

# Dynamics of Sharia Economic Dispute Resolution Regulations in the Sociology of Law

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## Abstrak

Penelitian ini dilatarbelakangi adanya kebutuhan sebuah lembaga dalam menyelesaikan sengketa ekonomi syariah. Berbagai regulasi telah disusun untuk memberikan kewenangan kepada sebuah lembaga. Namun demikian, berbagai regulasi tersebut tentunya menimbulkan gejolak di masyarakat, akibat adanya ketumpangtindihan regulasi, dua kewenangan lembaga, dan substansi regulasi yang memiliki banyak penafsiran hukum. Tujuan penelitian ini mencoba memaparkan analisis dinamika regulasi penyelesaian sengketa ekonomi syariah dalam pandangan sosiologi hukum. Jenis penelitian ini menggunakan metode deskriptif kepustakaan dengan pendekatan yuridis normatif. Penelitian ini termasuk penelitian kualitatif. Teknik analisis data yang digunakan adalah kondensasi data, penyajian data, dan penarikan kesimpulan. Hasil penelitian menemukan fakta bahwa kedudukan sosiologi hukum memberikan pengaruh terhadap dinamika perubahan penyusunan regulasi penyelesaian sengketa ekonomi syariah melalui adanya gejolak kebutuhan, gejolak kepastian hukum dan gejolak efisiensi penyelesaian sengketa yang berasal dari masyarakat. Sehingga dinamika perubahan regulasi tersebut mencoba mewujudkan kebutuhan para pelaku bisnis ekonomi syariah dalam mencari keadilan dan kepastian hukum.

Kata-kata kunci : Sosiologi Hukum; Regulasi; Sengketa; Ekonomi Syariah.

## Abstract.

*This research is motivated by the need for an institution to resolve sharia economic disputes. Various regulations have been drafted to give authority to an institution. However, these various regulations certainly cause turmoil in society due to overlapping regulations, two institutional authorities, and the substance of regulations that have many legal interpretations. The purpose of this study is to describe the analysis of the dynamics of the regulation of sharia economic dispute settlement in the view of the sociology of law. This type of research uses a descriptive method of literature with a normative juridical approach. This research includes qualitative research. Data analysis techniques are condensation, data presentation, and concluding. The results of the study found the fact that the position of the sociology of law influenced the dynamics of changes in the formulation of sharia*



*economic dispute settlement regulations through fluctuations in needs, fluctuations in legal certainty, and fluctuations in the efficiency of dispute resolution originating from the community so that the dynamics of regulatory changes try to realize the needs of sharia economic business actors in seeking justice and legal certainty.*

*Keywords: Legal Sociology; Regulation; Disputes; Sharia Economics*

## **Introduction**

Business development in Islamic Financial Institutions (LKS) has increased significantly, especially in Islamic banking. This is indicated by the increasing number of transactions between real sector meetings and the financial sector (Elida, 2015). As a result, it cannot be denied and avoided related to disputes between the LKS actors involved. The occurrence of these disputes, of course, requires a process of settlement and dispute resolution that is fast and precise. Prior to the existence of LKS, dispute resolution was usually carried out through a litigation mechanism. However, dispute resolution is less popular among business people. This is caused by the settlement mechanism, which is expensive and takes a long time (Saputera, 2019). So that the choice of dispute resolution through this route was chosen as a last resort after the alternative route was deemed not to produce maximum results. Thus, many dispute resolutions are pursued through non-litigation mechanisms or out of court (Triana, 2018).

The problem is that the birth of Islamic banking in Indonesia has its uniqueness. This can be seen from the position of the Islamic bank, which was first established rather than the establishment of the rules as the legal umbrella for the implementation of its operating system (Hakim, 2011). So, in settlement of sharia banking disputes, there is no apparent legal certainty, whether the dispute resolution is through litigation or non-litigation mechanisms. They see the void and the absence of legal certainty regarding dispute resolution. So the Attorney General's Office and the MUI established a dispute resolution agency outside the judiciary. The institution is the Indonesian Muamalah Arbitration Board (Bamui) (Antonio, 2018). However, over time, Law Number 3 of 2006 was issued as the first amendment to Law Number 7 of 1989 concerning Religious Courts. The law gives authority to the religious courts, and namely, in addition to its authority to decide a case related to civil disputes in family law, its authority is also expanded by adding the field of sharia economics (Nurhayati, 2019). As for the question, is the authority of the religious judiciary dwarfing the authority of Basyarnas as in the previous regulation, or is its authority only a dispute resolution option? The affirmation of its authority is also contained in Article 55 of Law Number 21 of 2008 concerning Islamic Banking. However, with the issuance of the law, there is an expansion of authority in resolving disputes related to the sharia economy,



especially sharia banking, namely apart from being resolved through religious courts, it can also be resolved through non-litigation channels (non-litigation) even through general courts based on the meaning based on the contents of the contract in article 55 (2) the Act. This creates legal uncertainty over the authority of an institution that has the right to resolve and decide cases of sharia economic disputes.

According to Nurhasanah & Nasution (2016), The sharia economic dispute resolution chosen by LKS and customers is very diverse. This means that the solution can be through both routes. This is influenced by the diversity of interpretations among legal experts on the absolute authority of religious courts in various regulations. Such as the choice of the forum of authority among judicial institutions, namely between the religious courts and the general courts. This creates turmoil that occurs in its application in society.

Legal provisions in the form of regulations will not be separated from the turmoil in the community's social life. Indirectly, the social life of the community can influence the legal position. So people's lives become one of the factors that can change the legal position. On the one hand, social changes in society must always go hand in hand with legal values and norms. However, it is possible that legal values and norms must be able to adapt to social changes in society (Salam, 2017). So based on that, this study tries to describe the analysis of the dynamics of the regulation of sharia economic dispute settlement in the view of the sociology of law so that the existence of social unrest in the community towards the regulation of sharia economic dispute settlement can be known and understood as a consideration for policymakers in changing existing legal provisions into a legal provision that is in harmony with the social life of the community, especially regarding the settlement of civil cases in sharia economic disputes.

## **Method**

This research uses the descriptive literature method, with data obtained directly through various literacy (laws and regulations, scientific articles, books, and other literature). This study uses a normative juridical approach, which makes laws and regulations in the national legal system the object. This type of research includes qualitative research. The data obtained are presented in detail from various points of view and presented by providing a complete picture into an integrated whole in a statement that has substance in the form of facts and explanations. Data analysis techniques are condensation, data presentation, and concluding.

## **Result and Discussion**

### **1. Sharia Economic Dispute Resolution Concept**

In general, economic activity is an activity that is closely related to the property within its scope. Economic activities are carried out in order to meet



human needs to achieve prosperity (Pradja, 2015). In other words, economic activity helps humans to give each other or exchange something that other humans need because the position of humans will never be able to meet the needs of their lives without the help of other parties. As for the assistance provided by the other party to him, it must be exchanged for something comparable based on the agreement (Shobirin 2016). So that the consequences of the transactions carried out give rise to rights and obligations between the two. As for the mechanism for the mutual fulfillment of rights and obligations between the parties, it sometimes creates disputes in the future.

Sharia economic disputes can be interpreted as disputes between economic actors that create legal consequences between one actor and another related to business activities based on sharia principles (Moh. Horah and Erie Hariyanto, 2021). Meanwhile, the settlement of sharia economic disputes is defined as a process of ending disputes arising from economic activities carried out based on sharia principles. Based on the explanation of article 49 letter (i) of the Law on Religious Courts, what is meant by these business activities consist of: sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds, and sharia futures securities, securities sharia, sharia financing, sharia pawnshops, LKS pension funds and sharia business (Musjtari, Radliyah, and Riyanto, 2019).

The types and kinds of Islamic economics mentioned above are the scopes of the sharia economic dispute. However, the types and types mentioned above are not all types and types of sharia economic disputes but only as examples. So the explanation in letter (i) has a limiting meaning when referring to the economic definition above. Therefore, it is possible that there are other types and types of Islamic economics that have not been mentioned when formulating the definition of Islamic economics (Mujahidin 2010), For example, sharia hotels. The presentation shows that the settlement of cases by the religious courts is related to sharia economic civil disputes (Rahmi, 2013).

As for the parties to the dispute, they can be classified into 3 (three), including (Ahmad, 2014): First, the dispute between LKS and its customers. Second, disputes between LKS. Third, the dispute between people who are Muslim, by looking at the substance of the agreement deed made, confirms that its business activities are carried out based on sharia principles. The explanation of article 49 states that what is meant by a third party above is a person or legal entity with the will to submit to the provisions of Islamic law. Submission is related to the authority of the judiciary in deciding and resolving disputes that occur as a result of an agreement he made. In other words, the explanation determines the legal subjects or actors disputing in sharia economic cases (Dzuluqy, 2016). The form of sharia economic conflict can be caused by two factors, namely the existence of default and acts against the law.



## 2. Dynamics of Sharia Economic Dispute Resolution Regulations

As explained in the introduction, Islamic banking as part of the Islamic economy was established first without being accompanied by regulations that became the legal umbrella. The legal umbrella which is the primary basis for the establishment of Islamic banks is Law Number 7 of 1992 concerning banking. It is only limited to the insertion of the word profit sharing in the credit return process. Then, Law No. 10 of 1998 was issued as an amendment to Law No. 7 of 1992, which allowed commercial banks to open a bank operating system on the principle of interest and profit sharing (Antonio 2018). The existing legal umbrella emphasizes the implementation of the operational system, not other things that cause disputes to be resolved due to the disputing parties. However, in its development, several regulations support the establishment and authority of an institution in order to resolve sharia economic disputes. Some of these regulations include the following:

### a. Regulations for the Establishment of the National Sharia Arbitration Board (Basyarnas)

They were seeing the absence of institutions or institutions that have the authority to decide sharia economic cases or disputes accompanied by the needs of sharia economic business actors. So MUI and the Attorney General's Office collaborated to establish an institution outside litigation. The institution is the foundation of the Indonesian Muamalat Arbitration Board (BAMUI) as an autonomous non-litigation dispute resolution institution. Then in 2003, through Decree No. 9 of 2003, it was stipulated that the name BAMUI was changed to BASYARNAS (National Sharia Arbitration Board) (Antonio, 2018). The institution was founded in 1993, a year after Islamic banking started its operational system.

The choice of the non-litigation pathway was because it was easy and fast to form without a regulatory formation process, the discussion of which was deemed time-consuming. So that the establishment of the foundation at that time was only enough to make a notary deed based on the jurisprudence and the Supreme Court Decision Number 124 of 1973. The jurisdictional competence of BAMUI/BASYARNAS in settlement of sharia economic disputes, in addition to its reference to the BAMUI procedure, was also based on the provisions of Article 2 of Law Number 30 of 1999 regarding Arbitration and Alternative Dispute Resolution (Rusli, 2017).

### b. Legislation Regulations

The authority of the religious courts in resolving sharia economic disputes is stated in two principal regulations, namely Law Number 3 of 2006 concerning religious courts, which is affirmed in article 49, and Law Number 21 of 2008 concerning sharia banking which is affirmed in article 55 (1). As for



the great turmoil in the absolute authority of the religious courts in resolving sharia economic disputes, which are considered to have no legal certainty, is the explanation of article 55 (2), which describes the purpose of dispute resolution carried out based on the substance of the contract, namely dispute resolution outside the religious court, through non-litigation channels. Namely through deliberation, mediation, Basyarnas, and other litigation channels, namely through the general court (Imaniyati & Badrudin, 2010).

Indirectly, the regulation that regulates is a legal provision that is complementary to the previous legal provisions. This means that the religious courts are given absolute authority to resolve sharia economic disputes by litigation without changing the position of authority of the non-litigation route, which has previously been given the authority to resolve sharia economic disputes. So the principle of *lex Posterior Derogat Legi Priori* does not apply in this case.

However, what has become a significant polemic is that the general judiciary is also given the authority based on the article's explanation. This is because the general court has previously received the authority to settle civil disputes in the business sector. Indirectly, the explanation of the article gives rise to a choice of the forum which results in legal uncertainty regarding the position of the absolute authority of the religious courts to resolve sharia economic disputes. That is, its absolute authority is questioned. This creates overlapping regulations on the absolute authority of the religious courts. In other words, the absolute authority of the religious courts to resolve sharia economic disputes based on Law Number 3 of 2006 concerning religious courts is reduced by Law Number 21 of 2008 concerning sharia banking.

The choice of a forum that occurs shows the inconsistency of policymakers in formulating legal provisions. In addition, the choice of forum has a crucial influence on the position of competence of the religious courts. This can be seen when there is a sharia economic dispute whose resolution is based on the substance of the contract, and the parties agree that if there is a dispute between the two, they will resolve it in the general court, then this, of course, makes the position of competence of the religious courts only textual without any execution in the courts exercise their authority. The dualism of authority in the litigation route between the religious courts and the general courts has created a polemic that has given rise to legal uncertainty.

So based on the judicial review of article 55 (2), the Constitutional Court is based on the Constitutional Court Decree Number 93 of 2012, which states that the explanation of article 55 paragraph (2) of Law Number 21 of 2008 concerning Islamic banking is contrary to article 28 D paragraph 1 of the 1945



Constitution. 55 paragraph 2 is declared not to have binding legal force. This means that the article's position cannot be used as a legal basis (Al Hakim, 2014).

The legal consequences of the issuance of the Constitutional Court's decision are the explanation of article 55 (2), which gives authority to non-litigation institutions and litigation institutions outside the religious courts, their authority is abolished in the constitution. This makes the position of competence of the religious courts the only institution in the litigation path that has absolute authority to decide sharia economic dispute cases (Heriyah and Santiago, 2021). However, if there is an agreement between the parties not to settle their dispute in a religious court, then the parties can only choose a dispute resolution forum outside the religious court (non-litigation) on the condition that the agreement on the selection of the settlement forum is written in advance in the deed of agreement and the selection of a settlement forum. The selected dispute is certainly not contrary to sharia principles (Siswanto et al., 2012). For example, in the contract agreement deed, the parties choose Basyarnas as the institution that will resolve the dispute if the agreement made causes a dispute in the future. Due to the substance of the contract, the authority of the religious court is hindered by the principle of freedom of contract as outlined by the parties in the substance of the contract agreed upon by both parties (Masse and Rusli, 2018).

Several non-litigation channels that can still be chosen include: deliberation, banking mediation (PBI Number 10 of 2008 concerning banking mediation), and BASYARNAS. Although the three options are listed in the explanation of article 55, paragraph 2 above, the Constitutional Court does not reduce the authority of banking mediation, and BASYARNAS only emphasizes the selection of dispute resolution forums outside the religious courts which must still meet the terms and conditions as described above (Lubis, 2015).

In addition, Perma Number 2 of 2015 was issued regarding the procedure for settling a simple lawsuit. The stipulation of this Perma is intended to provide time efficiency for settling civil disputes due to the accumulation of cases that cannot be resolved quickly. This simple dispute resolution does not take a long time. This means that the time needed to settle a simple dispute is 25 days from the filing of a simple lawsuit (Purnawati, 2020). The accumulation of cases shows that the judicial trilogy principle has not been implemented, namely that the judiciary is carried out in a simple, fast, and low-cost manner (Fuadah, 2019).

The regulation is juridically addressed to the general court regarding the settlement of civil disputes. However, for sharia economic disputes, in its development, Perma Number 14 of 2016 concerning procedures for resolving sharia economic disputes was issued. Article 3 (2) of the Supreme Court



Regulation Number 14 of 2016 adopts Article 1 of the Supreme Court Regulation 2 of 2015, which states that the value of a simple lawsuit in a sharia economic case is 200 million. Article 3 (3) states that the examination of simple lawsuits is based on Perma No. 2 of 2015. The issuance of Perma No. 14 of 2016 is a highly anticipated regulation as a material law for religious court judges and complements the position of Perma No. 2 of 2008 concerning KHES.

Since the issuance of Perma Number 14 in 2016, the settlement of sharia economic disputes through this simple lawsuit has experienced a significant increase. This shows that justice seekers need a dispute-resolution mechanism that is fast and inexpensive (Berkah, 2021). Many cases are decided by judges simply so that there is no longer a long pile of cases due to dispute resolution mechanisms that seem to take a long time.

Dispute resolution is considered adequate and efficient, as well as providing fast legal certainty for justice seekers, both in the religious court environment and the general court environment. Therefore, part of the substance of Perma No. 2 of 2015 was amended by Perma No. 4 of 2019, where one of the substances that were changed was an increase in the value of a simple lawsuit from 200 million to 500 million rupiahs. This change in regulation certainly affects the substance of Perma Number 14 of 2016, which includes Perma Number 2 of 2015 in terms of case examination. So, in this case, the *lex Posterior Derogat Legi Priori* principle applies (Fuadah, 2019). This means that the provisions in Articles 3 (2 and 3) of Perma Number 14 of 2016 have no legal force because they are amended by the provisions of Perma Number 4 of 2019 so that the value of a simple lawsuit in sharia economic cases is 500 million rupiahs and the examination of sharia economic cases is based on some of the substance of Perma No. 2 of 2015 which was not changed in Perma No. 4 of 2019.

### 3. The Influence of Legal Sociology on the Dynamics of Sharia Economic Dispute Resolution Regulations

Based on the explanation of various regulations for resolving sharia economic disputes above, there are several dynamics of regulatory changes following the background position of the formation of these regulations. The dynamics of dispute resolution can be grouped into five periods, including:

Table : Dynamics of Changes in Dispute Resolution Authority

No.	Period	Non-litigation	Litigation
1.	1993-2006	Basyarnas	
2.	2006-2008	Basyarnas	religious courts



3.	2008-2012	Deliberations, Banking Mediation and Basyarnas.	Religious Courts and General Courts
4.	2012-2015	Entire Non-litigation Path	Religious Courts
5.	2015-now	Entire Non-litigation Path	Religious Courts (ordinary and simple lawsuits)

Based on the explanation of the table above, there is a flurry of need for the establishment of a sharia economic dispute settlement institution which is strengthened through regulation as a legal umbrella. The turmoil can be seen in three periods, namely the first period in 1992 and the need for a dispute resolution institution from Islamic economic actors behind the formation of Bamui/Basyarnas. The second period of 2012, due to the choice of forum and overlapping authority in the litigation route for the settlement of sharia economic disputes. So, through the judicial review of regulations by the Constitutional Court, the position of religious courts has absolute authority to decide cases of sharia economic disputes as well as the expansion of the non-ligation pathway to becoming more diverse based on the principle of freedom of contract. In the three 2015-2019 periods, the need for dispute resolution that applies the trilogy of justice principle has been answered through a simple lawsuit. Dispute resolution through a simple lawsuit is considered effective in resolving sharia economic disputes so that there is a change in policy regarding the total value of the lawsuit, which is usually settled in a simple lawsuit, from 200 million to 500 million rupiahs.

In addition, the dynamics of the preparation of these regulations have an influence not only on the absolute authority of the religious courts but also on the preparation of other regulations that are considered crucial in the LKS operational system. The regulation in question is the DSN/MUI fatwa. This regulation does not have binding force in the national legal system. However, when the laws and regulations legitimize the fatwa. So the position of the fatwa has an alluring power and can be applied to the entire LKS operational system (Nurjaman and Ayu, 2021). As for the dynamics of regulation described above, it influences DSN/MUI in including the settlement of sharia economic disputes in the substance of its fatwa.

During the period (2000-2022), DSN-MUI issued 152 fatwas related to sharia economics. The inclusion of dispute resolution in the substance of the fatwa underwent a significant change. This means that the inclusion of institutions authorized to resolve disputes is adjusted to the laws and regulations. However, the language used by DSN/MUI in the inclusion of the substance of the dispute resolution has its peculiarity, namely, the mention of the authorized institution (litigation or non-litigation) can be the choice of the disputing parties if deliberation cannot be reached. This shows that DSN/MUI implements the provisions of Islamic sharia that in every dispute that occurs, the first recommended way to reconcile the



disputing parties is through family deliberation.

Suppose you look at the dynamics of changing regulations to settle sharia economic disputes. The position of sociology of law has a significant role in the dynamics of these changes. This can be seen from the various fluctuations following the three periods described above. The turmoil in the first period emphasized the need for sharia economic actors over the authority of which institutions could resolve disputes arising from the contractual agreements made. Due to this turmoil, the MUI and the Attorney General's Office moved quickly to establish a non-litigation institution (Basyarnas) to resolve sharia economic disputes.

The turmoil in the second period emphasized the turmoil of legal certainty. This means that stakeholders urge policymakers to be consistent in drafting legal regulations. So that one regulation does not conflict with other legal regulations. This period gave the religious courts absolute authority in deciding sharia economic dispute cases. In addition, the expansion of the non-litigation pathway with various choices is not only focused on Basyarnas.

The turmoil in the third period emphasized the need for efficiency in dispute resolution. That is, there are still obstacles in resolving disputes that occur, namely the unfulfilled principle of the trilogy of justice which emphasizes dispute resolution that is cheap, simple, and quickly resolved. So that there is a buildup of cases that are neglected in the decision of the case. So to realize this principle, a simple lawsuit whose settlement is designed by considering the efficiency of justice provides new turmoil for justice seekers to resolve disputes quickly following expectations.

## **Conclusion**

Settlement of sharia economic disputes is a necessity. This is because the Islamic economic business is experiencing rapid development, marked by the number of business transactions carried out. So it does not rule out the possibility of conflict between the parties. This turmoil of needs has made policymakers formulate various regulations as a legal umbrella to give authority to an institution in resolving sharia economic disputes. This shows the role of legal sociology in influencing the dynamics of sharia economic dispute resolution regulations following norms and laws that consider the needs of sharia economic business actors.

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