

SOLUTION OF SHARIAH ECONOMIC DISPUTES IN THE PROVISIONS SET BY THE SUPREME COURT

PENYELESAIAN SENGKETA EKONOMI SYARIAH MENURUT KETENTUAN MAHKAMAH AGUNG

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Abstract

Increase users of sharia contracts is directly proportional to the increase in sharia economic disputes. The occurrence of disputes can be caused by one party breaking a contract or committing an unlawful act. In the event of a dispute, the party who feels aggrieved can submit a lawsuit to the court, but it turns out that during the examination of the case the judge found that the contract used was deemed not in sharia compliance, while none of the parties filed a lawsuit for cancellation the contract. In this study, the authors used normative juridical research methods. by exploring the provisions of the supreme court which serve as guidelines for judges in examining cases of sharia economic disputes, while also using a conceptual approach by looking at Islamic law concepts regarding inappropriate contracts. with Islamic law. In this study the authors conclude that there are still many legal voids governing sharia economics, the existing provisions only regulate in general and universally, even contradicting each other. As a result of this legal vacuum, the supreme court made rules for examining sharia economic cases, where in several provisions found inconsistencies in the regulations made, or even contradicting each other, so it is necessary for judges to carry out *ijtihad* and decide on cases that are demanded by the parties in order to fulfill the principle of divinity. and so that the decision remains on the provisions stipulated by Islamic law

Keywords: decision; dispute; sharia economics

Abstrak

Peningkatan penggunaan akad syariah berbanding lurus dengan meningkatnya sengketa ekonomi syariah, terjadinya perselisihan dapat disebabkan oleh salah satu pihak cidera janji dan atau melakukan perbuatan melawan hukum yang merugikan pihak lain. Dalam hal terjadi sengketa pihak yang merasa dirugikan dapat mengajukan gugatan ke Pengadilan untuk mendapatkan keadilan, namun ternyata dalam proses pemeriksaan terhadap perkara hakim menemukan bahwa akad yang digunakan dinilai tidak sesuai dengan ketentuan syariah, sedangkan para pihak tidak ada yang mengajukan gugatan pembatalan akad, terutama dalam perkara yang diperiksa secara sederhana, yang tidak memungkinkan Tergugat untuk mengajukan Gugatan rekonvensi. Dalam penelitian ini, penulis menggunakan metode penelitian yuridis normatif. Yaitu dengan menggali ketentuan mahkamah agung yang menjadi pedoman hakim dalam memeriksa perkara sengketa ekonomi syariah, selain itu juga menggunakan pendekatan konseptual dengan melihat konsep hukum Islam tentang akad yang tidak sesuai. dengan hukum Islam. Dalam penelitian ini penulis menyimpulkan bahwa masih banyak kekosongan hukum yang mengatur mengenai ekonomi syariah, ketentuan yang ada hanya mengatur secara umum dan universal, bahkan saling bertentangan. Akibat kekosongan hukum tersebut, mahkamah agung membuat aturan untuk melakukan pemeriksaan perkara ekonomi

syariah, dimana dalam beberapa ketentuan ditemukan inkonsistensi dalam peraturan yang dibuat, atau bahkan bertentangan satu sama lain, sehingga perlu bagi hakim untuk melakukan ijtihad dan memutus perkara di apa yang di tuntut oleh para pihak demi memenuhi asas ketuhanan. dan agar keputusannya tetap pada ketentuan yang telah ditetapkan oleh hukum Islam.

Kata kunci: putusan; sengketa; ekonomi syariah

A. INTRODUCTION

The growth and development of a sharia-based economic system is not only determined by the increasing number of sharia economic actors or the increasing number of people who are becoming aware of sharia-based economic activities, but also by the legal instruments that govern them. This is because law and economics have a very close connection and give reciprocity, this is because law is a very important aspect in contributing to economic growth (Yani Iyan, 2012.). Thus, the aspect of legal certainty and all the instruments needed by business actors in carrying out economic activities, must always be maintained by stakeholders.

Awareness of the importance of applying Islamic law in muamalat has led to the emergence of many Islamic-based financial institutions, and it has become a natural thing that in a transaction there are disputes, both intentional and unintentional, and can lead to conflict. differences of interest which can then develop into a dispute.

In a transaction that uses sharia economic principles, each party has rights and obligations, and the law provides protection for each party to defend their rights and obligations. If these rights are violated, the party can file a lawsuit. A claim must have sufficient legal basis and this is the main requirement for a claim to be granted by the panel of judges, but it does not mean that every claim filed will be granted by the court. The court will grant the claim if, after an examination of the claim, the plaintiff can prove the arguments for the plaintiff's claim, so that the judge considers that the claim is true based on valid evidence and is not against the law, and produces a decision in favor of the plaintiff.

A default dispute is a situation where the parties or one of the parties does not fulfill the achievements as specified in the agreement (Eka, 2012). Subekti stated that, there are four forms of default, namely: Not doing what he was promised to do; carry out what was promised but not as promised; did what he promised but it was too late;

and the last to do something that according to the agreement should not be done (R Subekti, nd). In a normal situation between achievements and underachievement will be exchanged, but under certain conditions the exchange of achievements does not work as it should, resulting in an event called default.

Default is the result of non-fulfillment of achievements that occur in transactions between individuals, this is a conflict of interest that occurs due to differences of opinion or the interests of the parties, so to resolve the conflict of interest, efforts are needed to resolve it by re-creating the balance in order to restore disturbed conditions due to the occurrence of an These violations are intended to create order and peace in society. So that the settlement of disputes through the courts is a last resort. Article 2 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power regulates the functions of state courts, namely implementing and enforcing law and justice based on Pancasila, so that judges as officials holding judicial power have 2 (two) functions, namely: to implement and enforce law and justice (Sunarto, 2014).

A contract or agreement based on Sharia must of course be in accordance with the provisions set by Islamic law, including avoiding gharar, usury maysir and various prohibited prohibitions carried out in a transaction (Romli, 2021), if it is violated, then the contract becomes void.

In the event of a dispute, and the party who feels aggrieved can sue the Religious Courts so that the Defendant carries out the performance that should have been carried out by the Defendant, however, in the process of examining the case, the judge considers that the contract used is not in accordance with Sharia provisions, or there is a legal defect that resulted in the contract being canceled such as the lack of terms and pillars of the contract, or even between the practice and the contract that was not in accordance, while neither party filed a claim for cancellation of the contract used, especially if the lawsuit was filed with a simple procedure, in a simple event a Reconviction Claim was not allowed, so that it is possible for a decision to be made on the basis of a contract that is not in accordance with sharia provisions.

Based on the problems described above, the authors are interested in analyzing the legal provisions regarding the judge's authority to cancel contracts that are deemed not in accordance with sharia provisions without any request or lawsuit from the disputing parties.

B. THEORY FRAMEWORK

Islamic Economic Disputes

The development of the business world that uses sharia contracts, is in line with the disputes that occur between sharia economic actors objects (S Pradja, 2012). Disputes in the Big Indonesian Dictionary are anything that causes differences of opinion, disputes or disputes (Ministry of Education and Culture, 1990). Therefore, another word for dispute is conflict (Rasyid & Putri, 2019). In language, the two words contain the meaning of an event that describes a difference or conflict of interests between two or more parties. Conflict is a situation where if two or more parties are faced with a problem of an interest developing into a dispute (Hasan Basri et al., nd) if the party who feels aggrieved has expressed dissatisfaction or concern, either directly to the party considered to be the cause of the loss or to other parties (Muh Nasikhin, 2010). Thus, sharia economic disputes are a conflict between one or more parties involved in economic activity, where the economic activity is based on sharia principles. the occurrence of a dispute because one party defaults and or commits an unlawful act so that it can cause harm to the other party. Default is the negligence of one of the parties in fulfilling the achievements specified in the agreement (Sinaga & Darwis, 2020).

Ibn Farhum in his book *at-Tabsirah* argues that one of the goals of the judiciary is to eliminate chaos and distress, eliminate tyranny, and defend *mazlum* (people who are persecuted), resolve disputes, and tell people to do good, and forbid doing evil (Satria Effendi M. , Zein, 2004). Practically the parties to the dispute and submitting a settlement of Sharia economic dispute cases in court have entrusted their cases to judges to be examined, tried and given the fairest possible decision. The classical theory states that in civil procedural law what is sought is formal truth, (LJ Van Apeldoorn, 2005). then opinions emerged that contradicted this theory, such as M. Yahya Harahap who stated that material truth is sought in religious courts (Zaifudin, 2018), the formal truth referred to in this civil procedural law arises because it is the litigants who bear the burden of proving the truth in its entirety to be presented before the court.

Judges in examining, deciding and resolving sharia economic cases at the Religious Courts, are at least guided by the following provisions:

1. Provisions of Article 54 of Law Number 7 of 1989, Concerning the Law on Religious Courts.

2. Article 49 of Law Number 3 of 2006 Concerning the First Amendment to Law Number 7 of 1989.
3. Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989.
4. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
5. Perma Number 2 of 2008 concerning Compilation of Sharia Economic Law.
6. Perma Number 14 of 2016 concerning procedures for settling Sharia Economic cases.
7. Perma Number 5 of 2016 concerning Certification of Sharia Economic Judges.
8. Perma Number 1 of 2016 concerning Mediation Procedures in Courts.
9. Sema Number 2 of 2014 concerning Settlement of Cases at the Courts of First Instance and Appellate Level in 4 (four) Judiciary Environments.
10. Sema Number 6 of 2014 concerning Handling Call/Notification Assistance.
11. Sema Number 4 of 2016 concerning Enforcement of the results of the plenary meeting of the Supreme Court of the Republic of Indonesia in 2016 as a guideline for carrying out tasks for the Court.
12. Sema Number 2 of 2019 in the form of Legal Formulation of the Plenary Meeting of the Supreme Court.

In examining Sharia economic disputes, judges must examine the following provisions:

1. The judge must check the quality of the contract
2. The main source of law in Sharia Economic cases is the contract
3. The judge must examine whether the contract agreement meets the requirements and the pillars of the validity of a contract (Abdullah, 2016), which include: Does it fulfill the principle of freedom of contract; the principle of equality and equity; the principle of justice; principles of honesty and truth as well as written principles;
4. Does it contain things that are prohibited by Islamic law, which include: *usury* in all its forms, *gharar*, *maisir*, and *dzolim* (Rasyid & Putri, 2019).

So that in examining and deciding cases of Sharia economic disputes it is still guided by the provisions that have been stipulated in the guidelines for examining cases of Sharia economic disputes as well as the provisions of Islamic law (Kasmawati et al., 2022), so that judges who are organs of the court and are considered to understand the law, on whose shoulders obligations and responsibilities have been placed so that law and justice are upheld, whether based on what is written or not written, and nothing may conflict with the principles of justice.

In resolving civil cases, one of the judge's duties is to investigate the truth of the legal relationship that forms the basis of the lawsuit (Risiana & Taqiuddin, 2021). For this reason, the judge must know the truth of the incident in question objectively through evidence. Thus, proof intends to obtain the truth of an event and aims to establish a legal relationship between the two parties and determine a decision based on the results of evidence. The judge is an organ of the court that is considered to understand the law, and is obliged and responsible for upholding justice, whether written or unwritten, and nothing may conflict with judicial principles (Petannase, 2019), and ends with a decision.

Decisions are the end result of a trial process, decisions are the essence of the existence of a judiciary, the essence and purpose of all activities or judicial processes, decisions are expected to be a settlement of disputes which have burdened the parties since the dispute began. Among the judicial processes, only decisions have crucial consequences for the parties (Rubaie et al., 2014.). Decisions can explain and confirm a situation; nullify a legal situation or create a new legal situation; and can also be punitive (Mawey, Andre G., 2016).

Sudikno Mertokusumo states that the judge's decision is a statement that the judge as a State official who is authorized to pronounce in court and aims to end or resolve a case or problem between parties (Pattiwae, 2020). Not only what is said is called a decision, but also a statement that is stated in written form and then pronounced by the judge in court. A draft decision (written) does not have the power as a decision before it is pronounced in court by the judge (Mertokusumo, n.d.).

C. METHOD

In this study the authors used normative juridical research methods. Namely by describing how the statutory provisions regarding judge's decisions go beyond what is requested by the plaintiff in his petition (*State Approach*), while also using a conceptual *approach* by looking at the concept of Islamic law against judges in examining cases of sharia economic disputes which it was found that the contract used was not in accordance with the provisions of Islamic economic principles.

D. RESULTS AND DISCUSSION

Active Judges or Passive Judges in Civil Cases

In the trial process at the religious court, inequality can be found when one of the litigants is represented by a tough advocate while the other party is not. Apart from that, of course, many ordinary people do not understand the procedures for proceeding in court, so that they are often completely blind to the law and experience difficulties, both in seeking to grant their lawsuits and in defending themselves from attacks by opposing parties. Situations like this of course require the wisdom and activeness of a judge who upholds the value of impartiality (Sudirman L et al., 2019) to ensure that each party to a case obtains the same rights and obligations in order to achieve justice through the courts. This is already a mandate from Article 5 (1) of Law Number 48 of 2009 which states that the court shall judge according to law by not discriminating between the litigants, in the next paragraph, paragraph two (2) states that the court assists seekers of justice and tries to overcome all obstacles and obstacles to achieving a simple, fast and low-cost trial (Agustina, 2019; Mahardipa &, Ni Putu Rai Yuliantini, 2019).

In carrying out its main duties and functions, judges are always required to perform *ijtihad*. Textual interpretation of the text or laws and regulations is a method of determining law (Susanti & Efendi, 2019). In the event that the law has not yet been regulated, or when the law read textually is contrary to the conscience of justice, then another method of interpretation that is oriented towards the goals of law and *maqasid sharia* deserves to be an alternative in providing just and beneficial law. In Indonesia, positive law does not comprehensively regulate Islamic aspects, there are still many

legal voids that regulate muamalah in the sharia economy, or only regulate general and universal matters.

The opinion which states that in civil procedural law it is prohibited to make decisions containing *ultra petita* is not entirely correct, because in the Supreme Court Jurisprudence, there is a prohibition for judges to decide more than what is asked to experience a shift leading to being allowed to continue using accountable considerations (Sugeng Ariadi et al., 2019). The provisions on the principle of passive judges have undergone a shift, especially regarding the provisions of Article 178 HIR, Article 189 RBg, this argument is based on jurisprudence in civil court decisions (Saputra, rian, 2019).

Lilik Mulyadi further stated that the shift in the position of passive judges is also indicated by statutory regulations, as in the provisions of Article 5 paragraph (1) Law Number 48 of 2009 concerning Judicial Power which states that:

Judges and constitutional judges are required to explore, follow, and understand the legal values and sense of justice that live in society.

In addition, it is also prohibited to decide outside of the Plaintiff's demands opinion, this is not in accordance with the *ex aequo et bono*, this is because the prohibition is seen as a form of doubt about the independence and competence as well as the credibility of judges as interpreters of laws. If the petition contains a phrase stating that "if the panel of judges has a different opinion, ask for the fairest decision *orex aequo et bono* (Saputra, Dian, Jamaluddin, 2021), in the author's opinion that the applicant or litigation party has transformed their expectations in accordance with the justice upheld by the Judge. This prohibition makes judges only mouthpieces for the law in examining civil cases, and can lead to decisions that are far from the values of justice and expediency.

In resolving civil cases in the Religious courts, the parties have practically entrusted their case to the judge to be tried and given the fairest possible decision. This is the reason why judges must be active. Judges are not just mouthpieces for laws that only apply legal regulations, but state officials who have high knowledge, dignity, and authority and are a place to complain for justice seekers (Saputra, 2019). The task of the judge is to determine the truth based on the evidence that has been carried out based on the applicable law and the legal awareness and ideals that are trusted.

Provisions for Settlement of Sharia Economic Disputes in Indonesia.

The positive law currently in effect does not comprehensively regulate Islamic aspects, there are still many legal voids that regulate muamalah in the sharia economy, or only regulate matters that are general and universal, or even contradict each other. This is very unfortunate, considering that Indonesia, whose majority population is Muslim, and the enthusiasm of the Muslim community to carry out Islamic law is very high.

The authority of the religious courts to examine and decide on cases of shari'ah economic disputes is still in doubt several times, due to overlapping regulations and inconsistencies in existing provisions, until now the execution of arbitration awards is still the authority of the district court, even though the contract used by the disputing parties is contract based on Islamic provisions.

In response to the additional authority of the Religious Courts to examine sharia economic dispute cases, examining sharia economic dispute cases must be examined by judges who already have the competence to examine sharia economic cases and are certified. Supreme Court Regulation (Perma) Number 14 of 2016 provides for special qualifications for judges who can examine and adjudicate sharia economic disputes. Perma explained that judges who handle sharia economic dispute cases must have Sharia Economic Judge *certification* . justice.

In response to this, the Supreme Court has several times established rules and procedures for examining sharia economic disputes, such as Supreme Court regulation number 2 of 2008 concerning the compilation of sharia economic law which is a guide for judges deciding and examining cases of sharia economic disputes. And several other provisions.

Some of these provisions are inconsistent and appear to contradict each other, both with other supreme court regulations, or even with Islamic sharia provisions, such as the provisions in Perma number 14 of 2016 with sema number 4 of 2016, where according to the author the provisions stipulated by the supreme court contradict each other behind.

The provisions in Perma number 14 of 2016 instruct the judge as follows "*All decisions and court decisions in the field of sharia economics must include reasons and basis for the decision but must also contain sharia principles which are used as the*

basis for adjudicating”, this provision is a provision that should be appreciated by the Islamic community with the enthusiasm to apply Islamic law in court decisions, and make Islamic law the legal basis for judges' considerations in examining sharia economic disputes.

However, on another occasion the supreme court issued a provision that hurt this spirit, in the Supreme Court Circular Letter Number 4 of 2016 concerning the enactment of the formulation of the results of the 2016 plenary meeting of the supreme court chambers as a guideline for carrying out tasks for the court, there is a provision that lawsuits for default in the field of syar' economic contracts judges *ex officio* may not cancel a contract that is considered not in accordance with sharia principles if there is no claim for cancellation of the contract from the parties in the case concerned, this becomes a big problem if the disputing parties do not understand the basics of Islamic sharia, so they unknowingly entered into a contract that had defects, because their ignorance resulted in the litigants not filing a lawsuit for cancellation of the contract which was used as the basis of the transaction.

In other provisions, the Supreme Court Circular Letter Number 2 of 2019 is in the form of the Legal Formulation of the Plenary Meeting of the Supreme Court Chamber of the Supreme Court letter C number 2.b which reads “Claims for Cancellation of Sharia Economic Contracts by debtors whose contracts conflict with Islamic law may only be carried out before the object of the contract is utilized by the debtor, and if the contract is canceled, the debtor is punished to return the principal of the loan plus the margin/nisbah in accordance with the current loan period. or not the contract, even though the contract is the principle of the emergence of a transaction, the contract also has conditions and pillars that must be fulfilled, and if the conditions and pillars are not fulfilled it results in the cancellation of the contract, but in the SEMA it prohibits the Judge from examining the validity of the contract only because the object of the contract has been exploited by the defendant.

Provisions that are different and contradictory to one another cause confusion, on the one hand judges are required to apply Sharia principles, while on the other hand judges are as if ordered to close their eyes if they find a contract that is not in accordance with sharia, judges are directed to keep letting for contracts that are not in accordance with Sharia principles if it is prohibited to cancel the contract, even though

sharia provisions are not only an ideology, but must be applied in every transaction and judges must prioritize Sharia provisions (Mohammad, 2020).

In a decision, the judge is required to include the reasons that form the basis of a decision, and must contain sharia principles which are used as the basis for adjudicating in a decision. Consideration is the basis for the fall of a decision, this is a responsibility from the judge to the community, to explain why and what are the reasons for the judge to make such a decision, so that therefore it has objective value (Sugeng AS Gambang & Sujayadi, 2011).

In civil procedural law, there is a principle which according to the author of this principle provides an opportunity for judges to give decisions beyond what is requested or in other words *ultra petita*. The principle referred to is the principle of *Ex Aequo Et bono*, which is a phrase used in the *petitum* of a lawsuit which reads "if the panel of judges has another opinion, then request the fairest possible decision", this clause provides an assumption that the judge can grant and decide on a case that exceeds what was requested by the Petitioner on the grounds of justice. Because according to the author, the purpose of this principle is none other than to realize aspects which are the ideals and goals of the law itself, such as aspects of justice, aspects of certainty, and aspects of legal benefits. This is because ideally a decision must contain three elements, namely justice, legal certainty, and expediency.

Judges in deciding a case are required to exercise *ijtihad*, by expending all their energy and thoughts to find the best decision in a case, judges carry out interpretations of texts or statutory regulations to eventually become a legal provision, by using the judge's *ijtihad* in resolving cases, which can give birth to juridical products, both decisions that can be used as jurisprudence, as well as being a form of application of Islamic law in resolving a dispute, which is produced by judges (Abdullah & Wijaya, 2019). In the event that the law has not yet been regulated, or when the existing law is contrary to the conscience of justice, then another method of interpretation that is oriented to the goals of law and *maqasid sharia* deserves to be an alternative in providing just and beneficial law. What's more, at this time there are still many legal vacuums that regulate *muamalah* in the sharia economy, or only regulate matters that are general and universal in nature, so that religious court judges are required to carry out legal reconstruction based on the opinions of *fiqh* scholars and allow the judge's

decision to take the *contra legem* route to the applicable positive law rules (Mustofa, Abdul Halim, 2019). The breadth of the treasures of Islamic jurisprudence is a source of law in the form of a very valuable doctrine for efforts to ensure justice and the benefit of society, especially when grammatical interpretations conflict with the conscience of justice and also become a means of enforcing Islamic law in *muamalat*.

However, cases that are *contra legem* are casuistic in nature and not all cases can be treated equally, in essence, the Judge must examine these cases in detail so that a decision can then be made whether to comply with statutory provisions or to interpret or form a new law. The judge as *Judge Made Law* and as the embodiment of the law, is obliged to uphold the values of justice that live in the midst of social change in society, therefore the judge has the authority to decide cases with *contra legem* if a provision in the regulation is contrary to decency, principle and not in accordance with conditions and circumstances that developed contrary to decency, public order, and not in accordance with the reality that is happening (Hartini, n.d.).

If the contract is not in accordance with Sharia provisions, the decisions will be non-resolving in nature and have the potential to cause disputes in the future as well as decisions which, although condemnatory in nature, cannot be executed. While the judge has the responsibility to receive, process and decide cases so that they do not cause any more problems in the future.

Based on the theory of legal discovery there are no laws and regulations that can cover all of human life, so there are no laws and regulations that are as complete as possible (Helmi, 2020). The determination of Islamic law is aimed at creating a benefit for mankind. In practice, it requires an institution for enforcement because without an institution, these laws cannot be applied.

This is for the sake of realizing a fair justice system, even though judges are given the authority to decide other than what is requested in the petitum, this does not mean that judges can act arbitrarily, but that judges always decide cases based on legal facts revealed at trial, such as in the event that it is found that the contract used is not in accordance with the shari'ah provisions, the judge can cancel the contract used. Judges in making decisions must also explore existing sharia provisions, and use all legal discovery instruments, so as to provide decisions that are in accordance with sharia provisions, because in truth the judge is the end of a dispute, *Hukmu Al Hakim yarfa'u*

Al Khilaf, and if the parties do not agree with the judge's decision, you can submit an objection to a higher level of court, such as by making appeals, cassation or even extraordinary legal remedies, namely Judicial Review.

In fact, why are sharia economic cases given to religious courts? Apart from being ordered by law, according to the author, this is because the religious courts carry out Sharia principles, while the Sharia principles in the Perma seem to be set aside by these regulations, besides that the existence of a judicial institution is to protect people whose rights have been seized by parties other actions that are not in accordance with Islamic law, and function to rectify all actions that go out of line to be returned according to Islamic provisions (H. Abustam, 2016). In carrying out a Sharia contract, it must be based on the principle of divinity, so that it cannot be separated from the provisions of Islamic law. In addition, the existence of the divine principle causes that in a transaction there is not only a relationship between two humans only horizontally, but also involves a vertical relationship between creatures and their creators, of course there are predetermined signs, you cannot just make an agreement without pay attention to the provisions of the law.

E. CONCLUSION

In carrying out their main duties and functions, judges are required to carry out *ijtihad* by interpreting texts or statutory regulations, in the event that the law has not yet been regulated, or when the laws are deemed to be contradictory, the judge must explore existing sharia provisions, and use all of them. legal discovery instrument, so as to provide a decision in accordance with the provisions of the Shari'a; there are still many legal vacuums in sharia economic cases resulting in the judiciary making rules to carry out examinations of sharia economic cases. Where in several provisions found inconsistencies in the regulations made, or even contradicting each other, as in Perma number 4 of 2016 which prohibits judges from canceling contracts are deemed not in accordance with Sharia if no charges are filed, and Supreme Court Circular Letter No. 2 of 2019 which prohibits judges from canceling Sharia Economic Contracts, whereas in Perma number 14 of 2016 orders judges to decide Sharia economic cases must be based on Sharia provisions, this can cause contracts that are not in accordance with Islamic law to be used as the basis for decisions, so judges are prosecuted to carry out legal

reconstruction based on the opinions of fiqh scholars and allow the judge's decision to take the *contra legem route* to the applicable positive legal rules, and the judge is required to determine outside of the Plaintiff's lawsuit, in order to fulfill the divine principle and so that the decision remains in the corridor provisions that have been determined by syar it is Islam.

REFERENCES

- Abdullah, EA (2016). *contract as sharia text*. 1–8.
- Agustina, MIL (2019). *Application of the Principles of Simple, Fast and Low-Cost Trial in the Accumulation of Divorces and Joint Assets at the Syar'iyah Court in Banda Aceh*. Samarah: Journal of Family Law and Islamic Law, 3(1), 241–266.
- Abdullah, Z., & Wijaya, E. (2019). *Dynamics of Ijtihad Implementation in the Field of Sharia Economic Law in Indonesia*. Journal of Law & Development. 49(2). 299.
- Ministry of Education and Culture. (1990). *Big Indonesian Dictionary*. library hall.
- Eka, A. (2012). *Solutions When Trapped in Business Cases*. Achieve Asa Success.
- Hasan Echlos, JM, & Shadily. (1996). *Indonesian English and Indonesian English Dictionary*. Gramedia.
- H. Abustam. (nd) *The Implementation of the Pledge of Divorce Before a Religious Court Session (A Review of the Philosophy of Islamic Law)*. Journal of Islamic Family Law. Vols: II. 159-178.
- Hartini. (2009). *Exceptions to the Application of the Ultra Petitum Partium Principle in the Proceedings of the Religious Courts*. Legal Forum. Volume: 21, Number: 2. 203-408.
- Hasan Basri, A., Muna, R., Alwi Hasan Siregar, M., (2021). *Alternative Despute Resolution (Adr) in Islamic Business Disputes Positive Legal Perspectives and Islamic Law*. Al-Mabsut. Vol: 15. No: 2. 243-254.
- Helmi, M. (2020). *Legal Invention by Judges Based on Constructivism Paradigm*. Kanun Journal of Law Science. 22(1). 111–132.
- Kasmawati, K., Rivaldi, M., & Saputra, RA (2022). *Legal Analysis of Business Capital Financing Guarantees in Mudharabah Contracts in Islamic Banking*. PAMALI: Pattimura Magister Law Review. 2(1). 43.
- LJ Van Apeldoorn. (2005). *Introduction to Law*. Pradnya Paramita.
- Mahardipa, MW, & , Ni Putu Rai Yuliantini, RAW (2019). *Implementation Of The Principles Of Simple, Quick And Low Cost Justice In Criminal Cases In Class I*

- Singaraja State Court B. E-Journal Of The Yustisia Community, Ganesha University of Education, Department of Law, 2(3), 181–191.*
- Mawey, GA (2016) *Considerations of Judges in Delivering Decisions Regardless of All Lawsuits*. Lex Crimen. Vol: V No: 2. 82-90.
- Mertokusumo, S. (nd). *Indonesian Civil Procedure Code*. Jakarta. liberty.
- Mohammad, L. (2020). *Settlement Of Legal Disputes In Islamic Banking*. Madani Shari'ah, 3, 61–71.
- Mushthofa, Abd. H. (2019). *Judge Ijtihad in the Application of the Contra Legem Concept in Determining Cases in the Religious Courts*. Legitima, Vol: I No: 2.1-17
- Muh Nasikhin. (2010). *Islamic Banking And Dispute Resolution System*. Fatawa.
- Pattipawae, DR (2020). *State Administrative Decisions Having Executorial Power Are Not Complied With By State Administrative Officials*. Saniri, 1(November), 1–17.
- Petannase, I. (1999). *The Role of Judges As Modifiers And Law Reformers*. 108-126
- R Subekti. (n.d.). *Contract Law*. Time Advisor.
- Rasyid, A., & Putri, TA (2019). *Authority of the Sharia Banking Dispute Resolution Institution*. *Judicial Journal*, 12(2), 159.
- Risdiana, R., & Taqiuddin, HU (2021). *Application of the Principle of Minimum Proof in Civil Law Cases (Study of Decisions of the Selong District Court Number: 55/Pdt.G/2020/PN.Sel)*. *Scientific Journal of Mandala Education*, 7(2), 267–277.
- Romli, M. (2021). *The Concept of Terms of Contract Validity in Islamic Law and Terms of Agreement Validity in Article 1320 of the Civil Code*. *Tahkim*, XVII(2), 177–188.
- S Pradja, J. (2012). *Sharia Economics* . Faithful Library.
- Saputra, R., (2019). *Shifting Principles of Passive Judges to Active in Civil Judicial Practices from a Progressive Legal Perspective* . Legal Discourse: Journal of the Faculty of Law, University of Slamet Riyadi. Vol: 25, numbers: 1.10-18.
- Saputra, Dian, Jamaluddin, Y. (2021). *Protection Of The Rights Of Women And Children In The Verstek Decision At The Idi Shar'iyah Court*. *Journal of the Faculty of Law, Malikussaleh University*, 9(2), 1–24.
- Satria Effendi M. Zein. (2004). *Contemporary Islamic Family Law Problems*. golden.
- Sinaga, NA, & Darwis, N. (2020). *Default and Consequences in the Implementation of the Agreement*.

- Sudirman L, Hasanuddin Hasim, & Abdul Hafid. (2019). Implementation of the Code of Ethics and Code of Conduct for Judges at the Makassar State Administrative Court. *Ocean Justice Journal of Law*, 14(2), 179–199.
- Sugeng AS Gambang, & Sujayadi. (2011). *Civil procedural law and litigation documents for civil cases*. golden.
- Sunarto. (2014). *The active role of judges in civil cases*. golden.
- Susanti, DO, & Efendi, A. (2019). Understanding the Text of the Law with the Exegetical Interpretation Method. *Kertha Patrika Journal*, 41(2), 141.
- Sugeng Ariadi, BS, Wahyudi, J., Akbar, R., Application, K., & Sugeng Ariadi Subagyo, B. (2014). *Study of the Application of the Ultra Petita Principle to Petitum Ex Aequo Et Bono*. *Yuridika*: Vol: 29. Number: 1100-112.
- Yani Iyan, R. (2012). The Role of Law in Economic Development. *Journal of Socioeconomic Development*. Number: 5. 166-180.
- Zaifudin, T. (2018). Formal Truth in Evidence in Religious Courts. *Actualita*, Vol: I. Number: 2. 330-349.