



Faculty of Law Unissula

THE 1ST PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

Omnibus Law Opportunities And Challenges Towards
Entrepreneurs And Labor : Comparative Review

June 27 2020

June **27th** 2020

THE 1st PROCEEDING

International Conference And Call Paper

*" Omnibus Law Opportunities And Challenges Towards
Entrepreneurs And Labor : Comparative Review law"*

IMAM AS' SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :
UNISSULA PRESS

ISBN. 978-623-7097-74-7

COMITTE OF THE 6th PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

*" Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor
: Comparative Review"*

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Hal I-IX, 1-258

Cetakan Pertama Tahun 2020

Penerbit UNISSULA PRESS

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-623-7097-74-7

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Muh. Arifin, S.Kom

Desain Lay Out :

Suryo Atmojo, SH

ISBN :

978-623-7097-74-7

Penerbit :

UNISSULA PRESS

Alamat :

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Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor : Comparative Review" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

Wassalamu'alaikum Wr.Wb.

Table Of Content

STRENGTH AND WEAKNESSES OF OMNIBUS LAW IN INDONESIA

Saprodin, Widarto 1

OMNIBUS LAW BETWEEN JUSTICE AND BENEFITS

Hartanto, Aris Sudarmono 7

JURIDICAL REVIEW OF THE FORMATION AND IMPLEMENTATION OF OMNIBUSLAW IN LAW SYSTEM

Amir Darmanto, Muh. Tommy Fadlurohman 14

IMPACT OF LAW OMNIBUS APPLICATION IN INDONESIA IS POSSIBLY HAPPENING TO ENVIRONMENT DEGRADATION

Sunarto, Eva Kurniasih 19

Omnibus Law in Progressive Law Views in Indonesia

Nasrudin, Joko Prasetyo 25

OMNIBUS LAW WAS REVIEWED FROM THE EXCESS AND LACKS OF THE LEGAL CODIFICATION SYSTEM IN INDONESIA

Binov Handitya, Jarot Jati Bagus Suseno 32

OMNIBUS LAW AS SIMPLIFICATION OF LEGISLATION IN INDONESIA

FA Alexander GS, Sundoyo 38

PREROGATIVE RIGHTS OF PRESIDENTS IN OMNIBUS LAW

Tri Mulyani, Sih Ayuwatini 44

OMNIBUS LAW AND IT'S IMPLEMENTATION OF INDONESIAN COUNTRY MARITIME DEFENSE AND ISLAMIC LAW VIEWS ABOUT STATE DEFENSE

Aminudin Yakub, Teddy Prayoga 50

OMNIBUS LAW AND PROBLEMATICS LABOR IN INDONESIA

Nukhbatul Mankhub, Aep Saepudin² 57

OMNIBUS LAW IN INDIGENOUS LAW VIEWS IN INDONESIA

Carolina da Cruz, Suwitno 63

OMNIBUS LAW IN RENEW OF CRIMINAL LAW	
<i>Lukman Muhadjir ,Salidin</i>	69
URGENCY OF THE OMNIBUS LAW BILL	
<i>Andi Lala ,Sudiharto</i>	77
THE APPLICATION OF OMNIBUS LAW IN THE EFFECT OF LEGAL REFORM IN INDONESIA	
<i>Warijan ,Tri Setyadi Artono</i>	85
OMNIBUS LAW IN ECONOMIC DEVELOPMENT CONTEXT IN INDONESIA	
<i>Indrayana Addhywibowo Kusumawardana ,Iva Amiroch</i>	93
IMPLEMENTATION OF OMNIBUS LAW IN LAW OF WORK FIELD IN INDONESIA	
<i>Yimmy Kurniawan ,Henny Rosita</i>	101
OMNIBUS LAW OPPORTUNITIES AND CHALLENGES IN THE INDONESIAN LEGISLATION SYSTEM	
<i>Yuni Nurkuntari ,Sunardi</i>	109
OMNIBUS LAW IN COMPLETION OF LAND REGULATION PROBLEMS	
<i>Enju Juanda, Mairul</i>	117
LAW OF OMNIBUS LAW BUSINESS AGENCY FOR INDONESIAN COMMUNITY WELFARE	
<i>Ilham Akbar ,Ahmad Husaini</i>	125
THE CONCEPT OF OMNIBUS LAW RELATED TO NORMAL LAW APPLICABLE IN INDONESIA	
<i>Ariyanto ,Joncik Muhammad</i>	133
OMNIBUS LAW FOREIGN INVESTMENT IN INDONESIA	
<i>Adhi Budi Susilo ,Irwanto Efendi</i>	141
OMNIBUS LAW AND THE NEED OF INDONESIAN ECONOMIC INVESTMENTS VIEWED FROM ISLAMIC LAW VIEWS RELATED TO ECONOMY	
<i>Ahmad Syauqy S ,Yanto Irianto</i>	149

CRITICISM OF THE COMMUNITY IN THE OMNIBUS LAW BILL	
<i>Sitta Saraya ,Puguh Triatmojo</i>	156
MANIFESTATION OF PANCASILA VALUES IN THE OMNIBUS LAW FOR JUSTICE	
<i>Andri Winjaya Laksana</i>	164
LEGAL REVIEW OF LAW PROTECTION THEORY IMPLEMENTATION IN DISPUTE OF ADMINISTRATIVE COURT	
<i>Ahmad Yani</i>	174
OMNIBUS LAW ON JOB CREATION BILL IN THE ZEMIOLOGY PERSPECTIVE	
<i>Arif Awaludin, Eti Mul Erowati, Ninik Hartariningsih</i>	182
Application Of Omnibus Law In The Investment Field As A Efforts To The Settlement Licensing Regulation And Harmonization Of Law Regulation In Indonesia	
<i>Galuh Kartiko, Ludfi Djajanto, Rosy Aprieza Puspita Zandra</i>	191
IDEAL CONSTRUCTION OF THE IMPLEMENTATION OF A CONSTITUTIVE SYSTEM (“FIRST TO FILE”) IN BRAND REGISTRATION	
<i>Hani Subagio</i>	202
CRIMINAL PUNISHMENT AGAINST PERPRETRATORS OF HUMAN TRAFFICKING	
<i>Johny Koesoema</i>	210
WEAKNESSES OF THE LEGISLATION FUNCTION OF THE REGIONAL REPRESENTATIVE COUNCIL IN THE BICAMERAL PARLIAMENT SYSTEM IN INDONESIA	
<i>Kelik Endro Suryono</i>	220
UTILIZATION OF VILLAGE FUNDS ACCORDING TO LAW NO. 6 OF 2014 TO PREVENT CRIMINAL ACT OF CORRUPTION	
<i>M. Rohmidhi Srikusuma</i>	227
POTENTIALS OF NATURE TYPE AROUND BY THE ADVANCED: JURIDICAL ANALYSIS OF LAW OMNIBUS LAW DRAFT OF LAW	
<i>Subaidah Ratna Juita, Deni Setya Bagus Yuherawan</i>	235

**MEDIATION ROLE IN SOLVING SHARIA ECONOMIC DISPUTE AS CIVILIZATION
TOWARD ETHICAL VALUE OF ISLAM**

Santoso..... 240

**THE IMPLEMENTATION OF CRIMINAL CONVICTIONFOR CHILDREN UNDER
THE AGE OF CRIMINAL RESPONSIBILITY BASED ON JUSTICE VALUE**

Yustinus Bowo Dwinugrono 251

**Re-Conceptualizing Workers’ Constitutional Rights in the *Cipta Kerja* Bill based on the
Indonesian Welfare State Principles**

Zulkarnain Ridlwan, Yuswanto, Muhtadi, Yusdiyanto 258

MEDIATION ROLE IN SOLVING SHARIA ECONOMIC DISPUTE AS CIVILIZATION TOWARD ETHICAL VALUE OF ISLAM

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Abstract

The aim of this study is to explain the role of mediation in solving sharia economy dispute as civilization toward ethical value of Islam. That it has been practiced since Rasulullah SAW era was through many ways such as shulh, tahkim, and qadha. This study uses qualitative method and data collection is got from observation, direct interview to justice, attorney, lawyer, mediator, and the disputants.

Based on the result of the study above is known that the role of mediation in solving sharia economy dispute as civilization toward ethical value of Islam is important and needs to be optimized. According to Rasulullah SAW teaching, in fact, in a practice, there is failure of mediation in solving sharia economy dispute because the disputants feel that they are right and want to win finally by litigation way with consent or default judgment. Otherwise, mediation practice gives benefits for the disputants and based on Indonesian culture and civilization because solving dispute through mediation can be solved fast, correctly, and cheaply, thus it does not take much energy, time, and thought. In a result, it can keep privacy, beneficial for parties, and harmless with the result made by parties themselves, that is “win-win solution”. In ethical value of Islam in solving sharia economic dispute, firstly, by al-shulhu (peace). Peace in islam is recommended because if there is peace among disputants, they will avoid from hostility. If it does not work, it can be passed by al-tahkim (arbitration) and if it gets stuck, Islam teaches us by al-qadha (Court Process).

Keywords: *Mediation, Sharia Economy, Civilization, Ethical Value of Islalm*

A. INTRODUCTION

Recently, sharia economic practice grows fast so it is possible to lead a frequent conflict among sharia economic actors getting greater and finally it leads to dispute. The dispute comes from misunderstanding which takes longer and is not solved by the law subjects who previously have law relation, agreement, thus it makes the practice of rights and obligations run inharmoniously (Margono, 2000).¹

The existence of dispute resolution institution is as old as the existence of human itself. Humans have been blessed with advantages and disadvantages which sometimes brings to difference or conflict not only with humans, environments, but also themselves. When they face some problems or conflicts, at the same time they naturally try to find out solution for the happening conflict. Moreover, conflicts and their

1. Suyud Margono, “ADR dan Arbitrase Proses Pelembagaan dan Aspek Hukum”, Jakarta, Ghalia Indonesia, 2000. page. 12.

solutions also grows equally with the development of human civilization itself(Hudiata, 2015).²

Human as social being in human civilization shows that conflict always appears or interest frictions in interaction with others, especially related to economy, specifically sharia economy, require alternative solution of conflicts or disputes to create harmony in society.

Peace in islamic law is suggested because if there is peace among disputants, they can avoid the ruin of silaturahmi (love relationship) among them and the enmity among them can be solved. There is legal basis of suggestion for making peace among disputants seen on Quran rules, prophet's sunnah and Ijma'.³

Quran explains that conflict and dispute happened in human life are reality. Humans as his khalifa on this earth are required to solve dispute because they are blessed with thought and revelation in organizing their life. Pattern of solving dispute is made by them by referring to many verses of Quran, hadith book, custom practice, and many local wisdoms. Collaboration of these sources will ease humans to create peace and justice because the offered solution relates to religion teaching and roots in culture.⁴

The development of civilization and culture and also the great advances made by Abbasiyah dynasty in a first period had led the authorities to live luxuriously and even strikingly. Every khalifa tended to be more luxury from the previous one. This luxurious life of khalifah is imitated by tycoon and politician's children. Tendency of having luxury, weakness of khalifa and other factors led to chaos in government and civil became poorer. This condition gave chance to profesional turkish militaries who were delegated by Khalifa Al-Mu'tashim to take control in government. Their effort was successfully, thus the authority was under their hands. Meanwhile, Bani Abbas' authority which was founded by him got faded and it became the beginning of the ruin of this dynasty, even after that its era could exist more than four hundred years.⁵

Another factor which led politic role of Bani Abbas was lower was power seizing in central government. Actually, it was also happened in the previous government of Islam. Nonetheless, It was different with in the previous.

The prophet of Muhammad did not set how to change leader after his pass. He handed it over to moslems as well as the growth democracy in Arabians and democracy teaching in Islam. In the next development, the successful process of politic leadership in Islam history was different from years to years. There was sometimes successfully and peacefully but sometimes passed through conflicts and blood war because of uncontrolled ambition of certain parties. After the prophet passed away, there was argument conflicts between muhajirin and Ansar groups in Bani Sa'ida town hall in Medina. Each group stated that leadership should belong to theirs or at least each group had their own leader. Nevertheless, because of their good understanding of religion, spirit of discussion, and high ukhuwah (brotherhood), the differences could be solved. Abubakar had chosen as khalifa.⁶

Mediation role in solving sharia economic dispute can be seen from several regulations of Law and many kinds of dispute resolution form according to ethical value of Islam. Because peaceful dispute resolution is one of essential from Islam teaching. In Islam, peace process can be performed if disputants (*mushalih*) agrees to do peace.

2. Edi Hudiata, *Penyelesaian Sengketa Perbankan Syariah*, Yogyakarta, UII Press, 2015. Page. 88.

3. Chairuman Pasaribu, Suhrawardi K. Lubis, *Hukum Perjanjian dalam Islam*, Jakarta, Sinar Grafika, 2004. Page. 26-27.

4. Renny Supriyatni Bachrodan Andi Fariana, *Model Alternatif Mediasi Syariah Dalam Penyelesaian Sengketa Perbankan Syariah*, Jakarta, Mitra Wacana Media, 2016. Page. 126.

5. Badri Yatim, *Sejarah Peradaban Islam (Dirasah Islamiyah II)*, Jakarta, Raja Grafindo Persada, 2015. Page. 61-62.

6. *Ibid.*, Page. 67.

C. DISCUSSION

a. Meaning and Study Field of Mediation

The word “mediation” comes from English “mediation”, which means dispute resolution that involves the third party as mediator or solves the dispute intermediately, who mediate called “ mediator” or people who conciliates.

Some mediation scopes are stated by some experts, Gary Goodpaster mentioned:

Mediation is a negotiation process of solving problem which the impartial and neutral outsider work with disputants to help in getting the satisfied agreements. This impartial outsider is called mediator. In solving the disputes through mediation, mediator does not have rights to decide disputes among parties, as like judges or arbiter. In this case, the parties authorize to mediator to help them in solving their problems. The assumption is the third party will be able to change strenght and social dynamics of conflicts by influencing belief and personal attitude of them, giving knowledge and information, using negotiation process which is more effective, thus it helps parties to solve the dispute problems.⁷

It is as well as what was stated by Christoper W. Moore:

“Mediation is intervention in a dispute or negotiation by the third party which is acceptable for related parties, not include both parties and neutral. This third party does not have a right to take decision. He is in charge to help disputants to get agreement voluntarily for each party in some dispute”.⁸

1. Mediation is a way to solve sharia economic dispute by negotiation process to get agreement for parties helped by mediator (article 1 (7) Perma RI Nomor 1, 2008). One Called with mediator is those who has certificate of mediator and because some do not have certificate in religious court in that region so justice has a power to be mediator (Article 5 PermaNomor 1, 2008). The existence of mediator is as neutral party who helps parties in negotiation process in order to get many possible dispute resolutions without breaking or forcing a solution (Article 1 (6) PermaNomor 1, 2008).
2. Peace in sharia economy, as well as in other civil cases in general, is when both parties come to the court, justice must conciliate both disputants not only in the first session but also in the next, eventhough in a further investigation (Article 130 HIR/Article 154 R.Bg).
3. All sharia economic cases, before come into further court session, firstly begin with mediation, except in requesting appeal to BadanPenyelesaianSengketaKonsumen (Institution of consument dispute resolution) and objection to decision of KomisiPengawasPersaingan Usaha (Commission of business competition supervisor)(Article 4 PermaNomor 1, 2008). Not taking mediation procedure in sharia economic cases is breaking the Law article 130 HIR and/or Pasal 154 R.bg which leads to cancellation of verdict by law (Article 2 (3) PermaNomor 1, 2008).
4. Mediation process is private,only attended by parties or their attorneys and mediator, or the outsider allowed by parties, and the happened dynamics in the court must not be delivered to public, only under permission of related parties(Article 1 (12) and Article6 PermaNomor 1, 2008).
5. If the peace works out, it will be made into agreement certificate and verdict which strengthen

7. Moch. Faisal Salam, *Penyelesaian Sengketa Bisnis secara Nasional dan Internasional*, Bandung, Mandar Maju, 2007. Page. 167-168.

8. *Ibid.* Page. 168-169.

that peace agreement (Article 1 PermaNomor 1, 2008). Firstly, peace agreement should be read by justice in front of parties before he hands down the verdict that asks both parties to obey the content of that peace.

6. In consideration of verdict, justice must mention that cases of sharia economy handled by him have been tried peace through mediation by mentioning mediator name (Article 2 (4) PermaNomor 1, 2008).
7. Cost of attending parties in mediation process is charged to prosecutor at first by down payment of cases, if the mediation works out, it will be charged to parties whom justice punishes to pay the cases (Article 3 PermaNomor 1, 2008).⁹

b. Development of Sharia Economy in Indonesia

Talking about sharia economy is inseparable from its root that is world view of Islam about man and its belonging. Man in Islam view has more strategic position than others, in which he has function as Khalifa of Allah on the earth. Earth and its content, Allah's creation, is mandated to man as Allah's Khalifa to be used well for its welfare as well as explained in Quran surah Hud verse 61. The meaning:

“... *It has created you from earth (ground) and make you as its prosperous ...*” (Q.S. Hud: 61).¹⁰

Islam is *the comprehensive way of life* for all moslems. Its teachings are universal intended to all humans to get life benefits in social and country life. Including economic aspects, Islam really suggests its people to spread out on the earth to find out God's blessing after sholat as the main prayer and religious pillar. The suggestion is meant to make trade business activity. Selling, purchasing and profit sharing are classical repertoire in muamalat activity which is allowed and suggested by Islam teaching.¹¹

Sharia economic development in recent years is more passionate and demanded by many people. Not only moslems but also non moslems look sharia economy as alternative in their economy activity. Certainly, they tend to be only economical-oriented and not because it runs with approaches in belief consistency. Indonesia can be said that it is left behind in developing sharia economy than other moslem countries, such as Malaysia, etc

Development of sharia economy in our country in recent years shows the rapid growth. The appearance of sharia economic institutions, either bank or non-bank, is a real form that sharia values can be implemented in all life principles, including in economic principle. Therefore, it proves that sharia economic system is rahmatanlil 'alamien which more oriented on benefits for all humans and even blessing for universe.

The majority of moslems in Indonesia believe madzhab (*School of thought*) Syafi'i, as like followed by moslem and government in Malaysia. Nevertheless, Indonesian scholars apply carefully sharia principle in banking and tend to have same opinion with scholars from East Java Therefore, contracts used in transaction of sharia banking are those which get agreement from mostly scholars (jumhur ulama). By this prudential principle, contracts which still leads to controvertial are not used anymore in practice.¹²

c. Activity of Sharia Economy Toward Ethical Civilization of Islamic Values

9. Ahmad Mujahidin, *Prosedur Penyelesaian Sengketa Ekonomin Syariah di Indonesia*, Bogor, Ghalia Indonesia, 2010. Page. 76-78.
10. Didiek Ahmad Supadie, *Sistem Lembaga Keuangan Ekonomi Syariah Dalam Pemberdayaan Ekonomi Rakyat*, Semarang, Pustaka Rizki Putra, 2013. Page. 6.
11. Khotibul Umam, *Perbankan Syariah (Dasar-dasar dan Dinamika Perkembangannya di Indonesia)*, Jakarta, Raja Grafindo Persada, 2016. Page. 12.
12. Ascarya, *Akad dan Produk Bank Syariah*, Jakarta, PT Rajagrafindo Persada, Page. 205.

Economic life, basically, is an effort to fulfill needs of society or human, especially related to material needs. World of Islam, which grew and covered the wide world either in west or east, generally consisted of fertile areas so kinds of its economy was farming. Nowadays, Farmers' life is luckier than in pre-Islamic times, because government's concern more emphasized in making irrigation, excavating canal, especially in Tigris, Euphrat, and Nil river, and extending farming land.¹³

In fulfilling his needs, prophet asked Muhajirin people to work and try based on their skill, and also cooperated with Ansar. Those who were scholars continued their trading. Meanwhile, for those who experted in farming can work together with their siblings. Then, Moslems faced two serious matters, (a) field of trading, generally, has been empowered by Jews; (b) the limited farming lands were handled by Ansar because the fertile farming lands were generally empowered by Jews. Thus, not all of Muhajirin got occupation and some of them were not strong enough to work.¹⁴

Islam comes in Indonesia by bringing new civilization which has specially Islamic pattern. Some kinds of Islamic civilization colour life and thought of moslems in Indonesia. Islamic civilization brought by scholars from Arab was acculturated with local tradition and culture. Acculturation between civilization of Islam and local people became harmonious which gave positive effects for civilization of Islamic culture in.¹⁵

Islam as rahmatan lil alamin religion can be seen from many aspects in social life of Indonesian, such as social and cultural, economic, politic, and religious aspects as civilization of Islamic values, especially included in Indonesia culture which mostly can not be avoided and has become cultural life of nation in Indonesia.

Islamic Arabic word derived from 'salima' which means safe, peace, obey, give up, and surrender. An object of this self surrender is toward universe creator, Allah SWT. Eventhough, one admits that he believes in Islam, but he does not surrender to Allah, actually, he is not Islam because he has not surrender yet. This self surrender will lead to safety and happiness in life for people.

Islam views human life in this world is only a small part of human life journey because after living in this world, there is still living in akhirah which is eternal. Nonetheless, one's fate in afterlife world really depends on what he has done in the world, as the prophet of Muhammad SAW said *Al-dunyamazra'at al-akhirat* (dunya is a field of akhirah). Here is the role of Islam as guidances and instructions of human life in the world. Islam gives instruction about how to practice life well in order human can have happiness he wants it both in dunya and akhirah.¹⁶

There are three basic aspects in Islam teachings, such as aqeedah, (tawheed), law (shariah), and akhlaaq. When one understands about Islamic economy wholly, he should understand Islamic economy in those three aspects. Islamic economy in aqeedah dimension covers two matters: 1) understanding about Islamic economy is ilahiyah economy; 2) understanding about Islamic economy is Rabbaniyah.¹⁷

Consequences of view above are Islam teaching not only limited on personal matter between individual to its creator (*hablumminallah*) but also relation between human and other human beings, including nature

13. Fadil SJ., Pasang Surut Peradaban Islam Dalam Lintasan Sejarah, Malang, UIN Malang Press, 2008., Page. 199-200.

14. Ibid., Page. 105-106.

15. Samsul Munir Amin, Sejarah Peradaban Islam, Jakarta, Amzah, 2014. Page. 408.

16. Adiwarmanto A. Karim, Bank Islam (Analisis Fiqih dan Keuangan), Jakarta, Raja Grafindo Persada, 2006. Hlm. 1-2.

17. Ika Yulia Fauziah dan Abdul Kadir Riyadi, Prinsip Dasar Ekonomi Islam Perspektif Maqashid al-Syari'ah, Jakarta, Prenadamedia Group, 2015. Hlm. 8.

and environment. Therefore, Islam is a way of life which guides all aspects of human life.¹⁸

In *ushulfiqh*, there is principle that “*maalaayatimm al-wajibillabihifahuwawajib*”, something which should be to complete obligation, so it must be done. Working (doing economic activity) is obligation. Because in this modern era economic activity is not completed without banking, so banking must be existed. Therefore, connection between Islam and banking is getting clear.¹⁹

d. Dispute Resolution of Sharia Economy Based on Ethical value of Islam.

Basically, dispute is kind of actualization form from difference and conflict between two parties or more. Dispute appears as a result of having actions which break agreement, there is *wanprestasi* agreement, tricky, interpretation difference toward rules of law, unfair competition, forgery, deception, etc. Therefore, by having dispute, the parties are given freedom to set mechanism of choosing the wanted dispute resolution, by the court (*litigation*) or out of court (*non-litigation*). In Islamic tradition there is dispute resolution by non-litigation, such as *negotiation, as-sulh, tahkim, hisbah*, and by litigation (*qadha*).²⁰

Appearance of Law Number 3, 2006 about the change of Law Number 7, 1989 about Religious Court has brought a great change in existence of it recently. One of the basic change is adding authority of it such as in sharia economy. Moreover, the appearance of Law Number 41, 2004 about waqf has also given a new atmosphere in Religious Court because ruling waqf by this Law includes not only property but also authority of Religious Court to solve many disputes in its practices.²¹

Sharia economy is discussed in two fields of study, that are Islamic economics and economic law. It becomes the authority of Religious Court ruled in Law Number 3, 2006 about Religious Court relates to economic law which should be known by justices in its. In some Laws related to sharia economy does not have certain rules which regulate about formal law (prosedural law) and material law about sharia economy. The regulation of sharia economic law, nowadays, is contained in fiqh books and some are in the fatwa of Dewan Syariah Nasional (DSN) (National Sharia Council), Regulation of Indonesia Bank. Looking at this, cases are offered by disputants to Badan Arbitrase Syariah Nasional (BASYARNAS) (Arbitration Institution of National Sharia), related to disputes between Sharia Bank to its customers. In its solving, BASYARNAS uses two different laws: fatwa of Dewan Syariah Nasional (DSN) dan KUH Perdata (civil law). It is done to fulfill the emptiness of law in solving some cases.²²

1. Al Sulh (Peace)

Linguistically, “*sulh*” means calming down the conflicts, but in term “*sulh*” means a kind of contracts or agreement to accomplish conflicts or quarrels between both disputants peacefully.²³ Solving dispute bases on peace to end some cases.

Allah SWT requires to peace between both disputants and gets over their frictions. Therefore, clean up the soul and get away the hatred. Conciliating among humans belongs to great worship

18. Ibid., hlm. 2.

19. Ibid., hlm. 14-15.

20. Thalís Noor Cahyani, *Jesi (Jurnal Ekonomi Syariah Indonesia)*, Volume 1, Nomor 2, Desember 2011. Page. 18.

21. Nurul Hak, *Ekonomi Islam Hukum Bisnis Syariah (Mengupas Ekonomi Islam, Bank Islam, Bunga Uang dan Bagi Hasil, Wakaf Uang dan Sengketa Ekonomi Syariah)*, Yogyakarta, Teras, 2011. Page. 131.

22. Nurul Hak, *Ekonomi Islam Hukum Bisnis Syariah (Mengupas Ekonomi Islam, Bank Islam, Bunga Uang dan Bagi Hasil, Wakaf Uang dan Sengketa Ekonomi Syariah)*, Yogyakarta, Teras, 2011. Page. 132-133.

23. Al-Munawir, *Kamus Al Munawir*, Yogyakarta, Pondok Pesantren Al Munawir, 1984. Page. 843.

and obedience, if he does it only for getting blessing from Allah. As mentioned in Quran, Surah An-Nisaa, verse 114, the meaning:

“There is no goodness in much of their private conversation, except for those who enjoin charity or that which is right or conciliation between people. And whoever does that seeking means to the approval of Allah - then We are going to give him a great reward”.

And as the prophet of Muhammad SAW has said, the meaning is:

“Every pillar of man of giving charity, everyday sun raises to him taking justice among men is charity”. (Muttafaqun ‘Alaih)

Peace is needed between moslems and kafirs, fair and unfair people, husband and wife when having different opinion, neighbors, friends, and families, those who are in conflicts excludes wealth, those who are hate each other about wealth.²⁴

From the explanation above, it can be understood that which is meant by conciliation is an effort done by someone or corporation to make problem solution by avoiding more fatal problems. In this case, you cannot force the willing of disputants, conciliating is only giving advice and suggestion to cancel the accusation and solve peacefully.

2. *al-Tahkim* (Arbitration)

In perspective of Islam, it is known to solve the disputes by Arbitration, it is equivalent to the term ‘*Tahkim*’. It comes from ‘*Hakkama*’, etymologically it means to make someone as dispute. This meaning really relates to its meaning based on terminology. In solving the dispute, when *shulh* cannot be done, the next effort is done by the Court (*al-Qadha*).²⁵

3. *Al-Qadha* (Court Process)

Al-Qadha, literally, means deciding or establishing. According to fiqh, it means establishing syara’ law on affair or dispute to be solved fairly and bindingly. Islamic law regulates many aspects of life: regulating vertical relation which is relation with the creator and horizontal relation which is relation between man and nature. Islam really emphasizes on unity, entity, and dislikes separation and enmity.

In the book of sunnah fiqh, it is explained that among the most important suggestions of realizing the justice, safeguarding the rights and preserving life, honor and possessions is with uphold the required judicial system in Islam. The person who was first in charge of judicial affairs was Rasulullah SAW. Allah SWT ordered Rasulullah (SAW) to decide the case by referring what was revealed to him, as it is contained in Quran Surah AnNisa ‘verse 105-106.’²⁶

e. The role of mediation in the settlement of sharia economic disputes as civilization to ethical values of Islam

Islamic law as a unity with the teachings of Islam is a law that empirically lives and continues to develop along with the development of Indonesian society (the living law) since the entry of Islam into the archipelago. As a living law, Islamic law in Indonesia from time to time experienced an encouraging

24. Abdul Aziz, *Etika Bisnis Perspektif Islam (Implementasi Etika Islami Untuk Dunia Usaha)*, Alfabeta, Bandung, 2013. Page. 291-292.

25. Suhrawardi K. Lubis dan Farid Wajdi, *Hukum Ekonomi Islam*, Jakarta, Sinar Grafika, 2012. Page. 91.

26. Renny Supriyatni Bachrodan Andi Fariana, *Model Alternatif Mediasi Syariah Dalam Penyelesaian Sengketa Perbankan Syariah*, Jakarta, Mitra Wacana Media, 2016. Page. 115.

development.²⁷

In sharia economic activities that do not apply the system of interest, there is a possibility of dispute always exist, and to anticipate the occurrence of disputes concerning sharia economic activities, whether in the field of Sharia banking, Sharia insurance, until sharia business in general, is recommended to be resolved peacefully. The existence of peace between the parties to the dispute, it will avoid the destruction of friendship, and at the same time the hostility between the parties will be terminated.

The way to resolve disputes (conflicts) between individuals during this time, tend to be more done through conventional channels, namely the settlement of cases through litigation (court). Although on the way it is felt that the settlement of disputes through this path often gives less good impression for the parties. It is said that, because to reach a final decision of a court institution, the parties to the dispute are indeed required to actually fight in the council of judges, so it will be determined who is the winner of 'game'. Because of the inherent weaknesses of the courts in resolving disputes, whether they can be corrected or not, many seek to find other ways or institutions to resolve disputes outside the courts through alternative dispute resolution.²⁸

Since ancient times, Indonesians have been practicing mediation in the settlement of disputes or conflicts, because they believe that by doing a peaceful effort it will lead them in a harmonious, fair, balanced life and the creation of strong togetherness values in the life of society. History solves conflicts or disputes peacefully, even centuries ago. The Indonesian people feel the peaceful settlement of the dispute has led to a harmonious, fair, balanced and nurturing life of communal values (communality) in society. Even mediation is a method of dispute resolution that has developed rapidly in various parts of the world since the last three decades.²⁹

Already as a common problem in any country, whether in an advanced country or a developing country, criticisms of the judiciary in resolving community disputes and justice seekers, especially in trade and business, are numerous and varied. In general, they criticized because of the slow process of the judiciary, the cost is expensive, and convoluted. Tony Mc Adams points out that "Law has become a very big American business and that litigation costs may be doing damage to Nations Company". That the high cost of litigation is considered a very damaging factor to the American economy.³⁰

In Indonesia, when viewed in depth, peaceful dispute settlement procedures have been long and are commonly done by the people of Indonesia. This can be seen from the customary law which places the customary head as mediator and gives the customary ruling for dispute among its citizens. Especially in 1945, this ordinance officially became one of the nation's philosophy of the Indonesian nation which is reflected in the principle of deliberation for consensus.

Mediation or alternative dispute resolution in Indonesia is a culture of Indonesia itself, both in traditional society and as the foundation of Pancasila State known as deliberation for consensus. All ethnic groups in Indonesia must recognize the meaning of the term, although the mention of it is different. But it

27. Said Aqil Al Munawwar, *Islam dalam Pluralitas Masyarakat Indonesia*, Jakarta, Kaifa, 2004. Hlm. 176.

28. Parman Komarudin, *Al-Iqtishadiyah (Jurnal Ekonomi Syariah dan Hukum Ekonomi Syariah)*, Volume 1, Issue 1, Desember 2014. Hlm. 88.

29. Fatahillah A. Syukur, *Mediasi Yudisial Di Indonesia (Peluang dan Tantangan Dalam Memajukan Sistem Peradilan)*, Bandung, MasdarMaju, 2012. Hlm. 1.

30. Nurnaningsih Amrina, *Mediasi (Alternatif Penyelesaian Sengketa Perdata di Pengadilan)*, Jakarta, PT. RajaGrafindo Persada, 2011. Hlm. 1-2.

has the same philosophy. In the clauses of a contract or agreement, the dispute settlement section is always followed by the words “in the event of a dispute or strife will be settled by deliberation and if no agreement is reached it will be settled in court.”³¹

f. Mediation Practices In Settlement of Sharia Economic Disputes as civilization to ethical values of Islam

The practice of mediation in general is also based on the voluntary choice of the parties. In principle, the initiative of dispute resolution options through mediation is subject to the agreement of the parties. This can be seen from the nature of the binding strength of the mediated agreement on the basis of the strength of the agreement under article 1338 of KUHPerdata (civil law). Thus, in principle, the choice of mediation is subject to the will or the free choice of the parties to the dispute. Mediation cannot be implemented if one of the parties wants it.³²

The practice of mediating the settlement of sharia economic disputes there out court:

1. Phase of Pre-Mediation

Before the mediation, the parties determine the choice and set the mediator according to the agreement of the parties.

2. Phase of Mediation Process

The phase of the mediation process includes the following steps: first, the parties submit the resume of case each other and to the mediator. Second, the mediator prepares the schedule of mediation meetings to the parties.³³

3. Mediation Process that resulted in Peace Agreement

The end of the mediation process produces two possibilities, namely the parties reaching a peace agreement or failing to reach a peace agreement, Supreme Court Regulation No. 1 of 2008 obliges the parties to:

a. Formulate a peace agreement in writing and sign it;

b. To declare a written consent to the peace agreement if in the mediation process the parties are represented by a legal representative;

c. Face back to the judge on the appointed hearing day to notify the peace agreement.³⁴

4. Mediation Process Failed to Produce Peace Agreement

a. Mediation is deemed to fail if after a specified maximum deadline of forty days or extension of fourteen days has been met, but the parties have not yet reached agreement.

b. The mediator also has the authority to declare the mediation has failed even though the maximum deadline has not been exceeded.³⁵

D. CONCLUSION

The role of mediation in solving sharia economy dispute as civilization toward ethical value of Islam is important and needs to be optimized. According to Rasulullah SAW teaching, in fact, in a practice, there is failure of mediation in solving sharia economy dispute because the disputants feel that they are right and want to win finally by litigation way with consent or default judgment. Otherwise, mediation practice gives benefits for the disputants and based on Indonesian culture and civilization because solving dispute through mediation can be solved fast, correctly, and cheaply, thus it does not take much energy, time, and

34. *Ibid.*, hlm. 187.

thought. In a result, it can keep privacy, beneficial for parties, and harmless with the result made by parties themselves, that is “win-win solution”. In ethical value of Islam in solving sharia economic dispute, firstly, by *al-shulhu* (peace). Peace in Islam is recommended because if there is peace among disputants, they will avoid from hostility. If it does not work, it can be passed by *al-tahkim* (arbitration) and if it gets stuck, Islam teaches us by *al-qadha* (Court Process).

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