September 5th 2017

THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

This Conference And Call Paperwas held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

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"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM** from SebelasMaret University, **Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discus views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,

Dr. AnisMashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THEDEANOF FACULTY OFLAW

As-*salamu'alaikum Wr. Wb.*

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: "**Legal Development in Various Countries**" which is held by Faculty of Law, Sultan AgungIslamic University (UNISSULA) Semarang, on September5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.

Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme " Legal Development in Various Countries" focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Was*salamu'alaikum Wr. Wb.*

Semarang, September5th 2017

Dean,

Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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SHARIA ECONOMICS DISPUTE RESOLUTION IN RELIGIOUS COURT INSTITUTIONS

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ABSTRACT

The settlement of the sharia economic dispute through the judicial process becomes the authority of the Religious Courts. Through the political policy of government law, sharia economic system has become one of the subsystems of national economy. The Competence of Religious Courts concerns on the issue of Islamic law which has been practiced by society in everyday life. As long as Islamic law is alive and believed by society, so long as it should also be the legal competence of the Religious Courts. Consequently, sharia economic law automatically also becomes the subsystem of national law. Thus, it is certain that this factor is one of the considerations of the government so that it delegates the authority to solve the sharia economic case to the Religious Court.

Keywords: settlement, sharia economy, religious court

A. Introduction

Court is as institution needed by the community. Affair of judgment is one of the many functions that must exist and run by the community, in response to the existence of a certain demand. Trial is the job required to make the community peaceful and productive, within the society there will always be problems among its members to be resolved. Unresolved issues are a nuisance to community peace and productivity. An institution must be raised to perform the function—it is a court. The function of solving problems is called judgment, because the output of the institution is called justice. [2]

The resolution of the sharia economic dispute through the current judicial process is under the authority of the Religious Courts. This is based on the provisions of Article 49 of Law no. 3 of 2006 on Amendment to Law no. Law No. 7 of 1989 on Religious Courts (UUPA) which states that the Religious Courts are on duty and authorized to examine, decide, and resolve cases at the first level among the Islamic people in the field of sharia economics.

[1] Siti Anamah, Student of Doctoral Program in Law Science, Sultan Agung Islamic University
[2] Satjipto Rahardjo, 2002. *Sosiologi Hukum: Perkembangan Metode dan Pilihan Masalah. Surakarta :* Muhammadiyah University Press, page. 133

Thus, Law no. 3 of 2006 on Amendment of Law no. 7 of 1989 on Religious Courts is a legislation product that first provides competence to religious court in the settlement of Islamic economic case. Furthermore, Law no. 21 of 2008 concerning Sharia Banking (UUPS) can be said to have affirmed the competency of religious court in handling sharia economic case, especially sharia banking, Article 55 paragraph (1) which reads: "Settlement of sharia banking disputes conducted by courts within the Religious Courts".

The absolute authority of the Religious Courts as a court institution authorized to hear the sharia economic dispute is also reinforced by the issuance of Decision of the Constitutional Court. 93 / PUU-X / 2012 which in essence has given the decision that the explanation of Article 55 paragraph (2) of Law no. 21 of 2008 concerning Sharia Banking explained that the parties to the dispute can agree to settle the dispute through the general court. Before enactment of Law no. 3 of 2006 and the Law no. 21 Year 2008, sharia arbitration (tahkim) is one of the case settlement institutions between the parties who commit the contract in sharia economy outside the court lane to achieve the best solution when the deliberation effort does not produce consensus. [3]

In Indonesia, sharia arbitration was established after the establishment of BMI in 1991. The goal is to deal with cases between customers and sharia banks. The arbitration body is known as the Badan Arbitrse Muamalat Indonesia (BAMUI) established by the Indonesian Ulama Council (MUI) Center on October 21, 1993, based on Decree no. Kep-392 / MUI / V / 1993. In 2003, several banks or Sharia Business Units (UUS) were born, so that BAMUI was changed to the Indonesian Arbitration Board (Basyarnas). The change was based on Decree No. MUI. Kep-09 / MUI / XII / 2003 dated December 24, 2003. However, the existence of Basyarnas cannot simply be functioned because the settlement of dispute through Basyarnas can be done if in the contract is made a clause on the settlement of cases through arbitration. This refers to the provisions of Law no. 30 of 1999 on Arbitration and Alternative Dispute Resolution (UUAAPS). [4]

Based on Law no. 3 Year 2006, religious courts should have been practically authorized (having competence) in handling sharia economic case. Nevertheless, in reality the justification of the competence of religious courts in solving the sharia economic case is still

[3] Abdurrahman, 2007, *Masalah-masalah Hukum dalam Pelaksanaan Ekonomi syariah*; Paper presented at the Working Group Working Meeting of the Supreme Court of the Republic of Indonesia, di Cisarua-Bogor on 16-17 March 2007, page. 5.

[4] Syaifudin, 2007 *Penyelesaian sengketa*, Jakarta : Sinar Grafika. page. 35-36.

debatable, even three days after the enactment of UUPA on March 20, 2006, exactly March 23, 2006. Factually, the National Sharia Council of Majelis Ulama Indonesia (DSN-MUI) launched 3 (three) fatwas. All three are fatwas regarding mudarabah agreement, musyarakah on sharia insurance and grants (tabarru ') on insurance and reinsurance sharia, which practically still include clauses that the settlement of the case is done by the Arbitration Board of Sharia (Basyarnas). [5]

The DSN-MUI fatwa did not provide an alternative to the settlement of Islamic sharia law cases to the religious court. Whereas UUPA Number 3 of 2006 has firmly stated that the completion of sharia economy is the competence of religious courts. In this context, the question arises whether the DSN-MUI when issuing a fatwa did not know that the settlement of the sharia economic dispute has been formally juridical into the competence of religious courts, or there were other political indications. Related to the Fatwa DSN-MUI, Agustiono, Secretary General of the Association the Islamic Economic Expert (IAEI), in a sharia economic seminar held by the Supreme Court (MA), on November 20, 2006, argued that with the new religious justice system in the Islamic economic settlement, all 52 DSN-MUI fatwas need to be adjusted, contrary to Article 49 of the UUPA. [6]

Regardless of the above controversy, historically, the fact that the competence of religious courts applies Islamic law actually has gone hand in hand with the presence of Muslims in the country. As a formal institution, the existence of religious courts has been initiated by Islamic empires that place Islam as the basis of statehood or government. [7]

B. Problem Formulation

Based on the above description, then formulated problem is: How Institutional Religious Court in the settlement of sharia economic disputes?

C. Research Methods

1. Method approach used the juridical-normative approach (legal-research).
2. The specification is descriptive.

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[5] Fatwa DSN No. 52/DSN-MUI/III/2006, dalam Kamil dan Fauzan, Kitab Undang-undang, page. 923-935.

[6] *Ibid*. page. 35

[7] Bagir Manan, 2007.*Peradilan Agama dalam perpektif Ketua Mahkamah Agung*, Kumpulan Pidato Bagir Manan, Jakarta, Direktoral Jendral Peradilan Agama Mahkamah Agung RI. page. 2-3.

3. Location of research, considering the research is normative which prioritizes on secondary data, then the location of this study was done through the method of library research.
4. Data sources were secondary data in the form of primary legal materials, secondary materials and tertiary legal materials and literature related to the subject matter.
5. Methods of data collection, collected by library research methods (library research), which is to study, understand, identify and record data that are related to the subject matter.
6. Method of data presentation, presented in the form of descriptive-systematic description.
7. Analysis of data used was normative-qualitative.

D. Discussion

The judiciary in Indonesia is a real implementation of the exercise of judicial power in the State of the Republic of Indonesia. Therefore, theoretically and practically, the judiciary in Indonesia is bound to two legal norms at the same time applicable to it, namely the norm of positive law in Indonesia which is a prevailing norm of prevailing and regulating the existence and action of the Court in Indonesia and the unwritten legal norms that live in society which is a source of value for its existence and appearance as a State Court. This is consistent with the historical facts of the Indonesian courts born of and raised in the political and legal struggle in Indonesia. Included here are courts within the religious court.

Religious courts have their own uniqueness, difficulties and specifications. In the system of Islamic teachings, the administration of justice is a subsystem in Islamic teachings, which is part of Islamic Sharia. According to Mahmud Syaltuut, sharia is a regulation applied by Allah SWT or set its subjects only to be a guide for mankind in dealing with his Lord, dealing with his fellow Muslim brother, dealing with his fellow human beings, with the universe, and related to his own life. [8]

[8] Mukti Arto, 2011. *Redefinisi Fungsi Pengadilan Sebagai Penegak Hukum dan Keadilan*. Makalah dalam : M.E.R. Herki Artani R., *Himpunan Makalah, Artikel dan Rubrik Yang Berhubungan Dengan Masalah Hukum dan Keadilan Dalam Varia Peradilan IKAHI Mahkamah Agung Republik*

In Indonesia, the Constitution states explicitly that Indonesia is a State of law (rechtstaat). The Indonesian justice system is a form of judicial rule in the Indonesian constitutional system of law which includes the law on all courts under one roof under the Supreme Court as the executor of judicial power. The Indonesian judicial system is an orderly and interrelated arrangement that relates to court hearings and court cases, whether courts within the General Courts, Religious Courts, Military Courts, and State Administrative Courts, which are based on views, theories and principles in the field of justice applicable in Indonesia. Therefore, the judiciary held in Indonesia is a system that is interconnected with each other; each judicial institution is not independent, but rather interconnected and culminates in the Supreme Court. [9]

In the context of the enforcement of sharia economic law, the government through legislation gives authority to Religious Courts as an institution that has competence to handle sharia economic case. The provisions concerning the absolute competence of Religious Courts in the sharia economic case are set forth in Law no. 3 of 2006 on Amendment to Law no. 7 of 1989 on Religious Courts and reinforced in Law no. 21 of 2008 concerning Sharia Banking. Both regulations regulate how the solution for the settlement of Islamic economic case. [10]

The provisions concerning the settlement of sharia economic case under the competence of the Religious Courts is basically a manifestation of the national political law policy that seeks to fulfill the legal needs of the society which in reality empirically showcases the life of an economy that adopts sharia principles in several sectors of business and business activities. In reality, the sharia economic system is increasingly showing its existence and giving its own color for business and business activities in Indonesia, has even given significant influence and contribution to the growth of national economy.

In addition, normatively, the policy of government law is of course based on the consideration that the Religious Courts are the only judiciary establishing material law or substantive law compatible with sharia economic law based on the principles of Islamic law. Indonesia, a democracy state based on Pancasila, does not make Islam the basis of the State,

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Indonesia, Jakarta : Perpustakaan dan Layanan Biro Hukum dan Humas Badan Urusan Administrasi Mahkamah Agung Republik Indonesia, page. 73 - 74

[9] Hasbi Hasan, 2011. *Pemikiran dan Perkembangan Hukum Ekonomi Syariah di Dunia Islam Kontemporer*, Jakarta: Gramata Publishing. page. 207 - 208

[10] *Ibid.*, page. 210

delegating the authority of the settlement of sharia economic cases to the Religious Courts that apply Islamic law. [11]

Adiwarman A. Karim[12] argues that in Indonesian law, the litigants choose which judiciary (choice of forum) to use when there is a dispute. Karim argues in the law apply the principle of freedom of contract. This principle provides freedom for the parties to determine the terms and conditions that will bind them. In simple language, the origin is willingly willing. This is what in sharia is called the law of origin in muamalah is allowed (mubâh/al-ibâhah), except forbid the lawful and justify the haram. In relation to the settlement of sharia economic dispute, the forum that has been used is the General Court and Arbitration Board. With the enactment of Law no. 3 of 2006, has increased the choice of forum for sharia banking actors, namely religious court.

According to Hasbi Hasan[13] the promulgation of Law no. 3 of 2006 is nothing but an effort to synchronize all affairs and responsibilities of the organization, administration and finance of the judiciary within the Religious Courts with the provisions of Law no. 4 Year 2004. Therefore, if previously all the affairs and responsibilities of the organization, administration and finance of the judiciary within the Religious Courts are located in the authority of the Ministry of Religious Affairs, then after the Law no. 3 of 2006 have all been surrendered and transferred to the Supreme Court's authority. 3 of 2006, it has been specifically stipulated that the Religious Courts are one of the judicial authorities for the justice seekers who are Muslims about certain matters as referred to in the Act.

According to Syamsuhadi Ershad, there are several crucial reasons that can be asked related to the amendment of Law no. 7 of 1989 became Law no. 3 of 2006, both general and special reasons. Related to the common reasons, there are three pawns expressed by Syamsuhadi Irsyad, namely:

a. The competence of the Religious Courts has been castrated by Dutch colonizers since they occupied this Nusantara;
b. Now it is time for democratic Religious Courts positioned as state courts, namely as one of the executor of judicial power according to the 1945 Constitution;

[11] *Ibid.*, page. 213
[12] Cited from Adiwarman A. Karim, *"Choice of Forum Perbankan Syariah"*,www.mui.or.id/mui_in/hikmah.php?id=50.
[13] Hasbi Hasan, 2010. *Kompetensi Peradilan Agama, Dalam penyelesaian perkara ekonomi syariah (Edisi Revisi),* Jakarta: Gramata Publising. 68 - 69

c. In RUUPA, the initiative of Commission III of the House of Representatives (DPR) has received positive response and approval from the government, so that the Legal Judicature legally validates it, and the President enacts it as legitimizing the amendment of Law no. 7 of 1989 became Law no. 3 Year 2006.

While the specific reasons underlying the amendment of Law no. 7 of 1989 became Law no. 3 Year 2006, among others:

a. To conform to the amendment of the 1945 Constitution and Law no. 4 of 2004 on Judicial Power.
b. To affirm the position of Religious Courts in the formation and field of organization, administration, and financial, which originally under the Department of Religious Affairs under the Supreme Court, as regulated in Law no. 4 of 2004. [14]

In Article 2 of Law no. 3 of 2006 on Religious Courts affirms, "Religious court is one of the judicial authorities for the justice seekers who are Muslims about a particular case". With the affirmation of these competencies it is possible to settle the case in relation to criminal matters ". In addition, the Supreme of competence of Religious Courts obtains new competencies in the field of sharia economy as stated in Article 49 of BAL namely: marriage, inheritance, will, grant wakaf, zakat, infaq, shadaqah, and sharia economy. Thus, the points of adding new competencies are: zakat, infaq and sharia economy. [15]

The expansion of the competence of Religious Courts is a necessity, since all of the competence of Religious Courts, whether concerning marriage, inheritance, waqf, zakat, to the issue of sharia economy, is something that has been attached to the Muslim community. In other words, Islamic law that became the competence of Religious Courts has been a living law, a law that lives and lived by society. [16]

Thoughts and ideas about the concept of sharia economy in Indonesian legal politics to date have been represented in the practice of sharia banking. Although academically the word "sharia" and the word "Islam" have very different connotations and meanings, but in technical terms, the term "Islamic economy" and "sharia economy" are always interpreted in

[14] *Ibid.*, page. 71- 72
[15] *Ibid.*, page. 74 - 75
[16] *Ibid.*, page. 77

the same terminology. In fact, lately the term Islamic economics has been very popularly called sharia economics. Sometimes, the terms sharia economic and Islamic economics are also identified with "economics on the basis of the principle of sharing profit." [17]

In this context, Dawam Raharjo notes three possible interpretations of sharia economic terms; First, the sharia economy is referred to as "economics" based on Islamic values or teachings, as well as suggesting that Islamic teachings have a distinct understanding of what the economy is; Second, the sharia economy is referred to as "Islamic economic system"; and Third, the sharia economy is referred to as "Islamic economy", or perhaps more precisely "the economy of the Islamic world." [18]

The term "sharia economy" is a typical term used in Indonesia. Outside Indonesia, the term is more popularly known as "Islamic economy" (al-iqtisad al-islami, Islamic economic). In the discourse of contemporary Islamic economic thought, the concept of Islamic economy is indeed identified by different terms, such as "Islamic economics", "ilahiyyah economy", "Qur'anic economy", "sharia economy", based on the principle of profit sharing, "and" economic rahmatan lil 'alamin ". All of these terms refer to a concept of economic system and business activities based on Islamic law or economics based on sharia principles. The difference in the use of this term basically shows that the term "Islamic economy" is not a standard name in Islamic terminology.

Islamic economic terminology itself was only known in modern times. However, in practice he has existed since the emergence of Islam itself. In the early days of Islam, the term Islamic economics, as a definitive term, has not been formulated so it has not been recognized as an independent discipline. After the emergence of studies of modern Islamic economics, then the contemporary Islamic thinkers began to formulate the study of Islamic economics as an independent discipline. [19]

According to the English "Dispute" vocabulary there are 2 (two) terms, namely "conflict" and "dispute" which both contain a notion of a difference of interest between two or more parties, but both can be distinguished. The conflict vocabulary has been absorbed into

[17] The term "profit sharing principle" is formally juridically popularized through Law no. 7 of 1992 concerning Banking in the provisions of Article 6 letter (m) and Article 13 letter (c). In PP no. 72 of 1992, the principle of profit sharing is defined as "the principle of profit sharing by shari'a," or "the principle of muamalat under the Shari'a." See article 2 ayat (1) dan penjelasan Pasal 1 ayat (1) PP No. 72 Tahun 1992.

[18] M. Dawam Rajardjo, 1999.*Islam dan Transformasi Sosial Ekonomi,* Yogyakarta: LSAF. page. 3-4.

[19] Hasbi Hasan, 2011. *Pemikiran dan Perkembangan ….. Op. cit*. page. 19

Indonesian into "conflict", while the dispute vocabulary can be translated into "dispute". A conflict that is a situation in which two or more parties are faced with a difference of interest will not develop into a dispute if the disadvantaged party only harbored a feeling of dissatisfaction or concern. Conflicts will develop into disputes when the disadvantaged party has expressed his or her dissatisfaction or concern, either directly to the party deemed to be the cause of the loss or to the other party. [20]

Friedmen's point of view, as quoted by Sidik Sunaryo, is that to understand the effectiveness of law in society, the components of the legal system must be considered as follows:

a. The substance of the law included in this component is written and unwritten provisions and rules of law. Any decision that contains doctrine, judgment, decision of lawmakers and decisions issued by government bodies.
b. The legal structure, which is moving within the mechanism. For example in the judiciary its structure distinguishes the general courts, administrative courts, religious courts, military courts, by division of their respective competencies. This structural component is expected to see how the law provides services to the cultivation of legal materials on a regular basis.
c. Culture, which consists of values, attitudes inherent in the culture of the nation. The values in society can be used to explain whether or why people use or not to use legal processes to resolve their disputes. [21]

Building the law (order/system) of the law, in essence, build all the order of life of the nation (in the field of politics, social, economic, cultural, etc.). The legal system is a system of order in all areas of society life/nation/state. This implies that the rule of law is essentially supremacy of the order of norms and values throughout life (norms and social values, politics and so on) that have been mutually agreed upon. [22]

The supremacy of law and justice in all social life/nation/state will be difficult to be realized properly, if the three elements as stated by Sidik Sunaryo mentioned above do not run

[20] Rachmadi Ustman, 2003, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*, Bandung: Citra Aditya Bakti, page. 1.
[21] Sidik Sunaryo, 2005. *Kapita Selekta Peradilan Pidana*, Malang: Universitas Muhamamdiyah. page. 14
[22] Barda Nawawi Arief, 2001. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. Bandung: Citra Aditya Bakti.page. 9 dan 10

effectively, with reference to the theory of the legal system, then to realize the institutional of Religious Courts in Sharia economic settlement must refer thoroughly to the dimensions of the legal system, which include:

a. The substance of law (unity of law itself)

   With respect to its own legal factor, as a written law, the law may reflect the values on which the law itself is based so that such laws or regulations may be effective. In relation thereto, legislation relating to the institutional of the Religious Courts in solving the sharia economic dispute thus from its own legal factors has a strong legal basis for processing cases related to the current and prevailing sharia economic dispute, still relevant, so this factor is not a problem.

   The issue of positive law rules applied in the field relates to the demands or interests of the task or the development of community life, so that the law can live in the community, it needs a formal legal regulation that is considered more effective and felt justice by the community.

b. The legal structure (law enforcement apparatus)

   In the case of law enforcement as a form of application of the law greatly affects the real feelings of law, legal satisfaction, legal benefits, legal needs or legal justice individually or socially. In law enforcement is not possible apart from the rule of law, environmental law actors where law enforcement process occurs, then there can be no solution law enforcement issues if only glance at the law enforcement process, let alone more limited to the implementation of the judiciary. [23]

   In relation to the issue of law enforcement, law enforcers that are just and right must be focused on all governance and the State. It is very inadequate if it is only done in the judicial process. It has been fair, even though the judiciary is only a small part of various social or legal events including the unfair treatment felt or experienced by society. Even from the sequence, the judicial process is the ultimate journey of the possibility of a society experiencing unfair and unfair legal treatment. Society has in

[23] Bagir Manan, 2005. *Varia Peradilan*, Majalah Hukum Tahun ke XX No. 241 Nopember 2004, page. 4

many ways been subjected to unfair and unjust treatment since earlier since they came into contact with government or state organizers. [24]

c. Legal culture (community)

According to Friedman's opinion as quoted by M.J. Widijatmoko, legal culture is a reflection of the legal system, because it contains the potential to be used as a source of information to explain the legal system. So we must understand the legal culture to understand how the legal system works in society. The legal culture itself is of the values and attitudes that together bind the legal system and which determines the place of the legal system in the culture of society as a whole. While Lev argues, legal culture has the advantage of being able to attract people's attention to values relating to law and legal processes, but in analysis can be distinguished by law and legal processes and is often stated independently. [25]

A legal process is actually the fabric of communication, interelation and interaction of the system knowledge, embodying a value system and choice of those values in order to form the norm or rather a norm system. Knowledge and value are expressed in the attitude and pattern of human behavior which is entirely the scope of the legal culture. Thus legal cultural activities include reflection and systematization of legal knowledge, exchange ideas about that knowledge, formulate legal values and harmonize those values. [26]

In the interest-free economic activities, there may be a dispute, and to anticipate it, the establishment of an institution authorized by law to resolve it, namely the religious court. In accordance with the provisions of Article 49 of Law No. 3 of 2006, the Religious Courts are the judiciary of a Muslim person concerning certain civil cases which include sharia economics. This means that all disputes concerning sharia economic activities, whether in the field of sharia banking, sharia insurance to sharia business in general, are legally jurisdiction of religious courts. [27]

Along with the developments that occur in the religious court environment both in terms of authority and other developments are very dynamic, especially in the case of the

[24] *Ibid.*, page. 6-7
[25] M.J. Widijatmoko, 2009. *Mengatur Budaya Hukum Terhadap Kepatuhan Hukum Dalam Masyarakat*, Jurnal Hukum Responsa, Volume I Nomor 1, Januari 2009. Program Doktor (S3) Ilmu Hukum Fakultas Hukum Universitas Sebelas Maret, Surakarta. page 88
[26] *Ibid.*, page. 89
[27] *Ibid.*, page. 86

emergence of new cases that are the impact of the new religious court competence associated with the revision of the Act. No. 7 of 1989 and the enactment of Law no. Law No. 3 of 2006 on Religious Courts which states that the Religious Courts are authorized to hear the sharia economic dispute, it is not only intended for Muslims, but also non-Muslims who are subject to the provisions of sharia. [28]

This development necessarily requires the readiness of the entire ranks and corps of the Religious Courts to carry out the mandate of the Law thoroughly in order to realize the rule of law which is effective, efficient and gained public trust, professional in providing legal services, qualified and ethical. With the vision of the realization of a prime religious court service, and mission to improve the professionalism of the religious justice apparatus, as well as to realize the modern religious judicial management. [29]

To be able to realize and expect benefits in the implementation or enforcement of the law is to refer to the theory of the legal system proposed by Friedmen as quoted by Sidik Sunaryo, against the three elements of the theory of the legal system, the rule of law and justice in all life/community/nation/well realized, as for the steps that must be done is:

a. Structuring the legal system

The legal system can play a role as supporting element in every effort to realize the objectives of the law itself. An ineffective legal system will hinder the realization of the objectives to be achieved. The legal system can be mapped effectively if human behavior in society is in accordance with what has been determined in the applicable legal rules. Pul and Diaz, as quoted by Esmi Warassih[30], propose five conditions that must be fulfilled to streamline the legal system:

1) The ease of the meaning of the rule of law to be captured and understood;
2) The extent to which the public knows the contents of the relevant legal rules;
3) Efficient and effective mobility of legal rules;

[28] Mariana Sutadi, 2008. *Titik Singgung Pengadilan Agama dan Pengadilan Umum*. Dalam Ceramah Wakil Ketua MA-RI bidang Yudisial pada Pelatihan Hakim se-JABODECITABEK di Jakarta, 31 Maret s/d 1 April 2008.

[29] This discussion of vision and mission has been done by Directorate General of Badilag many times, among others on 24-25 January, 7-10 April and 24-25 May 2008 in Bandung. The last two meetings followed by two officials from the MENPAN Office.

[30] Esmi Warassih Pujiastuti, 2005, *Pratana Hukum Sebuah Telaah Sosiologis*, Semarang: Suryandaru Utama.page. 105-106

4) The existence of dispute resolution mechanisms that are not only accessible and accessible to every citizen, but also must be effective in resolving disputes;
5) The existence of the assumption and treatment among the people that the rules and legal institutions are indeed effective capacity.

According to the opinion put forward by Zainuddin Ali[31], in order for the law to function, the law must fulfill the requirements of the law as the rule, namely:

1) The rule of law shall be applicable juridical, if its determination is based on a higher level of norm or is established on a predetermined basis;
2) The rule of law passes sociologically, if the rule is effective. That is, the rule can be enforced by the authorities even if it is not accepted by the community (power theory) or the rule is valid because of the recognition of the community;
3) The rule of law applies philosophically, that is in accordance with the ideals of law as the highest positive value.

b. Structuring of legal institutions

In relation to the institutional arrangement of the Law of Arto[32], it is argued that there are two principles for determining the absolute competence of the Religious Courts, that is, if a case concerns the legal status of a Muslim, or a dispute arising from a legal act/event perpetrated by Islamic law or closely related with legal status as Muslims.

In Law no. 3 In 2006, the concept of Islamic personality has been expanded. Related to this, Explanation of number 37 Article 49 of Law no. 3 of 2006 states the following: "Referred to" between persons of Islam "includes any person or legal entity who voluntarily submits voluntarily to Islamic law concerning matters under the jurisdiction of religious courts in accordance with the provisions of this article ".[33] Under the provisions of Article 49 and its elucidation, it can be understood that the subject of law in the sharia economic dispute is:

a. Muslim People;

[31] H. Zainuddin Ali, 2010. *Filsafat Hukum*. Jakarta : Sinar Grafika, page. 94.
[32] A. Mukti Arto, 2004. *Praktek Perkara Perdata pada Pengadilan Agama*, Yogyakarta: Pustaka Pelajar, page. 6.
[33] Sulaikin Lubis, *et all.*, 2006. *Hukum Acara Perdata Peradilan Agama di Indonesia,* Jakarta: Kerjasama antara Badan Penerbit Fakultas Hukum Universitas Indonesia dan Prenada Media Group, page. 106.

b. People who are non-Muslim but subject themselves to Islamic law;
c. Legal entity conducting business activities based on Islamic law.

Based on the explanation of the article, it can be seen the extension of the understanding of the principle of Islamic personality by using the institution of "submission". Based on the above explanation, it can be mentioned that the absolute competence of religious court covers certain civil fields as mentioned in Article 49 paragraph (1) of Law no. 7 Year 1989 Jo. UU no. 3 of 2006 and based on an expanded Islamic personality. In other words, certain areas of civil law that are the absolute competence of religious courts are not just the areas of family law alone of the people who are Muslims.

While the provisions of Article 50 of Law no. 3 of 2006 along with his explanation shows that the religious personality of religion related by the litigant in the civilization case concerning the property rights is put forward in determining the absolute competence of the court handling the case. If the parties are litigants of Islam, then the religious court has the competence to resolve the case.

The resources that must be possessed within the framework in carrying out their duties law enforcement officers required to realize the objectives of the law need to have a certain level of autonomy, this autonomy is needed to be able to manage the resources available in order to achieve organizational goals. The resources are:

1) Human resources;
2) Physical resources, such as buildings, equipment, vehicles;
3) Financial resources, such as state expenditure and other resources;
4) The remaining resources needed to move the organization in its efforts to achieve its objectives. [34]

c. Structuring legal culture

In the process of community empowerment should emphasize the process of giving or transfer some of the strength, power, or ability to the community to be more empowered and encourage or motivate the individual so as to have the ability or empowerment to find what life choices through the process of dialogue. Empowerment is a provision to be able

[34] Satjipto Rahardjo, Tanpa tahun. *Masalah Penegakan Hukum (Suatu Tinjauan Sosiologis)*. Bandung: Sinar Baru. Page. 9

to access to existing resources so that there will be a fair power sharing that can increase public awareness of its existence. [35]

Empowerment can only be done through a process of participation. The lack of participation is due to patron-client relationships, where patrons own and control most resources. Power causes the community to feel alienated from its environment, so there is a cultural imposition. Participation can make people aware of the problems faced and seek solutions and help them to understand the social, political, and economic realities surrounding them. [36]

E. Conclusion

Summary

With the enactment of Law no. 3 of 2006 on Religious Courts is a product of legislation and has given competence to Religious Court in solving sharia economic case. The law can be said to be able to accommodate the development and legal needs of Indonesian society, especially the Muslim community, as well as a form of expansion of competence of Religious Courts in civil law cases, including sharia economic case.

Law no. 21 Year 2008 on Sharia Banking gives competence to Religious Court in handling sharia economic case. Basically, the Islamic Banking Law has an orientation and purpose to accommodate the will of religious communities, especially the Islamic community in Indonesia. Simply put, the product of this law is an instrument for the development of economic system based on Islamic values (sharia) by raising its principles into the national legal system.

The purpose of the determination of the competence limits of every judicial environment is to establish an orderly implementation of judicial power between each judicial environment. Each judicial institution must run on a predetermined rail so as to avoid competing competitions, not only to prevent competence disputes, but to ensure proper

[35] Esmi Warassih Pujirahayu, 2001. *Pemberdayaan Masyarakat dalam Mewujudkan Tujuan Hukum, Proses Penegakan Hukum dan Persoalan Keadilan*, Pidato Pengukuhan Guru Besar Ilmu Hukum Undip, Semarang, 14 April 2001, page. 28

[36] *Ibid., page*. 29

judgment and judgment, it is necessary to do the following: a) Structuring the legal system , b) Structuring of legal institutions, c) Structuring legal culture.

Suggestion

1. Formal education obtained especially judges of religious courts in solving sharia economic cases such as sharia banking dispute will encourage and give discourse on its implementation in court. Planning well and sufficient cost to conduct human resource development training based on good cooperation must be honest and open.
2. In order for the community to understand more and know more about the law relating to Religious Court as an institution that has competence to handle sharia economic case. The Government through relevant agencies should socialize the legislation and other regulations to the public relating to the authority to the Religious Courts as an institution that has competence to handle sharia economic case.

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