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IMPLEMENTATION OF MAQASID AL-SHARIAH ON SUBROGATION IN MUSYARAKAH MUTANAQISAH CONTRACTS DECIDED BY THE GENERAL COURT

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Abstract

The development of Islamic economic transactions in Indonesia has increased the legal complexity of financing disputes, including disputes arising from Musyarakah Mutanaqisah contracts. Positive law places Islamic economic disputes within the absolute jurisdiction of the Religious Courts; however, Surabaya District Court Decision Number 311/Pdt.G/2021/PN. Sby adjudicated a dispute involving subrogation connected to a Musyarakah Mutanaqisah financing contract. This article examines the jurisdictional context of the case, the application of subrogation in Musyarakah Mutanaqisah within Islamic legal principles, and the extent to which the decision aligns with maqasid al-shariah. This research employs normative legal research, utilizing statutory, case, conceptual, and comparative approaches. The findings show that the case should have been examined by the Religious Court because the disputed legal relationship was rooted in Islamic financing, namely Musyarakah Mutanaqisah and sharia-based subrogation. The decision produced a degree of asset-related settlement, but it did not fully satisfy Hifz al-Din because the case was resolved by a forum that lacked absolute jurisdiction over Islamic economic disputes. The article argues that stronger coordination between the General Courts and Religious Courts is needed to prevent forum error and to secure legal certainty, sharia compliance, and substantive justice in Islamic financing disputes.

Keywords: Maqasid al-Shariah; Subrogation; Musyarakah Mutanaqisah; Islamic Economic Dispute; Religious Court.

A. INTRODUCTION

Islamic banking in Indonesia is constructed on contractual relationships that must comply not only with general civil law but also with sharia principles. One of the financing instruments that frequently appears in property financing is the Musyarakah Mutanaqisah contract, a diminishing

partnership arrangement in which the bank and the customer share ownership of an asset and the customer gradually purchases the bank's ownership portion until full ownership is transferred. The National Sharia Council of the Indonesian Ulama Council regulates the basic structure of this contract through Fatwa Number 73/DSN-MUI/XI/2008, particularly by emphasizing joint ownership, proportional

rights and obligations, and loss allocation according to each party's capital contribution.¹ Recent studies also describe Musyarakah Mutanaqisah as a strategic alternative to murabahah because it combines asset financing, gradual ownership transfer, and risk-sharing features that are closer to the partnership logic of Islamic finance.²

The juridical relevance of Musyarakah Mutanaqisah becomes more complex when default, buy-back guarantees, sale-and-purchase binding agreements, and subrogation are involved in one transaction chain. In the case examined in this article, the debtor entered into a Musyarakah Mutanaqisah financing contract with the Islamic financing institution and was later deemed negligent in fulfilling payment obligations. The developer, as plaintiff, was bound by a buy-back guarantee and subsequently paid the debt to the financing institution. That payment was followed by a notarial subrogation agreement through which the original creditor's claim was transferred to the plaintiff. Although the plaintiff framed the dispute as a default under the preliminary sale and purchase agreement, the court's reasoning and operative part expressly addressed the Musyarakah Mutanaqisah financing contract. This structure shows that the dispute was not an ordinary civil sale-and-purchase matter but an Islamic financing dispute with a sharia contract as its substantive legal source.³

Indonesian positive law has already established a specific forum for Islamic economic disputes. Law Number 3 of 2006 expanded the jurisdiction of the Religious Courts to include Islamic economic matters, while Law Number 21 of 2008 on Islamic

Banking regulates the settlement of Islamic banking disputes.⁴ The Constitutional Court, through Decision Number 93/PUU-X/2012, eliminated the uncertainty caused by the explanatory clause of Article 55 paragraph (2) of Law Number 21 of 2008 and reinforced that Islamic banking disputes are not to be fragmented through competing judicial forums.⁵ The Supreme Court later issued Regulation Number 14 of 2016 concerning procedures for resolving Islamic economic cases, which further operationalizes the examination of Islamic economic disputes within the Religious Court framework.⁶ Therefore, when a dispute is substantively rooted in an Islamic financing contract, the court must examine the legal character of the contract before accepting jurisdiction.

Subrogation adds another layer to the problem. In Indonesian civil law, subrogation generally refers to the substitution of a creditor by a third party who pays the debtor's obligation, thereby transferring the creditor's rights to the payer. In sharia-based transactions, however, subrogation cannot be treated merely as a technical transfer of receivables. Fatwa Number 104/DSN-MUI/X/2016 defines sharia-based subrogation as a replacement of the old creditor by a new creditor because the old creditor's claim has been paid by the new creditor, and it requires that the mechanism remain free from prohibited elements such as *riba*, *gharar*, and unjust enrichment.⁷ Comparative scholarship on *cessie*, subrogation, and *hawalah* also confirms that a transfer of claim in Islamic law must be evaluated by reference to fairness, clarity of

¹ DSN-MUI, Fatwa No. 73/DSN-MUI/XI/2008.

² Asyiqin and Alfurqon (2024); Kadir et al. (2022); Maulan, Harahap, and Sasmini (2023).

³ Surabaya District Court, Decision No. 311/Pdt.G/2021/PN.Sby.

⁴ Republic of Indonesia, Law No. 3 of 2006; Republic of Indonesia, Law No. 21 of 2008.

⁵ Constitutional Court, Decision No. 93/PUU-X/2012.

⁶ Supreme Court, Regulation No. 14 of 2016.

⁷ DSN-MUI, Fatwa No. 104/DSN-MUI/X/2016.

object, and the legitimacy of the underlying debt.⁸

The decision of the Surabaya District Court Number 311/Pdt.G/2021/PN. Sby is therefore important because it represents a case in which the General Court adjudicated a dispute that contained Musyarakah Mutanaqisah and sharia-based subrogation. The court declared the defendant in default under the Musyarakah Mutanaqisah financing contract and declared the financing contract cancelled due to the defendant's default. At the same time, the court rejected the plaintiff's claim for additional replacement costs, damages, fines, and interest because the apartment unit had returned to the plaintiff after the cancellation of the sale-and-purchase binding agreement and the subrogation of the claim.⁹ This reasoning partially reflects distributive fairness, but it raises a fundamental jurisdictional question: can a General Court validly decide the legal consequences of a Sharia financing contract after the legal system has assigned such disputes to the Religious Courts?

This article addresses three research problems. First, it examines whether the Religious Court has absolute jurisdiction over subrogation disputes connected to Musyarakah Mutanaqisah financing. Second, it analyzes the legal certainty of subrogation in Musyarakah Mutanaqisah when the case is decided by the General Court. Third, it evaluates the decision through the maqasid al-shariah framework, particularly the protection of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-'aql), lineage (hifz al-nasl), and wealth (hifz al-mal). The contribution of this article lies in integrating forum competence, sharia-based subrogation, and maqasid analysis in one

normative assessment. Prior studies usually discuss Musyarakah Mutanaqisah implementation, subrogation, or Islamic economic dispute resolution separately, while this article places them in the concrete setting of a General Court decision that intervenes in a sharia financing dispute.¹⁰

The central argument is that jurisdictional correctness is not a procedural formality in Islamic economic disputes. It is a substantive requirement for sharia compliance because the forum determines the interpretive framework, applicable material norms, and sensitivity to Islamic legal principles. If a Sharia financing dispute is decided by a court that does not have absolute jurisdiction, legal certainty is weakened even when several aspects of the judgment appear equitable. From the perspective of maqasid al-shariah, the protection of wealth may be partially achieved through the prevention of double recovery, but the protection of religion is impaired when a dispute governed by sharia principles is separated from the judicial institution designed to apply those principles. This is the core problem of the decision analyzed in this article.

B. RESEARCH METHOD

This research uses normative legal research. The object of analysis is not empirical behavior but legal norms, judicial reasoning, and the coherence between positive law and Islamic legal principles. The primary legal materials consist of Surabaya District Court Decision Number 311/Pdt.G/2021/PN. Sby, Law Number 3 of 2006 concerning the Religious Courts, Law Number 21 of 2008 concerning Islamic Banking, Constitutional Court Decision Number 93/PUU-X/2012, Supreme Court Regulation Number 14 of 2016 concerning procedures for resolving Islamic economic

⁸ Asisah et al. (2025); Yunus and Raharto (2022).

⁹ Surabaya District Court, Decision No. 311/Pdt.G/2021/PN.Sby.

¹⁰ Nurdin and Ismail (2022); Ariska, Ula, and Maulana (2025); Widjaja (2025).

cases, Fatwa DSN-MUI Number 73/DSN-MUI/XI/2008 concerning Musyarakah Mutanaqisah, and Fatwa DSN-MUI Number 104/DSN-MUI/X/2016 concerning sharia-based subrogation.¹¹ These materials are treated as controlling authorities because they directly define the legal nature of the contract, the transfer of claims, and the competent forum.

The research applies four approaches. The statute approach is used to examine the hierarchy and normative content of statutes, Supreme Court regulations, and DSN-MUI fatwas relevant to Islamic financing disputes. The case approach is used to identify the ratio decidendi and operative consequences of Decision Number 311/Pdt.G/2021/PN.Sby. The conceptual approach is used to clarify the concepts of Musyarakah Mutanaqisah, subrogation, absolute competence, legal certainty, and maqasid al-shariah. The comparative approach is used to compare the logic of civil-law subrogation with sharia-based subrogation and to assess whether the General Court's reasoning corresponds with the normative structure of Islamic financing. Recent legal scholarship on subrogation, Islamic financing, and Islamic dispute resolution is used as secondary material to strengthen the analysis.¹²

The analysis is descriptive, prescriptive, and comparative. It is descriptive because it reconstructs the facts and legal reasoning of the disputed decision. It is prescriptive because it evaluates whether the decision should have been examined by the Religious Court and whether the legal consequences reached by the General Court are compatible with the Sharia nature of the transaction. It is comparative because it contrasts positive-law

competence with maqasid-based justice. The maqasid framework is used as an evaluative tool rather than merely as a theological concept. Hifz al-din is used to assess whether Sharia norms and institutions are respected; hifz al-mal is used to examine whether wealth and ownership are protected without unjust enrichment; hifz al-'aql is used to examine rational legal reasoning and clarity of rights; hifz al-nafs and hifz al-nasl are used to examine the broader stability and fairness of legal relations in financing disputes.¹³

C. RESULTS AND DISCUSSION

1. Absolute Jurisdiction of the Religious Court over Subrogation in Musyarakah Mutanaqisah

The first finding is that the dispute in Decision Number 311/Pdt.G/2021/PN. Sby falls within the absolute jurisdiction of the Religious Court. The relevant legal relationship cannot be understood only from the plaintiff's formulation of the claim. Courts must examine the substance of the dispute, the underlying contract, and the legal consequences requested in the petitum. In this case, the underlying financing was expressly based on a Musyarakah Mutanaqisah contract. The court's own operative ruling declared the defendant in default under that Musyarakah Mutanaqisah financing contract and declared the contract cancelled. This means the court did not merely adjudicate an ordinary civil sale-and-purchase relationship but made a ruling on

¹¹ DSN-MUI, Fatwa No. 73/DSN-MUI/XI/2008; Republic of Indonesia, Law No. 3 of 2006; Republic of Indonesia, Law No. 21 of 2008; Constitutional Court, Decision No. 93/PUU-X/2012; Supreme Court, Regulation No. 14 of 2016; DSN-MUI, Fatwa No. 104/DSN-

MUI/X/2016; Surabaya District Court, Decision No. 311/Pdt.G/2021/PN.Sby.

¹² Asisah et al. (2025); Yunus and Raharto (2022); Wicaksono and Paulus (2021); Widjaja (2025).

¹³ Nurdin and Ismail (2022); Ariska, Ula, and Maulana (2025); Al-Nahari et al. (2022).

the validity and consequences of a sharia financing contract.¹⁴

Absolute jurisdiction is determined by the type of dispute, not by the litigant's strategic description of the claim. Law Number 3 of 2006 gives the Religious Courts authority to examine, decide, and resolve Islamic economic cases.¹⁵ Law Number 21 of 2008 recognizes Islamic banking dispute settlement, while Constitutional Court Decision Number 93/PUU-X/2012 removes the possibility that the explanation of Article 55 paragraph (2) could be used to revive forum shopping between the General Courts and Religious Courts.¹⁶ Supreme Court Regulation Number 14 of 2016 further confirms that Islamic economic cases include disputes in Islamic banking, Islamic financing, and Islamic business.¹⁷ Because Musyarakah Mutanaqisah is an Islamic financing contract, a default dispute and subrogation arising from that contract must be treated as an Islamic economic case.

The plaintiff's reliance on the preliminary sale and purchase agreement and buy-back guarantee does not change the jurisdictional character of the dispute. These instruments were connected to the Musyarakah Mutanaqisah financing scheme. The buy-back guarantee functioned as a contractual mechanism that required the plaintiff to repurchase the apartment unit or pay the debtor's outstanding obligation if the debtor defaulted. The subsequent payment by the plaintiff to the financing institution triggered subrogation. Therefore, the subrogation was derivative of the Sharia financing relationship, not independent from it. A derivative claim follows the legal character of the principal obligation,

especially when the court must interpret the principal Islamic financing contract to determine default, cancellation, and loss allocation.

The relevant DSN-MUI fatwas also support this conclusion. Fatwa Number 73/DSN-MUI/XI/2008 regulates Musyarakah Mutanaqisah by referring to partnership rights and obligations, gradual transfer of ownership portions, and proportional sharing of losses according to each party's capital contribution.¹⁸ Fatwa Number 104/DSN-MUI/X/2016 regulates subrogation based on Sharia principles and places the transfer of creditor rights within the boundaries of Islamic commercial law.¹⁹ When a case combines both instruments, the judicial forum must be capable of applying Sharia commercial norms as material law. The Religious Court is the institution assigned by positive law to perform that function. The General Court should therefore have declined jurisdiction *ex officio* once the Sharia character of the contract became evident.

This jurisdictional conclusion is also consistent with recent scholarship. Studies on Musyarakah Mutanaqisah emphasize that the contract's legal identity is inseparable from sharia compliance, risk-sharing, and asset ownership principles.²⁰ Studies on Islamic economic dispute resolution likewise stress that dispute settlement must preserve the Sharia nature of the underlying transaction, not merely resolve the civil symptoms of default.²¹ If the forum ignores the sharia character of the transaction, the dispute may be resolved as an ordinary debt or property dispute, thereby obscuring the maqasid and

¹⁴ Surabaya District Court, Decision No. 311/Pdt.G/2021/PN.Sby.

¹⁵ Republic of Indonesia, Law No. 3 of 2006.

¹⁶ Republic of Indonesia, Law No. 21 of 2008; Constitutional Court, Decision No. 93/PUU-X/2012.

¹⁷ Supreme Court, Regulation No. 14 of 2016.

¹⁸ DSN-MUI, Fatwa No. 73/DSN-MUI/XI/2008.

¹⁹ DSN-MUI, Fatwa No. 104/DSN-MUI/X/2016.

²⁰ Asyiqin and Alfurqon (2024); Kadir et al. (2022); Sari, Mursalin, and Hartini (2024).

²¹ Nurdin and Ismail (2022); Widjaja (2025).

contractual architecture that distinguish Islamic finance from conventional finance.

2. Legal Certainty of Subrogation Decided by the General Court

The second finding is that the General Court decision creates uncertainty because it applies civil adjudication to a dispute that required Sharia economic competence. Legal certainty demands that parties know not only the content of their rights and obligations but also the proper institution for enforcing them. When the legal system assigns Islamic economic disputes to the Religious Courts, a General Court judgment on Musyarakah Mutanaqisah blurs the boundary of judicial authority. This is not a minor technical error. It affects the legitimacy of the decision because absolute competence concerns the authority of the court to adjudicate the subject matter.

In positive law, the court has an obligation to examine its own jurisdiction. If the claim falls outside its absolute competence, the court should declare that it is not authorized to examine the case. The Surabaya District Court, however, proceeded to consider the merits and even decided the legal effect of the Musyarakah Mutanaqisah contract.²² This creates a contradiction between the decision and the normative system established by Law Number 3 of 2006, Law Number 21 of 2008, Constitutional Court Decision Number 93/PUU-X/2012, and Supreme Court Regulation Number 14 of 2016.²³ The result is a decision that may resolve the immediate dispute but weakens systemic certainty for Islamic financing actors.

The uncertainty becomes more visible in the treatment of subrogation. In civil law, subrogation transfers creditor rights after a third party pays the debtor's obligation. In sharia-based subrogation, the transfer must be assessed according to the legitimacy of the debt, the clarity of the object, the absence of riba-based enrichment, and the fairness of the transfer.²⁴ If the General Court treats subrogation only as a civil-law mechanism, it may overlook whether the new creditor obtains rights that are consistent with the original sharia contract. Conversely, if the court applies sharia-based subrogation without jurisdiction, the decision may be substantively incomplete because it is issued outside the proper institutional framework.

The court's rejection of additional claims for replacement costs, damages, fines, and interest appears to prevent double recovery. The court reasoned that, after subrogation and cancellation of the preliminary sale and purchase agreement, the apartment unit had returned to the plaintiff; therefore, it would not be sufficiently fair to impose additional monetary burdens on the defendant.²⁵ This reasoning corresponds in part with *hifz al-mal* because it protects the debtor from excessive and potentially duplicative liability. It also resonates with the Musyarakah Mutanaqisah principle that losses should not be imposed arbitrarily on one party when the ownership structure and capital proportions must be considered.²⁶

Nevertheless, a fair-looking outcome in one part of the decision does not cure the jurisdictional defect. The court still declared the defendant in default under the Musyarakah Mutanaqisah contract and

²² Surabaya District Court, Decision No. 311/Pdt.G/2021/PN.Sby.

²³ Republic of Indonesia, Law No. 3 of 2006; Republic of Indonesia, Law No. 21 of 2008; Constitutional Court, Decision No. 93/PUU-X/2012; Supreme Court, Regulation No. 14 of 2016.

²⁴ DSN-MUI, Fatwa No. 104/DSN-MUI/X/2016; Asisah et al. (2025); Yunus and Raharto (2022).

²⁵ Surabaya District Court, Decision No. 311/Pdt.G/2021/PN.Sby.

²⁶ DSN-MUI, Fatwa No. 73/DSN-MUI/XI/2008; Jumarni, Fathurrahman, and Katman (2023).

cancelled that contract. Such a declaration requires the interpretive framework of Islamic economic law. In *Musyarakah Mutanaqisah*, default cannot be separated from the parties' partnership arrangement, gradual transfer of ownership, promise to purchase shares, and allocation of losses. Recent studies of MMQ implementation point out that the contract is often operationally complex because it contains multiple legal relations within one financing structure.²⁷ This complexity strengthens, rather than weakens, the need for the Religious Court to adjudicate the matter.

Legal certainty also concerns the precedential risk of the decision. If General Courts continue to accept disputes framed as sale-and-purchase default, guarantee enforcement, or civil subrogation even when the underlying contract is sharia financing, the jurisdictional settlement achieved by the Constitutional Court will be undermined. Litigants may strategically draft claims to avoid the Religious Court. This forum manipulation can weaken confidence in Islamic banking dispute resolution and create inconsistent legal outcomes. The proper approach is to treat the substance of the contract as decisive. Where the dispute requires the interpretation of a Sharia financing contract, the General Court must decline jurisdiction and direct the parties to the Religious Court.

From the standpoint of legal protection, the decision also raises a concern because judicial protection must be predictable and institutionally correct. Protection is not achieved only by distributing losses or returning an asset; it is also achieved by ensuring that parties receive adjudication

from the court authorized by law. Recent studies on Islamic financial dispute resolution emphasize that legal protection in sharia transactions must combine procedural certainty, substantive fairness, and compliance with Islamic legal values.²⁸ The decision under review satisfies part of the fairness dimension but fails on the procedural and institutional dimension.

3. Maqasid al-Shariah Analysis of the Decision

The third finding is that the decision only partially reflects maqasid al-shariah. Maqasid al-shariah provides a framework for examining whether a legal rule or judgment protects essential human interests. Classical theory identifies five essential protections: religion, life, intellect, lineage, and wealth. Contemporary Islamic legal scholarship extends the framework to justice, equality, transparency, and institutional accountability.²⁹ In Islamic finance, maqasid is not limited to the prohibition of *riba*. It requires a broader assessment of whether the transaction and its dispute settlement mechanism preserve fairness, prevent harm, and maintain trust in sharia-based economic activity.³⁰

Hifz al-mal is the most visible aspect in the Surabaya District Court decision. The court refused to burden the defendant with additional damages, fines, and interest after the apartment unit had returned to the plaintiff.³¹ This reasoning prevents an excessive accumulation of claims and limits the risk of unjust enrichment. It is consistent with the idea that wealth protection requires a balance between creditor recovery and debtor protection. In the context of

²⁷ Ulum et al. (2024); Nugroho et al. (2024).

²⁸ Nurdin and Ismail (2022); Widjaja (2025).

²⁹ Nurdin and Ismail (2022); Ariska, Ula, and Maulana (2025); Al-Nahari et al. (2022).

³⁰ Warsidi, Sami Ullah Khan, and Suhartono, "Implementasi Maqāṣid Al-Syarī'ah dalam

Pertimbangan Hakim pada Sengketa Ekonomi Syariah," *Maqasid: Jurnal Studi Hukum Islam* 14, no. 3 (2025).

³¹ Surabaya District Court, Decision No. 311/Pdt.G/2021/PN.Sby.

Musyarakah Mutanaqisah, wealth protection also requires attention to ownership portions and loss allocation. Fatwa Number 73/DSN-MUI/XI/2008 states that losses are borne according to the parties' capital proportions, which is incompatible with a one-sided transfer of all financial consequences to one party without examining the ownership structure.³²

Hifz al-'aql may also be partly identified because the court recognized the logical consequence of the return of the apartment unit. If the object of the dispute had returned to the plaintiff and the plaintiff had become the substituted creditor through subrogation, imposing all additional costs on the defendant could produce an unreasonable legal burden. Rational adjudication requires proportionality, not mechanical enforcement of every claim. The court's reasoning on this point reflects an attempt to avoid disproportionate liability. However, the reasoning remains incomplete because it does not first resolve the more basic rational question of jurisdiction.

Hifz al-nafs and hifz al-nasl are less direct but can still be associated with the social function of financing dispute settlement. A fair resolution of housing or property financing disputes can protect personal stability and family welfare by preventing excessive deprivation, uncertainty, or economically destructive liability. In this sense, rejecting disproportionate claims can help reduce harm to the debtor's broader social life. Yet these benefits are incidental. They do not replace the need to maintain the Sharia identity of the dispute, especially where the legal system provides a specialized forum for such cases.

The most problematic element is Hifz al-Din. In Islamic economic law, hifz al-din

requires that sharia-based transactions be interpreted and enforced in a manner that respects sharia norms and the institutions authorized to apply them. Because the disputed relationship was rooted in Musyarakah Mutanaqisah and sharia-based subrogation, the proper forum was the Religious Court.³³ When the General Court decided the case, it separated the dispute from the institution that positive law and Islamic legal policy designate for Islamic economic adjudication. This separation weakens hifz al-din, even if the decision contains some equitable reasoning on wealth protection.

The hierarchy of maqasid also supports this conclusion. Daruriyyat interests must be prioritized over hajiyyat and tahsiniyyat interests. Hifz al-din is part of the essential level because it preserves the normative foundation of Islamic legal transactions. The General Court's decision may have achieved a hajiyyat-level benefit by producing a practical settlement of the apartment unit and avoiding additional payment burdens, but it failed to satisfy the daruriyyat-level requirement of preserving the sharia character of the dispute through the proper forum. In cases of conflict, derivative procedural convenience should not override the essential protection of Sharia compliance.

This does not mean that the General Court's entire reasoning lacks value. The refusal to grant fines, interest, and additional damages may be aligned with Sharia concerns about fairness and avoidance of exploitative recovery. Yet the decision illustrates why maqasid analysis must examine both outcome and process. A result that partially protects wealth may still be deficient if the process undermines the institutional protection of religion. Islamic legal justice is not merely about reaching a practically acceptable result; it is about

³² DSN-MUI, Fatwa No. 73/DSN-MUI/XI/2008.

³³ Republic of Indonesia, Law No. 3 of 2006; Supreme Court, Regulation No. 14 of 2016.

reaching that result through norms and institutions consistent with Sharia objectives.³⁴

The case also demonstrates the need for harmonization between the General Courts and Religious Courts. Judges in the General Court should be equipped to identify Islamic economic elements at the preliminary stage of case examination. When a claim involves Musyarakah Mutanaqisah, murabahah, mudharabah, hawalah, sharia-based subrogation, or other sharia contracts, the court should examine whether the dispute requires interpretation of Islamic economic norms. If it does, the court should decline jurisdiction. This approach would not diminish the role of the General Court; it would protect the integrity of jurisdictional boundaries and prevent contradictory judgments.

For Islamic financial institutions, developers, guarantors, and customers, the decision carries a practical lesson. Contract drafting should clearly identify the Sharia character of the financing, the dispute resolution forum, the consequences of default, the mechanism of buy-back guarantees, and the legal consequences of subrogation. Clauses should avoid ambiguity that allows a Sharia financing dispute to be reframed as an ordinary civil dispute. Clear drafting supports *hifz al-mal* by clarifying economic rights and *hifz al-din* by directing disputes to the proper forum. It also supports *hifz al-'aql* by reducing interpretive confusion for judges and parties.

The broader doctrinal implication is that subrogation in Islamic financing should not be analyzed independently from the underlying contract. In Musyarakah Mutanaqisah, the transfer of creditor rights

may affect ownership portions, debt recovery, loss allocation, and the continued validity of the financing arrangement. Therefore, subrogation must be examined together with the MMQ contract, DSN-MUI fatwas, and Islamic economic dispute jurisdiction. Recent literature on subrogation and Islamic finance confirms that the transfer of rights in Islamic law is conditioned by the fairness and legitimacy of the underlying transaction.³⁵ This supports the conclusion that Religious Court competence is necessary when subrogation derives from a Sharia financing relationship.

D. CONCLUSION

This article concludes, first, that Surabaya District Court Decision Number 311/Pdt.G/2021/PN. Sby involved a sharia economic dispute because the court's reasoning and operative ruling directly addressed default and cancellation under a Musyarakah Mutanaqisah financing contract. The existence of a preliminary sale and purchase agreement, buy-back guarantee, and notarial subrogation agreement did not remove the sharia character of the dispute because those instruments were derivative of the Islamic financing relationship. Based on Law Number 3 of 2006, Law Number 21 of 2008, Constitutional Court Decision Number 93/PUU-X/2012, and Supreme Court Regulation Number 14 of 2016, the dispute should have been examined by the Religious Court rather than the General Court.

Second, the General Court decision creates legal uncertainty. Although the court attempted to prevent excessive recovery by rejecting additional damages, fines, and interest after the apartment unit returned to the plaintiff, the court nevertheless exceeded the proper jurisdictional boundary by

³⁴ Warsidi, Abdurrahman Raden Aji Haqqi, and Isma Swadjaja, "Implementation of Sharia System in Sharia-Certified Hospitals," *Jurnal Ilmiah Ekonomi Islam* 10, no. 3 (2024).

³⁵ Asisah et al. (2025); Yunus and Raharto (2022); Hutomo, Setiono, and Chaniago (2024).

deciding the validity and consequences of a Musyarakah Mutanaqisah contract. Legal certainty in Islamic finance requires not only a fair distribution of economic consequences but also the use of a court authorized to apply Sharia economic norms. A judgment that is substantively connected to Islamic financing but issued by an unauthorized forum risks encouraging forum shopping and inconsistent dispute settlement.

Third, the decision only partially fulfills maqasid al-shariah. The protection of wealth can be seen in the court's refusal to impose duplicative financial burdens on the defendant, and limited aspects of rationality and social stability may also be found. However, hifz al-din is not fulfilled because the case was decided outside the Religious Court, even though the underlying legal relationship was a Sharia financing contract and Sharia-based subrogation. In the hierarchy of maqasid, the essential protection

of religion must prevail over procedural convenience or merely practical dispute resolution. Therefore, the decision does not comprehensively reflect maqasid al-shariah.

This article recommends that the Supreme Court should strengthen technical guidance for General Court judges to identify Islamic economic elements at the earliest stage of case examination. General Courts should decline jurisdiction *ex officio* when the substance of the dispute requires the interpretation of Sharia contracts. Islamic financial institutions and related commercial actors should also draft financing, guarantee, and subrogation clauses with clearer forum selection and Sharia compliance language. Future research should compare similar cases decided by Religious Courts to evaluate whether maqasid al-shariah is implemented more consistently when Islamic economic disputes are adjudicated in the proper forum.

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