

# Analysis of Judge's Decision on Akad Murabahah Tort Case in Religious Court

<sup>1</sup>Azhar Alam\*, <sup>2</sup>Aditya Nurrahman, <sup>3</sup>Raisa Aribatul Hamidah

<sup>1</sup><sup>2</sup>Universitas Muhammadiyah Surakarta

<sup>3</sup>Universitas Islam Batik Surakarta

[aa123@ums.ac.id](mailto:aa123@ums.ac.id), [adityanurrahman040@gmail.com](mailto:adityanurrahman040@gmail.com), [raisaribatul9@gmail.com](mailto:raisaribatul9@gmail.com)

## Abstract

The Religious Courts currently handle Sharia economic cases. One of the cases that dominates sharia financial matters is the default on the Murabaha Agreement. This study aims to determine the basic considerations of Klaten Religious Court judges in resolving Sharia economic cases in Murabaha contracts. This research also tries to test whether decisions in deciding patients fulfill the principles of justice. This research is field research with a normative juridical approach. Religious Court data was collected through interviews and documentation in religious courts. This study shows the legal sources of the two cases studied using draft law sources - the Civil Code (KUHPPerdata) and Article 181 HIR. This research also reveals that the judge's conclusion was based on procedural law, applicable rules and regulations, and party benefits. This study suggests that disputing parties should be more careful in preparing materials for religious court cases to achieve the expected results.

**Keywords:** Justice; Legal Considerations; Murabaha; Judgment of the Court.

## Abstrak

*Perkara ekonomi syariah saat ini ditangani oleh Pengadilan Agama. Salah satu kasus yang mendominasi permasalahan ekonomi syariah adalah wanprestasi terhadap Akad Murabahah. Penelitian ini bertujuan untuk mengetahui dasar pertimbangan hakim Pengadilan Agama Klaten dalam menyelesaikan perkara ekonomi syariah dalam akad Murabahah. Penelitian ini juga mencoba menguji apakah putusan dalam memutus perkara memenuhi prinsip keadilan. Penelitian ini merupakan penelitian lapangan dengan pendekatan yuridis normatif. Data Pengadilan Agama dikumpulkan melalui wawancara dan dokumentasi di Pengadilan Agama. Kajian ini menunjukkan sumber hukum kedua kasus yang diteliti menggunakan sumber rancangan undang-undang – Kitab Undang-undang Hukum Perdata (KUHPPerdata) dan Pasal 181 HIR. Penelitian ini juga mengungkapkan bahwa kesimpulan hakim hanya berdasarkan hukum acara, peraturan perundang-undangan yang berlaku, dan keuntungan partai. Kajian ini menyarankan para pihak yang berselisih untuk lebih teliti menyusun materi perkara pengadilan agama agar dapat mencapai hasil yang diharapkan.*

**Kata Kunci:** Keadilan; Pertimbangan Hukum; Murabahah; Putusan Pengadilan.

## INTRODUCTION

Banking institutions must be distinct from the economic wheelman in this modern age. Banking is a business activity that is needed in the world economy. Because of its function as a fund-raising and channelling, funds supported economic growth. As a fundraiser, banking institutions can participate in the development by channelling funds for government projects. Banking institutions also provide funding for private entrepreneurs wishing to develop their businesses at a medium level to fund their businesses (Hafizd, 2020).

In principle, as an intermediary, banks collect funds from the public with a surplus of funds and channel funds to communities in need of capital.

Development financing in Islamic banking in Indonesia for the last ten years has risen significantly from institutional and asset development. Its rapid development and growth of Islamic financial institutions raised the question of implications for the growing dispute between the service provider and the community it serves (Irawan, 2018). Disputes that occur in the financing of Islamic Financial Institutions are included in the city where the authority of settlement by the Religious Courts is a body of the first instance where an institution (the institution) to try and resolve the legal dispute in the context of the judicial power, which has the authority absolute and according peraturanPerundang relative regulations (Rasyid & Putri, 2019). As for the settlement of disputes through judicial institutions listed in Article 18 of Law 48 of 2009 on judicial power, the authority to adjudicate disputes/lawsuits is in state court that the General Court, the Religious Courts, Military Courts, and Administrative Courts (Kusmayanti, 2021). Religious Courts are one of judicial power for the people of many different justice seekers that Islam regarding a specific case as referred to in Law No. 3 of 2006 changes Act No. 7 of 1989 concerning judicial Religion.

Based on the explanation of Article 49i of Law No. 3 In 2006, the term "Islamic economics" is an activity or business principles are carried out according to Islamic principles, among others, including Islamic banks, Islamic microfinance institutions, insurance sharia, shari'a reinsurance, mutual funds Shari'ah, bonds Shari'ah, the Shari'ah medium-term securities, securities sharia, shari'a finance, Shari'ah pawnshops, pension funds, and financial institutions Shari'ah Islamic business (Asnaini, 2018).

According to Article 11 of Law No. 3 of 2006 on the Religious Courts, the law comes into force on the date of enactment, namely on 20 March 2006. As of that date, the Islamic economic disputes fall into the absolute jurisdiction of the Religious Courts (Hamid, 2017).

Based on the extension of the authority of the Religious Court, there have been several rulings on how the sharia economy is handled in the Religious, such as the economic case ruling Islamic Religious Court Bukittinggi and the determination of such Encumbrance execution in Cimahi Religious Courts (Establishment No. 7 / Pdt.Eks Sya / 2007 / PA CME with executorial Beslag November 27, 2007) and Central Jakarta Religious Court.

Klaten Religious Courts also handled Syariah's economic case since Law No. 3 of 2006 on the Religious Courts. In the year 2016 to the year 2019, there were 30 (thirty) Syariah economic cases to Religious Courts Klaten. The 30 (thirty) cases of Islamic economics that go in Klaten Islamic Court can be classified as below:

**Table 1.** Case Klaten Islamic Economics on Trial

No	Enforceable	Amount
1	Appeal	4
2	Withdrawn	5
3	in Kracht	12
4	Peace	5
5	Rejected	3

No	Enforceable	Amount
6	Fall	1
Total Case		30

Source: data processed, 2023.

Of the thirty cases handled by the Islamic economic Klaten Islamic Court, the authors take one (case) is case 0290 / Pdt.G / 2018 / PA.Klt was used as study materials in the preparation of this study.

The reason to research Murabaha's case is based on the data of Klaten Religious Court from 2016 -2019 that the Religious Courts Klaten handled 30 economic sharia. In thirty cases of Islamic economics, the authors took a 1 (one) sample selected based on the lawsuit decision because of the 30 (thirty) lawsuits that went to Court Klaten of the Year 2016-2019 by 74% tort lawsuit murabahah (22 cases), so the case 0290 / Pdt.G / 2018 / PA. Klt is already represented in the Klaten Islamic Court decision of 2016 to 2019. In this case, 0290 / Pdt.G / 2018 / PA. Klt is used as a study material to determine the author of the Judge's consideration in deciding the case of Islamic economics.

Besides, this research is essential to know that the product yields the decision handed down by the Judge in the Klaten Islamic Court verdict of quality and integrity, thus fulfilling the principle of justice.

What happened is disputed by SRB Al Mabur in the working capital financing agreement. Raharjo Budi Santoso, in this case, acts as the customer and has applied to the SRB Al Mabur for working capital financing. Based on the customer's request, SRB Al Mabur agrees with the Akad Murabahah working capital. Furthermore, the two sides agreed to prepare and sign the contract for Murabahah's working capital.

Then, the customer violates the provisions / broken promises (defaults) on the Murabaha contract agreed on working capital. Customer Promise makes instalments following the repayment schedule set and paid at maturity. However, Defendant did not comply with its obligations. The SRB Al

Mabur is already billing the customer, but the customer needs to be more cooperative and elusive and always avoids when payment is due. Due to the absence of good faith in the customer, SRB Al Mabur attempted to register a collateral auction to KPKNL Surakarta on Collateral places. However, the customer objected to the efforts made by the SRB Al Mabur, so the customer reported BPRS Al Mabur Court Klaten with Case No. 0275 / Pdt.G / 2016 / PA. Let the basis of the claim that the registration process to KPKNL Surakarta auction of collateral on collateral objects is not procedural and expressed that SRB Al Mabur committed unlawful acts. In the suit, the Judge and the judge examiner ruled that the lawsuit was rejected in its entirety. The defendant then took legal actions in which the Judge of Appeal and Cassation upheld the ruling Judge and decided Klaten Islamic Court No. 0275 / Pdt.G / 2016 / PA.Klt. Customers associated with financing that was due, then the SRB Al Mabur issued a notice maturing dated January 11, 2018, with registration number REM.022 / SPJTL / ALMABRUR / 1/2018 via the post office. However, there has yet to be a response or the customer's good faith to settle the remaining debt.

Then, on February 12, 2018, the Court clerk received the lawsuit on the fulfilment of Murabaha financing agreement work with capital case number 0290 / Pdt.G / 2018 / PA.Klt filed by PT. Bank Financing Sharia Al Mabur Klaten, which has its legal domicile in Klaten-Solo Road Km 04, Kerubaru, Balangwetan. Klaten North, in this case, is represented by Hidayat Arifin, SE, as director of PT BPRS Al Mabur. Here they sued Raharjo Budi Santoso as the Customer. In the ruling, the Court granted the lawsuit in its entirety, stating legal action the Defendant in default / break a promise to the plaintiff.

## LITERATURE REVIEW

Fadhly (2015) reviewed the judge's decision and finding that, the judge has tried to fulfill judicial procedures and the principle of legal

certainty in resolving the default of the murabahah financing contract. However, there are several things that are not considered by the judge in his decision, such as late fines and lack of clarity on the lawsuit material.

Mirawati (2017) found that the main factors influencing people's perception of murabahah financing were moral foundations and mutual trust. Many people choose object factors in influencing their perception of murabahah financing including murabahah financing is popular in the community, employees are very professional and trustworthy and administrative costs are cheap (Mirawati, 2017). Suhaimi & Asnaini (2018) found that not all customers can return Islamic bank funds smoothly according to the agreement. Some problems in financing settlement can occur, which can threaten the liquidity of the bank (Suhaimi & Asnaini, 2018)

Naim's research (2019) concluded that the panel of judges decided not to accept the case because the murabahah contract containing dispute resolution should be resolved through an arbitration institution (BASYARNAS). Naim's study (2019) also states that capital loans are not in accordance with the teachings of the MUI fatwa which regulates murabahah only for the purchase of goods (Naim, 2019).

A study of the decision material of religious court judges was also conducted by Fitriyana (2018) whose results showed that the murabahah contract agreement made by customers with Islamic banks was null and void because the implementation and application of murabahah contracts to Islamic banks deviated from the DSN-MUI fatwa No 4 Th 2000, namely that there must be goods traded when the murabahah contract takes place.

Dzatihani & Rosyadi (2019) Review the decision of the taking related to the dispute over the murabahah contract. The results of the study show that there has been

a default and the legal basis used by the Panel of Judges in determining the decision is in accordance with Islamic Economic Law, namely using the Fatwa of the Sharia Council of the Indonesian Ulema Council (DSN-MUI) regarding the Murabahah contract.

Astanti et al. (2019) affirming the authority of the Religious Court in resolving Islamic banking disputes and the principles of handling Sharia banking dispute settlement. Dispute resolution related to Islamic banking economic activities is resolved in two ways, namely litigation and non-litigation (Astanti et al., 2019).

Prameswari et al. (2022) examined the problems that develop in the community regarding murabahah contracts, especially those carried out by BMT. The results of research by Prameswari et al. (2022) shows that in carrying out its practice, BMT has implemented a murabahah contract in accordance with sharia principles.

In contrast to earlier research, the purpose of this one is to investigate the fundamental factors that are taken into account by judges of the Klaten Religious Court when deciding how to apply sharia law to commercial disputes involving murabahah transactions. This research also aims to examine if decisions in determining cases adhere to the tenets of justice by comparing them to a set of ideals.

## **RESEARCH METHODS**

This type of research is a qualitative research procedure that produces descriptive data in the form of an idea research the facts, conditions, or activities that exist and what happened today (Mila Sari, Tri Siswati, 2022). This study was conducted by collecting data and information from the interviews.

The method used in this analysis is deductive, the juridical analysis of the existing law on Decision No. 0290 / Pdt.G / 2018 / PA.Klt. To find the law sources for the

Judge to decide the case first. The first step is to collect data. Once the data is collected, processed, and sorted out, irrelevant data is removed, and then the presentation of data is held to be drawn as the conclusion. After data has been collected and completed, more designations are made systematically so that a conclusion can be made based on these data.

## **THEORETICAL FRAMEWORK**

### **Murabahah Agreement**

Murabahah financing is an agreement for the provision of goods based on buying and selling where the bank finances or buys the customer's goods or investment needs and resells it to the customer plus the agreed profit (Melina, 2020; Nurjannah et al., 2018)(Melina, 2020; S et al., 2018). The customer's payment is within a predetermined period in instalments or instalments.

Murabahah is a transaction of selling goods by stating the acquisition price and profit (margin) agreed upon by the seller and buyer (Nurhayati et al., 2022). Economic experts also explain murabahah so that it is easy for the public to understand. Murabahah can be defined as buying and selling goods from the original price with additional agreed profits (Jauhari et al., 2023). In murabahah, the seller should inform the cost of goods purchased and determine the profit level (Rabuno, 2021). Murabahah is buying and selling with debt. Then, when the contract is signed, the customer's goods belong. Customers can do anything about their assets, including selling them (Wijayanti & Vanni, 2019).

Murabahah is financing given to customers to meet production. Murabahah financing is similar to the working capital credit that banks often provide, and therefore, one-year term murabahah financing. Meanwhile, in the Murabahah transaction, the seller should mention the goods being

traded, and the goods should not include illicit goods. Thus, the purchase price of the goods and the profit by way of payment must be informed. In this way, the buyer can determine the actual price of the goods purchased and desired by the seller. From the various definitions of experts above, it can be seen that murabahah is a sale and purchase agreement between two parties (banks) and buyers (customers) using payment delayed with the agreed time, and the benefits have been known to both parties (Wednesday, 2021).

Murabahah is derived from the word *ribh* (two-party advantage), meaning that both parties must agree upon the amount of profit. If the Bank does not tell how much the purchase is, then the trade is not a murabahah trade. The two parties must also agree on a payment period. The selling price is stated in the contract, and if it has been agreed upon, it cannot change as long as the contract is valid. In banking, murabahah is usually done using instalment payments. In this transaction, the goods are handed over immediately after the contract while the payment is made in a formidable manner. However, in practice, banks often encourage customers to buy the goods they need so that the financing agreement is carried out before a notary before the funds are transferred from the Bank to the seller (Saraswati & Hidayat, 2017).

The murabahah contract dispute will be resolved in the Religious Court. This is because the religious Court is given the authority to adjudicate sharia economic disputes with a type of financing (*musyarakah, mudharabah, murabahah*) accompanied by a guarantee agreement. If there is a dispute, the religious Court has the authority to resolve it (Dhian Indah Ashanti, B. Rini Heryanti, 2019).

This is following Law Number 7 of 1989 juncto Law Number 3 of 2006 concerning Religious Courts, which was later amended by Law Number 50 of 2009 challenging the authority of the Religious

Courts in marriage, polygamy permits, marriage prevention, refusal of marriage by marriage registrar employees (vat), talak divorce, divorce, joint property, child support, negligence of husband and wife obligations, child control, child support, child origin, refusal of intermarriage, marriage certificate, marriage dispensation, adol guardian, will, grant, waqf, shodaqoh, rights of ex-wife, endorsement of children, revocation of child power, the appointment of others as guardians, compensation to guardians and sharia economy (Dzatihanani & Rosyadi, 2019; Infantrylia, 2021).

The settlement of *the murabahah* contract dispute, according to Retnowati, Azmi, & Munawaroh (2022), is grouped into two (2) stages, namely, rescue efforts and settlement.

### **Default**

Default or "wanprestasi" comes from Dutch, meaning terrible achievement. The default is a condition due to his fault or negligence, so the debtor cannot fulfil the achievements agreed in the agreement and is not in a compelling state (Dsalimunthe, 2017).

Abdul Kadir Muhammad, in his book, stated that default is not fulfilling the obligations that must be stipulated in the agreement, both the agreement arising from the agreement and the agreement arising from the Law (Lastfitriani, 2017).

According to Article 1234 of the Civil Code, what is meant by achievement is a person who does something, does not do something, and gives up something. On the contrary, it is considered default if someone does (Kaparang, 2021) as follows:

1. Not doing what he thought he was going to do.
2. Carry out what he promised.
3. Doing what was promised, but too late.
4. According to the contract, he is doing something he should not do.

As a result of the default, sanctions can be imposed in the form of contract cancellation, compensation, risk transfer, or paying case fees. Nonetheless, the debtor may defend himself because the circumstances are compelling, the negligence of the creditor himself, and the creditor has exercised his right to claim compensation. For this reason, the debtor does not have to compensate for losses. Therefore, it is better in every business contract to include the risks, defaults, and these compelling circumstances (Setiawati, 2021).

### **An Overview of the Judge's Ruling.**

After the Judge knows the actual sitting of the case, the case examination is declared complete. Then, the verdict was handed down (Prasetyo et al., 2021).

The judgment is called *Vonnis* (Netherlands) or *al-qadau* (Arabic), which is a product of the Religious Court because there are two opposing parties in the case, namely "plaintiff" and "defendant." Court products are termed "real judicial products" *jurisdiction contentious*.

According to Sudikno Mertokusumo, the verdict is the act of a judge as a ruler or state official. Meanwhile, the definition of a judgment is a statement of a judge as a state official who is authorized to be pronounced in Court and aims to end or resolve cases or disputes between the parties. Sudikno Mertokusumo added that what is meant by the verdict is not only pronounced but also a statement that is stated in written form and then said by the Judge at the trial (Purnamawati, 2019).

Civil court rulings (Religious Courts are Civil Courts) always contain orders from the Court to the losing party to punish something, do something, or let go of something. So, the dictum of conviction is always a commentator, meaning to punish, or constructor means to create (Taufiq, 2020).

While the punishment contained in the judgment, both in the criminal procedural

law and the civil procedural law of its implementation, is imposed on the violators of rights indiscriminately, it is just that the difference in criminal law is generally in the form of criminal or imprisonment. In contrast, in civil law, the punishment is fulfilling achievements or compensating parties who have been harmed or won in court proceedings in a dispute.

Judges in adjudicating a case, especially those of interest, are the facts or events, not the law. Law regulation is a tool, while what determines is the event. There is a possibility of an event occurring, which, although there is already the rule of law, is precisely another settlement. The Judge will eventually find fault by judging and concluding the event (Anwar, 2020).

By listening to the answers at the trial between Plaintiff and Defendant, the Judge can prove that the event happened and can conclude what concrete details should have happened because the Judge must not draw conclusions or declare an event to be concrete occurring in the absence of proof. After the concrete event is proved, it can be concluded that it existed or happened. Then, after the concrete events are proved or concluded, the law must be found. Legal discovery is an activity that is inconsistent and continuous with evidentiary activities.

After the law is discovered, the law (the law) is applied to the events of his law. The Judge must pass his verdict by considering three factors in a propositional manner: justice, legal certainty, and expediency.

### **Principles of Justice**

According to Ahmad Azhar Basyir, justice is putting something in its proper place or putting something in its right place and giving it to someone to whom it is entitled (Makhrus, 2021).

According to Aristotle, justice is divided into *corrective* justice and *distributive* justice. (Sa'adah, 2017) Corrective justice is to provide a measure in

the course of carrying out daily life. In daily life, we must have a common standard to correct (recover) the consequences of an action carried out by people about each other. Criminal repairs that crimes have been committed, recovery corrects civil errors, and reparations return profits obtained incorrectly. Standards should be applied without seeing people; everything is subject to objective standards.

Meanwhile, distributive justice distributes goods and honours to each person according to their place in society. So that a person in the same position gets the same treatment in the eyes of the law. Meanwhile, other opinions state that justice includes equal, distributive, and corrective justice.

Equality-based justice is based on the principle that the law binds everyone so that the justice to be achieved by the law is understood in the context of the equality of degrees of each person in the eyes of the law and gives to each person what is already his right.

Distributive justice is justice based on granting rights according to the size of the service, so in this case, justice is based not on equality but rather according to its respective portions.

Corrective justice is justice that rests on the correction of a mistake. For example, suppose there is misconduct that causes harm. In that case, the person who caused the loss to appear must compensate the party who received the loss to recover his situation due to the misconduct committed.

Corrective justice is used by judges in resolving disputes and providing punishments against criminals (Flora et al., 2023).

The division of justice, according to modern authors such as John Boatright and Manuel Velasquez, namely:

- a. Distributive justice is the traditional pattern where benefits and burdens must be divided fairly.

- b. Retributive justice relates to errors, where the law or fine imposed on the guilty person must be fair.
- c. Compensatory justice concerns the mistakes committed, but according to other aspects, the person has a moral obligation to compensate other harmed parties.

In civil procedural law, there is also a concept of justice known as the principle of *Adl*, meaning that both parties must be heard together, not hear only one party.

Fairness is the joint of any agreement made by the parties. In modern times, the contract is often closed by one party with the other party without him having the opportunity to negotiate the contract clause because the other party has frozen the contract clause. In its implementation, it does not demand that losses may arise for the party who accepts the standard conditions because it is driven by need. In Islamic law, a principle has been accepted that for the sake of fairness, the Court can change the standard required if there is indeed a compelling reason.

According to France M. Want, the Court's decision must be able and courageous to appear to voice the conscience and dreams of the people. The institution of the judiciary not only became the engine of legislation but was able to observe the nation's life intensely. The Judge's decision must resolve the case filed, not taper the problem, and even cause contravention among legal practitioners and the general public.

The cause of the contravention of the Judge's decision is the situation of judges who do not master various fields of legal science that develop rapidly according to the times and are influenced by the lack of precision of judges to determine the process of a case. The Judge's decision must reflect legal certainty and reflect justice. The Judge's decision that reflects legal certainty is that the Judge in finding the law is not enough to seek the law because it is possible that the law

does not regulate clearly and construct the case that is tried as a whole, wisely and objectively, the Judge's decision containing elements of legal certainty will contribute to the development of knowledge science in the field of law and become a reference society in everyday life. While the Judge's decision reflects justice, the concept of a judgment that contains justice, it is difficult to find a benchmark for the party to the dispute. Fair for one party is not necessarily fair to the other party. Then the Judge, when deciding the case, must follow its true purpose, namely: the Judge's decision must make a definitive solution (providing a way out for the litigant), the Judge's decision must contain efficiency (fast, simple, and low-cost), the Judge's decision must be following the purpose of the law on which the Court's decision is based, the Judge's decision must contain stability (social order and community peace) and the Judge's decision must have fairness (provide equal opportunities for the litigant) (Juanda, 2018).

## RESULTS AND DISCUSSION

### **Principal Case Number 0290 / Pdt.G / 2018 / PA. Klt About Akad Murabaha Islamic Court Klaten**

Based on the case number 0290 / Pdt.G / 2018 / PA. Klt, relating to the tort dispute, is a lawsuit between the Defendant (Raharjo Budi Santoso) and the plaintiffs (Hidayat Arifin, SE). Santoso Budi Raharjo has applied to the SRB Al Mabrur for working capital financing. Upon the request, Santoso Budi Raharjo SRB Al Mabrur agrees, and Murabaha binds itself to provide working capital financing to Santoso Budi Raharjo following the provisions of the contract murabahah. Furthermore, the two sides agreed to prepare and sign this Murabaha contract.

Raharjo Budi Santoso later violated the provisions / broke a promise to the Murabaha



contract that had been agreed upon, while the forms of tort are: 1. The work does not meet achievement altogether 2. Meet accomplishments but need to be more timely. 3. Meet accomplishments that need to be more appropriate or corrected.

Raharjo Budi Santoso promised to make instalment payments under the agreed repayment schedule. Raharjo Budi Santoso agreed to make payments following its schedule of monthly instalments until the contract due date. However, Raharjo Budi Santoso wants to avoid paying the remaining obligations. Disputes in implementing this agreement, the SRB Al Maburr is trying to solve with family and deliberation. However, the customer needs to be more cooperative and elusive and always avoid when payment is due. Because of a lack of good faith from the customer, SRB Al Maburr attempted to register an auction of collateral to KPKNL Surakarta on Collateral places.

However, the customer objected to the efforts made by the SRB Ak Maburr, so the customer reported BPRS Al Maburr Court Klaten with Case No. 0290 / Pdt.G / 2018 / PA. Let the basis of the claim that the registration process to KPKNL Surakarta auction of collateral on the corresponding object procedural and expressed the SRB Al Maburr committed unlawful acts. In the suit, the Judge and the judge examiner ruled that the lawsuit was rejected in its entirety. The defendant then takes legal actions, Appeal and Cassation, where judges hear and decide to strengthen the Klaten Islamic Court decision No. 0275 / Pdt.G / 2016 / PA. Kat. Customers associated with due financing, then the SRB Al Maburr has issued a notice maturing dated January 11, 2018, with registration number REM. 022 / SPJTL / ALMABRUR / 1/2018 via the post office.

However, because there is no response or the good faith of the customer to pay off its remaining debts, SRB Al Maburr agreed to appoint and establish and authorize the Office of Klaten Islamic Court to give its decision that the legal opinion and the decision is final and binding determined.

Principal case Number 0275 / Pdt.G / 2016 / PA. KIt is in default murabahah, which includes the following:

1. No contract: 789 / APJBM / AL Maburr / XII / 2011 dated December 21, 2011, with the initial ceiling of Rp. 130.000.000.- instalments of Rp. 5,691,112, - per month, a period of 36 months, maturing on December 21, 2014.
2. No contract: 1254 / APJBM / AL maburr / II / 2013 dated March 13, 2013, with the initial ceiling of Rp. 15.000.000.- instalments of Rp. 1,058,334, - per month, a period of 36 months, maturing on September 15, 2014.
3. No contract: 1470 / APJBM / AL maburr / X / 2013 dated October 23, 2013, with the initial ceiling of Rp. 100.000.000.- instalments of Rp. 4,177,778, - per month, a period of 36 months, maturing on October 23, 2016.

Furthermore, on March 28, 2014, made the Akad Extension (restructuring) on the financing mentioned above Preliminary Agreement with the following details:

1. No contract: 1629 / APJBM / AL maburr / III / 2014 dated March 24, 2014, with the initial ceiling of Rp. 46.900.000.- installments of Rp. 1.642.543. - per month, a period of 45 months, maturing on December 28, 2017, as a contract restructuring / rescheduling facility initial

contract no: 789 / APJBM / AL mabrur / XII / 2011.

2. No contract: 1630 / APJBM / AL mabrur / III / 2014 dated March 28, 2014, with the initial ceiling of Rp. 6.100.000.- instalments of Rp. 328 587, - per month, a period of 24 months, maturing on March 28, 2016, as a contract restructuring / rescheduling facility initial contract no: 1254 / APJBM / AL mabrur / II / 2013.
3. No contract: 1631 / APJBM / AL mabrur / III / 2014 dated March 28, 2014, with the initial ceiling of Rp. 97.000.000.- instalments of Rp. 3,241,956, - per month, a period of 45 months, maturing on December 28, 2017, as a contract restructuring / rescheduling facility initial contract no: 1470 / APJBM / AL Mabrur / X2013.

Defendant should pay this by the schedule of instalments each month until the payment deadline. Based on the Murabaha contract, it can be concluded that the first case number is 0275 / Pdt.G / 2016 / PA. Klt is in default murabahah Rp. 174 733 945, - with calculating the principal amount and margin Rp. .362 159 918, - and a late fee of Rp. 10.000.000 -.

Based on Article 6 of the contract and the period in which the payment method in the article was mentioned, Defendant promised to make instalment payments following the repayment schedule that has been set and paid at maturity. Nevertheless, Defendant could not do so, did not comply with its obligations, and to date, Defendant has been delayed instalment payments.

Defendants were constantly stalling in instalment payments. Plaintiff has made against Defendant's billing associated with

delayed payment instalments, but Defendant is usually shy and elusive. The plaintiff has sent a warning letter several times and provided opportunities for the defence. However, until the lawsuit was filed, Defendant could not complete its obligations to Defendant.

The plaintiff never attempted to register the collateral auction to KPKNL Surakarta on Collateral places mentioned above, but the Defendant objected to the plaintiffs' effort. Then, the Defendant registered the lawsuit to the Court of Klaten and registered with the case number 0275 / Pdt.G / 2016 / PA. Klt, the basis of the claim that the registration process for auctioning collateral KPKNL Surakarta on the corresponding object is not procedural and declares the plaintiff has acted against the law. The Defendant of the lawsuit, the Judge, and the hearing examiner decided that the lawsuit defendant was rejected in its entirety. The defendant then takes legal actions, Appeal and Cassation, where Judge Examiner tried and decided to uphold the ruling Islamic Court Klaten number: 0275 / Pdt.G / 2016 / PA. Klt.

Associated with the financing of a defendant who has matured, the claimant has made various collection efforts and warnings to the Defendant. Plaintiff has issued a Notice of maturity dated January 11, 2018, letter number REM.022 / SPJT / AL MABRU / I / 2018 via the post office, but there has been no response or good faith of Defendant to repay the debt to date. Therefore, it is reasonable to Dispute the lawsuit against the plaintiff, Islamic Economics. The head of the Court Klaten this case under the provisions of Article 49 letter (i) of Act No. 3 the Year 2006 on the Amendment of Act No. 7 of 1989 on the Religious Courts jo. Article 55

paragraph (1) of Law No. 21 the Year 2008 on Islamic Banking. (D. of D. of the S. C. of the R. of Indonesia, 2018)

That on the day of the trial has been set for it. Namely, Plaintiff, Finance Director of PT Bank Rakyat Al Mabrur Klaten Shariah, appeared in Court, according to Defendant, to attend personally at the Judge.

Judges that the Examiner attempted to reconcile the Plaintiff and Defendant but was unsuccessful. Then, read the plaintiff's claim that it retained the plaintiff. Based upon the plaintiff, the Defendant has submitted an answer, which, in essence, "according to the defendant all that the plaintiff in the lawsuit is correct," The defendant wanted to settle this obligation. However, Defendant can not, unless done restructuring recycled and given a grace period of ten months. At the same time, the plaintiff was no longer willing to restructure the debt, as had been done, and still wished Plaintiff Defendant to settle obligations under the grace period that has been granted.

**Consideration Justice in Case Decision No. 0290 / Pdt.G / 2018 / PA.klt.**

Based on the case number 0290 / Pdt.G / 2018 / PA.klt, Judge Klaten Islamic Court, in deciding the case, has several considerations, among others, the following:

Considering that a decision per the provisions of Article 130 HIR (Herziene Indonesich Reglement), the Judge examiner has tried to reconcile the party litigant "but failed.

Before considering the substance of the plaintiff's lawsuit, the Judge will consider the first Examiner in its jurisdiction, Klaten, to hear the case a quo or legal status (legal standing) plaintiff litigate.

Considering that under the provisions of Article 49 of Law No. 3 of 2006 on Religious Courts, corresponding amendments to Law No. 7 of 1989 stated that the Religious Court has the duty and authority to examine, decide and resolve cases at the first level among the people of Moslem in the areas of a. Marriage, inheritance, wills, grants, endowments, charity, infaq, sadaqah, economic and Shariah (the inside cover of Islamic Banking).

Considering that the term "Islamic economics" is the act or the business activities carried out by Sharia principles include the following: Shariah banks, microfinance institutions Shariah, insurance sharia, shari'a reinsurance, Sharia mutual funds, Islamic bonds, securities sharia, shari'a finance, Shari'ah pawnshops, securities sharia, shari'a financing, pawnshops sharia, shari'a financial institution pension fund and business Shari'ah.

Considering that under Supreme Court Rule No. 14 Year 2016 regarding the procedure of the Economic Case Completion of Shariah, the judicial authorities decide upon the judgment in religious courts, and the Judge is the first level judge in religious courts that has been certified judge economy Shari'ah.

Considering this case is included in the economic dispute Shari'ah and "Simple lawsuit" as Religious Ministry Act No. 14 of 2016 on the settlement of economic disputes Shari'ah, the procedure of filing, examination, verification, decision or procedural law on the Court a quo to comply Religious Ministry Act No. 2 of 2015 on Procedures for Settlement of lawsuit simpler.

This case is a dispute "shari'a economy that entered the category" The lawsuit Simple "or small claims court, and the plaintiff and the Defendant's desires / does not mind this case is examined and decided upon by the Religious Courts. So therefore, the Religious Courts Klaten has the authority to investigate and try and resolve this matter.

The plaintiff director of PT BPRS Al Mabur, which is the Bank's financing, is in operation based on the principles of Shariah. The plaintiff is a creditor and or shahibul mall. At the same time, the Defendant, as the debtor or mudharib and at issue, is the Defendant's disobedience to the obligations of the tort / broken promises, then, according to the Examining Judge, the Plaintiffs have legal status (legal standing) as a party in the case a quo.

Considering that the plaintiff's argument quo is between Plaintiff and Defendant, has occurred 3 (three) contract/agreement financing based on Islamic principles, namely: Agreement made on 28 March 2014 with a contact number as follows:

- a. 1629 / APJBM / AL mabrur / III / 2014 as a contract restructuring / rescheduling facility initial contract no: 789 / APJBM / AL mabrur / XII / 2011.
- b. 1630 / APJBM / AL mabrur / III / 2014 as a contract restructuring / rescheduling facility initial contract no: 1254 / APJBM / AL mabrur / II / 2013.
- c. 1631 / APJBM / AL mabrur / III / 2014 as a contract restructuring / rescheduling facility initial contract no: 1470 / APJBM / AL mabrur / X / 2013.

The defendant's unanimous Court recognizes it. However, Defendants have

defaulted/breached the contract by not carrying out its obligations, so the plaintiff suffered a loss of principal and margin or for the results to be accepted Rp. 174 733 945, - (one hundred and twenty-four million are headed hundred thirty-three thousand nine hundred and forty-five rupiah)

Considering the above argument of the plaintiff's claim, Defendant validated and recognized their "financing agreement Murabaha", as the plaintiffs describe it. However, Defendant did not have the ability again to settle these obligations and Plaintiffs and Defendants agree to be completed and dropped by the Religious Courts Klaten.

The evidence is the authentic act, and the rebuttal evidence is not there, so under the provisions of Article 165 HIR, such evidence has strength. Thus, it must be convicted that the Plaintiffs and Defendants have perpetuated the contract/agreement "Murabahah" by collateral in SHM SHM No. 1659 and No. 1660.

Based on the description of the financing murabahah, the plaintiff paid Raharjo Budi Santoso Rp. 159 000 000, - and has paid Rp. 67,769,487, -, while the rest of unpaid liabilities amounting to Rp. 92,148,875. Based on the evidence, Q6 is as follows: Q6 Copy of Notice of falling Tempo No. REM.022 / SPJT / AL mabrur / I / 2018. Bahwa recognized and justified by the Defendant. The plaintiff has also noticed the fall in the Defendant's tempo on debt obligations, but not heeded, even tending to let the strike without a contract good to get it done.

They were considering that defaults in Dutch mean "poor performance." As the default is a condition due to negligence or fault, the debtor does not meet the

achievements specified in the agreement and is not in a state of force. The shape of the default is 1. The work only meets achievement partially. 2. Meet accomplishments but need to be more timely. 3. Meet accomplishments that need to be more appropriate or corrected.

Considering that the Examining Judge of the examination results of the evidence submitted by the plaintiff obtained legal facts as follows:

- a. That proved Defendant has failed to act (achievement) Plaintiff as in the contract agreement Murabaha financing of Article 6, paragraph 1 of the contract No: 789 / APJBM / AL mabrur / XII / 2011, No: 1470 / APJBM / AL mabrur / III / 2013, No: 1470 / APJBM / AL mabrur / X / 2013.
- b. They proved that the plaintiff had been notified about the obligation of the plaintiff as evidenced in the form of a copy of Notice P.6 fall Tempo No. REM.022 / SPJT / AL mabrur / I / 2018, but Defendant leaves without any good faith to complete financing payment. (D. P. M. A. R. Indonesia, 2018)

It is considered that to break a promise or breach like this, as referred to in article 1243 of the Civil Code, which strengthened the jurisprudence of the Supreme Court 186 K / Sip / 1959, that "Engagement is shown to give up something, or not do something, or to do nothing" or if it turns out in the agreement a clause that says claimed negligent debtors directly without requiring a subpoena (summoned) or warning.

Based on the calculation of compensation in the event of default, it is calculated from negligence as stipulated in Article 1237 of the Civil Code, "On an engagement for giving out certain items, items to be borne by creditors since the

engagement was born. If the debtors fail to deliver the goods in question, the goods that, since the engagement is done, dependents".

Considering that based on the fact mentioned above, it must be declared legally proven that the defendant "has not met the performance promised and or default (default)," so the Defendant has harmed the plaintiff as a "creditor," in which the plaintiff itself as creditor must be accountable to its customers, It is thus all the omissions by Defendants towards the plaintiff, must be considered as negligence containing actual loss.

It is considered that "profit-sharing" is a form of alternative financing scheme with very different characteristics than interest or usury. As the name implies, this scheme is a division of profits financed by credit/financing. The profit-sharing scheme can be applied in direct or indirect financing and through Islamic banks (in the form of financing Mudaraba and Musharaka). The production-sharing contracts need to be designed with a scheme for optimal results, namely that they can efficiently encourage entrepreneurs (the debtor) to perform their best effort and suppress falsification. (D. P. M. A. R. Indonesia, 2018)

Considering that the underlying financing agreement between Plaintiff and Defendant is "profit-sharing" (also called profit-and-loss sharing), which is used as a basis for the calculation of the profit, which is the difference between the sales/revenues and costs of the business, whether, in the form of cost of sales/cost of production, cost of sales and general expenses, and administrative or other terms can be interpreted as a profit-sharing distribution system benefits from a business.

Based on the facts mentioned above, the Judge examiner argues that because the Defendant has been convicted in default to the plaintiff, the Defendant was sentenced to return the loan principal, and margin / profit-sharing should be accepted by the plaintiff,

totalling Rp. 159 918 362, - (one hundred and fifty-nine million nine hundred eighteen thousand three hundred and sixty-two rupiah).

Considering that the subject demands a "late fee" or indemnity, in principle unknown to the principle of Islamic economics, the demand for a "late fee" is unfounded because it is against the principles of Shariah and can be rejected.

To consider that while the demands of the auction fee of Rp. 10.000.000, - (ten million) principally because the auction is tangible and measurable losses suffered by Plaintiff Defendant caused by deeds, these demands by the judges have sufficient reason, and the demands can be granted.

It is considered that based on the considerations mentioned above, the plaintiff may be granted and refuse apart and rest. To consider that since Defendant in part of the losing, by the provisions of Article 181 paragraph (1) HIR, Defendant was charged to pay for all these things.

## CONCLUSION

Based on the economic case analysis against Sharia's decision in case number 0290 / Pdt.G / 2018 / PA.Kit can be concluded that the legal basis used as consideration in the ruling Justice case number 0290 / Pdt.G / 2018 / PA.klt is Article 130 HIR (Herziene Indonesisch Reglement), as well as Article 49 of Law No. 3 of 2006 on the Religious Courts as an amendment to Act Act No. 7 of 1989, as well as the Supreme Court Regulation No. 14 the Year 2016 About the Economic Case Completion of Shariah, the Supreme Court Regulation No. 2 the Year 2015 On Simple Action Settlement Procedure and Article 181 Paragraph (1) HIR. This study also demonstrates the principle of justice in the verdict contained in the Shari'ah economic case number 0290 / Pdt.G / 2018 / PA. Klt studied by the authors

can be viewed from two perspectives. First, from The Judge and plaintiff's perspective, this decision is already fulfilling the principle of justice because it is by the judicial procedure in Klaten Islamic Court, following the laws and applicable laws and benefits for both parties. Second, according to the Defendant, justice is rated yet balanced and fair because the Defendant is the loser in the verdict of the Islamic economic case. Therefore, the Defendant would like to appeal to obtain justice at the level of appeal against the decision handed down by the Majelis Court Judge Klaten religion but rejected by the High Religious Court of Semarang.

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