

Legal Reasoning By Judges In The Decision Of The Religious Court In The Dki Jakarta Area Regarding Sharia Financing

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DOI: 10.29240/jhi.v10i1.10917

Received: 17-07-2024

Revised: 24-11-2024

Accepted: 10-12-2024

Cite this article:

Muhammad Ikhlas Supardin, Jaih Mubarok, JM Muslimin, Muhammad Nasril, Rahma Amir (2025). Legal Reasoning By Judges In The Decision Of The Religious Court In The Dki Jakarta Area Regarding Sharia Financing Approach. Al-Istinbath : Jurnal Hukum Islam, 10(1), 1-29.
Doi : 10.29240/jhi.v10i1.10917

Abstract

This study aims to analyze the differences in Religious Court rulings on Sharia economic cases based on judges' *ijtihad* in interpreting and constructing laws. The legal interpretation conducted by judges represents *ijtihad* in uncovering legal solutions to Sharia economic issues found in Religious Court rulings in the DKI Jakarta region from 2016 to 2022. Judges' *ijtihad* in legal discovery employs various methods or approaches, resulting in differences in rulings. The conceptual approaches utilized in this study include the statute approach and the case approach. The data sources for this research comprise Religious Court decisions in the DKI Jakarta region from 2016 to 2022 concerning Sharia economic cases, including *murabahah*, *musyarakah*, *mudharabah*, and *istisna* contracts. The data analysis technique employed in this research is descriptive qualitative analysis. The findings of this study demonstrate that judges' *ijtihad* in legal discovery is grounded in statutory regulations and various relevant legal sources. Judges' legal reasoning in examining, adjudicating, and delivering rulings applies different interpretative methods or approaches, leading to variations in rulings on similar Sharia economic cases. The *ijtihad* or legal reasoning methods used by judges are categorized into juridical interpretation methods, including grammatical, systematic, and authentic interpretations. Additionally,

teleological interpretation is the sole legal reasoning method used by judges as a contextual approach, incorporating empirical evidence based on statutory provisions.

Keywords: *Ijtihad*, Judicial Rulings, Religious Court, Sharia Economic Law.

Introduction

In the case tracking information system on the Supreme Court's website, the number of sharia economic disputes adjudicated in the Religious Courts has increased from 2016 to 2022. The rising number of sharia economic cases in Indonesia has become one of the key factors in this research. This situation necessitates that the Religious Courts, particularly the judges, be adequately prepared to examine, adjudicate, and resolve cases using the *ijtihād* method of legal discovery.

Sharia economic cases resolved in the Religious Courts saw an increase in 2020, with 460 cases filed and 521 cases resolved. This trend was influenced by a decline in economic activity in the Sharia banking sector (post-COVID-19 pandemic), which led to an escalation in associated risks. However, in 2021 and 2022, sharia economic cases declined and stabilized due to economic recovery following the COVID-19 pandemic.¹ An examination of sharia economic cases through the Supreme Court Directory website revealed 113 sharia economic rulings resolved by the Religious Courts in the DKI Jakarta region. Among these rulings, the South Jakarta Religious Court handled the highest number of cases, resolving 62 sharia economic disputes.² Following this, the Central Jakarta Religious Court resolved 32 sharia economic cases.³ The North Jakarta Religious Court resolved 7 sharia economic cases.⁴ Meanwhile, the West Jakarta and East Jakarta Religious Courts resolved a total of 12 sharia economic cases, with each court handling 6 cases respectively.

The differences in sharia economic rulings at the first-instance level across Religious Courts in the DKI Jakarta region are attributed to the judges' considerations based on an analysis of rulings using legal sources. These legal sources include Islamic jurisprudence (*fiqh*) books related to *fiqh muamalah* or

¹ Susilawati, Reinpal Falefi, and Agus Purwoko, "Impact of COVID-19's Pandemic on the Economy of Indonesia," *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, Vol.3 No.2 (2020): pp. 1147-1156.

² Mahkamah Agung Republik Indonesia, "Sistem Informasi Penelusuran Perkara Pengadilan Agama Jakarta Selatan," n.d.

³ Mahkamah Agung Republik Indonesia, "Sistem Informasi Penelusuran Perkara Pengadilan Agama Jakarta Pusat," n.d.

⁴ Mahkamah Agung Republik Indonesia, "Sistem Informasi Penelusuran Perkara Pengadilan Agama Jakarta Utara," n.d.

sharia economics. Additionally, judges refer to various laws and regulations, such as Law No. 50 of 2009 on the Second Amendment to Law No. 7 of 1989 on Religious Courts, Law No. 21 of 2008 on Sharia Banking, the Indonesian Civil Code, the Compilation of Sharia Economic Law, Bank Indonesia Regulations, and jurisprudence.⁵ A judge cannot arbitrarily issue a ruling that does not comply with the applicable legal provisions.

Several references or legal sources used by judges play a crucial role in determining the legal framework of sharia economics in an agreement. A judge's ruling cannot be issued without considering the factors that may have led to the dispute between the two parties.⁶ Disputes may arise due to various factors that create potential risks in executing an agreement. Risks can stem from two sources: internal and external factors. Internal factors are typically caused by negligence or deficiencies on the part of one of the parties in fulfilling the agreement. In contrast, external factors are triggered by unforeseen circumstances or events beyond the parties' control.⁷

The legal discovery conducted by judges represents a form of *ijtihad* that is currently needed by society to address existing legal issues. Judicial *ijtihad* is not a new or unprecedented practice; it has been carried out since the time of Prophet Muhammad (peace be upon him).

Based on the explanation of the research background, judicial *ijtihad* holds significant importance in shaping the decisions of the Religious Courts as jurisprudence in sharia economic law, referred to here as contemporary *ijtihad*. The methods employed by judges are highly varied, adhering to prevailing legal norms while respecting existing regulations. The role of judges in conducting legal *ijtihad* as a tool for examining, adjudicating, and issuing rulings is not driven merely by personal discretion. The central interest and research gap of this study lie in the concept and methodology of legal discovery employed by Religious Court judges in the DKI Jakarta region, particularly through methods of interpretation and legal construction. Accordingly, the focus of this research is on judicial *ijtihad* in resolving sharia economic disputes in the Religious Courts.

⁵ Gina Nabila and Bunyamin, "Analisis Putusan Kumulasi Perkara Perceraian Dan Harta Bersama Di Hubungkan Dengan Undang-Undang Nomor 50 Tahun 2009 Tentang Perubahan Kedua Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama," *UNES Law Review* 6, no. 4 (2024): 10070–77.

⁶ Dian Rosita and Naili Azizah, "Fenomena Kasus Perceraian Pada Usia Pernikahan Di Bawah 5 (Lima) Tahun Di Era Postmodernisme (Studi Di Pengadilan Agama Semarang) Phenomena Of Divorce Cases At The Age Of Marriage Under 5 (Five) Years In The Postmodernisme Era (Study at Semarang Religious Court)" 2, no. 2 (2023): 208–18.

⁷ Muhammad Fuad Zain, "Metode Penemuan Hukum Dalam Sengketa Ekonomi Syari'ah Di Pengadilan Agama Purwokerto," *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (2021): pp. 1278-1285.

This study provides a detailed analysis of how judges in the Religious Courts of the DKI Jakarta region utilize *ijtihād* in discovering and applying legal principles related to sharia financing (contracts such as *murābahah*, *musyārakah*, *muḍārabah*, and *istiṣna*) from 2016 to 2022. Emphasizing methods of interpretation and legal construction—including grammatical, systematic, teleological, and authentic interpretations—it offers fresh insights into the reasoning practices of judges. The article examines specific rulings from the Religious Courts in the DKI Jakarta region, complete with an analysis of changes in verdict formulations and the rationale behind such decisions, providing a localized context rarely explored in similar studies. The research highlights how judicial *ijtihād* in sharia financing cases contributes to the development of new jurisprudence, reflecting the evolution of sharia economic law in Indonesia. These findings are particularly relevant in strengthening the legal foundation for future judicial practices.

This study is certainly not entirely new, as several researchers have also conducted studies related to this theme. Therefore, it is essential to review relevant previous research, which will be outlined as follows:

Adriandi Kasim, in his research on the resolution of sharia economic disputes based on Islamic law and positive law in Indonesia, employed a juridical-philosophical approach, incorporating statutory regulations and the principles of *uṣūl al-fiqh*. In this context, various methods for addressing problematic financing were identified, including reconciliation, litigation, or arbitration. Reconciliation can be achieved through negotiation, consultation, and mediation.⁸ Vinna Sri Yuniarti, in her study, examines sharia economic law's analysis of the resolution of problematic financing in sharia banking.⁹ In this context, the resolution of problematic financing can be achieved through alternative dispute resolution or through litigation involving judicial institutions. In Islamic jurisprudence, problematic financing can be resolved by appointing a mediator to reconcile the disputing parties before proceeding to litigation.

Abdul Rasyid and Tiska Andita Putri argue that the resolution of sharia banking disputes is appropriately placed under the absolute jurisdiction of the Religious Courts. However, in practice, several sharia banking institutions still resolve sharia economic disputes in general courts following the Constitutional Court's ruling. This indicates that the Religious Courts are not the sole judicial

⁸ Vinna Sri Yuniarti, "Analisis Hukum Ekonomi Syariah Terhadap Penyelesaian Pembiayaan Bermasalah Di Perbankan Syariah," *Jurnal Perspektif* 2, no. 2 (2018): pp. 215-243.

⁹ Adriandi Kasim, "The Settlement of Sharia Economic Disputes in Indonesian Islamic Classic Traditions and Positive Law," *Tashannuf: Journal Economics and Business of Islam* 6, no. 1 (2021): pp. 54-67.

institution authorized to resolve sharia banking disputes.¹⁰ Lahilote also asserts that sharia economic disputes can be resolved through the National Sharia Arbitration Board (BASYARNAS), referring to Articles 58–59 of Law No. 48 of 2009 on Judicial Power.¹¹ Santriati, in her writing, states that dispute resolution in BASYARNAS must align with the terms of the contract.¹² Astanti also argues that sharia economic disputes can be resolved through general courts.¹³

Mutaz al-Khatib, in his writing, states that the process of legal reasoning or *ijtihad* serves as the fundamental foundation for addressing issues within the discipline of Islamic law. *Ijtihad* can produce legal decisions that help individuals uphold moral commitments. Al-Khatib also notes that contemporary scholars have not fully explored the relationship between *ijtihad* and ethics.¹⁴ Muannif Ridwan, in his writing, asserts that the method of *ijtihad* is highly necessary for addressing contemporary issues. He emphasizes that resolving current problems requires comparing the opinions of previous scholars and existing legal principles.¹⁵ Ridwan argues that the application of the concept of *maqāṣid al-sharī'ah* is paramount, focusing on the benefits (*maṣlaḥah*) and harms (*mafsadah*) of contemporary issues. Through this approach, contemporary *ijtihad* embodies harmonious and humanistic values in seeking solutions.

Alireza Mahdavi, Hossein Ahmari, and Mostafa Rajaei Pourazo examine the authority of judges in performing *ijtihad* from the perspective of Islamic jurisprudence (*fiqh*).¹⁶ They conclude that evidence serves as the foundation for judges to issue a ruling; if evidence is not obtained, judges are not entitled to interpret the law. They also argue that the qualifications of a *mujtahid* cannot be applied as requirements for becoming a judge. Susanti writes about the *ijtihad* of Religious Court judges, stating that methods of legal interpretation and legal construction represent new approaches for Religious Court judges that can be

¹⁰ Abdul Rasyid and Tiska Andita Putri, "THE AUTHORITY OF DISPUTE SETTLEMENT An Analysis of Constitutional Court 's Decision Number 93 / PUU-X / 2012," *Jurnal Yudisial* 12, no. 2 (2019), <https://doi.org/http://dx.doi.org/10.29123/jy.v12i2.256>.

¹¹ Hasyim Sofyan Lahil and Moh. Fitri Adam, "Eksistensi Basyarnas Dalam Penyelesaian Sengketa Perbankan Syariah Di Indonesia," *Al-'Aqdu: Journal of Islamic Economics Law* 1, no. 2 (2021): pp. 93-103.

¹² Amanda Tikha Santriati, "Penyelesaian Sengketa Perbankan Syariah Melalui Badan Arbitrase Syariah Nasional," *El-Wasathiya: Jurnal Studi Agama* 9, no. 1 (2021): pp. 38-54.

¹³ Dhian Indah Astanti et al., "Perbankan Syariah Enforcement Of Law Dispute Of Sharia Banking" 9, no. 2 (2019): 203–16.

¹⁴ Mutaz al-Khatib, "Contemporary Ijtihad, Ethics and Modernity," *Journal of Islamic Ethics* 3, no. 1–2 (2019): h. 1-7.

¹⁵ Muannif Ridwan, "Ijtihad In The Contemporary Age (Context of Islamic Thought in Fiqh and Maqashid Al-Sharia)," *Jurnal Masobi* 1, no. 2 (2020): pp. 110-121.

¹⁶ Alireza Mahdavi, Hossein Ahmari, and Mostafa Rajaei Pourazo, "Examining the Authority and Authority of Judges in Terms of Independence, Science and Ijtihad in Jurisprudence and Law," *Propósitos Y Representaciones* 9, no. 1 (2021): pp. 937.

utilized as methods of *ijtihad* in resolving cases.¹⁷ According to Susanti, *ijtihad* by Religious Court judges is essential for addressing future legal challenges. Judicial *ijtihad* is highly relevant to Islamic law as it provides contributions and new perspectives, as demonstrated in the decisions of Religious Courts that have been resolved through the application of *ijtihad* by judges.

The approach used in this study aligns with the approaches commonly employed in legal research, making it a normative legal study. This research adopts the conceptual approaches within legal studies, namely the statute approach and the case approach.¹⁸ The statute approach involves a comprehensive review of all legislation relevant to this study. Examples of relevant laws include: Law of the Republic of Indonesia No. 50 of 2009 on Amendments to Law No. 3 of 2006 on Amendments to Law No. 7 of 1989 on Religious Courts, Law of the Republic of Indonesia No. 49 of 2009 on Amendments to Law No. 2 of 1986 on General Courts, Law of the Republic of Indonesia No. 21 of 2008 on Sharia Banking, and Law of the Republic of Indonesia No. 4 of 2004 on Judicial Power. The case approach, on the other hand, involves gathering cases that serve as primary sources for this research.¹⁹ In this study, the case or decision approach used as a primary source consists of rulings from the Religious Courts in the DKI Jakarta region on sharia banking cases from 2016 to 2021. In addition to the legal research approach, this study also employs a historical approach to examine the causes underlying the cases to be analyzed. This combination makes the research multidisciplinary, integrating legal and social science approaches.

This study is essential in providing guidance for judges in resolving sharia economic disputes, particularly in ensuring consistency in verdicts for cases involving similar contracts. Such consistency will help enhance public trust in the fairness of the sharia legal system in Indonesia. With the increasing number of sharia economic disputes, judges often encounter cases that are not explicitly regulated in positive law. This study demonstrates how *ijtihad* can play a critical role in filling legal gaps, thereby offering solutions that are both fair and aligned with sharia principles.

As the country with the largest Muslim population, Indonesia holds significant potential for developing its sharia economy. This study is highly relevant in supporting such development by offering a more robust legal approach tailored to societal needs. The findings contribute to enriching sharia economic jurisprudence in Indonesia. By analyzing the methods of

¹⁷ Susi Susanti, "Modifikasi Ijtihad Hakim Pengadilan Agama Dan Relevansinya Terhadap Hukum Islam," *Al-Qisthu* 17, no. 1 (2019): pp. 27-33.

¹⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2019), pp. 133.

¹⁹ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: rajawali pers, 2016).

interpretation and legal construction employed by judges, the study aids in formulating legal guidelines that can be applied to similar cases in the future. This research emphasizes the importance of judicial competence in performing *ijtihad* to discover legal solutions, highlighting the need for enhanced judge training and reforms in Islamic legal education in Indonesia. It contributes not only to the theoretical framework of Islamic law but also to judicial practice and the advancement of the sharia economy in Indonesia. Therefore, it is particularly relevant to a wide range of stakeholders, including academics, legal practitioners, and policymakers.

The article “Legal Reasoning by Judges in the Decision of the Religious Court in the DKI Jakarta Area Regarding Sharia Financing” offers significant novelty in its analysis of judicial *ijtihad* in resolving sharia economic disputes in the Religious Courts of the DKI Jakarta region. This study highlights the methods of interpretation and legal construction employed by judges—such as grammatical, systematic, teleological, and authentic interpretation—which have been seldom discussed in the local context. The study also provides an empirical, data-driven analysis of Religious Court rulings from 2016 to 2022, encompassing sharia financing contracts such as *murabahah*, *musyarakah*, *mudharabah*, and *istisna*. Furthermore, the article contributes to the development of sharia economic law jurisprudence in Indonesia by demonstrating how judicial *ijtihad* creates new precedents that are pertinent for future judicial practices. These findings offer valuable insights for improving the consistency of legal decisions and supporting the development of policies and reforms in Islamic legal education. As a result, the study is highly relevant to academics, legal practitioners, and policymakers.

Discussion

Legal reasoning is a method used by judges to discover the law based on the issues at hand; in other words, a judge undertakes efforts to identify normative legal principles grounded in the facts and evidence presented during the trial. This chapter discusses the legal considerations and methods of legal discovery employed by judges in examining, adjudicating, and ruling on sharia economic cases resolved in the Religious Courts of the DKI Jakarta region from 2016 to 2022. Judges undertake legal considerations to analyze rulings with the aim of explaining the arguments and evidence presented by the disputing parties, referencing relevant legal sources. Legal discovery methods are employed as an approach to ensure that cases are examined, adjudicated, and resolved as fairly as possible. The main focus of this chapter is on the legal considerations and methods of legal discovery used by judges in analyzing sharia financing contracts, which include: *Murābahah* financing contracts, *Musyārahah* financing contracts, *Muḍārahah* financing contracts, *Istiṣna* financing contracts, *Wakālah* financing contracts, *Ijārah Muntahiyah Bi al-Tamlīk* financing

contracts, Rahn financing contracts, Rahn Tasjili financing contracts, Musyārahah Mutanāqisah financing contracts, and Murābahah Bi al-Wakālah financing contracts. A summary of the case positions or an overview of how these disputes arose, as presented in the rulings, has been outlined in the previous chapter.

Analysis of Court Decisions on Murābahah Contracts

The panel of judges, in decision number 588/Pdt.G/2022/PA.JP, opined that, legally, a request for the imposition of a seizure must be supported by facts based on evidence that can serve as grounds for the imposition of a security seizure. For instance, there must be indications that one party is concealing or absconding with the disputed object, potentially causing harm to the other party.²⁰ After examining the arguments and facts presented during the trial, the panel of judges did not find evidence proving that the defendant had concealed or absconded with the disputed object. Consequently, the judges rejected the plaintiff's claim to impose a security seizure (*conservatoir beslaag*) on the disputed property, consisting of a parcel of land and a shop building under the Certificate of Ownership in the name of Juliana. The judges also declined to order the court clerk or bailiff to execute the security seizure (*conservatoir beslaag*).

Based on the evidence presented during the trial regarding the financing agreement under the murābahah principle entered into by both parties on January 18, 2021, it was legally proven and established that the plaintiff and Defendant I have a legal relationship, with the plaintiff acting as the provider of financial services and Defendant I as the recipient of financing. The plaintiff's statements in this matter were legally substantiated and were not contested by the defendant. Therefore, the panel of judges concluded that the plaintiff's claim is justified and should be granted. In accordance with Article 1338 paragraph (1) of the Civil Code, which states that all legally executed agreements are binding as law upon the parties that create them, the panel of judges further declared that the collateral in the murābahah contract is an individual guarantee in the form of a certificate of ownership, as evidenced by the proofs submitted by the plaintiff during the trial. Consequently, the plaintiff's claim to declare the collateral in the murābahah contract as an individual guarantee in the form of a certificate of ownership is granted.

Furthermore, the panel of judges examined and considered the evidence and testimony provided by the plaintiff, concluding that the defendant had legally committed a breach of contract (*wanprestasi*) by failing to fulfill their obligations as stipulated in the addendum to the murābahah agreement dated

²⁰ Alfiana Dwi Putri Maesty and Hari Soeskandi, "Pemberian Remisi Bagi Pelaku Tindak Pidana Korupsi," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 3 (2022): 1214–40, <https://doi.org/10.53363/bureau.v2i3.117>.

May 21, 2021, and the second addendum to the murābahah agreement dated August 20, 2021. Based on these findings, the defendant was declared to have committed a breach of contract in accordance with the provisions of Article 36 of Supreme Court Regulation No. 2 of 2008 and Article 1238 of the Civil Code.²¹ Based on these actions, the panel of judges declared and determined that the murābahah debt amounted to Rp. 1,522,500,000, reduced by the total payments made of Rp. 305,000,001, leaving the remaining debt obligation owed by the defendant to the plaintiff at Rp. 1,217,499,999. Additionally, the panel of judges determined a compensation (ta'widh) amount of Rp. 304,050,000. In this matter, the panel referred to Fatwa DSN No. 43/DSN-MUI/VIII/2004 concerning Compensation (Ta'widh).²²

The plaintiff, in their claim, requested that the decision in this case be immediately executable (uitvoerbaar bij voorraad), even in the event of objection, appeal, cassation, or other legal remedies. In this regard, the panel of judges opined that the court adjudicating the a quo case cannot guarantee that the decision will not be overturned at the appellate or cassation levels, as every immediate execution decision (uitvoerbaar bij voorraad) carries inherent risks related to the difficulty of rehabilitating the implementation of the decision to its original state if later annulled. To mitigate such risks, the panel of judges adjudicated this case by referring to Supreme Court Circular Letter No. 3 of 1978. The panel concluded that the plaintiff's request for the decision to be immediately executable should be denied.

In the legal considerations for case number 588/Pdt.G/2022/PA.JP submitted to the Chairperson of the Central Jakarta Religious Court, the panel of judges hereby determined and partially granted the plaintiff's claim while rejecting other parts of the claim. Regarding the defendant, the panel declared that the defendant had committed a breach of contract (wanprestasi) related to the murābahah agreement and sentenced the defendant to pay compensation and court costs incurred during the proceedings. Article 182 paragraph (1) of the HIR provides an explanation regarding the detailed breakdown of costs that may be incurred.²³ The determination of the amount must be based on the applicable rates set or to be established by the Ministry of Justice or as determined by the Chairperson of the Court.

Subsequently, the panel of judges ruled and sentenced the defendant to settle the full murābahah debt amounting to Rp. 1,217,499,999 and ta'widh amounting to Rp. 304,050,000. If these amounts are not paid, they shall be

²¹ Fathin Afifuddin et al., "Penyelesaian Sengketa Wanprestasi Akad Murabahah Melalui Litigasi" 8 (2024): 234–44.

²² Aishath Muneeza, "Application of Ta'widh and Gharamah in Islamic Banking in Malaysia," *The Journal of Muamalat and Islamic Finance Research* 16, no. 1 (2019): 1–16.

²³ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2019), p. 267.

replaced by the proceeds from a public auction directly conducted by the Court of the property registered under Defendant II's name, consisting of a parcel of land and a shop building measuring 75 m² with Certificate of Ownership Number 00588 in the name of Juliana. Based on this ruling, the defendant is required to comply with and adhere to the judgment issued by the panel of judges in case number 588/Pdt.G/2022/PA.JP concerning financing agreements under the murābahah principle.

The method used by the judges in discovering the law in case number 588/Pdt.G/2022/PA.JP was the grammatical interpretation method and the systematic interpretation method. The grammatical interpretation method was applied by the judges to interpret the arguments presented by using the interpretation of words within the legislation. In this case, the judges stated that the defendant committed a breach of contract as described in Article 36 of Supreme Court Regulation No. 02 of 2008, which outlines that a party may be deemed to have breached a contract if, due to their fault: (1) they fail to fulfill what they promised to do, (2) they perform what they promised but not as agreed, (3) they fulfill the promise but with delays, or (4) they perform actions prohibited under the agreement. Based on the examination of evidence conducted during the trial, the defendant was proven negligent and failed to pay the debt owed to the plaintiff. Therefore, such actions can be categorized as a breach of contract (*wanprestasi*).

In determining *ta'widh* or compensation for the appointment of a legal consultant for debt collection, the judges interpreted the law by referring to DSN-MUI Fatwa Number 43/DSN-MUI/VIII/2004 on Compensation (*Ta'widh*). This fatwa states that a breach of contract (*wanprestasi*), or default, occurs when a party performs an act that is prohibited or improper (*al-ta'addi*), fails to perform what should be done (*al-taqshir*), or violates agreed terms (*mukhalafat al-syuruth*). In this case, the defendant caused losses related to the agreed contract, leading the judges to order the defendant to pay compensation for the legal consultant's services for debt collection or litigation up to the execution process in the amount of Rp. 304,050,000.

The systematic interpretation method employed by the judge to determine the applicable law in this case involves referring to various legal sources, such as Supreme Court Circular Letters (SEMA), Supreme Court Regulations (PERMA), and relevant provisions of the Civil Code. Since this lawsuit pertains to sharia economic matters, the judge relied on the DSN-MUI (National Sharia Council-Indonesian Ulema Council) fatwa on *murabahah* to examine the financing contract scheme undertaken by both parties. Additionally, the DSN-MUI fatwa on compensation served as the legal basis for ordering the defendant to pay compensation and cover all litigation costs incurred during the

trial.²⁴ The obligation to pay court fees in judicial proceedings is imposed on the losing party and must be explicitly stated in the judgment. Article 183 of the Indonesian Regulation (HIR) governs court fees, stipulating that: "the amount of court fees to be borne by one party must be specified in the court's decision. This rule applies not only to court fees but also to the amount of costs, damages, and interest that one party must pay to the other."²⁵

Analysis of Court Decisions on Musyarakah Contracts

The panel of judges, in the exception to the decision of case number 1027/Pdt.G/2016/PA.JP, examined and considered the defendant's exception regarding *error in persona*.²⁶ The judges concluded that the plaintiff, in conjunction with the Director of the Syariah Corporation and PT Bank DKI, had entered into a working capital financing agreement supported by binding authentic evidence as stipulated in Article 165 of the Herziene Indonesisch Reglement (HIR) in conjunction with Article 1868 of the Indonesian Civil Code. Furthermore, the panel referred to the jurisprudence of the Supreme Court of the Republic of Indonesia, case numbers 2332 K/Pdt/1985 and 2539 K/Pdt/1985, which establishes that the director of a legal entity (PT) represents the company both within and outside the court without requiring special authorization from the president director. Based on these legal sources, the judges opined that the defendants named by the plaintiff in this lawsuit were appropriately included, and thus, the defendant's exception was dismissed.

Regarding the defendant's exception claiming that the lawsuit is unclear or *obscur libel*,²⁷ specifically concerning the addition and amendment of the claims, it was argued to be contrary to Article 127 of the Reglement op de Rechtsvordering (Rv). This article stipulates that the plaintiff has the right to amend or reduce their claims up until the case is decided, provided that the core subject of the claim remains unchanged. This principle is also consistent with the jurisprudence of the Supreme Court of the Republic of Indonesia, case number 209K/Sip/1970, dated March 6, 1971, which states that amendments to

²⁴ M. Beni Kurniawan, "Implementation of Electronic Trial (E-Litigation) on the Civil Cases in Indonesia Court as a Legal Renewal of Civil Procedural Law," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020): pp. 43-70.

²⁵ Auliya Nur Fitriyani et al., "Analisis Sengketa Perjanjian Jual Beli (Studi Kasus Putusan Pengadilan Tingkat Pertama Di Kota Kupang No. 18/PDT.G/2016/PN.KPG)," *Jurnal Hukum Dan Kewarganegaraan: Causa* 9, no. 2 (2024): 1–12, <https://doi.org/10.8734/SINDORO.v1i2.365>.

²⁶ A personal interview with Yayuk Alfianah (Judge at the South Jakarta Religious Court), November 13, 2023.

²⁷ A personal interview with Yayuk Alfianah (Judge of the South Jakarta Religious Court), November 13, 2023.

a claim do not contravene the principles of civil procedural law as long as they do not alter or deviate from the material facts, even if there are no subsidiary demands. Accordingly, the defendant's exception was rejected by the court.

In the substance of the case, the panel of judges examined and considered that both parties had entered into a working capital financing facility agreement based on the *musyarakah* principle amounting to IDR 100,000,000,000, with a maximum duration of 12 months from the date of signing the agreement until June 27, 2015, and extendable. The initial purpose of the agreement was to finance working capital and the purchase of land for business expansion, although this was neither explicitly stated nor implied. Regarding the validity of the agreement, the panel of judges considered and declared that both parties had entered into a binding agreement based on the following arguments and evidence:

- a. The contracting parties consisted of the plaintiff, PT. Hardys Retailindo, and the defendant, PT. Bank DKI, both of whom were legally competent to perform legal acts.
- b. The subject matter of the agreement, namely the financing facility of IDR 100,000,000,000 provided by the defendant, PT. Bank DKI, constituted lawful assets required by both parties.
- c. The purpose of the agreement was to fulfill the plaintiff's request for additional working capital to purchase customer merchandise in accordance with Sharia principles.
- d. Both the plaintiff and the defendant mutually agreed to approve and sign the *musyarakah* financing agreement.

Based on the considerations above, the panel of judges concluded that the working capital financing facility agreement based on the *musyarakah* principle, as established by both parties, does not contravene lawful causes. Therefore, the plaintiff's claim to annul the financing agreement on the grounds that it lacks legal force and violates laws and/or Sharia principles cannot be granted and must be set aside based on the established facts. As stipulated, the contents of the agreement fulfill the elements of a valid contract under Article 1320 of the Indonesian Civil Code, which include: mutual agreement between the parties, legal capacity to perform legal acts, a specific object, and a lawful cause.²⁸

²⁸ R. Subekti, *Hukum Perjanjian* (Jakarta: Intermedia, 2005). p. 342.

The lawsuit for the annulment of these agreements is fundamentally based on the plaintiff's breach of contract or non-performance (*wanprestasi*), rendering the claim legally unfounded. One of the arguments in the lawsuit deemed to lack legal basis is the unclear right over the object of the claim.²⁹ In this case, the plaintiff filed for the annulment of the agreement with the defendant, claiming it was not in compliance with statutory regulations. However, in reality, the lawsuit was filed because the plaintiff was unable to fulfill their debt payment obligations. Consequently, the plaintiff sought to annul the financing agreement for the working capital financing facility based on the *musyarakah* principle to avoid their obligations and render the agreement legally non-binding between the two parties.

The legal considerations by the judges in this matter state and conclude that the working capital financing facility agreement based on the *musyarakah* principle, agreement No. 77, and the debt acknowledgment deed No. 78, dated June 27, 2013, fulfill the elements and requirements of a valid contract, as well as the provisions of Article 1320 of the Indonesian Civil Code. Therefore, these agreements must be declared legally valid, and in accordance with Article 1338 of the Indonesian Civil Code, the agreement becomes binding as law upon the parties involved. Based on all the considerations of the panel of judges, the plaintiff's claim to annul the working capital financing facility agreement based on the *musyarakah* principle No. 77, dated June 27, 2013, entered into by the plaintiff and the defendant before the co-defendant, as well as all related agreements—namely, the debt acknowledgment deed No. 78, dated June 27, 2014; the first addendum deed No. 30; the debt acknowledgment deed No. 31; the contract deed No. 32; and the debt acknowledgment deed No. 33, each dated August 26, 2015—on the grounds of being null and void along with all its consequences, is without legal basis and must be rejected.

In the civil case number 1027/Pdt.G/2016/PA.JP concerning the working capital financing facility agreement based on the *musyarakah* principle, the panel of judges decided to reject the plaintiff's claim in its entirety and ordered the plaintiff to bear all costs arising from the proceedings. Additionally, in regard to the exceptions, the judges rejected all of the defendant's exceptions. The approach or method employed by the judges in considering and deciding case number 1027/Pdt.G/2016/PA.JP utilized the teleological interpretation

²⁹ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan*.

method. Teleological or sociological interpretation is a legal interpretative approach applied by a judge to analyze a text by considering the social conditions or adapting it to the present circumstances.³⁰ In this case, the plaintiff's request to annul the working capital financing facility agreement based on the musyarakah principle No. 77 and the debt acknowledgment deed No. 78, dated June 27, 2013, on the grounds that it was not in accordance with statutory regulations and/or Sharia economic principles, was deemed unacceptable and rejected by the court. The panel of judges opined that the agreement conformed to several articles within the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah, KHES) pertaining to contracts (akad) and their essential elements (rukun akad). According to the judges' considerations, these provisions align with Article 22 of the KHES, which stipulates that the essential elements of a contract include³¹: a) The contracting parties, b) The object of the contract, c) The primary purpose of the contract, and d) Mutual agreement.

Based on the facts and evidence presented by both parties, the panel of judges considered that the four elements outlined in Article 22 of the Kompilasi Hukum Ekonomi Syariah (KHES) concerning the essential and requisite components of a contract (akad) were fulfilled, thereby aligning with the applicable legal principles and norms. After conducting an evaluation of the evidence, the judges identified congruence between Article 22 of the KHES and the working capital financing facility agreement based on the musyarakah principle entered into by the two parties, as follows:

- a. The contracting parties consist of the plaintiff, PT. Hardys Retailindo, and the defendant, PT. Bank DKI, both of whom are legally competent to perform legal acts.
- b. The object of the contract is the financing facility of IDR 100,000,000,000 provided by the defendant, PT. Bank DKI, which constitutes lawful property needed by both parties.
- c. The primary purpose of the contract is to fulfill the plaintiff's request for additional working capital for the purchase of customer merchandise in accordance with Sharia principles.

³⁰ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Teori Dan Praktik* (Jakarta: Prenadamedia Group, 2017), p. 71.

³¹ Mahkamah Agung Republik Indonesia, *Kompilasi Hukum Ekonomi Syariah* (Jakarta: Direktorat Jendral Badan Peradilan Agama, 2011), p. 16.

- d. There was mutual agreement between the plaintiff and the defendant to approve and sign the musyarakah financing agreement.

Furthermore, the teleological or sociological interpretation employed by the judges in adjudicating the plaintiff's petition, which claimed that the financing agreement violated one of the elements in Article 1320 of the Indonesian Civil Code—namely, a lawful cause (*suatu sebab yang halal*)—was thoroughly considered. In interpreting the legal provisions, the judges evaluated the fourth element, a lawful cause, in light of the plaintiff's argument that this element was allegedly obstructed. The plaintiff submitted the annulment claim on the basis that the agreements did not reflect a contract in alignment with or compliant with the objectives of Sharia Banking Law, for the following reasons:³²

- a. The agreements were argued to be legally defective.
- b. They were claimed to be in violation of applicable laws.
- c. They were alleged to contravene Sharia principles, both normatively and in practice, particularly in relation to unjust practices (*zalim*) and the lack of adherence to the ethical values (*akhlakul karimah*) expected of the parties involved.

In this case, the teleological interpretation method was employed by taking into account the prevailing circumstances rather than solely relying on the arguments presented by the parties.³³ The panel of judges considered that the working capital financing facility agreement based on the musyarakah principle was in accordance with legal principles. The subsequent grounds for annulment were also rejected by the judges, stating that this dispute must be resolved through the judicial process, as Sharia economic disputes fall under the jurisdiction of the Religious Courts. The final claim, alleging that the defendant threatened the plaintiff with bankruptcy through letters and public notices such as banners, was deemed contrary to Sharia principles, both normatively and in practice. The judges also took into account that the plaintiff experienced business stagnation due to economic difficulties, rendering them unable to repay the loan in full at once.

³² Sri Hariati, "Application of Principles of Sharia Contracts in Financing Contracts in Islamic Banking," *Jurnal Kompilasi Hukum* 9, no. 1 (2024): 15–32, <https://doi.org/10.29303/jkh.v9i1.167>.

³³ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Teori Dan Praktik*.

Analysis of the Decision on the Muḍārabah Contract Case

In the decision of civil case number 1511/Pdt.G/2018/PA.JS, the panel of judges examined a lawsuit filed by the plaintiff regarding financing based on the muḍārabah contract principle, wherein both parties agreed to resolve disputes at the South Jakarta Religious Court as stipulated in the contract. After reviewing the facts presented and correlating them with Fatwa No. 07/DSN-MUI/VI/2000 on Muḍārabah (Qiradh) Financing, the panel of judges opined that the financing undertaken by the plaintiff, along with Defendant I and Defendant II, complied with the provisions outlined in the fatwa. Therefore, the judges concluded that the financing based on the muḍārabah contract dated May 9, 2017, could be considered valid. In this context, the muḍārabah contract represents a form of collaboration between the plaintiff (acting as the provider of capital or *ṣāhib al-māl*) and the defendant (acting as the entrepreneur or *muḍārib*).³⁴ Therefore, this form of collaboration is recognized in the field of Islamic commercial jurisprudence (*fiqh muamalah*) as *syirkah muḍārabah*. In practice, businesses employing the muḍārabah contract scheme are conducted by both parties based on the principle of trust.

The subsequent lawsuit filed by the plaintiff was a breach of contract claim, following the panel of judges' determination that the muḍārabah contract had been declared valid. Accordingly, the Plaintiff and Defendant II had bound themselves to an agreement, which is binding upon the parties who entered into it, as stipulated in Article 1338 of the Indonesian Civil Code, which states: "All legally executed agreements shall serve as law for the parties who have made them."³⁵ Based on this argument, the panel of judges stated that since the Defendant, as the Director of PT. Sandang Kreasi Nusantara, acknowledged a breach of the muḍārabah contract, the judges considered Defendant I and Defendant II to have committed a breach of contract. This aligns with the provisions of Article 36 of Supreme Court Regulation No. 02 of 2008 on the

³⁴ Eka Wahyu Hestya Budianto, "Pemetaan Penelitian Akad Mudharabah Pada Lembaga Keuangan Syariah: Studi Bibliometrik Vosviewer Dan Literature Review," *J-EBIS (Jurnal Ekonomi Dan Bisnis Islam)* 7, no. April (2022): 43–68, <https://doi.org/10.32505/j-ebis.v7i1.3895>.

³⁵ Regina Veronika Wauran, "Kepastian Hukum Perjanjian Secara Lisan Menurut Kuhperdata Pasal 1338," *Lex Privatum* VIII, no. 4 (2020): 90, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/30971>.

Compilation of Sharia Economic Law, which stipulates that a party may be deemed to have committed a breach of contract if, due to their fault, they fail to fulfill what they have promised to perform.³⁶ Several legal grounds were employed by the panel of judges as the foundational basis for examining, adjudicating, and rendering a decision. In this case, the judges stated that the defendant was proven and deemed to have committed a breach of contract against the plaintiff by failing to fulfill the terms of the agreement as previously agreed upon.

The panel of judges considered that the plaintiff requested the defendant be ordered to pay compensation amounting to IDR 346,912,317, including penalties as stipulated in the muḍārabah contract dated May 9, 2017. Based on the evidence presented during the trial, the muḍārabah scheme agreed upon by the plaintiff and defendant involved a contractual transaction realized by the plaintiff amounting to IDR 300,000,000, wherein the plaintiff gained a margin of IDR 46,912,317 (16%). In this case, Article 38 of the Compilation of Sharia Economic Law (KHES) stipulates that a party breaching an agreement may be subject to sanctions, including compensation, contract termination, risk transfer, fines, and litigation costs.³⁷ Furthermore, Article 39(a) of the Compilation of Sharia Economic Law (KHES) stipulates that compensation sanctions may be imposed if the party in breach of contract persists in their non-compliance after being declared in breach of contract.³⁸ The panel of judges opined that the defendant should be subjected to sanctions based on the facts and arguments presented during the trial. Accordingly, the penalty for delayed repayment of financing funds is set at IDR 15,000 per month for every IDR 1,000,000 of delayed amount and its multiples, calculated for each day of delay in fulfilling the payment obligations by the fund user, i.e., the defendant.

The plaintiff petitioned the South Jakarta Religious Court to impose a coercive monetary penalty (dwangsom) of IDR 500,000 per day for delayed payments by the defendants. The panel of judges considered the provisions of the Reglement op de Rechtvordering (Regulations on Civil Procedure) concerning coercive monetary penalties. Based on these considerations, the

³⁶ Siti Absah, Syafri Gunawan, and Risalan Basri Harahap, “Akad Kerjasama Dalam Pengelolaan Kebun Sawit,” *Jurnal El-Thawalib* 2, no. 4 (2021): 265–78, <https://doi.org/10.24952/el-thawalib.v2i4.4236>.

³⁷ Mahkamah Agung Republik Indonesia, *Kompilasi Hukum Ekonomi Syariah*.

³⁸ Vinna Sri Yuniarti, “Analisis Hukum Ekonomi Syariah Terhadap Penyelesaian Pembiayaan Bermasalah Di Perbankan Syariah.”

defendants were ordered to compensate the plaintiff for damages and to pay a coercive penalty (dwangsom) of IDR 500,000 per day for delayed payments. Following the legal considerations of the panel of judges, the ruling in case number 1511/Pdt.G/2018/PA.JS, delivered by the presiding judge of the South Jakarta Religious Court, adjudicated and decided to partially grant the plaintiff's claims while rejecting or dismissing other parts of the plaintiff's claims.

In assessing the legal considerations regarding the breach of contract claim in the *muḍārabah* financing case, the panel of judges employed systematic and grammatical interpretation methods. These legal discovery methods were utilized by the judges as an approach to examine, adjudicate, and resolve the case based on applicable regulations. The legal findings to determine the validity of the *muḍārabah* contract in this decision referred to Fatwa No. 07/DSN-MUI/VI/2000 on Mudharabah (Qiradh) Financing and, more specifically, Fatwa of the National Sharia Council-Indonesian Ulama Council No. 151/DSN-MUI/IX/2017 on Muḍārabah Contracts. The fatwa states that:

- a. A *muḍārabah* contract is a business cooperation agreement between the capital owner (*shāhib al-māl* or *mālik*), who provides all the capital, and the manager (*'amil/muḍārib*), with the business profits shared between them according to the ratio agreed upon in the contract.
- b. The *shāhib al-māl* or *mālik* is the party providing funds in the *muḍārabah* business cooperation, which may be an individual or an entity, either a legal entity or a non-legal entity.
- c. The *'amil/muḍārib* is the party managing the funds in the *muḍārabah* business cooperation, which may also be an individual or an entity, either a legal entity or a non-legal entity.

The decision in civil case number 1511/Pdt.G/2018/PA.JS established that the agreement conducted under the *muḍārabah* financing scheme complied with the provisions of Fatwa No. 151/DSN-MUI/IX/2017 on *Muḍārabah* Contracts and did not violate Sharia principles. As demonstrated in the *muḍārabah* financing practice addressed in this ruling, the capital owner (*shāhib al-māl* or *mālik*) was the plaintiff, who entered into a partnership with the defendant, identified as the manager (*'amil/muḍārib*), to procure official uniforms for employees of Dr. Wahidin Sudirohusodo Hospital, Makassar, for the 2017 fiscal year, sourced from CV Mammiri Industries. The scheme implemented by both parties also adhered to applicable laws and regulations. The explanation of

mudārabah in the Sharia Banking Law defines it as a business cooperation agreement where the first party (*shāhib al-māl*, *malik*, or Islamic bank) provides all the capital, and the second party (*'amil*, *mudārib*, or customer) acts as the fund manager. Profits are shared according to the agreement outlined in the contract, while losses are borne entirely by the Islamic bank unless the second party commits deliberate misconduct, negligence, or breaches the contract. The validity of the *mudārabah* financing, as established in this case, was deemed in accordance with the agreed terms in the contract and properly executable as stipulated in the agreement between both parties.

The subsequent legal interpretation by the judge concluded that the defendant had committed a breach of contract by failing to fulfill the terms of the agreement. In this context, the judge employed grammatical and systematic interpretation approaches to determine the applicable law based on relevant legal sources. Grammatical interpretation refers to a method of interpreting legislation by analyzing the meaning of words or terms as stated in the provisions of the law.³⁹ In this case, the defendant was proven and acknowledged to have committed a breach of contract against the plaintiff in the *mudārabah* financing agreement agreed upon by both parties on May 9, 2019. The panel of judges applied legal reasoning to the term "has acknowledged," which implies "has acted" or committed a breach of contract. According to R. Subekti in his book, breach of contract (*wanprestasi*) refers to negligence or the absence of a cause, which may manifest as:⁴⁰

- a. Failing to perform what has been promised.
- b. Performing what has been agreed upon, but not in accordance with the agreement.
- c. Performing what has been agreed upon, but with delay.
- d. Performing an act that, according to the agreement, should not be performed.

The breach of contract committed by the defendant, as established by the facts and evidence presented during the trial, prompted the panel of judges to employ a legal interpretation using the systematic interpretation approach. This approach involves comparing and analyzing multiple interrelated laws. Article 36 of the Compilation of Sharia Economic Law (KHES) served as the

³⁹ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Teori Dan Praktik*.

⁴⁰ R. Subekti, *Hukum Perjanjian*, p. 50.

legal basis for declaring the defendant to have committed a breach of contract.⁴¹ Furthermore, the provision of Article 1238 of the Indonesian Civil Code (KUH Perdata) states: "The debtor is considered negligent if they have been declared in default through a formal notice or similar act, or by virtue of the agreement itself, which stipulates that the debtor shall be deemed in default upon the lapse of a specified period."⁴² Thus, it is evident that the defendant has been proven to have committed a breach of contract against the plaintiff. As a result, the panel of judges in this trial concluded to grant the civil lawsuit concerning the muḍārabah financing agreement related to the breach of contract. This decision was made based on the relevant legal grounds.

Analysis of the Decision on *Istiṣna* Contract Case

The panel of judges reviewed, considered, and adjudicated civil case number 1963/Pdt.G/2019/PA.JS concerning istiṣna' financing, resolved in the South Jakarta Religious Court. The court examined the defendant's exception in the convention, requesting that the lawsuit filed by the plaintiff in the convention be declared inadmissible. The defendant in the convention presented the following arguments:⁴³

- a. The lawsuit filed by the plaintiff in the convention was deemed defective and premature because the land and building that are the subject of the lawsuit had not yet been auctioned, and the defendant in the convention had not committed any legal act subject to litigation.
- b. The plaintiff in the convention was considered to lack standing (*persona standi in judicio*) since the lawsuit did not involve Syafrida Amir and Meirita Amir, who served as guarantors and owners of the collateral.
- c. The lawsuit by the plaintiff in the convention was considered incomplete or lacking parties (*plurium litis consortium*) because it did not include Syafrida Amir and Meirita Amir as guarantors and owners of the collateral.
- d. The lawsuit by the plaintiff in the convention was considered vague (*obscur libel*), as it did not clearly explain the unlawful acts committed by the

⁴¹ Rossy Ibnul Hayat and Sukardi, "Analisis Pertimbangan Hakim Dalam Memutus Perkara Ekonomi Syariah Terkait Wanprestasi: Studi Putusan Nomor 0132/Pdt.G/2016/PA.Stg," *Khatulistina Law Review* 1, no. 2 (2020): 169.

⁴² R. Subekti, *Hukum Perjanjian*. p. 321.

⁴³ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan*.

defendant in the convention that caused losses to the plaintiff in the convention.

- e. These considerations reflect the defendant's position that procedural and substantive deficiencies in the lawsuit rendered it inadmissible.

After reviewing and considering the exception submitted by the defendant in the convention and the plaintiff's response to the exception, the panel of judges concluded that the exception raised by the defendant in the convention was closely related to the subject matter of the case. Therefore, the main case and the evidence presented by both parties would be examined concurrently. Consequently, the exception submitted by the defendant in the convention should be deemed inadmissible.

In the main case, the core issue revolves around the unlawful act committed by the defendant concerning the auction of the collateralized land owned by the plaintiff. Evidence supporting this claim is contained in the defendant's letter No. 016/B/CNR-SRT/III/2019 dated March 4, 2019, regarding the Request for Collateral Auction of a Bank Muamalat Indonesia customer (on behalf of the plaintiff), as well as in the letter from co-defendant I No. S-780/WKN.07/KNL.02/2019 dated April 10, 2019, concerning the Determination of the Date and Time of Auction Implementation, and the letter from co-defendant II No. 207/BLS/IV/2019 dated April 18, 2019, concerning the Progress Report of SPK. These documents were deemed legally invalid. The plaintiff's lawsuit demanded that the defendant be ordered to cancel the auction of the plaintiff's collateralized land, citing the arguments and reasons outlined in the case background. According to the law on land mortgages and objects related to land, creditors are entitled to execute their rights over collateralized land secured under a mortgage if the debtor defaults on their obligations.⁴⁴ Based on these facts, it has been proven that the actions of the defendant in the convention, in submitting a request for the execution of the auction of the mortgaged property due to the plaintiff's breach of contract, were in accordance with the provisions of the law and do not constitute an unlawful act.

Considering that Article 1365 of the Indonesian Civil Code (*KUH Perdata*) defines an unlawful act as an action that violates the law and causes

⁴⁴ Jordy Herry Christian, "Juridical Study of Unlawful Acts as Factors in Cancellation of Auctions on Guaranteed Objects," *Lex Scientia Law Review* 3, no. 2 (2019): 205–18, <https://doi.org/10.15294/lesrev.v3i2.35401>.

harm to another party,⁴⁵ the facts presented indicate that the actions of the defendant in the convention to execute the auction of the plaintiff's collateralized land were in accordance with the procedures stipulated in the contract. The process began with the restructuring of the plaintiff's financing, which involved four amendments to the *istiṣna'* contract. However, the plaintiff was unable to fulfill these terms properly. Subsequently, seven financing agreements under the Line Facility *Al Musyarakah* scheme (a restructuring of the *istiṣna'* contract) were executed with the plaintiff. During this process, the defendant issued three warning letters to the plaintiff. As of the filing of this lawsuit, it was proven that the collateralized land had not been sold or transferred to any other party, and thus no party had suffered any loss. Based on these considerations, the panel of judges rejected the plaintiff's lawsuit, which alleged that the defendant had committed an unlawful act.

Furthermore, the panel of judges also rejected the plaintiff's request in the convention, which sought to hold the defendant in the counterclaim liable to pay material damages amounting to IDR 150,000,000 and immaterial damages amounting to IDR 100,000,000. The judges opined that the counterclaim was not supported by sufficient evidence to substantiate the allegation that the plaintiff in the counterclaim had suffered losses. As a result, the plaintiff was declared to have lost the case, and in accordance with Article 181(1) of the *Het Herzijene Indonesisch Reglement* (HIR), all costs arising from this case were imposed on the plaintiff in the convention. In civil case number 1963/Pdt.G/2019/PA.JS concerning *istiṣna'* financing resolved in the South Jakarta Religious Court, the panel of judges reviewed, adjudicated, and decided to reject the plaintiff's claims in the convention in their entirety.

The panel of judges, in their legal reasoning regarding the lawsuit for unlawful acts in the *istiṣna'* financing case, applied a systematic interpretation approach by correlating various legal provisions with one another. In this case, the plaintiff was the party requesting the *istiṣna'* financing facility from the defendant in the convention. Additionally, the plaintiff voluntarily provided the disputed object as collateral when applying for the financing facility from the defendant in the convention. The defendant in the convention submitted a

⁴⁵ Mendy Cevitra dan Gunawan Djajaputra, "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya," *UNES Law Review* 6, no. 5 (2023): 57–65, <https://review-unes.com/index.php/law/article/view/1074>.

request for the auction of the collateral because the plaintiff failed to fulfill their obligations, namely failing to pay installments as agreed in the contract. Before submitting the auction request, the defendant in the convention had restructured the plaintiff's financing by adding four amendments to the *istiṣna'* contract. However, the plaintiff repeatedly failed to meet their obligations properly. Subsequently, the defendant in the convention created seven Line Facility *Al Musyarakah* financing agreements (a restructuring of the *istiṣna'* contract) with the plaintiff. Furthermore, the defendant in the convention issued three warning letters to the plaintiff before taking further action.

A systematic approach is employed by judges in determining unlawful acts, particularly in conducting auctions of collateral rights. The legal basis used is Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. This law stipulates that if a debtor breaches an agreement, the holder of the primary mortgage right is entitled to sell the object of the mortgage independently through a public auction and use the proceeds to settle their claim. Furthermore, judges consider the provisions of this law in conjunction with Article 1365 of the Indonesian Civil Code, which defines an unlawful act as any act that violates the law and causes harm to another party. However, during the examination of evidence, the defendant in the counterclaim argued that the auction process had not been carried out, thereby failing to fulfill one of the elements required to establish an unlawful act. In his book, Amran Suadi outlines five elements of an unlawful act as stipulated in Article 1365 of the Indonesian Civil Code.

Analysis of Legal Discovery in Contract Conformity

Judges' legal reasoning in deciding cases related to Sharia financing, as seen in several cases, involves a complex process encompassing various aspects. Judges are guided not only by statutory laws but also by Sharia principles, scholars' fatwas, and previous jurisprudence. Legal discovery by judges, often referred to as *rechtwinding*, is the process by which judges identify or create new legal norms to address concrete cases that lack explicit regulation in positive law. The primary method employed in this process is the method of interpretation. This method emphasizes the interpretation of existing legal provisions. Judges endeavor to comprehend the meaning inherent in legal regulations through systematic interpretation, which involves analyzing a legal provision within the broader context of the legal system as a whole.

The second method utilized by judges is the method of legal construction. This method is employed when interpretation of existing legal provisions does not yield satisfactory answers. In such cases, judges construct or establish new legal norms by comparing the case under consideration with other cases that share similarities. This involves applying a legal provision to a case that formally falls outside the scope of that provision but shares substantial similarities. It may also include restricting the application of a legal provision to specific cases or, ultimately, rejecting the application of a legal provision to cases that are explicitly unregulated by it. By employing both interpretation and legal construction methods, judges can deliver fair and appropriate solutions in cases, as illustrated in the preceding discussion.

The cases discussed above fundamentally align with Sharia principles, not merely in name. The disputes reached the Religious Court because one party failed to fulfill the agreement in accordance with the Sharia contracts initially agreed upon. In the first case, involving issues related to *murabahah*, the systematic interpretation method employed by the judge to determine the applicable law relied on several legal sources, such as Supreme Court Circular Letters (SEMA), Supreme Court Regulations (PERMA), and relevant articles in the Civil Code (KUH Perdata). Since this dispute falls under the category of Sharia economic cases, the judge referred to the National Sharia Council-Indonesian Ulema Council (DSN-MUI) Fatwa on *murabahah* to analyze the financing contract scheme undertaken by both parties. Additionally, the DSN-MUI Fatwa on compensation served as the legal basis for obliging the defendant to pay damages and cover all court costs incurred during the proceedings.⁴⁶

In the second case, the financing facility agreement based on the *musyarakah* principle, established by both parties, was deemed consistent with lawful legal causes. However, the issue arose from the plaintiff's request to annul the financing facility agreement based on *musyarakah* principle No. 77 and the debt acknowledgment deed No. 78, dated June 27, 2013, on the grounds that it allegedly violated statutory provisions and/or Sharia economic principles. This argument was deemed inadmissible and was rejected by the judge. The panel of judges opined that the agreement complied with several articles in the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah* or KHES) concerning contracts and the pillars of contracts. Based on the judges'

⁴⁶ M. Beni Kurniawan, "Implementation of Electronic Trial (E-Litigation) on the Civil Cases in Indonesia Court as a Legal Renewal of Civil Procedural Law."

considerations, the relevant provisions were outlined in Article 22 of KHES, which stipulates that the pillars of a contract consist. Based on the facts and evidence presented by both parties, the panel of judges concluded that the four elements outlined in Article 22 of KHES concerning the pillars and conditions of a contract had been fulfilled. Consequently, the agreement adhered to the applicable principles and legal norms. This indicates that the financing was implemented in accordance with Sharia provisions, not merely in name but in substance as well.

In the *mudharabah* contract under Civil Case No. 1511/Pdt.G/2018/PA.JS, the court ruled that the financing agreement based on the *mudharabah* contract complied with Fatwa No. 151/DSN-MUI/IX/2017 on *Mudharabah* Contracts and did not violate Sharia principles. In this case, the capital owner (*shāhib al-māl* or *mālik*) was the plaintiff, who entered into a collaboration with the defendant, acting as the *'amil/muḍārib*, for the procurement of employee uniforms for RSUP Dr. Wahidin Sudirohusodo Makassar in the 2017 fiscal year, sourced from CV Mammiri Industries. The arrangement between the two parties was also consistent with the prevailing legal provisions. The *mudharabah* contract, as outlined in the Sharia Banking Law, is defined as a business cooperation agreement between the first party (*shāhib al-māl, mālik, or the Sharia Bank*) that provides all the capital and the second party (*'amil, muḍārib, or customer*) who manages the funds, with profits shared according to the agreement specified in the contract. Losses, however, are borne entirely by the Sharia Bank, except in cases where the second party commits intentional wrongdoing, negligence, or breaches the agreement. Regarding the validity of the *mudharabah* financing, it was deemed in compliance and could be executed in accordance with the terms agreed upon by both parties as stated in the contract.

In the case of the *istisna* contract, the panel of judges adopted a systematic interpretation approach, linking one regulation with other relevant legal provisions. In this case, the plaintiff was the party requesting the financing facility under the *istisna* contract from the conventional defendant. Additionally, the plaintiff voluntarily provided the disputed object as collateral when applying for the financing facility to the defendant. However, the plaintiff repeatedly failed to fulfill their obligations appropriately. Subsequently, the defendant restructured the financing agreement into a Line Facility Al Musyarakah agreement (as a restructuring of the *istisna* contract) seven times with the

plaintiff. Furthermore, the defendant issued three warning letters to the plaintiff before taking further action. This sequence of events indicates that the primary cause of the contract's deterioration was the plaintiff's repeated failure to make installment payments. This failure rendered the agreement legally defective in its execution, as the obligations outlined in the contract were not properly fulfilled.

Conclusion

Judicial reasoning in Sharia financing court rulings is a complex process involving the interpretation and application of Islamic law. Judges must consider various factors when making decisions, including their understanding of Sharia law, the prevailing legal culture, and the specific facts of the case. The legal reasoning employed by judges in examining, adjudicating, and delivering rulings utilizes different interpretative methods or approaches, which can result in varying decisions for cases involving similar Sharia economic contracts. The *ijtihad* or legal reasoning methods used by judges can be divided into juridical interpretation methods, including grammatical, systematic, and authentic interpretations. Meanwhile, the teleological interpretation method is the only reasoning approach used by judges as a contextual method, incorporating empirical evidence based on statutory regulations. Differences in rulings for cases involving similar types of contracts are attributable to the variations in legal approaches and interpretative methods employed by judges. This highlights the need for improved consistency in decision-making. Judges integrate various legal sources, including the Qur'an, Hadith, the Compilation of Sharia Economic Law (KHES), DSN-MUI fatwas, and national legislation, in their rulings. This integration reflects a comprehensive approach aimed at ensuring justice and adherence to Sharia principles.

Conflict of Interest

The authors of the manuscript have no financial or non financial conflict of interest in the subjek matter or materials discussed in this manuscript.

Data Availability Statement

The data associated with this study will be provided by the corresponding author upon request

Funding Details

We would like to thank the Indonesian Endowment Fund for Education Agency- *Lembaga Pengelola Dana Pendidikan Indonesia (LPDP)* within the Ministry of Finance, Republic of Indonesia for funfing this research.

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