Questioning the Authority to Settle Bankruptcy Cases of Sharia Financial Institution in Indonesia: in Religious Court or Commercial Court?

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***Abstract*: *In this span of time economic problem in Indonesia are increasingly complex, it can be seen from the number of economic cases involving various parties to resolve these cases. Some of the cases which currently troubleed the economic actors are bankruptcy cases. Some bankruptcy cases that have been handled by the commercial are the bankruptcy case of PT Asuransi Syariah Mubarakah (PT ASM) and the case of Haji Mujiono Rachmat which was bankrupt by PT Bank Syariah Bukopin. From this, several formulations of the problem arose, namely the fundamental differences in bankruptcy cases of Islamic financial institutions (LKS) from conventional financial institutions (LKK), how is the urgency of the readiness of religious courts (PA) in response to LKS bankruptcy (Taflis) cases, and within the authority of the Religious Court, what matters need to be prepared by the PA to anticipate the LKS bankruptcy case. From the research that has been carried out, some conclusions can be drawn, namely that there are fundamental differences in the LKS Bankruptcy Case from the LKK contract basis in LKS operations; By looking at the handling of cases in the Commercial Court (PN) that are not appropriate if viewed from the perspective of sharia contract law, the PA readiness in responding to the LKS Bankruptcy Case is very urgent; For this reason, it is necessary to clarify the position of the Bankruptcy Case (Taflis) within the authority of the Religious Court, along with the consequences of things that need to be prepared, namely in terms of regulation and bankruptcy supporting institutions that are in accordance with sharia, such as Curators and Supervisory Judges. As well as suggestions that can be given is the need to be regulated in the regulation regarding the clarity of the position of the Bankruptcy Case (Taflis) within the authority of the Religious Court along with the readiness of its supporting institutions within the Religious Courts.*

Index Terms*: *Bankruptcy, Religious Court Authority, Sharia dispute settlement

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I. INTRODUCTION

Religious court is a court which aimed to resolve disputes between people who are Muslim about matters which are the authority of the judiciary [1]. Since 2006, after the enactment of Law No. 3 of 2006, the Authority has included religious courts on legitimate economic matters. The discussion of matters in this set of Islamic economic issues in explaining the law includes eleven types, including on legitimate acts. One of the problems is the possibility of sharia in business Bankruptcy or insolvency in the administration of his works. How religious willingness of the judiciary to deal with matters in the area of bankruptcy, this is the fundamental issue in this article.

Bankruptcy law is one way to probate businesses that are failing to meet the state of stability in the business world. Recognizing that bankruptcy law has an important role in the economic sector, knowledge in the field of bankruptcy law is indispensable in today's economic development. Through this research, it should be useful for readers who want to further explore bankruptcy law, especially those related to bankruptcy in the economic field. sharia and know that the Religious Courts have an important role in handling bankruptcy cases in the field of Islamic economics.

Based on Law No. 37 of 2004 about Bankruptcy and Postponement of Liability for Debt Payment (UUK 2004), bankruptcy is a general seizure of all bankrupt debtor assets whose management and settlement are carried out by the curator under the supervision of a supervisory judge (Article 1 point 1 UUK 2004)[2]. Bankruptcy of a legal subject both individuals and legal entities can occur if some of the requirements required by UUK 2004 are contained in article 2 paragraph (1), which are :

1. Minimum (2) Two or more creditor;
2. Do not pay off at least one debt that has matured and can be billed (regardless of whether the debtor is indeed unable to pay or the debtor simply does not want to pay the creditor for certain reasons, for example in case the creditor does not carry out the achievements as previously agreed)[3] .

The purpose of the bankruptcy law is for the benefit of the business world in resolving the debt-receivable problem fairly, quickly, openly and effectively. According to Prof. Remy Sjahdeini, bankruptcy law is needed to regulate the method of distributing the proceeds of the sale of the debtor's assets to pay off the debts of each creditor based on the priority order. Before being distributed to the creditors, the debtor's property by the court is placed first under general seizure[4]. Requests for bankruptcy can be submitted by the debtor himself or by one or more creditors. The application for a bankruptcy statement must be granted if there is a fact or condition that is proven simply that the bankruptcy requirements in Article 2 paragraph 1UUK 2004 as described above have been fulfilled (Article 8 paragraph 4 UUK 2004)[5].

Regarding the bankruptcy of a legal subject, there are several institutions that are authorized by the Act to file bankruptcy applications. One of them can be seen from Article 2 paragraph (5) UUK 2004 which states that in the case of a debtor an insurance company, a reinsurance company, a pension fund or a State Owned Enterprise (BUMN) engaged in the field of public interest, the application for bankruptcy statements can only be submitted by the Minister of Finance.

As time goes by the authority to file bankruptcy applications against insurance companies or business entities operating in the public interest sector is transferred from the Minister of Finance to the Financial Services Authority (OJK) based on Article 55 paragraph (1) of Law Number 21 of 2011 concerning the Financial Services Authority (Law OJK) which states that :

"As of December 31, 2012, the functions, duties, authority of regulating and supervising financial services activities in the Capital Market, Insurance, Pension Funds, Financing Institutions and Other Financial Services Institutions were transferred from the Minister of Finance and the Capital Market and Financial Institution Supervisory Agency to OJK.

This is done because OJK is a form of unification of regulation and supervision of the financial services sector where previously the regulatory and supervisory authority was carried out by the Ministry of Finance, BI, and the Capital Market and Financial Institution Supervisory Agency (Bapepam-LK), so the OJK Law was adequately regulated details of the provisions governing the transition so that the transfer of duties and regulatory and supervisory functions can run well[6].

As an entity that has the authority to submit bankruptcy applications to insurance companies and other financial service institutions in its development at a time when there are more business forms offered by companies, one of which operates in sharia. This is an important issue to study because the principles contained in the operations of Islamic financial services institutions have specificities in accordance with the provisions of sharia contracts. Therefore, questions arise; what is the urgency of PA readiness in responding to the LKS Bankruptcy Case given the lack of clarity on the position of the Bankruptcy Case (Taflis) within the authority of the Religious Court?

A. Court Authority in Bankruptcy Cases

Bankruptcy

Bankruptcy is a condition where the debtor is unable to make payments - payment of debts from his creditor. The condition of being unable to pay is usually due to financial distress of the debtor business that has suffered a setback. Whereas bankruptcy is a court decision which results in a general seizure of all the assets of a bankrupt debtor, both those that have been and will be in the future Bankruptcy is a commercial solution to get out of debt problems that squeeze a debtor, where the debtor has no the ability to repay these debts to its creditors. Therefore, if the debtor is unable to pay the matured obligation, then the step to submit an application for voluntary petition for self bankruptcy becomes a possible step, or the bankruptcy status is determined by the court against the debtor if later there is evidence that the debtor has indeed been unable to repay the debt that has matured and can be billed (involuntary petition for bankruptcy)[7].

Bankruptcy is also a further implementation of the creditity parity principle and the pari passu prorate parte principle in the wealth law regime (vermogensrecht). The principle of creditorium parity means that all the debtor's wealth, whether in the form of movable goods or immovable property, as well as property that is now owned by the debtor and future items of the debtor, will be bound to the settlement of debtor's obligations[8].

Whereas the principle of pari passu prorate parte means that the property is a joint guarantee for the creditors and the results must be distributed proportionally between them, unless there are those between the creditors who according to the law must take precedence in receiving the bill payment[9].

The principle of creditorium parity is adopted in the civil law system in Indonesia. This is contained in Article 1131 of the Civil Code[10].Whereas, the principle of pari passu prorrata parte is contained in article 1132 of the Civil Code[11] . According to Kartini Mulyadi, that the formulation in Article 1131 of the Civil Code shows that every action taken by someone in the field of wealth will always bring consequences to their assets, both those which add to the amount of assets (credit), and which will reduce the amount of assets (debit). Thus the wealth of each person will always be in a dynamic state and always change from time to time. Any agreements made or agreements that occur can result in an individual's wealth increasing or decreasing[12].

Whereas if it turns out that in relation to the property law, a person has more than one obligation that must be fulfilled by more than one person who has the right to fulfill the obligation, then Article 1132 of the Civil Code stipulates that every party or creditor entitled to fulfillment of the agreement must obtain fulfillment of the engagement of the assets of the party in charge (debtor) in (1) pari passu, namely jointly

obtain repayment, without any precedence, (2) pro rata, ie proportionally calculated based on the amount of each receivable compared to their receivables as a whole, to all of the debtor's assets. Thus the bankruptcy philosophy is a mechanism for distributing assets fairly and equitably to creditors in relation to the condition of not paying the debtor because of the inability of the debtor to carry out the obligation[13].

Competence of Comercial Court on The Definition Of Debt in Bankruptcy Case

One of the important changes in the Bankruptcy Act (Faillessement Veroredening) as amended in the Bankruptcy Act of 1998 was the establishment of a Commercial Court. The establishment of the Commercial Court is still within the scope of the District Court. The establishment of the Commercial Court within the scope of the district court at that time was based on Law No. 14 of 1970 concerning the basic Provisions of Judicial Power jo. Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning Basic Provisions on Judicial Power[14].

Furthermore, in the Bankruptcy Act 1998 the Regulation on Commercial Court is stipulated in Chapter 3 of the Commercial Court Article 280 to Article 289. In Article 280 the UUK is said that the petition for bankruptcy and suspension of debt obligations is examined and terminated by the Commercial Court within the general judicial environment. In addition, the Commercial Court is authorized to examine and decide on other matters in the business of which the determination is made by Government Regulation. While in the new UUK there is no specific arrangement regarding the Commercial Court in its own chapter such as the old chapter[15].

In the process of bankruptcy the concept of debt is crucial, because without debt it is not possible for bankruptcy cases to be examined [16]. UUK-PKPU in Article 1 point 6 has stated that "debt is an obligation stated in the amount of money both in Indonesian currency and in foreign currency, either directly or will arise later or contingent, arising from an agreement or law invoice and which must be fulfilled by the Debtor and if not fulfilled gives the creditor the right to obtain its fulfillment from the Debtor assets[17]. If an "obligation that can be expressed in terms of money" can be categorized as debtor's debt, so that it can be registered in the verification it will cause problems. This can lead to "games" by the parties concerned which can harm other creditors[18].

Should "obligations" that do not or have not been stated in the amount of money must first be stated in the amount of money before being categorized as debt. In other words, the "obligation" must first be stated in the amount of money. Authorities that are authorized to declare the amount of money, should only be a court. Because this issue is included in the scope of bankruptcy, the court referred to is the Commercial Court[19].

In connection with the notion of debt in the bankruptcy law, according to Setiawan in his article entitled "Bankruptcy and Current Application Ordinance", the definition of debt adopted is the notion of debt as Jerry Hoff argues in his book "Indonesian Bankruptcy Law". Below is the statement from Setiawan as follows[20]:

"Debt should be given a broad meaning; both in terms of the obligation to pay a certain amount of money that arises because of a debt agreement (where the debtor has received a certain amount of money from his creditor, or the obligation to pay a certain amount of money arising from an agreement or other contract that causes the debtor to pay a certain amount of money. other words referred to as debt are not only the obligation to pay a certain amount of money due to the debtor having received a certain amount of money due to a credit agreement, but also the obligation to pay the debtor arising from other agreements. "

With regard to UUN. 4 of 1998 before finally being revoked and replaced with UUK-PKPU, Kartini Muljadi argued that the term debt in Article 1 and Article 212 of Law No. 4 of 1998 (supposedly) refers to the law of engagement in civil law. From Kartini Muljadi's description it can be concluded that the obligation arises because of each engagement, according to article 1233 the Civil Code was born either because of the agreement or because of the law[21]. Furthermore Kartini Muljadi connects the engagement referred to in Article 1233 of the Civil Code with the provisions of Article 1234 of the Civil Code which determines, each engagement (arises an obligation) to give something, do something, or do nothing. In other words, Kartini Muljadi argued that the notion of debt is every debtor's obligation to each creditor to give something, do something, or not do something[22]. This illustrates that debts in bankruptcy cases that can be settled at the Commercial Court later are all forms of debt originating from or as a result of an agreement.

Competence of Religious Court

According M. Yahya Harahap[23] , There are five duties and authorities in the Religious Court environment: (1) The function of the judicial authority; (2) provide information, advice and advice on Islamic law to government agencies; (3) other authority by or under the Law; (4) The jurisdiction of a religious high court adjudicates matters in the appeal and judges relative competence disputes; (5) To supervise the course of justice. Currently with the issuance of Law No. 3 of 2006 concerning the Amendment of Law No. 7 of 1989 on the Religious Courts, one of which is regulated is the change or expansion of the authority of the Religious Court institution in article 49 which now also covers matters in the field of sharia economy. In complete terms the jurisdiction of the Religious Court includes: (a) marriage; (b) heirs; (c) Will; (d) grants; (e) waqf; (f) zakat; (g) infak; (h) charity; and (i) the shariah economy.

In addition to the principles of Shariah economics in Article 3 of Law No. 21 of 2008 concerning Sharia Banking, the rules for settling the dispute are regulated in Article 49 letter (i) of Law No. 3 of 2006 concerning Religious Courts and the competence of religious courts is strengthened by the

existence of a Constitutional Court Decree No.93 / X / PUU / 2012 which has abolished the explanation of Article 55 paragraph (2) of the Sharia Banking Law, which originally allowed sharia economic cases to be resolved. by a general arbitration institution or a General Justice institution. If the explanation of Article 55 paragraph 2 of the Islamic Banking Act is removed it will return to the body. This makes the Shari'ah economic dispute especially in the Shariah banking transactions an absolute authority of the religious court. So that for bankruptcy cases in sharia economic business activities, especially in the world of banking and other sharia financial institutions such as Islamic insurance it is possible to be settled in the religious judiciary.

B. Bankruptcy Case Of Sharia Economic Entity Business In Indonesia

Business Principles of Islamic Economic Institutions

There are various shariah economic institutions that have stood along with the development of community awareness in sharia economy. Among them have been established since nearly three decades ago, the Islamic banking institution, which was followed by the establishment of sharia insurance institutions, syriah capital markets and others[24] . Each of these Islamic economic institutions works according to the principles justified in the provisions of Islamic law. So that the application will have a different impact from the origin of the institution conventionally. Among them, we can see two Islamic economic institutions that are widely established in Indonesia, namely Islamic Bank institutions and Sharia Insurance.

Business Principle of Sharia Banking

Sharia banking institutions in Indonesia currently have clear regulations in Law no. 21 of 2008. In Article 1 point 12 stated that the principle of sharia is the principle of Islamic law in banking activities based on a fatwa issued by an institution that has authority in determining fatwa in the field of sharia. In Article 1 number 25, what is meant by financing is the provision of funds or equivalent claims in the form of; a) profit sharing transactions in the form of mudharabah and musyarakah; b) leasing transactions in the form of ijarah or lease purchase in the form of ijarah muntahiya bittamlik; c) sale and purchase transactions in the form of murabahah, greetings and istishna receivables'; d) lending and borrowing transactions in the form of qardh receivables; and e) leasing transaction services in the form of ijarah for multi-service transactions based on an agreement or agreement between a Sharia Bank and / or UUS and another party that requires the financed party and / or is provided with funding facilities to return the funds after a certain period of time in return for ujrah , without reward, or profit sharing. This has become a major differentiator between the concept of Islamic banking from conventional banking, which only uses the principle of debt debt (the concept of the relationship between creditors and debtors) in its business activities. So that the Islamic banking business activities have variations that have legal impact as a legal consequence of each form of agreement made. This is what needs to be considered when resolving a dispute that occurs if one party wishes to bankrupt the Islamic bank institution.

Business Principle of Sharia Insurance Service

The philosophy underlying Islamic insurance is that humanity is a large family of humanity. In order for a common life to be held, fellow human beings must help, be responsible, and bear one another. Takaful which means to bear each other between human beings is the foundation of human activities as social beings. On that basis, among the participants agreed to share with them the risks caused by death, fire, loss, and so on[25].

UU no. 40 of 2014 concerning Insurance also provides a specific definition of Sharia Insurance. What is meant by Sharia Insurance is regulated in Article 1 number 2. The definition of Sharia Insurance is as follows:

"Sharia insurance is a collection of agreements, consisting of agreements between sharia insurance companies and policy holders and agreements between policyholders, in the context of managing contributions based on sharia principles to help and protect each other by:

a. provide reimbursement to participants or policyholders due to loss, damage, costs incurred, loss of profits, or legal liability to third parties that may be suffered by participants or policyholders due to an uncertain event; or

b. provide payment based on the death of the participant or payment based on the participant's life with the benefits that the amount has been determined and / or based on the results of fund management. "

In this Law Sharia Insurance has been recognized as a separate business field. This can be seen in the definition of Insurance Business in Article 1 number 4 Besides in terms of understanding, the most important difference in Sharia Insurance from conventional insurance is that there are principles that underlie its operations. In Article 2 of the Minister of Finance Regulation No. 18 / PMK.010 / 2010 explains that "Companies that carry out insurance business or reinsurance businesses with sharia principles must apply the following basic principles:
a. There is agreement to help (ta'awun) and each other (takaful) between participants
b. The contribution of participants to Tabarru 'Fund;
c. The company acts as the manager of the Tabarru Fund';
d. Fulfillment of principles of justice ('adl), trustworthy (trust), balance (tawazun), benefit (maslahah), and the universality (syumul); and Does not contain things that are forbidden, such as uncertainty / obscurity (gharar), gambling (maysir), interest (usury), persecution (zhulm), bribe (risywah), immorality, and illicit objects."
In the Regulation of the Minister of Finance of the Republic of Indonesia Number 227 / PMK.010 / 2012 in Article 4 reads as follows:

(1) The assets and liabilities of Tabarru 'Fund are the collective wealth and obligations of the Participants.
(2) The company is required to establish a Tabarru Fund for each business line.
(3) In the event that the establishment of Tabarru 'Fund for every business line as referred to in paragraph (3) has not fulfilled the law of the large number, the Company may form the Tabarru' Fund in combination from several business lines.
(4) The merger of Tabarru 'Fund as referred to in paragraph (4) must be informed by the Company to the Participant and contained in the policy.

From the description above, there appears to be a significant difference in the concept of Islamic insurance from the conventional insurance concept. So that these matters are also important to be considered before a Sharia Insurance is declared bankrupt.

Bankruptcy Case Example of Sharia Economic Institution

Banking Cases

From the banking side, namely between Bank Syariah Bukopin against Haji Mujiono Rachmat which led to the bankruptcy of Haji Mujiono Rachmat. This originated from an agreement made by Haji Mujiono Rachmat with Bank Syariah Bukopin using a Musharaka contract which basically used this concept of profit sharing between customers and the Bank. With this concept, if there is a profit obtained from the cooperation between the customer and the Bank, the profit will be divided according to the initial ratio promised by both parties. The opposite is true if there is a loss that is obtained from this cooperation, the loss must be borne jointly by both parties.
In the case of Haji Mujiono Rachmat which was bankrupted by the Commercial Court due to negligence in paying its "debt" to Bank Bukopin Syariah which was based on the musharaka agreement, the Commercial Court Judge should not have decided Pailit Haji Mujiono Rachmat. This is because when viewed from the contract both parties have agreed to use the Musharaka agreement contract. In the Musharakah agreement, the essence of the agreement is that both parties will jointly bear all the losses that occur in the future. In addition, it is not appropriate for the Commercial Court to deal with the bankruptcy case of Haji Mujiono Rachmat because basically in the contract used by both parties, namely musharaka, there are no transactions related to accounts payable and this case should be handled by the Religious Court.

Insurance Cases

As for the case of the new insurance sector handled by the Central Jakarta Commercial Court is a bankruptcy decision against PT Syariah Insurance Mubarakah, a company engaged in insurance that is based on sharia principles in Indonesia. PT Syariah Insurance Mubarakah is an insurance company based on sharia principles that can be defined as a system of systems whereby participants donate part or all of the contributions / premiums / fees they pay into the Tabarru Fund 'to use to pay claims for calamities experienced by some participants. The process of the relationship between the participants and the company in the insurance mechanism for Islamic insurance is sharing of risk or risk sharing. In the event of a disaster, all Sharia insurance participants bear each other. Thus, there is no transfer of risk or transfer of risk from participants to the company as is the case with conventional insurance. The role of insurance companies in sharia companies is limited only as a trustee in managing and investing funds from participant contributions. So in Islamic insurance companies, companies only act as operational managers, not as insurers as in conventional insurance. Because of differences in the systems applied by conventional insurance companies and sharia insurance companies which, despite being bound by an agreement, the replacement and / or fulfillment of claims submitted by the Respondent's customers is paid from the Tabarru Fund and Tabarru's Fund sources are clear from the premium payments made by the Respondent's customers. So it is clear that the claim request is not in accordance with the definition of debt and it is clear that Sharia insurance claims are not debt.

II. FINDINGS

A. Case Analysis

Haji Mujiono Rachmat v. PT Bank Bukopin Syariah Cases

Based on the results of the research, the conclusions are: 1) The decision of the bankruptcy case No. 354 K / Pdt.Sus-Pailit / 2014 does not consider at all the Islamic law in this regard manifested in the DSN-MUI Fatwa regarding the Musharakah agreement. But that does not mean the verdict is contrary to Islamic law only in the verdict there is no difference between the concept of debt, creditors, and maturities required in bankruptcy law with the provisions of Islamic law. 2) In general, the understanding of Commercial Court judges in resolving Shari'ah economic bankruptcy matters is first, there is no fundamental difference from the initial process of registration of the case to the verdict between the sharia economic bankruptcy and bankruptcy in general because of the same law. Secondly, there is no principle difference between the conditions of bankruptcy and the DSN-MUI Fatwa Act especially in relation to murabahah financing.

Bankruptcy Case of PT Asuransi Syariah Mubarakah

In this case, the Financial Services Authority (OJK), as the party that bankrupt PT. Mubarakah Sharia Insurance (PT ASM), is a State institution formed based on Law Number 21 of 2011 which functions to organize an integrated regulation and supervision system for all activities in the financial services sector in the banking, capital market and financial services sectors non-banks such as Insurance, Pension Funds, Financing Institutions, and other Financial Services Institutions. In the general explanation the OJK Law stated that:

"The Financial Services Authority carries out its duties and authorities based on the following principles:

1. The principle of independence, which is independent in decision making and the implementation of the functions, duties and authority of the OJK, in accordance with the prevailing laws and regulations
2. The principle of legal certainty, namely the principle in the rule of law which prioritizes the basis of legislation and justice in every policy of the implementation of the OJK;3.The principle of public interest, namely the principle that defends and protects the interests of consumers and society and promotes public welfare;
3. The principle of openness, namely the principle that opens itself to the right of the community to obtain information that is true, honest and non-discriminatory about the implementation of OJK, while still paying attention to the protection of personal rights and groups, as well as state secrets, including secrets as stipulated in the legislation -invitation;
4. Principle of professionalism, namely the principle that prioritizes expertise in the implementation of OJK's duties and authority, by continuing to be based on the code of ethics and the provisions of legislation;
5. The basis of integrity, which is the principle of adherence to moral values in every action and decision taken in the implementation of the OJK; and
6. The principle of accountability, namely the principle that determines that every activity and end result of each OJK implementation activity must be accountable to the public. "

In the provisions of Article 55 paragraph (1) the OJK Law states that:
"As of December 31, 2012, the functions, duties and authority of regulating and supervising financial services activities in the Capital Market, Insurance, Pension Funds, Financing Institutions and Other Financial Services Institutions have been transferred from the Minister of Finance and the Capital Market and Financial Institution Supervisory Agency to OJK . "

In the Authority of the OJK in applying for bankrupt statements, Article 50 of the insurance law states that: "Requests for bankruptcy against an Insurance Company, Sharia Insurance Company, Reinsurance Company, or Sharia Reinsurance Company based on this Act can only be submitted by the Financial Services Authority."
In this case it is seen that the OJK has the authority to file bankruptcy applications against a sharia insurance company. However, the regulation needs to be seen again who is the debtor in this case and the contract used in the case that will be submitted by OJK. PT ASM as an insurance company that uses sharia principles in running its business cannot be categorized as a debtor as defined in Article 1 point (3) UUK-PKPU because the takaful agreement that is used as the basis of the agreement between the company and the customer cannot be categorized as a debt, then PT ASM as a Takaful company cannot be tried by the Commercial Court but must be tried in the Religious Court.

III. CONCLUSION

Fundamental differences between bankruptcy cases of Islamic Financial Institutions (LKS) and Conventional Financial Institutions (LKK) become an urgent foundation for the readiness of the Religious Courts Institute to prepare themselves to resolve sharia economic disputes. This can be seen from the operational side of the contract (contract) based on the financing agreement at Bank Syriah which is different from the conventional bank concept. The consequences of the form of the agreement should be considered again the form of the financing contract, whether in the form of profit sharing, buying and selling, or leasing that has different consequences with accounts payable. Like wise in the insurance sector can be seen from the role of insurance companies in Islamic insurance companies that are limited only as trustees in manage and invest funds from participant contributions. In Islamic insurance companies, companies only act as operational managers, not as insurers as in conventional insurance based on the concept of accounts payable. Therefore, the readiness of the Religious Courts in responding to LKS bankruptcy cases and the clarity of the position of bankruptcy cases (taflis) within the authority of the Religious Courts are very necessary, along with the consequences of things that need to be prepared, namely from the regulatory side and bankruptcy supporting institutions that are in accordance with the sharia such as the curator and the supervisory judge.

A. Recommendations

1. It needs to be regulated in the regulation regarding the clarity of the position of the Bankruptcy Case (Taflis) under the authority of the Religious Court.

2. In order that there is legal certainty in the area of Bankruptcy Law, it is a good idea for the Actors to provide a clearer and more detailed understanding of the debt provisions that can be used as a basis for bankruptcy for debtors because basically every bankruptcy must be based on the existence of debt.

3. That in order for the OJK's duties and authorities to proceed properly, especially in the authority to apply for bankruptcy statements against the debtor, (especially in Islamic Insurance cases) the OJK must examine further the basic principles used by a company in carrying out its business activities so as not to harm the debitor.

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