

Handling Sharia Economic Disputes Through Non-Litigation and Its Relation to Maslahah

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Abstract

This research aims to analyze the handling of sharia economic disputes by passing through non-litigation channels with a Maslahah asy-Syatibiyy perspective. This research is included in library research using a qualitative descriptive approach. Data collection is obtained through primary and secondary literature review. Data analysis is carried out by normative juridical analysis. then after in-depth analysis, conclusions are drawn. The results of this study indicate that 1) When we try to determining Maslahah ash-Syatibiyy said that Maslahah should be acceptable to reason and logic, because there is a rational factor. Maslahah must be accepted without looking at reasons on the illat, namely on the rules of worship, must not conflict with Shara or qat'i evidence. So that This Maslahah must go hand in hand with the purpose of shara, namely maqashid sharia in general, must also go hand in hand with Maslahah which is required by shara even though there is no separate evidence, then Maslahah which must lift the hardship that emphasizing religion 2) Maslahah can be applied or in relevance to the resolution of Islamic economic disputes through non-court channels, namely peace and through the help of mediators because this can provide Maslahah because Islam teaches to prioritize peace when there is a dispute between the parties but this is not the case. disputes between the parties but this only applies in the field of This only applies to the field of muamalah or sharia economics again if it relates to worship. 3) The correlation between handling Sharia economic disputes through non-litigation avenues and the concept of Maslahah reveals a close relationship between the two. The resolution of Sharia economic disputes through non-litigation methods, such as mediation or negotiation, is often based on fundamental Maslahah principles, which emphasize the importance of achieving welfare and justice in Islam

Keywords : *Handling, Disputes, Corelation, Non-Litigation, Maslahah*

Abstrak

Penelitian ini bertujuan untuk menganalisis tentang penanganan sengketa ekonomi syariah dengan melewati jalur non litigasi dengan perspektif Maslahah asy-Syatibiyy. Penelitian ini termasuk dalam kajian Pustaka (library research) dengan menggunakan pendekatan deskriptif kualitatif. Pengumpulan data didapatkan melalui kajian literatur primer dan sekunder. Analisis data dilakukan dengan analisis normative yuridis. kemudian setelah dilakukan analisis mendalam maka diambil kesimpulan. Hasil dari penelitian ini menunjukkan bahwa 1) Maslahah bersifat rasional karena segala kebaikan dapat diterima akal. Maslahah juga dapat diterima tanpa memandang alasan (illat hukum) dan tidak bertentangan dengan dalil Qat'i. Sehingga Maslahah yang akan dicapai selalu selaras dengan tujuan syara' yakni maqâsid syari'ah itu sendiri umumnya. Artinya Maslahah yang ingin dicapai selalu beriringan dengan Maslahah yang ditekankan oleh agama. 2) Maslahah dapat diimplementasikan melalui penanganan sengketa ekonomi syariah lewat jalur diluar pengadilan (non litigasi) yakni saling damai antara pihak yang bersengketa dan melalui musyawarah atau mediasi orang ketiga karena cara ini sesuai dengan apa yang diajarkan oleh islam tatkala menemui perselisihan. Hal ini tentunya diperbolehkan selama menyangkut masalah mu'amalah dan bukan masalah ibadah. 3) Korelasi antara konsep penanganan sengketa ekonomi syari'ah non litigasi dengan konsep Maslahah memiliki kaitan erat meskipun ada sedikit perbedaan. Karena dalam islam mediasi tidak hanya sekedar mendamaikan pihak yang bersengketa, tapi juga menjunjung tinggi prinsip-prinsip keadilan, kemanusiaan, musyawarah, dan kemufakatan.

Kata Kunci : *Penanganan, Sengketa, Korelasi, Non-Ligitasi, Maslahah*

INTRODUCTION

The potential for disputes cannot be separated from life in society today. Disputes generally arise due to breaches of trust and deception. Breaches of trust can occur when one party betrays, and conflicts in Sharia economics typically arise from agreements, namely the initial contract of offer and acceptance, which serves as the foundation for relationships among parties engaged in Sharia economic activities (Suganda, 2022)

However, in seeking justice, parties must spend money if they wish to obtain justice through the judicial system. This is because the journey to enforce justice in court is a final decision, so conflicting parties battle before the court judges. The resolution of issues often relies on the litigation route. The emergence of the Sharia economic system in Indonesia has rapidly developed in recent times (Pertaminawati, 2019).

The abundance of various Sharia business or economic activities inevitably leads to disputes among the parties involved in making agreements, whether between business actors in one company and those in another, or between business actors and their customers. The method of resolving conflicts, often referred to as disputes, among individuals in society up to the present time, tends to be predominantly conducted through conventional means, called litigation (court proceedings) (Dzuluqy, 2016). In 1999, the Government of the Republic of Indonesia under the administration of President BJ Habibie enacted Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law is aimed at regulating dispute resolution outside the courtroom by providing possibilities for disputing parties to resolve conflicts or disagreements between them in a manner more suitable to their goals than litigation in court. Such a forum is expected to accommodate the interests of the conflicting parties (Hardiati et al., 2021).

As time progresses, it is felt that resolving conflicts through this avenue often leaves a less favorable impression on both parties. This is stated because to reach a final decision from a judicial institution, disputing parties are required to truly battle before the panel of judges, thereby determining the winner. Nowadays, dispute resolution has begun to shift towards non-litigation methods known as Alternative Dispute Resolution (ADR) (Novianti & Fadila, 2022). In America and Australia, almost 90 percent of disputes are resolved through non-litigation, especially among businessmen. Similarly, in Indonesia, the use of this institution for conflict resolution is becoming apparent, particularly among entrepreneurs. This poses a problem because once a decision is made, it becomes difficult to change for the disputing parties since it is final (Umam, 2016). Therefore, this leads the disputing parties to choose or seek alternative avenues outside of the judiciary. Regarding the authority of Sharia Courts in the field of Sharia Economics, in Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Sharia Courts, in the explanation of Article 49

letter i, it states Sharia economic matters, there are: a) Sharia Bank b) Sharia microfinance institutions c) Sharia Insurances d) Sharia Reinsurance e) Sharia Mutual Fund f) Sharia Obligation and sharia medium term securities g) Sharia Securities h) Sharia Pawnshop i) Sharia Retirement Funds j) Sharia Business (Norcholis, 2021).

However, Explanation of Article 55: Paragraph (2) What is meant by "dispute resolution carried out in accordance with the contents of the Contract" is as follows; 1) deliberations 2) mediation 3) National Sharia Arbitration Board 4) public court (MUSRIFAH & KHAIRUNISA, 2020).

In the point of D also implies that not all matters need to be brought to the Religious Courts but can be resolved through the general judiciary system. Consequently, there seems to be a lack of clarity. Therefore, this becomes a reason for individuals or companies to settle Sharia economic disputes outside the court through non-litigation channels. This is considered a virtue both in this world and in the hereafter because it must still be pursued in order to bring benefit by initiating consultation first (Hudawati, 2020). In Islamic teachings, ensuring the welfare of humanity requires the establishment of laws that do not oppress others. Similarly, in resolving disputes in Sharia economics among conflicting parties. Nowadays, resolving disputes outside the court can be done because Islam, since the time of the Prophet Muhammad (SAW), teaches that in resolving a matter, one should start with seeking peace, but if that cannot be agreed upon, then seek alternative solutions for resolution (Sufiarina, 2014).

According to asy-Syaitibiy as a prominent scholar of Ushul Fiqh, in discussing the theory of Maslaḥah, it is necessary to understand that if a benefit results in harm, it should be carefully considered when upholding justice, meaning that one should not justify actions that lead to wrong (Kurniawan & Hudafi, 2021). Therefore, in this article, the author aims to examine the relevance of the Maslaḥah theory from the perspective of asy-Syaitibi in resolving disputes through non-litigation channels.

METHODS

This research adopts a normative juridical approach based on the principles of legislation and Islamic law relevant to this study. It is a qualitative study, specifically descriptive research utilizing analysis (Sugiyono, 2016). The method employed is descriptive analytical research, which involves describing the research object using gathered data and samples. The author utilizes literature review from articles and scholarly works (such as books, journals, and academic articles) containing key points for examining Asy-Syaitibi's Maslaḥah theory in resolving Sharia economic disputes through non-litigation methods.

RESULTS AND DISCUSSION

The Concept of Maslaḥah

Imam Asy-Syatibiyy was a scholar of Ushul from the Maliki school. He hailed from Al-Lakhmiyah and resided in Andalusia. He bore the same surname as his

birthplace, which was Grandana. His full name was Abu Ishaq Ibrahim ibn Musa Muhammad Al Lakhmi Al Garjati. He belonged to the Arab tribe. His knowledge of fatwa methodology and Islamic law was acquired from Abu Sa'id ibn Lubd.

According to Ibn Manzur, *Maslahah* is goodness and also a form of *mufrad* (singular) of *masalih* (plural). But *Maslahah* itself comes from Arabic. In the term is goodness, benefits and also benefits. Rejecting badness and bring good is *Maslahah* (Kurniawan & Hudafi, 2021).

Al-Syaitibi said that what is meant by *Maslahah* is to achieve a complete sense that is demanded by the characteristics of desire and also aimed at goodness in the perfection of all human life.

Maslahah in general in the perspective of *ushul* distinguishes it into three, there are; 1) *Maslahah* which is refers to *qiyas* as a treatment by *syara'* that confirms, this *Maslahah* is called *al-Maslahah al-Mu'tabarah*. 2) *Maslahah* that is not accepted by *Shara*, for example the rule in requiring *kaffarah* to be paid to the who has intercourse during the month of *Romadan* starts consecutive fasts for two months. 3) *Maslahah* that is recognized by *Shara* with various arguments in isolation also has no evidence that correcting it (Kara, 2012).

In terms of its priority, *Maslahah* is divided into three categories, there are *al-Maslahah ad-daruriyyah*, *al-Maslahah al-hajiyah*, and *al-Maslahah at-tahsiniyyah*. 1) *Al-Maslahah al-Daruriyat* is a religious need until human life depends on it, but if it is not fulfilled it will get bad, namely losing a favor and misery in the hereafter. favors and misery in the hereafter. This *Dahuriyat* has five principles, namely religion, soul, offspring, mind, and property. Religion comes first in its position than the soul. However, the interests of the soul take precedence over reason, while reason is more necessary than offspring, while offspring are more important than property. These five *Maslahahs* are the strongest according to Imam al-Ghazali. according to Imam al-Ghazali. For example, in determining a law on adulterers in order to protect his offspring, mandatory *qisas* on a murderer in order to his life, the *hadd* law for people who drink alcohol in order to to preserve the mind, as well as the law of whipping for thieves and those who thieves and those who vandalize graves in order to safeguard human needs in this world 2) *Al-Maslahah al-Hajiyat*, there is the urgency needed by humans to provide convenience and eliminate difficulties that can make narrowness with its absence. But not hobble human life as in *Maslahah dahuriyat* but can bring difficulties to human life. *dahuriyat* but can bring difficulties to human life. *Maslahah* This *Maslahah* will be found in worship, *muamalah*, sex, and customs. For example, in worship, convenience is given, such as adjusting the prayers can be *qhasar* or *jama* for travelers or prayers can be while sitting for those who cannot stand. standing. In customs, it is obligatory looking for *halal rezeqi* both from food and shelter. On *muamalat* is required to have contracts in fulfilling human needs. fulfill human needs in terms of trade, cooperation, renting, giving collateral and so on. Then in the case of

the right of inheritance to reject the law hudud on the basis of subhat in avenging the murderer. So that this mashalahh hajiyat if not fulfilled will not lead to inequality of life, but cause hardship or difficulty only. This is Maslahah dahuriyat is prioritized. 3) Al-Maslahah al-Tahsiniyyat, Maslahah which if abandoned is only unpleasant viewed only does not lead to lameness of life as in Maslahah which is dahuriyyat, because this is necessary in maintaining the dignity that is in good habits with a noble image (Yelvita, 2022).

Meanwhile, in enhancing the dignity of customs, having good morals, and engaging in appropriate activities, this is referred to as "tahsiniyyat" by Muhammad Said. In terms of the priority of worship, customs, transactions, and crimes, in the theory of tahsiniyat Maslahah, it occupies the third position.

In the customs of eating and drinking, there are etiquettes enforced by Islam, such as not consuming products of cruelty or harm, also not permitting the trading of items containing impurities that are harmful, refraining from engaging in transactions already finalized by others, and also prohibiting the engagement in courting a woman who is already engaged to another. Covering the aurat during prayer and obligating purification beforehand is related to worship (Wartoyo, 2018).

The Maslahah in Syatibiy's Perspective

In the modern era, the use of Maslahah arguments is often associated with various interests in dealing with issues that may contradict Sharia law. Many use Maslahah as a justification for approving such matters. For example, in businesses that involve usury, Maslahah arguments are employed. Similarly, there are similar arguments made, such as for those engaged in prostitution emphasizing Maslahah to care for their children as a reason for necessitating their work. This is because they may risk losing their lives due to starvation, even though they engage in prostitution to preserve their lives (hifz al-nafs) (Kara, 2012).

As a result of many individuals misrepresenting or scapegoating this Maslahah, however, within the conditions of Maslahah, there are factors that could justify obligations that are not permissible. However, scholars establish conditions for Maslahah that are acceptable within Sharia.

Imam al-Syatibiy, in establishing the position of Maslahah, stipulates the requirement of providing arguments in his book al-I'tisam, emphasizing the need for careful consideration in determining Maslahah; 1) Ideally, a Maslahah should be acceptable to both reason and logic, as there is a rational factor involved. However, a Maslahah must be accepted without considering the reasons behind the illat, which pertains to the rules of worship. 2) This Maslahah should not contradict Sharia law or definitive evidence. Therefore, it must align with the global objectives of Sharia law and also align with the Maslahah required by Sharia law, even if there is no specific evidence. 3) The Maslahah must alleviate difficulties that emphasize the religion.

Therefore, it must be based on preserving the essential of *Maslahah* (Kurniawan & Hudafi, 2021).

Meanwhile, Imam al-Ghazali in *al-Mustasyfa* has emphasized strict conditions that contradict those of al-Syatibiy, there are; 1) *Maslahah* exists only in *dahuriyyat* that preserve religion, intellect, life, honor, and wealth. Therefore, if it pertains to *tahsiniyyat* or *hajiyyat*, the *Maslahah* is not valid. 2) *Maslahah* is general. 3) *Maslahah* is definitive. 4) *Maslahah* is prohibited from contradicting the text of the Quran, Sunnah, or *ijma'* (Kudaedah, 2020).

The requirements of *kulliyyat*, *qat'iyyat*, and *daruriyyat* conditions make it difficult to apply the theory of *Maslahah* in the modern era. Therefore, at one point, al-Qardawi provided the following criteria: *"Because preserving Maslahah for each individual or group may vary, this includes issues of differences in Sharia. Thus, it is not necessary for this Maslahah to be definitive, as practicing through zann is a matter acknowledged in Sharia. Furthermore, it is not a requirement, as stipulated by al-Ghazali, that the use of Maslahah must be limited to dahuriyyat, which also characterizes hajiyyat"*. Syeh Al-Qardawi also supports the approach of al-Syatibiy in theory of *Maslahah*, *"stating that alleviating difficulties and seeking ease for human issues indicate that Maslahah takmilah and hajjah are among the objectives of Sharia. He also endorses al-Syatibiy's approach in Maslahah's theory, which is suggests setting limits on daruriyah Maslahah and separating or discarding takmili and hajjah Maslahah"* (Yaqin, 2021).

In his theory, asy-Syatibiy aligns more closely with the objectives of Sharia, known as *maqashid syariah*. For example, the argument about Khidir not allowing the poor to take the abandoned boat, according to asy-Syatibiy, reflects a consideration of *Maslahah*, which is to preserve the boat of the poor from being stolen. Thus, this applies specifically to the poor in that location, not universally (Abdurrahman, 2020).

The Resolution of Economic Disputes in Islam

Islamic economics, also known as Sharia economics, refers to economic activities conducted based on Sharia principles, whether by individuals or corporate entities. The scope of Islamic economics includes sharia-compliant pawnshops, sharia securities, sharia banks, sharia microfinance institutions, sharia insurance, sharia mutual funds, sharia bonds, sharia reinsurance, Islamic Superannuation funds, Sharia businesses, and Sharia futures contracts (Rosidah & Karjoko, 2021).

The resolution of Sharia economic disputes outside the courts in Indonesia has been regulated in Article 6 of Law No. 30 of 1999 concerning arbitration and dispute resolution, which states :

a. As-Sulh

Islam teaches that in resolving issues, peace should be prioritized, commonly referred to as "as-sulhu." The Quran and the Sunnah should be the primary pillars in achieving genuine peace in all conflicts. Efforts should be made through consultation,

emphasizing adherence to Sharia principles for consensus to be reached. Thus, this method will yield favorable outcomes, utilizing al-Syatibiy's Maslaḥah theory, which emphasizes that all Maslaḥah must be in line with the objectives of Sharia, known as *maqashid syariah*.

Disputes that can be resolved through "al-sulhu" are in the field of muamalat or Islamic economics or issues regarding property rights among humans themselves. Thus, matters concerning God cannot be reconciled

b. Sharia Arbitration (*Taḥkīm*)

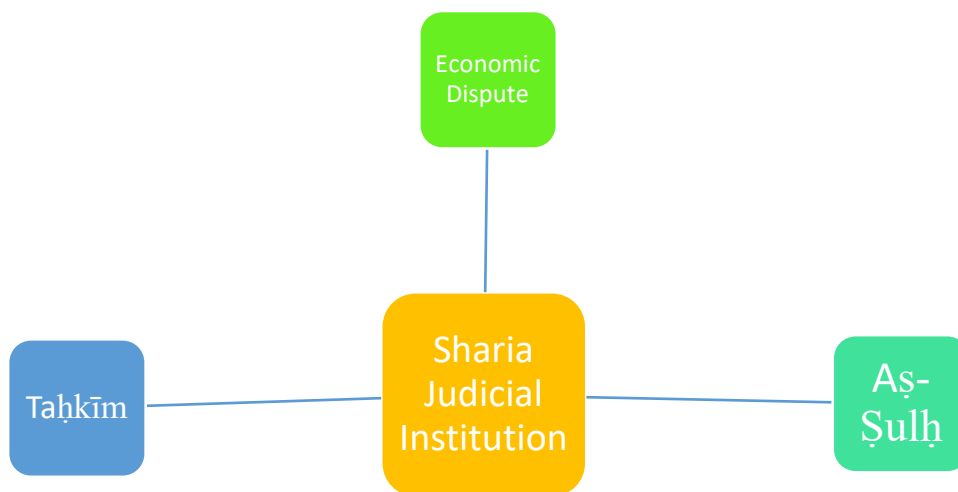
"Tahkim" is a method of peacefully resolving conflicts with the involvement of a mediator or arbitrator. Therefore, "tahkim" serves as a means of preventing disputes. This occurs when "al-sulhu" or peace cannot be achieved, thus resorting to "takhim," which involves introducing a mediator between conflicting parties. Nowadays, it is better known as arbitration. Meanwhile, when linked to the Maslaḥah theory of al-Syatibiy, this aims to achieve a Sharia objective as taught by Islam.

In the modern era generally dispute resolution has shifted to alternative methods, namely non-litigation or more commonly known as ADR (*Alternative Dispute Resolution*). Even in countries like Australia and America, almost 90% of disputes are settled through non-litigation channels, especially among entrepreneurs. In Indonesia, this approach has also begun to be implemented, albeit still limited.

c. Sharia Judicial Institution

The religious court has brought significant changes, namely with the enactment of Law No. 3 of 2006 amending Law No. 7 of 1989 regarding Religious Courts. With this law, issues related to the resolution of Sharia polemics can not only be resolved through reconciliation or arbitration but also through judicial rulings. This law has granted authority to religious courts to adjudicate matters in the field of Sharia economics, in addition to their usual jurisdiction over matters such as marriage, zakat, endowments, gifts, wills, alms, and charity.

Picture 1.1 Resolutian of Economic Dispute in Islam



Handling of Sharia Economic Disputes through Non-Litigation

According to the Supreme Court Article 22 of Law No. 14 of 1970, it is stated that law enforcement must be carried out within the judicial power as the judiciary body; otherwise, it is not permitted as it contradicts formal legal requirements. However, based on Article 3 of Law No. 14 of 1970 and Law No. 30 of 1999 concerning arbitration and alternative dispute resolution, it is open to disputing parties to use institutions outside the court or litigation, such as through reconciliation or arbitration in non-litigation pathways (Zahro et al., 2021).

Viewed from an Islamic perspective, arbitration is similar to takhim, where someone acts as a mediator in resolving a dispute. This institution has been known since pre-Islamic times. The initial idea of establishing Sharia arbitration in Indonesia began with discussions among scholars, legal practitioners, experts, and Muslim intellectuals. This included meetings with the idea put forward by the leadership of MUI on April 22, 1992. Although at that time there was no structured judiciary in matters concerning inheritance rights, property, and so forth (Kamal, 2020).

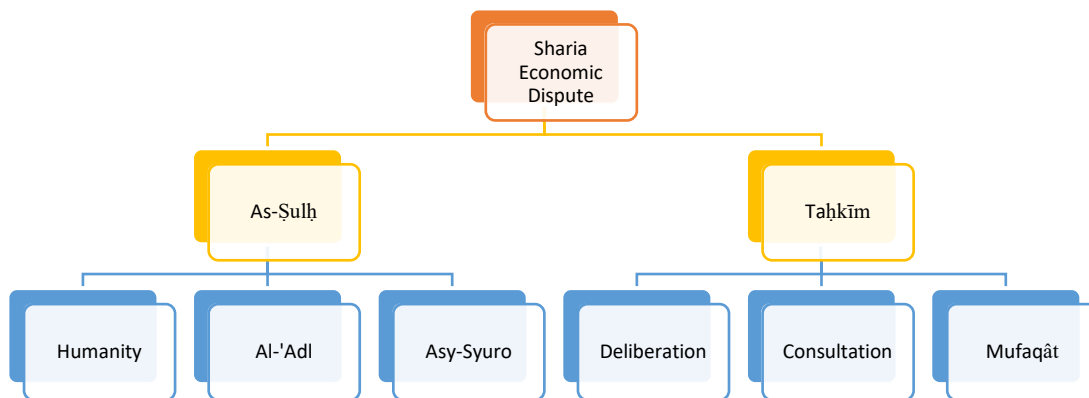
On October 23, 1993, the Muamalat Arbitration Board of Indonesia (BAMUI) was officially established after several rounds of meetings and procedural discussions. It has since been renamed the National Sharia Arbitration Board (BASYARNAS), a decision made during the MUI National Conference in 2002. The restructuring and leadership change of BAMUI were incorporated into MUI Decree No. Kep 09/MUI/XII/2003 dated December 24, 2003, designating it as an arbitral institution responsible for resolving disputes in the field of Sharia economics.

Correlation of the Handling of Sharia Economic Disputes through Non-Litigation Pathways with the Concept of Maslahaḥ

The correlation between resolving Sharia economic disputes through non-litigious means and the concept of Maslahaḥ is close. Resolving disputes non-litigiously, often involving consultation and mediation, aims to achieve peaceful agreements among the conflicting parties without resorting to formal legal proceedings. This approach is grounded in the principles of Maslahaḥ, which prioritize welfare and justice in Islam (Novianti & Fadila, 2022).

In the concept of Maslahaḥ, efforts to resolve disputes through non-litigious channels are seen as consistent with the primary goals of Sharia, namely to realize welfare for individuals and society. By prioritizing public interest and justice, the resolution of disputes through mediation or consultation is expected to create fair and beneficial solutions for all involved parties (Kamal, 2020).

Picture 2.1 Difference Between Maslaḥah and Non Litigation Concept



Thus, handling Sharia economic disputes through non-litigious means not only reflects the inclusive nature of Islamic law and its focus on fair resolution but also aligns with the principles of Maslaḥah that encourage the attainment of welfare and justice in society.

The correlation between handling Sharia economic disputes through non-litigation avenues and the concept of Maslaḥah reveals a close relationship between the two. The resolution of Sharia economic disputes through non-litigation methods, such as mediation or negotiation, is often based on fundamental Maslaḥah principles, which emphasize the importance of achieving welfare and justice in Islam.

Firstly, the handling of disputes through non-litigation channels reflects an understanding of Maslaḥah principles, which prioritize public welfare as the primary concern. In the context of Sharia economics, this includes efforts to create peace and beneficial agreements for all parties involved, without involving formal court proceedings.

Furthermore, resolving disputes through non-litigation methods also reflects humanitarian and justice aspects within the Maslaḥah concept. This approach considers common needs and interests and emphasizes the importance of seeking fair and beneficial solutions for all parties, while minimizing conflicts and potential losses.

Additionally, the handling of Sharia economic disputes through non-litigation channels also reflects the spirit of consultation and mediation encouraged in Islam. Through this process, disputing parties have the opportunity to reach mutually beneficial agreements, while respecting the principles of Islamic law and values of justice.

Thus, the correlation between handling Sharia economic disputes through non-litigation avenues and the concept of Maslaḥah demonstrates that this approach not only aligns with the inclusive teachings of Islam focused on welfare but also reflects humanitarian, justice, and consultation principles that are the primary foundation for resolving conflicts.

CONCLUSION

From the various analyzes and explanations of the results of the data obtained and the discussion in this study, the following conclusions can be drawn:

1. When we try to determining Maslaḥah ash-Syatibiyy said that Maslaḥah should be acceptable to reason and logic, because there is a rational factor. Maslaḥah must be accepted without looking at reasons on the illat, namely on the rules of worship, must not conflict with Shara or qat'i evidence. So that This Maslaḥah must go hand in hand with the purpose of shara, namely maqashid sharia in general, must also go hand in hand with Maslaḥah which is required by shara even though there is no separate evidence, then Maslaḥah which must lift the hardship that emphasizing religion
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