

CONSTRAINTS OF RELIGIOUS COURTS IN RESOLVING SHARIA ECONOMIC DISPUTES

Mayang Rosana

Institut Agama Islam Sultan Muhammad Syafiuddin Sambas
E-mail : rosanamayang@gmail.com

ABSTRACT

The rapid growth of sharia economics in Indonesia has had logical consequences for the increasing sharia economic disputes. Settlement of sharia economic disputes through the courts is the absolute authority of the Religious Courts. This is based on Law Number 3 of 2006 and Constitutional Court Decision No. 93/PUU-X/2012. However, in reality there are still obstacles faced by Religious Courts in resolving sharia economic disputes. This research aims to find out how sharia economic disputes are resolved and what obstacles the Religious Courts face in resolving sharia economic disputes. In this research, researchers used a type of library research, with a normative approach. Apart from that, this research also uses other scientific sources such as journal articles, regulations, internet media which are relevant to discussions regarding the obstacles of Religious Courts in resolving sharia economic disputes. The results of this research are that resolving sharia economic disputes can be achieved through two routes, namely the court route and outside the court. Settlement in court can be done through the Religious Courts, while outside the court it can be done by means of consultation, negotiation, mediation, conciliation, expert assessment and arbitration mechanisms. Meanwhile, the obstacles for Religious Courts in resolving sharia economic disputes are closely related to aspects of legal structure, legal substance and legal culture of society in the field of sharia economics. Apart from that, the implementation of sharia economics, socialization, practices and networking between sharia financial institutions.

Keywords: *Sharia Economic Disputes, Religious Courts, Obstacles.*

INTRODUCTION

Economic development goes hand in hand with human development and technological knowledge. As a Muslim, we should be sure that the Qur'an and Hadith have regulated the way of economic life, and to realize economic life. Indeed, Allah SWT has provided His resources and allows humans to utilize them. In fact, the world economic system is dominated by the conventional economic system which is much stronger than the Sharia economic system. Even Muslims themselves are more familiar with conventional economic procedures with all their advantages and disadvantages. Therefore, as Muslims are required to apply their Islam in all aspects of life, including aspects of economics. (Amran Suadi and Mardi Candra, 2016).

Currently, Islamic financial institutions are experiencing enormous growth with the large number of institutions and the number of customers. With so many institutions and customers from the Islamic financial sector, it is undeniable that sharia economic disputes arise.

Sharia economic dispute is a conflict between two or more economic actors whose business activities are carried out according to the principles and principles of sharia economic law. This is due to different perceptions of an interest or property right that can have legal consequences for both and can be given legal sanctions against one of the two. Based on this paradigm, it can be understood that the purpose of sharia economic dispute resolution is to find solutions to disputes that occur between parties carrying out economic activities based on sharia economic principles. Thus, a settlement is realized that can provide legal justice, legal certainty, and legal benefits for both parties to the dispute through adequate law enforcement institutions. (Amran Suadi, 2017).

The Religious Courts have been given the authority to resolve sharia economic disputes with the enactment of Law Number 3 of 2006 concerning Religious Courts. Effective resolution of sharia economic disputes is a necessity in every business activity. The more sharia economy and business activities develop, the more likely the number of disputes will increase. The enactment of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts has brought about major changes in the existence of the current Religious Courts institution. One of the fundamental changes is the addition of the authority of the Religious Courts Institution, among others, in the field of Sharia economics (Nurul Hak, 2011).

When examined more deeply, the realization of Religious Courts in Indonesia can be seen from several perspectives. Philosophically, the judiciary was established and developed to uphold law and justice. The law that is enforced is the law of God that has been systematized by humans. Meanwhile, the justice upheld is the justice of God. Then juridically Islamic law in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah and sharia economy applies in the Religious Courts within the Religious Courts. Then historically the Religious Courts are one of the links of the Islamic judicial chain that has been continuous since the time of the Prophet Muhammad. Sociologically, Religious Courts are supported and developed in Islamic society (Cik Hasan Bisri, 1996).

2006 was considered a revolutionary year in the history of the existence of the Religious Courts in the Indonesian legal system. The delegation of authority to examine, decide and resolve sharia economic cases to the Religious Courts signaled recognition of the existence of the Religious Courts as well as the realization of the desire of some, even all Indonesian Muslims to resolve their disputes in accordance with the demands of sharia. Therefore, the Religious Courts are expected as well as projected as the most appropriate and representative judicial institution in examining, deciding, and resolving Sharia economic cases (Hasbi Hasan, 2010).

Therefore, this research will further discuss how to resolve sharia economic disputes, and what are the obstacles to the Religious Court in resolving sharia economic disputes.

RESEARCH METHODS

Before conducting research, it is very important to determine the research method. In this research, the type of research used is library research, with a normative approach. In addition, this research also uses other scientific sources such as journal articles, regulations, internet media that are relevant to the discussion related to the obstacles of the Religious Court in resolving sharia economic disputes.

DISCUSSION

A. Sharia Economic Dispute

To understand the definition of sharia economic disputes, it is necessary to first understand two important parts of the term sharia economic disputes, namely "dispute" and "sharia economy". In the dictionary of Law, the word "dispute" is defined as something that causes a difference of opinion between two or more disputing parties. While disputes in court are commonly referred to as cases. From this definition, it can be understood that a dispute is a dispute between two or more parties caused by the emergence of a problem that causes differences of opinion and interests (Abdul Halim Muhammad Soleh, 2015).

While sharia economics according to language consists of two words, namely economics and sharia. Economics is one of the social sciences that studies human activities related to the production, distribution, and consumption of goods and services. While sharia is a law or law determined by Allah SWT for his servants as contained in the Qur'an and accepted by His Rasul in the form of his sunnah.

Islamic economics is a human activity in which there are various ways to maintain life and the welfare of society based on the teachings that have been mandated by Islam based on regulations recognized by society in general, especially Muslims and Muslim-majority countries (Ikhsan Al Hakim, 2013).

When formulating the definition of Islamic economics in the portion of Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning Religious Courts, then Islamic economics means actions and or business activities carried out according to sharia principles, including: sharia banks, sharia financial institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium-term securities, sharia securities, sharia financing, sharia pawnshops, pension funds of sharia financial institutions, and sharia businesses (Zainudin Ali, 2009).

The term sharia economy is a unique term used in Indonesia. Outside Indonesia, the term Islamic economics is better known as Islamic economics. In the discourse of contemporary Islamic economic thought, the concept of Islamic economics is often identified with a variety of different terms, including Islamic economics, ilahiyyah economics, qur'ani economics, sharia economics, and rahmatan lil 'alamin economics. All of these terms refer to a

concept of an economic system and business activities based on Islamic law or an economy based on Sharia principles (Hasbi Hasan, 2011).

At the terminological level, the notion of Islamic economics is formulated with various formulations by Islamic thinkers and economists. Some of them define Islamic economics by giving dominant accentuation to the sources and principles of Sharia economics, some emphasize the goals and objectives of economic activity in the Islamic economic system or order, and some formulate it within the scope of economic science studies (Hasbi Hasan, 2011).

The word sharia referred to in Islamic economics is actually the fiqh of the fuqaha. This is because one of the notions of sharia that developed in history is fiqh and not verses or traditions which are solely the core of Islam or legal verses and traditions specifically (Rifyal Ka'bah, 2007).

Based on the explanation above, it can be concluded that sharia economic disputes are disputes that occur between two or more parties related to economics that cause differences of opinion. These disputes can be in the form of disputes between financial institutions and sharia financing institutions and their customers, such as banks and customers, disputes between fellow financial institutions and sharia financing institutions such as one sharia bank with another sharia bank, and disputes between people who are Muslims, which in the agreement contract explicitly states that the actions or business activities carried out are based on sharia principles (Abdul Halim Muhammad Soleh, 2015).

Sharia economic disputes can also be in the form of a Bankruptcy Statement Application (PPP) case and can also be a Debt Payment Obligation Delay (PKPU) in the field of sharia economics. In addition, there are also bankruptcy cases (cases not purely as bankruptcy cases) (Muhammad Mujahidin, 2010).

B. Causes of Sharia Economic Disputes

Some of the problems faced by the Islamic economy in welcoming the future prospects of the Islamic economy in Indonesia are (Amran Suadi and Mardi Candra, 2016):

1. Improper public understanding of Islamic banking operations. The difference in the characteristics of conventional bank products with Islamic banks has caused reluctance for users of banking services, it arises because of the loss of opportunity to get a fixed income in the form of bank interest. Therefore, it is generally necessary to inform that the placement of funds in Islamic banks will get more blessed benefits.
2. The prevailing banking regulations have not fully accommodated the operations of Islamic banks.
3. The network of Islamic bank officials is not yet extensive, this development is necessary to expand the range of services to the community.
4. Human resources who have expertise in Islamic banking are still relatively few, this is because this system has not been developed for a long time.

Most of the causes of sharia economic disputes are due to the existence of disharmony between individuals or groups that enter into relationships due

to disturbed or violated rights. A dispute is a condition in which there is no agreement between the parties about something and the facts or differences in interests between the two parties. The occurrence of a dispute starts from situations and conditions that make one party feel disadvantaged by the other party (Amran Suadi and Mardi Candra, 2016).

The occurrence of this dispute is generally due to fraud or broken promises by the parties or one of the parties does not do what was promised or agreed to do. The parties or one of the parties has carried out what was agreed upon but not exactly as promised. The parties or one of the parties did what was promised, but late and the parties or one of the parties did something that according to the agreement should not be done. So that these actions cause one of the parties to feel disadvantaged (Richard Burton Simatupang, 2003).

Thus, the occurrence of a sharia economic dispute is caused by two parties, both individuals and legal entities who make a contract or agreement with sharia principles where one party makes a default and or commits an illegal act resulting in the other party feeling harmed. For example, in a Sharia Banking dispute, one of the customers made a loan and borrowing contract with one of the Islamic banks, let's say for example Bank Syariah Bukopin, for a certain amount with monthly installments according to the agreement for the first month or two installments smoothly, but in the following month the customer did not pay installments for various reasons (bad installments). This caused Bank Syariah Bukopin to feel disadvantaged. This situation resulted in a sharia economic dispute due to default.

C. Authority of Religious Courts

The authority (competence) of the Religious Courts is regulated in Articles 49 to 53 of Law No. 3/2006 on Religious Courts. The authority consists of relative authority and absolute authority. The relative authority of the Religious Courts in Article 118 HIR or Article 142 RBG jo Article 66 and Article 73 of Law No. 7 of 1989, while the absolute authority based on Article 49 of Law No. 7 of 1989, namely the authority to hear civil cases in the fields of marriage, inheritance, wills, grants made based on Islamic law, waqf, zakat, infaq, sadaqah, and Sharia economy (M. Fauzan, 2007).

The word authority can be interpreted as power, in legal terms this word is often referred to as competence, which comes from the Dutch language, namely *competentie*, which is often translated as authority, so that the three words are considered synonymous (Amran Suadi and Mardi Candra, 2016).

1. Relative Authority

Relative authority is defined as the power of a court of one type and one level, in contrast to the power of other courts of the same type and same level, for example between the Malang District Court and the Surabaya District Court or between the Medan Religious Court and the Padang Religious Court (Erfaniah Zuhriah, 2014).

Talking about the authority of the Religious Courts in its position as one of the executors of judicial power in Indonesia today, one must refer to the provisions of Law Number 3 of 2006 concerning Amendments to Law

Number 7 of 1989 concerning Religious Courts. In this law, the provisions regarding the authority of the Religious Courts have been regulated in such a way as in Article 49 to Article 53 and Article 66 and Article 73. The provisions regulate the relative authority and absolute authority of the Religious Courts (Cik Basir, 2009).

In general, the authority of the Religious Courts as stated in Article 49 of Law No. 3 of 2006, the contents and articles of which were not amended in Law No. 50 of 2009, is to examine, decide, and settle cases at the first level between people who are Muslims in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, sadaqah, and Sharia economy (Muhammad Mujahidin, 2010).

Article 4 paragraph (1) of Law No. 7 of 1989 concerning Religious Courts states explicitly that the Religious Court is domiciled in the municipality or in the capital of the regency, and its jurisdiction covers the municipality or regency. Then in the explanation of Article 4 paragraph (1) of Law No. 7 of 1989 says that the seat of the Religious Court is basically in the municipality or in the capital of the regency, whose jurisdiction covers the municipality or regency, but the possibility of exceptions is not closed.

Thus, each Religious Court has a specific jurisdiction or is said to have a specific relative jurisdiction. In this case it covers one municipality or one regency, or in certain exceptional circumstances, it may be more or less.

This relative jurisdiction has an important meaning, especially in terms of the domicile of the plaintiff and defendant in a case. Furthermore, it is certainly very decisive in relation to which Religious Court people will file their cases and in connection with the defendant's right of exception in dispute resolution (Amran Suadi and Mardi Candra, 2016).

2. Absolute Authority

Absolute authority means the authority or power of the court relating to the type of case or type of court or level of court, in contrast to other types of cases or types of courts or levels of courts, for example: Religious Courts have jurisdiction over marriages for people who are Muslims, while those who are non-Muslims have jurisdiction over General Courts. It is the Religious Court that is authorized to hear and adjudicate cases in the first instance, not the High Religious Court or the Supreme Court. Likewise, appeals from the Religious Courts should be submitted to the Religious High Court, not to the Supreme Court.

With respect to this absolute power, the Religious Courts are required to scrutinize the case submitted to them whether or not it falls within their absolute power. If it is clearly not within its absolute power, the Religious Court is prohibited from accepting it. If the Religious Court accepts it too, then the defendant can file an objection called an absolute exception and this type of exception can be filed since the defendant first answers the lawsuit and can even be filed at any time, even at the level of appeal or at the cassation level. At the cassation level, this absolute exception is one of the three reasons that allow people to request a cassation and can be used as a reason by the Supreme Court to overturn a decision of the Religious Court that has

exceeded the limits of its absolute power (Amran Suadi and Mardi Candra, 2016).

The amendment of Law No.7 of 1989 was to expand the authority of the Religious Courts, which were originally only tasked and authorized to examine, decide and resolve cases. After the Law was amended by Law No. 3 of 2006 and Law No. 50 of 2009 concerning the First and Second Amendment to Law No. 7 of 1989 concerning Religious Courts, the scope, duties and authority of the Religious Courts were expanded (Amran Suadi and Mardi Candra, 2016).

Based on Article 49 letter (i) of Law No. 3 of 2006 which articles and contents are not amended in Law No. 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 concerning Religious Courts that the Religious Courts have the duty and authority to examine people who are Muslims in the field of sharia economics which includes: sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium-term securities, sharia securities, sharia financing, sharia pawnshops, and pensions of sharia financial institutions, and sharia business (Amran Suadi and Mardi Candra, 2016).

D. Sharia Economic Dispute Resolution

A dispute is a difference of interest between the parties in the form of differences in civil rights and obligations regulated in material civil law (Retnowulan Sutantio and Iskandar Oeripkartawinata, 2002). In Indonesia, there are several ways of resolving sharia economic disputes. The settlement is based on the tradition of Indonesian positive law. There are several ways of resolving sharia economic disputes, namely: Peace and Alternative Dispute Resolution (ADR), Arbitration (Tahkim), and Court Litigation (Muhammad Zulhefni, 2017).

Dispute resolution mechanisms are pursued through formal and informal means. Formal dispute resolution processes have evolved into adjudicative processes consisting of litigation and arbitration. Informal conflict resolution processes on the agreement of the parties to the dispute outside the court (Suyud Margono, 2010).

Officials who carry out the duties of judicial power are judges. Judges who serve in the Religious Courts are required, among others, to be Muslim, sharia scholars and or master Islamic law. With these requirements, judges in the Religious Courts are those who master Islamic law. The Religious Courts Law states that not only for judges who meet the requirements of being Muslim, but also ad hoc judges, clerks, bailiffs, secretaries of the Religious Courts, among others, must be Muslim. The requirement to be Muslim is not found in the laws governing other judicial bodies (Sufiarina, 2014).

From the explanation above, it can be understood that the settlement of sharia economic disputes can be pursued through court channels and out-of-court channels.

a. Court Track

Settlement of sharia economic disputes can be done through court channels. The court authorized to receive, examine, and try sharia economic cases in Law No. 3 of 2006 is the Religious Court. However, if referring to Law No. 21 of 2008, the District Court is also authorized to resolve sharia economics cases. This situation continued and only ended after the Constitutional Court issued Decision No. 93/PUU-X/2012 on August 12, 2013. With the Constitutional Court's decision, the only court authorized to resolve shari'ah economic disputes is the Religious Court.

b. Out-of-Court Path

Efforts to resolve sharia economic disputes through out-of-court channels can be pursued by means of consultation, negotiation, mediation, conciliation, expert judgment, and arbitration mechanisms (Abdul Halim Muhammad Soleh, 2015).

E. Constraints of the Religious Court in Resolving Sharia Economic Disputes

The role of the Religious Court in resolving sharia economic disputes must at least be realized in two ways, namely providing justice for the parties to the dispute so that the parties are satisfied with the resulting decision. Then make a positive contribution to the development of Islamic economics in Indonesia (Amran Suadi and Mardi Candra, 2016).

The implementation of Law No. 3 of 2006 on the amendment of Law No. 7 of 1989 and later amended to Law No. 50 of 2009 on the expansion of the authority of the Religious Courts in adjudicating cases, namely on sharia economics, makes all elements of both judges, clerks, and existing structural officials to learn more about sharia economics.

There are several advantages of the Religious Court in resolving sharia economic disputes. The advantages are (Andi Fariana, 2015):

1. The Religious Courts have Human Resources (HR) who already understand shari'ah issues, although there is still a need to improve their insight and knowledge through regular education and training.
2. The Religious Courts have sufficient material law, especially relating to sharia economics, including the books of fiqh mu'amalah which are contextual in their application.
3. The Religious Courts have offices in almost all districts and municipalities throughout Indonesia and most have implemented internet-based information technology networks.
4. Having the support of the majority of Indonesia's population, namely the Muslim community, who are currently very passionate about upholding their religious values.
5. Strong political support because the government and the House of Representatives agreed to expand the authority of the Religious Courts on February 21, 2006, resulting in Law No. 3/2006, which is a necessity in meeting the demands of the existing law, namely the paradigm shift from family courts to modern courts.
6. Support from banking authorities (Bank Indonesia) and support from Islamic Financial Institutions around the world.

In providing justice for litigants, Religious Court judges are not only required to understand sharia aspects, but also to understand the politics of economic law. This right is because sharia economic law is part of national legal politics in general. Currently, Islamic economic practices that are developing are still in the synchronization (adjustment) stage between conventional economic practices and sharia-based economic practices. at the adjustment stage, of course, several factors must be considered, both external and internal, which cause the practice in Islamic economics to not fully comply with the sharia conception (Amran Suadi and Mardi Candra, 2016).

The settlement of sharia economic disputes is a species of law enforcement efforts in Indonesia. Therefore, the study of the obstacles of the Religious Court in resolving sharia economic disputes in Indonesia is closely related to aspects of the structure, substance, and legal culture of society in the field of sharia economics.

1. Legal Structure Aspects

In the aspect of legal structure, the ability of human resources organizing judicial power in the Religious Courts, including judges and other registrar officials, is very decisive for the implementation of law enforcement in the field of sharia economics.

2. Aspects of Legal Substance

In the aspect of legal substance, the availability of legal rules both formally and materially in the field of Islamic economics correlates with the realization of the values of certainty, justice, and legal expediency in the field of Islamic economics.

3. Aspects of Legal Culture

On the legal culture aspect, the level of public trust in the Religious Courts is very significant for the effectiveness and efficiency of law enforcement in the field of Sharia economics (Amran Suadi and Mardi Candra, 2016).

These three aspects correlate positively with the effectiveness of law enforcement in the field of sharia economics and the acceleration of sharia economic growth in Indonesia. In this regard, it is necessary to disclose the readiness of the Religious Courts, both in improving the ability of human resources and legal rules (formal and material) so that in carrying out the role that has been given by the Law can be carried out properly in accordance with the expectations of the community (Amran Suadi and Mardi Candra, 2016).

Comprehensively, the development and opportunities of the Islamic economy are not yet encouraging, because the Islamic economy still faces various obstacles and challenges caused by the following matters:

1. The socialization of Islamic economics has not been maximized.
 2. The lack of a strong network or synergy between Islamic financial institutions and social institutions engaged in the economy of the people, such as zakat and waqf institutions.
 3. The practice or application of Islamic economics has not been maximized.
- In theory, Islamic economics has been developed through the world of education and knowledge..

In addition to these matters, the development of Islamic economics has also experienced challenges in the following matters (Amran Suadi and Mardi Candra, 2016):

a. Institutional factors

This is influenced by at least two elements, namely limited capitalization and an inadequate office network.

b. Human resource factors

The existence of human resources is important. The challenge in this case is that there are still insufficient human resources in the field of Islamic banking.

c. Level of community understanding

The level of public understanding of the nature (characteristics that are different from conventional banks) of Islamic banking operations is still very limited so that the desire of people who are interested in Islamic banking is still limited to the awareness level.

d. Benchmarking operational instruments and products

As a newly emerging industry, the Islamic banking industry still has a very limited scope of operations and products in order to facilitate customer transaction needs so that in certain respects the development of operational instruments and products still refers to conventional banking.

e. Macroeconomic environment

The nature of Islamic banking operations that are directly in contact with the real sector is closely related to the development of the macroeconomic environment so that efforts to realize and maintain stable macroeconomic conditions are challenges that need to be taken into account in the development of Islamic banking and Islamic financial institutions.

CONCLUSIONS

Based on the explanation above regarding the Obstacles of the Religious Court in Settling Sharia Economic Disputes, it can be concluded that sengketa occurs due to fraud or broken promises by the parties or one of the parties does not do what was promised or agreed to do. The parties or one of the parties has carried out what was agreed upon but not exactly as promised. The parties or one of the parties did what was promised, but late and the parties or one of the parties did something that according to the agreement should not be done. So that these actions cause one party to feel disadvantaged. Settlement of sharia economic disputes can be pursued through two paths, namely the path in court and the path outside the court. Regarding the obstacles of the Religious Court in resolving sharia economic disputes in Indonesia, it is closely related to aspects of legal structure, legal substance, and legal culture of the community in the field of sharia economics. In addition, the application of Islamic economics, socialization, practice, and networks between fellow Islamic financial institutions.

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