



The Role of the National Sharia Arbitration Board in Alternative Dispute Resolution

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ABSTRACT

The Sharia Arbitration Board is an institution whose mission is to resolve disputes peacefully based on Sharia principles without interference from public courts. This effort is made to provide legal certainty for legal subjects in dispute in Sharia economics. Law Number 30 of 1999 regulates that arbitration has the right to resolve problems and disputes related to civil law, including the economic, business, financial, trade, and industrial sectors by applying sharia principles. The method used is a qualitative descriptive and library research approach by analyzing documents, data, and information related to Basyarnas. This research shows that although Basyarnas' role in resolving sharia economic disputes is very important its decision position is binding on the parties.

INTRODUCTION

Sharia economics is a sector that is experiencing rapid development. Many aspects of Sharia economics have become trends so people are interested in using these aspects. One thing that is experiencing development is Sharia banking. Along with rapid development, many scientific studies are being held in both academic and non-academic corridors (Alhusain, 2021).

Currently, the development of sharia economics in Indonesia shows a significant positive trend. The government and financial institutions continue to support the growth of this sector through policies that support Sharia-based finance. Increasing public understanding of Sharia economic principles also plays an important role in this development. Apart from that, a form of actualization of the Sharia economy is the existence of Sharia banks that are growing rapidly by involving various products and services that are by Sharia principles, such as mudharabah and murabah-based financing. Apart from that, the Sharia capital market is also experiencing positive growth with the existence of Sukuk and other Sharia financial instruments. The government's initiative in developing Sharia microfinance institutions is also an impetus for financial inclusion in the micro and medium economic segments.

The importance of this inclusive approach is reflected in efforts to integrate sharia principles in various economic sectors, such as insurance and investment. Apart from that, there is also a process of borrowing funds carried out by creditors and debtors in general through financial institution business entities such as banks, pawnshops and other financial institutions (Muchtar, 2021). Although there are still several challenges that need to be overcome, such as public awareness and clearer regulations, the development of sharia economics in Indonesia shows great potential to continue to develop and have a positive impact on the economy as a whole.

However, this development does not have a completely positive impact, the possibility of disputes will always arise as services increase in the sharia economy. For this reason, regarding dispute resolution in Sharia economics, there is an option, namely dispute resolution through arbitration, which is included in non-litigation or out-of-court settlement.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which addresses non-litigation settlement through arbitration, can be considered the most concrete and focused example of the state's efforts to implement and mainstream peace institutions in commercial disputes. Additionally, according to this law, parties may choose to settle business disputes amicably outside of court by using expert evaluation, negotiation, mediation, conciliation, or consultation (Manan, 2014).

These days, a growing number of disputes and conflicts are being resolved through non-litigation techniques called Alternative Dispute Resolution (ADR). Nearly 90% of conflicts in America and Australia are settled out of court, particularly between businesspeople. Similarly, in Indonesia, the use of this institution for resolving disputes has started to emerge, particularly among businesspeople (Emirzon, 2001).

However, in the context of Sharia economic disputes, based on several studies that have been conducted, Sharia economic activists generally prefer the litigation route because of the difficulty of executing Sharia arbitration decisions without a court order.

This tendency can be seen from the minimal number of Sharia arbitration submissions to Basyarnas. The public is generally less interested in resolving Sharia economic disputes through Basyarnas. They prefer other non-litigation paths, such as mediation, and similar or litigation paths. Data shows that from its inception in 2003 to 2007, Basyarnas only managed to resolve two Sharia banking disputes. Three other disputes were registered but ultimately not processed because they did not meet the requirements. Meanwhile, BAMUI, from 1993 to 2003, was recorded as resolving 12 sharia banking disputes. Thus, Basyarnas and BAMUI have only resolved 14 sharia banking disputes. National Sharia Arbitration (Basyarnas) in Resolving Sharia Economic Disputes Outside the Court (Sufriadi, 2007).

This raises a big question, why did economic activists not take advantage of resolving Sharia economic disputes through non-litigation litigation through Basyarnas, whether the jurisdiction of the Religious Courts become stronger in resolving Sharia economic disputes after the decision of the Constitutional Court Number: 93/PUU-X/2012 which has confirmed the absolute authority of the Religious Courts, also influences the dispute resolution choices of sharia economic actors, or other factors that cause the minimum number of applications for dispute resolution through Basyarnas.

LITERATURE REVIEW

Legal certainty

According to Sudikno Mertokusumo (2007), Legal certainty is a guarantee that decisions can be carried out, the law is applied, and those who are entitled to it can get their rights. Justice and legal certainty are not the same thing, despite their close relationship. Justice is individualistic, subjective, and non-generalizing, whereas law is universal, binding on all, and generalizing.

The importance of legal certainty is reflected in the belief that every individual must be able to understand the legal consequences of their actions, to avoid accidental violations. This concept is also related to the principle that the law must be applied consistently and fairly to maintain public trust in the legal system. In this context, the drafting and application of law must pay attention to clarity, consistency, and fairness to achieve the main goal of legal certainty. The theory of legal certainty supports the protection of human rights, encourages economic growth, and creates a trustworthy legal environment. As the basis for an effective legal system, this theory is an important basis in the formation of laws and legal policies at various levels.

The role carried out by Basyarnas is one form of providing legal certainty through binding decisions for parties who have gone through the process of resolving disputes through arbitration as an effort to resolve disputes outside of court.

METHODOLOGY

This research uses qualitative methods with the type of library research. Researchers use library research because they remember that the object of research, namely Basyarnas, has a lot of literature related to its role in resolving disputes. Therefore, researchers collected regulations, literature, documents, books, notes, websites and other references related to Basyarnas in resolving sharia economic disputes.

RESEARCH RESULT

National Sharia Arbitration Board

The existence of non-litigation institutions in resolving Sharia banking disputes cannot be separated from the existence of Sharia banking institutions. The first Sharia bank established in Indonesia was Bank Muamalat Indonesia. The existence of Islamic banks in Indonesia plays a very big role because they can support the national economy and help in the development of the country. Apart from that, Islamic banks also function as intermediary institutions in collecting public funds and managing these funds in various products.

One form of non-litigation resolution is arbitration, according to Law Number 30 of 1999, arbitration is a procedure for resolving a civil dispute outside the general court, based on a written arbitration agreement between the parties to the dispute. The difference between court and arbitration is that the court uses a permanent court or standing court while arbitration uses an arbitration panel that is formed specifically for this activity. In arbitration, the arbitrator acts as a court judge, as a permanent judge, but only on the case at hand.

The existence of the National Sharia Arbitration Agency is based on several regulations that have been made by the government to be able to fill the gaps in the institution at that time in resolving Sharia economic disputes. The existence of the Basyarnas institution was an extraordinary breakthrough in being able to help Sharia banking when it had just been established, namely Bank Muamalat Indonesia. The National Sharia Arbitration Board is an institution based on Sharia Principles which was formed by the Indonesian Ulema Council. The existence of Basyarnas in carrying out its duties and authority is supported by regulations in the form of laws, regulations, and fatwas from the Indonesian Ulema Council in recommending Sharia arbitration as a tool for resolving Islamic civil disputes in Indonesia. However, the existence of Basyarnas is limited by regulations because it cannot operate unless there is a request contained in the clause of the agreement made and mutually agreed upon as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

DISCUSSION

The Role of the National Sharia Arbitration Board

Arbitration is the out-of-court resolution of civil issues or disputes. Arbitration resolves disputes outside the general court based on a written arbitration agreement between the disputing parties, as regulated in Article 30, Article 1 (1) of the 1999 Law on Arbitration and Alternative Dispute Resolution.

Based on article 4 of the Basyarnas Bylaws (ART), the main objective of establishing Basyarnas is firstly to be able to provide fair and quick resolution in disputes arising from Islamic economic activities in the fields of banking, trade, and other sharia financial institutions. The second is accepting requests submitted by the parties to an agreement without any dispute, providing a binding opinion regarding an issue relating to the agreement (Johari, 2020).

This arbitration institution is a non-litigation institution, different from the Religious Courts which are litigation institutions (Lahilote, 2022). Arbitration institutions mediate between parties quickly, in contrast to Religious Courts which require time and bureaucracy.

Basyarnas's role is not only to resolve disputes in the field muamalat/civil matters arising in the fields of business, finance, industry, and services based on Sharia principles but also providing binding legal opinions at the request of the parties without any dispute in an agreement (Akad) (Hanif, 2020). To support its role and authority in resolving disputes and disagreements, as of January 2021, Basyarnas has 20 (twenty) Representative Offices spread across each Province in Indonesia.

The dispute resolution mechanism at Basyarnas begins with a written agreement by the parties. The agreement contains an agreement regarding the choice of how to resolve disputes by choosing through the Basyarnas Institution. The parties to the dispute must agree by choosing the Sharia arbitration route without any coercion from either party to achieve peace between the two parties and this agreement must be stated in the arbitration clause.

The authority of the Basyarnas Institution includes: 1) Resolving disputes must be done fairly and quickly. Disputes that can be resolved are disputes in the field of muamalah (civil); and, 2) Providing opinions to the parties regarding the problems faced by the parties to the dispute. Basyarnas was founded based on Surah An-Nisaa verse 35 which advocates the importance of peace as in the translation below:

And if you are worried that there will be a dispute between the two husband and wife, then send a hakam from the woman's family. If the two hakam people will make amends (peace), then, surely Allah will give taufik to the husband and wife. Indeed, Allah is All-Knowing, All-Knowing. Apart from that, it is also found in Surah Al-Hujurat verse 9, Surah An-Nisaa verse 128, and An-Nisaa verse 114 which regulates peace.

Islamic Sharia strongly recommends peace between the parties in conflict because it will save the friendship from being destroyed and end the hostility that occurs between the two. Provisions regulated in the *Quran*, *sunnah* and *ijmak* regulate recommendations for peace (Ichsan, 2015).

- a) The trial principles used by Basyarnas are as follows: The panel of arbitrators and mediators conducts the examination of the case;
- b) There is mutual agreement in resolving disputes. The settlement process is carried out in a friendly manner in order to bring about peace;
- c) The trial will be held behind closed doors;

- d) Peace is the main principle in resolving cases; 5) If the dispute resolution process is not successful peacefully, then the parties are given the opportunity to resolve it in court;
- e) The arbitrator makes a decision based on deliberation; and, 7) The dispute resolution period is no later than 180 days from the appointment of the arbitrator or panel of arbitrators.

Basyarnas' role in resolving disputes so far is still not optimal because it has experienced several obstacles. One of them is that dispute resolution through an arbitration institution must first be preceded by a written agreement between the parties to carry out the settlement using an arbitration institution. This implies that there won't be any dispute resolution at Basyarnas if the parties cannot agree on the agreement clause pertaining to the National Sharia Arbitration Board's role in resolving disputes. Whether an arbitration clause is included in an agreement either before a dispute arises (*pactum de compromittendo*) or after a dispute arises (*actacompromise*) determines the arbitration institution's absolute competence.

Legal Position of Decisions of the Indonesian Sharia Arbitration Board

Regarding the legal position of the National Sharia Arbitration Board's decision regarding the resolution of Sharia banking disputes in the judicial system, it is independent, final, and binding on the parties, such as a decision that has permanent legal force so that the chairman of the court is not permitted to examine the reasons or legal considerations. from the decision of the National Sharia Arbitration Board. Therefore, no resistance can be carried out in any form of legal action. The decision from Basyarnas is final and binding on the parties (binding), and must be obeyed and implemented voluntarily by the parties. The provisions of Article 59 paragraph (1) of the Law on Arbitration state that: "Within a maximum period of 30 (thirty) days from the date the decision is pronounced, the original or authentic copy of the arbitration award shall be submitted and registered by the arbitrator or his proxy to the Registrar of the District Court.

Based on the provisions of Article 59 paragraph (1), the Basyarnas decision must be registered by the arbitrator or his proxy with the District Court. "The arbitrator or his/her proxy is obliged to submit the original decision and appointment sheet as arbitrator or an authentic copy thereof to the District Court Registrar" as stated in Article 59 paragraph (3) of the Law on Arbitration and Alternative Dispute Resolution. The parties in a dispute sometimes do not implement decisions from Basyarnas voluntarily. However, this has been regulated in Article 61 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which reads as follows: "If the parties do not implement the arbitration award voluntarily, the award is implemented based on the order of the Chairman of the District Court at the request of one of the parties in dispute."

Based on the provisions of Article 59 paragraph (1) and paragraph (3) as well as Article 61 of the Law on Arbitration and Alternative Dispute Resolution,

the authority to execute arbitration awards is the District Court. Article 59 paragraph (3) of Law Number 48 Number 2009, which gives authority to the District Court to implement the Basyarnas Decision. With the enactment of Law Number 30 of 1999, through Articles 59 to Article 64, the authority to carry out arbitration decisions or executions becomes the authority of the District Court. Bearing in mind that Basyarnas is an Institutional Arbitration Body as intended in Law Number 30 of 1999, namely permanent arbitration, which was established by a certain organization or body to accommodate and resolve disputes arising from agreements.

CONCLUSIONS AND RECOMMENDATIONS

Basyarnas always relies on Islamic law in examining and deciding cases. Basyarnas can be a legal option for Muslims in resolving Sharia business disputes whose existence has been strengthened by Law Number 21 of 2008 concerning Sharia Banking and Law Number 48 of 2009 concerning Judicial Power, and if one party does not carry out the decision, its execution can be requested through Religious courts. Based on the research results, the role of Basyarnas in resolving disputes is very important because Basyarnas resolves disputes in accordance with the competence of the Arbitrator. Basyarnas dispute resolution is a Sharia economic dispute that includes business, Sharia trade, Sharia insurance, Sharia banking, and Sharia fintech/syariah P2P so the right institution to resolve disputes in a non-litigation route is Basyarnas.

The legal status of the decision of the national Sharia arbitration body in the Indonesian justice system is final, has permanent legal force, and is binding on the parties (binding), meaning that the decision cannot be taken to court except for matters permitted by law. If the decision is not implemented by the parties, as stipulated in Article 61 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the decision is implemented based on the order of the Chairman of the District Court at the request of one of the parties to the dispute.

ADVANCED RESEARCH

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

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