SETTLEMENT OF LITIGATION AND NON-LITIGATION DISPUTES IN SHARIA ECONOMIC CASES: A CASE STUDY OF THE MUSYARAKAH CONTRACT

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Abstract

Disputes can be resolved through litigation (in court) or non-litigation (out of court). Dispute resolution through litigation involves examining disputes before a judge in court. Whether it's public or private disputes, litigation, or court, are the most common dispute resolution methods. As time goes by, people's needs for justice and welfare increase. As a result, dispute resolution through litigation has become less effective. This is considered too long and costs quite a lot. In situations like this, people who seek justice begin to look for other options, namely dispute resolution outside the judicial process, which is called dispute resolution that does not involve litigation, i.e. non-litigation is carried out and the role of mediators. In the aspect of settlement using non-litigation methods for a quick and cheap settlement through the role of mediators in non-litigation dispute resolution through the negotiation stages, mediation, conciliation, and *arbitration* are some of the methods of resolving disputes outside of court. The discussion of the *Musyarakah* Contract is a form of financing that is commonly used in Islamic financial institutions. This research uses a normative approach to research to reveal the truth systematically, methodologically, and consistently. This approach has been collected and processed, analyzed and used for constructive purposes during the research process, how effective the role of mediators is in non-litigation dispute resolution.

Keywords: **Litigation, Non-Litigation, Mediation, Contract *of Musyarakah*, KHES.**

1. INTRODUCTION

Disputes can be resolved through litigation (in court) or non-litigation (out of court). Dispute resolution through litigation involves examining disputes before judges in the judiciary. Whether it's public or private disputes, litigation, or court, are the most common dispute resolution methods. Non-litigation dispute resolution, known as Alternative Dispute Resolution (ADR), is an out-of-court dispute resolution method that does not use a formal legal approach. One form of ADR (Alternative Dispute Resolution) is mediation, which is defined in the Great Dictionary of the Indonesian Language as the process of involving a third party as an advisor in resolving a dispute. The etymological explanation of mediation emphasizes that there is a third party who can help both parties to the dispute reach an agreement. One of the major changes that has taken place recently is the Religious Courts

Law which has recently added more powers to the Religious Courts, including those related to the field of Islamic economics. (Ka'bah, 2006, p. 12)

Indonesia itself has made progress in this regard. The presence of religious courts as a solution to disputes in this field is proof of Indonesia's commitment to developing the sharia economy. In addition, the implementation of special supervisors in the banking sector, such as those carried out by Bank Indonesia through its sharia division, can help the growth of the sharia economic infrastructure in Indonesia. . The issuance of Law Number 3 of 2006 is one of the logical consequences of the application of the concept of "one roof" in the development of judicial institutions under the Supreme Court of the Republic of Indonesia. This concept is included in Law Number 4 of 2004 concerning judicial power and Law Number 50 of 2009 concerning amendments to Law Number 7 of 1989 concerning Religious Courts. According to Article 5 Number 7 of 1989, the Supreme Court of the Republic of Indonesia is responsible for technical training, while the Ministry of Religion is responsible for non-technical training, such as organization, equipment, staff, and finance. The addition of the authority of the Religious Court is the most important thing.(Nasution, 2006, p. 38) (Widiana, 2007, p. 4)

Before the authority to handle sharia economic cases in the Religious Court in 1993, there was an institution known as the Indonesian Muamalat Arbitration Board (BAMUI). It is a sub-organization of the Indonesian Ulema Council (MUI) and was changed to BAMUI in 2003 before eventually being renamed the National Sharia Arbitration Body. Indonesian Muslims really expect the presence of the National Sharia Arbitration Board (BASYARNAS) because of the interest of Muslims to implement Islamic sharia and economic and financial development. In addition, it is a real need in economic and financial life that implements Islamic law. Therefore, the establishment of the National Sharia Arbitration Board (BASYARNAS) as a permanent and independent body with the aim of resolving muamalat disputes that may arise among Muslims in terms of trade, financial sector, services, and others. In the process of resolving disputes in the economic field (including sharia economics) other than through the District Court and the Religious Court. In accordance with Law No. 30 of 1999 and prior to the existence of Law No. 3 of 2006 which regulates the authority of Religious Courts to adjudicate sharia economic disputes, Law No. 30 of 1999 explains that the settlement of cases outside the court on the basis of peace is carried out by an Arbitration Body, but the arbitrator's decision only has executorial power after obtaining permission/order to execute (Executorial) from the Court. (Abdurrahman, 2008, p. 67) (Ka'bah, 2006, p. 14) (Abdurrahman, 2008, p. 69)

The existence of Law Number 3 of 2006 that has been enacted does not mean that the ranks of the religious courts will soon be flooded with muamalat cases, because in general, Islamic economic actors have been accustomed to using non-litigation dispute resolution forms such as negotiation, mediation and arbitration. Almost all transaction contracts made by Islamic financial institutions state that if there is a dispute, it will be resolved by consensus deliberation and then through the National Sharia Arbitration Board or the National Sharia Council of MUI. This is in accordance with the adagium of the Pacta Sun Servanda and the principle of freedom of engagement, which is also in accordance with the values held in Islamic Sharia. (Lubis, 2008, p. 14)

In the development of the configuration of sharia economics (KHES), formulated by the fiqh gained legitimacy through Supreme Court Regulation Number 02 of 2008 concerning the Compilation of Sharia Economic Law. Although it is in the form of a legal compilation, and not a legal condition, it is not part of the legal anatomy of Article 7 of Law No. 13 of 2022, but because of the position of the Supreme Court Regulation as a form of Law Article No. 13 of 2022, KHES is present as a form of legal unification and binding positive law. The presence of Perma No. 02 of 2022 makes the solution to solve the needs of the people as a guide for transactions and business, if there is a dispute, the environment of the Religious Court that will resolve the realm of Sharia Economics which refers to the Compilation of Sharia Economic Law (KHES) becomes the guideline of its books. (Prof. Dr. Oyo Sunaryo Mukhlas, 2025, p. 59)

With the authority shared between the National Sharia Arbitration Board (BASYARNAS) and the Religious Court (PA) in terms of sharia economic disputes, the author is interested in investigating and learning why, after the sharia economic dispute that was previously handled by the National Sharia Arbitration Board in accordance with Law Number 30 of 1999, has moved to the Religious Court in accordance with Law Number 3 of 2006, which stipulates that the Religious Court in the Musyarakah contract. Musyarakah, as one of the contracts based on the principle of profit sharing, has an important role in the development of the sharia economy. This agreement offers a fair and transparent financing alternative, in accordance with sharia principles.

From the description above, it is clear that dispute resolution through mediation is more effective quickly and cost-effective than dispute resolution through the courts (litigation) which costs a lot and is long. In Indonesian culture, mediation has existed for a long time in Pancasila deliberation, with the principle of deliberation and consensus to solve a problem. Therefore, mediation is considered to function as an institution outside the court that can provide a sense of justice for justice seekers.

2. IMPLEMENTATION METHOD

The purpose of research is to reveal the truth in a systematic, methodological, and consistent manner. Normative approach, data that has been collected and processed is analyzed and used for constructive purposes during the research process. In 2004, Soerjono Soekamto and Sri Marmudji wrote. Research is essentially "an attempt at thawing" rather than just looking at objects that are easy to hold. Research, which comes from the words "re" (return) and "seek" (search), lughowiyah means "to seek back" (Bambang Sunggono, 1997). In other words, research is also known as research which is an academically valuable research effort.

Furthermore, to achieve objective results, an analytical descriptive method is used to analyze the materials. This method is used to explain the reason why the authority to resolve sharia economic disputes shifted from the National Sharia Arbitration Board

(BASYARNAS) to the Religious Court. To achieve these results, the materials are evaluated objectively.

3. RESULTS AND DISCUSSION

3.1 Dispute Resolution

Disputes can be resolved by the disputing party through litigation or state judicial institutions. by judges in several trials. The judiciary is established by the Supreme Court and the judicial bodies under it, such as the General Court, the Religious Court, the Military Court, the State Administrative Court, and the Constitutional Court. The advantage of litigation dispute resolution is that the court decision has definite and final legal force, which determines which party's position wins or loses (winning and losing positions). In addition, if the losing party does not want to implement the content of the judgment, the court can force its implementation (execution). According to Sudikno Mertokusumo, court decisions have three powers: binding power, evidentiary power, and executory or enforcement power. This power is necessary to resolve disputes through litigation. (Mertokusumo, 1993, pp. 177-182)

- Binding Strength

The judge's decision has binding force, which means that all parties involved in the case must submit to and respect the decision. Except for extraordinary legal remedies, a judicial review (*civil request*) of a judge's decision that has acquired legal force cannot be changed by a higher court. The parties are bound by the judge's decision, both positively and negatively. Binding in the positive sense means that the judge's decision must be considered correct (*res judicata pro veritate habetur*), while binding in the negative sense means that the judge must not decide the same case again between the same parties or on the same subject (*nebis in idem*).

- Evidentiary Power

A judge's decision has probative power, which means that something that has been decided has been clear. The purpose of issuing a judge's decision in written form is to be used as evidence for parties who may need to file an appeal, cassation, review, or other legal remedy, as well as to enforce the decision.

- Executory Power

A decision made by a judge has executive power, which means that the decision not only has the purpose of resolving a problem or case, but also explicitly establishes the right or law, namely imposing its implementation. If the judge's decision cannot be applied or implemented, the force of law alone binding it is not enough. The judge's decision has executory power, namely the power to impose what is stipulated in the decision by force by the court because the decision firmly establishes its rights and laws to be realized by force obtained by the state apparatus.

3.2 Non-Litigation Dispute Resolution.

There is not only one way that the disputing parties can resolve the dispute through the courts; There are also out-of-court dispute resolutions, such as negotiations, mediation, arbitration, and conciliation. In addition, there are types of dispute resolution that often occur in everyday life, such as village heads resolving disputes peacefully. Because the dispute resolution process is based on a specific situation and is still colored by local customs, the parties to the dispute can basically accept it. All decisions that have been made by both parties to the dispute have been agreed. The non-litigation dispute resolution method is:

- Dispute resolution through negotiation

One way for the disputing parties to resolve a dispute is to negotiate. Negotiation is a deliberative process to reach an acceptable agreement between the parties to the direct dispute. In practice, negotiation is carried out for two reasons, namely:

a. To find something new that cannot be done by yourself, such as buying and selling transactions, the seller and the buyer determine each other's price according to the agreement (Akad).
b. To resolve disputes or disputes that arise between the two parties. (Soemartono, 2006, p. 2)

According to Gunawan Wijaya and Achmad Yani, because the outcome of the negotiation was stipulated in a written agreement as an agreement between the parties, the outcome of the negotiation could not be disputed on the grounds that someone was harmed by the error. However, if it can be proven that someone has been harmed, or if the agreement is made on the basis of signed documents, it can still be canceled. . Negotiations are basically carried out by the disputing parties to resolve their disputes with the aim of reaching a mutual agreement. In this case, Sudargo Gautama said that negotiation is a dynamic and diverse process of interaction and communication, which can be gentle and nuanced just like humans themselves.(Yani, 2000, p. 32) (Putra, 2000, p. 77)

Article 6 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stipulates that the parties have the right to resolve disputes or civil differences of opinion through alternative dispute resolution based on (goodwill) good faith, which sets aside the settlement of litigation in the District Court. (Indonesia, 2006, p. 164)

- Dispute resolution through Mediation

According to Achmad Ali, the mediator functions as a neutral and does not function as a judge; Therefore, he does not have the authority to make decisions. Although mediators hold face-to-face hearings with the disputing parties and use their special skills to listen to the parties' concerns, ask questions, negotiate, and make choices, mediators help the parties determine how they resolve their disputes. (Ali, 1999, p. 17)

Basically, mediation is a dispute resolution method that offers both parties a future perspective. Priyatna Abdurrasyid stated that mediation as a method of dispute resolution was successful. Mediation focuses on the future rather than the past. While the law looks backwards to determine who is right, mediation looks ahead to find a solution where each party can resolve their own problems. In law, the court has the authority to order a verdict, while in mediation, all parties collaborate to make a decision. (Abdurrasyid, 2002, p. 155)

- Dispute resolution through Arbitration

If both parties' efforts to resolve their disputes through negotiation and mediation are unsuccessful, each party may reach an agreement in writing to request a resolution of the dispute through arbitration. Dispute resolution through arbitration is a binding and final dispute resolution out of court. Based on Article 1 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution based on an agreement made in writing by both parties to the dispute. The arbitral award is final and binding on the parties. The arbitration award from the Indonesian National Arbitration Board (BANI) has permanent binding legal force for the parties.

Based on the above understanding, there are three bases for resolving disputes through arbitration: first, it is a form of non-litigation settlement; second, an agreement must be in writing; and third, it is an agreement to settle disputes outside of the common courts. Arbitration is not used to resolve disputes outside of civil disputes, according to Achmad Ali. Rather than going to court, arbitration is usually faster, more informal, cheaper, easier to conduct, and more confidential. In the general explanation of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that in general arbitration institutions have advantages compared to judicial institutions. These advantages include:

a) Ensure the confidentiality of the parties' disputes.
b) Delays caused due to procedural and administrative issues can be avoided.
c) The parties may choose an arbitrator who, according to their beliefs, has sufficient knowledge, experience and background on the disputed issue, is honest and fair.
d) The parties can choose what law will be applied to resolve the issue as well as the process and venue for the arbitration. An arbitrator's decision is a decision that is binding on the parties and can be implemented through simple procedures or directly.

Arbitration is an out-of-court dispute resolution method that is based on a written agreement of the disputing party. It is also a method of dispute resolution through consultation, negotiation, conciliation, and expert opinion. However, it should be underlined that the parties to the dispute do not agree to have full control of the dispute regarding the rights of the parties to the dispute on the basis of their agreement. In Indonesia, there are several arbitration institutions to resolve various business disputes that occur, including the Indonesian National Arbitration Board (BANI) and the National Sharia Arbitration Board (BASYARNAS).(Usman, 2003, p. 110)

The more and more business activities are, the more frequent disputes occur. This means more disputes to be resolved. Every type of conflict always requires a quick resolution. The way the parties resolve disputes or conflicts due to their differences in interests is called dispute resolution. In general, sharia economic procedural law is part of civil procedural law or formal civil law. Therefore, in addition to being specifically regulated by Supreme Court Regulation number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Disputes, the sharia economic procedural law that applies in the settlement of sharia economic disputes also refers to other civil procedural laws regulated by laws in Indonesia. (K, 2018, pp. 35-47)(Suadi, 2017, p. 1)

Dispute resolution can be done through 2 (two) processes. The oldest dispute resolution process is through the litigation process in court, then develops the dispute resolution process through cooperation (cooperative) outside the court. The litigation process results in adversarial agreements that are not able to embrace common interests, tend to create new problems, are slow to resolve, require high costs, are unresponsive, and cause hostility among the parties to the dispute. On the contrary, through an out-of-court process, an agreement is produced that is a "win-win solution", guaranteed the confidentiality of the parties' disputes, avoids delays caused by procedural and administrative matters, resolves problems comprehensively together and maintains good relations. However, in certain countries the judicial process can be faster. The only advantage of this non-litigation process is its confidentiality, because the trial process and even the results of the decision are not published. Out-of-court dispute resolution is generally called Alternative Dispute Resolution (ADR). (Roedjiono, 1996, p. 5)

Some say that Alternative Dispute Resolution (ADR) is the third cycle of business dispute resolution. Business dispute resolution in the era of globalization with the characteristic of "moving quickly", requires methods that are "informal procedure and be put in motion quickly". Since 1980, in various countries, Alternative Dispute Resolution (ADR) has been developed as an alternative breakthrough to the weaknesses of litigation settlement and arbitration, resulting in the depletion of resources, funds, time and thought and executive manpower, and even plunging businesses towards destruction. (Harahap, 1997, p. 280)

- Dispute resolution through Conciliation

Conciliation, like mediation, is the process of resolving disputes out of court between two parties to the dispute by involving an impartial third party. Basically, the role of the conciliator and mediator is to help the parties to the dispute communicate with each other so that they can reach a solution that can satisfy each of them. A conciliator is only responsible for doing things such as arranging the time and place of meeting of the disputing parties, directing the topic of discussion, and sending messages from one party to the other if it is not possible to deliver the message in person or if both parties are unwilling to meet in person. If conciliation or mediation is used, the final decision on a dispute remains with the consent of the parties to the dispute. The mediator, on the other hand, has the authority to do what the conciliator is supposed to do. In addition, the mediator can also suggest solutions or proposals for dispute resolution.

- Dispute resolution by Regional Heads

Village head dispute resolution is also a method of resolving disputes outside the court which is more dominated by local customary law. It is similar to the method of dispute resolution through negotiation, mediation, arbitration, and conciliation. The village community uses the village head dispute resolution method in their daily lives. In the case of a dispute, the most aggrieved party usually reports the matter to his village chief to reach a peaceful settlement.

The village head has an important role in resolving disputes, especially in keeping the village community peaceful. According to Article 15 paragraph (1) letter k of Government Regulation Number 72 of 2005 concerning Villages, "In carrying out the duties and authorities as referred to in Article 14, the village head has the obligation to reconcile community disputes in the village", the village head is the person responsible for resolving conflicts among community members. . Iman Sudiyati stated that customary law grows, is adhered to, and is maintained as a regulation that maintains social order and law among people who associate in the community.(Indoonesia, 2006, p. 11) (Sudiyati, 1999, p. 33)

Taking into account the above concept of thinking, a village chief, as the head of the legal community, has a moral responsibility to maintain peace and harmony in his community by making and maintaining the laws of his community and reconciling any disputes.

1. The Contract of Musyarakah

Musharakah is a practice in muamalah that is recommended in Islam. . Applying the principle of profit sharing (Yuliana, 2019) (Inayah, 2020)A yield agreement between parties that have reached an agreement to unionize, in which each party provides additional funds and those funds are converted into a business. There is no obligation for shareholders to take part in the management of the company. Instead, the parties bound by the contract can perform tasks related to the company's operations and receive compensation or payment for related work and experience.

The definition related to the musharakah contract is a union contract / agreement formed with two or more people who will carry out a business with each of them providing funds with an agreement that profit or loss is borne together.

The following are factors that can show the magnitude of the risk of financing problems arising from the musyarakah contract, of course, can cause losses if not handled properly:

a) First, the use of financing funds carried out by the partner is not in accordance with the agreement.
b) Second, intentional or unintentional mistakes made by the partner himself in his duties can cause a loss.
c) Third, is the dishonesty committed by partners in providing information.

Musharakah is an agreement between two or more parties to cooperate in a particular business, in which each party provides funds (or competition, knowledge), and the sharing of profits and risks according to the agreement. A business in which two or more owners of capital or expertise work together to legally and productively make money. According to the Hanafiah School, musharakah is an agreement between two parties who work together to gain profit and capital. According to the Shafi'i School, musharakah is an agreement that gives the right to act legally for two or more people. According to the scholars of the Maliki School, musharakah or shirkah is a combination of property ownership and authority. Although fiqh scholars have different views on how to write musharakah, their basis is the same: musharakah is a cooperative agreement between two or more people to create a new business, in which each party shares the benefits and risks. . Broadly speaking, Musharakah is divided into two types, namely Musharakah of ownership (shirkah al amlak) and Musharakah of contract (shirkah al'aqd). Musharakah ownership is due to inheritance, will, or other conditions that require two or more people to own a property. In this musharakah, the ownership of two or more people shares the actual assets and also shares the profits generated by the assets. The musharakah contract is made by agreement, where two or more people agree to each contribute in the form of musharakah capital, and they also agree to share the profits and losses. (Hoirul Ichfan, 2021, p. 2)

The musyarakah contract is divided into: shirkah al'Inan, al mufawadlah, al a'maal, and shirkah al wujuh, namely:

a. Syirkah al'Inan

Shirkah al'inan is a contractual agreement between two or more people, each of whom provides a measure of the total capital and participates in management. The parties share the profits and losses according to the agreement, but the parties' share (whether in capital, labor or profit sharing) does not have to be the same and the same, but according to their agreement. The Hanafi and Hanbali schools allow this to be implemented by using one of the following alternatives: The profits obtained must be distributed according to the amount of capital contribution given by each party, and the profits obtained are divided equally, although the amount of capital contribution of each party may be different, the profits obtained are not the same, but the financial contributions given are the same. Maliki and the Shafii school agreed to this type of shirkah contract on the condition that profits and losses were distributed proportionally based on capital contributions from investments. This type of musharakah is often used in Islamic banking.

b. Syirkah al Mufawadlah

Syirkah al-Mufawadlah is a cooperation contract between two or more people, and two or more people give a part of the joint fund and participate in the work. Each party shares the profits and losses equally. The responsibility and burden of debt are the responsibility of all parties. The Hanafi and Maliki schools allow this type of musharakah, but there are many restrictions.

c. Shirkah al-A'maal

Syirkah al-A'mal is a cooperation contract between two people in the same industry to accept a job together and then share the profits from the work. For example, the collaboration between two architects is working on a project. The Hanafi, Maliki and Hanbali schools agree and allow this practice of musharakah

d. Yirkah al-Wujuh

Shirkah al-Wujuh is a cooperation agreement between two or more reputable business experts, for example, there is a person who buys goods on credit from a store without using cash and then sells them in cash. Then they share the advantages and disadvantages. This type of musharakah does not require funds, because the purchase of goods is made through credits and allied guarantees.

3.3 Terms in Islamic Law

- Article 1784 "*Al-Qadla* includes the meaning of court decisions and the examination of cases"
- Article 1785 "A judge (*al-Qadli*) is a person appointed and assigned by the government to handle and settle lawsuits and disputes that arise. Among humans with the required laws".
- Article 1786 "Court decisions contain the meaning of stopping and resolving disputes by judges. Court decisions consist of two types:

  First, the court ruled that the person subject to the court's decision was ordered not to proceed with his lawsuit just as he ordered that the object of the lawsuit be returned to the plaintiff. This first decision is called a court decision that determines, or a court decision to establish a right.

Second, the court prohibits the plaintiff from filing a lawsuit, just as the court tells the plaintiff that he has no right to sue, and that he is prohibited from doing so. This court decision is called a court decision by way of annulment."

- Article 1787 "*Al-Mahkuum bih*, is something that the court decides, consisting of the obligations that must be fulfilled by the defendant to the plaintiff in a decree of a decree of a decree
- Article 1788 "*Al-Mahkuum alaih*, is the defeated party, that is, the one whose case is defeated by the court's decision"
- Article 1789 "*Mahkuum lahu* is the party who is won, that is, the person whose case is won by a court decision"
- Article 1790 "*Al-Tahkiim* (Arbitration) is the appointment of the parties who have agreed to choose a third person to decide the matter of disputes between them. This third party is called *a Hakam* or *Muhakam* (arbitrator, jury)
- Article 1791 "*Al-Wakil al-Musahar* is a representative appointed by the judge to represent the defendant who is unable to appear in court". (Djazuli, 2002, p. 449)

3.4 Case Study of the Musyarakah Contract

Number 180/Pdt.G/2024/PTA. BDG
Shariah Economic Matters among

Plaintiff	: Wahyu Wibowo (Depok City)
Defendant I	: Chairman of PT Bank Maybank Indonesia Tbk Sharia Business Unit (Bogor City).
Defendant II	: The Chairman of PT. Protindo Mitra Muda Selaras (Jakarta City)
Defendant III	: Ghozi Ridho Aditama (West Jakarta)
Also Defendant I	: The Chairman of PT. Trinity Menara Cipta (Tangerang City)
Defendant II	: Leader of KPKNL Bogor
Co-Defendant III	: Board of Directors of PT. Nuasa Pesona Asri (Bogor City)
Sitting Matter	: Paying attention to all the descriptions contained in the Decision of the Bogor Religious Court Number 1271/Pdt.G/2023/PA. Bgr on May 28, 2024

1. In the Convention : Rejecting the Plaintiff's lawsuit for Unlawful Acts in its entirety
2. In Exceptions : Reject the exclusion of Defendant I, Defendant II, and Defendant III
3. In Provision : Rejecting the Plaintiff's Provision Lawsuit
4. In the Reconvention :
   a. Granting the Reconvention Plaintiffs' lawsuit in its entirety
   b. Declaring that the Defendant of the Convention has committed an act of breach of promise (default) against the MUSYARAKAH MUTANAQISAH MAYBANK RUMAH SYARIAH iB financing contract Number 006/MMQ/BGR/2017 dated July 31, 2017.
   c. Declaring the transfer of murabahah receivables from the Reconvention Plaintiff to PT. Triniti Menara Cipta as the SALE AND PURCHASE AGREEMENT AND TRANSFER OF RECEIVABLES dated July 30, 2021 between the Plaintiff of the Convention as the Seller and PT. Triniti Menara

Cipta as the Buyer made before Notary Bayu Rushadian Hutama, S.H., M. Kn Notary in Tangerang City is valid and binding;

d. Punishing the Reconvention Defendant to submit and comply with the SALE AND PURCHASE AND TRANSFER AGREEMENT dated July 30, 2021 between the Reconvention Plaintiff as the Seller and PT. Trinity Menara Cipta;

5. In the Convention and Reconvention: To punish the Convention Plaintiff/Reconvention Defendant to pay the costs of the case in the amount of Rp564,000.00 (five hundred and sixty-four thousand rupiah);

The Appellant has filed an Appeal memory which contains the full content:

1. Accept and grant the APPLICATION for Appeal of the APPELLANT/PLAINTIFF dK/DEFENDANT dR;
2. Canceling the decision of the Bogor Religious Court Number. 1271/Pdt/G/2023/PA.BR dated May 18, 2024;

By judging yourself:
IN COMPENSATION
IN EXCEPTIONS
"Declaring an exception unacceptable";
IN THE MAIN POINTS
"Grant the plaintiff's lawsuit in its entirety"
IN RECOMPENSATION
IN EXCEPTIONS
"grant the DEFENDANT's exception in the reconscation in its entirety"
IN THE MAIN POINTS
"Rejecting the reconciliation lawsuit in its entirety".
IN COMPENSATION and RECOMPENSATION
"Charging the DEFENDANT with legal case fees
dK/PLAINTIFF dR/APPELLANT;

That the memorandum of appeal has been notified to Appellants I, II, and III is recorded on June 20, 2024 in accordance with the report Number 1271/Pdt.G/2023/PA. Bgr;

That the memory of the Appellant's Appeal, Appellant I has filed a Counter Memory of Appeal which contains the full contents:

1. Rejecting all postulates of the Appeal Memorandum submitted by the Appellant;
2. Strengthening the Decision of the Bogor Religious Court in Case Number 1271/PDT. G/2023/PA. BGR dated May 28, 2024;
3. Charge all costs of this case to the Appellant (originally the Plaintiff/Reconvention Defendant).

In the Convention

A. Exception

Considering, that in the hearing held electronically on Tuesday, January 23, 2024, that Respondent I, Respondent III, Co-Respondent II and Co-Respondent III filed the following exceptions, among others:

1. Appellant I/Defendant I filed an exception (vide Bundle A p. 95 sd. Thing. 99) Among other things, the points are:

• The lawsuit is Not Acceptable because it contains a formal defect, namely the party who is withdrawn as Defendant I is wrong (Gemis Aanhoeda Nigheid);

• Lawsuit Is Not Acceptable because it contains a Formal Defect, namely a lack of a Party (Plurium Litis Consortium);

• The plaintiff does not have the right to file a quo lawsuit (exceptio non adimpleti contractus), because he has committed a breach of promise (default) against Contract Number 006/MMQ/BGR/2017;

2. Appellant III/Defendant III filed an exception (vide Bundle A p. 111 sd. Thing. 112) among other things, declaring that the Plaintiff's Lawsuit is fuzzy (obscuur libel) because the Plaintiff's Petitum is not supported by the postulates in the Plaintiff's Posita;

3. Co-Appellant II/Co-Defendant II filed an exception (vide Bundle A p. 118), among other things, stating that the Plaintiff's lawsuit was fugitive (obscuur libel) because the Plaintiff's lawsuit did not meet the requirements as a lawsuit based on the provisions of Article 1365 of the Civil Code;

4. Co-Appellant III/Co-Defendant III filed an exception (vide Bundle A p. 127 sd. Thing. 129) among others, states that the Plaintiff's Lawsuit is Lacking a Party due to the non-inclusion of the Defense Agency as a party to the a quo case and the Plaintiff's Fugitive Lawsuit (obscuur libel) because it does not explain in detail the Plaintiff's losses and the absence of a match between Posita and Petitum;

Considering, that against the aforementioned exception, the Plaintiff/Appellant has denied it in a Replica that has been uploaded to the Court Information System and has been verified by the Chairman of the Assembly in the hearing on February 6, 2024;

Considering that the exception according to the Panel of Judges of the Appeal Level is not an exception regarding the absolute authority or relative authority of the Bogor Religious Court, but the exception mentioned above has been included in the main case, so it is examined in the main part of the case as a provision stipulated in HIR Article 136, that the aforementioned exception has been considered by the Panel of Judges of the First Level correctly and correctly, the Panel of Judges of the Appeal Level agrees the consideration which rejects the exception filed by Respondent I, Respondent III, Co-Respondent II and Co-Respondent III in the case of a quo;

B. In Provosionil

Considering that the Appellant in his petition also filed Provisional demands, including:

1. Ordering the Defendants and Co-Defendants or anyone who obtains the right from them not to take any action against the land and buildings in accordance with the building use rights certificate Number 1245 with a land area of 132 m2 in the form of a residential house located in Mutiara Sentul The Nature FB 23 Sentul Village, Babakan District, Bogor Regency;
2. Stipulate that before the decree has legal force, the land and buildings in the form of residential houses remain in the control of the Plaintiff;
3. Stipulating the decision of the Auction via the internet (closed Bidding) which was carried out on September 9, 2022 at KPKNL Bogor, through a letter of determination of the auction schedule No. S-3046/KNL.0803/2022 dated July 28, 2022 and the Plaintiff only found out about it on May 12, 2023, was declared legally defective and the decision was considered NULL.

Considering that the provisional claim of the Appellant has been properly and correctly considered by the Panel of Judges of the First Instance, the Panel of Judges of the Appellate Level needs to add the following considerations:

Considering that the Panel of Judges at the Appellate Level in this case guided the results of the 2005 Supreme Court Rekernas, the classification of the civil field, in formulation number 6 it is stated that: "The Judge must carefully consider whether granting a provisional lawsuit, to protect the party who pleads an urgent nature, if not done immediately it will cause greater losses";

Considering that the Panel of Judges at the Appellate Level also needs to state that the provisional lawsuit has several formal requirements that must be met, including:

1. The provisional lawsuit must contain the basis for the request explaining its urgency and relevance.
2. The interim lawsuit must clearly state what interim measures should be decided.
3. A provisional lawsuit must not concern the subject matter of the case.

Considering that the provisional claim of the Plaintiff/Appellant mentioned above does not meet the formal requirements described above, based on these considerations, the Panel of Judges of the Appellate Level agrees with the consideration and decision of the Panel of Judges of the First Level which rejected the provisional claim of the Plaintiff/Appellant;

C. In the Tree of Things

Considering that the subject matter of dispute in *the a quo* case is:

1). Whether Defendant I/Defendant I, Defendant II/Appellant II, Defendant III/Appellant III, Co-Defendant II/Co-Defendant II/Co-Defendant II/Tururt Defendant III/Co-Appellant III have committed an unlawful act (onrechtmatige daad) because there has been an auction of the object of the case in the form of land and buildings in accordance with the certificate of building use rights Number 1245 with a land area of 132 m2 in the form of a residential house located in Mutiara Sentul The Nature FB 23 Village Sentul Babakan District, Bogor Regency? and

2). Is the Auction Determination with the Auction Decision Letter via the internet (closed Bidding) carried out on September 9, 2022 at KPKNL Bogor, through the auction schedule determination letter Number S-3046/KNL.0803/2022 dated July 28, 2022 issued by Co-Defendant II at the request of Defendant II valid and has binding legal force?;

Considering, that the petitum of the Appellant in the subject matter of the a quo case has been considered by the Panel of Judges of the First Level appropriately and correctly and then taken over by the Panel of Judges of the Appellate Level to be its own opinion in judging the a quo case at the appellate level by adding the following considerations:

Considering, that the Appellant must comply with the contents of the AKAD FINANCING MUSYARAKAH MUTANAQISAH MAYBANK RUMAH SYARIAH iB No. 006/MMQ/BGR/2017 DATED JULY 31, 2017 (evidence P7 or evidence TI-1) made of their own will by the Appellant and Appellant I, because according to the provisions contained in Article 1338 of the Criminal Code which reads: "all agreements made lawfully shall be valid as law for those who make them", more than that, is the word of Allah SWT in Surah al-Maidah (5) verse 1 which reads:

يا ايها الذين امنوا اوفوا بالعقود

Meaning: O you who believe, keep your promise.

Considering, that Appellant I carried out the actions postulated by the Appellant in his gag posita which led to the auction of the object of the case by the Appellant II is a risk of the Appellant's actions that have broken the promise in complying with the contents of the MUSYARAKAH MUTANAQISAH MAYBANK RUMAH SYARIAH iB Financing Agreement No. 006/MMQ/BGR/2017 DATED JULY 31, 2017 (evidence P7 or evidence TI-1) in case of Article 19.1 and Article 19.3, so that this cannot be used as an excuse by the Appellant that the Defendants/Appellants and the Co-Defendants/Appellants have committed Unlawful Acts as postulated by the Appellant in his suit posita;

In the Reconvention

Considering, that Appellant I in the hearing held electronically on Tuesday, January 23, 2024, submitted his answer accompanied by a reconvention lawsuit with the following petitum:

1. Grant the reconvention lawsuit of the RECONVENTION PLAINTIFF in its entirety;
2. Declaring that the DEFENDANT RECONVENTION has committed an act of breach of promise (Default) against the MUSYARAKAH MUTANAQISAH MAYBANK RUMAH SYARIAH FINANCING CONTRACT iB No. 006/MMQ/BGR/2017 DATED JULY 31, 2017.
3. Declare that the transfer of murabahah receivables from the RECONVENTION PLAINTIFF (old da'in) to PT TRINITI MENARA CIPTA (new da'in) as the SALE AND PURCHASE AND TRANSFER AGREEMENT dated March 23, 2021 between the RECONVENTION PLAINTIFF as the Seller and PT TRINITI MENARA CIPTA as the Buyer made before Notary Bayu Rushadian Hutama, S.H., M. Kn Notary in Tangerang City is valid and binding.
4. Punishing the DEFENDANT RECONVENTION to submit and comply with the SALE AND PURCHASE AGREEMENT AND TRANSFER OF RECEIVABLES dated March 23, 2021 between the PLAINTIFF RECONVENTION as the Seller and PT TRINITI MENARA CIPTA.
5. Charging the case fee to the RECONVENTION DEFENDANT in accordance with the applicable laws.

In the Convention and the Reconvention

Considering that this case is a Sharia Economic case, then according to the provisions of Article 181 paragraph (1) of the HIR the cost of the case must be borne by the losing party, because the Appellant as the losing party is based on Article 38 of the Compilation of Sharia Economic Law jo. Article 181 of the Criminal Code, is sentenced to pay the costs of this case, as for the amount as stated in this judgment;

Paying attention to Law Number 48 of 2009 concerning Judicial Power, Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009, Law Number 20 of 1947 concerning Repeat Courts jo. PERMA Number 7 of 2022 concerning Amendments to PERMA Number 1 of 2019 concerning the Administration of Cases and Trials in the Court Electronically and regulations other laws and Islamic laws related to this matter;

ADJUDICATE:

I. Accept the appeal of the Appellant;

II. Upholding the decision of the Bogor Religious Court Number 1271/Pdt.G/2023/PA. Bgr dated May 28, 2024 AD, coinciding with the 20th of Dzulqaidah 1445 Hijri which was requested to be appealed with

Fix the amars as follows:

In the Convention

A. In Exception

• Reject the exclusion of Defendant I, Defendant III, Co-Defendant II and Co-Defendant III;

B. In Provision

• Rejecting the Plaintiff's provision lawsuit

C. In the Subject

• Rejecting the Plaintiff's lawsuit about Unlawful Acts in its entirety;

In the Reconvention

1. Grant the Reconvention Plaintiff's lawsuit in its entirety;

2. Declaring that the Reconvention Defendant has committed an act of breach of promise (Default) against the MUSYARAKAH MUTANAQISAH FINANCING CONTRACT MAYBANK RUMAH SYARIAH iB Number 006/MMQ/BGR/2017 dated July 31, 2017;

3. Declaring the transfer of murabahah receivables from the Reconvention Plaintiff to PT. Triniti Menara Cipta as the SALE AND PURCHASE AGREEMENT AND TRANSFER OF RECEIVABLES dated July 30, 2021 between the Plaintiff of the Convention as the Seller and PT. Triniti Menara Cipta as the Buyer made before Notary Bayu Rushadian Hutama, S.H., M. Kn Notary in Tangerang City is valid and binding;

4. To punish the Reconvention Defendant to submit and comply with the SALE AND PURCHASE AND TRANSFER AGREEMENT dated July 30, 2021 between the Reconvention Plaintiff as the Seller and PT. Trinity Menara Cipta;

In the Convention and the Reconvention

- Punish the Convention Plaintiff/Reconvention Defendant to pay the case fee of Rp564,000.00 (five hundred and sixty-four thousand rupiah);

III. To punish the Appellant to pay the case fee at the appeal level in the amount of Rp150,000.00 (one hundred and fifty thousand rupiah).

3.5 Litigation and Non-Litigation Tables

Table 1
Dispute Resolution Scheme in Indonesia

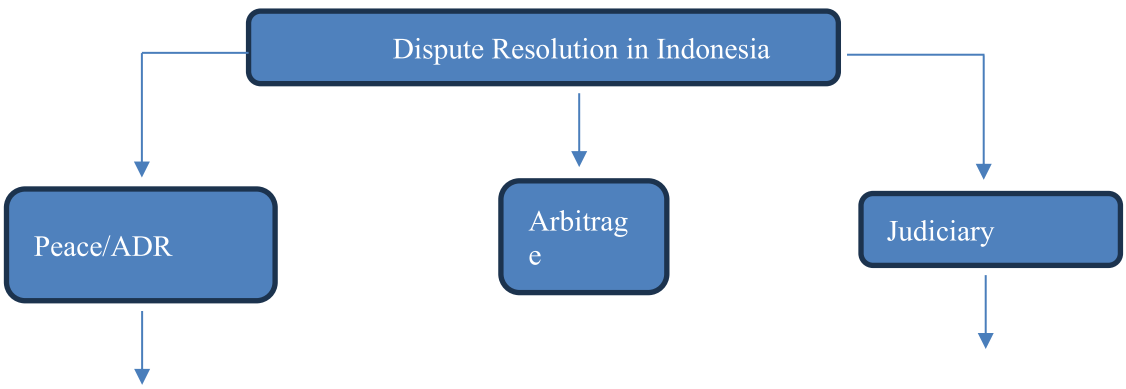

Table 2
Legal Basis

Litigation	Legal Basis
Constitution 1945	Article 24 of the 1945 Constitution regulates the independent judicial power, which is the foundation for the judicial system in Indonesia.
Law Number 48 of 2009 concerning Judicial Power:	This law regulates the organization, authority, and judicial procedures in Indonesia.
Procedural Law: **a. Civil Procedure Law** **b. Criminal Procedure Law** **c. Procedural Law of Religious Justice** **d. Procedural Law of the State Administrative Court**	(HIR, RBg, and Civil Code) regulates the procedures for proceedings in civil courts. (Criminal Code) regulates the procedures for proceedings in criminal courts.
Law on the Supreme Court:	Law No. 14 of 1985 concerning the Supreme Court.

Non-Litigation	Legal Basis
Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution:	This law regulates arbitration, mediation, conciliation, and other alternative forms of dispute resolution.
Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts:	This PERMA regulates the mediation procedures that must be taken before the litigation process in the civil court.
Law Number 21 of 2008 concerning Islamic Banking:	In this law, it regulates the settlement of sharia banking disputes that can be resolved by deliberation, mediation, sharia

	arbitration, or through courts in the religious court environment.
Other related laws and regulations:	Regulations governing mediation and arbitration in certain sectors, such as the financial sector, capital markets, and employment.

Abitrase	The Contract of Musyarakah
Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution: This law is the main foundation for the practice of arbitration in Indonesia. Regulates the definition of arbitration, arbitration agreements, arbitration procedures, and the enforcement of arbitral awards.	The legal basis for this musharakah contract itself is based on Fatwa DSN-MUI No.08 / DSN-MUI / IV / 2000 concerning musyarakah financing. In the context of Indonesian law, Law No. 10 of 1998 explains that musharakah is a profit-sharing financing.

Table 3
Disadvantages and Advantages of Litigation and Non-Litigation

Litigation	Excess	Deficiency
	Legal Certainty: court decisions have binding huum force	Lengthy and expensive process: lengthy and costly court proceedings (administration; lawyers)
	Enforcement of Justice: the court has the authority to enforce justice	Less Flexible: bound by formal procedural law rules so as to adjust to the needs of the parties
	Complex Dispute Resolution: litigation is suitable for resolving complex disputes involving multiple parties or complex legal issues	Damaging relationships: litigation can damage the hub between the parties to the dispute which can have a negative impact on the continuation of musyarakah cooperation
		Open to the public: this process is open so that the problem can be known to the public

Non-Litigation	Excess	Deficiency

	Faster and cheaper process: such as mediation or arbitration	Deal is not very binding
	More Flexible: can be adjusted to the needs of the parties	Depends on good faith: the success of this process is highly dependent on the good faith of the parties
	Keeping the hub good: this process emphasizes on resolving disputes peacefully.	Less suitable for complex disputes: This process is less suitable for resolving musharakah disputes involving complex legal issues.
	Confidentiality Maintained: problems only occur when they are known to the party concerned.	

From the table above, it is explained that the deliberative contract of the relationship between the two parties can be cooperative, so this dispute resolution is often used in a Non-Litigation manner. But if the non-litigation attempt fails, it must be resolved through legally complex litigation in order to be legally binding.

4. CONCLUSION

Based on the description stated above, it can be concluded that there are generally several ways that can be chosen to resolve a dispute that occurs. The methods in question are:

1. Dispute resolution by litigation, which is a form of dispute resolution carried out in court by following trial procedures according to the provisions of procedural law. The parties to the dispute face each other to defeat each other, held in court, and the result is in the form of a verdict.
2. Non-litigation dispute resolution, which is a form of dispute resolution that is carried out outside the court. Non-litigation dispute resolution can be in the form of negotiations between the disputing parties to reach a consensus, mediation, arbitration, and conciliation, each of which appoints a neutral third party to assist in the settlement of disputes that occur. In addition, there is also a form of customary dispute resolution, namely dispute resolution by the village head which is indeed very actual in daily life, especially in the village community. The implementation of this non-litigation settlement is easier to manage by the parties to the dispute without being bound by the provisions of procedural law which are rigid.
3. The deliberative contract of the relationship between the two parties can be cooperative, so the resolution of this dispute is often used in a Non-Litigation manner. But if the non-litigation attempt fails, it must be resolved through legally complex litigation in order to be legally binding.

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