LITIGATION OF SHARIA ECONOMIC BANKRUPTCY (Indonesian Bankruptcy Law Perspective)

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Abstract

This study aims to gain a deep understanding of whether the issue of debts in the scope of sharia economics has been well accommodated in bankruptcy and debt settlement through the Commercial Court based on the Bankruptcy Law. This is normative legal research through literature study and case study, and it is enriched with interviews with sources at the Supreme Court. The results show that there has been an overlap in the court's competency to adjudicate based on applicable laws and regulations. There is no synchronization between the court's competency based on the Bankruptcy Law and based on the Religious Courts Law, especially regarding the settlement of debts within the scope of sharia economics. In the case study on the Commercial Court's decisions, it is known that its final settlements were made without sufficient consideration of sharia economics compliance principles. The Supreme Court, as the holder of judicial power, has attempted to fill the legal vacuum with its policies to synchronize so that the judicial process can run smoothly. Another solution to resolve the overlapping judicial competency arising from the Bankruptcy Law and the Religious Courts Law is to file a judicial review with the Constitutional Court, even though dilemmatic. The remaining issue is that the settlement of debt within the scope of sharia economics is still decided in the Commercial

Court, not the Religious Court. The ultimate solution is to propose an amendment to the Bankruptcy Law to accommodate settlements within the scope of sharia economics.

Keywords: Bankruptcy, Debts, Sharia Economics, Commercial Court, Religious Court

Introduction

Economic activity is a universal issue due to social interaction among humans in fulfilling their life needs. These activities include production, consumption, and distribution activities. Economics comes from two Greek words: *oikos,* or household, and *nomos,* or rules. Therefore, Economics is defined as the rules for managing a household, whether it is a household on an individual, family, or company scale (microeconomic scale) or a household within a country (macroeconomic scale).[1]

Within the scope of economics is a specialization of sharia economics, often called Islamic economics. Sharia economics is also identified with *Qur'anic* economics, divine economics, or "*rahmatan lil'alamin economics*."[2] In Indonesia, the term sharia economics is more popular than Islamic economics. Political considerations also underlie the use of the term sharia economics as a proposal by the New Order government during its development at that time. Generally, Indonesians use the term sharia economics for laws and regulations.[3]

Sharia economics is defined as activities carried out by individuals, groups of people, or business entities, whether incorporated or not, to fulfill human needs that are commercial or non-commercial and based on Sharia principles.[4] Business activities carried out according to sharia

[1] Robert J.Buera, Francisco, P.Kaboski, Joseph, & M.Townsend, *From Micro to Macro Development* (1050 Massachusetts Avenue Cambridge, MA 02138, 2021), http://www.nber.org/papers/w28423.

[2] Ibnudin, "Pemikiran Ekonomi Islam Pada Masa Nabi Muhammad," *Risalah* 5, No. 1 (2019): 51–61.

[3] Sisi Ade Linda, Zufriani Zufriani, and Doli Witro, "Karakteristik Dan Hakekat Peraturan Perundang-Undangan Hukum Ekonomi Syariah," *Al-Amwal: Journal of Islamic Economic Law* 6, no. 1 (2021): 64–75.

[4] Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2008 concerning Compilation of Sharia Economic Law; Book I Chapter I Article 1 Number 1.

principles include sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds, sharia medium-term securities, sharia securities, sharia financing, sharia pawnshops, sharia financial institution pension funds, other sharia businesses.[5]

In economic and trade activities, there is a discussion about payment obligations, commonly called debt. The first thing that comes to mind for lay people about debt is the transaction of borrowing money to meet human needs. This understanding is debt in the narrow sense or *qardh* (القرض) in Arabic, and in the context of sharia economics, *qardh* is not debt in commercial transactions.[6] In the *Qur'an*, Chapter 2, verse 282, the term *dain* is also found to explain transactions not paid in cash. The discussion of debt settlement here refers to the definition and term of debt (*dain*), which is the last mentioned. Debt is an obligation that is stated or can be stated in an amount of money, either in Indonesian currency (IDR) or foreign currency, directly or contingently. The lender (the creditor) is called *da'in,* and the borrower (the debtor) is called *mudayin*.[7]

In the context of bankruptcy law, Hadi Subhan explains that a person, due to his actions, causes him to be obliged to give or not give something. This means that at that time he has a debt or must perform *prestatie*, then the debt is the same as *prestatie*. If he does not pay the debt or carry out the obligation, it can be called a breach of contract (*wanprestasi*).[8] In principle, the term debt can be replaced with the term "obligation," as contained in Article 1233 of the Indonesian Civil Code (*Burgeirlijk Wetboek*).[9]

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[5]See Explanation of Article 49 letter i of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts.

[6] Syafi'i (Nio Gwan Chung) Antonio, *Bank Syariah Dari Teori Ke Praktek* (Jakarta: Gema Insani Press-Tazkia Cendikia, 2017):131.

[7] Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2008 concerning Compilation of Sharia Economic Law; Book I Chapter I Article 1 Numbers 29, 31, and 32.

[8] Hadi Subhan, *Hukum Kepailitan - Prinsip, Norma, Dan Praktik Di Peradilan*, Cetakan Ke-4 (Jakarta: Kencana, 2014) p.35.

[9] *BW* is an abbreviation of *Burgirlijk Wet Boek* or Civil Code, which is applicable in the Netherlands and its colonies, including Indonesia, and it is still enforced today based on the Transitional Provisions in the 1945 Constitution.

Thus, the concept of debt in the scope of sharia economics has similarities with the general civil law perspective. A debt is a form of obligation to fulfill the performance in the form of payment of a sum of money due to an agreement or contract (*aqad*) or required by law. Furthermore, the debt from a Sharia economics perspective is different in terms of the specification concept of finance and the prohibition of usury (*riba*) in transactions. This has consequences for the final calculation of the monetary value of a debt as well as differences in treatment and settlement methods.

The sharia economic system is presented as a detector of usury transactions. The limitation is - وَاَحَلَّ اللهُ الْبَيْعَ وَحَرَّمَ الرِّبٰوا - *wa ahallallahu al baia' wa harrama al riba* - namely that "*Allah has permitted sale and purchase and forbidden usury* (*QS. al-Baqarah*: 275)." Sales and purchases on one side and usury on the other are compared because, in practice, usury can also occur or be easily found in sale and purchase practices. Even though people say, it is ordinary business practice. It is ordinary sales and purchases, and it is not usury. However, sale and purchase transactions can also fall into usury transactions. Even in the process of settling bankruptcy assets, usury can also occur.

The development of the Indonesian sharia macro economy, especially from the banking sector perspective, still has great potential to grow, considering that its market share is still in the range of 7%[10] or still far below Malaysia, which has reached 25%.[11] However, along with its development, the sharia economy also gave rise to problematic transactions that became disputes between economic actors (creditors and debtors). In this case, the problematic debt in the broad sense has occurred in general sharia business traffic, it does not only in the sharia banking sector.

In case debt settlement cannot be done peacefully through deliberation or becomes a dispute, the parties want the problem to be resolved through litigation. Settlement of disputes through judicial institutions is a choice of dispute resolution forum, outside of alternative dispute resolution forums such as mediation and arbitration.

[10] Ronald Rulindo et al., "Boosting Islamic Banking Market Share in Indonesia: Prioritized Strategies," *Al-Iqtishad* 16 (1), No. June (2024): 25–42.

[11] Zulfikar Hasan, "Market Share Islamic Banking In Indonesia," *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 8, no. 1 (2019): 124–137.

Based on Indonesian law, there are two possibilities regarding courts' competency, which have the competency to examine and resolve debt cases within the scope of sharia economics. The first possibility is the Commercial Court, which, according to the Bankruptcy Law, has the competency to examine and settle bankruptcy and debt restructuring cases. The second is the Religious Court, which also has the competency to examine and settle all disputes in the field of sharia economics. The conflict regarding competency to adjudicate has created legal uncertainty in resolving bankruptcy and problematic debts within the scope of sharia economics.[12] Some scholars also refer to cases like this as a sharia economic bankruptcy, or it is also called *al-Taflis*.[13]

This article is compiled based on normative legal research methods (*doctrinal*) conducted through library research, statute approach, and study of relevant decisions (*case study*). This legal research is also enriched by interviews with sources at the Supreme Court of the Republic of Indonesia, namely I Gusti Agung Sumanatha as Chairman of the Civil Chamber and Amran Suadi as Chairman of the Religious Chamber. The data collected are then analyzed qualitatively and described as analytical descriptions.

This article will discuss the settlement of problematic debts in the scope of sharia economics through litigation according to applicable law in Indonesia. The research is more focused on gaining a deep understanding of the existence of debt cases in society and their resolution through the Commercial Court based on Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law). It will be inspected regarding the dilemma, how the Supreme Court responds as a holder of judicative power, and its alternative solutions.

1. Bankruptcy Law as an Instrument for Settlement of Debts in the Scope of Sharia Economic

[12] Niniek Mumpuni and Sri Rejeki, "Uncertainty On The Bankrupt Process As A Legal Means For Sharia Economic Dispute Settlement (Case Study of BMT Fisabilillah)," *Jurnal Hukum dan Peradilan* 11, No. 3 (2022): 453–476.

[13] Yayan; Abdullah Raihannah; Sufiarina; Prihasmoro, Adi; Sopyan, "Sharia Economic Bankruptcy Law (Al-Taflis) and the Dualism of Court Competency in Indonesia," *Juris: Jurnal Ilmiah Syariah* 23, No. 2 (2024): 205–214.

Generally, bankruptcy law is another side of business law that predominantly discusses economic issues. The emergence of business bankruptcy in a nation's economy indicates an economic recession. Therefore, historically, bankruptcy law legislation has always been side by side with the problems of recession, panic, and failure in the business world. It was the background to publishing the first bankruptcy law in the United States (1800), and it was like the legal scheme in England. [14]

The economic crisis has indeed made the discussion of bankruptcy law relevant, including in Indonesia. Indonesian legal experts in the West reported that bankruptcy law in Indonesia was completely overhauled or reformed after the economic collapse or paralysis of banking and the business world when the monetary crisis hit Asian countries in 1997-1998.[15]

During the 2019 coronavirus disease (COVID-19) pandemic, there was another economic recession and an increase in the number of bankruptcies in the business world. One of the economic segments that was greatly affected by COVID-19 and closed its businesses was the microfinance business segment.[16] In Indonesia, it was reported that at the end of December 2021, the number of cases recorded in the Case Tracking Information System (*SIPP*) was 750 bankruptcy cases and suspension of debt payment obligations.[17]

The dynamics of bankruptcy can cause serious problems for the national economy if not resolved fairly and with legal certainty, considering the recovery of economic pressures experienced by the community and the business world. The legal instrument in Indonesia that is expected to be able to uphold the value of social justice is Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law).

Bankruptcy is indeed closely related to the settlement of debts, and therefore, the term bankruptcy also refers to its complementary process,

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[14] Lawrence Friedman, "Bankruptcy and Insolvency," in *A History of American Law*, 4th ed. (New York USA: Oxford University Press, 2019), 251.

[15] Tim Butt, Simon, and Lindsey, *Indonesian Law*, First Edit. (New York USA: Oxford University Press, 2018), p.388.

[16] Sugeng, et.al., "Strengthening Sharia Microfinance Regulations And Business Models In Indonesia," *Jurnal Hukum dan Peradilan* 13, No. 1 (2024): 89–122.

[17] *SIPP* of the Commercial Courts of Jakarta, Surabaya, Semarang, Makassar, and Medan Commercial Courts, last accessed on October 2024.

namely, suspension of debt payment obligations (*PKPU*)[18] or debt restructuring or *reorganization* according to the United States Bankruptcy Code. This restructuring, or *PKPU*, ultimately functions to maximize the settlement of debtors' debts to their creditors by continuing to manage and maximize the business run by debtors who are experiencing difficulties or crises. It is said to maximize the value of insolvent businesses through reorganization.[19]

Thus, *PKPU* is a complementary term for bankruptcy, or in the context of universal bankruptcy law, it can be explained that the term bankruptcy itself refers to the liquidation of the debtor's assets, while *PKPU* refers to debt restructuring, where both are intended to maximize efforts to settle debts by liquidating assets or continuing to run the debtor's business by postponing payment of its debts.

As explained above, bankruptcy becomes an interesting topic to study during an economic crisis, and indeed, the emergence of its legal instruments historically occurred when a crisis hit the national economy. The Bankruptcy Law currently in force in Indonesia is a replacement for the old bankruptcy law that was born during the 1998 monetary crisis. In addition to the renewal of bankruptcy law, the post-1998 monetary crisis was also marked by the development of the sharia economic system, which has colored the national economic system today.

The sharia economic system has indeed been proven to be resilient and stable against the global crisis, so the sharia economy has become an important issue worldwide. Its financial system is different from the conventional system because it is limited by the principles of sharia economics, such as the prohibition of interest, the prohibition of *short-selling transactions*, the prohibition of gambling-related businesses, speculation, alcohol, firearms, or involvement in other illicit businesses.[20]

Along with the development of sharia economics in Indonesia, there has also been an expansion of absolute competency in religious courts.

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[18] Abbreviation of *Penundaan Kewajiban Pembayaran Utang*.

[19] Mitchell A. Seider; Adam J. Goldberg; and Christian Adams, "Maximizing Enterprise Value and Minimizing 'Hold Up Value': Reorganizations in the United States under Chapter 11 of the US Bankruptcy Code," in *Global Insolvency and Bankruptcy Practice for Sustainable Economic Development - International Best Practice*, ed. Tarek M. Hajjiri and Andrian Cohen (New York: Palgrave Macmillan, 2016), 79.

[20] Ahmed A. El-Masry et al., "Environmental Conditions, Fund Characteristics, and Islamic Orientation: An Analysis of Mutual Fund Performance for the MENA Region," *Journal of Economic Behavior and Organization* 132 (2016): 174–197.

Now, the Religious Courts have been authorized to adjudicate cases in the field of sharia economics, in addition to the authority to handle cases of marriage, inheritance, wills and gifts, endowments, and alms or as regulated by Law No. 7 of 1989 jo. Law No. 3 of 2006 jo. Law No. 50 of 2009 concerning Religious Courts and its amendments (Religious Court Law).

It is also important to note that the scope of the sharia economic sector according to the Religious Courts' Law is not only limited to sharia banking but also includes sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds, and sharia medium-term securities, sharia securities, sharia financing, sharia pawnshops, sharia financial institution pension funds, and sharia businesses.

Regarding the development of national civil law in Indonesian history, the development of sharia economics or its legal instruments, and the expansion of the competency of the Religious Courts, all of this a logical consequence of the development of national law in the country with a majority Muslim population. As described by Friedrich Karl von Savigny (1770-1861) in his theory, law is an expression of the common consciousness or spirit of people. Law is not made, but it grows and develops with society (*das rechts wird nicht gemacht, es ist und wird mit dem volke*).[21]

In the sharia economics literature, it is no stranger to mention the topic discussion regarding bankruptcy or what is called *al-Taflis* and the verse of debt in the *al-Quran*, popularly called the verse of *mudayyanah in al-Baqarah: 282*. Even criticism from scholars about the absence of insolvency requirements in the Bankruptcy Law to determine the bankruptcy of debtors,[22] the principles of sharia economics offer the perspective that a business should provide blessings for the greatest number of parties. From the perspective of sharia economics, Bankruptcy Law can also encourage creditors to provide opportunities for debtors until their financial condition can repay their debts (*QS. al-Baqarah: 280*). In this case, the choice of the debt restructuring

[21] Darji & Sidarta Darmodiharjo, *Pokok-Pokok Filsafat Hukum, Apa Dan Bagaimana Filsafat Hukum Indonesia* (Jakarta: Gramedia, 2008), p,124.

[22] Diana sujanto, "Urgensi Pengaturan Syarat Insolvensi Dalam Undang-Undang Kepailitan dan Penundaan Kewajiban Pembayaran Utang," *Jurnal Hukum Kenotariatan* 3, No. 2 (2018): 258–268.

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instrument (PKPU) is considered more able to re-energize the business world and commerce, involving more economic actors, including those on the employment side.

However, the integration of the economic system with sharia principles into the national legal system leaves a problem of synchronization in the national legal system. The principles of sharia economics have not been implemented in the implementation of Bankruptcy Law, especially in bankruptcy cases and the settlement of debt problems within the scope of sharia economics.

Normatively, laws and regulations have determined that disputes over sharia economics and not only sharia banking disputes are the absolute competency of the Religious Court.[23] The problem in resolving bankruptcy and the problematic debt within the scope of sharia economics arises because the Commercial Court is the only choice of litigation settlement forum for the stakeholder. Legal instruments based on bankruptcy law are considered effective in resolving problematic debt problems, but the level of sharia compliance is not the focus of attention.

If the sharia economic bankruptcy cases are compared with (regular) bankruptcy cases in the Commercial Court and sharia economic cases in the Religious Court in the period 2018-2023, then comparison data can be displayed in the following table:

Table 1.1.
Sharia Economic Cases and Bankruptcy Cases

TYPE OF CASE	NUMBER OF CASES RECEIVED PER-YEAR						INFORMATION
	2018	2019	2020	2021	2022	2023	
Bankruptcy/*PKP U* in Commercial Court	521	669	848	923	676	652	Commercial Courts Jakarta, Surabaya, Semarang, Makassar, & Medan
Sharia Economics	229	389	463	491	496	545	

[23] For comparison, please review Article 55 paragraph (1) of Law No. 21 of 2008 concerning Sharia Banking and Article 49 letter (i) of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts.

in Religious Courts							In all (± 359) Religious Courts
Bankruptcy/ PKPU In Sharia Economics	1	2	4	2	5	1	Bankruptcy cases published in the Commercial Court SIPP

Source: *SIPP* of Jakarta Pusat, Surabaya, Semarang, Makassar, & Medan Commercial Courts,[24] and Sharia Economic Cases for 5 Years in the Badilag Annual Report of 2018-2023 (edited by Author)[25]

The above data shows that the settlement of sharia economic disputes in bankruptcy and debt restructuring cases is still settled through the Commercial Court. From the perspective of the Bankruptcy Law No. 37 of 2004, it is understood that all bankruptcy cases, including bankruptcy and debt cases within the scope of sharia economics (*al-Taflis*), are within the competency of the Commercial Court.

The legal opinion of scholars that the Commercial Court does not have the authority to settle bankruptcy cases that refer to trades or transactions based on sharia economic principles is not popular, such as the legal views of E. Widjajanti,[26] G. Anand,[27] A. Saprudin and A. Satiri,[28]

[24] http://sipp.pnjakartapusat.go.id/, http://sipp.pn-surabayakota.go.id/ , https://sipp.pn-semarangkota.go.id/,http://sipp.pn-makassar.go.id/, https://sipp.pn-medankota.go.id/ , & https://badilag.mahkamahagung.go.id/

[25] Adi Prihasmoro, *Penyelesaian Kepailitan Ekonomi Syariah Di Peradilan Indonesia*, ed. Yusuf Hidayat, Cetakan Pertama (Tangerang: Lembaga Kajian Dialektika, 2023).p.8.

[26] Erna Widjajati, "Penyelesaian Sengketa Kepailitan Menurut Hukum Perbankan Syariah" XV, No. 1 (2015): 117–126.

[27] Ghansam Anand, Kukuh Leksono S. Aditya, and Bagus Oktafian Abrianto, "Problematika Aplikasi Ekonomi Syariah Dalam Rezim Hukum Kepailitan Di Indonesia," Jurnal Bina Mulia Hukum 2, No. 1 SE-Articles (2017): 67–79.

28 Ahmad Saprudin dan Ahmad Satiri, Teknik Penyelesaian Perkara Kepailitan Ekonomi Syariah, Ke-1. (Yogyakarta: Pustaka Pelajar, 2018).

F. Wahyudi,[29] M. Kholid,[30] A. Suadi,[31] and L.D. Nugroho (2021).[32] However, there is also criticism from A. Syarifudin that the idea of transferring the competency to settle sharia economic bankruptcy to the Religious Court needs to be reviewed, besides being not easy and expensive, the ability and experience of the Religious Court in handling bankruptcy must also be considered.[33]

In addition, Sufiarina also expressed a different conclusion about the need to renew the regulation of the competency of the Religious Court in settling sharia economic disputes. Considering that creditors in their various transactions with debtors may have a mixture of sharia-based transactions and conventional transactions, there is also the possibility for debtors to be declared bankrupt twice by the Religious Court and by the Commercial Court. Because bankruptcy is a general confiscation process, the settlement of bankruptcy and debt restructuring should be made a one-stop shop at the Commercial Court by renewing the regulation of absolute competency at the Religious Court. It is limited to default and unlawful acts, not including sharia economic bankruptcy cases.[34]

The Supreme Court as the peak of judicial power also seems ambiguous in its response. This is reflected and can be revealed through the Decree of the Chief of the Supreme Court of the Republic of Indonesia No.: KMA/32/SK/IV/2006 concerning the Enforcement of Book II of the Guidelines for the Implementation of Court Duties and Administration. In Book II it is explained that the Application for

29 Firman Wahyudi, "The Quo Vadis of Bankruptcy Settlement and Pkpu Laws on Sharia Banking," Jurnal Hukum dan Peradilan 8, No. 1 (2019): 1.

30 Muhammad Kholid, "Kepastian Hukum Dalam Penyelesaian Sengketa Ekonomi Syariah Kepailitan Dihubungkan Dengan UU No.37 Tahun 2004 Tentang Kepailitan Dan PKPU" (UIN Sunan Gunung Djati Bandung, 2020).

31 Amran Suadi, Hukum Kepailitan Syariah (At-Taflis), Edisi Ke-1. (Jakarta: Kencana, 2021).

32 Lucky Dafira Nugroho, Konstruksi Hukum Kepailitan Syariah Di Indonesia, Pertama. (Surabaya: Scopindo Media Pustaka, 2021).

33 Ahmad Syarifudin, "Penyelesaian Perkara Kepailitan Ekonomi Syariah (Analisis Putusan No.3/Pailit/2014/Pn.Smg)" (Fakultas Syariah dan Hukum UIN Sunan Kalijaga Yogyakarta, 2017).

34 Sufiarina Sufiarina, "Buah Simalakama Pengaturan Prosedur Mediasi Di Pengadilan Terhadap Penyelesaian Kepailitan Ekonomi Syariah Di Indonesia," *ADHAPER: Jurnal Hukum Acara Perdata* 5, No. 1 (2019): 41.

Bankruptcy Declaration and *PKPU,* like Intellectual Property Rights, are examined and decided by the Commercial Court.[35]

On the other hand, the Supreme Court also stipulated PERMA RI No. 2 of 2008 concerning KHES, in Article 5 paragraph (2) in conjunction with Article 1 number (8) it is stated that the court's competency if a legal entity faces bankruptcy or is unable to pay debts or applies for PKPU, then the court can appoint a curator or administrator for the legal entity upon the request of the interested party. The court in the KHES is clearly defined as a court within the Religious Court environment. So, it becomes an interesting problem to study the most appropriate court to resolve debt problems in the scope of sharia economics, the Commercial Court, or the Religious Court, both of which are state courts that have a constitutional basis in exercising their competency as regulated by the 1945 Constitution.

According to Yahya Harahap, Article 24 paragraph (2) of the 1945 Constitution is the basis of the state justice system in Indonesia which is divided and separated based on jurisdiction, or it is called a separation court system based on jurisdiction. The system of separation of judicial jurisdiction; (i) is based on the scope of its competency, (ii) each scope has certain adjudication competency or diversity jurisdiction, (iii) this certain competency creates absolute competency in each scope according to the subject matter of jurisdiction, and (iv) therefore, each scope only has the competency to adjudicate cases that are delegated to it by law.[36]

In the end, the bankruptcy legal instrument is expected to effectively resolve debt problems quickly and have legal certainty, but the Bankruptcy Law has not yet included and accommodated the principles of sharia economics compliance. The framework of thinking in resolving debt cases based on sharia economic principles should be different and have a special or unique pattern that the value of debt according to sharia economic principles will never increase over time. Settlement of debts based on the Bankruptcy Law must also have functioned as a dual economic system that accommodates the legal interests of economic actors in sharia economic transaction patterns.

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[35]Book II Technical Guidelines for Administration and Technical Procedures for General and Special Civil Courts, 2007 Edition, p. 109.

[36] Yahya Harahap, Hukum *Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017), p.181.

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2. Problems of Resolving Sharia Economic Bankruptcy through Litigation

In the national legal and judicial system, it is found that the development of sharia economics and its legal instruments has given rise to a clash of competency between two special courts (*specialists*). In this case, the Commercial Court carries out the mandate of the Bankruptcy Law, and the Religious Court carries out the mandate of the Religious Court Law. The clash of court competency related to the settlement of debt cases in the scope of sharia economics then gave rise to the problem of the dualism of absolute judicial competence.

In terms of specificity of the subject matter, the Religious Court should be more competent than the Commercial Court, *lex specialis derogat legi generali*, where the substance of the case begins with a transaction based on the principles of sharia economics. In terms of the time of the enactment of laws, the provisions on the competency of the Commercial Court existed first based on the Bankruptcy Law No. 37 Year 2004. Afterward, it was determined that sharia economic cases became the competency of the Religious Court through the first amendment to the Religious Court Law No.3 Year 2006. Followed by the Sharia Banking Law No.21 Year 2008 which also determined the Religious Court as a formal litigation forum for resolving its disputes.

The lex posteriori derogat legi priori mechanism should apply. New legal provisions annul old legal provisions. The Religious Courts Law and the Sharia Banking Law should annul some of the Commercial Court's competency based on the Bankruptcy Law if it relates to sharia economic material.

The above argument shows that debt cases in the scope of sharia economics, according to theory, are the competency of the Religious Court. In fact, from the results of research on the case, as shown in Table 1.1. Until now, it is still being examined and tried by the Commercial Court, even though ideally it must be settled by the Religious Court. This means that it has become a legal problem of dualism or ambiguity of judicial competency for the settlement of debts in the scope of sharia economics.

The legal problem can not only be reviewed from the Bankruptcy Law and the Religious Court Law, but can also be analyzed from the competency of the Religious Court in the Sharia Banking Law. Regarding

the unclear competency of the courts to resolve disputes in the Sharia Banking Law, a judicial review was submitted to the Constitutional Court. The validity of the provisions of Article 55 paragraph (2) and (3) of the Sharia Banking Law was tested whether it conflicted with the provisions of Article 28D paragraph (1) of the 1945 Constitution.

The Constitutional Court, through Decision No. 93/PUU-X/2012 dated August 29, 2013, stated that the choice of the forum for resolving sharia banking disputes in the Sharia Banking Law has caused overlapping competency to adjudicate between the Religious Court and the District Court. The article was declared to be contrary to the constitution, and the resolution of sharia banking disputes is entirely the competency of the Religious Court.

Despite the Constitutional Court Decision No. 93/PUU-X/2012, sharia banking disputes related to debt disputes and customer bankruptcy are still examined and tried through the Commercial Court, a special civil court within the General Court, not in the Religious Court. The exception of absolute competence regarding the lack of competency of the Commercial Court has never been granted by the Commercial Judges Panel until the Cassation Judges Panel at the Supreme Court.

This legal problem is also recognized by Amran Suadi [37] that the Religious Court has a vision to adjudicate debt disputes within the scope of sharia economics, but currently, there are still regulatory constraints because the Bankruptcy Law currently only refers to the Commercial Court to handle all bankruptcy and debt cases. However, it must be stated that bankruptcy or settlement of sharia economic debt is different and has special characteristics. It cannot be treated the same as conventional ones.

Bankruptcy litigation is a settlement of debts expressed in money. In the sharia economic perspective, the basic idea of money is only positioned as a means of exchange. It is not a commodity.[38] Money can only be exchanged for the same value. It cannot work by itself to produce money, and it is forbidden to position cash as a commodity. Every difference in the money turnover must have an underlying economic

[37] Author already interviewed Amran Suadi as a Chairman of the Religious Chamber of the Republic of Indonesia Supreme Court and the interview was held on 25 July 2022 in his office.

[38] It is defined as Article 1 Number 20 Compilation of Sharia Economic Law in the Indonesian Suppreme Court Regulation No.2 Year 2008.

transaction. These are basic principles of sharia economics that differentiate it from conventional ones. Right now, it is not enforced yet by the Commercial Courts when examining the sharia economic bankruptcy cases as shown in Table 1.1 above.

It is a fact that Sharia economic bankruptcy could be examined by the Commercial Court even though the Bankruptcy Law No. 27 of 2004 has not mentioned it clearly and it has not enforced based on shariah principles yet. It is further explained that if those cases are registered with the Religious Court, there will be an exception to absolute competence and the case will be decided *NO* (*niet onvankelijke verklaard*) with the consideration that the Religious Court in practice as a judicial institution has not been given the competency to try cases of sharia economic bankruptcy.

I Gusti Agung Sumanatha has another perspective.[39] He said that the Commercial Court still has the competency to try cases of debt and bankruptcy within the scope of sharia economics, if it meets the requirements stipulated in the Bankruptcy Law. These requirements are that there is a bankruptcy petition, the debtor has two or more creditors, does not pay off at least one of his debts that has matured, and the nature of the debt can be proven simply.

Furthermore, another problem arises related to the creditor-debtor relationship in Bankruptcy Law, especially if it compares with the relationship in the scope of sharia economics. In the banking sector case, the bank is regulated by the Sharia Banking Law, so the legal relationship between sharia banks and their customers becomes more complex (not simple) compared to the legal relationship between creditors and debtors in the conventional banking system. In general, the relationship between banks and their customers in sharia banking is a partnership, it is not a debt relationship in the narrow sense or a loan agreement. Ideally, each party shares in the profits and losses (*profit-loss sharing scheme*).

In the relationship of sharia economic transactions, the pattern of creditor-debtor relations regulated by the Bankruptcy Law becomes difficult and not simple. It cannot be proven simply in terms of determining the existence of debt, when the debt becomes due and collectible, where the elements mentioned are the main elements in

[39] Interview with I Gusti Agung Sumanatha as a Chairman of the Civil Chamber of the Republic of Indonesia Supreme Court was already held on 18 August 2022 in his office.

bankruptcy cases and debt settlement which must be proven simply when a bankruptcy application is submitted to the Commercial Court (Vide: Article 8 paragraph (4) of Law No. 37 of 2004).

The non-simple pattern of creditor-debtor relationships in sharia economic transactions can be illustrated as follows: A and B are bound in a *Musyarakah Financing Contract*. The contract is intended to carry out the construction of telecommunications facilities in a turnkey project, where B gets a work contract from C. In the case of A being a sharia bank and B only returning 50% of A's financing, then defaulting because the turkey project implemented by B was damaged by natural disasters or force majeure. [40] Then the stalled *Musyarakah Contract* needs to be analyzed more deeply if A chooses the bankruptcy process as an effort to settle B's debt through the Commercial Court based on the Bankruptcy Law.

In the trial process, the thing that must be considered by the Commercial Court is the level of compliance with the principles of sharia economics. Is it right if A is positioned as a creditor and B as a debtor in the case? Is it true that 50% of the return of the defaulted financing can be called B's "debt" to A, when is it due, and when can the debt status be collected by A. In addition, how much is owed, is it true that the remaining 50% is? How is the principle of *musyarakah* in the creditor-debtor relationship pattern and how is the principle of profit loss sharing implemented in the case.

Musyarakah is usually translated as Partnership or defined as a Partnership of Investors. The partnership relationship is different from the creditor-debtor relationship in a loan agreement. It can be explained that the difference in relationship as follows. In debt-based contracts, the entrepreneur is obliged to pay back the total amount of capital obtained from banks, regardless of the performance of the projects. On the other hand, in equity-based contracts, banks and entrepreneurs share the profits and losses according to the pre-agreed profit ratio, as

[40]Summarized from the musyarakah financing transaction between the parties in the case in Decision No. 7/Pailit/2011/PN.Niaga.Jkt.Pst which was pronounced in a public hearing on Thursday, March 31, 2011. *Force majeure* is an extraordinary event beyond the ability of the parties to overcome it.

for a *musyarakah* contract and bank will bear the loss, if any, in the case of a *mudarabah* contract.[41]

From the explanation above, the remaining obligation of B that must be paid to A in the pattern of sharia economic transactions that are declared bankrupt should also be calculated as the proportion of losses that must be borne by the bank, the owner of the funds, or as a creditor. The proportion should be a reduction in B's obligation as a debtor and must also be calculated with the bankruptcy assets (*boedel*) that will be used for its payment to A as the creditor of the bankruptcy applicant.

The above problem is the confusion of the creditor-debtor relationship pattern that must be solved in transactions within the scope of sharia economics. Judges must be able to find the law (*rechtsvinding*) and be able to measure the level of sharia compliance to then decide it in concrete cases such as the case above fairly.

Furthermore, based on the results of research on the decisions of the Commercial Court that tried bankruptcy and debt cases in the scope of sharia economics at least since its first case which was decided in 2011, and the decisions of the Commercial Court as included in Table 1.1. it is known that the parties to the case all involve sharia banks, sharia insurance, and sharia cooperatives (*baitul mal wa tanwil*). The transactions carried out are certainly transactions or contracts that are bound by the principles of sharia economics, so from the time it begins, then its implementation, until its completion, it must consistently refer to the principles of sharia economics.

Currently, bankruptcy and debt settlement in the scope of sharia economics are still being resolved by the Commercial Court. The problem is whether the fulfillment of sharia principles becomes a legal consideration for judges in the Commercial Court in deciding it. Every court decision must contain reasons and legal basis for consideration, in this case, a specific article of the relevant law or an unwritten legal source that is used as the basis for judging. This provision is not only contained in the Law on Judicial Power, especially article 50 paragraph (1) of the Law No. 48 of 2009, but also in Article 8 paragraph (6). a.

[41] Aisyah Abdul-Rahman et al., "Failure and Potential of Profit-Loss Sharing Contracts: A Perspective of New Institutional, Economic (NIE) Theory," *Pacific Basin Finance Journal*, 2014.

Bankruptcy Law and article 62 paragraph (1) of the Religious Court Law.

Those provisions are the legal basis for each judge to include legal considerations that are the reasons and basis for a court's decision. Furthermore, the Bankruptcy Law even regulates the requirement to include legal considerations or opinions that differ from member judges or the chairman of the panel of judges in a court's decision (Vide: Article 8 paragraph (6). b. Law No. 37 of 2004).

It is often called a consideration as the basis of a court's decision. The consideration section of a court's decision is the judge's reasons as accountability to the community for reasoning why the judge made such a decision. Therefore, the judge's decision has objective and authoritative value.[42]A decision not meeting these provisions is categorized as an insufficient judgment or *onvoldoende gemotiveerd.*[43]

Thus, the requirement to include reasons and basis for consideration in adjudication is also regulated in the Bankruptcy Law. It does not prevent judges in the Commercial Court when examining sharia economics bankruptcy from including in their decisions sharia economics compliance principles, both laws and other legal sources, both written and unwritten, including *the Quran* and *Hadith* as well as *ijtihad* of scholars, KHES, Financial Services Authority Regulations (POJK) in the sharia sector, and also relevant DSN MUI Fatwas (Vide: Article 8 paragraph (6).a. Law No. 37 of 2004).[44]

The question is whether the Commercial Court has given legal considerations on sharia compliance. Even if it has become a legal consideration contained in its decisions, is it sufficient as required by law. The problematic question is which court is more competent and guarantees the upholding of sharia values in concrete cases in the field of sharia economics, the Commercial Court, or the Religious Court.

From research by M. Kholid reveals the fact that in a case study of 7 (seven) bankruptcy decisions at the Commercial Court, it can be

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[42] Sudikno Mertokusumo, *Mengenal Hukum - Suatu Pengantar*, Cetakan 1,. (Yogyakarta: Maha Karya Pustaka, 2019) p.194.

[43] Harahap, *Hukum Acara Perdata* ... p.797.

[44]In Book II of the Guidelines and Implementation of Duties and Administration of Religious Courts which was originally stipulated through the Decree of the Chief Justice of the Republic of Indonesia Number: KMA/032/SK/IV/2006 dated April 4, 2006, a list of material laws can be seen which contain and place *the Qur'an* and *the Hadith* as sources of law for judges (Vide: Book II revised edition 2013, p. 65).

reported that in examining the legal considerations in its decisions, it only based it on the Bankruptcy Law, and ignored the rules for resolving sharia economic disputes in the Religious Courts Law, Constitutional Court Decision No. 93/PUU-X/2012, Sharia Banking Law, PERMA No. 2 of 2008, and PERMA No. 14 of 2016. This shows that there has been a conflict between laws as an indicator of legal uncertainty. Finally, the validity of these decisions is questioned.[45]

Ironically, the absence of legal considerations regarding sharia compliance in the Commercial Court can also lead to bankruptcy proceedings becoming the legitimacy of the practice of sharia banks gaining usury profits from their bankrupt customers. In practice, sharia bank financing is always followed by an accessor agreement,[46] or the requirement of collateral to secure the main contract. On the other hand, every bankruptcy process creates a forced effort to create a creditor-debtor pattern. Whereas in sharia financing, a partnership pattern is known based on good faith, so that hopefully no party is harmed.[47]

This is also problematic because from the beginning there has been a tendency for bankruptcy cases in sharia economic transactions to be resolved through the Commercial Court. There is a tendency for sharia economic actors to prefer the Commercial Court with considerations of business practicality rather than the Religious Court as a forum for resolving disputes with considerations of fulfilling sharia compliance requirements.

The Religious Court, which has the competency to try sharia economic cases, can also resolve bankruptcy or debt cases of individuals or legal entities (*al-syirkah*). If only the application or lawsuit is submitted to him. The Religious Court may not reject for any reason, including the reason that there is no legal regulation, because the judge is obliged to make a legal discovery (*rechtvinding*). However, this still requires special regulations regarding the authority of the Religious Court in handling bankruptcy cases as regulated in the Bankruptcy Law.[48]

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[45] Kholid, M., "Kepastian Hukum Dalam Penyelesaian Sengketa Ekonomi Syariah..." p.15-16.

[46] The assessor agreement is a derivative agreement from the main agreement, in this case a material guarantee agreement such as morgage (*APHT)*, fiduciary, or pawn.

[47] Ghassan Anand, et.al., "Problematika Aplikasi Ekonomi Syariah... ."

[48] Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah - Teori dan Praktek* (Kencana Prenada Media Group, 2017), p.151.

3. Judicial Policy as a Solution for Handling Bankruptcy in the Scope of Sharia Economic

The effort to synchronize laws and regulations could solve the problems described above. In this case, the synchronization is intended to distribute absolute competency among judicial environments, especially between the Commercial Court and the Religious Court in the settlement of sharia economic bankruptcy cases. The distribution can be effective by their respective competency, expertise, or specialization and give more benefits and legal certainty, including justice for all sharia economic stakeholders.

In this case, synchronization can also be referred to as an effort to fill the legal vacuum related to the settlement of bankruptcy and sharia economic disputes in general. This alignment can start from a legal policy of the Supreme Court as a high state institution holding judicial power. Mahfud MD said that legal policy is the government's effort carried out nationally that creates, renews, and implements existing positive laws and regulations.[49]Abdul Gani Abdullah also explained that the task of the Supreme Court to fill the legal vacuum is not a policy, but to carry out the mandate of the law.[50]

The views of the two legal experts in Indonesia above seem contradictory. Therefore, it is necessary to clarify that the Supreme Court's policy in this context is an effort to internally regulate judicial power so that the administration of the state in the judicial field can run effectively and efficiently. The governmental function (executive) of the Supreme Court here can be seen when carrying out the mandate of the law to regulate all judicial environments under its auspices. This task includes efforts to coordinate the resolution of sharia economic disputes so that they can be handled properly by the judicial institution. Therefore, the Supreme Court can make an important contribution through its policies as a high state institution holding judicial power.

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[49] Moh.MD Mahfud, *Politik Hukum Di Indonesia*, Edisi Revisi (Jakarta: Rajawali Pers, 2017), p.17.

[50] This opinion was conveyed by Abdul Gani Abdullah during an interview and dissertation guidance opportunity for the author on Tuesday, January 31, 2023. He has served as a Supreme Court Judge on the period of 2007-2016. https://www.mahkamahagung.go.id/

To approach the problem, it is important to know that there are at least 4 (four) legal provisions issued by the Supreme Court as a judicial institution. The legal products of the Supreme Court are (i) Supreme Court Regulation (*PERMA*), (ii) Supreme Court Circular (*SEMA*), (iii) Decree of the Chairman of the Supreme Court (*SK KMA*), and (iv) Supreme Court Fatwa.

Amran Suadi explained that *PERMA* is a regulation of procedural law intended to ensure trials run smoothly. Meanwhile, *SEMA* is a form of circular from the Supreme Court Leadership to all levels of the judiciary, containing guidance, and it is more administrative. *PERMA* is binding on the public, while *SEMA* is more binding internally. In addition, there is also a Supreme Court Fatwa containing legal opinions given at the request of state institutions. Finally, *SK KMA* is a decree (*beschikking*) issued by the Chairman of the Supreme Court regarding a particular matter.[51]

With the paradigm of *stufenbau theorie* from Hans Kelsen and its references in Indonesia based on Article 8, paragraph (1) and paragraph (2) of Law No. 12 of 2011 jo. Law No. 15 of 2019 jo. Law No. 13 of 2022 which regulates the formation of laws and regulations, it is explained that the regulations stipulated by the Supreme Court include laws and regulations that are recognized and binding if they are ordered by higher laws and regulations or are formed based on authority.

Next, in Article 79 of Law No. 14 of 1985 concerning the Supreme Court, it is also stated that *"The Supreme Court may further regulate matters necessary for the smooth running of the judiciary if there are matters that are not sufficiently regulated in this law."* [52] It is also stated in the explanation of the article that *"If in the course of the judiciary, there are deficiencies or legal gaps in a matter, the Supreme Court has the authority to make regulations as a complement to fill the deficiencies or gaps.*"

Based on the two references to the law, the Supreme Court's policy in issuing legal products in the form of *PERMA, SEMA*, Fatwa, or *SK KMA* is recognized. The Supreme Court, as a state institution in the judicial field, has the authority to issue policies in the form of regulations. The regulations have legal force and are legally binding in a

[51] Suadi, *Penyelesaian Sengketa Ekonomi Syariah… p.88*.

[52] Article 79 of Law No. 15 of 1985 is still maintained even though the law as a whole has been amended as with Law No. 5 of 2004, as amended by Law No. 3 of 2009, all of which as an inseparable whole regulate the Supreme Court.

formal legal manner. The Supreme Court has indeed been given authority by law and the legal products of its policies have the same legal force as other laws and regulations of equal hierarchy.

The Supreme Court's policy is indeed quite responsive, after the Religious Courts have absolute competency regarding the settlement of disputes in the field of sharia economics. The Supreme Court's policy regarding the implementation of the sharia economic system is included in the *KMA* Decree No. KMA.32/SK/IV/2006 concerning the Enforcement of Book II of the Guidelines for the Implementation of Court Duties and Administration. In this KMA Decree, it is explicitly stated that *the Qur'an* and *Hadith* are the main sources of material law for the Religious Courts, outside of other sources of material law such as laws, *KHI, KHES, DSN MUI* Fatwa, and contracts (*akad*) made by the parties.

In addition, the Supreme Court has also issued *PERMA* No. 2 of 2008 concerning the Compilation of Sharia Economic Law (*KHES*). This *PERMA* is intended as a guideline on sharia principles and guidance for judges in the Religious Court environment in examining, trying, and resolving sharia economic cases. Its existence does not reduce the responsibility of judges to explore and find the law to ensure their decisions are fair and correct.

As an effort to improve the quality of human resources in the field of sharia economics, the Supreme Court has issued *PERMA* No. 5 of 2016 concerning Certification of Sharia Economic Judges. This *PERMA* is also intended as guidance for judges in the Religious Court environment as anticipation amidst the development of public enthusiasm for sharia economics, which at the same time raises risks and potential disputes involving sharia economic stakeholders. The courts as an instrument for enforcing sharia economic law are responsible for ensuring that their competencies are running well, therefore, dispute resolution in the field of sharia economics needs to be handled specifically by judges who understand the theory and practice of business based on sharia principles.

The Supreme Court also made a breakthrough in judicial procedural law by issuing *PERMA* No. 14 of 2016 concerning Procedures for Settlement of Sharia Economics. This *PERMA* is a Supreme Court Policy concerning sharia economic procedural law that fills the legal gap in the practice of court proceedings because it is not

regulated in general civil procedural law, such as in *HIR* and *RBg*. This *PERMA* regulates special procedures for resolving sharia economics, such as procedures for examining simple lawsuits, procedures for summons, trial examinations, evidence, decisions, and implementation of decisions (execution) in resolving sharia economic cases.

The Supreme Court's policy in the context of synchronizing judicial authority within the framework of dispute resolution in the field of sharia economics is indeed quite responsive. However, after the first amendment to the Religious Court Law (2006), which stipulates absolute competency for the Religious Court to resolve disputes in the field of sharia economics, the implementation of its judicial practices is still experiencing dynamics and being studied for various alternative solutions. This is important, especially regarding the dynamics between the competency of the Commercial Court and the Religious Court, which court is the most appropriate and competent to try bankruptcy and settlement of debt cases in the scope of sharia economics.

Another judicial policy that can be attempted to solve the problem of resolving bankruptcy and debts in the scope of sharia economics through litigation is a request for a *Judicial Review* of the Bankruptcy Law to the Constitutional Court. Amran Suadi explained that this judicial review request needs to be prioritized as a shortcut. This is more practical and reachable than going through the legislative process in the House of Representatives (DPR), which carries the consequences of great effort, time, and cost. The requirement can be mentioned as follows: there is a party whose constitutional rights are violated, and that party is willing to submit the judicial review issue to the Constitutional Court.

Regarding the party whose constitutional rights were violated, it is necessary to actively file a judicial review, which contains a legal issue as well.[53] In this context, the applicant whose constitutional rights have been violated by the existence of the Bankruptcy Law is the party who was declared bankrupt by the Commercial Court. Then how is it possible for a party that was declared bankrupt with all its legal consequences to file a judicial review to the Constitutional Court, if it is

[53] Andriansyah Rahman and Muthi'ah Maizaroh, "Strengthening Independence: Constitutional Interests as a Paradigm for Judicial Review in Indonesia," *Jurnal Hukum dan Peradilan* 13, No. 1 (2024): 33–62.

already declared bankrupt legally, or is no longer capable of taking legal action anymore?

It is still possible for the Bankruptcy Law to be tested materially at the Constitutional Court if it is submitted by the losing party and gets a *NO* (*niet ontvankelijke verklaard*) decision or its bankruptcy application is declared unacceptable because the Religious Court does not have the competency to adjudicate based on the Bankruptcy Law. This is a simulation of an imaginary case because no party has ever filed a bankruptcy application through the Religious Court. In this situation, the Religious Court then decides *NO* to the application. With this scenario, it is possible for a party whose constitutional rights to practice sharia law based on the Bankruptcy Law to be violated in the Religious Court, but is decided *NO*.

In such conditions and backgrounds, the applicant for *judicial review* can file a material review right against the Bankruptcy Law (Law No. 37 of 2004) at the same time against the Religious Court Law (Law No. 3 of 2006) concerning the absolute competency over the settlement of sharia economic bankruptcy cases which are ambiguous, unclear, and inconsistent. This has harmed the applicant's constitutional rights as a citizen who wishes to rule according to his religious beliefs as a manifestation of the freedom of every citizen to express his religious beliefs (worship)[54] freely as regulated and guaranteed by the State in Article 29 paragraph (2) of the 1945 Constitution, *"The State guarantees the freedom of every citizen to embrace their respective religions and to worship according to their religion and beliefs."*

The application for judicial review of all these laws to the Constitutional Court simultaneously conducts a review of the synchronization of legislation related to the distribution system of court's competency from each judicial environment under the Supreme Court, which is called a separation court system based on jurisdiction.[55] The constitutional issue is the need to test, harmonize, or synchronize the division of competence between the Commercial Court in the general judicial environment and the Religious Court in the religious

[54] Worship is defined as an act of devotion to Allah, the Creator, based on obedience to His commands and avoiding His prohibitions (KBBI). In this case, economics according to sharia or *muamalah* for Muslims is a form of carrying out obedience other than ritual worship (*ghairu mahdhah*).

[55] Harahap, *Hukum Acara Perdata Tentang… . p.231.*

judicial environment under Article 24 paragraph (2) jo. Article 29 of the *UUD* 1945 Constitution.

If it is said that the judicial review application to the Constitutional Court is a shortcut to find a solution to the overlapping court's competency to adjudicate bankruptcy and problematic debt cases in the scope of sharia economics, then the complete effort is to amend the Bankruptcy Law through legislative policies in the House of Representatives (*DPR*).

The solution through legislative policy in designing the ideal Bankruptcy Law is perhaps the most important and interesting discussion for other legal researchers to study in more depth. In general, it is recommended that all stakeholders in the field of sharia economics, including state institutions such as the Supreme Court, the Government, and the House of Representatives, synergize to prepare an academic paper on the draft law related to the necessary changes to the Bankruptcy Law that can accommodate the principles of sharia economic. The awareness of the sharia economic community regarding the importance of bankruptcy and debt payment suspensions law and regulation based on sharia principles is also important.

Conclusion/Concluding Remarks

The Commercial Court has already acted as a legal instrument to settle bankruptcy and debt restructuring, including settlements within the scope of sharia economics. However, the Commercial Court has not reviewed and enforced substantial aspects of sharia economic principles. Naturally, debts within sharia economic transactions cannot be proven simply and resolved quickly as regulated in Bankruptcy Law. Therefore, such debt settlement can also be solved through a judicial institution authorized by Indonesian law, namely the Religious Court.

The next Bankruptcy Law must accommodate the settlement of sharia economic bankruptcy and debt restructuring cases. It is urgent to establish a Sharia Commercial Court in the realm of a religious judiciary authorized to settle bankruptcy and debt restructuring in the scope of sharia economics.

It is another solution to form a connectivity court between Commercial Courts and Religious Courts in the jurisdiction of the 5 (five) Commercial Courts currently in Jakarta, Surabaya, Semarang,

Medan, and Makassar. The connectivity court is intended to handle bankruptcy and debt restructuring cases that originate from transactions within the scope of sharia economics. The debtor commonly has other mixed transactions based on the conventional financial system.

It is important that the settlement of sharia economic bankruptcy and debt restructuring needs different treatment or cannot be generalized to conventional ones, especially in the financial calculation. In this regard, the Religious Court has the most appropriate competency to settle disputes in the scope of sharia economics, including its bankruptcy and debt restructuring cases.

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