



Handling Disputes In Murabahah Agreements By Litigation

Hasanuddin¹; St. Rajiah Rusidy²; Reski Adi³

^{1,2,3} Universitas Muhammadiyah Makassar, Indonesia

*Corresponding author, email: hasanuddin@unismuh.ac.id

ARTICLE INFO

Article history:

Received 2 October 2023

Revised 15 November 2023

Accepted 30 November 2023

Available online

<http://journal.iaialhikmahtuban.ac.id/index.php/JSE>

Keywords:

Disputes, Sharia Economics, Judges, Religious Courts

Turabian style in citing this article: [citation Heading]

Hasanuddin; St. Rajiah Rusidy; Reski Adi "Handling Disputes In Murabahah Agreements By Litigation" *Journal of Sharia Economics* 5, No. 2 (December 2023): 119-128. 2023.

ABSTRACT

This research aims to evaluate the level of readiness of judges in dealing with sharia economic cases, especially in the context of litigation at the Makassar Religious Court. Within this framework, this research identifies two options that can be used to resolve economic disputes involving sharia law before entering the litigation process: the peaceful settlement option through negotiations outside the court (non-controversial) and the settlement option through litigation in court. However, the use of litigation to resolve economic cases involving sharia law in the Makassar Religious Court is still relatively low. This research uses a qualitative description method by collecting data through document study and interviews with stakeholders of the Makassar Class 1A Religious Court. In its implementation, it was found that the judges at the Makassar Class 1A Religious Court were not fully prepared to handle cases related to sharia economics, both in simple trials and ordinary trials. This is due to the small number of sharia economic cases submitted to court as well as the lack of training and certification of judges in the field of Islamic economics. The results of this research emphasize the importance of increasing the readiness of judges in handling sharia economic cases, including efforts to increase training and certification in this field. In addition, this research also highlights the importance of encouraging amicable resolution before engaging in litigation to reduce the burden on courts and facilitate faster and more efficient dispute resolution

2023 Journal of Sharia Economics with CC BY SA license.

Introduction

Islamic law in Indonesia has made progress in terms of dispute resolution, this has become even more striking since the enactment of Law Number 1 in March 2006, which replaced Law Number July 1989 concerning religious courts. In the context of rights violations and the consequences of losses that may occur,

individuals who feel their rights have been violated have the right to file a lawsuit in court in accordance with applicable regulations (Manan, 2005).

After enactment of U U N o. 3 In 2006, there have been significant changes in the field of religious justice, which have helped to reduce the concerns expressed in the U N o . 7 of 1989 . This development primarily focuses on the capacity of religious courts to accept, assess and resolve cases related to economic aspects based on sharia principles. In this context, Islam firmly opposes practices that seek profit by supporting all kinds of deception that can cause conflict (Pradja, 2015).

The jurisdiction of religious courts includes two key aspects, namely relative jurisdiction and absolute jurisdiction. Absolute jurisdiction refers to the court's right to examine a case based on legal substance (Musthofa, 2009). Relative jurisdiction is the right of a court to try a case based on the division of authority or allocation of power that has been determined (Muhammad, 2000). The absolute power of religious courts is tied to the division of judicial power between the two judicial spheres (Mujahidin, 2010).

By considering the provisions of the Supreme Court, the Supreme Court strives and is committed to implementing judicial principles that are efficient, simple and economical. This effort was carried out with the aim of reducing stereotypes and the general public perception that resolving disputes through litigation in court requires significant sacrifices of time, costs and effort. (Suadi, 2018). Abdul Manan's point of view Disputes in the field of sharia economics are under the jurisdiction of religious courts (Indonesia, 2012). This dispute arises because one party violates the law or carries out actions that violate legal regulations, which has the potential to cause harm to the other party (Yahya, 2012).

Sharia economic disputes can occur when two or more economic entities do not agree in carrying out their activities in accordance with the principles and provisions of Sharia economics . This conflict arises due to differences in perceptions regarding financial interests or rights. Legal consequences may apply to the parties involved (An, 2010).

With full confidence, the Religious Courts have demonstrated a strong commitment to resolving economic disputes related to Sharia law as well as resolving commercial conflicts, which were previously the responsibility of the General Courts. This change has come into effect since the adoption of Law No. 3 of 2006. Now, economic disputes related to aspects of Sharia, especially those related to resolving Sharia financial problems, must be resolved in the context of

the Religious Courts. This effort is important to prevent conflicts and disputes from arising if not implemented properly (Amriani, 2012).

In resolving sharia economic disputes, there are two resolution options available, namely through litigation (within the framework of the judicial authority) and non-litigation (settlement outside the judiciary). Currently, the focus is more on dispute resolution, especially using a consensual mediation approach. This approach emphasizes that everything that arises in the mediation process is the result of agreement or agreement from all parties involved (Rahmadi, 2011). In Islamic banks, disputes that arise, similar to disputes in other civil law, can be resolved through two different channels, namely litigation and non-litigation. (Hudiata, 2012).

Therefore, with the expanding authority of religious courts and the continued development of dispute resolution models in religious courts, of course, in this research it is also necessary to consider the quality of human resources and the level of knowledge of the people involved in the research . Considering the rapid economic growth of Muslims in this country, legal instruments are also needed to resolve the problems that arise.

Type of Research : This research involves field studies with the aim of collecting information about specific issues in the lives of the people who are the subject of the research. The main aim of this research is to provide an accurate picture of certain individuals, situations, phenomena or conditions. This research uses a research method that produces data in descriptive form through a person's verbal or written expressions as well as behavior that is observed and identified or understood using a qualitative approach.

The focus of this research is sharia economic disputes related to Mudharabah agreements submitted to religious courts. The main aim of the research is to prepare judges to resolve economic disputes related to Murabahah contracts in religious courts (Arikunto, 2016).

In this research, data sources include primary data and secondary data as explained by Gunawan (2014). Gunawan defines primary data as information obtained directly from data sources or through field data collection. Furthermore, in this research, primary data was collected through interviews with judges serving at the Makassar Class 1A Religious Court who provided direct information. During interactions with informants, the interview process will follow a guide in the form of a list of questions.

The research instruments applied in this research include data collection methods through direct observation and direct interviews with informants who took part in the research. In order to carry out this data collection process, the researcher has prepared the necessary equipment, including notebooks, writing equipment, and

an interview guide which contains a list of questions to be used when interacting with informants. The existence of this equipment is very important to ensure that the data collection process takes place efficiently and that the results produced can be considered reliable.

Data Collection Techniques 1) The author uses the observation method, which involves systematically observing and recording visible signs on written objects, both through direct and indirect observation (Sugiyono, 2010), 2) In-depth interviews with individuals, including face-to-face interviews between interviewers and research informants. 3) Documentation is a method of collecting data through existing documents or records.

Data analysis technique 1) Data reduction is a process that focuses on selecting, simplifying, abstracting and transforming original data obtained from field notes. 2) Data presentation is designed to integrate information that has been structured into a consistent and easily accessible form. 3) Drawing conclusions or analysis is a step in research that involves identifying meaning, observing patterns, explaining patterns, cause-effect relationships, and formulating propositions.

Results and Discussion

Readiness of Judges at Class 1A Makassar Religious Courts

Religious courts are the authority granted by the state to receive, review, adjudicate and resolve cases related to marriage, inheritance, wills, alimony, sadaqah, property and sharia economics among Muslim individuals. The main goal is to maintain and uphold law and justice in the context of sharia law.

In addition, in exploring information about the readiness of religious court judges to handle sharia economic cases, the researcher conducted an interview with one of the judges as the main source of information. Based on the results of interviews with informants, religious courts still handle very few economic cases involving sharia:

" For economic cases involving sharia law, not all judges can handle these cases, but judges who are able to handle cases are those who have a diploma in sharia law studies in sharia economics. And the judges never accepted jurisdiction because they didn't know the case.

" In terms of the readiness of judges to handle economic disputes in religious courts, there are still a limited number of judges who have taken judge certification for handling sharia economics, indicating that economic cases that come to court are still limited, most of which are resolved non-litigationally."

Certification of sharia economic judges is an important action in recognizing the competence of a judge who has passed a strict selection process. This selection includes an assessment of a number of factors, such as leadership ability, level of expertise, integrity, and special training required to serve as a sharia economics judge at the Supreme Court of the Republic of Indonesia. The aim of this certification process is to increase the efficiency of handling sharia economic cases in religious courts/syariah courts, while ensuring integrity and fairness in the application of sharia economic law (Indonesia MA, 2016).

Participation in the sharia economic judge certification process held by the Supreme Court of the Republic of Indonesia has a significant impact, especially considering the rapid growth of the sharia economy and its influence on various contemporary issues. Therefore, preparation and increasing the knowledge and skills of judges is very important in facing this development. One effective step to achieve this goal is through special education and training.

The significance of the certification of sharia economic judges held by the Supreme Court of the Republic of Indonesia is very large. This happens because the rapid development of the sharia economy recently has had a substantial impact, creating various problems that require handling. Therefore, the readiness of judges to face these changes is very vital.

One effective strategy to prepare judges in religious courts to face these developments is to increase their understanding and knowledge, especially in the context of sharia. In addition, it is also important to improve their ability to discover relevant laws and apply sharia principles appropriately in an economic context. To increase the capacity of judges to face the rapidly growing demands of the sharia economy, the Supreme Court of the Republic of Indonesia has implemented a special certification education and training program for sharia economic judges. Thus, certification of sharia economic judges not only improves the quality of law enforcement in sharia economic cases, but also helps maintain integrity and justice in the increasingly relevant application of Sharia Economic Law.

"According to Article 20 paragraph (2), when the court of first instance and the court of appeal do not have sharia economic judges, then the chairman of the religious court/syar'iyah court and the chairman of the Aceh high religious court/syar'iyah court, in accordance with their positions, have the authority to examine and make decisions in sharia economic matters."

"Based on the provisions of Article 26, if there are no Sharia Economic judges who have received certification, then Sharia Economic cases will be considered, tried and decided by judges who have completed special training in the field of Sharia Economics"

These two articles emphasize that in circumstances where there are no Sharia Economic Judges available, the responsibility for handling sharia economic cases is given to Judges who have undergone special training in

the field of Sharia Economics. This aims to ensure that sharia economic cases are still handled by individuals who have an adequate understanding of sharia principles, even though they do not yet have an official certificate as a certified Sharia Economic Judge.

" Yes , so this is a matter of Sharia economic disputes in religious courts as the authority of religious courts which have sharia only, during my time here in Tagani there have been more than six cases, the most common being musyarakah. ∞ The Makassar Religious Court has jurisdiction over sharia economic cases and the Makassar Religious Court is a judicial institution that often faces sharia economic cases in South Sulawesi. However, of all the cases that have been resolved, only a small portion will soon mature. frequency of incomplete file requests .

Meanwhile, cases related to sharia economic conflicts, such as Murabahah, Musyarakah, Mudharabah, and other contracts, are under the exclusive jurisdiction of religious courts to be processed, tried, and resolved at the first instance, especially for Muslims. According to the provisions stipulated in Law Number 3 of 2006, especially Article 49 letter (i), including Sharia Insurance, Sharia Reinsurance, Sharia Investment Pool, Sharia Bonds, Sharia term intermediate securities, Sharia Securities, Sharia Financing, Sharia . lender . Sharia financial institution pension funds and various other matters related to sharia remain within the framework of religious justice and have not undergone any changes compared to Law Number 7 of 1989.

"In the Makassar Religious Court, there are still very few economic disputes related to sharia, because the resolution is usually carried out peacefully by both parties."

Economic cases related to sharia, especially murabahah contracts, are still minimal in the Makassar Religious Court because settlement steps must be taken first if an economic dispute involving sharia occurs. approved first. an externally friendly process. Trial (non-litigation) can be carried out through negotiation, mediation and arbitration.

In resolving economic disputes related to sharia law, especially in the context of Murabahah contracts in religious courts, the most vital role in the dispute resolution process is played by the judge who is tasked with making decisions regarding the case at hand. However, not all religious court judges are qualified to handle sharia economic cases. Only judges who have certificates in the field of sharia economics have the authority and qualifications to resolve cases related to the field of sharia economics.

In general, based on the provisions of Article 20 paragraph (2) of Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic

Judges, judges who sit in religious courts have the right to assess and adjudicate economic cases. submitted to the Supreme Court. court , including simple cases. However, in terms of academic readiness, judges in religious courts still need to improve their readiness in dealing with sharia economic cases, both simple and more complex. This is because the number of sharia economic cases faced is still relatively small, so that judges who have special certification in sharia economics are still limited in number.

In order for a judge to be responsible for examining and adjudicating sharia economic cases, both simple and more complex, special competence and expertise are required, including : 1) Understanding Sharia Economic Law Provisions: Judges must have a strong understanding of legal provisions sharia economics, including the basic principles, concepts and rules that apply in the context of sharia economics. 2) Ability to Apply the Law: The judge's ability to apply the law as a tool to adjudicate sharia economic issues is very important. This includes the ability to interpret and apply sharia law in concrete cases. 3) Ability to Find Law (Rechtsvinding): Judges must have skills in finding law or rechtsvinding, namely the ability to search for, identify and determine relevant law in order to achieve justice in resolving sharia economic disputes. 4) Knowledge of Procedures: Judges must understand and be able to follow applicable procedural guidelines in adjudicating sharia economic cases. This includes procedures for filing cases, trials, examining evidence, and rendering decisions. By having these abilities and expertise, a judge can effectively and fairly adjudicate sharia economic cases in his duties.

So researchers are of the opinion that to improve their ability to handle sharia economic disputes more effectively, judges need to take training courses and obtain a Sharia Economic Judge certificate from the Sharia Law Technical Training Center organized by the Supreme Court of the Republic of Indonesia

Conclusion

Based on the analysis carried out by researchers, it can be stated that based on Article 20 paragraph (2) in Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic Judges, Religious Court judges have the authority to assess and decide cases related to sharia economics. cases were filed against them. However, in terms of preparation in the academic realm, judges at the Makassar Type 1A Religious Court do not yet have adequate preparation to face sharia economic cases submitted to them, whether in simple cases or complex cases. This is due to the small number of sharia economic cases they face and the lack of judges who have received certification as Sharia Economic Judges .

Reference list

Amriani, N. (2012). *Alternative Mediation for Civil Dispute Resolution in Court*. Jakarta: Rajawali Press.

- An, A. E. (2010). *Solutions When Trapped in Business Cases*. Jakarta: Achieve the Hope of Success.
- Arikunto, S. (2016). *Writing Procedures: A Practical Approach*. Jakarta: Rineka Cipta.
- Ashikin, A.d. (2004). *Introduction to Legal Research Methods*. Jakarta: PT. Raja Grafindo Persada.
- Gunawan, I. (2014). *Qualitative Writing Methods Theory and Practice*. Jakarta: Bumi Literacy.
- Hudiata, E. (2012). *Settlement of Sharia Banking Disputes Post Constitutional Court Decision Number 93/Puu-X/2012*. Anonymous: Anonymous.
- Indonesia, DJ (2012). *Developments in Sharia Economic Dispute Handling*. Jakarta: Directorate General of the Religious Courts of the Supreme Court of the Republic of Indonesia.
- Indonesia, MA (2016). *Article 1 Paragraph (1) and Article 3 of Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic Judges*. Jakarta: Supreme Court of the Republic of Indonesia.
- Kasiram, HM (2010). *Qualitative-Quantitative Research Methodology*. Malang: UIN MALIKI Press.
- Manan, A. (2005). *Application of Civil Procedure Law in the Religious Court Environment*. Jakarta: Kencana Prenada Media Group.
- Muhammad, A. (2000). *Indonesian Civil Procedure Law*. Bandung: PT. Aditya Bakti's image.
- Mujahideen, A. (2010). *Sharia Economic Dispute Resolution Procedures in Indonesia*. Bogor: Bogor: Ghalia Indonesia.
- Musthofa. (2009). *Registrar of Religious Courts, in Mardani, Civil Procedure Law of Religious Courts & Syar'iyah Court*. Jakarta: Sinar Graphics.
- Pradja, JS (2015). *Sharia economics*. Bandung: Pustaka Setia.
- Rahmadi, T. (2011). *Dispute Resolution Mediation Through a Consensus Approach*. Jakarta: Rajawali Press.
- Suadi, A. (2018). *Sharia Economic Dispute Resolution Legal Discoveries and Rules*. Jakarta: Kencana.
- Sugiyono. (2010). *Quantitative, Qualitative and R&D Writing Methods*. Bandung: Alfabeta.
- Yahya, I. (2012). *Sharia Economic Disputes in Indonesia After the Constitutional Court Decision Number 93/Puu-X/2012*. *Al-Manahij*, Vol. X No. 1 , 135.