

The Principles of Business Continuity and Public Interest in the Resolution of Sharia Bankruptcy Disputes

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ABSTRACT

The background of this study lies in the absence of specific regulations regarding bankruptcy and the suspension of debt payment obligations (PKPU) based on Sharia principles. In practice, the principles of business continuity and public interest (maṣlahah) are often neglected in resolving Sharia bankruptcy disputes, leading judges to focus primarily on formal juridical aspects. This research aims to analyze the implementation of these two principles in PKPU cases involving Sharia contracts, which the Commercial Court and the Supreme Court handle. The study employs a qualitative method with a normative legal approach through document studies and interviews. The results indicate that the principle of business continuity has not been optimally applied, while the principle of public interest is often overlooked in legal considerations. These findings underscore the need to reformulate Sharia bankruptcy law to incorporate maqāṣid al-syarī'ah values better, thereby providing judges with a stronger foundation for balancing the interests of debtors, creditors, and society fairly and equitably.

Keywords: Bankruptcy and PKPU Decisions, Business Continuity, Public Interest (Mashlahah).

I. Introduction

The Islamic financial industry in Indonesia has grown rapidly in recent years, driven by increasing demand for Sharia-compliant products. According to OJK data from 2022, Islamic financial assets reached IDR 2,375.84 trillion, a 15.87% increase from the previous year, with the most significant contributions coming from Islamic banking and non-banking institutions. This demonstrates Indonesia's strategic position as a global hub for Islamic finance (Ridwan et al., 2024). However, along with this growth, the risks faced by Islamic financial institutions have also become increasingly complex, encompassing financing, liquidity, operational, fraud, and fiduciary risks (Suadi, 2021). One crucial issue that frequently arises is bankruptcy disputes resulting from customers' failure to meet their financing obligations. This issue not only impacts the stability of financial institutions but also impacts the credibility of the Islamic financial system as a whole. In practice, the resolution of Islamic bankruptcy disputes continues to generate jurisdictional debate, given that Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) is predominantly used in commercial courts, even though the Constitutional Court, through Decision Number 93/PUU-X/2012,

emphasized that Islamic economic cases should be the absolute jurisdiction of religious courts (Al-Sarrafi, 2020). This regulatory disharmony creates serious problems because commercial courts often use conventional legal approaches in resolving Islamic financing disputes. As a result, the essence of Islamic contracts is often narrowed down to conventional debt-to-credit relationships. This contradicts the basic principles of Islamic economic law, which prioritize justice, public welfare, and the protection of the rights of both debtors and creditors (Gaol et al., 2021). Furthermore, the UUK-PKPU does not require an insolvency test as a bankruptcy criterion, unlike practices in various developed countries such as the United States, Japan, and Australia, which require an insolvency test as part of protecting business continuity (Johan, 2021).

The going concern principle is crucial in the bankruptcy context because it provides an opportunity for debtors with remaining business prospects to recover. However, this principle is often ignored by judges in dispute resolution practices in Indonesia (Pahsyah, 2023). Philosophically, the purpose of bankruptcy is to protect the rights of both debtors and creditors proportionally, ensuring business continuity, which in turn impacts the economy and employment (Pahsyah, 2023). From an Islamic legal perspective, the concept of reorganization or rehabilitation for debtors struggling to repay their debts aligns with the *maqasid al-syari'ah* (objectives of Islamic law), particularly in safeguarding welfare and assets (Syaiful, 2021). The phenomenon of bankruptcy under Islamic contracts becomes increasingly interesting to study when linked to the principle of welfare. This principle emphasizes the importance of considering benefits and efforts to avoid harm in every decision. Therefore, judges should not only assess from a normative perspective but also consider the values of Islamic law as the living law prevailing in society (Miqdad et al., 2025). In this context, an analysis of court decisions related to Islamic bankruptcy, such as the case of PT. Baja Agung, PT. Bank Syariah Indonesia, becomes relevant to assess the extent to which the principles of business continuity and welfare are applied. Based on the above description, this study aims to analyze the application of the principles of business continuity and the principle of benefit in resolving bankruptcy disputes and Sharia-based debt obligation (PKPU) cases, using a case study of the case between PT. Baja Agung and PT. Bank Syariah Indonesia. This research is expected to contribute to strengthening the legal basis and philosophy of Sharia economics in Indonesia, as well as provide input for reforming bankruptcy regulations to better align with the values of justice and benefit in Islamic law. The study of these decisions is expected to contribute to strengthening Indonesia's Sharia bankruptcy legal system. Furthermore, this study also aims to strengthen the normative and philosophical basis of Sharia economic law, aligning it with international practices while meeting the needs of the Indonesian Muslim community. This is crucial to ensure that the development of Sharia finance is measured not only by asset growth but also by the success of the legal system in providing justice, certainty, and benefit.

II. Literature Review and Hypothesis Development

2.1. Overview of Bankruptcy in Positive Law in Indonesia

2.1.1. Definition and Principles of Bankruptcy Law

According to Nugroho (2021), bankruptcy is a condition in which a debtor is unable to pay their debts, so the court declares bankruptcy through the general confiscation of all the debtor's assets. Under Law No. 37 of 2004, bankruptcy only concerns the debtor's assets and aims to prevent disputes among individual creditors. This mechanism is based on the principles of balance, business continuity, integration, creditor-debtor protection, transparency, and pre-bankruptcy debt restructuring, ensuring a fast, transparent, fair process that maintains a favorable business climate (Nugroho, 2021). As emphasized by Sunarmi (2020), the principle of balance between debtor and creditor protection is the foundation of every modern bankruptcy mechanism.

2.1.2. Objectives and Principles of Bankruptcy Law

The goal of bankruptcy law is to create a debt resolution mechanism that is fair, orderly, and protects all parties. The Bankruptcy Law and the PKPU regulate the proportional distribution of debtor assets, prevent fraud, and protect debtors acting in good faith. Its main principles include *paritas creditorum*, *pari passu prorata parte*, and structured creditors, with debt at the heart of bankruptcy. Furthermore, the principle of debt forgiveness provides a rehabilitation space, allowing debtors to restart their businesses. Thus, bankruptcy law not only protects creditors but also maintains fairness, balance, and business continuity (Nugroho, 2021).

2.1.3. Bankruptcy Requirements in Indonesia

The requirements for bankruptcy in Indonesia, according to Article 2 paragraph (1) of the Bankruptcy and PKPU Law, include three things: the presence of at least two creditors (*concursum creditorum*), the existence of debt, and at least one debt that is due and collectible. This provision emphasizes the importance of protecting the collective interests of creditors, with the debt in question encompassing all payment obligations based on agreements, laws, or judges' decisions. With just one unfulfilled obligation, a bankruptcy petition can be granted if proven, thus providing certainty and justice in resolving debt disputes (Nugroho, 2021).

2.1.4. Legal Consequences of Bankruptcy

The legal consequences of bankruptcy result in the debtor losing the authority to manage assets placed in the bankruptcy estate, which the curator then manages. The debtor can still take legal action as long as it is not related to the bankruptcy estate. Legally, the consequences of bankruptcy occur automatically (by operation of law) or based on the discretion of the authorities (rule of reason). Impacts include general seizure, *actio pauliana*, suspension of execution, termination of specific transactions, and potential termination of employment. The primary principle of general seizure is to protect the interests of all creditors collectively (Nugroho, 2021).

2.2. Overview of Suspension of Debt Payment Obligations (PKPU)

2.2.1. Definition and Purpose of PKPU

A PKPU (Payment and Settlement Order) is essentially a legal mechanism that allows debtors to defer debt payments through a settlement plan with creditors, either partially or entirely, to avoid bankruptcy. Regulated in Chapter III, Articles 222–294 of Law No. 37 of 2004, the PKPU serves as a moratorium that allows debtors to improve their financial condition and continue their business, while preventing the liquidation of assets. This provision also emphasizes that both debtors and creditors can submit a PKPU application to the commercial court as a deliberative step to resolve debt disputes. Thus, the PKPU is not merely a suspension of obligations, but a peace instrument that emphasizes restructuring, negotiation, and protection of the debtor's business continuity within a collective settlement framework (Nugroho, 2020).

2.2.2. Types and Conditions of PKPU

PKPU is divided into two types: temporary PKPU and permanent PKPU. Temporary PKPU is granted immediately upon receipt of the application, whether submitted by the debtor or creditor, with deadlines of three days for the debtor's application and twenty days for the creditor's application. During this period, a stay is in effect, allowing the debtor to develop a restructuring plan. If the creditors do not approve the plan or the

deadline expires without an agreement, the temporary PKPU will end. Furthermore, a permanent PKPU is determined by the court within 45 days of the temporary PKPU, with a maximum validity period of 270 days. A permanent PKPU is only ratified if approved by a majority of concurrent and secured creditors representing at least two-thirds of the receivables. During this stage, the debtor and creditors use the time to negotiate a restructuring or rescheduling of payments, which is then confirmed by the court (Nugroho, 2020).

2.2.3. Parties Entitled to Submit PKPU

PKPU can be submitted by both debtors and creditors, as regulated in Article 222, paragraph (1), of Law No. 37 of 2004. Debtors have the right to submit PKPU if they are unable or expect to be unable to continue paying their debts, with motives such as debt restructuring, resistance to bankruptcy petitions, debt recognition, concerns about social impacts, or conversion of debt into shares. Creditors, whether concurrent, preferred, or separate, can also submit a petition for protection under the PKPU if they consider the debtor unable to pay off maturing obligations. However, the rights of separate creditors are generally not affected by the PKPU, as property rights secure them. In addition, PKPU can also be submitted by other parties such as bank debtors, securities companies, stock exchanges, clearing houses, insurance companies, pension funds, and state-owned enterprises engaged in public services (Nugroho, 2020).

2.2.4. Debt Restructuring in PKPU

Debt restructuring under a PKPU (Cash Order Suspension) is a mechanism for restructuring a debtor's troubled obligations to improve their financial condition and facilitate easier and more effective payments to creditors. This process is outlined in a restructuring agreement that regulates a new payment mechanism between the debtor and creditors. The goal is to save the debtor from greater losses while safeguarding the interests of creditors. Restructuring options include various schemes, such as haircuts (reductions in principal or interest), moratoria (deferrals of payments), term extensions, debt conversion into shares, debt forgiveness, government bailouts, debt write-offs, and interest rate reductions (Rahmawati & Setiawan, 2022).

2.2.5. The end of PKPU

A PKPU can be terminated at the request of the supervisory judge through the administrator or creditor, provided a court decision is issued within ten days of the request being submitted. Before the decision is made, the debtor and administrator are allowed to explain the reasons behind the termination of the PKPU. Several conditions that can cause the PKPU to end include the debtor acting in bad faith, causing harm to creditors, violating the provisions of Article 240 of Law No. 37 of 2004, negligence in carrying out obligations determined by the court or administrator, and the debtor's inability to continue or fulfill obligations during the PKPU period. (Aulia & Ridwan, 2023).

2.2.6. Peace in PKPU

The settlement agreement under a PKPU (Commitment to Settlement) aims to resolve the debtor's debts through an agreement with creditors, thereby avoiding bankruptcy. The settlement plan can only be proposed by the debtor and must be approved through a creditors' meeting with majority support. If approved, the settlement agreement must be ratified (homologated) by the Commercial Court, thus binding all creditors. However, if rejected or not ratified, the PKPU comes to an end, and the debtor can be declared bankrupt. Therefore, the settlement agreement under a PKPU is an important instrument for debt restructuring through deliberation, unlike the settlement agreement under bankruptcy, which only applies to concurrent creditors (Sunarmi, 2020). By understanding the PKPU mechanism under positive law, it is important to review how a similar concept is regulated in Islamic economic law. The following discussion

explains the conceptual basis of bankruptcy (taflis) according to classical Islamic jurisprudence and its application in modern legal systems.

2.2.7. Legal Consequences of PKPU

The legal consequences of a PKPU (Commercial Debt Payment Suspension) restrict the debtor's actions to prevent harm to their assets, whereby any management or transfer of assets must obtain the administrator's approval. During the PKPU, the debtor cannot be forced to pay the debt, and all executions and seizures are suspended. Reciprocal agreements, delivery of goods, leases, and even employment relationships with employees can be terminated or amended according to the provisions, with legal protection for the injured party. Thus, the PKPU creates a "quiet" state that allows space for debt restructuring and peace (Sunarmi, 2020).

2.3. Overview of Bankruptcy in Sharia Economic Law

Bankruptcy, or taflis, in Islamic economic law refers to a condition in which an individual is unable to fulfill their debt obligations and consequently loses the right to manage their assets. A person experiencing taflis is called a mufliis, namely someone whose entire wealth has been used to pay off debts, leaving no remaining assets. This concept is supported by the hadith of the Prophet Muhammad (peace be upon him):

"Do you know who the bankrupt (mufliis) is?" They replied, "A bankrupt person among us is the one who has no money (dirham) and whose capital is exhausted..." (Narrated by Muslim and Ahmad).

According to Ibn Rushd, taflis includes situations in which a person's assets are depleted due to debt, resulting in complete financial hardship that renders the person unable to meet their obligations. The concept of debt in Islam emphasizes justice, responsibility, and protection for all parties involved. The Qur'an provides guidance that debtors should be granted leniency during times of hardship (al-'usr) and that debt agreements should be recorded and witnessed to ensure the integrity of transactions. Relevant verses include:

- a. QS. Al-Baqarah [2]:280: *"And if the debtor is in difficulty, then grant him respite until ease comes..."*
- b. QS. Al-Baqarah [2]:282: *"If you engage in a transaction involving deferred payments, write it down... and take witnesses when you buy and sell."*
- c. QS. Al-Baqarah [2]:283: *"Let the one who is entrusted fulfill his trust, and let him fear Allah."*

Al-'usr refers to financial difficulty, whereas al-iflas refers to a situation in which debt exceeds assets, requiring judicial restrictions (al-hajr) on the individual's ability to manage property. Hadith evidence emphasizes the principle of limiting a mufliis's legal authority to protect creditors. For example:

- a. The hadith of Mu'adz ibn Jabal states that the Prophet prohibited a mufliis from distributing his wealth and ordered that his property be sold to settle debts.
- b. The hadith of Sa'id al-Khudri explains that when a debtor's obligations exceed their assets, the creditor's rights are limited to what the debtor possesses.
- c. The hadith of Hudzaifah (r.a.) states: *"Giving leniency in debt payments and forgiving delays will earn Allah's forgiveness"* (Narrated by Bukhari, no. 2078).

Thus, Islamic bankruptcy law emphasizes restricting the legal actions of a mufliis, ensuring legal certainty, and protecting the rights of creditors in accordance with the principles of Sharia justice. In bankruptcy resolution (taflis), Islamic law prioritizes limiting a mufliis's authority over assets to safeguard creditors. Ibn Rushd explains that once a person is declared bankrupt, they are prohibited from conducting

economic transactions, such as buying, selling, or acknowledging debts. Most scholars agree that these restrictions apply only after a judicial decision, meaning that economic activities conducted before the declaration of bankruptcy remain valid. AAOIFI's Sharia accounting standards outline two stages: first, an official request from the capital owner to halt asset management; second, if the request is ignored, a formal lawsuit is filed to declare the debtor bankrupt (taflis) (Suadi, 2021). The legal consequences of bankruptcy in Islamic economic law include al-hajr, which restricts debtors from spending their assets to ensure creditor protection. Scholars differ regarding debtor detention: the majority argue that debtors experiencing genuine financial hardship should not be imprisoned, whereas wealthy debtors who refuse to pay may be subject to imprisonment.

The primary principle is to protect creditors' rights and prevent the debtor from engaging in transactions that are detrimental to their interests (Suadi, 2021). In contemporary practice, DSN-MUI fatwas provide guidelines related to bankruptcy in Islamic financing—such as murabahah, musyarakah, and mudharabah—by regulating payment rescheduling, contract restructuring, and sanctions for debtors who intentionally delay payment. Relevant fatwas include Fatwa No. 04/DSN-MUI/IV/2000 (Murabahah), No. 17/DSN-MUI/IX/2000 (Customer Sanctions), and No. 105/DSN-MUI/X/2016 (Guarantee of Capital Repayment). However, these fatwas focus only on the consequences of a customer's inability to repay debts and do not regulate the technical aspects of bankruptcy declarations, procedural requirements, or the management of boedel pailit (hajr) in detail. This suggests that Sharia bankruptcy practices still require more straightforward operational guidelines (Al-Fauzan, 2024). To date, there are no specific regulations in Indonesia that comprehensively govern Sharia bankruptcy (Hidayat, 2020; Rahmawati & Setiawan, 2022). As a result, courts often refer to Law Number 37 of 2004 as the primary legal basis, despite several of its provisions not fully aligning with Sharia economic principles (Yusuf et al., 2021).

2.4. The Principle of Business Continuity and the Principle of Public Interest in Resolving Bankruptcy Disputes

The case studies of PT Baja Agung and PT Bank Syariah Indonesia were chosen because they represent the practical application of the two main principles that are the focus of this research: business continuity and the principle of public interest. These cases demonstrate the gap between Islamic bankruptcy legal theory and judicial practice in Indonesia. The principle of going concern is a key principle in Indonesian and international bankruptcy law, emphasizing that debtors who still have the potential to continue operating their businesses should be allowed to restructure their debts before bankruptcy is declared as the ultimum remedium. An example of the application of this principle is seen in the PK decision No. 024/PK/N/1999 in the case of PT. Citra Jimbaran Indah Hotel, where the judge considered the debtor's prospects for future payment of its obligations. This principle aligns with the protection of the rights of both debtors and creditors, so that the determination of bankruptcy is based not only on physical assets but also on their economic value and business prospects.

The principle of benefit (maṣlaḥah) in Sharia bankruptcy resolution emphasizes the protection of human rights and the avoidance of harm, as affirmed in QS. Al-Baqarah [2]:179: "*And in retribution there is (a guarantee of) life for you... that you may become pious,*" and the Hadith of Ibn Majah: "*It is not permissible to cause harm to oneself or others.*" Scholars such as al-Syāthibī and Ibn al-Qayyim emphasize that Islamic law is founded on justice, mercy, and welfare (al-mashālih al-'āmmah), encompassing the protection of debtors' assets and their obligations to creditors. Therefore, every court decision regarding bankruptcy must consider the welfare to maintain a balance of interests for all parties. The application of business continuity and welfare principles is also evident in international practice and in Islamic countries. In the United States, Chapter 11 of the US Bankruptcy Code allows for debt restructuring to maintain company operations, unlike Chapter 7 liquidation. Australia and Singapore implement similar mechanisms through schemes of arrangement and judicial management. At the same time, in Muslim countries such as Saudi Arabia, Bahrain, Egypt, Morocco, and the UAE, bankruptcy law prioritizes reorganization and debtor protection. This principle aligns with the

AAOIFI's view that restructuring is more moral than liquidation, while also affirming the debtor's legal and moral obligation to repay its debts, while prioritizing the well-being of all parties (Al-Qurthuby, 2024).

2.5. Progressive Legal Theory or Viewpoint

Progressive law, as developed by Satjipto Rahardjo, emphasizes that law is a tool for achieving justice, welfare, and human happiness, rather than merely adhering to rigid rules. This law is responsive to social dynamics, placing humans, with their good nature, morality, and empathy, above regulations, and rejecting the status quo if it harms the public interest. Its characteristics include attention to the social goals and consequences of law, an approach to the complexities of real life, and a critique of education, lawmaking, and law enforcement (Ma'ruf, 2025). However, the implementation of progressive law in Indonesia remains hampered by low levels of understanding, morality, and political influence in the process of lawmaking and enforcement. Progressive law encourages judges to be bold in "rule-breaking" or "rule-making" to achieve substantive justice, emphasizing that the goal of law is justice, not merely legal certainty (Gaol et al., 2021). The method of applying progressive law by judges is carried out through a process of legal discovery, which consists of interpretation and argumentation. Interpretation is used to explain and interpret the text of the law within the context of the case. In contrast, argumentation is employed when there are no direct legal provisions governing the case, utilizing general legal principles or analogies (Pratiwi & Yopan, 2025). This approach emphasizes social justice and the real conditions of society, in accordance with the principle conveyed by Supreme Court Justice Bismar Seregar: "If to uphold justice I must sacrifice legal certainty, then I will sacrifice the law itself. The law is only a means, while the ultimate goal is justice." Thus, progressive law encourages the legal system to be more humane, adaptive, and focused on achieving substantive justice (Johan, 2021).

This research differs from previous studies, such as those by Nugroho (2021) and Suadi (2021), which focused more on the normative legal aspects of bankruptcy without distinguishing between conventional and sharia contracts. This research seeks to fill this gap by highlighting the application of the going concern and benefit principles in the context of sharia-compliant bankruptcy. By examining decisions by commercial courts and the Supreme Court, this research provides a new perspective on how the values of maqāsid al-shari'ah can be integrated into positive legal practice in Indonesia. These findings have broader relevance for the global Islamic financial system. The application of the going concern and benefit principles can serve as a model for countries with sharia-compliant economic systems, such as Malaysia and Saudi Arabia, in designing debt restructuring mechanisms consistent with the values of maqāsid al-shari'ah. Thus, this research contributes to the development of sharia-compliant bankruptcy principles in the context of international Islamic economic law. Based on the literature review above, it can be concluded that the bankruptcy system in Indonesia has not fully accommodated the principles of business continuity and welfare as mandated by Islamic law. The absence of established norms and conventional approaches in judicial practice has created an urgent need to reform Sharia bankruptcy law, one that is oriented toward substantive justice and social welfare.

III. Research Method

3.1. Research Type

This research employs a qualitative method with a normative legal approach. Qualitative methods were chosen because they provide an in-depth understanding of the legal phenomena studied through data analysis, legal texts, and official documents. The normative legal approach in this research not only examines laws and regulations but also examines the application of legal norms in court decisions related to Sharia bankruptcy. This approach is applied through an analysis of legal principles, an interpretation of the provisions of Law Number 37 of 2004, and an assessment of their conformity with the principles of maqāsid al-syarī'ah.

Thus, this research positions law as a means to achieve substantive justice, not merely a collection of formal norms. The normative legal approach positions law as a set of written rules applicable in society, whether in the form of statutory regulations, legal principles, or legal institutions. In this way, research views law not only as an ideal concept but also as an operational instrument in dispute resolution. The primary focus of the normative approach lies in the study of documents, which provide a framework for critically examining various court decisions relevant to Sharia bankruptcy issues, allowing this research to produce a more in-depth analysis of the application of positive law. The legal phenomena studied include court practices in handling bankruptcy cases involving Sharia financing contracts, such as the case between PT Baja Agung and PT Bank Syariah Indonesia, which represents the dilemma between the principle of going concern and the principle of public interest in positive law. The research questions that form the primary focus of this study are:

- a. How is the principle of going concern applied in resolving bankruptcy disputes and PKPU (Surat Pembinaan Pusal Pusal Term) based on Sharia principles?
- b. To what extent do judges consider the principle of public interest in rulings on Sharia bankruptcy cases?
- c. What factors hinder the implementation of these two principles in the practice of Islamic economic justice in Indonesia?

3.2. Data Source

The data sources in this study consist of primary and secondary legal materials. Primary legal materials include Law Number 37 of 2004 concerning Bankruptcy and PKPU, which serve as the legal basis for resolving bankruptcy cases in Indonesia. Furthermore, this study also examines explicitly two court decisions: Commercial Court Decision Number 26/Pdt.SusPKPU/2021/PN.Niaga.Mdn. and Supreme Court Decision Number 1648 K/Pdt.Sus-Pailit/2022, which serve as the primary research objects. Secondary legal materials, including DSN-MUI fatwas relevant to Islamic financing contracts such as Mudharabah, Murabahah, and Line Facility, are used to support the analysis. Academic literature encompasses books, scientific articles, legal dictionaries, and research journals that discuss regulations and practices in Islamic economic dispute resolution. Secondary legal materials include textbooks on Islamic economic law, national and international scientific journals indexed by Scopus or Sinta, and fatwas from the Indonesian Ulema Council (DSN-MUI) on financing and bankruptcy. Literature such as Nugroho (2021), Rahmawati & Setiawan (2022), and Aulia & Ridwan (2023) was selected because it provides a modern perspective on the application of the principles of justice and welfare in Islamic bankruptcy. These sources were selected based on their relevance to the primary legal materials, particularly in bridging Islamic legal theory with court practice. By combining these types of legal materials, this research is expected to obtain a solid foundation both normatively and theoretically. The author recognizes the potential for bias in the selection of legal sources and cases studied, particularly due to limited access to all commercial court decisions. To minimize this, this study employed a source triangulation approach by comparing several similar decisions and the opinions of Sharia law experts from the academic literature.

3.3. Technique of Collection of Data

The technique for collecting legal materials is carried out systematically through library research and the search for official documents. The researcher accessed the Directory of Decisions of the Supreme Court of the Republic of Indonesia to obtain a copy of the analyzed decision, and then conducted a literature review of various relevant references. This process involves reading, taking notes, understanding, and summarizing the legal material obtained, as well as classifying it into research themes. Next, the collected legal materials are arranged logically to suit the structure of the problem being studied. The classification of legal materials was based on three main themes: (1) the application of the principle of business continuity in court decisions;

(2) judges' consideration of the principle of public interest; and (3) the conformity between positive legal decisions and the principle of *maqāṣid al-syarī'ah*. Each category was analyzed deductively by tracing patterns of legal argumentation and jurisprudential basis. Legal documents were obtained through official access to the Directory of Decisions of the Supreme Court of the Republic of Indonesia and national law journal databases. Most decisions were downloaded in PDF format and then analyzed using legal text reader software. The main challenges in data collection were limited metadata and variations in document formats, which were addressed through cross-checking with secondary sources such as legal news and interviews with judicial practitioners. With these steps, the data collection process focuses not only on the quantity of information but also on the quality and relevance of the sources supporting the research. This research adheres to the ethical principles of legal research, including maintaining academic integrity, respecting the copyright of legal sources, and not altering or distorting the content of the analyzed legal documents. All data cited is sourced from legally accessible public archives, thus avoiding the risk of breaching confidentiality or privacy.

3.4. Technique of Analysis Data

The data analysis in this study employed a deductive method with juridical analysis. This method enables researchers to conclude general legal norms and their application to specific cases under study. The analysis stage begins with data reduction, which involves filtering and simplifying the information obtained to meet the research needs. This reduction is achieved through categorizing and classifying problems, eliminating irrelevant data, and organizing the information into a more structured format. The reduced data is then analyzed using content analysis techniques. This analysis focuses on understanding the content of decisions, laws, and regulations, as well as related literature, to answer the research questions. In this way, this study can produce a comprehensive picture of the application of business continuity principles and the principle of benefit in resolving Sharia bankruptcy disputes, while also contributing to the development of Sharia economic law in Indonesia. The deductive method is implemented by integrating general principles of Islamic law and positive law into a concrete case analysis. This process begins with determining the basic norm (central premise), examining the legal facts in the decision (minor premise), and then drawing normative conclusions (conclusions) regarding the application of the principles of business continuity and welfare. Meanwhile, content analysis is conducted by identifying key terms, the frequency of occurrence of legal principles, and the legal context within the decision text. The analysis is conducted manually, with assistance from NVivo software, to group legal themes and enhance the validity of the interpretation. The results are validated through triangulation between sources, specifically by comparing the findings of the document analysis with academic literature and interviews with Sharia law experts. This approach ensures that interpretations of the principles of business continuity and welfare are not subjective but are supported by strong normative and empirical evidence.

IV. Results and Discussion

This research data is sourced from primary legal materials in the form of Commercial Court and Supreme Court decisions regarding bankruptcy disputes involving sharia contracts, as well as secondary legal materials in the form of academic literature, legal journals, and DSN-MUI fatwas. The analysis was conducted using a normative legal approach, employing deductive methods and content analysis techniques, as explained in the Methods section. Case selection was based on the criteria of relevance to the application of business continuity principles and the principle of public interest.

4.1. Analysis of Judges' Considerations in Commercial Court Decisions

The bankruptcy case of PT Baja Agung and Mr. Soeganda Koesuma began with a petition for a temporary suspension of debt (PKPU) filed by PT Bank Syariah Indonesia Tbk with the Commercial Court at

the Medan District Court. Through Decision No. 26/Pdt.Sus-PKPU/2021/PN Niaga Mdn dated July 19, 2021, the panel of judges granted a temporary suspension of debt for 45 days. This decision was subsequently extended several times: on September 2, 2021, for 75 days, on November 16, 2021, for 75 days, and on January 31, 2022, for 60 days. During the extension period, the debtor was permitted to submit a settlement proposal that was acceptable to the creditors. The debtor finally submitted a restructuring proposal on January 24, 2022, which was then requested for approval through a vote on March 30, 2022. However, the majority of creditors, including PT Bank Syariah Indonesia, PT Bank Mandiri (Persero) Tbk, and PT Bank UOB Indonesia, rejected the restructuring plan. Therefore, the panel of judges terminated the PKPU (Personal Assurance Suspension) and, in Decision No. 26/Pdt.Sus-PKPU/2021/PN Niaga Mdn dated April 1, 2022, stated: 1) granting the creditors' request; 2) declaring PT Baja Agung and Mr. Soeganda Koesuma bankrupt with all its legal consequences; 3) appointing a curator to manage and settle the bankruptcy estate; and 4) ordering the debtor to pay court costs of Rp 15,000,000. Dissatisfied with the decision, the debtor filed an appeal with the Supreme Court, arguing that the company's total assets exceeded its debts, thereby allowing for restructuring. However, the Supreme Court emphasized that this reasoning was irrelevant because it was a factual assessment, not an application of law.

Furthermore, the Supreme Court stated that the vote on the reconciliation plan did not comply with Article 281 paragraph (1) of the Bankruptcy and PKPU Law; therefore, the Medan Commercial Court was appropriately declared bankrupt through Decision Number 1648 K/Pdt.Sus-Pailit/2022, the Supreme Court stated: 1) rejecting the cassation petition from the cassation petitioners, PT Baja Agung and Mr. Soeganda Koesuma; 2) ordering the cassation petitioners to pay court costs at the cassation level for Rp 5,000,000. This decision also upheld and validated the bankruptcy decision issued by the Medan Commercial Court, making it legally binding (*inkracht van gewijsde*). With the rejection of the appeal, PT Baja Agung and Mr. Soeganda Koesuma were declared bankrupt in a legal sense. Their assets were placed in the bankruptcy estate, and all authority to manage and settle the assets was transferred to a curator under the supervision of a supervising judge. This decision provides the basis for creditors to collectively collect their receivables, while debtors lose their right to manage their assets. The process of settling the bankrupt assets can now be implemented immediately in accordance with Indonesian bankruptcy law. The analysis shows that judges tend not to integrate the principle of going concern into their decisions. This contrasts with the findings of Rahmawati & Setiawan (2022), who emphasized the importance of this principle as a form of protection for debtors under Islamic law. This discrepancy indicates a gap between Islamic economic legal theory and court practice in Indonesia.

4.2. Application of the Principle of Business Continuity in Decisions

The Principle of Going Concern and Suspension of Debt Payment Obligations (PKPU) are two important concepts in bankruptcy law that are interrelated, where PKPU serves as a mechanism to prevent bankruptcy and provide debtors with the opportunity to recover their financial condition. Within this framework, debtors are considered to have still the potential to continue their operations, making restructuring of financial obligations more beneficial than liquidation. An analysis of the Medan Commercial Court decision No. 26/Pdt.Sus-PKPU/2021/PN.Niaga.Mdn juncto Supreme Court No. 1648 K/Pdt.Sus-Pailit/2022 shows the application of this principle through several aspects: the PKPU applicant's argument emphasizing the debtor's recovery potential, the respondent's rebuttal assessing the feasibility of the application, the peace process assessing the reconciliation proposal between the debtor and creditors, and the panel of judges' legal considerations in assessing the facts and law related to business continuity. Thus, the principle of Business Continuity is applied strategically to ensure that debtors can maintain business activities while fulfilling obligations to creditors, reflecting the commitment of bankruptcy law to the continuity of company operations.

4.2.1. Analysis of the PKPU Applicant's Arguments

PKPU Decision Case No. 26/Pdt.Sus-PKPU/2021/PN.Niaga.Mdn:

- a. Applicant: PT Bank Syariah Indonesia Tbk (BSI), a bank resulting from a business merger that changed its legal status into a new entity.
- b. Legal Relationship: The Applicant asserts that it has a valid and accountable debt relationship with PKPU Respondent I and PKPU Respondent II.
- c. Past-Due Debt: PKPU Respondent I has debts that are due and collectible, which serve as the basis for submitting the PKPU application.
- d. Number of Creditors: PKPU Respondent I and PKPU Respondent II have more than two creditors, with at least one debt that is past due and remains unpaid.
- e. Inability to Pay: The Applicant argues that PKPU Respondent I and PKPU Respondent II are unable to fulfill their matured debt obligations, as evidenced by the following summons:

Summons to Respondent in PKPU I:

- a. Letter No. 159/S&P/XII/2018 dated December 31, 2018 (Summons I)
- b. Letter No. 010/S&P/I/2019 dated January 15, 2019 (Summons II)
- c. Letter No. 028/S&P/II/2019 dated February 1, 2019 (Summons III)
- d. Letter No. 061/S&P/IV/2019 dated April 1, 2019 (Declaration of Default)
- e. Letter No. 132/S&P/PTBA/IV/2021 dated April 23, 2021 (Settlement of PT Baja Agung's Obligations)

Summons to Respondent in PKPU II:

- a. Letter No. 160/S&P/XII/2018 dated December 31, 2018 (Somasi I)
- b. Letter No. 011/S&P/I/2019 dated January 15, 2019 (Somasi II)
- c. Letter No. 029/S&P/II/2019 dated February 1, 2019 (Somasi III)
- d. Letter No. 133/S&P/SK/IV/2021 dated April 23, 2021 (Settlement of PT Baja Agung's Obligations).
- e. Proof of PKPU Application: The Applicant states that the PKPU application can be proven simply in accordance with the provisions of Article 8, Paragraph (4) of Law No. 37 of 2004 concerning Bankruptcy and PKPU.

Analysis of the PKPU Applicant's Arguments:

1. Creditor authority and support: The creditor, in this case PT Bank Syariah Indonesia Tbk, has the right to file a PKPU (Deferred Payment Order) if the debtor is deemed unable to pay the debt that has matured (Article 222 Paragraph 3 of the KPKPU Law). The law permits the submission of a restructuring plan that includes an offer to pay part or all of the debt to the creditor. However, in practice, debt restructuring outside the PKPU procedure may be more appropriate if the goal is only to postpone payment obligations, because the PKPU has the potential to lead to bankruptcy if the creditor rejects the restructuring application.
2. Simple proof: Article 8, Paragraph (4) of the KPKPU Law is more relevant for bankruptcy declaration applications, which require two or more creditors and unpaid debts due. In the context of the PKPU, Article 225, Paragraph (3) of the KPKPU Law stipulates that the court must grant a temporary PKPU application if submitted by a creditor, including the appointment of a manager within 20 days of registration. Therefore, the simple proof does not fully apply to PKPU. The focus should be on restructuring and ensuring business continuity for debtors, enabling them to repay their debts effectively while continuing to operate their businesses.

4.2.2. Analysis of the Respondent's Response to the PKPU

In response to the petition for Suspension of Debt Payment Obligations (PKPU) filed by the Applicant, the PKPU Respondent (Debtor) submitted a substantial objection regarding the provisions of Article 222 of Law Number 37 of 2004 concerning Bankruptcy and PKPU. This objection includes the following matters:

- a. Failure to meet formal requirements: The Respondent for the PKPU (Debt Collection) claims that the PKPU application does not meet formal requirements because the debtor only has one creditor, namely PT Bank Syariah Mandiri Tbk (formerly PT Bank Syariah Indonesia Tbk), therefore the minimum number of creditors required for a PKPU application is deemed unfulfilled (Article 222 of Law No. 37/2004).
- b. Violation of the Mortgage Rights Law: The Respondent argues that the PKPU violates Law No. 4 of 1996 concerning Mortgage Rights. If the debtor defaults, the first mortgage holder has the right to auction the mortgaged object to obtain repayment of the receivables (Article 6 of the Mortgage Rights Law), which the Respondent claims was ignored in the PKPU process.
- c. Payment Extension Request: The PKPU Respondent requested a postponement of its obligations from the end of February 2019 to March 21, 2019, to PT Bank Syariah Mandiri, citing the awaited payment from PT KIM, which planned to purchase approximately 46 hectares of land as collateral related to several banks, including PT Bank Syariah Mandiri, PT Bank UOB Indonesia, PT Bank Central Asia Tbk, and PT Bank Permata.
- d. Potential Debt Settlement Through Collateral: The PKPU Respondent's settlement proposal stated that the offer of debt settlement through Assets Assigned to BSI remains valid. The appraised value of the land pledged as collateral to BSI in 2017 was IDR 166.608 billion, while the debtor's debt to BSI was approximately IDR 70 billion, thus providing the potential for full debt settlement through the collateral.
- e. Banking Regulations Regarding Productive Asset Management: According to Rosalia Suci Handayani, Executive Director of Legal Affairs at Bank Indonesia, banks' management of Assets Assigned to BSI must prioritize the resolution of problem loans. Article 12A Paragraph (1) of the Banking Law stipulates that commercial banks may purchase collateral through auction or voluntary surrender and must liquidate the collateral promptly.
- f. Application of the Going Concern Principle: Based on the PKPU Respondent's response and evidence, the debtor has sufficient collateral to repay the debt and maintain the company's operations. This demonstrates the company's potential to survive and continue its business; thus, the going concern principle plays a crucial role in assessing the success of the PKPU process and determining the likelihood of effective restructuring.

4.2.3. Analysis of Judge's Considerations

- a. Commercial Court's Temporary PKPU Decision
 1. The Panel of Judges considered that the PKPU petition could be proven simply because the Respondent's debt was due and collectible, as per KMA Decree No. 109/KMA/SKV/IV/2020. This provision stipulates that simple evidence includes the debtor having two or more creditors, failure to pay at least one debt that is due, and the debt being acknowledged by the debtor. This demonstrates that the formal requirements for a PKPU have been met, justifying the court's decision to grant the interim petition.
 2. The obligations of Respondent PKPU I guaranteed by Respondent PKPU II amounted to Rp74,312,537,398.36, consisting of the principal debt of Rp70,506,699,146.22, margin/profit sharing of Rp2,048,563,233.21, and a fine/penalty of Rp1,757,275,019.43. This detail demonstrates that the

panel of judges has carefully considered the debt components, ensuring a clear legal and factual basis for proceeding with the PKPU (Commitment to Payment for Sustainable Development) process.

3. The panel of judges emphasized the principle of going concern, stating that the purpose of the PKPU is to provide the debtor with the opportunity to submit a restructuring plan and pay off obligations proportionately (*pari passu*). This emphasizes that the PKPU is not merely a debt collection process, but also a mechanism for reviving the debtor's business.
4. Decision No. 26/Pdt.Sus-PKPU/2021/PN Niaga Mdn (July 19, 2021) granted the PKPU for PT Baja Agung and Mr. Soeganda Koesuma for 45 days, providing a clear timeframe for the debtor to prepare a restructuring plan and maintain business continuity.

b. Commercial Court Bankruptcy Decision

1. After the temporary PKPU period ends and the debtor has not submitted a peace proposal, the PKPU will be extended in stages:
 - 1) September 2, 2021: Second extension for 75 days, giving the debtor additional time to submit a proposal;
 - 2) November 16, 2021: Third extension for 75 days, demonstrating the court's patience in seeking a settlement;
 - 3) January 31, 2022: Fourth extension for 60 days, confirming the court's efforts to maintain the principle of business continuity.
2. The debtor finally submitted a reconciliation proposal on March 30, 2022, but all creditors (concurrent and separatist) rejected it. This rejection highlighted the difficulty in reaching an agreement, despite the potential for business continuity.
3. The Panel of Judges declared PT Baja Agung and Mr. Soeganda Koesuma bankrupt (April 1, 2022), in accordance with Article 289 of the K-PKPU Law, confirming that the failure of the reconciliation proposal constitutes a formal legal basis for bankruptcy.

c. Supreme Court Bankruptcy Decision

1. The Supreme Court rejected the debtor's (formerly the Respondent for the PKPU) cassation appeal, declaring the decision of the judicial review committee to be valid and in accordance with the law.
2. The vote on the reconciliation plan was deemed not to comply with Article 281 paragraph (1) of the K-PKPU Law; therefore, the debtor was declared bankrupt.
3. The trial evidence showed that the debtor owed debts to several creditors, thus fulfilling the requirements of Article 2 paragraph (1) of the Bankruptcy and PKPU Law. This decision reinforces the principle that bankruptcy is a legally valid option if the debtor fails to fulfill their obligations, even though there is still an opportunity for restructuring.

d. Analysis of Judge's Considerations

1. From the peace procedure side:
 - 1) Judges are passive, only hearing the Supervisory Judge's report without an independent evaluation of the reasons for creditors' rejection. Judges should take an active role in assessing the reasons behind the rejection so that the PKPU process aligns with the principle of business continuity.
 - 2) The voting process is considered inflexible, not providing sufficient negotiating space for debtors and creditors to reach a fair agreement.
 - 3) Law No. 37/2004 still shows weaknesses, emphasizing debt settlement through a composition plan without alternative mechanisms for effective restructuring.

- 4) Debtors should have the opportunity to renegotiate, creditors can also submit proposals, and the Supervisory Judge serves as a mediator to facilitate compromise.
 - 5) The cumulative voting requirements for concurrent and separated creditors are high, often forcing debtors to default within one year of homologation.
 - 6) The authors emphasize the need for in-depth financial evaluations, measured restructuring plans, expert consultation, transparent communication, consideration of alternative scenarios, and evaluation of previous case experience to prevent PKPU failures.
2. From the perspective of the debtor's solvency conditions:
- 1) The debtor has assets greater than liabilities (Rp166.608 billion vs. approximately Rp70 billion in BSI debt), but the judicial panel did not consider this; this condition indicates the potential for business continuity.
 - 2) Article 2, paragraph (1) of the K-PKPU Law does not require the debtor to be insolvent for a PKPU, so the court should assess the potential for debt settlement proportionally.
 - 3) The insolvency test can be applied as a preventive measure:
 - Ability to Pay Test – assesses whether the debtor has the resources to pay maturing debts;
 - Balance Sheet Test – compares total debt and assets to assess the debt-to-asset ratio and insolvency status;
 - Capital Adequacy Test – assesses the projected stock value and capital adequacy to support the company's operations and development, thereby strengthening the principle of going concern.
- 4.3. Application of the Principle of Benefit in Decisions

According to Ibn al-Qudāmah (d. 620 H), the concept of *maṣlaḥah* (benefit) is defined as:

المصلحة جلب المنفعة أو دفع المضرّة
"Benefits are bringing benefits and avoiding harm."

Thus, *maṣlaḥah*, as the essence of *maqāṣid al-sharī'ah* (the objectives of Islamic law), must serve as a fundamental consideration for judges in making decisions, particularly in cases related to bankruptcy and PKPU (Postponement of Debt Payment Obligations). Based on the author's analysis, several parameters indicate that the debtors still possess the potential to continue their business activities, thereby making the application of the principle of benefit highly relevant.

4.3.1. Legal Considerations of the Panel of Judges

- a. The Panel of Judges appears to have neglected to consider a crucial aspect of the Line Facility (At-Tashilat As-Saqfiyyah) contract, a product of the DSN-MUI Fatwa Number 45/DSN-MUI/II/2005. This fatwa stipulates that in the event of a dispute, resolution shall be made through the National Shariah Arbitration Board after deliberation has failed.
- b. The fatwa states:
- c. "If one party fails to fulfill its obligations or if a dispute arises between the parties, the resolution shall be made through the National Shariah Arbitration Board after no agreement is reached through deliberation."
- d. Therefore, the judge should have considered Sharia procedures before pursuing a PKPU (Deferred Payment for Disability) so that the decision aligns with the principle of benefit: avoiding harm and bringing benefits to the parties involved.

4.3.2. Principles of Sharia Contracts

- a. The panel of judges failed to examine the principles of sharia contracts that underlie the relationship between debtors and creditors, such as the contract between PT Baja Agung and BSI.
- b. The purpose of sharia law is to maintain certainty and fairness in transactions, so ignoring this principle can lead to injustice from a sharia perspective.
- c. This demonstrates the need for judges to possess competence in sharia economics to ensure fairer decisions and align with the maqāshid al-syarī'ah.

4.3.3. Normative and Legal Considerations

- a. Based on Constitutional Court Decision No. 93/PUU-X/2012, disputes involving Islamic financial institutions should be subject to the jurisdiction of the Religious Courts, not the Commercial Courts.
- b. Filing bankruptcy cases based on Islamic contracts with the Commercial Court risks forcing Islamic principles to align with conventional law, resulting in a mixture of concepts that could obscure the substance of Islamic law.
- c. The impacts include:
 1. Conflict of Principles: Fundamental differences between Sharia and conventional law.
 2. Injustice: Decisions may disregard Sharia provisions, harming the parties to the contract.
 3. Effectiveness of the Contract: Sharia contracts lose their effectiveness if not completed according to their principles.
 4. Consideration of the Debtor's Condition
- d. According to Erman Rajagukguk, judges must consider the debtor's condition:
Judges need to consider the debtor's condition when deciding on a bankruptcy case, especially when the debtor still has the potential to recover, can repay its debts, and has the time and workforce to rely on the company. Honest debtors should be allowed to continue their business, while still protecting the interests of creditors and the public."
- e. This principle aligns with progressive law in Indonesia, which places human values above normative law, as stipulated in Article 5 paragraph (1) of Law No. 48/2009 concerning Judicial Power.

4.3.4. Sharia Guidelines for Debts and Receivables

- a. The Qur'an provides clear guidance regarding the treatment of debtors facing financial hardship, as stated in Surah Al-Baqarah [2:280]:

وَإِنْ كَانَ دُوْ عُسْرَةً فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۗ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

"And if the debtor is in difficulty, then grant him time until it is easy for him to repay. However, if you remit it as charity, it is better for you, if you only knew."

- b. This verse supports the modern concept of PKPU: providing leniency for debtors to restore their financial condition before paying off debts, as well as the principle of debt forgiveness that is in line with socio-economic interests.

4.3.5. Benefits of the Benefits Principle in Business Continuity

Maintaining company operations has a positive impact on economic value and social welfare:

- a. Increase Asset Value: Assets are maintained and not sold under duress.
- b. Benefit Creditors: Debtors have the opportunity to repay their debts more optimally.

- c. Maintain Economic Stability: Employment is maintained, and related industries are stable.
- d. Reduce Social Disadvantages: Reduce unemployment and maintain public welfare.

4.3.6. The Impact of Bankruptcy on Debtors and Society

- a. Bankruptcy causes widespread losses:
 - 1. Rising unemployment.
 - 2. Loss of state tax revenue.
 - 3. Local economic instability.
 - 4. Declining investor confidence.
 - 5. Difficulty for companies accessing future financing.
- b. Therefore, the principle of public interest must be a guide for judges so that these negative impacts are minimized.

4.3.7. Author's Conclusion

- a. In this case, the Panel of Judges appears to have considered only the normative legal aspects, without evaluating the debtor's recovery potential or the principle of public interest.
- b. Progressive legal theory emphasizes that the law must adapt to the values of justice and public interest.
- c. Applying the principle of public interest in line with Sharia principles and progressive law can result in just decisions that protect creditors, debtors, employees, and the wider community.

4.4. Implications for Sharia Bankruptcy Law Reform

The social impact of Sharia bankruptcy decisions is felt not only by business actors but also by employees, customers, and the wider community. When the principle of business continuity is ignored, the potential for job losses increases, and public trust in the Sharia financial system can decline. Conversely, consistent application of the principle of benefit can strengthen a just and sustainable Islamic economic ecosystem. Although the application of the principle of benefit is considered important, some experts argue that judges must prioritize legal certainty to prevent subjective decisions (Said, 2023). However, this view can be criticized because Sharia economic law places substantive justice above formal certainty. Thus, the benefit approach can be seen as a form of correction to the rigidity of positive law. The author interprets the principle of benefit in the context of Sharia bankruptcy not only as protection for creditors but also as an effort to maintain the socio-economic stability of society. In his view, benefits extend beyond fulfilling financial rights to include restoring public trust in Shariah financial institutions. This approach broadens the meaning of *maqāṣid al-syarī'ah* as a principle of distributive justice that is present in contemporary Islamic economic law practice. The implications of these findings for legal practice are the need for more explicit judicial guidelines regarding Sharia-based bankruptcy, so that judges have a clear reference point that aligns with the *maqāṣid al-syarī'ah*. For future research, it is essential to expand the analysis to an empirical dimension by conducting interviews with judges, curators, and Islamic finance practitioners to gain a more comprehensive understanding of the implementation of the principle of benefit. Based on the analysis, it can be concluded that the application of business continuity principles and benefits in Sharia bankruptcy disputes in Indonesia is not optimal. Court decisions still tend to be oriented towards formal legal certainty and do not fully reflect the values of *maqāṣid al-syarī'ah*. This research emphasizes the importance of integrating these two principles as a foundation for future Sharia bankruptcy law reform, both at the normative level and in judicial practice.

V. Conclusion

Based on the analysis of Case No. 26/Pdt.Sus-PKPU/2021/PN.Niaga.Mdn. in conjunction with Supreme Court Decision No. 1648 K/Pdt.Sus-Pailit/2022, it can be concluded that although the Business Continuity Principle served as the basis for the PKPU application, the reconciliation process ultimately failed due to the rejection by the majority of creditors. As a result, the panel of judges placed greater emphasis on normative and straightforward legal evidence without adequately considering the debtor's potential for business continuity. This demonstrates that the application of the Business Continuity Principle is highly dependent on creditor support and judicial discretion. Furthermore, the principle of public interest (maqāsid al-sharī'ah) within Sharia economic law was not given proper consideration. The decision failed to uphold the values of benefit, justice, and protection for the debtor, as well as the broader socio-economic impacts of bankruptcy. The judges' lack of attention to the nature of Sharia contracts and the appropriate forum for resolving disputes related to Islamic finance indicates that the ruling was more oriented toward formal legality than toward public interest and substantive justice. Based on the findings of this research, the author recommends that the Bankruptcy and PKPU Law be revised, particularly concerning the weaknesses in the simple proof provision, by integrating the norms of the Business Continuity Principle and the principle of Debt Forgiveness. Such revisions would provide judges with a more concrete and comprehensive foundation for rendering decisions. Judges are also expected not to be limited to a literal interpretation of the law, but to consider the laws that operate within society, including Sharia economic law, in order to realize public benefit and substantive justice. In addition, amendments to Article 49 of Law No. 3 of 2006 concerning the Religious Courts are necessary by explicitly including bankruptcy and Sharia-based PKPU within its jurisdiction. This would ensure that cases involving Sharia contracts can be examined and decided by the Religious Courts more appropriately and consistently.

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