



Optimization of Justice Institutions in Cancellation of Sharia Arbitration Decisions

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Abstract

This study aims to examine and analyze the role of the judiciary in the cancellation of the Sharia Arbitration award as an alternative settlement of sharia economic disputes. This research uses a type of normative legal research and a law and conceptual approach. The data obtained both primary and secondary data are then analyzed using qualitative descriptive methods. The results of the analysis show that the judiciary has the authority to adjudicate requests to cancel the Sharia Arbitration decision, namely the Religious Courts as a forum that represents Islamic justice in Indonesia. With this authority granted, the Religious Courts have the authority to examine at the same time the substance of the reasons for canceling the Sharia Arbitration award which is included in a criminal act which, in general terms, is the authority of the District Court. Therefore, it is necessary to have an arrangement that reinforces the authority of the Religious Court in canceling the Sharia Arbitration award so that it can more effectively support the enforcement of the sharia economy.

Keywords: Sharia Arbitration; Justice; Islamic Economics; Cancellation of Decision

Introduction

The judiciary is a place or place for people seeking justice to get truth, justice and legal certainty. The parties can settle disputes through the courts because the existence of the judiciary is a representation of the legal function in dispute resolution and means of enforcing justice (Wiwoho, 2007). The judiciary has a strategic position and is very important for the building of a state of law. The history of mankind has shown that the better the law and court of a nation, the higher the quality of the nation's civilization concerned (Gozzi, 2007). It can even be said that there is no nation that can be categorized as civilized without having a good law and a good and sovereign court (Anwar, 2018). But in addition to the judiciary, there are also settlement of disputes outside the court known as Arbitration and specifically the dispute resolution in the field of Islamic economics through Sharia Arbitration.

Settlement of sharia economic disputes must be in accordance with sharia because the implementation of sharia economics is based on Islamic law (Grais & Pellegrini, 2006). Actualizing Islamic economic values (an-Nathijah) is intended as an effort and process to understand, conceptualize,

and manifest these values in the life of society, nation and state (Choudhury, 2007). While Islamic values are a collection of Islamic principles, principles and teachings as guidelines for how humans in carrying out their interrelated lives form a unified whole, including Islamic economic values as a system (Hamid, 2007).

Logical consequences for Muslims there is no alternative other than choosing Islamic law to be enforced, including as a basis for dispute resolution. The relationship between the court and the Islamic arbitration institution consists of the appointment of the third arbitrator, the implementation of the award, the annulment of the award, the interim measure, and the implementation of the International Sharia arbitration award. However, the Court Regulation Number 14 of 2016 concerning the procedures for resolving Islamic economic disputes only confirms the implementation of the Sharia arbitration decision and the cancellation of the Islamic arbitration through the Religious Courts. With the existence of these rules provide a clear position on the implementation of the decision of the Sharia Arbitration and the cancellation of the Sharia Arbitration award. The authority was given to the Religious Courts because this court became the forum for the enforcement of Islamic law specifically in matters of Islamic economics.

Research Methods

The type of research used in this study is normative law research. Primary legal materials used in this legal research include: Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 48 of 2009 concerning Judicial Power, Law Number 3 year 2006 concerning Religious Courts, Civil Code, and Herziene Inlandsch Reglement (HIR) while the secondary legal materials used in this study are all secondary legal materials that can provide clarity about the relationship of the court in the process of canceling the Sharia arbitration award. Tertiary legal materials that provide instructions and explanations for primary and secondary legal materials. The legal materials obtained, both primary legal materials, secondary legal materials, and tertiary materials are presented in descriptive form.

Results and Discussion

The Absolute Authority of Sharia Arbitration

Arbitration is a permanent institution, tasked with resolving disputes where the disputing parties agree to appoint a third party (arbitrator) as an intermediary (Famauri, 2018). The definition of arbitration if connected with the concept of arbitration according to Islam is a way to settle a civil dispute outside the court based on an arbitration agreement made in writing by the parties to the dispute based on sharia principles. In general, Islamic arbitration and arbitration have many similarities, only the basic principles are used as a different basis. The basic principles of sharia arbitration are based on sharia principles (Anwar, 2018). In the perspective of Islamic law, arbitration can be paired with tahkim (Ashrii, 2013).

According to Abdul Manan, arbitration in an Islamic perspective can be paired with the term tahkim. Tahkim comes from the word hakkama-yuhakkimu-tahkiman. Etymologically tahkim means to make a person as a dispute. So that in general tahkim has the same understanding as arbitration known today, namely the appointment of one or more intermediaries (third parties) by two people in dispute, in order to resolve their disputes peacefully. The person who completes is called hakam. (Ashrii & Samuddin, 2013).

Based on the Arbitration Law and Alternative Sharia Economic Dispute Settlement is the last choice institution to be used outside the court, if other APS / ADR institutions fail to reach an agreement. That is because arbitration in this case the process is adjudication that is the nature of the dispute resolution in arbitration facing each other and the results of decisions issued by third parties who are authorized to decide on a win-lose nature.

The view that ADR emerged and originated in the West over the last few decades is contrary to Islamic law which has recognized it for a long time. Syed Khalid Rashid said in an article entitled "Peculiarities & Religious underlining of ADR in Islamic Law" in a journal "Mediation in the Asia Pacific: Constraints and Challenges". It is a popular belief that ADR has emerged and originated in the West during the last few decades. But contrary to this belief, such ADR processes like Negotiation, Mediation, Arbitration, Expert Determination, Ombudsman and Med-Arab are as old as Islamic Law itself, that is, 1400 years old. All of these have been not only mentioned in the Quran but were practiced since the times of the Prophet, who was a great supporter of the idea of amicable settlement of disputes. Many historic evidences are available in support of this statement. (Rashid, 2008).

In settlement through a sharia arbitration institution there must be an agreement between the two parties to the dispute, if one of the parties does not agree with the channel then it cannot be brought to the sharia arbitration body. However, when both parties do not have an agreement to bring the dispute to Islamic arbitration, the problem of Islamic economic dispute is resolved through the Judiciary. Therefore it can be said that Islamic arbitration has absolute authority obtained by the arbitrators from the parties based on the principle of *pacta sun servanda* (Anwar, 2018).

The principle was then fostered by a judge made law that gave birth to permanent jurisprudence in Indonesian judicial life which affirmed (Anwar, 2018), among others (1) Since the parties entered into an agreement that contained a sharia arbitration clause, the parties were bound absolutely to resolve disputes arising from the arbitration institution sharia. (2) The absolute attachment to a sharia arbitration agreement, automatically realizing the absolute authority of sharia arbitration to resolve disputes arising from the agreement. (3) The abolition of the absolute authority of sharia arbitration to resolve disputes can only be justified if the parties expressly agree to withdraw the sharia arbitration agreement.

That authority is the absolute authority of sharia arbitration, the absolute authority of sharia arbitration institutions is not absolutely absolute. Legislation follows the principle of exclusion (Aslam, 2005). The exception is seen by the relationship between the court and the Islamic arbitration institution in certain matters. This is what makes the absolute authority of sharia arbitration institutions not absolutely absolute (Adolf, 2006).

Requests for cancellation of Sharia arbitration award are limited in nature, that is, the application is limited only to the reasons permitted by law. These reasons are contained in article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In this case the regulation has been further regulated in decision Number: 15 / PUU-XII / 2014 dated October 23, 2014 which impacts on the authority of the Religious Court in terms of the cancellation of the Sharia arbitration award has not been supported by the provisions in the Act.

Authority of Religious Courts

The Religious Court in Indonesia is a state court whose duty is to provide legal and justice services in the field of Islamic sharia. Therefore, the religious court is subject to the basic principles of Islamic sharia. Historically, a religious court was indeed established and organized to examine and try cases that are valid against and comply with Islamic sharia law (Arto, 2012).

The authority of the Religious Courts is contained in article 49 of Law number 3 of 2006 concerning Religious Courts, namely the duty and authority of examining, deciding, and completing cases at the first level among people who are Muslims in the fields of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah, and shari'ah economics. That authority is the absolute authority of the Religious Court.

The Supreme Court Regulation No. 14 of 2016 concerning procedures for resolving Islamic economic disputes authorizes the Religious Courts to adjudicate requests for cancellation of the Sharia arbitration award. The regulation is a further rule of the existing legislation and is a provision for matters that have not been sufficiently regulated in the law to fill the shortcomings or emptiness of civil procedure law. Thus the Perma is a more technical provision than that already existed in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Based on existing provisions both in Perma Number 14 of 2016 concerning Procedures for Settling Sharia Economic Cases, as well as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, then in terms of carrying out the execution of sharia arbitration decisions and annulment, the provisions are written "court country "meant is" religious court". So that the technical submission of the cancellation of the Sharia arbitration decision based on the provisions of Article 70 through Article 72 of Law Number 30 of 1999 jo. Supreme Court Regulation No. 14 of 2016 concerning the procedures for resolving Islamic economic disputes.

Arrangements regarding the cancellation of the Sharia arbitration decision changed after the Constitutional Court ruling Number 15 / PUU-XII / 2014 dated October 23, 2014. The decision said that the explanation of article 70 of Law Number 30 of 1999 no longer has binding legal force. According to the author, before the abolition of the explanation from article 70 raises multiple interpretations, it can be interpreted that the reasons for submitting an application must be proven by the court as a condition for submitting a request for cancellation, or interpreted the reason for the cancellation as evidenced in a court hearing regarding the request for cancellation. However, after the abolition of the explanation is removed, the provisions concerning the cancellation of the Sharia arbitration award referring to the Arbitration Law and Alternative Dispute Resolution result in the reasons for the cancellation of the decision to be examined simultaneously by the court examining the cancellation of the arbitration award, so that the court can enter the realm of substance of the case in question.

One of the principles of arbitration is Non Court Intervention. This principle states that the court must not interfere in any dispute where the parties have been bound by an arbitration agreement. This principle is universal. This principle in national law is seen in articles 3 and 11 of the AAPS Law. The principle of non-court intervention in my opinion, should also be applied to the aspect of annulment of an arbitral award. The court must keep its distance as far as possible not to interfere with disputes of parties who have been bound by arbitration, including issuing decisions that invalidate the award.

However, the Islamic arbitration institution did not affirm in a procedural guideline regarding the means of proving the allegations as referred to in article 70 so that the author considers that the allegations were proven together with the application for the annulment of the decision in the Religious Court. Observe the elements which are the reasons for the cancellation of the Sharia Arbitration award in article 70, that is, the letter or document submitted in the examination, after the decision is handed down, is recognized as false or declared to be false; after the decision has been taken, decisive documents are found, which are hidden by the opposing party; and the decision taken from the results of a ruse carried out by one of the parties in the examination of a dispute is a criminal offense regulated in the Criminal Code. So that this is a consequence of the Religious court institution which has been given the authority of the Supreme Court Regulation No. 14 of 2016 to adjudicate requests for cancellation of the Sharia

arbitration award so that the religious court is more optimal in deciding criminal cases which include elements in canceling the Sharia arbitration award.

There are 6 basic principles in the power of adjudicating a court, namely (1) The absolute competence of each court is based on the objectives formed if it is not authorized according to its purpose; (2) The absolute competence of the court is based on the match between the court specifications and the case specifications; (3) Absolute Competence of the Court is monopolistic; (4) The absolute competence of a court over a case is holistic (kaffah) covering all parts of the legal system of each type of case; (5) The absolute competence of each court is regulated in law; and (6) In the event of a vacuum in the law that rules the determination of absolute competence in a case is returned to the original basic principle, namely the purpose of establishing and holding a court (Arto, 2012).

From the principles outlined above, it is appropriate that the religious court institution which has the authority in deciding an application to cancel an Islamic arbitration award as the owner of absolute authority in the field of sharia economics. Although the authority to declare a document is false or not in general provisions is basically the authority of the District Court. However, for the settlement of the case to request the cancellation of the decision to be fast and efficient, that authority must specifically be given to the Religious Courts. If the authority to audit the application for cancellation of the Sharia arbitration award has been given to the Religious Court, but he is not given the authority to declare a document or false, the religious court in making the decision is still bound by the district court, or it can be said that the party must first bring evidence that states the letter or document is a fake from the District Court as the basis for the Religious Court to decide the case. If so, then the settlement becomes ineffective and inefficient and requires a relatively long time and it is contrary to the nature of arbitration that prioritizes quickly and not through convoluted procedures.

Application for Cancellation of Sharia Arbitration Award

Cancellation is a legal remedy given to the parties to the dispute to ask the Court that an arbitration award be canceled, both for part of the contents of the award and for the entire contents of the decision. Although the basic concept of Law Number 30 of 1999 is final and binding, no appeal, appeal or review can be submitted. However, there are still a number of things that have a chance for the parties to submit an annulment of the arbitration award.

Furthermore, regarding the technical submission of cancellation of Sharia arbitration decisions based on the provisions of articles 70 to article 72 of Law Number 30 of 1999 jo / Supreme Court Regulation Number 14 of 2016.

Ideally, an arbitration award should be able to be enforced without judicial interference because it is final and binding. However, it may be possible that an arbitral proceeding fails to provide fairness or to be perceived as fair, thus resulting in a defective decision or award. Therefore, a control system, through judicial interference, is necessary to balance the interests of parties in an arbitral award (Sitorus, 2016).

Similar to arbitration in general, sharia arbitration also requires a judicial institution to ensure legal certainty both the implementation of the decision and cancellation. Parties who are dissatisfied with the sharia arbitration award conduct resistance through the existing legal loopholes namely canceling the arbitration award submitted to the religious court. The legal loophole is in the form of a situation which is the reason for the parties to ask the court to re-examine the dispute that has been examined by the Sharia arbitration institution (Suparman, 2012).

Arbitration award, the parties may submit a request for cancellation if the decision is alleged to contain the following elements: (1) Letters or documents submitted during the examination, after the decision is handed down, are recognized as false or declared to be false. (2) After the decision has been taken, decisive documents are found, which are hidden by the opposing party; and (3) Decisions are taken from the results of a ruse carried out by one of the parties in the examination of disputes.

In sharia arbitration, the aforementioned provisions still have the potential to cause problems because the sharia principles have not been explicitly accommodated in the Act. In these rules only regulate in general which rules regarding Islamic arbitration have a characteristic in its handling (Suadi, 2017).

The Supreme Court Regulation No. 14 of 2016 also does not regulate more specifically the reasons for canceling the Sharia arbitration award and even returns the rule to a general rule. Therefore, the reasons for cancellation as stated in the normative provisions mentioned above, for Islamic arbitration still need to be added one more condition, namely the reason that the "decision taken is not in accordance with the principles of sharia" can be canceled. This is based on the principles used in the implementation of Sharia Arbitration that is using sharia principles.

Conclusion

The role of the court in the cancellation of the sharia arbitration award is regulated in the Supreme Court Regulation No. 14 of 2016 concerning the procedures for resolving Islamic economic disputes. The regulation provides reaffirmation of the authority of the religious court in canceling the Sharia Arbitration award. The rules regarding the procedure for implementing the cancellation of the Sharia Arbitration award are returned to the general Arbitration rules namely Law Number 30 of 1999 concerning Arbitration and Alternative dispute resolution. Whereas Islamic arbitration deals with special cases whose handling is certainly different because it uses sharia principles. The reasons that can be submitted to cancel the Sharia Arbitration award in the Religious Court are limited in article 70 of the Arbitration Law and Alternative Dispute Resolution. The article is further regulated by Decision Number 15 / PUU-XII / 2014 dated October 23, 2014 which has implications for the authority of the Religious Courts to examine at once the substance of the reasons for canceling the Sharia Arbitration award which is included in a criminal act which in general provisions constitutes the authority of District Court. Therefore, it is necessary to arrange a regulation that reinforces the authority of the Religious Court in the cancellation of Sharia arbitration in the case of trying to fabricate documents or fraud that occurs after the Sharia Arbitration decision.

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