

Shariah Compliance on Laws About Alternative Disputes Resolution Institutions for Shariah Financial Institutions: Coverage and Elements

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Abstract--Shariah compliance is a special feature of Shariah financial institutions. Therefore, the paradigm of Shariah compliance has changed into an instrument for Shariah financial institutions. This article aims to find the coverage and elements of Shariah compliance, in laws about alternative dispute resolution institutions, especially for Shariah financial institutions in Indonesia. With qualitative analysis, this study uses a philosophical, historical, and analytical critical approach to the relevant laws. The results of this study are known that the Shariah compliance instrument covers all operational aspects of each Shariah financial institution, from the preparation of the institution to the completion of the agreement with customers. Therefore, "Shariah compliance" needs to be specifically and clearly regulated, in laws about Islamic financial institutions. In the context of legislation on alternative dispute resolution institutions, in order to be in accordance with the needs of Shariah compliance, it must meet the following elements: 1) clauses regarding the obligations of all parties concerned, to take attention to aspects of Shariah compliance; 2) Shariah competency standardization for arbitrators/ adjudicators through professional certification; 3) the obligation for arbitrators/ adjudicators to use references that are appropriate or not contrary to Shariah principles; 4) There is certainty that the execution of the decision of the arbitrator/ adjudicator is in line with the Shariah financial institutions philosophy. Overall, proper attention to Shariah compliance can increase the trust of Shariah financial institutions customers.

Keywords: *Shariah compliance, laws, alternative disputes resolution institutions, Shariah financial institutions*

I. INTRODUCTION

The Islamic finance industry in the world is currently in a rapid development. This is in line with Ernst & Young's research which revealed that assets of Islamic banking in the world reached 1.7 trillion in 2013. [1]Based on research by Banker in 2013, the percentage of growth in the Islamic financial industry reached 15% to 20% per year. [2]

In Indonesia, the development of Islamic banking continues to develop. Based on Sharia banking statistics report in October 2019 from the Indonesian Financial Services Authority, the assets of sharia banks in Indonesia reached 333.790 trillion rupiah. This data does not include sharia business units with total assets of 166.190 billion rupiah. So that the total assets of Islamic banks and

Islamic business units in Indonesia are 499,981 billion rupiah. [3]

The increasing presence of Islamic banking needs to be accompanied by the development of effective regulations and supervision. So that state regulations on Islamic financial institutions must be in accordance with the nature of sharia compliance, which is in accordance with the Qur'an and Al Hadith. Sharia compliance is a standard of specialization in financial products and services that can provide competitive advantages. [4] Including alternative dispute resolution is more desirable than the settlement process through litigation because it is more flexible, privacy, efficient, neutral, and gives parties the power to make choices. [5]Therefore alternative dispute resolution in sharia cases also needs to have regulations in accordance with sharia principles. [6]

This article aims to find the scope and elements of sharia compliance, in legislation related to Alternative Dispute Resolution Institutions, especially for sharia financial institutions in Indonesia.

II. RESEARCH METHOD

This research uses qualitative approaches to examining social phenomenon about sharia principles. This approach used to describe initial stages, from which the researchers often select to derive an understanding of key patterns or themes. [7] Then a philosophical, historical, and analytical critical approach to legislation related to shariah compliance is used in analyse about coverage and elements of Laws about Alternative Disputes Resolution Institutions for Shariah Financial Institutions

III. FINDINGS AND DISCUSSION

Shariah is an Islamic law derived from the divine revelation and practice of the prophet; namely, Al-Quran and al-Hadith. Shariah prohibits elements such as usury (*riba*), gambling (*maysir*) and uncertainty (*gharar*). [8]

The purpose of shariah compliance is that regulations regarding sharia compliance come from the Qur'an, Hadith and Ijma of the scholars so that the nature of sharia compliance is still broadly outlined.[9]This is included in

Islamic Corporate Governance (ICG) in Islamic financial institutions. ICG is different from Good Corporate Governance (GCG) which has a lot of research on GCG. Sharia compliance research is still small compared to non-sharia compliance. [10]

The Shariah compliance instrument covers all operational aspects of every Islamic financial institution, since the preparation of the institution, [11] until the completion of the agreement with the customer. Therefore, "Shariah compliance" needs to be specifically and clearly regulated, in legislation relating to Islamic financial institutions. In the context of legislation on alternative institutions.

The urgency of the suitability of laws and regulations with sharia principles has a big influence on the success of the Islamic financial system in a country. [12] From the results of this study, the dispute resolution is known, in order to be in accordance with the needs of Shariah compliance, it must meet some elements below.

First is clause on the obligation of all parties concerned, to pay attention to aspects of sharia compliance; What if the parties agreed to use sharia agreements but were not allowed by state regulations, this would certainly be from the validity of the agreement to the settlement of the dispute. So, the contract must write the dispute resolution mechanism in accordance with the sharia principle. [13]

It is the case in the UK that the law that applies to a contract must be the law of the United Kingdom instead of the law of the country. Sharia law cannot apply to contracts. However, it is still possible to include as stipulations on contracts certain principles of Sharia law, provided there is certainty about what is being included, and there must be strong evidence of the religious motivation of the opposing party to depend on whatever superiority flows from agreement structure. [14]

Second is standardization of sharia competence for arbitrators/ adjudicators through professional certification; This is in line with Oseni's research [15] which mentions the importance of standardizing human resources who master the principles of sharia in the Islamic financial industry. So, it needs standardization by the authorized institutions and training by expert institutions.

Third is the obligation for arbitrators/ adjudicators to use references that are appropriate or not contrary to Islamic principles; In line with Haqqi's opinion that dispute resolution in the case of Islamic financial institutions must be in accordance with the Sharia Principal. [16]

Lastly there should be certainty that the execution of the decision of the arbitrator / adjudicator is in line with the Shariah Financial Institution philosophy. Overall, proper attention to sharia compliance can increase the trust of Shariah Financial Institution customers.

In connection with the executive power of the decisions of alternative institutions, dispute resolution is considered less strong and does not meet Islamic principles. As in Indonesia in the arbitration law and the settlement of Indonesian disputes. That the execution of the arbitration award in all decisions that are not made voluntarily by the parties is given to the District Court. [17]

The foregoing, is the potential for dispute execution that does not meet the standards of sharia principles. District Courts are general courts that have judges with legal competence with general standards as well. The execution should be carried out in a court that has a judge who has scientific competence in the field of Islamic economic law.

Judges who do not understand sharia principles may carry out executions that are not in accordance with sharia principles. such as mixing usury funds with compensation or allowing compensation from the pork trade business. This is line with Ainley research that in sharia dispute the western court will render verdict. [18]

Indonesia as a former Dutch colony has become an adherent of civil law. This makes the importance of a written law for every aspect of state life in Indonesia. Included in the settlement of civil disputes outside the litigation path. So, every aspect in Indonesia have a legal basis as a reason to take action.

What is the legal basis for Islamic financial institutions in Indonesia? The regulations governing Islamic financial institutions in Indonesia are regulated in state laws and regulations of other state institutions. The regulations that apply to Islamic banks are Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. In the Amendment Law, the term bank with sharia principles has been used. The Amendment Law also regulates dual system banking, namely conventional and sharia. The term sharia bank is emphasized by the birth of Law no. 21 of 2008 concerning Islamic Banking.

In addition, non-bank Islamic financial institutions are also developing, namely Sharia Insurance Institutions, Sharia Capital Markets, Sharia Pawnshops, Sharia DPLK (Financial Institution Pension Funds), Sharia Cooperatives, Sharia Principles Companies, *Wakaf* Bodies, *Amil Zakat* Agencies, and BMT (*Baitul Mal Wat Tamwil*).

The development of Islamic financial institutions, both banks and non-banks, was followed by the development of regulations on Islamic economic law which is the legal umbrella for the enactment of Islamic financial institutions in Indonesia. These regulations are in the form of Laws, Government Regulations, Ministerial Regulations, Bank Indonesia Regulations, BAPEPAM-LK Regulations (Capital Market Supervisory Agency-Financial Institutions) which are now referred to as OJK

(Financial Services Authority), National Sharia Council Fatwa, and PERMA (Supreme Court Regulation) No. 2 of 2008 concerning Compilation of Sharia Economic Laws, which are compiled as guidelines for religious court judges in examining and deciding Sharia economic cases.

In law number 30 of 1999 there is no obligation for the parties to pay attention to aspects of sharia compliance in the agreement. So that sharia standards in an agreement can be said not ordered by law. In the law concerning arbitration and alternative dispute resolution there is no obligation for arbitrators and adjudicators to have certification in the field of sharia. It is also in line that there must be material laws that are used in dispute resolution must be in accordance with sharia law.

Law concerning arbitration and alternative dispute resolution have no single article that gives certainty about the execution of the decision of the arbitrators and adjudicators in accordance with sharia principles. There is not even a word of sharia in the law. This proves that the law is not in accordance with sharia principles. State law should be able to adjust to the needs of the community [19] and the spiritual rights of the people. [20]

Law number 30 of 1999 provides other options for Indonesian citizens to use case resolution outside government courts. Based on this law, the case that can be resolved through arbitration and dispute resolution is a civil case whose binding agreement contains a clause that dispute resolution is carried out through arbitration. Article 5 paragraph (1) states that disputes that can only be carried out through arbitration are disputes in the field of trade and concerning rights which according to the laws and regulations are fully controlled by the disputing parties. Article 5 Paragraph (2) also explains that disputes that cannot be resolved through arbitration are disputes which according to the laws and regulations cannot be made peaceable.

IV. CONCLUSION

The state's law must be in accordance with the source of law and the spirit of law that is in the community. In law number 30 of 1999 concerning arbitration and alternative dispute resolution there is not enough coverage and element to accommodate sharia principles in Indonesia.

Shariah compliance that accommodate sharia principle in arbitration or adjudication must have some elements. First the clauses regarding the obligations of all parties concerned, to take attention to aspects of Shariah compliance. Second shariah competency standardization for arbitrators/ adjudicators through professional certification. Third the obligation for arbitrators/ adjudicators to use references that are appropriate or not contrary to Shariah principles. Fourth There is certainty that the execution of the decision of the arbitrator/ adjudicator is in line with the Shariah financial institutions philosophy.

A state law should have contents that are in accordance with the needs of the people's spiritual right, namely the right to practice his religion as a whole. So, it is necessary to make a new law on alternative standards for resolving disputes outside the court in accordance with the sharia principle.

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