

DECISIONS AND AUTHORITY OF THE RELIGIOUS COURTS ON SHARIA ECONOMIC DISPUTES

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ABSTRACT

This article discusses one of the court products focused on the verdict. The presentation of the decision is divided into three sub-discussions, namely the understanding of court decisions, types and developments of court decisions in sharia economic cases, and legal remedies against sharia economic decisions. This article aims to find out how the decisions of Religious Courts regarding sharia economic disputes are used. The method used in this article is normative juridical, which is carried out qualitatively. The materials in this article come from laws, decisions of the Constitutional Court, decisions of the Supreme Court, books, scientific articles from journals, internet websites and so on related to the theme being studied, namely Religious Court decisions on sharia economics disputes. The data analysis technique used content analysis techniques. The results of the analysis show that the court's decision is the final result or conclusion in written form, which is decided by a state official (judge) who is given the authority to end or settle a lawsuit because there is contention between the disputing parties in court which must be submitted in a hearing.

Keywords: *Decision, Authority, Religious Court, Sharia Economic Dispute*

ABSTRAK

Artikel ini membahas satu di antara produk pengadilan yang difokuskan pada putusan. Dalam pemaparan tentang putusan dibagi menjadi tiga sub pembahasan yaitu pengertian putusan pengadilan, jenis dan perkembangan putusan pengadilan dalam perkara ekonomi syariah, dan upaya hukum terhadap putusan ekonomi syariah. Artikel itu bertujuan untuk mengetahui bagaimana putusan pengadilan agama tentang sengketa ekonomi syariah. Metode yang digunakan dalam artikel ini adalah yuridis normatif yang dilakukan secara kualitatif. Bahan-bahan dalam artikel ini berasal dari Undang-Undang, Putusan Mahkamah Konstitusi, Putusan Mahkamah Agung, buku-buku, artikel-artikel ilmiah berasal dari jurnal, website internet dan lain sebagainya yang berkaitan dengan tema yang dikaji yaitu tentang putusan pengadilan agama tentang sengketa ekonomi syariah. Teknik analisis data menggunakan teknik analisis isi (*content analysis*). Hasil analisis menunjukkan putusan pengadilan adalah hasil akhir atau kesimpulan dalam bentuk tertulis yang diputuskan oleh pejabat negara (hakim) yang diberikan wewenang dalam mengakhiri atau menyelesaikan suatu perkara gugatan karena adanya kontentius antara pihak-pihak yang bersengketa di pengadilan yang di harus disampaikan dalam sidang.

Kata Kunci: Putusan, Kewenangan, Pengadilan Agama, Sengketa Ekonomi Syariah

A. INTRODUCTION

In principle, economic activity is related to property and material matters. This activity can be established if a transaction between one economic actor and another. However, in its implementation, economic activities are not always smooth. Sometimes disputes arise so that disputes are possible. Therefore, legal instruments are needed to solve it, which are expected to provide justice. No exception in Islamic economics (Lathif & Habibaty, 2019 : 77).

Islamic economics is an inseparable unit with comprehensive and universal Islamic teachings. The nature and scope are broad and flexible, especially in the field of muamalah, so that it can be applied to every community, including non-Muslims (Ahmad, 2014: 477). The development of the Islamic economy in Indonesia is currently proliferating (Al Hakim, 2014: 270). This can be seen in Islamic Financial Institutions (LKS), both in banks and non-banks, growing and developing with Islamic economic products. Situations like this require regulations that specifically regulate the Sharia economy's types, products, and structures, including in settlement of sharia economic disputes to encourage the birth of several rules, both laws, presidential instructions, Supreme Court regulations, etc. (Imaniyati, Nurhasanah, & Adam, 2017 : 155–156).

Indonesia is a country based on law (Khairuddin, 2021: 131). Normatively, if the dispute resolution clause still contains a choice of forum in the form of a court within the general court environment, then the clause in question is null and void. This is contrary to the rule that imperative legal provisions cannot be deviated through an agreement, even though both parties agree. The decision of the Constitutional Court confirms the attributive competency of the courts within the Religious Courts in the field of sharia banking. Agreement in choosing a forum can only be realized in the non-litigation realm (Umam, 2016, : 710).

The Religious Courts are one of the implementers of judicial power for the people seeking justice who are Muslim, regarding certain civil cases regulated in Law Number 7 of 1989 concerning the Religious Courts as amended in the first amendment to Law Number 3 of 2006 (Nurhayati, 2016: 306; A. Rasyid & Putri, 2019, : 160; Uzma, 2014, : 388), and the second amendment to Law Number 50 of 2009. The settlement of sharia economic disputes is divided into two parts: disputes in sharia

banking and non-banking (Restudiyani, 2018: 70).

Based on the description above, this article discusses one of the products of Religious Courts that are focused on "decision". The presentation of Religious Court decisions is divided into three sub-discussions: the definition of court decisions, types of court decisions, and legal remedies against court decisions. This article aims to determine how Religious Court decisions regarding sharia economic disputes.

B. RESEARCH METHODS

The method used in this article is normative juridical, which is carried out qualitatively. The normative juridical research method examines the principles of law, legislation, jurisprudence, and the opinions of legal experts and views the law comprehensively (Wahyudin Anugrah, Hamsir, & Anis, 2020 : 49). This means that law is not only a set of normative rules or the text of the law (law in the book) but also sees how the law works (law in action). The data used in this study is secondary data called legal material (Kamal, 2020: 7). The materials in this article come from laws, Constitutional Court decisions, Supreme Court decisions, books, scientific articles from journals, internet websites, and related to the themes studied, namely Religious Court decisions and sharia economics disputes. Data is obtained by reading, studying, and understanding the materials that have been obtained and collected. The data analysis technique uses content analysis techniques, namely analyzing the contents of laws, decisions, books, articles and other materials related to the topic under study (Hayat & Sukardi, 2020: 169).

C. RESULTS AND DISCUSSION

1. Definition of Religious Court Decision

The verdict is called a *vonis* in Dutch or *al-qada'u* in Arabic, which means the product of a Religious Court because there are two opposing parties in the case, namely the "plaintiff" and "defendant". This kind of court product can be called religion, a "real court product" or *jurisdiction cententiosa*. The decision of the Religious Court (civil court) always contains an order from the court to the losing

party to do something, or to do something, or to release something, or to punish something. So, the dictum verdict is always *condemnatoir*, meaning to punish, or *constitutoir* meaning to create. If it is not obeyed voluntarily, this court order can be ordered to be carried out by force, which is called execution (R. A. Rasyid, 2016: 203).

The judge's decision is a binding law or law between the parties concerned, whereas according to Islamic law, it is a right for the *mahkum-lah* (the winning party) from the *mahkum-alaih* (the defeated party), so there is no difference. Deciding by the judges, in Islamic law is order, and likewise, the contents of the decision must be obeyed by Muslims, this is following the word of Allah in the letter An-Nisa' verse 58, which means *Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing*. Based on the word of Allah s.w.t., it can be understood that the judge in making a decision, in addition to being based on the provisions contained in the Qur'an and Hadith, also sees the provisions made by religious leaders or leaders, and if there is a conflict, return to Allah's law (Qur'an). In addition to the basis for making a decision, the paragraph describes the obligation to obey the law or the decision determined by the judge. Thus, it is clear that the judge's decision has binding power over the disputing person (Huda, 2018: 127).

In the world of justice, there is a distinction between a decision and a judge's determination. A decision is taken to decide or resolve a dispute or dispute that commonly occurs in a court of law called *contentiuse jurisdiction*, for example, a divorce lawsuit, joint property lawsuit, inheritance dispute lawsuit, etc. Meanwhile, a determination is taken in connection with an application often referred to as *voluntair jurisdiction*, such as a polygamy permit, marriage *isbat*, marriage dispensation, *adl* guardian, the appointment of a guardian, adoption of children, etc. The application does not have an element of the dispute so that there is no opposing party, and the product is a determination (Burhanudin, 2015: 26).

As one of the officials of the judicial power who carries out the judicial process, the judge must have responsibility for the court decisions/determinations he makes.

Decisions/stipulations made by judges in court ideally do not cause new problems in society, meaning that the quality of decisions/stipulations affects the authority and credibility of the judiciary itself (Christiawan, 2018: 372).

Rifyal Kaaba, as quoted from Huda, said that three forms of justice must be realized: legal justice, moral justice, and social justice. First, legal justice is justice based on the law, which can be seen from the applicable laws and regulations and from court judges' decisions that reflect the legal justice of the state in a legal form. Second, moral justice is nothing but justice based on morality. Morality is the standard of good and evil. Morality comes from various sources, the most important of which is religion. Third, social justice as one of the basic principles of the state (the fifth principle of Pancasila) is described in three forms of social justice: economic justice, people's welfare, and justice that is realized by the majority of the people can develop (Huda, 2018: 127).

Based on the description above, it can be understood that the judge's decision is a conclusion or final result in the written form taken by the judge as a state official who is given the authority to settle or end a lawsuit because of a dispute (contentious) between the litigants and must be pronounced in a trial that is open to the public (Burhanudin, 2015: 26).

State legal justice that represents moral justice and social justice must exist in Indonesian society. However, the problem does not stop there, harmonizing the three forms of justice in a decision is not impossible, but in practice, it is challenging to realize. In practice, judges sometimes have to face two difficult choices between legal justice itself and moral justice and social justice. Applying one justice and abandoning the other. There comes a time when based on the facts revealed at the trial, and to fulfil moral justice and social justice, judges must "jump" by getting rid of statutory provisions. In conditions like this, legal justice must be sacrificed (Huda, 2018: 127).

2. The Authority of the Religious Courts on the Settlement of Sharia Economic Disputes

The word "authority" is often referred to as "competence", which comes from

the Dutch word *competentie*. These three words are considered to have the same meaning. According to Article 24 of the 1945 Constitution of the Republic of Indonesia which reads: "judicial power is exercised by a Supreme Court and other judicial bodies according to the law." This article states explicitly that the Supreme Court is one of the judicial institutions that exercise judicial power in carrying out judicial functions and authorities assisted with other judicial power bodies (A. Rasyid & Putri, 2019: 164).

Etymologically, according to the Big Indonesian Online Dictionary (KBBI Daring), A dispute is something that causes a difference of opinion, quarrel, or dispute (KBBI Daring, 2021). In terms of terms, a dispute is a conflict between two or more parties that originates from different perceptions of an interest or property right, which can have legal consequences for both and can be given legal sanctions against one of the two (Kamal, 2020, p. 4). Every contract made by the parties must be carried out voluntarily or in good faith. In this case, the contract is also called a contract or agreement, namely, the meeting of the consent given by one party with the acceptance given by the other party legally according to *syar'i law* and has consequenced for the object (Al Hakim, 2014: 271; Nurjaman, Witro, & Hakim, 2021; Witro, Nuraeni, & Januri, 2021). However, not all parties to the contract can fulfil it, resulting in a dispute.

Sharia economic disputes can be classified into three, namely:

- a. Disputes in the field of Islamic economics between financial institutions and Islamic financing institutions and their customers;
- b. Disputes in the field of Islamic economics between financial institutions and Islamic financing institutions;
- c. Disputes in the field of sharia economics between Muslim people, in which the contract agreement is clearly stated that the business activities carried out are based on sharia principles (Kamal, 2020: 4).

Regarding the absolute authority of the Religious Courts, initially, it was regulated in Article 49 of Law Number 7 of 1989 concerning the Religious Courts, whose authority was only limited to the settlement of disputes or civil cases of marriage, inheritance, wills, grants, endowments, alms based on the principle of Islamic personality. The absolute authority of the Religious Courts has been expanded

in resolving sharia economic disputes since the amendment of Law Number 7 of 1998 with Law Number 3 of 2006. Law Number 3 of 2006 was amended again with Law Number 50 of 2009. Substantially there are no changes in the absolute competence of the Religious Courts in this latest law (A. Rasyid & Putri, 2019: 166).

The expansion of the authority of the Religious Courts in the field of Islamic economics and particularly in Islamic banking is limited to disputes between people who are Muslim, and This happens even between non-Muslims, as long as they submit to Islamic law in matters that are within the authority of the Religious Courts even though adherents of other religions outside of Islam are not subject to and cannot be forced to submit to the authority of the Religious Courts (Huda, 2018: 374–375).

After the decision of the Constitutional Court Number 93/PUU-X/2012 for the Settlement of Sharia Business and Finance Disputes, it binds the parties conducting transactions in the sharia banking sector. This means that there are no longer customers legally, and Islamic banks make a dispute resolution clause by choosing a court in the general court environment by taking refuge behind the principle of freedom of contract. Associated with the appropriate forum in court is the principle of legality, namely that in the realm of attributive competency, it is not possible to choose a forum by appointing another judicial environment. Options for disputes in the trade sector are only possible in non-litigation forums (Umam, 2016: 710).

The settlement of sharia economic disputes by litigation has occurred since the issuance of the Constitutional Court Decision Number 93/PUU-X/2012, which gives the Religious Courts absolute authority in resolving sharia economic disputes by litigation in the Religious Courts. The parties making a sharia economic contract can choose to settle disputes through non-litigation and litigation channels (Yunita, 2021: 436).

3. Types of Religious Court Decisions

Decisions made in Religious Courts are generally the same as general court decisions. As stated in Article 196 paragraph (1) HIR (*HerzienInlandschReglement*)/Article 185 paragraph (1) RBG (*Rechtreglementvoor de*

Buitengewesten) it is stated that a decision which is not a final decision even though it must be pronounced in court as well, is not made separately but only written in the minutes of the trial. Based on the two articles, it can be concluded that there are two kinds of decisions, namely interim verdict and final verdicts (Fatimah, 2013: 12–16).

a. Interim Verdict

According to Ridwan Syahrani, an interim decision is a decision handed down before the final decision, held to enable or facilitate the continuation of the case examination (Mappong, 2010, p. 105). The interlocutory decision is mentioned in Article 185 paragraph (1) HIR or Article 48 RV. According to the article, the judge can take or pass a decision that is not a final decision (*and vonnis*), which is handed down during the examination process. However, this decision does not stand alone but is an integral part of the final decision on the subject matter. So, before making a final decision, the judge can take an interlocutory decision in the form of a *preparatoir* or *interlocutoir* decision.

The interlocutory decision contains an order that must be carried out by the litigating parties to make it easier for the judge to complete the examination of the case before the judge makes a final decision. In connection with that, in theory, and practice, several types of decisions are known that arise from interim decisions (Harahap, 2004: 20), namely:

1) *Preparatoir* Verdict

A preparatoir verdict is an interim decision used to prepare a final decision. This decision does not affect the subject matter or final decision because the decision is intended to prepare the final decision.

2) *Interlocutoir* Verdict

Interlocutoir verdict is an interlocutory decision containing an order to conduct a preliminary examination of the evidence available to the litigation parties and the witnesses used to determine the final decision.

3) *Insidentil* Verdict

Incidental verdicts are interim decisions relating to incidents or events that can temporarily stop the normal judicial process. For example, the death of a power of attorney from one of the parties, both the defendant and the plaintiff.

4) *Provisionil* Verdict

Regulated in Article 180 HIR, Article 191 RGB. It is also called *prvisionele beschikking*, namely a quick decision or an interim award (*temporaru disposal*) which contains a temporary measure of waiting until the final decision on the subject matter is handed down.

b. Final Verdict

The final verdict (*eindvonnis*) is a decision that ends a civil case at a certain level of examination. Civil cases can be examined at 3 (three) levels of examination, namely the examination at the first level in the district court, the examination at the appeal level in the high court, and the examination at the cassation level at the Supreme Court (Mappong, 2010). The final decision, in terms of the nature of the ruling (the dictum), can be divided into three types (Sarwono, 2011, pp. 212–213), namely:

1) *Declaratoir* Verdict

A declaratoir decision is a decision that only confirms or states a legal situation. For example, a decision on the legitimacy of an adopted child according to the law, a legal heir decision, an owner's decision on a legal object.

2) *Constitutief* Verdict

A constitutive decision is a decision that can nullify a legal situation or create a new legal situation. For example, a decision on divorce, a decision that states that a person has fallen bankrupt, a decision that the court does not have the authority to handle a case.

3) *Condemnatoir* Verdict

A condemnatory verdict is a decision that punishes the defeated party in the trial to fulfil achievements. In general, this condemnatoir decision occurs because in the engagement relationship between the plaintiff and the defendant, which is based on an agreement or law, there has been a default, and the case is resolved in court.

Judges' decisions with permanent legal force can be implemented, but not all decisions can be implemented (executed). In principle, only *condemnatoir* decisions (decisions containing penalties) can be executed. Meanwhile, *declaratoir* and constitutive decisions cannot be executed because they are not contained, or there is no right to an achievement or decision that contains new characteristics and circumstances so that it does not require coercive means to be carried out. It should be noted that a judge's decision that can be implemented/which has executorial power is a decision requiring the inclusion of the sentence "For Justice based on the One Godhead". The consequences of not including the formulation in the court's decision may result in the court's decision being null and void. This means that the validity of the court decision is not recognized, and the decision has no legal force and no executive power (Erwin, 2015: 8).

4. Legal Efforts Against Religious Court Decisions

Roihan A. Rasyid revealed that legal remedies in Religious Courts could be categorized at several levels, including (R. A. Rasyid, 2016: 231-233):

a. Verzet

Verzet means resistance to the *verstek* decision handed down by the first-level court (Religious Court), which was submitted by the defendant who was decided by the *verstek* within a specific time, which was submitted by the Religious Court that decided it as well. Those who have decided that *verstek* cannot use appeals before they first use *verzet's* remedies.

b. Appeal

An appeal is an application for the re-examination of the decision or decision of the first instance court (Religious Court) because they are dissatisfied with the decision or decision, to the appellate court (Religious High Court), which is in charge of the relevant first instance court, through the court of the first instance. the first to decide, within a period and with certain conditions.

c. Cassation

Cassation means requesting the cancellation of the decision/stipulation of the first level court (Religious Court) or the decision of the appellate court (high Religious Court) to the Supreme Court in Jakarta, through the first level court (Religious Court), which previously decided for specific reasons, within a certain period. Certain conditions and under certain conditions.

d. Judicial review

The intended review is the decision/stipulation of the first court (Religious Court), which has permanent legal force, or the decision of the appellate court (Religious High Court), which has permanent legal force, or against the decision of the supreme court, therefore often referred to as being extended to "review of decisions that have obtained permanent legal force." The review is intended to be submitted to the Supreme Court through the first level court (Religious Court), which previously decided, with particular reasons and conditions but not bound by a specific time.

D. CONCLUSION

Court decisions are the final results or conclusions in written form, which are decided by state officials (judges) who are given the authority to end or settle a lawsuit because of the contention between the disputing parties in court, which must be submitted in a public hearing. The absolute authority of the Religious Courts has been expanded in resolving sharia economic disputes since the amendment of Law Number 7 of 1998 with Law Number 3 of 2006. Law Number 3 of 2006 was again

amended by Law Number 50 of 2009.

After the decision of the Constitutional Court Number 93/PUU-X/2012 for the Settlement of Sharia Business and Finance Disputes, it binds the parties conducting transactions in sharia banking and has absolute authority to the Religious Courts in the process of resolving sharia economic disputes by litigation in the Religious Courts. In deciding a case, the judge should consider three justice aspects, namely legal justice, moral justice and social justice. Religious Court decisions can be divided into interim decisions and final decisions. Meanwhile, there are four levels in obtaining legal remedies in the Religious Courts, namely *verzet*, appeal, cassation, and judicial review.

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