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BASYARNAS AS A PLACE FOR DISPUTE RESOLUTION OF *MUSYARAKAH* FINANCING IN SHARIA BANKING IN THE DISRUPTION ERA

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ABSTRACT

The practice of *musyarakah* financing in Islamic banking allows conflicts to occur between parties, the most dominating conflict in financing practices is the default. Arbitration is one of the non-litigation dispute resolution forums that can be used in resolving *musyarakah* financing disputes in Islamic banking. The purpose of this study was to analyze the settlement of default disputes on *musyarakah* financing practices which were resolved through the Badan Arbitrase Syariah Nasional (BASYARNAS). This research is normative legal research using a statutory approach. The results of the study show that financing disputes in Islamic banking occur because there are default factors behind them, namely intentional factors and negligence factors. Both of these factors can give a loss to the creditor (Bank) as the provider of funds. *Musyarakah* financing dispute settlement in Islamic banking is an agreement of the disputing parties. If it is contained in the agreement clause which states that dispute resolution is carried out through BASYARNAS, then BASYARNAS has the authority to resolve the dispute as stipulated in the law. In an era of disruption full of change and innovation, arbitration with the online system is an important matter in resolving disputes at BASYARNAS.

Keywords: Dispute Resolution; *Musyarakah*; and Arbitration;

ABSTRAK

Praktik pembiayaan *musyarakah* di perbankan syariah memungkinkan terjadinya konflik antara para pihak, konflik yang paling mendominasi dalam praktik pembiayaan adalah wanprestasi atau cidera janji. Arbitrase merupakan salah satu forum penyelesaian sengketa di luar pengadilan yang dapat digunakan dalam penyelesaian sengketa pembiayaan *musyarakah* di perbankan syariah. Tujuan penelitian ini untuk menganalisis penyelesaian sengketa wanprestasi pada praktik pembiayaan *musyarakah* yang diselesaikan melalui Badan Arbitrase Syariah Nasional (BASYARNAS). Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan. Hasil penelitian menunjukkan bahwa sengketa pembiayaan di perbankan syariah terjadi karena terdapat faktor-faktor wanprestasi yang melatarbelakangi, yaitu faktor kesengajaan dan faktor kelalaian. Kedua faktor tersebut dapat memberikan

kerugian bagi kreditur (bank) selaku pemberi dana. Penyelesaian sengketa pembiayaan musyarakah di perbankan syariah merupakan kesepakatan para pihak yang bersengketa. Jika terdapat dalam klausul perjanjian yang menyatakan bahwa penyelesaian sengketa dilakukan melalui BASYARNAS, maka BASYARNAS memiliki kewenangan untuk menyelesaikan sengketa tersebut sebagaimana diatur dalam perundang-undangan. Di era disrupsi yang penuh perubahan dan inovasi, arbitrase dengan sistem *online* menjadi suatu hal yang penting dalam penyelesaian sengketa di BASYARNAS.

Kata Kunci : Penyelesaian Sengketa; *Musyarakah*; dan Arbitrase;

Introduction

The development of Islamic banking in Indonesia is currently very advanced compared to its initial formation. Initially, the only Islamic bank in Indonesia was PT. Bank Muamalat Indonesia (BMI). Currently, based on OJK data on the development of Islamic banking, around 197 Islamic banks are operating, consisting of 12 Bank Umum Syariah (BUS), 21 Unit Usaha Syariah (UUS), and 164 Bank Pembiayaan Rakyat Syariah (BPRS).¹ Along with the development of Islamic banking, it is possible for various conflicts or disputes to occur. Problems arise in financing because there are various reasons behind it. Operationally, conventional banking and Islamic banking both collect funds, channel funds and provide institutional services needed by customers. Therefore, the problems that arise are often the same. Especially in the distribution of funds between banks to customers, defaults or failures often occur. Cases that arise in Islamic banking due to the distribution of funds that dominate the most, one of which is caused by a breach of contract (default).²

The most common motive that is the reason for customers not carrying out their achievements is the customer's inability to make payments according to the mutually agreed contract. Even though achievement is an obligation that must be carried out by customers on the rights of the bank. The inability to pay the *musyarakah* contract can result in losses by the bank such as loss of principal arrears or profit sharing that should be obtained. Based on Law Number 21 of 2008 concerning Sharia Banking, it explains that if there is a dispute between the parties regarding a breach of contract or breach of

¹Otoritas Jasa Keuangan, "Laporan Perkembangan Keuangan Syariah Indonesia 2022," 2022, <https://ojk.go.id/id/kanal/syariah/data-dan-statistik/laporan-perkembangan-keuangan-syariah-indonesia/Pages/Laporan-Perkembangan-Keuangan-Syariah-Indonesia-2022.aspx>.

²Dadan dan Fakhruddin Cikman Muttaqien, *Penyelesaian Sengketa Perbankan Syariah* (Yogyakarta: Kreasi Total Media, 2008).

contract, both of them can resolve it through court institutions (litigation) and institutions outside the court (non-litigation).

The process of resolving disputes through the courts takes a long time, dispute resolution can be done through alternative dispute resolution. As explained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The law explains that alternative dispute resolution is a dispute resolution institution through a procedure agreed upon by the parties, such as an out-of-court settlement, namely utilizing consultation, negotiation, mediation, conciliation, or expert judgment. If in the *musyarakah* financing agreement, the bank and the customer agree to be bound in resolving the dispute by including an arbitration clause addressed to BASYARNAS.³ So BASYARNAS has the authority to resolve the dispute.

Several studies have examined the role of BASYARNAS in dispute resolution, such as Wetria Fauzi,⁴ Eko Siswanto,⁵ and Husen Nunung Rodliyah.⁶ There are also those who examine arbitration in general as a dispute resolution such as Mohammad Azam Hussain,⁷ Keke Audia Vikarin,⁸ and Moustafa Elmetwaly Kandeel.⁹ From the studies that have been carried out, this study aims to analyze the settlement of *musyarakah* financing disputes in Islamic banking, through arbitration at the BASYARNAS institution which is the only institution authorized to resolve non-litigation sharia economic disputes in Indonesia..

³Andria Luhur Prakoso, "Tinjauan Terhadap Arbitrase Syariah Sebagai Alternatif Penyelesaian Sengketa Di Bidang Perbankan Syariah," *Jurnal Jurisprudence* 7, no. 1 (2017): 59–67, <https://doi.org/10.23917/jurisprudence.v7i1.4356>.

⁴Wetria Fauzi and Devianty Fitri, "An Alternative to Sharia Insurance Dispute Resolution through the National Sharia Arbitration Agency (Basyarnas) in Indonesia," *International Journal of Innovation, Creativity and Change* 10, no. 5 (2019): 68–75, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85079637354&partnerID=40&md5=59c5fc23b5e97b92503ffda8afefd1aa>.

⁵Eko Siswanto, "Peranan Arbitrase (BASYARNAS) Dalam Penyelesaian Sengketa Bisnis Syari'ah," *Al-Amwal: Journal of Islamic Economic Law* 3, no. 2 (2018): 165–85, <https://doi.org/10.24256/alw.v3i2.525>.

⁶Husen Nunung Rodliyah, Nila Nargis, Abdur Rohman, "Kedudukan Fatwa Terhadap Dasar Hukum Penyelesaian Sengketa Ekonomi Syariah Melalui Basyarnas," *Nizham* 7, no. 1 (2019): 1–16, <https://e-journal.metrouniv.ac.id/index.php/nizham/article/view/1516>.

⁷Mohammad Azam Hussain et al., "The Potential Prospect of Artificial Intelligence (AI) in Arbitration from the International, National and Islamic Perspectives," *Journal of International Studies(Malaysia)* 19, no. 1 (2023): 95–122, <https://doi.org/10.32890/jis2023.19.1.4>.

⁸Keke Audia Vikarin and Pujiyono, "Eksistensi Arbitrase Online Sebagai Model Penyelesaian Sengketa E-Commerce Di Beberapa Negara," *Privat Law* 8, no. 1 (2020): 97–103, <https://doi.org/10.20961/privat.v8i1.40376>.

⁹Moustafa Elmetwaly Kandeel, A Abouahmed, and A Zakaria, "The Premature Expiration of Arbitration Litigation in Investment Disputes," *Corporate Law and Governance Review* 5, no. 1 (2023): 17–28, <https://doi.org/10.22495/clgrv5i1p2>.

Method

This type of research is included in normative legal research.¹⁰ The approach used in this paper uses a statutory approach¹¹ based on applicable legal regulations using Law Number 21 of 2008 concerning Sharia Banking, fatwas, and other regulations. Sources of data obtained in this study come from secondary data such as books, journal articles, and documents.

Findings and Discussion

Musyarakah Financing in Sharia Banking

Contracts that use the principle of profit sharing known as Sharia banking are *musyarakah* financing. *Musyarakah* in the perspective of fiqh is referred to as *syarikah* or *syirkah* which means association, association, engagement. In general, the definition of *musyarakah* is a cooperation contract between two or more people for a particular business, each party contributing capital either in the form of funds or expertise with an agreement that the benefits and risks will be shared according to the contents of the contract. *Musyarakah* in Sharia banking is understood as a mechanism that combines work and capital for the production of goods or services that are beneficial to society. The purpose of *musyarakah* in every activity is carried out to earn profit. Profits or ratios obtained by each party are shared according to the agreement of the unionized parties. The legal basis of *musyarakah* in the Koran is as follows (QS. Shad: 24) and (QS.An-Nisa:12):

... وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ
 وَقَلِيلٌ مَّا هُمْ ۗ

... فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ ۗ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ
 غَيْرِ مُضَارٍّ ۗ

¹⁰Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram Press, 2020); Desi Refnita, "The Mustahik Zakat in Various Dimensions of Fiqh in Era Society 5.0," *El-Mashlahah* 11, no. 1 (2021): 13–28, <https://doi.org/10.23971/elma.v11i1.2285>.

¹¹Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenadamedia, 2015); Sabarudin Ahmad, "Hukum Aborsi Akibat Perkosaan (Analisis Hukum Islam Terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi)," *El-Mashlahah* 8, no. 2 (2018): 162–83, <https://doi.org/10.23971/el-mas.v8i2.1321>.

The two verses above emphasize that a partnership in the ownership of assets occurs on the basis of a contract, so in the form of cooperation requires other parties (partners) who are good and do not undermine or betray one another. If a dispute occurs, both of them can resolve it in a good way. In addition to the foundation of the Koran, the legal basis for *musyarakah* in banking is contained in Law Number 21 of 2008 which is one of the positive legal bases for *musyarakah* contracts in Islamic banking and other laws and regulations such as Law Number 21 of 2011 concerning the Financial Services Authority (Otoritas Jasa Keuangan, OJK) and other regulations.

The implementation of *musyarakah* financing contract practices in Sharia banking must fulfill several pillars and conditions in practice, including: first, the contracting parties. These parties are the bank and the customer. Both parties are the owners of capital (*sahibul mal*) while the customer is the owner of capital and executor in the proposed financing. Second, the object of the contract is a combination of capital and work that are combined in buying an asset, project or form of business, both of which want to gain profit..¹² Third, consent and qabul are agreements between the bank and the customer to agree. Fourth, the profit sharing ratio, namely the distribution of the portion of profits obtained by two or more parties, in the form of a percentage of profits written in the agreement.

Musyarakah in banking implementation can be found in financings such as project financing and venture capital. First, *musyarakah* in project financing, namely the customer and the bank both contribute in providing funds to finance a project that has been agreed upon in the agreement, after the project has been completed, the customer is obliged to return the funds that have been given with additional profit sharing agreed to the parties. bank. Second, *musyarakah* in venture capital financing. In special institutions that are allowed to invest in company ownership, *musyarakah* is implemented in a venture capital scheme. Investments are carried out within a certain period, then the bank will invest or sell part of its shares, either in a short period or in stages.

¹²Rani Rahayu and M. Zidny Nafi' Hasbi, "Teori Dan Konsep Akad Musyarakah Dan Penerapannya Dalam Perbankan Syariah," *Jurnal Keislaman* 5, no. 2 (2022): 176–85, <https://doi.org/10.54298/jk.v5i2.3436>.

Musyarakah Financing Disputes in Sharia Banking

The agreement is the source of the birth of an obligation or achievement from one party or more to another party, who is entitled to the achievement.¹³ Therefore, every agreement must consist of a debtor and a creditor. Debtors in banking are customers and creditors are bankers. The agreement entered into by both of them will lead to two legal relations, namely the legal relationship between the bank and the debtor and the legal relationship between the bank and the customer depositing funds.¹⁴ In practice, the implementation of agreements in banking is not always smooth in every agreement that has been made. Agreements or contracts made can often lead to disputes between customers or banks if one party defaults, in which one of the other parties feels a loss for achievements that are not implemented.

Default comes from the Dutch language *wanprestatie*, *wan* means bad or ugly and *prestatie* means an obligation that must be fulfilled by the debtor in an agreement. So, default is bad or bad achievement. In general, default is the attitude of a person who does not fulfill or is negligent of the obligations agreed upon in an agreement between the creditor (Bank) or the debtor (Customer).¹⁵ Article 36 of the Compilation of Sharia Economic Law (KHES) regulates default which is an act of negligence or negligence. Parties that can be considered to have committed a default, namely: first, not doing what was agreed to do.¹⁶ This means that the debtor does not fulfill his obligations that he has been able to fulfill in the agreement, the debtor does not carry out the agreement which can be caused by the inability to fulfill the achievements that should be fulfilled or does not intend to carry out his achievements. Second, carry out what was promised but not as promised. This means that the debtor has made a mistake or is not good at carrying out his achievements as agreed upon. According to the creditor, the achievements made by the debtor are not the same as what was promised. Third, did what he promised, but it was too late. The debtor has carried out his achievements but the implementation has

¹³Gunawan Widjaja, *SAHDB: Arbitrase Vs Pengadilan Persoalan Kompetensi (Absolut) Yang Tidak Pernah Selesai* (Jakarta: Kencana, 2008).

¹⁴Abdul Ghofur Anshori, *Penyelesaian Sengketa Perbankan Syariah* (Yogyakarta: Gadjah Mada University Press, 2010).

¹⁵Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama)* (Yogyakarta: FH UII Press, 2013)..

¹⁶Pusat Pengkajian Hukum Islam dan Masyarakat Madani (PPHIMM), *Kompilasi Hukum Ekonomi Syariah* (Jakarta: Kencana, 2009)..

passed the agreed time limit. Fourth, do something that according to the agreement is not allowed to be done.¹⁷

In general, a new default occurs if the debtor has been declared negligent in his obligations or achievements. The debtor can be said to be in default, if he cannot prove that he has defaulted beyond fault or due to coercive circumstances. If in the implementation of fulfillment of achievements there is no time limit, then the creditor needs to give an official warning, namely by giving a subpoena. Summons is a reprimand to the debtor by the creditor to carry out his achievements in accordance with the contents of the contract agreement that has been mutually agreed upon.¹⁸ If someone has defaulted, then that party can be prosecuted before a judge. In this case, the prosecution can be filed through dispute resolution, either litigation or non-litigation. The demands are as follows: first, the debtor is asked to carry out the contents of the agreement, even though the implementation has passed the deadline, second, the debtor is asked to compensate for losses suffered by the creditor because the agreement was not implemented or was implemented late or but not as it should, third, the creditor demands implementation by the agreement accompanied by compensation for losses suffered as a result of delays in the implementation of the agreement, fourth, in the case of an agreement that places reciprocal obligations, the negligence of one party gives rights to another party, the injured party can request an agreement canceled accompanied by compensation for losses.¹⁹

Financing of a *musyarakah* contract in Islamic banking occurs if two or more parties agree to work together in financing a project financing or form of business, both of them agree that if there are profits or risks they will be shared. If in practice the debtor cannot pay the facility fee that has been promised to the creditor and the creditor feels a loss due to dissatisfaction or because the contract is not implemented by the contents of the contract, then it can be said that the debtor or one of the contracted parties has defaulted. In general, defaults in *musyarakah* financing are caused by fault factors that act as a

¹⁷Amran Saudi, *Penyelesaian Sengketa Ekonomi Syariah* (Jakarta: Kencana, 2018).

¹⁸Dermina Dsalimunthe, "Akibat Hukum Wanprestasi Dalam Perspektif Kitab Undang-Undang Hukum Perdata (BW)," *Jurnal Al-Maqasid* 3, no. 1 (2017): 12–29, <http://jurnal.iain-padangsidiimpuan.ac.id/index.php/almaqasid/article/view/1444>.

¹⁹Muttaqien, *Penyelesaian Sengketa Perbankan Syariah*.

background for a customer not carrying out his achievements, namely intentional factors and negligence factors on the part of the customer.²⁰ The intentional factor here is if the loss incurred by the bank is intended by the customer to deliberately not fulfill obligations for payment of facilities that must be settled.

According to J. Satrio that in determining whether the debtor intentionally or unintentionally made a mistake, it cannot be required that he (the debtor) aims to harm the creditor because it is possible that when the debtor makes a mistake it is not intended to harm the creditor.²¹ Therefore, even though the debtor does not intend to harm the creditor, in reality, it causes a loss and he wants the loss, the debtor can be said to have done it on purpose. The intentional factor in the implementation of *musyarakah* financing can be in the form of a customer's intention to use funds for channeling funds from a bank, in which the implementation of these funds should be used in a business or other forms of cooperation. However, it is deliberately used in financing outside the mutually agreed upon agreement in the *musyarakah* contract. For example, a customer and a bank enter into a *musyarakah* financing contract agreement, in the agreement it is explained that the form of cooperation between the customer and the bank is used to finance a coffee shop business. In practice, the customer does not use these funds for coffee shop business capital but is used for other purposes, resulting in a loss for the bank (the creditor).

The negligence factor is an event where a person should in an objective condition know that the act or actions taken will result in a loss. Conditions of negligence are conditions that can have legal implications for someone's actions that can be said to be in default. The negligent factor in a *musyarakah* financing contract is when the customer has passed the deadline for submitting payments on a mutually agreed financing facility. This means that the achievements that should have been carried out by the debtor have passed the agreed time. Article 1238 of the Civil Code (KUHPperdata) states that an act cannot be said to be negligent if it only relies on achievements not being submitted even though the agreement has passed the deadline unless the agreement that has been made includes a limit where the debtor must be deemed negligent if the time limit has passed.

²⁰Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan Dan Kaidah Hukum* (Jakarta: Kencana, 2018).

²¹Suadi.

has been determined. Therefore, to declare that the customer has defaulted on the performance of the *musyarakah* contract, a letter of warning from the bank (subpoena) is needed to provide a warning for achievements that are not carried out.

Reprimands (subpoenas) can be given as warnings by customers who do not carry out achievements. The warning can be warned at least 2 (two) times, but in practice in Islamic banking, the warning is implemented 3 (three) times. Reprimands to debtors by creditors can be carried out by writing official or unofficial letters. The subpoena can contain substances such as a bank warning to customers to immediately carry out achievements, the basis for the warning rules made, and the latest deadline for fulfilling achievements. Through the time limit set in the warning letter, it can be used as a benchmark for customers to be said to be negligent so that they can be said to have committed a breach of contract.²² If a warning (subpoena) has been carried out by the creditor to the debtor but is not heeded or there is no good will from the debtor to immediately settle the obligations for financing the facility that has been agreed upon. The bank as a creditor can bring this problem to the dispute resolution path, both litigation and non-litigation, as stipulated in the contents of the *musyarakah* contract agreement made before there was a default dispute between the bank and the customer.

Acts of default are actions that can cause several legal consequences or sanctions that can be received by debtors (customers) who have defaulted, such as paying compensation received by the bank, canceling agreements, transferring risks, and paying court fees or claims that have been filed by a creditor as a bank. The default can have legal consequences in compensation claims that have been received by creditors. Therefore, if the debtor is negligent in carrying out his achievements. The creditor has the right to ask for compensation in the form of costs that the creditor should have received, for example, profit sharing margins, costs, and other losses.

***Musyarakah* Financing Dispute Resolution in Sharia Banking Through BASYARNAS in the Disruption Era**

Sharia banking disputes can be resolved through two channels, namely the court (litigation) and out of court (non-litigation). Settlement of sharia banking disputes has

²²Dsalimunthe, "Akibat Hukum Wanprestasi Dalam Perspektif Kitab Undang-Undang Hukum Perdata (BW)."

been explained in Law Number 3 of 2006 concerning the Religious Courts which states that the Religious Courts have the authority to examine, decide and resolve cases of first degree between Muslims in the fields of: marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah, and Islamic economics. This authority is confirmed by Article 55 paragraph (1) of Law Number 21 of 2008 concerning Sharia Banking which states that the settlement of Islamic banking disputes, as part of the settlement of Islamic economic disputes, is the absolute authority of the Religious Courts.²³ Apart from resolving disputes through the courts, article 55 paragraph (2) explains that sharia banking dispute resolution can be resolved in accordance with the contents of the contract agreement. The elucidation of Article 55 paragraph (2) shows that dispute resolution can be resolved through deliberations, banking mediation, the National Sharia Arbitration Board (BASYARNAS) or arbitration institutions, or courts in general courts. Article 55 paragraph (3) confirms that for the mechanism to be implemented in carrying out the previous article, it must stay away from things that are prohibited or not allowed to conflict with sharia principles.²⁴

Settlement of Sharia banking disputes can be resolved through channels outside the court. Based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, non-litigation dispute resolution can be resolved to utilize consultation, negotiation, mediation, conciliation, expert opinion, and arbitration (BASYARNAS). Article 1 of Law Number 30 of 1999, provides the notion of arbitration, namely the method of settling a civil dispute outside a public court based on an arbitration agreement made in writing by the parties to the dispute. The definition of arbitration can be concluded from several important elements that can show the characteristics of arbitration (*tahkim*).²⁵ (1) arbitration is a form of dispute resolution, (2) the dispute involves a civil case, (3) the settlement is non-litigation, (4) based on the written agreement of the parties, (5) the settlement is carried out by arbitrators appointed by the parties themselves.

²³Abdul Rasyid and Tiska Andita Putri, “Kewenangan Lembaga Penyelesaian Sengketa Perbankan Syariah,” *Jurnal Yudisial* 12, no. 2 (2019): 159–77, <https://doi.org/10.29123/jy.v12i2.256>.

²⁴Murtadho Ridwan, “Penyelesaian Sengketa Perbankan Syariah Di Indonesia,” *MALIA: Journal of Islamic Banking and Finance* 1, no. 1 (2018): 45–56, <https://doi.org/10.21043/malia.v1i1.3983>.

²⁵Syamsul Anwar, “Arbitrase Ex Aequo Et Bono Dan Hukum Islam,” *Asy-Syir’ah: Jurnal Ilmu Syariah Dan Hukum* 51, no. 2 (2017): 367–73, <https://asy-syirah.uin-suka.com/index.php/AS/article/view/51205>.

The method of resolving disputes through arbitration has advantages over settlement in court. Arbitration is seen as one of the out-of-court dispute settlements which require time, and costs which are relatively cheaper compared to settlement through litigation which takes a very long time and costs a lot.²⁶ The arbitration dispute resolution system is carried out in private so that the confidentiality of the parties to the dispute and the disputed material is not known by other parties.²⁷ Disputing parties, for example in the business world, will choose a law that is beneficial to them, by avoiding dispute resolution through courts where the results of the settlement are usually published.²⁸ In addition to the dispute resolution process which guarantees confidentiality, the dispute resolution process through arbitration is classified as faster than the religious courts. Therefore, if the settlement of disputes is immediately resolved, it can minimize the emergence of new problems that are increasingly complicated.

In Indonesia, the sharia economic dispute resolution institution is resolved through the National Sharia Arbitration Board (BASYARNAS), formerly named (BAMUI), which is part of MUI-Indonesia.²⁹ Entering the era of disruption, the dispute resolution process is also growing and is demanded to be fast, effective, and efficient. Various changes in dispute resolution mechanisms have undergone changes and innovations. Arbitration dispute resolution models from various countries have progressed, such as arbitration dispute resolution in the Netherlands which uses appropriate procedural rules in force in its country. Therefore, the existence of BASYARNAS can become an online-based arbitration institution to be practiced in various existing business dispute issues, for example in financing default disputes in Islamic banking. It is important to strive for and respond to this progress by arbitration bodies, especially BASYARNAS, regarding

²⁶Abdul Ghofur Anshori, *Penyelesaian Sengketa Perbankan Syariah*.89.

²⁷Ulfa Hasanah, "Peran Arbitrase Di Bank Syariah Dalam Penyelesaian Sengketa," *TAWAZUN: Journal of Sharia Economic Law* 4, no. 2 (2021): 196–208, <https://doi.org/10.21043/tawazun.v4i2.10697>.

²⁸ Rahmadi Indra Tektona, "Kepastian Hukum Terhadap Perlindungan Hak Anak Korban Perceraian," *Muwazah: Jurnal Kajian Gender* 4, no. 1 (2012): 42–57, <https://e-journal.iainpekalongan.ac.id/index.php/Muwazah/article/view/148/>.

²⁹Ani Yunita, "Efektifitas Penyelesaian Sengketa Ekonomi Syariah Melalui Badan Arbitrase Syariah Nasional Daerah Istimewa Yogyakarta," *Jurnal Hukum Progresif* 9, no. 1 (2021): 25–36, <https://doi.org/10.14710/jhp.9.1.25-36>.

changes to online-based dispute resolution.³⁰ Because, this can be an effort to uphold the principle of simple, fast, and low cost.

Default disputes on *musyarakah* financing are a form of violation of the agreement that occurred from the parties. Therefore, if a problem has been said to be an adverse act of default, then the aggrieved party can submit a request to resolve the dispute by the contents of the contract. Determination of dispute resolution forums, especially in Sharia economic cases by the MUI from several regulations issued, regulates resolving disputes through Sharia arbitration channels.³¹ As in the DSN-MUI Fatwa Number 08/DSN-MUI/IV/2000 concerning *Musyarakah* Financing, the last point in the fatwa explains that "If one party does not fulfill its obligations or if a dispute occurs, the settlement will be carried out through the Sharia Arbitration Board after there is no agreement through deliberation".

Agreement to choose settlement of default disputes in financing contracts in Sharia banking, in this case in *musyarakah* financing contracts is a choice of law for the disputing parties.³² Every agreement made by the parties is a freedom for them to choose the way of solving problems and the forum used according to their wishes.³³ Dispute resolution is a way to reconcile the problems that occur to the parties, which is expected to be able to restore business relations, legal relations, and brotherhood that can still be established.³⁴ In the *musyarakah* financing agreement, the dispute resolution provisions have been regulated in the contract agreement agreed upon by the parties. The article in the dispute resolution agreement explains how to settle disputes if there is a dispute in cooperation between the parties (debtor and creditor) in the future. Settlement of default

³⁰Vikarin and Pujiyono, "Eksistensi Arbitrase Online Sebagai Model Penyelesaian Sengketa E-Commerce Di Beberapa Negara."

³¹Amanda Tikha Santriati, "Penyelesaian Sengketa Perbankan Syariah Melalui Badan Arbitrase Syariah Nasional," *El-Wasathiya: Jurnal Studi Agama* 9, no. 1 (2021): 38–54, <http://ejournal.kopertais4.or.id/mataraman/index.php/wasathiya/article/view/4395>.

³²Riska Fauziah Hayati and Abdul Mujib, "Dispute Resolution on Muḍārabah Musyarakah Contract on Sharia Insurance in Indonesia: Between Regulation and Practice," *El-Mashlahah* 12, no. 1 (2022): 14–36, <https://doi.org/10.23971/elma.v12i1.3795>.

³³Syamsul Anwar, *Hukum Perjanjian Syariah (Studi Tentang Teori Akad Dalam Fikih Muamalat)* (Jakarta: PT Gaja Grafindo, 2007).

³⁴Mohamad Lutfi, "Penyelesaian Sengketa Hukum Di Perbankan Syariah," *Madani Syari'ah* 3, no. 3 (2020): 61–71, <https://stai-binamadani.e-journal.id/MadaniSyariah/article/view/156>.

disputes on *musyarakah* financing has similarities with other Sharia economic dispute settlements..

According to Sharia principles, settlement of default disputes on *musyarakah* financing contracts must be resolved by prioritizing methods of dispute resolution through deliberation and consensus. This has been explained in the Sharia Banking Act, article 55 paragraph 2 which prioritizes dispute resolution through deliberation and consensus. However, if the settlement of the default dispute has not been successful, further settlement can be resolved through channels outside the court such as dispute resolution through the BASYARNAS. The settlement of disputes through arbitration is a settlement that already exists in the agreement clause. That is, the dispute settlement agreement has been written in the contract agreement made by the parties. The agreement states the choice of law to resolve the dispute agreed upon in the statutory provisions that apply to the parties, which expressly states that "if there is a dispute between two parties who enter into a *musyarakah* financing contract agreement, then the settlement will be resolved through arbitration (BASYARNAS). This statement provides authority for the BASYARNAS to resolve disputes that occur for the parties to the dispute.

Disputes that occur due to the inability to pay the *musyarakah* financing facility cannot be fully classified as an act of default. DSN-MUI Fatwa Number 08/DSN-MUI/IV/2000 regarding *Musyarakah* Financing, says that "losses in a *musyarakah* contract must be shared by the parties proportionally according to the agreement that has been made". The fatwa explains that if there is a loss obtained by the debtor in running a business or cooperation project, then the creditor as part of the owner of the capital must bear the loss together. If the loss found by the debtor is indeed from the debtor himself, it is the result of intentional or negligent actions so that he cannot fulfill his achievements. So with that, the arbiter will evaluate whether the act is an act of default.³⁵ In default disputes on *musyarakah* financing, if one of the parties defaults on the implementation of achievement fulfillment, then that party must be responsible for the actions he has

³⁵Ahmad Faizun, "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021): 195–212, <https://doi.org/10.22515/alahkam.v6i2.3864>.

committed. This is part of the legal consequences that have been violated by the agreed agreement.

An arbitrator in making peace between the parties must continue to make every effort to be able to reconcile disputes by deliberation and consensus before the arbitral award ends. If the settlement effort is successful before the arbitral award is issued, the arbitrator will draw up a deed of reconciliation. However, if it is not successful, it will proceed with the implementation of the settlement process through arbitration. Arbitrators as arbitrators for dispute resolution on *musyarakah* financing have the authority to carry out their duties in seeing the suitability of the contents of the *musyarakah* financing contract. The arbitrator can review the suitability of the contents of the agreement with the provisions in the DSN-MUI fatwa regarding *musyarakah* financing. If there is a clause that is not by the provisions, the arbitrator will offer an amendment to the clause that does not harm either party. This is to avoid disagreements over the understanding of the contents of the agreement which can lead to interpretation.³⁶

The Sharia Standards for Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) explain in number 6.2 that dispute resolution between parties is about permissible rights, agreements to accept arbitrator decisions, and receiving arbitrators to carry out their duties in mediating settled cases.³⁷ That is, if the parties have mutually agreed on the settlement of disputes through an arbitration forum, then the agreement on the implementation of the settlement of the dispute by the arbitrator and the decision given by the arbitrator must be accepted by the parties. The arbitral award is a decision that is final and has permanent legal force for the parties, so that the decision must be obeyed and carried out voluntarily. As explained in Article 60 of Law Number 30 of 1999, "an arbitral award is final and has permanent legal force and is binding on the

³⁶Zaidah Nur Rosidah and Layyin Mahfiana, "Efektivitas Penerapan Prinsip-Prinsip Syariah Dalam Penyelesaian Sengketa Ekonomi Syariah Di Badan Arbitrase Syariah Nasional (BASYARNAS)," *TAWAZUN: Journal of Sharia Economic Law* 3, no. 1 (2020): 15–30, <https://doi.org/10.21043/tawazun.v3i1.7529>.

³⁷Accounting and Auditing Organization for Islamic Financial Institution, *Shari'ah Standards* (Kingdom of Bahrain: Worldwide Distribution: Dar AlMaiman for Publishing & Distributing For, 2015), <https://aaoifi.com/shariaa-standards/?lang=en>.

parties." The parties must register the results of the arbitral award and request execution by the court.³⁸

Conclusion

Settlement of default disputes on musyarakah financing contracts in Sharia banking through BASYARNAS is one way of resolving disputes that have been described in legislation. In an era of disruption full of change and innovation, arbitration with online systems is important to strive for. The settlement of musyarakah disputes in Sharia banking is said to be in default, not only assessed from the losses obtained by the creditor (Bank) but seen from the origin of these losses. If the default is caused by the customer's negligence, then this can be the responsibility that must be borne by the customer in accepting the consequences of the law that was carried out, but if the loss comes from business activities or cooperation projects and the customer has made every effort. Thus, the loss is borne jointly by the parties.

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³⁸Cicut Sutiarto, *Pelaksanaan Putusan Arbitrase Dalam Sengketa Bisnis* (Jakarta: Yayasan Pustaka obor Indonesia, 2011).

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