

Islamic Economic Dispute Resolution

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Info Artikel	Abstract
Article History Received : 2022-07-03 Revised: 2022-07-18 Published: 2022-07-30 Keywords: <i>Economics; Settlement; Dispute; Sharia.</i>	The rapid development of Islamic economics and finance in Indonesia has increased the potential for disputes due to differing understandings of contracts, breaches of contract, and inconsistencies in practices with Islamic principles. This situation demands a dispute resolution mechanism that can guarantee legal certainty while remaining grounded in Islamic values. This study aims to examine the definition and causes of Islamic economic disputes, the principles for their resolution, available mechanisms, and the authorized institutions in Indonesia. The method used is a normative juridical approach with an analysis of Islamic legal sources and relevant legislation. The study results show that, from an Islamic legal perspective, dispute resolution emphasizes the principles of justice (al-'adl), public interest (al-maslahah), and balance (tawazun) through deliberation (shura), reconciliation (sulh), and arbitration (tahkim). Meanwhile, under Indonesian positive law, dispute resolution is conducted through litigation in Religious Courts and non-litigation methods such as mediation and arbitration through BASYARNAS. These two approaches complement each other by ensuring legal certainty, efficiency, and compliance with sharia principles. Thus, the resolution of Islamic economic disputes in Indonesia is an integration of Islamic law and positive law that not only aims to resolve conflicts, but also maintains the values of justice, ethics, and sustainability of the Islamic economy.

I. INTRODUCTION

Sharia economic disputes generally arise from differing interpretations of contracts, inconsistent contract implementation, breach of contract, and violations of Sharia principles. The complexity of financial instruments and the involvement of multiple parties in transactions contribute to the increased risk of conflict. Therefore, resolving Sharia economic disputes requires not only legal certainty but also compliance with the normative values of Islamic law.

Normatively, Indonesia already has a legal framework governing the resolution of Sharia-compliant economic disputes through litigation and non-litigation channels. Religious courts are granted absolute authority to handle Sharia-compliant economic cases, while alternative mechanisms such as mediation and arbitration through the National Sharia Arbitration Board (BASYARNAS) are presented as more flexible and efficient resolution efforts. However, the effectiveness of this legal framework's implementation remains an issue that requires

critical examination.(Hariyanto, 2014a)

Various empirical issues demonstrate a gap between legal norms and practice. Low public legal literacy, potential overlapping regulations, and limited human resources competent in Islamic economic law hinder optimal dispute resolution. Furthermore, the suboptimal integration of Islamic principles and positive legal mechanisms also has the potential to lead to inconsistencies in decisions and dispute resolution processes.

Given these conditions, a study of Islamic economic dispute resolution is relevant and important. This research seeks to comprehensively analyze the concepts, principles, mechanisms, and institutions of Islamic economic dispute resolution in Indonesia, while also identifying the various challenges faced in its implementation.

II. RESEARCH METHODS

This study employs a normative legal research approach (normative juridical), focusing on the study of applicable legal norms, both derived

from Islamic law and positive law in Indonesia. This approach was chosen because the study aims to analyze the concepts, principles, and mechanisms for resolving Islamic economic disputes based on relevant laws and legal literature.

The approaches used in this research include a statutory approach and a conceptual approach. The statutory approach is conducted by examining various regulations related to the resolution of Islamic economic disputes, such as laws, Supreme Court regulations, and other relevant provisions. Meanwhile, the conceptual approach is used to understand the principles of Islamic law that form the basis for resolving Islamic economic disputes.

The legal sources used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations related to Islamic economics and dispute resolution. Secondary legal materials consist of scientific literature such as books, journals, and previous research relevant to the research topic. Tertiary legal materials include legal dictionaries and encyclopedias that support conceptual explanations.

The legal material collection technique was conducted through library research, which involved reviewing and examining various written sources relevant to the research object. Furthermore, the legal material was analyzed qualitatively using descriptive-analytical methods, systematically describing and interpreting the data obtained to gain a comprehensive understanding of Islamic economic dispute resolution in Indonesia.

III. RESULTS AND DISCUSSION

A. Research result

Based on a normative study of Islamic legal sources and positive law in Indonesia, it was found that Islamic economic dispute resolution has a relatively comprehensive structure, both in terms of principles, mechanisms, and institutions. From an Islamic legal perspective, dispute resolution is based on the principles of justice (al-'adl), benefit (al-maslahah), and balance (tawazun), which positions conflict resolution not only as a means of enforcing the

law but also as a means of maintaining social harmony and moral responsibility.

Dispute resolution mechanisms in Islamic law include deliberation (shura), conciliation (sulh), and arbitration (tahkim). These three mechanisms demonstrate that the preferred approach is peaceful and consensual resolution, avoiding protracted conflict. This demonstrates that Islamic law has both a preventative and solution-oriented nature in addressing economic disputes.

On the other hand, under Indonesian positive law, the resolution of Sharia-compliant economic disputes has been accommodated through a fairly clear regulatory framework. Religious Courts have absolute authority to handle Sharia-compliant economic disputes through litigation. Furthermore, non-litigation mechanisms such as mediation and arbitration are available through the National Sharia Arbitration Board (BASYARNAS), which offers a faster and more flexible resolution process.

The legal sources used in resolving Islamic economic disputes encompass two main dimensions: Islamic legal sources (the Qur'an, Hadith, Ijma', and Qiyas) and positive legal sources in the form of national legislation. The integration of these two legal sources demonstrates an effort to harmonize normative religious values and the state legal system.(Umam, 2016)

However, the research also uncovered several crucial issues. First, low public legal literacy leads to less than optimal utilization of available dispute resolution mechanisms. Second, there are indications of regulatory disharmony, potentially leading to legal uncertainty. Third, limited human resources with specialized competencies in Islamic economic law hinder its effective implementation. Fourth, there remains a gap between ideal Islamic principles and dispute resolution practices in the field.(Hardiati et al., 2021)

B. Discussion

Research findings indicate that conceptually, Islamic economic dispute resolution in Indonesia has a strong and unique foundation because it integrates two legal systems: Islamic law and positive law. This integration is fundamentally advantageous because it

combines moral-spiritual dimensions with formal legal certainty. Principles such as al-'adl, al-maslahah, and tawazun provide an orientation toward substantive justice, which is often not fully achieved in the more formalistic positive law approach.

However, this integration has not been fully implemented optimally in practice. One major problem is the tendency to formalize Sharia law within the judicial system, which has the potential to diminish the essence of the substantive values that should underlie dispute resolution. In some cases, dispute resolution still emphasizes procedural aspects over achieving holistic justice.

Furthermore, the duality of dispute resolution mechanisms—between litigation and non-litigation—does provide flexibility, but it also has the potential to cause confusion for the parties, especially those with low levels of legal literacy. A lack of understanding of the advantages and disadvantages of each mechanism can lead to the selection of an inappropriate resolution path, thereby reducing the effectiveness of dispute resolution.(Hernawan & Abdurrohman, 2022)

From an institutional perspective, the Religious Courts and the National Sharia Financial Supervisory Agency (BASYARNAS) play a strategic role in resolving Sharia economic disputes. However, the effectiveness of these two institutions is still influenced by the quality of their human resources, particularly in terms of understanding the multidisciplinary nature of Sharia economic law. This limitation has the potential to impact the quality of decisions and the consistency of the application of Sharia principles.

Furthermore, the issue of regulatory harmonization is also a significant issue. Overlapping or inconsistencies between various laws and regulations can create legal uncertainty and open up opportunities for differing interpretations. This situation contradicts the primary goal of dispute resolution, which is to provide certainty and justice for the parties.

Critically, it can be argued that the main challenge in resolving Islamic economic disputes in Indonesia lies not in the absence of norms, but

rather in their implementation and consistency. Therefore, reform efforts are needed that are not only normative, but also structural and cultural. These reforms can be implemented through regulatory harmonization, increasing the capacity of law enforcement officials, and strengthening public legal literacy.

Thus, the success of resolving Sharia-compliant economic disputes is determined not only by the comprehensiveness of the legal framework, but also by the extent to which Sharia values can be internalized in law enforcement practices. Without this, the integration of Islamic law and positive law has the potential to be merely symbolic and unable to deliver substantive justice.(Hariyanto, 2014)

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the research and discussion, it can be concluded that the resolution of Islamic economic disputes in Indonesia is the result of an integration of Islamic law and positive law. In Islamic law, dispute resolution emphasizes the principles of justice (al-'adl), public welfare (al-maslahah), and balance (tawazun), which are realized through mechanisms of deliberation (shura), reconciliation (sulh), and arbitration (tahkim). This approach is oriented not only toward conflict resolution but also toward achieving moral and spiritual values in economic activities.

Meanwhile, under Indonesian positive law, the resolution of Sharia-compliant economic disputes has a clear normative basis, both through the authority of the Religious Courts and through non-litigation mechanisms such as mediation and arbitration through the National Sharia Arbitration Board (BASYARNAS). Both mechanisms provide alternative dispute resolution options that prioritize legal certainty, efficiency, and flexibility.

However, various challenges remain in its implementation, such as low public legal literacy, potential regulatory disharmony, limited human resources, and gaps between legal norms and practice. These conditions demonstrate that the effectiveness of Sharia economic dispute resolution depends not only on the availability of regulations but also on the quality of

implementation and understanding of the parties involved.

Thus, it can be emphasized that the resolution of Sharia-compliant economic disputes in Indonesia is not yet fully optimal. Strengthening regulatory harmonization, increasing the capacity of dispute resolution institutions, and providing legal education to the public are needed to ensure the dispute resolution system operates more effectively, fairly, and in accordance with Sharia principles, both substantively and formally.

B. Suggestion

Based on the results of research on the resolution of sharia economic disputes in Indonesia, there are several suggestions that can be put forward as an effort to increase the effectiveness of the dispute resolution system.

First, the government and relevant institutions need to strengthen the harmonization of regulations governing the resolution of Sharia-compliant economic disputes. This is crucial to avoid potential regulatory overlap and to create greater legal certainty for Sharia-compliant economic actors.

Second, there is a need to improve the quality and competence of human resources, particularly judges in Religious Courts, arbitrators in BASYARNAS, and other practitioners of Islamic economic law. This improvement can be achieved through ongoing training, certification, and simultaneously strengthening understanding of Islamic law and positive law.

Third, there is a need to improve public legal literacy regarding Sharia economic dispute resolution mechanisms. Broader and more easily understood dissemination is crucial so that the public can choose dispute resolution channels that are appropriate, effective, and tailored to their needs.

Fourth, sharia economic dispute resolution institutions such as the Religious Courts and BASYARNAS need to continue to improve the quality of service, transparency of processes, and efficiency in resolving cases so that public trust in these institutions continues to increase.

Fifth, the integration between sharia principles and positive legal practices needs to be continuously strengthened so that it is not only

normative in nature, but is also truly implemented substantively in every dispute resolution process.

With these efforts, it is hoped that the Islamic economic dispute resolution system in Indonesia can run more effectively, fairly, and be able to answer the increasingly complex challenges of Islamic economic development.

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