

# Justisia Ekonomika

Jurnal Magister Hukum Ekonomi Syariah

Vol 9, No 1 tahun 2025 hal 1330-1347

EISSN: 2614-865X PISSN: 2598-5043 Website: <http://journal.um-surabaya.ac.id/index.php/JE/index>

## LEGAL ANALYSIS OF THE DECISION OF THE BANTUL RELIGIOUS COURT IN THE CASE OF DEFAULT AND COMPENSATION IN THE SHARIA ECONOMIC DISPUTE

**Rohayatun**

Bantul Religious Court

email : [rohayatun.arief1982@gmail.com](mailto:rohayatun.arief1982@gmail.com)

*Submitted: March 14, 2025,*

*Accepted: May 25, 2025,*

*Published: Jun 20, 2025*

### Abstract

This research examines the enforcement of legal principles in Sharia economic disputes, particularly focusing on the context of default and compensation in the jurisdiction of the Bantul Religious Court. Given the increasing complexity and volume of Sharia economic disputes, an understanding of how these cases are decided is crucial. There is a gap in the literature regarding the specific application of Sharia principles and law in the Religious Courts in Indonesia, particularly regarding the determination of damages in default cases. This research aims to analyze how the Bantul Religious Court applies relevant legal principles in default cases relating to Sharia economics and to identify the main juridical considerations that influence decisions on the amount and type of damages awarded. Using qualitative legal research methods, this study analyzed court decisions and relevant legal literature to identify patterns and justifications in the court's reasoning. The main findings revealed that the Bantul Religious Court sought to integrate the principles of Islamic law with Indonesian positive law, emphasizing fairness, compliance with sharia principles, and consumer protection. Key considerations include alignment with Sharia, actual losses incurred, the good faith of the debtors, their socio-economic circumstances, and the principles of equity.

**Keywords:** *Default, Sharia Economics, Compensation*

### A. Introduction

The increasing importance of Islamic economics in Indonesia is in line with the increasing number of disputes that arise, especially in the context of financing and managing Islamic contracts such as murabahah and musyarakah. Increased

public participation in Islamic financial products triggers complexity in contract implementation, which leads to default or breach of contract by customers.<sup>1,2</sup> This emphasizes that a better understanding of Sharia principles and settlement mechanisms is needed to encourage

<sup>1</sup> Nur Utari Setiawati and Trisadini Prasastinah Usanti, "Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah," *Lex Journal: Kajian Hukum & Keadilan* 2, no. 2 (2018), <https://doi.org/10.25139/lex.v2i2.1410>.

<sup>2</sup> Margaretha Yerima Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan

Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah," *Locus Journal of Academic Literature Review* 3, no. 1 (2024): 127–40, <https://doi.org/10.56128/ljoalr.v3i1.281>.

harmonization between economic needs and Sharia compliance in law.<sup>3,4</sup>

The Religious Courts play an important role in resolving disputes arising from musyarakah and murabahah deeds, referring to the Islamic law procedures governing contract enforcement as well as default resolution. Several decisions show that the Religious Courts not only consider aspects of legality, but also apply principles of social justice and the obligations of the parties by fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) that are relevant in the context of Islamic finance.<sup>5,6,7</sup> This reflects the commitment of the Religious Courts in providing protection to customers and promoting settlements based on dialogue and mutual agreement, as well as to strengthen the integrity of the Islamic financial system in Indonesia.<sup>8,9,10</sup>

In the context of Islamic law, default or injury to promise refers to the non-fulfillment of obligations in a contract, as occurs in musyarakah financing in Islamic banks, where customers who do not meet the proportion of profit sharing can be considered to have defaulted.<sup>11</sup> Therefore, the concept of compensation, or ta'widh, is important to protect the rights and interests of the injured party, as well as to encourage compliance with promises in Islamic economic transactions.<sup>12</sup> This not only maintains fairness between the parties but also strengthens the integrity and sustainability of Islamic economic transactions as a whole, thereby contributing to economic stability.<sup>13</sup>

The legal basis for handling sharia economic disputes in Indonesia, especially related to the authority of the Religious Courts, is regulated by Law No. 3 of 2006 and Law No. 50 of 2009, which authorizes the Religious Courts to handle sharia

<sup>3</sup> Fitriani et al., "Inklusi Keuangan Dan Pemberdayaan Ekonomi: Evaluasi Efektivitas Produk Keuangan Syariah Dalam Meningkatkan Akses Keuangan Bagi Masyarakat Marginal," *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 6, no. 7 (2024): 5195–5206, <https://doi.org/10.47467/alkharaj.v6i7.2406>.

<sup>4</sup> Deny Guntara, Farhan Asyhadi, and Anggy Giri Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah," *Jurnal Usm Law Review* 6, no. 2 (2023): 567, <https://doi.org/10.26623/julr.v6i2.6392>.

<sup>5</sup> Ahmad Faizun, "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021): 195–212, <https://doi.org/10.22515/alakhkam.v6i2.3864>.

<sup>6</sup> Dian Aura Lina and Muhammad Nadratuzzaman Hosen, "Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya Ta'widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra)," *Jurnal Hukum Ekonomi Syariah* 5, no. 1 (2022): 13, <https://doi.org/10.30595/jhes.v5i1.13108>.

<sup>7</sup> Khairil Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah," *Al-Syakhsyiyah: Journal of Law & Family Studies* 4, no. 2 (2023): 254,

<https://doi.org/10.21154/syakhsyiyah.v4i2.5497>.

<sup>8</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>9</sup> Mona Wulandari and Saifullah Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia," *Wajah Hukum* 6, no. 2 (2022): 441, <https://doi.org/10.33087/wjh.v6i2.1081>.

<sup>10</sup> Fitriani et al., "Inklusi Keuangan Dan Pemberdayaan Ekonomi: Evaluasi Efektivitas Produk Keuangan Syariah Dalam Meningkatkan Akses Keuangan Bagi Masyarakat Marginal."

<sup>11</sup> Setiawati and Usanti, "Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah."

<sup>12</sup> Muhajirin Muhajirin, "Ganti Rugi (Studi Analisis Perbandingan Antara Hukum Positif Dan Hukum Islam Melalui Pendekatan Maqashid Al-Syariah)," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial* 6, no. 02 (2018): 105, <https://doi.org/10.30868/am.v6i2.303>.

<sup>13</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

disputes, including financing contracts such as musyarakah and murabahah<sup>14</sup>. Religious Courts are expected to implement the principles of Sharia law in resolving disputes, given the importance of the value of justice in Islamic law<sup>15</sup>. Research shows that Religious Court decisions in default cases have guaranteed justice and protection for the parties involved in Sharia agreements<sup>16</sup>. In addition, the existence of the National Sharia Council fatwa also plays an important role in providing legal guidance for the resolution of Sharia economic disputes in Indonesia<sup>17</sup>.

The legal basis for handling sharia economic disputes in Indonesia, especially related to the authority of the Religious Courts, is regulated by Law No. 3 of 2006 and Law No. 50 of 2009, which authorizes the Religious Courts to handle sharia disputes, including financing contracts such as musyarakah and murabahah<sup>18,19</sup>. Religious Courts are expected to implement the principles of Sharia law in resolving disputes, given the importance of the value of justice in Islamic law.<sup>20</sup> Research shows that Religious Court decisions in default cases have guaranteed justice and protection for the parties involved in Sharia agreements.<sup>21,22</sup>

There are several challenges in conducting a juridical analysis of the Bantul Religious Court's decision in the case of default and

compensation in Sharia economic disputes. Among others, as follows:

1. The limited decision data that is publicly available is a major obstacle in analyzing trends and patterns of decision-making by the Bantul Religious Court regarding default cases.
2. Determining a fair and consistent standard in calculating immaterial damages by Sharia principles is a challenge in itself, considering that the laws and regulations governing this matter are still limited.
3. The potential for differences in the interpretation of sharia principles between judges can affect the consistency of decisions, making it difficult to draw comprehensive conclusions about the practice of sharia economic justice at the Bantul Religious Court.

The lack of publicly available decision data is a major obstacle in analyzing trends and patterns in decision-making by the Bantul Religious Court regarding default cases. Research shows that the lack of accessibility of legal data leads to difficulties in evaluating decisions made, as well as narrowing the understanding of the legal practices applicable in certain cases, such as defaults involving murabahah and

<sup>14</sup> Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

<sup>15</sup> Satriak Guntoro and Ahmad, "Dinamika Dan Problematika Ekonomi Syariah Di Negara Islam," *Syarikat: Jurnal Rumpun Ekonomi Syariah* 5, no. 2 (2022): 120–27, [https://doi.org/10.25299/syarikat.2022.vol5\(2\).10044](https://doi.org/10.25299/syarikat.2022.vol5(2).10044).

<sup>16</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

<sup>17</sup> Neneng Masturoh and Siti Haniatunnisa, "Mekanisme Penyelesaian Bagi Nasabah Wanprestasi," *An Nawawi* 2, no. 1 (2022): 23–34, <https://doi.org/10.55252/annawawi.v2i1.18>.

<sup>18</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus

Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

<sup>19</sup> Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

<sup>20</sup> Satriak Guntoro and Ahmad, "Dinamika Dan Problematika Ekonomi Syariah Di Negara Islam."

<sup>21</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>22</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

musyarakah contracts.<sup>23,24</sup> As a result, legal researchers and practitioners have difficulty in constructing arguments based on robust empirical data, which should form the basis for better policy recommendations and legal approaches.<sup>25,26</sup>

Determining a fair and consistent standard for calculating immaterial damages by sharia principles presents a significant challenge, especially given that there is limited legislation governing this matter. This is revealed by research showing that there is a gap in the application of damages between positive law and Sharia principles, where consumer protection in the context of damages is not fully guaranteed<sup>27</sup>. In addition, the approach to dispute resolution should consider the differences between conventional and Islamic banks, which also affect the process of determining redress and conflict resolution<sup>28</sup>. The importance of the integration of Sharia principles and transparent law enforcement has been emphasized in the literature discussing the dynamics and problems of Islamic economics in Muslim countries, including in the aspect of consumer protection<sup>29</sup>.

The potential for different interpretations of sharia principles among judges can lead to inconsistencies in decisions, which in turn makes it difficult to draw comprehensive conclusions about the practice of sharia economic justice at the Bantul Religious Court. This variety of interpretative perspectives creates challenges in the enforcement of sharia-based law, as

differences in judges' views not only affect the consistency of decisions but also create disparities that can be detrimental to litigants in the context of sharia economics. Therefore, a deep understanding of Sharia economic literacy among judges and decisions based on Sharia principles must be improved to achieve legal certainty and justice.

Although the juridical analysis of the Bantul Religious Court's decision in the case of default and compensation in Sharia economic disputes has important value, some arguments need to be considered.

First, too narrow a focus on specific court decisions may overlook available alternative dispute resolution mechanisms, such as mediation or Sharia arbitration through BASYARNAS. Out-of-court settlements are often faster, cheaper, and maintain good relations between disputants. Therefore, a comprehensive analysis should consider the relative effectiveness of various dispute resolution mechanisms in the context of Islamic economics.

Second, an overemphasis on formal legal aspects may overlook the underlying social and economic dimensions of the dispute. Factors such as public unfamiliarity with Islamic economic products and principles, or difficult economic conditions that cause debtors to fail to fulfill their obligations, may have a significant influence on the occurrence of defaults. A holistic analysis needs to consider these factors to provide a

<sup>23</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

<sup>24</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

<sup>25</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>26</sup> Lina and Hosen, "Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya

Ta'widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra)."

<sup>27</sup> Muhajirin, "Ganti Rugi (Studi Analisis Perbandingan Antara Hukum Positif Dan Hukum Islam Melalui Pendekatan Maqashid Al-Syariah)."

<sup>28</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>29</sup> Satriak Guntoro and Ahmad, "Dinamika Dan Problematika Ekonomi Syariah Di Negara Islam."

deeper understanding of the root causes and more targeted solutions.

Third, while it is important to identify potential inconsistencies in court decisions, it is important to remember that judges have discretion in applying Sharia law and principles according to the facts and circumstances of each case. Differences in interpretation do not necessarily reflect weaknesses in the judicial system, but can also reflect efforts to achieve substantive justice in unique contexts. Therefore, juridical analysis must be conducted carefully and take into account the complexity of judges' decision-making, as well as the social and economic implications of each decision.

This research is important because Sharia economic disputes in Indonesia are increasing, especially in the Bantul Religious Court, and juridical analysis of decisions related to default and compensation is needed to ensure justice and legal certainty. Various applications of maqashid sharia by judges in decision-making can lead to inconsistencies and disparities that are detrimental to litigants, so an in-depth understanding of Sharia economic literacy among judges needs to be improved. In addition, this research is also relevant to identify challenges and provide recommendations in the legal framework and practice of Islamic economic justice in Indonesia.

Based on the above explanation, this research aims to answer the following questions: 1. How does the Bantul Religious Court apply legal principles in deciding cases of default and compensation

in Sharia economic disputes, and 2. What are the juridical considerations in determining the amount and type of compensation in this case?

## Literature Review

This literature review will discuss previous studies that are relevant to the juridical analysis of the Bantul Religious Court's decision in the case of default and compensation in Sharia economic disputes. Areas to be reviewed include:

### 1. Sharia Economic Disputes and the Role of Religious Courts

In the context of Sharia economic dispute resolution, the urgency of the Religious Court as a resolution institution is very important, as it has the authority to handle various types of disputes related to Sharia contracts, especially in Sharia banking and financing, which involve Islamic economic principles<sup>30</sup>. In addition, the Religious Courts act as a forum that allows for the direct application of Sharia law in solving default problems and providing legal protection to consumers.<sup>31,32</sup> With a clear legal framework and oversight from the Sharia Council, Religious Courts play a key role in ensuring fairness and legal certainty for parties involved in Sharia economic transactions.<sup>33,34</sup> Religious Courts in Indonesia have a clear legal basis and authority in handling sharia economic disputes, as stipulated in Law No. 3/2006, where one of the main provisions is that the Religious Courts have the authority to handle sharia economic disputes. 3 Year 2006, where one of the competencies of this court is to resolve cases related to sharia

<sup>30</sup> Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

<sup>31</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditasi Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>32</sup> Anita Afriana and Hazar Kusmayanti, "Review of Syaria Economy Disputes in Religious Courts within the Perspective of Small Claims Court

(SCC)," *Fiat Justitia: Jurnal Ilmu Hukum* 15, no. 2 (2021): 183–94, <https://doi.org/10.25041/fiatjustitia.v15no2.2086>.

<sup>33</sup> Masturoh and Haniatunnisa, "Mekanisme Penyelesaian Bagi Nasabah Wanprestasi."

<sup>34</sup> Lina and Hosen, "Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya Ta'widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra)."

economics, including sharia financial institutions and sharia principles in business transactions<sup>35,36</sup>. In practice, the courts play an important role in providing justice for parties about disputes, particularly about defaults in contracts such as musyarakah and murabahah. Decisions issued by the judges often refer to Islamic law by Sharia principles.<sup>37,38</sup> This shows that the Religious Courts not only function as judicial institutions, but also as guardians of Sharia principles in the economy, which is in line with the increasing compliance with Sharia law in society.<sup>39,40</sup>

In discussions regarding the effectiveness of resolving Sharia economic disputes through litigation in Religious Courts compared to alternative dispute resolution, such as mediation or arbitration through BASYARNAS, research shows that the arbitration approach in BASYARNAS has advantages in terms of speed and cost, and is more in line with Sharia principles that encourage peaceful resolution.<sup>41,42</sup> On the other hand, Religious Courts tend to follow more formal procedures and may lengthen the time for dispute resolution, although they provide clearer legal certainty in some cases.<sup>43,44</sup> Therefore, although litigation in

the Religious Courts has strong legal force, alternative dispute resolution through BASYARNAS is often preferred by the parties due to its more flexible approach and better suits the needs of conflict resolution in the context of Islamic economics.<sup>45,46,47</sup>

### 1. Default in Sharia Agreements

In an in-depth study of default in Islamic law, the application of this concept to Islamic contracts such as Murabahah and Musyarakah is very important, where default can have implications for the indemnification responsibilities and dispute resolution steps to be taken by the parties involved. Research shows that in Murabahah contracts, customers who do not fulfill their payment obligations may be

<sup>35</sup> Aziz and Sasongkojati, "The Effectiveness of Sharia Economic Dispute Resolution Between Religious Court and National Sharia Arbitration Board."

<sup>36</sup> Afriana and Kusmayanti, "Review of Syaria Economy Disputes in Religious Courts within the Perspective of Small Claims Court (SCC)."

<sup>37</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

<sup>38</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

<sup>39</sup> Setiawati and Usanti, "Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah."

<sup>40</sup> Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

<sup>41</sup> Aziz and Sasongkojati, "The Effectiveness of Sharia Economic Dispute Resolution Between Religious Court and National Sharia Arbitration Board."

<sup>42</sup> Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

<sup>43</sup> Afriana and Kusmayanti, "Review of Syaria Economy Disputes in Religious Courts within the Perspective of Small Claims Court (SCC)."

<sup>44</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditasi Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>45</sup> Faizun, "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)."

<sup>46</sup> Firman Wahyudi, "Mengontrol Moral Hazard Nasabah Melalui Instrumen Ta'Zir Dan Ta'Widh," *Al-Banjari : Jurnal Ilmiah Ilmu-Ilmu Keislaman* 16, no. 2 (2017): 25, <https://doi.org/10.18592/al-banjari.v16i2.1357>.

<sup>47</sup> Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

liable for damages.<sup>48,49,50,51</sup> In a Musyarakah contract, non-compliance with the profit-sharing agreement can be categorized as a default.<sup>52</sup> Law enforcement in this context often refers to the maqashid al-syariah principle, which prioritizes justice and protection of the injured party.<sup>53,54</sup> In addition, dispute resolution in this context is usually carried out through religious courts or alternatives such as sharia arbitration bodies, which refer to Islamic law and sharia principles in practice.<sup>55</sup>

An analysis of the factors that cause default in Murabahah products can explain the various aspects that influence this contract violation, including the customer's inability to fulfill payment obligations and unclear information in the agreement that causes misunderstanding<sup>56</sup>. In the context of settlement, the mechanism applied involves mediation through religious courts or Sharia arbitration institutions so that the parties to the dispute can reach an

agreement without further division<sup>57</sup>. In addition, the application of compensation or Ta'widh is also regulated in the provisions of Sharia law to protect violated rights and ensure justice for both parties<sup>58</sup>.

An evaluation of the legal considerations of judges in deciding default cases in Murabahah contracts, as exemplified in Decision Number 002/Pdt.G.S/2020/Pa.Mgt shows that judges play an important role in assessing the evidence and arguments submitted by the relevant parties. In this case, the Panel of Judges proved that the customer had made a default and was entitled to be charged compensation by applicable legal provisions, both in positive law and Islamic law.<sup>59</sup> The emphasis on the fulfillment of contractual obligations and the discipline of keeping promises is important in ensuring justice for all parties involved in the

<sup>48</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

<sup>49</sup> Alfian Hanggara Putra and Djumardin Djumardin, "Wanprestasi Dalam Akad Murabahah," *Private Law* 3, no. 1 (2023): 85–94, <https://doi.org/10.29303/prlw.v3i1.2150>.

<sup>50</sup> Agus Salim Ferliadi Fredy Gandhi Midia, Hermanita, "Upaya Bank Syari'ah Dalam Menyelesaikan Masalah Debitur Wanprestasi Menurut Hukum Positif Di Indonesia," *FINANSIA-Jurnal Akuntansi Dan Perbankan Syariah* 1, no. 1 (2018), [https://doi.org/10.20595/jjbf.19.0\\_3](https://doi.org/10.20595/jjbf.19.0_3).

<sup>51</sup> Rahmadi Indra Tektona, Dyah Ochtorina Susanti, and Slamet Ervin Iskliyono, "Wanprestasi Pada Akad Murabahah (Studi Putusan Nomor 1039/Pdt.G/2014/PA.Pbg)," *Jurnal Supremasi* 10, no. 2 (2020): 52–65, <https://doi.org/10.35457/supremasi.v10i2.935>.

<sup>52</sup> Setiawati and Usanti, "Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah."

<sup>53</sup> Fiolenta Larassati, "Konsep Wanprestasi Dalam KHES Dan KUH Perdata: Implementasinya Di Pengadilan Agama Fiolenta," *Al-Faruq* 3, no. 2, January (2025), <https://doi.org/10.58518/al-faruq.v3i2.3380>.

<sup>54</sup> Muhajirin, "Ganti Rugi (Studi Analisis Perbandingan Antara Hukum Positif Dan

Hukum Islam Melalui Pendekatan Maqashid Al-Syariah)."

<sup>55</sup> Shofa Fathiyah and Nurhasanah Nurhasanah, "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen," *Jurnal Hukum Replik* 7, no. 1 (2020): 71, <https://doi.org/10.31000/jhr.v7i1.2544>.

<sup>56</sup> A Muamar and F Rohayati, "Penyelesaian Putusan Sengketa Ekonomi Syariah Pada Perkara Wanprestasi BMT Al-Falah Berkah Sejahtera Di Pengadilan Agama Sumber," *Recital Review* 6 (2024): 31–51, <https://online-journal.unja.ac.id/RR/article/view/30696>.

<sup>57</sup> Susi Nur Kholidhah, "Wanprestasi Dalam Kontrak Pembiayaan Bank Syariah Di Pt. Bprs Bangun Drajat Warga Yogyakarta," *Digilib.Uin-Suka.Ac.Id* 12, no. 2 (2020): 1–19, [https://digilib.uin-suka.ac.id/34858/1/1620310122\\_BAB-I\\_BAB-V\\_DAFTAR-PUSTAKA.pdf](https://digilib.uin-suka.ac.id/34858/1/1620310122_BAB-I_BAB-V_DAFTAR-PUSTAKA.pdf).

<sup>58</sup> Nadia Ananda Elsanti, "Penerapan Ta'Widh Pada Pemegang Syariah Card," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 4, no. 2 (2017): 146, <https://doi.org/10.24252/jurisprudentie.v4i2.4060>.

<sup>59</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

Murabahah contract.<sup>60,61</sup> In addition, these legal considerations are important to support the sustainability of the Islamic banking system in creating public trust.<sup>62</sup>

## 2. Compensation in Sharia Economic Disputes

In the context of Islamic economic disputes, the sharia principles underlying the determination of damages include the distinction between material and immaterial losses. Material losses are usually measured financially, such as loss of income or asset value, while immaterial losses include psychological and reputational impacts that cannot be directly measured in monetary value.<sup>63</sup> Sharia law emphasizes the importance of fairness and balance in the award of damages and follows the provisions set by the Sharia Supervisory Board, which distinguishes dispute resolution in Islamic banking from the conventional system.<sup>64</sup> Thus, compensation in sharia disputes not only refers to the recovery of direct losses but also considers moral and ethical aspects, in line with the maqashid al-syariah principle that emphasizes the protection of society as a whole.<sup>65</sup>

Discussion of the challenges in determining a fair and consistent standard for calculating immaterial damages by Sharia principles is complex, especially given the limitations of existing regulations. Indonesian laws and regulations are often inadequate in accommodating the assessment of damages based on maqashid al-syariah, namely, safeguarding the welfare of the people and social justice.<sup>66,67</sup> Moreover, differences in dispute resolution methodologies between Islamic and conventional banking also contribute to this difficulty, as different approaches to sharia principles and ethics in banking further complicate the establishment of universally acceptable standards.<sup>68</sup> Therefore, collaboration between lawyers, judges, and Sharia institutions is necessary to reach a decision that is not only legal but also morally justifiable.<sup>69,70</sup>

An analysis of court decisions relating to damages in the context of Islamic economics shows that different interpretations of Sharia principles by judges can affect the consistency of decisions. Enforcement of damages requires judges to consider Sharia indicators, as described in Maqashid al-Shariah, which focuses on the protection of

<sup>60</sup> Hanggara Putra and Djumardin, "Wanprestasi Dalam Akad Murabahah."

<sup>61</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

<sup>62</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>63</sup> Lina and Hosen, "Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya Ta'widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra)."

<sup>64</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>65</sup> Aziz and Sasongkojati, "The Effectiveness of Sharia Economic Dispute Resolution Between

Religious Court and National Sharia Arbitration Board."

<sup>66</sup> Muhajirin, "Ganti Rugi (Studi Analisis Perbandingan Antara Hukum Positif Dan Hukum Islam Melalui Pendekatan Maqashid Al-Syariah)."

<sup>67</sup> Lina and Hosen, "Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya Ta'widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra)."

<sup>68</sup> Ali Idrus, "IMPLEMENTASI TA'WIDH DAN TA'ZIR SERTA PENDISTRIBUSIANNYA DALAM AKAD MUROBAHAH PADA LEMBAGA KEUANGAN SYARIAH," *Jurnal Manajemen Dakwah* XI, no. Desember (2023): 185–98.

<sup>69</sup> Masturoh and Haniatunnisa, "Mekanisme Penyelesaian Bagi Nasabah Wanprestasi."

<sup>70</sup> Afriana and Kusmayanti, "Review of Syaria Economy Disputes in Religious Courts within the Perspective of Small Claims Court (SCC)."

consumer rights and substantive justice.<sup>71,72</sup> Various approaches, such as sharia mediators and dispute resolution through the award of ta'widh, often vary depending on the views of individual judges.<sup>73</sup> In a study looking at different verdicts in religious courts, it was found that judges' diverse legal reasoning plays an important role in determining the outcome of disputes and has the potential to create inconsistencies in the resulting decisions.<sup>74</sup>

### 3. Dispute Resolution Through BASYARNAS

A review of the effectiveness of dispute resolution through the National Sharia Arbitration Board (BASYARNAS) shows that it plays an important role in addressing sharia economic disputes, especially in the context of musyarakah contracts, by creating a forum that is more efficient and compliant with sharia principles than conventional courts. Research also reveals that despite challenges in the parties' understanding of contract provisions, the arbitration procedure conducted by BASYARNAS can guarantee the protection of consumer rights in the dispute resolution process, thereby increasing public confidence in Islamic financial institutions.<sup>75</sup> Thus, the use of BASYARNAS as a dispute resolution channel is expected to strengthen the legal

structure of Islamic economics in Indonesia.<sup>76</sup>

The application of the final and binding principle in resolving Sharia economic disputes through Basyarnas creates legal certainty underlying contractual relationships in this sector, where the arbitration process conducted by Basyarnas refers to Islamic law contained in the Qur'an and hadith, as well as established Sharia economic principles.<sup>77</sup> As an institution that plays a role in resolving disputes, Basyarnas is committed to providing fair and efficient solutions, strengthening public trust in the Islamic financial system, and increasing financial inclusion for marginalized communities.<sup>78</sup> By integrating a Sharia legal and economic approach in each of its decisions, Basyarnas has become a pioneer in applying alternative methods in dispute resolution in the field of Islamic finance.<sup>79</sup>

### B. Research Methodology

This research adopts a normative legal method with a qualitative approach to explore the legal considerations of judges in the Bantul Religious Court decision regarding default and compensation cases in the context of Sharia economic disputes, utilizing secondary data consisting of court decisions, laws and regulations, and

<sup>71</sup> Muhajirin, "Ganti Rugi (Studi Analisis Perbandingan Antara Hukum Positif Dan Hukum Islam Melalui Pendekatan Maqashid Al-Syariah)."

<sup>72</sup> Lina and Hosen, "Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya Ta'widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra)."

<sup>73</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>74</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

<sup>75</sup> Fathiyah and Nurhasanah, "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen."

<sup>76</sup> Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

<sup>77</sup> Faizun, "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)."

<sup>78</sup> Fitriani et al., "Inklusi Keuangan Dan Pemberdayaan Ekonomi: Evaluasi Efektivitas Produk Keuangan Syariah Dalam Meningkatkan Akses Keuangan Bagi Masyarakat Marginal."

<sup>79</sup> Afriana and Kusmayanti, "Review of Syariah Economy Disputes in Religious Courts within the Perspective of Small Claims Court (SCC)."

relevant literature.<sup>80,81</sup> This normative legal research method leads to a systematic analysis of existing literature, which serves to evaluate and understand legal norms applied in court practice.<sup>82,83</sup> Through a qualitative approach, this research aims to explain in depth the legal dynamics that occur in the decision, as well as the implications of the decision for the parties involved.<sup>84,85</sup>

The data collection technique in this study involves a document study, where data is obtained through the identification and analysis of various legal documents, including court decisions related to legal disputes. This approach is important in examining legal facts, issues that arise, as well as judges' legal considerations in each decision.<sup>86</sup> In addition, various laws and regulations and related literature will be explored to understand relevant legal concepts and evaluate judges' decisions in a broader legal context.<sup>87</sup> Through this technique, researchers can make a more in-depth analysis of the application of the law in real cases and explore the implications of the legal decision.<sup>88</sup>

The data analysis technique used in this research is qualitative analysis with descriptive analytical method, where the collected data will be analyzed systematically and in depth to identify patterns, themes, and categories that are in line with the research questions, especially related to the legal considerations of judges in court decisions. The focus of this analysis will include the principles of Islamic law as well as the applicable laws and regulations, while presenting the results of the analysis descriptively by quoting directly from the analyzed documents to strengthen the interpretations and arguments put forward.<sup>89,90</sup> With this comprehensive approach, the research is expected to provide in-depth insights into the dynamics of judges' decisions in the context of Islamic law, while considering relevant aspects of positive law.<sup>91</sup>

### C. Results and Discussion

This section presents the results of the juridical analysis of the Bantul Religious Court's decision in the case of default and compensation in Sharia economic disputes. The findings will answer the research question of how the judges of Bantul

<sup>80</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>81</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

<sup>82</sup> Shidarta Shidarta, "Putusan Pengadilan Sebagai Objek Penulisan Artikel Ilmiah," *Undang: Jurnal Hukum* 5, no. 1 (2022): 105–42, <https://doi.org/10.22437/ujh.5.1.105-142>.

<sup>83</sup> Jihan Nahda Nafiah, Isabel Zalita Putri, and Miftahul Ubaidilah, "Damai Dalam Penyelesaian Sengketa Wan Prestasi (Kajian Hadis Tentang Damai Pada Fatwa DSN MUI No. 08/DSN-MUI/IV/2000)," *El-Sunnah: Jurnal Kajian Hadis Dan Integrasi Ilmu* 5, no. 1 (2024): 59–71, <https://doi.org/10.19109/elsunnah.v5i1.21187>.

<sup>84</sup> Lina and Hosen, "Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya Ta'widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra)."

<sup>85</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

<sup>86</sup> Shidarta, "Putusan Pengadilan Sebagai Objek Penulisan Artikel Ilmiah."

<sup>87</sup> Rengganis Febrelina and Totok Tumangkar, "Perlindungan Hukum Terhadap Pembeli Dalam Ppjb (Perjanjian Pengikatan Jual Beli) Yang Obyeknya Dijaminkan Oleh Penjual," *Jurnal Akta Notaris* 2, no. 1 (2023): 114–23, <https://doi.org/10.56444/aktanotaris.v2i1.901>.

<sup>88</sup> Wahyudi, "Mengontrol Moral Hazard Nasabah Melalui Instrumen Ta'Zir Dan Ta'Widh."

<sup>89</sup> Aziz and Sasongkojati, "The Effectiveness of Sharia Economic Dispute Resolution Between Religious Court and National Sharia Arbitration Board."

<sup>90</sup> Wulandari and Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia."

<sup>91</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

Religious Court apply the principles of Islamic law, particularly related to justice and consumer protection, in deciding default cases in sharia contracts such as murabahah and musyarakah. In addition, the results of this study will also identify the factors considered by judges in determining the amount of compensation, as well as its implications for the practice of Islamic economic justice in Indonesia.

### 1. Application of Legal Principles in Deciding Cases of Default and Compensation in Sharia Economic Disputes

Bantul Religious Court, as a judicial institution that deals with cases related to Islamic law, plays an important role in resolving default and compensation disputes in the context of Sharia economics. This court is bound to apply the principles of Islamic law in every decision, which includes the enforcement of justice and consumer protection. This responsibility is all the more complex given the existence of various regulations governing Islamic financial transactions in Indonesia, such as Law No. 3/2006 on Religious Courts and various fatwas from the National Sharia Council (DSN)<sup>92</sup>. From the perspective of Sharia law, default is defined as a violation of an agreement that has been agreed upon between two parties. Concrete examples can be seen in the cases faced by the Bantul Religious Court, where Islamic bank customers failed to fulfill their obligations. In the context of murabahah and musyarakah contracts, both schools of fiqh and legal instruments suggest ta'widh

(compensation) for the injured party. This enforcement process follows the principle of justice, where partiality to the weak position is an important part of Islamic economic dispute resolution<sup>93</sup>. Based on previous studies, there is a significant influence of positive law on Religious Court decisions. For example, in one of the decisions on default in the murabahah contract, the judge made a decision that considered aspects of consumer protection, where customers who defaulted were still respected for their rights<sup>94</sup>. This indicates an effort by the Religious Courts to not only resolve cases formally but also to prioritize substantial justice. When deciding cases, judges in the Religious Courts also consider the use of legal instruments such as ta'widh as compensation for losses. Determining the amount of ta'widh must include various factors, including the goodwill of the debtor and its condition at the time of default<sup>95</sup>. For example, in some cases, judges decide not only to punish the debtor, but also to allow them to pay the debt within a certain period so as not to harm them further<sup>96</sup>. In dispute resolution, the mediation approach is also often used as a first step before the litigation process in the Religious Courts. This mediation process is expected to provide a solution for both parties without having to go through a long and tiring legal process<sup>97</sup>. This is in line with the principle in Islamic law that prioritizes deliberation to reach an agreement. In this context, the role of the judge as mediator and facilitator is crucial to achieving a fair and satisfactory resolution for both parties. As part of the judicial system, the Bantul Religious Court

<sup>92</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

<sup>93</sup> Lina and Hosen, "Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya Ta'widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra)."

<sup>94</sup> Fathiyah and Nurhasanah, "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen."

<sup>95</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

<sup>96</sup> Elsanti, "Penerapan Ta'Widh Pada Pemegang Syariah Card."

<sup>97</sup> Nafiah, Isabel Zalita Putri, and Miftahul Ubaidillah, "Damai Dalam Penyelesaian Sengketa Wan Prestasi (Kajian Hadis Tentang Damai Pada Fatwa DSN MUI No. 08/DSN-MUI/IV/2000)."

incorporates moral and ethical considerations in each of its decisions. In Indonesia, Religious Court decisions have been organized in such a way as to not only protect the interests of the parties involved in a financial dispute, but also to ensure that sharia law is properly implemented. Taking all these aspects into account, the successful resolution of disputes through the Religious Courts is considered crucial in building public confidence in the existing sharia justice system<sup>98</sup>. Furthermore, the role of the Religious Courts is also influenced by the norms contained in Maqashid al-Shariah, where the main objective of Sharia is to achieve justice and the benefit of the people<sup>99</sup>. Judgments made by judges do not merely look at procedural regularities, but also assess the social impact of their decisions. This allows judges to make decisions that are not only legally just but also in line with the values of society. The comparison between Islamic and conventional banking is also often the subject of study in Court decisions. There are a number of studies that show that default resolution in Islamic banking can be more complicated due to additional aspects that must be considered, such as Sharia provisions and the correct execution of contracts<sup>100</sup>. Judges in the Religious Courts always consider the background of Sharia law when making decisions, including comparing it with existing conventional civil law. The existing practice in the Bantul Religious Court also refers to previous decisions as precedents in deciding cases. This

continuity in the application of legal principles helps to create clarity and certainty in the legal process undertaken by parties involved in Sharia economic disputes. Over time, experiences in the field are expected to enrich the existing legal culture in the courts<sup>101</sup>. Bantul Religious Court strictly implements the principle of 'adhâlah' (justice) in each of its decisions. The application of these principles is very important, given the existence of sharia law, which often clashes with the evolving social and economic context. It is a challenge for the court to constantly adapt its thinking to the dynamics of society while maintaining legal integrity. In terms of implementation, there are various mechanisms used to deal with default cases, ranging from mediation procedures to proactive measures to prevent future conflicts. Through careful consideration and sensitivity to the socio-economic situation of the parties, the Religious Courts show great responsibility in ensuring that justice is served without harming any party<sup>102</sup>. The community also has an important stake in this process, especially in terms of knowledge of their rights and obligations in the signed agreement. When customers better understand the agreements they make, it is expected that they can uphold the commitments that have been set and prevent defaults in the future. Therefore, it is important for Islamic financial institutions to provide sufficient education to their customers<sup>103</sup>.

<sup>98</sup> Ahmad Munir Hamid et al., "Economic Empowerment Of Ummah Through Sharia Fintech:Literature Review," *International Journal of Scientific Research and Management (IJSRM)* 11, no. 11 (2023): 5289–5301, <https://doi.org/10.18535/ijssrm/v11i11.em02>.

<sup>99</sup> Shidarta, "Putusan Pengadilan Sebagai Objek Penulisan Artikel Ilmiah."

<sup>100</sup> Dyah Ayu Sekar Sukmaningrum and Muhammad Yazid, "Analisis Akad Ijarah Dalam Praktik Produk Pembiayaan Lembaga Keuangan Di Indonesia," *Al Fiddhoh: Journal of Banking, Insurance, and Finance* 3, no. 2 (2022): 81–97, <https://doi.org/10.32939/fdh.v3i2.1421>.

<sup>101</sup> Indra Tektana, Ochtorina Susanti, and Ervin Iskliyono, "Wanprestasi Pada Akad Murabahah (Studi Putusan Nomor 1039/Pdt.G/2014/PA.Pbg)."

<sup>102</sup> Dyah Auliah Rachma Ruslan, "Pengesampingan Pasal Dalam Perjanjian Oleh Para Pihak Dikaitkan Dengan Asas Kebebasan Berkontrak," *TATOHI: Jurnal Ilmu Hukum* 3, no. 3 (2023): 273, <https://doi.org/10.47268/tatohi.v3i3.1592>.

<sup>103</sup> Einsbie Grata Myn and Ahmad Yani, "Conflict Management Strategies: A Case Study of Sharing Family Inheritance," *Formosa Journal of Applied Sciences* 2, no. 8 (2023): 1927–46, <https://doi.org/10.55927/fjas.v2i8.5510>.

In deciding cases of default and compensation in Sharia economic disputes, the Bantul Religious Court seeks to apply the principles of Islamic law by considering various aspects, including the enforcement of justice, consumer protection, and compliance with applicable laws and regulations. Judges at the Bantul Religious Court have a complex responsibility in ensuring that every decision made reflects the principles of sharia and provides a fair solution for all parties involved.

One of the key principles that the Bantul Religious Court is concerned with is justice. In the context of Sharia economic disputes, justice not only means giving rights to the rightful, but also considering the conditions and capabilities of the parties to the dispute. Judges strive not only to resolve cases formally, but also to prioritize substantial justice. This is reflected in the judge's efforts to consider the goodwill of debtors and give them the opportunity to pay debts within a certain period of time, so as not to harm them further.

## **2. Legal Considerations in Determining the Amount and Type of Compensation**

In cases of compensation related to default, there are a number of legal considerations that must be considered in determining the amount and type of compensation. First, it is important to understand the legal context underlying the resolution of this dispute, both within the framework of positive law in Indonesia and from the perspective of Islamic law. Referring to Aziz and Sasongkojati, regulations regarding sharia economics provide a clear basis for the

types of transactions and dispute resolution mechanisms, including compensation that may arise from default.<sup>104</sup>

The results of the study show that in Islamic law, the basic power to claim compensation comes from sharia principles that encourage justice and balance in financial transactions. Second, the measurement and determination of the amount of compensation must be based on the agreement that has been set out in the contract. For example, in the musyarakah contract, Setiawati and Usanti noted that the distribution of profits and losses has been formulated in the contract, which is the basis for emphasizing the responsibility and consequences of default.<sup>105</sup> This emphasizes that any compensation must consider the provisions previously agreed upon by the parties, as well as the applicable legal provisions. This is in line with the opinion of Fitriani et al., who emphasized the importance of stakeholder understanding of Sharia financial products to strengthen security and fairness in transactions.<sup>106</sup>

Furthermore, the law regarding ta'widh (compensation) must be observed, because the provisions in the DSN-MUI Fatwa No. 43/DSN-MUI/VIII/2004 define how ta'widh can be determined.<sup>107</sup> This is important so that the compensation determined is by the principle of maqashid al-shariah, namely to protect rights and prevent losses, as stated by Muhajirin in a comparative analysis between positive law and Islamic law.<sup>108</sup> This dynamic is also noted in research by Masturoh and Haniatunnisa, which emphasizes the importance of compliance with Sharia

<sup>104</sup> Aziz and Sasongkojati, "The Effectiveness of Sharia Economic Dispute Resolution Between Religious Court and National Sharia Arbitration Board."

<sup>105</sup> Setiawati and Usanti, "Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah."

<sup>106</sup> Fitriani et al., "Inklusi Keuangan Dan Pemberdayaan Ekonomi: Evaluasi Efektivitas Produk Keuangan Syariah Dalam Meningkatkan Akses Keuangan Bagi Masyarakat Marginal."

<sup>107</sup> Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditasi Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah."

<sup>108</sup> Muhajirin, "Ganti Rugi (Studi Analisis Perbandingan Antara Hukum Positif Dan Hukum Islam Melalui Pendekatan Maqashid Al-Syariah)."

norms in calculating compensation.<sup>109</sup> In addition, it is important to observe the duties of judges and the court process in decisions regarding compensation. According to Guntara et al., judges have the authority to analyze and consider the use of appropriate law in the application of compensation, especially in the context of Sharia economics.<sup>110</sup> Legal considerations must also include analysis of further evidence and facts that arise in each case, so that the decisions taken truly reflect justice.<sup>111</sup>

One of the important issues in measuring compensation is the consideration of the moral hazard of customers or debtors. Wahyudi stated that the ta'zir and ta'widh mechanisms are used to control the moral hazard of customers in the hope of encouraging them to comply with the agreed-upon agreement.<sup>112</sup> Therefore, the determination of compensation must also consider consumer protection mechanisms so that justice is maintained as much as possible.<sup>113</sup> Within the legal framework, we must also pay attention to the principle of freedom of contract, which encourages parties to agree to terms that are considered fair. References from Ruslan indicate that the legal status of the contract made in the agreement must be obeyed, as long as it does not conflict with higher legal provisions.<sup>114</sup> Here, the assessment of fairness and transparency in the agreement of the contract can influence the final decision regarding the amount and type of compensation to be given. Furthermore,

peace in resolving disputes is an approach that is in the spotlight amidst the various settlement methods available. As studied by Nafiah et al., peaceful resolution not only minimizes conflict but can also assist in the process of determining compensation.<sup>115</sup>

Through this approach, the court can encourage agreement between the disputing parties, creating an atmosphere of mutual respect and compromise, which can lead to faster and more beneficial asset settlement for all parties. Finally, the emergence of Sharia fintech provides many opportunities and challenges in developing a new legal framework for compensation settlement. Hamid et al. argue that fintech platforms that adhere to Sharia principles can help improve access and transparency in various transaction processes<sup>116</sup>. This has the potential to change the way we view the implementation of compensation in the digital era by providing a more efficient and appropriate path. Expanding the understanding of rights and obligations and the application of Sharia law in this context is essential to ensure that all parties are protected and safeguarded<sup>117</sup>.

In cases of damages related to breach of contract, several legal considerations must be taken into account in determining the amount and type of damages. It is important to understand the legal context underlying the resolution of this dispute, both within the framework of positive law in Indonesia and from the perspective of Islamic law. Regulations on Islamic economics provide a clear basis for the types of transactions

<sup>109</sup> Masturoh and Haniatunnisa, "Mekanisme Penyelesaian Bagi Nasabah Wanprestasi."

<sup>110</sup> Guntara, Asyhadi, and Prawiyogi, "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah."

<sup>111</sup> Shidarta, "Putusan Pengadilan Sebagai Objek Penulisan Artikel Ilmiah."

<sup>112</sup> Wahyudi, "Mengontrol Moral Hazard Nasabah Melalui Instrumen Ta'Zir Dan Ta'Widh."

<sup>113</sup> Fathiyah and Nurhasanah, "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen."

<sup>114</sup> Ruslan, "Pengesampingan Pasal Dalam Perjanjian Oleh Para Pihak Dikaitkan Dengan Asas Kebebasan Berkontrak."

<sup>115</sup> Nafiah, Isabel Zalita Putri, and Miftahul Ubaidillah, "Damai Dalam Penyelesaian Sengketa Wan Prestasi (Kajian Hadis Tentang Damai Pada Fatwa DSN MUI No. 08/DSN-MUI/IV/2000)."

<sup>116</sup> Munir Hamid et al., "Economic Empowerment Of Ummah Through Sharia Fintech:Literature Review."

<sup>117</sup> Umami, "Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah."

and dispute resolution mechanisms, including damages that may arise from breach of contract. In Islamic law, the basic power to claim damages comes from the principles of sharia that encourage justice and balance in financial transactions.

The judge's role and the court process in the decision regarding compensation are also important. The judge has the authority to analyze and consider the use of appropriate law in the application of compensation, especially in the context of Islamic economics. Legal considerations must also include an analysis of the evidence and further facts that arise in each case, so that the decision taken reflects justice. The determination of compensation must also consider consumer protection mechanisms so that justice is maintained as much as possible.

#### D. Conclusion

As an introduction to the conclusion section of this study, it is important to reiterate that determining damages in Islamic economic disputes is a complex process involving various legal aspects and principles. In the context of default, religious courts have a central role in weighing fairness, compliance with Islamic principles, and consumer protection. This study aims to summarize the main findings related to the relevant legal considerations in determining the amount and type of damages, as well as provide directions for further research to deepen the understanding and improve the practice of Islamic economic dispute resolution in Indonesia. This study also

highlights the importance of ta'zir and ta'widh mechanisms in controlling customer moral hazard and consumer protection within the existing legal framework.

The following are the conclusions and directions for further research based on the questions and objectives of the research that have been submitted:

1. The application of legal principles in the Bantul Religious Court that the Bantul Religious Court seeks to apply Islamic legal principles comprehensively, in line with positive Indonesian law, while still considering justice and consumer protection.
2. Legal considerations in determining compensation that factors such as compliance with sharia principles, real losses, the debtor's goodwill, socio-economic conditions, and the principle of propriety are the main basis for determining the amount and type of compensation in cases of default. Mediation and deliberation are also prioritized.
3. Further research directions are needed to explore the effectiveness of the application of sharia principles, comparison of practices with other countries, and the role of sharia fintech in increasing access to justice in resolving sharia economic disputes.

#### References

- [1] Afriana, Anita, and Hazar Kusmayanti. "Review of Syaria Economy Disputes in Religious Courts within the Perspective of Small Claims Court (SCC)." *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 2 (2021): 183–94. <https://doi.org/10.25041/fiatjustisia.v15no2.2086>.
- [2] Aziz, Muhammad Abdul, and Fardan Bintang Agung Sasongkojati. "The Effectiveness of Sharia Economic Dispute Resolution Between Religious Court and National Sharia Arbitration Board." *Journal of Islamic Economic Laws* 5, no. 2 (2022): 216–45. <https://doi.org/10.23917/jisel.v5i2.19709>.

- [3] Billie, Alifian, Dwi Putra, Rahmadi Indra Tektona, Ayu Citra, Fakultas Hukum, and Universitas Jember. "AKIBAT HUKUM BAGI NASABAH BANK YANG MELAKUKAN WANPRESTASI TERHADAP BANK SYARIAH DALAM AKAD MURABAHAH." *Jurnal Dialektika Hukum* 6, no. 1 (2024): 66–78.
- [4] Claudia, Margaretha Yeremia, Mahmul Siregar, Maria Kaban, and Syarifah Lisa Andriati. "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditan Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah." *Locus Journal of Academic Literature Review* 3, no. 1 (2024): 127–40. <https://doi.org/10.56128/ljoalr.v3i1.281>.
- [5] Einsbie Grata Myn, and Ahmad Yani. "Conflict Management Strategies: A Case Study of Sharing Family Inheritance." *Formosa Journal of Applied Sciences* 2, no. 8 (2023): 1927–46. <https://doi.org/10.55927/fjas.v2i8.5510>.
- [6] Elsanti, Nadia Ananda. "Penerapan Ta'Widh Pada Pemegang Syariah Card." *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 4, no. 2 (2017): 146. <https://doi.org/10.24252/jurisprudentie.v4i2.4060>.
- [7] Faizun, Ahmad. "Penyelesaian Sengketa Akad Musyarakah Di Badan Arbitrase Syariah Nasional (Analisis Putusan Basyarnas Yogyakarta No X/Tahun 2017)." *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021): 195–212. <https://doi.org/10.22515/alakhkam.v6i2.3864>.
- [8] Fathiyah, Shofa, and Nurhasanah Nurhasanah. "Eksekusi Jaminan Hak Tanggungan Nasabah Wanprestasi Akad Musyarakah Dalam Perspektif Perlindungan Konsumen." *Jurnal Hukum Replik* 7, no. 1 (2020): 71. <https://doi.org/10.31000/jhr.v7i1.2544>.
- [9] Fitriani, Efendi Sugianto, Shylvia Andriani, Rihfenti Ernayani, and Dyah Mieta Setyawati. "Inklusi Keuangan Dan Pemberdayaan Ekonomi: Evaluasi Efektivitas Produk Keuangan Syariah Dalam Meningkatkan Akses Keuangan Bagi Masyarakat Marginal." *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 6, no. 7 (2024): 5195–5206. <https://doi.org/10.47467/alkharaj.v6i7.2406>.
- [10] Fredy Gandhi Midia, Hermanita, Agus Salim Ferliadi. "Upaya Bank Syari'ah Dalam Menyelesaikan Masalah Debitur Wanprestasi Menurut Hukum Positif Di Indonesia." *FINANSIA-Jurnal Akuntansi Dan Perbankan Syariah* 1, no. 1 (2018). [https://doi.org/10.20595/jjbf.19.0\\_3](https://doi.org/10.20595/jjbf.19.0_3).
- [11] Guntara, Deny, Farhan Asyhadi, and Anggy Giri Prawiyogi. "Analisis Legal Reasoning Hakim Dalam Memutus Perkara Ekonomi Syariah Tentang Wanprestasi Akad Musyarakah." *Jurnal Usm Law Review* 6, no. 2 (2023): 567. <https://doi.org/10.26623/julr.v6i2.6392>.
- [12] Hanggara Putra, Alfian, and Djumardin Djumardin. "Wanprestasi Dalam Akad Murabahah." *Private Law* 3, no. 1 (2023): 85–94. <https://doi.org/10.29303/prlw.v3i1.2150>.
- [13] Idrus, Ali. "IMPLEMENTASI TA'WIDH DAN TA'ZIR SERTA PENDISTRIBUSIANNYA DALAM AKAD MUROBAHAH PADA LEMBAGA KEUANGAN SYARIAH." *Jurnal Manajemen Dakwah* XI, no. Desember (2023): 185–98.
- [14] Indra Tektona, Rahmadi, Dyah Ochtorina Susanti, and Slamet Ervin Iskliyono. "Wanprestasi Pada Akad Murabahah (Studi Putusan Nomor 1039/Pdt.G/2014/PA.Pbg)." *Jurnal Supremasi* 10, no. 2 (2020): 52–65. <https://doi.org/10.35457/supremasi.v10i2.935>.
- [15] Kholidhah, Susi Nur. "Wanprestasi Dalam Kontrak Pembiayaan Bank Syariah Di Pt. Bprs Bangun Drajat Warga Yogyakarta." *Digilib.Uin-Suka. Ac.Id* 12, no. 2 (2020): 1–19. [https://digilib.uin-suka.ac.id/34858/1/1620310122\\_BAB-I\\_BAB-V\\_DAFTAR-PUSTAKA.pdf](https://digilib.uin-suka.ac.id/34858/1/1620310122_BAB-I_BAB-V_DAFTAR-PUSTAKA.pdf).

- [16] Larassati, Fiolenta. “Konsep Wanprestasi Dalam KHES Dan KUH Perdata: Implementasinya Di Pengadilan Agama Fiolenta.” *Al-Faruq* 3, no. 2, January (2025). <https://doi.org/10.58518/al-faruq.v3i2.3380>.
- [17] Lina, Dian Aura, and Muhammad Nadrattuzaman Hosen. “Penentuan Kelayakan Nasabah Dalam Pengenaan Biaya Ta’widh/Ganti Rugi (Analisis Putusan 1217/Pdt.G/2017/PA.Kra).” *Jurnal Hukum Ekonomi Syariah* 5, no. 1 (2022): 13. <https://doi.org/10.30595/jhes.v5i1.13108>.
- [18] Masturoh, Neneng, and Siti Haniatunnisa. “Mekanisme Penyelesaian Bagi Nasabah Wanprestasi.” *An Nawawi* 2, no. 1 (2022): 23–34. <https://doi.org/10.55252/annawawi.v2i1.18>.
- [19] Maula, I, and M Zaki. “Tinjauan Hukum Ekonomi Syariah Terhadap Ganti Kerugian Immateriil Dalam Sengketa Ekonomi Syariah.” *Indonesian Journal of Sharia Economic ...* 01, no. 01 (2024). <https://ejournal.radenintan.ac.id/index.php/IJSELAW/article/view/23043%0Ahttps://ejournal.radenintan.ac.id/index.php/IJSELAW/article/download/23043/7264>.
- [20] Muamar, A, and F Rohayati. “Penyelesaian Putusan Sengketa Ekonomi Syariah Pada Perkara Wanprestasi BMT Al-Falah Berkah Sejahtera Di Pengadilan Agama Sumber.” *Recital Review* 6 (2024): 31–51. <https://online-journal.unja.ac.id/RR/article/view/30696>.
- [21] Muhajirin, Muhajirin. “Ganti Rugi (Studi Analisis Perbandingan Antara Hukum Positif Dan Hukum Islam Melalui Pendekatan Maqashid Al-Syariah).” *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial* 6, no. 02 (2018): 105. <https://doi.org/10.30868/am.v6i2.303>.
- [22] Munir Hamid, Ahmad, Syuhada, Supriyanto, and Iskandar Ritonga. “Economic Empowerment Of Ummah Through Sharia Fintech: Literature Review.” *International Journal of Scientific Research and Management (IJSRM)* 11, no. 11 (2023): 5289–5301. <https://doi.org/10.18535/ijstrm/v11i11.em02>.
- [23] Nafiah, Jihan Nahda, Isabel Zalita Putri, and Miftahul Ubaidilah. “Damai Dalam Penyelesaian Sengketa Wan Prestasi (Kajian Hadis Tentang Damai Pada Fatwa DSN MUI No. 08/DSN-MUI/IV/2000).” *El-Sunnah: Jurnal Kajian Hadis Dan Integrasi Ilmu* 5, no. 1 (2024): 59–71. <https://doi.org/10.19109/elsunnah.v5i1.21187>.
- [24] Rengganis Febrelina, and Totok Tumangkar. “Perlindungan Hukum Terhadap Pembeli Dalam Ppjb (Perjanjian Pengikatan Jual Beli) Yang Obyeknya Dijaminkan Oleh Penjual.” *Jurnal Akta Notaris* 2, no. 1 (2023): 114–23. <https://doi.org/10.56444/aktanotaris.v2i1.901>.
- [25] Ruslan, Dyah Auliah Rachma. “Pengesampingan Pasal Dalam Perjanjian Oleh Para Pihak Dikaitkan Dengan Asas Kebebasan Berkontrak.” *TATOHI: Jurnal Ilmu Hukum* 3, no. 3 (2023): 273. <https://doi.org/10.47268/tatohi.v3i3.1592>.
- [26] Satriak Guntoro, and Ahmad. “Dinamika Dan Problematika Ekonomi Syariah Di Negara Islam.” *Syarikat: Jurnal Rumpun Ekonomi Syariah* 5, no. 2 (2022): 120–27. [https://doi.org/10.25299/syarikat.2022.vol5\(2\).10044](https://doi.org/10.25299/syarikat.2022.vol5(2).10044).
- [27] Setiawati, Nur Utari, and Trisadini Prasastinah Usanti. “Kriteria Ingkar Janji Pada Pembiayaan Musyarakah Di Bank Syariah.” *Lex Journal: Kajian Hukum & Keadilan* 2, no. 2 (2018). <https://doi.org/10.25139/lex.v2i2.1410>.
- [28] Shidarta, Shidarta. “Putusan Pengadilan Sebagai Objek Penulisan Artikel Ilmiah.” *Undang: Jurnal Hukum* 5, no. 1 (2022): 105–42. <https://doi.org/10.22437/ujh.5.1.105-142>.
- [29] Suaib Lubis, Mahpudin, Muhammad Dani Somantri. “Mekanisme Penyelesaian Sengketa Murabahah Di Pengadilan Agama Pendahuluan.” *Mutawasith: Jurnal Hukum Islam*, no. 1062 (2016).
- [30] Sukmaningrum, Dyah Ayu Sekar, and Muhammad Yazid. “Analisis Akad Ijarah Dalam

- Praktik Produk Pembiayaan Lembaga Keuangan Di Indonesia.” *Al Fiddhoh: Journal of Banking, Insurance, and Finance* 3, no. 2 (2022): 81–97. <https://doi.org/10.32939/fdh.v3i2.1421>.
- [31] Umami, Khairil. “Pertimbangan Hukum Putusan Nomor 0002/Pdt.G.S/2020/Pa.Mgt Tentang Wanprestasi Akad Murabahah.” *Al-Syakhsiyyah: Journal of Law & Family Studies* 4, no. 2 (2023): 254. <https://doi.org/10.21154/syakhsiyyah.v4i2.5497>.
- [32] Wahyudi, Firman. “Mengontrol Moral Hazard Nasabah Melalui Instrumen Ta’Zir Dan Ta’Widh.” *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 16, no. 2 (2017): 25. <https://doi.org/10.18592/al-banjari.v16i2.1357>.
- [33] Wulandari, Mona, and Saifullah Basri. “Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia.” *Wajah Hukum* 6, no. 2 (2022): 441. <https://doi.org/10.33087/wjh.v6i2.1081>.