



A Juridical Analysis Of Legal Protection For Business Actors In The Practice Of Endorsement Of Muslim Clothing Due To Default From The Perspective Of The Compilation Of Sharia Economic Law

Delinda Rarita Indana Zulva

Faculty of Law, Universitas Widya Gama Malang, aikdelin@gmail.com

Zahir Rusyad

Faculty of Law, Universitas Widya Gama Malang, zahrusv@gmail.com

ABSTRACT

Defaults in endorsements often occur so that the government needs to pay attention to legal protection for consumers who use endorsement services because many business actors utilize this marketing because it looks efficient, especially when business actors experience losses due to endoser negligence. The Compilation of Sharia Economic Law regulates breaking promises in Articles 36 to 38, which explain breaking promises and sanctions. The analysis method used is descriptive qualitative. The results of the analysis reveal first, the default in the KHES perspective endorsement, and second the application of default settlement, and finally the legal protection for business actors due to endorsement default. The conclusion of this research is that the government shall pay more attention to legal protection for ordinary consumers in technology, especially during online transactions.

Keywords: Legal Protection; Default; Sharia Economic Law Compilation.

INTRODUCTION

In the era of digital globalization and the rapid advancement of knowledge about technology in society, especially in Indonesia, people are now able to fully understand the benefits of technology as a support for the stability of the economy. Based on the survey results from the Internet Service Providers Association (APJII), in 2022, the level of internet usagereached 210.03 million people and was increasing in 2023 with internet users of 215.63 million people from the total population of Indonesia, namely 278,695,482 people. Therefore, every year internet users are increasing, so it can be concluded that the internet is greatly used by the Indonesian population, especially social media.¹

¹ Andi Dwi, 2023. “*Data Statistik Digital Asosiasi Penyelenggara Jasa Internet*”. Maret 10, 2023, <https://apjii.or.id/survei>.

In Indonesia, The social media most widely used by internet users are Whatsup, Instagram, Facebook, Tiktok platforms where the number of the users for each platform is increasing each year. The number of WhatsApp plattform users reaches 92.1% of the population, from 88.7% in the previous year, Instagram, 86.5% from 84.8%, Facebook, 83.8% from 81.3%, and then it is followed by the TikTok platform reaching 70.8% of the population, from the previous year 63.1%. Each platform certainly has different advantages in each feature.

One form of marketing often employed by business people is endorsement. Endorsement is one of the marketing strategies so that someone wants to invite, refer, or promote others to buy products from business actors at the request of the business actors themselves, by making an agreement between two people, namely the service provider and the endorsement service user. This agreement often causes unwanted things. So that the cooperation between the two parties is not always smooth and successful, depending on the awareness and responsibility of each party, especially the endorsement service provider called the endorser.

The unsuccessfulness referred to above, for example, allows for obligations that are not fulfilled in accordance with the agreement made by the service provider and the service user. And the impact is that this can cause harm to service users and bring about distrust of this endorsement service.

Based on this background, the formulation of the problem is how defaults on endorsements are viewed from the perspective of the Compilation of Sharia Economic Law, as well as what legal efforts can be made in resolving defaults made by endorse service providers and business actors and also how legal protection for business actors in endorsement practices is due to defaults from the perspective of the Compilation of Sharia Economic Law. The objective of this study is to find out how defaults on endorsements are viewed in the perspective of the Compilation of Sharia Economic Law and to analyze what legal efforts can be made in resolving defaults made by endorse service providers and business actors and to find out how legal protection for business actors in endorsement practices is affected by defaults from the perspective of the Compilation of Sharia Economic Law.

METHOD

This study employs juridical-normative legal research, a method that involves scrutinizing library materials or secondary data, including primary, secondary, and tertiary legal materials. The materials are arranged systematically, studied, and then a conclusion is drawn in relation to the problem under study.²

The method of analysis applied in this research is qualitative descriptive. In this context, the legal materials that have been collected are analyzed using a qualitative approach, a research approach that aims to produce analytical descriptive information. This process involves making detailed descriptions related to the facts found in the research, then describing them carefully and connecting them in such a way. The results of this analysis are then presented systematically in writing, leading to answers to the research problems that have been formulated. The main objective is to detail and describe the characteristics, patterns, or relationships contained in the legal materials. The analysis process is not only limited to presenting facts but also includes in-depth interpretation and explanation regarding the implications and meaning of the information revealed by the data.

RESULTS AND DISCUSSION

A. Default in Endorsement Perspective of the Compilation of Sharia Economic Law

Default, or what is also known as breach of contract, is the non-performance of achievements or obligations properly imposed by the contract on certain parties as stated in the contract concerned. In the compilation of sharia economic law (KHES), the term “breach of promise” is used even though some articles use the term “default.” Breach of promise is regulated in the compilation of sharia economic law, Article 36 to Article 38, which explains breach of promise and sanctions.

Concerning with breach of promise, the Qur'an and Hadith have paid attention to the issue of promises and encourage and order to keep them. This is found in:

1. QS An Nahl verse 91: (Ascarya, 2014)

وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْفُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا إِنَّ اللَّهَ يَعْلَمُ مَا تَفْعَلُونَ

“And keep your covenant with Allah when you make a promise and do not break your oaths after confirming them,

² Soerjono Soekanto. 1986. *Pengantar Penelitian Hukum*: Jakarta

while you have made Allah your witness (to your oaths).
Verily, Allah knows what you do.”.

2. QS Al Isra’ verse 34: (Ascarya, 2014)

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُ وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

“And do not approach the property of an orphan, except in a way that is better (beneficial) until he grows up and fulfills the promise; surely the promise must be accounted for.”

The agreement that occurs between the parties has formed an agreement between them. As stated in Article 46 of the Compilation of Sharia Economic Law, “a contract is only valid between the parties make the contract.” The agreement is irrevocable other than by agreement of both parties, or for reasons determined by law, the agreement must be carried out in good faith”.

Allah's word, al-Baqarah verse 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

“O you who believe, when you do business not in cash for a fixed time, you should write it down.”

Every agreement shall be carried out properly and honestly and free from elements of fraud, forgery, and violation. So that the practice of *muamalah* in Islam becomes a bright path away from things that are defective after making an agreement. The endorsement agreement system is often used by endorsers using the Instagram application. In carrying out this agreement, there are parties that violate their own promises that have been mutually agreed upon. The promise is an achievement of the rights and obligations of both parties that shall be fulfilled. This incident caused losses to the other party.

In Islamic law, negligence in fulfilling the obligation to give the rights of others is classified as a prohibited act, so then for those who commit violations or breaches of promise because they do not perform their obligations, sanctions are imposed.

B. Efforts to Settle Defaults Made by Endorse Service Providers and Business Actors

There are three ways to resolve disputes in Islam, namely through peace (*sulhu*), through arbitration (*tahkim*), and through justice (*al-qadha'*).

1) Peace (*Sulhu*)

In Islam, if there is a dispute, it is recommended to resolve it by means of peace. Because peace can avoid disputes between the parties by resolving through peace so that it can end the dispute experienced between the parties. The suggestion to resolve disputes through peace is in the provisions of the Qur'an.³

The recommendation to resolve disputes through peace in the Qur'an is found in QS. Al-Hujarat verse 9.

وَأِنْ طَائِفَتَيْنِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ
فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلَحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ
اللَّهَ يُحِبُّ الْمُقْسِطِينَ

“If there are two groups of believers at war, then reconcile between the two groups. If one of them is unjust to the other, then fight the unjust one to bring him back to the way of Allah. If the oppressed group has returned to the way of Allah, then reconcile between the two parties with justice and act justly. For Allah loves those who do justice.” (QS. Al-Hujarat (49):9).

There are three pillars that should be fulfilled in making a peace agreement, namely:⁴

- a. the existence of ijab
- b. the existence of qobul
- c. the existence of a memorization.⁵

If these three pillars have been fulfilled, then the peace agreement has taken place as expected. From the peace agreement, it will be born a legal bond that each party is obliged to carry out. The agreed peace agreement cannot be canceled unilaterally. If there are parties who do not agree with the contents of the agreement, then the cancellation of the agreement should be by agreement of both parties. The conditions for the validity of an agreement can be classified into the following:

³ Sayyid Sabiq. 1996. *Fiqh Sunnah*: Bandung

⁴ Surwadi K. Lubis dan Farid Wajdi. 2012. *Hukum Ekonomi Islam*, Jakarta: Sinar Grafik

a) Matters concerning the subject.

About the subject or person who makes peace must be a person who is capable of acting according to the law. Apart from that, the person who executes the peace should have the power or have the authority to release his rights or matters intended in the peace. It is not necessarily a person who is capable of acting to possess the power or authority.

b) Matters concerning the object.

Regarding the object of peace, it should fulfill the provisions. The first is that if it is in the form of property, both tangible and intangible, such as intellectual property rights, which can be valued or appreciated, it can be transferred, and is useful. The second is that it can be clearly known so as not to give birth to ambiguity and obscurity, which in turn can also result in new disputes over the same object.

c) Issues that can be reconciled (can be made into *sulh*).

Islamic jurists agree that matters that can and may be reconciled are only in the form of property disputes that can be valued and are limited only to replaceable human rights. In other words, the issue of reconciliation can only be allowed in the field of *muamalah*, while matters that deny the rights of God cannot be reconciled.

d) Implementation of the peace agreement.

The implementation of an amicable agreement can be carried out in two ways, namely outside the court session or through a court session. Outside the court session, dispute resolution can be carried out either by themselves (who make peace) without involving other parties or ask for help from others to become arbitrators (referees), which is what is then called arbitration, or in Islamic law called *hakam*.

Peace agreements (*sulh*) that are carried out by both parties to the dispute or dispute, in practice in several Islamic countries, especially in terms of Islamic banking, are called "*tafawud*" and "*taufiq*" (negotiation and adjustment).⁶

d. Arbitration (*Tahkim*)

⁶ Sayyid Quthb. 2001. *Tafsir Fi Zhilalil Qur'an*: Jakarta

The second dispute resolution is by way of (*tahkim*) or arbitration. In Islam, arbitration is called *tahkim* until it is part of the judiciary or *al-qadha'*. The legal basis for arbitration is the Qur'an, *sunnah*, and *ijma'*. But if studied together, the recommended dispute resolution is peace. However, if it cannot also be resolved through peace, a third party has to be present in resolving the dispute between the parties. The reason why Islamic law institutionalizes *tahkim* as a positive foundation is because;⁷

- i. Both parties are fully aware of the honorable and responsible settlement.
- ii. Will voluntarily submit the settlement of the dispute to a person or institution that is approved or trusted.
- iii. Will voluntarily implement the decision of the arbitrator; as a consequence of the agreement to appoint an arbitrator, the agreement contains a promise, and the promise must be kept.
- iv. Respect the rights of others even if the other person is the opponent.
- v. Do not want to be self-righteous and ignore the truth that may exist in others.
- vi. Having legal awareness as well as state or social awareness, so as to avoid taking the law into one's own hands (*eigenrechting*).
- vii. The implementation of *tahkim* or arbitrase contains the meaning of deliberation or peace.

⁷ A. Rahmat Rosyadi dan Ngatino. 2022. *Arbitrase dan Perspektif Hukum Islam dan Positif*: Bandung

The provisions or legal basis that explain the existence of tahkim have been stated in the Al-Quran, namely QS. An-Nisa verse 35:

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

“And if you fear a dispute between them, then send a hakam from the man's family and a hakam from the woman's family. If the two hakam intend to make amends, surely Allah will help the husband and wife. Indeed, Allah knows best. (Q.S. An-Nisa:35).

Looking at the verse above, it can be seen that the dispute resolution process requires a *hakam* (peacemaker) as an intermediary in dispute resolution. The role of the hakam here is very important, as they communicate with the parties to the dispute so that the dispute can be resolved peacefully.

e. Judiciary (Al-Qadha)

The third Islamic dispute resolution is justice (*al-qadha*). According to the language, it means to determine or decide. Based on the definition in fiqh, it determine a shara'a law in a dispute or phenomenon in resolving a matter fairly and bindingly. The judiciary is authorized to resolve civil or criminal disputes. The power of the judiciary cannot be limited in the agreement of the parties to the problem until the decision of the qadhi is binding on the parties to the dispute.

The necessity of the qadha institution in Islam is explained in the word of Allah, Surah Al-Maidah, verse 49:

وَأَنْ أَحْكُمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ فَإِنْ تَوَلَّوْا فَاعْلَمُوا أَنَّمَا يُرِيدُ اللَّهُ أَنْ يُصِيبَهُمْ بِبَعْضِ ذُنُوبِهِمْ وَإِنَّ كَثِيرًا مِّنَ النَّاسِ لَفَاسِقُونَ

“And judge between them according to what Allah has sent down, and do not follow their desires. And beware of them, lest they deceive you with some of what Allah has sent down to you. If they turn away (from the law that Allah has sent down), then know that it is Allah's will to afflict them with

calamity for some of their sins. And indeed, most of the people are wrongdoers.” (Q.S. Al-Maidah: 49)

The explanation related to the verse that Allah commands humans to resolve, decide cases and punish correctly according to what He has commanded is imperative, something that should be enforced in accordance with Allah's rules and regulations, if humans themselves do not do what Allah commands, then they can be categorized as disbelievers, unjust or wicked according to Allah. (Ngatino, 2022)

The concept of Sharia Economic Law, in resolving defaults made by Elzatta to endorsers who make defaults is permissible. This is in accordance with what is explained in the Compilation of Sharia Economic Law regarding the permissibility of imposing sanctions on parties who break promises, namely in article 38, which reads “Parties to the contract who break promises can be sanctioned:

1. Pay compensation
2. Cancellation of the contract
3. Transfer of risk
4. Fines
5. Paying court costs.

In this case, the endorser is called defaulting based on the Compilation of Sharia Economic Law in article 36; the endorser does what he promised, but after several years the endorser does not carry out the obligations contained in the contract, namely to always be *istiqomah* in hijab. Therefore, in accordance with article 38 of the Compilation of Sharia Economic Law, business actors can impose sanctions, one of which is the cancellation of the contract. The loss experienced by Elzatta for this incident is the many negative stigmas that arise due to endorsers not realizing the company's vision and mission to make women be *istiqomah* in hijab and carry out marketing in accordance with Islamic sharia.⁸

⁸ PPHIMM. 2009. *Kompilasi Hukum Ekonomi Syariah*: Jakarta

C. Legal Protection for Business Actors in the Practice of Endorsement Due to Default in Perspective of the Compilation of Sharia Economic Law

The purpose of consumer protection in Islamic law is to realize *mashlahah* (benefit) for mankind. In Islam, the legal basis for protection for consumers or, in this case, business actors who use endorsement services to promote their products and then suffer losses is 3, namely:

1. Al-Quran

The implementation of the economy in Islam is fully based on the teachings contained in the Al-Quran, the sunnah of the Prophet Saw, and the teachings carried out by the companions. With legal protection, it is hoped that people's lives will be better, safer, and avoid harmful actions. Apart from the above, what is no less important is to ensure legal certainty to provide protection to consumers, where consumers in this case are endorsement service users who are harmed because the endorser does not carry out its obligations according to the agreement. Of course, this cannot be separated from the awareness of producers (service providers/endorsers) so that both parties are not mutually disadvantaged.⁹

Allah SWT says in Qs. Surah al-Maidah Verse 67:

يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنْزِلَ إِلَيْكَ مِنْ رَبِّكَ وَإِنْ لَمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ وَاللَّهُ يَعْصِمُكَ مِنَ النَّاسِ إِنَّ اللَّهَ لَا يَهْدِي الْقَوْمَ الْكَافِرِينَ

“O Messenger, convey what is sent down to you from your Lord. And if you do not do what you are commanded, then you have not conveyed His message. Indeed, Allah does not guide those who disbelieve. (Qs. Al-Maidah: 67)”

⁹ Muhammad Djakfar. 2009. *Hukum Bisnis: Membangun Wacana Integrasi Perundangan Nasional dengan Syariah*: Yogyakarta

2. Hadith

Islam also has principles in terms of protecting human interests, as the Prophet's words state:

“From Abu Sa'id Sa'd bin Sinan al-Khudri he said: the Messenger of Allah SAW said: “It is not permissible to do harm, and it is not permissible to return harm in the wrong way.” (HR. Ibnu Majjah and al-Daruqutni).¹⁰

The meaning of the above hadith is that each party to the union should maintain their respective rights and obligations so that there is no fraud that can result in the loss of one party to the union.

The most important thing is how the service provider's attitude is to give consumers or service users the rights they deserve, and consumers realize what their obligations are. By respecting each other's rights and obligations, there will be a balance (*tawazun*) as taught in Islamic economics. (Djakfar, 2009)

3. *Qawa'id Jurisprudence*

Currently there are many human endeavors related to goods and services. In addition, of course, now with the development of science and technology, as well as the increasing demands of society, it has given birth to a new model of transaction models that require resolution in terms of Islamic law.

A contract is not valid if one of the parties is forced or feels deceived. It can happen that when the contract is mutually agreed upon, but then one of the parties feels deceived, meaning that his willingness is lost, then the contract can be invalidated, for example, if there are service users or consumers who feel harmed because they violate the existing contract, or such as buyers who feel cheated because they are harmed by the seller because the goods have defects.¹¹ In addition, there is another *qawa'id* that explains responsibility: “The provision of wages and the responsibility to compensate for losses do not go together.”

The enforcement of the law of *khiyar* in selling, either by the seller or the buyer, is to avoid fraud. With this rule, the deceived party is allowed to cancel the transaction and ask for his money back.¹²

¹⁰ Imam Mahyiddin an-Nawawi. 2006. *ad-Dhurrah as-Salafiyah Syarh al-Arba'in an Nawawiyah*: Solo

¹¹ H.A Djazuli. 2007. *Kaidah-Kaidah Fikih dalam Menyelesaikan Masalah-masalah yang Praktis*: Jakarta

¹² Ahmad Sudirman Abbas. 2004. *Qawa'id Fiqhiyah dalam Perspektif Fikih*: Jakarta

D. Analysis of Default in Endorsement from the Perspective of Compilation of Sharia Economic Law

Basically, in order for an act to be declared as a default, it SHOULD fulfill three pillars, namely the existence of an error, the existence of a loss, and also the existence of causality between the error and the loss.

1. The existence of a contract error

A contract error in Arabic is often referred to as *khatha` al-`aqdy* (contract error). In some literature, it is also sometimes referred to as *al-i`tidâ`/ at-ta`addy*. However, *i`tidâ`/ta`addy*" is more literally appropriate when IT IS used in terms of errors related to PMH.

Syamsul Anwar explained that the meaning of the error itself is an attitude (either doing or not doing) that is not permitted by the sharia. This error can be intentional or negligent (not doing as it should be). More clearly, Sanhuri said that the meaning of the contract error here is when the debtor is unable to fulfill what is the object of the obligation, whether it occurs because of the debtor's actions in the form of intent (not performing the contract), negligence, or due to the consequences of his actions (indirectly).

In more detail, in the compilation of Islamic economic law, IN Article 36, it is explained in more detail regarding the types of errors, namely:

1. Doesn't do what it promises to do
2. Carries out what it promises, but not as promised
3. Did what he promised, but was too late
4. Doing something that, according to the agreement, is not allowed to be done

This error can then be distinguished from the purpose of the existing contract. Sanhuri said that the types of purposes of implementing a contract are basically two, namely to realize results (*tahqîq al-ghâyah*) and to make an effort (*badzl al-`inâyah*). This division is also in accordance with what was decided by Islamic civil law experts who met at Dual Arabi University in Tunis in 1983, which then formed a decision in the form of Qanun Mu'amalah Mâliyah for Arab countries. The regulations in the form of

articles are made based on the principles of Islamic jurisprudence and from various existing schools of thought.¹³

The obligation to make an effort is an obligation that is said to be carried out when the debtor has made an effort to a certain extent, whether the effort is successful or not. The core point of this obligation is an effort to a certain extent. An example is in the case of Elzatta, the relationship between service users and service providers, where the service provider or endorser has to strive to carry out their obligations in accordance with the existing agreement.

2. There is a Loss

In addition to proven errors, the second pillar that should be fulfilled in order for this breach of contract to receive compensation is the existence of a loss. The existence of this loss is basically the core of compensation in the case of breach of contract or PMH. This means that even though an error occurs, if there is no loss, then the perpetrator cannot be called a defaulter or a debtor, and of course there is no compensation.

Loss (الضرر) (read: *dharar*) in terms of language has the opposite meaning of benefit. In terms of language, *dharar* is interpreted as the occurrence of damage/loss to another person, whether property, body, honor, or feelings. In the text, there are many verses and hadiths that use the word *dharar* and explain the meaning and law of *dharar* itself.

3. The existence of causality between the error of the contract and the loss

Wahbah Zuhaili said that this third aspect is not included in the pillars but rather an obstacle (*al-mâni'*) in the cause, while most scholars (Sanhuri, Syamsul Anwar, and Zarqa) make this a pillar of the existence of *dhamân*.

Basically, the debtor's defense in terms of nullifying causality can only be justified if it can prove the existence of a foreign/external cause. This external cause includes:

- a. Force majeure
- b. The loss occurs due to the creditor's fault.
- c. The loss occurs due to the fault of a third party.

¹³Mustafa Ahmad Zarqa. 2013. *Madkhal Ilâ Nadzariyyah al-Itizâm al-âmah fî Fiqih al-Islâmy*, Cetakan Kedua. Damaskus: Dar al-Qolam

Firstly, it is force majeure. In some Islamic legal literature, this is mentioned in the discussion of disasters (al-afât as-samawiyah) or also in the discussion of agricultural disasters (*al-jâihah*), which explains that force majeure can ease/even free the debtor from his obligations. This is because this condition is a condition that cannot be predicted, cannot be avoided, and makes the implementation of the contract impossible.

In this situation, if the debtor's position is *yad amanah* (trust holder), then the debtor is not responsible for the losses that occur. On the other hand, if the debtor's position is *yad dhamânah* (dhamân holder), then the debtor still provides compensation.

Secondly, the loss is the fault of the creditor. In this situation, both the debtor's position as a trustee or *dhamân* still do not have the obligation to compensate. For example, the debtor *Yad Dhamânah* is a seller who brings the buyer's goods, which are then damaged by the buyer himself.

Thirdly, the loss occurs due to the fault of a third party. In relation to this, it is the same as the first, namely if the debtor's position is the trustee, then compensation is not required, and if the debtor's position is the *dhamân* holder, then compensation is required. This non-obligation of compensation is on the condition that the debtor has no connection with this third person. If the debtor is still related to this cause, then the debtor has the responsibility for compensation; for example, the third party is a tool under his supervision or an employee employed by the debtor.

The research results and discussion section contain the research findings and further discussion. The findings obtained from the research results have to be written with additional support from adequate data. The results and findings of the research have to be able to resolve or provide an explanation for the questions stated in the introduction.

E. Analysis of Efforts to Resolve Defaults Carried Out by Endorsement Service Providers to Business Actors

In Islamic history, when there is a difference of opinion or dispute between parties, either in the family field (*al-ahwal al-syakhsiyyah*) or in the business field (*muamalah*), then the institution that can resolve the dispute is through the mechanism of peace (*al-shulh*), arbitration (*altahkim*), and court (*al-qadha*).¹⁴ The settlement of disputes due to defaults that have been carried out by Citra Kirana as an endorsement service provider to Elzatta as a business actor and user of endorsement services who committed default is through Peace (*Al-Shulh*). This method is in accordance with Islamic law, which recommends that the severance of ties between the parties in dispute can be ended.

Peace, or in Arabic termed *Al-Shulh*, contains the meaning of ending quarrels or disputes that occur between the two parties. In this peace, there are two parties who are in dispute but then agree to release each other's demands so that the dispute can end.

We can see the legal basis for holding peace in the Al-Qur'an: QS. An-Nisa verse 59, verse 144, and QS. Al Hujurat verses 9-10.

QS. An-Nisa verse 59:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَى الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

"O you who believe, obey Allah and obey the Messenger (Muhammad) and the ulil amri (holders of authority) among you. Then if you differ in opinion about something, then return it to Allah (the Qur'an) and the Messenger (sunnah); if you believe in Allah and the Last Day, that is more important (for you), and the consequences are better."

¹⁴ Faturrahman Djamil. 2012. *Penyelesaian Pembiayaan Bermasalah di Bank Syariah*: Jakarta

QS.An-Nisa' (4) : 114

لَا خَيْرَ فِي كَثِيرٍ مِّنْ نُّجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ وَمَنْ يَفْعَلْ ذَلِكَ ابْتِغَاءَ مَرْضَاتِ اللَّهِ فَسَوْفَ نُؤْتِيهِ أَجْرًا عَظِيمًا

“There is no good in much of their secret talks except the secret talks of those who enjoin charity, or do good, or establish peace between people. Whoever does that seeking the pleasure of Allah, We will soon give him a great reward.”

Q.S Al-Hujurat (49): 9 – 10:

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلَحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

“And if there are two groups of believers fighting, then make peace between them. If one of the two does injustice to the other (group), then fight the (group) that does the injustice so that the group returns to Allah's commands. If that group has returned (to Allah's command), then make peace between the two of them fairly and act fairly. Indeed, Allah loves those who act justly.”

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلَحُوا بَيْنَ أَخَوَيْكُمْ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ

“Indeed, believers are brothers; therefore, make peace between your two brothers (who are at odds) and fear Allah, so that you may receive mercy.”

There are several patterns in resolving defaults. One of them is by imposing sanctions. Sanctions regarding parties who commit defaults are regulated in the compilation of Islamic economic law. The regulation is contained in Article 38 of the Compilation of Islamic Economic Law regarding breach of promise and its sanctions. The sanctions given in this case are:

1. Paying court costs
2. Cancellation of the contract
3. Transfer of risk
4. Fines, and/or
5. Paying compensation

Compensation (التعويض) means compensation for real losses due to errors that occur. In the Compilation of Sharia Economic Law, article 20, paragraph 37, it is stated that compensation (ta'widh) is compensation for real losses paid by the party who is in default. In general, both are the same, but the definition used in the Compilation of Sharia Economic Law seems less comprehensive because it only limits it to default. This is likely because the regulations in the compilation of sharia economic law have not covered the problem of PMH in Islamic law and have only accommodated the problem of default (broken promise, Article 36 of the compilation of sharia economic law).

F. Analysis of Legal Protection for Business Actors in Endorsement Practices Due to Default Perspective of Compilation of Islamic Economic Law

Consumer protection for goods and services in Islam is carried out by providing the right of *khiyar*. *Khiyar* is a method carried out by people who are carrying out a contract in Islamic terms, namely giving freedom in determining the choice of what will be purchased in terms of buying and selling, which aims to provide rights to what will be done in determining the contract. While the function of the *khiyar* is as a form of protection for prospective users of goods and services in determining the contract to purchase and use the desired goods and services.

Islamic economic law has regulated consumer protection. In Islam, protecting consumers is an absolute requirement for achieving success. Islam has taught mankind not to do anything that can harm others, especially in terms of using goods and services. As Allah says in Surah an-Nisa, Verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who believe, do not consume each other's wealth in a false way, except by means of commerce that is carried out mutually between you. And do not kill yourselves; verily, Allah is most merciful to you."

The verse above explains that Allah SWT forbids His believing servants from consuming the wealth of others in a false manner and ways of seeking illegitimate profits and violating the Shari'a, such as usury, gambling, and the like, from various kinds of deception that appear to be in accordance with the Shari'a law, but Allah knows that what is done is only a trick by the perpetrator to avoid the provisions of the law that have been outlined by the Shari'a of Allah.¹⁵ Likewise, Allah's Word in Surah al-Jaatsiyah, Verse 22, namely:

وَخَلَقَ اللَّهُ السَّمَوَاتِ وَالْأَرْضَ بِالْحَقِّ وَلِتُجْزَىٰ كُلُّ نَفْسٍ بِمَا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

“And Allah created the heavens and the earth with a just purpose, and that every soul may be recompensed for what it has earned, and they will not be wronged.”

The explanation of the verse above can be interpreted that Allah has created the heavens and the earth with a true and just purpose, so that everyone who is judged and rewarded according to what he has done in the world during his life, and at no time will anyone be harmed. In addition, the Word of Allah in Surah al-Isra Verse 34:

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُ وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

“And do not approach the property of an orphan except in a way that is best until he reaches maturity, and fulfill your promise, for surely every promise will be questioned about it.
(QS. Al-Isra: 34)

Overall, the Compilation of Sharia Economic Law provides a strong principled basis for protecting consumer rights but still requires more specific and comprehensive regulations to provide legal protection for consumers in the context of buying and selling goods or services.

Thus, further regulations and actions are needed to provide adequate legal

¹⁵ Salim Bahreisy.1986. *Terjemahan Tafsir Ibnu Katsir*. Surabaya: PT. Bina Ilmu.

protection for consumers in buying and selling goods or services in accordance with sharia principles.

According to Islamic law, there are six consumer rights that require serious attention from business actors, namely;¹⁶

1. The right to obtain correct, honest, fair information and to avoid falsification
2. The right to obtain product safety and a healthy environment
3. The right to obtain advocacy and dispute resolution
4. The right to obtain protection from abuse of circumstances
5. The right to obtain compensation for negative consequences of a product

In addition, consumer rights in Islam are the right to choose, which is known as khiyar. Through this khiyar right, Islam provides ample space for consumers and producers to defend their rights in trade, whether to continue the aqad/business transaction or not. Likewise, according to Islamic jurisprudence scholars, khiyar is permitted in Islamic law based on an urgent need by considering the interests of each party conducting a transaction. The general legal basis for khiyar is as follows:

وعن ابن عمر عن رسول الله صلى الله عليه وسلم قال: إذا تباع الرجلان، فكل واحد منهما بالخيار مالم يتفرقا أو كان جميعا، أويخير أحدهما الآخر، فإن خير أحدهما الآخر فتبايعا على ذلك فقد وجب البيع، وإن تفرقا بعد أن تباعا ولم يترك واحد منهما البيع فقد وجب البيع. متفق عليه، واللفظ لمسل

"From Ibn Umar Ra, the Messenger of Allah said, "If two people buy and sell, then each of them has the right to khiyar (choose between canceling or continuing the sale and purchase) as long as they have not separated or are still together, or if one of the two determines khiyar to the other. If one person determines khiyar for another, then they buy and sell based on that, then that is the sale and purchase. If they separate after buying and selling and each of them does not

¹⁶ Muhammad & Alimin. 2004. *Etika & Perlindungan Konsumen Dalam Ekonomi Islam*: Yogyakarta

cancel the sale and purchase, then the sale and purchase are finished.” (Muttafaq Alaih, and the lafazh of this hadith according to Muslim history).

CONCLUSION

Default is the failure to perform the performance or obligations as required by the contract to certain parties. The endorsement agreement, according to the compilation of sharia law, is included in the ijarah contract. Ijarah is a rental transaction in the form of utilization of goods and services without ownership of the object for a certain period of time and receiving compensation for the benefits according to the agreement. Dispute resolution in Islam is in three ways: peace (*sulhu*), arbitration (*tahkim*), and court (*al-qadha'*). Peace can avoid disputes between parties by resolving them through peace, arbitration (*tahkim*), and court (*al-qadha'*). The recommended dispute resolution that cannot be resolved must involve the presence of a third party in resolving the dispute between the parties and the court (*al-qadha'*).

The purpose of consumer protection in Islam is to ensure compliance with the law. The three main laws of consumer protection are the *Qur'an*, *Hadith*, and *Qawa'id Fiqhiyyah*. Legal rights concerning consumer protection can be categorized into three types: if a product is in a certain territory, it is protected, and the rights that require protection are enforced. Advice that can be given to business actors or endorsees who use celebrity endorsement services or selebgrams as a medium to promote their services or merchandise is expected to know completely and clearly the legal rules relating to the use of celebrity endorsement services to minimize violations of cooperation agreements and know the right steps to resolve cases if involved in disputes in them.

It is recommended that the endorsement service party should create terms and conditions that do not harm either party. Endorsers should also comply with the provisions that have been set out in the agreement in accordance with their agreement with the service user, such as the material to be delivered or other provisions that have been agreed upon by both parties to avoid any misunderstandings between endorsers and service users (endorsees).

The government should pay more serious attention to the implementation of celebrity endorsement or advertising cooperation agreements because the majority of business actors who trade on the internet use endorsement services as their promotional media. An explanation of

the legal rules relating to the use of celebrity endorsement services is also needed to provide more guaranteed legal certainty, such as in the compilation of Islamic economic law (KHES), which has many limitations in protecting consumers.

REFERENCES

- Andi Dwi, 2023. “Data Statistik Digital Asosiasi Penyelenggara Jasa Internet”. Maret 10, 2023, <https://apjii.or.id/survei>
- A. Rahmat Rosyadi dan Ngatino. 2022. *Arbitrase dan Perspektif Hukum Islam dan Positif*: Bandung
- Abdur Razaq as-Sanhuri. 2009. *Mashâdir al-Haq fî al-Fiqh al-Islâmî*. Beirut-Lebanon: Dar Ihya’at-Turâts al-`Araby, tt
- Ahmad Sudirman Abbas. 2004. *Qawa'id Fiqhiyah dalam Perspektif Fikih*: Jakarta
- Ascarya. 2014. *Akad & Produk Bank Syariah*: Jakarta
- Faturrahman Djamil. 2012. *Penyelesaian Pembiayaan Bermasalah di Bank Syariah*: Jakarta
- H.A Djazuli. 2007. *Kaidah-Kaidah Fikih dalam Menyelesaikan Masalah-masalah yang Praktis*: Jakarta
- Imam Mahyiddin an-Nawawi. 2006. *ad-Dhurrah as-Salafiyyah Syarh al-Arba'in an Nawawiyah*: Solo
- Muhammad & Alimin. 2004. *Etika & Perlindungan Konsumen Dalam Ekonomi Islam*: Yogyakarta
- Muhammad Djakfar. 2009. *Hukum Bisnis: Membangun Wacana Integrasi Perundangan Nasional dengan Syariah*: Yogyakarta
- Mustafa Ahmad Zarqa. 2013. *Madkhal Ilâ Nadzariyyah al-Iltizâm al-`âmah fî Fiqh al-Islâmî*, Cetakan Kedua. Damaskus: Dar al-Qolam
- Nurul Ichsan. 2015 *Penyelesaian Sengketa Perbankan Syariah di Indonesia*: Ciputat
- PPHIMM. 2009. *Kompilasi Hukum Ekonomi Syariah*: Jakarta
- Quraish Shihab. 2012. *Tafsir Al-Misbah*: Jakarta
- Salim Bahreisy. 1986. *Terjemahan Tafsir Ibnu Katsir*. Surabaya: PT. Bina Ilmu,
- Sayyid Sabiq. 1996. *Fiqh Sunnah*: Bandung
- Sayyid Quthb. 2001. *Tafsir Fi Zhilalil Qur'an*: Jakarta
- Soerjono Soekanto. 1986. *Pengantar Penelitian Hukum*: Jakarta
- Surwadi K. Lubis dan Farid Wajdi. 2012. *Hukum Ekonomi Islam*, Jakarta: Sinar Grafik