ABSTRACT

Purpose: Disharmony in bankruptcy laws in Sharia business impacted public distrust and lack of legal certainty in society. The urgency of this research requires legal reform and renewal regarding the authority of religious justice institutions as the sole adjudicators in the realm of sharia law to guarantee legal certainty. This research aims to determine the effectiveness of bankruptcy dispute resolution from a sharia perspective.

Method: This qualitative research uses a normative juridical approach, and the legal sources used are primary and secondary. Legal sources are collected through literature reviews, then analyzed and described systematically, descriptively, and prescriptively to answer current and future.

Results and Conclusion: The result is that there is a need for a legal stipulation that religious courts are the only institutions authorized to decide on the resolution of bankruptcy disputes based on Sharia law so that Sharia bankruptcy law becomes effective.

Implications of research: Research on the Islamic legal perspective the resolution of bankruptcy in Sharia business disputes can have several significant implications among others are legal framework development. Such research can contribute to the development of a comprehensive legal framework within Islamic jurisprudence for handling bankruptcy cases in Sharia-compliant businesses. This includes exploring the principles outlined in Islamic commercial law (Fiqh al-Mu'amalat) and their application to modern economic systems.

Keywords: bankruptcy, religious court, sharia law.

PERSPECTIVA JURÍDICA ISLÂMICA RESOLUÇÃO DE FALÊNCIA EM DISPUTAS COMERCIAIS DA SHARIA

RESUMO

Objectivo: A desarmonia nas leis de falências nos negócios da Sharia teve impacto na desconfiança pública e na falta de segurança jurídica na sociedade. A urgência desta investigação exige uma reforma e renovação jurídica no que diz respeito à autoridade das instituições de justiça religiosa como os únicos árbitros no domínio da lei sharia para garantir a

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segurança jurídica. Esta pesquisa visa determinar a eficácia da resolução de disputas de falência sob a perspectiva da sharia.

**Método:** Esta pesquisa qualitativa utiliza uma abordagem jurídica normativa, e as fontes jurídicas utilizadas são primárias e secundárias. As fontes jurídicas são coletadas por meio de revisões da literatura, depois analisadas e descritas de forma sistemática, descritiva e prescritiva para responder às questões atuais e futuras.

**Resultados e Conclusão:** O resultado é que há necessidade de uma estipulação legal de que os tribunais religiosos sejam as únicas instituições autorizadas a decidir sobre a resolução de litígios de falência com base na lei da Sharia, para que a lei de falências da Sharia entre em vigor.

**Implicações da pesquisa:** Pesquisa sobre a perspectiva jurídica islâmica, a resolução de falências em disputas comerciais da Sharia pode ter várias implicações significativas, entre outras, o desenvolvimento do quadro jurídico. Essa investigação pode contribuir para o desenvolvimento de um quadro jurídico abrangente no âmbito da jurisprudência islâmica para o tratamento de casos de falência em empresas que cumprem a Sharia. Isto inclui explorar os princípios delineados na lei comercial islâmica (Fiqh al-Mu'amalat) e sua aplicação aos sistemas econômicos modernos.

**Palavras-chave:** falência, tribunal religioso, lei sharia.

**PERSPECTIVA JURÍDICA ISLÁMICA RESOLUCIÓN DE QUIEBRAS EN DISPUTAS EMPRESARIALES DE LA SHARIA**

**RESUMEN**

**Propósito:** La falta de armonía en las leyes de quiebras en los negocios de la Sharia afectó la desconfianza pública y la falta de seguridad jurídica en la sociedad. La urgencia de esta investigación requiere una reforma y renovación legal con respecto a la autoridad de las instituciones de justicia religiosa como los únicos árbitros en el ámbito de la ley sharia para garantizar la seguridad jurídica. Esta investigación tiene como objetivo determinar la eficacia de la resolución de disputas por quiebra desde la perspectiva de la sharia.

**Método:** Esta investigación cualitativa utiliza un enfoque jurídico normativo, y las fuentes jurídicas utilizadas son primarias y secundarias. Las fuentes jurídicas se recopilan a través de revisiones de la literatura, luego se analizan y describen de manera sistemática, descritiva y prescriptiva para responder al presente y al futuro.

**Resultados y conclusión:** El resultado es que existe la necesidad de una estipulación legal de que los tribunales religiosos sean las únicas instituciones autorizadas a decidir sobre la resolución de disputas de quiebras basadas en la ley Sharia para que la ley de quiebras Sharia entre en vigor.

**Implicaciones de la investigación:** La investigación desde la perspectiva legal islámica de la resolución de quiebras en disputas comerciales de la Sharia puede tener varias implicaciones importantes, entre otras el desarrollo del marco legal. Dicha investigación puede contribuir al desarrollo de un marco legal integral dentro de la jurisprudencia islámica para manejar casos de quiebra en empresas que cumplan con la Sharia. Esto incluye explorar los principios descritos en la ley comercial islámica (Fiqh al-Mu'amalat) y su aplicación a los sistemas económicos modernos.

**Palabras clave:** quiebras, tribunal religioso, ley sharia.
1 INTRODUCTION

Disharmony in bankruptcy laws in sharia business has the impact of public distrust and lack of legal certainty in society. The urgency of this research requires legal reform and renewal regarding the authority of religious justice institutions as the sole adjudicators in the realm of sharia law in order to guarantee legal certainty. The stipulation that debtors, both conventional and sharia customers, are declared bankrupt if a judge has decided in court that the debtor is no longer able to fulfill their financial obligations. The problem is that there is legal uncertainty due to the handling of sharia cases being carried out in different court domains, both through litigation and non-litigation route (Alternative Dispute Resolution (ADR)).

Disputes can be resolved in religious courts, tribunals or district courts, the choice of place or institution handling the case is adjusted to the clauses of the contractual agreement. Different legal rules have the impact of legal uncertainty and uncertainty in the authority to resolve cases. Sharia transaction dispute cases including bankruptcy should without any other choice be resolved in religious courts as mandated by Article 49 of Law Number 3 of 2006 which amends Law Number 7 of 1989 concerning Religious Courts. There is disharmony in handling bankruptcy in Article 3 paragraph (1) Bankruptcy and Postponement of Debt Payment Obligations that the competent court is the Commercial Court, while Article 55 Paragraph (2) of the Sharia Banking Law states that the authority for bankruptcy disputes is the authority of the religious courts.

The aspects of business in Islam are actually not much different from conventional business, however, what is different is the principles of sharia and maslahah which are more emphasized, as well as when disputes related to bankruptcy occur. The issue of bankruptcy is a topic of discussion among Islamic legal experts, especially among major legal schools such as Imam Maliki, Imam Hanafi, Imam Syafi'I and Imam Hambali. Discussions that have arisen regarding the issue of bankruptcy among the ulama include the determination of a person as bankrupt, the legal status of a bankrupt person, the legal consequences of a person being declared bankrupt and under guardianship, revocation of the status under guardianship of a bankrupt person and the issue of limiting authority or what is known as Al-Hajr see. Conflicts in sharia business often have the effect of breaking down relations between the parties due to the general confiscation of the debtor's assets if they are declared bankrupt. Sirkah or partnerships in sharia financing must be
based on good faith and can provide benefits for the parties. There are no regulations governing sharia bankruptcy, so disputes must be resolved through the conventional legal system. Every dispute is initiated by a contract between the parties which occurs as a result of a breach of contract (default) which has legal consequences resulting in conflict due to the debtor's inability to fulfill his obligations, however the creditor has the right to write off or restructure the debt through renewal of principal, interest and term time, finally it can be through litigation or non-litigation. Every business does not always make a profit and even goes bankrupt, which has the effect of freezing the debtor's assets as collateral for repayment as a general guarantee in the Civil Code and Bankruptcy Law.

The curator will act as the executor of the creditor's debt settlement through the bankruptcy auction of the debtor's assets. Disputes can also be resolved through sulh or peace based on sincerity so that the resolution of the case fulfills a sense of justice and legal certainty. Business disputes are often resolved through a fatwa as a legal reference. Sharia dispute resolution can be done through shura. The word al-shura is the masdar form of the words syawara or through mediation or negotiation, as-sulh, tahkim, hisbah, and qadha. Previous research relevant to this research is as follows: Settlement of business disputes based on sharia does not fully comply with sharia principles because Supreme Court Regulations No. 14 of 2016 still contains the concept of non-sharia compliance.

The determination of bankruptcy by the religious court (At-taflis/bankruptcy) states that debtors who are insolvent (bankrupt) are prohibited from taking legal action with their assets. Along with the development of sharia-based business, the consequences of legal regulations are in accordance with sharia principles, so that dualism in handling bankruptcy no longer needs to occur. Firmness is needed from the judiciary to clearly determine the limits of authority in sharia bankruptcy so that the litigation process runs effectively and efficiently. Jurisdictional conflicts in Sharia bankruptcy have the impact of not achieving certainty and justice in substance because there is an examination of the substance of Sharia economic law based on conventional economic principles so that it conflicts with contracts and agreements).

Bankruptcy in business is something that often happens, but the most important thing is how to resolve bankruptcy disputes using fair deliberation in bankruptcy disputes or delays in debt payments. The opinion of scholars from the Maliki, Syafi’i and Hambali schools of thought states that if the debtor is in bankruptcy, the creditor should not force his will to collect it but still give him the opportunity to rise so that he can pay off his debt.
at a later date, whereas according to the Hambali Ulama he must be freed from debt if the debtor is in his condition, no longer have any assets left. Meanwhile, Imam Syafi'i, Imam Malik, Abu Yusuf, and Muhammad are of the opinion that to reduce losses, creditors can sell the debtor's assets to pay the debt, even if it is not sufficient in full.

From the research above, it is clearly different from the author's research where the research gap is that legal reform is needed in deciding bankruptcy cases in sharia business. The novelty in this paper is to find out the consistency of handling sharia bankruptcy cases in Indonesia, the need for standard rules for resolving standard disputes, bankruptcy in Islamic business to ensure legal certainty and provide convenience and business. The aim of this research is to determine the consistency and effectiveness of bankruptcy dispute resolution from a sharia perspective

2 THEORETICAL FRAMEWORK

Developing a theoretical framework for understanding the Islamic legal perspective in the resolution of bankruptcy in Sharia business disputes involves integrating principles from Islamic law, particularly those related to commercial transactions, dispute resolution, and ethics. Here's a theoretical framework outline:

1) Islamic Legal Principles: Identify and elucidate the fundamental principles of Islamic law (Sharia) that govern commercial transactions, including contracts, debt, and bankruptcy. Explore the higher objectives of Sharia (Maqasid al-Sharia) as they relate to economic activities, such as preserving wealth, protecting property rights, promoting justice, and preventing harm. Examine the primary sources of Islamic law, including the Quran, Sunnah (Prophetic tradition), Ijma (consensus), Qiyas (analogical reasoning), and Istihsan (juristic preference), and their relevance to bankruptcy resolution.

2) Bankruptcy in Islamic Law: Define bankruptcy within the framework of Islamic law, considering its implications for debtors, creditors, and the broader economy. Identify prohibited practices in bankruptcy proceedings according to Islamic law, such as usury (riba), uncertainty (gharar), and gambling (maysir). Examine the priority of debt repayment in Islamic jurisprudence, particularly the hierarchy of creditors and the treatment of secured and unsecured debts.
By integrating these components, the theoretical framework provides a comprehensive understanding of the Islamic legal perspective in the resolution of bankruptcy in Sharia business disputes, facilitating both academic inquiry and practical application in the field of Islamic finance and commercial law.

3 METHODOLOGY

This qualitative research uses a normative juridical approach. The legal sources used are both primary and secondary to regulations and articles relating to bankruptcy issues: the Civil Code, Sharia banking regulations, the Religious Courts Law, and other relevant regulations like books, journals, and related articles. Besides that, the author involves studies between scientific fields in solving the above problems (interdisciplinary approach). Legal sources are collected through literature reviews, then analyzed and described systematically, descriptively and prescriptively to answer current and future.

4 RESULT AND DISCUSSION

4.1 GENERAL STUDY RELATED TO SHARIA BUSINESS DISPUTES

Disputes in the context of sharia business are becoming an increasingly relevant issue amidst the rapid growth of the sharia-based financial industry. These disputes can arise from various aspects, ranging from complex financial transactions to differences in interpretation of sharia principles. General studies related to sharia business resolution are important to understand the challenges faced by business people, financial institutions and the general public in managing and resolving conflicts that arise. Challenges in Sharia Business Dispute Resolution One of which is Transaction Complexity. Islamic financial transactions often involve complex structures, such as mudharabah, musyarakah, and murabahah. This can increase the risk of bailout due to the various possible interpretations of the contracts.

In some countries, sharia-related business regulations may still not be mature or detailed enough, which may cause difficulties in completing settlements. These limitations can hinder efforts to uphold sharia principles in resolving conflicts. Completing sharia businesses requires special skills in sharia law and a deep
understanding of the principles of Islamic economics. Not all parties involved in the settlement process have these skills, which can hinder an effective settlement process. Disputes that are not resolved properly can damage the reputation of sharia financial institutions and reduce public trust in the sharia-based financial system as a whole.

Prospects for Sharia Business Dispute Resolution
One of which is Development of Dispute Resolution Institutions
The development of special settlement institutions for sharia businesses can help increase access to resolution that is fast, fair and in accordance with sharia principles.

Increasing education and training related to sharia law and sharia financial transactions can help improve understanding and skills in completing sharia business settlements. Efforts to harmonize regulations related to sharia business at the national and international levels can help create a clear and predictable legal environment for economic settlement. Increasing openness and transparency in Islamic financial transactions can help prevent signatures by clarifying the rights and obligations of the parties more clearly. Disputes in sharia business are complex challenges but can be overcome through a holistic approach. With the development of appropriate settlement institutions, increased education, harmonization of regulations, and increased openness, the prospects for sharia business settlement can be better in the future. This will support the growth of the sharia-based financial industry and strengthen public trust in a financial system that is fair and in accordance with sharia values.

4.2 ISLAMIC LEGAL PERSPECTIVE RESOLUTION OF BANKRUPTCY IN SHARIA BUSINESS DISPUTES

Bankruptcy (at taflis) in Islam means if you no longer have assets (bankruptcy) or solvency (ratio of debt to assets, the amount of debt is more than assets so that the debtor fails to pay and the debtor's assets are unable to cover all his assets). Debt (al-I'sar) bankruptcy is a court decision that limits or prohibits the debtor from carrying out legal actions resulting from the confiscation of property in general. Bankruptcy concepts in Sharia are namely al-i'sar and al-iflas. Islamic jurists, it mean a person who is unable to pay debts. Economically, al-i'sar is a person's inability to pay his debts at the time or circumstances determined by an entrepreneur (company) where his assets are insufficient to cover his debts and obligations.
While al-iflas are the condition of a person unable to take responsibility, Ibn Quddamah said that his ownership of assets is only to cover all his debts. Ibn Rushd in Bedayat Al-Mujtahid states that a person who refuses to pay his debts. “Muflis is a debtor’s failure to pay off his debt results in him being prohibited from taking any legal action against the assets he owns (al hajr)”. The basis for this understanding comes from the hadith narrated by Ad-Daru Qutni and validated (justified) by al Hakim that the Prophet Muhammad SAW, forbade Mu'az to transact his property which had debts in it and distribute it to his creditors. However, Mu'az's assets could not meet the creditors’ receivables, so they questioned the Messenger of Allah.

The hadith related to Mu'adz bin Jabal is in the book Nail al-Author used as an argument regarding the limitation of authority over every person who is in debt, and it is also permissible for the authorities to sell the assets of people who are in debt to pay off their debts, without distinguishing between people whose assets are used up to pay debts and people whose assets are not used up to pay debts. Malik is of the opinion that after there is a ruling by the authorities regarding restrictions on authority, the use of assets by those who owe them does not apply, as a consequence of limitations on authority. Bankruptcy (At-taflis) is a condition experienced by a debtor who is unable to pay off his debts (insolvency) by the court in the form of a general confiscation of his assets and prohibits the debtor from carrying out legal disputes over his assets.

Hajr or restrictions on the authority of the bankrupt person to carry out transactions must be based on the request of the party receivable, or their children, due to the limitation of authority in principle, it is a benefit for the creditor, and they are the ones who know best what is most beneficial for them. In some circumstances the judge may take precautions against the bankrupt party without request if deemed necessary. Limitations on authority may be made at the request of the person who owes the debt, even through an intermediary. Because the person concerned has the intention to make payments on his debts. According to Imam Ar-rafi'I Hajr, what was done to Muaz Bin Jabal was at his own request. The legal impact on debtors who experience bankruptcy in Islam is as follows is give time to pay off the debt (respite period), confiscate the bankrupt's assets to reduce the debt burden, the bankrupt debtor, based on court orders, works (sells his skills) as part of debt repayment, determining the status of muzakii (zakat obligatory) to mustahik (zakat recipient) of the gharimin (bankrupt person) group for
individual bankrupt debtors and confiscate the muflis' assets (excluding primary needs) and sell them as part of debt repayment.

If it has been decided that the bankrupt person's authority is limited, then the assets whose authority to transact is limited are the rights of the creditor. Like collateral, the goal is so that the person does not use his assets in detrimental transactions and so that he does not increase his debt again. With the fall hajr in bankrupt persons, creditors' rights or ghurama only relates to the assets owned by the person declared bankrupt, whether they are sufficient for the amount of his receivables or insufficient, and has nothing to do with assets obtained by the bankrupt person through business which is in his charge (fi dzimmah). Because with the fall hajr, relations or of alluq right ghurama shift from dependent (dzimmah) the bankrupt person to his existing assets ('aini). Thus, if all the assets of a bankrupt person (bankruptcy) existing ones have been sold to pay debts to creditors according to their respective percentages, and then it is insufficient, then bankruptcy are not required to work to pay off the remaining debt.

There are limitations to freezing transactions bankruptcy or bankrupt person is any form of transaction with the following conditions is Property (they had), thus excluding transactions in the form of talak, marriage, etc.; In the form of existing assets ('ain), thereby excluding the transaction fi dzimmah (in dependents), Harmful to rights 'ghurama' (creditor), Based on one's own ideas or initiative, thus excluding due to coercion, The beginning, until excluding saving form university degree (return of goods sold), and Takes place while still alive, thus excluding transactions in the form of event (suspending the freedom of slaves by death), wills, etc. Nasrun Haroen Legal experts also stated the legal consequences of declaring someone bankrupt, as follow is the remaining assets of the person declared bankrupt become the rights of the creditors, thus it is not justified for the bankrupt person to take action against the remaining assets, and Legal experts also agree that a person who has been declared bankrupt by a judge may be subject to temporary detention until his debts are paid.

Related to the ability to temporarily detain or imprison people who bankruptcy, legal experts differ. Hanafiyah legal experts are of the opinion that judges have the right to temporarily detain people bankruptcy when the judge does not know exactly the financial situation of the bankrupt. In this condition the judge can detain him for two or three months. If within a period of two to three month the bankrupt is unable to paid the debt then he is released. This opinion is based on verse 280 from Quran Surah Al-
Baqarah: "And if (the debtor) is in difficulty, then give him a grace period until he finds the opportunity. And if you give charity, it is better for you, if you know. Meanwhile, according to Hanafiyyah circles, there are several conditions that must be met if a bankrupt person is subject to detention (Hasan, 2018):

a) The debt is due for payment;
b) It is known that this bankrupt person is able to pay his debts, but he does not, as mention in the hadith of the Prophet. "I have the right to temporarily detain people who refuse to pay their debts, because that act is cruel". (HR. al-Bukhari, Muslim, an-Nasa'I, Abu Daud, and Ibnu Majah);
c) People whom bankruptcy that is not the father and or mother of the person who gives credit, with the reason of the words of Allah SWT in Surat Al-Isra' verse 23 "...And do good to both parents..."
d) Creditors submit a lawsuit to the judge so that the person who has fallen into bankruptcy (bankruptcy) is subject to temporary detention.

Malikiyyah circles are of the opinion that judges may temporarily detain bankrupt people with the following conditions:

a) his financial situation is not known for certain;
b) the appearance of the person declared bankrupt makes creditors suspect that he has assets, while he still claims to have no money;
c) the bankrupt person turns out to have money but is reluctant to pay;
d) The judge first forces the person declared bankrupt to pay his debts. If he is reluctant to pay these debts, the judge may imprison him. If the results of further research show that the bankrupt person does not have the money to pay his debts, he will be released from temporary detention.

The Syaf'i'i and Hambali sects are of the opinion that if a person who is bankrupt has assets that can be sold to pay his debts, then the judge can force the person concerned to sell his assets to pay off his debts. If the bankrupt person does not want to sell his assets and does not pay his debts while the creditor wants the judge to detain the bankrupt person, then the judge can temporarily detain the bankrupt person. Sayyid Sabiq stated that if someone finds their assets in someone who has been declared bankrupt, then there are several possibilities that could happen to them:

a) person who finds that his assets are in the possession of a person who is declared bankrupt, then he has more rights to these assets than other creditors. This is based
on the hadith of the Prophet SAW, "Whoever finds his wealth in his form in someone who is bankrupt, then he has more rights to him than anyone else. 

b) If there are additions or reductions so that the property changes, then the owner has no more rights to it, however, his position is equal to other lenders.

c) Meanwhile, if the person declared bankrupt has sold the property and has retained part of the money from the sale, then his position is the same as the others and has no right to ask for the goods that have been sold, according to the opinion of the majority of ulama.

d) If the buyer has died while the seller has not received the money from the sale, and then the seller gets the goods he sold, then he (the owner of the goods) has more rights to it. This is based on the hadith mentioned above, and because there is no difference between death and bankruptcy. This is according to Syafi'i's opinion. Abu Hurairah said, "Indeed, I give the decision as decided by the Messenger of Allah, "whoever becomes bankrupt or dies, then someone finds the goods (on him) in his form, then that person has the most right to him." (According to the judge, this hadith is valid).

The majority of Ulama, including some Syafi’iyyah and Hanabilah legal experts, are of the opinion that if the assets of a person declared bankrupt have been divided among the creditors according to their respective portions, even if they are not enough or not paid off, then the status is under guardianship or there is a limitation of authority. declared expunged, because the cause that put him under pardon has disappeared. This is in accordance with the legal rules that state “al-hukmu yaduru ma’a al-illah wujudan wa’adaman. The law is related to the reason, whether it exists or does not exist. Meanwhile, some Syafi’iyyah and Hanabilah legal experts stated that the status of a person who is bankrupt under guardianship is not erased, except by a judge's decision, on the grounds that his or her determination under guardianship is based on the judge's decision. Thus, the cancellation must be based on the judge's decision.

There is a lot of homework that will continue to haunt the religious courts in carrying out their litigation function in bankruptcy disputes, one of which is that there are still many judges who have not been certified in sharia bankruptcy, especially in small cities, besides that the regulations used still refer to the PKPU Law which should be based on sharia-based regulations but the regulations used related to sharia economics, namely fatwa of the National Sharia Council of the Indonesian Ulama Council, Supreme Court
Regulations No. 2 of 2008 concerning the Compilation of Sharia Economic Law, Supreme Court Regulations No. 14 of 2016 on Procedures for Settlement of Sharia Economic Matters. It has not yet clearly regulated where there is a legal vacuum due to the postponement of taflis or bankruptcy articles in Supreme Court Regulations 14 of 2026 so that there are still many cases of sharia transactions that are resolved in the realm of general justice.

5 CONCLUSION

The authority of religious courts in examining and deciding Sharia bankruptcy cases still leaves problems due to the existence of dualism and disharmonization between equal laws, such as fatwa of the National Sharia Council of the Indonesian Ulama Council, Supreme Court Regulation No. 2 of 2008 concerning the Compilation of Sharia Economic Law, Supreme Court Regulation no. 14 of 2016 on Procedures for Settlement of Sharia Economic Matters, There is a legal vacuum in the Supreme Court Regulations and also in Constitutional Court Decision No. 93/PUU/X/2012. There is disharmony in handling bankruptcy in Article 3 paragraph (1) Bankruptcy and Postponement of Debt Payment Obligations that the competent court is the Commercial Court, while Article 55 Paragraph (2) of the Sharia Banking Law states that the authority for bankruptcy disputes is the authority of the religious courts. So resolving disputes related to bankruptcy from a Sharia perspective becomes ineffective and inefficient considering that there are still many Sharia cases that are submitted, examined, and decided in commercial courts, not in religious courts.
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