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# IMPLEMENTATION OF PROGRESSIVE LAW IN SHARIA BANKING DISPUTE SETTLEMENT: Case Study of Religious Court Decisions in Indonesia

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**Abstract:** This research aims to analyze the extent to which judges have applied progressive legal paradigm in deciding Sharia banking disputes and the extent to which the decisions have fulfilled the principles of legal certainty, justice, and value. This normative legal research uses statutory and case study approaches by analyzing Sharia banking dispute decisions obtained from the website of the Supreme Court of the Republic of Indonesia. This research found that decisions based on textual legal interpretations tend to less implement progressive law, lacking of accommodating people's sense of justice as they put more emphasis on legal certainty. Meanwhile, decisions based on contextual legal interpretations tend to implement progressive law by prioritizing legal justice rather than legal certainty, more accommodating people's sense of justice. Such different decisions are partly attributed to the different interpretations of judges due to different levels of competence and different understanding of Sharia among the judges. By participating in integrated and sustainable training, judges can improve their competence to deleiver justice for all concerned parties.

**Keywords**: Progressive Law, Sharia Banking Disputes, Legal Certainty, Legal Justice, Legal Value

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## Introduction

THE ESTABLISHMENT of Bank Muamalat Indonesia marked the emergence of Sharia finance in Indonesia, thanks to the support of Law no. 7 of 1992 concerning Banking which introduced "profit sharing banks"[1] The regulation was strengthened by the issuance of Law no. 10 of 1998 concerning Banking on amendments to Law

[1] Indonesia, "Undang-Undang No. 7 Tahun 1992 Tentang Perbankan" (1992).

no. 7 of 1992. This law allows conventional banks to carry out business activities using Sharia principles.[2] Then, Law No. 21 of 2008 concerning Islamic Banking provides legal legitimacy for the operation of Islamic banks.[3] Islamic banking continues to experience significant growth. As of July 2022, the market share of Sharia banking has reached 7.03% with 12 Sharia commercial banks, 21 Sharia business units, and 166 Sharia rural banks.[4]

The rise of Sharia business activities cannot avoid disputes between the parties involved.[5] This can lead to uncertainty for investors and market participants regarding the safety of their investments.[6] Disputes stemming from the Islamic finance industry are sui generis requiring a fast and efficient framework to secure sustainable business relationships.[7] Law No. 3 of 2006 concerning amendments to Law no. 7 of 1989 concerning the Religious Courts article 49 states that the Religious Courts have the authority to examine and decide Sharia economic cases. The article elucidates Sharia economics as actions or business activities carried out according to Sharia principles, including Sharia banks.[8]

The authority of the Religious Courts in deciding Sharia banking disputes was then strengthened by the Supreme Court

[2] Indonesia, "Undang-Undang No. 10 Tahun 1998 Tentang Perubahan Atas Undang-Undang No. 7 Tahun 1992 Tentang Perbankan" (1998).

[3] Indonesia, "Undang-Undang No. 21 Tahun 2008 Tentang Perbankan Syariah" (2008).

[4] Otoritas Jasa Keuangan, "Statistik Perbankan Syariah Juli 2022" (Jakarta, 2022).

[5] Erie Hariyanto and Moh Hamzah, "Bibliometric Analysis of the Development of Islamic Economic Dispute Resolution Research in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (December 30, 2022): 221–33, https://doi.org/10.31958/juris.v21i2.6997.

[6] Hasan Zulkifli and Mehmet Asutay, "An Analysis of the Courts' Decisions on Islamic Finance Disputes," *ISRA International Journal of Islamic Finance* 3, no. 2 (2011): 41–71.

[7] Umar A. Oseni and Abu Umar Faruq Ahmad, "Dispute Resolution in Islamic Finance: A Case Analysis of Malaysia," in *Ethics, Governance and Regulation in Islamic Finance* (Doha, Qatar: Bloomsbury Qatar Foundation, 2015), 127.

[8] Indonesia, "Undang-Undang Peradilan Agama, UU No.50 Tahun 2009 Jo. UU No.3 Tahun 2006 Jo. UU No.7 Tahun 1989, LN No.159 Tahun 2009 TLN NO. 5078 Jo. LN No.22 Tahun 2006 TLN No.4611 Jo. LN No.49 Tahun 1989 TLN No.3400" (2006).

Decision No. 93/PUU-X/2012 concerning Explanation of Article 52 Paragraph (2) of Law No. 21 of 2008.[9] Juridically, religious courts and Sharia banking in Indonesia have robust legitimacy. The application of Sharia principles in Sharia banking business activities and the role of the courts are expected to be able to oversee the dispute resolution process with the concept of kaffah (comprehensive) and istiqâmah (consistent) through court decisions to create justice, solidarity, and equity in economic activity.

The material source of law used by the Religious Courts in handling Sharia banking disputes is the contract (contents of the agreement), the Compilation of Sharia Economic Law (KHES) which is enforced as applied law in the religious courts through Supreme Court Regulation (PERMA) No. 2 of 2008[10], Jurisprudence, DSN-MUI Fatwa, and Fiqh as the intepretations of Islamic law (Sharia). Meanwhile, the source of formal law (procedural law) that applies in the Religious Courts to resolve disputes in Sharia banking is procedural law that applies in the General Court environment unless there are special rules governing it. This provision is regulated in Article 54 of the Law on Religious Courts. The special rules governing the procedures for resolving Sharia economic disputes are handled by Supreme Court Regulation No. 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases.[11]

Each lawsuit contains different issues and characteristics. Dutch colonialism in Indonesia left not only history but also legal systems and products. The flow of legal positivism brought by the Dutch to Indonesia is an implication of the civil law system adopted by the Dutch. The civil law tradition has a characteristic in terms of legal certainty, which then makes the legal approach adopted by Indonesia a legal system with a legal positivistic view. In enforcing the rule of law, the civil law system always refers to

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[9] Mahkamah Agung, "Putusan Mahkamah Agung No. 93/PUU-X/2012 Tentang Penjelasan Pasal 52 Ayat (2) Undang-Undang No. 21 Tahun 2008" (2012).

[10] Mahkamah Agung RI, "Peraturan Mahkamah Agung Republik Indonesia No. 02 Tahun 2008 Tentang Kompilasi Hukum Ekonomi Syariah" (2008).

[11] Mahkamah Agung RI, "Peraturan Mahkamah Agung No. 14 Tahun 2016 Tentang Tata Cara Penyelesaian Perkara Ekonomi Syariah" (2016).

the context of the written rules that become the text of the law to be applied often lacking of considering whether the laws and regulations are fair.

Western legal positivism paradigm seems to be incompatible with the nature and characteristics of Sharia economic law in Indonesia. Islamic law contains vertical and horizontal dimensions because it was born from the revelation while addressing the surrounding social reality. Western law is almost entirely based on tradition and rational thinking.[12] Mukhidin, in his research, stated that to get out of the legal downturn in Indonesia, there must be an effort to liberate oneself from the conventional way of working inherited from positive law schools with all their doctrines and procedures, which are all formal and procedural which give birth to formal justice, not substantial justice. Enlightenment and liberation from formal procedural shackles can be achieved through a progressive legal paradigm concerned with truth, humanity, and justice.[13] Akbar added that even though the legal system (including the method of law) in Indonesia is currently still based on modern law, which is very dominant with its legal-positivistic tradition, the idea of progressive law is not something far-fetched, the application of a progressive legal paradigm has been carried out by several law enforcers in overcoming positive legal impasses.[14]

Fikriawan, Anwar, and Ardiansyah said that a progressive legal paradigm is fundamental to producing progressive judges with legal decisions that adress the legal predicament. Progressive Judge's Decisions can become jurisprudence or a reference in resolving disputes.[15] More specifically, in their research, Hasanah,

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[12] Erie Hariyanto, "The Settlement of Sharia Banking Dispute Based on Legal Culture as a Practice of Indonesian Islamic Moderation," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (2019): 301–16, https://doi.org/10.19105/al-lhkam.v14i2.1888.

[13] Mukhidin, "Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterahkan Rakyat," *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 267–86.

[14] Muhammad Akbar, "Hukum Progresif Sebagai Alternatif Hukum Yang Ideal," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 15, no. 1 (2021): 125–37, https://doi.org/10.24239/blc.v15i1.702.

[15] Suad Fikriawan, Syamsul Anwar, and Misnen Ardiansyah, "The Paradigm of Progressive Judge's Decision and Its Contribution to Islamic Legal Reform in

Ja'far, and Fasa argued that progressive law has an essential role as one of the paradigms used in resolving Sharia economic disputes. Progressive legal teachings place "law for humans" and "substantive justice" in harmony with the goals of as-Syari' (Maqasid al-Shari'a) in creating laws for the public interest (maslahah).[16]

Progressive Law is based on Islamic law, which can be open to different interpretations.[17] Progressive law and Islamic law have compatibility related to the purpose of law, namely human welfare. Ijtihad in Islamic law also rejects the status quo. Islamic law has various sources, including the Al-Qur'an, Hadith (prophetic traditions), and scientific opinions of jurists. Therefore, the interpretations of the law by judges will always have differences.[18]

Progressive Law aims to encourage economic growth and development while upholding the principle of justice. In practice, however, these interests can conflict with each other. For example, resolving disputes for the sake of economic growth may not always be fair for all parties involved. Therefore, it is important to balance so that these competing interests can be resolved based on the principle of justice. This requires the judges to have in-depth understanding of the legal, economic, and social aspects of the dispute. Such understanding must be integrated with one another to reach justice in decision-making.

This study aims to analyze the extent to which judges have applied the progressive legal paradigm in deciding Sharia banking

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Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (2021): 249–62, https://doi.org/10.24090/mnh.v15i2.4730.

[16] Salasti Faridatun Hasanah, A. Khumaidi Ja'far, and Muhammad Iqbal Fasa, "Konstruksi Hukum Progresif: Urgensinya Dalam Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Program Studi Ekonomi Syariah STAIN Madina* 2, no. 2 (2021): 100–119.

[17] Suci Ramadhan and Jm. Muslimin, "Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 10, 2022): 89, https://doi.org/10.31958/juris.v21i1.5723.

[18] Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, *Islamic Legal Interpretation Muftis and Their Fatwas* (London: Harvard University Press, 1996).

disputes; and the extent to which the decision made meets the principles of certainty, justice, and legal value. The analysis is carried out by presenting case studies of some Sharia banking dispute decisions so that the conclusions made are based on empirical facts. This research is a type of normative legal research with statutory and case study approaches.

In its application, progressive law is still based on applicable law but is interpreted more as guided by the principles of substantive justice rather than technical juridical legal rules. In Sharia banking dispute resolution, what is used is not only the existing agreement (Sharia contract). Legal politics, legal sociology, legal philosophy, and even legal psychology are also applied to answer the problems faced by the parties concerned.[19]

This normative legal research uses statutory and case study approaches by analyzing Sharia banking dispute decisions at the DKI Jakarta Regional Religious Court obtained from the website of the Supreme Court of the Republic of Indonesia. The decisions analyzed include the Decision of the Central Jakarta Religious Court No. 670/Pdt.G/2021/PA.JP; Decision of the Jakarta Religious High Court No. 205/Pdt.G/2021/PTA. JK; East Jakarta Religious Court Decision No. 2616/Pdt.G/2019/PAJT; Verdict No. 88/Pdt.G/2020/PTA. JK; and Decision No. 881K/Aug/2020. Analysis contents decision using the IRAC logic and reasoning model (Issue, Rule, Argument, and Conclusion).[20] The IRAC model is the basis for legal analysis that helps to view complex and simple legal issues by identifying problems, finding suitable rules and laws with the identified problems, and drawing appropriate conclusions.

The first step is to reveal the facts of a case to formulate a problem or issue. There will be no legal issues unless several events have occurred. The second step is identifying the problems or issues illuminated by the rule of law. Issues or problems directly determine what rules are applied. The next step is to

[19] Dewi Nurul Musjtari, "Penyelesaian Sengketa Perbankan Syariah Dalam Perspektif Hukum Progresif," *Media Hukum* 20, no. 2 (2013): 301–16.

[20] Urbanus Ura Weruin, "Logika, Penalaran, Dan Argumentasi Hukum," *Jurnal Konstitusi* 14, no. 2 (2017): 374, https://doi.org/10.31078/jk1427.

compare the facts with the rules to construct an analysis. Do the facts meet the requirements of the law? Then, the final step is to conclude by showing the relationship between facts and rules (law) in the form of decisions and punishments. After outlining several decisions using the IRAC method, the authors critically analyze the extent to which judges have applied the progressive legal paradigm in deciding Sharia banking disputes; and the extent to which the decision made meets the principles of certainty, justice, and legal value. It is hoped that this research can provide insight into the legal constellation in the settlement of Islamic banking disputes in the Religious Courts and become an evaluation for related parties.

**Settlement of Sharia Banking Disputes in the Religious Courts**

Based on Law no. 3 of 2006 concerning amendments to Law no. 7 of 1989 concerning the Religious Courts, the courts that have the competence to resolve Sharia economic cases are courts within the Religious Courts. The authority of the Religious Courts was strengthened in the Constitutional Court decision no. 93/PUU-X/2012, which decides that the Religious Court is the only court authorized to resolve Sharia economic disputes.[21] The Religious Courts in Indonesia are an environment with specifications and uniqueness because it is subject to two legal systems with different sources. Viewed from the point of origin, the purpose for which it was formed and held, as well as the functions it carries out, the Religious Courts are Islamic Sharia courts and, based on ideology, are subject to Islamic Sharia law. Meanwhile, if viewed from the point of view of its status, which was formed and administered by the state, the Religious Courts are state courts and, based on the constitution, are subject to state law. This legal pluralism in the Religious Courts makes it an exciting research locus. This research examines and reviews Islamic banking disputes resolved through the Religious Courts, especially in the DKI Jakarta.

[21] Wardah Yuspin and Yurisvia Previlega Hatinuraya, "Tinjauan Yuridis Penyelesaian Sengketa Perekonomian Syariah Pasca Berlakunya Undang-Undang Nomor 3 Tahun 2006," *Jurnal Jurisprudence* 6, no. 1 (2015): 69, https://doi.org/10.23917/jurisprudence.v6i1.3000.

Regarding judicial techniques, Supreme Court Regulation No. 14 of 2016 provides two possibilities for handling Sharia economic cases: simple and usual. The benchmark is the value of material claims. If the value is less or equal to Rp. 200 million, then handled as simple case. Meanwhile, if the value is more than Rp. 200 million, then held in the usual way.[22]

Before the case is examined, there are administrative requirements that need to be completed. The administration of this case includes case files in which there is a down payment for case fees, case numbers, determination of the panel of judges, and appointment of court clerks. Having these are done, the panel of Judges then sets a trial day and orders the bailiff to be summoned to attend the trial, the time of which has been determined by the Judges in the Determination of Session Days. The panel of Judges examines the formal requirements of the case, which include the competency and competence of the plaintiff, the competence (authority) of the Religious Courts both in absolute and relative terms, the accuracy of the plaintiff's determination of the defendant (not wrong in determining the defendant), the lawsuit is not obscure (dark), the case to be examined has never been decided by a court with a decision that has permanent legal force (not ne bis in idem), not too early, not too late, and not prohibited by law from being examined and tried by the court.

The Judge's first and primary task is to reconcile the two parties as stipulated by Supreme Court Regulation No. 1 of 2008 concerning court mediation procedures. If peace is reached, the Judge does a peace deed. If no settlement can be achieved, the examination proceeds to the next stage: reading the lawsuit, the defendant's response, replica, duplic, and proof. If all of these stages have been passed, the Panel of Judges, based on their conclusions, will read out their decision. If parties are dissatisfied with the decision at the Court of First Instance, they can submit an appeal to the High Religious Court in each Province. The next

[22] Mahkamah Agung RI, "Membedah Perma Tata Cara Penyelesaian Perkara Ekonomi Syariah," https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/membedah-perma-tata-cara-penyelesaian-perkara-ekonomi-syariah, 2016.

effort to seek justice is to appeal to the Supreme Court and finally is an extraordinary legal remedy, namely Judicial Review, with the condition that there must be new evidence.

The material source of law used by the Religious Courts in handling Sharia banking disputes is the contract (contents of the agreement), the Compilation of Sharia Economic Law (KHES) which is enforced as applied law in the religious courts through Supreme Court Regulation (PERMA) No. 2 of 2008[23], Jurisprudence, and DSN-MUI Fatwa.

The Compilation of Sharia Economic Law is a bench book for religious court judges in examining, adjudicating, resolving, and adjudicating disputes related to the Sharia economy enforced through Supreme Court Regulation (PERMA) number 2 of 2008. The Compilation of Sharia Economic Law is prepared by referring to various books Fiqh, including Majallah al-ahkam al-adliyyah, DSN-MUI fatwas, and Bank Indonesia Regulations.[24] The Compilation of Sharia Economic Law consists of four books with 790 articles. Book I on Legal Subjects and Amwal, Book II on Contracts, Book III on Zakat and Grants, Book IV on Sharia Accounting.

In deciding cases, judges also pay attention to jurisprudence, a source of law formed by previsous judges' decisions. A fatwa is a legal opinion submitted by a mujtahid or scholar who has the scientific capacity in the field of Islamic law to answer specific questions based on the Book of Allah and the Sunnah of the Prophet Muhammad. A fatwa has no legal binding. The determination of the law to draw up a fatwa uses general principles from the Qur'an, Al-Hadith, and Qaidah Fiqhiyah. In addition, Fatwa is a source of Sharia economic law. The National Sharia Council-Indonesian Ulema Council (DSN-MUI) is an institution with authority to issue Sharia economic fatwas. The DSN-MUI fatwa has a reasonably high authority value in assessing

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[23] Mahkamah Agung RI, Peraturan Mahkamah Agung Republik Indonesia No. 02 Tahun 2008 Tentang Kompilasi Hukum Ekonomi Syariah.

[24] Ika Atikah, "Eksistensi Kompilasi Hukum Ekonomi Syariah (Khes) Sebagai Pedoman Hakim Dalam Menyelesaikan Perkara Ekonomi Syariah Di Pengadilan Agama," *Muamalatuna, Jurnal Hukum Ekonomi Syariah* 9, no. 2 (2017): 143–62.

the level of conformity of Sharia and the halalness of a product of an Islamic financial institution. Then, deduction and consideration of the stories of virtue are carried out, such as daruriyat (essential needs), hajiyat (secondary needs), and tahsiniyat (luxuries needs).

Meanwhile, the source of formal law (procedural law) that applies in the Religious Courts to resolve disputes in Sharia banking is procedural law that applies in the General Court environment unless there are special rules governing it. This provision is regulated in Article 54 of the Law on Religious Courts. These legal sources include HIR (Herzeine Inlandsch Reglement) for Java and Madura; Rbg (Rechtsreglement Voor De Buitengewesten) for outside Java and Madura; B.Rv (Reglement Op De Burgelijke Rechtvordering) for the European group; BW (Bugelijke Wetboek Voor Indonesia) or the Civil Code; Wvk (Wetboek Van Koophandel) or the Book of Commercial Law; Law No. 4 of 2004 concerning Main Provisions of Judicial Power; Law no. 50 of 2009 concerning the Second Amendment to Law no. 7 of 1989 concerning Religious Courts; Law No. 8 of 2004 concerning General Courts; Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law; RI Supreme Court Regulations; Circular of the Minister of Religion; Regulation of the Minister of Religion; Decree of the Minister of Religion; Books of Islamic Fiqh and Unwritten Sources of Law.

Material law and formal Islamic economics, including Islamic banking, have been regulated in the chamber system as stated in the Decree of the Chief Justice of the Supreme Court No. 142/KMA/SK/IX/2011 regarding room systems.[25] Then, to perfect the chamber system at the Supreme Court, the Chief Justice of the Supreme Court issued a Decree of the Chief Justice of the Supreme Court No. 143/KMA/IX/2011 concerning the Appointment of Chair of the Chamber in the chamber system[26] and No. 144/KMA/SK/IX/2011 concerning Supreme Court Judges as

[25] Mahkamah Agung RI, "SK KMA No. 142/KMA/SK/IX/2011 Tentang Sistem Kamar" (2011).

[26] Mahkamah Agung RI, "SK KMA No. 143/KMA/IX/ 2011 Tentang Penunjukan Ketua Kamar Dalam Sistem Kamar Pada MA" (2011).

Members of the Case Chamber in the chamber system.[27] The Supreme Court holds a plenary meeting annually to discuss all legal issues in each chamber and evaluations in case management. All the chamber law formulation results are outlined in a Supreme Court Circular Letter.

## Application of Progressive Law in Settlement of Sharia Banking Disputes

The Judge has the authority to preside over and adjudicate cases. The Judge's decision must go through three stages. The first is to confirm the legal events submitted by the parties by seeing, acknowledging, or justifying the occurrence of certain events based on the evidence presented. The second stage is qualifying or assessing legal events proposed by parties that are considered to have occurred by seeking or determining legal relations (statutory regulations) to the arguments or events that have been proven. The third stage is constituting or establishing the law by providing justice to the litigants.[28]

Juridically and philosophically, Indonesian judges have the obligation or right to interpret the law so that the decisions they make are by the law and the sense of justice of society. According to Gustav Radbruch, law rests on three essential values: certainty, justice, and value.[29]

Judge's decision that reflects legal certainty has a role in finding the proper law. In making decisions, judges do not only refer to the law because it is possible that the law does not regulate clearly, so judges are required to be able to explore legal values such as customary law and unwritten law that live in society. Judges can adjudicate, explore relevant local potentials, distort legal texts that are no longer appropriate, interpret legal texts, and carry out legal constructions if legal texts do not yet exist/are not

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[27] Mahkamah Agung RI, "SK KMA No. 144/KMA/SK/IX/2011 Tentang Hakim Agung" (2011).

[28] Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Persfektif Hukum Progresif* (Jakarta: Sinar Grafika, 2018).

[29] A Salman Maggalatung, "Hubungan Antara Fakta Norma, Moral, Dan Doktrin Hukum Dalam Pertimbangan Putusan Hakim," *Jurnal Cita Hukum* 2, no. 2 (2014): 185–92, https://doi.org/10.15408/jch.v1i2.1462.

found. However, this freedom is limited and subject to Pancasila, the 1945 Constitution, the code of ethics and conduct for judges, and clear and relevant laws and regulations in resolving cases for the sake of order and certainty.[30]

The Judge's decision reflects justice if it is impartial to one of the parties to the case and recognizes both parties' equal rights and obligations. The Judge'ss decision must be by its true purpose: to provide equal opportunities for litigants in court. The value of justice can also be obtained when the case settlement process is carried out quickly and at a low cost. The Judge's decision that reflects the legal value is when the Judgee does not only apply the law textually but the decision can be executed in real terms to help the litigants and benefit the society in general. Decisions issued by judges must maintain a balance in society so that people will again have complete trust in law enforcement officials.[31]

These three principles are closely interrelated to make the law a guideline for society's behavior. However, if these three principles are connected to the existing reality, there often needs to be more clarity between justice and legal certainty or between legal certainty and legal value. Sharia banking disputes that continue to increase require an appropriate legal paradigm in their settlement. The progressive legal paradigm has the urgency and relevance of law in resolving Sharia banking disputes.

Progressive legal thinking originates from Satjipto Rahardjo's concern for the legal situation in Indonesia. The people feel the law implementation in Indonesia could have been better through their concrete daily legal experiences. There are still many of those who are weak who get severe sanctions, while those who are assertive tend to escape the law.[32]

Progressive law begins with the thought of "law for humans"; that is, the law is a service to humans. Law is an institution that aims to deliver people to a just, prosperous life and make people happy. Progressive law has a value base that is not trapped in the

[30] Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah : Teori Dan Praktek* (Jakarta: Kencana, 2017).

[31] Amir Ilyas, *Kumpulan Asas-Asas Hukum* (Jakarta: Rajawali, 2016).

[32] Satjipto Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009).

spirit of formal legalism but is in favor of the nature of humanity.[33] The idea of progressive law places humans at the center of every discussion about the law: progressive law positions certainty, justice, and legal benefit in one line. The concept of "the best law" must be understood holistically in seeing and understanding society's problems. Hopefully, this thought can solve humanitarian problems oriented toward substantive justice.

Examining progressive legal thought can be traced back to some of the thinkers of earlier legal experts, such as Jeremy Bentham (1748-1832), who was a prominent figure from the utilitarianism school/school. The main idea of this school is "the aim of the law is the greatest happiness for the greatest number of people" and that the purpose of the law is to seek happiness and benefit as many people as possible. Apart from that, there is also a historical (historical) school/school figure named Friedrich Karl von Savigny who, in his teachings, said, "*das recht wird nicht gemacht, est ist und wird mit dem volke*," that laws are not made but grow and develop with society.[34]

Progressiveness is needed in law enforcement. Thinking progressively means daring to get out of the mainstream of thought of legal absolutism and positioning law in a relative position that lies in all humanistic issues.[35] Progressive law has the character that law is not in a stagnant position but instead flows like "*panta rei*" (everything flows); "*Laws are for humans*." With this fundamental belief, progressive law positions the law not as the center of human rotation but as humans at the center of the law cycle. Progressive law also pays great attention to justice that lives in the spirit of society or justice that lives in the nation's soul with the term "*Volksgeist* Progressive law refuses to maintain the status quo because of its restless search for how and where justice is."

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[33] Rizal Mustansyir, "Landasan Filosofis Mazhab Hukum Progresif Tinjauan Filsafat Ilmu," *Jurnal Filsafat* 18, no. 1 (2008): 20–23.

[34] H. R. Otji Salman, *Filsafat Hukum: Perkembangan & Dinamika Masalah* (Bandung: PT. Refika Aditama, 2010).

[35] Hamidah Abdurrachman et al., "Application of Ultimum Remedium Principles in Progressive Law Perspective," *International Journal of Criminology and Sociology* 10 (2021): 1012–22, https://doi.org/10.6000/1929-4409.2021.10.119.

Sound progressive legal principles are reflected in the community's behavior, especially legal experts as part of legislators, academics, judges, prosecutors, lawyers, and police. The behavior of lawmakers and legal practitioners, especially judges, can be an example of the development of legal education and development in society. Judges must be braver not only textually bound but also put forward the goal of realizing justice and benefit in society. Thus the main objectives of law will be realized, namely substantive justice, legal value, and legal certainty because the law is basically for humans, not for the law itself.[36]

Progressive behavior of judges can be created by imposing obligation morality, critical reason morality, and conscience morality. The morality of obligations means that if there is a conflict of loyalty, then what must be chosen is a higher norm or law, which does not only apply to one group but laws that have wider validity. The morality of critical reason is that the Judge realizes that the existing law is nothing but agreements. Suppose the law no longer fulfills its function. In that case, it must be changed by creating laws of higher quality and better able to accommodate the dynamics of society, but of course, not to change them arbitrarily but with full, fair, and logical consideration.

The highest level of morality is conscience morality. Conscience morality means using spiritual intelligence to carry out the law. Judges with conscience morality certainly have a mindset that has reached the stage of spiritual intelligence in carrying out the law. This morality never betrays the voice of conscience and beliefs about what is right and good.[37] Thus, the paradigm of progressive law must be applied in Sharia banking dispute resolution. This study aims to answer the extent to which judges have used the progressive legal paradigm in making decisions on Sharia banking disputes, especially in the case studies of decisions discussed in this study.

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[36] Fauzan, "Progressive Law Paradigm in Islamic Family Law Renewal in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 2 (2020): 187–202, https://doi.org/10.29300/mzn.v7i2.3617.

[37] Sastiono Kesek, "Prinsip Hukum Progresif Sebagai Paradigma Pembaharuan Sistem Peradilan Di Indonesia," *Jurnal Ilmiah* 14, no. 3 (2014): 131.

**Case Study: Decision on Sharia Banking Disputes at the DKI Jakarta Religious Court**

This study's first Islamic banking dispute case was about a *murabahah* agreement. The customer (defendant) has defaulted (broken promise) on the *murabahah* financing agreement/contract he entered into with an Islamic bank because he did not fulfill his obligation to pay installments. The Religious Court stated that the customer had defaulted based on Article 1 number 26 and Article 2 regarding the Murabahah Financing Agreement regarding default; Article 1338 of the Indonesian Civil Code, which states that all agreements made legally are valid as laws for those who make them;[38] Article 36 Compilation of Sharia Economic Law, namely that a party can be deemed to have broken a promise if, due to their mistake, namely, they did not do what was promised to so, and the provisions of Article 38 Compilation of Sharia Economic Law, namely that parties to a contract who break a promise may be subject to sanctions for paying compensation, canceling the contract, risk transfer, fines, and paying court fees.[39]

In addition, the Bank sued the customer for paying forced money (dwangsom). The legal provisions used by the Central Jakarta Religious Court are based on article 606a B.Rv (Reglement Op De Burgelijke Rechtvordering), namely, as long as a judge's decision contains a penalty for something other than paying a sum of money, it can be determined that as long as or whenever the convict does not fulfill the sentence said, he must submit an amount of money the amount of which is defined in a judge's decision and this money is called forced money (dwangsom); and article 606b, namely if the Judge's decision is not complied with, then the opposing party to the convicted person has the authority to carry out the decision on a certain amount of forced money (dwangsom) without first obtaining a new basis of rights according to law.[40] Central Jakarta Religious Court Decision No.

[38] Indonesia, "Kitab Undang-Undang Hukum Perdata (KUHPerdata)" (1847).

[39] Mahkamah Agung RI, Peraturan Mahkamah Agung Republik Indonesia No. 02 Tahun 2008 Tentang Kompilasi Hukum Ekonomi Syariah.

[40] Indonesia, "Herzien Inlandsch Reglement (HIR)" (1941).

670/Pdt.G/2021/PA.JP granted the Bank's lawsuit, punishing the customer for paying off a total of Rp. 18,560,114,305, -; and paid forced money of Rp. 100,000,- (one hundred thousand rupiah) for each day of delay as of the case decision quo with permanent legal force, as well as paying court fees.[41]

The case proceeded to the appeal level. The legal basis used by the Jakarta Religious High Court is article 1320 of the Civil Code, which states that the defendant/appellant is obliged to fulfill the contents of the murabahah agreement[42]; DSN Fatwa No. 04/DSN-MUI/IV/2000 Concerning Murabahah and DSN Fatwa No. 111/DSN-MUI/IX/2017 Concerning the *Murabahah* Sale and Purchase Contract that the agreement made is *Murabahah*, then the provisions as in the Fatwa apply;[43] whereas for forced money (dwangsom), the decision of the Judge of the High Religious Court is based on the Supreme Court Jurisprudence No. 791K/SIP/1972 and No. 233/K/Pdt/2008, July 23, 2009, that forced money (dwangsom) cannot be demanded together with demands for payment of amount money". The decision of the Jakarta Religious High Court No. 205/Pdt.G/2021/PTA. JK decided that the customer is required to return the remaining *murabahah* receivables after deducting the installments paid by him to the Bank for IDR 18,560,114,305,-; and the Bank's demands regarding forced money (dwangsom) were declared unacceptable.[44]

The second Sharia banking dispute case regarding the sale and purchase of debt and the transfer of receivables (cessie) was carried out by a Sharia bank (defendant I/ first creditor) against MA (defendant II/ second creditor) before a notary (co-defendant). The customer (Plaintiff) reported to the East Jakarta Religious Court because he objected to the debt sale and purchase agreement

[41] Mahkamah Agung RI, "Putusan Pengadilan Agama Jakarta Pusat No. 670/Pdt.G/2021/PA.JP" (2021).

[42] Indonesia, Kitab Undang-Undang Hukum Perdata (KUHPerdata).

[43] Dewan Syariah Nasional, "Fatwa DSN No. 04/DSN-MUI/IV/2000 Tentang Murabahah" (2000); Dewan Syariah Nasional, "Fatwa DSN No. 111/DSN-MUI/IX/2017 Tentang Akad Jual Beli Murabahah" (2017).

[44] Mahkamah Agung RI, "Yurisprudensi Mahkamah Agung No. 791K/SIP/1972" (1972); Mahkamah Agung RI, "Yurisprudensi Mahkamah Agung No. 233/K/Pdt/2008" (2008).

and the transfer of receivables agreement (cessie) because he was never invited to negotiate, and the Bank did not ask for his approval. The customer requests the Religious Court to cancel the agreement. Then, the customer receives a subpoena from the second creditor to pay his debt; if it is not paid by June 20, 2019, the debt guarantee (one plot of land and building on it) will be auctioned. Because of this, the customer requests the Religious Court to carry out a Collateral Confiscation against the debt guarantee.

The Judge at the East Jakarta Religious Court found that there had been an Ijarah Sharia Financing Agreement between the customer and the Bank, namely "*a contract for the transfer of usufructuary rights (benefits) for an item for a certain time with payment of rent (ujrah), without being followed by a transfer of ownership of the item itself*."[45] The customer has defaulted because he did not pay the installments on time. It is a general rule for banks that the value of the debt guarantee is always much higher than the debt platform approved by the Bank, as well as in the quo case, the object value of the debt guarantee is also higher than the remaining debt repayments that are the customer's obligation. Therefore, the Judge considers it proper and fair if, in the event of a sale/transfer of a customer's debt along with a guarantee of mortgage rights by the Bank to the second creditor, the creditors first ask for the customer's approval as a concrete form of willingness to buy and sell (*'an taradhin minkum*).

In the Decision of the Central Jakarta Religious Court No. 670/Pdt.G/2021/PA.JP, the Judgee granted the customer's request with consideration of the provisions of the DSN Fatwa Number 31/DSN-MUI/VI/2002, namely an alternative syar'i solution that must be carried out by the Bank is to provide *qardh* to customers, with *qardh* the customer pays off the credit (*remaining installments*) and thus the assets purchased with the credit become the entire property of the customer (*milkuttam*). Then, the customer sells the asset to the Islamic Bank, and with the proceeds from the sale, the customer pays off his *qardh*. Or the second alternative is that

[45] Munawar Iqbal and David T. Llewellyn, *Islamic Banking and Finance: New Perspectives on Profit Sharing and Risk* (Edward Elgar Publishing, 2002).

Islamic banks buy part of the customer's assets with the approval of the Conventional Financial Institution, so in this way, syirkat al-milk occurs between the Bank and the customer for these assets. Another legal source used is Q.S. Al-Maidah, verse 2 (about helping in virtue), Q.S.Al-Isra'z: 34 (about fulfilling promises), and QS Al-Baqarah: 275 (regarding the lawfulness of buying and selling and the prohibition of usury).

This case continues to the level of appeal at the Jakarta High Court. The panel of judges at the appellate level annulled the first instance judge's decision and made a different decision, namely Decision No. 88/Pdt.G/2020/PTA.JK. The results of the decision considered the agreement to buy and sell debts and the transfer of receivables made by Islamic banks to the second creditor valid based on Article 613 of the Civil Code and Article 16 of Law Number 4 of 1996 concerning Mortgage Rights. Likewise, based on Articles 459 and 467 of the Compilation of Sharia Economic Law, the transfer of debt is legal according to law and protected by applicable laws and regulations. There is no element of unlawful or detrimental acts. In Sharia economic law, the transfer of debt is called *hiwalah*,[46] which does not require *ijab* and *qabul* and is valid when stated orally, in writing, or by the gesture. One of the Hadith of the Prophet narrated by Imam al Bukhari, Muslim, Abu Dawud, and Ibn Majah from Abu Hurairah, Rasulullah SAW. He said if the debt payment is delayed by someone who can afford it, if the debt collection is diverted, then accept it. For the issue of confiscation of collateral, the Panel of Judges at the appellate level also disagreed with the Judgee at the first level based on the law on Supreme Court Jurisprudence No. 394K/Pdt/1984, which states that goods that have been used as collateral for a debt to a bank cannot be subject to Conservatoir Beslag (Seize collateral).

Then, this case goes to the cassation level. The decision of the Panel of Judges at the appellate level was supported by the Panel of Judges at the Cassation level, which stated that *hawalatul haq* or cessie (transfer of receivables) from the Bank to the second creditor was valid because the customer did not fulfill his obligations in

[46] Ibrahim Wade, *Islamic Finance in the Global Economy* (Edinburg: Edinburg University Press, 2000).

paying his debts even though he had been given a warning (subpoena) to fulfill his commitments the. Fatwa of the National Sharia Council Number 104/DSNMUI/X/2016 does not explicitly stipulate the obligation of Islamic banks to notify in advance of the existence of *hawalatul haq*/*cessie* and are allowed to apply subjective novation or change of da'in and subrogation according to Sharia principles. This is in line with Article 613 paragraph (2) of the Civil Code, which states that making a cessie agreement does not require the approval of the debtor; moreover, in the *quo* case, it turns out that the Bank has notified the customer as stated in the PT Bank Permata Tbk letter. Number 1404/RMG/CCR/IV/2018, dated April 16, 2018, concerning Notification of Transfer of Debt.

The Panel of Judges at the cassation level added that DSN Fatwa No. 31/DSN-MUI/VI/2002 concerning Transfer of Debt, which is used as a source of law by judges of first instance, could not be applied in the quo case because the Fatwa regulates the transfer of debt from Islamic Financial Institutions to Conventional Financial Institutions. Article 19 paragraph (1) letter g of Law no. 21 of 2018 concerning Islamic Banking states that the business activities of Islamic Commercial Banks include taking over debt based on hawalah contracts or other contracts that do not conflict with Sharia principles. Based on this article, the settlement of hawalatul haq or cassie disputes is not only considered from a purely normative perspective but also needs to be considered from the perspective of fulfilling Sharia economic principles. In the quo case, the Bank and the second creditor should provide opportunities for customers by applying Islamic economics principles to avoid illegal transactions.

In its decision, the Panel of Judges at the cassation level corrected the results of the Panel of Judges' decision at the appeal level, namely with Decision No. 881K/Aug/2020. The other decision penalizes the Bank and the second creditor by giving the customer an opportunity for 6 (six) months to pay off the remaining debt by the *Hawalatul Haq*/Cessie agreement Number 45 dated April 11, 2018, as of the date this decision has permanent legal force and surrenders the basis for the rights of the object of the dispute to the plaintiff after completing the settlement of the *Hawalatul Haq*/Cessie debt.

**Analysis of Legal Sources and Progressive Law Application in Sharia Banking Dispute Decisions at the DKI Jakarta Religious Court**

The Republic of Indonesia Supreme Court Regulation No. 02 of 2008 concerning the Compilation of Sharia Economic Law Article paragraph (1) has emphasized that court judges within the religious courts who examine, adjudicate, and resolve cases related to the Sharia economy, use the Compilation of Sharia Economic Law as a guideline for Sharia principles. However, paragraph (2) explains that using the Compilation of Sharia Economic Law does not reduce the responsibility of judges to explore and find laws to guarantee fair and correct decisions. Disputed cases in Islamic banking usually involve a mixture of problems and cannot only be resolved by sources of Islamic economic law alone. Therefore, the function of the Religious Court Judge in handling Islamic banking cases is to provide decisions that are considered juridically on specific facts from some instances before the law.

From several Islamic banking dispute decisions discussed in this study, it is known that Religious Court Judges have maximized various sources of applicable Islamic economic law in deciding cases. Judges use not only the Sharia Economic Law Compilation, DSN Fatwa, and Jurisprudence but also the Civil Law Code and B.Rv (Reglement Op De Burgelijke Rechtvordering) in deciding disputes. The first case study is regarding *murabahah* disputes. In determining the contract's validity, the Judge at the Central Jakarta Religious Court used the provisions of articles 36 and 38 of the Compilation of Sharia Economic Law regarding broken promises and sanctions for paying compensation. The Jakarta Religious High Court added that the legal source of the agreement was based on the provisions of Article 1320 of the Civil Code, Fatwa DSN No. 04/DSN-MUI/IV/2000 Concerning *Murabahah*, and DSN Fatwa No. 111/DSN-MUI/IX/2017 Concerning *Murabahah* Sale and Purchase Contracts.

Islamic banks not only sue customers to pay their installments but ask for forced money (dwangsom) for every day of delay. The Central Jakarta Religious Court is based on article 606a article 606b B.Rv (Reglement Op De Burgelijke Rechtvordering), which states

that as long as or whenever the convict does not fulfill the sentence, he must be given a forced amount of money (dwangsom). Therefore, the results of Decision No. 670/Pdt.G/2021/PA.JP requires customers to pay the forced money. Meanwhile, the Jakarta Religious High Court used the Supreme Court Jurisprudence No. 791K/SIP/1972 and No. 233/K/Pdt/2008, which states that forced money (dwangsom) cannot be prosecuted together with demands for payment of an amount of money to customers. Therefore, the results of Decision No. 205/Pdt.G/2021/PTA. JK rejected the lawsuit by the Sharia.

Bank, which required the customer to pay the forced money. Decisions of this kind are a form of Judge's thinking that does not just appear in the judicial process but is arried out through logical and complicated excavations and reasoning. In the murabahah dispute case, the Judge at the Central Jakarta Religious Court interpreted the provisions on forced money textually based on regulations and tended to be rigid. The Central Jakarta Religious Court uses a legal reasoning model from legal positivism. It has yet to be seen that the judges explored the benefits of imposing forced money. This can be seen from the ontology and epistemology of judges' decisions, prioritizing written rules as law and interpreting them textually in authentic rules/interpretations. The axiology or objective in the Judge's decision prioritizes legal certainty. Judges only seek to look at other approaches in deciding Sharia economic cases by using an economic system regarding value, utility, and efficiency.

Meanwhile, the Judge at the Jakarta Religious High Court conducted a historical review by looking at Jurisprudence, namely the source of law formed by previous judges' decisions. Then, the content of jurisprudence is interpreted contextually for this *murabahah* dispute. Because, in this case, the customer is required to pay installments to the Bank, which means "payment of an amount of money," the Court Judge decides that forced money cannot be demanded along with the installment payment. The decision has reflected a progressive legal paradigm by the principles of "law for humans" and "substantive justice." Decisions made have reflected certainty, justice, and legal benefits. As creditors who provide financing, Sharia Banks get legal guarantee

protection, namely getting the money back from customers. Meanwhile, customers are not burdened with forced money (dwangsom). The Panel of Judges at the Jakarta Religious High Court has implemented obligatory morality, namely choosing a higher norm or law that applies to all groups of people.

Unlike the previous dispute, the second case study has a more complex problem: debt sale and purchase agreements, transfer of receivables (cessie), and confiscation of collateral. The case occurred because the customer, as the plaintiff, objected to the debt sale and purchase agreement and the transfer of receivables made by the Islamic Bank to the second creditor (individual in nature) because the Islamic Bank did not seek approval from him. The customer requests the East Jakarta Religious Court to cancel the debt sale and purchase agreement, transfer the receivables, and confiscate collateral against the customer's debt guarantee to the Sharia Bank (one plot of land and building on it). The East Jakarta Court Judge used the legal source of Fatwa DSN No. 31/DSN-MUI/VI/2002 concerning the Transfer of Debt. East Jakarta Religious Court Decision No. 2616/Pdt.G/2019/PAJT decided to cancel the debt sale and purchase agreement and the transfer of receivables made by the Islamic Bank to the second creditor and to confiscate the collateral for the guarantee of the customer's debt to the Bank. The reason is that Islamic banks should carry out alternative syar'i solutions by giving *qardh* to customers to pay off their debts and selling/transferring customer debt along with guarantees of mortgage rights by the Bank to the second creditor; they should first ask for the customer's approval.

Meanwhile, the Panel of Judges at the Jakarta Religious High Court decided through Decision No. 88/Pdt.G/2020/PTA. JK that the transfer of debt by an Islamic Bank to a second creditor is legally based on the legal sources, the provisions of Articles 459 and 467 Compilation of Sharia Economic Law, Article 613 of the Civil Code, and Article 16 of the Law Number 4 of 1996 concerning Mortgage as a legal source of debt transfer; and goods that have been used as collateral for debt cannot be subject to collateral confiscation based on Supreme Court Jurisprudence No. 394K/Pdt/1984.

The Supreme Court Justices supported the decision at the cassation level through Decision No. 881 K/Ag/2020 that transferring debt does not require approval from the debtor based on DSN Fatwa No. 104/DSNMUI/X/2016 concerning Subrogation Based on Sharia Principles, Article 613 paragraph (2) of the Civil Code. DSN Fatwa No. 31/DSN-MUI/VI/2002 concerning the Transfer of Debt used by Judges at the first level cannot be applied in this case because the Fatwa regulates the transfer of debt from Islamic Financial Institutions to Conventional Financial Institutions. Supported by the provisions of Article 19 paragraph (1) letter g of Law no. 21 of 2018 concerning Islamic Banking states that the business activities of Islamic Commercial Banks include taking over debt based on *hiwalah* contracts or other contracts that do not conflict with Sharia principles.

Interestingly, in explaining *hawatul haq* (debt transfer),[47] sthe Panel of Judges at the Jakarta Religious High Court and the Supreme Court critically examine these cases by integrating approaches to common law, justice, and interpretation of Sharia principles. Transferring debt from the Bank's dependents to the second creditor in the Islamic economic system is called Hiwalah. This contract is valid by stating it orally, in writing, or by signing. The settlement of *hawalatul haq* or cassie disputes is not only considered from a purely normative perspective but also needs to be considered from the perspective of fulfilling Sharia economic principles. In the quo case, the Bank and the second creditor should provide opportunities for customers by applying Islamic economics principles to avoid illegal transactions. In Decision No. 881 K/Ag/2020, the Supreme Court Judge offers an opportunity for customers to pay off their debts to the second creditor within six months of the decision's effect. Islamic banks and second creditors must return debt collateral assets to customers after the debt is paid off.

The attitude of the Panel of Judges at the Jakarta Religious High Court and the Supreme Court Justices has reflected the application of a progressive legal paradigm by seeking and

[47] Mohammaed Imad Ali and Ikramur Rahman Falahi, *Islamic Banking and Finance: Principles and Practices* (Marifa Academy Private Limited, 2021).

continuing to seek justice. Based on the author's analysis, the Judgee has reflected a progressive behavior based on the morality of obligations which is reflected in the use of higher and more complete sources of law; critical sense morality, namely, the Judgee realizes that the existing law is nothing other than agreements and uses a better law and by the case that occurred; and conscience morality, namely using spiritual intelligence in implementing regulations that are not only based on normative law but also look at Sharia principles.

The development of progressive legal concepts still requires control. In his Pure Law Theory, Hans Kelsen states that the operation of the law can be outside the law, principles, or norms ("rule-breaking"). However, in its implementation, it still pays attention to existing laws. It should be remembered that the application of progressive law is not necessarily free from existing regulations but rather collaborates with existing rules and prioritizes sensitivity to the behavior and social impact of the law itself. This control can be seen from the Judge'ss decision, which provides legal certainty for both customers, Islamic Banks, and second creditors.

Legal certainty is reflected in the interpretation of the law by judges who are not only based on one rule but look at various legal sources that apply and are relevant to the case that occurred. Not only has legal certainty, but the decisions also fulfill the principles of justice and legal expediency. Justice is reflected in the Judge's decision, which allows customers to pay off their debts within six months and get their debt collateral assets back if they have paid off their debts. The second creditor is also sure to get his money back. The decisions made also have benefits, both for the parties to the dispute and society in general. This decision can be used as a guideline for other judges in deciding the same dispute case, namely regarding *hawatul haq* (transfer of debt).

From the two Sharia banking dispute cases, the authors found that there were differences in the way judges in the Religious Courts made decisions. Decisions based on textual interpretation of law tend not to implement progressive laws that accommodate people's sense of justice, because they are considered to place more emphasis on legal certainty. Meanwhile, judge's decisions based

on contextual legal interpretation tend to implement progressive law (which accommodates people's sense of justice) by prioritizing legal justice over legal certainty. The nature of legal certainty tends to interpret the law textually, while legal justice tends to dig deeper into the law by looking at the context of the case.

There are several factors that may be the cause of differences in judges' detention at the judicial level. First, related to the duties and powers of judges at the judicial level. Judges at the first level usually judge based on facts, while the Panel of Judges at the appellate and cassation levels has the duty and authority to deepen the application of law to cases that occur. Second, related to the uneven competence and understanding of Sharia owned by judges. Judges at the first level tend to display literal and passive scriptural, while judges at the appellate and cassation levels tend to display contextual, substantive, and active.

The contradiction between the principle of active judges and the principle of passive judges is usually associated with the issue of the prohibition of ultra petitum partium, namely the ban for judges to decide more than what is required under the provisions of Article 178 (2) and (3) of the HIR. However, there is Supreme Court jurisprudence which states that a judge can grant more than what is demanded in the petitum as long as it is by the subject matter of the case. The Supreme Court has determined that the Judge's decision must consider all juridical, philosophical, and sociological aspects. So that the justice to be achieved, realized, and accounted for in the Judge'ss decision is oriented toward legal justice, moral justice, and social justice. Thus, a progressive legal paradigm can be appropriately implemented in resolving shari'ah economic disputes.

In general, the implementation of progressive laws is also influenced by the regulatory framework for Islamic finance in Indonesia which is considered inconsistent and lacks clarity regarding regulations which can pose challenges to the implementation of Progressive Laws. For example, there may be different interpretations of what constitutes a Sharia-compliant transaction, which could have an impact on dispute resolution. In addition, changes or inconsistencies in regulations can cause

uncertainty and uncertainty in the settlement of Islamic banking disputes.

Progressive law implementation is also influenced by wider socio-economic factors, such as economic conditions, level of education, and awareness of Islamic finance, as well as public attitudes towards Islamic banking. These factors can affect the effectiveness and acceptability of Progressive law in practice. For example, if the level of public awareness of Islamic finance is still low, the parties may be reluctant to seek Islamic banking dispute resolution. Likewise, if there is a negative perception of Islamic banking in society, the parties may not trust the religious courts to resolve their dispute fairly.

Progressive law implementation depends on the availability and effectiveness of dispute resolution mechanisms. Inadequate or ineffective mechanisms can hinder the implementation of the Progressive Law, as parties may be reluctant to pursue Islamic banking dispute resolution. In addition, the availability and effectiveness of these mechanisms may also depend on the complexity and nature of the dispute. For example, disputes involving multiple parties or complex financial arrangements may require special expertise or facilities, which may not be available at fist level religious courts.

## Conclusion

From the several Sharia banking dispute decisions discussed in this study, it is demonstrated that Religious Court Judges not only use the Compilation of Sharia Economic Law, DSN Fatwa, and Jurisprudence but also use the Civil Code and B.Rv (Reglement Op De Burgelijke Rechtvordering) as a source of law in deciding disputes. The authors find that judges at the first level tend to interpret the law textually and still need to reflect on the application of progressive law. They tend to put emphasis on legal certainty, leading to relatively less accommodating people's sense of jstice. Meanwhile, the Panel of Judges at the appellate and cassation levels tends to interpret law contextually and historically, mirroring the application of advanced law by creating substantive justice. It can be concluded that the courts of appeal and cassation level have applied an integrated interpretation

approach by referring to and considering people's sense of justice and Sharia principles before making a decision. The decisions seek to attain the principles of legal certainty, justice, and value for the disputing parties and society in general. With the fulfillment of these three principles, it becomes a guarantee of legal protection for Islamic Banks and Islamic banking customers.

Religious court judges are expected to be more considerate in deciding cases, especially at the first level. Suppose the decision made at the court of first instance is by applicable legal provisions and fulfills the principles of legal certainty, justice, and value. In that case, the parties to the dispute do not have to spend time and money to continue the dispute to the appeal and cassation levels. So that Islamic banking disputes can be resolved quickly, efficiently, and at a low cost. The application of progressive law must be encouraged among judges in dealing with Sharia banking disputes. Judges are expected to continue to improve their competence and knowledge in handling Sharia banking disputes by participating in integrated and sustainable training. Judges who have attended the training must transfer knowledge to judges who have yet to experience it. The movement should also be decentralized and carried out in the jurisdiction of the respective High Courts. It is necessary to insert advanced legal materials or methods into the Judge training courses.

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