

ABSTRAK

Alasan pemilihan judul dalam penelitian disertasi, Pertumbuhan ekonomi syariah belakangan ini mendapatkan sambutan luar biasa dari masyarakat Indonesia. dibuktikan dengan semakin banyaknya lembaga keuangan syariah dan usaha mikro kecil menengah lainnya yang menggunakan nama syaria'ah, dan tentunya masih banyak lagi kegiatan usaha yang bernafaskan Islam dalam menjalankan dan mengoperasikan lembaga keuangan. Semakin banyak usaha dan investasi bernuansa syariah, tentunya juga tidak lepas terjadinya gesekan atau konflik antar masyarakat. mediasi dalam penyelesaian sengketa ekonomi syariah merupakan alternatif penyelesaian sengketa yang sangat efektif. Penelitian ini bertujuan (1) Untuk mengetahui efektifitas praktek mediasi dalam Penyelesaian Sengketa Ekonomi Syariah di Pengadilan Agama berbasis nilai keadilan; (2) Untuk menganalisis kelemahan-kelemahan Mediasi Penyelesaian Sengketa Ekonomi Syariah di Pengadilan Agama yang berbasis nilai keadilan; (3) Untuk merekonstruksi praktek mediasi dalam menyelesaikan Ekonomi Syariah di Pengadilan Agama yang berbasis nilai keadilan. Untuk mencapai tujuan tersebut digunakan pendekatan yuridis sosiologis. Spesifikasi penelitian bersifat deskriptif analisis. Lokasi penelitian di Pengadilan Agama Jawa Tengah. Sumber data primer diperoleh langsung responden. Data sekunder dengan studi pustaka. Pengumpulan data melalui : studi kepustakaan dan wawancara. Data disajikan dalam bentuk uraian yang disusun secara sistematis, logis, dan rasional, dianalisis menggunakan teknik deskriptif kualitatif.

mediasi dalam Penyelesaian Sengketa Ekonomi Syariah di Pengadilan Agama Jawa Tengah belum dapat berjalan efektif, karena mediator dari kalangan hakim yang menjalankan fungsi mediator akan kesulitan untuk memosisikan diri sebagai mediator, hakim pula cenderung tidak sabar dalam menangani mediasi hingga mempengaruhi ketidakefektifan proses mediasi. Kelemahan praktik mediasi dalam penyelesaian sengketa ekonomi syariah di Pengadilan Agama Jawa Tengah yaitu: (a) mediator hakim maupun non hakim meskipun sudah memiliki sertifikat mediator tetapi banyak yang kurang menguasai ilmu ekonomi syariah; (b) Mediator kurang memiliki keterampilan atau skill berunding yang memadai untuk keberhasilan mediasi ekonomi syariah; (c) Tidak ada iktikad baik dalam menyelesaikan secara musyawarah, mediasi sering diabaikan dan dianggap tidak penting; (d) kurang keterbukaan para pihak, (e) kurangnya motivasi/dukungan dari advokat/pengacara. Rekonstruksi mediasi dalam penyelesaian sengketa ekonomi syariah yang berbasis nilai keadilan dalam PERMA Nomor 1 Tahun 2016 yaitu: (a) Pasal 6 ayat 1 para pihak wajib menghadiri secara langsung pertemuan mediasi tanpa didampingi oleh kuasa hukum Kecuali berdasarkan kesepakatan kedua belah pihak; (b) Pasal 8 di tambah 1 ayat yaitu ayat 3 Biaya jasa mediator non hakim dan bukan pegawai pengadilan yang ditugaskan di pengadilan ditanggung oleh negara; (c) Pasal 13 ayat 4 mediator non hakim yang sudah terdaftar di pengadilan harus di tugaskan di kantor pengadilan.

Kata kunci: Rekonstruksi, Mediasi, Penyelesaian Sengketa Ekonomi Syariah.

ABSTRACT

The reason for choosing the title in this dissertation research, the growth of sharia economy has recently got a great response from Indonesians, proved by the increasing number of sharia finance and other micro, small and medium enterprises using the name of sharia, and certainly many Islamic-inspired business activities in running and operating financial institutions. The increasing number of sharia businesses and investments can certainly have friction or conflict between communities. Mediation in solving sharia economic dispute is a very effective alternative for dispute solving. This study aims (1) To determine the effectiveness of mediation practices in the sharia economic dispute solving in Religious Courts based on the justice value; (2) To analyze the weaknesses of the sharia economic dispute solving mediations in the Religious Courts based on the justice value; (3) To reconstruct the practice of mediation in solving the Sharia Economy in the Religious Courts based on the justice value. To achieve this goal, a sociological juridical approach is used. The research specification is descriptive analysis. The research location is in the Religious Court of Central Java. Primary data sources are directly obtained by respondents. Secondary data is literature study. Data collection is obtained from literature study and interviews. Data is presented in essay arranged systematically, logically, and rationally, analyzed by using qualitative descriptive technique.

Mediations in Sharia economic dispute solving in Religious Court of Central Java have not been able to run effectively because mediator from among the judges who perform the mediator function will be difficult to position itself as a mediator, the judge also tend not to be impatient in dealing with mediation to affect the ineffectiveness of the mediation process. The weaknesses of the mediation practice, in the sharia economic dispute solving in Religious Court of Central Java, are : (a) Although the mediator judges and non-judges already have a mediator certificate, they lack of knowledge about sharia economics; (b) The mediators lack sufficient bargaining skills for the success of sharia economic mediation; (c) There is no good intention in discussing the solution, mediation is often ignored and considered unimportant ; (d) Lack of transparency of the parties, (e) lack of motivation/ support from advocates / lawyers. Mediation reconstruction in the sharia economic dispute solving based on the justice value in PERMA Number 1 of 2016, mentioned: (a) Article 6 paragraph 1, the parties are required to attend directly the mediation meeting without being accompanied by a legal representative except based on the agreement of both parties; (b) Article 8 added by 1 paragraph, which is paragraph 3, the cost of services for non-judge mediators and non-court employees assigned to court will be borne by the state; (c) Article 13 paragraph 4 the registered non-judge mediators at the court must be assigned to the court office.

Keywords: *Reconstruction, Mediation, Sharia Economic Dispute Solving.*