

## **Dispute Resolution of Islamic University Of North Sumatra (UISU) Indonesia**

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**ABSTRACT:** The disputes of the Islamic University of North Sumatera Medan (UISU) refer to two sides: the disputes at the foundation level and those at university level. The disputes at the foundation level are the ongoing efforts done by Helmi to take control of UISU, starting from the establishment of *Forum Silaturrahmi Anak Pendi UISU* (kinship forum of UISU founders' children) having a goal to install the children in the structural organization of UISU but this is then rejected by Sariani. At a later stage they established UISU foundation of their own as a counter to Sariani. The next dispute is at the university level owing to the foundation appointing the rector; so legally the Rector conducting the policy and the learning process becomes the dispute at UISU. This research was conducted with qualitative approach and the location of research is UISU while the source is Muslim citizens of Medan city, founding party and administrators of UISU, court decrees containing of dispute decrees of UISU, decisions of National educational Ministry or Directorate of High Education and respective documents. Data collection techniques are document study approach and interview. The dispute settlements covering structural organization unification are carried out through non-litigation channels or ADR (Alternative Dispute Resolution).

**Key words:** ADR, Foundation, Rector, UISU and dispute

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### **I. INTRODUCTION**

Islamic University of North Sumatra (UISU) is the first university standing outside Java.<sup>1</sup> The establishment was based on the sincere and pure wishes of the founders. "A stone by a stone under the scorching heat of the sun, taking off the petals drooping to greet the flower breaking asunder. ." This sentence is a series of essences of the struggle that encourages (The late) H. Bahrum Djamil, SH, (The late) H. Rivai Abdul Manaf Nasution, (The late) ) Dr. Sabaruddin Ahmad, (The late) H. Adnan Benawi and Sariani AS to establish an Islamic Higher Education as an effort to educate the life of the nation in order to fill the independence.<sup>2</sup> With a sincere intention and determination and submission to Allah SWT, then on January 7, 1952 the founders established the Islamic College of Indonesia (*PTII*). The forerunners of the first student is the graduate of Islamic Academy of Indonesia (equivalent to graduate of III of Senior High School Part A). After running for some time, the academy name was changed to Islamic University of North Sumatra (UISU) as it is today. The first faculty established was the Faculty of Law, whose inauguration was attended by K.H.Wahid Hasyim as the Minister of Religious Affairs of Indonesia at the time.<sup>3</sup>

In its long history, UISU having the contributions and cooperation from the pioneer generations developed UISU, and by the assistance from various parties, UISU continues to grow and currently runs 9 Faculties, with 27 Undergraduate Programs, and 2 Postgraduate Programs. The number of Almuni generated has reached about 25,000 more scholars spread in various places, fields of work, and strategic positions both inland and abroad.

UISU in its future will remain *isti'qamah*, keeping self-improvement, and striving to give and be the best to build the people to be the best (*khairah ummah*). The Al-Munawwarah campus building of Islamic University of North Sumatra (UISU) Medan, Jl. SM. Raja Teladan Medan has been established since 1953, starting with the construction of the Foundation building which was marked by the laying of the first stone by M. Natsir and H. Bahrum Jamil, precisely on November 30th.<sup>4</sup>

People warmly welcomed the establishment of this University (still called Islamic University of Indonesia) even more so by the Government because at that time, the State desperately needs the intellectual generations to continue the Independence struggle that was stated on 17 August 1945. After the first construction, other buildings then began to be built up, both located at Al-Munawwarah campus (Central Campus) and the Campus of Faculty of Agriculture and Medical Faculty.<sup>5</sup>

Currently, the historical evidence of UISU Campus development can still be seen from the existing inscriptions in every building that has been established, although there are some buildings that have been renewed. With the establishment of UISU in 1952 (PTII) UISU is the oldest university outside Java. UISU's glory is demonstrated by the number of Indonesian youths applying to be students at the University. The need for the importance of education at that time, making UISU became one of the centers of educational civilization that existed on the island of Sumatra.<sup>6</sup>

Not only young people from Indonesia, many foreigners enroll their names to study at UISU. Although UISU is currently in a less stable condition due to internal conflicts, at least the inscriptions around UISU campus can remind us that UISU is founded on Islamic thought base, and UISU is owned by the people because almost everywhere the inscription mentioned that the construction of UISU campus buildings is the result of the donations from the society.

However, UISU having experienced a long history is not free from exposure of trials in its existence. The occurrence of disputes in UISU among the member board of UISU becomes issue not only among the people of North Sumatra but also outside North Sumatra. In the disputes Hj. Sariani and Helmi Foundations keep making efforts to defend their rights and affirm that each of them is entitled to be the UISU foundation holder. The legal efforts taken by both parties are not only at the local level of North Sumatra but up to the national level. Legally, UISU has a waqf status managed by UISU foundation.<sup>7</sup>

The disputes between the two sides of the foundation has taken a very long time with various legal ways but still there has been no way out. But in 2014 at least the two parties did *ishlah* or reconciliation ending the dispute between the two sides. Interestingly the resolution of the disputes does not go through litigation or court, but conducted by the ADR path approach.

The term ADR (Alternative Dispute Resolution) is relatively newly known in Indonesia, but actually the settlement of disputes by consensus has long been done by the community, which essentially emphasizes the efforts of consensus, kinship, peace and so on. ADR has a special attraction in Indonesia because of its harmony with traditional socio-cultural system based on consensus deliberations.<sup>8</sup>

Accordingly, the analogy of the term ADR should be sought in Indonesia. Currently there are many terms referring to ADR, such as: Optional Dispute Settlement (*PPS*), Alternative Dispute Mechanism (*MAPS*), Optional Out-of-Court Dispute Resolution, and Co-operative dispute resolution mechanism.<sup>9</sup>

Alternative Dispute Resolution System abbreviated *APS* has several sub-systems in dispute resolution and contained in Law No.30 of 1999 chapters 1 through 10 consultations, negotiations, mediations, conciliations or expert judgment.

From the description above, ADR is a theory of dispute resolution through the outer court line both decomposed in the perspective of both posit law and Islamic law. Among the advantages of dispute settlement through ADR is to minimize cost and not a loss-win solution but equally satisfied with mutual agreement. The context of dispute resolution of UISU is interesting seeing the stages in the process of UISU dispute resolution.

## **II. RESEARCH METHOD**

### **1. Research Approach**

This research is conducted by means of qualitative research. Qualitative research is often called naturalistic, ethnographic, case study or phenomenology research.<sup>10</sup> Qualitative research produces descriptive data in the form of written or oral words about people or behavior that can be observed. At least, the classification of this research on qualitative base is related to understanding the phenomena of dispute settlement of UISU.

### **2. Research Site**

The research site is Islamic University of North Sumatra, Medan.

### **3. Data Source**

The sources of data for this research are:

- a. Muslims of Medan city
- b. Founding party of UISU Foundation and Administrator.
- c. Court decrees containing UISU dispute decrees
- d. Decisions of the Ministry of National Education and the Higher Education
- e. Related documents.

### **4. Data Collection Technique**

Document studies and interviews are used to obtain data in the implementation of this study

### **5. Data Analysis**

The research is conducted by Miles and Huberman analysis covering, data reduction phase, data presentation / data analysis and data collection and conclusion steps.

### III. RESULT OF RESEARCH

#### 1. Background of the establishment of UISU

The background of the establishment of UISU foundation is based on efforts to liberate the backward children of the nation in various fields, especially in the field of law then UISU Foundation was established on January 7, 1951, while the establishment of the University on January 7, 1952, initiated by the founders namely:

1. Bahrum Djamil SH
2. H Adanan Banawi SH
3. Drs. H. Rifai Abdul Manaf
4. Hj. Sariani
5. Drs. Sabaruddin Ahmad

In principle, the assets owned by UISU and the capital of UISU establishment in the initial steps are from the funds of the people, the endowments of Muslims of North Sumatra and Aceh, Zakat, Infaq and Shadaqah, as well as social funds taken from cinema ticket, as well as the harvest donated voluntarily by the Muslim farmers.<sup>11</sup> One of them is the father of Prof. Dr. M. Yasir the former Rector of IAIN SU, giving out zakat at every harvest and donations for UISU development.<sup>12</sup> As UISU is the help of the Islamic *ummah*, the body of UISU waqf was formed, but the problem of the waqf body is that it cannot establish and manage a university. Therefore, for the establishment of UISU foundation, the five founders established UISU foundation and they are basically the administrators not as owners. Then based on the background of UISU establishment to free the nation's children from backwardness in the field of law, the first Faculty formed was Faculty of Law and Faculty of Sharia.<sup>13</sup>

So it is stated that the oldest university outside Java is UISU.<sup>14</sup> The lecturers in the early phases of the establishment of UISU were Mr. M. Roem, M. Natsir, Safaruddin Prawira Negara, and Prof. Sumitro. Even in the general study of the Faculty of Shariah in 1960 Granad Shaykh Akbar M Saltoet became the source, then the MOU was signed with Al-azhar Univeristy having the core point that students from UISU enter Al-Azhar without any test.<sup>15</sup> such as Prof. Abdullah Shah, Mahmud Aziz and Mazid Siraj and others. After the establishment of the two Faculty subsequently followed by the establishment of the Faculty of Economics.<sup>16</sup> In the course of history and development, UISU continues to experience the ups and downs, especially in the field of management and leadership, for example the initial establishment of UISU tension between Bahrum Djamil with Yusuf Rangkuti, but the tension can be settled with kinship, for example when Yusuf Rangkuti married his son, Bahrum Djamil came and they forgave each other at the party.<sup>17</sup>

#### 2. UISU Dispute Dynamics

The tidal wave of management and leadership at the UISU at a higher and more serious level began in 2001, at that time Hj. Sariani announced that UISU finance surged Rp 20 billion.<sup>18</sup> Then she made scholarship programs for the lecturers to continue study to S2 and S3 levels and at that time came Helmi who is the son of Bahrum Djamil from second wife, asking to enter the board of UISU foundation, whereas at UISU foundation other children of Bahrum Djamil were already in UISU, they are Iqbal, Haris, and Leliwawi.<sup>19</sup> Meanwhile, according to the articles of UISU Foundation charter, only one of the founders' children could be admitted into the Foundation. The wish to join the foundation was expressed by Helmi to Hj. Sariani but the petition was rejected on the grounds of the rules that prevailed in UISU, so in the end Helmi formed *Forum Silaturrahmi Anak Pendi UISU* (kinship forum of UISU founders' children) and those who joined the forum were only the children of Bahrum Djamil and Sabaruddin Ahmad.<sup>20</sup> Helmi wished the forum to be inserted in the Foundation and according to Hj. Sariani such a forum might be formed but not inserted into the Foundation; in other words Sariani rejected the forum to be included into structural divisions of the UISU Foundation.<sup>21</sup>

Seeing the rejection of Hj. Sariani against *Forum Silaturrahmi Anak Pendi UISU* (kinship forum of UISU founders' children) Helmi's next step was then to establish UISU Munawarah Foundation, and the chairman of UISU Munawarah Foundation was his brother Helmi Haris while the Rector Khairul Muhsin. The establishment of the UISU Munawarah foundation was eventually sued by Sariani to the court. Sariani's lawsuit was granted and Helmi finally was imprisoned for 6 months and afterwards Helmi continued with his Al-Munawarah Foundation so that there were two stewardship of UISU, one UISU of Sariani version and the other was that of Helmi.<sup>22</sup>

From the beginning of 2013 the chairman of the UISU Foundation of Sariani version was Prof. Dr. Usman Pelly and the Rector was H. Usman SE and subsequently replaced by Dr. Ir. M. Assad. Seeing this condition finally on the order of Directorate General of National High Education, Prof. Dr. Janius Jamil was appointed as the Rector of UISU and subsequently discontinued by Prof. Zulkarnain and then replaced by Prof. Zainuddin. The disputes between the two UISU stewardship continued until finally the two UISU Rectors requested the legality to Directorate of National High Education and finally the one granted was M. Assad. Then the Parent Association of Students (*POMA*)<sup>23</sup> urged Helmi to show the legality of UISU which he led but

it was never issued and the peak was when students passed under UISU of Helmi version was not acknowledge legally.<sup>24</sup>

Finally, thousands of students applying for jobs in various institutions were rejected so that one of parents of the medical student asked Helmi to give responsibility seriously in one room at UISU building, until finally Helmi handed over all the process of diploma and students to Coordinator of private universities (*Kopertis*) of Region led by Prof. Dian Armanto, witnessed by Prof. Dian Armanto, Dr. Bahdin Nur Tanjung (Chairman of *Aptisi* of Indonesian Private University Association), and Edi Hanafi SH (*Kopertis* law counsel). The agreement taken during the mediation was that Helmi might open a new foundation but should not take the students from UISU because it is not the same between UISU Medan and UISU Al-Munawarah. After the mediation, the legal UISU must make SKPI (letter of diploma substitute) for 12000 students under illegal Foundation issued by Helmi.<sup>25</sup>

### **3. Types of UISU Disputes**

Seeing the background of the establishment of UISU up to now it is clear that UISU is a university that has a vision to educate the nation's children and make the nation's children not backward especially from the beginning of its establishment from the legal dimension. UISU has a background and vision in order to make children of the nation who have the capacity and capability in the field of law progressive. In other words, UISU has a noble value to create an intelligent society and smart Muslims in law. This fact can be seen from the establishment of the first faculty, that is the faculty of law.

It cannot be ignored that UISU is the only oldest university in Indonesia outside Java. UISU has gone through a long journey with colorful dynamics. It can be said that starting from the establishment UISU has always been faced by various problems but all could be settled through kinship systems.

In the course of UISU up to the present day it can be asserted that the recurring disputes are on the clustering system. And all the disputes can be classified into two parts:<sup>26</sup>

*First, the disputes at the level of the foundation.*

At this first level it can be emphasized that the dispute model is on the management system that occupies the foundation position. In the charter of UISU it is mentioned that the those positioned in foundation are the founders as mentioned above. In other words, the founders of UISU are the ones who automatically have the right to be positioned in the foundation. As long as the founders are still alive, each of them will be the chairman of the Foundation in turns.

In the case of the UISU the founders are still alive and legally still stand the foundation. Furthermore, UISU charter it is affirmed that the of founders' children are also given a portion in the foundation. The children of the late founders can replace the position of their parents but only one person. In other words, only one child of each of the late founders could be the administrator of the Foundation.

In this case, UISU is unique in its dispute. Bahrum Jamil who was the first chairman of the foundation, after he passed away, was replaced by his son Abdul Haris. But it turns out that other children of Bahrum Jamil have also been included in the UISU foundation. Furthermore, the problem was when Helmi, the son of Bahrum Jamil, wishing to get into the Foundation was rejected. In principle, Helmi submitted the request directly to Hj. Sariani but the petition was not accepted because Helmi's siblings had got into UISU foundation.<sup>27</sup>

*Second, the disputes at the level of University management*

Principally this part is a derivative of the UISU foundation management disputes. After Helmi was rejected by Hj. Sariani then Helmi made *Forum Silaturrahi Anak Pendiri UISU* (kinship forum of UISU founders' children). Helmi put the association into part of UISU. But the reality, Hj. Sariani also refused to include the association in UISU. According to Sariani she personally did not have any objection of the establishment of the forum but sternly refused to be included in the Foundation. All done by Helmi was in vain until finally Helmi established UISU counter-foundation.<sup>28</sup>

At the moment, there is a dispute at the stage of the Rector. In this case Helmi appointed a Rector of his version. In this case, Helmi appointed Usman, SE as the Rector. While from the side of Hj. Sariani a Rector was also appointed. Of course the appointment of a Rector will have consequences in the decisions and policies. Among the most strategic policies is signing a graduate certificate. A further consequence is the legality of the diploma itself and the acceptance of the world of work to the legality of the diploma.<sup>29</sup>

### **4. Settlement of UISU Dispute**

UISU dispute case can be called as one of the disputes in the world of education which is quite serious and become a topic of discussion. UISU dispute is not only discussed in the local level of North Sumatra but

becomes a national issue and news. In accordance with the history and greatness of the name, UISU is the only university that stands and exists long enough outside Java. So the disputes get known as the name of UISU.

The main trigger of the disputes in UISU was the desire of a Helmi to join and take part in the stewardship of the UISU foundation. And the disputes that occurred in the management of UISU foundation lasted long. Both sides in the academic and educational process are ongoing. The irony is that both sides continue to accept new students and continue to issue a diploma. In other words, disputes continue to run but education systems and processes continue to run respectively.<sup>30</sup>

In principle, the dispute resolution of UISU has experienced many processes but does not find the results satisfactory enough to resolve the disputes. UISU disputes in principle if narrowed boils down to two figures that is between Helmi and Mrs. Hj. Sariani. In terms of age and seniority Helmi is of the child level for Hj. Sariani. Until a trial the prosecutor once asked Hj. Sariani, if she knew Helmi standing as the defendant. At that time Hj. Sariani said that Helmi was her child, and she sewed his school clothes as a child. In other words, the closeness of the atmosphere between Hj. Sariani and Helmi was quite close like a child and a mother. The closeness was also reflected from calling of Helmi to Hj. Sariani with the term "Ocik" which in Malay tradition means the sister of the father or mother or other meaning which in principle is the sign of closeness.<sup>31</sup>

UISU disputes have drawn Muslim attention seriously. This can be seen from the mass media that contains a lot of news about UISU disputes, particularly in the Waspada Daily in the era of the dispute and the news about the UISU together with all the decrees from the court and other authorized institution is always at the headlines.

The significant points conducted in the process of UISU dispute resolution are as follows:

First, the *ishlah* pattern in the Islamic legal dimension of *al-islah* literally means peace, improvement or reform; the opposite of the word *al-ifsad* which literally means destruction.<sup>32</sup> The Qur'an mentions the term *Al-Sulh* with all the changes of the *tasrif* form as many as 27 times.<sup>33</sup> Of the 27 mentionings of the term *al-Sulh* in the Qur'an, there are five verses (*Al-Baqarah* surah [2]: 182 and 224; *an-Nisa* [4]: 128, and *al-Hujurat* [49]: 9-10 connecting it directly with the object to be reconciled, such as improvements between two disputing parties, peace between internal conflicting Muslims, and peace among mankind involved in global tensions. This does not mean that the verses of the Qur'an do not mention the social context of *al-islah*, the improvement, peace, or reform having a lower level of peace message compared to the verses mentioning the context of *al-islah* in particular because the main theme of *al-islah* as a whole in the Qur'an is the heart of the Islam teachings.<sup>34</sup> Terminologically the word *al-sulh* is interpreted variously by scholars, among others, Imam Taqiy al-Din Abi Bakr ibn Muhammad al-Husaini in the book of *Kifayat al-Akhyar* who explains that *al-sulh* is a contract that resolves disputes between two disputing parties.<sup>35</sup> While Sayyid Sabiq argues that *al-sulh* is an agreement to end a dispute between two warring parties. Each of the two sides that entered into this agreement is called a *muslih*. The disputed rights are called *Moses' anhu*. As for what is done by either of the two parties to the opponent to end the dispute is called the '*alaih or badal al-sulh*'.<sup>36</sup> By presenting a more detailed understanding, Hasbi Ash-Shiddiqie explains that *al-sulh* is a contract agreed upon by two people who quarrel in the right to do something, with the covenant being able to dispel the dispute.<sup>37</sup> From the above understanding it is known that in peace there are two parties, before which there is a dispute, and then the parties agree to dispose of all or part of their demands with the aim of ending disputes between them (the parties to the dispute). In the context of UISU disputes, efforts of *ishlah* between the Sariani and Helmi have been done but not succeeded.

In the context of UISU charter, principally, this stage may be referred to as the consultation completion stage, completion in consultation phase. Consultation is a personal action between a certain party called a client with another party who is a consultant giving his opinion to the client to meet the needs and needs of his client. It can be asserted that the meeting between Sariani and Helmi has occurred but does not work out with the affirmation that Helmi is not included in the Foundation and by this Helmi still insisted on making UISU counter.

### *Second, Negotiation*

Negotiation is a way to solve problems through discussion (consultation) directly between the disputed parties, and the results are accepted by the respective parties.

Negotiation is a "fact of life" or everyday life. Everyone who negotiates in everyday life such as trading partner, legal counsel of one party with another party in dispute, even a lawyer filing his lawsuit in court also negotiates with the defendant or his / her attorney before the examination begins. Negotiation is the basic of means to get what is wanted from others.<sup>38</sup>

Negotiations according to Ficher and Ury are two-way communication designed to reach agreement when both parties have different interests as well as similar ones. Negotiations are a means for parties in a dispute to discuss the settlement without the involvement of a third party mediator who is not authorized to make a decision (mediation), nor a third party decision maker (arbitration and litigation).<sup>39</sup>

The negotiation principally has been done by both parties but the problem is that the Helmi party is still not ready to accept. Yet at least the two sides have been sitting together to solve the case. At the real level, community leaders have also contributed to finding common ground so that UISU issues can be settled. But the tip remains a dead end.

Third, *qadha* (judgment) or *Adjudication*

The term *al-qada* 'etymologically has many meanings such as *al-faragh* meaning breaking up or ending, *al-ada* meaning paying, and *al-hukmu* meaning deciding, preventing or obstructing.<sup>40</sup> By referring to the expression of vocabulary and explanation of the Qur'an Ali Duraib unravels some of the meanings of *al-qada*<sup>41</sup>; some of which mean the law or verdict as contained in the QS. an-Nisa [4]: 65;

*So for the sake of your God, they (essentially) have no faith until they make you judge of their disputed case, then they do not feel in their hearts an objection to the verdict you give, and they fully accept it.*

Judicial settlement by *Al Qada* or through court is for those who are involved in disputes after peace and *tahkim* stages are unsuccessful. The process of *al-Qada* is carried out by a *qadi* (judge) appointed by the government. The process of dispute resolution through *al-Qada* in many cases is unable to explore the true nature of the dispute of the parties, as the judge is only able to understand and decide the matter to the extent of the strong evidence presented to him. On the basis of the conviction and the evidence available, the judge decides the law, whereas the essence of the most known is the disputed parties. Thus, completion through adjudication cannot guarantee satisfaction to the disputed parties, because there are parties who have limitations in the filing of evidence. Therefore, some verses of the Qur'an prioritize the settlement of disputes through peace before the judge.

The Qur'an and the Prophet's Hadith offer a process of dispute resolution in court through two means, namely the provision of legal facts, and settlement through peace. The dispute settlement through the legal evidence proofing process is carried out by filing a number of evidences by the parties in claiming or defending their rights before the court.<sup>42</sup> In this context the rule of law applies: "**Evidence is charged to the grantor, while the oath to the denying party.**"<sup>43</sup> The submission of evidence is intended to prove who is authorized and authorized to something. Through evidences matters will be clearly revealed and the proper party gets right in accordance with God's law.

Evidence is the standard of measure (norm) for judges in deciding cases.<sup>44</sup> One who has strong evidence, shall win the case in court. The judge will decide on the basis of the strong evidence the parties present to him. In fact, filing evidence in court sometimes does not match the actual facts. However, since the party has the ability to convince the judge with the evidence presented, the judge will decide the case based on the evidence. The judge does not know the true nature of the evidence presented to him, whether the evidence is in accordance with the actual fact or not. Fake proof and false testimony mentioned by the Qur'an as a sign in practice of the settlement of cases in court is widely open.

The process of dispute resolution through adjudication has not been able to explore the true nature of the dispute between the parties, as the judge is only able to understand and decide on the basis of the strong evidence presented to him. On the basis of the judge's conviction and the available evidence, he decides the law, whereas the most knowing reality is the disputed parties. Thus, settlement through adjudication cannot guarantee satisfaction to the disputed parties, because there are parties who have limitations in the filing of evidence. Therefore a number of Qur'anic verses prioritize dispute settlement through peace before the judge. In the context of UISU dispute, the stages that the parties have made after being unable to go through the process of consultation and negotiation is to enter the court domain. At this level, first Hj. Sariani sued Helmi for making *Forum Silaturrahmi Anak Pendiri UISU* (kinship forum of UISU founders' children) considered illegal and the forum was rejected and finally Helmi was imprisoned for 6 months. But after that, with the new foundation of UISU Helmi stated that students were also from the sides of Hj. Sariani. Explicitly in terms of legality and stewardship of UISU then the legitimate is the one led by Hj. Sariani. Such recognition can be seen from the existing legal references that can be seen as follows:<sup>45</sup>

1. Letter from Directorate General of General Law Administration, Ministry of Justice and Human Rights of Republic Indonesia No. AHU-AH.01.08-229 dated 11 April 2011 on the Foundation of Islamic University of North Sumatra, abbreviated UISU.
2. Letter from Directorate General of General Law Administration, Ministry of Justice and Human Rights of Republic Indonesia No. AHU-AH.01.01-5854 dated 8 April 2011 on the Foundation of Islamic University of North Sumatra, abbreviated UISU.
3. Copy of Cassation Decree of Administrative Low Court, Jakarta, No. 404 K/TUN/2010 dated 02 Maret 2011.
4. Notice of Private Universities Coordinator of Region I, No. 028/LI/PK7/ 2009 dated 25 Nopember 2009.

5. Letter from Minister of National Education of Republic Indonesia No. 131/MPN/DT/2009 dated 11 September 2009 on Dispute Resolution of UISU Foundation.
6. Letter from Directorate General of General Law Administration, Ministry of Justice and Human Rights of Republic Indonesia No. AHU-AH.01.08-418 dated 16 Juli 2009 on the Foundation of Islamic University of North Sumatra, abbreviated UISU.
7. Copy of Cassation Decree No. 150 K/TUN/2008 dated 16 Pebruari 2009
8. Decree of Administrative Low Court, Jakarta No. 46/G/2007/PTUN-JKT dated 03 September 2007.
9. Letter from Directorate General of General Law Administration, Ministry of Justice and Human Rights of Republic Indonesia No. C.HT.01.10.14 dated 03 April 2007 on the affirmation of legality of UISU.
10. Surat Dirjen AHU Depkumham Ham RI No. C.HT.01.10.04 tanggal 31 Januari 2007 Perihal Yayasan UISU yang sah. Letter from Directorate General of General Law Administration, Ministry of Justice and Human Rights of Republic Indonesia No. C.HT.01.10.14 dated 31 January 2007 on the affirmation of legality of UISU.

From the ten points of the legality proof from the state represented by the Ministry of National Education and the Ministry of Justice and Human Rights, it can be clearly seen that all refers to granting the legality of the UISU foundation on behalf of Hj. Sariani and Prof. Usman Pelly. In other words, UISU led by Hj. Sariani and Prof. Usman Pelly has got legitimate rights to run the academic process of UISU. Interestingly, issues by the Administrative Court and the Cassation decrees all rejected Helmi's lawsuit and re-assigned Hj. Sariani. Therefore Hj. Sariani has got the legality but ironically Helmi continues to operate and continue to issue a diploma every year.

#### *Fourth, Mediation*

Mediation is a process of dispute settlement between the parties conducted with the help of a neutral and impartial mediator as a facilitator, in which the decision to reach an agreement is still taken by the parties themselves, not by the mediator. Mediation means mediating or dispute resolution through a mediator. Thus, the mediation system seeks dispute resolution through mediators. From the above understanding, mediation is one of the alternative solutions to dispute as a breakthrough on the ways of traditional settlement through litigation (litigation in court). In mediation, the disputed parties come together in private, coming together for a private, face to face meeting.<sup>46</sup>

The parties are dealing with mediators as neutral third parties. The role and function of the mediator, helping the parties find a way out of their dispute resolution. The settlement to be realized in mediation is compromise between the parties. In seeking compromise, the mediator warns not to let any party seek victory as if such symptoms arise, the parties will be stuck in what stated by Joe Macroni as "I have my way, you have your way; there is no way". If one party wants to seek victory, it will encourage each side to go their own way (I have my way and you have your way). As a result there will be a dead end (there is no the way). Such manner and attitude are contrary to the principle of mediation:<sup>47</sup>

1. aiming to achieve maximum compromise,
2. on compromise, the parties both win
3. therefore no party loses and no one wins absolutely.

Meanwhile, dispute settlement with mediation has benefits to the parties, such as:

1. Quick settlement is realized. The average compromise between the parties can already be realized within a week or at most one or two months. The process of achieving compromise, sometimes requires only two or three meetings between the disputed parties.
2. Low cost (inexpensive). Generally mediators are not paid. If paid, not expensive. Administrative costs are also small. There is no need for a lawyer, even if it is not possible. That is why the mediation process is said to be without nominal cost.
3. Confidential. Everything that the parties express in the process of submitting their opinions to the mediator is all closed; not open to the public as well as in a court process (there is no public docket) and also no coverage by journalists (no press coverage).<sup>48</sup>
4. Fair with compromise method. The result of the compromise achieved is a settlement that they intertwine themselves, based on their respective interests but both parties are based on the principle of mutual benefit. They are not bound by the legal precedents. There is no need to follow the formalities of court proceedings. The method of settlement is approaching to compromise. No need to prove each other. The settlement is made in: (a) informal, (b) flexible, ways and (c) giving full freedom to the parties submitting the desired proposal.
5. The relationship of the two sides are done cooperatively. By mediation, the relationship of the parties from the beginning to the next, is fostered on the basis of cooperative relations in resolving disputes. From the beginning the parties must throw away the nature and attitude of hostility (antagonistic). Different from

litigation in court where from the beginning the parties are on two sides that are mutually hostile. When things are done, vengeful resentment continues to burn in their chests.

6. Result achieved is win-win solution as the settlement is realized in the form of a compromise agreed by the parties, and both parties win. Nothing is lost and no one wins, but win-win solution for the beneficial of all and this is different from dispute resolution through the courts. Here a certain party will lose or win. The winner feels flying in the wind and the losers feel immersed.
7. Not emotional as the settlement approach is directed at cooperation to reach a compromise and neither side needs to keep each other on the facts and evidence they have, then not defending each other's truth. Thus the settlement process is not ridden emotionally.<sup>49</sup>

Essentially, in the case of UISU dispute, the last effort is the settlement of the UISU dispute, mediated by Private Universities Coordinator of Region I Prof. Dian Armanto, public figures. Bahdin Nur Nur, Ir. Arfis, and Edi Hanafi, SH.

This mediation process is not only directed to one factor but many factors. The most urgent factor is that Helmi should be ready to be mediated by several factors:

*First, the legality of an unauthorized diploma.*

This condition is further worsened when a circular from Private Universities Coordinator is issued and becomes a reference for government and private agencies not to accept UISU alumni applying for work signed by Helmi. Thousands of diplomas that have been issued by Helmi then automatically are rejected. Therefore, students begin to protest and question the legality of the diplomas they hold.

*Second, urges from Association of Students' Parents*

Next comes the swift current from the voice of Association of Students' Parents (*POMA*) asking Helmi to show the legality of UISU led; the basis of which as the references of the parents is the worry of alumni whose diplomas are not accepted by government or private agencies.

*Third, Massive Urgent from Association of Students' Parents (POMA).*

This section is not directly incorporated in the previous sub-section based on the urgency and importance of the harsh insistence of the student's parents. It can be mentioned that there is one of the student's parents who will take a violent action if in case Helmi does not immediately settle the legality of UISU certificate that has been issued. Meanwhile, Helmi initially is still stalling time and says it would soon be solved. At this strong urgency Helmi finally can no longer dodge and argue.

In the end, in pressed conditions Helmi seemed to have no way out again from the demands of the parents of students, voluntarily Helmi was ready to be mediated Private Universities Coordinator of Region I Medan. In the mediation process Helmi consciously submitted all the academic process of unification of UISU JL. SM. Raja Medan to the Coordinator of Region I of North Sumatra. Therefore on that basis, Universities Coordinator of Region I of North Sumatra performs mediation step by making a memorandum of understanding between the two sides. The important point is UISU leadership was given to Hj. Sariani with Rector Dr. As'ad, M.Si and further forming a new arrangement in the management of the Rectorate to the Vice Dean. In the agreement it was affirmed that the deputies 1 to 4, as well as the vice Deans 1 to Dean 3 had their respective representatives but the Rector remained one Dr. As'ad, M.Si

## **5. The existence and role of ADR in the Settlement of UISU Disputes**

Dispute settlement through ADR is a non-litigation or off-court legal dispute resolution category.<sup>50</sup> The settlement of disputes outside the court is based on the parties wishing to administer the dispute, that is how the parties deal with and resolve disputes in question. Of course, there are many ways in which the parties can take to resolve their legal disputes depending on the circumstances. If the parties want a legal path by 'peace' then the parties must take alternative dispute resolution out of court. These non-court or non-litigation forms or means of settlement are summarized in Alternative Dispute Resolution (ADR) terms.<sup>51</sup>

The forms of non-litigation settlement developing in Indonesia can be seen from two sides. First, from the side of traditional law or customary law, the settlement of non-litigation law disputes that live in the community has a diverse form in accordance with the various ethnic cultures and laws of society in Indonesia. Non-litigation settlements among Indonesians have long been practiced even as cultural roots that live as part of their lives. For example the people of Bali, Aceh, Batak and others have their own legal settlement system.

Secondly, in terms of legal settlement recognized in today's legal studies, non-litigation settlement forms are known as Alternative Dispute Resolution (ADR). Forms or models with ADR vary widely, including mediation, negotiation, conciliation, arbitration and Restorative Justice. Even in practice the settlement of legal dispute or Alternative Dispute Resolution (ADR) in the customary law of Indonesian society may also take the form of mediation, conciliation, arbitration, negotiation and (just restoration of the situation), but each custom law has uniqueness which is not owned by customary law and not possessed by the non-litigation forms present in modern society today.



The legal outreach process seems to have grown and gained recognition in the world of justice. The judge as a legal dispenser for the disputed parties is not allowed to reject any case for any reason. Therefore, the judge advise the parties to settle their lawsuits out of court. The existence of an increasingly evolving Alternative Dispute Resolution (ADR) is also based on the wishes of people who expect the community order to remain lasting and harmonious and there is no conflict because of the win-win solution at the end of the dispute. It seems that the social law of such society continues to move for the benefit of the social community.<sup>52</sup>

The settlement of non litigation disputes is also influenced by the social condition of the people who still want to maintain social relations with the parties or the litigants. In America, the process of dispute resolution of this kind is dominated by businessmen who still want to maintain good relationships with colleagues or business partners. Husbands who still want to maintain their relationship will not bring their spouses to court but resolve their dispute with compromise and consultation.<sup>53</sup> These non-litigation settlement models eventually expand into other areas of law, both civil and criminal.<sup>54</sup>

The existence of non-litigation law settlements increasingly is accepted by modern society, also based on the advantages existing. Some of the advantages of non-litigation law settlement are as follows:<sup>55</sup>

Firstly, through non-litigation, time for the legal dispute settlement tends to be fast, as it is not a rigorous and complicated procedure.

Secondly, if the legal settlement process is fast then the required cost is cheap. Thirdly, through non-litigation the disputing parties may undertake a process of reexamining through a win-win situation by granting or letting loose on certain rights on the basis of reciprocal principles. In other words agreement is left to the parties (voluntary).

Fourthly, by a win-win solution, the result of legal dispute resolution will create justice for the parties.

Fifthly non-litigation law settlements are more conservative and fulfill the interests of the parties from various aspects including terms of maintaining the interest of both the parties (interest-based and future looking).

Sixthly, information and flexibility . Procedures undertaken such as the calling of the parties are not rigid, including the design of the dispute resolution they want.<sup>56</sup>

Seventh, non-litigation settlement has bargaining value with the parties.<sup>57</sup>

In other words, the dispute settlement through ADR makes dispute settlements faster, at no cost and knitting back the ropes of brotherly relationships because no one loses and wins, but rather putting forward the point of intersection or red thread of the disputed case. This fact is reflected in the settlement of UISU dispute cases that have lasted long and seized the attention of the people of North Sumatra especially Muslims of North Sumatra.

In the dispute settlement of UISU related with the role of ADR it is significant that UISU dispute boils down to the issue of the wishes of the founding children who in this case Helmi to enter the stewardship of the UISU foundation after Hj. Sariani announces a surplus of UISU profits that has reached 20 billion. On that basis, a scholarship program is designed for lecturers to continue the study by UISU money. Then Helmi's wish is refuted by contradicting the charter of the 'Foundation' not allowing the founders' children of more than one person to be in the stewardship of the foundation.

UISU dispute has experienced legal phases both litigation and no litigation. Litigation of UISU case has entered into the realm of Administrative Court even to cassation. But it still does not work. It cannot be denied, however, that before entering into the domain of the ishlah's trial, consultation and negotiation have also been carried out but also unsuccessfully. The last three point is ADR or non litigation paths. By that, ADR's position is important before entering the domain of courts.

But interestingly is what is stated by Prof. Pagar Hasibuan, M. Ag, that in the process of applying ADR in various cases, in principle, a mediator must be able to discover the secrets of a legal process., intersection desired by both parties.<sup>58</sup> So in the last stage of UISU dispute case, there is one interest which Helmi cannot evade from the attitude of having to mediate namely the demands of students and parents of students on the legality of the diploma they have got. Consequently, neither government nor private companies accept UISU graduates.

Thus, finally Helmi fully hands over the process and responsibility of UISU to Private Universities Coordinator of Region I as well as a mediator between parties Hj. Sariani and Helmi. Evidence that dispute settlement through non-litigation or ADR channels is quick with low cost compared to litigation or trial process from the Administrative Court to the level of appeal.

It can be concluded that the successful process of UISU to make one stewardship and resolve the dispute is the result of ADR or non litigation settlement process. The outcome of the agreement is even stipulated in a common understanding and accommodate all the parties to jointly promote the UISU.

#### IV. CONCLUSION

The dispute of the Islamic University of North Sumatra (UISU) is one of the dispute cases in the world education. An educational institution run by the foundation's management after becoming prosperous has a great chance to face a dispute. The dispute between Hj. Sariyani with Helmi, son of Bahrum Jamil is a dispute between UISU founders and the one of the founders' son. The factors causing the dispute have been parsed in this study to see the case in a broader, objective perspective. The completion of the dispute case of the Islamic University of North Sumatera (UISU) and the unification of the UISU management is through the ADR settlement pattern.

#### BIOGRAPHY OF THE WRITER



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#### Endnote

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<sup>1</sup>Depdiknas, *Pengolahan dan Analisis Data Penelitian* (Jakarta: Depdiknas, 2008), p. 34  
<sup>1</sup>Interview with Yasir Nasution in Medan on 25 December 2016  
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<sup>1</sup>Abdul Rahim, *The Principles Muhammadan Jurisprudence* (London: Luzac & Co, 1991), p. 366-367

<sup>1</sup>Musthafa Ahmad al-Zarqa, *al-Madkhal ila al-Fiqh al-'Am al-Islamfi Tsaubih al-Jadid* (Beirut: Dar al Fikr,1965), p.369.

<sup>1</sup>Rahim, *The Principles Muhammadan Jurisprudence*, p. 368.

<sup>1</sup> UISU documents and files

<sup>1</sup> Roihan A. Rasyid, *Hukum Acara*, 89.

<sup>1</sup>*Ibid.*

<sup>1</sup>*Ibid.*

<sup>1</sup>*Ibid.*, p. 78

<sup>1</sup> Agarwal, "Alternative Dispute Resolution Methods", p. 4.

<sup>1</sup>*Ibid.* In the academic circles of Indonesian law the term Alternative Dispute Resolution (ADR) is known as Alternative Dispute Resolution (APS). Takdir Rahmadi, *Mediasi*, p. 10-12.

<sup>1</sup> Look: Investment Climate Advisory Service of the World Bank Grup, *Alternative Dispute Resolution Guidelines*.

<sup>1</sup> Steven Vago, *Law and Society*, p. 300-301

<sup>1</sup> Steven Vago, *Law and Society*, p. 300

<sup>1</sup> Non-litigation law settlement is generally used only in civil law cases that deal with the interests (interest). In fact in the life of the community, especially the people of Indonesia who do not distinguish the dispute in civil cases (private law) or criminal law. Both lawsuits are in fact often solved by non litigation. Read Takdir Rahmadi, *Medias*, p. 30-31.

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