

ANALYSIS OF THE EFFECTIVENESS OF DISPUTE RESOLUTION MECHANISMS: A CASE STUDY OF PT. BANK MUAMALAT INDONESIA AND PT. GENERAL TAKAFUL ECONOMY

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ABSTRACT

This paper explains how arbitration functions in the Indonesian legal system. The purpose of this study is to determine whether there is a legal remedy that can be made by law to reach a final decision based on the principle of final and binding. This study aims to study the way sharia arbitration bodies handle economic disputes. The research method used is juridical-normative, using descriptive qualitative analysis. The results showed that, as an extra-judicial institution governed by international law that has been ratified by the Indonesian government, arbitration helps complement the Indonesian judicial system. And the absence of a legal remedy for a final award in accordance with the principles of final and binding. And the absence of legal remedies for a final decision in accordance with the principle of finality and binding is one of the advantages of settlement through arbitration compared to the court. In conclusion arbitration is more effective in resolving sharia insurance disputes based on the principle of simple, fast, and cheap justice according to the mandate of the Law.

Keywords: Dispute Solution; Shariah Economy; Basyarnas.

ABSTRAK

Tulisan ini menjelaskan bagaimana arbitrase berfungsi dalam sistem hukum Indonesia. Tujuan dari penelitian ini adalah untuk menentukan apakah ada upaya hukum yang dapat dilakukan oleh undang-undang untuk mencapai keputusan akhir berdasarkan asas final dan binding. Penelitian ini bertujuan untuk mempelajari cara badan arbitrase syariah menangani sengketa ekonomi. Metode penelitian yang digunakan adalah yuridis-normatif, menggunakan analisis kualitatif deskriptif. Hasil penelitian menunjukkan bahwa, sebagai lembaga ekstra yudisial yang diatur oleh hukum internasional yang telah diratifikasi oleh pemerintah Indonesia, arbitrase membantu melengkapi sistem peradilan Indonesia. Dan tidak adanya upaya hukum untuk putusan akhir yang sesuai dengan asas final dan binding adalah salah satu keuntungan penyelesaian melalui arbitrase dibandingkan dengan pengadilan. Kesimpulannya arbitrase lebih efektif dalam menyelesaikan sengketa asuransi syariah berdasarkan prinsip peradilan yang sederhana, cepat, dan murah sesuai amanat Undang-Undang.

Kata Kunci: Penyelesaian Sengketa; Ekonomi Syariah; Basyarnas.

INTRODUCTION

Indonesia's current Sharia Economic System is developing rapidly. This condition is achieved through sustainable development; therefore, Indonesia is expected to have the ability and be able to compete in the global market in terms of trade and industry. Due to the bad experience with the 1998 Reform, Indonesia is expected to become a stronger and superior country to overcome the emerging economic turmoil. Along with economic growth, the banking sector is also expected to be able to follow the progress initiated by the government to make it easier for people to transact. The problem has become more complex due to the large number of new banks in Indonesia, which include public and private banking as well as Shari'ah-based banking.

Initially, religious courts could only handle legal cases in the areas of family law, such as endowments, inheritance or testamentary disputes, and marital termination. The competence of religious courts became broader after the Law on Religious Courts No. 7 of 1989 was amended. Dispute resolution in the field of Islamic economics is included in the scope of its authority.

Sharia economic disputes, like other banking disputes, are also still within the authority of the general judiciary. District courts that handle sharia economic disputes need experts in the field of sharia law because legal issues related to sharia economics depend on the principles and provisions of sharia law. District courts will rely on sharia as the legal basis for resolving sharia economic cases. Arbitration is a method of settlement by a particular judge that is not bound by various formalities. It is quick to make a decision because in the last case it is binding and easy to implement because all parties will follow suit (Gautama, 1979).

Islam governs all aspects of life, including economics and finance, based on the principles of sharia. These principles govern financial transactions such as buying and selling, leasing, pawns, loans, wages, and other finances in line with sharia provisions. In recent decades, Islamic financial institutions have grown rapidly in Indonesia, along with the strengthening of sharia law enforcement in the national legal system. The exponential growth of entities such as Islamic banks, Islamic insurance, Islamic pawnshops, and Islamic microfinance institutions has the potential to trigger problems or disputes between Islamic financial service providers and the customer community. As more Indonesians become clients of Islamic finance, friction can arise between institutions that provide sharia-compliant financial services and the people who use them.

The presence of Law Number 3 of 2006 concerning the Replacement of Law Number 7 of 1989 concerning Religious Courts has widened the authority of Religious Courts to handle disputes in the field of sharia economy. Article 49 of the law clearly states that religious courts have absolute authority to terminate sharia economic cases. This regulation is intended to prevent overlapping authority between the Religious Court and the District Court. However, then came Law Number 21 of 2008 concerning Sharia Banking which also authorizes the District Court to handle Islamic banking disputes. The existence of two laws that both regulate the authority to adjudicate sharia economic cases, especially Islamic banking, has the potential to cause incompatibility and dualism of authority between the Religious Court and the General Court (Yulianti, 2007).

This study formulates two formulations of the problem, namely is dispute resolution in Basyarnas more effective than religious courts? and secondly, is the decision of the National Sharia Arbitration Board final and binding for the parties? With the formulation of the problem, the author has a research objective, namely to determine the effectiveness of dispute resolution through Basyarnas and Religious Courts. This research also has the benefit of educating the public about how arbitration institutions and religious courts resolve disputes.

RESEARCH METHOD

This legal research is doctrinal in nature using statutory, conceptual, case, and historical approaches. The source of research data comes from primary, secondary, and tertiary legal materials obtained through literature studies. In addition, to enrich the data and compare the rule of law with its implementation, the collected data is then analyzed in a qualitative descriptive manner. This research is intended to examine normative law or legal doctrine based on applicable laws and regulations and legal concepts adopted, as well as how it is implemented and the history of its formation.

RESULT AND DISCUSSION

Dispute Resolution at the National Sharia Arbitration Board is More Effective Than Settlement through Judicial Institutions

According to MUI Decree No. 09/MUI/XII/2003 dated December 24, 2003, Basyarnas is the sole sharia economic dispute settlement institution outside the court. Settlement through Basyarnas can be done if there is an agreement, written in a deed or contract from the beginning

before a dispute occurs, or when a dispute occurs in a compromise deed. Article 55 paragraph 2 of Law No. 21 of 2008 concerning Sharia Banking states that sharia economic disputes can be resolved through channels outside the court, namely through deliberation, mediation, and arbitration (Syarifuddin, 2022; Yuniardi, 2020). If the parties do not reach an agreement during deliberations, then the sharia economic dispute can be resolved in Basyarnas, the arbitral institution (Permana, 2017).

Lembaga Basyarnas has several advantages in resolving disputes compared to Religious Court institutions, including: (1) Arbitration Hearings are conducted simply at one level, the first and last levels (Star & Kelly, 2021), and (2) Arbitration Hearings are conducted behind closed doors, not as open as Court hearings, so that people do not know who the parties to the dispute are and what they are talking about (Ansori et al., 2022; Maulana & Mariani, 2023; Nabilah et al., 2022; Vero, 2022). The difference in court is that it often takes years at no small cost; (3) The arbitrase judgment shall be final and irrevocable, no appeal or cassation; And it's short, fast, and effective (Hasan, 2022; Watti et al., 2023). In all respects, especially in the business field, effectiveness is highly valued. Parties to the dispute may select arbitrators whom they believe have experience, knowledge, honesty, and fairness, as well as sufficient background on the disputed matter. The parties may also determine the process and venue of the arbitration as well as the choice of law to resolve the dispute (BASYARNAS-MUI, 2021).

Unlike the Religious Court, Case Number 1221 / Pdt.G / 2009 / PA.JS, which is a sharia economic dispute between PT. Bank Muamalat Indonesia and PT. General Takaful Economics, settled by the Religious Court of first instance in approximately one year (Indonesia, 2010).

Religious Courts use applicable civil procedural law, but instead of meeting the simple, fast, and inexpensive standard of deciding a single case, Religious Courts take almost a year more. In the business world, this is very inefficient in such a short period of time. With respect to legislation, the resolution of economic disputes should be easy and fast according to the wishes of the people.

Sharia Economic Dispute Resolution Mechanism in District Courts and Religious Courts

Basically, the mechanism for resolving sharia economic disputes, both in the District Court and in the Religious Court, follows the procedures and mechanisms of civil procedural law in general in Indonesia. The main difference lies in the principles or legal foundations used in the judge's deliberations and decisions. In District Court, judges will use conventional civil

procedural law. Meanwhile, the judge of the Religious Court will apply the sharia civil procedural law or the Islamic sharia civil procedural law in deciding cases.

In Islamic law, al-shulhu is a peace effort made by the parties to resolve a business dispute (Lubis & Aprilia, 2023; Sukardi & Ulya, 2022). This can be done by the disputing party or by a third party seeking to help both parties resolve their dispute. In Islamic law, al-shulhu is very broad and is not only used to resolve family and political conflicts; Third parties can act as mediators or facilitators in the Al-Shulhu process (Sabiq, 2000).

In contrast, the fifth Fatwa on Murabahah, No. 4/DSN-MUI/IV/2000, states that "if a customer deliberately delays payment or fails to perform its obligations, then settlement shall be made through the Sharia Arbitration Board after no deliberative agreement has been reached" (Mujahidin, 2010).

In the Religious Court, sharia economic dispute resolution can be pursued through two channels, namely litigation and non-litigation channels (Dewi, 2021; Hanifah, 2024; Hapsari et al., 2022). Through litigation, the parties to the dispute will appear in court in accordance with applicable procedures. Meanwhile, non-litigation settlement can be done through alternative dispute resolution, such as mediation, legal consultation, or deliberation to reach consensus (Fitriyah & Soviana, 2021; Murali & Kumar, 2020).

In deciding sharia economic cases, judges of the Religious Court will use the basis of legal considerations in the form of sharia values and principles contained in the Quran and Hadith, fatwas of the National Sharia Councils (Andriansyah, 2023; Shobroni, 2024), and contracts or agreements made by the parties before. Thus, the resulting verdict is expected to be in accordance with justice and propriety according to Islamic sharia.

Judges are always required to thoroughly study the case before deciding it, as is usual when handling each case (Barabas et al., 2020; Dewi, 2021). Thus, there are several things that must be considered when examining Islamic economic cases, especially Islamic banking: First, make sure that the case is not an agreement with an arbitration clause. Second, thoroughly examine the agreement or agreement underlying the cooperation between the parties. (Mardani, 2011)

Case analysis in 2009 namely the dispute between PT. Bank Muamalat Indonesia and PT. General Takaful Insurance

There was a case in 2009 that was a dispute between PT. Bank Muamalat Indonesia with PT. General Takaful Insurance regarding non-fulfillment of Motor ship insurance claims "Karunia 1903" amounting to Rp.10.000.000.000.00,- (ten billion rupiah, where the Motor Ship

"Karunia 1903" is still bound by shari'ah financing facilities between PT. Bank Muamalat Indonesia with PT. Kartika Nusantara Riezkytama as stated in the financing agreement of al-mubarabahah financing contract No.253 dated February 15, 2005.

On September 1, 2006, PT. Bank Muamalat Indonesia handed over the Motor Ship "Karunia 1903" to PT. Takaful Insurance. Supposedly, an insurance company in Indonesia, provides its liability considering that it has been recorded in Insurance Policy No. 1.902.06.400.000002, with the type of TLO insurance (*Total Loss Only*), which provides coverage of Rp. 12,000,000,000.00 (twelve billion rupiah) for a period of twelve months, which began on September 1, 2006 and ended on September 1, 2007. PT. BMI Cab Batam is the insured (Fitri, 2019).

As the party who bears the policy, PT. Asuransi Takaful Umum refuses firmly to process PT. Bank Muamalat Indonesia. In addition, PT. General Takaful Insurance also refuses to insure and bear the risk of loss of the motor boat "Karunia 1903", as stated in letter No.DU.LO-08108.08 dated August 8, 2008. PT. Bank Muamalat Indonesia tried to get justice by filing a lawsuit at the South Jakarta Religious Court regarding the matter.

Based on Judgment No. 1221/Pdt.G/2009/PA.JS, any hope for justice has been shattered. The panel of judges ruled that the plaintiff's claim, Compensation could not be accepted, The panel of judges stated that the South Jakarta Religious Court was not authorized to examine and adjudicate certain cases related to contracts that were not in accordance with the principles of shari'ah economy, namely the agreement or TLO (*Total Loss Only*) type Insurance Coverage.

CONCLUSION

Based on the discussion above, several things can be concluded as follows: Currently, there are two legal institutions in Indonesia responsible for the resolution of sharia economic disputes: Basyarnas through out-of-court channels (non-litigation) and Religious Courts through litigation. However, Basyarnas and the Religious Court differ in the process of resolving sharia insurance disputes. Arbitration is an alternative way to resolve disputes out of court. Disputes and conflicts are frequent, especially in business. In general, Indonesians resolve issues by deliberation and use traditional elders as mediators. However, as civilization progressed, there was a tendency to use courts as a means of dispute resolution. In general, public preference in resolving sharia economic disputes tends to choose religious courts after the enactment of Law No. 3 of 2006.

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