

SHARIA BANKING DISPUTE RESOLUTION MODEL THAT IS EFFECTIVE, EFFICIENT AND FAIR

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Abstract

Sharia banks also target MSMEs through KUR loans, growing like mushrooms in the rain. The small loan value becomes disproportionate if a dispute is resolved through the judicial process. So, what is needed by financial service providers and the public is a dispute resolution model that is effective and efficient, fair and certain. Research specifications use descriptive analytical methods, with normative and empirical juridical approaches. The data used explores various legal materials (primary, secondary, and tertiary legal materials) obtained through Library Research. Descriptive-analytical means describing certain individuals, symptoms or groups to determine the frequency of a social symptom precisely. In addition to library research, field research is also conducted to obtain primary data to support secondary data obtained through library research as mentioned above, namely through interviews using purposive sampling method. All data will be analyzed using qualitative juridical methods through in-depth interpretation of legal materials without using calculations in the form of numbers. The settlement of sharia economic disputes juridically can be resolved in two ways, namely through litigation and non-litigation. According to the results of the study, currently the KUR guarantor is PT Jamkrindo Syariah under the supervision of the OJK, in practice when there is bad credit Jamkrindo Syariah chooses a non-litigation dispute resolution model by means of deliberation and mediation off line and online based on the good faith of the parties (vide Article 55 of Law Number 21 of 2008 and Perma Number 3 of 2022), so as to fulfill a sense of justice and legal certainty, therefore there is a need for a special legal umbrella for resolving sharia economic disputes outside the Court.

Keywords: Dispute resolution, Sharia economy, Justice

INTRODUCTION

The impact of the Covid-19 virus pandemic last year is still being felt, especially for entrepreneurs or traders from the middle to lower classes, which has resulted in an increase in the poverty rate in Indonesia. After the pandemic, it is known that, according to information from the Central Statistics Agency, the percentage of poor people in September 2022 rose to 9.57 percent (BPS, 2023).

Since December 1970, the Organization of Islamic Cooperation (OIC) has been addressing the issue of poverty alleviation in various member countries due to globalization and the establishment of free trade zones. However, Indonesia, as a developing country, has not been able to overcome this challenge, despite having signed a multilateral cooperation agreement.

In line with the COVID-19 pandemic's poverty alleviation program, which aims to improve the community's economy, restore the standard of living, and support sustainable economic growth, it is necessary to develop products and receive financial support from new (innovative) financial institutions to provide the community with capital.

The intended business capital aims to infuse funds into the economic activities of small-scale entrepreneurs. The Presidential Decree of the Republic of Indonesia Number 99 of 1998, which specifies the fields/types of businesses reserved for small businesses and those open to medium or large enterprises with partnership conditions, calls for the provision of business capital to support small business activities, which are essentially people's economic activities within the business world.

The Covid-19 pandemic primarily affects small, micro, and medium enterprises, prompting the government to implement a priority program through the People's Business Credit (KUR) scheme. This scheme, a new product of financial institutions through Islamic banking, supports MSMEs by providing credit or financing for working capital and/or investment. This program is available to individual debtors, business entities, and/or business groups that are productive and feasible, but lack additional collateral or have insufficient collateral. The aim is to improve and expand access to financing for productive small businesses, increase the competitiveness capacity of MSMEs, and encourage economic growth and employment.

If MSMEs advance, it can indirectly encourage the acceleration or recovery of the community's economic situation (KPPN Palangkaraya, 2019). According to Presidential Instruction No. 6/2007 on Policies to Accelerate Real Sector Development and Empower MSMEs, MSMEs play a significant role in the country's economy, creating numerous jobs and reducing poverty.

Furthermore, on 5 November 2007, Bank Muallamat Indonesia (BMI) officially launched the KUR program, which does not require collateral from debtors and eliminates interest. In fact, Bank Muallamat Indonesia (BMI) first initiated this program in 1991. Typically, Bank Muallamat Indonesia (BMI) initiates the provision of KUR by entering into a voluntary, good-faith agreement that binds both parties to a debt and credit agreement (credit) with specific requirements. Usually, credit provided by financial institutions is followed by an additional agreement in the form of a collateral agreement, but this is not the case with KUR, considering that the value of the loan is relatively small, namely no more than Rp. 500,000,000, - (five hundred million) or small KUR whose ceiling is at most Rp. 50,000,000, - (fifty million rupiah) while the collateral is non-certificate or even in the form of immaterial collateral.

In principle, the guarantee agreement serves to anticipate situations where the debtor is unable to pay his debt. It not only fulfills the debtor's debt but also mitigates the risk of loss for the bank or financial service provider. In essence, guarantees can take various forms, such as personal or corporate guarantees, material guarantees, or even in the form of business prospects for the debtor. The debtor's business prospects are immaterial guarantees that function as a first way out (Salim, 2016).

Considering that in 2021, the growth of financing or credit using Sharia principles for MSMEs has increased significantly. To enhance the liquidity of MSMEs in their business operations, the government provides working capital guarantees through PT (Persero) Jamkrindo and Askrindo.

In this context, banks and financial service providers must promptly address bad debts to minimize losses. The policy of handling bad debts is closely related to the conditions of each bank (Sutojo, 1997), which currently has a lot of cooperation with PT Jamkrindo Syariah (Jamsyar) under the supervision of the Financial Services Authority of the Republic of Indonesia (OJK).

In practice, debtor credit, also known as bad credit, often presents numerous challenges. When there is bad credit, the court resolves it in an adversarial manner. Anticipating this, numerous financial service providers and banks are searching for an effective and efficient approach to address bad credit issues, ensuring the issue doesn't persist, the bank doesn't incur losses, and customers have access to justice.

Currently, the judiciary, as a dispute resolution institution, faces significant criticism from legal experts, practitioners, and the public due to its perceived long-winded and adversarial nature, excessive formality, and lack of responsiveness to economic developments and needs, leading to feelings of ineffectiveness and inefficiency. As stated by Ariani (2012), the judicial system does not always represent the people's sense of justice and sometimes even tends to take sides, leading to corruption, collusion, and nepotism. Therefore, it is appropriate that the court is the last resort in resolving civil disputes.

According to Satjipto Raharjo, the slow resolution of legal disputes through the courts ultimately leads to weak law enforcement (Rahardjo, 2003). This is because the law enforcement process can take a very long time, is not simple, and requires a lot of money.

As a solution to the above, a dispute resolution model related to bad debts originating from the People's Business Credit (KUR) agreement is needed that is effective, efficient, and fair and creates legal certainty. A direct approach through deliberation, or what is termed in the business world as negotiation, to find a way out in repaying bad credit is highly expected, considering that the credit does not use collateral and can also be resolved through mediation. According to Priyatna Abdurasyid's opinion in his book *Maskanah* (2010), mediation is a process in which disputes between two or more parties are resolved in a direct hearing before an independent third party (mediator) to help the parties resolve their disputed issues (Maskanah, 2010).

The goal of deliberation (negotiation) and/or mediation is to open up a dialogue, identify the root causes of customers' unfulfilled expectations, or what we refer to as "bad credit," and simultaneously find a solution that is fair and acceptable to both parties so that everyone can have legal certainty.

Many countries have adopted the two dispute resolution options as an acceptable model for resolving banking disputes, as they offer a more efficient and effective approach, fostering a sense of justice and restoring harmony in the relationship between creditors and debtors, given the mutual dependence of both parties (Azhar, 2019).

In relation to the above description, issues arise when there is a dispute (bad credit) about whether the religious court is authorized to resolve the dispute between the creditor and the debtor, and what model of sharia economic dispute resolution is effective, efficient, and fair, to provide legal certainty and reduce creditor losses. For this reason, separate research is necessary.

RESEARCH METHOD

This research employs a descriptive-analytical approach, utilizing a normative juridical method, which views the law as a norm or *das sollen*. In this research, an empirical approach is also needed, namely legal research on the enactment or implementation of normative legal rules in reality in each specific legal event that occurs in society (*das sein*), which is related to finding the right, effective, efficient, and fair dispute resolution model related to bad credit from MSME actors who get KUR.

This research explores various legal materials (primary, secondary, and tertiary legal materials) obtained through library research. Descriptive-analytical means describing certain individuals, symptoms, or groups to determine the frequency of a social symptom precisely. Law serves as a guide to human behavior in various fields of life, regulating order and justice. Procedural law, especially civil procedure law, is no less important than other laws (Mertokusumo, 2009). Procedural law is always necessary to uphold the law, as it provides justice and legal certainty. In addition to conducting library research, researchers also carried out field research to gather primary data, specifically through interviews using the purposive sampling method (Soekanto & Mamudji, 2014).

Furthermore, we will employ qualitative juridical methods to analyze all data, interpreting the legal materials presented above in detail without relying on numerical calculations. This approach ensures that researchers thoroughly describe the research results before drawing conclusions. This qualitative method is dynamic, allowing for changes and additions in the analysis (Srivastava & Thomson, 2009), which can be adjusted to the existing phenomenon.

RESULTS AND DISCUSSION

Overview of Islamic Banking

Banking serves as a financial service business that significantly contributes to a country's development and economy. Its primary role is as an intermediary institution, collecting funds from the public and channeling them back to the public through various programs, including credit provision. From the past until now, people still trust banks when they need an injection of business funds, therefore, banking plays an important role in the economic system.

The development of society in Indonesia, a country predominantly Muslim, has led to a transformation in the legal system and the banking industry. Initially, the community demanded

financial services based on Islamic principles, leading to the emergence of Islamic banking. Islamic economics provides an alternative approach to address the dynamics of both the global and national economies (KPPN, 2018).

Conventional banks were established much earlier than those labeled as sharia banks. Egypt initiated Islamic banking internationally in 1970 by proposing the establishment of an Islamic bank at the OIC session, replacing the interest scheme with a profit and loss sharing scheme. The OIC members agreed and proceeded to implement this proposal in their respective countries, including Indonesia.

Furthermore, since 1992, PT Bank Muamalat Indonesia (BMI) has officially established the first Islamic bank in Indonesia. The legal basis for the operation of banks labeled sharia, at that time, was only accommodated in one paragraph about “bank dengan sistem bagi hasil” 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.

The politics of law led to the amendment of Law No. 7 of 1989 concerning Religious Courts, namely the addition of absolute authority given to the Religious Courts as outlined in Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts (PA Law), namely “*Ekonomi Syariah*”, which one of the scope of the Islamic economy is Islamic banking. However, after the PA Law was passed, it did not explain further about the dispute resolution process relating to the Islamic economy.

Along with the development of Islamic banks in Indonesia and at the same time to fill the legal vacuum in terms of sharia economic dispute resolution, Law Number 21 of 2006 concerning Islamic Banking was passed. The enactment of Law Number 21 of 2006 then provides a firm foundation for procedural law in the settlement of civil disputes using “*Prinsip Syariah*” as outlined in Article 55 of the Sharia Banking Law and more explicitly described in the Explanation of Article 55 paragraph (2).

Based on the Financial Services Authority (OJK) report published in the 2019 Sharia Financial Development Report, the number of banks conducting business activities based on sharia principles is increasing. Currently there are 14 (fourteen) Islamic commercial banks (BUS), 20 (twenty) Islamic business units (UUS), and 164 (one hundred and sixty-four) Islamic people's financing banks (BPRS) (Baihaki & Prasetya, 2021).

Government policy since 2007 to accelerate the development of the real sector and empowerment of MSMEs has become a government program that is then outlined in a joint memorandum of understanding between the government, banks, and guarantee companies through Presidential Instruction Number 6 of 2007 concerning policies and acceleration of real sector development and empowerment of MSMEs, which aims to improve the economic welfare of the community. The implementation of this program is crucial in the aftermath of the Covid-19 pandemic. The program policy is expected to provide benefits to the wider community as much as possible to improve the business or economy of the community, especially after the COVID-19 pandemic, one of which provides convenience in increasing business capital. The government relaunched the People's Business Credit (KUR) program on October 9, 2007, targeting small and medium enterprises (MSMEs) that meet the micro business criteria outlined in Law Number 20 of 2008 concerning MSMEs (UMKM Law) or productive Indonesian individuals (Lastina & Budhi, 2018).

KUR, which is intended for MSMEs, is given by various Islamic banks based on the provisions of the MSME Law which states “*Usaha Mikro adalah usaha produktif dalam 3 (tiga) kriteria yaitu pertama milik perorangan dan/atau badan usaha perorangan dengan ketentuan Memiliki kekayaan bersih paling banyak Rp50.000.000,00 (lima puluh juta rupiah) tidak termasuk tanah dan bangunan tempat usaha; atau Memiliki hasil penjualan tahunan paling banyak Rp300.000.000,00 (tiga ratus juta rupiah), kedua kriteria usaha menengah yang memiliki kekayaan bersih Rp. 50.000.000,00 (lima puluh juta rupiah) sampai dengan Rp. 500.000.000,00 (lima ratus juta rupiah) dengan hasil penjualan pertahun Rp. 300.000.000,00 (tiga ratus juta rupiah) sampai dengan Rp. 2.500.000.000,00 (dua milyar lima ratus ribu rupiah), dan kriteria yang ketiga adalah usaha ekonomi produktif yang berdiri sendiri, yang dilakukan oleh perorangan atau badan usaha yang bukan merupakan anak perusahaan atau bukan cabang perusahaan yang memiliki kekayaan bersih Rp. 500.000.000,00 (lima ratus juta rupiah) sampai dengan Rp. 10.000.000,00 (sepuluh milyar) dan memiliki hasil penjualan Rp. 2.500.000.000,00 (dua milyar lima ratus juta rupiah) hingga Rp. 50.000.000.000,00 (lima puluh milyar rupiah)”*.

Lending and borrowing, or direct financing based on the agreement article, has been a long-standing practice. However, as its development has coincided with the advancement of information technology, it has also brought about significant changes to the banking system. Various banking

services, particularly lending and borrowing, have emerged through the use of information technology and loan applications, aimed at facilitating the distribution of the KUR program to MSE entrepreneurs.

This is also regulated in the Financial Services Authority Regulation (PerOJK) Number 77/POJK.01/2016, to be precise in Article 1, paragraph (3), which states that the implementation of financial services to bring together lenders and receive loans in order to carry out lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network. These provisions establish a legal foundation for banks implementing the KUR program, enabling them to offer lending and borrowing services via technology-based lending and borrowing applications (Hasanah, 2018). The provisions of Law Number 19 of 2016, which amends Law Number 11 of 2008 concerning electronic information and transactions, also apply to all of them.

Bad Credit

Financing provided to MSMEs through the KUR program provided by Islamic banks is in the form of lending and borrowing transactions in the form of qardh receivables (vide Article 1 paragraph (25) based on an agreement between Islamic banks that requires the financed to return funds after a certain period of time in return or profit sharing).

Agreement or consensus is a requirement in an agreement. Therefore, when MSME actors participate in the KUR program, they must create a credit agreement, also known as a contract, that meets the criteria of the five C's of credit analysis principles (Simanjuntak, 2023), which include the principles of character, capacity, capital, collateral, and economic conditions. The prudential principle, as outlined in Article 35 of the Islamic Banking Law, must also be adhered to by Islamic banks to ensure their confidence in lending to creditors. The importance of applying the prudential principle in the lending and borrowing facility is to determine or assess the five principles above, so that Islamic banks are confident that customers or debtors are able and have good intentions to repay the funds received from bank loans.

When the implementation of the precautionary principle by Islamic banks in providing financing or credit to debtors results in the bank losing money, it can be categorized as an act or action that can be punished, see Article 65 and Article 66 of the Banking Law.

In principle, the lending and borrowing facility is followed by a guarantee; its function is as a guarantee if the debtor does not or stops paying for the funds he has received, but it is different from the KUR program, which does not require a loan, because the credit value (ceiling) is relatively small for individual and medium-sized MSMEs, but there is an institution that guarantees it, namely PT Jamkrindo Syariah (vide Financial Services Regulation Number 2/POJK.05/2017 concerning the Implementation of the Guarantee Institution Business) (PT. Jamkrindo Syariah, 2023). However, this doesn't imply that Islamic banks disregard the five debtor assessment principles and the prudential principles previously mentioned; instead, they need to exercise greater caution in selecting the recipients of loans. In reality, Islamic banks rely solely on trust to provide financing or loans, necessitating the presence of KTP and NPWP, as specified in the contract, rather than offering tangible collateral, as President Jokowi has recently demanded.

Not all sharia credit through the KUR program provided to MSME actors is running smoothly in the post-Covid-19 pandemic. The problem of bad credit must be resolved immediately; the goal is that both parties (creditors and debtors) legally formally get legal certainty (Friedmann, 1990). In reality, the bank itself may be at risk, but by working with PT Jamkrindo Syariah as the guarantor, we can reduce this risk.

Settlement of Sharia Economic disputes

As the purpose of the establishment of Islamic banks is to create the benefits of Muslims, the practice of Islamic banks should not conflict with the teachings or guidance of the sharia religion itself. Article 1 paragraph (16) states, "*nasabah adalah pihak yang menggunakan jasa bank syariah dan atau/ Unit Usaha Syariah (UUS).*" The article does not explicitly state that customers are only Muslims, so it can be interpreted that Islamic banks are not only intended for Muslim customers but do not rule out the possibility of being used by people who are not Muslims. Consequently, the interpretation of the word "*pencari keadilan*" in Article 2 of the PA Law can be expanded, which is not only based on "hanya" for people who are Muslims but must be expanded to "*Setiap orang yang melakukan hubungan hukum perdata yang berlandaskan prinsip syariah Islam*" becomes the authority of the Religious Court. This is in line with what is referred to in Article 1, paragraph (13), of the Banking Law, which basically states that sharia principles are the rules of agreement based on Islamic law between banks and other parties.

Sharia principles conceptually, are believed to be ideal as a way of thinking that is comprehensive and universal, so that it can be seen from the basic philosophy that distinguishes between conventional and sharia economic activities (Abubakar & Handayani, 2019). Therefore, when the debtor and creditor (Sharia bank) have problems or the emergence of a dispute that must be resolved immediately in principle, it must also be resolved by paying attention to the foundation of the operation of Islamic banks, namely *"prinsip syariah"* so that the aim of creating the benefits of Muslims in particular and in general also creates peace and happiness in business relationships (Achmad & Maskanah, 2020).

According to J.G Merrills, defines the word dispute as a dispute over a matter of fact, law or politics in which one party's statement of rejection, counterclaim or denial from the other party for which it must be resolved immediately (Merrills, 2017).

In principle, dispute resolution in Indonesia according to Article 59 of Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law) can be resolved through two channels, namely litigation and non-litigation channels. The legal politics of Islamic banking dispute resolution related to KUR provided to MSME members cannot be separated from the harmony of Islamic economic values and the characteristics of Islamic banking itself. So, any disputes that arise between the two parties (between Islamic banks and their customers) can naturally be resolved while still aiming for the benefit of the people or paying attention to the functions of Islamic banking which aim at the welfare and peace of society in real economic development.

Based on Law Number 3 of 2006 concerning Religious Courts in conjunction with Law Number 50 of 2009 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, the authority of the Religious Courts was added, namely to resolve Sharia Economic disputes. Then there was a choice of Law and Choice of forum in terms of sharia economic dispute resolution, namely with the issuance of Law Number 21 of 2008 concerning Sharia Banking, which states in the Explanation of Article 55 paragraph (2) that the settlement of sharia economic disputes can be done through deliberation, mediation, General Courts, Religious Courts and arbitration. So that this caused the emergence of a Judicial Review of Article 55 paragraph (2), and finally came out the Constitutional Court Decision Number 93/PUU-X/2012 which stated that the absolute authority to resolve sharia economic disputes was in the Religious Courts.

After the Constitutional Court Decision, and at the same time providing solutions for Islamic banks or Islamic guarantee institutions (PT. Jamkrindo Syariah) or also Islamic financial institutions that provide KUR, the Supreme Court made a breakthrough by issuing Perma Number 2 of 2015 concerning Procedures for Settling Simple Lawsuits as a manifestation of the principle of access to justice which requires that the object of the lawsuit is not more than Rp. 200,000,000.00 (two hundred million) and between the plaintiff and the defendant are in one jurisdiction, which was later amended to Perma Number 4 of 2019 with the addition of the object of dispute to Rp. 500,000,000.00 (five hundred million). This simple lawsuit aims to provide an alternative dispute resolution with the value of the object of the dispute not exceeding the predetermined, namely by simplifying the court process, namely within 25 (twenty-five) days the parties have received a decision.

Initially, Islamic banks that found that their debtors could no longer fulfill their obligations were resolved through the means of a Simple Lawsuit or what is known as the small claim court, but in practice banks still encountered many obstacles and obstacles (Prasetyo, 2023). Many studies have been conducted related to the Simple Lawsuit facility, stating that in practice the Simple Lawsuit does not solve the problem, one of which is related to the implementation of the Decision and is paid (Rohman et al., 2022). Given that the KUR program does not include material guarantees and the ceiling value is also relatively small, so that the judge's decision seems to only win on paper. So in its development, the Simple Lawsuit slowly began to be used less in the settlement of bad debts whose value of the object of dispute was not more than Rp. 500,000,000.00 (five hundred million), especially related to the KUR program provided to medium and individual MSME entrepreneurs.

This means that even though the idea or birth of dispute resolution through the Simple Lawsuit aims to provide solutions to justice seekers whose value of the object of dispute is not more than Rp. 500,000,000.00 (five hundred million rupiah) and at the same time accommodates the principles of simple, fast and light costs, according to some research results there are still obstacles in the implementation of the decision, therefore it cannot be used as a model for resolving disputes related to the KUR program provided to individual or medium-sized MSMEs.

Furthermore, again based on Article 55 paragraph (2) of the Sharia Banking Law which expressly stipulates *"dalam hal para pihak telah memperjanjikan penyelesaian sengketa selain sebagaimana dimaksud pada ayat (1), penyelesaian sengketa dilakukan sesuai dengan isi akad. Ketentuan ini dapat mengenyampingkan Putusan MK dan sekaligus memberikan legal standing bagi alternatif"*

penyelesaian sengketa sebagai suatu konstruksi hukum yang dapat dipergunakan sebagai pilihan penyelesaian sengketa bagi para pihak, asalkan disepakati dan dituangkan dalam akad yang didasarkan pada prinsip syariah”.

The choice of dispute resolution is left entirely to the wishes of the parties and is stated in the contract. This means that by signing the contract, the parties have indirectly agreed or agreed to the choice of dispute resolution outside the Religious Court, provided that it does not conflict with the principles of Islamic law as stated in Article 55 paragraph (3) of the Islamic Banking Law.

Indeed, out-of-court dispute resolution has long been known by the Indonesian people, namely since the Indonesian state existed, which is predominantly Muslim in resolving disputes, especially domestic problems, often based on the Qur'an, one of which is stated in Surah Al-Baqorah/2: 233, also QS al-Syura/42: 38 which basically contains deliberation as a way out to solve problems (Fitriyah, 2022), this is also in line with Pancasila as the philosophy of the Indonesian nation, especially the fourth Precept, namely the principle of mutual cooperation and consensus in finding solutions.

This brings with it the legal politics of sharia economic dispute resolution (especially in the financial sector) directed towards simple, cheap (efficient), fast and provide access to justice and at the same time provide legal certainty to both, namely through deliberation to reach consensus.

Out-of-court dispute resolution through deliberation is referred to in Article 6 paragraphs (2 and 3) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law) as *“pertemuan langsung”* or negotiations and mediation if negotiations are unsuccessful.

The difference between negotiation and mediation lies in the presence of a neutral third party, assisting in resolving their dispute called a mediator, as an assistant to the parties in finding a settlement that is acceptable to the parties to the dispute (Rahmadi, 2011). Both methods are a process to achieve peace with a consensus approach or consensus of the parties in order to achieve a fair result without incurring large costs (efficient).

The settlement of bad debts in the KUR program, which is given to entrepreneurs or MSME actors with small ceilings without collateral or guarantees, is actually more appropriate to be resolved through negotiation and/or mediation than by using the Litigation settlement method through the Simple Lawsuit procedure or other means of lawsuit.

By choosing negotiation or mediation as a way to resolve bad credit in the KUR program, it can have a positive impact on the parties, meaning that their relationship is maintained because it cannot be denied that creditors and debtors need each other (mutual symbiosis) because it is resolved in a *win win solution*.

The method of resolving disputes through negotiation and or mediation contains two orientations, the first as a process oriented to the rights of the parties or the interests of the parties, namely resolving bad credit, the second is oriented towards interests that are in the nature of improving the situation by accommodating the various wishes of the parties by providing solutions in solving their problems (Nugroho, 2019), and by conducting negotiations and or mediation there is deep interaction between them so that disputes can be resolved with the principle of *win win solutions* peacefully (Antoni, 2008).

In fact, there are models of out-of-court dispute resolution other than those mentioned above, namely those mentioned in the explanation of Article 55 paragraph (2) of the Sharia Banking Law which is in line with Article 6 paragraph (4) of the Arbitration Law, namely Dispute Settlement through Arbitration. However, in practice, as with dispute resolution through a Simple Lawsuit, dispute resolution through arbitration is less desirable for banks as lenders. Because according to the bank or PT Jamkrindo Syariah as the guarantor, the process takes a longer time so that it is inefficient and tends to require large costs, meaning that it is not comparable to the size of the loan ceiling in the KUR program for individual and medium-sized MSME entrepreneurs whose loans are not followed by collateral or property guarantees.

Based on the results of the study and analysis above, it can be concluded that negotiation and/or mediation is the right, effective and equitable choice of model to resolve bad credit related to the KUR program provided to individual and medium-sized MSME entrepreneurs who do not provide material security. This is in line with the philosophical, cultural and formal legal basis regulated in Article 130 HIR, so that the objectives of the law in order to provide justice, legal certainty and benefits can be achieved through peaceful agreements, therefore the goals of the welfare of the people and order are ultimately achieved as well.

Furthermore, dispute resolution efforts that use negotiation and/or mediation models, in their development can also be carried out by utilizing the development of information technology. With the issuance of Perma Number 3 of 2022 concerning Mediation in court electronically, it has a positive

impact, namely it can expand the reach of dispute resolution between customers and banks, meaning that mediation can be carried out electronically using information and communication technology facilities, which can be held through teleconferences to obtain an agreement on the settlement of bad credit.

CONCLUSION

The settlement of disputes over bad credit in Islamic banking that organizes the KUR program for MSME entrepreneurs can in principle be resolved through litigation and non-litigation channels. The Litigation Path, based on the provisions of Article 55 paragraph (1) of the Islamic Banking Law, must be resolved through the Religious Court, as well as the Constitutional Court Decision Number 93 / PUU-X / 2012 provides confirmation of the absolute authority of the Religious Court in resolving cases related to additional authority as outlined in Article 49 of the Religious Courts Law, namely related to the scope of Islamic economics.

Furthermore, specifically the settlement of bad credit in Islamic banking, taking into account the function of Islamic banking as a financial institution to implement the Government's program, namely the distribution of People's Business Kredit funds to MSME entrepreneurs in collaboration with PT Jamkrindo Syariah as the guarantor, taking into account its function as a trust agent based on prudential principles through the five C's of credit analysis to its customers and based on sharia principles, then when there is bad credit, the non-litigation model, namely negotiation and / or mediation, becomes a more effective, efficient and fair settlement because the result is a win win solution. In addition, non-litigation settlements are simpler, cheaper (efficient), faster and provide access to justice and at the same time provide legal certainty to both, namely through consensus. The provisions of Article 55 paragraph (2) of the Sharia Banking Law can be used as a legal basis in choosing a negotiation or deliberation model and or mediation as an option for resolving disputes by taking into account Islamic sharia principles (vide Article 55 paragraph (3) of the Sharia Banking Law), so that the relationship between customers and Islamic banks is maintained.

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