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APPLICATION OF THE PRINCIPLE OF JUSTICE IN NON-ADJUDICATIVE SETTLEMENT OF BANKING DISPUTES FROM THE PERSPECTIVE OF ISLAMIC LAW

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Abstract

Improving Indonesia's economy is crucial for overcoming poverty, especially post-Covid-19, which caused many business closures. The government introduced the People's Business Credit (KUR) programme to support MSMEs, though some programmes face bad debt issues. In West Bandung Regency, MSMEs use the programme extensively for economic recovery. This research examines whether the Non-Adjudication Settlement model between MSME actors and Islamic banks upholds principles of justice. Using normative and

empirical juridical methods, the study incorporates primary, secondary, and tertiary legal materials, along with interviews with MSME actors and KUR-issuing banks. Dispute resolution for problem credits can occur through adjudication (court) or non-adjudication (out-of-court). Islamic banks integrate values from Islamic teachings, encompassing law, morality, and social procedures. For KUR bad credit disputes, Islamic banks are mandated to select processes aligning with Islamic values of truth, justice, and compassion. The non-litigation settlement model is found to reflect Islamic and Indonesian societal values, emphasizing deliberation for consensus and justice. The contribution of this research is to provide an understanding of the effectiveness of the non-adjudication settlement model in handling bad credit in the KUR program, aligning with Islamic values and reflecting Indonesian values. This model can serve as a fairer and more efficient dispute resolution alternative for MSMEs and Islamic banks in Indonesia.

Meningkatkan ekonomi Indonesia menjadi sangat penting untuk mengatasi kemiskinan, terutama pasca-Covid-19 yang menyebabkan banyak bisnis tutup. Pemerintah memperkenalkan program Kredit Usaha Rakyat (KUR) untuk mendukung UMKM, meskipun beberapa program menghadapi masalah kredit macet. Di Kabupaten Bandung Barat, UMKM menggunakan program ini secara luas untuk pemulihan ekonomi. Penelitian ini mengkaji apakah model Penyelesaian Non-Adjudikasi antara pelaku UMKM dan bank syariah menjunjung prinsip-prinsip keadilan. Dengan menggunakan metode yuridis normatif dan empiris, studi ini melibatkan bahan hukum primer, sekunder, dan tersier, serta wawancara dengan pelaku UMKM dan bank penerbit KUR. Penyelesaian sengketa untuk kredit bermasalah dapat dilakukan melalui adjudikasi (pengadilan) atau non-adjudikasi (di luar pengadilan). Bank syariah mengintegrasikan nilai-nilai dari ajaran Islam, yang mencakup hukum, moralitas, dan prosedur sosial. Untuk sengketa kredit macet

KUR, bank syariah diwajibkan memilih proses yang sesuai dengan nilai-nilai Islam tentang kebenaran, keadilan, dan kasih sayang. Model penyelesaian non-litigasi ditemukan mencerminkan nilai-nilai Islam dan nilai-nilai masyarakat Indonesia, menekankan musyawarah untuk mufakat dan prinsip keadilan. Kontribusi penelitian ini adalah memberikan pemahaman tentang efektivitas model penyelesaian non-adjudikasi dalam menangani kredit macet dalam program KUR, yang sesuai dengan nilai-nilai Islam dan mencerminkan nilai-nilai Indonesia. Model ini dapat menjadi alternatif penyelesaian sengketa yang lebih adil dan efisien bagi pelaku UMKM dan bank syariah di Indonesia.

Keywords: *Islamic banks, non-performing loans, non-adjudication*

Introduction

Improving the economy at the community level is the goal of poverty alleviation in Indonesia.[1] This is critical to restoring people's living standards and supporting sustainable economic growth. To achieve this, innovative financial institutions must offer new products and provide financial assistance for community capital. In line with the Presidential Decree of the Republic of Indonesia Number 99 of 1998, large and small businesses can obtain business capital through financial institutions with a partnership scheme. Furthermore, as a new product of Islamic banking-based financial institutions, the government launched People's Business Credit (henceforth referred to as KUR) as a priority programme. The aim is to increase and expand access to financing for productive small businesses, improve the ability of MSMEs to compete, encourage economic growth, and increase employment to boost the community's economic recovery.[2]

[1] Ery Purwanti, Drajat Tri Kartono, and Kuni Nasihatun Arifah, "Portrait of Poverty in Indonesia : A Critical Review of Poverty Alleviation Policies in Indonesia in the SDGs Paradigm," *International Journal of Recent Research in Interdisciplinary Sciences (IJRRIS)* 9, no. 2 (2022): 81–86, https://doi.org/https://doi.org/10.5281/zenodo.6637633.
[2] Purwanti, Kartono, and Arifah.

KUR is usually granted by signing a voluntary debt and credit agreement that binds both parties in good faith.[3] The agreement has several requirements. Usually, when financial institutions grant credit, an additional collateral agreement is required, but this is not the case with KUR because the loan value is relatively small, not exceeding Rp 500,000,000 (five hundred million rupiahs) or small KUR with a maximum value of Rp 50,000,000 (fifty million rupiahs). In addition, the collateral provided can be uncertified or intangible collateral. The guarantee agreement principally anticipates if the debtor cannot pay his debt. In addition to fulfilling the debtor's debt, it reduces the risk of loss that may harm the bank / financial service provider.[4] Guarantees can be in the form of *individual/corporate guarantees* and material guarantees or can also be in the form of debtor business prospects. The debtor's business prospects are immaterial guarantees that function as a *first way out.* [5]

To improve the ability of MSMEs to compete and encourage economic growth, KUR has been provided, which is no more than Rp500,000,000.00 (five hundred million rupiah); some are even below Rp50,000,000.00 (fifty million). Due to the Indonesian economic conditions after COVID-19, people's purchasing power has decreased so that these MSME players have difficulty marketing their products, both processed products and other products, causing their paying power to also be disrupted, which, as a result, cannot pay KUR instalments to Sharia Banks. Such problems must be resolved immediately to not burden certain parties.

In principle, dispute resolution, according to Law No. 48/2009 concerning Judicial Power, can be resolved under the authority of the Religious

[3] M. Luthfi Hamidi and Fikri Salahudin, "Alternative Credit Guarantee Schemes for MSE Financing in Islamic Banking," *Journal of Monetary Economics and Islamic Finance* 7, no. 1 (2021): 27-54, https://doi.org/10.21098/jimf.v7i1.1331.

[4] Rosyidi Hamzah et al., "Imperfect Information of Standard Clauses in Credit Agreements in Banking Institutions: Further Legal Impact," *Lex Scientia Law Review* 7, no. 2 (2023): 529–68, https://doi.org/10.15294/lesrev.v7i2.76529.

[5] Ifa Latifa Fitriani, "Collateral and Guarantee in Islamic Bank Financing and Conventional Bank Credit," *Journal of Law & Development* 47, no. 1 (2017): 124–39, https://doi.org/10.21143/jhp.vol47.no1.138.

Court, which is adversarial in nature.[6] However, in practice, business actors feel uncomfortable with the process, meaning that it is not proportional to the amount of credit disputed. There is a dispute resolution model other than a conventional one, namely using the means of a Simple Lawsuit (*small claim court)* based on the Supreme Court Decision Number 2 of 2015 jo. However, obstacles are inevitable. When a verdict is announced, the verdict often contains the ruling "punishing the debtor to pay the remaining bills", and the debtor does not implement the Court Decision voluntarily, not to mention the assumption of *judicial corruption* and too technical (*inflexible, formalistic, and technical)* issues. Therefore, the idea to look for other ways to resolve non-performing loan-related disputes with a relatively small ceiling value cannot be achieved. To anticipate this, many financial/banking service providers are looking for ways or models to resolve non-performing loans effectively and efficiently so that this problem does not drag on, which can neglect legal certainty and justice for the parties. Law serves as a guide to human behaviour in various fields of life, regulating order and justice. Procedural Law, especially Civil Code Procedure, is no less important than other laws[7] because enforcing the law always requires procedural law to protect the interests of justice seekers in obtaining justice and legal certainty.

In settlement of Islamic banking disputes, the application of the principle of justice is essential, meaning that everyone has the same rights to be respected, recognised and treated fairly, as in line with the values, philosophy and ideology of the Indonesian nation and the characteristics of the rule of law, thus creating the principle of equality before the law.[8] Gustav Radbruch said that expediency, certainty, and justice are the three objectives of law. In

[6] Rio Christiawan, *Contemporary Business Law* (Jakarta: Raja Grafindo Persada, 2021).
[7] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1998).
[8] Mirza Elmy Safira, Andini Rachmawati, and Samuji, "Model of Justice System in Realising Legal Certainty and Justice in Indonesia," *Journal Indonesian Comparative of Shariah Law (JICL)* 6, no. 5 (2023): 1-17.

implementing these objectives, the principle of priority must be used.[9] Furthermore, it is said that the priority is always justice, followed by expediency and legal certainty. So, in principle, law enforcement must emphasise the principles of justice, certainty and benefit for the parties to protect the parties (especially vulnerable parties) and maintain the continuity of the relationship.

The growing need among justice seekers for more effective dispute resolution that prioritizes fairness is increasingly apparent today. Many perceive the conventional legal process as unresponsive to their economic needs, often leading to feelings of injustice and inefficiency. Consequently, many view the judicial process as a last resort for resolving disputes, especially in cases involving non-performing loans.[10] This perspective aligns with Satjipto Raharjo's viewpoint that the sluggish resolution of legal disputes through the courts results in ineffective law enforcement and a lack of fairness. The legal process is often protracted, complex, and financially burdensome. Such practices contradict the mandates of Article 2 Paragraph (4) and Article 4 Paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, stipulating that the judicial process should adhere to simplicity, time efficiency, and affordability.

Based on a World Bank study, the inhibiting factors in business dispute resolution in Indonesia are (1) Inefficient dispute resolution at the court of first instance; (2) time-consuming settlement; (3) High court fees; (4) High lawyer fees; and (5) possibilities leading to new disputes.[11]

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[9] Sonny Pungus, *Legal Objective Theory,* http://sonny-tobelo.com/2010/10/teori-tujuanhukum-gustav-radbruch-dan.html, accessed on 20 April 2024.

[10] Nurlely Darwis, "Justice Efforts for the People through the Small Claim Court," *Dirgantara Legal Scientific Journal* 10, no. 1 (2020): 21-34.

[11] Frans Hendra Winarta, *Indonesian National and International Arbitration Dispute Resolution Law* (Jakarta: Sinar Grafika, 2012); Idik Saeful Bahri, "The Efficiency of the Mediation Path in Resolving Business Disputes in Indonesia," no. February (2020): 1-19, https://www.researchgate.net/profile/Idik-Saeful-Bahri/publication/339165756_Efisiensi_Jalur_Mediasi_dalam_Penyelesaian_Sengketa_Bisnis_di_Indonesia/links/5e424b6b92851c7f7f2f39d7/Efisiensi-Jalur-Mediasi-dalam-Penyelesaian-Sengketa-Bisnis-di-Indonesia.pdf; R. Prasetia, I.B.; Subekti, "Legal Horizons," Legal *Horizons* 12, no. 1 (2021): 95-110, https://e-journal.unwiku.ac.id/hukum/index.php/CH/article/view/171; Rivany Rida Aliya Putri Fitria Nuryanti, Asyila Putri Wibowo Alfitri, Nurviya Firdaus, "Obstacles to the Resolution

Given the existing objective conditions, a dispute resolution model that prioritises or applies justice to the parties is needed to minimise new conflicts and build mutually beneficial relationships in the long term.[12] Therefore, those three principles in dispute resolutions, as mandated by the Judicial Law, must exist and have permanent legal force like a judge's decision.

Out-of-court dispute settlement can be based on an agreement between the two parties, which is clearly and explicitly stated in the agreement or credit contract, and must also be based on the principle of good faith. The credit contract agreement for KUR made by the parties regulates dispute resolution, often including the option of out-of-court dispute resolution because the credit ceiling is relatively small. For the parties involved, this also represents an attempt to find a resolution for repaying non-performing loans through negotiation, commonly referred to in the business world as deliberation. This approach is particularly relevant as no property guarantees are permitted apart from the People's Business Credit.[13] According to Priyatna Abdurrasyid in his book, Ummi Maskanah in 2010 stated, "Negotiation or deliberation is a dialogue (bargaining) that occurs directly between the parties to the dispute, to provide an opportunity for the debtor to explain why he cannot pay instalments, so that a mutually beneficial solution can then be taken, and the principle of justice is still put forward to obtain legal certainty. Dispute resolution can also involve a neutral third party, namely a certified mediator, as an arbiter in resolving the parties' problems to reach a *win-win solution* agreement. If an agreement has

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of Sharia Economic Disputes through Mediation during the Covid-19 Pandemic," *Journal of Sharia Economics* 1, no. 1 (2022): 50, https://jurnal.penerbitwidina.com/index.php/TIJARAH/article/download/114/116%0A; Anriz Nazarudin Halim M. Slamet Turhamun, Wira Franciska, "The Application of Peace in the Settlement of Sharia Economic Disputes," *IJMPS: Scientific Journal of History Education Students* 8, no. 3 (2023): 2881-91.

[12] Hana Nabilah Khairunnisa, "Mediation as an Alternative Business Dispute Resolution in the Perspective of Indonesian Legislation," *Hangoluan Law Review* 2, no. 1 (2023): 136-63, https://hlr.unja.ac.id/index.php/hlr/article/view/22.

[13] Aline Florencia, Hans Christoper Krisnawangsa, and Hudson Charitos, "A Legal Review of Debtors as PKPU Respondents Who Have Bound Arbitration Agreements with PKPU Applicants," *Legislative Journal of the Faculty of Law Unhas* 4, no. 2 (2021): 223-35.

been reached, negotiation and mediation can fulfil access to justice and bind both parties to provide legal certainty. As stated above, deliberation (negotiation) and/or mediation are Alternative Dispute Resolution models that aim to create a space for dialogue, find the causes of non-fulfilment of customer performance, and find solutions that provide access to justice (*fairness)* based on good faith, so that both parties can accept the settlement.

Previous research shows that the application of the principle of fairness in Islamic banking dispute resolution options needs to be studied further.[14] The Islamic banking dispute resolution model has been accepted and applied in many countries, as it provides a more effective and efficient way and is in line with Islamic ethical principles such as trustworthiness, fairness (providing equal treatment), justice (providing fair rights), and taqwa (awareness of the law of Allah SWT). Some previous scientific works have discussed related topics. Baiq Inti Dhena Sina in her article "Alternative Sharia Economic Dispute Resolution through the National Sharia Arbitration Board and Alternative Dispute Resolution Institutions in the Prospect of Sharia Economic Development in Indonesia" published in the DHARMASISYA Journal, Master of Law Studies Programme, Faculty of Law, University of Indonesia Vol. 2 No. 3, September 2022, examines the mechanism of dispute resolution procedures at the Basyarnas institution. On the other hand, Dudung Hidayat in his research "Implementation of Sharia Economic Dispute Resolution According to Perma No. 1 of 2016 in the Wonogiri Religious Court Environment" published in the Journal of Syntactic Transformation Vol. 3 No. 11, November 2022, examines the implementation of mediation and the effectiveness of the application of Supreme Court Regulation No. 1 of 2016 in the Wonogiri Religious Court, which according to him has not been effective because one party feels the most righteous and there are several cases of absence of the parties.

[14] Colin Rule, "Online Dispute Resolution and the Future of Justice," *Annual Review of Law and Social Science* 16 (2020): 277-92, https://doi.org/10.1146/annurev-lawsocsci-101518-043049.

These two studies have a different focus from the author's current research, which examines the application of the principle of justice in resolving disputes over non-performing loans in KUR provided for MSMEs. Other research, such as Mukharom's work in "The Effectiveness of the Mediator's Role in Non-Litigation Dispute Resolution in the Tamunda Tamba Business and Legal Field" published in the Islamic Banking Student Scientific Journal of the Sharia College of Economics and Business (STEBIS) Vol. 3 No. 2, September 2023, is also different because although it highlights out-of-court dispute resolution, it does not discuss the principle of justice.

Based on these various scientific works, none discusses the application of the principle of justice in non-adjudication settlements. This shows that there is a research gap related to the literature with a focus on applying the principle of justice in non-adjudicative dispute resolution for cases of KUR non-performing loans provided by Islamic Banks to MSMEs. Although various studies have discussed dispute resolution mechanisms in the context of Islamic banking and in-court mediation, no research has specifically highlighted the application of the principle of justice in out-of-court (non-adjudicative) dispute resolution. This research not only highlights the importance of the principle of fairness in resolving KUR non-performing loan disputes but also identifies factors that hinder its implementation. As such, this research offers a significant new contribution to Islamic banking dispute resolution, providing insights that can be used to improve fairness and efficiency in the settlement of KUR non-performing loan disputes. The results of this study are expected to serve as a reference for policymakers, legal practitioners, and future researchers in developing a fairer and more effective dispute resolution model.

Research Methods

This descriptive-analytical research aims to provide an overview of applying the principle of justice in non-litigation dispute resolution of non-performing loan cases between MSME actors and Islamic banks. It uses mixed methods that integrate normative and empirical juridical approaches to obtain

a comprehensive understanding. A normative juridical approach was used to analyse the application of the principle of justice based on applicable legal principles. This research examines primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an, Law Number 50 of 2009 concerning Religious Courts, Law Number 21 of 2008 concerning Sharia Banking, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Supreme Court Regulation Number 1 of 2016 concerning Court Mediation, and Supreme Court Regulation Number 3 of 2022 concerning Electronic Court Mediation. Secondary legal materials consist of literature and journals relevant to the research topic. Meanwhile, tertiary legal materials include dictionaries and encyclopaedias to explain legal terms and foreign words.

An empirical approach was used to directly understand the phenomenon of dispute resolution in the field. In this approach, researchers conducted interviews with two main groups: MSME business owners who received KUR to find out their experiences in resolving disputes over bad debts and the Islamic banks that issued KUR to get their perspectives on the application of the principle of fairness in dispute resolution. Data were collected from document study and in-depth interviews. The document study analysed primary, secondary and tertiary legal materials, while in-depth interviews were conducted to obtain empirical data from MSME businesses and Islamic banks.

The data obtained was analysed using a qualitative approach. This analysis aims to assess the application of the principle of justice in non-litigation dispute resolution, identify the factors causing bad debts, evaluate the effectiveness of dispute resolution used by the parties, and interpret the application of the principle of justice in the context of out-of-court dispute resolution. This qualitative approach focuses on in-depth analysis of the data collected, including the results of interviews, focusing on the aspects of justice that arise in dispute resolution. With this method, this research is expected to significantly contribute to understanding and developing an equitable non-litigation dispute resolution model for KUR bad debts in Islamic banks.

Discussion

Application of the Principle of Justice in the Non-Adjudication Settlement of People's Business Credit (KUR) Disputes at Sharia Banks

In 1992, Indonesia began to officially establish an Islamic bank, PT Bank Muamalat Indonesia (BMI).[15] The legal basis for the operation of banks labelled sharia, at that time, was only accommodated in one paragraph about "banks with profit-sharing systems" in Law Number 7 of 1992 concerning Banking, which was later amended to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. In running its business based on economic democracy using the principle of prudence, the financial services business plays a vital role in improving the development and economy of a country, which is applied through its programmes, one of which is the provision of credit to the community.

Bank Muamalat, as a Sharia-based financial institution, has triggered changes in legal approaches and related regulations, which led to the growth of Islamic banks in Indonesia until there were significant dynamics in the political development of religious justice law, namely the addition of absolute authority given to the Religious Courts.[16] As outlined in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious

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[15] Alifia Annisaa, Nurizal Ismail, and Iman Nur Hidayat, "The Legal History of Islamic Banking in Indonesia," *Ijtihad Journal of Islamic Law and Economics* 13, no. 2 (2019): 247-64; Ari Sita Nastiti and Agung Ivan Firdaus, "Towards Three Decades of Islamic Banking Development in Indonesia," *JIAI (Indonesian Accounting Scientific Journal)* 4, no. 2 (2019): 135-47; Munifa Munifa, Saifullah Bombang, and Syaakir Sofyan, "Strategy for Resolving Problem Financing in Murabahah Transactions at PT Bank Muamalat Indonesia (BMI) Palu Branch in the Perspective of Islamic Economics," *Journal of Islamic Banking and Finance* 1, no. 1 (2019): 73-95, https://doi.org/10.24239/jipsya.v1i1.6.73-95; Khodiron Khodiron, Fitriyani Fitriyani, and Muhammad Azka Maulana, "The Role of Islamic Banking in Indonesia's Microeconomic Development," *The Academy Of Management And Business* 1, no. 3 (2022): 113-18, https://doi.org/10.55824/tamb.v1i3.181.

[16] Alfiina Rohmatil Aliyah, "And Business Activities at Shari'ah Financial Institutions (Lks)," *IRSYADUNA: Journal of Student Studies* 3, no. 2 (2023): 190-205, https://doi.org/https://doi.org/10.54437/irsyaduna; Yusmalinda Yusmalinda, "The Contribution of Qanun Lks to Umkm as an Effort to Improve the Economic Welfare of the City Community," *JES [STIEP Economic Journal]* 8, no. 1 (2023): 45-55, https://doi.org/https://doi.org/10.54526/jes.v8i1.141.

Courts (PA Law), namely "Sharia Economics", one of the scopes of Islamic economics is Islamic banking. However, after reviewing the PA Law, we found that it was not followed by a dispute resolution process.

The massive development of an economy based on Islamic Sharia principles, which creates a transparent, fair, ethical and sustainable financial model, has made Islamic economics a major alternative in the face of current global and national economic dynamics.[17] An economy based on Islamic sharia principles integrates Islamic values into economic policy. These principles prohibit interest-based transactions, excessive speculation, and unethical business practices. The ultimate goal is to create social justice, prioritise sustainability and ensure fair distribution of wealth in accordance with Islamic teachings.[18] This means also taking into account their benefits and interests by basing them on their economic resources.

In fact, prior to COVID-19, the Government had also attempted to accelerate the development of the real sector and the empowerment of micro, small, and medium enterprises (MSMEs) in order to alleviate poverty and, at the same time, increase national economic growth[19] through Presidential Instruction Number 6 of 2007 concerning Policies to Accelerate the Development of the Real Sector and the Empowerment of Micro, Small, and Medium Enterprises. The realisation of the acceleration of real sector development and empowerment of MSMEs can be seen in the KUR programme, launched in November 2007. This programme expands MSME access to bank credit and increases production intending to improve the community's economic welfare. The implementation of this programme is regulated in a memorandum of understanding between the government, banks,

[17] Rizky Andrean, "Utilisation of Islamic Bank Social Funds through Financial Technology Platforms for MSME Empowerment in the Digital Era," *Velocity: Journal of Islamic Finance and Banking* 3, no. 1 (2023): 45-59.
[18] Asri Jaya et al, *Sharia Economics* (Batam: Yayasan Cendikia Mulia Mnadiri, 2023).
[19] Dewi Amimi and Siti Fatimah, "The Political Law of the Economy of Strengthening Microeconomics and MSMEs after the Covid-19 Pandemic," *Tana Mana Journal* 3, no. 2 (2023): 1-11, https://doi.org/https://doi.org/10.33648/jtm.v4i2.344.

and guarantee companies. In its development, there was an affirmation in Law No. 20/2008 concerning Micro, Small, and Medium Enterprises to make it easier for MSMEs to obtain credit. In addition, the technical regulations of the KUR programme change dynamically in line with changes in the direction of economic policy in Indonesia, the results of policy evaluations that are considered less effective, or social and economic changes in the community due to the coronavirus (COVID-19) pandemic.

Financing provided to MSMEs through the KUR programme from Islamic banks is in the form of lending and borrowing transactions in the form of *qardh* receivables (see Article 1 paragraph (25) letter d of the Islamic Banking Law) based on an agreement between the Islamic bank and the party being financed, namely the MSMEs, to return the funds after a certain period of time with a reward or profit sharing set out in the credit contract.

Agreement or *consensus* is a requirement. When MSME actors participate in the KUR programme, they will make a credit agreement known as a contract that meets the criteria of the *five C's of credit analysis*,[20] namely the principles of *character, capacity, capital, collateral, and* economic *conditions*.[21] Islamic banks also adhere to the precautionary principle stipulated in Article 35 of the Islamic Banking Law to provide confidence to the bank concerned in providing credit to debtors. Applying the prudential principle in lending and borrowing facilities is fundamental to ensure that Islamic banks are confident that customers are in good faith and can return the borrowed funds. In addition to the prudential principle, banks must also have trust or mutual trust in MSME actors who apply for the loan programme. These two principles are then used as the main basis for providing KUR to small and medium enterprises, as asserted in the President's order that KUR borrowers do not need to be burdened with collateral.

Lending and borrowing facilities (financing) generally require collateral to overcome the inability of debtors to repay their debts. However, the KUR

[20] Agustinus Simanjuntak, *Business Law, An Integrative Understanding Between Law and Business Practice* (Depok: PT. Raja Grafindo, 2023).
[21] Simanjuntak.

programme is different because the credit value is relatively small and does not require collateral, so the government provides insurance for Islamic banks that organise KUR through PT Askrindo Syariah, in accordance with POJK Number 2/POJK.05/2017. However, this does not mean that Islamic banks ignore the five principles of debtor assessment and the *prudential* principles of banks as explained above; rather, banks must be more careful in determining who will be given loans in the form of financing.

In practice, Islamic banks in providing financing or loans are only armed with trust, requiring only a Residential ID card and Tax Registration Number, such as the KUR given to Maya (pseudonym), without providing material collateral in accordance with President Jokowi's recent appeal. Not all sharia KUR loans for MSMEs run smoothly, as faced by Maya in the Parongpong MSME group, who obtained KUR but could not fulfil the obligation to pay the agreed-upon credit instalments, leading to non-performing loans. Bad debts can be a serious problem for banks because they can potentially cause financial losses. For this reason, it must be resolved immediately to avoid bank losses and provide legal certainty to creditors and debtors. However, this has been guaranteed by Askrindo Syariah, the aim is to minimize bank losses[22] so that Sharia Banks themselves will be more confident in providing KUR without experiencing significant financial pressure. Thus, the role of PT Askrindo Syariah in supporting the settlement of such disputes creates synergy between banks, debtors, and risk guarantee institutions, thereby minimising possible risks and negative impacts.

The Financial Services Authority (OJK) reported in the 2019 Sharia Financial Development Report that the number of banks performing business activities based on "Sharia principles" increased, in which there were 14 Sharia commercial banks (BUS), 20 (twenty) Sharia business units (UUS), and 164

[22] W. Friedmann, *Legal Theory & Philosophy A Critical Examination of Legal Theories (Series I)* (Jakarta: Rajawali Pers

sharia people's financing banks (BPRS).[23] The establishment of Islamic banks essentially aims to provide access to the benefits of the people to ensure that its programmes are in accordance with the principles of Islamic sharia by not explicitly limiting customers only to people who are Muslim as an extension of the interpretation of Article 1 paragraph (16) of the Islamic Banking Law. Therefore, the term "justice seeker" in Article 2 of the PA Law includes "Any person who conducts civil legal relations based on the principles of Islamic sharia." This definition is in line with Article 1 paragraph (13) of the Syariah Banking Law, which states that sharia principles are the rules of agreement based on Islamic law between banks and other parties to carry out business activities based on Islamic law.

Al-Ghazali, an Islamic philosopher, opines that Sharia principles refer to a set of values, norms and ethical guidelines derived from Islamic teachings. These principles cover all aspects of life, from law and morality to social order. Al-Ghazali emphasised that the principles of Sharia are not just a set of legal rules but also a spiritual and ethical framework that guides Muslims to live according to ethical, moral (truth, justice) and compassionate values, so the principles of Sharia are not just a set of rules, but a way of life that integrates spirituality and ethical values in every life aspect. The principles of Islamic sharia, especially those based on the Qur'an as explained by Nurdien (2012) and Djamil (1999), are as follows:[24] (1) *Adam al-Haraj (*not complicating or burdensome); (2) Taqlil al-Taklif (reducing the burden): (3) Periodic determination of the law; (4) In line with universal benefit; and (5) *al-Musawah wa al-Musawah* (equality and justice).

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[23] Ahmad Baihaki and M. Rizhan Budi Prasetya, "Absolute Authority of Religious Courts in Settling Sharia Economic Disputes After the Decision of the Constitutional Court Number 93/PUU-X/2012," *Krtha Bhayangkara* 15, no. 2 (2021): 289-308, https://doi.org/10.31599/krtha.v15i2.711.

[24] Muhammad Tho'in, "Competence of Islamic Bank Human Resources Based on Islamic Sharia Principles (Case Study at BNI Syariah Surakarta)," *Scientific Journal of Islamic Economics* 2, no. 03 (2016): 158–71, https://doi.org/10.29040/jiei.v2i03.49.

Sharia principles are conceptually believed to be ideal as a comprehensive and universal way of thinking, which can be seen from the basic philosophy distinguishing between conventional and sharia economic activities. [2526]Therefore, when problems occur between debtors and creditors (Islamic banks) or when disputes arise (such as the case experienced by Maya), they need immediate resolutions. In principle, such resolutions must also pay attention to the foundation of the operation of Islamic banks, namely "sharia principles", so that the goal of creating benefits for Muslims in particular and in general also creating justice, peace and certainty in business relations can be achieved.

J.G Merrills defines dispute as a dispute over a matter of fact, law or politics in which one party asserts the rejection, counterclaim or denial of the other party,[27] which must be resolved immediately. In principle, dispute resolution in Indonesia, according to Article 59 of Law No. 48/2009 concerning Judicial Power (Judicial Power Law), can be resolved through two channels: litigation and *non-litigation (non-adjudication).* Furthermore, *dispute resolution* specifically related to Sharia economics is further regulated in Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts where the Religious Courts are given the authority with regard to *absolute competence to* examine, decide, and adjudicate cases in the field of sharia economics.[28]

The legal politics of Islamic banking dispute resolution related to KUR provided to MSME members cannot be separated from the harmony of Islamic

[25] Lastuti Abubakar and Tri Handayani, "Effective, Efficient and Equitable Alternative Dispute Resolution for Sharia Banking," *Litigation* 20, no. 20 (2019): 173–204, https://doi.org/10.23969/litigasi.v20i2.1069.

[26] Aang Achmad and Ummi Maskanah, *Civil Procedure Law Theory and Practice (Class Action, Simple Lawsuit, E-Court and E-Litigation) Equipped with Jurisprudence* (Bandung: Logoz Publishing, 2010).

[27] J.G. Merrills, *International Dispute Settlement, Adapted by Ahmad F., In Ummi Maskanah, 2012, Alternative Business Dispute Resolution in the Indonesian Legal System, Critical Review of Law Number 30 Year 1999 on Arbitration and Alternative Settlement* (Bandung: Logoz Publishing, 1986).

[28] Ana Latifatuz Zahro, Muhammad Iqbal Fasa, and A. Kumedi Ja'far, "Analysis of Non-Litigation Settlement of Sharia Economic Disputes," *Reslaj :* 4, no. 2 (2021): ��336–52, https://doi.org/10.47467/reslaj.v4i2.716.

economic values and the characteristics of Islamic banking itself. Therefore, any disputes between the two parties (between Islamic banks and their customers) can naturally be resolved while still aiming for the benefit of the people and paying attention to the functions of Islamic banking, which aim at the welfare and peace of society in real economic development. Islamic banking, especially KUR organisers, expects quick, simple, low-cost dispute resolutions, but both parties can accept the results by prioritising a sense of justice. Although there are various *non-adjudication* (*non-litigation) settlement* methods available,[29] it is necessary to choose a *non-adjudication* model that prioritises the principle of justice without setting aside accuracy and thoroughness so that both parties obtain legal certainty and can then end the problem, thereby resolving bad debts of Islamic banks with MSME customers, most of whom do not have collateral. An interview with Maya, who received KUR amounting to Rp. 100,000,000.00 (one hundred million rupiah) from Bank BRI Syariah and signed a contract in which there was a clause on the choice of dispute resolution mentioning resolution by deliberation, shows that in the event of a non-performing loan, the dispute will be resolved by deliberation outside the court.

In this regard, Article 55 paragraph (2) of Law Number 21 Year 2008 on Sharia Banking authorises the parties to *choose from the choice of law* and *choice of forum* in resolving their disputes, despite the Constitutional Court Decision Number 93/PUU-X/2012 which states that "the absolute authority to resolve sharia economic disputes is within the Religious Courts." In its development, the Supreme Court made a breakthrough by issuing Supreme Court Regulation Number 2 of 2015 Jo Number 4 of 2019 concerning Procedures for Settling Simple Lawsuits as a manifestation of the principle of *access to justice* which requires the object of the lawsuit to be no more than Rp. 200,000,000.00, and the plaintiff and the defendant are in one jurisdiction. This regulation was later

[29] Aditya Prastian Supriyadi, Sheila Kusuma Wardani Amnesti, and Siti Zulaicha, "The Online-Based Economical Dispute Resolution for 4.0 Industry in the New Normal Era," *Jurisdictie* 12, no. 2 (2021): 145–69, https://doi.org/10.18860/j.v12i2.13395.

amended to Supreme Court Regulation Number 4 of 2019 with the addition of the object of the dispute to Rp. 500,000,000.00. This *small claim court* aims to provide an alternative dispute resolution with the value of the object of dispute not exceeding the predetermined, namely by simplifying the litigation process in court within 25 (twenty-five) days since the parties have received the decision.

Initially, *small claims courts* were used, but banks still encountered many obstacles and constraints.[30] Many studies have been conducted on the means of Small Claims Court, stating that Small Claims Court does not solve problems, one of which is related to the implementation of the Decision.[31] Not all *small claim court* decisions are implemented voluntarily, so they still require a further process the execution. However, the KUR programme does not include material security, and the ceiling value is also relatively small, so the judge's decision seems to only win on paper. So in its development, the Simple Lawsuit slowly began to be abandoned for the settlement of non-performing loans of Islamic banks.

In some cases like in Maya's case, simple lawsuits did not resolve the case, as told by Wiwin, the Head of BRI Suropati Bandung Branch. She believes that simple lawsuits also have many obstacles in practice, including not providing legal certainty, meaning that it does not reach customers who are outside the jurisdiction of the branch office and still requires a relatively small amount of money especially when there is already a verdict that punishes the debtor to pay a certain amount of money, but there is no building as collateral. In such a situation, there is no way for the bank to execute it, meaning that the bank only wins the case on paper.

Although the idea or birth of dispute resolution through a Simple Lawsuit aims to provide solutions to justice seekers whose value of the object of the dispute is not more than Rp 500,000,000.00 and, at the same time, accommodates the principles of simplicity, efficiency, and affordability, there are

[30] Aji Prasetyo, "Various Obstacles in Simple Lawsuits," HukumOnline.Com, 2023.
[31] Adi Nur Rohman et al, "Problematics of Simple Lawsuit Settlement and the Direction of Its Strengthening in Optimising the Simple, Fast and Low Cost Justice System," *Journal of IKAMAKUM* 2, no. 1 (2022).

still obstacles in the implementation of the decision. That is, it cannot be used as a model for resolving disputes related to the KUR programme provided to individual or medium-sized MSMEs.

The Bank refers to Article 55 paragraph (2) of the Sharia Banking Law as the basis which expressly stipulates "in the event that the parties have agreed on dispute resolution other than as referred to in paragraph (1), dispute resolution shall be carried out in accordance with the contents of the contract. Therefore, based on the research results in several KUR banks, such as BNI Syariah, BRI Syariah, and BPRSyariah, they always include a dispute resolution option clause when making credit contracts. This also provides *legal standing for* alternative dispute resolution as a legal construction that can be used as a dispute resolution option for the parties, provided that it is agreed upon and stated in a contract based on Sharia principles.

The choice of dispute resolution is left entirely to the parties' wishes as outlined in the contract (vide explanation of Article 55 paragraph (3) of the Islamic Banking Law). In other words, by signing a credit contract that contains a dispute resolution option clause, the parties have indirectly agreed, agreed or subjected themselves to the choice of *non-litigation* dispute resolution with the principles of Islamic law, so that this has closed the *absolute* authority of the Religious Court to resolve sharia economic disputes. Indeed, the majority Muslim Indonesian community has long recognised out-of-court dispute resolution through deliberation and mediation. QS Al-Baqorah/2:233 and QS al-Syura/42:38 have provided provisions related to "deliberation as a way out to solve problems"[32] that serve as a legal basis for the practice of sharia economic dispute resolution that takes into account the values of justice and legal certainty, which is also in line with Pancasila as the philosophy of Indonesia, namely the fourth principle which prioritises the principle of cooperation and consensus in finding solutions to dispute resolution.

[32] Ani Satun Fitriyah, "Deliberation in the Qur'an (Comparative Analysis of Tafsir Al Misbah and Tafsir Al Ibrisz on QS Al-Syūrā/42: 38, QS Ali-Imran/3: 159 and QS Al-Baqarah/2: 233)" (Institut Agama Islam Negeri Salatiga, 2020).

Of course, the deliberation referred to above must still be based on the principle of justice because the value of justice must be applied in every out-of-court dispute resolution. From the Islamic perspective, justice is the main characteristic of Islamic teachings, where every Muslim will get equal rights and obligations, so justice must be interpreted as equality and balance in doing or not doing. In legal policy, the settlement of Sharia economic disputes, especially in the financial sector, emphasises simple, efficient and fast settlement with the principles of justice, namely the principles of procedural justice and legal certainty, especially through deliberation and mediation. This approach reflects harmony with the values of religious teachings and the philosophy of the Indonesian nation.

An economy based on Islamic Sharia principles integrates Islamic values into economic policies such as the KUR programme. These principles prohibit interest-based transactions, excessive speculation and unethical business practices. The ultimate goal is to create social justice, prioritise sustainability, and ensure a fair distribution of wealth parallel to Islamic teachings. The principle of justice, known as *'adl* and *insaf*, has a significant philosophical foundation in Islamic law. Imam Muhammad al-Ghazali emphasised justice as a core value in Islam, which applies to legal and social realms.[33] Justice in Islam means treating all individuals equally and ensuring that policies and decisions align with Islamic moral and ethical principles. It is said that justice involves giving appropriate rights to every individual without discrimination or oppression. This idea aligns with the principle of justice in Western law, which implies that everyone is entitled to equal rights and should not be treated unfairly. According to Islamic law expert Mohammad Hashim Kamali, justice must permeate all aspects of life, including legal systems and dispute resolution

[33] Widi Lailatul Fajar et al., "Views of Islamic Economic Thinkers on Usury from the Perspective of Al-Ghazali and Al-Maududi," *Eco-Iqtishodi: Scientific Journal of Islamic Economics and Finance* 4, no. 2 (2023): 47-60, https://doi.org/https://doi.org/10.32670/ecoiqtishodi.v5i1.3610.

based on the principles of Islamic sharia. Justice must be an actualised principle, not just a theoretical concept.

The principle of *justice* or '*adl* in Islamic law must be placed as a human right to get fair treatment in business transactions and law enforcement. The Liang Gie argues that the meaning of justice in a broader relationship is *justice* that is close to the meaning of fairness. The characteristics of justice in the sense of feasibility or appropriateness, for example, are found in the expression fair *price* or *fair wage*. When moral elements or considerations are emphasised in the notion of justice and are seen as higher than *legal justice* alone, the meaning of *equity* for *justice* develops. *Equity* has a meaning that resembles justice according to moral values. When all moral ideals or all policies as a whole seem to be included in the notion of justice, the meaning then becomes truth, which can mean truth based on goodness, not truth as a science when translated. Through the above description, The Liang Gie then formulates the characteristics or nature of justice: *Justice*, legal, *legitimate*, *impartial,* equal, *fair,* morally just, proper, or *right.*[34]

Speaking of justice, we cannot forget the Greek philosophers Plato and Aristotle, who laid the foundation of justice in relation to positive law. The principle of justice is a concept that involves an understanding of the fair organisation and treatment of all individuals or groups. It encompasses the idea that everyone has an equal right to be respected, recognised and treated fairly in all respects, regardless of race, religion, gender, sexual orientation or socio-economic background. As an adherent of natural law, where, at the time, the idea of justice was what was fair according to natural law and that justice should be in accordance or according to the enactment of the law, Plato saw justice from the side of inspiration, while Aristotle came from a background of thinking about models of society, politics, and law.[35]

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[34] Popon Srisusilawati and Nanik Eprianti, "Application of the Principle of Justice in Mudharabah Agreements in Islamic Financial Institutions," *Law and Justice* 2, no. 1 (2017): 12–23, https://doi.org/10.23917/laj.v2i1.4333.
[35] Srisusilawati and Eprianti.

For this reason, both in the philosophy of Western law and in the context of Islamic law, the principle of *justice* can be interpreted as equal and substantial justice and makes an important contribution to the formation of a holistic understanding of the importance of the principle of *justice* in the process of resolving non-performing loan disputes in the KUR programme of Islamic Banks for MSMEs based on good faith as an implementation of an honest and fair legal system. Therefore, a holistic and structured approach is needed to ensure that the process meets Islamic justice's ethical standards and values. In the researcher's opinion, the most important anticipatory step in providing KUR by Islamic banks is to integrate the principles of *justice into* every lending stage up to resolving non-performing loan disputes.

Based on observations and research results by assisting with non-performing loan cases from MSME actors, reminders in writing to customers (MSMEs) have been given as one of bank procedures requesting that the arrears be paid. The clause in a reminder can be interpreted that the bank has tried to put MSME actors not in a depressed position, meaning that in terms of value, the bank is able to appreciate customers regardless of their economic conditions. That is, it puts debtors in the same position (fair), as stated and implied in Q.S. Ar-Rahman verse 7: "And Allah has raised the heavens, and He has placed a fair balance (scales)".

In its legal development, the deliberation model was then expanded by the Financial Services Authority (OJK) through another approach called collaborative negotiation. In this negotiation, the disputing parties work together to achieve a win-win solution, which means ensuring all parties are present in the dialogue to look for the best solution, which, according to the researcher, should be more about finding solutions from the perspective of MSMEs (as debtors who stop paying instalments) in order to reach an agreement that relieves customers. The prioritisation of the principle of *fairness* in collaborative negotiation is to create an open dialogue (communication or bargaining process), bringing together interests to reach a *win-win solution*.

Furthermore, in addition to collaborative negotiation, Islamic banking dispute resolution is introduced with the "facilitation model" based on Regulation No. 01/POJK.07/2013 (POJK No. 1 of 2013).

Based on Financial Services Authority Regulation (POJK) No. 1 of 2013 concerning Dispute Resolution in the Financial Services Sector and Law No. 21 of 2011 on the Financial Services Authority, the facilitation model is an approach where OJK acts as a facilitator in dispute resolution efforts between parties, particularly in the financial sector. The facilitation model allows the disputing parties to sit together under the guidance of OJK to reach a settlement agreement without going through litigation in court. This approach promotes dialogue, negotiation and mutual understanding between the disputing parties, with the hope of reaching a fair and mutually beneficial solution. Thus, OJK also indirectly contributes to building a conducive legal system and supporting the Islamic financial industry to provide legal protection for the parties to the dispute to realise a peace agreement. Based on the results of interviews with one of the OJK LAPS arbitrators named Tri Legono, it turns out that in its implementation, it still upholds the principle of *fairness on the* grounds of maintaining relationships, interests and dispute resolution of both parties that are *not discriminatory. This is a* guideline for reaching a feasible agreement (Khairandy, 2004) so that Islamic banking can function as an *agent of trust.*

As mentioned, the dispute resolution facilitated by OJK is based on: (1) Law No. 21 of 2008 concerning Sharia Banking; (2) Law No. 21 of 2011 concerning the Financial Services Authority; (3) POJK No. 1 of 2013 concerning Consumer Protection in the Financial Services Sector and POJK No. 1 of 2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector ; (4) OJK Circular Letter No. 54/SEOJK.07/ 2016 concerning Supervision of Alternative Dispute Resolution Institutions in the Financial Services Sector; (5) Standard Operating Procedures (SOP) as a reference in dispute resolution based on OJK Circular Letter Number

2/SEOJK.07/2014 concerning Services and Settlement of Consumer Complaints on Financial Services Business Actors.

According to the results of the researcher's interview with Mr Arman Tjoneng, the collaborative negotiation model and facilitation OJK has been carried out since 2014, but in the meantime, it is still devoted to consumer complaints that object or feel harmed by the performance of financial services. After being analysed, both models are more inclined to dispute resolution involving a third party, like the Mediation model. However, the difference is that the third party in the collaborative negotiation model and the facilitation model is only limited to facilitating the implementation of deliberations; therefore, OJK is given the authority to summon both parties to negotiate according to a predetermined time, with the hope of an agreement between the two, which can be said to be like a tripartite process.

Furthermore, in addition to the previously stated dispute resolution models, bad credit in KUR of Islamic Banks with small ceilings provided to MSMEs can also be pursued through mediation. According to Article 1 paragraph (1) of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the Parties with the assistance of a Mediator. Furthermore, paragraph (2) stipulates that a Mediator is a Judge or other party who has a Mediator Certificate as a neutral party who assists the Parties in the negotiation process in order to find various possible dispute resolutions without using a way to decide or impose a settlement.

As a neutral party, the mediator must ensure that each party has an equal and balanced opportunity to present its reasons and interests before the mediator with good faith as a basic principle. This means that mediation intends to reach a fair and mutually beneficial solution for all parties involved. With good faith as a basic principle, it is hoped that mediation can be carried out transparently and fairly, and the interests of all parties can be respected to reach

a fair agreement and *win-win solution* without necessarily causing new problems, thereby ensuring legal certainty for both.

Comprehensive research and the results of interviews with Yetti, a finance director, implied that cases like the one experienced by Maya stemmed from the guarantee given by PT Askrindo Syariah for the KUR. Yetty added that the subpoena sent by the Bank to the MSMEs was part of formality. Dispute resolution models that prioritise the principles of justice, such as the models that have been put forward and have also been applied in the settlement of the Maya's dispute not only reflect the values of justice in Islam but also provide effective and efficient solutions in resolving bad credit disputes of Islamic banks holistically. Thus, Islamic banks can build a strong reputation for providing fair and equitable services to their customers in accordance with Islamic economic principles, and Islamic banks can carry out their function as *agents of trust.*

For this reason, it is hoped that Islamic banks can integrate the principle of *justice into* all banking policy programs, including Sharia debt collection procedures, which means promoting dialogue with good morals to get a fair solution as desired by both parties so that to avoid problems in the future, the principle of *justice* can be applied in the implementation or management of financing programs from the start. From the results of research conducted by researchers both directly accompanying Maya and from the results of interviews with various parties, the three models, namely negotiation, collaborative negotiation, facilitation and/or mediation can be used as a means of resolving bad credit disputes, and these modes provide an opportunity for the parties to sit together in dialogue to find a middle ground that is acceptable to both parties, in a family atmosphere, not as opposing parties as the term in the court process, so as not to damage the *symbiotic-mutualistic* relationship *to* find a *solution to the* problem.[36] Thus, a *win-win solution to the* dispute is achieved.

[36] Susanti Adi Nugroho, The *Benefits of Mediation as an Alternative Dispute Resolution* (Prenada Media, 2019).

Constraints and Factors Affecting the Application of the Principle of Justice in the Non-Adjudication Settlement of Islamic Bank KUR Disputes Not as Expected

The application of the principle of *justice* in the *non-adjudicative* settlement of KUR disputes at Sharia Banks has several obstacles and influential factors. After conducting research, an overview of the obstacles that may arise is the imbalance of information between the bank and its customers, resulting in unfair decisions. In other words, the imbalance of information between parties is one of the main obstacles. Such conditions can lead to unfair decisions due to a lack of transparency and access to information, affecting the overall dispute resolution process.

Not all of the four models' negotiation, collaborative negotiation, facilitation, and mediation mentioned earlier successfully resolve bad debts for the parties in the KUR programme at Islamic banks since some obstacles are inevitable. The results of the interview with Yati, the finance director of PT Jamkrida who mentioned the absence of transparency from the bank itself to the customer about the rights and obligations, as well as the bank's wrong procedures in granting KUR, imply that the bank did not apply the five principles above in granting credit and did not apply the conditions for granting KUR properly, meaning that the bank was too careless in providing KUR because it felt there was insurance that guaranteed the KUR. It can also occur due to differences in interests, and the bank still expects the full payment of the debtor's arrears. On the other hand, the debtor expects the bank's policy to reduce or eliminate the amount of profit sharing or only take into account the principal by providing a more flexible instalment nominal due to the debtor's economic situation at that time. There are also obstacles due to difficulties in dialogue or communication because the MSMEs have changed the domicile that both parties know of.

Indeed, the success of the negotiation model as in the case above, collaborative negotiation, facilitators conducted by OJK and mediation shows that without involving the court, as long as the contract includes dispute

resolution options as stipulated in Article 55 of the Sharia Banking Law, in the opinion of researchers is more effective and efficient and can provide flexibility to the parties to find a middle ground in resolving unsecured bad credit. Arman, a legal practitioner appointed by OJK to resolve disputes, revealed in his interview that this success is inseparable from his good faith and inner attitude that has the responsibility to pay instalments or pay off his debt because debts and credits taught in Islam and positive law teach that those who owe are obliged to return them. According to Ahmad Wardi Muslich, stating that debt and credit (*qard)* is a form of muamalah, *qard* must be in the corridor of the principles of muamalah. One of the principles states that it must not harm others,[37] then it has consequences if not paid, he will get sin.

The success of this dispute resolution model is also inseparable from the important role of negotiators, facilitators and mediators in solving problems and simultaneously providing solutions in each case. In principle, they help the parties to find common ground, identify solutions, and defuse conflicts through the existing process. The point is that they must be able to unite opinions on the basis of good faith to end the dispute to reach an agreement without causing new problems, and, most importantly, convince the parties, especially the debtor, to resolve the dispute voluntarily. The negotiations in Maya's case went according to the agreed schedule, but that does not mean there were no obstacles in negotiating. Initially, there were difficulties in uniting opinions, and also, due to undeniable circumstances (economic), the achievement of a fair agreement was hampered. However, after Maya was given a solution (reconditioning) of relaxed payment with which she agreed, the agreement was then put in writing and signed by both parties. The analysis shows that the role of each party in the negotiation is very important, meaning that a negotiator must play an active role in the negotiation. In contrast, the role of the facilitator and mediator is more oriented towards guiding the process, directing, finding solutions, placing on an equal, neutral position to reach a fair agreement without intervening in

[37] Achmad Wardi Muslich, *Fiqh Muamalat,* (Jakarta: Amzah, 2010) p 3

determining the parties' agreement. The researcher argues that the application of the principle of justice has been carried out.

The success of mediation itself is not free from obstacles. These obstacles usually come from the way the disputing parties respond to the case by insisting on their respective wishes and opinions. The knowledge of the disputing parties regarding mediation is also one of the obstacles to the success of mediation in resolving economic disputes. Another obstacle that often occurs is the debtor not understanding the process or ignoring the summons to proceed due to ignorance of the summons or even fear of the process. Such a situation will spark difficulties for the creditor (bank) in resolving the bad credit problem.

The above information indicates that obstacles do not only come from the negotiators, facilitators and mediators directly; obstacles can also result from the customers and creditors themselves, as illustrated in the following Table that can illustrate the obstacles in out-of-court dispute resolution:

Table 1. Barriers to Two-Party Direct Meeting

No.	Creditor	Debtor	Result
1	None	Attending	failed
2	Attending	None (fear)	failed
3	Attending	Present (but not aware of the problem)	failed
4	Present (sticking to its interests)	Now (sticking to the reason)	failed
5	Present (providing payment solutions)	Present (accepting the solution)	Successful

Source: Author's Empirical Research in Parongpong, West Bandung Regency, October-November 2023

Table 2. Barriers in Terms of The Character of The Settlement Process Negotiation

No.	Negotiator Creditor Party	Debtor	Result
1	Making very high demands	Sticking to the reason	failed
2	Sticking to what matters	Sticking to the reason	failed
3	Pressing	Sticking to the reason	failed
4	Repaying only the remaining principal of the loan	Sticking to reason but considered	Successful
5	The remaining principal can be paid in instalments with recalculation	Approved	Successful

Source: Author's Empirical Research in Parongpong, West Bandung Regency, October-November 2023

Table 3. Dispute Resolution through Facilitator/Mediator Dispute Resolution through Facilitator/Mediator

No.	Creditor	Facilitator/mediator	Debtor	Result
1	His request is in his best interest	Explaining Creditor's willingness	Sticking to a reason or position	failed
2	Sticking to the interest (loan repayment)	Advising creditors and providing input to find ways to provide relief to debtors.	Unwilling to accept feedback and direction	failed
3	Making a new calculation while still obliging the debtor to provide profit	Suggesting a solution more favourable to both parties, And propose the best solution for both.	Sticking to a reason or position	failed

	sharing and pay late fees			
4	Creating a new calculation by removing the penalty payment	Providing an explanation to the creditor about the debtor's condition; then the facilitator or mediator can re-propose to recalculate the remaining loan amount.	Sticking to a reason or position due to business conditions.	failed
5	Recalculate to pay only the principal of the loan	The facilitator or mediator explains to the debtor that the creditor wants the debtor to only pay the principal loan, which means eliminating penalties and profit sharing. The facilitator or mediator will advise the debtor to consider the creditor's offer.	Remaining in its reason or position due to the condition of its business so that it is unable to pay the principal of the loan as well	failed
6	Organising and recalculating the remaining	The facilitator or mediator will advise the debtor to consider the creditor's offer.	approved	Successful

	unpaid loan in instalments.			
7	Approved	Drafting a peace agreement	approved	Successful

Source: Author's Empirical Research in Parongpong, West Bandung Regency, October-November 2023

The above description indicates that the factors hindering the *non-adjudication* dispute resolution process include (1) The absence of good faith from both parties in resolving the dispute, (2) The mindset of the parties to the dispute, (3) The characteristics of the parties to the dispute; (4) The lack of knowledge of the parties to the dispute about dispute resolution models.[38] (5) Lack of seriousness of negotiators, conciliators and mediators in helping the parties resolve their problems; (6) Or even lack of mastery of the disputed material, resulting in deadlock. In addition, there are obstacles to selecting mediators, negotiators, or facilitators who are truly neutral and competent in the context of Islamic law. Another influencing factor is the different interpretations of the principles of Islamic law underlying dispute resolution.

Possible solutions to overcome the obstacles in resolving bad debt disputes between MSMEs and Islamic banks include increasing transparency and access to information for both parties. Islamic banks need to develop clear and open communication with customers, including providing detailed information on customer rights and obligations and dispute resolution procedures. Each step in the dispute resolution process should be well documented and accessible to both parties, including details regarding payment obligations, instalment rescheduling, and any agreements reached during the mediation process. In addition, Islamic banks can organise training and workshops for the customers of MSMEs to provide knowledge on financial

[38] Reza Fakhlefi, "Implementation of Mediation in Shari'ah Economic Cases at the South Jakarta Religious Court (Study of Perma No. 1 of 2016 concerning Mediation Procedures in Court)" (Syarif Hidayatullah State Islamic University Jakarta, 2019).

management, debt management, and dispute resolution procedures and rights and provide specialised guidance for customers who have difficulty understanding dispute resolution procedures. It is important to ensure that the mediator chosen is a neutral party with no affiliations or interests that could influence their decision and has a deep understanding of Islamic law principles and experience in handling Islamic credit disputes. By implementing these solutions, it is hoped that the non-performing loan-related dispute resolution process can take place more effectively and efficiently and provide a sense of justice for all parties involved, thereby not only increasing customer satisfaction but also strengthening the reputation of Islamic banks in applying the principles of fairness and transparency. Barriers to the application of the principles of fairness in non-adjudicative resolution in Islamic banks can be reduced by implementing effective dispute resolution mechanisms. For example, Malaysia has successfully done so by incorporating the principles of Islamic law into its legal system. In addition, they have adopted a transparent and inclusive approach in handling Islamic banking disputes.

Developing countries such as Indonesia have increased the application of the principle of *fairness* in dispute resolution in Islamic Banks. The role of OJK as an out-of-court dispute resolution institution in Islamic finance has made a positive contribution. With the increasing legal awareness and increasing competence of dispute resolution institutions in developing countries, especially those with a Muslim majority population, the application of the principle of *justice* in the out-of-court dispute resolution process can continue to be improved. To improve the application of the principle of fairness in the resolution of KUR disputes in Islamic banks, concrete steps need to be taken, such as increasing transparency, educating customers, selecting careful mediators or negotiators, and harmonising the interpretation of Islamic legal principles. By learning from the positive experiences of developed and developing Muslim countries, Islamic banks can optimise dispute resolution fairly and efficiently.

Conclusion

This research explores the dispute resolution model for KUR bad debts in MSMEs provided by Islamic banks by prioritising the principle of justice. The results show that effective, efficient, and equitable resolution of Islamic banking disputes can be achieved through non-adjudication models such as deliberation to reach consensus, collaborative negotiation, conciliation, and mediation. These models emphasise the principles of equality, proportional balance, and kinship to create sustainable relationships and provide legal certainty, in line with the objectives of Islamic banking for the benefit of the people, social justice, and fair distribution of wealth.

To improve the effectiveness of bad debt dispute resolution in the KUR programme, Islamic banks need to ensure that the negotiator or mediator selected has in-depth expertise on Islamic law and the principles of justice. Islamic banks should also be active in educating KUR recipient MSMEs about their rights and obligations and the best available solutions. In addition, there is a need to improve the skills and flexibility of negotiators, conciliators and mediators in helping parties resolve disputes. The OJK and Islamic banks should establish clear criteria for selecting mediators or negotiation facilitators to ensure a neutral and fair process and that both parties conduct the entire process in good faith.

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