Conflict Resolution in Sharia Business Bankruptcies in Indonesia: Ethical and Legal Challenges

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Abstract: The objective of this study is to analyze and provide a description of the reasons why bankruptcy disputes in the Islamic economy continue to fall under the jurisdiction of the Commercial Court, a Special Court subordinate to the District Court. Additionally, it seeks to determine the ramifications of divergent Sharia norms and principles in business bankruptcy disputes involving Sharia contracts when resolved in accordance with conventional laws and regulations. A descriptive qualitative approach was adopted with the primary data obtained through several relevant sources. Data analysis was carried out using a legal approach, a sociological approach, and a philosophical approach. This study concluded that, in spite of the fact that it has been almost 18 years since the Commercial Court was established, the truth remains that it continues to have jurisdiction over insolvency cases in the Sharia commercial business sector. The absolute authority of the Religious Courts to address Sharia economic issues was expanded by Law No. 3 of 2006, which was passed in 2006. This leaves a significant question mark regarding the challenges and opposing norms and principles that may arise regarding insolvency disputes in Sharia economic enterprise if they are decided and handled using conventional general procedures and rules. Additionally, the Constitutional Court decision Number 93/PUU-X/2012 is exceedingly significant. It ends the dualistic way of resolving disputes in Sharia economics. It clarifies that

Sharia economic disputes decided in the District Court do not have binding legal force if they are looked at further. Therefore, business bankruptcies and companies employing Sharia contracts are included in this disagreement and other commercial conflicts.

Keywords: At-Taflis, Bankruptcy Dispute, Authority, Sharia Principles and Norms

Abstrak: Penelitian ini bertujuan untuk meneliti dan mendeskripsikan mengapa sampai saat ini sengketa kepailitan pada ekonomi syariah masih menjadi kewenangan Pengadilan Niaga yang merupakan Pengadilan Khusus dibawah Pengadilan Negeri, dan apa akibatnya terhadap perbedaan norma dan prinsip Syariah pada sengketa kepailitan usaha yang berdasarkan akad Syariah jika diselesaikan melalui hukum dan undang-undang yang masih bersifat konvensional. Jenis penelitian ini adalah deskriptif kualititaf dengan menggunakan pendekatan hukum, pendekatan sosiologis, dan pendekatan filosofis. Kajian ini berkesimpulan bahwa meskipun sudah hampir 18 tahun Pengadilan Niaga berdiri, faktanya Pengadilan Niaga masih memiliki yurisdiksi atas perkara kepailitan di sektor bisnis komersial syariah. Kewenangan absolut Pengadilan Agama untuk menangani masalah ekonomi Syariah diperluas oleh UU No. 3 tahun 2006, yang disahkan pada tahun 2006. Hal ini menyisakan tanda tanya besar mengenai tantangan dan pertentangan norma dan prinsip yang mungkin timbul terkait sengketa kepailitan di bidang ekonomi syariah jika diputuskan dan ditangani dengan menggunakan prosedur dan aturan umum konvensional. Selain itu, putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012 sangat signifikan. Putusan ini mengakhiri cara dualistik dalam penyelesaian sengketa ekonomi syariah. Putusan tersebut menjelaskan bahwa sengketa ekonomi syariah yang diputus di Pengadilan Negeri tidak memiliki kekuatan hukum mengikat jika ditinjau lebih lanjut. Oleh karena itu, kepailitan bisnis dan perusahaan yang menggunakan kontrak Syariah termasuk dalam perselisihan ini dan konflik komersial lainnya.

Kata kunci: At-Taflis, Sengketa Kepailitan, Kewenangan, Prinsip dan Norma Syariah

Introduction

The fundamental tenets governing the establishment of contracts in Sharia commerce and economics are derived from the teachings of the Qur'an and Sunnah. Sharia Bank consistently upholds three basic

principles, namely efficiency, fairness, and solidarity, throughout its operational activities. Efficiency refers to the collaborative process of mutually assisting one another to achieve the highest feasible level of profit or margin. Justice can be defined as a mutually respectful and honest relationship that upholds fairness when all parties involved reach a mature consensus regarding the distribution of resources and outcomes. Togetherness encompasses the act of providing reciprocal aid and guidance in order to enhance collective output.[1]

Legal interactions between legal subjects established following Sharia principles will result in legal repercussions. It is imperative that the settlement procedure likewise adheres to the rules of Sharia. In contrast, the Religious Courts possess the authority to employ sharia principles and draw upon the Qur'an, the Hadith of the Prophet, and the ijtihad of Islamic legal scholars as guiding principles during their judicial processes. Law number 3 of 2006 was enacted as an amendment to law no. 7 of 1989, pertaining to Religious Courts, has significantly expanded the jurisdiction of these courts in resolving civil disputes since its legalization. The jurisdiction of the Religious Courts has been revoked with respect to the examination, adjudication, and resolution of issues about various matters such as marriage, inheritance, wills, grants, endowments, and sadaqah.

Additionally, their authority no longer extends to conflicts arising from Sharia-compliant business transactions. The newfound jurisdiction has prompted skepticism among various stakeholders regarding the efficacy of religious courts in adjudicating Sharia-related economic conflicts. This doubt primarily pertains to the resolution of disputes arising from Sharia-compliant business and financial practices, particularly within the realm of Sharia banking. These practises have witnessed significant growth since their establishment under Law Number 21 of 2008, which pertains to Sharia Banking.[2]

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[1] Fiska Silvia, Kukuh Leksono, dan Ghansam Anand, "THE CHARACTERISTICS OF SHARIA COMPLIANCE IN THE SETTLEMENT OF SHARIA ECONOMIC DISPUTES IN INDONESIA," in *Proceedings of the International Conference on Law, Governance and Globalization* (Atlantis Press, 2017), 113–126, diakses Oktober 7, 2023, https://www.atlantis-press.com/proceedings/iclgg-17/25902332.

[2] Ikhsan Al Hakim, "Penyelesaian Sengketa Ekonomi Syariah di Pengadilan Agama," *Pandecta: Research Law Journal* 9, no. 2 (Desember 1, 2014): 273; Sherhan Sherhan, Pagar Pagar, dan Mustapa Khamal Rokan, "Execution of fiduciary

A further issue arises with the dichotomy in addressing Sharia economic problems, stemming from the contradiction between the provisions outlined in Article 55 Paragraph 1 of Law Number 21 of 2008. This article stipulates that the resolution of Sharia banking disputes is to be conducted within the jurisdiction of religious courts. Nevertheless, the elucidation of Article 55, paragraph 2 of the legislation stipulates that contractual disputes may be resolved in the General Courts, thereby implying that the resolution of sharia economic disputes lacks legal certainty due to the availability of litigation as a means of dispute settlement.[3] To ensure legal confidence, the Constitutional Court conducted a judicial review of Article 55 paragraph (2) of Law Number 21 of 2008 due to its inconsistency with Article 28 D paragraph 1 of the 1945 Constitution of the Republic of Indonesia. This review ultimately affirmed the exclusive and conclusive jurisdiction of the Religious Court over Sharia economics, as stated in Constitutional Court decision Number 93/PUU-X/2012.

The Religious Courts have successfully adjudicated several instances pertaining to Sharia economic problems, which have become progressively intricate and diverse, particularly in the aftermath of the amalgamation of state-owned Sharia banks into Bank Syariah Indonesia (BSI) and the advent of the Covid-19 pandemic.[4] The prevalence of Sharia economic conflicts has been seen to exhibit an upward trend over successive years. The term "year" refers to a unit of time commonly used to measure one of the several economic conflicts

guarantee in Sharia Banking after the court's decision number 18/PUU-XVII/2019," *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 8, no. 3 (September 30, 2022): 530.

[3] Yusna Zaidah, *Penyelesaian Sengketa Melalui Peradilan dan Arbitrase Syariah di Indonesia* (Yogyakarta: Aswaja Pressindo), 2015, 61.

[4] Mister Candera dan Karina Dwi Indah, "Financial Performance Islamic Banking: a Comparative Analysis Before and During the Covid-19 Pandemic in Indonesia," *International Journal of Business, Management and Economics* 1, no. 2 (Maret 9, 2021): 44–52 ;Jefik Zulfikar Hafizd, "PERAN BANK SYARIAH MANDIRI (BSM) BAGI PEREKONOMIAN INDONESIA DI MASA PANDEMI COVID-19," *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 5, no. 2 (Desember 7, 2020): 138; Allselia Riski Azhari dan Rofiul Wahyudi, "Analisis Kinerja Perbankan Syariah di Indonesia : Studi Masa Pandemi Covid-19," *JESI (Jurnal Ekonomi Syariah Indonesia)* 10, no. 2 (Desember 29, 2020): 96; Dinda Khoirotunnisa dan Zulfikar Zulfikar, "Impact of The Covid-19 Outbreak on The Stability of Sharia Banking Financial Performance," *International Journal of Finance & Banking Studies (2147-4486)* 11, no. 3 (Oktober 20, 2022): 82–87, diakses Desember 3, 2023, https://www.ssbfnet.com/ojs/index.php/ijfbs/article/view/2107.

within the framework of Sharia law that pertain to the jurisdictional limitations of the Religious Courts in handling bankruptcy disputes and postponement of debt payment obligations (PKPU). The issue is inherently linked to the need for amendments to Law Number 37 of 2004, specifically about Bankruptcy and Postponement of Debt Payment Obligations. Article 1, Paragraph 7 of this legislation explicitly designates the court mentioned in this law as a commercial court operating within the broader judicial framework.

Upon closer examination of Constitutional Court decision No. 93/PUU-X/2012, it becomes evident that the resolution of Sharia economic disputes in the District Court is deemed inconsistent with Article 28 D paragraph 1 of the 1945 Constitution of the Republic of Indonesia due to its failure to adhere to the principles of legal certainty and justice. The examination of this ruling also extends to Bankruptcy and PKPU proceedings as the underlying ideas and practices governing Sharia and mainstream economics diverge. When a bankruptcy dispute is brought before the Commercial Court and adjudicated by a judge within the Commercial Court, the guiding principles that will be employed are those derived from the general civil law framework that has been in operation since the Dutch colonial period.[5]

Consequently, despite utilizing a Sharia contract in the dispute, enforcing the terms will be conducted under debt, credit, and creditor concepts. Despite the inherent contradiction between these terms and the norms and principles of the Sharia economic contract, bankruptcy issues in Indonesia rooted in Sharia are resolved in accordance with conventional bankruptcy procedures, potentially leading to conflicts with Sharia principles. Based on the description provided, the author aims to examine the conflict arising from the legal validity of bankruptcy resolution within the context of Sharia business practices in Indonesia. Additionally, the author intends to explore the norms and principles governing Sharia business and the potential implications for preserving legal certainty in resolving Sharia economic disputes through litigation.

The researchers utilize a qualitative methodology, which is widely employed in the fields of Sharia, social sciences, and humanities, to investigate underlying assumptions. The principal aim of qualitative

[5] Syaifuddin Syaifuddin, "Dispute Settlement in Sharia Banking in Indonesia," *Randwick International of Social Science Journal* 4, no. 2 (April 2023): 297–309.

research is to produce novel insights by concentrating on identifying and comprehending situations, encompassing both textual and contextual elements.[6] A descriptive qualitative approach based on study library was adopted with the primary data obtained through several relevant sources such as textbooks, journal articles, seminar papers, and pertinent data from supplementary materials related to the subject matter. Data analysis was carried out using a legal approach, a sociological approach, and a philosophical approach.

Results and Discussion

Legal Foundations of *Taflis*: Safeguarding Creditor Interests

The matter of bankruptcy within the field of fiqh is not a novel concern since it has been previously deliberated upon by scholars in order to address the resolution of bankruptcy cases. In the Arabic language, the term "bankruptcy" is equivalent to "taflis," derived from the masdar word "fallasa," denoting the act of impoverishment. The term "masdar," also known as "iflas," derives from the Arabic word "aflasa," indicating a state of financial destitution. From an etymological perspective, the term "at-taflis" might be understood to denote a form of financial insolvency, excessive debt, or a decline into poverty. On the contrary, an insolvent individual is commonly referred to as "muflis," denoting a state of financial insufficiency characterized by a negative balance, descent into poverty or a situation where liabilities surpass assets.[7]

In legal terminology, "taflis" refers to a judicial ruling prohibiting "muflis" individuals from engaging in asset transactions. This ruling aims to safeguard the interests of "shahibul mal/ghurma'" (creditors) and prevent potential harm to their financial claims. It is important to note that a taflis decision can only be rendered by a judge, and this can occur either upon the explicit request of all or a majority of the shahibul mal/ghurma' or upon the request of the customer. The act of prohibiting or freezing assets, known as al-Hajr, is typically implemented when an individual is in a state of bankruptcy or

[6] Rukin Rukin, *Metodologi Penelitian Kualitatif.* (Yayasan Ahmar Cendekia Indonesia), 2019, 35.

[7] Ahmad Saparudin dan Ahmad Satiri, *Teknik Penyelesaian Perkara Kepailitan Ekonomi Syariah* (Yogyakarta: Pustaka Pelajar), 2018, 49-50.

insolvency [8]. The term "Al-Hajr" is commonly interpreted as the prohibition of an individual from expending their financial resources. The ban on utilizing insolvent assets stems from the fact that these assets inherently encompass the rights of other individuals, specifically the rights of the creditor who extended the obligation to the insolvent party.[9]

The legal foundation for taflis or bankruptcy in Islamic jurisprudence, as derived from the Hadith of the Prophet, can be attributed to the benevolent nature of Mu'azd Ibnu Jabal during his youth. He never grasped any object within his manual grasp. He continued to provide financial resources until he became overwhelmed by an insurmountable amount of debt.[10] Subsequently, the individual approached the esteemed Prophet, peace be upon him, and apprised him of the situation, seeking his intervention to reconcile with those indebted to him. If the individuals in question had chosen to show mercy, they would likely have spared Mu'azh due to their reverence for Rasulullah SAW. However, it is worth noting that after this act of sparing, they liquidated Mu'azh's assets, leaving him bereft of possessions. According to the principle of usul al-fiqh, the application of law is contingent upon its illat, which refers to the underlying legal relations that form the basis for its implementation.[11]

In the event that an ilat is present, it can be inferred that the law is applicable, whereas the absence of an ilat indicates that the law is not applicable. The declaration of bankruptcy among individuals is predicated on applying qiyas, as noted in this Hadith.[12] The topic of bankruptcy settlement in Islam is well-known, with Ibn Rushd

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[8] Amran Suadi, *Hukum Kepailitan Syariah (Al Taflis) dalam sengketa ekonomi Syariah* (Jakarta: Kencana), 2021, 35.

[9] Nur Hidayah et al., "Sharia Banking Disputes Settlement: Analysis of Religious Court Decisions in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (Juni 2023): 75–92.

[10] Ghansam Anand et al., "PROBLEMATIKA APLIKASI EKONOMI SYARIAH DALAM REZIM HUKUM KEPAILITAN DI INDONESIA," *Jurnal Bina Mulia Hukum* 2, no. 1 (September 28, 2017): 67–79, diakses Oktober 7, 2023, https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/97.

[11] Oktaria Ningsih, Fauziah Fauziah, dan Yusida Fitriyati, "Kepailitan Terhadap Harta Peninggalan Dalam Perspektif Hukum Ekonomi Syari'ah Telaah Pasal 207 Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Jurnal Muamalah* 5, no. 2 (2019): 50–61.

[12] Ibid.

introducing the method of bankruptcy settlement in his renowned work, Bidyatul Mujtahid. According to Ibn Rusy, bankruptcy can be seen as the state in which assets become entangled due to indebtedness. Following a declaration of bankruptcy, individuals are prohibited from engaging in certain financial activities, including purchasing, selling, transferring, donating, or acknowledging any debts owed to them by individuals in close proximity or at a distance.[13] Except for the Maliki school of thought, most ulama assert that the resolution of bankruptcy cases should be predicated upon a ruling issued by a judge. If his position as muflis remains undetermined, all acts pertaining to the utilization of his assets are deemed legitimate.[14]

Assume an individual has been legally determined to be encountering financial hardships per a judicial ruling, signifying the absence of assets that can be liquidated to satisfy outstanding debts. Under such circumstances, creditors are prohibited from imposing charges and demanding urgent debt repayment from the individual in question. The statement provided is derived from Surah al-Baqarah verse 280 of the Quran, where it is recommended that if an individual is facing financial hardship, it is recommended to grant them an extension until they can fulfill their obligations. In the context of Islamic bankruptcy law, the determination of priority in the settlement of specific obligations is guided by the principle of defending the public welfare. [15] stated that there are several responsibilities that the ulama emphasizes while addressing bankruptcy such as:

a. Compensation for individuals responsible for managing and resolving insolvent assets, caretakers, and support staff.
b. The remuneration was provided to individuals responsible for managing the irrigation of muflis' gardens after the taflis ruling.
c. The pawnbroker is entitled to obtain compensation equivalent to the pawned item's value per their rights.
d. Transportation wages pertaining to the conveyance of

[13] Ibnu Rusyd, *Bidyatul Mujtahid Wa Nihayatul Muqtashid*, 1 ed. (Jakarta: Pustaka Al-Kautsar), 2016, 215.

[14] Wahbah Az-Zuhaily, *Fiqih Islam wa Adillatuhu* (Jakarta: Gema Insani), 2011, 457; Abdul Mughits, "Kompilasi Hukum Ekonomi Syariah (KHES) dalam Tinjauan Hukum Islam," *Al-Mawarid Journal of Islamic Law* 18 (2008): 141–159, diakses Oktober 7, 2023, https://www.neliti.com/publications/59033/.

[15] Suadi (2021).

household furnishings and other items.

e. When Shahib al-maal identified a property, he proceeded to sell it to the muflis individuals before the passing of the taflis decision, when the muflis individuals were still in the process of making their payment. According to Islamic law principles, it can be argued that the shahib al-maal holds a stronger claim to the property in question.
f. According to Shahib al-maalas, in the event that a buyer has not received the items from Muflis, they have the right to reclaim the monetary value of the purchased goods.
g. In an ijarah fi al-dzimmah contract, service providers are entitled to take the ujrah remuneration from service users who clearly understand the advantages rendered.
h. In the Mudharabah and Salam agreement, the capital provider possesses the entitlement to reclaim the capital initially contributed, provided that it remains unimpaired subsequent to the declaration of bankruptcy or filing.

Middle Eastern countries, such as Saudi Arabia, have various legal instruments incorporated into their laws. These instruments include *ijra' at-taswiyah al-waqaiyah* (protection settlement procedures), *ijra i'adah at-tanzhimi al-maly* (financial reorganisation procedures), *ijra' at-tashfiyyah* (liquidation procedures), *ijra' at-taswiyah al-waqaiyah li shigharul madinin* (small customer protection settlement procedures), i*adah at-tanzhimi al-maly li shigharul madinin* (small customer financial reorganization procedures), *ijra' at-tashfiyyah li shigharul madinin* (small customer restructuring procedures), *tashhih audha' al-madinin* (correction shahib al-maal conditions), *I'adah schedule ad-duyun* (rescheduling of debts), *takhfid al-mabaligh al-mustahiqqah li ad-dainin* (reduction of the amount of customer debt) and *aulawiyat ad-duyun* (debt prioritisation).[16]

The aforementioned legal principle pertains to the insolvency regulations within the framework of Islamic jurisprudence. An individual who is proclaimed taflis will be subjected to hajr, which entails the seizure of all their possessions. Nevertheless, in the event that the muflis lacks the necessary resources to settle his outstanding

[16] Ibid.; Heriyah Heriyah dan Faisal Santiago, "Reconciliation as Problem Solution of Sharia Economic Dispute in Religious Court," in *International Conference on Law, Social Science, Economics, and Education* (European Alliance for Innovation n.o., 2021).

debts, it can be inferred from the Qur'anic as mentioned earlier verses and Hadith that the creditor is entitled to provide the muflis an extension period, allowing him sufficient time to repay his debts, or seize any remaining assets possessed by the muflis. The principal determinant for determining the disposition of an individual's assets, namely those declared as muflis, is the overall welfare of all relevant stakeholders, including the shahib maal (owner of the assets), mudharib (manager of the assets), and other associated parties such as employees.[17]

Bankruptcy Law in Indonesia

The bankruptcy law applicable in Indonesia can be comprehensively understood by examining Article 1 point 1 of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. This provision defines bankruptcy as the comprehensive seizure of all assets belonging to a debtor declared bankrupt. The management and resolution of these assets are entrusted to a curator, who operates under the supervision of a supervising judge per the regulations stipulated in this law. The aforementioned article elucidates that bankruptcy, as governed by Indonesian bankruptcy law, entails the comprehensive seizure of a debtor's assets. Consequently, bankruptcy law, from the standpoint of national legislation in Indonesia, serves as a means to resolve disputes pertaining to debts and receivables through legal proceedings.[18]

The process of resolving debts through a bankruptcy petition entails the court seizing the entirety of the debtor's assets. Consequently, the individual in question is only able to oversee their assets since they are entrusted to a curator at the conclusion of the bankruptcy proceedings, which includes the resolution of all outstanding obligations. One example of an entity that might be subject to bankruptcy proceedings is the estate of a deceased debtor, which encompasses the assets remaining after their passing. The potential

[17] Shamsalden Aziz Salh, "Dispute Resolution of Islamic Financial Institutions, Court Litigation and Negotiation," *International Affairs and Global Strategy* 90, no. March (2021): 24–29, diakses Oktober 7, 2023, www.iiste.org.

[18] Man S Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang* (Bandung: PT. Alumni, 2014); Mona Wulandari dan Saifullah Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah di indonesia," *Wajah Hukum* 6, no. 2 (Oktober 2022): 441–445.

insolvency of an individual's estate upon their demise may arise if the deceased had previously entered a state of non-payment towards their outstanding obligations or if the assets bequeathed at the time of death prove inadequate for debt settlement purposes.[19] Therefore, in the event of a debtor's demise, it is still possible for them to be declared bankrupt and have their assets subjected to this process, provided that a creditor lodges an application to that effect.[20]

Nevertheless, the application is directed towards the debtor's inheritance rather than the heirs. The concept of inheritance, as defined in the Civil Code, encompasses tangible property and the associated rights and obligations of heirs within the realm of property law, which can be quantified in monetary terms. Alternatively, in the event of the decedent's demise, the endowment may prove inadequate to satisfy the outstanding debt. Hence, in the event of a debtor's demise, it remains possible for the individual to be declared bankrupt with respect to their assets, contingent upon the submission of an application by a creditor. Nevertheless, the application is directed towards the debtor's inheritance rather than the heirs. The concept of inheritance, as defined in the Civil Code, encompasses tangible property and the associated rights and obligations of heirs within the realm of property law, which can be quantified in monetary terms.[21] In the event that the assets left behind by a deceased debtor are inadequate to cover their outstanding debts, the debtor can be declared bankrupt if a creditor applies that effect. [22]

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[19] Adriandi Kasim, "THE SETTLEMENT OF SHARIA ECONOMIC DISPUTES IN INDONESIAN ISLAMIC CLASSIC TRADITIONS AND POSITIVE LAW," *Tasharruf: Journal Economics and Business of Islam* 6, no. 1 (Juni 2021): 54–67.

[20] Ningsih, Fauziah, dan Fitriyati, "Kepailitan Terhadap Harta Peninggalan Dalam Perspektif Hukum Ekonomi Syari'ah Telaah Pasal 207 Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang".

[21] Sahnaz Kartika dan Muhammad Yadi Harahap, "Kewenangan Mengadili Dalam Penyelesaian Perkara Kepailitan dan Penundaan Kewajiban Pembayaran Utang Perbankan Syariah," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (Januari 2023): 101–112.

[22] Niniek Mumpuni Sri Rejeki, "UNCERTAINTY ON THE BANKRUPT PROCESS AS A LEGAL MEANS FOR SHARIA ECONOMIC DISPUTE SETTLEMENT (Case Study of BMT Fisabilillah)," *Jurnal Hukum dan Peradilan* 11, no. 3 (Desember 2022): 453–476.

Nevertheless, the application is directed towards the debtor's inheritance rather than the heirs. The concept of inheritance, as stipulated in the Civil Code, encompasses several aspects, such as property and the associated rights and obligations of heirs within the realm of property law, which can be quantified in monetary terms. The regulations pertaining to the eligibility of a business entity, whether it be an individual or an association, to file for bankruptcy are outlined in Article 2, paragraph (1) of the Bankruptcy Law and PKPU. This provision states that debtors who possess two or more creditors and have failed to satisfy at least one matured and enforceable debt fully may be declared bankrupt through a court decision. Such a declaration can be initiated either by the debtor themselves or by one or more of their creditors. The implementation of Law No. 37 of 2004, which pertains to Bankruptcy and Postponement of debt payment responsibilities, is guided by a set of principles. These principles serve as recommendations for the proper execution of the law.[23]

First, Balance. The legal framework established by Law No. 37 of 2004, which pertains to Bankruptcy and Postponement of Debt Payments, encompasses many rules that reflect the idea of equilibrium. These regulations safeguard against potential misuse of bankruptcy institutions and protect them from unscrupulous debtors. However, it is worth noting that some measures exist to mitigate the potential for exploitation of bankruptcy institutions by creditors with malicious intent.[24]

Second, Business Sustainability. The aforementioned idea is located at the inception of Law No. 37 of 2004. This explanation highlights the presence of provisions within Law No. 37 of 2004 that offer options for the sustained operation of a debtor's lucrative firm.[25]

Third, Justice. This principle posits that the regulations pertaining to bankruptcy have the capacity to satisfy a notion of fairness for the parties involved. The purpose of this concept of justice is to mitigate the occurrence of arbitrary actions by collectors who prioritize the

[23] Atharyanshah Puneri, "Dispute Resolutions Mechanisms for Islamic Banks in Indonesia," *International Journal of Islamic Economics and Finance (IJIEF)* 4, no. SI (2021): 153–180.

[24] Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang,* 55-60.

[25] *Ibid.*

collection of their debts from debtors while disregarding the interests of other creditors.[26]

Fourth, Integrity. This principle posits that the formal legal system and material law are integral to the civil law system and national civil procedural law. The recently enacted legislation pertaining to bankruptcy and the deferral of debt repayment requirements exhibits a more expansive purview in relation to its standards, breadth, substance, and debt resolution procedures.[27] More extensive coverage is deemed required due to recent advances and the legal requirements of society. Simultaneously, the already implemented regulations need to be revised as a legal mechanism for impartially, expeditiously, transparently, and efficiently addressing issues related to debt and receivables.[28]

Law No. 37 of 2004, which replaces Law No. 4 of 1998, highlights several significant aspects. Firstly, to avoid ambiguity, this legislation provides a precise delineation of the concept of debt, thereby minimizing potential divergent interpretations. The term "firm" refers to a business organization that operates in the market to produce and, similarly, the concept of maturity [29]. Furthermore, it is crucial to address the specific needs and protocols associated with filing for bankruptcy and requesting a postponement of debt payment obligations. This includes establishing a clear and predetermined timeframe for making decisions regarding the declaration of bankruptcy or the deferral of debt payment obligations.[30]

Conflict Resolution in Sharia Business Bankruptcies in Indonesia

The resolution of Sharia economic disputes in Indonesia is primarily the responsibility of the Religious Court or Sharia Court, as

[26] Fuady Fuady, *Hukum Pailit dalam Teori dan Praktek* (Bandung: PT Citra Aditya Bakti, 2011); Hashim Sofyan Lahilote et al., "The Litigation Aspects in Solving Banking Disputes in the Sharia Sector," *Public Policy and Administration Research* 9 ,no. 8 (2019): 53–62.

[27] Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang,* 59.

[28] Hidayah et al., "Sharia Banking Disputes Settlement: Analysis of Religious Court Decisions in Indonesia," 75–92.

[29] Fuady, *Hukum Pailit dalam Teori dan Praktek,* 53-62.

[30] Murtadho Ridwan, "PENYELESAIAN SENGKETA PERBANKAN SYARIAH DI INDONESIA," *MALIA: Journal of Islamic Banking and Finance* 1, no. 1 (November 2017): 45–56.

stipulated in Article 49 Letter i of Law No. 3 of 2006. This law, which amended Law Number 7 of 1989 concerning Religious Courts, has been further revised by Law No. 50 of 2009. The latter amendment has broadened the absolute jurisdiction of religious courts in addressing Sharia economic disputes. The Religious Courts possess the authority to adjudicate a wide range of situations, provided that Sharia-based contracts govern the disputes. In instances where a bankruptcy case is conducted in accordance with Sharia principles, it is sometimes referred to as a Sharia bankruptcy case. Presently, such cases continue to fall within the jurisdiction of the commercial court.[31]

The inseparability of this issue is contingent upon the unique characteristics of the bankruptcy law framework in Indonesia, as stipulated in Law Number 37 of 2004, which pertains to Bankruptcy and Postponement of Debt Payment Obligations (PKPU). During that period, there was no specific legislation governing the settlement of Sharia economic disputes. However, a dedicated regulation was introduced two years later, which specifically addresses the resolution of Sharia economic issues as stipulated in Article 49, letter i of Law No. 3 of 2006. However, the elucidation provided outlines the extent of Sharia economics as encompassing Islamic 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 institutions pension funds, and Sharia business.[32]

According to Article 300, paragraph 1 of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), the court is empowered to not only review and adjudicate applications for bankruptcy declaration and suspension of debt payment obligations but also to handle other commercial cases as determined by legislation. The court, as mentioned earlier discussed in the preceding article, refers to the Commercial Court situated inside the General Court, as explicitly mentioned in Article 1, paragraph 7 of the previous legislation. The court's statements in this article can be interpreted as alluding to the Commercial Court.[33] The establishment of the Commercial Court was historically aimed at expediting the resolution of debtors' payment

[31] Saparudin dan Satiri, *Teknik Penyelesaian Perkara Kepailitan Ekonomi Syariah,* 53.

[32] *Ibid.*

[33] *Ibid.*

obligations. This objective necessitated a streamlined and expeditious process, which in turn instilled trust among foreign investors.[34]

Notably, the Commercial Court's approach did not discriminate between debtors based on their financial standing. This paper examines the nature of disputes that arise within traditional and Sharia-compliant business practices. Furthermore, it is necessary to establish a more equitable balance between the enactment of Law Number 21 of 2008, which pertains to Sharia banking, and the introduction of modifications to Law Number 37 of 2004, which aim to control matters related to bankruptcy and disputes in the Sharia economy, namely those addressing PKPU. The inclusion of Sharia economic disputes within the jurisdiction of the Commercial Court gives rise to a conflict of norms between the fundamental principles of Islamic law that form the basis of Sharia economic contracts and the legal framework governing the resolution of Sharia economic bankruptcy.[35] Some of the conflicts arising from this situation are as follows:

First, The utilization of material law has a significant systemic influence. When examining the phenomenon of Sharia bankruptcy in Indonesia, it becomes apparent that there is a prevailing inclination to transform the fundamental nature of Sharia debts into conventional debts. This suggests an attempt to assimilate the principles of Sharia economic law within the framework of mainstream economic law. The Sharia Banking Law, as stipulated in Article 1 number 12, places significant emphasis on the adherence to Sharia principles in banking operations, which are derived from fatwas issued by authoritative entities responsible for issuing fatwas in the realm of Sharia. Law Number 21 of 2008 was enacted on the 16th of July, 2008.[36] Some noteworthy general regulations merit consideration. The general rules mentioned in Article 1 are novel and will have significant consequences, notably in terms of defining Sharia principles.[37]

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[34] Anand et al., "PROBLEMATIKA APLIKASI EKONOMI SYARIAH DALAM REZIM HUKUM KEPAILITAN DI INDONESIA", 67–79.

[35] Silvia, Leksono, dan Anand, "THE CHARACTERISTICS OF SHARIA COMPLIANCE IN THE SETTLEMENT OF SHARIA ECONOMIC DISPUTES IN INDONESIA," 67–79.

[36] Saparudin dan Satiri, *Teknik Penyelesaian Perkara Kepailitan Ekonomi Syariah,* 52.

[37] G Dewi, "The Review on Insolvency of Sharia Insurance Company from the Perspective of Islamic Economic Law in Indonesia (Case Study on Bankruptcy Decision of Asuransi Syariah Mubarakahco. Ltd Number 1016 K/Pdt.Sus-

Based on the definition mentioned above, an economy founded on Sharia contracts encompasses two significant messages. Firstly, it upholds the notion of Sharia, which represents the fundamental tenets of Islamic law. Secondly, it emphasizes the incorporation of Sharia contracts as a critical element within the economic framework. The transformation in the essential nature of legal relationships is evident in the criteria for initiating a bankruptcy petition, as stipulated in Article 2, Paragraph (1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. These criteria pertain to the presence of both creditors and debtors. In the context of bankruptcy disputes arising from Sharia contracts, there is a recurring tendency to invoke the concepts of creditor and debtor despite the fact that these entities may not be universally present in all forms of Sharia finance.[38]

Sharia financing exclusively operates on the basis of a partnership arrangement wherein one party provides assistance to the other. Conversely, Sharia funding ensures a reciprocal relationship between the financiers and the beneficiaries, thus eliminating any unjust exploitation for financial gain. The act of initiating a bankruptcy proceeding through the submission of a case rooted in a Sharia contract to the Commercial Court yields noteworthy outcomes.[39] It is worth noting that within the framework of Sharia economic practice, the existence of a creditor and debtor relationship is deemed unattainable due to the inherent contradiction with the fundamental principles of Islamic law. This contradiction arises from the close association between credit and interest, which is considered usurious. The argument presented relies on the definition of credit as stipulated in Article 1, point 11 of the Banking Law.[40]

Bankrupt/2016)," in *in Social Sciences on Sustainable Development for World Challenge: The First Economics, Law, Education and Humanities International Conference, KnE Social Sciences* (Knowledge E, 2019), 281–294.

[38] Anand et al., "PROBLEMATIKA APLIKASI EKONOMI SYARIAH DALAM REZIM HUKUM KEPAILITAN DI INDONESIA," 67-69.

[39] Rusni Hassan, Ibtisam @ Ilyana Ilias, dan Tuan Nur Hanis Tuan Ibrahim, "ISLAMIC BANKING DISPUTE RESOLUTION: THE EXPERIENCE OF MALAYSIA AND INDONESIA," *IIUM Law Journal* 30, no. S2 (November 12, 2022): 317–358, diakses Oktober 7, 2023, https://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/view/771.

[40] Elman Johari, "ESPON BANK SYARIAH KOTA BENGKULU TERHADAP KEWENANGAN PENGADILAN AGAMA PADA PENYELESAIAN SENGKETA PERBANKAN SYARIAH,"

According to this provision, credit refers to the condition of monetary funds or negotiable instruments that hold equivalent value based on a mutually agreed upon agreement or loan contract between a financial institution and another party. This agreement necessitates the borrower to repay the borrowed amount within a specified timeframe, along with additional charges. Second, one additional ramification arising from the adjudication of bankruptcy cases within Sharia financial institutions by the Commercial Court pertains to the imperative of enhancing the harmonization between contractual agreements and mechanisms for resolving disputes.[41] For instance, the lack of alignment between the contractual terms and the dispute resolution process is evident in the PKPU case involving Purdi E Chandra and PT BNI Syariah.

In this particular case, the bankruptcy ruling failed to take into account the provisions outlined in the DSN fatwa within the Murabahah contract. This fatwa explicitly grants bankrupt debtors an extension of time. From a philosophical standpoint, the prevalence of Islamic business terminology primarily characterizes the domain of Sharia banking. [42] This includes phrases such as murabahah, contemplation, mudharabah, qardh, hiwalah, ijarah, kafalah, and various others. Hence, it is deemed accurate and suitable for Sharia banking cases to be adjudicated within a legal framework that comprehensively addresses issues pertaining to Islamic Sharia principles. In the event of being subjected to a non-sharia legal framework, there will arise a necessity for harmonizing contract procedures and methods of resolving disputes. The execution of the contract adheres to the principles and regulations of the Sharia system.[43]

JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan 4, no. 1 (Juli 7, 2018): 23–32, diakses Oktober 7, 2023, https://ejournal.iainbengkulu.ac.id/index.php/mizani/article/view/1006.

[41] Rejeki, "UNCERTAINTY ON THE BANKRUPT PROCESS AS A LEGAL MEANS FOR SHARIA ECONOMIC DISPUTE SETTLEMENT (Case Study of BMT Fisabilillah)".

[42] Asep Maman, "Pranata Hukum Perbankan Syariah Dalam Sistem Perbankan Nasional di Indonesia," *JOURNAL EKONOMI, KEUANGAN, PERBANKAN DAN AKUNTANSI SYARIAH* 1, no. 02 (Desember 2022): 89–102.

[43] Anand et al., "PROBLEMATIKA APLIKASI EKONOMI SYARIAH DALAM REZIM HUKUM KEPAILITAN DI INDONESIA," 67–79.

In contrast, the resolution of disputes takes place within a legal framework that does not incorporate Sharia norms and principles. The resolution of bankruptcy disputes in the Sharia economy remains governed by the provisions of Law Number 37 of 2004. However, this law does not adequately consider the financial well-being of the debtor, regardless of whether they are solvent or insolvent. Instead, it focuses on specific criteria for declaring bankruptcy, such as the debtor having multiple creditors and failing to fully repay at least one outstanding debt that is due and collectible. In such cases, a Commercial Judge may declare the debtor bankrupt. This rule exhibits significant contradictions with the fundamental principles of bankruptcy in Islamic jurisprudence.[44]

In the realm of Islamic bankruptcy law studies, the designation of solvent or insolvent pertains to the financial well-being of the debtor. The concept of health can be comprehended through both physical and economic lenses. In his work, Bidayatul Mujtahid, Ibn Rushd provides an interpretation of the term "healthy" that encompasses both physical and mental well-being. According to his analysis, individuals who are indebted and suffer from genuine illnesses are not obligated to repay their debts immediately. Instead, they are granted a reasonable extension of time to settle their debts, allowing them to prioritize their health and eventually resume their normal activities.[45]

In the aforementioned commercial court ruling, namely case number 12/Pdt.Sus-Pailit/2017/PN. Niaga SMG, the panel of judges, has concluded the bankruptcy petition filed by the Petitioner against the Respondent (BMT et al.), which is currently being legally deliberated. The applicant's petition was deemed eligible for approval by the panel of judges based on the fulfillment of the bankruptcy conditions outlined in Article 2, paragraph 1, in conjunction with Article 5, paragraph 4, of Law Number 37 of 2004. These conditions include the presence of two or more creditors, non-payment of at least one outstanding debt, and the establishment of specific factual or circumstantial evidence.

The principles of Sharia encompass the fundamental tenets of Islamic law that serve as the foundation for economic activity conducted in accordance with Sharia. According to the fatwa number

[44] Syaifuddin, "Dispute Settlement in Sharia Banking in Indonesia," 297–309.
[45] Rusyd, *Bidyatul Mujtahid Wa Nihayatul Muqtashid,* 215.

04/DSN-MUI/IV/2000 issued by the Indonesian Ulema Council, in the context of Sharia banking, it is stipulated that in the event of a client's bankruptcy declaration and subsequent failure to fulfil their financial obligations, the bank is obligated to defer the collection of the debt until the customer is able to repay or as per a mutually agreed upon arrangement.[46]

This implies that some circumstances exist in which an individual, despite being officially declared bankrupt, is not promptly subjected to a comprehensive seizure of all assets possessed by the bankrupt party or institution. Nevertheless, within the context of Islam, there exist alternative approaches to address the issue mentioned above, as indicated by the MUI fatwa. These approaches typically involve extending the duration of maturity, waiving penalties, and mitigating interest rates. According to the Qur'an, specifically Surah Al Baqaroh verse 280, Allah said:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۚ وَأَنْ تَصَدَّقُوا خَيْرٌ لَكُمْ ۖ إِنْ كُنْتُمْ تَعْلَمُونَ

"And if the debtor is in straits, let there be a respite until the time of ease; and if you remit the debt as a charity, it will be better for you, should you know."

During the time of the Prophet Muhammad (PBUH), there were accounts of bankruptcy cases. One such case involved Mu'az bin Jabal, who was identified by Rasulullah (PBUH) as an individual burdened by debt and unable to settle it. In the act of benevolence, Rasulullah (PBUH) utilized his resources to discharge Mu'az bin Jabal's debt. Additionally, Rasulullah (PBUH) appointed Mu'az bin Jabal as a governor in Yemen, enabling him to receive a salary and regain financial stability.[47]

Third, based on the result of a judicial review conducted on the dualism of Sharia economic dispute resolution, as per the constitutional court decision Number 93/PUU-X/2012. The decision above declares that the interpretation of Article 55 paragraph 2 of Law No. 21 of 2008 regarding Sharia banking is in conflict with the Constitution, explicitly

[46] Suadi, *Hukum Kepailitan Syariah (Al Taflis) dalam sengketa ekonomi Syariah,* 107-109.

[47] Saparudin dan Satiri, *Teknik Penyelesaian Perkara Kepailitan Ekonomi Syariah,* 292-293.

violating the principle of legal certainty stated in Article 28 D, and lacks enforceable legal authority. This also pertains to the matter of Sharia economic bankruptcy disputes, wherein the resolution of such problems inside commercial courts contradicts the principle of legal certainty, particularly in the context of resolving Sharia financial disputes through litigation [48].

By eliminating the elucidation of Article 55, paragraph 2 of Law No. 21 of 2008, it can be ensured that the resolution of disputes pertaining to the implementation of Sharia principles through legal proceedings can only be conducted within the religious courts. This reflects the national legal and political policy's endeavor to fulfill the legal requirements of society, particularly in light of the empirical reality where various economic activities and sectors adopt Sharia principles.[49] Hence, the resolution of bankruptcy disputes in Indonesia, which are based on Sharia principles but resolved through conventional bankruptcy regulations, may give rise to conflicts with the fundamental values and rules of Sharia principles. Consequently, this situation engenders legal ambiguity concerning the comprehensive resolution of Sharia economic disputes.

Conclusion

The continued jurisdiction of the Commercial Court over bankruptcy cases in sharia economics can be attributed to the distinctive characteristics of the bankruptcy legal framework in Indonesia, as outlined in Law Number 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations (PKPU). As of the present time, modifications have yet to be made to the regulation above, despite the enactment of Law No. 3 of 2006, which pertains to revisions of Law No. 7 of 1989 governing Religious Courts. This law grants religious courts the jurisdiction to adjudicate Sharia economic matters, and its authority has been reinforced by constitutional court decision No. 93/PUU-X/2012. The aforementioned decision explicitly declares that the adjudication of Sharia economic disputes in the District Court violates the Constitution. This situation entails a clash

[48] Suadi, *Hukum Kepailitan Syariah (Al Taflis) dalam sengketa ekonomi Syariah,* 107-109.

[49] Saparudin dan Satiri, *Teknik Penyelesaian Perkara Kepailitan Ekonomi Syariah,* 292-293.

between the fundamental principles and norms of Islamic law that constitute the basis of Sharia economic contracts and the legality of formal law in addressing Sharia economic bankruptcy. One notable consequence is the potential systemic influence on the application of the relevant legal framework.

From the standpoint of Sharia bankruptcy in Indonesia, there appears to be a propensity to transform the fundamental nature of Sharia debts into conventional debts through the insistence on employing the designations of creditor and debtor, as this aligns with the regulations stipulated in Law Number 37 of 2004 pertaining to Bankruptcy and Postponement of Debt Payment Obligations. Furthermore, the inclusion of bankruptcy cases in Sharia financial institutions within the jurisdiction of the Commercial Court necessitates a greater level of coordination between contractual agreements and methods of resolving disputes. Likewise, it is worth noting the ruling of the constitutional court in case Number 93/PUU-X/2012, which declares that the interpretation of Article 55 paragraph 2 of Law No. 21 of 2008 pertaining to Sharia banking conflicts with the Constitution. Specifically, it is deemed to be inconsistent with the principle of legal certainty as stipulated in Article 28 D and lacks enforceable legal authority.

This also pertains to the issue of bankruptcy issues within the context of Sharia economics. The resolution of such problems, which are handled and resolved in commercial courts, may conflict with the principle of legal certainty, particularly when it comes to resolving Sharia economic conflicts through litigation. Hence, it is imperative to undertake an examination of the bankruptcy resolution framework within the context of the Sharia economy, with the active participation of experts and relevant stakeholders, including DSN-MUI, Sharia financial institutions, scholars specializing in Sharia law and finance, and other pertinent actors. This collaborative effort aims to ensure the effective functioning and advancement of the Sharia economic system in Indonesia in accordance with the comprehensive principles and regulations of Islamic law, particularly in the realm of resolving societal disputes.

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