



## Understanding the Characteristics of Dispute Settlement in Sharia Economic System

M. Arfin Hamid

Faculty of Law, Hasanuddin University, Indonesia. E-mail: arfinprof67@gmail.com

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### ABSTRACT

One of the most developed areas of Islamic law (sharia) today is "Fiqh Muamalah Iqtishadiyyah" or known as term "Sharia Economics." The outcomes of the research indicate that the characteristics of sharia dispute are important to be understood by sharia businessmen and law enforcers. As it turns out in practice, however, it has certain weaknesses, particularly in view of the accountability and legitimacy aspects of its establishment. The sharia economic disputes, whether through litigation or non-litigation is not a means to profit, but solely to resolve disputes in accordance with sharia principles. the settlement of sharia disputes is still not fully independent or free from conventional law that has been going during this in the religious courts. Responding this matter throughout the process of settlement is not contradictory to the principles of sharia can be accommodated while preparing sharia-based sharia dispute law.

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### 1. Introduction

The task requires to compare an intellectual construct (an Islamic economic system) with a concept that exists in reality in different forms (the social market economy). The economic systems that exist today are more or less systematic advancements of systems installed as a secular sign after gaining independence in continuance of, or in a (revolutionary) triumph over colonial era systems. Even the academic discipline of Islamic economics, which seeks to combine secular economic theories or (neoclassical) models with teachings from Islamic philosophy and law, is a relatively new phenomenon.<sup>1</sup>

From this perspective, dispute settlement in sharia economic system has a very wide scope. One of those scopes is business in sharia finance and it also has a variety of types. In the business of Islamic finance, this is not too difficult to mention because in simple terms, economic activity is divided into 2 (two); *Firstly*, the activity of financial

<sup>1</sup> Nienhaus, V. (2010). Fundamentals of an Islamic economic system compared to the social market economy. *KAS International Reports*, 11, 77.

sector by financial institutions consisting of banking institutions and financing institutions; *Secondly*, the real sector activities by business actors.

Starting from the stage of design, the activity of business is arranged as the principle of sharia and understands it exactly whenever there is dispute that its settlement according to sharia. In addition, the author also need to analyze the number of fundamental issues especially about sharia economic system with the fundamental characteristics that covering sharia business dispute and not depart from the sources of principle.

Basically, a dispute always begins with a contract. Relating to the contract, depending on the model chosen by the parties involved in it based on the principle of co-sensuality, the contract has arisen since the agreement reached.<sup>2</sup> In the meaning of *fiqh*, when a deliberation between the parties with a clear intention to do something positive together, then it has also been recorded as a promise (*wa'ad*) that must be enforced. Even now, its presence not only attract the attention of Muslims, Islamic communities and Muslim countries in the world, but also make non-Muslim community or secular countries also join avid for new economic system trend in this 21<sup>st</sup> century.

Nowadays, it is certain that almost every major country in Europe and America has opened and run various types of Sharia economic applications. Begin from sharia banks, insurance and more and especially in Muslim countries around the world.<sup>3</sup> However, in practice, it is also certain to provide a plus advantage that upholds the values of humanism that has been neglected in conventional systems.

Sharia economics as a system, certainly in it there are some inherent elements and should be viewed as a totality. A comprehensive perspective is unavoidable in responding to the presence of this newly applied economic system. The right and comprehensive viewpoint is so influential in the formation of a proportional perception and far from misleading.<sup>4</sup>

It is important not only the sharia system that was previously only seen as the source of normative teaching, only affecting the ethical and moral level. But the most important is also the relationship and the influence of conventional systems that have been co-opted in the pattern and behavior of the world economy, resulting directly to the conventional perspective. For example, sharia economy is identical when facing the conventional economics, so emerge a statement that sharia bank is same as conventional bank. Both are oriented to the profit, only different in the use of the term. It is important to be open for review and analysis especially related to dispute settlement in sharia business with various aspects.

Conceptually, it is considered effective if all the elements involved in it are able to form a condition as expected while in practice it does not create gaps. Ideally, in every concept, program, perhaps even a project as far as possible can proceed rationally, systematically and predictably to achieve certain targets, and it will be achieved when all paths are running proportionally so as not to cause problems that will become an obstacle in achieving these targets.

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<sup>2</sup> Djamil, F. (2012). *Penyelesaian Pembiayaan Bermasalah di Bank Syariah*. Jakarta: Sinar Grafika, p. 1-7

<sup>3</sup> Karim, A (2004). *Bank Islam: Analisis Fikih dan Keuangan*. Jakarta: Rajagrafindo Persada, p. 34.

<sup>4</sup> Usanti, T., & Shomad, A. (2016). Reconstruction of Financing Agreement Based on the Principle of Profit and Loss in Sharia Banking. *Hasanuddin Law Review*, 2(1), 10-23. doi: <http://dx.doi.org/10.20956/halrev.v1n1.211>

Sharia economic system that continues to grow is not only in the Islamic world, but on all countries in various parts of the world. Of course, the growth is also followed by the dynamics that cause problems in the management. Besides, needs guidance in facing the dynamics so that the settlement also has no impact on the short term alone, but can provide a sense of justice and benefit for the parties and mankind as a whole, in accordance with the origin of the teachings of Islam.

## 2. Method of the Research

The method of dispute settlement in sharia business has its own peculiarities, which must first be explained is the position on the dispute settlement that should not be viewed independently, but always viewed as a whole with the argument that the business is a derivation of Islamic teachings contained in the Qur'an And As-sunnah as its main reference. Second, in settle disputes always returned to the main source of the Qur'an and As-sunnah then on the source of *ijtihad* such as *ijma'*, *qiyas*, *maslahah mursalah*, *istihsan*, *urf* and so on.

Such a linear approach is a necessity in sharia economic systems that are epistemologically, axiological and ontological derived from both sources. This will be even more interesting for the Indonesian context which provides an opportunity for the State to organize and facilitate the implementation of Sharia business, so that requires an approach other than integrative must also be combinative, and even comparative.

## 3. Sharia Economic System: A Systematic Overview

The viewpoint are systematic and totality (*nazdah al-syamilah*) is a necessity in the sharia perspective, not only because sharia is a sacred divine law (*tazkiyah*), but also the structure is highly hierarchical, since it is logically seen as a legal system. The structure is pyramid-built in the uppermost position is the divine value (the God) which then derivatively forms the principle and then comes the norms, and so forms the covenants applied through the sharia economic institutions in the field.

Hierarchical building that will continue to maintain harmony and vertically no contradictions in it. Conceptual consistency as well as its practical becomes the standard of the legitimacy of a process or legal act that has a number of consequences. When the consistency is not run or cannot be maintained will be wide open the dispute (conflict) which of course in sharia should not be set since the beginning, but if it happens then all parties are obliged to settle it by sharia (*innamal a'malu binniyati wa innama likulli imri'in ma nawa*).

One fundamental thing related to the dispute settlement of sharia business is how the description of the sharia economic system profile is evolving today. As the study and observation of the author, there are at least 3 (three) profile views that can be used as a reference about SES' building as follows:

- a. The profile of sharia economic is described by Adiwarman Karim (Kariem Business Consulting), as a building consisting of foundation, pillars and roofs. In illustrating the profile of sharia economics is more bottoms-up from the foundation to the roof in it filled fields of applications ranging from sharia banks, insurance, and so on. It seems that the depiction is more influenced by the conventional view of economics whose system is evolved from the bottom

by evolution. The pattern of its formation is in line with the antropocentric approach that puts human beings as the deciding source and for the benefit of man. Such models are more modified of existing buildings, that is the conventional system and then adjusted to the content of sharia and eliminate everything that is contrary to the Islam teachings.

- b. The profile of sharia economic is depicted in its form as an Islamization attempt of conventional economic by using the formula:

**[Conventional Economics - Usury (Wrong) + Islamic Value = Sharia Economy]**

This depiction begins from a rule of *fiqh*, *al-ashlu anisy-suai al-ibahah hatta yadulla dalilun litahrimiha*, the law of origin of all things is allowed as long as there is no verse that strictly prohibits it. Therefore, all conventional forms that do not violate sharia can be accommodated as an integral part of the sharia economic system.

- c. The profile of sharia economy is depicted (the author) in the form of a pyramid building. At the top position is the highest value, the divine value, then middle position is the principle as derivation of the highest value, then the position under it is occupied by norms as derivation of principle and value. Then the bottom is occupied by application/sharia economic institutions and contained sharia contracts are more operational.<sup>5</sup>

Although this building is top-down (divine), it does not mean rejecting or opposing against all bottoms-up or conventional, but still has relevance as long as it does not conflict with sharia itself. But herein lies the significant difference with the two previous profiles, i.e no longer make the conventional system as its base but only make it as a secondary source as far as relevant with the sharia and the reality is now applied science that comes from the sciences of economics conventionally support the development of Islamic economics, among others, introduction of economics, management, marketing, banking, accounting, production systems, and others.

Its consideration, the practices of conventional economic today are actually the basis already existed in the period of Muhammad, when he was a trader and after he became the Messenger of Allah. So, the practice that seems today is the development of its former base and looks more modern according to the development of science and technology and demands of civilization.

The three forms of sharia economic profile have a relationship and influence to the dispute condition in sharia business hence to get solution of settlement which is relevant with sharia using third building pattern as building based on Islamic teachings, which make conventional system as secondary source by accommodating some relevant things.

As description of the profile of sharia economic system above, indicates that the origin and process of the emergence of this system is clearly sourced from the Islam teachings through the Qur'an and As-sunnah which is top-down developed through the sources of Islamic law that is hierarchy, in addition to having a value or basic principles, also has a purpose and orientation, as well as the existence of benchmark standards that

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<sup>5</sup> Such as bank, insurance, and others and see the collection of guidance DSN-MUI

governing operational units.<sup>6</sup> In line with the profile of sharia economy above, Manan,<sup>7</sup> asserted that:

*Islam has an economic system fundamentally different from other economic systems. The Islamic economic system has sharia root that formed world views, strategies and targets that are different from the secular systems that govern the world today. The concept of Islamic economy is not only based on material solely, but includes immaterial such as human happiness (al-falah), good life (hayatan tayyibah), brotherhood aspect (ukhuwah), social-economic justice and spiritual needs of other mankind.*

In general, sharia dispute is intended as a whole conflict, case or dispute either previously based on the explicit provisions of Islamic sharia or not explicitly as long as it is not contradictory with sharia, which has consequences in the life of the community.

Philosophically, it confirmed by verse, “*walillahi mulku as-samawati wal-ardhi...*” (Allah is the absolute ruler of what is in the heavens and on earth...) indicates that man is one of the earths’ contents which must also accept the consequences of that verse in the meaning of all his/her actions and conduct are not justified in violating the rule of absolute ruler, that is, Allah Almighty, both explicitly and implicitly arranged. Thus, if there are denials of Gods’ arrangement in the heavens and on earth will be the potential for conflict or dispute which also demands a solution or settlement so that man uses his/her potential in accordance with His instructions as well.

Man, as the focus of life for all His creatures has been created with the best form (*ahsanu taqwin*), also presumed as a potential animal (*hayawan an-natiq*) by Aristotle referred to as *zoon politikon*. This existence shows that human beings must be able to set their independence by utilizing all potential of self and nature properly and effectively. As it is affirmed in the verse *ta’awanu alal birri wattaqwa wala ta’awani alal ismi wal’udhwan* (synergizes in virtue and does not synergize in crime).

Observe more deeply to meanings and characteristics of conflict or dispute that is otherwise known as “*sulh*” means to eliminate conflict, in its sense as a contract to end a dispute or two dispute parties to a peaceful and settling a dispute based on peace to end a case is strongly recommended by Allah Almighty as verse 126 Surat an-Nisa “*peace is a good deed.*”<sup>8</sup>

On the other hand, humans are also bound to the necessity to combine dual-dimension in building the order of life, the harmonious relationship with God, *hablum minallah* and with human beings, *hablun minannas*. These two forms of relationship have the potential to conflict, the first will emerge vertical conflict that is contrary to the contract with the Creator, *alastu birabbikum qalu bala syahidnya* dan *hasibu anfusakum qabla an tuhasabu* and the second will emerge horizontal conflicts with human beings either by contract or not, and or because of particular object. The first conflict will be settled in *mahsyar* court, while the second conflicts will be settled in the world court, and this will be examined more in this paper. By refers to the horizontal conflict in the world of *fiqh*

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<sup>6</sup> Compare to Rivai, V. (2013). *Islamic Economics: Ekonomi Islam Bukan Opsi tetapi Solusi*, Jakarta: Bumi Perkasa, p. 20.

<sup>7</sup> Manan, A. (2011). *Hukum Ekonomi Syariah dalam Perspektif Kewenangan Peradilan Agama*. Jakarta: Prenada Media Group, p. 31.

<sup>8</sup> *Ibid.*, p. 427



it is known as problems arising from interactional called *al-muamalah al-makhluqiyyah* (see Table 1).

The scope of *muamalah* is so broad it includes all dimensions of life that are entirely within the sharia corridor (the Qur'an and As-sunnah) that govern it. And all the dimensions of *muamalah* have potential to conflicts because all conflicts that arise therein are called sharia disputes, whether on the dimensions of marriage, inheritance, zakat, *siyasah*, *jinayah*, sharia economy, *hajj*, blasphemy, smoking, and others.

The extensive sharia dispute certainly will not be reviewed in this short article but only as a description to open the treasures before review to examine more specifically the dispute of sharia economic. The dispute in this field is only one of the many dimensions of *muamalah islamiyyah*. Certainly, the profile of sharia economic dispute is also vulnerable with some special things that are characteristic when compared with sharia dispute in other fields.

Substantively, the focus of sharia economic disputes can occur in 2 (two) possibilities, the first; the technical disputes that are generally motivated by the interests of the parties directly related, especially those contained in the text of the contract made earlier. The second; ideological disputes, especially concerning the establishment of conceptual understanding of the entire of sharia economic system (*kaffah*), especially in maintaining the sharia and *tazkiyah* (holiness) as the implementation of Islamic teachings in the field of economic, this can arise not only the presence of the contract, may still appear in the form of other sensitive actions.

The presence of sharia economic dispute is not a stand-alone thing that should be projected as it would when preparing a sharia business to succeed in its implementation. But what is demanded by the shariah how to build good faith (intention) before declare something, after that pursued its realization programmatically, rationally and in accordance with capacity, away from the faiths that are not according to the sharia.

The sharia economic dispute is not a goal but as the impact of a process or perhaps as a sign of dynamics that also requires a system of correct and effective settlement, then to be realized by all parties involved in it. This means that in the concept of sharia economy, means to get the results, profits, and additional property, the disputes is not its path but the path of dispute is only limited as a means to solve problems related to disputed objects/property (Islam strongly prohibits mafia cases, judicial mafia and land mafia and other).

In essence, human beings are blessed by their Creator with all the potential to determine, to plan, to execute, and to measure all possible possibilities, but surely God who determines the outcome. So that the success of an activity from the beginning cannot be ascertained, not a few who have problems and even become a dispute that requires a separate settlement.<sup>9</sup> It is in these moments that sharia gives guidance to be trustworthy, to be honest, to be responsible, even to be required to declare the right is right and wrong is wrong according to the verse of Qur'an, *wa qul ja'al haqqu wazahaqal bathil innal bathila kana zahuqa*.

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<sup>9</sup> Abdullah, D.V., & Chee, K. (2010). *Islamic Finance Why it Makes Sense: Understanding its Principles and Practices*. Singapore: Marshaal Cevendish Business, pp 63-65.

In the context of the conflict, in addition to prioritizing the attitude of trust which is the initial commitment to form an honest attitude (*shiddiq*) in order to reach the truths that coveted all parties, whether material or formal truth.<sup>10</sup> In the context of sharia, both types of truth must integrate and complement each other and support to obtain justice.

The characterization of sharia disputes in general and the sharia economic disputes in particular, the following put forward a number of specific characters surrounding the sharia business dispute so that the system of settlement did not open the possibility of the emergence of new disputes, as follows:

- a) When human faces a problem or dispute, let it return to the provisions of Allah, *fa in tanaza'tun fi syai'in farudduhu ilallah*. It is not justified to put egoism forward especially by doing tyrannical with strategies that are not according to the sharia.
- b) Promoting *ishlah* or peace in every stage of handling that is central to *muamalah* processes.
- c) Every human being is required to be responsible for all their actions and actions including the consequences (*kullu nafsin bima kasaba rahinah*), fulfill the contract because it will actually be accounted (*wa aufu bil uqud innal ahda kana anhu mas'ulaa*).
- d) The principle of prioritizing peace for all parties is a major consideration in the settlement of disputes, this as the implementation of the goal of Islamic teachings as a blessing for all the contents of this nature.
- e) Sharia economic dispute is an inseparable part of the sharia economic system; hence the solution model adopted is not contradictory with the sharia economic principles that support it. A partial approach will not be settling the dispute proportionately.
- f) The anatomy of the sharia dispute is always aligned with the anatomy of sharia economic that correlates each other and determines its validity between one part and other.
- g) The system of sharia dispute settlement is not as a means of obtaining rights or objects by exploiting the weaknesses of one party.
- h) All parties must be committed and well-meaning to settle disputes well and sincerely from the attitudes of pride and deceit.
- i) Every related-party with sharia business actor or partners/clients always keep and minimize all opportunities of problems or conflicts, because the principle of good deeds and *husnuzhzhah* always actualized in it.
- j) The sharia dispute settlement of the law enforcers or all parties must be active especially the judges in accordance with the principles of sharia.
- k) There is no *riswah* (bribery) of all kinds in the process of sharia dispute settlement.
- l) The sharia economic dispute is open and flexible in the process as long as the final intention to settle the conflict and avoid the injustice (*la tazhlimuna wala tuzhlamun*), should not be evil and otherwise).
- m) Especially the context of Indonesia the source of law to settle the dispute is not only comes from the Islam source but also the positive source of Indonesia.

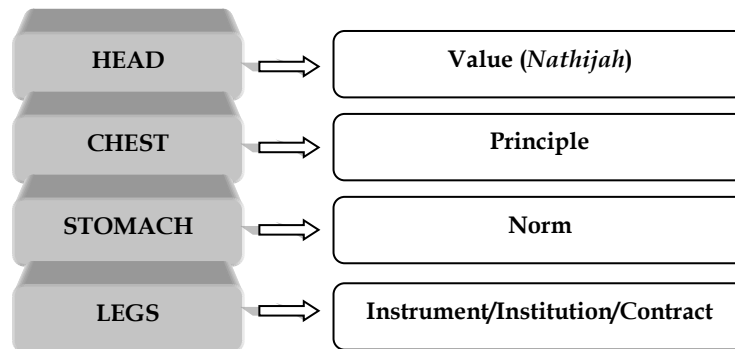
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<sup>10</sup> Chapra, U. (2001). *The Future of Economics: An Islamic Perspective*. Gema Insani, Jakarta.

#### 4. Anatomy of Sharia Business Disputes

From perspective of this dispute as part of the sharia economic system, it is necessary to state how the economic anatomy and how it relates to the sharia business dispute. If supposed the sharia economy to be a systematic concept so relevant if it is assumed as human anatomy that has the head, chest, stomach and legs, all those parts determine the presence of a complete human figure.

**Figure 1.** Antinomy of sharia economic.



Observing the anatomy, then the possibility of disputes at all levels, and should be viewed as an integral entity, and its nature is very hierarchy. For example, disputes arise in the stomach or legs because they do not and only localize the problem on the stomach and legs, but previously evaluated from the head and the stomach do not get on the top is in conditions that are not according to the sharia, so everything is canceled. However, disputes that require treatment will be faced by advocates at the level of implementation either by sharia economic institutions or entrepreneurs or by partners or customers.<sup>11</sup> At the level, then the most relevant to be reviewed and studied in its handling back to the contents of agreed contracts, and or something disputed by looking at the processes and evidence held by the parties. If so, the elements, requirements, validity and execution of a contract become important in it.

Related to the anatomy, in particular the sharia business dispute also has an anatomy that is directly related to the theory of *tazkiyah* Business which is built in 4 stages so emerging the *tazkiyah* business (clean), which is really according to the sharia, and in accordance with the verse, *wa kulu mimma fil halalan-tayyiban*.

The potential for conflict between entrepreneurs and their customers or employers with other entrepreneurs based on contracts will refer to the agreed contract with support from other Islamic legal arguments. However, if the parties involved are not business actors (producers and consumers) in the interests of each, but in relation to maintaining the integrity and interests of sharia enforcement for business actor and to other parties, for example, the applicant may be from a sharia institution non-commercial, such as DSN, MUI, BASYARNAS, Islam Mass Organization, NGOs and so on. It is also necessary to get the attention of all parties because it is not closed the possibility of such a conflict appears surface in line with the rapid development of sharia economy today.

<sup>11</sup> Hamid, M.A. (2008). *Membumikan Ekonomi Syariah: Perspektif Sosioyuridis*. Jakarta: ELSAS, p. 31.



**Table 1.** The anatomy of Tazkiyah Business-Based Sharia Disputes

Stage	Activities	Law Qualification	Description	Conflict
I	Object	Valid	Not <i>lizatihi</i> forbidden	Contract and business object of sharia contract
II	Mechanism/process	Valid	Not <i>lighairi zatihi</i> forbidden	Implementation is not accordance with contract
III	Output	Allowed	Tazkiyah	Allow and sharing process
IV	Utilization	Valid	Not in violation	Management is not accordance with sharia
Conclusion		<i>Halalan-tayyiban</i>	<i>Tazkiyah</i> Business	

Source: Primary data, 2017 (edited).

## 5. Legal Sources of Sharia Dispute Settlement

Discussing the legal source of sharia disputes certainly cannot be separated with the legal source of sharia economic. In general, the legal source of sharia economic is divided into 2 (two); (a) the source of normative legal, and (b) the source of positive legal, the two types of qualification of the legal source are mutually support the concept of sharia economy and its application to several Islamic economic institutions from sharia bank, insurance, and others to the business of sharia services.

The source of normative legal is derived from Al-qur'an, As-sunah, ijma, qiyas, other effort law and tens of guidance DSN-MUI as its basis source, therefore all theories, forms and models of the implementation of sharia economy should not violate the whole rule of normative legal and apply in hierarchy. Meanwhile, to support the effectiveness of the application of normative legal rules and get the full support of the community, the rule of nominative legal is positive by the State into national legal, become a positive legal source of sharia economic, starting from the 1945 Constitution article 29, National Banking Law, Sharia Banking Law 2008, Sukuk Law 2008, the Religious Judicature Law, the Indonesia Bank Law, and a number of other laws and regulations governing the sharia economic activities in the homeland.

Certainly, the source of positive legal must not be contrary to the source of normative legal, besides it as the basic law of sharia economy, it is also a divine law derived by Allah Almighty. Therefore, all provisions of the positive legal are the elaboration of the normative provisions, hence in the application and to enforce it becomes the responsibility of the State in addition to the responsibility of the Muslims as a whole.

## 6. Conclusion

In the settlement of sharia disputes, there are several related parties, especially business actors and partners/customers either through a litigation settlement based on the Religious Judiciary Law, Sharia Banking Law, Sukuk Law 2008, PBI, Guidance DSN, Compilation of Islamic Law, and Compilation of Islamic Economic Law (Sharia)

in it has been arranged mechanism of litigation in order it can run effectively and efficiently. Through several provisions, the settlement of sharia disputes can also be pursued through non-litigation, through Alternative Dispute Resolution possibly through the Sharia Arbitration Board under Act No. 30 of 1999.

Have to recognize that the settlement of sharia disputes is still not fully independent or free from conventional law that has been going during this in the religious courts. Responding this matter throughout the process of settlement is not contradictory to the principles of sharia can be accommodated while preparing sharia-based sharia dispute law.

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