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Resolution Of Sharia Banking Disputes Through The Religious Courts And The National Sharia Arbitration Board (BASYARNAS)

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Abstract

Indonesian banking adheres to a dual banking system, conventional and sharia. Law (UU) No. 21/2008 on Islamic Banking is the legal basis for Islamic Banking in carrying out their operations, and in the event of a dispute, it can refer to article 55 (1) disputes can be resolved through the Religious Court (PA), and (2) resolved not by PA but can be with other forums and paragraph 2 is in line with Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. Law No. 30 has led to to inconsistencies in resolving disputes, for example the practice of resolving financing contracts between banks and debtors who agree to resolve dispute at The National Shariah Arbitration Board (Basyarnas), but the implementation of dispute resolution is carried out at the PA. The results showed that the absolute authority to resolve sharia economic cases or the scope of Sharia Banking is the PA, but if the parties agree to settle at Basyarnas then the PA has not authorized in sharia economic cases.

Keywords*: *Sharia Banking, Religious Courts, National Sharia Arbitration Board.

INTRODUCTION

One of the financial institutions that influences economic development is banking. Banking serves as an intermediary between those who own funds and those who need funds. Banking operates in credit and various services are provided by banks to serve the public for their financing needs as well as smooth payment system mechanisms for all economic factors (Djumhana, 1993). As financial institutions aimed at the business world, banks are required to provide support to the community by carrying out various banking operational activities which are centered on collecting funds (funding) and distributing funds (lending) in addition to other banking operational activities. Activities that collect and distribute funds, namely activities that provide other banking services (services) (Usanti, 2013).

The Indonesian banking system adheres to a dual banking system, namely that banks can carry out two activities at once, namely conventional and sharia banking activities side by side, the implementation of which has been regulated in various applicable laws and regulations (Usanti, 2015). Banking, which is one of the pillars of the economy, is an embodiment of

Islamic values, especially "muamalah-syariah al Ulumiyyah", economic problems are in the public domain, people are given the freedom to formulate concepts, organize and run themselves as long as they do not conflict with the provisions of Islamic sharia. The words of the Apostle "Antum a'lamu bi jasai dunyakum" (you know better the affairs of your world). The Word of Allah SWT: "Indeed, human efforts are varied" (QS. Al-Lail: 595).

The banking sector is often considered the center and driver of a country's economy. The role of banks in the economy is as intermediary institutions that collect and channel public funds in the form of loans for economic sector activities, thereby strengthening the country's economic structure. In general, the role of banks in the economy is: 1) carrying out a transmission function, 2) collecting and distributing funds (intermediation function), and 3) transforming and distributing risks in the economy (transformation and distribution of risk function), 4) steps -steps to stabilize the economic situation (stabilization function).

Islam as a heavenly religion has regulated human life in two dimensions of life in balance (Islam is be dimensional) between aspects of the world and the hereafter, birth and mind. The arrangement of each of these dimensions to lead to the goal (final arrow) must be supported by knowledge (science), effort (movement) and faith (faith). In relation to economic issues, of course the tools and methods that must be possessed are economic knowledge, economic mechanisms and the objectives of the business (Mansyur, 2011). The banking industry is the core of a country's financial system, because banks are a reference point for individual businesses, private businesses and government/government-owned businesses, to carry out transactions in the form of money deposits, accounts payable, and other services related to financial matters (Suwandi, 2007).

In Indonesia, the Sharia Banking Industry is required to comply with two types of law: Islamic law and positive law. Positive law is the law that applies to a country. Sharia banks and conventional banks have something in common, namely that they are subject to positive law in Indonesia. In carrying out banking operational activities, conventional banks are subject to Law no. 7 of 1992 concerning Banking, amended into Law no. 10 of 1998, while sharia banks are subject to Law no. 21 of 2008 concerning Sharia Banking.

Sharia Bank's business activity is to provide loans to customers based on contracts or muamalah contracts which are regulated in contract law, which is regulated in the positive law of the Civil Code (burgerlijk wetboek) hereinafter abbreviated as BW. All sharia banks are required to understand the law of engagement as regulated in the BW. If the Sharia Bank is a public company, namely a company whose shares have been registered on the capital market, then the bank must also comply with Law no. 8 of 1995 concerning Capital Markets and various BAPEPAM regulations. If the Sharia Bank faces the threat of bankruptcy or submits a bankruptcy application to the Commercial Court, then the Sharia bank is controlled and regulated by Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

Operational activities carried out by banks contain risks so banks are required to manage banking risks. Article 36 of the Sharia Banking Law confirms that "In distributing financing and carrying out other business activities, Sharia Banks and UUS are obliged to use methods that do not harm the Sharia Bank and/or UUS and the interests of customers who entrust their funds." There are many methods taken by Sharia Banks to defend their rights and this will have

an impact on financing customer resistance, giving rise to legal risks, namely customers filing lawsuits in court.

The implementation of Sharia Banking dispute resolution, the Sharia Banking Law is regulated in Article 55 paragraph (1), namely "That Sharia Banking dispute resolution is carried out by a court within the Religious Courts", however if the parties have agreed to resolve the dispute other than as intended in paragraph (1) , dispute resolution can be carried out in accordance with the contents of the Agreement, this is as regulated in Article 55 paragraph (2) of the Sharia Banking Law. Based on this article, it can be understood that the resolution of Sharia Banking disputes is carried out by courts within the Religious Courts, however the parties are also allowed to determine other courts besides the Religious Courts so that this regulation creates judicial inconsistencies in resolving sharia cases. This inconsistency apparently has an influence on Sharia Banking settlement practices, such as the Financing Agreement between the Bank and the Debtor agreeing to resolve disputes at the Indonesian Muamalah Arbitration Board (BAMUI) or currently BASYARNAS, while in its implementation the dispute resolution is instead submitted to the Religious Court. For example, this inconsistent problem has actually occurred in civil lawsuit no. 1536/Pdt.G/2023/PA.Sby at the Surabaya Religious Court between the debtor on behalf of the DP as PLAINTIFF and Bank Syariah Indonesia as the DEFENDANT.

RESEARCH METHOD

This research is normative juridical research. Normative juridical research, namely legal research, the method carried out is in accordance with the scientific characteristics of legal science/jurisprudence (Hadjon & Djatmiko, 2005). Normative research aims to find things related to legal rules, principles and legal doctrines to answer legal problems. This research will help in providing recommendations regarding judicial authority in handling Sharia Banking disputes. The research approaches used are the statutory approach, conceptual approach, case approach regarding the ratio decidendi of Civil Decision No. 1536/Pdt.G/2023/PA.Sby at the Surabaya Religious Court.

DISCUSS AND ANALYSIS

Brief Development of Sharia Banking in Indonesia

The long history of the emergence of plans to establish a Sharia Bank dates back to the mid-1970s where it was discussed during a national seminar on relations between Indonesia and the Middle East in 1974 and 1976 which was held by the Institute for Social Sciences Studies (LSIK) and the Bhinneka Tunggal Ika Foundation (Nopriansyah & Unggul, 2019). This proposal was still hampered because at that time the legal basis was based on Law no. 14 of 1967 concerning Banking Principles which does not regulate how banks operate using the principle of profit sharing.

Furthermore, in 1991 a Sharia Bank was established called PT Bank Muamalat Indonesia. The existence of Bank Muamalat Indonesia existed before the issuance of Law no. 7 of 1992 concerning Banking. The existence of Bank Muamalat Indonesia is fully supported by the Islamic Ummah Council because it is the first pioneer in the existence of Sharia Banks in Indonesia.

When the monetary crisis occurred in 1998, many conventional banks closed, but Bank Muamalat was not affected by the monitoring crisis because Bank Muamalat implemented the principle of profit sharing and did not follow interest rates. Then based on this, the government made Law no. 10 of 1998 which is an amendment to Law no. 7 of 1992 concerning Banking which regulates that banks can carry out their functions by applying the principle of profit sharing. The issuance of Law no. 10 encouraged many parties to create new sharia banks which then in 2008 the government issued a special law regulating sharia banks, namely Law no. 21 2008 concerning Sharia Banking.

The basic business principles of the banking system are the same, namely a) collecting funds from the public, b) channeling these funds in the form of credit/financing, c) carrying out banking service activities. The following summarizes some of the differences between the two banking systems:

DIFFERENTIAL ASPECTS	SHARIA COMMERCIAL BANK	CONVENTIONAL COMMERCIAL BANK
Landasan prinsip kegiatan usaha	Prinsip syariah, demokrasi ekonomi, dan prinsip kehati-hatian.	Berasaskan demokrasi ekonomi dan prinsip kehati-hatian.
Dasar Hukum	Al-Quran dan hadis	UU 7/1992, telah diubah dengan UU 10/1998 dan UU 4/2023
	UU 21/2008 dan UU 4/2023	Peraturan OJK ("Otoritas Jasa Keuangan")
	Peraturan OJK ("Otoritas Jasa Keuangan")	Peraturan Bank Indonesia
	Peraturan Bank Indonesia ("BI")	-
	Fatwa DSN-MUI	-
Fungsi	Lembaga intermediasi	Lembaga intermediasi
	Fungsi sosial dalam bentuk lembaga *baitul mal*.	
Orientasi kegiatan usaha	*Profit* dan *falah oriented.*	*Profit oriented.*
Perolehan keuntungan	Margin pada akad jual beli, nisbah bagi hasil pada akad bagi hasil, dan imbalan jasa pada akad sewa.	Perangkat bunga.
Pengawasan	OJK dan Dewan Pengawas Syariah.	OJK
Penyelesaian Sengketa	Pengadilan Agama	Pengadilan Negeri
	Badan Arbitrase Syariah (Basyarnas-MUI)	Badan Arbitrase Nasional Indonesia ("BANI")

Table 1: Differences between Sharia Banks and Conventional Commercial Banks

Mechanism of Religious Courts and Indonesian Sharia Arbitration Board

The Religious Court (PA) is a religious court that examines, decides and resolves certain cases between people who are Muslim (Article 2 in conjunction with Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989). The absolute competence of the PA is to resolve sharia economic disputes through litigation which includes the areas of a) Marriage, b) Inheritance, c) Wills, d) Grants, e) Waqf, f) Zakat, g) Infaq, h) Sadaqah, and j) Economics Sharia.

Things that must be considered when filing a sharia economic case in PA are: a) ensuring that the case submitted is not an agreement containing an arbitration clause, b) ensuring that the case submitted is an agreement based on cooperation. Settlement of cases in PA can be carried out in 2 (two) ways, namely litigation/court and non-litigation/outside court.

Non-litigation can be achieved through consultation, negotiation, mediation, conciliation, expert assessment and arbitration mechanisms. Meanwhile, with litigation based on Law no. 3 of 2006 is a Religious Court but when referring to Law no. 21 of 2008 which has the authority to resolve sharia economic disputes is the District Court. Due to the dualism of the law, the Constitutional Court issued decision no. 93/PUU-X/2012 dated 29 August 2013 which has the authority to resolve sharia economic cases is the Religious Court.

Dispute resolution can be carried out through litigation through the Religious Courts, which can be done by means of simple lawsuits and ordinary proceedings. The rules for playing simple claims have been regulated through Supreme Court Regulation (PERMA) no. 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases where the implementation is faster and the costs are lower, while if the settlement is carried out using an ordinary lawsuit, you can be guided by civil procedural law except for those specifically regulated (lex specialis). The difference between a simple lawsuit and an ordinary lawsuit is that the value of material losses is a maximum of IDR 500,000,000 (simple lawsuits) and there is no limit to the value of material losses (for ordinary lawsuits). Simple claims are examined and decided by a single judge and based on Article 4 PERMA No. 4 of 2019 (Amendments to PERMA No. 2 of 2015 concerning Procedures for Settlement of Simple Claims) must fulfill the following requirements:

a. The parties in a simple lawsuit consist of a Plaintiff and a Defendant, each of whom cannot be more than one, unless they have the same legal interests.
b. A simple lawsuit cannot be filed if the defendant's place of residence is unknown.
c. The defendant and plaintiff in a simple lawsuit are domiciled in the same jurisdiction of the court.
d. The plaintiff and defendant are required to attend each trial in person with or without being accompanied by a legal representative.

More details can be seen in the following table. The differences between simple and ordinary lawsuit settlements according to PERMA are as follows:

ASPEK	CARA SEDERHANA	CARA BIASA
Nilai gugatan	Paling banyak Rp500 juta	Lebih dari Rp500 juta
Domisili para pihak	Penggugat dan tergugat berdomisili di wilayah hukum yang sama	Penggugat dan tergugat tidak harus berdomisili di wilayah hukum yang sama
Jumlah para pihak	Tergugat dan penggugat dan tidak boleh lebih dari satu, kecuali punya kepentingan hukum yang sama	Penggugat dan tergugat boleh lebih dari satu
Alamat tergugat	Wajib diketahui	Tidak wajib diketahui
Pendaftaran perkara	Menggunakan blanko gugatan	Membuat surat gugatan
Pengajuan bukti-bukti	Harus bersamaan dengan pendaftaran perkara	Pada saat sidang beragenda pembuktian
Pendaftaran perkara, penunjukan hakim dan panitera sidang	Paling lama 2 hari	Paling lama hari
Pemeriksa dan pemutus	Hakim tunggal	Majelis hakim
Pemeriksaan pendahuluan	Ada	Tidak ada
Mediasi	Tidak ada	Ada
Kehadiran para pihak	Penggugat dan tergugat wajib menghadiri setiap persidangan secara langsung (impersonal), meski punya kuasa hukum	Penggugat dan tergugat tidak wajib menghadiri setiap persidangan secara langsung (impersonal)

ASPEK	CARA SEDERHANA	CARA BIASA
Konsekuensi ketidakhadiran penggugat pada sidang pertama tanpa alasan yang sah	Gugatan dinyatakan gugur	Gugatan tidak dinyatakan gugur
Pemeriksaan perkara	Hanya gugatan dan jawaban	Dimungkinkan adanya tuntutan provisi, eksepsi, rekonvensi, intervensi, replik, duplik, dan kesimpulan
Batas penyelesaian perkara	25 hari sejak sidang pertama	5 bulan
Putusan disampaikan	Paling telat 2 hari sejak putusan diucapkan	Paling lambat 7 hari sejak putusan diucapkan
Upaya hukum dan batas waktu penyelesaiannya	Keberatan (7 hari sejak majelis hakim ditetapkan)	Banding (3 bulan), kasasi (3 bulan) dan peninjauan kembali (3 bulan)
Batas waktu pendaftaran upaya hukum	7 hari sejak putusan diucapkan atau diberitahukan	14 hari sejak putusan diucapkan atau diberitahukan
Kewenangan pengadilan tingkat banding dan MA	Tidak ada	Ada

Next, the mechanism for simple lawsuits and regular events when a sharia economic dispute occurs according to PERMA is as follows:

1. Lawsuit Mechanism with Simple Events
    a. Register;
    b. Checking the completeness of simple claims;
    c. Determination of judges and appointment of replacement clerks;
    d. Preliminary examination;
    e. Determination of the hearing date and summons of the parties;
    f. Trial and peace hearings;
    g. Proof;
    h. Decision.
2. Lawsuit Mechanism with Ordinary Procedures
    a. Registration;
    b. ii. Determination of judges and appointment of replacement clerks;
    c. iii. Determination of the hearing date and summons of the parties;
    d. iv. Trial and peace hearings;
    e. v. Proof;
    f. vi. Decision.

Dispute Resolution Mechanism Through the Indonesian Sharia Arbitration Board (BASYARNAS)

Arbitration is a step in resolving a civil dispute outside of court based on an arbitration agreement made in writing by the disputing parties (PERMA No. 3 of 2023 concerning Procedures for the Appointment of Arbitrators by the Court, Right of Rejection, Examination of Applications for Implementation and Cancellation of Arbitration Decisions) . The legal basis for Basyarnas is Law no. 3 of 1999 concerning Arbitration and Alternative Dispute Resolution. As a basic reference, Basyarnas refers to Islamic Law and the Basic Guidelines that have been established by the MUI. The National Sharia Arbitration Board-Indonesian Ulema Council, was founded by the MUI on 21 October 1993 M/5 Jumadil Awwal 1414 H. At its inception it was called the Indonesian Muamalat Arbitration Board (BAMUI). In 2003 BAMUI changed its name to the National Sharia Arbitration Board-Indonesian Ulema Council (BASYARNAS-

MUI) based on MUI Decree No. Kep-09/MUI/XII/2003 dated 24 December 2003. Basyarnas' duties according to the MUI Decree are:

1. resolve quickly and fairly muamalat/civil disputes that arise in the fields of trade, finance, law, services, industry and others which are organized based on sharia principles.
2. provide binding legal opinions at the request of the parties without any dispute regarding a muamalat/civil issue in an agreement/contract.

The mechanisms/procedures for resolving sharia economic disputes at Basyarnas have been specifically regulated through Basyarnas Agency Regulation No. PER-01/BASYARNAS-MUI/XI/2021 as follows:

1. Application for arbitration;
2. ii. Appointment of a Sole Arbitrator or Panel of Arbitrators;
3. iii. Respondent's Answer, Exceptions and Reconventions;
4. iv. Peace;
5. v. Evidence and Witnesses/Experts;
6. vi. Withdrawal of Application;
7. vii. Decision;
8. viii. Registration of Decisions;
9. ix. Execution of the Basyarnas Decision.

Ratio Decidendi Civil Decision No. 1536/Pdt.G/2023/PA.Sby at the Surabaya Religious Court

On June 13 2013, the Surabaya PA, which adjudicated and examined certain cases at the first instance, in the trial, the Panel of Judges handed down a decision in the sharia economic lawsuit case between DP as the PLAINTIFF and Bank Syariah Indonesia as the ACCUSED and DH as the CO-DEFENDANT. The contents of the plaintiff's lawsuit include:

a. That the PLAINTIFF is the Guarantor for the business capital loan and the debtor is the CO-DEFENDANT. THE PLAINTIFF is also the wife of the CO-DEFENDANT.
b. That the CO-DEFENDANT is the debtor of the working capital financing provided by the DEFENDANT on June 16 2011.
c. That around the beginning of 2014, the plaintiff's business experienced financial difficulties so that it often failed to pay so that it could not pay profit sharing and therefore a dispute occurred between the CO-DEFENDANT and ACCUSED I.
d. That on March 29 2023, the PLAINTIFF received a letter from the DEFENDANT regarding the guarantee auction notification on behalf of the PLAINTIFF. Actually, the PLAINTIFF wanted to pay off the CO-DEFENDANT'S loan by selling the existing collateral himself, in the hope that there would still be excess to buy another house as a residence for the PLAINTIFF and CO-DEFENDANT.
e. That in the clause of the Al-Musyarakah Financing Agreement agreement between the DEFENDANT and the CO-DEFENDANT, if a dispute arises then the method of deliberation to reach a consensus is chosen, and if it cannot be resolved by deliberation to reach a consensus, the PLAINTIFF and DEFENDANT I as parties

to the agreement, then agree to settle The dispute goes through BAMUI (Indonesian Muamalah Arbitration Board).

f. That BAMUI currently no longer exists because it was disbanded in 2003. Therefore, the dispute resolution clause in the financing agreement through BAMUI is no longer enforceable. In this case, the parties making the agreement, namely the ACCUSED and the ACCUSED, have not made an agreement regarding the dispute resolution institution so that the arbitration clause does not apply.
g. That because the arbitration clause does not apply, then lawsuits involving sharia banks and sharia contracts which are civil disputes, especially regarding claims for Unlawful Acts, should be the authority of the Religious Courts to examine and make decisions.

Based on the explanation above, it can be understood that DP is DH's wife who is the owner of the collateral object for DH's financing to Bank Syariah Indonesia. Because DH has defaulted by not fulfilling its obligations or making payments, Bank Syariah Indonesia is auctioning collateral objects belonging to DH as guarantor in the form of land and buildings. However, DP was not willing if the collateral object was sold at auction, so DP filed a lawsuit at the Religious Court regarding a sharia dispute. In the clause of the Al-Musyarakah Financing Agreement agreement between Bank Syariah Indonesia as the creditor and DH as the debtor, they have agreed to resolve the dispute through BAMUI (Indonesian Muamalah Arbitration Board), however DP instead filed a lawsuit with the Religious Court on the grounds that the lawsuit concerns Bank Syariah and the Akad Sharia in the nature of civil disputes, especially regarding claims for unlawful acts, should be the authority of the Religious Courts.

The ratio decidendi in Civil Decision No. 1536/Pdt.G/2023/PA.Sby at the Surabaya Religious Court, namely:

a. Considering that regarding absolute competence, the panel of judges is of the opinion that to determine whether the Surabaya religious court has absolute authority or not to resolve this dispute, it must rely on legal provisions;
b. Considering, that in Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning Religious Courts, Article 49 letter i states that religious courts have the duty and authority to examine, decide and resolve cases at the first level between people who are Muslim in the field of sharia economics;
c. Considering, that SEMA No. 2 of 2019 regarding the Implementation of the Formulation of the Results of the 2019 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court, emphasizing that one of the results of the religious chamber plenary meeting was the resolution of sharia economic disputes through litigation following the Constitutional Court decision No. 93/PUU-X/2012 dated 29 August 2013 becomes the absolute authority of the religious courts, while non-litigation settlements are carried out according to the agreement;
d. Considering, that article 3 of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution confirms that "District Courts have no authority to adjudicate disputes between parties who are bound by an arbitration agreement".

The words "district court" in the article must be read "religious court" if it relates to disputes between parties who are bound by a sharia arbitration agreement;

e. Considering, that article 1338 of the Civil Code confirms that agreements that have been made legally apply as law for the parties who make them (the principle of pacta sunt servanda). The agreement cannot be withdrawn unless agreed by both parties or for reasons determined by law. Agreements must be implemented in good faith;
f. Considering, therefore, if there is a clause in the contract (agreement) which states explicitly that if a dispute occurs it will be resolved in an Arbitration Body, then the parties to the contract (agreement) should comply with this provision and comply with the applicable law;
g. Considering, that the PLAINTIFF and the DEFENDANT both admit and confirm that there is article 15 point 2 in the Al-Musyarakah Financing Agreement No. 102 dated June 16 2011 which was signed between the DEFENDANT, PLAINTIFF, and CO-DEFENDANT emphasized that "if efforts to resolve differences of opinion or disputes through deliberation to reach a consensus do not produce a decision agreed upon by both parties, then the parties hereby agree to appoint and determine and provide power of attorney to the Indonesian Muamalat Arbitration Board (BAMUI) to give its decision";
h. Considering, that based on MUI Decree No. Kep-09/MUI/XII/2003 dated 30 Shawwal 1424 H coinciding with 24 December 2003, that BAMUI was changed to BASYARNAS;
i. Considering, that in the a quo case there has been a dispute regarding the implementation of the asset auction carried out by the DEFENDANT and CO-DEFENDANT over assets belonging to the PLAINTIFF, then based on the Al-Musyarakah Financing Agreement No. 102 dated 16 June 2011, the authority to resolve the dispute is the Indonesian Muamalat Arbitration Board (BAMUI) which has now been changed to the National Sharia Arbitration Board (BASYARNAS);
j. Considering, that based on the above legal considerations, the panel of judges concluded that the Surabaya Religious Court has no authority to try this case;
k. Considering that because the Surabaya Religious Court does not have the authority to try this case, the panel of judges is of the opinion that the PLAINTIFF's claim in the main case must be declared inadmissible

CLOSURE

Conclusion

Based on the explanation above, it can be understood that the authority to examine, decide and resolve sharia economic cases or the scope of Sharia Banking is the absolute authority of the Religious Court, but if the parties who agreed to resolve the dispute at BASYARNAS then the Religious Court no longer has the authority to examine and decide. , and resolve sharia economic matters or the scope of sharia banking. This is based on Article 3, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which emphasizes that the words "District Court" in this article must be read as "Religious Court". Based on MUI Decree No Kep-09/MUI/XII/2003, 30 Shawwal 1424 H coinciding with 24

December 2003, the Indonesian Muamalat Arbitration Board (BAMUI) was changed to the National Sharia Arbitration Board (BASYARNAS).

Then, based on Article 1338 of the Civil Code, it is emphasized that contracts/agreements made legally apply as law for the parties who make them (pacta sunt servanda principle). The agreement cannot be withdrawn other than by agreement of both parties or for reasons determined by law. Agreements must be implemented in good faith. So if the parties have agreed to resolve the dispute at the National Sharia Arbitration Board (BASYARNAS) then the Religious Court has no authority to examine, decide and resolve the case.

Suggestion

The author's suggestion is that a proposed revision be made to Article 3 of the Arbitration Law, namely that the sentence "District Courts have no authority to adjudicate disputes between parties who have been bound by an arbitration agreement" be changed to "District Courts and District Courts have no authority to adjudicate disputes between parties who have bound by an arbitration agreement." The aim of the proposal is that if the parties have agreed to resolve sharia economic disputes through Basyarnas, the PA will no longer have the authority (absolute competence) to adjudicate the dispute.

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