

CHAPTER 1

PREFACE

A. Background Of Study

The needs of an increasingly diverse society that puts financing as bank services, products most in demand. This is because financial institutions financing applied very helpful in meeting their needs. But in meeting their needs, many people who do not have the funds.

The financial institution is an institution that is useful to launch an economic mechanism to the meaning of any company whose business activities related to finance. In general, the financial institution acting as intermediary. Financial intermediation is the process of absorption of funds from surplus units of the economy, both the business sector, government agencies and individuals (households) for the provision of funds for other economic units.¹

So many Islamic institutions that have grown in Indonesia. Islamic banks consisting of BUS (Sharia Commercial Bank), UUS (Sharia Business Unit of a Conventional Bank) and BPRS (Sharia Rural Bank). Basically doing the same activity, which is doing the collection and distribution of public funds in addition to the provision of other financial services.² And one of them is Sharia Financing, Bank assisted in financing. Financing Bank's business activity Sharia Rural Bank covers placed funds in other Islamic banks in the form of deposit by agreement wadiah or investments based on mudaraba contract or other agreement is not contrary to Islamic principles.³ This is because this institution can reach Islamic transactions in remote areas that cannot be served by the bank or banks open Islamic

¹ Andri Soemitra, *Bank & Lembaga Keuangan Syariah*, (Jakarta: Kencana, 2015) p. 29.

² *Ibid*, p.72

³ Darsono, Ali Sakti, Ascarya, dkk., *Perbankan Syariah Di Indonesia Kelembagaan dan Kebijakan Serta tantangan Ke Depan*, (Jakarta : Rajawali Press, 2017), p.100

business unit.

In product distribution of funds to customers, an outline of Islamic financing products are divided into six categories are distinguished based on their intended use, namely: financing based on exchange, financing for the results, financing qardh, finance leasing goods to move or not to move to the customer, debt and financing multiservice takeover.⁴ Of the six categories of Islamic financing products, financial products most desirable one is murabaha contract financing the categories based on exchange.

Murabaha is a financing agreement in the form of buying and selling of goods at cost of goods plus a margin agreed by the parties where the seller inform in advance the acquisition price to the buyer.⁵ Financing murabaha shaped very much in demand because of the policy applied not to burden the people. But this raises a lot of problems. The problems that almost all financial institutions will naturally ie customers who can not repay what has been agreed or broken promises which raised defaults.

Finance management is one indicator of the success of these institutions in managing their business. Good financial management can decrease the value of financing problems and can increase the amount of assets in these institutions. Thus the quality of financing is very influential on the effectiveness of expected revenues. So the quality must be maintained in order to reduce the risk of financing problems, the precautionary principle is a major concern in the management of financing.⁶

Islamic Bank to provide financing hoped that the financing is running smoothly, but did not rule within customer financing receiver financing facilities will have problems or difficulties in the payment of which can result in losses for Sharia Bank.⁷ According to the Indonesian Banking Statistics

⁴ ndri Soemitra, *Bank & Lembaga Keuangan Syariah*,... p.79-87

⁵ *Statistik Perbankan Syariah*, Otoritas Jasa Keuangan accessed on October 27, 2018 at 14:50 pm

⁶ Heri Sudarsono, *Bank dan Lembaga Keuangan Syari'ah*, (Yogyakarta: Ekonisia, 2004), p.96

⁷ Trisadini P. Usanti, *Hukum Perbankan*, (Depok : Kencana,2017), p. 237

jammed financing in BPRS Indonesia, there are 590 billion in October and was reduced to 551 billion in December 2018.⁸ Seeing it is a sign that the BPRS has managed to reduce the number of bad debts experienced. But still financing problems mostly occur in the case of *murabaha* contract.

In dealing with a problem of non-current loans the Islamic Financial Institutions have several ways to deal with it some of them:⁹

1. Islamic Bank will conduct an inventory financing based on the quality / classification of each customer financing
2. Followed by creating a list Customer Financing Guilty
3. Islamic banks would then browse for the existing problems of each customer financing problems da followed by details of the efforts that have been made in order to restructure the financing problems and results.

After several efforts to address disputes in default, the Islamic financial institutions may attempt to rescue financing to the restructuring of the financing in accordance with Article 54 and Article 55 of the Financial Services Authority regulation No. 16 / PJOK.03 / 2014 concerning Asset Quality Rating for Islamic Banks and Sharia ,¹⁰ Restructuring financing is one of the efforts made by the bank in order helping with the customer in order to complete its obligations including through rescheduling (rescheduling), reservations back (reconditioning), and realignment (restructuring).¹¹

On the financing *murabaha* Islamic banks can reschedule (rescheduling) *murabaha* bill for customers who are unable to resolve / settle the financing according to the number and not agreed with the following provisions:¹²

⁸ *Statistik Perbankan Indonesia*, Otoritas Jasa Keuangan accessed on March 11, 2019 11:00 pm

⁹ Trisadini P. Usanti, *Hukum Perbankan*, ...p. 238

¹⁰ Copies of Peraturan Otoritas Jasa Keuangan No. 16/POJK.03/2014

¹¹ Trisadini P. Usanti, *Hukum Perbankan*, ...p. 239-240

¹² Trisadini P. Usanti, *Hukum Perbankan*, ..., p. 240

- a. Do not increase the amount of charge remaining
- b. Charging in the process of rescheduling is a real cost
- c. The extension of the payment must be by agreement of both parties

In resolving a dispute case sharia economy experienced by the Islamic financial institutions, there are several processes including the *As-Shulh* (any peace) which is based on sincerity instead of compulsion, *tahkim* (Arbitration) is the appointment of an interpreter middle or referee by both parties to the dispute with the aim to reconcile the dispute and *wilayat al-qadhai* (Judicial Power).¹³

To anticipate and provide comfort in the transaction in the event of a dispute, the government passed Law 3 of 2006 Article 49 of the religious court which stated that the Religious Court the duty and authority to examine, decide and resolve cases the first level of people who are Muslims in the areas of marriage, inheritance, wills, grants, endowments, charity, *infaq*, *sadaqah*, and islamic economics, and decision of the Board of Directors MUI Kep-09 / MUI / XII / 2003 on the establishment BASYARNAS.¹⁴ Which of these two institutions are institutions that handle government official Islamic economic disputes in and out of court.

Put forward some form of dispute Islamic banks caused the denial or violation of the contract, namely:¹⁵

- a. Negligence bank to return the funds deposited by customers
- b. Bank reduces clients benefit ratio without consent
- c. Customers conducting business activities that are forbidden in Islamic Law with funds sourced from bank loans sharia
- d. Parties customer and the bank are in default which causes harm
- e. Tort (PMH) which claims for compensation

¹³ Juhaya S. Pradja, *Ekonomi Syariah*, (Bandung : Pustaka Setia, 2012), p. 222-226

¹⁴ *Ibid*, p.227

¹⁵ Ahmad Mujahidin, *Prosedur Penyelesaian Sengketa Ekonomi Syariah di Indonesia*, (Bogor : Ghalia Indonesia, 2010), p.41-42

In the event of default which is caused by one of the customers of Islamic Financial Institutions, it can apply to the Court of Religion to complete.

Therefore, the author wanted to discuss the results verdict against murabaha financing is problematic because of default. to know that the author took the title **“ANALYSIS OF RELIGIUS COURT DECISION SLEMAN, YOGYAKARTA (NO. 796 / Pdt.G / 2018 / PA. Smn) ON THE RESCHEDULING OF *MURABAHAH* FINANCING ACCORDING TO ISLAMIC LAW”**

B. Problem Of The Study

Based on the background and the focus of the research, it can be the formula the problem as follows:

1. How is Case Description 796 / Pdt.G / 2018 / PA.Smn against Rescheduling of Murabaha Financing?
2. How is Islamic Law Against Rescheduling of Murabaha Financing?
3. How is Rescheduling of Murabaha Financing in Sleman Religious Court according to Islamic law?

C. Purposes Of The Study

Based on the description of the identification and limitation of the problem, the problems raised in this study are aimed at:

1. Knowing Description Case with number 796/Pdt.G/2018/PA.Smn against Rescheduling of *Murabaha* Financing
2. Identify and analyze View of Islamic law against Rescheduling of *Murabaha* Financing
3. Knowing Rescheduling of *Murabaha* Financing of the Religious Court conformity to Islamic law against the decision in addressing default disputes *murabahah* in Sleman Religious Court

D. Benefits of The Study

The expected benefits of this research are:

1. Usefulness Of Academic
 - a. The results of this study are expected to provide benefits for the development of science in the field of legal science in general and dispute settlement case Islamic economics.
 - b. The results of this study can be a reference material and literature for further research related to the verdict in the court with regard to the Islamic economic disputes, especially in the murabaha contract dispute.
2. Practical Utility
 - a. This study is expected to provide scientific reasoning and the ability of researchers as well as to determine the ability of Writers in applying legal knowledge gained through lectures.
 - b. Provide an overview of the general public against the Islamic economic dispute resolution practice in Sleman Religious Court.

E. Previous Research

Previous research a description of the study or research that has been done. Overview to obtain a picture that match the topics that will be examined from previous studies or interconnections, so that there is no repetition of research and duplication. In the search, the authors found some previous studies similar to that address specific research on verdict in tort murabaha financing agreement and the default handling murabahah, Here are some posts that discuss about the verdict and default murabaha financing agreement.

Thesis by Eko Mulyono titled “ Analisis terhadap Putusan Hakim dalam kasus Sengketa Ekonomi Syariah di Pengadilan Agama Purbalingga tentang Wanprestasi Akad Murabahah (Putusan No. 1720/Pdt.G/2013/PA.Pbg)”. This study aims to determine the legal basis and consideration of the Judge in deciding cases of sharia economic disputes in the Purbalingga

Religious Court. And the type of decision study research with a normative juridical approach. Cases in this study is the plaintiff demanded the defendant to pay the cost of the goods and their profit margins, fines, costs and attorney's fees visit. Plaintiff in the Defendants of the obligation to pay the cost and the profit margins of banks is unclear. Judges decide this case verstek because the Defendants were not present even though the upfront proceedings.¹⁶

By Syahriah thesis titled “ Analisis Legal Reasoning Hakim dalam Memutuskan Sengketa Perbankan Syariah (Studi Putusan kasus akad Murabahah di Pengadilan Agama Purbalingga)” by Syahriah. This research is to find the legal basis contained in a legal event, whether that is a legal act (agreement, trade transaction, etc.) or which is a case of violation of law (criminal, civil, or administrative) and includes it in the existing legal regulations. this study of economic disputes in the Purbalingga Religious Court. And the type of decision research with a normative judicial approach. Judge's decision in this case can be categorized into two, namely the normative character Legal Reasoning and Legal Reasoning Majelis Judge constructive normative character, that not all the Bank's petition was granted by the judges.¹⁷

By Noor Hafizah Uhdiyati thesis titled “ Penyelesaian Pembiayaan Murabahah Bermasalah (Studi Kasus di Pengadilan Agama Kota Banjarmasin)”. This study aims to analyze issues of economic disputes in murabaha financing PT.Alif, analyze the dispute resolution on murabaha financing problems, and decisions on economic disputes murabaha financing. And use the qualitative approach to the type of field research. Cases

¹⁶ Eko Mulyono, Analisis terhadap Putusan Hakim dalam kasus Sengketa Ekonomi Syariah di Pengadilan Agama Purbalingga tentang Wanprestasi Akad Murabahah (Putusan No. 1720/Pdt.G/2013/PA.Pbg), Program Studi Hkum Ekonomi Syariah, Fakultas Syariah, Institut Agama Islam Negeri (IAIN) Salatiga, 2017

¹⁷ Syahriah, *Analisis Legal Reasoning Hakim Dalam Memutuskan Sengketa Perbankan Syariah (Studi Putusan kasus akad Murabahah di Pengadilan Agama Purbalingga)*, Program Studi Hukum Ekonomi Syariah Pasca Sarjana, Institut Agama Islam Negeri (IAIN) Purwokerto, 2017

included in this study were between PT Alif and related customer murabaha financing problems. Financing problems here due to the declining condition of customers in installments. PT. Alif has made various efforts such as the rescheduling of installments to a letter of warning to the customer but the customer objected to the filing of the Religious Courts. The decision issued by a judge that fall because the plaintiff did not attend. Outside the court, the settlement reached PT Alif report customers to POLDA Banjarmasin.¹⁸

Journals by Arum Fitria Rohmah entitled “Penyelesaian Pembiayaan Murabahah Bermasalah di Bank Syariah “. Completion of murabaha financing problems that rescue financing and completion of financing. The rescue effort undertaken by financing through the efforts of rescheduling, reconditioning and restructuring. Meanwhile, efforts to resolve the financing through institutions outside the bank.¹⁹

Journals by Restudiyani with the title “ Kedudukan Jaminan Dalam Sengketa Pembiayaan Syariah pada Putusan Pengadilan Agama di Daerah Istimewa Yogyakarta “. The journal study aims to determine the position of collateral according to Islam. By using normative or doctrinal approach. Disputes that occur where the plaintiff sued the Defendants who are in default under the murabaha contract. Position guarantees in this case was not declared valid and valuable collateral, all guarantees cannot be auctioned because the judge only convicted and sentenced Defendant to pay the loan principal repayment and margin to the Plaintiff.²⁰

In observation of the researchers, there are already either in the form

¹⁸ Noor Hafizah Uhdlyati, *Penyelesaian Pembiayaan Murabahah Bermasalah (Studi Kasus di Pengadilan Agama Kota Banjarmasin)*, Pascasarjana Magister Ekonomi Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2017

¹⁹ Arum Fitria Rohmah, *Penyelesaian Pembiayaan Murabahah Bermasalah di Bank Syariah*, Jurnal Program Pasca Sarjana, Universitas Muhammadiyah Yogyakarta

²⁰ Restudiyani, *Kedudukan Jaminan dalam Sengketa Pembiayaan Syariah pada Putusan Pengadilan Agama di Daerah Istimewa Yogyakarta*, The National Conferences Management and Bussunes :”Pemberdayaan dan Penguatan Daya Saling Bisnis Dalam Era Digital” ISSN : 2621-1572, Jurnal Program Studi Magister Ilmu Hukum, Pascasarjana Universitas Muhammadiyah Yogyakarta, 2018

of thesis and journals that raise the research on the analysis of the dispute case verdict against Islamic economics and murabaha financing agreement of default. However, research on the religious court decision analysis Sleman with case number 796 / Pdt.G / 2018 / PA.Smn is in contrast to previous studies that focused on religious court case on murabaha contract renewal.

F. Conceptual Grounding

The assertion of this title meant to avoid any other interpretation which can lead to misunderstandings in understanding it. As for some grounding terms such titles are as follows:

Religious Court Dispute Cases in Islamic Economics one of which is in default *Murabaha* Agreement which causes loss unilaterally. Customers who experience a decrease in the ability of mortgage payments, it is relieved slightening here can be realized in the form of conversion by creating a new contract in the settlement of liabilities.²¹

Default is to not meet or fails to perform the obligations as determined in the agreement between the two parties.²² Parties may be perceived to broken promises, if it does not perform what was promised, carry out promised but not as promised, did but too late or do something that should not be made in the agreement.²³

The word '*aqad*' in terms of language means ties and straps.²⁴ The contract is an agreement in an agreement between two or more parties to initiate and / or perform certain legal actions.²⁵ According to Ibn Abidin,

²¹ Pusat Pengkajian Hukum Islam dan Masyarakat Madani (PPHMM), *Kompilasi Hukum Ekonomi Syariah Buku II*,...p.41

²² Salim H.S, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, (Jakarta : Sinar Grafika, 2015), p.98

²³ Pusat Pengkajian Hukum Islam dan Masyarakat Madani (PPHMM), *Kompilasi Hukum Ekonomi Syariah Buku II*, (Jakarta : Kencana, 2009), p.19

²⁴ Abdul Aziz Muhammad Azzam, *Fiqh Muamalah Sistem Transaksi dam Fiqh Islam*, (Jakarta : Amzah, 2017), p. 15

²⁵ Pusat Pengkajian Hukum Islam dan Masyarakat Madani (PPHMM), *Kompilasi*

the contract is stipulated engagement with the consent and *qabul* under the provisions of Personality that impact on the object.²⁶

Murabaha is selling goods at the original price with the added advantage that is agreed upon.²⁷ *Murabaha* is a financing mutual conducted by *sahib al-mal* to those in need through the purchase and sale transactions with the explanation that the price of goods and the selling price there is value that is an advantage or profit for the *sahib al-mal* and repayment made in cash or gradually.²⁸

G. Research Methodology

Qualitative research method is one type of research where researchers collect data by participant observation to determine the essential phenomena of participants in the experience of his life.²⁹ The method used in the preparation of this thesis are:

1. Types of research

Types of research that will be used in the preparation of this paper is to research the religious court decision analysis. Islamic Court decision is the result of *ijtihad* Islamic law individually or collectively in the form of a decision of a dispute that is presented to the scholars in court.³⁰

Hukum Ekonomi Syariah Buku II, ...p.10

²⁶ Mardani, *Hukum Sistem Ekonomi Islam*, (Jakarta : Raja Grafindo Persada, 2015), p. 144

²⁷ Muhammad Syafi'I Antonio, *Bank Syariah dari Teori ke Praktek*, (Jakarta : Gema Insani, 2001), p.101

²⁸ Pusat Pengkajian Hukum Islam dan Masyarakat Madani (PPHMM), *Kompilasi Hukum Ekonomi Syariah Buku II, ...p.10*

²⁹ Sugiyono, *Cara Mudah Menyusun : Skripsi, Tesis, dan Disertasi*, (Bandung : Alfabeta, 2016)

³⁰ Sofyan A.P. Kau, *Meode Penelitian Hukum Islam Penuntun Praktis untuk penulisan Skripsi dan Tesis*, (Yogyakarta : Mitra Pustaka, 2013), p.29

2. Object Research

Object Research will conduct research in Religious Court Decision Number 793 / Pdt.G / 2018 / PA.Smn

3. Method of collecting data

Methods of collecting Data used in the study is documentation, observation, and interviews.

- a. Documentation is seeking data from events that have already passed remarks which form of writing, pictures, or works of monumental someone.³¹ Among documents that investigators have obtained is an official copy of the file Decision Number 793 / Pdt.G / 2018 / PA.Smn issued by the Islamic Court of Sleman. In addition, researchers also collect legislation, thesis-thesis or a thesis, and books that are still relevant to the research object studied by the researchers, such as Act 3 of 2006 on the Religious Courts, thesis-thesis or thesis concerned a dispute about the judge's ruling islamic economics and books about the verdict, islamic economics, murabaha and renewal of the contract.
- b. Observation is the basis of all science.³² Observation is the selection, modification, recording, encoding, a series of behavior and mood with regard to what is observed, according to the empirical objectives.³³
- c. The interview is a meeting between two people to exchange information and ideas through questions and answers, so it can be constructed meaning in a particular topic.³⁴ Interview that researchers will be obtained from the interview meeting with

³¹ Sugiyono, *Metode Pnelitian Kuantitatif, Kualitatif dan R&D*, (Bandung : Alfabeta, 2017), p.240

³² Sugiyono, *Metode Penelitian Kualitatif*, (Bandung : Alfabeta, 2017), ...p.106

³³ M.Iqbal Hasan, *Pokok-pokok Materi Metodologi Penelitian dan Aplikasinya*, (Bogor : Ghalia Indonesia), p.86

³⁴ Sugiyono, *Metode Pnelitian Kuantitatif, Kualitatif dan R&D*, ...p.231

the Structural and the judges who handle Case Number 793 / Pdt.G / 2018 / PA.Smn.

4. Data analysis

Analisis data is done after all the data collected and to process, analyze and draw conclusions from the process of qualitative analysis using deductive method that is viewed in terms of Islamic law which is in Decision No. 793 / Pdt.G / 2018 / PA.Smn, with the aim of narrowing and limit the inventions to be data organized and structured, this is done to find out what is the source of law for Sleman Religious Court decision in deciding the verdict case in particular Islamic Economic Renewal Murabaha Akad.