NURANI:
JURNAL KAJIAN SYARI'AH DAN MASYARAKAT

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website: http://jurnal.radenfatah.ac.id/index.php/Nurani Email: jurnalnurani@radenfatah.ac.id
E ISSN: 2460-9102 P ISSN: 1693-8437

Sharia Economic Dispute Settlement Between Religious Courts And Basyarnas

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Keywords: *Sharia economic disputes; Religious courts; Basyarnas.*

DOI: https://doi.org/10.19109/nurani.v%vi%i.10667

Abstrack: This study aims to examine the settlement of sharia economic disputes that arise in the event of a dispute between the two parties. This study will answer the formulation of the problem, namely: Why can the settlement of sharia economic disputes be resolved through the Basyarnas and the Religious Courts? the impact of resolving sharia economic disputes through Basyarnas and the Religious Courts; Basyarnas status after the enactment of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989. In this study, the authors used literature research, then analyzed it using content analysis methods related to the problems studied. The research method used is a normative juridical research method. The results of this study state that the birth of Law Number 03 of 2006 which has been updated with Law Number 50 of 2009 has brought major changes to the existence of the current Religious Courts, one of the fundamental changes is that the Religious Courts have the authority to examine, hear, and resolve sharia economic disputes through litigation. The settlement of sharia economic disputes as regulated in Law Number 30 of 1999 has been carried out by Basyarnas and is still used as a non-litigation institution authorized to resolve disputes.

Introduction

Islamic law as a living law in Indonesia experienced a significant development in this period of independence. These developments can be seen, among others, from the authority possessed by the Religious Courts as Islamic courts in Indonesia. Previously, the decisions of the Religious Courts were purely based on the fiqh of the fuqahā', their executions had to be confirmed by the General Court, the judges only had traditional Sharia education and no legal education, the organization did not culminate in the Supreme Court, and so on. Now things have changed. One of the fundamental

changes lately is the addition of the authority of the Religious Courts in the new Law on Religious Courts, including the field of sharia economics (Kaaba, 2005:12).

In this regard, Indonesia itself has stepped forward. The existence of a religious court as a dispute resolution institution in the field of sharia economy is a proof of Indonesia's commitment to developing a sharia economy. In addition, the existence of special supervisors in the banking sector, such as that carried out by Bank Indonesia through its sharia division, can support the development of sharia economic infrastructure in Indonesia (Nasution, 2008:38).

The Religious Courts as one of the four judicial institutions in Indonesia. since the promulgation of Law Number 3 of 2006 and changed to Law Number 50 of 2009 concerning amendments to Law Number 7 of 1989 concerning the Religious Courts, has new authority as part of its absolute jurisdiction, namely the authority to receive, examine and adjudicate and resolve disputes in the field of Islamic economics.

The issuance of Law Number 03 of 2006 and amended to Law Number 50 of 2009 concerning amendments to Law Number 7 of 1989 concerning Religious Courts is a logical consequence of the application of the "one roof" concept in the development of judicial institutions under the Supreme Court. RI or commonly known as "one roof system". As regulated in Law Number 4 of 2004 concerning judicial power and Law Number 5 of 2004 concerning amendments to Law Number 14 of 1985 concerning the Supreme Court of the Republic of Indonesia. In Law Number 03 of 2006, in addition to changing the provisions for technical guidance of the judiciary, organization, administration and financial courts by the Supreme Court as regulated in Article 5 (in Law Number 7 of 1989 Article 5, technical assistance is carried out by the Supreme Court of the Republic of Indonesia). while non-technical guidance (organization, equipment, personnel and finance) is carried out by the Ministry of Religion), it is also important to regulate the addition of the authority of the Religious Courts (Widiana. 2007:4)

Prior to the regulation of the authority to handle sharia economic cases in the Religious Courts since 1993, there has been a body that handles disputes in the sharia economy through an institution known as the Indonesian Muamalat Arbitration Board (BAMUI) which is a sub-organization under the auspices of the Indonesian Ulema Council (Majelis Ulama Indonesia). MUI) which in its development the name BAMUI was changed to Basyarnas in 2003 (Abdurrahman, 2009:67).

The presence of BASYARNAS is highly expected by Indonesian Muslims, not only because it is motivated by the awareness and interest of Muslims to implement Islamic law, but also more than that is a real need in line with the development of economic and financial life among the people. Therefore, the purpose of establishing BASYARNAS as a permanent and independent body that functions to resolve the possibility of muamalat disputes arising in trade relations, the financial industry, services and others among Muslims (Kaaba, 2005:14) .

In the process of resolving disputes in the economic field (including sharia economics) other than through the District Court and the Religious

Courts. In accordance with Law Number 30 of 1999 and prior to Law Number 3 of 2006 which regulates the authority of the Religious Courts to adjudicate sharia economic disputes, Law Number 30 of 1999 explains that the settlement of cases out of court on the basis of peace is carried out by an Arbitration Board, but the arbitrator's decision only has executive power after obtaining a permit/order to be executed (Executorial) from the Court (Abdurrahman. 2009:69).

The existence of Law Number 3 of 2006 which has been enacted does not mean that the ranks of the religious courts will soon be flooded with muamalat cases, because in general, sharia economic actors have been accustomed to using non-litigation dispute resolution forms such as negotiation, mediation and arbitration. Almost all transaction contracts of Islamic financial institutions include a clause that in the event of a dispute, it will be resolved by deliberation and consensus and subsequently through Basyarnas or the National Sharia Council of MUI. In accordance with the Pacta Sun Servanda adage and the principle of freedom of engagement, which is also in line with the values held in Islamic Shari'a (Lubis. 2008:14).

The problems that will be discussed are related to the position of the two sharia economic dispute resolution institutions in Indonesia, both the Religious Courts and Basyarnas, as well as the boundaries between the two institutions in dealing with sharia economic disputes in Indonesia, so that a clear formulation of boundaries and clear authority and no overlaps is obtained. The overlapping of dispute resolution in Indonesia in order to achieve legal certainty after the enactment of Law No. 3 of 2006 concerning Religious Courts in which Article 49 of the Law states that the Religious Courts have the authority to handle sharia economic disputes as one of the absolute competencies within the Religious Courts..

Research Methods

This research is categorized as a type of qualitative research, namely research that is descriptive and tends to use an inductive approach to analysis. The data sources are divided into 2 (two), the first primary data sources, namely Law Number 30 of 1999 concerning Arbitration and Law Number 03 of 2006 concerning Religious Courts. While secondary data sources are books, journals and online articles that discuss the settlement of sharia economic disputes both in the Religious Courts and Basyarnas.

Furthermore, these materials were analyzed using a descriptive analytical method, namely to explain the causes of the transfer of authority for resolving sharia economic disputes which were originally through BASYARNAS to the Religious Courts and then analyzed them in a single unit to achieve an objective research result.

Discussion and Results

Overview of Islamic Financial Institutions and Dispute Resolution in Islam.

Islamic economics discusses two disciplines simultaneously. The two disciplines are pure economics and mu'amalat fiqh. (Abdul Hadi, 2013:39)

Sharia economic activity or Islamic economics is very broad and in the activities of human life to obtain the welfare of life in this world cannot be

separated from these activities, because humans are indeed ordered to fulfill their welfare in this world without forgetting their happiness in the hereafter.

However, in this case, it will be limited to sharia economic activities that are already popular and institutionalized in Indonesia, as stated in the explanation of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts. The sharia economic activities described in the law are: Sharia Bank; Sharia Microfinance Institutions; Sharia Insurance; Sharia reinsurance; Sharia Mutual Funds; Sharia Bonds and Sharia Medium Term Securities; Sharia Securities; Sharia Financing; Sharia financial institution pension fund; and Sharia Business.

Dispute resolution can be done through 2 (two) processes. The oldest dispute resolution process is through the litigation process in court, then the dispute resolution process develops through cooperation (cooperative) outside the court. The litigation process results in an adversarial agreement that has not been able to embrace common interests, tends to cause new problems, is slow to resolve, requires expensive costs, is unresponsive, and creates hostility between the disputing parties. On the other hand, through an out-of-court process, a "win-win solution" agreement is obtained, the confidentiality of the parties' disputes is guaranteed, delays caused by procedural and administrative matters are avoided, the problem is comprehensively resolved in togetherness and still maintains good relations. However, in certain countries the judicial process can be faster. The only advantage of this non-litigation process is its confidentiality, because the trial process and even the results of the decision are not published. Dispute resolution out of court is generally known as Alternative Dispute Resolution (ADR). (Roedjiono .1996:5)

Some say that the Alternative Dispute Resolution (ADR) is the third cycle of business dispute resolution. Settlement of business disputes in the era of globalization with the characteristics of "moving quickly", demands "informal procedures and be put in motion quickly". Since 1980, in various countries the Alternative Dispute Resolution (ADR) has been developed as an alternative breakthrough for the weaknesses of litigation and arbitration settlement, resulting in wasted resources, funds, time and thoughts and executive power, and even plunged the business into ruin. (Harahap. 1997:280)

Another alternative dispute resolution through Arbitration is one way of resolving disputes outside the court which is based on a written agreement from the disputing parties, in addition to other methods through consultation, negotiation, conciliation and expert opinion. However, it should be underlined that not all disputes regarding rights which according to law are fully controlled by the disputing parties on the basis of their agreement (Usman 2003:110).

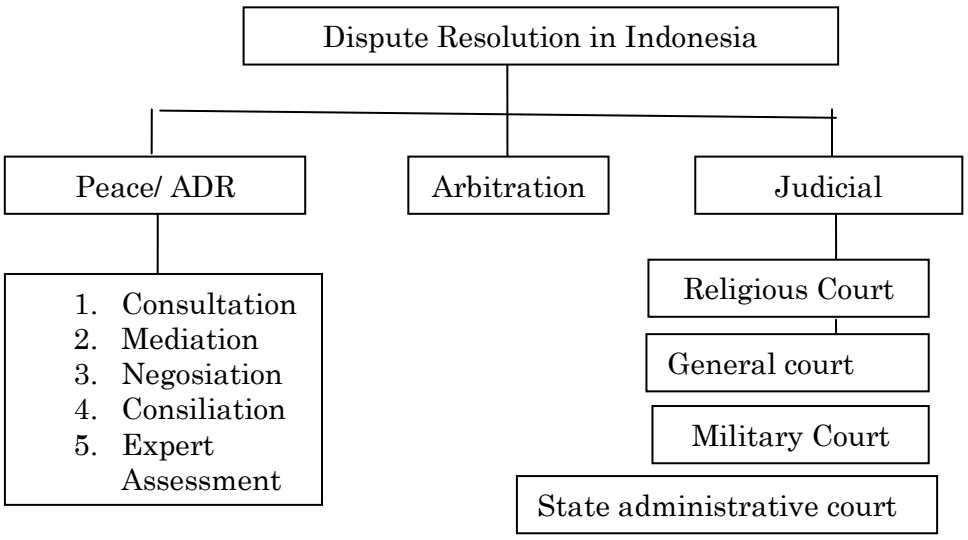
In Indonesia, there are several arbitration institutions to resolve various business disputes that occur, including the Indonesian National Arbitration Board (BANI) and BASYARNAS.

Settlement of disputes that cannot be resolved either through shulh (peace) or by arbitration will be resolved through the judiciary as described in Article 14 of Law Number 48 of 2009 concerning Judicial power which reads:

"Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court"

In the context of the sharia economy, the religious judiciary through Article 49 of Law Number 3 of 2006 which has been amended by Law Number 50 of 2009 concerning the Religious Courts has determined matters that are the authority of the Religious Courts (Manan. 2007:25). The following is the Scheme of the Dispute Resolution Mechanism in Indonesia.

Schema: Dispute Resolution Mechanism in Indonesia



Law on the Settlement of Sharia Economic Disputes

Settlement of Sharia Economic disputes according to Law Number 30 of 1999 concerning Arbitration

Arbitration is one way of resolving disputes. The dispute that must be resolved comes from a dispute over a contract in the following forms:

a. Differences in interpretation (disputes) regarding the implementation of the agreement, in the form of:
   1) Controversy of opinion (controversy);
   2) Misunderstanding (misunderstanding);
   3) Disagreement.
b. Breach of contract, including:
   1) whether the contract is valid or not;
   2) Whether the contract is valid or not.
c. Termination of the contract (termination of contract);
d. Claims regarding compensation for default or unlawful acts. (Harahap. 1991:106)

Meanwhile, according to Law Number 30 of 1999 concerning Arbitration, what is meant by arbitration is the method of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties.

PSettlement of disputes through the Arbitration Board has actually been regulated based on Law Number 30 of 1999 concerning Arbitration, in which the Law describes the possibility of resolving a dispute through an arbitration body.

Alternative Dispute Resolution is regulated in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article number 10 of the Law stipulates that Alternative Dispute Resolution is the resolution of disputes or differences of opinion through procedures desired by the parties, which can be carried out by means of consultation, negotiation, mediation, conciliation, expert judgment and arbitration. (Musrifah, M., & Khairunisa , M. 2020:1-12)

Although Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has been promulgated and therefore came into force on August 12, 1999, in some District Courts there are still judges who do not understand it. Article 3 of the Law expressly states that the District Court is not authorized to adjudicate the disputes of the parties who have been bound by the arbitration agreement. Even according to Article 11 of the Law, the existence of a written arbitration agreement negates the right of the parties to submit a dispute resolution or difference of opinion contained in the agreement to the District Court and the District Court is obliged to refuse and will not intervene in a predetermined dispute resolution. through arbitration, except in certain cases stipulated in Law Number 30 of 1999.

Settlement of business disputes through the ADR mechanism in the form of consultation, negotiation, mediation, conciliation, and expert judgment or through the arbitration mechanism, is widely chosen by the disputing parties for several reasons, including; volunteerism in the process, fast confidential procedures, saving time, saving costs, non-judicial decisions, flexibility in designing terms and conditions for dispute resolution, win-win solutions, maintaining good relations between disputing parties. The Arbitrators are people who have expertise (expertise) and the arbitration award is final and binding on the parties. In addition, there is no possibility of appeal and cassation against the arbitral award. (La Hafi, F., & Budiman, B. 2017: 149-169)

Some general provisions related to dispute resolution procedures based on Law no. 30/1999 as follows; (a) The examination of the dispute must be submitted in writing, it can also be orally if agreed by the parties and deemed necessary by the Arbitrator or the arbitral tribunal. (b) The arbitrator or the tribunal of arbitrators shall first try to make peace between the disputing parties. (c) The examination of the dispute must be completed within 180 days of the arbitrator or arbitration panel being formed, but can be extended if necessary and agreed by the parties. (d) The arbitration award must include a decision which reads "for the sake of justice based on the One Supreme Godhead" the short name of the dispute, a brief description of the dispute, the full name and address of the Arbitrator, the considerations and

conclusions of the Arbitrator or the Arbitrator Council regarding the whole dispute, the opinion of each Arbitrator. in the event that there is a difference of opinion in the arbitral tribunal. (e) In the decision, a period of time is determined for the decision to be implemented. (f) If the examination of the dispute has been completed, the examination must be closed and a hearing date is set to pronounce the arbitration award and pronounced within 30 (thirty) days after the examination is closed. (g) Within a maximum period of 14 (fourteen) days after the award is received, the parties may submit an application to the arbitrator or the arbitral tribunal to make corrections to administrative errors or to add or reduce a claim for the award. (La Hafi, F., & Budiman, B. 2017: 149-169)

Settlement of Sharia Economic Disputes according to Law Number 50 Year 2009 concerning the Religious Courts

As an Islamic court in Indonesia, the Religious Courts are authorized for those who are Muslim and or who declare themselves to be subject to Islamic law based on Law no. 3 of 2006 which has been amended by Law Number 50 of 2009 concerning the Religious Courts where there is a new authority for this institution in resolving sharia economic disputes or disputes in the field of sharia economic law (Zaida. 2007:1).

The potential for disputes in the field of Islamic Economics, among others, related to contracts (agreements) which in sharia economics is known as a contract or also a dispute of interest between a financial institution and the party using the funds, and can also be caused by differences in perceptions or interpretations of the obligations and rights that must be met. they fulfill. The Religious Courts as the chosen institution in the settlement of sharia economic disputes is the right and wise choice. This is in order to achieve harmony between material law based on Islamic principles and the Religious Courts which are representatives of Islamic judicial institutions, and are also in harmony with their legal apparatus who are Muslim and master Islamic law (Zaida. 2007:2).

The enactment of Law no. 3 of 2006 which was amended by Law Number 50 of 2009 concerning amendments to Law Number 7 of 1989 concerning the Religious Courts on March 20, 2006 brought about quite a fundamental change regarding the duties and authorities of the Religious Courts in Indonesia. The Religious Courts as affirmed in Law Number 7 of 1989 Article 49 paragraph 1 states that:

"The Religious Courts have the duty and authority to examine, decide and settle cases at the first level between people who are Muslims in the fields of:

a. Marriage
b. Inheritance, wills and grants made under Islamic law.
c. Waqf and Sadaqah.

The provisions of Article 49 with Law no. 3 of 2006 has been expanded. Based on the amendment referred to in this article, it reads:

"The Religious Courts have the duty and authority to examine, decide and settle cases at the first level between people who are Muslims in the fields of: Marriage; Inheritance; Will; Grant; Waqf; Zakat; infaq; Sadaqah and; Sharia Economics,

As for what is meant by sharia economy in the elucidation of Article 49 letter I, it states that what is meant by sharia economy is an act or business activity carried out according to sharia principles, including but not limited to Islamic Bank, Sharia Microfinance Institutions, Sharia Insuranced, Sharia Reinsurance, Sharia Mutual Funds, Sharia bonds and medium term sharia securities, Sharia Securities, Sharia Financing, Sharia financial institution pension fund and Sharia Business.

In the Elucidation of Article 49 it is stated:

> "What is meant by "among people who are Muslim" is including people or legal entities that automatically submit themselves voluntarily to Islamic law regarding matters that are the authority of the Religious Courts in accordance with the provisions of this article."

From the explanation of Article 49, all customers of Islamic financial institutions and sharia financing institutions, or conventional banks that open sharia business units are automatically bound by sharia economic provisions, both in the implementation of contracts and in dispute resolution.

The settlement of sharia economic disputes by litigation has occurred since the issuance of the Constitutional Court Decision Number 93/PUU-X/2012 which gives absolute authority to the Religious Courts in the process of resolving sharia economic disputes by litigation in the Religious Courts. The parties in making a sharia economic contract can choose to settle disputes through non-litigation and litigation channels. The settlement which was carried out through litigation since the Constitutional Court Decision Number 93/PUU-X/2012 was resolved through the Religious Courts so that the District Courts are no longer authorized to resolve sharia economic disputes. (Yunita, A. 2021: 435-452)

In the period 2006 to 2016, based on the results of the study, it was found that the formal law used was civil procedural law. The use of civil procedural law in the settlement of Sharia economic disputes is based on the provisions of Article 54 of Law Number 7 of 1989 junto Law number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, which states that: "Procedural law that applies to religious courts is civil procedural law that applies to courts within the general court environment, except those that have been specifically regulated in this Law". The civil procedural law is as applicable in the general court environment, namely the civil procedural law as regulated by HIR (Het Herzeine Inland Buitenggewesten) including the provisions stipulated in the Rv (Reglement of de Rechtsvordering), Civil Code, Law Number 48 of 2009 concerning Power Justice, Law Number 3 of 2009 concerning the Supreme Court and Law Number 49 of 2009 concerning General Courts and other related regulations. (Hudawati, SN 2020:17-40)

Settlement of sharia economic disputes at the Religious Courts after the issuance of Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Disputes must follow the settlement procedures as stipulated in the PERMA. The PERMA regulates in detail the sharia economy, sharia principles, sharia contracts and procedures for resolving sharia economic cases in the Religious Courts.

Impact of Sharia Economic Dispute Resolution Through Basyarnas and Religious Courts

Prior to the amendment of Law on Religious Courts No. 7 of 1989, the Arbitration Institution, in this case BASYARNAS is the party most interested in resolving disputes in the sharia economy. This is in the opinion of the author because if the sharia economic dispute is resolved through the General Court, it is not appropriate, because the general court does not use sharia principles as a legal basis in dispute resolution but is guided by western civil law, while on the other hand the Religious Courts are based on Law no. 7 of 1989 does not have the authority to resolve Sharia Economic disputes. (Musrifah, M., & Khairunisa, M. 2020:1-12)

Settlement of disputes using an arbitration system or through an arbitration body must be a written agreement by the parties and is generally contained in a clause when making an agreement, but can also be made in writing after a dispute occurs and cannot be resolved amicably. The existence of a written agreement means that the parties have consciously eliminated their right to submit their case settlement through the Court. Based on the arbitration clause, the Court is not authorized to adjudicate the disputes of the parties who have been bound by the arbitration agreement.

In relation to the settlement of sharia economic disputes, Basyarnas as a non-litigation dispute resolution agency or outside the judiciary, BASYARNAS is the only legal (sharia arbitration) institution in Indonesia that has the authority to examine and decide on muamalah disputes that arise in the fields of trade, finance , industry, services and others that are carried out based on sharia principles.

The experience of Basyarnas in resolving disputes between Sharia banks and their customers can be used as lessons for Religious Courts in resolving sharia economic disputes today, while BASYARNAS can develop Tahkim institutions that already exist in the treasures of Islamic law (Kaaba 2007:41).

The decision handed down by the Arbitration Board, including Basyarnas, is final, has permanent legal force and is binding on the parties. This means that the decision of the arbitral tribunal shall come into force at the time the decision is rendered by the arbitrator and there is no legal remedy for appeal, cassation or judicial review as applicable in the judiciary.

With the appointment of the Arbitration Board in the deed of agreement in resolving disputes, the arbitration clause applies and binds the parties as described in Article 1 paragraph 1 of Law Number 30 of 1999, so that the Court is not authorized to adjudicate the disputes of the parties who have been bound by the agreement. arbitration (Articles 3 and 11 paragraph (2) of Law Number 30 of 1999). However, in understanding the provisions of Articles 3 and 11 of the law, there are two streams, namely:

1. Generalization/absolute opinion which states that the origin of the agreement contains an arbitration clause, then it is the absolute authority for the arbitration body to resolve disputes arising from the agreement, regardless of the scope/scope of the dispute referred to in the arbitration formulation, this flow also called Pacta Sunt Servanda school.

2. The opinion which states that even though there is an arbitration clause, but because arbitration is not a public policy, its application is not absolute, but must look at the formulation of the arbitration clause carefully. (www.pa-kendal.ptasemarang.net)

In addition to the two schools mentioned above, there is one development which is actually a splinter which is very contrary to the flow of pacta sunt servanda, or it can also be referred to as a third school such as Supreme Court Decision No, 1851 K/Pdt/1984 which in essence is that even though there is an arbitration clause and exceptions from the opponent, the court remains competent, thus even if the parties have agreed that if a dispute arises it will be resolved through arbitration, this cannot be used as an excuse or close the possibility if one of the parties submits the case directly to the Court without going through arbitration. In the event that one of the parties has submitted their case through the courts, it can be interpreted that the parties are inconsistent with the arbitration agreement that has been made.

This interpretation is in accordance with the jurisprudence of the Supreme Court of the Republic of Indonesia No. 2027 K/Pdt.1984 dated April 23, 1986, which basically confirms that an agreement which is unreasonably burdensome to the other party is not binding on the ground that it is contrary to justice. The establishment of the Supreme Court is clear evidence that the Courts in Indonesia adhere to the notion that even if an agreement has been signed by both parties, the parties are not fully bound by the agreement as intended by Article 1338 of the Civil Code.

The settlement of sharia economic disputes carried out by Basyarnas as regulated in Law Number 30 of 1999 is a non-litigation or out of court dispute settlement with a final and binding decision for both parties, then the position of BASYARNAS after the Law - Law Number 50 of 2009 on the second amendment of Law Number 7 of 1989 as an institution that is also authorized to handle dispute cases in the field of Islamic economics.

Opportunities and Challenges of Religious Courts in Sharia Economic Dispute Resolution.

Identification of opportunities and challenges, sometimes also called threats, is an important activity of strategic planning programs which is an important part of strategic management. In the preparation of a good strategic plan, it is absolutely necessary to carry out an internal and external analysis of an organization or business unit. Internal analysis consists of efforts to fully and clearly identify strengths and weaknesses, while external analysis identifies existing opportunities and emerging challenges. (Lubis. 2008:12)

Identify these opportunities and challenges in relation to the settlement of sharia economic disputes. The expansion of the authority of the Religious Courts to hear and decide on muamalat dispute cases is a new thing with the enactment of Law Number 50 of 2009 as the second amendment to Law Number 07 of 1989, which in Article 49 of the law states that one of the The authority of the Religious Courts is to examine, decide and resolve sharia economic cases.

With the additional authority to examine, adjudicate and resolve Sharia economic cases for the Religious Courts institution. Besides being an opportunity, it is also a challenge. The opportunity is that the law has given authority to the Religious Courts in handling Sharia Economic cases, while the challenge that exists is the competence of religious Court judges in handling sharia economic cases quickly, simply, at low cost and fairly in accordance with the mandate of the law. The same opportunities and challenges are also aimed at heads of higher education institutions that have sharia faculties and concentrations, because one of the recruitments of judges / employees of the Religious Courts is the output of the Sharia Faculty. (Widiana. 2008:6)

Everyone can conclude how wide the opportunities given to the Religious Courts environment. At the same time, from the other side, this is an important responsibility and a big challenge that must be borne by this institution. However, this provision does not provide some touch points regarding the settlement of existing sharia economic disputes.

Although Law Number 50 of 2009 as the second amendment to Law Number 7 of 1989 has been enacted, this does not mean that the ranks of the religious courts will soon be flooded with muamalat cases, because in general, sharia economic actors have been accustomed to using this form of dispute resolution. non-litigation, such as negotiation, mediation and arbitration. Almost all transaction contracts of Islamic financial institutions include a clause that if a dispute occurs, it will be resolved amicably and subsequently to BASYARNAS. In accordance with the Pacta Sun Servanda adage and the principle of freedom of engagement, which is also in line with the values held in Islamic law, this should naturally be preserved.

The availability of applied legal sources for the Religious Courts in the field of Islamic economics after the birth of Law Number 03 of 2006 and which has been updated with Law Number 50 of 2009 is a very urgent need. Observing the conditions and positions of Islamic law and the Religious Courts in Indonesia, the compilation (or better yet codification) of Sharia Economic Law must simultaneously follow the legal drafting process of modern legislation and heed the requirements of legal ijtihad/istinbath applicable in the tradition of Islamic legal theory that dynamic.

One of the big challenges that must be faced by the ranks of the religious judiciary is the political constellation that continues to fluctuate and competing interests (including ideological interests) at the decision-making level are not yet established. That the legal substance, both material and formal in Indonesia, is a political product and sometimes the legislative process carried out and the resulting legal product is still far from ideal.

Conclusion

Impact Settlement of sharia economic disputes is categorized into 2 (two) ways, namely the first through Non-Litigation (Out of Court) which includes Negotiation, Mediation and Arbitration. Second, through Litigation or Courts, in this case in accordance with the Absolute competence possessed, the Religious Courts are authorized to examine, hear and resolve Sharia economic dispute cases.

The status of BASYARNAS after the enactment of Law Number 03 of 2006 which was changed to Law Number 50 of 2009 concerning the Religious Courts, that BASYARNAS stands autonomously and independently as one of the legal instruments that also has the authority to resolve disputes sharia economic disputes, as regulated in Law Number 30 of 1999 concerning Arbitration and alternative dispute resolution, which states that as long as the clause of the agreement made by the parties is explained which institution will resolve the dispute. If there is a dispute between the two parties in the field of Islamic economics. Settlement of sharia economic disputes through Basyarnas is legal, and has permanent legal force as long as it is agreed upon by the parties.

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