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THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS

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Abstract

This paper aims to analyses the dualism of authority in resolving disputes over bankruptcy cases in Islamic banking. On the one hand, the authority is given to the judiciary of the commercial court, on the other hand, there are rules that the settlement of economic disputes in Islamic banking is resolved by the religious court. This research was conducted with a normative legal approach, where the main data was obtained from the study of legislation, doctrine and legal theories on the authority of the court, as well as secondary data from studies conducted by previous researchers related to the topic of this article. The results show that the authority to resolve disputes over bankruptcy cases of Islamic banking customers is the authority of the Religious Court as stipulated in the Religious Court Law. However, the KPKPU Act also states that the authority is also given to the Commercial Court. Judging from the theory of authority, the dualism of these rules creates legal uncertainty because the KPKPU Law and the PA Law vest the authority to resolve bankruptcy disputes in two different judicial bodies. The provisions of the KPKPU Law and the PA Law are incoherent and incompatible with each other, resulting in legal uncertainty in the resolution of commercial disputes in Islamic banking in Indonesia.

Keywords: Court Authority, Settlement of Economic Disputes, Bankruptcy, and Indonesia.

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Abstrak

Tulisan ini bertujuan untuk mengkaji dan menganalisis tentang dualisme kewenangan dalam penyelesaian sengketa perkara nasabah pailit pada Perbankan Syariah. Pertama, kewenangan tersebut diberikan kepada peradilan Pengadilan Niaga, disisi lain terdapat aturan yang mengatur bahwa penyelesaian sengketa ekonomi pada perbankan syariah diselesaikan oleh Pengadilan Agama. Penelitian ini dilakukan dengan pendekatan normatif yuridis, dimana data utama diperoleh dari kajian perundang-undangan, doktrin dan teori-teori hukum tentang kewenangan pengadilan, serta data sekunder dari kajian yang telah dilakukan oleh peneliti sebelumnya terkait topik artikel ini. Hasil penelitian menunjukkan bahwa kewenangan penyelesaian sengketa perkara nasabah pailit perbankan syariah merupakan kewenangan Pengadilan Agama sebagaimana diatur dalam UU Pengadilan Agama. Akan tetapi, UU KPKPU juga menyebutkan bahwa kewenangan tersebut juga diberikan kepada Pengadilan Niaga. Dilihat dari teori kewenangan, maka adanya dualisme aturan tersebut justru menimbulkan ketidakpastian hukum, UU KPKPU maupun dalam UU PA menetapkan kewenangan menyelesaikan sengketa pailit berada pada dua badan peradilan berbeda. Aturan ini mengakibatkan ketidakjelasan tentang kompetensi absolut badan peradilan, dan ketentuan UU KPKPU dan UU PA tidak koheren dan tidak padu, sehingga menumbulkan ketidakpastian hukum dalam penyelesaian sengketa ekonomi pada perbankan syariah di Indonesia.

Kata Kunci: Kewenangan Pengadilan, Penyelesaian Sengketa Ekonomi, Pailit, dan Indonesia

INTRODUCTION

The court is an official state institution tasked with the administration of justice. It functions as a judicial body authorised to execute legal duties. One of its responsibilities is the resolution of bankruptcy matters regarding Islamic banking clients. Bankruptcy or insolvency refers to a debtor's inability to meet financial obligations and is subject to court declaration.[1] Bankruptcy can only be declared by the court for debtors who are in a state of insolvency or experiencing financial difficulties.[2]

From an Islamic economic perspective, bankruptcy cases arise in various contexts with different contract products. For instance, these

[1]Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Teori dan Praktik*, Edisi Revisi, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2017).
[2]Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan*, Edisi Kedua, (Jakarta: Kencana Prenada Media Group, 2016).

include cases of sale and purchase contracts executed through murābaḥah mechanisms for purchase orders between customers seeking specific commodity goods and finance companies, whether they be banks or non-banks. If the customer is unable to pay the instalments in accordance with the agreed contract terms, they are declared bankrupt. This applies similarly in other debt and credit agreements wherein the debtor is unable to repay the outstanding amount owed.

The problem that has arisen pertains to the jurisdiction for handling customer bankruptcy disputes in Islamic banking. Disputes can be resolved in the religious, commercial, or district court, or through alternative dispute resolution methods. Furthermore, since there may be an agreement contract in place, parties can choose an institution to resolve disputes.[3] The appearance of the option for resolving bankruptcy disputes through an authority can be attributed to two factors. Firstly, there are several legal regulations which govern sharia economic dispute resolution issues, which are carried out by various court institutions. Secondly, there is the issue of no legal certainty for the parties involved.

Indonesian laws and regulations are often inconsistent in regulating religious court authority. Religious courts are tasked and authorised to examine, decide, and resolve cases at the first level between Muslims in several civil fields, including sharia economy. These powers are outlined in Article 49 of Law No. 3 of 2006, which amended Law No. 7 of 1989 concerning Religious Courts. Bankruptcy of customers in Islamic banking is one of the Sharia economic cases discussed in the article. It is important to note this provision differs from others stated in the same law. According to Article 3, paragraph (1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, the decision regarding the bankruptcy petition statement is determined by the Commercial Court having jurisdiction over the area where the debtor's legal domicile is located. Article 55(2) of the Law No. 21 of 2008 regarding Sharia Banking mandates that if the parties to a dispute have resolved it outside of the Religious Court mentioned in paragraph (1), then the dispute resolution process shall follow the terms of the contract. The contract outlines that

[3]Abdul Jalil, "Tumpang Tindih Kewenangan Penyelesaian Sengketa Penbankan Syariah", *Jurnal: Konstitusi*, Vol. 10, No. 4, (Desember, 2013).

parties are permitted to settle disputes via the general courts which fall under the jurisdiction of the legal system.[4]

On the other hand, the emergence of numerous options for resolving bankruptcy disputes generates legal uncertainty with regards to legal regulations in Indonesia. Consequently, there is a legal ambiguity on whether the power to resolve bankruptcy cases by customers in Islamic banking ought to be exercised through litigation or non-litigation channels. If litigation is necessary, the Religious Court, Commercial Court or District Court, which are all within the scope of the general court, has been granted the authority. Considering these legal issues, it is intriguing to investigate the legislative aspect of resolving bankruptcy disputes.

RESEARCH METHOD

This qualitative research adopts a normative juridical approach, utilizing legal materials such as laws, regulations, and legal literature opinions as data sources. Formatting features adhere to conventions, and precise word choice is utilized to improve the text's overall clarity. Lastly, grammatical correctness is ensured whilst avoiding biased phrasing. The primary legal materials utilized in this research include the Civil Code, Sharia Banking Law, Bankruptcy Law, Religious Courts Law, and other relevant legislation. Excluding any subjective appraisals, the provided information is presented in clear, concise sentences with a logical flow and causal connections between statements. Technical term abbreviations are adequately explained upon first usage, and the language remains formal and objective, avoiding both colloquial language and filler words. Moreover, the author utilises secondary sources such as books, journals and articles that pertain to the subject matter of this study.

[4]Sahnaz Kartika, M. Yadi Harahap, "Kewenangan Mengadili dalam Penyelesaian Perkara Kepailitan dan Penundaan Kewajiban Pembayaran Utang Perbankan Syariah". *Jurnal: Al Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, Vol. 5, No. 1, (Januari-Juni, 2023), p 104-127.

RESULTS AND DISCUSSIONS

The Concept of Bankrupt Customer Dispute Resolution in Islamic Banking

Financial institutions in the form of banks come in two varieties: conventional banking and Islamic banking. The term sharia, found in the phrase Islamic banking, has an etymology in the Arabic word for "the path to the watering place".[5] Some interpret it as the path to be followed, the conduit through which water flows, the direct route, the central tenets of religion, or the path predetermined by God for humankind.[6] Yūsuf Al-Qaraḍāwī defines sharia as the rules and regulations that Allah has enjoined upon His slaves.[7] The term sharia in the context of Islamic banking denotes the restrictive and regulating nature in which banking is conducted, as well as the procedural framework of sharia principles. Islamic economics' sharia principles incorporate the absence of usury, *gharar* (uncertainty), *maisir* (gambling), fraud, and other prohibited elements in Islam.[8]

Islamic banking differs from conventional banking in its operational system. The former does not employ the interest system and adheres to basic principles outlined in Islamic sharia.[9] Islamic financial institutions or banks are based on the principles of the Qur'an and hadith, which guide *muamalah*, or permissible transactions, unless they are prohibited in the aforementioned sources that regulate economics, social relations, and politics.[10]

Based on the operational framework, the banking concept is categorised into conventional and Islamic banks. Islamic and conventional banking systems exhibit dissimilarities in their processes. The key variance in the Islamic banking system is the forbiddance of *riba* (usury) and *gharar* (uncertainty) practices. This is what sets apart the Islamic economic system from the conventional one, which is founded on the principle of self-interest

[5]Ibn Manẓūr, *Lisān al-'Arab*, Juz' 10, (Kuwait: Dār al-Nawādir, 2010).
[6]Abd. Shomad, *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum Indonesia*, Edisi Revisi, (Jakarta: Kencana Prenada Media Group, 2017).
[7]Yūsuf Al-Qaraḍāwī, *Madkhal li Dirāsah Al-Syarī'ah Al-Islāmiyyah*, (Terj: Ade Nurdin dan Riswan), (Bandung: Mizan Pustaka, 2018).
[8]Chairul Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in The Banking Industrial In Aceh, Indonesia". *Jurnal Ilmiah Peuradeun: The Indonesian Journal of the Social Sciences*. Vol. 11, No. 2, May 2023, p, 658-669.
[9]Ismail, *Perbankan Syariah*, Cet. 4, Ed. Kedua, (Jakarta: Kencana Prenada Media Group, 2016).
[10]Ikatan Bankir Indonesia, *Memahami Bisnis Bank Syari'ah*, (Jakarta: Gramedia Pustaka Utama, 2014).

in shaping its concept.[11] The differences between the two can be seen from the legal aspects, organisational structure, business financed and work environment.[12] From a legal standpoint, the primary focus pertains to the contract's legality and the underlying legal norms that guide its execution. Islamic and conventional banks exhibit contrasting organizational structures as the former incorporates crucial parts, like the Sharia Supervisory Board (DPS), which were hitherto absent in traditional banks. In terms of financed businesses, those in Islamic banks adhere to sharia principles and are limited to halal businesses. Such limitations ensure investment and financing activities are in accordance with Islamic law. In contrast, conventional banks are unconstrained by religious values and norms, enabling them to finance any kind of business recognized by laws and regulations.[13]

Islamic banking involves two parties: the bank and the customer. To comprehend Islamic banking dispute resolution, it is necessary to define both elements. Islamic banking dispute resolution refers to the process of settling disagreements between customers and Islamic banks concerning the agreed contract. With this in mind, it is apparent that explanation of the two components is essential. In this case, the matter under dispute concerns a customer who has failed to fulfil their obligations to an Islamic banking institution due to bankruptcy.

Bankruptcy customer disputes can be resolved through penal and non-penal channels according to the agreement. Technical term abbreviations are explained when first used. If either party, the customer or the Islamic bank, seeks an out-of-court settlement, steps can be taken through institutions of arbitration, deliberation and mediation. However, if the parties or the aggrieved party submits to judicial legal procedures, this also has a strong legal foundation. The process of resolving disputes in Islamic banking can be implemented through both methods.

[11]Chairul Fahmi, "Analysis of Legal Aspects on Debt Transfer from Conventional Bank to Sharia Bank Post The Application of Qanun Aceh No. 11 Of 2018". *Jurnal Al-Mudharabah*. Vol. 5, Edisi 1, 2023. p.34-54.
[12]Muhammad Syafi'i Antonio, *Bank Syariah dari Teori ke Praktik*, (Jakarta: Gema Insani Press, 2001).
[13]*Ibid*.

Legal Certainty Theory

The concept of legal certainty, also known as *rechtszekerheid*, is a fundamental tenet of legal theory. The concept of legal certainty, also known as *rechtszekerheid*, is a fundamental tenet of legal theory. It plays a crucial role in ensuring justice and upholding the rule of law.[14] If legal certainty cannot be attained, it may hinder the realization of legal justice in society, resulting in an unfair execution of the rule of law. This theory suggests that the law is perceived solely from a legal perspective, despite potential unfairness in its practical application.[15] According to supporters of legal certainty, it is not important if the rules and application of the law appear unjust and do not benefit the majority of society, as long as this legal certainty is achieved.[16]

Legal certainty, or "*scherkeit des rechts selbst*" in Deutch terms, refers to the certainty surrounding legal material. In countries that follow the common law system, legal certainty can be measured by the jurisprudence or decision products of judges. In countries that adhere to a written law system, such as the civil law or codification system, legal certainty can be measured by the material of the law itself.[17]

It is imperative that the application of law in society is based on written, positive law that is currently in force. This is because unwritten law can vary between societies, resulting in legal uncertainty. Hence, the law must always be written and positively applied to ensure legal certainty.[18] Therefore, according to the general theory of legal certainty, legal certainty pertains to the presence of rules with a general nature, enabling individuals to decipher which actions are either prohibited or commanded.[19]

[14]Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, (Jakarta, Konstitusi Press, 2005).
[15]*Ibid.*
[16]Achmad Ali, *Menguak Teori Hukum*, Ed. Kedua, Cet. 1, (Jakarta, Kencana Prenada Media Group, 2017).
[17]Achmad Ali, *Menguak Teori Hukum, Teori Peradilan Termasuk Interpretasi Undang-Undang*, Cet. 7, (Jakarta, Kencana Prenada Media Group, 2017).
[18]Peter Mahmud Marzuki, *Teori Hukum*, Edisi Pertama, Cet. 2, (Jakarta, Kencana Prenada Media Group, 2020).
[19]Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Edisi Revisi, Cet. 10, (Jakarta, Kencana Prenada Media Group, 2017).

Authority for Dispute Resolution in Bankruptcy Cases in Islamic Banking.

Dispute resolution has been carried out in various aspects pertaining to bankrupt customers in Islamic banking. This can be observed from the extensive repository of judgments by judges in either the Religious Court.[20] Parties involved in cases relating to customers and Islamic banks have the option to resolve disputes through alternative means instead of official judicial procedures. These non-punitive procedures may include the use of third-party mediators in the mediation process. It is possible and may even be desirable for both parties to choose other means of resolution. In such cases, objectivity must be maintained throughout the process. Cases that are resolved through both formal legal channels and alternative methods are compliant with the applicable regulations.

The agreement between Islamic banking and its customers should proceed smoothly. Both parties are obligated to fulfil all rights and obligations as outlined within the terms of the contract. It is imperative that each component of the binding agreement is upheld. In a debt and credit or financing agreement, the customer is obligated to fulfil their obligations by paying off any outstanding debts or instalments within the agreed timeframe, such as monthly or per semester, during a specified time period.

Sometimes, clients may face financial difficulties and struggle to fulfil their obligations. Additionally, banking institutions may also encounter bankruptcy or fail to meet their responsibilities towards clients. Consequently, legal proceedings may arise to address these disputes. Islamic banking dispute resolution is supported by a distinct legal framework, which applies both within and outside of the judicial system.

The settlement of sharia economic disputes or disputes in Islamic banking is governed by several binding regulations. These include:

1. Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations (KPKPU).

   Article 2 and Article 3 of the KPKPU Law state that disputes in the form of debtors not paying debts can be resolved in court. Article 127

[20] There are many cases of bankrupt customers specifically resolved in the Syar'iyah Court in Aceh. For example, in the Syar'iyyah Court of Banda Aceh, a bankrupt customer (defendant) in the repayment of murabahah financing at PT BPRS Mustaqim Aceh (plaintiff) with Decision number 1/Pdt.G.S/2022/MS.Bna. Furthermore, in Decision Number 319/Pdt.G/2018/MS.Bna, where the customer did not implement the contract agreement with PT Bank Syariah Mandiri Aceh Branch. There are still several other decisions, the point of which is that the Sharia Bank chooses the pernal route in resolving bankrupt customer cases.

paragraph (1) also contains the possibility for the parties to make peace, but if peace is not successful, the supervisory judge can order each party to settle through the court.

2. Law No. 3 of 2006 on the Amendment to Law No. 7 of 1989 on Religious Courts.

The Religious Courts Law is also the legal basis for efforts in the process of resolving Islamic banking disputes. This is understood from Article 49 as follows:

> "Religious courts have the duty and authority to examine, decide, and settle cases at the first instance between people of the Islamic faith in the fields of: a. marriage; b. inheritance; c. wills; d. grants; e. Wa kaf; f. zakat; g. infaq; h. shadaqah; and i. shari'ah economy".

Point (i) is clearly states that the settlement of cases at the first level in the field of sharia economics is the jurisdiction and at the same time the absolute competence of religious courts. In the explanation of Article 49 above, it is stated that the religious court is one of the judicial bodies exercising judicial power to administer law enforcement and justice for the people seeking justice in certain cases between people of the Islamic religion, one of which is in the field of sharia economics. With the affirmation of the authority of the Religious Courts, it is intended to provide a legal basis for the religious courts in resolving this particular case.

The settlement of disputes between the parties is not only limited in the field of Islamic banking, but also in other Islamic economic fields. What is meant by "between people who are Muslims" is including people or legal entities that automatically submit voluntarily to Islamic law regarding matters that fall under the authority of the Religious Courts in accordance with the provisions of Article 49. Meanwhile, what is meant by "sharia economy" is actions and business activities carried out according to sharia principles, including:

1) Islamic Bank;

2) Islamic microfinance institution;
3) Islamic insurance;
4) Islamic reinsurance;
5) Islamic mutual funds;
6) Sharia bonds and sharia medium-term securities;
7) Islamic securities;
8) Islamic financing;
9) Islamic pawnshop;
10) Pension fund of Islamic financial institutions;
11) Islamic business.[21]

3. Law No. 21 of 2008 on Sharia Banking prior to the issuance of Constitutional Court Decision Number 93/PUU-X/2012.

Article 55 of the Islamic Banking Law explicitly states that the settlement of Islamic banking disputes is carried out through the Religious Courts, and can also be with provisions that have been agreed upon by the parties, such as being carried out by way of deliberation and so on. In the explanation of article by article of the Islamic Banking Law, it is stated that the settlement of disputes that may arise in Islamic banking will be carried out through the courts within the Religious Courts, as well as the possibility of dispute resolution through deliberation, banking mediation, or arbitration institutions, or through the courts within the General Courts to the extent agreed upon in the Agreement by the parties. In the explanation of Article 55 paragraph (2), it is confirmed that what is meant by "dispute resolution is carried out in accordance with the contents of the contract" is an effort made by way of deliberation, banking mediation through the national sharia arbitration body (Basyarnas) or other arbitration institutions and courts within the General Court.

4. Law No. 30/1999 on Arbitration and Alternative Dispute Resolution (AAPS)

The APS Law is also one of the bases for resolving civil dispute cases in Islamic Banking. However, the APS Law specifically regulates arbitration and other out-of-court dispute resolution institutions such as mediation and

[21]Cik Basir, *Penyelesaian Sengketa Perbankan Syariah di Pengadilan Agama Mahkamah Syar'iyah*, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2012).

deliberation. This is understood in the provisions of Article 6 paragraph (1) below:

> "Civil disputes or disagreements may be resolved by the parties through alternative dispute resolution based on good faith to the exclusion of litigation settlement in the district court".

The above provision has a correlation with the provisions of Article 55 of the previous Sharia Banking Law, namely that if the parties between the customer and the Islamic banking company choose to resolve their dispute outside the court, the process and procedure will certainly follow the provisions of alternative dispute resolution, where there is an agreement in the settlement process.

However, in 2012, the Constitutional Court has decided and tested the provisions of Article 55 of the Banking Law. The Constitutional Court's decision was Number 93/PUU-X/2012. This decision tested Article 55 and the constitutional judges cancelled the article because of the dualism in dispute resolution between the customer and the bank. The dualism practically creates legal uncertainty. According to Suadi and Candra, after the Constitutional Court issued the Decision No. 93/PUU-X/2012, the loss of *quo vadis* related to dualism in the authority to resolve sharia economic disputes through litigation. Based on the description above, it can be understood that the settlement of Islamic banking disputes has a strong legal basis in Indonesian legislation.

Regulations governing the authority to resolve disputes in bankruptcy cases in Islamic banking have been established by several regulations. There are at least three regulations that explicitly regulate the issue, namely in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter KPKPU Law), Law No. 21 of 2008 concerning Sharia Banking (hereinafter Sharia Banking Law), Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts (hereinafter PA Law).

These three regulations state that the authority to resolve bankruptcy customers in Islamic banking is the authority of the court. However, there is ambiguity regarding which court has the right to resolve the problems of bankrupt customers, whether the Religious Court / Sharia Court or the Commercial Court. This can be seen in Article 3 paragraph (1) of the KPKPU Law, which explicitly states:

> "A debtor who has two or more creditors and fails to pay at least one debt that is due and collectible shall be declared bankrupt by a court decision, either on his own petition or on the petition of one or more of his creditors".

The court referred to in the above article is the Commercial Court. This is stated directly in Article 1 point 7 of the KPKPU Law, that the meaning of the court in all articles in the law is the Commercial Court. This provision is in contrast to Article 55 of the Syariah Banking Law and Article 49 of the PA Law. Article 55 of the Syariah Banking Law stipulates that the authority to resolve bankruptcy customer disputes is exercised by the Religious Court, or through other channels outside the judicial process in accordance with the contents of the contract. Likewise, in Article 49 of the PA Law, that the settlement of disputes of bankrupt Islamic banking customers is carried out by the Religious Court.

The conflict between the two provisions brings into question the ambiguous legislation concerning the actual institution that holds absolute competence in resolving bankruptcy cases in Islamic finance. The notion of authority or absolute competence of the court dwells on the forms of actions that fall under the court's jurisdiction, rather than the location where the dispute arose and was resolved - a relative competence of the court. Therefore, it is not feasible to resolve a single legal issue using two distinct judicial bodies, as is the situation between the Commercial Court and the Religious Court.

The discrepancy between the two aforementioned provisions creates ambiguity regarding the legislative body with absolute competence in settling a case. The Commercial Court exercises authority over the resolution of civil disputes as designated by the legislation. The relative authority of the Commercial Court lies in its jurisdiction and the location of the dispute. Absolute authority pertains to legally binding disputes that courts must resolve based on relevant provisions. This interpretation extends beyond the Commercial Court and encompasses other judicial bodies that perform duties under the Supreme Court, concerning bankrupt customers in Islamic banking. The notion of authority or absolute competence of the court dwells on the forms of actions that fall under the

court's jurisdiction, rather than the location where the dispute arose and was resolved - a relative competence of the court. Therefore, it is not feasible to resolve a single legal issue using two distinct judicial bodies, as is the situation between the Commercial Court and the Religious Court.

As per the provisions of previous articles, it is known that the authority of the Commercial Court is to settle disputes in the field of bankruptcy or debt payment as stated in Article 3 paragraph (1) of the previous Bankruptcy and Debt Payment Suspension Law. This is because Article 3 paragraph (1) of the Bankruptcy and Debt Payment Suspension Law directly confirms this jurisdiction. The Commercial Court has the jurisdiction to settle cases between bankrupt clients and sharia banking institutions.

On the other hand, the Religious Court has absolute authority in resolving civil cases in several fields including sharia economics. Article 49 of the previous Law on Religious Court explicitly states that sharia economic issues are areas of dispute that can be resolved in the Religious Courts.

Sharia-related disputes outlined in Article 49 of the Law on Religious Court encompass controversies involving banking parties, such as bankruptcy cases arising between customers and Islamic banking parties. As such, it is apparent that the Religious Court holds ultimate jurisdiction over the resolution of bankruptcy cases in banking, including those involving Islamic banking. If customers of Islamic banks are unable to make debt payments and experience bankruptcy, they can be subject to the authority of the Religious Court, particularly if they are Muslim and have entered into sharia contracts. This is the case for disputes arising from bankruptcy between customers and Islamic banks. Typically, sale and purchase financing within the community is conducted through credit, and customers who are unable to repay their debts to the bank may face such disputes.

Bankruptcy cases fall under the jurisdiction of both the Commercial Court under the KPKPU Law and the Religious Court under the Law on Religious Court, resulting in dual absolute authority. This creates ambiguity and legal uncertainty when both courts have the power to adjudicate legal cases related to bankrupt customers. Bankrupt individuals are resolved through either the Commercial Court, which holds authority

stipulated by the KPKPU law, or the Religious Courts, which hold equal authority as mandated in the Law on Religious Court.

The above provision is different from the provision in Article 55 of the Syariah Banking Law which stipulates that the parties can resolve disputes outside the judiciary, for example by banking mediation, deliberation, through an arbitration body. This provision is no longer valid because a judicial review has been conducted to the Constitutional Court so that the Constitutional Court through Decision Number 093 / PUU-X / 2012 states that Article 55 and its explanation are no longer valid. For this reason, the authority to resolve bankruptcy customer disputes is only carried out through litigation. The problem still exists because the authority is still ambiguous between the authority of the Commercial Court and the Religious Court / Sharia Court. Both still have the authority to resolve bankruptcy customer disputes in Islamic banking.

Based on the aforementioned theory of authority, it can be inferred that both the Religious Court and the Commercial Court possess attributive authority. This is due to the fact that the authority to adjudicate bankruptcy-related customer disputes by these two judicial entities is derived from legislative provisions. The concept of authority of attribution pertains to the authority vested in an individual who holds an official position within a state institution, such as judge or other relevant personnel. The authority to settle customer issues related to bankruptcy, as provided by the KPKPU Law, is an attributive authority. This is because the KPKPU Law explicitly defines this authority. The aforementioned statement holds true for the Religious Court, which is an attributive authority because the PA Law attributes such authority.

Legal Certainty of Bankrupt Customer Dispute Resolution in Islamic Banking Seen from the Authority of the Court

Before further analysing the legal certainty of resolving customer bankruptcy disputes in Islamic banking from the court's perspective, it is important to first discuss and examine the theory of certainty. This will act as an analytical tool for the court's authority in resolving bankruptcy disputes in Islamic banking.

Legal certainty is one of the three fundamental objectives of law. According to Gustav Radbruch (1878-1949), a German professor of criminal

law and legal philosophy, as cited by Sadi Is and Budianto, there are three objectives of law: legal justice, legal certainty, and legal benefits.[22] Additionally, Ali argued that in terms of legal certainty, the theory centres on two crucial aspects, as follows:

a. Legal certainty is associated with the content of legal documents.
b. A regulation may be deemed to have satisfied the principle of legal certainty if it fulfils four requirements. These requirements are: clarity, preciseness, predictability, and accessibility.
c. The concept of law is objective, comprising legal regulations.
d. This specific legislation is founded on factual evidence and not on a formula that considers judges' decisions, such as subjective notions of goodwill or politeness.
e. Positively formulated facts, presented as laws, should be expressed in a clear manner to avoid any ambiguity in interpretation and to facilitate implementation.
f. Additionally, it is important that positive laws remain stable and are not subject to frequent changes.[23]

Legal certainty can be established when the law is codified in tangible forms such as laws or regulations. The provisions should be precisely worded to prevent any ambiguity or interpretation. In the language put forward by Marzuki, the four points above are included in the definition of certainty as the existence of general rules that make individuals know what actions can and cannot be carried out.[24] Marzuki in his other literature stated that the legislator must at least look at three very important aspects, namely:[25]

a. Semantic clarity;
b. The law must not conflict with generally accepted principles of law;
c. Coherence between one law and another.

[22]Muhammad Sadi Is,& Kun Budianto, *Hukum Administrasi Negara*, (Jakarta: Kencana Prenada Media Group, 2021).
[23]Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan Termasuk Interpretasi Undang-Undang*, Cet. 7, (Jakarta: Kencana Prenada Media Group, 2017).
[24]Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Cet. 13, Edisi Revisi, (Jakarta: Kencana Prenada Media Group, 2021).
[25]Peter Mahmud Marzuki, *Teori Hukum*, (Jakarta: Kencana Prenada Media Group, 2020).

If the three aspects above are fulfilled, there will be no obstacles in their application. As a result, state organs in explaining their functions have definite guidelines, giving rise to aspects of legal certainty. The meaning is that a rule is loaded with clear and firm semantic language provisions, so that it is easy to understand and does not cause many interpretations. In fact, in Hans Kelsen's view, the most important point in the formulation of a law is to achieve the ideal of legal certainty. Legal certainty as a legal ideal can only be obtained when the material of a legal norm has only one correct interpretation.[26] For this reason, if the material in a regulation still creates ambiguity and there are many interpretations, it does not fulfil the aspect of legal certainty.

According to Marzuki, legal certainty is not only related to the existence of legal material regulated in laws and regulations, but legal certainty is also related to court decisions. This means that legal certainty also requires the consistency of the judge's decision between one judge's decision and another judge's decision for a similar case that has been decided.[27]

Referring to the two theories of legal certainty above, it can be understood that a statutory regulation can be said to have fulfilled the points of legal certainty if it has been contained in the form of a law, formulated clearly, firmly, and easily understood, then the material provisions of the law that have been positivised concern legal events and facts in the community. On the other hand, legal certainty is also related to similar judicial decisions in the same legal case.

Based on the court's authority in handling bankruptcy disputes in Islamic banking, the jurisdiction of adjudication creates legal uncertainty due to the various interpretations and ambiguous meanings found within the legislation. The KPKPU Law confers jurisdiction for bankruptcy disputes to the Commercial Court, while the PA Law assigns jurisdiction to the Religious Court.

The presence of two distinct legal regulations for determining the jurisdiction over resolving bankruptcy disputes with customers undoubtedly contributes to legal ambiguity. This is because of the existence of two rules, which grant the court the power to resolve bankruptcy

[26]Hans Kalsen, *Teori Hukum Murni*, (Terj: Raisul Muttaqien), Cet. 2, (Bandung: Penerbit Nusa Media, 2019).
[27]Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*..., p. 137.

disputes with customers in Islamic banking. This is because of the existence of two rules, which grant the court the power to resolve bankruptcy disputes with customers in Islamic banking. This is because of the existence of two rules, which grant the court the power to resolve bankruptcy disputes with customers in Islamic banking.

The absence of legal certainty regarding the authority of the court in resolving disputes in bankruptcy cases in Islamic banking can be traced through two aspects, namely:

1. The idea of legal certainty necessitates the establishment of regulations that are unambiguous and definitive, hence avoiding the potential for multiple interpretations. Once more, the existence of diverse interpretations of legal material indicates a lack of adherence to the principle of legal certainty. The presence of the KPKPU Law, which grants the Commercial Court the jurisdiction to resolve bankruptcy disputes, and the PA Law, which grants the Religious Court the jurisdiction to resolve bankruptcy disputes, has led to ambiguity in determining the delineation of competencies between these two courts concurrently, resulting in legal uncertainty. There remains a question over the authorization of either the Commercial Court or the Religious Court.
2. The idea of legal certainty necessitates the presence of consistency and coherence between different laws. The concept of coherence discussed in this context pertains to the integration or organisation of rules in a manner that establishes a relationship between them. The clauses of the KPKPU Law and the PA Law pertaining to the authority in resolving bankruptcy customer issues in Islamic banking exhibit a lack of coherence or compatibility. The KPKPU Law grants authority to the Commercial Court, but the PA Law grants authority to the Religious Court.

Based on the aforementioned considerations, it can be deduced that the jurisdiction for resolving customer issues related to bankruptcy in Islamic banking fails to meet the criterion of legal certainty. This phenomenon can be attributed to the presence of legislation that contain ambiguous language regarding the jurisdiction of the court. The KPKPU Law and the PA Law delineate distinct forms of jurisdiction for resolving disputes between bankruptcy clients and Islamic banking institutions. This

pertains not only to determining which court possesses the rightful authority, but also extends to the interpretation of ambiguous jurisdictional determinations between the Commercial Court and the Religious Court.

Moreover, it is imperative that the contractual arrangement between Islamic banking institutions and their clientele operates optimally. Both parties involved must ensure that their actions and decisions align with the content and provisions outlined in the agreement that has been established. Typically, civil conflicts between Islamic banking institutions and their clientele tend to emerge due to instances when contractual obligations have not been duly fulfilled. Customers occasionally fail to meet the terms of the agreement, and typically struggle to perform their financial commitments in making timely payments for the funding extended by Islamic banking institutions. The resolution of the conflict between the two parties necessitates the utilisation of a legal framework and the involvement of a judicial process. The central topic of the preceding discourse pertains to the determination of the judicial entity possessing the jurisdictional power to adjudicate the civil conflict. The KPKPU Law and the PA Law, as previously mentioned, exhibit a discrepancy in terms of the parties' entitlement to initiate legal proceedings. The KPKPU Law stipulates that the case must be filed in the Commercial Court, while the PA Law mandates that it should be pursued through the institution of the Religious Court.

In general, the regulations pertaining to the jurisdiction for the resolution of civil disputes are often governed by these statutes. Muslims, specifically, consistently resort to the PA Law as the established framework for resolving civil disputes. The Pennsylvania Law has comprehensively and specifically established regulations pertaining to the specific categories of civil problems that fall within the exclusive jurisdiction of the Religious Courts. One such category encompasses conflicts related to Islamic banking, which includes cases of bankruptcy involving consumers. The situation would vary if we consider the KPKPU Law, which explicitly stipulates that bankruptcy disputes are decided only within the jurisdiction of the Commercial Court. These two articles are incongruous, as they assign the settlement jurisdiction to both the Religious Court and the Commercial Court simultaneously. The impact of the duality of the two regulations on legal uncertainty has been previously elucidated.

The resolution of civil problems related to Islamic banking is ideally entrusted to the Religious Court, particularly in the region of Aceh. The reason for this is that the regulations outlined in the PA Law explicitly state that conflicts pertaining to Islamic banking fall under the exclusive jurisdiction of the Religious Courts. In relation to civil conflicts inside state courts, the author asserts that the KPKPU Law remains applicable. The provisions contained within the Law on Religious Court possess a distinctive nature, known as *lex specialis*, that is expressly designed to address the concerns of Muslim Indonesians involved in disputes with Islamic banks. The requirements outlined in the KPKPU Law can be classified as general (*lex generalis*), as they apply to parties involved in disputes who are not Muslims and do not engage in transactions with Islamic banking institutions.

The existence of two distinct regulations pertaining to the resolution of bankruptcy cases among customers can be attributed to a specific criterion: the type of banking institution involved, either a conventional bank or an Islamic bank. This criterion is independent of the religious affiliation of the customers, encompassing both Muslims and non-Muslims. In cases where a non-Muslim customer is facing bankruptcy under the jurisdiction of an Islamic banking institution, it is necessary to adhere to the dispute resolution procedure outlined in the Religious Court Law. This entails engaging with the Religious Court or Syar'iyah Court, rather than the Commercial Court as stipulated in the KPKPU Law.

The Religious Courts Law explicitly outlines that the jurisdiction over the resolution of Islamic financial issues lies within the purview of the Religious Courts, rather than the Commercial Courts. On the other hand, in the scenario where the insolvent individual identifies as Muslim, but is engaged with a conventional banking institution, the resolution process for any disputes must be directed to the Commercial Court rather than the Religious Court. This is due to the provision in the PA Law, which explicitly grants exclusive jurisdiction over Islamic banking disputes to the Religious Court. According to the author, it is imperative to consider the banking institution itself, regardless of whether it is an Islamic bank or a conventional bank, when resolving civil problems related to bankruptcy customers. This consideration should be made irrespective of the religious affiliation of the client. The salient aspect pertains to the legal entity of the banking institution. As per the author's assertion, the resolution of

bankruptcy client problems in Islamic banking necessitates the involvement of the Religious Court, but in traditional banking, such disputes have to be addressed through the Commercial Court.

CONCLUSION

Based on the examination and evaluation of the data, two key findings may be deduced. The resolution of issues between bankrupt clients and Islamic banking institutions is mostly achieved through both litigations, involving legal proceedings before the court, and non-litigation methods. The Constitutional Court Decision Number 93/PUU-X/2012 declared the provisions of Article 55 of the Islamic Banking Law, which pertain to the legal avenues for resolving bankruptcy cases involving customers of Islamic banking institutions through non-litigation means, as unconstitutional. The resolution of client complaints related to bankruptcy in Islamic banking falls entirely under the jurisdiction of the court. There exist two judicial bodies that possess the authority to adjudicate customer disputes arising from bankruptcy cases. These bodies are commonly referred to as the Commercial Court, which operates under the jurisdiction of the KPKPU Law, and the Religious Court, also known as the Syar'iyah Court, which derives its authority from the Religious Court Law. Based on the theoretical framework of authority, the authority vested in the Religious Court and the Commercial Court can be classified as attributive authority. This type of authority is derived from an institution or position, as mandated by relevant legislation. Secondly, the jurisdiction of the court in adjudicating disputes pertaining to bankruptcy proceedings in Islamic banking gives rise to legal ambiguity, as it encompasses two distinct facets. The lack of clarity in determining the absolute competence of the Commercial Court and the Religious Court to resolve bankruptcy disputes is evident in the simultaneous establishment of authority by the KPKPU Law and the Religious Court Law. This ambiguity raises questions regarding which judicial body, the Commercial Court or the Religious Court, possesses the authority in question. Furthermore, there exists a lack of coherence or consistency between the requirements of the KPKPU Law and the PA Law on the entity responsible for resolving client complaints related to bankruptcy in Islamic banking. The KPKPU legislation grants authority to the Commercial Court, whereas the PA legislation grants authority to the Religious Court.

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