

NORMATIVE JUSTICE AND IMPLEMENTATION OF SHARIA ECONOMIC LAW DISPUTES: QUESTIONING LAW CERTAINTY AND JUSTICE

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Abstract: The academic problem stems from the outcomes of decisions issued by Religious Court concerning sharia economic disputes, which fail to meet the criteria of certainty and justice, both at the normative (*book in law*) and implementation (*law in action*) levels. The losing parties can only file objections for simple cases and submit an appeal, which contradicts the principle of direct justice (*speedy trial*). Therefore, This research aims to analyze this issue. The theoretical frameworks employed in this research include the theories of legal certainty and justice, *sulh* theory, and the theory of judicial power. The findings of the research demonstrate that for the decisions of judges regarding Sharia economic disputes in Religious Courts to meet the requirements of legal certainty and justice, they must adhere to Sharia principles, including: refraining from making things difficult (*'adam al-haraj*), reducing burdens (*taqlil al-taklif*), periodically determining laws, and in line with universal benefit and ensuring equality and justice (*al-musawah wa al-ilah*). Additionally, the decisions of the panel of judges in examining, deciding and resolving the case are guided by government laws/regulations, Perma, KHES, and Islamic jurisprudence (*fiqh*) and the judge's *ijtihad*.

Keywords: Normative And Implementation Justice, Sharia Economic Law Disputes, Legal Certainty And Justice

Abstrak: Problem akademik bermula dari hasil produk putusan yang dikeluarkan oleh Pengadilan Agama berkaitan dengan sengketa ekonomi syariah, belum memenuhi unsur kepastian dan keadilan, baik dari tataran hukum normatif (*book in law*) maupun implementatif (*law in action*). Para pihak yang kalah hanya dapat mengajukan keberatan untuk perkara sederhana dan mengajukan banding. Sehingga hal tersebut bertolak belakang dengan asas *contante justitie* (*speedy trial*). Sehingga tujuan

penelitian ini adalah untuk menganalisis tentang hal tersebut. Teori yang digunakan dalam penelitian ini antara lain teori kepastian dan keadilan hukum, teori *sulh*, serta teori kekuasaan kehakiman. Hasil penelitian membuktikan bahwa hasil putusan Hakim berkaitan dengan sengketa ekonomi syariah di Pengadilan Agama agar memenuhi unsur kepastian dan keadilan hukum harus merujuk pada prinsip syariah, meliputi : tidak mempersulit (*'adam al-haraj*), mengurangi beban (*taqlil al-taklif*), penetapan hukum secara periodik, sejalan dengan kemaslahatan universal, dan persamaan dan keadilan (*al-musawah wa al-adalah*). Selain itu hasil putusan majelis hakim dalam memeriksa, memutus dan menyelesaikan perkara tersebut dilakukan dengan merujuk pada Undang-undang/peraturan pemerintah, Perma, KHES, dan fiqh islam dan ijtihad hakim.

Kata Kunci: Keadilan Normatif Dan Implementatif, Sengketa Hukum Ekonomi Syariah, Kepastian dan Keadilan Hukum

INTRODUCTION

Justice and legal certainty for the parties involved in the resolution of sharia economic disputes in the jurisdiction of the Surabaya Religious High Court (PTA) presents a unique and compelling area of study. This is due to the endeavour to resolve sharia economic disputes fairly, ensuring elements of legal certainty by referring to the criminal code (KUHP). However, during the trial examination stage at court, judges are bound by the principle of *contante justitie*/speedy trial, *necessitating* the swift, precise, and thorough conduct of trial proceedings. In contrast to the practices of the Religious Court, it is imperative to incorporate the principle of *contante justitie* (speedy trial) in deciding cases involving Sharia economic disputes.

The first academic challenge arises from the attempt to resolve sharia economic disputes within the Religious Courts under the jurisdiction of Supreme Court in pursuit of justice and legal certainty. The second academic challenge pertains to judges' efforts to ensure justice and legal certainty in resolving Sharia economic disputes within the Religious Courts' jurisdiction. This challenge is underscored by delays in adjudicating Sharia economic disputes due to panels of judges not expeditiously, precisely, and thoroughly addressing cases. While normative legal certainty is rooted in legislation, implementation legal certainty is contingent upon legal norms in concrete circumstances, reflecting a significant disparity between theory and practice.

The third academic challenge emerges from the manifestation of justice and normative and implementation legal certainty in resolving sharia economic disputes, concerning the Civil Code within the jurisdiction of the Surabaya PTA. The issue lies in the choice of reference utilized in deciding Sharia economic dispute cases, where the Civil Code fails to effectively uphold the principles of justice. Given the nature of Sharia economic disputes, it is imperative to reference the KHES (Compilation of Sharia Economic Law), grounded in the Quran and Sunnah, to ensure adherence to Islamic legal principles

In Indonesia it, the Religious Courts are authorized to adjudicate disputes in Islamic banking, a jurisdiction expanded with the amendment of Law No. 7 of 1989 by Law No. 3 of 2006 concerning the Religious Courts. Besides being authorized to examine, decide and resolve disputes at the first level between Muslims concerning inheritance, marriage, wills, grants, and zakat, the court also has the authority to examine, decide

and resolve disputes in the field of sharia economics.¹ Meanwhile, what is meant by "sharia economics" are actions or business activities carried out according to sharia principles.² The procedural law that applies in the Religious Courts is the civil procedural law that applies in the General Courts, except for what has been specifically regulated (article 54 of law no. 7 of 1989).³ Sharia economic law, an integral aspect of sharia or Islamic law, has gained prominence globally and in Indonesia,⁴ amalgamating conventional economic law with *muamalat fiqh* which has long roots in Islamic history and tradition. The religious court is entrusted with the duty and authority to examine, try and resolve cases involving "sharia economics", including sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, and others.⁵ These business activities include: sharia banking; sharia microfinance institutions; sharia insurance; sharia reinsurance; sharia mutual funds; Islamic bonds and Islamic medium term securities; sharia securities; sharia financing; sharia pawnshops; sharia financial institution pension funds; and sharia business.

It is clear that the Religious Courts have the authority to resolve disputes in Islamic banking and disputes with other Islamic financial institutions.⁶ This authority was then strengthened by article 55 paragraph 1 of Law No. 21 of 1989 concerning Islamic banking, stating that the settlement of Islamic banking disputes is carried out by the Religious Courts. The confirmation of the authority of the religious courts to resolve sharia disputes was also strengthened by the Constitutional Court's decision on case no 93/PUU-X/2012, stipulating that the elucidation of Article 55 paragraph 1 of Law No.21 of 1989 was contrary to the 1945 Constitution. Additionally, it does not have binding legal force in which prior to the existence of a judicial review lawsuit showing that in article 55 paragraph 1, this law provides an opportunity for the disputing parties to resolve their case outside the Religious Courts if it is mutually agreed upon

- 1 Article 49, Law of the Republic of Indonesia Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, 2006, 15–16.
- 2 Gabriele Lattanzio, 'Beyond Religion and Culture: The Economic Consequences of the Institutionalization of Sharia Law' (2022) 52 *Emerging Markets Review* 100918 <<https://linkinghub.elsevier.com/retrieve/pii/S1566014122000358>>. See also, Ermanto Fahamsyah, Brigitta Amalia Rama Wulandari and Yusuf Adiwibowo, 'Sustainable Development Goals To Strengthen Indonesian Palm Oil Development Through Indonesian Sustainable Palm Oil (ISPO)' (2021) 6 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 82 <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/112>>; Bismi Khalidin and Armiadi Musa, 'Murabaha Financing Of The Indonesian Islamic Banks Under An Islamic Economic Law And The Fatwa DSN MUI' (2023) 8 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/238>>; Chairul Fahmi, 'The Dutch Colonial Economic's Policy On Natives Land Property Of Indonesia' (2020) 5 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* <<http://petita.ar-raniry.ac.id/index.php/petita/article/view/99>>.
- 3 Yurii M Yurkevych and others, 'Civil Law Regulation and Criminal Enforcement of Mandatory Vaccination Policies: A Comparative Aspect' (2021) 2021 *Médecine & Droit* 54 <<https://linkinghub.elsevier.com/retrieve/pii/S124673912030107X>>.
- 4 M Kabir Hassan and others, 'Equity Costs and Risks in Emerging Markets: Are ESG and Sharia Principles Complementary?' (2023) 77 *Pacific-Basin Finance Journal* 101904 <<https://linkinghub.elsevier.com/retrieve/pii/S0927538X22001998>>.
- 5 Eny Kusdarini and others, 'Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia' (2022) 8 *Heliyon* e11932 <<https://linkinghub.elsevier.com/retrieve/pii/S2405844022032200>>.
- 6 Ryan Randy Suryono, Indra Budi and Betty Purwandari, 'Detection of Fintech P2P Lending Issues in Indonesia' (2021) 7 *Heliyon* e06782 <<https://linkinghub.elsevier.com/retrieve/pii/S2405844021008859>>.

the contract.⁷ Where the dispute can be resolved through deliberations, banking mediation, the National Sharia Arbitration Board, or other arbitration institutions and or.

The exclusive use of terms such as "sharia economy," "sharia bank," "sharia insurance," "sharia capital market," among others, is unique to Indonesia.⁸ In contrast, other countries typically refer to these concepts as Islamic economics,^{9,10} or Islamic banking.¹¹ through courts within the general court environment.¹² This distinction originated in the 1990s, during the New Order regime when the government harbored an "Islamophobia" towards political Islamic movements. Consequently, any issue or movement invoking the name of Islam was perceived as a potential threat to national stability and governmental authority. Therefore, an economic movement based on Islamic teachings must avoid the word "Islam" in its mention for the sake of its sustainability. Thus, the term "sharia" was chosen to refer to economic and financial behavior based on Islamic teachings. Sharia economics has now become popular in the community and has become a term in Indonesia to replace the term "Islamic economics". This has led to the emergence of terms such as Sharia Bank, Sharia Insurance, Sharia Pawnshop, Sharia Capital Market, and even Sharia Hotel and Sharia Travel. In practice, in Indonesia Islamic Financial Institutions must comply with the provisions of Islamic law, determined by a fatwa decision issued by the Indonesian Ulema Council (MUI) through the National Sharia Council (DSN). If the DSN has not issued a fatwa on an issue, the Sharia Supervisory Board (DPS), as an extension of the DSN, can issue a temporary opinion until the fatwa is issued. While fatwas are generally not obligatory, they become binding for sharia economic practitioners once reinforced and recognized as standards of sharia compliance by laws and regulations.

Regarding the resolution of sharia economic disputes, such disputes within the jurisdiction of the Religious Courts of the Surabaya PTA must be addressed by a panel of judges. These judges are tasked with ensuring justice and legal certainty in the settlement of sharia economic disputes, based on the principles of normative justice and implementation legal certainty, as delineated in the Civil Code within their jurisdiction.

7 Syedah Ahmad, Robert Lensink and Annika Mueller, 'Uptake, Use, and Impact of Islamic Savings: Evidence from a Field Experiment in Pakistan' (2023) 163 *Journal of Development Economics* 103098 <<https://linkinghub.elsevier.com/retrieve/pii/S0304387823000536>>.

8 M Kabir Hassan and others, 'Convergence in Islamic Financial Development: Evidence from Islamic Countries Using the Fourier Panel KPSS Stationarity Test' (2023) 23 *Borsa Istanbul Review* 1289 <<https://linkinghub.elsevier.com/retrieve/pii/S2214845023001047>>.

9 Hasan Kazak and others, 'The Impacts of Conventional and Islamic Banking Sectors on Real Sector Growth: Evidence from Time-Varying Causality Analysis for Turkiye' (2023) 23 *Borsa Istanbul Review* S15 <<https://linkinghub.elsevier.com/retrieve/pii/S2214845023001023>>.

10 Zulfahmi Alwi, Rika Parmitasari and Alim Syariati, 'An Assessment on Islamic Banking Ethics through Some Salient Points in the Prophetic Tradition' (2021) 7 *Heliyon* e07103.

11 Kokou Adalessossi, 'Impact of E-Banking on the Islamic Bank Profitability in Sub-Saharan Africa: What Are the Financial Determinants?' (2023) 57 *Finance Research Letters* 104188 <<https://linkinghub.elsevier.com/retrieve/pii/S1544612323005603>>.

12 Maryja Šupa, Vytautas Kaktinas and Aistė Rinkevičiūtė, 'Computer-Dependent or Computer-Assisted? The Social Context of Online Crime in Lithuanian Court Judgements' (2023) 73 *International Journal of Law, Crime and Justice* 100577 <<https://linkinghub.elsevier.com/retrieve/pii/S1756061623000034>>.

Given these considerations, this study aims to investigate these issues on "Normative Justice and Implementation Related to Sharia Economic Law Disputes in Realizing Justice in Indonesia."

The following are research questions formulated for this study, including: 1) What are the efforts to resolve sharia economic disputes in the Religious Courts jurisdiction in the search for justice and legal certainty?; 2) What are the efforts of the panel of judges in implementing justice and legal certainty in the products of sharia economic dispute settlement decisions in the Religious Courts jurisdiction?; and 3) What constitutes the the form of justice and normative and implementable legal certainty in the resolution of sharia economic disputes based on the Civil Code in the Religious Courts jurisdiction?.

Methods

This study utilized the empirical juridical method, which examines enacting and implementing normative legal provisions directly within specific legal events occurring in society. Empirical legal research leverages empirical facts derived from human behavior, encompassing verbal behavior from interviews and actual behavior from direct observation. In this methodological approach, collecting data directly from the source is imperative, with researchers actively engaging in research activities to gather the required information. Prior to data collection, researchers must formulate hypotheses regarding potential findings. Empirical studies view law as a facet of reality that includes social, cultural, and other realities. This descriptive research highlights the discrepancy or imbalance that defines the research problem. The empirical dimension describes this gap, while the theoretical dimension pertains to theories that captivate the researcher's interest. The term "empirical" originates from the Greek word "*empiria*," signifying experience, experiment, discovery, and observation. Research is deemed empirical when it investigates events that have transpired historically.

Peter Mahmud Marzuki identified five legal research approaches, with this study employing both statutory and historical approaches. Through the statutory approach, researchers analyze rules and regulations pertinent to legal issues, focusing on Legal Certainty and Justice for Parties in the Settlement of Sharia Economic Disputes at Religious Courts. This approach aligns with Peter Mahmud Marzuki's assertion in his book "Legal Research," where he described the legislative approach as analyzing rules and regulations to unearth legal principles relevant to specific issues, in this case, Legal Certainty and Justice in Sharia Economic Dispute resolution. Meanwhile, the historical approach examines the background and evolution of legal arrangements concerning societal issues. Therefore, this research explores the development of legal frameworks addressing the issue of Legal Certainty and Justice for Parties in the Settlement of Sharia Economic Disputes at the Religious Court in Indonesia, contributing to a more nuanced understanding of the legal landscape.

Result and Discussion

Efforts to Resolve Sharia Economic Disputes in the Religious Courts of the Surabaya PTA Legal Area in the Search for Justice and Legal Certainty

Efforts to resolve Sharia Economic Disputes in the Religious Courts of the PTA Surabaya Legal Area in the Search for Justice and Legal Certainty need to be reviewed from the theory of *Maqasid* Syariah. Al-Ghazali argued that *Maqasid* Syariah protects five main principles: religion, soul, mind, lineage and property. Every law or rule in

these five principles is called *maslahat*. Any legal decision ignoring or even denying the five principles means *mafsadah* (harm). Hence, efforts to resolve sharia economic disputes in the Religious Courts under the jurisdiction of PTA Surabaya in seeking justice and legal certainty must be carried out by referring to sharia principles, including 1) refraining from making things difficult (*'Adam al-Haraj*), 2) reducing burdens (*Taqilil al-Taklif*), 3) periodically determining laws, and 4) promoting universal benefit and ensuring equality and justice (*al-Musawah wa al-Adalah*).

In resolving sharia economic disputes in the Religious Courts of the Surabaya PTA jurisdiction, one must pay attention to sharia principles, including:

1. Refraining from making things difficult (*'Adamul-Haraj*)

In establishing Islamic law, the Qur'an always takes into account the human ability to implement it. It is created by providing ease and relaxation (*tasamuh wa rukhsah*) for humans to accept the rulings of the law with their ability. As explained in Surah Al-Baqarah verse 286, which translates to : "O Allah, our Lord, do not burden us with a heavy burden as You burdened those before us. O our Lord, do not burden us with a heavy burden." Al-Syatibi stated that human ability is absolute in accepting the provisions of sharia law. Legal provisions unreachable by human ability to see these principles are invalid to be assigned to humans. This principle has been agreed by the majority of ulama, both from the Mu'tazilah (rationalist) and some Asy'aria followers (Sunni traditionalists).

2. Reducing Burden (*Taqilil al-Taklif*)

This second principle is a preventive measure against the *mukallaf's* tendency to diminish or augment religious obligations. The Qur'an does not permit the mukallaf to modify its commandments, even though such alterations might seem acceptable from a societal perspective. This approach aims to alleviate hardships and uphold the principles of human welfare by ensuring the faithful adhere to the law without feeling overburdened, thus preventing any resultant difficulties. This concept is elucidated in Surah Al-Maidah, verse 101, which translates to: "O you who believe, do not ask about things which, if disclosed to you, would cause you distress." Hence, it is inferred that the Prophet PBUH, upon receiving the Qur'anic verses, interpreted them by the societal needs of that era. Verses not immediately relevant were left open-ended, allowing for future interpretation in line with evolving societal conditions and needs.

3. Periodic Determination of Laws

The Qur'an is a holy book which in the process of *tarsi'* (determination of law) pays great attention to various aspects, including natural, spiritual, cultural and social of the people. In setting the law, the Qur'an always considers whether the human spiritual mentality is ready to accept the provisions that will be imposed on him. This is closely related to the second principle, which is not to burden the people. Thus, the sharia law in the Qur'an was not revealed immediately in a final format, but gradually, with the intention that the people would not be surprised by the sudden sharia. Therefore, the revelation of the Qur'an always descends according to the conditions and reality that occurred at that time.

4. In line with the Universal Benefit

Humans are both objects and subjects of Qur'anic law legislation. All laws in the Qur'an are intended for the benefit and improvement of people's lives, both regarding the soul, mind, offsprings, religion, and management of property. Thus, the application of the laws of the Qur'an always takes into account the five benefits,

that is where Islamic law is found. Islam is not only a mere doctrine that is synonymous with imposition, but also teachings that aim to improve human welfare. All laws facilitate humans in meeting their needs.

The general definition of the concept of *Maqasid Syariah* centers around adherence to sharia principles aimed at securing the welfare of the people. The application of maqashid sharia involves a number of human activities related to protecting religion, soul, mind, offsprings and property,. After the promulgation of Law number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning the Religious Courts, the absolute competence of the Religious Courts was added to the settlement of sharia economic dispute cases. This expansion has sparked controversy within the community, especially considering that the Basyarnas (Indonesian Sharia Arbitration Board) retains authority over resolving sharia economic disputes. Conflicts have emerged mainly because of Article 55 paragraph (2) and its elucidation in the Law of the Republic of Indonesia No. 21 of 2008 concerning Sharia Banking, along with Article 59 paragraph (3) of the Law of the Republic of Indonesia No. 48 of 2009 concerning Judicial Power, grant jurisdiction to courts within the general court system to adjudicate cases related to sharia banking. Article 55 of Law Number 21 of 2008 concerning Islamic Banking states that:

1. Settlement of Sharia Banking disputes is carried out by courts within the Religious Courts;
2. In the event that the parties have agreed to settle a dispute other than as referred to in paragraph (1), the settlement of the dispute is undertaken in accordance with the contents of the Akad; and
3. Settlement of disputes, as referred to in paragraph (2), may not conflict with sharia principles and material law: KHES (Compilation of Sharia Economic Law) and fiqh books.

In review from *al-shulhu* and PERMA No. 1 of 2016 concerning Mediation Procedures in Courts, the Deed of Settlement of Sharia Economic Disputes in the Religious Courts uses a simple lawsuit procedure, so mediation, as stipulated in Perma No. 1 of 2016 regarding mediation procedures in court, is not implemented.¹³ The option to utilize a straightforward lawsuit procedure is further detailed in PERMA No. 4 of 2019, which amends PERMA No. 2 of 2015, delineating the criteria for settling simple claims without the intervention of a mediator. Interestingly, in Islamic law, the Peace Deed does not necessitate litigation; however, once a case proceeds along the litigation path, reconciliation (*al-shulhu*) remains a priority.

Sharia Economics has emerged as a novel discipline within Religious Courts across Indonesia, with its legal framework for resolving Sharia economic disputes established on March 20, 2006, through Law Number 3 of 2006. This legislation mandates that the

13 Sri Turatmiyah and others, 'The Ineffectiveness of Mediation in Divorce Disputes: A Case Study in the Palembang Religious Court' (2022) 55 *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 351 <<https://asy-syirah.uin-suka.com/index.php/AS/article/view/1232>>; Zesty Wulan Ayu Widhi Prameswari and Erni Agustin, 'Indonesian Marriage Law Reform: The Way To Strengthen The Protection of Children's Rights Against Child Marriage' (2018) 2 *Journal of Southeast Asian Human Rights* 286. See also, Siti Maimunah Binti Mohd Rijal and Rukiah Muhammad Ali, 'Efektivitas Pelaksanaan Sanksi Talak Di Luar Mahkamah Rendah Syariah' (2018) 3 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah*; Al Khanif, 'Women, Islam, and Modern Family Construction in the Perspectives of Legal Pluralism in Indonesia' (2019) Vol.4 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah*.

Religious Courts, under the Supreme Court's jurisdiction, adequately prepare to implement these new guidelines. This reform in the field of Sharia Economics prompted the Supreme Court to provide outreach to judges in Religious Courts throughout Indonesia to anticipate the inability of the Religious Courts to resolve sharia economic cases. According to Toif, within the jurisdiction of the Religious Court, post the enactment of Law Number 3 of 2006, judges from the Surabaya PTA jurisdiction have participated in training sessions conducted by the Supreme Court, the most recent of which was on April 26, 2013.¹⁴

The Religious Courts are required to have a special assembly that handles Sharia economic dispute cases, with preference given to panels where one, some, or all judges possess certification in Sharia economic dispute resolution training. Currently, at the Religious Court in the jurisdiction of PTA Surabaya, the head of the special assembly lacks a certificate in sharia economic training. However, its members are certified in Islamic economic dispute resolution. Before the introduction of Law Number 3 of 2006, the Kediri Religious Court had not registered any complaints about Sharia Economic disputes. Mulyadi, S.Ag., a judge at the PA of Kediri City, highlighted the absence of complaints about the Sharia economy, attributing it to a lack of legal framework and the inherently passive nature of the Religious Courts, which only act upon received complaints.¹⁵ Drs. Agus Suntono, M.H.I, a Kediri district Religious Court judge, emphasized the court's inability to perform its functions without public complaints regarding the sharia Economy.¹⁶

Echoing this sentiment, Drs. H. Imam Syafi'i, S.H., M.H., from the same court, stated that following Law No. 3 of 2006's enactment, the court had to adapt and prepare for handling sharia economic cases, despite the lack of specialized training initially.¹⁷ Through discussions with officials and judges and independent study, the judiciary began to familiarize themselves with Sharia economics. Drs. Sultoni, M.H., another Kediri Regency Religious Court judge, remarked on the gradual understanding and resolution of Sharia economic disputes, attributing progress to continuous communication and discussions among judges. Despite initial challenges, efforts towards reconciliation before making a legally binding decision have been emphasized, with some cases being amicably settled or withdrawn before reaching a court verdict.¹⁸ Of the four cases, two were resolved because they were repealed, one case was resolved amicably and one case was resolved by a judge's decision.

Before the training on Sharia economics, according to Sultoni, the Religious Courts had efficiently executed their responsibilities. Despite resolving Sharia economic disputes before such training was introduced, public acknowledgment of issues about Islamic economics remained somewhat underappreciated. This situation is reflected in the relatively low incidence of sharia economic cases brought to court, with an annual

14 'Results of an Interview with the Kediri Regency Religious Court Judge, Dr. H. Toif M.H, on June 11 2022'.

15 'Results of an Interview with the Judge of the Kediri City Religious Court, Mr. Mulyadi, S.Ag., on June 11 2022'.

16 'Results of Interviews with District Religious Court Judges. Kediri, Mr. Drs. Agus Suntono, M.H.I, on June 11, 2022'.

17 'Results of Interviews with District Religious Court Judges. Kediri, Mr. Drs. H. Imam Syafi'i, S.H., M.H., on June 11, 2022'.

18 'Results of Interviews with District Religious Court Judges. Kediri, Mr. Drs. Sultoni, M.H., on June 11, 2022'.

frequency ranging from one to three cases. Several hypotheses can be explored to account for this scant number of cases. Firstly, the absence of cases might be due to a lack of defaults or illegal actions, or such issues were settled through non-litigious means, including deliberations, mediation, and negotiations. Secondly, the incidence of sharia economic disputes between Islamic Rural Banks and depositors within the jurisdiction of the Kediri Regency Religious Court (PA) may be too insignificant to warrant legal action, deemed neither tactically nor practically advantageous.

Dra. Hj. Titik Purwantini, M.H., the Junior Registrar of Law at the Religious Court of Kab. Kediri, further supports this perspective,¹⁹ stating that " Whether we like it or not, we must always be prepared to enforce Law Number 3 of 2006. However, public engagement remains minimal despite numerous complaints about the Sharia economy being filed at the Kediri District Religious Court. Over the last two years, complaints have predominantly originated from a single institution; specifically, all Sharia economic grievances have been lodged by Bank Muamalat and individual claimants, primarily on suspicions of default".

The above discussion elucidates that resolving Sharia economic disputes in the pursuit of justice and legal certainty necessitates a reevaluation through the lens of *Maqasid Syariah*. Al-Ghazali stated that *Maqasid Syariah* is reflected in five main things, namely protecting religion, soul, mind, offspring and property. Every law or rule in these five principles is then called *maslahat*. Any legal decision ignoring or even denying the five principles above, means *mafsadah* (harm). Therefore, efforts to resolve sharia economic disputes in the Religious Courts in seeking justice and legal certainty must be carried out by referring to sharia principles, including 1) refraining from making things difficult (*'Adam al-Haraj*), 2) reducing burdens (*Taqlil al-Taklif*), 3) periodically determining laws, and 4) promoting universal benefit and ensuring equality and justice (*al-Musawah wa al-Adalah*).

Efforts to Settlement of Sharia Economic Disputes in the Religious Courts in the Search for Justice and Legal Certainty in terms of *maqashid sharia* results are a primary need for judges at PTA Surabaya. Where *Maqasid al-shariah* is the goal and purpose of Allah and His Messenger stipulating a law formulated in the sources of Islamic law, in which case the sharia classifies human needs into three classifications namely *al-Daruriyyah* (necessity), *al-hajjiyyah* (needs) and *al-tahsiniyyah* (luxuries).

The *dhorury* needs is divided into five parts: safeguarding religion (*hifzu al-din*), life (*hifzu al-nafs*), property (*hifzu al-mal*), sreason (*hifzu al-aql*), and the offspring (*hifzu al-nasl*). These goals and objectives can be traced in the Qur'an and the Sunnah of the Prophet as a logical reason that can never be separated from the benefit/interests of mankind. Al-Syatibi argued that basically the law and a set of rules are prescribed by Allah to mankind have aims and objectives for everyone's benefit.²⁰ Meanwhile, according to Syatibi, benefit is not distinguished between the benefit of the world and the benefit of the hereafter, both of which have been aimed at maintaining *khuliyat al-khams*, so it is included in the scope of *mashlahah*.²¹

19 'Results of Interviews with Junior Legal Registrars at the District Religious Courts. Kediri, Dra. Hj. Titik Purwantini, M.H, on March 11 2023'.

20 Satria Effendi, *Ushul Fiqh* (Prenada Media Group 2015).**Error! Reference source not found.**

21 Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Usul Al-Ahkam* (Jilid 1, Dar al-Ma'rifah 2004). See also, Muhammad Siddiq Armia and others, 'Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of

Imam al-Ghazali,²² asserted that a benefit must align with *syara'* or sharia's objectives, even if it contradicts human objectives, as human benefit often stems from desires (lust) rather than sharia's guidance. Thus, the benchmark for determining benefit is sharia's will and objectives, not human desires. Accordingly, a benefit considered for establishing law, according to al-Ghazali, must meet certain criteria. Firstly, it should align with the types of sharia actions. Secondly, it should not contravene sharia texts. Thirdly, it should fall under the *dhoruri* (essential) benefits, accommodating personal and public interests, applying universally to everyone.

In Islamic law, efforts to achieve peace by the parties to resolve muamalah disputes are known as *al-shulhu*. Parties in dispute or third parties can seek *al-shulhu* to resolve conflicts, with third parties acting as mediators or facilitators. The application of *al-shulhu* in Islamic law is actually extensive, extending beyond family and political disputes.²³

Therefore, efforts to resolve Sharia Economic Disputes in Religious Courts should adhere to Sharia principles, including: a) avoiding hardship (*adam al-haraj*), b) lightening burdens (*taqlil al-taklif*), c) periodically updating laws, and d) promoting universal benefit, and ensuring equality, and justice (*al-musawah wa al-adalah*).

In addition, efforts to resolve sharia economic disputes in the Religious Courts to achieve justice and legal certainty need to be reviewed from the theory of *Maqasid Syariah*. Al-Ghazali argued that *Maqasid Syariah* has five main objectives: protecting religion, soul, mind, offspring and property. Every law or rule that upholds these five principles is deemed *maslahah* (beneficial), while any decision that disregards or opposes them is considered *mafsadah* (harm). Therefore, efforts to resolve sharia economic disputes in the Religious Courts should adhere to sharia principles including: 1) refraining from making things difficult (*'Adam al-Haraj*), 2) reducing burdens (*Taqilil al-Taklif*), 3) periodically determining laws, and 4) promoting universal benefit and ensuring equality and justice (*al-Musawah wa al-Adalah*).

Efforts of the Panel of Judges in Implementing Justice and Legal Certainty in Sharia Economic Dispute Resolution Decision Products at the Religious Courts

The efforts of the Panel of judges in implementing justice and legal certainty in the products of sharia economic dispute settlement decisions should be reviewed from the theory of justice and legal certainty. These efforts refer to the ones made by government laws/regulations, KHI, KHES, and Islamic jurisprudence (fiqh). The meaning of justice comes from the word *masdar* from the verb (*fi'il madhi*) namely *'adala-ya'dilu-'adlan-wa'adulatan-wa'adalatan*, in which the basic letters of justice mean a state of deviation that is contradictory, namely straight or equal and crooked or different. In establishing a law, the word fair is to determine the law correctly. It is commonly understood that a just individual is characterized by integrity, consistent behavior, and equitable treatment toward all parties involved without showing favoritism or bias. Thus, justice is defined as the impartial resolution of disputes, standing firmly on the side of truth. Fairness is synonymous with balance, impartiality,

Restorative Justice' (2022) 17 AL-IHKAM: Jurnal Hukum & Pranata Sosial 113; Muhammad Siddiq Armia, 'Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)' [2019] Qudus International Journal of Islamic Studies.**Error! Reference source not found.**

22 Abu Hamid Ibn Muhammad Al-Ghazali, *Al-Mustasfa Min 'Ilm Al-Ushul* (Dar al Fikr).

23 Sayyid Sabiq, *Fiqh Al-Sunnah* (Al-Ma'arif 1997).

and ensuring that entitlements are granted without prejudice while also ensuring that everything is appropriately placed. It entails speaking the truth without hesitation, guided by a sense of duty to Allah. This involves determining the truth in accordance with religious principles, thereby ensuring that actions are based on righteousness.

The endeavor of the judicial panel to uphold justice and legal certainty in Sharia's economic dispute resolution within the jurisdiction of the Religious Courts of the Surabaya High Court is notable. A total of 177 cases were submitted for consideration, resulting in 126 adjudicated cases, with 51 cases still undergoing trial.²⁴ The following elaborates the sharia economic decisions List from the Religious Courts of the Surabaya High Court jurisdiction.

1. The status of "Peace" Decisions (20 cases) were decided by judges in several Religious Courts, including judges in Jombang PA, Kediri Municipal Religious Court, Surabaya religious courts, and Sidoarjo religious courts. The judges referred the legal sources of Islamic jurisprudence (*fiqh*), KHES, KHI, and UU/PP.
2. The verdict status of "Unacceptable" was in 15 cases, consisting of the Kediri Municipal Religious Court, Tulungagung Religious Court, Surabaya Religious Court, Sidoarjo Religious Court, and Bangil Religious Court. The judges referred to the legal sources of KHES and KHI.
3. The verdict status of "Rejected" was in eight cases, consisting of the Kediri Municipal Religious Court, Surabaya Islamic Court, and Bangil Religious Court. The judges referred to the legal sources of KHES and KHI, as well as UU/PP.
4. The verdict status of "granted" was in 36 cases, consisting of Jombang PA, Kediri Municipal PA, Tulungagung PA, Surabaya PA, Sidoarjo PA, Bojonegoro PA, and Bangil PA. The judges referred to the legal sources of Islamic jurisprudence (*fiqh*), KHES, KHI, and UU/PP.
5. The verdict status of "Written off the register" was in one case, namely in PA Tulungagung. The judges referred to the source of KHES law.
6. The verdict status of "Revoked" was in 46 cases, consisting of Jombang PA, Kediri Municipal PA, Tulungagung PA, Surabaya PA, Sidoarjo PA, Bojonegoro PA, and Bangil PA. Meanwhile, referredrefer to the legal sources of Islamic jurisprudence (*fiqh*), KHES, KHI, and UU/PP.

Based on the judges' decisions outlined above, it is evident that, overall, judges at PTA Surabaya predominantly rely on legal sources from KHI when adjudicating sharia economic dispute cases. The breakdown of these sources is as follows: a) Islamic jurisprudence (*fiqh*) as the source of law in 29 cases; b) KHES as the legal source in 25 cases; c) KHI as the source of law in 60 cases; and d) UU/PP as the source of law in 12 cases. Notably, the majority of verdicts concluded with "Revoked," totaling 46 cases of sharia economic disputes.

Enhancing the quality of judicial decisions and the professionalism of judicial institutions necessitates judges' consideration of three fundamental principles: justice

24 'Results of Dissertation Research Data Processing Result of Judge's Decision at the Religious Court in the Legal Area of PTA Surabaya Sharia Economic Case,' 2023'. See also, Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Form Over Substance, Achieving Objectives While Preserving Values' (2023) 8 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah* i; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Maintaining the Constitutional Rights to Create a Better Society' (2023) 8 *Petita : Jurnal Kajian Ilmu Hukum dan Syariah* 69.

(*gerechtigheit*), certainty (*rechsecherheit*) and expediency (*zwachmatigheit*).²⁵ Achieving harmony in law is a complex endeavor, contingent upon parties to disputes or those engaging with the law feeling content and accepting decisions gracefully. Moreover, law must evolve rapidly to keep pace with societal developments and regulate potential disputes comprehensively. The interplay between theory and practice is crucial, as independence without mutual reinforcement can undermine the efficacy of the legal system. Furthermore, failing to adapt to societal changes risks eroding public trust in the law. Fundamentally, the law exists to engender trust within society, facilitating the realization of human aspirations. Through law, it is hoped that the attainment of human aspirations (legal subjects) can be established. Gustav Radburch noted that justice, certainty, and expediency are integral to the law's fulfillment. The existence of the law includes passive law (statutory regulations) and active (judges in court). Given the importance of the principles of justice, legal certainty and benefits in decisions made by judges as a product of the court, it is paramount to explain how a decision has these three aspects so that the interests of justice seekers are not neglected.

Forms of Normative and Implementation Justice and Legal Certainty in Settlement of Sharia Economic Disputes Based on the Civil Code in the Religious Courts

The structure of justice and normative and implementation legal certainty in the resolution of Sharia economic disputes, based on the Civil Code in the Religious Courts is set forth in article 1244 of the Civil Code. This principle serves as a foundation for ensuring justice and normative legal certainty. Furthermore, at the implementation level, Islamic economic disputes are resolved through non-litigation channels, incorporating methods such resolution of Islamic economic conflicts based on *maslahah mursalah*.

Normative Legal Certainty arises when regulations are established and promulgated clearly, as they are defined unambiguously and logically. Legal certainty represents a fundamental objective of the law, striving towards achieving justice. In the context of Sharia Economic Dispute Resolution within the jurisdiction of the Civil Code, Normative Legal Certainty, as a manifestation of justice and legal certainty, is evident in the outcomes of judicial decisions. Specifically, 112 verdicts have been made based on various legal sources, including Islamic jurisprudence (*fiqh*), KHES, KHI, and UU/PP. Law implementation refers to the enactment of basic policy decisions, usually in the form of laws. However, it can also encompass important executive orders or decisions or decisions of the judiciary. An example of Implementation Justice and Certainty in the resolution of Sharia Economic Disputes under the Civil Code within the Religious Courts of the Surabaya PTA jurisdiction is illustrated by numerous decisions that were "Revoked" based on legal reasoning (*istinbatul ahkam*) derived from the Compilation of Islamic Law (KHI).

25 Robin Hui Huang, Hui Deng and Aiden Foon Lok Chan, 'The Legal Nature of Cryptocurrency as Property: Accounting and Taxation Implications' (2023) 51 *Computer Law & Security Review* 105860 <<https://linkinghub.elsevier.com/retrieve/pii/S0267364923000705>>. See also, Muhammad Siddiq et al Armia, 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?' (2022) 7 *JLS* 525; Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' [2018] *Intellectual Discourse*.

The pursuit of justice and both normative and implementation legal certainty in settling sharia economic disputes under civil law within the Religious Courts of the PTA Surabaya jurisdiction is inherently tied to the theory of sharia economic law (*maslahah*). It prioritizes the essential needs in establishing a model of justice and legal certainty for parties involved in Sharia Economic Dispute Resolution. The concept of *maslahah*, as proposed by al-Ghazālī dan al-Syatibi,²⁶ serves as an argument for Islamic law to foster the Form of Justice and legal certainty at the normative and implementation levels in the resolution of Sharia Economic Disputes based on the Civil Code under the Religious Courts of the jurisdiction of Supreme Court, including PTA Surabaya.

This concept aligns with the provisions in Part 4 of the Civil Code regarding Compensation for Costs, Losses, and Interest due to Non-fulfillment of an Agreement, specifically outlined in Articles 1243 and 1244. These articles stipulate the conditions under which compensation for costs, losses, and interest becomes obligatory and the debtor's responsibility to provide restitution unless the failure to fulfill the agreement or its timing was due to unforeseeable circumstances for which they cannot be held accountable.

Consistent with research by Idris by Idris,²⁷ the sharia economic conflict resolution through non-litigation is based on the perspective of al-Syaitibi *maslahah* theory. Currently, the settlement of sharia economics has been regulated in the Law on Religious Courts, stating that matters relating to sharia economics must be carried out at the Religious Courts. However, Islam traditionally recognizes and values out-of-court settlement for its potential to minimize risks, such as lower costs and sometimes even being cost-free. Rasulullah PBUH also demanded his people to resolve a conflict by peaceful means or deliberation, emphasizing that such a method aligns with Islamic virtues.

In addition, the ideal of law enforcement, as envisioned to uphold moral integrity within the Indonesian context, aims to foster legal awareness among the community and law enforcers. This initiative is expected to influence social dynamics positively. Ideally, law enforcement in Indonesia should evolve autonomously, adapting to the social order and the dynamic changes within society, thereby ensuring that the prevailing social conditions inform legal actions.²⁸

26 Sigurd D'hondt, 'Why Being There Mattered: Staged Transparency at the International Criminal Court' (2021) 183 *Journal of Pragmatics* 168 <<https://linkinghub.elsevier.com/retrieve/pii/S037821662100268X>>; Abi Adams-Prassl and Jeremias Adams-Prassl, 'Systemic Unfairness, Access to Justice and Futility: A Framework' (2020) 40 *Oxford Journal of Legal Studies* 561; Stevie Martin, 'Mud Sticks: Publication Of Information About Pre-Charge Criminal Investigations And The Tort Of Misuse Of Private Information' (2022) 81 *The Cambridge Law Journal* 232 <<https://www.cambridge.org/core/product/F238AE7597EB5B5652F410EDB5009B4A>>.

27 Fazilah Idris and others, 'Influence of Ritual Behavior on Religious Delinquent Behavior Among Youth: A Path Analysis Approach' (2012) 59 *Procedia - Social and Behavioral Sciences* 51 <<https://linkinghub.elsevier.com/retrieve/pii/S1877042812036865>>.

28 Hisam Ahyani, Memet Slamet and Tobroni, 'Building the Values of Rahmatan Lil 'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law' (2021) 16 *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 121 <<http://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/4550>>; Raditya Sukmana, 'Critical Assessment of Islamic Endowment Funds (Waqf) Literature: Lesson for Government and Future Directions' (2020) 6 *Heliyon* e05074 <<https://linkinghub.elsevier.com/retrieve/pii/S2405844020319174>>.

Judges, therefore, are encouraged to re-evaluate community customs concerning the distribution of joint assets and to seriously consider the principles of *maslahah* in every judgment. This approach necessitates judges consistently applying the *maslahah* principle in legal decision-making for Sharia Economic Dispute cases and requires judicial courage to engage in *ijtihad* in cases involving joint property. In the PTA Surabaya, decisions have predominantly been influenced by legal reasoning based on the Compilation of Islamic Law (KHI).

Conclusion

From the preceding discussion concerning the research on normative justice and implementation related to sharia economic law disputes in realizing legal certainty and justice in indonesia, the conclusions are as follows:

1. The efforts to resolve sharia economic disputes within the religious courts under the jurisdiction of the PTA Surabaya, in the pursuit of justice and legal certainty, necessitate an examination through the lens of the *Maqasid Syariah* theory. Al-Ghazali stated that *Maqasid Syariah* is reflected in five main elements: protecting religion, soul, mind, offspring and property. Every law or rule that contains these five principles is deemed to serve the public interest (*maslahat*). Any legal decision that ignores or even denies these five principles means *mafsadah* (harm). Thus, efforts to resolve sharia economic disputes in the religious courts under the jurisdiction of PTA Surabaya must adhere to sharia principles: a) refraining from making things difficult (*'Adam al-Haraj*), b) reducing burdens (*Taqil al-Taklif*), c) periodically determining laws, and d) promoting universal benefit and ensuring equality and justice (*al-Musawah wa al-Adalah*).
2. The efforts of the Panel of Judges in implementing justice and legal certainty in the products of sharia economic dispute settlement in the Religious Courts of the Surabaya PTA jurisdiction involve references to government laws/regulations, KHI, KHES, and Islamic jurisprudence (*fiqh*).
3. The manifestation of justice and both normative and implementation legal certainty in the settlement of Sharia economic disputes, as applied by the Religious Courts under the Surabaya PTA jurisdiction, are twofold. Normatively, it is represented by the principle of justice as delineated in Article 1244 of the Civil Code, encapsulating normative legal certainty. On the implementation level, it materializes through non-litigation dispute resolution mechanisms, including the resolution of sharia economic dispute based on the principle of *maslahah mursalah* (consideration of public interest).

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