

Reconstructing Sharia Economic Dispute Resolution Based on Indonesian Muslim Society Culture

Nita Triana

State Institute on Islamic Studies Purwokerto
triananita@ymail.com

Abstract

This paper describes the settlement of disputes in the field of Islamic economy based on Indonesian Muslim society culture. The research method used is Library research with normative juridical approach. In business, whether based on conventional or sharia, conflict or dispute sometimes happens and can not be avoided. The settlement of disputes in the Court, takes a long time, the cost is huge and the result is a win-lose, resulting in a sense of unfairness to either party. For that *Sulh* (peaceful) in resolving the dispute sharia economy becomes the choice of the sharia economic actors if there is a dispute between the parties. Sulh (peace) can be developed with various models, such as negotiation, mediation or arbitration. This dispute resolution model is more acceptable to the society, because philosophically the values of Sulh (peace) already exists intrinsically in the culture of Indonesian society which prioritizes deliberation and harmony in the life of society.

Keywords: Disputes, Sharia Economics, *Sulh* (peace), Culture, Muslim Society

A. INTRODUCTION

Currently sharia business is growing rapidly. The facts on the ground show that almost all business activities based on conventional have been followed by sharia-based business. For example, conventional banking followed by sharia banking; Conventional insurance, followed by Takaful, conventional capital market, followed by syariah capital market, and so on. This phenomenon indicates that both business concepts are important to learn together.

In business, whether based on conventional or sharia, conflict or dispute sometimes happens and can not be avoided. A conflict turns into a dispute whenever a disadvantaged party has expressed his or her dissatisfaction or concern either directly to the party who is considered the cause of the loss or to the other party. This means the dispute is a continuation of the conflict. A conflict will turn into a dispute if it can not be resolved.

Conflicts that occur in the field of Islamic economics may be caused by the existence of one of the parties who break the promise of agreements that have been mutually agreed in the contract. Conflicts that occur in business activities should be resolved quickly, if not resolved quickly, will develop into disputes and will certainly hamper business performance that ultimately leads to losses.

With regard to sharia business which is operated on the basis of sharia principles, it is expected that the dispute arising in it can be solved by means based on sharia principles as well. In Muslim societies in Indonesia there are various dispute resolution mechanisms that can be applied to resolve sharia economic disputes. The dispute settlement mechanism in question is a settlement by way of deliberation.

Based on the above background, it is very important to describe the development of Islamic economic dispute resolution based on Muslim community culture in Indonesia. This research uses normative juridical method with qualitative analyst. That is describing the normative values that exist in laws or laws that live in society (living law) (Strauss, 1990).

B. DISPUTE ON SHARIA ECONOMICS

Sharia Economics or also referred to as Islamic economics is an economy that is based on the principles of sharia. Sharia economy is also the whole business activities undertaken according to sharia principles. Disputes in sharia activities mean that there is a difference of interest between two or more parties which are interrelated.

If a person or a legal entity has entered into a shariah contract with another party, then between the parties it has established an engagement. Accordingly, according to civil law, an agreement agreed upon by such parties shall be binding as a law for those who make it. Thus, the occurrence of a sharia economic dispute is caused by two parties either an individual or a legal entity that engages in a contract or agreement with sharia principles that either party performs a breach and / or commits an act unlawful, causing the other party to feel disadvantaged.

The sharia economic dispute which is the authority of the Religious Courts (Asnawi, 2011) can be broadly classified into three categories:

1. Disputes in the field of Islamic economics between financial institutions and shariah financing institutions with their customers
2. Disputes in the field of Islamic economics between people who are Muslims, whose contract of agreement is stated explicitly that the business activities undertaken are based on the principles of sharia.
3. The sharia economic dispute can also be in the form of a Bankruptcy Declaration (PPP) and can also be a Postponement of Obligation of Payment of Debt (PKPU) in the field of syari'ah economy, as well as bankruptcy derivative matters (incomplete case as bankruptcy case).

C. SETTLEMENT OF SHARIA ECONOMIC DISPUTE IN LAW

UU no. 3 of 2006 regulates the absolute competence of the Religious Courts in the settlement of sharia economic disputes. In Article 55 paragraph (1) of Law no. 21 of 2008 on Sharia Banking also said that the settlement of the Sharia Banking dispute is done by the court within the Religious Courts (Manan, 2012). However, there is a problem of the authority of the Religious Courts in resolving the dispute

in the field of Islamic banking, which in Law no. 21 year 2008 about sharia banking happened clash of authority.

The clash of authorities is contained in the explanation of article 55 paragraph (2) contains the settlement of disputes which may be made according to the contract include: arbitration, dispute resolution alternatives, and the General Courts. The explanation of article 55 paragraph (2) raises legal uncertainty in resolving the dispute over sharia banking.

However, Constitutional Court Decision No. MK No. 93 / PUUX / 2012 has solved the problem of dualism of dispute settlement in a litigation, namely to hand over the absolute authority to solve the dispute over syariah banking litigation to the Religious Courts. Although the explanation of Article 55 Paragraph (2) is deleted, the settlement of a non-litigation dispute is returned to Article 55 Paragraph (2) which reads: In the event that the parties have agreed to settle the dispute other than as intended in paragraph (1) in the Religious Courts, Carried out in accordance with the contents of the contract and the settlement of alternative disputes such as mediation and arbitration.

So after the decision of Court Number 93 / PUUX / 2012, dispute resolution of Islamic banking in litigation handled by the Religious Courts. The non litigation is handled by arbitration and other dispute resolution alternatives.

Arbitration in this case is resolved by the National Syariah Arbitration Board (BASYARNAS), while other alternative disputes are resolved through a dispute resolution agreement based on good faith. If the dispute can not be resolved, in writing the parties to a dispute or disagreement shall be resolved through the assistance of a person or more of expert advisors or through a mediator.

This provision opens opportunities for the development of alternative solutions beyond litigation. The concept of civil disputes settlement with the Alternative Dispute Resolution mechanism (APS) or in its original term referred to as Alternative Dispute Resolution (ADR) is very conducive to the resolution of the sharia economic dispute in the future as well as in line with the concept of dispute resolution that has become a culture in the business world Local and global, which put forward the principle of win-win solution.

Factors that are the weakness of competitiveness to attract direct investment in a State are the existence of dispute resolution mechanisms. Effective dispute resolution is one of the factors to be taken into account before deciding to engage in investment activities.

The effective dispute resolution mechanism involves:

1. Dispute resolution forums, either through national courts, national and international arbitration agencies, as well as alternative dispute resolution forums such as negotiation and mediation;
2. The effectiveness of the applicability of the law applied in the dispute;
3. Fast decision-making processes and reasonable costs;
4. The neutrality and professionalism of judges, arbiters or third parties involved in decision-making processes such as mediators;
5. Effectiveness of implementation or implementation of court decisions, arbitration bodies and other dispute resolution bodies;
6. Parties' compliance with the resulting decisions.

Conversely, ineffective and unjust dispute settlement mechanisms that do not guarantee legal certainty and enforcement will not only undermine investor intentions to invest, even further encouraging investors to relocate and capital flight to other countries.

According to Prof. Dr. Bagir Manan that: In the Court the Judge should think to resolve the dispute rather than merely resolve a dispute. If it breaks a dispute, there may be a new dispute or even sharpen a long-standing dispute. However, if the Judge thinks of resolving the dispute, there will be no new disputes, because each party is satisfied with the settlement.

Mediation and arbitration are closer to the purpose of resolving the dispute, ie because the language is "settlement" which means settlement, then each party is expected to feel satisfied from the results of their own negotiations or through negotiations through mediators or arbiters ".

D. SETTLEMENT OF THE SHARIA-BASED ECONOMIC DISPUTE OF INDONESIAN MUSLIM SOCIETIES

One of the important things that can be modeled in conflict resolution is local culture (local wisdom). Indonesian Muslim society has a culture of conflict resolution with the philosophy of peace by way of deliberations influenced by Islamic law.

1. *Al-Sulh* (Peace)

The term "sulh" means to dampen the dispute, whereas in the term "sulh" means a type of contract or agreement to end a dispute / dispute between two parties to a peaceful dispute. Resolving a peace-based dispute to end a case is strongly recommended by Allah SWT as mentioned in an an-Nisaa '(4) verse 126 which means: "peace is a good deed."

There are three pillars that must be fulfilled in the peace agreement that must be done by the peacemaker, ie, the consent, the lafaz, and the lafaz of the peace agreement. If all three of these are met, then this agreement has taken place as expected. From the peace agreement was born a legal bond, which each party is obliged to implement it. Please note that the agreed peace agreement can not be unilaterally canceled. If any party does not agree to the contents of the agreement, then the cancellation of the agreement must be approved by both parties (Rahmani, 2008).

The requirements of a peace agreement can be classified as follows:

a. It concerns the subject

On the subject or the person making the peace must be a person capable of acting according to law. In addition, the person carrying out the peace shall be a person who has the power or has the authority to relinquish his or her rights or matters intended in the peace. Not necessarily every capable person has power or authority. The person who is capable of acting according to law but has no wewenang to have such; First, the guardian of the property of the person under his guardianship; Second, the owner of the property of the person under his control, and the third, the Nazir (wakaf) of the waqf of the Waaf's property under his supervision.

b. It concerns the object

The object of peace must meet the following provisions: first, in the form of assets, intangible or intangible, such as intellectual property, which can be valued or valued, may be handed over and useful; Second, can be known clearly so as not to give birth to fraud and obscurity, which in the end can also give birth to new disputes against the same object.

c. Issues that may be reconciled

Islamic jurists agree that things that can and may be reconciled are in the form of material disputes that can be judged and limited only to displaced human rights. In other words, the issue of peace is only permitted in the field of muamalah alone, while things related to the rights of God can not be reconciled (Maghfirah; 2016).

d. Peace Executor

Implementation of the peace agreement is implemented in two ways, namely outside the court or through court proceedings. Outside the court, dispute resolution can be carried out either by their own (who do the peace) without involving another party, or requesting the help of others to become arbiters (referees), it is then called arbitration, or in Islamic law called hakam. The implementation of the peace agreement through the court proceedings is held when the case is being processed in court.

In the provisions of the legislation it is determined that before the proceedings are processed or may be processed and even have been decided by the court but have not had permanent legal force, the judge should advise the parties to the dispute to make peace. The peace treaty (sulh) conducted by both disputing and dispute parties, in practice in some Islamic countries, especially in the case of sharia banking is called "tafawud" and "taufiq" (negotiation and adjustment. In overcoming disputes between internal banks, especially banks and government financial institutions (Assyria, 1996)

How to solve the dispute with the way of peace (Sulh) is also influenced the culture of Indonesian society. The social base of Indonesian society is a communal community, like harmony and togetherness. Generally Indonesian people live in a

place (village, village, nagari) with high social ties. The economic structure of rural communities in Indonesia is oriented towards conservative attitudes, guided by motives to maintain the security and sustainability of existing systems. The life of Indonesian society harmonized and in normative right through the concept of harmony and *kurmat*.

The dispute settlement with *Sulh* is in harmony with the settlement in a familial way in the form of deliberation and consensus that lives in Indonesian society. In reaching mutual agreement each disputing parties formulate mutually beneficial and non-mutually beneficial agreements. Results of dispute resolution with win win solution.

A familial dispute settlement can be made directly between the parties to the dispute, may also appoint a third party (*muhakkim* / arbiter) to assist in resolving the dispute, in Islam there are several types of settlements that use third parties as mediating parties to assist in dispute resolution:

2. *Tahkim* (Arbitration)

In the Islamic perspective, "arbitration" can be matched by the term "tahkim".

Tahkim itself comes from the word "hakkama". Etymologically, tahkim means to make someone as a deterrent to a dispute. In general, tahkim has the same understanding with the current known arbitration of the appointment of one or more persons as referees by two or more disputants to settle them peacefully, the disqualified is called "hakam". According to Abu al-Ainain Fatah Muhammad, the definition of tahkim according to istiah jurisprudence is as the leaning of two warring people to the one whom they accept the decision to resolve the dispute of the parties to the dispute.

According to Said Agil Husein a-Munawar (Al-Munawar 1994). The notion of "tahkim" according to the Islamic jurists of the Hanafiyah school of thought is to separate disputes or to establish the law among men with words binding two parties sourced from those who have power in general.

The definition of "tahkim" according to jurists from the Shafi'iyah group is to separate the dispute between the warring parties or more with syara 'law against an event that must be implemented. The arbitration institution has been known since

pre-Islamic era. At that time, although there has not been an organized Islamic judicial system, every dispute over the rights of miik, inheritance rights and other rights is often resolved through the arbitrator (referee) appointed by those in dispute. This arbitration institution is continuing and developed as an alternative settlement of disputes by modifying what was once prevalent in pre-Islamic times.

This arbitrage tradition is more developed in Mecca society as a trading center to dispute business disputes between mreka. Ada also developed in Madina, but more in cases related to agriculture, because the area of Madinah known as agrarian area. Prophet Muhammad SAW himself often become Mediator in various disputes that occur both in mecca and Madinah. When the area has grown more broadly, the mediator is appointed from among friends and in carrying out its duties remain guided by the Qur'an, Al-Hadith, and ijtihad according to his ability. Therefore Islamic law institutionalizes Tahkim as a positive order because tahkim (arbitrage) contains positive and constructive values as follows (Wahed: 2015):

- a. Both parties are fully aware of the need for respectable settlement and responsibility.
- b. They voluntarily submit the dispute to the person or institution approved and trusted.
- c. They will voluntarily implement the judgments and arbiters, as a consequence of their agreement to appoint the arbitrator, the promise of promise and promise must be fulfilled (QS.al-Isra '(17) verse 24.
- d. They respect the rights of others, even if the other person is his opponent.
- e. They do not want to feel right on their own (*bener sak karpe dewe*) and ignore the truth that may be in others.
- f. They have legal awareness and awareness of state / society, so it can be avoided vigilante action (*eigenrechting*).
- g. Surely the ploy of the ark / arbitration in it contains the meaning of deliberation and peace.

According to Wahbah az-Zuhaili (Zuhaili, 2005). Islamic jurists among the Hanafiyah schools think that the judge applies in the matter of property, qisas, hudud, marriage, li'an both concerning the rights of Allah and human rights, as said by Imam Ahmad al-Qadhi Abu Ya'la (false A sect) that tahkim can be done in everything, except in the field of marriage, li'an, qazdaf, and qisas. On the contrary, the jurists among the Hanafiyah schools argue that the tahkim is justified in everything except in the field of *hudud and qisas*, while in the field of *ijtihād* only justified in the field of muamalah, marriage and talak only. The Islamic jurists among the Malikiyyah schools say that tahkim is justified in the Islamic Shari'a only in the field of property only but is not justified in the field of hudud, qisas, and li'an, because this matter is a matter of the judiciary.

This last opinion is an opinion that is often used by Islamic jurists. To solve the problems that arise in the life of the community, including also in the field of Islamic economics. This opinion is in line with what Ibn Farhum disclosed that the area of tahkim is only related to property only, not included in the field of hudud and qisas. In Indonesia as referred to in Article 66 letter b of Law Number 30 Year 1999 concerning ADR, it is explained that disputes that can not be resolved by arbitration institutions are disputes which according to laws and regulations can not be held peace. The economic scope of commerce, banking, finance, investment, industry, intellectual property rights, and the like includes arbitration in resolving disputes arising in its implementation.

Islamic jurists in the Hanafiyah, Malikiyah, and Hambaliyah schools agree that all arbitration decisions are directly binding on the parties to the dispute, without first seeking the consent of both parties. This opinion is also supported by some jurists among the Shafi'i schools. Their reasoning is based on the Hadith of the Prophet SAW stating that if they have agreed to raise the right to resolve disputed disputes, then the judgment judgment is not obeyed, then for those who do not obey it will get punishment from Allah SWT. Besides, whoever is permitted by the Shari'a to decide upon a case, the verdict is valid, therefore the verdict is binding, as well as the judge in the Court who has been authorized by the ruler to prosecute a case (Khalidah; 2012).

3. Mediation

Mediation attempts to resolve disputes through non-litigation methods are contained in Law No. 30 of 1999 on Arbitration and Alternative Dispute Settlement through the agreed procedures of the parties that are conducted with the help of a neutral and impartial mediator as a facilitator, in which the decision To reach a fixed agreement taken by the parties themselves, not by the mediator. Therefore, mediation is the process of resolving disputes over negotiations with the help of a third party (Margono, 2000).

Understanding of mediation according to Bank Indonesia Regulation No.8 / 5 / PBI / 2006 which has been amended by Bank Indonesia Regulation no. 10/1 / PBI / 2008 concerning Banking Mediation, is a dispute resolution process involving mediators to assist the parties to the settlement in the form of voluntary agreements on some or all of the disputed issues (Sjahdeini; 2014).

Mediation has many positive sides. According to Wall (Wall, 2001), mediation has a positive side as follows:

- a. Mediator mediator may provide proposals of compromise between the parties;
- b. The mediator can provide businesses or other services, such as giving assistance in implementing agreements, financial assistance, oversee the implementation of the agreement, and others
- c. If the mediator is a country, normally the country can use the influence of his power to the parties to the dispute to reach a settlement of the dispute.

The advantage of mediation compared to other dispute resolution methods is that the mediation process is relatively easier compared to other dispute resolution alternatives. The parties to the dispute also have a tendency to accept the agreement reached because the agreement was made by the parties together with the mediator. Thus, the parties to the dispute feel they have a mediation verdict that has been reached and is likely to implement the outcome of the agreement well. The mediation verdict may also be used as a basis for the parties to the dispute to negotiate or negotiate among themselves if at any time is required if another dispute arises between the parties to the dispute without the need to involve the mediator.

Another advantage is the opening of opportunities to examine more deeply the issues that are the basis of a dispute. Sometimes in addressing a problem, the parties to the conflict have not studied in depth on the subject matter. The parties certainly prefer the interests of his own country. With the process of mediation can be done a more in-depth study with information and data provided by both parties in dispute. Ultimately this study can be more objective because it is based on information and interests from both parties. In the mediation process it is important for the disputing parties to trust each other that all parties will carry out the outcome of the mediation verdict properly so as to avoid hostility and resentment.

Whether or not the agreement is reached depends on the good faith of the parties to resolve the dispute in the mediation process. If there is no good faith in the mediation process from both sides, the agreement will never be reached and the conflict can not be resolved. In addition, in the mediation process should be raised enough information as a bargaining material. The information presented by both parties becomes very important for the mediator to be able to immediately give his opinion on the conflict that is happening. In addition, both parties must provide sufficient authority for mediators to mediate in the conflict being faced by both parties. The compliance of the parties to comply with the agreement made and the influence of the mediator in the mediation process strongly acknowledges the agreement to be reached by the parties to the dispute.

Mediators in mediation are not instrumental in making decisions, but rather to help the parties understand the views of others in relation to disputed issues. The mediator as the party determining the effectiveness of the dispute resolution process should be neutral, listen to the parties actively, try to minimize the differences, and then focus on the equations. A mediator must not influence one party to achieve the goals aspired by the other.

Mediators desperately need a personal ability that allows them to relate to each other pleasantly. However, the most important personal ability is the nonjudgmental nature, that is in relation to the thinking of each side, and its readiness to understand with empathy of the views of the parties. Mediators need to understand and react positively to the perceptions of each party with the aim of building rapport and trust.

Reconstructing Sharia Economic Dispute Resolution Based on Indonesian Muslim Society Culture

As a neutral party serving both parties, the mediator plays an interaction with the parties either jointly or individually, and takes them on the following three stages:

- a. Focusing on opening communication between the parties;
- b. Utilizing such communications to bridge or create mutual engagement between the parties (based on their perception of the dispute and their strengths and weaknesses); and
- c. Focused on the appearance of completion.

In addition to the opinions of experts writing about mediation, the mediator's tasks are also set out in the rules applicable to the implementation of mediation in Indonesia. These tasks are listed in Article 15 of the Supreme Court Regulation Number 1 of 2008. These duties are among others

- a. The mediator shall prepare the proposal of the mediation meeting meeting to the parties to be discussed and agreed upon.
- b. The mediator shall encourage the parties to directly play a role in the mediation process.
- c. If deemed necessary, the mediator may conduct a caucus.
- d. The mediator shall encourage parties to explore and explore their interests and seek the best possible solutions for the parties.

Based on the above descriptions, we can see that the mediator is responsible for directing and facilitating the smooth communication and helping the parties to understand the disputes between them, and the parties can make objective judgments until the resolution of the dispute is dealt with.

In the *islah* the existence of a third party is very important, in order to bridge the parties to the dispute. Parties generally need the help of others to find the right solution for their dispute resolution. The third party plays an important role in facilitating, negotiating, mediating or arbitration among the disputing parties. Facility, negotiation, mediation, and arbitration are the technical form of dispute resolution by using *sulh* pattern.

This pattern of *sulh* can be developed in alternative solutions to disputes outside the court such as mediation (*wasatha*), arbitration (*tahkim*), and others. This pattern is very flexible and gives the parties and third parties flexibility to formulate

options and alternative dispute resolution. Sulh is a means of realizing the peace and benefit of humanity as a whole. Sulh not done when bring harm and kemadaaratan for humans.

Implementation of the concept of mediation will bring about maximum results if all parties have the same commitment, the same intentions and mutual understanding drafts offered by all parties, including prioritizing positive thinking on solutions offered by the mediator. This commonality needs to be built so that from the beginning all parties are not trapped by a false egoism and feel the most righteous. All parties must have the resolve to agree to end the dispute and seek a mutually beneficial solution.

In order for all parties to be bound and implementable the material of peace must be poured in a transparent, simple, real, and clear legal form. The consequences of peace generated through mediation will greatly help resolve the conflict's focus more briefly, easily and foster a sense of brotherhood, let alone the process of settling the case with mediation through the pass which is very beneficial to all parties.

Mediation has been done by the Prophet Muhammad, both before the Prophet became an Apostle and after becoming an Apostle. The process of resolving conflicts or disputes can be found in the event of the re-laying of Hajar Aswad (the black stone on the side of the Ka'bah) and the Hudaibiyah Treaty. Both of these events are well known to the Muslims around the world, as they are generally accepted. Re-laying of Hajar Aswad and Hudaibiyah Agreement has value and strategy of conflict resolution (dispute) especially mediation and negotiation, so that these two events have the same perspective that is to realize peace.

4. *Al-Hisbah*

Al-Hisbah is an official state institution authorized to resolve minor issues or violations which by its nature do not require the judicial process to resolve them. According to al-Mawardi The authority of this scholarship institution is addressed to three things: first, indictments related to fraud and reduction of dosage or scales; Second, indictments related to commodity fraud and prices such as dose reduction

and scales on the market, selling outdated food, and third: indictments related to postponement of debt payments whereas the indebted party can afford it.

From the description it can be seen that the power of al-Hisbah is only limited to the supervision of the goodness of goods and prohibit from munkar. Sending to the good of sharing to three parts, namely: first, enjoining the goodness associated with God's rights such as having people to perform the Friday prayers if the place is enough people to do it, and punish them if there is irregularities in the Friday prayer; Second, in relation to human rights, such as the handling of pending rights and postponement of debt repayment. Munasib has the right to order the person who has the debt to repay it immediately; And thirdly, in relation to the common right between God's rights and human rights, such as having the wali married orphaned girls with a pair of men, or obliged divorced women to live their iddah. The Muhtasib had the right to bring ta'zir to the women if he refused to practice his iddah.

The forms of dispute settlement such as arbitration, mediation and al-hisbah are a form of dispute resolution within Islam known as *Sulh* (peace). Such settlement forms are then united intrinsically in harmony with Indonesian customary law and become the culture of Indonesian society. The melting of the dispute resolution in Islam with the culture of musyawarah in customary law can occur because of the universal values of the Indonesian community that are familial (communal)

In Minangkabau. There is a philosophy of Adat Bersendi Syarak, Syarak Bersendi Kitabullah in understanding and interpreting its existence as God's creature. Indeed, Adat Bersendi Syarak, Sokok Bersendi Kitabullah which is now a cultural identity of the Minangkabau people born from the historical awareness of the community through the process and a long struggle. Since the entry of Islam into the life of Minangkabau society, there was a meeting point and a mixture of adat teachings with Islam as a value system And the norm in Minangkabau culture which gave birth to the agreement of Adat Bersendi Syarak, Syarak Bersendi Kitabullah.

Adat is also called 'uruf', meaning something that is known, known and repeated and become a habit in society. It is old age, used from generation to generation, which becomes identity (identity) and is considered high value by the indigenous people 'Uruf for Muslims, there are good and some bad. Inauguration of good customs and the abolition of bad customs, became the duty and purpose of the coming of religion and shari'a Islam. The deem that became the basis to regard custom as the source of the law is the verse of the Qur'an, Surat al A'raf verse 199 and the hadith of Ibn Abbas which means " What is regarded well by the Muslims, then with Allah is also good among the jurists (law) Islam rules apply, the custom is the law. Therefore the stronger confidence filled by the true religion of Islam, haq from Rabb to foster Private nagari children in Minangkabau realm.

Man in customary law is a man who is always bound by his society. The traditional atmosphere in the community is mutual help or help. This communal style is still a culture and characteristic of Indonesian society. The universal values of the customary law are preserved together with consensus deliberations that are usually led by the adat head (Tamanaha, 2004).

The customary leader's role acts as a village peace judge, ie if there is a dispute between the villagers or if there are acts contrary to customary law, the adat head acts to restore the balance in the village atmosphere by restoring the law. If there is a conflict between the friends of one village with another, the adat head strives for both sides to achieve harmony. The parties are given an understanding so as not to demand 100% of their respective rights. The main objective is to reach the settlement of the dispute, so that customary peace can be restored (Philippe, 1973). For example in the Minangkabau area, a large family is led by a family leader called Mamak home or Tunganai, the oldest man. From the relatives in question. A Tunganai takes care of kinship matters relating to economy, inheritance and family by way of deliberation.

In Bengkulu know custom law that becomes an alternative in the process of settling the case is Setawar Sedingin. Sedawar symbolizes Culture. This means that the people of Bengkulu always uphold the values of culture in every region. The social, cultural, ethical and moral values are the glue of the sense of unity and unity

Reconstructing Sharia Economic Dispute Resolution Based on Indonesian Muslim Society Culture

(Rahardjo, 2005) among members of the community in Bengkulu. As cold as a cultural asset of fraternity is priceless. This concept for the people of Bengkulu City is an important thing to be conserved and developed in the future.

In the Java region there is Javanese ethics based on Javanese philosophy of solid life. This philosophy is flooded by Javanese joints, which include: insights of Tri-sila, Panca-sila, syncretism, tantularism and mystical experience. The Insights of Tri-sila include: the attitude of eling (remember), pracaya (believe) and mituhu (faithful). The Five Principles is the attitude of the Javanese life which includes: the (sincere in giving something), narima (sorry for reality), temen (earnest), patience is the behavior of momot, meaning to be willing to accept the trials consciously.

The above elements in practice there is no clear separation but are interrelated, this is because the main purpose of the application of Javanese ethics is Jalma wanilis (main human). Based on the above objectives, the ethical basis of Java is Rukun and Kurmat (Respectful). Rukun and respect is the way to obtain harmony or balance of life. The value of respect becomes the point of contact between the various feelings of the Javanese individual that arise when he is confronted with others and determines the behavior of the Javanese in his social relations (Geertz, 1993). Rukun and Kurmat are the values of Javanese philosophy when a dispute arises. The settlement by way of deliberation and consensus with mediation, arbitration and Al-hisbah lines harmoniously harmonize with the values of harmony and mutual respect in Javanese society.

Adat Badamai is one of the most common forms of dispute settlement by Banjar people. *Adat Badamai* also means as a result of the process of conspiracy or deliberation in the discussion together with the intention of reaching a decision as a settlement of a problem. *Badamai* custom is commonly also referred to as *Baparbaik*, *Bapatut* or *mamatut*, *baakuran* and completion by way of torch. *Badamai* Customary Laws in Banjar society are the entire unwritten law that prevails among Banjar people who are partially influenced by Islamic law.

Adat Badamai is a term for the settlement of disputes both criminal and economic / civil. *Badamai* custom in the settlement of disputes is also called

Baparbaik and Bapatut. In Banjar indigenous communities there are several terminology on criminal cases such as cases of violation of misconduct, traffic and incidents of violence, better known as Badamai, Baparbaik (ignore) mamatut, baakuran and so on. As for civil cases, used the term basuluh or *ishlah*.

Badamai custom is done in order to avoid disputes that may endanger the social order. Badamai's verdict generated through the musyawarah mechanism is an alternative effort in society. In the Banjar community in case of dispute among the citizens or an act of maltreatment or a violation of the norm (Adat) or a fight or a traffic violation, the community members tend to settle badamai. This custom is recognized as effective in settling disputes or disputes. At the same time able to eliminate feelings of resentment.

If there is a conflict or economic dispute between the people and the Badamai custom is not believed to be damaging the Harmony order which is a violation of traditional wisdom (Sousa; 1995). If conflicts occur especially in relation to criminal events, then community leaders (tetuha kampong) take the initiative to reconcile the parties to the dispute. Seeking meetings (musyawarah) of the family, continued the event salvation with apologies and sometimes accompanied by the agreement will not extend the dispute and hostility. Even between the two parties tied up in a brotherhood commonly referred to as baangkat dangsanak (was ratified) or *baangkat kuitan* (be a parent and adopted child).

The distinctive features that distinguish Adat Badamai from the peaceful settlement of other societies are the values or norms that must be obeyed, the ceremony that accompanies as the symbol of the completion of disputes or disputes, the occurrence of maundan dangsanak or maangkat kuitan (was ratified) loaded with elements Religious rituals such as freshwater ceremonies (peace ceremonies marked with symbols sprinkling chilli oil baboreh (coconut oil mixed with fragrance) to the heads of the parties as a symbol of brotherhood), complete with glutinous rice and coconut rice mixed with Javanese sugar.

With the customs and culture of Indonesian Muslim society with religious and communal nuance, the economic disputes that occur between relatives and between citizens with each other, resolved by way of kinship and deliberation by trying to

stay in harmony and mutual respect to each other (Galanter; 1981). Dispute the dispute with this philosophy of peace and harmony, the result is a win-win solution. Sharia economy, which is based on sharia principles or all business activities carried out according to sharia principles that exist in this modern era (Usanti; 2013), adopted the existing philosophy in Indonesian Muslim society. The settlement of mediation in Banking, mediation within Courts, insurance mediation, Banking negotiations, arbitration and others are well suited to be applied in the settlement of sharia economic disputes.

E. CONCLUSION

Solving of sharia economic dispute can be done by litigation (Religious Court) and non litigation (mediation, negotiation and arbitration). Settlement by litigation results in a win-win decision. This win-lose decision provides opportunities for hostilities between the parties. This is not in accordance with the culture of Indonesian people who are more concerned with harmony and peace. Non-litigation dispute resolution is more in line with the culture of Muslim communities in Indonesia which has a philosophy of peace and harmony.

In Islam there is known dispute settlement with Shulh principle which means peace. Shulh's form can be done by way of deliberation and direct negotiations between the disputing parties commonly called the negotiations of the parties. Shulh's form can also be done by presenting a third party to help resolve the dispute, the form of Al-tahqim, known today as an arbitase and mediation model. In addition to the above model, in Islam is also known there is a form of Al-hisbah. Al-hisbah is an official state institution authorized to resolve minor issues or violations which by its nature do not require the judicial process to resolve them. Currently this model is still sustainable in the form of customary institutions.

The culture and custom of dispute settlement with the path of peace which is now the cultural identity of Indonesian Muslim society is born from the historical awareness of its people through a long process and struggle. Since the entry of Islam into the life of Indonesian society, there has been a meeting point and a mixture of adat teachings with Islam as a system of values and norms in the culture that gave

birth to an agreement and this is done continuously so as to entrust and become the Urf in Indonesian Muslim society.

Dispute resolution The sharia economy currently develops models of negotiation, mediation and arbitration in resolving disputes, both negotiation and mediation in sharia banking, sharia insurance as well as mediation in Religious Courts. Such a model of settlement further provides a sense of justice for both parties, maintaining good relations between the parties and more in line with the values that exist as part of the Indonesian Muslim community.

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