JOURNAL OF ECONOMICATE STUDIES
https://journal.islamicateinstitute.co.id/index.php/joes

# Legal Dynamics of Shari'ah Banking Dispute Resolution in Indonesia's Religious Courts

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***Abstract***

This research aims to describe the dynamics of dispute resolution by religious court judges in sharia banking legal cases. In this research method, the author uses qualitative research, with the research approach being an empirical juridical approach. The results of the research prove that the dynamics of law and its application by court judges in the Religious Court environment in resolving Sharia economic disputes are empirical legal dynamics that occur in Indonesia, where unlawful acts are related to sharia banking, which is regulated in Article 49 of Law No. . 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning Religious Courts, one of which is the authority of the Religious Courts to adjudicate sharia banking disputes. In resolving disputes, the Religious Courts use formal law and material law. Formal law in the form of procedures for resolving disputes is regulated by the Supreme Court Regulations and procedural law in the Civil Code. Meanwhile, material law is in the form of KHES, DSN-MUI Fatwa, Bank Indonesia Regulations, and Financial Services Authority Regulations and other statutory regulations. So the author found a pattern of resolving sharia banking disputes in the Religious Courts, discovered the factors causing sharia banking disputes and discovered the impact of verdicts on the development of the sharia economy.

***Keywords:*** *Dynamics, Sharia Economic Disputes; Judge; religious courts.*

## INTRODUCTION

The duties and authority of the Religious Courts as stated in Article 49 of Law of the Republic of Indonesia Number 3 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts include receiving, examining, deciding and settling at the first level between people who are Muslim. in the fields of marriage, inheritance, wills, grants, endowments, zakat, infaq, sadaqah, and sharia economics. In the explanation of article 49, it is emphasized that sharia economics are actions or business activities carried out according to sharia principles, including sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, mutual funds. sharia funds, sharia bonds and sharia medium term securities, sharia securities, sharia financing, sharia pawnshops, sharia financial institution pension funds, and sharia business. Meanwhile, based on Article 55 paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking, resolving sharia banking disputes is the authority of the courts within the Religious Courts. Moreover, after the Constitutional Court decision number 93/PUU-X/2012, the resolution of litigation regarding sharia banking disputes is completely under the authority of the Religious Courts. (Aden Rosadi, 2015).

There was a view that the Religious Courts did not have adequate legal instruments and tools, both material and formal law, in resolving sharia economic cases, this view was triggered by a lack of knowledge regarding the dynamics of contemporary Religious Courts, as well as old assumptions and paradigms before the enactment of the Law. Number 3 of 2006. The old opinion in question is the public's opinion that the Religious Courts are only courts for divorce or marriage matters. In fact, the Religious Courts have been equipped with a number of material and formal legal instruments to resolve cases within their competence, as well as strengthening the resources of judges who master sharia economics..

At the formal legal level (procedural law), sharia economic examinations, both in cases of broken promises (default) and unlawful acts (onrechmatige daad) use procedural law applied in the General Court environment. As regulated in Article 54 of Law Number 7 of 1989 concerning Religious Courts which states that the procedural law that applies to courts within the Religious Courts is the civil procedural law that applies to courts within the General Courts, except as specifically regulated in the law. invite. Includes Herziene Inlandsch Reglement (HIR) or Rechtreglement Voor De Buittengewesten (RBg), Bugerlijke Wetbook Vor Indonesia (BW) or Civil Code. Also the applicable laws and regulations in Indonesia are the Republic of Indonesia Supreme Court Regulations such as Supreme Court Regulation number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases and Supreme Court Regulation number 2 of 2015 as amended by Number 4 of 2019 concerning Procedures Settlement of Simple Claims, as well as related jurisprudence. Normal case examination in its stages generally goes through a mediation process, peace efforts, reading of the Plaintiff's lawsuit letter, delivery of the Defendant's answer, delivery of the Plaintiff's replica, delivery of the Defendant's duplicate, Plaintiff's evidence, Defendant's evidence, Plaintiff's conclusion, Defendant's conclusion, judge's decision containing identity, cases, legal considerations, and verdicts. Meanwhile, in simple lawsuit cases, the value of the material claim is IDR. 500,000,000 (five hundred million) and below is settled in a simple manner.

Meanwhile, at the material law level, judges guide the rules in the Koran, al-Hadith, related laws and regulations that apply in Indonesia (positive law) in the form of Laws, Government Regulations, Presidential Regulations, Ministerial Regulations, Supreme Court Regulations, Bank Indonesia Regulations, Bank Indonesia Circular Letters, Financial Services Authority Regulations, Fatwa of the National Sharia Council (DSN) of the Indonesian Ulema Council, Compilation of Sharia Economic Law (KHES) issued by the Supreme Court through Republic of Indonesia Supreme Court Regulation number 2 of 2008, books of fiqh, also contracts or letters of agreement (contracts). An agreement that originates from a contract or agreement between two or more parties applies according to law for those who bind themselves to it, so that the contract or agreement is important to know because it will be considered in the judge's decision. In fact, according to Taufik, as quoted by Aden Rosadi, it was stated that in adjudicating cases of sharia economic disputes, contracts or agreements are also used as the main source of law.

Judges try hard to find the law and apply it to the concrete case being examined. In resolving sharia banking disputes, Religious Court judges consider aspects of sharia principles related to sharia banking as well as considering aspects of economic law. However, there are dynamics in the judge's decisions in resolving sharia economic cases, including the type of Unlawful Actions (PMH) in sharia banking. In contrast to default cases in the Religious Courts which are dominated by lawsuits by Sharia Financial Institutions (creditors) against their customers (debtors or recipients of financing services), until now cases of the Unlawful Act type are dominated by lawsuits from customers (debtors or recipients of financing services). towards Sharia Financial Institutions (creditors) or their partners. Debtor is an individual, company or entity that obtains one or more fund service facilities, as intended in Article 1 Number 7 of Bank Indonesia Regulation Number 18/21/PBI/2016 concerning Amendments to Bank Indonesia Regulation Number 9/14/PBI/2007 concerning Debtor Information System. These include the execution of collateral or collateral through the State Property and Auction Services Office (KPKNL), blocking customer accounts for certain reasons, canceling promises to provide investment financing, not providing correct information, including reporting via the Debtor Information System (SID). ) Bank Indonesia (BI) or what people usually call BI checking, or the Financial Information Services System (SLIK) of the Financial Services Authority (OJK). This is based on a search through the directory of decisions of the Supreme Court of the Republic of

Indonesia in April 2023 which can be accessed electronically via https://putusan3.mahkamahagung.go.id/.

In the examination of Unlawful Acts (PMH) cases involving banking institutions, there are dynamics in the judge's decision in terms of assessing the fulfillment of the elements of Unlawful Acts (PMH). Including regarding the causal relationship between actions and losses. For example, in cases related to reporting through the Debtor Information System at Bank Indonesia (SID-BI) or through the Financial Information Services System at the Financial Services Authority (SLIK-OJK) which is inaccurate so that the debtor's credit quality is reported to be bad (col. 5), is that the cause? which results in loss of potential profits in the form of financing or credit facilities from other banks. Several judges considered that this was the cause of losses, while several judges considered that this was not the case, because there were other causes that intervened and influenced credit or financing approval, namely business prospects, debtor performance, ability to pay, results of the 5C analysis (character, capacity, capital, collateral). , condition), and 5P analysis (personality, purpose, prospect, payment, party). Meanwhile, some judges considered that the report's inaccuracies were only administrative errors that should be followed up through a revision mechanism.

The dynamics of the judge's decision are also visible in terms of how to calculate the amount of material loss. Some judges determine based on the number of days reported incorrectly multiplied by an appropriate amount of money. Some judges calculate based on the number of days reported incorrectly multiplied by the daily fine if there is a delay in the bank reporting the customer's credit to the system, while some judges do not take into account losses if there is no definite basis for the calculation. Test results of several court decisions that examined and adjudicated cases of unlawful acts related to debtor information. Dynamics also exist in terms of compensation for immaterial losses. Some judges consider apologies in the press or the general public. Meanwhile, some judges are of the opinion that corrections through the system are sufficient so that the debtor's good name is restored.

The dynamics of the judge's decisions regarding unlawful acts are also visible in cases regarding auctions of debtor collateral when credit problems occur which are carried out openly through the State Assets and Auction Services Office (KPKNL). There are dynamics in the legal considerations used by judges in determining the causal relationship between actions and the losses that arise. It also concerns a good resolution if the collateral object being auctioned is a plot of land whose certificate name has been transferred to another party who has no connection with the creditor and debtor sharia contract.

Many sharia economic cases of this type of Unlawful Actions (PMH) are submitted to the Religious Courts, but those examined here are only cases that meet formal requirements and are decided after the evidentiary process. Several sharia economic cases of the type of Unlawful Actions (PMH) related to Debtor Information in Sharia Banking which were resolved through litigation and decided after the evidentiary process from 2012 to 2022 are as follows:

| NUMBER CASE | LEVEL OF EXAMINATION | DECISION POINT | INFORMATION |
|---|---|---|---|
| **A. Regarding Debtor Information on SID-BI or SLIK-OJK** | | | |
| 1609/Pdt.G/ 2017/PA.Tmk | First Level (Tasikmalaya City Religious Court) | – Granted the Plaintiff's lawsuit in part<br>– State that the Defendant committed PMH | The first instance decision was canceled by the cassation level decision. |

| | | | |
|---|---|---|---|
| | | – Punish the Defendant to pay compensation of a sum of money | |
| 410/Pdt.G/ 2022/PA.Gsg | First Level (Gunung Sugih Religious Court) | Reject the Plaintiff's claim | |
| 52/Pdt.G/ 2022/PTA.Bdl | Appeal level (Bandar Lampung High Religious Court) | Rejecting the lawsuit (affirming the decision of the first instance which rejected the lawsuit) | Appeal case on case number 410/Pdt.G/ 2022/PA.Gsg |
| 760/Pdt.G/ 2018/PA.Plb | First Level (Palembang Religious Court) | Reject the Plaintiff's claim | |
| 595/Pdt.G/ 2017/PA.Yk | First Level (Yogyakarta Religious Court) | Declaring the lawsuit Unacceptable | Exception accepted |
| **B. Regarding the Auction of Collateral Used as Collateral to the Bank** | | | |
| 752/Pdt.G/ 2022/PA.Ska | First Level (Surakarta Religious Court) | Reject the Plaintiff's claim | Exception rejected |
| 1024/Pdt.G/ 2016/PA.Lmg | First Level (Lamongan Religious Court) | Declaring the Plaintiff's claim unacceptable | Defendant II's exception was granted |
| 1202/Pdt.G/ 2022/PA.Tnk | First Level (Tanjung Karang Religious Court) | Reject the Plaintiff's claim | The Defendant's exception was rejected |
| 2400/Pdt.G/ 2013/PA.JS | First Level (South Jakarta Religious Court) | Granted some | Defendant finance company |
| 2279/Pdt.G/ 2015/PA.Mks | First Level (Makassar Religious Court) | Reject the Plaintiff's claim | Mixed lawsuits for cancellation of contracts and auctions. |

The judge's opinions and assessments regarding the fulfillment of the elements of unlawful acts (onrechtmatige daad) related to sharia banking, which are diverse and dynamic, are influenced by several factors, such as interpretation of Islamic law, principles of justice, and considerations of applicable policies. The dynamics of the court judge's decision in resolving the Sharia Banking Unlawful Act (PMH) dispute above shows the existence of a phenomenon that can be used as a background to the problem of this dissertation. Namely phenomena that occur in society, either currently or have already occurred, based on the results of daily observations and the results of exploratory studies in the field on research objects or locations that are planned to be studied, as well as scientific study struggles (Pascasarjana UIN Sunan Gunung Djati Bandung, 2022). Legal research regarding Unlawful Actions (PMH) and its dynamics, especially which includes the study of the central issue, namely the causal relationship between the act and the loss, is a very interesting issue to study academically, to the point that Munir Fuady said that the study of this theme is the darling of academic mind because there is still a lot of academic research needed in an effort to structure the problem of cause and effect relationships (causality) in acts against the law (Fuady, 2013). Apart from that, studies related to unlawful acts (PMH) are complex and confusing studies, so these studies are very necessary and have been eagerly awaited by society, both for theoretical enrichment purposes and for judicial practice. Munir Fuadi in his book entitled Acts Against the Law-Contemporary Approaches (Bandung, PT Citra Aditya Bakti, 2013) mentions this and explains that displeasure with the law Onrechmatige Daad (acts against the law) for example can be seen in the satire which says that the expression "Sue Thy Neighbour" which means "sue your

neighbor" is a way for legal people to replace the old adage in the form of the expression "Love Thy Neighbor" which means "love your neighbor". This condition creates dissatisfaction in society, thus encouraging it to look for alternative models that are more effective, efficient and less complicated. Therefore, through this research the author is interested in contributing to this study.

Moreover, in this research, which concerns the results of several judges' thoughts in decisions, which are certainly quite dynamic, there is also the problem of gaps or diversity in reasoning and legal findings by judges in court decisions. From the background of this problem, the question arises about the dynamics of the decisions of Religious Court judges in resolving sharia economic disputes, types of lawsuits against the law related to debtor information from 2012 to 2022, as well as what are the prospects for development in the justice system in Indonesia in the future, including future development prospects. involves improving the quality of judges' decisions through understanding the science of sharia economic law and knowledge that intersects with it, such as sharia science, economics and sharia economics, such as studies regarding sharia banking risk management and bank asset quality, considering that the sharia economic law that applies in Indonesia was not born in a vacuum that is not influenced by other aspects around it, and through efforts to maintain consistent legal certainty in sharia banking cases.

Based on the background of the problems above, there are several issues that are quite urgent and significant to be studied in depth. These problems are formulated in the form of formulated questions including: 1) How is the discovery of law and its application by court judges in the Religious Court environment in resolving Unlawful Act disputes related to sharia banking?; 2) What are the dynamics of court judges' decisions in the Religious Courts environment in resolving Unlawful Act lawsuits related to sharia banking?; 3) What is the shift in legal discovery and legal thinking by court judges in the Religious Court environment in resolving Unlawful Act disputes related to sharia banking?; 4) What are the prospects for developing legal concepts for resolving Unlawful Acts disputes over sharia banking in the Indonesian judicial system in the future?.

## LITERATURE REVIEW

The rapid development of Shari'ah banking in Indonesia has been accompanied by increasing legal challenges, particularly in relation to dispute resolution. Shari'ah banking disputes generally arise from contractual relationships between banks and their customers in financing, investment, or savings transactions that are governed by Shari'ah principles. The resolution of such disputes is distinctive in that it must comply with both national legal frameworks and Islamic jurisprudence (fiqh al-mu'āmalah).

The legal framework for Shari'ah banking dispute resolution in Indonesia is primarily rooted in Law No. 21 of 2008 on Shari'ah Banking, which explicitly stipulates that disputes arising from Shari'ah banking transactions fall under the jurisdiction of the Religious Courts. This provision was later reinforced by the Supreme Court Regulation No. 2 of 2008, which provided procedural guidelines for the adjudication of Shari'ah economic disputes. Thus, the Religious Courts, which were traditionally limited to family and inheritance matters, have now been vested with expanded jurisdiction to include commercial cases involving Shari'ah-based financial transactions.

In practice, the adjudication of Shari'ah banking disputes by Religious Court judges poses unique challenges. These include the integration of Shari'ah principles into positive law, the technical complexity of modern banking contracts, and the capacity of judges to interpret and

apply both Islamic jurisprudence and financial regulations consistently. The literature identifies that while statutory provisions provide a clear mandate, their implementation requires a nuanced understanding of both Shari'ah law and the broader national legal system (Lubis, 2010; Suhrawardi, 2018).

Scholars have further highlighted tensions between Shari'ah principles, such as the prohibition of riba (usury), gharar (excessive uncertainty), and maysir (speculation), and the realities of contemporary financial practices (Antonio, 2001). These tensions raise questions about legal certainty, fairness, and consistency in dispute resolution. The judicial role is therefore not only to enforce statutory rules but also to interpret Shari'ah principles in a way that aligns with the objectives of justice (maqāṣid al-sharī'ah).

## THEORETICAL FRAMEWORK

The study of Shari'ah banking dispute resolution in Indonesia can be framed within two interrelated theoretical perspectives: legal pluralism and the theory of judicial discretion.

Legal pluralism provides a lens through which to understand the coexistence and interaction of multiple legal systems within Indonesia. The Indonesian legal system is characterized by the simultaneous application of statutory law, Islamic law, and customary law (adat). The expansion of Religious Court jurisdiction to include Shari'ah banking disputes reflects a formal recognition of Islamic economic law within the national legal structure (Hooker, 2008). This pluralistic framework requires judges to balance statutory requirements, religious norms, and practical financial considerations in their adjudication.

Judicial discretion theory highlights the interpretive role of judges in contexts where statutory provisions may be ambiguous, underdeveloped, or in tension with Shari'ah principles. In such cases, judges are required to exercise discretion in applying fiqh doctrines, interpreting contracts, and resolving conflicts between statutory and religious norms. Their decisions are influenced not only by legal texts but also by their understanding of Shari'ah economics and the overarching goals of justice (maqāṣid al-sharī'ah).

Drawing on these frameworks, this study posits that the dynamics of Shari'ah banking dispute resolution are shaped by the intersection of: Regulatory frameworks (laws, regulations, and judicial guidelines), Shari'ah principles derived from classical and contemporary Islamic jurisprudence, and Judicial capacity and discretion in interpreting and applying the law.

This framework underscores the central role of judges as legal actors navigating between normative ideals and the practical demands of financial dispute resolution.

## PREVIOUS RESEARCH

Several scholars have examined the evolution and challenges of Shari'ah banking dispute resolution in Indonesia. Early studies (Lubis, 2010; Rasyid, 2012) emphasized the institutional transition that occurred after the enactment of Law No. 21/2008, highlighting how the Religious Courts assumed new responsibilities in adjudicating Shari'ah economic disputes. These studies pointed to the need for enhanced judicial training and capacity-building, given that many judges were more familiar with family law than with complex financial contracts.

Other research has focused on the substantive application of Shari'ah principles in judicial decisions. Suhrawardi (2018) observed that while courts generally adhere to statutory provisions, judges often draw upon fiqh al-mu'āmalah to resolve issues not explicitly regulated

by law. This demonstrates the ongoing relevance of Islamic jurisprudence in shaping dispute outcomes, particularly in cases involving riba, murābaḥah contracts, and profit-loss sharing mechanisms (mudārabah and mushārakah).

Comparative studies (e.g., Hosen, 2016; Barizah, 2020) have examined how Indonesian Religious Court judges approach Shari'ah banking disputes relative to other Muslim-majority jurisdictions. Findings suggest that while Indonesia has made significant progress in institutionalizing Shari'ah dispute resolution within the judiciary, challenges remain in ensuring uniformity of interpretation and avoiding conflicting rulings across different regions.

Finally, research has pointed to practical challenges such as the lack of technical financial expertise among judges, inconsistent application of expert testimony, and the need for harmonization between Religious Court decisions and regulatory oversight by the Financial Services Authority (Otoritas Jasa Keuangan, OJK). These challenges underscore the dynamic nature of Shari'ah banking dispute resolution and the need for continuous legal and institutional development.

## METHOD

The method used in this research is qualitative research, with the research approach being an empirical juridical approach. This research places the decisions of court judges in the Religious Courts in resolving cases of unlawful acts (Onrechmatige Daad) related to sharia banking as an object of study, especially regarding the discovery and application of law contained in the legal considerations in these decisions as an effort to enforce law and justice. This research provides an overview of legal exploration and application of law through existing and quite diverse legal sources and theories by court judges in the religious court environment so that dynamics occur in deciding lawsuits for unlawful acts (PMH or Onrechtmatige Daad) in sharia banking, especially regarding the fulfillment of the elements of an unlawful act (PMH) which is closely related to the assessment of the causes and consequences of the act that caused the loss as well as the civil responsibility of the perpetrator of the act to provide compensation to the victim.

Court decisions in the Religious Courts which examine and adjudicate cases of unlawful acts are a cultural phenomenon or symptom and include juridical research that is interesting to study in depth. Likewise, the issue of unlawful acts is also a study that is still confusing academically and practically, so it is still thirsty and requires in-depth studies. Moreover, regarding the causal relationship between the perpetrator's actions and the losses incurred as well as the level of civil liability and the calculation of compensation. Opinion (Fuady, 2018), said that the law regarding Onrechmatige Daad (unlawful acts) is a complicated machine that processes the transfer of the burden of risk from the shoulders of the victim to the shoulders of the perpetrator. However, in practice it turns out that the machine is too complicated so it often feels like it is far from the reach of justice. Furthermore (Fuady, 2013), mentioned this and explained that displeasure with the law of Onrechmatige Daad (acts against the law) for example can be seen in the satire which states that the expression "Sue Thy Neighbour" which means "sue your neighbor" is a way for legal people to replace the old adage in the form of the expression "Love Thy Neighbour" which means "love your neighbor". This condition creates dissatisfaction in society, thus encouraging it to look for alternative models that are more effective, efficient and less complicated. Even the central issue, namely causality, is an interesting issue to study academically. Munir Fuady also mentioned that the cause and effect relationship is the main issue in unlawful acts, although many legal experts have tried to structure the problem but have not succeeded satisfactorily even though the public is eagerly awaiting this concept, especially as a guideline in judicial practice, the complexity of the theory This juridical and legal application of cause and effect has become interesting to study

academically, so it has been dubbed the darling of academic minds. Therefore, through this research the author is interested in contributing to this study.

Court decisions in the field of sharia economics, including the field of sharia banking (Islamic banking), are the result of thoughts or products of thought in the field of Islamic law (muamalah) through ijtihad which includes legal exploration (istinbat al-ahkam). Therefore, this research which examines court decisions is research into religion as a cultural phenomenon (Mudzhar, 1998). Soekanto classifies legal research into two groups, namely normative research and empirical research (Soekanto, 1986, hlm. 51). Research on court decisions can be grouped into empirical juridical research if it is related to the impact of decisions on society.

The data sources in this research consist of two groups, namely primary data sources and secondary data sources. The primary data source is Religious Court decisions at the first level, appeal level and cassation level in the form of sharia economic case decisions related to unlawful acts involving sharia banking from 2012 to 2022. Primary data is a copy of the decision taken from the decision directory of the Supreme Court of the Republic of Indonesia which can be accessed via the page (website) https://putusan3.mahkamahagung.go.id/. As a form of judicial information openness (transparency), the Indonesian Supreme Court has published court products in the form of decisions online and in real time which can be accessed by the public openly and free of charge. The publication of this decision has been regulated through a decision letter from the Supreme Court of the Republic of Indonesia, taking into account the limits of confidentiality of certain data. The considerations of the examining panel of judges are definitely stated in the decision so that it can be read and known directly by researchers. If there is any ambiguity in the document, a copy of the decision can be obtained from the court examining and deciding the case after the author submits a request for it. Data sourced from the Supreme Court decision directory is also communicated or compared with data sourced from the Religious Courts Agency of the Supreme Court of the Republic of Indonesia which can be accessed via the website of the Directorate General of the Supreme Court's Religious Courts Agency in the case information transparency menu.

Meanwhile, the secondary data sources are Religious Court judges who handle cases of unlawful acts related to sharia banking, both at the first level, at the appeal level, and at the cassation level, whose data was obtained through interview techniques. Secondary data is also sourced from literature, whether available in print or electronically, relating to unlawful acts related to sharia banking, especially books, scientific works, articles, scientific journals, the Standard Book for Sharia Banking Products published by Bank Indonesia or the Authority. Financial Services, classical and contemporary fiqh books from various schools of thought, various other references, as well as various comments and analyzes on decisions, statutory regulations, the Compilation of Sharia Economic Law (KHES), fatwas from the National Sharia Council (DSN) of the Indonesian Ulema Council ( MUI), Bank Indonesia Regulations (PBI), Financial Services Authority Regulations (POJK), books of jurisprudence and theory of risk management in banking institutions, sharia banking product standards, as well as works related to Unlawful Acts, especially related to sharia banking.

## RESULTS AND DISCUSSION

### Overview of the Dynamics of Court Decisions in Settlement of Sharia Economic Disputes Unlawful Acts related to Sharia Banking in Indonesia

According to (Suheri, 2018) in his research that justice as the crown of law is something that has naturally been maintained by many theories since Socretes until now. Various theories

have emerged regarding justice and a just society, which in these theories concern rights and freedoms, opportunities for power, income and prosperity. Among these theories can be called: Aristotle's theory of justice. John Rawl's theory of social justice and Hans Kelsen's theory of law and justice. In essence, this view of justice is a grant of equal rights but not equality. Aristotle differentiates equal rights from proportional rights. Equality of rights is viewed by humans as a unit or the same container. This is what can be understood that all people or every citizen are equal before the law. Proportional equality gives each person what is their right according to their abilities and achievements. Justice according to Aristotle's view is divided into two types of justice, "distributive" justice and "commutative" justice. Distributive justice is justice that gives each person a portion according to their achievements. Meanwhile, commutative justice is justice that gives the same amount to everyone without discriminating against their achievements, in this case it relates to the role of exchanging goods and services. From this division of justice, Aristotle received a lot of controversy and debate. According to Aristotle, distributive justice focuses on distribution, honor, wealth and other goods that can be equally obtained in society. Putting aside the mathematical "proof", it is clear that what Aristotle had in mind was the distribution of wealth and other valuables based on the values prevailing among citizens. A fair distribution may be a distribution that is in accordance with its goodness, that is, its value to society (Apeldoorn, 1951).

Temporary based on (Rawls, 2009), argued that justice as fairness is characterized by the principles of rationality, freedom and equality. Therefore, the principle of justice must prioritize rights over interests. Justice as fairness implies that those with superior skills and talents are entitled to greater benefits, and those benefits should also provide opportunities for better life prospects for those deprived of those benefits (Yuanita, 2022). John Rawls developed the idea of the principles of justice by fully using the concepts he created known as the "original position" and the "veil of ignorance". Rawls's view posits that there is an equal and equal situation between every individual in society. There is no difference in position status or having a higher position between one another, so that one party can make a balanced agreement with another, that is Rawls' view as a "original position" which is based on the understanding of reflective equilibrium based on the characteristics of rationality and freedom ( freedom), and equality in order to regulate the basic structure of society. Meanwhile, the concept of "veil of ignorance" is translated by John Rawls as meaning that every person is faced with the closure of all facts and circumstances about himself, including certain social positions and doctrines, thus blinding the concept or knowledge of justice that is currently developing. With this concept, Rawls leads society to obtain the principle of fair equality with his theory called "Justice as fairness". In John Rawls's view of the concept of "original position" there are main principles of justice, including the principle of equality, namely that everyone is equal. freedom that is universal, essential and compatible and inequality of social and economic needs for each individual. The first principle stated is the principle of equal liberty principle (de Marneffe, 2014), *freedom of religion* (Babie dkk., 2020), *political of liberty* (Podoksik, 2010), *freedom of speech and expression* (Sabela & Pritaningtias, 2017), while the second principle is stated *difference principle* (Premchand, 2017), which hypothesizes on principles *equal oppotunity principle* (Greatica dkk., 2020).

A justice enforcement program with a people's dimension must pay attention to two principles of justice, namely first, providing equal rights and opportunities for the broadest basic freedoms as broad as the same freedoms for everyone. Second, being able to reorganize the socio-economic disparities that occur so that they can provide reciprocal benefits. Thus, the principle of difference demands that the basic structure of society be arranged in such a way that disparities in prospects for the main things of welfare, income, authority are allocated to the advantage of the most disadvantaged people. This means that social justice must be fought for two things: First, to correct and improve the conditions of inequality experienced by the

weak by providing empowering social, economic and political institutions. Second, every regulation must position itself as a guide for developing policies to correct injustices experienced by the weak.

**Justice in the Perspective of Indonesian National Law**

The view of justice in national law originates from the basis of the state. Pancasila as the basis of the state or state philosophy is still maintained and is still considered important for the Indonesian state. Axiologically, the Indonesian nation is *subcriber of values Pancasila* (Sutono & Purwosaputro, 2019). An Indonesian nation that is devout, humane, united, populist and socially just. As supporters of values, it is the Indonesian people who appreciate, recognize and accept Pancasila as something of value. Recognition, appreciation and acceptance of Pancasila as something of value will appear to be reflected in the attitudes, behavior and actions of the Indonesian people (Ahyani, Slamet, dkk., 2021). If recognition, acceptance or appreciation is reflected in the attitudes, behavior and actions of humans and the Indonesian nation, in this case, it is also the bearer of it in the attitudes, behavior and actions of Indonesian people. Therefore, Pancasila as the highest source of law is the source of national law for the Indonesian nation. The view of justice in the national law of the Indonesian nation is focused on the foundation of the state, namely Pancasila, the fifth principle of which reads: "Social justice for all Indonesian people". The problem now is what is fair according to the national legal conception that originates from Pancasila.

According to (Masyhur, 1985), in his book he expresses opinions about what is called fair, there are three things about the meaning of fair. Fairness is: putting things in their place. Fairness is: accepting rights without more and giving others without less. Fairness is: giving the rights of everyone who is entitled completely without more or less between those who have the right in the same circumstances, and punishing evil people or those who violate the law, according to mistakes and violations.

To further explain justice from a national legal perspective, there is an important discourse about fairness and social justice. Fairness and fairness are the recognition and balanced treatment of rights and obligations. If there is a recognition and balanced treatment of rights and obligations, naturally if we recognize the "right to life", then on the contrary we must defend this right to life by working hard, and the hard work done does not cause harm to other people, because other people also have the same rights (the right to life) as the rights that exist in individuals. By recognizing another person's right to life, they are automatically obliged to give that other person the opportunity to defend their right to life. This conception, when connected to the second principle of Pancasila as a source of national law for the Indonesian nation, essentially instructs them to always carry out harmonious relations between individual humans and other groups of individuals so as to create just and civilized relations. Fair and civilized relations can be likened to light and fire, if the fire is big then the light is bright: so if civilization is high, then justice is strong. Furthermore, if it is connected to "social justice", then justice must be linked to social relations. Social justice can be interpreted as: (1) Returning lost rights to those entitled to them. (2) Eradicating persecution, fear and rape against entrepreneurs. And (3) Realizing equality towards the law between every individual, businessman and luxury people who are obtained unnaturally.

As is known, justice and injustice cannot be separated from life and social life. In everyday life we often find people who "take the law into their own hands", in fact this action is the same as the act of achieving justice which results in injustice, especially for the person being judged. Social justice concerns the interests of society and a socially just individual must set aside his individual freedom for the interests of other individuals. National law only regulates justice for

all parties, therefore justice harmonizes or harmonizes justice that is general in nature among some of the individual justices. In this case, justice focuses more on the balance between individual community rights and general obligations within legal community groups.

Justice does not always mean that everyone must get the same thing in the same amount without looking objectively at the differences that exist in each individual. with John Rawls' theory of distributive justice, which includes the principle of freedom in the sense of equal rights (Rawls, 2009). Equality is the most basic principle that must be followed by everyone without exception, which means that everyone has the same rights to the most basic freedoms as widely as possible. Justice will be achieved if everyone is guaranteed the same freedom. Justice as fairness does not require that everyone involved and undergoes the same procedures to achieve the same results, but rather that the results of fair procedures are accepted as fair, the same applies when not everyone gets the same results. The concept of justice that emerges from a procedure that is accepted by all parties must also be accepted as a concept that is suitable to be applied to the general public.

**Justice in Islamic Law Perspective**

The ideal of good law enforcement (ideal) according to the moral style in Indonesia is a necessity. This means that realizing the values of Islamic law in Indonesia requires a special strategy, one of which is grounding the Sharia economy from an early age. (Putra & Ahyani, 2022). Justice (al-'adl), sometimes called al-qist or al-mizan, can be interpreted as equalizing something with another, both in terms of value and in terms of size, so that things are not biased and do not differ from each other. Fairness also means taking sides or adhering to the truth. There are several meanings related to justice in the Qur'an from the root word 'adl, namely something that is right, an impartial attitude, safeguarding one's rights and the right way of making decisions. as stated in the Qur'an in Surah an-Nisa' verse 58 that you humans should judge or make decisions on the basis of justice.
Overall, the definitions above are directly related to the side of justice, namely as an explanation of the forms of justice in life. In Islam, the command to act fairly is directed at everyone without discrimination. Correct words must be conveyed as they are, even if these words will harm one's relatives. The obligation to act fairly must also be upheld in Muslim families and communities themselves, even to non-believers, Muslims are commanded to act fairly. For social justice to be upheld without distinction between rich and poor, officials or commoners, women or men, they must be treated equally and have the same opportunities (Sirait, 2022).

In line with that, (Quṭb, 2000), emphasizes that Islam does not recognize differences that depend on level and position. Islam also teaches humans to fulfill the promises, duties and mandates they bear, protect those who suffer, are weak and needy, feel concrete solidarity with fellow citizens, be honest in their behavior, and so on. The things that are determined as achievements that must be achieved by Muslims show a very strong orientation towards the roots of justice. Likewise, the insight into justice is not only limited to the micro scope of the lives of individual citizens, but also the macro scope of society's life itself. Fairness is not only required of Muslims but also those of other religions. This is not only limited to being fair in their affairs, but also to their freedom to defend their beliefs and implement the teachings of their respective religions. The social justice system seeks to improve the welfare and improve the standard of living of community members, including those who suffer and have a weak position in society, such as orphans, the poor and widows, as well as less fortunate relatives (dzawil qurba). The principles of social justice and their implementation in every aspect of human life. Islam provides rules that can be implemented by all believers. Every member of society is encouraged to improve the material life of society without distinguishing form,

descent and type of person. Everyone is seen as equal to be given the opportunity to develop their full potential in life. The insight into justice presented by Islam is a religious commandment, not just an ethical reference or moral encouragement. Its implementation is a fulfillment of religious obligations and will be accounted for on the day of reckoning (yaum al-hisab), the day of judgment, and retribution in the afterlife. As intended in Q.S. 4/al-Nisa: 110 which means: And whoever does evil and wrongs himself, then asks Allah for forgiveness, he will surely find Allah Most Forgiving, Most Merciful.

Legal justice in Islam comes from God, the Most Just (al-hakim and al-ahkam al-hakimin), because in essence it is Allah who upholds justice (qaiman bil qisth), so it must be believed that Allah does not apply injustice (zalim) to his servants. Fair in the sense of equality, namely equality in rights, without distinguishing between who; from where the person who will be given a decision by the person who is handed over upholds justice. In the principle of legal justice, the Prophet Muhammad SAW emphasized the existence of absolute equality (absolute egalitarianism, al-musawah al-muthlaqah) before sharia laws. (Zulkifli, 2018). In Medina, the Prophet Muhammad, apart from being the head of religion, also served as head of state and qadhi (judge) who enforced law and justice. Justice is practiced properly and does not differentiate between a person's social status, level of economic ability (rich or poor), rank or position in society and not because of differences in skin color or differences in nationality and religion. All citizens before the law are treated equally fairly. The concept of equality contained in justice still takes into account the principle of proportionality, so it does not rule out the possibility of recognition of superiority in several aspects, which can make someone superior because of their achievements. However, these advantages will not make a difference in legal treatment for him.

Justice in legal philosophy is the core that must be fulfilled through existing laws. Aristotle emphasized that justice as the core of legal philosophy can be understood in the sense of numerical equality and equality of proportion. He also differentiates types of justice into distributive justice and corrective justice. Meanwhile, John Rawls emphasized that upholding justice has a social dimension or is known as social benefits and reciprocity (Sanuri, 2012).

**Dispute resolution**

Dispute resolution is an effort to return the relationship between the disputing parties to its original state. By restoring this relationship, the parties who had a dispute can once again enter into good social and legal relations. The term dispute resolution theory comes from the English translation, namely dispute settlement of theory, or in Dutch it is called theorye van de beslechting van geschillen. Settlement is a process and method of resolving, while a dispute is often interpreted as a conflict. According to (Sidik, 2021), that a dispute is a conflict, disagreement or quarrel that occurs between one party and another party and/or between one party and various parties relating to something of value, whether in the form of money or objects.

Category or type of dispute is a classification of the types of disputes that occur in society, such as land disputes, election disputes, share disputes, marriage disputes, inheritance disputes, household disputes, buying and selling disputes and so on. The factors that cause disputes to arise are generally triggered by ineffective communication between parties, as well as by lack of information, misinformation, differences in views, differences in interpretation of data, and differences in interpretation of procedures (Suadi, 2017). Data is something that is very important in a relationship, therefore data accuracy is necessary to achieve a good legal relationship. Disputes can also be caused by conflicts of interest which are triggered by strong emotions, misperceptions or poor communication. Meanwhile, according to Simon Fisher et al,

there are six theories that analyze the causes of disputes, namely public relations theory, principle negotiation theory, identity theory, misunderstanding theory, dispute transformation theory, and human needs theory. (Ritzer & Goodman, 2004).

Dispute resolution can be done through litigation through court, or non-litigation through alternative mediation and through traditional media. The method for resolving disputes is regulated in the Civil Procedure Code, namely through court. Meanwhile, the dispute resolution methods regulated by Republic of Indonesia Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR) include:

1. Consultation, namely negotiations carried out between the parties without involving a third party in resolving their dispute.
2. Negotiation, which is a means for the parties to carry out two-way communication designed to reach an agreement as a result of differences in views on something and is motivated by the similarity/dissimilarity of interests between them.
3. Mediation, namely the participation of a third party in the dispute resolution process, where the third party acts as an advisor or mediator.
4. Conciliation, namely an attempt to reconcile the wishes of disputing parties to reach agreement and resolve the dispute.
5. Expert assessment, which is a method of dispute resolution in which the parties appoint a neutral expert to make findings of facts that are binding or not, or even make binding briefings on the material.

Meanwhile, in Republic of Indonesia Law Number 7 of 2012 concerning Handling Social Conflicts, it is explained that the method for resolving disputes in society is carried out peacefully, as emphasized in article 8 of the law. Peaceful dispute resolution is a way to end disputes or conflicts that occur in society using deliberation so that neither party feels disadvantaged, they both accept each other. Institutions authorized to resolve conflicts as stated in Article 40 of the law include the government, regional governments, traditional institutions, social institutions, social conflict resolution task forces. Thus, it can be concluded that there are three patterns of dispute resolution in society, according to (Sidik, 2021), yang meliputi : Pengadilan,Alternative Dispute Resolution (ADR), dan Damai. Di samping ketiga cara itu, dikenal juga cara penyelesaian sengketa melalui lembaga adat dan nilai-nilai yang berkembang dalam masyarakat yang bersifat lokal karena masing-masing etnis atau daerah mempunyai lembaga adat dan nilai-nilai yang berbeda antara satu sama lain. Seperti misalnya dalam masyarakat etnis Samawa dikenal Lembaga Adat Tana Samawa (LATS) dan lembaga kedamangan di Palangkaraya. Damang adalah pimpinan adat kedamangan yang berfungsi sebagai kepala adat. Eksistensi damang sebagai hakim perdamaian adat diakui dan ditaati oleh masyarakat suku adat di Palangkaraya.

Analysis

The discovery of law and its application by court judges in the Religious Courts environment in resolving Unlawful Act disputes related to sharia banking has been regulated in Article 49 of Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning Religious Courts, one of which is the authority of the Religious Courts to adjudicate sharia banking disputes. In resolving disputes, the Religious Courts use formal law and material law. Formal law in the form of procedures for resolving disputes is regulated by the Supreme Court Regulations and procedural law in the Civil Code. Meanwhile, material law is in the form of KHES, DSN-MUI Fatwa, Bank Indonesia Regulations, and Financial Services Authority Regulations and other statutory regulations. So the author found a pattern of resolving sharia banking disputes in the

Religious Courts, discovered the factors causing sharia banking disputes and discovered the impact of verdicts on the development of the sharia economy.

First, the Judge adjudicates sharia banking disputes using: 1) Formal law in the form of PERMA and the Civil Code, 2) Material law in the form of KHES, DSN-MUI Fatwa, PBI and OJK. Second, the author found the factors that caused the dispute, namely: 1). Norm factors in contracts, rigid understanding resulting in default, coercive circumstances and unlawful acts, 2) Factors in fulfilling the rights and obligations of the parties, 3). Social and cultural factors of consumption by banks and customers. Third, finding the impact of the verdict on the development of sharia economic justice, financial institutions and people's welfare. So it recommends improving the formal laws of religious courts, strengthening customer and sharia banking understanding of contract clauses, the development of sharia economics which has an impact on financial institutions, customers and society in general.

The dynamics of court judges' decisions in the Religious Courts environment in resolving cases of Unlawful Actions related to sharia banking is a legal dynamic that occurs where Lawsuits for Unlawful Actions against Sharia Non-economic Laws are the Authority of the Religious Courts. This is just an opinion (Adicahya, 2021), that Lawsuits for Unlawful Acts are a form of dispute that is commonly found in the General Courts. Unlawful Act Disputes have become common and popular in the Religious Courts since Sharia Economic cases were promulgated as part of the cases under the authority of the Religious Courts. In fact, cases of Unlawful Acts are actually not limited to sharia economic cases. Concerning objects of joint property, inherited assets, and several other issues, unlawful actions can occur.

Legal Dynamics according to (Reza, 2017), can be traced from thoughts about what happened in the past, present and future. One meaning of the word dynamics is the continuous movement of society which is a change in the way of life of the society concerned, so dynamics means change. Dynamics or changes in the legal field take the form of legal changes as a closed system and/or open system. Legal change as a closed system of internal legal dynamics follows Kelsen's opinion, namely legal change that takes place based on levels of the legal hierarchy. In addition, there are changes taking place in society; for example, regarding people's obedience to the law. This last change is in the form of changes in people's values, attitudes and behavior towards the law. This last thing is meant by the external dynamics of law. These two points of view (internal and external legal dynamics) can cause people to draw sharp lines of difference, as if one is separated from the other, so that the validity of changes is measured from different points of view, resulting in contradictory conclusions. For example, the statement that the law has actually changed, when society has changed, even though the law remains the same. On the other hand, the law does not change, while society does not change, even though the law has changed. This statement cannot possibly be accepted if people hold the opinion that legal changes are only internal changes to the law.

The shift in legal discovery and legal thinking by court judges in the Religious Courts environment in resolving Unlawful Act disputes related to sharia banking can be seen in the form of decisions by judges. The Religious Courts have the authority to adjudicate all forms of civil disputes in the fields regulated in Article 49 of the Religious Courts Law. The authority of the Religious Courts to adjudicate all forms of civil disputes, including claims for Unlawful Acts, is carried out under the following conditions: 1) The dispute occurs between subjects of Islamic law/Muslim citizens. 2) Disputes relate to the object of the dispute. 3) The object of dispute is the object of dispute in the fields regulated in Article 49 of the Religious Courts Law. 4) PMH or other civil lawsuits are decided together with the settlement of the case in accordance with Article 49 of the Religious Courts Law. 5) There has not been a second transfer of the object of dispute.

The prospect of developing legal concepts for resolving Unlawful Acts disputes over sharia banking in the Indonesian judicial system in the future is a necessity. The development of the legal concept refers to Article 55 of Law Number 21 of 2008 concerning Sharia Banking which reads: (1) Settlement of Sharia Banking disputes is carried out by courts within the Religious Courts. (2) In the event that the parties have agreed to resolve a dispute other than as intended in paragraph (1), the dispute resolution is carried out in accordance with the contents of the agreement. (3) Dispute resolution as intended in paragraph (2) must not conflict with Sharia Principles. Elucidation of Article 55: Paragraph (2) What is meant by "dispute resolution is carried out in accordance with the contents of the Agreement" is the following efforts: a. discussion; b. banking mediation; c. through the National Sharia Arbitration Board (Basyarnas) or other arbitration institutions; and/or d. through a court within the General Court environment.

## CONCLUSION

The dynamics of law and its application by court judges in the Religious Courts environment in resolving Sharia economic disputes can be concluded that these legal dynamics are empirical legal dynamics that occur in Indonesia, where unlawful acts are related to sharia banking, which is regulated in Article 49 UU no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning Religious Courts, one of which is the authority of the Religious Courts to adjudicate sharia banking disputes. In resolving disputes, the Religious Courts use formal law and material law. Formal law in the form of procedures for resolving disputes is regulated by the Supreme Court Regulations and procedural law in the Civil Code. Meanwhile, material law is in the form of KHES, DSN-MUI Fatwa, Bank Indonesia Regulations, and Financial Services Authority Regulations and other statutory regulations. So the author found a pattern of resolving sharia banking disputes in the Religious Courts, found the factors that caused sharia banking disputes and found the impact of the verdict on the development of the sharia economy.

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