

**PEMBENTUKAN PENGADILAN KHUSUS EKONOMI SYARIAH
DI LINGKUNGAN PERADILAN AGAMA DALAM RANGKA
MEMPERKUAT SISTEM HUKUM NASIONAL INDONESIA**

Naskah Disertasi



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ABSTRAK

Urgensi pembentukan pengadilan khusus ekonomi syariah di lingkungan Peradilan Agama dikarenakan dualisme lembaga penyelesaian sengketa ekonomi syariah masih berlanjut diakibatkan harmonisasi peraturan perundang-undangan berkaitan ekonomi syariah belum dilakukan, data diperoleh jumlah perkara di Pengadilan Agama lebih banyak dari jumlah hakim sehingga menyita perhatian dalam menyelesaikan sengketa ekonomi syariah, kesepakatan menunjuk Pengadilan Negeri dan/atau arbitrase non syariah yang eksekusi dan pembatalanya ke Pengadilan Negeri, pelaku ekonomi syariah enggan membawa sengketanya ke Pengadilan Agama karena tidak nyaman adanya satu ruang tunggu dan satu ruang sidang dengan perkara keluarga. Permasalahan dalam tulisan: Apa yang melatarbelakangi pentingnya pembentukan pengadilan khusus di lingkungan Peradilan Agama dalam penyelesaian sengketa ekonomi syariah; Upaya dan kendala apa yang dilakukan Mahkamah Agung terhadap peningkatan kualitas penyelesaian sengketa ekonomi syariah di lingkungan Peradilan Agama; Bagaimana konstruksi hukum pembentukan Pengadilan khusus ekonomi syariah di lingkungan Peradilan Agama Indonesia. Metodologi normatif digunakan dalam penelitian dengan pendekatan metode yuridis normatif. Tipe penelitiannya Deskriptif. Sumber data adalah data primer dan didukung dengan data sekunder. Hasil penelitian, **Pertama**, pembentukan pengadilan khusus ekonomi syariah di lingkungan Peradilan Agama secara filosofis didasari Pancasila sebagai falsafah negara, dan ekonomi syariah sarat dengan muatan substantif dan peristilahan transaksi keuangan syariah, seperti: murabahah, musyarakah. Pengadilan khusus ekonomi syariah dalam rangka mewujudkan rasa keadilan dan ketentraman tercermin dalam tujuan dan praktik akad yang dijalankan, landasan sosiologis pengadilan khusus ekonomi syariah dibentuk untuk menjawab masalah dan memenuhi kebutuhan hukum agama Islam dibidang ekonomi syariah dengan dasar fakta empiris pelaksanaan penyelesaian sengketa ekonomi syariah, secara yuridis berdasarkan Pasal 3A Undang-Undang Nomor 3 Tahun 2006, dan Pasal 3A ayat (1), (3) dan 13B ayat (1) Undang-Undang Nomor 50 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama. **Kedua**, kendala upaya Mahkamah Agung RI dalam peningkatan kualitas penyelesaian sengketa ekonomi syariah di lingkungan Peradilan Agama dikarenakan tidak sinkronnya peraturan perundang-undangan berkaitan ekonomi syariah sehingga berdampak terjadinya dualisme lembaga penyelesaian sengketa ekonomi syariah, adanya kendala Peradilan Agama meliputi hukum material, sumber daya manusia, budaya hukum. **Ketiga**, konstruksi hukum pembentukan pengadilan khusus ekonomi syariah di tempatkan di lingkungan Peradilan Agama dan berpuncak ke Mahkamah Agung RI. Pembentukan pengadilan khusus ekonomi syariah dilandaskan konstitusional bersumber Pasal 24 ayat (2) UUD 1945, ketentuan Pasal 1 angka 8 dan Pasal 27 ayat (1), ayat (2) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman serta Pasal 3A Undang-Undang Nomor 3 Tahun 2006, ditegaskan Pasal 3A ayat (1), (3) dan 13B ayat (1)

Undang-Undang Nomor 50 Tahun 2009 tentang Perubahan Kedua Atas Undang-Undang Nomor 7 Tahun 1989 sebagai landasan hukumnya.

Kata Kunci: Pembentukan, Pengadilan Khusus, Sengketa Ekonomi Syariah
ABSTRACT

The Urgency of the establishment of a special syariah economic court within the Religious Courts because of the dualism of the dispute resolution of sharia economic institutions is still continuous due to harmonization of regulations related to sharia economy has not been done, the data obtained the number of cases in the Religious Court more than the number of judges so that seize attention in resolving economic disputes shari'ah, the agreement appoints the State Court and / or non-sharia arbitration which executes and its cancellation to the District Court, the sharia economic actors are reluctant to bring their dispute to the Religious Court because of the uncomfortable existence of one waiting room and one courtroom with family matter. Issues in writing: What lies behind the importance of the establishment of special courts within the Religious Courts in the settlement of sharia economic disputes; What efforts and constraints the Supreme Court has made to improve the quality of Islamic economic dispute resolution within the Religious Courts; What is the legal construction of the establishment of a special Shariah economic court within the Indonesian Religious Courts. Normative methodology is used in research with normative juridical approach approach. Descriptive research type. Data source is primary data and supported by secondary data. *First*, the establishment of a special syariah economic court within the Religious Courts is philosophically based on Pancasila as the state philosophy, and sharia economy is loaded with substantive content and terminology of syariaiah financial transactions, such as murabaha, musharaka. The special syariah economic court in order to realize the sense of justice and tranquility is reflected in the purpose and practice of the contract, the sociological foundation of the special syariah economic court is formed to answer the problem and fulfill the Islamic legal requirement in the field of sharia economy with empirical facts of the implementation of the dispute of sharia economy, juridical pursuant to Article 3A of Law Number 3 Year 2006 and Article 3A paragraph (1), (3) and 13B paragraph (1) of Law Number 50 Year 2009 concerning Second Amendment to Law Number 7 Year 1989 concerning Religious Courts . *Secondly*, the constraints of the Supreme Court's efforts to improve the quality of Islamic economic dispute resolution within the Religious Courts are due to the lack of sovereign legislation related to sharia economics, which has resulted in the dualism of syariah economic dispute resolution institutions, the obstacles of the Religious Courts include material law, human resources, legal culture. *Third*, the legal construction of the establishment of a special syariah economic court is placed within the Religious Courts and culminates in the Supreme Court of the Republic of Indonesia. The establishment of a special syariah economic court based on the constitution derived from Article 24 paragraph (2) of the 1945 Constitution, the provisions of Article 1 point 8 and Article 27 paragraph (1), paragraph (2) of Law Number 48 Year 2009 on Judicial Power and Article 3A of Law Number 3 of 2006, affirmed Article 3A paragraph (1), (3) and 13B paragraph

(1) of Law Number 50 Year 2009 regarding the Second Amendment to Law Number 7 Year 1989 as the legal basis.

Keywords: Establishment, Special Court, Sharia Economic Dispute

