

## **DISPUTE RESOLUTION ARRANGEMENTS IN ISLAMIC BUSINESS PRACTICES**

**Fauzi Anshari Sibarani\***

\*Email : [fauzisibarani@umsu.ac.id](mailto:fauzisibarani@umsu.ac.id)

Universitas Muhammadiyah Sumatera Utara

### **ABSTRAK**

Dispute in the Indonesian Dictionary means opposition or conflict. Conflict means opposition or conflict between people, groups, or organizations against one problem object. Conflict or conflict between individuals or groups who have the same relationship or interest in an object of ownership causes legal consequences between each other. Conflict or dispute is a situation and condition when people experience factual disputes or disputes in their perceptions only. In terms of terminology, a dispute is a conflict between two or more parties that originates from differences in perception about an interest or right of choice, resulting in legal consequences for both. In a dispute, the parties can be subject to legal sanctions against one of them. In short, "dispute" is a conflict or conflict as a form of actualization of differences and also a form of conflict between two or more people. A dispute can also be interpreted as a conflict in a social interaction in society that forms an opposition between people, groups, or organizations against a problem object that has not been resolved properly.

**Keywords: Dispute Resolution, Practice, Islamic Business.**

### **A. Introduction**

The Great Dictionary of the Indonesian Language translates law as provisions and state regulations made by the legislative body (House of Representatives), signed by the Head of State (President, Head of Government), and has binding force.

Achmad Ali in his book Suhrawardi K. Lubis, et al., states that law is a set of rules or measures arranged in a system that determines what humans as citizens may and may not do in their social life. The law originates from both the community itself and from other sources that are recognized as valid by the highest authority in the community, and is truly enforced by the community (as a whole) in their lives. If the rules are violated, it will give the highest authority the authority to impose external sanctions.<sup>1</sup>

---

<sup>1</sup> Suhrawardi K. Lubis dan Farid Wajdi. 2016. *Hukum Wakaf Tunai*. Bandung: PT. Citra Aditya Bakti, hlm 7-8.

Law is the whole norm, which by the state or the ruler of society who has the authority to set the law, is stated or considered as a binding regulation for some and all members of society with the aim of creating an order desired by the ruler. The development of human life history always causes changes in what is meant by law from time to time. Before humans knew the law, law was identical to customs and traditions that became guidelines in life.<sup>2</sup>

A legal product is not born in a vacuum. Every legal product is always born in society (in accordance with the principle of *ubi societates ibi jus* above), where this society is a complex of interrelations in interdependence between humans with a pluralistic background of differences in the background of each individual human being. Law is indeed shown ideally to create justice in the complex of interrelations between humans, but this complex of interrelations - interdependence between humans is not a reality that is still (static) waiting to be regulated by law. If these interacting subjects each have good intentions for the realization of a fair relationship pattern, then a conducive social order is created where ideal law will be created in it, and common justice is the same goal that each party wants to realize.<sup>3</sup>

The existence of law along with the existence of humans in the world. Humans are the ones who realize and provide laws for life and living in the context of living together in society or for their own presence in this world. In fact, the law itself has existed before humans were created. In the previous chapter, it was explained that angels questioned God's decision to create humans. That is where the law lies, when God's decree, which of course knows everything, was opposed by angels by saying "why did you create creatures that would destroy the earth". From the point of the earth feeling dissatisfied, the angels prided themselves on preventing God's decree by saying "while we always praise and worship you.

From this quote, if we think about it, we can learn something, namely that decrees exist first as law. Next, there was an anti-reaction to this decree by stating the consequences or consequences of a law. Next comes a comparison between one phenomenon and a phenomenon

---

<sup>2</sup> Farid Wajdi dan Suhrawardi K. Lubis. 2022. *Hukum Ekonomi Islam Edisi Revisi*. Jakarta: Sinar Grafika, hlm 1.

<sup>3</sup> Muhammad Syukri Albani Nasution, dkk. 2017. *Hukum Dalam Pendekatan Filsafat*. Jakarta: Prenadamedia Group, hlm 50.

that already existed. Pay attention to the angels' opinion that humans will not be able to worship and praise God any more than they did before.<sup>4</sup>

## **B. Research Methods**

A study cannot be called research if it does not have a research method.<sup>5</sup> Research methods are one of the factors of a problem that will be discussed.<sup>6</sup> The study was conducted using secondary data analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references derived from research results, studies, and reviews of several writings which are then summarized into a scientific paper.<sup>7</sup>

## **C. Analysis And Discussion**

Law is closely related to certainty. Law aims to create certainty in regulating relationships between people in society. The problem of legal certainty is closely related to the problem of where the law comes from. Sources of law can be interpreted as materials used as a basis by the court in deciding cases.<sup>8</sup>

The term source of law is often used in several meanings as follows:<sup>9</sup>

1. As a legal principle or something that is the beginning of law. For example, the will of God, human reason, the soul of the nation, and so on;
2. Showing previous laws that provide materials for the laws that are currently in force, namely French law and Roman law;
3. As a source of the validity of the law that gives formal force to legal regulations (rulers and society).
4. As a source for us to be able to recognize the law. For example, documents, laws, palm leaves, inscribed stones, and so on.

---

<sup>4</sup> Muhammad Erwin. 2016. *Filsafat Hukum Refleksi Kritis Terhadap Hukum dan Hukum Indonesia (dalam Dimensi Ide dan Aplikasi)*. Depok: PT. Rajagrafindo Persada, hlm 136-137.

<sup>5</sup> Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

<sup>6</sup> Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.

<sup>7</sup> Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.

<sup>8</sup> Farid Wajdi, dkk. Op. Cit., hlm 16.

<sup>9</sup> *Ibid.*, hlm 17.

5. As a source of the occurrence of law or a source that gives rise to law. The source of law is where the form of the manifestation of law can be seen.

The word moral always refers to the good and bad of humans as humans. Moral norms are the benchmark for determining the right and wrong of human attitudes and actions seen from the perspective of good and bad as humans, and not as actors in certain roles and free. So too with legal norms. Every society knows the law. Legal norms are norms that are strictly demanded by society because they are considered necessary for the safety and welfare of the public. Legal norms are norms that are not allowed to be violated. People who break the law will definitely be subject to the law as a sanction. But legal norms are not the same as moral norms. It can happen that for the sake of the demands of the conscience, so for the sake of moral awareness, we have to break the law.<sup>10</sup>

The legal field has agreed that Pancasila is the source of all sources of law, so it is natural that in discussing principles, it is also argued that the source of all legal principles is Pancasila. A principle is something that we can use as a basis, as a foundation, as a support, as a place to lean on, to return something that is to be explained.<sup>11</sup>

In various laws and regulations related to Sharia economics, there are no specific rules governing formal law (procedural law) and material law regarding Sharia economics. The existing Sharia economic law regulations are provisions contained in fiqh books and a small part is contained in the fatwas of the National Sharia Council (DSN), and in Bank Indonesia regulations. Looking at the cases submitted by the disputing parties to the National Sharia Arbitration Body (BASYARNAS) in connection with disputes between Sharia banks and their problems, in resolving them BASYARNAS uses 2 different laws, namely the fatwas of the National Sharia Council and the Civil Code. This is done to fill the legal gap in resolving a case.

Before the birth of legislation governing formal law and material law on Sharia economics in resolving Sharia economic disputes, on the other hand, religious court judges

---

<sup>10</sup> Muhammad Syukri Albani Nasution, Zul Pahmi Lubis, Iwan, Ahmad Fauri. 2017. *Hukum Dalam Pendekatan Filsafat*. Jakarta: Kencana, hlm 209.

<sup>11</sup> Mahadi. 1989. *Falsafah Hukum Suatu Pengantar*. Bandung: PT. Citra Aditya Bakti, hal. 119.

mastered the contract law contained in general civil law, the Civil Code, as well as all fatwas of the Indonesian National Sharia Council and the Indonesian National Waqf Council. Currently, the religious civil working group (pokja-perdata agama) of the Supreme Court of the Republic of Indonesia in collaboration with the Center for Islamic Law and Community Studies (PPHIM) is compiling a kind of compilation of Sharia Economic Law to be used as a reference for religious court institutions, of course this is while waiting for the legislation related to Sharia economics to be issued.<sup>12</sup>

#### **D. Conclusion**

The regulation of dispute resolution in Islamic business practices is regulated in several regulations, including:

- a. Law Number 48 of 2009 concerning Judicial Power (UUKK)
- b. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution
- c. Law Number 05 of 1968 concerning Settlement of Disputes between the State and Foreign Citizens regarding Investment
- d. Presidential Decree Number 34 of 1981 concerning Ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- e. Supreme Court Regulation Number 1 of 1990 concerning Procedures for the Implementation of Foreign Arbitration Awards
- f. United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.

---

<sup>12</sup> Minin, Darwinsyah. "Penyelesaian Sengketa dalam Praktik Ekonomi Syariah di Luar Pengadilan menurut Hukum Islam." *Kanun Jurnal Ilmu Hukum* 13.1 (2011): 1-22.

## References

- Farid Wajdi dan Suhrawardi K. Lubis. 2022. *Hukum Ekonomi Islam Edisi Revisi*. Jakarta: Sinar Grafika.
- Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.
- Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.
- Mahadi. 1989. *Falsafah Hukum Suatu Pengantar*. Bandung: PT. Citra Aditya Bakti.
- Minin, Darwinsyah. "Penyelesaian Sengketa dalam Praktik Ekonomi Syariah di Luar Pengadilan menurut Hukum Islam." *Kanun Jurnal Ilmu Hukum* 13.1 (2011): 1-22.
- Muhammad Erwin. 2016. *Filsafat Hukum Refleksi Kritis Terhadap Hukum dan Hukum Indonesia (dalam Dimensi Ide dan Aplikasi)*. Depok: PT. Rajagrafindo Persada.
- Muhammad Syukri Albani Nasution, dkk. 2017. *Hukum Dalam Pendekatan Filsafat*. Jakarta: Prenadamedia Group.
- Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.
- Suhrawardi K. Lubis dan Farid Wajdi. 2016. *Hukum Wakaf Tunai*. Bandung: PT. Citra Aditya Bakti