



THE SETTLEMENT MODEL OF NON-PERFORMING FINANCING WHICH IS MORE EFFECTIVE AND LEGAL JUSTICE IN SHARIA FINANCING COMPANIES

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ABSTRACT

Post-pandemic COVID-19 still leaves Non-Performing Financing (NPF), especially financing with fiduciary guarantees in Sharia finance companies. The Otoritas Jasa Keuangan's Relaxation Policy, which ended in April 2023, has not been effective and has fulfilled a sense of justice for debtors. This research discusses the causes of the ineffective implementation of the Relaxation policy in Sharia Financing Companies so that there is still NPF post the Covid-19 pandemic. Furthermore, it discusses the settlement model of NPF as an offer so that is more effective and fulfils a sense of justice for the parties. This empirical juridical research uses a qualitative approach in collaboration with statutory and conceptual approaches. The research locations were nineteen financing companies in Pekalongan ex-Residency with fiduciary financing objects. Data collection uses focus group discussions, interviews and document studies. The results show that inconsistent norms, negative legal culture, misperceptions of restructuring diction as the write-off of debt and the debtor's objection in the settlement of NPF are the causes of the ineffective implementation of the Relaxation policy. The settlement of NPF should be carried out based on sharia principles, the principle of prudence and good faith which prioritizes the needs of the debtor. Determining the rescheduling period should be carried out using a tri-semester tiered model so that effectivity, commutative justice and benefits (reciprocal benefits) will be realized between the two parties

1. Introduction

The COVID-19 pandemic has affected financial institutions in various countries due to an increase in problem loans and financing. Several studies have shown that in China the average NPL ratio is 3,810%, which is the highest since 2009,¹

¹ Lawrence Kryzanowski, Jinjing Liu, and Jie Zhang., Effect of COVID-19 on Non-Performing Loans in China, *Finance Research Letters*, Vol.52, 2023; See to, Chen Zheng and Junru Zhang., The Impact of COVID-19 on the Efficiency of Microfinance Institutions, *International Review of Economics & Finance*, Vol.71, 2021, page.407–23

in Colombia the average ratio of non-performing loans is between 5%-7% (per cent),² in seven Southeast Asian countries³ and countries that are members of The Organization of Islamic Cooperation, including Indonesia also experienced a significant impact at conventional and sharia financial institutions.⁴ In Indonesia, the covid 19 pandemic has increased problem financing at financial institutions including finance companies so that company receivables have contracted at a level of 1% -6% per year.⁵

Non-performing financing in nineteen sharia unit branch offices in the Pekalongan ex-Residency, especially motor vehicle financing, averaged 12% of total financing For example: *First*, PT Bussan Auto Finance Sharia Unit Branch Office, (KCUS) Tegal and Pekalongan in 2018, that is 2.78% and in 2019 that is 5.01% (per cent), but in 2020 Non-performing financing was 12.94%, in 2021 it was 11.59% and in 2022 it will be 7.82%. *Second*, PT Wahana Ottomitra Multiartha Sharia Unit Branch Office (KCUS) Tegal, Pekalongan and Pemalang, the ratio of non-performing financing to total receivables in 2020 was 12.08%, in 2021 that is 12.04% and in 2022 that is 7.56%. *Third*, PT Bima Multifinance Tegal Sharia Unit Branch Office (KCUS) also recorded that the ratio of non-performing financing to total receivables in 2018 was 3.40%-5.02% in 2019, that is 6.03%, but in 2020 that is 13.34%, in 2021 that is 12.94% and in 2022 that is 9.08%. This data shows an increase during the COVID-19 pandemic, where the average increase occurred in 2019 and 2020 and decreased in 2021 and 2022.

The Otoritas Jasa Keuangan has made efforts to resolve Non-Performing Financing due to the COVID-19 pandemic with a Relaxation policy that is valid until 2022, with The Regulations of Financial Services Authority, known as POJK. POJK Number 11/POJK.03/2020; POJK Number 14/POJK.05/2020; POJK Number 48/POJK.03/2020 and; POJK Number 58/POJK.05/2020. The policy was extended by POJK Number 30/POJK.05/2021 until 17 April 2023. The policy includes, among other things: 1) restructuring through lowering interest rates or margins (profits); 2) financing tenor rescheduling policy; 3) reduction of arrears of loan or financing principal; 4) reduction of interest arrears or margin (profit); 5) additional financing facilities; and 6) conversion of financing into temporary equity participation.

2 Julian Benavides-Franco et al., The Evolution of Loan Volume and Non-Performing Loans Under COVID-19 Innovations: The Colombian Case, *Heliyon*, Vol.9 No.4, 2023

3 Ooi Kok Loang, Zamri Ahmad, and R V Naveenan., Non-Performing Loans, Macroeconomic and Bank-Specific Variables in Southeast Asia During COVID-19 Pandemic, *The Singapore Economic Review*, Vol.68 No.03, 2023, page.941–61; See to, Silvia Marchesi., Adoption of an IMF Programme and Debt Rescheduling. An Empirical Analysis, *Journal of Development Economics*, Vol.70 No.2, 2003, page.403–23

4 Narjess Boubakri, Ali Mirzaei, and Mohsen Saad., Bank Lending During the COVID-19 Pandemic: A Comparison of Islamic and Conventional Banks, *Journal of International Financial Markets, Institutions and Money*, Vol.84, 2023

5 Syahrizal Sidik., Fenomena Bangkrutnya Leasing Mobil-Motor Efek Pandemi, Miris!, <https://www.cnbcindonesia.com/>, diakses pada 2021, <https://www.cnbcindonesia.com/market/20210706212710-17-258822/fenomena-bangkrutnya-leasing-mobil-motor-efek-pandemi-miris>.

However, the implementation of this policy was not optimal, so post the COVID-19 pandemic and after the validity period of the Otoritas Jasa Keuangan policy ended, there were still problems with Non-Performing Financing (NPF), especially financing with fiduciary guarantees. Data as of May 2023 shows that, at BAF of Sharia Unit Branch Office in Tegal and Pekalongan, the remaining amount of Non-performing Financing (NPF) with fiduciary guarantees post the COVID-19 pandemic was 6.09% (per cent). In PT Bima Multifinance, it was also recorded that it was 6.92% of total financing. In the Sharia Business Unit of PT. FIF Pekalongan City is 5.08%. In the PT WOM of Sharia Unit Branch Office in Tegal, Pekalongan and Pemalang, is 6.71%. Bentara Sinergies Multifinance of Sharia Unit Branch Office in Tegal, which is 7.28% and at PT Nusa Surya Cipta of Sharia Unit Branch Office in Tegal funds, there is still 7.53%.⁶ That means, the amount of non-performing financing in each of these financing companies still does not meet the standards set by the Otoritas Jasa Keuangan's Regulation Number 29/POJK.05/2014 of 2014 concerning Business Conduct of Financing Companies, where the maximum ratio of NPF should be less than 5% to avoid financing risk with substandard and loss non-performing collectibility.

The findings of previous researchers show the same thing regarding the policy of Otoritas Jasa Keuangan in the settlement of Non-performing financing. Ningsih & Resetiadi's research found that the restructuring policy was ineffective because of the large number of debtors and the economic conditions of the debtors before the pandemic had experienced problems⁷. Fitriawati, Chandra & Pratiwi in their research found that the 'Otoritas Jasa Keuangan's stimulus policy had no significant effect on non-performing financing.⁸ Agustina's research found that restructuring policies were not efficient for resolving bad financing.⁹ Risantyo also found that the restructuring policy did not have a significant impact on settlement NPF.¹⁰ However, several other researchers found that Otoritas Jasa Keuangan's policy regarding restructuring of non-performing financing during the Covid-19 pandemic was effective. For example, Sutanti & Haryanti, in their research found that the policy was effective due to a decrease in non-performing financing in 2021 from a level of

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7 Selfi Hastri Ningsih and Aslan Hari Risetiadi., Efektivitas Restrukturisasi Kredit Di Masa Pandemi, *Tamwil*, Vol.8 No.1, 2022, page.37–45

8 Fitriawati Fitriawati, Ferry Chandra, and Astria Noer Pratiwi, Efektivitas Kebijakan Stimulus Perekonomian Terhadap Kredit Bermasalah (Non Performing Loan) Pada BPR Konvensional Di Bandung Dalam Masa Pandemi, *Banking and Management Review*, Vol.10 No.2, 2021, page.1443–49.

9 Rani Sri Agustina., The Credit Restructuring As A Form Of Protection Against Customers During The Covid-19 Pandemic, *International Journal of Law Reconstruction*, Vol.5 No.2, 2021, page.228–41

10 Risky Risantyo., Efektivitas Restrukturisasi Kredit Perbankan Terkait Penerapan POJK No 11/POJK. 03/2020 Di Masa Pandemi Covid 19, *Jurnal Hukum Dan Pembangunan Ekonomi*, Vol.9 No.2, 2021, page.185–97

9.18% to 8.13% in 2022.¹¹ Chalid & Bella in their research also showed the same results, where the restructuring policy was effective in reducing the non-performing financing ratio caused by the Covid-19 pandemic.¹² Astuti & Ilmiah in their research showed the same results, where the restructuring policy reduced the portfolio and financing risk from 6% to 2.5%.¹³ Research conducted by Ilmih, Hartono & Musofiana shows that the restructuring policy has a positive impact from a legal, economic and psychological perspective for multifinance companies and customers.¹⁴ The difference between the current research and previous research is the focus of the research where the current research is to find a new formula for a non-performing financing model that is more effective and fair for the parties.

Based on the facts and findings of previous research, it is relevant to study in order to obtain clear and comprehensive answers regarding the implementation of the relaxation policy from the Otoritas Jasa Keuangan to the settlement of non-performing financing in Islamic finance companies. This research discusses two main patterns, first, the causes of the ineffective implementation of the relaxation policy to the settlement of non-performing financing with fiduciary guarantees due to the COVID-19 pandemic in Financing Companies, so there are still non-performing financing after the end of the policies; secondly, to find a new formula about the model of settlement of non-performing financing that is more effective and fair about for the parties.

2. Research Methods

This research is empirical juridical research that examines legal provisions that occur in the reality of society.¹⁵ This empirical juridical research uses a qualitative approach in collaboration with statutory and conceptual approaches. A qualitative approach to reveal empirical problems in an emic perspective related to the issue of settlement non-performing financing. Statutory approach to identify norms, principles and ratio legis of relaxation policies of the Otoritas Jasa Keuangan. The conceptual approach is to explore the views or opinions of experts and theories that are currently developing so that ideas are found that give rise to legal concepts and principles that are relevant to legal issues that are studied.

11 Arli Sutanti and Peni Haryanti., Efektivitas Kebijakan Restrukturisasi Pembiayaan Bermasalah Pada Masa Pandemi Covid-19, *Journal Of Institution And Sharia Finance*, Vol.5 No.2, 2022, page.75–84.

12 Fitria Idham Chalid and Firsty Izzata Bella., Determinant of Non-Performing Financing in Indonesian Islamic Commercial Banks in Time of Covid-19 Pandemic, *Al-Amwal: Jurnal Ekonomi Dan Perbankan Syari'ah*, Vol.13 No.2, 2021, page.239–50

13 Puji Astuti Eva and Ilmiah Dunyati., Implementasi Kebijakan Countercyclical Covid-19 Dalam Mitigasi Risiko Pembiayaan Bermasalah, *JPS (Jurnal Perbankan Syariah)*, Vol.3 No.2, 2022, page.115–28.

14 Andi Aina Ilmih, Kami Hartono, and Ida Musofiana., The Financing Restructuring Legal Analysis For Debtors Affected By Covid-19 In Sharia Multifinance Institutions, *Jurnal Pembaharuan Hukum*, Vol.8 No.1, 2021, page.172–83

15 Mukti Fajar ND and Yulianto Achmad., *Dualisme Penelitian Hukum Normatif & Empiris* Yogyakarta, Pustaka Pelajar, 2010, page.51.

This research was conducted at Sharia finance companies in Central Java, namely: Pekalongan City, Pekalongan Regency, Batang Regency, Pemalang Regency, Tegal City, Tegal Regency and Brebes Regency. Data collection techniques used interviews, questionnaires and document studies. Interviews were conducted with key informants and supporters who were selected purposively and developed with a snowball based on certain criteria with considerations based on the theoretical concepts used. Key informants are managers and employees and supporting informants are debtors of Sharia finance companies. The questionnaire was conducted online using the Google form. The analysis technique uses an interactive model which includes data collection activities, and then data presentation. Next is data reduction for sorting so that the data obtained is in accordance with the needs and is relevant to the research theme. The final stage is drawing conclusions.¹⁶

3. Results and Discussion

3.1. The Settlement Non-Performing Financing due to the Covid-19 Pandemic in Sharia Financing Companies: Why is it Less Effective?

Non-performing financing with fiduciary guarantees is financing for tangible and intangible movable objects and immovable objects, especially buildings that cannot be encumbered with mortgage rights and are under the control of the fiduciary giver as collateral for repayment of certain debts, which experience repayment difficulties due to intentional factors (bad faith) or external factors beyond the ability of the debtor to complete the financing.¹⁷

The process of settlement of non-performing financing with fiduciary guarantees due to the COVID-19 pandemic at nineteen Sharia Unit Branch Office of Islamic finance companies in the Pekalongan ex-Residency was mostly carried out by rescheduling with a tenor of three to six months.¹⁸ Rescheduling is a form of restructuring that is carried out by extending the maturity period of the financing without changing the remaining debtor obligations that must be

16 Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook*, California, Sage Publications, 1994, page.20.

17 Sanusi Sanusi., Legal Protection of the Creditor on Fiduciary Guarantee Objects Unlisted in the Fiduciary Registration Office, *International Journal of Law Reconstruction*, Vol.1 No.1, 2017, page.74–86; See to, Agung Pitra Maulana and Muhamad Azhar., Penafsiran Cidera Janji Oleh Mahkamah Konstitusi Terkait Eksekusi Jaminan Fidusia Dan Implikasinya, *Notarius* Vol.13 No.2, 2020, page.763–76; See to, Wiwin Dwi Ratna Febriyanti., Eksekusi Objek Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019, *ADHAPER: Jurnal Hukum Acara Perdata*, Vol.6 No.2, 2021, page.39–52; See to, Lembaga Jaminan Fidusia: Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019., *Nagari Law Review*, Vol.3 No.2, 2020, page.84–99; See to, Ageng Triganda Sayuti, Yenni Erwita, and Lili Naili Hidayah, "Parate Eksekusi Jaminan Fidusia: Urgensi Dan Rekonstruksi Hukum Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019, *Soumatara Law Review*, Vol.3 No.2, 2020, page.185–96; See to, Joni Alizon., Rekonstruksi Pelaksanaan Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/Puu-Xvii/2019, *Eksekusi: Journal Of Law*, Vol.2 No.1, 2020, page.58–82.

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paid to the financing company.¹⁹ Rescheduling provides relief to the debtor so that the payment period can be extended based on an agreement between the finance company and the debtor.²⁰ However, the settlement of this financing was not effective and still leaves problems where the ratio of non-performing financing post the COVID-19 pandemic at the Sharia Financing Company in the Pekalongan ex-Residency is still above 5% (per cent).²¹

The causes of the ineffective settlement of non-performing financing will be analyzed using the theory of legal effectiveness. Effective law according to Allot is one that can fulfill its purpose.²² According to Soekanto, effective law is if the community implements the law in accordance with existing legal norms by complying with these norms.²³ Allot sees the effectiveness of law from the point of view of its objectives, while Soekanto looks at it from the side of legal compliance of the people who are affected by legal regulations. Indicators of legal effectiveness, namely legal factors, law enforcement factors, supporting facilities or facilities, community factors and legal culture.²⁴

The effectiveness of the norms for implementing the Otoritas Jasa Keuangan's policies regarding the settlement of non-performing financing due to the Covid-19 pandemic for sharia financing companies in Central Java, among others:

First, seen from the legal factor. This factor is seen in the substance of the law which includes rules or legal norms.²⁵ The legal norms governing restructuring are POJK Number 11/POJK.03/2020; POJK Number 14/POJK.05/2020; POJK Number 48/POJK.03/2020; POJK Number 58/POJK.05/2020 and POJK Number 30/POJK.05/2021. Substantially, this legal norm regulates the determination of debtors who are affected by the Covid-19 pandemic. This implementation of policy is handed over to finance companies with stringent criteria. As explained in Article 11 Paragraph (3) POJK Number 14/POJK.05/2020, the arrangement of Debtors affected by the spread of Covid-19 includes: 1) debtors are individuals who are declared positive patients with Covid-19, patients under supervision, or people under supervision so that they experience difficulties in fulfilling obligations to LKNB according to the agreement; 2) The debtor has a business in the economic sector that is directly affected by Covid-19, so it is difficult for him to fulfil his obligations to LKNB according to the agreement. For example,

19 Marchesi, Silvia., Adoption of an IMF Programme and Debt Rescheduling, An Empirical Analysis, *Journal of Development Economics*, Vol.70 No.2, 2003, page.403–23.

20 Devi Liaanjani and Sutikno Sutikno., Restructuring As An Effort To Reduce The Impact Of Problem Financing On Griya Ib Hasanah Produc, *Jurnal Keuangan Dan Perbankan (KEBAN)*, Vol.1 No.1, 2021, page.44–51

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22 Antony Allott., The Effectiveness of Law, *Valparaiso University Law Review*, Vol.15 No.2, 1981, page.15; See to, Diana Tantri Cahyaningsih, Mengurai Teori Effectiveness of Law Anthony Allot, *Journal Rechts Vinding Online*, Jakarta, 2020.

23 Winarno Yudho and Heri Tjandrasari., Efektivitas Hukum Dalam Masyarakat, *Jurnal Hukum & Pembangunan*, Vol.17 No.1, 1987, page.57–63

24 Nur Fitriyani Siregar., Efektivitas Hukum, *Al-Razi*, Vol.18 No.2, 2018, page.1–16.

25 Lawrence M Friedman., *Sistem Hukum: Perspektif Ilmu Sosial*, Bandung, Nusamedia, 2019, 21.

the debtor works as a motorcycle taxi driver whose business income from transporting people has decreased significantly during the implementation of large-scale social restrictions; the debtor works as a street vendor whose business income has decreased significantly during the implementation of large-scale social restrictions; or the debtor working at a hotel in a tourism area experiences termination of employment, and 3) the debtor owns a business in the economic sector that has been indirectly affected by the spread of Covid-19 so that it has difficulty fulfilling obligations to LKNB according with the agreement. The provisions regarding this arrangement are inconsistent with Article 2 POJK Number 10 /Pojk.05/2019 concerning the Business Management of Sharia Financing Companies and Sharia Financing Companies Units, where the implementation of Sharia Financing activities must comply with the shariah principles, among others: principles of justice (*'adl*), balance (*tawazun*), benefit (*maslahah*), and universalism (*alamiyah*) and does not contain *gharar*, *maysir*, *usury*, *zhulm*, *risywah*, and *haram* objects. The inconsistency of these norms is also contrary to the purpose of law to achieve justice for all people. According to Bentham, the purpose of law is to create happiness for all people.²⁶ That is, a just law is a happy law. Rawls asserts that just law must pay attention to the principle of providing mutual benefits.²⁷

Second, law enforcement factors. Law enforcers are parties who are directly or indirectly involved in law enforcement, and who have the authority to carry out orders from statutory regulations.²⁸ Law enforcers in the policy of relaxing in Sharia finance companies are the organizational team of Sharia finance companies as executors who carry out orders from the Otoritas Jasa Keuangan's policies. The nineteen Sharia Unit Branch Offices at finance companies in seven regencies/cities of the Pekalongan residency, Central Java, have carried out the Otoritas Jasa Keuangan's policies. The organizational team from nineteen Sharia Unit Branch Offices in this region also provides services to debtors who wish to settle non-performing financing.²⁹ PT Adira Finance Tbk, Tegal City, have been forming a team to settle non-performing financing affected by the COVID-19 pandemic. PT. Ottomitra Multiartha Sharia Unit Branch Offices in Tegal, Brebes and Pekalongan; Bussan Auto Finance Sharia Unit Branch Offices in Pekalongan and Tegal, and PT FIF Sharia Unit Branch Offices in Pekalongan, Pemalang, Brebes and Tegal there are online services for debtors who wish to consult regarding NPF affected by the Covid-19 pandemic. Socialization and guidance to debtors who experience financing problems are also carried out by PT FIF Sharia Unit Branch Offices in Pekalongan, Pemalang,

26 James H Burns., Happiness and Utility: Jeremy Bentham's Equation, *Utilitas*, Vol.17 No.1, 2005, page. 46–61

27 John Rawls., *A Theory of Justice: Revised Edition*, Cambridge, Harvard University Press, 2020, page.19–25; See to, John Rawls, *Teori Keadilan*, Yogyakarta, Pustaka Pelajar, 2011, page.72; See to, Farahwati, Hakekat Hukum Untuk Mewujudkan Aspek Hukum Yang Berkeadilan, *Legalitas*, Vol.4 No.1, 2019, page.57–76.

28 Soerjono Soekanto., *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, 16th ed. Jakarta, Rajawali Press, 2019, page.10.

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Brebes and Tegal³⁰. This means that good service in settlement NPF due to the COVID-19 pandemic by the Sharia finance company the organizational team is an indicator of the effectiveness of implementing OJK policies. This condition will give rise to legal consequences, namely changes or loss of legal relations between the finance companies as creditor and debtor if the debtor follows the actions taken by the finance companies by paying their debt arrears.

Third, facilities that support law enforcement. Facilities that support law enforcement can be in the form of highly educated and skilled human resources, good organization, adequate This condition will give rise to legal consequences, namely changes or loss of legal relations between the finance companies as creditor and debtor if the debtor follows the actions taken by the finance companies by paying their debt arrears, equipment, adequate finances, and so on.³¹ The organizational team at the managerial level up to the employees at the Sharia Finance company in Central Java have a high school education level up to Master Degree/Strata-2 (two). For example in PT. FIF Sharia Unit Branch Office in Pekalongan, Pemalang, Brebes and Tegal have twenty-two employees, six high school graduates, and undergraduate graduates. Meanwhile, at the managerial level, two people graduated from Master Degree (S2). In addition, other supporting facilities were also strengthened, namely Information technology infrastructure to optimize services in solving problem financing.³²

Fourth, is the community factor. The community factor is the environment where the law applies.³³ Most debtors have an understanding that the reconstruction of non-performing financing due to COVID-19 is a Write-off debt of debtors and not debt relief for debtors in fulfilling their obligations. For example, debtors who work as online motorcycle taxis, apply to finance two-wheeled vehicles. During the Covid pandemic, they were no longer able to pay their instalments because their income as online motorcycles had decreased drastically. They heard from fellow online motorcycle workers that during the Covid 19 pandemic, motorcycle financing instalments would be removed or considered paid off by the finance company, so they would not pay the instalments until the relaxation policy period ended. In January 2021 they received a notification letter to pay the installment arrears but ignored it because they believed that the policy was a write-off debt.³⁴ This fact shows that the debtor does not understand the relaxation/restructuring policy so he is in arrears in financing instalments until the Covid-19 pandemic.

Fifth, is legal culture. Legal culture is defined as human attitudes towards law and the legal system, beliefs, values and expectations. Legal culture is the attitudes and values that have a positive or negative influence on behaviour

30 ST, Hd, Mar, Tin. JN, MH and Bkt (Staff Marketing), Interview, May 8-13, 2023.

31 Soerjono Soekanto., *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, 16th ed. Jakarta, Rajawali Press, 2019, page.18.

32 ST, Hd, Mar, Tin. JN, MH dan Bkt (Staff Marketing), Interview May 8-13, 2023.

33 Soerjono Soekanto., *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, 16th ed. Jakarta, Rajawali Press, 2019, page.18.

34 Hy, KH, Mn, Zy, Fh, Za, Ud dan Sh (Driver ojek online), Interview , May,3, 2023.

related to law.³⁵ That is, legal culture is an atmosphere of social thought and social power that determines the law to be used, avoided or misused.³⁶ The legal culture of society, in this case, the debtors, has an effect on the non-functioning of law in Sharia finance companies. The mindset of debtors who prefer to be considered poor when there is aid fund from the government becomes a building of a legal culture that influences the policies of the Otoritas Jasa Keuangan which cannot be implemented effectively.

Based on the facts above, the relaxation policy from the Otoritas Jasa Keuangan has not been fully effective, because: 1) there are substantial inconsistencies in the norms governing the relaxation of non-performing financing, especially regarding the arrangement of debtors affected by COVID-19 with Sharia principles; 2) understanding of financing relaxation/restructuring due to Covid-19, not as debt relief for debtors but as write off debt; and 3) negative legal culture of debtors, namely they prefer to be considered poor when there is aid fund from the government. According to Friedman, the substance, structure and culture of law influence each other to realize the effective implementation of law.³⁷ That is, the implementation of the law will be effective if the three elements of the legal system influence each other positively, conversely if the three legal systems affect negatively then the implementation of the law will not be effective.

3.2. The Settlement Model of Non-Performing Financing Post-Pandemic Covid-19 in Sharia Financing Companies: How Should be More Effective and Legal Justice?

According to Friedman, effective law is when the legal system elements, including legal substance, legal structure and legal culture, influence each other positively.³⁸ In contrast to Bentham, an effective law is one that gives happiness to everyone. According to Bentham, happiness as the primary goal of law must be measured quantitatively or referred to by Bentham as felicific calculus (happiness calculus).³⁹ Meanwhile, according to Rahardjo, the law must be able to provide something more than just a legal procedure, where the law must be competent and fair, able to respond to society's wishes broadly and commit to achieving substantive justice. Rahardjo emphasized that an effective law is a law that is just, capable of realizing prosperity and caring for the condition of the people.⁴⁰ That is, a law that is just and prosperous for the people is an effective law.

The settlement of Non-performing Financing post the COVID-19 pandemic in Sharia financing companies was felt hard by the debtors. For example, 1)

35 Lawrence M. Friedman., *Sistem Hukum: Perspektif Ilmu Sosial*, ed. M. Khozim, Bandung, Nusamedia, 2018, page.23.

36 *Ibid.*, page.24.

37 *Ibid.*

38 *Ibid.*

39 Robert A Cummins., Jeremy Bentham, Utility, and the Golden Triangle of Happiness, *Wealth (s) and Subjective Well-Being*, Vol.76, 2019, page.67–83

40 M Yasin Al Arif., Penegakan Hukum Dalam Perspektif Hukum Progresif., *Undang: Jurnal Hukum*, Vol.2 No.1, 2019, page.169–92.

arrangements by finance companies regarding the repayment of debtor obligations before the expiration of the relaxation policy, result in some debtors having to sell collateral items themselves to pay off their debts; 2) agreements for a rescheduling period with a tenor of 6 months which cannot be negotiated by debtors, resulting in debtors whose financing instalment period is up to 2024 and/or 2026 unable to fulfil instalment payment obligations and; 3) the implementation of the precautionary principle carried out by finance companies with reference to POJK Number 14/POJK.05/2020, results in debtors who are not included in the category as stipulated in the POJK, even though they are affected by Covid-19 they cannot apply for a financing restructuring. As stated by several debtors, they cannot apply for restructuring because they have to attach a business photo or online motorcycle taxi drivers have to attach an online motorcycle taxi card, even though they don't have one.⁴¹

On the contrary, according to the marketing staff at the Sharia Finance Company in the Pekalongan ex-Residency, if the debtor does not apply for restructuring and/or is not eligible to apply for restructuring, the settlement will be carried out using a graded approach. First, routine billing by telephone or in person. Second, provide a chance for the debtor to sell collateral so that the sales value is in accordance with the wishes of the debtor. Third, settlement of problematic financing through lawsuits. Fourth, the auction of fiduciary collateral objects in an effort to settle their obligations. Fifth, is a write-off, where writing off books to move unprofitable asset accounts from administration books if it is predicted that problematic financing cannot be attempted again.⁴²

Meanwhile, for debtors who are approved for restructuring, so monitoring is carried out periodically, between 6 months to 1 year to monitor developments in the condition of the debtor affected by the Covid-19 pandemic. If the debtor is still able to pay before the end of the restructuring policy, the finance company can request that the debtor in good faith, pay off its obligations before the end of time.⁴³ The finance company also provides an opportunity for all debtors to communicate to the company if there are problems with instalment payments so that the company can find a solution for the debtor.⁴⁴ Implementation of Otoritas Jasa Keuangan policies must attention to the principle of prudence in determining whether restructuring can still be done or not.⁴⁵

The precautionary principle applied by Sharia Finance Companies in the Pekalongan ex-residency area is not in accordance with sharia principles in Article 3 Paragraph (3) POJK Number 14/POJK.05/2020, whereby LKNB that carry out all or part of their business are based on sharia principles, must be in accordance with sharia principles, i.e: helping each other (*ta'awun*), justice, benefit and balance (*tawazun*). Therefore, the settlement of non-performing

41 Sy, Ms, Sc, Hy, Ft,Mz, Ds dan Fq (Debitur) Interview, May, 4, 2023.

42 ST, Hd, Mar, Tin. JN, MH dan Bkt (Staff Marketing), Interview, May 2-6, 2023.

43 Hdr, Lak, Ags (Manager BAF, WOM & BIM Finance), Interview, May. 13 2023.

44 Bd, Sra (Manager BSM dan Radhana Finance) Interview, May,16, 2023.

45 Mjs, DSk (Manager Nusa Surya dan Astra Sedaya) Interview, May, 15, 2023.

financing should be carried out based on sharia principles, as well as the principle of prudence by prioritizing the debtor's needs and paying attention to the good faith of the debtor in each stage of the settlement process, including in determining the rescheduling period using the tri-semester tiered method, where the first rescheduling period is 12 months, second 8 months and third 4 months. This new formula aims to realize legal objectives, namely fulfilling a sense of justice for all people and mutual benefits between the debtor and the finance company.

Theoretical arguments for the new formula for the settlement of non-performing financing are based on the theory of legal justice, namely: *first*, legal justice, in this case, the Otoritas Jasa Keuangan's policies, must be attention to the principle of providing reciprocal benefits by the principle of proportionality based on good faith;⁴⁶ *second*, legal justice are laws that can create prosperity and care for the condition of the people at large. Implementation of the law is not only carry out the black-and-white words of the regulations (according to the letter) but must look at the deeper meaning of the law and the policies to be implemented;⁴⁷ *Third*, the implementation of the law must look at the side of social justice and can be felt by the society;⁴⁸ *fourth*, the law must provide happiness for everyone. As to Bentham's formula, 'the greatest happiness of the greatest number'.⁴⁹ The principle of legal justice as the basis for settlement of non-performing financing is intended to create prosperity for all people by providing mutual benefits between the debtor and the financing company so that indirectly the implementation of the Otoritas Jasa Keuangan's policies will become more effective.

4. Conclusion

The ineffective implementation of the Otoritas Jasa Keuangan policy regarding the relaxation of non-performing financing in Sharia Business Unit financing companies was caused by inconsistencies between the norms regarding determining debtors affected by COVID-19 and the norms of Sharia principles; understanding of customers regarding the diction of financing relaxation/restructuring as a result of covid-19 as write off debt, and negative legal culture of debtors. In addition, the fact that the debtors objected to the settlement of non-performing financing in terms of applying the prudential

46 John Rawls, John., 2020, *A Theory of Justice: Revised Edition*, Harvard University Press, Cambridge; *A Theory of Justice: Revised Edition*, 69–72.

47 Muhammad Akbar, "Hukum Progresif Sebagai Alternatif Hukum Yang Ideal, *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum*, Vol.15 No.1, n.d., page.125–37; See to, Satjipto Rahardjo, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Yogyakarta, Genta Publishing, 2009, page.3; H Deni Nuryadi and M H Sh., *Teori Hukum Progresif Dan Penerapannya Di Indonesia*, *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum*, Vol.1, No.2, 2016, page.394–408

48 Philippe Nonet, Philip Selznick, and Robert A. Kagan., *Law and Society in Transition: Toward Responsive Law*, London, Routledge, 2017); See to, Teja Sukmana, Zahrah Salsabillah Ashari, and Yadi Darmawan., *Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo*, *Peradaban Journal of Law and Society*, Vol.2 No.1, 2023, page.92–106

49 Robert A Cummins., Jeremy Bentham, Utility, and the Golden Triangle of Happiness, *Wealth (s) and Subjective Well-Being*, Vol.76, 2019, page.67–83

principle, determining the settlement of obligations before the end of the relaxation policy and unilaterally determining the tenor of instalments by the financing company became the supporting for the ineffective settlement of non-performing financing, resulting in there are still leftovers of non-performing financing with a ratio of more than 5% after the end of the relaxation policy. Therefore, a new formula for settlement of non-performing financing is needed for more effective and legal justice based on Sharia principles, as well as the prudential principle which prioritizes the debtor's needs and good faith in each stage of the settlement process using the tri-semester tiered model rescheduling period method. The theoretical basis of the new formula is that an effective law is a just law, providing mutual welfare and benefits to all people.

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