

Research Article

The Existence of Electronic Evidence in the Settlement of Sharia Economic Disputes in Religious Courts During the Covid-19 Period Based on Positive Law and Islamic Law Perspectives

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Abstract.

The development of the Sharia economy, accompanied by the wide scope of economic activity in Indonesia, has had a huge influence on the increase in Sharia economic disputes, including during the Covid-19 pandemic. The Supreme Court has responded quickly by issuing various Regulations related to electronic trials to solve the accumulation of cases, especially Sharia economics in the Religious Courts. With this e-court application and electronic trials, it is hoped that it will be able to avoid crowds of people at the court office causing physical contact between justice seekers so it is feared that it could become one of the distribution chains or new clusters of the Covid-19 virus. Electronic information as legal evidence in civil cases is categorized as written evidence. Electronic information or electronic documents are considered valid as long as the information can be accessed, displayed, guaranteed for its integrity, and accounted for so that it can explain a situation. In Islamic law, electronic evidence can be used as evidence because it is included in other evidence according to Islamic law experts. So electronic evidence can be used as evidence in the settlement of Sharia economic disputes, especially in transaction activities using contracts in accordance with Sharia principles such as contracts of buying and selling, leasing, cooperation, debts, and so on.

Keywords: electronic evidence, Sharia economic dispute, Covid-19

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1. INTRODUCTION

Recent economic growth in the Islamic world has been swift during the past three decades. Similarly, Islamic economics is flourishing in Indonesia. In addition, it is believed that the Islamic economic system provides adequate responses to the weaknesses and shortcomings of the existing economic systems [1]. Sharia economic growth followed by a wide scope of economic activity in Indonesia from time to time has a significant influence on increasing sharia economic disputes, both in terms of quality (weight) and quantity (amount). The increasing number of people, especially those who are Muslim, indirectly affects the increasing number of Islamic Financial Institutions. Islamic financial institutions, especially in the banking sector, are part of the modern world economy and subject to the same economic laws as traditional (non-Islamic) financial market participants [2].

The issue of sharia compliance in Islamic Financial Institutions is currently one of the legal issues that is well-known in sharia economic discourse. Sharia compliance becomes essential in the operationalization of sharia contracts because it determines whether a practice in sharia financial services is in accordance with sharia principles [3].

Sharia principles must be applied in all activities carried out by Islamic Financial Institutions supervised by Sharia Supervisory Board (*DPS/Dewan Pengawas Syariah*). Thus, DPS has the responsibility to ensure sharia compliance with the practices carried out by Islamic Financial Institutions [4].

Sharia economic transactions in Indonesia have increased every year. One of them is marked by the proliferation of Islamic Financial Institutions in every region in Indonesia, both those in the form of Sharia Business Units (*UUS/Unit Usaha Syariah*) and those becoming Sharia Commercial Banks (*BUS/Bank Umum Syariah*) [5]. Additionally, in February 2021, three major Islamic banks in Indonesia, namely Bank Syariah Mandiri (BSM), BRI Syariah (BRIS), and BNI Syariah (BNIS) had officially merged into one, namely Bank Syariah Indonesia (BSI) as the biggest Sharia Bank in Indonesia.

In the midst of increasing sharia economic transactions in Indonesia, Covid-19 pandemic has hit Indonesia for almost two years and influenced several customers of Islamic Financial Institutions, both sharia banks and non-banks, to restructure their financing. Some of the customers are entrepreneurs who experienced a decrease in turnover or even went bankrupt, so that their ability to pay their financing installments decreased and then caused the restructuring or even selling of assets occurred in several areas of this country. In line with this, the number of sharia economic disputes is also increasing, both defaults and acts against the law.

In general, a sharia economic dispute is a conflict between two or more economic actors whose business activities are carried out in accordance with sharia economic law principles caused by different perceptions of an interest or property rights generating legal consequences for both parties and being given legal sanctions against one of them [6].

Another definition states that a sharia economic dispute is a dispute or conflict between two or more parties as legal subjects of economic actors whose business activities are carried out in accordance with sharia principles and sharia economic law principles caused by different opinion or interpretation of an interest or property rights giving legal implications for both parties and being given legal sanctions or harm against one of them [7].

In Article 2 of Law Number 50 Year 2009, it is explained that the religious court is one of the judicial powers for people who are Muslim seeking justice regarding certain civil cases. The decision of the Supreme Court Number 93/PUU-X/2012 became an important moment for strengthening the authority of the religious courts related to the settlement of sharia economic disputes. On the petition for judicial review of Article 55 of Law Number 21 Year 2008, the Supreme Court handed down the decision Number 93/PUU-X/2012 [8]. Based on the Supreme Court's decision, it is clearly stated that a sharia economic dispute is the absolute authority of religious courts. In other words, bringing the settlement of sharia economic disputes to another judicial environment is a violation of the absolute competence that has been outlined by the norms of the Supreme Court's decision.

The aforementioned authority is new, so that instruments in the settlement of sharia economic disputes must also be prepared. Its new instruments are the facilities of religious court institutions, the improvement of the technical capabilities of human resources, the collaboration with universities, the formation of formal and material laws to become guidelines for religious court apparatus in examining, adjudicating, and deciding sharia economic disputes, and finally the fixing systems and procedures so that disputes involving sharia economics are carried out in a simple, easy, and low-cost manner.

The dispute settlement carried out in the Religious Courts as the problem with formal and material legal rules still adopts civil law, whose foundation is western law or Dutch law. In line with this, many legal rules used in the settlement of sharia economic disputes still refer to civil law which sometimes in its implementation is in contrary to sharia principles. In fact, it is still in the stage of structuring and making formal legal rules in the settlement of sharia economic disputes to fulfill what is mandated by Law Number

3 Year 2006, based on sharia values, becomes a separate problem in the settlement of sharia economic disputes [9].

Law Number 3 Year 2006 as amended by Law Number 59 Year 2009 concerning Amendments to Law Number 7 Year 1989 concerning Religious Courts is a legislative product that first provided competence to the Religious Courts in resolving sharia economic cases/disputes. The enactment of the law, socio-juridically, represents the good will of government in responding to developments in national law and accommodating the needs of Indonesian people, especially Muslim community, and reflecting the direction of the government's legal politics in expanding the competence of the Religious Courts in sharia economic cases [10].

The more sharia economic disputes in Indonesia during the pandemic, the more cases that go into the Religious Courts. According to Muhamad Hasan, et al, [11] in every region in Indonesia, the Religious Courts have never had no cases. The number of cases at the Religious Courts in West Java reaches 10,000 cases per year, and some even more. By increasing the number of sharia economic cases, the court queue and the number of people who visit or convene at the Religious Court office will also increase. This kind of crowds must be avoided during a pandemic situation, hence, the government is always touting health protocols: wearing masks, washing hands with soap and running water, keeping distance, staying away from crowds, and limiting mobility. The Religious Courts, which are government agencies, must always implement health protocols in every office area and activities carried out in the office. In line with this, this research was conducted to resolve sharia economic disputes in the Religious Courts during the Covid-19 pandemic. The Religious Courts need to create innovations or breakthroughs to overcome these problems for the sake of excellent service to the justice-seeking community, especially those in disputed. Thus, all problems are resolved without causing other problems, including in the case of the trial process with evidence in the form of Electronic Evidence.

Today, in the practice of evidence, a new type of evidence that can be used in evidence is added, namely Electronic Evidence. In Indonesian laws and regulations, its meaning is still difficult to find. The concept developed earlier in common law countries [12]. Electronic Evidence in Indonesia tends to lead to limited understanding, namely electronic documents, transactions, and information.

2. METHOD

The approach used in this research was a normative juridical approach, which is carried out through a philosophical, systematic, and critical analysis approach. Since this research is based on a normative juridical approach, the technical data collection used a library study, namely studying and reviewing primary and secondary legal materials [13]. This was descriptive research because this was conducted to find data as accurate and complete as possible about the characteristics of situation or symptoms that can help strengthen the old theory to build a new theory regarding the settlement of sharia economic disputes in the Religious Courts.

3. RESULTS and DISCUSSION

3.1. The Dispute Settlement through Electronic (E-Litigation) in Religious Courts during the Covid-19 Pandemic

During the Covid-19 pandemic situation, innovations are needed to ease community to do activities in Religious Courts, but still apply health protocols to avoid crowds in Covid-19 cases in this country. The Supreme Court has issued an e-court application in which the system is integrated with the application of Case Investigation Information System (SIPP/*Sistem Informasi Penelusuran Perkara*), which has been used by four judicial circles to support the electronic case administration process that can facilitate community and provide fast, simple, and low-cost service, and avoid crowds of people seeking justice in the court.

The application can be used in all types of cases, including sharia economic cases. With this application, the trial can be conducted through electronic media (e-litigation). The Supreme Court also issued Supreme Court Regulation (PERMA/*Peraturan Mahkamah Agung*) regarding electronic trials as a legal umbrella for electronic report in which the rules or procedures have not existed yet in the *Herzien Inlandsch Reglement* (HIR) or RBG (PERMA 3 Year 2018).

In every case going into the Religious Courts, it begins with a lawsuit addressed to the Head of the Religious Court. Before having an e-court application, the lawsuit had to be submitted directly through One Stop Service (PTSP/*Pelayanan Terpadu Satu Pintu*) at the Religious Court office. Now, with the e-court application, justice seekers simply upload their lawsuit through the application and pay the down payment for the court

fees that can be carried out through a digital payment system, namely various types of transfer applications with banks collaborating with the court [14].

After receiving the summons, at the first trial, the litigating party must come directly to the Religious Court to conduct the trial and submit the original documents of the lawsuit. The parties will be ordered by the judge to carry out mediation stage. At this stage, the parties can choose their own mediator or leave it to the judge to choose one. In the implementation of mediation, the parties can mediate directly or through virtual (distance audio-visual communication) with devices that have been facilitated by the Religious Courts (Article 5 paragraph (3) of PERMA 1 Year 2016).

If the mediation is unsuccessful, the mediator will make a report stating that the mediation was unsuccessful to the examining judge, then the judge will continue the sharia economic case to the main point of the case with the agenda of reading the lawsuit and then answering it [15]. In the *jinawab* answering agenda (answers, replicas, and duplicates), which were previously conducted through a live trial, during this pandemic, the parties simply upload their answers, replicas, and duplicates through e-litigation, namely court application (electronic trial). Then, at the witness examination hearing, the trial is held offline in the courtroom of the Religious Court. However, if the witness is unable to attend due to long distance reasons, the witness examination can be carried out virtually with the assistance of the Religious Court in charge of the witness' address.

During the current pandemic situation, the conclusion hearing and verdict reading are carried out by e-litigation. Therefore, it is sufficient for the parties to be present at the first trial and at the witness examination only (proof). The rest of the trial is carried out through electronic media (e-litigation) such as the *jinawab* answering (answers, replicas, and duplicates), conclusion hearings, and verdict reading sessions.

3.2. Electronic Evidence in Economic Dispute Settlement based on the Perspective of Positive Law and Islamic Law

Several Indonesian legal experts give an understanding of electronic evidence, including Edmon Makarim who defined electronic evidence as a data or information that is processed by an electronic information system and stored in a certain electronic media [16]. Another opinion states that electronic documents are the documents that are created, communicated, and managed electronically using computer technology. Those documents can be created electronically or transferred from conventional documents.

The regulation regarding electronic evidence in Law Number 11 Year 2008 concerning Information and Electronic Transactions (UU ITE/*Undang-Undang Informasi dan Transaksi Elektronik*). Article 5 paragraph (1) of UU ITE states that:

“Electronic Information and/or Electronic Documents and/or their printed results are legal evidence”.

Article 5 paragraph (2) then explains that:

“Electronic Information and/or Electronic Documents and/or their printed results as referred to in paragraph (1) are an expansion of legal evidence in accordance with the applicable law of procedure in Indonesia.”

The existence of electronic documents has been recognized as legal evidence in civil courts since they have been regulated in the UU ITE. However, the use of electronic evidence as evidence tools has not been regulated in the *Herzien Inlandsch Reglement* (HIR). HIR is an Indonesian Reglement which has been amended and being the law of procedure of case trials in the applicable criminal or civil courts in Java and Madura Island. Regulations regarding the enactment of HIR are listed in the State Gazette or *Staatblaad* Number 16 Year 1848.

The absence of regulation regarding electronic evidence in HIR is one of the conditions that prevents judges from fully referring to electronic evidence as evidence tools, as it is known that HIR is a guideline for judges in their procedures, so the regulation must also be clearly stated in it.

Along with the entry of Indonesia into the reform era, the stages to find or form legal products in accordance with the nation's ideology continue to be carried out. This can be seen with the emergence of the Law of Civil Procedure Bill. Although it is not yet in effect, it must be seen as a step towards amending the Law of Civil Procedure.

Regarding evidence tools in the Law of Civil Procedure in Indonesian, electronic documents are present as new evidence that has an expansionary characteristics. This can be seen in Article 5 paragraph 2 of Law Number 11 Year 2008 concerning Electronic Information and Transactions: “Electronic Information and/or Electronic Documents and/or their printed results as referred to in paragraph (1) are an expansion of legal evidence in accordance with the applicable law of procedure in Indonesia”. The meaning of the word *expansion* based on the vocabulary is to expand. However, that meaning should be seen as one part of legal reform because the emergence of electronic documents has perfected the existing laws and regulations, so that they are not left behind the times.

The proving method using Electronic Information evidence in civil cases (including the settlement of sharia economic disputes) is the same as submitting written evidence or letters, which is submitted in the court in the form of copies or written evidence and must be matched with the original version. Electronic Information as evidence, in its presentation at trial, has a slight difference. It must be an acknowledgment from the owner, at least, able to be shown or displayed in court. Therefore, it can be used as legal evidence like other written evidence.

If the Electronic Information is denied or not acknowledged, the proving method returns to Article 163 HIR, stating that whoever postulates must prove his argument. In this case, the plaintiff must prove it. In addition, it also refers to Article 7 of Law Number 11 Year 2008: "Every person who declares rights, strengthens existing rights, or rejects the rights of others based on the existence of Electronic Information and/or Electronic Documents must ensure that the Electronic Information and/or Electronic Documents available to him come from Electronic Systems that meet requirements based on the Legislation". Article 7 of UU ITE explains that Electronic Information and/or Electronic Documents can be used as a reason for the emergence of a right. However, in order for Electronic Information and/or Electronic Documents to be assessed as evidence, an expert is required to conduct an assessment. Since to determine whether the Electronic Information and/or Electronic Documents are worthy of being used as evidence, the ability of an expert in the field is needed. Finally, if the electronic evidence is still denied/not acknowledged, the last piece of evidence can be used, namely proof of oath. As the Article 164 HIR, the evidence that can be used in the trial are letters, witness, confession, suspicion, and oath. The judge in this case may impose a suppletioir oath to one of the parties whose evidence is close to the truth [17].

Proof in Arabic terms comes from the word *al-bayyinah* meaning something that explains. Etymologically, it means information, namely everything that can explain the right (true). Technically, it means evidence in court. Jurisprudence scholars discuss evidence in court matters with all their instruments. In jurisprudence, evidence is also called *at-turuq alisbat*. *Al-bayyinah* is defined by jurisprudence scholars in accordance with its etymological meaning. The majority of jurisprudence scholars interpret *al-bayyinah* narrowly, which is the same as testimony.

Then, Ibn al-Qayyim al-Jauziyah stated that *al-bayyinah* has a broader meaning than the understanding of the number of scholars. According to him, testimony is only one of the types of *al-bayyinah* that can be used to support someone's claim and interpreted as anything to explain the truth in front of a panel of judges, in the form of statements,

witnesses, or various instructions that can be used as references by the panel of judges to return their rights to the actual owner.

Evidence (*hujjah*) is something that strengthens the claim. The jurists assume that there are seven kinds of proof: (1) *Iqrar* (confession), (2) *Shahadah* (testimony), (3) *Yamin* (oath), (4) *Nukul* (refuse oath), (5) *Qasama* (oath), (6) Judge's conviction, and (7) other evidence that can be used [18].

Based on Islamic law, electronic evidence can be categorized as other evidence that can be used to make a case much clearer, so that an assumption can be taken by the judge to determine a verdict. This is in line with the nature and characteristics of Islamic law, which is flexible and in accordance with the demands of the times. Therefore, electronic evidence can be used as evidence in the settlement of sharia economic disputes, especially in transaction activities using contracts in accordance with sharia principles, such as contracts for buying and selling, leasing, cooperation, debts and so on.

4. CONCLUSION

The more the increase of sharia economic transactions in Indonesia, the more the increase of sharia economic disputes going into the Religious Courts in Indonesia. During the current pandemic, the government issued various restrictions regarding crowds and strict health protocol rules to avoid crowds in Covid-19 cases in this country. The Supreme Court has responded quickly by issuing various Supreme Court Regulations related to electronic trials to solve the accumulation of cases, especially sharia economics in the Religious Courts. With this e-court application and electronic trial, it is hoped that it will be able to avoid crowds of people at the court office causing physical contact among between justice seekers so that it is feared that it could become one of the Covid-19 distribution chains or new clusters.

Electronic information becomes legal evidence in civil cases because it is categorized as written evidence. Electronic Information and/or Electronic Documents are considered valid as long as the information can be accessed, displayed, and guaranteed for its integrity, and accounted for, so that it can explain a situation. Therefore, Electronic Information has the power of proof such as written evidence if it can be displayed or printed and acknowledged by the owner. In Islamic law, electronic evidence can be used as evidence because it is included in other evidence in accordance with Islamic law experts. Since the Religious Courts are included in the scope of civil law, hence, as long as the evidence is not specifically regulated, it still follows the evidence in the

study of law of civil procedure law. Additionally, one of the authorities of the religious courts is to settle disputes in the field of sharia economics, so that electronic evidence can be used as evidence in the settlement of sharia economic disputes.

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