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Urgency of Establishing a Sharia Commercial Court for Sharia Economic Disputes in Indonesia

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ABSTRACT

Purpose: This article examines the jurisdictional uncertainty arising from the division of authority between the Religious Courts, which hear sharia economic disputes, and the Commercial Court, which handles bankruptcy and suspension of debt payment obligations (PKPU).

Research Design and Methodology: The study employs normative-empirical legal research using statutory, conceptual, and socio-legal approaches. It analyses legislation, court decisions, and relevant legal literature, supported by interviews with parties to Religious Court cases and Religious Court judges.

Findings and Discussion: The findings indicate that the current legal framework does not clearly determine how bankruptcy arising from sharia contracts should be handled. This creates a gap between the jurisdiction over sharia economic disputes and the jurisdiction over insolvency proceedings.

Implications: The article proposes a legal reconstruction for establishing a Sharia Commercial Court, supported by clearer institutional authority, harmonised procedural and substantive rules, and specialised judicial competence. These reforms are intended to strengthen legal certainty and ensure that sharia economic disputes are resolved by a court with appropriate expertise.

Introduction

Throughout history, sharia economics has existed and been practised ever since Islam first arrived in the Indonesian archipelago. From a legal perspective, however, formal recognition of sharia economics only took place 22 years ago, beginning with the establishment of Bank Muamalah Indonesia on May 1, 1992, the country's first Islamic bank to operate on sharia principles and one of the earliest institutions dedicated to managing sharia economic activities.[1] Sharia economics in Indonesia is still relatively young compared to conventional financial and business industries. Young, yet in a remarkably short period, it has grown and developed at an impressive pace, and today it stands as one of the most vital and strategic forces driving Indonesia's economic wheels.[2]

Sharia economics is an integral whole, inseparable from the Islamic principles that are applied across various communities including those that are not Muslim.[3] The growth and advancement of sharia economics in Indonesia is not limited to the financial or banking sector; it also encompasses a wide range of sharia economic activities that have begun to emerge, such as sharia insurance and

[1] Tutik Nurul Janah, "Pengaruh Islamic Law System Terhadap Hukum Ekonomi Indonesia," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 2 (2019).
[2] Vivi Meilinda, Sheila Aulia Anjani, and M Ridwan, "A Platform Based Business Revolution Activates Indonesia's Digital Economy," *Startupreneur Business Digital (SABDA Journal)* 2, no. 2 (August 14, 2023): 155–74, https://doi.org/10.33050/sabda.v2i2.279.
[3] Amany Amany et al., "Konsep Hukum Ekonomi Syariah Serta Implementasinya Di Negara Muslim Dan Non-Muslim," *Jurnal Hukum Ekonomi Syariah (JHESY)* 3, no. 1 (October 29, 2024): 97–108, https://doi.org/10.37968/jhesy.v3i1.816.

sharia pawnbroking.[4] In this way, sharia economics has become an important component of Indonesia's economic development, proving its resilience even in the face of global economic instability. It is therefore necessary to strengthen the sharia economic system in Indonesia. From the perspective of judicial competence, the Religious Courts lack the authority to handle sharia economic disputes when a non-Muslim party is involved.

There is a common understanding in society that the Religious Courts have jurisdiction over cases involving Muslims only without looking at the underlying contract, and without delving deeper into the principle of Islamic personality. Yet the principle of personality in sharia economic law rests on the type of contract involved.[5] The early proponents of the Sharia Commercial Court argued that its purpose was to ensure that every sharia economic dispute, when taken through litigation, could be adjudicated by judges with specialised expertise in that field.[6] The origins of this idea also trace back to the experience of establishing the Commercial Court within the General Judiciary. The standing of specialised courts was affirmed with the enactment of Law Number 48 of 2009 on Judicial Power. Article 1, number 8 of that Law states that a court with authority to examine, adjudicate, and decide on specific cases may only be established within one of the judicial bodies under the Supreme Court as regulated by law.[7]

The resolution of sharia economic disputes has, at one point, experienced a choice-of-forum dilemma. This arose from conflicting regulatory provisions. The explanation under Article 52(2) of Law No. 21 of 2008 on Sharia Banking indicated that the District Court had the authority to resolve sharia economic disputes.[8] However, this was in direct conflict with Article 49 of Law No. 3 of 2006 on Religious Courts, which affirmed that sharia economic disputes fall exclusively within the jurisdiction of the Religious Courts. Article 49 and its elucidation in Law No. 3 of 2006, as amended by Law No. 50 of 2009 on Religious Courts, states: "The Religious Court has the duty and authority to examine, adjudicate, and resolve cases at the first instance between Muslims in the following fields: a. Marriage; b. Inheritance; c. Wills; d. Grants; e. Waqf; f. Zakat; g. Infaq; h. Shadaqah; and i. Sharia economics."

Elucidation: What is meant by 'sharia economics' refers to acts or business activities carried out in accordance with sharia principles, which include, among others: a. Sharia Banks; b. Sharia Micro Financial Institutions; c. Sharia Insurance; d. Sharia Reinsurance; e. Sharia Mutual Funds; f. Sharia Bonds; g. Sharia Medium-Term Securities; h. Sharia Securities; i. Sharia Financing; j. Sharia Pawnbroking; k. Sharia Financial Institution Pension Funds; and l. Sharia Business.[9]

Since August 29, 2013, however, the dual-forum dilemma for resolving sharia banking disputes has come to an end. The closing section of Constitutional Court Decision Number 93/PUU-X/2012 records the exact time at which the verdict was read.[10] Through that Decision, the Constitutional Court firmly declared that the elucidation of Article 52(2) of Law No. 21 of 2008 on Sharia Banking was contrary to the 1945 Constitution and therefore had no binding legal force. Law Number 3 of 2006 on Religious Courts, further reinforced by Law Number 50 of 2009, established the foundation of the Religious Court's authority to adjudicate sharia economic disputes between Muslims based on

[4] Zahid Hasan and Abid Nurhuda, "The Role of Sharia Economic Law in Supporting A Healthy Economic System for Indonesian Communities," *Bukhori: Kajian Ekonomi Dan Keuangan Islam* 2, no. 2 (January 28, 2023): 103–10, https://doi.org/10.35912/bukhori.v2i2.1978.
[5] Istianah Zainal Asyiqin, M. Fabian Akbar, and Muhammad Daffa Auliarizky Onielda, "The Principle of Self-Submission in Sharia Economic Dispute Resolution: A Critical Examination through Friedman's Legal System Theory," *Jambura Law Review* 7, no. 2 (July 12, 2025), https://doi.org/10.33756/jlr.v7i2.27075.
[6] Ilham Akbar Ryant Prabowo, "Intersection of Sharia Economic Law in Asian Religious Courts (A Case Study of Indonesia)," *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah* 8, no. 1 (June 20, 2024): 1056–70, https://doi.org/10.30651/justeko.v8i1.22274.
[7] T. Firmanto et al., "Ratio Legis Regulation of The Establishment of A Judicial Agency Specific Election of Regional Head in Indonesia," *Russian Journal of Agricultural and Socio-Economic Sciences* 111, no. 3 (March 29, 2021): 121–31, https://doi.org/10.18551/rjoas.2021-03.14.
[8] Erie Hariyanto, "Public Trust in the Religious Court to Handle Dispute of Sharia Economy," *AHKAM : Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022), https://doi.org/10.15408/ajis.v22i1.26216.
[9] Fahadil Amin Al Hasan, "Peran Pengadilan Agama Dalam Mendukung Perkembangan Industri Keuangan Syariah Di Indonesia," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 1 (December 31, 2019), https://doi.org/10.22515/alahkam.v4i1.1329.
[10] Mona Wulandari and Saifullah Basri, "Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia," *Wajah Hukum* 6, no. 2 (October 14, 2022): 441, https://doi.org/10.33087/wjh.v6i2.1081.

Islamic law or sharia principles.[11] This delineation was confirmed by Constitutional Court Decision No. 93/PUU-X/2012, which affirmed that the resolution of sharia economic disputes including sharia banking disputes falls under the absolute competence of the Religious Courts within the Supreme Court framework.[12] The ruling nullified certain provisions in the Sharia Banking Law that had provided alternative forums outside the Religious Courts, thus making the Religious Court's absolute authority over sharia economic disputes all the clearer.

Regulations on bankruptcy and Suspension of Debt Payment Obligations (PKPU) in the Bankruptcy Law continue to place resolution within the jurisdiction of the Commercial Court. The insolvency system under Law No. 37 of 2004 has not yet clearly opened the door for the Religious Courts to handle bankruptcy cases arising from sharia contracts.[13] This has given rise to a legal conflict between the provisions on the absolute authority of the Religious Courts in sharia economic disputes and the jurisdiction of the Commercial Court in bankruptcy matters. The unresolved legal gap concerns the absence of a clear jurisdictional and procedural framework for bankruptcy and suspension of debt payment obligations arising from sharia contracts. Although the Religious Courts have authority over sharia economic disputes, the Bankruptcy Law places bankruptcy and PKPU proceedings within the jurisdiction of the Commercial Court. This division leaves uncertainty about the appropriate forum and the legal framework applicable to insolvency disputes based on sharia contracts.[14] It was the elucidation of Article 52(2) of Law No. 21 of 2008 that had long been the source of the choice-of-forum issue. The constitutional consequence is that, since that ruling was issued, the Religious Court became the sole institution with the right to adjudicate sharia banking cases. The ruling has in effect declared that the Religious Court lacks jurisdiction over sharia economic matters if one of the parties is non-Muslim.[15] The principle of Islamic personality in the resolution of sharia economic disputes is fully grounded in the sharia contract in force, not in the religion of the business parties involved.

Business actors' scepticism towards the Religious Courts is hard to avoid when sharia banking disputes are brought before them, as many consider this inappropriate and potentially problematic. The enactment of Law No. 3 of 2006, which grants the Religious Courts jurisdiction over sharia economic cases, is widely seen as having been poorly planned, due at least to two key factors. First, the expansion of the Religious Courts' authority was not accompanied by adequate supporting regulations governing the legal procedures for sharia economic cases, nor the mechanisms for examining and resolving them. Second, many judges in the Religious Courts have not received thorough training in sharia economics, either in academic settings or within the religious court institutions themselves.

The division of jurisdiction between the Religious Courts and the Commercial Court creates uncertainty when a sharia economic dispute develops into bankruptcy or PKPU proceedings. The Religious Courts have jurisdiction over sharia economic disputes, while the Commercial Court handles bankruptcy and PKPU under the Bankruptcy Law. The absence of a clear mechanism for coordinating these jurisdictions may leave parties uncertain about the competent forum and the applicable legal framework.

Against this background, this article examines the legal and institutional basis for establishing a Sharia Commercial Court in Indonesia. It addresses how jurisdiction should be allocated in sharia economic disputes involving bankruptcy and PKPU, and what institutional and regulatory arrangements are needed to provide legal certainty and specialised adjudication. The article aims to formulate a legal reconstruction that clarifies the court's position within the judicial system, harmonises the relevant procedural and substantive rules, and strengthens judicial competence.

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[11] H.Y. Sonafist et al., "Ibn Al-Muqaffa's Proposal for Taqnīn and Its Synchronization with Islamic Law Codification in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (December 28, 2020): 504, https://doi.org/10.22373/sjhk.v4i2.7864.

[12] Amran Suadi, "Judicial Authority and the Role of the Religious Courts in the Settlement of Sharia Economic Disputes," *Lex Publica* 7, no. 2 (July 30, 2020): 1–14, https://doi.org/10.58829/lp.7.2.2020.1-14.

[13] M Arif Syahputra and Zudan Arief Fakrulloh, "The Legal Vacuum in Bankruptcy Resolution Based on Sharia Contracts," *Asian Journal of Social and Humanities* 3, no. 3 (December 20, 2024): 591–601, https://doi.org/10.59888/ajosh.v3i3.454.

[14] Sri Wahyuni et al., "The Role of Courts in Resolving Cases of Bankruptcy of Islamic Bank Customers," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 1 (June 10, 2023): 1–23, https://doi.org/10.22373/jurista.v7i1.42.

[15] Devianty Fitri et al., "The Embodiment of Islamic Personality Principles in Sharia Economic Dispute Resolution in Indonesia," *International Journal of Research in Business and Social Science (2147- 4478)* 11, no. 5 (June 29, 2022): 539–44, https://doi.org/10.20525/ijrbs.v11i5.1844.

Literature Review

Sharia Economic Disputes and the Jurisdiction of Religious Courts

Sharia economic disputes arise from economic activities and transactions conducted in accordance with sharia principles. The Explanation of Article 49 of Law No. 3 of 2006 defines sharia economics as acts or business activities carried out in accordance with those principles. The legal relationship underlying such activities is generally formed through an akad, which establishes the parties' rights and obligations.

A dispute may arise when a party fails to perform an akad, the parties differ over its interpretation, or a transaction causes a loss that requires legal resolution. Accordingly, resolving a sharia economic dispute requires consideration of the contractual relationship and the principles governing the transaction. The dispute may concern performance of the contract, the parties' remedies, or the legal consequences of non-performance.[16]

Article 49 of Law No. 3 of 2006, as amended by Law No. 50 of 2009, assigns the Religious Courts authority to examine, decide, and resolve sharia economic cases at first instance. Decision No. 93/PUU-X/2012 of the Constitutional Court further clarified the litigation forum by invalidating the Explanation of Article 55(2) of the Sharia Banking Law, which had referred to the General Courts as a forum for resolving disputes.[17] These provisions provide the statutory basis for the Religious Courts' role in resolving sharia economic disputes.

The statutory recognition of the Religious Courts' jurisdiction does not, by itself, resolve every procedural issue that may arise from sharia transactions. A distinct question arises when a dispute based on a sharia contract proceeds into bankruptcy or PKPU proceedings. The relationship between the Religious Courts' jurisdiction over sharia economic disputes and the Commercial Court's role in insolvency proceedings therefore requires further examination.

Bankruptcy and PKPU in the Commercial Courts and Legal Certainty

Law No. 37 of 2004 regulates bankruptcy and PKPU as proceedings for resolving debt-related problems. Under this framework, bankruptcy and PKPU matters are handled by the Commercial Court. These proceedings address the debtor's assets and the collective interests of creditors.[18]

A bankruptcy case based on a sharia transaction combines a sharia contract with the formal procedures established by insolvency law. The dispute may require the court to consider the underlying akad, the parties' obligations, and the applicable bankruptcy procedure.[19] The law must therefore clarify how sharia principles are considered within the collective treatment of claims and assets.

The two legal frameworks create a jurisdictional issue when a sharia economic dispute develops into bankruptcy or PKPU proceedings. The Religious Courts have authority over sharia economic cases, while the Bankruptcy Law assigns insolvency proceedings to the Commercial Court. Studies have identified this relationship as a source of regulatory disharmony and uncertainty about the competent forum and applicable rules.[20]

For purposes of this study, legal certainty means that the law clearly identifies the competent forum, the applicable procedures, and the legal rules governing a dispute. In sharia bankruptcy cases, certainty also requires clarity on how the underlying contract and relevant sharia principles relate to

[16] Fitri et al.
[17] Ahmad Syarifudin, "Exploring The Progressive Law in The Constitutional Court Decision No. 93/Puu-X/2012 on Testing Article 55 Verses (2) and (3) Law No. 21 Of 2008 Concerning Sharia Banking," *Mu'amalat: Jurnal Kajian Hukum Ekonomi Syariah* 11, no. 2 (December 9, 2019): 215–33, https://doi.org/10.20414/mu.v11i2.2133.
[18] Hendra Onggowijaya, "Regulation Model for Filing an Actio Pauliana Lawsuit by Creditors to Revoke the Debtor's Legal Actions Prior to Declaration of Bankruptcy by The Commercial Court," *International Journal of Research in Business and Social Science (2147- 4478)* 11, no. 7 (November 6, 2022): 350–56, https://doi.org/10.20525/ijrbs.v11i7.2165.
[19] Yapiter Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 2 (December 17, 2025): 295–310, https://doi.org/10.31958/juris.v24i2.15863.
[20] Sri Wahyuni et al., "The Role of Courts in Resolving Cases of Bankruptcy of Islamic Bank Customers."

insolvency proceedings. Without a coherent framework, parties may face uncertainty over the forum and the legal treatment of their claims.

Judicial Specialization and Previous Studies

Judicial specialization assigns categories of cases to a court or judicial formation with relevant expertise and procedures. Law No. 48 of 2009 provides that a special court may be established within one of the judicial branches under the Supreme Court and must be regulated by law. This legal framework is relevant to proposals for establishing a Sharia Commercial Court.[21]

Specialization in sharia commercial matters requires judicial competence in sharia economic transactions as well as bankruptcy and PKPU procedures. It also requires procedural rules and institutional arrangements that allow the court to address both the underlying contract and the insolvency process. A proposal for a special court should therefore specify its placement within the judicial system and its relationship to existing court jurisdictions.

Several studies have considered specialized adjudication of sharia economic disputes. Manik, Yaswirman, Azheri, and Ikhwan (2017) proposed establishing a special sharia economic court within the Religious Courts to improve efficiency and professional capacity.[22] Dewi and Sidik (2019) examined bankruptcy involving sharia financial institutions and highlighted the need to clarify jurisdiction and prepare supporting institutions.[23] Romlah (2023) found that sharia bankruptcy proceedings in the Religious Courts were less effective in part because of limited legal instruments and parties' preference for the Commercial Court.[24]

Later research has continued to examine the overlap between the Religious Courts Law and the Bankruptcy Law. Kartika and Harahap (2023) called for harmonised rules on sharia bankruptcy, while Yuniardi, Kholid, and Shesa (2024) discussed the need to improve regulations and procedural law to support certainty and efficiency.[25] Prihasmoro, Suadi, and Abdullah (2025) also identified a lack of synchronization between the two legal regimes and proposed statutory reform. Building on these studies, this article examines the legal and institutional basis for establishing a Sharia Commercial Court, including its jurisdiction, regulatory framework, and judicial specialization.[26]

Research Design and Methodology

This study employs normative-empirical legal research to examine the legal and institutional basis for establishing a Sharia Commercial Court. It uses statutory, conceptual, and socio-legal approaches.[27] The normative analysis examines relevant legislation and court decisions, including Law No. 3 of 2006 as amended by Law No. 50 of 2009, Law No. 21 of 2008, Law No. 37 of 2004, Law No. 48 of 2009, and Constitutional Court Decision No. 93/PUU-X/2012.

The study distinguishes primary legal materials from primary empirical data. Primary legal materials consist of legislation and court decisions, while secondary legal materials include books, research reports, journal articles, and other relevant scholarly sources. Primary empirical data were obtained through structured and in-depth interviews with parties to cases before the Religious Courts

[21] Utang Rosidin et al., "The Paradox of Dual Jurisdiction: Reassessing the Sharia Court in Aceh's Special Autonomy Framework," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 27, 2026, 175–96, https://doi.org/10.24090/volksgeist.v9i1.12445.
[22] Saut Maruli Tua Manik et al., "Settlement of Syariah Economic Dispute through the Special Court of Syariah Economic in the Religious Courts," *AHKAM : Jurnal Ilmu Syariah* 17, no. 2 (July 10, 2017), https://doi.org/10.15408/ajis.v17i2.6082.
[23] G Dewi, "The Review on Insolvency of Sharia Insurance Company from the Perspective of Islamic Economic Law in Indonesia (Case Study on Bankruptcy Decision of Asuransi Syariah Mubarakahco. Ltd Number 1016 K/Pdt.Sus-Bankrupt/2016)," *KnE Social Sciences* 3, no. 14 (March 31, 2019): 281, https://doi.org/10.18502/kss.v3i14.4315.
[24] Siti Romlah, "Penyelesaian Sengketa Arbitrase Dan Kepailitan Syariah Di Pengadilan Agama," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 10, no. 1 (February 4, 2023): 95–114, https://doi.org/10.15408/sjsbs.v9i4.26634.
[25] Khairul Hanif, Muhammad Albahi, and Raja Sakti Putra Harahap, "Reconstruction of the Handling of Non-Performing Financing in Murabahah Contracts in Islamic Banking," *Al-Kharaj: Journal of Islamic Economic and Business* 8, no. 2 SE-Articles (June 20, 2026), https://doi.org/10.24256/kharaj.v8i2.10246.
[26] Hasanuddin Hasanuddin, Abdul Malik, and Hana Tuo, "Integrating Smart Contracts with Islamic Economic Law: A Sharia Design Framework for Digital Finance Governance," *Journal of Islamic Economics Lariba* 12, no. 1 (February 18, 2026): 443–70, https://doi.org/10.20885/jielariba.vol12.iss1.art16.
[27] Ilham Hibbaturrahman, Asep Ramdan Hidayat, and Liza Dzulhijjah, "Kewenangan Pengadilan Agama Dalam Penyelesaian Kepailitan Syariah," *Bandung Conference Series: Sharia Economic Law* 6, no. 1 (February 3, 2026): 9–16, https://doi.org/10.29313/bcssel.v6i1.22657.

and the Chief Justice of a Religious Court. The interviews provide information on how jurisdictional rules operate in practice and on institutional capacity to handle sharia economic disputes.

The legal materials were analysed qualitatively through statutory and conceptual analysis to identify how jurisdiction is allocated between the Religious Courts and the Commercial Court in sharia economic disputes, bankruptcy, and PKPU proceedings. Interview data were organised according to their relevance to the practical application of those rules and the institutional issues identified. The two sources were compared to identify gaps in the existing framework and assess the legal and institutional arrangements needed to establish a Sharia Commercial Court.

Findings and Discussion

Legal Politics and Juridical Foundations for Sharia Economics in Indonesia

The establishment of a Sharia Commercial Court requires more than creating a specialized institution. It must resolve the overlap between the Religious Courts' jurisdiction over sharia economic disputes and the Commercial Court's authority over bankruptcy and PKPU. The reconstruction should therefore connect institutional placement, statutory jurisdiction, applicable substantive and procedural law, and judicial competence. Without these elements being addressed together, a new court could reproduce the uncertainty it is intended to resolve.

a.1. Institutional Reconstruction

The first model is to establish a Sharia Commercial Court within the Religious Courts. This model is legally supported by Article 3A of Law No. 50 of 2009, which allows a special court to be formed within the Religious Courts through legislation. It also aligns the court's institutional placement with the Religious Courts' existing jurisdiction over sharia economic disputes.[28] To make this model effective, legislation must expressly assign the special court authority over bankruptcy and PKPU proceedings arising from sharia contracts, rather than leaving those proceedings within the Commercial Court's existing jurisdiction.

A second model is to establish a specialized sharia chamber within the Commercial Court. This model could draw on the Commercial Court's experience in handling insolvency proceedings, but it would not by itself resolve the jurisdictional tension. Unless legislation defines the chamber's authority and its relationship with the Religious Courts, disputes over the underlying sharia contract could remain separate from the bankruptcy proceedings.[29] This model is therefore workable only if the legislation also determines which court hears connected contractual and insolvency claims, and how sharia principles will govern those proceedings.

The integrated model within the Religious Courts provides the clearer institutional basis because it places sharia economic and sharia insolvency disputes within one judicial branch. It would reduce the risk that the contract is assessed in one court while the resulting bankruptcy is handled in another under a separate legal framework. However, this model requires a corresponding transfer of statutory authority and the development of insolvency procedures within the special court. Article 27 of Law No. 48 of 2009 requires special courts to be established within one of the judicial branches under the Supreme Court and to be regulated by law. The Sharia Commercial Court should therefore be designed as a special court within an existing judicial branch, not as a separate judicial branch.

a.2. Reconstruction of Substantive and Procedural Law

Institutional reform must be accompanied by harmonization of substantive and procedural law. Bankruptcy proceedings under Law No. 37 of 2004 provide procedures for resolving debtor-creditor claims, while sharia economic transactions are grounded in akad and principles that may affect the parties' obligations and available remedies. If the court applies insolvency procedures without a clear

[28] Tua Manik et al., "Settlement of Syariah Economic Dispute through the Special Court of Syariah Economic in the Religious Courts."
[29] Syahputra and Arief Fakrulloh, "The Legal Vacuum in Bankruptcy Resolution Based on Sharia Contracts."

method for considering the sharia contract, the jurisdictional change may not produce consistent outcomes.[30] The new framework should explain how the akad and relevant sharia principles are to be considered in debt verification, creditor claims, restructuring, and settlement of the debtor's assets.

The procedural framework should specify how bankruptcy and PKPU petitions based on sharia contracts are filed, examined, and decided. It should also clarify the relationship between the special court's authority and the existing Commercial Court process, including rules on venue, appeals, enforcement, and the treatment of pending cases. Substantive rules should identify how applicable sharia principles are recognized and applied in court. Fatwas and other sharia standards may inform this framework, but their legal role should be specified in legislation or regulations rather than left uncertain.

a.3. Regulatory Reform

The jurisdictional conflict cannot be resolved by institutional arrangements alone. Law No. 37 of 2004 assigns bankruptcy and PKPU proceedings to the Commercial Court, while the Religious Courts Law assigns sharia economic disputes to the Religious Courts. Article 300 of Law No. 37 of 2004 forms part of the statutory basis for the Commercial Court's authority over bankruptcy and PKPU.[31] Accordingly, the legislature must amend the relevant provisions of the Bankruptcy Law and the Religious Courts Law together or enact a special statute that expressly harmonizes and allocates their respective jurisdictions.

The legislation should define the scope of the Sharia Commercial Court's authority by reference to the legal basis of the transaction and the type of proceeding. It should specify whether the special court hears only bankruptcy and PKPU cases arising from sharia contracts or also related commercial claims, and how it coordinates with the Religious Courts and Commercial Court where claims overlap.[32] A coordinated statutory amendment is necessary to prevent competing interpretations of which court has authority. A Supreme Court regulation may later provide procedural details, but it cannot substitute for legislation that establishes or transfers jurisdiction reserved to statute.

a.4. Strengthening Judicial Competence

Specialization requires judges who can assess both sharia economic transactions and bankruptcy law. Certification should therefore cover the interpretation of akad, the relevant sharia economic principles, bankruptcy and PKPU procedures, and the judicial administration of insolvency cases. Continuing education and consistent qualification standards across the country would support more predictable decisions.[33] Court clerks and other personnel involved in case administration should also receive training relevant to the special court's jurisdiction.

The Supreme Court should prepare the institutional transition after the statutory basis is established. This preparation should include rules for selecting and training judges, procedural regulations consistent with the new legislation, and arrangements for transferring or continuing cases already before the courts. These measures would make the court operational and reduce disruption for litigants and creditors.[34]

Taken together, institutional integration, harmonized law, clear statutory jurisdiction, and specialized judicial competence provide the legal conditions for a workable Sharia Commercial Court. The most coherent model is a special court within the Religious Courts, provided that the legislature expressly assigns it jurisdiction over bankruptcy and PKPU arising from sharia contracts and harmonizes the relevant laws. This approach addresses the jurisdictional tension at its source by

[30] Akbar Ryant Prabowo, "Intersection of Sharia Economic Law in Asian Religious Courts (A Case Study of Indonesia)."
[31] Sri Wahyuni et al., "The Role of Courts in Resolving Cases of Bankruptcy of Islamic Bank Customers."
[32] Firman Wahyudi, "The Quo Vadis of Banckrupty Settlement and PKPU Laws on Sharia Banking," *Jurnal Hukum Dan Peradilan* 8, no. 1 (March 30, 2019): 1, https://doi.org/10.25216/jhp.8.1.2019.1-20.
[33] *World Development Report 2022: Finance for an Equitable Recovery* (The World Bank, 2022), https://doi.org/10.1596/978-1-4648-1730-4.
[34] Abdul Baasit Aziz Bamba and Peter Atudiwe Atupare, "The Case for Exclusive Winding Up Provisions for Security and Exchange Commission-Registered Entities in Ghana," *Journal of Politics and Law* 18, no. 4 (September 20, 2025): 52, https://doi.org/10.5539/jpl.v18n4p52.

placing the dispute over the sharia transaction and the related insolvency proceeding within a clearly defined legal framework.

Forms of Legal Reconstruction in The Establishment of a Sharia Commercial Court

The establishment of a Sharia Commercial Court must address a conflict in the allocation of judicial authority. The Religious Courts have jurisdiction over sharia economic disputes, while Law No. 37 of 2004 assigns bankruptcy and PKPU proceedings to the Commercial Court. This allocation creates a problem when an insolvency proceeding arises from a sharia contract: the court that determines the collective treatment of the debtor's estate may not be the court with the principal jurisdiction over the sharia economic relationship. Legal reconstruction must therefore address institutional placement, jurisdiction, substantive and procedural law, and judicial competence together.

b.1. Institutional Reconstruction

Two institutional models can be considered. The first is a specialized court within the Religious Courts. Article 3A of Law No. 50 of 2009 expressly allows a special court to be established within the Religious Courts by statute. This model aligns the proposed court with the Religious Courts' existing authority over sharia economic disputes and could allow the same judicial institution to consider the sharia contract and the related insolvency proceeding.[35]

The second model is a specialized sharia chamber within the Commercial Court. Its advantage is that it could use the Commercial Court's established experience in bankruptcy and PKPU. Its weakness is that a specialized chamber would not, by itself, resolve the allocation of jurisdiction over the underlying sharia contract.[36] If contractual disputes remain with the Religious Courts while insolvency proceedings proceed in the Commercial Court, the parties may still face inconsistent interpretations and uncertainty about which court determines issues that affect the same debt.

The more coherent model is a special court within the Religious Courts, provided that its statutory authority expressly includes bankruptcy and PKPU proceedings arising from sharia transactions. This would place adjudication of the sharia contract and collective treatment of the debtor's estate within one judicial forum. Article 27 of Law No. 48 of 2009 requires a special court to be established within one of the judicial branches under the Supreme Court and by statute.[37] The proposed court would therefore be a specialized court within an existing branch of the judiciary, rather than a separate judicial branch.

The jurisdictional statute must also specify the connecting factor that brings a bankruptcy case before the Sharia Commercial Court. A rule based solely on the contract may be insufficient where a debtor has both sharia and conventional debts, because bankruptcy is a collective proceeding that can affect creditors who are not parties to the original sharia akad. The legislation should determine whether jurisdiction depends on the debtor's status, the legal basis of the petition, or another clearly defined criterion.[38] It should also establish a single-forum rule for mixed claims to prevent parallel proceedings concerning the same debtor's estate.

b.2. Reconstruction of Substantive and Procedural Law

Institutional reform will not resolve the problem unless the applicable substantive and procedural rules are also harmonized. A sharia contract determines the parties' obligations, but bankruptcy and PKPU proceedings address the debtor's estate and the collective claims of creditors. The legislation must therefore explain how the court will assess the akad and relevant sharia

[35] Adi Prihasmoro et al., "Sharia Economic Bankruptcy Law (Al-Taflis) and the Dualism of Court Competency in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (August 15, 2024): 227–39, https://doi.org/10.31958/juris.v23i2.11045.
[36] Syamsul Huda, Lastuti Abubakar, and . Yasardin, "The Urgency of the Implementation of Sharia Bankruptcy (Taflis) in Bankruptcy Cases in Indonesia," *International Journal of Religion* 5, no. 10 (July 4, 2024): 3129–35, https://doi.org/10.61707/2wks4m18.
[37] Rosidin et al., "The Paradox of Dual Jurisdiction: Reassessing the Sharia Court in Aceh's Special Autonomy Framework."
[38] Syahputra and Arief Fakrulloh, "The Legal Vacuum in Bankruptcy Resolution Based on Sharia Contracts."

principles while applying rules on debt verification, creditor claims, restructuring, and distribution of assets.[39] This is necessary to ensure that the sharia basis of a claim is not disregarded and that the collective interests of creditors remain protected.

The procedural framework should define how bankruptcy and PKPU petitions based on sharia transactions are filed, examined, and decided. It should address venue, joinder or coordination of related claims, appeals, enforcement, and the handling of cases pending when the new jurisdiction takes effect.[40] It should also explain the role of curators, administrators, and other insolvency professionals in proceedings involving sharia contracts. Without these rules, transferring jurisdiction to a specialized court could create procedural gaps or disrupt the administration of the debtor's estate.

The law should also state how sharia standards are to be used in judicial decision-making. The relevant rules may include the interpretation of akad, the treatment of compensation or late-payment obligations, and the terms of a restructuring plan. DSN-MUI fatwas and other sharia standards may inform the applicable legal framework, but their role and legal effect should be clearly specified through legislation or regulations. The court should not be left to determine the status of those standards without a statutory basis.[41]

b.3. Regulatory Reform

The jurisdictional conflict requires legislative action because the relevant authority is established by statute. Article 49 of Law No. 3 of 2006 assigns sharia economic disputes to the Religious Courts, while Law No. 37 of 2004 governs bankruptcy and PKPU proceedings through the Commercial Court. Article 300 of the Bankruptcy Law forms part of the statutory basis for the Commercial Court's authority in those proceedings.[42] The legislature should amend the relevant provisions of the Religious Courts Law and the Bankruptcy Law together or enact a specific statute that expressly harmonizes and reallocates jurisdiction.

A coordinated amendment should, at minimum, establish the Sharia Commercial Court within a specified judicial branch, define its subject-matter and territorial jurisdiction, and identify the bankruptcy and PKPU cases it may hear. It should also amend the relevant provisions that currently assign those proceedings to the Commercial Court and clarify how the special court's authority relates to the Religious Courts' existing jurisdiction.[43] If a separate statute is chosen, it should expressly state how it amends or applies alongside the existing laws. Relying only on the general maxim lex specialis derogat legi generali would leave room for dispute if the statutory provisions do not clearly allocate jurisdiction.

A Supreme Court regulation may then provide technical rules on case administration, filing, hearings, and judicial qualifications. It cannot, however, replace legislation that establishes the special court or transfers subject-matter jurisdiction. Article 27 of Law No. 48 of 2009 requires the formation of a special court to be regulated by statute, while Article 3A of Law No. 50 of 2009 provides a statutory basis for a special court within the Religious Courts. The legislative framework should therefore precede the issuance of implementing regulations.

b.4. Strengthening Judicial Competence

The special court will require judges capable of applying both sharia economic law and bankruptcy and PKPU rules. A certification system should assess knowledge of akad and sharia economic principles, the statutory framework governing insolvency, and the procedural duties involved in collective creditor proceedings. Continuing education and consistent qualification

[39] Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice."
[40] Wahyudi, "The Quo Vadis of Banckrupty Settlement and PKPU Laws on Sharia Banking."
[41] Abdul Azis Ali Ramdlani, "Strengthening The DSN-MUI Fatwa As a Legal Source in Resolving Sharia Economic Disputes in Indonesia," *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah* 9, no. 1 (June 20, 2025): 1348–61, https://doi.org/10.30651/justeko.v9i1.25858.
[42] "The Philosophical Basis of the Competence to Adjudicate Bankruptcy Cases Involving an Arbitration Clause," *Journal of Law, Policy and Globalization*, March 2021, https://doi.org/10.7176/JLPG/107-09.
[43] Wahyudi, "The Quo Vadis of Banckrupty Settlement and PKPU Laws on Sharia Banking."

standards would support more predictable decisions across jurisdictions.[44] Court clerks and insolvency professionals involved in these cases should also receive training on the special court's procedures and the legal status of sharia-based claims.

The Supreme Court should prepare the operational transition after the statutory basis has been enacted. This should include a plan for selecting and training judges, issuing procedural regulations, assigning staff, and transferring or continuing pending cases. The legislation should specify the treatment of proceedings already commenced in the Commercial Court and the validity of procedural steps taken before the new court begins operating.[45] These transitional rules would reduce disruption for debtors, creditors, and other parties.

Taken together, institutional integration, harmonized substantive and procedural rules, express statutory jurisdiction, and judicial specialization are necessary to make the Sharia Commercial Court workable. The most coherent model is a special court within the Religious Courts, with explicit authority over bankruptcy and PKPU arising from sharia transactions and clear rules for mixed-creditor cases. This model addresses the jurisdictional tension by placing the sharia economic relationship and its insolvency consequences within a single, legally defined framework. Its establishment nevertheless depends on coordinated amendments to the Religious Courts Law and the Bankruptcy Law, followed by implementing regulations and institutional preparation.

Conclusion

This study concludes that the current legal framework allocates sharia economic disputes to the Religious Courts, while bankruptcy and PKPU proceedings fall within the jurisdiction of the Commercial Court under Law No. 37 of 2004. This division leaves unresolved how a sharia contract should be assessed when it forms the basis of insolvency proceedings. Constitutional Court Decision No. 93/PUU-X/2012 invalidated the Explanation of Article 55(2) of the Sharia Banking Law but did not amend the Bankruptcy Law or expressly resolve the jurisdictional allocation of sharia bankruptcy cases. The resulting uncertainty supports the need for a clear and coordinated legal framework.

The study recommends establishing a Sharia Commercial Court as a special court within the Religious Courts, subject to express statutory authority over bankruptcy and PKPU proceedings arising from sharia contracts. The legislature should harmonize the Religious Courts Law and Law No. 37 of 2004, define the special court's jurisdiction, and provide rules for cases involving both sharia and conventional debts. The legislation should also harmonize the applicable substantive and procedural law, including the treatment of sharia contracts in insolvency proceedings. After the statutory framework is established, the Supreme Court should issue implementing regulations and provide judicial certification and training in sharia economic law and insolvency proceedings. This institutional and regulatory reform would clarify the competent forum and strengthen the professionalism and competence of judges.

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