

## SETTLEMENT OF SHARIA ECONOMIC LEGAL DISPUTES INDONESIA'S POSITIVE LEGAL PERSPECTIVE

**Yuniartik**

Institute of Islamic Religion Sultan Muhammad Syafiuddin Sambas, Indonesia  
email : yuniartik@iaisambas.ac.id

### **Abstract**

*This study discusses sharia economic law, where currently economic growth has developed greatly in accordance with the current era, so that people also find it difficult to solve Islamic economic problems. The focus of the problem in this study is how to solve economic problems in sharia economic law from the perspective of Indonesian positive law? The purpose of this study is to find out how to solve economic problems using the classical tradition. The type of research used is library research using a juridical approach. And research results This found that in finish problem economic dispute sharia perspective Indonesia's positive law can be pursued in several ways, namely peace and Alternative Dispute Resolution (ADR) and arbitration (tahkim).*

**Keywords:** *Dispute Resolution, Sharia Economic Law, Indonesian Positive Law.*

### **INTRODUCTION**

In facing the demands of globalization and rapid change, the existence of a legal system capable of regulating and resolving disputes in the economic sphere is becoming increasingly important. Especially in the context of Indonesia, a country with a majority Muslim population, there is a dimension that gives unique characteristics to economic dispute resolution, namely the Indonesian Positive Legal Perspective which is based on Pancasila and the 1945 Constitution, and is integrated with Islamic legal principles, especially in the field of economics, known as Sharia Economic Law.

The understanding and implementation of Sharia Economic Law cannot be separated from studies in the Perspective of Indonesian Positive Law. As a rule of law country, Indonesia recognizes plurality and upholds the principles of justice and the protection of human rights. In the economic context, the existence of Sharia Economic Law is becoming increasingly relevant because it is able to integrate moral and ethical values in business transactions, while paying attention to sound and sustainable economic principles.

The importance of dispute resolution in the context of the Sharia economy recognized by Indonesia's Positive Law requires a deep understanding of the underlying principles, effective settlement methods, and harmonization efforts with the broader national legal framework. In subsequent investigations, this paper will explain in more detail the concept of Islamic Economic Law from the Perspective of Indonesian Positive Law, and review dispute resolution methods that are relevant in this scope. In addition, efforts to ensure sustainability and a better understanding of

the balance between economic needs and spiritual values that are respected in Indonesian society will also be explored.

Thus, the main objective of this study is to provide a more comprehensive insight into how Sharia Economic Law Dispute Resolution can be applied within the framework of Indonesia's Positive Law. Through this approach, it is hoped that an effective harmonization will be created between the demands of the modern economy and the principles of justice and religious values which are upheld in Indonesian society. In the course of the discussion, we will look at the principles of Sharia Economic Law, their relevance in the Indonesian Positive Law Perspective, as well as examples of dispute resolution methods used in practice .

It is hoped that this research can contribute to a better understanding of the importance of Sharia Economic Law Dispute Resolution in the Indonesian Positive Law Perspective, as well as provide a solid foundation for further discussion on how we can optimize this legal system in order to achieve sustainable, fair and prosperous prosperity. evenly for all levels of society.

In carrying out the dispute resolution function, Indonesia's positive law has created mechanisms and institutions that can be used as a forum for sharia economic dispute resolution. The religious courts and the Indonesian Sharia Arbitration Board (BASYARNAS) are examples of institutions that play a role in dispute resolution in this context (Al-Qattan, 2000).

However, efforts to resolve sharia economic law disputes within Indonesia's positive legal framework are also faced with various challenges, such as harmonization between sharia economic principles and broader national legal provisions, as well as the development of alternative dispute resolution mechanisms that are responsive to economic and societal dynamics.

Based on the problems above, the main problem that is the focus of this research is how to solve sharia economic law problems from the perspective of Indonesian positive law.

## **RESEARCH METHOD**

In this study, researchers used *the library research method* and the approach used in this study used a juridical approach ( Mestika Zed, 2008 ). The juridical approach is an approach that focuses on the analysis and interpretation of law by referring to the texts of statutory regulations, court decisions, international law conventions, and other related legal sources. This approach seeks understanding of law through the interpretation and application of existing legal norms.

## **RESULT AND DISCUSSION**

Settlement of Sharia economic law disputes in the perspective of Indonesian positive law involves two approaches main:

### **1. Peace and Alternative Dispute Resolution ( ADR )**

A concept that refers to efforts to avoid conflict and seek other, more peaceful and effective ways of resolving disputes or disputes, especially in a legal context. This approach emphasizes efforts to create peace, cooperation, and solutions that satisfy all parties involved, not just enforcing decisions through the formal justice process.

The concept of *sulh* (*peace*) as stated in various fiqh books is a main doctrine of Islamic law in the field of muamalah to resolve a dispute, and this is already a *condition sine quo non* in any society, because in essence peace is not a mere positive institution, but rather in the form of human nature (M. Tasmin, 2019).

All humans want all aspects of their lives to be comfortable, nothing to disturb, no want to be despised, want peace and serenity in all aspects of life. Thus the institution of peace is part of human life. The idea of the need for an institution of *sulh* (*peace*) in modern times is certainly not a discourse and ideals that are still utopian, but have entered the realm practical.

This can be seen by the rise and popularity of Alternative Dispute Resolution (ADR). In the Indonesian context, peace has been supported by its existence in positive law, namely Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. With positive arrangements regarding peace, all matters related to peace are still in good shape effort, process technical implementation to implementation of the decision by itself has been fully supported by the state (Susilawetty, 2013).

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution can be said to be the most real and more specific in the state's efforts to apply and socialize peace institutions in business disputes. This law also states that the state gives freedom to the public to resolve their business disputes outside the court, either through consultation, mediation, negotiation, conciliation or the judgment of the parties expert.

According to Suyud Margono, the tendency of people to choose Alternative Dispute Resolution (ADR) today is based on the *first consideration* : lack of believe in the court system and at the same time understand the advantages of using the arbitration system compared to the Court, so that the business community prefer look for alternative other in efforts to resolve various business disputes, namely by way of Arbitration, *second* : public trust in arbitration institutions, especially BANI, has begun to decline due to the many arbitration clauses that do not stand alone, but follow a clause on the possibility of submitting a dispute to the Court if the arbitration award is not successfully resolved.

In other words, not a few dispute cases received by the Court are cases that have been decided by BANI arbitration. Thus the settlement of disputes by means of ADR is a profitable alternative. Law Number 30 Years 1999 Regarding Arbitration and Alternative Settlement of Cases regulates dispute resolution outside the court,

namely through consultation, mediation, negotiation, conciliation and expert judgment (Nita Triana, 2019).

This law does not entirely provide detailed and clear definitions or limitations. Here will be explained about the brief understanding of the forms of ADR as follows:

a. Consultation

Black's Law Dictionary gives the notion of consulting as "*consulting or negotiating activities such as clients with advisors the law*". In another sense, consulting involves interaction between parties who have relevant expertise or knowledge (consultant) and those who need advice or guidance (clients). Consulting can take place in a variety of contexts, including business, education, health, law, psychology and many other fields. The main purpose of consulting is to assist clients in overcoming problems, making better decisions, or achieving certain goals by leveraging the consultant's expertise and knowledge.

b. Negotiation

Negotiation is an interactive process in which parties with different interests or goals try to reach mutually beneficial agreements through dialogue and compromise. The main objective of negotiations is to achieve adequate results for all parties involved, taking into account the interests and positions of each and creating joint solutions to overcome differences (Sembiring, 2011). In another sense, negotiation is an active involvement in discussions and negotiations to find the best solution in various situations, including in business, interpersonal relations, diplomacy, conflict resolution, or various aspects of life that involve the interests of various parties.

c. Conciliation

Conciliation is an alternative form of dispute resolution that involves the role of a conciliator or a neutral third party to help the disputing parties reach an agreement. The aim is to defuse tensions, facilitate effective communication, and create a solution that satisfies all parties involved in the dispute.

d. Expert Opinion or Judgment

Another form of ADR introduced in Law Number 30 of 1990 is an 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 the arbitral institution on certain legal relationship of a agreement.

## 2. Arbitration (*Tahkim*)

Usually in a business contract it has been agreed in the contract made to resolve disputes that occur in the future between them. Dispute settlement efforts can be submitted to certain forums in accordance with the agreement.

In Indonesia there are several arbitration institutions to resolve various business disputes that occur in trade traffic, including BAMUI (*Indonesian Muamalat Arbitration Agency*) which specifically deals with disputes in Islamic business,

BASYARNAS (*National Sharia Arbitration Agency*) which handles problems that occur in the implementation of Islamic Banks, and BANI ( *Indonesian National Arbitration Board* ) which specifically resolves non- Islamic business disputes ( Meria Utama, 2014).

a. Body Indonesian National Arbitration (*BANI*)

Most of the western countries already have arbitral institutions in resolving various matters economic disputes that arise as a result of default on the contracts it performs. In this regard, Indonesia, which is part of the world community, also has an arbitration institution under the name of the Indonesian National Arbitration Board Which abbreviated with BANI.

The purpose of establishing the Indonesian National Arbitration Board (*BANI*) is to provide a fair and speedy settlement of civil disputes that arise and are related to trade and finance, both national and international (Priyatna, 2014).

In addition, the existence of BANI besides functioning to resolve disputes, it can also accept requests submitted by the parties to an agreement to provide a binding *legal opinion regarding* an issue.

b. Indonesian Muamalat Arbitration Board (*BAMUI*)

The development of Islamic business based on sharia is increasingly showing its progress, so the need for an institution that can resolve disputes that occur or may occur peacefully and the process can be carried out quickly is a very urgent need urge.

The purpose of establishing BAMUI is *first*: to provide a fair and speedy settlement of civil muamalah disputes that arise in the fields of trade, industry, finance, services and others, *second*: accept requests submitted by the parties to an agreement without a dispute to provide a binding opinion on a matter relating to said agreement. (Suyud Margono, 2000: 82).

c. National Sharia Arbitration Board (*BASYARNAS*)

Sharia Arbitration Board National (*BASYARNAS*) domiciled in Jakarta with branches or representatives in other places deemed necessary. Body Arbitration Sharia National (*BASYARNAS*) in accordance with the Basic Guidelines set by the MUI: is a free, autonomous and independent judiciary institution, which cannot be interfered with by the authorities and any other parties. The National Sharia Arbitration Board (*BASYARNAS*) is an instrument organization.

## CONCLUSION

In the course of this research, it has been described carefully and in depth regarding the settlement of sharia economic law disputes from the perspective of Indonesian positive law. Through this approach, we have discussed the challenges and opportunities that arise in dealing with the dynamics of the Islamic economy as well as the disputes that may arise in this context.

Indonesia's positive law has a central role in regulating the settlement of sharia economic law disputes. The dispute settlement mechanisms regulated in this legal system, such as through religious courts and alternative institutions, provide a strong framework for achieving justice and legal certainty in the context of the sharia economy. From the results of the study, it can be concluded that resolving sharia economic disputes based on classical Islamic traditions can be pursued in two ways, namely peace and alternative dispute resolution (*ADR*) and Arbitration (*Tahkim*).

However, amidst the dynamics of the economy and the needs of society that continue to grow, there are challenges that must be overcome. The importance of harmonization between Islamic economic principles and national legal provisions is an issue that needs serious attention. In addition, the development of a dispute resolution mechanism that is more responsive and effective in dealing with modern economic dynamics also needs to be a focus in ensuring fair and accurate dispute resolution.

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