

Resolution of Sharia Economic Disputes: A Case Study on Default in Murabahah Contracts

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Abstract

Background: The increasing significance of sharia economics in Indonesia necessitates a thorough understanding of the judicial processes involved in resolving related disputes. This paper focuses on a specific case, to explore the judge's considerations and the legal frameworks at play.

Objectives: The primary objective of this research is to analyze the judge's considerations in the resolution of the mentioned sharia economic dispute. It aims to assess whether these considerations align with existing legal frameworks and principles, particularly in relation to the murabahah contract.

Novelty: This study contributes to the existing body of literature by providing an empirical normative analysis of a real case, highlighting discrepancies between judicial considerations and legal sources. It underscores the need for consistency in applying legal principles within sharia economic disputes, thereby filling a gap in current academic discussions.

Research Methodology: The research employs a qualitative approach, utilizing empirical normative research techniques. Primary data is gathered from relevant dispute decisions, while secondary data consists of legal texts and scholarly readings. The analysis follows a deductive method, employing Gustav Radbruch's theory of legal certainty to evaluate the findings.

Findings: The study reveals that the dispute was initiated as an ordinary lawsuit but could have been resolved through a simpler process as outlined in PERMA No. 4 of 2019. Furthermore, the judge's considerations did not adequately reflect the specifics of the murabahah contract. The analysis indicates a failure to adhere to the hierarchy of positive legal sources, including a lack of reference to the KHES, resulting in a violation of the principle of legal certainty.

Implication: This study advocates for enhanced judicial training and clearer guidelines to ensure consistent application of laws in sharia finance, ultimately contributing to the stability and integrity of sharia economic practices in Indonesia.

Keywords: Default, Murabahah bil Wakalah Contract, Judge's Decision.

JEL Classifications: D12, K12, K15, K41, Z12

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A. Introduction

The development of legal relations in the field of Islamic economics to date still shows a dynamic relationship marked by various changes in regulations, procedures for using sharia contracts, and social behavior of people who use the law based on sharia economics. This dynamic relationship also cannot avoid the occurrence of disputes between sharia economic actors. Dispute or conflict is a condition involving two or more parties struggling to achieve their main goals, and because each other cannot unite their opinions so that they put pressure on each other (Suadi, 2018).

Law No. 3 of 2006 concerning Religious Courts explains the duties and authority of the Religious Courts, namely to examine and then decide cases at the first stage between Muslims regarding marriage, inheritance, wills, grants, waqf, zakat, infaq, sadaqah, and sharia economics. The scope of the sharia economy referred to in Article 49 letter (i) includes banking, microfinance institutions, insurance, reinsurance, mutual funds, bonds, medium-term securities, securities, financing, pawnshops, pension funds of financial institutions, and businesses where all business practices of these financial institutions use sharia principles (Suadi, 2020).

Supreme Court Regulation (PERMA) No. 14 of 2006 concerning Procedures for Settling Sharia Economic Cases, in the case of resolving business disputes carried out based on sharia principles through litigation in the Religious Courts, it can be submitted in the form of an ordinary lawsuit or with a simple lawsuit (Soemitra, 2019). The Bantul Religious Court has decided many cases regarding sharia economic disputes, one of which was registered with the registrar on March 17, 2021 with No. 398/Pdt.G/2021/PA.Btl. The plaintiff in the case was KSPPS BMT Projo Artha represented by Andi Maryanto as manager, and the defendants were the customers, namely Ikhsan as defendant I and Tumirah as defendant II.

The seat of the lawsuit was the agreement of a murabaha financing agreement by the parties with the principal debt of the first defendant amounting to Rp.50,000,000, plus a margin of Rp.22,800,000 which was paid in monthly installments of Rp.3,035,000 for 24 months. The defendants until the time the lawsuit was filed could not fulfill their obligation to pay installments so that the plaintiff in the statement of claim stated that the defendants had defaulted so that the plaintiff suffered losses and demanded IDR 110,000,000 (Direktori Putusan Mahkamah Republik Indonesia, 2021).

Decision No. 398/Pdt.G/2021/PA.Btl was resolved by ordinary lawsuit, although the material claim in the lawsuit was only Rp.110,000,000. The judge's consideration used DSN Fatwa No. 09/DSN-MUI/IV/2000 and stated that the murabaha financing between the plaintiff and the defendant was valid and binding. The judge granted the content of the petitum that the defendant committed default based on the facts of the trial that defendant I did not pay the installments even though the plaintiff had given three warnings.

The judge's consideration is the most important part in making a court decision. The judge's consideration of the provisions of a case whether it is an ordinary lawsuit or a simple lawsuit is a fundamental stage in order to realize the principles of justice, namely simple, fast, and light costs in accordance with Article 2 of Law Number 48 of 2009 concerning Judicial Power. The realization of legal certainty by determining the right legal source in the decision of an Islamic economic case is an obligation carried out by the judge, either through primary legal sources, namely laws and regulations or other legal sources related to Islamic economics (Suadi, 2018).

Research on legal discovery by judges in resolving sharia economic disputes includes written by Ridwan (2020), Rosidah and Karjoko (2021), who in their research explain that the pattern of resolving sharia economic disputes is regulated in the Supreme Court Regulation (PERMA), and procedural law in the Compilation of Civil Law (KUHPerdata), while the material law is the Compilation of Sharia Economic Law (KHES), Bank Indonesia Regulations (PBI), DSN-MUI Fatwas, Financial Services Authority Regulations (POJK), and other laws and regulations. Factors causing disputes include contract norms, rigid understanding resulting in default, force majeure, and unlawful acts, due to non-fulfillment of the rights and obligations of the parties, as well as consumptive actions by customers and banks.

Research on the settlement of disputes over default in the murabahah contract was written by Delanti (2021), namely in court decision No. 0079/Pdt.G/2017/PA.Stg caused by a misunderstanding between the parties and the plaintiff's ignorance of the auction procedure for collateral goods as a result of default in the murabahah contract. The panel of judges decided the case based on evidence from the parties without considering KHES and the Civil Code in formulating the meaning of default. Tektona and friends (2020), stated that case No. 1039/Pdt.G/2014/PA.Pbg was caused by the default of the murabahah contract by a customer who bought a truck from a Sharia Bank in installments for four years, which turned out to be delinquent in payments so that the judge decided that the customer had defaulted and was required to pay compensation, meanwhile Article 20 of 2008 on Sharia Banking does not regulate compensation according to Islamic law.

Research on the settlement of sharia economic disputes has been extensively conducted, yet there remains a gap in the study, particularly regarding judges' considerations in applying legal provisions in concrete cases. Most previous studies have focused on analyzing the causes of disputes, such as misunderstandings of contracts or violations of obligations by one party. However, there is limited research that delves deeply into how judges in religious courts consider various legal factors in deciding sharia economic disputes, including positive law, DSN-MUI fatwas, and principles of justice in the context of religious courts.

This study aims to fill this gap by further analyzing how judges apply clear and fair legal reasoning in sharia economic dispute cases, specifically in Case No. 398/Pdt.G/2021/PA.Btl, and how legal provisions are interpreted in judicial practice. The novelty of this research lies in its focus on judicial decisions in the context of sharia economic law, linking the theory of legal certainty with the application of law in court practices. This research also offers an important contribution in clarifying the application of sharia economic law in religious court practices, emphasizing the principles of substantive justice and legal certainty that accommodate the rights of the parties involved in sharia economic disputes, thus focusing not only on existing regulations but also on their practical implementation in court proceedings.

B. Literature Review

B.1. Settlement of Sharia Economic Disputes

Sharia economic disputes are disputes in business activities as well as trade that can occur before or after an agreement, for example related to the price of goods and the object and content of the agreement (Suadi, 2018). Agreements or contracts that have the potential to cause disputes, namely:

1. The fact that the subjective and objective conditions of the contract are not fulfilled and the contract is requested to be canceled
2. Termination of the agreement by one of the parties and differences in interpreting the contents of the contract, resulting in legal conflicts.
3. Non-fulfillment of one party's performance in the agreed agreement
4. Unlawful act
5. The occurrence of unexpected causes or *force majeure* (Suadi, 2017).

Settlement of sharia economic disputes can be carried out by means of non-litigation or alternative dispute resolution, which based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution outside the court can be through consultation, mediation, negotiation, expert judgment, and conciliation (Nurhayati, 2019).

Supreme Court Regulation (PERMA) No. 14 of 2006 concerning Procedures for Settling Sharia Economic Cases by litigation can be resolved through Religious Courts through simple lawsuits and ordinary lawsuits that have differences in the procedures for examining cases with small and large values of material objects so that sharia economic cases can be resolved quickly, simply, and at low cost (Pertaminawati, 2019) in accordance with Article 2 of Law Number 48 of 2009 concerning Judicial Power.

The settlement of a simple lawsuit is regulated in PERMA Number 4 of 2019 on the amendment of PERMA Number 2 of 2015, namely in Article 1 it can be resolved by a Single Judge, and further Article 3 explains that it can be submitted provided that the claim for material loss is not more than Rp.500,000,000, the lawsuit filed is caused by acts of default or illegal acts, not the type of dispute whose resolution must go through a special court, and not a land dispute (Qibtiyah & Mujib, 2023).

Article 4 of PERMA No. 4 of 2019 states that the parties to the dispute cannot be more than one person unless they have the same legal interests, the plaintiff and defendant in a simple lawsuit are in the same court area but if they are not in the same jurisdiction then they can be represented by a representative or attorney, and the plaintiff and defendant must be present in person at each trial with or without being represented by their attorney and if the defendant is not present then it can be decided by *verstek* (Ali, 2019).

Default

Default is regulated in Article 1238 of the Civil Code, namely the debtor is declared negligent by warrant, or by a similar deed or based on the strength of the agreement itself which results in the debtor having to be declared negligent by exceeding the agreed time (Hani dkk, 2021). Article 36 KHES states that a person can be said to be in default if he does not do what should be done in the agreement, performs obligations but is not in sync with the agreement, is late in carrying out obligations, or does something that is prohibited in the agreement (Mahkamah Agung Republik Indonesia, 2011). The author can conclude that default is a failure to fulfill an obligation the fulfillment of obligations by one of the parties as agreed upon by both parties.

Default can be caused by several factors, including the non-implementation of good faith, the debtor's business has decreased, the business is not managed properly, and the use of financing is insufficient for its original purpose (Hayati, 2020). The legal consequences for the party in default include (Suadi, 2020):

1. Paying for losses includes all costs that are actually incurred by one party, loss of damage to one party's goods caused by the other party, and loss of profit sharing profits that have been calculated
2. The cancellation of the agreement or the breakdown of the agreement with the aim of both parties returning to the situation before the agreement, in accordance with Article 1266 of the Civil Code
3. Transfer of risk on the object of the agreement for the negligent party so that it becomes a default
4. The losing party pays the costs of the case.

Murabahah

Murabahah is a sale and purchase carried out by the seller by adding the initial item price and profit, which is then also notified to the buyer in order to reach an agreement (Suadi, 2020). Article 20 paragraph (6) KHES states that “Murabahah is mutually beneficial financing carried out by *shahib al-mal* with parties in need through sale and purchase transactions by explaining the procurement price of goods and the selling price has more value as a profit for *shahib al-mal* and can be returned in cash or installments” (Mahkamah Agung Republik Indonesia, 2011).

Murabahah in Fatwa No: 04/DSN-MUI/IV/2000, where the customer represents the customer bank to purchase goods from third parties, the murabahah sale and purchase agreement must be made after the goods have been owned by the bank (Nurhadi, 2016). The fatwa also regulates the collateral in the murabahah contract, which is allowed as an agreement to bind itself so that the customer is serious about his order, and the bank can ask the customer to submit collateral that can be held (Yafie, 2000).

Law Number 21 of 2008 concerning Islamic Banking defines the murabahah contract as an agreement to finance an item by explaining the purchase price to the buyer who pays more as an agreed profit, therefore what characterizes the murabahah contract is that the seller must inform the capital or purchase price of the goods plus the amount of profit (Suadi, 2018).

Legal Certainty Theory in Judges' Consideration

Article 50 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power states that “Court decisions must not only contain the reasons and basis for the decision, but also contain certain articles and relevant laws and regulations or unwritten sources of law that are used as a legal basis for adjudication” (Yudhoyono, 2009). The judge's reasoning in a case has a very important position because through the judge's consideration that contains legal certainty can reflect the extent of justice possessed by the judge as a decision maker, so that the decision made is based on a sense of responsibility, justice, wisdom, professionalism, and is objective (Isnantiana, 2017).

Positive law in Indonesia in addition to legislation there are also other sources of legal discovery that can be used in the consideration of judges in order to create legal certainty, among others:

1. Legislation, as a source of law that cannot be doubted so that it becomes the main source of reference for legal discovery because it is authentic and guaranteed legal certainty (Suadi, 2018)
2. Customary Law, which is an unwritten source of law in is the oldest source of law used if the rules are not found in legislation
3. Jurisprudence, which is used if in customary law there are no rules regarding the problem, the judge can find the rules in jurisprudence (Suadi, 2018)
4. Treaty or International Agreement, which is an agreement by two or more countries laterally or multilaterally regarding a matter
5. Doctrine, which is the opinion of legal experts who have influence in the development and practice of law which is used as a reference for legal practitioners and law makers including judges.
6. Other Legal Sources, which include Bank Indonesia Regulations, Financial Services Authority Regulations, Minister of Finance Regulations, Supreme Court Regulations, Supreme Court Circular Letters, National Sharia Council Fatwas, and books that are popular among Muslims in Indonesia (Suadi, 2018).

The source of material law for the settlement of sharia economic disputes is also regulated in Article 1 of PERMA No. 2 of 2008 concerning KHES, namely court judges within the scope of religious courts who examine, hear, and resolve cases related to sharia economics using as guidelines the sharia principles in KHES, without reducing the responsibility of judges to explore and find laws in order to ensure fair and correct judicial decisions (Manan, 2008).

Gustav Radbruch stated that there are three objectives of law, namely justice, benefit, and legal certainty which are interrelated, namely as a link to create a civilized society. The professionalism of a judge can also be seen from certain considerations used in deciding a case, because through these considerations it can show whether or not the principle of certainty is applied law. The theory of legal certainty according to Radbruch must fulfill the following elements:

1. Law is positive which means legislation
2. Law must be based on facts or reality
3. Facts must be clearly defined to avoid errors in understanding, in addition to being easy to implement
4. Positive law is not easily changed (Huda, 2020).

Legal certainty relates to the theory of the legal system that applies as a legal unit composed of three elements, namely legal structure, legal substance, and legal culture. The legal structure includes all enforcement institutions and legal apparatus, namely the police, prosecutors, lawyers, and courts, as well as judges and prosecutors. The substance contains all legal rules, both written and unwritten, including court decisions. Legal culture is the habits, opinions, ways of thinking and acting of law enforcers and citizens (Pahlevi, 2022).

C. Research Methodology

This research uses a qualitative approach with a type of empirical normative research that assesses the law not only as the rules contained in the text of laws and regulations, but also sees how they are applied in society, especially in the settlement of sharia economic disputes (Fahmi, 2023). The data collection technique uses primary data, which is sourced from the directory of Supreme Court decisions No. 398/Pdt.G/2021/PA.Btl reported via the internet, then secondary data is obtained by searching for literature such as books and journals relevant to this research and then citing the source of the idea (Hani dkk, 2021), and will be analyzed using deductive analysis, namely linking general theories contained in the literature review and then analyzing them with decision 398/Pdt.G/PA.Btl which is a specific conclusion in this study.

D. Results & Discussion

D.1. Settlement of Sharia Economic Dispute No. 398/Pdt.G/2021/PA.Btl

The Bantul Religious Court has received a sharia economic case with the register number 398/Pdt.G/2021/PA.Btl regarding default of the murabaha contract which was resolved by ordinary procedure. The parties in the case are domiciled in the same jurisdiction, namely in Bantul Regency, and based on the posita in the lawsuit that if a dispute occurs in this agreement, the parties will resolve it through litigation, namely at the Bantul Regency Religious Court. The plaintiff is KSPPS BMT Projo Artha represented by its manager, Andi Maryanto, against the customer as the first defendant, namely Ikhsan and Tumirah as the second defendant.

The petitem in the lawsuit regarding material losses amounted to IDR 110,000,000 (Directory of Court Decisions of the Republic of Indonesia, 2021), which means that case No. 398/Pdt.G/2021/PA.Btl should have been filed with a simple lawsuit because a simple lawsuit case can be filed against a breach of promise or tort with a maximum material claim value of IDR 500,000,000, and the judge is a Single Judge as regulated in PERMA No. 4 of 2019.

The case is also not about a land dispute, and the parties, although there are more than one defendant, have the same legal interests, namely defendant I as the customer who applied for financing and defendant II is the holder of the collateral property that has given its mortgage rights to the plaintiff as stated in article 4 letter e that the defendants provide collateral for a land certificate in the name of Tumirah located at Watu Kempul, Potorono Village, Bantul Regency (Direktori Putusan Mahkamah Republik Indonesia, 2021).

Simple dispute resolution procedures should be considered in this case in order to realize the principles of justice carried out simply, quickly, and at low cost as in Article 2 of Law No. 48/2009 on Judicial Power. The lawsuit filed to Religious courts before being decided by the judge are actually first examined by the clerk including lawsuit No. 398/Pdt.G/2021/PA.Btl, therefore the clerk and also the human resources working at the Bantul Religious Court should understand the procedures for resolving sharia economic disputes, both ordinary lawsuits and simple lawsuits.

D.2. Legal Certainty in Judge's Consideration No. 398/Pdt.G/2021/PA.Btl

Legal certainty is composed of a legal structure that includes all enforcement institutions and legal apparatus, namely the police, prosecutors, lawyers, and courts, as well as judges and prosecutors, legal substance contains all legal rules both written and unwritten, including court decisions, and legal culture is the habits, opinions, ways of thinking and acting of law enforcers and citizens. The relationship between these elements shows that synchronization is needed between law enforcers, applicable rules, and habits of community behavior to create legal certainty based on the theory of the applicable legal system.

Gustav Radbruch formulated that legal certainty must fulfill several elements, namely that the law is positive which means legislation, the law must be based on facts or reality, facts must be clearly defined to avoid misunderstanding and to be easily implemented, and positive law is not easily changed. Judges' considerations must contain legal sources that can be based on legislation as the main source of law, customary law, jurisprudence, international treaties or agreements, doctrine, as well as other legal sources, namely PBI, OJK Regulations, Permenkeu, PERMA, SEMA, Fatwa DSN MUI, *mu'tabarrah* books, and based on PERMA No. 2 of 2008 concerning KHES, judges in religious courts should use KHES as a source of reference in resolving sharia economic disputes in order to ensure justice and truth in the judge's decision.

Based on the *posita*, *petitum*, and evidence that has been presented at the trial, the judge decided the sharia economic dispute No. 398/Pdt.G/2021/PA.Btl by verdict due to the absence of the defendants, so the judge granted part of the lawsuit. The judge stated that the *murabahah* financing contract was valid and binding with legal considerations based on Article 1338 of the Civil Code and DSN Fatwa No: 09/DSN-MUI/IV/2000 (Direktori Putusan Mahkamah Republik Indonesia, 2021).

The judge also ruled that defendant I had defaulted based on the fact that defendant I paid the principal installment of Rp. 4,732,666, while the new margin fee was paid in installments of Rp. 2,850,000, so that the remaining unpaid principal was Rp. 45,267,334, and the remaining unpaid profit was Rp. 19,950,000, as well as the fact that the plaintiff had sent a warning letter to defendant I three times (Direktori Putusan Mahkamah Republik Indonesia, 2021).

The legal source of the judge's decision in partially granting the dispute claim No. 398/Pdt.G/2021/PA.Btl, namely that the murabahah financing is valid and binding, uses a legal source, namely the laws and regulations of Article 1338 of the Civil Code which states that "all agreements made legally shall apply as laws for those who make them" (Cahyono, 2023), and the judge also uses another legal source, namely the DSN-MUI Fatwa.

Radbruch's theory of legal certainty states that the law must be based on facts, and the facts must be formulated clearly, including by using the right legal sources so that there is no error in interpretation. Cases that will be resolved by judges in court must basically contain legal sources in the judge's consideration. The legal sources used must be based on the facts at trial and then linked to legislation or other legal sources that are in accordance with the facts in order to achieve legal certainty that is precise and accurate to the event.

Legal certainty according to Radbruch must be sourced from positive law, namely legislation, and in the hierarchy of sources of legal discovery in Indonesia can also be based on customary law, jurisprudence, treatY, doctrine, and other sources of law. The judge decided in dispute No. 398/Pdt.G/2021/PA.Btl that the defendant I had made a default referring to the evidence or facts of the trial without formulating legal sources related to these facts. The judge did not use the basis or source of law from legislation or other sources of law as in Article 1238 of the Civil Code as well as Article 36 KHES as a legal source for the judge's consideration of default, so that the judge's decision violated the principle of legal certainty because it did not refer to positive law, namely legislation or other sources of law.

The judge's consideration of the murabahah contract in this case is based on the facts in Article 1338 of the Civil Code and DSN Fatwa No: 09/DSN-MUI/IV/2000 so that the murabahah contract is valid and binding. The use of DSN Fatwa No: 09/DSN-MUI/IV/2000 as the judge's consideration is not appropriate because the fatwa contains ijarah financing, while what is disputed is murabahah financing. The judge's error in using the source of legal reference in this dispute resulted in the non- fulfillment of the elements of legal certainty as stated by Radbruch that the facts must be formulated clearly by using the right legal source so that there is no error in interpretation, but it turns out that in the judge's consideration it was wrong to use the fatwa so that it violates the theory of legal certainty.

Judges can use DSN Fatwa No: 04/DSN-MUI/IV/2000 (Yafie, 2000), or refer to paragraph 6 of Article 20 of KHES 2011, and can refer to Law Number 21 of 2008 concerning Islamic Banking as a judge's consideration regarding murabahah contracts, so that the judge's consideration in making a decision is based on the hierarchy of sources of legal discovery, namely legislation and fulfills the elements of legal certainty. Fatwa DSN MUI and KHES are sources of material law in resolving sharia economic disputes (Sa'i & Rosidah, 2022), so they should be used as a reference for judges' considerations in deciding sharia economic disputes as stipulated in PERMA No. 2 of 2008, as well as court decisions based on Article 50 paragraph 1 of Law No. 48 of 2009 concerning Judicial Power, which should contain the correct source of law to adjudicate a case.

Errors in the judge's consideration are not something that is desired or that should apply, but these things are indeed possible considering that the judge is also a human being. Legal remedies that can be taken by parties who feel aggrieved due to the judge's error in formulating legal certainty can still be done by filing an objection to the decision through appeal and cassation legal remedies.

E. Conclusion & Policy Recommendation

Settlement of sharia economic disputes can be done with ordinary lawsuits and simple lawsuits. Law Number 48 of 2009 concerning Judicial Power states that justice is carried out simply, quickly, and at low cost so that when a lawsuit is registered, the clerk or human resources at the religious court should carefully examine the case so that it can be considered first the case is resolved using an ordinary lawsuit or a simple lawsuit. The judge's consideration must contain elements of legal certainty based on existing positive legal sources, specifically sharia economic disputes which are the source of material law, the judge's consideration can be based on KHES as contained in PERMA No. 2 of 2008.

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