

# The Protection of Spiritual Rights in the Sharia Banking Dispute Settlement: Overview of the Sharia Banking Law in Indonesia

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## Abstract

The status of Islamic banking in dispute settlement is normatively a positive legal subject to Islamic law principles. The Financial Services Authority confirms that many conflicts involve Islamic banks and their customers. The problem of the legal and economic context of Islamic banking is more complex, considering the operational concept of Islamic banks is different from conventional banking. Islamic banking must operate based on sharia, including in dispute resolution issues. Spiritual rights are one of the interests of Islamic banking customers that require attention. This study investigates the protection of spiritual rights in the sharia banking dispute settlement based on the perspective of Indonesian sharia banking law. This study employed normative qualitative research methods on primary data, such as the sharia banking law, the consumer protection act, and the dispute resolution act. It found that Indonesia has laws to address sharia banking disputes based on Islamic principles. However, they have not been appropriately implemented. The authority of religious courts to settle disputes on sharia banking has not been effective in protecting spiritual rights because there are still processes of settlement on sharia banking through the general courts. It indicates that stakeholders' understanding of spiritual rights is still limited.

**Keywords:** dispute settlement, sharia banking, spiritual rights.

## A. Introduction

Sharia banking covers the legal relationship between customers and sharia banks. Unquestionably, the settlement of disputes outside of court is not an exclusion due to the implementation of the Islamic legal system. It encompasses all Islamic banking institution's activities.<sup>1</sup> One of the unique characteristics of sharia banking

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<sup>1</sup> Rofah Setyowati, "Penyelesaian Pertikaian Perbankan Islam di Indonesia dalam Perspektif Perlindungan Pengguna" (PhD Thesis – Universitas Kebangsaan Malaysia, 2012): 3, [http://eprints.undip.ac.id/37644/2/BAB\\_I\\_PENDAHULUAN.pdf](http://eprints.undip.ac.id/37644/2/BAB_I_PENDAHULUAN.pdf).

is the juridical consequence. It recognizes spiritual rights. The rights distinguish sharia banking's legal relationships from conventional banking.<sup>2</sup>

According to the Indonesian Consumers Foundation (YLKI-*Yayasan Lembaga Konsumen Indonesia*), banking complaints have consistently ranked in the top three customer complaint reports in recent years. Based on the 2010 data, it reached 13.72 percent of all complaints. The Financial Services Authority (OJK-*Otoritas Jasa Keuangan*) also noted that the number of complaints submitted to the OJK increased 21 times to 560 thousand complaints as of October 2021, with the banking sector receiving the most complaints (43 thousand or around 12 percent).<sup>3</sup>

These facts indicate a high possibility of conflict in the banking industry. They also demonstrate the growing need for public awareness for efficient and effective dispute settlement between banks and customers. Unfortunately, the operational concept of Islamic banking differs from conventional banking causing it more complex problems.<sup>4</sup> In addition to adhering to general banking principles and laws, Islamic banking practices must conform to sharia principles and rules in all aspects, including the settlement of conflict and disputes arising from legal and contractual relationships.<sup>5</sup> Inosentius states that there is a tendency to increase complaints from banking customers.<sup>6</sup> The banking industry has a high potential for conflict. The phenomenon also indicates the increasing need and public awareness to properly settle disputes between banks and customers. However, for Islamic banking, the problems are more complex, given the concept of spiritual rights in their operations which distinguishes its legal transactions from conventional banking transactions.

This study used one point of view. It is a spiritual aspect of Islamic banking customers that differs from conventional banking customers. The distinction in this context refers to the nature of Islamic banking customers, who have unique needs and interests. Most customers of Islamic banking are Muslims, every Muslim must be *kaffah* (complete) and adhere to the creed of Islamic law in all aspects based on *halal* and *thoyyib* standards.<sup>7</sup> Consequently, the need can be defined as the

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<sup>2</sup> Rida Hesti Ratnasari, "Understanding the Islamic Banking System in Indonesian Modern Economics Practices," *International Journal of Business, Economics & Management* 3, no. 1 (2020): 212, <https://doi.org/10.31295/ijbem.v3n1.197>.

<sup>3</sup> Syahrizal Sidik, "Aduan Konsumen Selama Pandemi Naik, Layanan Bank Terbanyak," *CNBC Indonesia*, accessed October 22, 2021, <https://www.cnbcindonesia.com/market/20211022105436-17-285754/aduan-konsumen-selama-pandemi-naik-layanan-bank-terbanyak>.

<sup>4</sup> Neneng Nurhasanah and Panji Adam, *Hukum Perbankan Syariah: Konsep dan Regulasi* (Jakarta: Sinar Grafika, 2017), 41.

<sup>5</sup> Muniaty Aisyah, "Islamic Bank Service Quality and its Impact on Indonesian Customer's Satisfaction and Loyalty," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah (Journal of Islamic Economics)* 10, no. 2 (2018): 367, <http://dx.doi.org/10.15408/aiq.v10i2.7135>.

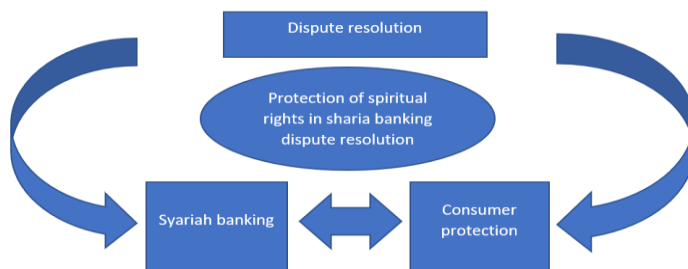
<sup>6</sup> Samsul Inosentius, "Pengembangan Model Penyelesaian Sengketa Perbankan Dalam Perspektif Perlindungan Kepentingan Konsumen," *Buletin Hukum Perbankan dan Kebanksentralan, Bank Indonesia* 7, no. 1 (2010): 59.

<sup>7</sup> Muhammad and Alimin, *Etika dan Perlindungan Pengguna dalam Ekonomi Islam* (Yogyakarta: BPFE Fakultas Ekonomi Universitas Gadjah Mada, 2004), 56.

fulfillment of the customer's fundamental rights (human rights enshrined in the 1945 Constitution) or the customer's constitutional right to the security and safety of the world and the hereafter based on an Islamic religious standpoint.<sup>8</sup>

The fulfillment of the rights is part of the customer protection concept as outlined in Law Number 8 of 1999 on Customer Protection. The following figure depicts the context of customer protection in this study.

**Figure 1.** The Customer Protection Concept



### 1. The Concept of Legal Protection for Spiritual Rights as Enshrined in the Law on Customer Protection

Article 1 Number 1 of the Law on Customer Protection defines customer protection as *any attempt to ensure legal certainty to provide consumers with protection*.<sup>9</sup> On the other hand, a consumer is an individual who, rather than trading, consumes goods or services offered in society for the benefit of self, family, other people, and other living species. The Law discusses customer protection in Chapter II Article 2, which includes the principles of benefits, justice, balance, customer safety, security, and legal certainty.<sup>10</sup> Article 3 on customer protection contains the objectives of (a) improving customer awareness, ability, and independence to protect themselves; (b) elevating customer dignity by limiting all harmful access to goods and/or services; (c) boosting customer empowerment in choosing, determining, and demanding their customer rights; (d) putting in place a customer protection framework that incorporates legal certainty and information; (e) raising awareness of the necessity of customer protection among corporate actors, resulting in a more honest, and responsible approach to doing business; and (f) increasing the quality of goods and/or services to ensure the business of producing

<sup>8</sup> Hayat M. Awan and Khuram Shahzad Bukhari, "Customer's Criteria for Selecting an Islamic Bank: Evidence from Pakistan," *Journal of Islamic Marketing* 2, no. 1 (2011): 14, <https://doi.org/10.1108/17590831111115213>.

<sup>9</sup> Article 1 Number 1 of Law Number 8 of 1999 on Customer Protection Law.

<sup>10</sup> Article 2 of Law Number 8 of 1999 on Customer Protection Law.

goods and/or services continues, as well as the health, comfort, security, and safety of consumers.<sup>11</sup>

Chapter III Article 4 explains the rights of customers, which include (a) the right to reassure, stability, and safeness when people consume goods and/or services; (b) the right to choose products and services and acquire such goods and/or services in compliance with the currency rate and the promised circumstances and assurances; and (c) the right to rectify, clear, and truthful information about the circumstances and assurances of goods and/or services; (d) the right to reimbursement; (e) the right to have their beliefs and concerns about the goods or services used did hear; (f) the right to adequate advocates, protection, and attempts to fix customer protection conflicts; and (g) the right to customer assistance and education; (h) the right to be treated or provided appropriately, truthfully, and without bias; (i) the right to obtain from various, recompense, or replacement if the goods and/or service provided are not in compliance with the terms or are not appropriately provided; and (j) the rights that are controlled by other rules and regulations.<sup>12</sup>

Then, Article 5 is related to customer obligations: (a) reviewing or pursuing info methods and guidelines for the use or utilization of goods or services for protection and stability; (b) negotiating in good faith in carrying out transactions to acquire goods or services; (d) paying at the agreement currency rate, and (e) complying to the appropriate legal settlement of customer rights disputes.

## **2. The Goals and Purpose of the Concept of Legal Certainty in Customer Protection**

The term legal protection in the study of customer protection refers to all legal principles and laws that control the relations and difficulties among entities in social life, especially customers and/or services. According to Sidobalok, customer protection law encompasses all regulations and rules that govern customers' and providers rights and responsibilities. They appear from efforts to meet demands and specific measures to ensure legal certainty and protection of consumers' demands and interests.<sup>13</sup>

Further, Law Number 8 of 1999 on Customer Protection regulates and defines the aims and purposes of customer protection. It stipulates that customer protection refers to all attempts to ensure legal certainty. The customer protection law governs the rights and obligations of the customer, producer, and business actor. It also enforces certain rights and completion of obligations. The YLKI, founded on May 11, 1973 is a community group that initiates, oversees, and encourages the recognition of customer protection in Indonesia. In 1990, The YLKI and National Legal Development Agency (BPHN-*Badan Pembinaan Hukum*

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<sup>11</sup> Article 3 of Law Number 8 of 1999 on Customer Protection Law.

<sup>12</sup> Article 5 of Law Number 8 of 1999 on Customer Protection Law.

<sup>13</sup> Janus Sidobalok, *Hukum Perlindungan Konsumen di Indonesia* (Bandung: Citra Aditya Bakti, 2014), 48.

*Nasional*) made a joint commitment to draft the Customer Protection Law. The Ministry of Trade backed the proposed Customer Protection Law when International Monetary Fund (IMF) requested it. Finally, Law Number 8 of 1999 on Customer Protection has taken effect since April 20, 2000.

### **3. The Constitutional Objective of the Customer Protection Principles**

Customer protection aims to provide economic actors, industry, producers, and customers with fundamental rights, certainty, and legal balance. The objectives and basic principles of customer protection are referred to in Article 3 of the Consumer Protection Law:

1. Customer protection shall increase customers' self-protection awareness, ability, and independence.
2. Customer protection shall enhance integrity by ensuring that customer is protected from the negative impacts of making purchases or services.
3. Customer protection shall enhance costumer's capability to pick, select, and seek their economic stakeholders' or consumers' rights.
4. Customer protection shall create a customer safety framework that involves legal basis, information leakage, and availability of information.<sup>14</sup>

Customer protection aims to offer customers security when meeting their necessities. It is necessary to apply legal principles proportionally to protect consumers' spiritual rights in implementing the Customer Protection Law.<sup>15</sup> The regulation of customer protection principles is a norm stated in Article 2 of the Customer Protection Law.

#### **a. Benefit Principle**

Every effort aims to establish maximum protection for consumers' needs and a balance of rights and obligations for consumers and business actors. In other words, both parties gain benefit. Thus, it should not be only one party gaining benefits while the other party is ignored, unlucky, or even loses.

#### **b. Justice Principle**

In an unsatisfactory transaction, the dispute or conflict is not always the fault of the business actor. It can also be the fault of the irresponsible consumer. Consumer, producer, and business actors can behave ethically and in good faith to balance rights and obligations.

#### **c. Balance Principle**

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<sup>14</sup> Article 3 of Law Number 8 of 1999 on Customer Protection.

<sup>15</sup> Cik Basir, *Penyelesaian Sengketa Perbankan Syariah di Pengadilan Agama dan Mahkamah Syar'iyah* (Jakarta: Kencana Prenada Media Group, 2019), 104.

The balance principle means preserving equality between business actors' and consumers' rights and obligations. The principal mandates that customer protection legislation should be regulated and enforced in a beneficial way for consumers, producers or business actors, and the government.

**d. Safety and Security Principles**

The customer security and safety principle offer legal assurance that the customer or consumer will obtain the benefits and functions of a product. Vice versa, the product will not damage consumers' peace and safety.

**e. Legal Certainty Principle**

The legal certainty principle ensures certainty and provides legal protection to make business actors and consumers fully aware of the law, responsibilities, and privileges without imposing responsibility on one party; and to guarantee the state's existence in legal certainty for both parties of the transaction or legal partnership.<sup>16</sup>

**4. The Rights and Obligations of Sharia Banking Customer**

The term customer protection serves as a legal guarantee of protection of consumer interests.<sup>17</sup> It implies that interests are represented in the form of rights. Internationally, four fundamental customer rights are confidentiality, education, voting, and speaking.<sup>18</sup> Article 4 of the Customer Protection Law details that the rights of the customer are the following:

- 1) to purchase goods or services in comfort and security;
- 2) to choose goods and services and obtain them at the currency rate and under the pledged terms and conditions;
- 3) to accurate, precise, and truthful information about the condition of a product's or service's warranty;
- 4) to have their opinions and concerns about the goods or services utilized noticed;
- 5) to obtain protection advocacy and appropriate consumer protection dispute resolution efforts;
- 6) to customer education and counseling;
- 7) to be treated or served in an adequate, truthful, and non-discriminatory manner;
- 8) to pursue restoration or remuneration if the goods and services received do not conform to the agreement or do not meet expectations; and
- 9) all rights constrained by other mandates.

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<sup>16</sup> Article 2 of Law Number 8 of 1999 on Customer Protection.

<sup>17</sup> Shidarta, *Hukum Perlindungan Konsumen* (Jakarta: Grasindo, 2000), 11.

<sup>18</sup> Janus Sidabalok, 31.

Furthermore, Article 5 of the Customer Protection Law states that the obligations as follows.

- 1) to read or follow info guidelines and procedures for the use of goods or services;
- 2) to have great intent when making purchases of goods and services;
- 3) to use the agreed-upon rate of exchange to pay; and
- 4) to comply with all applicable attempts to overcome customer protection disputes properly.<sup>19</sup>

## **B. Spiritual Rights**

Linguistically, the term spiritual can be defined morphologically and etymologically. Morphologically, spirituality refers to understanding, offerings, supernatural dimensions different from physical dimensions, feelings or statements of the soul, something sacred, intellectual quality thinking, the development of thoughts and feelings, the presence of a sense of humor, a change in life, and associated with religious organizations. Etymologically, spiritual refers to something fundamental, meaningful, and capable of moving and leading a person's way of thinking and behaving.<sup>20</sup>

The combination of the meanings creates a broad characteristic of spirituality. Thus, spirituality is a human need for the mind of something higher, important, big, strong, able to move, better, holy, and appropriate for human nature. The term spirit refers to an individual's inner life, such as idealism, attitudes, thoughts, feelings, and individual expectations of the essence of the absolute God. Thus, the meaning of spirituality in this context also includes human's expressions of a daily relationship with the Supreme Absolute Essence, God.

Spirituality in a greater depth is categorized in various aspects. However, based on these aspects, there is a strong relationship between spirituality and religion. The following are the aspects of objective spirituality.

1. The ideological aspect consists of beliefs that serve as existential premises.
2. The ritualistic aspect is religion's implementation of rituals or worship.
3. The affective aspect of the experience is a part of the implementation of religious teachings, which leads to a sense of religiosity or faith (religious feeling).
4. The intellectual aspect is religious knowledge covering the level of spiritual knowledge among followers of a religion or the level of interest in studying theology.
5. The social aspect is also known as the consequential aspect. It is a social implementation of religious teachings that can explain the influence of spiritual

<sup>19</sup> Article 5 of Law Number 8 of 1999 on Customer Protection.

<sup>20</sup> Rof'ah Setyowati, "Perlindungan Hak Spiritual Dalam Penyelesaian Sengketa Perbankan Syariah: Praktek di Malaysia dan Indonesia," *Share: Jurnal Ekonomi dan Keuangan Islam* 5, no. 2 (2016): 124, <http://dx.doi.org/10.22373/share.v5i2.1235>.

teachings on individual attitudes such as work ethic, caring, community, brotherhood and kinship, and cooperation.

The first two aspects are religious cognitive aspects. The last two are behavioral. The others are religiously effective. The preceding meaning demonstrates that the spiritual aspect cannot be separated from religion. Thus, if it is related to the needs and interests of customers as consumers, spiritual rights can be defined based on beliefs, customer values, and religious teachings.

Essentially, spiritual rights are not limited to customers because spiritual rights are constitutionally guaranteed to all citizens. However, related to the legal protection for sharia banking customers, the spiritual rights in this study refers to customers as economic agents. The term spiritual rights were coined recently. It is one of the findings of a series of customer protection studies, particularly in Islamic banking and, more specifically, in dispute settlement.

The term 'spiritual rights' differs from other customer rights categories. It is essentially a crystallization of several concepts that already exist and live within society. Using a new term can be interpreted as an attempt to raise awareness about an important issue. Many people are still unaware of the significance and necessity of spiritual rights. The certainty of a product's permissibility and goodness based on sharia is necessary for Muslims. Thus, it is a concrete example of a spiritual right.

Most Muslims interpret the term *halal* materially, usually as physical consumption that is a basic need, specifically in food consumption.<sup>21</sup> A saying of the Prophet Muhammad also stresses the importance of keeping a distance from *haram* items.<sup>22</sup> Spirituality and religion are inextricably linked. For Muslims, life spirit is influenced more by Islamic religious beliefs. Spiritual issues are significant for people who have a solid religious spirit.

Religion confers significant spiritual rights because every religion has unique commands and prohibitions. Religious obligations are valid forever beyond region, space, or time. Accordingly, spiritual rights are universal and belong to everyone who practices his religion. The Customer Protection Law has recognized spiritual rights. The principles of benefits, justice, balance, customer safety, security, legal certainty, and legislation all contribute to customer protection as provided in Article 2.

Article 2 of the Customer Protection Law also states that customer protection is conducted as a collaborative effort based on the five relevant national development priorities. The adjustment principle is intended to provide a material or spiritual balance between the interests of consumers, economic actors, business actors, and

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<sup>21</sup> Quran, Chapter *Al Baqarah*, verse 168.

<sup>22</sup> Hadith narrated by Nu'man bin Basyir ra.



the government. The article's spiritual aspect is explicit. It is the foundation of protecting customers' interests and needs and sharia banking.

### **C. Dispute Settlement Methods and Procedures**

According to Amriani, a dispute is a conflict that occurs between the contract's parties because of the parties' defaults.<sup>23</sup> Rahmadi defines disputes as situations and conditions in which people experience factual disputes based on their perceptions. As a result, disagreements can be interpreted as divergences in perspectives, opinions, and interests. A difference of interests refers to situations in which one party is dissatisfied with the other party, and the other party expresses the dissatisfaction to a third party. A dispute occurs when a condition exhibits a difference of interest (conflict) and then turns into a difference of opinion.

In the legal context, particularly contract law, a dispute arises between parties because of a breach of the agreement stated in a contract, either in part or whole. In other words, there has been a default by the parties or one of the parties due to non-compliance with the obligations. In this case, everything the parties must do or fulfill is done or fulfilled, but there is a shortage or excess, resulting in one or both parties being harmed. Disputes between parties must be resolved quickly to avoid a protracted dispute conflict and to provide the parties with justice and legal certainty. In general, dispute settlement can be carried out in two ways: litigation (Judicial) or non-litigation. Essentially, dispute settlement can and is usually carried out in two ways or methods: dispute settlement through litigation institutions (general courts) and dispute settlement through non-litigation, known as Alternative Dispute Resolution (ADR).<sup>24</sup>

#### **1. Dispute Settlement by Litigation**

There is no specific definition of litigation in the book of laws and regulations. Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution states that the parties can settle civil disputes through an alternative settlement (APS–*Alternatif Penyelesaian Sengketa*) based on solid faith by deferring litigation settlement in the District Court.<sup>25</sup> Consequently, litigation settlement can be defined as resolving legal disputes in court in which each party will have the same, stable, and equal rights and obligations, whether pursuing legal action or answering a lawsuit.

#### **2. Alternative Dispute Settlement**

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<sup>23</sup> Nurnaningsih Amriani, *MEDIASI: Alternatif Penyelesaian Sengketa di Pengadilan* (Jakarta: Raja Grafindo Persada, 2012), 13.

<sup>24</sup> Rachmadi Usman, *Mediasi di Pengadilan: Dalam Teori dan Praktek* (Jakarta: Sinar Grafika, 2012), 8.

<sup>25</sup> Article 6 Paragraph 1 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.

Dispute settlement can take place through litigation or a non-litigation process. Litigation refers to dispute settlement through the courts, and non-litigation relates to dispute settlement out of court. It is often referred to as Alternative Dispute Settlement (ADR) in the United States or *Penyelesaian Sengketa Alternatif* (PSA) in Indonesia and often also referred to as *Alternatif Penyelesaian Sengketa* (APS). APS has a legal basis as outlined in the Law on ADR.

#### **D. The Concept of Protection and Spiritual Rights in the Law Number 21 of 2008 on Sharia Banking**

The helpful overview introduces the notion of spiritual rights protection in Chapter I, Article 1 of the Sharia Banking Law. The Law covers Islamic Banking as all about Islamic banks and sharia business units, which include institutions, business activities, and the practices and procedures of business activities.<sup>26</sup> A bank is a business entity that aims to collect funds from the general public in the form of deposits and distributes them to the general public for credit or other forms to improve the people's profitability and living standards, including the welfare of Indonesian citizens.

Sharia Banks are financial institutions that follow sharia rules in their operations. The two types are Sharia Commercial Banks and Sharia Rural Banks (*BPRS-Bank Perkreditan Rakyat Syariah*). Sharia principles are Islamic law applied to banking activities based on fatwas issued by organizations with sharia authorization.<sup>27</sup> A legal contract between a sharia bank and another party that describes each party's legal rights and responsibilities under sharia principles is known as an *Akad*. Sharia banking's business operations are founded on sharia law, economic democracy, and prudence.<sup>28</sup> According to Article 3, Islamic banking is to assist in implementing national development to achieve fairness, peace, and the equal sharing of the welfare of people. According to Article 4, (a) Islamic banks must collect and distribute public funds; (b) Islamic banks can perform social engagements in the form of *baitul mal* institutions, which also include getting payments from *zakat*, *infaq*, *waqf*, and *shadaqa*, or other social funds and delivering them to *zakat* management; and (c) Islamic banks can obtain and distribute social funds deduced from cash *waqf* to *waqf* managers (*nazhir*) under the will of the *waqf* giver (*wakif*).

#### **E. The Sharia Banking Law and Spiritual Rights**

Islamic banks are financial or banking entities that operate based on profit sharing rather than interest and are guided by the Quran and Hadiths. Islamic banks are defined as banks that carry out their business activities based on Sharia principles and are classified into two types of financing services, namely Sharia Commercial

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<sup>26</sup> Article 1 Number 1 of Law Number 21 of 2008 on Islamic Banking.

<sup>27</sup> Rof'ah Setyowati, 124.

<sup>28</sup> Article 2 Number 2 of Law Number 21 of 2008 on Islamic Banking.

Banks and Sharia Rural Banks (BPRS), based on economies of scale and sharia principles.<sup>29</sup> Islamic banking has the same purposes as conventional banking. It makes money by lending money, saving money, funding business, industry, and commerce, or engaging in other appropriate and agreed-upon activities. The difference is in the philosophy and principles guiding its implementation. Sharia banking is based on Islamic legal norms prohibiting elements of illicit goods trading; interest (*usury*), deliberate gambling and speculation (*maisir*), and obscurity and manipulation (*gharar*).<sup>30</sup>

According to Islamic law, every transaction, whether carried out by individuals or institutions in any field, including the economic field is bound by Islamic ideals. In other words, the act is bound by *halal* or *haram* provisions. Provisions of *halal-haram* are one of the areas of legal studies. Consequently, law, finance, and sharia have a close link. The application of Islamic sharia as a lawful source in some Muslim countries as well as sharia banking, sharia insurance, and sharia economics, is referred to as *fiqh*. Sharia principles are based on fairness, benefit, balance, and universality (*rahmatan lil'alam*). Islamic Banking was coined to describe how these ideals are mirrored in banking rules.

Islamic banking customers are generally divided into two groups: Muslims and non-Muslims. This is an intriguing phenomenon since the sharia-based economic system is also in demand and preferred by economic actors, businesses, and non-Muslim consumers.<sup>31</sup> It demonstrates indirectly that Islamic economics is universal, and Islam is a religion of *rahmatan Lil 'Alamin* (grace to the universe). In the context of this study, however, the discussed Islamic banking customers are only Muslims. It relates to the fundamental relationship between the goals of establishing a banking institution and Muslim customers, which is based on Islamic philosophy. It is significant because it will have ramifications for various issues, particularly on customer rights.

Sharia banking activities and sharia quality must be preserved. Therefore, every action must be based on sharia principles, including the source and investment of funds, the products offered, and the contract manufacture, implementation, and settlement. In addition, access to justice in a dispute must also be considered. Every Muslim must pay attention to the Sharia quality of an Islamic bank in daily transaction activities.

The relationship between Muslims and Islam, referring to the Muslim's responsibility to Islamic law, includes three things: (1) studying and living Islamic knowledge, (2) reshaping an excellent society, and (3) implementing Islamic law.<sup>32</sup>

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<sup>29</sup> Law Number 21 of 2008 on Islamic Banking.

<sup>30</sup> Abdul Aziz (et.al.), *Bank Syariah: Transaksi Murabahah Perbankan Syariah Terbelunggu Isu Batal Demi Hukum* (Jakarta: IF & Rekan, 2020), 112.

<sup>31</sup> Sutan Remy Sjahdaeni, "Perbankan Syariah Suatu Alternatif Kebutuhan Pembiayaan Masyarakat," *Jurnal Hukum Bisnis* 20, no. 2 (2002): 8.

<sup>32</sup> Nesrine Badawi, *Introduction to Islamic Law*, (Cambridge: Harvard University, 2009), 2.

Muslim customers' needs and interests are to practice their beliefs because given that the essential thing in terms of obligations in Islam is the practice of its values as worship, the virtue of practicing Islamic law is the substance. According to the description, the most critical aspect of Muslim relations with Islamic banking is that Islamic values related to banking activities are recognized and can be practiced by both banking institutions and consumers.

The elaboration and implementation of spiritual rights can be found in Law Number 7 of 1989 on Religious Courts. It explains that the Religious Courts in the Law are the judiciary for Muslims.<sup>33</sup> The Religious Courts consist of Religious Courts and Religious High Courts. Furthermore, Chapter II Article 2 of the Law Number 3 of 2006 on Amendment to Law Number 7 of 1989 on Religious Court states that the Religious Courts are one of the judicial power's executors for Muslims seeking justice in certain civil cases referred by the law.

#### **F. Concept of Spiritual Rights Protection in Legal Relationships between Customers and Islamic Banking**

Islamic law principles are quite factual in the concept of Islamic banking in Indonesia, as in Law Number 21 of 2008 on Sharia Banking.<sup>34</sup> Table 1 contains a list of articles specifically related to the topic.

**Table 1.** Sharia Principles in the Sharia Banking Law

Clause	Substance
Article 1 Paragraph 7	Sharia Bank is a bank that operates based on Islamic principles. The two types are Sharia Commercial Banks (BUS – <i>Bank Usaha Syariah</i> ) and Sharia Rural Banks (BPRS – <i>Bank Perkreditan Rakyat Syariah</i> ).
Article 1 Paragraph 12	Sharia is the Islamic law principle that governs banking activities and is based on fatwas issued by institutions with authority to issue fatwas in the field of Sharia.
Article 1 Paragraph 13	<i>Akad</i> is a formal agreement between a Sharia/Islamic bank or the government and another party that spells out each party's rights and responsibilities under the Sharia Principles.
Article 1 Paragraph 19	According to the Sharia principles, the customer who receives the facility is the customer who receives the fund facility or its equivalent.
Section 2	Sharia banking is based on Islamic principles, economic democracy, and prudence principles.

Articles in the Sharia Banking Law illustrate that all Islamic banks in Indonesia must adhere to the sharia principles with dedication. It is intended to be a spiritual right

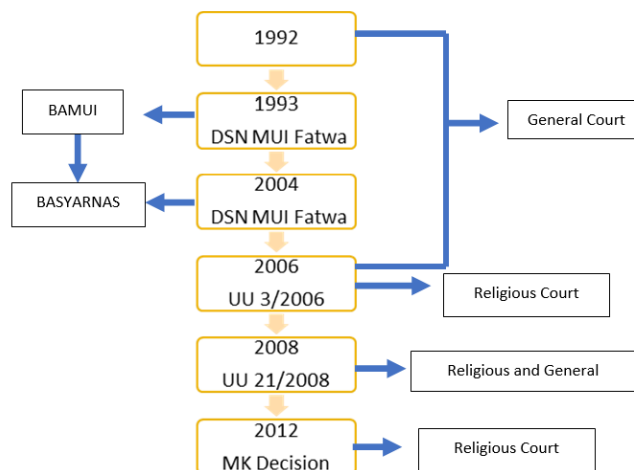
<sup>33</sup> Article 1 Number 1 of Law Number 7 of 1989 on Religious Courts.

<sup>34</sup> Law Number 21 of 2008 on Sharia Banking.

for sharia banking consumers, in conjunction with the sharia protection in sharia banking activities. However, the Sharia Banking Law contains strict regulations for customers only in Article 39. It states that Islamic banks and sharia business units must inform the customers about the potential risk of loss associated with transactions.<sup>35</sup> The bank's obligation to provide this explanation fulfills the customer's spiritual right to knowledge.

According to Islamic law, every transaction whether carried out by individuals or institutions in any field, including the economic field is bound by Islamic ideals. In other words, the act is bound by *halal* or *haram* provisions. Provisions of *halal-haram* are one of the areas of legal studies.<sup>36</sup> Consequently, law, finance, society, and sharia are closely linked. The application of Islamic Sharia as a lawful source in some Muslim countries, as well as sharia banking, sharia insurance, and sharia economics, is referred to as *fiqh*. Sharia principles are based on fairness, benefit, balance, and universality (*rahmatan lil'alam*). Islamic Banking was coined to describe how these ideals are reflected in banking rules.<sup>37</sup> Indonesia undergoes developments and changes in the protection of spiritual rights through judicial institutions. Figure 2 below exemplifies this point.

**Figure 2.** Islamic Banking Dispute Settlement



<sup>35</sup> Nurul Ichsan, "Penyelesaian Sengketa Perbankan Syariah di Indonesia," *Ahkam: Jurnal Ilmu Syariah* 15, no. 2 (2015): 231, <https://dx.doi.org/10.15408/ajis.v15i2.2867>.

<sup>36</sup> Muhyidin Muhyidin, "Islamic Banking Law Perspective in the Concept of National Law", *Gema Keadilan* 7, no. 2 (2020): 69, <https://dx.doi.org/10.14710/gk.7.2.69-83>.

<sup>37</sup> Sutan Remy Sjahdaeni, *Perbankan Syariah Produk-Produk dan Aspek-Aspek Hukumnya* (Jakarta: Prenadamedia Group, 2015), 8.

Based on the figure, the judiciary that handles sharia banking disputes has changed several times. Since there was no specific arrangement, the conflict was initially resolved in a general court setting. Then, dispute settlement was submitted to the Religious Courts by adding the field of competence. Adding the Religious Court's competence to disputes over Sharia economic institutions in 2006 has far-reaching legal ramifications. It is due to the Religious Court's previous reputation for only resolving disputes involving Islamic law in family matters. However, due to Law Number 21 of 2008 on Islamic Banking, there was a dualism between religious and general courts.<sup>38</sup>

The judiciary's competence has been very clearly regulated in Law Number 14 of 1970, Law Number 35 of 1999, Law Number 4 of 2004, and Law Number 48 of 2009. Each court environment has a specific area of jurisdiction based on law. Consequently, if the jurisdictional limit is exceeded, the case filed will be legally faulty, and the court that receives it will declare itself unable to adjudicate, leading to legal ambiguity. The preamble of Law Number 21 of 2008 about Islamic Banking demonstrates that Islamic banking is distinct from conventional banking. It has ramifications for settling conflicts in the context of this study. Islamic banking's originality originates principally from the Islamic concept, which served as the fundamental framework for its operation. Therefore, Islamic law principles must be implemented. The Law on Sharia Banking, which is created particularly for the requirements and interests of Indonesian Islamic banking, reflects it.<sup>39</sup>

In addition, the Panel of Judges in the trial of sharia banking disputes should be committed to sharia banking legislation and the settlement of sharia banking with its various consequences. To be precise, if the Panel of Judges determines during the trial that the legislation is contrary to Sharia principles, excavation and discovery of the law (*rechtvinding*) are required. A part of the judge's obligation is to resolve a situation lacking legal reference sources. It protects spiritual rights in settlement of sharia banking disputes. The obligation to follow such sharia principles has been stated in a particular provision. A particular dispute settlement clause expresses the obligation to follow such Sharia principles.

**Table 2.** Spiritual Rights Protection in Sharia Banking Dispute Settlement<sup>40</sup>

Clause	Substance
Dispute Settlement, Chapter IX, Article 55	In the dispute settlement process, strict adherence to sharia principles must be maintained: (1) sharia banking disputes are resolved by the Religious Courts; (2) if the parties have agreed on a dispute settlement other than that referred to in Paragraph

<sup>38</sup> Law Number 21 of 2008 on Islamic Banking.

<sup>39</sup> Law Number 21 of 2008 on Islamic Banking.

<sup>40</sup> Law Number 21 of 2008 on Islamic Banking.

	1, the dispute settlement is carried out in accordance with the contents of the <i>Akad</i> ; and (3) the dispute settlement referred to in paragraph 2 may not conflict with the Sharia Principles.
Article 55	<p>Explanation</p> <p>The first paragraph is quite clear.</p> <p>Verse 2: Dispute settlement is carried out under the contents of the <i>Akad</i> based on (1) deliberation; (2) banking mediation; (3) through National Sharia Arbitration Board or other arbitration institutions; and (4) through General Courts.</p> <p>The third paragraph is self-explanatory.</p>

The article causes a dualism of absolute competence and a robust framework for protecting spiritual rights in settlement of sharia banking disputes. This study found that there are resolutions of sharia banking disputes through the District Court during absolute competence dualism. Several issues, among others, do not fulfill the spiritual rights referred to in Article 55, Paragraph 3. First, the judges lacked a basic understanding of the sharia banking system. Second, in some cases, non-Muslim judges do not understand the institutional and operational philosophy of Islamic banking. Third, the Panel of Judges does not use material legal references under Islamic sharia principles in their legal considerations. The cases do not support fulfilling customer rights (spiritual rights) based on Islamic banking's philosophical values. In addition, some of these issues resulted in decisions that were not under sharia principles.

### G. Conflict and Dispute Cases of Islamic Banking

Nowadays, conflicts or disputes between Islamic banking and their customers or consumers are rising. Some cases can be appropriately solved, but others are not because the reference for dispute settlement on a win-win basis is still not widely known.

Therefore, the mediator judges at the Religious Courts and the District Courts must increase their knowledge and reference principles to resolve conflicts and disputes. The substance of cases may vary related to economic, business, individual, social values, religion, and culture. Cases may arise in this situation, starting with those involving banks and private individuals, between banks, or even banks and the business sector.

As an illustration in the context above, there is a case with a fundamental contractual issue, namely a dispute (dispute) involving a citizen (Bandung), Sugiharto Widjaja (SW), aged 50, and a well-known Sharia Private Bank X (BSS X). SW's contract loan is used to purchase a plot of land and buildings. SW was involved in this case due to installment and repayment arrears. SW sparked the controversy in 2014 when it paid IDR20 billion for a plot of land and buildings.

Meanwhile, BSS X paid 70 percent of the total price, or IDR13 billion, in cash. SW is responsible for the remaining Rp7 billion. SW was required to repay the loan in monthly installments of Rp136 million. A total of IDR10 billion has been paid in installments. However, the installment payment has been postponed for some time. In addition, BSS X filed a lawsuit in the Bandung District Court (PN-*Pengadilan Negeri*). BSS X sold the SW collateral land following a *verstek* litigation decision by the Bandung City District Court Number 12/Pdt/Ex/2018/PN Bdg. However, SW, through his lawyer, petitioned the Bandung City District Court to cancel the BSS X transaction due to incompetence, filing a civil lawsuit under the number 329/Pdt.Plw/2018/Pn Bdg.

Based on the case, some issues can be considered and criticized. These issues harm the district court's ability to resolve financial problems based on sharia law. It presented significant challenges for the defendant, especially in the conflict between the lawsuit and the report. The bank was sued through the District Court, and the litigation cannot be dismissed due to the court's overall control over the economy despite conflicting reports or claims between those addressed to the District Court or the Religious Courts. It is impossible to prevent commercial and civil disagreements and other customer issues in Islamic banking. The sharia banking disagreement cases are just a few additional sharia consumer disputes presented to the district court.

In the other case, the primary issue started with unpaid obligations. The plaintiff did not pay PT Bank Mega Syariah (PT BMS) was unpaid in June and July 2013 because the Plaintiff's motorbike sales were declining. The plaintiff's failure to make the payments in June and July was not due to deliberate action but rather to the absence of a motorcycle sales market (outside of their will). The dispute over non-performing financing at PT BMS was resolved in the District Court of Medan. The panel of judges acquitted the Plaintiff for the payment of a *murabahah* profit margin of Rp197.099.567.- because the profit margin did not arise. The defendant could not take over a banking institution implementing Sharia principles. Plaintiff was still obliged to pay the principal debt to the defendant for Rp365.000.000.-.

Problems that arise later are related to the mechanism of settlement for non-performing financing in Islamic banking institutions, the procedures of settlement of non-performing funding based on sharia principles, and the competence of the judiciary that is authorized to examine and decide cases in sharia economic disputes. Another problem is Article 55 of the Sharia Banking Law, which provides competence to adjudicate litigation (legal standing) to both Religious and General Courts. In the revision of the new Law on Religious Courts, sharia economic dispute is the absolute domain of the religious courts.

It is initially possible to settle non-performing financing at Islamic banks under sharia rules through discussion and consent (a win-win solution). The efforts made by Islamic banks to handle non-performing funding, specifically through financing restructuring policies, are the physical manifestation of deliberateness in



settlement of non-performing financing. When the attempts fall short, the bank has several options to settle the non-performing debt, including Alternative Dispute Resolution (ADR), which involves negotiation and mediation by an Independent Mediator or a Mediator Judge at the Religious Courts.

The main findings and legal standards from the Medan Religious Court Decision Number 142/Pdt.G/2015/PA.Mdn, the judge considered various legal aspects in implementing *murabahah* financing. One is the *murabahah* financing provisions regulated in the Circular of Bank Indonesia Number 10/14/DPbs/dated March 17, 2008. It achieved positive legal justice and fulfilled the concept of justice and legality. In a *murabahah* transaction, the goods, as the subject of the sale and purchase, must be apparent in terms of amount, quality, purchase price, etc. Thus, the various party's arguments, which are not in line with sharia, should be ignored. Based on the violation of the customer's spiritual rights in dispute settlement, a request to the Sharia Banking Law has been submitted to the Constitutional Court. The Constitutional Court issued Number 93/PUU-X/2012 on August 29, 2013, to respond to the request for judicial review of Law Number 21 of 2008 on Sharia Banking, particularly on Article 55, Paragraphs 2 and 3. Essentially, dispute resolution through the general judiciary (Paragraph 2 Article 55) has the potential to be inconsistent with Paragraph 3. It has the potential to violate the customer's spiritual rights. Furthermore, the results of the review contained in the Constitutional Court's Decision, restore the competence of sharia banking dispute resolution to the Religious Courts. It shows that the spiritual rights of every Indonesian (customer) are recognized and protected by the Constitution of the Republic of Indonesia.

#### **H. Implementation of Spiritual Rights Protection in Legal Relationships between Customers and Sharia Banking**

Muslim and non-Muslim customers make up most Islamic banking customers. This is an intriguing phenomenon in which a sharia-based economic system is in demand by both businesspeople and non-Muslim consumers. It indirectly demonstrates that Islamic economics is a universal concept and Islam is a religion of grace to the universe (*rahmatan lil 'alamin*).<sup>41</sup>

In the context of this study, however, the discussed Islamic banking customers are only Muslims. It relates to the fundamental relationship between the goals of establishing a banking institution and Muslim customers, which is based on Islamic philosophy. It is significant because it will impact various issues, particularly customer rights.

Sharia banking activities and sharia quality must be preserved. Therefore, every action must be based on sharia principles, including the source and investment of

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<sup>41</sup> Ruzian Markom, Noor Inayah Yaakub, and Wan Hafizuddin, "The Role of Shariah Advisory Council (SAC) in Islamic Finance Dispute Resolution: Malaysian Experience" (Prosiding Kebangsaan Dispute Resolution – Fakulti Undang-Undang UKM, 2011).

funds, the products offered, and the contract manufacture, implementation, and settlement. In addition, access to justice in a dispute must also be considered. Every Muslim must pay attention to the sharia quality of an Islamic bank in daily transaction activities.

Based on the description, Islamic banking is one of the sharia-based business institutions. The dispute resolution process in Islamic banking must be based on sharia principles. It is in line with the philosophy of Islamic banking. There are some essential requirements to fulfill. Firstly, judges/arbitrators/mediators, who handle sharia banking disputes, must understand Islamic economic law, especially sharia banking. Secondly, in providing legal considerations, legislation used by judges must not conflict with the sharia principles.

## I. Conclusion

Spiritual rights are part of Islamic banking consumers' rights. They are essentially a reflection of the balance principle used in Customer Protection Law. The elements of spiritual rights must be fulfilled in the context of sharia banking dispute settlement. Firstly, cases should be handled by judges, arbitrators, or mediators with adequate competence in Sharia Economic Law. Secondly, the references used for the trial process should not conflict with Islamic principles.

The settlement of sharia banking disputes through the judiciary differs from conventional banking. Indonesia has general and specific laws on the settlement of sharia banking disputes to comply with Islamic principles. However, they have not been adequately implemented. The protection of spiritual rights has not been adequate since there are still dispute settlements in general courts. The practice also shows that the awareness of stakeholders in terms of 'spiritual rights' is still low. The Supreme Court as the supreme law enforcement authority overseeing both general and religious courts, must provide supervision and review several related policies to be aligned with the need for fulfillment of spiritual rights for dispute settlement in all types of sharia economic institutions.

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