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Dispute Resolution Efforts for Sharia Banking Profit-Sharing Agreements

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ABSTRACT
Islamic banking relies on profit-sharing agreements as one of its fundamental financial instruments, adhering to the principles of justice and partnership in sharia law. However, disputes often arise between banks and customers regarding the distribution of profits and losses. This study examines the dispute resolution mechanisms for profit-sharing agreements within Islamic banking, focusing on litigation in religious courts and non-litigation processes such as mediation and arbitration. This research aims to evaluate the effectiveness and compliance of these mechanisms with Sharia principles while also proposing improvements to regulatory frameworks. A mixed-method approach was employed, combining normative juridical analysis and empirical research. The normative juridical method was used to review existing laws and regulations related to Islamic banking and dispute resolution. At the same time, the empirical data was gathered through interviews with key stakeholders such as banking practitioners, customers, and mediators involved in dispute resolution. The results indicate that non-litigation mechanisms, particularly mediation, are more efficient and cost-effective than litigation. However, there remains a need for greater public understanding and stronger institutional support to ensure the fairness and transparency of these processes. This research recommends enhancing dispute resolution systems in Islamic banking, aligning them more closely with legal and sharia standards.

Introduction

Islamic banking is critical in advancing a financial system grounded in Sharia principles, emphasising justice, transparency, and partnership. One of the key financial instruments in Islamic banking is the profit-sharing agreement, which governs the distribution of profits and losses between the bank and its customers based on pre-agreed ratios. This system, particularly through contracts like *mudharabah* and *musyarakah*, is seen as a way to promote economic growth while adhering to Islamic principles that prohibit interest (*riba*). However, the practice of profit-sharing agreements has not been without its challenges.

The urgency for this research arises from the growing number of disputes between Islamic banks and their customers regarding calculating and distributing profits and losses. These disputes often stem from varying interpretations of the terms in profit-sharing agreements, fluctuations in economic conditions, and the information imbalance between the bank and customers. Resolving such disputes is vital for maintaining the credibility and sustainability of Islamic banking. Moreover,

understanding and refining dispute resolution mechanisms is critical in ensuring Islamic banking aligns with Sharia principles while fostering public trust and participation in the sector.

Previous research has examined various dispute resolution mechanisms, such as mediation, arbitration, and litigation in religious courts (Tim Bank Mega Syariah, 2023). Studies have noted that while non-litigation mechanisms are often faster and more cost-effective, public understanding and institutional frameworks still need to be enhanced to ensure fairness and transparency in the resolution process (Efendi & Bakhri, 2018). Despite these efforts, gaps remain in understanding how to balance compliance with sharia principles and legal efficiency in practice. Additionally, previous studies have not fully explored the specific factors that lead to these disputes or how they can be preemptively mitigated.

This research addresses these gaps by analysing litigation and non-litigation methods for resolving disputes in profit-sharing agreements. It seeks to examine the effectiveness and compliance of these mechanisms with sharia law, providing a comprehensive understanding of how to enhance dispute resolution in the Islamic banking sector. The study will also explore how regulatory frameworks can be improved to support Islamic banking institutions and their customers in resolving disputes efficiently and justly.

This research examines efforts to resolve disputes arising from profit-sharing agreements in Islamic banking. Various dispute resolution mechanisms, both through litigation in religious courts and non-litigation such as Sharia mediation or arbitration, will be analysed in the context of their compliance with Sharia principles and effectiveness in resolving disputes fairly and quickly. Thus, this research is expected to improve the understanding of the dispute resolution process in the Islamic banking sector and support the development of Islamic banking in Indonesia.

Materials and Methods

Normative Juridical Method

This method reviews the applicable laws and regulations related to Islamic banking and dispute resolution. The research will focus on the study of legal rules relating to profit-sharing agreements, such as the Sharia Banking Law and fatwas of the National Sharia Council (DSN), as well as regulations governing dispute resolution mechanisms through religious courts and sharia arbitration institutions.

The normative juridical analysis aims to understand how these legal provisions are applied in settling Islamic banking disputes and whether there are gaps or discrepancies in their implementation.

Empirical Method

This method involves interviews or surveys with parties involved in dispute resolution, such as Islamic law practitioners, Islamic banks, customers, or mediators in non-litigation dispute resolution institutions. The empirical data is used to understand how profit-sharing agreement disputes are resolved in practice, the effectiveness of various settlement mechanisms, and the challenges faced in the process.

With this method, researchers can identify gaps between legal rules and their implementation in the field.

The combination of these two methods allows the research to comprehensively analyse legal theory and practice to provide more appropriate recommendations for resolving disputes over profit-sharing agreements in Islamic banking.

Results and Discussions

As is known, Sharia Bank does not recognise the concept of interest in its profit-sharing system for customers. Instead, Sharia Banks apply the principle of profit sharing or *Misbah*. Through *Misbah* or profit sharing, the bank and the customer will get a legitimate profit in Islamic Shariah to avoid usury. The calculation itself has been determined from the beginning through the contract. Simply put, profit sharing provided at Sharia Banks is a substitute for the interest method in conventional banks. Sharia financial institutions and customers will share profits and risks in the concept of profit sharing. This is a special attraction for customers who want to avoid the practice of usury, which is forbidden in Islam. The provision of profit sharing also has definite rules according to the fatwa of the Indonesian Ulema Council (MUI), the Financial Services Authority (OJK), and the provisions of the banking company itself. In addition, there are several other advantages of the profit-sharing principle applied by Sharia Banks, including (Tim Bank Mega Syariah, 2023)

1. Has a clear agreement. The profit-sharing ratio between the owner of the funds (*Shahibul Mal*) and the business manager (*mudharib*) has been determined from the beginning based on mutual agreement.
2. There is transparency about the profits earned.
3. Customers will avoid worries because the bank will transparently provide information about banking business activities, profits received, and so on.
4. Certainty regarding the timing of the profit sharing provided.

The amount of profit sharing obtained by the customer and the bank has been agreed upon. The percentage proportion has also been determined in the contract agreed by both parties. However, in practice, determining the amount of this ratio is influenced by various factors, among others. One factor that affects the level of profit sharing received by customers is the composition of fund placement. In other words, the determination of profits between one customer and another can differ according to the amount or composition of funding. As is known, the profit-sharing portion obtained by the Sharia Bank will be used to finance the bank's operational activities. This gain becomes the bank's fair profit itself, where the amount depends on each bank's effectiveness level. In other words, the real performance of the business will determine how much profit is obtained. If the bank gets a large profit, the customer will also get a large portion.

The last factor that affects the profit-sharing rate is the risk factor, especially in financing products. For information, banks generally profit from financing products with higher risks. However, in this scheme, the customer does not need to bear the loss because it will be considered a business risk. In practice, Bank Syari'ah only sets the margin (profit) in the form of a percentage of a percentage, if indeed the business that is given a financing facility develops and grows, of course, Bank Syari'ah gets a balanced margin (profit), which is also much greater. In this case, Syari'ah Bank's profit has an expectation and an opportunity to get a much greater profit than conventional banks. Conventional banks, for example, only get monthly from the capital 2 per cent per month, 2 per cent of the capital he gave. If the Sharia Bank can be more, maybe it can reach 10 per cent, but sometimes it can also be less than 2 per cent or potentially minus. The minus is what the Sharia Bang is not ready to accept. Bank Syari'ah wants only profit and continues to profit.

The profit-sharing ratio applied by the Sharia Bank has deviated from the provisions of the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). The portion of the Nisbah that is determined is the Nisbah multiplied by the average debit balance divided by the ceiling,

so the ceiling is multiplied by sales. When Bank Syari'ah facilitates financing at the financing ceiling, for example, 1 billion, it will get profit sharing with the following calculation: Sales value multiplied by the average debit balance divided by the ceiling. So if, for example, it is taken, it gets a ceiling of 1 billion, then the debit balance is 1 billion. Nothing has been returned because the money is all used and taken. For example, it is agreed that the ratio is 0 point one per cent of the sales. The nisbah is small, zero point one per cent, but from sales. So if, for example, the sales are 1 billion. Then, it is multiplied by 1 billion. Suppose the sales are 3 billion. Start multiplying it by 3 billion. This is contrary to the DSN-MUI fatwa No. 8 concerning musyarokah financing. In musyarokah financing, there is no profit-sharing calculation as done by the Sharia Bank, so this formula is not allowed.

Bank Syari'ah Mandiri, which currently markers into Bank Syari'ah Indonesia (BSI), uses the Fatwa of the National Shari'ah Council of the Indonesian Ulema Council (DSN-MUI) Number 15. However, Number 15 is known for two methods. The first is profit sharing, and the second is net revenue sharing. Net revenue is revenue minus cost of goods acquired (COGS). While what Bank Syariah Mandiri practices is revenue sharing, the net is eliminated. By the definition of profit sharing, it is the share of results calculated from revenue after deducting capital and costs. This capital is the Cost of Acquisition (COGS), and this cost is incurred. Net revenue sharing is profit sharing calculated from revenue after deducting capital and deducting the Cost of Goods Manufactured. The formulation by the Fatwa of the National Shari'ah Council of the Indonesian Ulema Council (DSN-MUI) should be used. Profit sharing is sales minus capital minus costs. If it is by Net revenue sharing, the ratio times one average divided by fatwa multiplied by sales minus capital should be so. However, the fact is that the profit sharing taken by Bank Syariah Mandiri is Net revenue sharing like this. This is not known in any Fatwa of the National Shari'ah Council of Majlis Ulama Indonesia; there is no multiplication by sales.

Religious courts also handle disputes over profit-sharing in the form of profit-sharing contracts, namely musyarakah contracts and mudharabah contracts, depending on the lawsuit. Profit sharing can be done from gross profit (net revenue) or net profit (net profit), depending on which is more profitable for both parties and whether profit sharing is allowed from assumptions or net revenue (turnover). At the same time, the Fatwa regulation of the National Shari'ah Council of the Indonesian Ulema Council stipulates profit-sharing distribution only with 2 approaches: net revenue (gross profit) or net profit (net profit). It needs to be studied more deeply; it is clear that both systems if allowed by DSM-MUI, are legal. Unless the DSM-MUI does not regulate it, it is not allowed. Suppose there are other opinions related to it. In that case, the judge can make a basis for consideration to decide of course by holding the Al-Quran, Sunnah which is summarised in the Fatwa of the National Shari'ah Council of the Indonesian Ulema Council (DSN-MUI) and the Compilation of Shari'ah Economic Law (KHES) as a legal norm as a basis for consideration of judges in deciding Shari'ah economic cases in which the case of resolving disputes over Shari'ah banking profit sharing agreements in religious courts.

In the fatwa of the National Shari'ah Council of the Indonesian Ulema Council (DSN-MUI) itself, when it comes to the issue of profit sharing, there should be nothing that is covered up. This means that both in terms of capital and surplus, including losses when unexpected things happen in the course of its journey, This means that as long as everything is open, then this is by the fatwa of the National Shari'ah Council of the Indonesian Ulema Council (DSN-MUI), there is no problem with the

distribution. Some sometimes use distributive justice. This means that one has more capital; the return is, of course, no problem.

Islamic economic activities are currently not covered by existing positive laws. Regarding the authority that makes norms, the position of DSN is still an NGO, while it is given the authority by law to make norms that bind the public. This shows that the constitutional structure is not neat; State organs must make norms that bind the public. Moreover, DSN members become the Sharia Supervisory Board when there is a conflict of interest. Finally, it is not a supervisor of implementing sharia principles but justifies deviations from those in Islamic banking institutions. Sharia is only a stamp, pity for people who want to improve their mullah by avoiding Conventional Banks, but what is faced is no better. Someone who says based on the Quran, based on sharia, but deviates from all. People who say this is not by the Quran and Sharia are worse than those who say it according to Sharia but deviate from all so that many people are deceived. However, people who choose this are not by sharia; this is a Ribawi bank; they do not deceive when they come because they choose. In this case, many are trapped by the symbols of sharia. If it is Ribawi, clearly haram, then it is abandoned. In this case, the Muslim community is deceived into thinking it is Sharia-compliant, thinking it can follow Sharia, but it turns out that the mullah is conventional.

Islamic banks' profit and loss sharing system is based on gross net income. However, Islamic Banks set revenue (turnover) in the profit sharing system as the value of calculating the ratio. This is done because Islamic Banks do not want to lose or cannot. If taken from profit and loss sharing, then the Islamic Bank has the possibility of experiencing losses when customers experience problems so that they cannot pay instalments. Meanwhile, in the DSN fatwa, the only two choices are net revenue and net profit, which cannot be derived from revenue. If you do not use revenue, what if you lose everything and are responsible for paying the deposit to customers of the Islamic Bank? Justification (justification) for their attitude and the problem is justified by members of the Sharia Supervisory Board if profit sharing from revenue is justified/permitted. The dispute arises from the unequal position of the debtor and the creditor. The creditor considers that the debtor needs funds to design any agreement clause without having to negotiate or discuss the contents of the agreement/contract. Even though the Islamic Bank or the Debtor wants to make a good faith effort to do good business by implementing the concept of sharia, the Islamic Bank should explain that the provisions in profit sharing are regulated in the DSN MUI fatwa, whether from Net Revenue or Net Profit. If the Islamic Bank wants to take a path outside of that, the Islamic Bank must convey to the Debtor whether he agrees or not if he takes the choice or offers options, not both, as in the inclusion of the DSN MUI fatwa. Islamic banks want to take from Revenue, which should be like that. We Islamic banks cannot use this because it will harm Islamic banks. Do not let debtors be lied to as if this is a Syrian contract, but they are doing legal smuggling in the agreement. Islamic banks want to do shirkah with debtors because they are Islamic banks that use the concept of sharia in their muamalah. They must be conveyed when they want to get out of Sharia rules. I am an Islamic bank; we want to set aside the rules of Sharia. Do you (the debtor) agree?

When questioning whether it is not following Sharia when it is already running, there is no more room for questioning; at the beginning, it was conveyed that we have both set aside the Sharia rules related to profit sharing. Islamic banks must say, "Tell me if you want to sin. Say it. We agree to disobey it" This is a trap. If from Net Revenue, the consequence is that the bank does not need to occupy people because they only need to see proof of COGS evidence; in COGS from the price of drugs, every month

it is reported, where are the sales, how much COGS is so many times so many, no need to place people. If Net Provit, there must be a bank party placed to represent the bank, ensuring that the business process is in accordance so that the Net Provit calculation does not have a gap for fraud.

The percentage must be explicit, and a percentage margin must be part of the contract requirements and stated at what percentage. What distinguishes conventional banks from Islamic banks is whether the percentage of revenue is from conventional or Islamic banks must be from net revenue or net profit. From Accounting Net Revenue (revenue there is hpp the difference between revenue minus hpp is Net Revenue), or below to the end, namely Net Profit, it is complicated to make bank banks just from net revenue. If it is taken above from revenue, for example, 10 billion, if the COGS is 9.5 billion, it becomes blunt, even though the percentage must be from revenue minus COGS. Sharia or not is not because the percentage is stated (explicitly) from where it distinguishes sharia or not if the percentage must be explicit in Islamic banking. Islamic BS is impossible not to know Net Revenue and Net Profit as an option, using revenue as a form of security. We are invited to sin but not offered. They do legal smuggling as if they are inviting debtors to invite debtors to Sharia when they are not; they mix the rules of the game or agreements that are not based on Sharia principles.

In the profit-sharing agreement, there must be equality between the customer and the bank. This is in line with the opinion of Muhammad Hatta, who said that equality must occur. Muhammad Hatta said that profits are divided among members according to their services in advancing the association. For example, members who buy many goods for their needs in a cooperative, more also get a share of the profits than members who buy little. This basis is called the basis of economic democracy in cooperatives. An important article for cooperatives is on how to maintain harmony. Disputes between members or between members and the management must be reconciled to the satisfaction of both parties. Therefore, the articles of association must also contain rules on reconciling such disputes. The interest paid on money borrowed to start a company is productive rent. The rent is part of the profit made with the help of other people's money. For the lender, the calculation is based on the possibility of getting a profit from his money. According to Hatta, taking productive rent is sharing the profit with the person who runs the money by determining the share of the owner of the capital in advance (Efendi & Bakhri, 2018).

Specialised Courts and Sharia Certification of Judges

The involvement of the general judiciary in dispute resolution raises problems, first concerning the competence of judges in handling cases of shari'ah banking disputes with shari'ah principles. The second problem is horizontal conflict with the Religious Courts Law, which means that the Sharia Banking Law is not synchronised and harmonious with existing legislation. This is considering that the issue of the Shari'ah economy, the settlement of litigation disputes has been regulated in the Religious Courts Act, which is included and becomes the absolute competence of religious courts. The existence of a choice of law (option) for justice seekers and the general court becomes one of the choices of forum for the parties to resolve disputes or disputes, causing the independence of the Religious Courts to be disturbed. This problem (dispute resolution) can lead to inefficiency, namely disharmony between one law and another. The competence referred to according to "most" experts is no longer absolute, namely with the promulgation of Law Number 21 of 2008 concerning Sharia Banking. The problem is that Article 55 of the law provides arrangements for settling Sharia banking disputes. Article 55 of Law Number 21 Year 2008 on Sharia Banking states that: (1) Dispute settlement in Sharia Banking shall be conducted by a court within the Religious Courts; (2) If the parties have agreed on dispute settlement other than as referred to in paragraph (1), dispute

settlement shall be conducted by the contents of the Agreement; (3) Dispute settlement as referred to in paragraph (2) shall not be contrary to the Sharia Principles. In the Explanation of Article 55 paragraph (2), it is stated that what is meant by "dispute resolution shall be conducted under the contents of the Deed" is an effort through a. deliberation; b. banking mediation; c. the National Shari'ah Arbitration Board (Basyarnas) or other arbitration institutions; and d. through a court within the General Court.

The amendment of Law No. 7 of 1989 gave the authority of Religious Courts wider powers, which originally, as stipulated in Article 49 of Law No. 7 of 1989, was only tasked and authorised to examine, decide, and resolve cases at the first level between people who are Muslims in the fields of a) marriage, b) inheritance, wills and grants made under Islamic law, and c) waqf and shadaqah. With the amendment of the Law, the scope of duties and authority of the Religious Courts was expanded. Based on Article 49 letter (i) of Law no. 3 of 2006, the Religious Courts have the duty and authority to examine, hear and settle cases at the first level between people who are Muslims in the field of shari'ah economics which includes: a) shari'ah banks, b) shari'ah microfinance institutions, c) shari'ah insurance, d) shari'ah reinsurance, e) shari'ah mutual funds, f) shari'ah bonds and shari'ah medium-term securities, g) shari'ah securities, h) shari'ah financing, i) shari'ah pawnshops, j) pension funds of shari'ah financial institutions, and k) shari'ah businesses.

In the explanation of the Article, among other things, it is stated: "What is meant by "between people who are Muslims" is including people or legal entities that automatically submit themselves voluntarily to Islamic law regarding matters that fall under the authority of the Religious Court by the provisions of this Article." From the explanation of Article 49, all customers of Sharia financial institutions and financing institutions or conventional banks that open Sharia business units are automatically bound by the provisions of Sharia economics, both in the implementation of contracts and dispute resolution. The disputes in the field of Sharia economics, which are the authority of the Religious Court, are:

1. Disputes in the field of Sharia economics between financial institutions and Sharia financing institutions and their customers;
2. Disputes in the field of Islamic economics between fellow financial institutions and Islamic financing institutions;

Disputes in the field of Sharia economics between people who are Muslims, where the agreement contract explicitly states that the business activities carried out are based on Sharia principles. The advantages of the Religious Court in resolving Sharia banking disputes include:

1. The Religious Courts have human resources who already understand Sharia issues; it is just a matter of improving their insight and knowledge through regular education and training;
2. Religious Court offices exist in almost all regions and municipalities throughout Indonesia, and most use Information Technology (IT) networks online. Thus, compared to BASYARNAS, whose existence is still concentrated in the capital region, the Religious Courts have an advantage in ease of service.
3. It has the support of the majority of Indonesia's population, namely the Muslim community, which is currently highly motivated to uphold their religious values;
4. There was strong political support because the government and the House of Representatives had agreed to expand the authority of the Religious Courts on February 21, 2006, so that the birth of Law No. 3/2006 was a necessity to adjust to existing legal demands, namely the paradigm shift from family courts to modern courts.
5. There is support from the Banking authority (Bank Indonesia) and support from Islamic Financial Institutions around the world;

In addition to the advantages and advantages above, the Religious Courts also have several weaknesses in their authority in resolving Sharia economic disputes, especially Sharia banking, namely:

1. Religious Court officials, most of whom have a background in sharia and legal disciplines, have little understanding of both micro and macro-economic activities, as well as activities in the real sector, production, distribution, and consumption;
2. The Religious Judicial Apparatus is still stuttering on the activities of Islamic financial institutions as a supporter of real sector business activities, such as Sharia Banks, Sharia Insurance, Sharia Pawnshops, Mult finance, Capital Market, and so on;
3. The inferior image of the Religious Courts, which is seen as only dealing with NCTR issues, is difficult to erase, resulting from a lack of support from relevant institutions to socialize Law No. 3 of 2006.

Settlement of sharia economic disputes can be done through court channels. Religious courts are authorised to receive, examine, and hear sharia economic cases according to Law No. 3 of 2006. However, if referring to Law No. 21 of 2008, the district court is also authorised to resolve Sharia economic cases. This situation continued and ended after the Constitutional Court issued Decision No. 93/ PUU-X/2012 on August 29, 2013. With the Constitutional Court's decision, the courts authorised to resolve sharia economic cases are only religious courts. Efforts to resolve sharia economic disputes through out-of-court channels can be pursued using consultation, negotiation, mediation, conciliation, expert judgment, and arbitration mechanisms. As explained in the previous description, after the issuance of Constitutional Court Decision No. 93/PUU-X/2012, there is expected to be a surge in sharia economic cases that will enter the Religious Courts. To anticipate the above possibility, religious courts must prepare themselves to handle shari'ah economic disputes properly to increase the trust and satisfaction of justice seekers towards them. To find out the extent of the readiness of the Religious Courts to resolve Sharia economic cases after the enactment of Law No. 3 of 2006, there are three aspects studied in this study, namely aspects of facilities, aspects of human resources, and aspects of regulations/laws. The study of the three aspects above is in line with what Soerjono Soekanto stated that in order for laws or regulations to function or be effective, four factors influence, namely: First, the law or regulation; second, the officers who enforce it, third, the facilities that are expected to support the implementation of the law, and fourth, the citizens affected by the scope of the regulation Efendi (Soekanto, 1986, p. 35).

The concept of dispute resolution of Islamic banking profit-sharing agreements in religious courts refers to the State which aims to prosper the lives of its citizens equally, and the state is required to provide the best and widest possible services to the community by having equal legal standing and obtaining legal protection and the fulfilment of certainty, justice and legal benefits against religious court decisions that have absolute authority in resolving Islamic economic cases in which Islamic banking disputes are included. So, researchers, in this case, convey that the settlement of Islamic economic disputes can also be adopted in the Malaysian court, where the highest source of law is only the customs of the community developed in court and has become a court decision. The nature of common law, as practised by the British state at that time, was a judge-made law, namely the law formed by the judiciary of royal judges and maintained by the power given to the precedents (previous decisions) of the judges.

Every legal consideration they take is from the basis of customary law that they use, namely only Al Qur'an and Sunnah, which are used in every settlement of Sharia economic disputes as a reference without any other source of legal consideration, such as Indonesia; there are still mixed legal norms in deciding sharia economic cases in the Religious Courts and even procedural law still uses civil procedural law as is done in the district court so that the results decided by the judges do not reflect the purity of sharia in their decisions because there are still many imbalances and partiality.

The concepts and proposals offered by researchers for the settlement of Islamic banking dispute cases include:

It is necessary to establish a special court within the religious judiciary to resolve Islamic banking disputes and special judicial institutions or bodies developed in the general judicial

environment, such as the Corruption Court, Human Rights Court, Children's Court, Fisheries Court, and Commercial Court. There are also special courts within the state administrative judiciary, such as the Tax Court, and even in other fields; there are also new ideas to establish special judicial bodies dealing with separate areas of development to provide better guarantees to fulfil a sense of justice for the wider community. The importance of reforming the judicial system also has an impact on whether the performance of the judiciary is good; it will produce quality court decisions, where these decisions can later become a new source of law in society.

Thus, it can be said that Islamic banking settlement law can be interpreted as a rule of law that deviates from Islamic economic law in connection with certain actions and certain people. Harriman Satria said that regarding the conception of Islamic banking law, the applicable principle is lex specialist derogate legi general, that Islamic banking law overrides or defeats Sharia economic law, in the sense that if an act violates sharia and special economics at the same time, special regulations are used.

The existence of this special court, following the judicial process such as the practice of simple lawsuits, must be encouraged to have legal rules related to the regulation of special procedural law with the Regulation of the Supreme Court of the Republic of Indonesia (PERMA RI) as its legal umbrella to ensure a proper legal process in enforcing the law. Procedural law is different from material law, which regulates the substance of the law itself and, in turn, will be tested through procedural law, with the hope that every decision of this special Islamic banking court reflects the satisfaction of justice seekers and the creation of legal certainty, justice, and expediency.

The existence of the Special Court for the settlement of Islamic banking disputes is not necessarily concentrated in certain areas of court competence because it will be burdensome for debtors who will file a lawsuit. Those plaintiffs living in small towns will find it difficult to file a lawsuit if they go to a big city, especially if the plaintiff does not have many funds and access to support. Hence, the specialty is only in its competence to litigate in the religious court of the respective region where the Islamic banking case occurs.

Judges who are entitled to decide the issue of Islamic banking disputes must have special competence, namely holding a license or being Sharia certified if it is necessary to appoint Ad Hoc judges, in this case, judges who have expertise and experience in certain fields to examine, hear and decide a case appointed for a certain period and their appointment is regulated by law. Those who do have a field of expertise, both practitioners and academics who fully understand Islamic banking cases by following the procedures for appointing other Ad Hoc judges to become part of the panel of judges in the hope that they can take the basis of appropriate legal considerations to reflect decisions that have legal certainty, justice and expediency.

The competence of the Ad Hoc judge must be a master of Shari'ah economic law. The selection or appointment of judges is based on the election results. When there is a Shari'ah economic dispute, they can be involved in the assembly team. Judges must deeply understand Sharia economic law and banking to help enlighten other judges, at least when an ad hoc judge can give colour to the decisions made in every Sharia economic decision. Ad hoc judges can be involved not only in certain religious courts but also in certain city district religious courts.

The simple and ordinary lawsuits in religious courts that are still running can still be used to resolve Sharia economic cases, which are still the competence of religious courts, including inheritance disputes, grants, wills, and infaq sadaqah. Sharia banking courts in the religious courts as special courts are part of an effort to resolve Sharia banking disputes more professionally, and every decision has certainty, justice, and legal benefits for justice seekers.

Conducting efforts to test lower legislation against higher legislation carried out by the judiciary (Judicial Review) against several legal norms in the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) related to the process of resolving disputes over sharia banking profit-sharing agreements in religious courts including;

a. Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 08/DSNMUI/IV/2000 concerning Musyarakah Financing.
b. Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 15/DSNMUI/IX/2000 concerning the principle of distribution of business results in Islamic financial institutions.
c. Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 17/DSNMUI/IX/2000 concerning sanctions for capable customers who delay payments.

The Fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) mentioned above have many irregularities in the operational practice of Islamic banking, which can potentially lead to chaos in applying Sharia Economics in Indonesia. In addition, many have caused multiple interpretations, misunderstandings, and even failure to understand the Fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) because in the form of a decision without following the standards of the formation of laws and regulations Number 11 of 2011 in force in Indonesia following the rules that have been regulated in the format of the legislation that researchers consider erroneous and must be determined through the process of forming applicable laws and regulations in order to obtain detailed explanations and what is possible and appropriate is under the Regulation of the Supreme Court of the Republic of Indonesia (PERMA RI) as well as the Compilation of Sharia Economic Law (KHES).

Fatwa is a law in Islam after the Qur'an and al-Hadith, which is dynamic and the result of the scholars' ijtihad alone or together (in congregation). Fatwas produced or issued by institutions or individuals are not binding to be fully followed by Muslims in Indonesia because fatwas are not included in positive law and will become binding if the fatwa is implemented into state regulations that apply in Indonesia. Fatwa can change according to certain conditions because various elements influence it, so it can occasionally be different. Fatwas from MUI, especially from the National Sharia Council, is used as an absolute reference by Bank Indonesia as mandated by the legislation.

Fatwa is an opinion or answer to a problem or issue people, scholars, or institutions ask. Fatwas by Muslims can be binding and obeyed if the person or group feels there is a bond to those who issue fatwas, and fatwas do not have the legal power to force all Muslims to obey. In this contemporary era, the process of making fatwas should be carried out in congregations with various disciplines, both Islamic religion and worldly science. The sharia principles underlying the implementation of Islamic banking in Indonesia direct that the source of reference is the fatwa DSN of the Indonesian Ulema Council, and the fatwa of the ulama is not included in the source of positive law in the Indonesian national legal system. Therefore, the implementation of the DSN-MUI fatwa into the Indonesian national legal system is carried out through the transformation of the DSN-MUI fatwa into the Law and then to the Bank Indonesia Regulation.

Only in practice is it clear that there is a mismatch of legal norms in the form of the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) in the application of Islamic banking operations, which is striking and is the biggest contributor to the emergence of Islamic banking disputes, especially with the sharia bank debtor itself which continues to be legitimised so that the sharia banking party will always feel right. So, the application of Sharia in Islamic banking is only half-hearted; taking what is profitable and leaving what is not profitable besides regulation is also one of the factors causing the legitimisation of violations of Sharia law.

The community of Sharia economic actors has not fully trusted the ability of the Religious Court apparatus to handle Sharia economic disputes because the community has not understood that entrusting the settlement of Sharia economic disputes through the Religious Court is part of a religious obligation. This is confirmed by research conducted by Rof'ah Setyowati Soekanto (2015) titled "Analysis of Effective Legal and Judicial Systems Supporting Shari'ah Financial Institutions Through Legal Harmonization" in 2015. This research concluded that the reality of the settlement of Sharia banking disputes in the Religious Courts and Basyarnas, the reason for choosing the Religious Courts institution is because the Religious Courts apply the principles of Sharia (Islamic law), the

legislation gives authority to the Religious Courts, has made various efforts to strengthen its institutional competence, especially the judges, the Constitutional Court's decision directs and strengthens the settlement to the Religious Courts. The institutional constraints are the readiness and competence of human resources and the minimal understanding of judges, so they often make decisions that do not touch the subject matter. In addition, the legal and judicial system for dispute resolution of Shari'ah Financial Institutions is still constrained by legal disharmony, interpretations, and attitudes that are not in harmony with legal objectives. This is seen between one legal norm and another, for example, between the Fatwa of the National Shari'ah Council of the Indonesian Ulema Council, in addition to complementing each other. However, in practice, there is disharmony between these legal norms. Therefore, it is necessary to increase the competence of judges.

Executive Review and Judicial Review

Conduct an Executive Review to DSN-MUI on fatwas that regulate Islamic banking, which has received attribution authority from the Islamic Banking Law number 21 of 2008 by following the format of legislation number 11 of 2012. Suppose DSN-MUI does not do this on its fatwas, especially those that become norms of the Law in Islamic banking activities. In that case, further efforts can be made by Judicial Review at the Constitutional Court both physically and materially, in order to fulfill legal certainty.

Conducting efforts to test lower legislation against higher legislation carried out by the judiciary (Judicial Review) against several legal norms in the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) related to the process of resolving disputes over sharia banking profit-sharing agreements in religious courts including;

1. Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 08/DSNMUI/IV/2000 concerning Musyarakah Financing.
2. Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 15/DSNMUI/IX/2000 concerning the principle of distribution of business results in Islamic financial institutions.
3. Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 17/DSNMUI/IX/2000 concerning sanctions for capable customers who delay payments.

The Fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) mentioned above have many irregularities in the operational practice of Islamic banking, which can potentially lead to chaos in the application of Sharia Economics in Indonesia. In addition, there are many multi-interpretations, misunderstandings, and even failures to understand the Fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) because in the form of decisions without following the standards of the formation of laws and regulations Number 11 of 2011 in force in Indonesia following the rules that have been regulated in the format of the legislation that researchers consider erroneous and must be determined through the process of forming applicable laws and regulations in order to obtain detailed explanations and what is possible and appropriate is under the Regulation of the Supreme Court of the Republic of Indonesia (PERMA RI) as well as the Compilation of Sharia Economic Law (KHES). Fatwa is a law that exists in Islam after the Qur'an and al-Hadith, which is dynamic and the result of the scholars' ijtihad alone or together (in congregation). Fatwas produced or issued by institutions or individuals are not binding to be fully followed by Muslims in Indonesia because fatwas are not included in positive law and will become binding if the fatwa is implemented into state regulations that apply in Indonesia. Fatwa can change according to certain conditions because of various elements that influence it, so it can be different from time to

time. Fatwas from MUI, especially from the National Sharia Council, is used as an absolute reference by Bank Indonesia as mandated by the legislation.

Fatwa is an opinion or answer to a problem or issue people, scholars, or institutions ask. Fatwas by Muslims can be binding and obeyed if the person or group feels there is a bond to those who issue fatwas, and fatwas do not have the legal power to force all Muslims to obey. In this contemporary era, fatwas should be made in congregations with various disciplines, including Islamic religion and worldly science. The sharia principles underlying the implementation of Islamic banking in Indonesia direct that the source of reference is the fatwa DSN of the Indonesian Ulema Council, and the fatwa of the ulama is not included in the source of positive law in the Indonesian national legal system. Therefore, the implementation of the DSN-MUI fatwa into the Indonesian national legal system is carried out through the transformation of the DSN-MUI fatwa into the Law and then to the Bank Indonesia Regulation.

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Revoke SEMA No. 2 of 2019

Implementing the chamber system in the Supreme Court aims to maintain the unity of the application of law and consistency of decisions. The Chamber Plenary Meeting is one of the instruments to realise this goal. Therefore, each Chamber in the Supreme Court routinely organises Chamber Plenary Meetings, namely from 2012 until 2019.

From November 3, 2019, until November 5, 2019, the Supreme Court held a chamber plenary meeting to discuss technical and non-technical judicial issues raised in each chamber. The chamber plenary has produced the following formulations:

1. Criminal chamber plenary formulation;
2. Plenary formulation of the civil chamber;
3. The plenary formulation of the religious chamber;
4. Formulation of the military chamber plenary;
5. Formulation of the plenary of the state administrative chamber; and
6. Plenary formulation of the secretarial room;

In connection with the formulations of the results of the plenary meeting of the chamber, the following matters are submitted:

1. Making the formulation of the results of the chamber plenary meeting in 2012 up to 2019 as an inseparable unit, and the entire formulation is applied as a guideline in case handling and secretariat in the Supreme Court, courts of first instance, and courts of appeal as long as the substance of the formulation is related to the authority of the courts of first instance and appeal.
2. The formulation of the results of the plenary meeting of the chamber from 2012 to 2018, which is expressly stated to be revised or substantially contradicts the formulation of the results of the plenary meeting of the chamber in 2019, is declared invalid.

The Supreme Court Chamber Plenary Meeting was attended by members of the Criminal Chamber, Civil Chamber, Religious Chamber, Military Chamber, State Administrative Chamber and

Secretarial Chamber, held on November 3-5, 2019, at the Intercontinental Hotel Bandung on Point C of the Legal Formulation of the Religious Chamber Point B Sharia Economics as follows:

1. Litigation settlement of Sharia economic disputes became the absolute competence/authority of the Religious Courts after the Constitutional Court Decision Number 93 / PUU-X / 2012, dated August 29, 2013, while non-litigation settlement is carried out in accordance with the contract.
2. A lawsuit to cancel a Sharia economic contract by a debtor whose contract is contrary to Islamic law can only be made before the debtor utilises the object of the contract. If the contract is cancelled, the debtor is sentenced to return the principal loan plus a margin/Misbah by the loan period that has been running.

Revoke the Supreme Court Circular Letter (SEMA RI) Number 2 of 2019, which imprisons judges who will settle Sharia economic disputes in the Religious Courts. The existence of the Circular Letter has an impact on judges in the religious courts who will not dare to decide or win the debtor's side because they have been sentenced in advance by the SEMA, which means that creditors should not be harmed because they are part of the state representation that must be protected. After all, Islamic banking is also a pillar for the growth of the Indonesian economy. However, if the debtor can be harmed and ignored, the inequality must be eliminated by removing Supreme Court Circular Letter (SEMA RI) Number 2 of 2019.

The uniformity of decisions throughout the religious courts by ignoring other legal aspects as a form of simplification, fast decision-making, and considered appropriate is not justified because it is clear that there is a gap. The fulfilment of unbalanced legal justice does not reflect the principle of equality before the law, which is a principle in which everyone is subject to the same judicial law. Put, equality before the law means that all humans are equal before the law.

The concepts and suggestions of researchers conveyed in handling the settlement of Islamic banking disputes more seriously, professionally and the establishment of judicial specialisation that has the authority to resolve Sharia banking disputes is a manifestation and reflection of the principles in sharia, including not complicating ('Adam al-Haraj), reducing the burden (Taqlil al-Taklif), periodic legal determination, in line with universal benefits, and equality and justice (al-Musawah wa al-Adalah). In resolving sharia economic disputes, we must first see whether the dispute resolution procedures in religious courts are by sharia principles. Usually, if the dispute is Sharia-based, the procedure must also be based on Sharia. Religious courts must also carry out dispute procedures based on Sharia principles to fulfil justice seekers' satisfaction. In the decisions of the panel of judges, both the Religious Court, the Religious High Court at the Appeal level and even the Supreme Court for Cassation and Judicial Review levels have certainty, justice and expediency.

The settlement of Sharia Banking disputes through the institution of the Court is carried out by the authority of the Court, which is attributively authorised by law to examine, decide and resolve the case. According to the provisions of the Law, Sharia Banking disputes that occur and are resolved through the Courts are carried out by the Religious Courts. By the law's mandate, the Religious Court is authorised to examine, decide, and resolve Shari'ah's economic disputes, including Shari'ah's banking disputes. The authority of the Religious Court in the settlement of Shari'ah banking disputes is also regulated by the Shari'ah Banking Law, which confirms that the settlement of Shari'ah banking disputes is carried out by courts within the religious judicial system. The Religious Courts have examined and adjudicated several Shari'ah banking dispute cases.

In a state of law, there are legal objectives that the state should implement. The objectives of the rule of law are legal certainty, legal justice and expediency. Indonesia can be said to be a state of law if these three goals are realised. Ideally, the law should accommodate all three. According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can find out what the State can impose or do to individuals (Djojorahardjo, 2019, p. 94).

Legal objectives that are close to realistic are legal certainty and legal benefits. The Positivists emphasise legal certainty, while the Functionalists prioritise legal expediency, and if it can be stated that "summum ius, summa injuria, summa lex, summa crux," which means that harsh law can hurt, except justice that can help it, thus. However, justice is not the only legal goal; the most substantive legal goal is justice. According to Aristotle, without a good social-ethical inclination in citizens, there is no hope of achieving ultimate justice in the state, even though the rulers are wise people with quality laws. Gustav Radbruch said that law is the bearer of the value of justice; justice has a normative and constitutive nature for law. It is normative because it is to justice that positive law is based. It is constitutive because justice must be an absolute element of the law; without justice, a rule does not deserve to be a law (Tanya et al., 2013, p. 42). Gustav Radbruch's view generally means that legal certainty does not always have to be prioritised in every positive legal system, as legal certainty must exist first, followed by justice and expediency. Gustav Radbruch later revised his theory that the three legal objectives are equal (Susanto, 2014). Law enforcement is enforcing legal norms or laws and regulations that serve as guidelines for behaviour in society, nation and state. When the law becomes an order, there will be obedience to the law.

Law enforcement is closely related to obedience for users and implementers of laws and regulations, in this case, the community and state administrators, namely law enforcement (Machmud, 2012, p. 132). Law enforcement is a duty. The task is carried out by law enforcement officials because the task, as Kant said, is a "categorical obligation" or "absolute obligation". It does not recognize the term "with conditions". Duty is duty, must be carried out (Tanya, 2011, p. 35). Obedience in law enforcement in a state of law must actually be carried out by all parties, especially the legal apparatus itself. The community will easily imitate and imitate when legal officers do not implement and carry out the law properly and correctly in accordance with existing statutory provisions. Make laws and legal norms as guidelines in carrying out the law and processing a legal event that occurs. The law enforcement process must be carried out by fixing several things. For example, the law enforcement side itself. That is, how the law is carried out by the state in accordance with existing laws. The law will have no meaning if it is implemented with bad morals. In the hands of good law enforcement, the law will work well. It all comes down to who carries out the law itself responsively. Although the law is made very much and responsive in warding off crime, if it is not implemented by people who are not responsive in eradicating crime, everything will be in vain. Then the side of legal awareness that complies with the law. This means that when the law is carried out by the state by not violating the law, the community will also comply with existing laws. The state must set an example of law enforcement to the community. Because the community will emulate a country that obeys the law according to applicable norms and laws. That is the essence and core of the law itself.

Justice is the essence of law. This justice must be obtained by all people without exception. It is the duty and responsibility of law enforcement institutions to create such justice. The police must

start law enforcement in order to create justice from the investigation and investigation level. Prosecutors must create justice from the prosecution level in terms of making indictments. Judges achieve the message of justice through their decisions in court. This is actually the main moral message put forward by law enforcement in accordance with their duties and responsibilities. The community should not seek justice, but the community must get justice. In this context, the law becomes something that must be obeyed by all parties without exception. The law should not be just a formulation of words without the implementation of community justice. If the law is only a paper decoration but has minimal implementation in achieving justice, then Indonesia as a state of law will certainly become a mere memory. Our country's constitution explains that the state is based on law, which is characterized by several principles, including that all actions or actions of a person, both individuals and groups, must be based on existing legal provisions, of course, according to their guilt. The rule of law must be based on good and fair law without discrimination. The fact that good law must contain ideal values, namely upholding legal values where all people are equal before the law (equality before the law). So that law enforcement can realize the existence of certainty, justice and legal benefits. The success of enforcement will be reflected in the absence or reduction of crime in people's lives.

Law enforcement is an activity to harmonize existing laws with the values that live in society. This means that the law must be able to describe the rules or norms in the life of society in the context of the orderly life of the state and nation. According to Muchsin, the law is not actually a goal but it is only a tool. This means that the goal is human, so what is meant by the purpose of the law is human, with the law as a tool to achieve that goal (Oksidelfa, 2020, p. 2). In terms of law's existence in society, people must inevitably obey the law. By obeying the law, the community will avoid evil deeds and actions that violate the law. If there are criminals in society, then the law must play its role by holding the perpetrators accountable. Because in fact, the perpetrator of the crime must be held accountable for his actions. This is because legal norms are made but not obeyed by the community. Thus, if someone violates the law, including the norms and values that live in society, they will be subject to sanctions in the form of punishment. This is a reaction to the actions he has taken. In addition, it is important to maintain all existing legal regulations. Therefore, human actions must not conflict with legal regulations because they can injure the sense of justice in the community. It must always be remembered that the law aims to ensure legal certainty in society, and the law must also be based on justice, namely the principles of justice from society.

Eight principles must be considered in overcoming a crime, as follows: First, it is necessary to create a society based on the principle of social contract; Second, the source of law is the law; in deciding cases, judges must base themselves on the law; Third, the main task of criminal judges is to determine the guilt of a defendant; Fourth, punishment is the authority of the state, which is needed to protect society from legal greed; Fifth, there must be a scale of comparison between crime and punishment; Sixth, in committing an act, humans always weigh the level of pleasure with misery; Seventh, the basis for determining the severity of punishment is the act, not the intention; Eighth, the principle of criminal law is the existence of positive sanctions (Munir, 2013, p. 296).

As a state of law, the principles described above should be upheld and used as the basis for creating good law. The law must be a force that can be used as a basis for creating better living conditions in society. The peace of life in society away from all kinds of chaos, intimidation and arbitrariness is the power of good law. In principle, the concept of legal sovereignty states that a

country's supreme power is law. Therefore, all state equipment, whatever their name is, including citizens, must submit and obey and uphold the law without exception (Handoyo, 2003, p. 12). The law should be enforced to achieve certainty and justice as two partners in the legal struggle. There is a need to balance certainty and justice, bringing justice closer to society, whose search occurs at all times, places, and all corners of the world. The burden of proof is a central point in procedural law, even for the benefit of science (Salman & Susanro, 2018, pp. 15–16). Every criminal must be given a sentence in accordance with the provisions of the existing law. This is because, in a state of law, it is known as the principle of no punishment without guilt, and the guilty must be punished if their actions can be held criminally responsible. This is what is called legal certainty and justice. Legal certainty must be maintained in society to ensure that every person who is guilty and commits an act against the law is subject to legal sanctions to realize justice and legal expediency.

In general, there has been a shift in the development of Shari'ah's economic legal theory in Indonesia. The shift in legal theory used is due to the changing economic practices of the community. The most obvious changes occurred after the community used the banking system to meet economic needs and desires. The shift in formal Shari'ah economic law theory began when Shari'ah economic law, known as fiqh muamalah, became a positive law in various laws and regulations in Indonesia. The shift in the theory of Shari'ah economic law also occurred when the absolute competence of the Religious Courts was expanded in Shari'ah economics. According to research conducted by Kamaludin titled "Islamic Legal Certainty and Its Relevance to the Implementation of Shari'ah Economic Dispute Resolution in Indonesia" in 2015 (Kamaludin, 2015, p. 15), Mentioning that efforts to weaken the authority of the Religious Courts to handle Shari'ah economic disputes still occur in the era of fostering judicial institutions under one roof, because the legislators and policymakers do not yet have the view that Muslims maintain the existence and strengthen the authority of the Religious Courts is the implementation of religious orders and as a realization of the purpose of maintaining religion.

Fatwa DSN-MUI, in addition to being a public need, is also for uniformity of rules for Shari'ah economic actors. Almost all regulations of Shari'ah economic activities in banking, insurance, and capital markets mention the principles of Shari'ah in accordance with the Qur'an and Hadith contained in the DSN-MUI fatwa. However, the DSN-MUI Fatwa is not binding for the judge or the parties. This DSN-MUI fatwa is binding if it is absorbed into legislation. But in essence, the fatwa issued by DSN-MUI is a binding positive law, because its existence is often legitimized through legislation by government agencies, Sharia economic actors must obey it. In positivization theory, according to legal research on "The Position of MUI Fatwa in Efforts to Encourage the Implementation of Sharia Economics" by the National Law Development Agency - Ministry of Law and Human Rights of the Republic of Indonesia in 2011 (Badan Pembinaan Hukum Nasional. 2011). that the DSN-MUI fatwa is a set of rules of community life that is not binding, and there is no legal coercion for the target of the issuance of the fatwa to comply with its provisions.

But on the other hand, based on the applicable laws and regulations, especially Law Number 21 Year 2008 on Sharia Banking, through certain patterns, there is an obligation for the regulator, namely Bank Indonesia, so that the content material contained in the MUI fatwa can be absorbed and transformed to formulate Sharia principles in the field of Sharia economy and finance, becoming the content material of laws and regulations that have legal force and are binding on the public. The existence of the Fatwa of the Shari'ah Council of the Indonesian Ulema Council (DSN-MUI) in the

format of a decision that does not follow the Formation of Legislation in accordance with Law Number 12 of 2011, it results in many multi-interpretations, misunderstandings, and even failure to understand the contents of the fatwa so that it is likely that the potential for losses in litigation in religious courts is wide open suffered by customers who make a lawsuit against Sharia banking and a lot of deviations between fatwas and facts in activities in Sharia banking so that the Fatwa of the National Sharia Council of the Indonesian Ulema Council researchers propose to do a Judicial review so that the mistakes that have been legitimized can end with clarity in the form of the format of the formation of laws and regulations in accordance with Law Number 12 of 2011.

In addition, the uniformity of the decision that became the direction of the Supreme Court in welcoming and convincing the public regarding the readiness to accept additional authority in deciding sharia economic cases is clearly detrimental to justice seekers. Where the Supreme Court has issued (Supreme Court Circular Letter) SEMA No. 2 of 2009 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2019 as a Guide to the Implementation of Tasks for Courts, including religious courts in deciding Sharia economic cases which include sharia banking disputes, the contents of the Circular Letter state. "A lawsuit to cancel a Sharia economic contract by a debtor whose contract is contrary to Islamic law can only be made before the debtor utilizes the object of the contract, and if the contract is cancelled, the debtor is sentenced to return the principal loan plus margin/nisbah by the loan period that has been running."

The Supreme Court Circular Letter No. 2 of 2009 prints the judge who will settle the Sharia economic dispute in the Religious Court. There is no point in resolving disputes in religious courts if the Circular Letter still exists and is not revoked; it will impact judges in the Religious Courts who decide Sharia economic cases will not dare to decide and even win the debtor because they have been sentenced in advance. Ensuring that creditors should not be disadvantaged because the State and sharia banking representation is part of the pillar of economic development in Indonesia. However, on the debtor's side, it can be easily harmed, an imbalance that must be eliminated by removing Supreme Court Circular Letter No.2 of 2009.

When the result of the settlement of disputes over profit-sharing agreements in Sharia banking in the Religious Courts does not reflect in each of its decisions the fulfilment of certainty, justice and legal benefits for the decision, it can be ascertained that the consequences are as follows:

1. The credibility of the religious courts in the eyes of justice seekers decreases because the courts are considered not to provide a fair settlement for them. The injustice is felt because the Court no longer considers the legal facts experienced by the debtor properly because it has been convicted from the start as a party that does not have good faith. Debtors who feel aggrieved by creditors who act arbitrarily in determining the terms of the agreement are immediately judged by the court to be lacking in good faith because they only challenge the creditor's arbitrariness after they have enjoyed the value of the money promised in the profit-sharing agreement.
2. The fading of public trust (especially Muslim entrepreneurs as debtors) in Shari'ah financial institutions (banking) because they will never get the benefit if bersyirkah (cooperation) with financial institutions (banking) Shari'ah, which is judged to be a mere formality by implementing Shari'ah half-heartedly only taking some of the guidance and leaving some of the potential losses from the side of Shari'ah banking.
3. There is an omission and increasingly fertilises the deviant practices carried out by Sharia financial institutions (banking). In the end, the difference between the practices of Shari'ah and

conventional financial institutions (banking) is only felt in the names and terms used, while the substance is identical.

Conclusion

Effectiveness of Non-Litigation Dispute Resolution: Based on the analysis, dispute resolution through non-litigation mechanisms such as mediation and arbitration is more effective regarding time and cost than settlement through litigation in religious courts. Non-litigation allows the parties to reach an agreement amicably and by the principle of deliberation, which is at the core of the sharia system. Conformity with Sharia Principles: The various existing dispute resolution methods, both litigation and non-litigation, are generally compatible with Sharia principles, such as fairness, transparency and equality. However, there are challenges in interpreting and implementing Sharia principles, especially regarding the different views between the parties regarding the distribution of profits and losses in profit-sharing agreements. Limited Public Understanding: This study also found that there is still a limited understanding of customers and some related parties regarding the dispute resolution mechanism applicable in Islamic banking. This ignorance often becomes a dispute source or slows the dispute resolution process. The Role of Sharia Regulations and Institutions: Although Islamic banking institutions have followed the guidelines of the National Sharia Council (DSN) and existing regulations, stronger harmonisation is still needed between positive law regulations and sharia law regarding dispute resolution. Strengthening the role of institutions such as the National Sharia Arbitration Board (BASYARNAS) is also important.

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