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Regulation and Significance of Sharia Economic Dispute Resolution in Religious Courts

(Application of Justice, Finality and Legal Certainty Aspects)

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***Abstract**: Religious courts have a function as actors of independent judicial power at the first level to administer justice to uphold law and justice. To carry out their functions, religious courts are given the duty and authority to examines, decide and resolve cases at the first instance between people of the Islamic faith, one of which is in the field of sharia economics. The urgency of this research is to explain and analyse the implementation of Radbruch's legal objectives in the trial process, so as to produce a fair and certain court decision. Therefore, this research aims to examine the regulation and significance of the settlement of sharia economic disputes in the Religious Courts. This research is a doctrinal research that examines the law conceptualised as a rule, using conceptual approaches and legislation. The results of the study found that: 1) the regulation of economic dispute resolution comes from legislation, customs, and jurisprudence; and 2) the significance of sharia economic dispute resolution in the Religious Courts, namely the obtaining of justice, finality / usefulness, and legal certainty for the justice-seeking community.*

***Keywords** : finality, fairness, certainty, proof, regulation*

Introduction

In the Indonesian dictionary, regulation is a noun that means arrangement.[1] The word regulation is an absorption from English, namely regulation, which means rules or orders.[2] In addition, the word regulation is also derived into other words, such as regulative (related to rules), regularization (customary or something that is usually

[1] https://kbbi.kemdikbud.go.id/entri/regulasi, diakses 2 Mei 2023.
[2] Henry Campbell Black, *Black's Law Dictionary* (Amerika: West Publishing Co, 1968), 1451.

done), regular (regular or following the rules), and regulator (regulatory tool or rule maker).

The use of the word regulation, for legal scholars, is often connoted as a legal instrument. Sociologists, on the other hand, connote regulation as another form of social control.[3] Moreover, the use of the word regulation in Indonesia is limited to formal legal sources in the form of laws and regulations.[4] Where, the laws and regulations must fulfill the following elements: a written legal norm, made by an authorized institution or official, and binding (has force).

According to Peter Mahmud Marzuki, legislation has two characteristics, namely: first, universally applicable; and second, outwardly binding. Thus, it is from this characteristic that Marzuki distinguishes between laws and regulations and stipulations.[5] Stipulations apply individually, but must be respected by others. For example, the granting of clemency by the president through a Presidential Decree (Keppres) to a convict whose conviction decision has binding legal force. Similarly, in relation to the determination of heirs through court decisions, it must be respected by other heirs. Determination by the court occurs because of a petition, where the court's jurisdiction in handling the petition case is voluntaire (determination) not contentieux (verdict / sentence).

The differences between voluntaire and contentieux include:[6] 1) voluntaire there is only one interested party, while contentieux consists of two litigants; 2) voluntaire, the court's activities can exceed what is requested—because the court's task is administrative in nature which is regulating, while contentieux, the court's activities are limited to what is stated and requested by the parties; 3) voluntaire, the court has the freedom to use the discretion it deems necessary to regulate a matter, while contentieux, the court only pays attention to and applies what has been determined by law and is not under pressure from any party; 4) voluntaire, namely the court's decision

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[3] Anendya Niervana, "Regulasi: Pengertian, Bentuk, Dan Teori," gramedia.com, n.d., https://www.gramedia.com/literasi/regulasi/.

[4] Andi Fachruddin, *Journalism Today* (Jakarta: Kencana, 2019), 128; Lusia Sulastri and Kurniawan Tri Wibowo, *Merajut Sistem Keorganisasian Advokat Di Indonesia* (Ponorogo: Gracias Logis Kreatif, 2021), 286.

[5] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2017), 259.

[6] Endang Hadrian and Lukman Hakim, *Hukum Acara Perdata Di Indonesia: Permasalahan Eksekusi Dan Mediasi* (Sleman: Deepublish, 2020), 13.

has binding force on everyone, while contentieux, namely the court's decision only has binding force on the parties to the dispute; 5) voluntaire, namely the determination of the petition is the first and final court decision that cannot be appealed or cassated, while contentieux, namely the court's decision can be submitted for further legal remedies such as appeal or cassation.

In the study of laws and regulations, it is inseparable from the hierarchy (level) and the principle of preference as a legal adage. Hierarchy refers to the order of laws and regulations, where laws and regulations of a lower position must not conflict with the contents of laws and regulations of a higher position.[7] Thus, there is no disharmony of legal norms in the level or hierarchy of laws and regulations. In addition, legal norms in laws and regulations of the same degree or position must not contradict each other. The existence of inconsistencies in legal norms (disharmonization and conflict of norms), then the law cannot achieve its goals, namely providing justice, finality and certainty (Gustav Radbruch's legal goals).[8] In contrast to Radbruch, the purpose of law according to Kusumaatmadja is not only to provide certainty and justice, but the law aims for order. This is because, if order is used as the purpose of law, then certainty and justice are already included in it.[9] In contrast to these two, the purpose of law according to Jeremi Bentham is not justice, but happiness. Because Bentham said, justice is sub-ordinate to happiness.[10]

The principle of preference refers to: 1) two laws and regulations whose position in the hierarchy is different, but regulate the same legal provisions, the adage lex superior derogat legi inferior applies (the regulation whose position in the hierarchy is higher will override the regulation whose position is lower); 2) two laws and regulations whose position in the hierarchy is the same and regulate the same legal provisions, but the date of enactment is different, the adage lex posterior derogat legi priori applies (the regulation that comes later will be overruled by the new regulation); and 3) two

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[7] Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi, 2006), 170.

[8] Bernard L. Tanya, Yoan N. Simanjuntak, and Markus Y. Hage, *Teori Hukum* (Yogyakarta: Genta Publishing, 2013), 118.

[9] Dhaniswara K. Harjono, *Peranan Hukum Dalam Pembangunan Ekonomi*, ed. Indri Jatmoko (Jakarta: UKI Press, 2021), 37–39.

[10] Philip Schofield, "Jeremy Bentham, the Principle of Utility, and Legal Positivism," *Current Legal Problems* 56, no. 1 (2003): 1; James H Burns, "Happiness and Utility: Jeremy Bentham's Equation," *Utilitas* 17, no. 1 (2005): 46–61, https://doi.org/doi:10.1017/S0953820804001396; Mertokusumo Sudikno, *Mengenal Hukum: Suatu Pengantar*, Lima (Yogyakarta: Liberty, 2003), 77.

laws and regulations that are in the same hierarchy and regulate the same legal provisions, but one is specific and the other is general, the adage lex spesialis derogat legi generali (the specific regulation will override the general regulation) applies.[11]

After the enactment of Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning Religious Courts, Religious Courts are given the authority (competence) by attribution by law to resolve sharia economic cases.[12] Authority or competence is divided into two parts, namely absolute competence and relative competence. Absolute competence or jurisdictional amount is the whole of certain cases that have been determined by legislation to be tried by authorized legal institutions.[13] In other words, absolute competence is the power of the court that relates to the type of case or type of court or level of court, in contrast to other types of cases or types of courts or levels of courts.[14] Meanwhile, relative authority concerns the division of power to adjudicate between the same type of court depending on the residence of the defendant and the existence of the object in dispute.[15]

Philosophically, the presence of the court is to uphold law and justice for the justice-seeking community. Therefore, to realize all of this, a clean and authoritative judicial institution is needed to fulfill a sense of justice in society. Juridically, the presence of the court is a manifestation that Indonesia is a state of law based on Pancasila and the 1945 Constitution.

The urgency of this research is to explain and analyze the implementation of Radbruch's legal objectives in the trial process, so as to produce a fair and certain court decision. Therefore, this research aims to examine: 1) the regulation of sharia

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[11] Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 305–25.

[12] Jefry Tarantang, Rahmad Kurniawan, and Yunia Nariyah, *Arbitrase Syariah (Regulasi Dan Implementasi Penyelesaian Sengketa Bisnis Di Indonesia)*, ed. Syarifuddin (Yogyakarta: Penerbit K-Media, 2022), 11, http://digilib.iain-palangkaraya.ac.id/3935/1/Abritase Syariah_Jefry Tarantang%2C Rahmad Kurniawan %26.pdf.

[13] Siti Nurhayati, "Penguatan Peran Hakim Pengadilan Agama Dalam Penyelesaian Sengketa Perbankan Syariah Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 7, no. 2 (2016): 311–12.

[14]http://www.pa-kalianda.go.id/gallery/artikel/190-definisi-kompetensi-peradilan-agama.html, diakses Tanggal 20 Mei 2023.

[15] Ahmad Mujahidin, *Pembaharuan Hukum Acara Perdata Peradilan Agama Dan Mahkamah Syar'iyah Di Indonesia* (Jakarta: IKAHI Mahkamah Agung R.I., 2008), 124.

economic dispute settlement; and 2) the significance of sharia economic dispute settlement in the Religious Court.

This research is a doctrinal research that examines the law conceptualized as statutory rules based on the doctrine of positivism.[16] The object of research study, namely legislation. The research approach used, namely conceptual approach, and legislation.[17] Legal materials are obtained from legal documents, while non-legal materials are obtained from literature documents (books, journals, and articles). Techniques for collecting and managing legal and non-legal materials are carried out through the stages of identification, inventory, quoting and recording, and analyzing. The technique of analyzing research materials uses a prescriptive approach with the aim of providing arguments to the results of the research.[18]

Regulation of Sharia Economic Dispute Resolution

Disputes in civil cases are generally caused by two factors, namely breach of contract and unlawful acts. Thus, from both actions there are parties who feel harmed. The difference between the two actions can be seen from: 1) the legal basis used; 2) the elements that cause the action; 3) the right to claim compensation; 4) proof in the lawsuit; and 5) the claim for compensation.

First, the legal basis for breach of contract is regulated in Articles 1238, 1239, 1243 of the Civil Code and / or regulated in the agreement or agreement made by the parties. Meanwhile, the legal basis for tort actions is regulated in Articles 1365 - 1380 of the Civil Code and arises from the actions of people who cause harm.

Second, the elements that cause a breach of contract, namely there is an agreement by the parties, a party violates or does not carry out the contents of the agreed agreement, and/or has been declared negligent but does not have good faith to carry out the contents of the agreement. Meanwhile, the elements that cause a tort, namely the existence of an act, the act is against the law, there is fault on the part of the perpetrator, there is a loss to the victim, and/or there is a causality relationship between the act and the loss.

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[16] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 51.
[17] Bachtiar, *Metode Penelitian Hukum* (Tangerang: Unpam Press, 2019), 81–82.
[18] Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010), 182.

Third, the emergence of the right to claim compensation in breach of contract is regulated in Article 1243 of the Civil Code, which in principle requires a negligent statement. Whereas the right to claim compensation in tort does not require a negligent warning. If there are people who commit unlawful acts, then the party who feels harmed has the right to immediately claim compensation.

Fourth, proof in a breach of contract lawsuit is sufficient to show the existence of a breach of contract or an agreement that has been violated by one of the parties. Meanwhile, in tort actions, the plaintiff must prove that all elements of the tort are fulfilled and prove the existence of fault.

Fifth, the claim for compensation in breach of contract is regulated in the Civil Code starting from the period of calculation of compensation that can be claimed, as well as the type and amount of compensation that can be claimed in breach of contract. In a breach of contract lawsuit cannot demand a return to the original state. Whereas in tort, the Civil Code does not regulate the form and details of compensation. Thus, the plaintiff can sue for material and immaterial losses and can demand a return to the original state.

In Article 36 of Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Law, a party can be considered to have broken a promise if: a) does not do what he promised to do; b) performs what he promised, but not as promised; c) does what he promised but is late; and d) does something that according to the agreement must not be done. In addition to breach of contract, there is also a tort (onrechmatige daad) which includes:[19] a) acts that violate applicable laws; b) acts that violate the rights of others guaranteed by law; c) acts that conflict with the perpetrator's legal obligations; d) acts that conflict with decency (goede zeden); or e) acts that conflict with a good attitude in society to consider the interests of others.

Examples of unlawful acts in civil cases include unilaterally terminating an agreement. The legal basis for unlawful acts in the case of unilateral termination of an agreement refers to several jurisprudences of Supreme Court decision No. 4/Yur/Pdt/2018, Supreme Court decision No. 1051/K/Pdt/2014, Supreme Court decision No. 580/PK/Pdt/2015, Supreme Court decision No. 28/K/Pdt/2016. The

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[19] Jaih Mubarok et al., *Ekonomi Syariah* (Jakarta: Departemen Ekonomi dan Keuangan Syariah - Bank Indonesia, 2021), 294.

jurisprudence is a legal basis that confirms that unilateral termination of an agreement is included in a tort.

Based on some of the definitions above, the author formulates that sharia economic disputes, whether caused by breach of contract or illegal acts, can be resolved by litigation through the Religious Courts. In the explanation of Article 49 letter (i) of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts, it is explained that what is meant by sharia economy is an action or business activity carried out according to sharia principles, including: a) sharia banks; b) sharia microfinance institutions; c) sharia insurance; d) sharia reinsurance; e) sharia mutual funds; f) sharia bonds and sharia medium-term securities; g) sharia securities; h) sharia financing; i) sharia pawnshops; j) pension funds of sharia financial institutions; and k) sharia business.

Regulation of the settlement of economic disputes by litigation in the Religious Courts, regulated in formal law and material law as follows. The formal law or procedural law that applies in the Religious Courts, namely the procedural law that applies in the General Court environment as long as there is no regulation that specifically regulates procedural law in the Religious Courts, including:[20]

1. HIR (Het Herziene Inlandsch Reglement) or also known as RIB (Renewed Indonesian Reglement);
2. R.Bg. (Reglement Buitengewesten, Staatsblad 1927 No. 227) was established based on the ordinance of May 11, 1927 and was in effect since July 1, 1927, especially Chapter II Article 104 up to Article 323 and applied to outside Java and Madura;
3. Rv (Reglement op de Burgerlijke Rechtsvordering) which is commonly called the Civil Procedure Law for European Classes (Stb. 1847 Number 52 jo. Stb. 1849 Number 63);
4. BW (Burgerlijke Wetboek) is also known as the European Civil Code;
5. WvK (Wetboek van Koophandel), which in Indonesian is known as the Kitab Undang-Undang Hukum Dagang, specifically in relation to the rules on bankruptcy (faillissements) regulated in Stb. 1906 Number 348.

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[20] Aah Tsamrotul Fuadah, *Hukum Acara Peradilan Agama Plus Prinsip Hukum Acara Islam Dalam Risalah Qadha Umar Bin Khattab* (Depok: Rajawali Pers, 2019), 12–13.

6. Law No. 20/1947, specifically for appeals in Java and Madura, and Article 199 to Article 205 R.Bg. for outside Java and Madura, and for cassation is regulated in Law No. 14/1985 (LNRI 1985 No. 73) concerning the Supreme Court.
7. Law No. 14 of 1970 on the principles of judicial power as amended by Law No. 35 of 1999, and declared invalid by the issuance of Law No. 4 of 2004 as a replacement, then amended by Law No. 48 of 2009 on judicial power.
8. Law No. 14 of 1985 on the Supreme Court which has been amended and improved by Law No. 5 of 2004, and amended again by Law No. 3 of 2009.
9. Law No. 7 of 1989 on Religious Courts Jo Law No. 3 of 2006 on the First Amendment to Law No. 7 of 1989 on Religious Courts and Law No. 50 of 2009 on the Second Amendment to Law No. 7 of 1989 on Religious Courts.
10. Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases.
11. Supreme Court Regulation Number 4 of 2019 on the Amendment of Supreme Court Regulation Number 2 of 2015 on the Procedure for the Settlement of Simple Lawsuits.
12. Jurisprudence. However, judges should not be bound by such jurisprudence, because the Indonesian State does not adhere to the principle of “the blinding force of precedent”.

While the material law that is used as the basis in adjudicating sharia economic cases, among others:

1. The contents of the agreement or contract (agreement) made by the parties, because the position of the agreement or contract applies as a law for the parties who make it;[21]
2. Legislation related to Islamic economics, for example Law Number 21 of 2008 concerning Islamic Banking.
3. Legislation related to property rights that are used as collateral objects in Islamic financial institutions, for example Law Number 4 of 1996 concerning Mortgage Rights.

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[21] Taufiq Amrullah, “Analisis Pengaruh Pembangunan Infrastruktur Terhadap Pertumbuhan Ekonomi Indonesia” (Universitas Indonesia, 2006), 6; C.S.T. Kansil, *Pengantar Hukum Indonesia* (Jakarta: Balai Pustaka, 1993), 254.

4. Bank Indonesia Regulations and Circulars related to Islamic banking business activities.
5. Financial Services Authority regulations related to Islamic banking business activities.
6. Jurisprudence and doctrines on Islamic economics.
7. Compilation of Sharia Economic Law (KHES) which was enacted based on Supreme Court Regulation Number 2 of 2008.
8. Fatwa National Sharia Board-Indonesian Council of Ulama (DSN MUI).
9. A book of fiqh that contains various muamalah issues that can be used as a reference in resolving sharia economic cases.

Significance of the Settlement of Sharia Economic Disputes in the Religious Courts

In essence, sharia economic dispute resolution is included in the realm of agreement law.[22] Thus, the applicable principle is the principle of freedom of contract. This means that the parties are free to make a choice of law and choice of dispute resolution forum, both before the dispute (pactum de compromittendo) and after the dispute (acta compromise).[23] Based on the principle of freedom of contract, the Religious Court is authorized to resolve sharia economic disputes if it is not bound by the arbitration clause/agreement made by the parties. Likewise, if the parties are bound by an arbitration agreement, the Religious Court is not authorized to resolve the sharia economic case.[24]

In the explanation of Article 49 of Law Number 3 of 2006, it is explained that what is meant by sharia economy is an action or activity carried out according to sharia principles. This provision positions the Religious Court as one of the institutions tasked

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[22] Abdul Ghofur Anshori, *Penyelesaian Sengketa Perbankan Syariah* (Yogyakarta: Gadjah Mada University Press, 2010), v.

[23] Eko Priadi and Mhd Erwin Munthe, "Keabsahan Putusan Badan Arbitrase Syariah Nasional Dalam Penyelesaian Sengketa Ekonomi Syariah Di Indonesia," *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 8, no. 1 (2019): 1–15; Dewa Gde Rudy and I Dewa Ayu Dwi Mayasari, "Kekuatan Mengikat Klausula Arbitrase Dalam Kontrak Bisnis Dari Perspektif Hukum Perjanjian," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 11, no. 2 (2022): 427–37; Ayup Suran Ningsih, "The Form of Justice in Resolving Capital Market Dispute Resolution," in *1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* (Atlantis Press, 2021), 221–29.

[24] Pasal 3 Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

and authorized to examine, decide and resolve disputes arising in sharia economic activities without questioning who is the legal subject entering into an agreement with an Islamic bank, either an individual or a legal entity. In Article 49 of the Law on Religious Courts above, diction is found that explains: "to settle cases at first instance between people of the Muslim religion". The article explains that, the scope or coverage that is classified as "between people who are Muslims", namely "what is meant by between people who are Muslims" includes people or legal entities that automatically submit themselves voluntarily to Islamic law regarding matters that fall under the authority of the Religious Court in accordance with the provisions of the article.

Based on the above article, the settlement of sharia economic disputes in litigation is the authority or absolute competence of the Religious Court. While the authority or relative competence of the Religious Court, seen from the area or residence of the parties to the case, and / or the existence of objects that become the object of the case / dispute. Based on Article 118 HIR / Article 142 R.Bg., the Religious Court is authorized to examine a lawsuit whose jurisdiction includes the following: a) the residence of the defendant or where the defendant actually resides; b) the residence of one of the defendants, if there is more than one defendant whose residence is not within the jurisdiction of the religious court according to the choice of the plaintiff; c) the main defendant resides, if the relationship between the defendant and the defendant is as a debtor or guarantor; d) the residence of the plaintiff or one of the plaintiffs, in the event that: (1) the defendant has no residence and it is not known where he is, and (2) the defendant is unknown, that is, the lawsuit states first his last residence, and then the information that his current residence is no longer known; e) in the event that the defendant's residence is unknown and the object of the sharia economic case lawsuit is an immovable object, the lawsuit shall be filed in the place where the immovable object is located; f) for areas where R.Bg applies, if the object of the sharia economic case lawsuit concerns immovable objects, the lawsuit shall be filed with the Religious Court covering the jurisdiction where the immovable object is located (R.Bg., Article 142 paragraph (5)); and g) if there is a choice of domicile written in the deed, the lawsuit shall be filed in the place of domicile chosen.

To find out the significance of the settlement of sharia economic disputes in the Religious Courts, it must first be known the duties and powers and functions of the Religious Courts. The duties and powers of the Religious Courts are set out in Article 49 and Article 52A of the Law on Religious Courts. While the function of the Religious Court, namely as an independent judicial power actor at the first level to administer justice in order to uphold law and justice. Based on the duties and authorities and functions of the Religious Courts, the significance of the settlement of sharia economic disputes in the Religious Courts, namely the obtaining of justice and legal certainty for the justice-seeking community. In fact, according to Radbruch-in addition to justice and certainty, it must also provide finality as the goal of justice.[25]

According to Radbruch, the aspect of justice refers to equal rights before the law. The aspect of finality points to the purpose of justice, which is to foster the value of goodness for society. Meanwhile, the certainty aspect points to the guarantee that the law or court decisions that contain justice and norms that foster good values for society, actually function as court decisions that must be obeyed by the litigants.[26] So it can be said that the aspects of justice and finality are the ideal framework of the law. Meanwhile, the certainty aspect is the operational framework of the law through the ruling.

The following is the implementation and realization of aspects of justice and certainty in the process of trial—settlement of sharia economic disputes in the Religious Courts.

Aspects	Realization in the Trial Process	Description
Fairness (equality before the law)	The judge conducts mediation before entering the trial stage as an effort to reconcile the parties	The judge positions the parties equal before the law (*equality before the law*)[27]
	The judge reads the lawsuit in front of the defendant	The judge is passive and waits for the right claim to be presented to him
	The defendant is given the right to answer the lawsuit	

[25] Tanya, Simanjuntak, and Hage, *Teori Hukum*, 118.
[26] Tanya, Simanjuntak, and Hage, 118.
[27] Pasal 27 ayat (1) UUD 1945, bahwa semua orang memiliki kedudukan sama di depan hukum. Pasal 130 H.I.R. dan Pasal 154 R.Bg., tentang mendamaikan para pihak (mediasi). Pasal 14 ayat (2) UU No. 14 Tahun 1970 jo. UU No. 48 Tahun 2009 tentang Kekuasaan Kehakiman, bahwa semua perkara perdata dapat diselesaikan secara damai.

	The plaintiff is given the right to respond to the defendant's answer (replik)	(*judex ne procedat ex officio*)[28] Once the trial has begun, the judge must hear from both sides of the dispute, not just one party (*Audi et alteram partem* atau *audiatur et altera pars*)[29]
	The defendant is given the right to reply to the plaintiff's response (duplik)	
	The Plaintiff presented and presented evidence as legal facts during the trial	Whoever postulates then he who must prove *(actori incumbit probation)*[30]
	The Defendant submitted and presented evidence as legal facts during the trial	If the defendant denies/disputes the plaintiff's claim, then he must have the burden of proof *(reus excipiendo it actor)*[31]
	The plaintiff and defendant submit their final conclusions on the case being examined	This conclusion is not mandatory, but in practice it is very useful to facilitate the judge's way of thinking in understanding the legal position of each plaintiff and defendant
Fairness	The judge provides legal considerations based on the arguments of the lawsuit and the legal facts at trial. The judge rendered a verdict that did not exceed the legal demands (petitum) in the lawsuit.	Judges must make judgments based on statements and legal facts (*judex debet judicare secundum allegata et probate*)[32] The judge only considers the matters submitted by

[28] Pasal 2 ayat (1) UU No. 14 Tahun 1970 jo. UU No. 48 Tahun 2009 tentang Kekuasaan Kehakiman. Lihat juga Pasal 118 ayat (1) HIR dan Pasal 142 ayat (1) R.Bg.

[29] Pasal 121 H.I.R. dan Pasal 142 R.Bg.

[30] Pasal 163 H.I.R.

[31] Pasal 163 H.I.R.

[32] Pasal 178 ayat (1) H.I.R. Lihat juga Pasal 23 ayat (1) UU No. 14 Tahun 1970 jo. UU No. 48 Tahun 2009 tentang Kekuasaan Kehakiman. Lihat juga Pasal 62 ayat (1) UU No. 7 Tahun 1989 jo. UU No. 3 Tahun 2006 jo. UU No. 50 Tahun 2009 tentang Peradilan Agama.

		the parties and the legal claims based on them *(judex non ultra petita atau ultra petita non cognoscitur)*[33] Judges must adjudicate in accordance with the law.[34]
Certainty	Court decisions that have been pronounced are binding on the parties. Court decisions that are legally binding (inkracht) after 14 days or no verzet or appeal has been filed; High Court decisions that are accepted by both parties and not appealed; and Supreme Court decisions in the case of cassation.	If the court decision is not implemented voluntarily by the losing party, then the winning party can submit a request for execution to the President of the Court (the court that issued the verdict), after the verdict is legally binding (inkracht), unless the verdict is declared to be executed immediately, despite the appeal or cassation.[35]

Based on the table above, the aspects of justice and certainty above can be used as a reference for judges to produce good and correct decisions for the justice-seeking community. By paying attention to the aspects of justice and certainty in the stages and processes of the trial, the judge will reach a conclusion/belief—whether a person is guilty or not. In addition, judges must pay attention to the stages and process of determining decisions as follows:[36]

First, the constatir stage, which is to constatirize the legal events submitted by the parties. This means that the judge sees, knows, and confirms that the legal event has occurred based on legal facts or evidence at trial. The evidentiary stage starts from: 1) the burden of proof on the parties; 2) assessing the evidence submitted by the

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[33] Pasal 178 ayat (2) dan (3) H.I.R.

[34] Pasal 5 ayat (1) UU No. 14 Tahun 1970 jo. UU No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.

[35] Penjelasan Pasal 195 Herzien Inlandsch Reglement (H.I.R) Reglemen Indonesia yang Diperbaharui (R.I.B.)

[36] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1988), 87–89.

parties, whether the evidence meets the formal requirements, material requirements, meets the minimum threshold of evidence and has evidentiary value; and 3) determining whether or not the arguments of the events submitted by the parties are proven. For the judge, what matters is the legal facts of the parties' legal events, not the law. This is because proof is the spirit of the judge's decision. Second, the qualifying stage, which is assessing events that actually occurred or events that did not occur, including having to find which legal relationship and what law for the two events. The judge assesses events that have been proven or assesses events that have not been proven with legislation which is material law. In short, the qualification stage is to find the correct application of the law to the constatirized event. Third, the stage of determining the law or providing justice to the litigants.

Justice as explained by Radbruch - is not interpreted only as the end result of legal objectives. However, aspects of justice must be applied in the process of determining the law - in order to provide justice and finality as the purpose of a law or court decision. Justice referred to by Radbruch is normative justice (what is wrong according to the law is wrong and what is right according to the law is right). Meanwhile, finality in a law or court decision will be given and felt by the winning party as a good value or benefit, for example obtaining debt payments from the collateral auction. However, justice and finality cannot work or be carried out without certainty (court decisions with permanent legal force/inkracht).

Conclusion

Based on the explanation above, the researcher concludes that: First, the regulation of economic dispute resolution is limited to formal sources of law in the form of legislation. However, if the law has not regulated it, then judges can use customs that live and are accepted as law by the community, treaties, and / or jurisprudence. Given, Indonesia adheres to the civil law system.

Second, the significance of the settlement of sharia economic disputes in the Religious Courts, namely the obtaining of justice, finality / usefulness, and legal certainty for the justice-seeking community. The benchmark of justice in question is justice derived from positive law. Different from justice, finality is the value of goodness or benefits as a manifestation of justice. Meanwhile, certainty is the operational framework of law to realize justice and finality.

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