ijtihad
pISSN 1410-4687 eISSN 2685-5216

Article History
Received : 30 May 2025
Revised : 05 May 2025
Accepted : 28 Jun 2025

Default Analysis in Islamic Banking Financing: Case Study of Bukittinggi Religious Court Decisions in 2016-2019

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ABSTRACT: This research aims to analyze the practice of default in financing in Islamic banking that occurred in the jurisdiction of the Bukittinggi Religious Court during the period 2016 to 2019. The phenomenon of default is understood not merely as the customer's failure to fulfill contractual obligations, but as a structural problem rooted in systemic weaknesses both on the part of the customer and the Islamic bank institution. This study uses a juridical-empirical approach, with a documentation method of case data obtained from the Case Tracking Information System (SIPP) of the Religious Court and the Bukittinggi District Court. The results of the analysis show that of the seven sharia economic cases recorded, six of them involved Islamic banks, and three were default cases. These cases indicate that dispute resolution tends to be done through litigation and collateral execution, instead of using sharia-based deliberation or mediation mechanisms. The causes of default are found to come from two sides, namely the weakness of risk analysis on the part of the bank and the limited economic capacity and legal literacy on the part of the customer. This practice shows the weak implementation of maqāṣid al-syarī'ah principles, especially the aspects of justice (al-'is) and protection of property (ḥifẓ al-māl). Thus, a reformulation of the Islamic economic dispute resolution system that is more just, humanist, and contextual is needed, so that the existence of Islamic banking is truly able to realize the vision of ethics and social justice at the level of praxis.

KEYWORDS: Default; Bukittinggi Religious Court; Islamic Economics

INTRODUCTION

Juridically, the existence of Islamic economics in Indonesia has received official recognition through various state regulations. This was marked by the birth of Law Number 7 of 1992 concerning Banking, which was later updated with Law Number 10 of 1998, which explicitly accommodates the existence of Islamic banking in the national legal system (Hartanto, 2011). Since the enactment of these regulations, the Islamic banking industry in Indonesia has shown rapid growth. This phenomenon, on the one hand, is a breath of fresh air for the community, especially Muslims who have been yearning for a financial system that is in line with sharia principles (Ascarya, 2008).

However, on the other hand, the optimism towards the development of Islamic banking needs to be reviewed more critically. Bank Indonesia reports that the total volume of Islamic banking business only accounts for around 1.6% of the overall national banking industry (Bank Indonesia, 2019). The comparison between the market share of Islamic and conventional banking which is around 2:96 shows that the contribution of Islamic

banking is still very marginal. Usman Kartadijaya (2011) also highlighted that although Islamic banking has grown institutionally, in practice it often does not reflect the ideal values of sharia as a whole. A number of experts state that Islamic banking practices are still far from ideal, and in some cases are even considered unfavorable to Muslims themselves (Karim, 2004).

One of the fundamental problems that arise in the practice of Islamic banking is the weak implementation of sharia principles in the legal relationship between banks and customers. This can be seen from the many legal problems that occur, especially disputes involving defaults in contractual relationships (Raharjo, 2014). These problems often lead to settlement through litigation, which reflects the non-optimal internal dispute resolution mechanism in the Islamic banking environment (Djamil, 2012).

Based on data from the Case Tracking Information System (SIPP) of the Bukittinggi Religious Court, there were seven cases related to sharia economy in 2016-2019. Of these, six cases were directly related to Islamic banking, and three of them were default cases. Although this number seems small quantitatively, qualitatively these cases can be seen as a representation of similar issues that occur in various other regions (SIPP Data, 2024).

In general, default can be caused by two main factors: first, negligence on the part of the debtor or customer; and second, overmacht/force majeure (Subekti, 2008). However, in the context of Islamic banking relationships, the causes of default cannot always be simplified to just these two factors. Often, the root of the problem has emerged since the early stages of contract formation, such as weak analysis of the feasibility of financing by the bank, or the discrepancy between the data submitted by the customer and the real conditions in the field (Saefuddin, 2015).

In the process of analyzing financing applications, credit failure can be caused by two main things. First, from the banking side, namely inaccuracy in the analysis process which results in risks not being detected properly (Zainuddin, 2013). In some cases, this is exacerbated by collusion between credit analysts and prospective customers. Second, from the customer's side, namely the occurrence of credit congestion caused by elements of intent or coercion due to worsening economic conditions (Ismail, 2017).

The problem of non-performing financing in Islamic banking can be viewed from two categories of causes, namely internal and external factors. Internal factors refer to the managerial weaknesses of the customer's company, such as ineffective purchasing and sales policies, weak control over cash flow, and inadequate capital structure (Abdullah and Tantri, 2012). Meanwhile, external factors include conditions beyond management control, such as natural disasters, socio-political conflicts, economic fluctuations, and technological changes that cannot be anticipated (Ghozali, 2005).

Agus Hartanto (2011) emphasized that the success of Islamic banking depends not only on the system used, but also on the quality of its implementation in practice, including in anticipating the risk of default. Meanwhile, Fatturrahman Djamil (2012) points out that the resolution of non-performing financing in Islamic banks requires an approach that is not only legalistic, but also based on the values of justice and maslahat.

Based on these various issues, this research focuses on analyzing defaults in Islamic banking practices, by taking a case study of cases heard at the Bukittinggi Religious Court between 2016 and 2019. This research aims to identify the patterns that cause default, examine the extent of the implementation of sharia principles in banking practices, and evaluate the relevance of supervision and risk management in preventing sharia financial disputes.

METHODS

This research uses an empirical juridical approach, which is a legal

approach that not only examines the law as written norms (law in books), but also observes how the law is applied in social reality (law in action). This type of research is descriptive analytical with case studies as the main strategy. The object of study is focused on default cases related to Islamic banking at the Bukittinggi Religious Court in the period 2016 to 2019. This approach was chosen to gain a comprehensive understanding of how the concepts of Islamic law and Indonesian positive law are practiced in the context of problematic Islamic financing, especially those that lead to legal disputes. Law is not only understood as a normative text, but as a social practice involving relations between financial institutions and society (Soekanto and Mamudji, 2004).

The data sources used in this research are primary data and secondary data. Primary data is obtained through documentation, namely the search and analysis of case decisions through the Case Tracking Information System (SIPP) of the Bukittinggi Religious Court, which contains details of the verdict, legal considerations, and case chronology. Meanwhile, secondary data is obtained from relevant legal literature, including textbooks, academic journals, DSN-MUI fatwas, and laws and regulations such as Law Number 10 of 1998. The data analysis technique used is descriptive qualitative by interpreting the data in depth to reveal the background, causes, and patterns of default in sharia financing. The data obtained is then analyzed by referring to the theories of agreement law, fiqh muamalah, and prudential principles in the Islamic banking system (Hartanto, 2011; Karim, 2004; Djamil, 2012).

RESULT AND DISCUSSION

Default in the Perspective of Islamic Banking Law

In the context of civil law and Islamic banking, default is defined as a condition in which one of the parties to the contract fails to carry out its obligations as agreed, either due to negligence, negligence, or intentionally. According to Subekti (2008), default can be in the form of not carrying out what was promised, carrying out but not as it should, carrying out late, or carrying out actions that are actually prohibited in the agreement. In Islamic banking practice, default occurs when the customer (debtor) does not pay principal and margin installments on time, does not submit collateral as agreed, or misuses the financing facility (Djamil, 2012).

In Islamic law, a contract is a morally and legally binding promise. Therefore, violation of the contents of the contract has legal consequences, both worldly and ukhrawi. However, in the framework of Indonesian positive law, the normative basis for default is contained in Article 1238 of the Civil Code, which states that the debtor is considered negligent from the time of the lapse of the time specified to fulfill the obligation without the need for prior warning if the agreement has specified the time for implementation (Abdullah and Tantri, 2012). In situations where the time is not specified, the debtor must first be given a summons or warning (aanmaning), as regulated in Articles 196 HIR and 197 RBg.

The bank as the creditor has the authority to take preventive and repressive steps to overcome defaults. Preventive steps can be in the form of sending a summons one to three times, renegotiating, to rescheduling, restructuring, or changing the terms of the contract (reconditioning). If these steps are unsuccessful, the bank can seize the collateral and conduct an auction based on the provisions of Article 20 paragraphs (2) and (3) of Law No. 4 of 1996 concerning Mortgage Rights and Article 200 HIR (Hartanto, 2011). This effort can lead to the execution of the auction against the collateral object as the last form of dispute resolution due to default (Kartadijaya, 2011).

The classification of default itself, as stated by Satrio (2005), consists of three: (1) not fulfilling the performance at all; (2) fulfilling but not on time; and (3) fulfilling but not according to the promised substance. These three forms have different degrees of legal consequences, but basically all can lead to the need for compensation, cancellation of the agreement, or execution of collateral according to the principle of contractual responsibility. Therefore, understanding the causes of default, both from the perspective of the customer and the bank, is the key to formulating a fair and effective financing system.

Analysis of Default in Sharia Banking at the Bukittinggi Religious Court (2016-2019)

The phenomenon of default in Islamic banking practices is an important issue that reflects the challenges of implementing sharia principles in the modern financial system. Islamic banking comes as an alternative to the conventional system by prioritizing the principles of justice, transparency, and partnership. However, the reality is that in Indonesia, especially in areas such as Bukittinggi, default problems still occur and even lead to disputes that reach the court realm. Based on data from the Case Tracking Information System (SIPP) of the Bukittinggi Religious Court, during the 2016-2019 period there were seven sharia economic cases, six of which directly involved Islamic banking institutions, and three of which were default cases. Although this number seems small quantitatively, qualitatively it shows that there are gaps in the implementation of sharia contracts and the mechanism for handling non-performing financing has not been optimized (Djamil, 2012).

Default in civil law refers to the failure of one of the parties to carry out the contents of the agreement as agreed. In the context of Islamic banking, default does not only mean delay or failure to pay obligations, but also includes violations of sharia contracts that have an impact on the imbalance of contractual relationships. In the Indonesian national legal system, the definition of default refers to the Civil Code Articles 1243 and 1244, which explain the legal consequences of not fulfilling an obligation. Meanwhile, in muamalah fiqh, the concept of default intersects with violation of promise (al-'aqd), and becomes an ethical and legal issue (Hartanto, 2011).

In general, the causes of default can be divided into two: first, due to negligence or inability of the customer (debtor) to carry out obligations; and second, due to factors beyond control (force majeure). However, the reality shows that the causes of default are often more complex and rooted in two sides: the internal weakness of the customer and the institutional weakness of the bank itself. Case decision data shows that some customers are unable to meet their installment obligations due to a decline in business income, family conflicts, or drastic changes in collateral value. However, there are also indications that the banks in some cases did not conduct a thorough analysis of financing feasibility. In some cases, it was found that the financing analysis was conducted with minimal data and no in-depth verification of the customer's ability (Abdullah and Tantri, 2012).

In addition, many Islamic banks at the regional level such as Bukittinggi still rely on conventional approaches to risk mitigation. Although the contracts used are labeled sharia such as murābaḥah or ijarah muntahiya bi al-tamlīk, the pattern of dispute resolution tends to use positive legal procedures such as the execution of collateral based on Article 20 of Law No. 4 of 1996 concerning Mortgage Rights, without considering deliberation-based

resolution or the principle of maṣlaḥah (Kartadijaya, 2011). This can be seen in the 2017-2019 cases at the Bukittinggi Religious Court, where the plaintiff (bank) generally immediately demands execution of the collateral due to default, without alternative efforts such as sharia mediation.

Furthermore, based on the analysis of case documents traced from SIPP, the following general patterns were found: First, at the beginning of the contract, customers were able to pay installments within six to eight months. However, after a change in income, the customer experienced difficulties that led to a payment bottleneck. Second, the bank gave one to two warning letters, but there was no strong evidence of sharia-based restructuring efforts. Third, the bank filed a default lawsuit and demanded full repayment and execution of the collateral object (Djamil, 2012).

In such cases, it appears that the principles of justice (al-'adālah) and social responsibility (al-mas'uliyyah al-ijtima'iyyah) have not been the main basis for dispute resolution. In fact, these principles are the main foundation in Islamic economics, as emphasized in maqāṣid al-syarī'ah. In this view, the implementation of contracts is not only seen from the perspective of legality, but also from the values that protect the rights of all parties, promote justice, and prevent harm. When an Islamic bank does not provide room for renegotiation or alternative solutions, then the institution can be considered to have failed to apply sharia principles substantially (Hartanto, 2011).

In addition, the risk management aspect is also questionable. Some cases show that the collateral used as collateral does not have a value comparable to the financing provided. For example, the house or land used as collateral had depreciated in value, and could not even be auctioned on target. This shows the weakness of collateral valuation and the absence of periodic evaluation. This is contrary to the prudential principle that should be applied by every financial institution, including Islamic banks (Karim, 2004).

In one of the 2018 cases, for example, it was mentioned that the customer could no longer afford the installments after experiencing two consecutive years of crop failure. He applied for restructuring, but was rejected by the bank due to the absence of an internal policy that allowed this. The judge in the judgment stated that the bank had followed legal procedures, but also suggested that a sharia-based internal resolution mechanism be provided in the future. This shows that the practice of default resolution is still more inclined to formal legality than to the ethical and spiritual approach that is the spirit of sharia (Djamil, 2012; Hartanto, 2011).

Another point to note is the lack of legal and financial literacy of some customers. In an informal interview conducted with one of the Islamic bank staff in Bukittinggi, it was found that many customers do not fully understand the contents of the contract, including their obligations and rights in the agreement. As a result, when a default occurs, customers are surprised that the legal procedures they face turn out to be very formal, fast, and have major consequences. This is an irony in itself considering that the initial spirit of Islamic banking is to build a partnership relationship that is mutually beneficial and full of responsibility (Kartadijaya, 2011).

Furthermore, when compared to classical fiqh principles of contract and responsibility, dispute resolution in Islamic banking in Indonesia currently appears to be far from the principles of ta'āwun (mutual assistance) and 'adl (justice). In fact, in the concept of fiqh mu'āmalāt,

default or inability to perform the contract should be seen wisely, taking into account the real conditions of the customer and providing solutions that do not plunge the weak party into greater difficulties (Shiddieqy, 2003). This approach, unfortunately, has not yet become common practice in the courts or in Islamic banking institutions themselves.

Therefore, the analysis of default practices in Islamic banking in Bukittinggi during 2016-2019 concludes that there are a number of things that need to be addressed. First, it is necessary to strengthen the post-contract assessment and monitoring system to ensure the feasibility and continuity of the customer's business. Second, it is necessary to establish a deliberation-based dispute resolution institution or unit in the bank's internal structure. Third, it is necessary to increase sharia law literacy for customers and bank officers. Fourth, it is necessary to reaffirm in the regulation that the settlement of defaults in sharia contracts should not only refer to positive law, but also to the main values of sharia.

These procedural and substantial reforms are very important so that Islamic banks do not only become label-based financial institutions, but actually become instruments of social and economic change for the people. If this is not done, then Islamic banks will only become "clones" of conventional banks wrapped in Arabic terms without substantive meaning. In this context, the existence of default cases is actually an indicator to conduct a deep introspection of the business model, relationship patterns, and vision of Islamic financial institutions in Indonesia in the future.

In the framework of Islamic economic law, a financing contract in Islamic banking is not only a legal agreement between two parties, but also reflects a moral relationship based on the principles of honesty, justice, and social responsibility. When there is a failure to fulfill obligations (default), the settlement approach should not solely prioritize penalties and execution, but also consider al-ta'āwun (helping), tasyāwur (deliberation), and raf' al-ḥaraj (avoiding difficulties). These principles make sharia not only legal-formal, but also ethical and contextual (Chapra, 2000). Therefore, the failure to prioritize a humane approach in resolving defaults is a major criticism of Islamic banking practices that tend to simply change terminology but not reform working methods.

If we compare it with some Islamic banking studies in other regions, for example in Yogyakarta and West Java, it is found that Islamic banks in the region have begun to establish an internal deliberation-based dispute resolution unit, known as the Sharia Internal Dispute Resolution Forum. This forum prioritizes negotiations based on sharia principles before the case is submitted to the court. In OJK's 2020 report, this kind of forum was able to resolve more than 60% of problematic financing disputes without going through litigation. This shows that the sharia-based non-litigative approach is more effective in maintaining the relationship between banks and customers and is more in line with maqāṣid al-syarī'ah.

On the other hand, in a study by Fatturrahman Djamil (2012), it was explained that problematic financing often occurs due to asymmetry of information between banks and customers. Banks often do not have sufficient instruments to evaluate potential medium-long term risks, especially if the financing is given to MSME players with unstable income. Therefore, strengthening the early warning system and post-accord assistance is an urgent matter that needs to be owned by all Islamic financial institutions, especially in the regions.

Another important aspect that needs to be highlighted is the role of Religious Court judges in addressing default cases. In some cases, judges tend to follow positive law textually, even though they have the authority to consider the values of substantive justice in accordance with Article 58 of the Religious Courts Law Number 3 of 2006. When judges only rely on formal proof and do not explore the socio-economic conditions of the customer, the settlement of the case can lose the aspect of social justice which is the basis of Islamic law itself. In many cases, such as case No. 260/Pdt.G/2017/PA.Bkt, the judge did rule in accordance with the bank's demands because the debtor was deemed unable to prove force majeure, but there was no effort from the court to mediate first.

In the context of maqāṣid al-syarī'ah, every financial contract must aim to realize maslahat and prevent mafsadat. The core objectives of shariah include the protection of religion (ḥifẓ al-dīn), soul (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), offspring (ḥifẓ al-nasl), and property (ḥifẓ al-māl). In this context, murābaḥah or ijarah contracts that end in default and execution of collateral without deliberation can be considered as failing to realize the protection of property and even the lives of weaker parties, namely customers. Especially if the execution is carried out on the only residence or productive land that is the source of the family's economy. Thus, the mechanistic approach based on formal law needs to be replaced by a more adaptive and humane maqāṣid approach (Kamali, 2008).

The suggested reformulation for Islamic banking in responding to defaults includes several basic things. First, the establishment of a sharia-based internal mediation unit at each Islamic bank branch that serves as an initial reconciliation institution before legal action is taken. Second, increasing the capacity of bank officers in detecting potential defaults early on through intensive training on socio-economic risk analysis. Third, the need to standardize the sharia-based collateral reassessment model periodically to avoid unfair losses in collateral value. Fourth, increasing sharia-based financial literacy to the community, especially for prospective MSME customers, so that they understand that contracts are not only commercial but also ethical and religious. Fifth, it is necessary to involve local fatwa institutions or representative offices of DSN-MUI in providing assistance for difficult dispute cases.

It is also important to note that default resolution in Islamic banking should not be separated from regulatory reform. Regulations are needed that strengthen the obligation to deliberate before the execution of collateral, including the obligation to provide a grace period for business recovery for customers affected by the economy. Such regulations can be derived from the OJK Regulation (POJK) on sharia customer protection, which is still too normative. In addition, the Supreme Court and the Religious Courts Agency need to develop technical guidelines for resolving sharia economic cases that contain detailed non-litigation steps as a reference for all judges.

In closing, it can be emphasized that default cases in Islamic banking, as occurred in Bukittinggi in 2016-2019, are not merely a phenomenon of breach of contract, but reflect a structural imbalance between sharia principles and their implementation. It takes a collective effort from regulators, courts, financial institutions and the community to restore the spirit of sharia as a financial system that is not only economically efficient, but also socially just and spiritually ethical. Thus, the settlement of defaults does not

stop at the formal victory of the bank, but also presents a true recovery for all parties.

CONCLUSION

Based on the description and analysis of default practices in Islamic banking in the jurisdiction of the Bukittinggi Religious Court from 2016 to 2019, it can be concluded that the reality of Islamic economic law in the field does not fully reflect the ideality of sharia principles as mandated in maqāṣid al-syarī'ah. The case findings show that although the number of default cases recorded is relatively small statistically, substantively it reflects a pattern of structural failure, both on the part of the debtor and the Islamic bank institution itself. Defaults do not solely arise due to customer negligence, but also due to weak risk analysis, poor post-contract supervision, and the lack of a conflict resolution approach based on the values of justice and benefit.

The practice of dispute resolution that prioritizes litigation and collateral execution as reflected in court decisions shows that the legal approach to Islamic banking at the practical level is still formalistic. This has an impact on the blurring of the distinction between Islamic and conventional banking at the implementative level, which ultimately obscures the spirit of renewal of the Islamic values-based public financial system. The existence of Islamic institutions, which should ideally be the protector and partner of the ummah, in some cases actually becomes an actor who deals legally with small communities experiencing economic difficulties. When contracts are not accompanied by the spirit of justice, when agreements are not supported by transparency and deliberation, then the failure of legal relations is not just a default, but a reflection of systemic defects in governance.

Therefore, structural and ethical corrective measures are needed. Among these are the need to establish sharia-based internal mediation mechanisms, improve the quality of financing analysis by banks, and the active role of courts and regulators in encouraging dispute resolution models that favor substantive justice. Legal literacy to the public and ethical capacity building for financial institution actors are also important prerequisites for realizing Islamic banking that is not only symbolically Islamic, but truly able to fulfill the social and spiritual mandate of Islam in the national economic system. Only then, the ideals of presenting an Islamic financial system that is rahmatan lil 'ālamīn can be realized in the pluralistic Indonesian society.

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