



## **Fatwa, Default, and Legal Certainty: A Study of Normative-Practical Gaps in the Resolution of Non-Performing Loans in Sharia Microfinance Institutions**

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### ***Abstract***

This study aims to analyze the forms of default in Islamic financing, particularly *murābahah* transactions (mutually beneficial transactions) at *Baitul Māl wa Tamwīl* (BMT) Adzkiya Khidmatul Ummah (AKU) in Metro City, and to examine the normative-practical gap between the settlement mechanisms applied and the provisions stipulated in the DSN-MUI fatwa. This study adopts a qualitative approach, collecting data through interviews, document analysis, and direct observation of *murābahah* financing procedures and default handling. The study's results show significant differences between the provisions of the DSN-MUI fatwa and the operational practices of BMT. First, late fees are imposed uniformly on all problematic customers, including those who are unable to pay, while DSN-MUI Fatwa No. 47/2005 limits fines only to debtors who are able but negligent (*mumāthil*). Second, the allocation of penalty funds has not been disclosed transparently, contrary to the provisions of DSN-MUI Fatwa No. 04/2000, which requires clarity on fund usage. Third, there is no classification of debtor ability before sanctions are imposed. Fourth, restructuring, which is recommended as the first step in Sharia-based settlements, is only carried out after three late payments, making penalties the primary response. This study contributes empirically by presenting comprehensive evidence of normative-practical inconsistencies in sharia financing and legal certainty, and conceptually emphasizes the importance of compliance governance in achieving fairness, transparency, and compliance with sharia principles.

**Keywords:** *Murābahah; Default; Normative-Practical Gap; DSN-MUI Fatwa, Resolution of Problematic Financing*

### ***Abstrak***

Penelitian ini bertujuan untuk menganalisis bentuk-bentuk wanprestasi dalam pembiayaan syariah khususnya transaksi *murābahah* (transaksi saling menguntungkan) pada *Baitul Māl wa Tamwīl* (BMT) Adzkiya Khidmatul Ummah (AKU) Kota Metro serta mengkaji kesenjangan normatif-praktis antara mekanisme penyelesaian yang diterapkan dengan ketentuan yang diatur dalam fatwa DSN-MUI. Penelitian ini menggunakan pendekatan kualitatif dengan pengumpulan data melalui wawancara, analisis dokumen,

dan observasi langsung terhadap prosedur pembiayaan *murābahah* dan penanganan wanprestasi. Hasil penelitian menunjukkan adanya perbedaan signifikan antara ketentuan fatwa DSN-MUI dan praktik operasional BMT. Pertama, denda keterlambatan dikenakan secara seragam kepada seluruh nasabah bermasalah, termasuk yang tidak mampu membayar, sementara Fatwa DSN-MUI No. 47/2005 membatasi denda hanya untuk debitur mampu tetapi lalai (*mumāthil*). Kedua, alokasi dana denda belum disampaikan secara transparan, bertentangan dengan ketentuan Fatwa DSN-MUI No. 04/2000 yang mewajibkan kejelasan penggunaan dana. Ketiga, tidak terdapat klasifikasi kemampuan debitur sebelum penetapan sanksi. Keempat, restrukturisasi yang direkomendasikan sebagai langkah awal penyelesaian berbasis syari'ah baru dilakukan setelah tiga kali keterlambatan sehingga denda menjadi respons utama. Penelitian ini berkontribusi secara empiris dengan memaparkan bukti komprehensif mengenai ketidaksesuaian normatif-praktis dalam pembiayaan syariah dan kepastian hukum, serta secara konseptual menegaskan pentingnya tata kelola kepatuhan untuk mewujudkan keadilan, transparansi, dan kesesuaian prinsip syariah.

**Kata kunci:** *Murābahah; Gagal Bayar; Kesenjangan Antara Norma dan Praktik; Fatwa DSN-MUI, Penyelesaian Pembiayaan Bermasalah*

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## Introduction

In modern civil law discourse, default is understood as the failure of a debtor to fulfill the obligations specified in a contract, which gives rise to legal consequences.<sup>1</sup> Default is a form of violation of the obligations agreed upon in an agreement.<sup>2</sup> In loan or financing schemes, the concept of default serves as the main instrument for ensuring legal certainty and balancing the rights and obligations of the parties.<sup>3</sup> Within the Indonesian legal framework, default is regulated in the Civil Code (KUHPer) Article 1243, which emphasizes that an agreement gives rise to binding legal consequences, so that a breach

<sup>1</sup> D. Sulistianingsih et al., "Juridical Consequences of Anticipatory Breach as a Form of Breach of Contract," *Journal of Indonesian Legal Studies* 9, no. 1 (2024): 131–54, <https://doi.org/10.15294/jils.vol9i1.4537>.

<sup>2</sup> Roger Cotterrell, "What Is Transnational Law?," *Law & Social Inquiry* 37, no. 2 (2012), <https://doi.org/10.2307/23252270>.

<sup>3</sup> Hugh Collins, *The Law of Contract* (Cambridge: Cambridge University Press, 2003).

of it opens the door to legal remedies in the form of the fulfillment of obligations, compensation, or cancellation of the agreement.

However, in modern financing practices (particularly in financial institutions), default can no longer be understood as the individual failure of the debtor,<sup>4</sup> but rather as a legal phenomenon influenced by contract design, institutional governance, and the effectiveness of dispute resolution mechanisms.<sup>5</sup> The effectiveness of handling defaults is highly dependent on the institutional context and legal system used.<sup>6</sup> This framework of understanding becomes relevant when applied to the context of Sharia microfinance institutions, such as *Baitul Māl wa Tamwīl* (BMT), which carry out financing functions based on Sharia principles and have relatively close social relationships with their customers.<sup>7</sup>

In BMT practice, default often occurs in *murābahah* (profit sharing) financing when customers fail to meet their payment obligations in accordance with the contract,<sup>8</sup> even though normatively *murābahah* is designed as a sale and purchase contract with a higher degree of certainty compared to profit-sharing-based schemes.<sup>9</sup> However, the dominance of *murābahah* increases financing problems if it is not balanced with adequate risk management.<sup>10</sup> Furthermore, default in BMT is not only related to the economic capacity of customers, but is also influenced by social relations, weak contract standardization, and the gap between the normative provisions of the DSN-MUI fatwa and operational practices at the institutional level.<sup>11</sup> Normatively, the consequences of default have been explained in DSN-MUI Fatwa No. 47/2005, which regulates the settlement of *murābahah* receivables for customers who are unable to pay, emphasizing

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<sup>4</sup> R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2001); Salim H.S, *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2019).

<sup>5</sup> Omri Ben-Shahar and Ariel Porat, eds., *Fault in American Contract Law*, 1st ed. (Cambridge University Press, 2010), <https://doi.org/10.1017/CBO9780511780097>.

<sup>6</sup> Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation: Text and Materials*, 1st ed. (Cambridge University Press, 2007), <https://doi.org/10.1017/CBO9780511801112>.

<sup>7</sup> Ahmad Ridwan Hasan, *Manajemen Baitul Mal Wa Tamwil* (Bandung: Pustaka Setia, 2013).

<sup>8</sup> Habib Ahmed, “Financial Inclusion and Islamic Finance: Organizational Formats, Products, Outreach and Sustainability,” in *Economic Development and Islamic Finance* (Washington DC: The World Bank, 2013), <https://durham-repository.worktribe.com/output/1675193>.

<sup>9</sup> Ahmad M. Mashal, “Islamic Financial in the Global Financial System,” *Asian Economic and Social Society* 2, no. 1 (2012), <https://archive.aessweb.com/index.php/5002/article/download/749/1198>.

<sup>10</sup> Rodney Wilson, *The Development of Islamic Finance in the GCC* (London: London School of Economics and Political Science, 2009), <http://eprints.lse.ac.uk/id/eprint/55281>.

<sup>11</sup> Zamir Iqbal and Abbas Mirakhor, *Ethical Dimensions of Islamic Finance* (Cham: Springer International Publishing, 2017), <https://doi.org/10.1007/978-3-319-66390-6>.

the principles of justice, benefit, and the prohibition of practices that contradict Sharia, including emphasizing that penalties may only be imposed on customers who are able and deliberately delay payment.<sup>12</sup>

Therefore, handling defaults in BMT requires a mechanism that is not only legally effective but also consistent with the principles of fairness, prudence, and Sharia compliance as the foundation of Sharia financing. The practice of default in this financing also occurs at BMT Adzkiya Khidmatul Ummah (BMT AKU) in Metro City, which actively provides financing to the community through various contracts, especially *murābahah* contracts, which account for 80% of its financing portfolio.<sup>13</sup> *Murābahah* is seen as a simple form of financing, even though it has a fairly high risk of default.<sup>14</sup> However, the practice at BMT AKU Metro shows a deviation from normative provisions, namely the imposition of fines on all customers who are late in paying their financing, even those from economically disadvantaged groups.<sup>15</sup> This creates a normative-practical gap with Sharia principles, as emphasized in DSN-MUI Fatwa No. 47/2005. This gap is important to examine because it can impact fairness, transparency, and customer trust in the institution, as well as legal certainty.

Several previous studies have shown a normative-practical gap in the application of DSN-MUI fatwas in Islamic microfinance institutions, particularly BMTs. Several studies show inconsistencies in compliance with Sharia in the implementation of financing contracts such as *murābahah* and *mudārabah* in accordance with the fatwa.<sup>16</sup> However, this problem is exacerbated by the lack of alignment between the Compilation of Sharia Economic Law (KHES) and the DSN-MUI fatwa, which creates legal uncertainty.<sup>17</sup> Likewise, the weak internal and external supervisory mechanisms of BMTs

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<sup>12</sup> "DSN-MUI, Fatwa No. 47/DSN-MUI/2005 Pada Ketentuan Umum," unpublished manuscript, n.d.

<sup>13</sup> Saiful Anwar, "Wawancara Direktur BMT AKU Metro," November 15, 2022.

<sup>14</sup> Nur Azza Morlin Iwanti, "Akibat Hukum Wanprestasi Serta Upaya Hukum Wanprestasi Berdasarkan Undang-Undang Yang Berlaku," *Jurnal Ilmu Hukum* Vol. 6, No. 1 (December 2022): 347.

<sup>15</sup> Saiful Anwar, "Wawancara Direktur BMT AKU Metro," November 15, 2022.

<sup>16</sup> A. Ibrahim and A.J. Salam, "A Comparative Analysis of DSN-MUI Fatwas Regarding Murabahah Contract and the Real Context Application (A Study at Islamic Banking in Aceh)," *Samarah* 5, no. 1 (2021): 372–401, <https://doi.org/10.22373/sjhk.v5i1.8845>; M. Rasyid, "Problematics of Implementation of the Mudhārabah Contract on Sharia Banking in Indonesia," *Journal of Islamic Law* 2, no. 1 (2021): 22–42, <https://doi.org/10.24260/jil.v2i1.135>.

<sup>17</sup> S.B. Kooria, "Revisiting the Compilation of Islamic Economic Law in Indonesia: Legal Challenges and Pathways to Harmonization," *Juris: Jurnal Ilmiah Syariah* 24, no. 1 (2025): 127–36, <https://doi.org/10.31958/juris.v24i1.13736>.

contribute to the suboptimal handling of default,<sup>18</sup> while practices in the field show that the handling of default often depends on social mechanisms.<sup>19</sup> These studies have not specifically reviewed the integration between normative provisions and the practice of handling defaults at the institutional level of BMTs, particularly in placing the principles of benefit, justice, and legal certainty as the main analytical framework.

Therefore, this study fills this gap by comprehensively analyzing the normative-practical differences in default handling at BMT AKU Metro and formulating harmonization strategies to ensure that field practices are in line with Islamic legal principles that are fair and oriented towards legal certainty. Thus, this study contributes to strengthening the discourse on harmonization between DSN-MUI fatwas as a normative source of Islamic law and the empirical practice of handling defaults in Islamic microfinance institutions, particularly BMTs. It can also serve as a strategic reference for BMT in formulating default handling policies that not only maintain institutional sustainability but are also in line with the principles of benefit, justice, and protection of vulnerable customers.

## **Method**

This study uses qualitative research in the form of a case study at *Baitul Māl wa Tamwīl* (BMT) Adzkiya Khidmatul Ummah (AKU) in Metro City, Indonesia. The location was chosen because it is an Islamic microfinance institution with a high intensity of *murābahah* financing and a significant level of default, making it relevant for studying the compatibility between norms and practices. A case study was chosen because it allows researchers to explore the practice of resolving *murābahah* defaults in the context of an institution's operations directly. A normative approach was used to analyze the provisions of DSN-MUI Fatwa No. 47/2005 and *murābahah* contracts, while an empirical approach was used to explore default resolution practices through interviews and field observations. Fatwas and practices were analyzed to identify normative provisions regarding contracts and default resolution mechanisms.

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<sup>18</sup> M.Y. Rusdiyono and A. Muallim, “Bankruptcy Settlement of Baitul Maal Wa Tamwil in Yogyakarta: An Islamic Law Perspective,” *Millah: Journal of Religious Studies* 21, no. 2 (2022): 553–82, <https://doi.org/10.20885/millah.vol21.iss2.art9>.

<sup>19</sup> P. Wulandari and S. Kassim, “Issues and Challenges in Financing the Poor: Case of Baitul Maal Wa Tamwil in Indonesia,” *International Journal of Bank Marketing* 34, no. 2 (2016): 216–34, <https://doi.org/10.1108/IJBM-01-2015-0007>.

Data were collected by interviewing several informants selected using purposive sampling techniques, including AKU Metro BMT managers, such as the Director and Manager, and several customers who had experienced default. Customer informants were selected because *murābahah* is the most commonly used financing method by members, thus providing a realistic picture of their experience. Secondary data were obtained through documents, including DSN-MUI Fatwa No. 47/2005, SOPs for handling problematic financing, *murābahah* contract files, warning letters, and restructuring records are also included.

The data were then analyzed using content analysis techniques on operational documents to identify patterns of BMT actions in practice, including collection, restructuring, and mediation steps. The results of the document analysis were combined with interviews and observations and then reviewed comparatively to determine the extent to which BMT practices comply with or deviate from Sharia provisions, as well as the factors that influence these discrepancies. The limitations of this study are that it focuses on only one institution, BMT AKU Metro, and is limited to *murābahah* contracts and normative-practical gaps; therefore, the findings are not generalizable.

## Results and Discussion

### Default in Sharia Financing at BMT Adzkiya Khidmatul Umma Kota Metro: Factors and Forms

In modern financing practices (especially in financial institutions), default can no longer be understood as an individual failure of the debtor,<sup>20</sup> but rather as a legal phenomenon influenced by contract design, institutional governance, and the effectiveness of available dispute resolution mechanisms.<sup>21</sup> In the context of Sharia microfinance institutions, such as *Baitul Māl wa Tamwīl* (BMT), which carry out financing functions based on Sharia principles and have relatively close social relationships with customers.<sup>22</sup> Nevertheless, defaults often occur in *murābahah* (profit-sharing) financing when customers fail to fulfill their payment obligations in accordance with the contract.<sup>23</sup>

<sup>20</sup> Fathurrahman Djamil, *Penerapan Hukum Perjanjian Dalam Transaksi Di Lembaga Keuangan Syariah*, 2nd ed., 2 vols. (Jakarta: Sinar Grafika, 2013).

<sup>21</sup> Ben-Shahar and Porat, *Fault in American Contract Law*.

<sup>22</sup> Hasan, *Manajemen Baitul Mal Wa Tamwil*.

<sup>23</sup> Ahmed, “Financial Inclusion and Islamic Finance: Organizational Formats, Products, Outreach and Sustainability.”

Defaults in sharia financing also occur at BMT Adzkiya Khidmatul Ummah Kota Metro, both on the part of members (customers) and BMT itself, and take various forms. From the customer's perspective, the most common default is late or non-payment of financing installments according to the schedule agreed upon in the contract, such as in *murābahah*, *qard*, or *ijārah* financing.<sup>24</sup> In addition, the use of financing funds that are not in accordance with the objectives stated in the contract is also considered a default, for example, funds that should be used for the purchase of capital goods are instead used for consumptive purposes. Customers can also default by not submitting the agreed collateral (*rahn*), providing false information when applying for financing, or not periodically reporting business developments in profit-sharing agreements such as *mudārabah* and *musyārakah*. In fact, there are also cases of customers who disappear or run away to avoid their payment obligations.<sup>25</sup>

However, BMTs can also default, for example, by not disbursing funds in accordance with the agreed contract, withdrawing instalments in excess of the agreed amount, not providing profit-sharing reports to customers in cooperation contracts, and providing services that are not in accordance with Sharia principles, such as delays in disbursing funds or lack of transparency in the contract process. This breach of contract can cause financial losses and damage the trust between the two parties. Therefore, settlement is usually carried out through a family approach, renegotiation, or, if necessary, through Sharia law channels such as BASYARNAS (National Sharia Arbitration Agency).

Field findings show that the resolution of *murābahah* default at BMT Adzkiya Khidmatul Ummah Metro is not fully in accordance with Sharia provisions as stipulated in the DSN-MUI Fatwa. The practice of imposing a *kaffārah* is applied to all customers who are late in paying instalments, regardless of whether the customer is truly unable to pay or is simply delaying their obligations. One informant, who is a customer, stated that "in this case, I was given a *kaffārah* of Rp 57,000, but I do not know what the funds are used for."<sup>26</sup> A similar statement was made by AA, who was three months behind on

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<sup>24</sup> Titin NurmalaSari, "Manager BMT Adzkiya Khidmatul Ummah Kota Metro," November 15, 2020.

<sup>25</sup> Yusriana Maida Hastuti and dkk, "Penyelesaian Wanprestasi Dalam Pembiayaan Murabahah Pada Masa Pandemi Perspektif Hukum Islam Dan Hukum Positif: Studi Kasus Di KSPPS BMT NU Sejahtera Kecamatan Haurgeulis," *MIZAN: Journal of Islamic Law* Vol. 5, No. 1 (2021): 87–100.

<sup>26</sup> RR, "Nasabah BMT AKU Metro," June 8, 2023.

payments and said, “I paid a *kaffārah* of Rp 120,000, but I do not know what the *kaffārah* is used for.”<sup>27</sup>

These two statements highlight two main issues: (a) penalties are imposed without considering the customer's financial situation and (b) there is no transparency regarding the allocation of *kaffārah* funds. Even the Director of BMT emphasized that “*kaffārah* is imposed on all members who default... the penalty is usually paid directly by the member.” Thus, there is no distinction between customers who are truly unable to pay and those who deliberately delay payment, and the educational aspect of the contract is not functioning as it should be. Similarly, the Financing Manager also stated that restructuring is only granted if the customer has missed three payment deadlines, as he stated, “Rescheduling is only granted a maximum of two times after a member has missed three payment deadlines.”<sup>28</sup> This shows that the initial steps to resolve the issue prioritize fines and warnings rather than restructuring, which should be the main priority.

BMT Adzkiya Khidmatul Ummah not only handles financing that has defaulted but also takes preventive measures from the outset. These efforts are applied to new prospective customers to minimize the possibility of defaulting in the future. Based on an interview with an informant who is the Manager of BMT Adzkiya Khidmatul Ummah in Metro City, it was found that from 2021 to October 2022, the number of members reached approximately 16,198, including both active and inactive members. The data also show that the majority of members who entered into financing agreements at BMT Adzkiya Khidmatul Ummah—around 80%—chose the *murābahah* and *musyārakah* financing schemes. The funds received are generally used for capital and business development. The number of customers classified as problematic is as follows:

Table 1. Details of Problem Customers (defaulters) in Sharia Financing

No	Number of Customers	Problem Category		
		Less than smooth	Doubtful	Stalled
1	8.254	12%	8%	10%
		990	660	825

<sup>27</sup> AA, “Wawancana Nasabah BMT AKU Metro,” June 8, 2023.

<sup>28</sup> Titin Nurmala, “Manager BMT Adzkiya Khidmatul Ummah Kota Metro,” November 15, 2020.

Source: BMT AKU 2022 Financial Data

Based on Table 1, in 2022, 8,254 members entered *murābahah* contracts, and around 30% of them defaulted, as indicated by late payments or installments. This percentage is divided into the following categories: 12% less than current, 8% doubtful, and 10% non-performing. BMT imposes fines ranging from 0.1% to 1.0% of the customer's remaining savings in accordance with the institution's internal regulations. The funds collected from these fines are allocated to social needs or unexpected expenses. These penalty provisions apply to all members who violate their payment obligations.<sup>29</sup>

These data show that a *murābahah* financing default rate of around 30% indicates that the BMT's financing portfolio is in a relatively high-risk category and reflects the weak payment capacity of some members, due to both internal factors within the institution and the economic conditions of the customers. The pattern of problematic financing, which is divided into substandard, doubtful, and loss categories, shows a gradual deterioration in financing quality. Rahman state that *murābahah* is the most dominant contract and at the same time the most vulnerable to the risk of default in Islamic financial institutions.<sup>30</sup>

In addition, the factors causing default at BMT AKU are twofold: internal and external. Internal factors can be caused by BMT's misanalysis of member characteristics, resulting in stalled instalment payments due to economic factors, which are the main cause of payment stalls, especially when customer income declines due to sluggish economic conditions, commodity price fluctuations or reduced market demand. Louzis, Vouldis, and Metaxas (2012) also show that the high ratio of non-performing loans is greatly influenced by internal risk management factors and the economic conditions of debtors.<sup>31</sup> This situation is exacerbated by increasing operational costs and living expenses, which weaken customers' financial ability to meet their instalment obligations.

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<sup>29</sup> Titin NurmalaSari.

<sup>30</sup> Fany Arista Wati and Dian Filanti, "FAKTOR-FAKTOR YANG MEMPENGARUHI PEMBIAYAAN USAHA MIKRO KECIL DAN MENENGAH PADA BANK PEMBIAYAAN RAKYAT SYARIAH DI INDONESIA," *Jurnal Ekonomi Syariah Teori Dan Terapan* 6, no. 4 (January 2020): 846, <https://doi.org/10.20473/vol6iss20194pp846-860>.

<sup>31</sup> Dimitrios P. Louzis, Angelos T. Vouldis, and Vasilios L. Metaxas, "Macroeconomic and Bank-Specific Determinants of Non-Performing Loans in Greece: A Comparative Study of Mortgage, Business and Consumer Loan Portfolios," *Journal of Banking & Finance* 36, no. 4 (April 2012): 1012–27, <https://doi.org/10.1016/j.jbankfin.2011.10.012>.

Among the characteristics of members that contribute to default are extravagance and a lack of consideration of relevant factors when making decisions. In addition, the loss of physical collateral can also contribute to defaults in *murābahah* financing. This situation occurs when customers are unable to repay their obligations at maturity and the collateral documents used for financing are lost due to theft beyond the customer's control. If the collateral is not protected by insurance, the BMT has the potential to suffer losses because the financing funds have been disbursed, while the customer has passed the due date but is still unable to make payments.

Another internal factor is the determination of the payment period, which greatly affects the members' ability to pay off instalments. Setting a payment period that is too long often makes customers feel relaxed and less disciplined in making payments because they think the instalment period is still long enough. Meanwhile, if the payment period is set too short, customers will rush to reach the target to pay it off and experience difficulties in doing so. Meanwhile, external factors are caused by a decline in members' businesses due to the large number of competitors, which can lead to financial losses. In addition, procrastination was also a reason. These members are able to pay, but when billed, they always have excuses for not paying.<sup>32</sup>

Despite the sanctions, that penalties in Islamic financing serve as an instrument of moral compliance, not a source of profit.<sup>33</sup> However, a penalty-only approach has proven ineffective in reducing defaults without strengthening customer selection, post-financing supervision, and sustainable restructuring and assistance strategies.<sup>34</sup> The combination of these factors has significantly impacted the increase in non-performing financing and has prompted BMTs to implement stricter policies, such as penalties and direct visits.

Forms of default found at BMT AKU Metro include late instalments, misuse of financing funds not in accordance with the agreement, failure to submit the agreed collateral, provision of false information in financing applications, and even customers

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<sup>32</sup> Ilmia Rofi and dkk, "Penyelesaian Sengketa Wanprestasi Pembiayaan Murabahah Di BMT NU Jawa Timur Cabang Sepulu Bangkalan," *Jurnal ISECO* Vol. 3, No. 1 (2024): 143.

<sup>33</sup> Mohammed Obaidullah, *Islamic Financial Services* (Jeddah: Scientific Publishing Centre King Abdulaziz University, n.d.); Pejman Abedifar, Philip Molyneux, and Amine Tarazi, "Risk in Islamic Banking," *Review of Finance* 17, no. 6 (November 2013): 2035–96, <https://doi.org/10.1093/rof/rfs041>; Muhammad Akram Khan, *What Is Wrong with Islamic Economics?: Analysing the Present State and Future Agenda* (Edward Elgar Publishing, 2013), <https://doi.org/10.4337/9781782544159>.

<sup>34</sup> Muhamed Umer Chapra and Habib Ahmed, *Corporate Governance in Islamic Financial Institution* (Saudi Arabia: Islamic Development Bank, 2022).

who disappear to avoid their obligations.<sup>35</sup> On the other hand, BMT AKU Metro customers can also default, such as late disbursement, lack of transparency in the agreement, or instalment withdrawals exceeding the agreement.

Table 2. Forms and Characteristics of Wanpretasi at BMT AKU Metro

Category	Form of Default	Key Characteristics
<b>Default by Customer</b>	Delayed installment payments	Installments not paid according to the agreed schedule
	Misuse of financing funds	Funds used for purposes other than those specified in the agreement
	Failure to submit collateral	Agreed collateral is not submitted
	False information	Incorrect data when applying for financing
	Customer disappears	Avoids payment obligations
	Delayed disbursement	Funds not disbursed on time
<b>Default by BMT</b>	Lack of transparency in agreements	Agreement information not communicated clearly
	Excessive installment withdrawals	Collection exceeding the agreement

Source: data compiled by the author

The levels of default by BMT AKU Metro customers can be categorized as follows: (1) minor default, consisting of 1–2 late payments and the customer remaining cooperative; (2) moderate default, in the form of 3–5 months of delay, the customer becomes uncooperative, or there is misuse of funds; and (3) severe default, such as a delay of more than six months, the customer disappears, or provides fictitious data, requiring legal action or execution of collateral.<sup>36</sup>

Table 3. Classification of Default at BMT AKU Metro in Civil Law and *Fiqh*

*Mu'amalah*

<sup>35</sup> Ahmad Ridwan Hasan, *Manajemen Baitul Mal Wat Tamwil* (Bandung: Pustaka Setia, 2013), 23.

<sup>36</sup> Nur Syamsudin Buchori, *Koperasi Syariah Teori & Praktik* (Tangerang: Pustaka Aalfa Media, 2012), 17.

Levels of Breach of Contract	Key Characteristics	Civil Law Equivalents	<i>Fiqh Mu'amalah</i> Equivalents
<b>Minor</b>	Late 1–2 times, cooperative	Relative default (time violation)	<i>Ta'khīr al-sadād</i> in good faith
<b>Currently</b>	3–5 months late, starting to be uncooperative or misusing funds	Partial material breach	<i>Mukhalafah al-shurūt</i> (breach of contract terms)
<b>Weight</b>	>6 months, disappearance, fictitious data, requires execution	Total default + unlawful acts	<i>Gharar, tadrīs, and ta'assur</i>

Source: data compiled by the author

The classification of default at BMT AKU Metro shows a pattern that is in line with the construction of default in civil law and *fiqh mu'amalah*. Minor default, in the form of late payment by customers who are still cooperative, can be understood as relative default or breach of time, which in *fiqh* is categorized as *ta'khīr al-sadād* with good faith, so that the settlement emphasizes deliberation and leniency.<sup>37</sup> Moderate default, characterized by prolonged delays, uncooperativeness, or misuse of funds, reflects a substantial violation of the contract (*mukhalafah al-shurūt*). In the practice of Islamic financial institutions, this is generally classified as substandard or doubtful financing and requires restructuring and close supervision.<sup>38</sup>

Meanwhile, severe default, such as providing fictitious data, customer disappearance, or failure to pay for more than six months, indicates total default intersecting with elements of *tadrīs* and *gharar*, thus legally justifying decisive measures such as collateral execution or litigation settlement.<sup>39</sup> These findings confirm that *murābahah* financing in Islamic financial institutions (especially in the micro sector)

<sup>37</sup> Wahbah az Zuhaili, *Al-Fiqh al-Islam Wa Adillatuhu* (Beirut: Dar al Fikr, 1989).

<sup>38</sup> Rashidah Abdul Rahman et al., “RISK MANAGEMENT PRACTICES IN ISLAMIC BANKING INSTITUTIONS: A COMPARATIVE STUDY BETWEEN MALAYSIA AND INDONESIA,” *PONTE International Scientific Researchs Journal* 72, no. 12 (2016), <https://doi.org/10.21506/j.ponte.2016.12.17>.

<sup>39</sup> Chapra and Ahmed, *Corporate Governance in Islamic Financial Institution*.

requires differentiated treatment based on risk levels, as a single approach is ineffective in reducing nonperforming financing.<sup>40</sup>

Regarding the practice of resolving defaults, BMT AKU Metro implements a step-by-step approach in the form of two telephone calls, the issuance of a First Warning Letter, a visit to the customer's home, the signing of a new agreement, and the issuance of a Second Warning Letter.<sup>41</sup> If the arrears remain unresolved, the BMT executes the collateral or submits the process to a sharia dispute resolution institution. However, this process is inconsistent with DSN-MUI Fatwa No. 47/2005, which stipulates that penalties may only be imposed on customers who are able to pay but delay payment (*mumāthil*), while customers who are unable to pay must be given leniency without financial penalties.

Similarly, DSN-MUI Fatwa No. 04/2000 requires institutions to transparently explain the mechanism and allocation of fines to customers and prohibits fines that are similar to interest payments. Empirical findings show that customers are unaware of the allocation of *kaffārah* funds, and fines are imposed across the board without considering customers' actual circumstances. Thus, the practices of BMT AKU Metro show deviations in four aspects: (1) penalties are imposed on customers who are unable to pay, (2) lack of transparency in the allocation of penalty funds<sup>42</sup> (3) penalties are applied without classifying the level of customer ability, and (4) restructuring is not the first step as recommended by sharia.<sup>43</sup> At BMT Adzkiya Khidmatul Ummah Kota Metro, *murābahah* contracts are the most widely used financing schemes. There are two ways to apply for this scheme: first, prospective members who are approached by the marketing department and are interested in applying for financing; second, members or prospective members who come directly to the BMT office to apply for *murābahah* financing.

In the event of a default or late payment, BMT takes gradual measures. The initial stage involves contacting the member by telephone twice to remind them that their obligation is overdue. If, after two calls, the member still has not made the payment, BMT issues a first warning letter (SP 1) or makes a direct visit to the member's home to

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<sup>40</sup> Abedifar, Molyneux, and Tarazi, "Risk in Islamic Banking."

<sup>41</sup> Titin NurmalaSari, "Manager BMT Adzkiya Khidmatul Ummah Kota Metro," November 15, 2020.

<sup>42</sup> A. Karim, *Bank Islam: Analisis Fiqh Dan Keuangan* (Jakarta: Raja Grafindo Persada, 2010), 184.

<sup>43</sup> Ascarya, "Akad Dan Produk Bank Syariah," *Jurnal Ekonomi Islam Al-Ifsaq* Vol. 2, No. 1 (2011).

investigate the cause of the delay. Subsequently, the member is asked to make a new agreement containing a commitment to fulfill their payment obligations in accordance with the agreed terms. However, if the delay or inability to pay persists, BMT issues a second warning letter (SP II) and continues to communicate with the concerned member to immediately settle outstanding payments.<sup>44</sup>

According to Islamic law, if one party ignores the agreed contract, the debtor must provide compensation or damages. This compensation is an obligation that must be fulfilled by the party who has violated the law and caused losses to the other party as a result of their mistake.<sup>45</sup> A delay in returning rented goods, as agreed in the contract, gives rise to an obligation to pay compensation in accordance with Sharia provisions. The provision of compensation is intended to safeguard and protect property from damage or loss, as well as to provide a sense of security for the owner against potential risks of loss. Based on Article 1246 of the Civil Code (KUH Per), compensation consists of three elements: a) costs, which are all expenses that have actually been incurred; b) losses, which are the consequences arising from the damage to BMT property due to the negligence of its members; and c) interest, which is the profit that BMT would have earned if there had been no negligence on the part of the lessee.<sup>46</sup>

In financing practices at BMTs, particularly *murābahah* contracts, the settlement of defaults often does not comply with the sharia provisions established by the Indonesian Ulema Council's National Sharia Board (DSN-MUI). One of the most common deviations is the imposition of late fees that are not in accordance with Sharia. DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 strictly prohibits the imposition of fines as a form of usury, except for customers who are capable but deliberately negligent (*ta'zīr*). The proceeds from these fines must be channeled into social funds, not as institutional income. However, in practice, several BMTs impose fines in the form of a fixed percentage per day or per month of delay, which resembles conventional interest. This contradicts the principles of justice and fair *mu'amalah* in Islam.<sup>47</sup>

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<sup>44</sup> Titin NurmalaSari, "Manager BMT Adzkiya Khidmatul Ummah Kota Metro," November 15, 2020.

<sup>45</sup> A. Karim, *Bank Islam: Analisis Fiqh Dan Keuangan*, 112.

<sup>46</sup> Simanjuntak, *Hukum Perdata Indonesia* (Jakarta: Prenadamedia Group, 2019), 294.

<sup>47</sup> Irdlon Sahil and dkk, "Penyelesaian Sengketa Wanprestasi Pembiayaan Murabahah Di BMT NU Jawa Timur Cabang Sepulu Bangkalan," *Islamic Economics and Finance Journal* Vol. 3, No. 1 (2023): 1.

### **Resolution of Default by BMT Members in the MUI DSN Fatwa**

In the operational activities of Baitul Māl wa Tamwīl (BMT), the issue of default or the inability of members to fulfill their obligations in accordance with the contract is often a challenge that must be faced. To ensure resolution in accordance with Sharia principles and justice, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has issued a fatwa as a guideline for Sharia financial institutions, including BMTs. The fatwa emphasizes that the process of resolving default must be carried out with the principles of fairness, transparency, and prioritizing deliberation between the BMT and the concerned members. The main objective is to protect the rights of members while maintaining the sustainability of BMT so that it remains grounded in Islamic values.

The resolution of *murābahah* financing default disputes at BMT AKY prioritizes the principles of kinship and mutual assistance between administrators and members so that problems are resolved through deliberation and consensus, although applicable procedures exist. If deliberation and consensus cannot resolve the problem, several options are available for resolving the dispute. These include seeking consideration from the BMT Supervisory Board, seeking justice through the National Sharia Arbitration Agency (BASYARNAS), and resolving disputes through the judicial system. To date, disputes have been resolved through deliberation and consensus or through a familial approach by visiting the parties concerned.

Fatwa DSN-MUI No. 47/DSN-MUI/II/2005 also provides important guidelines regarding the mechanism for resolving defaults in *murābahah* contracts, which must be carried out while prioritizing the principles of fairness and protection for customers. This fatwa stipulates that when a customer is unable to pay, the BMT can settle the dispute by selling the *murābahah* object or collateral at an agreed market price and then using the proceeds from the sale to pay off the remaining debt. If there are excess funds from the sale, the excess must be returned to the customer,<sup>48</sup> while if the proceeds from the sale are insufficient, the shortfall remains the responsibility of the customer and may even be waived if the customer is truly unable to pay.

In addition, the fatwa also emphasizes that the imposition of fines or *ta'wīd* is only permissible for customers who deliberately or negligently violate the agreement and

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<sup>48</sup> Trisadini Prasastinah Usanti, *Transaksi Bank Syariah* (Jakarta: Bumi Aksara, 2013), 105.

cause losses to other parties,<sup>49</sup> so that fines should not be imposed on customers who are truly unable to pay. This provision shows that the settlement of default is not solely oriented towards the recovery of funds but must reflect Sharia values such as mutual assistance (*ta 'awun*), deliberation, compassion, and balance so that no party is unduly harmed.<sup>50</sup>

In practice, BMT Adzkiya Khidmatul Ummah prioritizes amicable and family based settlements before resorting to legal channels, so that the entire settlement mechanism is in line with the principles set out in the fatwa and reflects Islamic economic ethics that uphold justice and mutual benefits.<sup>51</sup> With the guidance of this DSN-MUI fatwa, it is hoped that BMTs will be able to handle defaults professionally and in accordance with Islamic law, so that the trust of members and the community can be maintained and the risk of loss can be minimized. In Islamic teachings, every party conducting a *mu 'āmalah* transaction is obliged to fulfill and comply with the terms of the contract. Whether the agreement is made verbally or in writing, Islam emphasizes the importance of maintaining commitment and honouring agreements. In this context, Allah SWT emphasizes this obligation through His words in Surah Al-Māidah, verse 1.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعَهْدِ إِذَا حَلَّتْ لَكُمْ بَهِيمَةُ الْأَنْتَعَامِ إِلَّا مَا يُنْتَلِي عَلَيْكُمْ غَيْرَ مُحِلٍ لِلْسَّبُعِ ۝ .  
إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

“O you who believe, fulfill your covenants.”<sup>52</sup>

This verse shows how much the Qur'an emphasizes the importance of fulfilling covenants in all their forms and meanings to the best of one's ability, even encouraging people to exceed what has been agreed upon and condemning those who ignore them. Allah SWT emphasizes that believers should always obey and fulfill their promises. Thus,

<sup>49</sup> Ichwal Subagjo, “Penyelesaian Wanprestasi Dalam Perjanjian Kredit Antara Kreditur Dan Debitur,” *Jurnal Hukum Universitas Bojonegoro* Vol. 2, No. 1 (n.d.): 55.

<sup>50</sup> Dermina D. Salimunthe, “Akibat Hukum Wanprestasi Dalam Perspektif BW,” *Jurnal Al-Maqasid* Vol. 3, No. 1 (2017): 15.

<sup>51</sup> Nurul Hidayah, “Wanprestasi Dan Model Penyelesaiannya Di LKMS,” *Jurnal Serambi Hukum* Vol. 8, No. 2 (2014): 302.

<sup>52</sup> Qs. al-Maidah (5):1

Islamic law highly values and obligates every individual who has made an agreement to fulfill the commitments agreed upon with the other parties.

In the context of *murābahah* financing at BMT Adzkiya Khidmatul Ummah Kota Metro, the settlement of defaults is an obligation for members who are late or fail to pay installments. BMT applies a financing management concept based on risk categories: substandard, doubtful, and loss. These delays are usually caused by member negligence or deliberate postponement of payment, even though they are able to settle their obligations.

Of the 8,254 members participating in *murābahah* financing, 2,476 members (approximately 30%) defaulted by delaying their installment payments. These members are categorized as customers with substandard, doubtful, or nonperforming statuses. This is because BMT applies penalties or *kaffārah* in accordance with the conditions and factors that cause the default. To resolve this issue, BMT Adzkiya Khidmatul Ummah Kota Metro has taken the following steps.

#### ***Issuing a warning letter in the form of a statement of negligence to the customer***

If the delay continues, the customer receives a further warning letter. If the summons is not responded to, a letter of demand is issued. In addition, the BMT conducts direct visits to customers to determine the cause of the delay, provide guidance, seek solutions through peaceful and amicable deliberations, and provide tolerance up to a certain limit.<sup>53</sup> This approach is in line with the warning in the words of Allah SWT in QS. Al-Anfal verse 27.

يَأَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَرَسُولَهُ وَتَخُونُوا أَمْتِنْكُمْ وَآتَيْتُمْ تَعْلَمُونَ

“O you who believe, do not betray Allah and His Messenger, nor betray the trust entrusted to you, while you know.”

#### ***Rescheduling***

Rescheduling is a change in financing terms that only concerns the financing schedule or period, including the grace period and changes in the installment amounts. The extension of the financing period is based on the results of a re-examination of the

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<sup>53</sup> Andriani R, “Penanganan Pembiayaan Bermasalah Melalui Surat Peringatan Dan Somasi Pada Lembaga Keuangan Syariah,” *Hukum Ekonomi Syariah* Vol. 8, No. 2 (2020): 155–67.

members' circumstances in all aspects.<sup>54</sup> This method is applied to members who, based on the results of research and calculations carried out by the BMT, are unable to fulfill their obligations in terms of repaying the loan as agreed at the beginning of the agreement. With rescheduling, the BMT gives BMT members leeway to repay financing that is past due or has exceeded the contract period. This rescheduling facility is only given a maximum of two times to members who are in arrears, and after that, members must make an effort to pay their debts to the BMT.

### ***Peaceful Approach***

BMT Adzkiya Khidmatul Ummah Kota Metro chose a peaceful approach because this institution is based on Islamic legal principles that prioritize peace among its people. BMT realizes that if the settlement is carried out through legal channels, the potential for conflict between the two parties could become even more intense.<sup>55</sup> Therefore, the BMT strongly encourages peaceful efforts. This is also in line with the teachings of QS. Ali Imran verse 159.

فَاعْفُ عَنْهُمْ وَاسْتَعْفِرْ لَهُمْ وَشَاعِرْ هُمْ فِي الْأَمْرِ فَإِذَا عَرَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ  
الْمُتَوَكِّلِينَ

“Therefore, forgive them, ask forgiveness for them, and consult with them in all (important) matters. Then, when you have made a decision, put your trust in Allah. Indeed, Allah loves those who put their trust in Him.”

### ***Legal Action***

BMT Adzkiya Khidmatul Ummah Kota Metro will take legal action to resolve default if a member is proven to have violated the rules and procedures applicable at BMT, as well as attempting to remove traces of their place of residence.<sup>56</sup> However, to date, the BMT has never resorted to legal action and prefers amicable resolutions.

### ***Surrender of Collateral***

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<sup>54</sup> Ismail, *Perbankan Syariah* (Jakarta: Prenadamedia Group, 2016), 421–23.

<sup>55</sup> S. Arif, “Implementasi Prinsip Islah Dalam Penyelesaian Pembiayaan Bermasalah,” *Al-Muzara’ah: Jurnal Ekonomi Syariah* Vol. 9, No. 2 (2021): 210–12.

<sup>56</sup> A.S Hamid, “Penanganan Pembiayaan Bermasalah Pada BMT,” *Jurnal Ekonomi Syariah* Vol. 6, No. 1 (2022): 134–36.

The surrender of collateral is carried out when BMT members have given up and are no longer able to pay their debts. At that time, members are required to sign a letter of proof of surrender of collateral so that the goods can be sold and the proceeds used to pay off outstanding installments.<sup>57</sup> The surrender of collateral is carried out based on the customer's own awareness and willingness because they are no longer able to pay and want to settle their obligations immediately.

This provision is in line with National Sharia Council Fatwa No. 47/DSN-MUI/II/2005 concerning the Settlement of *murābahah* Receivables for Customers Who Are Unable to Pay. The fatwa provides room for Sharia Financial Institutions (LKS) to settle *murābahah* financing when customers cannot fulfill their repayment obligations in accordance with the agreed nominal value and time. The mechanism includes: a) the customer sells the *murābahah* object or other collateral to the LKS, or through the LKS, based on a mutually agreed market price; b) the proceeds from the sale are used to settle the customer's remaining obligations; c) if the sale value exceeds the remaining debt, the excess is returned to the customer; d) if the sale value is insufficient, the shortfall remains the customer's responsibility; and e) if the customer is proven unable to pay the remaining debt, the SLI is permitted to write off the remaining obligation.

In addition, BMT Adzkiya Khidmatul Ummah chooses amicable settlement methods for several reasons, including:

1. In line with Islamic Sharia Principles

BMT is a Sharia financial institution that adheres to Islamic values prioritizing deliberation (*shūrā*), peace (*islāh*), and mutual assistance (*ta‘āwun*). The amicable approach reflects the spirit of Islam in resolving disputes peacefully and avoiding hostility or conflict.<sup>58</sup>

2. Maintaining Long-Term Relationships with Members

BMT act as financial institutions and social and spiritual partners for their members. Using a family-based approach allows BMT to maintain good relationships and trust with its members, so that loyalty is maintained even in the event of a delay or default.

3. Avoiding Legal Conflicts that Worsen the Situation

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<sup>57</sup> Muhammad, *Manajemen Pembiayaan Bank Syariah* (Yogyakarta: UPP STIM YKPN, n.d.), 280–81.

<sup>58</sup> Rahman A, “Prinsip Syura Dalam Penyelesaian Sengketa Pada Lembaga Keuangan Syariah,” *Jurnal Hukum Ekonomi Syariah* Vol. 6, No. 1 (2020): 45–57.

Legal processes, such as court or arbitration, often take time, cost money, and can cause tension. The familial approach is more flexible and minimizes conflict, making it more in line with the spirit of cooperation and economic empowerment of the people promoted by the BMT.

#### 4. Effectiveness and Efficiency in Handling Problems

In many cases, amicable settlements can speed up the process of handling defaults without having to go through formal legal channels. Members tend to be more open, honest, and cooperative when they are involved in amicable dialogue.<sup>59</sup>

#### 5. Increasing Members' Social Awareness and Responsibility

With a family like approach, members are not only seen as debtors but also as part of a community that needs to be nurtured and given space to correct their mistakes. This increases members' awareness of fulfilling their obligations voluntarily and responsibly.

Defaults at BMT Adzkiya Khidmatul Ummah in Metro City are generally settled through a deliberative and family like approach. Based on interviews with management, each case of late payment is first handled by contacting the customer by telephone, issuing Warning Letters (SP) 1 to SP 3, and conducting direct visits to determine the cause of the member's default. This approach is considered effective because most members still show good faith in fulfilling their obligations after being given an explanation and the opportunity to dialogue with the BMT.<sup>60</sup>

Field data also show that BMT AKU Metro has never taken legal or arbitration measures in handling problematic financing because all cases that have occurred so far have been resolved amicably through direct communication and internal deliberation between the BMT and its members. This is confirmed by the management, who stated that resolutions are always sought through family like relationships and that tolerance is given to a certain extent before more decisive actions, such as collateral execution, are taken. Thus, the family like approach, rather than formal legal channels, is the dominant pattern of resolution that actually occurs in the operational context of BMT Adzkiya Khidmatul Ummah Kota Metro.<sup>61</sup>

<sup>59</sup> Suryadi A and dkk, "Efektivitas Pendekatan Kekeluargaan Dalam Penyelesaian Sengketa Pembiayaan Pada BMT," *Jurnal Hukum Ekonomi Syariah* Vol. 8, No. 2 (n.d.): 134–49.

<sup>60</sup> Muhammad Syafii Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Jakarta: Gema Insani, 2001), 171.

<sup>61</sup> Adiwarman A. Karim, *Fiqh Muamalah* (Jakarta: Raja Grafindo Persada, 210 AD), 250.

### Normative-Practical Gap in Handling *Murābahah* Default

The handling of defaults in *murābahah* financing at BMT Adzkiya Khidmatul Ummah (BMT AKU) in Metro City shows the dynamics between the normative provisions set by the fatwa of the National Sharia Council-Indonesian Ulema Council and the field practices that have developed within the BMT environment. Normatively, DSN-MUI Fatwa No. 47 of 2005 concerning the Settlement of Debts for Customers Unable to Pay emphasizes that the settlement of defaults must be carried out through a deliberative approach that considers the debtor's ability, provides leniency, and provides restructuring options such as rescheduling, reconditioning, and restructuring.

The fatwa also emphasized that compensation may only be imposed on customers who are proven to have committed negligence or intentional acts that caused losses to Islamic financial institutions.<sup>62</sup> This provision places the principles of prudence and protection of justice as the main basis for handling unfulfilled obligations. From an Islamic law perspective, the practice of handling defaults at BMT AKU Metro shows several appropriate aspects, but there are also a number of deviations that require normative correction. On the side of conformity, the application of initial mechanisms in the form of deliberation, warnings (SP), and persuasive approaches is in line with the principles of *sulh* (peace) and *ta 'āwun* (cooperation) recommended for the settlement of *mu 'āmalah* disputes. However, several operational practices show non-compliance with Sharia provisions.

The uniform imposition of fines on all customers—without distinguishing between capable (*mumāthil*) and incapable debtors—contradicts the principle of *ta 'zīr lil mumāthil* and the command of the Qur'an in QS. al-Baqarah verse 280 to give leniency to those who have difficulty paying. In addition, the unclear use of penalty funds has the potential to give rise to *gharar*, which is contrary to DSN-MUI Fatwa No. 04/2000, which requires the distribution of penalties for social funds, not institutional profits. The practice of restructuring, which is only carried out at the final stage, is also inconsistent with the principle of *al- 'adālah*, because restructuring should be the first step for debtors who are truly unable to pay, as stipulated in *fiqh* literature and the DSN-MUI fatwa on relief in financing. The execution of collateral without the classification of ability raises problems

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<sup>62</sup> Widyaningsih and dkk, "Analisis Penyelesaian Wanprestasi Dalam Pembiayaan Murabahah," *Yurisprudentia: Jurnal Hukum Ekonomi* Vol. 11, No. 1 (2025): 121–35.

of substantive justice because Islamic law distinguishes treatment based on the objective conditions of each customer.<sup>63</sup>

In BMT AKU's operational practice, the handling of default generally begins when a customer is unable to pay instalments at the agreed time. BMT issues a series of warnings, ranging from verbal warnings to gradual warning letters (SP), namely SP 1, SP 2, and SP 3, which are intended to remind customers of their outstanding obligations.<sup>64</sup> This practice is in accordance with the principle of summons in civil law and is the first step before taking further actions. However, in some cases, BMT also encounters situations where customers evade or even abandon their obligations, rendering the warnings ineffective. In such circumstances, the BMT continues to prioritize a familial approach to find the best solution without immediately taking the case to court.

The first gap between norms and practice arises in terms of imposing fines or penalties. Normatively, fines should not be imposed on customers who are truly unable to pay or are facing economic hardship, as these are considered emergency circumstances exempt from compensation provisions. However, in practice, BMT AKU imposes fines of 0.1% to 1% of the remaining principal amount, and this provision applies to almost all customers who are late or delay their payment obligations, regardless of the cause of the delay.<sup>65</sup>

For example, there was a case where a customer's collateral was lost due to theft, but BMT still processed it according to internal procedures and, in some situations, still imposed fines if the customer was deemed to still have the ability to pay. In another case, a customer delayed payment due to family and economic problems but was still considered to be in default; therefore, fines were imposed based on the provisions of the contract.<sup>66</sup> Although BMT AKU tries to consider the individual circumstances of customers, the application of these general penalties is not entirely in line with the DSN-MUI Fatwa, which requires a clear distinction between inability and deliberate negligence.

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<sup>63</sup> Latifah S, "Analisis Hukum Islam Terhadap Praktik Operasional BMT," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial* Vol. 7, No. 1 (2021): 22–35.

<sup>64</sup> Saiful Anwar, "Wawancara Direktur BMT AKU Metro," November 15, 2022.

<sup>65</sup> Titin NurmalaSari, "Manager BMT AKU Metro," November 15, 2022.

<sup>66</sup> Siti Hayati, "Analisis Dhaman (Ganti Rugi) Bagi Nasabah Wanprestasi Dalam Perbankan Syariah (Studi Pada Pembiayaan Murabahah)," *Syarikat: Jurnal Rumpun Ekonomi Syariah* Vol. 3, No. 2 (December 2020): 1–6.

The second gap is observed in the implementation of financing restructuring instruments. The DSN Fatwa emphasizes the importance of restructuring efforts as a preventive and solution-oriented measure to avoid losses for both parties. These efforts include rescheduling without changing the value of the obligation, reconditioning in the form of changes to contract terms such as instalment value or duration, and restructuring in the form of reorganizing financing, including the possibility of providing additional facilities that can help customers' businesses run smoothly. In its normative documents, BMT AKU states that these options are available and can be used as needed.

However, in practice, restructuring is not the main procedure and is only carried out in certain situations, rather than as the standard initial response, as recommended by the fatwa. Based on interviews with management, the most common measures taken are still warnings and fines, while restructuring is less frequently applied and only in cases where customers are cooperative and have proven their good faith.<sup>67</sup> This indicates a shift in priority that places administrative mechanisms and sanctions as the first approach rather than restructuring.

The next gap is apparent in the documentation and formal mechanisms for resolving defaults. The fatwa provides a structural basis for the need for official documentation, such as an addendum to the contract when there is a change in the payment scheme, as well as for recording the resolution process so that it can be audited in accordance with Sharia. However, BMT AKU mostly resolves issues through informal deliberation, direct visits to customers' homes, and verbal agreements between BMT and members. This approach is indeed socially effective and in line with the community-based institutional character of BMT, but it can raise issues of legal certainty, thus failing to meet the Sharia administrative standards stipulated in the normative provisions of DSN-MUI. BMT AKU's decision to never bring cases of default to court, even though it has a legal basis to do so, also shows a gap between Sharia provisions that allow for judicial mechanisms and the institution's practice of prioritizing amicable settlements.<sup>68</sup>

Another aspect that shows the difference between normative provisions and practice is the way the BMT treats collateral. The DSN fatwa does not explicitly regulate

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<sup>67</sup> M.A.S Maula, "Analisis Fatwa No. 17/DSN-MUI/IX/2000 Terhadap Penerapan Denda Keterlambatan Pembayaran Angsuran Dalam Akad Murabahah Di Perbankan Syariah," *Jurnal Ilmiah Ekonomi Islam* Vol. 9, No. 1 (2023): 1227.

<sup>68</sup> Ilmia Rofi, "Penyelesaian Sengketa Wanprestasi Pembiayaan Murabahah Di BMT NU Jawa Timur Cabang Sepulu Bangkalan," *Islamic Economics and Finance Journal* Vol. 3, No. 1 (2024): 126.

the mechanism for the surrender of collateral in the context of default, but Sharia principles stipulate that collateral can only be executed if the customer is truly unable to repay the obligation, and the process must be carried out based on a valid agreement without coercion. In practice, BMT AKU asks customers who are unable to pay to voluntarily surrender their collateral through an official letter of surrender, so that the collateral can be sold to repay the financing.

Although this is still done through agreement, the voluntary nature of the customer's surrender of collateral can be influenced by moral pressure or an unbalanced bargaining position, given that the customer is in a position of need. This shows that even though the procedure does not violate Sharia principles, there is still the potential for incompatibility with the spirit of protection for the weak, as emphasized by the DSN-MUI.<sup>69</sup> The overall analysis shows that the normative-practical gap in handling *murābahah* defaults at BMT AKU Metro is caused by two main factors. First, BMT's orientation, which prioritizes a familial approach and social closeness, tends to adapt sharia provisions to the practical needs of the institution and the community's character.

Second, limited administrative resources and customer understanding of Sharia contracts cause BMT to focus more on pragmatic measures such as warnings and fines rather than formal restructuring procedures that require detailed documentation. Thus, although BMT AKU Metro reflects sharia values in principle and uses the DSN-MUI Fatwa as a reference, the gap between norms and practices remains clear and needs to be addressed so that financing management is more in line with ideal sharia provisions.

## Conclusion

BMT AKU Metro's handling of *murābahah* defaults has basically applied sharia principles through gradual steps, such as deliberation, warnings, and restructuring, which are in line with the principle of *islāh* (amicable settlement) in Islamic law. However, legally, the effectiveness of Sharia compliance is not only measured by the existence of procedural stages but also by its conformity with *fiqh* norms and DSN-MUI Fatwa provisions. Therefore, the legal conclusion that can be confirmed is that BMT AKU's practices have fulfilled some of the principles of sharia, but still require normative corrections, especially regarding the imposition of fines on customers who are unable to

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<sup>69</sup> M Yunani, "Tinjauan Fatwa DSN-MUI No. 47 Terhadap Penyelesaian Pembiayaan Murabahah Bermasalah (Studi Di BPRS Dana Amanah Surakarta)," *Rayah Al-Islam* Vol. 5, No. 1 (2021): 170–80.

pay, transparency in the use of fine funds, and the classification of debtor's ability before imposing sanctions.

From an Islamic law perspective, the settlement model applied is humanistic but does not fully meet the standards of Sharia compliance as stipulated in DSN-MUI Fatwa No. 47/2005 and the Fiqh Rules on the prohibition of *ta'zīr* against parties who are genuinely unable to pay. This study also identifies a normative-practical gap between the provisions of the DSN-MUI Fatwa and its field application. Several normative aspects, such as contract consistency, *ta'wīd* limitations, contract object separation, and dispute resolution procedures, have not been optimally implemented because BMTs prioritize a familial approach and adjust to customers' socioeconomic conditions.

Based on these findings, this study offers recommendations and novelty in the form of a model for harmonizing fatwa provisions with the practical needs of BMTs. This includes the preparation of fatwa-based SOPs, the application of proportional *ta'wīd*, the strengthening of contract documentation, and the use of sharia mediation that maintains family values so that sharia compliance and operational effectiveness can be achieved in a balanced manner.

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