

# PROCEEDING

## of the International Seminar Faculty of Law 2015

*“Comparative Law of Various  
Law Systems in the World”*

Organized By :

FACULTY OF LAW

SULTAN AGUNG ISLAMIC UNIVERSITY

Jl. Raya Kaligawe Km. 4 PO. BOX. 1054

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UNISSULA

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**Reviewer:**

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. H. Jawade Hafidz, S.H., M.H.

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Dr. Latifah Hanim, S.H., M.Hum., M.Kn

Dr. H. Ahmad Khisni., S.H., M.H

**Editor :**

Dr. Amin Purnawan.,S.H.,CN.,M.Hum

M. Abdul Hadi.,SE

Erna Sunarti, S.Pd

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(The President of the Board of Islamic University Europe)(IUE)  
**Prof. Dr. Rohimi Shapiee**  
(The Dean of Faculty of Law and Islamic Studies / Bangkok)  
**Prof. Dr. Topo Santoso, S.H**  
(The Dean of Faculty of Law Indonesia University)  
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## INTERNATIONAL CONFERENCE

### ON COMPARATIVE LAW OF VARIOUS LAW SYSTEMS IN THE WORLD

**SPEAKERS:**  
**Solijan Saury Siregar, BA, Lc., MA, Ph.D**  
(The President of the Board of Islamic University Europe)(IUE)  
**Prof. Dr. Rohimi Shapiee**  
(The Dean of Faculty of Law the National University of Malaysia)  
**Prof. Dr. Topo Santoso, S.H**  
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**Ir. Syarifah Siregar, M.Eng**  
(Faculty of Law Göteborg, Sweden)

**MODERATOR:**  
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Organized by:  
Magister of Law  
Faculty of Law Sultan Agung Islamic of University  
Semarang - Indonesia  
Indonesia, December 23<sup>rd</sup> - 2015

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**PROCEEDING**  
of the International Seminar Faculty of Law 2015  
"Comparative Law of Various Law Systems in the World"

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## PREFACE

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*As-salamu'alaikum Wr. Wb.*

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can provide this handbook without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Sofjan Saury Siregar, BA., LC, MA, PhD The President of the Broad of Islamic University Europe (IUE), Prof. Dr. Rohimi Shapiee The Dean of Faculty of Law The National University of Malaysia, Prof. Dr. Topo Santoso, SH The Dean of Faculty of Law Indonesia University, and Syarifah Siregar Master of Science in Mechanical engineering, Gothenburg, Sweden.

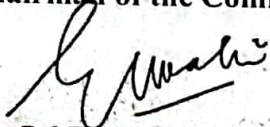
This conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines for doing law system in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participant and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us going better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

*Was-salamu'alaikum Wr. Wb.*

Semarang, December 29<sup>th</sup> 2015

Chairman of the Committee,



**Dr. Sri Endah Wahyuningsih, S.H., M.Hum**

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# GREETING FROM THE DEAN OF FACULTY OF LAW

*As-salamu'alaikum Wr. Wb.*

Thank to Allah SWT is what must we say after conducting the International Seminar by theme: "Comparative Law of Various Law Systems in The World" which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on December 23<sup>rd</sup> 2015.

There have always been studies of foreign laws and resource in legal scholarship. The comparison of laws, at least in their geographical diversity, is as old as the science of law itself. Aristotle (384-322 BC), in considering what form of political community would be best, studied 153 constitutions of Greek and other cities in his treatise, Politics, Solon (c. 640-558 BC), when drafting the Athenian laws, the decemvirs appointed in 451-450 BC to draw up the law of XII Tables for Rome are also supposed to have carried out comparative those first confronted with the phenomenon 'comparative law'.

Any different law system may have different understanding for each country. This diversity, further, can create miss-understanding among countries in the world. Based on the phenomena above, the faculty of law of UNISSULA holds an international seminar and call for paper to applicate the *Tri Darma* (three obligations) of higher education, that is comparing law of various law systems in the world, to increase the quality of student and all faculty members, and make partnership closer with other abroad university.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event ,so that this international seminar ran well.

*Was-salamu'alaikum Wr. Wb.*

Semarang, December 29<sup>th</sup> 2015  
Dean,



**Dr. H. Jawade Hafidz, S.H., M.H.**

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# THE COMPARATIVE LAW IN BUSINESS DISPUTE RESOLUTION OF ISLAMIC BANKING IN INDONESIA AND MALAYSIA.

Dessy Sunarsi & Agus Ridwan  
Universitas Sahid Jakarta  
dessynew@ymail.com

## Abstract

This article titled :The Comparison of Law in Business Dispute Resolution of Islamic Banking in Indonesia and Malaysia. The background of this study rely on the existence of Islamic Banking in Indonesia and Malaysia are undergoing a fast development with the its dispute case between bank and customer or bank and bank itself. Islamic Banking and challenging of economic globalization has emerged creativity of diverse products with its customer either Moeslem or non moeslem. The implementation of contract often emerging of conflict that culminating in legal action. Section 55 Verse (2) Statute Number 21 Year 2008 about Islamic Banking resulting any choice in dispute resolution by the court or non court like Arbitration and Alternative Dispute Resolution. In implementing, there are dichotomy and over lapping of authority of dispute resolution institution resulting from uncertainty of law. This research studied about how the mechanism of business dispute resolution of Islamic Banking related with Indonesian and Malaysia judicature system. This paper will focus on the regulatory framework of dispute resolution forum and its implementation in Islamic banking in Malaysia and Indonesia. The study used the qualitative analysis in analyzing the case and its founded solution. The study use also the comparison of the case of business dispute resolution in Indonesia and Malaysia. By the comparison between the two countries, some advantages will be identified. Particular reference should be made to the regulations and their implementation in the Islamic banking in Malaysia and Indonesia since the availability of few valuable considerations. Malaysia experienced the advanced development of Islamic banking compared to the rest of the Asian Muslim countries in the Southeast Asia region. The result of this study will be beneficial for Indonesia and Malaysia in correcting and developing of System in resolution of business dispute in Islamic Banking in Indonesia and Malaysia.

**Keyword: Islamic Banking, Business Dispute Resolution, Arbitration, Alternative Dispute Resolution**

## A. BACKGROUND OF STUDY

The existence of Islamic Banking in Indonesia and Malaysia are undergoing a fast development with its dispute case between bank and customer or bank and bank itself. In this case, Islamic Banking and challenging of economic globalization has emerged creativity of diverse products with its customer either Muslim or non Muslim. Actually, the implementation of contract often emerging the conflict that culminating in legal action. Section 55 Verse (2) Statute Number 21 Year 2008. about Islamic Banking resulting any choice in dispute resolution by the court or non court like Arbitration and Alternative Dispute Resolution.

In its implementation, there are dichotomy and over lapping of authority of dispute resolution institution resulting from uncertainty of law. Resolution dual banking system in Indonesia makes the development of Islamic Banking drove quite rapidly. Bank Islamic time to time the number grew a lot, both fully operational and that operates through branch offices are specifically based on Sharia principles. Similarly, the type of product and the amount of mobilization of public funds

managed by Islamic banks have been increasing. When the economic crisis hit Indonesia (1997-1999) which among other things is characterized by the decline of the national banking industry, principally Islamic Banking with the principle of profit and loss sharing, have resilience as an economic unit in the financial system of the State of Indonesia<sup>1</sup>. In a period of 17 years, the total assets of Islamic Banking industry increased 27-fold from Rp. 1.79 trillion in 2000 to Rp. 49.6 trillion at the end of 2008. The growth rate is impressive assets recorded 46.3% per year. For the period 2007-2008, reaching an average growth of 36.2% per year, even higher than the growth rate of Islamic banking assets of the regional (Southeast Asia) which is only around 30% per year for the same period<sup>2</sup>.

The enactment of Law No. 21 of 2008 concerning Islamic Banking ( hereinafter written Islamic Banking Act ) as a formal legal foundation that specifically regulate matters concerning Islamic Banking in Indonesia , making the speed of growth of this industry go much faster . It was seen from the indicators in the finance portfolio which grew an average of 36.7 % per year and an indicator collection funds with an average growth reached 33.5 % per year in 2007-2008<sup>3</sup>. Islamic Banking assets grew to Rp 47.25 trillion, up 24.24 % from Rp 195.01 trillion in 2012 to Rp 242.27 trillion in 2013. This shows that the community has begun to recognize the existence of Islamic Banking as part of a Dual Banking System in Indonesia.

The rapid growth of Islamic Banking is the potential market gets quite warm welcome to people's well support from the Government. The scholars and regulatory BI continues to accommodate the needs of industry regulations and open up wider opportunities to banks and investors to carry out banking operations Islamic. So, in 2013 , BI BI has issued 28 regulations , ranging from the institutional ( commercial bank and Islamic BPR ) , the precautionary principle ( quality of productive assets , allowance for uncollectible accounts ) , financial markets and monetary instruments ( clearing , GWM , the interbank money market sharia , short-term loans Islamic bank , Bank Indonesia Wadiah Certificate ) , and the monthly report of Commercial and BPR Islamic on-line.<sup>4</sup>

In practice, the transaction between the Islamic Bank and the customer agreed in the contract of sharia. Customer Islamic bank is open to the public, whether Muslim or non-Muslim, to the needs and interests of diverse clients . Currently there are 20 % non-Muslim customers to transact in Islamic banks. This shows that Islamic banks is no different than conventional banks as part of the Dual Banking System , only just contract specificity and mechanism based on the principles of sharia.

Individuals and business entities that conduct Islamic banking transactions possible violation of the Shariah contract . Therefore , the dispute may be happen , both among Islamic banks in the capital by capital owners or Islamic banks as well as with customers that led to the dispute. Disputes between the customer and the Islamic banks forever more triggered by three things: the difference in interpretation of the content of the agreement, the dispute when a transaction is already running , the losses suffered by one of the parties as a result of another party defaults.

- 1 See : Message from the Governor of Bank Indonesia , the National Sharia Board MUI - Bank Indonesia , the Association of National Sharia Board Fatwa MUI , Revised Edition 2006 , Jakarta : CV . Echoes Persada , 2006 , p. xxv .
- 2 Media Indonesia , Islamic Education : Impressive Progress iB Islamic Banking , Jakarta : April 27 , 2009 , p. 17 .
- 3 Ibid , p 17
- 4 www.bi.go.id. Regulations Banking . See also Abdul Ghofur Anshori , Umbrella Islamic Banking Law ( Law in Banking DSN - MUI Fatwa and Regulation of Bank Indonesia ) , Cet . I , Yogyakarta : UII Press , 2007 , p. 185-445.

This implies the need for regulation of various shapes / dispute resolution mechanism that can satisfy the justice of the perpetrators of this sharia business. Necessary arrangements are fair and accommodating for all business actors (stakeholders) in order not to harm one of the parties and other party favor , so that the nature of the establishment of Islamic Banking as a community helper bank does not become biased by economic interests alone .

Business dispute resolution, through a process known as “Non-Litigation” that Alternative Dispute Resolution (Alternatief Dispute Resolution) and arbitration, as well as through the process of “Litigation” (court). Dispute resolution Islamic Banking in practice through the APS known institutions are: the Institute of Customer Complaints through As-Shura and Deliberation Consensus involving a neutral third party consists of Mediation Banking (for the settlement of disputes between customers and the Bank, which was originally located in Bank Indonesia is now in Authority Financial Services), independent or Mediation has now been established by the Mediation Board Sharia Islamic Economic Society (MES), or Conciliation and Arbitration at the National Islamic Arbitrate Agency (Basyarnas). Meanwhile, through the litigation process can be through the Religious Courts in accordance with Law No. 3 of 2006 on the Amendment of Law No. 7 of 1989 on the Religious Courts or even nothing to the District Court to the extent provided in its contact.

Industrial presence of Islamic Banking as the banking system could be one option in addition to the conventional banking system in Indonesia in the last decade, has received legal force completely as national law with the enactment of Law No. 21 of 2008 concerning Islamic Banking (Act No. 21 of 2008 ) . Islamic banking is defined as “ everything that concerns about the Islamic banks and Islamic business units , covering institutional , business activities , as well as the manner and process of carrying out its business activities . “

Banking arrangements in Indonesia, including Islamic banks , is to improve the resilience of the banking system by improving the regulatory and infrastructure . In Islamic banking laws many provisions that ordered “ further provisions regarding certain matters regulated in PBI ( Bank Indonesia Regulation ) .

Furthermore, Article 55 paragraph ( 2 ) Islamic Banking Act provides that “ In the event that the parties have foretell dispute resolution other than as prescribed in paragraph ( 1 ) , then the settlement under the terms of the contract “ . The provisions of Article 55 paragraph ( 2 ) is then which gave birth to their choice of dispute resolution forum of Islamic Banking business , with the proviso that the settlement referred to should not be contrary to Islamic principles . It is based on that the settlement of disputes in the implementation of sharia contract actually entered the realm of contract law . Therefore, the principle of freedom of contract (freedom of contract ) which is the main principle in the law of the applicable agreement , which the parties are free to determine the contents of the agreement , the agreement form to the dispute settlement mechanism.<sup>5</sup> Based on the explanation of Article 55 paragraph ( 2 ) of this Act , which is carried out in accordance with the dispute settlement contents of the Agreement “that the settlement is done through the efforts of consultation , banking mediation Arbitration , or through the courts within the General Court.<sup>6</sup> Then with the decision of the Constitutional Court No. 93 / PUU - X / 2012 that the verdict stated that the elucidation of Article 55 paragraph ( 2 ) of Law No. 21 of 2008 concerning Islamic Banking has no legal tight power .Although the explanation of Article 55 paragraph ( 2 ) has been

<sup>5</sup> Ghofur Abdul Ansari , Islamic Banking Law ( Law No. 21 of 2008 ) , Bandung : PT . Refika Aditama , 2009 , p. 109 .

<sup>6</sup> See Constitutional Court decision No. 93 / PUU - X / 2012 that the verdict stated that the elucidation of Article 55 paragraph ( 2 ) of Law No. 21 of 2008 concerning Islamic Banking does not have binding legal force .

revoked by the Constitutional Court decision No. 93 / PUU / -X / 2012, but in its application to fixed existence Article 55 paragraph ( 2 ) persists legal uncertainty . This situation extended the overlapping institutional choice of dispute resolution forum of Islamic Banking .

By some accounts the problems described above , the regulatory and institutional mechanism for dispute resolution in the field of Islamic banking business to be attractive object of study in depth and comprehensive if it is associated with the harmonization of laws within the framework of the judicial system in Indonesia .

## B. Problem Statement

Based on the background study above, the problem will be discussed in this paper is:

“How is the regulatory of business dispute resolution on Islamic Banking related with Indonesian and Malaysia judicature system “

## C. Regulatory of Business Dispute Resolution on Islamic Banking in Indonesia

Discussion of the legislation under legislation within the framework of the development of the judicial system in Indonesia is discussed as the state of Indonesian law and subsequent acts seen how relation to one another in terms of vertical and horizontal settlement of disputes as systems that support the business . Discussion will include legal certainty in the field of Islamic Banking regulations , legal policy underlying political or legal regulations, the adequacy of the existing regulatory framework and hierarchy of authority regulations in response to the settlement of business disputes in the field of Islamic Banking

Discussion of legal certainty in Islamic Banking business dispute resolution starts from the role of regulation in Islamic Banking System. Dari three factors that are part of the legal system of interacting as referring to the theory Laurence M. Friedman, the regulation is at the heart of the existence of the banking system in general and Islamic Banking in particular. Therefore, the banks do business by collecting funds from the public and channel funds to communities based on trust, then the bank is a business entity that is loaded with the regulations. The more advanced the world economy, the greater the growth and development of active and banking diversity. The more world business world, the more diverse and complex financing agreement also contract-manufactured by the Islamic Banking Islamic banks to the public. Almost every Islamic bank activities should be based on regulations issued by the banking authorities and are also supervised by the supervisory board's sharia .The study wants to examine the vertical and horizontal relationships of the existence of Islamic Banking laws and regulations governing Islamic Banking resolution dispute.

Referring to the theory of the legal system Laurence Friedman , who is the substance in the Islamic banking system is any regulations and policies related to licensing , business activities , and the dissolution of the Islamic Bank , both of which apply individually or as a system . In the settlement of business disputes referred to the substance other than the same understanding in the Islamic banking system as well as all the provisions and policies related to the dispute settlement procedures of Islamic banking forum in question.

Islamic banking dispute settlement has been arranged in the regulation include:

1. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (APS).
2. Act Number 3 of 2006 concerning the first amendment to Law No. 7 of 1989 on Religious Courts where provided for in Article 49.

3. Act Number 21 of 2008 concerning Islamic Banking especially in article 55 governing the settlement of disputes referred to as follows:

Paragraph (1): that the banking dispute settlement carried out by the Court within the Religious Court;

Paragraph (2): that in the event the parties have foretell dispute resolution other than referred to in paragraph (1), the dispute settlement conducted in accordance with the contents of the contract. In the explanation of paragraph (2) is in accordance with the contents of the contract is an effort (a) deliberation (b) banking mediation (c) through arbitration body sharia (Basarnas) or other arbitration institutions and (d) by the Court of General Jurisdiction in the environment;

Paragraph (3): that the settlement of disputes referred to in paragraph (2) shall not be contrary to Islamic principles.

Paragraph (4): PBI No. 8/5 / PBI / 2006 on mediasai jo PBI No. 10/1 / PBI / 2008 regarding the amendment of Regulation No. 8/5 / PBI / 2006 on Banking mediation.

Paragraph (5): PBI # 7/7 / PBI / 2005 regarding customer procurement penyelesaian jo PBI No.10 / 10 / PBI / 2008 regarding the amendment of PBI # 7/7 / PBI / 2005 regarding the settlement of the customer.

With the birth of the Islamic banking law will reawaken choice of dispute resolution forum of Islamic Banking, because one side according to the Religious Courts Law asserts that Islamic banking dispute settlement under the authority of the Religious Courts. This was corroborated in Chapter IX Article 55 paragraph (1) of this Act that the Islamic banking dispute settlement carried out by the Court within the Religious Courts. But on the other hand, Article 55 paragraph (2) of the law explains that in the event the parties have foretell dispute settlement other than those referred to in paragraph (1) the settlement in accordance with the contents of the contract. Efforts settlement is appropriate contract in an effort of practice deliberation, banking mediation institutions, facilitated by BI through Arbitration Sharia (Basyarnas) or other arbitration institution or through the courts within the judicial justice and the common religion. Institutional role within the framework of Islamic banking dispute resolution simultaneously will influence the improvement of legal system, while elements of governance in development will determine the success rate of change being implemented. Optimal or less optimal factor of the substance or regulation according to Friedman is the actual rules, norms - norms, and behavior patterns of people in the system, including any regulations or rules that may pose a negative impact or implications of such a loss.<sup>7</sup>

Factors legal culture , which is defined by Friedman as behaviors / attitudes , beliefs , values, thoughts , and expectations of society with laws , covering about who and how to determine the factor structure and substance of the law runs and used. In legal culture , known theory that distinguishes formal law and law in action. Formal law means a set of norms or rules contained in the legislation invitations or in settlement of a legal case , while the law in action is enforced or implemented by the parties , lawyers and the courts.<sup>8</sup>

In the country - a country in Asia, is often mentioned that tradition or culture is very influential in the application of the law, for example, the common interest takes precedence over individual rights. Furthermore, many stated that in order to understand the implementation of the provisions

<sup>7</sup> Didik J. Rachbini , Political Economy , Policy and Development Strategy , Publisher Granite, Jakarta 2004

<sup>8</sup> Susan Glazebrook , The Role of The Rule of Law in the Asian Economic Crisis , the Plenary Session of the Inter - Pacific Bar Association Nineth Annual Conference , Bangkok 1999 .



of laws - laws in countries - Asian countries, it is important to understand customary norms, customs, religion, and moral behavior and culture that underlie these provisions. In the Islamic banking system, issues related to the way the authorities implement the law officers of banking and how the managers or owners of the bank to understand, comply with and implement the provisions and policy of Islamic banking and law enforcement officials. In this context not apart the political aspects of the law that affect the application of policies and regulations in the field of Islamic Banking. One example is the legal culture of all the habits and behavior of sharia-bank banks and their staff members in carrying out banking operations, or the culture of Indonesia Low awareness to read the contract before the contract is signed.

In the Islamic Banking system included in the structure of an institution that has become the authority which issued the regulations which oversees the functioning of the banking and Islamic banking system is good. The current structure of the coverage in the Indonesian Islamic Banking practices consist of Bank Indonesia (the central bank as an institution / bank monetary), the Ministry of Finance (as the organization of the government guarantee ). Financial Services Authority and the Sharia Supervisory Board/MUI, including the Institute for Dispute Settlement Forum of Islamic Banking Business is BANI, BASYARNAS, Mediation Banking by the FSA, which was established by the Mediation sharia Islamic Economic Society (MES ) to the judiciary both general courts and religious courts.

The interaction of these three factors, will reflect the role of law in a state in a country. Findings on the interaction of three factors the legal system can give you an idea whether the regulations in the field of Islamic Banking ensure law enforcement or in the Islamic banking business dispute resolution.

#### **D. Regulatory of Business Dispute Resolution on Islamic Banking in Malaysia**

The development of Islamic banking in Malaysia began after the birth of the spirit to explore religion by using means of controlling the Islam among intellectuals in the 1970s . In the Bumiputera Economic Congress in 1980 , proposed the establishing an Institute for Hajj Affairs and savings in an Islamic bank that aims to collect and invest the money belongs to the Muslims<sup>9</sup> .

Deed of Islamic banks in 1983 to become the basis of the guidelines approved regulations that need to be adhered to by Islamic banks operating conduct Islamic banking in Malaysia . At the same time the kingdom has inaugurated the kingdom of Investment Act 1983 which authorizes the kingdom to issue investment certificates Islamic banking is based on the principles of Islam.

Islamic banking in Malaysia beginning with the establishment of Bank Islam Malaysia Berhad (BIMB) established under Syarikat Act 1965 on 1 March 1983 and began operations July 1 , 1983. BIMB operate as a single Islamic bank in Malaysia from 1983 to the year 1999 has more than seven twenty branches throughout the State in end of 1999. In addition to the Full system Pledge Islamic Banking, Islamic Window system is also used which provide Islamic banking services in conventional banks . In 1999 , founded another new Islamic banks , namely Bank Muamalah<sup>10</sup>

At the end of 2003 , the Islamic banking system in Malaysia has 33 financial institutions consists of 2 fully Islamic banks and 33 conventional financial institutions which include 9 trading

<sup>9</sup> Sudin Haron, *Sistem Kewangan Dan Perbankan Islam* , Kuala Lumpur Business School SDN, Kuala Lumpur, Berhad . hlm.43  
<sup>10</sup> Mumin Ghani , AB. , *Islam And The exercise financially System In Malaysia*, Kuala Lumpur , Malaysia Berhad National Percekarakan 2006 , p.24

banks , four merchant banks , four foreign trade bank , a reputable financial 7 , and 7 home discounted . The amount of deposits in Islamic banking system by the end of 2003 reached RM60 billion , compared to a conventional bank deposit amount RM482 billion . So on the money market between banks sharia (Islamic Interbank money market ) experienced a rapid development of RM0.5 billion a year to increase to RM283.8 billion in 2003<sup>11</sup>

In promoting Islamic banking and in harmony with the desire to make Malaysia as a center for Islamic banking , Bank Negara Malaysia has passed a petition three institutions Islamic Bank foreigners to carry out its operations in Malaysia namely Kuwait Finance House , (2004 ) followed, Al Rajhi Banking and Investment Corporation , Arab Saudi and a consortium includes Qatar Islamic Bank , RUSD Investment Bank Inc. and Global House on 14 October 2004<sup>12</sup>

Changes in state bank certificates in 2009 became the starting point maximum protection to bank customers in Malaysia where the settlement of law enforcement better in terms of providing protection , aspects of the legislation and institutions.

Islamic banking in Malaysia in terms of the implementation of the law , among others, shall ensure the goods are used lawful and good / Toyib , Halal in Essence and sources , how to obtain and use , in Malaysia to apply the principles of Islam carried out in all the activities included in the settlement of disputes , settlement of disputes in Malaysia conducted in accordance with Islamic principles done by judges , arbitrators , mediators , lawyers who have competence sharia . Also in Malaysia use legislation that is consistent with Islamic principles in every decision .

Although central banks in Malaysia are generally banks Islamic banks but not all banks there are Islamic banks , due to the policy development of Islamic Banking in Malaysia is divided into two, namely pure sharia and the dual banking system .

Since the beginning of the Islamic finance business presence in Malaysia , in this case initiated by the establishment of BIMB , has been facilitated by various government policy the financial incentives for business development Islam. BIMB, the first Islamic bank, stands by basing itself on Islamic Banking Act 1983 (IBA) specifically arrange the bank fully operational with the principle syariah. Meanwhile, for conventional banks opening Islamic services, often referred to sharia or window, governed by laws other acts, the Banking and Financial Institutions Act 1989 ( BAFIA ) .Beside both legal instruments, Islamic banking can not be released its association with various other laws .

Islamic finance business is also related to valid generally by legal rules, such as the Contract Act, the National Land Code , the Companies Act , Hire Purchase Act , Rules of the High Court, and so on. In addition, there are sufficient legal rules affecting businesses Islamic financial ie , taxation law , which include : Real Property Gains Tax Act 1976 and the Stamp Act 1949 .

Various laws are interconnected between each others, and all of which affect the Islamic finance transactions. It effect on whether the problems surrounding Islamic Banking use “true transactions” is a transaction which is in fact and proper with Islamic principles or more of a “national transactions” or transaction subject to the provisions of the national law on Islamic principles. Also, whether certain transactions, that involving transfer of ownership, actually involves ownership changing and registered in accordance with existing laws, such as “transfer

11 Mumin Ghani , AB. , Ibid . , p.26

12 Mumin Ghani , AB. , Ibid . , p.30

of legal title," or simply "beneficial title" or effect to profits generated by an asset.<sup>13</sup> Besides that, due to litigation in cases in Islamic finance business transaction fall to the general court (civil court), so as determined by sharia sometimes do not considerate properly, this is because the court generally bound by the rules of civil law. On this basis, the Islamic finance business transactions should considerate relationship with the overall device sharia law availability. Tools of governance (governance by shariah) Islamic Banking in Malaysia governed by various rules, either statute (law) or in the form of other regulations that like guidelines issued by Bank Negara Malaysia. The important thing that it is a law on Islamic banking (IBA 1983), for example, in Article 13A, which hinted at the necessity to comply with the Islamic bank the advice of the Shariah Advisory Council ( SAC ) of Bank Negara Malaysia , the advice is given on purpose.<sup>14</sup> Then , BAFIA 1989 also provide syariah governance rules in this . Article 124 , paragraph 3 and 4 confirms that conventional bank financial institutions are open syariah services refer to the Shariah Advisory Council and must comply with the banking and finance business based perinsip syariah issued after consultation with the SAC<sup>15</sup> . It also very important for governance is the rule that give sharia legal force to the existence of the SAC is amendment of the Central Bank Act 1958 ( CBA )<sup>16</sup> . With this rules , it is clear that the SAC has authority over all business financing sharia , including insurance , except for the capital market ( Securities Commission ) which has its own sharia advisory and separate from the Central Bank<sup>17</sup>

The jurisdiction of the General Court Business Dispute Settlement Islamic Banking in Malaysia

In Malaysia, the jurisdiction of the dispute resolution Islam on financial business in general civil courts or courts , or also called Civil Court . Of course the question is why its happen. Of course understood that the Islamic finance business is the businesses transaction that use the principles of muamalah, why the disputes of business resolution must be done in a general court, where used the civil courts is a common law that the heritage of colonial Britain. The answer of this can see at the following explanation : First, although the term "Islamic law" or Islamic law exist in legal regulations in force in Malaysia but should be understood that its application was limited to those who embrace Islam. So, Islam as the legal enforceability is very limited.

While in the Islamic finance business transactions, many people from different religious backgrounds are involved, relatively large non-Muslim even the amount in the composition of customers of Islamic Banking in Malaysia.<sup>18</sup>

Secondly, other things become important considerations are also financial and banking that business stipulated in the federal legislative power, and as long as there is no regulation of financial business and banking in legislation in the state of (state). Therefore, the state can not regulate financial and banking issues, so the regulation that originates in the state (federal government)

13 Nik Norzrul Thaní , et.al , Law and Practice of Islamic Banking and Finance , ( Malaysia : Sweet & Maxwell Asia , 2003) , 94-96 . Hamzah Ismail and Radziah Abdul Latif , Survey & Analysis of Financial Reporting of Islamic Banks Worldwide , ( Kuala Lumpur : Arab - Malaysian Banking Group and Malaysian Accountancy Research and Education Foundation , 2001) , 49. Bank Islam Malaysia Berhad , Islamic Banking Practice, 162 ,

14 Islamic Banking Act 1983 ( IBA ) Article 13A .

15 Banking and Financial Institutions Act 1989 ( BAFIA ) , Article 124

16 Central Bank Act 1958 ( CBA ) , Article 16B

17 The existence and membership of the Advisory Council of the Securities Commission in Malaysia can be seen in , Resolutions of the Securities Commission Shariah Advisory Council ( Kuala Lumpur : Securities Commission , 2006) .

18 Para 1 , List II of the Ninth Schedule

was valid in national. Federal Regulatory provided that the financial and banking business entered automatically at civil law. Hence, legal dispute over business financing in Islam is entered on the authority of the civil court. Thus the contrary, if the dispute will be resolved in the court of sharia, must be carried out very substantial amendments. It caused by sharia court, especially in financing that regulate autonomously by state. Thus, for changing, must be done through a parliamentary amendment state in all the states in Malaysia amounted to 13 furthermore particular region of the Federal Territory.

Other reasons such as court decision, given Malaysia included one among the many countries that use the system of Common Law, or the law on the basis of habit. One of the prominent feature of the legal system is the law based on precedent, meaning that a court decision in a case, at the same reference will be binding rules for all subsequent court decision related to the matter (the doctrine of binding precedences). In this context, banking disputes and Islamic Business Financing, BIMB case vs Adnan bin Omar, BIMB vs Ink Press Sdn Bhd. & Ors, also the case of Dato ' Nik Mahmud vs BIMB, and the case Emcee Rakyat vs Bank Corp., Affin Bank vs. Zulkifli, etc, into a binding precedent, which in that case also was decided on Civil Court authority, and instead of the Syariah Court.

### E. Conclusion

In Indonesia, Islamic banking dispute settlement has been arranged in the regulation include:

1. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (APS).
2. Act Number 3 of 2006 concerning the first amendment to Law No. 7 of 1989 on Religious Courts where provided for in Article 49.
3. Act Number 21 of 2008 concerning Islamic Banking especially in article 55 governing the settlement of disputes.

In practice, the Business Dispute Resolution use Forum of Islamic Banking Business such as BANI, BASYARNAS, Mediation Banking by the FSA, which was established by the Mediation Sharia Economic Society (MES) to the judiciary both general courts and religious courts.

Meanwhile, in Malaysia, the jurisdiction of the dispute resolution Islam on financial business in general civil courts or courts, or also called Civil Court. In this, Islamic finance business is the businesses transaction that use the principles of muamalah and the disputes of business resolution must be done in a general court, where used thee civil courts is a common law that the heritage of colonial Britain.

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