JURNAL CITA HUKUM (Indonesian Law Journal)
FSH UIN Syarif Hidayatullah Jakarta
Vol.12 No. 1 (2024), pp. 147-166, DOI: 10.15408/jch.v12i1.37929

Judge's Arguments in Decisions Involving Sharia Economic Disputes in the Regional Religious Courts of Jakarta, 2015–2022*

Faqih Zuhdi Rahman,[1] Mustolih Siradj,[2] Asadurrahman[3]
[1] Universitas Pembangunan Nasional Veteran Jakarta
[2,3] Universitas Islam Negeri Syarif Hidayatullah Jakarta

10.15408/jch.v12i1.37929

Abstract
Judges must be capable of settling sharia economic issues without departing from accepted sharia principles. When weighing each decision, the judge takes into account the DSN-MUI Fatwa, which serves as a manual and a mechanism for the implementation of sharia economic activities in Indonesia, as well as KHES, which serves as the primary legal framework for religious courts handling sharia economic disputes. This study intends to map the judges' arguments in sharia economic issues and explain how the National Sharia Council-Indonesian Ulema Council (DSN-MUI) Fatwa and the Compilation of Sharia Economic Law (KHES) are applied in Religious Court rulings involving sharia economic disputes. A qualitative approach is applied in the study methodology, which is normative legal research. The study's findings demonstrate that the judges' arguments in sharia economic matters in the Jakarta Regional Religious Court jurisdiction reflect their own viewpoints. The judge's arguments in the five Religious Courts in the Jakarta region frequently reference the Civil Code for legal justifications. The DSN-MUI Fatwa and KHES must be applied as effectively as possible. The use of KHES is only used in specific articles, namely using Articles 36 and 38 of the Compilation of Sharia Economic Law and the DSN-MUI Fatwa, which is mostly used in matters of compensation or ta'widh or sanctions for customers who are unable to fulfill their obligations, according to an analysis of sharia economic case decisions at the Jakarta Regional Religious Court.
Keywords: Religious Courts; Sharia Economic Disputes; KHES; DSN-MUI Fatwa

* Received: January 12, 2024; revised: January 23, 2023; accepted: March 24, 2024; published April 30, 2024.
[1]Lecturer in the Faculty of Law, Universitas Pembangunan Nasional Veteran, Jakarta. Email: faqihzuhdi@gmail.com
[2] Lecturer in the Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta. Email: Siradj@gmail.com
[3] Senior Lecturer in the Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta. Email: conitasyifa@gmail.com
**Corresponding author: faqihzuhdi@gmail.com

A. INTRODUCTION

Application Sharia, in a way, comprehensive starts from philosophy until solution dispute in activity economy Islam experiences constraint. These obstacles mainly occur at the level of implementation of sharia in the economy, such as preparation contracts and solution disputes. Hassan in His research concluded that there is a dual economic *system that) meets constraints in various matters, including legislation, jurisdiction, arrangement, sharia, documentation, And violation of* law. (Hasan et al. 2011) Furthermore, with the existence of a dual legal system, inconsistencies will be found; Sharia economic activities, such as Sharia banking, must use Islamic law in solving the problems being faced. as a result, In resolving disputes, there is authority between the general judiciary authorised to handle problem civil and Justice religion who handles it problem sharia law. (Hasan, et al. 2011)

Sharia banking in Indonesia experience constraint apply contracts sharia. As example contract *murabahah* which is implemented incompletely as intended in sharia. (Hasanudin & Maksum, 2010) To overcome the difficulties of implementing profit-sharing products, for example, banks modify contracts, sell, and buy goods normally become financing with a credit system. (Lewis, 2008) Difficulties caused bank Sharia to choose credit-based financing from profit sharing so that it gives the impression that Islamic banks are the same as conventional banks. (Siddiqui, 2010) According to Article 55 of Law Number 21 of 2008 concerning Sharia Banking, regarding dispute resolution carried out in the Religious Courts. This is followed by Article 55 Paragraph (3), that the parties can choose a court according to the agreement in the contract as long as the court applies Sharia law. Finally, the Constitutional Court Decision Number 92/PUU-X/2012 was issued, explaining that Sharia banking disputes are resolved in the Religious Courts.

However, there is a constraint in applying legal material in dispute economy sharia. According to provision Which applies, like Act Number 40 the Year 2007 about Limited Liability Company and Law Number 21 of 2008 concerning Sharia Banking, the principle of sharia used in the economy sharia is fatwa Board Sharia National (DSN) Assembly Cleric Indonesia (MUI). Fatwas MUI,according to the study by Barlinti, has been adopted by authority financial institutions such as Bank Indonesia and the Ministry of Finance. (Barlinti, 2010) However, as the parent court of religion, the Supreme Court has emitted Regulation Court Great Number 2 Year 2008 About Compilation Law Economy Sharia (KHES), Which became law material in Justice religion in handling Sharia

economic disputes. The KHES did not all adopt the fatwa issued by DSN. These differences in sharia economic material law can impact court rulings. Moreover, if there are differences in the regulations between DSN and KHES fatwas, the judge will consider using material legal sources according to his considerations.

Based on the background above, the problem formulation is the judge's argument in resolving sharia economic law cases by considering the application of the Compilation of Sharia Economic Law (KHES) and the Fatwa of the National Sharia Council-Indonesian Ulema Council (DSN-MUI), with the following research questions: How do judges argue in sharia economic cases? How do KHES and DSN-MUI Fatwas apply to Religious Court decisions?

B. METHODS

This research is included in normative legal research by examining the norms, philosophy, and legal considerations judges make in formulating decisions in Sharia economic cases. It uses a qualitative approach: the judge's dialectic with KHES and DSN-MUI Fatwa in Sharia economic dispute decisions.

This study employs a qualitative research methodology utilising two primary approaches: the literature approach and the legislative approach. The literary method examines pertinent legal theories, doctrines, and scholarly research, particularly about Islamic legal norms, philosophical considerations, and principles in adjudicating sharia economic issues. This study thoroughly examines citations from the Sharia Economic Law Book (KHES) and the Fatwa of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) as the legal and ethical foundation judges utilise in their decision-making processes.

The legislative approach examines the relevant legal framework, encompassing national law and sharia norms that affect the resolution of sharia economic disputes in Indonesia. This study critically examines the legal norms within the KHES and the DSN-MUI Fatwa to comprehend how judges navigate the interplay between positive law and Sharia law in adjudicating conflicts. This study is categorised as normative legal research, as it examines judges' interpretation and application of sharia legal standards within an economic framework.

This study technique focuses on the normative analysis of the dialectical relationship between statutory law and judicial practice, wherein judges consider not only formal legal elements but also sharia norms drawn from the DSN-MUI Fatwa. This study offers an in-depth analysis of the processes influencing judges'

decision-making in sharia economic conflicts while also outlining the problems and potential in integrating sharia law with national law.

C. RESULTS AND DISCUSSION

1. Sharia Economic Law Regulations

Islamic values are incorporated into the formal and normative legal bases of Sharia economic law, which is a law that governs economic system operations based on those bases. With the introduction of the Sharia economic system in the form of banking based on the principle of profit sharing, as stated in Law Number 7 of 1992 concerning Banking and Government Regulation Number 72 of 1992 concerning Banks based on the Principle of Profit Sharing, it first came into legal existence in Indonesia. This can be seen as the precursor to Indonesia's adoption of Sharia economics, which has been given a legal framework. Several significant changes, particularly with the number of Sharia financial institutions, emerged following the confirmation of legislation relating to Sharia economic activity.

The creation of the national legal system, which is based on Pancasila and the 1945 Constitution and was the result of national legal politics, cannot be separated from the development of the Sharia economic legal system. This legal system was influenced by the legal systems used by Indonesian society, starting with the customary legal system, the Islamic legal system, and the European legal system. Based on these three factors, it can serve as the fundamental components of a thorough and thorough national law through national legal politics. Unless their nature is to serve (rather than impose imperatives) on what is already valid as an awareness in daily life, the three sources of law mentioned above are not exclusive kinds of law in and of themselves. Sharia economic law institutions, which are necessary for developing Sharia economic institutions, provide insight into the political relationship of Sharia economic law. Sharia economic law is a component of Islamic law, applied in Indonesia for constitutional (constitutional) grounds, historical (historical) reasons, and the need for Islamic law itself. Sharia economic law serves a specific purpose for Muslims, but it is also warmly welcomed by non-Muslims who think the Sharia economic system may encourage fair and equal investment. Because numerous issues and insufficient legislative rules still serve as the fundamental framework for implementing Sharia economics in Indonesia, it is argued that the journey for Sharia economic law to become national law is still ongoing. As stated in Law Number 7 of 1992, the beginning of the existence of the Sharia economy in Indonesia was

characterised by profit-sharing banks. Due to the flimsy legal protections for Sharia banks, this legislation has not given them complete discretion over how they conduct business and grow. Additionally, according to Law Number 7 of 1992, commercial banks and BPR (People's Credit Banks) that are not founded on the profit-sharing premise are not allowed to conduct business on a profit-sharing basis. This means that Sharia banks have no chance of growing their network or setting up Sharia Windows. Before, the government ultimately passed Law Number 10 of 1998 as an addendum to Law Number 7 of 1992 concerning Banking, which clarifies how to operate banks according to Sharia principles. Then came Law Number 23 of 1999, which, about Bank Indonesia (BI), stated in Article 10 that BI could impose monetary regulations based on Sharia principles. The two rules mentioned above strengthen the basis for Sharia banking in Indonesia. Due to the implementation of this legislation, a parallel banking system exists that serves as the legal foundation for national banking. Conventional banks can open Sharia Windows, and the two types of banking systems can coexist. Finally, conventional banks issued the Sharia Business Unit (UUS). The passage of Law Number 21 of 2008 Concerning Sharia Banking was a success in advancing Sharia banking. The implementation of the dual banking system in the banking industry creates issues with the system of resolving Sharia economic disputes through litigation where the District Court and Religious Court have equal authority to resolve these disputes, which should be able to resolve Sharia economic disputes through judicial institutions that have expertise in the field of law—Islamist economics.

In order to alter Law Number 7 of 1989 about Religious Courts, Article 49 letter I, which gives religious courts the authority to receive, consider, resolve, and adjudicate issues in Sharia economics, Law Number 3 of 2006 was released. This paper confirms that the Religious Courts have the power to establish a legal framework for addressing economic issues arising under Sharia law. According to Article 55 Paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking, "Disagreement resolution is carried out by the wording of the contract in the case that the parties have decided to resolve a dispute other than as indicated in Paragraph (1)." This may lessen the absolute power of the religious courts when dealing with Sharia economic cases. Meanwhile, the judiciary still favours settling disagreements that can arise about the application of Sharia financing in the context of the regular court setting.

The Constitutional Court's decision number 93/PUU-X-2012 about the review of Law Number 21 of 2008 concerning Sharia Banking and its violation of the 1945 Constitution was at its height. The topic of discussion was Article 55 Paragraphs (2) and (3) of Law Number 21 of 2008 concerning Sharia banking,

which is thought to be harmful to customers of a Sharia bank because dispute resolution takes place in the general justice system through courts, which is harmful to customers based on their constitutional rights because they lack legal certainty. Because there are two courts with the power to decide matters with the same substance and goal, the Constitutional Court claims that the emergence of the choice of forum does not give legal certainty. In real life, disputes over conflict resolution arise. Therefore, according to the Constitutional Court's Decision Number 93/PUU-X/2012, the Sharia Banking Law Number 21 of 2008's Article 55 Paragraphs (2) and (3) are deemed to have breached the 1945 Constitution's provisions on human rights, particularly in the area of legal certainty. Make the Religious Courts a recognised body with the power to hear, consider, and render judgment in instances involving Sharia economics. With the publication of Law Number 19 of 2008 concerning State Sharia Securities, the process of creating national rules in the area of economic Sharia law has continued. as a way for the government to aid in the development of Sharia finance, which aims to finance national development initiatives that are advantageous to both the nation and its people. As of now, statutory regulations, as well as supplementary regulations in the form of National Sharia Council Fatwa, Financial Services Authority Regulations (POJK), Bank Indonesia Regulations (PBI), and Supreme Court Regulations, have been used to include and distribute national laws in the area of sharia economic law.

- Legislation
  - Law Number 41 of 2004 concerning Waqf
  - Law Number 21 of 2008 concerning Sharia Banking
  - Law Number 19 of 2008 concerning National Sharia Securities
  - Law Number 23 of 2011 concerning Zakat Management
  - Law Number 33 of 2014 concerning Halal Product Guarantees
  - Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf.
  - Government Regulation Number 14 of 2014 concerning Implementation of Law Number 23 of 2011 concerning Zakat Management
- Supreme Court Regulations
  - Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Law
  - Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases
  - Supreme Court Regulation Number 5 of 2016 concerning Certification of Sharia Economic Judges

- Financial Services Authority Regulations (POJK)
- Bank Indonesia Regulations (PBI)
- Fatwa of the National Sharia Council-Indonesian Ulema Council

2. Map of Use of KHES and DSN-MUI Fatwa

The author categorises several decisions published through the Directorate of the Supreme Court of the Republic of Indonesia with the keyword Directorate of Religious Civil Affairs, classification of Sharia economics at the Jakarta Regional Religious Court (South Jakarta Religious Court, West Jakarta Religious Court, E.) and discusses the position and use of DSN-MUI and KHES fatwas in the judge's considerations when resolving Sharia economic cases at the Jakarta Regional Religious Court.

a. South Jakarta Religious Court

Table 1.
Sharia Economic Case at the South Jakarta Religious Court

No.	Case Number	Judge's considerations			Note
		Fatwa-DSN	KHES	Civil Code	
1.	Decision No. 426/Pdt.G/2021/PA.JS	No	No	Yes	
2.	Decision No. 0644/Pdt.G/2016/PA.JS	No	Yes	Yes	
3.	Decision No. 968/Pdt.G/2021/PA.JS	No	No	Yes	
4.	Decision No. 1901/Pdt.G/2016/PA.JS	No	Yes	Yes	
5.	Decision No. 1963/Pdt.G/2019/PA.JS	No	No	Yes	
6.	Decision No. 2522/Pdt.G/2020/PA.JS	No	No	Yes	
7.	Decision No. 1957/Pdt.G/2018/PA.JS	No	Yes	No	
8.	Decision No. 1127/Pdt.G/2022/PA.JS	No	No	No	
9.	Decision No. 1511/Pdt.G/2018/PA.JS	Yes	Yes	Yes	

b. West Jakarta Religious Court

Table 2.
Sharia Economic Case at the West Jakarta Religious Court

No.	Case Number	Judge's considerations			Note
		Fatwa-DSN	KHES	Civil Code	
1.	Decision No. 3976/Pdt.G/2019/PA.JB	Yes	Yes	No	

c. Central Jakarta Religious Court

Table 3.
Sharia Economic Case at the Central Jakarta Religious Court

No.	Case Number	Judge's considerations			Note
		Fatwa-DSN	KHES	Civil Code	

1.	Decision No. 731/Pdt.G/2019/PA.JP	No	Yes	Yes	
2.	Decision No. 733/Pdt.G/2019/PA.JP	Yes	Yes	No	
3	Decision No. 1372/Pdt.G/2017/PA.JP	No	Yes	No	
4.	Decision No. 670/Pdt.G/2021/PA.JP	No	Yes	Yes	
5.	Decision No. 587/Pdt.G/2022/PA.JP	Yes	Yes	Yes	

d. East Jakarta Religious Court

Table 4.
Sharia Economic Case at the East Jakarta Religious Court

No.	Case Number	Judge's considerations			Note
		Fatwa-DSN	KHES	Civil Code	
1.	Decision No. 0001/Pdt.G/2019/PA.JT	No	No	No	
2.	Decision No. 2616/Pdt.G/2019/PA.JT	Yes	No	Yes	

e. North Jakarta Religious Court

Table 5.
Sharia Economic Case at the North Jakarta Religious Court

No.	Case Number	Judge's considerations			Note
		Fatwa-DSN	KHES	Civil Code	
1.	Decision No. 565/Pdt.G/2020/PA.JU	No	Yes	No	
2.	Decision No. 2651/Pdt.G/2019/PA.JU	No	No	No	

The figures above indicate that the DSN-MUI Fatwa is still not being used as a legal foundation for properly resolving Sharia economic matters. Only 5 of the 18 Sharia economic cases in the Jakarta Regional Religious Court examined employ the DSN-MUI Fatwa. MUI as their legal foundation. The ten Sharia economic situations mentioned above are subjected to the Compilation of Sharia Economic Law. The application of the DSN-MUI and KHES Fatwa was employed the least frequently in settling Sharia economic matters at the South Jakarta Religious Court compared to other Religious Courts, while the majority of Sharia economic cases were entered and processed through the South Jakarta Religious Court.

3. Judge's Argument

A judge must consider the legal conclusion of the facts presented in court while making decisions, as stated in Article 5 of Law Number 48 of 2009 concerning Judicial Power. Therefore, examining the law via ethical principles and a sense of fairness permeating society is essential. Judges may apply legislative laws and their implementing regulations, unwritten law or customary law, jurisprudence, scientific dogma, or expert teachings as sources of law. The essential inquiry into how judges reach decisions in legal cases is legal reasoning.

The use of legal reasoning is beneficial while deciding a matter. A judge must pay attention and put out effort before ruling in the hopes that it may prevent the emergence of additional instances in the future. Religious court judges must be able to render rulings that are and have binding legal effect in the case of religious courts. "All decisions and decisions of the Court in the field of sharia economics, apart from having to contain the reasons and basis for the decision, must also contain sharia principles which are used as the basis for adjudicating," states Article 5 of Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases. Sharia principles are defined as "principles of Islamic law in sharia economic activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia" in Article 1 Number 3 of Perma Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases.

Based on the judgment in a Sharia economic lawsuit that the Jakarta Regional Religious Court decided, judges' justifications for ruling on Sharia economic disputes differ between religious courts. The judges have their own views on the usage of the Compilation of Sharia Economic Law (KHES) and the Fatwa of the National Sharia Council-Indonesian Ulema Council, in particular, when it comes to the application of legal considerations (DSN-MUI).

4. Decision Number 0644/Pdt.G/2016/PA.JS

Regarding default cases, where a *murabahah bil wakalah* financing agreement previously bound the parties. The total amount of financing that Defendant I must pay is as follows: Acquisition price: Rp. 1,435,500,000; Margin: Rp. 308,991,375; Selling price: Rp. 1, 744,491,375; Urbun (advance payment): Rp. 430,650,000; Total liabilities: Rp. 1,313,841,375

According to the agreement, the payment period is 36 months from the date the contract is signed, beginning on 16 May 2011 and ending on 16 April 2014, paid in 36 instalments and paid in instalments of Rp 36,495,600 every 16th of each month. In this instance, Defendant I could not fulfil all his contractual responsibilities to make payments as specified.

From its legal analysis, the judges' panel concluded that it had been established that Defendant I and Defendant II had violated Plaintiff's contract. According to the document of the *murabahah* financing agreement with *Wakalah*, there is a financing arrangement with *Wakalah* from Plaintiff to Defendant I and Defendant II with a limit of Rp. 1,435,500,000 and a payment obligation of Rp. 1,313,841,375. According to Defendant I and Defendant II's responses, Defendant

I and Defendant II made installment payments to Plaintiff 17 times since April 16, 2011, and Plaintiff acknowledged this (36,495,600 divided by 17 equals Rp. 620,425,200). After the 17th instalment, Defendant I and Defendant II stopped making instalments because Plaintiff knew that their businesses were not operating smoothly. As a result, it has been established that Plaintiff, Defendant I, and Defendant II are in default. They have also agreed, and those who made it are bound by it. There are 19 more instalments that Defendant I and Defendant II must pay to Plaintiff. Hence, Defendants still owe Plaintiff a debt (Rp. 36,495,600 x 19 = Rp. 693,416,175) under the provisions of Article 36 of Perma No. 2 of 2008 concerning the Compilation of Sharia Economic Law, which states that "a party can be deemed to have broken a contract if a contract jo "Parties to the contract who breach their promises may be liable to sanctions: a. pay compensation b. annul the contract c. transfer risk d. fines and e. pay the court fees," states Article 38 Perma No. 2 of 2008.

The Compilation of Sharia Economic Law was used in the judge's decision in case no. 0644/Pdt.G/2016/PA.JS, specifically in Articles 36 and 38 of Supreme Court Regulation No. 2 of 2008 concerning the Compilation of Sharia Economic Law. The judge decided this case by partially granting the plaintiff's claim. Article 36 of Perma No. 2 of 2008 defines default and discusses possible consequences for defaulters, and Article 38 of Perma No. 2 of 2008 are two legal references that are frequently cited.

5. Decision Number 1511/Pdt.G/2018/PA.JS

The Plaintiff brought a claim for breach of contract, and the judges only partially upheld it, according to the verdict. They are starting with the *Mudharabah* Financing Agreement between Plaintiff and Defendant I and II. The Plaintiff is the money provider, and Defendants I and II are the fund users. The monies will be utilised to purchase official apparel from CV Mammiri Industries for RSUP Dr Wahidin Sudirohusodo Makassar workers for the 2017 fiscal year. It has been decided that Plaintiff will grant Defendants I and II financial credit facilities in Rp. 300,000,000 with a 50 per cent profit-sharing ratio agreement, or Rp. 46,912,317. Defendant I is account has received a transfer from the plaintiff totalling Rp. 300,000,000 with the following information:

The first stage	Rp. 100,000,000	May 10, 2017
Second Stage	Rp. 100,000,000	May 16, 2017
Third phase	Rp. 100,000,000	May 24, 2017

In the *Mudharabah* Agreement, Defendants I and II agreed to return and split the profits of the money the Plaintiff provided no later than 83 days from that date, or on July 31, 2017.

Based on the facts at the trial, the judge decided this case relying on Fatwa Number 07/DSN-MUI/VI/2000 concerning *Mudharabah* Financing *(Qiradh).* The Panel of Judges thought that the financing was carried out by both parties (Plaintiff with Defendant I and Defendant II) and that they complied with the provisions stipulated in the fatwa above so that the financing of the *mudharabah* agreement dated 9 May 2017 is valid.

According to Article 1338 of the Civil Code, which provides that "all agreements formed legally, are valid as laws for those who make them," the *Mudharabah* Agreement was also deemed valid on May 9, 2017, binding the Plaintiff and Defendant II to the terms of the agreement. The Panel of Judges believes that because Defendants I and II have defaulted on the *mudharabah* agreement, they can be considered to have broken their promise under the terms of Article 36 of Perma No. 2 of 2008 concerning the Compilation of Sharia Economic Law, which reads: "Parties can be considered a promise, if due to his/her fault: a. does not do what it promises to do."

By the provisions of Article 38 of Perma No. 2 of 2008 concerning the Compilation of Sharia Economic Law, it is stated that "Parties to the contract who break their promises may be subject to sanctions: a. pay compensation, b. cancel the contract, c. transfer risk, d. fines, funds to pay court costs," and the provisions of Article 39 letter an of Perma No. 2 of 2008 concerning the Compilation of Sharia Economic Law state that "

Given that Defendant II had continued to break his promise, which was established by evidence P-7 as a confession and debt settlement agreement dated 30 November 2017, the Panel of Judges concluded that Defendant II deserved to be punished under the law.

6. Dispute Resolution No. 3976/Pdt.G/2019/PA.JB

This lawsuit concerns a contract breach resulting from an arrangement between the Plaintiff and the Defendant under the *Murabahah* Financing Agreement. Due to Plaintiff having purchased goods through Defendant, Defendant repurchased those goods from Plaintiff for a value of Rp. 400,000,000 plus a margin of Rp. 132,000,000 to sell them to consumers. As a result, the Defendant owes the Plaintiff Rp. 542,000,000 and is under obligation to make

payment. The Defendant is required to pay the Plaintiff on the 30th of each month for 12 months beginning on October 30, 2014, in installments with the following information:

Installments for principal and margin are Rp. 44,333,333 (flat/fixed) monthly (Rp. 33,333,300 + Rp. 11,000,000). Located on Jalan AA RT/RW 006/007 No. 5 Sukabumi Selatan Subdistrict, Kebon Jeruk District, West Jakarta, the defendant filed collateral in the form of SHM No. 2323 in the name of Suhriah Haji Achmad (in Casu Co-Defendant) covering an area of 237 m2.

For one Toyota brand vehicle, Kijang KF83 type, Minibus model, Police number B. 1118 sq. According to Articles 4 and 5 of the *Murabahah* Agreement, Defendant only made instalments with a total payment of only Rp. 233,650,000,- which has not fulfilled the obligation that must be returned to Plaintiff, with a shortfall of Rp. 298,350,000,- and has broken his promise to guarantee land SHM No. 2323 in the name of (Co-Defendant).

Regarding the argument regarding the legality of the agreement between Plaintiff and Defendant in the *Murabahah* Financing Agreement (Sales and Purchase) No. 043/KJKS/Kp.CP/IX/2014 dated 30 September 2014, the judge noted in his argument that. A contract is an agreement between two or more parties to carry out or not carry out specific legal acts, according to Article 20 Number 1 of the Compilation of Sharia Economic Law, and Article 22 states that "the pillars of a contract consist of a. The parties to the contract, b. The object of the contract, c. The main purpose of the contract, and d. Agreement." With the conditions stated in Articles 23, 24 and 25, based on the factors mentioned earlier, it can be concluded that the agreement is legitimate legally and that the claim is consequently granted.

The Plaintiff and Defendant were obligated to carry out the terms of the agreement because a panel of judges upheld them as legal provisions in Compilation of Sharia Economic Law Article 36. Legal standards surrounding default have been met in light of these factors.

The general guidelines of the National Sharia Council Fatwa (DSN-MUI) Number 17 of 2000 about Sanctions for Affordable Customers who postpone payments apply to requests for payment of unpaid balances and late fees. The panel of judges believes it would be unreasonable to impose on the Defendant a late fine under the Standard Operating Procedure (SOP) of 3 per cent. It is furthermore unproven as to the reason for the Defendant's failure to pay the instalments, whether due to SOPs not being implemented or other reasons, as well as the use of the fine, which should be used for social funds (*qardul hasan*

funds) under DSN-MUI Fatwa Number 17 of 2000. Article 9 of the Agreement does not explicitly state a monetary fine, which is determined when the contract is signed. Based on this, the petitum about the payment of compensation and fines was partially accepted, and the remainder was denied by fining Defendant Rp. 298,350,000 for the outstanding instalment payment obligations.

7. Decision Number 565/Pdt.G/2020/PAJU

The complaint, which alleges a breach of contract, is based on an agreement made and signed at the PT branch by the plaintiff and defendant in a credit agreement that included diamonds as collateral. Based on the Rahn Evidence Letter, Kramat Raya Sharia Pawnshop (Pawn Agreement). That the Plaintiff had borrowed Rp. 100,000,000 with an expiration date of February 12, 2019, and Defendant had received *marhun bih*/money from that loan. The defendant has offered eight loose round-shaped diamonds valued at one carat as collateral for the pawned goods. A Credit Maturity Notification Letter has been sent to Defendant by Plaintiff since the credit agreement between Plaintiff and Defendant has matured. Defendant is required to pay Plaintiff *Marhun bih* and *mu'nah* before the deadline specified in the Rahn Evidence Letter since Defendant has committed himself to a pawn arrangement (Debts and Receivables Agreement with Pawn Guarantee). According to the Plaintiff's Petitum, supported by *Rahn's* proof letter No. 1, the credit arrangement was pledged as security in the case. The Plaintiff and Defendant signed an agreement on October 16, 2018, which is legally binding and compliant with all applicable laws.

According to the Panel of Judges' presentation of Jaih Mubarok and Hasanuddin legal's opinion on *rukun* and the criteria of *rahn* (Simsiosa, 2020): Hanafiah scholars believe that rukun rahn is a declaration of *rahn's* will *(ijab)* from *rahin* and a declaration of *murtahin's* approval (*qabul)* of *rahin's* will. As for the four pillars of *rahn,* most scholars believe that they are *sighat, 'aqidain* (parties to the contract), *marhun,* and *marhun bih.* The panel of judges took charge since the panel's judgment represents that of the vast majority of ulama:

- *Rahin:* The party with a debt *(madin)* who uses his property as collateral for his loan (or another party's property with the owner's consent)
- *Murtahin:* The person who lends money *(daiin)* to the *rahin* in exchange for receiving collateral (receivables)
- *Rahn/marhun*: property pledged as security (collateral) for obligations owed by *rahin*

- *Rahin* owes *Murtahin* money (dain), or *Murtahin* owes money to *Rahin. Rahin*
- Contract: a declaration of agreement (*qabul*/acceptance) from the *murtahin* party and a declaration of offer (*ijab*/offering) from the *rahin* party.

Declare an arrangement for credit backed by collateral using Rahn Evidence Letter No. Plaintiff and Defendant signed a contract on October 16, 2018, which is legally binding and compliant with all applicable laws. The clauses in Chapter Marhun, Marhun Bih/Debts and Contracts are being discussed here. The Plaintiff's lawsuit's petitum claims that the Defendant is in default concerning Rahn Evidence Letter No. In its agreement dated 16 October 2018, the Tribunal took into account the advice of subject-matter experts who wrote in their book Sharia Economic Dispute Resolution Theory and Practice, Kencana, pp. 131–132, that the process for declaring a debtor in default must include at least two of the following stages.

Sommatie, namely a written warning given by the creditor to the debtor officially through the court. A summons is a warning from the debtor (the creditor) to the debtor (the debtor) so that they can fulfil their achievements under the contents of the agreement agreed upon between the two. This subpoena is regulated in Article 1238 of the Civil Code and Article 1243 of the Civil Code and

Ingebreke stelling, namely warning the creditor to the debtor separately and not through court, the substance of the warning given by the creditor to the debtor must fulfil the following: A warning from the creditor so that the debtor immediately carries out the achievement; an essential warning; and the latest date to fulfil the achievement.

The summons has then, in good faith, been served at least twice by the creditor or bailiff. A week's working days are between the first and second summons. However, it is commonly used in banking circles because it is founded on good faith or because summonses are typically issued three times. The creditor has the right to file a lawsuit if the summons is ignored, and the judge will then determine whether the debtor is in default. In this instance, Plaintiff has followed the procedures stated above, and Defendant has likewise fallen short of its obligations under the terms of their contract with Plaintiff. Therefore, it has been established that Defendant defaults to the Rahn Evidence Letter No. Agreement dated 16 October 2018 and that, up until the conclusion of the trial, Defendant continued to be unwilling to carry out the achievement, namely paying the debt as an obligation, so that Defendant was in a state of default under Article 1238 of the Civil Code. Regarding the petitum, the Plaintiff's lawsuit

relates to covering the cost of various expenses in addition to the debt for compensation and the loan. According to the Panel of Judges, who based their decision on the advice of legal professionals in the book Sharia Economic Dispute Resolution, Theory and Practice, by Kencana, page 132, there are many legal repercussions and sanctions for debtors who have defaulted, and these can include: a). Paying losses suffered by creditors, namely in compensation payments; b). Cancellation of agreement; c). Risk transfer, where the object promised is the object of the agreement; from the moment the obligation is not fulfilled, it becomes the debtor's responsibility and; d). Pay court costs if the case is brought before a judge through court. Punish the Defendant for paying back the debt of compensation for loan money (*marhun bih*), *mu'nah,* and other expenses in the form of administrative fees for settling the *marhun* in the auction process, totalling Rp. 110,150,000.

The Compilation of Sharia Economic Law (KHES) and the Fatwa of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) are still not applied by judges in every settlement of Sharia economic cases to the fullest extent, and there are even very few Religious Courts that implement both. This conclusion can be drawn from analysing decisions made in sharia economic cases at the Jakarta Regional Religious Court. Only two provisions in the Compilation of Sharia Economic Law—Articles 36 and 38—are cited the most frequently in the sharia economic matters heard by the Jakarta Religious Court.

Breaking Promises and Sanctions' fourth section, Article 36, states, "A party may be considered to have breached a promise if: a). It does not do what it promises to do; b). Carrying out what he promised but not as he promised; c). Did what was promised but was late; or d). Doing something that, according to the agreement, is not allowed to be done."

In addition, Article 38 stipulates that contract violators could face the following penalties: a. compensation; b. contract cancellation; c. risk shifting; d. fine; and e. court costs. It can meet Sharia principles, which must be considered while making decisions on Sharia economic situations, by adopting legal considerations through KHES. In resolving sharia economic problems, judges may also consider this an alternative to extensively relying on Article 1338 of the Civil Code when making default decisions. KHES was created as a way to standardise the convoluted Islamic law that is based on the 13th book of the Yellow Book. It is hoped that by providing judges who hear, consider, and decide on Sharia economic matters with a single source of reference in the form of a Compilation of Sharia Economic Law books, it will become material law or a holy book.

The genesis of Law Number 3 of the Year, an amendment to Law Number 7 of 1989 concerning Religious Courts, as a forerunner to reconstructing the role and presence of religious courts, is the background to KHES' existence. Whether concepts like *talak*, reconciliation, *fasakh, isbat*, and others are included in the Compilation of Islamic Law. In order to resolve Sharia economic matters in the Religious Courts, the new power for religious courts, which has been given an expansion in handling Sharia economic cases, requires material law.

KHES was created with a wide range of content; it currently has four books and 796 articles. Legal Concepts of Property, Book I (*amwal*). Second Book: Covenant. Book III: Grants and Zakat. Sharia Accounting, Book IV. The Qur'an, the Sunnah, the Ijma, and the Qiyas are considered agreed sources of law (*masadir al-ahkam al-muttafaq alaiha*), while *istihsan, maslahah murlah, urf, istishab,* and other sources are disputed sources of law (*Masadir al-ahkam al-mukhtalaf fiha*). In addition, KHES accepts DSN-MUI fatwas since they can be tailored to the sociological realities of the Muslim community and turn ulama ideas into a grassroots function that can be considered when formulating their fatwas. The Compilation of Sharia Economic Law (KHES), whose position is outlined in Supreme Court Regulation Number 2 of 2008, is thus justified as the material law of religious courts in resolving Sharia economic disputes. This makes using KHES a recommendation when making decisions on sharia economic cases. KHES's existence in the legal hierarchy was acknowledged in an invitation issued by Indonesia under PERMA No. 2 in 2008, where the legal system's highest court was seen as its product. This judiciary serves as its organiser. Justice. According to Law No. 13 of 2022, the Second Amendment to Law No. 12 of 2011 Concerning the Formation of Legislative Regulations, Article 8 Paragraphs (1) and (2), Perma Position is a statutory regulation that has previously been established in hierarchy regulation legislation (2). In order to fill the "legal vacuum," their function is to "organise things that have not yet been arranged in law." As a result, the showroom Freedom Court is excellent for filling up gaps in the law. The freedom in the frame The Supreme Court created a brand-new set of laws arranged in the Constitution for the first time.

The Jakarta Regional Religious Court seldom applies the DSN-MUI fatwa to resolve sharia economic matters. Judges in the Religious Courts consider the DSN-MUI fatwa when making sharia economic decisions. The DSN-MUI fatwa is frequently used to address issues like *Ta'widh* compensation, regarding sanctions for customers who cannot fulfill their obligations due to bad credit. It can also be an explanation for the existence of a contract, concerning the analysis of sharia economic case decisions at the Jakarta Regional Religious Court. -

Contracts that contain sharia economic elements not covered by KHES, POJK, or PBI.

Law enforcement stakeholders should be aware of this and continue to pay attention to Sharia principles as legal considerations when making decisions in cases, particularly in sharia economic matters. Sharia business operations, including those related to IKNB and Sharia banking, will always move in tandem with the expansion and development of the Sharia economy. The DSN-MUI Fatwa is seen as more receptive to issues arising in the sharia financial sector.

In the cases decided by Decision Nos. 0644/Pdt.G/2016/PA.JS and 3976/Pdt.G/2019/PA.JB. Both instances concern contract violation or default cases based on the *Murabahah* Agreement and *Murabahah bil Wakalah* Agreements, and they are both Sharia economic cases. The judges who presided over the abovementioned cases made different decisions based on different legal reasons. The judge ruled in Case No. 0644/Pdt.G/2016/PA.JS that Article 1338, in conjunction with Article 36 of the Compilation of Sharia Economic Law, proved Defendant's breach of contract and granted Plaintiff's demand regarding the balance of instalments due from Defendant I and Defendant II based on Article 38 of Compilation of Sharia Economic Law.

In the meantime, the defendant was found guilty of violating his promise/defaulting based on Article 36 of the Compilation of Sharia Economic Law in Decision No. 3976/Pdt.G/2019/PA.JB. The National Sharia Council Fatwa (DSN-MUI) Number 17 of 2000 about Sanctions for Affordable Customers who Delay Payment, however, contains universal provisions that apply to demands for payment of the outstanding instalments and late fees. The panel of judges believes it would be unreasonable to impose on the Defendant a late fine under the SOP (Standard Operating Procedure) of 3 per cent. It is furthermore unproven as to the reason for the Defendant's failure to pay the instalments, whether due to SOPs not being implemented or other reasons, as well as the use of the fine, which should be used for social funds (*qardul hasan* funds) under DSN-MUI Fatwa Number 17 of 2000. Article 9 of the Agreement does not explicitly state a monetary fine, which is determined when the contract is signed.

The decision No. 3976/Pdt.G/2019/PA.JB, where the judge pays attention to the value of justice and looks at the substance of the contract that has been carried out, is more widely regarded as having sharia principles than the two case decisions mentioned above with the same case and the origin of the same contract. You must at least pay attention to what occurred and link it to statutory regulations rather than just concentrating on the effects of a simple default. Only parties that knowingly or negligently violate the conditions of the contract and

cause losses to the other party may be required to pay compensation *(Ta'widh).* The amount of compensation is determined by the genuine loss that was incurred (fixed cost) in the transaction, not by the loss that was anticipated to happen (potential loss) as a result of missed opportunities (opportunity loss or *al-furshah al-dha-I 'ah)*. This is based on Fatwa No. 43/DSN-MUI/VIII/2004 of the National Sharia Council about Compensation *(Ta'widh).* In order to ensure that no party is damaged, the fatwa regulating compensation also aims to safeguard the interests of both clients and LKS. This is distinct from the *Ta'zir* (fine) definition, which is a penalty for affluent clients who postpone payments. The indicators of fines/*ta'zir* in Sharia banking are explained by DSN-MUI as the Sharia controller of Sharia banking. DSN-MUI believes that fines are designed for capable consumers who postpone payments or do not have the will and good faith to pay their debts under National Sharia Council Fatwa No. 17/DSN-MUI/IX/2000 about Sanctions for Wealthy Customers Who Delay Payments. There may be penalties applied. Sanctions are based on the *ta'zir* concept, which tries to discipline customers to fulfil their responsibilities.

D. CONCLUSION

The differing perspectives of the judges handling the case are reflected in the judge's arguments in resolving Sharia economic cases in the Jakarta Regional Religious Court area. However, there are still judges who merely consider the law generally or, in this case, depend solely on the Civil Code. These judges utilise statutory rules supported by Islamic principles received through KHES and the DSN-MUI Fatwa. The judge's arguments in the five Religious Courts in the Jakarta region frequently reference the Civil Code for legal justifications. The DSN-MUI Fatwa and KHES must be applied as effectively as possible. The use of KHES is only used in specific articles, namely Articles 36 and 38 of the Compilation of Sharia Economic Law and the DSN-MUI Fatwa, which is used chiefly in matters of compensation or *ta'widh* or sanctions for customers who are unable to fulfil their obligations, according to an analysis of sharia economic case decisions at the Jakarta Regional Religious Court.

REFERENCES:

Book:

Anshori, Abdul Ghofur. *Application of Sharia Principles in Financial Institutions, Financing Institutions and Financing Companies,* Yogyakarta: Student Library, 2008

Barlinti, Yeni Salma. *The Position of the Fatwa of the National Sharia Council in the Indonesian National Legal System,* Jakarta: Research and Development and Training Agency of the Ministry of Religion of the Republic of Indonesia, 2010

Darmodiharjo Darji and Sidharta, *Basics of Legal Philosophy: What and How is Indonesian Legal Philosophy,* Jakarta: Gramedia, 2002

Maksum, Muhammad. *Fatwa on Sharia Economics in Indonesia, Malaysia and the Middle East,* Jakarta: Research and Development and Training Center of the Ministry of Religion, 2013

Mertokusumo, Sudikno. *Indonesian Civil Procedure Law,* Yogyakarta, Liberty, 2002

Rimdan, *Judicial Power After Constitutional Amendments,* Jakarta: Kencana Media Group, 2012

Rosadi, Otong & Andi Deswan. *Political and Legal Studies,* Yogyakarta: Thafa Media Yogyakarta, 2013

Soeparmono, R. *Civil Procedure Law and Jurisprudence,* Bandung: Mandar Maju, 2005

Wahab, Abdul. *Sharia Economic Law,* Yogyakarta: Zahir Publishing, 2022

Suma, Muhammad Amin. *Collection of Islamic Civil Laws and Other Implementing Regulations in the Indonesian Legal State,* Jakarta: RajaGrafindo Persada, 2004

Article Journal:

Charity, Mohdh Ishamm Ohdk. "Office Of The Mufti in Malaysia: Legal History and Constitutional Role, *sharia law report* 2009

Habibullah, Eka Sakti. "Sharia Economic Law in the National Legal Order", Al Mashlahah Journal of Islamic Law and Islamic Social Institutions, Vol 5 No. 9, 2017

Hasan, Rusni. Aishath Muneeza and Ismail Azzam Wajeeh, "Legal Obstacles Facing Islamic Banking in Malaysia", *World Journal of Social Science,* Vol 1, No. 5, November 2011

Hasnita, Nevi. "The Politics of Sharia Economic Law in Indonesia", LEGITIMATION, VOL 1 No. January 2-June 2012.

Irwan, Mul. "The Politics of Sharia Economic Law in the Development of Sharia Financial Institutions in Indonesia", Legal Media Journal, Vol 2 N0. 1, June 2018

Lewis, Mervyn K. "In what ways does Islamic banking differ from conventional finance?" *Journal of Islamic Economics, Banking, and Finance,* Vol 4, No. 3, September-December 2008

Miskam, Surianom. "Reference To The Shariah Advisory Council In Islamic Banking and Finance Cases: The Effect of The Central Bank of Malaysia Act 2009

Mudzhar, M. Atho. "Fatwa's on The Council of Indonesia Ulama on Economics Issues: A Study of Legal Reasoning and Socio-Legal Impact," Makalah dipresentasikan pada Konferensi Internasional tentang Fatwa, (24-26 Desember 2012).

Siddiqui, Shamim Ahmad. "Establishing the Need and Suggesting a Strategy to Develop Profit and Loss Sharing Islamic Banking", *Journal of Islamic Economic, Banking, and Finance,* Vol 6, No. 4, Oktober-Desember 2010

Syaifullah, Hamli. "Ta'widh and Ta'zir from the Classical Mufassir Perspective and Its Implementation in Sharia Banks", MALIA, Vol 5, No. 1 2021

Research Report

Hasanudin and Mauhammad Maksum, *Sharia Compliance of Multi Contract Practices in Sharia Financial Institutions,* UIN Jakarta Research Report 2010.