The embodiment of Islamic personality principles in sharia economic dispute resolution in Indonesia

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ABSTRACT
This study aims to determine the manifestation of the Islamic Personality Principle in the settlement of Islamic Economic disputes in Indonesia, both litigation and non-litigation. This research is normative legal research using a historical approach and legislation related to the embodiment of Islamic Personality Principles in sharia economic disputes. Based on the results of the study, it is known that the manifestation of the Islamic Personality Principle in the settlement of Sharia Economic disputes is seen in proceedings in the religious courts, in which the judges who resolve the cases are Muslims and the procedural law used is based on the Al-Quran and Hadith. Whereas in the settlement of sharia economic disputes with non-litigation mechanisms such as in Basyarnas, the manifestation of the Islamic Personality Principle is seen in the selection of arbitrators, that the arbitrators at Basyarnas are Muslims and the legal basis used in resolving sharia economic disputes is the Al-Quran and Hadith.

Introduction
In the early stages of Islam developing in Indonesia, it was founded the teachings about the justice system in a simple form called the tahkim with hakam as the peacemaker or mediator (Bisri, 2003). The tahkim institution is the forerunner of the birth of religious courts later. The development of religious courts from a historical perspective can be seen as experiencing ups and downs. The arrival of the Dutch (VOC) to Indonesia, whose main purpose was only to trade, also had implications for the religious judiciary that existed at that time.

During the Dutch colonial administration in 1882, Ordonantie was released, Stb. 1882-152 about the Religious Courts in Java and Madura (Rasyid, 2003). The Stb contains the Dutch colonial government who uses the term priesterraad which means priest justice. This is because in their assumption the scholars who exercise judicial power in the field of civil law are the same as priests in their religion (Anshori, 2007).

The development of religious courts at that time was influenced by several theories including the Receptio in Complexu Theory was originally coined by Salomon Keyzer which was later strengthened by Ch Van den Berg (Emirzon, 2001). The Receptio in Complexu theory states that each resident applies their respective religious laws. For adherents of Islam fully apply Islamic law because they have embraced Islam. However, it should be noted that the applicable of Islamic law only deals with the matters of family law, marriage and inheritance.

Next, there is the Receptie Theory, which was developed by a prominent Dutch scholar known as an Islamologist, Christian Snouck Hurgronje. Furthermore, it was developed and systemized scientifically by Van Vollenhoven with Ter Harr. the Receptie Theory states that the law that applies to the community is the customary law and the Islamic law which can be applied as long as it does not...
conflict with customary law. Thus, according to the view of this theory, for the validity of the Islamic law, it must be accepted first by the customary law.

These theories make a big difference to the authority of the religious courts. Based on the Receptio in Complexu theory, the religious court is authorized to receive, examine and decide on all civil disputes for Muslims. Meanwhile, based on the Receptie Theory, the authority of the religious courts is crastated, where the religious courts are no longer authorized to resolve disputes in the field of Islamic inheritance. Thus, the authority of the religious courts is limited to matters relating to marriage, divorce, and reconciliation.

In the era of independence, remnants of this colonial legacy still exist, where the religious courts still do not have independence in carrying out their functions and roles. Regarding to the decision of the religious courts, it still requires fiat execution (executor verklaring) from the Head of the District Court (Irianto & Sidharta, 2013). The new religious judiciary has established itself and it has equal position with other courts then it has a role as a real judicial institution (the Court of Law) after the enactment of Law No. 7 of 1989 concerning Religious Courts.

The issuance of this law makes the Religious Courts have independence in resolving certain civil disputes. It is said to be a certain civil case because the Religious Courts have the duty and authority to examine, decide and resolve cases at an early stage between fellow Muslims in the fields of: a). marriage, b). inheritance, 3). will, 4). waqf, 5). grants, and 6). shadaqah. The beginning of the issuance of Law no. 7 of 1989 concerning the Religious Courts, the authority of the Religious Courts is only limited to marital and inheritance disputes. However, with the enactment of Law No. 3 of 2006 concerning the amendments to Law No. 7 of 1989 concerning the Religious Courts, it gave a very significant change in the existence of the Religious Courts.

The fundamental change that can be seen is the authority addition of the Religious Courts in the field of Islamic economics. Based on Article 49 letter (i) of Law No. 3 of 2006, it is emphasized that the Religious Courts has the authority to examine, hear and resolve cases including sharia economics. The scope of sharia economic cases includes: sharia banks, sharia macro financial institutions, sharia financing, sharia insurance, sharia reinsurance, sharia bonds and sharia medium term securities, sharia securities, sharia pawnshops, sharia financial institution pension funds, and sharia businesses.

One of the specialties that exist in the religious judiciary is the principle of the Islamic Personality. It means that those who are subject to and who can be submitted to the authority of the Religious Courts are only those who are Muslim (Dewi et al., 2005). It can be interpreted for non-Muslims that the provisions in the Religious Courts do not apply. The principle of Islamic Personality is regulated in Article 2, General explanation number 2, third paragraph and Article 49 paragraph (1) of the Law on Religious Courts.

The principle of Islamic Personality is a special principle inherent in the Religious Courts environment. The key word of this concept is Islam which means those who claim as Muslims are submissive and can be submitted to the authority of the Religious Courts. Meanwhile, non-Muslims are not submissive and cannot be forced to submit to the authority of the Religious Courts (Harahap, 2003).

Regarding the principle of Islamic Personality in the Religious Courts, there are new things after the emergence of Law no. 3 of 2006 concerning the amendments to Law No. 7 of 1989 concerning the Religious Courts. The addition of the power and authority of the Religious Courts in examining, deciding and resolving problems in sharia economic disputes becomes very interesting to study due to the fact that for economic problems including sharia economics, practically it cannot be distinguished between Muslims and non-Muslims. It is evident that Britain as the world's financial center in Europe, wants itself as the Gateway to Islamic Finance. Despite the number of the Muslim community there which is only 2.7 million people, the UK professionally views Islamic banking as a very potential new market opportunity. Based on this baground, this research aims to know how is the embodiment of the Islamic Personality principle in the settlement of sharia economic disputes, especially non-litigation?

**The Principle of Islamic Personality**

In accordance with the formulation of the problem above, this study has the following objectives: to find answers to the embodiment of the principle of Islamic Personality in accordance with the concept of Islamic Law in the settlement of sharia economic disputes. The results of this study are expected to contribute ideas for the development of legal knowledge, especially the Law of Religious Courts and Islamic Economic Law. This research is expected to be of benefit to legal practitioners, religious court judges, sharia business people and academics. This research is also expected to be a consideration and input for sharia business actors and related parties in resolving sharia economic disputes.

The type of research in this article is legal research. Legal research is a process of finding the laws that apply in society (Marzuki, 2016). In conducting this legal research, primary legal materials and secondary legal materials are used. This study uses a normative legal research method because the main problem in this research is a legal problem.

The technique or method of collecting materials used in this research is library research, through searching and collecting primary legal materials, secondary legal materials and legal materials which are relevant to the problem to be answered, namely the embodiment of the Islamic Personality Principle in the Settlement of Sharia Economic disputes.

Sharia Economics is a term that is only known in Indonesia, and in other countries it is known as Islamic Economy and as a science it is called Islamic economics. Islamic economics is different from economics or conventional economics that is developing in the
world today. The first is bound to Islamic values and the second is not, because it separates itself from religion since Western countries adhere to secularism and carry out secularization politics (Ka’bah, 2007).

Economics in the view of Islam has goals, among others: to meet the needs of a person's life in a simple way, to meet family needs, to meet long-term needs, to provide for the needs of the bereaved family, to provide social assistance and donations for those in need and to apply economics in everyday life as personal, family, community groups and entrepreneurs in order to organize the factors of production, distribution and utilization of goods and services produced based on sharia principles (Manan, 2012). M. Yasir Nasution in Manan (2012), argues that Islamic economics has special characteristics that distinguish it from conventional economics, namely: a philosophical foundation. Sharia economics is built on four philosophical foundations, namely: first, monotheism, in the sense that everything in nature is God's creation and only God is the one who regulates everything, including the mechanism of human relations, ways of obtaining sustenance and doing things, and business transactions and other economic activities; second, justice and balance, in the sense of these two things must be used as the basis for achieving the welfare of mankind. Therefore, all economic activities must be based on the notion of justice and balance; third, freedom, in the sense that humans are free to carry out all economic activities as long as there are no provisions and prohibitions. In line with sharia economics, innovation and creativity in sharia economics is a must; fourth, accountability, in the sense that humans must assume responsibility for all decisions he made.

The principle of Islamic Personality is the principle which is inherent in the Law on Religious Courts that is the basis for the application of Islamic law to Muslims and Islamic legal entities. The principle of Islamic Personality has the meaning that those who are subject to and who can be submitted to the authority of the Religious Courts are only those who are Muslim. (Dewi et al., 2005). By means, an adherent of a non-Islamic religion, is not subject to and cannot be submitted to the authority of the Religious Courts. This principle is regulated in Article 2 Law of Religious Courts, general explanation number 2, third paragraph and Article 49 paragraph (1). Yahya Harahap said from the three statements, it can be seen that the principle of Islamic Personality is at the same time related to certain civil cases (Arto, 2003) as long as it is about disputes over cases that are under the authority of the Religious Courts. Therefore, the submission of Muslim personalities to the environment of the Religious Courts is not general submission covering all civil fields.

The purposes of this principle are:

i. The disputing parties must be all Muslims,

ii. The civil cases that are disputed are regarding cases which are included in the fields of marriage, inheritance, waqf, alms, wills, grants, and sharia economics, namely: sharia banks, sharia macro financial institutions, sharia mutual funds, sharia bonds and medium-term securities, sharia securities, sharia financing, sharia insurance, sharia reinsurance, sharia pawnshops, sharia financial institution pension funds, and sharia businesses.

iii. The legal relationship that underlies this particular civil relationship is based on Islamic law.

This principle of Islamic Personality will be perfect and absolute if it is supported and not separated from elements of legal relations based on Islamic law. The basis used in this principle is based on general standards and standards when there is a legal relationship. In contrast to the opinion above, Abdullah (1994) stated that the provisions of Law No. 7 of 1989 concerning the principle of Islamic Personality focused more on the religious principles of the party filing the lawsuit, regardless of the religion of the opposing party.

Sharia Economic Dispute Resolution

The fast growth of the Sharia Economy is the solution for the community on lameness and social injustice (Ghozali & Sari, 2018). That matter is marked with development economic institutions in operation based on the sharia principles such as the establishment of sharia Bank, sharia insurance, and other Islamic financial institutions (Nofinawati, 2015). Disagreement, dispute, and contentious debate are one of the efforts made to maintain the establishment and recognition in the process of achieving and interest. Counterproductive behavior increases the tendency towards each individual who conflicts to survive and try to dominate each other with all diplomacy, negotiation, or by using the formal legal procedures that the state has provided through litigation forums (Witanto, 2011). The development of the sharia economy in Indonesia does not close the possibility of disputes between the parties who conduct sharia economic transactions (Yulianti, 2007). That would give rise to the point of the tangent with the judicial world, especially the Religious Judiciary. The point of tangency referred to here is in settlement of sharia economic disputes.

The term dispute has a meaning as a conflict between two or more parties that originates from a different perception of an interest or property right which can have legal consequences for both of them and may be subject to legal sanctions against one of them. A sharia economic dispute is a dispute in the fulfillment of the rights and obligations of the parties bound in the sharia economic activity contract. While Islamic Economics is defined as a science that studies the order of people's lives in meeting their needs to achieve the pleasure of Allah. In other words, an act or activity carried out according to sharia principles, or can also be interpreted as an economic system based on the teachings of Islam and Islamic values (Nasution, et al., 2006). So it can be concluded that a sharia economic dispute is a conflict between two or more economic actors whose business activities are carried out according to the principles of sharia economic law caused by different perceptions of an interest or property right which can have legal consequences and have law sanctions.
The dispute resolution mechanism is divided into two, namely: litigation and non-litigation. The litigation route is a mechanism for resolving cases through the judiciary using a legal approach. While the non-litigation route is a dispute resolution mechanism outside the court.

In line with that Article 25 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, explicitly states that in Indonesia there are four judicial environments under the auspices of the Supreme Court that carry out the functions and authorities of judicial power, namely:

i. General Courts, only competent to examine and decide general criminal cases, customary civil and western civil.

ii. The State Administrative Court, only examines and decides on state administrative cases.

iii. Military Courts, only cover cases of military crimes and general crimes committed by members of The Indonesian Armed Forces (ABRI).

iv. The Religious Courts only examine and decide cases in certain civil fields as mandated by law.

In the context of sharia economics, the religious judiciary through Article 49 of Law Number 7 of 1989 stipulates matters that are the authority of the religious judiciary. As for the duties and authorities to examine, decide and settle certain cases for those who are Muslim in the field of marriage and others as well as sharia economics.

The settlement of sharia economic disputes through litigation in Indonesia is authorized by the Religious Courts. Since 2006, the authority of the Religious Courts has been expanded, with the amendment of Law no. 7 of 1989 with Law no. 3 of 2006 concerning Religious Courts. According to Article 49 paragraph (i) of Law no. 3 of 2006 concerning the Religious Courts. Besides, Religion Courts also have the authority to examine, decide and resolve disputes at the first level between people who are Muslim in the fields of marriage, inheritance, wills, grants, zakat, infaq, waqf, and shadaqah, the Religious Courts are also authorized to examine, decide, and resolve disputes in the field of Islamic economics.

Settlement of sharia economic disputes through litigation in the Religious Courts, has two mechanisms, namely by simple procedures and by ordinary procedures in accordance with Law of Supreme Court (PERMA) Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases Chapter III of PERMA Number 14 of 2016 regulates Procedures for Examination of Cases with Simple Procedures. A lawsuit in a sharia economic case can be filed orally or writing in printed form or electronic case registration in a case examination with a simple procedure with a maximum value of Rp. 200,000,000 (two hundred million rupiahs) which was completed with simple procedures and evidence (Rahmadi, 2010). In this case, the plaintiff files his lawsuit at the Registrar's Office of the Religious Courts or through electronic registration or he can register his claim by filling out the claim form that has been provided by the clerk at the local court.

The parties in this simple lawsuit consist of a plaintiff and a defendant, each of whom cannot be more than one, unless they have the same legal interest who are domiciled in the jurisdiction of the same court. In addition, the parties are required to attend each trial directly with or without being accompanied by a legal representative. It is necessary to understand the difference between a simple lawsuit and a lawsuit that is not included in a simple lawsuit. Not a simple lawsuit includes: cases where the dispute resolution is carried out through a special court or a dispute over land rights; the defendant whose place of residence is unknown; and more than one litigating party unless they have the same legal interest.

Meanwhile, the settlement of disputes outside the court or non-litigation has three alternatives, namely:

i. The Alternatives For Settlement Of Sharia Economic Disputes Through Peace Institutions

The idea of the need for a peace institution (al-shalhu) in modern times is certainly not a discourse or just an ideal but has entered the practical area. This can be seen in the rise and popularity of Alternative Dispute Resolution (ADR). In Indonesia, peace has been supported by its existence in positive law, namely Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Alternative Dispute Resolution is the resolution of disputes or differences of opinion through a procedure agreed upon by the parties, namely settlement out of court by means of mediation, consultation, negotiation, conciliation, or expert judgment.

The legal basis for peaceful settlement of sharia economic disputes outside the court are:

i. Al-Quran Surah Al-Hujurat verse 9:

"And if there are two groups of those who believe in war, then you should make peace between them. But if one violates the agreement with the other, let the one who violates the agreement fight until it recedes back to Allah's command. When he has receded, reconcile between the two according to justice, and be fair; Indeed, Allah loves those who act justly."

ii. The suggestion of peace can be found in the hadith which has also become a rule of fiqh, which means: "Peace among Muslims is permissible except for peace which forbids what is lawful or makes lawful what is unlawful" (HR. Bukhari)

iii. Article 10 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power which states "The provisions as referred in paragraph (1) do not close efforts to settle civil cases amicably"
In the Islamic perspective, dispute resolution through arbitration is also known as Tahkim. Tahkim literally means to make someone as a mediator for a dispute (Zein, 1994). Tahkim is a method of resolving disputes outside the court through judge who is trusted to end disputes between parties who are chosen voluntarily with the consequence that the parties must implement the results of the judge's decision (Bachro & Fariana, 2016). Settlement of disputes carried out by judges in the modern era is known as arbitration. In Indonesia, this Tahkim institution is known as the National Sharia Arbitration Board (Basyarnas). The establishment of an Islamic arbitration institution (Basyarnas) has a strong legal basis, both from a positive legal review and from Islamic law.

Basyarnas is an out-of-court dispute settlement agency that resolves sharia economic disputes through the intercession judge or arbitrator, in accordance with MUI Decree No. 09/MUI/XII/2003 dated December 24, 2003 regarding Basyarnas. The legal basis for the application of arbitration in the settlement of sharia economic disputes is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Dispute resolution through Basyarnas can be done if there is an agreement and it is included in the deed or contract from the beginning, before the dispute occurs (pactum compromittendo), or made when a dispute occurs in a deed (acta compromis). Initially Basyarnas was named the Indonesian Muamalat Arbitration Board (BAMUI), which was established on October 21, 1993, as a foundation.

Basyarnas has the following scope of authority:

i. Resolve quickly and fairly the civil disputes that arise in the field of sharia economics and others where the parties agree in writing to submit the settlement to Basyarnas in accordance with Basyarnas procedures.

ii. Provide an opinion that is binding on the parties without any dispute or disagreement on the question related to an agreement.

Associated with the settlement of sharia economics in Basyarnas, the principle of personality manifests itself through the arbitrators in Basyarnas where all arbitrator judges must be Muslims, master Islamic Law and obtain scientific certification in accordance with Islamic Law. So although the parties are not required to be Muslims, but the arbitrators must be Muslims. Furthermore, the form of the Principle of Islamic Personality can also be seen in the rules used in the settlement of disputes, namely the rules which are based on Islamic Law.

i. The Alternative Shariah Economic Dispute Resolution Through Shariah Mediation.

Mediation is a settlement of a dispute by consultation or consensus between the disputing parties with the assistance of one or more mediators who are approved by the parties and do not have the authority to decide. Mediation is a process of resolving disputes through consultation or deliberation and consensus of the parties with the assistance of a mediator who does not have the authority to decide or force a settlement. Thus, the main feature of the mediation process is agreement whose essence is the same as deliberation for consensus. Furthermore, the mediation process at an early stage still refers to Rules of Supreme Court (PERMA) No. 1 of 2008 on the Mediation Process in Court. The mediation process in the initial stage has five stages, namely: agreeing to go through the mediation process, understand the problem, find problem-solving options, reach an agreement and implement an agreement.

Conclusion

The form of Islamic personality in the settlement of sharia economic disputes in religious courts is the judges who examine and decide cases are Muslim and master Islamic law. Meanwhile, with non-litigation mechanisms such as in Basyarnas, it can also be seen from the arbitrator. Where all arbitrator must be Muslim, master Islamic law and obtain scientific certification according to Islamic law. So even though the parties are not required to be Muslim, the judges at the Religious Courts and the arbitrators at Basyarnas must be Muslim. Furthermore, the manifestation of the Islamic Personality Principle can also be seen in the rules used in dispute resolution, namely the rules based on Islamic law.

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