

Authority of Religious Court in Complete Settlement of Sharia Banking Based on Justice Values

Dhian Indah Astanti^a, B.Rini Heryanti^b, Subaidah Ratna Juita^c, ^{a,b,c}The writers are the lecturer in Law Faculty, Semarang University, Semarang, Indonesia, Email: ^adhian.indah.astanti@gmail.com, ^bb.rini.heryanti@gmail.com, ^cratna.juita@usm.ac.id

Law is always present to overcome any problems that occur in the community and is asked to be given to every party who litigates. Legal matters that provide justice as one of the best solutions to any existing problems, can be seen in discussions related to Islamic banking and are expected to provide licenses for all litigants. A dignified justice at the practical level will be seen, evaluated and explained as to how to overcome the laws governing Islamic banking or injustices that are always in conflict with Islamic banking through a judge's decision. The method approach used in this research is normative juridical by analysing primary and secondary data. The data collection method is done through a literature study. In the context of the judges' decisions in the Religious Courts as the spearhead in sharia banking settlement, it is expected that the ruling should not only apply as a legal and statutory responsibility, but more important than any judge's decision that can be provided in accordance with expectations, is the value born of responsive legal sources according to conscience, including the judge's conscience when giving a verdict. Thus, this paper will conduct a depth study and see further what determines the Religious Courts in sharia banking agreements based on a dignified value justice perspective.

Key words: *Dispute Resolution, Sharia Banking, Dignified Justice.*

Introduction

Islamic banking principles are part of Islamic teachings relating to economics. One of the standards in Islamic financial matters is a denial of usury in different structures, and utilising the framework, among others, the guideline of benefit sharing. With the principle of profit-sharing, Islamic banks can create a healthy and fair investment climate because all parties can share both profits and potential risks that arise, so that it will create a balanced position between the bank and its customers. Seeing the development of Islamic banks so far, Islamic

principles, which are the main foundation of Islamic banks in carrying out their duties, cannot be implemented and enforced optimally, especially in the event of disputes between parties, Islamic banks, and their customers.

In law enforcement in Indonesia today, we often find so many judges' decisions that are considered very detrimental to the sense of justice of the community. Many judges' decisions castrate a sense of justice in society, where the judge's decision is often felt not in favour of truth and justice. Alignments of judges' decisions that tend to harm the sense of justice of the community certainly cannot be separated from the many influences and pressures in the judicial process, including the decision of Religious Court judges, as a concrete form of resolution of Islamic banking disputes. The influence of power holders and economic influence is one of the reasons or causes of the judge's decision to be held not in favour of the right one. If the judge's decision is contaminated with interests or other motives, then it will certainly not fulfill the community's sense of justice (Teguh Prasetyo: 2015).

Therefore, by using the legislative approach, based on the description above, and seen through the title of this paper, the legal issue in this paper is how is the authority of the Religious Court in solving Islamic banking disputes, based on the perspective of the value of justice with dignity?

Method

a. Approach Method

The method of approach used in this paper is a normative juridical approach. By studying or analysing secondary data, in the form of primary legal material, and understanding the law as a set of rules or positive norms in the legal system governing the authority of the Religious Court in dispute resolution, Islamic banking is based on the perspective of the value of justice with dignity. Meanwhile, tertiary legal materials as secondary are also used. So, the discussion in this study is understood as a literature review of secondary data. Thus, the juridical-normative approach in this study is used to analyse issues related to the authority of the Religious Courts in the settlement of Islamic banking disputes, based on the perspective of the value of dignified justice.

b. Data Collection and Analysis Methods

The data collection method is done through a literature study. Data collected is secondary data. Research data in the form of secondary data will be analysed qualitatively then identified and categorised. From the results of the analysis, conclusions will be drawn in response to existing problems.

Discussion

A. The Authority of the Religious Courts in Sharia Banking Dispute Resolution

The Law on Amendment of Law No. 7 of 1989 concerning Religious Courts on 21st March 2006 known as Law No. 3 of 2006 (Law on Religious Courts), has placed new mandates and responsibilities within the Religious Courts.

According to Article 49 letter I of the Religious Courts' Law, the authority of the religious courts is extended from before. If previously (Law No. 7 of 1989 concerning Religious Courts), the authority of the Religious Courts only had the authority to settle marriages, inheritance, wills, grants, endowments and halaqah, then now based on Article 49 letter I, the authority of the Religious Courts is expanded including zakat, infaq, and sharia economics.

Article 49 letter (i) of Law No. 3/2006 states that religious courts have the duty and authority to examine, decide upon, and settle cases in the field of sharia economics. explanation of letter (i) of this article states that what is intended by the "sharia economy" is an act or business activity carried out according to sharia principles (sharia contract), which includes: a. Islamic Bank; b. Islamic macro-financial institutions; c. sharia insurance; d. Islamic reinsurance; e. Islamic mutual fund; f. sharia bonds and sharia medium-term securities; g. sharia securities; sharia financing: i. Islamic pawnshop; j. pension funds for Islamic financial institutions; and k. sharia business.

From the explanation of this article, it can be seen that the range of authority to adjudicate the environment of the religious court in the field of sharia economics covers the entire sharia economy. This can be understood from the meaning of the word sharia economy itself which in the explanation of the article is interpreted as an act or business activity carried out according to sharia principles.

Further clarification of Article 49 of Law No. 3/2006 states that a person or legal entity voluntarily submits himself to Islamic law, regarding matters which become the authority of the Religious Courts. Then all customers of Islamic financial institutions and financial institutions, or conventional banks that open sharia business units (such as Bank Syariah Mandiri, BNI Syariah and others) who use sharia-based contracts, are automatically bound by Islamic economic provisions, both in the implementation of the contract and in dispute resolution.

Whereas according to Article 55 of Law No. 21 Year 2008 concerning Sharia Banking, it is stated that the settlement of disputes that may arise in Islamic banking, can be resolved through courts within the Religious Courts. However, there is a possibility of dispute resolution through the agreement of the parties written in the contract. Furthermore in the explanation of Article 55 paragraph (2) of Law No. 21 of 2008 concerning Sharia Banking, also stated that "dispute resolution is carried out in accordance with the contents of the contract" and is an effort to

resolve disputes through non-litigation such as deliberations, banking mediation, through the National Sharia Arbitration Board or other arbitration institutions; and/or through litigation such as dispute resolution through courts in the religious sphere under general justice.

In financial transactions between Islamic banks and their customers, in the event of a dispute, it is mostly due to problematic financing or non-performance finance (NPF). (Abdul Ghofur Anshori: 2015). Other problems can also arise due to the choice of profit and loss sharing or revenue sharing in the equity participation agreement. This problem arises when the distribution of funds to the public in mudharabah contracts where banks are not permitted to interfere in daily activities of the business manager (mudharib).

Islamic banking disputes become the authority of the parties to resolve the dispute because the dispute is, in essence, an actualisation of a difference and/or conflict between two or more parties (Bambang Sutiyoso: 2006). Dispute resolution is or falls within the scope of the treaty law so that it is an open system. The principle that applies is also the principle of freedom of contract. This means that the parties are free to make legal choices or determine the procedures, as well as forums that will be used as a means of resolving disputes that they face (Article 1338 of Civil Code).

B. Basis of Understanding of Dignified Justice

Dignified Justice is a Grand Theory of Law. As a new Legal Theory, Dignified Justice functions to explain and justify an applicable legal system, which is different from the western theories that have been referenced so far. The Dignified Justice Theory explains and justifies a legal system by including a postulate (Soetandyo Wignjosoebroto: 2013) that law exists, and grows in the soul of the nation or Volksgeist.

The concept of justice, for example, which has been understood so far, is the conception of justice of Plato and Aristotle, who came from different eras and different places, namely Ancient Greece. It is time we have a conception of justice built from the soul of our nation, namely Pancasila.

In the Pancasila legal system, Pancasila is the soul of the nation or Volkgeist Indonesia. Pancasila as the soul of the nation consists of five precepts, especially the principle of the Almighty God, a humanity that is just and civilised, as well as the precepts of social justice for all Indonesian people being the source of all sources of law, or becoming the First Agreement (Teguh Prasetyo dan Abdul Halim Barkatullah: 2012). In this case, another postulate that is no less important in Dignified Justice is that the law must be seen as a system.

C. The Authority of the Religious Courts in the Settlement of Sharia Banking Disputes based on Dignified Justice Values

In carrying out banking activities, especially Islamic banking, it does not rule out the possibility of a dispute. Disputes are a condition that is not desired by anyone whose mind is healthy (Budhy Budiman: 2019). In essence, this dispute can arise because of a problem. This problem itself occurs because of a gap between *das sollen* and *das sein*, or it can also occur because of the difference between the desired thing and the thing that happened.

Disputes that occur in the end must be resolved by both parties, namely the bank and the customer, because both parties have the same position as the parties concerned. In the case of dispute resolution that occurs in Islamic banking, there are two methods of dispute resolution, namely dispute resolution through litigation (court) and dispute resolution through non-litigation (out of court), each of which has a settlement method, with weaknesses and strengths with each. The basis of dispute resolution in Islamic banking itself is regulated in Act No. 21 of 2008 concerning Islamic Banking.

The principle of sharia (Act No. 1 paragraph (13) Constitution No. 10 of 1998) which is the basis of Islamic banks, is not only an ideological foundation but also an operational basis. In this regard, sharia banks do not only carry out business activities or products that must be following sharia principles, but also include the legal relations that are created and the legal consequences that arise. This includes if there is a dispute between the Islamic banks and their customers.

In resolving a dispute that arises that includes sharia studies such as sharia banking disputes, (Arnaen Perwataatmadja: 2005) the problem is not only related to general justice judges who do not necessarily master sharia economic problems, but more than that general justice does not use Islamic sharia as a legal basis in resolving proposed cases to the judge (Muhammad Syafii Antonio: 2005).

In connection with the authority of the Religious Courts in the settlement of Islamic banking disputes, the law is present in resolving Islamic banking disputes or injustice in solving Islamic banking disputes. The presence of the law in the perspective of the Dignified Justice Theory can be seen as its manifestation in the laws and regulations governing Islamic banking disputes. One of the regulations concerning Islamic banking disputes is that concerning the authority of the Religious Courts in Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts (Law on Religious Courts).

In Article 49 letter (i) of Law Number 3 of 2006, the Religious Courts that have been approved, resolved and adjudicated, complete cases at the first level are among people who are Muslim in the field of sharia economics which contain:

1. Islamic banks;

2. Sharia microfinance organisations;
3. Sharia insurance;
4. Sharia reinsurance;
5. Sharia mutual funds;
6. Sharia bonds and sharia medium term bonds;
7. Sharia securities;
8. Sharia financing;
9. Sharia pawnshop;
10. Sharia financial institution pension funds;
11. Sharia business. (Suhartono: 2019)

The questions in the field of Islamic financial matters that are under the authority of the Religious Court are:

1. Sharia economic disputes between financial and Islamic financial organisations and their customers;
2. Sharia economic disputes between financial and Islamic financial organisations;
3. Sharia economic disputes between Muslim and non-Muslim people, whose contract agreement is explicitly stated that the business activities carried out are based on sharia principles (Abdul Manan: 2019).

The way toward settling Islamic financial debates through the case in the trial process, is the same as the trial process in the general court. If the settlement efforts through peace are unsuccessful, in which both parties do not find an agreement to resolve the case peacefully, then following the provisions of Article 115 R.Bg or Article 131 HIR paragraph (1) and (2) jo. Article 18 paragraph (2) PERMA, the judge must continue the examination of the case following the applicable of procedural law. The case will be examined and resolved through due process proceedings accordingly.

In adjudicating a case, the judge seeks the law from legitimate sources and interprets it, and then applies it to the concrete facts or events found in the case (Sudikno Mertokusuma: 1999). Sources of law that are legal and generally recognised, especially in the business sector, are the contents of agreements, laws, jurisprudence, customs, international agreements, and science (Taufik: 2007). As for the religious justice environment, the most important legal sources to be used as a basis in prosecuting Islamic banking cases are of the Koran and the US-Sunnah as the main source.

The settlement of Islamic banking cases in the religious court environment is based on the provisions of the civil procedural law as applicable in the General Court environment. So, if the peace attempt has proved unsuccessful, then the judge will continue the process of examining the case at the trial following the provisions of the intended civil procedure law. Therefore, the case investigation process will proceed as usual, the civil case will be examined in court, which will generally begin with reading the plaintiff's claim letter, then followed by a

process of answering, which will begin with answers from the defendant's party, then the plaintiff's replica, and finally the duplicate from the defendant party.

After the answer process is complete, the trial will continue with the verification process. In this evidentiary stage, the two litigants will each submit their evidence in support of the arguments that have been presented at the hearing. After each party submits their evidence, the next stage is the conclusion of the parties, which is the final stage of the case review process at the hearing.

After all stages of the hearing of the trial have been completed, the judge continues his work to decide to try or provide justice in the case. For this reason, the next action that must be taken by the judge in examining and adjudicating the case, will be to decide on the dispute.

Concerning passing a decision, the judge is required to be careful and as careful as possible, so that the decision handed down is not contrary to Islamic principles, so that it does not create new problems for justice seekers in particular and the community at large. On the one hand, some scholars oppose sanctions by judges in the form of fines for a sum of money, because such sanctions are considered to contain elements of usury that are qat'I forbidden by syara, while the central thing that recognises Islamic banks from conventional banks is decisively the components which contain usury. On the other hand, some scholars support the imposition of sanctions on customers because they have reason to uphold the maqasid ash-sharia. (Maftukhatulosikhah: 2008).

In the context of Islamic banking, especially in Indonesia, the alternative dispute resolution that can be taken by the parties has experienced significant developments both in terms of legal and institutional regulations. This is indicated by the promulgation of Law No.3 of 2006 concerning the amendment to law no. 7 of 1999 concerning religious courts. The core point of this amendment to the religious court law, lies in the addition of the authority of the religious court in the form of authority to receive, examine, hear and decide on disputes in the field of sharia economics.

Conclusion

The presence of the law in the perspective of the Dignified Justice Theory can be seen as its manifestation in the laws and regulations governing Islamic banking disputes. One of the regulations concerning Islamic banking disputes, concerning the authority of the Religious Courts is Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts (Religious Law Court).

The authority of the Religious Court in the settlement of Islamic banking disputes according to Volksgeist Indonesia can be seen concretely and can be explained properly, by taking into account the formulation of the provisions in the laws and regulations governing Islamic



banking disputes. Therefore, the court's decision, in this case, is the decision of the Religious Court judge, concerning his authority in resolving disputes on Islamic banking, which must be able to provide a sense of justice to the community based on the value of dignified justice according to the Pancasila legal system.

Acknowledgments

We are grateful because we managed to complete our research with many supports. We would like to express our gratitude toward Semarang University Rector, the Dean of Law Faculty and distinguished member of Purbalingga and Banjarnegara Religious Courts who gave us permission and supported our data.

REFERENCES**Books**

- Anshori, Abdul Ghofur. *Pembentukan Bank Syariah Melalui Akuisisi dan Konversi*. Yogyakarta: UII Press, 2010.
- Antonio, Muhammad Syafii. *Bank Syariah dari Teori ke Praktek*. Jakarta: Gema Insani, 2005.
- Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.
- Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.
- Kausarian, H., Lei, S., Goh, T. L., & Cui, Y. (2019). A new geological map for formation distribution on southern part of south China sea: West Kalimantan, Indonesia. *International Journal of GEOMATE*, 17(63), 249-254.
- Maftukhatusolikhah and Rusyid, *Riba dan Penyelesaian Sengketa dalam Perbankan Syariah*, (Yogyakarta: Politea Press, 2008)
- Mertokusumo, Sudikno. *Hukum Acara Perdata*. Yogyakarta: Liberty, 1999.
- Muladi, *Interaksi Antara Politik dan Hukum*. Jakarta, 1999
- Prasetyo, Teguh. *Keadilan Bermartabat Perspektif Teori Hukum*. Bandung: Nusa Media, 2015.
- Prasetyo, Teguh., And Abdul Halim Barkatullah. *Filsafat, Teori, dan Ilmu Hukum Pemikiran Menuju masyarakat yang Berkeadilan dan Bermartabat*, Cetakan ke-1, (Jakarta: Raja Grafindo Persada, 2015.
- Perwataatmadja, Karnaen. *Bank dan Asuransi Islam di Indonesia*. Jakarta: Prenada Media, 2005.
- Paul A Samuelson, *The Economic*, New York :MC .Graw-Hill Book Co,1973
- Sutiyoso, Bambang. *Penyelesaian Sengketa Bisnis : Solusi dan Antisipasi bagi Peminat Bisnis Dalam Menghadapi Sengketa Kini dan Mendatang*. Yogyakarta: Citra Media, 2006.



Soerjono Soekanto .*Faktor-faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Press, 1983

Taufik. Nadhariyyatu Al-Uqud Al-Syar'iyah. Yogyakarta: LKis, 2007.

Wignjosoebroto, Soetandyo. *Pergeseran Paradigma dalam Kajian-kajian Sosial dan Hukum*. Malang: Setara Press, 2013.

Law

Sekretariat Negara RI. *Kitab Undang-undang Hukum Perdata (KUH Perdata)*

Sekretariat Negara RI. *Undang-undang Nomor 7 Tahun 1989 Tentang Peradilan Agama*. Jakarta, 1989.

Sekretariat Negara RI. *Undang-undang Nomor 10 Tahun 1998 tentang Perbankan*. Jakarta, 1998

Sekretariat Negara RI. *Undang-undang Nomor 4 Tahun 2004 tentang Kekuasaan Kehakiman*. Jakarta, 2004

Sekretariat Negara RI. *Undang-undang Nomor 21 Tahun 2008 tentang Perbankan Syariah*. Jakarta, 2008

Sekretariat Negara RI. *Undang-undang Nomor 3 Tahun 2006 Tentang Perubahan Undang-undang Nomor 7 Tahun 1989 Tentang Peradilan Agama*. Jakarta, 2006.

a. Website

<https://www.kompasiana.com>.