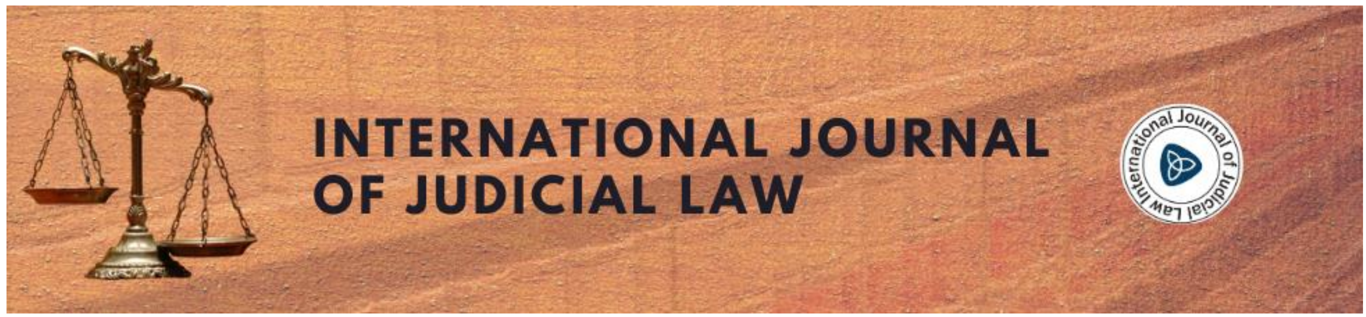

Authority to Implement the Execution of Decisions of the National Sharia Arbitration Board According to Indonesian Positive Law

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Abstract
This study aims to analyze the authority and regulations for the execution of decisions of the National Sharia Arbitration Board (BASYARNAS) in the Indonesian legal system. The research method used is normative research with a statutory, conceptual, comparative, and historical approach. The analysis used in this study uses a qualitative analysis method, namely by interpreting the processed legal materials. The results of the study indicate that: *First,* the regulation of the authority to execute BASYARNAS decisions is still dualistic between the District Court and the Religious Court, thus creating legal uncertainty. *Second,* the regulation of the execution of BASYARNAS decisions as stipulated in PERMA Number 14 of 2016 still refers to the provisions in Law Number 30 of 1999 which still regulates arbitration in general, this is very inconsistent with sharia principles, so that a regulation at the level of a law that specifically regulates sharia arbitration is very necessary.

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1. Introduction

The development of the Sharia-compliant economy and businesses in Indonesia is showing rapid growth. This is evident in the growing number of Sharia Financial Institutions (SFIs), such as Sharia banking, Sharia insurance, Sharia cooperatives, Sharia pawnshops, and various other business activities based on Sharia principles. National Sharia financial assets are projected to surge significantly, from IDR 6,193 trillion in 2021 to IDR 10,257 trillion in 2025. [1] These developments demand the presence of a dispute resolution mechanism that is not only efficient and fast, but also subject to sharia principles.

Regarding non-litigation resolution through arbitration, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is the most concrete and specific form of the state's efforts to apply and promote peacemaking institutions in business disputes. This law also states that the state grants the public the freedom to resolve their business disputes outside the courts, whether through consultation, mediation, negotiation, conciliation, or expert assessment. [2]

One of the sharia arbitration institutions in Indonesia is BASYARNAS (National Sharia Arbitration Board), which has the authority to resolve sharia economic disputes based on Islamic principles. BASYARNAS's decisions are final and binding, and therefore cannot be appealed, cassated, or reviewed. However, BASYARNAS does not have the authority to enforce its own decisions, requiring a judicial institution to enforce them if the parties do not voluntarily comply with the decision.

[1]The Coordinating Ministry for Economic Affairs of the Republic of Indonesia stated that ***the rapid growth of the Sharia economy is propelling Indonesia to become a major player on the global stage.*** *https://www.ekon.go.id/publikasi/detail/6704/* , December 1, 2025, (accessed May 10, 2026 at 15.18 WITA).
[2]Abdul Manan, *Sharia Economic Law from the Perspective of the Authority of Religious Courts*, Kencana Prenadamedia Group, Jakarta, 2014, p. 441.

The problem arises due to the dualism of authority between the District Court and the Religious Court in implementing the execution of BASYARNAS decisions. Law Number 30 of 1999 Article 61 and Article 59 paragraph (3) of Law Number 48 of 2009 concerning Judicial Power state that the execution of arbitration decisions is carried out on the orders of the Head of the District Court. On the other hand, Law Number 3 of 2006 in conjunction with Law Number 50 of 2009 concerning Religious Courts gives the Religious Courts the authority to handle sharia economic cases, including sharia arbitration disputes.

The Supreme Court issued Circular Letter No. 8 of 2008, granting the Religious Courts the authority to execute BASYARNAS decisions. However, following the enactment of the 2009 Judicial Powers Law, the Supreme Court issued Circular Letter No. 8 of 2010, reaffirming that authority rests with the District Courts. This has created legal uncertainty and conflicts of authority between judicial institutions.

Furthermore, Constitutional Court Decision Number 93/PUU-X/2012 emphasized that the resolution of sharia economic disputes is the absolute authority of the Religious Courts. This provision was further strengthened through PERMA Number 14 of 2016 concerning Procedures for the Settlement of Sharia Economic Disputes. However, Article 59 paragraph (3) of the Judicial Power Law is still in effect, thus creating a lack of synchronization of laws and regulations and legal uncertainty regarding the authority to execute BASYARNAS decisions in Indonesia.

The Judicial Power Law and PERMA are part of the statutory regulations in Indonesia as contained in the provisions of Article 8 of Law Number 12 of 2011 *in conjunction with* Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. Therefore, how is it possible that there is a lack of synchronization between the laws and regulations in their arrangements, which provide authority? execution decision arbitration sharia to the judicial institution different, both of which are under the Supreme Court of the Republic of Indonesia.

The potential for conflicting norms between one regulation and another in terms of regulating and determining the legal force of the BASYARNAS's executive decisions creates legal uncertainty for justice seekers, so the author in conducting this research is interested in conducting research by raising the problem with the title "Authority to Execute the Decision of the National Sharia Arbitration Board According to Indonesian Positive Law".

Research methods

2. Research Methods

All legal materials obtained from library research will then be analyzed descriptively and qualitatively, constructing arguments based on deductive logic. Using the descriptive-qualitative method, the researcher will present, explain, and connect all relevant legal materials obtained from library research in a systematic, comprehensive, and accurate manner. Simultaneously, the author will interpret various legal materials to obtain accurate and comprehensive answers to the problems.

The legal material collection technique used by the researcher is through literature studies collected using document study techniques, namely by tracing and collecting primary legal materials, secondary legal materials, books, research results and laws and regulations related to the research as well as tertiary legal materials in the form of dictionaries.

3. Discussion

Regulation of the Authority to Execute Decisions of the National Sharia Arbitration Board According to Positive Law in Indonesia

The Position of BASYARNAS as a Sharia Arbitration Institution in the Indonesian Legal System

- **Conception of the National Sharia Arbitration Board (BASYARNAS)**

Tahkim is a legacy of Arab tradition that has long been known since pre-Islam and was later converted to Islam by the Prophet Muhammad SAW. In pre-Islamic society, if there were disputes regarding property rights, inheritance rights and violations of the law other than murder, the disputes were resolved through the assistance of a peacemaker or referee appointed by each party to the dispute who was tasked with resolving the case.

The hakam's authority extends to resolving disputes submitted to him, such as those concerning individual rights, namely those concerning property and domestic relations. Disputes concerning general rights or the rights of God do not fall within the hakam's authority. If any rules in this area are violated, it is entirely up to the authority of the ruler (the judge) to resolve them. [3]

The establishment of an arbitration institution based on Islamic law is urgently needed to resolve Islamic civil disputes, particularly those related to Islamic banking. Therefore, on October 21, 1993, the Indonesian Ulema Council (MUI) established the National Sharia Arbitration Board (Basyarnas) in Jakarta. Its previous name was the Indonesian Muamalat Arbitration Board (BAMUI).

The establishment of the National Sharia Arbitration Board (BASYARNAS) in Indonesia to resolve sharia economic disputes, has a strong legal basis both from a positive legal perspective and from Islamic law itself. The legal basis of Basyarnas refers to: the Qur'an, As-Sunnah, Ijma', Qiyas, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking Article 55 paragraph (2), Regulation of the Supreme Court of the Republic of Indonesia Number 14 of 2016 concerning Procedures for Settling Sharia Economic Disputes, Regulation of the Supreme Court Number 03 of 2023 concerning Procedures for Appointing Arbitrators by the Court, Right of Refusal, Examination of Applications for Implementation and Cancellation of Arbitration Decisions, Decree of the MUI Leadership Council No. Decree-09/MUI/XII/2003 concerning the National Sharia Arbitration Board, Regulation of the National Sharia Arbitration Board-Indonesian Ulema Council (BASYARNAS-MUI) Number: PER-01/BASYARNAS-MUI/XI/2021 Concerning Procedures for Resolving Sharia Economic Disputes at the National Sharia Arbitration Board-Indonesian Ulema Council (BASYARNAS-MUI), DSN-MUI Fatwa, namely all fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) regarding muamalah (civil) relations which always give authority to the National Sharia Arbitration Board (Basyarnas) in resolving muamalah (civil) disputes if no agreement is reached through deliberation by

[3]Jaih Mubarok, *Sariah Economic Law of Mudharabah Contracts*, Fokusmedia, Bandung, 2013, p. 78.

both disputing parties, Basyarnas-MUI Arbitrator Code of Ethics.

- **Duties and authorities of BASYARNAS in resolving Sharia economic disputes**

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Article 1 Point 1 states that: "Arbitration is a method of resolving a civil dispute outside the general courts based on an arbitration agreement made in writing by the disputing parties". This provision is in line with the provisions contained in Article 55 paragraph (2) and (3) of Law Number 21 of 2008 concerning Sharia Banking which gives the parties the freedom to choose the dispute resolution institution to be used if a Sharia Banking dispute occurs outside the court in this case the Religious Court as long as it does not conflict with sharia principles. Moreover, the fatwas of the DSN (National Sharia Council) always require the resolution of Sharia Banking disputes through the Sharia Arbitration Board after no agreement is reached in deliberation. The DSN version of the settlement clause as at the end of each Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) of 2006 Numbers 05, 06, 07 and 08 always states as follows [4] "if one of the parties does not fulfill its obligations or if a dispute occurs between the parties, then the settlement is carried out through the Sharia Arbitration Board after no agreement is reached through deliberation."

According to Frans Hendra Winarta in his book "Indonesian National and International Arbitration Dispute Resolution Law", the scope of the authority of the National Sharia Arbitration Board (BASYARNAS) includes: [5]

1. Resolve fairly and quickly muamalah (civil) disputes arising in the fields of trade, finance, industry, services, etc. which according to law and statutory regulations are fully controlled by the disputing parties, and the parties agree in writing to submit the resolution to Basyarnas in accordance with Basyarnas procedures;
2. Providing binding opinions at the request of the parties without any dispute regarding issues relating to an agreement.

The appointment of an Arbitration Board in the deed of agreement made by the parties in resolving Islamic economic cases contains the consequence that the arbitration agreement clause applies and binds the parties in accordance with the provisions of Article 1 paragraph (1) of Law Number 30 of 1999 above, so that the Court does not have the authority to adjudicate disputes between parties who are bound by an arbitration agreement, in accordance with the provisions of Article 3 of Law Number 30 of 1999 which states: "The District Court does not have the authority to adjudicate disputes between parties who are bound by an arbitration agreement."

Therefore, the provisions contained in Article 3 of Law Number 30 of 1999 state that the court is obliged to reject a case submitted to it if an arbitration agreement has been made by the parties, in accordance with the provisions of Article 11 paragraph (1) and (2) of Law Number 30 of 1999 which reads:

1. The existence of a written arbitration agreement eliminates the right of the parties to submit a dispute resolution or difference of opinion contained in the agreement to the District Court.
2. The District Court is obliged to refuse and will not intervene in a dispute resolution that has been determined through arbitration, except in certain cases stipulated in this Law.

In understanding the provisions of Article 3 and 11 paragraphs (1) and (2) of Law Number 30 of 1999 above, there are several different views, namely: *first,* the generalist/absolute opinion which states that as long as there is an arbitration clause in the agreement, then it is the absolute authority of arbitration in handling disputes arising from the agreement, without having to look at the scope/reach of the dispute referred to in the arbitration formulation. This school of thought is called *the pacta Sunt Servanda school of thought. Second,* even if there is an arbitration clause, but because arbitration is not *a public policy* or not *an open order,* its application is not absolute. *Third,* seen from the Supreme Court decision No. 1851 K/Pdt/1984 which essentially states that even if there is an arbitration clause and there is an exception from the opposing party, the court still has authority. In other words, even if the parties have agreed that if a dispute arises it will be resolved through arbitration, this does not preclude the possibility that one of the parties will take their case directly to court without going through arbitration. [6]

In relation to the arbitration agreement made by the parties above, Frans Hendra Winarta put forward two forms of arbitration agreement, namely: [7]

- **Pactum De Compromittendo**

Pactum De Compromittendo means "agreement to agree with the arbitrator's decision". This form of clause is regulated in Article 2 of Law Number 30 of 1999 which reads: "this law regulates the resolution of disputes or differences of opinion between parties in a certain legal relationship who have entered into an arbitration agreement which expressly states that all disputes or differences of opinion that arise or that may arise from the legal relationship will be resolved by means of arbitration or through alternative dispute resolution".

From these provisions, the parties may make an agreement in the form of an arbitration clause to resolve disputes that may arise in the future through arbitration or alternative dispute resolution (*arbitration clause*), so that the parties are prepared to anticipate any disputes that may arise in the future.

[4]Rachmadi Usman, *Legal Aspects of Islamic Banking in Indonesia, 1st ed.*, Sinar Grafika, Jakarta, 2012, p. 391.

[5]Frans Hendra Winarta, *Indonesian National and International Arbitration Dispute Settlement Law, 2nd Ed., 1st Printing*, Sinar Grafika, Jakarta, 2012, p. 149.

[6] Achmad Fikri Oslami, *The Position of Religious Courts and Basyarnas in Resolving Sharia Economic Disputes*, At-Tasyri' Scientific Journal of the Muamalah Study Program, Volume 14, Number 2, June 2022, Pangkalan Balai Religious Court, p. 37.

[7]Frans Hendra Winarta, *Indonesian National and International Arbitration Dispute Resolution Law, 2nd ed., 1st ed.*, Sinar Grafika, Jakarta, 2012, pp. 38-39

- **Deed of Compromise**

The provisions regarding this deed of compromise are regulated in Article 9 paragraph (1), (2), and paragraph (3) of Law Number 30 of 1999 which reads:

1. In the event that the parties choose to resolve the dispute through arbitration after the dispute has occurred, the agreement regarding this must be made in a written agreement signed by the parties.
2. In the event that the parties are unable to sign a written agreement as referred to in paragraph (1), the written agreement must be made in the form of a notarial deed.
3. The written agreement as referred to in paragraph (1) must contain: (a) the disputed issue; (b) the full names and place of residence of the parties; (c) the full name and place of residence of the arbitrator or arbitration panel; (d) the place where the arbitrator or arbitration panel will make a decision; (e) the full name of the secretary; (f) the time period for resolving the dispute; (g) a statement of willingness from the arbitrator; and (h) a statement of willingness from the disputing parties to bear all costs required for resolving the dispute through arbitration.
4. A written agreement that does not contain the matters referred to in paragraph (3) is void by law.

Based on the above provisions, a deed of compromise is an arbitration agreement made by the parties after a dispute arises in the form of a written deed, not by verbal agreement. Therefore, if there is an arbitration clause or arbitration agreement made by the parties in a sharia economic dispute regarding the settlement method to be carried out, the court is obliged to reject the case if the case is submitted to it. In this case, the National Sharia Arbitration Board (Basyarnas), as a non-litigation institution, plays a crucial role in resolving sharia economic disputes, especially if it is already stipulated in the contents of the arbitration agreement/clause.

- **The choice of law must be in accordance with Sharia**

A sharia arbitration agreement arises from the parties' agreement to submit dispute resolution to an arbitration forum, either through a permanent arbitration institution or *ad hoc arbitration.* In this agreement, the parties can determine the choice *of forum* and the choice *of law* to be used in resolving the dispute. Based on Article 56 paragraph (2) of Law Number 30 of 1999, the parties have the right to determine the applicable law in the arbitration process. If no such determination is made, then the law used is the law of the place where the arbitration is conducted. To resolve a dispute through arbitration, the law that will be applied first is the law chosen by the parties as written in the agreement clause. If no law is expressly chosen by the parties, then the law that will be applied is the law of the place where the agreement was made, or other matters that provide guidance on the law to be used. [8]

In making a choice of law, in general, the following points must be taken into account. [9] (a) The law chosen must be known to the parties, although usually the *counter party* who has a stronger position in *bargaining* will tend to choose the law that is already known to them. (b) The choice of law is made firmly, namely to avoid further *ambiguity,* especially for countries that recognize the application of more than one legal rule. (c) The law chosen is the applicable law, namely the law that is recognized and respected by all judicial bodies, including arbitration, and therefore must be applied in resolving their disputes. (d) Restrictions on freedom in determining the choice of law, meaning that determining the choice of law must always pay attention to statutory regulations, public order, and morality. (e) The choice of law must be appropriate, meaning it has a direct relationship with the agreement made. (f) The choice of law must not result in legal smuggling, and if it occurs, the choice of law will be null and void, and the judge can determine the applicable law *(proper law of contract)* to decide the dispute that occurs.

The legal choice that is justified is a legal choice that is in accordance with the principles of Islamic law. The general principles of Islamic law include: (1) the principle of God or true faith; (2) the principle of eliminating intermediaries between humans and God; (3) the principle of middle ground in all matters; (4) the principle of mutual assistance; (5) the principle of justice and equality; (6) the principle of deliberation; (7) the principle of freedom; (8) the principle of tolerance; (9) the principle of social tolerance; (10) the principle of enjoining good and preventing evil. [10] More specifically, the choice of law does not undermine the achievement of the goals of Islamic law *(maqasid al-syariah)* which are based on the interests *of al-dharuriyah* and are detailed in five goals, called *al-maqashid al-khamsah,* namely preserving religion, soul, mind, descendants, and property. These five main goals of Islamic law are always upheld in life and ensure that these interests are not violated. If one of the disputing parties is non-Muslim, they must be considered to have submitted to the Islamic legal system in the context of the dispute. Even if another non-Islamic law is to be used to resolve the dispute, it is still permissible as long as it is in accordance with and does not conflict with Sharia principles. With this explanation, the legal provisions contained in Dutch colonial law, which were not originally created to uphold and maintain Islamic law, should not be simply discarded. The legal provisions of the Dutch colonial legacy, both material and formal, can still be used without error by modifying and adapting them to Sharia. [11]

- **The decision is final and binding**

A sharia arbitration decision is a written legal product that is prepared based on a dispute resolution examination through an arbitrator with a closed system which is the final level decision and has permanent legal force and is binding on the parties *(final and binding).* [12]

However, in terms of implementing arbitration decisions, it is still necessary certain mechanisms so that the decision has executive power. Based on provisions of Law Number 30 of 1999, arbitration decisions must be registered first go to court so that it can be enforced by force if one the party does not voluntarily carry out the contents of the decision.

The implementation of the execution of sharia arbitration decisions remains the authority of the District Court in

[8]Huala Adolf, *International Commercial Arbitration,* Rajawali, Jakarta, 1991, p. 47.

[9]Gunawan Widjaja and Ahmad Yani, *Arbitration Law,* PT RajaGrafindo, Jakarta, 2000, pp. 81-85.

[10]Akhmad Azhar Basyir, *Main Issues of Islamic Legal Philosophy,* UII Press, Yogyakarta, 2000, p. 56.

[11]Abdoerraoef, *Al-Quran and Legal Science,* Bulan Bintang, Jakarta, 1970, p. 50.

[12]Cicut Sutiarso, *Implementation of Arbitration Decisions in Business Disputes,* Pustaka Obor Indonesia, Jakarta, 2011, p. 163.

accordance with the provisions stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. [13] However, after the issuance of PERMA No. 14 of 2016 concerning Procedures for Settling Sharia Economic Disputes, this authority was given to the Religious Courts, but its implementation still refers to Law Number 30 of 1999 and this is in accordance with the provisions of Article 49 letter i which gives absolute authority to the Religious Courts in handling Sharia economic disputes, including in this case the implementation of BASYARNAS decisions.

Therefore, Sharia arbitration does not have judicial authority. Although its decision is final and binding, meaning it has permanent legal force, it cannot be enforced solely through a judicial institution. This final and binding nature *simply* means that an arbitration decision cannot be appealed, cassated, or reviewed. [14] In order for the final and binding nature to be effective, the sharia arbitration decision must be followed by the principle of compliance, namely that the decision that has been reached must be complied with and implemented voluntarily by the disputing parties.

In comparison, arbitration awards in Saudi Arabia must be registered with the authority *originally having jurisdiction over the dispute* and notified to the parties. The parties still have the right to object to the award, and the award is final after the appeal period has expired *and* can be enforced through a *decision granting leave to enforce*.

Furthermore, under the new Egyptian arbitration rules, arbitral awards are registered with the secretariat of the court having jurisdiction for enforcement. Furthermore, arbitral awards rendered in Egypt or abroad, provided they apply Egyptian law, are given the title of exequatur by the President *of the Court* where the award is registered.

Malaysia is one of the countries with a fairly advanced development of sharia arbitration, particularly in supporting the Islamic finance industry and international business transactions. Arbitration in Malaysia is regulated by the Arbitration Act 2005, which adopts international principles and provides strong support for out-of-court dispute resolution. In practice, arbitral awards can be recognized and enforced by the High Court after meeting the requirements stipulated by law. Malaysia has also developed a sharia arbitration mechanism to handle disputes related to Islamic finance, while still allowing the courts to exercise limited oversight over procedural aspects and public order. This system makes Malaysia one of the international centers of sharia arbitration capable of integrating sharia principles with modern arbitration standards.

Meanwhile, Brunei Darussalam recognizes arbitration as a legitimate dispute resolution mechanism outside the courts, while maintaining Sharia principles as a fundamental foundation in its legal system. Arbitration awards can be enforced after obtaining recognition or ratification from a competent court. In granting such ratification, the court will assess whether the arbitration procedure has been carried out legally and whether the content of the award does not conflict with Sharia law or public order in the country. The strong influence of Sharia in Brunei's legal system gives the court the authority to refuse to enforce arbitration awards deemed contrary to Islamic values. Therefore, arbitration in Brunei serves not only as an efficient means of dispute resolution but also as an instrument that must remain in line with Sharia principles, the foundation of state law.

Based on this comparison, the system for resolving Islamic economic disputes through arbitration that is most similar to Indonesia's is Malaysia. This is because both Indonesia and Malaysia implement a modern arbitration system that combines national legal principles, international arbitration law, and Sharia principles in Islamic economic disputes.

- **Dualism in the Regulation of Authority to Execute Decisions of the National Sharia Arbitration Board in the Settlement of Sharia Economic Disputes in Indonesia**

The judicial body as a subsystem of the judicial power system according to the 1945 Constitution of the Republic of Indonesia, Article 24 paragraph (1) of the Third Amendment, is established in order to uphold law and justice. The judicial body in question consists of 4 (four) judicial environments, namely the general judicial environment, the religious judicial environment, the military judicial environment, and the state administrative judicial environment.

The legal consequence of the existence of four judicial environments and special courts is the division of the scope of authority (competence) in these judicial bodies.

Judicial competence is the power or authority of a judicial body to try or examine a particular case. According to Indonesian doctrine, judicial competence is divided into two types: absolute judicial authority (attribution of power) and relative judicial authority (distribution of power).

Absolute competence or absolute authority concerns the power between judicial bodies, seen from the type of court, concerning the granting of power to try, in Dutch called *attributie van rechtsmachts*. Absolute competence or absolute authority, answers the question: what kind of judicial body is authorized to try a case. [15] Relative competence or relative authority, regulates the division of judicial power between similar courts, depending on the defendant's residence. In this case, the principle of " *Actor Sequitur Forum Rei* " is applied, meaning that the competent one is the district court where the defendant lives. Relative competence or relative authority, answers the question: Which district court is authorized to try a case. Relative competence is the authority to examine or try a case based on the division of legal areas. Absolute competence is the authority to examine and try a case based on the division of authority or duties.

The authority to adjudicate based on the division of power (attribution of power) between judicial bodies is regulated by Law No. 48 of 2009 concerning judicial power. The authority of each judicial body includes:

1. The absolute competence of general courts is to examine, try, and decide criminal and civil cases in accordance with statutory regulations. (Law No. 49 of 2009 *in conjunction with* Law No. 2 of 1986 concerning General Courts).
2. The absolute competence of military justice is to examine and decide criminal cases and administrative disputes of the armed forces for military personnel (Law No. 31 of 1997 concerning Military Justice).

[13] Muhammad Arifin, *Op. Cit.*, p. 453.

[14] I Made Widnyana, *Alternative Dispute Resolution (ADR)*, Fikahati, Jakarta, 2009, p. 210.

[15] Yahya Harahap, *Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence and Court Decisions*, Sinar Grafika, Jakarta, 2016, p. 215.

3. The absolute competence of religious courts is to examine, try, decide and resolve civil cases between people of the Muslim faith in accordance with statutory regulations (Law No. 50 of 2009 in conjunction with Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts).
4. The absolute competence of the state administrative court is to examine and decide on lawsuits against state administrative officials, as a result of the written decisions they make being detrimental to a person or civil legal entity (Law No. 51 of 2009 *in conjunction with* Law No. 5 of 1986 concerning State Administrative Courts).

Regarding absolute competence, dualism in the regulation of authority between one judicial body and another is not uncommon. This dualism exists because both judicial bodies have equal authority over related cases.

The dualism in the regulatory system's jurisdiction is the division of judicial authority between general courts and religious courts, one of which concerns the authority to execute and annul sharia arbitration decisions. Both jurisdictions have the same absolute authority to enforce BASYARNAS decisions.

Law No. 30 of 1999 concerning Arbitration and Article 59 paragraph (3) of Law No. 48 of 2009 concerning Judicial Power grants the District Court the authority to execute arbitration decisions. Meanwhile, Law No. 3 of 2006 in conjunction with Law No. 50 of 2009 concerning Religious Courts and Article 55 of Law No. 21 of 2008 concerning Sharia Banking emphasize that sharia economic disputes are the absolute authority of the Religious Court.

These conflicting regulations give rise to conflicting norms, legal inconsistencies, multiple interpretations, and legal uncertainty for Sharia economic actors. In principle, the resolution of Sharia economic disputes should be based on Islamic law, making it more appropriate for the Religious Courts to exercise their jurisdiction, as they utilize Sharia principles as their substantive law.

Therefore, harmonization and revision of the Arbitration Law and the Judicial Power Law are needed to firmly place the authority to enforce BASYARNAS decisions with the Religious Courts. This step is crucial for creating legal certainty, justice, and synchronization of laws and regulations in resolving Sharia economic disputes in Indonesia.

- **Legal Consequences of Dualism in the Execution of Basyarnas Decisions**

The duality of regulations governing the execution of BASYARNAS decisions has created legal uncertainty in the resolution of sharia economic disputes. Regulations are supposed to create order, justice, and legal certainty. However, the conflict between the Arbitration Law and the Judicial Powers Law, which designate District Courts, and PERMA No. 14 of 2016, which designates Religious Courts, has caused confusion in the implementation of BASYARNAS decisions.

This dualism arises from a lack of harmonization and synchronization of regulations, policy changes, political interests, and weak regulatory formulation. This results in conflicting norms, multiple interpretations, and legal inconsistencies that are detrimental to the public and Sharia business actors.

To resolve these normative conflicts, legal principles such as lex specialis derogat legi generali, lex superior derogat legi inferiori, and lex posterior derogat legi priori are used. If conflicts persist, revision or revocation of conflicting regulations is necessary to ensure legal certainty, justice, and effectiveness in the implementation of BASYARNAS decisions.

Thus, the dualism in the regulation of the execution of decisions of the National Sharia Arbitration Board (Basyarnas) has legal implications in the form of legal uncertainty in terms of the implementation of the execution of Basyarnas decisions because in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and the Law on Judicial Power, the execution of Basyarnas decisions is mandated to the District Court, while based on PERMA No. 14 of 2016 concerning Procedures for the Settlement of Sharia Economic Disputes it is mandated to the Religious Court.

- **Legal Analysis of the Regulations on the Authority to Execute BASYARNAS Decisions**

Legislation is a subsystem of a larger system, namely the legal system in force in Indonesia, because it also contains several parts or components that are interconnected and influence each other to achieve certain goals, namely tranquility, peace and order in society. [16]

Referring to the provisions in Article 60 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which states: "The Arbitration Decision is final and has permanent and binding legal force."

It is clear that the decision of Basyarnas (National Sharia Arbitration Board) is a final decision and cannot be subject to legal action such as cassation, appeal or judicial review. Therefore, the parties are required to implement the Basyarnas decision voluntarily. However, if the parties are unable to implement the Basyarnas decision voluntarily, in accordance with the provisions of Article 61 of Law Number 30 of 1999 which states: "in the event that the parties do not implement the arbitration decision voluntarily, the decision is implemented based on the order of the Head of the District Court at the request of one of the disputing parties."

From these provisions, in accordance with the authority granted by attribution by Law Number 30 of 1999 which is also the legal umbrella for BASYARNAS itself, it is known that the authority to carry out the execution of Basyarnas decisions is the District Court.

However, based on the provisions of Article 49 of Law Number 3 of 2006 concerning Religious Courts which states: "Religious Courts have the duty and authority to examine, decide and settle cases at the first level between people who are Muslim in the fields of: a) marriage; b) inheritance; c) wills; d) grants; e) waqf; f) zakat; g) infaq; h) shadaqah; and i) sharia economics" it is clear that these provisions are expressly gives authority to the Religious Court to handle the resolution of sharia economic disputes, however, the authority of the Religious Court is not accompanied by legal certainty regarding non-litigation dispute resolution in this case through Basyarnas. Which judicial environment is authorized to carry out the execution of Basyarnas' decision, this is what has become a polemic, because in the laws and regulations under it there are different rules regarding the

[16] M. Bakri, *Introduction to Indonesian Law (Indonesian Legal System in the Reform Era),* UB Press, Malang, p. 276.

courts authorized to carry out the execution of BASYARNAS decisions.

The Supreme Court issued SEMA No. 8 of 2008, which granted execution authority to the Religious Courts. However, following the enactment of Law No. 48 of 2009 concerning Judicial Power, specifically Article 59 paragraph (3), this authority was returned to the District Courts. This was reinforced through SEMA No. 8 of 2010.

Furthermore, Constitutional Court Decision No. 93/PUU-X/2012 emphasized that the resolution of sharia economic disputes falls under the jurisdiction of the Religious Courts. Furthermore, Supreme Court Regulation No. 14 of 2016 also stipulates that the enforcement of sharia arbitration decisions is carried out by the Religious Courts. However, because Law No. 30 of 1999 and Law No. 48 of 2009 still designate the District Courts, there is a disharmony between the law and the Supreme Court Regulation.

Based on the principle *of lex specialis derogat legi generalis,* the Religious Courts Law can be viewed as a special rule (*lex specialis*) that specifically regulates the authority to resolve sharia economic disputes, while Law Number 30 of 1999 is a general rule (*lex generalis*) that regulates arbitration in general without distinguishing between conventional arbitration and sharia arbitration. Therefore, for sharia economic disputes resolved through BASYARNAS, the substantive execution authority should lie with the Religious Courts as institutions that have absolute competence in the field of sharia economics. This opinion is in line with the view of Jimly Asshiddiqie who includes Supreme Court regulations as special regulations and therefore subject to the principle of *lex specialis derogat legi generalis.* [17]

In addition, provisions regarding the resolution of sharia economic disputes can also be found in Law Number 21 of 2008 concerning Sharia Banking, specifically Article 55, which in principle stipulates that the resolution of sharia banking disputes is carried out by the Religious Court. However, the provisions in the Sharia Banking Law are general in nature because they only regulate the resolution of sharia economic disputes as a whole and do not specifically regulate the implementation of the execution of sharia arbitration decisions. This is different from Law Number 48 of 2009 concerning Judicial Power, specifically Article 59 paragraph (3) and its explanation, which explicitly states that the implementation of arbitration decisions, including sharia arbitration, is carried out based on the order of the Head of the District Court. Thus, the Law on Judicial Power provides more specific regulations regarding the mechanism for implementing arbitration decisions compared to the Sharia Banking Law, which only regulates the resolution of sharia economic disputes in general.

On the other hand, PERMA Number 14 of 2016 does indeed grant the Religious Courts the authority to handle the settlement of sharia economic cases, including the execution of BASYARNAS decisions. However, in its implementation, the implementation of PERMA still refers to the provisions of Law Number 30 of 1999, particularly regarding the procedures for implementing the execution of arbitration decisions, which designates the District Court as the institution authorized to issue execution orders. In other words, although PERMA Number 14 of 2016 grants the Religious Courts some authority, the implementation mechanism is not yet completely free from the general arbitration regulatory regime in Law Number 30 of 1999, which normatively still places the District Court as the executor of execution.

As a result, although substantively the authority to resolve sharia economic disputes is the absolute competence of the Religious Court based on the Religious Courts Law and strengthened by the Sharia Banking Law, the existence of Article 59 paragraph (3) of Law Number 48 of 2009 which expressly regulates the implementation of sharia arbitration execution by the District Court, plus the continued reference to the provisions of Law Number 30 of 1999 in the implementation of PERMA Number 14 of 2016, gives rise to disharmony in norms regarding the institution authorized to carry out the execution of BASYARNAS decisions.

The Supreme Court Regulation (“PERMA”) is one type of statutory regulation as stipulated in Article 8 paragraph (1) **of** Law No. 12 of 2011 concerning the Formation of Statutory Regulations which reads: “ Types of Statutory Regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, bodies, institutions or commissions of the same level which are established by Law or by the Government on the orders of Law, the Provincial People's Representative Council, the Governor, the Regency/City People's Representative Council, the Regent/Mayor, the Village Head or those of the same level.”

According to Maria Farida Indrati S.'s view, statutory regulations can only be formed by institutions that have legislative authority *(wetgevingsbevoegheid),* namely the power to form laws or *rechtsvorming.* [18]

Article 1 number 2 of Law Number 12 of 2011 concerning the Formation of Legislation explains that statutory regulations are defined as written regulations containing generally binding legal norms and are formed or stipulated by state institutions or authorized officials through procedures stipulated in statutory regulations. Meanwhile, the Supreme Court is a state institution that is authorized by law to create statutory regulations. The statutory regulations formed by the Supreme Court are recognized and have binding legal force as long as they are ordered by higher statutory regulations or are formed based on authority (*vide* Article 8 paragraph (2) of Law 12/2011). What is meant by based on authority according to the explanation of Article 8 of Law 12/2011 is the implementation of certain government affairs in accordance with the provisions of statutory regulations.

According to Yuliandri, the phrase "legal force" above is in accordance with the hierarchy of laws and regulations, namely the hierarchy of each type of law based on the principle that lower-level laws and regulations must not conflict with higher-level laws. Yuliandri argues that other types of regulations (in this context, regulations issued by the Supreme Court) should also be subject to the principle of

[17] Jimly Asshiddiqie, *Constitution and Constitutionalism,* Sinar Grafika, Jakarta, 2011, p. 288.

[18] Maria Farida Indrati Soeprapto, *Legal Science: The Basics of Its Formation*, Kanisius, Yogyakarta, 1998, p. 54.

hierarchy. [19]
Based on the description above, the provisions of Law Number 30 of 1999 remain the legal basis for enforcing BASYARNAS decisions. Furthermore, Law Number 48 of 2009 also grants absolute authority to District Courts in enforcing Sharia arbitration decisions.
On the other hand, Supreme Court Regulation No. 14 of 2016, established by the Supreme Court based on its attribution authority, has authorized Religious Courts to handle the execution of BASYARNAS decisions. However, the implementation of this execution still refers to the provisions of Law No. 30 of 1999, which designates District Courts as the authorized institution, thus creating disharmony in norms.
Based on the principle of *lex superior derogat legi inferiori,* higher regulations override lower regulations. Therefore, the validity of PERMA No. 14 of 2016 should be supported by regulations at the statutory level that align with the provisions and principles of Sharia arbitration.
Thus, Law Number 30 of 1999, which only regulates arbitration in general, is inconsistent with PERMA Number 14 of 2016. Therefore, a specific law on sharia arbitration is necessary as a stronger legal basis, as there is currently no specific regulation (law) that explicitly regulates sharia arbitration. Consequently, the execution of Basyarnas decisions has not been fully based on sharia principles. This is important so that the implementation of subordinate regulations, including PERMA Number 14 of 2016, is in line with the regulations above it, while also ensuring that the execution of Basyarnas decisions can be fully based on sharia principles and provide legal certainty for justice seekers.

- **Regulations on the Execution of Decisions of the National Sharia Arbitration Board According to Positive Law in Indonesia Basyarnas Decision Execution Procedure**

The procedures for enforcing arbitration awards are regulated in Chapter VI concerning the Enforcement of Arbitration Awards in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This provision grants the District Court the authority to enforce the award. However, this law does not explicitly regulate sharia arbitration or the enforcement of sharia arbitration awards.
Meanwhile, provisions regarding the implementation of the execution of sharia arbitration decisions are specifically regulated in Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settling Sharia Economic Disputes. In Chapter IX concerning the Implementation of Decisions, Article 13 paragraph (2) emphasizes that the authority to implement the execution of sharia arbitration decisions (BASYARNAS) is the Religious Court.
The execution of sharia arbitration decisions, as with the execution of court decisions, must follow the general principles of execution, namely: [20] *First,* only decisions that have permanent legal force *(in kracht van gewijsde) can be enforced.* There is a substantial difference between arbitration and courts in determining when a decision has permanent legal force. An arbitration decision has permanent legal force from the moment it is issued by the arbitrator or arbitration panel concerned. Article 60 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates the *"final and binding" nature* of arbitration decisions from the moment the decision is read. Arbitration decisions cannot be appealed, cassated, or reviewed. Court decisions, on the other hand, have permanent legal force from the moment there are no further legal remedies. This can occur at the first instance, the appellate instance, or the cassation instance. *Second,* an enforceable decision contains a condemnatory dictum or injunction. According to civil procedural law, an enforceable decision is one whose dictum is *condemnatory,* that is, a decision that punishes or orders the losing party to perform a certain act. A decision with a declaratory or constitutive dictum cannot be enforced. This provision applies to court decisions, which also applies *mutatis mutandis* to arbitration decisions. *Third,* the execution action is carried out if the applicant for execution, as the losing or sentenced party, is unwilling to voluntarily *(in good faith)* comply with the decision's order. If the applicant for execution is willing to comply with the decision voluntarily, then execution is not necessary. Execution is essentially a coercive action *(execution forcee)* against the applicant for execution who is unwilling to voluntarily comply with the contents of the decision, based on the applicant's request. Thus, the execution of a sharia arbitration decision by the Religious Court is essentially *an ultimum remidium* or *the last resort,* the implementation of which must of course be adjusted to the principles of humanity and justice contained in the values of Pancasila. *Fourth,* the execution action is carried out on the orders and under the leadership of the Head of the District Court *(op last en onder leiding van den voorzitter van den landraad).* The execution of civil decisions of the district court and arbitration decisions is basically *ex officio* the authority of the Head of the District Court. In this case, it relates to Sharia arbitration decisions which are the authority of the Religious Court so that they are carried out on the orders and under the leadership of the Head of the Religious Court (vide PERMA Number 14 of 2016 Article 13 paragraph (2)).
The arbitration institution, in this case BASYARNAS, does not have the authority to enforce its own decision. This is due to, among other things, first, the arbitration institution is not a state institution, so arbitration does not have public authority that can be enforced against other parties; second, there is no legal basis for the arbitration institution to enforce its own decision; and third, the arbitration institution does not have a bailiff *(deurwaarder)* as is the case in judicial institutions whose duty is to carry out actions related to execution. [21]
The provisions in Article 195 (1) HIR., 12 or Article 206 (1) Rbg., regulate the authority to execute civil court decisions that have permanent legal force. The execution of Sharia arbitration decisions (BASYARNAS) is the authority of the Chairman of the Religious Court. Technically, the procedural execution of Sharia arbitration decisions uses the same legal basis as the execution of court decisions. The authority of the Chairman of the Religious Court includes, among other

[19] Yuliandri, *Principles for the Formation of Good Legislation: Ideas for the Formation of Sustainable Laws,* RajaGrafindo Persada, Jakarta, 2010, pp. 67 – 68.
[20] M. Yahya Harahap, *Scope of Execution Problems in the Civil Sector,* Gramedia, Jakarta, 1988, pp. 4-19.
[21] Panusunan Harahap, " *Executable Arbitration Decisions by Judicial Institutions* " Journal of Law and Justice, Volume 7 Number 1, March 2018, p. 132.

things, receiving requests for execution, determining execution, carrying out *aanmaning,* determining execution seizures, and ordering and leading the execution process.

- **Stages/Procedures for Execution**

According to Article 13 Paragraph (3) of Supreme Court Regulation No. 14 of 2016 concerning Procedures for Settling Sharia Economic Cases, it is stated that the procedures for implementing arbitration decisions as referred to in paragraph (2) of the Supreme Court Regulation refer to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The procedures for executing arbitration decisions (in this case Basyarnas) are regulated in Articles 59-64 of the Arbitration Law, namely:

1. Within a period of 30 (thirty) days from the date the decision is pronounced, the original or authentic copy of the arbitration decision, in this case the sharia arbitration decision (BASYARNAS), must be submitted and registered by the arbitrator or his attorney to the Clerk of the Religious Court (Article 59 paragraph 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
2. The submission and registration as referred to in paragraph (1) is carried out by recording and signing at the end or at the edge of the decision by the Clerk of the Religious Court and the arbitrator or his attorney who submitted it, and this record constitutes a registration deed. (Article 59 paragraph 2 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
3. The arbitrator or his attorney must submit the decision and the original sheet of appointment as arbitrator or an authentic copy to the Clerk of the Religious Court (Article 59 paragraph 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
4. Failure to comply with the provisions as referred to in Article 59 paragraph (1) above will result in the arbitration decision not being able to be implemented. (Article 59 paragraph 4 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
5. All costs associated with the preparation of the registration deed are borne by the parties. (Article 59 paragraph 5 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
6. In the event that the parties do not implement the arbitration decision voluntarily, the decision will be implemented based on the order of the Head of the Religious Court at the request of one of the disputing parties; (Article 61 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
7. The order as referred to in Article 61 shall be given within a maximum of 30 (thirty) days after the execution application is registered with the Clerk of the Religious Court. (Article 62 paragraph 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
8. The Head of the Religious Court as referred to in paragraph (1) before issuing an order for implementation, must first examine whether the arbitration decision meets the provisions of Article 4 and Article 5 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and does not conflict with morality and public order. (Article 62 paragraph 2 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
9. In the event that the arbitration decision does not fulfill the provisions as referred to in Article 62 paragraph (2), the Chairman of the Religious Court shall reject the application for execution and no legal remedy shall be available against the decision of the Chairman of the Religious Court. (Article 62 paragraph 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
10. The Chief Justice of the Religious Court does not examine the reasons or considerations of the arbitration decision. (Article 62 paragraph 4 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
11. The order of the Chief Justice of the Religious Court is written on the original sheet and an authentic copy of the arbitration decision issued. (Article 63 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution);
12. Sharia arbitration decisions (BASYARNAS) that have been issued with an order from the Head of the Religious Court, are implemented in accordance with the provisions for implementing decisions in civil cases whose decisions have permanent legal force. (Article 64 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution).

Based on the series of procedures and stages of execution as described, it can be understood that although Supreme Court Regulation Number 14 of 2016 grants the Religious Courts the authority to execute Sharia arbitration decisions (BASYARNAS), this regulation basically still shows normative dependence on the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This is reflected in the procedural references that still refer to the articles in the law, which conceptually still places the authority to execute arbitration decisions within the scope of competence of the District Court.

In this context, a fundamental question arises: does the existence of PERMA Number 14 of 2016 definitively guarantee that Religious Courts have absolute authority in executing BASYARNAS decisions? This question is relevant considering that both Law Number 30 of 1999 and the Law on Judicial Power still grant absolute authority in executing BASYARNAS decisions to District Courts. Thus, a dualistic state of authority regulation has emerged that has the potential to give rise to normative conflicts.

When analyzed through the perspective of the hierarchy of legal regulations, this situation becomes even more problematic. Within the structure of legal norms, the Supreme Court Regulation (PERMA) is subordinate to the law, and therefore subject to the principle of *lex superior derogat legi inferiori,* which implies that higher regulations override lower regulations. Therefore, if a PERMA provides regulations that differ from or deviate from statutory provisions, its validity can theoretically be questioned.

A further implication of this disharmony is the disruption of the principle of legal certainty. As stated by Gustav Radbruch, legal certainty (*rechtssicherheit*) requires clarity, consistency, and predictability of legal norms by legal subjects, meaning that legal norms must be formulated firmly

to avoid errors in interpretation, be easy to implement, and not easily changed. In this context, the dualism of authority between the Religious Court and the District Court actually creates a space of uncertainty, particularly in the implementation of BASYARNAS decisions.

From a justice perspective, execution is essentially a crucial instrument for realizing the rights of the victorious party. Execution is a form of corrective justice, as taught by Aristotle, namely restoring the rights of the injured party due to the voluntary failure to comply with the decision. Therefore, unclear authority in carrying out execution has the potential to hinder the realization of this justice, as the party who should receive the restoration of their rights faces uncertainty regarding the execution mechanism.

Furthermore, the ambiguity of these norms has the potential to open up opportunities for deviations in practice, including the possibility of parties intentionally failing to voluntarily enforce arbitration decisions by exploiting the existing loopholes in the duality of authority. Under such conditions, it is possible for practices to arise that deviate from the principles of a clean and integrated judiciary, such as attempts to seek advantageous forums (*forum shopping*) or even collusive practices that undermine the objectives of law enforcement. Therefore, this disharmony in the regulation of enforcement authority not only impacts the normative aspect but also has serious implications for the effectiveness of law enforcement and public trust in judicial institutions.

Therefore, in the context of regulating the execution of BASYARNAS decisions, a regulation at the level of a law is needed that specifically regulates sharia arbitration. The presence of this regulation aims to provide a more comprehensive and harmonious legal basis, so that the provisions regarding the procedures for implementing the execution of BASYARNAS decisions in PERMA Number 14 of 2016, which grants the authority to execute BASYARNAS decisions to Religious Courts, have vertical alignment with higher-level laws and regulations. Thus, the implementation of the execution of decisions not only obtains legal certainty, but can also be carried out consistently in accordance with the sharia principles that form the basis of sharia arbitration (BASYARNAS).

4. Conclusion

The regulation of BASYARNAS's authority to execute decisions still experiences dualism between the authority of the District Court based on Law Number 30 of 1999 and Law Number 48 of 2009, with the authority of the Religious Court based on Law Number 3 of 2006 and PERMA Number 14 of 2016. This disharmony creates legal uncertainty because PERMA must not conflict with the law. As a result, BASYARNAS is not yet fully independent because the implementation of its decision execution still depends on general courts, even though substantially this authority should lie with the Religious Courts.

The regulations governing the execution of BASYARNAS decisions in PERMA No. 14 of 2016 still refer to Law No. 30 of 1999, which regulates arbitration in general, and therefore do not fully comply with sharia principles. Therefore, a statutory regulation specifically governing sharia arbitration is needed to ensure legal certainty and align execution with sharia principles.

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