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SHARIA BUSINESS DISPUTE RESOLUTION IN RELIGIOUS COURTS ACROSS LOMBOK ISLAND

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Abstract

Islamic banking applies Islamic principles to every financial decision. Judges, acting as representatives of God on Earth, are responsible for ensuring justice and delivering rulings that are both beneficial and blessed in resolving Islamic banking disputes. This study is a normative-empirical research employing philosophical, conceptual, statutory, and sociological approaches. The conclusions of this study are as follows: a) Business in Islam prioritizes blessings and benefits that transcend material gains, establishing a balance between moral and spiritual principles. b) The legal policy of Islamic banking, characterized by a prophetic legal paradigm, not only adheres to divine revelation but also shapes a just socio-economic order. c) The implementation of Islamic banking dispute resolution within the Religious Courts across Lombok Island remains overall sub-optimal, due to institutional quality constraints and limited public understanding influenced by cultural factors. Recommendations: a) Legal practitioners and jurists must disseminate knowledge regarding Sharia business to ensure consistency in dispute resolution. b) Revisions to Islamic banking policies are necessary to implement the principles of prophetic law in a comprehensive and detailed manner. c) Enhancing public education regarding the role of Religious Courts in the Sharia economy, increasing judicial competence through training in Sharia principles, and improving judicial infrastructure including active collaboration among judicial institutions, banking authorities, and Sharia experts must be encouraged to establish a consistent and effective legal framework.

Keywords: Dispute, Sharia Business, Judges.

INTRODUCTION

Change within life is a constant and inevitable phenomenon, aligned with the ontological order of the universe. Nature and its entire constituents, by virtue of their dynamic disposition, are perpetually in a state of flux. This transformation encompasses not merely physical manifestations, but also non-physical dimensions, including paradigms, theories, concepts, methodologies, approaches, definitions, and perceptions. Insofar as nature is intrinsically subject to transformation, humanity must concurrently remain prepared to confront these vicissitudes at all times.

Correspondingly, the correlation between legal frameworks and social dynamics is frequently inseparable, yet both operate concurrently along divergent trajectories. The law maintains its own distinct domain when responding to social developments within a specific community or state. On one hand, the law endeavors to undergo modifications in accordance with its foundational principles; on the other hand, society may desire transformations that do not necessarily align with the objectives of the law. Consequently, the conceptual understanding of how law functions within social change fundamentally diverges from the understanding of change occurring within the law itself. Notwithstanding the diametral divergence in understanding the relationship between law and social change, which remains highly debatable,

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historical developments demonstrate that legal perspectives shaped by nature, logic, and transcendence have significantly influenced social change toward the objectives envisioned by their respective theorists. Nevertheless, within the context of statehood, the nexus between law and social change is directed solely toward realizing the welfare of its citizens. It is at this juncture that the correlation with the formulation of law in Indonesia emerges, wherein the adoption of the grand design pillars and the national legal-political system is predicated upon the principle that the law serves the interests of the nation to advance the state, functioning as a pillar of democracy and a catalyst for the achievement of public welfare[1].

Epistemologically, the State, through its legal instruments, must be capable of responding to contemporary dynamics and challenges within governance. This is particularly crucial regarding the fulfillment of citizen welfare in the economic sector, which must be guided by philosophical, theoretical, juridical, and sociological foundations. In this regard, it is highly pertinent for the State to respond to the development of the Islamic economy in Indonesia, which has progressively demonstrated a positive trajectory over time. Not only has the banking sector expanded rapidly, but various other Islamic financial institutions such as Islamic insurance (*tawāfun*/*takaful*) and Islamic pawnbroking (*sharia pawn*) have also experienced significant growth. This expansion undoubtedly contributes substantially to sustainable economic development, not only at the national[2] level but also within the global sphere[3].

According to data promulgated by the Financial Services Authority (OJK) in 2022, the Islamic financial architecture comprised 13 Islamic Commercial Banks, 20 Islamic Business Units, 167 Islamic Rural Banks, 58 Islamic Insurance Companies, 31 Islamic Finance Companies, 7 Islamic Venture Capital Firms, 10 Islamic Pension Funds, 7 Islamic Fintech Operators, 98 Other Islamic Non-Bank Financial Institutions, 1 Islamic Investment Management Firm, 61 Islamic Investment Management Units, 78 Sovereign Sukuk (Outstanding), 221 Corporate Sukuk (Outstanding), and 274 Islamic Mutual Funds (Outstanding).[4]

As a matter of critical note, the State must proffer a comprehensive response, taking into due account the philosophical, theoretical, juridical, and sociological dimensions that may arise. Within this context, the formulated regulations must substantially incorporate Sharia principles as their foundational bedrock. This implies that Sharia financial institutions (SFIs), encompassing both banking and non-banking institutions, are legally bound to operate in strict compliance with Sharia principles across all facets of their activities, thereby ensuring absolute consistency with the tenets upheld within the Sharia financial system. Furthermore, the implementation of these Sharia principles must adhere to business ethics deeply rooted in the teachings of the Quran[5] and the Sunnah[6]. Furthermore, business ethics in Islam emphasizes the concepts of unity (tawhid), equilibrium, free will, responsibility, and benevolence (*ihsan*).[7]

The incorporation of these principles must encompass not only substantive aspects but also procedural dimensions, particularly concerning the supporting institutions in Islamic economic dispute resolution. In this regard, the examination and adjudication of disputes involving parties in Sharia-based business operations must strictly adhere to the foundational principles of Sharia. The emergence of disputes within business activities constitutes an inevitable phenomenon, notwithstanding the parties' intentions to avoid them. Disputes inherently

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manifest the diverse variations of human volition. Consequently, dispute resolution can be pursued through various distinct approaches, each employing a paradigm aligned with the objectives, culture, and values upheld by the disputing parties.

There are two primary approaches to dispute resolution, namely the litigation and non-litigation approaches. The litigation approach entails adversarial mechanisms and coercive measures to resolve disputes, culminating in a judgment that establishes a winner and a loser (a zero-sum outcome). Conversely, the non-litigation approach places greater emphasis on amicable settlement and endeavors to reconcile the competing interests of the disputing parties, with the expectation that the resulting resolution yields a mutually beneficial outcome (a win-win solution). In practice, it is observed that numerous Sharia compliant agreements executed by both banking and non-banking Islamic financial institutions stipulate dispute resolution through the Religious Courts rather than opting for the Indonesia Sharia Arbitration Board (*Badan Arbitrase Syariah Nasional* or Basyarnas). The election of litigation for dispute resolution is predicated upon the premise that judicial adjudication affords dissatisfied parties the opportunity to seek further legal remedies, whereas resolutions rendered through Basyarnas are final and binding (*final and binding*).[8]

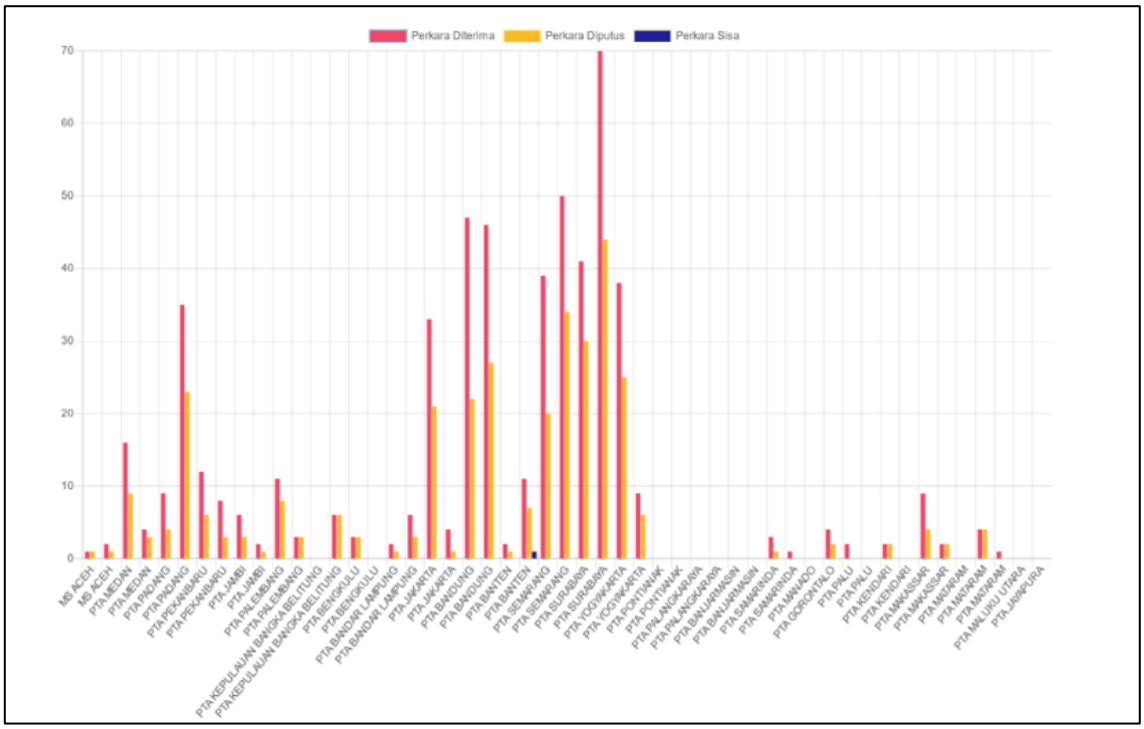

Figure 1: Types of Cases

Islamic economic cases filed with the religious courts continue to experience a steady increase. According to the decision directory of the Supreme Court of the Republic of Indonesia[9], as of December 2022, approximately 1,561 cases have been adjudicated by religious courts across Indonesia. This figure excludes pending cases that have not yet attained final and binding legal

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force (*res judicata*) due to ongoing appellate proceedings. The caseload within these religious courts is predominantly dominated by general civil disputes, specifically instances where customers commit a breach of contract (*default*) or initiate legal opposition against the impending auction of collateral by banks. Conversely, disputes arising from non-performance or non-compliance with Sharia principles do not constitute the majority of the caseload.

Based on the aforementioned data, Islamic banks exhibit a propensity to opt for dispute resolution through the religious courts rather than via non-litigation institutions, such as the National Sharia Arbitration Board (*Badan Arbitrase Syariah Nasional* or Basyarnas). Recourse to judicial channels facilitates the availability of subsequent legal remedies. This phenomenon reflects a legal culture preference among Islamic banking institutions that skews toward contentious litigation over non-litigational alternatives[10]. It is within this empirical reality that the role of the judiciary is paramount in enforcing Sharia principles within commercial transactions. In the context of Islamic economic dispute resolution, a judge's adjudication must satisfy a threefold standard of correctness: it must be legally sound under Sharia law, compliant with positive law, and economically viable.[11]

Premised upon the aforementioned discourse, it can be understood that the efficacy of Islamic banking dispute resolution is determined not merely by the normative aspects of statutory legislation, but also by the judiciary's comprehension of the essence of Islamic business, the legal-political paradigm underlying Islamic banking regulations, and their execution within judicial practice. Consequently, in order to attain a comprehensive overview of these three dimensions, this study formulates several research questions that will serve as the focal points of analysis. First, what constitutes the essence of business in Islam? Second, what is the legal-political paradigm concerning the positivization of Islamic banking in Indonesia? Third, how is the dispute resolution of Islamic business implemented within the Religious Courts throughout Lombok Island?

METHODE

The research methods applied herein are normative legal research and empirical legal research. Normative legal research is otherwise referred to as doctrinal legal research. The analytical framework employs the following approaches: 1) The Statute Approach, which examines relevant legislations and regulations, such as Law No. 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 concerning the Religious Judicature; Law No. 21 of 2008 concerning Islamic Banking; Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; the Constitutional Court Decision No. 93/PUU-X/2012; Supreme Court Regulation (PERMA) No. 4 of 2019 concerning the Amendment to Supreme Court Regulation No. 2 of 2015 concerning the Procedures for Small Claims Lawsuits; Supreme Court Regulation (PERMA) No. 14 of 2016 concerning the Procedures for Islamic Economic Dispute Resolution; National Sharia Board-Indonesian Ulema Council (DSN-MUI) Fatwa No. 69/VI/2008 concerning Sovereign Sharia Securities (SBSN); DSN-MUI Fatwa No. 70/VI/2008 concerning Methods of Issuing SBSN; DSN-MUI Fatwa No. 71/VI/2008 concerning Sale and Lease Back; DSN-MUI Fatwa No. 72/VI/2008 concerning SBSN Ijarah Sale and Lease Back;

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DSN-MUI Fatwa No. 76/VI/2010 concerning SBSN Ijarah Asset To Be Leased; DSN-MUI Fatwa No. 95/III/2014 concerning SBSN Wakalah; as well as other related statutory and regulatory instruments. 2) The Conceptual Approach, and 3) The Analytical Approach.

The geographical scope of this research is situated across Religious Courts throughout Lombok Island. To obtain the necessary data, the data collection techniques involved observation, in-depth and structured interviews, and documentation. The compiled data were processed through verification, editing, and systematization, and subsequently analyzed using qualitative analysis methods. The research conclusions were drawn utilizing both the deductive method deriving conclusions from general premises to the concrete legal issues under review and the inductive method.

RESULTS AND DISCUSSION

1) The Essence of Business in Islam: The Nexus Between Ethics and Profit

The existence of Islam extends beyond its status as one of the world's preeminent spiritual forces; it serves as a comprehensive roadmap and guidance intended to bring universal benevolence (*rahmatan lil 'alamin*) across all facets of human life. This foundational assertion is enshrined in the word of Allah SWT in Surah al-Anbiya' verse 107: *"And We have not sent you, except as a mercy to the worlds."*. As a normative framework, the epistemological dimension of the aforementioned verse provides a corpus of rules that must be observed to engender universal welfare. Furthermore, Islam offers pragmatic mechanisms to address the contemporary critical challenges confronting humanity, particularly within the postmodern era. Notably, the phenomenon of materialism, which can be characterized as a classical conundrum, has permeated not only ideological paradigms but also human conduct. In business practices, this frequently manifests as a disregard for ethical dimensions, thereby triggering a *homo homoni lupus* (man is a wolf to man) dynamic within contractual relations, where a *homo homoni ridens* (man is a smiling friend to man) atmosphere ought to prevail. Concurrently, Islam possesses distinct pathways to resolve these issues. Specifically within economic and commercial activities, Islam prescribes an ideal framework of business ethics designed to preclude any detriment or prejudice to either or both contracting parties.[12]

This assertion is grounded in the fact that Islamic business ethics prioritize the principles of justice, as well as the equilibrium of rights and obligations in every commercial activity. This framework is guided by Surah al-Baqarah, verse 188, which establishes the following ethical parameters, "*And do not consume one another's wealth unjustly"*.

The actualization of the aforementioned Islamic[13] business ethics can be observed through the conceptual framework of Islamic financial jurisprudence (*fiqh al-muamalat*), commonly referred to as *tijarah*. Within this framework, wealth management in Sharia-compliant business extends beyond the mere pursuit of material profit; it inherently encompasses the endeavor to attain the pleasure (*rida*) of Allah SWT in every operational aspect. In this context, Sharia business conceptually aligns with Quranic guidance, which governs not only material dimensions but also, pivotally, immaterial considerations[14]. This perspective harmonizes with

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the divine decree of Allah SWT in Surah al-Jatsiyah, verse 18, which prescribes, "*'Then We put you, on an ordained way concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know"*.

The business implementation principles elucidated by Islam above negate the existence of an inherent functional relation therein, which are invariably executed within the business domain as the core lifeblood of commercial activity specifically, as an instrument for securing a livelihood. Within Sharia-compliant commerce, such enterprise is frequently defined as a human endeavor to obtain a means of subsistence through lawful (*halal*) avenues, as textually mandated in Surah al-A'raaf verse 10[15], Surah az-Zukhruf verse 32[16], and Surah al-Lail verse 4.[17]

Premised upon the existence and essence of the aforementioned Sharia principles, the primacy and quality of Sharia business fundamentally lie in its adherence to Sharia tenets, which underscore (*mahallu al-syahid*) divine revelation as a guiding framework. This adherence is designed to enable mankind to achieve the ultimate objective of existence—namely, attaining well-being in both the worldly life and the hereafter (*maslahat al-din wa al-dunya*) inter alia, through commercial avenues.

Theoretically, this perspective aligns with the views of Imam Al-Ghazali, who conceptualized salvation as the ultimate end, while concurrently emphasizing the imperative of fulfilling worldly obligations without undermining spiritual dimensions. Al-Ghazali posited that economic activities conducted with intentions aligned with divine principles are deemed acts of worship. Ultimately, he asserted that economic development constitutes a collective social obligation (*fard al-kifayah*) ordained by Allah; should this obligation remain unfulfilled, worldly order would disintegrate and humanity would perish[18].

Departing from the philosophical paradigms of Imam Al-Ghazali, the essence of commerce in Islam extends beyond the mere pursuit of material gain; rather, it fundamentally serves as a vehicle for achieving a utility-blessing framework grounded in moral and spiritual principles. Commerce is conceived as a trajectory that generates not only economic outcomes but also upholds the values of justice and integrity. In every operational phase, Islamic commerce is enjoined to evaluate its broader impact on both individuals and society at large, eschewing all forms of fraudulent misrepresentation or exploitation, while ensuring that every transaction is executed with profound transparency and bona fide honesty.

Crucially, transcending material acquisition, the quintessence of Islamic commerce compels the pursuit of *barakah* (divine blessing). *Barakah* represents more than worldly success; it denotes divine acceptance and the pleasure of Allah SWT. This constructs a conceptual paradigm wherein the utility derived from commercial undertakings must align with Islamic ethical tenets, thereby ensuring that the outcomes are not merely materially advantageous but also imbued with profound moral value. Consequently, business within the Islamic framework does not merely serve as an instrument for profit maximization, but functions as a spiritual journey that synthesizes economic endeavors with moral aspirations to achieve sustainable blessings and welfare for the individual, society, and the environment holistically.

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The aforementioned functional correlation reflects an indissoluble nexus between ethics and profit in the context of Islamic commerce. This relationship demonstrates that under Islamic jurisprudence, business is not merely a mechanism for material gain, but an obligation to execute the highest ethical standards in every facet. In the view of the author, several points of convergence within this relationship can be constructed as follows:

(a). Justice and Integrity**:** Islamic commerce strictly upholds the principles of justice and integrity as its foundational pillars. Every transaction and corporate decision is perceived as an opportunity to establish an equitable equilibrium between individual profitability and broader societal welfare. This principle guarantees not only that profitability does not prejudice other parties or the public interest, but also ensures that every commercial step is anchored in elevated moral values.

(b). Honesty and Transparency**:** Business ethics in Islam emphasize the paramount importance of honesty and transparency in all dealings. This imposes an affirmative duty to clearly disclose the nature of the products or services offered, reinforcing that fraudulent practices or the exploitation of consumers and business partners are strictly prohibited. Honesty serves as an inviolable baseline for achieving sustainable commercial success.

(c). Divine Blessing (*Barakah*): The concept of *barakah* introduces a profound spiritual dimension to commerce. Profitability is deemed an act of devotion (*ibadah*) when pursued with benevolent intent and in strict compliance with Sharia principles. This divine blessing transcends material prosperity, focusing instead on securing the grace and pleasure of Allah SWT, thereby imparting a deeper normative meaning to all commercial activities.

(d). Community Development**:** Moving beyond the pursuit of utility *an sich* (*per se*), commerce in Islam encompasses a broader objective, namely the cultivation of a just and sustainable community. This incorporates corporate social responsibility to contribute positively to the collective welfare of society.

Ergo, the alignment between robust ethical practices and the attainment of profitability in Islamic commerce is not merely a conceptual possibility, but a mandatory expectation that must be manifested in every operational step and commercial decision taken.

2) The Paradigm of Legal Politics in the Positivization of Islamic Banking in Indonesia

In Indonesia, the national legal system is deeply rooted in the principles of Pancasila and governed by the 1945 Constitution. Its legal implications in application are *erga omnes* (binding upon all) and constitute a *sine qua non* (indispensable prerequisite) condition that reflects the widely accepted values of society. These values are manifested across legislation, jurisprudence, and customary law to ensure the establishment of social order and public tranquility. Similarly, the existence of Islamic banking regulations within the context of legal policy demonstrates that law serves as the primary foundation sustaining the nation's social and economic life. Within the realm of business transactions, such regulations not only formulate the operational rules of engagement for Islamic banking but also shape public trust in the system. By ensuring that the law reflects universally accepted societal values, particularly in

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business contexts, Islamic banking regulations provide the legal certainty necessary to foster growth and business stability within the Islamic economy.

To discern the trajectory (*quo vadis*) and the ultimate objectives (*adressat*) of Islamic banking regulations, a critical aspect that must be examined pertains to the legal policy discourse embedded therein. This is because national legal policy encompasses the formulation and implementation processes of law, which ultimately dictate the character, orientation of development, and enforcement of the law. It serves as the official framework utilized to design and execute laws aimed at achieving the state and national ideals.

Grounded in the aforementioned conceptual framework, the primary endeavor in analyzing Islamic banking regulations is to adopt a historical approach toward its foundational paradigm. The Islamic economy is widely projected as a resilient economic system capable of withstanding global crises. Furthermore, it is envisioned as an alternative solution to global economic challenges. In Islamic doctrine, economics is explicitly addressed and regulated. The entirety of the systems and principles within the Islamic economy aligns with the demographic reality of Indonesia, which, as home to a predominantly Muslim majority and the world's largest Muslim population, plays an instrumental role in the development of the Islamic economy in Indonesia[19].

At the very least, based on the aforementioned expectational and cultural considerations, the government supports the existence of Sharia banking, perceiving it not merely as an innovation within the banking system, but also as an opportunity to compete directly with conventional banking. However, this state of affairs prompts critical philosophical inquiries that warrant academic deliberation: first, what is the conceptual framework that justifies the necessity of state intervention in regulating Sharia banking in Indonesia? Second, what legal paradigm is prescribed for Sharia business operators, alongside its supporting institutional structure? It is imperative to bring these ontological and epistemological queries to the fore.

The initial inquiry is highly essential to unearth the underlying politico-legal paradigm Within this context, to reinforce the theoretical framework, one may invoke the tenets of utilitarianism. Theoretically, utilitarianism posits that the law must be formulated to promote the collective interest of society. The law is expected to safeguard the interests of both individuals and corporate entities, focusing on the realization of legal objectives namely justice, public utility, and legal certainty to comprehensively protect societal welfare. From a philosophical standpoint, utility theory can be elucidated through the conceptual framework of John Stuart Mill, which categorizes utility into two fundamental premises: first, the foundational principle that an action is deemed right if it seeks to maximize the good and avert any implications that lead to harm; second, the inherent desire of all individuals to collectively foster a good life[20].

Functionally, under Mill's utilitarianism, the law aims to generate positive outcomes for the public interest or to avert negative impacts. Generally, utilitarianism serves as the legal foundation for safeguarding societal welfare. Within the context of the legal policy of Islamic Banking, the utilitarian theory functions as an ethical instrumental framework to attain maximum happiness, which must yield concrete legal benefits for society. In this regard, the

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government must bear the responsibility of realizing the principle of utility, given that the state holds the sovereign power to achieve national objectives[21].

The position of the government in this regard, according to Mill[22]: "The only government which can fully satisfy all the exigencies of the social state is one in which the whole people participate; that any participation, even in the smallest public function, is useful; that the participation should everywhere be as great as the general degree of improvement of the community will allow, and that nothing less can be ultimately desirable than the admission of all to share in the sovereign power of the State." Pursuant to the principle of justice advanced by Mill, the role of the government becomes paramount as the state apparatus charged with safeguarding public interest. The government must ensure the proper execution of social functions and foster an actively engaged citizenry, whilst concurrently maintaining social cohesion and unity.

The utility theory within utilitarianism intertwines law and economics, positing that the law must be predicated upon utility. Should a law yield substantial benefits to society, it is deemed favorable within an economic context. This theory adheres to the framework established by J.S. Mill and Jeremy Bentham, which encompasses a threefold reference of utility. First, utility constitutes a policy that engenders specific benefits or usefulness. Second, utility refers to a policy that generates greater benefits relative to alternative policies. Third, utility serves as an objective fundamentally oriented toward the welfare of society[23].

The application of utility theory as a theoretical foundation for state regulation of Islamic banking can be juxtaposed with the theory of *maslahah* (public interest) in Islamic law. *Al-Maslahah* seeks to promote benefits and prevent harms (*jalb al-masalih wa dar' al-mafasid*). Concomitant with this Sharia objective, al-Shatibi established his philosophical framework, positing that the ultimate purpose of the divine law's revelation is to secure the well-being of mankind simultaneously in both this world and the hereafter[24].

Within the framework of *maṣlaḥah* (public interest), it is deemed imperative for the State to provide a comprehensive and unambiguous regulatory framework governing the existence of Islamic banking. Islamic banking is not merely relevant to the Indonesian Muslim populace, but also carries profound implications for the overarching national interest. Consequently, the regulation of Islamic banking is envisioned to achieve the objectives of public welfare for society at large and to catalyze national economic advancement. This aligns with the constitutional mandate enshrined in Article 33 Paragraph (2) of the 1945 Constitution, which explicitly asserts that "sectors of production which are vital to the State and which affect the livelihood of the public shall be controlled by the State".

From the aforementioned theoretical and constitutional perspectives, it is critically important for the State to regulate Islamic banking as an integral component of the financial system that sustains the broader economy and public life. This objective seeks to ensure that strategic national interests and societal necessities are fulfilled in an efficient, sustainable manner, firmly anchored in Sharia principles. As a demonstration of the state's commitment to reinforcing the substantive framework of Islamic banking post-Constitutional Court Decision Number

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93/PUU-X/2012, legal certainty has been consolidated within the structural domain of dispute resolution. Under this paradigm, the Religious Courts possess exclusive and absolute jurisdiction to adjudicate Islamic banking disputes within Indonesia.

Examining both the substantive and procedural legal dimensions of Islamic banking dispute resolution, its positive enactment within the municipal legal order effectively integrates Islamic law into the national legal system. In this process, from a theoretical standpoint, the author posits that this phenomenon can be conceptualized through the lens of a prophetic legal paradigm. Prophetic jurisprudence is predicated upon prophetic values whose primary source emanates from divine revelation. Consequently, within the epistemology of the prophetic legal paradigm, the Qur'an and Hadith serve as the foundational bedrock"[25].

In the epistemological aspect, the prophetic legal paradigm conceptualizes the Quran and Hadith not merely as sources of law (*fontes juris*), but also as moral and ethical frameworks. This paradigm significantly influences how Islamic banking regulations are drafted, implemented, and evaluated. Consequently, this approach emphasizes the imperative of constructing a system that is not only legally compliant but also ethically sound and aligned with the moral principles of Islam. In terms of practical implications, the integration of the prophetic legal paradigm into Islamic banking regulations provides enhanced legal certainty (*rechtzekerheid*) and consistency. This framework effectively minimizes ambiguities or indeterminacies that may arise in legal interpretation, as its foundation is derived from divine revelation, which holds supreme authority in Islam.

Accordingly, the integration and institutionalization of the prophetic legal paradigm within Islamic banking regulations not only reflect a steadfast commitment to religious values but also establish a robust foundation for developing an ethical, equitable, and sustainable financial system. Such a framework governs commercial legal transactions particularly within the banking sector to foster public welfare. In this context, the manifestation of Islamic tenets as a blessing for all creation (*rahmatan lil-ʿalamin*) possesses profound and enduring relevance.

The legal policy of Islamic banking based on the prophetic legal paradigm dictates that the integration of this paradigm into banking regulations extends beyond mere compliance with divine revelations contained in the Quran and Hadith. Rather, it entails the establishment of a just socio-economic order that yields utility for society at large. This paradigm directly aligns with the Islamic doctrine of *rahmatan lil-ʿalamin*. Thus, the prophetic legal paradigm is not only theologically profound but also pragmatically viable in addressing the exigencies of a just and sustainable financial system within an ever-evolving global context.The essence (*ruh*) of the prophetic legal paradigm must be embedded not only within the substantive law but also within the procedural mechanisms of dispute resolution, which are structured through two distinct avenues, non-litigation and litigation[26]. Non-litigation avenues encompass customer complaint mechanisms, banking mediation[27], and the National Sharia Arbitration Board (Basyarnas)[28]. Conversely, the litigation route is pursued through the religious court system[29]. In this regard, two distinct modalities of litigation are available: a simplified procedure initiated via a small claims court[30], and an ordinary lawsuit pursued through standard contentious proceedings[31].

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These dispute resolution pathways, within the context of judicial decisions, must possess executory force, embodying *ethos* (integrity), *pathos* (the primary and paramount juridical considerations), philosophy (anchored in justice and truth), sociology (aligned with the prevailing cultural values within society), and *logos* (conforming to sound reason), to ensure the independence of the judicial authorities, particularly the Religious Courts in resolving Islamic banking disputes. The necessity of these judicial attributes aligns with the ontological existence of judges as the vicegerents of God. This is explicitly ordained by Allah SWT in Surah An-Nisa, verse 58, "*Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing".*

By virtue of the aforementioned judicial status, the phrase *"For the Sake of Justice Based on the Belief in the One and Only God"* is enshrined within the caption (heading) of the judicial decision. In substance, from the perspective of Bisma Siregar, this formulation constitutes a judge's oath in adjudicating a case[32], establishing a direct vertical accountability to God. Consequently, in adjudicating a dispute, a judge shall render an ultra-equitable judgment in strict adherence to the judicial oath of office.

3) The Implementation of Sharia Business Dispute Resolution across Religious Courts in Lombok Island

In exercising the judicial function, judges of the Religious Courts must fully recognize that their primary duty is to uphold the law and achieve justice. Every judgment rendered to conclude and resolve a case must carefully consider three essential elements that constitute the core objectives of the law. These objectives must be integrally reflected in the judicial decision: namely, justice in relation to moral norms (*gerechtigkeit*), utility in relation to social norms (*zweckmäßigkeit*), and legal certainty in relation to positive legal norms (*rechtssicherheit*).

These three elements must be professionally balanced, notwithstanding the operational challenges in practical application. Judges must exert their best efforts to ensure that every decision mirrors these principles. Judicial decisions must not engender public unrest or societal disorder, particularly among justice seekers. Upon evaluating a case, the judge is legally required to draft a well-founded and proper judgment. Such judgment must be pronounced in a session open to the public to definitively conclude the dispute under review. The judicial judgment is formulated only after the examination phase is concluded and the litigating parties have rested their arguments. A judgment constitutes the formal conclusion reached by a judge after deliberate and mature consideration. Sudikno Mertokusumo defines a judgment as a formal declaration pronounced by a judge in their capacity as a duly authorized state official in a public court session, intended to resolve or adjudicate a dispute between the litigating parties[33]. Every judgment rendered by the Religious Court must be drafted in writing and signed by the Presiding Judge and the Panel Judges who examined the case, in accordance with the Panel Appointment Decree issued by the Chief Judge of the Religious Court. The judgment must also be signed by the Substitute Registrar who attended the proceedings pursuant to the Registrar's Appointment Decree[34]. Accordingly, the judgment pronounced in open court must correspond precisely to the written judgment, and the written judgment must faithfully reflect

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what has been orally delivered during the court proceedings. In civil proceedings, judges are under a legal obligation to adjudicate every claim set forth in the statement of claim[35]. They are prohibited from granting relief beyond what has been requested (*ultra petita*), except where such authority is expressly conferred by statutory provisions through the judge's *ex officio* powers.

In formulating a judgment, judges are required to observe three fundamental stages of judicial reasoning: *constatering* (ascertaining the facts), *kwalificeren* (legal qualification), and *constitueren* (legal determination)[36]. The first stage, *constatering*, requires the judge to establish whether the factual circumstances alleged by the parties have actually occurred. This determination necessarily depends upon the evaluation of admissible evidence recognized under the applicable rules of evidence. At this stage, judicial reasoning is predominantly logical in nature, thereby making a comprehensive mastery of evidentiary law indispensable for judges.

The second stage, namely *kwalificeren*, requires the judge to classify the proven facts into the appropriate legal relationship and to identify the governing legal norms applicable to those facts. Where both the factual circumstances and the governing legal provisions are clear and unequivocal, the application of the law is relatively straightforward. However, where statutory provisions are ambiguous, incomplete, or silent, judges are not merely expected to discover the applicable law but are also entrusted with the responsibility of developing the law, provided that such judicial development remains consistent with the overall structure and coherence of the national legal system[36].

The final stage, *constitueren*, consists of determining the legal consequences arising from the established facts and delivering justice to the parties in dispute. Through this stage, judicial reasoning culminates in a legally binding decision that embodies legal certainty, justice, and utility within the framework of the applicable legal order[37].

While the procedural stages of judicial decision-making may be explained through the *de heuristic* and *de legitimatic* approaches, the more fundamental aspect underlying those procedural mechanisms concerns the legal paradigm embraced by the judge. In the adjudication of Islamic banking disputes, this paradigm functions as a critical indicator of judicial commitment to upholding Sharia principles throughout the decision-making process.

The *de heuristic* and *de legitimatic* approaches outlined above provide an appropriate methodological foundation for judges serving in the Religious Courts throughout Lombok Island to produce judgments that are not only procedurally sound but also substantively consistent with Sharia principles and local wisdom. Judges are therefore required to harmonize positive law with the substantive values of Islamic justice, thereby ensuring that judicial decisions reflect a balanced integration of statutory law and the spiritual values underpinning the Sharia legal system. To establish the foregoing, evidentiary proof is indispensable. Accordingly, judges must base their findings exclusively on legally admissible evidence. At this fact-finding (constatering) stage, judicial reasoning is fundamentally logical in nature, thereby rendering a comprehensive mastery of the law of evidence indispensable for judges[38].

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The subsequent stage is the qualification stage, during which the judge determines the legal characterization of the concrete facts that have been established as having actually occurred, including identifying the nature of the legal relationship involved or otherwise ascertaining the applicable law governing those facts. Where the facts have been sufficiently proven and the relevant legal provisions are clear and unambiguous, the application of the law presents little difficulty. However, where the applicable legal rules are vague, incomplete, or ambiguous, the judge is required not merely to discover the applicable law but also to develop the law, provided that such judicial law-making remains consistent with the overarching framework and coherence of the statutory legal system[39]. The final stage is the **constitutive** stage, in which the judge renders a legally binding determination by applying the law to the established facts and delivering justice to the parties to the dispute.

The procedural stages for formulating and constructing the rationality of judicial decisions, which may be undertaken through the *de heuristic* and *de legitimatik* approaches, underscore an equally significant substantive aspect underlying such procedures, namely the legal paradigm embraced by the adjudicator. Within the context of resolving Islamic banking disputes, this element serves, at the very least, as a benchmark for assessing the judge's commitment to upholding the fundamental principles of Sharia law.

The *de heuristic* and *de legitimatik* stages outlined above may provide a normative and methodological foundation for judges serving in the Religious Courts throughout Lombok Island to deliver judgments that are not only procedurally sound but also consistent with the principles of Sharia and the values of local wisdom. Judges are therefore required to harmonize the application of positive law with the demands of Sharia justice, thereby producing decisions that reflect a coherent integration of statutory norms and the spiritual values embodied in Islamic law.

In 2024, the Religious Courts across Lombok Island adjudicated only a limited number of Islamic economic disputes. Among the five Religious Courts operating on the island, only the Mataram Religious Court handled Islamic economic cases, recording a total of three cases. Meanwhile, the Religious Courts of Selong (East Lombok), Praya (Central Lombok), and Giri Menang (West Lombok) did not adjudicate any Islamic economic disputes during the same period[40].

These data indicate that, notwithstanding the presence of the Islamic economic system within the region, only a relatively small number of disputes have been brought before the courts, with the concentration of cases being limited to the Mataram Religious Court. This phenomenon warrants further scholarly inquiry into the factors contributing to the low number of cases reaching judicial adjudication, as well as the challenges encountered throughout the dispute resolution process.

A judge of the Mataram Religious Court explained, “The parties involved in the evidentiary process include the plaintiff, the defendant, witnesses, and expert witnesses. The plaintiff bears the burden of proving the asserted claims, while the defendant is entitled to submit evidence in support of the defence. Witnesses provide testimony concerning relevant factual circumstances,

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whereas expert witnesses may offer technical or specialized opinions regarding Sharia principles or other legal aspects. In practice, differences in interpretation frequently arise with respect to the construction of contractual provisions and the applicable Sharia principles. At times, divergent understandings of the meaning and scope of Sharia norms or contractual stipulations may influence the legal characterization of particular events and, consequently, the manner in which such disputes are adjudicated"[41].

"Furthermore, a primary impediment in adjudicating Islamic economic or banking disputes lies in the divergent interpretations of Sharia principles. This challenge is compounded by an uneven understanding of Islamic banking doctrines among the stakeholders involved. Moreover, the rapid evolution of technology and the escalating complexity of Sharia-compliant financial products demand a more profound proficiency from the judiciary. In navigating these advancements, a meticulous approach to statutory interpretation is imperative to balance classical Islamic legal texts with the contemporary demands of modern banking.

Consequently, a framework rooted in *maqasid al-shariah* the ultimate objectives of Sharia, which fundamentally center on public welfare (*maslahah*) must be adopted. In contemporary cases, this framework aligns directly with the tenets of ethical Islamic finance[42]. Following the enactment of Supreme Court Regulation No. 2 of 2015 concerning Procedures for Small Claims Lawsuits, the Selong Religious Court adjudicated a total of nine Islamic economic dispute cases between 2017 and 2023, two of which were resolved through small claims procedures[43].

To determine whether an Islamic economic dispute is justiciable under the small claims court system at the Selong Religious Court, the preliminary step is to examine whether the case falls within the ambit of a small claims action. This encompasses either a breach of contract (*cidera janji*) or a tortious act with a maximum material claim value of Rp 500,000,000. Actions seeking immaterial damages are strictly precluded from this procedure. Furthermore, it must be ensured that the case does not constitute a civil dispute falling under the jurisdiction of a specialized court such as labor disputes nor does it involve land rights disputes. Ultimately, it must be verified that the dispute arises from Islamic economic activities and adheres to Sharia principles in its operations[44]. However, the primary challenge resides within the cultural dimension, wherein the public understanding of Islamic banking disputes remains conspicuously limited. A persistent societal perception endures that the Religious Courts function exclusively as judicial institutions vested with jurisdiction over matrimonial and hereditary matters[45].

In rendering judgments, the judiciary is enjoined to deliver rulings that manifest a sense of justice, notwithstanding the inherently subjective nature of justice, the baseline and principles of which remain contingent upon individual interpretation. The true essence of justice dictates the attribution of matters to their proper locus and the dispensation of due entitlements, predicated upon the foundational maxim that all individuals stand equal before the law (*equality before the law*)[46]. At the Giri Menang Religious Court, the cessation of dual competence in adjudicating Islamic economic disputes has elicited diverse responses from the judiciary. Concurrently, this newfound jurisdiction vested in the Religious Courts is perceived

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as a formidable challenge. This stems from prevailing societal assumptions regarding the catalysts of such disputes, compounded by public skepticism toward the professional competence of Religious Court judges in handling sophisticated Islamic economic litigations. Nonetheless, the expansion of this jurisdiction is widely regarded as a strategic legal-policy maneuver designed to bolster the broader Islamic economic movement in Indonesia[47]. By way of preparatory measures, concerted efforts were undertaken to enhance the quality of human resources[48].

An institutional structural enhancement is imperative; from a cultural standpoint, public confidence in this institution is heavily contingent upon the societal relevance of the applied law and the alignment of judicial decisions with religious doctrines. When the public perceives that adjudications not only satisfy legal justice but also harmonize with religious principles, their propensity to trust both the judiciary and the Islamic banking system increases. Nonetheless, a significant impediment persists, namely the disparate understanding of Islamic banking principles among relevant stakeholders[49].

Based on the empirical data regarding the implementation of Islamic economic or Sharia banking dispute resolution within religious courts post-enactment of Supreme Court Regulation No. 2 of 2015, as delineated above, and analyzed through the lens of Hans Kelsen's theory of legal effectiveness, this research focuses on several pivotal dimensions: legal validity, the effectiveness of legal norms, and implementation challenges. The analysis is structured as follows:

1. Legal Validity and Legal Effectiveness

According to Kelsen, legal validity pertains to the binding nature of legal norms that command societal adherence. Within this context, Perma No. 2 of 2015 establishes binding legal norms governing the procedural framework for Islamic economic dispute resolution, specifically through small claims lawsuits within Religious Courts. While this norm possesses formal validity, its ultimate effectiveness hinges upon whether it is accurately applied and adhered to by the public and the litigating parties. However, a persistent challenge arises from the public's limited comprehension regarding the jurisdiction of Religious Courts in adjudicating Islamic economic disputes. This lacuna underscores the divergence between legal validity (the de jure existence of the regulation) and legal effectiveness (its de facto implementation). Consequently, while the statutory instrument is inherently valid, its effectiveness remains contested as it has not been fully internalized or observed by the wider community.

2. Effectiveness and Legal Justice

Kelsen posits that law must be effective in operationalizing its core objectives, namely the realization of legal certainty (*rechtszekerheid*) and justice. In the Selong and Giri Menang Religious Courts, the application of the newly instituted small claims mechanisms in Sharia economic disputes demonstrates a structural effort to uphold legal certainty through the judicial system. Nonetheless, cultural impediments and a deficit in the comprehension of Sharia banking tenets severely obstruct the law's efficacy.

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Legal certainty demands that legal norms be precise and intelligible to the public. If the populace continues to perceive Religious Courts solely as forums for matrimonial and inheritance law, the regulations pertaining to Islamic commercial disputes cannot function effectively. To enhance efficacy, robust legal socialization as conceptualized by Kelsen is imperative to realign public perception with the expanded contemporary jurisdiction of the Religious Courts in resolving Islamic economic disputes.

3. Human Resources Capacity Building

Legal effectiveness is inextricably linked to the existence of sanctions that compel compliance with legal norms. In this regard, although Perma No. 2 of 2015 codifies explicit procedural rules and sanctions, the efficacy of its enforcement is heavily contingent upon the professional competence of the presiding judges. Within the Giri Menang Religious Court, institutional capacity building, particularly targeting judicial personnel, serves as a strategic measure to amplify legal effectiveness. Conversely, public apprehension persists regarding judicial competence in managing intricate Sharia commercial disputes. Absent continuous professional development, public trust will erode, thereby diminishing compliance with the prescribed legal norms.

Furthermore, optimizing the utilization of legal interpretation instruments is paramount. As articulated by Asikin, methods of legal interpretation are indispensable tools for judges in the process of legal discovery (*rechtsvinding*). Legal interpretation not only facilitates a granular understanding of prevailing societal norms but also serves to verify and ensure the precise application of Sharia principles in every judicial adjudication[50]. It is within this compelling interest that one approach to fulfill the manifestation of prophetic jurisprudence in delivering equitable judgments is through the deployment of a hermeneutic approach. To capture the latent messages embedded within both legal texts and factual occurrences, hermeneutics must be actively utilized and positioned as a theory, a philosophy, and a critique.

This hermeneutic positioning is indispensable for judges in executing their duty to unveil the enigmas underlying texts and events. Consequently, the preservation of judicial discretion is paramount, serving as the necessary operational space for judges to engage in deep exploration transcending literal texts and factual boundaries to retrieve hidden justice[51]. In addition to hermeneutics, the theory of *al-mashlahah* (public interest) may be employed, which can be perceived as a representation of the dynamic nature of Islamic jurisprudence. All *mujtahids* (independent jurists) utilize *al-mashlahah* as a foundational basis in *istinbat al-ahkam* (legal deduction). M. Ibn Ahmad Taqiyah asserts that there is a consensus among jurists that through *al-mashlahah*, Islamic Sharia is capable of addressing multifaceted challenges and adapting to the evolving developments across time[52]. By strengthening the comprehension and application of hermeneutic interpretation theory and the theory of *al-maslahah* (public interest), judges can perceive and apply Sharia principles in a profound and contextual manner; safeguard justice and welfare for all parties involved; and bolster public trust in Islamic banking. This approach demonstrates that Sharia law can be adjudicated equitably and relevantly within a modern context, thereby reinforcing the existence of prophetic law rooted in Islamic moral and spiritual values. This serves as a vital instrument for judicial rationality in constructing the *ratio*

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decidendi (the reason for the decision) as an essential element within the substantive anatomy of a judgment. In this context, it is pertinent to invoke René Descartes' aphorism, *"Cogito, Ergo Sum"* [I think, therefore I am]. Transposed to the judiciary, a judge's existence (*dasein*) is manifested through their judgment; in other words, a judge is only deemed to "exist" if their adjudication engenders legal certainty, utility, and justice for seekers of justice. The application of both legal interpretations in reinforcing the paradigm of prophetic law is paramount for Religious Court judges on Lombok Island, West Nusa Tenggara, to implement in the resolution of Islamic banking disputes. This aims to generate a contextual and profound interpretation as well as the application of *maslahah* in their decisions. Through this approach, it is anticipated that the existence of prophetic law will be strengthened, thereby enhancing the trust of the Lombok society in the Islamic banking system and the religious judicial institutions on Lombok Island. Furthermore, it enables these institutions to navigate emerging challenges without abandoning the fundamental principles of Islam.

4. Legal Communication and Public Trust

Kelsen underscores the significance of effective legal communication to ensure that legal norms can be comprehended and observed by society. Here, the text indicates that the success of Sharia economic law within the Religious Courts hinges strictly upon how said law is communicated to the public. If the principles of Islamic banking and the relevance of law to daily life are not communicated effectively, the public will withdraw its trust from the existing legal system. This lack of comprehension may induce frustration, conflict, and ultimately diminish the efficacy of the law.

5. Cultural Challenges and Legal Efficacy

Cultural aspects present a significant impediment to the implementation of Sharia economic law. The public tends to be skeptical toward the newly expanded role of the Religious Courts due to the presumption that these institutions solely adjudicate domestic relations and inheritance matters. This creates a barrier to legal efficacy because, as Kelsen posits, law achieves efficacy only if the norm is genuinely observed by society. This condition reflects a hiatus (gap) between the objective of the law (achieving certainty and justice in the Sharia economy) and the expected outcomes (societal compliance with new norms). Absent cultural understanding and acceptance, legal norms are difficult to enforce effectively.

In this critical analysis, it can be concluded that the post-Supreme Court Regulation No. 2 of 2015 dispute resolution mechanism for Islamic Banking in the Religious Courts across Lombok Island still encounters substantial challenges regarding legal efficacy. Although the legal regulation is valid and binding, its efficacy in achieving the objectives of the law namely legal certainty and justice in Islamic economic dispute resolution remains constrained by a deficit in public understanding, judicial competence, and cultural factors. To enhance efficacy, superior legal communication, public education concerning the expanded jurisdiction of Religious Courts in Sharia economic disputes, and human resources capacity building are imperative. Consequently, an all encompassing, holistic approach is required to surmount the challenges in law enforcement and to elevate public trust.

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CONCLUSION

The essence of business in Islam extends beyond the pursuit of material utility to encompass the attainment of divine blessing (*barakah*), predicated upon moral and spiritual principles as manifested in the principle of coherence between utility and blessing (the utility-blessing paradigm); The legal policy of Islamic banking is anchored in the prophetic legal paradigm. The integration of this prophetic legal paradigm into Islamic banking regulation entails not merely compliance with divine revelation as enshrined in the Qur'an and Hadith, but also involves the formulation of a just socio-economic order that yields welfare for the public at large; and The adjudication of Islamic banking disputes within the Religious Courts across Lombok Island has not attained optimal efficacy, owing to institutional quality constraints and limited public awareness heavily influenced by socio-cultural factors.

Recommendations: Legal scholars and practitioners (*juris*) must continuously cultivate and disseminate their knowledge regarding the essence of Sharia business to ensure uniformity in the interpretation and application of Sharia principles in dispute resolution, thereby consistently upholding the administration of justice; In order to fortify Islamic banking regulations and policies, it is imperative to conduct a profound policy revision concerning the enforcement of prophetic legal principles. This necessitates the drafting of more detailed and comprehensive frameworks that explicitly delineate how prophetic legal tenets are implemented across all facets of Islamic banking regulation; and Public education regarding the jurisdiction of Religious Courts in Islamic economics, the enhancement of judicial competence through specialized training in Sharia principles, and the amelioration of judicial infrastructure must be prioritized. Furthermore, active collaboration among judicial institutions, banking authorities, and Sharia experts must be fostered to establish a cohesive and consistent legal framework.

Footnote

1) Maroni, *Problem Penggantian-Penggantain Hukum Kolonial Dengan Hukum Nasional Sebagai Politik Hukum,* Jurnal Dinamika Hukum, Vol. 12, no. 1, (2012), p. 92

2) Adi Ahdiat, *Islamic Financing in Indonesia Increased Throughout 2022. Based on data from the Indonesian Financial Services Authority (Otoritas Jasa Keuangan/OJK), the total value of financing under all contract schemes provided by Islamic commercial banks and Islamic business units in Indonesia reached IDR 470 trillion in August 2022, representing a year-on-year (YoY) increase of 18.51%.* Available at: https://databoks.katadata.co.id/datapublish/2023/01/10/pembiayaan-syariah-di-indonesia-meningkat-sepanjang-2022. Accessed on December 7, 2023.

3) Global Islamic financial assets reached US$3.96 trillion in 2021, representing a 16.76% increase from US$3.39 trillion in the previous year. This growth indicates that the global Islamic finance industry has continued to demonstrate strong resilience alongside the recovery of the global economy. See: *Indonesia Islamic Finance Development Report 2022: Empowering the Islamic Economic Ecosystem and Digitalization to Strengthen Islamic Finance in Supporting National Economic Resilience*, Islamic Banking Department, Indonesian Financial Services Authority (Otoritas Jasa Keuangan/OJK), Jakarta, p. 14.

4) Ibid., p. 17.

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5) (1) Qur'an, Surah An-Nisā' (4):29, which states: *"O you who have believed, do not consume one another's wealth unjustly (through falsehood or unlawful means)."* (2) Qur'an, Surah Al-Baqarah (2):275, which states: *"Those who consume usury (riba) will not stand on the Day of Resurrection except as one stands who has been driven to madness by the touch of Satan. That is because they say, 'Trade is just like usury,' whereas Allah has permitted trade and forbidden usury".* (3) Qur'an, Surah Āl 'Imrān (3):130, which states: *"O you who have believed, do not consume usury, doubled and multiplied, and fear Allah so that you may be successful".*

6) The hadith narrated by **Muslim** on the authority of Jabir ibn Abd Allah states: *The Messenger of Allah cursed the one who consumes usury (riba), the one who pays it, the one who records the transaction, and its two witnesses." He then said, "They are all equal (in sin).* Furthermore, Abdullah ibn Mas'ud reported that the Prophet Muhammad (peace be upon him) said: "*Riba has seventy-three categories (or gateways), and the least severe of them is equivalent to a man having sexual intercourse with his own mother".* (Narrated by Ibn Majah and Al-Hakim.)

7) Destiya Wati, Suyud Arif, & Abristadevi , *Analisis Penerapan Prinsip-Prinsip Etika Bisnis Islam Dalam Transaksi Jual Beli Online Di Humaira Shop*, Jurnal Kajian Ekonomi & Bisnis Islam (Elmal), Volume 5 (1) 2022, p. 141

8) Zaidah Nur Rosiidah, dkk, *Aspek Keadilan Penyelesaian Sengketa Ekonomi Syariah Melalui Pengadilan Agama*, *Laporan Penelitian* , LPPM IAIN Surakarta, Surakarta, 2016, p. 67

9) http://kinsatker.badilag.net/JenisPerkara/perkara_persatker/370/2022. Accessed on December 7, 2023.

10) Zaidah Nur Rosidah, dkk, Aspek Keadilan….,*Op,cit,*p. 70

11) Rachmadi Usman, *Aspek Hukum Perbankan Syariah Di Indonesia,* Sinar Grafika, Jakarta,2014, p.107

12) Maulana Muhammad Ali, *Islamologi (Dinul'l Islam),* Da'rul Kutubil Islamiyah dan Ichtiar Baru Vanhoeve, 1977, Jakarta, p. 8.

13) Ethics is regarded as synonymous with morality, as it examines the distinction between good and bad human conduct. In the Islamic context, the principles of business and their conformity with Islamic business ethics include the principles of philanthropy, altruism, common sense, good profit, and *barakah* cost. The practical implementation of these principles may be reflected in prioritizing product and service quality, maintaining discipline, demonstrating honesty and responsibility, ensuring fairness without discrimination, and upholding other ethical business practices. See: Angga Gumilar, *Etika Bisnis Dalam Nilai-Nilai Islam'*, Jurnal Ilmiah Administrasi Bisnis, 1.Vol 1 No 2 (2017): 2017-Februari (2017), p. 126

14) R. Lukman Fauroni, *Etika Bisnis Dalam Al-Qur'an*, Pustaka Pesantren, Yogyakarta, 2006, p.78.

15) Qur'an, Surah Al-A'raf (7:10), states: "Indeed, We have established you upon the earth and provided for you therein means of livelihood. Yet little are you grateful".

16) Qur'an, Surah Az-Zukhruf (43:32) states, "*"Is it they who distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this world, and We have raised some of them above others in rank so that some may employ others in service. But the mercy of your Lord is better than whatever wealth they accumulate.*

17) Qur'an, Surah Az-Zukhruf (43:32) **states, "***Is it they who distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this world, and We have raised some of them above others in rank so that some may employ others in service. But the mercy of your Lord is better than whatever wealth they accumulate".*

18) *Ibid*, p. 319

19) Muhammad Syafi'i Antonio, *Islamic Banking Bank Syariah Dari Teori ke Praktik*, Gema Insani, Jakarta, 2001, p. 227.

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20) John Stuart Mill, *The Collected Work Of John Stuart Mill,,* University of Toronto Press, Toronto,1991, p. 230

21) According to Wahiduddin Adams (Justice of the Constitutional Court), this provision explicitly embodies the ideals and objectives of the Indonesian state. As an independent nation, Indonesia is obligated to establish and organize a system of government. The fundamental objectives of that government are to protect all Indonesian people and the entire territory of Indonesia; promote public welfare; advance the intellectual development of the nation; and contribute to the establishment of a world order founded upon independence, lasting peace, and social justice. As he explains, *"In short, regardless of who governs or what governmental programs are pursued, constitutional ideals must serve as the guiding principles in formulating those programs. Therefore, the objectives of the state, or constitutional ideals, constitute the essential element of continuity in governance."* See: Constitutional Court of the Republic of Indonesia (accessed on 17 July 2024, 10:37 p.m. WIB).

22) Mill, *The Collected Work…Op.,Cit,* p.256

23) J.S. Mill and Jeremy Bentham, *Utilitarism and Other Essays,* Penguin Book Ltd, London,2004, p.5

24) Abi Ishaq Ibrahim al-Syathibi, *al-Muwafaqat fi Ushul al-Syari'ah*, Juz II, Dâr Kutub al-Ilmiyah, Beirut, t.t., p. 5-8

25) M. Syamsuddin (ed.), *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan dan Kemungkinan Pengembangannya di Era Postmodern* Pusat Studi Hukum FH UIIFH UII Press, Yogyakarta, 2013

26) Indonesia, Bank Indonesia Regulation (PBI) No. 7/7/PBI/2005 concerning Customer Complaint Resolution, art. 1, para. 4.

27) Indonesia, Bank Indonesia Regulation (PBI) No. 8/5/PBI/2006 concerning Banking Mediation, art. 1, para. 5, as amended by Bank Indonesia Regulation (PBI) No. 10/1/PBI/2008 concerning the Amendment to Bank Indonesia Regulation No. 8/5/PBI/2006 concerning Banking Mediation.

28) Indonesia, Law No. 21 of 2008 concerning Islamic Banking, art. 55(1); Regulation of the National Sharia Arbitration Board - Indonesian Ulema Council (BASYARNAS-MUI) No. PER-01/BASYARNAS-MUI/XI/2021 concerning the Procedures for Islamic Economic Dispute Resolution in the National Sharia Arbitration Board - Indonesian Ulema Council (BASYARNAS-MUI).

29) Indonesia, Law No. 3 of 2006, art. 49.

30) Indonesia, Supreme Court Regulation (PERMA) No. 4 of 2019 concerning the Amendment to Supreme Court Regulation No. 2 of 2015 concerning the Procedures for Small Claims Lawsuits. *Under this provision, the category of Islamic economic cases adjudicated through small claims procedures is limited to a maximum claim value of IDR 500,000,000 (five hundred million rupiahs), whereas claims exceeding IDR 500,000,000 (five hundred million rupiahs) are classified as ordinary lawsuits.*

31) Indonesia, Supreme Court Regulation (PERMA) No. 14 of 2016 concerning the Procedures for Islamic Economic Dispute Resolution.

32) Syarif Mappiase, *Logika Hukum Pertimbangan Putusan Hakim*, cet. 2, (Jakarta: Kencana, 2017), p. 4

33) Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama*, cet. 8, (Jakarta: Kencana, 2016), p. 306

34) Indonesia, Law No. 48 of 2009 concerning Judicial Power, art. 50, para. 2, and Law No. 7 of 1989 concerning Religious Judicature, art. 62, para. 2. *See also*: M. Yahya Harahap, *Kedudukan, Kewenangan dan Acara Peradilan Agama* [The Position, Authority, and Procedural Law of Religious Courts], 5th ed. (Jakarta: Sinar Grafika, 2009), p. 323.

35) Indonesia, Herzien Inlandsch Reglement (HIR), art. 178, para. 2 / Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madoera (R.Bg), art. 189, para. 2.

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36) Indonesia, Herzien Inlandsch Reglement (HIR), art. 178, para. 3 / Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madoera (R.Bg), art. 189, para. 3.

37) Indonesia, Law No. 1 of 1974 [concerning Marriage], art. 41(c) *jo.* Government Regulation No. 9 of 1975, art. 24, para. 2, and Compilation of Islamic Law (KHI), art. 149.

38) Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perpsektif Hukum Progresif*, cet. 4, Sinar Grafika, Jakarta, 2018, hlm. 54-57

39) *Ibid,* hlm. 54

40) https://kinsatker.badilag.net/Dash_page_perkaraditerima/perkara_persatker_detail/307885, di akses pada tanggal 27 Juli 2024, pkl. 23:21 wib

41) Interview with Judge Muniroh Chamim (Judge at the Mataram Religious Court), August 25, 2024, at 10:15 AM WITA.

42) *Ibid.*

43) Case No. 1/Pdt.G.S/2023/PA.Sel, registered on January 13, 2023, regarding a Sharia joint venture (*Musyarakah*) dispute; Case No. 724/Pdt.G/2022/PA.Sel, registered on June 14, 2022, concerning Islamic banking; Case No. 1/Pdt.G.S/2020/PA.Sel, registered on August 6, 2020, concerning Islamic banking; Case No. 2/Pdt.G.S/2020/PA.Sel, registered on the same date, also concerning Islamic banking; Case No. 2/Pdt.G.S/2019/PA.Sel, registered on December 20, 2019, concerning Islamic banking; Case No. 1/Pdt.G.S/2019/PA.Sel, registered on July 4, 2019, concerning a financing agreement (*Murabahah*); Case No. 1048/Pdt.G/2018/PA.Sel, registered on October 11, 2018, concerning Islamic banking; Case No. 1100/Pdt.G/2017/PA.Sel, registered on October 26, 2017, also concerning Islamic banking; and Case No. 765/Pdt.G/2017/PA.Sel, registered on August 8, 2017, concerning Islamic banking. *See*: https://sipp.pa-selong.go.id, accessed on August 26, 2024, at 9:35 PM WITA.

44) Interview with Fatkun Qorib, S.Sy., Judge at the Selong Religious Court (PA Selong), February 3, 2023.

45) Interview by Salsabila I.F. with Fatkun Qorib, S.Sy., Judge at the Selong Religious Court (PA Selong), February 3, 2023.

46) Interview by Salsabila I.F. with Drs. H. Moh Nasri BA., M.H., Judge at the Selong Religious Court, who adjudicated Case No. 1/Pdt.G.S/2023/PA.Sel.

47) Based on the questionnaire results compiled by Naili Rahmawati regarding judicial readiness in Islamic Economic Dispute Resolution Post-Enactment of Supreme Court Regulation (PERMA) No. 14 of 2016 at the Giri Menang Religious Court, West Lombok, the data indicates the following: First, regarding the jurisdiction over Islamic economic cases, the majority of respondents concurred with this authority, with 11 agreeing, 0 disagreeing, and 1 remaining neutral. Second, most respondents perceived that the resolution of dual-competence issues in handling economic cases strengthens the institutional existence of the Religious Judicature's competence, with 12 responding "yes" and none responding "no" or “undecided”. Third, this new jurisdiction of the Religious Judicature is deemed a challenge for judges by 10 respondents, while 2 considered it not a challenge, and none viewed it as a burden. Fourth, concerning public assumptions regarding either catalysts or skepticism toward the competence of Religious Court judges in handling Islamic economic cases, 10 respondents viewed it as a challenge, 0 considered it not a challenge, and 2 remained neutral. Lastly, the jurisdiction over the Islamic economy is deemed a legal-policy step that supports the Sharia economic movement in Indonesia by 11 respondents, while 0 disagreed and 1 was undecided.

48) To enhance the quality of human resources, several initiatives have been undertaken, including Islamic economics education and training. These encompass the Sharia Economic Judge Certification provided by the Supreme Court of the Republic of Indonesia, the Sharia Economic Judge Training (Diklat Hakim Ekonomi Syariah - DHES) organized in collaboration with the Imam Muhammad ibn Saud Islamic University, and Continuing Judges Education (CJE). Additionally, judges are afforded opportunities to pursue higher academic degrees. Data indicates that among the twelve judges at the Giri Menang Religious

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Court, seven have completed their Master's degrees (S2), one is currently pursuing a Master of Islamic Law, and four hold Bachelor's degrees (S1).

49) *Ibid.*,

50) Asikin dalam, dalam Amran suadi, *Penyelesaian Ekonomi Syariah, Teori Dan Praktik,* Cet Ke-1, kencana, Jakarta, 2017, hlm. 263

51) Ibid,hlm. 261

52) *Ibid,* hlm. 265

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1) Maroni, *Problem Penggantian-Penggantain Hukum Kolonial Dengan Hukum Nasional Sebagai Politik Hukum,* Jurnal Dinamika Hukum, Vol. 12, no. 1, (2012), p. 92

2) Adi Ahdiat, *Islamic Financing in Indonesia Increased Throughout 2022. Based on data from the Indonesian Financial Services Authority (Otoritas Jasa Keuangan/OJK), the total value of financing under all contract schemes provided by Islamic commercial banks and Islamic business units in Indonesia reached IDR 470 trillion in August 2022, representing a year-on-year (YoY) increase of 18.51%.* Available at: https://databoks.katadata.co.id/datapublish/2023/01/10/pembiayaan-syariah-di-indonesia-meningkat-sepanjang-2022. Accessed on December 7, 2023.

3) Global Islamic financial assets reached US$3.96 trillion in 2021, representing a 16.76% increase from US$3.39 trillion in the previous year. This growth indicates that the global Islamic finance industry has continued to demonstrate strong resilience alongside the recovery of the global economy. See: *Indonesia Islamic Finance Development Report 2022: Empowering the Islamic Economic Ecosystem and Digitalization to Strengthen Islamic Finance in Supporting National Economic Resilience*, Islamic Banking Department, Indonesian Financial Services Authority (Otoritas Jasa Keuangan/OJK), Jakarta, p. 14.

4) Destiya Wati, Suyud Arif, & Abristadevi , *Analisis Penerapan Prinsip-Prinsip Etika Bisnis Islam Dalam Transaksi Jual Beli Online Di Humaira Shop*, Jurnal Kajian Ekonomi & Bisnis Islam (Elmal), Volume 5 (1) 2022, p. 141

5) Zaidah Nur Rosiidah, dkk, *Aspek Keadilan Penyelesaian Sengketa Ekonomi Syariah Melalui Pengadilan Agama*, *Laporan Penelitian* , LPPM IAIN Surakarta, Surakarta, 2016, p. 67

6) http://kinsatker.badilag.net/JenisPerkara/perkara_persatker/370/2022. Accessed on December 7, 2023.

7) Rachmadi Usman, *Aspek Hukum Perbankan Syariah Di Indonesia,* Sinar Grafika, Jakarta,2014, p.107

8) Maulana Muhammad Ali, *Islamologi (Dinul'l Islam),* Da'rul Kutubil Islamiyah dan Ichtiar Baru Vanhoeve, 1977, Jakarta, p. 8.

9) Ethics is regarded as synonymous with morality, as it examines the distinction between good and bad human conduct. In the Islamic context, the principles of business and their conformity with Islamic business ethics include the principles of philanthropy, altruism, common sense, good profit, and *barakah* cost. The practical implementation of these principles may be reflected in prioritizing product and service quality, maintaining discipline, demonstrating honesty and responsibility, ensuring fairness without discrimination, and upholding other ethical business practices. See: Angga Gumilar, *Etika Bisnis Dalam Nilai-Nilai Islam'*, Jurnal Ilmiah Administrasi Bisnis, 1.Vol 1 No 2 (2017): 2017-Februari (2017), p. 126

10) R. Lukman Fauroni, *Etika Bisnis Dalam Al-Qur'an*, Pustaka Pesantren, Yogyakarta, 2006, p.78.

11) Muhammad Syafi'i Antonio, *Islamic Banking Bank Syariah Dari Teori ke Praktik*, Gema Insani, Jakarta, 2001, p. 227.

12) John Stuart Mill, *The Collected Work Of John Stuart Mill,,* University of Toronto Press, Toronto,1991, p. 230

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13) According to Wahiduddin Adams (Justice of the Constitutional Court), this provision explicitly embodies the ideals and objectives of the Indonesian state. As an independent nation, Indonesia is obligated to establish and organize a system of government. The fundamental objectives of that government are to protect all Indonesian people and the entire territory of Indonesia; promote public welfare; advance the intellectual development of the nation; and contribute to the establishment of a world order founded upon independence, lasting peace, and social justice. As he explains, *"In short, regardless of who governs or what governmental programs are pursued, constitutional ideals must serve as the guiding principles in formulating those programs. Therefore, the objectives of the state, or constitutional ideals, constitute the essential element of continuity in governance."* See: Constitutional Court of the Republic of Indonesia (accessed on 17 July 2024, 10:37 p.m. WIB).
14) J.S. Mill and Jeremy Bentham, *Utilitarism and Other Essays,* Penguin Book Ltd, London,2004, p.5
15) Abi Ishaq Ibrahim al-Syathibi, *al-Muwafaqat fi Ushul al-Syari'ah*, Juz II, Dâr Kutub al-Ilmiyah, Beirut, t.t., p. 5-8
16) M. Syamsuddin (ed.), *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan dan Kemungkinan Pengembangannya di Era Postmodern* Pusat Studi Hukum FH UIIFH UII Press, Yogyakarta, 2013
17) Indonesia, Bank Indonesia Regulation (PBI) No. 7/7/PBI/2005 concerning Customer Complaint Resolution, art. 1, para. 4.
18) Indonesia, Bank Indonesia Regulation (PBI) No. 8/5/PBI/2006 concerning Banking Mediation, art. 1, para. 5, as amended by Bank Indonesia Regulation (PBI) No. 10/1/PBI/2008 concerning the Amendment to Bank Indonesia Regulation No. 8/5/PBI/2006 concerning Banking Mediation.
19) Indonesia, Law No. 21 of 2008 concerning Islamic Banking, art. 55(1); Regulation of the National Sharia Arbitration Board - Indonesian Ulema Council (BASYARNAS-MUI) No. PER-01/BASYARNAS-MUI/XI/2021 concerning the Procedures for Islamic Economic Dispute Resolution in the National Sharia Arbitration Board - Indonesian Ulema Council (BASYARNAS-MUI).
20) Indonesia, Law No. 3 of 2006, art. 49.
21) Indonesia, Supreme Court Regulation (PERMA) No. 4 of 2019 concerning the Amendment to Supreme Court Regulation No. 2 of 2015 concerning the Procedures for Small Claims Lawsuits. *Under this provision, the category of Islamic economic cases adjudicated through small claims procedures is limited to a maximum claim value of IDR 500,000,000 (five hundred million rupiahs), whereas claims exceeding IDR 500,000,000 (five hundred million rupiahs) are classified as ordinary lawsuits.*
22) Indonesia, Supreme Court Regulation (PERMA) No. 14 of 2016 concerning the Procedures for Islamic Economic Dispute Resolution.
23) Syarif Mappiase, *Logika Hukum Pertimbangan Putusan Hakim*, cet. 2, (Jakarta: Kencana, 2017), p. 4
24) Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama*, cet. 8, (Jakarta: Kencana, 2016), p. 306
25) Indonesia, Law No. 48 of 2009 concerning Judicial Power, art. 50, para. 2, and Law No. 7 of 1989 concerning Religious Judicature, art. 62, para. 2. *See also*: M. Yahya Harahap, *Kedudukan, Kewenangan dan Acara Peradilan Agama* [The Position, Authority, and Procedural Law of Religious Courts], 5th ed. (Jakarta: Sinar Grafika, 2009), p. 323.
26) Indonesia, Herzien Inlandsch Reglement (HIR), art. 178, para. 2 / Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madoera (R.Bg), art. 189, para. 2.
27) Indonesia, Herzien Inlandsch Reglement (HIR), art. 178, para. 3 / Reglement tot Regeling van het Rechtswezen in de Gewesten Buiten Java en Madoera (R.Bg), art. 189, para. 3.
28) Indonesia, Law No. 1 of 1974 [concerning Marriage], art. 41(c) *jo.* Government Regulation No. 9 of 1975, art. 24, para. 2, and Compilation of Islamic Law (KHI), art. 149.

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29) Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perpsektif Hukum Progresif*, cet. 4, Sinar Grafika, Jakarta, 2018, hlm. 54-57

30) https://kinsatker.badilag.net/Dash_page_perkaraditerima/perkara_persatker_detail/307885, di akses pada tanggal 27 Juli 2024, pkl. 23:21 wib

31) Case No. 1/Pdt.G.S/2023/PA.Sel, registered on January 13, 2023, regarding a Sharia joint venture (*Musyarakah*) dispute; Case No. 724/Pdt.G/2022/PA.Sel, registered on June 14, 2022, concerning Islamic banking; Case No. 1/Pdt.G.S/2020/PA.Sel, registered on August 6, 2020, concerning Islamic banking; Case No. 2/Pdt.G.S/2020/PA.Sel, registered on the same date, also concerning Islamic banking; Case No. 2/Pdt.G.S/2019/PA.Sel, registered on December 20, 2019, concerning Islamic banking; Case No. 1/Pdt.G.S/2019/PA.Sel, registered on July 4, 2019, concerning a financing agreement (*Murabahah*); Case No. 1048/Pdt.G/2018/PA.Sel, registered on October 11, 2018, concerning Islamic banking; Case No. 1100/Pdt.G/2017/PA.Sel, registered on October 26, 2017, also concerning Islamic banking; and Case No. 765/Pdt.G/2017/PA.Sel, registered on August 8, 2017, concerning Islamic banking. *See*: https://sipp.pa-selong.go.id, accessed on August 26, 2024, at 9:35 PM WITA.

32) Asikin dalam, dalam Amran suadi, *Penyelesaian Ekonomi Syariah, Teori Dan Praktik,* Cet Ke-1, kencana, Jakarta, 2017, hlm. 263