Journal of International Islamic Law, Human Rights, and Public Policy
(JISHUP Journal) | ISSN(e): 3031-2280
Website https://jishup.org/index.php/ojs/index | Volume 4 No. 3 (2026)

EXECUTORY POWER OF SETTLEMENT FOR FICTITIOUS CREDIT DISPUTES IN THE BANKING SECTOR THROUGH A MEDIATION APPROACH

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Received: 03/06/2026 | **Revised:** 08/06/2026 | **Accepted:** 20/06/2026 | **Published:** 26/07/2026

Abstract

The development of Islamic banking in Indonesia brings various challenges, one of which is the emergence of fictitious credit practices that can cause financial losses and damage public trust in Islamic financial institutions. Fictitious credit occurs when a debtor applies for financing using problematic documents and unauthorized collateral, resulting in losses for the bank. In this case, Debtor X submitted nine forms of collateral, consisting of six primary collaterals and three additional collaterals, which were later proven to belong to other parties. This situation led to a legal dispute because the collateral could not be executed. Through court-facilitated mediation, the parties reached an agreement to replace the three problematic collaterals with a new single collateral: land located in Purbalingga. This agreement was recorded in a deed of settlement, which holds executory power equivalent to a legally binding court decision. The research results show that settlement through mediation is more effective than litigation, as it is faster and more cost-efficient, while also aligning with sharia principles, namely *ishlah* (reconciliation). With the deed of settlement, the bank has a clear legal basis to execute the new collateral if the debtor defaults again.

Keywords: The Principle of Adequacy, Trade Agreements, United States-Indonesia

INTRODUCTION

Islamic banking plays a vital role in supporting community economic activities through a financing system based on sharia principles. However, the practice of fictitious credit remains a serious issue that has the potential to harm financial institutions. Fictitious credit arises when a customer or certain parties apply for financing using invalid data, or when funds are disbursed without following proper procedures (Lestari, 2013). According to the Financial Services Authority (OJK), by mid 2024, there were more than one hundred recorded cases related to fictitious credit causing losses to banking institutions. This phenomenon serves as a warning for Islamic banks, including Islamic Bank Z (a pseudonym), to tighten their internal monitoring systems. Fictitious credit can be understood as a form of deviation in financing practices, where the documents or collateral used do not correspond to reality. This not only reflects weaknesses in risk management systems but also reveals gaps in the governance of Islamic financial institutions. In practice, fictitious credit often involves unhealthy collaboration between Debtor X and internal bank personnel, resulting in both material and reputational losses.

When facing fictitious credit disputes, the method of dispute resolution becomes key. One available channel is mediation dispute resolution through deliberation assisted by a neutral third party. Mediation, particularly court-annexed mediation, is a faster, cheaper, and more sharia-aligned option. This is regulated through Supreme Court Regulation (Perma) Number 1 of 2016 concerning Mediation Procedures in Courts (Wijaya, 2023). From an Islamic perspective, mediation aligns with the concept of *ishlah*, which emphasizes reconciliation between conflicting parties. The principle of *ishlah* is highly recommended because it prioritizes reconciliation, maintains good relationships, and avoids prolonged conflict. Therefore, resolving disputes through deliberation and reconciliation not only complies with positive legal provisions but also reflects the values of justice within Islamic law (Santini, 2022). The legal force of mediation outcomes becomes stronger when formalized as a deed of settlement (*acta van dading*). Within Indonesia's civil law system, a deed of settlement has three main attributes: first, it is equivalent to a legally binding court decision (*inkracht van gewijsde*); second, it holds executory power that allows for direct enforcement; and third, it cannot be challenged through appeal or cassation. Thus, mediation outcomes formalized in court provide greater legal certainty compared to informal agreements.

Previous research also supports this view. For example, a study conducted at one of the Religious Courts showed that deeds of settlement in sharia economic cases carry the same weight as final court decisions, are not subject to legal challenge, and can be enforced directly. This confirms that mediation is not merely an alternative dispute resolution method, but a mechanism that is legally valid under positive law and effective in practice. However, it should be understood that executory power is only attached to deeds of settlement that have been ratified by a court. Informal mediation conducted outside the court for instance, by a non-judge mediator only produces ordinary civil agreements that cannot be enforced directly. To obtain executory power, the agreement resulting from such mediation must be submitted to a court to receive an official ruling from a judge.

In the context of Islamic Bank Z (a pseudonym), the fictitious credit dispute involving Debtor X (a pseudonym) posed serious problems. While litigation is an option, the process is lengthy and could potentially damage the institution's reputation. Conversely, mediation formalized through the court serves as a strategic solution: it preserves reputation, saves time, and upholds sharia principles and justice. Based on the description above, this research examines the executory power of fictitious credit dispute resolution through mediation at Islamic Bank Z. This study is important to demonstrate that mediation resulting in a deed of settlement is not only a peaceful resolution but also a strong and effective legal solution. Accordingly, this research may contribute both theoretically and practically to the development of sharia economic law and Islamic banking practices in Indonesia.

LITERATURE REVIEW

Mediation is an alternative out-of-court dispute resolution method aimed at reaching a peaceful agreement between conflicting parties with the assistance of a mediator. This process emphasizes deliberation, transparency, and fairness, enabling the parties to find solutions that not only formally resolve the problem but also maintain good relations between them (Mulyadi, 2013). In practice, mediation is often chosen because it is faster, relatively low-cost, and provides space for the parties to play an active role in determining the outcome of the resolution. Therefore, mediation holds strategic value in creating social stability, reducing the caseload of courts, and strengthening the culture of deliberation within society (Lamsu, 2016).

From the perspective of *maqāṣid al-syarīʻah* (the objectives of Islamic law), mediation can be seen as a means to uphold the five core goals of sharia: *ḥifẓ al-dīn* (protection of religion), *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-ʻaql* (protection of intellect), *ḥifẓ al-nasl* (protection of lineage), and *ḥifẓ al-māl* (protection of property). Resolving disputes through mediation can minimize greater potential harm (*mafsadah*), such as prolonged conflict, family breakdown, or even acts of violence. Conversely, mediation also brings benefit (*maṣlaḥah*) by establishing justice, peace, and protection of the rights of all parties. Thus, the implementation of mediation aligns with the principles of *maqāṣid al-syarīʻah*, which prioritize the achievement of benefit and the avoidance of harm for humanity (Fadlan, 2014).

The concept of *al-ṣulḥ* (reconciliation) in Islam is also very closely related to mediation. *Al-ṣulḥ* is a reconciliation contract entered into by two conflicting parties to end hostility or disagreement through a mutually agreed settlement. Mediation within the framework of *al-ṣulḥ* plays an important role in building a culture of peace and harmony within Muslim communities. This reconciliation process not only resolves legal issues but also considers moral, spiritual, and social aspects that have long-term impact. When reconciliation is achieved, it does not only resolve worldly matters but also results in spiritual reward, as it fulfills religious obligations (Rahmah, 2019).

A deed of settlement is a legal instrument recognized within Indonesia's judicial system as the outcome of dispute resolution through reconciliation. According to Article 130 of the *Herzien Indonesisch Reglement* (HIR), if a reconciliation takes place before a judge, the judge shall record it in a deed of settlement. This document carries the same legal force as a legally binding court decision (*in kracht van gewijsde*) and therefore cannot be challenged through appeal or cassation (Firmansyah, 2017). This provision demonstrates that civil procedural law provides a special avenue for parties who choose peaceful resolution with court ratification. Accordingly, a deed of settlement is not merely an ordinary agreement, but one that possesses executory power to be enforced by law if one party defaults (Khrisna, et.al, 2019). In the Indonesian Civil Code (KUHPerdata), Article 1858 confirms that reconciliation is an agreement whereby the parties, by transferring, promising, or withholding something, end a case currently being examined by a court or prevent a future case from arising. This provision shows that a deed of settlement functions not only to resolve ongoing disputes but also serves as a preventive measure to avoid future conflicts.

As a form of agreement, a deed of settlement is subject to general contract provisions within the Civil Code, including the requirements of mutual consent, legal capacity, a specific object, and a lawful cause. However, through judicial ratification, the agreement gains executory power that is stronger than that of an ordinary contract (Syahida, 2025). The legal standing of a deed of settlement, regulated in Article 130 of the HIR and Article 1858 of the Civil Code, demonstrates a synergy between procedural and substantive law. From a procedural law perspective, it serves as an efficient and effective dispute resolution alternative that reduces court caseloads. From a substantive law perspective, it is viewed as a valid agreement that binds the parties with the force of law. Consequently, if one party fails to comply with the settlement terms, the other party may request enforcement from the court without the need to file a new lawsuit (Syahida, 2025).

Fictitious credit disputes generally arise when there are irregularities in the credit disbursement process, whether due to negligence on the bank's part or bad faith from customers or internal bank personnel. Fictitious credit typically occurs through the falsification of documents, identities, or collateral to appear as though administrative requirements have been met, while in reality there is no genuine business activity or valid collateral backing the loan (Puspitaningrum, 2018). This creates serious problems because it causes losses to the bank, disrupts financial stability, and reduces public confidence in banking institutions. Consequently, when such cases are revealed, disputes often arise between the bank and customers, and may even involve law enforcement agencies, as such acts can be categorized as banking crimes or fraud (Puspitaningrum, 2018).

In terms of resolution, fictitious credit disputes can be settled through either litigation or non-litigation channels, depending on the agreement and the form of default that occurs. From a civil law perspective, the bank may demand the return of funds and the execution of collateral; from a criminal law perspective, perpetrators may face sanctions under the Banking Act and the Indonesian Criminal Code (KUHP). It is not uncommon for such cases to also involve mediation or deeds of settlement as a means of resolution to recover the bank's losses. However, because fictitious credit often involves elements of fraud or abuse of authority, criminal proceedings are frequently chosen as a firm measure to provide a deterrent effect and maintain the integrity of the banking system (Kartika, 2016).

Fiqh muamalah is a branch of Islamic jurisprudence that addresses sharia regulations governing human relations in social, economic, and daily transactional matters. Unlike *ibadah* (worship), which is ritualistic and has fixed provisions, *muamalah* is more flexible because it relates directly to evolving human needs. In this context, *fiqh muamalah* serves as a guideline to ensure every transaction is conducted in a lawful, fair, and beneficial manner, while also protecting parties from harmful practices such as usury (*riba*), uncertainty (*gharar*), and fraud. Thus, *fiqh muamalah* provides both an ethical and normative foundation to create a transactional system aligned with sharia principles (Istianah, et.al, 2024).

One important principle within *fiqh muamalah* is *ishlah* or reconciliation. *Ishlah* refers to the effort to resolve disputes between two conflicting parties in a just and sharia-compliant manner. In practice, *ishlah* functions not only as a conflict resolution mechanism but also as a means to preserve *ukhuwah islamiyah* (Islamic brotherhood), uphold justice, and prevent greater social harm. Through the principle of *ishlah*, *fiqh muamalah* teaches that relationships between individuals and groups must be maintained by prioritizing reconciliation, deliberation, and mutual benefit. Within the Indonesian context, the role of *ishlah* in *fiqh muamalah* is also supported by fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). These fatwas provide legal certainty for Muslims engaging in modern economic activities that often present new issues not found in classical practices (Alexander, 2023).

For example, in Islamic banking, sharia insurance, and contemporary business contracts, the DSN-MUI emphasizes the importance of the *ishlah* principle in dispute resolution to achieve outcomes that provide benefit (*maslahah*). These fatwas not only serve as guidelines for Islamic financial institutions but also function as a reference for the public to ensure all transactions comply with sharia principles. Therefore, *fiqh muamalah* based on *ishlah* and supported by DSN-MUI fatwas can serve as a vital foundation for building an economic system that is fair, transparent, and oriented toward public benefit (Siswandi, 2019).

METHOD

This is a qualitative research study using a juridical-empirical approach. The juridical approach is used to analyze applicable legal regulations related to the executory power of mediation outcomes in fictitious credit disputes, while the empirical approach is used to examine on-the-ground resolution practices at Islamic Bank Z (a pseudonym). This research is descriptive-analytical, meaning it aims to provide a systematic and factual overview of fictitious credit dispute resolution through mediation, and to analyze the extent to which the legal force of a deed of settlement can provide legal certainty for the parties involved.

The research was conducted at Islamic Bank Z (a pseudonym), a sharia-based rural bank operating in the Regency of Semarang, Central Java. This location was selected because the institution has previously handled a non-performing financing case with indications of fictitious credit that was resolved through mediation. Prymary data obtained through interviews with internal parties at Islamic Bank Z (financing, legal, and risk management divisions), as well as Mediator A (a pseudonym), who has handled sharia economic cases. Secondary data obtained from literature, laws and regulations, relevant court decisions regarding sharia economics, and related legal journals or books. Collected data was analyzed using qualitative analysis methods. The analysis stages include data reduction, data presentation, and conclusion drawing. Analysis was conducted interactively between primary and secondary data to examine the relationship between legal theory and the practical resolution of fictitious credit disputes through mediation.

RESULTS AND DISCUSSION

Islamic Bank Z (a pseudonym) is a sharia-based rural bank operating in the Regency of Semarang, Central Java. As an Islamic financial institution, it collects public funds and distributes financing through sharia-compliant contracts, such as *musyarakah*, *mudharabah*, and *murabahah*. In practice, the bank has handled a non-performing financing case that developed into fictitious credit, where Debtor X (a pseudonym) applied for financing using collateral documents that were later found to be problematic. After the financing was disbursed, Debtor X failed to fulfill obligations according to the agreed schedule, resulting in a dispute between the bank and the debtor.

The fictitious credit case at Islamic Bank Z began when Debtor X, a local entrepreneur, submitted a financing application to the bank at the end of 2018. In the application, Debtor X presented a convincing business proposal accompanied by supporting documents, including simple financial statements, personal identification, and collateral documents. At the initial stage, the bank’s analysis team deemed the application eligible for financing, and Islamic Bank Z approved the request under a *musyarakah* contract.

Once approved, Islamic Bank Z disbursed a relatively large amount of financing funds to Debtor X. Disbursement was made in cash and supported by official contractual documents between the bank and the debtor. Debtor X also submitted collateral in the form of land and building certificates, which were later discovered to be registered under the name of another party: Company Y (a pseudonym). Although the collateral was handed over, it was subsequently revealed that the certificates were problematic because they were still in the process of ownership transfer and lacked clear legal status.

As time passed, Debtor X failed to fulfill the obligation of making the first installment payment. The delay, initially considered reasonable, continued for several months without any significant payment being made. Islamic Bank Z began to suspect irregularities, as the business claimed by Debtor X was found not to be operating in accordance with the initial proposal. Internal bank investigations revealed that some documents used in the financing application were suspected to be forged or manipulated.

The bank sent formal notices (*somasi*) to Debtor X demanding immediate fulfillment of obligations. However, Debtor X failed to provide an adequate response. Instead, Debtor X submitted a request for payment restructuring, citing financial difficulties. The bank initially approved the restructuring through an addendum to the agreement, hoping that Debtor X would subsequently fulfill obligations. However, the effort was unsuccessful, as the debtor once again neglected payments.

Suspicions were further confirmed when Debtor X refused to sign a draft follow-up addendum prepared by the bank. This refusal indicated a lack of seriousness or even bad faith on the debtor’s part. At this point, the bank concluded that the financing granted lacked a valid legal basis, as the business operated by Debtor X was not genuine, while the collateral documents used were also problematic. This is the basis for categorizing the case as fictitious credit.

This situation caused significant losses to Islamic Bank Z. Beyond the loss of principal financing, the bank also incurred additional costs related to the collection process. Consequently, the case escalated into a legal dispute due to alleged default by Debtor X. To avoid a lengthy litigation process, the bank opted for mediation facilitated by the Religious Court, with the objective of resolving the dispute peacefully while maintaining legally binding force. At the initial stage of dispute resolution, Islamic Bank Z attempted to resolve the issue internally. Measures taken included issuing formal warnings, offering payment restructuring, and approaching Debtor X through informal, family-based channels. However, Debtor X continued to demonstrate a lack of good faith in fulfilling obligations. This situation forced the bank to consider legal resolution.

Before filing a lawsuit with the court, the bank chose mediation. This process involved Mediator A (a pseudonym), a certified mediator registered with the local Religious Court. Mediation was selected because it is considered faster, cheaper, and aligned with sharia principles, specifically ishlah (reconciliation). During the process, the mediator assisted both parties in finding common ground without the need for lengthy court proceedings. Mediation was facilitated by the Religious Court, in accordance with the provisions of Article 49(i) of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 regarding the Religious Courts. In this process, Islamic Bank Z and Debtor X agreed to settle the financing obligation through installment payments and the submission of additional collateral. This agreement was formalized in a deed of settlement (acta van dading) ratified by the mediator-judge.

The deed of settlement resulting from mediation holds the same legal force as a legally binding court decision (inkracht van gewijsde). This means that if Debtor X continues to fail to fulfill obligations according to the agreement, Islamic Bank Z may directly request enforcement from the court without filing a new lawsuit. This is in accordance with Article 130 of the HIR and Article 1858 of the Civil Code, which state that deeds of settlement possess executory power. From the perspective of positive law, dispute resolution through mediation at the Religious Court provides strong legal certainty. Mediation that concludes with a deed of settlement is final and binding, and cannot be challenged through appeal or cassation. Furthermore, the deed of settlement has the attribute of uitvoerbaar bij voorraad (provisionally enforceable), meaning it can be executed even if a party attempts to file other legal remedies. Thus, the bank's position is legally protected.

Although mediation is considered effective, there are several challenges. First, not all debtors demonstrate good faith in fulfilling obligations. Second, mediation requires competent mediators who understand both legal aspects and sharia banking. Third, even though deeds of settlement are final, enforcement in practice sometimes faces technical obstacles, such as the debtor refusing to hand over collateral assets. Furthermore, the use of three additional collaterals that were proven not to belong to Debtor X but to other parties indicates weaknesses in the collateral verification process. Under civil law, any asset pledged as collateral must be legally owned by the pledgor. If collateral does not belong to the debtor, written consent from the legal owner is required for the pledge to be legally valid. In this case, there was no evidence of formal consent from the legal owners, meaning the additional collateral had no legal standing as security. Consequently, even though the bank held the certificates, its executory rights over such collateral were weak and could be legally voided if challenged in court.

From a banking law perspective, this condition can be categorized as negligence in the financing feasibility analysis and risk management processes. The Financial Services Authority (OJK) regulates the obligation of banks to apply the "4P" principle Personality, Purpose, Payment, and Protection in financing disbursement. The Protection component means banks are required to ensure that collateral is legally valid, has economic value, and is enforceable. When the three additional collaterals were found invalid due to transferred ownership, the bank's security over the financing was lost. This weakened the bank's position in collecting obligations and increased the risk associated with fictitious credit.

The legal implication is that Islamic Bank Z lost the right to enforce the three additional collaterals, as they could not be legally encumbered with security rights. Consequently, if the debtor defaults, the bank may only enforce the six valid primary collaterals, while the three additional collaterals have no binding legal force. Furthermore, this situation may lead to new disputes with the legal owners, who have the right to claim the return of their certificates. From a sharia perspective, such practices also violate the principle of al-amanah (trustworthiness), as Debtor X used other people's assets without permission as collateral. Therefore, this case reinforces the classification of Debtor X's financing application as fictitious credit, due to invalid collateral and the non-existence of a genuine business operation.

The fictitious credit dispute at Islamic Bank Z demonstrates that mediation can serve as a strategic solution that not only complies with positive law but also aligns with sharia principles. The executory power of the deed of settlement provides legal certainty to the bank, while the peaceful approach preserves the institution's public image. However, to achieve greater effectiveness, banks must strengthen their financing analysis systems from the outset, so that fictitious credit can be prevented rather than resolved after it occurs. In Islamic banking practice, every financing contract must comply with sharia provisions established by the National Sharia Council – Indonesian Ulema Council (DSN-MUI). One relevant regulation is DSN-MUI Fatwa Number 19/DSN-

MUI/IV/2001 concerning Al-Qardh, and Fatwa Number 25/DSN-MUI/III/2002 concerning Rahn. These fatwas stipulate that collateral (marhun) must be legally owned by the pledgor, capable of being transferred, and possess economic value. Accordingly, the use of three additional collaterals not belonging to Debtor X clearly violated sharia provisions, as they did not meet the requirement of valid ownership (al-milk at-tam).

When the three problematic collaterals were replaced with a new single collateral land located in Purbalingga this action became compliant with DSN-MUI Fatwa Number 25/2002 concerning Rahn, which permits collateral provided it is legally owned by the party submitting it. Through the deed of settlement, the agreement between the bank and Debtor X obtained both legal and sharia legitimacy, as the settlement contract eliminated the element of gharar (uncertainty) regarding the collateral. This is essential for maintaining fairness and certainty in sharia-based contracts.

Additionally, DSN-MUI Fatwa Number 17/DSN-MUI/IX/2000 concerning Sanctions for Capable Customers Who Delay Payments is also applicable. This fatwa states that if a customer has the ability to pay but refuses to do so, they are considered to commit ta'addiy (fraud) or tasarruf bi ghairi haq (unlawful conduct). In the case of Debtor X, the use of collateral documents not belonging to them can be categorized as unlawful conduct. Therefore, the deed of settlement regulating the replacement of collateral is valid under sharia and serves as a legal basis for the bank to enforce the collateral if the debtor defaults again. Accordingly, dispute resolution through a deed of settlement not only possesses executory power under positive law but also complies with sharia principles defined by the DSN-MUI.

The final outcome of the case is as follows: after mediation between Islamic Bank Z (a pseudonym) and Debtor X (a pseudonym) facilitated by the court, the parties reached an agreement recorded in a deed of settlement (acta van dading). In this agreement, the three additional collaterals that were problematic and proven not to belong to Debtor X were replaced with a new single collateral: land and buildings located in Purbalingga. Consequently, the bank's legal position was strengthened, as the new collateral was verified as legally owned and capable of being encumbered with security rights. This collateral replacement process, formalized through the deed of settlement, provided the bank with a clear legal basis to enforce the collateral if Debtor X continued to default.

The executory power of the deed of settlement derives from its nature as final and binding (equivalent to a legally binding court decision) and its direct enforceability (executorial kracht). This is regulated in Article 130 of the HIR and Article 1858 of the Civil Code, which state that a settlement made before a judge has the same legal force as a final court decision. Therefore, if Debtor X continues to fail to fulfill payment obligations, Islamic Bank Z may directly submit an enforcement request to the court regarding the new collateral land located in Purbalingga without initiating a new lawsuit.

CONCLUSION

Based on the research findings, it can be concluded that the resolution of fictitious credit disputes at Islamic Bank Z through mediation resulting in a deed of settlement provides strong legal certainty, as the deed of settlement holds executory power equivalent to a legally binding court decision. Although there were initial weaknesses related to the three additional collaterals that did not belong to the debtor, their replacement with a new single collateral land located in Purbalingga restored the bank's legal position and provided security for enforcement in the event of future default. Thus, mediation is not only efficient in terms of time and cost but also aligns with sharia principles, specifically *ishlah* (reconciliation) and justice.

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