

One Contract, Two Verdicts: A Comparative Analysis of *Mudharabah* Default Disputes in the Yogyakarta Religious Court

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Abstract

This research is motivated by differences in judges' decisions in disputes over the default of a *Mudharabah* contract in the religious court environment, even though the objects of the dispute and the legal bases used are similar. This study aims to analyze inconsistencies in judges' legal reasoning in assessing the elements of default and their implications for the consistency of the application of Sharia economic law in Indonesia. This research uses a qualitative method with a juridical-normative approach, drawing on two decisions of the Yogyakarta Religious Court, Number 392/Pdt.G/2021/PA. YK and Number 370/Pdt.G/2020/PA. YK by analyzing positive legal norms, DSN-MUI fatwas, and the principles of muamalah fiqh. The results of the study show that the judge in the first case emphasizes the legal-formal approach, oriented toward legal certainty, while the judge in the second case adopts a substantive-normative approach that considers the fairness and good faith of the parties. These paradigm differences indicate a disharmony in the interpretation of sharia law and in the proof of *Mudharabah* contracts. This disharmony has implications for the weakening of legal certainty in the settlement of Sharia economic disputes. Theoretically, these findings confirm Gustav Radbruch's view of the tension between the value of legal certainty (*rechtssicherheit*) and substantive justice (*gerechtigkeits*) in judicial practice. Therefore, it is necessary to prepare guidelines for the interpretation of sharia economic law that integrates the principles of positive law, fiqh muamalah, and maqashid al-sharia in encouraging real business sector financing and supporting development of the sharia economy.

Penelitian ini dimotivasi oleh perbedaan putusan hakim dalam sengketa wanprestasi kontrak Mudharabah di lingkungan pengadilan agama, meskipun objek sengketa dan dasar

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hukum yang digunakan serupa. Studi ini bertujuan untuk menganalisis inkonsistensi dalam penalaran hukum hakim dalam menilai unsur-unsur wanprestasi dan implikasinya terhadap konsistensi penerapan hukum ekonomi Syariah di Indonesia. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis-normatif, berdasarkan dua putusan Pengadilan Agama Yogyakarta Nomor 392/Pdt.G/2021/PA.YK dan putusan Nomor 370/Pdt.G/2020/PA. YK dengan menganalisis norma-norma hukum positif, fatwa DSN-MUI, dan prinsip-prinsip fiqh muamalah. Hasil penelitian menunjukkan bahwa hakim pada kasus pertama menekankan pendekatan formal-hukum, berorientasi pada kepastian hukum, sedangkan hakim pada kasus kedua mengadopsi pendekatan substantif-normatif yang mempertimbangkan keadilan dan itikad baik para pihak. Perbedaan paradigma ini menunjukkan ketidakharmonisan dalam interpretasi hukum syariah dan dalam pembuktian kontrak Mudharabah. Ketidakharmonisan ini memiliki implikasi terhadap melemahnya kepastian hukum dalam penyelesaian sengketa ekonomi syariah. Secara teoritis, temuan ini menegaskan pandangan Gustav Radbruch tentang ketegangan antara nilai kepastian hukum (rechtsicherheit) dan keadilan substantif (gerechtigkei) dalam praktik peradilan. Oleh karena itu, perlu disiapkan pedoman untuk interpretasi hukum ekonomi syariah yang mengintegrasikan prinsip-prinsip hukum positif, fiqh muamalah, dan maqashid al-sharia dalam mendorong pembiayaan sektor bisnis riil dan mendukung pengembangan ekonomi syariah.

Keywords: Inconsistency of Verdicts, Default Dispute; Mudharabah Contracts; Sharia Economic Law; Religious Justice

Introduction

Sharia economic law is one of the important pillars of Indonesia's national legal system and continues to undergo transformation in both institutions and practices. As part of the living Islamic law, it functions not only as a moral guideline but also as a positive legal system that organizes the community's economic behavior in harmony with the principles of justice and benefit.¹ The presence of Islamic economic law reflects modern society's need for an ethical, transparent, and fair financial system, and serves as an alternative to the conventional system, which is often criticized for its usury practices and unequal distribution of profits.²

Over the past two decades, the sharia economy in Indonesia has shown very rapid development. As the country with the world's largest Muslim population,

¹ Islam Kamal, "Islamic Finance and Welfare Economics: Normative Islamic Welfare State versus Positive Islamic Finance Mechanisms," *Qualitative Research in Financial Markets*, 2025, <https://doi.org/10.1108/QRFM-03-2025-0092>.

² Muhammad Iqbal Anjum, "An Islamic Critique of Rival Economic Systems' Theories of Interest," *International Journal of Ethics and Systems* 38, no. 4 (2022): 598–620., <https://doi.org/10.1108/IJOES-08-2021-0155>.

Indonesia has a great opportunity to become a global Islamic financial center.³ Based on official data from the Financial Services Authority (OJK), total Islamic banking assets in December 2024 reached IDR 980.30 trillion, up 9.88% year-on-year, with the market share increasing to 7.72% from 7.44% in the previous year. The National Committee for Sharia Economics and Finance (KNEKS) on May 15, 2025, also reported that the total assets of the national Islamic finance industry, including banking, capital markets, and the non-bank sector, had exceeded IDR 9,927 trillion, or around 45% of Indonesia's Gross Domestic Product (GDP).⁴ The data confirms that Islamic finance has now become an important element in the national economic structure.⁵

This growth not only affects the economy but also entails increasingly complex legal consequences. Every transaction in the Islamic financial system must comply with the basic principles of Islam, such as the prohibition of *riba*, *gharar*, and *Maysir*, and ensure a fair mechanism for the sharing of profits and risks.⁶ In the practice of sharia contracts, including *Mudharabah*, *musharakah*, and *murabahah*, disputes often arise from differences in interpretation, particularly regarding capital transparency, profit-sharing ratios, and the responsibility of negligent parties.⁷ This condition requires the judge to assess not only the formal aspects of the agreement but also to interpret its substance according to the principles of *fiqh muamalah*.⁸

³ Helyatul Millah, Saniatun Najiyah, and Kartika Novitasari, "Strategi Pengembangan Ekonomi Syariah Di Indonesia Menjadi Pusat Ekonomi Syariah Dunia," *Journal of Accounting, Management, Economics, and Business (ANALYSIS)* 3, no. 1 (2025): 28–37, <https://doi.org/10.56855/analysis.v3i1.1263>.

⁴ Ahmad Dahlan and Muhammad Wildan, "Analisis Ekonomi Politik Terhadap Kebijakan Pemerintahan Jokowi Pada Sektor Kawasan Industri Halal (KIH) Dan Perbankan Syariah," *El-Jizya : Jurnal Ekonomi Islam* 10, no. 2 (2022): 105–22, <https://doi.org/10.24090/ej.v10i2.6165>.

⁵ Nasir Ababulgu Abasimel, "Islamic Banking and Economics: Concepts and Instruments, Features, Advantages, Differences from Conventional Banks, and Contributions to Economic Growth," *Journal of the Knowledge Economy* 14 (2022): 1923–1950, <https://doi.org/https://doi.org/10.1007/s13132-022-00940-z>.

⁶ Alisyia Afifah and Maulidina Putri Abdillah, "Prinsip Dasar Hukum Ekonomi Syariah: Antara Keadilan Dan Profitabilitas," *Jurnal Multidisiplin Ilmu Akademik* 2, no. 2 (2025): 205–16, <https://doi.org/https://doi.org/10.61722/jmia.v2i2.4282>.

⁷ Ahmad Asif Sardari and Asfar Rinaldy, "Perbandingan Konseptual Dan Praktis Antara Akad Musyarakah Dan Mudharabah Dalam Pembiayaan Syariah: Telaah Risiko Dan Nilai Keadilan," *Journal of Economics and Islamic Economics* 5, no. 1 (2025): 75–95, <https://doi.org/https://doi.org/10.30984/maqrizi.v5i1.1506>.

⁸ Ihsan Helmi Lubis, "The Pillars And Conditions Of A Contract In Muamalat Transactions," *Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2023): 15–35, <https://doi.org/https://doi.org/10.32332/muamalah.v2i1.6983>.

The strategic role of the Religious Court has become increasingly important since the issuance of Law No. 3 of 2006, which expanded its authority to adjudicate sharia economic cases, including sharia financing, banking, and investment disputes.⁹ Previously, the authority of religious courts was limited to family affairs such as marriage, inheritance, grants, and waqf. Now, judges in the religious justice environment are required to combine national positive legal norms with Islamic legal values and to make the DSN-MUI fatwa the primary reference for assessing the validity and violations of Sharia contracts.¹⁰ However, in practice, there are inconsistencies in the judge's decision, especially in the dispute of default of the *Mudharabah* contract. This can be seen from two decisions of the Yogyakarta Religious Court, namely Number 392/Pdt.G/2021/PA. YK¹¹ and Number 370/Pdt.G/2020/PA. YK,¹² which has a similar dispute object but produces a different verdict. Both cases involve customers (shahib al-maal) and cooperatives (mudharib) in disputes over profit-sharing-based financing. However, decision No. 392/2021 granted most of the lawsuits because the judge considered evidence of summons and a valid deed of agreement, whereas decision No. 370/2020 only partially granted the claim and rejected part of it because not all of the evidence supported the argument of default.¹³ This difference shows that judges do not yet have uniform standards in assessing evidence and interpreting negligence in the *Mudharabah* contract. These inconsistencies not only show variations in the application of Sharia civil procedure law but also illustrate the different approaches of judges to the fatwa DSN-MUI No. 07/DSN-MUI/IV/2000, which affirms that *Mudharabah* losses are borne by shahib al-maal unless there is negligence, intentionality, or breach of contract by the mudharib.¹⁴

A number of previous studies have also highlighted similar issues. Hasibuan & Harahap examined the default decision in a *Mudharabah* contract at the South

⁹ Pemeriksa Keuangan Republik, "Undang-Undang Republik Indonesia Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama," Undang-Undang Republik Indonesia, 2006.

¹⁰ Sulastrri Daulay, Faisar Ananda Arfa, and Ibnu Radwan Siddik Turnip, "Transformasi Hukum Keluarga Islam Melalui Putusan Pengadilan Agama," *Fatih: Journal of Contemporary Research* 2, no. 1 (2025): 577–86, <https://doi.org/https://doi.org/10.61253/ff1g0290>.

¹¹ Mahkamah Agung, "Hal 1 Dari 25 Hal Put. No 392/Pdt.G/2021/PA.YK," no. 5 (2021): 1–25.

¹² Mahkamah Agung, *Hal 1 Dari 31 Hal Put. No 370/Pdt.G/2020/PA.YK*, 2020.

¹³ Agung.

¹⁴ Mahkamah Agung, "Fatwa DSN No 07/DSN-MUI/IV/2000 Tahun 2000," *Peraturan & Perundang-Undangan*, 2000.

Jakarta Religious Court and found a discrepancy between the judge's considerations and the principles of sharia economic law in the imposition of a penalty.¹⁵ Habibullah reviewed the dispute settlement of *Mudharabah* contracts in PA Yogyakarta (No. 193/Pdt.G/2021/PA. YK), focusing on the validity of the contract and the strength of the evidence as the basis for the decision.¹⁶ Meanwhile, Saraswati researched the determination of compensation in *Mudharabah* disputes in the Bantul PA and compared it with the concept of compensation in Islamic law.¹⁷ However, these studies generally discuss only a single decision and have not examined inconsistencies in judges' decisions in cases with the same object in dispute but different outcomes, especially regarding proof and the interpretation of Sharia contracts.

The novelty of this study lies in its in-depth analytical framework for comparing evidence and interpreting sharia contracts in the context of religious court judges' decisions in disputes over *Mudharabah* contract defaults. In addition, this study confirms the analysis of the inconsistency in judges' decisions regarding the settlement of *Mudharabah* contract disputes, where the two cases both involve customers (shahib al-maal) and cooperatives (mudharib) in profit-sharing-based financing disputes, yet lead to different decisions. Therefore, the theoretical framework for analyzing the problem draws on Gustav Radbruch's theory of legal certainty as an analytical tool for solving it.

This phenomenon underscores the importance of in-depth research into judges' legal considerations in deciding Sharia economic cases. Inconsistent decisions can create legal uncertainty and undermine public trust in the Sharia justice system. By comparing the two decisions, this study aims to understand the extent to which the evidence and interpretation of the contract affect the verdict, as well as how different judges' views can shape the enforcement of Sharia economic law in Indonesia. This study is expected to contribute to efforts to harmonize the practice of sharia economic justice in Indonesia. The consistency of the verdicts will strengthen the legitimacy of the Religious Court as the main pillar of sharia-based economic dispute resolution and provide legal

¹⁵ Fitri Hidayanti Hasibuan and Mhd. Yadi Harahap, "Wanprestasi Akad Pembiayaan Mudharabah (Analisis Putusan Hakim Pengadilan Agama)," *Jurnal Dunia Pendidikan* 5, no. 2 (2024): 482–93, <https://doi.org/https://doi.org/10.55081/jurdip.v5i2.3127>.

¹⁶ Habibullah, "Penyelesaian Sengketa Akad Mudharabah Melalui Pengadilan Agama Yogyakarta (Studi Kasus Putusan Nomor 193/Pdt. g/2021/Pa. Yk)," *Mu'amalat: Jurnal Kajian Hukum Ekonomi Syariah* 15, no. 2 (2023): 129–44, <https://doi.org/10.20414/mu.v15i2.8658>.

¹⁷ Dewi Nurlita Saraswati, "Kemitraan Peternak Ayam Ras Petelur Di Kec. Pajangan, Kab. Bantul Perspektif Syirkah Dalam Fikih Muamalah" (Universitas Islam Indonesia, 2025).

certainty for the community in carrying out economic activities in accordance with Islamic principles.

Method

This study uses a qualitative method with a normative juridical approach reviewed from the perspective of Sharia economic law.¹⁸ This method was chosen because the research focuses on analyzing legal norms and the principles of fiqh muamalah that judges apply when deciding Sharia economic cases, especially disputes arising from the default of *Mudharabah* contracts. A normative juridical approach is used to examine relevant laws and regulations, such as Law No. 3 of 2006 concerning Religious Courts.¹⁹ Law No. 21 of 2008 concerning Sharia Banking,²⁰ and DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000 concerning *Mudharabah* Financing.²¹

The case approach is applied through an analysis of two decisions of the Yogyakarta Religious Court, namely Number 392/Pdt.G/2021/PA. YK (case 1) and Number 370/Pdt.G/2020/PA. YK (case 2), which has a similar object of dispute and type of contract, but produces a different verdict. A comparative analysis was conducted to identify differences in legal considerations and judges' assessments of evidence, and to assess their conformity with the principles of justice and the fatwa of DSN-MUI. The legal materials used include primary sources (court decisions, laws, and regulations), secondary sources (literature and scientific journals on Sharia economics and Islamic civil law), and tertiary sources (legal dictionaries and other supporting references). All materials are analyzed in a descriptive-analytical manner: they are first described, then compared to identify the forms of juridical and normative inconsistencies that arise in the practice of Sharia economic justice.

An in-depth analysis was conducted of the aspects of proof, the application of sharia norms, and the judge's legal considerations to assess the consistency of applying the principle of fiqh muamalah in the practice of sharia economic justice. This approach is also intended to examine how judges exercise their authority in making legal discoveries (*rechtsvinding*) and whether the legal

¹⁸ Nur Hidayah, *Metodologi Penelitian Ekonomi Syariah: Pendekatan Kualitatif* (Depok: Rajawali Pers, 2023).

¹⁹ Republik, "Undang-Undang Republik Indonesia Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama."

²⁰ Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 21 Tahun 2008," *Badan Pemeriksa Keuangan Republik Indonesia* 7, no. 5 (2008): 3–7.

²¹ Agung, "Fatwa DSN No 07/DSN-MUI/IV/2000 Tahun 2000."

considerations they apply align with the principles of justice, utility, and legal certainty as articulated by Gustav Radbruch.

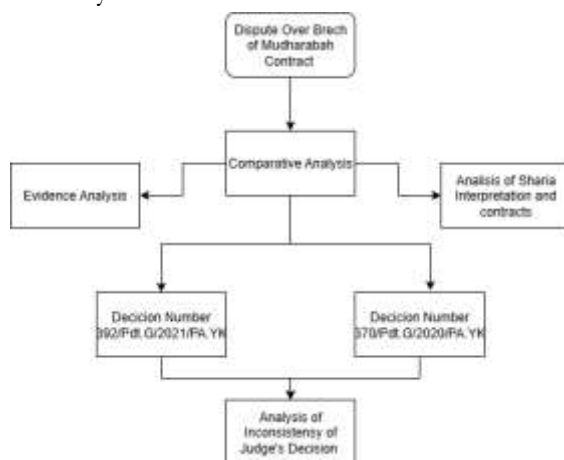


Figure 1.
Flow Chart Analysis of *Mudharabah* Contract Dispute Decisions

The research is expected to objectively describe differences in judges' approaches and provide a comprehensive understanding of the sources of inconsistencies in decisions on *Mudharabah* contract disputes.

Result and Discussion

The results of this study focus on the analysis of the Religious Court's decision on default disputes under the *Mudharabah* contract, with the aim of understanding the extent to which the evidence and interpretation of the contract affect the judge's decision. This study was carried out using a normative juridical approach, examining two decisions involving the same object and contract type but yielding different outcomes. These differences reveal a dynamic in how judges assess evidence and interpret the legal relationship between shahib al-maal (capital owner) and mudharib (capital manager).

Summary of Case 1 (Decision Number 392/Pdt.G/2021/PAYK)

This case involves a default dispute in a *Mudharabah* contract filed by Fahmy Akbar Idries (plaintiff/shahib al-maal) against the Sumber Makmur Street Vendor Cooperative (Defendant I) and two insurers (Defendants II and III). The dispute arose from a profit-sharing financing agreement worth Rp350,000,000, as stated in a notarized Deed of *Mudharabah* Financing Agreement No. 03 dated January 10, 2019, with a 60:40 profit ratio (manager :

capital owner). Despite formal summonses, the defendant failed to deposit profit shares and return the principal as promised.

The plaintiff claimed default and demanded payment of remaining capital, profits, and compensation for losses. The defendant argued that the business failure was caused by unavoidable external factors and that the relationship was a partnership, not a creditor-debtor relationship. During the trial, the plaintiff submitted five pieces of evidence: (1) the *Mudharabah* deed, (2) an addendum, (3) three written summonses, (4) proof of fund transfer, and (5) financial statements showing discrepancies in profit sharing. The panel found the contract valid under both Islamic and positive law, meeting the requirements of consent, object clarity, and profit ratio. The judge also found the defendant negligent (*taqsir*) for failing to manage capital as agreed and failing to provide required periodic reports.

The panel referred to Articles 1320, 1338, and 1820 of the Civil Code, Supreme Court Regulation No. 2/2008 on KHES, and DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000. Under Sharia law, the panel emphasized that a *mudharib* must maintain trust, avoid negligence, and bear responsibility for losses arising from breach of contract. The panel granted most of the plaintiff's claims, declared the defendants in default, and held them jointly and severally liable to pay the remaining principal and profits.

From a legal theory perspective, this decision reflects a textual-formalistic approach, where written and authentic evidence suffices to prove default without assessing business context. While this maintains legal certainty, it may overlook substantive justice and the risk balance in Sharia contracts. The DSN-MUI fatwa was applied but without full contextual interpretation—failing to distinguish *force majeure* from genuine negligence.

Table 1.
Case Relationships

Aspects	Description
Legal Facts and Evidence	This case concerns a default dispute under a <i>Mudharabah</i> contract between the plaintiff (<i>shahib al-maal</i>) and the defendant (<i>mudharib</i>) involving business financing of Rp350,000,000.00. The plaintiff claims that the defendant failed to distribute profits and return the principal as agreed. The evidence presented is strong and legally formal, consisting of a notarial deed of agreement, an addendum, proof of a fund transfer, a formal summons, and financial reports indicating discrepancies in profit realization.

Judge's Legal Considerations	The panel of judges considered that the formal and authentic evidence sufficiently proved the defendant's negligence (taqsir) in fulfilling contractual obligations. The judge emphasized the binding force of the agreement (pacta sunt servanda) and relied on positive legal norms as well as DSN-MUI Fatwa No.07/DSN-MUI/IV/2000. The approach taken is legal-formal, prioritizing certainty through written and verifiable evidence.
Amar Academic Verdict and Analysis	The court granted most of the plaintiff's claims and entered default against the defendant. Academically, this decision reflects positivist-formalist reasoning, in which the default is determined by violations of contract clauses, supported by strong documentary evidence. This approach emphasizes legal certainty but may limit deeper consideration of the business context.

Overall, this decision demonstrates a normative-positivist reasoning pattern, prioritizing formal contract validity and summons evidence. Its formalistic character also points to potential judicial inconsistency when compared to other similar cases with different outcomes. Table 1 below summarizes the legal facts, judicial considerations, and verdict analysis.

Summary of Case 2 (Decision Number 1750/Pdt.G/2022/PA. YK)

After describing the first case, which shows judges' tendency to use a formal approach in assessing the evidence and the contract violation, this section turns to the second case, which has a similar object in dispute but produces a different verdict. The analysis of the second case is important for tracing the pattern of judges' legal reasoning when faced with relatively similar facts, but with different levels of evidence and business context.

This study aims to understand the extent to which judges consider the principles of fiqh muamalah, particularly in applying the concept of Al-Ghunmu bi Al-Ghurmi (profit is proportional to risk), and to examine how moral considerations and good faith influence the assessment of the element of default. By examining the structure of legal argumentation in the second case, this study seeks to demonstrate a shift in the judge's approach from a legal-formal orientation to a more substantive one in applying Sharia economic law.

This case involves a dispute over a default under the *Al-Mudharabah* contract between the plaintiff, as shahib al-maal, and the defendant, as the mudharib, in profit-sharing-based small and medium business financing. The disputed financing amount is IDR 420,000,000.00, with a profit ratio of 60:40. This case was submitted to the Yogyakarta Religious Court at the end of 2022 after the plaintiff assessed that the defendant had not submitted a business

results report for three consecutive periods and had not returned the capital in accordance with the agreement. In contrast to the first case, the plaintiff's evidence is not entirely strong on the formal side. In the trial, the *Mudharabah* agreement deed is only a copy without a notary endorsement, and the proof of fund transfer is mostly a copy of a bank statement without a receipt. In addition, the business financial statements used as the basis for loss claims are considered unverifiable because they are not audited by independent auditors. The defendant filed an exception on the grounds that the losses resulted from market fluctuations and business failure, not from negligence or a breach of contract.

The panel of judges in this decision took a more substantive approach than in the first case. The judge considered that, although there was a delay in reporting and a decline in business results, there was insufficient evidence to conclude that the defendant acted negligently or with intent. Based on the principle of *Al-Ghunmu bi Al-Ghurmi* (profit is proportional to the risk) and the provisions of Fatwa DSN-MUI No.07/DSN-MUI/IV/2000, the judge emphasized that losses in *Mudharabah* are the responsibility of shahib al-maal as long as there is no evidence of intentional error from the mudharib. Therefore, the judge rejected most of the plaintiffs' lawsuits on the grounds that the parties' relationship under this contract had been conducted in good faith, even though the business results were declining. In procedural law, the judge adheres to the principles of free proof and prudence in Sharia economic cases. The panel emphasized that written evidence is not always the sole benchmark in Sharia cases because contracts are often grounded in principles of trust and moral responsibility. Thus, the panel seeks to strike a balance between formal justice and substantive justice in assessing defaults.

The results of the analysis show that the main difference between this verdict and the first case lies in the assessment of the elements of negligence and the strength of the evidence. The judge in this case views business failure as a business risk, not a default, whereas in the first case, the judge considers the failure a breach of contract because the formal evidence is deemed complete. This emphasizes the difference in the paradigms of juridical reasoning between the two panels of judges: the first case is positivist-formal, while the second is more substantive and normative. These two patterns create space for inconsistency in the enforcement of sharia economic law, especially in the context of providing *Mudharabah* contracts.

To clarify the structure of the reasoning, the following summary of the subject matter of the second case is presented in the form of a table containing three main aspects: (1) legal facts and evidence, (2) legal considerations of judges, and (3) verdicts and analysis.

Table 2.
Case Reasoning Structure

Aspects	Description
Legal Facts and Evidence	This case involves a default dispute under a <i>Mudharabah</i> contract between the plaintiff (shahib al-maal) and the defendant (mudharib) with a financing value of Rp420,000,000.00. The plaintiff alleges negligence for failure to report business outcomes and to return capital. However, the evidence presented is relatively weak, consisting of non-notarized copies of agreements, bank statements without supporting receipts, and unaudited financial reports.
Judge's Legal Considerations	The panel of judges held that the evidence was insufficient to prove negligence or intentional misconduct. Referring to the principle of <i>al-ghunmu bi al-ghurmi</i> and DSN-MUI Fatwa No.07/DSN-MUI/IV/2000, the judge emphasized that business losses are borne by shahib al-maal as long as the mudharib acts in good faith. The reasoning reflects a substantive-normative approach, balancing legal and moral considerations.
Amar Academic Verdict and Analysis	The court rejected most of the plaintiff's claims and declared that the defendant was not in default. Academically, this ruling highlights that proof in sharia contracts extends beyond formal documents to include good faith and moral responsibility. This decision illustrates a more contextual interpretation of liability in <i>Mudharabah</i> contracts.

Analysis of the Inconsistency of the Judge's Decision

Analysis of two decisions of the Yogyakarta Religious Court, namely Decision Number 392/Pdt.G/2021/PA. YK and Decision Number 370/Pdt.G/2020/PA. YK shows a difference in the paradigm of legal reasoning when assessing the element of default in the *Mudharabah* contract. The two cases have similar characteristics of the dispute, namely profit-sharing-based financing between shahib al-maal and mudharib, but result in different rulings. In the first case, the judge tends to assess the breach of contract as a form of negligence that can be qualified as a default, while in the second case, the judge interprets business losses as a reasonable business consequence in the partnership relationship. This difference highlights the lack of uniformity in interpreting the principle of responsibility under the *Mudharabah* contract, ultimately leading to inconsistent decisions.

This inconsistency cannot be explained solely by differences in legal paradigms.²² In addition to differences in legal paradigms, empirical studies in judicial behavior and socio-legal research demonstrate that inconsistencies in court decisions are also shaped by non-legal factors.²³ Research on judicial decision-making shows that judges' competence, professional background, and expertise in specific areas of law significantly influence how legal principles are interpreted and applied.²⁴ In the context of Sharia economic disputes, judges with a stronger grounding in fiqh muamalah and Islamic finance tend to employ a more substantive approach, while others rely more on formal legal reasoning.²⁵

Furthermore, institutional dynamics within the judiciary have been identified in the literature as contributing factors to variations in judicial outcomes.²⁶ Differences in court administration, case management systems, workload distribution, and internal judicial culture affect the consistency of legal interpretation.²⁷ The absence of standardized technical guidelines for adjudicating Sharia economic cases further reinforces reliance on individual judicial reasoning, which leads to recurring patterns of inconsistency across jurisdictions.²⁸

This analytical finding can be further reinforced by considering decisions from Religious Courts in other regions, such as Decision Number 1511/Pdt.G/2018/PA.JS of the South Jakarta Religious Court and Decision

²² JBrandon Duck-Mayr, "Explaining Legal Inconsistency," *Journal of Theoretical Politics* 34, no. 1 (2022): 107–26, <https://doi.org/10.1177/09516298211061159>.

²³ Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso, "Reply to Weinshall-Margel and Shapard: Extraneous Factors in Judicial Decisions Persist," *Proceedings of the National Academy of Sciences of the United States of America* 108, no. 42 (2011), <https://doi.org/10.1073/pnas.1112190108>.

²⁴ Letizia Caso et al., "The Role of Expertise, Personality Traits and Decision-Making Styles in Criminal Case Evaluation: A Comparison among Judges, Law Students and Non-Legal Professionals," *Journal of Criminal Psychology* 15, no. 6 (2025): 685–700, <https://doi.org/10.1108/JCP-01-2025-0006>.

²⁵ Muhammad Ikhlas Supardin et al., "Legal Reasoning By Judges In The Decision Of The Religious Court In The Dki Jakarta Area Regarding Sharia Financing," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 1–29, <https://doi.org/10.29240/jhi.v10i1.10917>.

²⁶ Jeffery T. Ulmer, "Criminal Courts as Inhabited Institutions: Making Sense of Difference and Similarity in Sentencing," *Crime and Justice* 48, no. 1 (2019): 483–522, <https://doi.org/10.1086/701504>.

²⁷ Álvaro Pérez Ragone, "Case Management from a Comparative Perspective: Horizontal and Vertical Court Arrangements," *Ius Gentium* 85 (2021): 35–49, https://doi.org/10.1007/978-981-33-4512-6_3.

²⁸ Supardin et al., "Legal Reasoning By Judges In The Decision Of The Religious Court In The Dki Jakarta Area Regarding Sharia Financing."

Number 5221/Pdt.G/2018/PA. Sby of the Surabaya Religious Court, which exhibits similar patterns of divergence in judicial reasoning. In the Jakarta case, the panel of judges tends to emphasize formal legal evidence and contractual compliance, reflecting a positivistic-formalistic approach. Meanwhile, the Surabaya decision demonstrates a more substantive orientation, in which the assessment of business risk and the parties' good faith become central considerations in determining liability.

Although these cases are not the primary focus of this study, their inclusion strengthens the argument that inconsistencies in adjudicating *Mudharabah* contract disputes are not merely local phenomena confined to the Yogyakarta Religious Court. Instead, they reflect a broader systemic issue in the interpretation and application of Sharia economic law across Indonesia's judicial environments.

The application of Gustav Radbruch's theory in this study provides an important analytical lens to distinguish between the value of legal certainty (*rechtsicherheit*) and substantive justice (*gerechtigkeit*) in judicial reasoning.²⁹ However, relying solely on Radbruch's framework may be insufficient to explain the complexity of Sharia economic law, which operates within a dual legal system integrating positive law and the principles of *fiqh muamalah*.

In the first case (Decision Number 392/Pdt.G/2021/PA. YK), the judge's reasoning reflects a strong orientation toward legal certainty. This is evident in the reliance on formal evidence such as the notarial deed of agreement, written summons, and documented financial discrepancies. The judge interpreted the failure to fulfill contractual obligations as a form of negligence under the principle of *pacta sunt servanda*, without closely examining whether the losses arose from business risk or intentional misconduct. This approach illustrates Radbruch's notion of *rechtsicherheit*, where legal norms are applied in a formal and predictable manner.

In contrast, the second case (Decision Number 370/Pdt.G/2020/PA. YK) demonstrates a shift toward substantive justice. The panel of judges placed greater emphasis on the principle of *al-ghunmu bi al-ghurmi* and on the *mudharib's* good faith. Despite the weakness of formal evidence, the judge considered the broader business context and concluded that the losses constituted a normal business risk rather than a default. This reflects Radbruch's concept of *gerechtigkeit*, where justice is interpreted substantively by considering fairness and moral responsibility.

²⁹ Barna Horvath, "The Legal Philosophies of Lask, Radbruch, and Dabin," *The American Journal of Comparative Law* 1, no. 1–2 (1952): 150–55, <https://doi.org/10.1093/ajcl/1.1-2.150>.

Nevertheless, these two approaches cannot be fully understood through Radbruch's dichotomy alone. In the context of Sharia economic law, judges are not only balancing legal certainty and justice, but also navigating between normative sources—namely, state law and Islamic legal principles. For instance, while the first judge emphasized the Civil Code and formal contractual obligations, the second judge gave greater weight to the DSN-MUI Fatwa and the ethical foundations of *fiqh muamalah*.

Therefore, the inconsistency observed in these decisions is not merely a reflection of competing legal values, as described by Radbruch, but also a result of the absence of an integrated interpretative framework that harmonizes positive law with sharia principles. This indicates that Radbruch's theory, while relevant, needs to be complemented with an approach that accommodates the epistemological and normative duality inherent in Sharia economic law. This difference in value orientation leads to inconsistencies in reasoning when applying Sharia economic law.

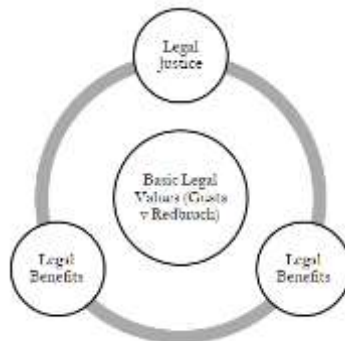


Figure 2.
The Basic Values of Law by Gustav Radbruch

This finding can be conceptually linked to Najwa and Sharif's study, which argues that inconsistencies in Sharia economic decisions arise from the absence of standardized interpretative guidelines. In this research, a similar issue is reflected in the variation of judges' reasoning, particularly in assessing evidence and interpreting the principle of liability in *Mudharabah* contracts.³⁰ Nurfadillah et al.'s research also shows that in many Muslim-majority countries, the disharmony between sharia principles and positive legal approaches is a major source of inconsistency in dispute resolution based on profit-sharing

³⁰ Izzatil Najwa and Dafiari Syarif, "Peran Ekonomi Syariah Terhadap UMKM Di Indonesia," *IQTISHOD: Jurnal Pemikiran Dan Hukum Ekonomi Syariah* 4, no. 2 (2025): 193–203, <https://doi.org/10.69768/ji.v4i2.84>.

agreements.³¹ Meanwhile, Lubis emphasized that judges in the religious court environment often interpret the DSN-MUI fatwa individually, without paying attention to the sharia maqashid as a framework for legal discovery, resulting in differences in the direction of the verdict even when the norms and contracts are similar.³²

This study discusses these three views and confirms that the inconsistencies that arise are not the result of factual differences alone, but of differences in juridical and epistemological paradigms in understanding the *Mudharabah* contract. The judge in the first case is based on the legal-formal paradigm, in which administrative violations under the contract are treated as legal negligence, whereas the judge in the second case adopts the maqashid-oriented paradigm, which takes into account the substantive justice and good faith of the parties. The absence of uniform guidelines for assessing the boundary between risk sharing and fault-based liability leads to disharmony in the application of the principle of Sharia legal responsibility.

This difference is also reflected in the evidentiary aspect. In the first case, the judge relied on written evidence, notarial deeds, and summons letters to determine default, while in the second case, the judge assessed moral evidence, such as good-faith and business reports, as indicators of contract compliance. This difference of views indicates that the principle of free proof in Sharia economic cases has not been operationalized consistently. Ideally, the judge assesses not only the physical form of the evidence, but also its conformity with the principles of trust and honesty (SIDQ) in Islamic law.³³ The inconsistencies in the verdicts in these two cases are epistemological and interpretive, not merely technical differences in proof. This phenomenon indicates that there is no unified standard for interpreting Sharia economic law in the religious justice environment. This condition requires a more comprehensive methodological guide for judges in interpreting profit-sharing-based contracts, so that the value of legal certainty and substantive justice can be balanced.

³¹ Nurfadillah, Ainun Nabila, and Risnah St. Khadijah Wahid, "Sengketa Perbankan Syariah: Inovasi Dan Tantangan," *Abdurrauf Journal of Education and Islamic Studies* 1, no. 2 (2025), <https://doi.org/https://doi.org/10.70742/arjeis.v1i2.133>.

³² MIALF LUBIS, "Analisis Putusan Hakim Tentang Pembiayaan Musyarakah Mutanaqisah Di Pengadilan Agama (Studi Perbandingan Putusan Nomor 863/Pdt. G/2020/PA. Mks Putusan Nomor 0001/Pdt. GS/2019/PA. Amb Dan Putusan Nomor 5221/Pdt. G/2018/PA. Sby)," 2022.

³³ Dhea Ramdhani Pangestu, "Analisis Hukum Terhadap Putusan Hakim Yang Tidak Sesuai Dengan Nilai Keadilan Pihak Yang Berperkara" (2024).

Thus, the results of this study confirm that the evidence and interpretation of the contract directly influence the direction of the decision. The difference in the legal paradigms adopted by judges has implications for disparities in the implementation of the DSN-MUI fatwa No. 07/DSN-MUI/IV/2000 on *Mudharabah*.³⁴ If this is not harmonized, the Sharia economic justice system may lose its certainty and consistency. Therefore, there is a need for a systematic effort from the Supreme Court, especially the Directorate General of Badilag, to form guidelines for the interpretation of sharia economic law that integrates positive law, fiqh muamalah, and maqashid al-sharia, so that judicial practice can reflect substantive justice while maintaining the stability of the national legal system.

Table 3.
Differences in Legal Cases

Analysis Aspect	Decision Number 392/Pdt.G/2021/PA. YK	Decision Number 370/Pdt.G/2020/PA. YK	Theoretical Analysis/Relevant Research
Approach to Proof	The judge emphasized formal evidence (deed, transfer, summons). Administrative negligence is considered a default.	The judge assesses the evidence substantively; Although formally weak, good faith and business context are taken into account.	The difference in the paradigm of proof between positive law and Sharia principles. ³⁵
Interpretation of DSN-MUI Fatwa No.07/2000	Interpreted textually: losses must be borne by the Mudharib if the business results are not paid.	Interpreted contextually: losses are borne by Shahib al-Maal if there is no evidence of negligence.	Variations in interpretation due to the absence of standard guidelines for the application of fatwa. ³⁶
Judge Reasoning Paradigm	Positivistic-formalistic; emphasizing legal certainty (rechtssicherheit).	Substantive-normative; oriented towards justice and benefit (gerechtigkei).	Gustav Radbruch's theory: the tension between legal certainty and substantive justice. ³⁷
Business Risk Assessment	The risk is considered to be due to negligence because there are no reports or returns on capital.	Risk is assessed as a reasonable business consequence rather than negligence.	The principle of al-ghunmu bi al-ghurmi profit is proportional to the risk (fiqh muamalah).

³⁴ Agung, "Fatwa DSN No 07/DSN-MUI/IV/2000 Tahun 2000."

³⁵ Nurfadillah, Nabila, and St. Khadijah Wahid, "Sengketa Perbankan Syariah: Inovasi Dan Tantangan."

³⁶ LUBIS, "Analisis Putusan Hakim Tentang Pembiayaan Musyarakah Mutanaqisah Di Pengadilan Agama (Studi Perbandingan Putusan Nomor 863/Pdt. G/2020/PA. Mks Putusan Nomor 0001/Pdt. GS/2019/PA. Amb Dan Putusan Nomor 5221/Pdt. G/2018/PA. Sby)."

³⁷ Horvath, "The Legal Philosophies of Lask, Radbruch, and Dabin."

Amar and Implications of the Verdict	The lawsuit was granted in part; Mudharib was found in default.	The lawsuit was dismissed in part; Mudharib was not proven to be in default.	Showing that there is no uniform standard of jurisprudence. ³⁸
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The table above shows that the most significant difference lies in the approach to proving and interpreting Sharia principles. Decision Number 392/Pdt.G/2021/PA. YK emphasizes legal certainty through a formalistic approach, while Decision Number 370/Pdt.G/2020/PA. YK highlights substantive justice by considering the context of efforts and good faith. This distinction is consistent with Radbruch's theory, which posits a tension between the value of legal certainty and substantive justice.³⁹ As a result, there are inconsistencies in the practice of sharia economic justice, as stated by Syarif, Nurfadillah, and Lubis et al., that the disparity in juridical reasoning among judges is the main challenge in the formation of stable and consistent sharia economic jurisprudence. The findings regarding inconsistencies in evidentiary standards and differences in the interpretation of the contract not only affect legal certainty but also have broader implications for the development of the sharia economy.⁴⁰

Ambiguity in dispute resolution under *Mudharabah* can affect the confidence of business actors and capital owners in profit-sharing-based financing schemes.⁴¹ In the Islamic economic system, legal certainty plays an important role in maintaining the stability of contractual relationships, encouraging investment, and ensuring the sustainability of financing in the real business sector.⁴² If the court's decision reveals a difference between the standard of proof and the pattern of legal consideration, the legal risk becomes difficult to

³⁸ Fitrianur Syarif, "Perkembangan Hukum Ekonomi Syariah Di Indonesia," *Pleno Jure* 8, no. 2 (2019): 1–16, <https://doi.org/10.37541/plenojure.v8i2.38>.

³⁹ Horvath, "The Legal Philosophies of Lask, Radbruch, and Dabin."

⁴⁰ Rosalina Limbong, "A Legal Perspective on Inheritance of Joint Property: A Comparative Analysis of Various Legal Systems," *Legal Frontier* 1, no. 1 (2025): 11–18.

⁴¹ Kautsar Riza Salman and Arif Zeinfiki Djunaedi, "Key Success Factors in the Trust Metaphor Framework for Profit Sharing Contracts: A Literature Review," *Journal of Islamic Economic and Business Research* 3, no. 2 (2023): 243–55, <https://doi.org/10.18196/jiebr.v3i2.123>.

⁴² A. N. Azzamani and J. Jaharuddin, "Menuju Kesejahteraan Ekonomi Umat Islam: Peran Strategis Pengembangan Sistem Keuangan Syariah," *EKOMA: Jurnal Ekonomi, Manajemen, Akuntansi* 3, no. 5 (2024): 1828–45, <https://doi.org/https://doi.org/10.56799/ekoma.v3i5.4355>.

estimate.⁴³ This condition can encourage parties to avoid risk-sharing-based contracts and switch to financing schemes considered more certain.⁴⁴

Therefore, the uniformity of judges' consideration patterns and the existence of clear standards for proving Sharia economic cases are very important.⁴⁵ This effort not only aims to bring order to judicial practice but also to support the sustainable growth of the sharia economy. Decisions that are consistent with the character of profit-sharing-based contracts can strengthen investors', financial institutions', and business actors' confidence in the guarantee of legal certainty.⁴⁶

These findings not only highlight doctrinal and institutional inconsistencies but also carry broader implications for the Islamic financial industry. Therefore, concrete policy measures are required to address this issue. One important step is the issuance of a Supreme Court Circular Letter (Surat Edaran Mahkamah Agung/SEMA) that provides standardized guidelines for adjudicating Sharia economic disputes, particularly those related to profit-sharing contracts. In addition, the development of specialized training modules for judges in Sharia economics is essential to enhance their competence in *fiqh muamalah* and Islamic finance.⁴⁷ Strengthening institutional capacity through continuous professional education can contribute to greater consistency in judicial reasoning, thereby enhancing legal certainty and strengthening investor confidence.⁴⁸

Differences at the remedial level should not be understood simply as technical variations among judges, but as structural problems that affect the stability of jurisprudence and the development of Sharia economic law in

⁴³ Zichun Xu, "Human Judges in the Era of Artificial Intelligence: Challenges and Opportunities," *Applied Artificial Intelligence* 36, no. 1 (December 2022), <https://doi.org/10.1080/08839514.2021.2013652>.

⁴⁴ Leira Narulita and Fauzatul Laily Nisa, "Analisis Pembagian Risiko Dan Distribusi Keuntungan Dalam Kontrak Pembiayaan Musyarakah," *Jurnal Rumpun Manajemen Dan Ekonomi* 1, no. 3 (2024): 182-195., <https://doi.org/https://doi.org/10.61722/jrme.v1i3.1599>.

⁴⁵ Nehaluddin Ahmad and Zheimie H. Zamri, "The Imperative of Establishing an Islamic Judicial System in Türkiye: A Critical Examination from an Islamic Perspective," *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 1 (2024): 303–311.

⁴⁶ Reza Gholami et al., "A Theoretical Analysis in Choosing Between Profit-Loss Sharing and Interest-Based Contracts: A Simple Game Model," *ISRA International Journal of Islamic Finance* 15, no. 3 (2023): 115–41, <https://doi.org/10.55188/ijif.v15i3.614>.

⁴⁷ Ahmad Farid Fadhli Mustafa, Muhammad Anas Al Muhsin, and Zulkifli Osman, "Development and Validity of Arabic Muamalat Module (M~BAM) for Islamic Finance Higher Education Learning Program," *Global Journal Al-Thaqafah* 14, no. 1 (2024): 20–31.

⁴⁸ Yunbo Li, Yibo Jiang, and Huifang Zhang, "Practical Legal Education as Transformative Learning in China: Advancing SDG 4 and SDG 16," *European Journal of Education* 60, no. 4 (2025), <https://doi.org/10.1111/ejed.70272>.

Indonesia.⁴⁹ This phenomenon indicates that there is no unified standard for interpreting Sharia economic law within the religious justice environment, as reflected in similar patterns in Decision Number 1511/Pdt. G/2018/PA and Decision Number 5221/Pdt.G/2018/PA. Sby.

Conclusion

This study concludes that inconsistencies in judicial decisions on *Mudharabah* contract default disputes are primarily due to differences in legal reasoning paradigms, namely, between a formal-positivistic approach that emphasizes legal certainty and a substantive-normative approach that prioritizes justice and good faith. These differences not only reflect varying interpretations of evidence and Sharia principles but also contribute to the weakening of legal certainty in resolving Sharia economic disputes. The findings highlight that such inconsistency is not merely technical but epistemological, rooted in the absence of a unified interpretative framework integrating positive law and *fiqh muamalah*. Therefore, this study recommends developing standardized guidelines for interpreting Sharia economic law, particularly for assessing default and business risk in *Mudharabah* contracts, to achieve a balanced application of legal certainty, justice, and benefit in judicial practice.

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⁴⁹ Hasanudin, Kamsi, and Ahmad Yani Anshori, "The Contestation of Legal Foundations in the Resolution of Islamic Economic Disputes in Religious Courts," *Al-Manabji: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 271–88, <https://doi.org/10.24090/mnh.v18i2.11934>.

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