

THE ISSUE OF JUDICIAL COMPETENCE IN THE SETTLEMENT OF SHARIA ECONOMIC INSOLVENCY

DWI SENO WIJANARKO

Fakultas Hukum, Universitas Bhayangkara Jakarta Raya, Indonesia

dwi.seno@dsn.ubhaarajaya.ac.id

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Abstract

Settlement of bankruptcy disputes, according to Sharia banking law. Based on UUPA No:3 of 2006 related to the authority of the Religious Court to examine sharia economic disputes and based on PERMA No: 2 of 2008 on the Compilation of Sharia Economic Law decided directly by the Supreme Court referring to Law No: 27 of 2004 which appoints about the Commercial Court. Whereas the Religious Court that has the authority of bankruptcy disputes contains elements of Sharia Economics, including Islamic banking. Insolvency Decision No: 7/ Bankruptcy/2011/PU. Niaga JKT PST strengthened MARI Verdict No: 346F/PDT. SUS / Year 2011 which does not consider the existence of PERMA Number: 2 of 2008 on Compilation of Economic Law established by the Supreme Court.

Keywords: Authority of the Court, Sharia Economic Law, Reasons for Bankruptcy Law

INTRODUCTION

Based on Pancasila and the Constitution of the Republic of Indonesia in 1945, the goal of national development is the creation of a just and prosperous society, based on economic democracy, by developing an economic system that relies on market mechanisms that are justice. To realize these goals, the implementation of national economic development is directed at an economy that is in favor of the economy of citizenship, reliable, fair, equitable, independent, and able to compete in the economic arena. One form of potential court and the form of community contribution in the national economy is the progress of the economic system based on islamic values (sharia) by lifting its principles into a national legal system.

Sharia principles are based on the values of justice, balance, benefit, and universality. As the first source of Islamic law is sharia, because sharia is khitâb Allâh which contains the text of the holy text of Allah Almighty which was handed down to the Prophet Muhammad through Jibril, as the understanding expressed by Fathî al--Dhuraynî

In Indonesia, as long as the case of insolvency in the intention contains elements of Sharia economic disputes, including bankruptcy cases with elements of Sharia Banking disputes. Legal issues that need attention, especially with the consideration of the Supreme Court, stated with arguments based on Article 303 of Law No: 37 of 20044 on Bankruptcy and Delay of Debt Payment Obligations are not appropriate. Sharia economics is discussed in two disciplines, namely Islamic economics and Islamic economic law. Sharia economy which is the authority of religious judiciary is regulated in Law No. 3 of 2006 on religious justice related to the science of economic law that must be known by judges of religious justice.

The arrangement of Sharia economic law that has existed so far is a provision contained in the book of jurisprudent and a small part is in the fatwa of the National Sharia Council (DSN) as well as in bank indonesia regulations. Many legal rules contained in various laws and regulations that have a tangent point with Law No. 3 of 2006.

LITERATUR REVIEW

The term modern banking today is derived from Islamic treasures (jurisprudent) such as the term credit taken from the term "qardh". Credit in English means to lend money. Credo means trust, while qardh in jurisprudence is lending money on the basis of trust. Similarly the term check is taken from the term "saq". Saq in Arabic means market. While cheques are a means of payment that is usually used in the market.⁴ Thus, it can be known that the beginning of Islam already had banking practices, although even in a simple form such as some open businesses with borrowing functions, some perform the delivery function and some provide working capital.

Likewise, doing other ribawi practices such as riba nasîah that can be found in the payment of interest on credit, savings interest and deposits. Riba jahiliyah can also be found in conventional bank practices such as credit card transactions that are not paid in full.

Insolvency with register Number: 7 / bankruptcy / 2011 / PN. Niaga.Jakarta.Pusat, dated January 31, 2011 in the Commercial Court at the Central Jakarta District Court, the bank that is subject to the Islamic Banking Law.Based on the bankruptcy application by the bank that conducts financing transactions based on the principle of deliberation principles with the Limited Company companies in the field of telecommunications does not run smoothly. Finally, the bank submitted a bankruptcy application to the Commercial Court, without regard to the legal relationship with its business partner (the bankruptcy respondent) based on the principle of deliberation.

Based on the above case, the bankruptcy respondents put up a fight to the level of Cassation. One of the objections raised by the bankruptcy court is that the Commercial Court is not authorized to examine, resolve and decide disputes based on Islamic banking transactions, namely in the form of financing agreements based on the principle of deliberation.

On the insolvency dispute, the Supreme Court of the Republic of Indonesia No. 346 K / PDT. SUS/2011 on August 22, 2011 caused problems that must be solved. The issues in this paper relate to the authority over the resolution of insolvency disputes that occur between parties whose legal relationships are based on Islamic banking law. The development of Islamic banking law began with the revision of Law No: 7 of 1989 concerning Religious Courts into Law No: 3 of 2006 which gives authority to the Religious Court to adjudicate disputes in the field of Sharia economy.

The Panel of Judges in the Bankruptcy Case Decision No: 7/ Bankruptcy/2001/PN Niaga. JKT. PST in Commercial Court at the Central Jakarta District Court does not contain and consider the special event law that is the absolute authority of the Religious Court.⁶ In Case Cassation Level No: 346 K / PDT. SUS/2011, the Supreme Court of the Republic of Indonesia has upheld the Decision of the Commercial⁷ Court which is a legal issue in this case is: (1) Does the Commercial Court have the

authority to resolve insolvency disputes whose legal relations of the parties comply with sharia bank law? (2) What is the legal consideration of the Central Jakarta Commercial Court Decision and the Supreme Court Decision No: 346 K / PDT. SUS/2011 is appropriate in the resolution of insolvency disputes whose parties are subject to Islamic banking law?

RESULT AND DISCUSSION

MATERIAL LAW IN RESOLVING SHARIA ECONOMIC DISPUTES

Article 55 paragraph 3 of Law No. 21 of 2008 specifies that the resolution of disputes as referred to in paragraph 2 should not be subject to sharia principles. What is meant by sharia principles in this law is as specified in article 1 number 12, which is the principle of Islamic law in banking activities based on fatwas issued by institutions that have authority in the determination of the Fatwa of the National Sharia Council (DSN) which is applied to the Regulation of Bank Indonesia (PBI) for the Islamic banking environment, and by institutions that have authority for other Islamic economic activities,

Then the source of the law that is a reference is Islamic law based on the Qur'an and Hadith, Ijmak, the rules of Jurisprudence and the opinions of other scholars related to muamalat. Since material law related to sharia economy has not been codified before, the Supreme Court feels the need to take shortcuts to compile a compilation of sharia economic law as applied material law in resolving sharia economic disputes in the religious justice environment. This was finally realized by the Supreme Court regulation No. 02 of 2008 on the Compilation of Sharia Economic Law (KHES), which in article 1 paragraph (1) determined that court judges in the religious judiciary environment who examine, adjudicate and resolve cases related to sharia economy, use as guidelines of sharia principles on the Compilation of Sharia Economic Law.⁸

Sharia economic activities in Indonesia were formally marked by the establishment of Bank Syariah (Bank Muamalat Indonesia) in November 1991, followed by other Islamic economic activities (takaful, Sharia pawn, Islamic capital market, Islamic bonds, Islamic mutual funds and others).

So as to answer the challenge of the new authority in the field of Sharia economy, on the one hand it is absolute for religious judicial officers, especially judges to work harder to increase knowledge, improve skills in the field of Islamic economic law and recognize the operationalization of Islamic economic activities, and on the other hand it is the responsibility of the Supreme Court to conduct technical improvement training in the field of Islamic economics for judges and clerks of the court. Religion as soon as possible. and for those who hold the authority of drafting legislation, it is necessary to synchronize the products of legislation related to the new authority of the religious judiciary so that it can avoid overlapping in an implementation..⁹

Based on the authority of the religious court with the birth of UUPA No.3 of 2006, the Muslim community in Indonesia has in principle been able to implement Islamic sharia in the Unitary State of the Republic of Indonesia where the state has also facilitated it by providing institutions and judicial forums in the settlement of disputes in the field of sharia economy, namely religious courts.

CONCLUSION

Parties subject to Islamic law can agree and reaffirm in an agreement on Islamic sharia as a governing law and the selection of dispute resolution forums at religious courts. The ideal of the founding father of the Indonesian nation to formulate the first precept of Pancasila in the 1945 version of the Jakarta Charter, namely the Supreme Divinity by Implementing Islamic Sharia for its Adherents, has substantially been realized with the birth of UUPA No.3 of 2006 which establishes broad absolute competence to religious courts. With regard to the absolute authority or competence of the religious court, Uupa No.3 of 2006 regulates it in the provisions of number 37 article 49, namely that the religious court is in charge and authorized to examine, decide and resolve cases at the first level between people who are Muslim in the field of marriage, waqf, zakat, infaq, inheritance, will, sharia economy grant, and shadaqah.

It further explained that the guidelines for the judge as intended do not reduce the responsibility of the judge to dig in and find the law to guarantee a fair and correct verdict.

Commercial courts are not authorized to examine, resolve and resolve insolvency disputes between parties subject to Islamic banking law. In principle, bankruptcy cases with elements of Sharia economic disputes, including bankruptcy cases with elements of Islamic banking disputes, for the sake of law have become the authority granted by law to religious courts. Based on the provisions in Uupa No.3 of 2006 related to the authority of religious courts to examine cases in the field of Sharia economy and compilation of Sharia economic law stipulated by the Supreme Court in PERMA No. 2

of 2008. Judges in The Commercial Court's Decision on Bankruptcy Case Number.

7/Bankruptcy/2011/ PN. TRADE. JKT. PST in the Commercial Court at the Central Jakarta District Court does not contain and consider the provisions of special event law that become absolute authority, namely the provisions of event law in the Religious Justice Law Number. 3, 2006 and Act on The Number. 21 of 2008 on Islamic Banking, and does not contain the provisions of the event law that gives authority to religious courts. Judges at the cassation level in Cassation Case No. 346 K/PDT.

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