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Reconstructing The Regulation of Default in Sharia Contracts Based on The Principles of Islamic Justice

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ABSTRACT

The development of the sharia economic sector in Indonesia has shown significant growth, yet it is accompanied by the increasing occurrence of defaults (wanprestasi) in the implementation of sharia contracts. The regulation of default in Indonesia generally refers to the Kitab Undang-Undang Hukum Perdata, which adopts a formalistic and contractual approach, thus not fully reflecting the principles of Islamic justice. Meanwhile, the Kompilasi Hukum Ekonomi Syariah incorporates sharia values; however, its regulation remains partial and lacks comprehensive legal certainty. This study aims to analyze the regulation of default in sharia contracts based on Islamic justice principles and to formulate the ius constituendum as a legal reconstruction for the future. This research employs a normative legal method with a literature study approach, analyzing statutory regulations, fatwas, and relevant legal doctrines. The findings indicate that the concept of default in Islamic law encompasses not only contractual breaches but also moral and ethical dimensions, including al-ta'addi (misconduct), al-taqshir (negligence), and mukhalafat al-syuruth (violation of agreed terms). Furthermore, compensation in sharia law (ta'widh) is limited to actual losses and excludes interest. Therefore, a legal reconstruction is necessary, focusing on the classification of default based on its causes, the standardization of compensation, and the strengthening of dispute resolution mechanisms through restorative justice approaches. This is expected to create a more just, proportional, and sharia-compliant legal framework for Islamic economic practices in Indonesia.

Perkembangan ekonomi syariah di Indonesia menunjukkan peningkatan yang signifikan, namun diiringi dengan munculnya permasalahan wanprestasi dalam pelaksanaan akad syariah. Pengaturan wanprestasi selama ini masih banyak merujuk pada Kitab Undang-Undang Hukum Perdata yang berorientasi pada pendekatan formalistik dan kontraktual, sehingga belum sepenuhnya mencerminkan prinsip keadilan Islam. Sementara itu, Kompilasi Hukum Ekonomi Syariah telah mengakomodasi nilai-nilai syariah, namun pengaturannya masih bersifat parsial dan belum memberikan kepastian hukum yang komprehensif. Penelitian ini bertujuan untuk menganalisis pengaturan wanprestasi dalam akad syariah berdasarkan prinsip keadilan Islam serta merumuskan ius constituendum sebagai upaya rekonstruksi hukum ke depan. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan studi

pustaka, melalui analisis terhadap peraturan perundang-undangan, fatwa, dan literatur hukum yang relevan. Hasil penelitian menunjukkan bahwa konsep wanprestasi dalam hukum syariah tidak hanya mencakup pelanggaran kontraktual, tetapi juga mempertimbangkan aspek moral, keadilan, dan kondisi para pihak, dengan bentuk seperti *al-ta'addi, al-taqshir*, dan *mukhalafat al-syuruth*. Selain itu, ganti rugi dalam hukum syariah *(ta'widh)* dibatasi pada kerugian riil dan tidak memperbolehkan adanya bunga. Oleh karena itu, diperlukan rekonstruksi pengaturan wanprestasi yang menekankan klasifikasi penyebab wanprestasi, standarisasi ganti rugi, serta penguatan penyelesaian sengketa berbasis keadilan restoratif. Dengan demikian, diharapkan tercipta sistem hukum ekonomi syariah yang lebih adil, proporsional, dan sesuai dengan prinsip keadilan Islam.

Introduction

The development of the Islamic economy in Indonesia has increased significantly over the past two decades. This growth is reflected in the increasing value of assets and financing, as well as in the growing number of Islamic financial institutions operating in accordance with Sharia principles. Sharia contracts (*akad syariah*) serve as the primary instruments governing legal relationships between parties in various economic activities, including banking, financing, insurance, and other Sharia-based business activities. Unlike contracts under conventional civil law, Sharia contracts contain not only a contractual dimension that legally binds the parties but also ethical and religious dimensions grounded in the principles of justice (*al-'adl*), public benefit (*maslahah*), balance (*tawazun*), trust (*amanah*), and good faith. (Ahmadi 2012)

The increasing use of Sharia contracts in economic practice has also contributed to a greater potential for disputes arising from the non-performance of obligations by one of the parties. In the settlement of Sharia economic disputes, one of the most common forms of dispute concerns default (*wanprestasi*), namely a situation in which one party fails to perform an obligation as agreed under the contract. Defaults in Sharia contracts frequently arise in various forms of financing, including *murabahah*, *musyarakah*, and *ijarah* contracts. Such defaults not only affect the legal relationship between the parties but also raise issues concerning legal certainty, the protection of contracting parties, and the consistent application of Sharia principles in Islamic economic practice. (Indra Tektona, Ochtorina Susanti, and Ervin Iskliyono 2020)

Nevertheless, the regulation of default in Sharia contracts in Indonesia continues to face fundamental legal problems. To date, there is no specific and comprehensive regulatory framework that formulates the concept of default based on the distinctive characteristics of Sharia contracts. The regulation of default remains dispersed across various legal instruments, including the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*—KUHPerdata), Law Number 21 of 2008 concerning Sharia Banking, the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi*

Syariah—KHES), and the Fatwas of the National Sharia Council of the Indonesian Ulema Council (*Dewan Syariah Nasional-Majelis Ulama Indonesia*—DSN-MUI). These various legal instruments have not yet fully clarified the scope of default in Sharia contracts, the classification of contractual breaches, the parameters for determining the parties' fault, or the mechanisms of legal liability consistent with the principles of Islamic justice. (Larassati 2025)

This situation demonstrates a lack of alignment between the distinctive characteristics of Sharia contracts and the concept of default, which has traditionally relied heavily on conventional civil law. In the settlement of Sharia economic disputes, the concept of default under the Indonesian Civil Code is still frequently used as a basis for legal analysis, even where the subject matter of the dispute arises from a contract governed by different principles and objectives (Larassati 2025). This condition may create legal uncertainty because the civil-law approach places greater emphasis on the performance of contractual obligations and compensation for losses, whereas Sharia contracts take into account not only material considerations but also the values of justice, balance, and the public benefit of the parties.

From the perspective of Islamic law, default is not merely understood as a breach of contractual obligations but is also associated with moral considerations and responsibility for the trust (*amanah*) entrusted to the parties. Accordingly, failure to perform an obligation must be analyzed in light of its underlying cause, including intentional conduct (*ta'ammud*), negligence (*taqshir*), or force majeure (Arifin and Mukhlas 2025). Furthermore, the imposition of sanctions for default in Sharia contracts cannot be based solely on the principle of material compensation but must also take into account the prohibition of *riba*, the principle of proportionality, and the objectives of Islamic law (*maqāṣid al-syarī'ah*). This demonstrates the need to reconstruct the regulation of default in a manner that accommodates the distinctive characteristics of Sharia contracts while providing legal certainty for the parties.

Several previous studies have examined default in Sharia contracts from various perspectives. The study by Tektona, Susanti, and Iskliyono on default in *murabahah* contracts, through the decision of the Purbalingga Religious Court Number 1039/Pdt.G/2014/PA.Pbg, demonstrates that the settlement of Sharia contract disputes continues to employ the concept of default under civil law, despite the distinctive characteristics of Sharia contracts. The study contributes to an understanding of the application of the concept of default in a specific case; however, it does not address the reconstruction of the regulatory framework governing default (Indra Tektona et al. 2020).

Another study concerning the auction of collateral as a consequence of default under *murabahah* contracts demonstrates that the application of KHES in the settlement of Sharia economic disputes continues to encounter various challenges, resulting in the continued strong influence of civil-law constructions in judicial reasoning (Delanti, Sulaiman, and Bakar 2021). Meanwhile, research on the application of Sharia economic law principles in resolving default under *murabahah* contracts emphasizes the importance of applying the principle of justice (*al-'adl*) and

the *ta'widh* mechanism in determining the legal consequences of default (Fadlila and Muallifin 2025). Nevertheless, these studies remain limited to particular types of contracts and have not comprehensively examined the concept of default regulation applicable across various Sharia contracts.

Based on the foregoing studies, research on default in Sharia contracts remains predominantly focused on the analysis of judicial decisions, the application of KHES, and dispute resolution involving particular types of contracts. Previous studies have not sufficiently examined how the regulation of default in Sharia contracts can be reconstructed as a legal framework that integrates the principles of Islamic justice with the need for legal certainty within the national legal system. Accordingly, a *research gap* remains in the absence of a comprehensive regulatory framework for default in Sharia contracts that addresses the classification of defaults, standards of fault, forms of legal liability, and dispute resolution mechanisms based on Islamic legal principles.

This research is necessary because the regulation of default in Sharia contracts in Indonesia remains insufficiently comprehensive in addressing the classification of defaults, degrees of fault, liability, and compensation based on the principles of Islamic justice. The dispersion of relevant provisions across various legal instruments has resulted in the concept of default in Sharia contracts continuing to rely substantially on conventional civil-law approaches, while previous studies have not produced a regulatory framework that integrates *al-ʻadl*, *maslahah*, and *tawazun* with legal certainty within the national legal system. Therefore, a reconstruction of the regulation of default is necessary to provide legal certainty, proportionate liability, and equitable protection for the parties.

Based on these legal problems and research gaps, this study focuses on two principal issues. First, how should the regulatory framework and problems concerning default in Sharia contracts in Indonesia be constructed in light of the applicable legal provisions, particularly with regard to the classification of forms of default, the parameters for determining the parties' fault, and the resulting forms of legal liability? Second, how should the regulation of default in Sharia contracts be reconstructed based on the principles of Islamic justice (*al-ʻadl*), public benefit (*maslahah*), balance (*tawazun*), protection of contracting parties, and legal certainty? These two issues are important to examine in order to develop a legal framework capable of bridging the need for legal certainty within the national legal system with the distinctive characteristics and values inherent in Sharia contracts.

Building upon these research questions, this study offers a novel contribution in the form of reconstructing the regulation of default in Sharia contracts based on the principle of Islamic justice (*al-ʻadl*). The reconstruction proposed in this study is not limited to identifying deficiencies in the existing regulatory framework but is also directed toward formulating a more comprehensive framework by integrating the classification of defaults according to the degree of fault, parameters of legal liability, the application of *ta'widh* based on actual losses and the principle of proportionality, and the strengthening of *ṣulḥ* as an alternative dispute resolution

mechanism. Accordingly, this study seeks to develop a regulatory framework that not only ensures legal certainty but also promotes substantive justice and public benefit for the parties to Sharia contracts.

Based on the foregoing research focus, this study aims to analyze the problems concerning the regulation of default in Sharia contracts in Indonesia and to formulate a reconstruction of such regulation based on the principles of Islamic justice, with a view to establishing a Sharia economic legal system that provides legal certainty, justice, and equitable benefits for the parties.

Literature Review

1. The Concept of Sharia Contracts and the Principle of Justice in Sharia Economic Law

A contract (*akad*) constitutes the legal foundation of economic relationships within the Sharia economic system, giving rise to rights and obligations for the parties. The existence of a contract not only produces legal consequences in the form of an obligation to perform as agreed but also embodies Sharia values that serve as the foundation for its formation and implementation. Accordingly, the performance of Sharia contracts must take into account the principles of justice (*al-ʻadl*), public benefit (*maslahah*), balance (*tawazun*), trust (*amanah*), and good faith. These principles position contractual relationships not merely as relationships involving the exchange of rights and obligations but as legal relationships that must ensure a balanced distribution of protection and benefits between the parties.

The principle of justice in Sharia economic law concerns not only formal equality of treatment but also the establishment of a balance between rights and obligations and the prevention of one party from obtaining benefits by imposing disproportionate burdens on the other. Studies on justice in Sharia economic transactions indicate that the application of the principle of justice is closely associated with the objectives of *maqāṣid al-syarīʻah*. Accordingly, a transaction should not be assessed solely on the basis of its formal validity but also in terms of its consequences and the benefits it generates (Aulia et al. 2025).

In the context of Sharia contracts, the principle of justice becomes particularly important when one party fails to perform its obligations. The legal consequences of a contractual breach must provide protection to the injured party while, at the same time, avoiding the imposition of excessive burdens on the breaching party. Thus, the principles of *al-ʻadl*, *maslahah*, and *tawazun* provide a basis for determining whether liability arising from default is consistent with the objectives of Sharia economic law.

2. The Concept of Default in Sharia Contracts

Default (*wanprestasi*) essentially refers to a situation in which one party fails to perform an obligation as agreed. Under contract law, default may take the form of failure to perform an obligation, performance that does not conform to the agreed terms, delay in performance, or the commission of an act that is prohibited under the contract. This concept provides a basis for determining when a contractual In

Sharia contracts, the concept of default is more complex because the performance of contractual obligations takes place within the framework of Sharia principles. Research on default in *murabahah* contracts demonstrates that disputes concerning default in religious court practice continue to concern the performance of contractual obligations, while their resolution must also take into account the distinctive characteristics of Sharia contracts and the provisions of Sharia economic law (Indra Tektona et al. 2020). Accordingly, the application of the concept of default to Sharia contracts cannot be separated from the provisions of the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah*—KHES) and the Sharia principles underlying the relevant contract.

The regulation of default under KHES provides a normative basis for determining forms of breach in Sharia contracts. However, difficulties arise because these provisions do not yet provide sufficiently detailed parameters for distinguishing the degrees of fault attributable to the parties. Research on the implementation of default under KHES and the Indonesian Civil Code indicates similarities in certain respects, while also identifying differences in orientation and application in the resolution of Sharia economic disputes (Larassati 2025). This situation demonstrates the importance of establishing more objective parameters for determining the forms and legal consequences of default in Sharia contracts.

From the perspective of Islamic law, the assessment of default should also take into account the circumstances giving rise to the breach. Intentional conduct (*ta'ammud*) and negligence (*taqṣīr*) should not necessarily be assessed in the same manner as circumstances genuinely beyond the parties' control. Likewise, force majeure should be regarded as a circumstance capable of affecting legal liability where it is established that the failure to perform resulted from circumstances beyond the control of the obligated party. Therefore, classification based on the degree of fault constitutes an important basis for developing a fair regulatory framework governing default.

3. *Ta'widh* as a Form of Liability Arising from Default

One of the legal consequences that may arise from default in Sharia contracts is the imposition of *ta'widh*, or compensation for losses resulting from a breach of obligation. The concept of *ta'widh* differs in nature from a punitive penalty. In principle, *ta'widh* is intended to compensate for actual losses suffered by the injured party as a consequence of default.

The application of *ta'widh* must be based on the principles of justice and proportionality. This means that compensation should not be used to provide an additional benefit to the injured party but rather to restore the actual losses resulting from the contractual breach. Research on the resolution of default in *murabahah* contracts indicates that the application of Sharia economic law principles, including justice and *ta'widh*, constitutes an important consideration in determining the legal consequences for a party in default (Fadlila and Muallifin 2025).

The issue of *ta'widh* becomes increasingly important because the regulation of penalties under KHES is considered to contain relatively general provisions and does not yet fully establish clear parameters concerning proportionality and protection for parties in a weaker position. Fitriani's research indicates the need to reformulate the regulation of penalties so that it is more proportionate and transparent while taking into account the financial capacity of the party upon whom the burden is imposed (Fitriani 2025). This finding reinforces the need to distinguish between compensation for actual losses and sanctions that may impose excessive burdens on the debtor.

Accordingly, the theory of *ta'widh* in this study is employed to examine whether the regulation of compensation for losses arising from default satisfies three principal elements: the existence of actual loss, a causal relationship between the default and the loss, and proportionality between the loss suffered and the compensation awarded. These three elements provide the basis for formulating a reconstruction of *ta'widh* regulation consistent with the principles of *al-'adl* and *maslahah*.

4. *Ṣulḥ* and the Resolution of Disputes Arising from Sharia Contracts

Dispute resolution in Sharia economic law is not limited to litigation but may also be pursued through reconciliation (*ṣulḥ*) and mediation. *Ṣulḥ* constitutes a dispute resolution mechanism that provides the parties with an opportunity to reach an agreement through reconciliation and mutually agreed settlement. This approach is relevant to the principles of Islamic justice because dispute resolution is not solely directed toward determining a winner and a loser.

Research on *ṣulḥ*-based resolution of Sharia economic disputes indicates that reconciliation mechanisms can be developed through negotiation, mediation, and other forms of dispute resolution that emphasize the pursuit of mutually acceptable solutions. Such mechanisms are considered consistent with the values of consultation (*musyawarah*) and social harmony and may be employed to achieve justice in the resolution of Sharia economic disputes (Fauzi 2018).

In the context of disputes arising from default, *ṣulḥ* serves an important function by providing the parties with an opportunity to consider their respective circumstances before the dispute is resolved through a binding and coercive judgment. Research on mediation in *murabahah* disputes before Religious Courts also demonstrates that mediation may be implemented consistently with the concept of *ṣulḥ* in Islamic law (Juen 2025). Accordingly, strengthening *ṣulḥ* and mediation may constitute an integral component of reconstructing the dispute resolution mechanism for default in Sharia contracts

Based on this framework, the theoretical analysis in this study places four concepts within an integrated analytical framework: Sharia contracts and the principle of justice as the foundation; default as the subject matter of contractual breach; *ta'widh* as a form of liability; and *ṣulḥ* as a dispute resolution mechanism. These four concepts are employed to assess the deficiencies of the existing regulatory framework and to provide the basis for formulating a reconstruction of default

regulation capable of integrating legal certainty with substantive justice in Sharia economic law.

Methods

This study employs a normative legal research method, namely a research approach that treats law as a system of norms examined through legislation, legal principles, doctrines, and legal concepts to address the legal issues under investigation. Normative legal research is doctrinal in nature and is directed toward identifying and developing legal arguments concerning the issues under examination (Yanova, Komarudin, and Hadi 2023). This method is employed because the study focuses on analyzing the existing regulation of default in Sharia contracts (*ius constitutum*) and formulating an ideal regulatory framework (*ius constituendum*) based on the principles of Islamic justice.

This study employs a statutory approach (*statute approach*), a conceptual approach (*conceptual approach*), and a case approach (*case approach*). The statutory approach is used to examine the provisions of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*—KUHPerdata), Law Number 21 of 2008 concerning Sharia Banking, the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah*—KHES), and the Fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) relating to contracts and default. The conceptual approach is employed to analyze the concepts of default, Sharia contracts, *al-ʻadl*, *maqāṣid al-syarīʻah*, and legal liability, while the case approach is used to examine the application of legal norms in judicial decisions concerning disputes arising from default in Sharia contracts(Devi and Westra 2024).

The use of these approaches is consistent with the characteristics of normative legal research, which combines the analysis of legal norms with legal concepts and doctrines in order to develop a relevant legal construction (Fadli, Asmara, and Zunnuraeni 2024). The legal materials consist of primary legal materials, including legislation, KHES, DSN-MUI Fatwas, and judicial decisions; secondary legal materials, including books, scholarly journals, research findings, and expert opinions; and tertiary legal materials, including legal dictionaries and encyclopedias.

Legal materials were collected through library research involving the systematic stages of inventorying, identifying, classifying, and examining the relevant legal materials (Marzuki 2017; Zed 2008). The collected legal materials were subsequently analyzed qualitatively using a prescriptive method, namely by examining the applicable legal provisions to identify problems, inconsistencies, and deficiencies within the existing norms, and subsequently formulating the legal framework that ought to apply (*das sollen*) as the basis for reconstructing the regulation of default in Sharia contracts (Kristianto and Chariansyah 2026).

Results and Discussion

1. Regulation of Default in Sharia Contracts Based on the Principles of Islamic Justice

Default, or breach of promise, constitutes a violation of an obligation agreed upon by the parties in a contract and consequently gives rise to legal consequences for the breaching party (Harahap, 1986). Under civil law, default is generally understood as the failure to perform an obligation, delay in performing an obligation, or performance that does not conform to the terms of the contract. Although this understanding has been widely accepted, the concept of default in Sharia contracts cannot be understood merely as a contractual breach. Sharia contracts place the relationship between the parties not only within the framework of legally enforceable rights and obligations but also as a trust (*amanah*) that must be fulfilled in accordance with the principles of Islamic justice. Accordingly, an analysis of default in Sharia contracts should not be limited to the fulfillment of legal elements but must also assess whether the existing regulatory framework reflects the principles of justice as contemplated by Islamic law.

The regulation of default within the Indonesian civil law system is fundamentally oriented toward legal certainty through the fulfillment of the rights and obligations of the parties as stipulated in the contract. The Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*—KUHPerdata) classifies default as a debtor's failure to perform an obligation, which may give rise to legal consequences in the form of compensation, termination of the contract, or the allocation of risk. This approach provides legal certainty for the parties; however, it places greater emphasis on formal contractual considerations than on substantive justice. Consequently, the existing regulatory framework does not fully distinguish between a debtor who intentionally breaches a contractual obligation and a debtor who experiences difficulties in performing the obligation due to circumstances beyond their control. From the perspective of Islamic law, this distinction is significant because justice is measured not only by the fulfillment of contractual terms but also by the proportionality of treatment afforded to the parties (Hertanto and Djajaputra 2024).

The provision on default under Article 1243 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*—KUHPerdata) essentially stipulates that a debtor who has been declared in default and nevertheless fails to fulfill the obligation may be required to pay compensation for costs, losses, and interest. This provision demonstrates that the primary orientation of the Indonesian Civil Code is the restoration of losses suffered by the creditor. However, this approach does not explicitly accommodate moral and social considerations as emphasized in Sharia economic law, particularly the protection of debtors who experience difficulties in performing their obligations due to force majeure. Accordingly, the provision reflects formal justice to a greater extent than the substantive justice that constitutes one of the defining characteristics of Islamic law (Miru and Pati 2008).

Default may also be understood as a breach of promise committed by one of the parties who fails to perform the terms of the agreement, performs them

incompletely, performs them belatedly, or performs an act that the party is expressly prohibited from undertaking under the agreement.

According to the prevailing view, it is not the debtor's default itself that automatically terminates the contract, but rather a judicial decision that terminates the agreement. Accordingly, such a decision is *"constitutive"* (*constitutief*) rather than merely *"declaratory"* (*declaratoir*). The judge also possesses *"discretionary"* authority, meaning that the judge is empowered to assess the nature and degree of the debtor's default. Where the breach is considered minor, the judge may refuse to terminate the agreement, although a claim for damages may still be granted (Subekti 1982).

Although the Indonesian Civil Code constitutes the general legal basis governing default in Indonesian civil law, its application to Sharia contracts cannot be absolute. This is because Sharia contracts are not solely oriented toward the fulfillment of contractual rights and obligations but also toward the realization of Sharia values, including justice (*al-'adl*), balance (*tawazun*), and public benefit (*maslahah*) (Larassati 2025). Accordingly, the regulation of default in Sharia contracts requires an approach that assesses not only whether a contractual breach has occurred but also the circumstances giving rise to the breach and its implications for justice between the parties (Fitriani 2025). On this basis, the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah*—KHES) serves as a primary reference because it was designed to accommodate the distinctive characteristics of Sharia contracts that have not been fully addressed by the Indonesian Civil Code (Larassati 2025).

Under KHES, default is not understood merely as a contractual breach but is also assessed by taking into account considerations of justice, fairness, and the good faith of the parties. Such assessment includes the possibility of intentional conduct, negligence, or force majeure, making the framework conceptually more compatible with the characteristics of Sharia contracts than the Indonesian Civil Code approach, which tends to be more formalistic (S 2019). Nevertheless, KHES does not yet provide clear parameters defining the boundaries of each of these elements (Lina and Hosen 2022) Consequently, the application of the principle of justice in dispute resolution remains highly dependent on judicial interpretation (Ramadhita and Hasibuan 2023). This condition demonstrates that although the orientation toward justice has been normatively incorporated into KHES, it has not yet been fully translated into legal standards capable of simultaneously providing legal certainty and ensuring substantive justice.

The concept of *faskh al-'aqd* demonstrates that termination of a contract under Islamic law is not merely an automatic consequence of default but rather a means of restoring justice within the contractual relationship. Unlike the Indonesian Civil Code, which places greater emphasis on the legal consequences of contractual breaches, Sharia economic law regards termination of a contract as a measure of last resort, to be considered after assessing the fulfillment of the principle of justice and ensuring that no act results in *ẓulm* (injustice or oppression). Nevertheless, KHES does not provide detailed regulation concerning the indicators for determining when a default

satisfies the requirements for *faskh al-ʻaqd*. This regulatory deficiency may lead to divergent applications in judicial practice, thereby preventing the objective of achieving substantive justice from being fully realized.

From the perspective of *fiqh muamalah*, termination of a contract is not based solely on the occurrence of default but must be grounded in the principle of justice and must not result in disproportionate harm to either party. Accordingly, in Sharia economics, termination of a contract requires not only evidence of a contractual breach but also evidence of actual loss, thereby preventing the imposition of unjust harm upon the other party.

KHES conceptualizes default as an act of *al-taʻaddi* (committing an act that should not be performed), *al-taqshir* (failing to perform an obligation that should have been fulfilled), and *mukhalafat al-syuruth* (breaching conditions agreed upon in the contract). This framework demonstrates that the concept of default in Sharia economic law is not solely oriented toward contractual breach but also incorporates ethical and moral dimensions of responsibility. Nevertheless, KHES does not clearly establish indicators for distinguishing among these three forms of breach. Consequently, the determination of whether a default has occurred remains highly dependent on judicial interpretation, potentially resulting in divergent applications in cases with similar characteristics. This condition indicates that the existing framework does not fully embody the principle of *al-ʻadl*, as the criteria for determining justice have not yet been clearly formulated.

The regulation of default is further elaborated in DSN-MUI Fatwa Number 129/DSN-MUI/VII/2019, which classifies various forms of contractual breach, ranging from complete failure to perform an obligation and defective performance to delays in performing contractual obligations. This regulation broadens the understanding of default in Sharia transactions by extending it beyond failure to make payments to include performance that does not conform to the agreed terms. Nevertheless, the Fatwa primarily identifies forms of default rather than providing operational guidelines concerning the parameters for determining fault, evidentiary requirements, or standards for assessing actual losses (*real loss*). Consequently, the implementation of the Fatwa in dispute resolution practice still requires further interpretation by judges and Sharia financial institutions, resulting in a lack of uniformity in the application of the principle of justice.

The substance of DSN-MUI Fatwa Number 129 of 2019 demonstrates an effort to adapt the concept of default to the characteristics of Sharia transactions by emphasizing contractual responsibility while maintaining compliance with Sharia principles. However, the Fatwa does not establish objective criteria for determining when a breach may be classified as negligence, intentional conduct, or force majeure. This regulatory deficiency may result in inconsistent application of the law and reduce the effectiveness of legal protection for the parties. From the perspective of *maqāṣid al-syarīʻah*, this condition may also affect the protection of property (*ḥifẓ al-māl*) because the absence of clear standards complicates the determination of liability and the appropriate amount of compensation.

Conceptually, the regulation of default under KHES bears similarities to the Indonesian Civil Code, particularly in the classification of forms of breach of promise. However, such similarities indicate that the drafters of KHES continue to draw substantially upon civil-law constructions in developing the Sharia economic legal framework. As a result, the distinctive characteristics of Islamic justice have not yet been fully reflected in the technical regulatory framework, particularly with regard to the determination of liability, dispute resolution mechanisms, and compensation. In other words, although KHES has excluded the element of interest that is inconsistent with Sharia principles, strengthening the dimension of substantive justice still requires a more comprehensive regulatory framework to ensure that the objectives of Islamic law are effectively realized (Mughitsd 2008).

In addition to the provisions contained in the Fatwa, Islamic legal provisions concerning default or breach of promise are also set out in the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah*—KHES), hereinafter referred to as the Compilation of Sharia Economic Law. These provisions are contained in Part Four, which addresses breach of promise and the sanctions applicable thereto, as further regulated in Articles 36 to 39 of KHES. A party may be considered to have committed a breach where, due to the party's fault, the party:

a. fails to perform what was promised;
b. performs what was promised, but not in the manner agreed;
c. performs what was promised, but does so belatedly; or
d. performs an act that, under the agreement, is prohibited. (Pusat Pengkajian Hukum Islam dan Masyarakat Madani (PPHIMM) 2009)

The parties to an agreement may be categorized as having committed a contractual breach or default under KHES where, through a formal demand or a similar instrument, they have been declared to have breached the agreement. Such circumstances may involve the expiration of a grace period or failure to comply with the stipulated payment schedule, potentially resulting in default.

The fundamental differences between default under the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*—KUHPerdata/BW) and the Compilation of Sharia Economic Law (KHES) lie in their respective legal sources, legal consequences, and approaches to compensation. Whereas the Indonesian Civil Code is rooted in the secular Dutch civil-law tradition, KHES derives from Islamic law and incorporates Sharia values, including the prohibition of *riba* (usury or interest) and *gharar* (uncertainty). The following table provides a detailed comparison:

Aspect of Comparison	Default under the Indonesian Civil Code (BW)	Breach of Promise under KHES
Legal Basis	Book III of the Indonesian Civil Code concerning Obligations	Articles 36–38 of KHES and the principles of *fiqh*

Aspect of Comparison	Default under the Indonesian Civil Code (BW)	Breach of Promise under KHES
	(Articles 1238–1246, 1267, *et seq.*).	*muamalah*.
Terminology	*Wanprestasi* (breach of contract/default or negligence).	*Ingkar janji* (breach of promise)
Legal Capacity of the Parties	Legally competent (21 years of age or married).	Legally competent to perform legal acts (18 years of age or married).
Cause & Object	Any lawful matter that may be subject to commercial transactions.	The object and underlying cause must be lawful and must not involve *riba*, *gharar*, or *maisir*.
Form of Compensation	Costs (*kosten*), losses (*schade*), and interest (*interessen*) (Article 1243 of the Indonesian Civil Code).	Costs (*kosten*), losses (*schade*), and interest (*interessen*) (Article 1243 of the Indonesian Civil Code).
Principle of Compensation	Repressive, involving full compensation for losses and potential profits.	Compensatory and proportionate, and may not be speculative. This is known as *ta'widh*.
Sanctions/Legal Consequences	Payment of compensation, cancellation of the agreement, transfer of risk, and payment of litigation costs (Article 1267 of the Indonesian Civil Code).	Generally similar, but enforcement must comply with Sharia principles and must not unfairly burden the weaker party. It may include the transfer of debt (*hawalah*) or the reduction of an obligation (*ibra'*).
Initial Procedure	A *somasi* (written demand) is generally required for a party to be declared in default (Article 1238 of the Indonesian Civil Code).	he principle of precaution (*ikhtiyati*) is strongly emphasized; procedurally, however, a *somasi* remains relevant as evidence.
Judicial Institution	District Court (*Pengadilan Negeri*) with general jurisdiction.	Religious Court (*Pengadilan Agama*), specifically for Sharia economic disputes.

Source: *Compiled by the authors based on the Indonesian Civil Code (KUHPerdata), Supreme Court Regulation (PERMA) No. 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES), Larassati (2025), Lina and Hosen (2022), and Ramadhita and Hasibuan (2022).*

The comparison between the Indonesian Civil Code and KHES demonstrates that the two legal systems adopt different orientations in addressing default. The Indonesian Civil Code treats default as a contractual violation that gives rise to the enforcement of civil rights through mechanisms such as compensation, termination of the agreement, and other legal sanctions. By contrast, KHES develops the concept of default on the basis of Sharia principles, emphasizing not only legal certainty but also justice, balance, and the moral responsibility of the parties. This difference in orientation demonstrates that Sharia economic law seeks to integrate legal and ethical considerations into the resolution of disputes arising from Sharia contracts.

Nevertheless, the provisions of KHES have not yet fully translated these Sharia values into operational legal norms. For example, the concept of justice underlying dispute resolution is not accompanied by clear indicators concerning how judges should assess elements of negligence, intent, or force majeure. Consequently, the application of the principle of justice remains highly dependent on judicial interpretation in each case. This condition may result in inconsistencies in judicial decisions, meaning that the objective of simultaneously ensuring legal certainty and substantive justice has not yet been fully achieved.

When analyzed from the perspective of Islamic justice, the regulation of default under KHES still requires further refinement. The principle of *al-ʻadl* requires each party to receive its rights and fulfill its obligations proportionately, while the principle of *tawazun* requires a balanced allocation of protection between creditors and debtors. In addition, the concept of *maqāṣid al-syarīʻah*, particularly the protection of property (*ḥifẓ al-māl*), requires dispute resolution mechanisms to safeguard the economic interests of both parties without causing injustice. Therefore, the regulation of default should not merely prescribe the forms of contractual violations but should also establish clear parameters for assessing fault, determining the amount of compensation, and protecting parties who experience genuine financial hardship.

Although the regulation of default under the Indonesian Civil Code provides a strong foundation for legal certainty, its approach remains relatively formalistic because it places contractual breach at the center of legal liability. This approach does not fully take into account the factual circumstances that may prevent a debtor from performing its obligations, particularly where non-performance results from circumstances beyond the debtor's control. From the perspective of Islamic justice, dispute resolution should not be oriented solely toward legal certainty but should also take into account considerations of *maslahah*, the balance between rights and obligations, and the prevention of injustice. Accordingly, the rigid application of default provisions may conflict with the principle of *rafʻ al-haraj*, which seeks to

prevent excessive hardship for parties who are genuinely unable to fulfill their obligations.

On the other hand, KHES has sought to accommodate the characteristics of Sharia contracts by recognizing the principles of justice, fairness, and good faith. Nevertheless, these provisions still present several normative shortcomings. KHES does not provide measurable criteria for distinguishing between intentional misconduct, negligence, and force majeure, even though such distinctions are crucial in determining the form and extent of the parties' liability. Furthermore, the absence of standardized criteria for determining actual compensation (*ta'widh*) creates considerable room for interpretation in judicial practice. As a result, the objective of achieving substantive justice as envisaged by the principles of *al-'adl* and *maqāṣid al-syarī'ah* has not yet been optimally realized.

In addition, although KHES emphasizes the principle of justice and prohibits *riba* in the imposition of compensation, the implementation of the concept of actual compensation (*ta'widh*) still lacks clear and standardized criteria. This creates the possibility of inconsistencies in determining the amount of compensation in similar cases. Furthermore, the mechanism for terminating contracts through the concept of *faskh al-'aqd* has not yet been fully integrated into the modern judicial system, particularly with regard to procedural requirements and evidentiary mechanisms.

Both the Indonesian Civil Code and KHES have, in principle, yet to fully address the dynamics of modern economic practices, particularly in the rapidly expanding Sharia finance sector. The Indonesian Civil Code tends to be less responsive to the distinctive characteristics of Sharia contracts, whereas KHES still requires further strengthening in terms of regulatory development and harmonization with other laws and regulations.

There is a fundamental distinction between the concept of default under the Indonesian Civil Code and Sharia principles. Under the Indonesian Civil Code, compensation encompasses costs (*kosten*), losses (*schade*), and interest (*interessen*), as provided under Article 1243 of the Indonesian Civil Code. In Sharia economic law, however, interest is not recognized, and compensation (*ta'widh*) is limited to actual losses that have genuinely been incurred (*real loss*), rather than losses that are merely anticipated or projected (*potential loss*).

Based on an analysis of judicial practice and the implementation of Sharia fatwas, at least four major gaps can be identified in the current regulation of default in Sharia contracts:

a. *The absence of clear parameters for the standard of Sharia compliance and due care in determining default.* Article 36 of KHES merely classifies the forms of breach of promise without establishing objective criteria for determining when an act may be categorized as negligence, intentional misconduct, or force majeure. This normative gap gives judges considerable room for interpretation in adjudicating cases. From the perspective of al-'adl, such a condition may result in different treatment of cases with similar characteristics, thereby

undermining legal certainty. Furthermore, from the perspective of maqāṣid al-syarīʻah, particularly ḥifẓ al-māl (protection of property), the absence of clear parameters may reduce the effectiveness of protecting the rights of parties to Sharia contracts.(Muslimin et al. 2022)

b. *The regulation of compensation (ta'widh) has not yet been fully integrated into dispute resolution mechanisms before the Religious Courts.* The DSN-MUI Fatwa has affirmed that compensation may only be awarded for actual losses (real loss) and must not contain an element of riba. However, neither KHES nor the applicable procedural law provides detailed guidance concerning the methods for proving actual losses or the standards for determining their amount. Consequently, the application of ta'widh may still result in divergent judicial decisions across cases. This condition does not fully reflect the principle of maslahah, because the objective of compensation, namely to restore losses fairly, has not yet been supported by a uniform mechanism capable of ensuring legal certainty.(Fitriani 2025)
c. *The absence of a clear distinction between contractual default and violations of Sharia principles.* The expanded jurisdiction of the Religious Courts, as reflected in Supreme Court Circular Letter (SEMA) Number 3 of 2023, demonstrates that Sharia economic disputes concern not only the performance of contractual provisions but also compliance with Sharia principles. Nevertheless, KHES has not yet established clear criteria for distinguishing between these two forms of violation. As a result, there is a potential for inconsistency in determining the legal basis of liability. From the perspective of tawazun, this situation may disrupt the balance of legal protection between the parties because there is no clear boundary concerning the forms of violation and their respective legal consequences.(Larassati 2025)
d. *The somasi procedure, which continues to rely on the formalistic approach of the Indonesian Civil Code, is not yet fully consistent with the principles of Islamic justice.* In dispute resolution practice, a *somasi* is positioned as a prerequisite for declaring a debtor to be in default. However, this approach does not provide sufficient scope for considering the circumstances of debtors who genuinely experience financial hardship due to circumstances beyond their control. QS. Al-Baqarah verse 280 expressly teaches that creditors should grant a postponement to debtors experiencing hardship until they attain financial ease. Therefore, the application of *somasi* in disputes arising from Sharia contracts should not be regarded merely as a procedural formality, but also as an instrument that reflects the principle of *raf' al-haraj*, namely the avoidance of excessive hardship and the promotion of a more just approach to dispute resolution.

Based on the foregoing analysis, it can be understood that the regulation of default in Sharia contracts in Indonesia has demonstrated a shift from the conventional civil-law approach toward an approach grounded in Sharia values. This shift is reflected in the recognition of the principles of justice and good faith, the prohibition of *riba*, and the use of *ta'widh* as compensation for actual losses.

Nevertheless, the provisions contained in KHES and DSN-MUI Fatwas continue to present various normative shortcomings, particularly with regard to the parameters for determining default, standards for awarding *ta'widh*, distinctions between forms of violation, and mechanisms for protecting debtors experiencing financial hardship. When assessed against the indicators of Islamic justice, namely *al-'adl*, *maqāṣid al-syarī'ah* (particularly *ḥifẓ al-māl*), *maslahah*, *tawazun*, and *raf' al-haraj*, these regulations have normatively reflected an orientation toward justice but have not yet fully realized substantive justice in practice. Therefore, regulatory refinement is necessary to ensure that the regulation of default in Sharia contracts not only provides legal certainty but also effectively realizes the objectives of Islamic law by ensuring fair and proportionate protection for all parties to the contract.

2. Reconstructing the Ideal Regulation of Default in Sharia Contracts Based on the Principles of Islamic Justice as *Ius Constituendum*

The principle of ***al-'adl*** constitutes a fundamental basis for the development of Islamic law, requiring every person to receive their rights proportionately without causing injustice to others. The Qur'an emphasizes the importance of justice in QS. An-Nahl, verse 90, which commands the observance of justice as a foundation for social life. In the context of default, this principle requires that the determination of liability not be based solely on a formal contractual breach but also take into account the cause of the breach, the degree of fault, and the circumstances of the parties. Consistent with this approach, the concept of *maqāṣid al-syarī'ah*, particularly the protection of property (*ḥifẓ al-māl*), requires regulations governing default to protect the economic rights of the parties without compromising the value of justice. Therefore, reconstructing the regulation of default should not be limited to ensuring legal certainty but must also seek to realize substantive justice in accordance with the objectives of Sharia (Fadlila and Muallifin 2025).

In addition to the principle of *al-'adl*, the reconstruction of default regulations must take into account the principles of *maslahah*, *tawazun*, and *raf' al-haraj*. The principle of *maslahah* requires legal regulations to provide the greatest possible benefit to society while preventing harm. Meanwhile, the principle of *tawazun* requires a balanced allocation of legal protection between creditors and debtors so that neither party obtains a disproportionate advantage. The principle of *raf' al-haraj*, in turn, requires that the law not impose excessive hardship on parties who genuinely face obstacles in fulfilling their obligations. This principle is consistent with QS. Al-Baqarah, verse 280, which instructs creditors to grant a postponement to debtors experiencing hardship until they attain financial ease. Accordingly, the reconstruction of default regulations must integrate these five principles so that dispute resolution not only ensures legal certainty but also realizes substantive justice (Fitriani 2025).

The reconstruction of default regulations in Sharia contracts should begin with the reformulation of the basic norms governing the criteria for the occurrence of default. Articles 36 to 39 of the Compilation of Sharia Economic Law (KHES) have essentially classified the forms of breach of promise but have not established objective

parameters distinguishing intentional misconduct (*ta'ammud*), negligence (*taqṣīr*), and force majeure. This regulatory gap may lead to divergent interpretations in judicial practice, thereby undermining legal certainty and potentially disregarding substantive justice (Larassati 2025). Accordingly, this study proposes refining the provisions of KHES by incorporating clear indicators concerning fault, the standard of care, good faith, and force majeure based on Sharia principles. This would provide judges with more objective guidance in determining whether an act should be categorized as default.

The addition of such parameters is important because justice under Islamic law is not measured solely by whether a party has violated the terms of a contract but also by the degree of fault attributable to the parties. The principle of *al-'adl* requires a party who intentionally breaches a contract to be treated differently from a party who is unable to perform its obligations due to circumstances beyond its control. Likewise, the principle of *raf' al-haraj* teaches that the law should not impose excessive burdens on parties experiencing genuine hardship. Therefore, the reconstruction of default norms must clearly distinguish between a debtor acting in bad faith (*mumatil*), a negligent debtor (*muqassir*), and a debtor experiencing financial hardship (*mu'sir*), so that judicial decisions more accurately reflect substantive justice (Larassati 2025).

Based on an analysis of the applicable regulatory framework, the legal reconstruction proposed in this study is directed toward refining the provisions of Articles 36 to 39 of the Compilation of Sharia Economic Law (KHES) and strengthening the substance of DSN-MUI Fatwa Number 43/DSN-MUI/VIII/2004 and DSN-MUI Fatwa Number 129/DSN-MUI/VII/2019. Article 36 of KHES should be reconstructed by introducing classifications distinguishing default arising from intentional misconduct (*ta'ammud*), negligence (*taqṣīr*), and *Sharia-based force majeure* (*force majeure syar'i*) as grounds for determining the liability of the parties. Furthermore, Articles 38 and 39 of KHES should be strengthened by incorporating indicators of good faith, the debtor's ability to perform, and the causal relationship between the default and the resulting loss as grounds for awarding compensation. At the same time, the DSN-MUI Fatwas concerning *ta'widh* should be refined by adding provisions concerning standards for proving actual loss (*real loss*), mechanisms for judicial assessment, and limitations on the award of *ta'widh* in order to promote consistency in the application of the law. This reconstruction is expected to strengthen legal certainty while realizing substantive justice based on the principles of *al-'adl*, *maqāṣid al-syarī'ah*, *maslahah*, *tawazun*, and *raf' al-haraj*.

The next aspect of the reconstruction concerns the refinement of the regulation of compensation (*ta'widh*) in Sharia contracts. DSN-MUI Fatwa Number 43/DSN-MUI/VIII/2004 and DSN-MUI Fatwa Number 129/DSN-MUI/VII/2019 affirm that *ta'widh* may only be awarded for actual losses (*real loss*) genuinely suffered by the injured party. Nevertheless, these two Fatwas do not provide detailed rules concerning the methods for proving actual loss or the parameters that judges may use to determine the amount of *ta'widh*. Consequently, the application of *ta'widh*

may still result in disparities in judicial decisions involving cases with similar characteristics (Fadlila and Muallifin 2025).

In response to this condition, this study proposes reconstructing the regulation of *ta'widh* through the establishment of norms governing three stages of compensation assessment. The first stage involves verifying the existence of actual loss that can be objectively demonstrated through legally admissible evidence. The second stage involves assessing the causal relationship between the default and the loss suffered by the creditor. The third stage involves assessing the debtor's ability to fulfill the obligation so that the award of *ta'widh* continues to observe the principle of proportionality and does not result in injustice. This model is more consistent with the principles of *al-'adl*, *maslahah*, and the protection of property (*ḥifẓ al-māl*), because compensation is no longer determined solely on the basis of the occurrence of default but also by reference to the actual circumstances of the parties and the legal consequences arising therefrom.

In addition to reconstructing the parameters of default and the *ta'widh* mechanism, dispute resolution should also be directed toward strengthening *ṣulḥ* as a dispute resolution instrument consistent with the characteristics of Sharia economic law. *Ṣulḥ* provides the parties with an opportunity to reach an agreement through reconciliation and deliberation, so that dispute resolution is not solely oriented toward determining a winning and losing party. In the context of Sharia economic disputes, strengthening *ṣulḥ* and mediation may serve as instruments for balancing the interests of the parties and reducing the potential losses that may arise from litigation-based dispute resolution (Rahman 2021).

Based on the foregoing analysis, the reconstruction of the regulation of default in Sharia contracts as *ius constituendum* can be formulated into several key aspects, as presented in Table 2.

Aspect	Current Regulation	Problem	Reconstruction as ***Ius Constituendum***
Default Parameters	Articles 36–39 of KHES regulate the forms of default.	There are no objective parameters for distinguishing intentional misconduct, negligence, and force majeure.	Adding indicators concerning the degree of fault, good faith, and force majeure as the basis for determining default.
Ta'widh	DSN-MUI Fatwa No. 43/2004 and No. 129/2019 regulate compensation based on *real loss*.	There are no standardized evidentiary criteria for proving actual loss or determining the amount of *ta'widh*	Establishing stages for verifying *real loss*, assessing the causal relationship, and determining the debtor's ability to perform as the basis for

			awarding *ta'widh*.
Dispute Resolution	Disputes are resolved through mediation and litigation based on Supreme Court Regulation (PERMA) Number 1 of 2016.	The *ṣulḥ* mechanism has not yet become the primary approach in Sharia economic disputes.	Strengthening *ṣulḥ* as a mandatory preliminary stage before litigation to promote a more just resolution.
Debtor Protection	There is no specific regulation governing *mu'sir* debtors.	Debtors experiencing financial hardship may potentially be treated in the same manner as debtors acting in bad faith.	Introducing mechanisms for restructuring or postponing obligations based on QS. Al-Baqarah, verse 280, and the principle of *raf' al-haraj*.

Source: *Compiled by the authors based on KHES, DSN-MUI Fatwa Number 43/DSN-MUI/VIII/2004, DSN-MUI Fatwa Number 129/DSN-MUI/VII/2019, and the findings of this study (2026).*

The table above demonstrates that the reconstruction of the regulation of default in Sharia contracts is not limited to revising the norms governing default but also encompasses the refinement of the mechanism for determining *ta'widh*, the strengthening of dispute resolution through *ṣulḥ*, and enhanced protection for debtors experiencing financial hardship (*mu'sir*). This reconstruction constitutes an integrated system grounded in the principles of *al-'adl*, *maqāṣid al-syarī'ah*, *maslahah*, *tawazun*, and *raf' al-haraj*. It is therefore expected to produce a regulatory framework for default that provides greater legal certainty while realizing substantive justice in Sharia economic practice.

Based on the findings of the analysis, the reconstruction of the regulation of default in Sharia contracts as *ius constituendum* should be directed toward refining the norms governing the parameters of default and the mechanism for determining *ta'widh* based on the principles of Islamic justice. This reconstruction should be implemented through the refinement of Articles 36 to 39 of the Compilation of Sharia Economic Law (KHES) by incorporating parameters concerning intentional misconduct (*ta'ammud*), negligence (*taqṣīr*), *Sharia-based force majeure* (*force majeure syar'i*), as well as indicators of good faith and the debtor's ability to perform in determining legal liability. In addition, DSN-MUI Fatwa Number 43/DSN-MUI/VIII/2004 and DSN-MUI Fatwa Number 129/DSN-MUI/VII/2019 should be strengthened by establishing standards for proving actual loss (*real loss*), determining the causal relationship between default and loss, and providing a more measurable mechanism for determining *ta'widh*. Accordingly, the proposed reconstruction not only strengthens legal certainty but also promotes substantive justice grounded in the principles of *al-'adl*, *maqāṣid al-syarī'ah*, *maslahah*, *tawazun*,

and *raf' al-haraj*, thereby providing a direction for legal reform (*ius constituendum*) in the regulation of default in Sharia contracts in Indonesia.

Conclusion

Based on the findings of this study, the regulation of default in Sharia contracts in Indonesia has essentially shifted from a conventional civil-law approach toward an approach that accommodates Sharia principles. The Indonesian Civil Code provides legal certainty through provisions governing non-performance, compensation, and termination of agreements, but tends to place default within a formalistic and contractual framework. Meanwhile, KHES and DSN-MUI Fatwas have accommodated the principles of *al-'adl*, *tawazun*, *maslahah*, and *raf' al-haraj*, while also recognizing forms of violation such as *al-ta'addi*, *al-taqṣīr*, and *mukhalafat al-syuruth*. However, these provisions have not yet fully realized substantive justice because there are no objective parameters for distinguishing intentional misconduct, negligence, and force majeure; no uniform standards for proving and determining *ta'widh*; and no adequate regulatory framework for protecting debtors experiencing financial hardship. Accordingly, the existing regulatory framework normatively reflects an orientation toward Islamic justice but continues to present uncertainty in its practical application.

As *ius constituendum*, the reconstruction of the regulation of default in Sharia contracts should be directed toward establishing more comprehensive norms grounded in the principles of *al-'adl*, *maqāṣid al-syarī'ah*, *maslahah*, *tawazun*, and *raf' al-haraj*. Such reconstruction should include the refinement of Articles 36 to 39 of KHES by expressly classifying default based on intentional misconduct (*ta'ammud*), negligence (*taqṣīr*), and *Sharia-based force majeure* (*force majeure syar'i*), while also taking into account good faith, the debtor's financial capacity, and the causal relationship between the violation and the resulting loss. The regulation of *ta'widh* should likewise be strengthened through standards for proving *real loss*, assessing causation, and considering the debtor's ability to perform, so that compensation remains proportionate and does not result in injustice. In addition, the *ṣulḥ* mechanism should be strengthened as a dispute resolution instrument that emphasizes the restoration of relationships and the balancing of the parties' interests, accompanied by mechanisms for restructuring or postponing obligations for *mu'sir* debtors. This reconstruction is necessary to establish a regulatory framework for default that not only provides legal certainty but also realizes substantive justice and proportionate protection for the parties to Sharia contracts.

Based on the findings of this study, harmonization and refinement of the regulation of default in Sharia contracts are necessary, particularly through the revision of the Compilation of Sharia Economic Law (KHES) to incorporate more objective parameters for distinguishing default arising from intentional misconduct (*ta'ammud*), negligence (*taqṣīr*), and *Sharia-based force majeure*. The regulation should clarify the indicators of good faith, the debtor's financial capacity, and the causal relationship between default and loss, grounded in the principles of *al-'adl*

and *tawazun*. In addition, more measurable guidelines should be developed concerning the proof and determination of compensation (*ta'widh*), particularly with respect to actual loss (*real loss*), causation, and the debtor's financial capacity, so that its application remains proportionate, does not contain an element of *riba*, and is consistent with the principles of *maslahah* and *ḥifẓ al-māl*. For judicial institutions, particularly the Religious Courts, stronger guidance is required for applying Islamic justice principles in resolving disputes arising from default in Sharia contracts, taking into account the causes and degree of fault of the parties, the debtor's economic circumstances, and the causal relationship between default and loss. The *ṣulḥ* and mediation mechanisms should also be optimized to promote restoration and balance between the parties' interests. Furthermore, for debtors experiencing financial hardship (*mu'sir*), mechanisms for restructuring or postponing obligations should be developed while continuing to protect the legitimate interests of creditors, based on the principle of *raf' al-haraj*. This would enable debtors whose difficulties arise from circumstances beyond their control to be distinguished from debtors who intentionally commit default or act in bad faith.

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