EVIDENCE SYSTEM IN SHARIA ECONOMIC DISPUTE RESOLUTION FROM THE PERSPECTIVE OF ISLAMIC LAW: A Study of Decision Number 1848/Pdt.G/2019/PA.Mks

Hidayat
Institut Ilmu Al-Qur'an (IIQ) Jakarta
Jl. Ir H. Juanda No.70 Kota Tangerang Selatan, Indonesia
E-mail: hidayat@iiq.ac.id

Abstract: This research is a literature-based study with a descriptive approach aimed at explaining the evidence in cases of Sharia economic disputes. Data was collected through documentation methods, primarily by reviewing relevant articles and books. Data analysis used the content analysis method to identify the main messages in the literature. The results of this study are as follows: (1) In civil law, the evidentiary process requires parties to present valid evidence such as documents, witnesses, confessions, oaths, and judicial presumptions, as stipulated in Article 164 HIR/284 RBG. The main principle is that judges decide based on the "preponderance of evidence" or strong enough evidence. Documentary evidence is divided into authentic deeds (created by official authorities) and private deeds (without official authorities). Understanding the types of evidence and how to use them is crucial for achieving justice in court. And (2) In Islamic jurisprudence, the plaintiff must prove their allegations, and oaths are mandatory for those who deny. Testimonies are required by the court's order, and the minimum requirement for proof is two pieces of evidence, including witnesses, which is quantitative in nature. Testimonies and other evidence are essential in ensuring the truthfulness of the Islamic legal process.

Keywords*:* evidence system; Sharia economic dispute resolution; decision Number 1848/Pdt.G/2019/PA.Mks

Abstrak: Penelitian ini adalah studi kepustakaan dengan pendekatan deskriptif, bertujuan untuk menjelaskan bukti-bukti dalam kasus-kasus sengketa ekonomi syariah. Data dikumpulkan melalui metode dokumentasi, yaitu dengan mereview artikel dan buku terkait. Analisis data menggunakan metode analisis isi untuk mengidentifikasi pesan utama dalam literatur. Hasil penelitian ini adalah (1) Dalam hukum perdata, proses pembuktian mewajibkan pihak-pihak untuk menyajikan alat bukti yang sah, seperti surat, saksi, pengakuan, sumpah, dan persangkaan hakim, sesuai dengan ketentuan dalam pasal 164 HIR/284 RBG. Prinsip utamanya adalah hakim memutus berdasarkan *"preponderance of evidence"* atau bukti yang cukup kuat. Alat bukti surat dibagi menjadi akta otentik (dibuat oleh pejabat resmi) dan akta di bawah tangan (tanpa pejabat resmi). Pahami jenis alat bukti dan cara menggunakannya untuk mencapai keadilan di pengadilan, dan (2) Dalam hukum peradilan Islam, penuntut harus membuktikan dakwaannya, dan sumpah wajib bagi yang inkar. Kesaksian diwajibkan oleh peradilan atas perintah hakim, dan syarat minimum pembuktian adalah dua alat bukti, termasuk saksi, yang bersifat kuantitatif. Kesaksian dan alat bukti lainnya penting dalam memastikan kebenaran dalam proses hukum Islam

Kata kunci: sistem bukti; penyelesaian sengketa ekonomi Syariah; putusan Nomor 1848/Pdt.G/2019/PA.Mks

Introduction

The history of the formation of Islamic legal institutions in Indonesia has faced many challenges. This is due to the concerns of various parties who were worried about the enforcement of Islamic law. As a result, they employed various means with the primary goal of erasing the application of Islamic legal values and preventing Islamic law from becoming positive law in Indonesia. The peak of this controversy occurred with the enactment of Law No. 7 of 1989 concerning Religious Courts, which underwent two amendments some time ago. However, regardless of the controversies, these legal institutions continued to exist, albeit still undergoing a process of refinement.[1]

[1] Darussalam Syamsuddin, "Transformasi Hukum Islam Di Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, vol. 2, no. 1 (2015), pp. 1–14.

In regulating various aspects of life, rules are necessary, created, agreed upon, and followed by humans or a group of people. These rules, generally understood and interpreted as law or legislation, undergo changes from one generation to another, both theoretically and empirically, as observed in society.[2]

The system of evidence in religious jurisprudence leads to fair decisions since it follows the Sharia system and is based on the Quran, Hadith, and the interpretations (Ijtihad) of religious scholars. It is guided by principles that govern life. Particularly in economic disputes, it ensures fair judgments, as Allah commands His servants to act justly towards others.[3]

The existence of religious courts has been recognized for a long time. During the Dutch colonial period, they established religious courts in Java, Madura, and South Kalimantan. After Indonesia gained independence, the government established religious courts for regions other than Java, Madura, and South Kalimantan through Government Regulation No. 45 of 1957. However, these regulations did not cover procedural laws regarding the procedures for examining, adjudicating, and settling cases. Therefore, religious judges derived their procedural laws from various Islamic jurisprudential sources, resulting in differences in the application of procedural laws between different religious courts.[4]

The religious court, in broad terms, consists of material legal sources bound by Law No. 50 of 2009, which is the second amendment to Law No. 7 of 1989 concerning Religious Judiciary, and formal legal sources that include statutory law, customary law, jurisprudential law, religious law, and customary law, all of which are declared as positive law. The authority to examine, adjudicate, and settle cases at the first instance among Muslims is the responsibility of the Religious Court based on relative jurisdiction and absolute jurisdiction.[5]

Human interactions within society often lead to conflicts. These conflicts can sometimes be resolved amicably, but when they persist, they create ongoing tension and can result in losses for both parties involved.[6] To ensure that both parties do not exceed the boundaries of established norms in defending their rights, individual actions should be avoided. When individuals feel that their rights are infringed upon and cause them harm, they can file lawsuits with the appropriate court following the applicable procedures.[7]

In essence, during the examination of a case, after the presentation of the reply and rejoinder, the Panel of Judges can assess whether the lawsuit is admissible for a final decision, particularly when all the claims and counterclaims are clear, admitted, or unchallenged by the opposing party.[8] However, if the claims and counterclaims remain unclear, evidence becomes necessary, and the Chief Justice of the Panel will determine which party must present evidence through an interim decision.[9]

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[2] Supardin, *Fikih Peradilan Agama Di Indonesia*, 1st ed, (Makassar: Alauddin University Press, 2018).

[3] Therefore, the evidentiary system can deliver justice effectively, making it possible to resolve business or economic transactions in religious courts. In Islamic law and religious jurisprudence, the focus is on the position of Islamic law within the national legal system. Indonesia's legal system, due to its historical development, is pluralistic. This means that, until now, several legal systems with their characteristics and structures have been in place. These legal systems include customary law, Islamic law, and Western law. *"And when they have [nearly] fulfilled their term, either retain them according to acceptable terms or part with them according to acceptable terms. And bring to witness two just men from among you and establish the testimony for [the acceptance of] Allah. That is instructed to whoever should believe in Allah and the Last day. And whoever fears Allah - He will make for him a way out"* [al-Talaq 65:2]. Mardani, *Hukum Acara Perdata Peradilan Agama Dan Mahkamah Syariyyah*, 1st ed, (Jakarta: PT. Sinar Grafika, 2017), p. 1.

[4] Andi Intan Cahyani, "Peradilan Agama Sebagai Penegak Hukum Islam Di Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, vol. 6, no. 1 (2019), pp. 119–132.

[5] The Religious Court is tasked and authorized to examine, adjudicate, and settle cases at the first instance among Muslims in various matters, including marriage, inheritance, wills, gifts, endowments, zakat, almsgiving, and Shariah economy.

[6] Ahmad Maulidizen, "The Urgency of Islamic Law Sources Knowledge Masadir Al-Ahkam Al-Mukhtalaf Fiha: Istisab, Sadd Al-Dzariah and Qaul Al-Sahabi," *Jurnal Hukum Islam*, vol. 18, no. 2 (2018), pp. 49–68.

[7] Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama*, 1st ed, (Jakarta: Kencana Prenada Media Group, 2005), p. 1.

[8] Ahmad Maulidizen, Heristina Fitri Rukmana, and Muhammad Rafi Thoriq, "Moneylender and the Welfare of Traders in Parung Market: Theological and Economic Approach," *Journal of International Conference Proceedings (JICP)*, vol. 5, no. 4 (2022), pp. 136–149.

[9] Not all evidence presented by the parties involved holds binding value. In some cases, judges are not required

Law and justice are fundamentally interconnected, with one being a condition sine qua non for the other. Law should be conceived on the basis of justice, and conversely, justice should be the spirit of the law.[10] Only with this concept can integration be achieved, creating a harmony between law and justice, making it difficult to distinguish between the two. When the law is enforced in this manner, justice is automatically realized, and vice versa, when justice is achieved, the law naturally prevails.[11]

Sharia economic disputes refer to conflicts between two parties, usually business entities or customers, arising from the principles of Sharia or laws related to Sharia economics. In such disputes, when one party wrongfully takes the rights of another or violates an agreement or contract, evidence must be presented in court to substantiate the claims and losses incurred. The evidence presented in Sharia economic dispute proceedings is of paramount importance, including documents, contracts, and witness testimony.[12]

The evidentiary system in Sharia economic disputes during court proceedings is essential, and there are concerns that it may not operate effectively or in line with the principles of Islamic law. A specific case, Decision No. 1848/Pdt.G/2019/PA.Mks, is suspected not to have followed the Islamic evidentiary system, which raises questions about the purpose of law, certainty, utility, and justice. Therefore, further research, particularly concerning Decision No. 1848/Pdt.G/2019/PA.Mks, is deemed necessary.

Method

This research is a library-based study employing a descriptive approach, which aims to describe and explain the evidence in cases related to Islamic economic disputes. Data for this research were collected through the documentation method, primarily by reviewing various articles and books related to the topic. The analysis of the collected data was conducted using the content analysis method, which involves a descriptive and scientific examination of the primary message conveyed by the literature.

Results and Discussion

Overview of Sharia Economic Disputes

The process of a dispute arises from the lack of common ground between the disputing parties. Potentially, two parties with differing opinions or stances can lead to a situation of dispute. Generally, people will avoid openly expressing opinions that may lead to open conflict. This is because such opinions could result in unpleasant consequences, potentially leading to complicated situations that affect one's position.[13]

Disputes often arise due to deception or broken promises by one or more parties. One party may fail to fulfill what was agreed upon or promised. Even when actions are taken as agreed upon, they may not align precisely with the promises made. Delays in fulfillment, actions that breach the agreement, or actions not allowed by the agreement can all lead to one party feeling disadvantaged.[14]

Sharia economics is the embodiment of the Quran and Sunna in the field of business, whether through individual, group, or institutional activities. A conducive business environment starts with a strong and accurate understanding of its

to consider certain evidence as conclusive in finding material truth. Examples of non-binding evidence include witness statements, where the testimony provided by a witness does not compel the judge to accept it as truth; instead, the judge has the freedom to assess the credibility of the testimony. Witness testimony must pertain to events or incidents personally experienced by the witness. Opinions or assumptions formed through thought processes do not constitute witness testimony. Witness statements must be delivered orally and in person during the court proceedings; they cannot be delegated or submitted in written form. Aris Bintania, *Hukum Acara Peradilan Agama*, 1st ed, (Jakarta: PT. Raja Grafindo Persada, 2013), 54.

[10] Ahmad Maulidizen, "Economic Thought of Ibn Taimiyah and Relevance to the World Economic and Community Economic System," *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin*, vol. 20, no. 2 (2019), pp. 131–146.

[11] Mardani, *Hukum Acara Perdata Peradilan Agama Dan Mahkamah Syariyyah*, p. 109.

[12] Marilang, "Menimbang Paradigma Keadilan Hukum Progresif," *Jurnal Konstitusi*, vol. 14, no. 2 (2017), pp. 315–331; Ahmad Maulidizen and Eka Pratiwi, "The Concept of Qat'I Dalalah: Definition, Laws and Perceived Conflict," *Khatulistiwa: Journal of Islamic Studies*, vol. 10, no. 1 (2020), pp. 115–131.

[13] Sulaikin Lubis, *Hukum Acara Perdata Peradilan Agama Di Indonesia*, IV, (Jakarta: Kencana, 2018), pp. 133–138.

[14] Fitrotin Jamilah, *Strategi Penyelesaian Sengketa Bisnis*, 1st ed. (Yogyakarta: Madpress Digital, 2014), pp. 12–13.

principles and values.[15] Sharia economics becomes an integral part of society when this understanding and embodiment are complete. However, it may appear that Islamic economics is primarily associated with financial and banking systems. In reality, Islamic economics encompasses a much broader scope than what is currently practiced.[16]

The Mechanism for Resolving Sharia Economic Disputes

First. The simple lawsuit or Small Claim Court procedure for the examination in the trial of a civil lawsuit with a material claim value of IDR 200 million, which is resolved through a simple proof process, contains many new norms. Among them, it explicitly sets aside the rules in the Civil Procedure Law. The law applied in civil procedure law includes the institution of legal remedies or objections that were previously unknown in the prevailing civil procedure law system in Indonesia.[17]

The resolution of simple lawsuits is examined and decided by a single judge appointed by the chairman of the religious court and the Sharia Court, as follows (1) Registration; (2) Examination of the Completeness of the Simple Lawsuit; (3) Determination of the Case Fee Deposit; (4) Assignment of the Single Judge; (5) Preliminary Examination; (6) Setting the Trial Date and Summoning the Parties; (7) Trial and Mediation; (8) Active Role of the Judge; (9) Regarding Evidence; (10) Verdict and Court Proceedings; (11) Legal Remedies; (12) Examination of the Objection Request Files; (13) Objection Examination; and (14) Implementation of the Verdict.[18]

Second. A regular lawsuit is a lawsuit that can be filed by a company or its organs in court based on provisions outside of statutory regulations. Regular lawsuits arise from common cases, based on unlawful acts or breaches of contract.[19]

A complaint is a document submitted by the plaintiff to the competent Religious Court Chairman. The complaint contains claims of rights that involve a dispute serving as the basis for the case examination and the proof of the truth of a right.[20]

The regulations governing group representative lawsuits are stipulated in Supreme Court Regulation No. 1 of 2002 concerning group representative lawsuit procedures. Some differences between class action lawsuits and regular lawsuits are as follows: (1) In class action, the plaintiffs are a group of people who share a common legal issue and seek the same rights; (2) In class action lawsuits, a group of individuals who have suffered losses appoint legal representatives to represent them in court; (3) In class action, group representatives do not require authorization from group members. This is regulated in Supreme Court Regulation No. 1 of 2002; and (4) When granting authorization from group representatives to legal representatives, specific authorization is still required, similar to what is stipulated in the Civil Procedure Law for regular civil lawsuits.[21]

Disputes can be resolved through negotiation, which is one form of alternative dispute resolution outside of the court system. It encompasses everything taken from individuals, including opinions, and serves as an initial step in dispute resolution, providing convenience to the parties involved as it is informal, straightforward, and flexible.[22]

Implementation of the Evidence System in the Settlement of Sharia Economic Disputes in Case Decision Number 1848/ Pdt.G/2019/PA.Mks

Considering that the Plaintiff, in their lawsuit dated August 2, 2019, registered with the Registry

[15] Abdul Halim Talli, "Mediasi Dalam Perma No 1 Tahun 2008," *Jurnal Peradilan dan Hukum Keluarga Islam*, vol. 2, no. 1 (2015), p. 82.

[16] Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah*, 2nd ed, (Jakarta: Kencana, 2017), 7.

[17] Zainal Assikin, *Hukum Acara Perdata Di Indonesia*, 3rd ed, (Jakarta: Prenada Media Grup, 2018), pp. 3–9.

[18] Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan Dan Kaidah Hukum,* (Jakarta: Kencana, 2018), pp. 39–43.

[19] Munir Fuady, *Doktrin-Doktrin Modern Dalam Corporate Law & Eksistensinya Dalam Hukum Indonesia*, 1st ed, (Jakarta: Citra Adya Bakti, 2002), p. 93.

[20] Mardani, *Hukum Acara Perdata Peradilan Agama & Mahkamah Syariah*, IV, (Jakarta: Sinar Grafika, 2009), p. 80.

[21] Frans Satriyo Wicaksono, *Panduan Lengkap Membuat Surat-Surat Kuasa*, 1st ed, (Jakarta: Transmedia Pustaka, 2009), p. 12.

[22] Musfikah Ilyas, "Tinjauan Hukum Islam Terhadap Musyarakah Dalam Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Peradilan dan Hukum Keluarga Islam*, vol. 5, no. 2 (2018), pp. 227–236.

of the Religious Court of Makassar under Case Number 1848/Pdt.G/2019/PA.Mks. The Defendant is the rightful owner of 1 (one) shop unit measuring 140 square meters, located in the Village of Antang, District of Manggala, City of Makassar, also known as Certificate of Ownership No. 25015/Desa/Kel. Antang, Land Measurement Letter (SU) dated August 26, 2009, No. 03182/2009, under the name: Mrs. PELAWAN (Pelawan).

In 2017, the Defendant applied for financing facilities for 1 (one) shop unit measuring 140 square meters, located in the Village of Antang, District of Manggala, City of Makassar, also known as Certificate of Ownership No. 25015/Desa/Kel. Antang, Land Measurement Letter (SU) dated August 26, 2009, No. 03182/2009, under the name: Mrs. PELAWAN (Pelawan).

With the mentioned financing facility request, on November 6, 2017, a Murabahah Financing Agreement with Wakalah was signed between the Defendant and the First Opponent before IRENE LIDJAJA, SH,.MH, a Notary in the Regency of Gowa, as evidenced by Murabahah Financing Agreement with Wakalah No. 19 dated November 6, 2017.

In the clause of the Murabahah Financing Agreement with Wakalah No. 19 dated November 6, 2017, made by the Defendant with the First Opponent, it is stipulated in Article 3 regarding Financing Facilities and Prices; (1) Purchase Price Rp. 1,715,000,000; (2) Down Payment Tp. 500,000,000; (3) Bank Financing (First Opponent) Rp. 1,200,000,000; (4) Profit Margin Rp. 1,212,188,946.77; (5) Selling Price After Margin Rp. 2,927,188,946.77; and (6) Selling Price After Down Payment Rp. 2,412,188,946.77.

Whereas, in addition to regulating the Financing Facilities and Prices mentioned above, it is also stipulated in Article 7 that the installments to be paid by the Defendant will be made over a period of 120 (one hundred and twenty) months, with a monthly installment of Rp. 20,101,154.56.

Whereas, since the Defendant signed the Murabahah Financing Agreement with Wakalah No. 19 dated November 6, 2017, as mentioned above, the Defendant has made payments for 1 (one) year with the following details: Rp. 20,101,154.56 X 12 months = Rp. 241,213,385.72.

Whereas, the Defendant accepted the financing facilities from the First Opponent with good intentions, and the delay in installment payments, as stated in Warning Letter III dated April 23, 2019, from the First Opponent, with a total arrearage until April 2019 of Rp. 96,108,141.13, was not due to an intentional refusal to make these payments. On February 4, 2019, which was long before the warning letter was sent by the First Opponent, the Defendant attempted to sell the collateral/security object through the Ray White marketing service with the aim of settling all of the Defendant's obligations.

Additionally, the occurrence of the mentioned arrears is also due to the fact that the First Opponent, in this case, was not transparent in providing information to the Defendant. Furthermore, all correspondence related to the facilities received by the Defendant was never received directly by the Defendant but through their family members.

However, based on Murabahah Financing Agreement with Wakalah No. 19 dated November 6, 2017, it is very clear that the legal relationship is only binding between the Defendant and the First Opponent, so all information and correspondence should have been directly received by the Defendant without involving third parties.

The Defendant received no notification of the auction despite buying several newspapers. To ascertain the exact limit price for the auction, the Defendant visited the Second Opponent, who issued the auction schedule to the First Opponent.

However, the Second Opponent provided no explanation regarding the limit price, claiming that it was determined by the First Opponent. Subsequently, the Defendant contacted the First Opponent to inquire about the mentioned limit price, but the First Opponent did not provide the limit price, stating that it would be known at the time of the announcement. However, based on the Second Opponent's letter No. S.1947WKN.15/KNL.02/2019 regarding the Announcement of the Auction Schedule dated July 16, 2019, addressed to the First Opponent, it ordered the announcement of the auction to be made on July 31, 2019.

Upon the Defendant's efforts to determine the limit price for the auction of the Defendant's collateral/security, on August 1, 2019, the Defendant once again visited the Second Opponent and inquired about the limit price determined by the First Opponent. Ultimately, the Second Opponent stated that the limit price for the auction of the Defendant's collateral/security was Rp. 1,718,100,000 (one billion seven hundred eighteen million one hundred thousand rupiah).

Whereas, the determination of the limit price established by the First Opponent for the auction of the Defendant's collateral/security is in violation of prevailing law and contradicts principles of justice and fairness because;

a. Article 1 number 26 of the Regulation of the Minister of Finance No. 93/PMK.06/2010

   Regarding Guidelines for Auction Implementation states, "The limit value is the minimum price of the item to be auctioned, determined by the seller/owner of the item." Meanwhile, the owner of the item as referred to in Article 1 number 20 of this Regulation is defined as, "The owner of the item is a person or legal entity/business entity that has ownership rights over an item to be auctioned."

b. Based on the above provision, it is clear that the limit price determined by the First Opponent contradicts the provision because, legally, the establishment of the limit price should involve the Defendant as the owner of ownership rights over the item to be auctioned.

c. The limit price established by the First Opponent is contrary to principles of justice and fairness because, based on the Murabahah Financing Agreement with Wakalah No. 19 dated November 6, 2017, made between the Defendant and the First Opponent, it is determined in Article 3 regarding Financing Facilities and Prices that the purchase price is Rp. 1,715,000,000,-, with the

   Defendant having provided a down payment of Rp. 500,000,000,-. Therefore, the financing provided by the First Opponent amounts to Rp. 1,200,000,000,-, and during the financing process, the Defendant made installment payments for 1 (one) year, with monthly installments of Rp. 20,101,574.56 X 12 months = Rp. 241,218,894.72. Thus, during the financing process, the Defendant had paid a total of Rp. 500,000,000,- + Rp. 241,218,894.72 (installments for 12 months already paid by the Defendant) = Rp. 741,218,894.72 (total amount paid by the Defendant).

   Therefore, if we deduct the amount already paid by the Defendant from the purchase price of Rp. 1,715,000,000,- (the shop unit), which amounts to Rp. 741,218,894.72 (down payment + 12-month installments), the remaining purchase price is Rp. 973,781,105.28. In other words, the payment made by the Defendant towards the purchase price has almost reached half (1/2) of the purchase price itself, while this financing facility lasts for 120 months or 10 years.

d. Furthermore, based on the Murabahah Financing Agreement with Wakalah No. 19 dated November 6, 2017, it is evident that the agreement was made in 2017, during which the purchase price of Rp. 1,715,000,000,- was agreed upon.

Therefore, it is highly improper and unjust if the auction with a limit price is set according to the purchase price as agreed upon in 2017, and the reasonable limit price should exceed the previous purchase price because the agreement has been in effect for approximately 2 (two) years, during which the price has naturally increased.

Considering these facts, it is clear that the auction conducted by the First Opponent through the Second Opponent with the determined limit price is in violation of the prevailing law and also contradicts principles of justice and fairness. Therefore, it is reasonable to declare the auction as invalid due to its inconsistency with the prevailing law and principles of justice and fairness.

Whereas, in reality, the Defendant is the rightful owner of 1 (one) unit of a shop unit measuring 140 M2 (one hundred and forty square meters), located in Kelurahan Antang, Kecamatan Manggala, Kota Makassar, or more commonly known in Certificate of Ownership No.

25015/Desa/Kel. Antang, Survey Letter (SU) dated August 26, 2009, No. 03182/2009 in the name of Nyonya PELAWAN (Pelawan), therefore, with all due humility, a request is made to the Chairman/ Panel of Judges to order the First Opponent and the Second Opponent not to proceed with the auction of the shop unit that serves as collateral/ security.

Challenged II needs to emphasize, as stipulated in Article 6 paragraph (5) of the Directorate General of State Assets Regulation No: PER-02/KN/2017 on Technical Guidelines for the Implementation of Auctions, that the documentation requirements for foreclosure auctions; (a) A copy of the Credit Agreement; (b) A copy of the Mortgage Deed and the Mortgage Rights Notification Deed; (c) A copy of the Land Ownership Certificate encumbered with the Mortgage Right; (d) A copy of the debtor's debt breakdown/obligation amount to be fulfilled; (e) A copy of evidence that the debtor is in default, such as warnings or statements from the creditor; (f) A statement letter from the creditor as the auction applicant, stating their responsibility in case of a lawsuit; and (g) A copy of the notice of the auction plan sent to the debtor by the creditor, to be delivered no later than 1 (one) day before the auction.

Considering that, in order to prove its counterarguments, it has submitted the following written evidence;

a. Offer letter from Wiardi Harjosetio (Seller) dated August 1, 2017.
b. BNI cash deposit slip from Muhtar (Parent of the Customer/Claimant) to Wiardi Harjosetio (Receiver/ Seller) with a note on the down payment for the shop house on October 27, 2017, amounting to IDR 200,000,000.
c. BNI cash deposit slip from Muhtar (Parent of the Customer/Claimant) to Wiardi Harjosetio (Receiver/ Seller) with a note on the down payment for the house/shop house amounting to IDR 200,000,000.
d. BCA deposit slip from the depositor to Wiardi Harjosetio (Receiver/Seller) with a note on the down payment for the shop house amounting to IDR 42,500,000.
e. BRISyariah account statement of PELAWAN for a transfer to Wiardi (Receiver/Seller) on October 12, 2017, amounting to IDR 60,000,000.
f. Receipt for receiving a down payment for the shop house on Antang Raya Street (in front of Antang Market) from Mr. Haji Muhktar (Parent of the Customer/ Claimant) received by Fanny Tjowarno (Wife of the Seller/ Wiardi Harjosetio) on October 26, 2017, amounting to IDR 12,500,000.
g. Evidence T.I-1 to T.I-6 proving that there was an offer for the shop house (SHM 25015 located on Jl.Antang Raya, Makassar City, with an area of 140 m2 in the name of Wiardi Harjosetio) from Wiardi Harjosetio amounting to IDR 1,715,000,000, which was then paid as a down payment (DP) for the purchase of the shop house from the Customer/ Claimant totaling IDR 515,000,000, all of which were transferred /reallocated /received by Wiardi Harjosetio (Seller).
h. Loan Application Letter by PELAWAN dated July 27, 2017, amounting to IDR 1,200,000,000.
i. Letter from PT Bank BRISyariah, No. B.130/ KCMKS/ARF/10/2017 dated October 4, 2017, regarding the Letter of Agreement for Financing Principles (SPPP).
j. Murabahah Financing Agreement Bil Wakalah No. 41 made before Dr. Abdul Muis, Bachelor of Law, Master of Law, a Notary in Makassar, on February 24, 2015.
k. Certificate of Ownership No. 25015 /Antang, located in South Sulawesi Province, Makassar City, Manggala Subdistrict, Antang Village, based on Survey Letter No. 03182/2009 dated August 26, 2009, with an area of 140 m2 registered in the name of the Customer/ Claimant, issued by the Head of the Land Office of Makassar City on October 14, 2009.
l. Deed of Granting of Mortgage Rights, No. 06/2018, dated October 23, 2018, made before Suzanti Lukman, Bachelor of Law, Master of Notarial Law, an Official Deed Maker of Land Deeds (PPAT) in Makassar City.
m. Certificate of Mortgage Rights No. 1061/2018, Makassar City, South Sulawesi Province, issued by the Head of the Land Office of Makassar City on February 12, 2018.

n. All evidence from T.I-7 to T.I-12 proves that all procedures for financing and collateralization of the debt guarantee have followed the procedures. Therefore, the actions of Defendant I are in accordance with the principle of good faith and cannot bear any loss. On the contrary, legally, they are obligated to be protected, as stipulated in Articles 1338 and 1341 of the Indonesian Civil Code.

o. Letter from PT Bank BRISyariah No. B.019/ KC-MKS/ARF/03/2019 dated March 21, 2019, subject: Warning Letter I (one), addressed to PELAWAN (Customer/ Claimant).

p. Letter from PT Bank BRISyariah No. B.026/ KC-MKS/ARF/04/2019 dated April 1, 2019, subject: Warning Letter II (two), addressed to PELAWAN (Customer/ Claimant).

q. Letter from PT Bank BRISyariah No. B.038/ KC-MKS/ARF/04/2019 dated April 23, 2019, subject: Warning Letter III (three), addressed to PELAWAN (Customer/Claimant).

r. Auction Minutes No. 963/72/2019 dated September 5, 2019.

s. Letter from the Public Appraiser's Office Nanang Rahayu & Rekan, File No: 00101/2.0088-04/PI/07/0126/1/VI/2019 dated June 20, 2019, regarding Property Appraisal Report for a land area of 140 m2 and a Building (Shop House) located at Jalan Antang Raya No.99, Antang Village, Manggala Subdistrict, Makassar Regency, South Sulawesi Province (Customer/ Claimant's collateral).

t. Evidence T.I-13 to T.I-20 proves that due to the financing facility provided to the Customer/ Claimant, difficulties in payment were encountered. Although Defendant I provided an opportunity to settle the obligations, until the specified time, the Customer/Claimant remained unable to fulfill their obligations. Therefore, Defendant I conducted an auction to fulfill and settle the Customer/ Claimant's obligations. All auction processes have been in accordance with applicable procedures, including all legal processes arising from the auction process, in accordance with Law No. 4 of 1996 regarding Mortgage Rights.

Considering that, to substantiate their counterarguments, Defendant II has submitted the following evidence;

a. Photocopy of auction minutes No. 963/72/2019 dated September 5, 2019, with sufficient stamp duty and verified to match the original, then marked by the Chairperson as TII.1.

b. Photocopy of a statement letter No. B.659/ KC-MKS/07/2019 dated July 11, 2019, from PT BRISyariah Makassar Pettarani Branch signed by Bambang Sutedjo, the Branch Manager, with sufficient stamp duty and verified to match the original, then marked by the Chairperson as TII.2

c. Request letter No. B.660/KC-MKS/07/2019 dated July 11, 2019, regarding the request for the determination of the execution of mortgage rights auction date via the internet from PT Bank BRISyariah Makassar Pettarani Branch to KPKNL, with sufficient stamp duty. This copy could not be verified with the original as it was a photocopy, then marked by the Chairperson as TII.3.

d. Photocopy of the auction schedule determination letter No. S1947/WKN.15/ KNL.02/2019 dated July 16, 2019, regarding the auction schedule determination, with sufficient stamp duty and verified to match the original, then marked by the Chairperson as TII.4

e. Photocopy of the auction notification letter from PT Bank BRISyariah Makassar Pettarani Branch No. B.833/KC-MKS/08/2019 dated August 19, 2019, to the debtor PELAWAN regarding the auction sale of PELAWAN's collateral. This copy had sufficient stamp duty but could not be verified with the original as it was a photocopy, then marked by the Chairperson as TII.5.

f. Photocopy of the warning letter from PT Bank BRISyariah Makassar Pettarani Branch No. B.019/KC-MKS/ARF/03.2019 dated March 21, 2019, regarding Warning Letter I (one) addressed to the debtor PELAWAN (customer). This copy had sufficient stamp duty but could not be verified with the original as it was a photocopy, then marked by the Chairperson as TII.6.

g. Photocopy of the second warning letter from PT Bank BRISyariah Makassar Pettarani Branch No. B.026/KC-MKS/ARF/04.2019 dated April 1, 2019, regarding the second warning letter to the debtor PELAWAN (customer). This copy had sufficient stamp duty but could not be verified with the original as it was a photocopy, then marked by the Chairperson as TII.7.

h. Photocopy of the second warning letter from PT Bank BRISyariah Makassar Pettarani Branch No. B.026/KC-MKS/ARF/04.2019 dated April 1, 2019, regarding the second warning letter to the debtor PELAWAN (customer). This copy had sufficient stamp duty but could not be verified with the original as it was a photocopy, then marked by the Chairperson as TII.8.

i. Photocopy of auction minutes No. 963/72/2019 dated September 5, 2019, with sufficient stamp duty and verified to match the original, then marked as TII.1 by the Chairperson.

j. Photocopy of a statement letter No. B.659/KC-MKS/07/2019 dated July 11, 2019, from PT BRISyariah Makassar Pettarani Branch, signed by Bambang Sutedjo, the Branch Manager, with sufficient stamp duty and verified to match the original, then marked as TII.2 by the Chairperson.

k. Photocopy of the land registration certificate No. 2250/2019 issued by the Land Office of Makassar, with sufficient stamp duty, but it cannot be verified with the original as it is a photocopy, then marked as TII.10 by the Chairperson.

l. Photocopy of the mortgage certificate No. 1081/2018 dated February 12, 2018, with sufficient stamp duty, but it cannot be verified with the original as it is a photocopy, then marked as TII.11 by the Chairperson.

m. Photocopy of the deed of mortgage No. 06/2018 dated February 23, 2018, with sufficient stamp duty, but it cannot be verified with the original as it is a photocopy, then marked as TII.12 by the Chairperson.

Considering that both the Plaintiff, Defendant I, and Defendant II have presented their conclusions. Considering that the parties have not submitted anything further and are requesting a verdict. Considering that the purpose of the Plaintiff's lawsuit as stated above. Considering that regarding the course of the trial, the Plaintiff was represented in court, and Defendant I and Defendant II were also present in court. Considering furthermore that in accordance with Article 154 of the RBg. (staatsblad 1927 - 227 procedural law regulations for areas outside of Java and Madura) jo. Supreme Court Regulation No. 1 of 2016 concerning mediation procedures in court (State Gazette of 2016 No. 175), jo. Supreme Court Decision No. 108/KMA/sk/2016 concerning the governance of mediation in court, the parties have participated in mediation with the agreed mediator, Drs. Syahidal, a judge at the Class 1 A Religious Court in Makassar.

Considering that both parties in the court have signed a mediation statement dated August 14, 2019. Considering that, according to the mediator's report dated August 28, 2019, mediation was declared unsuccessful because both parties did not agree to propose a settlement to end the dispute amicably. Considering that the trial of this case continued with the reading of the objections raised by the Plaintiff, which were maintained by the Plaintiff. Considering that, in response to the objections raised by the Plaintiff, Defendant I and Defendant II submitted their responses, and in their responses, they raised exceptions.

In the Exceptions. Considering that Defendant I submitted exceptions with the following arguments. The objection raised by the Plaintiff is already late because the item has already been auctioned, and the land in question by the Plaintiff has been auctioned with auction number 2016/2015 on November 10, 2015. Therefore, the Plaintiff's objection is untimely, and the case should not be accepted.

The documents related to the financing agreement, including the Murabahah Bil Wakalah agreement No. 190, made before Irene Lidjaya, S.H., M.H., a Notary in Gowa Regency on November 6, 2017, and the Deed of Mortgage, were made in accordance with the law by authorized Public Officials and constitute Authentic Deeds under Article 1868 of the Civil Code, so the Plaintiff's claims should not be accepted.

Considering that the exception raised by Defendant I in this matter is not appropriate because the actual auction takes place when the item has been sold, not when the auction process is completed with an auction report. In this case, the item has not been sold yet, and there is no buyer (as confirmed by the statements and documents provided by the Defendants). Therefore, the exception raised by Defendant I is rejected.

Considering that Defendant II submitted an Exception with the following arguments:

a. The Plaintiff's lawsuit is unclear (Obscuur Libel). The legal basis used in their lawsuit regarding the auction procedure with number 93/PMK.06/2010 has been revoked and declared no longer valid since the issuance of Ministry of Finance Regulation No. 27/PMK.06/2016.
b. The Plaintiff's lawsuit is wrong in parties (Error in Persona); the Plaintiff included KPKNL Makassar (Defendant II) as the Seller in the case at hand, even though the actual Seller in the auction for PT BRI Syariah Makassar Branch (Defendant I) was recognized by the Plaintiff.
c. The Plaintiff's lawsuit is Non Persona Standi in Yudicio; the Plaintiff mentioned the Defendant II in their lawsuit, but it is not appropriate and incorrect because they did not connect it with the Directorate General of State Assets and the Regional Office of DJKN South Sulawesi, which is the superior authority of Defendant II. KPKNL, without being linked to its superior authority, is incorrect and inappropriate. Based on these exception arguments, the Plaintiff's claims should not be accepted in their entirety.

Considering that, in response to the exceptions raised by Defendant I and Defendant II, the Plaintiff submitted a response, rejecting the exceptions raised by Defendant I and Defendant II. The exceptions raised by Defendant I and Defendant II are not in line with legal facts because the auction schedule was issued by Defendant II, determining that the auction would be held on September 5, 2019.

Considering that, based on the exceptions raised by Defendant I and Defendant II and the Plaintiff's responses to these exceptions, the panel of judges is of the opinion that these exceptions are related to the substance of the case. Therefore, the panel of judges will consider them together with the substance of the case.

Islamic Law Provisions and Relevant Legislation Regarding the Evidence System in Sharia Economic Disputes

Evidence is an integral part of procedural law, both in civil and criminal procedures; its presence cannot be separated from each other and holds a significant and crucial position in safeguarding the rights of individuals. Evidence has a substantial impact and serves as the basis for making legal decisions because it is a means to achieve legal justice. In relation to evidence, Islamic law has been regulated accordingly. The legal basis for evidence in Islamic law is derived from the Quran, Hadith, the *ijtihad* (independent legal reasoning) of scholars, and other permissible sources within the scope of Islamic law. Some of the forms of evidence found in the Quran, Hadith, and scholar's *ijtihad*.

Regarding the verse: "And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her," it is evident that in disputes, there must be witnesses—two just witnesses to corroborate the truth.

The stipulation of the Murabahah Financing Agreement is further supported by the Fatwa of The National Sharia Council No. 92/DSN-MUI/IV/2014 on Financing Accompanied by Rahn (Al-Tamwil al-Mautsuq bin al-Rahn), Fifth paragraph 3, which states: *"The collateral in the trust agreement can only be executed if the trustee (al-Amin, including partners, mudharib, and musta'jir) commits an act of moral hazard."*

In Islamic law, evidence encompasses anything related to an action. These pieces of evidence can be used as proof to establish a judge's conviction regarding the truth of a dispute that has been conducted by the defendant. The evidence system according to Islamic law includes:

1. *Ikrar* (Confession): A statement made by the plaintiff, defendant, or other parties regarding the presence or absence of something. Confessions can be made in front of a judge during a trial or outside the courtroom.
2. *Syahadah* (Witness): A person who testifies in court and meets specific criteria, giving an account of an event or circumstance they personally witnessed, heard, or experienced.
3. *Yamin* (Oath): A solemn declaration made during the giving of testimony or promise, invoking the divine power of God, signifying that false testimony will be punished. An oath provides reliable evidence in judicial decisions.
4. *Riddah* (Apostasy): Used for proving divorce in cases where legal reasons for divorce are the basis for the claim, and the wife declares her exit from Islam (apostasy) to end the marriage.
5. *Maktubah* (Written Proof): Written documents such as contracts and certificates can serve as evidence in legal proceedings.
6. *Tabayyun* (Supplementary Inquiry): The process of seeking clarification or additional information, conducted by a different judicial panel than the one currently handling the case

Evidence is a procedural process, whether in civil, criminal, or other proceedings, involving the use of valid evidentiary tools. It follows a specific procedure to ascertain the accuracy of disputed facts or statements presented in court. Several parameters are associated with the process of evidence in a trial, including:

1. Bewijsthheorie: The theory of evidence used as the basis for proof by judges in court.
2. Bewijsmiddelen: The means of evidence used to prove the occurrence of a legal event.
3. Bewijsvoring: The process of obtaining, collecting, and presenting evidence in court.
4. Bewijslast or Burden of Proof: The allocation of the burden of proof as mandated by law to establish a legal event.
5. Bewijskracht: The strength of evidence provided by each piece of evidence.
6. Bewijs minimum or Minimum Proof: The minimum amount of evidence required to bind a judge's decision

However, it's important to note that not in all cases is the party making factual claims required to prove those claims. Exceptions may apply, such as when errors are evident in cases of absolute liability, cases where the burden of proof is reversed, or when the opposing party does not contest the claim. Additionally, there is no need to prove widely known facts, facts that can be directly observed by the judge, or facts that have already become positive law.[23]

Article 1865 of the Civil Code (KUHPer) states that anyone who claims to have a right to assert their own right or dispute someone else's right by referring to an event is obligated to prove the existence of that right or event. Additionally, there are specific articles in the KUHPer that explicitly regulate the burden of proof, including;

1. Article 1224 KUHPer, where the existence of force majeure must be proven by the debtor.
2. Article 1365 KUHPer, which states that the party claiming damages due to unlawful actions must prove the wrongdoing.
3. Article 1394 KUHPer, which states that three consecutive receipts with payment dates exempt the debtor from proving earlier payments.
4. Article 1769 KUHPer, where proof of principal loan payment is considered evidence of paying interest on that loan.
5. Article 1977 KUHPer, which considers someone who possesses movable property as its owner.
6. Article 252 KUHPer, which allows a husband to deny a child born to his wife as his legitimate child if he can prove that he did not have sexual intercourse with his wife during the period between 300 and 180 days before the child's birth.
7. Article 489 KUHPer, which requires proof that a person without a fixed residence and uncertain survival status was alive when the right in question passed to that person.

[23] Abdul Haris Muchtar, Ahmad Maulidizen, and Amriatus Safaah, " 'Am and Khas Linguistic Method Concept and Implementation in Islamic Law Determination," *Al-Mashalih: Journal of Islamic Law*, vol. 3, no. 1 (2022), pp. 1–26.

8. Article 533 KUHPer, where someone who accuses another of misconduct does not need to prove it, but the accuser must prove it.
9. Article 535 KUHPer, which presumes that someone who starts to possess something for someone else continues to do so unless proven otherwise.
10. Article 468 paragraph (2) of the Criminal Code, which holds the transporter of goods liable for any damage suffered by the owner of the goods if the goods were not fully delivered, unless the transporter can prove that the non-delivery was due to an event beyond human control.

The role of this evidence in legal proceedings, according to Islamic law, is to strengthen the proof of disputed actions. According to Article 1866 (KUHPerdata), the types of evidence include: (1) Written proof/documents, (2) Testimonies from witnesses, (3) Objections or disputes, (4) Confessions, and (5) Oaths.

In civil procedure law, written evidence is considered the most significant and primary form of evidence compared to others. This is especially true in contemporary times when all legal actions are recorded or documented in various forms of written documents specifically created for that purpose. The purpose of providing evidence is to convince the judge of the truth of the arguments presented by both parties before the judge makes a decision. This is in line with the provisions of Article 1865 of the Civil Code (KUHPerdata) and Article 163 of the HIR/283 Rbg, which state that anyone who claims to have a right or aims to assert their right or dispute someone else's right based on an event must prove the existence of that right or event.

Based on the judge's considerations outlined above, what I can understand is that the judge's reasoning begins with the premise that the opposition raised by the Petitioner is already late because the property has already been auctioned.[24]

Moreover, it appears that the land object in dispute by the Petitioner had been put up for auction with reference to auction number 2016/2015 dated November 10, 2015. Because the Petitioner filed the opposition late, the case is declared inadmissible. Furthermore, the document of the financing agreement, in the form of *Murabahah Bil Wakalah* agreement number 190, executed before Irene Lidjaya, S.H., M.H., a Notary in Gowa Regency on November 6, 2017, and the Deed of Granting Mortgage Rights has been made in accordance with the applicable law by a qualified Public Official, constituting an Authentic Deed based on Article 1868 of the Criminal Code (KUHP), hence the Petitioner's claims cannot be accepted.[25]

The evidence presented by the Petitioner and Challenged I, the *Murabahah* financing agreement agreed upon between the Petitioner and Bank BRI Syariah, as evidenced by Petitioner's Exhibit (P3) and Challenged's Exhibit (TL9), proves that the Petitioner defaulted, with delayed payments.

The *Murabahah Bil Wakalah* agreement number 19, the property in question serves as collateral for the Petitioner in case of default. In addition to the above, Article 55 paragraph (2) of Law No. 21 of 2008 concerning Sharia Banking stipulates that when the parties have agreed to settle disputes outside the court within the jurisdiction of religious courts, dispute resolution shall be carried out in accordance with the agreement.

The Plaintiff is the losing party, the court costs are imposed on them. The decision-making process in Decision Number 1848/Pdt.G/2019/PA.Mks. affirms that the judge's decision was correct because the system of evidence presented was in accordance with the relevant provisions regarding evidence in both civil procedural law and Islamic law.

Conclusion

The evidence system in this context adheres to the requirement of presenting valid pieces of evidence according to civil procedural law, as

[24] Ahmad Maulidizen, Mamduh Tirmidzi, and Habiburrahman Rizapoor, "Migration of Muslims to Other Parts of the World: New Events and Facts," *Religia: Jurnal Ilmu-ilmu Keislaman*, vol. 24, no. 2 (2021), pp. 141–156.

[25] Ahmad Maulidizen and Asphia Sahida, "An-Nahyu: Consept and Implementation in Islamic Law Determination," *Khatulistiwa: Journal of Islamic Studies*, vol. 9, no. 1 (2019), pp. 116–140.

regulated in Article 164 of HIR/284 RBG. These valid pieces of evidence include documents, witnesses, confessions, oaths, and judicial presumptions. In principle, in civil cases, judges make decisions based on a preponderance of evidence. These valid pieces of evidence must meet certain qualifications to have full and binding probative value. Documentary evidence is categorized as written evidence, which is further divided into two types: deeds and other written documents that are not deeds. Deeds are further categorized as authentic deeds and deeds under private signature. The decision-making process in Decision Number 1848/Pdt.G/2019/ PA.Mks. affirms that the judge's decision was correct because the evidence presented was in accordance with the relevant provisions regarding evidence in both civil procedural law and Islamic law.

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