

Implementation of Fine in Murabaha Agreement on Sharia Banking In Banda Aceh

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Abstract: According to article 1 point 1 of the Indonesian law number 21 of 2008 concerning sharia banking and everything related to sharia banks and sharia business units, including institutional activities and its ways to do activities and processes. The trading system (Buying-selling) in Islamic banking have several benefits, one of which is the capital provided consistently related to the real sector as the goods sold are the base for it. In addition, the agreed price remain unchanged until the terms end, one of the examples is murabaha. In the implementation of the murabaha, occasionally the customers breach the agreement with several consequences, in effect, bank applies fines for late payment of installment. The purpose of this paper is to explain the implementation of the fine in the murabaha agreement in Islamic banking in Banda Aceh. This type of research uses primary data or empirical juridical research that examines law identification (unwritten) and research on the effectiveness of law as an object of research. The approach used in this research is a qualitative approach and presented in analytical descriptive form. The results showed high level of neglect among customers regarding the principle of fines and some still signed the contract immediately without trying to understand the terms of the contract. Moreover, lack of direct communication and supervision by the bank are other factors that prevent the customers business to operate normally without installment payments being delayed. Based on the results of this study, it is suggested to customers to understand and read the murabaha contract before it is signed so that they can object to the payment of a fine when they are unable to pay. Furthermore, the bank should ensure and continuously remind customers to read the entire contract, examine and supervise periodically customer's business activities to avoid the case of unpaid installment.

Keywords: Implementation, Fines, Murabaha Agreements, Islamic Banking.

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I. INTRODUCTION

The development of the sharia banking system in Indonesia is carried out within the framework of a dual-banking system of Indonesian Banking Architecture (API), to develop an alternative and thorough banking system to the Indonesian. Altogether, the Islamic banking system and conventional banking synergistically support broader mobilization of public funds to enhance financing capabilities for sectors of the national economy. (Indonesian Banker Association, 2014: 11).

The characteristics of the sharia banking system which operate based on the principle of profit sharing provide an alternative banking system that is mutually beneficial to the public and banks, and highlighting aspects of fairness in transactions, ethical investment, promoting the values of togetherness in production, and avoiding speculative activities in financial transactions. By having a variety of products and diverse banking services with more varied financial schemes, Islamic banking has become a credible alternative to the banking system that could be utilized by all classes of Indonesian community.

In the context of managing the macro economy, the widespread use of various Islamic financial products and instruments will be able to strengthen the relationship between the financial sector and the real sector and create harmony between the two sectors. The increasingly widespread use of Islamic products and instruments is not only supporting financial and business activities in the community but also reducing speculative transactions, thereby supporting overall financial system stability, which in turn will contribute significantly to achieving long-term price stability.

The enactment of Law No.21 of 2008 concerning Sharia Banking issued on July 16, 2008, the development of the national sharia banking industry has more adequate legal basis. The development of sharia banking is directed to provide the enormous benefit to the community and contribute optimally to the national economy.

The concept of buying and selling in Islamic banking include several benefits, one of which is the capital provided consistently related to the real sector as the goods sold are the base for it. In addition, the agreed price remain unchanged until the term the terms end, one of the examples is murabaha.

Literally, Murabaha means selling an item at the price of capital plus profit. (Hulwati, 2009: 76). According to Ibnu Rusy Al Maliki as quoted by Dimyauddin Djuwaini, Murabaha is the sell and purchase of commodities in which the seller provides information to the buyer about the cost of goods purchased and the desired level of profit. (Dimyauddin Djuwaini, 2008: 103-104).

The application of the Murabaha system does not always run smoothly, occasionally the customers betray the agreement with several consequences, in effect, bank applies fines for late payment of installment. The fine must be paid by the customer to the bank as agreed. As obtained from the results of preliminary research that there are Bank Syariah Mandiri (BSM) customers who have to pay fines due to late installment payments. He mentioned that the reason for late payment in installments was due to non-current business which could be categorized as forced or unavoidable. Based on the descriptions above, the research problem formulated is: how is the implementation of the fines on the murabaha agreement in Islamic banking in Banda Aceh?

This type of research is sociological or empirical law research, which includes, research on law identification (unwritten) and research on law effectiveness. (Soerjono Soekanto, 1983: 51) It also be referred to field research. This research is based on normative law science (laws and regulations), instead of examine the norm system in the rule of law, it analyze how the reactions and interactions occur when the norm system works in society. (Mukti Fajar and Yulianto Achmad, 2010: 47)

The approach used in this research is a qualitative approach method. A qualitative approach is a method of analyzing research results that produces descriptive analytical data, the data that are asked by respondents in writing or verbally as well as real behavior, which is researched and studied as a whole.

This study uses two types of research techniques, namely field and library research. Field research is a way of collecting data or information obtained directly through interviews or direct and open conversation in the form of questions and answers to informants. (Amiruddin and Asikin Zainal, 2012: 31-32). The Interviews in this study are used as additional material for analysis and to increase the accuracy of data. While library research is a way of collecting data through the study of various sources of literature, documents, reports.

II. LITERATURE REVIEW

Sharia Banking is everything that related to the sharia banks and sharia business units, includes institutions, business activities, as well as procedures and processes in carrying out its business activities. Sharia Bank operates the business activities based on sharia principles, and according to its type sharia banks consist of Sharia Commercial Banks (BUS), Sharia Business Units (UUS) and Sharia Folk Financing Bank (BPRS), Sharia Banks are banks that operate in accordance to the Islamic sharia principles. This bank operation procedure refers to the provisions of the Al-Quran and hadith. (Edy Wibowo. Et al, 2005: 33).

Based on the definition of Islamic banks according to the Law and expert opinion, it can be concluded that Islamic banks are financial institutions that are responsible for raising funds from the public, distributing, and providing financial services to the public by using rules or regulations applied in Islamic dogma. Murabaha as one of the products of an Islamic bank might defines as selling an item at the base price plus profit that is mutually agreed to be paid at the specified time or paid in installments. (M. Syafi'i Anwar, 1991: 13).

Murabaha financing is a financing in the form of a sell and purchase transaction of goods at the acquisition price of the goods plus a profit margin agreed by the parties (seller and buyer). The profit margin is expressed in terms of nominal rupiah or a percentage of the purchase price. Examples of murabaha financing are: housing ownership financing, motor vehicle financing, working capital financing, investment financing, and multipurpose financing. (Indonesian Banker Association, 2014: 116).

In practice, the activities carried out by Islamic banks are completely different from conventional banks. Particularly, in determining the price of their products. In Islamic banks, the determination of the price is based on an agreement between the bank and the depositors in accordance to the type of deposit and time period which will determine the size of the profit-sharing portion to be received by the depositor.

Sharia according to the terminology means the road to a wellhead. It is the rule regulated by God to be used by humans in relation to the God, with their fellow muslims, humans, nature, and in relation to life. (Mahmut Syaltut: 1996: 12). It regulates human life as individuals, namely servants of Allah who must obey and abide Allah. Obedience and biddable to Allah are needed in the form of worship which is regulated by Islamic Sharia which come from the Al-Quran and Sunnah.

Fines or ta'zir according to the terminology of Islamic law are educative punishment determined by the judge of the perpetrators of criminal acts and immoral perpetrators whose punishment has not been determined by the Shari'a or there is no legal certainty. (Sayyid Sabiq, 1978: 159). Quran surah ar-Ra'd verse 25. In this verse, Allah threatens those who break promises. "Those who break God's promises after being firmly pledged

and decide on what Allah commands to be connected and do damage on earth, it is these people who get the curse and for them a bad place of residence (hell). " The Hadith of the Prophet Bukhari from Abu Hurairah, Muslims from Abu Hurairah also emphasized the tyranny of customers who delay payment. Putting off payments made by capable people is a tyranny.

If there is no imposition of fines, as an impact, surely many capable customers will deliberately delay payment. So that it will caused more disadvantage, to highlight, preventing the risk is more important than attracting goodness. Then the National Sharia Council fatwa was issued Number 17/DSN-MUI /IX /2000, concerning Sanctions for Capable Customers to Postpone Payment.

Regarding the application of late fees, the National Sharia Council of the Indonesian Ulema Council (DSN MUI) has issued a fatwa regarding sanctions for fines namely DSN MUI fatwa number 17 / DSN-MUI / IX 2000. According to the Fatwa, the fine is imposed on the customers that are able to pay the dept but does not have the will to do so, and customers in force majeure situation may not be subject to the fines. But in reality, customers experiencing financial losses are still subject to fines on installments that are delayed payment after maturity.

The Indonesian Ulema Council (MUI) also explained that customers who are able to pay, but postpone the payments deliberately without any desire to pay may be subject to sanctions. Imposition of late payment penalties or ta'zir is allowed. But the amount of penalty must be discussed and agreed among those two parties, customer and financial institution. In addition, the allocation of ta'zir funds must also be used as social funds. So, the funds may not become the company's revenue, but for social activities, such as for environmental cleanliness.

This fine is imposed on the ta'zir principle, which aims to make customers more disciplined in carrying out their obligations. Sanctions can be in the form money as fines that determined on the basis of an agreement. This sanction was made when the contract was signed. Funds from fines are intended as social funds. In that fatwa for customers who are unable to pay due to force majeure (exceptional conditions) may not be subject to sanctions. This is stated in the word of Allah SWT "... And, if (the person who owes it) is in trouble, give him tough until he is free. And, giving (in part or all) the debt is better for you, if you know ..." (Surat al-Baqarah: 280). This verse explains the obligation for lenders to give a suspension if the borrower experiences difficulties. Imam Ibnu Katsir explained the meaning of this verse that Allah SWT commands us to be patient in dealing with people in debt who are in trouble.

III. IMPLEMENTATION OF FINES ON MURABAHA AGREEMENT IN ISLAMIC BANKING IN BANDA ACEH

One of the goals of Indonesia's development is to achieve the prosperity and justice based on economic democracy and the development of economy based on the value of fairness, togetherness, fair distribution, and benefit which is in accordance to the Syaria principle. Rapid growth in the demands of the service of Syaria banking system makes the government establish a monetary system which is based on Syaria principle as an alternative.

In accordance with article 1 sub article (1) Law Number 21/2008 on Syaria Banking System stating that Syaria Banking System is all matters relating to Syaria Banking, business established based on Syaria System including the structures of organization, activities, and the operations systems. While according to the article 1 sub article (7) of the Law states that Syaria Banking is a Bank running business based on Syaria principle and according to the types of the bank, it may consist of general bank institution and Syaria public funding.

According to the Law number 21/2008 firmly states that Syaria bank is a bank operating based on Syaria principle adopted from Al-quran and Hadits and also with the respect to Indonesia monetary regulations

According to the Law number 21/2008 Syaria banking system is the bank that provides slightly different services with that of conventional banking system. Syaria banking system has Syaria control board officer functioning as assessment body in every activity. The board officer also ensures that each Syaria banking product offered by the bank made based on the condition stated in Al-quran and Hadits

One of the products of Syaria Banking is funding. According to the article 1 sub-article 25 Law number 21/2008, funding is providing the fund and all payment related to that. One of the forms of funding and payment is trading in the forms of the debt to customers. The contract (Akad) is the agreement between the bank and customers. The contract contains the obligation of the parties based on Syaria principle. The contract is legally binding that parties.

Bank Syaria Mandiri (BSM) is one of Indonesia's conventional banking institution that adopted Murabaha funding system based on Syaria principle. However, in the practice not all customers that agreed the Akad of Murabaha funding system are able to pay the debt on time as agreed in the Akad. Consequently, the customers breach the contract that leads to the imposing of the fine (ta'zir) in the form of payment of some

amount of money. Apart from the Akad, BSM also impose the fine to the lateness of the payment and the payment but less than mentioned in Akad to pay the fine about 0,00069% daily.

The Fatwa of national Syariah council of Indonesia Ulema council (DSN-MUI) number 04/DSN - MUI/IV/2000 about Murabaha regulates about the lateness of payment by the customers:

1. The customer that are able to pay the debt is not encouraged to postpone the payment.
2. If the customer deliberately postpones the payment or if a party does not fulfill the obligation the settlement of the dispute in Syaria arbitration body after the agreement reached in a face to face meeting.
3. In relation to the bankruptcy or the customer stated bankrupt and fail to pay the debt, the bank has to postpone the payment process until the customer capable to fulfill the obligation as agreed.

One of the customers of an independent Islamic bank that binds itself to a murabaha financing agreement stated that he had experienced economic problems from lack of business income, causing delays in installment payments according to the due date. So he had to pay a fine of 7 days multiplied by 0,00069 from his installments, he explained that the bank should not immediately impose a fine on him, because he feels that he cannot pay the payments on time not because it was deliberately done but because of the lack of buyers during a particular month in his business. (Amin, 2019)

National Sharia council fatwa number 17 / DSN-MUI / IX / 2000 concerning sanctions for capable customers who delay payments explains that;

1. Sanctions are imposed on customers who can afford to pay, but delay the payments on purpose,
2. Customers who are unable to pay due to force majeure may not be subject to sanctions,
3. Capable customers who delay payment and / or do not have the will and good faith to pay their debts may be subject to witnesses,
4. Sanctions are based on the principle of ta'zir, which aims to make customers more disciplined in carrying out their obligations,
5. Sanctions can be in the form of a fine of an amount of money determined on the basis of an agreement and made when the contract is signed,
6. Funds originating from fines are intended as social funds.

Bank Syariah Mandiri (BSM) have implemented fines in accordance with the fatwa of the national sharia council, but sometimes customers do not see and read clearly the murabaha financing contract issued by the bank in which one of its articles mentions that under compulsion, in this case one of the parties (the customer) late, hindered or completely unable to carry out its obligations based on the contract by force, then the party (the customer) cannot be deemed to have been negligent in carrying out its obligations, but the party experiencing forced conditions must notify other party (bank) of proof of the circumstances said in writing within a period of 3 (three) days after the first day the services have been hindered, if that time period is passed, another party (the bank) has the right to refuse forced situations as a reason for the failure to carry out obligations by that party (customer). (Idrah, 2019).

Supervision and examination of business management for those who get financing facilities is also a form of business carried out by Bank Syariah Mandiri to ensure that businesses run well, so that the important thing is the customers and banks should continue to establish harmonious communication in order mutual benefit and avoid what is not expected by both parties.

IV. CONCLUSION

The implementation of fine on the murabaha agreement on Bank Syariah Mandiri in Banda Aceh has been carried out in accordance with the agreement that has been mutually agreed upon and certainly the contract which is the result of the product of Bank Syariah Mandiri, namely the murabaha principle that has been supervised by a sharia supervisory board based on the fatwa of the national sharia council based on sharia principles. Although customers who are fined assume that the reason for delaying installment payments due to forced circumstances, the bank in accordance with the contract agreed to invite the customer to submit a written condition of the forced condition to the bank within 3 (three) working days resulting in the customer failing to pay on time.

The importance of customers and Bank Syariah Mandiri continues to establish harmonious communication for mutual benefit and to avoid what is not expected by both parties, such as ensuring that customers read all the contents of the contract before signing it so that customers can fully understand their rights and obligations. Moreover the bank can conduct oversight and inspection of the business carried out by the customer and become a mentor in running the business both by providing input and breakthroughs in seeing market opportunities, so that the customer's business continues to progress and makes installment payments on time.

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