The Social Sciences 11 (Special Issue 4): 6726-6733, 2016
ISSN: 1818-5800
© Medwell Journals, 2016

Islamic Arbitration in Indonesia

Muhammad Arifin
Faculty of Law, Muhammadiyah University of North Sumatera, Medan, Indonesia

Abstract: Indonesian law recognizes the Islamic arbitration which is so called as Sharia Arbitration. This recognition is regarded as a new attempt to settle the economic disputes (Muamalah). The development of economic activities and sharia based business in the Islamic communityof Indonesia needs the Sharia arbitration. It is a kind of settlement forum outside the religious court which is agreed by the parties. The existence of sharia arbitration is stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and the National Sharia Arbitration Board (Badan Arbitrase Syariah Nasional-BASYARNAS). This forum is under the organization of Indonesian Council of Ulama (Majelis Ulama Indonesia-MUI). The Sharia Arbitration of Indonesia has affected the principal rules and operational patterns for the economic disputes and resolutions among the Islamic community of Indonesia. It recommends the widely implementation of Sharia Arbitration of Indonesia in the settlement of economic disputes.

Key words: Sharia arbitration, Islamic community, economic disputes, settlement, board

INTRODUCTION

In the tradition of Islam law, the word ‘arbitration’ is known as tahkim. The Tahkim (arbitration) has a long history, even since the pre-Islamic era (Schacht, 1964). It was noted that the disputes among tribes were settled through arbitration and the members of judges were chosen by each tribe in ad hoc. To be an arbitrator is very tight those who were chosen as arbitrators had to own supernatural power which was called kahin (Schacht, 1964). When an arbitrator had agreed to settle a certain dispute, the conflicting parties had to present collateral, either in the form of an object or a hostage as a guarantee that they would accept his decision (Schacht, 1964). Islam eventually had continued the existence of arbitration and the continuation of tahkim since it contained positive and constructive values; one of them is concerning with the importance of reconciliation and peace which was emphasized by the Islamic values. The validity of arbitration in Islam can be seen in the Verse 35 of the Surah of the Women (Nisaa) of Holy Koran as follows:

If ye fear a breach
Between them twain
Appoint (two) arbiters
One from his family
And the other from hers
If they wish for peace
God will cause
Their reconciliation
For God hath full knowledge
And is acquainted
With all things

The existence of arbitration got the consent by the Prophet in a certain case, he agreed to be an arbitrator, or he appointed someone to be an arbitrator and then accepted the decision. He also suggested that the tribes settle their disputes through arbitration.

Arbitration does not only have the validity in settling family dispute between wife and husband but also have respect on chattels and on political conflict such as what had happened to the conflict between Ali Bin Abi Taleb and Muawiyat in order to end up Shiffin war in 675 A.D (Murodi, 2011). Shiffin incidence is the implementation of arbitration which occurred for the first time in the Islamic history as a means for settling dispute in the political authority. Islamic experts (fuqaha) agree on arbitration as the forum for settling disputes which occur among the Muslims in war or in peace, related to internal and external affairs of a nation.

Arbitration (tahkim) in the Islamic teaching is recognized as a forum for settling disputes outside the Court. As a voluntarily forum, the main objective of arbitration in Islam is to maintain good relationship among the conflicting parties so that cooperation will continue productively. In a modern business world today, either nationally or internationally, the settlement of disputes through arbitration becomes a principle which can create economic welfare and social harmony (Affandi, 2002).

Business relationship in our daily life will potentially cause disputes. Business life is susceptible to the incidence of conflict. It is undeniably that conflict is potentially found in any business relationship. Therefore, it is necessary to have a well-known mechanism in settling the economic disputes. When there is a dispute, business people will follow the mechanism to settle it peacefully

without breaking off good relationship and taking a short time, having low cost and being able to keep the secret of the conflicting parties. It stops the publication of their disputes that may disturb their credibility. Additionally, the Islamic arbitration does not allow the publication of disputes. Therefore, Islamic arbitration is needed to settle any dispute which occurs in business field, particularly business which is performed by Muslims. Arbitration in Indonesia which is implemented based on the Islamic law, is known as sharia arbitration and institutionally National Sharia Arbitration Board (Badan Arbitrase Syariah Nasional-BASYARNAS) has been established.

MATERIALS AND METHODS

Validity of Islamic Arbitration in Indonesia: Indonesia law recognizes the existence of Islamic arbitration board, along with non-sharia arbitration. Islamic arbitration characterizes the arbitration legal system of Indonesia that will not be found in other countries such as Australia, Malaysia and Singapore (Ismail, 2007). Fallahnejad reports that the article 595 of Islamic Punishment Law of Iran has regarded perpetrator of usury crime (Fallahnejad, 2016). In the Indonesian context, tahkim (arbitration) is regarded as the initial period of the establishment of religious jurisdiction board Ramulyo. Arbitration had been practiced before the religious jurisdiction was established. When there were disputes among Muslims, they would tahkim (negotiate) by trusting the resolution of disputes to Islamic scholars who would act as arbitrators and the conflicting parties would accept their decision voluntarily (Thaib, 2006). The Islamic arbitration board which functions as the forum for settling disputes in sharia legal based transaction, including financial transaction and banking, settles disputes according to the Islamic law.

The existence of Islamic arbitration in Indonesia has legal umbrella, that is, Law No. 30, 1999 concerning Arbitration and Alternative Dispute Resolution. The imposition of this law has caused the previous regulation of arbitration, according to Article 651 of the Code of Civil Procedure and Article 377 of the Renewal Indonesian Regulation and Article 705 on the Procedure Regulation for Regional Administrations outside Java and Madura to be declared void. The regulations which regulate judiciary have incurred several amendments and the last amendment was Law No. 48 of 2009 which simultaneously gave recognition to arbitration as the forum for settling disputes outside the Court.

Viewed from the historical perspective, the birth of Islamic arbitration in Indonesia began with the establishment of Indonesian Muamalat Arbitration Board (Badan Arbitrase Muamalat Indonesia-BAMUI). The establishment of this Islamic arbitration board was closely related to the socio-economic development of the Islamic society in Indonesia which is indicated by the fact on the growth of various sharia based financial institutions such as sharia banks, sharia people's credit banks, sharia capital market and sharia insurances or takaful. Therefore, the existence of sharia arbitration in Indonesia becomes a conditio sine qua non. Through Islamic arbitration, business disputes which are done in sharia method can be settled by implementing the Islamic law.

Based on the National Working Meeting of the Indonesian Council of Ulama (Majelis Ulama Indonesia MUI) in 1992, Indonesian Muamalat Arbitration Board had the legality in establishing a foundation with a Notarial Deed No. 175 on October 21, 1993. The objective of the establishment of the foundation, Indonesian Muamalat Arbitration Board Foundation (Yayasan Badan Arbitrase Muamalat Indonesia), was as follows: first, to provide righteous and rapid resolution in muamalat disputes (civil case) in trades, industry, finance, services and so on; secondly, to receive requests from any parties in a certain contract without any dispute, in order to provide ideas which adhere to the problem of the contract.

The establishment of Indonesian Muamalat Arbitration Board was based on some reasons as follows: first, Islamic religion not only consists of guidance for performing one's religious duties/obligations but also guidance for his entire life, including his life in muamalat (secular life); secondly, the need for an institution which can decide and settle muamalat and business disputes among Muslims, based on the principle of mutual agreement and on Islamic behavior in the framework of the Unitary State of the Republic of Indonesia, based on Pancasila (National ideology) and the 1945 Constitution; thirdly, historically, hakam institution which was known for the first time as an ad hoc, has been known since Islam was born and has continued institutionally until the present time; fourthly, it fulfills the need of Muslims in settling disputes continuously and professionally by performing righteous and permanent decisions; and fifthly, the objective of hakam institution is to settle and to bring to an end any disputes rapidly, inexpensively and appropriately because this institution was born by the wish and ambition of the Muslims themselves.

Indonesian Muamalat Arbitration Board (BAMUI) in its next development changed its name to National Sharia Arbitration Board (BASYARNAS) and simultaneously the status of the legal entity of this foundation changed into an institution which was under and became an organizational instrument of Indonesian Council of Ulama

(MUI) in 2002. The change in its name and its status occurred based on the National Working Meeting of the Indonesian Council of Ulama in 2002 which was then validated through the Ruling of the Indonesian Council of Ulama No. Kep-09/MUI/XII/2003 on December 24, 2003. Based on this Ruling, the National Sharia Arbitration Board became the only legal entity in Indonesia with its position as the organizational instrument of the Indonesian Council of Ulama in which the management was appointed and discharged by the Indonesian Council of Ulama. Even though this institution was organizationally under the Indonesian Council of Ulama, the National Sharia Arbitration Board, in implementing its duty and function was autonomous and independent.

Basically, the National Sharia Arbitration Board is the realization of tahkim which is institutionalized permanently, similar to the characters of:

- Resolution of disputes outside the Court
- Resolution of disputes voluntarily
- Resolution of disputes performed by the third party (arbitrator/hakam) that is nonaligned and professional in his field
- Arbitrator/hakam is given an authority to make a final and binding decision

The existence of permanent arbitration board is the real need which functions to solve various sharia based economic and business disputes. Through arbitration board, sharia based economic and business disputes in which its operational is in accordance with the Islamic law can be settled by using the Islamic law. In the age of the development of the Islamic financial institution, the National Sharia Arbitration Board becomes the only alternative forum for settling disputes so that it plays an important role in anticipating each incidence of dispute. Nevertheless, the Islamic arbitration still needs to strengthen its existence in order to settle disputes which occur in sharia transactions nationally and internationally.

The existence of the National Sharia Arbitration Board as an Islamic arbitration in Indonesia which implements the resolution of disputes is in accordance with Law No. 30, 1999 concerning Arbitration and Alternative Dispute Resolution. The National Sharia Arbitration Board is the forum for settling muamalat disputes outside religious court chosen by the conflicting parties, based on their agreement in order to settle the incidence of dispute by making decision or giving opinion on legal matters about the dispute. Now-a-days, the National Sharia Arbitration Board is the only Islamic arbitration institution in settling muamalah disputes among the people.

The establishment of the National Sharia Arbitration Board is intended to:

- Settle disputes in civil law by principally prioritizing reconciliation (ishlah)
- Settle business disputes with its sharia based operation using the Islamic law
- Settle the possibility of the incidence of disputes in civil law between sharia banks and their clients or service users and among Muslims who are involved in civil law matters, based on the Islamic canon law
- Settle disputes in righteous and rapid manner which exist in trade, industry, services and so on (Winarta, 2012)

The perspective of the Islamic arbitration in the future will be developing, following the growth of the flourishing sharia financial institutions, not only nationally but also internationally. The advantage of arbitration in Islam is not solely on the confidential principle in the process and the skill of arbitrators which is also the characteristic of arbitration in general. The Islamic arbitration prioritizes the resolution of disputes not only in an efficient way but also by firmly maintaining good relationship among the conflicting parties. Therefore, the resolution of disputes through Islamic arbitration emphasizes peaceful settlement of dispute by implementing the Islamic law which is believed to be the truth (Soemitro, 1996).

Sharia arbitration is the forum for settling disputes, according to legal provisions, law and regulations which plays its role in settling disputes through arbitrators as the third party that is nonaligned by implementing appropriate law which is not contrary to the Islamic canon law. Sharia arbitration has obtained recognition in the Indonesian legal structure and has the same position with other arbitration boards, such as Indonesia National Arbitration Board. Sharia arbitration board becomes the forum for settling disputes in order to uphold true justice, according to the Koran and the Sunna.

RESULTS AND DISCUSSION

Pillars of Islamic arbitration: The National Sharia Arbitration Board as the realization of a permanent Islamic arbitration becomes the real need for settling various muamalat disputes. Besides fulfilling the real need, the Islamic arbitration in Indonesia also has legal umbrella which recognizes its existence, based on the prevailing positive law. As a permanent arbitration organizer board, the National Sharia Arbitration Board is equipped with Procedural Regulation as guidance for settling disputes. Procedural Regulation of National Sharia Arbitration Board is organized according to the regulation stipulated in Law No. 30, 1999 by always paying attention to sharia

characteristic which is adhered to sharia arbitration board. The main pillars which are adhered to the arbitration will be presented below in order to find out the operational pattern of arbitration in Islam.

Arbitration agreement: The main requirement in the process of the resolution of a dispute through an arbitration board is arbitration agreement which is agreed by the conflicting parties. There is no arbitration without being agreed. Arbitration agreement becomes the principal basis for the authority of sharia arbitration in settling a dispute. Arbitration agreement is established, based on the agreement between the conflicting parties in a written form. Agreement is the reflection of the freedom of contract owned by the conflicting parties.

The validity of arbitration agreement must fulfill the legal provisions, law and regulation, made in a written form by the conflicting parties. Besides fulfilling the prevailing regulations and their relevance by the proof in the future in settling a dispute. The arbitration agreement, made in the written form, has four essential functions:

- To yield mandatory consequences
- To prevent Court's intervention in settling disputes of the conflicting parties
- To empower arbitrator in settling a dispute
- To stipulate a procedure in settling a dispute

Presenting the resolution of a dispute to the National Sharia Arbitration Board can be done in two models: first, by attaching arbitration clauses in the draft of the agreement, made before the incidence of dispute (arbitration clauses) and secondly, by the arbitration agreement itself which is made and agreed by the conflicting parties before or after the arbitration submission agreements.

There is no difference which will be considered in the two models of arbitration agreement except at the time the agreement was being made. The two arbitration agreements have the same effect the dispute will not be examined and declared by the Court but through arbitration board. The court does not have any authority to pronounce judgment on the dispute of the conflicting parties who have been bound in the arbitration agreement. The same is true for the conflicting parties since they cannot claim the incidence of dispute to the Court and the Court must refuse to settle the dispute which has been stipulated through arbitration.

The conflicting parties are adhered to arbitration agreement which has been agreed by them, as what has been quoted in the Koran, O ye who believe! Fulfill (all) obligations. And in another part of the Koran, Allah speaks:

> Come not nigh
> To the orphan's property
> Except to improve it,
> Untill he attains the age
> Of the full strength; and fulfil
> (Every) engagement,
> For (every) engagement
> Will be enquired into
> (On the Day of Reckoning)

Both these verses indicate that the agreement (akad) which has been agreed, is binding and must be obeyed by the conflicting parties (pacta sunt servanda) and must be justified to Allah.

It is necessary to note that arbitration Agreement is separated from the principal agreement agreed by the conflicting parties (separability clauses). From the international point of view, the principle of separability is recognized in UNCITRAL Model Law. Arbitration agreement is always in force even though the principal agreement is canceled, nullified and stopped. From the legal point of view, arbitration agreement is autonomous from the principal agreement; therefore, it can always be in force despite the nullity of such contract, except the nullity of contract is also included in the arbitration agreement in which the conflicting parties do not have the capacity in signing the agreement or contract.

Jurisdiction: The Koran has confirmed the possibility of settling a dispute between wife and husband in the household through arbitration (hakam). Outside the relationship problem between wife and husband, there is still the difference of opinion among the scholars of Islamic law about the arbitration jurisdiction in Islam. According to Satria Effendi, a dispute which can be settled and becomes the authority of hakam is only the dispute which be reconciled, such as the dispute which is related to property and an individual right in a household. Az-Zuhaili states that tahkim is allowed to settle a dispute in civil law and ahwal syakhshiyyah such as marriage and divorce.

A problem which is related to hudud (Islamic criminal law) and takzir (punishment less than that prescribed by Islamic law), according to the majority group of the Islamic scholars from mazhab Syafii (school of thought concerning the interpretation of Islamic law), cannot be settled by arbitration (tahkim) because it is included in the authority of Allah or public rights. The Islamic scholars

from mazhab Hanafi state that arbitration cannot settle a dispute which is related to hudud and qisas (lex talionis or retaliation) because settlement through arbitration is the settlement by reconciliation and the decision of hakam (arbitrator) is uncertain (uncertainty/syubhat) while hudud and qisas cases cannot be decided as long as there is uncertainty in it. The Prophet Muhammad says, "Leave out hudud punishment if there is uncertainty" (Hadist, account of Bukhari, Tarmizi and Hakim) (Dahlan, 1996).

In today's development, the coverage of Islamic arbitration authority includes sharia economy. The National Sharia Arbitration Board as an Islamic arbitration institution has its jurisdiction to settle muamalat or civil law disputes in trades, finance, industry, services and so on. Besides settling a dispute, the National Sharia Arbitration Board has the authority to give opinion related to a contract on the request of the parties without any dispute. Referring to the provision in Law No. 30, 1999, the coverage of the authority in commerce includes trade, banking, finance, capital investment, industry and intellectual property rights.

Arbitrator: If the conflicting parties have agreed on the resolution of a dispute through arbitration, they must also agree on the appointment of an arbitrator (hakam). An arbitrator plays an important role in settling a dispute by reconciliation. In order to make a righteous and rapid decision, an arbitrator is expected to have not only skill in the Islamic law in the principal case of a dispute but also skill in stopping dispute peacefully by emphasizing on reconciliation. Therefore, an arbitrator, according to Jafar Shadiq, must fulfill the requirements of intelligent presence of mind or reasoning, broad-minded, experienced, having concern and taqwa (religious devotion) (Thaib, 2012). The next thing about arbitrator (hakam), according to Ali Ben Abu Bakr al-Marginani, is that an arbitrator must fulfill the requirements of being a judge (qadi). It is prohibited to appoint a kafir (non-Muslim), hamba (slave), a person who is punished in hudud because of qazf (false accusation), fasik (someone not meeting the legal requirements of righteousness) and children as a hakam since they are not valid to be witnesses and eventually they are not included as the persons who have the competence to judge (Dahlan 1996).

The National Sharia Arbitration Board states that an arbitrator must fulfill some requirements that he must be a Muslim, be an expert in science have integrity, credibility and good reputation in society, comply with various kinds of prevailing rules and fill out and sign the available forms. Of course, an arbitrator must be an adult and skillful in performing legal action, does not have any relationship with or financial interest in the conflicting parties. Judges, prosecutors, clerks and the other personnel of judicial administration cannot be appointed as arbitrators. There is no prohibition for a woman to be an arbitrator, considering qiyas (reasoning by analogy) with the provision in the Koran which states that a male is equivalent to two females.

Based on the direction from the Koran in settling family feud between wife and husband, it is found that the number of arbitrators (hakam) must be in even numbers, that is, two persons. The resolution of a dispute between a wife and a husband is done by two hakams who come from of each family respectively. The same is true for the incidence of tahkim between Ali and Muawiyat in settling the Shiffin war; it was settled by two arbitrators: Abu Musa Al-Asy'ari from Ali's side and Amr Ben Ash from Muawiyat's side.

The Procedure Regulation of the National Sharia Arbitration Board stipulates that arbitrators can be appointed in a group of people or council that is usually in odd numbers. The appointment of arbitrators in odd numbers is needed in making any decision, based on majority vote when mutual agreement is not reached. The appointment of arbitrators who will examine and deciding the dispute of the conflicting parties is done by the Head of the National Sharia Arbitration Board.

The appointed arbitrators are selected from the members of Arbitrator Board who have been registered in the National Sharia Arbitration Board. When a specific skill is needed in the examination, the Head of the Arbitration Board has the right to appoint an expert in a specific field who is needed to be an arbitrator. When single arbitrator or council has been appointed by the Head of the Arbitration Board, without any objection from the conflicting parties, the arbitrator will use his authority to examine and to decide the dispute on behalf of the National Sharia Arbitration Board.

An arbitrator who has been appointed is prohibited to withdraw except when one or both of the conflicting parties claim the objection on him. In this case, the withdrawal is done by presenting a Letter of Withdrawal to the Head of the National Sharia Arbitration Board.

In performing his authority, an arbitrator must treat the two conflicting parties righteously, without taking side which can cause bias in making the decision. Umar Ben Khattab when he became khalifah (caliph), had differed in opinion with Abi Ben Kaab, an ordinary man. They agreed to settle their dispute through arbitration by appointing Zaid Ben Tsabit as the arbitrator. Zaid was very shocked when he found out that the man who came

to his house was a caliph, Caliph Umar Ben Khattab. It should have been him who visited the caliph's house. Umar Ben Khattab said that it was a duty for him to come to an arbitrator's house in order to ask his consideration. Zaid as the arbitrator asked both of them, Umar Ben Khattab and Abi Ben Kaab, to come into his house and gave a cushion to the caliph. All at once the caliph refused by saying that the action would cause bias for an arbitrator. The characteristic of a caliph gives a hint that an arbitrator must be righteous by giving equal and balanced position to those who ask someone to settle their dispute (Dahlan, 1996).

Applied law: Arbitration as law of procedure and law of the parties will apply the procedure of the prevailing State's law or apply the procedure of law of reconciliation agreed mutually by the conflicting parties (Abdurrasyid, 2011). Law which is in accordance with or not contrary to the Islamic law should be applied in order to settle a dispute through sharia arbitration. The characteristic of sharia which is adhered to arbitration gives a hint of the use of the Islamic law as an applied law in settling a dispute through sharia arbitration. The Koran has required that believers must be faithful to Allah and His Prophet and ulil amri, people who have the authority in power and religion; in this case, the rulers and the Islamic scholars. When there is a dissenting opinion or a dispute, we have to refer to Allah and his Prophet.

> O ye who believe!
> Obey God and obey the Apostle,
> And those charged
> With authority among you,
> If ye differ in anything
> Among yourselves, refer it
> To God and His Apostle,
> If ye do believe in God
> And the Last Day:
> That is best and most suitable
> For final determination

The order to refer all disputes to Allah (the Koran) and His Prophet or Sunna (the path or way of the Prophet, the body of traditions recording the deeds, pronouncements, examples and things silently approved by the Prophet) means that the order to put law into practice should be through ijtihad (interpretation through reasoning and judgment of the Koran code, conclusion formed after careful study of the evidence). Therefore, it legitimates the existence of three sources of the Islamic law: the Koran, Sunna and Ijtihad.

The three sources of the Islamic law are emphasized by the Prophet's Sunna which tells about the dialogue between the Prophet and Muadz Ben Jabal when the latter is ordered to be the judge (qadi) in Yaman. From the dialogue, it is clearly seen the three sources of the Islamic law: the Koran, Sunna and Ijtihad by using reasoning (ra'yu). The three sources are done consecutively by placing the Koran as the principal source, followed by the Prophet's Sunna. If the law is not clearly found in the Koran, then ijtihad by using reasoning (ra'yu) is used.

> The Prophet asked, 'How will you decide on a case which is presented to you?' Muadz answered, 'I will decide by using Allah's Book (the Koran). The Prophet then asked, 'if you do not find it in Allah's Book?' Muadz answered, 'By the Prophet's Sunna (Hadis)' The Prophet asked again,'If you do not find it in the Prophet's Sunna?' Muadz answered, 'I will use my ijtihad with my reasoning and I will not leave it out. The Prophet then beat His chest while saying, 'Alhamdulillah' (praise be to God) who has bestowed piety to His Prophet according to what is blessed by Allah and His Prophet" (Hadis, accounted by Ahmad, Abu Daud and Tarmizi)

The Islamic law becomes the imperative basis to settle a sharia based business dispute through Islamic arbitration. The conflicting parties may use the choice of law as far as they agree on it and is not contrary to sharia regulation. If one of the conflicting parties is non-Muslim, he has to comply with the Islamic law, of course, in the context of the type of dispute.

The Procedure Regulation of the National Sharia Arbitration Board explicitly states about the use of the Islamic law as the basic law in settling a dispute. It is mentioned that arbitration decision must be based on sharia regulation and on legal provisions which are not contrary to sharia. It is also mentioned previously that an arbitrator's decision must be based on legal provisions or on the righteousness and on compatibility (ex aquo et bono).

The award: Among the scholars of Islamic law, there is the dissenting opinion about whether arbitration ruling is biding or not. Some of them argue that arbitral award has binding force without needing the agreement from the conflicting parties. A binding decision is the consequence of the agreement and the choice of the conflicting parties on arbitration. Each party is adhered to their own agreement so that they have to keep it and to carry out voluntarily with good faith.

On the other hand, some of the experts claim that arbitral award is not directly binding, except it has been agreed by the conflicting parties. According to this opinion, the willingness to choose arbitration does not mean that someone automatically agrees on the arbitral award. The agreement of the conflicting parties is needed to make the award binding. If the award is considered binding without the consent of the conflicting parties, the implementation will not be based on the willingness so that it will eventually cause resentment. This is, of course, contrary to the objective of arbitration which is aimed to eliminate the resentment of the conflicting parties.

The ruling of sharia arbitration in Indonesia is final and binding for the conflicting parties, must be obeyed and implemented voluntarily. The nature of final and binding ruling of sharia arbitration does not only mean that the award must be obeyed and implemented voluntarily but also mean that it gives the perception that it does not have any legal remedy and appeal to a higher court as what occurs in Court.

Even though the ruling of sharia arbitration is based on the arbitrator's examination in the hearing process which produces final and binding award, it cannot automatically be executed. The next procedure, by presenting and registering arbitral award to the clerk of the District Court by the arbitrator or his attorney, is needed to carry out an execution. If the arbitral award is not implemented voluntarily, the ruling is implemented based on the instruction of the Head of the District Court on the request for execution by one of the conflicting parties. It means that the implementation of the execution of arbitral award by an arbitrator can only be realized by the instruction for execution from the Head of the District Court. El-Ahdab states that "…most scholars hold that arbitral awards are enforceable in themselves. However, the arbitrator has no authority with respect to enforcement of the award and thus the intervention of the judge is necessary".

The ruling of sharia arbitration is preceded by attaching the word, Basmalah (in the name of God) which is put on the top of the award which says, Bismillahirrohmanirrohim (In the name of God, the Merciful, the Compassionate), followed by Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa (For the Sake of Justice, Based on God the Almighty). The inclusion of the word, Basmalah becomes the characteristic which differs it from arbitral award of non-sharia. The next structure of sharia arbitral award is similar to the other non-sharia arbitral award as it is stipulated in Article 54 of Law No. 30, 1999.

The authority given to sharia arbitration comes to an end when the single arbitrator or council has made the ruling. The examination through the National Sharia Arbitration Board will last at least 180 (one hundred eighty) days since the appointment of arbitrator. The extended time of examination can only be done by an arbitrator when: a request is submitted by one of the conflicting parties about specific case, provisional ruling or other interlocutory rulings is enacted and arbitrator think that it is necessary to extend the period of time for the sake of the examination.

The award by council arbitrator is made based on mutual agreement but if it does not reach any decision, the award is made based on the majority of vote. If the majority of vote is not reached, the Head of the Council Arbitrator can make the award himself and the award is considered to be made by all members of the Arbitrator Council.

CONCLUSION

The existence of arbitration in Islam has the validity which is based on the theorem of the Koran and Sunna, supported by idjma' (consensus of opinion). Indonesia is a nation which recognizes the existence of sharia arbitration besides non-sharia arbitration. Sharia arbitration has the authority in settling muamalat disputes which include trade, finance, industry, services and so on.

Sharia arbitration becomes an alternative forum for settling disputes besides Religious Court in the field of sharia economy. The birth of sharia arbitration board in Indonesia is needed for fulfilling the interest of the people who want to carry out the Islamic canon law and for fulfilling the demand of economic development based on sharia which grows rapidly in society. Therefore, sharia arbitration board was established to settle potential conflicts related to sharia economy by the members of society.

As an alternative of the Religious Court, sharia arbitration becomes an alternative choice for settling disputes, based on sharia principle in the muamalat field. The choice of sharia arbitration is potentially needed by the parties concerned because it has the characteristic of confidentiality in the process, arbitrators' skill and the process which can be based on agreement by the conflicting parties. This characteristic has the possibility to maintain good relationship among those who are in conflict so that business relation always runs productively.

REFERENCES

Abdurrasyid, P., 2011. Arbitration and Alternative Dispute Resolution (APS). Fikahati Aneska Publisher, Jakarta, Indonesia,.

Affandi, N.M.B.N.Y., 2002. Islam and Business. Pelanduk Publications, Selangor,.

Dahlan, A.A., 1996. Ensiklopedi Hukum Islam. Jakarta Ichtiar Baru Van Hoeve, Jakarta, Indonesia,.

Fallahnejad, F., 2016. Studying usury from the jurisprudential and legal perspective in Iran. Soc. Sci., 11: 1277-1282.

Ismail, M., 2007. Introduction to the Practice of Arbitration in Indonesia, Malaysia, Singapore and Australia. Fakultas Hukum UAI, Jakarta, Indonesia,.

Murodi, 2011. Political Reconciliation Muslims: Historical Overview Events Am Al-Jamaah. Kencana Publisher, Jakarta, Indonesia,.

Schacht, J., 1964. An Introduction to Islamic Law. Clarendon Press, Oxford, USA.,.

Soemitro, W., 1996. Principles of Islamic Banking and Related Institutions (MUI & Takaful) in Indonesia. PT. Raja Grafindo Persada, Jakarta, Indonesia,.

Thaib, H., 2012. Peace is Commander of All Law in the Spirit of Law. Rajawali Pers Publisher, Jakarta, Indonesia,.

Winarta, F.H., 2012. Legal Settlement: Indonesia's National and International Arbitration. Sinar Grafika Publisher, Jakarta, Indonesia,.