

AMICABLE AS THE PRINCIPAL MISSION IN A DISPUTE RESOLUTION THROUGH SHARIA ARBITRATION

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ABSTRACT

Feud or dispute which occurs in legal relation of a commercial contract such as in trade and investment usually cannot be settled by the parties concerned themselves; therefore, the involvement of the third party that is neutral is needed to help settle it. The disputing parties (disputants) should hand in the dispute to an arbitrator who acts as a mediator or arbiter in settling it. The objective of settling a dispute is to create the amicable so that contractual relationship of the disputants can continue after the dispute has been settled. Amicable becomes the principal mission in settling a dispute through sharia arbitration.

Keywords: *Amicable, Islamic Arbitration, Dispute Resolution*

1. INTRODUCTION

Dispute resolution which involves the third party has long been practiced, either in the form of litigation or in the form of non-litigation. A non-litigation form of settling a dispute is conducted outside the formal judicial process established by 20 government. In the modern atmosphere, settling a dispute out of judicial process is known as an 'Alternative Dispute Resolution' (ADR). This type of dispute resolution has been developed either in the developed countries or in the developing countries.¹ Dispute resolution out of court has the characteristic of not being publicized; it is confidential, and the process is relatively fast and efficient. Moreover, the objective of dispute resolution through ADR is a win-win solution and not as a win-lose solution as what occurs in a litigation process in court.²

Arbitration is one of the types of ADR (alternative to litigation),³ which plays an important role as the forum for settling a commercial contract which is mostly selected by many people in carrying arbitration clause in their contracts.⁴ Arbitration constitutes the main and the oldest alternative form of dispute resolution selected by conflicting parties by ignoring the Court's authority to investigate their cases.⁵ Arbitration as a forum for settling a dispute, which has the characteristic of private agencies, is selected by disputants with some considerations. Besides avoiding expensive cost and the complexity of litigation process caused by consuming procedure and administration, dispute resolution through arbitration is also related to the attempt to ease the workload of courts.⁶ The qualified skill of arbitrators or arbiters in their respective fields which are in line with the objects of dispute becomes the priority of the conflicting

1 Komar Kantaatmadji, 7 "Beberapa Masalah Dalam Penerapan ADR Di Indonesia," in Hendarmin Djarab, Rudi M. Rizki, and Lili Irahati (eds.), 8 Aspek Pelaksanaan Arbitrase Di Indonesia, (Bandung: Citra Aditya Bakti, 2001), p. 38

2 Mans Hendra Winarta, Hukum Penyelesaian Sengketa, Arbitrase Nasional Indonesia dan Internasional, (Jakarta: Sinar Grafika, 2012), p. 9

3 Suyud Margono, ADR (Alternative Dispute Resolution) & Arbitrase: Proses Pelembagaan dan Aspek Hukum, (Jakarta: Ghalia Indonesia, 2000), p.36

4 Juala Adolf, "Beberapa Catatan Tentang Arbitrase Dalam Milenium Baru," in Hendarmin Djarab, Rudi M. Rizki, and Lili Irahati (eds.) 7 Aspek Pelaksanaan Arbitrase Di Indonesia, (Bandung: Citra Aditya Bakti, 2001), p. 75

5 David Kelly, Ann Holmes, Ruth Hayward, Business Law, (London: Cavendish Publishing Limited, 2002), p. 7

6 Ronald A. Anderson, Ivan Fox, David P. Twomey, Business Law, (Cincinnati: South-Western Publishing, 1984), p. 6

parties in selecting arbitration. A skill constitutes one of the guarantees toward confidence because without confidence, the forum for arbitration cannot function properly.⁷

Dispute resolution through arbitration has been known long before the existence of modern governments. It is noted that the practice of arbitration had been done in Ur and Mesopotamia since about 2800 BC.⁸ In its modern development, various countries have had institutions and rules which regulate arbitration, and, internationally, various institutions and agreements or conventions had been created as the instruments of arbitration, such as 1965 Washington Convention which bore ICSID Convention, 1958 New York Convention, and Uncitral Model Law.

Islam also has an important contribution to the development of arbitration. Arbitration in the Islamic legal thought, which is called *tahkim*, has had long history since the Arab pre-Islamic tradition. Before Muhammad became a Prophet, he had been an arbitrator in settling disputes among the people in Mecca in his attempt to put back *hajar al-aswad* on its original place.

The coming of Islam carried on the existence of *tahkim* and adapted it to sharia principle revealed by Allah to the Prophet Muhammad. The recognition of the implementation of arbitration (*tahkim*) is carried on in Islam because it has positive and constructive values since it contains negotiation and amicable settlement.⁹ In the midst of the Islamic business and economic development nowadays, the existence of arbitration becomes increasingly urgent in settling disputes which may occur among business people. Dispute resolution through arbitration becomes one of the principles which is highly put forward in maintaining the economic prosperity and social harmony. If there is a dispute, Islam proposes to be settled by an independent and reliable arbitrator.¹⁰

The basic principle of arbitration which has the characteristic of contract is found in the Holy Quran which indicates the Islamic recognition of arbitration:

God doth command you
To render back your Trusts
To those to whom they are due;
And when ye judge
Between man and man, that ye judge with justice;
Verily how excellent
Is the teaching which He giveth you!
For God is He who heareth
And seeth all things.¹¹

The Prophet Muhammad recognized arbitration, and he had been an arbitrator in handling cases. He sometimes appointed arbitrators and acknowledged their decisions. The Prophet himself proposed *kabilah* or tribes to perform arbitration in order to settle disputes when they occurred.¹² Therefore, the Prophet Muhammad could accept Abu Syuraih to take the initiative to be an arbitrator for his people in settling disputes among them.

2. METHODOLOGY

The Concept of Arbitration in Islam

The validation of arbitration has been recognized by the Holy Quran, *As-Sunnah*, and *Ijmak* or the consensus of *ulamas*.¹³ The verse of the Holy Quran which always becomes the foundation for the recognition of arbitration in the Islamic law is *An-Nisa*: 35,

⁷ Eman Suparman, *Arbitrase & Dilema Penegakan Keadilan*, (Jakarta: Fikahati Aneska, 2012), p. 75

⁸ Saqdir Ismail, *Pengantar Praktek Arbitrase Di Indonesia, Malaysia, Singapura, dan Australia*, (Jakarta: Fakultas Hukum, UAI, 2007), p. 3

⁹ A. Wasit Aulawi, "Arbitrase Dalam Perspektif Hukum Islam," in Satria Effendi M. Zein, et.al., *Arbitrase Islam Di Indonesia*, (Jakarta: Badan Arbitrase Muamalat Indonesia, Kerjasama dengan Bank Muamalat, 1994), p. 46

¹⁰ Nik Mohamed Affandi bin Nik Yusoff, *Islam & Business*, (Selangor: Planduk Publications, 2002), p. 95

¹¹ Verse 58 of the Surah of the Women (*An-Nisa*) (Translation by A. Yusuf Ali, *The Holy Quran*)

¹² Abdel Hamid El-Ahdab and Jalal El-Ahdab, *Arbitration with the Arab Countries*, (Alphen: Kluwer Law Intemational, 2011), p. 7

¹³ Zamakhsyari, *Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih*, (Bandung: Citapustaka Media Perintis, 2013), pp. 71-75

Between them twain,
Appoint (two) arbiters, one from his family,
And the other from hers;
If they wish for peace,
God will cause
Their reconciliation;
For God has full knowledge,
And is acquainted
With all things.¹⁴

This verse becomes the foundation for arbitration (*tahkim*) in dispute between a husband and a wife. The resolution for the dispute between a husband and a wife is performed by appointing a *hakam* (arbitrator) from each party in the husband's side and in the wife's side. A dispute between a husband and a wife is not always settled before the court; it is always suggested to be settled in a spirit of mutual cooperation and family relationship in order to create reconciliation between the two parties.

Another verse which can be used as the foundation for the recognition of arbitration in the Islamic law is *Al-Maidah*: 95,

O ye who believe!
Kill not game
While in the Sacred
Precincts or in pilgrim garb
If any of you doth so
Intentionally, the compensation
Is an offering, brought
To the Kaba, of a domestic animal
Equivalent to be killed,
As adjudged by two just men
Among you; or by way
Of atonement; the feeding
Of the indigent; or its
Equivalent in fasts: that he
May taste of the penalty
Of his deed, God
Forgives what is past
Exact from him the penalty,
For God as Exalted,
And Lord of Retribution.¹⁵

In Islam, arbitration is not solely done to settle the incidence of dispute, but also to ask those who are not involved in the dispute. The meaning implicated in the verse above is not related to any dispute; it is related to the ascertainment of fine (*hadyan*) which has to be paid by a person who has violated religious law; he has intentionally killed a hunted animal while he is in a state of purity (*ihram*).

The practice of arbitration as the implementation of the doctrine of the Holy Quran is done to settle a dispute which occurs between a husband and a wife in their household. If the Holy Quran regulates the validity of arbitration to settle the dispute between a husband and a wife; it is, of course, through an analogy method (*qiyas*);¹⁶ in this case, arbitration can be used to put into practice in settling a dispute in the case of property. If we see the period of the Prophet Muhammad in Mecca and moved to Medina, the

¹⁴ Verse 35 of the Sura of the Women (*An-Nisa*) (Translated by A. Yusuf Ali, *The Holy Quran*).

¹⁵ Verse 95 of the Surah of the Table Spread (*Al-Maidah*) (Translation by A. Yusuf Ali, *The Holy Quran*)

¹⁶ Satria Effendi M. Zein, "Arbitrase Dalam Syariat Islam," dalam Satria Effendi M. Zein, *et.al.*, *Aribtrase Islam Di Indonesia*, (Jakarta: Indonesian Muamalat Arbitration Board, Collaborating with Bank Muamalat, 1994), p. 10

dispute resolution at the time had included trade, agriculture, debt and credit, let and sublet, and anything which was related to property.¹⁷ Arbitration in Islam is also put into practice to settle public disputes in politics or war.

The incidence of arbitration was also popular when there was a dispute between Ali Ben Abi Taleb and Muawiyat in order to bring to an end the Shiffin war in 657 A.D. The agreement between the two parties to accept the proposal for arbitration was based on some reasons. First, there would be an attempt to bring the war to an end, to protect the Muslims' birth place, and to become reconciled. Secondly, there was a concern about the extinction of Muslims, particularly the Arabs who were in war at the time. Thirdly, the long lasting war had caused them to have the feeling of too much of it. Fourthly, there was a response from those who proposed reconciliation as it was found in An-Nisa (4): 59 of the Holy Quran, so that Ali answered, "Yes, I give the priority to *tahkim*. Between us and you is the Message of God (the Holy Quran)."¹⁸

Among the classic Islamic legal experts, there were different points of view in the concept of arbitration.¹⁹ One of the viewpoints stated that arbitration was a type of coalition to create unbinding reconciliation, unless it was accepted by all parties concerned. In this type of coalition, the process of arbitration was done in an amiable composition which was called 'arbitration in equity'. Another viewpoint stated that arbitration in the Islamic law had the same meaning as what had been understood in the modern world; that is, a binding decision for the conflicting parties. This concept is equivalent to the 'arbitration in law'. According to the first viewpoint, even though the parties concerned have agreed to appoint an arbitrator, it does not mean that they have agreed on the decision made by the arbitrator. The agreement of the conflicting parties is needed to make the arbitrator's decision legally binding. On the other hand, another viewpoint states that an arbitrator's decision is binding without any agreement of the conflicting parties.²⁰ Concerning the two viewpoints above, Abdel Hamid El-Ahdab points out that, according to Sharia, 'arbitration in equity' (amiable composition) is a rule, while 'arbitration in law' is the exception. As long as the expression is not clear enough, it is mostly possible that there will be a difference in its assessment in which, in the one hand arbitration is viewed as the concept of 'arbitration in equity'; on the other hand, it is viewed as 'arbitration in law'.²¹

Indonesia, *tahkim* has given the inspiration for the establishment of sharia arbitration which is realized by the establishment of BASYARNAS (National Sharia Arbitration Board) on the initiative of MUI (Indonesian Council of Ulama) which used to be BAMUI (Indonesian Muamalat Arbitration Board). The existence of BASYARNAS cannot be separated from the empirical fact of the increase in sharia based business and economic activities which need an institution for settling disputes out of court. Indonesia is a country which recognizes the existence of sharia arbitration institution coexisting with non-sharia arbitration, BANI (Indonesian National Arbitration Board), established by KADIN (Indonesian Chamber of Commerce and Industry). The existence of BASYARNAS and BANI is under the umbrella act of Law No. 30/1999 on Arbitration and the Alternative Dispute Resolution.

BASYARNAS plays an important role in settling sharia economic disputes. The more increasing the activities of sharia economy in public affairs, the more possible the incidence of dispute occurs. In line with the procedures, BASYARNAS has an authority to accommodate disputes and any other point of view. In settling a dispute, BASYARNAS has the authority on civil cases in commerce, industrial disputes, services, and others which, according to legal provisions, laws, and regulations, are completely controlled by the conflicting parties. BASYARNAS also has the authority to create binding viewpoint on the request of non-conflicting parties about any problem which arises from a certain agreement.²²

¹⁷ Wahyuni S. Pradja, *Ekonomi Syariah*, (Bandung: Pustaka Setia, 2012), p. 226

¹⁸ Muhammad Ash-Shalabi, *Biografi Ali Bin Abi Thalib*, (Jakarta: Al-Kautsar, 2012), p. 648

¹⁹ Abdel Hamid El-Ahdab and Jalal El-Ahdab, *Arbitration with the Arab Countries*, p. 11

²⁰ Satria Effendi M. Zein, "Arbitrase Dalam Syariat Islam," in Satria Effendi M. Zein, et al., *Arbitrase Islam Di Indonesia*, p. 25

²¹ Abdel Hamid El-Ahdab and Jalal El-Ahdab, *Arbitration with the Arab Countries*, p. 11

²² Article 1 of BASYARNAS procedures

Sharia arbitration can only have the authority to settle disputes¹³ by ignoring the authority of religious court when the parties concerned carry a clause of arbitration in a contract or with a particular arbitration agreement made by the parties concerned, before or after the incidence of dispute. Therefore, an arbitrator should pay attention to the evidence related to the validity of the *akad* (contract) before starting to settle a dispute.

Dispute resolution through sharia arbitration emphasizes on the resolution in the Islamic way. In implementing the *amanah* (something given to someone to take care of), we have to pay attention to the Islamic values so that it can be said that law enforcement through sharia arbitration is based on the Islamic guidelines. The capability of settling a dispute based on religious values will create the power of reconciliation since religious doctrine will lead to universal value of humanity.²³ The procedures of BASYARNAS regulate that arbitration decision must be based on sharia provisions and other legal provisions, laws, and regulations which are not contrary to sharia.²⁴ By these regulations, it is required that an arbitrator (*hakam*) knows about the Islamic canon law which is related to the dispute which will be reconciled.

Dispute resolution through arbitration also has an advantage, compared with dispute resolution through courts. The capability and the skill of an arbitrator who has been appointed by the conflicting parties, should have already been known in order to settle their dispute righteously and appropriately. The implementation of arbitration process is performed, covered from the public in order to keep it confidential for the sake of the conflicting parties' good reputation. Besides that, dispute resolution through arbitration, which applies reconciliation aspect, can create harmony, while the court's verdict will create prejudice among them.²⁵

3. DISCUSSION

Amicable Settlement as the Objective of Islamic Arbitration

The main objective of dispute resolution through arbitration in Islam is to create an amicable settlement.²⁶

A peaceful dispute resolution is highly proposed in Islam in order to avoid various unwanted violence and vengeance since they are contrary to the Islamic mission. Therefore, the position of an arbitrator (*hakam*) becomes an integral part in creating amicable to settle a dispute without breaking off ties of friendship since it is really aimed to keep ties of friendship among the conflicting parties. By amicable settlement, there is an even position among the conflicting parties which means that no party will oppress and be oppressed; they will be mutually respected since they have been treated righteously.

Amicable settlement in Islam can be understood as a harmonious condition, either physically or socially. Islam requires all its followers to create reconciliation in every walk of life. The main objective of Divine Revelation in the Holy Quran for Muslims is to create the righteous and peaceful social structure.²⁷ An effort to create reconciliation is a certainty which has to be created in settling disputes among individuals and society. Therefore, reconciliation through arbitration in Islam (*tahkim*) is permitted in any problems which are in line with jurisdiction, either related to dispute resolution between husbands and wives, or related to the field of *muamalah* and war or politics.

Dispute resolution through arbitration, using the aspect of reconciliation (*sulh*) is very flexible, and it becomes a means for creating human welfare as a whole. *Sulh* will not be used if it brings about destruction and disadvantages for human beings.²⁸ The objective of reconciliation is to bring about

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²³ Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat Dan Hukum Nasional*, (Jakarta: Kencana, 2009), p. 125

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²⁴ Article 24, paragraph 3 of BASYARNAS Procedures

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²⁵ Syaid Sabiq, *Fiqh Sunnah, Volume 3*, (Jakarta: Al-I'tishon, 2008), p.498

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²⁶ Satria Effendi M. Zein, "Arbitrase Dalam Syariat Islam," in Satria Effendi M. Zein, et.al., *Arbitrase Islam Di Indonesia*, p. 16 10

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²⁷ Mohammed Abu-Nimer, *Nirkekerasan Dan Bina-Damai Dalam Islam: Teori dan Praktik*, (Jakarta: Pustaka Alvabet, 2010), p. 75

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²⁸ Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional*, p. 165

advantages and to keep harmonious and everlasting relationship among the disputants.²⁹ The assumptions, which become the background of and automatically the significance of the implementation of *sulh*, are: (1) the disputants should be convinced that creating a harmony is better than the victory of one of them, (2) intervention of the third party (arbitrator) is extremely important in settling a dispute, (3) the process of *sulh* is aimed to reconcile and develop a harmony,³⁰ (4) *sulh* can satisfy all parties because each of them does not feel that there is no win and lose in the dispute resolution, (5) *sulh* leads to peace and quiet, satisfaction, and strengthens ties of friendship among them,³¹ (6) reconciliation can cope with various polemics and eliminate hostility, and (7) reconciliation can distribute love and affection among Muslims.³² In short, *sulh* will prevent disputants from 'taking the law into one's own hands' (*eigenrichting*).

In the Islamic canon law, an amicable settlement is an umbrella for dispute resolution, including through
 21 itration. Encouragement to create reconciliation in settling a dispute is based on a number of verses in the Holy Quran.

If a wife fears
 Cruelty and desertion
 On her husband's part,
 There is no blame on them
 If they arrange
 An amicable settlement
 Between themselves;
 And such settlement is best
 Even though men's souls
 Are swayed by greed
 But if ye do good
 And practice self-restraint,
 God is well-acquainted
 With all that ye do.³³

This verse is related to an attempt to create reconciliation in household affairs when there are fears of the incidence of *musyuz*. Another verse describes a command to reconcile two groups of people who are in war, particularly when the war occurs among Muslims.

If two parties among
 The Believers fall into
 A quarrel, make ye peace
 Between them; but if
 One of them transgresses
 Beyond bound against the other,
 The fight ye (all) against
 The one that transgresses
 Until it complies with
 The command of God;
 But if it complies, then
 Make peace between them

²⁹ Hasballah Thaib, "Perdamaian Adalah Panglima Dari Semua Hukum," in Pendastaren Tarigan dan Arif (eds.) *Spirit Hukum*, (Jakarta: Rajawali Per, 4 2012), p. 19

³⁰ Mohammed Abu-Nimer, *Nirkekerasan Dan Bina-Damai Dalam Islam: Teori dan Praktik*, p. 124

³¹ 6ahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional*, p. 160

³² Shalah ash-Shawi and Abdullah al-Mushlih, *Fikih Ekonomi Keuangan Islam*, (Jakarta: Darul Haq, 2004) p. 264

³³ Verse 128 of the Sura of the Women (*An-Nisa*) (Translation by A. Yusuf Ali, *The Holy Quran*).

With justice, and be fair:
For God loves those
Who are fair (and just).

The Believers are but
A single Brotherhood;
So make peace and
Reconciliation between your
Two (constending) brothers;
And fear God, that ye
May receive Mercy.³⁴

Besides that, the proposal to make reconciliation is categorized as pious-deed in which the big reward from God will be gained.

In most of their secret talks
There is no good; but if
One exhorts to a deed
To charity of justice
Or conciliation between men,
(Secrecy is permissible);
To him who does this,
Seeking the good pleasure
For God, We shall soon give
A reward of the highest (value).³⁵

The significance of reconciliation can also be seen in the words of the Prophet Muhammad, “Do you want me to tell you what is more virtuous than the ranks of fasting, charitable gift, and prayer? We (the Prophet Muhammad’s disciples) answered, ‘Of course’. He said. ‘Bring peace (reconcile) between different parties because the destruction of relationship among Muslims constitutes the destruction of religion.”³⁶ Basically, reconciliation can be performed on the problems which are related to human rights in order to meet the obligation to Allah and His Prophets.³⁷ In line with the Hadist, which was narrated by Abu Dawud, Ibnu Hibban, and Tirmizi, reconciliation cannot be performed if it is solely aimed to permit prohibited things and consider lawful things unlawful.

Islam highly proposes its followers to settle disputes peacefully, not only disputes between husbands and wives but also disputes which are related to properties. Reconciliation gives an opportunity to the conflicting parties (disputants) to always keep harmony among them so that taking the law into one’s own hands which is closely related to violence and vengeance will not occur.

The concept of *sulh* (reconciliation) in dispute resolution can really be realized, either in court or out of court. Some Islamic legal experts tend to perform *sulh* out of court where the conflicting parties agree not to use legal path (litigation) in settling their disputes.³⁸ Reconciliation is closely related to justice since both of them are on two sides of a coin. Law enforcement in Islam is very fundamental in creating reconciliation; therefore, both of them have to be seen as related concepts. Advocacy for the former (justice) basically involves the latter (reconciliation).³⁹

³⁴ Verse 9-10 of the Sura of the Inner Apartments (Hujurat) (Translation by A. Yusuf Ali, *The Holy Quran*).

³⁵ Verse 114 of the Sura of the Women (*An-Nisa*) (Translation by A. Yusuf Ali, *The Holy Quran*)

³⁶ Shalah ash-Shawi and Abdullah al-Mushlih, *Fikih Ekonomi Keuangan Islam*, p. 264

³⁷ Sballah Thaib and Zamakhsyari Hasballah, *Tafsir Tematik Alquran V*, (Medan: Pustaka Bangsa, 2008), p. 148

³⁸ Anhrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional*, p. 206

³⁹ Mohammed Abu-Nimer, *Nirkekerasan Dan Bina-Damai Dalam, Islam: Teori dan Praktik*, p. 16

Amicable settlement should be followed by tolerance, that is, a party should be ready to accept less than what they have expected or release a part of their rights for what they have claimed. On the other hand, the other party should also be ready to return the rights of their harmed opponents. Reconciliation can take place after the testimony of a defendant or his refusal, or reconcile after there is no testimony and refusal (keeping silent) of the defendant.⁴⁰ According to ulama Hanafi, reconciliation of the three types above is permitted if the compensation in the positive reconciliation becomes the ownership of the plaintiff. Meanwhile, ulama Syafii points out that a permitted amicable is reconciliation after the testimony because reconciliation can only be made when the ownership exists. This case is not found in the other two types of reconciliation (*sulh*).

Arbitrator (*hakam*) can perform various kinds of reconciliation as far as they are in line with the Islamic doctrine, with the limitation of not permitting prohibited things and consider unlawful things lawful. The essence of settling a dispute peacefully which is performed through the forum for arbitration is to settle or eliminate disputes which must be performed voluntarily by both disputants in good faith. The choice of forum and implementation of arbitration which originally came from a contract is always on the principle of good faith.⁴¹

4. CONCLUSION

Based on BASYARNAS procedures, an arbitrator should make every effort to reconcile the conflicting parties (disputants) before the investigation begins. Actually, the effort to reconcile is made during the investigation until the ruling is handed down and not before the investigation. An arbitrator is successful in performing amicable when he writes reconciliation deed which is final and binding and requires the conflicting parties (disputants) to comply with the agreement voluntarily. If the agreement is not obeyed voluntarily, the implementation of the agreement can be enforced after the decision of the agreement has been registered in the District Court.⁴² The purpose of registering the decision of the agreement is not only to provide the power for the execution but also to give an opportunity to the Court not to examine the dispute whose fact is in litigation.

Amicable settlement through arbitration is possible because an arbitrator makes a decision based on the principle of justice and appropriateness (*ex aqua et bono*); it is not merely based on legal provisions as it occurs in courts. With this principle, an arbitrator is given the opportunity to settle a dispute based on his prudence although he also has to pay attention to religious doctrine. Therefore, the success of an arbitrator in creating reconciliation highly depends on his success in performing his wise behavior and on good faith and transparency of the conflicting parties to reveal the truth.⁴³

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⁴¹ Anita D.A. Kolopaking, *Asas Itikad Baik Dalam Penyelesaian Sengketa Kontrak Melalui Arbitrase*, (Bandung: Alumni, 2013), p. 108

⁴² Article 19 in conjunction with Article 25 of BASYARNAS Procedures

⁴³ Satria Effendi M. Zein, "Arbitrase Dalam Syariat Islam," in Satria Effendi M. Zein, et al., *Arbitrase Islam Di Indonesia*, p. 21

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Amicable ...

ORIGINALITY REPORT

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