

Absolute Competency Problems in Settlement of Mortgage Rights Execution Disputes of Islamic Banking in Religious Courts

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Abstract

Banking activities, especially credit/financing transactions, apart from the existence of trust between creditors and debtors, also require guarantees that have a high liquidity value in the form of material guarantees and individual guarantees. The District Court does not have the authority to resolve sharia economic disputes in any form, including the execution of the object of mortgage rights in Islamic banking which has issued Constitutional Court Decision Number 93/PUU-X/2012. If the ruling or decision issued by the district court is related to implementation the object of mortgage rights in sharia banking, then the stipulation or decision is not valid, this is because there is no regulation between the old law and the new law. This research used a normative juridical approach which was carried out through analysis obtained from library materials linked to statutory regulations and the concept of legal experts as the basis for research. The result of this research was that harmonization emphasized more on equating perceptions of the implied meaning without making editorial changes. Reconstruction of norms, including improving old laws or making new laws by changing the editorial staff of articles that still contain contradictions.

Keywords: Islamic banking disputes, execution of mortgage rights

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INTRODUCTION

Banking is a financial institution becoming an important indicator in the economy of a country; therefore, banking is called as the heart of the driving force of the economy. This is because the function of the bank is as a financial intermediary, that the bank functions to collect funds, provide credit, facilitate payment traffic, media for monetary policy and provide information, provide consultation and administrative assistance.¹

In the explanation of Article 8 of Law No. 10 of 1998, banks are obliged to be careful in evaluating prospective *mudharib*. The same thing is also explained in article 22 of the Islamic Banking Law that it is very important for Islamic banks and Islamic financial institutions to see the character of the *mudharib* candidate, this is commonly referred to as the C's of credit (Character, Capital, Capacity, Collateral and Condition of economy) apart from the business prospects of the prospective customer receiving the facility. Thus, Islamic banking conducts analysis on requests for funds submitted by *mudharib* candidates and from the capabilities and potential of the business to be financed to withdraw funds as a source of repayment to the bank.

¹ Nindyo, *financial intermediary*, 2006.

Islamic banks have a higher risk than conventional banks.² Based on the National Sharia Council Fatwa No. 7/DSN-MUI/IV/2000 regarding *mudharabah* financing, and guarantees in the contract.

Based on the fact, that *mudharabah* financing is used for working capital and investment financing or the purchase of goods needed by members (consumptive financing) which is accompanied by an agreement between the bank (*shahibul maal*) which provides financing with the entrepreneur (*mudharib*), which can be in the form of PT, CV, Cooperatives, BMT, Individual. The financing provided is tied to material and individual guarantees such as mortgage and fiduciary rights. Meanwhile, individual guarantees are carried out by making a guarantee deed known as the *borgtocht* deed. A third party that binds itself as a guarantor of debt (*borg*) must relinquish its privileges to material rights, which are then tied to a guarantee institution in accordance with the object of guarantee, it is Mortgage Rights or Fiduciary For fiduciary security, the guaranteed property remains with the owner of the object, only the right of ownership is transferred to the bank. While the *cessie* is used as additional collateral for the repayment of the fund manager's debt (*mudharib*), it is invoices for cooperatives, BMT to its members. The commitment of fiduciary security or security rights is made with a notary deed.

Based on the description above, in banking activities, especially credit/financing transactions, besides the existence of trust between creditors and debtors, guarantees that have a high liquidity value are also required in the form of material guarantees and individual guarantees. This is to prevent losses that force banking institutions to settle credit or there is a term "write of" mechanism or write off debtor's debt. So that the problem of this research is limited to the legal position of the guarantee of the *mudharabah* contract (contractual) in the Islamic banking system in Indonesia (Islamic law) with the application of guarantee law in the conventional banking system (positive law) in effect in Indonesia.

In the formulation of Law Number 4 of 1996 concerning the Mortgage Rights Law (UUHT) in Article 6 it is written: "If the debtor fails to promise, the holder of the first security right has the right to sell the object of the Mortgage Rights on his own power through a public auction and collect the debt from the results of the auction". As a consequence of the provisions of Article 54 of Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006, substantially the direction and objectives of dispute resolution are given to Islamic banks, the dispute settlement shall be carried out in religious court, dispute resolution is clearly different from conventional banking in general courts. Among the various principles

² Syafe'i, *Bank syariah berisiko lebih tinggi dibandingkan bank konvensional*, 1995.

that need to be implemented and considered in this regard is that the settlement of Islamic banking cases within the religious court is none other than the framework for enforcing Islamic material civil law.³

In this case, there are still many problems that arise because there are still many cases of settlement of liability rights with Islamic banking that have been filed in district courts, because the issuance of the Constitutional Court's decision does not necessarily change the legal basis for land mortgage rights, it is the HT Law, especially Article 18 which states that the right of responsibility is based on the decision of the head of the district court.

RESEARCH METHODOLOGY

This research used a normative juridical approach which was carried out through analysis obtained from library materials linked to laws and regulations and the concept of legal experts as the basis for research. Sources of legal materials from this research included 1) Primary legal materials, consisting of legal materials that were binding in the form of statutory regulations, such as the Criminal Code, court decisions or juris production, 2) Secondary legal materials, including legal materials that provided explanations for primary legal materials, such as research results, scientific works in the field of law, legal literature, and so on.⁴ Tertiary legal materials in the form of dictionaries and handbooks (hand out).⁵ The collection of material in this research used document study techniques. After the data has been collected completely, the next step was to carry out the following analysis, deductive techniques, including deductive techniques, how to draw conclusions from general conditions to find specific ones.

THE EXECUTION CONCEPT OF LIABILITY RIGHTS AND AUTHORITY OF THE RELIGIOUS COURT IN ITS SETTLEMENT IN ISLAMIC BANKING

a. Execution of Mortgage

Bank credit attempts made by debtors and creditors are always made by credit agreement in advance as the principal agreement. A credit agreement is usually a standard agreement given by the creditor to a mutually agreed debtor. Giving credit to a creditor to a debtor is not free, provided a guarantee of the value of the credit.⁶

The majority of debtors apply for guarantees to creditors in the form of land in the form of a letter/certificate of land rights. This is because the land has a relatively stable value and

³ Cik Basir, *Penyelesaian Sengketa Perbankan Syariah di Pengadilan Agama dan Mahkamah Syar'iyah* (Kencana, 2012).

⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Perdana Media Grup, 2010).

⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 2006).

⁶ Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama* (Jakarta: Prenada Media, 2006).

will not even experience a very favorable decline in creditors. It is as regulated in Article 51 of Law No. 5 of 1960 on Agrarian Principal Law (UUPA).

The debt security institution is the right of liability as regulated in UUPA. Provisions of Article 1 paragraph (1) of Law No. 4 of 1996 on the Right of Liability on Land and Things Relating to Land.

Based on the understanding of the mortgage, that the guarantee in the form of a certificate of land also includes things contained on the land as payment for certain debts. Placement of collateral on land with the right of liability will not waive from the credit agreement as a principal agreement. Furthermore, the Liability Charge Act (APHT) was made by an authorized Land Act Making Officer as regulated in Government Regulation Number 37 of 1998 on the Regulations of the Department of Land Act Making Office.⁷

Because this agreement is an appraisal agreement or an additional agreement of the credit agreement which is the principal agreement. This assessment agreement is made after the main agreement is signed by the parties. It is not uncommon for a debtor to make a performance, as regulated in Article 6 or Article 20 of the UUPA has given the creditor the authority as the holder of the liability to execute the liability. ; (2) The decision is not made by the Defendant voluntarily; (3) The verdict is *condemnatoir*; (4) Execution by order and under the leadership of the chairman of the Court; (5) Execution of a decision punishing the Defendant to pay a sum of money, the execution of which is derived from a dispute over the receivables agreement and compensation based on the performance; (6) Execution that punishes a person for committing or not committing an act valued with money; (7) Real execution or execution of verdict in the form of submission/evacuation or demolition.⁸

b. The Authority of Religious Courts in Execution of Islamic Economic Disputes

Since 2006, with the amendment of Law No. 7 of 1989 concerning the Religious Courts with Law Number 3 of 2006 concerning the Religious Courts, the authority of the religious courts has been expanded. Besides having the authority to examine, decide and resolve disputes at the first level between people who are Muslim in the fields of marriage, inheritance, wills, grants, waqf, zakat, *infaq*, and *shadaqah*, the Religious Courts are also authorized to examine, decide, and resolve disputes in in the field of Islamic economics (Article 49 letter i of Law No.3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts). The authority of the religious court was also strengthened by the decision of the Constitutional

⁷ Sutan Remi, *Hak Tanggungan: Asas-Asas, Ketentuan Pokok dan Masalah yang dihadapi oleh Perbankan (Suatu Kajian Mengenai Undang-Undang Hak Tanggungan)* (Jakarta: Bandung Alumni, 1999).

⁸ Wahyu Mulyono, *Teori dan Praktik Peradilan Perdata di Indonesia* (Yogyakarta: Pustaka Yustisia, 2012).

Court on case No. 93/PUU-X/2012 which eliminates the explanation of Article 55 paragraph (2) of Law No. 21 of 2008 concerning Islamic Banking, thus making religious courts the only judicial institution authorized to resolve Islamic economic disputes.

The Religious Court is one of the platforms for Muslims seeking justice in realizing a sense of justice, Islamic norms and values in accordance with the provisions of Islamic law. This is where the role of *Qadhi* or religious judges in upholding justice and eradicating existing injustices. In Indonesia, in realizing and carrying out this order, there are stages that must be carried out in accordance with applicable regulations, starting from the types of cases being tried in accordance with Article 49 of Law Number 3 of 2006 concerning Absolute Authority of Religious Courts which specifically determine and decide civil cases for Muslim communities and other matters regulated in law. From the type of case, at the end of the trial the judge will decide the case according to the type of case, the result of which is called a verdict or ruling.⁹

c. Application of Norms in Settlement of Mortgage Disputes

Reconstruction of norms, it is formulating and protecting constitutional resilience. Legal reconstruction is needed amid the increasingly intense linkages between law and political power. With reconstruction, the express meaning of a norm can easily be understood and truly shows a meaning that does not contain dualism and contradiction. So, it is necessary to change the editorial of an article or change in certain phrases which are still contradictory.¹⁰

The Constitutional Court Decision Number 93/PUU-X/2012 expressly cancels the legal force of Elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Islamic Banking. However, implicitly, the Constitutional Court's decision directly and indirectly eliminates the dualism of sharia economic dispute resolution and substantively contextually invalidates several previous norms that signal the authority of Islamic economic settlement to the district court.

EXECUTION OF MORTGAGE GUARANTEE IN THE CONTEXT OF IMPLEMENTING THE DECISION

This guarantee rights provisions are regulated in Law Number 4 of 1996, which was promulgated on April 09 1996 and becomes effective on the date of promulgation (article 31). To explain the execution of Mortgage Rights, it is necessary to know in advance the juridical

⁹ Abdul Manan, *Hukum Ekonomi Syariah; dalam Perspektif Kewenangan Peradilan Agama* (Jakarta: Kencana, 2012).

¹⁰ Mohamad Nur Yasin, "Pragmatisme Perbankan Syariah dalam Penyelesaian Eksekusi Objek Hak Tanggungan," *Jurnal Al Ihkam* 12, no. 1 (2017).

and administrative processes attached to the title of execution to the Mortgage, it is through the following stages:

The first stage is the binding of a credit agreement or debt agreement. The second stage is the making of the Deed of Providing Mortgage Rights (APHT) made by PPAT which serves as evidence of the granting of Mortgage which is the second contractual document that complements the main agreement document. Regarding the contents and format of APHT, it is explained in article 11 paragraph 1 and 2 of Law Number 4 of 1996. The third stage is registration of Mortgage Rights, this is as regulated in Article 13 paragraph 1, 2 and 3; that this registration is imperative which must be registered at the land office, which is a principle of publicity which is an absolute requirement for the birth and binding of the Mortgage to a third party (paragraph 1); the obligation of ppas as the maker of APHT to send APHT and other documents which include documents of evidence related to the object of the Mortgage Rights and the identity of the parties as well as certificates of land at the land office, no later than 7 working days from the signing of the APHT (paragraph 2); and to the obligations of the Land Registration Office (KPT) as referred to in paragraph 3 of Law 4 of 1996. The last stage is holding back the creation of a certificate of Mortgage Rights as regulated in article 14 of Law Number 4 of 1996, related; The party that issues the Mortgage Certificate; Mortgage certificate function; and Related to the next action of the Land Office to return the land certificate which contains the record of granting Mortgage Rights to land rights holders and giving certificates of Mortgage Rights to creditors.

Then on the object of the Mortgage Rights according to article 4, limited to article 16 of the Basic Agrarian Law (UUPA No. 5 of 1960). In this connection, with a starting point and referring to article 16 of the UUPA, the rights that can be used as a mortgage consist of: a) Property Rights (HM), b) Business Use Rights (HGU), c) Building Use Rights (HGB), d) Right to Use (HP).

The principles owned on the object of the Mortgage, include the principle of publicity (announced), the principle of transferability, and the principle of certainty.¹¹ Regarding the issue of the execution of the guarantee of mortgage rights, initially it can be carried out directly by the mortgage holder to sell the object of the mortgage without going through a judicial process, which means that the execution of the auction sale of the object of the mortgage is carried out on his own power by the mortgage holder without court intervention or judge. So that the process of selling mortgage object auction directly by the mortgage holder requires a

¹¹ Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Sinar Grafika, 2007).

clause that absolutely authorizes the mortgage holder to sell the mortgage object, which is called the *aigenmachtigeverkoop* clause based on the principle of agreement from the debtor who gives the right to the creditor to sell the mortgage object without going through court, if the debtor is in default, this is based on article 1178 of the Civil Code, and the execution process based on this *aigenmachtigeverkoop* is regulated in regulation number 1178 jo. Article 1211 of the Civil Code, it is through public auction sales.

However, the implementation of the *aigenmachtigeverkoop* which was given in Article 1178 of the Civil Code, was paralyzed by the decision of the Supreme Court No. 320 K/Pdt/1980 dated 20 May 1984. Which with this decision does not justify the implementation of the *executoriale verkoop* based on the *aigenmachtige verkoop* clause carried out by the creditors alone without going through the judicial process on the grounds that: “every auction sale (*executoriale verkoop*) based on article 224 HIR, must go through court interference; the auction sale is not valid, if it is carried out without an auction service; and what is meant by the general service in article 1211 of the Civil Code is a court, not an auction agency”.¹²

Based on this provision, at the same time it contains a *parate* character of execution and sale on its own power or *aigenmachtige verkoop* (the right to sale), but its application refers to the explanation of the article that the execution of *parate* execution is subject to Article 224 HIR, article 256 RBg if the power to sell itself is not agreed, then the sale auction (*executorialeverkoop*) must be requested to the chairman of the Court (PN), and requests are based on reasons of default.

What is meant by broken promise is not explained in detail in article 6 of Law no. 4 of 1996, so that to determine if there is a broken promise, refer to the provisions of article 1243 of the Civil Code, or in accordance with the agreement stipulated in the agreement, or if it refers to an analogue with the provisions of Article 1178 of the Civil Code, which is categorized as broken promise if the debtor does not pay off the principal debt ; and or Failure to pay interest owed accordingly.

The attachment of the right to sell on their own power, referring to the explanation of article 6 of the Act above, states that the right to sell HT objects on their own power is a manifestation of the position or preference rights of the holder of the Mortgage Right or the first Mortgage holder, if the holder Mortgage more than one person. The right to sell on one's own power will only be attached if it is explicitly agreed in the APHT.

¹² Harahap.

From the sale, the creditor has the right to take the settlement in advance by overriding other creditors. If there is still any leftover, then the excess becomes the right of the H.T. The concept and system of selling on one's own power as regulated in article 6 of Law Number 4 of the Year, as outlined in Article 1178 of the Civil Code, must be affirmed as a clause in the APHT.

NORMS IN SETTLEMENT OF MORTGAGE DISPUTES

All norms related to Islamic economic dispute resolution issued before the issuance of the Constitutional Court Decision Number 93/PUU-X/2012 can be taken with concrete steps.

First, harmonization of norms, it is repositioning (replace) each other's dignity (respective degrees) and enforcing national law in line with the general rules (the existing national law with common rule). Harmonization is carried out by harmonizing the meaning of norms that are not yet in line with the Constitutional Court Decision Number 93/PUU-X/2012. Harmonization emphasizes more on equating perceptions to implied meanings without making editorial changes. Harmonization must always be accompanied by a commitment from all parties to remain consistent with sharia principles. Without a commitment to consistency with sharia principles, the harmonization is unlikely to last long. The temptation to behave pragmatically surrounding Islamic banking is a challenge to the continuation of the harmonization of sharia economic dispute resolution, particularly in relation to applications for execution of objects of mortgage rights in Islamic banking.

Second, norm reconstruction, it is formulating and protecting constitutional resilience. Legal reconstruction is needed in the midst of intensifying the relationship between law and political power. By reconstruction, the express intent of a norm can easily be understood and truly shows a meaning that does not contain dualism and contradiction. So, it is necessary to change the editorial of an article or change in certain phrases which are still contradictory.¹³

The Constitutional Court Decision Number 93/PUU-X/2012 expressly nullifies the legal force of Elucidation of Article 55 paragraph (2) of Law Number 21 of 2008 concerning Islamic Banking. However, implicitly, the Constitutional Court's decision directly and indirectly eliminates the dualism of Islamic economic dispute resolution and substantively contextually invalidates several previous norms that signal the authority of sharia economic settlement to the district court.

There are six norms, they are (1) article 200 paragraph (11) HIR, (2) Explanation of Articles 637 and 639 RV, (3) Article 18, Article 19, and Article 22 UUHT, (4) Article 61 UU-

¹³ Nur Yasin, "Pragmatisme Perbankan Syariah dalam Penyelesaian Eksekusi Objek Hak Tanggungan."

APS, (5) Article 59 and Elucidation of Article 59 paragraph (1) UUKK, and (6) SEMA Number 8 Year 2010, obligatory principal analysis, it is analysis that makes legal principles as a reference for reading and understanding the text of a norm. As far as the settlement of sharia economic disputes is concerned, the applicable legal principle is the principle of sharia.

MORTGAGE DISPUTE RESOLUTION

The purpose of the parties in a case to submit cases, especially civil cases to the court, is to solve the problem completely and find legal certainty through court decisions.

In principle, only decisions with permanent legal force can be enforced, it is court decisions that are conditional in nature, because the decisions have permanent legal force, in which they contain a fixed and certain legal relationship between the parties in the case. *Amar*, who is characterized as *condemnatoir*, is simply an *amar* who can be executed if the defendant is reluctant to voluntarily fulfill the verdict.¹⁴ Furthermore, the legal action taken by the court against the losing party in a court decision is called execution. Therefore, execution is nothing but a continuous act of the entire procedural law process. Execution is an integral part of the implementation of procedural order in court.

The characteristics that can be used as indicators of determining a decision are *condemnator*, in the *amar* or dictum of the decision there are orders that punish the losing party.¹⁵

However, in the discussion of this author, that the execution term to be described is a form of execution that focuses on procedural procedures in execution related to dispute resolution in the banking and Islamic business sector.

AUTHORITY FOR EXECUTION OF ISLAMIC ECONOMIC DISPUTES

Since 2006, with the amendment of Law No. 7 of 1989 concerning the Religious Courts with Law Number 3 of 2006 concerning the Religious Courts, the authority of the religious courts was expanded. Besides having the authority to examine, decide and resolve disputes at the first level between people who are Muslim in the fields of marriage, inheritance, wills, grants, waqf, zakat, *infaq*, and *shadaqah*, the Religious Courts are also authorized to examine, decide, and resolve disputes in in the field of sharia economics (Article 49 letter i of Law No.3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts). The authority of the religious court was also strengthened by the decision of the Constitutional Court on case No. 93/PUU-X/2012 which eliminates the explanation of Article 55 paragraph

¹⁴ Arto A. Mukti, *Praktek Perkara Perdata* (Yogyakarta: Pustaka Pelajar, 2000).

¹⁵ Wildan Sayuthi, *Sekitar Acara dan Hukum Perdata Agama (PUSDIKLAT Pegawai Mahkamah Agung RI*, 2005.

(2) of Law No. 21 of 2008 concerning Sharia Banking, thus making religious courts the only judicial institution authorized to resolve Islamic economic disputes.

The Religious Court is one of the platforms for Muslims seeking justice in realizing a sense of justice, Islamic norms and values in accordance with the provisions of Islamic law. This is where the role of *Qadhi* or religious judges in upholding justice and eradicating existing injustices. In Indonesia, in realizing and carrying out this order, there are stages that must be carried out in accordance with applicable regulations, starting from the types of cases being tried in accordance with Article 49 of Law Number 3 of 2006 concerning Absolute Authority of Religious Courts which specifically determine and decide civil cases for Muslim communities and other matters regulated in law. From the type of case, at the end of the trial the judge will decide the case according to the type of case, the result of which is called a verdict or ruling.¹⁶

THE ANTINOMY OF ABSOLUTE AUTHORITY OF COURTS IN EXAMINING AND RESOLVING MORTGAGE DISPUTES IN ISLAMIC BANKING

The separation of authority between judicial circles still leaves problems in its implementation, especially in the settlement of liability rights disputes that occur in Islamic banking, this can be seen from several cases, including:

- a. Kepanjen District Court Decision No 116/Pdt.Plw/2015/PN.Kpn. Decision Number 116/Pdt.Plw/2015/PN.Kpn is a legal product in the form of *rechtvinding*, which is a law making through a court decision (judge made law).¹⁷
- b. Determination of the Chairman of the Kepanjen District Court (PN) No. 20/Eks/2014/PN.Kpn dated 25 November 2014 received resistance from Sugeng Subowo on the grounds that the *murâbahah* contract dispute was part of a Islamic economic dispute. Islamic economic dispute resolution is the authority of the religious court. District courts are not authorized to settle Islamic economic disputes.
- c. Decision of the Supreme Court No. 75/Pdt.G/2014/PN Krg,¹⁸ This decision is a decision at the cassation level between Albertus Heru Sediarto, SE., (Plaintiff I) and G.K. Hestiningrum (Plaintiff II) against PT. Bank Mega Syariah Unit Pasar Legi (Defendant I), Head of the Office of State Assets and Auction Services (KPKNL) Surakarta Legi (Defendant II), and Head of the Karanganyar Regency Land Office (Defendant III).

¹⁶ Manan, *Hukum Ekonomi Syariah; dalam Perspektif Kewenangan Peradilan Agama*.

¹⁷ Nur Yasin, "Pragmatisme Perbankan Syariah dalam Penyelesaian Eksekusi Objek Hak Tanggungan."

¹⁸ "Direktori Putusan Mahkamah Agung Republik Indonesia. Putusan Nomor 75/Pdt.G/2014/PN Krg," 31 Januari 2019, www.putusan.mahkamahagung.go.id.

In this case the plaintiffs sued the auction sale of land which was the right of the respondent at Bank Mega Syariah Unit Pasar Legi (Defendant I) was a violation of the legally flawed *Murabahah* financing deed, which was made between Plaintiff I and Defendant I. At point 9, sitting The case in this decision stated that Defendant II's act of executing the *parate* auction of the legally flawed object of credit guarantee for Plaintiff I was contrary to Article 20 of Law No. 4 of 1996, because based on the deed of granting security rights over the object of guarantee for the *Murabahah* deed of financing from Defendant I to Defendant I must be on orders and under the leadership of the Head of the District Court, Defendant II must be sentenced to cancel the *parate* execution of the auction in question.

Based on the clauses that existed in the end, the Supreme Court decision made a decision through various considerations which finally decided that the district court was not authorized and competent to resolve this issue. Requesting the execution of the object of mortgage in Islamic banking to the head of the district court is a legally inappropriate act. If the district court accepts and processes the application, the legal product will not have legal force. Therefore, all actions that appear as a continuation of a district court's ruling or decision that do not have legal force are invalid. If the application for the execution of the object of mortgage in sharia banking is still submitted to the head of the district court, then more broadly the benefit of the people will continue to be ignored. Safeguarding the benefit of the people is the highest goal of Islamic law and national law. According to Jaser Auda, the orientation of the development of Islamic law and national law must not neglect the interests of the family, society and humans as a whole.¹⁹

CONCLUSION

The legal basis for the authority of the Religious Courts is Law No. 3 of 2006 which is an amendment of Law No. 7 of 1989, later strengthened again by the decision of the Constitutional Court on case No. 93/PUU-X/2012 which eliminates the explanation of Article 55 paragraph (2) of Law No. 21 of 2008 concerning Islamic Banking, thus making the Religious Courts the only judicial institution authorized to resolve sharia economic disputes. The District Court does not have the authority to resolve sharia Islamic disputes in any form, including determining the execution of objects of mortgage rights in Islamic banking as of the issuance of the Constitutional Court Decision Number 93/PUU-X/2012. If there is a decision or decision issued by a district court related to the execution of the object of mortgage rights in Islamic banking, then the decision or decision is invalid, this is because there is no synchronization

¹⁹ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought (IIIT), 2008).

between the old and the new laws. All norms related to the settlement of sharia economic disputes issued before the issuance of the Constitutional Court Decision Number 93/PUU-X/2012 can take concrete steps. First, harmonization of norms, it is aligning the meaning of norms that are not in line with the Constitutional Court Decision Number 93/PUU-X/2012. Harmonization emphasizes more on equating perceptions to the implied meaning without making editorial changes. Second, norm reconstruction, it is improving old laws or making new laws by changing the editorial staff of articles that still contain contradictions.

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