

Sharia economics dispute settlement in the institution of court of religion

Siti Amanah, Gunarto, Akhmad Khisni

Doctorate Degree of Faculty of Law, Universitas Islam Sultan Agung Semarang, Indonesia

Abstract

This research aim is to solve the sharia economic dispute through the judicial process that is the authority of the Court of religion. Approach method of this research, uses juridical-normative approach (legal-reserach). Through the political policy of government law, sharia economic system has become one of the subsystems of national economy. The competence of Court of Religion concerning the issue of Islamic law which has been practiced by society in everyday life. As long as Islamic law is alive and believed by the community, so long as it should also be the legal competence of the Court of Religions. Consequently, sharia economic law automatically also becomes the subsystem of national law. Thus, it is certain that this factor is one of the considerations of the government so that it delegates the authority to solve the sharia economic case to the Court of Religion.

Keywords: sharia economic, settlement, court of religion

Introduction

Courts as an institution is needed by the community. The task or work of judgment is one of the many functions that must exist and be carried out by the community, in response to the existence of this certain needs. Understanding the Concept of Nationalism: Using Comparative Law ^[1].

Trial is the job required to make the community peaceful and productive, within the community there will always be problems among its members to be resolved. Unresolved issues are a nuisance to community peace and productivity. An institution must be raised to perform this function and only the court can do. The function of solving problems is called justice ^[2] because the output of the institution is called justice. As in Indonesia many of its citizen are Islam follower, Then the resolution of the sharia (Islamic Law) economic dispute through the current judicial process is regulated and approved as seen under the authority of the Court of religion, this is based on the provisions of Article 49 of Law no. 3 of 2006 on Amendment to Law no. Law No. 7 of 1989 on Court of Religion (UUPA) which states that the Court of Religions duty are to examine, decide, and resolve cases at the first level between people who are Muslims in sharia economics. Signs in trade have a dual function as a means of competition and monopoly. This indicates that the mark should provide Legal protection ^[3].

Thus, Law no. 3 of 2006 on Amendment of Law no. 7 of 1989 on Court of Religion, is a legislative product that

first provides competence to court of religion in the settlement of sharia economic case. Furthermore, Law no. 21 of 2008 concerning Sharia Banking (UUPS) can be said to have affirmed the competency of Court of Religion in handling sharia economic case, especially sharia banking, Article 55 paragraph (1) which reads: "Settlement of sharia banking disputes conducted by courts within the Court of Religion".

The absolute authority of the Court of Religions as a court institution authorized to hear the sharia economic dispute is also reinforced by the issuance of Decision of the Constitutional Court. 93 / PUU-X / 2012 which in essence has given the decision that the explanation of Article 55 paragraph (2) of Law no. 21 of 2008 concerning Sharia Banking, among others explained that the parties to the dispute may agree to settle the dispute through the general court. Prior to promulgation of Law no. 3 of 2006 and Law no. 21 Year 2008, syariah arbitration (tahkim) is one of the case settlement institutions between parties who committed in sharia economy outside court to reach the best solution when consensus effort does not arise consensus ^[4].

In Indonesia, sharia arbitration was established after the establishment of BMI in 1991. The goal is to deal with cases between customers and sharia banks. The arbitration body is known as the Muamalat Arbitrary Bodies of Indonesia (BAMUI), established by the Indonesian Ulama/islamic priest Council (MUI) Center on October 21, 1993, based on Decree no. Kep-392 / MUI / V / 1993. In 2003, several banks or Sharia Business Unit (UUS) was born so that BAMUI was changed to the Indonesian Arbitration Board (Basyarnas). The change is based on Decree No. MUI. Kep-09 / MUI / XII / 2003 dated December 24, 2003. However, the existence of

¹ Wahyu Widodo, Sapto Budoyo and Maryanto, understanding the concept of nationalism: using comparative law for a better indonesian immigration system in handling the illegal immigrant, International Journal of Humanities and Social Sciences. ISSN 2250-3226 Volume 7, Number 1 Research India Publications (2017)

² Satjipto Rahardjo, 2002. *Sosiologi Hukum: Perkembangan Metode dan Pilihan Masalah*. Surakarta: Muhammadiyah University Press, hlm. 133

³ Bakti Trisnawati, Gunarto, Anis Mashdurohatun, *The Legal Protection To The Owner Of Registered Mark Based On The Value Of Justice International Journal of Business, Economics and Law, Vol. 11, Issue 4 (Dec.) ISSN 2289-1552, 2016*

⁴ Abdurrahman, 2007, *Masalah-masalah Hukum dalam Pelaksanaan Ekonomi syariah*; Makalah disampaikan pada Rapat kerja Kelompok Kerja Perdata Mahkamah agung RI, di Cisarua-Bogor pada tanggal 16-17 Maret 2007, hlm. 5.

Basyarnas cannot be functioned because the settlement of dispute through Basyarnas can only be done if in the contract listed a clause on the settlement of cases through arbitration. This refers to the provisions of Law no. 30 of 1999 on Arbitration and Alternative Dispute Resolution (UUAAPS) ^[5].

Based on Law no. 3 of 2006, Court of Religions should have been practically authorized (having competence) in handling sharia economic case. Nevertheless, in reality the justification of the competence of Court of Religions in solving the shariah economic case is still debated, even three days after the enactment of BAL on March 20, 2006, exactly March 23, 2006, Factually the National Sharia Council of Majelis Ulama Indonesia (DSN-MUI) launched 3 (Three) fatwas. All three are fatwas regarding mudarabah agreement, musyarakah on sharia insurance. As well as grants (tabarru ') on insurance and reinsurance of sharia, which practically still include clauses that the settlement of the case is done by the Arbitration Sharia (Basyarnas) ^[6].

The DSN-MUI fatwa (Islamic Priests Appeal on certain things that have no legal power) did not provide an alternative to the settlement of sharia economic cases to the Court of Religion. Whereas UUPA Number 3 of 2006 has firmly stated that the completion of sharia economy is a competence of Court of Religions. In that context, the question arises whether the DSN-MUI when issuing a fatwa does not know that the settlement of sharia economic dispute has been formally juridical into the competence of Court of Religions, or there are other indications that are political. Related to the Fatwa of DSN-MUI, Agustiono, Secretary General of Islamic Economic Expert Association (IAEI), in the sharia economic seminar held by the Supreme Court (MA), on November 20, 2006, argued that with the new religious justice competency in the sharia economic settlement, DSN-MUI of 52 need to be adjusted, so as not to conflict with Article 49 of BAL ^[7].

Apart from the above controversy, historically, the fact that the competence of Court of Religions that apply Islamic law actually has gone hand in hand with the presence of Muslims in the country. As a formal institution, the existence of Court of Religions has been initiated by Islamic empires that place Islam as the basis of statehood or government ^[8]. Based on the above description, then formulated the problem as follows: How Institutional Court of Religion in the settlement of sharia economic disputes?

Method of Research

1. Method approach, using the juridical-normative approach (legal-research).
2. Research Specification is descriptive-empirical.
3. Location of research, given the normative research that prioritizes secondary data, then the location of

this study is done through the method of library research.

4. Source of data, is secondary data in the form of primary law material, secondary material and tertiary law material and literature related to subject matter.
5. Methods of data collection, collected by library research methods (library research), which is to study, understand, identify and record data that are related to the subject matter.
6. The method of data presentation, presented in the form of descriptive-descriptive-systematic.
7. Analysis of data used are normative-qualitative.

Research Result and Discussion

The Courts in Indonesia is a real implementation of the exercise of judicial power in the State of the Republic of Indonesia. Therefore, theoretically and practically, the Courts in Indonesia is bound to two legal norms at the same time applicable to it, namely the norm of positive law in Indonesia which is a prevailing norm of prevailing and regulating the existence and action of the Court in Indonesia and the unwritten norms of law that live in society Which is a source of value for its existence and appearance as a State Court. This is in line with the historical facts of the Indonesian courts born of and raised in the political and legal struggle in Indonesia. Included here are courts of Religion.

Court of Religions have their own uniqueness, difficulties and specifications. In the system of Islamic teachings, the administration of justice is a subsystem in the teachings of Islam, which is part of Islamic Shari'ah. According to Mahmud Syaltuut, shari'ah is a regulation applied by Allah SWT or set its subjects only to be a guide for mankind in dealing with his Lord, dealing with his fellow Muslim brother, dealing with his fellow human beings, with the universe, and relating to his life own ^[9].

In Indonesia, the Constitution states explicitly that Indonesia is a State of law (rechtstaat). The Indonesian justice system is a form of judicial rule in the Indonesian constitutional system of law which includes the law on all courts under one roof under the Supreme Court as the executor of judicial power. The Indonesian judicial system is an orderly and interrelated arrangement that relates to court hearings and court cases, whether courts within the General Courts, Court of Religions, Military Courts, and State Administrative Courts, which are based on Views, theories, and principles in the field of justice applicable in Indonesia. Therefore, the judiciary held in Indonesia is a system that is interconnected with each other; Each judicial institution is not independent, but rather interconnected and culminates in the Supreme Court ^[10].

⁵ Syaifudin, 2007 *Penyelesaian sengketa*, Jakarta: Sinar Grafika. hlm. 35-36.

⁶ Fatwa DSN No. 52/DSN-MUI/III/2006, dalam Kamil dan Fauzan, Kitab Undang-undang, hlm. 923-935.

⁷ *Ibid.* hlm. 35

⁸ Bagir Manan, 2007. *Peradilan Agama dalam perpektif Ketua Mahkamah Agung*, Kumpulan Pidato Bagir Manan, Jakarta, Direktorat Jendral Peradilan Agama Mahkamah Agung RI. hlm. 2-3.

⁹ Mukti Arto, 2011. *Redefinisi Fungsi Pengadilan Sebagai Penegak Hukum dan Keadilan*. Makalah dalam: M.E.R. Herki Artani R., *Himpunan Makalah, Artikel dan Rubrik Yang Berhubungan Dengan Masalah Hukum dan Keadilan Dalam Varia Peradilan IKAHI Mahkamah Agung Republik Indonesia*, Jakarta: Perpustakaan dan Layanan Biro Hukum dan Humas Badan Urusan Administrasi Mahkamah Agung Republik Indonesia, hlm. 73 - 74

¹⁰ Hasbi Hasan, 2011. *Pemikiran dan Perkembangan Hukum Ekonomi Syariah di Dunia Islam Kontemporer*, Jakarta: Gramata Publishing. hlm. 207 - 208

In the context of sharia economic law enforcement, the government through legislation gives authority to Court of Religions as an institution that has competence to handle sharia economic case. The provisions concerning the absolute competence of Court of Religions in the sharia economic case are set forth in Law no. 3 of 2006 on Amendment to Law no. 7 of 1989 on Court of Religions and reinforced in Law no. 21 of 2008 concerning Sharia Banking. Both regulations regulate how the solution for the settlement of sharia economic case ^[11].

The provisions concerning the settlement of syariah economic case under the competence of the Court of Religions is basically a manifestation of the national political law policy that seeks to fulfill the legal needs of the society which in fact empirically shows the life of the economy that adopts the sharia principles in several sectors of business and business activities. In reality, the sharia economic system is increasingly showing its existence and giving its own color for business and business activities in Indonesia, has even given significant influence and contribution to the growth of national economy.

In addition, normatively, the policy of government law is of course based on the consideration that the Court of Religions are the only judiciary establishing material law or substantive law compatible with sharia economic law based on the principles of Islamic law. Indonesia, as a democracy based on Pancasila, does not make Islam the basis of the State, delegating the authority of the settlement of sharia economic cases to the Court of Religions in implementing Islamic law ^[12].

Adiwarman A. Karim ^[13]. Adiwarman A. Karim, argues that in Indonesian law, free litigants choose which court judiciary (choice of forum) to use when there is a dispute or dispute. Karim argues, in the law apply the principle of freedom of contract (freedom of contract). This principle gives freedom for the parties to determine the terms and conditions that will bind them. In the simplest language, the origin is willingly willing. This is what in shari'a is called the law of origin in muamalah is allowed (mubâh / al-ibâhah), except if it forbid the lawful and justify the haram. In connection with the settlement of sharia economic disputes, the forum that has been used is the General Court and Arbitration Board. With the enactment of Law no. 3 of 2006, has increased the choice of forum for sharia banking actors, namely Court of Religion.

According to Hasbi Hasan ^[14] the promulgation of Law no. 3 of 2006 is nothing but an attempt to synchronize all affairs and responsibilities of the organization, administration and finance of the judiciary within the Court of Religions with the provisions of Law no. 4 Year 2004. Therefore, if previously all the affairs and responsibilities of the organization, administration, and finance of the judiciary within the Court of Religions are

located in the authority of the Ministry of Religious Affairs, then after the Law no. 3 In 2006 everything has been surrendered and transferred to Supreme Court authority. Through Law no. 3 of 2006, it has been specifically determined that the Court of Religions are one of the judicial authorities for the justice seekers who are Muslim about certain matters as referred to in the Act.

According to Syamsuhadi Ershad, there are several crucial reasons that can be asked related to the amendment of Law no. 7 of 1989 became Law no. 3 of 2006, both general and special reasons. Related to the common reasons, there are three pawns expressed by Syamsuhadi Irsyad, namely.

- a. The competence of the Court of Religions has been castrated by Dutch colonists since they have dominated the archipelago;
- b. Now it is time for democratic Court of Religions positioned as state courts, namely as one of the executor of judicial power according to the 1945 Constitution;
- c. In RUUPA, the initiative of Commission III of the House of Representatives (DPR) has received a positive response and approval from the government, so that the legislative judicially legally endorsed it, and the President enacted it as legitimating the amendment of Law no. 7 of 1989 became Law no. 3 Year 2006.

While the specific reasons underlying the amendment of Law no. 7 of 1989 became Law no. 3 Year 2006, as follows:

- a. To conform with the amendment of the 1945 Constitution and Law no. 4 of 2004 on Judicial Power.
- b. To affirm the position of the Court of Religions in the formation and field of organization, administration, and finance, which originally under the Department of Religious Affairs under the Supreme Court, as regulated in Law no. 4 of 2004 ^[15].

In Article 2 of Law no. 3 of 2006 on Court of Religions affirms, "Court of Religions are one of the judicial authorities for the justice seekers who are Muslims about a particular case". With the affirmation of these competencies it is possible to settle the case in relation to criminal matters ". In addition, the Supreme of competence of Court of Religions obtains new competencies in the field of sharia economy as stated in Article 49 of BAL namely: marriage, inheritance, will, grant, wakaf, zakat, infaq, shadaqah, and sharia economy. Thus, the points of adding new competencies are: zakat, infaq and sharia economy ^[16].

The expansion of the competence of Court of Religions is a necessity, since all of the competence of Court of Religions, whether involving marriage, inheritance, waqf, zakat, to the issue of sharia economy, is something that has been attached to the Muslim community. In other words, Islamic law that became the competence of Court

¹¹ *Ibid.*, hlm. 210

¹² *Ibid.*, hlm. 213

¹³ Dikutip dari Adiwarman A. Karim, "Choice of Forum Perbankan Syariah", www.mui.or.id/mui_in/hikmah.php?id=50.

¹⁴ Hasbi Hasan, 2010. *Kompetensi Peradilan Agama, Dalam penyelesaian perkara ekonomi syariah (Edisi Revisi)*, Jakarta: Gramata Publishing. 68 - 69

¹⁵ *Ibid.*, hlm. 71 - 72

¹⁶ *Ibid.*, hlm. 74 - 75

of Religions has been a living law, a law that lives and lived by society^[17].

Thoughts and ideas about the concept of sharia economy in Indonesian legal politics to date have been represented in the practice of sharia banking. Although academically the word "shariah" and the word "Islam" contain very different connotations and meanings, but in technical terms, the term "Islamic economy" and "syariah economy" are always interpreted in the same terminology. In fact, lately the term Islamic economics has been very popularly called sharia economics. Sometimes, the terms sharia economy and Islamic economy are also identified with "economics based on the principle of profit sharing"^[18].

In this context, Dawam Raharjo notes that there are three possible interpretations of sharia economic terms; First, the sharia economy is an "economic science" based on Islamic values or teachings, while suggesting that Islamic teachings have an understanding of what the economy is; Second, the sharia economy is referred to as "Islamic economic system"; And Third, the sharia economy is referred to as "Islamic economy", or perhaps more precisely "the economy of the Islamic world"^[19].

The term "sharia economy" is a typical term used in Indonesia. Outside Indonesia, the term is more popularly known as "Islamic economy" (al-iqtisad al-islami, Islamic economic). In the discourse of contemporary Islamic economic thought, the concept of Islamic economics is indeed identified by different terms, including "Islamic economics", "ilahiyah economy", "Qur'anic economy", "sharia economy", based on the principle of profit sharing, "and" Economic rahmatan lil 'alamin ". All of these terms refer to a concept of economic system and business activities based on Islamic law or economics based on sharia principles. The difference in the use of this term basically shows that the term "Islamic economy" is not a standard name in Islamic terminology.

Islamic economic terminology itself was only known in modern times. However, in practice he has existed since the emergence of Islam itself. In the early days of Islam, the term Islamic economics, as a definitive term, has not been formulated so it has not been recognized as an independent discipline. After the emergence of studies of modern Islamic economics, then contemporary Islamic thinkers began to formulate the study of Islamic economics as an independent discipline^[20].

According to the English vocabulary "Disputes" there are 2 (two) terms, namely "conflict" and "dispute" in which both contain the notion of a difference of interest between two or more parties, but both can be distinguished. This "conflict" vocabulary has been absorbed into Indonesian into "konflik", while the "dispute" vocabulary can be translated into "sengketa". A

¹⁷ *Ibid.*, hlm. 77

¹⁸ Istilah "prinsip bagi hasil" secara yuridis formal dipopulerkan melalui UU No. 7 Tahun 1992 tentang Perbankan dalam ketentuan Pasal 6 huruf (m) dan Pasal 13 huruf (c). Dalam PP No. 72 Tahun 1992, prinsip bagi hasil diartikan sebagai "prinsip bagi hasil berdasarkan syariat," atau "prinsip muamalat berdasarkan syariat." Lihat ketentuan Pasal 2 ayat (1) dan penjelasan Pasal 1 ayat (1) PP No. 72 Tahun 1992.

¹⁹ M. Dawam Rajardjo, 1999. *Islam dan Transformasi Sosial Ekonomi*, Yogyakarta: LSAF. hlm. 3-4.

²⁰ Hasbi Hasan, 2011. *Pemikiran dan Perkembangan. Op. cit.* hlm. 19

conflict is a situation in which two or more parties are faced with a difference of interest, will not develop into a dispute if the party who feels aggrieved simply harbored a feeling of dissatisfaction or concern. Conflicts will develop into disputes when the disadvantaged party has expressed his dissatisfaction or concern, either directly to the party deemed to be the cause of the loss or to the other party^[21].

Friedmen's view, as quoted by Sidik Sunaryo, that in order to understand the effectiveness or absence of law in society, the components of the legal system must be considered as follows.

- a. The substance of the law, included in this component are written and unwritten provisions and rules of law. Any decision containing doctrine, judgment, decision of lawmakers and decisions issued by government bodies.
- b. The legal structure, that moves within the mechanism. For example within the judiciary the structure distinguishes the general courts, administrative courts, Court of Religions, military courts, by division of their respective competencies. This structural component is expected to see how the law provides services to the cultivation of legal materials on a regular basis.
- c. Culture, which consists of values, attitudes inherent in the culture of the nation. The values in society can be used to explain whether or why people use or not to use legal processes to resolve their disputes^[22].

Building the law (order / system) of the law in essence build all the order of life of the nation (in the field of politics, social, economic, cultural, etc.). The legal system is a system of order in all areas of social life / nation / state. This implies that the rule of law is essentially the supremacy of the order of norms and values throughout life (norms and social values, politics and so on) which has been mutually agreed upon^[23].

The supremacy of law and justice in all social life / nation / state will be difficult to be realized properly, if the three elements as stated by Sidik Sunaryo mentioned above does not run effectively, in reference to the theory of the legal system, then to realize the institutional of Court of Religions in Sharia economic settlement must refer thoroughly to the dimensions of the legal system, which includes.

a. The substance of law (unity of law itself)

With regard to its own legal factor, as a written law, the law may reflect the values on which the law itself is based so that such laws or regulations may be effective. In relation thereto, legislation relating to the institutional of the Court of Religions in the settlement of sharia economic disputes is thus of its own legal factor has a strong legal basis for processing cases related to current and prevailing sharia economic disputes, Still relevant, so this factor is not a problem.

²¹ Rachmadi Ustman, 2003, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*, Bandung: Citra Aditya Bakti, hlm. 1.

²² Sidik Sunaryo, 2005. *Kapita Selekta Peradilan Pidana*, Malang: Universitas Muhammadiyah. hlm. 14

²³ Barda Nawawi Arief, 2001. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. Bandung: Citra Aditya Bakti. hlm. 9 dan 10

The issue of positive law regulations applied in the field relates to the demands or interests of the task or the development of community life, so that the law can live in the community, the formal law is considered more effective and more justice by the community.

b. The legal structure (law enforcement apparatus)

In the case of law enforcement as a form of application of the law greatly affects the real feeling of law, legal satisfaction, legal benefits, legal needs or legal justice individually or socially. In law enforcement is not possible apart from the rule of law, environmental law actors where law enforcement process occurs, there can be no law enforcement solution if only glance at the law enforcement process, let alone more limited to the administration of the judiciary [24].

In relation to the issue of law enforcement, fair and proper law enforcement must be sought in all government and state administrations. and it's very limited if it is only done in the judicial process. It has been fair, even though the judiciary is only a small part of various social or legal events including the unfair treatment felt or experienced by the public. Even from the sequence, the judicial process is the ultimate journey of the possibility of a society experiencing unfair and unfair legal treatment. Society has in many ways been subjected to unfair and unjust treatment since earlier since they came into contact with government or state organizers [25].

c. Legal culture (community)

According to Friedman's opinion as quoted by M.J. Widijatmoko, legal culture is a reflection of the legal system, because it contains the potential to be used as a source of information to explain the legal system. So we must understand the legal culture to understand how the legal system works in society. The legal culture itself is of the values and attitudes that together bind the legal system and which determines the place of the legal system in the culture of society as a whole. While Lev argues, legal culture has the advantage of being able to attract people's attention to values relating to law and legal processes, but in analysis can be distinguished by law and legal processes and often stated independently [26].

A legal process is actually the fabric of communication, interaction and interaction of the knowledge system, embodies the value system and choice of those values in order to establish the norm or rather a norm system. Knowledge and value are expressed in the attitude and patterns of human behavior that are entirely the scope of the legal culture. Thus legal cultural activities include reflection and systematization of legal knowledge, exchange ideas about that knowledge, formulate legal values and harmonize those values [27].

In a flower-free economic activity, there may be a dispute, and to anticipate the establishment of an institution authorized by law to resolve it, namely the Court of Religion. In accordance with the provisions of Article 49 of Law Number 3 Year 2006, the Court of Religions are the judiciary of a Muslim person concerning certain civil cases which include sharia economics. This means that all disputes concerning sharia economic activities, whether in the field of sharia banking, sharia insurance to sharia business in general, juridically become the authority of Court of Religions [28]. Along with developments that occur in the Court of Religion environment both in terms of authority and other developments are very dynamic, especially in the case of the emergence of new cases which is the impact of the new Court of Religion competence associated with the revision of the Act. No. 7 of 1989 and the enactment of Law no. 3 of 2006 on Court of Religions which stated that the Court of Religions are authorized to hear the sharia economic dispute are not only intended for Muslims an sich but also non-Muslims who are subjected to the provisions of sharia [29].

This development necessarily requires the readiness of the entire ranks and corps of the Court of Religions to carry out the mandate of the Law thoroughly in order to realize the rule of law which is effective, efficient and gain public trust, professional in providing legal services, quality and ethical. With the vision of the realization of the prime Court of Religion service, and the mission to improve the professionalism of the religious justice apparatus, as well as to realize the modern religious judicial management [30].

To be able to realize and expect benefits in the implementation or law enforcement is to refer to the theory of the legal system put forward by Friedman as quoted by Sidik Sunaryo, against the three elements of the theory of the legal system, the supremacy of law and justice in all life / community / nation / Well realized, as for the steps that must be done is.

a. Structuring the Legal System

The legal system can play a role as supporting and supporting in every effort to realize the objectives of the law itself. An ineffective legal system will hinder the realization of the objectives to be achieved. The legal system can be mapped effectively if human behaviors in society are in accordance with what has been specified in the applicable legal rules. Pul and Diaz, as quoted by Esmi Warassih, proposed five conditions that must be fulfilled to streamline the legal system [31].

1. The ease of the meaning of the rule of law to be captured and understood;

²⁴ *Ibid.*, hlm. 86

²⁵ Mariana Sutadi, 2008. *Titik Singgung Pengadilan Agama dan Pengadilan Umum*. Dalam Ceramah Wakil Ketua MA-RI bidang Yudisial pada Pelatihan Hakim se-JABODECITABEK di Jakarta, 31 Maret s/d 1 April 2008.

²⁶ Pembahasan visi dan misi ini telah dilakukan oleh Ditjen Badilag berkali-kali, antara lain pada tanggal 24-25 Januari, 7-10 April dan 24-25 Mei 2008 di Bandung. Dua pertemuan terakhir diikuti dua orang pejabat dari Kantor MENPAN.

²⁷ Esmi Warassih Pujiastuti, 2005, *Pratana Hukum Sebuah Telaah Sosiologis*, Semarang: Suryandaru Utama.hlm. 105-106

²⁴ Bagir Manan, 2005. *Varia Peradilan*, Majalah Hukum Tahun ke XX No. 241 Nopember 2004, hlm. 4

²⁵ *Ibid.*, hlm. 6-7

²⁶ M.J. Widijatmoko, 2009. *Mengatur Budaya Hukum Terhadap Kepatuhan Hukum Dalam Masyarakat*, Jurnal Hukum Responsa, Volume I Nomor 1, Januari 2009. Program Doktor (S3) Ilmu Hukum Fakultas Hukum Universitas Sebelas Maret, Surakarta. hlm 88

²⁷ *Ibid.*, hlm. 89

2. The extent to which the public knows the contents of the relevant legal rules;
3. Efficient and effective mobility of legal rules;
4. The existence of dispute resolution mechanisms that are not only accessible and accessible to every citizen, but also must be effective in resolving disputes;
5. The existence of the assumption and treatment among the community that the rules and legal institutions are indeed effective capacity.

According to the opinion put forward by Zainuddin Ali, in order for the law to function, the law must meet the requirements of the law, namely ^[32].

1. The rule of law shall be applicable juridically, if its determination is based on a higher level of norm or is established on a predetermined basis;
2. The rule of law passes sociologically, if the rule is effective. That is, the rule can be enforced by the authorities even if it is not accepted by the community (power theory) or the rule is valid because of the recognition of the community;
3. The rule of law applies philosophically, ie in accordance with the ideals of law as the highest positive value.

b. Structuring The Legal Institution

In relation to the law institutional arrangement according to Mukti Arto, ^[33] argued that there are two principles for determining the absolute competence of the Court of Religions, ie when a matter concerns the legal status of a Muslim, or a dispute arising from a legal act happening / done under Islamic law or related Closely with the legal status as Muslims.

In Law no. 3 In 2006, the concept of Islamic personality has been expanded. Related to this, Explanation of number 37 Article 49 of Law no. 3 of 2006 states the following: "Referred to" between persons of Islam "includes any person or legal entity who voluntarily submits voluntarily to Islamic law on matters under the jurisdiction of the Court of Religion in accordance with the provisions of this article ". Based on the provisions of Article 49 and its elucidation, it can be understood that the subject of law in the sharia economic dispute is.

- a. People who are Muslims;
- b. People who are non-Muslim but subjected themselves to Islamic law;
- c. Legal entity conducting their business activities based on Islamic law.

Based on the explanation of the article can be seen the extension of the understanding of the principle of Islamic personality by using the institution of "submission". Based on the above explanation, it can be mentioned that the absolute competence of Court of Religion covers certain civil fields as mentioned in Article 49 paragraph (1) of Law no. 7 Year 1989 Jo. UU no. 3 of 2006 and based on an expanded Islamic personality. In other words, certain areas of civil law that are the absolute

competence of Court of Religions are not just the areas of family law alone of the people who are Muslims.

While the provisions of Article 50 of Law. 3 of 2006 along with his explanation shows that the religious personality of religion related by the litigant in the civilization case concerning the property rights is put forward in determining the absolute competence of the court handling the case. If the parties are litigants of Islam, then the Court of Religion has the competence to resolve the case.

The resources that must be possessed within the framework of carrying out their duties law enforcement officers required to realize the objectives of the law need to have a certain level of autonomy, this autonomy is needed to be able to manage the resources available in order to achieve organizational goals. The resources are.

1. Human resources;
2. Physical resources, such as buildings, equipment, vehicles;
3. Financial resources, such as state expenditures and other resources;
4. The remaining resources needed to move the organization in an effort to achieve its objectives ^[34].

c. Structuring the Legal Structure

In the process of community empowerment should emphasize the process of giving or transfer some power, power, or ability to the community to be more empowered and encourage or motivate the individual so as to have the ability or empowerment to find what life choices through the process of dialogue. Empowerment is a provision to be able to access to existing resources so that there will be a fair power that can increase public awareness of its existence ^[35].

Empowerment can only be done through a process of participation. The lack of participation is due to patron-client relationships, where patrons own and control most of the resources. Power causes people to feel alienated from their environment, so there is a forced culture. Participation can make people aware of the problems faced and seek solutions and help them to understand the social, political, and economic realities surrounding them ^[36].

Conclusion

Indonesians believe that every law; General or law within the Indonesian legal system must always contain the spirit of Pancasila. With the enactment of Law no. 3 of 2006 on Court of Religions which is a product of legislation and has given competence to Court of Religion in solving sharia economic case. The law can be said to be able to accommodate the development and legal needs of Indonesian society, especially the Muslim community, as well as a form of expansion of

³² H. Zainuddin Ali, 2010. *Filsafat Hukum*. Jakarta: Sinar Grafika, hlm. 94.

³³ A. Mukti Arto, 2004. *Praktek Perkara Perdata pada Pengadilan Agama*, Yogyakarta: Pustaka Pelajar, hlm. 6.

³⁴ Satjipto Rahardjo, Tanpa tahun. *Masalah Penegakan Hukum (Suatu Tinjauan Sosiologis)*. Bandung: Sinar Baru. Hlm. 9

³⁵ Esmi Warassih Pujirahayu, 2001. *Pemberdayaan Masyarakat dalam Mewujudkan Tujuan Hukum, Proses Penegakan Hukum dan Persoalan Keadilan*, Pidato Pengukuhan Guru Besar Ilmu Hukum Undip, Semarang, 14 April 2001, hlm. 28

³⁶ *Ibid.*, hlm. 29

competence of Court of Religions in civil law cases, including sharia economic case.

Law no. 21 of 2008 concerning Sharia Banking gives competence to Court of Religion in handling sharia economic case. Basically, the Islamic Banking Law has an orientation and purpose to accommodate the will of religious communities, especially the Islamic community in Indonesia. Simply put, the product of this law is an instrument for the development of economic system based on Islamic values (shariah) by lifting its principles into the national legal system.

The purpose of the determination of the competence limits of every judicial environment is to establish an orderly implementation of judicial power between each court environment. Each judicial institution must run on a predetermined rail so as to avoid competing competitions, not only to prevent competence disputes, but to ensure proper judgment and judgment, it is necessary to: a) Structuring the legal system, B) Structuring of legal institutions, c) Structuring legal culture. For the sake of perfection there must be a formal education obtained especially the judges of Court of Religions in solving sharia economic cases such as sharia banking dispute, will encourage and give discourse on its implementation in court. Planning well and cost enough Sufficient enough to conduct a human resources development training based on good cooperation, must be honest and open. In order for the community to understand and know more deeply about the law relating to Court of Religions as an institution that has the competence to handle sharia economic case. Government through related institutions need to socialize legislation and other regulation to society related to authority to Court of Religion as institution having competence to handle sharia economic cases.

References

1. Abdurrahman. Masalah-masalah Hukum dalam Pelaksanaan Ekonomi syariah; Makalah disampaikan pada Rapat kerja Kelompok Kerja Perdata Mahkamah Agung RI, di Cisarua-Bogor pada tanggal. 2007, 16-17.
2. Ali H, Zainuddin. Filsafat Hukum. Jakarta: Sinar Grafika, 2010.
3. Arief, Barda Nawawi. Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan. Bandung: Citra Aditya Bakti, 2001.
4. Arto A. Mukti. Praktek Perkara Perdata pada Pengadilan Agama, Yogyakarta: Pustaka Pelajar, 2004.
5. Redefinisi Fungsi Pengadilan Sebagai Penegak Hukum dan Keadilan. Makalah dalam: M.E.R. Herki Artani R., Himpunan Makalah, Artikel dan Rubrik Yang Berhubungan Dengan Masalah Hukum dan Keadilan Dalam Varia Peradilan IKAHI Mahkamah Agung Republik Indonesia, Jakarta: Perpustakaan dan Layanan Biro Hukum dan Humas Badan Urusan Administrasi Mahkamah Agung Republik Indonesia, 2011.
6. Dikutip Dari Adiwarmen A. Karim, Choice of Forum Perbankan Syariah, www.mui.or.id/mui_in/hikmah.php?id=50.
7. Fatwa DSN No. 52/DSN-MUI/III/2006, dalam Kamil dan Fauzan, Kitab Undang-undang, hlm. 923-935.
8. Hasan, Hasbi. Kompetensi Peradilan Agama, Dalam penyelesaian perkara ekonomi syariah Edisi Revisi, Jakarta: Gramata Publisng, 2010.
9. Pemikiran dan Perkembangan Hukum Ekonomi Syariah di Dunia Islam Kontemporer, Jakarta: Gramata Publishing, 2011.
10. Lubis, Sulaikin. et al. Hukum Acara Perdata Peradilan Agama di Indonesia, Jakarta: Kerjasama antara Badan Penerbit Fakultas Hukum Universitas Indonesia dan Prenada Media Group, 2006.
11. Manan, Bagir. Varia Peradilan, Majalah Hukum Tahun ke. 2004-2005; XX(241).
12. Peradilan Agama dalam perpektif Ketua Mahkamah Agung, Kumpulan Pidato Bagir Manan, Jakarta, Direktorat Jendral Peradilan Agama Mahkamah Agung RI. hlm. 2007, 2-3.
13. Pujirahayu, Esmi Warassih. Pemberdayaan Masyarakat dalam Mewujudkan Tujuan Hukum, Proses Penegakan Hukum dan Persoalan Keadilan, Pidato Pengukuhan Guru Besar Ilmu Hukum Undip, Semarang, 2001.
14. Pratana Hukum Sebuah Telaah Sosiologis, Semarang: Suryandaru Utama, 2005.
15. Rahardjo, Satjipto, Tanpa tahun. Masalah Penegakan Hukum Suatu Tinjauan Sosiologis. Bandung: Sinar Baru, 2005.
16. Sosiologi Hukum: Perkembangan Metode dan Pilihan Masalah. Surakarta: Muhammadiyah University Press, 2002.
17. Rajardjo M. Dawam. Islam dan Transformasi Sosial Ekonomi, Yogyakarta: LSAF, 1999.
18. Sunaryo, Sidik. Kapita Selekta Peradilan Pidana, Malang: Universitas Muhamadiyah, 2005.
19. Sutadi, Mariana. Titik Singgung Pengadilan Agama dan Pengadilan Umum. Dalam Ceramah Wakil Ketua MA-RI bidang Yudisial pada Pelatihan Hakim se-JABODECITABEK di Jakarta, 2008.
20. Syaifudin, Penyelesaian sengketa, Jakarta: Sinar Grafika, 2007.
21. Ustman, Rachmadi. Pilihan Penyelesaian Sengketa Di Luar Pengadilan, Bandung: Citra Aditya Bakti, 2003.
22. Undang-Undang Republik Indonesia Nomor 21 Tahun tentang Bank Syariah, 2008.
23. Undang-Undang Republik Indonesia Nomor 3 Tahun tentang Perubahan Atas Undang-Undang No. 7 Tahun 1989 tentang Peradilan Agama, 2006.
24. Widijatmoko MJ. Mengatur Budaya Hukum Terhadap Kepatuhan Hukum Dalam Masyarakat, Jurnal Hukum Responsa. Program Doktor (S3) Ilmu Hukum Fakultas Hukum Universitas Sebelas Maret, Surakarta, 2009; 1(1).
25. Bakti Trisnawati, Gunarto, Anis Mashdurohatun. The legal protection to the owner of registered mark based on the value of justice international journal of business, economics and law. 2016; 11(4):2289-1552.
26. Teguh Prasetyo. Liability of doctor in Indonesia From A Dignified Justice Perspective. International Journal of advanced research (IJAR). 2320-5407 Int. J. Adv. Res. 2016; 4(10):1223-1229.

27. Wahyu Widodo, Sapto Budoyo, Maryanto. Understanding the Concept of Nationalism: Using Comparative Law for a Better Indonesian Immigration System in Handling the Illegal Immigrant, *International Journal of Humanities and Social Sciences*. Research India Publications. 2017; 7(1):2250-3226.