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BANKRUPTCY RESOLUTION OF ISLAMIC BANKS BY DISTRICT COURTS: The Paradox of Lex Specialis and The Vacuum in Islamic Banking Law

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Abstract

This study examines why the settlement of Islamic bank bankruptcies in Indonesia is still processed through the Commercial Court at the District Court, even though legal relationships in Islamic banking are based on contracts and Islamic principles. The research uses a socio-legal qualitative design by combining normative analysis of legislation and empirical analysis through semi-structured interviews with three licensed curators in Semarang who have between seven and thirteen years of professional experience. The findings show that Islamic bank bankruptcy and conventional bankruptcy are treated uniformly under a single national bankruptcy regime as lex specialis, so that the bankruptcy forum and procedures are identical. However, at the stage of claim verification and determination, Islamic bank bankruptcy still depends on the initial contract and agreement, especially regarding the profit-sharing structure, thus forming a hybrid practice between Islamic substance and conventional bankruptcy procedures. This study also identifies gaps in capacity and standardization, marked by the absence of sharia competency requirements for commercial judges and the lack of special licenses or certifications for curators handling Islamic bank insolvency. The slow pace of policy change is influenced by the limited number of Islamic bank insolvency cases and the strength of established institutional channels. This study contributes by positioning the issue of Islamic bank bankruptcy as a judicial policy vacuum, rather than merely a matter of forum, and provides a descriptive overview of the direction of institutional reform, actor capacity, and technical instruments in the resolution of Islamic bank bankruptcy in Indonesia.

Keywords: Islamic banking; bankruptcy; commercial court; judicial policy; Islamic contract.

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Introduction

Sharia banking in Indonesia was established as part of the national financial system that places sharia principles as the foundation of business activities, primarily through the use of contracts as the basis for legal relationships between banks and other parties. Law No. 21 of 2008 affirms Sharia principles as Islamic legal principles in banking activities based on fatwas issued by authorized institutions, and defines contracts as written agreements that contain the rights and obligations of the parties in accordance with Sharia principles.[1] With this structure, Islamic banking should not only be understood as product differentiation, but also as differentiation in the substance of legal relationships, including when those relationships face the risk of default.

In practice, every banking system, including Islamic banking, cannot be separated from the possibility of distress and insolvency. At this stage, the most decisive legal instrument is no longer the law governing daily transactions, but rather the regime governing collective debt settlement, claim verification, and the liquidation of the debtor's assets. In the Indonesian context, this regime is laid out in Law No. 37 of 2004, which defines bankruptcy as a general seizure of all the assets of the bankrupt debtor, with the administration and liquidation carried out by a curator under the supervision of a supervisory judge.[2] Institutionally, the bankruptcy process is conducted through the Commercial Court at the District Court, with the main instruments appointed at the outset of the bankruptcy ruling, namely the curator and the supervising judge.[3] The Supreme Court has also issued administrative guidelines instructing commercial judges and supervisory judges to implement guidelines for the settlement of bankruptcy and PKPU cases, demonstrating the strength of procedural standardization in the bankruptcy ecosystem.[4]

However, the findings from the initial interviews in this study indicate that there is a distinctive configuration in Islamic bank bankruptcy. The curators who served as informants emphasized that both conventional and Sharia bankruptcy cases, as lex specialis, still refer to Law No. 37 of 2004, so that the forum for resolution remains the

[1] Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 tentang Perbankan Syariah.

[2] Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

[3] Undang-Undang Republik Indonesia Nomor 37 Tahun 2004, Pasal 15 ayat (1).

[4] Keputusan Ketua Mahkamah Agung Republik Indonesia Nomor 109/KMA/SK/IV/2020 tentang Pedoman Penyelesaian Perkara Kepailitan dan PKPU.

Commercial Court at the District Court. The informants also stated that the determination and verification of receivables in Islamic bank bankruptcy refer to Islamic principles, namely the agreement, the structure of the contract agreed upon from the outset, and the profit-sharing scheme that has been agreed upon. In contrast, in conventional bank bankruptcy, the receivables component generally follows a calculation structure related to interest in accordance with the agreement between the parties. Thus, Islamic bank bankruptcy exhibits a "hybrid" pattern: the substance of claims is influenced by the nature of Islamic contracts, while the forum, procedures, and judicial apparatus continue to follow the design of general bankruptcy.

This "hybrid" configuration becomes a policy problem when the judicial infrastructure and the capacity of its actors are not adjusted accordingly. Based on information from informants, judges handling Islamic bank bankruptcies are not distinguished from judges handling conventional bankruptcies in practice, and there are no Sharia competency standards attached to such assignments. Similarly, curators handling Islamic bankruptcy cases are, in practice, generally licensed curators, without any special licenses or certifications that test their substantive Islamic competency. Informants expressed their main complaint, which is the absence of an Islamic Commercial Court (envisioned to be under the jurisdiction of the Religious Court) as a forum that institutionally integrates commercial competency and Islamic literacy. This situation is considered risky because errors in understanding or applying the nature of contracts can lead to inaccurate legal reasoning and settlement outcomes, while bankruptcy itself is a regime that has a broad impact on legal certainty and public trust.

At a broader level, international literature on Islamic bank resolution also emphasizes that the framework for handling the failure of Islamic institutions has specific issues due to their contracts and governance structures, requiring tools that are sensitive to Islamic characteristics and cannot simply be copied from conventional frameworks without adjustment.[5] The IFSB, for example, places the recovery and resolution needs of Islamic financial institutions as part of the system resilience agenda, while emphasizing the need for a framework that takes into account the characteristics of Islamic

[5] dan Mario Tamez Elsie Addo Awadzi, Carine Chartouni, *"Resolution Frameworks for Islamic Banks," IMF Working Paper No. 15/247* (2015), https://doi.org/https://doi.org/10.5089/9781513503219.001.

institutions.6 Although this international framework is not identical to the bankruptcy forum in Indonesia, it provides a basis for the argument that differences in contractual substance and governance may require differentiation in the design of institutions and operational instruments.

Based on this, this article positions the main issue not on the existence or absence of bankruptcy law, but on the judicial policy gap, namely the lack of institutional design, competency standards, and adequate operational instruments to ensure that the substance of sharia contracts can be processed appropriately and consistently in a bankruptcy regime that is procedurally very strict. Based on primary data from interviews with experienced curators, this study assesses that although Law 37/2004 has functioned as lex specialis for bankruptcy applicable across entities, Islamic banks present specific needs at the level of adjudication capacity (judges), professionalism of practitioners (curators), and institutional design (the idea of an Islamic commercial court) so that the settlement of Islamic bankruptcy does not depend on ad hoc practices.[7]

In this hybrid configuration, this study identifies a gap in judicial policy at the institutional capacity level. There is an issue of adjudication capacity because judges handling Islamic bank bankruptcies are not distinguished from conventional bankruptcy judges in practice, and there are no inherent sharia competency requirements for handling such cases. This condition has the potential to cause inaccuracies when the main issue of the case is not merely the existence of debt, but also the accuracy of understanding the contract structure that forms the amount of the claim and its consequences. In the context of Islamic banking, Law No. 21 of 2008 places contracts and Islamic principles as the foundation of legal relationships, so that insufficient Islamic competency at the adjudication level has the potential to reduce the quality of legal considerations and the consistency of results.8

There is an issue of professionalism among bankruptcy administrators. Informants stated that the administrators handling Islamic bank bankruptcies are, in practice, administrators with general licenses; there are no specific licensing or certification

[6] Islamic Financial Services Board (IFSB), *TN-4: Technical Note on Recovery and Resolution for Institutions Offering Islamic Financial Services* (2022).

[7] Muhamad Nasrudin dkk., "Contestation between Sharia Business Law and Civil Law in Resolving Sharia Bankruptcy Disputes in Indonesia," *Proceeding of International Conference on Sharia Economic Law (ICoShEL)* 1, no. 1 (2024): 1.

[8] Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 tentang Perbankan Syariah.

requirements that distinguish administrators for Sharia cases. In fact, trustees play a central role in the management and settlement of bankruptcy estates, including the verification of claims and the preparation of lists of receivables, which in Islamic cases requires an adequate understanding of contract structures, profit-sharing schemes, and appropriate evidence. Law No. 37 of 2004 itself emphasizes the centrality of curators and supervisory judges in the bankruptcy mechanism, so the absence of sharia competency standards for bankruptcy administrators has the potential to give rise to variations in practice and dependence on individual capacity.[9]

This study identifies problems in institutional design. The main complaint raised by informants is the absence of a "Sharia Commercial Court," which is envisioned to be under the jurisdiction of the Religious Court as a forum that integrates commercial (bankruptcy) characteristics with sharia literacy. Regardless of the debate over its institutional form, this aspiration signals a strong perception among practitioners that the resolution of Islamic bank insolvency requires a more specific institutional design and capacity than is currently available. This situation is in line with the international literature on Islamic bank resolution, which emphasizes that handling Islamic bank failures requires tools that take into account the nature of Islamic contracts and governance so as not to cause implementation friction. [10]

This study identifies differences in the basis for calculating receivables as a sensitive point that highlights the need for policy adjustments. In Islamic banks, the amount of receivables in bankruptcy tends to be determined by the initial contract agreement, including the profit-sharing structure and type of contract, whereas in conventional banks, the amount of receivables generally follows the interest structure as agreed upon. This difference does not automatically change the bankruptcy forum, but it reinforces the need for operational instruments (proof guidelines, claim assessment standards, and actor competencies) so that the process in the commercial forum continues to produce accurate and consistent assessments for Islamic transactions.

This study also identifies policy inertia as a factor explaining why policy adjustments have not yet been made. Informants stated that Islamic bank bankruptcy cases

[9] Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

[10] Elsie Addo Awadzi, Carine Chartouni, *"Resolution Frameworks for Islamic Banks," IMF Working Paper No. 15/247*.

are still relatively few and not yet large in scale, so the impetus for the formation of specific policies has not yet strengthened. However, the scarcity of cases does not negate the need for design, because it is precisely in rare but high-value and systemic cases that mishandling can have major implications for legal certainty and the legitimacy of the Islamic banking ecosystem. Thus, this research problem is directed at the key question: how should the judicial system and policy instruments be designed so that the same bankruptcy regime (Law 37/2004) can accommodate the substance of Islamic transactions appropriately

In other words, try to answer at least two questions: (1) why your research question is essential, (2) how other researchers have or have not answered, or how you think your answer will contribute to existing scholarship on the subject. At the end of your introduction, clearly state your research question or the purpose of your article. Your introduction should flow logically, coherently, and systematically from beginning to end.

Method

This study employs a qualitative research design with a socio-legal (normative-empirical) approach to examine the practice of Islamic bank bankruptcy in Indonesia. The normative aspect analyzes the structure of bankruptcy law and the legal position of Islamic banking within Indonesian positive law, particularly Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and Law No. 21 of 2008 concerning Islamic Banking. Meanwhile, the empirical aspect focuses on practical implementation through in-depth interviews with curators who directly handle bankruptcy administration and claim verification processes.11

This research applies three complementary approaches. First, the statute approach is used to examine the legal framework governing bankruptcy procedures and sharia-based banking relationships. Second, a conceptual approach is employed to develop the analytical framework regarding hybrid bankruptcy practices, judicial policy gaps, and contract-based claim assessment. Third, an actor-based case study approach is utilized to understand how curators interpret legal norms and institutional challenges in Islamic bank bankruptcy cases.12

[11] John W. Creswell and Cheryl N. Poth, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches, 4th ed.* (SAGE Publications., 2018).

[12] Robert K. Yin, *Case Study Research and Applications: Design and Methods, 6th ed.* (SAGE Publications., 2018).

The research was conducted in Semarang City, Central Java, Indonesia, where the primary informants practice as professional curators. Informants were selected purposively based on their professional licenses, experience in bankruptcy proceedings, and understanding of Islamic banking insolvency practices.13 The study involved several experienced curators, including Jati Prihantono, Dr. Toni Triyanto, and Dr. Sunarto, whose professional experiences provided empirical insight into the implementation of Islamic bankruptcy procedures.

The study relies on two categories of data sources. Primary data were obtained through semi-structured interviews with curators conducted on December 15 and 18, 2025. These interviews explored issues such as claim verification, judicial competence, sharia-based receivable calculations, and institutional policy gaps. Secondary data consist of statutory regulations, official legal guidelines, and relevant academic literature concerning bankruptcy law, Islamic banking, judicial policy, and Islamic financial institution resolution.14

Data analysis was conducted qualitatively using thematic analysis. The process involved repeated reading of interview transcripts, initial coding based on research indicators, categorization of themes, and interpretation of findings within the broader socio-legal framework. Major themes identified include hybrid bankruptcy practices, institutional capacity gaps, lack of sharia competency standards, and policy inertia in judicial reform.15 To ensure reliability and validity, the study applied triangulation between interview findings and normative legal documents, maintained concise audit trails, and ensured referential adequacy between empirical evidence and analytical conclusions.

Discussion

This study finds that Islamic bank insolvency in Indonesia operates through a "hybrid" model. Procedurally, insolvency cases are still resolved through the Commercial Court under the general bankruptcy regime, but substantively, the determination and verification of claims depend on Sharia contracts and the initial agreements between the

[13] Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

[14] Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 tentang Perbankan Syariah, t.t.

[15] Virginia Braun and Victoria Clarke, "'Using Thematic Analysis in Psychology,'" *Qualitative Research in Psychology* 33, no. no.2 (2006): 77–101, https://doi.org/10.1191/1478088706qp063oa.

parties, including profit-sharing structures. Therefore, "Islamic bankruptcy" is not treated as a separate legal regime, but as part of the general bankruptcy framework requiring special substantive treatment because of the contractual nature of Islamic finance. To explain this issue, the article applies the concept of policy design, which emphasizes that the effectiveness of legal norms depends heavily on operational instruments such as standards, procedures, competency mechanisms, and institutional coordination.[16]

Curator Profile

To maintain methodological transparency while remaining consistent with scientific publication ethics, the identities of the sources are presented in a limited form in the following table. All sources are curators (insolvency practitioners) based in Semarang with extensive experience in insolvency practice. In the context of socio-legal research, the choice of curators as the main sources is relevant because curators are actors who carry out the core functions of bankruptcy, namely the management and settlement of bankruptcy estates, including the most substantively sensitive stages, namely the verification of claims and the formation of a list of claims. This function places curators as "bridges" between procedural bankruptcy norms and the nature of Islamic banking transactions based on contracts.

For research documentation purposes, the identities of the sources are presented factually in the following table:

Table 1: Source Data

No	Name	Age	Length of Service as Curator	Office
1.	Jati Prihantono, S.H., M.E., M.H.	45 years old	13 years	JP Law Office (So Voism) jln Dokter Cipto No.18-20 Kebonagung, Kec.Semarang Timur, Semarang City, Central Java, 50126.

[16] Michael Howlett, *Designing Public Policies: Principles and Instruments (Routledge)*, t.t., https://doi.org/https://doi.org/10.4324/9780203838631.

2.	Dr. Toni Triyanto,S.H.,M.H.	40 years	7 years	Law Office of Dr. Toni Triyanto, S.H., Jl. Supriyadi No. 69 A-B, Kalicari, Pedurungan, Semarang City, Central Java, Indonesia
3.	Dr. Sunarto, S.H., M.H.	50 years	7 years	The Office of Advocate and Curator Sunarto, Agung and Associates is located at Jl. Jend Sudirman No. 258 Salamanloyo, West Semarang, Semarang City, Central Java, Indonesia.

In the analysis in this section IV, to maintain narrative consistency and facilitate argument tracking, the third source is referred to as K1 (Jati Prihantono), K2 (Toni Triyanto), and K3 (Sunarto). The disclosure of identities (names and offices) can be maintained as long as the author assesses that there are no ethical or sensitivity risks; if the target journal requires strict anonymization, the same table can be converted into a "source code" version without mentioning the full address.

Law 37/2004 as Lex Specialis Bankruptcy for Sharia and Conventional

The most stable and consistent finding from all interviews is that bankruptcy cases in both conventional and Sharia entities, as lex specialis, still refer to Law Number 37 of 2004. The informants explained that once a case enters the realm of bankruptcy/PKPU, the framework used is the national bankruptcy framework, such as the general seizure mechanism, the appointment of a curator, the role of the supervisory judge, creditor meetings, claim verification, and estate settlement. In the words of the curators, "Sharia

or conventional does not change the entry point for bankruptcy; the reference remains Law 37/2004."

Normatively, the conclusion of these parties has a very clear basis. Law 37/2004 defines bankruptcy as "a general seizure of all assets of the Bankrupt Debtor, the management and settlement of which is carried out by a Curator under the supervision of a Supervisory Judge."[17] This definition is general in nature and does not create categories of bankruptcy based on the type of business activity or operational principles of the debtor, so by design, it tends to apply "uniformly" to all debtors who meet the requirements for bankruptcy. In essence, when an Islamic bank defaults and enters into bankruptcy proceedings, the procedural regime that is enforced remains the general bankruptcy regime, not a regime specifically designed for Islamic bankruptcy.

From a law in action perspective, the uniformity of this regime is reinforced by internal judicial policies that emphasize standardization in the handling of bankruptcy and PKPU cases. The Supreme Court issued Supreme Court Chief Justice Decree No. 109/KMA/SK/IV/2020 on the implementation of guidelines for the settlement of bankruptcy and PKPU cases, which explicitly instructs commercial judges, supervisory judges, and related officials to implement these technical guidelines.[18] This instrument is important for analysis because it shows that the basic commercial system in Indonesia is built with a strong orientation towards procedural certainty and integrated case management. In other words, in addition to Law 37/2004, which has become the foundation of lex specialis, there is also an "administrative layer" which emphasizes that bankruptcy must proceed in the same standard procedures.

These two layers of norms (Law 37/2004 and Supreme Court guidelines) explain why, in practice, Islamic bank insolvency tends to follow the same institutional path as conventional insolvency. Islamic banking is indeed regulated as a special regime in terms of principles and contracts through Law 21/2008, for example, the definition of a contract as a written agreement that gives rise to rights and obligations in accordance with sharia principles, but this law does not establish separate bankruptcy procedures. As a result, at

[17] Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

[18] Keputusan Ketua Mahkamah Agung Republik Indonesia Nomor 109/KMA/SK/IV/2020 tentang Pedoman Penyelesaian Perkara Kepailitan dan PKPU.

the insolvency stage, the bankruptcy regime (which is the most “ready to use” in terms of procedures and institutions) takes on a dominant role.

Hybrid Practice: Sharia Substance Implemented in Commercial Court Forums

Hybrid practice on the one hand, the settlement of Islamic bank bankruptcy continues to proceed within the logic and apparatus of general bankruptcy (general seizure, curator, supervisory judge, creditors' meeting, verification of claims) because lex specialis bankruptcy still refers to Law No. 37 of 2004; but on the other hand, the curator continues to apply “sharia mechanisms” through contracts and initial agreements as the basis for determining claim amounts, profit-sharing ratios, and the structure of the parties' obligations. This hybrid practice does not mean that Islamic bank bankruptcy is outside the national bankruptcy regime, but rather that the substance of sharia mortgage claims is forced into a uniform bankruptcy procedural channel.

Normatively, this design can be understood from two parallel legal instruments. First, Law No. 37 of 2004 places bankruptcy as a general seizure whose management and settlement is carried out by a curator under the supervision of a supervisory judge. In this construction, bankruptcy is a collective mechanism that standardizes the verification and settlement process, so that the forum and procedures are “standardized” through the Commercial Court in the District Court. In fact, the Supreme Court reinforced this standardization through Supreme Court Chief Justice Decision No. 109/KMA/SK/IV/2020, which essentially orders commercial judges, supervisory judges, and related officials to implement the bankruptcy/PKPU guidelines.[19] Second, Law No. 21 of 2008 emphasizes that Islamic banking operations are built through contracts (written agreements containing rights and obligations in accordance with sharia principles) and various types of contracts for the collection and distribution of funds that are not always identical to interest-based debt relationships.[20]

It was at the intersection of these two regimes that hybrid practices emerged. The curators explained that even though the case was being processed in the Commercial Court, the determination of the claim amount at the Islamic bank must refer to the contract documents agreed upon from the outset. In other words, the “sharia mechanism” continues to function as the substance (how obligations are calculated), while the

[19] Keputusan Ketua Mahkamah Agung Republik Indonesia Nomor 109/KMA/SK/IV/2020 tentang Pedoman Penyelesaian Perkara Kepailitan dan PKPU.

[20] Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 tentang Perbankan Syariah, t.t.

"bankruptcy mechanism" functions as a procedural container (how obligations are distributed). This structure reinforces the main proposition of this article, namely that Islamic bank insolvency in Indonesia is not merely a forum issue, but rather an issue of integrating the substance of contracts into uniform insolvency procedures.

From a policy design theory perspective, hybrid practices are an indicator of an instrument gap, whereby the system provides highly mature procedural tools (Law 37/2004 and trading guidelines), but does not yet provide explicit disclosure instruments to integrate the characteristics of Sharia contracts, such as guidelines for converting contracts into claims, standards for proving Sharia claims in verification meetings, or technical parameters to avoid equating profit-loss sharing relationships with debt-like claims.[21] Thus, the previous point not only describes "Sharia processes in commerce," but also explains more academically that what is happening is institutional asymmetry: the forum and procedures are very certain, but the substantial norms of contracts do not yet have an equivalent operational bridge.

Absence of Sharia Competence in Commercial Judges: Capacity Mismatch in Sharia Bank Bankruptcy Cases

The findings in the previous point show that judges handling Islamic bank insolvency cases are essentially the same as judges handling conventional insolvency cases, without any specific requirements for Islamic law expertise. The curators stated that there is no formal mechanism requiring commercial judges to have Islamic contract literacy, specific certification, or mandatory training to examine Islamic bank bankruptcies. As a result, Islamic bank cases are processed through the same bankruptcy apparatus, with judicial competence designed primarily for bankruptcy as a procedural regime, not for the specificity of contract-based transactions.

Regulatory-wise, this condition can be explained through the design of the trading system. Law 37/2004 does not establish the category of "sharia commercial judge," because bankruptcy is positioned as a universal mechanism.[22] The bankruptcy guidelines/PKPU enforced by the Supreme Court also emphasize the standardization of case management for commercial judges and supervisory judges, rather than the

[21] Michael Howlett, "Merancang Kebijakan Publik: Prinsip dan Instrumen," *Routledge*, advance online publication, 2010, https://doi.org/10.4324/9780203838631.

[22] Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

differentiation of business sector competencies.[23] Meanwhile, the instrument governing the settlement of sharia economic cases (PERMA No. 14 of 2016) operates in the domain of sharia economic cases in general, but does not provide a design for bankruptcy cases, which institutionally remain attached to the Commercial Court.[24] This is the basis for why, in practice, Islamic bank insolvency proceeds without a Sharia "capacity filter" at the judge level.

From an analytical perspective, the main problem here is not simply that "judges do not understand Sharia," but rather that there is a capacity mismatch between the needs of the case and the design of the actors' competencies. In Islamic bank bankruptcy, the amount of claims (and to a certain extent the legal status of the relationship) is influenced by the type of contract and initial agreement as stipulated in Law 21/2008 concerning contracts in Islamic banking activities.[25] When the judges' competency tools are not designed to read the characteristics of contracts, the system tends to rely on "intermediary actors" who are technically closer to proving claims, namely curators. In this configuration, the risk of inaccuracy increases not because the law does not exist, but because institutional capacity is not in line with the complexity of the substance.

From a policy design perspective, this capacity issue is a procedural and institutional issue. The establishment of competency standards, training, special assignments, or specialization paths are commonly used instruments to ensure that policy design is effective.[26] Because these instruments do not yet exist, what has emerged is a "default" implementation pattern whereby sharia bankruptcy is processed in the same way as conventional bankruptcy in terms of the forum and actors, while sharia characteristics are treated as a substantive issue that is "handled as necessary" in documents through contracts at the verification stage. This explains why curators have recommended the establishment of sharia-competent judges and the design of a Sharia Commercial Court. These recommendations are not merely ideological demands, but rather a response to the capacity mismatch they experience as bankruptcy administrators.

[23] Keputusan Ketua Mahkamah Agung Republik Indonesia Nomor 109/KMA/SK/IV/2020 tentang Pedoman Penyelesaian Perkara Kepailitan dan PKPU.

[24] Peraturan Mahkamah Agung Republik Indonesia Nomor 14 Tahun 2016 tentang Tata Cara Penyelesaian Perkara Ekonomi Syariah.

[25] Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 tentang Perbankan Syariah, t.t.

[26] Michael Howlett, "Merancang Kebijakan Publik: Prinsip dan Instrumen."

The Absence of Sharia Curator Licenses: Professional Standard Gap in the Implementation of Sharia Bank Bankruptcy

The findings on this point confirm that curators handling Islamic bank bankruptcy cases are no different from curators handling conventional cases. The sources stated that as long as a person has a curator license in accordance with applicable regulations, he or she can be appointed and carry out curator duties in any case, including bankruptcy cases involving transactions based on Islamic contracts. In other words, there are no norms that require an Islamic curator license/certification or minimum Islamic competency standards as professional prerequisites for handling Islamic bank bankruptcy estates.

Normatively, this condition is in line with the construction of Law No. 37 of 2004, which places curators as the core mechanism of bankruptcy for all types of debtors. This law regulates the recruitment of trustees and the role of supervisory judges in the bankruptcy mechanism without distinguishing between sectors or the nature of debtor transactions.[27] Because the bankruptcy system is universal in nature, the competencies of trustees are designed as general bankruptcy competencies rather than sector-based competencies (such as Islamic banking). While the Islamic banking regime (Law No. 21 of 2008) affirms Islamic contracts and principles as the basis for legal relationships, it does not provide instruments that regulate the professional competence of curators in the insolvency phase.[28] As a result, at the intersection of the two regimes, the competency standards for Islamic curators become a "void" that is not filled by norms.

From an analytical perspective, the absence of a sharia curator license can be explained as a professional standard gap. In the case of sharia bank bankruptcy, the curator does not merely inventory assets, but also verifies claims and compiles a list of payments that must be based on documentary evidence. In Islamic banks, these documents often take the form of contracts that determine the structure of obligations, ratios, margins, or return mechanisms. If the competence of Islamic trustees is not set as a minimum standard, the quality of implementation will potentially depend on the personal capacity of each trustee (learning by doing), rather than on standardized policy instruments.

[27] Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

[28] Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 tentang Perbankan Syariah, t.t.

This phenomenon persists as described in Lipsky's theory of implementation, which states that when formal rules do not provide adequate standards or guidance, frontline actors (street-level implementers) rely on discretion and customary practices to get the job done.[29] In the context of Islamic bank bankruptcy, such discretion can be positive (flexibility to interpret contracts appropriately), but it also risks creating variations in practice between trustees and between cases, because the standard of "sharia competence" is not embedded as an institutional dependency.

The policy implications are clear: if commercial courts remain the forum, then to close the gap in professional standards, instruments that can be practically applied are needed, such as additional certification/licensing for curators handling sharia-based cases, or minimum competency guidelines (minimum competency framework) recognized by professional authorities and/or relevant institutions. This finding provides a strong basis for the implementation of a licensed curator for sharia bankruptcy cases, which is not merely a normative idea, but a response to the current implementation structure that does not yet provide distinguishing standards.

The Absence of Sharia Commercial Forums as a Structural Complaint and Its Institutional Impact

From all sources, one structural complaint emerges, namely the absence of a "sharia commercial court" or bankruptcy forum design within an ecosystem that has sharia economic competence. This complaint does not stop at the issue of the "name of the institution," but stems from the practical experience that the bankruptcy of Islamic banks requires a different reading of contracts and calculation of claims, while the available forum, the Commercial Court in the District Court, operates with uniform bankruptcy tools and does not require Sharia literacy for its judges.

Institutionally, this situation results in poor legitimacy and capacity. In terms of capacity, cases involving substantive claims of sharia contracts are processed by actors (commercial judges and curators) who are not formally required to meet sharia competency standards. In terms of legitimacy, the "sharia nuances" in sharia bank bankruptcy have the potential to be perceived as merely substantive attributes used at the claim verification stage, while the process structure remains "general commercial." In the

[29] Michael Lipsky, *Birokrasi Tingkat Jalanan: Dilema Individu dalam Pelayanan Publik*, edisi peri (Russell Sage Foundation, 2010).

context of this study, this reinforces the article's argument that the problem identified is not a binary conflict of norms, but rather a lack of judicial policy instruments to ensure that contract-based transactions are processed consistently within the same bankruptcy regime.

Previous literature has detected similar symptoms through studies of authority and practice, namely that bankruptcy/PKPU in sharia entities tends to be drawn to the Commercial Court due to its procedural readiness and institutional channels, even though the general sharia ecosystem has its own ecosystem.[30] However, the author's interview findings add a more "implementational" dimension: the need for a special forum arises not only from demand but also from issues of actor capacity (competence fit) and the need for standardization in the interpretation of contracts during verification and estate settlement proceedings.

From a policy design perspective, these complaints can be interpreted as a signal that the current instruments are stronger at the "procedural container" level (bankruptcy as a collective regime), but not yet strong enough at the "bridging instrument" level, which integrates the characteristics of sharia contracts into the bankruptcy mechanism. Howlett emphasizes that the effectiveness of policy is not only determined by basic norms, but also by the choice and combination of instruments, including institutional design, competency standards, and operational guidelines that enable norms to function stably in practice.[31] Therefore, the demand for a "sharia commercial court" from the source should not be read as the only solution option, but as an expression of the need for a bundle of instruments such as special forums/assignments, judge competency, curator certification, and SOPs for contract-based bill verification.

Slow Policy Change: Low Case Volume and Policy Inertia

The sources also emphasized the factors explaining why policies have not moved significantly, namely because cases of Islamic bank bankruptcy are still relatively few and not yet significant. Due to the limited frequency of cases, institutional issues do not immediately emerge as a priority agenda in the judicial system or policy-making. They noted that in practice, Islamic bank bankruptcy cases are "not numerous," so the impetus

[30] Firman Wahyudi, "'Quo Vadis Penyelesaian Kebangkrutan dan Hukum PKPU tentang Perbankan Syariah,'" *Jurnal Hukum dan Peradilan* 8, no. no.1 (2019): 1–20, https://doi.org/https://doi.org/10.25216/jhp.8.1.2019.1-20.

[31] Michael Howlett, "Merancang Kebijakan Publik: Prinsip dan Instrumen."

to create new instruments such as special forums, judicial competencies, or Sharia curator licenses has not gained momentum.

Theoretically, this pattern is consistent with the logic of agenda-setting. Kingdon explains that policy change usually occurs when three elements converge: the problem is recognized as urgent, alternatives/solutions are available and considered feasible, and political/institutional conditions open a policy window.32 If the volume of cases is low, then the "problem flow" tends to be insufficient to push for the opening of a policy window, so that new designs are not prioritized even though there is a substantive need.

In addition, the slowness of policy change can also be explained through path dependency. When an institutional path is well established, in this case the bankruptcy path through the Commercial Court, the system tends to maintain that path because it provides procedural certainty, and change is considered costly and risky. The Hansen & Hansen study shows how path dependency can cause bankruptcy regimes to develop incrementally and tend to maintain stable institutional configurations. The authors' interview findings confirm this logic at the practical level. Even though the substance of Sharia claims differs, the forum path and bankruptcy tools remain the "default" because they are the most procedurally prepared and predictable paths.

In terms of implementation, this condition also produces side effects because the distinguishing instruments are not yet available, the system will rely on the discretion of the implementing actors (curators) to fill the void in standards. In line with Lipsky's concept of street-level bureaucracy, when formal guidelines do not yet regulate the details of a particular situation, implementation shifts to working practices and discretion built by actors in the field.

Conclusion

This study demonstrates that bankruptcy settlements in both conventional and Islamic banking in Indonesia continue to rely on the national bankruptcy regime under the Commercial Court system. Although Islamic bank insolvency cases follow the same procedural mechanisms as conventional bankruptcy cases, the determination of claims in Islamic banking is substantively based on Sharia contracts and profit-sharing agreements rather than interest-based calculations. This creates a hybrid practice in which substantive Sharia characteristics are processed through a uniform national bankruptcy mechanism.

[32] John W. Kingdon, *Agenda, Alternatif, dan Kebijakan Publik*, edisi ke-2 (t.t.).

The research identifies significant institutional capacity gaps, particularly the absence of Sharia competency requirements for judges and the lack of specialized licenses or certifications for curators handling Islamic bank insolvency. As a result, the integration of Sharia contractual substance into claim verification and debt assessment depends heavily on individual experience, increasing the risk of inconsistency and inaccuracy in bankruptcy practice.

The study also finds that policy reform has progressed slowly due to the relatively low number of Islamic bank bankruptcy cases and the strong institutional dominance of the existing Commercial Court structure. Consequently, despite the risks of legal inaccuracy and legitimacy concerns identified by practitioners, reform has not yet become a policy priority. Overall, the study concludes that the main issue is not the absence of bankruptcy law, but the lack of judicial policy instruments capable of bridging Sharia contractual characteristics with the standardized national bankruptcy system.

Based on these findings, the study recommends several reforms. First, Indonesia should develop a more adaptive institutional framework, such as a Sharia Commercial Court or a specialized unit with Islamic economic expertise. Second, minimum competency standards and structured training programs for commercial judges should be introduced to improve their understanding of contract-based Islamic transactions. Third, additional licensing or certification should be considered for curators handling Sharia insolvency cases, focusing on technical competencies related to contract verification and claim assessment. Fourth, technical guidelines or standard operating procedures (SOPs) should be established to regulate the verification of contract-based claims consistently. Finally, judicial policy reform should be implemented proactively as a preventive measure before Islamic bank insolvency cases increase in scale or complexity.

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