Strata Law Review, 2026, Vol. 4, No. 2, 83–98
E-ISSN: 2986-8114 | P-ISSN: 2987-3185
doi: 10.59631/slr.v4i2.546
Advance Access publication September 30, 2026

STRATA LAW REVIEW
journals.stratapersada.com/index.php/slr

Litigation in Religious Courts as a Pressure Mechanism for Resolving Non-Performing Financing in Islamic Banking

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Article History	Submitted	Revised	Accepted
	2026-06-24	2026-07-13 & 2026-09-09	2026-09-20

Abstract

This study aims to examine the use of lawsuits as an instrument to encourage the fulfillment of obligations by customers in default. The research employs an empirical juridical method using statutory and case approaches. The findings reveal that filing lawsuits demonstrates a high degree of effectiveness in enhancing customer compliance with financing obligations. Furthermore, lawsuits are not merely initiated to obtain judicial decisions but also function as instruments of negotiation and legal pressure that facilitate the settlement of obligations before the court renders a judgment. This study concludes that the use of litigation as an instrument to induce debt settlement constitutes an emerging reality in the practice of resolving non-performing Islamic financing. Nevertheless, such practices must be constrained by the principles of good faith and the prohibition of abuse of judicial process. Accordingly, the study recommends strengthening the regulatory framework and guidelines governing Islamic financing dispute resolution, optimizing non-litigation mechanisms, and implementing stricter judicial oversight to ensure that the use of litigation remains consistent with the principles of justice, legal certainty, and Sharia values.

Keywords: Islamic banks, litigation, lawsuit, dispute resolution, religious courts.

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INTRODUCTION

The use of litigation before the Religious Courts in resolving non-performing financing disputes in Islamic banking has increased substantially over the past two decades.[1] Following the enactment of Article 49(i) of Law No. 3 of 2006, subsequently maintained under Law No. 50 of 2009 concerning the Religious Courts, the jurisdiction of the Religious Courts was expanded to include the adjudication of Islamic economic disputes.[2] This authority was further reinforced by Constitutional Court Decision No. 93/PUU-X/2012, which affirmed the Religious Courts as the competent forum for the settlement of disputes arising from Islamic economic transactions. As a consequence, disputes involving non-performing Islamic financing have increasingly been brought before the Religious Courts.[3]

Despite the growing number of lawsuits filed by Islamic banks, empirical observations indicate that not all default claims culminate in judicial decisions.[4] In practice, many disputes are settled through amicable agreements, withdrawal of claims by the plaintiff, or repayment of obligations by customers after the lawsuit has been registered and court proceedings have commenced. Such a pattern suggests that litigation is not always pursued solely to obtain judicial remedies but may also function as an instrument that creates legal and psychological pressure, thereby encouraging defaulting customers to settle their obligations.[5] This phenomenon reflects the transformation of litigation from a purely adjudicative mechanism into a strategic instrument capable of influencing the behavior of disputing parties.[6]

From an economic perspective, the utilization of litigation as a means to induce compliance may be understood as an efficient strategy for accelerating asset recovery and minimizing losses incurred by Islamic banks. Legal institutions often function not merely as mechanisms for resolving disputes but also as instruments that shape incentives and influence economic behavior.[7] Nevertheless, such strategic use of litigation raises concerns regarding the appropriate role of judicial institutions and the extent to which legal procedures should be employed as bargaining mechanisms rather than as forums for the administration of justice. This issue is closely related to the doctrine of abuse of process, which seeks to prevent judicial mechanisms from being utilized for purposes inconsistent with the proper administration of justice.[8] Within

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[1] Mohamad Hidayatullah A.K Husein, Abdul Mujib, and Nenden Herawaty Suleman, "The Urgency of Rescheduling Policy As a Solution To Sharia Banking Dispute on Murabahah Agreements," *Tasharruf: Journal Economics and Business of Islam* 7, no. 2 (2022): 170, https://doi.org/10.30984/tjebi.v7i2.2106.

[2] Syawaluddin Hanafi, "Legal Politics of Changes to Marriage Laws in Indonesia," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (2024): 68–85, https://doi.org/10.32505/qadha.v11i1.8867.

[3] Mohammad Ghozali et al., "The Law Concept of Sharia Banking Compliance on Murabaha Financing in Indonesia," *Samarah* 8, no. 3 (2024): 1391–1408, https://doi.org/10.22373/sjhk.v8i3.11313.

[4] Nadhifatuz Zulfa et al., "Mubadalah Marriage Guidance to Prevent Divorce in Pekalongan City," *Muwazah* 15, no. 2 (2023): 75–94, https://doi.org/10.28918/muwazah.v15i2.2062.

[5] Husein, Mujib, and Suleman, "The Urgency of Rescheduling Policy As a Solution To Sharia Banking Dispute on Murabahah Agreements."

[6] Misbakhul Munir and Fathin Afifuddin, "Penyelesaian Sengketa Wanprestasi Akad Murabahah Melalui Litigasi," *SANGAJI : Jurnal Pemikiran Syariah Dan Hukum* 8, no. 2 (2024): 234–44, https://doi.org/10.52266/sangaji.v8i2.3394.

[7] Ulfa Azizah, Rismawati, and Ilham, "Penyelesaian Sengketa Perbankan Syariah Jalur Peradilan," *JIMU:Jurnal Ilmiah Multidisipliner* 3, no. 02 (May 17, 2025): 1136–48, https://ojs.smkmerahputih.com/index.php/jimu/article/view/735.

[8] Husein, Mujib, and Suleman, "The Urgency of Rescheduling Policy As a Solution To Sharia Banking Dispute on Murabahah Agreements."

the framework of contract law and Islamic economic law, contractual relationships are governed by the principle of good faith, which requires parties to exercise their rights and obligations honestly, fairly, and reasonably.[9] The increasing tendency to utilize litigation as a means of inducing compliance also raises important normative questions concerning access to justice and the compatibility of such practices with the essential function of the judiciary.[10]

Despite the growing body of scholarship on Islamic banking dispute resolution in Indonesia—which has predominantly focused on jurisdictional issues,[11] the comparative roles of litigation versus non-litigation mechanisms (such as BASYARNAS or mediation),[12] sharia compliance in court decisions,[13] and general procedural frameworks,[14] a critical research gap remains. Prior studies have largely examined the institutional authority of the Religious Courts or the technical resolution of disputes[15] without adequately investigating the phenomenon of litigation as a strategic pressure mechanism or bargaining tool employed by Islamic banks to induce debtor compliance prior to final judicial determination. This study distinguishes itself by analyzing how the initiation of lawsuits functions not primarily for adjudication but as an instrument generating legal and psychological pressure, leading to out-of-court settlements, claim withdrawals, or voluntary repayments. Furthermore, it critically evaluates the normative implications of such practices for the principles of good faith (ikhsan and amanah in Islamic contract law), access to justice, and the proper function of the judiciary, areas that have received limited attention in existing literature on Islamic economic disputes.

Against this background, the present study seeks to examine the growing tendency of filing non-performing financing claims before the Religious Courts and to analyze the use of litigation as an instrument for encouraging defaulting customers to fulfill their contractual obligations.[16] This research offers both theoretical and practical benefits. Theoretically, it contributes to the enrichment of Islamic economic law and procedural law literature by developing a normative framework that integrates principles of good faith, access to justice, and the prevention of abuse of process in the context of strategic litigation. Practically, the findings are expected to provide guidance for Islamic banks in developing more ethical and effective debt recovery strategies,

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[9] Dewa Ayu Putri Sukadana, "Implikasi Yuridis Wanprestasi Dalam Hukum Perdata Antara Teori Dan Praktik," *Jurnal Rechtens* 14, no. 1 (2025): 139–54, https://doi.org/10.56013/rechtens.v14i1.4292.

[10] Studi Kasus et al., "Analisis Aspek Substansif Dan Prosedural Pada Sengketa Wanprestasi Pembiayaan Akad Murabahah Memengaruhi Dalam Penyelesaian Sengketa Wanprestasi Akad Murabahah Di Perbankan Syariah , Teori Ekonomi Syariah Dan Akad Murabahah Ekonomi Syariah Berprinsip Tegu," no. September (2025).

[11] Azizan Rizky Ramadhan and Rahmad Efendi, "Settlement Of Problematic Financing Through Religious Courts (Case Study Of BPRS Al-Washliyah)," *Journal Analytica Islamica* 14, no. 2 (August 15, 2025): 1033–42, https://doi.org/10.30829/JAI.V14I2.25781.

[12] Amda Usnaka, "Litigation and Non-Litigation Approaches in Islamic Banking Syariah Resolution," *Dirham: Journal of Sharia Finance and Economics* 1, no. 1 (January 22, 2025): 45–59, https://doi.org/10.35912/josfe.v1i1.3332.

[13] Dudi Badruzaman et al., "Legal Review of Business Dispute Resolution in the Sharia Capital Market," *Jurnal Ekonomi Syariah Pelita Bangsa* 8, no. 01 (April 30, 2023): 121–26, https://doi.org/10.37366/JESPB.V8I01.1687.

[14] Atharyanshah Puneri, "Dispute Resolution for Islamic Banks in Indonesia," *International Journal of Islamic Economics and Finance (IJIEF)* 4, no. SI (March 18, 2021), https://doi.org/10.18196/ijief.v4i0.10084; Muhammad Zuhdi Asyrofi et al., "Dispute Resolution And Dynamics Of Legal Aspects In Sharia Banking Practices In Indonesia," *Al-Kharaj: Journal of Islamic Economic and Business* 8, no. 2 (June 25, 2026): 2026, https://doi.org/10.24256/KHARAJ.V8I2.10913.

[15] Azizah, Rismawati, and Ilham, "Penyelesaian Sengketa Perbankan Syariah Jalur Peradilan."

[16] Husein, Mujib, and Suleman, "The Urgency of Rescheduling Policy As a Solution To Sharia Banking Dispute on Murabahah Agreements."

assist Religious Court judges in evaluating the substance of claims, and offer policy recommendations for regulators to enhance dispute resolution mechanisms that align with Sharia values and the rule of law. Accordingly, this study aims to contribute to the development of a normative framework capable of establishing appropriate limitations on the strategic use of litigation, thereby promoting a dispute resolution system that is more equitable, accountable, and consistent with the values of Islamic law and the rule of law.

METHOD

This study employed normative legal research using a statutory approach, conceptual approach, and case approach to examine the legal issues concerning the use of litigation before the Religious Courts as a mechanism for resolving non-performing financing in Islamic banking. The statutory approach was applied to analyze the legal framework governing Islamic economic dispute resolution, particularly Law No. 3 of 2006 concerning the Religious Courts, Law No. 50 of 2009, Constitutional Court Decision No. 93/PUU-X/2012, the Indonesian Civil Code, and other relevant regulations. The conceptual approach was used to examine legal doctrines and scholarly theories relating to good faith, access to justice, abuse of process, strategic litigation, and economic analysis of law. Meanwhile, the case approach focused on analyzing judicial decisions concerning Islamic financing disputes adjudicated by the Religious Courts, particularly simple claim cases involving non-performing financing.

The data sources consisted of primary legal materials, including statutory regulations and judicial decisions of the Religious Courts, secondary legal materials comprising books, journal articles, and other scholarly publications relevant to Islamic banking dispute resolution, and tertiary legal materials, including legal dictionaries and other supporting references. Data were collected through documentary research by systematically identifying, selecting, and examining relevant legislation, court decisions, and legal literature. The judicial decisions were selected purposively based on their relevance to disputes concerning non-performing Islamic financing and their capacity to illustrate litigation practices before the Religious Courts.

The collected legal materials were analyzed qualitatively using a descriptive-analytical method. The analysis was conducted by interpreting statutory provisions, comparing legal doctrines with judicial reasoning, and examining patterns emerging from court decisions concerning the disposition of Islamic financing disputes. Furthermore, the legal issues were analyzed through legal reasoning to assess whether litigation functions solely as a judicial mechanism for resolving disputes or also operates as a strategic instrument for encouraging debtors to fulfill their contractual obligations. The integration of statutory interpretation, conceptual analysis, and judicial case analysis enabled this study to evaluate the consistency between litigation practices and the principles of good faith, access to justice, and the proper administration of justice within the Religious Courts.

Doi: 10.59631/slr.v4i2.546

RESULT AND DISCUSSION

The Use of Litigation in the Resolution of Non-Performing Financing in Islamic

Murabahah financing, despite being one of the most widely utilized financing schemes in Islamic banking, is not immune from various problems,[17] particularly defaults arising from customers' inability to fulfill their contractual obligations[18]. Default (wanprestasi) refers to the failure of one party to perform its obligations in accordance with the agreed terms and within the stipulated time. Such failure may result in financial losses for Islamic banks and adversely affect the stability of their operations. Consequently, Islamic banks are required to undertake appropriate measures to mitigate the risks associated with non-performing financing.

In practice, litigation constitutes the last resort in resolving problematic financing.[19] Prior to initiating legal proceedings, Islamic banks generally employ several non-litigation measures aimed at restoring the customer's capacity and willingness to perform the contract. These measures include financing restructuring, collection efforts, formal warnings (somasi), and negotiations. Litigation before the Religious Courts is pursued only after these mechanisms have proven ineffective. Such an approach is consistent with the principles of prudence and good faith embedded in Islamic economic transactions, which prioritize amicable settlement and the preservation of contractual relationships.

The increasing number of non-performing financing cases brought before the Religious Courts demonstrates that litigation has become an integral component of the dispute resolution mechanism in Islamic banking. The expansion of the Religious Courts' jurisdiction under Law No. 3 of 2006 and Constitutional Court Decision No. 93/PUU-X/2012 has provided legal certainty regarding the competence of these courts in adjudicating Islamic economic disputes. Consequently, Islamic banks have increasingly relied upon litigation as a means of protecting their financial interests and recovering problematic assets.[20]

Characteristics of Islamic Financing Litigation before the Religious Courts

Islamic financing disputes brought before the Religious Courts possess distinctive characteristics compared with ordinary civil disputes. In addition to examining contractual obligations and evidence, judges are also required to consider the conformity of the financing

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[17] Rijal Assidiq Mulyana and Silviya Maharani, "Strategies for Handling Problematic Murabaha Financing at Bank Syariah Indonesia Cipto Sub Branch Office," *Etihad: Journal of Islamic Banking and Finance* 3, no. 2 (November 14, 2023): 81–90, https://doi.org/10.21154/etihad.v3i2.7375.

[18] Husein, Mujib, and Suleman, "The Urgency of Rescheduling Policy As a Solution To Sharia Banking Dispute on Murabahah Agreements."

[19] Nur Wulan N. Moeda, Weny Almoravid Dungga, and Nurul Fazri Elfikri, "Resolution of People's Business Credit (KUR) Breach at BRI Bank, South City," *Estudiante Law Journal* 6, no. 3 (October 13, 2024): 620–32, https://doi.org/10.33756/eslaj.v6i3.29266; Mudhoffar Rachman, Ubaidillah Rosyad, and Nita Sabila, "Settlement of Problematic Financing in Sharia Banks from the Perspective of Sharia Economic Law: A Case Study of Bank BTN Syariah in Surabaya," *Journal of Sharia Economic Law* 3, no. 2 (December 27, 2025): 137–48, https://doi.org/10.37680/JSHEL.v3i2.9125.

[20] Sonia Regita Irawan, "Akibat Hukum Harta Bersama Yang Masih Menjadi Objek Jaminan Dalam Perjanjian Kredit Terhadap Pembagian Harta Bersama Setelah Perceraian," *Lex Patrimonium* 3, no. 1 (2024).

agreement with Islamic principles. Therefore, the adjudication of Islamic financing disputes encompasses not only legal aspects but also normative considerations derived from Sharia principles. The primary objective of lawsuits filed by Islamic banks is the restoration of creditors' rights resulting from customers' defaults. Nevertheless, this research reveal that Islamic financing disputes exhibit a relatively high rate of non-adjudicative settlement[21].

A considerable number of cases do not culminate in final judicial decisions after substantive examination. Instead, disputes are frequently resolved through settlement agreements, withdrawal of claims by the plaintiffs, or repayment of obligations by customers during the litigation process or even before substantive hearings commence. This pattern indicates that litigation serves functions beyond the traditional role of adjudication. The registration of a lawsuit and the commencement of judicial proceedings create legal and psychological pressure that encourages customers to settle their obligations voluntarily. Consequently, the litigation process itself appears to function as a mechanism for inducing compliance rather than merely as a forum for obtaining judicial remedies. In this regard, litigation operates as an instrument that facilitates negotiations and accelerates debt recovery while reducing the need for prolonged judicial proceedings.[22]

Indications of Litigation as an Instrument for Encouraging the Fulfillment of Obligations in the Resolution of Non-Performing Financing

The prevalence of settlements, voluntary repayments, and withdrawals of claims before the issuance of judicial decisions provides strong indications that litigation is increasingly utilized as a mechanism for encouraging customers to fulfill their contractual obligations. The filing of a lawsuit before the Religious Courts generates legal consequences and reputational concerns that may motivate debtors to negotiate and settle their liabilities. As a result, litigation exerts both legal and psychological pressure on the parties involved. From the perspective of economic analysis of law, such practices may be viewed as rational and efficient strategies for accelerating asset recovery and minimizing transaction costs. Litigation creates incentives that encourage debtors to perform their obligations without requiring lengthy and costly judicial processes. Accordingly, lawsuits are not always intended to obtain judicial judgments but may also function as bargaining instruments that facilitate settlement[23].

However, the strategic use of litigation raises concerns regarding the proper role of judicial institutions. Courts are fundamentally established to administer justice and provide legal certainty rather than to serve merely as instruments of debt collection. Excessive reliance on litigation as a means of coercion may blur the distinction between judicial dispute resolution and commercial negotiation. Furthermore, such practices may give rise to concerns regarding the potential abuse of judicial process, particularly when legal proceedings are initiated primarily to

[21] Muhamad Ismail, Robitho Alam Hadi Faisal, and Zainur Zainur, "Marriage and Divorce in Islamic Law: Sociological Implications for Modern Muslim Societies," *Journal of Islamic Law El Madani* 4, no. 1 (2025): 25–37, https://doi.org/10.55438/jile.v4i1.142.
[22] Azizah, Rismawati, and Ilham, "Penyelesaian Sengketa Perbankan Syariah Jalur Peradilan."
[23] Supriyandi Supriyandi and Saiful Anwar, "The Implementation Of Murabahah Financing Contracts In Bank Syariah Indonesia," *Jurnal Ilmiah Ekonomi Islam* 9, no. 3 (2023): 4295, https://doi.org/10.29040/jiei.v9i3.10811.

exert pressure rather than to seek judicial protection.[24] From the perspective of contract law and Islamic economic law, the exercise of the right to litigate should be guided by the principle of good faith. Although Islamic banks possess the legal right to file lawsuits against defaulting customers, such rights must be exercised in a manner consistent with fairness, proportionality, and ethical standards. Therefore, the use of litigation as an instrument for encouraging debt repayment should remain subject to the principles of good faith, access to justice, and the prohibition against abuse of process[25].

These findings suggest that the use of litigation as an instrument for inducing the fulfillment of obligations has become an emerging reality in the practice of resolving non-performing Islamic financing in Indonesia. While such practices may contribute to the efficiency of debt recovery, they should not undermine the fundamental function of judicial institutions as forums for the administration of justice. Accordingly, stronger regulatory frameworks and judicial guidelines are required to ensure that litigation remains aligned with the principles of legal certainty, justice, and the values of Islamic law.

1. Litigation Initiated after the Failure of Negotiation

This research findings indicate that most Islamic financing lawsuits are initiated only after Islamic banks have exhausted various non-litigation measures. Prior to filing claims before the Religious Courts, banks generally undertake several efforts, including financing restructuring, collection activities, negotiations, and the issuance of formal notices (somasi). Consequently, litigation constitutes a response to the failure of previous settlement mechanisms rather than the primary means of resolving disputes.

This practice demonstrates that litigation serves a strategic function by exerting legal pressure on customers who are perceived as uncooperative. The prospect of adverse legal consequences, including judicial decisions, the enforcement of collateral, and litigation costs, may encourage debtors to resume negotiations with the bank. In this regard, the filing of a lawsuit operates not merely as a means of obtaining judicial protection but also as a mechanism intended to alter the behavior of defaulting customers. Such findings support the view that legal institutions possess an incentive function capable of influencing economic actors and encouraging contractual compliance.

2. Repayment of Obligations Following the Registration of Lawsuits

Another indication of the pressure function of litigation can be observed in the tendency of debtors to settle their obligations after a lawsuit has been formally registered before the Religious Courts. In numerous cases, customers who previously failed to respond to collection efforts subsequently demonstrate a willingness to negotiate or repay their debts after receiving court summonses or becoming aware that legal proceedings have commenced. This phenomenon suggests that the principal effect of litigation lies not necessarily in the final judicial

[24] Sukadana, "Implikasi Yuridis Wanprestasi Dalam Hukum Perdata Antara Teori Dan Praktik."
[25] Luzavindra Maulana Adrian Luzavindra and Umar Haris Sanjaya, "Application of Article 27 Paragraph (2) of the Marriage Law on the Misconception of the Applicant in Marriage Annulment," *Domus Legalis Cogitatio* 2, no. 1 (2025): 1–23, https://doi.org/10.24002/dlc.v2i1.9879.

determination, but rather in the psychological and reputational consequences associated with court proceedings. Compared with ordinary collection mechanisms, litigation generates stronger legal and social pressures that increase debtor compliance. Consequently, the litigation process itself becomes an effective instrument for inducing the performance of contractual obligations.

From the perspective of dispute transformation theory, the initiation of legal proceedings may alter the dynamics of conflict and encourage parties to seek mutually acceptable solutions before the court renders a judgment. Therefore, the significance of litigation extends beyond adjudication and encompasses its role as a mechanism for influencing the behavior of disputing parties.

3. High Rates of Withdrawal of Claims and Amicable Settlements Prior to Final Judgment

Another indication supporting the pressure function of litigation is the relatively high incidence of claim withdrawals and amicable settlements before the completion of judicial proceedings. Such situations commonly arise after lawsuits have been formally registered with the Religious Courts. Once litigation has commenced, customers frequently decide to fulfill their obligations or negotiate settlement agreements with the bank. Upon reaching a mutually acceptable resolution, the bank generally withdraws the lawsuit, thereby terminating the proceedings without the need for a judicial determination on the merits. This pattern suggests that litigation functions not solely as a mechanism for obtaining judicial remedies but also as a bargaining instrument that facilitates negotiations between the parties. Consequently, the filing of lawsuits serves as leverage for encouraging debtors to settle their liabilities voluntarily. The relatively high proportion of settlements and claim withdrawals demonstrates that the effectiveness of litigation lies largely in its ability to create incentives for compliance rather than in securing final judgments. Evidence of this phenomenon can be observed in the Religious Court of Wates. Based on data collected by the researcher regarding simple claim cases filed over several years, a substantial number of cases were resolved through claim withdrawals and amicable settlements before the completion of trial proceedings. his pattern observed in the judicial decisions indicates that litigation frequently operates as a catalyst for settlement rather than as an instrument aimed primarily at obtaining judicial decisions. These findings provide strong indications that litigation in Islamic financing disputes has evolved into an instrument for encouraging debtors to fulfill their obligations. From the perspective of economic analysis of law, such practices may contribute to efficiency and accelerate asset recovery. Nevertheless, from the perspective of procedural justice, excessive reliance on litigation as a means of exerting pressure raises concerns regarding the proper function of judicial institutions. Courts are established to administer justice and provide legal certainty, not merely to serve as instruments of debt collection. Therefore, the use of litigation as a mechanism for inducing compliance should remain subject to the principles of good faith, proportionality, access to justice, and the prohibition against abuse of process.

Table 1 presents the disposition of simple claim cases concerning Islamic financing disputes filed before the Religious Court of Wates between 2022 and 2026. During this period, eight cases were registered. Of these, five cases (62.5%) ended with the withdrawal of claims, two cases (25%) resulted in judgments granting the plaintiff's claims, and one case (12.5%) was resolved through

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an amicable settlement. These findings indicate that the majority of cases did not proceed to final adjudication. The high proportion of withdrawn claims and settlements demonstrates that litigation before the Religious Courts frequently serves purposes beyond obtaining judicial decisions. In many instances, the filing of a lawsuit itself appears sufficient to induce debtors to fulfill their obligations or to negotiate settlement agreements with the bank. Consequently, the litigation process functions as a catalyst for compliance rather than merely as a mechanism for judicial determination.

The predominance of claim withdrawals is particularly noteworthy. Five out of eight cases (62.5%) were terminated through the withdrawal mechanism, suggesting that debtors had either fulfilled their obligations or reached agreements with the plaintiff after the commencement of legal proceedings. This pattern supports the argument that the effectiveness of litigation lies not necessarily in the issuance of judgments but in the legal and psychological pressure generated by the prospect of judicial proceedings. The possibility of adverse judgments, execution against collateral, litigation costs, and reputational consequences provides incentives for debtors to settle their liabilities voluntarily. Furthermore, only two cases (25%) culminated in judgments granting the plaintiff's claims. This relatively low proportion indicates that obtaining judicial decisions is not always the primary objective pursued by Islamic banks. Rather, litigation appears to operate as a strategic mechanism designed to encourage compliance and accelerate asset recovery. Such findings are consistent with the economic analysis of law, which emphasizes the role of legal institutions in creating incentives and influencing the behavior of economic actors (Posner, 2014).

The existence of one case resolved through amicable settlement further reinforces the view that litigation may facilitate negotiations between disputing parties. Judicial proceedings provide a formal framework that encourages parties to reassess their positions and seek mutually beneficial solutions. In this respect, litigation performs both adjudicative and conciliatory functions, thereby transforming the nature of dispute resolution from adversarial confrontation to negotiated settlement. These findings from the case analysis suggest that litigation in Islamic financing disputes before the Religious Courts increasingly exhibits the characteristics of strategic litigation for debt recovery. While such practices may enhance efficiency and accelerate the recovery of non-performing assets, they also raise concerns regarding the proper role of judicial institutions. Excessive reliance on litigation as an instrument of pressure risks shifting the function of courts from forums for the administration of justice to mechanisms of commercial leverage. Therefore, the exercise of the right to litigate should remain subject to the principles of good faith, proportionality, and the prohibition against abuse of process, thereby ensuring that judicial institutions continue to uphold the values of justice, legal certainty, and Sharia principles.

Table 1. *Disposition of Islamic Financing Simple Claim Cases before the Religious Court of Wates (2022–2026)*

No.	Case Number	Year	Outcome
1	2/Pdt.G.S/2022/PA.Wt	2022	Withdrawn
2	3/Pdt.G.S/2022/PA.Wt	2022	Withdrawn
3	1/Pdt.G.S/2024/PA.Wt	2024	Withdrawn
4	1/Pdt.G.S/2025/PA.Wt	2025	Withdrawn

5	2/Pdt.G.S/2025/PA.Wt	2025	Granted
6	3/Pdt.G.S/2025/PA.Wt	2025	Withdrawn
7	4/Pdt.G.S/2025/PA.Wt	2025	Granted
8	1/Pdt.G.S/2026/PA.Wt	2026	Settled Amicably

Good Faith, Abuse of Process, and Access to Justice in the Strategic Use of Litigation

From an economic perspective, such practices may benefit both parties because they avoid the costs and time required to continue judicial proceedings until a final and binding judgment is rendered. However, from the standpoint of the judicial function, this phenomenon indicates that the objective of filing a lawsuit is frequently achieved before the court has the opportunity to provide substantive adjudication of the dispute. These findings suggest that litigation in Islamic financing disputes is not always oriented toward obtaining judicial decisions. In practice, litigation often serves as a strategic instrument aimed at encouraging debtor compliance and accelerating asset recovery. This raises important questions concerning whether such practices remain consistent with the principles of good faith and access to justice or whether they constitute a form of judicial instrumentalization that may potentially lead to abuse of process.

1. Indications of Abuse of Process

The doctrine of abuse of process is based on the principle that every individual has the right to access the courts to protect his or her legal rights.[26] Nevertheless, this right is not absolute and should not be exercised for purposes inconsistent with the proper administration of justice. Abuse of process arises when judicial mechanisms are employed not to resolve disputes fairly but to obtain collateral advantages outside the legitimate objectives of legal proceedings, including economic, psychological, or reputational pressure on opposing parties. The findings of this study reveal that, out of eight simple claim cases filed before the Religious Court of Wates, only two cases culminated in judgments on the merits, while one case was resolved amicably and five cases were withdrawn by the plaintiff. This pattern indicates that a substantial proportion of cases were terminated before judicial determination. Such circumstances provide indications that litigation may have been utilized primarily as a pressure mechanism intended to encourage debt repayment rather than as a genuine effort to obtain judicial resolution. The repeated withdrawal of claims after the achievement of debt repayment or negotiated settlements suggests that the filing of lawsuits may have functioned as leverage rather than as an instrument for substantive adjudication. Although these findings do not necessarily establish the existence of abuse of process in a strict legal sense, they raise concerns regarding the potential instrumentalization of judicial procedures and the possibility that litigation is being employed for objectives beyond its fundamental purpose.

2. Good Faith in the Use of Litigation

[26] Alexey Ispolinov, "The Doctrine of Abuse of Rights in International Law," *Mežđunarodnoe Pravosudie* 15, no. 3 (2025): 3–22, https://doi.org/10.21128/2226-2059-2025-3-3-22; Luke Tattersall and Azfer A. Khan, "Taking Stock: Abuse of Process within the International Court of Justice," *The Law & Practice of International Courts and Tribunals* 19, no. 2 (August 26, 2020): 229–68, https://doi.org/10.1163/15718034-12341423.

The principle of good faith constitutes one of the fundamental principles of both contract law and Islamic economic law.[27] In contractual relationships, good faith requires parties to exercise their rights and perform their obligations honestly, fairly, and proportionately.[28] Accordingly, the relationship between Islamic banks and customers should be guided by the values of justice, fairness, and the genuine intention to resolve disputes.[29] The high number of withdrawn cases observed in this study suggests that litigation is not always initiated with the primary purpose of obtaining judicial settlement. Instead, lawsuits may function as psychological instruments aimed at compelling debtors to fulfill the demands of creditors. Under such circumstances, the role of litigation shifts from a mechanism for dispute resolution to a pressure instrument. From the perspective of good faith, such practices may be regarded as inconsistent with the underlying objectives of the right to litigate. The discrepancy between the formal exercise of the right to sue and the substantive objective actually pursued indicates that judicial institutions may be utilized not to obtain fair adjudication but rather to impose economic and psychological pressure on relatively weaker parties. Such practices are closely related to the doctrine of abuse of process, which emphasizes that legal procedures should not be employed for purposes unrelated to the proper administration of justice.

As institutions operating under Sharia principles, Islamic banks are expected not only to comply with positive law but also to uphold the values of trustworthiness (amanah), justice ('adl), and public welfare (maslahah).[30] Consequently, the use of litigation primarily as a pressure mechanism against weaker parties may create inconsistencies between dispute resolution practices and the ethical values that constitute the foundation of Islamic finance. Therefore, compliance with the principle of good faith should not be measured solely by the existence of the legal right to bring an action. Rather, it should be assessed in light of the objectives, methods, and proportionality of exercising such rights. Litigation genuinely intended to resolve disputes remains legally and ethically justifiable. However, litigation employed merely to exert pressure on customers tends to contradict the principle of good faith and may potentially constitute an abuse of judicial process.

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[27] Choi, Seok Beom et al., "Towards A Better Understanding of Good Faith Concept in Islamic Contract Law," *International Journal of Engineering & Technology* 7, no. 4.28 (November 30, 2018): 247–53, https://doi.org/10.14419/ijet.v7i4.28.22588; Maulidina Sari et al., "The Principle of Good Faith in Digital Business Contracts: Between Freedom of Contract and Legal Protection," *Yurisprudentia: Jurnal Hukum Ekonomi* 12, no. 1 (June 30, 2026): 75–89, https://doi.org/10.24952/YURISPRUDENTIA.V12I1.19963; Derita Prapti Rahayu et al., "Legal Effectiveness of Business Contracts in Tin Mining: Socio-Legal and Governance Challenges in Corporate–Community Relations in Indonesia," *Resources Policy* 111 (December 2025): 105767, https://doi.org/10.1016/j.resourpol.2025.105767.

[28] Meydora Cahya Nugrahenti and Ari Hernawan, "Good Faith Principle in Indonesian Contract Law: How to Set the Definition and Its Benchmarks," *Journal of Infrastructure Policy and Development* 8, no. 10 (September 26, 2024): 7358, https://doi.org/10.24294/jipd.v8i10.7358.

[29] Binta Tijjani Jibril et al., "Awareness and Perception of Customers on Islamic Banking Products and Services: A Meta-Synthesis," *Journal of Accounting Research, Organization and Economics* 4, no. 3 (December 9, 2021): 234–47, https://doi.org/10.24815/jaroe.v4i3.20057.

[30] Muhammad Zuhdi Asyrofi, Muhammad Albahi, and Rozi Andrini, "Operational Concepts and Sharia Principles in the Management of Sharia Financial Institutions," *Amkop Management Accounting Review (AMAR)* 5, no. 2 (December 9, 2025): 1406–16, https://doi.org/10.37531/amar.v5i2.3301.

3. Implications for Access to Justice

Legally, Islamic banks possess the right to initiate proceedings before the Religious Courts when customers default on financing agreements.[31] Such rights form an essential component of access to justice and legal protection guaranteed by law. Therefore, the filing of lawsuits cannot, in itself, be regarded as contrary to good faith, provided that such actions are exercised proportionately and consistently with the purposes of judicial institutions. Nevertheless, the strategic use of litigation as an instrument of pressure may have several implications for access to justice. First, it may increase the caseload of the Religious Courts. The filing of lawsuits that are not genuinely intended to obtain judicial resolution may reduce the efficiency of courts in handling disputes that actually require adjudication. As a consequence, delays in case disposition and reductions in the quality of judicial services may occur. Second, it risks transforming courts into debt collection instruments. Normatively, courts are established to administer justice and resolve disputes rather than to function as mechanisms for debt recovery. When litigation is used primarily to pressure customers into fulfilling their obligations, judicial institutions may gradually assume a role that resembles a legally legitimized collection agency. Such developments may weaken public confidence in the neutrality and independence of courts.

Third, the use of litigation as a pressure mechanism may exacerbate inequalities between banks and customers. Access to justice requires equality of arms between litigants.[32] In practice, Islamic banks generally possess greater financial resources, legal expertise, and litigation capabilities than individual customers. Consequently, customers may accept the demands of banks not because those demands are substantively justified but because they lack the resources necessary to withstand judicial proceedings. Such circumstances are inconsistent with the fundamental objectives of access to justice. Finally, the strategic use of litigation may alter the institutional role of the Religious Courts themselves. Within the framework of Islamic economic law, Religious Courts are intended to provide justice, legal certainty, and social benefit. However, when litigation functions primarily as a means of enforcing contractual compliance rather than resolving disputes, the courts risk becoming instruments that support debt recovery strategies rather than guardians of justice. Such instrumentalization may undermine the substantive role of the judiciary and shift its orientation from the fair resolution of disputes to the coercive enforcement of contractual obligations.

CONCLUSION

This study demonstrates that litigation in the settlement of non-performing Islamic financing before the Religious Courts is not always aimed at obtaining judicial decisions. The findings from the Religious Court of Wates indicate that most cases are resolved before substantive adjudication through the withdrawal of claims or amicable settlements. Of the eight simple claim cases examined, only two resulted in judicial decisions, while five cases were withdrawn and one case

[31] Tuti Tarumartani and Sri Wahyu Tarumartani, "Keadilan Dan Kepastian Hukum Nasabah Dalam Penyelesaian Sengketa Pembiayaan Murabahah," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 3 (2025): 2130–41, https://doi.org/10.38035/jihhp.v5i3.3902.

[32] Erwin Susilo et al., "Access to Justice," *Jurnal Hukum Dan Peradilan* 14, no. 2 (July 31, 2025): 317–50, https://doi.org/10.25216/jhp.14.2.2025.317-350.

ended in settlement. These findings suggest that litigation frequently functions as a strategic instrument for encouraging debtors to fulfill their contractual obligations and accelerating the recovery of non-performing assets. From an economic perspective, such practices may contribute to efficiency by reducing transaction costs and shortening the time required to recover financing. However, from the perspective of judicial function, the strategic use of litigation raises concerns regarding the instrumentalization of judicial institutions. Findings from the case analysis indicate the existence of potential abuse of process, insofar as lawsuits are not always pursued with the genuine intention of obtaining judicial resolution but may instead be employed to exert legal, psychological, and reputational pressure on defaulting customers.

Furthermore, the findings reveal that the strategic use of litigation should be evaluated in light of the principles of good faith and access to justice. Although Islamic banks possess the legal right to initiate proceedings against defaulting customers, the exercise of such rights must remain proportionate and consistent with the fundamental objectives of judicial institutions. Excessive reliance on litigation as a mechanism for debt recovery risks transforming the Religious Courts from forums for the administration of justice into instruments of debt collection, thereby potentially undermining public confidence in judicial institutions and creating inequalities between banks and customers. Accordingly, the use of litigation as an instrument for encouraging the fulfillment of obligations constitutes an emerging reality in the practice of resolving non-performing Islamic financing in Indonesia. Nevertheless, such practices should remain subject to the principles of good faith, proportionality, and the prohibition against abuse of process in order to ensure that dispute resolution remains consistent with legal certainty, justice, and the ethical values underlying Islamic finance.

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