

Reconciliation as Problem Solution of Sharia Economic Dispute in Religious Court

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Abstract. Since the decision of the Constitutional Court Number: 93 / PUU-X / 2012, which states that sharia economic disputes resolution is the absolute authority of the Religious Courts. Of course, this authority requires law as a tool in resolving sharia economic disputes in both formal and material law. The reality is that the use of procedural law in sharia economic dispute resolution applies civil procedural law as it employs general courts. This raises problems for Religious Court Judges. As a Muslim, it would be against his conscience. Resolving sharia disputes, but must use the procedural law inherited from the Dutch colonialists which are contradictory to Islamic law. For this reason, as a solution to these problems, peace is the best choice for resolving sharia economic disputes as long as there is no Islamic judicial procedure law to be applied in the Indonesian Religious Court. This solution for this advantage answers doubts about the use of civil procedural law. Reconciliation is very good and recommended, as ordered by the religion of Islam. Even though there are differences between civil procedural law in general courts and Islamic judicial procedural law, there is no difference in the context of good peace, both of them prioritize the settlement of a dispute by well-disposed means which is the best solution to be accepted by all parties without hostility.

Keywords: Reconciliation; Problem Solution; Sharia Economic Dispute; Religious Court

1 Introduction

The 1945 Constitution of the Republic of Indonesia, Article 24 paragraph (1) affirms that judicial power is an independent power to administer the judiciary to uphold law and justice. Furthermore, the 1945 Constitution of the Republic of Indonesia, Article 24 paragraph (2) determines that judicial power is exercised by a Supreme Court and its subordinate judiciary within the environment of general courts, religious courts, military courts, state administrative courts, and by a Constitutional Court.

Concerning religious courts, the Constitutional Court decision Number: 93 / PUU-X / 2012, states that the resolution of sharia economic disputes is the absolute authority of the religious courts. This is based on the philosophical sub and sifkum of sharia economics, for example, Islamic banking is dominated by Islamic business terms, such as *murabahah*, *hudaibiyah*, *musyarakah*, *mudarabah*, *qardh*, *hawalah*, *ijarah*, and *kafalah*. Therefore, it is the

right and right thing if the settlement of sharia economic cases is carried out in a judicial environment that is substantially in charge of matters related to the values of Islamic law. Because if it is submitted to a judicial system that does not apply sharia rules, what will emerge is the inconsistency between the practice of the contract and the settlement of the dispute.

The decision of the Constitutional Court is an affirmation of Law Number 3 of 2006, Article 49, which states "*The Religious Court has the duty and authority to inspect, decide, and resolve matters at the first level among Muslims in the field of: a. marriage; b. heirs; c. will; d. grant; e. wakaf; f. zakat; g. infaq; h. shadaqah; and i. sharia economy*". Of the nine authorities, the sharia economic dispute is relatively new. Juridically Article 49 letter (i) gives the absolute authority for the Religious Court to accept, examine, judge, and decide on sharia economic matters.

The authority to resolve sharia economic disputes is also contained in Law No. 21 of 2008 on Sharia Banking, Article 55, which states that the settlement of Shariah Banking disputes is done by a court within the Religious Court. This means that sharia banking dispute resolution which is part of the sharia economy is done by the Religious Court. Another provision is that the 1945 Constitution, Article 1 paragraph (3), states that the state of Indonesia is a constitutional state in which there are two definitions, namely supreme of law and equality before the law. Interpretation of the supreme of law, namely one of which is legal certainty, likewise *rechtstaat* is legal certainty, which in this case legal certainty regarding authority in resolving sharia economic disputes, namely by religious courts.

Furthermore, that Article 29 paragraph (2), states that "*The State shall guarantee freedom of religious adherents' population to implement Sharia*". It means implementing the resolution of sharia economic disputes in religious courts is a form of implementation of Article 29 paragraph (2), where the state must protect the legal rights of each citizen. Also, Article 28 paragraph (1), is clear about legal certainty, that everyone is entitled to the recognition of the guarantee of protection and fair legal certainty, as well as the same treatment before the law. That equality before the law is the same position between the Religious Court and the District Court, but because the religious court has been justified by its law, namely Law Number 3 of 2006 in conjunction with Law No. 50 of 2009 on Religious Justice, so this is an absolute competence for religious justice, which in this case the Religious Court.

Concerning the authority of the Religious Court in resolving sharia economic disputes that in the event law use civil law as applicable in the common court. Of course, this is problematic for the judge itself. There is an internal contradiction between a judge as a Muslim resolving a matter of Islamic economic disputes, but having to settle and decide matters using a different event law than the Islamic court event law, namely the Dutch colonial inheritance law which is contrary to Islamic law. It has been stated that it is true and proper when sharia economic matters resolving is done in a judicial environment that substantively deals with matters related to Islamic sharia values. However, if you use the law of issues that do not apply the rules of sharia, what will appear is the inconsistency in resolving the dispute, and causing harm to the disputing parties. Although there is a Compilation of Sharia Economic Law (KHES) and the Rule of the Supreme Court No. 14 of 2016 on Shariah Economic Dispute Resolution Procedures as a guide, but if the law of the matter is not the law of Islamic judicial affairs, will still cause asynchrony.

As a solution for the benefit, then reconciliation is an option and a solution to the sharia economic dispute in the Religious Court. As it is known that peace in Islamic law is highly recommended. Moreover, it should be a principle in Islamic law that civil procedures in court that the judge must reconcile the parties to the case. Because, with peace, the destruction of

silaturrahim (loving relationship) will be avoided as well as enmity between the disputing parties will be able to end [1].

Based on the above background, then peace as a problem solution to resolve sharia economic disputes in the Religious Court becomes important to study and discuss. Resolution is analyzed based on the perspective of civil law and Islamic law, as well as the positive laws that apply in Indonesia.

Research Problem

Based on the background described above, this research problem can be formulated as follows: How is reconciliation as a problem solution of sharia economic disputes in the Religious Courts?

2 Research Method

This research method is conducted by using a normative juridical approach, which refers to the legal norms contained in statutory regulations and court verdicts as well as norms that live and develop in society [2].

3 Result and Discussion

The most important reasons for the application of Islamic law in Indonesia are the reasons of the constitution and the reasons of history, as well as the reasons for the need for Islamic law itself [3]. One of the ways of enforcing Islamic law in Indonesia is the existence of an Islamic Religious Court which is also a constitutional and historical reason.

In terms of resolving sharia economic disputes, the Religious Courts have the authority to hear compensation claims (*ta'wid, daman*) either due to default or because of an act against the law. It should be noted that the procedural law that applies in the Religious Courts to adjudicate sharia economic disputes is the procedural law that applies and is used in general courts. This provision is based on Law Number 3 of 2006, Article 154, which states "*The procedural law that applies to courts within the Religious Courts in civil procedural law that applies to courts within the General Court unless it has been regulated according to the law*".

It should be noted that the procedural law that applies in the General Court is *Herziene Inlandsch Reglement (HIR)* for Java and Madura, *Rechtreglement Voor De Buitengewesten (R.Bg)* for outside Java and Madura. These two procedural law rules are enforced within the Religious Courts, except for matters that have been specifically regulated in Law Number 3 of 2006 concerning the Religious Courts which were later amended to Law Number 50 of 2009 concerning the Religious Courts.

The provision of using procedural law as mentioned above has become a problem in itself that the procedural law that applies in the Religious Courts to adjudicate sharia economic disputes which is an Islamic economy which is based on Islamic law must use applicable procedural law and be used in a general court environment that does not originate. of Islamic law. Meanwhile, the procedural laws that apply in the General Court are *Herziene Inlandsch Reglement (HIR)* for Java and Madura, *Rechtreglement Voor De Buitengewesten (R.Bg)* for outside Java and Madura. These two procedural law rules are enforced within the Religious Courts, except for matters that have been specifically regulated in Law Number 3 of 2006

concerning Religious Courts which were later amended to Law Number 50 of 2009 concerning Religious Courts.

Apart from these two regulations, the *Burgerlijke Wetboek Voor Indonesia* (BW) or what is known as the Civil Code, especially Book IV on Evidence which is included in Article 1865 to Article 1993 also applies. *Wetboek Van Koophandel* (Wv. K) which is enforced based on Stb. 1847 number 23, especially in Articles 7, 8, 9, 22, 23, 32, 225, 258, 272, 273, 274, and 275. In connection with this regulation, there is also procedural law regulated in the *faillissements verordering* (Bankruptcy Rules) as regulated in Stb. 1906 Number 348, and also contained in various laws and regulations in force in Indonesia and used as guidelines in Indonesian judicial practice.

In connection with the agreement of sharia economic disputes, the Republic of Indonesia's Supreme Court Regulation Number 14 of 2016 concerning Procedures for the Settlement of Sharia Economic Disputes has been issued, which in the regulation is synchronized with the material law. However, this regulation has not yet reached procedural law which must be used as formal law.

The resolution of sharia economic or business disputes that have been running until now still refers to the provisions of civil procedural law which are regularly carried out in state courts. According to Wirjono Prodjodikoro, procedural law is a series of regulations that contain how people must act before a court and how the courts must act, with each other to enforce the implementation of civil law regulations [4].

Civil procedural law is a legal regulation that regulates how to ensure compliance with material civil law through a judge or legal regulations that determine how to guarantee the implementation of material civil law. Civil procedural law regulates how to file a claim for rights, how to examine it and how to decide it, and how to implement the decision [5].

That is, the procedural guidelines used are still such as HIR (*Het Herzeine Indlandsche Reglement*), R.Bg (*Rechts Reglement Buitengewesten*), and Rv (*Reglement of de Rechtsvordering*). Furthermore, other rules that guide procedures in the settlement of sharia economic disputes also refer to the Civil Procedure Code (*KUH Perdata*), Law No. 48 of 2009 concerning Judicial Power, Law Number 3 of 2009 concerning the Supreme Court, and Law Number 49 of 2009 concerning General Courts, are considered to be inconsistent with the breath and ideology because they are still oriented to the Dutch legal system. Logically, if the material law is following Islamic law, then of course the formal law will follow. So, it is ambiguous and it will be difficult if the material law already uses Islamic law, but the formal law is from the legacy of the Dutch colonial law. The two legal systems are as distinct as the earth and the sky. In Islamic law, there are lofty ideals to be achieved called *maqhasidus sharia*, namely legal ideals that transcend the boundaries of formalism, where the Dutch legal system does not recognize.

Especially if the party in the case is a Muslim who understands Islamic law, of course, he will not fully accept the decision made by the Judge of the Religious Court based on the law that does not come from Islamic law. This will result in disappointment and dissatisfaction with the disputing parties and create harm.

The principle of fast, simple, low-cost justice has not been reflected in the proceedings when using civil procedural law, and the average sharia economic dispute resolution takes 5-6 months at the first level in the Religious Courts. If the time for appeal and cassation is added, the time will be longer, so that the principle of speed is not fulfilled in the examination of sharia economic disputes using civil procedural law or better known as the usual handling process, because it takes a long time. Thus, it can be said that the solution is procedurally

inefficient and the implication is expensive. Meanwhile, Islamic principles require that the process of handling cases be fast, simple, and cheap.

This is where the role of Religious Court Judges in the process of resolving sharia economic disputes is needed by the community. A Muslim judge is not only bound by the duty to decide cases fairly but also to apply justice to the parties involved during problem-solving by treating them equally. This role is to fulfill the community's sense of justice and to create a just and prosperous society. Fairness is obtaining a proportional decision and not detrimental to one of the parties, so as not to cause disappointment and hostility to the parties who feel disadvantaged. Prosperity means getting more than just justice, for example, the sustainability of the relationship between the two parties in doing business.

Therefore, the Judge in this case is demanded not only to use a formal approach which is merely to find facts about the quantity and quality of the dispute in question. However, they are required to find the best solution for the disputing parties, namely by providing alternative dispute resolution through conciliation. Judges in carrying out their function of reconciliation must also look for and find the factors behind the dispute because it is impossible for the judge to be able to effectively invite and persuade the parties to reconcile if the judge himself does not know the causes of the dispute if the judges only try to make peace in passing with time, in short, certainly, such peace efforts will not bring beneficial results to both parties to the dispute [6].

The first stage when the parties are present at the first trial in court, then the court in this case the Judge is morally obliged to reconcile the parties to the case presented to him. The peace process is usually carried out through litigation mediation in court. This is regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts, that at each stage of a case examination, the Case Examining Judge continues to strive to encourage or seek peace until before the pronouncement of the verdict [7]. However, it should be noted that efforts to reconcile cannot be prosecuted optimally because these efforts were made by the Judge only as a moral obligation, not a legal obligation [8].

According to Vollmar, reconciliation in civil law is known as "*dading*" [9] is an agreement or agreement agreed by both parties to the dispute to end a dispute that is being settled by the court [10]. The Book of Civil Law (KUHPerdara), Article 1851, states that peace is "*an agreement in which both parties by handing over, promising or withholding an item, terminate a matter which is pending or prevents the occurrence of a matter*" [11].

In Islamic law resolving disputes based on peace to end a matter is highly recommended. Peace in Islamic law is known as "*islah*", which is to repair, reconcile, or eliminate disputes. *Islah* is trying to create peace, bring harmony, encourage people to make peace in resolving disputes between them by producing results that are not detrimental to the two [12]. The boundaries of peace according to Islam are the peace that does not allow what is haram and forbids what is halal [13].

So, reconciliation is a basic principle in life (of Muslims). This principle is a way of life that allows a person or society to solve and resolve various problems (including sharia economic disputes) in an easy, smooth, balanced, and fair manner. Even the word Islam itself as a religious nomenclature means a religion of peace.

Based on the *Het Herziene Indonesisch Reglement* (HIR), Article 131 paragraph (1), attempts to reconcile are imperative. Whereas the judge is obliged to make efforts to reconcile the parties in a case, and if it is not implemented then the consequence is that the decision will be null and void [14]. This also involves cases of sharia economic disputes, where

reconciliation efforts are imperative which must effectively and optimally be carried out by judges in every trial.

PERMA RI Number 1 of 2016 and Article 130 HIR / 154 of the RBG are the juridical basis for pursuing a settlement in the courts of the first case including those in the Religious Courts which must be applied properly. It has been stated earlier that the reconciliation process is carried out through litigation mediation in court. This is following stated in PERMA RI No. 1 of 2016, Article 4 which states "*All civil disputes submitted to the Court, including cases of resistance (verzet) over the verstek decision and the resistance of the litigant (partij verzet) and third parties (derden verzet) against the implementation of decisions that have permanent legal force, are obliged first attempted settlement through Mediation unless otherwise stipulated by this Supreme Court Regulation*".

When the disputing parties agree to end the dispute in a peaceful way, then the form of the peace agreement is poured out in the form of a reconciliation act made and signed by the parties. The peace act is an act that contains the contents of the peace text and the Judge's decision that strengthens the peace agreement [15].

Furthermore, the Religious Court will soon make an act of peace (*actavan vergelijk*) which has the same legal force as the judge's decision that can be executed. The peace act cannot be appealed, cassation, or re-examined. Similarly, the peace act cannot be filed with a new lawsuit [16]. Here the peace act produced is from the litigation mediation process, that is, mediation is done by both parties on the order of the Judiciary with the assistance of mediators and successfully poured into the reconciliation act signed by both parties and mediators, then the Judiciary has determined that the matter has been peace through mediation. The benefits of peace made in the form of a decision are as follows:

- a. Have permanent legal force. Whereas the conciliatory decisions made in the trial of the Panel of Judges are of the same position as other decisions which have permanent legal force. A reconciliation decision can be canceled if there is an error in a reconciliation agreement regarding the person or because there is fraud or coercion in making it.
- b. Closed appeal and cassation. Because the reconciliation decision has permanent legal force, the legal remedies for appeal and cassation are closed because since the decision is stipulated, it is certain and there is no interpretation and can be directly implemented by the parties implementing the peace.
- c. Has executorial power. The value of the strength of a conciliation decision is the same as an ordinary court decision which has binding legal force, and has the power of execution law, and has permanent legal force at the final level [17].

Three pillars must be fulfilled in a peace agreement that must be carried out by people who carry out peace, namely consent, *qabul*, and *lafazd* from the peace agreement. If these three things have been fulfilled, then the peace agreement has proceeded as expected. From the reconciliation agreement, a legal bond was born, which each party was obliged to carry out. It is necessary to note that the peace agreement that has been agreed upon cannot be canceled unilaterally. If there are parties who do not agree with the contents of the agreement, then the cancellation of the agreement must be with the consent of both parties [18].

In terms of efforts to reconcile (mediate) the disputing parties in court, it turns out that in Islamic judicial procedure law, peace is very good and recommended, as ordered by Islam. Thus it can be stated that peace efforts are the best solution for sharia economic dispute resolution in the Religious Courts which is the answer to the problems faced by Judges. This is because the application of civil procedural law that applies in general courts is applied to the Religious Courts. Of course, this peace will be the answer to inner conflicts using procedural law which is very different from the procedural law of Islamic justice. However, in the context

of reconciliation, both according to civil law and Islamic judicial procedural law, there is no difference, both of them prioritize the settlement of a dispute by peaceful means.

4 Conclusion and Suggestion

4.1 Conclusion

Reconciliation as a solution of economic disputes resolving in the Religious Courts is an answer to the response of the Muslim community in general who hesitant concerning the ability of the Religious Courts to carry out the mandate in resolving sharia economic disputes. This is quite reasonable because the resolution of sharia economic disputes in the Religious Courts is influenced by three factors, namely legal material in the form of statutory regulations regarding sharia dispute resolution authority which still clash with other laws. Although there is already a Compilation of Sharia Economic Laws (KHES) and PERMA No. 14 of 2016 concerning Procedures for Sharia Economic Dispute Resolution, however, it is still general in nature and does not completely cover procedural law, so that some people, especially Muslims, still doubt its benefit.

4.2 Suggestion

The need for "*goodwill and morale*" and legal politics regarding the authority to handle sharia economic disputes together between the Supreme Court and the DPR to reinforce the position of the Religious Courts as courts that have absolute authority in resolving Sharia economic disputes by using Islamic judicial procedural law instead of law civil procedures that apply in the general court. There is also a necessity for harmonization of other laws and regulations relating to sharia economic disputes. Besides, there is a need for the establishment of a Sharia Commercial Court that is specifically for solving matters of sharia economic disputes, so that the judicial process is faster and concentrated so that it can guarantee legal certainty.

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