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# ARBITRASE NASIONAL DENGAN ARBITRASE SYARIAH: SUATU KAJIAN PERBANDINGAN

## ABSTRACT

In the business world, of course, many considerations that underlie the business actors to choose arbitration as a dispute resolution efforts for dispute that will or they face. Among the advantages of arbitration over court based on Arbitration Act are the parties can choose the arbitrator. Although in the arbitration the parties can select arbitrators who are experts in their fields, seem the consideration to establish BASYARNAS (The National Sharia Arbitration Board) at first certainly raises the pros and cons. Based on the description of the background of the above problems then the formulation of the problem is how the comparison between national arbitration and sharia arbitration where the discussion focused on Rules and Procedures of BANI (The Indonesia National Board of Arbitration) and BASYARNAS. The substance of similarities between National arbitration and Sharia arbitration in the same way of resolving disputes other than through the courts or *alqadla*. With regard to the legal basis for the enactment of a national arbitration refers to Law No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution, while sharia arbitration is not set explicitly in the Law No. 30 of 1999 even in this act there is no article that offends the existence of sharia arbitration. The existence of sharia arbitration is recognized



in the elucidation of Article 59 paragraph 1 of Law Number 48 of 2009 concerning the judicial power, which reads referred to arbitration under the provisions of the law including the sharia arbitration. There are some differences between national arbitration and sharia arbitration, the differences are the source of law, the legal principle, the jurisdiction of authority, pre-hearing phase, hearing phase and enforcement of the arbitral award phase.

Keywords: National Arbitration, Sharia Arbitration, Comparative Study

#### Abstrak

Dalam dunia bisnis, tentunya banyak pertimbangan yang mendasari para pelaku bisnis untuk memilih arbitrase sebagai upaya penyelesaian perselisihan yang akan atau mereka hadapi. Diantara kelebihan arbitrase dibandingkan pengadilan berdasarkan UU arbitrase tersebut diatas adalah para pihak dapat memilih arbiter. Walaupun dalam arbitrase para pihak dapat memilih arbiter yang ahli di bidangnya seperti pertimbangan untuk mendirikan BASYARNAS pada mulanya pastilah menimbulkan pro dan kontra, bertitik tolak dari uraian dalam latar belakang permasalahan di atas maka perumusan masalahnya adalah bagaimana perbandingan antara arbitrase nasional dan arbitrase syariah dimana pembahasan difokuskan Peraturan dan Prosedur BANI dengan Peraturan dan Prosedur BASYARNAS. Persamaan substansi antara arbitrase nasional dan arbitrase syariah dimana arbitrase merupakan salah satu cara penyelesaian sengketa selain melalui lembaga pengadilan atau alqadla. Berkaitan dengan dasar hukum berlakunya arbitrase nasional mengacu kepada UU Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa, walaupun arbitrase syariah tidak diatur secara eksplisit dalam UU Nomor 30 Tahun 1999 bahkan UU arbitrase ini tidak ada 1 pasalpun yang menyinggung keberadaan arbitrase syariah. Keberadaan arbitrase syariah diakui dalam Penjelasan Pasal 59 ayat 1 UU Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman yang berbunyi yang dimaksud dengan arbitrase dalam ketentuan UU tersebut termasuk juga arbitrase syariah. Perbedaan antara arbitrase nasional dan arbitrase syariah penulis cermati dalam peraturan prosedur beracara BANI dan BASYARNAS melalui kriteria antara lain sumber hukum, asas, yurisdiksi kewenangan, Tahap pra pemeriksaan meliputi perjanjian arbitrase penunjukan arbiter, pengajuan surat tuntutan dari pemohon, jawaban dari termohon, perintah agar pihak menghadap dalam siding arbitrase, Tahap pemeriksaan meliputi perdamaian, asas pemeriksaan peristiwa, pengambilan putusan, Tahap pelaksanaan putusan meliputi pendaftaran dan pencatatan putusan, eksekusi putusan arbitrase, pembatalan putusan arbitrase

Kata Kunci: Arbitrase Nasional, Arbitrase Syariah, Kajian Perbandingan

## A INTRODUCTION

In the business world, of course, many considerations that underlie the business actors to choose arbitration as a dispute resolution efforts for dispute that will or they face (Mardani, 2010: 101) There are various reasons that can be used by business actors in choosing arbitration as an effort to resolve trade disputes, among others, as stated in the fourth paragraph of the General Elucidation of the Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution are:

Generally, arbitration institutions have advantages as compared to judicial institutions. The advantages include:

1. The confidentiality of the dispute secured between the litigants parties
2. They can avoid delays caused by procedures and administration
3. The parties can select arbitrator who according to their beliefs, have the knowledge, experience and enough background, honest, fair on the issue disputed.

4. The parties may determine the choice of law to resolve the problem, as well as the process and place of the arbitration, and
5. The decision of the arbitrator is a decision binding upon the parties, and through a simple procedure, or can be implemented directly.

Among the advantages of arbitration compared to trial court based on the law, arbitration is the parties can choose the arbitrator which they believe have the knowledge, experience and enough background about the case being disputed in a law-abiding and fair manner, and can choose choice of law which assessed fair to resolve the dispute, hence a fair decision can be achieved for the parties in dispute.

Since the establishment of sharia banks in Indonesia in 1992, the government has made the laws and regulations relating to sharia banking. Now there is a law regulating sharia banking, Law No. 21 of 2008.

Besides the banking institutions, many non-bank financial institutions are now implementing sharia system, including insurance, reinsurance, pawnshops, bonds, capital markets, mutual funds and others. With the fast development of Islamic financial institutions in Indonesia, the possibility of conflict between sharia financial institutions with customers would likely increase. Potential disputes are not only faced by client and sharia financial institutions, but may also occur between clients, between sharia financial institutions, etc.

According to Mardani, sharia business dispute resolution mechanism in civil law can generally be resolved through three alternatives. First, achieved through agreement known as the system of ADR (Alternative Dispute Resolution), Second, through, sharia arbitration institutions. Third through litigation (judicial process in the Religious Court, or District Court, depending on the agreed contract clauses) (Mardani, 2010:101)

Even in Article 55 of Law Number 21 of 2008 regarding sharia Banking emphasized that sharia banking disputes conducted by the court in a religious court, except in the case where parties in dispute have given their consents to settle the dispute in accordance to the agreement, through deliberation, banking mediation, BASYARNAS or other arbitration institution, courts in general court.

Although in the arbitration the parties can select arbitrators who are experts in their fields, but the considerations for establishing BASYARNAS raises pro's and contra's, in reference to Article 55 of the Sharia Banking Law mention before, where it is stated that for the resolving disputes between sharia banking can be done through a BASYARNAS or another arbitration institutions. Furthermore, it presents a comparison between national arbitration and sharia arbitration, the comparison is done to reveal the similarities and differences between both of arbitrations, the discussion of this paper is limited to the comparison between rules of arbitral procedure of BANI and BASYARNAS, so that hopefully it can be used as reference for development of arbitration in the future.



## B. DISCUSSION

There are similarities between the substance of the national arbitration and sharia arbitration, both are ways of resolving disputes outside of the judicial institutions or *alqadla*. Relating to the legal basis, the enactment of a national arbitration refers to the Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, although sharia arbitration is not regulated explicitly in the Law No. 30 of 1999, it is even unmentioned. The existence of sharia arbitration is recognized in the elucidation of Article 59 Paragraph 1 of Law Number 48 of 2009 on Judicial Power, which states: "referred to arbitration under the provisions of the law which also includes sharia arbitration." Arbitration can be temporary (*adhoc*) arbitration or a permanent institution. To know and determine whether the parties agreed to arbitration is a kind of *ad hoc* arbitration or not, it can be seen from the formulation of the clause namely *pactum de compromittendo* or compromise deed which stated that the dispute will be settled by an independent arbitration outside of institutional arbitration. In other words, if the clause states that arbitration will resolve the disputes by a sole arbitration, is a kind of *ad hoc* arbitration. The main features of *ad hoc* arbitration also *volunteer* arbitration, or sole arbitration is the appointment of the arbitrators as individuals. This type of arbitration does not have its own rules or mechanisms, about the hearing procedures for the dispute, a designated *ad hoc* arbitration in Indonesia would have to meet the requirements of the arbitrator appointment as provided in Article 12 of Law arbitration. (Suyud Margono, 2000;123-124)

According to Article 12 of Law arbitration, the parties who may be appointed or designated as arbitrators must meet the following requirements:

1. Being authorized or competent to perform legal actions
2. Being at least 35 years of age
3. Having no family relationship by blood or marriage, to the second degree with either of the disputing parties.
4. Having no financial or other interest in the arbitration award, and
5. Having at least 15 years experience and active mastery in the field.

To ensure objectivity in examining and given award by the arbitrator or the arbitral tribunal so that judge, prosecutors, clerks of courts, and other government or court officials cannot be designated or appointed as an arbitrator.

*Adhoc* Arbitration can also be implemented according to the rules deliberately formed for the purpose of arbitration as agreed by the parties, such as Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution or the UNCITRAL Arbitration Rules. Because incidental *adhoc* arbitration, can only resolve and decide disputes of a particular case, once the dispute is decided, the existence of an *adhoc* arbitration is exterminated and ends automatically. In contrast to the arbitration institution, which is a permanent institution.

In general, *ad hoc* arbitration is determined based on agreements that containing the ap-

pointment of the sole arbitrator or the arbitral tribunal, as well as procedures for implementing, as agreed by the parties. The use of ad hoc arbitration needs to be mentioned in an arbitration clause. If the a clause pactum de compromittendo or compromise deed states the dispute will be resolved by an independent arbitration outside institutional arbitration, or in other words if a clause states that arbitration will be resolved by sole arbitrator therefore the arbitration agreement is of aadhoc arbitration type,(Yahya Harahap, 2004;105) with reference to the prevailing arbitration law in conducting the hearing (Radian Adi Nugraha, 2011;1)

Arbitration institution is a permanent institution managed by various arbitration body under the rules that they set themselves. In Indonesia there are several arbitration institutions namely BANI (Indonesian National Board of Arbitration), BAPMI (Indonesian Capital Market Arbitration Board), BASYARNAS (National Sharia Arbitration Board)

This paper examines the differences between national arbitration and sharia arbitration, in the rules of hearing procedure of BANI and BASYARNAS through criteria such as:

#### 1. Sources of Law

Formal sources of law between national arbitration and sharia arbitration, is the same, which refers to Law No. 30 of 1999 concerning Arbitration and ADR, Law No. 48 of 2009 on Judicial Power Article 58 to 59, arbitration award executed according to the provisions contained in Article 637 and Article 639 Rv, although sharia arbitration is not regulated explicitly in the Law No. 30 of 1999, it is even unmentioned. The existence of sharia arbitration is recognized in the elucidation of article 59 paragraph 1 of Law Number 48 of 2009 on Judicial Power, which states: "referred to arbitration under the provisions of the law which also includes sharia arbitration."

BANI and BASYARNAS still refer to the provisions of Article 637 and Article 639 Rv, though according to Law No. 30 of 1999 concerning Arbitration and ADR article 81 which states that when the arbitration act applies, the provisions of the arbitration is referred to Article 615 to Article 651 Rv and Article 377 of the HIR and Article 705 RBg are declared invalid.

While for the source of substantive law, BASYARNAS should use sharia law or national law, which are not contrary to the sharia principle. Sharia principles shall mean not only based on the sources of Islamic law, which includes the legal provisions contained in the books of fiqh. Sharia principles also mean conformity to the provisions of positive law made by the legislative body, as long as it is not contrary to the Islamic values. It is possible for the arbitrator to explore the legal values that live in the community, as long as it is not contrary to sharia principles. In contrast to the national arbitration, the material legal source is the law relating to the scope of the trade. This is in line with the content of Article 55 of Law Number 21 of 2008 concerning Sharia Banking in order to reinforce the principle of freedom of contract in Muamalah dispute resolution, the parties are free to determine the procedures and media that are used in resolution disputes as long as not contrary to the sharia principles, so that the parties may choose BANI to resolve the dispute over Islamic banking, but legal material used should conform to sharia law or national law which are not contrary to the sharia law.



## 2. The Legal principle

The legal principle that apply in national arbitration can be used in Sharia arbitration, there is only an additional principle that applies to the sharia arbitration namely all arbitration procedures shall follow the sharia principle. In connection with these principles, the purpose of arbitration is to resolve the disputes in trade or business and industry, and personal rights that can be controlled entirely by the parties to issue a decision quickly and fairly, without any formalities or complicated procedures that can delay dispute resolution. (Sudiarto and Zaeni Asyhadie, 2004;32)

## 3. Jurisdiction Authorities

There is no difference between BANI jurisdiction authority and BASYARNAS that resolve the civil disputes in the areas of trade, industry, finance, but in rules of arbitral procedure of BANI, the dispute may be a national disputes and international disputes. In the rules of arbitral procedure of BASYARNAS are not given explicit provision that trade disputes are disputes of Islamic finance as listed in the Compilation of *Sharia* Economics Law.

## 4. Arbitration Proceedings Phase

In general, regulating the proceedings between BANI and BASYARNAS about Rules of arbitral procedures is relatively the same, with the specificity of each, which is divided into 3 Stages:

A Pre-hearings Stage (preliminary stage) includes the arbitration agreement, appointing the arbitrator, submission of the request for arbitration from the claimant, respondent's answer, and the arbitrator orders that the both parties to appear before an arbitration session.

### 1) Arbitration agreement

In the tradition of Islamic fiqh, according to Prof. Yahya Harahap, an institution known as Hakam is referred for arbitration. This Hakam institutions deals only with ad hoc arbitration, there are similarities found between the Hakam system and the arbitration system namely:

- a) Resolution disputes conducted voluntarily
- b) Outside the formal justice
- c) Each of the parties in dispute appoints one or more persons considered capable, honest and independent.

While the similarities in terms of authority are:

- a) To act as arbitral tribunal
- b) It can not be withdrawn once appointed
- c) Full Authority to resolve the dispute by render an award is final and binding. (Al Fitri, tth;6)

### 2) Appointment of arbitrator

There is a difference between the rules and procedures of BANI and BASYARNAS, related to the appointing of arbitrator. In BANI rules, each party appoints an arbitrator in the claimant's

claim and the respondent's answer. The Chairman of BANI then choose an arbitrator who will become chairman of the arbitral tribunal who examine the dispute. The arbitrator appointed as chairman is chosen by considering suggestions of the arbitrators of each party, that each arbitrators nominate two candidates of the BANI arbitrator, whereas the BASYARNAS procedure, Chairman of BASYARNAS assign and appoint the sole arbitrator or arbitral tribunal, immediately after the request for arbitration is submitted to BASYARNAS, or arbitration clause is considered enough determined based on difficult or easy dispute. Arbitrators appointed by the Chairman of BASYARNAS are selected from members of the arbitrators are registered by BASYARNAS. However, in case where the examination requires a special skill, Chairman of BASYARNAS is entitled to appoint an expert in the particular field required to be an arbitrator.

If one or both parties have objections to the arbitrator appointed by the Chairman of BASYARNAS, this objection has been submitted by the parties no later than the first hearing, with reasons based on law. Immediately after completion of the first hearing examination or at the latest within seven days the sole arbitrator or arbitral tribunal will process the objection to the Chairman of BASYARNAS and in three days at the latest, the chairman of BASYARNAS will provide determination whether the objection is accepted or rejected with reasons. If the objection is accepted, the chairman of BASYARNAS will appoint another arbitrator

Any objection to the arbitrator appointed by the Chairman of BASYARNAS submitted by one or both parties, does not reduce the obligation of the respondent to provide a written answer, as determined.

### 3) *The Request for arbitration from the claimant*

Basically for submission of a request for arbitration, either in BANI or BASYARNAS, there is no substantial difference; There is only a difference to those who cannot afford the registration fee. In BANI registration will not be proceeded by the secretary if the costs of registration and administration or hearing as set out in the regulations on arbitration costs have not been paid in full by the claimant. In contrast to BASYARNAS, if the claimant is unable to pay the registration fees and others that can be verified by an official certificate at least from by the local village chief or headman, the Chairman of BASYARNAS may assign his discretion.

In addition, the difference between BANI and BASYARNAS is notification period for can not be receipt of the arbitration request by the claimant. In BANI, the decision on the non-acceptance of the arbitration request is notified to the claimant not later than 30 (thirty) days and only hearing cost returned to the claimant. The BANI arbitration costs consist of: registration fee of Rp 2,000,000, cost of administration, cost for each hearing to *konpensasi* and *rekompensi* and cost of arbitrator honorarium is arranged or set on the table, charge for calls and trips for witness or expert paid by the party requesting and the cost must be paid in advance to the secretariat of BANI. The cost for a binding opinion, determined by the Chairman of BANI according to the severity of the issue of the requested opinion. If the arbitrator or arbitral tribunal needs to take a



trip to the local inspection, the cost of the trip is charged to both parties, each half. The cost must be paid in advance to the Secretariat of BANI.

While on BASYARNAS statement cannot be receipt of the claim can also be done by a sole arbitrator or the arbitral tribunal within a period not later than fourteen days from the date of registration of the claim. All costs that have been paid by the applicant will be refunded, except the cost of registration and administration, if the chairman of BASYARNAS cannot accept the application.

#### *4) The Responses of the Respondent*

The provision about deadline that is given to the Respondent to provide answers in BANI and BASYARNAS is the same, that is 30 days from the date when notification is received. The provision of period is different from Arbitration Law Article 39 which determines the time limit of 14 days from the date when a copy of notification or claim is received by the respondent. The difference between BANI and BASYARNAS is about delivery period and the notice of the request sent to the respondent. In Article 5, paragraph 1 of Rules of arbitral procedure of BANI do not specify a time limit. In contrast to BASYARNAS that a copy of request and order to respond and give a written reply to the Respondent should be submitted not later than eight days after the determination or appointment of a sole arbiter or the arbitral tribunal.

#### *5) The Orders to both parties to appear before a session of the arbitration*

In this provision between BANI and BASYARNAS no difference, the difference in only about delivery time-frame response and the decision of the arbitration only when the respondent is not present in the hearing of the dispute which is different from the provision set out in the arbitration act. The arbitration act gives a period of 14 (fourteen) days for the respondent to submit a response, if the respondent does not submit a response, the respondent will be called back. In contrast to BANI and BASYARNAS, the given timeframe is 30 days. When the appointed day and the respondent does not have a legitimate reason, while the respondent has been properly informed, arbitrator or the arbitral tribunal will perform the calling soon. Maximum of 10 (ten) days after the second call is received and if the respondent still does not attend the proceedings without a legitimate reason, the hearing will be processed without presence of the respondent and the demands of the claimant will be granted in full, except if demands are not unreasonable or not based on law. Within fourteen (14) days after the notification of the award, the respondent has the right to oppose the award. The request for opposition is filed in the same way as a request to arbitration, except that the opposer has not to pay registration and administration costs. When on the day the request for opposition is to be heard by the tribunal, the respondent does not appear notwithstanding he is duly notified, the tribunal will confirm the award. When both parties appear, the hearings will be held as from the beginning in accordance with the stipulations in the following articles. When on the fixed day, the claimant, notwithstanding he

has been duly summoned, does not appear, the tribunal will declare his request for arbitration cancelled.

While in arbitration act given time period of 14 days. According to the arbitration Law, when the respondent does not attend the proceedings without a legitimate reason, the hearing will be processed without presence of the respondent and the claim of the claimant will be granted in full, except if claims are not unreasonable or not based on law.

#### **5. Hearing stage includes: peace, initial examination of the case, examination of the evidence and discussion, arbitration award**

##### **a Peace**

There are no differences between BANI and BASYARNAS on the provision of peace.

##### **b Initial examination of the case**

Basically these both arbitration bodies have similar rules regarding the calling of a witness or expert witness as well as regarding revocation of request, the difference is found in the cost when a witness or experts is needed or conducted on the initiative of sole or the tribunal, the costs are borne by the parties equally in BASYARNAS, while BANI does not regulate this provision strictly.

##### **c The arbitration award**

The Arbitration award is given in a period of 30 days after the hearings process is close; this provision is regulated in the Rules of Arbitral Procedures of BANI, whereas in the rules of Arbitral procedure of BASYARNAS it is not regulated.

A heading to the BASYARNAS award begins with the sentence *Bismillahirrahmanirrahim*, followed by for the sake of Justice Based on the Belief in the Almighty God". According BASYARNAS, sole arbitrator or council of arbitrators should decide based on propriety and justice in accordance with the provisions of law applicable to the agreement which caused the disputes agreed by the parties.

In contrast to BANI, a heading to the BANI award only containing the sentences For the sake of Justice Based on the Belief in the Almighty God and the rules of arbitral procedurs of BANI not regulate what the basis of award-making by the Arbitrator; The approach of this is through the provision of BANI, Article 19 which reads the arbitration award executed according to the provisions contained in Articles 637 and 639 RV (Reglement op de Rechtsvordering). Things that are not regulated in BANI referring to what outlined in Article RV, namely the arbitration award is determined by the law, and may be determined by *ex aequo et bono* if it is expressly agreed by the parties in the arbitration agreement.



## 6. Enforcement of the Arbitration Award Phase includes: registration , enforcement,annulment of arbitration award

### a. Registration of arbitration award

If the provisions of Article 59 in Law Arbitration in comparison with Article 17 and Article 18 the rules of arbitral procedures of BANI, obviously there is a very noticeable difference. The difference is that according to the provisions of Article 59 of Arbitration Law, the registration must be made within one month, although it is uncertain whether the parties want to execute the arbitration award voluntary or not. However, meanwhile according to Article 17 and Article 18 of the Rules of arbitral Procedure of BANI registrations done after the parties do not want to proceed the arbitration award voluntary until a certain time-limit has been set.

There is no difference between the Rules of arbitral Procedure of BANI and BASYARNAS , both referring to Rv, and not referring to the Arbitration Law, whereas according to the Arbitration Law Article 81 stated that with the enactment of the Arbitration Law, then Rv becomes invalid.

### b. The enforcement of arbitration award

The Provision concerning the enforcement of BANI and BASYARNAS award is not regulated in the rules of arbitral procedures of BANI and BASYARNAS, but the Arbitration Law provisions stipulated in Article 60 to Article 64.

In the rule of arbitral procedure of BANI only regulates, the cost of enforcement of an arbitration award, which is set between the Chairman of BANI and the Chairman of the Court concerned. The fee charged to the party that has been defeated, and not voluntarily comply the award.. In Law No. 48 of 2009 article 59, which reads: If the parties do not enforcement the arbitration award voluntarily, the award will be enforced by the order from the chief judge of the district court, upon request of either party of the dispute, in the elucidation of Article 59, it is stated that the reference to arbitration is under this provision, including Sharia arbitration, so that register the arbitration award given by BASYARNAS, it must done in the district court, this raises pros and cons in the community, on the reason why the registration is not done in a religious court.

### c. Annulment of arbitration award

The rules of arbitral procedures of BANI do not regulate the annulment of the award, in contrary to the rules of arbitral procedure of BASYARNAS and the Arbitration Act, the differences are only which states regulations on, the reasons of annulment, the time limit for submit the annulment and who have authority to render the award annulment. In the rule of arbitral procedure of BASYARNAS, the reason for the annulment of award, can only be done by one of the following reasons;

a) Appointment of a sole arbitrator or the arbitral tribunal is not in accordance with the provi-

- sions set forth in the rule of arbitral procedures of BASYARNAS
- b) The arbitration award beyond the authority of BASYARNAS
  - c) The arbitration award rendered in excess of that required by the parties
  - d) There is a deviation between a member of the arbitrator
  - e) The arbitration award deviates from the provisions of the rules procedure of BA.SYARNAS

The period for annulment of an arbitration award no later than within sixty (60) days from the date the arbitration award is received to the party, except on reason of fraud and it is valid for a long time in the period of 3 years from the arbitration award handed down. Within 40 days of annulment request received secretary, chairman of the BASYARNAS should form the adhoc committee consisting of three persons who will examine and decide the annulment. If the committee granted the annulment, the original dispute arose again and the request of either party be submitted for resolution to BASYARNAS and it is formed a sole arbitrator or the tribunal in accordance with the provisions of the new appointment of arbitrator. There is no time limit given to the committee to complete the annulment of arbitration award, in contrary to the provisions stipulate in arbitration act namely

- a) Letters or documents submitted the hearings are acknowledged to be false or forged or declared to be forgeries after the award has been rendered.
- b) After the award has been rendered documents are founded which are decisive in nature and which deliberately concealed by the opposing party or
- c) The award was rendered as result of fraud committed by one of the parties to the dispute.

An application for annulment of an arbitration award must be submitted in writing within not more than thirty (30) days from the date such arbitration award was submitted for registration to the clerk to the district court. The party has authority to process an annulment request upon an arbitration award, is Chief judge of the applicable district court. If the application is granted the chief judge of the district court shall determine further the consequences of the annulment of the whole, or a part of the arbitration award. The decision on the application for annulment shall be made by the chief judge of the district court within not more than thirty (30) days from receipt of the aforesaid application. An application for an appeal against the decision of the district court may be made to the supreme court, which latter shall decide the dispute in the first and final. The Supreme court shall consider and decide upon any such application to appeal, within not more than thirty (30) days after such application to appeal is received by the supreme court.

#### **D. CONCLUSIONS AND RECOMMENDATIONS**

1. There are substantial similarities between national arbitration and sharia arbitration, arbitration is one way of resolving disputes other than through court institution or *alqadla*. Relating



to the legal basis, validity of the national arbitration refers to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, although *Sharia* arbitration is not set explicitly in Law No. 30 of 1999, not even one article in this arbitration law, that mentions the existence of *Sharia* arbitration. The existence of *Sharia* arbitration is recognized in the elucidation of Article 59 paragraph 1 of Law No. 48 of 2009, concerning the judicial power, which reads: referred to arbitration under the provisions of the law including the *Sharia* arbitration.

2. The writer examines differences between the national arbitration and *Sharia* arbitration, contained in the regulation for procedure and proceedings of both BANI and BASYARNAS, the following criteria are: the source of law, the legal principle, the jurisdiction of authority, pre-hearing phase, hearing phase and enforcement of the arbitral award phase.

## E RECOMMENDATIONS / SUGGESTIONS

There should be revisions for Arbitration Act that regulates arbitration so that it may fulfill the needs of *Sharia* arbitration practice.

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