



Reconstruction of Consumer Protection Law in the Settlement of Islamic Banking Disputes

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Abstract

The rapid growth of Islamic banking in Indonesia has not been matched by an adequate consumer protection framework, particularly in resolving disputes between customers and Islamic banking institutions. Law No. 8 of 1999 on Consumer Protection remains general and does not accommodate the specific characteristics of Islamic economic law, creating normative inconsistencies and ambiguity in dispute resolution. This study uses a normative legal approach to analyze legislation, DSN-MUI fatwas, and court decisions, and finds a regulatory gap rooted in contractual justice and maqashid syariah principles. This gap risks disadvantaging consumers, especially regarding transparency, the prohibition of usury, and protection from harmful practices such as gharar and maysir. The study concludes that reconstructing consumer protection law to incorporate Sharia-based norms and clearer dispute resolution mechanisms is essential for realizing a fair and sustainable Islamic banking system in Indonesia.

A. Introduction

The development of Islamic banking in Indonesia continues to grow in line with rising public awareness of sharia-based financial systems. As a key component of the Islamic economic framework, Islamic banks function not only

as financial intermediaries but also as institutions that must uphold justice, transparency, and social responsibility. However, this growth has also brought legal challenges, particularly related to consumer protection and dispute resolution between banks and customers.¹

Islamic banking refers to a system that operates under sharia principles, prohibiting *riba* (interest), *maisir* (gambling), and *gharar* (uncertainty). Instead, it relies on contracts such as *mudharabah* (profit-sharing between capital owners and managers), *musyarakah* (partnerships involving shared capital), and *ijarah* (leasing of goods or services without transfer of ownership).²

Despite positive trends, the performance of Islamic banks remains below expectations. Their market share has stayed under five percent for more than 25 years that is often referred to as the “five percent trap.” In addition, Islamic banks struggle to compete with conventional banks in terms of size. Currently, only two banks have reached the BUKU 3 category: Bank Syariah Mandiri (BSM) and Bank Muamalat Indonesia (BMI). BSM later merged into Bank Syariah Indonesia (BSI) on February 1, 2021, in accordance with OJK Regulation No. 6/POJK.03/2016 on bank tiering and business activities³.

Law No. 8/1999 on Consumer Protection/*UUPK*, herein referred to as GCPL serves as Indonesia’s primary legal framework governing consumer rights and obligations, including in financial services. However, the GCPL does not explicitly address the unique characteristics of Islamic banking, such as *muamalah*-based contracts, the prohibition of *riba*, and the principles of justice and *maslahah*. This gap creates challenges in resolving disputes between consumers and Islamic financial institutions, as formal legal procedures often do not align with the sharia values underlying these relationships.⁴

Although institutions such as the National Sharia Arbitration Board (BASYARNAS) and the religious courts handle sharia economic disputes, their roles are not fully integrated into the national consumer protection system. Regulatory inconsistencies between the GCPL and Law No. 21/2008 on Islamic Banking further highlight the need to reconstruct legal norms to ensure better harmonization.

¹ Mustapa Khamal Rokan, *Optimalisasi Peran Dewan Pengawas Syariah (Dps) Dalam Perbankan Syariah Di Medan*, hal. 292-305

² Rudy Haposan Siahaan, *Penyelesaian Sengketa Perbankan Melalui Mediasi Pasca Keluarnya UU Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan Settlement Of Duty Banking Through The Posted Mediation Ater The Constitution Number 21 Year 2011 Of The Authority Of Financial Services*,

³ *Mustapa Khamal Rokan, Optimalisasi Peran Dewan Pengawas Syariah (Dps) Dalam Perbankan Syariah Di Medan*, EQUILIBRIUM: Jurnal Ekonomi Syariah, hal.293, Volume 5, Nomor 2, 2017

⁴ Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah.

This paper proposes revisions to the Consumer Protection Law, particularly concerning dispute resolution in Islamic banking, to develop a legal system that is fairer, more responsive, and aligned with sharia principles as follows.⁵

1. Article 1 (definition). Add definitions for consumers of Islamic financial services and sharia contracts to reflect the specific legal relationships in Islamic banking.
2. Article 4 (consumer rights). Include explicit rights for sharia consumers, such as the right to transactions compliant with sharia principles and access to sharia-based dispute resolution.
3. Article 19-21 (Liability and Compensation) Insert mechanisms for dispute resolution based on sharia law, including referral to BASYARNAS and allowing settlement through religious courts as mandated by the Islamic Banking Law.
4. Article 45-48 (Dispute Resolution). Expand dispute resolution options to include sharia-based forums, as the current provisions mention only the BPSK, which is not sharia-oriented. Strengthening sharia-based mediation should also be considered.

This approach is expected to strengthen legal protection for Islamic banking consumers and enhance public trust in Indonesia's sharia financial system. However, Law No. 8/1999 on Consumer Protection, as the primary legal instrument in this area, does not specifically address the unique principles and characteristics of Islamic banking transactions. The law remains general and neutral, without distinguishing between conventional and sharia-based systems⁶.

As a result, disputes between customers and Islamic banks often lead to uncertainty regarding the appropriate dispute resolution forum, the applicable legal framework, and the role of DSN-MUI fatwas. Although Constitutional Court Decision No. 93/PUU-X/2012 establishes that sharia economic disputes fall under the exclusive authority of the Religious Courts, overlapping jurisdiction still occurs among BPSK, the OJK, and the Religious Courts.⁷

In addition, the legal status of DSN-MUI fatwas, which serve as key guidelines in sharia transactions, has not been clearly defined within the national legal system, particularly in the context of consumer protection. These issues reflect a regulatory vacuum and a lack of harmonization in both substantive consumer law and procedural dispute resolution.⁸

Islamic banking has become an important part of Indonesia's national financial system and has grown rapidly in recent decades. This growth is evident not only from the increasing number of Islamic banks and business units, but also

⁵ Khoirul Huda, Fungsi dan Tugas Otoritas Jasa Keuangan (OJK) dalam Penyelesaian Sengketa Nasabah Perbankan Syariah di Indonesia, *Malia: Jurnal Ekonomi Islam*, Volume 14 Number 1, December 2022, Pages 6 Print : 2087-9636 Online : 2549-2578

⁶ Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

⁷ Arifin, Zainal. *Hukum Ekonomi Syariah di Indonesia*. Jakarta, 2017

⁸ Puspitasari, Ani. (2021). Kedudukan BPSK dalam Penyelesaian Sengketa Konsumen Jasa Keuangan di Indonesia. *Jurnal Hukum dan Pembangunan*, 51(1), 94-95.

from greater public use of sharia-based products such as *murabahah*, *mudharabah*, and *ijarah*. This trend reflects rising awareness of the value of conducting transactions in accordance with Islamic law. However, the development of Islamic banking is not matched by a legal framework that adequately addresses the protection of Islamic banking consumers. In practice, customers still face issues such as delays in information, discrepancies in contracts, and disputes related to default or *wanakad*. Consumers are often in a vulnerable position due to limited literacy in sharia law and economics and the absence of dispute resolution mechanisms that align with both sharia principles and national law.⁹

Law No. 8 of 1999 on Consumer Protection is intended to serve as the primary legal foundation for protecting consumers in Indonesia, including users of Islamic financial services. In reality, its provisions remain general and do not address the distinct characteristics of sharia transactions. The law does not regulate types of sharia contracts, transparency requirements specific to sharia, or sanctions for violations of sharia principles such as usury and *gharar*.¹⁰ Meanwhile, Islamic banking transactions rely on contracts rooted in the legal and philosophical framework of *fiqh muamalah*.¹¹

From an institutional perspective, the dualism between the Consumer Dispute Resolution Agency (BPSK) and the Religious Courts creates legal uncertainty. Although the Constitutional Court, through Decision No. 93/PUU-X/2012, has confirmed that sharia economic disputes fall under the exclusive jurisdiction of the Religious Courts, consumers are often directed to BPSK or to the OJK without clear sharia-based procedures. Furthermore, the role of the National Sharia Council-MUI (DSN-MUI), whose fatwas form the basis for Islamic banking products, has not been given a legally binding position, including in matters of consumer protection.¹²

This reconstruction is essential to ensure legal justice, legal certainty, and proportional protection of sharia consumer rights in accordance with both the Islamic economic system and national legislation. Based on this context, the research will examine weaknesses in the substantive provisions of the Consumer Protection Law, analyze inconsistencies in existing dispute resolution forums, and propose a more responsive legal reconstruction model for Islamic banking consumers in Indonesia.¹³

In Islamic law, dispute resolution prioritizes peaceful settlement. Peace (*sulh*) is highly encouraged because it preserves relationships between the parties and

⁹ Erie Hariyanto, *Penyelesaian Sengketa Ekonomi Syariah Di Indonesia*, Iqtishadia al-Ihkâm, Vol.1 No.1 Juni 2014

¹⁰ Shidarta. *Hukum Perlindungan Konsumen Indonesia*. Jakarta: Grasindo, 2006

¹¹ Husein, Muhammad. *Fiqh Muamalah: Menyusun Sistem Ekonomi Berdasarkan Syariah Islam*. Jakarta, 2004

¹² Fatwa DSN-MUI terkait akad-akad perbankan syariah

¹³ Erie Hariyanto, *Penyelesaian Sengketa Ekonomi Syariah Di Indonesia*, Iqtishadia al-Ihkâm, Vol.1 No.1 Juni 2014

prevents ongoing hostility.¹⁴ The emphasis on reconciliation is supported by the Qur'an, the Sunnah of the Prophet, and the consensus of scholars (ijma). The Quran as in Q.s. al-Hujarât [49]: 9¹⁵

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ فَاصْلِحُوا بَيْنَهُمَا فَإِن بَعَثَ إِحْدَاهُمَا عَلَى الْآخَرَىٰ فَقَاتِلُوا الَّتِي
تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ فَإِن
فَاءَتْ فَاصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Meaning: And if two groups of believers are at war, then reconcile between them. If one of the two groups mistreats the other, then fight the mistreated group until it returns to the commandments of Allah, and if it returns (to the commandments of Allah), then reconcile between them with justice and fairness. Verily, Allah loves those who are just.

Abu Daud, al-Tirmidhi, Ibn Majah, al-Judge and Ibn Hibban narrated from 'Amar bin Auf that the Messenger of Allah (saw) said. said,¹⁶

" الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلَّا صُلْحًا أَحَلَّ حَرَامًا أَوْ حَرَّمَ حَلَالًا " "

"Covenants between Muslims are permissible, except those that make lawful or unlawful."

This Hadith provides essential guidance for conducting social interactions and agreements, helping Muslims ensure that every contract aligns with Islamic teachings and promotes goodness and benefit. In Islamic law, one recognized method of resolving disputes is *Islah/Shulh (peace)*. Literally meaning the resolution of conflict, *Islah* is defined in Islamic jurisprudence as an agreement aimed at ending disputes between two opposing parties.¹⁷ It is strongly encouraged because it preserves relationships and eliminates hostility, with its foundation found in the Qur'an, Sunnah, and scholarly consensus¹⁸. Within this framework, the disputing parties are referred to as *mushâlih*, the object of dispute as *mushâlih 'anhu*, and the act of reconciliation as *mushâlih 'alayhi*. Scholars agree that dispute resolution is firmly established in Islamic teachings¹⁹, through (1) Fairness in deciding disputed cases, no party feels disadvantaged in making decisions; (2) Kinship; (3) Win-win solution, guaranteeing the confidentiality of the parties' disputes; and (4) Resolving problems amicably.

The pillars of *Islah* consist of (1) *Ijab*; (2) *Kabul*; and (3) Memorization, and these elements are essential for establishing a valid peace agreement. Without

¹⁴ ¹⁴ Sayyid Sabiq, Fiqh Sunah, (Bandung: al-Ma'rif, 1996), h. 189.

¹⁵ <https://quran.nu.or.id>

¹⁶ Nurul Ichsan, Penyelesaian Sengketa Perbankan Syariah, hal.846, Jurnal Ahkam: Vol. XV, No. 2, Juli 2015

¹⁷ Fitria Amini, Perlindungan Hak Nasabah melalui Mediasi dalam Penyelesaian Sengketa Perbankan di Indonesia, Fakultas Hukum, Universitas Sriwijaya, Synotic Law: Jurnal Ilmu Hukum Fakultas Hukum, Universitas Sriwijaya, E-ISSN: 2829-2952 Volume 3 Nomor 4 (2024)

¹⁸ Hasbullah, Bakri. *Pengantar Hukum Ekonomi Syariah*. Malang: UMM Press, 2010.

¹⁹ Fatwa DSN-MUI terkait akad-akad perbankan syariah

them, the existence of reconciliation cannot be recognized. When these pillars are fulfilled, the agreement becomes a binding legal obligation that each party must follow.²⁰ The validity of a peace agreement also depends on several conditions. The first relates to the subject, meaning the individuals involved must be legally competent and must have the authority to relinquish their rights in the matters being settled. The second concerns the object of the agreement, which must involve property, whether tangible or intangible, that has value, can be transferred, and provides benefit. The object must also be clearly identifiable to prevent ambiguity that could create new disputes.²¹

Another method of resolving disputes is through *al-qadhâ'* (justice). *Al-qadhâ'* literally means to decide or determine, and in *fiqh* it refers to issuing a *syarak*-based ruling on an event or dispute to resolve it fairly and in a binding manner. Judicial institutions have the authority to handle both civil and criminal cases, and the power of the *qâdhî* is not dependent on the approval of the disputing parties. Once a decision is issued, it becomes binding on both sides. The basis for the role of the *qâdhî* is found in Qur'an Surah al-Nisâ' [4]: 35.²²

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

Meaning: "And if you fear a dispute between them, then send a judge from the man's family and a judge from the woman's family. If the two judges intend to make amends, surely Allah will help the husband and wife. Verily, Allah knows best."

B. Discussion

As a general law, the Consumer Protection Law (GCPL) applies to all legal relationships between businesses and consumers, including those between Islamic banks as service providers and customers as service recipients. This strengthens the position of customers and prevents them from being placed in a weaker position than banks²³. The GCPL confirms several key rights that must be fulfilled by business actors. Customers are entitled to accurate, complete, and non-misleading information about Islamic banking products, including *murabahah*, *mudharabah*, and *ijarah* contracts. Transparency is essential in Islamic banking because each contract carries different structures, risks, obligations, and repayment mechanisms, and the GCPL requires banks to explain these elements honestly and responsibly.

²⁰ Kompilasi Hukum Ekonomi Syariah (KHES), Mahkamah Agung RI.

²¹ Fitria Amini, Perlindungan Hak Nasabah melalui Mediasi dalam Penyelesaian Sengketa Perbankan di Indonesia, Fakultas Hukum, Universitas Sriwijaya, Synotic Law: Jurnal Ilmu Hukum Fakultas Hukum, Universitas Sriwijaya, E-ISSN: 2829-2952 Volume 3 Nomor 4 (2024)

²² <https://quran.nu.or.id>

²³ POJK No. 31/POJK.05/2014 tentang Tata Kelola Lembaga Jasa Keuangan Syariah

The GCPL also prohibits the use of standard clauses that harm consumers. This includes clauses that limit bank responsibility or allow banks to change fees, margins, or contract mechanisms without customer consent. This protection is important because Sharia products rely on written agreements that must follow Sharia requirements and uphold fairness. In addition, the GCPL provides access to dispute resolution through litigation and non-litigation channels. Sharia banking customers can submit objections to the Financial and Social Security Agency (BPSK) or seek resolution through Sharia arbitration or the Religious Courts, as provided in the Sharia Banking Law. These mechanisms ensure that consumers can obtain fair settlement of disputes.

Overall, the Consumer Protection Law (GCPL) functions as a legal umbrella that reinforces protection for Sharia banking customers, especially regarding transparency, fairness, and legal certainty.²⁴ Although Law No. 8/1999 provides an important foundational framework, its implementation in Islamic banking remains limited and requires regulatory strengthening. The analysis is as follows:

1.1 Foundation of Consumer Protection

a. Legal certainty & right to sue

The GCPL ensures that consumers can file claims against business actors through general courts or dispute resolution institutions, giving Islamic banking customers a legal basis to seek compensation for losses.

b. Prohibition of harmful standard clauses

Article 18(2) of GCPL restricts the use of unilateral standard clauses—which are often used in sharia products such as *murabaha* contracts—to protect consumers from unfair clauses.

1.2 Right to Information, Transparency & Education

a. True and clear information

The GCPL obligates businesses to provide complete and honest product information, which is crucial for understanding Sharia contracts, associated risks, and profit-sharing mechanisms.

b. Implementation of digital finance

Although GCPL provides a general legal basis for digital Sharia banking, specific regulations remain lacking. Research indicates consumer education and awareness are still low.

1.3 Dispute Resolution Mechanism

a. Through public channels

Disputes may be resolved through courts or consumer dispute institutions. Islamic banking, however, also offers Sharia-specific alternatives such as BASYARNAS/BSN.

b. Support through sectoral institutions

In addition to the GCPL, there are *lex specialis* such as the Sharia Banking Law (Law 21/2008), consumer & mediation POJK, and the Sharia

²⁴ Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

Supervisory Board (DPS). These strengthen the complementary protection dimensions of sharia and financial aspects.

1.4 Implementation Challenges

a. Unilateral standardized agreements

Standardized clauses in *murabahah* or *mudharabah* contracts may disadvantage customers due to the absence of negotiation.

b. Weak education and understanding

Studies show frequent consumer losses, especially in digital services like mobile banking, due to inadequate knowledge.

1.5 In general, GCPL has established a foundation of legal protection in the form of information rights, the obligation to provide honest information, provisions for reporting complaints, and access to legal channels. However, when applied to Islamic banking, there are still some gaps:²⁵

a. Unfair and one-sided standard clauses.

b. Lack of sharia consumer education.

c. Limited protection of sharia aspects (e.g. *maqashid* and DPS supervision).

1.6 Recommendations for improvement:

a. Revise GCPL to include specific provisions for sharia products.

b. Stricter restrictions on unilateral clauses.

c. Customer education regarding the principles

1.7 Strengthening the integration of GCPL with Law 21/2008, POJK, and DPS institutions for sharia-based dispute resolution. GCPL is general; it has not specifically accommodated the characteristics of sharia products and principles. As a result, protection from a sharia *maqashid* perspective is not optimal.

Thus, the GCPL can in fact provide effective legal protection, provided that its implementation in the Islamic banking sector is strengthened through regulatory harmonization, improved consumer education, and stricter limitations on harmful clauses. Would you like me to help draft the section on normative weaknesses or proceed to the reconstruction draft?

Law No. 8/1999 on Consumer Protection (GCPL) is a general regulatory framework that governs consumer rights, business obligations, and accountability across various sectors, including banking. In the context of Islamic banking, the GCPL forms a legal basis that enables consumers to obtain protection from harmful practices through the right to clear information, the prohibition of unfair standard clauses, and access to dispute resolution mechanisms both inside and outside the courts.²⁶

In principle, the GCPL guarantees essential consumer rights, such as the right to comfort, security, and safety in using Islamic banking services, the right to

²⁵ Ma'sum, Zezen Zainal. "Dualisme Penyelesaian Sengketa Perbankan Syariah: Antara Pengadilan Agama dan Arbitrase Syariah." *Jurnal Hukum Islam*, Vol. 11, No. 1, 2019.

²⁶ Sayidah Aminatuzzuhriyah, Penyelesaian Sengketa Konsumen Jasa Kredit Motor Prespektif Undang-Undang Perlindungan Konsumen dan Hukum Perjanjian Syariah, *JOURNAL OF ISLAMIC BUSINESS LAW* Volume 7 Issue 2 2023 ISSN (Online): 2580-2658

accurate, clear, and honest information regarding the terms and guarantees of banking products, and the right to be heard and to obtain a resolution of complaints or disputes. If consumer rights are violated, the GCPL also gives consumers the right to file lawsuits, either individually or through class actions, which serves as an important tool for ensuring the accountability of banking institutions.²⁷

However, the effectiveness of these protections is still limited when applied within Islamic banking practices. This limitation exists because the GCPL does not specifically regulate the unique characteristics and contractual principles of Islamic economic transactions, such as justice (*adl*), equality (*musaawah*), transparency (*idllah*), and responsibility (*amanah*). As a result, there are legal gaps that permit deviations in the implementation of Sharia contracts, particularly with respect to unilateral standard clauses and the limited consumer understanding of Sharia-based products.

The dispute resolution mechanisms under the GCPL, namely BPSK and the general courts, are considered less appropriate for Islamic banking disputes that involve Sharia legal principles. This creates a dualism of authority between general institutions and Sharia-based bodies such as BASYARNAS or the religious courts. The lack of alignment between the GCPL and Law No. 21/2008 on Islamic Banking also reduces the effectiveness of consumer protection in the Islamic banking sector.²⁸

Thus, although the GCPL provides a general framework for consumer protection, its application in Islamic banking remains suboptimal. Regulatory reconstruction is needed to fully accommodate Sharia values and principles, either through revising the GCPL or integrating it with Islamic banking-specific regulations, in order to establish a fair consumer protection system that aligns with the objectives of *maqashid al-syari'ah*.²⁹

1. Regulatory and institutional weaknesses in Islamic banking consumer dispute resolution in Indonesia

Regulatory inconsistencies, weak institutional frameworks, and inadequate human resource competency and outreach remain the factors that hinder effective implementation of consumer Islamic banking solutions.

1. Regulatory Weaknesses

a. GCPL does not specifically regulate Islamic consumers

Law No. 8/1999 on Consumer Protection is general in nature, so it does not specifically regulate legal protection for consumers of Islamic

²⁷ Latifah, Nur. "Efektivitas Perlindungan Konsumen dalam Transaksi Perbankan Syariah." *Jurnal Hukum dan Syariah*, Vol. 14, No. 2 (2021).

²⁸ Puspitasari, Ani. (2021). Kedudukan BPSK dalam Penyelesaian Sengketa Konsumen Jasa Keuangan di Indonesia. *Jurnal Hukum dan Pembangunan*, 51(1), 88–105.

²⁹ Dimas, Penyelesaian Sengketa Oleh Lembaga Perlindungan Konsumen Dalam Memberikan Perlindungan Terhadap Hak-Hak Konsumen di Industri Perbankan, *INNOVATIVE: Journal Of Social Science Research* Volume 4 Nomor 1 Tahun 2024 Page 6468 E-ISSN 2807-4238,

financial products, including the characteristics of contracts, sharia principles, and the prohibition of usury, *gharar*, and *maysir*.

b. Overlap with sectoral regulations³⁰

There is a lack of synchronization between the GCPL, Law No. 21/2008 on Islamic Banking, and Law No. 30/1999 on Arbitration. This disharmony makes the dispute resolution forum inconsistent and opens the gap for forum shopping (strategic selection of forums by stronger parties).

c. The absence of standardized technical rules for sharia dispute resolution

There is no Government Regulation or derivative regulation of GCPL that regulates the technical dispute resolution for customers of Islamic banks. As a result, the settlement mechanism often does not consider fatwas and sharia principles thoroughly.

d. The absence of a mandatory sharia forum clause in the contract

Most Islamic financing contracts do not explicitly include a dispute resolution clause to the sharia forum, hence disputes can run to the district court or BPSK which are not competent in handling Islamic law.

2. Institutional Weaknesses

a. Institutionalization of sharia dispute resolution is not yet strong.

Institutions such as BASYARNAS (National Sharia Arbitration Board) do not yet have adequate infrastructure, human resource capacity, and networks in the regions. Not all Islamic banks or customers are familiar with this institution.

b. Religious Courts have not optimally handled banking disputes

Although juridically authorized to handle sharia economic disputes (based on Law No. 3 of 2006), most Religious Court judges still have limited understanding of the technical aspects of Islamic banking and finance.

c. The Consumer Dispute Resolution Agency (BPSK) does not have sharia competence

BPSK is a consumer dispute resolution institution, but it is not sharia-based and does not have the authority or understanding of DSN-MUI fatwa or *fiqh muamalah*.

d. Weak coordination between institutions

There is no coordination or integration system between OJK, MUI, MA, and Islamic financial institutions in terms of supervision and resolution of consumer disputes. This increases the possibility of overlapping authority and legal uncertainty.

Overall, the weaknesses in regulatory and institutional arrangements for Islamic banking consumer dispute resolution stem from the absence of Sharia-specific regulations, unfocused dispute resolution forums, and limited institutional

³⁰ Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa

capacity, both in arbitration and the courts, to professionally address contemporary *muamalah* issues.³¹

2. Reconstruction of the Ideal Consumer Protection Law in the Context of Islamic Banking Dispute Resolution

Reconstructing the Consumer Protection Law (GCPL) requires attention to the distinctive features of Islamic banking and its Sharia principles. This reconstruction should refine normative provisions, institutional arrangements, legal substance, and dispute resolution mechanisms to align with the objectives of *maqashid al-syari'ah*, which emphasize justice, transparency, and balanced rights and obligations.³²

The following are some forms of reconstruction that can be proposed:³³

1. Addition of Special Provisions on Islamic Financial Services

The GCPL needs to insert a special chapter or article on consumer protection of Islamic financial services, especially banking. This provision must specifically regulate:

- c. Basic principles of sharia contracts (*murabahah*, *mudharabah*, *musyarakah*, *ijarah*, etc.).
- d. Consumer rights to transparency of contracts, margin structures, and risks.
- e. Explicit prohibition of usury, *gharar* (uncertainty), and *dzalim* (cheating) practices.

2. Harmonization with Sharia Banking Law (Law No. 21 of 2008)

Reconstruction must build a legal bridge between the GCPL and the Sharia Banking Law so that there is no dualism of rules. This harmonization can be done by:

- a. Expressly stating that consumer disputes in the Islamic banking sector are subject to sharia provisions.
- b. Establishing the sharia dispute resolution institution as the main forum before the court.

3. Institutional Strengthening of Sharia Dispute Resolution

There needs to be a sharia consumer dispute resolution institution recognized in the GCPL Law, such as:

- a. BASYARNAS as a sharia-based arbitration forum equivalent to BPSK.
- b. Or the establishment of a Sharia Consumer Dispute Settlement Body (BPSKS) that specifically handles sharia customer complaints.

4. Regulation of Standard Clauses in Sharia Agreements

³¹ Wibowo, Riki. "Urgensi Pembentukan Lembaga Penyelesaian Sengketa Khusus untuk Konsumen Syariah." *Jurnal Legislasi Indonesia*, Vol. 17, No. 3 (2020)

³² Abdul Rasyid, The Authority Of Dispute Settlement Institution Of Sharia Banking An Analysis of Constitutional Court's Decision Number 93/PUU-X/2012, *Jurnal Yudisial* Vol. 12 No. 2 Agustus 2019: 170

³³ Dualisme Penyelesaian Sengketa Perbankan Syariah: Antara Pengadilan Agama dan Arbitrase Syariah." *Jurnal Hukum Islam*, Vol. 11, No. 1 (2019).

The GCPL Law must be revised to explicitly regulate:

- a. Prohibition of standard clauses in sharia contracts that are one-sided and non-transparent.
 - b. The obligation of sharia business actors to prepare contracts that are fair, clear, and can be understood by consumers.
 - c. Preventive sharia audit of banking contracts by the DPS (Sharia Supervisory Board).
5. Integration of *Maqashid al-syari'ah* Principles in Consumer Protection
The concept of justice in Islam is not only based on formal rights, but also moral and social. So the ideal reconstruction must refer to:
- a. Protection of *hifz al-mal* (protection of property).
 - b. Encouraging the principle of *ta'awun* (mutual help) between banks and customers.
 - c. Avoiding elements of *gharar* and *tadlis* (hidden fraud) in transactions.
6. Increasing Sharia Literacy for Consumers
The reconstructed GCPL Law needs to include:
- a. The obligation of sharia education by business actors (Islamic banks) to consumers.
 - b. Provision of contract and risk materials in a transparent and easy to understand manner.
 - c. Sharia literacy counseling program by OJK, MUI, and the government.

Reconstructing the Consumer Protection Law (GCPL) requires consideration of the distinctive characteristics of Islamic banking and its Sharia principles. The reconstruction should refine normative rules, institutional structures, legal substance, and dispute resolution mechanisms to align with *maqashid al-syari'ah*, which prioritize justice, transparency, and balanced rights and obligations.³⁴

C. Conclusion

The research findings show that Law Number 8 of 1999 on Consumer Protection has not yet provided effective legal protection for consumers in the Islamic banking sector. The GCPL is too general and does not reflect the distinct principles of Sharia, particularly those concerning contract fairness, the prohibition of usury, avoidance of *gharar*, and dispute resolution based on Islamic law. Current dispute settlement practices still face dualism of authority, weak integration between the GCPL and the Islamic Banking Law, and limited alignment with *maqashid al-syari'ah*, creating legal uncertainty and potential harm to consumers in Sharia-based transactions.

To address these gaps, the GCPL needs to be reconstructed by adding provisions specific to Islamic financial services. This includes incorporating norms grounded in Sharia principles, regulating fair standard clauses,

³⁴ Naufal Faris, *Perlindungan Konsumen Dalam Perbankan Syariah: Perspektif Hukum Ekonomi Syariah*, MJRS: Volume 1, Nomor 1, Tahun 2024.

strengthening the role of Sharia-based dispute resolution institutions such as BASYARNAS and the Religious Courts, and improving consumer literacy on Sharia contracts. Such reconstruction is expected to enhance consumer protection in Islamic banking in a more comprehensive, fair, and Sharia-compliant manner.

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