THE POSITION OF THE NATIONAL SHARIA ARBITRATION BOARD (BASYARNAS) IN RESOLVING DISPUTES OUT OF COURT IN THE FINANCIAL SERVICES SECTOR AFTER THE ENACTMENT OF LAW NUMBER 4 OF 2023 ON THE DEVELOPMENT AND STRENGTHENING OF THE FINANCIAL SECTOR

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ABSTRACT

This research aims to analyze the position of the National Sharia Arbitration Board (BASYARNAS) in resolving sharia disputes in the financial services sector following the issuance of Financial Services Authority Regulation (POJK) Number 61/2020 and Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector (UU P2SK). This study also identifies the challenges faced by BASYARNAS and offers legal solutions to address these issues in the context of protecting the spiritual rights of sharia financial services consumers.

The method used is normative-empirical legal research with descriptive-analytical and prescriptive approaches. Data collection techniques were conducted through literature studies, analysis of laws and regulations, and in-depth interviews with respondents from BASYARNAS, the Financial Services Authority (OJK), the Financial Services Sector Alternative Dispute Resolution Institution (LAPS SJK), and academic sources as well as sharia law practitioners. The analysis was conducted using juridical-comparative and qualitative thematic approaches to examine the dynamics of dispute resolution regulations in the sharia financial services sector.

The research findings indicate that BASYARNAS's position underwent fundamental changes following the implementation of POJK 61/2020, where this institution lost its formal authority in financial services sector dispute resolution due to the implementation of a single forum system through LAPS SJK. Although UU P2SK provides normative space for dispute resolution institutions that obtain authority approval, BASYARNAS faces regulatory constraints in the form of institutional exclusion, institutional constraints related to legal entity forms and independence, and operational constraints including limited human resources, funding, and geographical distribution. To address these constraints, comprehensive solutions are needed in the form of POJK 61/2020 revision to accommodate the principle of dispute resolution pluralism, judicial review submission against provisions that limit sharia arbitration authority, and the establishment of cooperation agreements between LAPS SJK and BASYARNAS to ensure the fulfillment of consumers' spiritual rights in resolving sharia financial product disputes.

Keywords:
BASYARNAS, Sharia Dispute Resolution, Alternative Dispute Resolution, Financial Services Sector

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KEDUDUKAN BASYARNAS DALAM PENYELESAIAN SENGKETA DI LUAR PENGADILAN PADA SEKTOR JASA KEUANGAN PASCA BERLAKUNYA UNDANG-UNDANG NOMOR 4 TAHUN 2023 TENTANG PENGEMBANGAN DAN PENGUATAN SEKTOR KEUANGAN

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INTISARI

Tujuan penelitian ini adalah untuk menganalisis kedudukan Badan Arbitrase Syariah Nasional (BASYARNAS) dalam penyelesaian sengketa syariah di sektor jasa keuangan pasca diterbitkannya Peraturan Otoritas Jasa Keuangan (POJK) Nomor 61/2020 dan Undang-Undang Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan (UU P2SK). Penelitian ini juga mengidentifikasi kendala yang dihadapi BASYARNAS dan menawarkan solusi hukum untuk mengatasi permasalahan tersebut dalam konteks perlindungan hak spiritual konsumen sektor jasa keuangan syariah.

Metode yang digunakan adalah penelitian hukum normatif-empiris dengan pendekatan deskriptif-analitis dan preskriptif. Teknik pengumpulan data dilakukan melalui studi literatur, analisis peraturan perundang-undangan, serta wawancara mendalam dengan responden dari BASYARNAS, Otoritas Jasa Keuangan (OJK), Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan (LAPS SJK), dan narasumber akademisi serta praktisi hukum syariah. Analisis dilakukan secara yuridis-komparatif dan kualitatif tematik terhadap dinamika regulasi penyelesaian sengketa di sektor jasa keuangan syariah.

Hasil penelitian menunjukkan bahwa kedudukan BASYARNAS mengalami perubahan mendasar pasca pemberlakuan POJK 61/2020, di mana lembaga ini kehilangan kewenangan formal dalam penyelesaian sengketa sektor jasa keuangan akibat penerapan sistem *single forum* melalui LAPS SJK. Meskipun UU P2SK memberikan ruang normatif bagi lembaga penyelesaian sengketa yang mendapat persetujuan otoritas, BASYARNAS menghadapi kendala regulatif berupa eksklusi kelembagaan, kendala kelembagaan terkait bentuk badan hukum dan independensi, serta kendala operasional meliputi keterbatasan SDM, pendanaan, dan distribusi geografis. Untuk mengatasi kendala tersebut, diperlukan solusi komprehensif berupa revisi POJK 61/2020 untuk mengakomodasi prinsip pluralisme penyelesaian sengketa, pengajuan *judicial review* terhadap ketentuan yang membatasi kewenangan arbitrase syariah, dan pembentukan perjanjian kerja sama antara LAPS SJK dengan BASYARNAS guna memastikan pemenuhan hak spiritual konsumen dalam penyelesaian sengketa produk keuangan syariah.

Kata kunci: BASYARNAS, Penyelesaian Sengketa Syariah, Alternatif Penyelesaian Sengketa, Sektor Jasa Keuangan

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