



## THE POSITION OF BASYARNAS AS AN ALTERNATIVE INSTITUTION FOR RESOLVING SHARIA ECONOMIC FINANCIAL DISPUTES AFTER THE ESTABLISHMENT OF LAPS-SJK

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### Abstract

Basyarnas as an institution that has been operating for a long time, has an important role in alternative settlement of sharia economic disputes through arbitration. However, the existence of LAPS-SJK, which was initiated by the Financial Services Authority (OJK), has made changes in the dispute resolution mechanism in the financial services sector, including Islamic finance. This study aims to analyze the position of Basyarnas as an alternative institution for resolving sharia economic disputes after the establishment of LAPS-SJK. In addition, this study tries to analyze the differences in the mechanism for resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK. In answering these problems, the researcher uses literature research, which is research conducted using literature materials. The data that has been obtained is then analyzed using the descriptive analysis method. The results of this study show that with the existence of LAPS-SJK, Basyarnas still has relevance in arbitration-based sharia dispute resolution even though its scope is limited. The difference in sharia economic dispute resolution in Basyarnas and LAPS-SJK is that in Basyarnas *internal dispute resolution* is not a requirement to submit dispute resolution, while in LAPS-SJK it is one of the requirements. Furthermore, in Basyarnas there is no term *retail small claim*, while in LAPS-SJK there is one. Arbitral awards by Basyarnas are registered with the Religious Court, while LAPS-SJK arbitration awards for both conventional and sharia disputes are registered with the District Court.

**Keywords:** Basyarnas, LAPS-SJK, sharia financial disputes.

### INTRODUCTION

The establishment of Islamic banking is the starting point for the integration of the Islamic economic system into the national economic system of Indonesia. Over time, the sharia economy continues to develop in Indonesia, where the majority of the population is Muslim. The development of the sharia economy has increased both in terms of institutions, infrastructure, regulatory apparatus, supervisory institutions, and public interest in the sharia economic system. Financing based on sharia principles is not only found in Sharia Banking and the Non-Bank Sharia Financial Industry, but has developed to the Sharia Capital Market. In addition, the existence of the sharia economy in Indonesia can also be seen from the shift in public interest towards financing based on sharia principles. Thus, it can be said that the current position of the sharia economy is on par with the conventional economy.

The development of the sharia economy has implications for potential problems that can cause disputes. Disputes arise due to conflicts of interest between the parties. In addition, factors that can cause sharia economic disputes include: the first is the factor of disagreement between the parties to the contract because they are stuck in the profit orientation, the character of trial and error, or because of the inability to recognize their business partners and there may be no *legal cover*. The second factor is the difficulty in the implementation of the contract or contract that has been agreed. This is due to inaccuracy, lack of caution in negotiating, lack of expertise in understanding the contract that has been made, lack of ability to observe risks, or even dishonesty in making contracts so that it only benefits one party. Therefore, the parties who will carry out economic or business activities are expected to be careful and clearly understand the formulation of the contract, so that disputes between them can be avoided.

In Indonesia, the settlement of sharia economic disputes is known through two channels, namely through litigation or settlement through the court and through non-litigation channels, namely dispute resolution outside the court. Litigation settlement in the sharia economy is carried out through religious courts. This is regulated in Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning religious courts. Article 49 letter (i) expressly states that the Religious Court is tasked and authorized to examine, decide and settle cases at the first level between people who are Muslims in the field of sharia economics. What is meant by sharia economics in the explanation of Article 49 letter i is an act or business activity carried out according to sharia principles. These business activities include: Sharia Banks, Sharia Microfinance Institutions, Sharia Insurance, Sharia Reinsurance, Sharia Mutual Funds, Sharia Bonds and Sharia Medium-Term Securities, Sharia Securities, Sharia Financing, Sharia Financial Institution Pension Funds, Sharia Business.

The settlement of sharia economic disputes outside the courts in Indonesia is regulated through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. According to article 1 paragraph 10 of Law Number 30 of 1999, an alternative dispute resolution is a dispute resolution institution or a difference of opinion agreed upon by the parties, namely an out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment. With the birth of the law on arbitration and alternative dispute resolution, the state gives freedom and choice to the public to resolve its business disputes outside the courts. One of the alternative dispute resolution methods that are popular with the public is through arbitration. Based on the provisions of article 1 paragraph 1 of Law number 30 of 1999, arbitration is a way of resolving civil disputes outside the general court, which is based on an arbitration agreement made



in writing by the parties to the dispute.<sup>1</sup> Other dispute resolution for business actors is much more profitable for them. This can be seen from the principle of arbitration itself which emphasizes the principle of *win-win solution* and dispute resolution that is closed and confidential. In addition, according to business actors, arbitrators are considered to understand business disputes more deeply than judges in court.

Institutional arbitration is an arbitration institution or body that is permanent. In Indonesia, institutional arbitration institutions that have the authority to resolve sharia disputes are handed over to the National Sharia Arbitration Board or Basyarnas. The Basyarnas Institution is an institution formed by the Indonesia Ulema Council, which was previously known as the Indonesia Muamalat Arbitration Board (BAMUI). The Deed of Establishment of National Arbitration (BAMUI) was implemented on October 21, 1993 with number 175 signed by KH. Hasan Basri (Chairman of MUI) and HS. Prodjokusumo (General Secretary of MUI). If calculated, Basyarnas has carried out its role in alternative dispute resolution for approximately 3 decades.

The existence of Basyarnas as a sharia arbitration institution in Indonesia is one of the juridical links that is very interesting from an Islamic perspective. Based on juridical, historical and sociological studies, it can be stated that the legal basis is very strong derived from the Qur'an and the sunnah. There are a number of reasons and arguments about the necessity of a sharia arbitration institution as well as Basyarnas. Likewise, sociological reality shows that people everywhere urgently need an institution to resolve disputes between them in an easy, cheap, and fair way. From the perspective of formal Islamic juridical, it shows that the necessity of the existence of an Islamic Arbitration Institution, namely Basyarnas, which aims to resolve disputes or problems of Muslims is an obligation.<sup>2</sup>

The presence of Basyarnas in carrying out its duties and authorities has a strong legal and regulatory basis in the form of laws, regulations, and fatwas of the MUI in recommending sharia arbitration as a means of resolving Islamic civil disputes in Indonesia. Since its establishment until now, Basyarnas has carried out its role and work as the only sharia arbitration body in Indonesia in resolving business, financial and other civil disputes in accordance with sharia principles. Although Basyarnas has not released a report on the number of cases that have been examined and decided since the beginning of its establishment. However, the dispute resolution clause contained in each contract always makes Basyarnas an alternative institution for dispute resolution. Based on this

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<sup>1</sup> Kingkin Wahyuningdyah et al., *Alternative Law on Dispute Resolution and Arbitration*, (Bandar Lampung: CV Anugerah Utama Raharja, 2018) p. 6.

<sup>2</sup> Jefry Tarantang, *Sharia Arbitration Textbook*, (Yogyakarta: K-Media Publishers, 2022), p. 6.

description, it can be seen the urgency of the existence of Basyarnas in alternative dispute resolution in Indonesia.

A confusing condition occurred when, the Financial Services Authority (OJK) as an institution that has authority in the supervision of financial services institutions issued POJK Number 61/POJK.07/Year 2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector,. POJK Number 61/POJK.07/2020 was born from the existence of the Financial Services Authority Law and POJK Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. As stated in Article 55 of the OJK Law, "The functions, duties, and authorities of regulating and supervising financial services activities in the Capital Market, Insurance, Pension Funds, Financial Institutions, and other Financial Services Institutions are transferred from the minister of finance and the Moal Market Supervisory Agency and Financial Institutions to the Financial Services Authority." As the only Alternative Dispute Resolution Institution (LAPS) in the financial services sector that has obtained an operational license from the OJK, LAPS SJK replaces the roles and functions of the 6 LAPS that previously existed in the financial services sector and at the same time expands its scope to dispute resolution in the field of *Fintech*.

POJK Number 61/POJK.07/2020 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector changes the previous OJK regulation, namely POJK Number 1/POJK.07/2014 which still allows LAPS to appear in many sectors, while in POJK regulation 61/2020 there is practically only one LAPS for the financial services sector. One type of LAPS SJK service is an arbitration service known as LAPS SJK Arbitration. LAPS SJK Arbitration is a way of resolving civil disputes outside the general court which is based on an Arbitration Agreement made in writing by the parties to the dispute. The examination of the arbitration of the SJK LAPS is conducted by the Sole Arbitrator/ Arbitral Tribunal to render the Arbitration Award in accordance with the procedural procedures determined by the SJK LAPS. LAPS SJK arbitration can be carried out as an alternative to dispute resolution, both conventional and sharia. In fact, so far, dispute resolution in the Islamic financial services sector through arbitration has been carried out by Basyarnas. The existence of the provisions of Article 6 of POJK Number 61/POJK.07/2020 leaves questions related to the position of Basyarnas as an institution that has been active and has made a great contribution to alternative settlement of Islamic financial disputes in Indonesia

Research on the theme of Basyarnas' position as an alternative institution for resolving sharia economic financial disputes after the establishment of LAPS SJK is still rare. However, in principle, this research is a development and continuation of previous research. The following are

some writings related to the theme discussed by the researcher: First, Ahmad Saprudin's 2024 research entitled "Quo Vadis Basyarnas in Dispute Resolution in the Sharia Financial Services Sector". The purpose of this study is to find out how the role of the National Sharia Arbitration Board (Basyarnas) in resolving sharia economic disputes outside the court, especially the Islamic financial services sector after the issuance of 61/POJK.07/2020 and number 6/POJK.07/2022 which only allows 1 Financial Services LAPS in resolving financial services disputes outside the court. This study uses a descriptive qualitative method and uses a library research approach by analyzing documents, data, and information related to Basyarnas. This research results in the POJK legal instrument limiting the movement of Basyarnas which has so far provided its work in resolving sharia economic disputes, especially the Islamic financial services sector.

Second, Dinah Tyas Juliana's 2023 research entitled "Comparison of Sharia Dispute Resolution Through Arbitration at the National Sharia Arbitration Board (Basyarnas) and Alternative Institutions for Dispute Resolution in the Financial Services Sector (LAPS SJK)". This study uses empirical legal research with a comparative approach to law and legal effectiveness. The primary data source is from direct interviews with the parties involved, namely Basyarnas and LAPS SJK resource persons. The results of this study show that the similarity of arbitration litigation in Basyarnas and LAPS SJK is that both institutions only accept civil disputes, if the applicant is not present at the first hearing, the arbitration application will be dropped. The difference is that in Basyarnas, *Internal Dispute Resolution* is not a requirement for submitting a dispute resolution. Meanwhile, the SJK Internal Dispute Resolution is part of the requirements for submitting dispute resolution.

The third research is Hasyim Sofyan Lahilote and Moh. Fitri Adam in 2021 entitled "The Existence of Basyarnas in Sharia Banking Dispute Resolution in Indonesia". This paper aims to find out the position and function of Basayarnas as a non-litigation Islamic banking dispute resolution institution which has advantages in terms of efficiency and speed as well as effectiveness in resolving business disputes, including Islamic banking disputes. The method used is normative juridical. The results of the study indicate that from the legal aspect of the existence of Basyarnas which refers to the provisions of Law Number 30 of 1999, its legal existence is still questionable considering that this provision does not mention sharia arbitration at all, but in practice there is a strengthening of the function of Basyarnas through Law Number 48 of 2009 which provides an explanation for the use of Basyarnas as a form of sharia economic dispute resolution.

This study focuses on the position of Basyarnas after the birth of LAPS SJK and analyzes the differences in the mechanism of resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK.

## 1. Method

This research is a literature research. This type of research is qualitative, namely research that produces descriptive data in the form of words instead of numbers. The data sources used are in the form of literature related to the discussion to be discussed. The data collection technique used is documentation. The documentation technique is carried out by collecting some knowledge information, facts and data. After the data is collected, it is then categorized that is related to research problems, both from document sources, books, scientific journals, and websites. In this data collection, the author uses *library research*, reviews books, websites, photos, and other documents related to the focus of the discussion. In analyzing the data, the researcher uses the descriptive method of analysis, which is a way of writing by prioritizing observation of actual symptoms, events and conditions in the present. The application of the descriptive analysis method is by describing and describing the position of basyarnas as an alternative institution for resolving sharia economic financial disputes after the establishment of LAPS-SJK.

## 2. Result

### 1. Legal Basis and Authority of Basyarnas

The existence of the National Sharia Arbitration Board (BASYARNAS) is based on several regulations that have been made by the government to be able to fill the institutional void at that time in resolving sharia economic disputes. The existence of the BASYARNAS institution was an extraordinary breakthrough to be able to help Islamic banking when it was just established, namely Bank Muamalat Indonesia. The National Sharia Arbitration Board (BASYARNAS) as an institution based on Sharia Principles formed by the Indonesia Ulema Council. The existence of BASYARNAS in carrying out its duties and authorities is supported by regulations in the form of laws, regulations and fatwas of the Indonesia Ulema Council in recommending Sharia arbitration as a tool to resolve Islamic civil disputes in Indonesia. The legal basis for the establishment of the BASYARNAS institution (National Sharia Arbitration Board) is as follows:

- a. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.  
Arbitration according to Law No. 30 of 1999 is a way of resolving civil disputes outside

the general court, while an arbitration institution is a body chosen by the parties to the dispute to give a decision on a particular dispute.

- b. Decree of the MUI Executive Board No.Kep-09/MUI/XII/2003 dated December 24, 2003 concerning the National Sharia Arbitration Board. The National Sharia Arbitration Board (Basyarnas) is the only hakam (sharia arbitration) institution in Indonesia that has the authority to examine and decide muamalah disputes that arise in the fields of trade, finance, industry, services and others.
- c. All fatwas of the National Sharia Council of the Indonesia Ulema Council (DS NMUI) regarding muamalah (civil) relations always end with the provision: "If one of the parties does not fulfill its obligations or if there is a dispute between the parties, then the settlement is carried out through the Sharia Arbitration Board after no agreement is reached through deliberation".

The authority of Basyarnas is regulated in Article 1 of the Procedure Regulations of the National Sharia Arbitration Body, namely: 1. Resolve fairly and quickly muamalah (civil) disputes arising in trade, finance, industry, services and others which according to laws and regulations are fully controlled by the parties to the dispute, and the parties agree in writing to submit the settlement to the National Sharia Arbitration Board (Basyarnas) in accordance with the procedures of the National Sharia Arbitration Board National Sharia Arbitration (Basyarnas); 2. Providing a binding opinion at the request of the parties without a dispute regarding issues related to an agreement. Meanwhile, the objectives of Basyarnas are as follows: 1. Resolving disputes or civil disputes by prioritizing the principles of peace or islah; 2. Resolving business disputes whose operations use Islamic law by using Islamic law; 3. Resolving the possibility of civil disputes between Islamic banks and their customers or service users in particular, and between fellow Muslims who carry out civil relations that make Islamic sharia as the basis; 4. Providing fair and prompt settlement in muamalat/civil disputes arising in the fields of trade, industry, finance, services, and others.

Sharia arbitration is the settlement of disputes between parties who make a contract in the sharia economy, outside the court to reach the best settlement when deliberative efforts do not result in consensus. This arbitration is carried out by appointing and authorizing the arbitral body to provide justice and propriety based on Islamic law and applicable legal procedures. However, the existence of Basyarnas cannot simply be functioned. It must be underlined that settlement through Basyarnas can only be done if a clause is made in the contract regarding dispute resolution through Arbitrator. This refers to the provisions in Law Number 30 of 1999 concerning Arbitration and

Alternative Dispute Resolution. The absolute competence of the arbitral institution is determined by the existence or absence of an agreement that contains an arbitration clause either before the dispute occurs (*pactum de compromittendo*), or after a dispute (*acta compromis*). In the provisions of Article 11 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that the existence of a written arbitration agreement negates the right of the parties to submit dispute resolution or differences of opinion contained in the agreement to the District Court. Therefore, based on the applicable legal rules, the absolute authority of all judicial bodies, including in this case the Religious Court environment, cannot reach disputes or cases arising from agreements in which there is an arbitration clause.

The legitimacy of dispute resolution through arbitration is that the agreement applies as a law to the parties who make it (in accordance with the *Pacta Sunt Servanda Principle* regulated in Article 1388 of the Civil Code), and that the law of the agreement adheres to an open system, where there is freedom for the parties to determine the material/content of the agreement, the implementation of the agreement, and also includes the method of resolving the dispute (in accordance with the Consensual Principle which regulated in Article 1320 of the Civil Code. Thus, it is expressly stated in Law Number 30 of 1999 that arbitration is a dispute settlement outside the general court based on an arbitration agreement, both made before the dispute outside the general court based on an arbitration agreement, both made before the dispute occurs (*pactum de compromittendo*) and after the dispute occurs (*acta compromis*).

## **2. Dispute Resolution Mechanism Through Arbitration in Basyarnas**

The arbitration procedure begins with the registration of a letter of request to hold an arbitration by the secretary in the Basyarnas register. The application letter must contain at least the full name and place of residence or position, and a brief description of the seat in dispute, and what is being sought. The application will not be accepted by Basyarnas if the arbitration agreement or clause is considered insufficient as a basis for Basyarnas' authority to examine the dispute submitted. The statement regarding the inadmissibility of the application is made with a determination issued by the Chairman of Basyarnas no later than within 14 days (fourteen days) from the registration of the application. Meanwhile, if the arbitration agreement or clause distributed to Basyarnas is sufficient, then the Chairman of Basyarnas immediately appoints and appoints a sole arbitrator or arbitrator of the tribunal who will examine and decide the dispute. Then ordered to submit a copy of the application letter to the respondent accompanied by an order to





respond to the application. The respondent must provide its answer no later than 30 days (thirty days) from the date of receipt of the copy of the application letter and summons letter.

Upon receipt of the respondent's reply, a copy of the answer is submitted to the applicant. At the same time, the sole arbitrator or the arbitrator of the tribunal orders the parties to appear before the trial on the date fixed, no later than within 14 days (fourteen days), from the date of issuance of the order. The applicant can withdraw his application as long as the decision has not been issued. If there is already an answer from the respondent, then the revocation can only be done with the consent of the respondent. If the application for revocation is made by the applicant before the chairman of Basyarnas appoints an arbitrator and determines the summons to appear before the hearing, then all examination fees are returned to the applicant.

The venue of the inspection event was carried out at Basyarnas' position. However, if there is agreement from both parties, the inspection can be carried out elsewhere. During the proceedings at each stage of the examination, the arrears arbitrator or the arbitrator of the tribunal shall give the same treatment and full opportunity to each party to defend and defend its interests. In the settlement of disputes in Basyarnas, arbitrators will prioritize the achievement of peace. If the effort is successful, then a single arbitrator or panel arbitrator will make a peace deed. However, if the peace is not successful, then the sole arbitrator or the arbitrator of the tribunal will proceed to the examination of the dispute requested.

In the trial, the parties are welcome to present their respective postulates and submit evidence that is considered necessary to corroborate them. If necessary, a sole arbitrator or an arbitrator of the panel may call witnesses or members to be heard. The party who requests the summoning of witnesses or experts must pay in advance to the secretary concerned. When the examination has been deemed sufficient by the sole arbitrator or arbitrator of the tribunal, the arbitrator or the presiding arbitrator of the tribunal shall close the examination and set a hearing date to pronounce the judgment taken.

The arbitrators who handle disputes in Basyarnas consist of 3 (three) people. Any award or other ruling from the arbitrator must be taken based on the majority vote. However, if a majority vote is not reached, the Chief Arbitrator may render an award based on his own authority, and it is deemed to be made by the majority of the arbitrators. The verdict must contain reasons unless the parties agree that the verdict does not need to contain reasons. The direct award is final and binding to the parties, if it has been signed by the arbitrator. The parties to the dispute are obliged to obey the decision and immediately fulfill its implementation. The verdict should not be announced because it is confidential, unless agreed by both parties. After the decision is made within twenty

days of being submitted, either party may submit in writing a request for correction of the judgment regarding errors related to the number of calculations, typographical errors, or printing errors. In addition, the parties can apply for the cancellation of the decision in writing which is submitted to the secretary and a copy to the opposing party as a notice with the reasons that have been determined. The Basyarnas decision is registered by the arbitrator or his legal representative to the Registrar of the Religious Court.

### **3. Legal Basis and Authority of LAPS SJK**

The legal basis of LAPS-SJK is POJK number 61/POJK.07/2020. Based on Article 2 letter b of POJK No. 61/POJK.07/2020, LAPS SJK was formed with the aim that out-of-court dispute resolution services can be trusted by consumers and financial services business actors (Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector). The establishment of this institution went through a long process, namely in a *focus group discussion* (FGD) formed by the OJK during 2018 to 2019 with the initial idea of forming a single and integrated LAP. Until September 22, 2020, there was an agreement to form LAPS SJK by *Self Regulatory Organizations* (SROs) and associations within the financial services sector. Then the Financial Services Authority as an institution authorized by the Law to regulate, supervise, and conduct investigations into financial services institutions regulates this institution through POJK No. 61/2020 which was promulgated on December 16, 2020. From an institutional perspective, LAPS SJK is not part of the OJK, but as a consumer protection ecosystem built by the OJK. In carrying out its duties, LAPS SJK received an operational permit and was directly supervised by the OJK. The legal entity form of LAPS SJK is an association registered with the Ministry of Law and Human Rights. Dispute resolution through LAPS SJK is carried out independently, fairly, effectively, efficiently and easily accessible for the parties to the dispute.

The update of rules related to LAPS-SJK as briefly explained previously has an impact related to the dispute resolution process through LAPS SJK. LAPS-SJK based on POJK 61/2020 is an integrated institution and domiciled outside the OJK and is not the result of the merger of the existing LAPS, which is authorized to resolve disputes between Financial Services Business Actors (hereinafter referred to as PUJK) and consumers in the financial services sector, the establishment of LAPS-SJK aims to provide professional, credible financial services dispute resolution services and establish standardization of dispute resolution in the financial services sector. The disputes that can be resolved through LAPS-SJK must meet the criteria in accordance with the provisions of Article 32 paragraph (1) POJK 61/2020, namely: 1. There is a complaint first to PUJK, which is

then processed through Internal Dispute Settlement but no agreement has been met or has not received a response from PUJK. 2. The dispute submitted is not a dispute that is being processed or has been decided by a judicial institution, arbitration or other alternative dispute resolution institution. 3. The dispute submitted is civil in nature.

In article 4 of the POJK LAPS SJK, LAPS SJK has several duties and authorities, namely: a. Carrying out the handling and resolution of Consumer Disputes; b. Providing consultation on dispute resolution in the financial services sector; c. Conducting research and development of dispute resolution services in the financial services sector; d. Making regulations in the context of resolving disputes in the financial services sector; e. Collaborating with consumer protection institutions/agencies both nationally and international; and f. Developing the competence of mediators and arbitrators registered with the Financial Services Sector LAPS. LAPS SJK is authorized to resolve disputes in the financial services sector, both conventional and sharia. Alternative dispute resolution services available at LPSJ SJK include mediation, arbitration, and binding opinions. The duties of LAPS SJK are not limited to *retail disputes and small claims* but can also accept the resolution of commercial disputes by charging a fee for the settlement of such disputes

#### 4. **Dispute Resolution Mechanism Through Arbitration AT LAPS SJK**

The main activity of LAPS SJK is to resolve civil disputes in the financial services sector between consumers and financial services business actors (PUJK) where the dispute has first been sought to be resolved through the IDR (Internal Dispute Resolution) mechanism, namely deliberation for consensus/direct negotiation between Consumers and PUJK; and the dispute is not being investigated and/or has not been decided by other (authorized) agencies. The Arbitration proceedings at LAPS SJK are based on the parties' arbitration agreement. In the agreement, the disputing parties agree in writing if the disputes that occur or will occur between them are resolved through the LAPS SJK Arbitration. Before the applicant submits the registration of the Arbitration Request, the Applicant must first provide notice to the respondent.

The next step is to file an arbitration application. The management verifies and will submit confirmation of acceptance/rejection of registration within a maximum of 10 (ten) days after the date of registration of the arbitration application. In the event that the registration of the Arbitration Application is accepted: (a) The Arbitration Application is recorded in the LAPS SJK Case Register Book; (b) confirmation is submitted to the Parties, and a copy of the Request for Arbitration to the Respondent is attached; (c) The confirmation letter also contains information regarding the name of

the Secretary, the calculation of the Costs of Arbitration, and the stages of appointment of the Arbitrator. The Parties to the Arbitration may agree on an odd number of Arbitrators. The Applicant and the Respondent are each given the opportunity to appoint an Arbitrator within a maximum period of 10 (ten) days after the Applicant/Respondent receives confirmation of the registration of the Arbitration Request.

The time for the examination of the Arbitration shall be 180 (one hundred and eighty) days from the date the Single Arbitrator is appointed/ the Arbitral Tribunal is formed until the reading of the Arbitral Award. To overcome space and time limitations, LAPS SJK applies several concepts of online dispute resolution ("ODR"), which is a way of dispute resolution that is carried out through internet media so that the dispute resolution process can be carried out by parties in cross-border areas (borderless) and without having to be face-to-face.<sup>39</sup> ODR itself is an online development and implementation of the Alternative Dispute Resolution (ADR) mechanism or alternatives dispute resolution. The means used by ODR vary from the use of video conferencing, email, chat features, automated systems, to a combination of these features.

In settling using arbitration in LAPS, SJK also wants peaceful efforts. If peaceful conditions are not realized, then at the next arbitration examination, the parties are given an equal and fair opportunity to submit evidence that is deemed necessary to corroborate their postulates. The Sole Arbitrator/Arbitral Tribunal is authorized to determine whether the evidence is admissible, relevant and relevant to the subject matter of the case and has the strength of evidence. If there is no longer any evidence or information that the parties wish to add, and the arbitrator is of the opinion that the examination of the arbitration is sufficient, then the parties are given the opportunity to present their conclusions at the time set by the arbitrator. After the parties submitted their conclusions, the arbitrator declared the hearing closed.

In the case of an arbitral award, the Sole Arbitrator compiles and signs the Arbitral Award on its own, whereas the Arbitral Award of the Arbitral Tribunal is collective in nature and is decided on the basis of deliberation for consensus or on the basis of a majority vote. Arbitral awards shall be pronounced at a hearing that has been determined by the Sole Arbitrator/Arbitral Tribunal. If one of the Arbitrators, or one of the Parties, or the Parties is not present, the Sole Arbitrator/Arbitral Tribunal may still read the Arbitral Awards at the scheduled hearings. Within a maximum of 30 (thirty) days from the date the Peace Deed/Arbitral Award is pronounced, the original sheet or an authentic copy of the Peace Deed/Arbitral Award shall be submitted and registered by the Sole Arbitrator/Arbitral Tribunal to the Registrar of the District Court.

### **3. Discussions**

## **1. The Position of Basyarnas as an Alternative Institution for Sharia Economic Financial Dispute Resolution after the birth of LAPS SJK**

So far, alternative solutions to sharia economic financial disputes in Indonesia have been implemented by Basyarnas. This has changed after the government issued POJK Number 61/POJK.07/2020. Article 6 of POJK Number 61/POJK.07/2020 stipulates that the settlement of disputes in the financial services sector outside the court, is carried out by one LAPS of the Financial Services Sector. These provisions apply to all financial services sectors, both conventional and sharia. POJK number 61/POJK.07/2020 also stipulates that all PUJKs who have become members of LAPS in the financial services sector registered as regulated in POJK number 1/POJK.07/2014 since January 1, 2021 automatically become members of LAPS SJK. The institutions referred to in the above regulations are institutions that carry out activities in the banking sector, capital market, insurance, pension funds, financial institutions, and other financial service institutions. Other financial service institutions in this case are pawnshops, guarantee institutions, Indonesia export institutions, public fund management institutions, *fintech* sectors, etc. This indicates that the institutions mentioned above no longer have the freedom to solve their problems in other institutions such as Basyarnas. So, institutions that have become members of LAPSJK automatically also handle their disputes at LAPS SJK.

The existence of the provisions of Article 6 of POJK Number 61/POJK.07/2020 actually does not kill the institution of Basyarnas which has been an alternative institution for dispute resolution through Arbitration. Even since January 2021, Basyarnas has had 20 representative offices in Indonesia. Basyarnas representative offices are spread across the provinces of East Java, Central Java, Yogyakarta, Banten, South Kalimantan, Central Kalimantan, North Sumatra, Riau Islands, Central Sulawesi, North Maluku, and others. This shows that with POJK Number 61/POJK.07/2020, Basyarnas can still carry out its duties, but its scope is now limited. Basyarnas still plays a role as an institution that handles disputes related to Islamic finance, but for disputes in the financial services sector registered in POJK number 1/POJK.07/2014, LAPS SJK has a central role.

The existence of LAPS-SJK is a challenge for Basyarnas to continue to play an active role in overcoming sharia economic disputes in Indonesia. It is undeniable that the birth of LAPS-SJK seems to override and limit the area of movement of Basyarnas which has been known as the only Sharia Arbitration institution in Indonesia. This of course must be considered by the government so that Basyarnas, which has been contributing to alternative sharia financial dispute resolution, is not eroded by its authority and position.

## 2. Differences in the mechanism for resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK

Basyarnas and LAPS-SJK are both alternative institutions for resolving sharia financial disputes that offer arbitration channels in their settlement. However, there are differences between Basyarnas and LAPS SJK in the dispute resolution mechanism by arbitration, including: First, in Basyarnas, *Internal Dispute Resolution* (IDR) is not a requirement to file a dispute resolution, while in LAPS-SJK it is one of the requirements. In LAPS SJK in Article 2 concerning the Scope of this Regulation, it is emphasized that: (3) Disputes that can be submitted for settlement to the LAPS-SJK Arbitrase are disputes between the Parties to meet the following provisions: (a) Settlement has been sought in advance by muasyawarah for consensus among the Parties themselves (Internal Dispute Resolution). Second, in the SJK LAPS, it is always accompanied by a notification by the applicant to the respondent, while not with Basyarnas. In the LAPS SJK Article 8 states: (1) In the event of a dispute, and before the Applicant submits the registration of the Arbitration Application, the Applicant must first submit a notification to the Respondent. (2) The Notice of Arbitration contains information from the Applicant that the terms of the arbitration held by the parties have been valid, and the notification clearly contains: the names and addresses of the Parties, the submission to the Arbitration Agreement, a summary of the basis of the claim and the amount demanded, the desired method of settlement, the number of Arbitrators in accordance with the Arbitration Agreement, or a proposal about the number of Arbitrators in an odd number if it has not been stated in the Arbitration Agreement. (3) The Respondent shall provide a response to the Claimant to the notice of arbitration, in particular with respect to the number of Arbitrators' proposals available. (4) The submission of the arbitration notification is no longer required in the event that an arbitration agreement is made after the dispute arises.

Third, in Basyarnas there is no known retail small claim while in LAPS-SJK it is known for the existence of retail small claims that apply to PUJK in the conventional and sharia fields. LAPS-SJK provides a special policy in the form of exemption of mediation fees for disputes between consumers and PUJK which are included in the retail & small claim category, namely: (1) Disputes with the value of the consumer's claim to PUJK up to Rp. 200,000 (two hundred million rupiah) for disputes in the fields of pawnshops, financing and fintech. (2) Disputes with the value of Consumers' demands to PUJK up to Rp. 500,000,000 (five hundred million rupiah) for disputes in 71 fields of banking, capital market, life insurance, pension funds, venture capital, and guarantees. (3) Disputes with the value of consumer claims to PUJK up to Rp. 750,000,000 (seven hundred and fifty million rupiah) for general insurance disputes. Fourth, in LAPS SJK, the arbitration award is

registered with the District Court, both conventional and sharia disputes. Meanwhile, Basyarnas arbitral awards are registered with the Religious Court.

#### 4. Conclusions

After the birth of the Alternative Institution for Dispute Resolution in the Financial Services Sector (LAPS-SJK), the position of the National Sharia Arbitration Board (Basyarnas) has undergone several changes. Basyarnas continues to play the role of an arbitration institution authorized to handle disputes related to Islamic finance. However, for disputes in the financial services sector that are specifically under the supervision of the Financial Services Authority (OJK), LAPS-SJK has a central role as an alternative dispute resolution institution. OJK regulations stipulate that dispute resolution in the Islamic financial services sector can be through the LAPS-SJK mechanism, but Basyarnas is still recognized as a competent institution for sharia arbitration. These two institutions are expected to function in a complementary manner to provide legal certainty and justice for the parties to the dispute. With the existence of Basyarnas and LAPS-SJK, it is hoped that they can work together and collaborate in handling Islamic financial disputes. Basyarnas, with its experience and expertise in sharia arbitration, can support LAPS-SJK in handling cases that require special knowledge of sharia law and principles.

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