



## SETTLEMENT OF SHARIA ECONOMIC DISPUTES: EFFICIENCY OF IMPLEMENTATION IN INDONESIAN RELIGIOUS COURTS

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**Abstract:** This research is a critique of the efficiency of the sources of material law used in the settlement of sharia economic disputes to see how great the urgency is in creating sources of material law that are more specific and can be used as legally binding in sharia economic cases. This research uses descriptive qualitative research methods. The data collection method is done through observation, interviews, and documentation. Furthermore, data analysis was carried out using the methods of data reduction, data display, and conclusion/verification. The results of this study show that the source of material law in the settlement of sharia economic disputes is less efficient because the settlement of defaults and unlawful acts in the field of sharia economics still refers to the Civil Code (*KUHPerdata*). This finding confirms that there is a legal vacuum in sharia economic disputes, so dispute resolution only focuses on the agreed aspects of the contract, not on the form and practice of the contract. The implication is that the decision made by the judge does not fulfill the interpretative legal theory that adheres to the values of justice, fairness, and procedural due process. Ideally, the resolution of sharia economic disputes should still be based on Islamic law principles as the basis of the function of the Religious Courts. Practically, this research contributes to the conceptual framework of the source of material law in resolving sharia economic disputes in more effective Religious courts, as well as offering a concept of dispute resolution that follows the principles of the Islamic legal system.

**Keywords:** efficiency; material law; disputes; sharia economics.

**Abstrak:** Penelitian ini merupakan kritik efisiensi sumber hukum materiil yang digunakan dalam penyelesaian sengketa ekonomi syariah, sehingga dapat melihat seberapa besar urgensinya dalam menciptakan sumber hukum materiil yang lebih spesifik dan dapat dijadikan sebagai *legal binding* pada perkara-perkara ekonomi syariah. Penelitian ini menggunakan metode penelitian deskriptif kualitatif. Sedangkan metode pengumpulan data dilakukan melalui observasi, wawancara, dan

dokumentasi. Selanjutnya dilakukan analisis data dengan metode reduksi data, displai data, dan konklusi data. Hasil penelitian ini menunjukkan bahwa sumber hukum materiil dalam penyelesaian sengketa ekonomi syariah kurang efisien, karena penyelesaian sengketa wanprestasi dan Perbuatan Melawan Hukum bidang ekonomi syariah masih merujuk pada KUHPperdata. Temuan ini menegaskan bahwa terjadi kekosongan hukum pada sengketa ekonomi syariah, sehingga penyelesaian sengketa tersebut hanya berfokus pada aspek kontrak yang sudah disepakati, dan tidak pada bentuk dan praktik akad yang dilakukan. Implikasinya putusan yang ditetapkan hakim tidak memenuhi teori hukum interpretatif yang menganut nilai justice, fairness dan procedural due process. Padahal idealnya penyelesaian sengketa ekonomi syariah harus tetap berpijak pada prinsip hukum Islam, sebagaimana basis fungsi pengadilan Agama. Secara praktis, penelitian ini berkontribusi terhadap kerangka konsep sumber hukum materiil dalam penyelesaian sengketa ekonomi syariah di pengadilan Agama yang lebih efektif, sekaligus menawarkan konsep penyelesaian sengketa yang sesuai dengan prinsip-prinsip sistem hukum Islam.

**Kata Kunci:** efisiensi; hukum materiil; sengketa; ekonomi syariah.



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## INTRODUCTION

Since the issuance of Law Number 3 of 2006, amending Law Number 7 of 1989, concerning Religious Courts, dispute resolution under Sharia economics has become the absolute authority of Religious Courts. This change has further expanded the authority of Religious Courts.<sup>1</sup> The Religious Court must prepare everything related to the competence. There must be formal and material legal sources that support the implementation of the settlement of Sharia economic disputes in the Religious Court. Formal legal sources are generally applicable, so formal legal sources in the General Court can also apply in the Religious Court. These formal legal sources include HIR, R.Bg, BW, B.Rv, and other laws.<sup>2</sup>

The material legal sources used in adjudicating Islamic economic cases include laws related to Islamic economics, such as Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, Law No. 3 of 2004 concerning Amendments to Law No. 23 of 1999 concerning Bank Indonesia; Law No. 21 of 2008 concerning Islamic Banking, Law No. 24 of 2004 concerning the

<sup>1</sup> Abdul Rasyid and Tiska Andita Putri, "Kewenangan Lembaga Penyelesaian Sengketa Perbankan Syariah," *Jurnal Yudisial* 12, no. 2 (2019): 159, <https://doi.org/10.29123/jy.v12i2.256>.

<sup>2</sup> Ruslaini and Juhrotul Khulwah, "Ijtihad Hakim Dalam Menyelesaikan Sengketa Ekonomi Syariah Dilingkungan Peradilan Agama," *Jurnal Ekonomi Islam* 8, no. 2 (2017): 150-70.

Deposit Insurance Agency; Law No. 19 of 2008 concerning State Islamic Securities, and others.<sup>3</sup>

The law is still general, not specific, and regulates explicitly provisions in Sharia economics, especially the services and products of non-bank Sharia financial institutions. So, in trying Islamic economic cases, Religious Court judges must explore the law from various legal sources, even though Indonesia has a civil law system, where judges only act as legal instruments, and the decisions issued are purely those written in the law.<sup>4</sup> Several other sources of material law can assist judges in adjudicating Sharia economic cases, namely the Compilation of Sharia Economic Law and the Fatwa of the National Sharia Council of the Indonesian Ulema Council. The compilation of Sharia Economic Law is a guideline that judges in religious courts use to examine, decide, and resolve Sharia economic disputes.<sup>5</sup> The issuance of the *KHES* is urgently needed to ensure the availability of legal sources for Religious Courts in Islamic economics after the issuance of Law Number 3 of 2006. This *KHES* is only a *PERMA*, not a generally binding legal material.<sup>6</sup>

In addition, the Supreme Court's efforts to establish an effective and efficient judiciary are reflected in the issuance of the following Supreme Court Regulations (*PERMA*): Supreme Court Regulation Number 2 of 2015 concerning Procedures for the Settlement of Small Claims, Supreme Court Regulation Number 14 of 2016 concerning Procedures for the Settlement of Sharia Economic Disputes, Supreme Court Regulation Number 5 of 2016 concerning the Certification of Sharia Economic Judges, Supreme Court Regulation Number 04 of 2019 regarding Amendments to Supreme Court Regulation Number 02 of 2015 concerning Procedures for the Settlement of Small Claims, and Supreme Court Regulation Number 01 of 2019 concerning Electronic Case Administration and Court Proceedings.<sup>7</sup>

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<sup>3</sup> Osman and Kudrat Abdillah, "Hukum Materiil Penyelesaian Sengketa Ekonomi Syariah (Tinjauan Undang-Undang Dan Hukum Islam)," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 1, no. 1 (2019): 31, <https://doi.org/10.19105/alhuquq.v1i1.2646>.

<sup>4</sup> Choky Ramadhan, "Konvergensi Civil Law Dan Common Law Di Indonesia Dalam Penemuan Dan Pembentukan Hukum," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 2 (2018): 213, <https://doi.org/10.22146/jmh.31169>.

<sup>5</sup> 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.

<sup>6</sup> Muslimin et al., "Efektivitas Khes Dan Fatwa DSN-MUI Terhadap Penegakan Hukum Ekonomi Syariah Di Indonesia," *Jurnal Pendidikan Tambusai* 6, no. 2 (2022): 8617-31, <https://www.jptam.org/index.php/jptam/article/view/3723/3149>.

<sup>7</sup> Hasanuddin Muhammad, "Efektifitas Dan Efisiensi Penyelesaian Sengketa Ekonomi Syariah Di Peradilan Agama," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 1 (2020): 35, <https://doi.org/10.29300/mzn.v7i1.3192>.

The fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) are merely legal opinions, serving only as doctrine or legal advice for judges in Religious Courts when exploring laws related to sharia economic cases.<sup>8</sup> The DSN-MUI fatwas are not binding like legally binding laws. Therefore, if a judge rules based on a DSN-MUI fatwa, the decision may be considered weak and questioned by the litigants. Based on the above explanation, conducting a fundamental study on the efficiency of material legal sources in Sharia economics is necessary. This is because the various material legal sources mentioned have significant weaknesses, which may create obstacles for judges in adjudicating sharia economic cases. Therefore, this study aims to critique the efficiency of material legal sources in resolving Sharia economic disputes to assess how urgent it is to establish more specific material legal sources that can legally bind in Sharia economic cases.

The critical theory used in this study is Ronald Dworkin's interpretive legal theory, which views law as integrity, encompassing three interconnected values: justice, fairness, and procedural due process. These values are related to one another to produce a decision that is sound both legally and morally. The value of justice emphasizes the protection of individual rights by moral standards. The value of fairness relates to societal respect and adherence. The value of *procedural due process* demands compliance with existing norms.<sup>9</sup> The approaches used in this study are the normative juridical approach and the empirical juridical approach. The normative juridical approach involves examining, analyzing, and interpreting theoretical aspects of legal principles, including concepts, legislation, viewpoints, legal doctrines, and relevant legal systems.<sup>10</sup> This method emphasizes obtaining information in the form of legal texts related to the object of study. Meanwhile, the empirical juridical method, or field research, involves studying the law as it is practiced in reality, including assessments, behaviors, opinions, and attitudes related to resolving sharia economic disputes in Religious Courts.<sup>11</sup>

This study uses a qualitative method.<sup>12</sup> This study explores the efficiency of using material legal sources in resolving Sharia economic disputes within Religious

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<sup>8</sup> Sarip, Diana Fitriana, and Elya Kusuma Dewi, "Mendudukan Fatwa Majelis Ulama Indonesia Sebagai Doktrin Perundang-Undangan," *Legislasi Indonesia* 16, no. 3 (2019): 289-98.

<sup>9</sup> Ngurah Suradatta Dharmaputra, "Kritisi Terhadap Teori Hukum Ketiga Ronald Dworkin," *Jurnal Hukum Indonesia* 1, no. 1 (2020): 1-10.

<sup>10</sup> Soerjono Soekanto, *Penganlar Penelitian Hukum* (Jakarta: Rineka Cipta, 1983).

<sup>11</sup> Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004).

<sup>12</sup> Sugiyono, *Metode Penelitian Kuantitatif Dan Kualitatif* (Bandung: Alfabeta, 2009).

Courts. Additionally, a descriptive method is used during the problem-solving phase, which involves describing and illustrating facts related to resolving Sharia economic disputes in Religious Courts. Data is collected at Religious Courts through observation, interviews, and documentation. The next stage involves analyzing the collected data using data reduction, data display, and conclusion/verification methods.

### **INCREASE IN THE NUMBER OF SHARIA ECONOMIC DISPUTES**

The number of Sharia economic disputes continues to rise in line with the increasing number of business players in industries operating within the Sharia economy. This is triggered by the non-compliance of Sharia economic industry players and their customers, driven by several factors influencing the surge in disputes, such as the Covid-19 pandemic, which has affected customers' ability to meet their obligations. In reality, the number of Sharia economic disputes brought to Religious Courts is still relatively small compared to other civil cases. However, the increase in Sharia economic disputes has been significant year after year. The total number of Sharia economic cases across Indonesia remains countable on the one hand. Over the past ten years, the number of Sharia economic cases in Religious Courts has grown more than tenfold. The most common types of disputes are cases of breach of contract and unlawful acts (*PMH*).<sup>13</sup>

As of 2023, the total number of Sharia economic disputes filed in Religious Courts across Indonesia has reached 2,919 cases.<sup>14</sup> This figure indicates that Sharia economic cases have increased significantly each year. The rise in Sharia economic cases in Religious Courts can be illustrated in the diagram below:

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<sup>13</sup> Azizah Nur Alfi, "Pelaku Industri Meningkatkan, Perkara Ekonomi Syariah Terus Bertambah," *Bisnis.com*, 2020, <https://finansial.bisnis.com/read/20201023/231/1309054/pelaku-industri-meningkat-perkara-ekonomi-syariah-terus-bertambah>.

<sup>14</sup> "Direktori Putusan," Mahkamah Agung Republik Indonesia, n.d., [https://putusan3.mahkamahagung.go.id/search.html?q=&jenis\\_doc=putusan&cat=e7ba7a43c03cf527ca70e12f4798d315&jd=&tp=&court=&t\\_put=&t\\_reg=&t\\_upl=&t\\_pr=](https://putusan3.mahkamahagung.go.id/search.html?q=&jenis_doc=putusan&cat=e7ba7a43c03cf527ca70e12f4798d315&jd=&tp=&court=&t_put=&t_reg=&t_upl=&t_pr=).

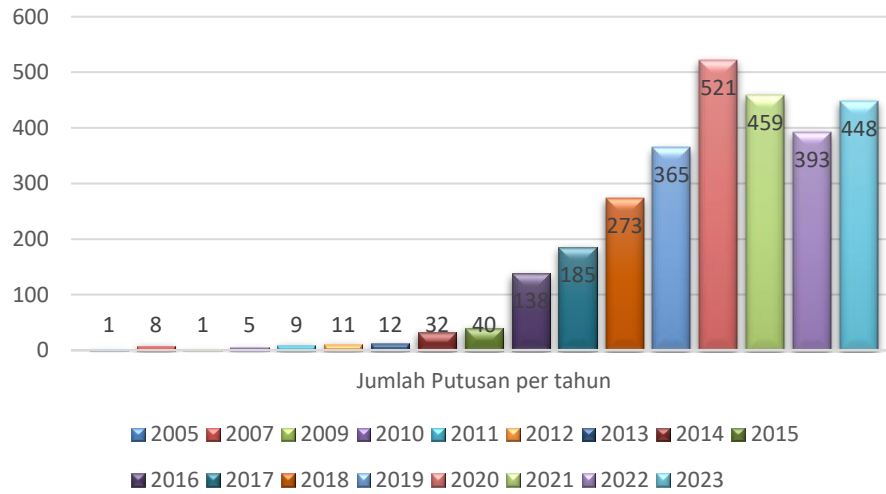
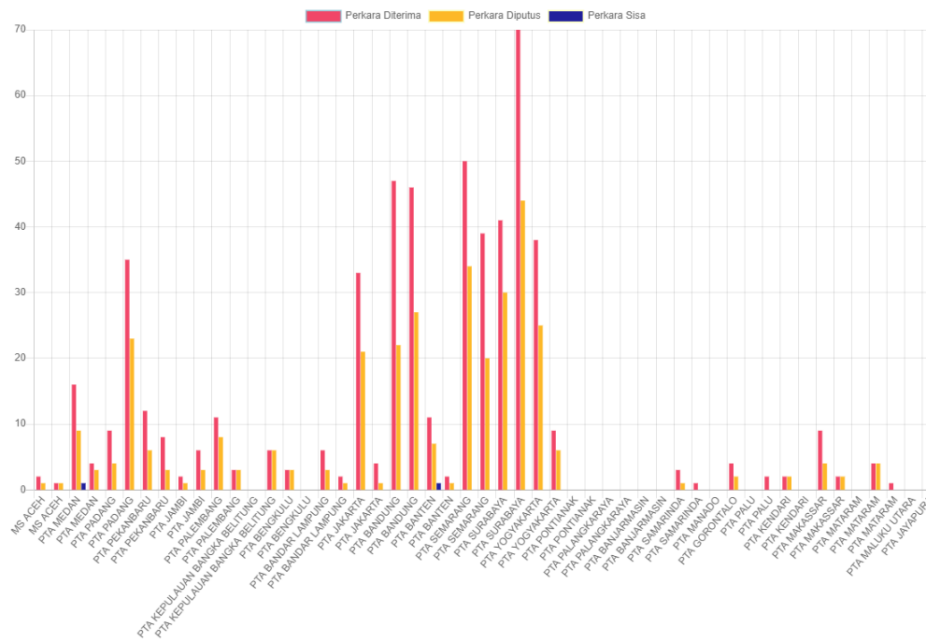


Figure 1. Diagram of Sharia Economic Cases in Religious Courts

In 2022, many sharia economic disputes from the previous year remained unresolved. However, a significant number of new cases were also received. The leftover instances of the prior year totaled 48, while 496 new cases were filed, bringing the total number of cases to 544. Of these, 472 cases were resolved or withdrawn, leaving 72 cases to carry over into 2023.<sup>15</sup>



<sup>15</sup> Direktorat Jenderal Badan Peradilan Agama, "Rekap Data Jenis Perkara Ekonomi Syariah Peradilan Agama Tahun 2022," accessed December 24, 2023, [http://kingsatker.badilag.net/JenisPerkara/perkara\\_persatker/370/2022](http://kingsatker.badilag.net/JenisPerkara/perkara_persatker/370/2022).

**Figure 2.** Summary of Data on Types of Sharia Economic Cases in Religious Courts for 2022

However, not all Religious Courts have received Sharia economic cases. For instance, in Ponorogo, no Sharia economic dispute has been handled based on the researcher's interview with a Religious Court judge.

## **THE EXISTENCE OF LEGAL SOURCES IN THE RESOLUTION OF SHARIA ECONOMIC DISPUTES**

The increase in Sharia economic cases must be anticipated by preparing both material and formal legal sources in the form of applicable positive law. This is essential because Indonesia is a country that adheres to the principles of positivism.<sup>16</sup> This means that the prevailing legal doctrine is positivism, which asserts that the law in force is solely positive law or legislation.<sup>17</sup> Therefore, from a religious perspective, all rules regarding Sharia economics will not be applicable unless they become positive law, including fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) on Sharia economics. Legal sources are divided into two categories: material and formal sources. Material legal sources refer to the content of the law, such as the Criminal Code (KUHP), which governs general crimes, offenses, and violations, and the Civil Code (KUHPer), which addresses matters related to persons, property, obligations, contracts, and evidence.<sup>18</sup> Meanwhile, formal legal sources are regulations that govern the procedures for implementing or enforcing material law.<sup>19</sup>

The Qur'an and the Sunnah are the material legal sources for resolving disputes in Religious Courts. However, Indonesia has a civil law system, which means that laws or codifications of regulations are the source of law and the primary basis for judges in deciding a case, so judges essentially act as interpreters of these laws.<sup>20</sup> Thus, the concrete material legal sources and basis for dispute resolution by

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<sup>16</sup> A. B. Hermanto, "Ajaran Positivisme Hukum Di Indonesia: Kritik Dan Alternatif Solusinya," *Jurnal Hukum Dan Bisnis (Selisik)* 2, no. 2 (2016), <https://doi.org/10.35814/selisik.v2i2.650>.

<sup>17</sup> Islamiyati Islamiyati, "Kritik Filsafat Hukum Positivisme Sebagai Upaya Mewujudkan Hukum Yang Berkeadilan," *Law, Development and Justice Review* 1, no. 1 (2018): 82-96, <https://doi.org/10.14710/ldjr.v1i1.3574>.

<sup>18</sup> Theresia Ngutra, "Hukum Dan Sumber-Sumber Hukum," *Jurnal Supremasi* 11, no. 2 (2016): 193-211.

<sup>19</sup> Yashinta Nurul Imani et al., "Analisis Sumber Hukum Formil Dan Materil Dalam Pembentukan Hukum Adat Jinayat Di Aceh," *Intelektiva* 4, no. 10 (2023): 51-56.

<sup>20</sup> Muhammad Irkham Firdaus, "Criticism Analysis of The Effectiveness of Indonesia's Economic Criminal Policy in The Perspective of Islamic Law," *JCH (Jurnal Cendekia Hukum)* 8, no. September (2022): 85-102, <https://doi.org/10.3376/jch.v8i1.570>.

judges in Religious Courts are the Islamic legal sources that have been positivized. The material legal sources used to resolve Sharia economic disputes in Religious Courts are minimal. These sources include Law No. 21 of 2008 on Islamic Banking and Law No. 19 of 2008 on State Sharia Securities. In addition to these laws, several other regulations serve as material legal sources for Sharia economics, such as Ministry of Finance regulations or decisions, totaling 19 Finance Ministerial Regulations (PMK). 59 Bank Indonesia regulations or circulars and 55 Financial Services Authority (*OJK*) regulations exist.<sup>21</sup>

To support the resolution of Sharia economic disputes, the Supreme Court established the Compilation of Sharia Economic Law (KHES). The development of KHES was a critical response to the need for legal sources in Religious Courts in Sharia economics, especially after the enactment of Law No. 3 of 2006. Fundamentally, KHES is a Supreme Court Regulation (PERMA) and does not serve as binding material law.<sup>22</sup> Thus, several articles and sections only explain specific terms related to Sharia economic transactions rather than explicitly addressing Sharia economic disputes.

The Compilation of Sharia Economic Law (KHES) is a collection of Sharia economic laws established by the Supreme Court Regulation (PERMA) No. 2 of 2008 on the Compilation of Sharia Economic Law. KHES serves as a guide for judges in religious courts, providing a reference for understanding Sharia principles and economics. This provision is outlined in Article 1, Paragraph (1) of the PERMA.<sup>23</sup> The Compilation of Sharia Economic Law (KHES) consists of four volumes: Volume I on Legal Subjects and Property, Volume II on Contracts, Volume III on Zakat and Donations, and Volume IV on Sharia Accounting. KHES represents a form of politicization of Islamic law with several adjustments to the contemporary context within the framework of the Unitary State of the Republic of Indonesia (NKRI).<sup>24</sup> In addition to these material legal sources, judges may refer to legal opinions from various experts, particularly in Sharia economics. The fatwas issued by the National

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<sup>21</sup> "Kumpulan Regulasi Ekonomi Syariah Di Indonesia," accessed December 25, 2023, <https://www.shariaknowledgecentre.id/id/regulatory-data/regulation/>.

<sup>22</sup> Muslimin et al., "Efektivitas Khes Dan Fatwa DSN-MUI Terhadap Penegakan Hukum Ekonomi Syariah Di Indonesia."

<sup>23</sup> Ahmad Badrut Tamam, "Konsep Subyek Hukum Dalam Hukum Islam, Hukum Positif Dan Kompilasi Hukum Ekonomi Syariah," *Journal of Sharia Economics* 1 (2018): 107-17.

<sup>24</sup> Nashihul Ibad Elhas, "Kompilasi Hukum Ekonomi Syariah: Tinjauan Umum Hukum Islam," *Jurnal Studi Islam: Qolamuna* 1, no. 2 (2016): 213-22, <http://ejournal.stismu.ac.id/ojs/index.php/qolamuna/article/view/15%0Ahttp://ejournal.stismu.ac.id/ojs/index.php/qolamuna/article/download/15/23>.



Sharia Council of the Indonesian Ulema Council (DSN-MUI) serve as a foundational reference that supports judges in resolving Sharia economic disputes. As of 2024, the DSN-MUI has issued 156 fatwas covering Sharia economic contract systems and mechanisms and developing financial products that comply with Sharia principles.

However, according to Law No. 21 of 2008 on Islamic Banking, DSN-MUI fatwas can only become legally binding if incorporated into Bank Indonesia Regulations (PBI). Thus, fatwas referenced and incorporated into PBI are binding on financial institutions and the public, while those not included in PBI are not yet considered binding.<sup>25</sup> But it has been clarified in Bank Indonesia Regulation (PBI) No. 11/15/PBI/2009 on the Conversion of Conventional Banks into Sharia Banks that Article 1, Paragraph 7 of the PBI specifies that Sharia principles are Islamic legal principles in banking activities based on fatwas issued by the National Sharia Council of the Indonesian Ulema Council.<sup>26</sup> Thus, it can be concluded that fatwas, as legal opinions, can only become legally binding through a constitutional process similar to Sharia banking laws.<sup>27</sup>

So the legal sources used in resolving Sharia economic disputes include civil procedural law as regulated by HIR (*Het Herziene Inlandsch Reglement*), including provisions outlined in the Rv (*Reglement op de Rechtsvordering*), the Civil Code (KUH Perdata), Law No. 48 of 2009 on Judicial Power, Law No. 3 of 2009 on the Supreme Court, and Law No. 49 of 2009 on General Courts, along with other related regulations. These formal legal sources are the same as those used in other civil cases.<sup>28</sup> However, in 2016, the Supreme Court issued Supreme Court Regulation No. 14 of 2016 on the Procedures for Resolving Sharia Economic Disputes. This PERMA was initially a draft of the Compilation of Sharia Economic Procedural Law (KHAES), which was ultimately approved and formalized as a PERMA.<sup>29</sup> There are differences between the resolution of Sharia economic disputes under the PERMA

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<sup>25</sup> Ahmad Badrut Tamam, "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dan Fatwa Dewan Syariah Nasional (DSN) Dalam Sistem Hukum Indonesia," *Al-Musthofa: Journal of Sharia Economics* 04, no. 01 (2021): 1-25, <https://ejournal.unuja.ac.id/index.php/hakam/article/view/1368/642>.

<sup>26</sup> Eka Dahlan Uar, "Legalisasi Dewan Syariah Nasional Dan Komite Perbankan Syariah Dalam Pandangan Fiqhi Ekonomi Perbankan," *Tahkim* 9, no. 1 (2013): 106-21.

<sup>27</sup> Wildan Imaduddin Muhammad, "Keberangkatan Fatwa dari Legal Opinion Menjadi Legal Binding: (Studi Kasus Fatwa DSN MUI Tentang Perbankan Syariah)," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Ekonomi Islam* 11, no. 2 (2019): 146-63, <https://doi.org/10.32505/jurisprudensi.v11i2.996>.

<sup>28</sup> Sinta Noer Hudawati, "Problematika Hukum Formil Penyelesaian Sengketa Ekonomi Syariah Di Pengadilan Agama," *Jurnal Penegakan Hukum Dan Keadilan* 1, no. 1 (2020): 17-40, <https://doi.org/10.18196/jphk.1102>.

<sup>29</sup> "Draft Kompilasi Hukum Acara Ekonomi Syariah Berubah Menjadi PERMA," 2016, <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/draft-kompilasi-hukum-acara-ekonomi-syariah-berubah-menjadi-perma>.

and civil procedural law. The PERMA distinguishes the resolution process based on the size of the dispute's object. In contrast, civil procedural law does not make such distinctions; it only recognizes a single resolution process with a standard procedure.<sup>30</sup> Additionally, there are various procedural differences between Sharia economic dispute resolution and ordinary civil procedural law.

### **CRITICAL ANALYSIS OF THE EFFICIENCY OF MATERIAL LEGAL SOURCES IN RESOLVING SHARIA ECONOMIC DISPUTES**

The development of Sharia economics in Indonesia has shown remarkable progress. This is evidenced by the growth of various economic sectors applying Sharia principles, particularly the financial industry, which has significantly increased in Indonesia. Data from the Financial Services Authority (OJK) up to 2019 indicates that there are 189 Sharia banks in Indonesia, comprising 14 Sharia Commercial Banks, 20 Sharia Business Units, and 164 Sharia Rural Banks.<sup>31</sup> However, Sharia economics has increased the number of Sharia economic disputes in Indonesia. This rise is due to industry players' and consumers' non-compliance with the applicable regulations. The number of Sharia economic disputes in Religious Courts across Indonesia has experienced a significant increase.

That happens because the position of Islamic economic law in Indonesia is indeed well-rooted, but its applicability remains primarily normative and sociological. Since the majority of the Indonesian population is Muslim, the development of Islamic economic law in Indonesia receives broad support from the community.<sup>32</sup> Only two regulations are specifically prepared to cover Sharia economics: Law No. 21 of 2008 on Islamic Banking and Law No. 19 of 2008 on State Sharia Securities. These laws alone cannot address all Sharia economic disputes due to the diverse developments in the Sharia financial industry, which can complicate the nature of the conflicts. Therefore, additional legislation is needed to strengthen the material legal sources for Sharia economics. For example, according to previous research, Bank Indonesia Circular No. 14/7/DPbS, a reference for gold-backed Qardh products in Sharia banks, has led to new problems due to the evolving Islamic

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<sup>30</sup> Hudawati, "Problematika Hukum Formil Penyelesaian Sengketa Ekonomi Syariah Di Pengadilan Agama."

<sup>31</sup> Muhammad Cahlanang Prandawa et al., "Perkembangan Ekonomi Islam Di Indonesia: Antara Peluang Dan Tantangan," *Jurnal Hukum Islam, Ekonomi Dan Bisnis* 8, no. 1 (2022): 29-47, <https://doi.org/10.30739/istiqro.v8i1.1271>.

<sup>32</sup> Fitriyanur Syarif, "Perkembangan Hukum Ekonomi Syariah Di Indonesia," *Pleno Jure* 8, no. 2 (2019): 1-16, <https://doi.org/10.37541/plenojure.v8i2.38>.

banking market. This can result in significant losses for both customers and Sharia banks themselves.<sup>33</sup>

Therefore, concrete steps must be taken to anticipate the increasing number of sharia economic disputes, particularly in developing and strengthening material legal sources used as a foundation for resolving these disputes through litigation and non-litigation channels. Litigation involves resolving disputes through the court system; non-litigation refers to resolving disputes outside the court system.<sup>34</sup> In resolving disputes, judges have the authority and freedom to decide a case based on their conviction, guided by the evidence presented during the trial.<sup>35</sup> However, this freedom is still limited; judicial discretion is not absolute and boundless, as it should not lead to arbitrariness.<sup>36</sup> Judges must prioritize the law as long as the legal provisions are precise, unambiguous, not contrary to public interest, and do not result in unjust consequences.<sup>37</sup> Therefore, in the case of Sharia economic disputes, a solid material legal source must be established as positive law.

So far, material legal sources related to Sharia economics still need to fully meet the needs of judges in resolving Sharia economic cases. There are still many things that could be improved in these legal sources. For instance, the Compilation of Sharia Economic Law (KHES) has several areas for improvement. Some provisions must be consistent with the legal content of other regulations related to Sharia economics. For example, research conducted by the Sharia Economic Society (MES) indicates that there are still many discrepancies between the material legal content in KHES and the implementation of Sharia economics in Indonesia. These discrepancies include inappropriate terminology, definitions that overlap with conventional concepts, and the introduction of new provisions that elaborate on old ideas, among other issues.

Additionally, according to the team responsible for compiling the Compilation of Sharia Economic Law (KHES), the sections on breach of contract and unlawful

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<sup>33</sup> Irfan Rinaldi, Ro'fah Setyowati, and Islamiyati, "Produk Qardh Beragun Emas Secara Syariah Dalam Perspektif Surat Edaran Bank Indonesia No. 14/7/DPbS Pada PT. Bank Rakyat Indonesia Syariah Cabang Semarang," *Diponegoro Law Journal* 6, no. 1 (2017): 1-15.

<sup>34</sup> Ni Made Trisna Dewi, "Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata," *Jurnal Analisis Hukum* 5, no. 1 (2022): 81-89, <https://doi.org/10.38043/jah.v5i1.3223>.

<sup>35</sup> Alva Dio Rayfindratama, "Kebebasan Hakim Dalam Menjatuhkan Putusan Di Pengadilan," *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara* 1, no. 2 (2023): 1-17.

<sup>36</sup> Firman Floranta Adonara, "Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi," *Jurnal Konstitusi* 12, no. 1 (2015): 1-20.

<sup>37</sup> Teguh Satya Bhakti, "Politik Hukum Dalam Putusan Hakim (The Politic of Law in a Verdict)," *Jurnal Hukum Dan Peradilan* 5, no. 1 (2017): 53.

acts (PMH) included in the KHES are still weak and must be perfected.<sup>38</sup> Breach of contract is when a debtor fails to fulfill or perform their obligations as stipulated.<sup>39</sup> An unlawful act (PMH) is an action that violates the law, infringes upon the rights of others, contradicts moral and ethical values, or breaches general principles of law.<sup>40</sup>

Therefore, the statement by the drafting team about PMH and breach of contract results in the resolution of Sharia economic disputes still relying on legal considerations from the sources in the Civil Code, specifically Article 1238 on breach of contract and Article 1368 on unlawful acts. These laws are used as material legal sources because Sharia economic disputes are treated similarly to general civil law disputes. This indicates a gap in the legal regulations, compelling judges to seek out existing laws based on prevailing societal values and principles. However, it is paradoxical that the laws referenced continue to be based on existing legislation rather than other material legal sources. In fact, in these disputes, judges do not refer to KHES because, as mentioned earlier, the substance of breach of contract and unlawful acts in the Compilation of Sharia Economic Law (KHES) remains weak and incomplete.<sup>41</sup>

Researchers have found on the website of court decisions under the Supreme Court of the Republic of Indonesia, namely the Directorate of Supreme Court Decisions, that many rulings on Sharia economic cases are based solely on laws regarding breach of contract and unlawful acts. Currently, 996 judicial decisions on Sharia economics rely on the Civil Code's provisions on breach of contract and some cases involving unlawful acts. For example, the decision in the Slawi Religious Court Case No. 4/Pdt.G.S/2023/PA.Slw regarding a *murabaha* contract between the Syariah Savings and Loan Cooperative (KPPS) and its customer, where the customer was sued for violating the contract or breach of contract. The ruling was based solely on material legal sources regarding breach of contract, as no concrete material legal source specifically addresses violations in *murabaha* contracts.<sup>42</sup> In this case, the judge granted all the plaintiff's claims. From the perspective of the Civil Code on

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<sup>38</sup> Mahkamah Agung Republik Indonesia, "Kompilasi Hukum Ekonomi Syariah," *Mahkamah Agung*, 2011, 37.

<sup>39</sup> Niru Anita Sinaga and Nurlely Darwis, "Wanprestasi dan Akibatnya Dalam Pelaksanaan Perjanjian," *Jurnal Mitra Manajemen* 7, no. 2 (2015).

<sup>40</sup> Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 53–70, <https://doi.org/10.35968/jh.v11i1.651>.

<sup>41</sup> Mahkamah Agung Republik Indonesia, "Kompilasi Hukum Ekonomi Syariah," 37.

<sup>42</sup> Directory of Decisions of the Supreme Court of the Republic of Indonesia, "Decision no 4/Pdt.G.S/2023/PA.Slw," 2023.

breach of contract, the decision is accurate and by the existing laws. However, from the standpoint of Islamic economic law, resolving this case requires considering all aspects of the contract form and its practice, not just the breach of written contract clauses. It is essential to assess whether the form and practice meet Sharia standards, as there may be discrepancies between practice and theory, even if the contract clauses have been mutually agreed upon. There are also instances where contracts are drafted unilaterally, forcing the other party to comply with the contract terms. Consequently, such dispute resolutions indirectly violate Law No. 21 of 2008 on Sharia Banking, Article 55, Paragraph 3, which states that dispute resolution must not contradict Sharia principles.<sup>43</sup>

In other cases, the contract practice must be documented in Sharia banking contracts. For instance, in the decision of the Situbondo Religious Court Case No. 04/Pdt.G.S/2024/PA.Sit. concerning a financing agreement between PT. BPRS Syariah and its two customers, the contract's specifics are unclear, and the financing product contract is only mentioned. This lack of clarity conflicts with Sharia banking principles, which stipulate that the type of contract and agreement must be clear and compliant with Sharia requirements, as outlined in Law No. 21 of 2008 on Sharia Banking and the Compilation of Sharia Economic Law (KHES). There are many cases where the form of practice should be analyzed thoroughly to ensure that judicial decisions address not only the breach of contract but also the adherence to Sharia principles.

These case examples indicate that judges rely heavily on positive law when making legal decisions. Judges continue to refer to related laws when faced with legal gaps, as seen in the cases above, where judges have used provisions on breach of contract and unlawful acts from the Civil Code. In practice, Indonesia adheres to a civil law system, where judges must use written regulations as their legal source.<sup>44</sup> Thus, the judicial system in Indonesia operates under a heteronomous legal discovery system, where judges must base their decisions on written laws.<sup>45</sup> This is grounded in Article 20 of the *Algemene Bepalingen van Wetgeving* (AB), which states, "Judges must adjudicate based on the law."<sup>46</sup>

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<sup>43</sup> "Law No 21 of 2008 Concerning Sharia Banking," 2008.

<sup>44</sup> Putra Halomoan Hasibuan, "Proses Penemuan Hukum," *Yurisprudencia* 2, no. 2 (2016): 79.

<sup>45</sup> Bhakti, "Politik Hukum Dalam Putusan Hakim (The Politic of Law in a Verdict)."

<sup>46</sup> Henlie Fernandes and Ayu Trisna Dewi, "Kewenangan Mahkamah Konstitusi Dalam Penemuan Hukum Baru (Rechtvinding) Tentang Status Anak Luar Kawin," *Jurnal Warta* 62, no. 1 (2019): 1-1.

These facts indicate that Indonesia adheres to the positivist tradition, which views law as comprising rules formally established as positive law or legislation.<sup>47</sup> In legal positivism, all regulations encompass the entirety of the law. Therefore, the judge's role is to mechanically apply these legal provisions to resolve societal issues stipulated by the legislation.<sup>48</sup>

According to Ronald Dworkin's theory of interpretive law, the law must be grounded in moral reasoning that encompasses values such as *justice, fairness, and procedural due process*.<sup>49</sup> This reasoning must involve interpretation and the assessment of moral judgments regarding the nature of the law.<sup>50</sup> This means that judges should not base their decisions solely on statutes but should also engage in legal reasoning that draws on other sources of law while remaining grounded in principles of morality and justice. Moreover, in sharia economic disputes, the available material legal sources are minimal, often resulting in legal gaps, particularly concerning breach of contract and unlawful acts. This situation forces judges to base their legal considerations on the Civil Code provisions on breach of contract and illegal acts. As a result, resolving Sharia economic disputes in religious courts often results in procedural justice aligned with existing laws rather than substantive *justice* that protects individual rights by legal morals. Consequently, judicial decisions may appear rigid and fail to deliver true justice.<sup>51</sup>

Judicial considerations of this nature fail to respect the parties' rights. Namely, the values of fairness and justice, which have the principles of respect and compliance with people's rights, should guide the process. Therefore, the parties should be entitled to have their cases adjudicated based on material legal sources that align with Sharia principles. A judge's reasoning must be clear and detailed, grounded in specific legal provisions, customary law, jurisprudence, or legal doctrine. This ensures that the parties' rights are upheld and that Sharia law serves justice.<sup>52</sup> Judges should be able to use legal considerations from other Islamic legal

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<sup>47</sup> Asep Bambang Hermanto, "Ajaran Positivisme Hukum Di Indonesia: Kritik Dan Alternatif Solusinya," *Selisik* 2, no. 4 (2016): 4, <http://journal.univpancasila.ac.id/index.php/selisik/article/view/650>.

<sup>48</sup> Faissal Malik, "Tinjauan Terhadap Teori Positivisme Hukum Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 188-96, <https://ejournal.undiksha.ac.id/index.php/JJPP/article/view/31488>.

<sup>49</sup> Dharmaputra, "Kritisi Terhadap Teori Hukum Ketiga Ronald Dworkin."

<sup>50</sup> Tainus Sebastian, "Teori Hukum Interpretatif Menurut Ronald Dworkin" (Sekolah Tinggi Filsafat Driyarkara, 2016).

<sup>51</sup> Asep Bambang Hermanto, "Ajaran Positivisme Hukum Di Indonesia: Kritik Dan Alternatif Solusinya," *Selisik* 2, no. 4 (2016): 4.

<sup>52</sup> Nur Iftitah Isnantiana, "Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan," *Islamadina* 18, no. 2 (2017): 54.

sources beyond positive law. This is reinforced by the provisions in Article 2 of Law No. 3 of 2006, which state that one of the judicial powers is to adjudicate for Muslim individuals seeking justice in specific cases.<sup>53</sup> It means that the resolution of sharia economic disputes must align with the rights of the parties seeking justice according to Islamic principles.

The judge's decision must include the reasons and basis for the ruling and cite specific articles from relevant laws or unwritten sources of law used as the basis for the judgment.<sup>54</sup> Legal gaps should not force judges to resolve sharia economic disputes solely based on provisions from the Civil Code. Instead, they should explore other sources of material law. According to Ronald Dworkin, in adjudicating and shaping the law, there must be adherence to *procedural due process*, meaning decisions should comply with existing norms.<sup>55</sup> However, in reality, material sources of law other than positive law cannot be used as the basis for adjudicating cases. As the fatwa of DSN-MUI cannot be fully binding, as fatwas are considered legal opinions or legal advice,<sup>56</sup> They are not legally binding. They can also change based on specific conditions and various influencing factors, which may vary over time.<sup>57</sup> This occurs because Islamic economic experts can still debate DSN-MUI fatwas, which become legally binding only when transformed into positive law. So far, regulations like POJK, SE, PBI, and PMK regarding Islamic economics are legal products adopted from DSN-MUI fatwas. In fact, in PBI No. 11/15/PBI/2009 on the Conversion of Conventional Banks into Islamic Banks, Article 1 point 7 defines Sharia principles as Islamic legal principles in banking activities based on fatwas issued by the DSN-MUI.<sup>58</sup> However, this regulation does not directly and specifically state that fatwas issued by the DSN-MUI are binding and can serve as a legitimate legal basis to strengthen Islamic economics in Indonesia.

This situation negatively impacts the material legal sources for resolving Islamic economic disputes, which remain weak and insufficient. It also affects public compliance with the proper implementation of Islamic economics by existing

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<sup>53</sup> Muhamad Mas'ud, "Konsep Murofa' At Dan Kewenangan Peradilan Agama Dalam Menyelesaikan Sengketa Perbankan Syariah," *Islamika* 11, no. 1 (2020): 32-57, <https://doi.org/10.33592/islamika.v11i1.418>.

<sup>54</sup> Isnantiana, "Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan."

<sup>55</sup> Dharmaputra, "Kritisi Terhadap Teori Hukum Ketiga Ronald Dworkin."

<sup>56</sup> Devid Frastiawan Amir Sup Muhammad Irkham Firdaus, "LEGAL OPINION DALAM PERSPEKTIF HUKUM ISLAM," *El-Ghiroh: Jurnal Studi Keislaman* 21, no. 1 (2023): 57-73, <https://doi.org/https://doi.org/10.37092/el-ghiroh.v21i1.360>.

<sup>57</sup> Ian Rakhmawan Suherli, "Kelemahan Fatwa Dan Implementasinya Dalam Pengembangan Ekonomi Dan Keuangan Kontemporer," *Jurnal Tafaqquh STIS Darul Falah* 7, no. 1 (2022): 59-76.

<sup>58</sup> "Bank Indonesia Regulation Number 11/15/PBI/2009 Regarding the Change of Business Activities of Conventional Banks into Sharia Banks," 2009.

regulations. As evidence, several cases have been appealed due to the parties' dissatisfaction with the initial verdict. There are 406 appeal cases, 127 cassation cases, and 11 judicial reviews out of 2,919 court decisions.<sup>59</sup> This means that 19% of the rulings still have dissatisfied parties who were not satisfied with the decisions issued by the Religious Courts.

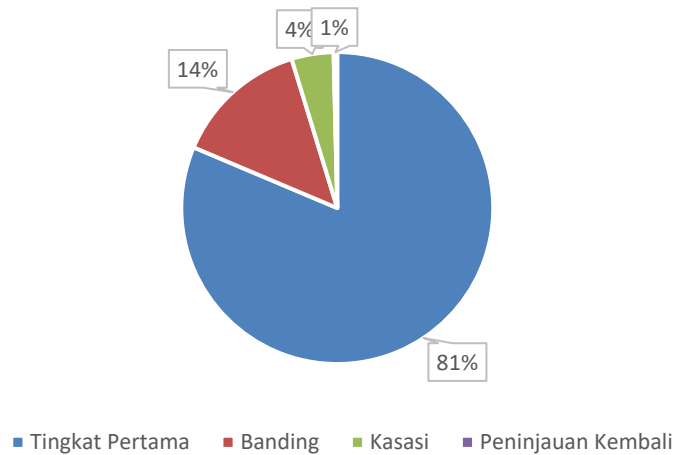


Figure 3. Percentage Diagram of Sharia Economic Rulings

Several cases have also been carried over from the previous year. For instance 2022, 48 cases were carried over from 393 cases.<sup>60</sup> It can be concluded that the parties involved in resolving Sharia economic disputes are still dissatisfied with the process. Therefore, concrete efforts are needed to address this dissatisfaction. Although the percentage is still low, it does not rule out the possibility that the dissatisfaction among the parties may increase yearly. Thus, steps need to be taken to address this issue. The material legal sources used to resolve Sharia economic disputes are still inefficient, so stronger regulations are required to aid their resolution. More specific laws should govern all Sharia economic instruments, with all components of the law fully addressed, including procedures for dispute resolution and provisions for sanctions to be imposed.

The resolution of disputes in Sharia economic cases, as outlined in Law No. 21 of 2008 on Sharia Banking, must be clear and detailed. Additionally, it should adhere to Sharia principles and not contradict the examples set by the Prophet Muhammad

<sup>59</sup> "Direktori Putusan."

<sup>60</sup> Directorate General of Religious Courts, "Rekap Data Jenis Perkara Ekonomi Syariah Peradilan Agama Tahun 2022,".



Saw.<sup>61</sup> Resolution of Sharia economic disputes that adhere to Sharia economic principles must meet the following criteria: 1) Not causing hardship (*Adam al-Haraj*); 2) Reducing burdens (*Taqlil al-Taklif*); 3) Periodic legal rulings; 4) In line with universal welfare; 4) Equality and Justice (*al-Musawah wa al-Adalah*).<sup>62</sup>

Sharia economic disputes also need to be classified in detail and clearly. This way, violations can be more concrete. Violations such as breach of contract and unlawful acts (PMH) should have their forms and models of violations by Sharia economic actors in more detail. Additionally, prohibitions in Sharia economics should be clearly outlined in regulations so that industry players in Sharia economics have no excuses for a lack of understanding of the Sharia economic system and mechanisms. Prohibitions in Sharia economics should be further clarified in the latest regulations, such as the prohibitions on *Maisyir* (gambling), *Gharar* (uncertainty in transactions), and *Riba* (interest).

## CONCLUSION

The material legal sources for resolving Sharia economic disputes still need to improve, and there is a legal gap in disputes related to breach of contract and unlawful acts (PMH). As a result, judicial decisions may need to align with the values of interpretative legal theory, which includes *justice, fairness, and procedural due process*. Therefore, new, more concrete, detailed, and precise regulations must be established to address the weaknesses in the existing material legal sources for Sharia economics. This will help reduce the level of non-compliance among Sharia economic industry players. There needs to be a more concrete legal source for each type of Sharia contract, including all components of clear regulations, such as procedures for resolving Sharia economic disputes by Islamic principles, forms of sanctions for agreement violators, and classification of types of violations in Sharia economics.

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<sup>61</sup> Osman and Abdillah, "Hukum Materiil Penyelesaian Sengketa Ekonomi Syariah (Tinjauan Undang-Undang Dan Hukum Islam)."

<sup>62</sup> Norcholis, "Prinsip-Prinsip Syariah Dalam Penyelesaian Sengketa Ekonomi Syariah Di Pengadilan Agama," *Syarikat: Jurnal Rumpun Ekonomi Syariah* 4, no. 1 (2021): 22-29, [https://doi.org/10.25299/syarikat.2021.vol4\(1\).8471](https://doi.org/10.25299/syarikat.2021.vol4(1).8471).

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