

Research Article

Resolution Of Shariah Economic Bankruptcy Disputes Through a Non-Litigation Approach: Analysis Based On Wahbah Az-Zuhaili's Legal Theory

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Abstract.

This paper aims to understand to resolution of bankruptcy disputes according to Wahbah Az-Zuhaili in Al-Fiqh Al-Islam Wa Adilatuhu. This issue is especially topical given the number of companies that have gone bankrupt due to the pandemic. In this paper, the authors use descriptive qualitative methods and collect data using a documentation technique. In the research that will be carried out by this author, it is descriptive which aims to describe data related to the subject matter that has been formulated. The results show that Wahbah az-Zuhaili, as a contemporary ulama, he describes dispute resolution through ash-Sulh as a form of lenient attitude to obtain some of the existing rights. As a result, even if not in full, the plaintiff can obtain some of his rights.

Keywords: bankruptcy dispute resolution, sharia economics, non-litigation approach, Wahbah Az-Zuhaili

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1. Introduction

The development of the sharia economic business mindset is increasingly advanced, but the COVID-19 pandemic has caused many banks and companies to experience crises and even bankruptcy (1). To restore a business, entrepreneurs need a large capital, which is often obtained from loans from various sources (2). However, debt payments are not always smooth due to various obstacles such as financial crises or natural disasters, which can cause conflicts between debtors and creditors (3).

In resolving disputes, people now prefer methods that comply with legal regulations. There are two options for resolving sharia economic disputes: litigation through the courts, and non-litigation such as APS, ADR, and arbitration (4). Conventional litigation is often slow and uncertain and can be unfair (5). Non-litigation, which includes negotiation, mediation, and arbitration, is more effective and profitable, although litigation is still necessary if non-litigation fails (5).

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In Islam, dispute resolution includes reconciliation (Sulh), arbitration (Tahkim), and court (al-qada) (6). Wahbah Az-Zuhaili, a contemporary scholar, described various methods of dispute resolution in his work “Al-Fiqh Al-Islami wa Adillatuhu,” comparing the views of various madhhabs (7). Seeing the relevance of the current bankruptcy dispute phenomenon with the writings of Wahbah Az-Zuhaili, the author is interested in doing research entitled “Solving Non-Litigation Sharia Economic Bankruptcy Disputes from Wahbah Az-Zuhaili’s Perspective in Al-Fiqh Al-Islami Wa Adillatuhu.”

The purpose of this research is to find out the non-litigation Sharia economic bankruptcy solution from the perspective of Wahbah Az-Zuhaili in his work Al-Fiqh Al-Islami Wa Adillatuhu. The benefits of this research are divided into two, namely academic benefits and practical benefits. Academically, this research can develop the knowledge of Sharia law related to dispute resolution, which can be explored further according to various scholars, especially Wahbah Az-Zuhaili. Practically, for the writer, this research is useful to add a stronger scientific insight and to be able to understand how to resolve Sharia economic disputes according to the views of Wahbah Az-Zuhaili.

This research is based on a collection of journals and books that discuss bankruptcy disputes. This research limits the discussion to resolving Sharia economic disputes from the perspective of Wahbah Az-Zuhaili in his book Al-Fiqh Al-Islami Wa-Adillatuhu. This research is specifically focused on resolving non-litigation Sharia economic disputes because it will only discuss bankruptcy disputes that occur in companies that have implemented Sharia contracts in their business, so it is hoped that this research will Wahbah Az-Zuhaili can help in solving them. In providing this report the researcher read a lot of abstracts from journals and books to gather various information in preparing material for this report. The scope of research is generally quite large, therefore here the researcher reviews the number of available papers according to the field being researched.

Bankruptcy disputes involve disputes between individuals or institutions regarding assets that have the potential to trigger legal consequences. Such conflicts can be resolved through various methods, such as direct negotiations, mediation, or arbitration. Sharia economics, on the other hand, is an economic system based on Islamic principles, considering the laws of the Koran and Sunnah in economic activities (8). In addition, the study of Wahbah Az-Zuhaili and his work, especially “Al-Fiqh Al-Islami Wa Adillatuhu”, highlights the importance of understanding Islamic law in a contemporary context. Previous research shows various approaches to handling Islamic economic disputes, both based on classical Islamic traditions and Indonesian positive law.

Previous research highlights the challenges in handling sharia economic disputes, including the need for clear legal procedures and a deep understanding of Islamic legal principles (9). In an effort to bridge the gap between theory and practice, this research explores various methods of dispute resolution, including the role of mediation, arbitration, and peaceful resolution. Recent studies also show efforts to combine classical Islamic legal traditions with the Indonesian positive legal context, offering alternative dispute resolution that suits the needs of modern society. Thus, a deep understanding of sharia economic concepts and dispute handling is crucial in facing the complexity of contemporary economic challenges.

2. Methods

This research uses a type of library research to collect data related to Sharia economic dispute resolution, especially the views of Wahbah Az-Zuhaili, which is then analyzed to evaluate the shortcomings, advantages, and relationship with the discourse explained by these sources. The data sources used consist of primary data originating from the book *Al-Fiqh Al-Islami Wa Adillatuhu*, as well as secondary data in the form of books, journals, and related articles. The data collection technique used is documentation, utilizing various written sources such as articles and books related to Sharia economic dispute resolution. The data is presented in the form of narrative text and analyzed through code snippets to obtain conclusions. Data analysis was carried out descriptively with the aim of describing data related to the subject matter that had been previously formulated. The analysis technique used is content analysis, to reveal the meaning of verbal communication in the book *Al-Fiqh Al-Islami Wa Adillatuhu* by Wahbah Az-Zuhaili which will be studied.

3. Results and Discussion

3.1. Settlement of Sharia Economic Bankruptcy Disputes According to Wahbah Az-Zuhaili in *Al-Fiqh Al-Islami Wa Adillatuhu*

Article 49 of Law no. 3 of 2006 states that sharia economic disputes, including sharia banking, can be resolved through litigation and non-litigation. Litigation involves religious courts and district courts, while non-litigation includes mediation, negotiation, arbitration, and out-of-court catalyzing (10).

Article 1 paragraph (1) Bankruptcy Law no. 37 of 2004 defines bankruptcy as the general confiscation of all the debtor's assets which are managed by a curator under the supervision of a judge (11). In general, bankruptcy occurs when the debtor is unable to pay his debts, so the debtor's assets are used as collateral to pay off the debt (12). Wahbah Az-Zuhaili defines bankruptcy as a condition where the debtor is unable to pay his debts, so the judge limits the use of his assets (13).

To overcome bankruptcy, Wahbah Az-Zuhaili proposed the *ash-shul* (non-litigation) method as a solution for resolving sharia economic bankruptcy disputes (14).

3.1.1. Definition and Regulations of Ash-Shulh

Ash-shulh linguistically means to resolve disputes or arguments. In shari'i terms, *Ash-shulh* is defined by various scholars, such as Taqiy al-Din Abu Bakar Ibnu Muhammad al-Husaini who calls it an agreement to resolve a conflict between two parties who are at odds, Hasby Ash-Siddiqie who defines it as a contract agreed by two parties to resolve the conflict, and Sayyid Sabiq who saw it as an agreement to resolve a fight between two opposites. Hanabilah scholars also consider *Ash-shulh* as an agreement to reconcile the conflicting parties. Wahbah Az-Zuhaili in his book "Al-Fiqh Al-Islami Wa Adillatuhu" defines *Ash-shulh* as an agreement to resolve all forms of fights or disputes.

This *Ash-shulh* is prescribed based on the Qur'an, Sunnah, and Ijma. In the Al-Qur'an, Surah Al-Hujurat verse 10 emphasizes the importance of reconciling conflicting parties. In the Sunnah, the hadith of the Prophet SAW encourages peace, on the condition of not making lawful what is unlawful or prohibiting what is lawful (HR. Ibnu Hibban and Tirmidhi). Scholars agree that *Ash-shulh* is a beneficial contract because it can end arguments and disagreements. Wahbah Az-Zuhaili emphasized that *Ash-shulh* is a religious recommendation, and the judge can suggest negotiation but not force the disputing parties.

3.1.2. All kinds of Ash-Shulh

Wahbah Az-Zuhaili divides *Ash-shulh* into two types based on property matters. First, *Ash-shulh* between the plaintiff and the defendant, which can occur in three forms: with the defendant's confession, such as when the plaintiff demands money and the defendant admits it, then makes peace by giving goods in exchange; with the defendant's denial, such as when the plaintiff demands a right and the defendant denies it, then reconciles by giving away some of the recognized rights; and with the defendant's

silence, where the defendant does not admit or deny the claim but wants to make peace (15). Second, *Ash-shulh* is between the plaintiff and a third party, not with the defendant directly. Hanafi'iyah scholars allow *Ash-shulh* if the compensation belongs to the plaintiff and the defendant loses the right to sue again. This *Ash-shulh* aims to stop disputes, according to the word of Allah in Surah Al-Anfaal verse 46, which reminds us of the importance of avoiding disputes and encouraging obedience and patience.

3.1.3. Contracts Contained in As-Shulh

According to Wahbah az-Zuhaili, contracts in *Ash-shulh* involve several types of contracts. First, the *Ash-shulh* contract with an element of sale and purchase, where someone sues another person for their property rights and agrees to receive money or other goods as a replacement. Second, the *Ash-shulh* contract with the meaning of rent (*ijarah*), involves resolving disputes with other benefits such as work or renting a place. Third, the *Ash-shulh* contract is a loan (*Sarah*), namely a peaceful agreement by accepting the use of the goods in dispute for a certain period. Fourth, the *Ash-shulh* contract contains the meaning of release (*ibraa'*), namely an agreement in which the plaintiff receives part of the amount demanded and releases the rest. Fifth, the *Ash-shulh* contract means message (greeting), where the substitute is the item ordered.

3.1.4. The pillars of Ash-Shulh

Wahbah az-Zuhaili explained that according to Hanafiyyah scholars, the pillars of *Ash-shulh* are consent and qabul, which is shown through the words of the defendant who agrees to make peace and the plaintiff who accepts(16). Meanwhile, the majority of scholars state that the pillars of *Ash-shulh* include four things: the parties who make peace, consent and qabul, the disputed item, and a replacement for the disputed item(17).

3.1.5. Ash-shulh Terms

Wahbah az-Zuhaili explains that the terms of *Ash-shulh* can relate to the two parties making peace (*al-Mushaalih*), the disputed item (*al-Mushaalah 'anhu*), or a replacement for the disputed item (*al-Mushaalah 'alaihi*). Requirements for *al-Mushaalih* include being sensible, not causing harm to young children if represented, having the right

to dispose of children's property, and not being an apostate. The conditions for *al-Mushaalah 'alaihi* or a replacement for the goods demanded include that they must be assets that are clear and halal, *mutaqawwam* (valuable), belong to *al-Mushaalih*, and are clear and certain. The conditions for *al-Mushaalah 'anhu* or the rights claimed include that they must be human property rights, not Allah's rights, and must be permanent and positive rights for *al-mushaalih*.

Overall, the contracts in *as-shulh* regulate various forms of dispute resolution through an agreement between the two parties, taking into account the conditions that have been determined to ensure that the agreement is legal and fair.

3.1.6. Legal Consequences and Cancellation of the *Ash-shulh* Agreement

The *Ash-shulh* agreement has some significant legal consequences (18). First, after the *Ash-shulh* agreement occurs, the conflict between the disputing parties ends, and their claims and lawsuits will no longer be heard. Second, *syuf'ah* rights allow the replacement of ownership of the goods being sued. Third, if there is a defect in the agreement, the party to the dispute has the right to return the goods or choose to continue the agreement. Fourth, the delivery of replacement goods may only be carried out after the goods have been handed over to the plaintiff. Fifth, the appointed representative must fulfill obligations if the agreement implies the exchange of goods of a different type. However, some factors can cancel an *Ash-shulh* agreement, such as the agreement of both parties to cancel, the death of one of the parties, or a defect in the agreement. After cancellation, the disputing parties return to their original conditions and can sue according to their initial claims.

3.2. Analysis of Bankruptcy Dispute Resolution with *Ash-Shulh*

According to Wahbah Az-Zuhaili in *Al-Fiqh Al-Islami Wa Adillatuhu*, there are several important principles used to resolve bankruptcy disputes with "*ash-shulh*", which means peace:

3.2.1. Willingness to Reduce Rights

Ash-shulh seeks to prevent prolonged conflict by asking the disputing parties to be willing to accept some of their rights. In the case of bankruptcy, creditors may not receive all of their rights.

3.2.2. Adjustment of the Object of the Dispute

The *Ash-shulh* agreement is valid if it is directly related to the object of the dispute that is clear and valid according to sharia. Examples include peace related to a house or replacing a debt with a clear item.

3.2.3. Definite Item

The object of the dispute must be real and clear. It is not permissible to replace a debt with another debt, and in bankruptcy, the replacement must be a clear item.

Az-Zuhaili is also non-fanatical, although Shafi'iyah, he often adopts the Hanafiyyah view to reach a solution that is more appropriate to the context of the dispute, showing flexibility in the application of Islamic law.

From the explanation above, it can be concluded that Wahbah-Az-Zuhaili uses many opinions from the Hanafiyyah school of thought, even though he belongs to the Shafi'iyah school of thought. In this way, Wahbah az-Zuhaili is not someone who is fanatical about his school of thought and wants to use opinions from a different school of thought.

4. Conclusion

Based on this research, dispute resolution can be done through litigation (through court) or non-litigation (outside court), with the author choosing non-litigation for sharia economic bankruptcy disputes, which consists of a peace agreement (*ash-shulh*) and arbitration (*tahkim*). Wahbah az-Zuhaili highlights *ash-shulh* in “*Al-Fiqh Al-Islami Wa Adillatuhu*,” stating that although not all rights are obtained, the contract is considered fair and allows for a quick resolution so that disputes do not prolong. *Ash-shulh* requires parties who are not only knowledgeable about the law but also have authority, and many ulama supports it because they are considered to have a noble goal in deciding and ending disputes, not only in bankruptcy disputes but also in other contexts such as

between families and politics. It is hoped that Wahbah az-Zuhaili's thoughts on the ash-shulh contract can solve various problems, especially in resolving Sharia economic bankruptcy disputes

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