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Analysis of Islamic Law on Sharia Economic Disputes (Studies UU No.3/2006 and UU No.50/2009)

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ABSTRACT

The emergence of sharia economic disputes cannot be separated from differences in interpretation of the sharia understanding of contractual transactions. Default arises because there is a breach of agreement between the two parties so that they cannot find a solution. Islamic law exists to provide solutions to economic problems that occur, either through courts or without courts. The birth of Law no. 3 of 2006 wants to emphasize the function of religious courts in sharia economic disputes without conflicting with Law no. 50 of 2009 concerning disputes faced by not a Muslim. Sharia economic disputes faced so far can be returned to applicable Islamic law.

1. INTRODUCTION

Islamic law is generally understood as law based on the Al-Qur'an and hadith. Then it was followed up by the understanding of the ulama through their ijtihad. At the level of *ijtihad*, Islamic law is given meaning in various versions according to their respective approaches. Specifically in Indonesia, Islamic law can be understood as regulations taken from revelation and formulated in four products of legal thought, namely *fiqh, fatwa*, court decisions or jurisprudence and laws that are guided and enforced by Muslims in Indonesia. (Mohammad Daud Ali, 2007)

The meaning of Islamic law above provides the understanding that what is meant by Islamic law is everything that comes from the Koran and hadith, which can be formulated through ijtihad according to the time, circumstances and place where Islamic law is enforced. For the legal formulation category above, it contains *muamalah* law or *fiqh*. In *muamalah fiqh*, it explains economic law. Based on this, it can be understood that Islamic law has regulated matters relating to sharia economics.

In relation to sharia economics, it is currently something that is actual and widely discussed, both at the discourse level and already being realized in the economic life of society. There are two reasons that emerge, namely first, because many Islamic societies are oriented towards capitalist economies or economies developed by Western countries, which, if studied properly, is certainly in conflict with Islamic law. Second, the capital economy does not have a good impact on society, especially communities with small and medium economies, and can even cause scandals. (Manan, 2010)

The implementation of a sharia economy, in theory, could be said to be ideal. However, no matter how good a funding theory or concept is, if it is not supported by resources, especially human resources as operational and professional staff, then the theory will not work well, including sharia economics will not bring prosperity to society. The institutionalization of sharia economics is a demand. However, as mentioned above, the issue of human resources as sharia economic managers and the general public as sharia economic actors, can be a source of problems among them if they do not have good motivation and understanding of sharia economics. In fact, it does not rule out the possibility of a dispute occurring that requires legal resolution. (Abd. Shomad, 2010)

Disputes in the economic sector are a common thing and often encourage those in dispute to take legal action/ that is why in matters of sharia economics, we have anticipated this by issuing legal rules which serve as a reference if there is a dispute in the implementation of the sharia economy. Among the legal regulations relating to sharia economics is Law Number. 3 of 2000 concerning Religious Courts for Sharia Economics, Law Number 21 of 2008 concerning Sharia Banking, and Law Number 8 of 1989 concerning Religious Courts.

2. METHOD

This research is a type of qualitative descriptive research with a formative legal approach regarding the aspects of Islamic law on economic disputes. The data found were analyzed qualitatively by legal analysis on the problems studied. The data used contains primary data, namely Law No. 3/2006 and Law No. 50/2009. While the secondary data used contains an analysis of Islamic law on sharia economic disputes. The data can be found using a library research approach through books and journals so that a holistic understanding of the problems studied can be found to find conclusions.

3. RESULTS AND DISCUSSION

To fulfill the needs of society in life, interaction between fellow human beings is needed so that the economic problems of society can be realized. However, it is undeniable that there will be friction between fellow human beings in fulfilling their needs. To resolve social problems in fulfilling their needs, rules are needed that can neutralize so that horizontal conflicts do not occur. Islam as a religion of *rahmatanlilaalamain* must of course be a mediator in the economic conflicts of society. The presence of Islam as a religion must certainly provide solutions to the problems faced. (H. A. Djazuli, 2005)

Sharia economics, its implementation can be said to be something new in the modern era today compared to the implementation of conventional economics or general economics. So when sharia economics appears on the surface with various concepts offered amidst the waves and ebbs and flows of conventional economics, various responses emerge, some are cynical, pessimistic, and some are optimistic. Among non-Islamic economists who think positively, they will consider it a new challenge that must be responded to. For those who are not happy with the progress of Islam, of course they will think differently, at least they consider it a far-fetched concept, for example, with the pretext that it is impossible for economic chess to develop without an interest system. (A. Kadir, 2010)

For Islamic economists or pioneers of the concept of sharia economics, they are very confident and optimistic that they can lead to the salvation of the community's economy, both macro and micro. They argue that the sharia economic system has been predicted by the Prophet Muhammad, his companions and the *tabiin* with various economic principles that pay great attention to the public interest in community and state life. For example, the principle of تعاون (mutual assistance), رضاعية (willing to be willing) is fair and beneficial. (Amir Syarifuddiin, 2010)

Islam was born in the environment of the economic law of Mecca trade, in the socio-economic context, it emphasizes the goodness of trade (التجارة) since it places it as an honest economic actor after the Prophet Muhammad, his companions and the martyrs who died in the way of Allah. At the same time, he severely punished dishonest economic actors who attempted to gain profits and wealth through unfair means. Moral principles in economic practice at that time were the main basis so that economic actors would not suffer harm, caused by lies, suspicion, greed, injustice and so on.

One of the barometers of the sharia economy in the modern era today is sharia banking. Sharia banking is part of Islamic banking that is related to the economy. One of the principles applied in it is the prohibition of usury in its various forms, and using a profit-sharing system. With the principle of profit-sharing, sharia banks can create a healthy and fair investment climate, because all parties can share, both profits and losses. Of course, in the implementation of sharia economics, it is not only in the banking sector that is desired to gain mutual benefits, but all economic systems based on sharia (the Al-Qur'an and hadith) try to avoid losses for the perpetrators. (Ahmad Rafiq, 1998)

In conducting transactions according to Islamic economics, it must be based on the principle of reciprocal will, mutual desire or mutual consent according to the determined method. Then followed by other principles, namely:

1. In conducting transactions, there is an *ijab and qabul* which is carried out consciously and intentionally by a person who has perfect reason, has reached an age that is able to distinguish something related to transaction activities.
2. The goods being transacted are goods that are clean in material, both in substance and how to obtain them.
3. The goods being traded are something that is useful
4. Both goods, services and what is used as the object of the transaction, truly belong to the person making the transaction and are in his power, even if temporarily not at the place where the transaction occurs
5. The object being transacted is something that is transparent, both in quality and quantity.
6. Some concepts applied in Islamic economics as stated, are something that involves interested parties, misunderstandings occur. (Hulwati, 2006)

Because the name of the economic transaction, including Islamic economic transactions, is very sensitive and about misunderstandings and disputes. For example, in the concept of مضاربة which prioritizes trust between the two parties that have been agreed upon together. Because the name of human desire is not 100% trustworthy. Especially if there is one party who feels that the profits obtained are the result of his own hard work, without any contribution from other parties. Several factors that can cause disputes in the مضاربة or profit sharing system, namely:

1. Side steaming, the customer uses the funds not as stated in the contract.
2. Deliberate mistakes and errors
3. Concealment of profits by the customer, if the customer is not honest.

The three things above are very permissible between the transacting parties, especially for capital managers between the transacting parties, especially for capital managers in the مضاربة system, and generally in other Islamic economic systems such as مشاركة. Moreover, if in managing the agreed finances it is not followed by good management and supervision, then the potential for errors and fraud can become a reality that leads to disputes. It is undeniable that disputes in Islamic economic practices have not occurred much and have not been processed through the courts. However, looking at the graph of public enthusiasm for the implementation of the economy in general and Islamic banking economics in particular, then of course there are potential complications or disputes in it. (Muhammad Syafi'i Antonio, 2001)

Human interaction with other humans is always based on common interests, whether the relationship is passive or negative. This relationship occurs in many aspects, such as political, legal and economic aspects. The economic aspect is one aspect that is very urgent. Because most interactions related to the world, in it there are elements of economic aspects. That is why many people get pleasure in life and not a few suffer, due to economic factors. It is very vital for economic disputes to occur, especially in the trade economy, for example the sale and purchase of goods and services, rent and problems for those involved in it. Therefore, especially in the practice of Islamic economics in Indonesia, several related laws and regulations have been created and published if a dispute occurs. (Sinar Grafika Editorial, 2009)

However, Law Number 3 of 2006 and Law Number 50 of 2009 are revisions of Law Number 7 of 1989 which do not contain matters relating to sharia economics, including those relating to the duties and authorities of the Religious Court, namely examining, deciding and resolving cases of Muslims in the fields of a) marriage, b) inheritance, wills and gifts, c) endowments and charity (Article 49 (2)). The issue of endowments, some include in the category of sharia science. However, if observed carefully, endowments do not touch on the issue of the substance of sharia economics, because in practice there are no transactions that benefit both parties individually or in groups. Endowments are carried out with the aim of taking economic benefits for the interests of worship and public welfare. Although there may be material benefits and losses in it, these benefits and losses do not return to the endowment (wakif) individually, except solely for the public interest. (Law Number 4 of 2004)

Law number 3 of 2006, there is nothing in principle related to sharia economics. Matters related to sharia economics in the law, only the addition of the authority of the Religious Court, namely the authority to handle sharia economic disputes (Article 49 letter (i). However, in Article 50 (1) and (2), it is implied that the Religious Court does not fully handle sharia economic cases, because it concerns the object of the dispute related to ownership rights, which must first be decided by a court within the General Court environment. (Ministry of Religion of the Republic of Indonesia, 2005)

Law Number 50 of 2009, does not include the addition of authority as stipulated in Law Number 3 of 2006 Article 49. But what exists is the establishment of a special court, namely the appointment of ad hoc judges to examine, try, and decide cases, which require expertise and experience in certain fields and within a certain period of time (Article 3 (3)). To strengthen the argument put forward, it can be considered the determination of the requirements to become a judge in the Religious Court environment.

The authority given to the Religious Court in handling sharia economic cases will not be maximized if it is not followed by the judge's resources, especially knowledge of economic issues. Many judges have been found to have a sharia education background and know about *muamalah* issues, but only touch a little on the substance of sharia economics because they are more focused on the legal aspects without looking at other aspects. Law Number 7 of 1989 to Law Number 3 of 2006 and Law Number 50 of 2009 is a positive thing in order to provide answers to the problems faced by Muslims related to economic transaction problems. However, on the other hand, there are several fundamental weaknesses, namely regulations related to the independence and legal certainty of the authority of the Religious Court to handle sharia economic disputes, as well as the readiness of judges' resources in handling sharia economic disputes. (Law No. 50 of 2009).

In principle, it can be understood that Law No. 3 of 2006 concerning Religious Courts for Islamic economics and Law No. 50 of 2009 concerning amendments to Law No. 7 of 1989 concerning Religious Courts relating to disputes with Islamic economics, are potential to give judges authority in handling Islamic economic disputes for Muslims only. However, both legal products certainly have weaknesses related to judges' resources in deciding Islamic economic cases. (Management Team for Compilation of Legislation on Islamic Economics)

4. CONCLUSION

Islamic law is a law derived from the Qur'an and hadith. It contains issues of worship and *muamalah*. The field of *muamalah*, related to the relationship of human activities, especially economic issues, such as buying and selling, renting and borrowing according to the principles of Islamic law. Sharia economics built on the foundation of the Al-Qur'an and hadith, is a very ideal economic system. However, sometimes a good theory is found, but in practice the opposite happens.

To overcome the problem of disputes in the practice of sharia economics, several laws were issued, including Law No. 3/2006 and Law No. 50/2009 as an amendment to Law No. 7/1989. Examining these laws, basically nothing has changed from the previous laws, except for the addition of the authority of the Religious Court to handle sharia economic disputes, as well as the formation of edhoc judges to help resolve sharia economic cases.

BIBLIOGRAPHY

Ali, H. Mohammad Daud, *Hukum Islam Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia,* Edisi VI; Jakarta PT RajaGrafindo Persada, 2007.

Antonio, Muhammad Syafi'I, Islamic Banking al-Mawsuf al-Islam Bank Syariah Dari Teori ke Praktek, Cet. V; Jakarta: Gema Insani, 2001.

Djazuli, H.A. *Ilmu Fiqh, Penggalian, Perkembangan dan Penerapan Hukum Islam,* Cet. III; Jakarta: Prenada Media, 2005.

Departemen Agama RI., *Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf,* Cet. II; Jakarta: Direktorat Jendral Bimas Islam dan Urusan Haji, 2005.

Hulwati, *Ekonomi Islam,* Edisi I; Jakarta: Ciputat Press Group, 2006.

Kadir, A. *Hukum Bisnis Syariah dalam Alquran*, Cet. I; Jakarta: Amzah, 2010.

Manan, M.A. *Islamic Economics Theory and Practice,* Delhi: Idarah Adabiyat, 2010.

Rafiq, Ahmad, *Hukum Islam di Indonesia*, Cet. III; Jakarta: PT RajaGrafindo Persada, 1998.

Redaksi Sinar Grafika, *Undang-Undang Perbankan Syariah (UU RI No. 21 Tahun 2008),* Cet. II; Sinar Grafika, 2009.

Somad, Abd. *Hukum Islam Penormaan Prinsip Syariah Dan Hukum Indonesia*, Cet. I; Jakarta: Kencana Pernada Media Group. 2010

Syarifuddiin, Amir, *Garis-Garis Besar Fiqh*, Cet. I; Jakarta: Kencana Permada Media Group, 2003.

Tim Manajemen Kompilasi Perundang-undangan tentang Ekonomi Syariah, Bekerja dengan Riset Informasi dan Data Ekonomi Syariah (Prides), *Kompilasi Perundang-Undangan Tentang Ekonomi Syariah*, Cet. I: Jakarta: Cermelang, t.th.

Undang-Undang Nomor 4 Tahun 2004 tentang Kekuasaan Kehakiman

Undang-Undang No 50 tahun 2009 tentang Perubahan Kedua atas Undang-Undang No 7 Tahun 1989 tentang Peradilan Agama dan Penjelasannya