



Original Article

**INVESTIGATION OF THE MURABAHAH FINANCING AGREEMENT FOR
FORCE MAJEURE DEBTORS**

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ABSTRACT

Background. Islamic banking in Indonesia is a manifestation of the fulfillment of the expectations of people who need an alternative banking system and also meet the principles of Sharia. This research examines the handling of murabahah financing due to debtors experiencing force majeure in Islamic banks, in accordance with applicable legal corridors.

Research method. There is a type of research that is included in the type of normative research. The approach used is the legislative approach, the conceptual approach, and the comparative approach.

Findings. The handling of problematic murabahah funding resulting from a force majeure event on the part of the customer has two handling efforts, namely rescue efforts and efforts to resolve problematic murabahah financing. The obstacles in handling problematic murabaha financing caused by force majeure are both external consumer variables and internal bank factors.

Conclusion. It is reasonable to assume that Islamic banks will maximize risk management and the concept of prudence in their business operations to reduce the impact of the existence of problematic murabaha financing brought on by force majeure.

Keywords: Force Majeure, Handling, Murabahah.

BACKGROUND

The existence of Islamic banking in Indonesia is a manifestation of the fulfillment of the expectations of people who need an alternative banking system, and also meets the principles of Sharia[1]. This is because the Indonesian people are mostly Muslims, while the existing banking system is only a conventional banking system, which in its operations applies a usury system. By issuing regulations in line with applicable Sharia banking laws to strengthen Bank Indonesia Regulation Number: 9/19PBI/2007 on the Implementation of Sharia Principles in Fund Raising and Fund Disbursement Activities as well as Sharia Banking Services and Bank Indonesia Regulation Number: 7/35/PBI/2005 on the amendment of Bank Indonesia Regulation Number: 6/24/PBI/2004 on Commercial Banks Conducting Business Activities Based on Sharia Principles, the government has demonstrated its support for the growth of Islamic banking[2].

One of the efforts that can be made to improve the function and role of banks is through the development of an Islamic banking system. In the Islamic banking system, the principles used are Sharia Principles based on the values of justice, benefit, balance, and universality (*Rahmatan Lil Alamin*). Furthermore, these values are applied in banking arrangements based on Sharia Principles called Sharia Banking. The birth of Islamic banking in Indonesia is inseparable from the development and progress of Islamic banking in the world, as well as the support of the Indonesian Government[3], which is reflected in the banking policies issued by the Government, where the Government's commitment to support the development of Islamic Banks in Indonesia began in 1992.

According to Article 1, Number 1 of Law No. 21 of 2008 concerning Islamic Banking, everything pertaining to Islamic Banks and Islamic Business Units, including establishments, commercial operations, and procedures and methods used in conducting such operations, is referred to as Islamic Banking. Islamic banks, in carrying out their operational activities, apply a profit-sharing system, which is the main basis for each of their business activities, both in funding business activities, financing, and other products[4]. Through this profit-sharing system is expected to realize justice, so that no party is exploited as happens in conventional banks. This study only examines the murabaha financing contract, which basically means that the financing provided by Islamic banks to customers is always related to the contract. Akad is a connection between *ijab* and *qabul* according to the provisions of *shara*, which causes legal consequences on the object, or in other words, the connection between the speech of one of the contracting parties and the other according to *shara*, in terms of its apparent effect on the object.

Based on this understanding, a contract is a bond between two parties, where one person says *ijab* and the other person says *qabul*, then with the occurrence of *ijab* and *qabul*, legal consequences arise, namely the rights and obligations between the two parties bound in it. The use of contracts in Islamic banks is basically tailored to each product and service, because each product and service has a different concept from one another. When associated with murabaha financing, the contract used is a murabaha contract. The financing of an item by confirming its purchase price to the buyer and having the buyer pay an agreed-upon profit is known as a murabahah agreement[5].

In general, the contracts used in Islamic banking in Indonesia are contracts that have been agreed upon by most scholars and are in accordance with Sharia provisions. These contracts include funding contracts, financing, services, operational services, and others. However, there are several contracts that are often used by Islamic banking in Indonesia, including murabahah, mudharabah, and musyarakah financing contracts[6].

Non-performing financing arises as a result of the risks inherent in almost all banking activities. In the context of banking, risk may be seen as a possible occurrence, both expected and unexpected, that has an adverse effect on capital and revenue. While risk cannot be completely eliminated, it can be regulated and managed. The risk that is often experienced by Islamic banks, especially in murabaha financing, is financing risk. Financing risk is the risk that occurs due to the failure of payment or repayment of murabaha financing from customers due to things that cannot be predicted by the bank[7].

Problematic murabaha financing between banks and customers related to financing risks can arise due to non-fulfillment of the rights and obligations of the parties as agreed in the contract. And murabaha financing problems can occur due to *force majeure*. *Force majeure* is a circumstance that occurs beyond his control, thus forcing him not to be able to perform the performance that has become his obligation[8].

Force majeure in this case is limited only to relative *force majeure*. *Force majeure* of a relative nature, such as: the customer loses their job, the customer is sick, the customer dies, and others. *Force majeure* or relative *force majeure* is a situation that causes the debtor to still be able to carry out their obligations, but the implementation of the performance must be carried out by making a significant, imbalanced sacrifice, exercising mental fortitude beyond human capacity, or facing the prospect of suffering a significant loss[9].

The handling of financing murabahah problematic financing, caused *force majeure* by the customer needs to be studied more deeply, in order to find out the right handling efforts and in accordance with Sharia Principles. So, from the things that the author puts forward in the background above, this research examines the handling of murabahah financing due to debtors experiencing *force majeure* in Islamic banks, in accordance with applicable legal corridors.

RESEARCH METHODS

This study uses a different methodology than other studies because it is normative legal research. A methodical approach to research is the legal research method[10]. In accordance with Article 55, Paragraph 2 of Law Number 21 of 2008 about Islamic Banking, the authors of this paper will analyze the settlement of force majeure debts through murabahah financing. The author uses a number of methods in this legal research, including the Statute Approach, which looks at all laws and regulations that are relevant to the legal questions the researchers are interested in. In this study, current legal issues are examined in order to comprehend their hierarchy and legislative principles. Regarding the application of Law Number 21 Year 2008 on Sharia Banking, Article 55, paragraph (2).

Since there isn't a legal norm for the situation at hand, the researcher's conceptual approach in this instance complies with the laws that were in effect at the time. By searching for the discourse, ideas, opinions, and doctrines of legal experts, the author hopes to develop a concept that will serve as a guide for future research. In order to later identify points of similarity and difference that will be very helpful in the analysis process, the comparative approach is used to see how one law regulates similar provisions but not in the same direction as other laws. This is especially true in Law number 21 of 2008 concerning Islamic banks, specifically in Article 55, Paragraphs (1) and (2).

Three categories of data types and sources will be used to write this thesis, specifically: Legal content that is authoritative, that is, possesses authority, is referred to as primary legal content. The main legal research materials. These are rules and laws: 1) Civil Code, particularly Articles 1244 and 1245, 2) Law No. 21 Year 2008 on Sharia Banking, 3) Bank Indonesia Regulation No. 8/21/2006 concerning Asset Quality Assessment of Commercial Banks Conducting Business Activities Based on Sharia Principles, 4) Bank Indonesia Regulation No. 9/9/2007 on the Amendment to Bank Indonesia Regulation No. 8/21/2006 on the Assessment of Asset Quality of Commercial Banks Conducting Business Activities Based on Sharia Principles, 5) Bank Indonesia Regulation Number: 10/16/PBI/2008 concerning Amendments to Bank Indonesia Regulation Number 9/19/PBI/2007 concerning Implementation of Sharia Principles in Fund Raising and Fund Disbursement Activities and Services of Sharia Banks, 6) Bank Indonesia Regulation Number: 10/18/PBI/2008 concerning Financing Restructuring for Sharia Banks and Sharia Business Units, 7) Bank Indonesia Regulation Number: 13/9/PBI/2011 concerning Amendments to Bank Indonesia Regulation Number 10/18/PBI/2008 concerning Financing Restructuring for Sharia Banks and Sharia Business Units, 8) Bank Indonesia Circular Letter Number: 10/34/DPbS/2008, 9) DSN Fatwa No. 4/DSN-MUI/IV/2000 on Murabahah, Compilation of Sharia Economic Law[2,11]. Legal material that is useful or supports the main legal material in this thesis research and will elucidate the explanation in it is referred to as secondary legal material. Books on banking law and Islamic banking law, the subject of this thesis research, are among them.

In library research, gathering legal materials is a documentary strategy that involves gathering information from archival reviews or literature studies, including books, papers, articles, periodicals, journals, newspapers, and expert opinions. Literature study using technically acquired data from reading materials at the Library. Citing information from books, documents, the internet, and laws and rules pertaining to the process for managing troublesome murabaha funding in Islamic banks, among other sources.

The editing procedure used in this study involves reexamining the legal materials acquired, paying particular attention to their completeness, meaning clarity, appropriateness, and usefulness to other groups. Following editing, the next step is coding, which is adding

comments or markings that specify the issue formulation sequence, copyright holders (author's name, year of publication), and the type of source of legal content (literature, laws, or documents). The next step is material reconstruction, which is the process of reorganizing legal information in a logical, linear, and orderly fashion to make it easier to comprehend and interpret. Systemizing legal material, or arranging it in accordance with a methodical framework of discussion based on the problem's order, is the final phase.

FINDINGS

One of the main components of Sharia economics is the Sharia bank. Sharia, in which banks that do not rely on interest are known as sharia banks. Another definition of a Sharia Bank is a financial or banking organization whose operations and offerings are derived from the Qur'an and the Prophet Muhammad's Hadith. Another term used for Islamic Banks is Bank Islam. As for what is meant by Islamic Bank according to Karnaen Perwataatmadja and Muhammad Syafi'i Antonio are: Banks that operate on Islamic sharia principles, namely banks that in their operations follow the provisions of Islamic sharia, especially concerning procedures how to In the procedure of Islamic mingling. Practices that are feared to contain elements of usury are to be filled with activities that are not in line with Islamic law[12]. This is filled with investment activities on the basis of profit sharing and trade financing. Furthermore, it is also said that: Islamic Bank is a bank whose operating procedures refer to the provisions of the Qur'an and the Hadith to the provisions of the Qur'an and the Hadith, i.e., a bank whose operating procedures are in accordance with the decrees and prohibitions In accordance with the commands prohibitions, what is shunned are practices that are not in line with the provisions of the Qur'an and Hadith. Practices that contain usury, while those followed are business practices that were carried out in the era of the Messenger of Allah, or the forms of business which already existed before but were not prohibited by him.

According to Paragraph 1 of Article 1 of Law No. 21 of 2008, it is explained that Islamic banking is everything related to Islamic Banks and Islamic Business Units. Sharia includes institutions, business activities, and methods and processes in carrying out their business activities. The purpose of Islamic banking is to support the implementation of national development. Work in the banking industry. In addition to collecting and allocating public funds, Islamic banking also carries out social functions through the establishment of Shariah financial institutions that receive waqf funds and disburse them to the designated nazir and through a lembaga baitul maaly that receives zakat, infaq, alms, grants, and other contributions for distribution to zakat management organizations[13].

Murabahah is etymologically an Arabic term in economics taken from the word al-ribhu (لاربح), which means something that grows in trade (لاررءيرالنمرء) or excess and addition (profit). Terminologically, what is meant by murabahah according to the three general madhhabs, including according to the Shafi'iah scholars, murabahah is the sale of commodities at the original price accompanied by profit and certain conditions. According to the Hanafiah scholars, murabahah is a sale at the same price as the purchase price (capital) plus profit. Murabahah is a sale at the capital price plus a known profit[5].

According to Law No. 21 of 2008, a murabahah contract is a financing agreement for an item in which the buyer confirms the purchase price and pays the seller an additional agreed-upon profit. In carrying out an engagement, there are pillars and conditions that must be met. A pillar in language can be interpreted as something that must be fulfilled for the validity of a job, while a condition is a requirement (rules, instructions) that must be observed and carried out.

When there is a variation in the repayment of funding that results in payback delays or

necessitates legal action, this is known as non-performing finance. Juridical action in repayment or the possibility of a potential loss. Things that cause non-performing financing can come from the bank, customers, and external parties. The process of providing financing begins with the following steps[14]: The stage before the provision of financing is decided by the Islamic bank, namely the stage when the Islamic bank considers the financing application of the prospective customer receiving the facility. This stage is called the stage of analyzing the feasibility of channeling funds.

The stage after the financing application is decided to be granted by the Islamic bank, and then the disbursement of the decision is made into a financing agreement. In the financing agreement (financing contract) and the execution of collateral binding for the financing. This stage is called the financing documentation stage. The stage after the financing agreement is signed by both parties and binding documentation collateral has been completed, and the collateral binding documentation has been completed and will be used by the customer receiving the facility until the end of the financing period. This stage is called the stage of financing utilization. The stage after the financing becomes problematic but the business of the customer receiving the facility still has prospects so that the problematic financing can be saved to become smooth again. can be saved to become smooth again. This stage is called the financing rescue stage.

The stage after the financing becomes stuck. This stage is called the stage of financing settlement. Articles 19 through 26 of Law No.21 Year 2008 provide arrangements regarding the restrictions on the business activities of Sharia Banks and UUS to regulate the business activities that may be conducted by Sharia Banks and UUS[6]. The business activities of these banks are distinguished between Islamic Commercial Banks and Islamic People's Financing Banks. One of the business activities of Sharia Commercial Banks and Sharia Business Units is to distribute financing based on the murabahah Akad, the salam Akad, the istishna' Akad, or the sharia business unit. Other contracts that are not contrary to Sharia Principles. Parties, so standard contracts are usually very one-sided.

DISCUSSION

Problems or disputes that occur in Sharia banking. One of the reasons is due to the use of financing agreements in the form of financing for customers in need. The agreement for the distribution of funds has generally been made in a form made by one of the parties, or in other words, the contract is a standard contract. A standard contract is a contract written that is made only by one of the parties to the contract, even if the contract is standardized.

The contract has been printed in the form of certain forms by one of the parties, in this case when the contract is signed, generally the parties only write down certain informative data with little or no changes in the clauses, where others party to the contract does not have the opportunity or only little opportunity to negotiate or to modify the clauses that have been already made by one[9]. If examined further, the agreement which is a standardized contract can lead to disputes between the bank and the customer, because the customer tends to have little or no opportunity to negotiate with the customer, because the customer tends to have only a few opportunities, even if not at all, to negotiate and change the clauses in the contract and change the clauses made by the bank, so that the customer is always in a weak position and whether or not the customer agrees to all the clauses made by the bank. Agree to all the clauses in the contract that have been made by the bank, or in other words, the contract is one-sided.

Related to the murabahah financing, there are factors that cause the emergence of cases

of problematic murabahah financing. There are factors that cause the emergence of problematic murabaha financing cases causing the emergence of murabaha financing cases[15], among others, such as: 1) Customers experiencing economic problems, usually caused by resigning customers, customers being laid off, bankruptcy, and the business run by the customer has decreased turnover; 2) Divorce of husband and wife; 3) The customer is seriously ill; 4) The customer's character is not good.

In a legal relationship between Islamic banks and customers, it is not impossible for disputes related to non-performing financing to arise between the two of them, and this can be avoided. When an Islamic bank agrees to provide financing to customers, then at there is always there is an inherent risk. To prevent the occurrence of non-refundable financing, the Islamic banks, in carrying out their business activities, try to prevent the occurrence of non-refundable financing. To prevent the non-return of such loans, Sharia banks, in carrying out their business activities, strive to minimize the amount of non-performing financing.

If the customer does not carry out the obligations as agreed in this contract, whether due to default or other reasons, the handling actions as stipulated in the contract carried out by the Bank when there is a problematic murabahah financing[8], include: the first action taken by the bankruptcy court is to give a warning either verbally or in the form of a statement of default in the form of a letter or other similar deed sent by the bank. However, if the warning is not heeded by the customer, the bank then gives a warning in the form of installing a warning board (*Plank*), stickers, or by any means that is affixed or written on the financing guarantee.

Furthermore, if the customer after receiving a warning from the bank, and it turns out that the customer cannot pay off the debt when collected by the bank, then the bank has the right to order the customer and the bank to pay the debt by the bank, then the bank has the right to instruct the customer and the customer obliged to vacate house along with the land that has been pledged by the customers to bank, at the latest within 30 (thirty) days from the date of the bank's order, without any conditions and compensation whatsoever.

If the external customer does not vacate the house and its land within 30 days from the date of the bank's order, the bank has the right to request the assistance of the authorized party to remove the customer from the house to vacate the house. For defaulting customers and customers who not able to no longer able to fulfill their obligations to pay less installments or pay back the financing and on that basis they feel that they are handing over the house that is used as collateral for the financing to the bank, then after to warn the customer, the bank has the right to take the following actions: carry out a search of the collateral based on the provisions of the law. Applicable laws and regulations, carry out the sale of collateral based on the Power of Attorney to Sell made by the customer, and set the sales price at a price that is considered good by the bank.

The proceeds from the execution and or sale of the collateral house are prioritized to pay off all debts owed by the customer to the bank, including all costs that have been incurred by the bank to carry out the sale or the executor of the guarantee house and if there is any leftover, then the remaining amount will be paid to the customer. And if the results of the execution or sale of the financing guarantee house are insufficient to pay off the remaining debt of the customer to the bank, then in accordance with the rules and regulations of the bank. With provisions or regulations applicable, the bank has the right to take repayment from the collateral of the loan and the sale of other assets. Other assets belonging to the customer.

Based on the results of the analysis juridical analysis if in *practice* there is a problematic financing of murabahah, then the parties, namely the Bank and the customer who is experiencing force majeure, will find a solution to the problem. The actions taken by the Bank in the framework of resolving the problematic murabahah financing, actions taken by the Bank

in the framework of handling problematic murabaha financing caused by customers experiencing force majeure, are grouped into two stages, namely: 1) efforts to rescue problematic murabaha financing, and 2) efforts to settle problematic murabaha financing.

Basically, before taking action to handle problematic murabaha financing, the Bank should carry out do categorization of customers regarding their ability to pay installments. Customer categories include: a) The customer is able to pay but does not want to pay, b) The customer is unable to pay and unwilling to pay, c) The customer is able and willing to pay, and d) The customer is unable to pay but willing to pay. Based on these categories, when associated with customers who are unable to pay due to Force Majeure, which is relative in nature, then the Islamic Bank categorizes customers who are unable to pay because they experience Force Majeure, which is relative in nature, in the fourth category, namely customers who are unable to pay but want to pay[16].

In Indonesian law, the concept of force majeure is where the debtor shows that the non-performance of the promise was caused by situations that were wholly unexpected and in which he had no control over the actions or circumstances that resulted from the expectation[9]. In contrast, overmacht occurs when the debtor is either totally incapable of repaying the debt (absolute overmacht) or, if it is still possible, it necessitates a significant, unbalanced sacrifice or mental fortitude that is beyond human capacity, or it results in a significant loss for the debtor (relative overmacht).

Based on this opinion, in summary, force majeure is defined as a situation in which one of the parties to an agreement is unable to fulfill all or a portion of their obligations in accordance with what was agreed upon because of an unforeseen circumstance that neither party could have predicted or known would occur at the time of the agreement. In such a situation, the party who is unable to fulfill their obligations cannot be held accountable or assume the risk.

Contribution of this research that the Islamic Bank before deciding to agree to provide murabaha financing which is applied in the form of mortgage financing must be more careful and careful in the financing analysis stage of prospective customers, in this case specifically for prospective customers who work as private employees and entrepreneurs, this is because these two jobs are prone to layoffs, customer resignation, or customer business losses. Thus, it can minimize the number of problematic murabaha financing.

The Islamic Bank is making efforts to handle problematic murabaha financing. It is better if, after reminding the customer. The Collection Staff Division meets the customer directly so that the bank can immediately find out the customer's problem and determine the right effort to protect the customer from non-performing financing. Bank Syariah should provide counseling on financing restructuring to customers during the pre-realization stage of financing. Thus can the customer should be more cooperative and honest if they experience relative Force Majeure, and immediately notify the Islamic Bank, so that both parties can immediately determine the right handling efforts to overcome the problematic murabaha financing.

CONCLUSIONS

The handling of problematic murabaha financing caused by Force Majeure on the part of the customer at Bank Syariah can be divided into two stages, namely: efforts rescue financing problematic murabaha, consisting giving 1st, 2nd, and 3rd warnings, Provide a summons letter to the customer, marking the collateral object that the house is in trouble, financing restructuring. Efforts to resolve problematic murabaha financing, namely by

submitting a request for an auction of the customer's house that has been pledged with Mortgage Rights to the State Property and Auction Service Office. Obstacles in handling problematic murabahah financing caused by Force Majeure. The customer's party in the Islamic Bank comes from internal factors originating from the bank, and comes from external factors originating from the customer. Efforts that can be made by the Islamic Bank to overcome these obstacles include: providing training to employees, especially new employees who handle financing, conducting intensive billing, and using a persuasive approach. If problems arise, such as problematic financing, they are resolved in accordance with applicable laws and regulations.

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