



Sharia Cooperative Business Dispute Resolution in Indonesia Accepted Under the Guidelines of Sharia Economic Law

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ABSTRACT

The purpose of this study was to clarify how Sharia Economic Law is used to settle disputes involving cooperative businesses in Indonesia. This study uses a qualitative approach to the literature to investigate secondary data sources pertaining to Indonesian legislation and regulations pertaining to commercial conflict resolution. The findings demonstrated the crucial role that sharia cooperatives play in the Islamic economic system, particularly as a substitute finance source for the lower middle class. According to Indonesia's legal system, sharia business disputes, including those involving sharia cooperative businesses, can be settled through family mediation, legal proceedings in religious courts with absolute jurisdiction, arbitration, or alternative dispute resolution organizations like LAPSPI (banking), BMAI (insurance), BMDP (pension funds), BAPMI (capital market), BMPPVI (venture capital), and BAMPPPI (guarantee). The establishment of LAPS Cooperatives that mesh well with the cooperative's spirit and have access to human resources with expertise in sharia-based cooperative business become crucial factors to take into consideration. Sharia cooperatives are seen as a unique type of business entity that operate member-based businesses that simultaneously hold two statuses (owner and user) and cooperative wealth owned by all cooperative members who run their businesses according to sharia principles

INTRODUCTION

In addition to being aware of the nation's founding father's mandate, the economy is structured as a collaborative effort based on the principle that kinship is a basic norm (staat fundamental norm). This forms the basis of Indonesia's political economic policy. Naturally, the founder of the nation also reflects the cultural values of Indonesian people, which are rich in unity, togetherness, and mutual cooperation, as reflected in Pancasila (I A Pohan, A E Krisdayanti, 2019). In addition to being aware of the nation's founding father's mandate, the economy is structured as a collaborative effort based on the principle that kinship is a basic norm (staat fundamental norm). This forms the basis of Indonesia's political economic policy. Naturally, the founder of the nation also reflects the cultural values of Indonesian people, which are rich in unity, togetherness, and mutual cooperation, as reflected in Pancasila (Rinawati, 2020).

The cooperative on its journey has continued to develop since before independence until now. The Political Will of the Indonesian government was seen with the birth of Law No. 12 of 1967 concerning the Principles of Cooperatives and replaced by Law No. 25 of 1992 concerning Cooperatives which is in force today and various related regulations. Administratively, the state has provided institutions that serve as cooperative regulators with the existence of a cooperative ministry that has grown and developed since before independence (PPID, 2017).

Further developments, along with the growth and development of the concept of sharia economy marked by the establishment of Sharia Bank (Bank Muamalat) in 1991 followed by the birth of Sharia Banking Law, namely Law No. 21 of 2008 concerning Sharia Banking and sharia-based bank and non-bank financial industries (Uswatun Khasanah, 2020) Compare with (Utama, 2018), The cooperative economy also experienced development and became part of the development of a sharia-based economy, so that then a cooperative legal entity was born that practiced and made sharia principles the basis of its business operations (Nurjamil & Nurhayati, 2019a).

A business transaction, if it is based on good faith, respect for business ethics and law, will certainly run well. Conversely, if business people no longer pay attention to business ethics and law, then problems that lead to disputes known as business disputes cannot be avoided. Business disputes are generally caused by default, which is a condition where one party (debtor) does not fulfill its achievements, namely its obligation to give, do or not do something that has been agreed upon which is the right of the other party (creditor), either because the debtor is unable or unwilling to fulfill its performance.

Indeed, business actors will avoid the slightest dispute in business, because it will interfere with the running of business processes that have an impact on inefficient economic development, decreased productivity, business sterility, and increased production costs (Suyud Margono, 2004). However, if the dispute occurs, for the sake of business continuity, business people are required to resolve the dispute in an appropriate and efficient time. In this case, the government as a regulator of all economic activities has a very important role to provide a set of rules that support a conducive business climate and encourage

the business dispute resolution process that meets a sense of justice and legal certainty while still paying attention to the principles adopted in the business world, such as consumer protection, business continuity, and guarantee on behalf (company branding).

The Indonesian government has responded to this by enacting a number of laws and regulations, such as Law Number 8 of 1999 about Consumer Protection, Law Number 5 of 1999 about the Prohibition of Monopoly Practices and Unfair Business Competition, Law No. 30 of 1999 about Arbitration and Alternative Dispute Resolution, Law Number 37 of 2004 about Bankruptcy and Suspension of Debt Payment Obligations, and various rules legislation. These laws and regulations support the ongoing operations of business conflict resolution, which includes organizations (organizations) with obligations to settle business conflicts both out of court and through other channels.

The cooperative is a legal entity that was created to conduct business with a unique identity. Its members have dual status as both owners and users, and it has the highest organizational structure, which is found at member meetings. All members own cooperative wealth, and the residual profits of its operations are distributed according to member participation and the presence of family values that lead to the creation of Due to their shared commitment to bearing losses, cooperatives are given special consideration when it comes to business disputes. This means that when resolving disputes through the legal system, particularly if it results in a bankruptcy judgment for the cooperative, the resolution process must take into account the unique characteristics of cooperatives.

LITERATURE REVIEW

The Ins and Outs of Sharia Cooperatives

Definition

A cooperative is a type of legal organization that was founded to make money via a business that is managed to advance the benefit of its members. (Arifin, 2013) as defined by Article 1 point (1) of Law No. 25 of 1992 concerning Cooperatives, a cooperative is a business entity consisting of a person or cooperative legal entity by basing its activities on the cooperative principle as well as the people's economic movement based on the principle of kinship. According to the International Cooperative Association (ICA), a cooperative is defined as an autonomous association of people who unite voluntarily to meet common economic, social and cultural needs and aspirations through enterprises they democratically control (Agus Tri Darmawanto, 2015).

It is clear from these definitions that sharia cooperatives Sharia cooperatives are both a people's economic movement founded on family values and business entities made up of individuals or cooperative legal entities that base their operations on sharia principles. (Sofiani, 2014). Sharia Cooperative Principles, among others: 1). wealth is a mandate of Allah SWT that cannot be owned by anyone absolutely; 2) people are given the freedom to pray as long as they are not contrary to the Shari'a; 3) man is the caliph of God and prosper on earth and ; 4) uphold the dignity and reject every form of usury and the

concentration of economic resources on a few people or groups of people (Sofiani, 2014).

Legal Basis of Sharia Cooperatives

As a legal entity, sharia cooperatives are subject to applicable legal rules known as positive law, but as a product, both institutionally and operational and business activities that they run, of course, sharia cooperatives are based both on nash and cooperative regulations as outlined by Triana that the legal basis for sharia cooperatives is as follows: 1) Sharia cooperatives based on Pancasila and the 1945 Constitution; 2) Sharia cooperatives based on kinship and; 3) Sharia cooperatives based on Islamic sharia, namely the Quran and As-Sunnah refer to the nash of mutual help and mutual guarantee in the concept of takafful (Sofiani, 2014). Sharia cooperatives' legal foundation can be broadly characterized as follows:: (Nurjamil & Nurhayati, 2019) :

1. Government Regulation of the Republic of Indonesia No. 9 of 1995 concerning the Implementation of Savings and Loans Business by Cooperatives
2. Decree of the State Minister of Cooperatives and SMEs of the Republic of Indonesia Number 91 / Kep / M.KUKM / IX / 2004 dated September 10, 2004 concerning Guidelines for the Implementation of Sharia Financial Services Cooperative Business Activities
3. Regulation of the State Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia No: 35.2 / PER / M.KUKM / X / 2007 concerning Guidelines for Operational Standards for Management of Islamic Financial Services Cooperatives and Sharia Financial Services Units
4. Regulation of the State Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 35.3 / PER / M.KUKM / X / 2007 concerning Guidelines for Health Assessment of Islamic Financial Services Cooperatives and Cooperative Sharia Financial Services Units
5. Article 1320 of the Civil Code on the Legal Terms of the Agreement
6. Article 1243 of the Civil Code concerning Reimbursement of Costs, Losses and Interest Due to Non-Fulfillment of an Engagement
7. Law Number 3 of 2006 concerning Religious Courts related to the settlement of Islamic economic disputes
8. Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small and Medium Enterprises;
9. Fatwa of the National Sharia Council Number: 02/DSNMUI/IV/2000 concerning Savings (wa'diah)
10. Fatwa of the National Sharia Council of the Indonesian Ulema Council Number: 03/DSNMUI/IV/2000, concerning Deposit
11. National Sharia Council Fatwa No: 08/DSNMUI/IV/2000 concerning Musharakah Financing and other related regulations.

Sharia Cooperative as Legal Entity

In legal terminology, several fundamental terms are known such as legal subjects, legal entities, legal acts and legal objects. Subject of law or subject van een recht; i.e. "person" who has rights, a natural person or legal entity who has the right, will or perform legal acts. A legal entity is an association or organization that is established and can act as a legal subject, for example it can

own wealth, enter into agreements and so on. While legal acts are actions of a person based on a legal provision that can give rise to legal relations, that is, consequences arising from legal relationships such as marriage between a man and a woman, which therefore gives and imposes rights and obligations on each party. In short, the subjects of law in civil law consist of: (Komariah, 2002):

1. Mankind (*Naturlijke Persoon*)

Man is a subject of law because from the moment he is born (even in the womb) he is already a supporter of rights and obligations. This state ends when man dies.

2. Legal Entity (*Recht Persoon*)

In addition to humans, legal entities are also supporters of rights and obligations. Legal entities can perform legal acts like humans. According to civil law, both, human beings and legal entities are referred to as persons (*persoon*), that is, bearers of rights and obligations (P.N.H. Simanjuntak, 2008).

The object of law is everything that is useful to the subject of law (human or legal entity) and that can be the subject of a legal relationship, because that something can be controlled by the subject of law. In this case, of course, something has a price and value, so it requires determining who is entitled to it, such as movable or immovable objects that have value and price, so that its control is regulated by legal rules.

In the Indonesian legal system, one of the legal subjects that is synonymous with Indonesian values is cooperatives. The Indonesian people who are familiar with the concept of group strength, are described in the term of *sapulidi* science which gives birth to a pattern of working together, building awareness of cooperation, joint strength, so that weight is the same carried, light is carried which is then translated into cooperatives (Ramudi Arifin, 2013).

In the lens of legal science, a legal entity (*recht persoon*) is a legal subject who can perform legal actions like humans. In this case, the cooperative as a legal entity is represented by the management both inside and outside the court (See Article 30 point (2) letter (a) of the Cooperative Law) and is responsible to the Members Meeting or Extraordinary Members Meeting (See Article 31 of the Cooperative Law). In the event of a cooperative loss, due to the management's intentional or negligent actions, the management is responsible for bearing the loss (See Article 34 point (1) of the Cooperative Law).

In the event that the loss of the cooperative is caused by the decision of the board meeting, the loss is borne by all management, and if the loss is caused by the legal actions of the management personally, then the loss is borne by the management individually. In the event of losses suffered by the cooperative that are not caused by the actions of the cooperative management, such as due to force majeure, the burden of responsibility for the loss of the cooperative is borne by the cooperative as an organization consisting of organizational devices from: Meeting of Members, Management and Supervisors where organizationally sharia cooperative legal entities can be equated with conventional cooperatives except for several things including: the existence of a Sharia Supervisory Board (DPS) and the obligation to implement sharia principles in its business operations

as stipulated in the Regulation of the Minister of Cooperatives and SMEs Number 11 of 2017 concerning the Implementation of Sharia Savings and Loans and Financing Business Activities by Cooperatives.

METHODOLOGY

This study uses a normative juridical approach to the literature to gather secondary data from a variety of sources, including books and research journals on business dispute resolution, laws and regulations pertaining to business dispute resolution, laws Number 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts, and laws and regulations pertaining to Sharia Cooperatives and Alternative Dispute Resolution (APS). Next, Sharia is examined and evaluated through the lens of sharia economic law.

RESULTS AND DISCUSSION

Cooperatives as private legal entities that are recognized in the legal system in Indonesia, if there is a business dispute in it, then as a legal subject, the cooperative can carry out legal actions such as suing or even being sued legally either before the court, be it a public court including the Commercial Court if there is a bankruptcy lawsuit case or religious court (for business disputes based on sharia economic contracts) or outside the court either through arbitration includes the Indonesian National Arbitration Board (BANI), the National Sharia Arbitration Board (BASYARNAS) and Alternative Dispute Resolution (ADR).

Disputes in the Islamic cooperative business can occur in several models, namely:

1. Disputes between cooperatives and members. This dispute occurs where the cooperative as an organization disputes with cooperative members, both individuals individually in the primary cooperative and between cooperatives and cooperative members in the form of cooperative legal entities in secondary cooperatives. When Non-Performing Financing (NPF) occurs, the problem is resolved familiarly. In conditions where the family method cannot be a solution, then confiscation is carried out on bail if there are even a few cases whose settlement ends in court. As another example, in sharia cooperatives, there are many cases of problematic mudharabah financing, cooperatives as capital owners (*sohibul maal*) and members as business actors (*mudharib*), problems occur when *mudharib* cannot return capital and business profit sharing because the business is not running well. The problem can be resolved by rescheduling, restructuring and reconditioning, but if the three stages cannot be a solution, then the resolution step is taken either through Arbitration or Religious Court as agreed in the contract or deed of agreement.
2. Disputes between Cooperatives and Non-Members. Examples of disputes include the case of the Pandawa Cooperative where the chairman of the cooperative embezzled public investment money where this case ended with a criminal conviction for banking crimes for the defendant (chairman of the cooperative) with a sentence of 15 years in prison which was decided at the Depok District Court and upheld in the Supreme Court cassation decision. Meanwhile, the bankruptcy decision was previously

through the decision of Suspension of Debt Payment Obligations (PKPU) for the Pandawa cooperative by the Central Jakarta Commercial Court, where the assets of the cooperative were auctioned through the intermediary of the curator's authority and distributed to the community and members in a fair and balanced manner (*pari passu pro rata parte*). The problem is what about cooperative assets sourced from cooperative businesses? What about members' rights in the form of compulsory deposits and principal deposits after the cooperative is declared bankrupt by the court?

3. Disputes between cooperatives and other parties in terms of fulfilling cooperative capital, one of which comes from bank participation capital funds. In the event that the cooperative cannot fulfill its achievements to shepherd the loan, then there is a default that causes a business dispute between the cooperative and the bank, then the dispute requires appropriate resolution steps, because it involves the sustainability of the cooperative's business. In general, disputes are resolved through deliberation or through a special division known as the Consumer Business Division or Procurement and General Service Division, if no solution is found, the bank has an alternative dispute resolution institution specifically for banking with its customers called the Indonesian Banking Alternative Dispute Resolution Institution (LAPSPI), or through Arbitration or even through Court.

In general, cooperative disputes that occur generally result in several conditions as follows:

1. Fulfillment of obligations (achievements) as appropriate, both in whole and in part in accordance with the agreement taken with debt restructuring steps, namely improvement efforts made in credit activities to debtors who have the potential to have difficulty fulfilling their obligations. Financing restructuring policy in this case is known as credit to financial service institutions, among others, through: First, Rescheduling, which is a change in the payment schedule of customer obligations or its term, Second, reconditioning, which is an effort to secure financing with changes in some parts or also all conditions between banks and customers on financing. This rescue effort is intended to adjust the customer's ability to conditions that make it easier for customers, namely changes in payment schedules, time periods, profit sharing rates, and so on, Third, Restructuring, namely in the form of additional financing facility funds; Conversion of Financing contract; and/or Conversion of Financing into Temporary Capital Participation in customer companies as regulated in OJK Regulation 16/POJK.03/2014 (Amalia & Adinugraha, 2021);
2. Dissolution of cooperatives determined based on Member Meeting or Government Decision (Article 46 of the Cooperative Law). The dissolution of a cooperative decided by the government can be carried out if the cooperative concerned does not comply with the provisions of the Cooperative Law, the activities carried out are contrary to public order

- and/or decency and its survival can no longer be expected (Article 47 of the Cooperative Law);
3. Settlement of dissolution (Article 52 of the Cooperative Law) carried out by a settler appointed by the Meeting of Members or appointed by the government (Article 52 of the Cooperative Law);
 4. Abolition of cooperative legal entity status from the date of announcement of the dissolution of the cooperative published in the State Gazette of the Republic of Indonesia;
 5. Postponement of debt payment obligations (PKPU);
 6. Confiscation of collateral followed by an auction of assets equal to the value of the debt;
 7. Confiscation of collateral to be auctioned and distributed fairly and proportionately to creditors if the cooperative dispute ends in bankruptcy by the Commercial Court;
 8. Criminal judgment by the general court if the cooperative dispute in it contains criminal or criminal elements;
 9. Responsibility jointly or individually charged to the management which intentionally or omittingly results in the loss of the cooperative

In sharia business practice, the community actually has many choices in resolving disputes that occur, of course, the most important thing is to prioritize settlement through family deliberation, especially if it occurs in sharia cooperatives. If no common ground is obtained, then sharia business actors can go through one of two processes, namely through the litigation process in the Religious Court and this is the absolute competence of the PA as affirmed in Article 49 of Law Number 3 of 2006 concerning Religious Courts which states that the Religious Court has the duty and authority to examine, decide, and settle cases in the first instance between people of Muslim faith in the fields of marriage, inheritance, wills, grants, waqf, zakat, infak, alms, and sharia economics and Article 55 (paragraph 1) of Law Number 21 of 2008 concerning Sharia Banking Sharia Banking dispute resolution is carried out by the Court within the Religious Court, or through a non-litigation process, namely through Arbitration, such as BASYARNAS and Alternative Dispute Resolution as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Islamic banking laws with settlement clauses adjusted to the contents of the contract made by the parties.

At the practical level, it turns out that dispute resolution through alternative dispute resolution institutions (LAPS) is preferred by business people with consideration of a fast process, completed by professional human resources, cheaper costs and most importantly a win-win solution, maintaining company privacy until the final and binding decision. Currently there are several LAPS foundation legal entities such as BAPMI (capital market), BMAI (insurance), BMDP (pension fund), LAPSPI (banking), BAMPPI (guarantee) and BMPPVI (venture capital) compare with (Renny Supryatni, 2021) which was later established also LAPS SJK (Alternative Dispute Resolution Institution in the Financial Services Sector) which was established based on POJK 61/2020 on September 22, 2020 by Self Regulatory Organizations (SROs) and associations

within the financial services sector. Then obtained an operational license from OJK on December 29, 2020, and began operating on January 1, 2021.

Seeing sharia cooperatives as a business entity that has its own uniqueness that prioritizes kinship in the establishment to the running of a cooperative business, by carrying out a member-based business that has two statuses at once (owner and user) and cooperative wealth owned by all cooperative members who run their business with sharia principles with the involvement of the Sharia Supervisory Board, cooperative business disputes cannot be treated equally with other business entities or legal entities. In this case, an effort is needed to establish an alternative dispute resolution institution which could be in the form of Alternative Cooperative Dispute Resolution Institution (Cooperative LAPS).

CONCLUSIONS AND RECOMMENDATIONS

Settlement of cooperative business disputes can be achieved through a family deliberation process, if no agreement and meeting point can be reached through the proceedings in the Religious Court or through arbitration and alternative dispute resolution institutions such as BAPMI in the capital market, BMAI in insurance, BMDP in the pension fund, LAPSPI in banking, BAMPPI in the guarantee sector and BMPPVI in venture capital business, However, seeing sharia cooperatives as a business entity that has its own uniqueness, alternative dispute resolution specifically for cooperatives or sharia cooperatives is very important to consider so that serious efforts are needed to initiate the establishment of Cooperative LAPS.

FURTHER STUDY

This research is a temporary illustration of the urgency of establishing alternative cooperative business dispute resolution institutions in terms of regulations and theory-based business interests, then it is necessary to conduct research related to the views of people who have interests related to cooperative business in Indonesia such as cooperative legal entities represented by cooperative administrators, cooperative association organizations, cooperative activists, academics, as well as the government that responsible for the continuity of the existence of cooperatives in Indonesia through more in-depth research with a survey approach.

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