

## **Legal Consequences in Murabahah Agreement Litigation Dispute Resolution: Analysis of Forum Choice Clauses in District Courts**

**Bambang Widagdo Suryaning Projo<sup>1)</sup>, Siti Hamidah<sup>2)</sup>, Nur Chanifah<sup>3)</sup>**

<sup>1,2,3)</sup> Faculty of Law Universitas Brawijaya Malang, Indonesia

\*Corresponding Author

Email: [bambangwidagdosuryaningprojo@gmail.com](mailto:bambangwidagdosuryaningprojo@gmail.com)

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### **Abstract**

*The development of Islamic banking in Indonesia, with the Murabahah financing contract dominating, is not free from disputes among the parties involved. Dispute resolution can be settled out of court (non-litigation), one of which can be through the National Sharia Arbitration Board (Basyarnas) and through the Religious Courts (litigation). Legislation has regulated the absolute authority of the institution responsible for litigation dispute resolution through Article 49 letter (i) of Law Number 3 of 2006, as amended in Law Number 50 of 2009 Regarding the Second Amendment of Law Number 7 of 1989 and Article 55 paragraph (1) of Law Number 21 of 2008 Regarding Islamic Banking, namely the Religious Court. A conflict of norms appears in the Murabahah financing contract, which still includes a clause for dispute resolution litigation in the District Court. This raises the first issue formulation regarding what the legal consequences are for the parties in the Murabahah financing contract with the choice of forum clause in the District Court when resolving litigation disputes and what choice of forum clause is stipulated in the Murabahah financing contract to provide a balanced position for the parties when resolving litigation disputes.*

**Keywords:** *Restoration of Indigenous People's Rights, Fpic, and Natural Resource Management.*

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## **INTRODUCTION**

The existence of banking is inseparable from human life, especially in the economic field. The business activities of banks, which involve the collection of funds in the form of savings, distributing these savings by providing financing, and offering service facilities for the financial transactions needed by the community, are difficult to abandon. The more modern or advanced a society becomes, the more challenging it seems to be to disregard the presence of banks. Ancient economic practices such as bartering or the borrowing of agricultural seeds, which were applied in the past, no longer seem relevant in today's society.

The diversity of society, concerning both lifestyle and the beliefs or religions adopted, greatly influences the development of economic activities. The varied lifestyles must adapt to current conditions. The current situation, which has not yet fully recovered from the downturn caused by the COVID-19 pandemic, especially in the economic sector, requires attention from all parties. Not only has the government continued to provide various relaxations and special regulations in the economic field after the pandemic, but attention from all parties, especially the banking sector, is also necessary.

The role of Islamic financial institutions in Indonesia towards the community affected during the COVID-19 pandemic includes providing various solutions such as: (1) distribution of direct cash assistance from zakat, infaq, and almsgiving; (2) strengthening of endowments, including cash endowments, productive endowments, waqf linked sukuk, and endowments for infrastructure; (3) providing business capital assistance for SMEs affected by the pandemic; (4) qardhul hasan schemes; (5) increasing literacy in Islamic economics and finance; (6) through the development of Islamic financial technology. (Iskandar et al., 2020)

The role of banking is crucial as it serves as one of the primary drivers in the economic sector. Banking products, especially credit or financing products, become significantly influential after the government declares the end of the pandemic. Customers who have credit or financing from banks and whose businesses are affected by the pandemic will be impacted both directly and indirectly. Fulfilling obligations will certainly be hindered if the business that is financed, which is the primary source of cash flow, experiences a decrease in turnover.

Islamic banking is very suitable for supporting the growth of SMEs in Indonesia. Therefore, the contribution of Islamic banking in driving the economy, especially for the SME sector, is highly anticipated. This is intended to create economic equality and public welfare. Such contributions include providing easier requirements for financing applications, increasing affordable financing, and conducting business training and mentoring. Islamic banking in Indonesia, with its financing products for fund distribution in business, whether running on a sales concept or profit-sharing, is expected to play a role. The legal products produced are expected to be beneficial for both parties, Islamic banks as fund owners and customers as fund managers, so that both parties can feel significant benefits from these products.

One form of fund distribution in Islamic banking is Murabahah sales financing. Murabahah financing has its unique characteristics and dominates the total financing in Islamic banking. A specific characteristic of Murabahah financing is that the seller must provide accurate information to the prospective buyer about the cost price of the goods purchased, and the profit margin or markup on the goods must also be agreed upon by both parties. This information must be detailed in the financing contract signed by the seller and the buyer and is one of the conditions for the validity of the agreement.

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Murabahah is a term in Islamic Fiqh that refers to a specific type of sale where the seller declares the cost of acquiring the goods, including the price of the goods and other expenses incurred in obtaining them, and the desired profit margin. (Ascarya, 2017). In Murabahah financing, the Islamic bank acts as the seller, while the customer is the buyer. As the seller, the

bank must own the goods being sold, not merely act as an intermediary. This is also one of the valid conditions for the agreement in Murabahah financing.

In the financing contract, Islamic banks have legal consequences in both this world and the hereafter. Such contracts must not contradict positive law and must adhere to Islamic law. Therefore, if a dispute arises between the Islamic bank and its customer, it must be resolved in a manner that does not contravene these legal provisions. One legal consequence that can arise from the legal actions of the subjects is the overlap of laws as the rule that must be followed in society. This happens due to the vast number of legal rules that must be created to protect the interests and needs of the community, leading to differing interpretations among the public, experts, and legal practitioners.<sup>0</sup>

People sometimes find themselves confused when facing legal issues, and even some laypeople do not know where to take their legal problems. This means that if negotiations reach a deadlock and they must resort to litigation, they often do not know the path to take to resolve their legal issues. Here, the role of legal experts or practitioners should be to contribute by providing advice, input, or legal counsel to those unfamiliar with the law.

Currently, in Indonesia, the resolution of Islamic banking disputes can be carried out outside of court (non-litigation), one of which can be through the National Sharia Arbitration Board (Basyarnas) and through the Religious Courts (litigation). Thus, the existence of these resolution institutions provides options for Islamic banking and its customers in the event of a dispute that has been regulated in the legislation.

Under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, if the parties grant authority to arbitration to resolve disputes, then the arbitrator or arbitration panel is authorized to make decisions that must be implemented by both the Islamic bank and its disputing customers. Arbitration decisions are final and have binding legal force on the parties. This is reinforced in the Islamic Banking Law, which states that arbitration institutions, such as the National Sharia Arbitration Board (Basyarnas) or other arbitration bodies, have the authority to resolve such disputes.

Resolving disputes through the National Sharia Arbitration Board (Basyarnas) after unsuccessful consensus-based discussions is actually more formal, cost-effective, and quicker compared to settling disputes through the judicial system. This is because, through such arbitration institutions, decisions are final and there is no further recourse such as appeals, cassations, or reviews. Additionally, arbitration case resolutions are confidential and not published, thus maintaining the credibility of the disputing parties.

Another advantage of resolving Islamic banking cases through arbitration institutions is the emphasis on fairness, as the disputing parties are free to choose the arbitrator they trust to resolve their case. The minimal element of hostility is also an advantage because the decisions made lead to agreements and peace between the disputing parties.

However, in reality, the authority of Basyarnas as one of the arbitration institutions that can resolve Islamic banking disputes outside the court is not easily implemented. This is because Basyarnas requires an executory institution, namely the District Court, when its decisions require execution. Therefore, the role of the District Court cannot be disregarded because if the parties do not voluntarily execute the arbitration decision, the decision is carried out based on the order of the District Court Chief upon the request of one of the disputing parties. This leads to legal uncertainty in Indonesia or results in a legal consequence that Basyarnas decisions cannot be directly enforced.

The article by Maulan, Harahap, and Sasmini (2023) offers a comparative analysis of Murabahah and Musyarakah Mutanaqisah financing agreements within Indonesia's Sharia banking system. Murabahah is highlighted as a predominant financing model where banks purchase goods on behalf of customers, adding a profit margin, and then reselling to the

customer. It involves fixed installment payments and clear profit margins from the outset. In contrast, Musyarakah Mutanaqisah, a diminishing partnership, allows joint ownership between the bank and the customer, with the customer gradually purchasing the bank's share. (Maulan dkk., 2023)

The Religious Court also emerges as an institution to resolve disputes in Islamic banking through the judicial system (litigation). Law Number 3 of 2006, whose articles and contents were not changed in Law Number 50 of 2009 Regarding the Second Amendment to Law Number 7 of 1989, subsequently referred to as the Religious Courts Law, grants authority to the Religious Court to settle Islamic banking disputes as part of the Shariah economic scope. From the authority granted by the law, it is evident that the Religious Court, in addition to handling specific civil cases for Muslims, has also entered the commercial realm with the authority to resolve Shariah economic disputes, including Islamic banking cases. This sparks its own problems as it leads to debates among legal and Shariah economic experts. Those who agree that Islamic banking disputes fall under the jurisdiction of religious courts consider the religious courts law as *lex specialis*, while the arbitration law is *lex generalis*, and therefore no longer applicable. There are even some opinions that the arbitration law should be revised to not hinder the process of resolving Islamic banking disputes through religious courts.

The polemic regarding forum selection in the effort to resolve Islamic banking disputes through litigation should have ended with the Constitutional Court Decision Number 93/PUU-X/2012. This decision eliminated the explanation of Article 55 paragraph (2) of the Islamic Banking Law regarding the resolution of Islamic banking disputes through general courts and reinforced the absolute authority of religious courts as the sole institution authorized to adjudicate disputes in Islamic banking. Thus, in Islamic banking contracts, the chosen forum clause for dispute resolution should be in the religious courts, not the general courts, in this case, the District Court.

Therefore, it is necessary to consider the Legal Consequences in Resolving Litigation Disputes of Murabahah Contracts based on the Analysis of Forum Choice Clauses in the District Court.

## RESEARCH METHODS

The type of research is normative research. (Diantha & Sh, 2016) This study addresses the legal issue of norm conflicts and legal uncertainty resulting from the clauses in Murabahah financing contracts with the choice of forum in the District Court. It involves examining various legal norms, regulations, court decisions that have legal force, and agreements that must be applied to address the legal issues or problem formulations, hence it's termed normative legal research. The research is conducted through literature study on primary, secondary, and tertiary legal materials obtained from existing legal sources. Literature study on written norms/regulations/doctrines is carried out, making it not only referred to as normative research but also as doctrinal research. (Sariani, 2018)

The methodological approach used is the statute. (Anam, 2017) This approach involves examining legislation or norms related to the legal issue of norm conflicts and legal uncertainty in Murabahah financing contracts with the choice of forum clause in the District Court. Another methodological approach used is the case approach (Nurhayati et al., 2021) to examine cases related to the problem formulation and have similarities with the research object, namely Murabahah financing contracts containing the choice of forum in the District Court.

The types and sources of legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials are binding, such as legislation, legally binding court

decisions, and agreements. Secondary legal materials are those that provide explanations of the aforementioned primary legal materials. In this study, secondary legal materials are explanations of legislation mentioned in primary legal materials and explanations by legal experts, legal doctrines, and previous legal researchers that are relevant.

The theoretical foundation used as the analytical tool in this article is:

### **Legal Certainty Theory**

This is utilized in this research to observe the assurance of fulfilling the rights of the parties in legal actions conducted in the form of agreements that have been implemented according to the applicable legal regulations. This is because statutory provisions can provide more legal certainty compared to customary and traditional laws. According to Faisal Imam Harahap, quoting Bagir Manan, to truly guarantee legal certainty, legislation must not only meet formal requirements but also other criteria such as clarity in formulation, consistency both internally and externally, and the use of language that is precise and easily understood by its readers. The purpose of the law is to provide protection for society. Legal products must be executable, and every member of society expects concrete events as examples of legal products. Faisal Imam Harahap quotes Sudikno, saying that society expects legal certainty, as with it, society will be orderly; without legal certainty, people will not know how to act correctly in legal terms, ultimately leading to unrest.(Harahap, 2019).

### **Authority Theory**

According to Prajudi Atmosudirdjo, as cited by Mohammad Dhiyaul Haq in his thesis, authority is what is referred to as formal power, namely power derived from laws or legislative power, and also from executive and administrative power. The difference between authority and power is that authority is a mastery over a certain field of governance or a certain group of people within which power resides, while power itself is defined as the authority given to a particular person or group to perform a public action.(Haq, 2022) The Authority Theory is used in this research to understand the legal consequences for the parties in the Murabahah financing contract with the choice of forum clause in the District Court when resolving litigation disputes. Authority Theory is also used to observe the choice of forum clause stipulated in the Murabahah financing contract to provide a balanced position for the parties when resolving litigation disputes.

### **Legal System Theory**

The Legal System Theory is proposed by Lawrence Meir Friedman. Friedman explains that in a legal system, several components are recognized, including:

1. Legal structure as one of the bases and real elements of the legal system.
2. Legal substance composed of rules and provisions about how the institution should behave.
3. Legal culture is the element of attitudes and social values.

According to Friedman, structure is the pattern that shows how the law is executed according to its formal provisions. This structure shows how courts, lawmakers, and bodies, as well as legal processes, run and are executed.(Hayati, 2015) One of the functions of the legal system according to Friedman is dispute resolution. Conflicts arise in every society. One of the primary functions of the legal system is to provide machinery and a venue that people can turn to in order to resolve their conflicts and settle their disputes.

## RESULT AND DISCUSSION

### **Legal Consequences for Parties in Murabahah Financing Agreements with Forum Choice Clauses in District Courts When Resolving Litigation Disputes.**

The jurisdiction of judicial institutions in Indonesia in handling and deciding cases is divided into two types: absolute jurisdiction and relative jurisdiction. Absolute jurisdiction is granted by law to judicial institutions, including the power to adjudicate certain cases. (Baihaki & Prasetya, 2021) Meanwhile, relative jurisdiction is based on the region or place of residence or domicile of the parties involved in the case or according to the location of the disputed object.

The jurisdiction of judicial institutions is regulated by the 1945 Constitution. This regulation is in Article 24 paragraph (2) stating that the judicial power is carried out by a Supreme Court and judicial bodies under it within the general judicial environment, religious courts, military courts, administrative courts, and by a Constitutional Court.

Concerning absolute jurisdiction, it is regulated in Law Number 48 of 2009 about Judicial Power, Article 25, which also relates to Religious Courts. Article 25 paragraph (3) states that Religious Courts are authorized to examine, judge, decide, and resolve cases between people of the Islamic faith according to legal provisions.

Furthermore, the legislation that regulates this is Law Number 3 of 2006, whose articles and content were not changed in Law Number 50 of 2009 About the Second Amendment to Law Number 7 of 1989, subsequently referred to as the Religious Courts Law. Article 49 states that the duties and authority of the Religious Courts are to examine, decide, and resolve cases at the first level between people of the Islamic faith in the field of a. Marriage, b. Inheritance, c. Wills, d. Gifts, e. Endowments, f. Zakat, g. Infaq, h. Alms, and i. Shariah Economy. The Shariah economy in the explanation of the above law is mentioned as acts or business activities carried out according to Shariah principles, including: Islamic banks, microfinance institutions, insurance, reinsurance, Shariah mutual funds, Shariah bonds and medium-term securities, Shariah securities, pawnshops, pension funds of financial institutions, and Shariah business. According to the theory of authority, this confirms the absolute jurisdiction of the Religious Courts to resolve Islamic banking disputes through litigation.

In line with the review above, Law Number 3 of 2006, whose articles and content were not changed in Law Number 50 of 2009 About the Second Amendment to Law Number 7 of 1989 About Religious Courts, is the rule that governs the absolute jurisdiction of the Religious Courts, including the authority of the Religious Courts in resolving Islamic banking disputes. This means that the absolute jurisdiction of the Religious Courts in resolving Islamic banking disputes is given by attribution by the constitution and legislation. (Hasana et al., 2023)

The conflict of norms related to the absolute jurisdiction of the Religious Court in handling Sharia banking litigation disputes between the Explanation of Article 55 paragraph (2) of Law Number 21 of 2008 Concerning Sharia Banking and Article 49 letter (i) of Law Number 3 of 2006 as amended by Law Number 50 of 2009 About Religious Courts according to some opinions can be resolved with the principle of *lex specialis derogat legi generali* with the following arguments: (Hasana et al., 2023)

1). The conflict of norms within the two regulations, which are at the same hierarchical level and regulate the same legal provisions, between the Explanation of Article 55 paragraph (2) of Law Number 21 of 2008 Concerning Sharia Banking and Article 49 letter (i) of Law Number 3 of 2006 as amended by Law Number 50 of 2009 About Religious Courts.

2). Law Number 21 of 2008 is a general rule because it primarily regulates the Sharia banking system, not the judicial system. Unlike the Law on Sharia Banking, the Law on Religious Courts is a specific rule that regulates one of the subsystems of the judiciary in

Indonesia, including regulating the division of power or jurisdiction. Thus, Law Number 21 of 2008 is a *lex generali*, while Law Number 3 of 2006 and its amendments are *lex specialis*.

Therefore, based on this opinion, through the principle of *lex specialis derogat legi generali*, a specific rule overrides a general rule. (Wahyuni, 2022) This means in resolving Sharia banking litigation disputes, Article 49 letter (i) of Law Number 3 of 2006 as amended by Law Number 50 of 2009 About Religious Courts supersedes or takes precedence over the Explanation of Article 55 paragraph (2) of Law Number 21 of 2008 Concerning Sharia Banking.

Hans Kelsen, in his book "Allgemeine der Normen," defines the conflict of norms as quoted by Nurfaqih Irfani in his writing that the original text in German is "Ein Konflikt zwischen zwei Normen liegt vor, wenn das, was die eine als gesollt setzt, mit dem, was die andere als gesollt setzt, unvereinbar ist, und daher die Befolgung oder Anwendung der einen Norm notwendiger oder moeglicherweise die Verletzung der anderen involviert." The free translation is: a conflict between two norms occurs when what is commanded in the provision of one norm and what is commanded in the provision of another norm are incompatible/suitable such that adhering to or implementing one norm will inevitably or possibly cause a violation of the other norm. This definition explains that a conflict of norms occurs when two opposing norms regulate one object, meaning only one norm can be applied to that regulatory object, resulting in the other norm being set aside. This is also referred to as norm overlap (similar to the legal consideration of the Constitutional Court in decision 93/PUU-X/2012).

The use of the principle *lex specialis derogat legi generali*, where a specific rule overrides a general rule, must meet two conditions: first, both regulations must be at the same hierarchical level, and second, both regulations must regulate the same thing or the same regime. The first condition is met as both regulations are at the same hierarchical level, namely laws, but the second condition is not met as the regulations do not regulate the same thing or are from different regimes. Law Number 21 of 2008 Concerning Sharia Banking is a *lex specialis* of Law Number 10 of 1998 Concerning Banking, not a *lex specialis* of Law Number 3 of 2006 Concerning Religious Courts.

From the above description, it is clear that the Religious Court is given the authority by attribution to resolve Sharia banking litigation disputes, and the District Court is not given the authority to resolve Sharia banking disputes.

I Dewa Gede Atmadja and I Nyoman Putu Budiarta wrote about the theory of authority according to Philipus M. Hadjon, which explains as follows:(Atmadja, 2018)

1. Attribution is the normal way to acquire governmental authority;
2. Attribution is also the authority to make decisions (*besluit*) that directly originate from the law in a material sense;
3. Attribution is the formation of specific authority and its granting or distribution to a particular organ;
4. The establishment and distribution of authority are primarily stipulated in the Constitution, and the formation of governmental authority is based on the authority determined by legislation;
5. In positive administrative law, various provisions about attribution are found, for example, in Regional Regulations on Buildings, various variations of granting attribution authority are found, such as: "it is prohibited without the permission of the Regent to erect buildings in the area..." This prohibition simultaneously establishes the Regent's attribution authority to grant Building Permits.

Meanwhile, the theory of authority according to Ridwan HR, as written by Mexsasai Indra, Oksep Adhayanto, and Pery Rehendra Sucipta, states that authority obtained by attribution is

intrinsic and originates from legislation. In other words, governmental organs acquire authority directly from the wording of a specific article in a piece of legislation. In the case of attribution, the recipient of authority can create new authority or expand existing authority, with the internal and external responsibility for the execution of the attributed authority lying entirely with the recipient of the authority (attributory). (Indra, Mexsasai, 2021)

The absolute authority given by attribution to the Religious Court in the resolution of Sharia banking disputes according to the theory of legal certainty is interpreted broadly by Fuller as quoted by Faisal Imam Harahap. Fuller elaborates his views on legal certainty, stating that it is always related to the following aspects: (Harahap, 2019)

1. The presence of a legal system consisting of regulations, not based on momentary decisions for specific matters.
2. The regulations are announced to the public.
3. The regulations do not have retroactive effect.
4. They are formulated in a way that is understandable by the general public.
5. There must be no conflicting regulations.
6. They must not demand an action that exceeds what can be done.
7. They must not be frequently changed.
8. There must be a consistency between the regulations and their daily implementation.

Therefore, to achieve legal certainty, there should no longer be a choice of forum for the resolution of Sharia banking disputes in the District Court because the regulations will conflict or there will be a conflict of norms, as the District Court is not given the authority to do so by law.

The Legal Certainty Theory used in this study clarifies the guarantee of fulfilling the rights of the parties in legal actions taken in the form of agreement making that has been implemented according to the applicable legal provisions. Specifically related to this study, in the Murabahah financing contract, for the rights of the parties to be fulfilled, the correct choice of forum clause that can provide legal certainty during the settlement of litigation disputes is in the Religious Court, not the District Court.

Regarding the resolution of Sharia banking disputes through litigation according to Legislation, it reinforces the authority of the Religious Court. This should not be in doubt and should serve as a guideline for the parties in the Murabahah financing contract to express their will and choose the forum for the resolution of litigation disputes in the Religious Court. The reinforcement is because there are already clear provisions in Law Number 3 of 2006, whose articles and content were not changed in Law Number 50 of 2009 About the Second Amendment to Law Number 7 of 1989 About Religious Courts. Article 49 states that the duties and authority of the Religious Court are to examine, decide, and resolve cases at the first level between Muslims in the field of a. Marriage, b. Inheritance, c. Will, d. Donation, e. Endowment, f. Zakat, g. Infaq, h. Alms, and i. Sharia Economy. Sharia economy, as mentioned in the explanation of the law above, is an act or business activity carried out according to Sharia principles, including: Islamic banks, microfinance institutions, insurance, reinsurance, Sharia mutual funds, Sharia bonds and medium-term securities, Sharia securities, pawnshops, pension funds of financial institutions, and Sharia business.

In addition to the above law, another piece of legislation that regulates the resolution of Sharia banking disputes through litigation is Law Number 21 of 2008 About Sharia Banking. Article 55 paragraph (1) states that the choice of forum for litigation dispute resolution in Sharia banking is the Religious Court. According to the theory of authority, this reinforces the absolute authority of the Religious Court to resolve Sharia banking disputes through litigation. In the Constitutional Court Decision Number 93/PUU-X/2012, which is Erga Omnes, every right and obligation of an Erga Omnes nature must be implemented and enforced by every person or



institution, including the parties in all Murabahah financing contracts, who must include the choice of forum for the resolution of Sharia banking disputes through litigation in the Religious Court. The ruling states that what was decided to be in contradiction with the 1945 Constitution of the Republic of Indonesia and what was decided not to have binding legal force is only the explanatory part, while the content of Article 55 paragraphs (1), (2), and (3) of Law Number 21 of 2008 About Sharia Banking still applies and can be used as the legal basis, including the choice of forum for the resolution of Sharia banking disputes in the Religious Court.

In the background related to legal consequences, it has been explained that a legal consequence is the outcome produced by a legal event, which can manifest in the birth, change, or cessation of a legal condition. If this explanation is linked to the above description, then the legal event by the legal subject in the Murabahah financing contract with the choice of forum clause in the District Court during litigation dispute resolution has a legal consequence in the form of the cessation of the District Court's authority as stipulated in the contract clause. With the cessation of that authority, it shifts to the jurisdiction of the Religious Court according to regulations that are firm and beyond dispute. The reinforcement of the Religious Court's authority and the consequent fall of the District Court's authority due to the Murabahah financing contract with the choice of forum clause in the District Court during litigation dispute resolution can also be analyzed with the theory of authority and the theory of legal certainty. According to the theory of authority, the Religious Court is given authority by attribution to resolve Sharia banking litigation disputes, and the District Court is not given the authority to resolve Sharia banking disputes. In the theory of legal certainty, it is explained that legal certainty can be realized if there is a system of laws consisting of non-contradictory regulations and there must be a consistency between the regulations and their implementation, meaning that in the Murabahah financing contract, the choice of forum clause in the District Court during litigation dispute resolution will conflict with regulations that have given absolute authority to the Religious Court, resulting in the non-realization of legal certainty.

Regarding the validity of the Murabahah contract agreement with the choice of forum clause in the District Court in resolving Sharia banking disputes through litigation, various opinions exist. On one hand, many opinions state that Murabahah contract agreements containing the choice of forum clause in the District Court are automatically null and void by law, but not a few also state that the contract remains legally valid. This is based on research with a legislative approach that has been conducted. Related to the Murabahah contract, it cannot be separated from the Compilation of Sharia Economic Law (KHES) listed in the Supreme Court Regulation Number 02 of 2008 as a response to Law Number 3 of 2006, whose articles and content were not changed in Law Number 50 of 2009 About the Second Amendment to Law Number 7 of 1989 About Religious Courts, which has extended the jurisdiction of religious courts in resolving Sharia economic disputes, including Sharia banking. KHES acts as a source of material law that can be used by judges of religious courts to decide Sharia economic cases. However, it must of course take into account the provisions in the law of contracts according to the applicable positive law.

In the legislative approach, it has been mentioned that the resolution of Sharia banking disputes through litigation is the absolute/mutual jurisdiction of religious courts. This carries the consequence that the inclusion of the choice of forum for dispute resolution through litigation in Sharia banking contract agreements, including Murabahah contract agreements as one of the Sharia banking products, is in the Religious Court. The absolute/mutual jurisdiction of religious courts is in accordance with the provisions of Article 49 letter (i) of Law Number 3 of 2006, whose articles and content were not changed in Law Number 50 of 2009 About the Second Amendment to Law Number 7 of 1989 About Religious Courts. In addition to the above law, the

jurisdiction of religious courts in resolving Sharia banking disputes through litigation is found in Article 55 paragraph (1) of Law Number 21 of 2008 About Sharia Banking.

Because the absolute authority for resolving Sharia banking disputes through litigation according to legislation lies with the religious courts, it carries consequences for the inclusion of a choice of forum clause in Sharia banking contracts. According to legislation, the choice of forum for dispute resolution through litigation in Sharia banking contracts, including Murabahah financing contracts, is through the Religious Court. Based on the above explanation, Murabahah financing contracts with a choice of forum clause in the District Court contradict legislation, namely Article 49 letter (i) of Law Number 3 of 2006, whose articles and content were not changed in Law Number 50 of 2009 About the Second Amendment to Law Number 7 of 1989 About Religious Courts and Article 55 paragraph (1) of Law Number 21 of 2008 About Sharia Banking. According to Article 26 of the Compilation of Sharia Economic Law (KHES), Murabahah financing contracts that contradict legislation are thus invalid.

Similarly, if we refer to the Civil Code. If a contract/agreement contradicts or is prohibited by law, it becomes a forbidden cause or is contrary to a lawful cause, thus not meeting one of the objective conditions for the validity of the agreement in Article 1320 of the Civil Code. The legal consequence if an agreement does not meet the objective condition is that the contract is null and void by law. The legal consequence of a contract/agreement that is invalid according to KHES or null and void according to the Civil Code is that the subsidiary/accompanying agreement is also invalid or null and void. In contracts/agreements, one of the subsidiary agreements is the agreement for securing guarantees, so the consequences of the guarantee securing agreement are also invalid or null and void.

The legal consequences of a contract/agreement that is invalid according to KHES or null and void according to the Civil Code are in line with the theory of authority and the legal system theory. In the theory of authority according to Prajudi Atmosudirdjo, authority is what is referred to as formal power, namely power that stems from the law or legislative power, as well as from executive and administrative power. Any action taken is valid if it does not contradict the applicable laws. If that action is based on invalid authority according to legislation, then the product of that action is also invalid. This means that if a legal action in the form of creating a Murabahah financing contract contains clauses that contradict the law according to that theory, then the contract is invalid according to the law.

## CONCLUSION

The legal consequences for the parties in a Murabahah financing agreement with a choice of forum clause in the District Court for litigation dispute resolution, if a lawsuit is filed, will result in the District Court lacking the authority to examine and adjudicate the case. Therefore, the lawsuit cannot be accepted because it is procedurally defective and contradicts the legal provisions of Article 49 letter (i) of Law Number 3 of 2006, as amended by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 and Article 55 paragraph (1) of Law Number 21 of 2008 concerning Sharia Banking, which stipulate the absolute authority of the Religious Court for dispute resolution. The law has strengthened the authority of the Religious Court in the litigation resolution of Sharia Banking disputes. As a result, the choice of forum clause in the Murabahah financing agreement that specifies the District Court as the forum for dispute resolution becomes null and cannot be used as a basis for dispute resolution.

A Murabahah financing agreement with a choice of forum clause for litigation dispute resolution in the District Court is not valid according to Article 26 of the Compilation of Sharia Economic Law (KHES) or null and void because it contradicts Article 1320 of the Civil Code

regarding the conditions for the validity of an agreement. The choice of forum clause included in the Murabahah financing agreement to provide a balanced position for the parties in dispute resolution is in the Religious Court. Amendments can be made to the Murabahah financing agreement with a choice of forum clause in the District Court due to typographical errors, as per Article 51 of the Notary Office Law, or an addendum can be made with the agreement and consent of the parties involved.

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