

## CHAPTER I

### INTRODUCTION

#### A. Background of Study

Islamic banking, as an institution that operates under the Sharia economy, functions to collect and distribute funds but is vulnerable to the risk of losses, especially in customer financing. Article 2 of the Sharia Banking Law states that as finance makes up the bulk of an Islamic bank's assets, its quality must be carefully maintained.<sup>1</sup> This financing includes trade, leasing, profit-sharing, and partnerships, which are long-term investments with gradual returns. Collateral is a crucial requirement to cover debts in case of default.<sup>2</sup> If financing issues arise, the bank can take steps such as intensive collection, rescheduling, restructuring, or executing collateral<sup>3</sup> in compliance with the Indonesian Civil Code's Articles 1131 and 1132.<sup>4</sup>

The funds that banks make available to the general public as financing comes from deposits made by clients and are not owned by the bank. With limited capital, financing provided in large amounts but not repaid on time as agreed can decrease the quality of financing (credit) into Non-Performing

---

<sup>1</sup> Ika Gustin Rahayu and Hendrianto Hendrianto, "Mitigasi Risiko Pembiayaan Pada Bank Perkreditan Rakyat Syariah (BPRS) Safir Cabang Curup Kabupaten Rejang Lebong," *AL-FALAH: Journal of Islamic Economics* 3, no. 2 (2018): 192, <https://doi.org/10.29240/alfalah.v3i2.638>.

<sup>2</sup> Muhammad Maulana, *Sistem Jaminan Dalam Pembiayaan Pada Perbankan Syariah Menurut Hukum Islam* (Banda Aceh: Ar-Raniry Press, 2020), 4.

<sup>3</sup> Nofriza, "Penerapan Cessie Dalam Penyelesaian Hutang Pada Perbankan Syariah," *Hukum Responsif* 13, no. 1 (2022): 142–49, <https://doi.org/10.33603/responsif.v13i1.6720>.

<sup>4</sup> Ni Made Mirah Dwi Lestari, I Nyoman Putu Budiarta, and Ni Gusti Ketut, "Upaya Perlindungan Hukum Terhadap Kreditur Atas Debitur Wanprestasi Dalam Perjanjian Kredit Pada Masa Pandemi Covid-19," *Jurnal Interpretasi Hukum* 3, no. 1 (2022): 177, <https://doi.org/10.22225/juinhum.3.1.4740.176-181>.

Loans (NPL). A high NPL rate can threaten the bank's liquidity, which worsens if problematic financing continues to increase. To address this issue and quickly obtain fresh funds for receivables that have not yet matured, banks often sell or transfer these receivables to other parties willing to purchase them.<sup>5</sup> One method commonly used is through the mechanism of cessie.<sup>6</sup>

Cessie is a legal procedure in which a creditor transfers receivables to a new party without terminating the credit or loan arrangement that resulted in the debt. However, in Indonesia laws now in effect include no reference of the word "cessie." Within the Second Part of Book II of the Civil Code, under the heading "On the Means of Acquiring Ownership Rights," Article 613 states that the transfer in question is the transfer of ownership to the receiver. Consequently, the transfer of receivables in the name of other intangible assets is the source of the issues that arise.<sup>7</sup>

From the perspective of contract regulation, cessie can be considered a valid basis and instrument that allows the substitution of creditors, as cessie is a method for transferring claim rights to another party or a third party to secure financing facilities or funds provided by the bank.<sup>8</sup> This process is carried out

---

<sup>5</sup> Novelia Adistie and Jarkasi Anwar, "Hubungan Keabsahan Pengalihan Piutang (Cessie) Yang Dilakukan Secara Berulang Kali Terhadap Perpindahan Hak Tanggungan Milik Debitur," *Yustisia Tirtayasa: Jurnal Tugas Akhir* 1, no. 1 (2021): 96, <https://doi.org/10.51825/yta.v1i1.11407>.

<sup>6</sup> I Kadek Alit Buda Astawa and Dewa Gde Rudy, "PENYELESAIAN KREDIT MACET PERBANKAN MELALUI CESSIE," *Jurnal Kertha Semaya* 12, no. 6 (2024): 1228.

<sup>7</sup> Ade Darmawan Basri, "Pengalihan Piutang Dengan Skema Cessie Dalam Hukum Perbankan Syariah Maupun Konvensional," *El-Iqtishady: Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2020): 5, <https://doi.org/10.24252/el-iqthisadi.v2i1.13979>.

<sup>8</sup> Adam Farhansyah, Rani Sri Agustina, and Efriyanto, "Keabsahan Penyerahan Cessie Tanpa Pemberitahuan Debitur Dalam Perkara Kepailitan Perbankan Syariah," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 4, no. 1 (2024): 94.

by drafting an official document or deed, which is then delivered to the debtor.<sup>9</sup> Due to using a cessie to transfer receivables, the receiver of the cessie becomes the debtor's new creditor. Because of their relationship and all the repercussions of the transfer of receivables, the new creditor has the legal right to sue the debtor if the latter defaults on their debts. The execution of the debtor's collateral in the event of default can take place in several ways, including through private sales based on an agreement between the debtor and the creditor, *parate* execution permitting direct execution where the creditor can sell the collateral through a public auction, or execution based on an executorial title with the help of the court.<sup>10</sup>

Islamic law permits using a *hawālah* mechanism for debt transfers. According to Article 20, point 13 in the Compilation of Islamic Law, *hawālah* is the transfer of debt from the original debtor (*muhīl al-aṣīl*) to the recipient (*muhāl 'alaih*). To avoid *ribā* (usury), *hawālah* lays a great focus on the ideas of flexibility and simplicity while negotiating loans. Verse 280 of Surah Al-Baqarah of the Qur'an states that this is achieved by granting another person the authority to collect the loan from a distressed debtor: "*Provide the debtor some time till it becomes easier for him to repay if he is having trouble. However, it would be better for you if you knew, if you sent it to a charity.*"<sup>11</sup>

---

<sup>9</sup> Erlina Bachri and Hendra Gunawan, "Perlindungan Hukum Terhadap Debitur Perorangan Atas Hilangnya Objek Jaminan Fidusia Pada Saat Kreditur Telah Berganti Karena Pelaksanaan Pengalihan Hak Atau Cessie," *Jurnal Yustisiabel* 6, no. 2 (2022): 243, <https://doi.org/10.32529/yustisiabel.v6i2.1879>.

<sup>10</sup> Cynthia Ayu Juniar and Ibnu Arly, "Analisis Pengalihan Piutang Secara Cessie Atas Hak Tanggungan Di Bank BTN Syariah," *Gorontalo Law Review* 4, no. 1 (2021): 33–44.

<sup>11</sup> Achmad Wahid Wibisono and Ramadhita, "Pengalihan Piutang Secara Cessie Pada Putusan No.1992/PDT.G/2020.PA.Btm Perspektif Hukum Positif Dan Hukum Ekonomi Syariah," *Journal of Islamic Business Law* 6, no. 4 (2022): 9, <http://urj.uin-malang.ac.id/index.php/jibl/article/view/1900%0Ahttp://urj.uin->

According to the Civil Code, if an agreement meets the legal requirements for a valid contract, it is deemed genuine and binding on the parties.<sup>12</sup> Customers, however, could suffer in the case of a financing default if the bank sells collateral or receivables in violation of the law, transferring rights over collateral assets whose value exceeds the bank's loan amount. Referring to civil law, the cessie transfer of receivables must comply with existing requirements and notify the debtor in line with the financing arrangement. In this procedure, the third party receiving the cessie is given a deed of transfer or a declaration waiving rights over the collateral and claims.<sup>13</sup>

Banks use Cessie as a finance rescue operation to safeguard their assets and their customers' collateral. However, when the financing institution or creditor changes due to cessie, credit guarantees or fiduciary rights are sometimes lost in the financing arrangement.<sup>14</sup> According to Devid Frastiawan Amir Sup's research, the prerequisites for cessie in the Civil Code do not fully satisfy the standards for making a contract as specified in *hawālah*, even though cessie technically comes under *hawālah al-ḥaq*.<sup>15</sup> From debtor's perspective, transferring a creditor's rights or substituting one creditor for another is known as *hawālah al-ḥaq*.<sup>16</sup> Accordingly, although while cessie is legal under positive

---

malang.ac.id/index.php/jibl/article/download/1900/1175.

<sup>12</sup> Devid Frastiawan Amir Sup, "Cessie Dalam Tinjauan Hukum Islam," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Ekonomi Islam* 11, no. 1 (2019): 44–73, <https://doi.org/10.32505/jurisprudensi.v11i1.995>.

<sup>13</sup> Ilham Muzaki and Aris Machmud, "Prosedur Pengalihan Cessie Dalam Perspektif Hukum (Akibat Hukum Terhadap Jaminan Hak Tanggungan Dan Perlindungan Debitur)," *Binamulia Hukum* 12, no. 1 (2023): 146, <https://doi.org/10.37893/jbh.v12i1.503>.

<sup>14</sup> Bachri and Gunawan, "Perlindungan Hukum Terhadap Debitur Perorangan Atas Hilangnya Objek Jaminan Fidusia Pada Saat Kreditur Telah Berganti Karena Pelaksanaan Pengalihan Hak Atau Cessie," 243.

<sup>15</sup> Sup, "Cessie Dalam Tinjauan Hukum Islam," 45.

<sup>16</sup> (دمشق: دار الفكر، ١٩٨٥). ١٧١ الفقه الإسلامي وأدلته الجزء الخامس، وهبة الزحيلي.

law, Islamic banks that undertake this activity should preferably do so following sharia principles that complement their objectives.

In a cessie transaction, there is a possibility that the debtor (cessus) is unaware that their debt has been transferred to another creditor. Legally, the cessie agreement between the cedent (initial creditor) and the cessionary (new creditor) does not affect the cessus until official notification or written consent is obtained from the debtor. To protect the debtor's rights in such situations, they are entitled to request an original copy or a legally certified photocopy of the sales and receivables transfer agreement as valid proof of the transfer of the claim by the new creditor.<sup>17</sup>

Although cessie is recognized as a legally valid transaction, its legal certainty still faces challenges because the Indonesian Civil Code does not explicitly regulate its implementation procedures. This often leads to multiple interpretations in the execution of cessie,<sup>18</sup> particularly concerning the debtor's rights regarding transparency, fairness, and legal certainty. In banking practices, cessie clauses in credit agreements must maintain a balance between business interests and the legal protection of debtors. Therefore, the transfer of receivables through cessie must be legally valid ensure that debtors receive adequate protection and clear information regarding the changes in their rights and obligations.<sup>19</sup>

---

<sup>17</sup> Widya Padmasari, "PERLINDUNGAN HUKUM BAGI PARA PIHAK DALAM PENGALIHAN PIUTANG (CESSIE) MELALUI AKTA NOTARIS," *Jurnal Hukum Dan Kenotariatan* 2, no. 2 (2018): 274.

<sup>18</sup> Agung La Tenritata, Anita Afriana, and Nun Harrieti, "Kepastian Hukum Terkait Pengalihan Piutang (Cessie) Dalam Praktik Kredit Pemilikan Rumah Ditinjau Dari Kitab Undang-Undang Hukum Perdata," *Jurnal Poros Hukum Padjadjaran* 3, no. 2 (2022): 338, <https://doi.org/10.23920/jphp>.

<sup>19</sup> Baiq Supiya Indah Sasmita, "Proses Pengalihan Cessie Dan Dampaknya Terhadap Hak Debitur Dalam Perjanjian Kredit Perbankan," *UNES Law Review* 7, no. 1 (2024): 492.

Suppose a receivables transfer occurs without the debtor's knowledge and the new creditor demands payment in an incorrect amount or applies excessive interest, in that case such actions may be considered a legal violation.<sup>20</sup> According to research by Farhansyah et al., cessie without notification to the debtor is legally permissible but may be detrimental if the new creditor does not act in good faith in conveying information regarding the debt transfer.<sup>21</sup> In line with this, Sudarsono emphasizes that a cessie transaction only has legal consequences for the debtor once they have duly notified and acknowledged it. Suppose there is a violation of legal provisions in the implementation of cessie, in that case, the debtor has the right to take legal action in the District Court to obtain appropriate legal protection.<sup>22</sup>

Several Islamic banks have used cessie to manage non-performing loans. However, this practice has led to legal disputes, as some customers felt disadvantaged by transferring their receivables. Instead of resolving financial issues, implementing of cessie resulted in lawsuits being filed against the banks. The following provides an overview of a cessie dispute between a customer and an Islamic bank within the jurisdiction of the Religious Court.

---

<sup>20</sup> Muzaki and Machmud, "Prosedur Pengalihan Cessie Dalam Perspektif Hukum (Akibat Hukum Terhadap Jaminan Hak Tanggungan Dan Perlindungan Debitur)," 147.

<sup>21</sup> Farhansyah, Agustina, and Efriyanto, "Keabsahan Penyerahan Cessie Tanpa Pemberitahuan Debitur Dalam Perkara Kepailitan Perbankan Syariah," 101.

<sup>22</sup> Galih Putri Sudarsono, "Problematisa Pengalihan Hak Tagih Piutang (Cessie) Terhadap Kredit Macet Perbankan," *Yudhistira: Jurnal Yurisprudensi, Hukum Dan Peradilan* 2, no. 2 (2024): 21.



**Table 1**  
Cessie Disputes Previously Resolved in Religious Courts

No	Decision Number	Cessie Case	Decision Result
1	3330/Pdt.G/2016/PA.Dpk	Debtor in Default, Transfer of Collateral to Another Person Without the Knowledge of the Legal Owner.	Rejected
2	128/Pdt.G/2020/PTA.Sby	Debtor in Default, Transfer of Collateral Without the Debtor's Consent, Improper Cessie Transfer Procedure.	Partially granted
3	2616/Pdt.G/2019/PA.JT	Debtor in Default, Contesting the Cessie Transfer as an Unlawful Act.	Granted
4	88/Pdt.G/2020/PTA.JK	Appellant Dissatisfied with the Decision of the Religious Court No. 2616/Pdt.G/2019/PA.JT.	Granted
5	881 K/Ag/2020	Plaintiff Dissatisfied with the Appeal Decision of the Religious High Court No. 88/Pdt.G/2020/PTA.JK.	Partially granted
6	589/Pdt.G/2020/PA.Mrs	Debtor in Default, Cessie in Accordance with Procedure.	Fully granted.
7	427/Pdt.G/2021/PA Sgm	Debtor in Default, Cessie in Accordance with Procedure.	Fully granted.

*Source: The Supreme Court of the Republic of Indonesia's Directory of Decisions website.<sup>23</sup>*

In the cases above, several decisions were rejected, fully granted, or partially granted. Interestingly, three of the seven decisions mentioned, are interconnected as they resolve disputes within the same case: the Supreme Court's decision No. 881 K/Ag/2020, and the Jakarta High Religious Court's decisions in No. 88/Pdt.G/2020/PTA.JK, and the East Jakarta Religious Court's ruling No. 2616/Pdt.G/2019/PA.JT.

The dispute started when the debtor objected to transferring debt receivables with the East Jakarta Religious Court, arguing that the bank and

---

<sup>23</sup> Kepaniteraan Mahkamah Agung Republik Indonesia, "Publikasi Dokumen Elektronik Putusan Seluruh Pengadilan Di Indonesia," Direktori Putusan Mahkamah Agung Republik Indonesia, n.d., <https://putusan3.mahkamahagung.go.id/beranda.html>.

the new creditor had engaged in illegal activity. This was based on Supreme Court decision No. 881 K/Ag/2020, which deals with transferring mortgage rights on receivables between an Islamic bank and a customer. In case number 2616/Pdt.G/2019/PA.JT, the plaintiff brought the matter to the court's attention, and it was decided that the defendants were found guilty and had to pay the plaintiff for significant damages. But because the defendants didn't like the decision, they appealed it to the Jakarta High Religious Court, which filed the case with case number 88/Pdt.G/2020/PTA.JK.<sup>24</sup>

The case was submitted to an Appellate Panel of Judges to re-examine, adjudicate, and rule on the matter, and to annul the East Jakarta Religious Court decision No. 2616/Pdt.G/2019/PA.JT. The Religious High Court's final ruling upheld the appeal and declared the East Jakarta Religious Court's decision No. 2616/Pdt.G/2019/PA.JT to be invalid.<sup>25</sup> The appellate decision was issued, and the plaintiff appealed in cassation to the Supreme Court. This cassation appeal was filed under case number 881 K/Ag/2020. The plaintiff requested that the Jakarta Religious High Court's decision No. 88/Pdt.G/2020/PTA.JK should be overturned and their lawsuit fully granted. However, the Supreme Court rejected the request at the cassation level. The cassation judgment's conclusion states the Jakarta Religious High Court's decision No. 88/Pdt.G/2020/PTA.JK has to be reexamined and resolved by an impartial court.<sup>26</sup>

In resolving the dispute above, the Religious Court's appeals process to the cassation level demonstrates that the parties are seeking justice for the

---

<sup>24</sup> Pengadilan Tinggi Agama DKI Jakarta, Putusan No. 88/Pdt.G/2020/PTA.JK (2020).

<sup>25</sup> Jakarta.

<sup>26</sup> Mahkamah Agung, Putusan Mahkamah Agung No. 881 K/Ag/2020 (2020).



matter. Since justice is necessary for humankind, the court is an important part of Islam and a need that Muslims must take seriously. In Surah An-Nisa, verse 135: "O you who have believed, be persistently standing firm in justice," Allah SWT instructs us.<sup>27</sup>

Court decisions require sufficient legal reasoning to avoid being classified as *onvoldoende gemotiveerd* (insufficiently reasoned), which could lead to annulment by a higher court. In Indonesia, such classification serves as a basis for invalidating lower court decisions. A ruling that lacks adequate legal considerations undermines its quality and can result in unfair outcomes for individuals and society.<sup>28</sup> The above case highlights that the consistency of their decisions measures the credibility of judicial institutions. Judicial independence must be balanced with social responsibility, ensuring legal certainty through careful decision-making.<sup>29</sup>

The cessie (transfer of claim rights) ensures that the two parties' property rights are safeguarded, which is one aspect of the Religious Court's decision in the case above that exemplifies fairness and benefit. This safeguard emphasizes how crucial it is to take *maqāṣid sharī'ah* into account while settling Islamic business issues. In legal discovery, *maqāṣid sharī'ah* plays a crucial role in the utility of law, which one of the three main objectives of law: justice, utility, and legal certainty. Consequently, in addition to maintaining justice and legal certainty, court decisions have to give special consideration to the advantages they offer the parties involved in the dispute.<sup>30</sup>

<sup>27</sup> (دمشق: دار الفكر، ١٩٨٥). ٧٤٠ الفقه الإسلامي وأدلته الجزء السادس، وهبة الزحيلي.

<sup>28</sup> M. Natsir Asnawi, *Hermeneutika Putusan Hakim* (Yogyakarta: UII Press, 2014), 5.

<sup>29</sup> Busra and Fajar Hernawan, *Kaidah-Kaidah Hukum Putusan Mahkamah Agung Republik Indonesia* (Jakarta: Kencana, 2023), 213.

<sup>30</sup> Rizki Pradana Hidayatullah, "Penemuan Hukum Oleh Hakim Perspektif Maqashid

Islamic law emphasizes noble social values, making them a central part of its *maqāṣid*, as affirmed through *mutawātir* texts and established legal rulings. These values include honesty and trustworthiness, justice and balance (*al-qist*), purity and modesty (*‘iffah & ḥayā*), humility and self-respect, compassion and gentleness, courage and generosity,<sup>31</sup> brotherhood and solidarity, as well as freedom and human dignity. These principles form the foundation of a harmonious and just social order in Islam.<sup>32</sup>

The *maqāṣid* approach in Islamic law elevates legal discourse to a higher philosophical level, resolving historical differences between various schools of thought while fostering reconciliation and peaceful coexistence. In this context, *maqāṣid sharī’ah* must serve as the primary objective in every *ijtihād* methodology, whether linguistically or rationally based. Therefore, the validity of an *ijtihād* should be measured by how well it fulfils the objectives of Islamic law and provides broader benefits to society.<sup>33</sup>

According to Jasser Auda, a *maqāṣid*-based approach to human rights issues can support the Islamic Universal Declaration of Human Rights. Moreover, Islam is believed to offer a "new positive dimension" to the concept of human rights, incorporating the perspectives of justice, welfare, and balance, which are at the core of *maqāṣid sharī’ah*. Thus, this approach not only reinforces Islamic values within the legal framework but also contributes to the broader

---

Syariah,” *TERAJU: Jurnal Syariah Dan Hukum* 2, no. 01 (2020): 95, <https://doi.org/10.35961/teraju.v2i01.94>.

<sup>31</sup> يوسف القرضاوي، *دراسة في فقه مقاصد الشريعة (بين المقاصد الكلية والنصوص الجزئية)* (القاهرة: دار الشروق، ٢٠٠٨)، ٢٩.

<sup>32</sup> جمال الدين عطية، *نحو تفعيل مقاصد الشريعة* (دمشق: دار الفكر، ٢٠٠١)، ١٠١.

<sup>33</sup> Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2007), 258.

discourse on human rights at a global level.<sup>34</sup>

For judges, *maqāṣid sharī'ah* serves as a foundation for discovering the law, especially in the absence of explicit rules, ensuring that the resulting decisions are beneficial and aligned with the purpose of the sharia. Allah has honored humanity with sharia for the benefit of mankind, and the established *maqāṣid sharī'ah* is the primary foundation for human dignity and a key reference for human rights.<sup>35</sup> *Maqāṣid sharī'ah* is the ultimate objective of the legal establishment, aimed at creating benefits by safeguarding five fundamental elements: religion, life, lineage, intellect, and property to provide advantages.<sup>36</sup> Scholars of *uṣūl al-fiqh* claim that there are three primary degrees of need in maqashid: *ḍarūriyyāt* (essential needs), *ḥājīyyāt* (complementary needs), and *taḥsīniyyāt* (embellishing requirements).<sup>37</sup>

Research on cessie dispute decisions has been done by Fathin and Destri (2024) and Nimatul and Veri (2020). In their 2020 research , "*Analisis Hukum Pengalihan Utang Dalam Akad Pembiayaan Ijarah Oleh Unit Usaha Syariah PT Bank Permata Tbk Melalui Transaksi Non-Syariah Pada Putusan Nomor: 2616/PDT.G/2019/PA.JT*," they examine the legality and implications of debt transfers in ijarah financing contracts that are carried out by the Sharia Business Unit of PT Bank Permata Tbk through non-sharia transactions.<sup>38</sup> In the meantime, the research by Fathin and Destri (2024) titled "*Analisis*

---

<sup>34</sup> Jasser Auda, 248.

<sup>35</sup> محمد عثمان شبير, *حقوق الانسان محور مقاصد الشريعة* (الدوحة: كتاب الأمة, ٢٠٠٢), ٦٩. and أحمد الريسوني, محمد الزحيلي,

<sup>36</sup> Hidayatulah, "Penemuan Hukum Oleh Hakim Perspektif Maqashid Syariah," 97.

<sup>37</sup> عطية, *نحو تفعيل مقاصد الشريعة*, 51.

<sup>38</sup> Nimatul Fauziah and Veri Antoni, "Analisis Hukum Pengalihan Utang Dalam Akad Pembiayaan Ijarah Oleh Unit Usaha Syariah PT Bank Permata Tbk Melalui Transaksi Non-Syariah Pada Putusan Nomor: 2616/PDT.G/2019/PA.JT" (Master Thesis, Universitas Gadjah Mada, 2020).

*Pertimbangan Hakim Dalam Menetapkan Keabsahan Hawalatul Haq (Cessie) Pada Pembiayaan Ijarah (Studi Putusan Nomor 2616/Pdt.G/2019/PA.JT Jo. Putusan Nomor 88/Pdt.G/PTA.JK Jo. Putusan Nomor 881 K/Ag/2020)*" examines the legal factors that judges take into account when deciding whether or not *hawālāh al-haq* (cessie) is valid in the context of ijarah financing.<sup>39</sup>

Both studies focus on the technical legal aspects of the validity of claim transfers and the judges' legal considerations, but they do not adopt a *maqāṣid sharī'ah* approach. This indicates that in-depth studies on aligning judicial decisions with *maqāṣid sharī'ah* principles remain limited. Understanding *maqāṣid sharī'ah* in legal contexts is crucial, especially for Muslims, scholars, and judges. Without regulations, judges can refer to *maqāṣid sharī'ah* to establish laws that align with the spirit and core principles of sharia.<sup>40</sup>

Badria Nur Lailina Ulfa's 2019 thesis, titled "Sharia Economic Dispute Regarding the Default on Ijarah Multijasa Financing From Maqashid Sharia Perspective (Decision No. 38/Pdt.G/2019/PA.Btl)," highlights the importance of examining the relationship between elements of *maqāṣid sharī'ah* and legal decision. Badria argues that judges must apply *maqāṣid sharī'ah* principles in every decision to ensure justice, balance legal and ethical considerations, address societal welfare (*maṣlaḥah*), prevent defaults and mismanagement in financing, and understand the contracts between disputing parties.<sup>41</sup> Her

---

<sup>39</sup> Fathin Aqidatus Zahro and Destri Budi Nugraheni, "Analisis Pertimbangan Hakim Dalam Menetapkan Keabsahan Hawalatul Haq (Cessie) Pada Pembiayaan Ijarah (Studi Putusan Nomor 2616/Pdt.G/2019/PA.JT Jo. Putusan Nomor 88/Pdt.G/PTA.JK Jo. Putusan Nomor 881 K/Ag/2020)" (Master Thesis, Universitas Gadjah Mada, 2024).

<sup>40</sup> 77, شبير. حقوق الانسان محور مقاصد الشريعة and الريسوني، الزحيلي.

<sup>41</sup> Badria Nur Lailina Ulfa, "Sharia Economic Dispute Regarding The Default on Ijarah Multijasa Financing From Maqashid Sharia Perspective (Decision No. 38/Pdt.G/2019/PA.Btl)" (Master Thesis, University Darussalam Gontor, 2019).

research emphasizes the need to explore the connection between *maqāṣid sharī'ah* and judicial decisions, strengthening the originality of this research, which offers an innovative approach free from plagiarism.

To resolve financial disputes among Muslims, such as those concerning debt, trade, and inheritance, Azmi Sirajuddin highlights the need of *maqāṣid sharī'ah* as a norm for judges in religious courts. Under Shatibi's *maqāṣid sharī'ah* theory, judges are expected to ensure that rulings comply with Islamic standards. Since Law No. 3 of 2006 was passed, this strategy has grown in importance. It gives the Religious Courts the power to resolve commercial conflicts and encourages judges to constantly innovate by developing new legal goods based on *maqāṣid sharī'ah*.<sup>42</sup>

In contrast to other research, this research focuses on how *maqāṣid sharī'ah* principles are applied in court decisions on cessie matters involving Islamic banks and clients in the Religious Courts. As was previously indicated, cessie, which Islamic banks implement in an attempt to settle non-performing funding from clients, has instead led to litigation from clients who believe that the cessie transfer of receivables disadvantages them. One of the causes is that consumers believe the bank is breaking the law because of Cessie's incompatibility with sharia contracts. Judges rely heavily on *maqāṣid sharī'ah* when determining the law, particularly when legal statutes do not specifically address a given instance. Thus, *maqāṣid sharī'ah* helps judges produce decision that reflect substantive justice and provide tangible benefits for society. Additionally, *maqāṣid sharī'ah* functions as a method for understanding the

---

<sup>42</sup> Azmi Sirajuddin, "Model Penemuan Hukum Dengan Metode Maqashid Syariah Sebagai Jiwa Fleksibilitas Hukum Islam," *Istinbath: Jurnal Hukum* 13, no. 1 (2016): 126.

purpose of the law within the texts, ensuring that judicial decisions are accepted and effectively implemented within the community.<sup>43</sup>

The dispute in this case has reached a verdict at the cassation level, which is a final and binding decision for both parties. The considerations made by judges at the cassation level carry greater weight compared to those at the appellate or first-instance court levels.<sup>44</sup> Like the field of human rights, the field of human development also needs more research from a *maqasid* perspective.<sup>45</sup> Therefore, analyzing the cassation decision on *cessie* through the lens of *maqāṣid sharī'ah* becomes crucial to ensure that the principles of justice, protection of the disputing parties' property, and public welfare are upheld. Based on these issues, this research addresses the topic under the title: **"The Relevance of Supreme Court Decision Number 881 K/Ag/2020 on Cessie Dispute with *Maqāṣid Sharī'ah*."**

## B. Scope of Research

This research intends to examine the Religious Court's decision about a *cessie* dispute, focusing on how *maqāṣid sharī'ah* principles were used. The main subject is Decision Number 881 K/Ag/2020, which includes the case history, the legal arguments, and the judges' decision. Additionally, in the context of the *Cessie* conflict, the research will identify and assess the application of *maqāṣid sharī'ah* principles. The methodology used to evaluate the ruling's legal content and conformity to *maqāṣid sharī'ah* is a qualitative content analysis with a descriptive inductive approach. In addition to offering new insights into the relationship between *Cessie* dispute rulings and *maqāṣid*

<sup>43</sup> Hidayatulah, "Penemuan Hukum Oleh Hakim Perspektif Maqashid Syariah," 83.

<sup>44</sup> Tuti Harwati, *Peradilan Di Indonesia* (Mataram: Sanabil, 2015), 38.

<sup>45</sup> Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, 25.



*sharī'ah* principles, this research is expected to provide recommendations for improving legal processes.

### **C. Problem Formulation**

Based on the issues outlined, the researcher aims to analyze:

1. How is the decision number 881 K/Ag/2020 of the cessie dispute?
2. Has the decision number 881 K/Ag/2020 complied with the *maqāṣid sharī'ah*?

### **D. Research Purpose**

In line with the stated research questions, the purpose of this research are:

1. To understand the Decision Number 881 K/Ag/2020 of the cessie dispute.
2. To determine the alignment of Decision Number 881 K/Ag/2020 with the *maqāṣid sharī'ah*.

### **E. Benefits of Research**

Practical and theoretical advantages are the two categories into which the research's utility value or axiological part is separated. Completing the criteria for a Master's degree in Sharia Economics Law is the practical advantage of this research. Additional advantages of this research include:

1. Theoretical Benefits:
  - a) Contribution to Sharia Law Development: By examining court rulings about to debt transfers, this research adds to the body of knowledge on the application of *maqāṣid sharī'ah* in civil disputes, especially cessie instances, and the function of sharia law in the economy.

- b) Developing a better understanding of how *maqāṣid sharī'ah* is applied in positive law by examining how *maqāṣid sharī'ah* is used in court rulings and demonstrating how positive law supports or contradicts sharia's goals, particularly those of public welfare, justice, and property protection.
- c) Evaluation of the Quality of Court Decisions: This research analyzes the quality of judges' decisions in cessie cases according to *maqāṣid sharī'ah* and assesses the contribution of sharia laws in upholding the preservation of the values of justice and property protection in the banking and finance sectors.

## 2. Practical Benefits:

- a) Recommendations for Legal Practitioners and Judges: This research guides judges and legal practitioners on how the principles of *maqāṣid sharī'ah* can be used in cessie case decisions, helping to create fairer and sharia-compliant rulings.
- b) Increasing Compliance with Sharia in Civil Law: Providing guidelines for sharia law institutions and sharia banks to integrate the principles of *maqāṣid sharī'ah* in economic transactions, enhancing public trust, and creating fairer transactions.
- c) Source for Policy and Legal Changes: This research can serve as a guide for reforming sharia economic law and as a basis for revising regulations oriented towards the community's interests.
- d) Improvement of Transparency and Justice in Legal Processes: Identify injustices in cessie case rulings and provide input to enhance transparency and justice in the judicial system.

- e) Guide for Sharia Banking Practices: Providing insights for sharia banks in integrating the principles of *maqāṣid sharī'ah* into the operational transfer of receivables and financing to enhance customer welfare.

## **F. Systematics of Writing**

To thoroughly understand this research, the researchers have divided the discussion into four chapters, as outlined below:

1. CHAPTER I: Introduction. This chapter includes the background of study, the scope of the research, the formulation of the problem, the purpose of the research, the benefits of the research, and the writing systematics.
2. CHAPTER II: Literature Review and Theoretical Framework. This chapter serves as a literature review and theoretical framework. The theoretical review is based on literature from print and online sources, and an explanation of the research conceptual framework.
3. CHAPTER III: Research Methods. This chapter explains the processes carried out in the research, which includes the type and approach of the research, the types and sources of data, data collection techniques, and data analysis techniques.
4. CHAPTER IV: Results and Analysis. This chapter explains the research data, data analysis, and the model of relationships between the research variables. This chapter presents research data on Cessie Case Decisions in Religious Courts, then connects it with the theories that have been outlined, as well as an in-depth analysis related to the research findings.

5. CHAPTER V, Conclusion. This chapter contains the research results and recommendations related to relevant research findings.

