Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah (Journal of Islamic Economics)
Volume 14 (2), Jul-Dec 2022
P-ISSN: 2087-135X; E-ISSN: 2407-8654
Page 213 - 232

Author: Helza Nova Lita
Received: 12 March 2022
Accepted: 26 December 2022
Published: 31 December 2022

Settlement of Cross-Border Sharia Economic Disputes through Arbitration Forum

Helza Nova Lita

Abstract. *In resolving cross-border sharia economic disputes, the parties can agree on a choice of law and forum. Both can choose arbitration forums, but in practice, the decisions cannot always be enforced due to the incompatibility with national law. Using normative legal approach, this article discusses the arrangement of arbitration institutions in resolving such sharia economic disputes and the application of the principles of private international law, Islamic law, national and international legal provisions. In Islamic law, each party must carry out the agreement as long as it does not conflict with sharia principles. In international private law, parties can choose Islamic law as the choice of law, and sharia arbitration as the choice of forum. To implement the inter-country sharia arbitral awards, there must be an agreement between countries to mutually recognize the awards and not conflict with national laws.*

Keywords: *Arbitration; Cross-Border; Sharia*

Abstrak. *Dalam penyelesaian sengketa ekonomi syariah lintas batas, para pihak dapat menyepakati pilihan hukum dan forum. Forum arbitrase dapat digunakan dalam kesepakatan, namun dalam praktiknya putusan tidak selalu dapat dilaksanakan karena bertentangan dengan hukum nasional. Artikel ini membahas pengaturan lembaga arbitrase ini dan penerapan prinsip hukum perdata internasional, hukum Islam, ketentuan hukum nasional maupun internasional. Dalam hukum Islam, setiap pihak harus melaksanakan perjanjiannya sepanjang tidak bertentangan dengan prinsip syariah. Dalam hukum perdata Internasional, para pihak dapat memilih hukum Islam sebagai choice of law, dan arbitrase syariah sebagai choice of forum. Untuk melaksanakan putusan arbitrase syariah, harus ada kesepakatan antar negara untuk saling mengakui putusan tersebut dan tidak boleh bertentangan dengan hukum nasional.*

Kata kunci: *Arbitrase; Lintas Batas Negara; Syariah*

Padjajaran Univeristy, Indonesian
E-mail: helza.nova@unpad.ac.id

Introduction

The implementation of economic transactions based on Islamic sharia has experienced a fairly high level of development nationally and internationally. The use of the Islamic sharia system in today's economic activities is developing in countries where the majority of the population is Muslim and in countries with Muslim minorities. The development of the Islamic economy as a system of science and economics has received many positive responses at the global level (Hamid in Dina Fitriasia Septiarini, 2008).

The increase in sharia-based economic activities does not rule out the possibility of disputes arising from economic activities in general with the parties involved, whether this occurs between one business actor (a company) with another business actor (a company) or a business actor (a company) with consumers, both in national and cross-border countries. Settlement of sharia economic disputes can be carried out through litigation and non-litigation, also called ADR (Alternative Dispute Resolution), namely settlements carried out outside the court, one of which is through arbitration institutions. Settlement through the Arbitration Institution in Indonesia has been regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The recent growth of the Islamic finance industry has also increased market demand for Shariah-compliant dispute resolution (Bhatti, 2019). Companies generally use arbitration as an alternative dispute resolution method to resolve their business disputes, including international business disputes. Interview to Muhammad Tahir Mansoori (2022), International arbitration has been recognized in all countries as long as there is no conflict with the national law of the country concerned. Pramudya (2018) explained that dispute resolution through arbitration has the following advantages: Fast and economical, freedom in choosing arbitrators, Guaranteed confidentiality; non-precedent, sensitivity or wisdom of the arbitrator towards a set of rules to be applied by the arbitrator in matters handled, as well as Trust and security. Arbitration provides great freedom and autonomy and is also relatively safe against uncertain conditions and uncertainty with respect to the system's different laws.

The provisions of international civil law, especially regarding international business contract law, allow the parties to choose a contract law that they mutually agree on. In our discussion with Achmad Ramli (2021), he explained that the parties can choose the Islamic law option clause to regulate the implementation of their business contract, including the material law used, if there is a dispute in the execution of their contract.

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DOI: https://doi.org/10.15408/aiq.v14i2.25177

Current implementation provisions of Islamic economics in many countries, including Indonesia, are governed by fatwas (legal opinions) issued by the state based on religion, independent of any religious authority or institution (Hasanuddin et al., 2022). In Indonesia, the fatwa of the Indonesian Ulama National Sharia Council (DSN-MUI) is used as a reference and guideline for applying Islamic law in the economic field, including in preparing trade contracts between the parties. DSN-MUI is independent outside the state power structure (Hasanuddin et al., 2022). The entry into force of the DSN MUI fatwa is based on the provisions of a law passed by the Indonesian government.

In Indonesia, the ruling by the independent sharia arbitration establishments is final and compulsory for the parties in a dispute to abide by and implement voluntarily. The manner in which the verdict is executed implies that the contenders are not given alternative channels to legally challenge the verdicts in courts, which means that it is compulsory (Arifin, 2019).

To ensure that the foreign arbitral award is implemented, the parties must be mindful of the limitations in applying the chosen law so that it does not conflict with the law and legal order of the country where the award will be implemented. Because the legal interpretation of each country may differ, including due to the different schools of thought used, the application of Islamic law in settlement of sharia economic disputes must also be integrated with the provisions of the national law of the country concerned.

The case of Shamil Bank of Bahrain EC v. Beximco Pharmaceuticals Limited in London is interesting to discuss. Shamil Bank raises the issue of whether parties could choose Islamic law, as a generic and non-country specific system of law, to serve as the applicable or proper law of the commercial transaction. His area of law is primarily governed by the Rome Convention as incorporated into English law by means of an Act of Parliament, the Contracts (Applicable Law) Act 1990 ('the Act") (Chuah, 2006). The Shamil Bank defendants argued that, because of the governing law clause, the agreements were only enforceable if they were valid in the eyes of both English and Sharia law (Shamil Bank, [2004] EWCA (Civ) 19, [27]. The defendants alleged that certain parts of the contract were contrary to Sharia law because they were disguised loans requiring the payment of interest, thus rendering the entire contract invalid. "If the agreement were invalid, both the debtors and guarantors would be discharged. In the alternative, the defendants argued that the guarantees had been entered into on the basis of a common mistake as to the validity of the agreements under Sharia law and were therefore of no effect". The judge held that English law was the governing law

DOI: https://doi.org/10.15408/aiq.v14i2.25177

because there could not be two separate systems of law governing the contract (Shamil Bank of Bahr. EC v. Beximco Pharms. Ltd., [2003] EWHC (Comm) 2118). The judge also held that the parties had not chosen Sharia law as the governing law because, as a set of religious principles, Sharia law was not the law of a country. Therefore the parties could not have intended for the secular English court to resolve matters of religious controversy. From this case, we can ask how compliance with Islamic principles might be best achieved in a financing agreement governed by national law.

Regarding the required choice of applicable law, there is a fundamental difference between Islamic fiqh and most modern arbitration law because the general rule in Islamic fiqh is that only Islamic law applies. In other words, the arbitral award may not differ from the principles of Islamic law. This point has been confirmed by Saudi Arbitration Law, Article (20), which ensures that, before being issued, the arbitration award does not conflict with the principles of Islamic Jurisprudence (al-Jarba, 2001).

In implementing foreign arbitral awards in Indonesia, the term "public order" refers to those not foreign to the Indonesian judiciary. In some cases, such as E.D. & F. Man Sugar Ltd v. Yani Haryanto and the Astro Group v. Lippo Group, the court refuses to implement foreign arbitral awards due to public order. E.D. and F. Man Sugar Ltd v. Yani Haryanto is a case brought before the arbitral tribunal in London by E.D. and F. Man Sugar Ltd. The London arbitration award went on to win E.D. & F. Man Sugar Ltd. However, based on Decision No. 001/Pdt/Arb. Int/1999, the Chairman of the Central Jakarta District Court refused to give execution to the London Arbitration Award because it was based on the rules Under Indonesian law. Only Bulog has the right to import sugar, so the judge believed that the London Arbitration Award is contrary to public order (Farsia, 2018).

In terms of the limits of public order as provisions, the fundamental principles of law, and a nation's national interest, public order as a condition for obtaining an exequatur in Indonesia is an order from New York Convention 1958 Article V paragraph (2) letter (b). However, the 1958 New York Convention did not stipulate the definition of the term "public order", meaning that every state can determine the limits of public order in its jurisdiction (Farsia, 2018). In practice, this explanation is still widely interpreted, so the boundaries and arrangements are unclear. Likewise, in using Islamic law to settle sharia economic disputes, adjustments between the provisions of sharia law and the state's national law need to be synergized together.

DOI: https://doi.org/10.15408/aiq.v14i2.25177

The use of Arbitration in Indonesia certainly needs to be anticipated regarding the current development of the sharia economy in preparing for an effective sharia economic dispute resolution, especially in Indonesia, in order to support the strengthening of the sharia ecosystem in Indonesia, not only at the national level but also internationally. This article will further analyze the use of arbitration as an alternative to cross-border sharia economic dispute resolution. The study will discuss the regulation of Arbitration institutions in settlement of international sharia economic disputes and how to integrate the application of the principles of International Civil Law and Islamic law in the use of sharia arbitration clauses in settlement of international sharia economic disputes. This article is expected to provide benefits for strengthening arbitration institutions in the resolution of international economic disputes in order to make Indonesia the center of the world's sharia economy and strengthen the role of academics, practitioners, and related institutions to support the success of national development programs, especially in the development of sharia economic law in Indonesia.

Literature Review

There are three forms of dispute resolution mechanisms in classical Islamic tradition—at the time of the Prophet Muhammad, his companions, the caliph of the Bani Umayyad, and Bani Abbas—namely; *ulḥ* (peace), *taḥkīm* (Arbitration), and the litigation process called wilāyah *al-qaḍā'* (the power of law) (Sari, 2016). Arbitration is synonymuos with the term *taḥkīm*. *Taḥkīm* comes from the word *hakkama*. Etymologically, it means making someone a deterrent to a dispute (Rosyadi in Tri Setiady, 2015). *Taḥkīm,* in *fiqh* terms, is defined by Wahbah Zuhaili, among other things, as punishing two people who are at odds with another person in order to resolve the existing conflict between the two by following the instructions of Islamic law.

Taḥkīm is recognized as a dispute resolution mechanism allowed outside the judiciary (*al-qaḍā'*) (Rasyid, 2017). This arrangement of *Taḥkīm* is also clearly written in the Quran and Hadith. Several verses in the Koran regulate the implementation of dispute resolution through arbitration, including:

> *"And if you fear that there will be a dispute between the two, then send a hakam from a male family and a hakam from a female family. If the two hakam intends to do good, Allah will surely give taufik to the husband and wife. Verily, Allah is All-Knowing, All-Knowing."* (QS an-Nisa' [4]:35)

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DOI: https://doi.org/10.15408/aiq.v14i2.25177

> *"So, by your Lord, they (in essence) do not believe until they make you a judge in the case they dispute, then they feel no objection in their hearts to the decision you give, and they accept it completely"* (QS an-Nisa' [4]:65).

Arbitration institutions (*hakams*) have been known since prehistoric times in Islam. At the time, the people of Mecca as a trade center had a more developed tradition of dispute resolution through peacemakers; in addition to Makkah arbitration, the people of Medina as a region developed an agrarian system to deal with disputes over land ownership rights (Sumitro in Wagianto, 2020).

Arbitration is a non-litigation institution that can be used in settlement of sharia economic disputes. Referring to the provisions of Law no. 30 of 1999, the Arbitration Institution is the body chosen by the disputing parties to decide on a particular dispute; the institution can also provide a binding opinion regarding a certain legal relationship if a dispute has not arisen. Based on the provisions of Article 60 of Law no. 30 of 1999, The arbitration award is final, has permanent legal force, and is binding on the parties.

The use of arbitration based on the provisions of Article 5 of Law no. 30 of 1999 is only for settling disputes in the trade sector and regarding rights that, according to the law and statutory regulations, are fully controlled by the disputing parties. Disputes that cannot be resolved through arbitration are those that cannot be reconciled according to the laws and regulations.

In the practice of international trade, the parties can also use arbitration as a settlement institution if there is a dispute between them. In this case, it can be related to foreign arbitration. International Arbitration In accordance with Law No. 30 of 1999, an international arbitration award is a decision rendered by an arbitration institution or an individual arbitrator outside the jurisdiction of the Republic of Indonesia, or a decision rendered by an arbitration institution or an individual arbitrator that is considered an international arbitration award by the Republic of Indonesia's legal provisions.

The parties can agree on the material law provisions to be used in resolving their dispute when using foreign arbitration. It should be noted that the choice of law does not conflict with the provisions of law and public order in the country where the decision will be implemented. According to Winarta (in Nahak, 2013), the principle of public order (public policy), which is specifically stated in Article 3 paragraph (3) of Supreme Court Regulation No. 1 of 1990, confirms that recognized and enforceable international arbitral awards in Indonesia are only limited to decisions that are not contrary to public order. Problems arising in

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implementing public order (public policy) are about the definition and scope of public order, which are not clearly defined in the Regulation of the Supreme Court. In general, the definition of "public order" is limited to something that is considered contrary to public order at a certain time and place (a country). If it contains something or conditions contrary to the foundations and basic values of the system law and a nation's national interest (Winarta in Nahak, 2013).

Methods

The method used in this article is normative legal research (legal research). Normative legal research is commonly carried out in the development of Legal Science, which in the west is called Legal Dogmatics (Sidharta, 2011). Legal Science is a scientific inquiry, including taking inventory, describing, interpreting, systematizing, and evaluating all positive laws. Those are applied in a society or country based on concepts (understandings), categories, classifications, and methods formed and specially developed to solve legal problems in the community. The primary and secondary data analysis used in this study is a qualitative juridical data analysis using legal interpretation and legal construction, which is then stated systematically in the form of descriptions. The primary data was obtained directly from competent resource persons, namely arbitration law functionaries, both academics and practitioners. While secondary data is obtained through research and analysis of binding primary legal materials such as arbitration laws and regulations, secondary legal materials such as books, scientific works, and scholarly research aid in the analysis of primary legal materials. As for tertiary materials, among others, sources such as journals and magazines were used.

Results and Discussion

Based on the provisions of positive Indonesian law, the Settlement of Islamic Economic Disputes in Indonesia can be done through Litigation and Non-Litigation. The legal basis for dispute resolution through litigation is based on the provisions of Article 49 of Law Number 3 of 2006 and the Constitutional Court's Decision Number 93/PUU-X/2012. Meanwhile, for non-litigation dispute resolution based on law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution) and Alternative Service Sector Dispute Resolution Institutions (LAPS) – POJK No. 61/POJK.07/2020 (Suadi, 2021). The non-litigation route is based on a written agreement between the parties based on the principles of

DOI: https://doi.org/10.15408/aiq.v14i2.25177

hurriyah and *an-taradhin pactum de compromittendo acta compromis*. *Pactum de compromittendo* is an agreement between the parties in the form of an arbitration clause stated in the agreement written before a dispute arises, while an act of compromise is an agreement for separate arbitration made by the parties after the dispute arises (Muskibah, 2018).

In detail, below are the legal basis for resolving sharia economic disputes in Indonesia:

1. Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts. Article 49 stipulates that one of the duties and authorities of the court is to settle cases at the first level sharia economics. Furthermore, in the elucidation of Article 49, it is stated that "Shari'ah economy" is an act or business activity carried out according to Shari'ah principles, including, among others: Islamic Banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and medium-term sharia securities, sharia securities, sharia financing, sharia pawnshops, sharia financial institution pension funds, and sharia business.
2. Article 65 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that the Central Jakarta District Court has the authority to handle the issue of the recognition and implementation of international arbitration awards. Furthermore, Article 66 states that the International Arbitration Award is only recognized and can be enforced in the territory of Indonesia if it fulfills the following requirements: Submitted by an arbitrator or arbitral tribunal in a country with which Indonesia has an agreement, either bilaterally or multilaterally, regarding the recognition and implementation of an International Arbitration Award, The decision falls within the scope of trade law The decision does not conflict with public order, Obtain an exequatur from the Chairman of the Central Jakarta District Court. If the State of Indonesia is one of the parties to the dispute, it will obtain an exequatur from the Supreme Court and then delegate it to the Central Jakarta District Court.
3. Regulation of the Supreme Court No. 14 of 2016 concerning Procedures for Settlement of Sharia Economic Disputes. Related provisions regarding the implementation of sharia arbitral awards in this rule are contained in Article 13, paragraphs (2) and (3), which stipulate that the court in a religious court environment carries out the implementation and cancellation of sharia arbitral awards. The procedure for implementing the decision refers to Law

No. 30 of 1999 concerning Arbitration and Alternative Settlement Disputes.

4. Supreme Court Regulation No. 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES). KHES is used as a guideline by judges in the neighborhood religious courts in examining, deciding, and resolving economic cases.
5. Regulation of the Supreme Court, Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits, has been amended by Regulation of the Supreme Court Number 4 of 2019. With this provision, the lawsuit procedure is simpler and more effective and is in accordance with the principle of simple, fast, and low-cost dispute resolution.
6. Regulation of the Supreme Court Number 5 of 2016 concerning the Certification of Sharia Economic Judges. Sharia economic cases need to be handled specifically by religious court judges who understand business theory and practice based on sharia principles. For this to be implemented, the Supreme Court needs to develop certification for sharia economic judges to handle sharia economic cases;
7. Regulation of the Supreme Court No. 14 of 2016 concerns Procedures for Settlement of Sharia Economic Cases. Article 5 of this Regulation states: All decisions and court decisions in the field of Islamic economics, in addition to having to contain the reasons and basis for the decision, must also contain sharia principles used as a basis for trial. Regarding the arbitration award, Article 13 regulates the implementation of sharia arbitral awards, the religious court carries out the cancellation, and the procedure for implementing the decision is in Law No 30 of 1999 concerning Arbitration and Alternative Settlement Dispute;
8. Supreme Court Circular (SEMA) concerns the Formulation of the Results of the Supreme Court Chamber's Plenary Meeting (since 2016-present). The provisions of Article 72, paragraph 4, of Law Number 30 of 1999 concerning arbitration and its explanation are discussed in the Meeting's Results. There is no legal remedy for appeal or review against court decisions in a country that rejects the application for annulment of the arbitral award. The Supreme Court decides first and last, so there is no judicial review.

Of all the regulations above, there is no specific regulation regarding resolving cross-border sharia economic disputes either through litigation or non-litigation forums. Provisions governing the resolution of cross-border sharia

DOI: https://doi.org/10.15408/aiq.v14i2.25177

economic disputes through arbitration forums are currently based on Law Number 30 of 1999.

Non-litigation settlement of sharia economic disputes is the settlement of disputes outside of the court in order to achieve settlement efforts through deliberation and consensus with the principle of a win-win solution. Law No. 30 of 1999 states that Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through a procedure agreed upon by the parties, namely, an out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert judgment.

The settlement of sharia economic disputes through alternative dispute resolution (APS), also known as Alternative Dispute Resolution (ADR): such as negotiation, mediation, and conciliation. According to Islamic conception, the settlement of sharia economic disputes through arbitration institutions is called *taḥkīm* in terminology; it can mean the power to settle something with wisdom or peace by an arbitrator or referee. This is generally regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Thus, since the enactment of Law Number 30 of 1999, the out-of-court dispute resolution model has been institutionalized in the Indonesian legal system.

The implementation of foreign arbitral awards in Indonesia is based on the New York Convention of 1958, known as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The implementation of this convention is based on Presidential Decree No. 34 of 1981, which stipulates that the Indonesian government imposes restrictions on the implementation of foreign arbitral awards based on the principle of reciprocity. This only applies to disputes arising from contractual or non-contractual legal relationships of a commercial nature under Indonesian law. The arbitral award used includes not only the decisions of the arbitrators appointed for each case but also the decisions of the permanent arbitral tribunal (Panjaitan, 2018).

Article 3 of Presidential Decree No. 34 of 1981 regulates the implementation procedure by stating that each participating country will recognize the arbitral award as binding and implement it in accordance with the procedural law rules in force in the area where the arbitral award is requested for implementation. In submitting a request for recognition and implementation of a foreign arbitral award, the requesting party is only required to submit the original or a copy that has been officially ratified and the original of the arbitration agreement or a ratified copy.

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Hulman (2018) explains that the convention opens the possibility of refusing the implementation of foreign arbitral awards in the following circumstances: *first,* an Arbitration agreement is declared invalid (invalid), *Second;* one of the parties does not have the opportunity to defend himself, so the arbitration award is deemed to have been obtained improperly, *Third*; the arbitration award is not in accordance with the assignment given, *fourth*; the appointment or arbitration procedure is not in accordance with the agreement of the parties, and *last*; the arbitral award has not yet been binding on the parties or has been set aside in the country in which it was made.

Furthermore, according to article 5, a foreign arbitral award can be rejected if the competent official in the country where the application for implementation of the award is submitted believes that: the dispute cannot be resolved through arbitration under the law of that country (Hulman, 2018). In Indonesia, the provisions for international arbitration awards are in Article 66 of Law Number 30 of 1999. It is stated that international arbitration awards can only be recognized and implemented in Indonesia only with certain criteria, including its compatibility with public order. Furthermore, the International Arbitration Award is only limited to decisions that, according to Indonesian law, are included in the scope of commercial law and do not conflict with public order. Implementation of international arbitral awards takes place after receiving an exequatur from the Chairman of the Central Jakarta District Court. An International Arbitration Award related to the Republic of Indonesia as a party to the dispute can only be implemented after receiving an exequatur from the Supreme Court of the Republic of Indonesia, which is then transferred to the Central Jakarta District Court.

Article 67 of Law Number 30 of 1999 stipulates that the application for implementation of the International Arbitration Award is carried out after the award is submitted and registered by the arbitrator or his proxies to the Registrar of the Central Jakarta District Court. The application for implementation must be accompanied by a copy of the original or authenticity of the International Arbitration Award, in accordance with the provisions regarding the authentication of foreign documents and an official translation in the Indonesian language. Also, the application is accompanied by a statement from the Indonesian diplomatic representative in the country where the International Arbitration Award was made. This statement mentioned that the applicant country is bound by an agreement, bilaterally and multilaterally, with the Republic of Indonesia regarding the International Arbitration Award.

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Furthermore, Article 68 of Law no. 30 of 1999 states that the decision of the Chairman of the Central Jakarta District Court, as referred to in Article 66 letter d, that recognizes and implements the International Arbitration Award, cannot be appealed or challenged. Meanwhile, the decision of the Chairman of the Central Jakarta District Court, as referred to in Article 66 letter d, that refuses to recognize and enforce an International Arbitration Award may be appealed. The Supreme Court considers and decides on each cassation application within a maximum period of 90 (ninety) days after the Supreme Court receives the application. Against the decision of the Supreme Court, as referred to in Article 66, letter e (i.e., regarding the International Arbitration Award concerning the Republic of Indonesia as one of the parties to the dispute), efforts to challenge cannot be submitted.

Islamic economic transactions have distinctive and distinct characteristics that are different from conventional economic transactions. One of the most basic is the issue of the prohibition of usury in every economic transaction. The Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN MUI) governs whether or not a sharia economic transaction is carried out. Then, the decision on a dispute related to sharia economics requires a judge or referee (the arbitrator) who understands national law and sharia law and economics. Religious courts are considered relevant institutions rather than general courts (district courts). This may be the reason why the handling of sharia economic disputes is separated from the general judiciary and the use of arbitration as a dispute resolution method.

The absolute competence of the religious court is not complete if it has not been coupled with the authority to implement sharia arbitration decisions. The implementation of sharia arbitration decisions is still in the hands of the general court (district court) (Indonesia Jentera School of Law, 2022). Law Number 30 of 1999 does stipulate that district courts do not have the competence to examine the substance of arbitral awards, except those related to public order (Indonesia Jentera School of Law, 2022). In this case, the matters examined by the district court are only related to non-substantive aspects. However, it seems incomplete if absolute competence is still in the hands of the general court. Law Number 30 of 1999 needs to be revised to include provisions for implementing sharia arbitral awards in religious courts.

Besides that, the most important thing is the commitment of the leadership of the Supreme Court and the judiciary, as well as the strong encouragement of sharia economic actors in this country, including preparing the capacity of religious

judges and religious judicial apparatus for the implementation of registration and implementation of national and foreign sharia arbitral awards (Indonesia Jentera School of Law, 2022). However, strengthening the role of religious courts in resolving sharia economic disputes can refer to the provisions of Article 49 of the Religious Courts Law, and Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases in Article 13, which regulates the implementation of sharia. The religious court carries out the arbitration award and its annulment, and the procedure for implementing the award is contained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Integration of Islamic Law and International Civil Law in Sharia Arbitration Forums

In Islamic law, every form of the agreement must be obeyed by the parties who make it as long as it does not conflict with sharia principles as stated in the Word of Allah QS al-Maidah (5): 1: as follows: "O you who believe! Fulfill those contracts…". Likewise, the parties' agreement is contained regarding the choice of dispute resolution institution and material law that will be used if a dispute occurs in their business practices.

Settlement of sharia economic disputes can use litigation or non-litigation channels. However, legal problems can arise from the positive legal provisions used by judges in adjudicating dispute. For example, in settlement of civil disputes through the Indonesian judiciary, the provisions based on the Civil Code are generally used. Meanwhile, sharia economic provisions refer to the fact that in addition to complying with the provisions of national law, they must also not conflict with the provisions of Islamic Law.

To overcome the legal differences that apply in the settlement of sharia economic disputes, whether the Indonesian Civil Code or Islamic law, other principles must be considered in contract law as stated in Article 1338 of the Civil Code (Sjahdeini, 2002). This principle stipulates that if the agreement is not regulated regarding the matters disputed by the parties but has been regulated by contract law in the Civil Code, then the provisions in the Civil Code apply.

However, if this has been regulated in the agreement, but the content differs from the provisions in the Civil Code, then the provisions in the agreement must be applied, provided that the provisions in the law of the agreement do not constitute provisions that cannot be deviated from (the provisions are coercive or

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dwingendrecht). Suppose the provisions of the agreement law in the Civil Code are provisions that cannot be deviated from (forced), then in accordance with the principle that the contents of the agreement must not conflict with the law. In that case, the provisions of the agreement law must be enforced, while the agreement provisions are null and void. Furthermore, Sutan Remy Sjachdeini stated that most of the legal provisions of the agreement in the Civil Code are non-coercive (*aanvullend recht*), meaning that the parties may deviate from them by making other provisions and conditions in the agreement they make.

The freedom to choose to use Islamic sharia in economic activities includes "freedom to contract" for every individual, apart from being a natural and most basic right and being part of a broader understanding of the definition of "*mu'amalah* worship" (Mugiyati in Titik Triwulan Tutik, 2016). So, in relation with the state, it also gets the guarantee in Article 29 of the 1945 Constitution, namely, "the state guarantees the independence of each resident to embrace his religion and to worship according to his religion and beliefs". Thus, the guarantee of the 1945 Constitution must be interpreted as the existence of freedom for Muslims to engage in civil activities consistent with their belief in Islamic Sharia.

In trade relations in international contracts between importers and exporters, the parties are free to choose the law used, including the law used in the event of a dispute in the execution of their contract. If there is a dispute between them, the dispute resolution can use the principles of dispute resolution based on international civil law provisions. In settlement of international civil disputes, in general, the parties are given the freedom to determine their own forum and law that they can use to resolve disputes that may arise in the implementation of the transaction, as long as it does not conflict with the law, decency, and public order in their respective countries.

If the international civil contract does not include the choice of forum or law, International Civil Law provides several theories regarding ways of resolving disputes, as follows:

1. Lex Loci Contractus Theory; i.e., the law of a contract is determined by the law under which the contract was made. However, in the development of international trade practices, it is difficult to determine a place if the parties to a contract do not meet faceto-face. (Sudargo Gautama, 1998)
2. The theory of Lex Loci Solutionis; namely, the law that applies to a contract based on the place where the agreement is executed. In general, in accordance with customary trade practice, it is customary in international trade contracts that the place of delivery of the goods in question or the

DOI: https://doi.org/10.15408/aiq.v14i2.25177

location of the services to be rendered will be determined. However, this theory can also create difficulties if there are several places to implement the contract.

3. The Proper Law of the Contract; namely the law that applies to a contract based on the "intention of the parties" is determined by looking at the facts that indirectly indicate the parties' desire to enforce a certain law.
4. The Most Characteristic Connection; i.e., the law that applies to a contract, is dependent on whose performance is the most characteristic or the most dominant. For example, in a sale and purchase transaction, the seller's interest is considered the most important factor in determining the applicable law in the contract.

Based on the explanation of several theories above, their use in the settlement of international trade disputes can be seen depending on the case that occurs. Although, in practice, the theory of The Proper Law of the Contract and The Most Characteristic Connection for the present is more appropriate.

Agreements in international business contracts are made based on the principle of freedom of contract. This is consistent with the provisions of Civil Code Article 1338: the parties are free to make the contents of the contract in accordance with the parties' desired interests. Freedom in determining the contents of the agreement according to Article 1337 of the Civil Code (as a source of international civil law in Indonesia) is limited by the provisions that "must have a lawful cause" that is not contrary to the law, public order, and morality.

The contents of the contract include the object of the agreement along with the arrangement of rights and obligations, including clause determining dispute resolution. In the dispute clause, the parties can make a choice of law. Therefore, choice of law is the law chosen by the parties in the contract as a tool to interpret the contents of the agreement, including objects, setting rights and obligations, or resolving a dispute if one occurs. In general, there are different types of legal options, including:

1. Choice of law: in this case, the parties determine for themselves in the contract which law applies to the interpretation of the contract.
2. Choice of Forum (choice of jurisdiction): where the parties determine which court or forum applies if there is a dispute between the parties in the contract.
3. Choice of domicile: in this case, each party appoints the legal domicile of the parties.

DOI: https://doi.org/10.15408/aiq.v14i2.25177

The limitations of the choice of law in international business contracts includes the meaning of not violating public order is not violating things that have been regulated by law because the regulation was created for the benefit of a country so that the elements of an international business contract may not violate regulations or legislation in a choice of law. The choice of law can only be in the field of contract law, meaning that this choice of law only applies to international business contracts and cannot be used in any case. It should not be about employment contract law; in line with the statement above, an employment contract is not a business contract. Therefore, this choice of law cannot be used.

The choice of law may not be regarding civil provisions with a public nature, meaning that this public nature is related to public order in a country. The choice of law must be made in a bona fide (in good faith) manner and must not be made intentionally to smuggle the law. It is not permissible for the choice of law to be made for malicious purposes, which violates the provisions of the law chosen.

The use of sharia arbitration forums can be agreed upon by the parties in the trade contracts they have agreed upon. For this reason, this sharia arbitration institution has also received recognition nationally and in countries where the parties are citizens. Among them are those related to the provisions of Article 66 of Law No. 30 of 1999. There was already an agreement between countries regarding the respective recognition of the sharia arbitration award. In addition, the said sharia arbitration award can be adjusted to the legal provisions and limitations of the legal order in the country where the arbitral award will be executed.

There are possible differences in implementing Islamic economics in each country. Although the source of sharia economic law comes from Islamic law, which is universal, in its implementation, there can be differences in interpretation. This can happen because sharia economic law is included in the category of *muamalah* legal studies, where there are possible differences regarding the concept of ijtihad. To overcome this, the contract for sharia economic business transactions states which country's material law will be used if there is a dispute in their business transaction. So that the provisions of sharia economic law are adjusted to the interpretation of Islamic law in the legal provisions of the selected country. In addition, the parties must also consider the legal decision that stipulates can also be applied and does not conflict with the provisions of law and public order in the country where the decision will be implemented.

DOI: https://doi.org/10.15408/aiq.v14i2.25177

Conclusion

Settlement of sharia economic disputes through alternative dispute resolution or also known as alternative dispute resolution (ADR), such as negotiation, mediation, and conciliation. Settlement of sharia economic disputes through arbitration institutions. In Indonesia, Arbitration Institutions are generally regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This provision is still the parent of arbitration institutions, including sharia.

In Islamic law, every form of the agreement must be obeyed by the parties who make it as long as it does not conflict with sharia principles. Various laws and forums for resolving international business disputes under international civil law exist. This can also be used by the parties to choose a sharia arbitration forum as a dispute resolution institution in their business, as stated in the contract clauses they have agreed to. Recognition of the implementation of foreign arbitral awards must first have an agreement between countries, and the decision must not conflict with public order or the legal provisions of the country where the award is implemented. It is necessary to pay attention to the parties so that international arbitration decisions in the settlement of sharia economic disputes can be carried out properly. The choice of Islamic law is adjusted to the interpretation of the national law of the chosen country because there can be differences in the school of thought used by each country. Islamic economics includes the field of *muamalah*, a study of ijtihad, which may differ based on the provisions of Islamic law.

In order to have the Indonesian Sharia Arbitration Decision recoginized in business dispute resolution forums, especially at the international level, the Indonesian government needs to explore cooperation and make mutual recognition agreements between countries regarding Sharia Arbitration Decisions. The Indonesian government must also prepare special regulations regarding the settlement of cross-border sharia economic disputes, including recognition of the validity of Islamic law in resolving these disputes. This needs to be done in anticipation of preparing and meeting Indonesia's aspirations to become the center of the world's sharia economy.

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