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The Effectiveness of Sharia Economic Dispute Resolution in the Commercial Court related to Sharia Bankruptcy after the Constitutional Court Decision No. 93/PUU-X/2012 concerning Legal Certainty in the Settlement of Sharia Banking Cases

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Abstract

This research aims to identify the sources of material and formal law applied in the settlement of sharia economic disputes, evaluate the effectiveness of its implementation, and analyse the obstacles faced by religious courts at various levels. The data used includes cases in several religious courts and commercial courts in Indonesia in the period 2014-2020. This research uses a qualitative method with a descriptive-analytical approach. Data were collected through document studies, interviews with religious court judges, and a review of relevant laws and regulations. Analyses were conducted to evaluate the application of material and formal law in dispute resolution, as well as to identify obstacles faced by religious courts in practice. The results of the study show that the material legal sources used in resolving sharia economic disputes include the Qur'an, Hadith, DSN-MUI fatwas, laws and regulations, and jurisprudence. Formal legal sources still depend on HIR/RBg as well as special regulations such as PERMA No. 14 of 2016. The religious court institutionally has shown readiness by increasing human resources, applying technology through e-courts, as well as efforts to provide technical guidance and certification of sharia economic judges. Religious courts have great potential to become the main institution in resolving sharia economic disputes. Improving regulations, codifying procedural law, and establishing sharia commercial courts in the future are needed to ensure legal certainty and efficiency of the dispute resolution process.

Keywords: *Sharia Economic Disputes, Religious Courts, Islamic Law, E-Courts.*

Abstrak

Penelitian ini bertujuan untuk mengidentifikasi sumber hukum materiil dan formil yang diterapkan dalam penyelesaian sengketa ekonomi syariah, mengevaluasi efektivitas penerapannya, dan menganalisis kendala yang

dihadapi pengadilan agama di berbagai tingkatan. Data yang digunakan meliputi kasus-kasus di beberapa pengadilan agama dan pengadilan niaga di Indonesia dalam kurun waktu 2014-2020. Penelitian ini menggunakan metode kualitatif dengan pendekatan deskriptif-analitis. Data dikumpulkan melalui studi dokumen, wawancara dengan hakim pengadilan agama, dan tinjauan terhadap peraturan perundang-undangan yang relevan. Analisis dilakukan untuk mengevaluasi penerapan hukum materiil dan formil dalam penyelesaian sengketa, serta mengidentifikasi kendala yang dihadapi pengadilan agama dalam praktiknya. Hasil penelitian menunjukkan bahwa sumber hukum materiil yang digunakan dalam penyelesaian sengketa ekonomi syariah antara lain Al-Qur'an, Hadis, fatwa DSN-MUI, peraturan perundang-undangan, dan yurisprudensi. Sumber hukum formal masih bergantung pada HIR/RBg serta peraturan khusus seperti PERMA No. 14 Tahun 2016. Peradilan agama secara kelembagaan telah menunjukkan kesiapan dengan peningkatan sumber daya manusia, penerapan teknologi melalui e-court, serta upaya memberikan bimbingan teknis dan sertifikasi hakim ekonomi syariah. Pengadilan agama memiliki potensi besar untuk menjadi lembaga utama dalam menyelesaikan sengketa ekonomi syariah. Penyempurnaan regulasi, kodifikasi hukum acara, dan pembentukan pengadilan niaga syariah di masa mendatang sangat diperlukan untuk menjamin kepastian hukum dan efisiensi proses penyelesaian sengketa.

Kata kunci: *Sengketa ekonomi syariah, pengadilan agama, hukum Islam, e-court,*

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Introduction

The condition of the sharia economy in Indonesia, which continues to show positive developments, is a domestic economic condition that is seen as an opportunity for foreign investors who want to invest their capital in the form of sharia investment. The implementation of the ASEAN Economic Community at the end of 2015 is expected to have a positive impact on national economic growth, especially in the trade

and investment sectors.[1] In the trade sector, the MEA will be a good opportunity because trade barriers will tend to decrease or even become non-existent. This will have an impact on increasing Indonesia's exports while the investment sector can create and develop investment in various fields, including the Islamic economy.

Based on the Islamic Financial Services Board (IFSB) Report, Indonesia's Islamic banking assets are ranked 9th largest globally reaching USD 28.08 billion. According to the Global Islamic Finance Report 2017, Islamic financial assets ranked 10th globally, reaching USD66 billion, and the Islamic Finance Country Index increased to 6th in 2018, from 7th in 2017. Meanwhile, in June 2018 the share of Indonesian banks in terms of assets reached around 6 percent of all banks in Indonesia while the total share of assets in the Islamic finance industry in Indonesia was around 8.5 percent of all assets of the financial industry in Indonesia.

The development of the national economy should be accompanied by the development of the law. This is because these two fields are in direct contact with people's lives. When viewed in terms of its function, Milton Friedman, said that there are 3 (three) legal functions, namely: Supervision or social control (Social Control); Dispute settlement; and Social Engineering.

Roscoe Pound, argues that the law functions as a tool of social engineering. The idea of Roscoe Pound departs from the understanding of law. For Roscoe Pound, law is not only a set of systems of rules, doctrines, and rules or principles, created and promulgated by the authorities, but also processes that embody the law through the exercise of power. In order for the law to perform its function, the Pound makes a list of interests. The list is a classification of interests consisting of public interests; and individual interests.[2] Mochtar Kusumaatmadja, arguing that the law functions as a tool of social engineering, modifies the concept of the Roscoe Pound. This is based on the assumption that there must be order or order in development, renewal is something that is desirable or even considered necessary. Therefore, law functions as a tool (regulator) or means of development in the sense of channeling the direction of human activities in the direction desired by development or renewal.

[1] Nine Haryanti, Yini Adicahya, and Rizky Zulfia Ningrum, 'Peran Baznas Dalam Meningkatkan Perekonomian Masyarakat', *Iqtisadiya: Jurnal Ilmu Ekonomi Islam*, 7.14 (2020), 103–12.

[2] Mahathir Muhammad Iqbal, 'Merumuskan Konsep Fiqh Islam Perspektif Indonesia', *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum*, 2.1 (2017), 1–20 <https://doi.org/10.22515/alahkam.v2i1.820>.

Law has a very close relationship with other fields in society, including the economic, social, cultural, and technological fields. All of this means that the process of forming a law must be able to accommodate all things that are closely related to the field or issue to be regulated by the relevant law. Therefore, an adequate definition of law should not only view the law as a set of rules or principles that govern human life in society, but must also include the institutions and processes necessary to realize the law in reality. This has the consequence that the law must not be left behind with the development process that occurs in society by being able to encourage and direct development as a reflection of the goals of modern law. The function of law in development is not only as a tool of social control, but also to make efforts to mobilize people to behave in accordance with the new order to achieve an aspirational state of society.[3]

The development of the sharia economy in Indonesia should be accompanied by regulatory conditions that support the realization of legal goals, namely justice, legal certainty, and utility. The more and more extensive business activities, the higher the frequency of disputes so that it is impossible to avoid disputes. Allowing business disputes to be resolved too late will result in inefficient economic development, decreased productivity, a decline in the business world, and an increase in production costs. Thus, anticipatory regulations are needed, especially rules related to dispute resolution.

The litigation institution that is given the authority to be able to receive, examine, adjudicate, and decide sharia economic cases is the Religious Court as stipulated in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts and Article 55 paragraph (1) of Law Number 21 of 2008 concerning Sharia Banking (hereinafter referred to as the Sharia Banking Law). The above two regulations were strengthened by the issuance of the Constitutional Court Decision on August 12, 2012 regarding the application for a material test lawsuit against the Sharia Banking Law, namely Article 55 paragraph (2) and paragraph (3) which regulates the settlement of Islamic banking disputes.

[3] Intan Nevia Cahyana, 'Perlindungan Hukum Terhadap Keberadaan Dan Peran Serta Masyarakat Hukum Adat Dalam Pengelolaan Hutan Di Kawasaan Hutan Adat', *Jurnal Hukum PRIORIS*, 2017 <https://doi.org/10.25105/prio.v6i2.2440>.

Thus, the court institution that is given the authority to receive, examine, and decide sharia economic cases is only the Religious Court. This Constitutional Court decision is expanded in its application, not only specifically for Islamic banking disputes but also for Islamic economic disputes in general, which includes Sharia Banks; Sharia Microfinance Institutions; Sharia Insurance; Sharia Reinsurance; Sharia Mutual Funds; Sharia Bonds and Sharia Medium-Term Securities; Sharia Securities; Sharia Financing; Sharia Pawnshops; Sharia Financial Institution Pension Fund; and Sharia Business, but in fact, in 2013-2014, there were (four) commercial court decisions that resolved sharia economic disputes in bankruptcy cases, namely:

1. Case Decision Number 10/Pdt.Sus/Bankruptcy/2013/PN. Niaga.Jkt.Pst;
2. Case Decision Number 13/Palit/2013/PN. JKT. PST;
3. Case Decision Number 03/Bankruptcy/2014/PN. Niaga.Smg;
4. Case Decision Number 36/pdt.sus-pellet/2016/pn pn.jkt.pst.

The first previous research was an article entitled "Analysis of the Constitutional Court Decision No.93/PUU-X/2012" which was published in the Muara Ilmu Law Journal. This study discusses in depth the impact of the Constitutional Court's decision on the settlement of Islamic banking disputes, especially in terms of the authority of the Religious Court as a competent institution to handle these disputes. The author also analyzes the readiness of the Religious Court in implementing the decision thoroughly and consistently.

The second research was entitled "Quo Vadis Settlement of Bankruptcy Cases and Postponement of Debt Payment Obligations (PKPU) in Sharia Financial Institutions", which was published by the Bandung High Court of Religion. This study focuses on the analysis of the absolute competence of Religious Courts in resolving sharia economic disputes after the Constitutional Court Decision No.93/PUU-X/2012. This article also highlights the implementation of this authority in handling bankruptcy and PKPU cases, as well as the challenges faced by judicial institutions in ensuring the consistency of the application of sharia principles.

The third research is an article entitled "Legal Analysis of Sharia Bankruptcy Dispute Resolution in Indonesia", which was published on the ResearchGate platform. This study analyzes the mechanism for resolving bankruptcy disputes in Islamic

financial institutions after the issuance of the Constitutional Court decision. The main focus is on the implications of the decision on legal certainty and how judicial practice is able to ensure the efficient and fair application of sharia principles.

Method

This study uses an analytical descriptive method with the aim of objectively describing the implementation of sharia economic dispute resolution, especially in bankruptcy cases. The approach applied is normative juridical, which relies on the analysis of laws and regulations, legal principles, and vertical and horizontal synchronization between regulations. This study is designed to identify legal problems that arise in the practice of resolving sharia economic disputes after the Constitutional Court decision Number 93/PUU-X/2012. Data collection was carried out through field research (field research). Field research, on the other hand, is conducted through interviews with judicial officials to obtain empirical data related to the implementation of sharia economic dispute resolution in court.

The data analysis technique used is qualitative analysis, where the collected data is systematically analyzed to describe facts, identify problems, and provide solutions based on legal theories and principles. The data that has been analyzed are then presented in a descriptive form, with the support of a relevant theoretical framework. This approach aims to provide comprehensive recommendations related to the development of judicial regulations and practices in the resolution of sharia economic disputes. Through this methodology, the research seeks to provide a comprehensive overview of the effectiveness of law enforcement in resolving sharia economic disputes. In addition, this study also identifies obstacles faced by judicial institutions, such as regulatory inharmony and limitations of special procedure law. The results of the research are expected to be the basis for the development of better regulations to ensure legal certainty, fairness, and efficiency in the resolution of sharia economic disputes.

Discussion

Judge Mustofa at the Bandung City Court said that the Bandung City Court had accepted and resolved sharia economic disputes with human resources and facilities and

infrastructure that were quite supportive.[4] Sharia economic cases submitted to the Bandung City PA are all in the field of Islamic banks with the material of a breach of promise (default) lawsuit. The material legal sources used in resolving sharia economic disputes in the Bandung City Court are based on Islamic legal sources, namely the Qur'an and As-sunnah accompanied by laws and regulations, namely PERMA No.2 of 2008, and DSN-MUI Fatwas.

The Bandung City PA until August 2020 has completed 20 (seventeen) sharia economic cases with details, 1 (one) case in 2016, 2 (two) cases in 2017, 2 (two) cases in 2018, and 13 (twelve) cases in 2019. In 2019, 12 cases have been decided while the remaining 1 case will be resolved in 2020. In the 12 decisions, there are 2 (two) decisions that apply for appeal. In 2020, there are 2 matters of sharia economics. The Bandung City Court has 18 judges who already have competence in the field of sharia economics.

As a result of an interview with Judge M. Taufiq H.Z., as the High Judge of PTA Bandung as well as the Chairman of PTA Bandung, he said that PTA Bandung had accepted, examined, adjudicated, and decided sharia economic cases at the appellate level. PTA Bandung already has a special panel to resolve sharia economic disputes and prepare a panel of judges who already have a license or certificate for sharia economic dispute resolution. The material legal sources used in resolving sharia economic disputes at the appellate level are the sources of Islamic law, namely the Qur'an and As-sunnah accompanied by laws and regulations, namely PERMA No.2 of 2008, DSN-MUI Fatwas, and contracts or agreements that have been made and agreed upon by the previous parties. PTA Bandung has resolved sharia economic disputes since the last 5 (five) years (2016-2020) at the appeal level, namely as many as 17 (*seventeen*) sharia economic cases in the field of Islamic banks with lawsuits for breach of promise (*wanprestatie*) and unlawful acts (*onrechtmatigedaad*).

Director of Religious Justice Technical Personnel Development of the Religious Justice Agency of the Supreme Court of the Republic of Indonesia (Dirbinganis Badilag MA RI), Candra Boy Seroza said that the material law used in religious courts is based

[4] Based on the results of an interview with Judge Mustofa as the judge of the Bandung City Court, on Tuesday, August 18, 2020, at 10.30-11.30 WIB, at the Bandung City Court Office on Jalan Terusan Jakarta No.120, Antapani, Bandung City.

on Islamic law, including in sharia economic disputes, only related to bankruptcy disputes and PKPU that use sharia contracts have not been explicitly regulated both in regulations related to religious justice and in the form of PERMA even though it has been implicitly regulated in Law No. 3 of 2006 and Constitutional Court Decision No. 93/PUU-X/2012.[5]

Director of Religious Justice Technical Personnel Development of the Religious Justice Agency of the Supreme Court of the Republic of Indonesia (Dirbinganis Badilag MA RI), Candra Boy Seroza he said regarding the effectiveness of sharia economic case decisions in religious courts by saying that with indicators of the lack of execution applications for sharia economic dispute decisions. Therefore, quantitatively the settlement of the case has been accepted by the community. The obedience and compliance of Islamic banking institutions to resolve disputes to the PA illustrates the high level of trust of the parties in the PA as well as showing compliance to implement the laws and regulations correctly and well. Meanwhile, from the other side, PA has also been able to carry out the mandate to solve problems well.

Based on the results of observations to PTA Bandung, at least in the last 5 (five) years (2016-2020), PTA Bandung has received 17 appeal cases of sharia economic cases. Thus, the culture in sharia economic dispute settlement law in Indonesia has experienced positive developments with few appeal cases filed. This situation is due to the very serious readiness of the PA to be able to exercise the authority given by the Law, including in resolving sharia economic disputes professionally so as to produce a level of satisfaction from the community, especially from justice seekers.

Implementation of the Principle of Legal Certainty in Sharia Economic Dispute Resolution in Bankruptcy Cases

The implementation of the principle of legal certainty in the settlement of sharia economic disputes in bankruptcy cases began with a review of the results of a 2015 study, concluding that the failure of law in Indonesia to create legal certainty in the settlement of sharia economic disputes in bankruptcy cases in the field of sharia banking

[5] Silvi Yuniardi, 'Penyelesaian Sengketa Perbankan Syariah Berdasarkan Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah Pasca Keputusan Mahkamah Konstitusi No 93/PUU-X/2012 Dihubungkan Dengan Asas Kepastian Hukum (Studi Kasus Putusan No.28/PDT.G/2018PT.BDG)', *Nurani Hukum*, 2.2 (2020), 35 <https://doi.org/10.51825/nhk.v2i2.8656>.

is a factor in the existence of legal dualism. The results of the study are reinforced by the results of a 2018 study which concluded that there has been a disharmony of laws related to the handling of sharia economic disputes in court. Research in 2020 resulted in differences in legal policies in the establishment of Islamic Courts and Commercial Courts causing inconsistencies in absolute authority norms, suggesting the granting of expanded authority to resolve sharia economic disputes in bankruptcy cases to PAs with historical considerations.

In this study, 4 (four) sharia economic disputes in bankruptcy cases have been found, which are as follows:

Case Decision Number: 10/Pdt.Sus/Bankruptcy/2013/PN. Niaga.Jkt.Pst. This case started from the provision of financing facilities in the form of murabahah financing contracts by BNI Syariah to Purdi E Chandra. The financing was carried out on August 29, 2007 with an amount of Rp3.3 billion and May 9, 2008 with a total of Rp20.9 billion. The financing should be paid in installments at the end of every month. However, until the PKPU application was submitted, the respondent did not complete its obligations. PT. BNI Syariah has submitted summons 3 (three) times, namely on December 1, 2011, December 16, 2011, and December 27, 2011. The bankruptcy application was registered on February 18, 2013 and received a decision on June 12, 2013 to the Central Jakarta Commercial Court.

The Central Jakarta Commercial Court Judges on duty were chaired by Judge Lidya Sasando Parapat with Member Judges Kasianus Telaumbanua and Nawawi Pomolango having given their verdict. The decision stated that the PKPU Respondent was in a state of bankruptcy with all its legal consequences. The panel of judges decided that Purdi E Chandra was declared bankrupt because the provisions of Article 281 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU were not fulfilled, namely the peace effort between PT BNI Syariah and Purdi E Chandra did not yield results because there was one of the creditors who did not want to reconcile, so the supervising judge reported the result of not reaching the peace agreement.

Case Number 13/Bankruptcy/2013/PN. JKT PST. The basis for filing a bankruptcy lawsuit is the Murabahah Financing contract agreed by the previous parties in the amount of IDR 13.85 billion for 41 units of field vehicles. The total total

obligations that have not been paid by PT. Haseda Remindo to Bank Syariah Bukopin amounting to IDR 8.999 billion. The details are IDR 7.05 billion as the principal price, IDR 1.36 billion margin, and IDR 579.04 million for Ta'wid}. The bankruptcy application was filed because PT. Haseda Remindo did not meet the payment of the 25th to 47th debt installments as agreed by the parties. The due date for installment payments is the 10th of each month. PT. Haseda Remindo last paid the installment on December 28, 2012, that was for the payment due on March 10, 2011. In the Murabah contract agreed upon by the parties, the dispute resolution institution has been determined, namely in the sharia arbitration institution. On March 11, 2013, the Panel of Judges chaired by Amin Sutikno gave a decision, namely the Central Jakarta Commercial Court granted Haseda's application for Temporary PKPU. PT. Haseda Remindo. The Panel of Judges argued that the submission of the PKPU application was in accordance with Article 229 paragraphs (3) and (4) of Law No. 37 of 2004 concerning Bankruptcy and PKPU and appointed Nuzul Hakim and M. Prasetyo Suharyadi as curators of PT Haseda Remindo.

Case Decision Number 03/Bankruptcy/2014/PN. Niaga.Smg. There has been a restructuring of the original financing of Murabahah Financing to Musyarakah Financing on July 22, 2013. Until the specified time, the Bankruptcy Respondent has not paid to the Applicant a debt that has become due and collectible. In the content of the Musyarakah Agreement No.201, dated July 22, 2013, which was agreed by the parties that if one of the parties does not fulfill its obligations or if there is a dispute between the parties, then the settlement is carried out through the Sharia Arbitration Board after no agreement is reached through deliberation.

Case Number 36/Pdt.Sus-Bankruptcy/2016/PN Pn.Jkt.Pst. On February 26, 2016, the Financial Services Authority (OJK) registered an application for a bankruptcy declaration against PT. Asuransi Syariah Mubarakah (ASM) to the Clerk of the Commercial Court at the Central Jakarta District Court under Register Number: 08/Pdt.Sus-Pailit/2016/PN. Niaga.Jkt.Pst, whose application contains about the Commercial Court at the Central Jakarta District Court has the authority to adjudicate ASM's bankruptcy case. OJK as the Bankruptcy Applicant does not need to carry out the dissolution of ASM as the Bankruptcy Respondent first before filing an application for a bankruptcy declaration, on the grounds that the revocation of ASM's business

license by the OJK on December 28 was carried out before the enactment of Law Number 40 of 2014 concerning Insurance which came into effect on October 17, 2014. In the Insurance Law, there is a grace period for dissolution that must be met by insurance companies that have had their business licenses revoked to decide on the dissolution of the legal entity of the company concerned and form a liquidation team. However, because the revocation of ASM's business license was carried out before the Insurance Law came into effect, the requirements regarding the grace period could not be met. The rules regarding the dissolution of insurance companies whose business licenses have been revoked in the Insurance Law also do not apply to ASM. Therefore, based on this, the OJK does not need to carry out the dissolution stages of ASM first before filing an application for a bankruptcy declaration.

OJK can directly file an application for a bankruptcy declaration against ASM without waiting for an application from creditors. Article 51 paragraph (1) of the Insurance Law does not stipulate that a creditor's application is a condition that must be met before the OJK submits an application for a declaration of bankruptcy against the insurance company.[6] However, despite this, OJK has received a bankruptcy application from the policyholder's creditors with an application letter from PT. Bank Pembangunan Daerah Jawa Barat dan Banten, tbk (Bank BJB) which has been submitted through letter number ANC&Co./FA-0210/V2014 dated May 14, 2014 Regarding Application for Bankruptcy or Other Legal Actions against PT. Mubarakah Sharia Insurance.

Based on the explanation of Article 49 letter (1) of Law No.3 of 2006, what is meant by sharia economy is any act or business activity that is carried out according to sharia principles.[7] In the explanation of Article 49 of Law No. 3 of 2006, it is explained that what is meant by between people who are Muslims includes individuals or legal entities that voluntarily submit themselves to Islamic law regarding matters that are the authority of religious courts, including resolving sharia economic disputes. The explanation of this article is strengthened by Article 1 number (1) of PERMA No.2 of 2008, explaining that what is included in the scope of sharia economics is any business

[6] Rossy Ibnul Hayat and Sukardi, 'Analisis Pertimbangan Hakim Dalam Memutus Perkara Ekonomi Syariah Terkait Wanprestasi: Studi Putusan Nomor 0132/Pdt.G/2016/PA.Stg', *Khatulistiwa Law Review*, 1.2 (2020), 169.

[7] Sekar Wiji Rahayu Nisa P. Basti, Sanggup L Agustian, 'HUKUM WARIS DAN KEBUTUHAN BISNIS DALAM WARIS', *Jurnal Aktual Justice*, 6.2 (2021), 211–29.

or activity carried out by individuals, groups of people, or business entities that are already incorporated or not yet incorporated that are profit-oriented or social (non-profit oriented) based on sharia principles.[8] Thus, the four cases Number 10/Pdt.Sus/Bankruptcy/2013/PN. Niaga.Jkt.Pst; Case Number 13/Bankruptcy/2013/PN. JKT PST; Case Number 03/Bankruptcy/2014/PN. Niaga.Smg; and Case Number 36/Pdt.Sus-Pailit/2016/PN Pn.Jkt.Pst, which is a sharia economic case.

Judge Mustofa said that the material legal sources used in resolving sharia economic disputes in the Bandung City Court are using the Qur'an and al-Sunnah accompanied by laws and regulations, namely PERMA No.2 of 2008, and Fatwas DSN-MUI.121 High Judge M. Taufiq H.Z., also said that the material legal sources used in resolving sharia economic disputes at the appeal level of the Bandung PTA are Islamic legal sources, namely the Qur'an and al-Sunnah accompanied by laws and regulations, namely PERMA No.2 of 2008, DSN-MUI Fatwas, and contracts or agreements that have been made and agreed upon by the previous parties. Therefore, the decision of the commercial court that has resolved sharia economic cases, bankruptcy cases, and PKPU cases only based on the Bankruptcy Law is considered incomprehensive.[9]

Regarding the regulation regarding the institution authorized to receive, examine, decide and adjudicate sharia economic disputes, bankruptcy cases have occurred a mutual tug-of-war between the commercial court under the general court and the religious court. The regulation in the Bankruptcy Law has stipulated that related to bankruptcy disputes is the absolute competence of the commercial court as stipulated in Article 1 number (7) that the court with the authority to resolve bankruptcy disputes is the commercial court within the general judicial environment. Article 300 of the Bankruptcy Law explains that the commercial court is given the authority to examine and decide on bankruptcy applications.

In other laws and regulations, namely Article 49 letter (i) of Law No.3 of 2006 Jo Law No.50 of 2009 stipulates that the court is given the authority to examine, decide

[8] AFIF SHIDQI, 'Sejarah Perkembangan Ekonomi Syariah', *Universitas Indonesia*, 2.5 (2009), 117.

[9] Besty Dyah Qorina Ilmy, Iswi Hariyani, and Bhim Prakoso, 'Kedudukan Kreditor Asing Dalam Perkara Penundaan Kewajiban Pembayaran Utang Terhadap Debitor Yang Berkedudukan Di Indonesia', *Mimbar Yustitia*, 7.2 (2023), 163–80.

and settle sharia economic cases.[10] The scope of the sharia economy is regulated in the explanation of Article 49 letter (i) of Law Number 3 of 2006, namely sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds and sharia medium-term securities, sharia securities, sharia financing, sharia mutual funds, sharia financial institution pension funds, and sharia business.

The regulation of Law No. 50 of 2009 and Law No. 3 of 2006 was strengthened by PMK No. 93/PUU-X/2012, which decided that the Explanation of Article 55 paragraph (2) of the Sharia Banking Law which provides the option of resolving Islamic banking disputes through the courts in the general judicial environment is contrary to the Constitution of the Republic of Indonesia in 1945 so that the explanation of Article 55 paragraph (2) of the Sharia Banking Law does not have binding legal force.[11]

Ija Suntana as an expert in case Number 93/PUU-X/2012 has given information that philosophically the sub and sifkum of Islamic banking is dominated by Islamic business terms, such as murabahah, hudaibiyah, musyarakah, mudarabah, qard, hawalah, ijarah, and kafalah. Therefore, it is right and appropriate if the settlement of Islamic banking cases is carried out in a judicial environment that substantively handles matters related to Islamic sharia values. If it is left to a judicial system that does not apply sharia rules, what will appear is a missynchronization between the practice of contracts and the resolution of disputes. The contract is carried out in the sharia system, while the settlement is carried out in a judicial environment that does not use sharia rules and principles.

Explicitly said that the Religious Court in Law Number 50 of 2009 which amended Law Number 3 of 2006, it is said directly that one of the absolute competencies of the religious court is to resolve cases of sharia economic disputes and sharia banking is included in the sharia economy.[12] Therefore, the throwing of absolute competence to institutions other than those that are directly written, according to the

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[10] Taufiq Hamami, *Peradilan Agama Dalam Reformasi Kekuasaan Kehakiman* (Jakarta: Tatanusa, 2013).

[11] A. Mukti Arto, *Praktik Perkara Perdata Pada Peradilan Agama* (yogyakarta: pustaka pelajar, 1998).

[12] A. Zamakhsyari Baharuddin and Rifqi Qowiyul Iman, 'Kompetensi Peradilan Agama Menangani Perkara Cerai Gugat Dalam Tinjauan Fikih Islam', *Al-Mizan*, 16.2 (2020), 201–24 <https://doi.org/10.30603/am.v16i2.1875>.

expert's assessment, is a deviation from the principle of legal certainty regulated in the 1945 Constitution, namely Article 28D Chapter 10A concerning Human Rights which guarantees legal certainty for its citizens. When there are two courts, then given the opportunity to be chosen by the parties to the dispute, this will give rise to the choice of forum in cases where the substance is also the same, the object is the same, then given the freedom of choice, so that it will cause legaldisorder (legal chaos). In addition, it will cause disparity in decisions, there is also a possibility that there will be strangeness, because maybe when the decision is born from a religious court, while the decision b is born from the general court for the same case, or there are two cases that have the same or even the same, then there will be strangeness for the receiving parties.

Article a quo paragraph (2) and paragraph (3) of the Sharia Banking Law, in Islamic legal terms, will give rise to what is called *Ta'arud al-Adillah*, the conflict between the two rules when paragraph (2) and paragraph (3) still remains. Furthermore, related to Article 2 and Article 3 of the Sharia Banking Law, it is actually contrary if it is still stipulated in the Law, namely with Article 1 paragraph (3) which states in the 1945 Constitution that the state of Indonesia is a state of law because one of the characteristics of the state of law is the existence of legal certainty and also contradicts Article 28D which states that one of the human rights, Including the customers, is guaranteed legal certainty.[13]

If there is a choice of a forum for the settlement of cases, while people are given the freedom, as if to choose, not directly appointed by the law, it will cause chaos before or in the practice of the contract. Because it is possible that when people want to sign a contract at their bank that enters an Islamic bank, the person/customer who enters an Islamic bank, while the bank wants the dispute settlement to be in the district court, while the customer wants to be resolved in the religious court, this will cause problems in the contract. Before entering into legal matters, the determination of the contract will also be a problem because it will be a debate between "I want to be in a religious court," said the customer, while the bank said, "I want to be in the district court," and there will be no common ground. When given the opportunity to choose of forum, it is dangerous

[13] Wari Martha Kambu, 'Tinjauan Yuridis Tentang Hak Asasi Manusia Berdasarkan Pasal 28D Ayat 3 Undang-Undang Dasar 1945', *Lex Et Societatis*, 9.1 (2021), 137–45 <https://doi.org/10.35796/les.v9i1.32170>.

if there is an expression that the people who enter the Islamic bank are not only Muslims, but there are non-Muslims.

In legal theory, when a non-Muslim enters the judiciary or Islamic banking, he has done *choice of law* (has chosen the law). When he has chosen the law, then he is directly ready and regulated by the rules and principles in the institution he enters, namely matters related to sharia and when the sharia bank implements sharia rules, then when non-Muslims enter the sharia bank they have prepared themselves and are ready to accept the rules applied by the sharia bank, So that from the matter of principles, rules, and dispute resolution must be adjusted to sharia. Therefore, it is said that non-Muslims who have entered the Islamic bank have committed *choice of law* Because there are conventional banks that can be chosen why enter Islamic banks. Meanwhile, in Islamic banks, it has been explained in real terms that the rules and principles that have been implemented from the contract to the settlement of disputes are in accordance with sharia rules.

Dedi Ismatullah as another expert in case Number 93/PUU-X/2012 has given information in the hearing, namely that Article 1 paragraph (3) of the 1945 Constitution, the state of Indonesia is a state of law in which there are two meanings, namely supreme of law and equality before the law.[14] The interpretation of the supreme of law is that one of them is legal certainty, rechtstaat is legal certainty, so by providing legal options for people who enter the court, it will cause confusion or legal confusion. Therefore, the expert sees Article 2 paragraph (2) and paragraph (3) as irrational, because it is contrary to paragraph (1). One of them is to carry out justice in religious courts but given a choice in other courts. This will also be contrary to Law No. 50 of 2009 concerning Religious Justice Competence. Thus, the religious court is the only judicial institution that is given absolute authority in resolving Islamic banking disputes. The explanation of Article 49 of Law No.3 of 2006 provides a generalization of the absolute authority of religious courts not only limited to the field of Islamic banking but also other fields of Islamic economics.

[14] Muhammad Abdullah Faqih, 'ANALISIS YURIDIS DALAM PENYELESEIAN SENGKETA PERBANKAN SYARIAH PASCA PUTUSAN MAHKAMAH KONSTITUSI', *Dinamika: Jurnal Ilmiah Hukum*, 2019, 1–11.

Article 55 paragraph (1) of the Sharia Banking Law stipulates that the settlement of Islamic banking disputes is carried out by the courts within the religious court, namely the religious courts.[15] Of the four rulings on sharia economic disputes, bankruptcy and PKPU cases are dominantly 3 (three) rulings involving sharia banks, namely Case Number 10/Pdt.Sus/Bankruptcy/2013/PN. Niaga.Jkt.Pst between PT. BNI Syariah against Purdi E Chandra; Case Number 13/Bankruptcy/2013/PN. JKT PST between PT. Bank Syariah Bukopin against PT. Haseda Remindo; and Case Number 03/Bankruptcy/2014/PN. Niaga.Smg between PT. Bank Syariah Bukopin against Mrs. Hajjah Yudianti. The consideration of PERMA No. 2 of 2008 is for the smooth examination and settlement of sharia economic disputes as referred to in Article 49 letter i along with the Explanation of Law No. 3 of 2006, Law No. 19 of 2008, Article 55 of the Sharia Banking Law. Thus, the regulation regarding dispute resolution institutions follows existing regulations, namely making religious courts the only court authorized to resolve sharia economic disputes.

PERMA Law No. 14 of 2016, strengthens the position of religious courts in resolving sharia economic disputes.[16] Some of the considerations for the issuance of this PERMA are in order to follow the development of legal relations in the community in the economic field, especially in the field of agreements that use sharia principles. In line with the development of legal relations in the field of sharia economics, in society there have also been disputes between sharia economic actors, especially disputes between parties who are bound by agreements that use sharia contracts. Legal developments in the field of sharia economics and other civil affairs in society require simpler, faster and less costly settlement procedures, especially in simple legal relationships.

The existence of several arrangements that attract authority in resolving sharia economic disputes, bankruptcy cases, and PKPU causes legal uncertainty, while legal certainty is one of the purposes in the formation of law or the granting of decisions in court by judges. Van Kan in his book Inleiding Tot the Recht Wetenschap reveals that

[15] Thalis Noor Cahyadi, 'Penyelesaian Sengketa Perbankan Syariah', *Jurnal Ekonomi Syariah Indonesia*, 1.2 (2011), 29.

[16] Naili Rahmawati, 'Kesiapan Hakim Dalam Penyelesaian Sengketa Ekonomi Syariah Pasca Keluarnya PERMA No. 14 Tahun 2016', *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah*, 9.2 (2018), 159 <https://doi.org/10.18326/muqtasid.v9i2.159-168>.

the law aims to protect the interests of every human being so that those interests cannot be disturbed. This means that the law aims to protect the interests of everyone so that their rights are not disturbed. Thus, the purpose of the law must be enshrined and reflected in every existing and applicable law and regulation so that the judge, panel of judges or jurors make the law as a source of law in realizing legal certainty.

Legal certainty is based on several principles, as follows:

1. The principles of legality, constitutionality, and the rule of law;
2. The Principles of the Law set forth various sets of rules on how the government and its officials conduct governmental actions;
3. The principle of non-retroactive legislation, namely that before binding, the law must be promulgated appropriately;
4. The principle of non-liquet, that is, the judge may not reject the case before him on the grounds that the Law is unclear or does not exist;
5. The principle of free, objective-imfarial, and just-humane justice;
6. The principle of Human Rights must be formulated and guaranteed protection in the Constitution.

Van Apeldoorn said that legal certainty is the existence of a clear behavioral scenario that is general and binding on all citizens of the community, including its legal consequences.[17] Legal certainty as something that can be determined from the law on concrete matters. Thus, legal certainty is basically as an enforcer of the law according to its sound so that the community gets certainty that the law can be implemented as long as it is obeyed. Sudikno Mertokusumo concluded that legal certainty is a guarantee that the law is carried out, those who are entitled according to the law get their rights, and the verdict can be enforced. Furthermore, legal certainty is a protection against arbitrary actions, which means that a person will get something expected under certain circumstances.

[17] Muhammad Afiful Jauhani, 'Kepastian Hukum Penyelesaian Sengketa Medis Melalui Mediasi Di Luar', *Welfare State*, 1.April (2022), 29–58.

Gustav Radburch (1878-1949 AD) put forward 4 (four) basic things about legal certainty.[18] First, legal certainty is legislation (gesetzliches recht). Second, legal certainty is based on facts (tatsachen), not a formulation of judgment that will later be carried out by the judge, such as good will, politeness. Third, that the fact must be formulated in a clear way so as to avoid mistakes in meaning, besides being easy to implement. Fourth, the positive law should not be changed frequently. It is based on Gustav Radbruch's view that legal certainty is legal certainty itself and legal certainty is a product of law or legislation. Gustav Radbruch argued that positive laws that govern human interests in society should be obeyed even though positive laws are less fair.

Ibn Hazm (994-1064 AD) in his book *al-Ihkam in' Ushul al-Ahkam* said that the method of determining Islamic law by zahir naskh al-Qur'an and al-Hadith | thus rejecting any methods that use reason such as *al-qiyas, al-Istihsan, al-Maslahat al-Mursalah*, and others.[19] Even rejecting istidlal with the postulated approach of al-Khittab which actually still includes reasoning on the text of the Qur'an and al-Hadith|. The meaning of the zahir of the Qur'an and the hadith of the only way to determine the Islamic hukukm. For Ibn Hazm (994-1064 AD) who was based on his belief that Islam was complete and the Qur'an unequivocally stated that nothing was missing in it. The things that are mujmal in the Qur'an have been explained by the Prophet Muhammad (peace be upon him) in his sunnah.

Nurhasan Ismail argues that the creation of legal certainty in laws and regulations requires requirements related to the internal structure of the legal norm itself. The clarity of the concept used is that it contains legal norms about certain behaviors which are then integrated into certain concepts. The clarity of this hierarchy is important because it concerns whether or not it is legal and whether or not it is binding on the laws and regulations it makes. The consistency of legal norms means that the provisions of a number of laws and regulations related to one particular subject do not conflict with each other. Legal certainty requires an effort to regulate the law in the legislation made by the competent and authoritative authorities, so that the rules have a

[18] Mohammad Wangsit Supriyadi and others, 'POKOK PIKIRAN DAN SUMBANGSIH FUNDAMENTAL GUSTAV', *Jurnal Pedia*, 07.1 (2025), 395–413.

[19] Muhammad Nurzansyah, 'Perbandingan Tafsir Kata Faqir Dan Miskin Dalam Al-Qur'an', *Rausyan Fikr : Jurnal Pemikiran Dan Pencerahan*, 17.1 (2021) <https://doi.org/10.31000/rf.v17i1.4210>.

juridical aspect that can guarantee that the law functions as a regulation that must be obeyed.

The background of the Bankruptcy Law is the rapid development of the economy and trade, the more debt and receivables problems arise in the community; and the monetary crisis that occurred in Indonesia has had an unfavorable impact on the national economy, causing great difficulties for the business world in settling debts and receivables to continue its activities. Meanwhile, the background of the birth of Law No. 3 of 2006 Jo. Law No. 50 of 2009 is to affirm the expansion of authority for religious courts, namely sharia economic cases. This is done because it adjusts to the development of law and the legal needs of the community, especially the Muslim community. Thus, the Religious Court is one of the judicial environments under the Supreme Court along with other judicial bodies within the General Court, the State Administrative Court, and the Military Court, the Religious Court is one of the judicial bodies of the actors of judicial power to carry out law enforcement and justice for the people seeking justice in certain cases between Muslims in the field of marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and sharia economics.

With the affirmation of the authority of the Religious Court, it is intended to provide a legal basis for religious courts in resolving certain cases, dispute resolution is not only limited to the field of sharia banking, but also in other fields of sharia economics.142 Thus, Law No. 3 of 2006 Jo. Law No. 50 of 2009 must be enacted, setting aside the Bankruptcy Law. This is because Law No. 3 of 2006 Jo. Law No. 50 of 2009 replaces the Bankruptcy Law. Therefore, related to the institution authorized to resolve sharia economic disputes, bankruptcy cases are PA.

The existence of conflicts in regulations related to the settlement of sharia economic disputes in bankruptcy cases causes the decision to become legally uncertain because there is no consistency in the legal norms that govern it and mutual attraction between each other. Legal certainty requires efforts to regulate the law in the legislation made by the competent institution or authority, so that the rules have a juridical aspect that can guarantee certainty. The absence of legal certainty in the settlement of sharia economic disputes in the field of bankruptcy causes legal validity and effectiveness to

be disturbed. According to the theory of validity, a rule of law must be legitimate and valid in its application so that it can be applied to the community, if necessary by force.

Thus, a legal rule is invalid if the legal rule is unacceptable to the community or the legal rule turns out to be unenforceable in practice, even though the legal rules have been made through the correct process and made by the legally authorized authorities. Therefore, it can be said that a law that is not made correctly, or a law that is not made by the authorities, or a law that is not accepted by the community, or a law that is unfair, is not a law. The four decisions are motivated by the existence of a financing contract provided by Sharia Banks, namely in the form of Mudharabah and Murabahah financing. The submission of a bankruptcy application is an act of breach of promise (default) committed by the debtor. In the decision of case No.13/Bankruptcy/2013/PN.Jkt Pst and the decision of case No.03/Bankruptcy/2014/PN. Niaga.Smg has an arbitration agreement that agrees on sharia arbitration as the dispute resolution institution. Thus, the agreement made by the parties is binding and the parties are obliged to carry out the agreement. Article 1338 paragraph (1) of the Civil Code stipulates that every agreement made (written or oral) made and agreed upon by the parties is binding as per the law.

In the process of providing financing by the Islamic bank, the notary party is included as a public official authorized to make authentic deeds, including a financing agreement (akad) carried out between the bank as a creditor and its debtor customer. The position of the notary in the agreement made is as a witness in the event of a dispute in the future by explaining the things known by him.

Regarding the settlement of bad loans/financing administratively, it can be done in 3 (three) ways, namely:

1. Rescheduling, which is a change in credit conditions that concerns the payment schedule and/or period including the grace period, whether it includes a change in the amount of installments or not;
2. Reconditioning, which is a change in part or all of the credit terms that is not limited to changes in the payment schedule, term, and/or other requirements as long as it does not involve a maximum change in the credit balance and the conversion of all or part of the loan into bank participation;

3. Restructuring, namely changes in credit conditions in the form of additional bank funds; and/or conversion of all or part of the interest arrears into new credit principal, and/or conversion of all or part of the credit into participation in the company.

In case Number 03/Bankruptcy/2014/PN. Niaga.Smg between PT. Bank Syariah Bukopin as the Bankruptcy Applicant against Mrs. Hajjah Yudianti as the Bankruptcy Respondent, is Mrs. Hajjah Yudianti. On August 14, 2012, PT. Bank Syariah Bukopin has provided a Murabahah Contract Financing facility No.004/DSP-LG/MRBH/KCP-BKS/VIII/2012 with a ceiling of Rp.3,000,000,000.- (three billion rupiah) with a margin of Rp.1,049,628,840.- (one billion forty-nine million six hundred and twenty thousand thousand rupiah and one hundred and forty rupiah installments every month until August 15, 2017 but in the implementation of the contract the debtor experienced a bottleneck in making the payment so that efforts were made to restructure the financing that was originally Murabahah Financing to Musyarakah Financing on July 22, 2013. Until the specified time, the debtor is still unable to pay the debt that has matured and can be collected.

The making of authentic deeds is required by laws and regulations in order to create certainty, order and legal protection, including a debt acknowledgment letter. Legally, based on the financing contract agreed upon by the parties, the contract is the basis for filing a lawsuit to the court. The contract made and before a notary has the force of proof and is even a perfect written evidence if submitted in court examination as stipulated in Article 1870 of the Civil Code. Thus, it can be said that the contract carried out using an authentic deed is a means of legal certainty for the parties and third parties.

The Effectiveness of Sharia Economic Dispute Resolution in the Commercial Court related to Sharia Bankruptcy after the Constitutional Court Decision

The Constitutional Court (MK) Decision Number 93/PUU-X/2012 provides clarity regarding the absolute authority of the Religious Court in resolving sharia banking disputes, including disputes involving sharia contracts. This decision cancels Article 55 paragraph (2) of the Sharia Banking Law which previously provided an option for the parties to bring the dispute to another settlement institution, such as the

general court or arbitration. After the ruling, all sharia economic disputes, including bankruptcy cases, should be resolved under the authority of the Religious Court to ensure the consistent application of sharia principles.

However, in practice, the effectiveness of the implementation of this decision still faces various challenges. The Commercial Court, which previously handled bankruptcy cases, is still deciding several cases related to sharia contracts. Examples of cases such as Decision No. 10/Pdt.Sus/Bankruptcy/2013/PN. Niaga.Jkt.Pst and Decision No. 03/Bankruptcy/2014/PN. Niaga.Smg shows that competence related to bankruptcy based on sharia contracts has not been fully transferred to the Religious Court. This is due to the inconsistency of regulations between the Bankruptcy Law and the Constitutional Court's decision, which results in legal uncertainty in the implementation of dispute resolution.

In addition, limitations in the Religious Court, such as the lack of codification of special procedural law related to sharia bankruptcy, also affect the effectiveness of dispute resolution. Although judges in the Religious Courts have received special training, such as certification of sharia economic judges, the lack of technical guidance in handling bankruptcy cases has led to some cases still being decided outside the jurisdiction of the Religious Courts. This creates the impression of a dualism of authority between the Religious Court and the Commercial Court, which has the potential to undermine the principle of legal certainty.

Overall, the effectiveness of resolving sharia economic disputes after the Constitutional Court's decision still requires harmonization of regulations between various related laws and regulations, such as the Bankruptcy Law, the Sharia Banking Law, and PERMA related to procedural law in the Religious Court. This harmonization is needed to strengthen the authority of the Religious Court, eliminate dualism of authority, and ensure that sharia principles are applied comprehensively in every stage of dispute resolution.

To ensure effectiveness in the future, it is necessary to make efforts such as the establishment of a special sharia commercial court under the Religious Court, the preparation of special procedural laws related to sharia bankruptcy, and the strengthening of human resources in the religious justice environment. These steps are

expected to overcome existing obstacles, increase public trust in the sharia justice system, and realize legal certainty in accordance with Islamic justice principles. Next Steps to strengthen the effectiveness of sharia economic dispute resolution:

1. Propose legislative changes, such as amendments to Law No. 3 of 2006 concerning Religious Courts, to include the establishment of special sharia commercial courts under the jurisdiction of Religious Courts. Initiating a pilot program of sharia commercial courts in regions with high levels of sharia economic disputes to measure effectiveness prior to national implementation.

2. Collaborate between the Supreme Court, the Financial Services Authority (OJK), and the National Sharia Council-Indonesian Ulema Council (DSN-MUI) to draft sharia-based procedural law. Sharia Procedural Law Compendium: Compendium or practical guidelines for judges and legal practitioners who handle sharia-based bankruptcy disputes.
3. Conducting special certification and training programs for judges in the field of sharia economics, including in-depth training on sharia bankruptcy law. Recruiting experts in the field of sharia economic law to support the work of the court.
4. Develop a special e-court system designed to handle sharia economic disputes, including online mediation features based on sharia principles. Build a national database that contains jurisprudence and rulings related to sharia economic disputes to be a reference for judges and legal practitioners.
5. Conducting socialization to sharia business actors regarding dispute resolution mechanisms in the Religious Court, including the mediation and bankruptcy process. Develop an education module for the public and business actors about sharia principles in economic dispute resolution.

Conclusion

The settlement of sharia economic disputes in religious courts is based on material legal sources that include the Qur'an, Hadith, DSN-MUI fatwas, fiqh, jurisprudence, and laws and regulations such as the Religious Justice Law, the Sharia Banking Law, and other

related regulations. Meanwhile, procedural law or formal legal sources still depend on HIR/RBg and several special regulations such as PERMA No. 14 of 2016. Religious courts have shown significant readiness in handling sharia economic disputes. This can be seen from the increase in the number of judges certified in the sharia economy, the implementation of technology through e-courts, and the implementation of technical training to increase the capacity of judges and court staff. The main obstacles in resolving sharia economic disputes are regulatory disharmony, dualism of authority between religious courts and commercial courts, and limitations in the codification of sharia procedural law. In addition, bankruptcy cases and PKPU based on sharia contracts are still within the competence of the commercial courts, even though the sharia principles should make them the authority of religious courts. In general, the settlement of sharia economic disputes in religious courts has gone well, supported by adequate regulations even though they are not perfect. For the future, efforts are needed to harmonize regulations, codify sharia-based procedural law, and establish sharia commercial courts to ensure legal certainty and efficiency in dispute resolution.

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