

Urgency Of The Supreme Court Regulation No. 5 Year 2016 About Certification Of Sharia Economic Judges In The Settlement Of Sharia Economic Disputes In Religious Court

Shofiyun Nahidloh
Sharia Business Law
Trunojoyo University of Madura
Bangkalan. Indonesia
shofiyun.nahidloh@trunojoyo.ac.id

Abstract-With the increase of Sharia banking industry either bank or non-bank, the authority of the Religious Court Law No. 7 Year 1989 amended by Law No. 3 Year 2006 and the second amendment namely Law No. 50 Year 2009 in which the authority of the Religious Courts is increasingly broad which includes cases of marriage, inheritance, wills, grants, endowments, zakat, infaq, alms and sharia economics. In the case of sharia economics the Sharia Banking Law No. 21 Year 2008 states that litigation dispute resolution is under the authority of the Religious Court, as in Law No. 50 Year 2009. The importance of certified Islamic economics judges as the Supreme Court Regulation No. 5 Year 2016, that is, regardless of the lack of Islamic economic transactions, because Islamic economic transactions are increasing every year, thus enabling the occurrence of Sharia economic disputes. Therefore, the Religious Courts should have applied Supreme Court Regulation No. 5 Year 2016 concerning the certification of sharia economic judges in resolving sharia economic activities and requires judges of the Religious Courts to have competence in Sharia Economic Law.

Keyword-*urgensi, sertifikasi, ekonomi syariah, sengketa, hakim.*

I. INTRODUCTION

Civil cases become the authority of the Religious Court with Law No. 7 Year 1989 which handles cases of marriage, inheritance, wills, grants, endowments, zakat, infaq, and alms. Along with the times and economic growth, awareness to implement the sharia principles is increasing in Indonesia. This awareness drives the sharia industries growth accompanied by the establishment of the Muamalat bank and is followed by other sharia banks.

Along with the growth of sharia banking or non-banking industry, the authority of the Religious Court Law No. 7 Year 1989 amended by Law No. 3 Year 2006 and the second amendment namely Law No. 50 Year 2009 in which the authority of the Religious Courts is increasingly broad which includes cases of marriage, inheritance, wills, grants, endowments, zakat, infaq, alms and sharia economics.[1] In the case of sharia economics the Sharia Banking Law No. 21 Year 2008 states that litigation dispute resolution is under the

authority of the Religious Court, as in Law No. 50 Year 2009. In the completion of the Islamic economy in the Religious Court, the Supreme Court issued Regulation No. 5 Year 2016 concerning Sharia Economic Judge Certification that the sharia economic case in the first court and the court of appeal in the Religious Courts must be tried by the sharia economic judges. Sharia economic judges are Religious Courts judges who have been certified as sharia economics and appointed by the chairman of the Supreme Court of the Republic of Indonesia.[2]

II. RESEARCH METHOD

To get the complete data, in-depth and give the right answer to the problems posed it is used library research. While the research characteristic is descriptive analysis. The purpose of this study is to describe the facts obtained from the results of library research, and is strengthened by observation, interviews, documentation to explain the data obtained from the field. Then analyzed based on the suitability of the theory about the Religious Courts and PERMA on the certification of sharia economic judges in resolving sharia economic cases in the Religious Courts. The approach used is a normative juridical approach, because the object of this research is the statutory regulations. This study analyzed data obtained from the results of field research and then adjusted to PERMA No. 5 Year 2016 concerning certification of sharia economic judges in resolving sharia economic cases. The data analysis method used in this study is the analysis of data obtained from observations, interviews, documentation in the field and other supporting materials such as books. Then analyzed descriptively.

III. RESULTS AND DISCUSSION

A. *Supreme Court Regulation No. 5 Year 2016 concerning Certification of Sharia Economic Judge*

The Supreme Court as the holder of judicial authority in Indonesia has the authority to determine how the law can be

carried out in order to create justice for the people of Indonesia. The Supreme Court is also expected to absorb the aspirations of the justice seekers community, therefore in carrying out its duties the Supreme Court is authorized to set written regulations that are regulative concerning the role and implementation of the judiciary. As for the main tasks and functions of the Supreme Court, one of which is the regulating function, which states that:

"The Supreme Court can further regulate what is needed for the smooth operation of the judiciary if there are things that have not been sufficiently regulated in the Law on the Supreme Court as complement to fill the shortcomings or legal vacuum required for the smooth running of the judiciary".[3]

Article 131 of Law Number 1 Year 1950 concerning the Supreme Court of the Republic of Indonesia, becomes the first legal basis for the Supreme Court to carry out the regulatory function. The sound of Article 131 is as follows:

"If the court has a matter that is not regulated in the Act, then the Supreme Court can determine for itself how the matter must be resolved."

The regulatory function is the authority of the Supreme Court as Article 79 of Law No. 14 Year 2004 then amended by Law No. 5 of 2004 and Law No. 3 Year 2009. The Supreme Court issued a regulation that aims to facilitate the running of the judiciary. Like the provisions of Article 14 paragraph 4 of Law No. 48 Year 2009 concerning the power of the judiciary which explicitly states that the judicial deliberation hearing is regulated through PERMA. This is closely related to the Religious Courts as one of the executors of judicial power.[2]

The executor of judicial authority is affirmed in Article 10 paragraph 1, 2 of Law No. 4 Year 2004 which states that:

"Judicial power is exercised by Supreme Court and the judicial body under it and by constitutional court. The judiciary body which is under the Supreme Court covers the judiciary within the general court, religious court, military court, and state administration court".[4]

In the Religious Courts there is authority held in connection with the duties of the Religious Courts as institution that receives, examines, and decides cases. As Law No. 3 Year 2006 was later updated with Law No. 50 Year 2009 concerning the absolute competence of the Religious Courts covering marital, inheritance, wills, grants, endowments, alms and Sharia economic matters.

The authority to adjudicate in the field of sharia economics as explained in Article 49 of Law No. 3 Year 2006 which reads as follows:

"Sharia economics is an act or business activity carried out according to sharia principles."

The sharia economic dispute under the authority of the Religious Court is dispute in the field of civil law. On the resolution of Sharia economic disputes, the Supreme Court issued regulation namely PERMA No. 5 Year 2016

concerning Sharia Economic Judge Certification.[5] Wherein in resolving sharia economic disputes must be tried by judges who are certified sharia economics [6].

Certificate is a written statement from the authorized person that can be used as proof of ownership.[7] Sharia economic judge certificate is a process of granting judge certification which has been declared to pass administrative selection, competence, integration, and training to become sharia economic judges.[8] The existence of certification of sharia economic judges which is looking at the increasing human needs based on sharia principles that enable disputes, one of which is in sharia economic practices. Then the Supreme Court as instrument of law enforcement is responsible for enforcing the law in the field of sharia economics as stipulated in PERMA No. 5 Year 2016 concerning the certification of Sharia Economic Judges.

The purpose of the sharia economic judgescertification is to uphold the effectiveness of the settlement of sharia economic cases in the Religious Courts as an effort to uphold sharia economic law that fulfills a sense of justice . As stated by the director of technical development of the Religious Courts Dr. H. Fauzan, SH, MM:

"Judges of the Religious Courts should continue to improve their understanding and knowledge of Islamic economics, so that they are better prepared when accepting Sharia economic matters"[8]

The requirements to be appointed as sharia economic judges must meet the following criteria: (1) Administrative requirements, (2) Competency requirements, (3), Integrity requirements, (4), Participating in training, (5) Declared by the selection team. The administrative requirements include the following requirements: (a) Physically and mentally healthy. (b) Has served as a judge for 8 years.[8] (c) Meet the verification, clarification and validation of requirements.[9] Competencies requirements include: (i) Able to understand legal norms of sharia economy.[9] (ii) Able to apply law as an instrument in adjudicating sharia economic cases. (iii) Able to make legal discoveries to bring about justice. (iv) (v) Able to apply guidelines in trying Islamic economic cases. Framed in the form of written tests and interviews .

Sharia-certified judges registrants who have passed administration, competence, and integrity are entitled to take part in the training, for judges who have passed the training, are appointed by the head of the Supreme Court to become special case judges or sharia economic certification judges.[8] Sharia economic matters in question include: (1) Islamic banks h; (2) Islamic microfinance institutions; (3) Islamic insurance; Islamic Reinsurance; (4) Islamic mutual funds; (5) Sharia bonds and sharia medium securities; (6) Sharia securities; (7) Sharia financing; (8) Islamic pawn shops; (9) Pension funds of Sharia financial institutions; (10) Sharia business.[8]

B. Urgency of Supreme Court Regulation No. 5 Year 2016 concerning Sharia Economic Judge Certification in Sharia Economic Dispute Settlement

The Supreme Court Regulation is the highest judicial power that has authority for the judiciary, justice enforcers, and justice seekers. The Supreme Court Regulations regulate the public interest that binds judges, prosecutors, advocates and justice seekers who want to go to court. Article 131 of Law Number 1 Year 1950 concerning the Supreme Court of the Republic of Indonesia, becomes the first legal basis for the Supreme Court to carry out the regulatory function. The sound of Article 131 is as follows:

"If the court has matter that is not regulated in the Law, then the Supreme Court can determine for itself how the matter must be resolved."

The regulatory function is the authority of the Supreme Court as Article 79 of Law No. 14 Year 2004 then amended by Law No. 5 of 2004 and Law No. 3 Year 2009. The Supreme Court issued a regulation that aims to smooth the running of the administration of justice one of which is PERMA No. 5 Year 2016 concerning the certification of Sharia Economic Judges .

PERMA No. 5 Year 2016 concerning the certification of Sharia Economic Judges states that:

Sharia economic matters must be tried by sharia economic judges. Sharia economic judges are judges who have been certified and appointed by the Chief Justice of the Supreme Court. Cases tried include sharia banks, micro microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium term securities, sharia securities, sharia financing, sharia pawnshops, sharia pension funds, sharia financial institutions, and sharia business[10].

The composition of the panel of judges in sharia economic cases that is tried by a panel of judges whose head of the panel of judges or one of the members of the panel of judges is a sharia economic judge. However, if there are no judges who are certified as sharia economics, then the head of the Religious Court because of his position can appoint a deputy chairman or senior judge who has followed the functional training of sharia economic judges.[10]

Based on the data obtained by the author, that the majority of sharia economic dispute resolution is tried by judges who are not yet certified sharia economics. This is because when this case was registered in the Religious Court, the Religious Court judges still did not have a judge who was certified as sharia economy. So that the Chair of the Religious Courts with their authority appoints the Deputy Chair of the Religious Courts as senior judges as well as judges who have participated in Sharia economic training.

The importance of certified Islamic economics judges as the Supreme Court Regulation No. 5 Year 2016, that is, regardless of the lack of Islamic economic transactions, because Islamic economic transactions are increasing every

year, thus enabling the occurrence of Sharia economic disputes. Therefore, the Religious Courts should implement the Supreme Court Regulation No. 5 Year 2016 concerning certification of sharia economic judges in resolving sharia economic studies.

IV. CLOSING

The urgency of sharia-certified judges in resolving sharia economic disputes in the religious court is very important because the settlement of sharia-economic cases by sharia-certified judges is more in line with existing theories. Bearing in mind, judges who are certified as sharia economics have passed the stages of selection of sharia economic cases. There are fewer risks in making decisions that do not fulfill sense of justice, because judges who are certified as sharia economics already know their knowledge. Then the Judge by mastering the law of Sharia economics is very important, and through Supreme Court Regulation No. 5 Year 2016 concerning the certification of Sharia Economic Judges strongly supports the Religious Courts. Bearing in mind, the development of sharia business has been growing rapidly. Likewise with the Religious Court as judicial institution that receives, examines and decides sharia economic cases.

Therefore, the fund is PERMA No. 5 Year 2016 concerning Certification of Sharia Economic Judges, Religious Court judges should follow the certification of Sharia Economic Judges in order to improve the effectiveness of sharia economic casesettlement. The existence of PERMA No. 5 Year 2016 concerning the certification of Sharia Economic Judges becomes mandate for Religious Court judges in resolving Sharia economic matters. Namely, which must be tried by panel of Sharia Economic Judges.

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