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JURIDICAL ANALYSIS OF DEFAULT IN MUSYARAKAH MUTANAQISAH AND IJARAH CONTRACTS (STUDY OF DECISION NUMBER 129/PDT.G/2023/PA.MN)

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Abstract

This study analyzes the juridical interpretation of breach of contract in Musyarakah Mutanaqisah financing through an examination of Decision Number 129/Pdt.G/2023/PA.Mn issued by the Religious Court of Madiun. The dispute occurred between PT Bank Muamalat Indonesia Tbk and PT Hasta Mulya Putra concerning the developer's failure to facilitate the transfer of property ownership for customers financed through Islamic home financing schemes. This research aims to identify the factors causing breach of contract and examine judicial reasoning in interpreting the relationship between developer obligations and Musyarakah Mutanaqisah contracts. This research uses normative legal research with statute and case approaches. Data were obtained through documentation techniques from court decisions, legislation, books, and scientific journals related to Islamic economic law. The findings show that a breach of contract occurred due to the developer's failure to prepare Sale and Purchase Deeds (AJB) and transfer ownership certificates to customers. The judges interpreted the developer's declaration as an integral part of the Musyarakah Mutanaqisah financing scheme, thus bringing the dispute within the jurisdiction of the Religious Court. This decision illustrates the dynamic development of Islamic economic dispute resolution and may serve as jurisprudence for similar cases in Indonesia.

Keywords: *breach of contract, musyarakah mutanaqisah, Islamic economic dispute*

A. INTRODUCTION

The *Musyarakah Mutanaqisah wal Ijarah* (MMWI) contract is one of the innovations in Islamic financing that has developed rapidly in Indonesia. This concept combines elements of *musyarakah* (partnership) with *ijarah* (leasing). In practice, MMWI provides a solution for individuals or companies who wish to own assets, such as property or vehicles, without violating Sharia principles.

Through this contract, Islamic financial institutions provide capital to purchase assets, while customers pay rent for the use of those assets. Over time, the customers can gradually purchase the ownership portion from the financial institution until they

eventually become the full owner.¹

Although MMWI provides many benefits, its implementation is not free from challenges. One of the main issues that often arises is default (*wanprestasi*), where a party fails to fulfill the obligations required to comply with the agreement that has been mutually agreed upon.² This situation carries the risk of causing disputes, which may lead to lengthy and time-consuming legal proceedings. This is because when default (*wanprestasi*) occurs, the impact can be highly detrimental to all parties involved.³ At a conceptual level, default in Islamic economic transactions should also be read as an interruption of productive economic order. Mauludiyah and Warsidi, drawing on Ibn Khaldun, emphasize that economic strength is supported by productive skills and the capacity of society to organize work and opportunity; this insight reinforces the importance of dispute settlement that restores legal certainty and economic continuity.⁴

Decision No. 129/Pdt.G/2023/PA.Mn. originated from a lawsuit filed by PT Bank Muamalat Indonesia against PT Hasta Mulya Putra, a developer acting as the provider of the financed objects. This lawsuit arose because PT Hasta Mulya Putra was considered to have failed to fulfill its commitments in carrying out sale and

purchase transactions with end users. In its statement, PT Hasta Mulya Putra committed to facilitating the sale of housing units in Bumi Citra Legacy and Rawa Bhakti Residence through a Home Ownership Credit (KPR) scheme provided by PT Bank Muamalat Indonesia. However, within the context of the agreed contract, facilitating the sale and purchase does not only include the construction and delivery of the financed objects—namely residential buildings—to each end user.

These actions also include the obligation to prepare a Deed of Sale and Purchase (*Akta Jual Beli / AJB*) for the financed objects. The preparation of the AJB is crucial because without this document, the process of transferring ownership title and registering the property as collateral in the form of a mortgage right cannot be carried out. This situation has the potential to create serious problems, especially for end users who rely on legal certainty in the ownership of the property they have purchased.⁵ The land-document dimension of this dispute also shows why financing cases cannot be separated from the legal certainty of land rights. Warsidi, Suhartono, and Swadjaja argue that the intersection of land-related security interests and Islamic legal principles requires regulatory harmonization so that collateral arrangements do not undermine

¹ Muhammad Rafi Ashsiddiqy, Hilda Monoarfa, dan Aneu Cakhyaneu, "Implementation of Aqad Musyarakah Mutanaqisah (MMQ) Take Over Financing on KPR Products in Sharia Banks," *Review of Islamic Economics and Finance* 1, no. 1 (21 Maret 2020): 32, <https://doi.org/10.17509/rief.v1i1.23745>.

² Dina Fazriah, "Tanggung Jawab Atas Terjadinya Wanprestasi Yang Dilakukan Oleh Debitur Pada Saat Pelaksanaan Perjanjian," *Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat* 1 (Juli, 2023): 6, <https://doi.org/10.11111/dassollen.xxxxxxx>.

³ Warsidi, Sami Ullah Khan, Suhartono, Implementasi Maqāṣid Al-Syarī'ah dalam Pertimbangan Hakim pada Sengketa Ekonomi

Syariah, *Maqasid : Jurnal Studi Hukum Islam*, Vol 14, no 3, 2025, E ISSN : 2615-2622, <https://journal.um-surabaya.ac.id/Maqasid/article/view/28691>

⁴ Nurul Mauludiyah and Warsidi, 2023, The Joints of Economic Strength According To Ibn Khaldun, *PARADIGMA: Journal of Science, Religion and Culture Studies*, Vol. 20, No. 1, 49-64, DOI: 10.33558/paradigma.v20i1.5931.

⁵ Risky Amelia, "Perlindungan Hukum Terhadap Para Pihak dalam Jual Beli Hak Atas Tanah Dengan Kuasa Menjual Notaris Berdasarkan Kitab Undang-Undang Hukum Perdata dan Peraturan Pemerintah No.18 Tahun 2021," *Jurnal Adhikari* 2, No. 1 (29 Juli 2022): 236, <https://doi.org/10.53968/Ja.V2i1.57>.

Sharia objectives or national legal certainty.⁶

Based on this, it is clearly evident that PT Hasta Mulya Putra has committed a default (wanprestasi). Its failure to follow through with the process of preparing the Deed of Sale and Purchase (AJB) with the end users has resulted in the inability to register the transfer of ownership certificates at the Madiun City Land Office. Although the financed objects and their original certificates are physically under the control of PT Bank Muamalat Indonesia, PT Hasta Mulya Putra's refusal to complete the AJB has created serious legal complications and caused losses to the Plaintiff.⁷

In this context, the default committed by PT Hasta Mulya Putra can also be analyzed through the framework of the *Musyarakah Mutanaqisah wal Ijarah* (MMWI) contract.⁸ This contract represents a form of Islamic financing that combines the principles of partnership and leasing. Within this framework, there exists a Memorandum of Understanding (MoU) between the bank and the developer, in which both parties are obligated to fulfill their agreed commitments. PT Bank Muamalat Indonesia, as the financing provider, is responsible for providing financial support, while PT Hasta Mulya Putra is responsible for completing the construction and preparing the necessary documents, including the Deed of Sale and Purchase (AJB).

PT Hasta Mulya Putra's failure to prepare the AJB reflects a violation of the principle of

accountability upheld in the *Musyarakah Mutanaqisah wal Ijarah* (MMWI) contract. Under this agreement, both parties are expected to carry out their respective responsibilities in good faith, and non-compliance by one party may harm the other. In other words, the default committed by PT Hasta Mulya Putra not only affects its relationship with PT Bank Muamalat Indonesia but also creates legal uncertainty for the end users who have invested in purchasing the property.⁹

From a Sharia perspective, this action creates injustice and contradicts the ethical principles of business conduct. In a legal context, this decision provides important guidance for the parties involved to comply with agreed contracts and uphold the principle of justice in every transaction. It is hoped that this ruling will not only deliver justice to the parties involved but also serve as a reminder for all parties to remain committed to their responsibilities and to maintain integrity in every transaction conducted in accordance with Sharia principles.

B. RESEARCH METHOD

The type of research used in this study is qualitative research with a legal and statutory (statute approach) perspective.¹⁰ In this case, the author conducts the research to examine the validity in terms of the quality of the decision of the Religious Court (PA) of Madiun City, based on statutory regulations, scientific journals, books, and other studies,

⁶ Warsidi, Suhartono, and Isma Swadjaja, 2025, Tinjauan Hukum Islam terhadap Interseksi Hak Tanggungan Atas Tanah dan Hukum Perwakafan, *Jurnal Masharif Al-Syariah: Jurnal Ekonomi dan Perbankan Syariah*, Vol. 10, No. 2, DOI: 10.30651/jms.v10i2.27386.

⁷ Tresna Rahayu, Cantika, Chelsea Kairadinda Adam, 2024 "Perlindungan Hukum Terhadap Pihak yang Dirugikan Dalam Wanprestasi," (9 November). <https://doi.org/10.5281/ZENODO.14058588>.

⁸ Sinaga, Niru Anita, and Nurely Darwis, 2020. "Wanprestasi dan Akibatnya Dalam Pelaksanaan Perjanjian." *Jurnal Mitra Manajemen* 7, no. 2.

⁹ Ascarya, 2015. *Akad dan Produk Bank Syariah*, (Jakarta: Rajawali Press).

¹⁰ Edward Siregar, Fritz, 2015. "Indonesia Constitutional Court Constitutional Interpretation Methodology (2003-2008)", *Constitutional Review*, 1.

such as theses, dissertations, and other relevant sources related to the object of this study.

C. RESULTS AND DISCUSSION

1. Profile of the Religious Court of Madiun City

The Religious Court of Madiun City was established based on *Staatsblad* No. 152 in conjunction with *Staatsblad* 1937 Nos. 116 and 106, as well as Article 106 of Law No. 7 of 1989.¹¹ The Religious Court of Madiun City was not established independently. At that time, the Madiun residency area consisted of two specific jurisdictions, namely Madiun Regency and Madiun Municipality. As of 1998, the Religious Court that was originally established under the same *Staatsblad* was divided into two, which are now known as the Religious Court of Madiun Regency and the Religious Court of Madiun City.

The Religious Court of Madiun City, which serves as the location of the author's research on Decision Number 129/Pdt.G/2023/PA.Mn., is located at Jl. Cokrobasonto No. 2, Madiun, where the building stands on land with usage rights. Subsequently, in 2006, the Religious Court of Madiun City received funding for the purchase of land on Jl. Ring Road Barat, Madiun City, and in 2007, it received funding for the construction of its building.¹² Thus, in 2008, the new Religious Court of Madiun City was officially inaugurated and currently occupies its address at Jl. Ring Road Barat No. 1, Ngegong Subdistrict, Manguharjo District, Madiun City.

Organizational Structure of the Religious Court of Madiun City

The history of the Chief Judges of the Religious Court of Madiun City, from the Dutch colonial period to the present, is as follows :

a. During the Dutch Colonial Period (1850–1942)

1. Haji Imam Ghazali (1850–1855)
2. Mas Ngabdulah Sajat (1855–1888)
3. Mas Ngabdulah Sajat (1888–1914)
4. Mas Muhammad Bajuri (1914–1917)
5. Mas Abdullah Rasid (1917–1920)
6. Mas Kasandiwirjo (1920–1942)

b. During the Japanese Occupation (1942–1945)

Mas Kasandiwirjo (1942–1945)

c. Post-Independence of the Republic of Indonesia (1979–Present)

1. K.H. Abidullah (1979–1981)
2. Drs. H. Muh Jamhur, S.H. (1982–1983)
3. Abdul Malik, B.A. (1983–1983)
4. Dr. H. Misro Ahmadi, S.H. (1988–1988)
5. Drs. Ahmad, S.H. (1997–2000)
6. Drs. Thoyib M., S.H. (2000–2003)
7. Drs. Achjarul Umam (2003–2008)
8. Hj. Sri Astuti, S.H. (2009–2010)
9. Drs. H. Amam Fakhur, S.H., M.H. (2010–2012)
10. Drs. H. Zamroni Rosadi, S.H., M.H. (2013–2015)
11. Drs. Mochammad Djauhari, M.H. (2015–2017)

¹¹ <https://www.arsip-web.pa-kotamadiun.go.id/profil-satuan-kerja/profil-pengadilan>, dilihat pada hari Kamis tanggal 9 Januari 2025 pukul 9.74 WIB.

¹² <https://www.arsip-web.pa-kotamadiun.go.id/profil-satuan-kerja/profil-pengadilan>, di lihat pada hari kamis tanggal 9 Januari 2025 pukul 11.09 WIB.

12. Dra. Hj. Muslihah (2017–2018)
13. Drs. H. Ahmad Zaenal Fanani F., S.H.I., M.Si. (2016–2020)
14. H. Hamadi, Lc., M.E.I. (2021)
15. Nur Hamid, S.Ag., M.H. (2021–2022)
16. Dr. Hermin S., S.H.I., S.H., M.S.I. (2022)
17. Nur Chotimah, S.H.I., M.A. (2022–2023)
18. Dr. H. Sofyan Zefri, S.H.I., M.S.I. (2023–Present)

Since its establishment, the Religious Court of Madiun City has handled a relatively diverse range of cases and is not solely dominated by divorce cases. For example, following the issuance of Constitutional Court Decision No. 93/PUU-X/2012—which declared that the explanation of Article 55 paragraph (2) of Law No. 21 of 2008 concerning Islamic Banking has no binding legal force—and the enactment of Law No. 3 of 2006 concerning Religious Courts, all disputes arising in Islamic banking that are brought through litigation fall under the absolute jurisdiction of the Religious Courts.^{13, 14}

Therefore, the inclusion of case No. 129/Pdt.G/2023/PA.Mn. in the Religious Court of Madiun City represents a concrete implication of the implementation of these regulations, and at the same time demonstrates that the Religious Court of Madiun City handles a wide variety of cases.

2. Factors Causing Default (Breach of Contract) in the Musyarakah Mutanaqisah and Ijarah Contract

According to Decision Number 129/Pdt.G/2023/PA.Mn

As previously known, the Sharia economic dispute was submitted to the Religious Court of Madiun City under case number 129/Pdt.G/2023/PA.Mn has the main *fundamentum petendi* in the form of default (breach of contract). The default was committed by PT Hasta Mulya Putra because it did not fully carry out the statement letter made for the purpose of buying and selling land with seven (7) customers of PT Bank Muamalat Indonesia. In the statement agreement, the director of PT Hasta Mulya Putra declared that they would facilitate the sale and purchase of several housing units through a mortgage (KPR) system, which would then be facilitated by PT Bank Muamalat Indonesia Tbk, located at KCP Madiun, Jl. Kol. Marhadi No. 63, Madiun.

The physical form of the statement letter constitutes evidence P.3 submitted by the Plaintiff, which is a photocopy of the statement letter from the director of PT HMP to PT Bank Muamalat Indonesia. Based on this statement letter, PT Bank Muamalat Indonesia filed a lawsuit against PT Hasta Mulya Putra on the grounds of default at the Religious Court of Madiun City. The Plaintiff argued that on September 9, 2013, and September 25, 2013, it had received statement letters from PT Hasta Mulya Putra (hereinafter referred to as the Defendant).

The Plaintiff received two (2) statement letters, both containing promises. In point 1 of the agreement, the Defendant promised to facilitate the process of buying and selling housing units in Bumi Citra Legacy Housing and Rawa Bhakti Residence through a mortgage (KPR) mechanism facilitated by the Plaintiff. Based on these statements, the Plaintiff accepted customers. Although the

¹³ Subekti, 2007. *Kitab Undang-Undang Hukum Perdata*. (Jakarta: PT Arga Printing).

¹⁴ Salim HS, 2008. *Pengantar Hukum Perdata Tertulis (BW)*. (Jakarta: Sinar Grafika).

Plaintiff did not specify in the lawsuit the type of contract used between PT Bank Muamalat Indonesia and its customers, the panel of judges, in their consideration, revealed a legal fact that the contract used for housing mortgage financing in Bumi Citra Legacy and Rawa Bhakti Residence was a Musyarakah Mutanaqisah wal Ijarah (MMWI) contract, also known as Musyarakah Mutanaqisah (MMQ).

Based on the two statement letters, the Plaintiff then entered into MMQ contracts with its customers and provided financing in the form of money to the owner of the *ra'sul mal* (Defendant), who had previously submitted the statement letter under the name of the director of PT HMP, with the following list of customers:

- a. Customer I, Bastomi Martino (Co-Defendant I), received financing for land to be developed, with SHGB No. 2321 under PT Hasta Mulya Putra, covering 125 m², located at Bumi Citra Legacy Housing Kav-06, Jl. Tanjung Raya, Manisrejo, Taman District, Madiun City. The Plaintiff paid Rp200,000,000.00 on May 22, 2013.
- b. Customer II, Chrisnovandi Wijonarko (Co-Defendant II), received financing for land with SHGB No. 2317 under PT Hasta Mulya Putra, covering 112 m², located at Bumi Citra Legacy Housing Kav-03, Jl. Tanjung Raya, Manisrejo, Taman District, Madiun City, East Java. The Plaintiff paid Rp160,000,000.00 on July 10, 2013.
- c. Customer III, Handaru Armuninggar, S.E. (Co-Defendant III), received financing for land with SHGB No. 876 under PT Hasta Mulya Putra, covering 112 m², located at Rawa Bhakti Residence Kav-15, Jl. Rawa Bhakti, Mojorejo, Taman District, Madiun City. The Plaintiff paid Rp130,000,000.00 on September 13, 2013.
- d. Customer IV, Yuhanes Budi Irwanto (Co-Defendant IV), received financing for land with SHGB No. 866 under PT Hasta Mulya Putra, covering 87 m², located at Rawa Bhakti Residence Kav-4, Mojorejo, Taman District, Madiun City. The Plaintiff paid Rp196,250,000.00 on May 17, 2014.
- e. Customer V, Wimbi Waseso Aji (Co-Defendant V), received financing for two plots of land: SHGB No. 873 and SHGB No. 874 under PT Hasta Mulya Putra, each covering 71 m², located at Rawa Bhakti Residence Kav-17 and Kav-18, Mojorejo, Taman District, Madiun City. The Plaintiff paid Rp300,000,000.00 on July 21, 2014.
- f. Customer VI, Wim Wisnuar Sumawidjaja (Co-Defendant VI), received financing for land with SHGB No. 871 under PT Hasta Mulya Putra, covering 71 m². The Plaintiff paid Rp290,000,000.00 on September 27, 2014.
- g. Customer VII, Bambang Jatmiko (Co-Defendant VII), received financing for land with SHGB No. 2310 under PT Hasta Mulya Putra, covering 172 m², located at Bumi Citra Legacy Kav-4, Jl. Tanjung Raya, Manisrejo, Taman District, Madiun City.

The factors causing the default in the Musyarakah Mutanaqisah and Ijarah contract, according to Decision Number 129/Pdt.G/2023/PA.Mn are as follows:

- a. The failure of the director of PT HMP to fulfill the promise to facilitate the sale and purchase of housing units in Bumi Citra Legacy and Rawa Bhakti Residence for PT Bank Muamalat Indonesia, particularly in promptly processing the Sale and Purchase Deed (AJB) with the seven (7) customers.
- b. The failure of the director of PT HMP to fulfill the promise to facilitate the

sale and purchase process by promptly managing the conversion and transfer of land title certificates (SHGB) under PT HMP into ownership certificates (SHM) under the names of the seven (7) customers of PT Bank Muamalat Indonesia.

3. Juridical Interpretation of Decision Number 129/Pdt.G/2023/PA.Mn in the Musyarakah Mutanaqisah and Ijarah Contract

It is interesting for the author to examine that, so far, the definition of default (breach of contract) in the MMQ contract occurs when one of the parties fails to perform the agreement, as reflected in the four (4) types of default according to legal scholars. The causes of default in the lawsuit discussed in point two are in accordance with the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah), Article 36, as follows :

- a. The agreement is not performed;
 - b. The agreement is performed improperly or inadequately;
 - c. Delay in performing the agreement;
- or
- d. Performing actions that are not permitted under the agreement.

However, in the case examined by the author, the default did not occur between the promise holder, namely PT Bank Muamalat Indonesia, and its seven (7) customers. In fact, the agreement was completed and concluded in good faith, where, upon the customers receiving back the SHGB collateral from PT Bank Muamalat Indonesia, they had fully (100%) purchased the Bank's ownership portion (*nisbah*) along with the *ijarah* profit-sharing through the MMQ contract.

The default in this case did not occur with the customers, but rather with PT Hasta Mulya Putra (PT HMP), as previously explained. Such a default, from the

perspective of civil procedural law, should be considered a pure breach of contract, since the prior agreement did not employ a Sharia economic contract. This is because the default literally arose from the failure to fulfill the director's statement letter from PT HMP to PT Bank Muamalat Indonesia, not from a breach of the Musyarakah Mutanaqisah (MMQ) contract itself.

The formulation of the panel of judges' legal reasoning in establishing facts (*konstantir*), qualifying them (*kualifisir*), and constituting the legal conclusion (*konstituir*) in this dispute lies in a different perspective in analyzing the MMQ contract and the default. Rather than treating them partially as entirely unrelated matters, the panel of judges attempted to apply a somewhat unconventional approach not commonly used by most judges in similar cases.

In this regard, the panel of judges qualified the legal facts by essentially stating that the statement letter of the director of PT HMP to PT Bank Muamalat constituted an integral part of the MMQ contract itself. Although the decision does not explicitly elaborate detailed reasoning as a researcher would, the implicit reasoning within the legal facts stated by the presiding judge can be understood: that the presiding judge and panel members, in formulating their legal considerations, referred to various aspects, including juridical, legal-political, and applicable legal principles.

In the current era, many challenges have evolved into complex problems, and cases are often found that are not yet regulated by existing laws. Nevertheless, the role of judges is crucial; under any circumstances, a judge may not refuse to adjudicate a case, including on the grounds of insufficient evidentiary instruments. This applies even in cases such as this, where the agreement and the default involve two different legal subjects.

In the ruling of Decision Number 129/Pdt.G/2023/PA.Mn, the court lawfully summoned the Defendant to attend the trial due to default, and granted the Plaintiff's claim *in absentia* (*verstek*). The court also declared valid the two statement letters made by the Defendant in September 2013, which contained a promise to facilitate the sale and purchase of housing units in Bumi Citra Legacy and Rawa Bhakti Residence. Furthermore, the Defendant was declared in default with respect to these two statement letters, and the Plaintiff was granted the right to process the transfer of ownership of land and buildings from Co-Defendant I to Co-Defendant VII.

Subsequently, the court granted Co-Defendant VIII the authority to amend administrative records in the context of transferring ownership of eight certificates, as stated in dictum point 5, from the name of PT Hasta Mulya Putra to the names of Co-Defendant I through Co-Defendant VII at the Madiun City Land Office. The court also imposed litigation costs to be paid in the amount of Rp 925,000.00 (nine hundred twenty-five thousand rupiah) by the Plaintiff and Co-Defendants I through VII.

It is very important for judges to issue decisions in handling, examining, and adjudicating cases. The data obtained will influence whether a decision is prudent, fair, and competent. The operative part (*amar putusan*) in Decision No. 129/Pdt.G/2023/PA.Mn contains the following:

- a. PT Hasta Mulya Putra is declared to have committed default regarding the two statement letters made in September 2013.
- b. The decision states that the Plaintiff has the right to transfer ownership of eight plots of land and buildings (financing objects) to Co-Defendants I through

VII, whose physical possession has already been handed over.

- c. In accordance with dictum point 5, Co-Defendant VIII is ordered to carry out registration or administrative changes of ownership of eight (8) SHGB (Building Use Rights Certificates), originally under the name of PT Hasta Mulya Putra, to the names of Co-Defendants I through VII.
- d. The decision is declared provisionally enforceable, notwithstanding the availability of appeal, cassation, or judicial review.
- e. Litigation costs amounting to Rp 925,000.00 (nine hundred twenty-five thousand rupiah) must be paid by Co-Defendants I through VII.

4. Default (Breach of Contract) in the Musyarakah Mutanaqisah and Ijarah Contract in Decision Number 129/Pdt.G/2023/PA.Mn

For the author, Decision Number 129/Pdt.G/2023/PA.Mn represents a new perspective of the panel of judges in addressing Sharia economic dispute cases through litigation in the Religious Courts. Although the research gap suggests that, in essence, the panel of judges could have decided not to proceed with the *a quo* case because it is clear who committed the default—namely, a party not bound by the MMQ (Sharia economic) contract—and thus the case could have ended with a declaration of inadmissibility (*Niet Ontvankelijk Verklaard/NO*). However, legal development cannot be denied; it always evolves, including in the field of Sharia economics, which continues to be a necessity for society in Indonesia. Based on the principle of Islamic personality (*asas personalitas keislaman*), such cases fall under the absolute jurisdiction of the Religious Courts.

From a sociology of law perspective, the Plaintiff's primary basis appears to be an

effort to protect its customers from significant losses, rather than merely protecting itself from becoming a Defendant. In the author's view, the strategic step taken by PT Bank Muamalat Indonesia in including its seven (7) customers as Co-Defendants will, in the long term, be beneficial, as it does not eliminate the customers' right to appeal if the court's decision is not favorable to them.

The Plaintiff also carefully incorporated relevant legal provisions into its *fundamentum petendi* in formulating the statement of claim, thereby strengthening the argument that the case falls under the jurisdiction of the Religious Courts. This is supported by the Constitutional Court Decision Number 93/PUU-X/2012, which invalidated the elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking by declaring it non-binding. Similarly, the existence of Supreme Court Regulation (PERMA) Number 14 of 2016 and the formulation of the Supreme Court Plenary Chamber (2019, dated November 27, page 7, sub-section on Sharia Economics) further reinforce this position.

Due to the panel of judges' paradigm in reviewing the *a quo* case from various perspectives, the case was not immediately declared inadmissible (*Niet Ontvankelijke Verklaard/NO*). Instead, it introduces a legal development that the author hopes can serve as a new legal basis (jurisprudence) for similar cases in the future.

In exploring the substantive law, several factors influenced the panel of judges in concluding that the default constituted part of the MMQ contract, as follows:

Internal Factors

In essence, judges in deciding cases may be influenced by various aspects such as personal background, ethnicity, culture, social conditions, religion, politics, equality, and education. The overlapping identity of a

judge may result in decisions that are not purely juridical-normative but also contain cultural and sociological elements. In decision-making, judges are not bound by previous rulings; rather, they possess full authority, independence, and freedom from interference. Each judge may have a different perspective in viewing a case. In Decision Number 129/Pdt.G/2023/PA.Mn, the judges considered the objective of the Musyarakah Mutanaqisah contract, namely that each party is entitled to obtain a share according to their respective portions, and that all parties bear risks jointly in the event of losses.

External Factors

External factors are elements that may influence judges in rendering decisions, such as statutory regulations. These factors may lead to differences of opinion among judges in issuing rulings. If a case is not yet regulated by existing laws or involves new legal issues, judges are permitted to create law or decide the case based on their discretion and conviction.

D. CONCLUSION

Based on the above explanation of the research findings related to the Decision of the Religious Court of Madiun City No. 129/Pdt.G/2023/PA.Mn, the researcher formulates the following conclusions:

1. The factors causing default (breach of contract) in this analytical study are:
 - a. The failure of the director of PT HMP to fulfill the promise to facilitate the sale and purchase of housing units in Bumi Citra Legacy and Rawa Bhakti Residence to PT Bank Muamalat Indonesia, particularly in promptly processing the Sale and Purchase Deed (AJB) with seven (7) customers;
 - b. The failure of the director of PT HMP to fulfill the promise to facilitate the sale and purchase

process by promptly managing the conversion and transfer of land title certificates (SHGB) under the name of PT HMP into ownership certificates (SHM) under the names of the seven (7) customers of PT Bank Muamalat Indonesia;

2. The juridical interpretation of Decision Number 129/Pdt.G/2023/PA.Mn is as follows:

Although such default, from the perspective of civil procedural law, should be considered a pure breach of contract—since the prior agreement did not employ a Sharia economic contract—because the default literally arose from the failure to fulfill the statement letter of the director of PT HMP to

PT Bank Muamalat Indonesia, and not from a breach of the Musyarakah Mutanaqisah (MMQ) contract between PT Bank Muamalat Indonesia and its seven (7) customers; nevertheless, the panel of judges astutely determined that the default contained in the director's statement of PT HMP constitutes part of the MMQ contract itself. In the juridical interpretation concluded by the author, this legal fact is justified because the agreement and the statement from the Director of PT Hasta Mulya Putra to PT Bank Muamalat Indonesia would not have existed without a causal basis, namely the Musyarakah Mutanaqisah wal Ijarah contract between PT Bank Muamalat Indonesia and its seven (7) customers.

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