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Sharia Economic Dispute Resolution: Case Study in the Religious Court of JAKPUS Related to Murabahah

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A R T I C L E I N F O

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A B S T R A C T

This research aims to analyze the resolution of sharia economic disputes in case studies at the Central Jakarta Religious Court regarding Mudharabah. The method used is descriptive qualitative by studying related sources. The results of this research are that resolving sharia economic disputes related to murabahah in the Religious Courts requires a careful approach. The results of this research are that sharia economic dispute resolution provides better legal protection for the parties, and strengthens public trust in the sharia economic justice system. It is proven that the public prefers the Religious Courts which have executorial rights compared to the National Sharia Arbitration Board (BASYARNAS)

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INTRODUCTION

As an Indonesian nation, we are proud that the nation's economy has advanced with the development of sharia economics, but on the other hand, the rampant growth of sharia economic law practices is full of various problems that arise due to the tug-of-war between the interests of the parties in economic matters, while at that time there were no laws and regulations that specifically regulated the problems that arose. Since 1994, if there is a sharia economic dispute, it is resolved through the National Sharia Arbitration Board (Basyarnas) which only acts as a mediator and is not legally binding. The regulations that are applied are also still limited to Bank Indonesia (BI) regulations that refer to the fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). While the fatwa, as understood in Islamic law, is a legal opinion that is not binding on all Muslims, the same as fiqh. The compilation of sharia economic law was published with the issuance of the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law, in the considerations it is stated that the basis for the consideration of making KHES is for the smooth examination and resolution of sharia economic disputes as referred to in Article 49 letter (i) along with the Explanation, Law Number 3 of 2006 concerning Religious Courts (as amended by Law Number 50 of 2009 concerning), Law Number 19 of 2008 concerning State Sharia Securities, Article 55 of Law Number 21 of 2008 concerning Sharia Banking, it is necessary to create guidelines for judges regarding economic law according to sharia principles.

The publication of the compilation of sharia economic law becomes the material law for cases related to sharia economics. The implication is that judges in religious courts who examine, try and resolve cases related to sharia economics are bound to use KHES as a guideline for their material law, although Article 2 explains that the use of KHES as a guideline as referred to in Article 1 does not reduce the judge's responsibility to explore and find the law to ensure a fair and correct decision, this is related to the principle of the judge's independence in enforcing the law. Indonesia as a country of law, should resolve all forms of disputes that occur in the business world through litigation (court) although for the Civil sector in Indonesia there are alternatives through non-litigation channels, both peace and alternative dispute resolution (APS/ADR). Especially for the field of sharia economic disputes before the dispute case is brought to the District Court, the dispute problem is first handled by the Sharia Arbitration Board. Along the way, the role and function of this Arbitration Board are not optimal and inadequate to resolve every dispute case, because the arbitration institution does not have the power to force the person being sued to court, so it is not surprising that hundreds or even thousands of cases of disputes in the field of sharia economics are scattered, because they are outside the authority of the Sharia Arbitration Board.

To reveal solutions to sharia economic problems or disputes that often arise in the midst of society, research is needed related to the resolution of sharia economic disputes that give birth to legal certainty and legal justice.

LITERATURE REVIEW

Here are some studies related to the researcher's research:

1. Settlement of Sharia Economic Disputes in Religious Courts Previous Research Title:

- Ali, M. (2017). "Settlement of Sharia Economic Disputes in Religious Courts: Case Study in Surabaya Religious Court." Journal of Islamic Law.
- Syarifuddin, A. (2019). "The Role of Mediation in Settlement of Sharia Economic Disputes in Religious Courts." Journal of Sharia Economics.

The above research explores how Religious Courts in Indonesia handle sharia economic disputes. This research often includes analysis of jurisdiction, legal procedures, and the effectiveness of dispute resolution. For example, there is a study that examines how sharia economic disputes, especially related to murabahah financing, are resolved through mediation or judicial processes.

2. Murabahah Disputes and Their Resolution Previous Research Title:

- Zain, M. (2018). "Resolution of Murabahah Disputes in Religious Courts: Case Study in Banda Aceh Religious Court." Journal of Islamic Economic Law.
- Rahmawati, F. (2020). "Analysis of Murabahah Dispute Resolution in Islamic Banking Practices in Indonesia." Journal of Islamic Finance.

This study focuses more on murabahah transactions, which are one form of financing in popular Islamic economics. This study examines the types of disputes that arise from murabahah transactions, how these disputes are resolved, and the role of Islamic legal institutions in resolving these disputes.

3. Effectiveness of Religious Courts in Resolving Islamic Economic Disputes Previous Research Title:

Harahap, R. (2016). "Effectiveness of Religious Courts in Resolving Islamic Economic Disputes in North Sumatra." Journal of Law and Justice.
Mulyadi, M. (2021). "Evaluation of the Performance of Religious Courts in Resolving Islamic Economic Disputes in Indonesia." Journal of Islamic Law.
This study measures the effectiveness of Religious Courts in resolving Islamic economic disputes. The focus of research is usually on speed, fairness, and compliance with sharia principles in dispute resolution. These studies can be a reference to assess how cases in Central Jakarta compare to other areas.

4. Case Study of Sharia Economic Dispute Resolution in Central Jakarta Previous Research Title:

- Yusron, A. (2019). "Case Study of Sharia Economic Dispute Resolution at the South Jakarta Religious Court." Journal of Islamic Law.
- Fitriani, R. (2022). "Case Analysis of Murabahah Financing Dispute Resolution at the East Jakarta Religious Court." Journal of Islamic Economics and Islamic Law.

This research is a case study that focuses on the Central Jakarta Religious Court may be limited, but there is research that explores various aspects of sharia economic disputes in major courts, which can provide an overview of practices in Central Jakarta. This research can help understand the local context as well as the challenges and successes in dispute resolution.

METHODOLOGY

Type and Approach

This research is a type of normative legal research. The normative legal aspect in this research is related to efforts to explore reading sources related to the theme of writing, both from books, journals, other sources related to the title of the research.

Data Analysis Technique

The data analysis technique used by the author is by making conclusions. Data that has been patterned and arranged systematically, both through determining the theme and those that have been systematically written will be analyzed using a content analysis approach, then conclusions are drawn so that meaning or understanding can be found.

RESULT AND DISCUSSION

Dispute Resolution Theory

- Dispute resolution through the courts (Litigation)

Dispute resolution through the courts refers to the provisions on general courts in force.

The presence of sharia economics in the realm of the national legal system is an embodiment of the growing thought and awareness to realize the principle of law as an agent of development, agent of modernization and law as a tool of social engineering. Along with the development of sharia economic institutions in Indonesia, there will be a point of contact with the world of justice, namely the General Court and the Religious Court. The point of contact in question is in terms of dispute resolution. The birth of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts (hereinafter referred to as UUPAg) has brought about major changes in the existence of the Religious Court institution today, where one of the fundamental changes is the addition of the authority of the Religious Court institution, including in the field of sharia economics.

This happened after being approximately 17 years old, UUPAg was amended by Law (hereinafter written as UU) Number 3 of 2006 as stated in the State Gazette of the Republic of Indonesia (LNRI) of 2006 Number 22 Supplement to the State Gazette of the Republic of Indonesia (TLNRI) Number 4611. Then there was another change through Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. Article 49 of UUPAg is one of the articles that was amended. The complete results of the amendment are as follows: “The religious court has the duty and authority to examine, decide, and settle cases at the first level between people who are Muslim in the fields of: a. marriage, b. inheritance, c. wills, d. grants, e. endowments, f. zakat, g. infaq, h. shadaqah, and i. sharia economy”

The amendment, the jurisdiction of religious courts became nine types from the original six types. The six types are marriage, inheritance, wills, and grants, which are carried out based on Islamic law, as well as waqf and shadaqah. The three additional types are zakat, infaq, and sharia economy.

The explanation of the verse above, further expands the authority of religious courts, so that with this explanation it can be said that the possibility of multiple interpretations of the content is closed. The explanation in question is stated as follows: "Dispute resolution is not only limited to the fields of marriage, inheritance, wills, and grants, which are carried out based on Islamic law, as well as waqf and shadaqah, but also in other sharia economic fields".

"Between people who are Muslims" referred to includes people or legal entities who voluntarily submit themselves to Islamic law regarding matters that are the authority of religious courts in accordance with the provisions of the Article. In the Explanation of Article 49 Letter (i), what is meant by "sharia economy" is an act or business activity carried out according to sharia principles, including: 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, pension funds, sharia financial institutions; and sharia business.

Based on Article 49 letter (i) of the UUPAg, it is emphasized that the Religious Court has the duty and authority to examine, try and resolve cases including sharia economics. Disputes in the field of sharia economics that are the authority of the Religious Court are:

1. Disputes in the field of sharia economics between financial institutions and sharia financing institutions and their customers;
2. Disputes in the field of sharia economics between fellow financial institutions and sharia financing institutions;
3. Disputes in the field of sharia economics between people who are Muslims, where the agreement clearly states that the business activities carried out are based on sharia principles.

Based on Supreme Court Regulation Number 2 of 2008 Concerning the Compilation of Sharia Economic Law and Fatwas of the National Sharia Council, Fiqh Books, Banking Laws, Bank Indonesia Regulations, and other references. Although sharia economic cases are a new area of authority for the Religious Court, the Court may not reject cases submitted as stated in Article 16 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as UUKK). In addition, Article 28 paragraph (1) of UUKK also states that judges as enforcers of law and justice are required to explore, follow and understand the legal values and sense of justice that live in society. Therefore, judges in deciding cases for the sake of legal certainty do not only base it on the wording of the law. The two legal concepts above are combined in a complementary manner where legal certainty must be upheld as long as it does not conflict with the sense of justice. Judges have a function as harmonizers between law in the sense of statutes and law that lives in society, both written law and unwritten law, such as Sharia/Islamic Law. The debate on who has the authority to resolve

Islamic/sharia economic disputes has been answered with the amendment of Law Number 7 of 1989 concerning Religious Courts by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts which was then amended again by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. However, the question as with the phenomenon above is what kind of legal protection is provided to the disputing parties through this litigation process. Because in practice, various non-litigation paths are the first choice for economic actors who are considered more effective and efficient. The position of fiqh in the judicial process in the Religious Court, can be reviewed Law Number 48 of 2009 and Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts recommends or even demands Religious Judges to conduct ijtihad (rechtsvinding). When associated with the forms of legal schools, Indonesia uses the Rechtsvinding school, the theory of legal discovery is also the basis for discussing this research. The meaning of the school of legal discovery can also be said that judges also see the jurisprudence and religious arguments, customs and so on that apply in society. The recommendation regarding ijtihad can be understood from the description of the texts, namely:

1. The court may not refuse to examine and try a case submitted on the pretext that the law is not or is less clear but is obliged to examine and try it (Article 10 paragraph (1) of Law No. 48 of 2009 in conjunction with Article 56 paragraph (1) of Law No. 7 of 1989.
2. Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society..." (Article 5 of Law No. 48 of 2009.
3. Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that live in society (the living law). In a society that still recognizes unwritten law, and is in a period of turmoil and transition, judges are the formula and excavators of the legal values that live among the people. For this reason, judges must plunge into the midst of society to know, feel and be able to dive into the sense of law and sense of justice that live in society. Thus, judges can provide decisions that are in accordance with the law and the sense of justice of society" (Article 27 and its explanation of Law No. 14 of 1970).

Based on the description above, it can be understood that every judge in the Religious Court environment is basically required to develop his/her ijtihad ability (rechtvinding), because there is no law that prohibits judges, especially Religious Judges, from conducting ijtihad. Included in the ijtihad category here is trying to find/provide a more appropriate and fair legal decision in an effort to develop the legal system itself. A good court and judiciary if they always pay attention to the sense of justice of the community.

- Dispute Resolution Outside the Court (Non-Litigation)

a. Arbitration in Islam

In general, arbitration is understood as dispute resolution outside the court. Islam has introduced it more than fourteen centuries ago through an institution called "hakam" or referee. This institution is listed in Surah An Nissa verse 35 concerning the resolution of marital disputes (household conflicts) called syiqaq. The implementation of the concept of "hakam" is of course as an institution in Islamic law not only limited to household cases, but can also be applied to all civil cases (muamalah), including inheritance in it. Some related definitions include: 1). Tahkim (Sharia Arbitration) is an agreement/contract to end a dispute between two people in dispute; Arbitration according to Aqbul 'Ainan Abd. Fatah Muhammad is the reliance of two disputants on someone whose decision they approve to resolve their dispute; Arbitration according to Abd. Karim Zidan is the voluntary appointment or designation of two disputants to someone they trust to resolve their dispute/conflict.

Based on the description above, Sharia Arbitration is a method of resolving civil disputes according to the arbitration system which is carried out in accordance with/referring to the provisions of Islamic Sharia.

Islam offers a principle that aims to form a decision after the disputants have been heard from so that there is a clear exchange of ideas with full patience. This principle is called deliberation, which is essentially the same as conducting negotiations, mediation, conciliation and arbitration. According to Achmad Heidar, deliberation is a process or mechanism in decision-making based on the principles:

1) Equality between the parties;
2) Freedom of expression;
3) Prioritizing public interest;
4) Paying more attention to content and starting from ideas;
5) Starting with good intentions, and
6) The existence of a standard reference that is adhered to by all parties.

It should be added that in order for deliberation to be carried out properly, there are several requirements to be able to hold deliberation, namely between people who are equal, have equal rights and obligations and are of equal status in carrying out sovereignty over the positions that are discussed.

The Qur'an commands humans to resolve all social (worldly) problems through deliberation. There are two verses that clearly outline this, namely:

- Surah As Syura: 38 which means:

"....as for social affairs, they are decided by deliberation between them";

- Al Imran Letter: 159 which means:

" ……and consult with them, O Muhammad, in every social matter'

- Arbitration According to Legislation

The model for resolving disputes outside the court is more popularly known as "arbitration", even though arbitration is not the only way to resolve disputes outside the court. Several definitions of "Arbitration", including:

1. Literally, what is meant by arbitration is: arbitrage (Dutch), arbitrare (Latin), arbitration (English), and tahkim (Islam);
2. Then formulated in the definition according to Law No. 33/1999, Article 1 paragraph (1), arbitration: is a method of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties;
3. Arbitration according to R. Soebekti is a dispute resolution carried out by one or several arbitrators based on their discretion and the parties will submit to or obey the decision given by the arbitrators they appoint (R. Soebekti, 1992: 1);

Based on the above definitions, arbitration is a settlement of civil disputes outside the official court by people appointed based on a written agreement from the disputing parties and the decision is a final binding decision.

Basically, the existence of alternative dispute resolution outside the court has been recognized since 1970, namely in Law Number 14 of 1970 concerning the Main Provisions of Judicial Power. The explanation of Article 3 of this law states: "Settlement of cases outside the court, by peace or through a referee (arbitration), is still permitted". In its current development, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has been issued. This law is actually more appropriately called the Law on Arbitration, because this law only regulates the existence of arbitration institutions and the mechanism for the dispute resolution process through arbitration, while other institutions do not. Law Number 30 of 1999 regulates the resolution of disputes or differences of opinion between parties in a certain legal relationship which expressly states that all disputes or differences of opinion that arise or may arise from the legal relationship will be resolved by arbitration or through alternative dispute resolution.

Alternative Dispute Resolution is better known as "Alternative Dispute Resolution" which is abbreviated as ADR. Various terms in Indonesian have been introduced in various forums by various ADR parties if translated into the correct language to be equivalent:
1. Dispute Resolution Options (PPS);
2. Alternative Dispute Resolution Mechanism (MAPS);
3. Dispute Resolution Options Outside the Court;
4. Cooperative dispute resolution mechanism.

Thus, it can be concluded that ADR/APS is a dispute resolution process in which the disputing parties can assist or be involved in resolving the dispute or involve a neutral third party.

Based on the recommendation of the National Working Meeting (hereinafter referred to as Rakernas) of the MUI, on December 23-26, 2002, it confirmed the change of name of BAMUI to the National Sharia Arbitration Board (hereinafter referred to as Basyarnas), the change is based on MUI Decree Number Kep-09/MUI XII/2003 dated December 24, 2003 concerning Basyarnas.

The name change is to indicate that Basyarnas is an Islamic arbitration institution/hakam (hereinafter referred to as hakam) that decides based on Sharia Principles, and BAMUI does not directly mention the term Sharia arbitration. BAMUI at the beginning of its formation was a foundation, but after the issuance of MUI Decree Number Kep-09/MUI XII/2003, it changed into one of the organizational apparatuses of MUI.

This is a form of realization of the Explanation of Article 3 paragraph (1) and Article 16 paragraph (2) of the UUKK which provides an opportunity for resolving cases outside the General Court, namely through peace or arbitration. In Indonesia, on August 12, 1999, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter abbreviated as UUA) was born, which became the formal legality for resolving disputes outside the General Court through arbitration or through Alternative Dispute Resolution (hereinafter abbreviated as APS) such as negotiation, mediation, and conciliation. Basyarnas as an arbitration institution plays a role as an alternative institution for resolving disputes outside the court in the field of muamalah. One of the differences between Basyarnas and other arbitration institutions is the existence of regulations regarding the possibility of litigating prodeo for those who are unable to pay the Arbitrator's honorarium. Inability is proven by an official statement letter at least from the village office. This is in accordance with the nature of the foundation as a legal entity that is social in nature but is allowed to seek profit.

Since Basyarnas was established and has been operating since October 21, 1994, there have been at least 4 cases of Islamic Banking disputes submitted to Basyarnas and each has received a decision, namely the case between BMI as a creditor and a customer as a debtor originating from South Jakarta and Central Jakarta, 2 cases each.

In practice so far, Basyarnas has proven capable of resolving cases submitted and has decided cases with a full sense of justice, so that it does not require court execution or decisions made voluntarily by the parties. Thus, Basyarnas can be an alternative for resolving muamalah disputes, which include: trade, industry, and services that in their efforts use Sharia Principles, including cases that occur in Sharia Banking.

Basyarnas as one of the arbitration institutions in carrying out its duties and authorities refers to Islamic law and UUA. While UUA does not regulate the resolution of muamalah disputes. Thus, Basyarnas does not yet have special regulations that specifically regulate it at the level of Law but only has internal regulations such as Basic Guidelines, MUI Decrees, and Fatwas of the National Sharia Council (hereinafter abbreviated as DSN).

A dispute implies a difference of interest or conflict between two or more parties. A dispute is a continuation of a conflict, while conflict itself can be interpreted as a conflict between parties in the event of no agreement.

Disputes occur, among other things, due to fraud and broken promises. H. Taufiq, former supreme court judge and member of the MARI Religious Affairs Working Group), emphasized that what is meant by broken promises is:

a. The parties or one of the parties do not do what was promised/agreed to be done
b. The parties or one of the parties have carried out what has been agreed, but not "exactly the same" as promised;
c. The parties or one of the parties do what has been promised, but too late; and
d. The parties or one of the parties do something that according to the agreement should not be done.

- Settlement of Sharia Economic Disputes Based on Islamic Law In Islamic teachings, there are three systems for resolving disputes or disputes that are provided in the context of resolving disputes or disagreements, namely peace (al-shulh), arbitration (altahkim), and justice (al-qadha).

Al Sulh (Peace) Linguistically, "sulh" means to reduce disputes, while according to the term "sulh" means a type of contract or agreement to end a dispute or quarrel between two disputing parties peacefully. Resolving disputes based on peace to end a case is highly recommended by Allah SWT as stated in Surah al-Hujarat Verse 9, which means: "And if there are two groups of those who believe at war, let you make peace between them! but if one violates the Agreement against another, let the one who violates the Agreement fight against it until it recedes back to Allah's command. when He has receded, make peace between the two according to justice, and act justly; Indeed, Allah loves those who act justly"

There are three pillars that must be fulfilled in a peace agreement that must be carried out by those who make peace, namely the ijab, qabul and lafazd of the peace agreement, from the peace agreement a legal bond is born, each of which the parties are obliged to implement it. It should be noted that the peace agreement that has been agreed upon cannot be canceled unilaterally, if there is a party that does not agree to the contents of the agreement, then the cancellation of the agreement must be with the agreement of both parties.

Arbitration

The arbitration institution has known since pre-Islamic times. At that time, although there was no organized Islamic justice system, every time there was a dispute regarding property rights, inheritance rights and other rights, it was often resolved through a peacemaker (referee) appointed by those in dispute.
Scope of arbitration only related to issues concerning "huququl Ibad" (individual rights) in full, namely legal regulations that regulate individual rights relating to their property. For example, the obligation to compensate someone who has damaged another person's property, the rights of a mortgagee in its maintenance, rights related to buying and selling, renting and debts. Therefore, the purpose of Arbitration is only to resolve disputes peacefully, namely disputes that are related to property and of a similar nature as described above. Islamic legal experts among the Hanafiyah, Malikiyah and Hambaliyah schools of thought agree that everything that becomes a judicial decision (arbitration) is

immediately binding on the parties to the dispute, without first asking for the consent of both parties. This opinion is also supported by some legal experts among the Shafi'i school of thought, their reasons are based on the hadith of the Prophet Muhammad which states that: "if they have agreed to appoint a judge to resolve the dispute they are disputing, then they do not comply with the judge's decision, then for People who do not comply will be punished by Allah SWT".

Wilayat al Qadha (Judicial Power) 1) Al-Hisbah Al Hisbah is an official state institution that is given the authority to resolve problems or minor violations which by their nature do not require a judicial process to resolve them. Al Hisbah's power is only limited to supervising the fulfillment of good deeds and prohibiting people from evil.

Al Madzalim

This body was formed by the government to defend people who were persecuted due to the arbitrary attitude of state officials or their families, which is usually difficult to resolve by ordinary courts and the power of hisbah. The authority of this institution is to resolve cases of violations law carried out by government officials or officers such as bribery, corruption and government policies that are detrimental to society. The person who has the authority to resolve this case is called the guardian Al Mudzalim or Al Nadlir.

Al Qadha (Judiciary)

According to the meaning of language, Al Qadha means deciding or determining. According to the term, it means "determining the sharia law on an event or dispute to resolve it fairly and bindingly".

The authority held by this institution is to resolve certain cases related to the problem of al ahwal asy syakhsiyah (civil problems, including family law), and jinayat issues (namely matters concerning criminal law). A person who is authorized to settle a case in court is called a qadhi (judge).

Looking at the three areas of Al Qadha (judicial power) as mentioned above, when compared to the judicial power in Indonesia, it seems that two of the three judicial powers have similarities with the Courts in Indonesia. In terms of substance and authority, the al mudzalim region can be equated with the State Administrative Court, the al al Qadha region can be equated with the General Court and Religious Court institutions. While the wilayatul al Hisbah in substance has similar duties to the police or Kamtibmas, Satpol PP.

- Settlement of Sharia Economic Disputes Based on Positive Indonesian Law

a. Peace and Alternative Dispute Resolution (ADR)

Dispute resolution through Alternative Dispute Resolution (ADR) in Indonesia, peace has been supported by its existence in positive law, namely Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law states that the state gives people the freedom to resolve business disputes outside the courts, either through consultation, mediation, negotiation, conciliation or expert assessment. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates dispute resolution outside the Court, namely through consultation, mediation, negotiation, conciliation and expert assessment. This Law does not fully provide a detailed and clear

understanding or limitations. Here we will explain a brief understanding of the forms of ADR as follows:

Consultation

Black's Law Dictionary defines Consultation as "the activity of consulting or negotiating such as a client with his legal advisor". In addition, consultation is also understood as the consideration of people (parties) regarding a problem. Consultation as an ADR institution in practice can take the form of hiring a consultant to be asked for his opinion in an effort to resolve a problem. In this case, consultation is not dominant but only provides legal opinions which can later be used as a reference by the parties to resolve their disputes.

Negotiation

The form of negotiation is only carried out outside the court. In order to have binding force, this peace agreement through negotiation must be registered at the District Court within 30 days after its signing and implemented within 30 days from its registration as stipulated in Article 6 paragraph 7 and 8 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Conciliation

Black's Law Dictionary explains that what is meant by conciliation is the creation of adjustment of opinions and resolution of a dispute in a friendly atmosphere and without any hostility carried out in court before the start of the trial with the intention of avoiding the legitimacy process.

From this definition, it can be understood that basically what is meant by ADR in the form of Conciliation is a peace institution that can emerge in the court process and at the same time it is the judge's duty to offer it as stated in Article 1851 of the Civil Code. Conciliation has the same binding legal force in consultation and negotiation, namely 30 days from its signing and implemented within 30 days from its registration. (Vide Article 6 paragraph (7) of Law Number 30 of 1999).

Expert Opinion or Assessment

Another form of ADR contained in Law Number 30 of 1990 is expert opinion (assessment). In the formulation of Article 52 of this Law, it is stated that the parties to an agreement have the right to request a binding opinion from an arbitration institution regarding certain legal relations of an agreement. This provision is basically the implementation of the duties of the arbitration institution as stated in Article 1 paragraph 8 of Law Number 30 of 1999 which states that the arbitration institution is a body chosen by the disputing parties to provide a decision regarding a certain dispute, the institution can also provide a binding opinion regarding a certain legal relationship in the event that a dispute has not yet arisen. b. Arbitration (Tahkim)

The legal basis for the implementation of arbitration in resolving disputes in the business sector is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which came into effect on August 12, 1999. The provisions regarding the terms of the agreement or arbitration clause follow the provisions of the terms as in general agreements, namely subjective terms and objective terms as understood in Article 1320 of the Civil Code, as well as subjective terms and objective terms as stated in Law Number 30 of 1999. This is based on the fact that arbitration is an agreement agreed upon in a business

contract and at the same time becomes part of all topics agreed upon by the parties. In Indonesia, there are several arbitration institutions to resolve various business disputes that occur in trade traffic, including BASYARNAS (National Sharia Arbitration Board) which handles problems that occur in the implementation of sharia economic activities, and BANI (Indonesian National Arbitration Board) which specifically resolves non-Islamic business disputes.

Court Litigation Process

Disputes that cannot be resolved either through peace or arbitration will be resolved through the Court institution. According to the provisions of Article 10 paragraph (1) of Law Number 14 of 1970 in conjunction with Law Number 35 of 1999 concerning the Principles of Judicial Power, it explicitly states that in Indonesia there are 4 judicial institutions, namely General Courts, Religious Courts, Military Courts and Religious Courts. In the context of Sharia economics, the Religious Court Institution through Article 49 of the UUPAg has determined matters that are the authority of the Religious Court institution. The duties and authorities to examine, decide and settle certain cases for Muslims in the fields of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah and sharia economics.

In the explanation of this Law, it is stated that what is meant by sharia economics is an act or business activity carried out according to sharia principles which include sharia banks, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium-term securities, sharia securities, sharia financing, sharia pawnshops, and pension funds, sharia financial institutions, and sharia microfinance institutions that are growing and developing in Indonesia.

- Case Analysis of Sharia Economic Dispute Resolution in Religious Courts

After the enactment of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, cases of sharia economic disputes have become the authority of the Religious Courts in accordance with Article 49 letter I of the UUPAg.

In this study, the researcher will analyze a case that has been submitted and is still being processed in the Religious Court, namely a case filed by Pertamina regarding the mudharabah contract. The murabahah contract is a financing contract for an item by confirming the purchase price to the buyer and the buyer pays it at a higher price as an agreed profit. Meanwhile, the Mudharabah Agreement is a cooperation agreement for a business between the first party (malik, shohibul maal or Islamic Bank) who provides all the capital and the second party ('amil, mudharib, or customer) who acts as the fund manager by sharing the business profits according to the agreement stated in the agreement, while the losses are borne entirely by the Islamic bank unless the second party commits a default or deliberate error, is negligent or violates the rules of the agreement. This case began with Pertamina submitting financing in a murabahah (sale and purchase) scheme to two Islamic banks to finance the procurement of 100 vehicles. The two Islamic banks agreed to distribute financing for 50 vehicles. Along the way, Pertamina was late in paying, but unilaterally one of the banks suddenly increased the selling price of the

murabahah agreement. The Islamic bank unilaterally changed the murabahah sale and purchase price with a significant change in figures (hundreds of millions of rupiah) which clearly harmed the customer. In fact, in Islamic principles, this change should not be made. This change was made because the customer delayed payment. In fact, in other Islamic banks that are purely Islamic, there was no change in price even though there was a delay in payment. Because of the change in the ba'i murabhah price, the customer objected and filed a lawsuit with the Islamic Arbitration Board. In response to this, the Islamic bank clearly did not want to be sued, because the bank knew that the bank had to change the sale and purchase price back to the original price. Because the Islamic bank did not want to, the Sharia Arbitration Board could not resolve the dispute case. This is different if the customer filed the case in court. The Islamic bank can be summoned by the court to resolve the case through a trial. The Islamic bank cannot refuse and state that it does not want to take the case to court.

This dispute has not been resolved because the bank is reluctant to take the case to BASYARNAS. In fact, a sharia economic dispute case can only be brought to an arbitration institution if both parties agree. The bank chose to resolve it through a general court because it could get a profit of around Rp. 250 million. Pertamina, represented by its legal advisor Agustiono, felt that it had become a victim with a loss of Rp. 250 million. Furthermore, Agustiono, who is a postgraduate lecturer at UI, then reported this case to Bank Indonesia, the relevant Islamic Bank, DSN-MUI and the Sharia Supervisory Board (DPS) but the results were still zero. Then Pertamina registered the case with the Jakarta Religious Court. However, until now this case has not received a decision because it is still in the judicial process. In this case it can be seen that the sale and purchase agreement made by the parties is by using a financing system based on murabahah. Financing based on murabahah is a sale and purchase agreement, one form of sale and purchase where the seller provides information to the buyer about the costs incurred to obtain the cost of purchase and additional agreed margin/profit which is reflected in the selling price. According to Article 9 of Bank Indonesia Regulation Number: 7/46/PBI/2005 Concerning Fund Collection and Distribution Agreements for Banks Carrying Out Business Activities Based on Sharia Principles, in Financing based on Murabahah the following requirements apply: The seller provides financing funds based on a sales and purchase agreement. What is meant by "goods" are goods whose quantity, quality and specifications are clearly known.

b. The payment period for the price of goods by the buyer to the Seller is determined based on the agreement between the seller and the buyer;
c. The seller can finance part or all of the purchase price of goods whose qualifications have been agreed upon;
d. In the event that the seller delegates the buyer (wakalah) to purchase goods, the Murabahah Agreement must be made after the goods in principle become the property of the seller;

Wakalah must be made a separate agreement from the Murabahah agreement. What is meant by goods in principle belonging to the seller in the wakalah in the Murabahah Agreement is the existence of a flow of funds directed to the supplier of goods or evidenced by a purchase receipt.

e. The seller can ask the buyer to pay a down payment or urbun when signing the initial agreement for ordering goods by the buyer;
f. The seller can ask the buyer to provide additional collateral in addition to the goods financed by the Seller;
g. The margin agreement must be determined once at the beginning of the Agreement and does not change during the Agreement period;
h. Installment financing during the period of the Contract must be done proportionally.

Proportional installments are installments set by the seller proportionally between the principal price and margin, as well as the installment period. Example:

1. The basic price of the machine is Rp. 10,000,000,- (ten million rupiah) " Margin Rp. 2,000,000,- (two million rupiah).
2. Installment period = 12 (twelve) months. Installment Rp. 12,000,000,-/12 = Rp. 1,000,000,- (one million rupiah)

In the event that the seller asks the buyer to pay a down payment or urbun, the following provisions apply:

a. In the case of a down payment, if the buyer refuses to buy the goods after paying the down payment, then the seller's real costs must be paid from the down payment and the seller must return the excess down payment to the buyer. However, if the down payment is less than the loss value that must be borne by the seller, then the seller can ask the buyer to pay the remaining loss;
b. In the case of urbun, if the buyer cancels the purchase of the goods, then the urbun that has been paid by the buyer becomes the property of the seller up to a maximum of the loss borne by the seller due to the cancellation, and if the urbun is insufficient, the buyer is obliged pay off the shortfall. In Murabahah financing, the seller can give a discount from the total payment obligation only to buyers who have fulfilled their installment payment obligations on time and/or buyers who experience a decrease in payment capacity. What is meant by buyers who experience a decrease in payment capacity are buyers whose business activities are affected by natural disasters or economic crises that are officially determined by the government as a national crisis. The amount of the Murabahah discount to the buyer may not be agreed upon in the Contract and submitted to the seller.

Regarding what has been contracted, each party must respect what they have agreed upon because in the legal provisions contained in the Quran, among others in the letter Al Maidah verse 1, which means: "O you who believe, fulfill the contracts [388]. Livestock is made lawful for you, except for that which will be read to you. (That is) and hunting is not made lawful while you are performing the pilgrimage. Indeed, Allah establishes laws according to what He wills"

Based on the provisions of the law, it can be seen that whatever the reason, it is an unlawful act if someone has committed an act that violates a contract that has been made, then the perpetrator can be given a sanction. The imposition of the sanction is the reason for regulating a contract or what in other terms is called "breach of contract". Articles 1244, 1245 and 1246 of the Civil Code state that if one party breaks a promise (breach of contract) or acts unlawfully, then the injured party can claim compensation in the form of restoration of performance, compensation, costs and interest

CONCLUSION AND RECOMMENDATION

Based on the explanation above, the researcher draws the following conclusions:

- The settlement of sharia disputes at the Central Jakarta Religious Court regarding murabahah submitted by PT Pertamina has not yet produced a final decision, so it is still waiting for the judge's decision.
- The parties prefer the Religious Court compared to Basyarnas, because the Court is considered to be more compelling for the parties to obey the decisions made.

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