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A CRITICAL REVIEW OF THE ROLE OF COMMERCIAL COURTS IN INDONESIA'S RELIGIOUS JUSTICE SYSTEM

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Abstract

This study aims to identify the inaccuracy of the forum for resolving Islamic bank liquidation cases under the jurisdiction of the Commercial Court. The approach used is normative juridical. The research data is in the form of laws and decisions of the Constitutional Court that have relevance to the absolute authority of the judiciary, sharia economic law, and the latest regulations that have an impact on the liquidation dispute resolution forum. Data analysis uses descriptive qualitative analysis. The results show that the dominance of the Commercial Court in Islamic bank liquidation cases is contrary to the principle of lex specialis and Constitutional Court Decision No. 93/PUU-X/2012, and ignores the principles of sharia justice. In addition, the non-use of the Kompilasi Hukum Ekonomi Syariah (KHES), the absence of reference to Dewan Syariah Nasional-Majelis Ulama Indonesia fatwas, and the absence of sharia expert witnesses in evidentiary practice, widened the gap between sharia norms and litigation mechanisms. The jurisdictional fragmentation that occurs indicates a systemic failure to integrate the values, procedures and forums of sharia economic law into the national legal system. This research confirms that the repositioning of authority to the Religious Courts needs to be accompanied by cross-regulatory harmonization, strengthening institutional capacity, and affirmation of the constitutional rights of Muslims in choosing religious-based justice forums. This research is expected to be an important contribution to the renewal of a national justice system that is inclusive, responsive and valuable.

Keywords: *Islamic bank liquidation; judicial authority; Commercial Court.*

Abstrak

Penelitian ini bertujuan untuk mengidentifikasi ketidaktepatan forum penyelesaian perkara likuidasi bank syariah di bawah yurisdiksi Pengadilan Niaga. Pendekatan yang digunakan adalah normatif yuridis. Data penelitian berupa Undang-Undang dan Putusan Mahkamah Konstitusi yang memiliki keterkaitan dengan kewenangan absolut peradilan, hukum ekonomi syariah, dan regulasi terbaru yang berdampak pada forum penyelesaian sengketa likuidasi. Analisis data menggunakan analisis kualitatif secara deskriptif. Hasil penelitian menunjukkan bahwa dominasi Pengadilan Niaga dalam perkara likuidasi bank syariah bertentangan dengan prinsip lex specialis dan Putusan Mahkamah Konstitusi No. 93/PUU-X/2012, serta mengabaikan prinsip-prinsip keadilan syariah. Selain itu, tidak digunakannya Kompilasi Hukum Ekonomi Syariah (KHES), absennya rujukan kepada fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia, dan tidak dihadirkannya saksi ahli syariah dalam praktik pembuktian, memperlebar jarak antara norma syariah dan mekanisme litigasi. Fragmentasi yurisdiksi yang terjadi mengindikasikan kegagalan sistemik dalam mengintegrasikan nilai, prosedur, dan forum

hukum ekonomi syariah ke dalam sistem hukum nasional. Penelitian ini menegaskan bahwa reposisi kewenangan ke Peradilan Agama perlu disertai dengan harmonisasi lintas regulasi, penguatan kapasitas kelembagaan, serta afirmasi terhadap hak konstitusional umat Islam dalam memilih forum keadilan berbasis agama. Penelitian ini diharapkan dapat menjadi kontribusi penting dalam pembaruan sistem peradilan nasional yang inklusif, responsif, dan bernilai.

***Kata kunci**: likuidasi bank syariah; kewenangan peradilan; Pengadilan Niaga.*

Introduction

The development of Islamic economics in Indonesia has accelerated significantly in the last two decades. This is marked by the establishment of Islamic financial institutions, the increase in financial instruments based on Islamic contracts, and the presence of a legal umbrella that facilitates Islamic banking activities in particular. Behind this progress, a fundamental irony emerges: when a dispute occurs in the form of liquidation of an Islamic financial institution such as an Islamic bank, the forum for settlement remains under the authority of the Commercial Court. In fact, the disputed products originate from contracts that are expressly subject to sharia principles, such as *murabahah, mudharabah, musyarakah, a*nd *ijarah.*

This issue became even more complex after the enactment of Law No. 4 of 2023 on Financial Sector Development and Strengthening (P2SK Law). Articles 50A and 50B of the P2SK Law state that any disputes arising in the liquidation process of financial institutions must be resolved through the Commercial Court, without distinguishing between conventional and sharia institutions. This provision emphasizes the dominance of conventional judicial forums over economic entities that are based on Islamic values, and leaves a fundamental question: is the commercial procedural law system able to guarantee substantive justice for parties who transact based on sharia principles?

This systemic void has resulted in jurisdictional fragmentation between the Commercial and Religious Courts. On the one hand, Constitutional Court Decision No. 93/PUU-X/2012 has affirmed that all sharia economic disputes are the absolute authority of the Religious Courts. On the other hand, there is no legal mechanism that explicitly regulates that liquidation disputes of sharia institutions must be drawn to the Religious Courts. The implication of this condition is the separation between sharia values as the basis of the transaction and the resolution forum that is neutral to these principles.

Several PKPU cases involving sharia contracts, such as the dispute between Bank Syariah Indonesia and PT Baja Agung, were processed entirely in the Commercial Court without regard to the DSN-MUI fatwa or the characteristics of the contract, reflecting the inappropriateness of the resolution forum. (Faizah & Azzahra, 2022).

This paper aims to review the position of the Commercial Court in resolving Islamic bank liquidation disputes and offers the idea of repositioning the authority to resolve cases to the realm of the Religious Courts as part of a complete Islamic economic justice system. Using normative, conceptual and political law

approaches, this paper also seeks to build a structural justification for the urgency of unifying judicial forums that are responsive to sharia principles. This study is important because until now there have not been many studies that systematically criticize the expansion of the jurisdiction of the Commercial Court over Islamic financial institutions in the P2SK Law and propose institutional repositioning as a response to the marginalization of Islamic law principles in modern economic disputes.

The study of the fragmentation of judicial authority in the settlement of sharia economic disputes has become an academic concern in various legal publications. Mukhlis argues that sharia economic disputes should be subject to the jurisdiction of the Religious Courts because contracts in the sharia economy differ in principle from conventional financial contracts, and their resolution requires an understanding of the values of *fiqh muamalah* (Mukhlis, 2020). Namun, dalam praktiknya, pengadilan niaga tetap menjadi forum utama penyelesaian sengketa, termasuk dalam kasus PKPU dan kepailitan yang bersumber dari hubungan syariah (Faizah & Azzahra, 2022).

Najib criticized the dualism of sharia arbitration dispute resolution between the Religious Courts and the State Courts, and assessed that the national legal system has not fully supported the institutionalization of Islamic economics structurally. (Najib, 2019). This shows that sharia dispute resolution forums, both litigation and non-litigation, have not been given consistent institutional authority. Subhi Apriantoro et al. in the perspective of classical fiqh reviewed that scholars, including Ibn Rushd, have long established that bankruptcy resolution is the realm of authority of *qadhi* who understands the structure of sharia justice, not just a mathematical distribution of assets. (Apriantoro et al., 2021). Meanwhile, Alamudi highlighted the legal politics of Islamic banking regulation that was born from the interaction between the aspirations of the Muslim community and the reality of national law. He mentioned that Islamic economic law is still often treated as a complement, not the main pillar of the national economic legal system(Alamudi, 2023). Kurrohman noted that the principle of lex specialis derogat legi generali should apply to the Religious Courts in sharia economic cases, but the general courts remain dominant due to the unsynchronized legislation. (Kurrokhman, 2016).

By referring to the theory of lex specialis, political-legal configuration (Mahfud MD), and the principle of *maqāṣid al-syarī'ah,* this paper places the idea of jurisdictional repositioning as a structural and principle need, not just a technical correction to the distribution of authority. Thus, although the normative basis for the authority of the Religious Courts is strong, the literature shows that the real problem lies in the failure of national legal politics to unify the principles, forums and procedures for resolving sharia economic disputes as a whole.

Research Methods

This research uses a normative juridical approach, which relies on legal materials as the main basis in analyzing the issue of repositioning the authority to resolve liquidation of Islamic banks. In addition, this research uses a conceptual approach, by dissecting classical fiqh

thinking as proposed by Ibn Rushd, as well as contemporary Islamic legal theory on maqāṣid al-syarī'ah as the basis for substantive justice in the Islamic economic system. Furthermore, the political approach of law is used to analyze the dynamics of regulation and power structures that affect the institutional position of the Religious Courts. As stated by Mahfud MD, law cannot be separated from the prevailing power configuration. Therefore, the analysis of the P2SK Law, Sharia Banking Law, and judicial practices in Indonesia will be framed in the context of power relations between the conventional legal system and the aspirations of Muslims in the institutionalization of Islamic economics. In addition, this research uses a conceptual approach, by dissecting classical fiqh thinking as proposed by Ibn Rushd, as well as contemporary Islamic legal theory on *maqāṣid al-syarī'ah* as the basis for substantive justice in the Islamic economic system. This approach is useful to assess whether the current dispute resolution system is in accordance with the principles of sharia or if it negates the basic values that should be the foundation of sharia economic transactions and disputes. The conceptual fiqh approach is used to understand Islamic law not merely as a collection of fatwas, but as a living and contextual normative system. The maqāṣid al-syarī'ah theory becomes an analytical tool to assess whether the repositioning of authority supports the main objectives of sharia: justice, protection of property, and social order.

The sources of legal materials in this research consist of. First, primary legal materials, namely legislation such as Law No. 3 of 2006, Law No. 21 of 2008, Law No. 4 of 2023 (P2SK), and Constitutional Court Decision No. 93/PUU-X/2012. The selection of the Law and Constitutional Court Decision is based on its direct relationship with the absolute authority of the judiciary, sharia economic law, and the latest regulations that have an impact on the liquidation dispute resolution forum. Second, secondary legal materials, in the form of legal literature, scientific journals, research results, and relevant doctrines. Third, tertiary legal materials, in the form of legal dictionaries, encyclopedias of Islamic law, and technical guidelines of the Supreme Court. The method of data analysis is carried out by descriptive qualitative analysis, namely describing data based on the relationship between norms, theories, and judicial practices. The analysis process was conducted not only to describe the legal reality, but also to evaluate the relevance and compatibility between norms and the values of sharia justice, as well as to develop alternative conceptual solutions that can be used as input for national justice system reform.

Results and Discussion

The Dominance of Commercial Courts in Islamic Bank Liquidation Disputes

Law No. 4 of 2023 on Financial Sector Development and Strengthening (P2SK Law) explicitly authorizes the Commercial Court to handle all disputes in the liquidation process of financial institutions, including Islamic banks, as stipulated in Articles 50A and 50B. This provision confirms the position of the Commercial Court as the sole forum, without providing exceptions to the sharia

characteristics of the entity being liquidated.

In practice, this creates serious legal problems. As shown in case No. 26/Pdt.Sus-PKPU/2021/PN Niaga Medan between Bank Syariah Indonesia and PT Baja Agung, the Commercial Court continued to hear the dispute even though the source of the dispute originated from a sharia contract (Line Facility Agreement At-Tashilat As-Saqfiyyah). There was no obligation for the panel of judges to refer to the DSN-MUI fatwa or consider the validity of the contract based on Islamic law. (Faizah & Azzahra, 2022).

This attitude shows that the Commercial Court works within the logic of conventional civil law that is neutral to sharia values. This creates a discrepancy between the substance of the contract and the settlement procedure, resulting in the alienation of values in legal decisions. Not only that, the property law approach used in the liquidation process risks ignoring the principles of Islamic distributive justice, because all aspects of the halalness of transactions, the status of assets, and the intention of muamalah are not used as benchmarks.

As criticized by Subhi Apriantoro et al. in classical fiqh, the issue of bankruptcy is the domain of the qadhi, which must be carried out with an understanding of maqāṣid and the balance between the rights of debtors and creditors within the framework of sharia justice. (Apriantoro et al., 2021).

Therefore, the dominance of the Commercial Court over liquidation cases of Islamic financial institutions is not only substantively wrong, but also ideologically dangerous.

Furthermore, the neglect of sharia elements in liquidation disputes has the potential to violate the constitutional rights of Muslim citizens who wish to practice their religious principles in the aspect of transactions. In the perspective of the 1945 Constitution, Article 28E paragraph (1) and Article 29 paragraph (2) guarantee the freedom to practice religion, which should include economic practices and legal settlements.

When disputes are resolved outside the sharia forum, the parties who originally entered into sharia contracts lose the guarantee of substantive justice for their choice of law. This condition also reduces public confidence in the legal system that is expected to be able to protect the plurality of norms, including religious norms in economic transactions. In contrast, in several countries such as Malaysia and Pakistan, dispute resolution of Islamic financial institutions involves sharia institutions or councils that have the authority to assess the validity of the contract. This ensures that the judge's decision remains in line with sharia principles as the law chosen by the parties. This model shows that the dominance of conventional jurisdiction over sharia entities is not a systemic inevitability, but rather a legal political construct that can be changed through legislative and institutional reforms. Thus, the dominance of the Commercial Court over Islamic bank liquidation cases is not merely a procedural shift, but a form of systemic exclusion of Islamic law from the forum of justice. This needs to be reviewed in depth as a first step towards a value-based reorganization of Islamic economic judicial jurisdiction.

Jurisdictional Fragmentation and Failure to Integrate the Islamic Economic Justice System

One of the main root causes of Islamic bank liquidation disputes is the fragmentation of jurisdiction between the Religious Courts and the Commercial Courts. On the one hand, Constitutional Court Decision No. 93/PUU-X/2012 has stipulated that all sharia economic disputes, including those stemming from sharia contracts, are the absolute competence of the Religious Courts. On the other hand, the P2SK Law confirms that all disputes in the liquidation process of financial institutions, without distinguishing between conventional and sharia, are under the jurisdiction of the Commercial Court.

The limited jurisdiction of the Religious Courts in economic matters is actually a colonial legacy, which separated Islamic law from the public sphere and placed it solely in domestic religious affairs. This paradigm continues to carry over into contemporary judicial design even though formal regulations have begun to recognize the authority of sharia economics.

This fragmentation has created chaos in the national judicial system. In practice, parties experience legal confusion because the substance of their legal relationship - which is based on a sharia contract - is examined by judges who are not required to have an understanding of Islamic law or sharia fatwas. This not only creates the potential for disparity in decisions, but also creates forum shopping that is detrimental to parties who want a religious value-based settlement.

Najib mentioned that until now there has been no adequate institutional integration between the positive legal system and the Islamic economic system. As a result, the Religious Courts as a judicial institution that normatively has the authority of Islamic economics, is still seen as subordinate in resolving major cases such as bankruptcy and liquidation (Najib, 2019). This condition is exacerbated by the fact that sectoral legislation such as the Islamic Banking Law and the P2SK Law do not explicitly affirm the role of the Religious Courts, even though the material law used in Islamic financial transactions has a different structure, principles and values from the general civil system.

In terms of maqāṣid al-syarī'ah, this fragmentation undermines the protection of property (*ḥifẓ al-māl*) and social justice (*ʿadl*). The absence of a single forum that integrates sharia substance and litigation procedures creates legal uncertainty, especially for Muslim businesses and communities that base their activities on fatwas and religious values. Jurisdictional fragmentation is therefore not just a judicial technicality, but a systemic failure to integrate national legal structures with the increasingly complex development of the Islamic economy.

To address this, harmonization of legislation between the P2SK Law, the Syariah Banking Law, and the Religious Courts Law is required. The explicit repositioning of authority to the Religious Courts, accompanied by synchronization of norms across laws, is an urgent strategic step to ensure the presence of a judicial system that is intact, responsive and contextual to the value of Islamic law.

The Urgency of Repositioning Authority to the Religious Courts as a Single Forum for Sharia Economics

The repositioning of the authority to resolve Islamic bank liquidation cases to the Religious Courts is an urgent step needed to unify the value, substance and forum of justice in Islamic economic cases. In the framework of Islamic law, dispute resolution cannot be separated from the structure of sharia norms that are binding from the beginning of the contract, so that its validity and violation cannot be tried neutrally from religious values.

In addition to fulfilling the principle of lex specialis, the repositioning of authority is also a manifestation of the constitutional rights of citizens to carry out their religious teachings in all aspects of life, including in economic transactions and dispute resolution (1945 Constitution Article 28E paragraph (1) and Article 29 paragraph (2)).

Since the enactment of Law No. 3/2006, the Religious Courts have had absolute authority in sharia economic cases, as also confirmed in Constitutional Court Decision No. 93/PUU-X/2012. This affirmation should be the basis for all sectoral regulations to adjust the authority structure. However, the reality shows that the P2SK Law ignores the lex specialis principle by continuing to submit liquidation cases to the Commercial Court.

In the construction of legal politics, Kurrohman mentioned that sharia law in Indonesia is still positioned as a complement to the national legal system, not as an autonomous and integral system. Consequently, the Religious Courts, despite having normative competence, are still not given institutional, procedural, or authority support in strategic cases such as bank liquidation. (Kurrohman, 2016:98).

Reforming the legal system of sharia economic justice requires legal political courage to recognize that disputes arising from sharia contracts must be resolved through courts that understand and respect these principles. This can be realized through the revision of the P2SK Law and the Islamic Banking Law by emphasizing that disputes over the liquidation of Islamic financial institutions are fully under the authority of the Religious Courts. This revision must also be accompanied by harmonization of sectoral laws such as the LPS Law, Arbitration Law, and Bankruptcy Law to avoid overlapping jurisdictions and irregularities in the implementation of authority in the field.

Moreover, the Supreme Court needs to develop the structure of sharia economic courts as a whole, including through the preparation of sharia economic procedural law, the provision of exya certified judges, and the integration of DSN fatwas in the evidentiary process. Thus, the Religious Courts will be able to become a single forum that is not only legally valid, but also value-just and responsive to the dynamics of Islamic economics. If this repositioning is not done immediately, then the national legal system will continue to maintain dualism to the detriment of justice seekers, and strengthen the imbalance of judicial structures between sharia value-based forums and conventional formalistic forums.

Absence of Sharia Procedures in Liquidation Dispute Handling

In addition to the issue of institutional authority, no less important is the absence of sharia procedures in the process of handling Islamic bank liquidation disputes in the Commercial Court. Although the disputed entity is subject to sharia principles, the evidentiary system, measuring tools for the validity of the contract, and the execution procedures applied are entirely based on conventional civil law.

There is no mechanism for the panel of judges to verify the validity of the sharia contract by referring to the DSN-MUI fatwa. There is also no obligation to refer to the Compilation of Sharia Economic Law (KHES) as a guideline for dispute resolution. In fact, KHES has been prepared by the Supreme Court and DSN-MUI as a source of material and procedural law in sharia economic cases. Inconsistency can also be seen from the Supreme Court's policy that has issued KHES, but does not require its implementation across courts. As a result, although KHES is available as a source of material law, it has no binding force in the commercial court forum.

In addition, in the evidentiary process, there is no obligation to present sharia expert witnesses or muamalah fiqh authorities who can explain the intent and purpose of the contract. This makes the litigation process detached from the substantive meaning of sharia which should be the foundation in resolving Islamic financial disputes.

The absence of this has serious disadvantages. First, substantively, the parties to the dispute do not get justice based on the principles they chose at the outset of the contract. Second, procedurally, there is a separation between values and settlement mechanisms, which violates the integrative principle in sharia procedural law. Thirdly, the absence of room for testing the validity of fatwas or interpretations of Islamic law makes the decision dry of religious justice.

In comparative practice, Malaysia has implemented a more integrative procedure. Their judicial system requires a referral to the Shariah Advisory Council of Bank Negara Malaysia for every Islamic finance case that comes before the court. Thus, the legal reasoning in the judge's decision remains subject to sharia norms, not merely conventional civil principles (Rosly & Sanusi, 2010).

The absence of sharia procedures in Indonesia reflects the failure to build a complete Islamic economic justice system. If this continues, then all *maqāṣid al-syarī'ah* principles in the context of Islamic finance such as *ḥifẓ al-māl, ḥifẓ al-dīn*, and *ʿadl* will only become jargon, without real protection in the judicial process. Therefore, the repositioning of authority to the Religious Courts must be accompanied by a thorough reconstruction of the procedural law system. In this context, it is important to realize that Islamic law should be able to identify the diversity of manifestations of textuality and normativity of legal products that are responsive to the context (Fatahillah & Luhuringbudi, 2024). Especially in the reality of Indonesia's pluralistic society, the sociology of law approach is also urgent in applying legal principles to a diverse society (Idary et al., 2024). In other words, the implementation of Islamic law can develop, both theoretically and practically (Harahap, 2025).

Thus, concrete steps are needed in responding to this problem as follows. First, legislative. There needs to be a revision of the P2SK Law and the Sharia Banking Law to explicitly state that cases of liquidation of Islamic financial institutions are the absolute authority of the Religious Courts. Second, the Judiciary. The Supreme Court needs to strengthen the position of KHES as a source of procedural law that must be referred to in all sharia economic cases, and build the capacity of Religious Court judges in handling liquidation and bankruptcy cases. Third, the Executive and technical authorities. The Ministry of Finance, OJK, and LPS need to build coordination with sharia-based judicial institutions to ensure that the liquidation administration process does not harm the principles of *muamalah.*

A. Conclusion

This study concludes that the repositioning of the authority to resolve the liquidation of Islamic banks from the Commercial Court to the Religious Courts is not merely an institutional agenda, but a structural correction to the fragmentation of the national legal system that has not fully recognized the integration between the principles of Islamic law and the design of the judicial system. This study shows that the dominance of the Commercial Court in Islamic bank liquidation cases is not only contrary to the spirit of lex specialis and Constitutional Court Decision No. 93/PUU-X/2012, but also creates procedural and substantive imbalances towards sharia justice.

This study also enriches the academic discourse on the reform of the sharia economic justice system, which has so far focused more on institutional aspects, without touching the urgency of synchronization between norms, forums and procedures as a whole. From an academic perspective, this study opens up space for the development of interdisciplinary research between procedural law, *fiqh muamalah*, and the theory of the rule of law, in order to build a sharia judicial foundation that is not only compatible with the national system, but also authentic in upholding the values of Islamic justice. If Indonesia is serious about making sharia economy a strategic pillar of national development, then the first step is to ensure that sharia justice has an equal, professional and sovereign forum in the national judicial system.

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