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# Exequatur of Sharia Economic Sector Arbitration Awards in The National Legal System

**Diding Jalaludin**
SAH Law Firm
Correspondence Email: diding.advokat@gmail.com

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**Abstract**

*Exequatur is the act of the Chief Justice of the Supreme Court granting an executive title to an arbitral award, allowing it to be enforced with the assistance of state instruments if required. This exequatur can take the form of either a stamp affixed to the arbitral award or a separate determination (aparte beschikking). The objective of this research is to identify the judicial bodies that hold the competence to grant exequatur for arbitral awards in Sharia economics and business. The study employs a normative legal approach, concentrating on norms derived from applicable legislations and regulations. Currently, the arbitration settlement cases in the Islamic economics field are handled by two courts. The Sharia exequatur arbitral award is governed by Article 59, paragraph (1) of Law Number 30 of 1999 on Arbitration and ADR. The District Court is authorized to execute this award while the Religious Courts are given the authority to execute and annul Sharia arbitration decisions, according to Supreme Court Regulation (PERMA) Number 14 of 2016 regarding Procedures for the Settlement of Sharia Economic Cases. The Arbitration Law and ADR need expeditious revision to incorporate the existence of Sharia arbitration, including the unification of all authority relating to sharia arbitration given to 1 (one) judicial environment, namely the Religious Courts.*

**Kata Kunci:**
*Exequatur; Putusan Arbitrase Syariah; Ekonomi Syariah; Eksekusi*

**Abstrak**

*Exequatur* adalah tindakan Ketua Pengadilan yang memberikan *executoriale titel* pada putusan arbitrase, yang memungkinkan putusan arbitrase untuk dilaksanakan eksekusi dengan bantuan instrumen negara jika diperlukan. *Exequatur* ini dapat berupa stempel yang ditempelkan pada putusan arbitrase atau penetapan terpisah (*aparte beschikking*). Tujuan dari penelitian ini adalah untuk mengidentifikasi badan-badan peradilan yang memiliki kompetensi untuk memberikan *exequatur* untuk putusan arbitrase dalam ekonomi dan bisnis Syariah. Penelitian ini menggunakan pendekatan hukum normatif, yang berkonsentrasi pada norma-norma yang berasal dari peraturan perundang-undangan yang berlaku. Saat ini, kasus-kasus penyelesaian arbitrase di bidang ekonomi syariah ditangani oleh dua pengadilan. *Exequatur* putusan arbitrase syariah diatur dalam Pasal 59 ayat (1) UU No. 30 Tahun 1999 tentang Arbitrase dan APS. Pengadilan Negeri berwenang untuk mengeksekusi putusan ini, sedangkan Pengadilan Agama diberikan kewenangan untuk mengeksekusi dan membatalkan putusan arbitrase Syariah, sesuai dengan Peraturan Mahkamah Agung (PERMA) Nomor 14 Tahun 2016 tentang Tata Cara Penyelesaian Perkara Ekonomi Syariah. UU Arbitrase dan APS perlu segera direvisi untuk memasukkan keberadaan arbitrase Syariah, mencakup penyatuan seluruh kewenangan yang berkaitan dengan arbitrase syariah diberikan pada 1 (satu) lingkungan peradilan, yaitu Pengadilan Agama.

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## INTRODUCTION

Business growth in the sharia economy sector is expanding quickly. Large corporations, micro, small, and medium-sized enterprises (MSMEs), and public figures are now actively engaged in developing sharia-compliant businesses in halal food, fashion, media, recreation, muslim-friendly travel, cosmetics, pharmaceuticals, and Islamic finance.

As the country with the world's largest muslim population, it is unsurprising that Indonesia ranks among the top nations for Islamic economic growth. The State of the Global Islamic Economy Report 2020-2021 indicates that Indonesia's sharia economy is fourth, with total sharia financial assets valued at US$99 billion. Indonesia places seventh for total sharia financial assets globally.

However, the uncertain global economic climate marked by high inflation, energy and food crises, climate change, and geopolitical[1] conflicts compels business actors in the sharia economic sector to devise survival strategies. They may encounter substantial challenges such as disputes with business partners or laborers, making it crucial to prepare against such contingencies.

Currently, several countries including Russia, UK, Hong Kong, Sri Lanka, Afghanistan, Macau, Brunei Darussalam, and Ukraine are on the brink of recession.[2] Many national and international companies are also facing significant worker layoffs. Twitter has laid off 3,700 workers, Meta has fired 11,000 employees, and Amazon has let go of as many as 10,000 workers.

National companies are also currently struggling due to the economic downturn, which has led to widespread layoffs. Established companies such as Shopee Indonesia, Indosat Ooredoo Hutchinson, JD.ID, LinkAja, SiCepat, GoTo, and Ruangguru[3] have been unable to cope with the recent economic conditions.

Business activities present broad opportunities for making contracts between business actors. Disputes often arise in business contracts, and this is an inevitable part of the contract. When parties agree on a contract, they also open the door to potential disputes. Consequently, selecting a dispute resolution forum that is "friendly" to businesses is an essential element of business strategy that today's business actors must consider.

In the national legal system, disputes in the shariah economic sector fall under the exclusive jurisdiction of the Religious Courts. This is in accordance with Article 49 of Law Number 3 of 2006,[4] which explicitly declares that:

> *"The Religious Courts possess the duty and authority to investigate, determine, and resolve cases at the primary level between individuals of the Muslim faith in the following areas: a. matrimony; b. bequests; c. testaments; d. grants; e. waqf; f. zakat; g. infaq; h. shadaqah; and i. shariah economy."*

[1] Eva Mazrieva, Virginia Gunawan, dan Rivan Dwiastono, "Sri Mulyani: Peringatan bahwa Ekonomi Dunia dalam Bahaya, Bukan Hal Berlebihan," VOA Indonesia, 14 Oktober 2022, https://www.voaindonesia.com/a/sri-mulyani-peringatan-bahwa-ekonomi-dunia-dalam-bahaya-bukan-hal-berlebihan-/6789438.html.
[2] CNN Indonesia, "Daftar Negara yang Terjebak dalam Jurang Resesi," CNN Indonesia, 18 November 2022, https://www.cnnindonesia.com/ekonomi/20221118152523-532-875595/daftar-negara-yang-terjebak-dalam-jurang-resesi.
[3] Tim detikFinance, "Badai PHK Sudah Melanda 18 Perusahaan Besar di Indonesia," detik.com, 20 November 2022, https://www.detik.com/bali/bisnis/d-6416043/badai-phk-sudah-melanda-18-perusahaan-besar-di-indonesia.
[4] Article 49 of Law Number 3 of 2006 Concerning the Amendment to Law Number 7 of 1989 Concerning Religious Courts.

Sharia economy refers to business activities conducted in compliance with sharia principles. This can include sharia-compliant institutions such as banks, microfinance organizations, insurance and reinsurance firms, mutual funds, bonds, medium-term securities, securities, financing, pawnshops, pension funds provided by sharia-based financial institutions, and sharia-compliant businesses.[5]

Not every dispute is resolved through a litigation forum, especially since an open judicial litigation forum is not suitable for the nature of business actors who must maintain a good reputation with consumers. Public disputes between business actors have the potential to negatively impact the business climate. Business actors typically prefer resolving their disputes in private to prevent any negative effects on their business activities.

Law No. 48 of 2009 on Judicial Power explicitly acknowledges these preferences and allows business actors to attempt to resolve their civil or trade disputes outside of court via Article 58. This can be achieved through arbitration or alternative dispute resolution mechanisms, such as consultation, negotiation, mediation, conciliation, or expert judgment.

Of all alternative methods for resolving disputes outside of the court system, arbitration is widely employed by business actors. Arbitrations provide final and binding decisions, confidentiality, time efficiency, and party autonomy, which grants parties the freedom to agree on the choice of law including the selection of arbitrators who they consider competent and understand their dispute, ensuring that the resulting decision fulfills the legal interests of each party.

Although arbitration possesses the same dispute resolution authority as a court, it must retain a unique identity from the judicial institution. As is commonly understood, in court the conflict between parties is labeled as a "case," whereas in arbitration it is referred to as a "dispute." In contrast to judicial judges who have the capability to examine, decide, and try, an arbitrator is only responsible for examining and rendering a decision, lacking the authority to try. The arbitration award should include legal theories and opinions pertaining to the dispute, presented as an expert legal opinion by the arbitrator.

According to Girsang, an arbitral award does not by itself have exequatorial force. Therefore, against an arbitral award containing a judgment, the prevailing party may request exequatur to the President of the District Court (*President der Rechtbank*) (vide Article 1062 Rv).[6] Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution (Arbitration and ADR Law), uses the terminology of registration of awards in national arbitration instead of exequatur. As for international arbitration, the term exequatur is used. Both national and international arbitration awards are required to be registered with the District Court. If not registered, the arbitration award cannot be executed. The Arbitration and ADR Law still uses the terminology of the District Court as the institution authorized to

[5]Explanation of Article 49 letter i of Law Number 3 of 2006 Concerning the Amendment to Law Number 7 of 1989 Concerning Religious Courts.
[6] S.U.T. Girsang, *Arbitrase Jilid II* (Jakarta: Litbang Diklat Mahkamah Agung RI, 1992).

grant exequatur to arbitration awards. On the other hand, sharia economic disputes are currently the absolute competence of the Religious Courts.[7]

## RESEARCH METHODS

The study employs normative juridical research, involving the search, examination, and collection of legal materials from law books and other legal texts. This research type is selected based on the assumption that the focal point of the study is the legal framework surrounding the exequatur of sharia economic sector arbitration decisions in the country's legal system. In normative research, the focus is on examining the provisions of positive law and positive legal instruments as sources of legal material.[8] Data collected from legal materials is then analyzed, presented, and conclusions are drawn.

## RESULTS AND DISCUSSION

In Indonesia, two types of arbitration dispute resolution forums exist: ad hoc and institutional. Ad hoc arbitration lacks administrative authority and mandatory procedures for parties to adhere to; all arbitration process rules depend on the parties' agreements. In contrast, institutional arbitration involves the authority of the relevant arbitration institution in determining the arbitration procedure's rules. Therefore, parties must adhere to and comply with the established rules.

There are various distinctions between ad hoc and institutional arbitration,[9] such as the following:

| **Ad Hoc Arbitration** | **Institutional Arbitration** |
|---|---|
| Parties have easy contact with the Arbitral Tribunal | Parties cannot have contact with the Arbitral Tribunal |
| Non-measurable costs | Measurable costs |
| Any disagreement is resolved through the District Court | Disagreements are resolved through the arbitral institution concerned |

*Table 1 Distinctions between ad hoc and institutional arbitration*

Currently, there are quite a number of institutionally managed arbitration institutions both domestically and internationally,[10] such as the Indonesian National Arbitration Board (BANI), the National Sharia Arbitration Board (BASYARNAS-MUI), the International Chamber of Commerce (ICC International Court Arbitration), and the Singapore International Arbitration Center (SIAC). Even in the financial services sector itself there are a number of arbitration Alternative Dispute Resolution Institutions (LAPS) consisting of the Indonesian Insurance Mediation and Arbitration Board (BMAI), the Indonesian Capital Market Arbitration Board (BAPMI), the Pension Fund Mediation Board (BMDP), the Indonesian

[7]Article 59 paragraph (4) and Article 66 letter b of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution (Arbitration and ADR Law).
[8] Jonaedi Efendi dan Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Jakarta: Prenada Media, 2018), 176.
[9] Bambang Hariyanto, "Makalah Hukum Acara Arbitrae" (Pendidikan Khusus Profesi Advokat PERADI dan Universitas Pamulang, 31 Maret 2022), 26.
[10] Suleman Batubara dan Orinton Purba, *Arbitrase Internasional* (Depok: RAIH ASA SUKSES, 2013).

Banking Alternative Dispute Resolution Institution (LAPSPI), the Indonesian Guarantee Company Arbitration and Mediation Board (BAMPPI), the Indonesian Financing and Pawnshop Mediation Board (BMPPI), and the Financial Services Sector Alternative Dispute Resolution Institution (LAPS SJK).

Similar to other commercial disputes, civil disputes in the Islamic economic sector can be resolved through an arbitration forum, as long as the dispute arises in the field of trade.[11] Hence, the parties do not always resort to bringing commercial disputes in front of the court. Moreover, in the Islamic economic sector, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) recommends using arbitration institutions as a forum for resolving disputes if they cannot be resolved through consensus, apart from the Religious Court.

Islamic business actors who have chosen a law and forum for resolving disputes must adhere to the rules and administrative procedures of the arbitration institution. Additionally, the parties must comply with the arbitration decision issued by the arbitrator, as it is final and legally binding. As a result, the decision cannot be appealed, cassated, or reviewed, allowing for prompt legal certainty.

However, the parties may request the annulment of an arbitral award suspected to contain elements as stipulated in Article 70 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution. These elements include: a) a letter or document submitted during the examination, which is recognized or declared false after the award's render; b) a decisive document, which was concealed by the opposing party and found after the award's render; or c) the award is rendered due to deceit committed by one of the parties during the dispute examination.

However, the interested parties can only annul the arbitral award within a maximum of 30 days from the day of submission and registration with the Registrar of the competent Court.[12] Therefore, the registration of arbitral awards in court is a crucial process as it relates to other legal remedies such as annulment and execution of the award. Nonetheless, the arbitration award is final and binding by itself.

The provisions of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution authorize only the District Court to issue an exequatur against arbitral awards. Exequatur entails the President of the District Court granting executorial title to the arbitral award, thus enabling its implementation, if required, with the assistance of State instruments. This exequatur may take the form of a stamp affixed to the arbitral award or a separate determination *(aparte beschikking)*.[13]

The existing laws and regulations have not comprehensively regulated arbitration in the Islamic economic sector and still retain outdated provisions to regulate the exequatur of arbitral awards. Such provisions as the requirement for arbitral awards to be registered in the District Court, as stipulated in Article 59 (1) of the Law Number 30 of 1999 on Arbitration and ADR, and Article 59 of the Law Number 48 of 2009 on Judicial Power.

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[11] Article 5 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution.
[12] Article 71 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution.
[13] Girsang, *Arbitrase Jilid II*.

The regulation of sharia arbitration decisions and their annulment is currently carried out through Supreme Court Regulation (PERMA) Number 14 of 2016 concerning Procedures for Settling Sharia Economic Cases. The Religious Court has the authority in this matter. However, the PERMA does not explicitly regulate the exequatur authority over sharia arbitration decisions.

This PERMA is also guided by the provisions under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, particularly with regard to the procedures for enforcing decisions. The Arbitration Law still designates the District Court as the institution authorized to grant exequatur to arbitration awards. The registration of an arbitration award aims to confer executory power upon it. However, registration for arbitration in accordance with the Arbitration Law and APS occurs at the District Court, whereas PERMA No. 14 of 2016 governs the implementation and revocation of sharia arbitration decisions at the Religious Court.

This creates legal ambiguity and conflicting regulations and jurisdictions over a specific legal matter. Consequently, the regulatory norms appear incongruous with one another. While disputes within the sharia-based economic sector fall under the sole authority of the Religious Court as stated in Article 49 letter i of the 2006 amendment to Law Number 7 of 1989 concerning Religious Courts.

In terms of executing an arbitration award, it is an absolute requirement for the arbitrator to register the award for filing a request for execution. Failure to register the arbitration award with the authorized judicial institution will render the award unenforceable for execution. Because the execution and annulment of arbitral awards are closely linked with exequatur or registration of arbitral awards, the judicial authority responsible for legitimizing the series must also be carried out by a single type of court. Therefore, in reference to Article 13, paragraph 2 of PERMA No. 14/2016, the exequatur or registration of sharia arbitration decisions falls under the exclusive authority of the Court within the Religious Courts.

The swift expansion of business in the Islamic economic sector necessitates unambiguous legal regulations to uphold and advance commerce in this domain. Therefore, stakeholders should make efforts to promptly revise the Arbitration and ADR Law, which has been in effect for 23 years, to accommodate the existence of Sharia arbitration. This includes integrating all absolute competence related to Sharia arbitration into one judicial environment, specifically the Religious Court.

Although the Supreme Court has the authority to regulate as given by law, its jurisdiction is limited to legal gaps related to judicial provisions as stated in Article 79 of Law No. 14 of 1985.

> *"The Supreme Court can regulate additional matters necessary for the smooth administration of justice if certain issues have not been adequately addressed in this Law."*

If we examine the aforementioned norms, it becomes clear that the authority of the Supreme Court is restricted to regulating norms that fill gaps or legal voids in the

administration of justice, which is a part of procedural law overall. This authority does not encroach upon nor exceed the regulation of the general rights and obligations of citizens; it also does not regulate the nature, strength means of evidence and its evaluation, or the allocation of the burden of proof.[14]

Meanwhile, citizens are obligated to follow sharia arbitration decisions, which are made by arbitrators in disputes. This should ideally be regulated in the Law rather than in Supreme Court Regulations.

## CONCLUSION

Based on the principle of *lex specialis* overriding *lex generalis* and referring to the provisions of PERMA No. 14 of 2016 on Procedures for Settling Sharia Economic Cases, the Religious Courts hold absolute authority over settling arbitration cases in the sharia economic sector, including registration, exequatur of decisions, execution, and cancellation of sharia arbitration decisions.

However, disputes within the Islamic economic sector demand legal guidelines that are unambiguous and clear. Hence, all pertinent parties must endeavor to revise the Arbitration and Alternative Dispute Resolution Law as well as the Judicial Power Law immediately. These revisions should explicitly incorporate the existence of Sharia arbitration, including the integration of all authorities related to Sharia arbitration within a single judicial environment, specifically the Religious Court.

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