

The Role of Ombudsman Institution on Dispute Resolution of Islamic Finance Institution Based on *Maslahah Mursalah* (Case Study of the Ombudsman Institution of Yogyakarta Special Region, 2018)

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Abstract

Conflicts or disputes can happen to anyone and in any relationship. Conflicts or disputes can be resolved in two ways, namely through litigation institutions (courts) or non-litigation institutions (outside the court). The complexity of the dispute resolution process through litigation institutions (courts) can make many disputing parties resolve conflicts or disputes in non-litigation institutions. Many of the benefits are obtained when resolving disputes in non-litigation institutions are win-win solutions. The purpose of this research is to find out the role of the Ombudsman Institution of Yogyakarta Special Region as a facilitator of dispute resolution of Islamic Finance Institutions and the legal basis used to resolve Islamic finance institution dispute. The type of research is descriptive qualitative. The method used in this study is descriptive field analysis (field research). The method of data collection is by conducting interviews, observation, studying the document then analyzed based on Maslahah Mursalah. The result of this research on the role of the Ombudsman Institute in providing solutions to disputes through several reporting processes, investigation, clarification, mediation, and the existence of the process of judging and legal opinion. This is the implementation or manifestation of the concept of Maslahah Mursalah, which is highly beneficial for many people.

Key Words: *Dispute Resolution, Islamic Financial Institution, the Ombudsman Institution of Yogyakarta, Maslahah Mursalah.*

INTRODUCTION

Financial institutions can never be detached from money. Money has been useful as a tool of exchange by humans and act as a tool of the economy movement. Before beginning of the world trading system, financial institution used the barter system as a tool of the movement of the economy. The barter system is a system of exchange between goods with goods or goods with the services or otherwise.

In the new era, the barter system has a lot of constraints. Therefore, to overcome the barriers, improvements had to be made for the Exchange to be more effective and more efficient. The general definition of money is something that can be generally accepted as means of payment in a particular area or as a means of payment or as a tool to make purchases of goods and services.¹

Islamic financial institutions are built to introduce and develop the application of the Islamic principles, and tradition into the financial transactions, banking transactions and the related business. The majority of Islamic principles embraced by Islamic financial institutions have always put forward the values of fairness, expediency, balance and universal or thorough, with no discrimination. Even at their best, there is still possibility to dispute which sometimes cannot be solved conversationally. Therefore, the world economy must be carefully anticipated. Dispute is the situation that cannot be separated in the human life. In many situations, especially with *muamalah* occurs much critical interface.²

Islam also teaches about the theory of *maslahah* which means any task which has benefit and usefulness. It can also mean acting to benefit and refusing to regard (danger) in order to maintain the goal of sharia (Islamic law).³ In addition, *maslahah* is also defined as every form of goodness for worldly and prolific *ukhrawi*, material and spiritual, as well as individual and collective as well as the need to understand the three items namely Sharia compliance (halal), useful and brings goodness (*thayib*) in all aspects as a whole which does not cause any disadvantageousness. The mediation process that produces

¹Kasmir, *Bank dan Lembaga Keuangan Lainnya*, (Jakarta: PT. RajaGrafindo Persada, 2008) p.13

²Andri Soemitra, *Bank dan Lembaga Keuangan Syariah*, (Jakarta: kencana, 2016) 6th edision, p.33

³Harun, Pemikiran najmun at-Thufi Tentang Konsep Maslahah Sebagai Teori Istinbath Hukum Islam, *Jurnal Digital Ishraqi* Vol 5 No.1, (January-June, 2009) p.24.

a win-win solution will cause the goodness of *maslahah* on both sides.

There are some institutions that resolve disputes outside of the Court, namely: BPSK (Business dispute resolution Bodies), BANI (Indonesia National Board of arbitration), YLKI (Foundation of Consumer Agency Indonesia), LODIY (the Ombudsman Institutions of Yogyakarta Special Region).⁴ The dispute resolution process through the non-litigation has advantages that it produces deals which are “win-win solution” and guarantees the confidentiality of disputes the parties, avoids delay caused due to procedural matters and the administrative, settlements of issues in a comprehensive way within the community, and maintaining a good relationship.⁵

Mediation is a concept that is deemed most suitable by the Supreme Court to carry out the peace process in the case of civil liability are regulated by article 130 HIR/154 Rbg. This view stemmed from the rejection of the assumption that the peace process with the use of the concept of mediation will be considered to have more optimal results compared to the peace process by giving the opportunity to the parties to conduct its own peace. Mediation is a problem-solving negotiation process, where an impartial outside parties (impartial) and neutral works with the parties to the dispute to help them obtain a satisfactory agreement with the agreement.⁶

The Ombudsman Institution as one institution that has the competence to intervene in handling cases and dispute on Islamic financial institutions had an important role in bridging the grooves dispute resolution between the two parties. In practice, the Ombudsman Institution of Yogyakarta Special Region in Sharia business acts to resolve dispute between the parties using the mediation. Uniquely in the movement of the mediation conducted by the Ombudsman Institution of Yogyakarta Special Region, its existence is not as a mediator but a facilitator.

⁴Harun, Pemikiran najmun at-Thufi Tentang Konsep Masalah Sebagai Teori Istinbath Hukum Islam,..... p. 24

⁵Susanti Adi Nugroho, *Mediasi Sebagai Alternatif Penyelesaian Sengketa*, (Jakarta: PT. Telaga Ilmu Indonesia, 2009) p. 1.

⁶Elwalad Meuraksa, M. Amin. Analisis Mediasi Dalam Penyelesaian Sengketa Wanprestasi Perjanjian Sewa Menyewa di Pengadilan Negri Tangerang Dihubungkan Dengan Undang-undang nomor 30 tahun 1999 Tentang Arbitase dan Alternatif Penyelesaian Sengketa (Analisis Putusan No.129/PDT.G/2016/PN.TNG), *Jurnal surya kencana dua: Dinamika Masalah Hukum dan Keadilan* Vol 4 No.1 July 2017. p. 76.

LITERATUR REVIEW

1. Dispute Resolutions

Dispute resolution can be done through litigation and non-litigation channels. Litigation means resolving legal disputes through the courts, while non-litigation means resolving legal disputes outside the court. The path of non-litigation is often referred to as alternative dispute resolution; ADR (Alternative Dispute Resolution).⁷ In resolving disputes out of the court, the parties not through with formal processes that are often expensive and wasting time. Parties only submit their case to third parties to resolve disputes.⁸

According to Islamic law dispute resolution can also be done in two ways, namely in litigation in the courts and in Non-Litigation mediation model for instance Sharia (*ash shulhu*) or arbitration (*at tahkim*), namely among others through Basyarnas (Sharia National Agency).⁹

a) Dispute resolution through court (litigation)

As perpetrators of judicial power, court institutions have the main duty to accept, examine, hear and resolve every case filed. The judiciary is also a milestone of hope for justice seekers in all walks of life who crave justice.¹⁰ Therefore, the court is still relevant to be used as a place to seek truth and justice, including resolving disputes. But according to many people, the court system is ineffective and inefficient, thus the process is lengthy, ranging from appeals, appeals to judicial review.¹¹

⁷Safitri Mukarromah, Kesiapan Hakim dan Peraturan Perundang-undangan Dalam Penyelesaian Sengketa Ekonomi Syariah Di Pengadilan Agama Purwokerto, *ISLAMADINA*, Vol XVIII, No 1, (Purwokerto: Universitas Muhammadiyah Purwokerto, 2017) p.77.

⁸Dewi Tuti Muryati dan B. Rini Heryanti, Pengaturan Dan Mekanisme Penyelesaian Sengketa Non-Litigasi Di Bidang Perdagangan, *Jurnal DINAMIKA SOSBUD* Vol 13 No 1, June 2011. p. 49.

⁹Yudo Paripurno, *Peran Basyarnas dalam penyelesaian sengketa ekonomi syariah*, <http://examinasi.com/2012/01>. Accessed on 10th of January 2019. 15.30 p.m.

¹⁰Dwi Rezki Sri Astarini, *Mediasi Pengadilan*, (Bandung: PT.ALUMNI, December, 2013) p, 41.

¹¹Atang Abd Hakim dan Sofyan Al-Hakim, Kerangka Penyelesaian Sengketa Bisnis Syariah, *AT-TARADHI Jurnal Studi Ekonomi*, Vol 6, No 1 (Bandung: UIN Bandung, June, 2015) p. 34.

b) Dispute resolution outside the court (non-litigation)

Courts are not the only way that can be taken to resolve disputes, because in addition to going through the courts there are other avenues that can be taken to resolve popular disputes as alternative dispute resolution (ADR).¹²

Article 1 paragraph 10 of the Arbitration Act and Alternative Dispute Resolution states:

“Alternative Dispute Resolution is an institution for resolving disputes or disagreements through procedures agreed upon by the parties, namely resolving disputes outside the court through consultations, negotiations, mediations, conciliations, or expert judgments”¹³

Several ways that can be chosen in resolving disputes include:

a) Consultation

Consultation is a personal action between the party (client) and another party who is a consultant, who gives opinions or suggestions to the client to meet the needs and needs of the client.¹⁴

Consultation as a medium for Alternative Dispute Resolution in practice can be in the form of hiring consultants to be consulted in an effort to resolve problems. In this case the consultation is not dominant but only provides public opinion which can later be used as a reference for the parties to resolve the problem.¹⁵

b) Negotiations

Negotiations can be used to resolve any form of dispute, such as economic, political, legal, territorial, family, ethnic and other disputes. The smooth negotiation is determined by the communication skills and insights of the parties, especially in conveying the wishes and listening to the demands and interests of other parties.¹⁶

Negotiating dispute resolution is common place and is the

¹²Dwi Rezki Sri Astarini, *Mediasi Pengadilan*.....p, 60.

¹³Undang-Undang Negara 1945 Tentang Arbitrase Dan Alternative Penyelesaian Sengketa Nomor 30 Tahun 1999 Article 1 Paragraph 10.

¹⁴Musyifikah Ilyas, Tinjauan Hukum Islam Terhadap Musyawarah Dalam Penyelesaian Sengketa Ekonomi Syariah, *Jurnal Al-Qadau, Peradilan dan hukum keluarga islam*. Vol 5 No 2 Desember (Makassar: UIN Alauddin Makassar, 2018) p.233

¹⁵Darwinsyah Manin, Penyelesaian Sengketa Dalam Praktek Ekonomi Syariah Di Luar Pengadilan, *KANUN Jurnal Ilmu Hukum*, No. 53, Th. XIII (April, 2011). p. 10.

¹⁶Dwi Rezki Sri Astarini, *Mediasi Pengadilan*.....p, 79.

first step taken by business people. This is usually included in the contract clause, which states that if a dispute arises regarding the implementation of the contract in the future, the first step in the settlement is through negotiation or deliberation. If there is no agreement away reached in the negotiations, other methods will be carried out, such as mediation, arbitration and litigation.¹⁷

In article 6 paragraph (2) the Law on Arbitration and Alternative Dispute Resolution, states that:¹⁸

“Dispute resolution or difference of opinion through alternative dispute resolution is settled in a direct meeting (negotiation) by the parties within a maximum period of 14 (fourteen) days and the results are counted in a written agreement”

Negotiations are carried out by negotiators starting from the simplest negotiations where the negotiators are interested parties themselves, to providing special negotiators or using lawyers as negotiators.¹⁹ In conclusion, negotiation is a condition where there is a process of bargaining or a speaker to reach an agreement on certain problems that occur between the parties.

c) Mediation

Mediation is basically negotiations involving third parties who have expertise in effective mediation procedures, can assist in conflict situations or coordinate their activities so that in the process of bargaining, if there is no negotiation then there is no mediation.²⁰ Mediation is a peaceful way of resolving disputes that is appropriate, effective and can open wider access to the parties to obtain a satisfactory and equitable solution.²¹ In mediation, third party who will help to resolve the dispute must have standard character that are:²²

¹⁷Nurnaningsih Amriani, *MEDIASI; Alternatif penyelesaian sengketa perdata di pengadilan*, (Jakarta: Raja Grafindo Persada, 2012) p.23-24.

¹⁸Undang-Undang Negara 1945 Tentang Arbitrase Dan Alternative Penyelesaian Sengketa Nomor 30 Tahun 1999 Article 6 Paragraph 2.

¹⁹Munir Fuady, *Arbitrase Nasional, Alternatif Penyelesaian Sengketa Bisnis*, (Bandung: Citra Aditya Bakti, 2000) p. 42.

²⁰Nurnaningsih Ariani, *Mediasi Alternatif Penyelesaian Sengketa Perdata di pengadilan*, (Jakarta: Raja Grafindo Persada, 2011) p. 28.

²¹Peraturan Mahkamah Agung Republik Indonesia, Nomor 1 Tahun 2016. Tentang Prosedur Mediasi Di Pengadilan, p. 1.

²²Nora Abdul Hak and Hanna Ambaras Khan, *Building Strong Communities Through Mediation: Proposing A Legal Framework For Malaysia*, *International*

- (1) Impartiality, a person that be third party in mediation or as mediator must be impartial in any situation.
- (2) Competence, he needs to be competent to conduct mediation sessions. There is no exact assessment to check on mediator competency, but training, skills, and knowledge of a mediator may add value to it.
- (3) Confidentiality, known that mediation is a private process, so the elements of privacy in the mediation process must be protected.
- (4) Conflict of interest, a mediator must avoid conflicts of interest. This problem can arise if the mediator personally knows one party or has had a transaction or previous involvement with that party.
- (5) Compensation and gift, a mediator are prohibited from receiving compensation, fees or gifts from the disputing parties.

d) Conciliation

Conciliation is the creation of adjustments to opinions and resolution of disputes in any atmosphere of friendship and no hostility carried out in court before the start of the trial with the aim of avoiding the litigation process.²³

e) Arbitration

Arbitration is a process of examining a dispute conducted judicially as by the parties to the dispute, and the solution will be based on the evidence submitted by the parties²⁴.

2. Islamic Financial Institutions

Islamic Financial Institutions are financial institutions whose operating principles are based on Islamic sharia principles. The operation of Islamic financial institutions must avoid usury, *gharar* and *maisir*. These things are highly prohibited and have been explained in the Qur'an and Al-Hadist. Islamic financial institutions do not have much difference with conventional financial institutions,

Conference On Dispute Relation 2017 Modern Trends in Effective Dispute Resolution (Malaysia: International Islamic University Malaysia, 2017) p. 41-43

²³Darwinsyah Manin, *Penyelesaian Sengketa Dalam Praktek Ekonomi Syariah Di Luar Pengadilan*, *KANUN Jurnal Ilmu Hukum*, No. 53, Th. XIII (April, 2011) p. 11.

²⁴H. Priyatna Abdurrasyid, *Penyelesaian Sengketa Komersial (Nasional dan Internasional) di luar Pengadilan Pembayaran*, Article, September, 1996, p. 3.

however in Islamic financial institutions they have a principle that is not the same as conventional financial institutions, namely the principle of Islamic law and banking and financial activities based on fatwas issued by institutions that have authority in setting fatwas in the field sharia.²⁵

The means of Islamic finance or sharia finance is the activity of business that base on Islamic principles such as Sharia Bank, Sharia Insurance, Reinsurance, Islamic mutual funds, Sharia Obligation, sharia medium term securities, Sharia Securities, Sharia Pawnee, Islamic financial institution pension funds and then sharia Micro Finance Institution.²⁶

There are two types or two forms of sharia financial institutions, namely Bank Sharia Financial Institutions (Sharia Banks) and Non-Bank Islamic Financial Institutions.

a) Bank Islamic Financial Institutions (Islamic Bank)

Bank financial institutions are business entities that carry out activities in the financial sector by collecting funds from the public in the form of deposits and redistributing them to the community in the form of credit or financing.²⁷

Philosophically a Sharia Financial Institution (Sharia Bank) is a bank whose activities leave usury problems. According to the type it consists of Sharia Commercial Bank and Sharia Community Financing Bank. Islamic banks have interest-free services for their customers, Islamic banks do not use the interest system, both interest in deposit funds and borrowing customers.²⁸

b) Non-Bank Islamic Financial Institutions (Islamic Non-Bank)

Non-bank financial institutions are business entities that carry out financial activities that directly or indirectly raise funds by issuing securities and distributing them to the public to finance company investments.²⁹

²⁵Roifatul Syauqoti and Mohammad Ghazali, Analisis Sistem Lembaga Keuangan Syariah Dan Lembaga Keuangan Konvensional, *IQTISHODUNA*, Vol. 14 No. 1 2018, p. 19.

²⁶Mardani, *Hukum Acara Peradilan Agama*, (Jakarta: Sinar Grafika, 2007) p, 58

²⁷Mardani, *Aspek Hukum Lembaga Keuangan Syariah Di Indonesia*, (Jakarta: KENCANA, 2nd edision, January, 2017), p. 2.

²⁸Roifatul Syauqoti and Mohammad Ghazali, Analisis Sistem Lembaga Keuangan Syariah Dan Lembaga Keuangan Konvensional.....p. 19.

²⁹Mardani, *Aspek Hukum Lembaga Keuangan Syariah Di Indonesia*.....p. 2

Then that includes Non-bank Sharia Financial Institutions, namely:

- 1) Sharia Insurance Institutions
- 2) Islamic Capital Market Institutions
- 3) Sharia Pawnshop Institution
- 4) Sharia Pension Fund Institution
- 5) Syari'ah (Syirkah) Business Institution
- 6) Zakat Institutions
- 7) Endowment Institutions
- 8) Bait al-Mal wa al-Tamwil

3. *Maslahah Mursalah*

a) Definition of *Maslahah Mursalah*

Maslahah in language is the opposite of the word *mafsadah* which means damage. *Maslahah* can be interpreted as the benefit, goodness and the benefits that are expected of something. *Maslahah* is what returns to the solidity of human life and a perfect life. Attracting benefit and discarding destructive things in life can also be called by carrying out life in the world for life in the hereafter.³⁰

Maslahah, literally means benefit or interest. When it is narrowed to *Maslahah Mursalah*, the term indicates that the public interest is not regulated in the same way as lawyer does not regulate. As no textual authority can be found on its validity or otherwise.³¹

Maslahah Mursalah is one of the arguments of Islamic law which is still disputed by the *fiqh* scholars. This *maslahah mursalah* is a proposition to establish a new problem that is explicitly not mentioned in the main source, the Qur'an and the Sunnah, both accepted and rejected.³² Called by *maslahah* because the law is determined based on this *maslahah* can prevent someone from a danger or damage, but on

³⁰Rizal Fahlefi, Implementasi Maslahah Dalam Kegiatan Ekonomi Syariah, *Jurnal JURIS* Volume 14, Nomer 2 (December, 2015) p. 226.

³¹Elvan Syaputra, Faridl Noor Hilal, Muhammad Febriansyah, Issa Qaed, Muhammad Majdy Amiruddin, Muhammad Ridhwan Ab. Aziz, Maslahah as an Islamic Source and its Application in Financial Transaction, *Journal of Research in Humanities and Social Science* Volume 2, issue 5 (Malaysia: May, 2014)

³²Muhammad Al-Tahir Ibn Ashur, *IBN ASHUR Treatise on Maqasid al-Shari'ah*, (London: The International Institute of Islamic Thought, 2006) p. 96.

the contrary *maslahah* can bring benefit and goodness to someone.³³

Jurisprudence scholars agree that *maslahah mursalah* is illegitimate as the legal basis in the field of *ibadah*, because in the field of worship must be practiced as it is inherited by the Prophet Muhammad, and therefore the field of worship does not develop.³⁴

Maslahah Mursalah as a legal proposition originated from the death of the Prophet Muhammad. At that time the revelation of the Qur'an had stopped going down along with the cessation of the words of the Prophet Muhammad. Meanwhile, community problems are growing. From here came the idea of *Maslahah Mursalah* as an option for the proposition of Islamic law.³⁵

b) Terms of *Maslahah Mursalah*

The scholars set different conditions regarding the use of *Maslahah Mursalah*, including:

- 1) Abdul Wahhab Khallaf establishes the terms of use for *maslahah mursalah*, as follows³⁶:
 - a) *Maslahah* is an essential problem, not a problem of wahamiyyah (guess). *Maslahah* is essential to protect the five essentials which are the objectives of sharia (*maqashi sharia*).
 - b) *Maslahah* is general benefit, not individuals or groups.
 - c) This problem must not conflict with the text (the Qur'an and the Sunnah) and *ijma*.
- 2) Imam Al-Ghazali gives several operational conditions about *maslahah mursalah* to be accepted as a basis in establishing Islamic law:³⁷
 - a) *Maslahah* must be in accordance with the purpose of establishing Islamic law, namely maintaining religion, soul, mind, property and honor (descent).

³³Moh. Mufid, *Ushul Fiqh Ekonomi dan Keuangan Kontemporer; dari Teori ke Aplikasi*, (Jakarta: Prenadamedia Group, 2018) p. 118.

³⁴I Satria Effendi, *Ushul Fiqh*, (Jakarta: Kencana, 2005) p. 150-152

³⁵Imron Rosyadi, Pemikiran Asy-Syatibi tentang *Maslahah Mursalah*, *PROFETIKA*, Jurnal Studi Islam Vol.14, No.1, June 2013, p. 79

³⁶Abdul Wahhab Khallaf, *Ilmu Ushul Fiqh* quoted by Prof. Dr. Ahmad Qorib, MA and Dr. Isnaini Harahap, MA, Penerapan *Maslahah Mursalah* Dalam Ekonomi Islam, *Analytica Islamica*, Vol 5, No. 1, 2016. p. 67

³⁷Abdul Hayy Abdul 'Al, *Pengantar Ilmu Ushul Fiqh, Alih Bahasa Muhammad Hisbah, Lc.* (Jakarta: Pustaka Al-Kautsar, 2006) p. 317-319. Lihat juga Wael B. Hallaq. *Sejarah Teori Hukum Islam* (Jakarta: Raja Grafindo Persada, 2000) p. 166.

- b) *Maslahah* must not conflict with the Qur'an, as-sunnah and *ijma'*.
 - c) The *maslahah* occupies the level of *dharuriyyah* (primary), or *hajjiyah* (secondary), which is equivalent to *dharuriyyah*.
 - d) Benefit must be *qath'i* or *zann* which approaches *qath'i*.
 - e) Certain cases require requirements, must be *qath'iyah*, *dharuriyyah*, and *kulliyah*.
- 3) Imam As-Syatibi only requires two criteria in determining *Maslahah Mursalah* as the basis for forming Islamic law, namely:³⁸
- a) *Maslahah* must be in line with the type of action, therefore *maslahah* which is not in line with *syara* actions or contrary to Islamic law cannot be accepted as a basis in establishing Islamic law.
 - b) Problems such as number 1 are not indicated by specific propositions. If there is a specific argument that shows then it is included in *qiyas*.

From the conditions set by the leaders or scholars in the use of *maslahah mursalah*, it can be concluded as follows:

- 1) *Maslahah* must be rational or acceptable to the mind that it brings essential benefits and good generality.
- 2) The conditions that have been determined must be in accordance with the intent or purpose (*maqashid syariah*), which is benefit for humans.
- 3) *Maslahah* should not be opposed to the provisions and objectives of the Sharia that are in the Qur'an, *sunnah* and *ijma'*.
- 4) Even if it is carried out in the demanded and needed. This means that if you practice *maslahah* it will make it difficult for the problem then you don't need to practice it.

DISCUSSION

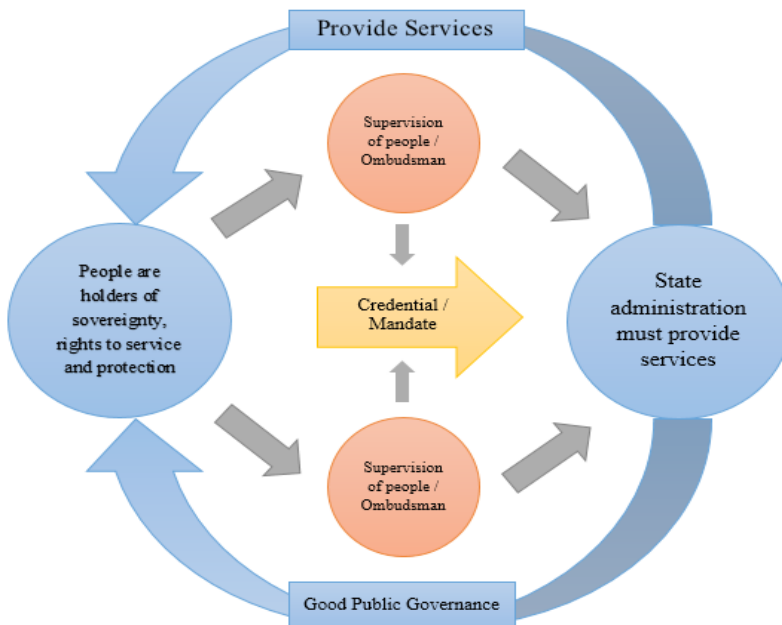
The Role of Ombudsman Institution on Dispute Resolution of Islamic Finance Institution Based on *Maslahah Mursalah*.

The Ombudsman is an institution formed to deal with the abuse of power by official government and to help apparatus to implement government efficiently and fairly, as well as to encourage power

³⁸Agustianto Minka, *Maqashid Syariah dalam Ekonomi dan Keuangan Syariah* (Jakarta: Penerbit Ikatan Ahli Ekonomi Islam Indonesia, 2013) p. 92

holders to carry out accountability and service properly. Generally, the Ombudsman is known as an independent institution that receives and investigates the complaints of people who are victims of public service errors. But in fact the Ombudsman is not just a system for resolving community complaints case by case, the main one is taking the initiative to specialize administrative or systemic improvements in its efforts to improve the quality of public services. Maladministration is a corrupt act which, although it does not cause a state loss, results in losses to the community (citizens and residents) because they do not get good public services (easy, cheap, fast, precise and quality).³⁹

Scheme of relations between the state, the ombudsman and the people



The Ombudsman Institution of Yogyakarta has a function as a supervisory institution, mediating community services towards the implementation of local government and the practice of the business world. In carrying out its duties and perfecting its role the Ombudsman Institution of Yogyakarta Special Region holds the

³⁹Lembaga Ombudsman Swasta, *Pedoman Tata Kelola Usaha Beretika*, (Yogyakarta: Ombudsman Institution, 2013) 1st edition, p. 8.

principle, namely:⁴⁰

1. Independent
2. Impartial
3. Justice
4. Non-discrimination
5. Equation
6. Transparency
7. Accountability

As a facilitator of the principles held by the Ombudsman Institute of Yogyakarta Special Region, it is very necessary for the implementation of the concept of *maslahah* in resolving disputes between the two parties.

1. The process and mechanism of dispute resolution of sharia financial institutions at the Ombudsman Institution of Yogyakarta Special Region.⁴¹

- a. Consultation and receipt of reports

Consultation and receipt of this report is the initial stage and can be done with various media such as telephone, message, e-mail, but for official reports it is expected that the reporter will come directly to the Ombudsman Institution of Yogyakarta Special Region. If the complaint / problem material reported is not the authority of the Ombudsman Institution of Yogyakarta, the report recipient can provide advice including showing the competent institution to handle the problem.

- b. Clarification

Clarification is very necessary to obtain balanced information from both parties. Before the clarification is done, the Ombudsman Institution of Yogyakarta Special Region has to set up a clarification invitation letter to the reported party. A clarification invitation can be made at most 3 times and if the reporter does not respond, then the reporter's statement is considered correct.⁴²

⁴⁰Peraturan Gubernur Daerah Istimewa Yogyakarta Nomor 69 tahun 2014, *Tentang Organisasi dan Tata kelola Lembaga Ombudsman Daerah Istimewa Yogyakarta*, Bagian Kedua, wewenang, pasal 5

⁴¹Lembaga Ombudsman Swasta, *Pedoman Tata Kelola Usaha Beretika*,..... p. 48-67

⁴²The result of Interview conducted with Mrs. Yusticia Eka Noor Ida, S.T as a

c. Mediation

Mediation is done if we have clarified, data, information, and others that have been collapsed. Then offered to both parties, we called both of them and we sat in one room for mediation. There is a form and there are minutes for what the agreement will be. So usually we also offer bids between the two parties. Mediation always balances both sides of balance.⁴³

d. Investigation⁴⁴

In the process of following up on public complaints, an investigative effort is needed to complete the evidence, data and information that will strengthen the analysis of problems in the context of dispute resolution. In investigations, a checklist is needed as a guideline in conducting investigations.

Not all cases entered in the Ombudsman Institution of Yogyakarta are investigated, cases that need to be investigated if:

- 1) Data submitted by the reporter or reported or information obtained by the Ombudsman Institution of Yogyakarta Special Region contradicts each other. Not yet available, incomplete or dubious.
- 2) Investigations are only carried out on the subject matter of the complaint.
- 3) Investigations are only carried out by case supervisors and / or parties designated by the Ombudsman Institution of Yogyakarta specifically.
- 4) Investigations are only for alleged violations of business ethics.
- 5) Investigations carried out do not exceed the handling of cases.
- 6) Investigation does not reveal the realm of personal life.

e. Case Resolution Report and Recommendations

There are two forms of reports from The Ombudsman Institution of Yogyakarta Special Region, namely case resolution report and recommendations. This case resolution report for cases that have been completed without further

commissioner 2018-2021, Head of Research, Development and Institutional Relations. On Friday, 15th of January 2019. 15.30 p.m.

⁴³*Ibid*

⁴⁴Lembaga Ombudsman Swasta, *Pedoman Tata Kelola Usaha Beretika*,.....p. 59-61

stages, and the reported party is not proven to carry out administrative matters or violations and recommendations are the results of reports if it turns out found administrative problems or violations of public services both government or private, and the follow-up of the Ombudsman Institution of Yogyakarta Special Region.⁴⁵

Recommendation is a recommendation / improvement regarding good governance aimed at the reported based on the principles of business ethics. The nature of recommendations issued does not yet have a sanction mechanism. The Ombudsman Institution of Yogyakarta Special Region does not yet have a sanction mechanism if recommendations are not followed up or implemented. The authority of The Ombudsman Institution of Yogyakarta is limited to issuing recommendations. If it is not implemented there is no mechanism for sanctions or penalties. Then there are fields that determine which companies need to be monitored so that companies or government agencies that get recommendations from The Ombudsman Institution of Yogyakarta can be assessed, the extent to which they make these recommendations. So there is also a monitoring and evaluation system.⁴⁶

2. Flow of handling Information and Complaint Reports at the Ombudsman Institution of Yogyakarta Special Region.
 - a. The community (reporter) comes directly to the office of the Ombudsman Institute of the Special Region of Yogyakarta, Jl. Tentara Zeni (Genie) Student No.1A Pingit Kidul, Yogyakarta 55231 or report by telephone to telephone number 0274-554989 or report via SMS to number 08112741000 or report via email to the email address ombudsman.jogja@gmail.com or report via the website at <http://www.lo-diy.or.id> or report through social media officially owned by the Ombudsman Institute of the Special Region of Yogyakarta.
 - b. Hence, the report will immediately be inserted and received by the Receiving Information Staff. There are two possibilities for receipt of reports, which are included in the authority of

⁴⁵The result of Interview conducted with Mrs. Yusticia Eka Noor Ida, S.T as a commissioner 2018-2021, Head of Research, Development and Institutional Relations. On Tuesday, 15th of January 2019. 15.30 p.m.

⁴⁶Lembaga Ombudsman Swasta, *Pedoman Tata Kelola Usaha Beretika*,... p. 65-67.

the Ombudsman Institution of Yogyakarta as written in the governor's regulation 69 of 2014 POS follow-up handling complaints reports or not included.

- c. If it is not included in the authority of the Ombudsman Institution of Yogyakarta, the report is only in the form of information or consultation from the community. Furthermore, the Ombudsman Institution of Yogyakarta will give direction to complete outside the Ombudsman Institution of Yogyakarta.
- d. If it is included in the authority of the Ombudsman Institution of Yogyakarta, the report will be submitted to the complaint report followed by a case meeting (plan for follow-up) and clarification / coordination / investigation / mediation.
- e. From the follow-up process there will be a decision. If in the complaint report there is no maladministration or violation of the principle of business ethics, then the preparation of the draft Case Completion Report is then immediately issued by the Case Completion Report.
- f. If in the complaint report there is a maladministration or violation of the business ethics principle, then a draft recommendation will be drawn up and a plenary meeting will be held after the issuance of recommendations.

Looking at the procedures for resolving sharia financial institutions that have been implemented by the Ombudsman Institution of Yogyakarta Special Region, this has provided good and benefits based on *maslahah mursalah*.

Seeing from the theory of Imam Al-Ghazali and Ash-Syatibi's view that *maslahah* is maintaining the objectives of Sharia includes protecting religion, protecting the soul, protecting the mind, protecting offspring, and protecting property. The theory of *maslahah* which is in resolving the dispute over Islamic financial institutions in the Ombudsman Institution of Yogyakarta Special Region is protecting lives and assets. The problem is in the settlement of disputes of financial institutions is also in accordance the conditions set by the leaders or *ulama*, which concludes that *maslahah* must be rational or acceptable to the mind that it brings essential and benefits. The determined settlement must be in line with the intention or purpose (*maqashid sharia*) that provides benefit for people. *Maslahah* should not be opposed to the provisions and objectives of the Sharia that already exist in the *Qur'an, sunnah and ijma'*. *Maslahah* shall still

be carried out in conditions that are needed. It is meaningfully that if you practice *maslahah* and if it causes any sort of further difficulties for the problem then there is no necessity to practice it.

CONCLUSION

The Islamic financial institution dispute resolution process in The Ombudsman Institute of Yogyakarta Special Region begins with a report from the reporter or the community due to a violation of business ethics to The Ombudsman Institution of Yogyakarta Special Region which will later be accepted by the reception and investigation, after which the reported party is invited to The Ombudsman Institution of Yogyakarta Special Region office formally or in writing for clarification of report. A clarification invitation can be made at most 3 times and if the reporter does not respond, then the reporter's statement is considered correct. If clarification is not enough, then it can go to another stage that is investigation, asking questions related to the problem being reported and asking experts to strengthen existing data. If more detailed information and explanation are needed from the reporter, clarification of the reporter is held. If all data's and information are considered sufficient, a mediation process can be held with an agreement from both parties to mediate.

Several matters in resolving and handling disputes in sharia financial institutions starting from the reporting, clarification, mediation, investigation to recommendations stages are the implementation of the concept of *maslahah mursalah*, namely giving goodness and impacting the good to the majority of the people. The theory of *maslahah mursalah* is also used when resolving disputes in mediation, where there is justice that refers to the benefit of both parties.

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