

Implementation of Mediation as an Unique Step in Resolving Banking Business Disputes Sharia in Religious Courts

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Abstract

Mediation steps that are rarely carried out in sharia economic business problems are contained in the Al-Quran and Hadith which have been relied upon to be implemented in sharia banking, so that sharia business problems are now starting to enter a unique renewal phase which is the basis for fast and low-cost processes as the wheels of running the economy. because Islamic banks in their operations are still limited by Bank Indonesia regulations and applicable laws, for example the mudharabah principle, the Bai' Salam principle, the Wadi'ah principle, the Musyarakah principle, and the leasing principle (Ijarah). Islamic banks in their wheel of rotation are certainly inseparable from problems both internally and externally through financing with customers even though they are solely based on the principle of profit sharing.

Keyword : Mediation, Disputes, Business, Sharia Banking.

1. Introduction

The basis of Islamic economics in the Al-Quran and Hadith has been implemented in Islamic banking. So that Islamic banks can take part in banking sector through new practices partly because Islamic banks in running their wheels are still limited by Bank Indonesia regulations and applicable laws, for example on the principles *mudharabah*, the Mudharabah principle (mark-up), the Bai' Salam principle, the Wadi'ah principle, the Musyarakah principle, and the leasing principle (Ijarah). the implementation of sharia in its operation is not solely based on the principle of profit sharing, but it is more determined by the customer choosing which banking product to expect, because different service products have different systems as stipulated in Law no. 21 of 2008 concerning Islamic Banking.

The economy with the sharia method is a collection of legal norms originating from the Al-Qur'an and Hadith which regulate the economic affairs of mankind (Zainudin Ali: 2009:4). Further explanation of Law no. 50 of 2009 concerning the Religious Courts explains that "sharia economics means actions and/or business activities carried out according to sharia principles". So sharia is the implementation of a profit sharing mechanism in practice between the owner of the capital and the borrower with the same goal in the way agreed in accordance with the contract.

in line with the implementation of the economic system in financial institutions such as banks and other financial institutions, so that the terms sharia banking and general banking were born. The difference between the two lies in the philosophy of economics, not in the science of economics, the philosophy of economics provides a spirit of thought with Islamic values and sharia boundaries, while the science of economics contains economic analysis tools that can be used. (Adiwarman A Karim, 2001: 60).

So it can be concluded that sharia banking must have a foundation of Islamic values contained in Islamic syari'at which incidentally is carried out in accordance with the principles of the Qur'an and Al-Hadith. This illustrates how important the process of financing through Islamic banks is, which is highly regulated in such a way as not to run away from an Islamic perspective. Then with Law no. 21 of 2008 concerning Islamic Banking, there is strict juridical legitimacy not

only for the possibility of growth and development of Islamic banking, but also the need to develop non-bank Islamic institutions.

Given the spirit contained in Law Number 21 of 2008, namely the enthusiasm to encourage the growth and development of Islamic banking services as a financing solution that can be offered in financial associations in Indonesia, the banking world and the public as users of banking services need to make announcements in their activities. based on these sharia principles. Furthermore, it is also necessary to provide an understanding of the position of Islamic banking in the legal system of Indonesian banking when it has problems in financing Islamic banks.

The profit sharing system as the identity of an Islamic bank certainly has an operational system mechanism that is very different from the principle of interest at banks in general. in the profit-sharing system, the balance is seen based on the profits and losses from the business being carried out and the profit-sharing is very flexible and unpredictable, while the interest arrangement applied to commercial banks prioritizes fixed calculation aspects. This makes Islamic banks very vulnerable to crises and the possibility of default from customers who borrow money is very small so that it will have the effect of causing conflict so that it can lead to disputes in court.

2. Methodology

This research method is a qualitative analysis method with a normative approach so that the study is based more on library research supported by field methods as secondary material (Peter Mahmud Marzuki: 2006: 141).

3. Discussion

a. Actualization of Islamic Banking Principles in Sharia Methods and Compilation of Sharia-Based Economic Law

Indonesia as a country whose population is almost the average population is Muslim so that it becomes the main indicator of the strength of sharia-based banks in Indonesia that can be implemented. That is, seen since the first national awakening. Then in Indonesia the development of Islamic banking has long been coveted. This is because Muslims do not yet have their own banking system that is free from usury (Karnaen A. Perwaatmadja and Hendri Tanjung: 2007:93).

In addition, Islamic banking also received support from Islamic financial institutions around the world, so that in 1970 in Karachi, Pakistan, the foreign ministers of Muslim countries around the world agreed on the establishment of the Islamic Development Bank (IDB), where Indonesia entered as IDB founding member. According to the provisions in the IDB, to be precise in the Article of Agreement, Article 2 Paragraph XI which states that it will assist the establishment of banks that will operate in accordance with the principles of Islamic Sharia in its member countries. (Gemala Dewi: 2005:53).

Even further, if necessary, IDB is certain to be able to participate in the capital of the Islamic bank, as has also been done in a number of its member countries, including Indonesia itself. IDB has helped PT. Bank Muamalat Indonesia in the first stage amounted to 3 million dollars, and then in the next stage it was added again so that it became 10 million dollars. (Gemala Dewi: 2005:53).

Furthermore, the immunity of sharia banking also boils down to the sharia legal system which has its own characteristics and is different from the banking system in general. So that the theory of the wheel of the company that has been developed so far in Indonesia emphasizes the principle of maximizing company profits in every line of life. However, the economic theory in question shifts to a broader value system, namely the benefits obtained are no longer focused on

shareholders, but on all parties who can benefit from the presence of a unit of economic and financial activity (Zainuddin Ali: 2008:20). The existence of Islamic banks is very much guided by the rules of the game that will be applied in the legal system in order to obtain a relevant position so as to produce a financing cycle which has implications for the progress of Islamic banking.

Bank Indonesia gives approval or rejection of an application for approval in principle no later than 30 days after receipt of the complete application. The said principle approval is valid for a period of 180 days from the date the principle approval letter is issued. Banks that have obtained principle approval may carry out bank business activities.

Applicatively, some of these deed are in the form of authentic deed and some are in the form of private deed. An authentic deed is a deed made in a form determined by law, made by or before an employee or public official in charge for that at the place where the deed was made (Article 1868 of the Civil Code). The public official authorized to make authentic deeds based on the law is a Notary; Land Deed Making Officer (PPAT), Civil Registry Officer, Auction Officer and Bailiff. (Fathurrahman Djamil, 2012: 2). Meanwhile, private deed is any writing or deed made not by or before a public official, but made and signed by the parties themselves who entered into an agreement (Article 1874 of the Civil Code).

Moving on from here, in terms of avoiding conflict issues in the world of Islamic banking, the deed of agreement made must be based on an authentic deed made in front of a notary as an official for making the deed, which then makes the deed a reference and can take precautions in the event of a business dispute.

b. Types of Various Sharia Bank Business Products

Islamic banks as an Islamic business entity make Islamic values and laws as a guide in any case. Included in creating products and contracts used. In its application, Islamic bank operations are based on the principles of buying and selling and profit sharing in accordance with other principles in accordance with Islamic law. The basic contract forms in creating Islamic bank products include:

1) Al Wadia

Namely an agreement between the owner of the goods (including money) and the depository (including the bank) in which the depositor is willing to store and maintain the safety of the goods and or money entrusted to him. This is according to what is regulated in QS An-Nisaa: 58 and Surah Al Baqarah 283 as mentioned on pages 157-158 above. For example, this is depositing capital with Islamic banks by opening an account for saving and carrying out transaction steps that can benefit the customer.

2) Al-Mudharabah

Namely an agreement between the owner of capital (money/goods) and the entrepreneur in which the owner of the capital fully finances a project/business that the entrepreneur is willing to manage the project with profit sharing. This is in accordance with what is regulated in (QS: Al Muzammil: 20), among others

c. Mudharabah in savings applications

The application of this principle is that the depositor or depositor acts as *shohibul mal* and the bank as *mudharib*. These funds are used by the bank to finance sale and purchase contracts and *syirkah*. If there is a loss, the bank is responsible for the loss that occurs.

d. Al-Musyarakah

Al-Musyarakah namely cooperation agreements between 2 (two) parties/more owners of capital (money/goods) to achieve a business. This is in accordance with what is stipulated in QS An-Nisaa' 4: 12. In this case, when a joint venture is carried out with the same goal between two or more people with the same goal as proof of seriousness in building a capital business.

e. Al Bai'

Al-Bai' contracts sale and purchase agreement for an item. As regulated in QS An-Nisaa: 29. Henceforth, this contract will be developed into several contract products including:

- 1) Murabahah Financing (from the word Ribhu called profit)

The bank as the seller and the customer as the buyer, the goods are delivered immediately.

- 2) Salam financing (there is no sale and purchase of goods yet)

Cash payment, goods delivered tough. Banks as buyers, and customers as sellers. In this transaction there is certainty about the quantity, quality, price and time of delivery.

- 3) Istishna's Funding

That is buying and selling like *greeting contract* but the payment is made by the bank in several payments. Istishna' is applied to manufacturing and construction financing.

- 4) Al-Ijarah

Al Ijarais an agreement between the owner of the object and the lease that allows the lessee to use the object by paying rent according to the agreement of both parties. This is in accordance with what is contained in QS Al Qashash verse 28: 26. Moving on from the lending method in sharia, it is carried out in accordance with the views of Islamic law demands in the form of buying and selling, renting and so on to be used by those who rent so that the goods bring benefits.

f. Various Forms of Sharia Business Fund Collection

Islamic banks have several types of fundraising based on the principles consisting of: (a). Principle *wadiah*, in the tradition of Islamic jurisprudence, is known as the principle of deposit or savings. Wadi'ah can also be interpreted as a pure deposit from one party to another, either as an individual or as a legal entity. either in the form of savings accounts, deposits, or other forms, (b). The principle of *mudharabah*, comes from the word *dharb* which means to hit or rather is the process of someone hitting his feet in the course of business. Technically, (c). Complementary contracts, for example *wakalah*, *Murabahah* (financing with margin), and *Musyarakah* are cooperation agreements between two or more parties to carry out a particular business, this is a form of raising funds carried out by Islamic banking, both for productive business activities, as well as consumptive ones. (Zainuddin Ali, 2009: 26).

So it can be concluded that the sharia business model that is carried out is inseparable from the *mudhorobah*, *wadiah* and *wakalah* systems, all of which are utilized in the transactional financing process, both the customer and the bank are bound by some form of agreement. Financing capital turnover is carried out in a form for the sake of collecting finances that is oriented towards benefits that can be felt by the community so as to avoid misappropriation of funds by these agencies which in turn will bring legal effects that must be faced together which just takes time when there is a conflict between banks and customers so that deterrence it is necessary to prioritize in seeking profits in the financing system carried out by the Islamic banking business.

g. Mediation as a Powerful Solution in Resolving Sharia Business Conflicts

Every time there is a conflict, there must be a solution offered in carrying out the settlement process either through the court or outside it, this shows that the mediation process is a powerful

weapon in making efforts to resolve conflicts in sharia business as stated in Supreme Court Regulation Number 01 of 2016 concerning Mediation Procedures in Court clearly states what mediation is, its methods and procedures so that mediation has the meaning of resolving disputes through a process of negotiation by the parties with the assistance of the mediator. Mediation simply has the aim of reconciling the parties who are having problems. In Article 1851 of the Civil Code, which explains the Peace in detail, namely: "An agreement by which both parties, by handing over, promising or withholding an item, to end a case that is hanging or prevent a case from arising" (Subekti: 1992: 141).

Departing from this, mediation is very necessary in solving a conflict that exists between the parties, even though it is carried out using the deliberation-consensus method. Things like this are highly expected as a form of direction and guidance conveyed by the mediator so that the parties can understand it, which will definitely bring an ideal contribution to achieve victory together with the deed of peace agreement if the mediation results in success.

The legal basis of peace in Indonesia is the foundation of the Indonesian state, namely Pancasila, where in its philosophy it is implied that the principle of dispute resolution is deliberation for consensus which is also implied in the 1945 Constitution. Then peace is regulated in such a way in Book III of the Civil Code in Chapter XVIII, beginning with Article 1851 to Article 1864 because Book III of the Civil Code regulates the law of agreements, peace as an agreement is subject to the general provisions of an agreement, namely Article 1319 of the Civil Code which reads "All agreements, whether those with a special name or those that are not known with a certain name, subject to the general regulations contained in this chapter and the previous chapter". As for peace made out of court, regulated in RO (Reglement op de Rechtletterlijke Organisatie) especially in Article 3.a. which is still maintained today. Article 3.a. paragraph (1) RO, states "if according to customary law certain civil cases fall under the jurisdiction of village peace judges, then this situation will be maintained."

Thus that peace with the deliberation-consensus method actually needs to be realized as a form of togetherness in upholding peace in every conflict that occurs, this is in line if sharia business disputes occur, problems must be carried out first through deliberation through mediation as a unifying tool for the disputing parties to avoid hostilities, expensive costs and avoid losing and winning, because if it is done in the form of a mediation pattern it will not result in defeats and wins, but must produce wins together with concrete forms that can be felt by the parties to the dispute so that the sense of kinship continues intertwined even though it is carried out between institutions and principals in the case of an agreement that was made previously.

A business dispute is a situation where one party feels aggrieved by another party. The party who feels aggrieved conveys this dissatisfaction to the second party and if the second party does not respond and satisfy the first party, and shows a difference of opinion, then what is called a dispute occurs (Suyud Margono: 2004: 143). So that in the legal context, especially business law, what is meant by a dispute is a dispute that occurs between parties due to a violation of the agreement that has been stated in a contract, either in part or in whole. Many words may be used to describe disputes such as conflict, debate, lawsuit, objection, controversy to produce other disputes.

Thus, it can be concluded that what is meant by a dispute is a dispute that occurs between the parties to the agreement due to a default committed by one of the parties to the agreement. Dispute resolution depends on how the dispute is managed, and it must be resolved in every case that can minimize the problem from happening again in the same case, with the form of not being in a case that will occur in the same substance so that it is mutually avoided by the parties. Then in the context of Islamic banking business disputes are triggered due to defaults, unlawful acts, land

disputes and so on which have a sense of dispute as a result of their rights being taken or seized by the parties or one of the parties.

Many other studies show that social relations (especially kinship) play an important role in the dispute resolution process. When the continuation of social relations is considered as important for someone, then they will make every effort to maintain the relationship. These efforts include seeking a settlement through negotiation or settlement through institutions (deliberation), which in principle will result in a compromise settlement, or even avoid disputes. (Sulistiyowati Irianto: 2005:45).

Misunderstandings indeed begin with the existence of social relations between individuals with one another, because humans are unable to live on their own, instead they need to be accompanied in their lives and interact like social beings, so that with communication between them it has an impact on the engagement carried out with an institution. sharia business which is actually carried out at every stage in order to get results from financing that needs to be warned so that it needs to be done so that it is avoided, if it is not avoided it will definitely lead to problems that actually need resolution through mediation.

In general, efforts that are often taken in order to resolve conflicts or disputes in Islamic banking business that occur in the midst of people's lives are in 2 (two) ways, namely: 1) taking non-judicial efforts (litigation) through negotiations or better known as the term deliberation along with all its variants; and 2). Take legal action by carrying out judicial mechanisms (litigation) in accordance with applicable formal law, such as reporting to the police or lawsuits to court. Both of these methods each have advantages and disadvantages in reaching a resolution of a conflict or dispute that occurs.

The two processes both produce what is expected if it then brings benefits, only if it is non-judicial it uses the weapons of negotiation and mediation which requires an emphasis on the method of the stages if it is carried out, starting from the briefing and delivery of the provisions of mediation, caucus and the final stages the conclusion of mediation and the results of mediation submitted to the parties, resulting in low costs and time, as well as avoiding the existence of further extraordinary legal remedies such as appeals and cassation, but if it is carried out using a judicial method, there will definitely be a win-win that will bring the effect of resentment, hostility prolonged, expensive and a lot of time is consumed in doing so so that it is required for the mediation process as a shortcut deemed appropriate to provide the best solution in sharia business disputes experienced by the party.

so that later the customer filed a lawsuit against the law at the Rantaupraptat Religious Court so that a mediation process was carried out at the first trial, after that the mediation process was carried out with various stages that were passed so that finally a point of peace was found by the parties. Therefore the mediation process is strengthened in the form of a peace agreement followed up by the panel of judges to be strengthened in the form of a decision through a vanding deed, in order to avoid legal remedies arising from it, if later the results of the agreement are still denied, then efforts will be made directly to via execution from the object involved. mutually agreed through the decision.

Common sense can be understood that one of the advantages of a judicial mechanism is that it is strong and the results are legally binding so that it can be executed by the authorities if there has been a decision that has permanent legal force. In addition to these advantages, the formal legal mechanism through the courts has weaknesses, including: 1). The process requires a very long time to obtain certainty of legal settlement because dissatisfied parties can request an appeal, cassation and review; 2). It drains considerable energy and high costs in litigation. In addition, this mechanism also categorizes the disputing parties into 2 (two) camps, namely, those who win or those who lose.

Meanwhile, on the other hand, the advantage of non-judicial mechanisms is that the process can take place quickly because it can be realized in the form of deliberations by directly involving the disputing parties. In addition, the parties are usually able to accept gracefully the settlement agreement that is attempted with a high intensity of involvement from each party during the dispute resolution process, whether it is a direct deliberation process involving only the parties or a process assisted by a mediator. .

Perma Rule No. 1 of 2016 concerning Mediation Procedures in Courts is an element of legal substance. This substance element can provide certainty to the disputing parties to find a way out of the dispute they have faced. The mediation rules are part of the main content regarding the substance and procedure of mediation in court. So related to the legal structure is part of the institution such as the Supreme Court, and other judicial bodies such as general courts and religious courts and their appropriate apparatus described in Article 1 letter (e) Perma No. 01 of 2016 explains that court judges as a structure within the court have a very important role in increasing the success of mediation,

4. Conclusion

Every sharia business dispute that occurs can be carried out in two ways that can be taken as an alternative choice, namely; first: carried out in a non-judicial way through negotiation and mediation mechanisms, and second; with the judicial route in the procedure for litigation in court, these two forms have advantages and disadvantages. The advantages of mediation can result in a short stream of time in resolving sharia business disputes which results in a peace agreement by the parties at their respective wills so that it has satisfactory results for them without any the elements of losing and winning so that the result can be carried out by direct execution which is requested by the local court, and if it goes through a judicial process it will definitely be expensive, and the time is so long that dragging it out will lead to boredom in waiting for the results to be decided by the panel of judges, besides that, it opens up opportunities for ordinary legal remedies and extraordinary legal remedies which can be taken by each of the parties, who cannot stop thinking that the grudge still lingers burning in the hearts and minds of each party that is difficult to get rid of. Therefore, every sharia business dispute in the present era is a powerful weapon that can cure the sadness in disputes quickly and easily which produces an antidote for sharia business people and in the end peace will result in shared beauty. opening up opportunities for ordinary legal remedies and extraordinary legal remedies which can be taken by each of the parties, who can't stop thinking that the feeling of grudge still burning in the hearts and minds of each party is difficult to get rid of. Therefore, every sharia business dispute in the present era is a powerful weapon that can cure the sadness in disputes quickly and easily which produces an antidote for sharia business people and in the end peace will result in shared beauty. opening up opportunities for ordinary legal remedies and extraordinary legal remedies which can be taken by each of the parties, who can't stop thinking that the feeling of grudge still burning in the hearts and minds of each party is difficult to get rid of. Therefore, every sharia business dispute in the present era is a powerful weapon that can cure the sadness in disputes quickly and easily which produces an antidote for sharia business people and in the end peace will result in shared beauty.

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