



ISSN: 1979-4940
E-ISSN: 2477-0124

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ADDRESSING ISLAMIC ECONOMIC LAWSUIT ON RELIGIOUS COURTS AND FINANCIAL INSTITUTIONS OF CENTRAL KALIMANTAN

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Abstract

The development of sharia financial institutions which continues to experience a positive trend in Central Kalimantan does not rule out the possibility of sharia economic disputes to emerge. Thus, there needs to be further elaboration regarding the potential and prospects for sharia economic disputes in Central Kalimantan and how prepared sharia financial institutions and religious courts are in handling sharia economic cases. This research is a type of empirical juridical research with a case approach which relies on primary data sources obtained directly from the field using observation, interviews and documentation methods which are then analyzed using analytical descriptive methods. The results of the research led the author to the first conclusion, that the potential/prospects for sharia economic matters in Central Kalimantan were very large, this could not be separated from the existence of sharia financial institutions which could serve users in various levels of society, both upper-middle and lower-middle class. Second, the readiness of Islamic financial institutions to address Islamic economic issues is supported by a sound management system. The principle of "knowing your customer" is always prioritized, ensuring consensus. Similarly, the readiness of religious courts, with judges undergoing competency development related to Islamic economics and legal sources for resolving Islamic economic disputes, is complemented by structured regulations issued by the Supreme Court.

Keywords: Litigation, Sharia economic lawsuit, Sharia financial institutions, Religious courts

Abstrak

Perkembangan Lembaga keuangan syariah, terus mengalami peningkatan di Kalimantan Tengah memungkinkan bermunculannya sengketa ekonomi syariah. Sehingga perlu adanya elaborasi berkelanjutan terkait bagaimana potensi dan prospek sengketa ekonomi syariah di Kalimantan Tengah dan bagaimana kesiapan Lembaga keuangan syariah dan pengadilan agama dalam menangani sengketa ekonomi syariah. Penelitian ini merupakan jenis penelitian yuridis empiris dengan pendekatan kasus yang bertumpu pada sumber data primer yang diperoleh dari lapangan dengan metode observasi, wawancara, dan dokumentasi yang kemudian dianalisis dengan metode deskriptif analitik. Hasil penelitian ini membawa penulis pada kesimpulan pertama, bahwa potensi dan prospek perkara ekonomi syariah di Kalimantan Tengah sangatlah besar, hal ini terbukti dari eksistensi lembaga keuangan syariah yang telah melayani penggunaannya dalam berbagai lapisan masyarakat, baik masyarakat menengah keatas maupun menengah kebawah. Hal tersebut juga diyakini oleh mayoritas hakim pengadilan agama dilingkungan Kalimantan Tengah. Kedua, kesiapan lembaga keuangan syariah dalam menangani permasalahan ekonomi syariah telah didukung oleh sistem manajemen yang baik. Prinsip "mengetahui nasabah" senantiasa diutamakan, sehingga tercipta musyawarah mufakat dalam penanganan sengketa. Begitu

pula kesiapan pengadilan agama, para hakim telah menjalani pembinaan dan peningkatan kompetensi terkait perkara ekonomi syariah. Hal ini dilengkapi dengan regulasi terstruktur yang dikeluarkan Mahkamah Agung.

Kata kunci: Litigasi, Sengketa ekonomi syariah, Lembaga keuangan syariah, Pengadilan agama

INTRODUCTION

The existence of sharia financial institutions in form of sharia banking has experienced rapid development over time as the return-on-asset (ROA) recorded in May 2022 was 2.01%, experiencing a fairly high increase since 2020 which was only 1.40%. (Keuangan 2022b) Such positive form could be monitored through indicators, such as non-performing financing (NPF) and the ratio of operational costs to operating income (BOPO), in the sharia banking sector which is decreasing. This was indicated by the NPF value of 2.67% in May 2022, decreasing from the NPF of 3.13% in 2020. Likewise, BOPO decreased from 85.55% in 2020 to 79.44% in May 2022. (Keuangan 2022b)

The development of Islamic law in Indonesia within the sharia economic sector has undergone a significant journey, marked by an increasingly strong legal foundation. In the field of Islamic banking, this culminated in the enactment of Law No. 21 of 2008 concerning Sharia Banking as a specific legal umbrella, supported by OJK regulations and DSN-MUI Fatwas. Meanwhile, sharia microfinance institutions (LKMS), such as BMT and BPRS, are regulated by Law No. 1 of 2013 concerning LKM to encourage sharia-based financial inclusion. (Amin 2019) For the resolution of sharia-based economic disputes, Indonesian law provides two main options: litigation, which falls under the absolute authority of the Religious Courts, and non-litigation (such as deliberation, mediation, or arbitration through Basyarnas) based on the agreement of the parties. (Primadhany 2025)

The development of sharia banking also had an impact in Central Kalimantan Province, including 6 Branch Offices (so-called as Kantor Cabang or abbreviated as KC) and 4 Sub-Branch Offices (so-called as Kantor Cabang Pembantu or abbreviated as KCP). Those were located in several districts/cities, including Palangka Raya City and East Kotawaringin Regency. Meanwhile, there were 1 units of sharia rural bank in the city of Palangka Raya. (Keuangan 2022a)

Such achievement indicated that the existence of sharia commercial banks and sharia rural banks is increasingly finding a place to grow and develop among conventional banks (Hidayat n.d.). Based on this, the Muslim community in Central Kalimantan is facilitated in making transactions using sharia principles corresponding to Islamic law.

Being relevant with such positive development, it is surely proportional to the possibility of disputes (Adi Saputera 2019), where disputes between parties, both service providers and customers, would actually increase as well. (Huda 2010) In fact to date the Religious Courts in Central Kalimantan province have not dealt with considerable sharia economic lawsuit given by the value of transactions reported by numerous sharia banks and sharia financial institutions. (Rahayunie n.d.) This was the academic motive for researchers to study the inconsistency amidst the rapid development of sharia financial institutions with the slight number of sharia economic lawsuits addressed by religious courts in Central Kalimantan. This research focuses on the possibility and prospects of sharia economic disputes in central kalimantan and readiness of sharia financial institutions and religious courts in handling sharia economic disputes.

The rapid development of sharia financial institutions, particularly sharia banking, hinted the progress in the economy and the high interest of the Muslim community in implementing Islamic law, but it is still not balanced with products and readiness to anticipate problems that arise in line with the Constitutional Court Decision Number 93/PUU-X/ 2012. (Konstitusi 2012) This work used the theory of legal effectiveness as expressed by Hans Kelsen in looking at the potential and prospects for sharia economic disputes after the issuance of the Constitutional Court decision as a hierarchy of laws that gives a mandate to religious courts to handle sharia economic dispute cases. (Subroto 2014) Apart from that, according to the theory of authority of Philip M. Hadjon, authority is part of formal power which is part of the concept of public law to see the absolute competence (Norcholis 2021) of the Religious Courts regarding their readiness to handle sharia economic cases and also sharia financial institutions themselves. (Hadjon 1997)

METHOD

The method of this work was empirical juridical,(Sadiani et al. 2023) by examining the factors that might influence the law, including first, the legal rules/regulations themselves; second, officers/law enforcers; third, the means or facilities used by law enforcement; fourth, public awareness. (Ali 2011) The approach used in this research was the case approach. (Marzuki 2015)

Data collection techniques were obtained through observation, interviews, and documentation (Putri dan Amin 2024). The data source was primary data from interviews with subjects and secondary data including statutory regulations, books and journals along with the results of scientific work related to the reference problem being studied. (Marzuki 2000) The

source triangulation technique proves the validity of the data, then analyzed by the legal effectiveness theory (Harun 2019).

RESULT AND DISCUSSION

Possibilities and Prospects of Sharia Economic Disputes in Central Kalimantan

Various types of financial institutions acted as business entities whose main assets were in the form of financial assets or claims which can be in the form of shares, bonds and loans, rather than real assets, such as buildings, equipment, and raw materials. (Putra, Ardhansyah dan Saraswati 2020) Sharia financial institution is a business institution whose wealth is mainly in the form of financial assets and non-financial assets or real assets based on the concept of sharia. (Priyadi n.d.) Sharia financial institutions could be divided into two, namely: sharia depository financial institutions (Nurhayati 2019) which were called sharia bank financial institutions and non-depository sharia financial institutions which were called non-bank sharia financial institutions. (Soemitra 2017)

Based on sources who are involved in cooperative sharia financial institutions, they said that the activities they are currently carrying out are cooperative legal entities and comply with the rules of the local cooperative service. Even though we are a sharia financial institution, the cooperative service that supervises us is not Financial Services Authority, but Cooperative Department since we are a cooperative legal entity. In line with existing regulations, *Baitul Mal Wa Tamwil* which is a cooperative legal entity does have the authority to determine its legal entity which will have an impact on their legal basis. If *Baitul Mal Wa Tamwil* chooses to become a sharia financial services cooperative, then it will be under the guidance of the Ministry of Cooperatives and Small and Medium Enterprises. While it chooses to become a microfinance institution as a legal entity, then it will be under Law Number 1 of 2013 concerning Microfinance Institutions (Amin 2019).

Apart from cooperative legal entities, the majority of other sharia financial institutions are limited liability companies, ranging from sharia pawnshops, sharia people's financing banks to sharia banks (H. Hariyanto dan Nafi'ah 2022). Of the many sharia financial institutions that exist, the majority are state-owned companies such that their establishment can be ensured in accordance with applicable regulations. Existing sharia financial institutions have been able to provide services to members/customers in various categories, ranging from the needs of lower-middle class customers to upper-middle class. The source person who is the manager of a *Baitul Mal Wa Tamwil* said that their market share is customers who are traders in the market whose

need for financing they expected was not quite large, only estimated around 1 - 20 million rupiah (Abror 2019).

Customers who choose to be served by sharia banks are customers who really need large amounts of financing and are intended for productive business, not for consumptive needs. In contrast to sharia public financing banks, their market share is middle class customers. What this means is that you are not a member of *Baitul Mal Wa Tamwil*, but also not a sharia bank customer (Subhan, Willy Susanto, dan Susanto 2021). Identically, they are those who need medium amounts of financing, such as motorbikes and micro business capital.

Members/customers of Islamic financial institutions could be categorized into two types. (Anggraini dan Sholihin 2016) First, members/customers who do not understand sharia principles. Based on the experience of sharia financial institution managers when meeting with potential members/customers, the first step taken was to provide them education about sharia financial first. Such members/customers tend to be reckless since they have experienced bad times, thus they hope to be immediately served by sharia financial institutions. Second, members/customers who understand sharia economic principles. (Azhari 2023) The majority of customers in this category make transactions with sharia financial institutions as they uphold religious values as a form of worship in economic transactions. Managers of Islamic financial institutions will provide different services when they find members/customers like this, since they feel that members/customers like this also play an active role in socializing and promoting the pleasure of sharia economic transactions. (Anam 2023)

Based on the data and explanations from the sources above, the potential for disputes in sharia financial institutions is actually very large because the number of sharia financial institutions in terms of sharia commercial banks, sharia people's financing banks, *baitul mal wa tamwil*, sharia savings and loan cooperatives, sharia pawnshops and other financial institutions in their existence continue to experience positive trends. In line with the opinion of a judge at the Kuala Kapuas religious court who was our source, he stated that since the advent of the sharia banking law and the authority of religious courts to manage sharia economic cases, 100% of the potential for disputes is real (Siswajanthly dan . 2021). This was also confirmed by a judge at the Palangkaraya religious court. However, These data show a disconnect between the growth of Islamic financial institutions and the number of cases submitted to the Religious Courts

Based on this fact, the assumption arises that the potential for sharia economic disputes was not noticeable. As explained by a judge at the Sampit religious court, she stated that the potential for sharia economic disputes tends to be small as the existence of sharia financial

institutions in the city of Sampit was only represented by Indonesian sharia banks. (Af'Idah 2023) This was also the case in the Kasongan area, as far as the judge knows there, the only sharia financial institutions that exist are *Baitul mal wa tamwil*, in this case represented by BMT UGT Nusantara, each Kasongan Branch and Kereng Pangi Branch. (Islami 2023) In addition, there were many members or customers who still do not care about the system run by sharia financial institutions. What they prioritize is meeting the financing needs they want. This could also increase the potential for sharia economic disputes in the future (Haq dan Kalamika 2016).

The situation illustrating that society rarely and almost never resolves Sharia economic disputes in the Religious Courts, However, they are more in agreement that the stage of dispute resolution through litigation is the last approach, so the magnitude of the potential dispute is not yet clear when compared to the number of disputes that have been handled by the Religious Court in Central Kalimantan. (Af'Idah 2023; Anam 2023; Azhari 2023; Islami 2023) if examined from the theory of legal effectiveness according to Bronislaw Malinowski, includes three problems, first, in modern society, social order is maintained, among other things, by a system of control, coercive social force, namely law. To implement this, such is supported by a system of power tools (police, courts, and so on) organized by a state. Second, in primitive society such tools of power ultimately did not exist. And finally, in primitive society there are no laws. (Halim , H. HS 2014)

The theory of legal effectiveness according to Soerjono Soekanto is that whether a law is effective or not is determined by 5 (five) factors, such as the legal factor itself (law), the law enforcement factor, namely the parties who form or apply the law, the means or facilities factor which supports law enforcement, community factors, namely the environment where the law applies or is applied and cultural factors, namely as a result of work, creativity and feelings that are based on human initiative in social life. (Soekanto 2008) From a legal perspective, the legal and law enforcement factors have adequate tools, starting from Law No. 3 of 2006, Law No. 21 of 2008, to Supreme Court Regulation No. 14 of 2016. Judges in the Central Kalimantan Religious Court have been prepared through training and certification of sharia economic competencies. However, the "consensus" culture is highly respected in Central Kalimantan, compounded by a lack of a thorough understanding of sharia principles and a preference for meeting financial needs over sharia legality. Furthermore, the existence of a special department for handling cases in Islamic banks, including the State Assets and Auction Services Office (KPKNL), provides collateral execution as a means of supporting non-litigation alternatives.

Readiness of Sharia Financial Institutions and Religious Courts in Managing Sharia Economic Disputes

The means for resolving disputes having been included in the category of disputes can essentially be achieved through two resolution ways, namely through litigation (dispute resolution through a judicial body established by the government to resolve disputes in society), and through non-litigation one, namely through Alternative Dispute Resolution (APS) held outside of court (Hendrianto 2021).

Starting from this, the discussion continued with the readiness that had been carried out by the two agencies in resolving sharia economic disputes. First, the readiness of sharia financial institutions, the possibility of disputes that they have been aware of since the beginning of carrying out sharia-based economic business activities requires independence (resourcefulness) in dealing with them. The variety of members/customers who ask to be served means they need expertise in responding to disputes that arise (E. Hariyanto 2014). Sharia financial institutions serving the lower-middle class community through cooperative legal entities (Muhdhori Ahmad 2022), such as KSPPS Kube and BMT UGT Nusantara, convey the importance of getting to know customers thoroughly. This will build an emotional bond between the member and the Islamic financial institution. Members are positioned as users and owners of the sharia financial institution. Hence, there will be feelings of embarrassment and shame about non-performing financing. (Agustin 2021)

A different thing is shown by sharia banks, customers who are from the upper middle class have complexity in handling them. However, the concept of independence is also still promoted by sharia banks, in this case BPRS Mitra Amanah and sharia banks. One of our sources who came from the Indonesian Sharia Bank Palangkaraya branch office said that there was a department in their office which was a special department that handled problematic matters. The most frequent cases present in their environment are financing cases. This statement was also confirmed by our source from BPRS Mitra Amanah, who said the situation they felt was the same as with Indonesian sharia banks. Thus, the step they took was to resolve it by means of internal deliberation.

However, in general, after a deliberation meeting between banks and bad financing customers, the next step taken was an agreement to restructure the contract. (Penelitian 2016) Contract restructuring was a reformulation of previously agreed contracts. This was due to weakness on the part of the customer which causes default on previous financing. The reason why customers failed to pay is that the business they ran experience decline in turnover or

increasing costs. Contract restructuring was an offer made by banks to address sharia economic disputes that arise in their operations.

Furthermore, the independence applied by financial institutions to members/customers who experience financing problems was by carrying out collateral sales. Bank Syariah Indonesia, Sampit branch, through its employees, conveyed to us that the method for auctioning mortgage rights from the customers concerned was through the State Property and Auction Services Office, so that their steps were not considered arbitrary but had gone through proper procedures. Our sources agreed that this alternative resolution of sharia economic disputes at sharia financial institutions had been stated in the contract as a method of anticipation in the future. From the many resources (expertise) of Islamic financial institutions in addressing arising disputes, it was clear that the good faith put forward by Islamic financial institutions. Apart from many methods above, another necessary thing is support from the above agencies. (Hendra Permana dan Aulia Adhiem 2019) This had been experienced by BMT UGT Nusantara Palangkaraya, the management told us that they had brought in central parties directly from Sidogiri (East Java) to resolve the dispute that occurred in Palangkaraya. At that time, members pledged a plot of land as collateral for the financing they requested since the dispute was quite tough and the object of the guarantee was quite large.

Head office intervention did not only involve going directly to the location where the dispute was taking place. However, sharia financial institutions that had good management, marked the presence of the head office through a standardized system, either displayed in an application or an internal system that can accommodate customers who were eligible for financing or customers who were still not eligible as a preventive measure. (Wahyuna dan Zulhamdi 2022) Second, the readiness of religious courts in this case was influenced by the addition of authority to adjudicate sharia economic cases based on Article 49 of Law Number 3 of 2006, amendments to Law Number 7 of 1989 concerning Religious Courts. Then, the existence of Law Number 21 of 2008 concerning Sharia Banking in Article 55 paragraph (1) confirms that the Religious Courts are a means of resolving disputes in the field of Sharia Banking if a dispute occurs. Thus, the Religious Courts have the right and authority to accept, examine and adjudicate and resolve sharia economic disputes. (Nasikhin n.d.)

In addressing sharia economic disputes, judges were required to carefully study the substance of the case first. For example sharia economic cases, particularly in the field of sharia banking in which require several things to pay attention to, including that the case was not containing a settlement clause through arbitration and the contract that is the background for

cooperation of the parties in order to administer justice in upholding law and justice. (Ardiyanto 2023) It was indicated that judges were obliged to explore the values that exist in society by referring to Law Number 48 of 2009 concerning Judicial Power. (Maskur 2016)

The legal basis for judges in managing sharia economic cases is, firstly, Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 and Law Number 21 of 2008 concerning Sharia Banking, secondly the Civil Code (Kitab Undang-undang Hukum Perdata) and Supreme Court Regulation Number 4 of 2019 concerning Amendments to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Claims and the third Compilation of Sharia Economic Law (KHES) as material law and fiqh books. (Mardani 2007)

Furthermore, it refers to the participation of judges in participating in sharia economics training/certification. Judges as the main implementers in the Religious Courts was the spearhead in adjudicating a case, where the judge's presence was expected to help in resolving legal problems. The existence of Law Number 3 of 2006 states that sharia economic matters fall under the absolute authority of the Religious Courts. (Azhari 2023)

Absolute authority itself is actually divided into 2, namely: (Fuadi 2023)

a) Voluntary

Voluntary itself can be interpreted as a case in the form of a request that has no opposition and the outcome is a determination.

b) Contensive

Contensive is a form of lawsuit involving the disputing parties with a verdict as the output.

Referring to the case of addressing sharia economics in Central Kalimantan, so far this was a rare case, based on information from judges in several religious courts in regencies/cities in the Central Kalimantan region. The results of the interviews obtained information that only 2 sharia economic cases were found. (Azhari 2023)

Following the policies issued by the Supreme Court after the emergence of Law Number 3 of 2006, and also the Constitutional Court Decision Number 93/PUU-X/2012, the Supreme Court issued a policy in the form of Supreme Court Regulation Number 14 of 2016 concerning Procedures for Resolving Sharia Economic Disputes requiring the readiness of religious justice officials to manage them professionally. (Rahmawati 2018)

CONCLUSION

The potential and prospects for sharia economic matters in Central Kalimantan were noticeably large, this could not be separated from the existence of sharia financial institutions which can serve users in various levels of society, both upper-middle and lower-middle class. This was also believed by the majority of religious court judges in Central Kalimantan. There were very few sharia economic cases resolved through litigation (religious courts). Refer to the theory of legal effectiveness according to Bronislaw Malinowski, in this case, it did not mean that textually the effectiveness of the law has been implemented, even though in reality the number of sharia economic dispute resolved through litigation in Central Kalimantan was limited.

The readiness of sharia financial institutions in handling sharia economic matters can be seen from the many methods applied with a supportive management system, starting from getting to know their members/customers more deeply, to being able to touch their emotional side so that the goodwill of customers will continue to exist, to being willing to restructure contracts. to ease the burden on its members/customers. Support from higher level sharia financial institutions is also proof of readiness to resolve disputes while prioritizing consensus deliberation. Likewise, with the readiness of religious courts, the judges have been introduced to many types of sharia economic disputes and sources of law in deciding sharia economic disputes. Furthermore, the Supreme Court as the agency above provides special training (certification) related to sharia economic cases to prepare the judges in case they will be faced with a sharia economic dispute which they will decide.

Acknowledgment

We are grateful to Ministry of Religious Affair through the grant of Litapdimas of year 2023 which allowed us to complete this research. We also be thankful to Institut Agama Islam Negeri Palangka Raya with support being given. We also thank all parties which are pleased to give information and support our research.

Conflict of Interest

We state that this article does not have conflict of interest.

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