Vol. 15, No. 2, pp.58-71, Desember 2023 DOI: http://dx.doi.org/10.24042/asas.v15i02.18521

ASAS Jurnal Hukum Ekonomi Syariah
http://ejournal.radenintan.ac.id/index.php/asas/article/view

P-ISSN 1979-1488
E-ISSN:2722-8681

Dispute Resolution of Akad Mudharabah Muqayyadah

(Analysis of Decision No. 1695/Pdt.G/2012/PA. Js, Number 5/Pdt.G/ 2014/PTA. Jk and Number 272 K/Ag/2015)

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Received : Juli 2023 Accepted: November 2023 Published: Desember 2023

Abstract: Sharia economic dispute resolution in Indonesia can be resolved through litigation and non-litigation. Through litigation becomes the absolute authority of religious courts, while non-litigation can be through deliberation, mediation or sharia arbitration bodies. The problem in this study is about the disparity in the decision of religious court judges in deciding disputes over mudharabah muqayyadah contracts submitted in religious courts, namely Decision Number 1695/Pdt.G/2012/PA. Js, Number 5/Pdt.G/2014/PTA. Jk and Number 272 K/Ag/2015, which in its contract mentions the sharia arbitration body as a dispute resolution institution. The purpose of this study is to analyze the judge's consideration of the disparity of the three rulings. This type of research is literature research and the nature of analytical descriptive research. The data obtained was sourced from the document of the South Jakarta Religious Court Decision Number 1695/Pdt.G/2012/PA. Js, Jakarta High Religious Court Decision Number 5/Pdt.G/2014/PTA. Jk and Supreme Court Decision Number 272 K/Ag/2015. Data collection techniques by means of library and documentation methods. Data analysis using qualitative analysis research methods. The results of this study showed that the South Jakarta Court Decision granted the Plaintiff's lawsuit by not considering the authority of the religious court in resolving the dispute despite the difference in contract clauses, the Jakarta High Religious Court stated that the religious court was not authorized to adjudicate the dispute because there was an arbitration clause in the contract, while the Supreme Court ruled that the religious court was authorized to resolve the dispute with consideration under Article 1343 and Article 1344 of the Civil Code, that is, the will of the parties takes precedence.

Keywords: *contract mudharabah muqayyadah, sharia economics, dispute resolution*

Abstrak: Penyelesaian sengketa ekonomi syariah di Indonesia dapat diselesaikan melalui litigasi dan non litigasi. Melalui litigasi menjadi kewenangan absolut pengadilan agama, sedangkan non litigasi bisa melalui musyawarah, mediasi atau badan arbitrase syariah. Permasalahan dalam penelitian ini adalah mengenai disparitas putusan hakim peradilan agama dalam memutus sengketa akad mudharabah muqayyadah yang diajukan di pengadilan agama yaitu Putusan Nomor 1695/Pdt.G/2012/PA.Js, Nomor 5/Pdt.G/2014/PTA.Jk dan Nomor 272 K/Ag/2015, yang mana didalam akadnya menyebutkan badan arbitrase syariah sebagai lembaga penyelesaian sengketa. Tujuan dari penelitian ini yaitu menganalisis pertimbangan hakim terhadap disparitas ketiga putusan tersebut. Jenis penelitian ini merupakan penelitian kepustakaan dan sifat penelitian deskriptif analitis. Data yang diperoleh bersumber dari dokumen Putusan Pengadilan Agama Jakarta Selatan Nomor 1695/Pdt.G/2012/PA.Js, Putusan Pengadilan

Tinggi Agama Jakarta Nomor 5/Pdt.G/2014/PTA.Jk dan Putusan Mahkamah Agung Nomor Nomor 272 K/Ag/2015. Teknik pengumpulan data dengan cara metode pustaka dan dokumentasi. Analisis data menggunakan metode penelitian analisis kualitatif. Hasil dari penelitian ini menunjukan bahwa Putusan Pengadilan Jakarta Selatan mengabulkan gugatan Penggugat dengan tidak mempertimbangkan terkait kewenangan pengadilan agama dalam menyelesaikan sengketa tersebut meskipun ada perbedaan klausul akad, Pengadilan Tinggi Agama Jakarta menyatakan pengadilan agama tidak berwenang mengadili sengketa tersebut dikarenakan ada klausul arbitrase dalam akad tersebut, sedangkan Mahkamah Agung memutus pengadilan agama berwenang menyelesaikan sengketa tersebut dengan pertimbangan berdasarkan Pasal 1343 dan Pasal 1344 KUH Perdata yaitu kehendak para pihak lebih diutamakan.
Kata kunci: akad mudharabah muqayyadah, ekonomi syariah, Penyelesaian sengketa

Introduction

The development of sharia economy in the world, especially in Indonesia, is increasing every year. The development of the Islamic economy in Indonesia is no longer unstoppable, Islamic banks are not difficult to find because they already exist in various cities in Indonesia. With the increasing number of Islamic banks, there are more and more sharia economic transactions in the territory of the Republic of Indonesia. One of the contracts that is often used by Islamic banking in Indonesia with its customers is the mudharabah contract. Mudharabah is a contract that has been known by Muslims since the time of the prophet, and even practiced by the Arabs before the descent of Islam. Prophet Muhammad himself was once a merchant who practiced a mudharabah contract with Khadija. Thus, in terms of Islamic law, the practice of mudharabah is permissible, both according to the Qur'an, Sunnah, and ijma'.

The increasing number of mudharabah contracts used by banks in their transactions or products is also in line with the increasing sharia economic disputes in Indonesia. The Law already regulates the settlement of sharia economic disputes, as Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts states that Religious Courts have the duty and authority to examine, decide, and settle cases in the first instance between people of Muslim faith in the fields of: (a) marriage; (b) inheritance; (c) wills; (d) grants; (e) endowments; (f) zakat; (g) infaq; (h) sadaqah; and (i) Shari'ah economics. Since the existence of this Law, the authority of religious courts has been increased, namely the authority to resolve sharia economic cases. After the issuance of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, Law Number 21 of 2008 concerning Sharia Banking was also issued, in Article 55 paragraph (1) of the law states that the settlement of sharia banking disputes is carried out by the Religious Court, and in the next paragraph states that if the parties have agreed to resolve disputes outside/other than religious courts, then the settlement of the dispute carried out as the content of the contract with the condition that it must not contradict the principles of sharia. If the article is understood, sharia economic disputes are

absolutely the authority of the Religious Court, courts other than the Religious Court are not authorized to handle sharia economic disputes. However, the article explains that sharia economic disputes can be resolved or carried out as the contents of the contract, can be through litigation or non-litigation with a choice of measures, namely deliberation, banking mediation, Basyarnas or other arbitration institutions and courts.

Islamic financial institutions, especially Islamic banking in Indonesia, in practice make contracts and choices of different dispute forums. There are banks that choose dispute resolution through the Sharia Arbitration Board, some choose the Religious Court and there are also banks that choose the two institutions as dispute resolution institutions in case of disputes. The article on the choice of dispute resolution institution in the contract binds the parties to resolve the dispute in accordance with the content of the contract (which settlement institution is written in the contract). The parties must abide by the agreement they make, in which the clauses have been made by the Islamic bank together with the customer before a notary chosen by the parties. Based on the contract that has been agreed and signed by the bank and the customer, the parties who have contracted can file a claim for default or unlawful action to the religious court or basyarnas as the contents of the contract and the religious court or basyarnas will issue a decision in which the contents can grant the lawsuit, reject the lawsuit or declare the claim inadmissible.

Based on this problem, researchers found the decision of the Religious Court that tried the same case, namely the dispute case of the contract Mudharabah Muqayyadah Number 081 /Mudharabah Muqayyadah/ PBMT/V/2010 and Number 081/ Tmb1/ Mudharabah Muqayyadah/PBMT/VII/ 2010 but there was a disparity in the judge's decision in deciding the dispute. These differences can be seen in the table below:

Table 1.
Dispute Verdict of Akad Mudharabah Muqayyadah

Putusan	Amar	Pertimbangan	Majelis Hakim
PA Jakarta Selatan (1695/2012)	Granting Plaintiff's claim in part	Does not consider the authority to adjudicate	Drs. Yasardin, S.H., M.H. Dra. Hj. Athiroh Muchtar, S.H., M.H. Drs. Azhar Mayang, M.H.
PTA Jakarta (5/2014)	Declaring that the Religious Court is not authorized to adjudicate the case	The parties have chosen dispute resolution through the Sharia Arbitration Board in their contract, so the Religious Court is not authorized to adjudicate the case	Edi Riadi Drs. H. Muslih Munawar, S.H. Drs. H. Masilihan Saifurrozi, S.H., M.H.

Mahkamah Agung (272/2015)	Grant Plaintiff's claim in part	The Religious Court has the authority to adjudicate the case (if the parties have voted and there is no exeption, then the judge can no longer interpret which institution the dispute resolution is submitted to)	Prof. Dr. H. Abdul Manan, S.H., S.IP. Dr. H. Habiburrahman, M.Hum. Dr. H. Amran Suadi, S.H., M.H., M.M.

The table above is an example of a mudharabah muqayyadah contract dispute decision which can be understood that between the judge's decision at the South Jakarta Religious Court, the Jakarta High Religious Court and the judge's decision at the Supreme Court there are very different differences in adjudicating the sharia economic case. The disparity or difference in the judges' decisions that are different in adjudicating sharia economic cases causes legal uncertainty and unrest among other judges and business people, both public and banking. The question arises to what extent the contracts that have been agreed and signed in front of the competent authority must be obeyed, because with the decision one of the clauses in the contract can be kept or set aside. Whereas Article 1338 of the Civil Code states that all agreements made legally are laws for those who make them. So does the word of Allah in the Qur'an surah surah al-Maidah verse 1:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ .....

"O believers, fulfill your promises!"..... (QS. al-Maidah [5]: 1).

Article 21 of the Compilation of Sharia Economic Law (KHES) also states that one of the principles of the contract is trust/keeping promises, it is explained in the article that every contract must be executed by the parties in accordance with the agreement stipulated by the person concerned and at the same time avoid default.

Based on the phenomenon of the judge's decision above, researchers are interested in researching, analyzing further in the form of scientific work with the focus of the problem in this study is about the disparity in the decision of religious court judges in deciding the dispute over the mudharabah muqayyadah contract submitted in the religious court, namely Decision Number 1695/Pdt.G/ 2012/PA. Js, Number 5/Pdt.G/2014/PTA. Jk and Number 272 K/Ag/2015, which in its contract mentions the sharia arbitration body as a dispute resolution institution?

This research is library research. Literature research is a research conducted by collecting data from various literature, both from libraries and from other sources. The literature used is not limited only to books, but can also be in the form of official documents (deeds), laws and regulations, documentation materials, magazines, newspapers, articles and other sources in the form of written materials. (Hadari Nawawi, 1998). This study used secondary data and tertiary data, namely

in the form of documents of the South Jakarta Religious Court Decision Number 1695/Pdt.G/2012/PA. Js, Jakarta High Religious Court Decision Number 5/Pdt.G/2014/PTA. Jk and Supreme Court Decision Number 272 K/Ag/ 2015 as well as from legal materials used by the Panel of Judges in giving consideration to the three decisions such as laws, Islamic legal propositions contained in the judgment, trial documents and evidence used in the trial. The method used in this research is qualitative analysis that explains and analyzes the judges' considerations by producing analytical descriptive.

- **Discussion and Research Results**

1. **Judge's Consideration in South Jakarta Religious Court Decision Number 1695/Pdt.G/2012/PA. Js**

In the decision of the South Jakarta Religious Court Number 1695/Pdt.G/ 2012/PA. The panel of judges granted the Plaintiff's claim in part by stating that the debtor (Defendant) had committed an act of default (breaking promise) by not carrying out the contents of the contract and punished the Defendants to pay the Plaintiff a sum of Rp1,426,846,507, - (one billion four hundred twenty-six million eight hundred forty-six thousand five hundred and seven rupiah). In its legal deliberations, the Panel of Judges who examined and tried the case has outlined various legal arguments why the Defendant was declared to have committed a breach of promise. The panel of judges in its consideration directly considered the subject matter by not considering the authority of religious courts in adjudicating the case even though there was an arbitration clause in the contract signed by the parties. The panel of judges of the South Jakarta Religious Court stated that the religious court has the authority to examine and adjudicate the dispute by continuing to examine the subject matter until the reading of the verdict.

2. **Judge's Consideration in Jakarta High Religious Court Decision Number 5/Pdt.G/2014/PTA. Jk**

Against the decision of the South Jakarta Religious Court Number 1695/Pdt.G/ 2012/PA. Js, the Defendant filed an appeal with case number 5/Pdt.G/2014/PTA. Jk at the Jakarta High Religious Court. The appellate judge against the Appellant's legal efforts (Defendant) decided by accepting the appeal and overturning the South Jakarta Religious Court Decision Number 1695/Pdt.G/2012/PA. Js by adjudicating itself and declaring that the religious court is not authorized to adjudicate the dispute considering that in the financing agreement signed by the Plaintiff and the Defendant in Article 14 of the Chapter of Dispute Settlement paragraph (2) states *"if deliberation for consensus has been sought but the opinion or interpretation, dispute or dispute cannot be resolved by both parties, then the parties agree, and hereby promise and bind themselves to resolve it through the Sharia Arbitration Board according to the procedural procedures applicable in the Arbitration Body"* and in Article 15 of the Chapter of Domicile and Notification paragraph (4) states *"regarding the cooperation contract with all its consequences and In practice, the parties agreed to choose a permanent and unchanged legal residence at the Majelengka Religious Court Office. However, Mudharib agrees that the Company at its own choice may submit any dispute that may arise*

in connection with this contract to other Religious Courts in West Java or any Court in the territory of the Republic of Indonesia authorized over the Company."

There are differences in the clauses of the contract on the dispute resolution institution in the contract and against two different clauses in the contract signed by the parties and acknowledged, the appellate judge interpreted the two articles as the choice of dispute through the sharia arbitration body in the financing contract Mudharabah Muqayyadah No. 81/mudharabah muqayyadhah/PBMT /V/2010 dated May 1, 2010 and No. 081/Tmb1/mudharabah muqayyadhah/ PBMT/VII/2010 dated July 3, 2010 contained in the "Chapter Dispute Resolution", while the choice of dispute resolution through the religious court body in the two contracts is contained in the "Chapter of Domicile and Notification", on that basis the Judge of the Jakarta High Religious Court is of the opinion that the choice that must be held is contained in the "Chapter on Dispute Resolution", namely choosing a sharia arbitration body that will resolve the dispute contained in the two Mudharabah Muqayyadah contracts.

With this consideration, the appellate judge concluded that the parties had chosen the dispute resolution through the Sharia Arbitration Board, and based on Article 3 of Law Number 30 of 1999 concerning Arbitration, religious courts were not authorized to adjudicate the case. Article 3 states that district courts (in this case religious courts) are not authorized to adjudicate disputes between parties who have been bound by arbitration agreements. As a result of the non-acceptance of the Plaintiff's claim by the appellate judge, the appellate judge overturned the decision of the South Jakarta Religious Court Number 1695/Pdt.G/ 2012/PA. Js and declared the bail confiscation executed by the South Jakarta Religious Court invalid and worthless and ordered the South Jakarta Religious Court to lift the bail confiscation.

There are very different things in the decision of the Jakarta High Religious Court and the decision of the South Jakarta Religious Court. The Jakarta High Court of Religion before examining the subject matter of the dispute, namely the default, first considers the authority of the religious court in handling the dispute. The Jakarta High Religious Court Judge considered the difference in the clauses of the dispute resolution institution in the contract, while the South Jakarta Religious Court Judge did not consider the differences in the clauses of the contract and immediately examined and adjudicated the subject matter of the dispute.

As a result of the existence of the clause of the sharia arbitration body as a dispute resolution institution in the contract, namely in the chapter on Dispute Resolution, the Judge of the Jakarta High Religious Court stated that the religious court was not authorized to adjudicate the dispute. Because the religious court is not authorized to adjudicate, the judge does not need to continue the examination of the subject matter and ends the examination with a ruling declaring the religious court unauthorized and overturning the decision of the South Jakarta Religious Court. The judge of the Jakarta High Religious Court argued

that the dispute was the absolute authority of the sharia arbitration body.

3. Judge's Consideration in Supreme Court Decision Number 272 K/Ag/2015

The plaintiff as the defeated party in the decision of the appellate court filed a legal remedy of cassation to the Supreme Court. On the cassation application, the Chief Justice of the Supreme Court handed down a decision granting the Plaintiff's lawsuit and canceling the decision of the Jakarta High Religious Court Number 5/Pdt.G/2014/PTA. Jk, considering that there is already a legal fact that the Plaintiff and the Defendant have entered into an agreement which in Article 14 of the contract is determined or agreed that the dispute resolution is submitted to Basyarnas, while in Article 15 it is stated that the mudharib agrees if the shahibul maal (persero) chooses to file a case with the religious court according to his authority. Against this fact, the Cassation Judge argued that Article 1344 of the Civil Code states that if a contract is given two meanings, a meaning that is possible to be implemented is chosen, and Article 1343 of the Civil Code which states that if the contract contains multiple interpretations, then the will of the parties takes precedence over the disguised words in the contract. In the case of a quo, the judge argued that the parties had chosen a religious court to resolve the dispute. The judge also argued that if there are two choices in the contract, then the party is free to choose which institution to file a lawsuit against. If the parties have chosen and there is no exception from the opposing party, then the judge can no longer interpret the institution to which the dispute resolution is filed, but is obliged to resolve the wishes of the parties.

Cassation judges use simple, fast and low-cost guidelines or principles. According to the judge, the cassation level will be fair enough and in accordance with this principle if the contract is chosen, Article 15 (4), namely the settlement of disputes, cases a quo resolved by religious courts. In addition, the cassation judge considers that based on the legal facts at trial, it is proven that the original Defendant has defaulted on the agreement that has been made together, then it is mandatory to fulfill the performance to the Plaintiff in accordance with the agreed provisions. For these considerations, the cassation judge overturned the decision of the Jakarta High Religious Court and tried the case a quo himself, namely granting the cassation application of the Cassation Applicant (originally the Plaintiff) and canceling the decision of the Jakarta High Religious Court Number 5/Pdt.G/2014/PTA. Jk.

Judges in resolving disputes and deciding a case, may escape from the provisions contained in applicable laws and regulations for the greater benefit, provided that they have appropriate legal arguments and can be accounted for. (Article 5 of Law Number 48 of 2005 concerning Judicial Power). Based on this legal norm, the cassation judge does not decide formally based on the contract signed by the parties. The judge looks at the will of the parties to the dispute, namely that in the absence of exceptions or objections from the Defendant at the time of the answer, it means that indirectly the Defendant does

not object if the dispute is submitted or resolved through a religious court. The judge also guidelines the principle of simple, fast and light costs, if the parties who have both not objected or agreed to resolve their disputes in religious courts do not need to make an acta compromise made before a notary after the dispute, which will take more time and incur more costs.

Two different clauses in Article 14 and Article 15 but not disputed by the parties, as well as no objection in the answer and the absence of memory of the Defendant's appeal regarding the dispute of the sharia economic dispute resolution institution add to the confidence of the Cassation level Judge other than based on the Civil Code and the principle of simple, fast and light costs. Although there is a gap or legal vacuum in the event that the case is about differences in dispute resolution institutions (in the contract there is an arbitration clause but the parties both want to resolve through the Religious Court) and the case has been registered or heard in the judicial institution, the Judge tries to explore and understand what the parties dispute.

4. Sharia Economic Law View on Decision Number 1695/Pdt.G/2012/PA. Js, Number 5/Pdt.G/2014/Pta.Jk and Number 272 K/Ag/2015

Islamic economics is built on the basis of Islam, therefore Islamic economics is an inseparable part of Islam. Sharia economics will always follow Islam in its various aspects. Islam is a way of life, where Islam has provided a complete set of rules for human life, including in the economic field. Some of these rules are definite and permanent, while some others are contextual according to the situation and conditions. The Islamic Sharia revealed by Allah SWT on earth is in the form of laws that are set out in detail and some are only stipulated in principle. Laws that are only stipulated in general or only the basics then become the task of the mujtahidin to describe in more detail and detail in order to appear as a practical order so that it can be a guide and guide for every Muslim on earth. Mahmud Syalthout in Kitab al-Islam aqidah wa syariah, explains what sharia is:

اللشريعة هى النظم التى شرعهاالله اوشرع أصولها ليأخذالانسان بها نفسه فى علاقته بربه وعلاقته بأخيه المسلم وعلاقته بأخيه الانسان وعلاقته بالكون وعلاقته بالحياة

"Sharia is an order established by Allah or established only the basics in order to guide mankind in communicating: with its God, with its fellow Muslims, with its brothers and sisters among mankind, with the universe and with its own life."

Islamic Sharia as a living order for mankind has a mission to protect the benefit of human life both in the world and in the Hereafter. Likewise, Islamic economics aims to obtain the benefit and welfare of the community, especially in the economic sector. An economic system can be said to be successful and successful if it is able to realize these benefits and welfare. This benefit is closely related to the existence, dignity and dignity of man and his future. If the provisions of Islamic sharia law are obeyed, that is, implemented properly, then Allah guarantees the realization of the benefit of life for mankind.

Vol. 15, No. 2, pp.66-71, December 2023 DOI: http://dx.doi.org/10.24042/asas.v15i02.18521

The concept of Maqhasid al-Sharia is an attempt to establish benefit as the most important element of basic objectives in Islamic law. Furthermore, in Kitab al-Muwafaqat, Ash-Shatibi wrote that:

وَاَنَّ الْأَحْكَـــامَ مَشْرُوْعَـةٌ لِمَصَـــالِحِ الْعِبَـــادِ

"And indeed the laws decreed (sharia) are for the benefit of the servant of Allah (man)."

According to Ash-Shatibi, human life will run well if the human being is able to understand the basics of the goals of sharia that have been set by Allah. A complete understanding of the basic objectives of sharia will make a person excel in life on earth and survive in the hereafter. The main points of the purpose of the Shari'ah in question are the maintenance and development of the five most substantial basic aspects, namely religion, soul, heredity, reason and property. These five elements are the substance of the teachings of Islamic law and in their application must also pay attention to the priority scale that must be considered in order to realize the targeted goals. The priority levels in question include the daruriyyat category, the hajiyyat category, and the tahsiniyyat category.

To protect the benefit of human life, Islamic sharia commands that humans do everything that contains and invites benefit, both for themselves and others. Islamic Sharia also prohibits doing acts that contain and/or invite madharat, both against oneself and against others and Islamic Sharia commands to do everything that can improve the benefit of human life.[1]

According to Anas Zarqa, as quoted by Abdul Ghofur, affirmed that Islamic economics is built from 3 (three) methodological frameworks. First, presumption and ideas (basic economic principles derived from the Qur'an, al-Hadith, and fiqh al-maqashid). Second, the nature of value jugdgement (the Islamic approach of value to the actual economic situation). Third, positive part of economics science (rules that can be realized practically).[2]

Islam advocates moral, social, economic, and institutional reforms to help realize the goals of sharia (Maqhasid al-Sharia), namely the realization of justice and welfare. Justice is the essence of the vision and mission of Islamic Law. Therefore, all forms of tyranny in the world must be eliminated, in the economic field examples are the absence of equality, monopoly, exploitation, and the imbalance between rights and obligations. Because actually the protection of the property in question also implies the protection of the rights of the property, while the property itself is entitled to fulfill its social function. The Qur'an does not want the property to be monopolized by only a few, as contained in the Qur'an surah al-Humazah (104) verses 1 and 2, which reads:

وَيْلٌ لِّكُلِّ هُمَزَةٍ لُّمَزَةٍ ۙ (1) الَّذِىْ جَمَعَ مَالًا وَّعَدَّدَه (2)

[1] Arto, Mukti. 2018. *Penemuan Hukum Islam Demi Mewujudkan Keadilan.* Yogyakarta: Pustaka Pelajar.

[2] Ghofur, Abdul. 2017. *Pengantar Ekonomi Islam.* Jakarta: Raja Grafindo Persada.

"*Reproach every swearer again detractors. Who collects treasures and counts them.*" (QS. al-Humazah [104]: 1-2).

Sharia economics is closely related to Maqhasid al-Sharia, especially in terms of property protection or hifzu al-mal. Maqhasid al-Sharia is the basis for the development of Islamic economics because it aims to create welfare and prosperity of society at large, by balancing the circulation of wealth fairly and equitably. In the economic context, Maqhasid al-Sharia has a dual role, namely: as a tool of control as well as a tool of social engineering, meaning that it provides a rational philosophical basis of economic activity itself. Without Maqhasid al-Sharia, the understanding and development of Islamic economic practices will be narrow, rigid, static, and tend to be slow. The Islamic economy will lose its sharia spirit and substance. But on the contrary, with Maqhasid al-Sharia the Islamic economy will develop elastically, dynamically, in accordance with the character of Islamic sharia which is universal and relevant in all places and in every age.

In order to strive for the realization of the ultimate goal of sharia economic law, it cannot only be imposed on business actors or the government, but requires support from all parties (stakeholders) and all levels of society. The parties interested in the success of the goal include:

a. The government, in this case is the Financial Services Authority (OJK) as the regulator.
b. The Indonesian Ulema Council, in this case the National Sharia Council (DSN-MUI), as the guardian of the products of Islamic economic institutions.
c. Judicial Institutions, in this case religious courts as the last gatekeeper in adjudicating disputes in the field of sharia economics.
d. Sharia Financial Institutions, such as sharia banks, sharia insurance, sharia pawnshops, sharia mutual funds, and other sharia businesses.
e. The public, users of sharia business products (creditors, debtors, and investors).

Based on some of these stakeholders, the judiciary has an important and strategic role in overseeing the achievement of the ultimate goal of the Islamic economy, through its function in adjudicating and resolving disputes in the field of Islamic economics. Parties who transact sharia economy, both creditors and debtors, have the same right to file a claim or lawsuit to the religious court if they feel aggrieved by other parties on the basis of sharia contracts that have been made or agreed.

The decision of the South Jakarta Religious Court, the Jakarta High Religious Court and the Supreme Court Decision as the researcher examined, these three are just a few examples of the many decisions of sharia economic disputes and the Supreme Court decision Number 272 K/Ag/2015 which is a decision from the last legal effort that resolves the dispute can be used as a reference in adjudicating or resolving disputes to lead to wider benefits, Especially in the scope of Islamic economics.

Based on the analysis that has been described by the researcher, it can be seen that there are different clauses in the contract related to dispute resolution institutions, in one article mentioning sharia arbitration and in another article

mentioning religious courts. The difference in dispute resolution institutions in one contract causes differences in the interpretation of judges which makes the different decisions handed down. The Jakarta High Religious Court adjudicated the case by declaring the case inadmissible on the grounds that the religious court was not authorized while the Supreme Court ruled in favor of the lawsuit by stating that the religious court had the authority to adjudicate the dispute.

The decision of the Jakarta High Religious Court which declared it unacceptable was not without basis. The Jakarta High Religious Court argued that with the difference between the two clauses of the dispute resolution agency, the appellate judge interpreted both articles. That the choice of dispute through a sharia arbitration body is contained in the "Dispute Resolution Chapter", while the choice of dispute resolution through a religious court body is contained in the "Chapter of Domicile and Notification", on that basis the Judge of the Jakarta High Religious Court is of the opinion that the choice that must be held is that contained in the "Dispute Resolution Chapter" which is to choose a sharia arbitration body, so that the religious court is not authorized.

Cassation judges are different from appellate court rulings. The cassation judge sees the problem in the dispute case not only seen from the contract, but also looks at the facts at the trial. In the trial process, the Defendant did not raise any objections or exceptions regarding the dispute filed in court. The Defendant only objected or answered the material of the dispute, did not discuss formal issues, especially dispute resolution institutions. The cassation judge responds to the difference in contract clauses between the dispute resolution chapter and the domicile chapter and notices with the understanding that if a contract is given two meanings, then a possible meaning is chosen to be executed. As in the case of such disputes in the contract contains multiple interpretations, the will of the parties takes precedence over the disguised wording of the contract. The parties have no dispute about the dispute being resolved in a religious court, therefore it is quite fair to choose a contract Article 15 (4) namely the settlement of the dispute a quo case settled by the Religious Court. The decision of the cassation judge is in line with Imam Shathibi's theory of maslahah, that Allah sent down sharia (rule of law) to take benefit and avoid madharatan. With the decision of the dispute in the religious court, So the problem of the parties is resolved without having to start over from scratch, namely submitting the dispute to the Sharia Arbitration Board which automatically costs a lot and more time to the parties to the dispute.

Cassation decisions provide legal certainty and justice to the aggrieved party, in this case creditors (financiers) for defaults committed by debtors (fund managers). The Defendant has defaulted on the agreement that has been made together, so it is mandatory to fulfill the performance to the Plaintiff in accordance with the agreed provisions so that the Cassation Judge sentences the Defendant to pay off debts, profit sharing and fines of Rp. 1,426,846,507, - (one billion four hundred twenty-six million eight hundred forty-

six thousand five hundred and seven rupiah). Allah says in Sura an-Nisa verse 29 which reads:

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تَأْكُلُوْٓا اَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ اِلَّآ اَنْ تَكُوْنَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۗ وَلَا تَقْتُلُوْٓا اَنْفُسَكُمْ ۗ اِنَّ اللّٰهَ كَانَ بِكُمْ رَحِيْمًا

"O believers! Do not eat one another's property in an unrighteous way, except in consensual trade among yourselves. And do not kill yourself. Truly, Allah is merciful to you." (QS. an-Nisa [4]: 29).

There are various verses in the Qur'an that allude to wealth, proving how much Islam pays attention to wealth. Although property has properties that can be different or contradictory, such as can save the owner and can also harm. But Islam has regulated how a Muslim can use his wealth to be useful for the life of the world and the Hereafter. Surah an-Nisa verse 29 is a strict prohibition regarding eating other people's property in a vanity way. Eating other people's property by vanity, such as eating it by usury, gambling, cheating or being dishonest and persecuting. Also included in this vanity path are all buying and selling prohibited by shara'.

Cassation decision number 272 K/Ag/2015 provides certainty and shows the public and all actors or practitioners of sharia economics, that sharia economic law has been well maintained in Indonesia through religious courts as judicial institutions and has run in accordance with sharia principles. The judge in giving a decision is impartial to any party, does not see who is in dispute and treats the parties equally in court by giving equal rights through jinawab answers and evidence from each party so that facts appear at trial and make the judge's consideration in deciding the dispute. Sharia Economic Law has been enforced based on the principles of sharia, as well as the basic objectives of sharia (*Maqhasid al-Sharia)*. Those who try to deviate and go outside the sharia line, the religious court through the judge will straighten it out and return it to the established path and will punish the losing party for carrying out the contents of the verdict.

If business actors have understood and understood the principles of sharia in the field of business they run, and the people who use these sharia products also understand and understand what they have signed, then the sharia economy in Indonesia will develop well and can provide greater benefits to the wider community. There should be no parties who seek unilateral benefits with the existence of sharia business in a vanity way or harm other parties. Seeking profit in business is normal and humane, but seeking such profit in ways that are in accordance with sharia and prioritizing benefits and blessings is primary. Benefits and blessings will not be obtained in ways that are vanity and deviate from the principles of sharia.

With the Supreme Court decision Number 272 K/Ag/2015, there are several lessons or benefits that can be summarized for the benefit of sharia economic law in Indonesia, namely:

a. Sharia economic law is the vanguard of law enforcement against the Islamic economic/business system.
b. Judges in religious courts use sharia economic law as an analytical knife

in building legal arguments against their decisions.

c. With the decision on the default lawsuit of the mudharabah contract, business actors and the wider community can see the judge's point of view in adjudicating sharia economic disputes, as a manifestation of the judge's commitment in maintaining sharia principles manifested in the sharia contract/contract.
d. With a ruling that prioritizes sharia principles, the value of benefit to the decision can be more felt in the community. Because the judge does not look at who is involved in the contract, but rather looks at what and how the contract is made and executed.
e. Judges do not only look at rules and laws textually, judges are not the mouthpiece of the law and can think progressively in resolving a sharia economic dispute in Indonesia. Because the text cannot change by itself, the meaning and understanding of the text must always develop along with the development of the benefit of society itself.

Based on the summary above, the researcher finally realized that whatever kind of regulations made by policymakers in the field of Islamic economics, and no matter how the contract made by interested parties, in the end the judge looked at the point of view "how the contract is implemented and in accordance with sharia principles". Because the judge looks more at the benefit side of the verdict. The extent to which the judgment can be executed by the parties, and the extent to which the judgment can provide benefits and benefits to society at large.

Judges in deciding cases must pay attention to the provisions of applicable laws and regulations, be it in the form of legal norms, legal principles, legal theories, laws, legal expert opinions and other regulations made by authorized institutions. In addition, judges can also base their legal considerations on the nash-nash of the Qur'an, al-Hadith, and the opinions of scholars. However, if these legal sources are still lacking, or there are special things that require a new, more relevant perspective, judges have the freedom and independence to use their understanding and knowledge in building legal arguments for their decisions. Which in the framework of Islamic law is often referred to as ijtihad.

▪ Closing

After analyzing the judge's judgment in Decision Number 1695/Pdt.G/2012/PA. Js, Decision No. 5/Pdt.G/2014/PTA. Jk and Decision Number 272 K/Ag/2015, can be concluded as follows:

1. There is a disparity in judges' decisions between Decision No. 1695/Pdt.G/2012 /PA.Js, Decision No. 5/Pdt.G/2014/PTA. Jk and Decision Number 272 K/ Ag/2015, namely: the judge's consideration in adjudicating differences in contract clauses regarding dispute resolution institutions. The South Jakarta Court's decision did not consider the authority of religious courts in resolving the dispute despite differences in contract clauses, the Jakarta High Religious Court stated that religious courts were not authorized to adjudicate the dispute due to the arbitration clause in the

contract, while the Supreme Court ruled that religious courts were authorized to resolve the dispute with consideration under Article 1343 and Article 1344 of the Civil Code.

2. The decision of a religious court judge becomes a legal product that ends a dispute and dispute in the field of sharia economy. Supreme Court Decision Number 72 K/Ag/2015 has provided certainty and shows the public and all sharia economic actors and practitioners that sharia economic law has been well maintained and has run in accordance with sharia principles. Judges explore legal values according to the sense of justice of the community so that the resulting verdict becomes a legal product that provides benefits, legal certainty and justice.

▪ Bibliography

Arto, Mukti. 2018. *Penemuan Hukum Islam Demi Mewujudkan Keadilan.* Yogyakarta: Pustaka Pelajar.

Ghofur, Abdul. 2017. *Pengantar Ekonomi Islam.* Jakarta: Raja Grafindo Persada.

Karim, Adimarwan A. 2013. *Bank Islam, Analisis Fiqh dan Keuangan Islam"*, Jakarta: Raja Grafindo Persada, Edisi 5, Cet. 9.

Kitab Undang-Undang Hukum Perdata.

Kompilasi Hukum Ekonomi Syariah.

Nasitotul Janah, Abdul Ghofur. 2018. *Maqashid As-Ayari'ah sebagai Dasar Pengembangan Ekonomi Islam.* International Journal Ihya' 'Ulum Al-Din Vol 20 No 2.

Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

Undang-Undang Nomor 48 tahun 2005 Tentang Kekuasaan Kehakiman.

Undang-Undang Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama.

Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah

Zein, Fuad. 2003. *Neo Ushul Fiqh Menuju Ijtihad Kontemporer: Aplikasi Ushul Fiqh Dalam Mengkaji Keuangan Kontemporer.* Yogyakarta: Fakultas Syariah UIN SuKa Press.