

The Enforcement of Small Claim Court of Sharia Economics in Religious Courts According to Sharia Economic Principles

(Case Study of Religious Courts in West Java)

Neni Sri Imaniyati*, Ratna Januarita, Faiz Mufidi

Law Science, Faculty of Law
UNISBA
Bandung, Indonesia
*imaniyati@yahoo.com

Panji Adam Putra, Yoghi Arif

Postgraduate and graduate student
Law Science
UNISBA
Bandung, Indonesia

Abstract—The Supreme Court has issued PERMA Number 4 Year 2019 as a follow-up to PERMA Number 14 Year 2016 concerning Procedures for Settlement of Sharia Economic Disputes. Article 3 Paragraph (2) of PERMA stipulates that the settlement of sharia economic disputes can use a small claim court. The regulation was created to meet the need for a quick dispute resolution and provide a sense of justice to the disputing parties. The purpose of this study is to describe the implementation of small claim court mechanism of sharia economics in the religious courts in West Java and to explain the enforcement of small claim court of sharia economics at the religious courts in West Java in the principles of sharia economic dispute resolution. The research was conducted using a normative juridical approach with descriptive analytical research nature and secondary data. It used qualitative data analysis through legal interpretation. The research site was the Religious District Court in West Java. The results can be concluded that the implementation of dispute resolution process of small claim court of sharia economics in Religious Courts in West Java was seen from the mechanism, timing, and execution using the same mechanism as dispute resolution in general. The enforcement of small claim court of sharia economics lawsuits in Religious Courts in West Java related to the principles of sharia economics dispute resolution have not fulfilled the substance, structure, and legal culture aspects.

Keywords—*small claim court, dispute, sharia economics, sharia economic principles*

I. INTRODUCTION

The development of sharia economics in Indonesia shows progress in various sectors, one of which is banking sector [1]. Based on OJK data in 2021, it is stated that currently there are 34 sharia banking business actors in Indonesia, consisting of 14 Sharia Commercial Banks (BUS), 20 Sharia Business Units (UUS), and 163 Rural Banks (BPRS) [2]. This development needs to be the attention of various parties, one of which is for dispute resolution institutions, because the sharia economics

and sharia business activities should be anticipated against the potential for conflict disputes that may occur [3].

A sharia economic dispute is a conflict between two parties in an economic activity based on sharia economic principles and basis, caused by one party that defaults and/or commits an unlawful act that causes harm to the other party [4]. The basis of an economy is an activity that cannot be separated from property and objects. An act can be included into an economic activity when an economic transaction between one party and another causes a dispute.

The process of settling sharia economic disputes is divided into two, namely litigation and non-litigation settlement [5]. Disputes that exist in the community require a quick and simple resolution, so that the cost of the case is relatively less, but the results of the settlement can be acceptable to both parties without causing new problems or prolonging the dispute [6].

Sharia economic disputes have increased from 2017 to 2019. As stated by Amran Saudi, there were 229 cases in 2017, 287 cases in 2018, and 312 cases in 2019. In the area of Religious High Court, West Java, of 26 first-level Religious Courts, there were 13 cases in 2018, 47 cases in 2019, and 35 cases in 2020. It is seen that sharia economic cases in the last three years have increased [7].

The sharia contracts-based business development has significantly resulted in the occurrence of some disputes between sharia economic actors, so the Supreme Court issued Supreme Court Regulation (PERMA/Peraturan Mahkamah Agung) Number 14 Year 2016 on December 22, 2016, concerning the Settlement of Sharia Economic Disputes. Article 3 paragraph (2) of PERMA stipulates that the settlement of sharia economic disputes can be filed and resolved in the form of a small claim court or a lawsuit with the usual procedure. This regulation was made to meet the need for a speedy dispute resolution and provide justice to the disputing

parties. This study aims to describe the implementation of small claim court mechanism of sharia economics in the Religious Courts in West Java and explain the enforcement of small claim court of sharia economics in the Religious Courts in West Java in the principles of sharia economic dispute resolution.

II. METHODS

This research used a normative juridical approach, namely by reviewing or analyzing secondary data in the form of primary and secondary legal materials by understanding the law as a set of regulations or positive norms in the applicable legislation. Therefore, this research includes library research, namely research on secondary materials [8].

According to Rianto Adi [9], the research specification was descriptive analytical, to describe the problems that exist in the present (actual problems), by collecting, compiling, clarifying, analyzing, and interpreting data. Descriptive aims to describe the observed data without testing the hypotheses.

The type of data in this research was secondary data in which laws and regulations have relevance to the focus of the discussion, namely PERMA Number 14 Year 2016 on December 22, 2016, concerning the Settlement of Sharia Economic Cases. The data collection method used a literature study, namely by reviewing and analyzing the mechanism of small claim court of sharia economy and the enforcement of sharia economic law in the principle of sharia economic dispute resolution in the Religious Court, West Java. The data analysis method used a qualitative method.

III. DISCUSSION

The implementation of small claim court in the sharia economic disputes settlement in religious courts is connected to sharia principles, carried out in various ways. Frans Hendra Winarta [10] says that conventionally, dispute resolution in the business world, such as in trade, banking, mining projects, oil and gas, energy, infrastructure, and so on is carried out through the litigation process. This process places the parties against each other. Besides that, litigation dispute resolution is the final means (*ultimum remedium*) after other dispute resolution alternatives do not produce results. Rachmadi Usman [11] agrees that apart from going to court (litigation), dispute resolution can also be resolved out of court (non-litigation), which is commonly known as Alternative Dispute Resolution (ADR).

The purpose of a process before a court is to obtain legal certainty in a case, in other words, to ensure the real and duly legal relationship between the two litigating parties, and to achieve the implementation of court's decision. Thus, the rights and obligations given by the material law's determination or decision of the court can be realized [12].

Broadly speaking, sharia economic disputes can be classified into the following three parts [13]:

1. Disputes in the field of sharia economics between financial institutions and sharia financing institutions and their customers.
2. Disputes in the field of sharia economics between financial institutions and sharia financing institutions.
3. Disputes in the field of sharia economics between Muslim, in which the agreement is clearly stated that the conducted business activities are based on sharia principles.

The absolute competence of the Religious Courts to resolve sharia economic disputes has several advantages and disadvantages that can be used in resolving sharia economic disputes [14].

- The Religious Courts have human resources who already understand sharia issues, they just need to increase their insight and knowledge through regular education and training.
- The Religious Courts have material laws that are quite adequate, especially those related to sharia economics, including in the form of *muamalah fiqh* books which are still contextual in their application.
- The existence of the Religious Courts' offices covers almost all districts and municipalities throughout Indonesia. Most of them have applied internet-based information technology networks, so that when compared to Basyarnas, whose existence is still concentrated in the capital area, the Religious Courts have the advantage of ease of service.
- The Religious Courts obtain the support of the majority of Indonesian population, namely Muslim community who currently have a high spirit in upholding the religious values they profess.
- There is strong political support because the Government and the House of Representatives (DPR/*Dewan Perwakilan Rakyat*) have agreed to expand the authority of the Religious Courts on February 21, 2006, so that Religious Court Law (UUPA/*Undang-Undang Peradilan Agama*) Number 3 Year 2006 concerning a necessity in fulfilling existing legal demands, namely a paradigm shift from family courts to modern courts.
- There is support from the banking authority (Bank Indonesia) and from Islamic financial institutions around the world

The substance of small claim court contained in PERMA Number 2 Year 2015 as amended by PERMA Number 4 Year 2019 was initially enacted specifically for general courts, not for religious courts. Only a year later, the Supreme Court issued PERMA Number 14 Year 2016 stating that sharia economic disputes can use a small claim court by referring to PERMA Number 2 Year 2015 as amended by PERMA Number 4 Year 2019.

In line with this, a small claim court is basically intended not to enforce Islamic material law, especially sharia economics whose examination must be based on sharia principles. However, the conditions found from the two Religious Courts that became the object of research, namely the Bandung Religious Court and Garut Religious Court, had similarities and differences in the settlement of sharia economic disputes with a small claim court, which in general the description of the problem is outlined in the table 1.

TABLE I. SETTLEMENT OF SHARIA ECONOMIC DISPUTES IN THE RELIGIOUS COURTS

Legal System	Reality
Legal Substance	There is no specific regulation or legislation that regulates sharia economics. The lack of clarity on sharia principles must refer to DSN-MUI Fatwa, Bank Indonesia Regulations, Financial Authority Service (OJK/Otoritas Jasa Keuangan) Regulation, Sharia Banking Laws, and Sharia Economic Law Compilation.
Legal Structure	Most apparatus of Religious Courts who have a background in sharia and legal education do not understand both macro and micro economic activities, the real sector business, production, distribution and consumption, and the limited number of judges who have certification and qualifications as sharia economic judge
Legal Culture	There is a stigma from the community that the Religious Courts only handle cases in the field of marriage law, so trust in the Religious Courts in sharia economic settlement is still lacking.

In the process of examining sharia economic disputes, judges must pay attention to the aforementioned values so that judge's decision can bring justice even though formally and materially, it is not intended to enforce Islamic law. In the relevance of small claim court examination process regulated in PERMA Number 4 Year 2019 with PERMA Number 14 Year 2016 with sharia economic principles does not contradict as described in the following table 2:

TABLE II. THE RELEVANCE OF THE SIMPLE LAWSUIT EXAMINATION MECHANISM WITH SHARIA PRINCIPLES

Aspects/Types	The Provision of Small Claim Court	Sharia Economics Principles
Registration Process	There are certain conditions that can be done with a small claim court, such as the value of the material object is not more than Rp. 500,000,000.00 (five hundred million rupiahs); the parties must be domiciled in the same court area; and the case is not under the authority of a special court, this is done by the clerk.	This provision can be said to be a form of kindness (<i>Al-Ihsan</i>), so that resolving disputes with a small claim court finds an ease if certain limitations can make it easier. In addition, it can include the principle of <i>mas'uliyah</i> (responsibility) in which the clerk of the Religious Courts openly checks the completeness of the claim from the parties, as a form of service.
Peace Efforts	Judges give advice in	These efforts only

	the trial.	provide advice, do not make efforts such as mediation or other deliberation, so that this does not have the power of coercion on the disputing parties.
Preliminary Examination Process	In this process, before entering the trial, judges will examine the lawsuit description the available evidence whether it is in the small claim court category or not. Preliminary examination time is three days from the appointment of the examining judge.	This is a form of caution from the judges before examining a small claim court. This process is a form of implementing the principle of justice to achieve a benefit.
Trial Stage	Settlement of sharia economic disputes with a small claim court is limited to a maximum of 25 working days. The trial process is only claims, answers and decisions. Evidence is attached to the answer and lawsuit directly.	In this process, there are several relevant principles, namely the principle of justice, the principle of <i>mas'uliyah</i> (responsibility), the principle of <i>wasathaniyah</i> (balance), and the principle of honesty/truth. However, the implementation of the examination is more than 25 days, so that this is detrimental to the disputing parties.
Decisions	Decisions expressly imply that all court decisions and determination must contain sharia principles as the basis for adjudicating.	This process is a form of implementing the principles of justice and <i>mas'uliyah</i> (responsibility), because the decision is the judge's crown and line of thought.
Execution	Execution is regulated on the security time in the execution process.	This process is considered contrary to sharia principles, especially the principles of goodness, honesty or truth and responsibility.

From the table 2 above, the execution is not in accordance with sharia principles. When the decision has been given by the judge, the party who is given the obligation to pay must carry out its obligation. If it is associated with sharia principles, this becomes part of moral-based honesty, whose one of the indicators is no coercion. Besides that, if there is an execution, it will cause malice on both sides. The execution process is not only certainly coercive, but its implementation also involves the security apparatus for the sake of smoothness, so it is feared that it will exacerbate the problem, not be a solution. In philosophical dispute resolution, maintain brotherhood [15] must be carried out, because this is the foundation of social, legal, and behavioral building. Additionally, this is also contrary to the principle of justice in which in Islamic law justice shows security, strength and unity.

It is no longer an open secret that the execution of decisions in Indonesia often reaches a dead end, in which external factors often heat up the process, as a result of which the problem becomes increasingly sharp and has bad consequences for the parties. It should be aware that the party who is declared to have paid must carry out his obligations in order to maintain security and unity to be in accordance with the principle of justice.

IV. CONCLUSION

The implementation of a small claim court on the settlement of sharia economic disputes in the Religious Courts still have processes that are contrary to sharia economic principles, including the execution process which is still not in accordance with the principles of justice and the principle of honesty. The examination time exceeds 25 days of working that is not in accordance with PERNA Number 4 Year 2016, so that it is contrary to the principle of justice and the principle of responsibility.

The enforcement of small claim court of sharia economic in the Religious Court in West Java is related to the principles of sharia economic dispute resolution. It has not met the aspects of substance, structure, and legal culture.

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