

# Dispute Resolution of Problem Financing in Indonesian Islamic Banks by Basyarnas

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## Abstract

**Purpose:** This study discusses whether there is a dispute, and whether Indonesian positive law has usually provided a way for both parties to resolve it. The process that parties can undertake can be either extrajudicial proceedings or court proceedings (litigation).

**Method:** This research applies a literature review. We collected information on regulations, research, books, documents, records, websites, and various other literature related to BASYARNAS regarding dispute resolution in Islamic banking. The secondary data used in the analysis included data from Law No. 30/1999, Indonesian Banking Surveillance Report-Third Quarter 2023, and data from the National Sharia Arbitration Board of Indonesia.

**Results:** The results show that the role of BASYARNAS is not yet ideal because it must be preceded by written consent from the parties, and the overlapping jurisdiction between religious courts and district courts hinders the enforcement of arbitration awards.

**Limitations:** This research suggests the need for stricter regulations regarding the jurisdiction of Islamic bank financing disputes to avoid jurisdictional dualism. There is a need for a legal infrastructure that supports Sharia-based businesses by providing effective and culturally relevant out-of-court dispute resolution mechanisms with the principles and values of Sharia commerce.

**Contribution:** Arbitration is considered by entrepreneurs as the best way to resolve disputes out of court, as it suits the needs of businesses.

**Keywords:** BASYARNAS, Legal Protection, Dispute Resolution Option

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## 1. Introduction

Currently, the Indonesian banking system contains two types of systems: one that uses the sharia system and one that uses the conventional system. The sharia economy has been growing very fast. When compared to conventional regulation, the contribution of Islamic finance is still very small. But it cannot be denied that this remarkable growth rate is not limited to the banking industry. Shariah-based businesses also operate in areas such as insurance, pawnshops, mutual funds, etc. Given how vast and diverse sharia-based business models are, it is imperative to seek legal protection, especially in cases involving disputes (Fitriyah, 2021).

A financial institution that follows sharia principles, the main business of an Islamic Bank is to offer loans along with other services related to money circulation and payment traffic. Initially, the concept of Islamic banking was doubted due to two factors: first, there were many who believed that an interest-free banking system was unusual and impossible; and second, the question of how the bank should fund its operations (Usman, 2022). On the contrary, in Luthfi Hamidi's book titled "Jejak Jejak Ekonomi Syariah" (2003), Luthfi Hamidi said that Islamic banks are an alternative to the Islamic economic system that is able to calm the followers of Islam because they can fulfill their worldly needs without

violating the legal rules of the Qur'an and Hadith. Murabahah, Mudharabah, and Musyarakah are some of the financing products often used by Islamic banks.

The Indonesian banking system has undergone a significant transformation, evolving to encompass two distinct models: the sharia system and the conventional system. Within this dual framework, the sharia economy has experienced rapid growth, marking a noteworthy trajectory in the financial landscape. Despite its impressive expansion, the contribution of Islamic finance remains relatively modest when compared to conventional regulations. However, the dynamism of the sharia economy extends beyond banking, permeating diverse sectors such as insurance, pawnshops, and mutual funds. Given the multifaceted nature of sharia-based business models, there is an inherent need for legal protection, particularly in cases involving disputes (Kurniawati, 2017).

At the core of the sharia-based financial institutions is the Islamic Bank, an entity that adheres to the principles of sharia in its operations. The primary focus of an Islamic Bank is not only to provide loans but also to offer a range of services related to money circulation and payment traffic. The significance of these institutions goes beyond conventional banking, as they play a pivotal role in facilitating financial activities while adhering to the ethical principles outlined in Islamic law.

The inception of Islamic banking faced skepticism rooted in two primary concerns. Firstly, there was a prevailing belief that an interest-free banking system was both unusual and impractical. Secondly, questions arose about how these banks would fund their operations (Usman, 2022). Addressing these concerns, Luthfi Hamidi's book, "Jejak Jejak Ekonomi Syariah" (2003), posits that Islamic banks represent a viable alternative within the Islamic economic system. Hamidi argues that these banks provide a means for followers of Islam to meet their worldly needs without violating the legal rules outlined in the Qur'an and Hadith (Taufikurohman et al., 2022).

The financing products offered by Islamic banks further exemplify their unique approach to economic transactions. Murabahah, Mudharabah, and Musyarakah are among the commonly employed financing mechanisms. Murabahah involves the sale of goods at a profit margin agreed upon by both the buyer and the bank, providing an interest-free financing solution. Mudharabah operates on a profit-sharing model, fostering a collaborative approach between the bank and the client. Musyarakah, on the other hand, involves a joint venture where both parties contribute capital and share in the profits and losses (Dani et al., 2024).

As the sharia economy continues to thrive and diversify, legal protection becomes paramount, especially in navigating potential disputes within this intricate landscape. The expansion of Islamic finance beyond banking into various sectors emphasizes the need for a comprehensive legal framework that can address the nuances and complexities inherent in sharia-based business practices.

In conclusion, the coexistence of sharia and conventional banking systems in Indonesia has given rise to a burgeoning sharia economy. Islamic banks, with their unique financing models, contribute to this growth by providing ethical and interest-free financial solutions. Overcoming initial skepticism, these institutions have become integral to the Islamic economic system, offering followers of Islam a means to fulfill their worldly needs while adhering to the principles outlined in Islamic law. As the sharia economy extends its influence, the imperative for legal protection in the face of potential disputes becomes increasingly apparent, necessitating a robust legal framework to support the continued growth and stability of Islamic finance in Indonesia (Maulida et al., 2023; Trilaksono et al., 2021).

In terms of financing implementation, the legal relationship between Islamic banks and their customers is based on an agreement (akad). Referring to Law No. 21 of 2008 concerning Islamic Banking, it is revealed that "Akad is a written agreement between an Islamic Bank or Islamic Business Unit and other parties that contains the rights and obligations for each party in accordance with Sharia Principles" (Article 1 point 13). From the wording of this contract, it is clear that the Akad regulates a number of rights and obligations for the parties concerned, namely the Islamic Bank lender and the customer as the applicant for financing.

If there is a dispute, Indonesian positive law has usually provided a way for both parties to resolve it. The process that parties can take can be either extrajudicial proceedings or in court (litigation). Parties have the two aforementioned institutions to resolve their disputes (Rachman et al., 2022).

Arbitration is considered by entrepreneurs as the best way to resolve disputes out of court as it best suits the needs of businesses. In fact, arbitration is considered an independent court that allows businesses to resolve disputes according to their own will and needs (Faizal, 2021).

The research on "Dispute Resolution of Problem Financing in Indonesian Islamic Banks by BASYARNAS" is designed to delve into the intricate mechanisms employed by the National Sharia Arbitration Board (BASYARNAS) in handling disputes related to problem financing within the context of Islamic banks in Indonesia. This investigation aims to provide a comprehensive examination of the dispute resolution procedures, assessing their effectiveness and adherence to Sharia principles. By scrutinizing the processes undertaken by BASYARNAS, the research seeks to evaluate the institution's compliance with Islamic legal frameworks and identify any challenges encountered during the resolution of problem financing disputes. Additionally, the study aims to contribute insights into potential solutions for enhancing the overall efficiency of dispute resolution within the Islamic banking sector. Furthermore, the research may play a pivotal role in recommending legal and policy changes to strengthen the legal infrastructure supporting Islamic finance in Indonesia, ultimately fostering confidence among stakeholders and promoting the growth of Sharia-compliant financial practices.

## **2. Literature Review**

### ***2.1 Arbitration Institution in Indonesia***

Arbitration in Indonesia plays a crucial role in the legal landscape, with the Indonesian National Arbitration Board (BANI) and the National Sharia Arbitration Board (BASYARNAS) serving as the key institutions responsible for resolving disputes outside the conventional court system. These arbitration bodies contribute significantly to the efficiency and effectiveness of the dispute resolution process, providing an alternative avenue for parties seeking swift and impartial solutions (Arifin, 2019). The official BASYARNAS website sheds light on the evolution of the institution's nomenclature. Originally named the Indonesian Muamalat Arbitration Board (BAMUI), this Islamic arbitration entity emerged in Indonesia under the auspices of the Indonesian Ulema Council (MUI) on October 21, 1993. The primary objective of establishing BAMUI was to facilitate out-of-court settlements, recognizing the need for an institutional framework dedicated to resolving disputes in accordance with Islamic principles (Mardiansyah & Marpaung, 2022).

The transformation of BAMUI into BASYARNAS signifies a broader scope and a more inclusive approach to arbitration. The name BASYARNAS is an acronym derived from the words "Badan Arbitrase Syariah Nasional" in Bahasa Indonesia, translating to the National Sharia Arbitration Board. This renaming reflects a strategic move towards encompassing a wider range of arbitration cases, not limited solely to Islamic financial matters but extending to various sectors where alternative dispute resolution is sought.

BASYARNAS operates as a distinct type of institutional arbitration, positioning itself as a reliable and trusted entity for parties engaged in legal disputes. The institution aligns its practices with Sharia principles, emphasizing fairness, justice, and adherence to ethical considerations in the resolution process. Its establishment signifies the commitment to providing a structured and Sharia-compliant framework for those opting for out-of-court settlements (Santriati, 2021).

Furthermore, BASYARNAS aims to foster an environment conducive to dispute resolution, ensuring a balance between legal expertise and Islamic jurisprudence. The institution's commitment to resolving disputes reflects a broader societal need for alternative mechanisms, acknowledging the limitations and complexities often associated with traditional court proceedings.

In conclusion, the Indonesian National Arbitration Board (BANI) and the National Sharia Arbitration Board (BASYARNAS) stand as pivotal institutions in Indonesia's legal infrastructure. Their role in providing alternative dispute resolution mechanisms, especially in the context of Islamic principles, contributes significantly to the diversification and effectiveness of the country's legal landscape. The evolution of BASYARNAS from BAMUI underscores the institution's adaptability and commitment to meeting the evolving demands of a dynamic legal environment. As these arbitration bodies continue to play a vital role, their impact extends beyond mere dispute resolution, contributing to the overall development and resilience of Indonesia's legal and financial systems.

## **2.2 Bank Syariah Indonesia**

BSI is the result of the merger of PT Bank BRI Syariah Tbk, PT Bank BNI Syariah and PT Bank Syariah Mandiri. With the Financial Services Authority (OJK) Decree No. 04/KDK.03/2021, official permission for the merger of the three Islamic banking companies was granted on January 27, 2021. In addition, President Joko Widodo inaugurated the formation of BSI on February 1, 2021 (Bank Syariah Indonesia, n.d.).

BSI's shareholders are composed of 50.83% ownership of PT Bank Mandiri (Persero) Tbk, 24.85% ownership of PT Bank Negara Indonesia (Persero) Tbk, and 17.25% ownership of PT Bank Rakyat Indonesia (Persero) Tbk, with the remaining shareholders less than 5% (Munawwarah, 2023; Putri et al., 2023).

In order to provide wider services, more massive coverage, and better capitalization, this merger combines the advantages of the three Islamic banks. BSI is urged to compete on a global level thanks to cooperation with companies and the commitment of the government through the Ministry of State-Owned Enterprises (Juliansyah, 2022; Wahyudi & Astuti, 2022).

The official website of Bank Syariah Indonesia states that BSI's goal is to become a "TOP 10 GLOBAL ISLAMIC BANK". To achieve this goal, their mission is:

- 1) To provide Islamic financial solutions to the people of Indonesia. With more than 20 million customers, it will become one of the top five banks by assets (500+T) and book value of 50 T by 2025.
- 2) To be a great bank that delivers the best value for shareholders. One of the top five banks in Indonesia has an ROE of 18%) and has a strong valuation (PB of more than 2).
- 3) To be a company chosen and respected by Indonesia's best talent. A company that has strong values, empowers the community, and is committed to developing a performance-based work culture.

## **2.3 Product Schemes of Bank Syariah Indonesia**

The following is a scheme of products available at Bank Syariah Indonesia:

- 1) Sharia Savings: A savings product that follows sharia principles, through a wadi'ah (entrustment) contract, meaning that your savings do not provide a profit.
- 2) Syariah deposits: A form of time deposit with a mudharabah contract, where the profit earned is in the form of a ratio or profit sharing.
- 3) Islamic Current Account: A savings product that falls under the concept of wadi'ah (entrustment), where the funds you deposit do not earn a profit.
- 4) Sharia Financing: Financing products that follow sharia principles, with various contracts such as murabahah, ijarah, musyarakah, and mudharabah.
- 5) Sharia Pawn: A sharia-compliant pawn product, where the bank provides financing through collateral in the form of goods.

These products have been adapted to sharia principles and recognized by the Sharia Council. Bank Syariah Indonesia also offers digital banking services to make it easier for customers to make transactions (Azmi, 2020; Dani et al., 2024).

### 3. Research Methodology

This research applies literature study as a method. According to Nuryana et al. (2019), literature study consists of a series of actions related to the process of collecting library data, reading and recording, and how to manage research data systematically, objectively, analytically, and critically. The researchers used literature research because the subject of the study was BASYARNAS, and there were many studies on its role to resolve disputes in Islamic banking. They collected regulations, research, books, documents, records, websites, and various other literature related to BASYARNAS regarding dispute resolution in Islamic banking. Secondary data used in the analysis include Law No. 30/1999, Indonesian Banking Surveillance Report-Third Quarter 2023, and data from the National Sharia Arbitration Board of the Indonesian Ulema Council on Islamic banking dispute resolution in Indonesia.

### 4. Results and Discussion

#### 4.1 BASYARNAS Institution

The establishment of a sharia arbitration body, now called Basyarnas – MUI, originated from the MUI National Working Meeting (Rakernas) in 1992. Hartono Marjono, SH, presented a paper on Islamic sharia-based arbitration at the National Meeting Forum. The attendees responded positively, and the paper was suggested for further consideration by MUI. The enthusiastic welcome was due to the founding of Bank Muamalat Indonesia (BMI) in 1992 and Sharia People's Credit Bank, which followed profit-sharing methods as outlined in Law Number 7 of 1992 and Government Regulation Number 7 of 1992.

On April 22, 1992, the MUI Leadership Board gathered legal practitioners, including universities, to discuss the establishment of a Sharia arbitration body. At the meeting on May 2, 1992, Bank Muamalat Indonesia was asked to give feedback on the proposal to create a sharia arbitration body. The MUI Leadership Board formed a working group to prepare for the creation of a sharia arbitration body following two sessions and Decree No. Kep.392/MUI/V/1992 issued on May 4, 1992. The working group is split into two sections: the resource person portion includes Prof. KH. Ali Yafie, Prof. KH. Ibrahim Husen, H. Andi Lolo Tonang, S.H, H. Hartono Mardjono, S.H, and Jimly Asshiddiqie, SH, MH. The Technical Committee is composed of Abdul Rahman Saleh, Erman Rajagukguk, Hidayat Achyar, Dr. Satria Effendi, Dr. Abdul Gani Abdullah, Yudo Paripurno, Drs. H. Syaidus Syahar, H.A Zen Umar Purba, Drs. KH. Ma'ruf Amin, H.M. Isa Anshary, and Drs. Ahmad Dimiyati.

The Indonesian Ulema Council established BASYARNAS as a permanent institution to handle muamalat disputes that may occur in the fields of trade, industry, finance, and services. The establishment of Bank Muamalat Indonesia and Sharia Rural Banks was the initial reason for the formation of this organization.

In addition, this body has the authority to issue recommendations and legal opinions (binding recommendations), which are opinions that are binding in the absence of specific problems related to the implementation of agreements, which of course will be resolved based on the request of the party who signed the BASYARNAS agreement. By issuing this opinion, this body has several advantages, among others:

1. Trusted by the parties because the settlement is responsible and honorable.
2. Since the arbitrators are selected by people who are highly proficient in their fields, the parties trust them very much.
3. Fast, easy and cheap decision-making.
4. Since the nature of the agreement contains promises and each of those promises must be fulfilled, the parties voluntarily leave the resolution of their disputes to trustworthy parties, who also voluntarily enforce the award made by them when they agree to appoint arbitrators.
5. Basically, arbitration involves peace and prudence, and peace and prudence is what everyone wants.
6. Muamalat Arbitration (BASYARNAS) will allow the application of Islamic law to be a reference in case settlement for the benefit of Islamic muamalat and transactions conducted through Bank Muamalat Indonesia and Islamic BPR. This is because in each contract there is a clause that regulates the application of arbitration by BASYARNAS.

#### ***4.2 Competence of the Religious Courts***

The enactment of Law No. 3 of 2006 marked a significant expansion of authority for religious courts, particularly in the realm of Sharia economics. This legislative amendment, which modified Law No. 7 of 1989 concerning Religious Courts, empowered these courts to adjudicate disputes not only within the banking sector but also across various other Sharia economic domains. These encompassed areas such as Sharia insurance, Sharia reinsurance, Sharia microfinance institutions, Sharia mutual funds, Sharia bonds and short-term notes, Sharia financing, Sharia securities, and more, as highlighted (Haryanti, 2017).

In emphasizing the moral responsibility incumbent upon judges, the recognition of their decisions as correct underscores the imperative for continuous deepening of legal knowledge. To meet this demand, religious court judges are mandated to engage in additional research, specifically focusing on an in-depth understanding of Islamic economics. Despite prior training in Islamic law, judges may lack comprehensive knowledge in Sharia economics, particularly when they have not previously handled disputes in this domain, such as those related to marital issues, inheritance, wills, gifts, waqf, and sadaqah.

Expanding their jurisdiction to commercial disputes based on Sharia requires religious court judges to address several crucial aspects. Firstly, a thorough grounding in Sharia economics within the framework of Indonesian legislation and the realization of Islamic fiqh becomes essential. Secondly, judges must acquire a robust understanding of the operational dynamics of Islamic microfinance institutions, Islamic banking, mutual funds, and related service products. This expansion of knowledge is paramount in equipping religious court judges to effectively navigate and adjudicate within the evolving landscape of Sharia economics.

#### ***4.3 The Role of BASYARNAS in the Settlement of Islamic Banking Disputes***

BASYARNAS' role in dispute resolution is not ideal because it is faced with several obstacles. Among them is that dispute resolution by arbitration institutions must be preceded by written consent from the parties. In other words, if the parties do not agree to a clause in their contract that refers to dispute resolution by the National Sharia Arbitration Institute, then the dispute will not be resolved at BASYARNAS. The presence or absence of an agreement that includes an arbitration clause long before the dispute arises (*pactum de compromittendo*) or after the dispute arises (*acta compromisi*) determines the absolute jurisdiction of the arbitration institution. In addition, because religious courts and district courts have overlapping jurisdictions, enforcement of the award is difficult.

For example, there are obstacles that cause the BASYARNAS decision, a case between PT ATRIUMASTA SAKTI as the plaintiff and PT BANK SYARIAH MANDIRI as the defendant, to be canceled. The decision was issued on September 16, 2009 with number 16/Tahun 2008/BASYARNAS/Ka.Jak. The decision states that the plaintiff's request is granted because the defendant did not do anything correctly. In addition, the verdict stated that the defendant must refund Rp. 878,791,366 to the plaintiff. On October 12, 2009, this decision was submitted to the Central Jakarta Religious Court (now PA. Jak.Pus) under number 01/BASYARNAS/2009/PA. JP.

After the decision was reported, the respondent filed a reversal of the BASYARNAS decision with PA. Jak.Pus. The defendant's motion was then granted by PA. Jak.Pus which had the effect of canceling the BASYARNAS decision. Then, the plaintiff appealed the decision of PA. Jak. Pus. The decision was brought to the Supreme Court. The Supreme Court through Decision No. 188 K/AG/2010 dated June 9, 2010, ruled that PA. Jak.Pus did not have the authority to review and decide the case *a quo*. The Supreme Court also rejected the motion to set aside the BASYARNAS decision for several reasons, including the appointment of a single arbitrator or a panel that was contrary to the provisions of the BASYARNAS Code of Conduct.

## 5. Conclusion

In Sharia-based businesses, securing legal protection is of paramount importance, particularly when addressing disputes. Various avenues exist for resolving these disputes, including both judicial proceedings and alternative methods such as arbitration. In Indonesia, the Indonesian National Arbitration Board (BANI) and the National Sharia Arbitration Board (BASYARNAS) serve as vital institutions for out-of-court dispute resolution.

The Indonesian National Arbitration Board (BANI) plays a crucial role as a well-established and widely recognized arbitration institution in the country. It provides a platform for businesses to resolve disputes through arbitration, offering a neutral and efficient process that often expedites resolution compared to traditional court proceedings.

The National Sharia Arbitration Board (BASYARNAS) specifically caters to Sharia-based businesses, aligning its processes with Islamic principles. This institution serves as a specialized avenue for resolving disputes arising within the context of Sharia-compliant transactions. By offering an alternative to conventional legal channels, BASYARNAS contributes to the efficient and Sharia-compliant resolution of disputes, providing a mechanism that aligns with the principles and values of Islamic finance and commerce.

These arbitration institutions, BANI and BASYARNAS, collectively contribute to the legal infrastructure supporting Sharia-based businesses in Indonesia. Their existence and functionality underscore the commitment to providing businesses with effective and culturally relevant mechanisms for resolving disputes outside the traditional court system. This approach not only enhances the efficiency of dispute resolution but also aligns with the principles and values integral to Sharia-based commerce.

## Suggestion

- 1) Stricter legal regulations are needed to resolve Islamic bank financing disputes, particularly with regard to the jurisdiction of religious courts. This is done to avoid jurisdictional dualism between district courts and religious courts.
- 2) It is recommended to resolve disputes over problematic financing in Islamic banks by using out-of-court solutions, such as consultation and arbitration.
- 3) It is recommended that any disputes related to Islamic bank financing fall under the jurisdiction of the Religious Courts. On the other hand, all religious judges who only have knowledge of family law should understand Islamic banking law by attending training and education on Islamic banking disputes.

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