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PERSPECTIVE OF ARBITRATE INSTITUTIONS TO THE SHUT OF SHARIA BUSINESS (ASH-SHULH WA TAHKIM)

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Abstract

The Qur'an is the main basis of Shari'ah. It states the principles while the sunnah of the Prophet provides the details of their application. For example, the Qur'an says: establish Salah, observe sawm, pay zakah, take decisions by consultation, do not earn or spend in wrong ways but it does not describe how to do these things. It is the sunnah of the Prophet which gives us the details. The Qur'an is the main book of guidance and the Prophet taught how to follow it. The Prophet not only told us how to follow the guidance, but he also practised it himself. The Qur'an has rules for every aspect of life. It is complete and perfect and guarantees us success, welfare, and peace in this life on earth and in the life after death. For example, arbitrate and et all.

Keywords: Arbitration, peace, conflict (conflict), a judiciary

Introduction

The Qur'an views human behaviour, individually or collectively (society), in private life as well as in society, as being under divine command. "He who does not judge (or judge) according to that which Allah hath revealed, they are the disbelievers." (Q.S. al-Maida 5: 44-45; and 47)

Similarly in the letter of al-Baqarah, verse 213, which means:

"Man is one people. (After a dispute arose), God sent the prophets to be glad tidings and warners, and Allah sent them down with the Book correctly, to make decisions among men about the matter in which they disputed. There is no dispute concerning the Book but the one who was sent to them the Book, that is, after coming to them the real testimonies, out of envy among themselves. So Allah gives guidance to those who believe in the truth about what they disputed with His will. And Allah always guides those whom He will in a straight path."

According to Rahman in Law and Ethics in Islam, it is said that the main purpose and purpose of Allah to decrease the books of revelation is to decide various disputed matters and issues among human beings. Therefore, the Qur'an attributes the commandments of prayer or fasting to Allah, and so does the laws concerning various financial (Akad) transactions. Thus, the laws of Islamic jurisprudence are the rules governing the problematic disputes between individuals, individuals, or collectives, both in matters of worship, politics, social, and economics.

However, because the tendency of human instincts to overdo the love of wealth, especially in the economic field sometimes make people forget how to get it, maybe obtained by way of haram and ignore aspects of halal. This act according to Praja (2010: 221) is including

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property and not guided by the rules of sharia, the potential for a dispute to be very large. Islam hates those who seek treasure by justifying any means that lead to dispute.

Understanding of Ash-Shulh (Peace)

In Arabic vocabulary, the word "sulh" literally means breaking quarrels or muffling disputes. According to the term, "sulh" means the type of contract or agreement to terminate the dispute (the burning) between two parties in a peaceful dispute. Thus, ash-Shulh means the deal gained by it removes disputes between two hostile people. (Praja 2012, 227)

Allah Almighty is reconciling to unite between two hostile people and eliminate the divisions between the two. Thus, clean the soul and the feeling of vengeance disappears. Reconcile among human beings including the greatest and most obedient worship, when he does so for the pleasure of God. As in the Qur'an, Surat An-Nisga, verse 114, Allah says:

كَلَّا لَعَنِي نَمُو سَانِلَا نُنَيْب حِلَاضَاوُ أَفُوْرُ عُمُ وَأَقْتَدَصِب رَمَانَّم لِأَمُهَاوَجْن نَم رِيْتِك يَف رِيْح لَا

امْبُطِع اِرْجَاهِيْتُوْن فُوْسَف اللّٰهُ اَضْرَم ءَاَعْتَبَا

"There is no good idea of their whispers, except the whispers of those who ask for charity, virtue, or make peace among humans. And we will give him a big present."

Similarly, in the words of the Messenger of Allah:

نَيْب لَدَعِي سَمَشْلَا هَيْف عَلَطْت مَوِي لِك ,تَقْدَص هَيْلِع سَانِلَا نَم يَمَلَس لِك (هَيْلِع قَقْتَم هَاوْر) تَقْدَص سَانِلَا

"Every joint of man upon him alms, every day that rises his days to him to do justice among men is alms." (Muttafaqun 'alaih)

Peace is prescribed among the Muslims and the unbelievers, among the just and the unjust, between the husband and wife in dispute, among neighbours, kinsman relatives, and friends, among two hostile persons in the matter in addition to a property, and between two people who are hostile in the matter of property.

Settlement of Sharia Economic Dispute

Competition of sticks or reconciliation in Fiqh Muamalah called as-Shulh. According to Shaykh Muhammad bin Ibrahim At-Tuwaijri in the book "Mukhtashar al-Fiqh al-Islami: Kitab al-Mua'amalah", distinguish two dispute settlements about the property. First, the settlement of disputes (reconciliation) about assets based on iqrar (confession). Second, the settlement of peace (dispute) about the problem of denial.

1. Settlement (reconciled) over iqrar (acknowledgement)

As a person has a bill of objects or debt on another person, both do not know the amount and he acknowledges it, and then he reconciles him to something, the law is valid. And if he has a debt bill on it that is due and he acknowledges it, then he gives up some of it and delays the rest, undoubtedly to give up and delay. And if he reconciles from being postponed with part of it at that moment, the law is legal. This peace is only valid if it is not required in iqrar (confession), as it says, 'I acknowledge for it on condition that you give me this,' and not impede its right without it.



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2. Settlement (reconciled) for denial

Settlement (reconciled) for denial as mudda'i (who claimed) has a right that is not known by mudda'a 'alaih (accused), then he denied it. When both are reconciled accordingly, peace is valid. But if one of them lies, the unlawful peace is in his right inwardly, and what he takes is haram.

Muslims are above their requirements, and their peace of mind may be among them except the peace which justifies the haram or forbids the lawful. And the peace that may be the just one commanded by Allah and His apostle. That is what is meant by Allah's approval from him, then the two enemies are happy. And Allah SWT praises it with His word:

"And if a woman is afraid of nushuz or indifference from her husband, then it is okay for both of them to make a real peace, and peace is better (for them) even though man is according to the stingy nature, And if you associate with (nusyuz and indifference), then truly Allah is the Knower of what you do." (Surat an-Nisa, 128)

A just peace has several conditions, most importantly: The appropriateness of two reconciled men, which is legitimate of both syariah transactions, and that peace does not contain halal or halal harbors, and one of the reconciled ones does not lie in his charge, and who reconcile a pious person to reality, know the obligatory, aimed at seeking justice.

Haram on the owner raises something that endangers his neighbor with what he has, a powerful machine or oven (stove) and such as both. If it is not harmful, then why not. And for neighbors over his neighbors there are many rights, most importantly contacting him, doing good to him, not disturbing him, saba for his disturbance, and such as that which is obligatory to a Muslim. From Umar's mother RA. he said: "Rasulullah SAW said: 'Gabriel as always told me by (always doing good) to the neighbors, so I thought that he would inherit it'." (Muttafaqun 'Alaih)

Based on the above description, it can be said that peace over the dispute can be applied to any issues, not least in economic activities. According to Praja (2010: 22) that disputes in the economic context, usually caused by the non-fulfillment of rights and obligations. From this comes the dissatisfaction among the parties, which leads to disputes. In Fiqh Muamalah, as exemplified above, can be solved by three processes of settlement peace, namely as follows:

1. Ash-Shulh (Peace)

In fiqh Islam, the peace process can be done if the parties to the dispute (mushalih) agree to make peace. This agreement is made with the shigat, ijab, and qabul as a sign that the peace takes place on the basis of sincerity, not on the basis of compulsion (under pressure).

The alleged parties (al-'aqidaen / mushalih), shigat, ijab, and qabul, as well as the pledge of agreement to make peace (mushalih 'alaih) are included in the rukun ash-shulh. The position of the pillars in the engagement according to Islamic fiqh becomes a necessity because the rukun is one of the determinants of the realization of the peace process.

In the peace process, there is an agreement pledged by both disputing parties to commit to preserve the peace, as mentioned above. It is from the peace treaty that a legal bond (al-aqdu) is binding on both sides, and each party must respect and guard what it has promised. Allah says, "O you who believe! Fulfill the promises", (Q.S. Al-Maidah, 5: 1). The verse has a spirit of ethics, that every Muslim has an obligation to realize the promise and should not deny it. This ethical spirit has consequences that the covenant in Islam, should not be

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unilaterally canceled. Cancellations can only be made if what is agreed violates the principles of sharia.

At the level of practice, the process of sulh can be done through an intermediary medium or by appointing a guardian agreed by both parties. Furthermore, a deliberation to discuss problems and solutions. Thus, the peace process by way of shulh, actually more musyawarah deliberate to seek the truth and mutual agreement (win-win solution). However, if the process of shulh through this deliberation does not find a common ground or cannot solve the problem, the parties to the dispute may take the next step, namely the court route. Settlement of disputes through courts is an attempt to obtain legal certainty for the parties to the dispute. The decision issued by the court is a decision that must be respected as a legal decision.

2. The area of al-Qadha (Judicial Power)

In the Islamic government and politics of the judicial system (al-qadha - the judicial institution which has the authority to solving madani / civic issues, the original al-ahwal asy-syakhsiyah / family law, and jinayat / criminal matters) between the parties (human) in accordance with the values of sharia, then the judicial system can be divided into two, namely: al-madzalim and al-hisbah. The following is an explanation of each of the two judicial models:

a. Wilayahul Madzalim

According to Abu Sinn (2010: 196) that the judicial system (al-qadha) with the al-madzalim region model is a judicial model in dealing with the arbitrary acts of leaders, officials for injured employees or communities. The duties of al-madzalim are more under the management justice system (the Supreme Court, the Constitutional Court) which concerns the tyranny of employees and the public from government figures or officials.



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According to Praja (2010: 227) that the al-Madzalim area is an institution intended to defend the rights of his persecuted people resulting from the policy of the state deemed impartial or misuse of state power, such as corruption or bribery. Abu Zahrah gives the definition of 'al-madzalim' with 'Territory al-Madzalim', like the al-qadah and or al-Harb (war) areas, as part of the duties of a leader, and he must represent his successor to the person having the competence and integrity to carry it out to the person in charge of the 'al-madzalim' area, is called 'nadir' and is not called 'qadhi' (judge), although it has the power of the judiciary, or as the duties of the judicial system, pure justice.

This al-Madzalim area runs the judicial and execution judgments simultaneously (tanfidz), it encompasses the obvious issues to be exercised, the benefit, the good deeds to be returned to the rightful, it sometimes exercises judicial functions and execution of management (execution, tanfidz).

The Messenger of Allah has performed the function of al-madzalim with this understanding. Narrated in Saheeh hadeeth, Khalid bin Walid kills a person from the Jadzimah tribe, after giving the warning to submit. The Messenger of Allah denied the action and sent Ali bin Abi Talib to come to the tribe to eliminate the tyranny that happened. Murder is a mistake, and the killer is obliged to pay diyat (fine). Then the Messenger of Allah raised his face toward the sky and said: "O Allah, I am free from what Khalid did".

Kulafaur Rashidin also performs the madzalim function as-which is done by the Messenger of Allah. Caliph Umar RA. Very loud to his officials and employees, and said: "I did not send you to hit human skin, for God's sake, I did not bring in an employee to hit human skin without the presence, so I would qishash it. This was also done by Umar r.a to Amr ibn Ash when beating the Egyptians, and he gave qishash, saying, "If you ask people to worship, then their mother has given birth in a state of freedom".

Nevertheless, among the sabbaths of Khulafaur Rashidun, no one has yet sat on 'al-madzalim'. At the beginning of the development of Islam, society determines the person in

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charge of upholding justice, showing the truth or giving advice from the act of tyranny. Ali's friend also performs this function, but he does not specify a certain day to hear the act of injustice, but when some people are oppressed, he gives justice. (Abu Sin, 2010: 196)

At the time of the Umayyads, the caliphs determined the day, the special time to see or hear the act of injustice, then to give justice. This was first done by Abdul Malik bin Marwan who was assisted by Qadhi ibn Idris al-Azdi to give the verdict of the law. Umar bin Abdul Aziz was the person who first performed the function of al-madzalim then continued by the Caliph of the Abbasids who started by 'Al-Mahdi' then al-Hadi followed al-Rashid and Al-Ma'mun until Al-Muhtadi.

Assembly of al-Madzalim area, Abu Sinn said can be perfect with attended by the following groups, namely:

- 1) Lawyers and helpers, provide assistance in case of acts of arbitrariness in judicial decisions.
- 2) Qadhi (judges) and leaders, signaled to the culprit in a straight path, and restored the rights to their owners, and gave testimony to the hostilities that occurred.
- 3) Ahli fiqh, consideration of opinion related to syar'i issue.
- 4) The author records the course of the session and the resulting decision relates to rights and obligations.
- 5) The witness, testifying that what the judge decided did not contradict truth and justice.

According to Abu Sinn (2010: 197) that an officer of al-madzalim region is a person who is known as a wira'i (guard against sin) and pious. The region of al-Madzalim has an urgent task and power to realize the benefit for people's lives. It is an interesting concept to develop in the management of modern management, in particular, to eliminate injustice for the people, officials and employees as well as acts of tyranny committed by state figures, officials or leaders.

b. Al-Hisbah

The meaning of the word hisbah is the same as the amar makruf nahi munkar. Usually, the definition of amar makruf nahi munkar is considered to be synonymous with da'wah in general. But actually, dakwah obligations are more publicized and are pinned on the shoulders of every Muslim individual. While hisbah duty is interpreted as a commanding activity and prohibit. Therefore, the actualization of the practice of hisbah is usually through institutions (Wilayat).

In general, the institution or otherwise known as wilayat al-Hisbah or also called a public order service is one of the qadha regions within the Islamic system of government has the distinction in defining and describing it between concepts and reality in the historical context. Abu Ya'la Muhammad Ibn al-Husein al-Farakhi in al-Ahkam al-Sulthaniyah declares that Wilayat al-Hisbah is doing good deeds by forbidding to do evil.

This definition is too general to describe the Wilayat al-Hisbah itself on the grounds that the Islamic government always strives to enjoin to do good and forbid doing evil. While in the historical context, Wilayat al-Hisbah is one of the institutions of the judiciary whose authority is centered on the places of transactions as seen in the history of the Umayyads and Abbasids, even during the time of the Prophet. However, it is clear that Wilayat al-Hisbah is not a form of Roman cultural influence of empire as revealed by Schacht. According to Al-Mawardi, hisbah is "commanding to do good if the good is not done, and forbidding munkar if there are signs that the munkar is done.

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Al-Mawardi (in Mufi and Fuad 2000, 131) defines hisbah as a form of supervision in the event of a violation of a rule. The person who runs the task is called muhtasib or wali al-hisbah or nazir fil hisbah. Usually, a muhtasib taken from the judges. A judge has the freedom to

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decide a root on the basis of 'urf (habit). 'Urf is different from sharia. However, this institution is naturally born which is likely to be backgrounded by a) the existence of rules in the texts that strictly regulate the sale and purchase system, b) the cues of syara 'form a market in accordance with Islamic Shari'a.

The emergence of the institution of hisbah or in the present language can be simplified into a public order service is an institution that has existed since classical Islam. Precisely at the time of the Islamic government spread across the country. In order to regulate the administration or government at that time, the administration began to be neatly arranged. The Caliph or supreme leader of the government at that time was assisted by the viziers. According to Nasution (1985: 110) that according to his position as the successor of the Prophet in the care of the mundane world of the Ummah, the Caliph is not only the head of State but also the Commander-in-Chief of the Armed Forces. In its function, this caliph is called Amir Al-Mu'minin.

But in addition to the Caliph's function as a substitute for the Prophet, the caliph is also in charge other than running the government, also carrying out the law. At first, the Caliph himself broke the cases that arose in society. People who have a case go directly to the caliph to get a settlement. But then the matter of enforcement of this law is left to the representatives of the Caliphs. Implementation of sharia law is submitted to qadi (judge) and implementation of non-shariah, like qanun (law) to sahid al-syurtah or hajib.

The muhtasib is one of the sahib al-syurtah (security guards) or the police department. Sahib asyurtah is the head of this institution. His job is to prevent criminal offenses, check for violations of the law and punish the guilty. The law he uses, in this case, is that the law exists locally.

Besides Sahib al-Shurtah there is a muhtasib who is in charge of taking care of matters of light violation and violation of moral teachings. Included in the field of duties are offenses on the reduction of scales, and size, sales fraud, debt repayment, usury, alcohol violations, gambling games and parts of it.

In his duties include the implementation of worship, such as the procurement of Friday prayers, people who do not fast in Ramadan, widows who do not care about the time of iddah and so forth. Also included in his power of cruelty to house servants, and pets like poorly fed horses but overloaded. (Nasution, 1985: 117)

This is reinforced by Taufiq Abd. al-Gani al-Rasyasyi that the Wilayat al-Hisbah or institution of hisbah is detached from the power of the caliph (the government). Rasulullah and the caliph al-Rashid at the beginning of the Islamic government directly plunge in carrying out hisbah function, as already mentioned above related to the decision of the case directly handled by the caliph. However, as government affairs grow more and more, this authority is specified in certain institutions which in the future are called Wilayat al-Hisbah.

The above statement is acceptable because it is factually seen that the embryo of this institution existed at the time of the Prophet (s) which at that time his authority was still carried out by the Prophet (s) and after Futuhat al-Makkah the task of market supervision was delegated to Umar Ibn al-Khattab in Medina, and Shahid Ibn Shahid Ibn al-Ash for Makkah. According to Antonio (2007, 219) that at the time of

Khulafa al-Rashidin, hisbah was still held by the caliph in addition to appointing hisbah (muhtasib) officials to exercise the authority of hisbah as Umar Ibn al-Khattab who appointed Sa'id Ibn Yazid, Abdullah Ibn Uthbah, and Ummu al-Syifa as muhtasib. So also in the days of Uthman Ibn Affan and Ali Ibn Thalib. Thus at the time of Prophet SAW and Khulafa al-Rashidin does not clear any separation between Wilayat al-Hisbah with the power of the caliph.

The next period in the time of the Umayyad Daula, Wilayat al-Hisbah had already separated his powers by the power of the caliph. This is seen in the existence of Wilayat al-Hisbah as one of the judiciary institutions (qadha), although the appointment of muhtasib is

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still under the authority of the caliph, as did Muawiyah Ibn Abi Sufyan who appointed Qais Ibn Hamzah al-Mahdaq as muhtasib. This shows that Wilayat al-Hisbah is already separated from the power of the caliph, only the determination of the implementation of hisbah rule is still the task of the caliph. Therefore, the question when will the Wilayat al-Hisbah be officially declared as an institution? According to Hassan Ibrahim Hassan, who was confirmed by Muhammad Salam Madzkur in his book *al-Qadha fi al-Islam* that Wilayat al-Hisbah as an institution with his officers' muhtasib, that is at the time of the Caliph al-Mahdi al-Abbasid (158-199 H / 775 - 785 AD).

During the reign of Abbasid, according to Jalaluddin (2008: 387), the institutionalism of hisbah is still the same as the institution of hisbah in the Umayyad period, but the authority to appoint the muhtasib is no longer in the power of the caliph, but it is up to the qadhi al-qudhah, either to appoint or dismiss it. The system of applying of Wilayat al-Hisbah, muhtasib has no right to decide the law as it is in the area of qadha, muhtasib can only act in small-scale matters and moral offenses which if deemed necessary muhtasib can provide ta'zir punishment against moral violations.

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Based on this matter, the authority of muhtasib is closer to the authority of the police, but the difference is that the muhtasib space is only a matter of decency and public safety, whereas to carry out arrests, detentions, and seizures are not included in its authority. In addition, Muhtasib is also authorized to prevent trade crimes in his position as a market watchdog, including preventing harassment and obstacles, violating the streets, prospering mosques, and preventing malice such as drinking, gambling, etc.

Wilayat al-Hisbah is one of the judicial institutions (qadha) in the system of Islamic government, which has the authority to Amar ma'ruf Nahi munkar. The embryo of this institution has been encountered since the time of Prophet SAW as one of the religious obligations, and during the reign of the Umayyah and Abbasid, this institution was transformed into an institution separate from the power of the caliph.

Wilayat al-Hisbah is authorized to impose penalties against violators of the law. Nevertheless, muhtasib does not impose such punishment directly, but through stages such as advising, remembering, all of which belong to the ta'zir category. However, Wilayat al-Hisbah is only in charge of observing the things that appear (zahir) and already ma'ruf in the community. That is general cases that there are no clash disputes about the obligation to carry it out or leave it, or often also called cases that have become 'uruf (adat) in the daily life of society. The details of cases that are still in the form of anxiety, suspicion, suspicion, and require in-depth investigation, verification, testimony, and oath are not the authority of Wilayah Hisbah, but the authority of other institutions, namely; wilayatul qadha 'or wilayat mazalim.

The institution of hisbah is run to ensure that transactions in the market do not deviate from Islamic teachings in economic activities. The institution of hisbah has the authority to warn, and impose administrative sanctions on economic actors who practice in practice. At the time of Caliph Umar Ibn Khattab, the role of market oversight was carried out by conducting inspections into the market. Overseeing practices that could lead to market distortions, as well as sanctions against distorting market participants and destabilizing market conditions. Supervision conducted to ensure the implementation of the provisions include: 1) Freedom of entry and exit of the market, 2) Arranging promotion and propaganda, 3) Prohibition of stockpiling, 4) Arranging trade intermediaries, 5) Supervision of prices.

In the history of the Islamic Caliphate, there were always institutional institutions formed by the government. The task of this institution is special, namely to exercise social control over general virtues and prevent immoral practices in public, such as lunch in the month of Ramadan and open gambling practices. In addition, he also ordered the establishment of Shari'a, starting from the need to cover the genitals to prayer in congregation at the mosque.

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Now, hisbah has faded and is no longer visible in Islamic countries except the Kingdom of Saudi Arabia, especially in the time of Shaykh Muhammad ibn Abdul Wahhab in the middle of the 12th century H. The space of hisbah never really extends during the time of King Abdul Aziz in power. At that time, hisbah position was handed over to Shaykh Abdul Aziz Abdul Lathif Alu Shaykh, a pious man who was very authoritative and heard his voice. At the time, Hasan Al-Banna enacted hisbah again. His activities have created an achievement that should be used as a reference to restore hisbah into the midst of today's global society.

In the famous book titled "Ahkam al-Sultaniyah", Al-Mawardi clarified his views on the institution of hisbah. According to him, there are some differences between a muhtasib (paid professional officer) and mutatawwi '(volunteer officer). Among the differences are:

- a. The existence of the institution of hisbah is fardu ain, while the volunteer officer fardu kifayah.
- b. For muhtasib, hisbah is a duty and authority that must be implemented and cannot be suspended, while a volunteer, hisbah is a sunnah task that can be suspended.
- c. Muhtasib is the person appointed to receive reports of cases to be reprimanded, while volunteers (volunteers) are not.
- d. Mutashib must serve every person who reports, while volunteers do not.
- e. Muhtasib should investigate a real crime, while volunteers do not.

- f. Muhtasih may appoint servants to be stronger to carry out their duties, while volunteers are not entitled.
- g. Muhtasib may give light punishment (ta'zir), not severe punishment (had), whereas volunteers have no right.
- h. Muhtasib may ask for salary from bait al-mal, while volunteers should not.
- i. Muhtasib may perform ijthad syar'i. Ijthad urfi is related to the regulation in the market and building regulations.

Therefore, a wali hisbah (muhtasib) must meet the requirements. Then a muhtasib must have characteristics; (a) Fair attitude, (b) Independence, (c) Having a view (knowledge), (d) Insightful and keen thoughts, and (e) True in the establishment of religion and possessing knowledge of criminal acts committed in society. The differences and similarities between hisbah and mazalim according to Al-Mawardi as follows:

Madzalim Muhtasib

Equation 1. Both of them both rely on authority which is manifested through the power of position and violence in the way they act.

2. Both may take action to achieve the benefit of the community.

Differences 1. Madzalim is formed to deal 1. Hisbah was formed to alleviate the with matters that cannot be responsibility of the Mazalim officer.

solved by qadi. 2. Obligated to prevent the occurrence of

2. The position of the moral violations and prevent actions mazalim is higher than the that result in the disruption of public hisbah. order

3. The mazalim clerk may 3. Responsible for supervising delegate his duties to the production activities in the market judge (qadi) and muhtasib. 4. Must prevent practices that harm the market

5. Prevent the appearance of theft

6. Check the honesty of traders

7. Spying on socio-economic activities on the market.

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According to Nasution (1985: 119) that mazalim is an institution tasked with solving problems of unfair treatment or persecution carried out by government officials against the people. For example, taxes are too high, illegally seized property and so on. Nazir al-Mazalim has wider powers than qadis, and who acts as Nazir al-mazalim sometimes viziers (ministers) himself.

Al-Mawardi also mentions that the duty of muhtasib to prevent the occurrence of cruise accidents by reminding the owners or riders (boats) to not careless. Included in the responsibilities of muhtasib is the oversight of a residential building which should not be too extravagant. Even muhtasib should pay attention to non-Muslims (ahl dhimmah) not to build their houses higher than Muslim houses. Thus, the formation of hisbah is to minimize the occurrence of human rights abuses.

3. Tahkim (Arbitration)

Arbitration or in Arabic is a translation of TAHKIM, derived from the word "hakama", "yuhakkimu", "tahkiman", has the meaning of making someone as a deterrent to a dispute. In term, TAHKIM is the appointment of the middle interpreter or the referee by both parties in dispute, with the goal of reconciling the dispute experienced by the two parties who appointed him. From this sense, the word tahkim is often paired with the word ARBITRASE, because the notion of tahkim has similarities with the meaning of arbitration.

According to Said Agil Husein al-Munawar, as quoted by Praja (2010, 225), the definition of tahkim according to the Islamic jurists' group of Hanafiyah schools is to separate the dispute or set the law among the people with the binding remarks of both parties sourced from those who have power general. The definition of tahkim according to the Shafi'iyah group, is to separate the dispute between the conflicting parties or more with the law of Allah or declare and set syara 'law against events that must be executed.

The legal basis for dispute settlement through tahkim is contained in the Qur'an, an an-

Nisa, verse 35 which reads:

رَبِّ نَا اِهْلِيَا نَم امكحو هلهيا نم امكح اوْتعباف امهنيب قاش متفخ ناو
 تَا اِهْنِيْب
 اريخ اميلع ك الل نا الل

"And if you are afraid there will be a dispute between the two, then send hakam from the male family and hakam from the female family. If the two priests intend to make improvements, Allah will give the husband taufik. Allah is Knower, the Real.

Based on the above verse, it is clear that the Qur'an invites to make peace if there is any dispute between two or more parties, let there be one who can mediate and reconcile it. The person who reconciles the dispute is called hakam. The capacity of the hakam here is one who has the ability to reconcile and be accepted by the parties to the dispute. For example, there is a dispute in the banking world between the debtor (customer) and the creditor (bank) associated with bad credit. Thus the arbitrator is very urgent.

According to Law Number 30, the Year 1999 on Aribtrase bring fresh air to the banking world because this institution is a medium between banks and debtors. The law says that arbitration is a way of resolving civil disputes outside public courts based on arbitration agreements made in writing made by the parties to the dispute.

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However, Islamic Arbitration is, in particular, a Dispute Settlement Agency by means of arbitration which is carried out in accordance with the guidance of sharia. An arbitration agreement is a written agreement made by the parties to settle any dispute whether or not has

the guidance of sharia. An arbitration agreement is a written agreement made by the parties to settle any dispute whether or not has occurred through arbitration. With the arbitration agreement, the court, both the District Court and the Religious Court, is not authorized to examine and adjudicate the case.

Syariah Business Arbitration Institution

By looking at the growth of the sharia economic system in the early 1990s, and after establishing Bank Muamalah (as the first bank on the basis of syariah bank), the Indonesian Ulema Council with several figures has also considered how to settle the dispute (in case of dispute) appropriately, fairly, and practical, final and binding decisions and have the executive power.

To anticipate and provide comfort in transactions in case of dispute, the government has issued Law no. 3 of 2006 on an amendment to Law no. 7 of 1989 on Religious Courts which is a response from the wishes of the people who need a clear legal umbrella if it is a dispute in the field of Islamic economics. In the aforementioned law, as mentioned in article 49 it is stated that: Religious Courts have the duty and authority to examine, decide and settle cases at the first level between persons of the faith in (a) marriage, (b) inheritance, (c) referees, (d) grants, (e) waqf (f) zakat (g) infak, (h) shadaqah, and (i) Islamic economics.

From Law no. 3 of 2006 Article 29 of this, whether it be one of the academic studies and sharia finance practitioners are to accommodate the dispute resolution process in the field of Islamic economy into the authority of Religious Courts. When the Religious Court as an institution is obeyed by the Law to resolve the sharia economic dispute, all the ranks in the religious court must be clean to prepare institutionally, especially the judges who have the ability in the field of economic dispute sharia.



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According to Praja (2010, 229) that disputes in the field of Islamic economics, include:

(a) dispute of sharia banks, (b) disputes Sharia Micro Finance Institutions; (c) Sharia Risk disputes, (e) Shariah mutual fund disputes, (f) Sharia bond disputes, (g) Sharia Securities Disputes, (h) Shariah Financing Disputes, (i) Sharia Sharia Dispute, (j) disputes on pension funds of sharia financial institutions, and (k) disputes on sharia business.

The process of dispute resolution sharia economy can be done through two ways, namely through the court or out of court. Through the courts mentioned above, it is a wilayatul qadha, but an out-of-court settlement through BASYARNAS (National Syariah Arbitration Board), in accordance with Decree No. MUI. Kep-09 / MUI / XII / 2003, dated 30 Syawwal 1424 H / 24 December 2003 M.

The task of BASYARNAS is to resolve fairly and quickly disputes muamalah (civil) arising in the field of trade, finance, industry, services, and others, and provide a binding opinion at the request of the parties without any dispute on certain issues in an agreement.

Thus it can be concluded that in the Islamic business economy is not spared from the problems that occur both internally and externally. Therefore, the handling of these disputes can be resolved through both judicial and non-judicial proceedings. Through the courts can be implemented by Religious Courts, while outside the religious court through the National Sharia Arbitration Board. Of course, the arbitration institution that provides peace through kinship.