



Dispute Resolution of Shariah Economy in Murabahah Financing Contract in Sahabat Mitra Sejati Cooperatives

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Abstract

Sharia resolution in the murabahah financing contract at the Mitra Sejati Cooperative indirectly in the process of resolving the dispute still refers to Law No. 21 of 2008 concerning Sharia Banking. While the Fatwa of the National Syari'ah Council Number 07 / DSN-MUI / IV / 2000 explained that the resolution of murabahah financing disputes was in the Syari'ah Arbitration Board. According to Article 55 of Law No. 21 of 2008 concerning Sharia Banking, that sharia dispute resolution can be carried out by the Court within the religious court environment and can also be resolved by referring to the contents of the contract. In fact, murabahah financing contracts carried out by true partner cooperatives do not explicitly appoint which judicial institutions to solve them. Sharia dispute resolution in the murabahah financing contract must be settled in the Religious Court but the fact is resolved in non-litigation in the form of a public auction. When viewed from the theoretical concept of legal certainty, this does not reflect the firmness in the rule of law because the resolution through non KPKNL parate litigation does not yet have binding legal force. where the results of the auction cannot automatically have disputed objects. With respect to murabahah financing agreements in true partner cooperatives, legal defects can be declared because there is no firmness and there is no accuracy of the contract maker when a dispute occurs where the contract maker does not confirm which institution is appointed and agreed when a dispute occurs.

Keywords: Islamic Economic Dispute; Murabahah Contract; Resolution Process

Introduction

Shariah Economy views that money is money. It means that it only functions as exchanging tool. Therefore, money is public good that must be always in a flow (Chapra, 2001). Thus, the practices that disturb the money flow like money hoarding is highly contradicting. If compared to the concept of conventional economy, Shariah economy refuses demand for holding money as in the stock concept. Besides, in the paradigm of flow concept, there is a similarity of perception. Al-Ghazali defines money as good or thing that functions to get other goods. Money is a good which is function agreed as a medium of exchange (Jevons, 1989) . The good is considered not having value as a thing (intrinsic value). The thing value functioning as exchanging tool. The value of "function" in the good functioning as exchanging tool as money is exchanging value and nominal value. Therefore, it is assumed that it is like a mirror that does not have its own color, but it is able to reflect all colors.

Shariah Finance Service Unit is a business unit in Cooperatives in which its business activity run in field of financing, investment, and saving as in line with the pattern of profit sharing (Shariah), as the part of the related cooperatives business activity. Shariah Cooperative is an institution consisting of people or cooperative legal institution bases its activity based on Shariah principle as well as the part of society economy movement that bases on kinship principle. The cooperative aims to make its members welfare such as individual that is the person who voluntarily becomes the cooperative member and cooperative legal board which is a Shariah cooperative that becomes the member that has wider scope. Generally, cooperative, including, Shariah cooperative, is handled collectively by all members in which every member has same voice right in every decision taken by cooperative. The profit sharing of cooperative (commonly known as Business Output Remnant or SHU) calculated based on the member contribution in the cooperative (Sofiani, 2014). The purpose of Shariah Cooperative is to improve the members' welfare especially and society generally as well as to participate in developing the fair economy as in line with the Islamic principles (El-Zoghbi & Tarazi, 2013).

Sahabat Mitra Sejati Cooperative is the name of a form of partnership to develop and to modernize the saving and loan business of cooperative. Through partnership between Sahabat Sampoerna Bank and cooperative, the system used is banking system. It is beneficial for improving the cooperative performance and for adding the cooperative capital in order to be able to more developing and to open capital successful opportunity for cooperative. The concept of financing contract used by Sahabat Mitra Sejati Cooperative is Shariah financing concept where it is proven by financing contract based on *murabahah* so that the financing system uses Islamic Shariah principle.

In running its business, Sahabat Mitra Sejati cooperative is not separated from the problems of bad credit happening on giving loan to the creditors, so that in this case, dispute occurs for the loan given by Sahabat Mitra Sejati cooperative, in which the process of its dispute resolution also becomes difficult to do.

Research Method

The research method is a way used to obtain right knowledge through certain steps systematically. This research is included into legal research viewed from the aspect of nature, form, purpose, and implementatin from some knowledge viewpoints (Waluyo,1991). Research method is a research that provides the ways or the steps that must be taken in a research systematically and logically so that it can be accounted for its authenticity (Hadi, 2001).

Research Approach and Nature

Viewed from its type, the research that the writer does is included in to Normative Law Research or it is also known as Library Research especially on studying or investigating *Murahabah* financing contract number 1 issued by a Notary.

Data Source

This research uses secondary data which is the data obtained through library research consisting of laws, Secondary law materials comprising of research results, and tertiary legal material which is the material that can provide information, direction, and explanation on primary and secondary law materials.

Data Analysis and Conclusion Making

In this research, the first step that is done is collecting data from primary law material in form of case documents. The data are then processed by studying the case and comparing with the existing concepts in the secondary law material in form of books and other literatures.

Discussion

Mainly, economy activity is the activity related to wealth and goods. It can be related if transaction happens between one economy actor and other economy actors. However, in the implementation of the transaction, it sometimes triggers dispute in the next future.

Nowadays, Shariah economy is experiencing rapid development; study and concept regarding Shariah Economy is not only done in the countries which have Moslem as majority, but also it is done in non-Moslem countries like United States of America and Europe. It is discussed more after crisis in capitalism countries happen that never stop, so that new economy system is needed to replace liberal economy system or capitalism which is considered failed. The main factor from the failure of market system is the presence of interest system which is considered far from fairness principle that becomes the foundation in Shariah Economy principle. One of the branches of Shariah Economy is Shariah Banking in which Shariah Banking in its practice is based on Islamic standing which is Al-Qur'an and Al-Hadits, which is to remove the interest system that so far becomes the main strength of Capitalist Economy. It is based on Al-Quran surat Al Baqarah verse 275-279, QS. Al-Imran verse 130, QS. An-Nisa verse 160-161 which all emphasizes that usury or interest is totally illegal. Therefore, it is fine if we see that capitalist system that nowadays is still becoming the direction of some countries, is the system that is actually porous and is very sensitive to crisis and recession.

The development of Shariah banking in Indonesia is quite fast and rapid but some society still assume that Shariah bank is only a label used to attract Moslem society's attention in banking aspect. They argue that Shariah Bank is conventional bank with banking terms that uses Islamic terms, the contract that has *Bismillahirrahmaanirrahiim* and the employee that wears Islamic uniform and say greeting, but the implementation of contract in Shariah Bank still uses forbidden ways by religion. Sceptical attitude from society on Shariah Bank cannot be denied because the connotation of banking has been indeed separated truly with Shariah, so that in the beginning of Shariah bank establishment, many do not believe the presence of Islamic economists in uniting banking institutions with Shariah (Rahmawati & Hosen, 2012). One of the forms of funding circulation in Shariah Bank is through *murahabah* financing (Henry & Wilson, 2004). *Murahabah* is sale and purchase of goods with the normal price with profit addition that has been agreed (Ismal, 2010). The characteristics of *murahabah* is that the seller must tell the buyer about the price of the goods and state the number of profit added in the cost (Dusuki, 2007).

In Shariah Economy, it is absolutely not smooth by not having dispute. Dispute cannot be separated from a conflict. In which where there is a dispute, there is a conflict. There are so many conflicts in daily life both small conflict and serious conflict. It is experienced by all levels because this life is not separated from problems. It depends on how to face it. Why should we learn about dispute? Because it is to know deeper on how a dispute it is and how to solve it. According to Chomzah (2003) dispute is a contradiction between two parties or more caused by an interest or an ownership right that can lead to legal consequence for both.

From the opinion above, it can be stated that dispute is a contradiction behavior between two people or more that can cause a legal consequence and thus, sanction can be given for one of them or both of them. The dispute happens when one of the parties act or not act something but other parties ignore to do so. The search of some types of process and method to settle the dispute happening is something urgent in society. The non-law experts mostly release energy and innovation to express some methods of dispute resolution. Some dispute resolutions both formal and informal, can be made as the reference to answer the dispute that may happen if it brings fairness and betterment.

This occurrence of dispute generally is because of deception or promise breaking by parties, or one of the parties does not do what has been agreed to be done. The parties or one of the parties has done what to do but it is not quite precise with what has been promised. The parties or one of the parties does what has been promise but it is late, and the parties or one of the parties does something that according to the contract it is forbidden to do. Therefore, the actions lead to one of the parties feel betrayed. Some ways that can be chosen in solving the dispute are as follows: consultation, negotiation, mediation, conciliation, arbitration.

By seeing the dispute that happens, the problem that occurs is:

“How is the Process of Shariah Economy Dispute Resolution in *Murahabah* Financing Contract in Sahabat Mitra Sejati Cooperative?”

Towards *Murahabah* financing contract that becomes the dispute that there is a regulation regarding conflict resolution as set in Article 15 of *Murahabah* Financing regarding Dispute Resolution, explaining that:

1. If someday a dispute happens in the interpretation or in the implementation of regulations of this contract, then the parties agree to solve it first by discussion;
2. If discussion as mentioned in subsection 1 of this Article does not obtain agreement on dispute resolution, then all disputes caused from this contract is solved and determined by National Shariah Arbitration Board (Basyarnas) in which its decision bind both parties that are in dispute, as the first level decision and the last level decision; and
3. Without intending to minimize the main place of National Shariah Arbitration Board (Basyarnas) in Jakarta set in Arbitration regulations and procedure of National Shariah Arbitration Board (Basyarnas), the parties can agree to choose and determine other places as the place to sit in session.

Seeing the article in the contract of *Murahabah* above, it clearly has dispute resolution if a dispute occurs, then it is solved through non litigation which is discussion is done first. If agreement is not made in the discussion, then it is solved through National Shariah Arbitration Board (Basyarnas). Seeing the process recommended in *Murahabah* contract, it is done through National Shariah Arbitration Board which is not effective because the position of National Shariah Arbitration Board (Basyarnas) is only in Jakarta, in which in this case it will make a difficulty and obstacles in the process of dispute resolution because National Shariah Arbitration Board (Basyarnas) is not in province or regency area, so that the process of resolution through National Shariah Arbitration Board (Basyarnas) is seen ineffective.

Principally, legal enforcement is only done by Judicial Power that is constitutionally known as Judicative Board. It is also in the dispute resolution of Shariah Economy directed using litigation way and non litigation way. Litigation way is through Religious Court and non litigation way is through discussion, Dispute Resolution Alternative (APR) or National Shariah Arbitration Board (BASYARNAS). However, the decision of National Shariah Arbitration Board is still Religious Court, so that it needs to establish National Shariah Arbitration Board in province/regency/municipal all over Indonesia. It also needs to establish Shariah Trading Court that indeed specially solves Shariah Economy dispute so that the judicature process is faster so that it does not hamper national economy especially in economy specifically Shariah banking. (Journal article Iqtishadia, 2014). Thus, this non litigation resolution is seen ineffective so that financing agency which is Sahabat Mitra Sejati Cooperave Duri Branch referring to Article 15 subsection 3 to be able to continue the process of dispute resolution, but in *Murahabah* financing contract made by a Notary still also has unclarity and uncertainty as set in Article 15 subsection 3 stating that it can choose and determine other places to sit in session.

It does not have explanation and statement to do Litigation process to which judicature board that becomes the purpose and the authorities to solve Shariah Economy dispute happening in Sahabat Mitra Sejati Cooperative, so that the role of Notary in actually making a binding in form of *Murahabah* financing contract is highly important because it will be legal standing when a dispute happens and how to solve it.

A notary has a very vital position in Shariah banking industry nowadays because the norary has a role in making contracts of Shariah banking products and collateral attachment (especially in the case of Mortgage and Fiduciary). The development of Banking and Shariah Fiannce runs so quick and so rapid with a very high development level between 40- 45 percents per year. (Deni K. Yusup, 2015:701).

The resolution or the loan collection from default creditors done by Sahabat Mitra Sejati Cooperative according to Legal Procedures:

1. Sending Legal Notice or visiting directly
2. Or inviting default creditors by good legal way without ignoring Obedience and Fittingness elements.

That creditor based on financin contracy has a right to do loan collection to the debtors through Legal Notice or visiting or inviting the debtor that is considered making default on the financing contract that has been agreed, by the allowed ways by law with **Obedience** and **Fittingness** elements by sending Legal Notice or invitation or direct meeting with the debtor.

According to Article 55 Law of Shariah Banking has provided alternative of Dispute Resolution out of court in Religious Court, both from non court path and through a court in general court. Principally, law enforcement of dispute resolution is only done by Judicial Power which is made as an institution constitutionally which is commony known as Judicative Board. Therefore, the one who has an authority to investigate and to try the dispute is judicature board under Supreme Court m in this case is pointed by Laws of a quo which is religious court. This regulation has also been synchronized with the provision in Article 49 Law Number 3 of 2006 regarding Amendement of Laws Number 7 of 1989 regarding Religious Cort that mentions the presence of authorities extenstion of religious court to handle, investigae, determing, and solve the dispute in Shariah Economy incluing Shariah Banking. Religious Court is one of judicature boards, judicature actors to conduct law enforcement of certain fairness, such as the Moslem people in the field of marriage, heir, will, grant, *infaq*, alms, and Shariah Economy.

Based on the explanation on the resolution process that has been done by Sahabat Mitra sejati Cooperative with non litigation way by using Shariah principle which does not have resolution and even the resolution is not there, then Sahabat Mitra Sejati Cooperative Duri Branch chooses Non Litigation way in form of execution of Mortgage.

Mortgage as the only guarantee right on land for the sake of paying certain money which gives superiority position for the first creditor compared to other creditors. As emphasized in General Explanation number 3 of Mortgage Law, it is mentioned that the characteristics of Mortgage as the strong institution for Mortgage right on line are as follows:

1. Giving a position prioritized to the holder;
2. Always following the guaranteed object whoever holds the object;
3. Fulfilling specialty principle and publicity principle so that it can bind the third party and providing legal certainty for the involved parties.
4. Being easy and certain in its execution.

Based on the characteristics of mortgage as mentioned above, the creditor of mortgage holder has special position compared to other creditors obviously, then the creditor of the first mortgage holder deserves to do sales through general auction on the object of debtor's guarantee. Sales through auction on the guaranteed object must be through prevailing regulations (UUHT). The implementation of execution expected by Article 6 UUHT should not have involvement from court (no need court's agreement) because its presence is the willingness of UUHT, so that its execution implementation is the exception from judicature process.

That the reason to do sales first on general auction guarantee right or through privately direct sales without Court (with the condition the presence of agreement between creditor and debtor) is caused by the opinion that it is viewed more efficient from cost factor and remaining loan return if the guaranteed object sales does not cover all number of loan which is then asked its return before the Court.

Creditor based on Mortgage entitled executorial can do direct execution based on the guarantee by using the principle **“For the Sake of Justice Based on Almighty God”** meaning that its power is same as the court’s decision power which is permanent. This principle gives executorial title and means that the deed can be executed directly without the court’s decision. Therefore, what is meant by Write of Execution is the execution on a guarantee certificate like the court’s decision that has infinite power which is by asking *writing* from the court head by asking for determination from the court head to do execution. The Court Head will lead the execution as meant in the prevailing Law Procedure.

The grant of right to the creditor to execute the object guarantee given by the debtor can be seen in Civil Law and some regulations which are Article 6 *jo.* Article 20 Law Number 4 of 1996 regarding Mortgage on Land and Objects Related to the Land which provides right to the creditor to execute the guarantee object by selling itself if the debtor is default.

The execution on this power must be contracted in the previous agreement. According to Article 20 subsection (1) letter (a) *jo.* Article 6 of Mortgage Law, if the debtor is default, then the creditor of the first mortgage holder has a right to sell the object of mortgage on this power through general auction and takes its loan payment from the sales outcome.

The execution of sales made on mortgage object is set in Article 20 (2) and (3) of Mortgage Law. The main aspect of this article is the agreeent between giver and holder of mortgage that the sales made on mortgage will obtain the highest price that will benefit all parties. Privately made sales can only be done after passing 1 (one) month after written notice is issued by the mortgage holder to the involved parties and announced at least in 2 (two) newspaper circulated in the area and no parties that shows objection.

Furthermore, the attempt of Shariah Economy dispute resolution in *Murahabah* financing contract done by Sahabat Mitra Sejati Cooperative by usin Preference Right in form of execution on loan that has Mortgage in which the party of Sahabat Mitra Sejati Cooperative Duri Branch using law basis in Law Number 4 ov 1996 based on Article 6 can submit direct proposal to State Assets and Auction Service Office (KPKNL) to ask for public sales; it can be done by the presence of Mortgage Granting Deed as noted and made by the same Notary in *Murahabah* financing contract which is APHT Number 72/2015. So that, the presence of Mortgage Granting deed and based on the certificate of Mortgage Number 589/2015 Sahabat Mitra Sejati Cooperative Duri Branch is able and is legal to submit execution proposal on its customers’ loan.

Shariah Economy dispute resolution in *Murahabah* Financing Contract done by Auction has been performed by Sahabat Mitra Sejati Cooperative Duri Branch in March 23, 2018, as noted in Auction Report Number 088/12/2018 in March 23, 2018, issued by State Assets and Auction Service Office (KPKNL)Dumai. Thus, Shariah Economy dispute resolution in Sahabat Mitra Sejati Cooperative Duri Branch is clearly done by Litigation which is by Mortgage Execution. Therefore, it is proven that Shariah dispute resolution identically related to non litigation is not proven effective because the absence of certainty to be able to implement.

Conclusion

Shariah economy dispute resolution in *Murahabah* contract in Sahabat Mitra Sejati Cooperative Duri Branch can be done with discussion. If in the discussion, the resolution is not made, then it is solved and determined by National Shariah Arbitration Board (Basyarnas), however, in its resolution practice in which is in line with the fact happening that resolution process based on discussion and *Basyarnas* cannot happen. Shariah dispute resolution in *Murahabah* financing contract must be in line and is not allowed to contradict with Shariah principle. The attempt of Shariah economy dispute resolution in *Murahabah* financing contract done by Sahabat Mitra Sejati Cooperative Duri Branch has been in line with Shariah principle which is by prioritizing resolution by discussion, providing Written Notice, but they all are not succesful, so that it is by using Preference Right in form of execution on Loan that has Mortgage in which the party of Sahabat Mitra Sejati Cooperative using law basis in Law Number 4 of 1996 based on Article 6 can submit direct proposal to State Assets and Auction Service Office (KPKNL) to ask for public sales;

it can be done by the presence of Mortgage Granting Deed as noted and made by the same Notary in *Murahabah* financing contract which is APHT Number 72/2015. Therefore, the presence of Mortgage Granting deed and based on Mortgage Certificate Number 589/2015 Sahabat Mitra Sejati Cooperative Duri Branch is able and legal to submit execution proposal on its customers' loan. Eventually, the writes expresses thankfulness for the parties that have helped this research especially to the advisor and the employees of Sahabat Mitra Sejati Cooperative Duri Branch that have provided some date as the writer's research focus.

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