INKRAH Law Journal
Volume 1, Issue 1, pp. 1-17
INKRAH.com/journal

DEFAULT IN MURABAHAH FINANCING CONTRACTS AND DISPUTE RESOLUTION EFFORTS IN ISLAMIC BANKING: A JURIDICAL, PHILOSOPHICAL, AND SOCIO-ECONOMIC STUDY IN INDONESIA

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ARTICLE INFO & META
Received: 08-Sep-2026
Revised: 08-Sep-2026
Accepted: 08-Sep-2026

Murabahah financing occupies the most dominant position among the contracts offered by Islamic banks operating within the Indonesian financial system, a circumstance that renders the legal relationship between the bank and the customer vulnerable to default in the form of delayed payment, inability to fulfil obligations, and breach of contractual clauses. This article examines the juridical qualification of default within murabahah contracts and the dispute resolution efforts available to the contracting parties under Indonesian positive law. Normative legal research is employed, combining the statute approach and the conceptual approach, supported by materials drawn from legislation, fatwa, judicial decisions, and peer-reviewed literature. The findings demonstrate that default in murabahah financing may be classified into four juridical forms recognised under Article 1243 of the Indonesian Civil Code, each carrying distinct consequences for compensation, contract termination, and risk allocation. Resolution efforts extend along a spectrum commencing with deliberation (musyawarah) and financing restructuring, proceeding to mediation through the Alternative Dispute Resolution Institution for the Financial Services Sector, arbitration before the National Sharia Arbitration Board, and culminating in litigation before the Religious Courts, whose absolute competence was reinforced by Constitutional Court Decision Number 93/PUU-X/2012. The article argues that dispute settlement must harmonise legal certainty, sharia compliance, and the protection of both institutional and customer interests, guided by the maqashid al-shari'ah framework and the civil law principle of pacta sunt servanda. The study contributes a normative synthesis situating Islamic legal philosophy, fiqh muamalah, and Indonesian positive law within a single analytical structure for evaluating financing default and its resolution.

Keywords: *Default; Murabahah Financing; Islamic Banking; Dispute Resolution; Maqashid al-Shari'ah.*

1. Introduction

1.1 Background

The expansion of Islamic banking institutions across Indonesia over the past two decades has been accompanied by a marked preference among practitioners for murabahah as the principal mode of financing extended to customers seeking consumptive and productive capital.[1] Murabahah, understood within fiqh muamalah as a sale and purchase transaction in which the seller discloses the acquisition cost and an agreed profit margin to the buyer, has been adapted by Indonesian Islamic banks into a deferred-payment financing instrument governed by Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia Number 04/DSN-MUI/IV/2000.[2] Its popularity rests on a combination of factors: the contract offers predictable instalment schedules, permits banks to calculate margins with commercial certainty, and satisfies the sharia requirement that financing be anchored to a real underlying asset rather than a bare loan of money.[3] The Indonesian legislature codified the legal foundation for this practice through Law Number 21 of 2008 concerning Sharia Banking, which recognises murabahah among the financing contracts that Islamic banks are authorised to offer, subject to compliance with sharia principles supervised by the National Sharia Board.[4] Academic commentary has consistently observed that the murabahah contract, despite its formal simplicity, generates a bundle of reciprocal obligations whose breach exposes both bank and customer to legal consequences reaching beyond ordinary civil default.[5] The adagium pacta sunt servanda, agreements must be kept, anchors the entire edifice of contractual obligation in Indonesian civil law, and its Islamic counterpart is expressed in the Qur'anic injunction to fulfil covenants, a principle fiqh scholars label al-wafa bi al-'ahd.[6] Sharia banking practice in Indonesia cannot escape the reality that customers occasionally fail to honour their instalment obligations, whether through economic hardship, mismanagement, or wilful avoidance, and each of these circumstances produces a distinct juridical characterisation of default.[7] Empirical review of Religious Court decisions across various jurisdictions, including Pekanbaru, Situbondo, and Pamekasan, confirms that murabahah-related default disputes constitute a recurring category

[1]J Basri, AK Dewi and G Iswahyudi, 'Pembiayaan Murabahah pada Perbankan Syariah dalam Perspektif Hukum di Indonesia' (2022) 4(2) AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam, p. 375.

[2]Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No 04/DSN-MUI/IV/2000 tentang Murabahah.

[3]MA Shalahuddin and NS Fauziah, 'Implementasi Pembiayaan Murabahah pada Perbankan Syariah di Indonesia: Studi Literatur' (2023) 1(1) Journal of Fiqh in Contemporary Financial Transactions, p. 29.

[4]Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah, art 19.

[5]BA Prabowo, 'Konsep Akad Murabahah pada Perbankan Syariah (Analisa Kritis terhadap Aplikasi Konsep Akad Murabahah di Indonesia dan Malaysia)' (2009) 16(1) Jurnal Hukum Ius Quia Iustum, p. 106.

[6]Syamsul Anwar, Hukum Perjanjian Syariah: Studi tentang Teori Akad dalam Fikih Muamalat (Raja Grafindo Persada 2007).

[7]AZ Fadlila and DA Muallifin, 'Penerapan Prinsip Hukum Ekonomi Syariah dalam Penyelesaian Wanprestasi Akad Murabahah: Studi Kasus di Pengadilan Agama Situbondo' (2025) 11(2) Shar-E: Jurnal Kajian Ekonomi Hukum Syariah, p. 159.

of sharia economic litigation, prompting judges to apply a combination of positive law, DSN-MUI fatwa, and the Compilation of Sharia Economic Law.[8] The persistence of these disputes generates a legitimate scholarly enquiry into the adequacy of existing legal protection mechanisms and the availability of proportionate, sharia-compliant dispute resolution pathways for both financing institutions and their customers.

Indonesian contract law, codified predominantly in Book III of the Civil Code, rests upon four governing principles: the principle of consensualism, the principle of freedom of contract articulated in Article 1338, the principle of good faith, and the principle of the binding force of agreements.[9] Islamic banking transplants these civil law principles into a sharia-compliant register, adding further asas such as al-ikhtiyari (voluntariness), al-amanah (trustworthiness), al-ikhtiyati (prudence), and al-taswiyah (equality between the parties), all of which are enumerated within the Compilation of Sharia Economic Law as foundational contract principles.[10] A murabahah agreement executed under these principles binds the bank and the customer with a force equivalent to statute for the parties themselves, a rule expressed in Latin as lex contractus, and any unilateral departure from its terms constitutes wanprestasi, breach of a valid obligation.[11] The doctrine of legal protection, articulated prominently within Indonesian civil law scholarship, distinguishes preventive protection, mechanisms designed to forestall disputes before they crystallise, from repressive protection, remedies invoked once a violation has occurred.[12] Murabahah financing default implicates both dimensions: preventive protection is embedded in disclosure obligations, creditworthiness assessment, and contractual clarity at the point of signing, whereas repressive protection materialises through compensation claims, contract termination, or execution against collateral once default has been established.[13] The customer's interest in protection against arbitrary or disproportionate sanction stands in permanent tension with the bank's interest in recovering financed capital and preserving

[8]A Purnama Sari, 'Penyelesaian Sengketa Wanprestasi pada Akad Pembiayaan Murabahah (Studi Kasus Putusan Nomor: 407/Pdt.G/2020/PA.Pbr di Pengadilan Agama Pekanbaru)' (2023) 12(2) Maqasid: Jurnal Studi Hukum Islam, p. 59.
[9]Kitab Undang-Undang Hukum Perdata, art 1338.
[10]Kompilasi Hukum Ekonomi Syariah (Peraturan Mahkamah Agung No 2 Tahun 2008), Buku II, art 21.
[11]Abdul Ghofur Anshori, Penyelesaian Sengketa Perbankan Syariah: Analisis Konsep dan Undang-Undang No 21 Tahun 2008 (Gadjah Mada University Press 2010).
[12]Abdul Ghofur, Perbankan Syariah Indonesia (Gadjah Mada University Press 2007).
[13]Akhmad Mujaidin, Hukum Perbankan Syariah (Raja Grafindo Persada 2016).

portfolio quality, a tension that mirrors the classical debate in legal philosophy between individual liberty and collective order.[14] Gustav Radbruch's tripartite conception of legal value, comprising justice, legal certainty, and expediency, offers a useful lens for evaluating how Indonesian regulators and judges have attempted to reconcile these competing interests within the sharia banking sector.[15] This tension is not resolved through rhetorical appeal alone; it demands a structured juridical framework capable of classifying default, calibrating consequence, and channelling disputes toward forums equipped to deliver outcomes consistent with both positive law and sharia values.

Sociological observation of Islamic banking practice reveals that default rarely arises from a single cause; it emerges from an interplay of macroeconomic pressure, sectoral vulnerability, financial literacy gaps, and, on occasion, structural weaknesses in the bank's own risk assessment procedures.[16] Economic analysis of financing default further suggests that the manner in which a dispute resolution mechanism is designed carries direct consequences for systemic financial stability, since protracted litigation raises transaction costs, depresses recovery rates, and erodes public confidence in Islamic banking as a viable alternative to conventional finance.[17] Ubi ius ibi remedium, where there is a right there is a remedy, captures the normative expectation that Indonesian law must furnish customers and banks alike with accessible avenues for resolving murabahah disputes without abandoning either sharia compliance or commercial viability.[18] Indonesian legislation has responded through a layered architecture of dispute resolution: litigation before the Religious Courts, whose absolute competence over sharia economic disputes was affirmed by the Constitutional Court, alongside non-litigation avenues including musyawarah, financing restructuring, mediation, and arbitration through the National Sharia Arbitration Board.[19] The coexistence of these pathways

[14] D Nilam Sari, 'Kedudukan Objek Akad sebagai Akibat Hukum Perjanjian (Kajian Reflektif dalam Fikih Muamalah)' (2024) 3(2) I-BEST: Islamic Banking & Economic Law Studies, p. 86.

[15] Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, Filsafat Hukum dan Maqasid Syariah (Kencana 2020).

[16] N Nursari, E Solehudin and N Nasrudin, 'Praktik Riba dan Gagal Bayar Pinjaman Online: Ancaman pada Reputasi dan Kredibilitas Nasabah di Era Digital' (2024) 2(2) Equality: Journal of Islamic Law (EJIL), p. 14.

[17] I Sari, 'Keunggulan Arbitrase sebagai Forum Penyelesaian Sengketa di Luar Pengadilan' (2019) 9(2) Jurnal Ilmiah Hukum Dirgantara, p. 49.

[18] Subekti, Hukum Perjanjian (Intermasa 2005).

[19] Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah, art 55; Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012.

raises a further question regarding the criteria that should guide the choice of forum, particularly where the parties have inserted a sharia dispute resolution clause into the murabahah contract itself.[20] Judicial practice demonstrates uneven consistency in applying these criteria, occasionally producing procedural anomalies such as the rejection of claims on formal grounds despite the substantive merit of the underlying default allegation.[21] This article situates itself within that unsettled terrain, seeking to clarify the juridical qualification of default in murabahah financing and to map the dispute resolution efforts available under Indonesian positive law, read through the combined lenses of legal philosophy, Islamic legal philosophy, fiqh muamalah, and the philosophy of Islamic economics.[22] The inquiry carries practical significance for banks refining their risk mitigation clauses, for customers seeking clarity regarding their rights during financial distress, and for policymakers assessing whether the current regulatory framework achieves an equilibrium between sharia fidelity and economic function.

1.2 Problem Formulation

Grounded in the background set out above, this article formulates two central questions warranting sustained juridical enquiry within Indonesia's Islamic banking sector. First, what forms does default assume within murabahah financing contracts, and how does Indonesian positive law qualify such default within the broader framework of the law of obligations and sharia contract theory? Addressing this question requires close reading of Article 1243 of the Civil Code alongside Fatwa DSN-MUI Number 04/DSN-MUI/IV/2000 and relevant provisions of the Compilation of Sharia Economic Law. Second, what dispute resolution efforts are available to Islamic banks and their customers once default occurs, and how should these efforts be evaluated against the principles of legal certainty, justice, and sharia compliance? This second question demands examination of both non-litigation pathways, including musyawarah, restructuring, mediation, and arbitration, and the litigation pathway administered by the Religious Courts. The two questions are interdependent, since a precise qualification of default determines which remedies become legally available, while the choice among available

[20] Anshori (n 11).
[21] IDAAM Puspitaningrat, PCK Kayuan and IMA Rimbawan, 'Niet Ontvankelijke Verklaard dalam Putusan' (2024) 18(1) Jurnal Yustitia, p. 32.
[22] Azhari Akmal Tarigan, Hukum Ekonomi Syariah di Indonesia (Perdana Publishing 2019).

remedies in turn shapes the practical protection ultimately afforded to each contracting party. Resolving both questions coherently requires an interpretive method capable of drawing together positive law, Islamic legal philosophy, and fiqh muamalah rather than treating each body of authority in isolation. This article accordingly proceeds from the premise that murabahah default cannot be adequately understood, still less resolved, through statutory text alone, absent sustained attention to the sharia values that gave the contract its original juridical form.

1.3 Research Objective

This article pursues two closely related objectives. It aims, first, to analyse the juridical forms of default arising within murabahah financing contracts operating in Indonesian Islamic banking, drawing upon statutory provisions, DSN-MUI fatwa, judicial decisions, and doctrinal commentary developed within Indonesian civil law scholarship. This analysis extends to identifying the evidentiary and procedural requirements that must be satisfied before default may be lawfully established against a customer. It aims, second, to examine the dispute resolution efforts, spanning non-litigation and litigation pathways, that parties may pursue when default materialises, assessing the strengths and limitations attached to each forum. This second objective requires evaluating restructuring, mediation, arbitration, and litigation as components of a single, graduated system of dispute management rather than as isolated mechanisms. The article further aims to assess the extent to which these efforts embody the philosophical and sharia values underpinning Islamic contract law in Indonesia, including maqashid al-shari'ah, fiqh muamalah, and the constitutional guarantee of legal certainty. In pursuing these objectives, the article seeks to contribute a normative synthesis of use to legislators refining sharia banking regulation, judges adjudicating sharia economic disputes, and banking practitioners drafting murabahah contracts. The ultimate ambition is a coherent account of default and its resolution capable of serving both doctrinal clarity and practical guidance for the Indonesian sharia banking sector.

2. Research Method

This article employs normative legal research, a method oriented toward the analysis of legal norms, doctrines, and principles rather than empirical field data, consistent with the established tradition of doctrinal legal scholarship in Indonesia.[23] Two approaches structure the analysis: the statute approach, which examines the hierarchy of Indonesian legislation relevant to sharia banking and the law of obligations, and the conceptual approach, which draws upon doctrines developed within legal philosophy, Islamic legal philosophy, and fiqh muamalah to interpret those provisions.[24] The statute approach requires systematic reading of the Civil Code, sharia banking legislation, and religious court jurisdiction rules as an integrated regulatory whole rather than as disconnected instruments. The conceptual approach, by contrast, permits engagement with doctrines that have not yet been fully codified, including maqashid al-shari'ah and the theory of legal protection, both of which inform judicial reasoning even where no single statutory provision names them explicitly. Primary legal materials consist of the Indonesian Civil Code, Law Number 21 of 2008 concerning Sharia Banking, Law Number 3 of 2006 concerning Religious Courts, Fatwa DSN-MUI Number 04/DSN-MUI/IV/2000 concerning Murabahah, the Compilation of Sharia Economic Law, and Constitutional Court Decision Number 93/PUU-X/2012.[25] Secondary materials comprise peer-reviewed journal articles, scholarly books on Islamic contract law and sharia banking, and published judicial decisions from the Religious Courts addressing murabahah default disputes.[26] Materials were collected through library research and analysed qualitatively using content analysis, allowing the identification of recurring doctrinal patterns across statute, fatwa, and case law before those patterns were synthesised into the critical argument advanced throughout this article.

3. Discussion

3.1 The Juridical Nature of Murabahah Financing Contracts in Indonesian Positive Law

Murabahah, translated literally as a transaction yielding mutual profit, is classified within fiqh muamalah as a species of bay' (sale and purchase) distinguished by the seller's obligation to disclose the acquisition cost of the commodity together with an agreed margin

[23] Peter Mahmud Marzuki, Penelitian Hukum (Kencana 2016).
[24] ibid.
[25] Kitab Undang-Undang Hukum Perdata; Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah; Kompilasi Hukum Ekonomi Syariah; Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012.
[26] See eg Basri, Dewi and Iswahyudi (n 1); Shalahuddin and Fauziah (n 3); Prabowo (n 5); Fadlila and Muallifin (n 7); Purnama Sari (n 8).

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before the buyer consents to the transaction.[27] Indonesian Islamic banks have adapted this classical contract into a tripartite financing arrangement in which the bank purchases an asset requested by the customer, subsequently sells that asset to the customer at cost plus margin, and permits repayment through instalments over an agreed tenor.[28] Fatwa DSN-MUI Number 04/DSN-MUI/IV/2000 furnishes the sharia parameters governing this arrangement, stipulating that the bank must own the object of sale prior to transfer, that the margin must be disclosed transparently, and that any penalty imposed for delay must be directed toward social funds rather than the bank's own revenue.[29] Article 19 of Law Number 21 of 2008 concerning Sharia Banking positions murabahah among the recognised categories of financing that Islamic banks may extend, thereby granting the contract statutory legitimacy within Indonesia's dual banking system.[30] The Compilation of Sharia Economic Law, promulgated through Supreme Court Regulation Number 2 of 2008, supplies further operative definitions and contractual principles applicable to murabahah, situating the contract within a codified body of Islamic civil law administered by the Religious Courts.[31] From the perspective of general contract law, a murabahah agreement satisfies the four validity requirements enumerated in Article 1320 of the Civil Code: consent, capacity, a specific object, and a permissible cause, rendering the contract simultaneously subject to general civil law scrutiny and specialised sharia banking regulation.[32] Lex specialis derogat legi generali, the specific law overrides the general law, governs the interpretive relationship between the Civil Code and sharia banking legislation, such that provisions particular to Islamic finance take precedence over general civil provisions wherever a genuine conflict arises.[33] The contract's dual character, at once a civil law agreement and a sharia-governed transaction, explains why default disputes require judges to apply both bodies of law in combination rather than treating either as self-sufficient.[34] This

[27] Wahbah al-Zuhayli, Al-Fiqh al-Islami wa Adillatuh, vol 5 (Dar al-Fikr 2006).
[28] Prabowo (n 5).
[29] Fatwa DSN-MUI No 04/DSN-MUI/IV/2000 (n 2).
[30] Undang-Undang Nomor 21 Tahun 2008, art 19 (n 4).
[31] Kompilasi Hukum Ekonomi Syariah (n 10), Buku II.
[32] Kitab Undang-Undang Hukum Perdata, art 1320.
[33] Anshori (n 11).
[34] Basri, Dewi and Iswahyudi (n 1).

hybridity reflects the considered legislative choice to integrate Islamic commercial law within the national legal system while preserving the doctrinal integrity of fiqh muamalah.

3.2 Forms and Legal Qualification of Wanprestasi in Murabahah Financing

Article 1243 of the Indonesian Civil Code identifies four forms through which a debtor may fall into default: failing to perform the obligation at all, performing the obligation belatedly, performing the obligation improperly, and doing something the agreement prohibits.[35] Applied to murabahah financing, these four categories translate into concrete scenarios familiar to Islamic banking practice: total non-payment of instalments, delayed remittance beyond the agreed schedule, partial payment falling short of the amount due, and conduct violating specific covenants attached to the financing, such as the unauthorised transfer of collateral.[36] Indonesian civil procedure requires that default be preceded, in principle, by a notice of default, somasi, through which the creditor formally demands performance and fixes a reasonable period within which the debtor must comply, a safeguard designed to prevent premature or arbitrary allegations of breach.[37] Subekti's classical exposition of the law of obligations emphasises that default liability attaches only once the debtor has been placed in a state of culpable delay, and that force majeure, circumstances beyond the debtor's control, may excuse performance entirely or suspend liability temporarily.[38] Sharia banking practice layers an additional distinction atop this civil law framework: default attributable to genuine incapacity, ta'sir, is treated with leniency consistent with the Qur'anic command to grant respite to a debtor in difficulty, whereas default attributable to wilful avoidance despite capacity, mumatalah, permits the bank to pursue sanction without the same measure of leniency.[39] Fatwa DSN-MUI Number 17/DSN-MUI/IX/2000 concerning sanctions for capable customers who delay payment operationalises this distinction by authorising a ta'zir sanction calculated as a deterrent rather than compensation, with proceeds directed to social welfare rather than bank profit.[40] Judicial decisions reviewed from the Religious Courts of Pekanbaru, Situbondo, and

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[35]Kitab Undang-Undang Hukum Perdata, art 1243.
[36]Fadlila and Muallifin (n 7).
[37]Subekti (n 18).
[38]ibid.
[39]Nasution and Nasution (n 15).
[40]Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia No 17/DSN-MUI/IX/2000 tentang Sanksi atas Nasabah Mampu yang Menunda-nunda Pembayaran.

Pamekasan illustrate that default findings typically rest upon documentary evidence of missed instalments cross-referenced against the financing schedule annexed to the murabahah agreement, with the burden of proof, actori incumbit probatio, resting upon the party alleging breach.[41] Legal consequence flowing from an established default may include acceleration of the outstanding balance, compensation for actual loss, execution against collateral, or termination of the agreement, each remedy calibrated to the severity and cause of the underlying breach rather than applied uniformly.[42] The qualification exercise, therefore, is an evaluative undertaking demanding careful attention to the debtor's capacity, conduct, and the surrounding economic circumstances before any sanction is imposed.

3.3 Philosophical and Sharia Foundations: Maqashid al-Shari'ah, Fiqh Muamalah, and Legal Certainty

Legal philosophy supplies the deep structure against which default and its remedies must be evaluated, and Gustav Radbruch's insistence that law simultaneously pursue justice, legal certainty, and expediency remains instructive for assessing how Indonesian sharia banking regulation balances customer protection against institutional solvency.[43] Fiat justitia ruat caelum, let justice be done though the heavens fall, expresses the uncompromising demand for fairness, yet Indonesian regulators have wisely tempered this maximalist ideal with pragmatic instruments such as financing restructuring, recognising that rigid insistence on immediate full recovery may destroy productive capacity without correspondingly advancing justice.[44] Islamic legal philosophy contributes the maqashid al-shari'ah framework, articulated classically by al-Shatibi and developed further by contemporary scholars, which orders the objectives of sharia around the protection of religion, life, intellect, lineage, and property.[45] Hifz al-mal, the protection of property, operates as the governing maqashid principle for murabahah default disputes, since both the bank's capital and the customer's assets fall within its protective scope, requiring any resolution mechanism to safeguard property interests on both

[41]Purnama Sari (n 8).
[42]Mujaidin (n 13).
[43]Nasution and Nasution (n 15).
[44]ibid.
[45]Nasution and Nasution (n 15); see also M Rajib, 'Terbentuknya Akad (Kontrak): Rukun dan Syarat Akad' (2025) 6(3) Iqtishaduna: Jurnal Ilmiah Mahasiswa Hukum Ekonomi Syari'ah, p. 678.

sides of the transaction rather than privileging the institutionally stronger party.[46] A systems-theory reading of maqashid emphasises openness, multi-dimensionality, and wholeness, cautioning against interpretations of sharia contract law that isolate a single textual provision from its broader ethical purpose.[47] Fiqh muamalah supplies further operative principles directly relevant to default resolution: al-birr wa al-taqwa (righteousness and piety) counsels creditors toward leniency where debtors face genuine hardship, while al-'adl (justice) and al-ihsan (excellence in conduct) jointly demand that any sanction imposed remain proportionate to the actual harm suffered.[48] The philosophy of Islamic economics reinforces these fiqh principles by rejecting exploitative gain, gharar (excessive uncertainty), and riba (usurious increment), insisting instead that financial relationships generate value through shared risk and equitable exchange rather than one-sided extraction.[49] Ex aequo et bono, according to what is just and good, captures the spirit that should animate every stage of murabahah default resolution, from the initial characterisation of breach through to the final remedy imposed, ensuring that legal technicality never eclipses substantive fairness.[50] Sociological jurisprudence, associated with the conception of law as an instrument of social engineering, adds a final dimension by insisting that dispute resolution mechanisms be evaluated for their capacity to preserve social trust in Islamic banking as a genuine alternative economic system serving the Indonesian population.

3.4 Dispute Resolution Mechanisms: Musyawarah, Restructuring, Mediation, Arbitration, and Litigation

Indonesian law offers a graduated architecture of dispute resolution for murabahah default, commencing with musyawarah, deliberative negotiation between bank and customer aimed at reaching consensus without external intervention, a mechanism consistent with the Qur'anic exhortation toward mutual consultation and reflected in the contract principles of the Compilation of Sharia Economic Law.[51] Where deliberation alone proves insufficient, Islamic banks frequently pursue financing restructuring, encompassing rescheduling of instalments,

[46] S Jauhari, 'Akad dalam Perspektif Filsafat Hukum Islam' (2015) 3(2) Tafaqquh: Jurnal Penelitian dan Kajian Keislaman, p. 1.
[47] ibid.
[48] al-Zuhayli (n 27).
[49] Nasution and Nasution (n 15).
[50] D Nilam Sari (n 14).
[51] Kompilasi Hukum Ekonomi Syariah (n 10), art 45.

reconditioning of contractual terms, or restructuring of the financing structure itself, an approach given regulatory foundation by the Financial Services Authority's provisions on asset quality assessment for sharia banks, designed to preserve the customer's capacity to perform while protecting the bank's asset quality.[52] Mediation constitutes the next tier, channelled predominantly through the Alternative Dispute Resolution Institution for the Financial Services Sector, which offers a low-cost, expedited forum for retail customers seeking resolution without resorting to full litigation.[53] Arbitration before the National Sharia Arbitration Board, Basyarnas, provides a further non-litigation avenue whenever the murabahah contract contains a valid arbitration clause, producing a binding award grounded in Islamic principles of justice and confidentiality, though its enforcement ultimately requires confirmation before the Religious Courts.[54] Academic assessment of Basyarnas consistently identifies efficiency, procedural flexibility, and sharia fidelity as its principal advantages, tempered by the observation that its institutional presence remains concentrated in major cities, limiting accessibility for customers in outlying regions.[55] Litigation before the Religious Courts represents the final tier, its absolute competence over sharia economic disputes, including murabahah default, confirmed by Article 49 of Law Number 3 of 2006 and reinforced decisively by Constitutional Court Decision Number 93/PUU-X/2012, which resolved the jurisdictional dualism previously created by Article 55 of the Sharia Banking Law.[56] Procedural reform has further improved accessibility through the small claims mechanism, gugatan sederhana, which permits qualifying murabahah disputes to be resolved within a maximum of twenty-five working days, substantially reducing the transaction costs historically associated with sharia economic litigation.[57] Judicial practice nonetheless reveals recurring procedural pitfalls, including claims rejected on formal grounds such as defective powers of attorney despite substantively meritorious allegations of default, illustrating that procedural rigour must

[52]Peraturan Otoritas Jasa Keuangan Nomor 2/POJK.03/2022 tentang Penilaian Kualitas Aset Bank Umum Syariah dan Unit Usaha Syariah, art 36.
[53]Puspitaningrat, Kayuan and Rimbawan (n 21).
[54]I Sari (n 17).
[55]ibid.
[56]Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama, art 49; Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012.
[57]A Afriana and AA Chandrawulan, 'Menakar Penyelesaian Gugatan Sederhana di Indonesia' (2019) 4(1) Jurnal Bina Mulia Hukum; D Solihin and others, 'Simplified Lawsuits in Dispute Resolution within Sharia Economic Law in Indonesia' (2024) 6(1) Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam, p. 86.

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be matched by adequate legal literacy among litigants and their counsel.[58] Audi et alteram partem, hear the other side, remains the procedural cornerstone uniting every tier of this architecture, ensuring that whichever forum a dispute reaches, both bank and customer retain a genuine opportunity to present evidence and argument before a binding outcome is imposed.

3.5 Critical Analysis: Reconciling Legal Certainty, Sharia Compliance, and Economic Function

Evaluated against the layered architecture described above, Indonesian dispute resolution practice for murabahah default demonstrates a discernible trajectory toward pluralism, offering banks and customers a menu of forums calibrated to dispute complexity, urgency, and the parties' preference for confidentiality or public adjudication.[59] This pluralism carries genuine advantages: it distributes caseload away from an already burdened judiciary, accommodates the sharia preference for amicable settlement embodied in the principle of sulh, and permits customised remedies such as restructuring that a court applying rigid civil procedure might struggle to fashion.[60] The pluralism nonetheless generates a coordination challenge, since parties confronted with overlapping forums, court, arbitration, mediation, must exercise genuine choice rather than being funnelled toward whichever forum happens to be procedurally convenient for the institutionally dominant party.[61] Asymmetry of bargaining power between Islamic banks and individual customers raises a legitimate concern that arbitration clauses inserted into standard-form murabahah contracts may function less as genuine consent and more as a mechanism steering disputes away from public judicial scrutiny, a concern that resonates with critical legal scholarship on adhesion contracts generally.[62] Addressing this asymmetry does not require abandoning arbitration or restructuring as legitimate tools; it requires strengthening disclosure obligations at the point of contracting and ensuring that customers retain meaningful access to Religious Court review where sharia compliance or procedural fairness is genuinely contested.[63] Economic analysis suggests that a well-calibrated dispute resolution architecture reduces the cost of capital for Islamic banks by

[58]Puspitaningrat, Kayuan and Rimbawan (n 21).
[59]I Sari (n 17); Puspitaningrat, Kayuan and Rimbawan (n 21).
[60]Kompilasi Hukum Ekonomi Syariah (n 10).
[61]Anshori (n 11).
[62]Nursari, Solehudin and Nasrudin (n 16).
[63]Peraturan Otoritas Jasa Keuangan Nomor 2/POJK.03/2022 (n 52).

lowering the risk premium attached to default, a benefit that ultimately flows through to customers in the form of more competitive financing margins.[64] The maqashid al-shari'ah framework, read together with the constitutional guarantee of legal certainty under Article 28D of the 1945 Constitution, supplies the normative benchmark against which every reform to this architecture should be measured: whether the mechanism protects property, preserves dignity, and delivers outcomes proportionate to the conduct actually established.[65] Lex dura sed tamen scripta est, the law is harsh but it is what is written, cannot serve as a complete answer to murabahah default disputes where the written law itself contemplates leniency for genuine hardship; the maxim must be read alongside its sharia counterpart that debt relief for the insolvent constitutes an act of charity rather than mere discretion.[66] A coherent path forward integrates strengthened financial literacy programmes, transparent restructuring criteria published by the Financial Services Authority, expanded Basyarnas presence beyond major urban centres, and continued judicial refinement of small claims procedure, each contributing to a dispute resolution ecosystem that honours pacta sunt servanda without abandoning the compassion embedded in Islamic contract philosophy.

4. Conclusion

Default within murabahah financing contracts assumes four juridically distinct forms under Indonesian civil law, non-performance, delayed performance, defective performance, and prohibited conduct, each carrying consequences calibrated by the debtor's capacity and the cause underlying the breach rather than applied through undifferentiated sanction. These forms are not merely academic categories; Religious Court decisions from Pekanbaru, Situbondo, and Pamekasan confirm that judges rely upon this fourfold classification when determining liability and remedy. Resolution of such default proceeds along a graduated architecture commencing with deliberation and restructuring, advancing through mediation and arbitration, and culminating in litigation before Religious Courts whose absolute competence has been constitutionally secured since Constitutional Court Decision Number 93/PUU-X/2012. Each tier of this architecture serves a distinct function, offering parties an opportunity to resolve

[64] I Sari (n 17).
[65] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, art 28D(1); Nasution and Nasution (n 15).
[66] Nasution and Nasution (n 15).

disputes at the level of formality, cost, and confidentiality most suited to the dispute at hand. This architecture achieves genuine legitimacy only when guided simultaneously by the civil law principle of pacta sunt servanda, the maqashid al-shari'ah objective of protecting property and dignity, and the fiqh muamalah demand for proportionate, compassionate treatment of debtors facing genuine hardship. Legal certainty and sharia compliance are not competing values to be traded off against one another; properly understood, they converge whenever a dispute resolution mechanism is designed with sufficient sensitivity to both formal rule and substantive purpose. Continued refinement of restructuring criteria, expansion of Basyarnas accessibility beyond major urban centres, and sustained judicial attention to procedural fairness together offer the most promising trajectory for reconciling legal certainty with sharia-compliant justice within Indonesia's Islamic banking sector.

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