

EXPLORING LEGAL CHALLENGES IN MURABAHAH FINANCING: A JURIDICAL ANALYSIS OF WANPRESTASI DISPUTES IN CONSUMER LOANS

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Received : 22 May 2025

Published : 25 July 2025

Revised : 30 May 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i4.3474>

Accepted : 17 June 2025

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

Abstract

This study examines the *wanprestasi* dispute between PT. Bank Syariah Indonesia, Tbk and a debtor concerning a murabahah financing agreement. The Makassar Religious Court's decision upheld the enforceability of the murabahah contract and collateral under *Hak Tanggungan* but dismissed the debtor's financial hardship claim due to the COVID-19 pandemic. The study highlights gaps in debtor protection and the need for clearer procedural guidelines on collateral execution, proposing improvements for aligning Sharia principles with practical dispute resolution in Indonesia's growing sharia finance sector.

Keywords: *Collateral Execution; Consumer Financing; Murabahah Agreements; Wanprestasi.*

INTRODUCTION

The sharia economy in Indonesia is experiencing remarkable development, evidenced by the rapid growth of the sharia financial industry, including sharia-compliant financing services. As one of the largest markets for Islamic finance, Indonesia has secured a prominent position globally, ranking 7th in the world for sharia financial assets (Rohman et al., 2023). Further highlighting this success, the Islamic Finance Development Indicator 2023 recognized Indonesia's sharia finance industry as the 3rd leading market. Similarly, Indonesia achieved 3rd place in the Global Islamic Economy Indicator Score, which evaluates performance across key Islamic economy sectors, including finance (Siregar and Ma, 2024). By the end of December 2023, the total assets of Indonesia's sharia financial sector, excluding sharia stocks, had reached IDR 2,582.25 trillion, reflecting a year-on-year growth of 9.04% (Otoritas Jasa Keuangan, 2023).

The remarkable expansion of Indonesia's sharia economy, a phenomenon observed across diverse sectors, is the direct result of a powerful synergy. On one hand, robust consumer demand for sharia-compliant products and services has fueled market growth. Simultaneously, the Indonesian government has demonstrated a steadfast commitment to this sector, implementing a series of strategic initiatives. These initiatives, encompassing the development of a sophisticated Islamic finance ecosystem, the construction of comprehensive halal infrastructure, and the active promotion of ethical and sustainable investment practices, have collectively cultivated an environment conducive to unprecedented economic advancement. Consequently, the sharia economy has not only witnessed significant quantitative growth but has also firmly established itself as a critical engine driving the nation's overall economic prosperity.

LITERATURE REVIEW

Among the various sharia financing products, consumer financing using murabahah contracts remains a popular choice (Makkulau, 2023). Murabahah is a cost-plus financing method wherein the financier purchases an asset and resells it to the customer at an agreed-upon profit margin (Khalidin and Musa, 2023). This arrangement is valued for its transparency and compliance with Islamic law. However, the implementation of murabahah contracts is not without challenges. In *fiqh* books, murabahah is known as *al-bai'*. Etymologically, murabahah comes from *masdhar* which means "profit and benefit". Wahbah az-Zuhaili defines murabahah as buying and selling at the initial price plus profit. Murabahah does not have direct references or references from the Quran or sunnah, only references to buying and selling or trading. Murabahah buying and selling is only discussed in *fiqh* books. Imam Malik and

Imam Syafi'i said that murabahah buying and selling is legal according to law although Abdullah Saeed said that this statement did not mention a clear reference from the hadith (Tri, 2014). In its current implementation, murabahah is implemented as a contract to bridge the parties to work together. However, the implementation of murabahah contracts is not without challenges. Disputes frequently arise between customers and financial institutions, particularly when one party fails to fulfill contractual obligations, leading to default. In Indonesia, disputes related to murabahah contracts often escalate to the Religious Courts, which are specifically authorized to resolve civil cases involving Islamic legal principles (Hidayah et al., 2023). These disputes are typically triggered by conflicting interests between financial institutions and consumers. For financial institutions, protecting their financial and operational integrity is paramount, while consumers may struggle to meet payment obligations due to unforeseen circumstances. The intricate nature of murabahah contracts, including the stipulations regarding profit margins and collateral, further complicates the resolution of such disputes (Yuslem et al., 2022).

A notable example of such a dispute is encapsulated in the Makassar Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks. This case involved PT. Bank Syariah Indonesia, Tbk, as the plaintiff, and a debtor as the defendant, in a murabahah financing agreement dated July 18, 2018. The court declared the defendant in default and ordered repayment of the debt, including the agreed profit margin. However, the status of the collateral, which was secured under a *Hak Tanggungan* (mortgage right), was not sufficiently addressed in the decision. The absence of clarity regarding the treatment of the collateral raises significant questions about the application of sharia economic law in such cases. The lack of detailed elaboration on critical aspects, such as the confiscation and execution of the collateral, underscores a broader issue in judicial decisions involving Islamic financial contracts. This case highlights the need for a more nuanced understanding of sharia principles as applied in the context of contemporary legal systems. In particular, it emphasizes the importance of reconciling the ethical and equitable foundations of Islamic law with the procedural and enforcement frameworks of Indonesian civil law.

Previous research on murabahah financing disputes has largely focused on theoretical analyses or broad overviews of sharia financing mechanisms (Makkulau, 2023). For instance, some studies have praised murabahah for its potential to promote financial inclusion and ethical business practices. However, others have critiqued the rigidity of the contracts, and the limited protection offered to consumers in cases of default. While these studies provide valuable perspectives, they often fail to examine specific case law, or the practical challenges faced by financial institutions and consumers in dispute resolution processes. This research aims to fill these gaps by conducting an in-depth analysis of the Makassar Religious Court decision. It will explore the legal reasoning employed by the court, assess its compliance with Islamic legal principles, and evaluate its implications for both the financial institution and the debtor. Moreover, the study will examine whether the decision aligns with the broader objectives of sharia (*maqasid al-sharia*), particularly in ensuring justice, transparency, and the protection of stakeholders.

By focusing on a specific case, this research seeks to offer practical insights into the resolution of *wanprestasi* disputes in murabahah financing. It will analyze how the Religious Courts interpret contractual provisions, address the enforcement of collateral, and balance the interests of the parties involved. This case study approach will provide a detailed understanding of the challenges and opportunities in applying sharia economic law to modern financial disputes. The objectives of this research are twofold. First, it aims to identify the strengths and limitations of current judicial practices in resolving murabahah disputes. Second, it seeks to propose recommendations for improving contract drafting, dispute resolution mechanisms, and judicial processes to better align with Islamic legal principles and contemporary legal needs. By addressing these objectives, this study contributes to the ongoing development of Indonesia's sharia financial system.

The findings of this research are expected to enhance the understanding of murabahah financing disputes and provide actionable recommendations for policymakers, financial institutions, and legal practitioners. By addressing the limitations of existing practices and proposing solutions grounded in both Islamic jurisprudence and modern legal frameworks, this research aims to support the sustainable growth of sharia financing in Indonesia. In summation, the comprehensive findings derived from this research endeavor hold the potential to significantly augment the existing body of knowledge surrounding murabahah financing disputes within the Indonesian context. This expanded understanding is not merely academic; it is intended to translate into practical, actionable recommendations tailored for a diverse range of stakeholders. Specifically, these recommendations are designed to empower policymakers in refining regulatory frameworks, guide financial institutions in optimizing their operational procedures, and equip legal practitioners with enhanced tools for dispute resolution. By meticulously dissecting the inherent limitations present in current practices, this research has strived to formulate viable solutions that are firmly rooted in the foundational principles of Islamic jurisprudence, while simultaneously ensuring their compatibility with

the nuanced demands of contemporary Indonesian legal frameworks. This dual approach is essential for fostering a robust and sustainable ecosystem for sharia financing. Ultimately, the overarching objective of this research is to contribute to the long-term, equitable, and responsible growth of sharia financing in Indonesia, thereby strengthening its role as a vital component of the nation's economic landscape and ensuring that its ethical and practical dimensions are harmoniously aligned.

METHOD

This research employs a normative legal research method, focusing on law as a system of norms or rules governing societal behavior and serving as a reference for individual conduct (Negara, 2023). To address the research problem, three approaches are utilized: the statute approach, the case approach, and the conceptual approach. The statute approach examines all relevant laws and regulations, such as those governing murabahah agreements and sharia economic law (Felix and Abubakar, 2019). The case approach analyzes concrete legal cases with permanent legal force, specifically focusing on the Makassar Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks, to derive legal arguments aligned with justice principles. The conceptual approach explores legal doctrines and theories to provide a foundation for developing legal arguments. The research adopts analytical-prescriptive specifications to study legal objectives, justice values, validity, concepts, and norms, aiming to develop new arguments, theories, or concepts as solutions to the identified legal issues. Data collection integrates primary and secondary legal materials, validated through cross-referencing authoritative sources to ensure reliability. This systematic approach ensures a comprehensive analysis of murabahah disputes within Indonesia's sharia financing context.

RESULTS AND DISCUSSION

Murabahah Agreement in Sharia Financing by Sharia Bank

Murabahah agreements are fundamental in Islamic banking, characterized as a cost-plus sale contract where the bank purchases goods on behalf of a customer and resells them at an agreed profit margin (Supriyandi and Anwar, 2023). This transaction involves the seller (in this case, the bank) disclosing the purchase price of the goods to the buyer (customer) and transparently specifying the added margin. The customer, in turn, agrees to pay the total price through a mutually established mechanism, often in installments. The ethical and transparent nature of murabahah aligns with the principles of Islamic finance, emphasizing trust, fairness, and accountability in financial dealings (Tax Administration Laboratory & Purwanto, 2019). The murabahah framework is rooted in Islamic jurisprudence, with *fuqaha* (Islamic jurists) defining it as a sale transaction where the cost of goods is disclosed to the buyer along with the added profit (Maulidizen, 2018). This requirement ensures transparency, a hallmark of Islamic financial transactions, safeguarding the interests of both parties. For the seller, it eliminates uncertainty regarding profits, while for the buyer, it establishes confidence in the fairness of the transaction (Fitriyanti et al., 2023). These principles uphold the broader goals of Islamic finance, known as *maqasid al-sharia*, which prioritize justice, equity, and societal well-being.

In practice, murabahah agreements offer numerous advantages to Islamic banks. These contracts simplify product approval and regulatory supervision, ensuring that financial products comply with Islamic principles. Furthermore, murabahah facilitates market expansion, allowing Islamic banks to innovate and develop customer-focused solutions. Its inherent transparency and fairness contribute to fostering trust between financial institutions and their customers, strengthening the ethical foundations of the sharia banking system. Sharia banking in Indonesia has emerged as a pivotal component of the national economy. According to data from the Financial Services Authority (OJK), Islamic bank financing grew by 8.08% in 2020, reaching IDR 394.6 trillion. Similarly, third-party funds surged by 11.80% to IDR 475.5 trillion, demonstrating public confidence in sharia-compliant financial services. These figures reflect the increasing adoption of Islamic finance in a predominantly Muslim country like Indonesia, solidifying its role in the nation's economic development.

Apart from financing growth, the sector's health has also improved significantly. The non-performing financing ratio, a key indicator of credit quality, decreased to 3.08% in 2020, showcasing enhanced risk management in the industry. The capital adequacy ratio, standing at 21.59%, further highlights the financial resilience of sharia banks. Such robust indicators enable Islamic banks to maintain a competitive edge while adhering to ethical financial practices (Otoritas Jasa Keuangan, 2023). Despite these accomplishments, murabahah agreements are not without challenges. Marjani Putri and Nashirudin (2024) explain that one of the most significant issues is the potential for disputes between creditors (banks) and debtors (customers). These disputes often arise from defaults, where customers fail to fulfill their contractual obligations, leading to financial and operational challenges for banks. The complex nature of murabahah contracts, including detailed stipulations about profit margins and collateral, can

exacerbate these conflicts (Maryani, 2022). The increasing market share of sharia banking, along with the growth of financing accounts, also presents risks. As more customers engage with Islamic banking, the likelihood of contractual disputes rises. Misunderstandings about contract terms or unforeseen financial hardships can lead to defaults, posing challenges for dispute resolution mechanisms (Lailiya and Kusumaningtias, 2024). These disputes not only impact the involved parties but also test the credibility and operational efficiency of the Islamic banking system. To address such disputes, the role of Indonesia's Religious Courts becomes crucial. These courts, which are authorized to handle cases involving Islamic principles, play a pivotal role in interpreting and enforcing murabahah agreements. A pertinent example is the Makassar Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks, where the court ruled on a murabahah financing dispute involving PT. Bank Syariah Indonesia, Tbk. The case underscored the need for clear judicial reasoning in addressing defaults and handling collateral.

This case also highlights a critical challenge: the lack of detailed judicial elaboration on collateral execution. In murabahah agreements, collateral, often in the form of property with *Hak Tanggungan* (mortgage rights), plays a vital role in securing the bank's interests. However, ambiguities in judicial decisions regarding collateral management can create uncertainties for both banks and customers, undermining the principles of transparency and fairness in Islamic finance. In conclusion, while murabahah agreements provide a strong foundation for ethical and transparent financial transactions in Indonesia's sharia banking sector, challenges remain. As the sector grows, it must address potential disputes through improved contract clarity, robust risk management, and effective dispute resolution mechanisms. These efforts are essential to uphold the principles of Islamic finance and ensure the sustainable development of sharia banking in Indonesia.

Sharia Economic Disputes and Default Elaboration in Creditor and Debtor Relations

In the context of Islamic finance, disputes between creditors and debtors are a significant challenge, especially in murabahah agreements where financial obligations are explicitly defined (Fauzi and Wulandari, 2023). These agreements require debtors to fulfill payment commitments as per the terms, while creditors (typically banks) are expected to uphold the principles of transparency and fairness. Disputes often arise when one party fails to meet these expectations, commonly due to defaults by debtors or procedural lapses by creditors. Understanding the nuances of such disputes is critical for resolving them effectively while adhering to Islamic principles. Disputes between creditors and debtors in murabahah financing typically stem from defaults, which occur when debtors fail to meet payment schedules. Defaults may result from financial hardships, such as loss of income or unexpected expenses (Alam et al., 2023). Additionally, disputes may arise from unclear contract terms, misinterpretation of obligations, or improper disclosure of profit margins by creditors. These issues undermine trust and highlight the need for precise contract drafting and execution.

From a legal perspective, a default in Islamic finance referred to as *wanprestasi* is a breach of contractual obligations. In sharia, contractual obligations are viewed as binding moral and legal commitments (Nurfitri, 2022). A default not only disrupts financial agreements but also contravenes Islamic ethical principles, such as trust (*amanah*) and accountability (*mas'uliyah*). Resolving such defaults requires balancing justice for creditors and compassion for debtors, aligning with the principles of equity and social welfare in sharia law. Collateral plays a central role in murabahah agreements as a security measure for creditors. Assets such as land or property, often encumbered with *Hak Tanggungan* (mortgage rights), provide creditors with a mechanism to recover losses in the event of a default. However, disputes frequently arise regarding the execution of collateral, particularly when the procedures for asset confiscation and sale lack clarity or fairness. Courts must carefully consider the proportionality and procedural integrity of collateral execution to uphold Islamic legal principles.

In Indonesia, sharia economic disputes, including defaults in murabahah contracts, fall under the jurisdiction of Religious Courts. These courts interpret sharia principles in light of national laws, ensuring that rulings align with both Islamic and statutory regulations. A key aspect of judicial resolution is determining the debtor's fault, assessing the creditor's adherence to procedural transparency, and deciding the appropriate remedy, such as rescheduling payments or liquidating collateral. The Makassar Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks offers insights into the judicial handling of defaults in murabahah agreements. The case involved PT. Bank Syariah Indonesia, Tbk as the creditor and a debtor accused of default. The court's decision, which required the debtor to settle the unpaid amount plus the agreed margin, raised questions about the management of collateral. While the court ruled in favor of the creditor, the lack of elaboration on the collateral's status highlighted gaps in addressing critical legal and practical aspects. Managing defaults in murabahah agreements involves navigating complex legal, ethical, and practical issues. Courts must ensure that creditors' rights are protected while safeguarding debtors from undue hardship. Ambiguities in judicial decisions, particularly regarding collateral execution, can exacerbate

disputes (Afra et al., 2023). Furthermore, discrepancies between contractual terms and their judicial interpretation often create uncertainty, underscoring the need for consistent legal standards. Islamic finance emphasizes the principle of equity (*al-'adl*), which requires fair treatment of all parties. In default cases, this principle calls for a balance between the creditor's right to recover losses and the debtor's capacity to fulfill obligations. Mechanisms such as payment rescheduling, debt restructuring, or negotiated settlements are essential for achieving equitable outcomes. These solutions must consider the debtor's financial situation and the economic context to ensure fairness and social justice.

Preventing disputes requires meticulous drafting of murabahah contracts, with explicit terms regarding payment schedules, profit margins, and collateral management. Contracts should include contingency clauses for unforeseen circumstances, such as financial hardships faced by debtors. Additionally, banks must prioritize customer education, ensuring that debtors fully understand their obligations and the consequences of default. To address defaults effectively, Indonesia's Religious Courts must enhance their capacity to resolve disputes in murabahah agreements. This includes developing comprehensive guidelines for collateral execution, ensuring transparency and fairness in judicial decisions (Asyiqin and Akbar, n.d.). Establishing alternative dispute resolution (ADR) mechanisms, such as mediation or arbitration, can also provide efficient and amicable solutions, reducing the burden on courts. Sharia economic disputes, particularly those involving defaults in murabahah agreements, present a complex interplay of legal, ethical, and financial considerations. Effective management of these disputes requires a robust legal framework, transparent contractual practices, and a judicial system capable of delivering equitable outcomes. By addressing these challenges, Indonesia's Islamic finance sector can strengthen its credibility and sustainability, ensuring that the principles of justice and social welfare remain at the core of its operations.

Review of Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks

In analyzing the resolution of murabahah financing disputes, it is essential to consider specific case law that highlights both the strengths and limitations of the judicial system in handling sharia-based financial disputes. One such case is the Makassar Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks, which provides valuable insight into how the courts interpret and enforce murabahah contracts, particularly when the debtor defaults. This case involved PT. Bank Syariah Indonesia, Tbk, and a debtor who failed to meet repayment obligations under a murabahah financing agreement, leading to a legal dispute regarding breach of contract (*wanprestasi*) and the execution of collateral. The court's decision offers a critical perspective on the enforcement of Islamic financial principles, as well as the challenges in balancing creditor rights and debtor protections.

The case revolves around a murabahah financing agreement where the debtor secured a loan to purchase property, with the property itself acting as collateral under *Hak Tanggungan* (mortgage rights). However, when the debtor defaulted, the creditor filed a claim for breach of contract, seeking the repayment of the debt along with enforcement of the collateral. The court's jurisdiction, based on Law No. 3 of 2006 concerning the Religious Courts, demonstrates how the legal system applies sharia principles to resolve financial disputes. Despite the debtor's claim of financial hardship due to the COVID-19 pandemic, the court ruled in favor of the creditor, ordering full repayment of the debt while acknowledging the enforceability of the collateral but lacking clarity on its procedural execution. This highlights the need for more detailed legal guidelines in collateral execution within the framework of Islamic finance. This case involves a dispute between PT. Bank Syariah Indonesia, Tbk (the creditor) and a debtor regarding a murabahah financing agreement. The debtor obtained financing for IDR 300 million to purchase a property, secured by land and a building under a *Hak Tanggungan* (mortgage right). However, the debtor defaulted on repayments, prompting the creditor to file a claim for breach of contract (*wanprestasi*) in the Makassar Religious Court.

The Religious Court's jurisdiction was established under Article 49(i) of Law No. 3 of 2006 concerning the Religious Courts, which includes sharia economic disputes. The case was adjudicated as a simple lawsuit (*gugatan sederhana*), following Supreme Court Regulation No. 2 of 2015 (amended in 2019). The creditor sought repayment of the outstanding amount of IDR 371,656,152, including principal and margin, enforcement of the collateral, and imposition of daily fines (*dwangsom*) of IDR 1,000,000 from the decision date until the debt was settled. The creditor argued that multiple warnings had been issued to the debtor, but no repayment had been made. The debtor acknowledged the debt but contested the margin's calculation, arguing it was excessive. Additionally, the debtor cited financial hardships caused by the COVID-19 pandemic as a reason for non-payment, claiming that their business collapsed during this period. The debtor requested six months to settle the outstanding amount. The court confirmed the existence of the murabahah contract, including its terms and conditions, as supported by documentary evidence (P-1 to P-9). It ruled that the debtor had indeed defaulted, as evidenced by failure to respond to multiple written warnings. The debtor's claims of financial hardship were dismissed as irrelevant to the financing's original

purpose, which was for property acquisition rather than business operations. The court ruled in favor of the creditor, ordering the debtor to repay the full outstanding amount of IDR 371,656,152 and confirming the enforceability of the collateral under the *Hak Tanggungan*. However, the court did not enforce the daily fines, as this part of the creditor's claim was withdrawn during proceedings. The judgment emphasized the binding nature of contracts under Islamic and civil law principles (*pacta sunt servanda*). The court's reliance on detailed evidence (contracts, collateral documents, and warning letters) strengthened its legal reasoning. While the judgment upheld the enforceability of the collateral, it did not detail the procedural steps for executing the *Hak Tanggungan*. The court dismissed the debtor's hardship claims without thoroughly exploring potential restructuring or relief mechanisms, which could align with the Islamic principle of equity (*al-'adl*). The decision underscores the importance of contract enforcement in sharia economic activities while highlighting the need for procedural clarity in collateral execution. It also demonstrates the challenges of balancing creditor rights with debtor protections, especially during unforeseen crises like the COVID-19 pandemic. Courts should provide explicit procedural instructions to avoid ambiguities in enforcement. Integrating Islamic financial principles, such as debt rescheduling, could provide fairer outcomes in similar cases. Specialized training in sharia economic law can enhance judicial capacity to address complex financial disputes.

Legal and Ethical Implications of Collateral Execution in Murabahah Financing

In sharia-compliant financing agreements, murabahah contracts are designed to be transparent and ethically sound, ensuring mutual benefit between the creditor and the debtor. However, issues arise when the debtor defaults, and the enforcement of collateral often in the form of property or assets secured through *Hak Tanggungan* (mortgage right) comes into play. This subtopic will examine the legal and ethical dimensions surrounding collateral execution, particularly within the context of Islamic law, and the balance between creditor's rights and debtor protections. Murabahah financing involves a clear sale agreement where the creditor (usually a bank) purchases goods on behalf of the debtor and resells the items at an agreed-upon profit margin (Iksan and Yuspin, 2022). The goods involved are often secured by collateral, which provides a safeguard for creditors in the event of a default. Collateral in murabahah contracts typically comes in the form of property or other valuable assets, and the debtor must transfer a *Hak Tanggungan* (mortgage right) to the creditor to secure the loan (Sriani et al., 2023).

Under Islamic law, collateral is meant to protect the interests of both the debtor and creditor by ensuring that the creditor can recover the owed amount in case of default (Katterbauer et al., 2023). The collateral, however, cannot exceed the debt itself, meaning that the creditor is only entitled to claim the value of the debt and should not profit from the liquidation of the collateral. This condition aligns with the Islamic principle of avoiding excessive gain from another person's misfortune (Fauzi and Wulandari, 2023). Sharia law mandates that the execution of collateral must adhere to strict principles of justice, transparency, and equity. The creditor cannot use the collateral as a means to exploit the debtor, and the process must be conducted with fairness and respect for the debtor's dignity. The ethical implications of collateral execution under Islamic law highlight the necessity of ensuring that the debtor is not subjected to unnecessary hardship.

When a default occurs, Islamic law encourages creditors to seek alternative dispute resolution mechanisms, such as mediation, before resorting to liquidation of the collateral. The Quran stresses fairness in dealings, urging creditors to act with patience and compassion towards debtors facing financial difficulties. In practice, collateral execution often becomes a point of contention in murabahah financing disputes. A major challenge arises when the terms regarding the confiscation and liquidation of the collateral are not clearly outlined in the contract. In the absence of clear procedural guidelines, both creditors and debtors may experience confusion or injustice during the enforcement phase. In the Indonesian context, as seen in the case of the Makassar Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks, the court upheld the enforceability of collateral under *Hak Tanggungan* but did not provide sufficient clarity on how the collateral should be executed. This lack of detail in judicial decisions can create significant uncertainty for both parties, particularly when it comes to the fair valuation of the collateral or the timing of its liquidation. The ethical dimension of collateral execution is critical in ensuring that the creditor's rights are balanced with the debtor's protection under sharia law. While Islamic law allows creditors to recover losses through collateral, it places strong emphasis on fairness and mercy. This means that creditors are obligated to act transparently, ensuring that the liquidation process does not unjustly harm the debtor. The Quran and Hadiths offer guidance on this matter. For instance, creditors are encouraged to be patient and give the debtor more time if they are facing financial difficulties. Additionally, Islamic law permits debt forgiveness in cases of genuine hardship, emphasizing compassion over strict enforcement. This ethical framework suggests that collateral should only be liquidated as a last resort after all avenues for reconciliation have been exhausted.

Courts play a crucial role in overseeing the execution of collateral, ensuring that both creditors and debtors are treated fairly according to the principles of sharia. The judicial process should involve a careful examination of the circumstances surrounding the default, including the debtor's financial situation, and determine whether the liquidation of collateral is the fairest option. For example, in the case of *wanprestasi* (default), the Indonesian Religious Courts must ensure that the debtor's rights are not violated during the collateral execution process. This includes making sure that the creditor does not unjustly profit from the debtor's default and that the value of the collateral is properly assessed. Furthermore, courts should play a role in facilitating debt restructuring or renegotiation of terms, especially in cases where the debtor faces financial hardship. Islamic principles encourage courts to be flexible and to allow debtors to recover from difficult situations through restructuring, which can prevent the drastic step of collateral liquidation.

To address the challenges and ethical concerns surrounding collateral execution, it is essential for reforms to be introduced into the legal and financial systems, particularly in sharia-compliant banking. These reforms could include the establishment of clearer guidelines for the liquidation of collateral and enhanced training for judges in the application of Islamic economic principles. One potential reform could be the creation of a standardized framework for collateral enforcement that outlines how collateral should be valued, when it should be liquidated, and the procedures for ensuring that the debtor is not subjected to unnecessary hardship. Moreover, financial institutions and courts should work together to provide better mechanisms for debt rescheduling and restructuring, especially in times of financial crisis, such as during the COVID-19 pandemic.

Collateral execution in murabahah financing agreements is an essential aspect of ensuring that creditors are protected in case of default. However, the ethical and legal implications of this process cannot be ignored. Sharia law provides a balanced approach to collateral enforcement, emphasizing fairness, transparency, and compassion for the debtor. By ensuring that creditors and debtors are treated equitably, Islamic law seeks to maintain justice while protecting the welfare of society. To enhance the practice of collateral execution, greater clarity in legal rulings and more detailed procedural guidelines are required. These steps would help prevent ambiguities in the enforcement process and ensure that the principles of justice and mercy are upheld in sharia finance.

A Glance at Debtor Protection in Sharia Contracts

Debtor protection in sharia contracts is a fundamental concept embedded in Islamic finance principles. Islamic law, or sharia, emphasizes justice, fairness, and equity, not only in business transactions but also in how debts are handled (Fitriyanti et al., 2023). The primary objective is to ensure that debtors are treated with dignity, that their financial rights are respected, and that they are not unduly burdened or exploited. This reflects the broader values of social justice and community welfare that are central to Islamic teachings. A cornerstone of debtor protection in sharia contracts is the outright prohibition of *riba*, or usury. *Riba* refers to any guaranteed return on money lent, typically in the form of interest. In conventional finance systems, interest payments can lead to the accumulation of debt, making it harder for debtors to repay. Islamic law, however, prevents this by forbidding any form of interest-based lending. As a result, debtors are shielded from the destructive cycle of increasing debt that often happens in interest-based financial systems. In its place, Islamic finance offers interest-free loans and profit-sharing mechanisms that align the interests of both creditors and debtors.

In sharia-compliant contracts, the principles of fairness, mutual consent, and transparency are essential. All terms must be clear and understandable to both parties, without any form of ambiguity. The contract must be free from unjust clauses or exploitative practices. For example, in a murabahah contract (a type of cost-plus financing), the debtor knows exactly how much they are paying for a product, including the agreed-upon markup. These principles are aimed at preventing any exploitation of the debtor, ensuring that the terms are fair and just for both sides. Sharia law recognizes that unforeseen financial hardships can occur, and it provides a framework for offering debt relief in such circumstances. If a debtor is unable to meet their repayment schedule due to economic difficulty or personal hardship, sharia encourages the creditor to allow a delay or renegotiate the repayment terms. The Quran specifically recommends giving more time to those who are in financial difficulty, and creditors are urged to show patience and understanding. This flexibility ensures that debtors are not penalized for circumstances beyond their control. In cases where a debtor is struggling, sharia law promotes the idea of forgiving debts or reducing repayment obligations. This act of forgiveness is seen as a form of charity, and it is highly valued in Islamic ethics. The Quran encourages creditors to forgive debts as a noble and merciful act, especially if the debtor is unable to repay despite making efforts. This practice serves to alleviate the financial burden on the debtor and aligns with the broader Islamic values of compassion and mercy.

Under sharia law, debtors cannot be subjected to excessive punishment or harsh treatment for failing to repay a debt. Unlike conventional systems where debtors may face imprisonment, harassment, or financial ruin, sharia encourages reasonable and fair treatment. If a debtor fails to meet their obligations, Islamic principles suggest that the creditor should not take punitive measures such as seizing property or imprisoning the individual. Instead, they should attempt to reach a fair resolution through mutual understanding or mediation, protecting the debtor from undue harm. Sharia also introduces the concept of collective responsibility. In cases of severe financial distress, a debtor's family, community, or even the state may intervene to assist in repayment. This reflects the Islamic value of solidarity, where the welfare of individuals is seen as interconnected with that of the broader society. Additionally, the concepts of *zakat* (almsgiving) and *sadaqah* (charity) can be utilized to help alleviate a debtor's burden. In cases where the debtor is genuinely unable to repay, the community may rally together to provide assistance, ensuring that the debtor is not left to suffer alone.

When disputes arise between a debtor and creditor, sharia encourages mediation and arbitration as means of resolving conflicts. Islamic law discourages prolonged litigation or harsh legal actions, opting instead for peaceful resolution through dialogue. The role of Islamic courts or arbitration bodies is to ensure that the parties reach a fair settlement, with an emphasis on restoring justice and fairness. These mechanisms aim to prevent the exploitation of either party and ensure that both creditors and debtors are treated equitably throughout the process. Unlike conventional financial systems that often rely purely on loans with interest, many sharia-compliant financial instruments are based on tangible assets. In contracts such as *ijara* (leasing) or *mudarabah* (profit-sharing), the debtor's obligations are tied to physical assets or specific business outcomes. This creates a more balanced relationship between the debtor and creditor, as the debt is not a mere financial obligation but is backed by actual value. As a result, the debtor is protected from the risk of escalating debt, and the creditor's returns are also more closely aligned with the performance of the underlying asset or project. Sharia law has a clear approach to the repayment of debts upon a debtor's death. When an individual passes away, their debts must be settled before the distribution of inheritance. This ensures that the debtor's obligations are not passed on to heirs, providing an added layer of protection to the debtor's family. It also prevents the creditor from being left without repayment, but it ensures that the estate's remaining assets are used appropriately. This aspect of Islamic inheritance law guarantees that the debtor's obligations are handled fairly, providing a balanced resolution for all parties involved.

CONCLUSION

In conclusion, the Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks underscores the balance between upholding creditor rights and debtor protections within the framework of sharia law. The court emphasized the enforceability of the murabahah contract, requiring the debtor to repay the full amount owed, including the collateral. However, the debtor's claim of financial hardship due to the COVID-19 pandemic highlights a critical issue: while sharia law supports creditor rights, it also offers provisions for flexibility, such as debt restructuring or forgiveness. The decision, by not exploring these options in greater detail, suggests a need for courts to better integrate Islamic principles of mercy and fairness, especially in situations of genuine hardship. Moreover, the case reveals the importance of clear procedural guidelines for the execution of collateral under sharia law. Although the court confirmed the enforceability of the mortgage (*Hak Tanggungan*), it lacked specific instructions on how this should be carried out, leaving room for potential ambiguity in enforcement. This highlights the necessity for greater clarity and procedural transparency in sharia finance rulings to ensure both parties are treated equitably. In future cases, integrating debt rescheduling options and more explicit collateral enforcement procedures would better align with sharia's principles of justice and community welfare, offering a more balanced approach to financial disputes.

SUGGESTION

The execution of collateral in murabahah financing agreements remains a critical issue in sharia-compliant finance, particularly in light of judicial decisions like the Makassar Religious Court Decision Number 1/PDT.G.S/2024/PA.Mks. While the court upheld the enforceability of the murabahah contract and the collateral secured by *Hak Tanggungan* (mortgage rights), it failed to provide clear procedural guidelines on the liquidation process. This lack of clarity creates uncertainty for both creditors and debtors, undermining the transparency that is central to Islamic finance. To address this gap, reforms are needed to establish a standardized framework that clearly outlines the steps for collateral execution, from asset valuation to liquidation, ensuring fairness for all parties involved. This would ensure that both creditors can recover debts effectively, while debtors are not subjected to unjust practices, aligning the process with the ethical principles of sharia law.

In addition to procedural clarity, integrating sharia's ethical principles into the collateral enforcement process is essential for a fair and just system. Beyond the mere establishment of transparent and predictable procedural guidelines, the imperative lies in embedding the core ethical principles of sharia within the very fabric of collateral enforcement practices, thereby cultivating a truly just and equitable system. Islamic finance, at its heart, champions values such as fairness, equitable distribution of risk, and the demonstration of mercy, all of which should find tangible expression in judicial proceedings. This can be achieved through the implementation of robust mechanisms that facilitate debt restructuring, allowing for the renegotiation of terms to better suit the debtor's current financial reality. Furthermore, the ability to reschedule payments, or to grant temporary relief during periods of demonstrable financial hardship, provides a vital safety net, preventing undue distress and offering a pathway to recovery. Equally important is the proactive prioritization of alternative dispute resolution (ADR) methods within the judicial framework. Techniques such as mediation, which fosters collaborative problem-solving, and arbitration, which offers a structured and impartial decision-making process, should be actively encouraged as primary avenues for conflict resolution, before resorting to the drastic measure of asset liquidation. By seamlessly weaving these ethical considerations into the enforcement of collateral, the judicial system not only upholds the legitimate rights of creditors, ensuring the stability and reliability of financial transactions, but also effectively shields debtors from the potentially devastating consequences of unwarranted financial distress. This balanced approach is paramount in fostering a sharia finance ecosystem that is not only robust and sustainable but also deeply rooted in principles of justice, compassion, and the promotion of societal well-being.

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