

Implementation Of Final Sanctions On Murabahah

Akad At Mandiri Sharia Bank

Khoirul Ihfan¹, Junaidi²

¹Institut Agama Islam Syarifuddin Lumajang, Indonesia

²Institut Agama Islam Syarifuddin Lumajang, Indonesia

E-mail: 1magisterichfan@gmail.com 2Junaidi123@gmail.com

Abstract: *The development of Islamic banks in Indonesia is quite significant, this is indicated by the increasing number of Islamic banking institutions that have been established. From a number of Islamic bank products, the most widely used is murabahah financing products. To avoid losses suffered by Islamic banking due to delays in customer payments for their maturing obligations, especially in murabahah contracts, a provision is made regarding the application of sanctions by taking a number of assets as a fine for delays made by customers, with the aim of providing a deterrent effect to people who are able but delaying payments. This paper uses a descriptive method of application from secondary data sources in the form of books, articles and documents from the internet either from websites or other valid sources.*

Keywords: *Murabahah akad*

1. Introduction

The development of the Islamic economy in Indonesia can be said to be quite developed. One of the indicators can be seen from the increasing number of financial institutions, both banks and non-banks that apply sharia principles. The growing number of Islamic financial institutions is not merely a temporal business trend. However, the existence of Islamic financial institutions is seen as a necessity for the community, especially for those who are Muslim.

Professionalism in the management of Islamic financial institutions is seen as very important, this is because Islamic financial institutions are trusted by

the wider community (Muslims and non-Muslims).

Among the many Islamic financial institutions, talking about Islamic banks is quite interesting. This is because Islamic banks are considered as a representation of Islamic economic development

Meanwhile, the response that has received enough attention is regarding Islamic bank products. Whether it's a fundraising product or a fund distribution product. As is known, Islamic bank products are quite varied, in contrast to conventional banking products which are only interest-based.

Studying Islamic bank products does not mean that the product is superior without any

flaws, of course this is absurd. However, the study of Islamic bank products and services is carried out precisely as an effort to improve, so that Islamic banks are truly able to show the advantages of the principles and benefits of these products rather than just talking at a normative level.

In this paper, we will examine the Islamic banking financing product, namely murabahah. This product is familiar to the wider community, considering that most sharia banking financing products are based on murabahah contracts.

The problem that will be studied in this paper is the application of fines for late installment payments regarding sanctions for capable customers who delay the financing.

In the author's view, there are still few papers that examine financing fines in Islamic banks, both from the point of view of Islamic law or from the side of business management.

2. Characteristics Of Sharia Bank

In the view of prof. Dr.Sutan Remy Sjahdeini, that the establishment of Islamic banks is inseparable from a narrow interpretation of usury. The real practice of usury in today's era is the practice of interest money as is the case in conventional banking. Therefore, there is an urgency for Muslims in particular, to establish or use a banking system that is free from the practice of interest-bearing money. So that the Islamic banking system emerged as it is today.

To find out the things that underlie the establishment of Islamic banks, it can be seen from the purpose of the establishment of Islamic banks themselves.

In the author's view, these are grouped into three. The first is the normative view. That is the view which states that the purpose of establishing an Islamic bank is nothing but the avoidance of an interest-based banking system

The second is a practical view. Muslim bankers argue that Islamic banking is a business or commercial institution that uses non-interest financial instruments with the aim of making a profit.

The third is the moderate view. Called moderate because the existence of Islamic banks has a broad vision. Not only oriented to the Muslim community. In Article 3 of Law no. 21 of 2008 concerning Islamic Banking, it is stated that Islamic banking aims to support the implementation of national development in order to improve justice, togetherness, and equitable distribution of people's welfare.

3. The Concept Of Murobahah Contract

Murabahah comes from the (Arabic) word rabaha - yurabihu - murabahatan, which means profit or profit.

Murabahah also comes from the word ribhun or rubhun which means to grow, develop, and increase.

The fuqaha characterize murabahah as a form of buying and selling on the basis of trust (dhaman buyu" al-amanah). This is because

the seller trusts the buyer, which is realized by informing the cost of goods to be sold in the future and the benefits to the buyer. In another opinion, murabahah is a sale and purchase transaction with the procedure of the seller stating the capital for the purchase of goods, then determining the agreed profit margin (ribh) from the capital. According to the majority of scholars, ba'imurabahah is legally permissible.

Utilization of financing funds from a murabahah contract if it is used for interests outside the object of financing, the legal impact that occurs is the invalidity of the agreement contract. As is known, there are three pillars of buying and selling, namely:

(1) aqidain (2) ma'qudalaih / object of sale and purchase (3) shighah / contract. In order to achieve the validity of buying and selling, including the mode of buying and selling in a murabahah contract, the three pillars of buying and selling must be fulfilled.

The expiration of the murabahah agreement can be determined for reasons following:

1. Expiration of the Validity Period

In an agreement it has been determined when an agreement will end, so that with the passage of time, the agreement will automatically end or be completed. The legal basis for this can be seen in QS. At-Taubah (9): 4, which means: "Except the polytheists who have made an agreement with you and they do not

reduce (the content of the agreement) in the slightest and do not (also) help anyone who is hostile to you, then against them it fulfills its promise until the deadline. Indeed, Allah loves those who fear anything (from the contents of your agreement) and they do not (also) help someone who is hostile to you, so against them fulfill their promise until the time limit. Indeed, Allah loves those who are pious.

2. Canceled by Contracting Party or Occurrence of Cancellation or Termination of Contract (Fasakh)

This happens if one of the parties has violated the terms of the agreement or one of the parties knows that in the making of the agreement there is an element of error or fraud. Mistakes can involve the object of the agreement (error in objecto), or regarding the person (error in persona). This is based on the provisions of the Koran including QS. At-Taubah (9): 7, which means "How can there be a (safe) agreement with Allah and"

His Messenger with the polytheists, except with those with whom you have made an agreement (with them) near the Grand Mosque (Hudaibiyah), so as long as they are honest with you, you should be honest with them. Indeed, Allah loves those who are pious.

3. One of the Committed Party Dies This applies to engagements to do something, which requires special competence. Meanwhile, if the agreement is made in terms of giving something, say in the form of money/goods, the agreement remains valid for the heirs. For example, when a person makes an agreement to borrow money, then dies, the obligation to repay the debt becomes the obligation of the heirs.

So the bank provides a condition that in financing the customer is asked to participate in insuring his life in financing life insurance. So that if there is a risk of default because the customer dies, the heirs are not burdened to pay the remaining installments that have not been paid, because it has been covered by the insurance.

If there is impudence and evidence of betrayal (fraud) If an agreement is proven to be fraudulent, then the contract can be canceled by the deceived party. This is based on the word of Allah swt QS. Al-Anfal (8): 58, which means: "And if you (Muhammad) are worried about (the occurrence of) betrayal from a group, then return the agreement to them in an honest way. Indeed, Allah

does not like those who betray.

4. The Concept Of Fine In The Contract In Murobahah Financing

In general, a fine is a form of punishment that involves paying a certain amount of money. The most common types are fixed fines, and daily fines that are paid according to a person's income. Fines are one type of ta'zir punishment. Ta'zir according to language is ta'dib, which means to teach. Ta'zir is also interpreted as Ar-RadduWalMan'u, which means to refuse and prevent. At-ta'zir is prohibition, prevention, reprimand, punishment, reproach and hitting.

The form and amount of punishment must be carried out against all forms of immorality that do not include hudud and kafarat, both violations involving the rights of Allah SWT and personal rights.

According to Wahbah Al-Zuhaili in the book Al-Fiqh Al-Islami wa Adillatuh, ta'zir sanctions are punishments that are not stipulated in terms of their size. Islamic law handed it over to state authorities to determine sanctions against perpetrators of criminal acts in accordance with their crimes. These ta'zir sanctions are very diverse according to the situation and conditions of society, the level of education of the community, and various other human conditions in various periods and times. place. Because ta'zir is not determined directly in the Qur'an and hadith, especially in the context of murabahah financing, this becomes the competence of local authorities

or government agencies. In deciding the type and size of the ta'zir sanction, it is necessary to provide careful textual instructions because it involves the general benefit. Ta'Zir has certain requirements and objectives, including the following.

Preventive prevention, intended for other people who have not done Jarimah.

Repression makes perpetrators deterrent, intended to prevent perpetrators from repeating their actions

actions that are prohibited by syara' in the future.

Curative improvement, ta'zir must be able to bring improvements to the behavior of the convict in the future.

Educational education, is expected to change the pattern of life for the better.

The basic reason why customers are subject to fines is because they are considered to have broken their promises. The breach of promise in question is that the customer is unable to make repayments or installment payments according to their maturity. It is categorized into two factors,

The customer intentionally does not make installment payments because he does not have good faith

Customers in this category are considered financially capable, meaning that the customer's financial condition is in a good or sufficient condition. When viewed from the business conditions, customers of this category do not experience any problems in their business. In general, the business continues to run normally, even

experiencing development. Likewise with business turnover and profits. What is interesting to understand is why customers who are economically or financially capable, suddenly commit default actions.

The customer intentionally does not make installment payments because he is not financially or economically capable

In contrast to customers in the first category. This category of customers is right to intentionally default or default in the form of not paying the financing installments or making repayments due to pressure or economic factors. This can be seen from the customer's business activities that have decreased both in terms of turnover or profits, even experiencing losses.

4. Analysis Of Application Of Delay Fine Payments In Murabahah Financing Contract

Sanctions on capable customers who delay financing on general terms who are able to pay but deliberately delay payments. In this provision, sanctions in the form of fines can be applied to customers who have the ability to pay.

If you look at the size of being able to pay in general, of course all financing customers are initially considered capable and feasible by the Islamic bank, therefore they pass the test, so that the financing is approved. However, over time, not all customers experience business development as desired. In fact, there are customers who are getting better economically and some are falling or going bankrupt.

It is appropriate to apply fines or sanctions to customers who have the ability to pay and delay paying because the funds are used for other things. In addition, the application of fines or sanctions has carried out an educational function, namely educating customers to be orderly, that their obligation to pay installments is the main thing and must be resolved first.

In practice, it is not easy to find out the motives of customers choosing to delay payment of financing installments. Islamic banks must be able to identify each customer. There should be no mistake that fines are applied to customers whose businesses are still running but have experienced a decline in business.

Or it is not applied to customers who are able to make payments but deliberately delay for reasons that the bank cannot identify. So that the educative and preventive elements in the application of fines are not able to change the bad habits of customers. The application of fines or sanctions must be explained as well as possible by the bank to the customer. Regarding the sanctions for capable customers who delay financing, it is not explained in detail the amount of fines that may be taken. This is returned to the authority and policy of the Islamic bank itself in determining the amount of the fine. In this case it can be understood that collecting a certain amount of money as payment for violations committed by customers regarding installment payments is permissible, as long as certain conditions are met.

The customer process is not enough to be carried out only in the financing process, but Islamic banks need to monitor customer financing on a regular basis. This is done not only to ensure that the customer's economic condition is good or bad. Things like this are very important to obtain information about the customer's business conditions and build customer emotional closeness, but also as a preventive measure.tif so that customers do not default due to negligence of their obligations.

5. Conclusion

1. Islamic banks as financial institutions have a fairly broad role in encouraging the development of the national economy, because the existence of Islamic banks is a manifestation of rahmatanlilalamin, which is not specifically intended for Muslims only.
2. Murabahah as an installment-based financing mode remains the most widely used financing mode by Islamic banks, this is because the murabahah financing mode is considered low risk with a predetermined amount of income.
3. Sanctions for capable customers who delay financing, are deemed appropriate, and even must be emphasized in their application, because this is quite good for Islamic banks, namely as a warning to customers. This makes customers more orderly and responsible for the

murabahah financing facilities obtained.

REFERENCES

- Afandi, M. Yazid. 2009. *Fiqh Muamalah dan Implementasinya Dalam Lembaga Keuangan Syariah* Yogyakarta: Logung Pustaka.
- Terjemahan. Jakarta: Lentera Abadi
- Djamil, Fathurrahman. 2013. *Penerapan Hukum Perjanjian dalam Transaksi di Lembaga Keuangan Syariah*. Jakarta :
- Mardani, 2013. *Hukum Perikatan Syariah di Indonesia*. Jakarta: Sinar Grafika, 2013.