FORMS OF RELIGIOUS COURT’S AUTHORITY EXPANSION ON SHARIA BANKRUPTCY CASE

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ABSTRACT

Objective: The primary objective of this study is to explore the various forms of authority expansion by religious courts concerning sharia bankruptcy cases. Through a literature research methodology, the study aims to provide insights into the ways in which religious courts assert their authority in handling disputes related to sharia bankruptcy.

Methods: This study employs a literature research methodology to delve into the forms of authority expansion exercised by religious courts in the context of sharia bankruptcy cases. The approach involves a comprehensive review of existing literature to elucidate the strategies and mechanisms through which religious courts enhance their jurisdiction and influence in dealing with sharia bankruptcy disputes.

Results: The findings of this study reveal distinct forms of authority expansion by religious courts in addressing sharia bankruptcy cases. Notably, these include the revision of Law Number 3 of 2006 to explicitly designate the settlement of sharia bankruptcy disputes as the absolute authority of religious courts. Furthermore, religious courts are observed to proactively elevate the quality of judge candidates, equipping them with a deeper understanding of the complexities associated with sharia bankruptcy cases.

Conclusion: In conclusion, the study emphasizes the urgency and progressiveness of religious court authority expansion in managing sharia bankruptcy disputes. With the categorization of sharia bankruptcy cases under sharia economy, the study asserts that religious courts hold absolute authority in handling these disputes. The conclusive remarks underscore the significance of religious court intervention in sharia bankruptcy cases and the ongoing need for further enhancements in their jurisdiction to effectively address the intricacies of sharia economy matters.

Keywords: sharia bankruptcy, authority, religious court, sharia economy.

Received: 28/08/2023
Accepted: 27/11/2023
DOI: https://doi.org/10.55908/sdgs.v11i12.2383

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FORMAS DE EXPANSÃO DA AUTORIDADE DO TRIBUNAL DE RELIGIÃO SOBRE O CASO DE FALÊNCIA DA SHARIA

RESUMO

Objetivo: O objetivo principal deste estudo é explorar as várias formas de expansão da autoridade por tribunais religiosos em casos de falência da sharia. Através de uma metodologia de pesquisa literária, o estudo visa fornecer ideias sobre as maneiras pelas quais os tribunais religiosos afirmam sua autoridade no tratamento de disputas relacionadas à falência da sharia.

Métodos: Este estudo emprega uma metodologia de pesquisa literária para aprofundar as formas de expansão da autoridade exercida por tribunais religiosos no contexto de casos de falência da sharia. A abordagem envolve uma revisão abrangente da literatura existente para elucidar as estratégias e os mecanismos através dos quais os tribunais religiosos reforçam a sua jurisdição e influência no tratamento de litígios de falência da sharia.

Resultados: As conclusões deste estudo revelam formas distintas de expansão da autoridade por tribunais religiosos na resolução de casos de falência da sharia. Nomeadamente, estas incluem a revisão da Lei n. º 3 de 2006, a fim de designar explicitamente a resolução de litígios em matéria de falência da sharia como a autoridade absoluta dos tribunais religiosos. Além disso, observa-se que os tribunais religiosos elevam proativamente a qualidade dos candidatos a juízes, dotando-os de uma compreensão mais profunda das complexidades associadas aos processos de falência da sharia.

Conclusão: Em conclusão, o estudo enfatiza a urgência e a progressividade da expansão da autoridade judicial religiosa na gestão de disputas de falência da sharia. Com a categorização dos casos de falência da sharia sob a economia da sharia, o estudo afirma que os tribunais religiosos têm autoridade absoluta no tratamento dessas disputas. As observações conclusivas sublinham a importância da intervenção dos tribunais religiosos nos processos de falência da sharia e a necessidade contínua de novos melhoramentos na sua jurisdição para resolver eficazmente as complexidades das questões de economia da sharia.


1 INTRODUCTION

Indonesia is considered to be dominated with Moslem population. Therefore, it is rather necessary to adjust the communities’ way of living to adopt Islamic principles. Nur et al., (2023) pronounce that there is a great desire of Indonesian Muslims to have Islamic law-based banking system which further encouraged the birth of sharia banking system. Apparently, the future of a company is hugely reflected in the financial statement. Financial statement is a periodic report of a company’s financial health that provides insight to stakeholders on the corporation’s operations, cash flow, and overall performance (Gbadebo et al., 2023). Business owners are suggested to be prepared for the worst-case scenario of bankruptcy. Therefore, it is also necessary to establish sharia bankruptcy policies and regulations.
Judiciary according to linguistics is everything concerning adjudication case (Tim Penyusun Pusat Pembinaan dan Pengembangan Bahasa, 1990:7). Meanwhile, the definition of judiciary according to terminology is the authority of an institution to settle a dispute for and on the name of law in order to uphold the law and justice (Abdullah, 1986:104). Judiciary can also be defined as a process ended by establishing a verdict in particular procedure arranged by procedure of law regulation (Bisri, 1997:3). The definition of judiciary emphasizes on the process executed by the institution in imposing the authority to settle the dispute with particular procedure arranged in procedure of law for the sake of law and justice enforcement.

Religious Court as a way to settle particular law dispute based on the legal regulations becomes a significant party in formulating the alternatives towards sharia bankruptcy case. As a matter of fact, it becomes the right place where the case can be addressed to. Upon the increasing urgency to find legal solution to overcome any sharia bankruptcy situation, this study tries to identify the particular forms of authority expansion established for Religious Court. Previous research may appear to be conducted on the general authorities of Religious Court. However, the specific authority expansion of the institution in handling sharia bankruptcy case is still limited. Therefore, this study aims to discover this part.

2 THEORETICAL FRAMEWORK

Religious Court is the translation of Godsdienstige Rechtspraak (Dutch) (Arief, 1995:150), originated from the word of godsdienst which means religion; worship; religious and the word of rechtspraak which means judiciary (Arief, 1995:359). The definition of Religious Court according to terminology is the effort to find justice or the settlement of law dispute which is done according to the law and in particular institutions in judiciary (Bisri, 1997:4).

According to Harahap (1993:133), there are five tasks and authorities in the area of Religious Court, namely:

1. Authority function in judging,
2. Giving information, consideration, and advice regarding Islamic Law to government institutions,
3. Other authorities arranged in the law,
4. The authority of Religious Supreme Court in judging the dispute in the level of appeal and judging relative competency dispute,
5. Also, playing the role in supervising the running of judiciary.

Religious Court as the embodiment of Islamic Judiciary in Indonesia, the main areas of examination are reflected in the definition formulation, in details involving (Rahmi, 2013:1):

1. State authority, judiciary authority which is free from the intervention of other state authorities and from outsiders;
2. Judiciary in the area of Religious Judiciary includes hierarchy, arrangement, command, judge, registrar, and other elements in the arrangement of judiciary organization;
3. Dispute procedure in court includes dispute type, procedural law, and the products;
4. Disputes in the area of marriage, heritage, will, grant, waqf, zakat, infaq, and shadaqa, and also sharia economy. They cover the variations and distributions in various judiciary institutions;
5. Moslem people as the party who are in dispute, or those who seek for justice;
6. Islamic law as substantial law used as reference;
7. Law and justice enforcement.
8. Orang-orang yang beragama Islam sebagai pihak yang berperkara, atau para.

According to the Clause 49 Law Number 3 of 2006 related to the change of Law Number 7 of 1989 related to Religious Court, it is stated that Religious Court plays the role and is authorized to inspect, determine, and settle the dispute in the first level among Moslem people in the areas of marriage, heritage, will, grant, waqf, zakat, infaq, shadaqa, and sharia economy. The explanation of Clause 49 i Law Number 3 of 2006 promotes that sharia economy is business act or activity implemented according to sharia principles, including sharia bank, sharia micro financial institution, sharia insurance, sharia reinsurance, sharia reksadana (mutual funds), sharia obligation, and sharia medium-term marketable securities, sharia securities, sharia financing, sharia pawn-brokering, sharia financial institution of pension fund, and sharia business.

From the explanation above, it can be inferred that the interesting thing is the expansion of the definition on people including economic institutions such as bank or
insurance company which has been legalized. This is caused by the fact that financial institution as a legal agency is classified as the parties who obey Islamic law principles.

The appellation of 11 fields related to sharia economy as stated in the explanation of Clause 49 i Law Number 3 of 2006 is surely not limitative as it is initiated with the phrase ‘such as’ so that it is possible to include other sharia economy activities aside from the 11 mentioned fields. It means that it is possible to include business activities such as sharia company, sharia bankruptcy, sharia business competition, and others. However, according to Abdurrahman (2010:3), those things correlated to the authorities of Religious Court is still in debate. The difference of opinion related to the fields that are not mentioned in the 11 fields always raises a question whether Religious Court is authorized to inspect and judge it or not.

The settlement of the dispute which may appear in the field of sharia economy especially sharia banking is done through religious court. Initially, the explanation formulation of Clause 55 Verse (2) Law Number 21 of 2008 related to Sharia Banking, which states that the dispute settlement is done through deliberation, mediation, arbitration institution, or through judiciary in public judiciary environment can be done as long as it is agreed in akad by all the interested parties. Because there is a decision of Constitutional Court Number 93/PUU-X/2012, the explanation of Clause 55 Verse (2) Number 21 of 2008 related to Sharia Banking becomes unbinding. The decision of Constitutional Court Number 93/PUU-X/2012 emphasizes that the authority of sharia banking dispute settlement becomes the absolute authority of religious court. This strengthens the existence of religious court in handling sharia economy dispute di Indonesia even more.

According to the absolute competence established in Clause 49 i Law Number 3 of 2006 to religious court to adjudicate sharia economy dispute of The Decision of Constitutional Court Number 93/PUU-X/2012, the entire types of civil dispute related to sharia economy area are supposed to become the authorities of religious court. Those disputes may appear as the consequences of the act of breaching the contract, the act of breaking the law, including sharia bankruptcy (taflis), because substantially sharia bankruptcy (taflis) is still categorized as the dispute within sharia economy case. Likewise the case of Basyarnas decision execution, religious court has received the authority to do the execution or annulment of the decision, even though the law it is only mentioned that the execution and annulment of arbitration decision are the authorities of state court, but
in term of sharia economy case, the state court, mutatis-mutandis, is defined as religious court, which is supposed to apply the same rules in term of sharia bankruptcy (taflis).

3 METHODOLOGY

This research employs literature research methodology to answer the research question. The researchers read through related literatures to the topic, analyze the retrieved data, and sort them to discover the essential knowledge regarding the topic. Relevant research and scientific developments are the main sources of the data. It is also considerable to find and analyze the representative literature to address accurate answer of the research question.

4 RESULTS AND DISCUSSION

The settlement of sharia bankruptcy surely employes sharia principles, different from the settlement of common bankruptcy. Clause 2 Verse (1) Law Number 37 of 2004 related to Bankruptcy and The Postponement of Debt Payment Obligations states that the debtor who has two or more creditors and does not settle at least one debt fully which has been due and can be collected is pronounced as bankrupt with the judiciary decision either at his own request or at one or more of his creditors’ requests. If the mentioned dispute is sharia economy bankruptcy’s case, the referred court by this Law is Religious Court. It is in line with the statement of Clause 49 i Law Number 3 of 2006 promoting that the authority and task to inspect, judge, and settle Moslem people’s disputes including sharia economy case is established to Religious Court.

According to the explanation, it can be inferred that sharia economy bankruptcy dispute can only be settled through litigation path as the status of bankrupt from a debtor can only be retrieved through the verdict of Religious Court (Bastary, 2019:12). The existence of civil court aims to settle the dispute emerged among the community members. The emerged disputes have various forms; ones that are related to breach of agreement, unlawful act, property dispute, divorce, bankruptcy, authority abuse by the rulers which harms particular party, and so on. The emergence of those cases when they are correlated to the existence of civil court leads to the problem of judging authority called jurisdiction or competence which is an authority of a judiciary institution in judging particular dispute according to the rules established by the law (Subhan, 2018:23).
The provisions of sharia economy bankruptcy dispute from the process of case registration to the verdict of the bankrupt debtor by commercial court are similar to bankruptcy dispute in general. The two cases refer to Law Number 37 of 2004 related to Bankruptcy and Postponement of Debt Payment Obligations. The case of sharia bankruptcy dispute is different from conventional bankruptcy dispute. For example, the *akad* or contract used in sharia bankruptcy employs different Islamic law principles compared to the *akad* employed in conventional bankruptcy. Viewed from the legal certainty, it surely does not match and does not create legal certainty.

Legal certainty means everything which can be decided by the law in terms of concrete things. Legal certainty is the guarantee that the law is abided and those who are rightful according to the law will reserve their rights and the verdict can be implemented. If it is initiated with making an agreement or *akad* using sharia contract, the settlement should also use sharia principles if there is a problem. If sharia bankruptcy case is initiated with sharia *akad* or contract, religious court is authorized to judge if there is a sharia bankruptcy dispute. This is in line with legal certainty principles.

Some similarities of sharia bankruptcy (*taflis*) in Islamic law and conventional bankruptcy are as follow (Suadi, 2021:113-116):

a. From requirements perspective

Both *taflis* and conventional bankruptcy determine the emergence of overdue debt and the existence of *taflis/sharia bankruptcy decision proposal from shahib al-maal/creditor or customer/debtor for themselves as the requirement of stating the *taflis/bankrupt verdict.*

b. Criteria of Shahib al-Maal/Creditor

The law of *taflis* and conventional bankruptcy both divide the criteria of *shahib al-maal/creditor* into the prioritized and general *shahib al-maal/creditor*. However, the *taflis* law only recognizes two criteria, namely *shahib al-maal al-mumtazah* and *shahib al-maal ghairu al-mumtazah* (general) while there are preference, separatist, and concurrent creditors in conventional bankruptcy law.

c. Settlement Process (Giving Postponement Period)

Both laws of *taflis* and conventional bankruptcy emphasize on *shahib al-maal/creditor* to give the opportunity to the customer/debtor to settle the debt obligation. In surah Al-Baqarah verse 280, Allah Swt reminds every *shahib al-maal/creditor* to give postponement period of debt obligation payment to the customer/debtor who gets
difficulty. In the law of conventional bankruptcy, giving postponement period can be done through suspension of payment mechanism. Suspension of payment or *sursceance van betaling* is a period allotted by the law through commercial judge’s verdict where the period gives the opportunity for the creditor and debtor to discuss the alternatives of debt payment, either fully or partially, including when debtor’s debt restructuring is needed (Fuady, 2016:175).

From the type, suspension of payment consists of two types, namely temporary suspension of payment and permanent suspension of payment. If there is a proposal of suspension of payment filed by customer/debtor, the court has to grant the proposal in the form of temporary suspension of payment at the latest of three days since the date of proposal registration. If the one who files the proposal is creditor, the court has to grant at the latest twenty days since the proposal is submitted (Rahayu & Hartono, 2020:94). The court has to invite the creditor and debtor through registered letter to attend the trial at the latest of forty-five days after the verdict of temporary suspension of payment is issued. If the settlement proposal from the debtor during the suspension of payment period is not granted by the concurrent creditor or the debtor is not present even if they have been legally invited, the debtor is pronounced as bankrupt legally and the verdict allows them to be immune towards legal effort, either cassation or Judicial Review.

If the settlement proposal is granted by half of concurrent creditors who attend the settlement meeting and the amount of credits is two-thirds of the credits admitted or temporarily admitted by the present concurrent creditors or is agreed by half of the present separatist creditors in the settlement meeting and the amount of the credits is two-thirds of the entire present creditors’ claim, the court decides permanent suspension of payment verdict (Rahayu & Hartono, 2020:96).

The periods of temporary and permanent suspension of payment is 270 days since the temporary suspension of payment verdict is issued. If during the period the debt payment cannot be settled yet between the debtor and creditor, the debtor is pronounced as bankrupt on the name of law ((Rahayu & Hartono, 2020:97).

**d. Bankruptcy assets settlement**

Both of *taflis* and conventional bankruptcy laws determine that one of the treatments toward *taflis/bankruptcy* is to put general confiscation upon the *muflis/debtor’s* assets and then are sold to be divided to *shahib al-maal/creditors*. This kind of treatment
is in line with the principle of debt payment assurance (rahn) in Islamic law as cited in Allah Swt words in surah Al-Baqarah verse 283. However, taflis is legally emphasized that the assets which become muflis’s primary necessity including business equipment which is significant for muflis and his family’s life sustainability cannot be sold.

e. Verification Process

Debt verification is one of the important activities in bankruptcy process as this process determines the consideration and the order of each creditor’s right. One of the notable things in this process is that each creditor who files their right claim to the curator has to be based on the written evidence (Fuady, 2016:133). The above principle is in line with one principle of akad in Islamic law, namely kitabah (written). The principle is stated in surah Al-Baqarah verse 282 which emphasizes that each non-cash transaction is supposed to be recorded. This recorded principle is very important to examine the rightfulness of the debt existence if there is a dispute, including when debtor experiences bankruptcy. Curators who conduct validation on the amount of debtor’s entire debt obligation highly need the debt obligation evidence.

The differences of taflis and conventional bankruptcy are (Suadi, 2021:116-117):

a. From the definitions

Taflis prioritizes on the prevention of customer’s freedom to do tasharruf on their assets in order to guarantee the rights of shahib al-maal and in the process it features settlement peacefully which helps the customer to overcome financial problems. Meanwhile, the definition of conventional bankruptcy has pursed towards the general confiscation process of the debtor’s assets to be handled by curator in order to pay the debtor’s debt to the creditor even though the suspention of payment process cannot be separated from bankruptcy process.

b. Relationship between Customer and Shahib al-Maal

Taflis law prioritizes more on the ta’awuni principle (helping each other) on the basis of monotheism principles (tauhid) so that the emphasized treatment is in the form of giving the opportunity for the customer to improve the financial capability while conventional bankruptcy law prioritizes on economical solution between the creditor and debtor using profit and loss consideration.

c. Requirement

Taflis does not use two shahib al-maal or more as the requirement of taflis verdict statement. The more important thing is that customer has debt bigger than the assets, the
debt has been overdue, and the customer is not capable to settle the debt obligation. Meanwhile, in conventional bankruptcy law, the number of creditors becomes the requirement of bankruptcy verdict statement.

d. *Muflis* is rightful to receive zakat

Individual *muflis* in *taflis* law can receive zakat distribution from zakat *mustahiq* post, *al-gharimin*, in order to help the settlement of the debt obligation. Meanwhile, in conventional bankruptcy law, there is no such treatment.

Bankruptcy settlement according to the legal system (Law Number 37 of 2004) has to refer to how the judge works where the judge has to use the arguments based on the facts, as follow:

a. The debtor has to be present in the trial.
b. There is still capability of the debtor to pay the debt.
c. There is evidence, witness, and estimation in this dispute.
d. The examination result in the trial does not find other debts.
e. Proposal is filed by the debtor either in the first level or appeal and cassation.
f. The is confession from the respondent.

Aside from the basis of the above facts, it can be seen in Clause 2 Verse (1) and Clause 6 Verse (5) of the Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) as follow: Clause 2 Verse (1) of the Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) states that there should be the evidence and the factual situation reflecting the debtor is in the situation of stopping to pay the debt. The term stopping to pay the debt is not always interpreted *near da letter* which means the party does not pay at all but he is in the situation where he stops paying when the bankruptcy proposal is filed. Clause 6 Verse (5) of the Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) confirms the statement related to the situation of stopping to pay so that the judge is not bound to the revised Clause 164 of Indonesian reglement regarding the evidence such as marketable securities, witness, accusation, and confession so that the verdict of stopping to pay situation is an absolute fact to be assessed by the judge. The judge has to consider the argument (how it works) used with the handled dispute.

The legal consequences of bankruptcy can be against the bankrupt debtor, assets, the third party, or marital assets. Towards the bankrupt debtor, Clause 24 of the Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU)
emphasizes that debtor legally lose their rights to control and manage their assets since the date of stating bankruptcy verdict. Therefore, bankrupt debtor only loses the authority or power to manage and divert their assets. The bankrupt debtor still can carry out legal actions such as getting married, receiving grant, acting as the authorities, and so on. Towards the asset, Clause 21 of the Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) mentions that bankruptcy assets include the entire debtor’s fortune and everything retrieved during the bankruptcy, either the movable properties or immovable properties. It does not apply to the assets very much needed for human’s life sustainability.

Towards the third party, after the court passes the bankruptcy verdict judgment, the bankrupt debtor is no longer free to control and manage their assets. But, in particular limits, he still has the skill to do legal actions as long as the legal action is not boedel’s responsibility. If the action harms the bankrupt boedel, property and heritage agency (third party) can state cancellation upon Actio Pauliana principle. Therefore, all debtor’s actions towards the third party before the bankruptcy verdict can play the role as the competitor creditor party except that the action is done after forty days before the bankruptcy verdict. Towards the marital assets, if someone who marries is in one bankruptcy assets’ togetherness, the bankruptcy is applied as shared bankruptcy. Consequently, if a bankrupt party marries in a togetherness has personal assets, the assets are not responsible for the bill of shared assets but only for the debt binding the bankrupt debtor personally.

Bankruptcy settlement according to sharia economy legal system refers to jurisprudential practice so that jurisprudence is often used as the reference or legal consideration to settle disputes by the judge. Thus, in the case of a debtor who is no longer capable to pay the debt because the assets are gone or the assets are insufficient to pay the entire debts (bankruptcy), fiqh scholars agree to allow the judge to do intervention to settle the debt. One of the considerations is the number of creditors who propose the claim to the judge.

The end of the debtor’s bankrupt status is because the agreement among the creditor and debtor can be found in Islamic economy law and Indonesian constitution. In Islamic economy law, the agreement can be interpreted as the suspension or postponement of the obligation to pay a part of the creditor’s right according to the agreement to end the dispute between the debtor and creditor. Meanwhile, according to
Indonesian constitution, the agreement is modern organization report where the concept is the offer to pay a part of the debtor’s debts until the debt is paid off which then free them from debt.

According to Islamic economy law and Indonesian constitution, freeing the debtor’s debt on the name of the creditor’s sincerity receives similar perspectives. The debt liberation is given by the court’s instruction where the requirement for the debt liberation is that the debtor does not carry out dishonest act and other inappropriate behaviors related to financial problems or the debtor has good intention or is willing to cooperate in bankruptcy process.

The forms of religious court’s authority expansion in handling sharia economy bankruptcy dispute are based on the following three aspects:

1. Philosophical aspect

   Religious court’s authority in handling sharia economy bankruptcy dispute is based on the regulation on Clause 29 Verse (1) and (2) of Republic of Indonesia’s 1945 Constitution which states that (1) Nation is based on the Almighty divinity and (2) Nation guarantees the freedom of each citizen to choose their own religion and worship according to their religion and belief. It means that this regulation becomes the nation unifier and becomes one important value in independence struggle. Denotatively, it explains that Indonesia prohibits disbelief towards God like atheism. Indonesia is a nation of laws based on divinity and does not tend towards one religion. The nation also guarantees the citizen’s freedom to choose religion and worship which means that the nation will protect, guarantee, guide, and lead religious life according to the belief they have. The government plays the role of giving guidance and advice to the entire religions in Indonesia without any discrimination. The government also plays the role in assuring the safety and convenience of the citizens’ religious life and preserve the harmony among the people. Religious Court has the authority to judge sharia bankruptcy dispute so that the nation prioritizes the religious values among Indonesian Moslem people either as the debtor or the creditor. Their freedom to seek justice according to their belief (Islam religion) is entirely guaranteed. Sharia economy bankruptcy dispute employs the principles in Islamic law so that it has to be settled using Islamic rules and religious court is the best option in this case, not the commercial court.

2. Sociological aspect
The consideration that the established regulation is to fulfill the community’s demand, it is important for religious court to accommodate the parties to be inspected and accept the verdict using the law according to the community’s need in handling sharia bankruptcy dispute. The akad used in sharia bankruptcy dispute is the akad using Islamic principles. Therefore, the settlement of the dispute also requires the use of the same principle and religious court is the best party to judge.

3. Juridical aspect

Clause 49 i of Law Number 3 of 2006 has given the authority to religious court in handling sharia economy dispute which also handling sharia economy bankruptcy dispute. It becomes irrelevant if sharia economy bankruptcy dispute is judged by commercial court because the dispute object is different. Conventional bankruptcy and sharia bankruptcy have many distinctions as explained in Table 7 above. Sharia bankruptcy still use bankruptcy legal system adhered by the Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) which is applied by conventional economy.

The forms of religious court’s authority expansion in judging sharia bankruptcy are to protect Indonesian Moslem people entirely. Bankruptcy is started with proposing bankruptcy statement which leads to generate a bankruptcy verdict. In bankruptcy verdict, there are some legal consequences for the bankrupt debtors. One of them is the bankrupt debtor’s action authority in their assets’ regulation. This causes the debtor’s authorities to be very limited. Bankrupt debtor can only do the actions which may bring profit or the actions which may increase the assets which then used as bankruptcy boedel. However, if the bankrupt debtor’s actions are expected to bring loss or decrease bankruptcy assets, the curator can propose legal action cancellation done by the bankrupt debtor. The cancellation is relative meaning that it can only be used for the sake of bankruptcy assets. The action done by the curator to propose the cancellation is called Actio Paulina. Aside from protecting the bankruptcy assets, the cancellation is done to protect the creditors so that they are not harmed.

The importance of amnesty (al Hajr) through the curator (in Indonesian bankruptcy law) is because people who are in debt have huge potential to lie and break a promise. As pronounced by Rasulullah related to how often Rasulullah prays for the protection from debt, he said:

إِنَّ الرَّجُلَ إِذَا غَرِمَ، حَدَّثَ فَكَذَبَ، وَوَعَدَ فَأَخْلَفَ

Meaning: "Indeed, when someone is in debt, they will lie when they speak, and
Philosophically, sharia bankruptcy dispute handled by commercial court is unfair according to John Rawls’ theory and Sayid Qutub’s justice theory because the dispute settlement has to refer to the contract previously agreed by the two parties namely sharia contract. The involved parties cannot utilize the opportunity and their own advantage by exploiting the law ambiguity by bringing sharia bankruptcy dispute to commercial court which is within general judiciary.

In reality, Rawls approach is imagining a group of people who are selecting the principles to evaluate the justice of the community’s basic structure. If in the process of selecting the justice principle is applied, there is no one allowed to dominate the selection or utilize unfair opportunity such as the advantage of the natural gift or the social position (Rawls, 2019:12). Justice principle is the result of equal choice that is called as justice as fairness. The concept does not reflect that the justice and fairness concepts are the same, but fairness is required in shaping justice. Therefore, in Rawls view, the justice seeker in sharia bankruptcy dispute needs to take political justice step to fight for justice by reconstructing bankruptcy law according to sharia principles.

Political Justice is the justice retrieved from constitution and fair rules (Ratnapala, 2009:325). It emphasizes that law is political product so that justice can be taken by using political path reflected in the established constitution, law, and rules. Political justice is classified into two, namely: natural which is universal and legal or conventional. The Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) which is currently valid employed by commercial court in judging sharia bankruptcy dispute implies the failure in achieving equality principle because it emphasizes more on the protection towards the creditors.

The protection given by the creditors and stakeholders cannot harm the debtor stakeholders’ interests. The Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) allows bankruptcy statement proposal to be filed by one of the creditors only. But, for the sake of other creditors, the Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) should not give the opportunity to the statement of bankrupt verdict without being agreed by the other creditors. The decision that the court verdict upon bankrupt proposal filed by creditor is supposed to be based on the agreement of other creditors retrieved from meeting of the
creditors which is specially conducted (Sinaga, 2012:49). One of legal protections guaranteed by the Law of Bankruptcy and The Postponement of Debt Payment Obligations (UUK-PKPU) for the creditors is the existence of actio paulina. Actio Paulina is initially established in Clause 1341 of Civil Code where it gives the authority to the creditors to file abolition of any legal action which is not obliged to be done by the debtor which may harm the creditors. The provision of actio paulina in Clause 1341 of Civil Code is correlated to the provision of Clause 1131 of Civil Code which regulates the principle of Paritas creditorium. This is because Clause 1131 of Civil Code determines that the entire debtor’s assets become the assurance of the debtor’s debts for the sake of law. Therefore, debtor is not free upon the possessed assets when he has debts to the creditors.

From Islamic justice theory, the position of sharia bankruptcy dispute settlement to the commercial court does not suit the justice sought by the parties involved in dispute. The term Al-‘adly in the Quran is interpreted as social justice by several Moslem scholars which has some meanings, such as (1) Almusawah means equality cited in surah An Nisa’ verse 3, (2) al ‘Adlu means giving according to the rights as we can find in surah Al Hujurat verse 9, (3) al ‘Adlu means positioning something at the right place and portion which can be found in surah As Syura verse 15, (4) al ‘Adlu means proportional or balanced, when Allah uses the word al’ adlu in the verse related to the perfection of human creation cited in surah Al Infithar verse 7, and lastly (5) al ‘Adlu means right/honest as used in surah Al Baqarah verse 282.

Islamic justice theory according to Sayyid Qutb emphasizes on the meaning of al musawah or equality and al qist and the significance of governmental politic elaborating Islamic substances. Justice can be embodied if the involved parties are equally positioned without any discrimination and favoritism towards one side and it employs Islamic or sharia principles. Regarding the settlement of sharia bankruptcy dispute in commercial court, it does not reflect fair position for both parties because it still uses conventional legal basis and irrelevant to Islamic principles according to the akad or the previously made sharia contract.

Other policies and adjustment also need to be made in order to set legal and sharia standard of how to proceed sharia bankruptcy. It is also suggested to form special judiciary force to handle sharia bankruptcy in Religious Court. It refers to the implementation of Clause 1 Verse 8 of Law Number 50 of 2009 related to the second
revision of Law Number 7 of 1989. If there is a special force to handle the case, it will eliminate the inconvenience of pronouncing bankruptcy based on Islamic principle as it has been clearly established. The community, especially business owners will not face confusion about where to go when they encounter bankruptcy and want to proceed it in sharia way. Further, it is also necessary to establish special law of sharia bankruptcy containing the law of material and formal sharia bankruptcy case in Indonesia. Related adjustment and regulations will help the process to run smoothly.

5 CONCLUSION

Authority expansion forms of Religious Court in settling sharia bankruptcy dispute by revising Law Number 3 of 2006 and stating strictly that the settlement of sharia bankruptcy dispute are the absolute authorities of Religious Court. Moreover, Religious Court also improves to upgrade the quality of judge candidates in order to understand the complexity of sharia bankruptcy case. It is also suggested to form special judiciary force to handle sharia bankruptcy in Religious Court. It refers to the implementation of Clause 1 Verse 8 of Law Number 50 of 2009 related to the second revision of Law Number 7 of 1989. Further, it is also necessary to establish special law of sharia bankruptcy containing the law of material and formal sharia bankruptcy case in Indonesia. The authority expansion of religious court in handling future sharia bankruptcy dispute is greatly urgent and progressive because sharia bankruptcy dispute is classified into sharia economy case. Sharia economy dispute is the absolute authority of Religious Court.
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