KnE Social Sciences
4th INCLAR
4th International Conference on Law Reform
Volume 2024

Conference Paper

Implementation of Online Dispute Resolution Sharia Arbitration in the New Normal Era (Basyarnas-Indonesia)

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Abstract.
Changes in behavior to continue carrying out normal activities or continuing habits that were previously carried out during the implementation of regional quarantine or large-scale social restrictions (PSBB) are the post-Covid 19 new normal era. This also affects behavior in the world of justice, especially trials that are carried out simply and quickly. This research will also discuss the use of online dispute resolution (ODR) that can be applied in Sharia economic dispute cases at Basyarnas, and understanding in terms of examinations based on electronic evidence other than written evidence. Also for the sake of caution that must be examined regarding physical evidence in court so that this evidence gains strength and validity according to the law as an update in court administration to overcome obstacles in the process of conducting an effective and efficient trial. The nature of this research is an analytical perspective and modernly the Supreme Court with Permanya Number 1 of 2019 regarding trials in court electronically implemented for the sake of legal certainty. So dispute resolution is non-litigation in the muamalah field. Though Sharia Arbitration, can be done by ODR.

Keywords: implementation, Sharia arbitration, ODR

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Published 5 January 2024

Publishing services provided by Knowledge E

Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

1. INTRODUCTION

The New Normal Era is a condition that changes from habitual behavior while continuing to carry out normal activities. This occurs due to the announcement of the implementation of regional quarantine or large-scale social restrictions (PSBB) after Covid 19. The influence of this situation has caused a change in behavior in the world of justice, which has been straightforward, fast, and easy. In this regard, there is an institution outside the judiciary tasked with reconciling disputes. If there is a dispute, this institution has a strong ius constitutum foundation and is an actual requirement.[1]

One of them is the Sharia Arbitration Board in Indonesia, identical to Basyarnas, inaugurated on October 21, 1993 called the Indonesian Muamalat Arbitration Board

(BAMUI). [2] The purpose of establishing this institution is to resolve every case fairly and quickly for muamalah cases that arise in the aspects of commerce, industry, services, and more, because there is a legal vacuum in BMUI, on December 24, 2003, by Decree of the Board of Directors (MUI) No.Kep.09/MUI//XII/2003, changed to BAYARMAS, Law Number 14 of 1970, Article 3 paragraph (1) that "the case is still being resolved in court based on peace or arbitration, decisions are made only after legal confirmation or decisions in court", that is, and the Federal Court (PN). "Law 48 of 2009 concerning arbitration articles 58 to 61 Chapter XII of the Court/Section 58 of the non-dispute court stipulates that attempts may be made to resolve civil disputes outside the Federal Court through arbitration or other disputed decisions. Definition 1 Article 59 states that in the constitution, the term "arbitration" also includes sharia arbitration, which is one of the external settlement efforts for civil disputes and arbitration. In agreement, all parties involved in the dispute prepare a written explanation.

In this regard, with the promulgation of the Judicial Powers Act and SEMA Number 8 of 2010 concerning the Invalidity of. Number 8 of 2008, then Article 59 paragraph (3) states that the implementation of arbitration is carried out following the order of Ka. PN, so that implementation of sharia arbitral awards can only be carried out by PN, and implementation through PA which was once decided through SEMA. Number 8 of 2008 regarding the Implementation of Sharia arbitration decisions can no longer be implemented and this SEMA has canceled SEMA Number 8 of 2010, resulting in a legal vacuum, because the presence of the Judicial Powers Act contains arbitration settlement through PN.

Furthermore, Islamic banking regulation number 21 of 2008 emerged, namely the existence of a *choice of law* and absolute competency in resolving disputes carried out by PA according to the contents of the contract as stated in Article 52 paragraph 2, this creates overlapping authority to adjudicate because it concretely opens up space for the choice of forums for handling cases. and raises the issue of constitutionality e to the existence of legal uncertainty, then with the issuance of the Constitutional Court decision Number 93/PUU-IX/2012, which abolished Article 55UU Sharia Banking in order to obtain legal certainty "(vide , Article 28D (1) of the Republic of Indonesia's Constitution) In 1945 so PA has absolute competence in the execution of sharia arbitral awards and there is relevance.

The sharia arbitral award is further emphasized by the Compilation of Sharia Economic Law (KHES) through PERMA , Number 2 of 2008, which gives rise to procedures for resolving sharia economic disputes and their implementation through Perma No. 14 of 2016 as procedural material in resolving sharia economic disputes. Given the

legal position of sharia arbitration itself, from an institutional perspective, it has the status of a foundation formed based on the Notary Deed Number 175/21-10-1993, and based on a letter from the Minister of Justice of the Republic of Indonesia. Number, C-190.HT03.07.TH.1992, dated 7-08-1992. Meanwhile, when viewed from the legal system in Indonesia, this sharia arbitration institution also has legal force.

The previous study entitled Online Dispute Resolution (ODR): Prospects of E-Commerce Dispute Resolution in Indonesia, has understanding of ODR used in E-commerce disputes conducted in cyberspace, especially Indonesian people by using virtual media, namely the internet as an alternative dispute resolution, and in the novelty of this research the author innovates from this understanding strictly how ODR is applied to Islamic Arbitration institutions for muamalah dispute resolution which ODR and synergy with related stakeholders resolve.

So that in its improvement, Basyarnas issued a rule regarding “Procedures for Settlement of Sharia Economic Disputes at Basyarnas-MUI” through Basyarnas-MUI regulation No. PER-01/Basyarnas-MUI/XI/2021, which is currently in force. However, a virtual muamalah dispute resolution is needed if the situation is urgent. Based on the background that has been described, the problem is how to implement *Online Dispute Resolution* (ODR) in Sharia Arbitration in the New Normal Era, especially the settlement of the Muamalah field (Basyarnas-Indonesia).

2. METHODOLOGY

This research uses normative juridical research methods. The method is the choice because positive legal principles and legal principles are carried out by evaluating legal rules that are still relevant to address growing rumors and legal issues encountered [2] related to implementing Online Dispute Resolution (ODR) in Islamic Arbitration institutions. In addition, this paper aims to examine legal conceptions, legal principles and rules of law both in the sense of statutory regulations and court decisions.

The statutory regulations in question include national statutory regulations, international customs, and various developments in the regulation of the religious justice system, especially concerning the sharia economy. The research is core focuses on exploring and obtaining a regulatory norm as the basis for the mechanism of the sharia arbitration procedure for handling muamalah disputes through ODR. In addition, legal regulations and expert opinions in related fields are also reviewed.

The results of these searches and discoveries form the basis for formulating legal norms as research results so that they can be applied to handling muamalah cases in

general. Therefore, this research's purpose, focus and results are included in normative juridical.[3] Normative juridical research according to Soerjono Soekanto and Sri Mamudji is research guided by relevant normative rules and the validity of evaluating applicable normative rules (legislation).[4]

The primary data collection from this study was obtained through observation and interviews with informants while collecting secondary data in the form of library materials, journals or scientific papers related to the problems and purposes of this writing. The data in this study were obtained from literature studies and compared with alternative dispute resolution in several countries.

Preliminary data in this paper comes from the study of scientific theory which is classified as dogmatic or prescriptive research by reviewing various literatures.[5] [?]Prescriptively researchers are directly confronted with scientific manuscripts or journals, and the literature has been processed (ready made), secondary data obtained from general library materials. The literature is not limited by place and label.[6] [?]The data sources examined in this paper consist of primary and secondary data sources, including:[7]. Primary law, namely Arbitration and Alternative Dispute Resolution (UUAAPS), Fatwas of the Sharia Council, and other laws and regulations related to ODR. Then secondary legal data, namely the provision of clarity regarding primary law materials, textbooks, journals, articles, annual reports, proceedings of scientific work related to research objects and subjects. Solving the problem is carried out through collecting legal materials by identifying and inventorying positive legal rules and researching relevant problems in library materials regarding implementing ODR at Basyarnas Indonesia, especially in the muamalah field. The conclusion from the results of this study is an analytical perspective, namely an investigation whose purpose is to provide an overview or formulate a problem according to existing circumstances/facts.

3. RESULTS AND DISCUSSIONS

3.1. Legal standpoint of Sharia Arbitration in Law Number 48 of 2009 Concerning Judicial Powers which previously applied Law Number 14 of 1970.

It was stated that "Settlement of cases outside the Court based on peace and even through a referee (arbitration) is still permissible", as stated in the elucidation of Article 3 of the Judicial Power Act, so that the handling of cases with arbitral bodies is very likely to be implemented. Meanwhile, the Law on Judicial Power No. 48 of 2009 in

Chapter II describes the handling of cases that can be carried out through the AAPS contained in Articles 58-61, besides that the Civil Code Article 1338 paragraph (1) states " All agreements made legally can be used as laws for those who make it."

Previously, we understood the articles in HIR, namely; "If native Indonesians and foreigners want the conflict of the litigants to be resolved by a peacemaker, then they must follow the court rules that apply to European countries", Case 377HIR / Article 705RBg, also emphasized "the ability of the litigants to settle disputes If the dispute is through arbitration with its function and authority to be resolved through a decision, then Articles 615-651 Rv., entitled "Law of Procedure" is the legal basis for arbitration, covering; first, agreement and appointment of arbitrators (Articles 615-623) Second, the investigation before the Arbitration Board (article 624-630). Part III (631-640) regarding the Arbitration Award. Part IV (641-647) is the efforts towards the Arbitration award. Part V (648-651)) namely the termination of the Arbitration program. So business people and entrepreneurs, if they determine a contract other than the rights and obligations contained, must include a dispute resolution clause if it appears at one time. It can be resolved through sharia arbitration and made in writing in an agreement.

3.2. Direction of Sharia Arbitration Policy in UUAAPS

This UUAAPS was stipulated on 12-08-1999 by BJ Habibie in Jakarta, this regulation regulates officially and comprehensively regarding arbitration is the resolution of conflicts outside the common arena. Comments on the contents of the law include; Chapter One contains General Provisions, which contains 5 articles, Chapter Two Articles APS 1, Chapter III Arbitration Clauses, Appointment of Arbitrators and Withdrawal Rights, contains 20 Articles, and Chapter IV discusses Cases currently in process at the Arbitral Tribunal, which includes 25 articles, then Chapter V which contains opinions and arbitral awards, contains 7 articles, and Chapter VI concerning the implementation of the award, there are 11 articles, II concerning the allowance for arbitral awards, there is article 3, then Chapter VIII discusses Extinction has 3 articles, chapter IX discusses Termination Fees, then chapter X discusses time changes and chapter XI discusses closing.

The existence of arbitration in the UUAAPS regulates various related aspects regulated here, with arbitrator requirements, appointment of arbitrators, right of refusal; Arbitration Procedure Law, opinion and arbitral award; Implementation of the Award (Articles 59-72), and the end of the Arbitration Tasks (Articles 73-77), although not

explicitly stated, the existence of sharia arbitration is also under the umbrella of UUAAPS Number 30 of 1999.[8]

So the UUAAPS consists of 11 Chapters and 82 Articles, so the position of the sharia arbitration body in *the ius constitutum* has solid normative reasons. For example, Basyarnas is a permanent institution in the form of a legal entity, which has the right to resolve disputes regarding Islamic transactions between other people, according to the procedure set out in Article 58, which states: “Responsibility for resolving civil law disputes outside the district court can be granted through arbitration or APS without the approval of the institution.” Justice.” Restrictions on the use of Sharia arbitration, particularly the use or enforcement of arbitration, have not been implemented by Ka. PN. local law and may not be accepted if judges consider it to have violated UUAAPS provisions. However, the urgency of changing UUAAPS to become the Paradigm of experts by giving the following reasons;

According to Huala Adolf,[9] There are reasons for the urgency of amendments to the UUAAPS, including; First; regarding the status of UUAAPS not adopting the UNCITRAL *Model Law on International Commercial Arbitration* 1985, it is necessary to pay attention to the Decision (MK) Number. 15/PUU-XII/2014. Second; the development of electronic trials considering that pandemic conditions may not impede trials and can be conducted online or hybrid with establishing rules and procedures for administering electronic arbitration. Third; foreign arbitration is increasing, granting a stronger status in the law is necessary. Fourth; Several articles of the UUAAPS need to be revised. For example, Article 58 proposes a request to interpret a decision and additional decisions if a petitum has not been decided.[10]

Furthermore, Basuki Rekso Wibowo, he gave several notes regarding the urgency of UUAAPS reform, including mentioning:[11] The need for legal reform regarding the separation of arbitration material from APS is regulated in a separate regulation. The Government includes plans for updating UUAAPS in the Prolegnas as a priority regarding the Formation of PerUUan Regulation No. 13 of 2022 concerning the second amendment to Law Number 12 of 2011 concerning the Establishment of Legislation. It has been formulated in the preamble considering that developments in the situation and conditions relate to national and international trading practices. In consideration, it is necessary to bring up the Law on Judicial Power and the UUPA. Furthermore, according to him, the meaning of the court must be interpreted with the suitability of absolute competence, namely arbitration. In general, has a link through PN., then sharia arbitration is related to the underline with PA., so that the authority of arbitral decisions is through PN and sharia arbitration is through PA., thereby regulating the

conditions for existence and authority , requirements and prohibitions for arbitrators to be clearer and more focused followed by content and reasonable thinking.

Furthermore, it is necessary to adapt the *"best practices" model* online by adjusting the applicability of "Electronic Administration of Cases and Trials in Courts" under Perma No. 1 of 2019, and there are clear parameters regarding "public order" for requests for the enforcement of international arbitration decisions in the regions RI law. As well as amendments to Article 70 concerning cancellation of arbitration to expand the reasons for canceling the decision; by adding namely; (d). arbitration agreement as the basis for annulment of the award after the award is rendered ; (e). after the fall of the decision it is known that the dispute is outside the absolute authority ; (f). after the decision was rendered, it became known that the arbitrator had a conflict with one of the litigants; (g). The role and function of the arbitrator/arbitrator assembly is not carried out in good faith.

Ricardo Simanjuntak stated how important it is to revise Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution or UUAAPS, considering the developments that have taken place regarding arbitration with various specificities related to arbitration and institutions formed by financial services authorities, especially with online virtual models. or offline post-pandemic.[12]

3.3. Sharia Arbitration through Hybrid in the New Normal Era

As is well known, the Covid 19 pandemic can be said to be over and life must go on. Therefore people must begin to adapt to new living habits, which is called new normal life, new normal is a change in behavior to continue with normal activities or continue habits that were previously carried out during quarantine. areas or large-scale social restrictions (PSBB). [13] This also affects behavior in the world of justice, especially trials that are carried out in a simple, quick and light manner so that reforms in administration and trials are needed to overcome obstacles and obstacles in the process of conducting trials effectively and efficiently so that in a modern way the Supreme Court with Permanya No. 1 of 2019 regulates trials in electronic courts.

This is done so that the legal basis for the implementation of case administration and trials electronically in court is to support the realization of orderly case handling that is professional, transparent, accountable, effective, efficient and modern and applies to types of civil cases, civil religion, military administration and state administration, and carried out electronically from the first level if the appeal and cassation are also carried out electronically.

The electronic trial stage is based on Supreme Court Decree No. 129/KMA/SK/VIII/2019 namely;

1. Preliminary Document Examination
2. On the day of the first trial, registered users and other users submit the original power of attorney, original lawsuit and original principal approval letter to proceed electronically.
3. On the first day of the trial which the parties attended, the judge offered the Defendant to proceed electronically, except in cases of state administration.
4. If the Defendant is represented by an advocate, approval for electronic proceedings is not required.
5. In the words of the state administration, on the day of the first preparatory examination, registered users and other users submit the original power of attorney, original lawsuit, original/photocopy of object of dispute (KTUN) and original principal approval to proceed electronically.
6. Preparatory examinations in state administrative cases are carried out manually.
7. Session Summons

Based on the judge's order, the bailiff/substituting bailiff sends a court summons to the parties electronically following the electronic domicile with the following stages:

1. The bailiff/bailiff substitute *logs in* to the *e-court application* according to the username and password provided by the administrator.
2. The surrogate clerk/bailiff confirms the medium schedule prior to sending electronic calls; And
3. The substitute bailiff/bailiff sends a summons through the e-court application to the electronic domicile of the parties.
4. Preliminary Trial Process
5. The judge/presiding judge determines the trial schedule and the first trial's agenda.
6. The trial is held in the courtroom according to the set date and working hours.
7. The presiding judge/judge opens the hearing
8. The panel of judges examined electronic documents submitted through the court information system.

9. The presiding judge/judge requests electronic trial approval from the Defendant, except in state administrative cases.
10. The presiding judge/judge orders the parties to mediate in accordance with the provisions of the supreme court regulation number 1 of 2016, except for state administrative cases.
11. Advanced Trial Process
12. The Presiding Judge/Judge is required to set an electronic trial schedule (*Cot Calendar*) for delivery of schedules, replicas, duplicates, evidence up to the reading of the decision, whereas in State administrative cases, the electronic trial schedule (*Cot calendar)* is determined after the preparatory examination is completed.
13. The trial schedule is conveyed to the parties through the court information system.
14. The substitute clerk records all trial data on the court information system.
15. The Defendant filed an answer electronically on the appointed hearing day.
16. If at the predetermined trial schedule, the plaintiff does not send an answer/duplicate/conclusion electronically without a valid reason, then it is deemed not to have exercised his rights, except for a valid reason, then the trial is adjourned once.
17. After the panel of judges verified the answers submitted by the Defendant electronically, the panel of judges forwarded the answers to the plaintiff via the court information system.
18. In the words of the state administration, if the Defendant is not present and does not submit an answer, the event for the Defendant's answer refers to the provisions of Article 72 of Law No. 5 of 1986 concerning the State Administrative Court, the trial of the Defendant through his superiors is carried out by registered letter.
19. After the judge/presiding judge verifies the replica submitted by the plaintiff electronically, the panel of judges forwards the replica to the Defendant via the court information system.
20. After the judge/presiding judge verifies the duplicate filed by the Defendant electronically, the panel of judges forwards the duplicate to the plaintiff.

21. All documents submitted through the court information system must be in pdf and rtf/doc formats.
22. Proof
23. The parties must upload stamped evidence documents into the court information system.
24. The original evidence is shown in front of the court that has been determined.
25. Evidence trials by examining witness and/or expert testimony can be carried out remotely through audio-visual communication media, so that all parties see and hear each other directly and participate in the trial.
26. All costs arising from implementing the audio-visual communication process are borne by the plaintiff and/or the Defendant who wishes.
27. The electronic trial as referred to in letter d is carried out with the infrastructure of a court where witnesses and/or experts give statements under oath and/or experts give statements under oath, before the Alternate Judge and Registrar appointed by the Chief Justice of the Court.
28. Local Inspection
29. If in the examination of a case a local examination is required, it shall be carried out under the applicable Law of Procedure.
30. The Minutes of Local Examination must be uploaded into the Court Information System by the Alternate Registrar.
31. Intervention
32. Third parties submitting interventions must meet the requirements as registered users and/or other users.
33. The Invention Plaintiff submits an Intervention through the *e-Court desk* .
34. *e-Court* desk clerk registers an intervention case through an account that has been prepared by downloading the intervention claim.
35. *e-Court* desk clerk uploads the intervention suit and power of attorney into the court information system.
36. The process of examining intervention lawsuits is carried out electronically by the applicable procedural law.

37. In intervention lawsuits, the parties' responses/answers to intervention lawsuits are submitted to the parties electronically.
38. Decision
39. The judge/presiding judge electronically pronounces the decision/arrangement.
40. The pronouncement of the decision/decision as referred to in letter a has legally been carried out by submitting an electronic decision/decision in pdf format to the parties through the court information system.
41. The pronouncement of the decision/stipulation as referred to in letter b is legally deemed to have been attended by the parties.
42. Copy of decision
43. If the parties request a copy of the decision, it can be provided in printed form.
44. A copy of the decision in print or electronic can be paid electronically.
45. Legal effort
46. Parties who have had electronic proceedings from the start can submit legal remedies electronically within the time limit per applicable regulations.
47. The Petitioner pays the costs of legal proceedings electronically consisting of:
48. The court clerk concerned shall issue a deed of legal action statement electronically.
49. Notice of statement of appeal/cassation/PK, submission of memorandum of appeal/cassation/PK, counter memorandum of appeal/cassation/PK and inzage is done electronically.
50. Delivery of bundles A and B electronically.
51. The court of appeals/supreme court downloads electronic documents from the court of first instance as a data *backup* .
52. Notification of the decision on appeal/cassation/PK is notified by the court submitting it electronically by 14 (fourteen) days after pronouncing the decision electronically.
53. All documents submitted electronically must be in pdf and rtf/doc formats.
54. In state administration cases, resistance to the dismissal process is filed through the Court Information System within the time limit and procedure as stipulated in the applicable laws and regulations.

3.4. The Urgency of Using Online Dispute Resolution (ODR) in Settlement of Sharia Arbitration Disputes

The general principles of arbitration procedural law require the use of ODR for each dispute to be resolved, bearing in mind, among other things:[14]

1. Principle of Final Decision

   The sharia arbitration/arbitration institution has the authority to adjudicate at the first and final levels whose decisions are final and binding and have permanent legal force since they are read out.

2. Principle of Free Evidence

   The Arbitrator Tribunal is free to determine what must be proven, the burden of proof, and the assessment of evidence based on its convictions.

1. The Principle of Activeness of the Arbitrator Council
2. The Arbitrator Council actively conducts searches and explorations to obtain the truth through existing evidence.
3. Independence Principle
4. The Arbitrator Council is independent and free from any interference from other powers, either directly or indirectly.
5. Simple, fast and low cost Principle
6. The procedural law is easy to understand and straightforward so the examination is relatively fast and low-cost.

4. CONCLUSION AND RECOMENDATION

As is well known, the Covid 19 pandemic can be said to have ended and life must go on. Therefore people must begin to adapt to new living habits, which is called the new normal life. This also affects behavior in the world of justice, especially trials that are carried out in a simple, fast and light manner so that reforms in administration and trials are needed to overcome obstacles and obstacles in the process of conducting trials that are effective and efficient so that in a modern way the Supreme Court with Permanya No. 1 of 2019 regulates trials in electronic courts. Supreme Court Decree No. 29/KMA/SK/VIII/2019 Concerning Technical Instructions for Administration

of Cases and Trials in Courts Electronically, Online Dispute Resolution can be applied in sharia economic dispute cases at basyarnas. So the application of ODR at Basyarnas Indonesia, especially in the muamalah disputes, still requires digital forensic testing of the submitted electronic evidence, and the results of the digital forensic tests are ratified in court. Then in terms of examining witnesses (especially fact witnesses), it can be carried out hybrid, namely partly through video conferencing and partly presented physically in court. Caution and accuracy is needed in using Online Dispute Resolution (ODR). So the direction of the non-litigation muamalah dispute resolution policy is through Sharia Arbitration, and in practice, there is still a need for collaboration with related Stakeholders through virtual media, especially ODR. The Government needs to develop quality internet and telecommunications network infrastructure and professional human resources in the field of technology so that Basyarnas Indonesia is broadly capable of resolving disputes, especially online muamalah.

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