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Authority of Religious Justice on the Dispute of the Jewels of Sharia Banking in the Perspective of the State System

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Abstract

Law No. 3 of the year 2006 concerning on Religious Courts, especially Article 49 letter (i) of the Religious Courts has the authority to adjudicate disputes Sharia banking is a problem among legal experts, the Supreme Court, Law Number 21 of the year 2008 concerning Sharia Banking, then decided by the Court's decision The Constitution Number 93 / PUU-X / 2012 becomes the authority of the Religious Court.

Keywords: Authority of Religious Courts, Sharia Banking, State System

1. Introduction

a. Background Knowledge

Based on Article 49 letter (1) of the Law, the Religious Court has the duty and authority to examine, decide, and settle cases at the first level between people who are Muslim in the fields of "Islamic economy." and explanation is an act or business activity carried out according to sharia principles, including among others: a. shariah bank, b. sharia microfinance institutions, c. sharia insurance, d. sharia reinsurance, e. sharia mutual funds, f. sharia bonds and sharia medium-term securities, sharia securities, g. Islamic finance, h. sharia mortgage, i. pension funds for sharia financial institutions; and j. sharia business.

The law was debated by legal experts, 1. Sutan Remy Sjahdaeini, stated: "That Islamic Law in the context of sharia economic law is not a positive law that applies in Indonesia so it cannot be forced to resolve cases that arise between Islamic banks and their problems, therefore, the settlement of sharia economic matters must be based on the treaty law as stipulated in code of Civil law" 2. Agustiono, said: "The authority to handle sharia economic cases resolved in the District Court is not armed with sharia law, because it is referred to as a conventional court. And it is impossible for the sharia problem to be resolved conventionally, not by sharia." ,3. Adiwarman A. Karim, argues: "The applicable law in Indonesia, the parties who litigate are free to choose which court will be used when there are disputes and disputes".

Instituted by the Supreme Court there has also been a change of authority, namely: "Based on Supreme Court Circular Republic of Indonesia Number 8 the Year 2008 states that the completion of the Shari'ah economic dispute under the authority of the Religious Court was annulled by the Supreme Court Circular Republic of Indonesia Number 8 of 2010 which said dispute resolution was the authority of the General Court.

Problems was rose again with the issuance of Law Number 21 of 2008 concerning Islamic Banking in Article 55 which said; 1. Settlement of sharia banking disputes is carried out by courts in the religious court environment. 2. In the event that the parties have promised a dispute resolution other than as referred to in paragraph (1), dispute resolution shall be carried out in accordance with the contract, 3. Dispute resolution as referred to in paragraph (2) may not conflict with sharia principles in accordance with the contents of the Contract "are the following efforts: a. deliberation, b. banking mediation, c. through the National Sharia Arbitration Agency (Basyarnas) or other arbitration institutions; and/or, and d. through a court in the General Court environment.

Finally, with Judicial Review (Test Material of Law Number 21 of 2008) which was decided by the Decision of the Constitutional Court Number 93/PUU-X/2012 and Amar Decision: To declare that Religious Court that has the authority over disputes over sharia banking cases.

b. Research Question

a. What is the essence of the Authority of Religious Courts in Trial of Sharia Economic Cases?

b. What is the authority of the Religious Courts over Sharia Banking Disputes in the Perspective of the State System?

c. Analysis Theory

The theoretical foundation used for arranging this dissertation is as follows: 1. Law State Theory, 2. Theory of Law Theory, 3. Theory of Legislation. 4. Authority theory, and 5. Absolute Competence Theory.

2. Discussion

a. What is the essence of the Authority of Religious Courts in Trial of Sharia Economic Cases?

The theory used is the theory of state law and the theory of legal objectives. As below:

A. Legal State Theory

August 17, 1945, Indonesian independence and legal basis to the 1945 Constitution. All laws and regulations in a hierarchy must not conflict with these laws. Because the contents are the norm meta leading to the Preamble of the 1945 Constitution and then to the Pancasila philosophy. Pancasila is a cultural forum for Indonesian people. Indonesian culture is diverse in terms of beliefs, religion, ethnicity, characters called Bhinneka Tunggal Ika.

This is in accordance with Carl Von Savigny's view:

That in this world there are various kinds of nations which in each nation have a volkgeist, Savigny further said that “das recht wind gemacht, esk ist und wind mit dem volke” (the law was not made, but grew and develop with the community). This is in accordance with the views of the sociological jurisprudence that good law is a law that is in accordance with the laws that live in society. Thus the order of the Indonesian legal system must refer to the ideals of the Pancasila.

Indonesia as a state of law and the nature of the authority of the Religious Courts adjudicating cases of dispute over sharia banking is inseparable from the characteristics of the articles in the 1945 Constitution, including:

1. Article 1 paragraph (3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia which states that the State of Indonesia is a state of law.
2. Article 27 paragraph (1) which states that all citizens are at the same time in the law and the government is obliged to uphold the law and government with no exception
3. Article 28 letter (I) paragraph (5) which states that to uphold and protect human rights in accordance with the principles of a democratic legal state, the implementation of human rights is guaranteed, regulated, and set forth in the legislation.

The authority of the Religious Courts has a clear basis as stipulated in the provisions of Article 1 paragraph (3) of the 1945 Constitution which cannot be separated from the existence of legislation such as Law Number 3 of 2006 concerning the Religious Courts.

Article 27 paragraph (1) shows both the community and the government must uphold the law (legislation) that have been made and issued. The word compulsory must not disobey the laws and regulations and should not be disputed about the authority of the Religious Courts with the debate between legal experts, the Government, and the Supreme Court that should understand the law in the 1945 Constitution with Article 27. It is not permissible to give a choice to the General court with the issuance of Law Number 21 of 2008 concerning Sharia Banking such as Article 55 paragraph (2), and also the Supreme Court as the highest judicial authority with inconsistencies in giving authority to the General Courts.

Article 28 letter (I) paragraph (5) is a guarantee of Human Rights in the framework of implying faith in their religion, and Indonesia is not a religion but religion as its belief has been recognized as a provision of Article 28D paragraph (1) and Article 28E paragraph (1 and 2) 1945 Constitution. The article has harmony with the authority of the Religious Courts contained in the provisions of Article 2 of Law Number 3 the Year 2006 concerning the Religious Courts.

B. Legal Purpose Theory

1. Legal Certainty

Strengthening the authority of the Religious Courts regarding sharia banking by issuing Law Number 21 of 2008 concerning Islamic Banking in Article 55 paragraph (1). But in Article 55 paragraph (2) in resolving sharia banking disputes through alternative dispute resolution mechanisms outside the court one of them is through the General Court. The involvement of the General Justice raises a problem because it is given the same authority in resolving sharia banking disputes. The problem has been the dualism of dispute resolution. With two competent judicial bodies resulting in legal uncertainty in the form of overlapping authority in resolving the same case. It should be noted, this authority is clearly the authority of the Religious Court as stipulated in Article 49 (i) Law No. 3 of 2006 concerning the Religious Courts as the jurisdiction of the judiciary.

2. Legal justice

The nature of justice consists in terms of distributive justice or cumulative justice.

First, distributive justice as happened in number 37 of Article 49 of Law Number 3 Year 2006 concerning Religious Courts by distributing Islamic law (sharia) to non-Islamic people who wish to submit themselves to Islamic law through Islamic banking transactions that must follow in the event of a banking case dispute sharia authority of the Religious Courts.

Secondly, cumulative justice in terms of personal Muslims is determined by Article 2 and 49 of Law Number 3 the Year 2006 as their rights that must be obeyed and also Islamic banking uses Islamic law (sharia).

3. Legal use.

The law in principle is intended to create maximum public order and usefulness to the majority of Muslims. In achieving the legal objectives that have been formulated, the role of Islamic law (sharia) that is produced can provide space for every Muslim to pursue his happiness in the form of protection for every Muslim religious person who produces Islamic law towards positive law by these legislators to provide and produce harmony between the interests of Islamic individuals and the public.

b. What is the authority of the Religious Courts over Sharia Banking Disputes in the Perspective of the State System?

Theories used by the theory of legislation, the theory of authority, then absolute competence.

A. Theory of legislation.

There are three legal bases in the provisions of Law Number 12 of 2011 concerning the Establishment of Legislation Regulations ".

1. Article 1 paragraph (2), which stipulates that "Legislation is a written regulation containing generally binding legal norms and established or determined by state institutions or authorized officials through the procedures stipulated in the Laws and Regulations.
2. Article 3 (1) The 1945 Constitution of the Republic of Indonesia is a basic law in the Laws and Regulations.
3. Article 4 Legislation regulated in this Law covers the Laws and Regulations below.

The role of such legislation, there are similarities with the tradition of the civil law system that places legislation as the main pillar and influences many Indonesian legal systems. In the case of the opinion of Soetanto Wignjosoebroto, namely: "That there is a process of instruction and transplacement of Western law (Continental Europe) into Indonesian law (Dutch East Indies). The socio-political dynamics that occurred both in the Netherlands and in the Indies were the dominant factors in the formation and implementation of laws in the Dutch East Indies (Indonesia).

B. Authority Theory

Based on the authority of the Religious Courts from the provisions of Article 2 of Law No. 3 of 2006 concerning the Religious Courts that the Religious Courts are one of the perpetrators of judicial powers for Muslim justice seekers regarding certain cases as referred to this law. Article 49 of Law No. 3 of 2006 concerning Religious Courts has the duty and authority to examine, decide, and settle cases between people who are Muslim in the field as described above as explained in Article 49 letter (i).

For people or institutions outside of Islam, they can conduct proceedings to the Religious Courts as based on the Explanation of Number 37 Article 49 that Settlement of disputes is not only limited to the field of Sharia banking, but also in other sharia economic fields. What is meant by "among people who are Muslim" is including a person or legal entity which itself submits voluntarily to Islamic law concerning matters that are the authority of the Religious Courts in accordance with the provisions of this Article?

C. Absolute Competence Theory.

The validity of the Religious Courts is strengthened by the decision of the Constitutional Court Number 93 / PUU-X / 2012 and on 29 August 2013 which is final and binding as based on Article 24C Paragraph (1) of the 1945 Constitution confirms that "The Constitutional Court has the authority to adjudicate at the first and final level and the decision will be final.

The final decision is based on the meaning of the Law of the Final and Binding of the Constitutional Court:

That literally, the decision of the Constitutional Court which is final and binding has its own legal meaning. The phrase "final" in the Large Dictionary of Indonesian is interpreted as "the last of a series of examinations", while the binding phrase is interpreted as "tightened", "united". Starting from this literal meaning, the final phrase and binding phrase, interrelated together like two sides of a coin, means the end of a process of examination, has the power to tighten or unite all wills and cannot be denied.

3. Conclusion

The conclusion is as follows:

a. Sharia banking case disputes becomes the authority of the Religious Courts to be a justice because it provides convenience for people who are Muslim and/or other religious people who submit themselves to Islamic law by being tried by their own law.

b. The Authority of the Religious Courts over Sharia Banking Case Disputes The Perspective of the State System is seen from the theory of legislation, authority, and absolute competence, then the dispute over sharia banking matters becomes the absolute authority of the Religious Courts.

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