

Justisia Ekonomika

Jurnal Magister Hukum Ekonomi Syariah

Vol 8, No 2 tahun 2024 hal 1202-1212

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

ANALYSIS OF JUDGES' CONSIDERATIONS IN SETTLING MUSYARAKAH AGREEMENT DISPUTES

¹Ines Prasheila Kusmastuti, ²Al Muazzami

^{1,2}Universitas Islam Negeri Sunan Kalijaga Yogyakarta

e-mail: prasheilaines@gmail.com¹, almuazzami000@gmail.com²

Submitted: Sept 16, 2024 Accepted: Nov 05, 2024 Published: Dec 20, 2024

Abstract

Judges resolving Sharia economic disputes must adhere to Sharia principles, including the DSN Fatwa. However, certain decisions still fail to consider these principles, even in cases involving musyarakah contract financing disputes. This study employs a normative approach to examine judicial considerations in resolving musyarakah contract financing disputes. Secondary data were collected through a literature review and analyzed descriptively and qualitatively. The findings reveal that the legal basis used by judges in Purbalingga Religious Court Decision No. Xx/Pdt.G/2020/PA.Pbg is incomplete, as it neglects the DSN MUI Fatwa on musyarakah financing and does not comply with Perma Number 14 of 2016. Judges who are obligated to apply Sharia principles failed to incorporate DSN Fatwa No. 08/DSN-MUI/IV/2000 and DSN Fatwa No. 42/DSN-MUI/VIII/2004 in their considerations. Furthermore, the nominal ta'widh imposed on the defendant was deemed inappropriate due to the lack of evidence of actual losses incurred by the plaintiff. These findings highlight the need for judges in religious courts to thoroughly explore legal and Sharia principles to ensure decisions that reflect justice, legal certainty, and expediency while adhering to Sharia principles.

Keywords: DSN Fatwa, Musyarakah, Dispute Resolution, Judges' Considerations

A. INTRODUCTION

Every decision within the field of Shariah economics must take into account the various Shariah principles that are used as a foundation for decision-making. Referring to Article 1 point 2 of the Supreme Court Regulation (Perma) Number 14 of 2016 concerning Procedures for Settling Sharia Economic Cases, the definition of sharia principles is the application of Islamic law to sharia-compliant economic activity, as determined by fatwas issued by sharia authorities. There are still decisions that do not make sharia principles as outlined in the

Perma for resolving economic issues based on sharia.

Sharia economic disputes became the absolute power of religious courts following the Constitutional Court's Number 93/PUU-X/2012 ruling. As a result, judges in the Religious Courts must comprehend, master, and understand the sharia economic dispute

cases that become their competence.¹ This new authority is a challenge for religious courts because sharia economic disputes are very complex. It is also undeniable that various parties such as Islamic banking continue to question the Religious Court's capacity to settle Sharia-compliant business issues.² Therefore, judges of the Religious Court must thoroughly examine the law when resolving sharia economic conflict, especially those related to sharia principles.

One of the decisions on sharia economic disputes is the decision of the Purbalingga Religious Court No.xx/Pdt.G/2020/PA.Pbg. The customers in this case were considered in default by the Bank because the customers did not carry out profit sharing on financing with a musyarakah contract on the realization date of each month and did not return the capital according to the stipulated schedule. According to Verstek's ruling, the plaintiff's claim was granted by the panel of judges in this instance, declaring the defendant to have defaulted, and punishing the defendant for material losses in the amount of Rp. 53,732,715 (fifty-three million seven hundred thirty-two thousand seven hundred fifteen rupiah) to the plaintiff.

The issue is that the panel of judges in the ruling failed to take into account the Fatwa of the Indonesian Ulama Council's National Sharia Council (DSN MUI) as the foundation for deciding instances involving Sharia economic disputes. This goes against what Perma Number 14 of 2016 says. Even though, according to Law Number 13 of 2022

concerning the Second Amendment to Law Number 12 of 2011, fatwas do not have legally binding authority, the Fatwa of DSN MUI ought must be utilized as a consideration to adjudicate considering that the dispute handled is musyarakah financing.

Musyarakah is one type of financing contract applied by Islamic financial institutions. Musyarakah is applied through profit and revenue-sharing techniques as well as a framework for the parties to share profits and losses. This idea distinguishes Islamic financial institutions' operations from conventional ones.³ The legal basis for musyarakah financing in Islamic banking includes Law Number 21 of 2008 and DSN MUI Fatwa No.8/DSN-MUI/IV/2000 which discusses everything related to musyarakah. This musyarakah fatwa discusses starting from *ijab qabul*, capital specifications, and division of labor, to profits and losses, which must be borne by all parties.⁴

Before using musyarakah contracts, all capital must be combined to form musyarakah project capital, which must then be managed collaboratively. Every capital owner is entitled to have a say in the business policies that the partners.⁵ The costs incurred in implementing the project and the duration of the project must be known together. Next, the profit is allocated based on the agreed-upon share, and the loss is allocated based on the capital contribution portion. The customer is required to reimburse the bank

¹ Rasyid, A., & Putri, T. A. (2019). The Dispute Settlement Authority An Examination of Decision Number 93/PUU-X/2012 of the Constitutional Court. *Judicial Journal*, 12(2), hlm. 167.

² Santoso, M. A. (2016). Competence of Religious Court Judges in Resolving Sharia Economic Disputes. <http://repository.radenintan.ac.id/416/>

³ Hasanah, U., & Ichfan, H. (2021). Application of Musyarakah Akad Financing in Islamic Banking. *Muhasabatuna: Journal of Islamic Accounting*,

3(1), 1. <https://doi.org/10.54471/muhasabatuna.v3i1.1085>

⁴ Widyarini, Syamsul Hadi. (2016). MUI Fatwa, PSAK, and Musyarakah Practice. *Istinbâth*, 15(1), hlm. 134.

⁵ Anhar, Z. (2022). Implementation of Musyarakah Akad in Islamic Banking. *Journal of Islamic Banking and Finance Science*, 4(2), 110-122. <https://doi.org/10.24239/jipsya.v4i2.145.110-122>

for the funds after the project is finished, along with the agreed profit share.⁶

The problem that often occurs in musyarakah financing is default or breach of promise by the customer as a partner of the bank.⁷ Default is considered a failure to carry out the promises agreed upon in the contract between the customers and the Bank.⁸ One example of default is that the customers do not carry out their obligation to pay profits as agreed upon profit sharing ratio and principal loan to the Bank. Even though the Bank has given a warning letter. As a result, the Bank feels disadvantaged, resulting in a dispute between the Bank and the customers. Disputes that occur can be resolved in non-litigation or litigation as agreed in the agreement.⁹

Musyarakah financing disputes resolved by litigation through the court are found in decision No.xx/Pdt.G/2020/PA.Pbg. The customers in this case were considered in default by the Bank because the customers did not carry out profit sharing on the realization date of each month and did not return the capital according to the stipulated schedule. After several warning letters were given and there was no response, the Bank filed a lawsuit through the registrar of the X Religious Court for several requests that would later be considered by the judge.

The judge's consideration in Decision No.xx/Pdt.G/2020/PA.PBG seems to lack Sharia laws. It is important for judges to consider sharia laws such as Fatwa DSN MUI

considering that the case handled is a sharia economic dispute. Therefore, it is necessary to further study and analyze the judge's consideration in Decision No.xx/Pdt.G/2020/PA.Pbg to see the suitability of the judge's decision and whether the judge has explored Sharia laws, especially in handling musyarakah contract financing disputes. The problem of this research is first, how is the case sitting of Decision No.xx/Pdt.G/2020/PA.Pbg? Second, how is the analysis of the judge's consideration in Decision No.xx/Pdt.G/2020/PA.Pbg?

Research conducted by Fadlillah (2021) states that the majority of musyarakah contract financing disputes are litigated through the Religious Court. The resolution of this dispute will later adjust the decision by the panel of judges. In this regard, research conducted by Fathiyah (2020), Melyda Khoiriyah (2021), Chairul Lutfi (2021), Faizun (2021), Made Yogi et al (2022), and Guntara (2023) concluded that the judges were right to apply the law to the issue about musyarakah. Nonetheless, research indicates that judges are incorrect in their application of the law to disputes such as research by Muflihatul Bariroh (2017), Lestari (2021), and Jero Miko (2023). Meanwhile, this research will further examine the legal foundation that was employed by judges in considering the settlement of musyarakah contract financing disputes. Results will be gathered later to determine whether the

⁶ Andriani, F. (2014). Implementation of Murabahah and Musyarakah Mutanaqishah Agreements in Home Ownership Financing in Islamic Banking (Case Study at Bank Muamalat Indonesia) Fitria. Journal of Petra Marketing Management, 2(1), hlm. 4. <https://ejournal.uinsuka.ac.id/syariah/azzarqa/article/view/2078/1554>

⁷ Pusat Pengembangan Publikasi Ilmiah (P3I) (2021), Universitas Muhammadiyah Surabaya, *Pengembangan Hukum Ekonomi Syariah Melalui*

Profesionalisme Pendidikan Dan Spiritual Quotient, ed. Warsidi. (UMSurabaya Publishing).

⁸ Guntara, D., Asyhadi, F., & Prawiyogi, A. G. (2023). Analysis of Judges' Legal Reasoning in Deciding Sharia Economic Cases on Default in Musyarakah Agreements. Journal of Usm Law Review, 6(2), hlm. 567. <https://doi.org/10.26623/julr.v6i2.6392>

⁹ Setiawati, N. U., & Usanti, T. P. (2018). Breach of Promise Criteria in Musyarakah Financing in Islamic Banks. Lex Journal: Law & Justice Studies, 2(2). <https://doi.org/10.25139/lex.v2i2.1410>

judge's use of legal aspects in deciding the musyarakah financing dispute is complete. The findings of this research are expected to be a consideration, especially for judges in the Religious Courts who handle Sharia economic disputes so that the decisions produced can reflect justice, certainty, and expediency while still based on Sharia principles.

B. RESEARCH METHODS

This research includes normative research with secondary data sources. This normative research is used to further examine the judge's consideration in resolving musyarakah financing disputes specifically in Decision No.xx/Pdt.G/2020/PA.Pbg. Primary legal materials consist of Law Number 21 of 2008, Law Number 50 of 2009, Herziene Indonesich Reglement (HIR), Bank Indonesia Regulation Number 7/46/BI/2005, DSN Fatwa 8/DSNMUI/IV/2000, DSN Fatwa 17/DSN-MUI/XII/IX/2000, and DSN Fatwa 43/DSNMUI/VIII/2004. Secondary legal materials in this research consist of books, journals, theses, and theses related to dispute resolution in musyarakah financing. Studying the literature is how secondary collecting is carried out. The analysis that was employed in this research is descriptive qualitative to answer research problems.

The theory used in this research is the judge's consideration. Judges' considerations are the ideas or viewpoints that judges take into account when rendering judgments. Written considerations or opinions pertaining to the issue in question must be submitted by each judge and are an essential component of the decision. A judge's legal considerations include the reasons or arguments used as the basis for making a decision, including in a

legal consideration.¹⁰ The judge acts as the embodiment of the judicial institution. A judge needs to be highly moral and honest in addition to being intellectually intelligent. It is anticipated that this will uphold justice, provide legal clarity, and benefit society. In the process of making decisions in court, judges can consider various aspects.¹¹

Article 50 of Law No. 48/2009 on Judicial Power states as follows: "(1) A court decision shall, in addition to containing the reasons and basis for the decision, also contain a specific article of the relevant legislation or unwritten source of law upon which the judgment is based." "(2) The chairman, the judge who rendered the decision, and the clerk who attended the hearing must all sign each judgment of the court. Regarding judges' decision-making in a case, Article 53 of the Judicial Power Law states as follows: "(1) judges are accountable for their findings and verdicts while reviewing and deciding cases." "(2) The judge's legal reasoning, which is supported by clear and accurate justifications and a sound legal foundation, must be included in the agreement and decision mentioned in paragraph (1)." Specifically for judges in the Religious Courts who handle sharia economic disputes, Article 5 of Supreme Court Regulation (Perma) Number 14 of 2016 states as follows: "Sharia principles that serve as the foundation for adjudication must be included in all court decisions and decisions pertaining to sharia economics, additionally to the reasons and basis for the decision."

When rendering a verdict in a case, a judge must take sociological, philosophical, and legal realities into account. Juridical correctness refers to the assessment of

¹⁰ Dewanto, P. (2020). Reconstruction of judges' consideration of civil dispute decisions based on the value of justice. *Journal of Ius Constituendum*, 5(2), 303-324. <http://dx.doi.org/10.26623/jic.v5i2.2307>

¹¹ Rosidah, Z. N., & Karjoko, L. (2021). Philosophical Orientation of Religious Court Judges in Resolving Sharia Economic Disputes. *Ius Quia Iustum Law Journal*, 28(1), 163-182. <https://doi.org/10.20885/iustum.vol28.iss1.art8>

whether the legal basis used is in accordance with the applicable legal provisions. Philosophical correctness emphasizes that judges must ensure that their actions and decisions reflect the principles of justice. Meanwhile, sociological considerations indicate that judges must also think about potential negative impacts and implications in society with the aim of making fair and wise decisions that take into account the legal consequences and effects in the social environment.¹²

Judges in making decisions related to the case under consideration must consider factors that have relevance so that they can be used as a basis or argument in detailing the reasons for solving legal issues. According to Rusli Muhammad, judges' considerations in making decisions can be grouped into two categories. First, juridical considerations are considerations of judges according to the legal facts that come out throughout the trial and are required by law to be explained in the decision. Second, judges take into account nonjuridical factors derived from nonlegal factors.

C. RESULTS AND DISCUSSION

Sitting The Case Of Musyarakah Contract Financing Dispute In Decision No.xx/Pdt.G/2020/PA.Pbg

Decision No.xx/Pdt.G/2020/PA.Pbg is one of the decisions regarding the settlement of a financing dispute using a musyarakah contract. Initially, the partners agreed to operate a company in the manner of a coconut and brown sugar trading business located in Kabupaten P. Each party provided the capital with details of the Bank amounting to Rp. 20,000,000 and customers amounting to Rp.

18,800,000. The capital is 51.5% from the Bank and 48.5% from the customers. The agreement to use the capital is 36 months.

In the middle of the agreement, the customers were in arrears with their installments and the Bank had sent warning letters several times but were ignored. The Bank has actually given the customer another chance, but until the customers cannot complete their obligations to the Bank. This made the Bank check the customer's business, and it was found that the customers had defaulted by never implementing profit sharing as agreed and the customers were negligent in not returning the capital according to the predetermined schedule.

The Bank as a partner has made various collection efforts, warnings, and family approaches to the customers but the customers still have no good faith to settle¹³. As a result, the Bank suffered losses and filed a lawsuit with the Religious Court P. According to the Bank, the filing of this lawsuit has legal grounds as stipulated in Article 49 letter (i) of Law Number 3 of 2006 jo. Article 55 paragraph (1) of Law Number 21 of 2008.

The requests of the Bank as plaintiffs in this case include the following:

PRIMAIR

1. Accept the plaintiff's whole claim;
2. Declare valid and valuable bail confiscation (Conservatoire Beslaag) on fixed goods belonging to the Defendants placed by the Purbalingga Religious Court in the form of Land Title Number: 118, Area 270 M2, located in Rajawana Purbalingga as described in Measurement Letter Number: G.S.No. 1118/1974,

¹² Taufiqurrohim, A. A., & Al Munawar, F. A. (2022). Ijtihad Method and Legal Considerations of Judges of the Blitar Religious Court in the Hajj Talangan Fund Case of Sharia Economic Disputes

Decision Number 3333/Pdt. G/2014/PA. BL. Journal of Islamic Business Law, 6(2).

¹³ Warsidi, *Strategi Pemasaran Produk Bank Syariah* (Yogyakarta: Zahir Publishing, 2023).

Certificate dated May 13, 1974, written in the name of SB;

3. Declare legally valid the Musyarakah Financing Agreement Number: 105/MSA/IV/07 dated April 17, 2007, made between the Plaintiff and the Defendants.
4. Stating that the Defendants have committed an act of breach of promise/default against the Musyarakah Financing Agreement Number: 105/MSA/IV/07 dated April 17, 2007, which is very detrimental to the Plaintiff, in the form of material losses in the amount of Rp. 53,732,715.- (fifty-three million seven hundred thirty-two thousand seven hundred fifteen rupiah);
5. Punish the Defendants to pay material damages in the amount of Rp. 53,732,715 (fifty-three million seven hundred thirty-two thousand seven hundred fifteen rupiahs) to the Plaintiff immediately after the decision has permanent legal force;
6. Direct the Defendants to cover all of the case's expenses. Alternatively, if the Purbalingga Religious Court holds a different view, then:

SUBSIDIARY: In a good trial, we ask for a fair verdict.

The panel of judges' decision in this case is as follows:

1. Stating that the Defendants, who have been legally and properly summoned to appear in court, did not appear;
2. Granting the Plaintiff's claim by way of partial summary judgment and rejecting the rest;
3. Declare legally valid the Musyarakah Financing Agreement Number: 105/MSA/IV/07 dated April 17, 2007,

made between the Plaintiff and the Defendants;

4. Stating that the Defendants have committed an act of breach of promise/default against the Musyarakah Financing Agreement Number: 105/MSA/IV/07 dated April 17, 2007, which is very detrimental to the Plaintiff, in the form of material losses in the amount of Rp. 53,732,715.- (fifty-three million seven hundred thirty-two thousand seven hundred fifteen rupiah);
5. Punish the Defendants to pay material damages in the amount of Rp. 53,732,715 (fifty-three million seven hundred thirty-two thousand seven hundred fifteen rupiahs) to the Plaintiff;
6. Order the Defendants to pay the approximate Rp. 1,401,000 (one million four hundred and one thousand rupiah).

Analysis Of The Judge's Consideration In Decision No.xx/Pdt.G/2020/PA.Pbg

According to Law No. 3/2006 on Religious Courts, Law No. 21/2008, and Constitutional Court Decision No. 93/PUU-X/2012, Sharia economic cases are among the unlimited powers of religious courts. Establishing the power of religious courts to decide matters involving Sharia economics is both a difficulty and a fantastic chance to assess the judges' qualifications. The Chief Justice of the Indonesian Supreme Court appoints certified judges to consider sharia economic cases by this jurisdiction.¹⁴

Judges of use religious tribunals to decide Sharia-compliant business disputes have special things in their considerations. Theoretically, when making a decision, the judge's opinion is crucial. The judge's legal considerations contain the reasons or arguments that are taken into consideration in

¹⁴ Najib, Lutfi A. (2024). PROBLEMS OF THE IMPLEMENTATION OF THE COMPETENCY OF THE AGENCY IN THE field of SYARIAH ECONOMY Lutfi Ainun Najib Postgraduate

Jember, East Java, Indonesia Sri Lumatus Sa'adah Postgraduate UIN Jember, East Java, Indon. 18(3), 1807-1819.

a decision to be rendered.¹⁵ Even the judge's consideration can be said to be the juridical core of a decision. Especially in Sharia economic disputes, the judge's consideration must contain Sharia principles as Article 5 of Supreme Court Regulation (Perma) Number 14 of 2016 which states as follows: Regarding Sharia economics, all court rulings and decisions must include the Sharia principles that served as the foundation for decision-making, in addition to the reasoning and supporting evidence.”

The foundation of Sharia economic operations, which are based on fatwas issued by organizations with the power to pronounce fatwas in the Sharia field, is Sharia principles, which are the fundamentals of Islamic law. The pertinent fatwa was given by the Indonesian Ulema Council's National Sharia Council (DSN MUI).¹⁶ Through this Perma, it can be seen that the panel of judges in deciding cases of Sharia economic disputes must contain Sharia principles such as the Fatwa of DSN MUI.¹⁷ For example, when a judge handles a musyarakah contract financing dispute case, the Sharia principles that must be used by the judge include Perma Number 2 of 2008 concerning the Compilation of Sharia Economic Law, DSN Fatwa No. 08/DSN-MUI/ IV/2000, DSN Fatwa No. 55/DSN-MUI/V/2007, and other legal bases.

The uneven distribution of judges further research is still required to determine who with Sharia economic certifications

decides Sharia economic disputes in the Religious Courts. This is also to contribute legal thinking to judges to further explore the law related to sharia economic issues.¹⁸ As with the judge's consideration in determining Decision No.xx/Pdt.G/2020/PA.Pbg related to the settlement of musyarakah financing disputes.

Referring to the sitting of the case that has been described previously, an analysis of the judge's consideration with reference to the ruling is carried out as follows. First, the decision was partially granted by the verdict. The defendants in this case had been summoned but did not appear and did not authorize another person while the plaintiff was present. Therefore, the panel of judges considered that this case must still be examined and tried without the presence of the plaintiff so that the plaintiff's claim could be granted by Verstek (without the presence of the accused). The judge's consideration was by Article 125 HIR.

Second, the decision rejected the plaintiff's assertion regarding the remaining. The lawsuit that was not granted in this case was the second request regarding the confiscation of collateral for fixed goods belonging to the defendants placed by the Religious Court of P. The panel of judges rejected this request with the consideration that the goods requested for confiscation of collateral had been used as a mortgage whose holder was PT. Bank Pembiayaan Rakyat Syariah (BPRS) X and for the application for

¹⁵ Effendi, J. (2018). Reconstruction of the Basis of Judges' Legal Considerations (Based on Legal Values and Sense of Living Conditions in Society). PRENADAMEDIA GROUP. https://books.google.com/books?hl=id&lr=&id=NdeDwAAQBAJ&oi=fnd&pg=PR7&dq=efendi+judge+consideration&ots=66apkADP8F&sig=YcjJ0aK-P4VfIgjI_AsLOdQemE

¹⁶ Baihaki, A. (2021). Religious Courts' Complete Power to Resolve Sharia Economic Conflicts Following the Constitutional Court's Decision Number 93/PUU-X/2012. *Krtha Bhayangkara*,

15(2) 289-308. <https://doi.org/10.31599/krtha.v15i2.711>

¹⁷ Pertaminawati, H. (2019). Forms of Sharia Economic Disputes and Their Resolution. *Dirasat: Journal of Islamic & Civilization Studies*, 14(02), 59-83. <https://dirasat.id/JSIP/article/view/84>

¹⁸ Kartika, S., & Harahap, M. Y. (2023). The power to make decisions about bankruptcy settlements and the suspension of Islamic banking debt payment obligations. *AL-MANHAJ: Journal of Islamic Law and Social Institutions*, 5(1), 101-112. <https://doi.org/10.37680/almanhaj.v5i1.2195>

confiscation of collateral the Plaintiff did not accompany it with preliminary evidence so that there were no reasons and signs or concerns that the goods would be transferred by the Defendants. Although the judge's consideration was reasonable, the judge's panel neglected to include the lawsuit's legal foundation.

Third, the decision was partially granted. The judge's panel then stated that the Musyarakah financing contract Number: 105/MSA/IV/07 dated April 17, 2007, made between the plaintiff and the defendants was valid in the eyes of the law. The panel of judges consideration of this matter was the existence of evidence in the form of a musyarakah financing contract that had been made and watermarking by a Notary in Purbalingga and signed by the parties. This musyarakah financing is used to operate a company in the manner of a coconut and brown sugar trading business, with agreements in the contract, therefore the contract in question has fulfilled the terms and conditions of the contract. Therefore, the existing musyarakah financing contract is considered valid in the eyes of the law.

Fourth, the panel of judges' subsequent decision is to state that the defendants have committed a breach of promise/default on the Musyarakah Financing Agreement which is very detrimental to the Plaintiff, as substantial damages of Rp. 53,732,715.- (fifty-three million seven hundred thirty-two thousand seven hundred fifteen rupiah). The judge first looked at the facts before making the decision. The thing that strengthens the conviction of the judge in rendering a decision is that the Defendant is considered to have made a default / broken promise because the defendant has neglected to never carry out the profit sharing on each realization date each month in compliance with the terms of Article 6 paragraph 2 of the Agreement and the Defendants have neglected to return the capital by the schedule

set in compliance with the terms of the Agreement Article 8 paragraph 1 and for this reason the Plaintiff has submitted several summonses.

Based on the author's perspective, the judge made the right decision in declaring the defendant in default. This complies with Article 36 of the Compilation of Sharia Economic Law (KHES), which states that an individual is considered to be in default if, as a result of his error, he fails to carry out his responsibilities under the agreement., fulfills obligations that are not in accordance with the agreement, is late in fulfilling obligations, or does something that based on the agreement must not be done. In this case, the defendant was proven not to have carried out his obligation to return the capital and pay the profit-sharing ratio agreed by both parties.

Fifth, the judges' panel subsequently approved the plaintiff's claim against the defendant to pay material damages of Rp. 53,732,715 (fifty-three million seven hundred thirty-two thousand seven hundred fifteen rupiah) with the following details:

1. Principal Financing: Rp. 16,275,200
 2. Arrears of profit sharing (Article 6 of the Agreement): Rp. 21,117,515
 3. Fine (Akad Article 9 paragraph 2): Rp. 10,890,000
 4. Visit Fee: IDR 450,000
 5. Attorney fees (Article 9 paragraph 2 of the Agreement): Rp. 5,000,000
- Total: IDR 53,732,715.

The judge's decision to order the defendant to pay these damages was not based on explicit, clear, and detailed considerations. The judges only considered the details submitted by the plaintiff without using any other basis. The panel of judges in this case also did not mention the basis for deciding the losses suffered by the plaintiff and must be paid by the defendant. In contrast, Fatwa DSN Number 42/DSN-MUI/VIII/2004 regarding Ta'widh states that the compensatory amount (ta'widh) is

determined by the difference between the predicted loss (potential loss) and the actual loss (real loss) that must be incurred (fixed cost) in the transaction as a result of the missed opportunity (opportunity loss or al-furshah al-dha-i'ah)."

The provisions regarding ta'widh in this musyarakah contract are also contained in Bank Indonesia Regulation Number 7/46/PBI/2005.¹⁹ This regulation basically regulates that the da'wah provision in musyarakah financing can only be carried out on profits that are not paid.²⁰ . There is no evidence to show that the unpaid profit caused the plaintiff to suffer a real loss of IDR 53,732,715 (fifty-three million seven hundred thirty-two thousand seven hundred fifteen rupiah). The panel of judges in this case should reconsider the nominal ta'widh that must be paid by the defendant by referring to the existing legal basis.

Sixth, the panel of judges also ordered the respondents to pay the costs of this case, which until now have been calculated at Rp. 1,401,000 (one million four hundred and one thousand rupiah). In relation to the costs of this case, it is appropriate because the Defendants are the losing party. This complies with the guidelines of Article 192 R.Bg which states the obligation to pay court costs for the losing party in a case.

One of the main concerns in the judge's consideration of granting the plaintiff's claim is the legal basis used by the panel of judges. When examined further, the panel of judges granted the defendant's request using the legal basis of the Compilation of Sharia Economic Law, Al-Quran letter Al-Maidah verse 1, and hadith narrated by Abu Daud, Ahmad, Tirmidzi, and Daruqutn. In terms of legal principles and juridical basis, the panel

of judges did not use the legal foundation for the musyarakah contract at all. Even though the case being handled is a musyarakah contract financing dispute.²¹

The judge's consideration in declaring the defendant in default and punishing the defendant to pay compensation is only based on KHES. On the other hand, the judge may take into account DSN Fatwa No. 42/DSN-MUI/VIII/2004 and DSN Fatwa No. 08/DSNMUI/IV/2000. In order to make Fatwa DSN No. 08/DSN-MUI/IV/2000 a reference, the judge can first clarify that the current dispute is a musyarakah contract. Similarly, the judge should consult the provisions of Fatwa DSN Number 42/DSN-MUI/VIII/2004 about Ta'widh when calculating the notional amount of ta'widh against the plaintiff.

The main and only legal basis used by the judge in deciding Decision No.xx/Pdt.G/2020/PA.Pbg is the Compilation of Sharia Economic Law. However, the panel of judges should have used and considered the legal basis for musyarakah financing contracts such as DSN Fatwa No. 08/DSN-MUI/ IV/2000. For the consideration of ta'widh, the panel of judges should have used DSN Fatwa Number 42/DSN-MUI/VIII/2004 as a reference. This is because the existing dispute is a Sharia economic dispute so the judge should consider Sharia principles as stipulated in Supreme Court Regulation (Perma) Number 14 of 2016 concerning Procedures for Settling Sharia Economic Cases. Therefore, according to the author's analysis, the legal rules used by the panel of judges are incomplete so the juridical basis in their considerations is not perfectly applied. Judges who handle Sharia economic cases

¹⁹ Setiawati, N. U., & Usanti, T. P. (2018). Breach of Promise Criteria in Musyarakah Financing in Islamic Banks. *Lex Journal: Law & Justice Studies*, 2(2).
<https://doi.org/10.25139/lex.v2i2.1410>

²⁰ Saripudin, U. (2021). Shirkah and its Application in Islamic Financial Institutions. *Eqien*, 4(1), 63-79

²¹ Decision No.xx/Pdt.G/2020/PA.Pbg

must be able to investigate and apply Sharia principles, even though Sharia principles like DSN Fatwas do not have binding legal force. This is because sharia economic disputes have come under the absolute jurisdiction of Religious Courts and because sharia economic transactions are growing rapidly. This needs to be done so that the resulting decision can reflect justice, certainty, and expediency while still being based on Sharia principles.

D. CONCLUSION

The case No.xx/Pdt.G/2020/PA.Pbg occurred due to the default of the customers who did not pay profit sharing and principal loans according to the agreement. In this case, the legal rules used by the judge are incomplete. The judge should have applied

sharia principles instead of using DSN Fatwa No. 08/DSN-MUI/ IV/2000, DSN Fatwa No. 42/DSN-MUI/VIII/2004, and other legal bases as considerations. The only basis used by judges is the Compilation of Sharia Economic Law. Regarding the judge's decision, the author disagrees with the nominal ta'widh charged to the defendant because there is no evidence of real losses suffered by the plaintiff so the determination of the nominal ta'widh is not in line with DSN Fatwa Number 42/DSN-MUI/VIII/2004 and Bank Indonesia Regulation Number 7/46/PBI/2005. For judges in the Religious Courts who handle sharia economic dispute cases, it is hoped that they can explore the legal aspects and principles of sharia completely.

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