

Justisia Ekonomika

Jurnal Magister Hukum Ekonomi Syariah

Vol 8, No 1 tahun 2024 hal 1056-1070

EISSN: 2614-865X PISSN: 2598-5043 Website: <http://journal.um-surabaya.ac.id/index.php/JE/index>

INTERSECTION OF SHARIA ECONOMIC LAW IN ASIAN RELIGIOUS COURTS (A Case Study of Indonesia)

Ilham Akbar Ryant Prabowo

Fakultas Syariah wal Qonun Universitas Al Azhar Kairo

e-mail: ilhamakbarr0207@gmail.com

Submitted: 13 April 2024; Accepted: 05 June 2024; Published: 20 June 2024

Abstract

This research delves into the competency of religious courts within the framework of Sharia economic law, specifically focusing on a case study of religious courts in Indonesia. These courts hold a crucial role in resolving disputes related to Sharia economics, including matters of marriage, inheritance, and family finance. The competency of these courts, which involves a deep understanding of Sharia economic principles such as inheritance law, transactions (muamalah), and Sharia financial contracts, is vital for dispensing justice in line with Sharia principles. The study scrutinizes the ability of Indonesian religious courts to apply and comprehend Sharia economic law in their legal proceedings. This research offers insights into the nuanced aspects of religious court competency through a qualitative approach, employing methods such as case studies and content analysis. By focusing on qualitative methods, the study provides a rich and in-depth understanding of how religious courts navigate and interpret Sharia economic law within the Indonesian context. This research contributes significantly to the understanding of the importance of religious court competency in supporting Sharia economics in Indonesia and offers valuable insights for policymakers and practitioners.

Keywords: Competence of religious justice, perspective of Sharia economic law, religious justice

A. INTRODUCTION

Pandemic The pandemic has resulted in global economic collapse, considered to be the cause of the worst global financial crisis in modern history, even surpassing the 1997-1998 financial crisis. The impact was very significant, giving rise to several major problems related to the economy, such as increasing unemployment rates, mass business closures, and a sharp decline in international trade and investment activities.

In many developing countries, the inability of health systems to handle the surge in cases is worsening economic conditions. Developed countries are also experiencing severe shocks, with the tourism and hospitality sectors hit hard, while manufacturing and service industries are facing unprecedented supply chain disruptions. Prolonged uncertainty worsened investor and consumer confidence, further deepening the economic recession in various regions, including

Europe, Asia, and Latin America. Global recovery efforts require strong international coordination and aggressive fiscal and monetary policy support to encourage growth again¹. First, many countries experienced an economic recession due to activity restrictions to control the virus, which reduced business activity, production, and consumption. Second, business closures and reduced economic activity have caused millions of people to lose jobs or income, especially in the banking, tourism, hospitality, transportation, and retail sectors. Third, the pandemic creates uncertainty for business actors who have difficulty planning and managing supply, distribution, and demand due to changes in consumer behavior and fluctuating government regulations. Fourth, international travel restrictions and global supply chain disruptions cause delays in the production and delivery of goods, negatively impacting various industrial sectors. Fifth, many companies, especially small and medium-sized companies, are experiencing liquidity problems and bankruptcy due to falling revenues, while the financial system is also under pressure, especially in highly affected countries. Finally, many governments increased spending to support society and the economy during the pandemic, which increased public debt significantly.

The pandemic forced many governments, including in Africa and Asia, to pass trillion-dollar stimulus packages to deal with the impact. Several countries have relaxed banking regulations, including sharia banking, by simplifying the restructuring and rescheduling process for affected customers, especially MSMEs and non-MSMEs with financing under 500,000 dollars. Amid economic uncertainty, companies must be prepared to face the worst, such as

bankruptcy and pressure for restructuring, similar to the 1997-1998 monetary crisis, which was marked by the difficulty of many companies in paying debts. In the field, there are three interesting legal issues to study from the competency perspective of the Religious Courts in Indonesia related to the continued impact of this pandemic: 1) The increase in cases of default and unlawful acts during the pandemic; 2) Problems executing mortgage rights for bad credit; and 3) Challenges related to bankruptcy and postponement of debt payment obligations (PKPU). Research into these issues is important to understand how Religious Courts adapt and deal with increasing caseloads and find appropriate solutions in the context of sharia law.

B. RESEARCH METHODS

The research method used in this research is normative legal research, namely a type of legal research related to legal rules, norms, and principles. This research refers to the views of Soejono Soekanto, who emphasizes the importance of understanding law as a normative system that guides people's behavior and assesses the consistency of law application with established principles.² which emphasizes that normative legal research focuses on legal principles, legal systematics, synchronization of statutory regulations, legal comparison, and legal history. The approach applied is a conceptual approach, which aims to build complete arguments about legal principles in concrete cases, either by perfecting existing concepts or by finding new concepts. The method used is substantive analysis, which focuses on an in-depth understanding of legal substance to identify and elaborate relevant principles and their application in various

¹ Mardani, *Hukum Ekonomi Islam* (Jakarta: PT Raja Grafindo Persada, 2015).

² Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (Jakarta: Rajawali Pers, 2001).

legal contexts³, where all legal sources are described and analyzed to find a framework and model for implementing bankruptcy trials as a means of proof in bankruptcy cases based on Sharia contracts.

This research was conducted by referring to Indonesian law as a reference, using three types of legal materials, namely primary, secondary, and tertiary. Primary legal materials consist of regulations related to research topics, such as Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, *Failissements-Verordening* (Staatsblad 1905 No. 217 juncto Staatsblad 1906 No. 348), and the Book of *Bidayatul Mujtahid* by Ibn Rushd. Secondary legal materials include publications about law that are not official documents, such as books, dissertations, journals, papers, and other scientific written sources that are relevant to this research. Meanwhile, tertiary legal materials consist of sources that provide instructions and explanations for primary and secondary legal materials, such as dictionaries and encyclopedias. With this approach and method, this research aims to provide an in-depth understanding of the legal issues that arise in the context of sharia economic law in Indonesia

C. RESULTS AND DISCUSSION

1. Cases of Default and Unlawful Acts

1.1 Default

Bambang Arianto⁴ explained that the coronavirus outbreak would cause negative shocks to the global economy by forcing factories to close and disrupting global supply chains. Then, the Institute for Development of Economics and Finance (INDEF) summarized Fornano & Wolf's

research findings⁵ regarding the impact of COVID-19 in simpler language. They stated that the COVID-19 pandemic is predicted to produce shocks on the supply and demand sides which include a decrease in production of goods, a decrease in income, a wave of layoffs, a decrease in purchasing power, and a decrease in demand for goods.

Furthermore, all business actors, including suppliers, service providers, service providers, distributors, and consumers, will face an unfavorable situation during the COVID-19 pandemic. For debtors, a decrease in turnover due to a decrease in demand will have an impact on their ability to pay credit to creditors, and can even cause debtors to default or fail to pay banks (whether conventional commercial banks, Sharia business units, Sharia commercial banks, people's credit banks, or banks sharia public financing). Default is regulated in Article 1243 of the Civil Code, which takes the term from Dutch, which means "bad performance". Default refers to a situation where the debtor cannot fulfill his obligations as stipulated in the agreement, and this is caused by the debtor's negligence or error, not because of conditions that cannot be avoided.

Various types of default

Default is the inability of a person or entity to fulfill the obligations or achievements agreed upon in an agreement. Several types of default can occur, including⁶:

1. Absolute Default:

This is a situation where a person or entity completely fails to fulfill the obligations agreed upon in the agreement. An example is when a debtor

³ Ferdinand A Gul Teh Chee Ghee, "No Title," *Journal of Geotechnical and Geoenvironmental Engineering ASCE* 120, no. 11 (2015): 259.

⁴ Bambang Arianto, "Dampak Pandemi COVID-19 Terhadap Perekonomian Dunia," *Jurnal Ekonomi Perjuangan* 2, no. 2 (2020), [https://doi.org/https://www.e-](https://doi.org/https://www.e-journal.unper.ac.id/index.php/JUMPER/article/view/665)

[journal.unper.ac.id/index.php/JUMPER/article/view/665](https://doi.org/https://www.e-journal.unper.ac.id/index.php/JUMPER/article/view/665).

⁵ Luca Fornaro and Martin Wolf, "Covid-19 Coronavirus and Macroeconomic Policy," *Econpapers* 1168 (2020).

⁶ Subekti, *Kitab Undang Undang Hukum Perdata* (Jakarta: PT Arga Printing, 2007).

does not pay his debt to the creditor within the specified period.

2. Relative Default:

This is a situation where a person or entity fulfills obligations, but does not comply with the terms agreed upon in the agreement. For example, if a buyer pays the price of goods late, even though there has been an agreement to pay at a certain time.

3. Partial Default:

Occurs when a person or entity only fulfills part of the obligations agreed upon in the agreement. For example, if a tenant only pays part of the rent he or she is supposed to pay.

4. Active Default:

This is a default that is intentional or intentionally committed by one of the parties involved in the agreement. An example is when a contractor deliberately does not complete the agreed work.

5. Passive Default:

This is a default that occurs due to incompetence or negligence without any malicious intent from one of the parties involved in the agreement. For example, when a buyer does not pay a bill on time due to financial difficulties without any intention to deceive.

Creditor's Rights if the Debtor defaults

When a debtor defaults, that is, does not fulfill his obligations as agreed in the agreement, the creditor has several rights that can be exercised to demand the implementation of these obligations. The following are some of the creditor's rights if the debtor defaults⁷:

1. Right to Request Enforcement:

Kreditur The creditor has the right to demand direct implementation from the debtor by what has been agreed in

the agreement. This means that creditors can demand that debtors fulfill their stated obligations, for example, payment of outstanding debts

2. The Right to Request Appropriate Fulfillment:

Creditors also have the right to demand fulfillment of obligations by the provisions agreed in the agreement. This means that the creditor can demand that the debtor carry out his obligations correctly, by what has been agreed.

3. Right to Request Compensation:

If the debtor defaults and causes losses to the creditor, the creditor has the right to demand compensation for these losses. This compensation can cover direct or indirect losses arising as a result of the default.

4. Right to Cancel the Agreement:

In some cases, default by the debtor can be a reason for the creditor to cancel the agreement that has been agreed. This depends on the applicable legal provisions and agreements between the parties involved.

5. Right to Withdraw Collateral:

If the creditor has provided guarantees for obligations fulfilled by the debtor, for example in the form of guarantees or collateral, then the creditor has the right to withdraw the guarantee as compensation for the debtor's default.

6. Right to Take Legal Action:

If the debtor does not fulfill his obligations after being given a warning or deadline, the creditor has the right to take legal action to demand fulfillment of these obligations, such as through a judicial

⁷ Salim, *Pengantar Hukum Perdata Tetulis (BW)* (Jakarta, 2008).

process to obtain a court decision forcing the debtor to carry out his obligations.

The creditor's right to file a claim against the debtor is expressly regulated in Article 1267 of the Civil Code⁸ which states as follows: "The party whose obligation is not fulfilled, can choose; force the other party to fulfill the agreement, if this can still be done, or demand cancellation of the agreement, with compensation for costs, losses, and interest. According to Article 1267, the creditor has the right to sue the debtor who is negligent in fulfilling the agreement or canceling the agreement by requesting compensation for costs, losses, and interest (compensation). However, it should be noted that Articles 1244 and 1245 of the Civil Code explain that in situations of force majeure (overmatch), where the debtor is unable to fulfill contractual obligations due to circumstances beyond his control, the debtor is not obliged to pay compensation. In addition, in reciprocal agreements, creditors cannot demand cancellation of the agreement because the agreement is considered invalid or erased. However, because default has significant consequences in an agreement, it is necessary to determine first whether the debtor has committed a default or negligence. If the debtor denies the alleged default, then he must prove it in court.

1.2 Act against the law

Apart from default, there is the possibility of unlawful acts committed by creditors and debtors. For example, in the context of the COVID-19 pandemic, banks were accused of committing unlawful acts by determining debits, where financial reports to the OJK were still based on internal banking contracts and policies. Often, customers are not informed about this and are not even

aware that the amount of outstanding debt is still calculated by adding interest and penalties to the principal debt. This continues even though the debtor has proposed relaxation in the form of financing restructuring. However, in reality, this adds a heavy financial burden to customers. Because reductions in fines and interest are not applied fairly by banking institutions, customers feel disadvantaged. As another example, bank provisions that change customer interest arrears and fines into new debt principal are also a form of unlawful action. This violates the principle of justice for customers affected by force majeure due to the COVID-19 pandemic. This condition is far from the concept of justice and sharia principles which are the reference for banks with the sharia concept, which is based on a correct understanding of financial transactions.

Unlawful Acts are strictly regulated in Articles 1365 and 1366 of the Civil Code. Article 1365 of the Civil Code states: "Every action that violates the law and results in loss to another party, requires the perpetrator of the action to compensate for the loss as a result of his or her fault". Meanwhile, Article 1366 of the Civil Code states: "Every individual is responsible not only for losses caused by actions but also for losses caused by negligence or inaccuracy."

Elements of Unlawful Acts :

Unlawful acts are actions that are contrary to applicable legal norms and result in harm to other parties⁹. The elements of unlawful acts can be described as follows :

1. Violation of the Law:

The first element is a violation of applicable law. This means that the

⁸ Aminudin Dan Zainal Hakim, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2013).

⁹ H. Asmu'i Syarkowi and (Hakim Tinggi PTA Jayapura), "Perbuatan Melawan Hukum Dalam Hukum Perdata," 2023.

action must be contrary to established legal provisions.

2. **There is a loss:**

The second element is the loss caused to other parties as a result of the violation of the law. These losses can be material losses, such as financial losses, or immaterial losses, such as losses in reputation or honor.

3. **Causality:**

The third element is the existence of a cause-and-effect relationship between the legal violation committed and the losses experienced by other parties. This means that the loss must be directly or indirectly caused by an unlawful act

4. **Errors or Omissions:**

The final element is the existence of error or negligence on the part of the party committing the unlawful act. This error can be in the form of an intentional act or negligence in doing something that should be done

1.3 Form of Settlement of Default Lawsuits and Unlawful Acts

A. Solution with a simple event

Settlement of lawsuits using a simple procedure refers to legal procedures that are carried out in a faster, simpler, and more efficient manner, especially for cases that have a relatively small nature and economic value. This settlement is based on several regulations, including:

1. PERMA Number 14 Tahun 2016¹⁰: This regulation regulates the simple resolution of cases in court, by providing guidelines and procedures for handling cases that

are eligible for processing in a simpler and faster manner.

2. PERMA Number 2 Tahun 2015¹¹: This regulation regulates procedures for settling small claims in more detail, including procedures for filing a claim, trial process, and case settlement
3. PERMA Number 4 Tahun 2019¹²: This regulation is an amendment to PERMA Number 2 of 2015, which aims to increase efficiency and speed in resolving simple cases.

The procedure for resolving a lawsuit using a simple procedure usually involves a shorter trial and a more limited evidentiary process. This settlement aims to provide easier and faster access for the public to resolve legal disputes, especially those of small value, without having to go through a long and complicated process as in regular trials.

Thus, settling lawsuits using a simple procedure is an effective alternative for handling cases that meet the requirements and ensures that access to justice remains open to all parties, without being hampered by excessive costs and time.

Simple Lawsuit Terms:

1. Cases of breach of contract and/or unlawful acts with a maximum material claim value of IDR. 500 million rupiah, provided that it is not a case that is resolved through a special court and does not include land rights disputes.

¹⁰ Mahkamah Agung Republik Indonesia, “Perma No 14 Tentang Tata Cara Penyelesaian Ekonomi Syariah” (2016).

¹¹ Mahkamah Agung Republik Indonesia, “PERMA No 2 Tentang Tata Cara Gugatan Sederhana” (2015).

¹² Mahkamah Agung Republik Indonesia, “Perma No 4 Tentang, Perubahan Perma No 2 Tentang Tata Cara Penyelesaian Gugatan Sederhana” (2019).

2. The Plaintiff and Defendant consist of one person unless they have the same legal interests.
 3. The defendant's place of residence is known.
 4. The Plaintiff and Defendant are domiciled in the same jurisdiction of the Court.
 5. If the Plaintiff is outside Defendant's jurisdiction, the Plaintiff must appoint a legal representative whose address is in the Defendant's jurisdiction.
3. PERMA and other related SEMA: Apart from PERMA Number 14 of 2016, there are also other regulations related to procedures for resolving cases in court, both general and specific for certain types of cases.
 4. Jurisprudence: Jurisprudence or previous court decisions are also a reference in settling in a normal manner. These decisions can be a basis for the court to determine the right decision in handling similar cases.

B. Settlement By Ordinary Events

Settlement using ordinary procedures refers to a more general and comprehensive legal procedure applied in resolving cases in court. This settlement is based on several legal grounds, including:

1. HIR (Herzien Inlandsch Reglement) / RBG (Reglement Buitengewesten): This is the legal rule in force in the Dutch East Indies (Indonesia during the Dutch colonial period) which regulates the procedures and procedures for resolving cases in court. Even though it has been replaced by modern civil procedural law, the basic principles contained in HIR and RBG are still relevant and form the basis for understanding the legal process in Indonesia.
2. PERMA Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases: This regulation regulates procedures for resolving Sharia economic cases in court, including the procedures that must be followed in the trial process and case settlement.

Settlement using this ordinary procedure involves a more complex and complete trial process, including a more detailed evidentiary process and the use of more detailed legal rules. The aim is to ensure that case resolution is carried out fairly and appropriately, by applicable legal principles, and to provide legal certainty for all parties involved in the case.

2. Execution of Mortgage Rights in Bad Credit

The method of Execution Auction based on the Mortgage Rights Law is through Execution Parties, namely the Mortgage Rights Holder, in this case, the Sharia Bank sells the Mortgage Rights object through a public auction and takes repayment of receivables from the results of the public auction. The Execution Auction Method is through the Execution Parade¹³ namely the Mortgage Rights Holder, in this case, the Bank, sells the Mortgage Rights object through a public auction and takes repayment of receivables from the results of the public auction. The execution parate is carried out based on the executorial title contained in the Mortgage Rights Certificate according to the procedures specified in the statutory

¹³ Vide Pasal 20 UU Hak Tanggungan dan Penjelasan Pasal 15 ayat (3) UU

Fidusia untuk objek jaminan berupa barang bergerak.

regulations.¹⁴ The Execution Auction method has the principle of an Execution Auction process without Court intervention, in this case, the execution is carried out without the approval of the Chair of the Religious Court (fiat of the Chair of the Religious Court).

Parate Execution is an execution based on Article 6 UUHT where convenience is provided for creditors holding HT in carrying out HT execution because creditors holding HT have a special position in the form of *droit de preference* and *droit de suite* which are the characteristics of HT. So that if the debtor breaks his contract, the creditor of the HT holder can immediately submit a request to the Head of the State Auction Office to sell the HT object in question.

Parate Execution is an execution carried out without involving a Bailiff, without the Fiat of the Chairman of the Religious Court, carried out outside the procedural law, and also not based on the executive title. The doctrine describes it as a person selling his property. The doctrine calls it a simplified execution. Here it appears that the makers of the law wanted to make it easier for mortgage holders' creditors to collect repayment.

Taking payment of a bill through a lawsuit before the court from the moment the lawsuit is filed until the execution takes a long time and costs quite a lot. Due to these conditions at that time, the consequence was that banks would be reluctant to provide credit to small customers.

If there is potential for objection/rejection or even a lawsuit from the debtor/executioner, in practice the Bank will seek an alternative implementation of the auction with a fiat of execution from the Chair of the Religious Court. Where the Religious Court will convey an *aanmaning* to the debtor so that the debtor will come before him on the appointed day and carry out his

obligations to the Bank, if the *aanmaning* is not complied with by the debtor, then the Religious Court will confiscate the execution of the debtor's guarantee.

Next is the Execution of the Executorial Title Mortgage. The implementation of executive title executions is regulated in Articles 224 HIR and 258 RBg. This is based on the provisions of Article 26 UUHT which states that before there are statutory regulations that specifically regulate HT executions, regulations regarding *hypotheek* executions apply to HT executions. In carrying out this execution, the provisions of Article 14 of the UUHT must be taken into account which states that the HT certificate is valid as a substitute for the gross act *hypotheek* as long as it concerns land rights that are the object of the HT.

Execution is carried out by submitting a request for execution by the creditor holding the HT to the local PA Chairman by submitting an HT certificate as the basis. Then the execution will be carried out on orders and led by the Chairman of the PA concerned through a public auction conducted by the State Auction Office.

3. Bankruptcy and Postponement of Debt Payment Obligations

Specific regulations regarding bankruptcy in Indonesia are regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU). In the Bankruptcy Law, it is stated in Article 1 paragraph (1), that bankruptcy is a general confiscation of the assets of a bankrupt debtor, the management and settlement of which is carried out by a curator under the supervision of a supervisory judge as regulated in the law. The definition of bankruptcy as stated in Article 1 Number 1 of the UUK provides the formulation that a

¹⁴ Vide Pasal 20 ayat (1) huruf b UU Hak Tanggungan

declaration of bankruptcy is a court decision. This shows that before a decision on a declaration of bankruptcy is made by the court, a debtor cannot be declared bankrupt. After the announcement of the bankruptcy decision, the provisions of Article 1131 of the Civil Code apply¹⁵.

Bankruptcy law regulated in Law Number 37 of 2004 adheres to the principle of business competition, namely regardless of whether the debtor is solvent or insolvent, as long as it fulfills the requirements of having two or more creditors and does not pay in full at least one debt that has matured and can be collected, then the debtor can be declared bankrupt by a Commercial Judge.

The main principle of bankruptcy is that two or more creditors are required (*concursum creditorum*). In resolving bankruptcy, the interests of the debtor himself, as well as the interests of his creditors, are involved. With the decision to declare bankruptcy, it is hoped that the bankrupt debtor's assets can be used to repay all of the debtor's debts fairly and equitably.

Postponement of Debt Payment Obligations (PKPU) is an alternative debt settlement to avoid bankruptcy. Postponement of Debt Payment Obligations (PKPU) is a certain period given by law through a Commercial Court decision, where within this period creditors and debtors are given an agreement to discuss ways to pay their debts by providing a peace plan (*composition*). plan) for all or part of the debt, including if necessary to restructure the debt. Thus, the Postponement of Debt Payment Obligations (PKPU) is a kind of moratorium known as a legal moratorium.

PKPU applications can be submitted by creditors or debtors to the Commercial Court. A PKPU application can be submitted before a bankruptcy application is submitted by the debtor or creditor or it can also be submitted after a bankruptcy application is submitted no later than the first hearing for the examination of the application for bankruptcy declaration. However, if the bankruptcy and PKPU applications are submitted at the same time, the PKPU application will be examined first. Based on the definition above, it can be distinguished that in bankruptcy, the debtor's assets will be used to pay all his debts which have been adjusted, whereas in PKPU, the debtor's assets will be managed so that they produce and can be used to pay the debtor's debts.

3.1 Because of law Bankruptcy cases based on Sharia contracts are resolved through the Commercial Court

The legal consequences of handling bankruptcy cases based on Sharia contracts by the Commercial Court are:

First, it has a systemic impact on the application of the material law used. When viewed from a Sharia bankruptcy perspective, there is a legal transformation that essentially changes debts based on Sharia contracts into conventional-based debts.¹⁶ This gives the impression of raping the substance of Sharia economic law into conventional economic law.

This essential change in legal relations can be seen from the requirements for filing a bankruptcy petition in Article 2 Paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, namely the existence of

¹⁵ Ahmad Yani dan Gunawan Widjaja, *Seni Hukum Bisnis Kepailitan*, (Jakarta : PT. Raja Grafindo Persada, 2002), h. 12.

¹⁶ Konsep Utang dalam UU Kepailitan mengarah kepada praktik bunga yang harus dibayar setelah jatuh tempo (lihat pasal 1 ayat 6 UUK-PKPU), hal

ini bertentangan dengan konsep "*Dayn*" hutang dalam Islam yang mengharamkan praktik pengambilan bunga di setiap transaksi serta memberikan kelonggaran dalam setiap pembayaran utang (lihat fatwa MUI No 04/DSN-MUI/IV/2000) tentang Murabahah.

creditors and debtors. Every bankruptcy dispute based on a Sharia contract that occurs always gives rise to forced efforts to bring up the terms creditor and debtor, even though these parties (creditors and debtors) do not exist in every Sharia financing, in sharia financing only a partnership relationship is known, namely one party helps the other. On the other hand, those financed help those who finance it and vice versa, there is no unfair profit taking in any Sharia financing. As a result of filing a bankruptcy case based on a Sharia contract with the Commercial Court, the potential for mixing up the legal concept of Sharia financing with the concept of conventional debts and receivables will occur.¹⁷

Second, there will be a lack of synchronization between the contract and dispute resolution¹⁸ Philosophically, Sharia banking sub and difsub are dominated by Islamic business terms, such as murabahah, deliberation, mudharabah, qardh, hiwalah, ijarah, kafala, and so on. Therefore, it is right and appropriate if the resolution of Sharia banking cases is carried out in a judicial environment that substantively deals with matters related to Islamic sharia values. If handed over to a judicial system that does not apply sharia rules, what will emerge is a lack of synchronization between contract practices and dispute resolution. 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 principles¹⁹.

Third, namely the bankruptcy law regulated in Law Number 37 of 2004 adheres to the principle of business continuity where this law does not pay attention at all to the financial health of the debtor whether it is solvent or insolvent, as long as it meets several requirements, namely the debtor has two or more creditors and does not pay in full at least one debt that has matured and can be collected, then the situation can cumulatively be declared bankrupt by the Commercial Judge. This provision is very contradictory to the concept of bankruptcy in Islam.

The term solvent or insolvent in the framework of Islamic bankruptcy law studies is known as whether the debtor is healthy or not. This health can of course be understood from a physical or financial perspective. In the book *Bidayatul Mujtahid*, Ibnu Rushd interprets the word healthy as physical and mental health, because debtors who have debts and are sick (not fake) do not have to be charged for their debts but are given a tolerance limit of time/extension to pay off their debts so that they are healthy and can return to activities²⁰.

In the context of modern Islamic finance, the above meaning of health has expanded its meaning not only to individual physical and mental health but also to the level of financial health of the fiscal institution itself as the debtor, which in this case is called solvent. Islamic bankruptcy is very tolerant in providing an extension of time for debt repayment if the debtor is insolvent (financially unhealthy). This is an

¹⁷ Ghansam Anam, dkk, *Problematika Aplikasi Ekonomi Syariah Dalam Rezim Hukum Kepailitan Di Indonesia*, Jurnal Bina Mulia Hukum, Vol. 2, (2017), h. 70.

¹⁸ Ketidaksinkronan antara akad dengan penyelesaian sengketa ini dapat dilihat dari perkara PKPU antara Purdi E Chandra melawan PT. BNI Syariah dimana putusan pailit tidak mempertimbangkan sama sekali isi fatwa DSN yang tertuang dalam akad tentang Murabahah yang esensinya menyebutkan adanya pemberian

tempo (perpanjangan) waktu bagi debitor yang pailit.

¹⁹ Tim Redaksi, *Babak Baru Penyelesaian Sengketa Ekonomi Syariah*, Majalah Peradilan Agama, Edisi 3, Des 2013-Feb 2014, h. 40.

²⁰ Dian Asriani Lubis, *Kepailitan Menurut Ibnu Rusyd dan Perbandingannya Dengan Hukum Kepailitan di Indonesia*, Jurnal Hukum Islam, Vol. XIII, No. 2, Nopember (2013), h. 272.

ethic of learning Islamic economics which always equalizes the position of debtors and creditors as a relationship of cooperative partners who help each other, as in Q.S. Al-Baqarah (2:280) as follows:

وان كان ذو عسرة فنظرة الى ميسرة وان تصادقوا خير لكم ان كنتم تعلمون

Meaning: And if (the person who owes the debt) is in difficulty, then give him respite until He is free and gives charity (some or all of the debt), it is better for you if you only knew.

The principles adopted in the Bankruptcy Law and PKPU tend to be business-oriented and prioritize the interests of creditors (non-impartial), this is of course very contrary to the principles of social justice contained in Sharia economic law.

3.2 Slices of Authority To adjudicate bankruptcy cases based on Sharia contracts, they are resolved through the Commercial Court

After the issuance of Constitutional Court Decision Number 93/PUU-X/2012, the quo vadis regarding the authority to adjudicate between the General Court and the Religious Court in resolving Sharia economic disputes has normatively ended and the conclusion is that the Religious Courts have constitutional law in handling sharia economic disputes. However, at an empirical level, it is still found that there are bankruptcy disputes based on sharia contracts which are resolved through the Commercial Court within the General Court environment. Several factors cause this dualism of authority, including the following :

a. Condition of Legal Vacuum (Legal Loophole) regarding Sharia Bankruptcy Law

When discussing Law Number 3 of 2006 concerning Religious Courts, all members of the Law Drafting Committee in the

DPR accepted by acclamation the existence of this Law. Unfortunately, article 49 letter (i) regarding the explanation section of the words "Sharia economics," only mentions point (k) and does not include the point of Sharia Bankruptcy as part of Sharia economic disputes.

The existence of a condition, namely a legal vacuum or legal loophole in the legal system in Indonesia where there are no definite regulations regarding bankruptcy processes or procedures for Sharia banks, so bankruptcy disputes based on Sharia in Indonesia are resolved by conventional bankruptcy regulations. Bankruptcy regulations based on sharia in Indonesian regulations only exist in Perma Number 2 of 2008 concerning KHES and even then only a few articles discuss it. Among the articles that contain bankruptcy and PKPU are starting from articles 1 paragraph 6, 7, 8, article 5 paragraph 2, articles 7 and 8.

Meanwhile, the provisions of Article 300 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, where the article states "The court as intended in this Law, apart from examining and deciding on applications for declaration of Bankruptcy and Suspension of Debt Payment Obligations, has the authority to also examine and decide on other cases in the field of commerce which are determined by law."

The words of the Court in this article, implicitly refer to the Commercial Court, because historically, the establishment of the

Commercial Court was to speed up the process of resolving the payment of debtors' debts which required a simple and fast process, and to increase the confidence of foreign investors.

b. Harmonization of Norms based on Authority Theory

The controversy over the handling of bankruptcy and PKPU cases based on Sharia contracts has been answered based on the decision of the Constitutional Court Number 93/PUU- (2) and paragraph (3), however, the explanation of Article 55 paragraph (2) of the law reads: "What is meant by dispute resolution carried out by the contents of the contract is the following efforts: a). Deliberation b). banking mediation c). through the National Sharia Arbitration Board (BASYARNAS) or other arbitration institutions and/or d). through a court within the General Court" was declared no longer valid because it was deemed to be contrary to the 1945 Constitution and did not have binding legal force.

The publication of Constitutional Court decision Number 93/PUU-X/2012 gave rise to several new norms and also guaranteed legal certainty as mandated by Article 28 paragraph (1) of the 1945 Constitution, especially in terms of resolving Sharia banking disputes themselves. Sharia banking dispute resolution is the absolute (absolute) authority of the Court within the Religious Courts as mandated by Article 49 letter (i) of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning

Religious Courts and Article 55 paragraph (1) Law Number 21 of 2008 concerning Sharia Banking. Resolving disputes over Sharia banking and Sharia financial institutions through litigation, including bankruptcy disputes and postponing debt payment obligations (PKPU), must be read as the absolute authority of the Sharia Court/Court in the Religious Court environment as mandated by Article 49 letter (i) of Law Number 3 2006.

With the issuance of Law Number 3 of 2006 and Constitutional Court Decision Number 93/PU-X/2012, new boundaries of authority have been established between the General (Commercial) Court and the Religious Court in resolving sharia economic disputes. All disputes over Sharia economic contracts and all their resolutions must be decided and resolved linearly based on Sharia principles, including Bankruptcy and PKPU disputes in Sharia financial institutions.

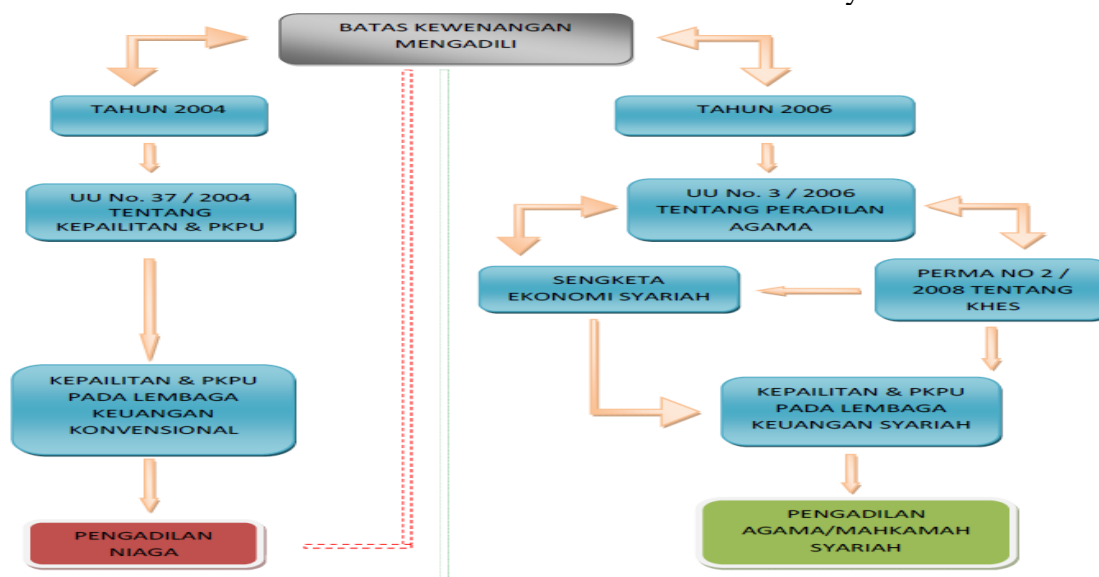
Based on the theory of limits of authority above, the Commercial Court should not have the authority to decide and adjudicate bankruptcy and PKPU cases in Sharia financial institutions, because the legal basis used as a guideline in adjudicating is Law Number 37 of 2004 which is substantively only limited to the legal context of conventional financial institutions. (civil law) and has not yet reached the legal realm of Sharia financial institutions. The enactment of Law Number 3 of 2006 and strengthened by the Constitutional Court Decision Number 93/PUU-X/2012 has provided a limit for resolution

between conventional economic disputes and Sharia economics to the Religious Courts/Sharia Courts.

For more clarity, the limits of the authority of the Religious Courts

and Commercial Courts in handling bankruptcy cases and Postponement of Debt Payment Obligations can be depicted in the scheme below.

SCHEME: Limits of Judicial Authority



Ket :
Garis Merah Putus-putus adalah batas kewenangan Pengadilan Niaga.
Garis Hijau putus-putus adalah batas kewenangan Pengadilan Agama/Mahkamah Syariah.

D. CONCLUSION

From the discussion in the paper above, it can be concluded that the COVID-19 pandemic has caused shocks in all aspects, especially in the field of sharia economic law. Business actors who are directly affected by this condition face an inevitable situation, namely rampant defaults by debtors and unlawful acts (PMH) by both creditors and debtors. To reduce greater losses, Sharia banking uses an execution auction method through Execution Parate, namely the holder of mortgage rights, in this case, Sharia Bank sells the object of mortgage rights through a public auction and collects receivables from the auction results. If there is an objection, rejection, or lawsuit from the debtor/executor, the Bank can seek an alternative implementation of the auction

with a fiat of execution from the Chair of the Religious Court.

Business actors who are unable to fulfill their obligations in paying credit to banks usually file a bankruptcy petition with the Commercial Court. Postponement of Debt Payment Obligations (PKPU) is an alternative debt settlement to avoid bankruptcy, such as a moratorium or legal moratorium. Even though its business activities are based on Sharia contracts, the Commercial Court is under the domain of the General Court, not the Religious Court. Therefore, I will conclude this discussion here. However, it is important to discuss in the future the urgency of the presence of the Sharia Commercial Court as a Special Court within the Religious Courts to avoid conflicting norms between contracts entered into and their settlement in court.

REFERENCES

- [1] Agung Nurrahman. “Upaya Pemerintah Dalam Mengatasi Permasalahan Pengangguran Di Indonesia.” *Jurnal Registratie* 2, no. 1 (2020): 1–8.
- [2] Ahmad Yani dan Gunawan Widjaja. 2002. *Seni Hukum Bisnis Kepailitan*. Jakarta: PT. Raja Grafindo Persada.
- [3] Aminudin Dan Zainal Hakim, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2013).
- [4] Arianto, Bambang. “Dampak Pandemi COVID-19 Terhadap Perekonomian Dunia.” *Jurnal Ekonomi Perjuangan* 2, no. 2 (2020). <https://doi.org/https://www.e-journal.unper.ac.id/index.php/JUMPER/article/view/665>.
- [5] Dian Asriani Lubis, 2013. *Kepailitan Menurut Ibnu Rusyd dan Perbandingannya Dengan Hukum Kepailitan di Indonesia*, *Jurnal Hukum Islam*, Vol. XIII, No. 2, Nopember (2013), h. 272.
- [6] Ghansam Anam, 2017. *Problematika Aplikasi Ekonomi Syariah Dalam Rezim Hukum Kepailitan Di Indonesia*, *Jurnal Bina Mulia Hukum*, Vol. 2, (2017), h. 70.
- [7] Ferdinand A Gul Teh Chee Ghee, “No Title,” *Journal of Geotechnical and Geoenvironmental Engineering ASCE* 120, no. 11 (2015): 259.
- [8] H. Asmu’i Syarkowi and (Hakim Tinggi PTA Jayapura), “Perbuatan Melawan Hukum Dalam Hukum Perdata,” 2023.
- [9] Hakim, Aminudin Dan Zainal. *Pengantar Metode Penelitian Hukum*. Jakarta: Rajawali Pers, 2013.
- [10] Indonesia, Mahkamah Agung Republik. Perma no 14 tentang tata cara penyelesaian ekonomi syariah (2016).
- [11] ———. Perma no 4 tentang, perubahan perma no 2 tentang tata cara penyelesaian gugatan sederhana (2019).
- [12] Indonesia, Mahkamah Agung Republik. PERMA No 2 tentang tata cara gugatan sederhana (2015).
- [13] Konsep Utang dalam UU Kepailitan mengarah kepada praktik bunga yang harus dibayar setelah jatuh tempo (lihat pasal 1 ayat 6 UUK-PKPU), hal ini bertentangan dengan konsep “*Dayn*” hutang dalam Islam yang mengharamkan praktik pengambilan bunga di setiap transaksi serta memberikan kelonggaran dalam setiap pembayaran utang (lihat fatwa MUI No 04/DSN-MUI/IV/2000) tentang Murabahah.
- [14] Ketidaksinkronan antara akad dengan penyelesaian sengketa ini dapat dilihat dari perkara PKPU antara Purdi E Chandra melawan PT. BNI Syariah dimana putusan pailit tidak mempertimbangkan sama sekali isi fatwa DSN yang tertuang dalam akad tentang Murabahah yang esensinya menyebutkan adanya pemberian tempo (perpanjangan) waktu bagi debitor yang pailit.
- [15] Luca Fornaro and Martin Wolf, “Covid-19 Coronavirus and Macroeconomic Policy,” *Econpapers* 1168 (2020).
- [16] Mardani. *Hukum Ekonomi Islam*. Jakarta: PT Raja Grafindo Persada, 2015.
- [17] Munir Fuady, *Hukum Pailit*, (Bandung : Citra Aditya Bhakti, 2002), h. 8
- [18] Salim. *Pengantar Hukum Perdata Tetulis (BW)*. Jakarta, 2008.
- [19] Soerjono Soekanto, Sri Mamudji. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: Rajawali Pers, 2001.
- [20] Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*

- (Jakarta: Rajawali Pers, 2001).
- [21] Subekti. *Kitab Undang Undang Hukum Perdata*. Jakarta: PT Arga Printing, 2007.
 - [22] Syarkowi, H. Asmu'i, and (Hakim Tinggi PTA Jayapura). "Perbuatan Melawan Hukum Dalam Hukum Perdata," 2023.
 - [23] Tim Redaksi, *Babak Baru Penyelesaian Sengketa Ekonomi Syariah*, Majalah Peradilan Agama, Edisi 3, Des 2013-Feb 2014, h. 40.
 - [24] Teh Chee Ghee, Ferdinand A Gul. "No Title" *Journal of Geotechnical and Geoenvironmental Engineering ASCE* 120, no. 11 (2015): 259.
 - [25] UU 4 tahun 1996 tentang Hak Tanggungan atas Tanah beserta Benda-Benda yang Berkaitan dengan Tanah
 - [26] Vide Pasal 20 UU Hak Tanggungan dan Penjelasan Pasal 15 ayat (3) UU Fidusia untuk objek jaminan berupa barang bergerak.
 - [27] Wolf, Luca Fornaro, and Martin. "Covid-19 Coronavirus and Macroeconomic Policy." *Econpapers* 1168 (2020).