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Authority of religious courts to judge Sharia bankruptcy

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Abstract. At this writing the type of research used, namely the type of normative legal research. Bankruptcy cases in Indonesia have not specifically regulated dealing with Sharia Bankruptcy using sharia principles/sharia contracts. Sharia Bankruptcy Cases are absolutely the competence of the Religious Courts based on the philosophical Aspects, Sociological Aspects, and Juridical Aspects of the Urgency of the Authority of the Religious Courts to Adjudicate Sharia Bankruptcy.

Keywords. courts, judge, sharia

Introduction

The Religious Court is one of the judicial circles under the Supreme Court. The Law on Religious Courts which is a positive law is regulated in Law No. 7 of 1989 which has been amended by Law No. 3 of 2006 and the second amendment with Law No. 50 of 2009 concerning Religious Courts.

Religious Courts as a sharia economic dispute resolution. Article 49 of Law No. 3 of 2006 provides an extension of the authority of the Religious Courts to examine and decide on sharia economic disputes. The expansion of authority brings legal consequences that the District Court is no longer authorized to receive, examine and decide on sharia economic disputes.

The cause of the weak authority of the Religious Courts to adjudicate Sharia Bankruptcy, is because currently the settlement of Sharia Bank disputes, especially bankruptcy, is experiencing legal problems or problems, namely the legal vacuum of Sharia Bankruptcy regulations.

Sharia Bankruptcy which still has no regulation / legal vacuum so that it still uses the Bankruptcy Legal System adopted by the Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law and PKPU) and is applied by non-Sharia banks (conventional banks). In fact, Law No. 21 of 2008 concerning the Sharia Banking Law (Sharia Banking Law) requires sharia banking to adhere to sharia principles as a whole (kaffah) and consistently (istiqomah).

As for sharia principles in banking, there are contract rules based on Islamic law between banks and other parties to save funds and or finance business activities, or other activities that are declared in accordance with sharia, among others, based on the principle of

profit sharing (mudharabah) (Ishak & Rahman, 2021), financing based on the principle of participation capital (musharakah), the principle of buying and selling goods with a profit (murabahah) (Lestari & Jayanti, 2020) or financing of capital goods based on the principle of pure lease without a choice (ijarah) (Warninda et al., 2019), or with the option of transferring ownership of the goods leased from the bank by another party (ijarah wa iqtina) (Rauf, 2016).

Philosophically, this study contains the results of the study reflecting the ideal basis or views on which the ideals are based on Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia on the Authority of the Religious Courts to adjudicate Sharia Bankruptcy containing the values of Pancasila and the State Constitution Republic of Indonesia in 1945 in it.

Juridically, the legal regulations related to the Authority of the Religious Courts to adjudicate Sharia Bankruptcy are conceptually still problematic. The problem of legal vacuum in Sharia Bankruptcy Regulations. Sharia Bankruptcy which still has no regulation so that it still uses the Bankruptcy legal system adopted by the PKPU Bankruptcy Law which is applied by conventional economics.

Sociologically, in the Urgency of the Authority of the Religious Courts to adjudicate Sharia Bankruptcy, it is arranged not only to accommodate the interests of the Creditors but also to accommodate the interests of the Debtors, to examine the realities of society which include the legal needs of the community, socio-economic aspects and values that live and develop (a sense of community justice).

With the growth and development of sharia economic activities, the opportunities for disputes and disputes between sharia economic actors are also getting bigger. A dispute stems from a dispute of understanding which then drags on and is not resolved between legal subjects who have previously entered into a legal contractual relationship, so that the implementation of the rights and obligations it causes is not harmonious. (Margono, 2000)

Disputes in Islamic banks, when one party cannot fulfill its obligations (the debtor) then the other party (the creditor) can file a lawsuit to the Religious Court to ask for the fulfillment of what is their right based on Article 49 of Law No. 3 of 2006 concerning Religious Courts (Law on Religious Courts). However, what if the party charged with the obligation (the debtor) in an engagement based on sharia principles has more than one creditor whose receivables have matured and the debtor is in a state of stopping payment. According to the Bankruptcy Law and PKPU, the conditions for Bankruptcy have been met as Article 2 paragraph (1) of the Bankruptcy Law states as follows:

1. The debtor has two or more creditors;
2. The debtor has not paid off at least one debt that is due and collectible.

The problem is that the authority of the Religious Courts in resolving sharia banking disputes is still weak, because there are no regulations related to Sharia Bankruptcy, so they still use the Bankruptcy legal system adopted by the Bankruptcy Law and PKPU is applied by non-sharia banks (conventional banks). The existence of this phenomenon raises legal problems according to philosophical, juridical and sociological understanding in terms of the legal development paradigm. (Nurjaya, 2008) This means that there is no guarantee to uphold justice, legal certainty, legal benefit, which is able to provide guarantees for the implementation of independent judicial power, to administer justice to uphold law and justice as mandated by the 1945 Constitution. Departing from the above background, so that it is formulated religious issues The urgency of the Authority of the Religious Courts to Adjudicate Bankruptcy Syariah? and how is the Authority of the Religious Courts to Adjudicate Sharia Bankruptcy?

Research methods

At this writing the type of research used, namely the type of normative legal research. (Michael et al., 2021)

Research results and discussion

The Urgency of the Authority of Religious Courts to Adjudicate Sharia Bankruptcy

The importance of the authority of the Religious Courts to adjudicate Sharia Bankruptcy, must be studied through several aspects, namely Philosophical Aspects, Sociological Aspects, and Juridical Aspects.

Philosophical aspects

The urgency of the Authority of the Religious Courts to Adjudicate Bankruptcy Syariah to realize Article 29 of the 1945 Constitution of the Republic of Indonesia, namely a State based on the One Supreme Godhead with guaranteed independence for each resident to embrace their respective religions and to worship according to their religion and beliefs. With the Religious Courts having the authority to adjudicate Sharia Bankruptcy Cases, the state upholds the value of Religion for the Indonesian people who are Muslim, both as debtors and creditors, guaranteed independence to seek justice in accordance with their beliefs (Islam) as a whole.

To analyze these problems using the theory of authority according to Philipus M. Hadjon, said that authority is obtained through three sources, namely attribution, delegation, and mandate. Attribution authority is usually outlined through the division of state power by the Constitution, delegation and mandate authority are powers that come from delegation. Each authority is limited by the content or material area and time. Meanwhile, Gustav Radbruch's (Radbruch, 2006) Theory of Legal Objectives must contain 3 (three) basic values, namely Legal Justice; Legal Benefits; Legal certainty. Since the values of Pancasila as the basis of the Indonesian state, of course, it already contains justice, expediency, and legal certainty.

Sociological Aspect

Sociological aspects are considerations or reasons that illustrate that regulations are formed to meet the needs of the community in various aspects. If it is related to the importance of the authority of the Religious Courts to adjudicate Bankruptcy Sharia, it is structured not only to accommodate the interests of creditors but also to accommodate the interests of debtors, to examine the realities of society which include the legal needs of the community. When compared with the Kingdom of Saudi Arabia which implements a sharia economic system and applies bankruptcy law based on sharia principles, the regulation of bankruptcy is different from the Bankruptcy Law in Indonesia.

Bankruptcy arrangements in Saudi Arabia which hold Sharia principles are different from the Bankruptcy Law in Indonesia. In Saudi Arabia, Bankruptcy is one of the most important issues in terms of supporting companies and institutions to continue their business rather than crippling them, encouraging investment in Saudi Arabia, increasing economic activity and attracting international investors.

To analyze these problems using the theory of authority according to J.G. Brouwer and A.E. Schilder stated that the authority of a government organ (institution) or state institution must be genuine, namely the attribution authority and the opinion of Philipus M. Hadjon, said that every government action is required to be based on legitimate authority. This authority is

obtained through three sources, namely attribution, delegation, and mandate. Meanwhile, Gustav Radbruch's theory of legal goals, Sociological Aspects of the Urgency of the Authority of Religious Courts to Adjudicate Sharia Bankruptcy must fulfill the Legal Purpose Theory which reflects the three basic values of legal goals, namely justice, certainty, and expediency.

Juridical Aspect

The juridical aspect in the legal regulations related to the Authority of the Religious Courts to adjudicate Sharia Bankruptcy is conceptually still problematic. The problem of legal vacuum in Sharia Bankruptcy Regulations. Sharia Bankruptcy which still has no regulation so that it still uses the Bankruptcy legal system adopted by the PKPU Bankruptcy Law which is applied by conventional economics. This aspect in the legal regulations related to the Authority of the Religious Courts to adjudicate Sharia Bankruptcy is conceptually still problematic. The problem of legal vacuum in Sharia Bankruptcy Regulations.

Sharia Bankruptcy which still has no regulation so that it still uses the Bankruptcy legal system adopted by the PKPU Bankruptcy Law which is applied by conventional economics.

To analyze these problems using the theory of authority, according to Philipus M Hadjon, authority is obtained through three sources, namely attribution, delegation, and mandate. Attribution authority is usually outlined through the division of state power by the Constitution, delegation and mandate authority are powers that come from delegation. Meanwhile, Gustav Radbruch's Theory of Legal Objectives, Juridical Aspects of the Urgency of the Authority of Religious Courts to Adjudicate Bankruptcy Sharia must meet the Theory of Legal Objectives which reflects the three basic values of legal objectives, namely justice, certainty, and expediency.

Concept of Authority of Religious Courts to Adjudicate Sharia Bankruptcy.

The concept of the authority of the Religious Courts (Iman, 2018) to adjudicate sharia bankruptcies is the concept of the Bankruptcy Institution in adjudicating Sharia Bankruptcy in Indonesia, namely the Religious Courts/Sharia Courts. The concept of the Authority of the Religious Courts to adjudicate Sharia Bankruptcy to protect the Indonesian people who are Muslim as a whole against the monetary crisis that hit the world, Asian countries including Indonesia since 2020 have caused great difficulties for the national economy and trade. The ability of the business world to develop its business is severely disrupted, even to maintain the continuity of its business activities is also not easy, this greatly affects the ability to meet its debt payment obligations.

The concept of a religious court is of course aimed at realizing the values of justice that exist in Pancasila and the 1945 Constitution by considering Article 20, Article 21, Article 24, and Article 25 of the 1945 Constitution of the Republic of Indonesia.

This shows that the concept of the Authority of the Religious Courts to adjudicate Sharia Bankruptcy is in accordance with the theory of legal protection. Legal protection for the people of Indonesia, especially those who are Muslim, to implement sharia principles as a whole. This is just the opinion of Setiono, legal protection is an act or effort to protect the community from arbitrary actions by the authorities that are not in accordance with the rule of law, to create order and peace, thus enabling humans to enjoy their dignity as human beings.

This is in line with Satjipto Raharjo's opinion that legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Because the nature and purpose

of law, according to him, is to provide protection (protection) to the community, which must be realized in the form of legal certainty. Legal protection is a preventive and repressive measure.

Meanwhile, according to the theory of legal protection, according to Philipus M. Hadjon, legal protection is the protection of the dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. The principle of legal protection for the people against government actions is based on and stems from the concept of recognition and protection of human rights because historically in the West, the birth of concepts regarding the recognition and protection of human rights was directed at restrictions and laying down of human rights. obligations to society and government.

Conclusion

Bankruptcy cases in Indonesia have not specifically regulated dealing with Sharia Bankruptcy using sharia principles/sharia contracts. Sharia Bankruptcy Cases are absolutely the competence of the Religious Courts based on the philosophical Aspects, Sociological Aspects, and Juridical Aspects of the Urgency of the Authority of the Religious Courts to Adjudicate Sharia Bankruptcy.

The concept of the authority of the Religious Courts to adjudicate sharia bankruptcies is the concept of the Bankruptcy Institution in adjudicating Sharia Bankruptcy in Indonesia, namely the Religious Courts/Sharia Courts. The applicable procedural law is civil procedural law, the use of ad-hoc judges. Application of Mediation in Settlement of Disputes with the aim of Restructuring as in Egyptian and Arab countries. Restructuring aims to develop a plan to reorganize the merchant's finance and administration business which includes how to get out of the financial and administrative turmoil stage and repay the debt with an indication of the proposed financing source, and this is done in several ways, including asset revaluation, debt restructuring, including state debt, and increase in capital, increase internal cash flows, reduce cash outflows, and administrative restructuring.

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