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Judicial Consideration Of Decision No. 273/Pdt.G/2021/Pa.Bkt In The Perspectives Of Benefit And Justice In *Murabahah* Contract

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ABSTRACT

Purpose of the Study: This paper aims to analyze the judicial consideration of judges in Decision No. 273/Pdt.g/2021/PA.Bkt from the perspective of benefit and justice for all parties in the murabahah and its legal consequences.

Methodology: This research used the literature review method. It used the descriptive qualitative analysis, which was conducted by profoundly reading the decision, analyzing the case, examining the appropriateness of the legal basis, and how to define them.

Results: The legal considerations of judges in Decision No. 273/Pdt.g/2021/PA.Bkt are: (1) the resolution of disputes on sharia economy is the absolute authority of the Religious Court; (2) the judge assembly must maintain the legal interests and rights of the plaintiff from the actions of the defendant to undergo an auction, as well as avoiding the losses and harm that may befall the plaintiff; (3) there was an emphasis on good intentions, benefit, and justice for all parties but the judges punished the defendant to undergo rescheduling, restructuring, and reconditioning.

Applications of this study: It can inspire judges to create legal reasoning that supports the aspect of legal certainty. It can inspire banks and customers to emphasize the aspects of good intention, benefit, and justice in implementing contracts.

Novelty/ Originality of this study:
It explained the legal consideration of judges that emphasized the aspect of mediation through contract renegotiation based on the positive law and relevant sharia principles.

Keywords: Judicial consideration, murabahah contracts, banks, good intention, benefit, justice.

ABSTRAK

Tujuan*: Tulisan ini bertujuan untuk menganalisis pertimbangan yuridis hakim dalam Putusan No. 273/Pdt.g/2021/PA.Bkt dari perspektif kemanfaatan dan keadilan bagi semua pihak dalam murabahah dan akibat hukumnya.*

Metodologi: *Penelitian ini menggunakan metode literature review. Analisis yang digunakan adalah deskriptif kualitatif, yang dilakukan dengan membaca putusan secara mendalam, menganalisis kasus, memeriksa kesesuaian dasar hukum, dan bagaimana mendefinisikannya.*

Hasil: *Pertimbangan hukum hakim dalam Putusan Nomor 273/Pdt.g/2021/PA.Bkt adalah: (1) penyelesaian sengketa ekonomi syariah merupakan kewenangan mutlak Peradilan Agama; (2) majelis hakim harus menjaga kepentingan hukum dan hak penggugat dari tindakan tergugat untuk menjalani lelang, serta menghindari kerugian dan kerugian yang mungkin menimpa penggugat; (3) ada penekanan pada itikad baik, kemanfaatan, dan keadilan bagi semua pihak tetapi hakim menghukum terdakwa dengan penjadwalan ulang, penataan ulang, dan rekondisi.*

Aplikasi penelitian ini: *Dapat menginspirasi hakim untuk menciptakan penalaran hukum yang mendukung aspek kepastian hukum. Hal tersebut dapat menggugah bank dan nasabah untuk mengedepankan aspek itikad baik, manfaat, dan keadilan dalam pelaksanaan kontrak.*

Kebaruan/Orisinalitas*: Dijelaskan pertimbangan hukum hakim yang menekankan aspek mediasi melalui renegosiasi kontrak berdasarkan hukum positif dan prinsip syariah yang relevan.*

***Kata kunci**: akad murabahah, bank, itikad baik, kemanfaatan, keadilan*

INTRODUCTION

Contracts in sharia-based financial institutions and banks are the basis for customers and financial institutions in implementing the financial instruments chosen and agreed upon by both parties. A contract is a written agreement based on sharia principles between sharia banks or Sharia Business Units (SBU) and other parties that contain the rights and obligations of each party. Sharia principles are Islamic legal principles in banking activities based on a *fatwa* (legal pronouncement) issued by institutions that are authorized to make *fatwa* in the sharia field. In this case, the National Sharia Assembly of the Indonesian Islamic Scholar Assembly (NSA-IISA) is mandated and authorized to determine the *fatwa* based on stipulations of Law No. 21 on Sharia Banks, Article 1 number 21. This was based on Yeni Salma Barlinti's opinion that "The NSA-IISA *fatwa* is a binding positive law, as its existence is often legitimized through constitutional regulations by governmental institutions. Thus, they must be complied with by actors of the sharia economy. It means that the NSA-IISA *fatwa* does not bind citizens, but it can be binding when absorbed by constitutional regulations."

The position of the NSA-IISA *fatwa* is one of the prerequisites in determining the provisions of a product in a sharia financial institution. If an NSA-IISA *fatwa* on sharia principles has been issued and is not complied with by sharia banks and financial institutions, these institutions will have to deal with the consequences, which is facing administrative sanctions. When a product proposed by the Sharia Supervisory Board (SSB) of each sharia financial institution obtains a stipulation of *fatwa* from NSA-IISA, that product is deemed according to the Islamic sharia. Apart from that, the stipulations of that *fatwa* become legal protection in applying the product. This becomes a point of attraction for customers, especially if the products are legitimized by the law or regulations of the Bank of Indonesia. Thus, the NSA-IISA *fatwa* becomes a legal stipulation that binds all sharia financial institutions. Its application is monitored by the SSB.

The SSB has the job to give advice and suggestions to the directors so that their activities stay within the corridors of the sharia. Supervision is very urgent. It must principally

be applied as it is the core of operating the sharia financial institutions (Budiono, 2017). The sanctions imposed on sharia banks that fail to adhere to the sharia principles are regulated in Law No. 21 of 2008 on Sharia Banks Article 56:

> "The Bank of Indonesia imposes administrative sanctions to sharia banks or SBU, members of the commissary assembly, members of the sharia supervisory board, the directors and/or employees of sharia banks or general conventional banks that have SBU, who prevent and/or fail to adhere to sharia principles in undergoing their business or their job to do not fulfill their obligations as stipulated in this law" (Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah, 2008).

Thus, the Bank of Indonesia is the party that is given the authority to apply the stipulations of the NSA-IISA *fatwa* through the regulations they apply. This becomes one of the factors that determine the sustainability of all business operations in sharia financial institutions so that they can bring benefits and blessings to all parties involved, including the sharia financial institutions an authority that offers products and customers as the product users (Nurjaman & Ayu, 2021).

Sharia financial institutions and banks have varied contracts. Each contract chosen and agreed upon has its own legal consequence. The basic principle of the *murabahah* contract is the sale of goods to buyers with a price *(tsaman)* of purchase and required fees added with profits that have been agreed upon (Dewan Syari'ah Nasional, 2000). An NSA-IISA *fatwa* can be issued based on the request for issuing by sharia banks or financial institutions. Each product issued by sharia financial institutions must be in line with the existing applicable NSA-IISA *fatwa*. In several contracts, banks often choose, use, and offer the *murabahah* contract (or sales) to customers. They do so by mentioning the price at the start. Then, the sharia banks or financial institutions take the profit or margin. A transaction with the *murabahah* contract is a sales transaction in the form of credit. The concept of murabahah financing in a *murabahah* contract is that Islamic banks will buy the goods requested by the customer and then the bank sells it back to the customer with additional bank profits or margins (Nurjannah S; Bambang Setiaji, 2021).

In practice, the sharia banks or financial institutions apply the *murabahah* contract without buying the goods. But they only provide cash with a contract, as if that cash will be used to buy the goods requested by the debtors. Then, after the money is submitted, there is no control over whether or not the goods have been bought according to the request. This means that the sharia financial institutions do not intend to sell them to the customers. But they only undergo *hilah* or deceit, as if it is according to sharia, although it contains usury that is

prohibited in Islam. It means that sharia banks or financial institutions do not truly apply sharia principles that are supposed to be their operational guidelines (Budiono, 2017).

The contract, requirements, and pillars of the clauses cannot violate sharia principles in the framework of shariah compliance. Shariah compliance is the fulfillment of all sharia principles in all activities as manifestations of the characteristic of that institution, in this case including sharia bank institutions. Sharia compliance departs from the existence of sharia principles that become the basis of its application (Septyanun et al., 2020). Sharia compliance is part of the good management system of sharia banks, known as good corporate governance.

The definition of banks in sharia bank laws still inserts articles on banks that function as intermediary institutions. This is stipulated in Article 1 number (2) that, "A bank is a business agency that collects funds from society in the form of savings and distribute them to the people in the form of credit and/or other forms to increase people's standard of life*"* (Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah, 2008). Thus, an institution with an intermediary function cannot act as a direct seller and buyer with customers. It means that the shift in the ownership of goods never happened. What actually happened is the submission of money to customers or debtors. This is what often causes *hilah* or deceit in *murabahah* contracts.

Banks that function as intermediary institutions often fail to interpret the implementation of sharia bank contracts according to sharia principles as written in the NSA-IISA *fatwa* and essential principles for *muamalah* of banks. The violation of sharia often leads to disputes in the sharia economy. The consequences of sharia non-compliance can be seen in stipulations of Law No. 21 of 2008 on Sharia Banks Article 58 clause 1:

> The aforementioned administrative sanctions are: a) fines; b) written warning; c) the decrease of the health level of sharia banks and SBU; d) the prohibition from participating in clearing activities; e) the freezing of certain business activities, either those of certain office branches or for the sharia bank or SBU as a whole; f) terminating the administrators of sharia banks and general conventional banks that have SBU, and followed by appointing and promoting a temporary substitute until the Stakeholders' General Meeting appoints a permanent substitute under the approval of the Bank of Indonesia; g) Including administrative members, employees, and stakeholders of sharia banks and general conventional banks that have SBU into a list of despicable people in the banking sector; and/or revoking the business permit.

The resolution of disputes on the sharia economy is the absolute authority of the Religious Court, Room of Sharia Disputes. This is based on the stipulations of Law No. 21 of

2008 on Sharia Banks, Article 55. The stipulations of this law contain two mechanisms, *first,* "In clause (1) it is stated that the resolution of sharia bank disputes is carried out by courts in the scope of the Religious Court" and *second,* "In the case where the parties have agreed to resolve disputes other than those mentioned in clause (1), the dispute resolution is carried out according to the contents of the contract." Article two leaves room for legal interpretation on the non-litigative mechanism that becomes a choice of law for the parties, such as banking mediation and the like. The explanation of Article (2) states that the dispute is carried out according to the contents of the contract, as mentioned above, is an effort that includes: a. deliberation; b. banking mediation; c. through the National Sharia Arbitrage Agency or other Arbitrage institutions; and/or d. through courts in the scope of the General Court (Rasyid & Putri, 2019).

When obtaining a case of sharia economy dispute, the Religious Court as an enforcer of law must accept, examine, and adjudicate that case. In examining, adjudicating, and making a verdict upon a case, a judge does not only have the job to return the condition to a normal condition *(restitutio in integrum)* like before the dispute occurred. But he must make the best efforts to not create new or derivative disputes from the main dispute he examined. Paradigm and legal considerations of judges in making a verdict upon a case are crucial in fulfilling people's sense of justice. Currently, in the context of Civil Procedural Law, "justice" is only defined as the power and authority of parties that are bound by the principles of consent and the freedom to make contracts (Hakim, 2017).

At the final stage, court decisions should give tasks and authority to judges to give legal reasoning that is achievable through legal findings. These findings can be found through legal interpretation and construction. This can be carried out to complete the judicial consideration of a decision in the case of rather unclear, unclear, or incomplete legal regulations. A judicial verdict must have adequate consideration; thus, it must be built with strong legal reasoning. Logical and accurate legal basis and rationing are crucial as a rational basis for the decision made (Sulistyawan & Atmaja, 2021).

This research is crucial to be conducted to know and analyze the judicial consideration of judges in Decision No. 273/Pdt.g/2021/PA.Bkt in the perspectives of benefit and justice in the *murabahah* contract. It also analyzes the *murabahah* contract between sharia banks and customers in the case of default caused by a condition of force majeure. Then, it examines the resolution of sharia bank disputes, whether they are carried out according to the steps, which

are based on the contract as an effort of banking mediation or through the non-litigation method. Or, do they not go through these steps and directly jump to the lawsuit process in the Religious Court as the party with absolute authority in resolving disputes of sharia economy, as well as the legal consequences when lawsuits in the Religious Court are revoked by one of the parties.

RESEARCH METHOD

This research used the normative doctrinal method. This research has normative because it departed from the internal perspective with the legal analysis object as the *sollen sein.* Here, practical-nomological legal studies arrive, that touch the interpretation and systemization of legal materials as well as statute theories, legal findings, and legal argumentation (Shidarta, 2020). Practical-normologic is strongly tied to the concept of legal application. Practical law application is "the socialization with the law in real life". It consists of legal formation, legal findings, and legal aid. The legal formation is then divided into constitutional regulations, concrete decisions, and real actions. The analysis object is the order of positive law. Legal studies must be opened and they must be able to process the products of various scientific fields without changing or being changed into other studies. They must not lose their special characteristics as normative studies (Sulaiman, 2015).

The data sources and/or legal materials originated from primary, secondary, and tertiary legal materials. This research used the literature review method. It used the descriptive qualitative analysis, which was conducted by profoundly reading the decision, analyzing the case, and examining the appropriateness of the legal basis and how to define them. The authors also analyzed the argumentations and appropriateness of the order of verdict in the case that became the object of analysis (Sidharta, 2020).

RESULTS AND DISCUSSION

A. Judicial Consideration of Judges on the Sharia Economy Case Lawsuit No. 273/Pdt.g/2021/PA.Bkt.

Sharia-based economic activities that involve legal subjects such as customers and sharia financial institutions or banks often have issues that occur during the application of the contract. If we look behind, we know that before a contract is applied, the involved parties must know and understand the contents and substance of the contract. Issues that

occur are often caused by emergencies or urgent conditions. Apart from that, defaults are also cases that often occur both in the litigation and non-litigation scopes.

Constitutionality examination has been applied to the stipulations on resolving disputes in the sharia economy based on the Decision No. 93/PUU-X/2012 to the Constitutional Court on the Law on Sharia Banking. Article 55 clause (2) of this law, as known in its explanation, allows the resolution of sharia economy disputes through general court processes. In the Constitutional Court's Plenary Session that was opened to the public on August 29th, 2013, it was stated that Article 55 clause (2) of the Law on Sharia Banking violates the Republic of Indonesia's 1945 Constitution. It was deemed unconstitutional and it does not have binding legal power. The legal interpretation used by the Constitutional Court in Decision No. 93/PUU-X/2012, in the end, formed legal justice *(iustitia legalis)* that resulted in the fact that the resolution of disputes on the sharia economy must be carried out through the Religious Court (Muda, 2016). Legal justice *(iustitia legalis)* is justice according to the law, where the objects are a society that is protected by the law (Pandit, 2018).

The Constitutional Court Decision No. 93/PUU-X/2012 strengthened the authority of the Religious Court in handling disputes on the sharia economy through the litigation method. This Decision is the revocation of the Choice of Law and Choice of Forum ideas in the case of resolving sharia economy disputes in Law No. 21 of 2008 on Sharia Banking. Formerly, the explanation of Article 55 clause (2) states that the resolution of sharia economy disputes can be carried out through deliberation, mediation, General Court, and Religious Court. But with this decision, the Constitutional Court declares that the resolution of sharia economy disputes is the absolute authority of the Religious Court (Berkah, 2020). the

The legal consideration of the Bukittinggi Religious Court Judge concerning this matter was as follows: (1) the resolution of sharia economy disputes is the absolute authority of the Religious Court; (2) the judicial assembly has the obligation to still maintain the legal interest and rights of the Plaintiff from the actions of the Defendant to undergo auction, as well as to avoid loses and harm that may inflict the Plaintiff; and (3) the judge punishes the Defendant to undergo rescheduling, restructuring, and reconditioning.

The legal consideration of the judge above was based on the position of the civil law case that was submitted to the Religious Court. The lawsuit was submitted and registered to the Secretariat of the Bukittinggi Religious Court on April 5th, 2021 with the number 273/Pdt.G/PA.Bkt. It concerned the rights and responsibilities of each conflicting party. In its application, a default occurred, which led to the emergence of a lawsuit to the State Court (*Putusan Nomor 273/Pdt.G/2021/PA.Bkt*, 2021):

1. Plaintiff I and Plaintiff II signed a funding contract based on the *murabahah* principle with Defendant I which was based on the *al Murabahah* Funding Contract No. 150.0010303/MRH/LXXXIV/21022020 on February 21st, 2020.
2. Plaintiff I and Plaintiff II have obtained *murabahah* funding facilities from Defendant I and Defendant II who have bought dresses and blouses with the total price (after adding with margin or profit) of Rp. 377.933.572 with the agreed-upon period of 84 months starting from February 21st, 2020 up to February 21st, 2027. The funding was repaid through monthly installments with an installment which is Rp. 4.499.209. The agreement stipulated that if Defendant is late in paying according to the signed agreement, Defendant must pay the lateness fee of Rp.4.499 every day of being late.
3. As the collateral for that sale, Defendant yielded a plot of land and all of the buildings on it according to the Certificate of Land Tenure No. 433/Nagari Biaro Gadang with the area of 232 m^2 as described in the measurement certificate dated September 23rd, 2005 No. 438/Biaro Gadang/2005 that was located in Kenagarian Biaro Gadang, Ampek Angkek District, Agam Regency under the name of Zurni.
4. According to the agreement made, Defendant paid on time from February to October 2020. But starting from November and December, Defendant started to face issues due to low sales.
5. On March 8th, 2021 Defendant issued a notice of auction to Plaintiff and the auction on the collateral was to be executed on Tuesday, April 6th, 2021. Plaintiff came to the office of Defendant to see the main director and seek resolution of Plaintiff's installments.

Several *murabahah* contracts, that is a contract of selling and buying in the form of credit, are commonly bound with collateral. A collateral is an additional guarantee, either in the form of movable or immovable objects that is yielded by the collateral owner to the Sharia Bank and/or SBU, to guarantee the obligation repayment of the Facility-Recipient

Customers. In the collateral of the *murabahah* contract, the *a quo* was a plot of land and all of the buildings on it according to the Certificate of Land Tenure No. 433/Nagari Biaro Gadang with the area of 232 m^2 as described in the measurement certificate dated September 23rd, 2005 No. 438/Biaro Gadang/2005 that was located in Kenagarian Biaro Gadang, Ampek Angkek District, Agam Regency under the name of Zurni.

The legal consequence of collateral in a *murabahah* contract was as a guarantee *(dhoman)*. The position of the confiscation of the collateral object based on the sharia principles was that it violated the principle of justice and balance, the principle of benefit, and universalism. It does not contain *maysir* (gambling)*, riba* (usury)*, gharar* (uncertainty)*, dzolim* (doing unjust things)*, riswah* (bribery), and *haram* (impermissible) objects. This is also regulated in the stipulations of Article 2 clause (2) of the Regulation of the Bank of Indonesia (RBI) No.9/19/PBI/2007 on the application of sharia principles in the activity of fund collection and distribution as well as the service of Sharia Banks which was changed into Article 2 clause (2) of the explanation of RBI No.9/19/PBI/2007.

In the *murabahah* contract, the fulfillment of the sharia principles was carried out based on the principal stipulations of Islamic law, including the principle of justice, balance, benefit, and universalism. It must not contain *maysir, riba, gharar, dzolim, riswah*, and *haram* (impermissible) object (Article 2 clause (2) of the RBI No.9/19/PBI/2007 on the application of sharia principles). This contract is deemed to not fulfill sharia compliance. This situation was also suspected by the sharia bank in the implementation of the contract. an arbitrary determination of the collateral object's price is a *dzolim* (unjust) act. The inappropriateness carried out can lead to harm to Plaintiff or the customer for the reason that Defendant determine the limit value of the object in dispute without discussing it with Plaintiff. Then, in the positive law-based aspect of legal certainty, the Defendant's actions are not only inappropriate but are also deemed as a law-violating action.

An interesting thing that happened to this case was that the case that was registered *a quo* was revoked by the Plaintiff. This made the characteristic of the legal studies on the judicial decision no. 273/Pdt.g/2021/PA.Bkt on the *murabahah* contract has a normative positivistic character. Dispute resolution in the field of private law can peacefully be resolved through various alternative dispute resolution mechanisms or through court forums. In principle, the resolution of civil disputes in the court is directed to be peacefully

resolved. But the data show that peace is not always effectively utilized through the court. The suboptimum peace in the court was also influenced by the condition that courts actually act as a last resort that is desired by the parties from the start with the existence of a decision or a judicial verdict (Afriana et al., 2022).

In the case that was revoked by the Plaintiff, there were some stipulations that can normatively be guided according to the legal positivistic characteristic of Indonesian law. Some things can be analyzed, such that the stipulations on lawsuit revocation are not regulated in HIR and R.Bg. But it is regulated in Articles 271 and 272 of the RV whose main points are as follows: (1) revocation is basically the right of the plaintiff, but the law also protects the rights of the defendant. If the lawsuit revocation was submitted before the defendant answered, there is no need for the defendant's approval as the defendant's interests are not yet attacked, and (2) if the lawsuit revocation was submitted after the defendant answered, the defendant's approval is required.

M. Yahya Harahap's opinion on the revocation of civil cases is as follows:

1) A lawsuit revocation that was approved by the defendant in the face of court is constructed as an agreement based on Article 1330 of the Civil Code and it is analogous with the decision of peace outlined in Article 130 of HIR;
2) Thus, lawsuit revocation is a binding dispute resolution that is final for the plaintiff and defendant;
3) Thus, the dispute resolution is deemed final and binding. The dispute contained in the lawsuit cannot be resubmitted by the parties. Neither the plaintiff nor the defendant can resubmit it.
4) Because the plaintiff revoked the lawsuit, this case is deemed resolved based on the laws above. The judge assembly did not enter the principal examination. Thus, the judges do not need to give their legal considerations on the principal examination of this *murabahah* contract.

Law No. 3 of 2006 on the Religious Court strengthened the existence of the Religious Court in Indonesia. Its authorities were extended to not only encompass familial law but also accommodate the *muamalah* sector. A significant change towards Law No. 7 of 1980 was the stipulation of Article 49 which involved the absolute authority of the Religious Court. Law No. 3 of 2006 Article 49 stipulates that "The Religious Court has the job and authority to examine, decide upon, and resolve first-level cases of Muslims in the

fields of marriage, inheritance, wills, *wakaf* (charitable endowment)*, zakat* (annual charity)*, infaq* (spending for the sake of God)*, shadaqah* (giving away wealth for the sake of God), and sharia economy (Muwahid et al., 2021).

B. The Aspects of Good Intention, Benefit, and Justice in the Dispute Resolution of *Mudharabah* Contract and the Legal Consideration of Judges in Case No. 273/Pdt.g/2021/PA.Bkt

In case No. 273/Pdt.g/2021/PA.Bkt concerning the *murabahah* contract, the customer expressed objections to the fact that the banks arbitrarily determined the limit of the collateral object without discussing it with the customer. Considering that in the contract, it was agreed that in the case of an underhand sale, the sale price of the collateral object is determined by the bank. But the sales carried out on the collateral object was not underhand. Thus, in other words, the sharia bank cannot arbitrarily determine the limit value of that collateral object. If the sales were carried out through a public auction, the determination of the limit value must be based on an agreement between the customer and the sharia bank. In such a condition, it can be seen that the sharia bank committed a law-violating action in determining the value of the collateral object.

In collecting funds, distributing funds, and providing services, sharia banks must comply with sharia principles as mandated in Article 2 clause (1) of the RBI No.9/19/PBI/2007 on the application of sharia principles in the activity of fund collection and distribution as well as the service of Sharia Banks which was changed into Article 2 clause (1) of the explanation of RBI No.9/19/PBI/2007 on the application of sharia principles in the activity of fund collection and distribution as well as the service of Sharia Banks.

The fulfillment of the sharia principles in the case decision was applied by fulfilling the principal stipulations of Islamic law, including the principle of justice, balance, benefit, and universalism. It must not contain *maysir, riba, gharar, dzolim, riswah*, and *haram* (impermissible) object (Article 2 clause (2) of the RBI No.9/19/PBI/2007 on the application of sharia principles in the activity of fund collection and distribution as well as the service of Sharia Banks which was changed into Article 2 clause (2) of the explanation of RBI No.9/19/PBI/2007 on the application of sharia principles in the activity of fund collection and distribution as well as the service of Sharia Banks). This stipulation cannot

be ignored by sharia banks. If sharia banks violate this, the legal consequence is a sharia bank dispute.

The sharia contract created by sharia banks and customers must be based on sharia principles whose main source is the Islamic law, i.e., the Koran and Hadeeth. The decision of the Constitutional Court No. 93/PUU-X/2012 on the Review of the Law on Sharia Banks against the Republic of Indonesia Unified State's 1945 Constitution implies the legality of the contract. It is based on the constitutional regulations that Islamic law is a basis for creating the sharia contract. Thus, to obtain a contract legality, the aim of the law must be fulfilled, namely justice, certainty, and benefit. Thus, there are no conflicts between norms, empty norms, and vague norms (Pranoto, 2015).

The aspect of *maslahah* (benefit) that becomes the main consideration of the parties are all forms of virtue which encompass the dimensions of worldly matters and those of the hereafter, material and spiritual dimensions, as well as individual and collective dimensions. The context of *maslahah* must fulfill three elements, namely compliance with the sharia (halal/permissible), beneficial, and brings virtues (*thoyib*). All aspects must fulfill these elements and not cause harm. Then, what is meant by *dzalim* is a transaction that causes injustice for other parties (Article 2 clause (2) of the explanation of RBI No.9/19/PBI/2007 on the application of sharia principles in the activity of fund collection and distribution as well as the service of Sharia Banks).

Due to the default or the failure to fulfill the performance from the Plaintiff in the *murabahah* contract carried out, the collateral was to be auctioned without an institution that measured its value. The auction price was deemed as not appropriate with the price of the collateral. This stipulation was based on the contract clause which states that, "In the case of an underhand sale, the sale price of the collateral object is determined by the bank." There was another contract clause which regulated fines, "The funding must be repaid through monthly installments with an installment which is Rp. 4.499.209 with an agreement that if Defendant is late in paying according to the signed agreement, Defendant must pay the lateness fee of Rp.4.499 every day of being late."

These two clauses contain requirements that are not in line with a Hadeeth narrated by Tirmizi from 'Amr bin 'Auf which translates into, "Peace can be made between Muslims except for the peace that makes the haram halal or that makes the halal haram; and Muslims are bound to their requirements except those that make the haram halal or that

make the halal haram" (Dewan Syari'ah Nasional, 2000). In this case, judges must keep the legal interests and rights of Plaintiff from Defendant's actions of organizing the auction as well as avoid the losses and harm that may inflict Plaintiff. Then, the judges gave a legal consideration by punishing the Defendant to undergo rescheduling, restructuring, and reconditioning.

This judicial consideration is quite appropriate considering that the defendant was going to sell the collateral object under the market price. This is an injustice that cannot be stipulated in the contract. Then, the fine for the lateness in paying is a type of *Dayn* usury. A *Dayn* usury was practiced by pre-Islamic Arabs, where debtors who were late in repaying installments will be fined. The debtors themselves may state that they are willing to pay the fine. Al Mawardi said, "Not a single Abrahamic religion permitted usury." Allah (God) stated, explaining the law of previous peoples, "And [for] their taking of usury while they had been forbidden from it, and their consuming of the people's wealth unjustly" (An Nisaa': 161) (Subaily, 2017).

Further, the collateral object was to be auctioned without an institution that priorly measures its price and the auction price was deemed to not suit the collateral object's price. In other words, banks cannot individually determine the value limit of collateral objects. If sales are carried out through a public auction, the determination of the value limit must be based on an agreement between the customer and the bank. This violated the stipulations of Article 2 clause (2) of the RBI No.9/19/PBI/2007 on the application of sharia principles in the activity of fund collection and distribution as well as the service of Sharia Banks, which must fulfill the principles of justice, balance, benefit, and universalism. It must not contain *maysir, riba, gharar, dzolim, riswah*, and *haram* (impermissible) objects. When correlated with Thomas Aquinas' *iustitia legalis* theory on law and religion, legal justice must show compliance with the law. Thus, legal compliance is the same as acting virtuously and justly in all aspects. The *lex humane* concept states that human-made laws must be according to the law of nature. Some of Aquinas' concepts also differentiated laws that originate from revelations and those achieved by the human mind.

The legal reasoning behind the judicial decision in case No. 273/Pdt.g/2021/PA.Bkt is already according to the appropriate principles of rationing. The legal reasoning behind every judicial decision must ground every party. A grounding legal reasoning, as translated by Arief, is a rationing to resolve concrete cases. It can be described from the writing of

Gr. van der Borght and J.D.C. Winkelman which was translated and published in 1994. These two Dutch writers offered seven steps in resolving cases, which are simultaneously steps for legal rationing. These seven steps include: (1) placing a case on a map or describing a case in a summary concerning the sitting matter of a case (schematization); (2) translating this case into juridical terms (qualification); (3) selecting relevant legal regulations; (4) analyzing and interpreting these legal regulations; (5) applying legal regulations in a case; (6) evaluating and reviewing arguments and its resolution; and (7) formulating the resolution (Shidarta, 2020).

CONCLUSION

The legal reasoning behind the judicial decision in case No. 273/Pdt.g/2021/PA.Bkt is already according to the appropriate principles of rationing. The legal reasoning of judges used legal reasoning that grounds every party. The revocation of the case by the parties brought logical consequences in the decision of the Bukittinggi Religious Court Judges. This case was deemed resolved and there is no need to follow up on it. From the basis for the judicial consideration in case No. 273/Pdt.g/2021/PA.Bkt it can be seen that the absolute authority of the Religious Court in examining and deciding upon a dispute of sharia economy is normative positivistic. The condition is that the *a quo* lawsuit was then revoked by the Plaintiff or the customer, which means that the non-litigation method has been successful by emphasizing the aspect of good intention, benefit, and justice for all parties through the mediation of sharia banks. It must be noted that the defendant must undergo rescheduling, restructuring, and reconditioning.

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