

BETWEEN SHARIA ARBITRATION AND RELIGIOUS COURTS: JURISDICTIONAL CONFLICT AND JUDICIAL CONSIDERATIONS ON ARBITRATION CLAUSES IN SUPREME COURT DECISIONS

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Abstract

Purpose - This study aims to analyze the conflict of jurisdiction between the National Sharia Arbitration Board (Basyarnas) and the Religious Courts in the resolution of sharia economic disputes, particularly regarding the effectiveness of arbitration clauses when such institutions are not structurally available in certain regions. The focus of the study is directed at the judges' legal considerations in Supreme Court Decisions No. 159 K/Ag/2021 and No. 175 K/Ag/2021.

Methods - The research employs a normative legal method using a statutory and case study approach, focusing on Supreme Court Decisions No. 159 K/Ag/2021 and No. 175 K/Ag/2021. The analysis utilizes Friedman's legal system theory and Radbruch's legal objectives to examine the rationality of the judges' considerations.

Findings - The results of this study found that the structural absence of Basyarnas in a region constitutes the primary *ratio decidendi* for judges to assume adjudicatory authority. Within Friedman's framework, there is an interaction between the limitations of the legal structure and a responsive legal culture, which prompts judges to engage in legal discovery through the interpretation of Article 1344 of the Civil Code. Based on Radbruch's conceptual framework, the judge's legal balancing, in its implications, incorporates legal objectives within a framework aimed at achieving substantive justice for the aggrieved party; the utility-oriented nature of the decision provides practical benefits for the disputing parties; and certainty ensures that regulations are clearly formulated and not open to multiple interpretations, thereby providing legal certainty for the litigants as subjects of law.

Research contribution/limitations - This study is limited to a normative analysis of specific cases; therefore, generalizations are limited.

Originality/value - This study demonstrates that under conditions of institutional limitations, judges tend to prioritize substantive justice and the effectiveness of dispute resolution over formal legal certainty

Keywords: *Basyarnas; Arbitration Clause; Judicial Reasoning; Sharia Economic Dispute*

Abstrak

Tujuan – Penelitian ini bertujuan untuk menganalisis konflik kompetensi antara Badan Arbitrase Syariah Nasional (Basyarnas) dan Peradilan Agama dalam penyelesaian sengketa ekonomi syariah, khususnya terkait efektivitas klausula arbitrase ketika lembaga tersebut tidak tersedia secara struktural di daerah tertentu. Fokus kajian diarahkan pada pertimbangan hukum hakim dalam Putusan Mahkamah Agung Nomor 159 K/Ag/2021 dan Nomor 175 K/Ag/2021.

Metode - Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan studi kasus, pada Putusan Mahkamah Agung Nomor 159 K/Ag/2021 dan Nomor 175 K/Ag/2021. Analisis menggunakan teori sistem hukum Friedman dan tujuan hukum Radbruch untuk mengkaji rasionalitas pertimbangan hakim.

Temuan - Hasil penelitian ini menemukan bahwa ketiadaan struktural Basyarnas di suatu daerah menjadi permasalahan *ratio decidendi* utama bagi hakim untuk mengambil alih kewenangan mengadili. Dalam kerangka Friedman, terdapat interaksi antara keterbatasan struktur hukum dan kultur hukum yang responsif, yang mendorong hakim melakukan penemuan hukum melalui penafsiran Pasal 1344 KUH Perdata. Sementara itu, berdasarkan kerangka konsep Radbruch, pertimbangan hukum hakim dalam implikasinya memuat tujuan hukum dalam kerangka untuk mencapai keadilan substantif bagi yang dirugikan, kemanfaatan berorientasi pada putusan memberi nilai manfaat praktis bagi masyarakat bersengketa, juga kepastian menunjukkan bahwa regulasi itu dirumuskan dengan jelas dan tidak multitafsir dengan memberi ketentuan bagi pihak berperkara sebagai objek hukum.

Kontribusi/Keterbatasan penelitian - Penelitian ini terbatas pada analisis normatif kasus tertentu, sehingga generalisasi bersifat terbatas.

Keaslian/Nilai - Penelitian ini menunjukkan bahwa dalam kondisi keterbatasan institusional, hakim cenderung memprioritaskan keadilan substantif dan efektivitas penyelesaian sengketa dibandingkan kepastian hukum formal

Kata kunci: Basyarnas; Klausula Arbitrase; Pertimbangan Hukum Hakim; Sengketa Ekonomi Syariah

INTRODUCTION

In Islam, arbitration is known as *tahkīm*, a dispute resolution mechanism involving a third party selected by the parties based on Sharia principles (Labanieh, Hussain, and Mahdzir 2021). In a global context, Sharia arbitration has emerged as part of alternative dispute resolution within the Islamic financial system, emphasizing justice, confidentiality, efficiency, and the resolution of disputes outside formal courts (Warman and Hayati 2022). The legitimacy of Sharia arbitration is growing stronger alongside the rapid development of the modern Islamic finance industry, which requires a dispute resolution mechanism that is not

only swift and efficient but also compliant with Sharia principles (Attsani et al. 2025). Therefore, Sharia arbitration functions not only as a dispute resolution mechanism but also as part of the legal infrastructure within the contemporary Islamic economic system.

In the Indonesian context, the legal legitimacy of arbitration stems from Article 11 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, which recognizes the legal validity of written arbitration agreements and excludes the jurisdiction of district courts over disputes agreed to be resolved through arbitration (Suganda 2022). Institutionally, Sharia arbitration in Indonesia is conducted by

the National Sharia Arbitration Board (Basyarnas) (Sutiyoso 2020), formerly known as the Indonesian Muamalat Arbitration Board (BAMUI), and established by the Indonesian Ulema Council to resolve Sharia economic disputes outside the courts (Fitri et al. 2022). In practice, Sharia arbitration is chosen by business actors because it guarantees the confidentiality of disputes (Faizun 2021), is faster, and is considered more efficient than litigation in court (Herliana 2025). Alternative dispute resolution institutions strongly prioritize privacy, which is considered more advantageous (Abu Bakar and Handayani 2021). However, the development of online arbitration has also raised new issues regarding privacy guarantees and the readiness of supporting infrastructure (Sudiarawan et al. 2024).

In resolving disputes, Basyarnas adopts two forms of agreement: the arbitration clause (*pactum de compromittendo*) and the arbitration agreement (*acta compromis*) (Ramadhan et al. 2024). In short, this process involves a dispute that has already arisen, after which both parties agree to choose arbitration as the means of resolution (Triana 2018). Thus, the key difference lies in the drafting of the content, which is prepared before the dispute arises, whereas the arbitration agreement is made once a dispute occurs (Widjaja and Yani 2003). The main issue arises when arbitration clauses, which, by law, should preclude court

jurisdiction based on the principles of party autonomy, *pacta sunt servanda* (Winarta 2019), and *lex specialis derogat legi generali* (Harahap 2006) are, in practice, still frequently disregarded by courts

This is evident from the data in the Supreme Court Rulings Directory, which shows that Islamic economic disputes are still being heard by courts, even when the contract contains an arbitration clause, with a total of 147 rulings from the first instance through review (Supreme Court Directory of the Republic of Indonesia 2025). This phenomenon indicates a discrepancy between arbitration legal norms and judicial practice, thereby raising issues of jurisdictional conflict between Islamic arbitration and religious courts and demonstrating that the effectiveness of arbitration clauses in Islamic economic disputes in Indonesia still faces implementation challenges (W et al. 2025). Therefore, this study is crucial for critically examining the gap between normative constructs and judicial practices while formulating a model to strengthen the effectiveness of Sharia arbitration within the Sharia economic dispute resolution system in Indonesia.

Previous research has extensively examined Basyarnas from various perspectives. First, regarding institutional and sectoral effectiveness (Limbong, Siregar, Nasution, Raja, et al. 2024), Basyarnas' role in resolving problematic financing in Indonesia's Islamic banking sector (Oktaviany,

Ramadhan, and Zakaria 2024), and Basyarnas' contribution to resolving disputes in the Islamic economy and business (Harahap and Khoirudin 2024). Second, studies on Basyarnas have focused on geographical aspects and regulatory prospects, such as the effectiveness of dispute resolution (Yunita 2021), the status of Islamic arbitration institutions following Law No. 4 of 2023 and POJK No. 61 of 2020 (Afifullah, Haryanto, and Sakti 2024), the challenges and prospects of Basyarnas within Indonesian law (Judijanto et al. 2024). Third, studies on Basyarnas related to innovation and transactional law, such as research on online arbitration during the pandemic (Heriyanto, Rahadian, and Lubis 2023), the resolution of musyarakah contract disputes in national sharia arbitration (Faizun 2021), the effectiveness of Basyarnas in ensuring legal certainty (Afsaloka 2025), and the application of the principle of good faith in dispute resolution as viewed under World Trade Organization regulations (Herliana and Nugrahenti 2025). The majority of studies are based on the assumption that arbitration institutions are available and functioning normally. Previous research has focused more on the decisions rendered rather than on the judges' reasoning processes.

This study aims to analyze the legal and sociological reasons underlying judges' decisions to set aside arbitration clauses and continue adjudicating sharia economic disputes, as well as to examine

the legal implications for the principles of legal certainty, justice, and public interest. This study is based on the argument that the panel of judges rejects arbitration clauses and continues to adjudicate disputes because of the non-operation of Basyarnas in certain regions. This problem arises because, although Basyarnas has several branch offices in various provinces, its operational reach does not guarantee the availability of such institutions throughout the entire jurisdiction, thereby creating barriers to access to arbitration forums. Using a legal system theory framework, this study analyzes the factors influencing judges' legal reasoning (*ratio decidendi*) in setting aside the arbitration clause, particularly those related to legal structure, legal substance, and legal culture. This study also employs the legal purpose theory framework to analyze the implications of such judicial considerations from the perspectives of justice, utility, and legal certainty. Through this approach, the study aims to comprehensively explain the basis of judges' reasoning in making legal determinations and their implications for the Islamic economic dispute resolution system in Indonesia.

METHOD

This study employs a normative approach (normative legal research), which focuses on examining the application of legal principles or norms in positive law. The primary focus of this approach is to analyze the conflict

between absolute jurisdiction in Sharia arbitration and that in religious courts. The data used in this study include judicial decisions No. 159 K/Ag/2021 and No. 175 K/Ag/2021, as well as other relevant laws and regulations. Data collection was conducted through library research. This process began by accessing and downloading relevant rulings via the Directory of Rulings of the Supreme Court of the Republic of Indonesia, followed by an inventory of rulings on sharia economic disputes containing arbitration clauses but adjudicated by Religious Courts.

Data analysis techniques involve a descriptive-analytical examination of judges' legal reasoning (*ratio decidendi*) using Lawrence M. Friedman's legal system theory framework, as well as an analysis of legal implications based on Gustav Radbruch's theory of the purpose of law. Data validity can be tested through source triangulation by comparing the results of the analysis of various judicial decisions with relevant laws and regulations. AI is used in this research to verify the consistency of rulings and literature. AI extracts recurring patterns of legal arguments in ruling documents and assists in organizing complex literature syntheses. The use of AI in this research is intended to verify the consistency of judicial decisions and the literature. AI is employed to extract recurring patterns of legal arguments with

RESULTS AND DISCUSSION

Sharia Economic Dispute Lawsuits Containing the Basyarnas Clause

The judicial system is the cornerstone of a nation's law enforcement, ensuring justice and social order (Ilhamuna 2025). In Indonesian civil procedure law, the resolution of Islamic economic disputes adheres to the principle of choice of forum, whereby the parties have the freedom to determine whether the dispute will be resolved through litigation (religious court) or non-litigation (Islamic arbitration/basyarnas) (Nurjaman and Witro 2022). In the litigation track, there are absolute and relative jurisdictions. In determining relative jurisdiction, the principle of actor sequitur forum rei applies, whereby the plaintiff follows the forum where the defendant is domiciled (Sujayadi, Wijayanta, and Herliana 2023). Meanwhile, in the non-litigation channel, specifically arbitration, it is normatively established that the presence of an arbitration clause in a financing agreement gives rise to legal consequences in the form of absolute jurisdiction, which supersedes the authority of the courts (Fakhriah and Afriana 2023).

These two avenues are provided for in Article 3 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, as well as the doctrine of *pacta sunt servanda*, whereby a contract is binding as law upon the parties who have entered into it (Dewi and Jamil 2023). Any form of arbitration agreement may only be declared null

and void if, during the dispute resolution process, the following events occur: (1) the death of one of the disputing parties; (2) the bankruptcy, novation (debt renewal), or insolvency of one of the parties; (3) inheritance; (4) the elimination of the essential terms of the contract; (5) the execution of the arbitration agreement is transferred to a third party with the consent of the parties to the agreement; and (6) the termination or cancellation of the underlying contract (Saepullah 2022).

In the practice of drafting business agreements, both at the national and international levels, parties are advised to agree on a dispute resolution mechanism for the future, regardless of the certainty of a dispute arising. Preventive measures to mitigate potential disputes include the inclusion of a dispute resolution clause within the agreement. This clause, titled Settlement of Disputes, contains an agreement regarding the forum that will adjudicate the parties' disputes, whether through litigation (court) or arbitration (Sidik et al. 2024). However, the application of this arbitration clause often faces factual and legal obstacles in practice. Problems arise when the agreed-upon arbitration institution (Basyarnas) is unavailable or

no longer operates in the parties' jurisdiction, or when the substance of the dispute has shifted from a pure breach of contract to an act against the law or a dispute regarding the enforcement of security rights, which are governed by different legal regimes.

The Supreme Court has, through several of its decisions, provided guidelines on legal interpretation (*rechtsvoinding*) to address the gaps or obstacles in the implementation of such arbitration clauses. These decisions stem from legal reasoning grounded in general practical arguments for specific cases; however, they can serve as a reference for future rulings (Taufiki, Darsyah, and Ridha 2022). A proper understanding of interpretation methods can be further examined to draw conclusions through intellectual activity, thereby enabling a more comprehensive understanding of legal meaning (Kurniawan et al. 2025).

The following two rulings—No. 159 K/Ag/2021 and No. 175 K/Ag/2021—illustrate how the Religious Court and the Supreme Court addressed jurisdictional objections in disputes involving Basyarnas clauses, despite operational and substantive challenges.

Table 1. Case Position of the First Ruling

No	The Parties	Dispute Lawsuit	Judge's Ruling	Judgment
1	F.D.S. as Plaintiff Against PT. M.I.F.	Lawsuit for the Cancellation of the Murābahah Agreement by the Plaintiff, alleging that the Defendant's	The judge at the Pekanbaru Religious Court cited Article 49(i) of Law No. 3 of 2006, which states that the Religious Courts are	407/Pdt.G/2020/PA.Pbr On the Conventional Claim On the Plea Dismisses the Defendant's plea

	<p>Pekanbaru Branch Office as Defendant</p>	<p>practices violate Article 3(a) of the agreement, and DSN-MUI Fatwa No. 4/DSN-MUI/IV/2000 on Murābahah, and contain elements of gharar and riba</p> <p>The subject of the lawsuit is Murābahah Financing Agreement No. 57390190063 for a Honda BRV 1.5 Prestige CVT SUV priced at Rp. 278,400,000</p> <p>The defendant raised an objection regarding Article 22 of the Murābahah Financing Agreement, stating that any disputes shall be resolved at Basyarnas in accordance with the arbitration rules and procedures established and in force at that institution</p> <p>Article 23 of the Murābahah Financing Agreement states that if both parties agree, and there is no Basyarnas in that region, the parties</p>	<p>responsible for adjudicating disputes involving Islamic finance</p>	<p>On the Merits</p> <p>1. Dismisses the Plaintiff's claim in its entirety</p> <p>On the Counterclaim</p> <p>1. Granting the Plaintiff's counterclaim</p> <p>2. Finding the Defendant in breach of contract</p> <p>3. Ordering F.D.R to pay off the debt or return the vehicle</p> <p>In the Main Action and Counterclaim:</p> <p>Ordering F. D. R. to Pay Court Costs of Rp. 234,000</p>
<p>2</p>			<p>The judge of the Pekanbaru High Court cited the principle of Pacta Sunt Servanda (Agreements Must Be Kept) because the parties had agreed in clause 22 of the contract to resolve the matter at Basyarnas in accordance with Article 1338 of the Civil Code</p> <p>The judge cited Article 3 of the Arbitration Law and the Qur'an, Surah al-Maidah, Verse 1.</p> <p>The judge interpreted that Article 23 could be enforced if agreed upon by both parties</p>	<p>70/Pdt/G/2020/PTA.Pbr</p> <p>On the Motion to Dismiss</p> <p>Granting the Defendant's motion to dismiss</p> <p>On the Merits of the Case</p> <p>Declaring that the Pekanbaru Religious Court lacks jurisdiction to hear this case</p> <p>Ordering F.D.R. to pay the court costs of Rp. 150,000</p>
<p>3</p>			<p>The Supreme Court judge ruled that the High Court judge considered clause 22 of the agreement but not clause 23</p>	<p>159 K/Ag/2021</p> <p>In the Main Action</p> <p>In the Plea</p> <p>Dismisses the Defendant's plea</p> <p>In the Main Action</p>

may resolve the matter through the District Court or the Religious Court	The judge noted that Basyarnas in Pekanbaru is no longer operational and the parties did not agree to file the case with the Religious Court The judge cited Article 1344 of the Civil Code, stating that if an agreement cannot be enforced, an interpretation that allows for enforcement must be chosen. The judge determined that the Religious Court is the more appropriate forum	Dismisses the Plaintiff's claim in its entirety In the Counterclaim Grant the Plaintiff's counterclaim Find the Defendant in breach of contract Order F.D.R to pay the debt in full or return the vehicle In the Original Action and Counterclaim Order F. D. R. to pay the amount of Rp. 500,000
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Source: compiled by the author

Table 1 shows that in the first case— Decision No. 159 K/Ag/2021—the proceedings originated from a lawsuit filed by F.D.R (Plaintiff) against PT. Maybank Indonesia Finance Pekanbaru Branch (Defendant) regarding the cancellation of a Murabahah agreement for the purchase of a car. In the Pekanbaru Sharia Court decision No. 407/Pdt.G/2020/PA.Pbr, it is stated that the Defendant raised an exception based on the arbitration clause in the Murabahah financing agreement, which includes two articles: Article 22 states that “if a dispute or conflict cannot be resolved through mutual consultation, the parties agree to resolve it through the National Sharia Arbitration Board (Basyarnas), and Second, Article 23 states that “if agreed upon by both

parties, where there is no Basyarnas in that region, then the parties may resolve the matter through the District Court or the Religious Court.” However, the plaintiff's (F.D.R) claim for annulment of the contract was rejected by the judge; thus, the ruling of the Pekanbaru Religious Court was to reject the defendant's objection, adjudicate the case, and dismiss the plaintiff's claim in its entirety.

At the appellate level, in decision no. 70/Pdt. 70/Pdt. 70/Pdt.G/2020/PTA/Pbr, F.D.R, as the client, filed an appeal with the same claim, namely the annulment of the contract. Regarding the legal reasoning (*ratio decidendi*), the Appellate Judges relied on the principle of *pacta sunt servanda* (Article 1338 of the Civil Code) and Article 3 of Law No. 30 of 1999 on Arbitration, which affirms

that the court lacks jurisdiction if there is an arbitration clause, as contained in Article 22 of the agreement. As for the legal reasoning (*ratio decidendi*), the Appellate Judges relied on the principle of *Pacta Sunt Seroanda* (Article 1338 of the Civil Code) and Article 3 of Law No. 30 of 1999 on Arbitration, which affirm that the court lacks jurisdiction if there is an arbitration clause as contained in Article 22 of the agreement. As for the resolution through the Religious Court (PA) or District Court (PN) as stipulated in Article 23 of the agreement, this did not materialize because the Defendant filed an exception, arguing that there was no agreement to resolve the matter in court.

Consequently, the High Court (PTA) in case No. 70/Pdt. 70/Pdt.G/2020/PTA/Pbr granted the appeal, overturned the Pekanbaru District Court's decision, and declared the lawsuit inadmissible (*Niet Ontvankelijk Verklaard*) or that the court lacks jurisdiction to hear the dispute. At the cassation level in Decision No. 159 K/Ag/2021, F.D.R, as the plaintiff, filed a cassation petition regarding the same lawsuit as in the first instance and the appeal. In this case, the Supreme Court held a different view, stating that the Pekanbaru High Court's decision was erroneous in its legal reasoning. The focus of the Supreme Court's consideration was that the Supreme Court explicitly stated that the PTA had granted the defendant's

exception without considering clause 23 of the agreement.

The Supreme Court found that Basyarnas in Pekanbaru had ceased operations since 2013, making it impossible to resolve the matter at Basyarnas Pekanbaru. The legal finding in *In Concreto* referred to is the Supreme Court's citation of Article 1344 of the Civil Code, which states that "when a contract cannot be performed, then adopt an interpretation that allows for performance"; in this case, the Supreme Court chose an interpretation that allows the promise to be fulfilled. Since the parties' intent was to resolve the dispute and Basyarnas does not operate in that region, the Religious Court is considered the most appropriate forum (Directory of the Supreme Court of the Republic of Indonesia 2021).

From the perspective of good faith in contract performance, the cassation judge applied objective good faith (reasonableness). It is unreasonable for one party (the defendant) to insist on Basyarnas solely to obstruct the proceedings, especially since it is known that Basyarnas is not currently operating. The Supreme Court views this as an attempt to obstruct justice. From the perspective of absolute jurisdiction, the Supreme Court reinforces the principle of *voldoende gemotiveerd* by detailing the rules of contract interpretation in the Civil Code (Articles 1343 & 1344). This demonstrates that the judge does not arbitrarily assume authority but rather

through a process of legal reasoning that is theoretically sound.

Table 2. Second Ruling Position Case

No	The Parties	Dispute Lawsuit	Judge's Ruling	Judgment
1	Mitra Plb Multi-Purpose Cooperative as Plaintiff Against Bank Syariah Mandiri, Meulaboh Branch, as Defendant I Mitra Plb	Lawsuit for Unlawful Acts regarding Defendant I's action in setting the auction reserve price at Rp. 792,200,000 and Defendant II's action in establishing the auction execution schedule The subject of the lawsuit is the al-	The judge in Meulaboh ruled that the agreement regarding the contract was not an objection to the auction, but rather a claim for tort against the defendant's actions, and thus falls under the jurisdiction of the Religious Court The judge cited SEMA No. 3 of 2018	99/Pdt.G/2019/MS.Mbo <i>On the Motion to Dismiss</i> The Defendants' motion to dismiss is denied in its entirety <i>On the Merits</i> The Plaintiff's complaint is dismissed in its entirety. The Plaintiff is ordered to pay court costs in the amount of 1,551,000.00
2	Multi-Purpose Cooperative as Plaintiff vs. Bank Syariah Mandiri, Meulaboh Branch, as Defendant I The KPKNL Banda Aceh as Defendant II	<i>Musyārahah</i> Financing Agreement No. 12/181/236/MSYRKH regarding the provision of capital facilities in the amount of Rp. 400,000,000 The Defendant raised an exception under Article 15 of the al- <i>Musyārahah</i> agreement, which states that the matter shall be resolved at Basyarnas in accordance with the arbitration rules and procedures established and in force at that body	An Aceh Sharia Court judge ruled that the Basarnas agency did not exist in the Aceh region. The judge cited Constitutional Court Decision No. 93/PUU- X/2012, thereby placing the matter under the jurisdiction of the Sharia Court.	52/Pdt/G/2020/MS.Aceh Accepts the Appellant's appeal Affirms the decision of Meulaboh District Court No. 99/Pdt.G/2019/MS.Mbo Orders the Appellant to pay court costs in the amount of 150,000
3			The Supreme Court judge ruled that the auction of the property was in accordance with the contract and therefore did not constitute a violation of human rights. The judge cited the Minister of Finance Regulation (PMK) No. 27 of 2016, Guidelines for the Conduct of Auctions.	K/Ag/2021 Dismiss the appellant's petition for cassation Order the appellant to pay court costs of 500,000

Source: compiled by the researcher

Table 2 shows that the second case, Decision No. 175 K/Ag/2021, involves a

dispute between the Mitra Jaya Plb Multi-Purpose Cooperative (Plaintiff) and Bank Syariah Mandiri, Meulaboh

Branch (Defendant I) and the KPKNL Banda Aceh (Defendant II). As stated in Meulaboh District Court Decision No. 99/Pdt.G/2020/MS.Mbo, the lawsuit filed by the plaintiff is an objection to the defendant's unlawful acts regarding the auction proceedings, specifically concerning the dispute over the al-musyarakah financing agreement. The defendants raised an arbitration clause exception contained in the *Musyārahah* Financing Agreement, specifically Article 15 (Directory of the Supreme Court of the Republic of Indonesia, 2019).

The legal reasoning of the Meulaboh judge at the first instance rejected the defendant I's arbitration exception. The judge opined that the substance of the dispute pertained to an enforcement dispute and was no longer a pure contractual dispute; thus, the judge ruled that the dispute regarding the objection to the auction fell within the exclusive jurisdiction of the Religious Court/Shari'ah Court, in accordance with SEMA Guideline No. 3 of 2018. However, in the judgment's dispositive portion, the Meulaboh Religious Court judge also dismissed the plaintiff's claim and stated that the defendant's auction proceedings were in accordance with applicable laws and regulations; thus, the judgment's dispositive portion stated that the defendant's objection was dismissed and the plaintiff's claim was dismissed.

At the appellate level, in MS Aceh Decision No. 52/Pdt. 52/Pdt.

52/Pdt.G/2020/MS.Aceh, the plaintiff and defendant remained the same parties—in this case, the appellant and the appellee—regarding the same lawsuit. The High Court Panel stated that although there was a Basyarnas agreement, since the relevant institution does not exist in the Aceh region, dispute resolution could not be carried out; therefore, the more feasible option was to file the case with the Sharia Court, especially since the dispute had already entered the auction execution phase (Directory of the Supreme Court of the Republic of Indonesia 2020). This affirmation reinforces the judges' decision to set aside the Basyarnas clause to ensure access to justice; thus, in its ruling, the Aceh Sharia Court upheld the decision of the Meulaboh Sharia Court.

At the Cassation level, Supreme Court Decision No. 175 K/Ag/2021 was issued, with the same parties again filing a cassation appeal on the same grounds. The Supreme Court's reasoning implicitly reaffirmed the jurisdiction of the Religious Court/Sharia Court (absolute jurisdiction) as previously decided by the appellate and trial courts. The Supreme Court Justices reaffirmed that in this case, the Syariah Court has jurisdiction, both because the dispute involves a public auction objection and due to non-legal factors (the absence of Basyarnas in the region) (Directory of the Supreme Court of the Republic of Indonesia 2021). Consequently, the Supreme Court's ruling dismissed the

Respondent's objection and rejected the appellant's cassation petition while upholding the Meulaboh Sharia Court's decision.

Legal Factors Considered by Judges in Rendering Decisions

In analyzing the determining factors influencing judicial legal considerations, Friedman's Legal System Theory framework is employed. Within a legal system, there are three components: legal substance, legal structure, and legal culture (Friedman 1975). These three components are typically utilized in the administration of justice (Setyowati and Prabowo 2021). A legal system is a synthesis of fundamental regulations in the form of customary rules and secondary provisions (Sari and Adityo 2024). A legal system is also viewed as consisting of three interrelated components: the ideal, operational, and factual components (Al-Anshori, Handayani, and Jha 2024). Meanwhile, according to Hart's perspective, there are two fundamental prerequisites for the existence of a legal order. First, there must be a basis of recognition reinforced by secondary regulations, and second, every legal subject must comply with these primary rules (Hart 1972). This is interpreted as social acceptance of the law, encompassing traditions, perspectives, and patterns of behavior and thought that stimulate the public's response to either comply with or disregard regulations (Friedman 1975).

Legal Substance.

Legal substance pertains to the rules, norms, and principles in force, considering the functionality of legal norms (Herviani, Zuhriah, and Yasin 2022a). In this case, there is a fundamental conflict of norms, namely, a conflict of absolute jurisdiction.

First, there is a conflict between the principle of *pacta sunt servanda* and article 3 of Law No. 30 of 1999 on Arbitration (which grants absolute authority to Basyarnas if agreed upon) and the absolute jurisdiction of the religious courts/sharia courts in sharia economic disputes. Referring to the Arbitration Law, there are four key elements that characterize arbitration (tahkim); (1) arbitration is a form of dispute resolution, (2) the dispute in question is a civil matter, (3) the resolution is non-litigious in nature, (4) it is based on a written agreement between the parties, (5) the resolution is conducted by arbitrators appointed by the parties themselves (Elvia et al. 2023). Meanwhile, regarding the absolute jurisdiction of the Religious Courts/Sharia Courts, the Supreme Court issued Supreme Court Regulation (PERMA) No. 2 of 2008 on the Compilation of Sharia Economic Law (KHES) to support the authority of the Religious Courts to resolve sharia economic disputes (Hayati and Mujib 2022).

Second, the Application of Contract Interpretation Standards: when faced with an impasse, the Supreme Court

Justices in Decision No. 159 K/Ag/2021 applied a positive legal norm—namely Article 1344 of the Civil Code (an agreement that is impossible to perform)—as the *Ratio Decidendi* to interpret the arbitration clause. In other words, the arbitration clause—that is, the agreement on dispute resolution—has been incorporated into the contract drafted by the parties (Suganda 2022). This provision grants Basyarnas the authority to adjudicate cases filed by the relevant parties (Elvia et al. 2023). This provision grants Basyarnas the authority to adjudicate cases filed by the relevant parties (Elvia et al. 2023). However, in their reasoning, the judges explicitly invoke Article 1334 of the Civil Code to provide a way out of the formalities of *Pacta Sunt Servanda*. However, in their reasoning, judges explicitly invoke Article 1334 of the Civil Code to provide a way out of the formalities of *Pacta Sunt Servanda*.

Legal Structure

A legal structure refers to institutional frameworks and procedures, and comprehensively examines existing legal institutions alongside their enforcers (Herviani et al. 2022a). The institutional aspect (legal structure) emphasizes the importance of adequate institutions in handling Islamic economic cases (Hasanudin, Kamsi, and Anshori 2024). Even if existing regulations have been formulated ideally, low legal enforcement capacity will still lead to systemic distortions, and the same

applies in the opposite scenario (Sari and Adityo 2024). The most dominant determining factor in this case is the institutional structure of Basyarnas in the region, which subsequently becomes the primary legal basis (*ratio decidendi*) for the judge.

First, Basyarnas' operational limitations—namely, the fact that Basyarnas, as the chosen arbitration body, cannot perform its functions in the disputed region—structurally create obstacles for the parties to execute their agreement. In the Pekanbaru case, the Supreme Court judges found that Basyarnas in Pekanbaru had ceased operations since 2013, and in the Aceh case, the panel of judges found that there was no Basyarnas institution in the Aceh region. Second, Discretion in Legal Reasoning (*Rechtsvinding*). These structural limitations trigger judicial discretion. Judges, particularly at the cassation and Aceh appellate levels, use the fact of Basyarnas' non-operation as a basis to conclude that the parties' intent in the agreement was dispute resolution, and the most appropriate forum is the Religious Court. (Sibarani 2023).

Legal Culture

Legal culture encompasses the values, attitudes, and perspectives that influence judicial behavior; at its core are beliefs, assumptions, frameworks of thought, and behavioral traditions, whether inherent to law enforcement authorities or within the broader social community (Herviani, Zuhriah, and

Yasin 2022). Friedman introduced social forces as legal culture (Arifin et al. 2023). First, Conflict of Fundamental Legal Values, where judges face a normative conflict between upholding legal certainty, justice, and the public interest. Second, Prioritizing Justice and the Public Interest. The judge rejects the arbitration exception to ensure that disputing parties have access to a dispute resolution forum, even if this means setting aside the arbitration

clause stipulated in the contract. However, forum selection is a form of implementation of the *pacta sunt servanda* principle, under which the parties are free to determine the institutional forum for resolving the case (Soviani and Priyono 2022). The choice of dispute resolution forum is intended to determine which court will resolve a dispute through litigation or non-litigation. (Pratama et al. 2025).

Table 3. Determining Factors in Judicial Considerations Based on Friedman’s Legal System Theory

Components of the Legal System	Focus of Analysis	Findings of Fact & Judicial Rationale (<i>Ratio Decidendi</i>)
1. Legal Substance	Normative Rules and Contracts	Conflict of norms between the Arbitration Act (Section 3) and the reality on the ground In Decision No. 159 K/Ag/2021, the use of Article 1344 of the Civil Code (an agreement that is impossible to perform) as the basis for setting aside the arbitration clause SEMA No. 3/2018 was used for decision no. 175 K/Ag/2021 to affirm the PA’s jurisdiction in enforcement/ disputes
2. Legal Structure	Institutions and Government Apparatus	The fact that the Basyarnas office in Pekanbaru has been inactive since 2013 and is also not available in Aceh The Supreme Court judge engaged in <i>Rechtsvinding</i> (legal discovery) to address the lack of a dispute resolution forum resulting from the absence of a regional arbitration structure
3. Legal Culture	Values & Attitudes	Judges shifted their focus from legal certainty (contract text) toward practicality (the availability of a court forum) Although the parties did not agree, some of them filed the case with the Court as the dispute resolution forum

Source: adapted by the author

Based on Table 4, the primary trigger was the legal structural void regarding

the Basyarnas institution. This issue was then addressed by the judge through the application of alternative legal rules in

terms of legal substance, with the aim of ensuring that the case could still be resolved in the interest of justice, as a legal culture dictates. These three factors underpinned the judge's decision to transfer adjudicatory authority to the Religious Court. Barlow and Thow add that this system in the business world aims to establish balanced and legally valid commercial relationships (Amandossuly et al. 2025).

In Judgment No. 159 K/Ag/2021 and Judgment No. 175 K/Ag/2021, the conflict arose between the Religious Courts Act and the Arbitration Act on the one hand, and the provisions of the Civil Code as well as a conditional contract clause on the other, leading the judge to interpret Article 1344 of the Civil Code broadly to avoid a legal vacuum resulting from an unenforceable arbitration clause due to the unavailability of Basyarnas. From the perspective of legal substance, both decisions reveal a conflict between public law and private law. In Decision 159 K/Ag/2021, the conflict arose between the Religious Courts Act and the Arbitration Act on the one hand, and the provisions of the Civil Code as well as a conditional contract clause on the other, leading the judge to interpret Article 1344 of the Civil Code broadly to avoid a legal vacuum resulting from an unenforceable arbitration clause due to the unavailability of Basyarnas.

In Decision 175 K/Ag/2021, the Supreme Court interpreted that the dispute brought before it was no longer

a purely contractual dispute but rather a dispute regarding an unlawful act related to the execution of an auction; consequently, pursuant to SEMA No. 3 of 2018, it fell under the exclusive jurisdiction of the Religious Court. This indicates that the substance of the law is understood functionally, not merely textually, but based on the nature of the dispute and the feasibility of enforcing the decision.

From a legal structural perspective, differences in approach are evident across judicial levels. In Decision 159 K/Ag/2021, the trial court judge tended to adopt a legalistic-formal approach by rejecting the court's jurisdiction based on the Arbitration Act, whereas the Supreme Court adopted a responsive judicial approach by considering the factual reality that Basyarnas was not operational in that region, thereby requiring the court to hear the case to avoid denial of justice. In Decision 175 K/Ag/2021, however, the judicial structure demonstrates consistency in holding that disputes related to enforcement and auctions fall within the jurisdiction of state courts, meaning that arbitration clauses cannot be applied absolutely to all disputes arising from a contract. Thus, the legal framework in both rulings demonstrates the Supreme Court's role as a corrective institution that balances the authority of arbitration with that of the state courts.

From a legal culture perspective, both rulings demonstrate a pragmatic legal culture among the parties and judges.

The parties initially demonstrated trust in Sharia arbitration by including a Basyarnas clause in the contract; however, when that institution was inaccessible or when the dispute involved the enforcement of rights, the parties turned to the courts as a more effective forum to obtain legal protection. In contrast, the legal culture of judges, particularly at the cassation level, indicates a shift from a conservative approach toward a progressive one through the practice of *rechtsvinding*—the discovery of law—to ensure access to justice and prevent legal vacuums. Thus, through Friedman’s lens, it can be concluded that the setting aside of the arbitration clause in both rulings is not merely a matter of breach of contract, but rather the legal system’s response to the limitations of the institutional structure of arbitration and

the need to ensure substantive justice, utility, and legal certainty in a balanced manner.

The Implications of Judicial Discretion on Justice, Utility, and Legal Certainty

Gustav held that the purpose of law must be oriented toward justice, utility, and legal certainty (Radbruch 1950). In principle, these three fundamental values are rooted in the three essential foundations of law: philosophical, juridical, and sociological. The philosophical foundation provides the basis for justice; legal certainty is rooted in the juridical foundation; and the value of utility is rooted in the sociological foundation. Justice should serve as the moral foundation of law as well as a benchmark within the positive legal system (Sari, Zulfikar, and Dorlah 2024).

Table 4. Implications of Judicial Legal Considerations

Legal Principles	Implications of the Judge’s Legal Rationale
Decision No. 159 K/Ag/2021	
Justice	The Supreme Court prioritizes substantive justice by providing protection for the aggrieved party (the plaintiff) to ensure that their right to be heard in court remains guaranteed, even if there are obstacles in the previously chosen forum.
Expediency	This ruling is highly beneficial because it prevents cases from stalling midway merely because of administrative hurdles at the arbitration institution. The Supreme Court ensures that the law remains in effect (law in action).
Legal Certainty	This ruling provides functional certainty. Although the text of the contract was “breached,” it creates certainty that the dispute will be resolved. Certainty is not placed on the “name of the institution,” but on the “availability of a forum.”
Decision 175 K/Ag/2021	
Justice	The Supreme Court prioritizes procedural justice. “Fair” here is defined as “adherence to procedure.” As long as the bank follows auction

	implementation guidelines, the customer's rights are deemed to have been procedurally respected, even if their assets are sold.
Expediency	This ruling is considered beneficial for the banking ecosystem. By upholding the validity of auctions conducted in accordance with procedures, the Supreme Court has bolstered confidence in the banking industry that debt collateral can still be effectively enforced without being hindered by baseless civil lawsuits.
Legal Certainty	Legal certainty no longer relies solely on contracts as a private matter but is anchored in PMK No. 27 of 2016 as a public matter. Customers and banks are assured that, as long as state auction procedures are fulfilled, such actions are legally valid.

Source: compiled by the author

Table 4 shows that the judge's legal considerations in the decision are not solely oriented toward formal legal certainty but strike a proportional balance between justice, utility, and legal certainty. In terms of justice, the judge prioritizes substantive justice by ensuring that the parties retain access to a dispute resolution forum when the arbitration clause cannot be enforced. In terms of utility, the judge's decision ensures the effectiveness of dispute resolution by preventing a legal vacuum resulting from the failure of the arbitration institution to function. Regarding legal certainty, although the decision may potentially reduce contractual certainty regarding the arbitration clause, it legally establishes certainty regarding the competent and enforceable dispute resolution forum. Thus, the judges' considerations in both decisions reflect a legal approach that is not rigidly normative but responsive to institutional realities and the needs of those seeking justice.

Justice (gerechtigheid)

The implications of the judges' considerations regarding justice indicate an orientation toward substantive justice prioritized over formal justice. The rejection of the arbitration exception in Decision No. 159 K/Ag/2021 constitutes a form of legal discovery (*rechtsvinding*) to ensure access to justice when the agreed-upon arbitration forum fails to function. Therefore, when Basyarnas is not operational, the transfer of jurisdiction to the Religious Court constitutes substantive justice because it ensures that the dispute can still be heard and adjudicated. This approach aligns with the view that legal positivism is not always sufficient to guarantee justice, as the law must prioritize the value of justice as its primary objective (Arifin et al. 2023). This approach aligns with the view that legal positivism is not always sufficient to guarantee justice, as the law must prioritize the value of justice as its primary objective (Arifin et al. 2023).

In Decision No. 175 K/Ag/2021, substantive justice is also reflected in the

judge's stance of allowing the client to challenge the auction proceedings through a tort claim, thereby ensuring the client's right to legal protection remains safeguarded despite the existence of an arbitration clause. In his view, such judicial implications underscore that justice is the most important purpose of the law (Melisa et al. 2023). In his view, such judicial implications underscore that justice is the most important purpose of the law (Melisa et al. 2023).

Utility (doelmatigheid)

The implications of the judge's reasoning regarding legal utility are evident in the judge's efforts to ensure the effectiveness of dispute resolution. If an arbitration exception is upheld while the arbitration institution is not operational, the dispute risks remaining unresolved, and the lawsuit may be dismissed. This situation contradicts the purpose of a contract, which is fundamentally designed to provide benefits and certainty in economic legal relationships (Harir et al. 2025). If an arbitration clause actually hinders dispute resolution because the designated institution is not functioning, then the contract has lost its essence of utility (Radbruch 1950). Therefore, the court's assumption of jurisdiction constitutes a judicial measure to preserve the legal utility of the contract, ensuring that disputes can still be effectively resolved. This ruling simultaneously demonstrates the role of

judge-made law in addressing structural obstacles within regional arbitration institutions and preventing disputes from becoming trapped in prolonged conflicts of absolute jurisdiction (Widjaja 2008).

The implications regarding the principle of utility in this ruling demonstrate the certainty that disputes can be resolved without hindrance, while the appellate court views utility in respecting the parties' autonomy and encouraging the use of arbitration as a swift dispute resolution mechanism. The Supreme Court, at the cassation level, stated that forcing resolution at Basyarnas, which is no longer operational, is useless and will actually hinder the dispute resolution itself. Meanwhile, in the case of decision 175 K/Ag/2021, the implication regarding the principle of utility is that the consideration that Basyarnas does not exist in that region is heavily influenced by the principle of utility. Forcing the disputing parties to file for arbitration with an institution that is no longer operational is useless. The first instance and cassation courts held that the PA/MS's authority is beneficial because it guarantees a resolution forum by ensuring that the client has an available and functioning forum.

Legal Certainty

The implications regarding legal certainty exhibit an ambivalent nature. On one hand, the set-aside of an arbitration clause may be viewed as

undermining the principle of *pacta sunt servanda* and potentially creating uncertainty for businesses regarding the binding force of arbitration clauses (Surasa, Suryani, and Ahyani 2022). However, the ruling actually creates legal certainty regarding the dispute resolution forum, as legal certainty does not rest solely on the contract text but also on the enforceability and practical applicability of a legal norm in reality (Elvia et al. 2023). Given the principle of contractual freedom, this means that contracting parties are free to choose the dispute resolution method and forum to be used in the event of a dispute between them, but must still comply with applicable regulations (Hayati and Mujib 2022).

Legal certainty must take into account the principle of factual enforceability, such that clauses that are impossible to enforce cannot be upheld for the sake of illusory certainty. Therefore, the application of the principle of the hierarchy of norms—such as *lex superior derogat legi inferiori*, *lex specialis derogat legi generali*, and *lex posterior derogat legi priori*—serves as the foundation for determining judicial jurisdiction (Pratama et al. 2025). If legal certainty is based solely on a contract text that is impossible to enforce (impossible condition), then it is no longer certainty but rather institutionalized uncertainty. Legal certainty demands that the law be grounded in facts (*factualness*) (Radbruch 1950). Legal certainty does not stop at

the enactment of a legal product but must also be evaluated regarding its effectiveness within society (Almaududi 2024).

Legal certainty is also related to the applicability of norms, accessibility, and the ability of norms to be applied in practice within society (Lestari 2023). Legal certainty, as a superior principle within the formal system of the rule of law, justifies the validity of the law based on a specific set of values (Setiawan, Nugraha, and Putri 2021). Based on the finding that the arbitration institution was not operational, the judge ensured that the dispute was resolved in the Religious Court/Mahkamah Syar'iyah, as the institution possessing *competentie absolute*. Thus, legal certainty in this decision is not only understood as normative certainty but also as practical certainty that the dispute can be examined by an authorized and functioning institution.

CONCLUSION

This study concludes that the Supreme Court's assumption of adjudicatory authority in Decision No. 159 K/Ag/2021 and Decision No. 175 K/Ag/2021 constitutes a form of progressive *rechtsvinding* (legal discovery) to address the void in dispute resolution forums. The main finding indicates that the structural absence of the National Sharia Arbitration Board (Basyarnas) in the disputed regions (Pekanbaru and Aceh) served as the

primary *ratio decidendi* that superseded the application of the *pacta sunt servanda* principle. From the perspective of Lawrence M. Friedman's legal system theory, weaknesses in the structural components of the law (the absence of institutions) compel judges to reconstruct the substantive components of the law through an extensive interpretation of Article 1344 of the Civil Code regarding contracts with impossible conditions (impossible condition).

Theoretically, this research argues that in situations of normative conflict arising from factual obstacles, judicial considerations tend to depart from textual-contractual legal certainty to achieve substantive justice and utility. Viewed through the lens of Gustav Radbruch's theory of the purpose of law, judges prioritize the values of utility (*zweckmassigkeit*)—ensuring disputes can be resolved effectively—and justice (*gerechtigkeit*)—providing legal access to the aggrieved party—over the legal certainty (*rechtssicherheit*) of the arbitration clause. This approach is taken to prevent the denial of justice and legal stagnation, which could potentially harm those seeking justice if disputes are forced into a non-operational forum.

Nevertheless, this study has limitations as it focuses solely on a normative analysis of two cassation rulings triggered by specific non-legal factors, namely, the lack of operational arbitration institutions in the relevant legal jurisdiction. Therefore,

generalizing the findings regarding the set-aside of arbitration clauses in regions with active Basyarnas structures requires further interpretive caution. For practitioners, it is necessary to formulate more flexible or conditional dispute resolution clauses in financing agreements to anticipate situations in which the designated arbitration institution fails to function. For Basyarnas, strengthening organizational structures and services in regional areas is necessary to ensure that access to Sharia arbitration remains effectively guaranteed. Furthermore, for future research, it is recommended to examine the sociological impact of this ruling on customer preferences regarding the choice of dispute resolution channels for Sharia-based economic disputes.

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