

**DEFAULT ON DEBT COLLECTOR SERVICE REWARDS IN  
*IJĀRAH 'ALĀ AL-'AMĀL CONTRACT*  
(Analysis Of Decision Number 324/Pdt.G/2024/MS. Bna)**

**Faris Ghifary<sup>1\*</sup>, Muhammad Syuib<sup>2</sup>**

<sup>1,2</sup> Ar-Raniry State Islamic University, Aceh, Indonesia

\*Email: [220102061@student.ar-raniry.ac.id](mailto:220102061@student.ar-raniry.ac.id)

**Abstract**

This study analyzes the legal considerations of judges in Decision Number 324/Pdt.G/2024/MS. Bna concerning a dispute over the non-performance of service fee payments between Bank Aceh Syariah and a debt collection company. The research employs a normative juridical method with statutory, case, and conceptual approaches. The analysis is conducted based on the Indonesian Civil Code, the Compilation of Sharia Economic Law, DSN-MUI fatwas, and the concept of *ijarah 'ala al-'amal* in Islamic jurisprudence (*fiqh muamalah*). The main findings indicate that the judges appropriately qualified the defendant's actions as a breach of contract; however, the legal reasoning remains predominantly grounded in civil law and has not fully utilized the *ijarah 'ala al-'amal* contract as a substantive analytical framework. This study emphasizes the importance of coherently integrating positive law and *fiqh muamalah* in the resolution of Sharia economic disputes.

**Keywords:** Default, *Ijarah 'ala al-'Amal*, Judicial Decision

### Abstrak

Penelitian ini menganalisis pertimbangan hukum hakim dalam Putusan Nomor 324/Pdt.G/2024/MS.Bna terkait sengketa wanprestasi pembayaran imbalan jasa antara Bank Aceh Syariah dan perusahaan debt collector. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, kasus, dan konseptual. Analisis dilakukan berdasarkan KUHPerdara, Kompilasi Hukum Ekonomi Syariah, fatwa DSN-MUI, dan konsep akad *ijārah 'alā al-'amāl* dalam fikih muamalah. Temuan utama menunjukkan bahwa hakim secara tepat mengkualifikasikan perbuatan tergugat sebagai wanprestasi, namun pertimbangan hukum masih didominasi pendekatan perdata dan belum sepenuhnya menjadikan akad *ijārah 'alā al-'amāl* sebagai instrumen analisis substantif. Penelitian ini menegaskan pentingnya integrasi hukum positif dan fikih muamalah secara koheren dalam penyelesaian sengketa ekonomi syariah.

**Kata kunci:** Wanprestasi, *Ijārah 'alā al-'amāl*, Putusan Hakim

### INTRODUCTION

Islamic financial institutions, such as banks, usually require the services of other parties to meet certain needs that can be met by using certain services from service provider companies, such as securities, *office boys* (OB), *debt collectors*, and others. This is in accordance with the Financial Services Authority Regulation number 9 of 2016.<sup>1</sup> The use of services required by the LKS (Sharia Financial Institution) is carried out using a contract system that is negotiated and transacted professionally, by emphasizing the needs of the parties and the process of procurement of services and the *fee* system, so that the employment contract can run well, through a mutually beneficial mechanism.

In *fiqhiyyah*, this transaction is carried out using the *ijārah contract ala al-'amāl*, as a transaction that occurs between two parties in which one of the parties provides services to complete a certain task, and in return, the other party provides compensation in accordance with a mutually determined agreement. In this context, *debt collector companies* play the role of service providers, while LKS acts as service users.<sup>2</sup>

In the *ijārah contract ala al-'amāl*, 4 (four) pillars must be fulfilled by the parties who will enter into the contract, namely: (a) the parties to the contract, (b) rewards, (c) benefits and (e) *shigat* (*ijab* and *qabul*).<sup>3</sup> Normatively, the *ijārah 'alā al-'amāl contract* requires clarity about the object of the service, the period of

<sup>1</sup> Board of Commissioners and Service Authority, "Financial Services Authority of the Republic of Indonesia," 2015.

<sup>2</sup> Hasanudin et al., "Hybrid Contract in Islamic Financial Services," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah*, Vol. 14, no. 1 (2022), p. 111–128.

<sup>3</sup> Nasrun Haroen, *Fiqh Muamalah*, cet-2 (Jakarta: Gaya Media Pratama, 2007), p. 231.

implementation, and the amount of remuneration (*fee*) as the right of the service provider. The fulfilment of the reward is a fundamental obligation on behalf of the service user (*musta'jir*) if the service provider (*mu'ājir*) has carried out the performance according to the agreement.<sup>4</sup> However, in practice, the implementation of contracts based on sharia principles does not always run in accordance with the principles of justice and legal certainty that are the foundation.

The case in Decision Number 324/Pdt.G/2024/MS. Bna started from a service cooperation between PT Hartana Tamita Bersama and Bank Aceh Syariah based on the Cooperation Agreement Number 132/BA/PK/VI/2015, which was updated through several addenda. The Plaintiff acts as a provider of marketing and financing collection services, while the Defendant acts as a service user. The dispute arose when Bank Aceh Syariah did not pay the *service fee* in full within several periods, even though the work had been carried out according to the agreement. The difference in the calculation of fee payments was not resolved in a non-litigation manner, so the Plaintiff filed a default lawsuit with the Banda Aceh Sharia Court.

In the Indonesian legal system, default is known as a violation of contractual obligations that give rise to the right of the aggrieved party to demand performance or compensation as written in article 1243 of the Civil Code, namely: "Reimbursement of costs, losses and interest due to non-fulfillment of an agreement begins to be mandatory, if the debtor, even though it has been declared negligent, is still negligent to fulfill the obligation, or if something that must be given or done can only be given or done within a time that exceeds the specified time". Default can occur in several ways, namely: 1) not doing any of the promised achievements, 2) getting results not in accordance with the agreement, 3) late completion of achievements not according to the deadline, and 4) doing things that are prohibited in the agreement.<sup>5</sup> This concept is not only known in civil law, but also has equivalents in Islamic law, such as *al-ta'addi*, *al-taqshir*, and *mukhalafat al-syuruth*.<sup>6</sup>

In the case of a sharia economic dispute, default is regulated in article 36 of the KHES (Compilation of Sharia Economic Law) which states that a person can be said to be in default if, due to his fault, he does not fulfill his obligations as in the agreement, fulfills obligations that are not in accordance with the agreement, is late in fulfilling obligations, or does something that is not allowed

---

<sup>4</sup> *Ibid.*, p. Sec. 232.

<sup>5</sup> Satiah Satiah and Riska Ari Amalia, "Kajian Tentang Wanprestasi Dalam Hubungan Perjanjian," *Jatiswara* 36, no. 2 (2021), p. 131.

<sup>6</sup> DSN-MUI, "Fatwa of the National Sharia Council-Indonesian Ulema Council No: 129/DSN-MUI/VII/2019 concerning Real Costs as Ta'widh Due to Default (at-Takalif Al-Fi'liyyah an-Nasyi'ah 'an an-Nukul)," no. 19 (2019): p. 7.

to be done under the agreement.<sup>7</sup> Therefore, the settlement of contractual disputes in the Islamic economy should ideally not only be based on positive law but also consider the values of jurisprudence in a substantive manner.

This research is important because academic studies on default disputes between Islamic banks and third-party service providers are still relatively limited, especially those that analyze judges' legal considerations in court decisions. The focus of this study is to analyze how the judge considers the aspect of default in the *ijārah 'alā al-'amāl contract* and the extent to which the decision reflects the conformity between positive law and the principles of sharia economic law.

Academic studies on default disputes in Sharia economics have tended to focus on the normative aspects of contracts or the elaboration of the concept of default in general, while the dimensions of judges' legal considerations in placing Sharia contracts as substantive evaluative instruments are still relatively rarely studied in depth. In judicial practice, especially in disputes of services based on *ijārah 'alā al-'amāl contracts*, the principle of muamalah jurisprudence is often present only in normative legitimacy and has not been fully integrated in the construction of judges' legal arguments. This condition raises the need to critically examine how defaults are qualified in court decisions and how the *ijārah 'alā al-'amāl contract* is understood and applied in the judge's consideration, by examining its conformity with civil law and the principles of sharia economic law. With this approach, the analysis is directed to comprehensively assess the consistency and depth of judges' considerations in resolving Sharia economic disputes based on service contracts.

This research provides a scientific contribution in the form of strengthening the integration between positive law and muamalah jurisprudence in the analysis of sharia economic decisions, especially in service disputes based on *ijārah 'alā al-'amāl contracts*, as well as evaluating the consistency of the Banda Aceh Sharia Court in applying the principles of justice and certainty of sharia law.

## METHODS

This research uses normative juridical methods. Qualitative normative juridical research is research that refers to legal norms contained in laws and court decisions, as well as norms that live and develop in society.<sup>8</sup> This approach

---

<sup>7</sup> Rossy Ibnul Hayat and Sukardi, " Analisis Pertimbangan Hakim Dalam Memutus Perkara Ekonomi Syariah Terkait Wanprestasi: Studi Putusan Nomor 0132/Pdt.G/2016/PA.Stg," *Equatorial Law Review* 1, no. 2 (2020): p. 163-181.

<sup>8</sup> Gunardi, *Metode Penelitian Hukum*, ed. Murni, Cet. 1 (Jakarta: Damara Press, 2022).

was chosen because the object of the research study is in the form of judges' decisions related to contractual disputes in the realm of Sharia economics.

The approach used includes three types. First, the statute approach, which is used to examine relevant positive legal provisions, such as the Civil Code and other legal norms that regulate default and engagement. Second, the case approach, which is focused on the analysis of Decision Number 324/Pdt.G/2024/MS. Bna as the main data source. Third, the conceptual approach, which is used to understand the concepts of muamalah fiqh related to the *ijārah 'alā al-'amāl* contract and default in Islamic law.

The source of research data consists of primary data and secondary data. Primary data is in the form of court decisions that are the object of research, while secondary data includes KHES, DSN-MUI fatwas, muamalah fiqh books (such as Nasrun Haroen's work), and sharia economic law journals that are relevant to the topic of default and service contracts in sharia economic law.

The processing and analysis techniques of legal materials in this study are carried out qualitatively through the inventory and systematization of primary and secondary legal materials. The analysis was carried out with deductive and interpretive legal reasoning, namely relating the normative provisions of laws and regulations, KHES, and the principles of muamalah jurisprudence, with the legal facts in the decisions being studied. The judge's legal considerations are analyzed through ratio decidendi to assess the suitability between the ideal norm (*das sollen*) and the practice of its application (*das sein*). The legal arguments used are prescriptive-analytical, by building legal judgments based on positive laws and the concept of *ijārah 'alā al-'amāl* contracts in sharia economic law.

## DISCUSSION AND RESULTS

### Qualification of Default in Judge's Decision: Perspective of Civil Law and Islamic Law

Default is a central concept in the law of an agreement that indicates a situation when one of the parties to the agreement does not perform its obligations as agreed. The existence of a default is conceptually always preceded by a valid agreement that gives birth to a legal relationship between the parties. Without an agreement, there is no achievement that can be sued, so default is impossible. Therefore, default functions as an evaluative instrument for the implementation of the agreement, not just for its formal existence.<sup>9</sup>

In Indonesian civil law, default is regulated normatively in Article 1243 of the Civil Code, which affirms that default is related to the debtor's negligence in

---

<sup>9</sup> Yahman, *KARAKTERISTIK WANPRESTASI DAN TINDAK PIDANA PENIPUAN YANG LAHIR DARI HUBUNGAN KONTRAKTUAL*, *Ethics of Journalism in Yellow Newspapers: A Study of Green Light Newspapers*, vol. 16 (Jakarta: PRENADAMEDIA GROUP, 2014).

fulfilling the achievement, both after being declared negligent and when the achievement can no longer be implemented according to the agreed time. This provision shows that default is not only related to total failure to perform obligations, but also includes the performance of performance that is not timely or not in accordance with the content of the agreement. In judicial practice, this article is the main basis for judges to assess the existence of contractual violations and determine the legal consequences that arise, including the obligation to compensate.<sup>10</sup>

Forms of default in civil law can be in the form of no performance at all, performance of performance but not as intended, delay in fulfilling obligations, or performance of acts that are expressly prohibited in the agreement. This classification shows that the default is broad and contextual, so the assessment is highly dependent on the substance of the agreement and the facts of the implementation on the ground. In service-based employment relationships, forms of default are often not black-and-white, but appear in the form of the performance of obligations that formally exist, but substantially deviate from the purpose of the agreement.

In the perspective of Islamic law, default is known by several terms, such as al-taqṣīr (negligence), al-ta'addī (exceeding the limits of authority), and mukhalafat al-syurūṭ (violation of the terms of the contract).<sup>11</sup> These three concepts show that Islamic law views violation of the contract not only from the aspect of failure to fulfil the achievements, but also from the aspect of deviation of the behaviour of the parties to the agreed limits. Thus, default in Islamic law has a wider scope because it assesses the implementation of the contract substantively, not merely formally.

In contrast to civil law, which emphasizes default on juridical consequences, Islamic law places breach of contract as a violation of the law as well as a moral and religious violation. The principle of fulfilling the contract as affirmed in the QS. al-Māidah verse 1, which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ...

The above verse emphasizes that obedience to the agreement is a normative obligation that has a strong ethical dimension. Consequently, default from an Islamic perspective not only gives rise to legal responsibility between humans, but also moral responsibility before Allah SWT. This dimension reinforces the demands of good faith and trust in every contractual relationship.

<sup>10</sup> <https://www.hukumonline.com/klinik/a/bunyi-pasal-1243-kuh-perdata-tentang-wanprestasi-lt65dc608264499/> retrieved on December 29, 2025 7:35 PM

<sup>11</sup> DSN-MUI, "Fatwa of the National Sharia Council-Indonesian Ulama Council No: 129/DSN-MUI/VII/2019 concerning Real Costs as Ta'widh Due to Default (at-takalif al-fi'liyyah an-Nasyi'ah 'an an-Nukul)."

However, the integration between the concept of default in civil law and Islamic law does not always run harmoniously in dispute resolution practice. In many Sharia economic cases, judges tend to use the civil default framework as the basis for assessment, while Sharia principles are more often used as normative legitimacy. This condition raises questions about the extent to which the concept of default in Islamic law is really internalized in the judge's legal considerations, especially when disputes relate to sharia-based contracts such as *ijārah 'alā al-'amāl*.

Therefore, the understanding of default in this study is not only positioned as a normative concept, but as an analytical framework to assess the suitability between the implementation of the contract, the principles of civil law, and the values of Islamic law. This approach is important to test whether the settlement of disputes by judges reflects substantive justice as required in Sharia economic law, or is still limited to formal assessments of contractual breaches.

#### **Application of the *Ijārah 'alā al-'amāl* Agreement in the Cooperation Agreement between Bank Aceh Syariah and Debt Collector**

The *ijārah* contract in muamalah fiqh is, in principle, interpreted as an agreement on the utilization of benefits, both benefits for goods and benefits for services. In the context of the use of services, this contract is known as *ijārah 'alā al-'amāl*, which is an agreement to use the manpower or expertise of a certain party to carry out a predetermined work in return (*ujrah*) based on an agreement. In Sharia economic law, this contract is the normative basis for professional employment relations because it places services as the object of a valid contract with economic value.<sup>12</sup>

The characteristics of the *ijārah 'alā al-'amāl* contract are concretely reflected in the cooperation agreement between Bank Aceh Syariah and PT Hartana Tamita Bersama. Based on the Cooperation Agreement Number 132/BA/PK/VI/2015 and its addenda, Bank Aceh Syariah acts as a service user (*musta'jir*), while PT Hartana Tamita Bersama is positioned as a service provider (*ajir*). The object of the contract is in the form of marketing services for financing products and problematic financing collection; the scope, implementation mechanism, and indicators of success are regulated in detail in agreements and addenda.

The clarity of the object of service in the agreement indicates the fulfillment of one of the essential elements of the *ijārah 'alā al-'amāl* contract, namely the benefits of services that can be measured and assessed clearly. This is important to avoid the element of *gharar* in the contract, as required in the fiqh

---

<sup>12</sup> Haroen, *Fiqh Muamalah*. p. 231

of muamalah.<sup>13</sup> In addition, the agreement also stipulates the amount and mechanism for calculating *ujrah* in the form of *fees* based on a certain percentage of the financing ceiling that has been successfully marketed or billed, which is written in article 2 paragraph 3, namely "that for product marketing services and credit collection of PT. Bank Aceh (read PT. Bank Aceh Syariah), based on article 2, paragraph (2) c of the cooperation agreement, the plaintiff is entitled to receive payment from the defendant in the form of *fees* for the services of marketing products and credit collection of PT. Bank Aceh (read PT. Bank Aceh Syariah), whose amount is as stipulated in articles 6, 7, and 8, normatively meet the requirements for clarity of rewards in the *degree contract*.

From the aspect of the validity of the contract, the legal relationship between PT. Bank Aceh Syariah and PT Hartana Tamita Bersama meet the principles and conditions of the *ijārah 'alā al-'amāl contract*. The legal competence of the parties is reflected in the status of both as legal entities and authorized to enter into an engagement, which is implicitly recognized by the panel of judges through the acceptance of *legal standing* and the assessment of the cooperation agreement as valid evidence. The object of the contract in the form of financing collection services and product marketing is considered as a halal and clear service benefit, because it is a professional activity that does not conflict with Sharia law or principles and is regulated in detail in agreements and addenda. The clarity of *ujrah* is also fulfilled, because the amount and mechanism of calculating the reward for services have been agreed from the beginning, and the dispute that arises is not caused by the ambiguity of the *ujrah*, but by the non-fulfilment of the payment obligation according to the agreement. Thus, the legal problem in this case is related to the implementation of the contract, not the validity of the contract itself. As well as the agreement stated in the written agreement. With the fulfillment of these elements, the *ijārah 'alā al-'amāl contract* that underlies this cooperation is valid and legally binding on the parties, both according to civil law and sharia economic law.

However, the legal problem in this case does not lie in the validity of the contract, but in its implementation. Although the plaintiff has carried out the services in accordance with the agreed scope of work, Bank Aceh Syariah did not realize the full payment of the *fee* as stipulated in the addendum to the agreement. This condition shows that there is a discrepancy between the normative structure of the *ijārah 'alā al-'amāl contract* and the actual practice in the implementation of cooperation.

In the perspective of the *ijārah 'alā al-'amāl contract*, the main obligation of the service user is to pay the *ujrah* after the service benefits are received. With the

---

<sup>13</sup> Haroen. p. 236



receipt of the results of billing and marketing services by Bank Aceh Syariah, the obligation to pay *fees* becomes a binding achievement. Therefore, the failure or lack of payment of service rewards, as occurred in this case, can substantively be qualified as a violation of the *ijārah 'alā al-'amāl contract*, which at the same time fulfills the element of default.

Based on this description, the application of the *ijārah 'alā al-'amāl contract* in the cooperation agreement between Bank Aceh Syariah and *debt collectors* is not only seen at the normative and formal level, but also becomes an evaluative instrument to assess the implementation of the rights and obligations of the parties. Thus, the analysis of this contract should be directed at testing the consistency between the structure of the contract, the implementation of the achievements, and the judge's legal considerations in the decision, so that the *ijārah 'alā al-'amāl contract* really functions as a substantive framework in dispute resolution.

### **Analysis of the Application of the Principles of Justice and Legal Certainty in the *Ijārah Contract* in the Judge's Decision**

The application of the *ijārah 'alā al-'amāl contract* in a contractual dispute cannot be assessed solely based on the fulfillment of the formal conditions of the contract, but must be tested through the principle of justice and the principle of legal certainty. Legal certainty functions to ensure the enforceability and binding power of agreements, while justice acts as a substantive measure to assess the proportionality of rights, obligations, and risks arising from the implementation of contracts. In Sharia economic law, these two principles are not mutually exclusive, but must be understood in a complementary manner.

The Principle of Justice serves as a substantive spirit that ensures that the formal text of the agreement does not become a tool of exploitation. Justice in contracts is achieved when there is harmony and balance of rights and obligations between the parties.<sup>14</sup> The principle of justice requires that an unequal bargaining position does not result in a clause that oppresses one of the parties. From the perspective of Sharia economic law, justice is a pillar of muamalah that prohibits the existence of an element of tyranny and illegitimately enriching oneself at the expense of others.<sup>15</sup> It is not enough for the judge to refer only to the text of the contract, but it is necessary to assess the reality of the implementation of the contract and its impact on the parties. This approach is in

---

<sup>14</sup> Iip Aripah, "Penerapan Asas Keadilan Dan Keadilan Dalam Putusan Yurisprudensi Perdata," YUDHISTIRA : Jurnal Yurisprudensi, Hukum Dan Peradilan 1, no. 2 (2023): p. 70-77, <https://doi.org/10.59966/yudhistira.v1i2.1671>.

<sup>15</sup> Aristoni, "PENERAPAN PRINSIP-PRINSIP HUKUM PERJANJIAN ISLAM DALAM PRODUK PERBANKAN SYARIAH (Telaah Atas Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah)," Jurnal QAWANIN 3, no. 2 (2019): p. 239-259.

line with the purpose of sharia which places justice as a fundamental principle in muamalah.<sup>16</sup>

The Principle of Legal Certainty affirms that a legally made agreement is valid as a law for those who make it. As written in article 1338 paragraph 1 of the Civil Code: "All agreements made legally shall be valid as laws for those who make them. Theoretically, legal certainty requires clarity of rules and stipulations so that the parties can predict the consequences of their legal actions.<sup>17</sup> Legal certainty provides a stable framework so that agreements are not easily cancelled unilaterally without a strong legal reason. Legal certainty must be directed to protect justice, not as a means of legitimizing contractual injustice. Therefore, the judge has interpretive room to assess whether the formal enforcement of the contract remains in line with the principle of substantive justice.<sup>18</sup>

Thus, the ideal judge's decision in a *dispute over an ijārah* contract is one that is able to synthesise legal certainty with justice. Legal certainty provides a normative framework, while justice serves as a substantive correction. This synthesis is a typical characteristic of Sharia economic law in assessing and enforcing contracts.

Based on the theoretical review above, the analysis of the Decision of the Banda Aceh Syar'iyah Court Number 324/Pdt.G/2024/MS. Bna shows how the judge carefully synthesizes the two principles in deciding disputes between PT. Hartana Tamita Bersama and PT. Bank Aceh Syariah.

First, in terms of the principle of justice, the analysis of this verdict reveals the judge's efforts to restore the balance disturbed by the Defendant's default. The fact that the Defendant has received economic benefits from the marketing and billing services provided by the Plaintiff, but has not fulfilled its financial obligations, is a manifest form of injustice. Judges apply substantive justice by seeing that withholding the wages of workers (in this case, service providers) is an act that is contrary to the morality of law and sharia. By punishing the Defendant to pay Rp. 306,911,604.00, the judge ensured that no party was unfairly harmed after carrying out his obligations in good faith.<sup>19</sup>

Second, the principle of legal certainty, the judge provides protection for the Plaintiff's legal expectations by recognizing the validity of the cooperation agreement and its follow-up addenda.<sup>20</sup> The judge rejected the Defendant's

---

<sup>16</sup> *Ibid.*,

<sup>17</sup> Niru Anita Sinaga, " Keselarasan Asas-Asas Hukum Perjanjian Untuk Mewujudkan Keadilan Bagi Para Pihak Dalam Suatu Perjanjian," *Jurnal Mitra Manajemen* 7 (2013): 84-98.

<sup>18</sup> Muhammad Harfin Zuhdi and Fafa, "PRINSIP-PRINSIP AKAD DALAM TRANSAKSI EKONOMI ISLAM," *IqtishaduNa Journal* VIII, no. 2 (2017): p. 78-115.

<sup>19</sup> Directory of Decisions, Supreme Court, and Republic of Indonesia, Decision of the Banda Aceh Syar'iyah Court Number 324/Pdt.G/2024/MS. Bna, (2024).

<sup>20</sup> *Ibid.*,

arguments that he tried to ignore the obligation to pay *the* collection service fee that had been agreed. The judge's affirmation that the legal relationship between the parties is valid shows that the "certainty" in the contract must be upheld. When one party has fulfilled the achievement (collecting), then the other party is definitely obliged to fulfill the counter-achievement (payment of wages). This decision provides a positive signal for the certainty of the business climate, where banking institutions cannot unilaterally terminate or withhold the rights of partners without a strong legal basis. In conclusion, Decision Number 324/Pdt.G/2024/MS. Bna is a representation of "Absolute Justice". Judges are not only fixated on formal texts (certainty), but also explore the moral value behind the execution of contracts (justice). The dispute over *the ijārah 'alā al-'amāl* contract is resolved by ensuring that legal certainty is used to uphold just rights, thereby realizing the essential legal purpose.

### **Judge's Considerations on Freedom of Contract and Damages in a Default Judgment**

The legal theory of the agreement explains that the agreement gives birth to a legal relationship that gives rise to rights and obligations for the parties. Each party that promises is obliged to carry out the achievements as agreed, while the other party has the right to demand the fulfillment of the achievements. This relationship is the basis for assessing whether or not there is a breach of contract.

The principle of freedom of contract gives the parties the authority to determine the content and form of their own agreements. In Indonesian civil law, this principle is reflected in the provision that a legally made agreement shall be valid as law for the parties. This freedom reflects the autonomy of the will and legal responsibility of the parties.

From the perspective of Islamic law, freedom of contract is not absolute. These freedoms are limited by the principle of non-harm and non-harm, as well as the obligation to maintain justice and balance. Therefore, a contract that is formally valid can be considered unjustified if it contains elements of tyranny or harm to one of the parties. In the event of a default, civil law regulates the compensation mechanism as a consequence of breach of the agreement. Compensation includes actual losses and profits that should have been obtained, as long as it can be proven that there is a causal relationship between the violation and the losses incurred. The purpose of indemnification is to return the aggrieved party to a position as if the agreement had been executed.

In Islamic law, the concept of compensation is known as *ta'wīḍ*, which is compensation for real losses due to violations of contracts. The application of *ta'wīḍ* should be done proportionately and not beyond the harm caused. Thus,

both civil law and Islamic law place compensation as an instrument of protection of contractual rights and justice.

Based on the results of the research on Decision Number 324/Pdt.G/2024/MS. Bna, the legal relationship between the parties in the case of default in payment of debt collector service fees can be understood as a relationship of service utilization with certain rewards. In the context of Sharia economic law, the characteristics of the relationship show compatibility with *the ijārah 'alā al-'amāl contract*, which is a contract for the rental of services for certain personnel or skills with compensation in the form of *ujrah*.

The results of the study showed that the panel of judges recognized the existence of a cooperative relationship between the plaintiff and the defendant, which gave birth to reciprocal rights and obligations. The plaintiff is positioned as the party who provides the billing service (*ajīr*), while the defendant is the party who receives the benefits of the service (*musta'jīr*). The facts of the trial prove that the billing services have been carried out by the plaintiff in accordance with the initial agreement, so that the object of the contract in the form of services has been fulfilled in a real way.

From the perspective of the *ijārah 'alā al-'amāl contract*, the object of the contract must be clear, usable, and not contrary to the provisions of sharia. Based on the judge's consideration, the collection services carried out by the plaintiff were considered to be legitimate work and provided direct benefits to the defendant. With the fulfillment of the elements of the object of the contract, according to Sharia law, the plaintiff is entitled to obtain *ujrah* for the services that have been provided.

Furthermore, the results of the study found that the panel of judges assessed the obligation to pay *service fees* as the main achievement of the defendant. In the *ijārah 'alā al-'amāl contract*, the obligation to pay *ujrah* arises after the service is carried out according to the agreement. The defendant's non-compliance in paying *the service fee*, as disclosed in the judgment, is seen as negligence in fulfilling contractual obligations. This shows the compatibility between the concept of default according to civil law and breach of contract in the perspective of Sharia economic law.

The results of the study also show that the panel of judges does not focus on the formality of the written agreement but on the reality of the contract's implementation. This approach is in line with the principle of *ijārah* in muamalah jurisprudence, which assesses the validity of the contract not only by its written form but also by the existence of an agreement and the provision of services in real terms. With the receipt of service benefits by the defendant, the obligation to pay *ujrah* becomes legally binding. The judge, in deciding, also used several postulates, including QS. al-Ma'idah [5]: 1:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ...

And also the hadith narrated by Abu Daud, Ahmad, Tirmidhi and Daruqutni which reads:

وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

The judge also used the rules of fiqh asy-Syafi'iyah in the book al Asybah wa an-Nadhair by Imam Jalal ad-Din as-Sayuthi, which reads:

الْعَادَةُ مُحْكَمَةٌ

Meaning: "Customs can be made into law"

In its ruling, the panel of judges stated that the defendant had committed a default and sentenced the defendant to pay a *service fee* to the plaintiff. The results of the study show that the decision substantively affirms the principle of balance of achievement in the *ijārah 'alā al-'amāl contract*, where the right to *ujrah* arises as a consequence of the fulfillment of work obligations by the service provider.

Overall, the results of the study show that the judge's consideration in Decision Number 324/Pdt.G/2024/MS. Bna has reflected the main elements of the *ijārah 'alā al-'amāl contract*, especially related to the subject of the contract, the object of service, and the obligation to pay *ujrah*. This finding is an important basis for assessing the suitability of the decision with the principles of Sharia economic law in the next part of the discussion.

## CONCLUSION

This research shows that the collaboration between Bank Aceh Syariah and PT. Hartana Tamita Bersama is formally established through a service cooperation agreement along with an addendum that can substantially be qualified as an *ijārah 'alā al-'amāl contract*, because the object of the agreement is in the form of service benefits, the scope of work is clearly determined, and the amount of reward is agreed upon by the parties. However, in its implementation, inconsistencies were found in the payment of *fees* by Bank Aceh Syariah, even though the service provider had carried out its obligations according to the agreement. This condition reflects the gap between the agreed ideal provisions (*das sollen*) and actual practice in the field (*das sein*), so that although the cooperation is formally valid, it is substantively contrary to the principles of justice, trust, and legal certainty in the *ijārah 'alā al-'amāl contract* according to sharia economic law.

Decision Number 324/Pdt.G/2024/MS. Bna showed that the panel of judges in assessing the default prioritized the civil law approach by focusing on the existence of a valid agreement, the obligation to pay *fees* as the main

achievement, and evidence of the occurrence of a lack of payment, which is in line with Article 1243 of the Civil Code and Article 36 of the Compilation of Sharia Economic Law. Although from the formal juridical aspect, the decision has fulfilled the principle of legal certainty, the consideration of sharia law is still limited and tends to be formalistic, because the principles of muamalah jurisprudence, such as *ijārah 'alā al-'amāl*, the principle of *wafā' bi al-'uqūd*, and the value of justice and trust have not been used as a substantive analytical framework in assessing violations of contracts and their legal consequences. Therefore, this case emphasizes the importance of a more holistic approach in resolving Sharia economic disputes, placing Islamic law not just as normative legitimacy, but as the basis of values and methodologies in the judge's consideration. This research contributes to strengthening the analysis of sharia economic decisions by placing the *ijārah 'alā al-'amāl* contract as a substantive evaluative instrument, not just normative legitimacy.

## BIBLIOGRAPHY

- Aripah, Iip. "Penerapan Asas Keadilan Dan Keadilan Dalam Putusan Yurisprudensi Perdata." YUDHISTIRA : Jurnal Yurisprudensi, Hukum Dan Peradilan 1, no. 2 (2023) <https://doi.org/10.59966/yudhistira.v1i2.1671>.
- Aristoni. "PENERAPAN PRINSIP-PRINSIP HUKUM PERJANJIAN ISLAM DALAM PRODUK PERBANKAN SYARIAH (Telaah Atas Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah)." Jurnal QAWANIN 3, no. 2 (2019)
- Amalia, Euis. "Keadilan Dalam Perspektif Ekonomi Islam." Ilmu Ekonomi Syariah V, no. 1 (2013)
- DSN-MUI. "Fatwa Dewan Syari'ah Nasional-Majelis Ulama Indonesia No: 129/DSN-MUI/VII/2019 Tentang Biaya Riil Sebagai Ta'widh Akibat Wanprestasi (at-Takalif Al-Fi'liyyah an-Nasyi'ah 'an an-Nukul)," no. 19 (2019)
- Gunardi. Metode Penelitian Hukum. Edited by Murni. Cet. 1. Jakarta: Damara Press, 2022.
- Haroen, Nasrun. Fiqh Muamalah. Cet-2. Jakarta: Gaya Media Pratama, 2007.
- Hartati, Neneng. "Analisis Hukum Ekonomi Syariah Terhadap Putusan Mahkamah Agung Nomor: 569 K/Ag/2015 Tentang Penyelesaian Sengketa Pembiayaan Ijârah Multijasa." Jurnal Perspektif 2, no. 2 (2019). <https://doi.org/10.15575/jp.v2i2.28>.
- Hasanudin, Hasanudin, Nisrina Mutiara Dewi, Gine Putri Pertiwi, and Feby Wijayanti. "Hybrid Contract in Islamic Financial Services." Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah 14, no. 1 (2022)

<https://doi.org/10.15408/aiq.v14i1.25692>.

- Ibnul Hayat, Rossy, and Sukardi. "Analisis Pertimbangan Hakim Dalam Memutus Perkara Ekonomi Syariah Terkait Wanprestasi: Studi Putusan Nomor 0132/Pdt.G/2016/PA.Stg." *Khatulistiwa Law Review* 1, no. 2 (2020): hal. 163-181.
- Komisioner, Dewan, and Otoritas Jasa. "Otoritas Jasa Keuangan Republik Indonesia," 2015.
- Niru Anita Sinaga. "Keselarasan Asas-Asas Hukum Perjanjian Untuk Mewujudkan Keadilan Bagi Para Pihak Dalam Suatu Perjanjian." *Jurnal Mitra Manajemen* 7 (2013).
- Putusan, Direktori, Mahkamah Agung, and Republik Indonesia. Putusan Mahkamah Syar'iyah Banda Aceh Nomor 324/Pdt.G/2024/MS.Bna, (2024).
- Satiah, Satiah, and Riska Ari Amalia. "Kajian Tentang Wanprestasi Dalam Hubungan Perjanjian." *Jatiswara* 36, no. 2 (2021). <https://doi.org/10.29303/jatiswara.v36i2.280>.
- Yahman. KARAKTERISTIK WANPRESTASI DAN TINDAK PIDANA PENIPUAN YANG LAHIR DARI HUBUNGAN KONTRAKTUAL. *Etika Jurnalisme Pada Koran Kuning : Sebuah Studi Mengenai Koran Lampu Hijau*. Vol. 16. Jakarta: PRENADAMEDIA GROUP, 2014.
- Zuhdi, Muhammad Harfin, and Fakultas. "PRINSIP-PRINSIP AKAD DALAM TRANSAKSI EKONOMI ISLAM." *IqtishaduNa Jurnal* viii, no. 2 (2017)