

Justisia Ekonomika

Jurnal Magister Hukum Ekonomi Syariah

Vol 9, No 1 tahun 2025 hal 1316-1329

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

DEFAULT IN MUSYARAKAH CONTRACT A CRITICAL EXAMINATION OF LEGAL CERTAINTY IN ISLAMIC ECONOMICS

Nurrahmawaty

Religious Court of Klungkung, Bali

email: watyahmad1979@gmail.com

Submitted: March 14, 2025,

Accepted: May 25, 2025,

Published: Jun 20, 2025

Abstract

The musyarakah (partnership) contract is a key component in Islamic finance, enabling joint economic ventures. However, *wanprestasi* (breach of contract) threatens its stability, undermining trust and hindering the sector's growth. This study explores the forms and impacts of *wanprestasi* in musyarakah contracts and their implications for legal certainty in Islamic economics. Using a qualitative, literature-based approach, it examines Islamic legal principles and contemporary practices in Islamic finance. Findings show that *wanprestasi* can involve financial breaches (e.g., failure to contribute capital), managerial issues (e.g., mismanagement, lack of transparency), and violations of Sharia. To address these challenges, the study proposes a comprehensive approach grounded in Islamic values, emphasizing justice, honesty, and good faith; utilizing religious courts and Sharia arbitration; applying appropriate guarantees; and promoting restorative justice. It also highlights the role of Islamic financial institutions in risk management and education. By reinforcing these measures, the legal certainty and trust in musyarakah contracts can be strengthened. Related studies support these findings, emphasizing the need for Sharia adherence and clear rights allocation in Islamic finance.

Key words: *Musyarakah, Wanprestasi (breach of contract), Kepastian Hukum (legal certainty)*

A. INTRODUCTION

The basic principles of Islamic economics include justice, honesty, and the prohibition of usury, which form the basis for various contracts, including musyarakah. Justice in Islamic economics emphasizes the need for fair and equitable distribution of resources, so that every individual has an equal

opportunity to participate in economic activities.¹ Honesty is also very important, where transactions must be transparent and clear, avoiding fraud and manipulation.²

The prohibition of usury is one of the most fundamental aspects of Islamic economics, which aims to prevent exploitation and injustice in financial transactions. Usury is

¹ Fauziah Sulaiman, Muhtar Lutfi, and Rahmawati Muin, "Karakteristik Dan Rancang Bangun Ekonomi Islam," *Tadayun: Jurnal Hukum Ekonomi Syariah* 3, no. 2 (2022): 163–82, <https://doi.org/10.24239/tadayun.v3i2.84>.

² Andy Fahmi Halim, "PERAN KOPERASI AMANAH SAHABAT HIJRAH DALAM

MEMBERIKAN LAYANAN PENJUALAN KREDIT SYAR'I BEBAS DARI RIBA," *Jurnal Al-Fawa'id : Jurnal Agama Dan Bahasa* 12, no. 1 (June 6, 2022): 105–15, <https://doi.org/10.54214/alfawaid.Vol12.Iss1.208>.

considered a form of injustice that harms the weaker party. In the context of musyarakah contracts, where two or more parties collaborate by contributing capital to a joint venture, these principles are particularly important. Each party is entitled to profits under the agreement, and losses are borne in proportion to the capital deposited.

By applying these principles, Islamic economics seeks to create a system that is not only financially beneficial but also ethical and sustainable. Musyarakah, as a form of cooperation, reflects these values by emphasizing collaboration and shared responsibility in achieving economic goals. This shows that Islamic economics does not only focus on material gains, but also on the social and moral well-being of society.

The musyarakah agreement is one of the important instruments in Islamic economics that serves as a cooperation contract between two or more parties in a business. In this contract, each party contributes to the capital and shares the profits according to the agreement, while losses are borne in proportion to their respective contributions.³ The application of musyarakah contracts in Islamic financial institutions is highly relevant in the context of financial inclusion, where Islamic financial products, including musyarakah, can increase access to finance for marginalized communities.⁴ In Indonesia, Islamic financial institutions have adopted musyarakah contracts as one of the financing methods that comply with Sharia principles. This can be seen from various studies that show that musyarakah

not only helps in financing businesses, but also provides legal protection for customers in the event of default.⁵

In practice, Islamic financial institutions must ensure that all aspects of the musyarakah contract fulfill the provisions of Sharia and applicable laws, including in terms of dispute resolution.⁶ However, challenges in implementing musyarakah contracts remain, such as the risk of default and the need for appropriate collateral.⁷

The musyarakah agreement, as a form of cooperation in Islamic banking, has significant potential problems, especially related to default. Default occurs when one party does not fulfill its agreed obligations, which can result in losses for the other party. In the context of musyarakah, this problem often arises when one party fails to contribute capital or is unable to share profits as agreed, which has the potential to lead to legal disputes. In addition, the legal aspect of musyarakah dispute resolution is also a challenge. The lengthy and complex legal process is often an impediment to a quick and fair resolution. Research shows that many default cases in musyarakah end up in court, where judges have to consider various factors, including substantive justice in their decisions. This suggests the need for more efficient alternative resolution mechanisms, such as Sharia arbitration, to address this issue. On the other hand, legal protection for parties harmed by default is also a concern. In musyarakah contracts, parties who suffer losses are entitled to compensation, but the application of these sanctions is often

³ Setiawati and Usanti, "Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah."

⁴ Fitriani et al., "Inklusi Keuangan Dan Pemberdayaan Ekonomi: Evaluasi Efektivitas Produk Keuangan Syariah Dalam Meningkatkan Akses Keuangan Bagi Masyarakat Marginal," *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 6, no. 7 (2024): 5195–5206, <https://doi.org/10.47467/alkharaj.v6i7.2406>.

⁵ Astriah and Muhammad Kamal Zubair, "Analisis Penerapan Jaminan Pada Pembiayaan Mudharabah Dan Musyarakah Di Perbankan

Syariah," *BANCO: Jurnal Manajemen Dan Perbankan Syariah* 3, no. 2 (2022): 106–17, <https://doi.org/10.35905/banco.v3i2.2654>.

⁶ Ahmad Faizun, "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021): 195–212, <https://doi.org/10.22515/alahkam.v6i2.3864>.

⁷ Islami, "Analisis Jaminan Dalam Akad-Akad Bagi Hasil (Akad Mudharabah Dan Akad Musyarakah) Di Perbankan Syariah."

ineffective. Therefore, it is important to strengthen regulations and understanding of rights and obligations in musyarakah contracts so that potential problems can be minimized and justice can be upheld.

Default in the context of a musyarakah contract refers to a violation of the terms agreed upon by the parties to the agreement. This definition covers various forms of default, such as negligence in fulfilling obligations, willful non-fulfillment of the agreement, and force majeure that prevents the performance of obligations. In a musyarakah contract, each party is expected to contribute both in capital and in the management of the business, and non-compliance with this can be considered a default.⁸ Common forms of default in musyarakah contracts include failure to contribute capital as agreed, which can result in losses to the other party. In addition, deliberate non-fulfillment of obligations, such as non-payment of profit sharing, is also a serious form of default. In this case, the injured party has the right to demand compensation or sanctions under applicable regulations.⁹ Force majeure can also be an excuse for not fulfilling obligations in a musyarakah contract. However, the party claiming force majeure must be able to prove that the situation was completely out of their control and unavoidable. In this case, it is important to have clear provisions in the agreement to avoid disputes later on.¹⁰

Default, in the context of a musyarakah contract, is defined as the failure of one party to fulfill its obligations as stated in the agreement. This failure can be detrimental to the other parties who have fulfilled their obligations and undermine the purpose of

the musyarakah itself. It is important to note that default is not always intentional, but can occur due to a variety of factors.

Defaults in musyarakah contracts can take many forms. First, negligence, for example, depositing capital late, not running the business in good faith, or not providing periodic financial reports. Second, willfulness, such as embezzling musyarakah funds or taking actions that harm the business. Third, force majeure, which is an event beyond human control that causes one party to be unable to fulfill its obligations, such as natural disasters or changes in government policies that have a significant impact on the business.

The impact of default on legal certainty in Islamic economics, especially in musyarakah contracts, is very significant. The default can destabilize the relationship between the parties involved in the contract, which in turn affects public confidence in the Islamic economic system. In the context of musyarakah, where two or more parties collaborate to achieve a common goal, default can cause financial losses and damage the reputation of the party that does not fulfill its obligations.¹¹ The uncertainty caused by default can also reduce investors' interest in participating in musyarakah contracts. This is due to concerns that a breach of contract will result in unforeseen losses. Weak law enforcement in dealing with defaults can exacerbate this situation, as the aggrieved party may feel they have no effective channel to claim their rights.¹²

The urgency of a critical review of legal certainty in the musyarakah contract is very important to minimize the negative impact of default. In the context of Islamic

⁸ Setiawati and Usanti, "Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah."

⁹ Shofa Fathiyah and Nurhasanah Nurhasanah, "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen," *Jurnal Hukum Replik* 7, no. 1 (2020): 71, <https://doi.org/10.31000/jhr.v7i1.2544>.

¹⁰ Masturoh and Haniatunnisa, "Mekanisme Penyelesaian Bagi Nasabah Wanprestasi."

¹¹ Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

¹² Haryono, "PENEGAKAN HUKUM BERBASIS NILAI KEADILAN SUBSTANTIF (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012)."

economics, default can occur when one party does not fulfill its agreed obligations, which can significantly harm the other party.¹³ This critical review helps in understanding and identifying the criteria for default and the legal implications that can arise, so that preventive steps can be taken to avoid disputes.¹⁴

Research on defaults in musyarakah contracts and their impact on legal certainty in Islamic economics is very important for the following reasons:

1. **Ensuring Legal Certainty.**
Legal certainty is one of the main pillars of any economic system. This research seeks to identify and evaluate the factors that lead to default in musyarakah contracts, which can help in formulating a more robust and efficient legal mechanism, thereby promoting better legal certainty in Islamic financial contracts.
2. **Reduces Economic Risk.**
Defaults can cause significant financial losses for the parties involved. By identifying default cases and their solutions, this research can help increase investors' and market participants' confidence in the Islamic financial system, which in turn can reduce economic risk and increase participation.
3. **Promoting Islamic Economic Growth**
By understanding and effectively addressing default issues, this research contributes to the sustainable growth of the Islamic economic sector. This is important amidst the growing global interest in Shariah-based financial products and services, which require a strong and reliable foundation.
4. **Integrating Shariah Principles in Economic Practice**
This research helps to apply Shariah principles in realistic and sustainable economic practices. It not only

enhances the understanding of Islamic law in a financial context but also ensures that financial practices remain in line with the moral and ethical values it espouses.

This research aims to analyze the forms as well as the impact of default on legal certainty in the musyarakah contract and explore Islamic law solutions in realizing legal certainty in Islamic economics. The formulation of the problems studied includes the forms of default in the musyarakah contract, the impact of default on legal certainty in Islamic economics, and Islamic legal solutions in overcoming default in the musyarakah contract to realize legal certainty.

B. RESEARCH METHOD

This research belongs to the type of research that uses qualitative methods with a literature study approach. This study will comprehensively review the literature relevant to the topic of legal certainty in musyarakah contracts. The literature study process is conducted with the following steps:

1. **Keyword Identification.**
Determine keywords relevant to the research topic, such as “musyarakah contract”, “default”, “legal certainty”, “sharia economic law”, and “dispute resolution”.
2. **Literature Search.**
Conducting a literature search using predetermined keywords through Google Scholar. The identified sources will be grouped based on relevance to the research topic.
3. **Literature Selection**
Selected literature relevant to the established inclusion and exclusion criteria. Inclusion criteria included literature that directly addressed the research topic, was published within a certain time frame (e.g., the last 10

¹³ Guntara, Asyhadi, and Prawiyogi, “Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah.”

¹⁴ Setiawati and Usanti, “Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah.”

years), and used credible methodologies. Exclusion criteria included literature that was not relevant to the research topic, did not meet academic quality standards, or was not available in full.

4. **Data Extraction**
Extract important information from the selected literature, such as definitions, theories, concepts, empirical data, and arguments related to the research topic.
5. **Synthesis and Analysis.**
Analyze and synthesize the extracted information to identify patterns, trends, and gaps in the literature and to answer the research questions.
6. **Report Preparation.**
Prepare a systematic and structured literature study report, listing the sources used completely and accurately.

This desk study process will be conducted iteratively, where each step can be repeated or revised as needed. The aim is to produce a comprehensive and in-depth understanding of legal certainty in musyarakah contracts and the impact of default on it.

The literature study approach used in the research aims to comprehensively review the literature relevant to the topic of legal certainty in musyarakah contracts. This study includes sources in the form of scientific articles indexed by Google Scholar. Previous research shows that literature analysis can provide deep insights into the dynamics and problems of Islamic economics, as well as the application of Islamic law in the context of musyarakah contracts.¹⁵ In the context of dispute resolution, research also underscores the importance of the National Sharia Council's fatwa and the arbitration mechanism

provided for in legislation. For example, research on dispute resolution at the National Sharia Arbitration Board shows how Islamic law is applied in arbitration practice.¹⁶ This shows that a desk study approach can help in understanding how Sharia principles are integrated in legal practice and dispute resolution.

C. RESULTS AND DISCUSSION

This section presents the results of the research, analyzes the form and impact of default on legal certainty in musyarakah contracts, and explores solutions based on Islamic law. This discussion connects the findings with the purpose of the research, which is to understand how the principles of Islamic law can be applied to reduce the negative impact of default and strengthen the Islamic economic framework.

1. Forms of default in musyarakah contracts in Indonesia.

In the context of musyarakah contracts in Indonesia, default or breach of contract can arise in various forms that affect the relationship between the parties involved. A musyarakah contract is a form of cooperation in which two or more parties contribute capital to a business, with the sharing of profits and losses according to the proportion of their respective contributions. However, in practice, several forms of default can occur, which need to be analyzed in depth. One form of default that commonly occurs in musyarakah contracts is the inability of one party to fulfill its financial obligations, such as not depositing the promised capital or not paying profit sharing as agreed. This can cause losses to the other party, who has fulfilled its obligations. Research shows that in such cases, the injured party has the right to claim compensation or sanctions

¹⁵ Satriak Guntoro and Ahmad, "Dinamika Dan Problematika Ekonomi Syariah Di Negara Islam," *Syarikat: Jurnal Rumpun Ekonomi Syariah* 5, no. 2 (2022): 120–27, [https://doi.org/10.25299/syarikat.2022.vol5\(2\).10044](https://doi.org/10.25299/syarikat.2022.vol5(2).10044).

¹⁶ Mona Wulandari and Saifullah Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia," *Wajah Hukum* 6, no. 2 (2022): 441, <https://doi.org/10.33087/wjh.v6i2.1081>.

under the provisions agreed upon in the contract.

In this case, it is important to understand that every musyarakah contract must have clear provisions regarding the consequences of default, to provide legal protection for all parties involved.¹⁷ Another form of default in a musyarakah contract can be the neglect of the agreement that has been made, such as not implementing the agreed business plan. For example, if one party does not run the business in accordance with the set objectives, this can be considered a breach of contract. Research shows that neglecting this agreement can lead to significant financial losses and can trigger legal disputes between the parties involved.¹⁸

Therefore, it is important for the parties to clearly define the objectives and business plan in the musyarakah contract to minimize the risk of default. In addition, default can also occur in the form of non-compliance with the Sharia provisions on which the musyarakah contract is based. In the context of Islamic banking, for example, if one party engages in practices that are contrary to Sharia principles, such as usury or gharar, then this can be considered a default. Research shows that violations of Sharia principles can result in the cancellation of the contract and claims for compensation from the injured party.¹⁹ In the legal context, dispute resolution due to defaults in musyarakah contracts can be done through litigation in religious courts or through arbitration. Research shows that religious courts have the authority to decide

disputes related to Islamic economics, including cases of default in musyarakah contracts.²⁰ On the other hand, arbitration is also becoming an increasingly popular option, where parties can resolve disputes more quickly and efficiently. Research shows that arbitration decisions are often more favorable to the parties involved, as the process is more flexible and not bound by strict court procedures.²¹

Furthermore, it is important to note that in the face of default, consumer protection must also be considered. In the context of musyarakah contracts, the customer or the weaker party in the agreement must receive adequate legal protection. Research shows that consumer protection laws in Indonesia provide a legal basis for customers to file claims in the event of defaults that harm them.²²

This shows the importance of awareness of the legal rights of each party in a musyarakah contract. In addition, external factors such as economic conditions and regulatory changes can also influence defaults in musyarakah contracts. Research shows that unexpected economic fluctuations can cause financial hardship for one party, which in turn can trigger default.²³ Therefore, it is important for parties to consider these risks in their business planning and to draft contracts that include provisions regarding risk handling. The forms of default in musyarakah contracts in Indonesia are diverse and can be viewed from various perspectives. In general, default occurs when one party does not fulfill its obligations in accordance with

¹⁷ Fathiyah and Nurhasanah, "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen."

¹⁸ Faizun, "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)."

¹⁹ Hadist Shohih and Ro'fah Setyowati, "Perspektif Hukum Islam Mengenai Praktik Gharar Dalam Transaksi Perbankan Syariah," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 12, no. 2 (2021): 69–82, <https://doi.org/10.28932/di.v12i2.3323>.

²⁰ Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

²¹ Warsidi, *Strategi Pemasaran Produk Bank Syariah*, (Yogyakarta: Zahir Publishing, 2020)

²² Fathiyah and Nurhasanah, "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen."

²³ Munir Hamid et al., "Economic Empowerment Of Ummah Through Sharia Fintech: Literature Review."

the agreement in the contract. The following are the forms of default in musyarakah contracts elaborated with a more in-depth analysis:

1. Default in Fulfillment of Financial Obligations

a. Not Depositing Capital

One of the most common forms of default is the failure of one party to deposit capital by the agreed-upon amount and time. This can disrupt the running of the business and harm other parties who have deposited their capital.

b. Not Paying Profit Share

In musyarakah, profits and losses are shared according to the agreed ratio. Default occurs if one party does not pay the profit sharing by the agreement, either due to intent or negligence.

c. Misuse of Capital

Default can also occur if one party misuses the musyarakah capital for personal gain or outside the collective agreement. This action violates the principle of trust and can harm the other party.

2. Default in Business Management

a. Failure to Implement the Business Plan.

If a specific business plan has been agreed upon in the musyarakah contract, then failure to implement the plan may be considered a default. This may occur due to negligence, incompetence, or willfulness of one of the parties.

b. Not Managing the Business in Good Faith

Each party in musyarakah is obliged to manage the business in good faith and with full responsibility. If one party takes actions that are detrimental to the business, such as committing fraud or not being

transparent in financial management, then this can be considered a default.

c. Not Providing Periodic Reports

Transparency and accountability are essential in musyarakah. Failure by either party to provide periodic reports on the progress of the business to the other party may be considered a default.

3. Defaults Related to Sharia Principles

Conducting Practices Contrary to Sharia Principles

A musyarakah agreement must be based on Sharia principles. If one of the parties engages in practices that are contrary to Sharia principles, such as usury, gharar, or maisir, then it can be considered a default and may result in the cancellation of the contract.

d. The impact of default on legal certainty in musyarakah contracts.

The impact of default on legal certainty in musyarakah contracts is a complex and important issue in the context of Islamic economic law. Default, or the breach of agreed terms in a contract, can affect the relationship between the parties involved in a musyarakah contract, as well as have significant legal implications. In this context, it is important to understand how default can affect legal certainty, as well as the existing settlement mechanisms to address this issue.

A musyarakah contract is a form of cooperation in which two or more parties contribute capital to a business, with the sharing of profits and losses based on agreement. In this contract, legal certainty is essential to maintain trust between the parties involved. Default can occur when one party does not fulfill its obligations, such as not contributing the promised capital or not sharing profits as agreed. This can lead to legal uncertainty and conflict between the parties involved.²⁴

In the context of Islamic banking, default can lead to sanctions for customers who do

²⁴ Setiawati and Usanti, "Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah."

not fulfill their obligations. Research shows that banks have the right to impose sanctions on customers who are proven to be able to pay but are in arrears on installment payments. These sanctions can be in the form of fines or compensation.²⁵ This sanction aims to provide a deterrent effect and maintain compliance with the terms agreed in the contract. However, the application of these sanctions must be carried out carefully so as not to violate the principles of justice and consumer protection.²⁶ Dispute resolution due to default in the musyarakah contract is also an important concern.

In addition, it is important to examine how collateral in musyarakah contracts can serve as a means of protection for the parties involved. Security can be in the form of assets that are used as collateral to ensure that the agreed obligations can be fulfilled. Research shows that the application of collateral in musyarakah contracts can provide legal certainty and protect the rights of parties who contribute capital. However, the application of this guarantee must be carried out with due regard to Sharia principles so as not to violate existing provisions.

From a legal perspective, defaults in musyarakah contracts can also be analyzed through the theory of norm ranking in Islamic law. This theory explains that Islamic law has basic principles that must be followed, as well as more specific legal provisions. In this context, default can be seen as a violation of agreed-upon legal norms, which can result in legal consequences for the defaulting party.²⁷ Therefore, it is important to understand these norms to avoid default and maintain legal certainty in musyarakah contracts. In practice, dispute resolution due to default in

musyarakah contracts often involves mediation or arbitration. Sharia arbitration institutions, such as the National Sharia Arbitration Board (BASYARNAS), have an important role in resolving these disputes. Research shows that arbitration can be an effective alternative to resolving disputes, due to its faster and more flexible process compared to courts.²⁸ However, the success of arbitration depends on the agreement between the parties involved to comply with the decision taken.

The impact of default on legal certainty in musyarakah contracts is a complex issue. Default, or a breach of the agreed terms of a contract, can affect the relationship between the parties involved in a musyarakah contract, as well as have significant legal implications.

1. Eroding Trust and Stability

- a. Legal certainty plays an important role in building trust between the parties to a musyarakah contract. When default occurs, this trust is eroded, which can disrupt the stability of the cooperation.
- b. The impact extends not only to the relationship between the parties to the contract, but also to the Islamic economic system as a whole. If defaults occur frequently and are not handled properly, there will be a negative perception of the Islamic economic system.

2. Causing Disputes and Legal Uncertainty.

- a. The default can trigger disputes between the parties. The dispute resolution process, whether through litigation or arbitration, takes time and money.
- b. Legal uncertainty arises due to different interpretations of the

²⁵ Fathiyah and Nurhasanah, "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen."

²⁶ Fathiyah and Nurhasanah.

²⁷ Agung Wibowo and Arif Sugitanata, "Teori Pertingkatan Norma Dan Penemuan Hukum Islam (Pendalaman Dan Rekonstruksi Konsep),"

JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab 3, no. 1 (2023): 79–96, <https://doi.org/10.59259/jd.v3i1.50>.

²⁸ Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

contents of the agreement or the application of the law. This can make it difficult for parties to predict the legal consequences of their actions.

3. Influence on Sharia Economic Performance

- a. Legal uncertainty due to default can hamper the growth of the Islamic economy. Investors and businesses are reluctant to use musyarakah contracts because they are worried about the risk of default and difficulties in dispute resolution.
- b. In addition, default can also reduce public interest in investing or transacting using Islamic instruments.

4. Causing Sanctions and Legal Consequences

- a. Default can result in sanctions for parties who violate the agreement. These sanctions can be in the form of fines, compensation, or even cancellation of the contract.
- b. The legal consequences of default need to be regulated in the musyarakah agreement to provide legal certainty for the parties.

To minimize the negative impact of default on legal certainty in musyarakah contracts, the following efforts are required:

1. Strengthening the Regulation
The laws and regulations governing musyarakah need to be strengthened and clarified to reduce legal uncertainty.
2. Improvement of Understanding
Socialization and education on the principles of musyarakah and the legal consequences of default need to be improved.
3. Development of Dispute Resolution Mechanisms
Effective and efficient dispute resolution mechanisms need to be developed, whether through litigation, arbitration, or mediation.
4. Improved Professionalism

The parties involved in a musyarakah contract, including Islamic financial institutions, need to improve their professionalism and integrity in carrying out the contract.

Thus, a comprehensive understanding of the impact of default on legal certainty in musyarakah contracts and appropriate mitigation efforts is essential to maintain public trust and encourage the growth of the Islamic economy.

e. **Islamic law solutions in overcoming defaults in musyarakah contracts to realize legal certainty in Islamic economics.**

In the context of Islamic law, default in musyarakah contracts is a significant issue that requires special attention to achieve legal certainty in the Islamic economy. Musyarakah contracts, which are a form of cooperation between two or more parties in a business, often face challenges when one party does not fulfill its obligations. Therefore, it is important to understand the Islamic legal remedies that can be applied to address these defaults, as well as how they can contribute to legal certainty in Islamic economic practice.

First, it is important to understand the basic concept of the musyarakah contract itself. It involves capital contributions from all parties involved, where profits are shared by the agreement, while losses are borne by the proportion of capital deposited. In this case, default can occur when one of the parties fails to fulfill its agreed obligations, both in terms of depositing capital and in managing the business. Research shows that in cases of default, religious courts have the authority to decide cases related to Islamic economics, including in the context of musyarakah contracts. This shows that the Islamic justice system has a mechanism to handle disputes arising from defaults.

In addition, the application of collateral in musyarakah contracts is also one of the solutions to overcome defaults. This guarantee serves as protection for the party providing the capital, so that in the event of

a default, the party can claim the previously agreed-upon guarantee. Research shows that although musyarakah contracts are a form of trust-based cooperation, the application of collateral in practice can provide a sense of security for all parties involved.²⁹ This is important to create legal certainty in Islamic economic transactions, where each party can feel protected.

Furthermore, in the context of dispute resolution due to default, alternative dispute resolution, such as Sharia arbitration, can also be an effective solution. Research shows that the National Sharia Arbitration Board (BASYARNAS) has an important role in resolving disputes arising from musyarakah contracts, using the principles of Islamic law as the basis for decision-making.³⁰ This arbitration process provides an alternative for the parties involved to resolve disputes out of court, which is often faster and more efficient. Thus, the existence of BASYARNAS and other sharia arbitration mechanisms can increase legal certainty in the Islamic economy.

In addition, it is important to note that the application of restorative justice principles in dispute resolution can also be a relevant approach. This principle emphasizes restoring the relationship between the parties involved, rather than focusing solely on punishment for the defaulting party. With this approach, it is hoped that a fairer and more sustainable solution can be created, which not only benefits one party but also considers the interests of all parties involved in the musyarakah contract.³¹ This is in line with the broader objective of Islamic law, which is to create benefits for the people.

In this context, it is also important to consider the role of Islamic financial institutions in managing default risk. Islamic financial institutions are expected to apply sharia principles in every transaction, including in musyarakah contracts. Research shows that Islamic financial institutions can implement a strict monitoring system for customers to prevent defaults.³² Thus, Islamic financial institutions not only function as capital providers but also as active partners in ensuring the success of the business being run.

To achieve legal certainty in Islamic economics, collaboration between various parties is also very important. The government, Islamic financial institutions, and the public need to work together to create a conducive environment for the practice of Islamic economics. Research shows that support from the government in the form of clear regulations that support Islamic economic practices can increase public confidence in this system.³³ With this support, it is expected that the practice of musyarakah contracts can develop well and reduce the risk of default.

Finally, to achieve a comprehensive solution in overcoming defaults in musyarakah contracts, further research is needed on the best practices that can be applied in the context of Islamic economics. In-depth research on default cases that have occurred and how they were resolved can provide valuable insights for the development of Islamic law in the economic field. Thus, it is hoped that a legal system that is more effective and responsive to the challenges faced in the

²⁹ Astriah and Muhammad Kamal Zubair, "Analisis Penerapan Jaminan Pada Pembiayaan Mudharabah Dan Musyarakah Di Perbankan Syariah."

³⁰ Faizun, "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)."

³¹ Aksar, Umar Dinata, and Saut Maruli Tua Manik, "Rekonstruksi Prinsip Restorative Justice

Dalam Penyelesaian Tindak Pidana Anak," *Journal Equitable* 8, no. 2 (2023): 184–97, <https://doi.org/10.37859/jeq.v8i2.4949>.

³² Siti Hayati, "Analisis Dhaman (Ganti Rugi) Bagi Nasabah Wanprestasi Dalam Perbankan Syariah (Study Pada Pembiayaan Murabahah)."

³³ Satriak Guntoro and Ahmad, "Dinamika Dan Problematika Ekonomi Syariah Di Negara Islam."

practice of Islamic economics can be created.

Islamic law solutions in overcoming defaults in musyarakah contracts aim to realize justice and legal certainty in Islamic economics. Here are some solutions that can be applied:

1. Basic Principles of Islamic Law

a. Fairness and Honesty

The parties to a musyarakah contract must act honestly and fairly. Dishonesty or actions that harm the other party can be considered a default.

b. Good Faith

The parties must carry out the contract in good faith and by the agreement. If there is a dispute, it must be resolved by deliberation to reach consensus.

2. Dispute Resolution Mechanism

a. Religious Court

If the deliberation does not reach consensus, the dispute can be resolved through the religious court. Religious courts have the authority to decide cases related to Sharia economy, including musyarakah contracts.

b. Sharia Arbitration

Alternative dispute resolution through Sharia arbitration, such as the National Sharia Arbitration Board, can be a faster and more efficient solution.

3. Application of Guarantees

Although musyarakah is based on trust, the application of collateral can protect the party providing the capital. In case of default, the aggrieved party can claim the collateral.

4. Restorative Justice.

The application of restorative justice principles in dispute resolution can be a relevant approach. This principle emphasizes restoring the relationship between the disputing parties, rather than focusing on punishment.

5. Role of Islamic Financial Institutions.

Islamic financial institutions play an important role in managing default risk. They are expected to apply Sharia principles in every transaction and conduct close monitoring of customers to prevent defaults.

6. Education and Socialization

Improved education and socialization on Islamic law and sharia economic practices, particularly musyarakah contracts, are essential. An adequate understanding of the rights and obligations in a musyarakah contract can help prevent defaults.

7. Collaboration and Government Support

Collaboration between the government, Islamic financial institutions, and the public is needed to create a conducive environment for the practice of Islamic economics. Government support in the form of clear and supportive regulations can increase public confidence in this system.

8. Research and Development

Further research on best practices in musyarakah contracts and dispute resolution can provide valuable insights for the development of Islamic law in the economic field.

By applying these solutions comprehensively, it is hoped that legal certainty in Islamic economics can be realized and the negative impact of default in musyarakah contracts can be minimized.

D. CONCLUSION

The conclusion of this research answers the three research objectives that have been formulated.

1. Forms of default in musyarakah contracts in Indonesia.

This study identified various forms of default, including financial violations (e.g., non-payment of capital, unfair profit sharing, misuse of funds), managerial violations (e.g., failure to implement business plans, mismanagement), and violations of Sharia principles.

These findings show that defaults can arise from various aspects, both in terms of financial management and operations.

2. The impact of default on legal certainty in musyarakah contracts.

The default is proven to disrupt legal certainty in musyarakah contracts. This can result in a loss of trust between parties, the emergence of disputes, and hampering the growth of the Islamic economy. This legal uncertainty can hinder the development of the Islamic economy as a whole.

3. Islamic law solutions in overcoming defaults in musyarakah contracts.

This research offers comprehensive Islamic law solutions, including the application of the principles of justice, honesty, and good faith; dispute resolution mechanisms such as religious courts and sharia arbitration; the application of guarantees; restorative justice approaches; the role of Islamic financial institutions in risk mitigation; education and socialization of Islamic economic law; and government collaboration and support. These solutions aim to strengthen the legal framework and practice of Islamic economics, to

minimize the negative impact of default, and to realize legal certainty in Islamic economics.

Suggestions for future research can focus on the following themes:

1. Comparative Study.

Comparing the regulation and practice of default resolution in musyarakah contracts in various Muslim-majority countries. This research can identify best practices and provide insights for improving laws and regulations in Indonesia.

2. Empirical Research.

Conduct empirical research to determine the frequency, types, and causes of defaults in musyarakah contracts in Indonesia. This empirical data can provide a clearer picture of the problems that occur in the field and form the basis for formulating more effective solutions.

3. Impact of Technology.

Analyze the impact of technological developments, such as blockchain and smart contracts, on risk mitigation and increased transparency in musyarakah contracts. Technology can play a role in creating a more secure and efficient system, thereby reducing the potential for default.

References

- [1] Aksar, Umar Dinata, and Saut Maruli Tua Manik. "Rekontruksi Prinsip Restorative Justice Dalam Penyelesaian Tindak Pidana Anak." *Journal Equitable* 8, no. 2 (2023): 184–97. <https://doi.org/10.37859/jeq.v8i2.4949>.
- [2] Astriah, and Muhammad Kamal Zubair. "Analisis Penerapan Jaminan Pada Pembiayaan Mudharabah Dan Musyarakah Di Perbankan Syariah." *BANCO: Jurnal Manajemen Dan Perbankan Syariah* 3, no. 2 (2022): 106–17. <https://doi.org/10.35905/banco.v3i2.2654>.
- [3] Faizun, Ahmad. "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)." *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021): 195–212. <https://doi.org/10.22515/alahkam.v6i2.3864>.
- [4] Fathiyah, Shofa, and Nurhasanah Nurhasanah. "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen." *Jurnal Hukum Replik* 7, no. 1 (2020): 71. <https://doi.org/10.31000/jhr.v7i1.2544>.
- [5] Fitriani, Efendi Sugianto, Shylvia Andriani, Rihfenti Ernayani, and Dyah Mieta

- Setyawati. “Inklusi Keuangan Dan Pemberdayaan Ekonomi: Evaluasi Efektivitas Produk Keuangan Syariah Dalam Meningkatkan Akses Keuangan Bagi Masyarakat Marginal.” *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 6, no. 7 (2024): 5195–5206. <https://doi.org/10.47467/alkharaj.v6i7.2406>.
- [6] Guntara, Deny, Farhan Asyhadi, and Anggy Giri Prawiyogi. “Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah.” *Jurnal Usm Law Review* 6, no. 2 (2023): 567. <https://doi.org/10.26623/julr.v6i2.6392>.
- [7] Halim, Andy Fahmi. “PERAN KOPERASI AMANAH SAHABAT HIJRAH DALAM MEMBERIKAN LAYANAN PENJUALAN KREDIT SYAR’I BEBAS DARI RIBA.” *Jurnal Al-Fawa'id: Jurnal Agama Dan Bahasa* 12, no. 1 (June 6, 2022): 105–15. <https://doi.org/10.54214/alfawaid.Vol12.Iss1.208>.
- [8] Haryono, Haryono. “PENEGAKAN HUKUM BERBASIS NILAI KEADILAN SUBSTANTIF (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012).” *Jurnal Hukum Progresif* 7, no. 1 (2019): 20. <https://doi.org/10.14710/hp.7.1.20-39>.
- [9] Islami, Aufa. “Analisis Jaminan Dalam Akad-Akad Bagi Hasil (Akad Mudharabah Dan Akad Musyarakah) Di Perbankan Syariah.” *Jurnal Hukum Ekonomi Syariah* 4, no. 1 (2021): 1. <https://doi.org/10.30595/jhes.v4i1.9903>.
- [10] Masturoh, Neneng, and Siti Haniatunnisa. “Mekanisme Penyelesaian Bagi Nasabah Wanprestasi.” *An Nawawi* 2, no. 1 (2022): 23–34. <https://doi.org/10.55252/annawawi.v2i1.18>.
- [11] Munir Hamid, Ahmad, Syuhada, Supriyanto, and Iskandar Ritonga. “Economic Empowerment Of Ummah Through Sharia Fintech: Literature Review.” *International Journal of Scientific Research and Management (IJSRM)* 11, no. 11 (2023): 5289–5301. <https://doi.org/10.18535/ijssrm/v11i11.em02>.
- [12] Ramdhany, Memmy Fatiyanti Deri. “Implementasi Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan ADR.” *Indonesia Berdaya* 4, no. 4 (2023): 1263–70. <https://doi.org/10.47679/ib.2023549>.
- [13] Satriak Guntoro, and Ahmad. “Dinamika Dan Problematika Ekonomi Syariah Di Negara Islam.” *Syarikat: Jurnal Rumpun Ekonomi Syariah* 5, no. 2 (2022): 120–27. [https://doi.org/10.25299/syarikat.2022.vol5\(2\).10044](https://doi.org/10.25299/syarikat.2022.vol5(2).10044).
- [14] Setiawati, Nur Utari, and Trisadini Prasastinah Usanti. “Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah.” *Lex Journal: Kajian Hukum & Keadilan* 2, no. 2 (2018). <https://doi.org/10.25139/lex.v2i2.1410>.
- [15] Shohih, Hadist, and Ro’fah Setyowati. “Perspektif Hukum Islam Mengenai Praktik Gharar Dalam Transaksi Perbankan Syariah.” *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 12, no. 2 (2021): 69–82. <https://doi.org/10.28932/di.v12i2.3323>.
- [16] Siti Hayati. “Analisis Dhaman (Ganti Rugi) Bagi Nasabah Wanprestasi Dalam Perbankan Syariah (Study Pada Pembiayaan Murabahah).” *Syarikat: Jurnal Rumpun Ekonomi Syariah* 3, no. 2 (2021): 1–6. [https://doi.org/10.25299/syarikat.2020.vol3\(2\).5018](https://doi.org/10.25299/syarikat.2020.vol3(2).5018).
- [17] Sulaiman, Fauziah, Muhtar Lutfi, and Rahmawati Muin. “Karakteristik Dan Rancang Bangun Ekonomi Islam.” *Tadayun: Jurnal Hukum Ekonomi Syariah* 3, no. 2 (2022): 163–82. <https://doi.org/10.24239/tadayun.v3i2.84>.
- [18] Tona, Tuah Itona. “Praktik Gharar Dan Maisir Era Modern.” *Mu’amalat: Jurnal Kajian Hukum Ekonomi Syariah* 14, no. 2 (2022): 163–76. <https://doi.org/10.20414/mu.v14i2.5504>.
- [19] Warsidi, *Strategi Pemasaran Produk Bank Syariah*, Yogyakarta: Zahir Publishing, 2020.
- [20] Wibowo, Agung, and Arif Sugitanata. “Teori Pertingkatan Norma Dan Penemuan

- Hukum Islam (Pendalaman Dan Rekonstruksi Konsep).” *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab* 3, no. 1 (2023): 79–96. <https://doi.org/10.59259/jd.v3i1.50>.
- [21] Wulandari, Mona, and Saifullah Basri. “Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia.” *Wajah Hukum* 6, no. 2 (2022): 441. <https://doi.org/10.33087/wjh.v6i2.1081>.