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Principle of Justice in Compensation for Disputes Due to Breach of Murabahah Contract

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ABSTRACT

Contract default often occurs, as a result the creditor demands compensation from the debtor through the religious court instrument, the murabahah contract as a sharia contract which in fact implements sharia principles has fundamental differences related to compensation. The difference lies in the calculation of compensation only taking into account the original losses suffered and not the loss of future profits. The study focuses on two legal issues, namely the characteristics of compensation and the suitability of the application of compensation cases with the principle of justice in murabahah contract default disputes. This study is a normative legal study with a statutory, conceptual and case approach. The results show that sharia principle compensation has special characteristics, namely the value of compensation is calculated from real losses and does not depend on total future profits. In several cases of this study, the mandated sharia principles often do not become the legal basis for judges in deciding cases of compensation for default so that the principle of justice is not achieved.

Kata Kunci: Keadilan; Ganti Rugi; Murabahah

ABSTRAK

Wanprestasi akad murabahah seringkali terjadi, akibatnya kreditur menuntut ganti rugi kepada debitur melalui instrumen pengadilan agama, akad murabahah sebagai akad syariah yang notabene mengimplementasikan prinsip syariah memiliki perbedaan mendasar terkait ganti rugi. Perbedaan tersebut terletak pada perhitungan ganti rugi hanya memperhitungkan kerugian asli yang diderita dan bukan pada kehilangan keuntungan masa mendatang. Penelitian fokus pada dua isu hukum yakni karakteristik ganti rugi serta kesesuaian penerapan kasus ganti rugi dengan asas keadilan pada sengketa wanprestasi akad murabahah. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undnagan, konseptual dan kasus. Hasilnya menunjukkan bahwa ganti rugi prinsip syariah memiliki karakteristik khusus, yaitu nilai ganti rugi dihitung dari kerugian riil (real loss) dan tidak bergantung pada total keuntungan pada masa mendatang. Beberapa kasus penelitian ini prinsip syariah yang diamanahkan kerap tidak menjadi landasan

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hukum hakim dalam memutus perkara ganti rugi atas wanprestasi sehingga asas keadilan tidak tercapai.

INTRODUCTION

Islamic banks have shown a significant increase in electability along with the rapid development of the global Islamic financial industry in recent years. The total assets of this industry have experienced quite significant growth, with an average increase of 9% during the 2015-2021 period, approaching a value of US$ 4 trillion (OJK, 2023). The number of Islamic bank customers in Indonesia currently stands at 31.89 million people, equivalent to 12% of the total number of Muslims in Indonesia (KNKS, 2020).

Different from conventional banks that are solely oriented towards business profits (profit-oriented), Islamic banks have unique characteristics with an approach based on sharia principles. In addition to business interests, they are also financial institutions with a primary reference to sharia provisions that conduct business based on the application of Islamic law and the principles inherent in it (Lukmanul Hakim & Amelia Anwar, 2017), even emphasizing socio-economic values as a goal (UU Nomor 4 Tahun 2023). Philosophically, the existence of Islamic banks is universally considered as part of the revival of Islam in the economic field. The basic principle of the relationship between Islamic banks and customers is to create mutually beneficial transactions and uphold justice, in line with Islamic teachings that encourage the application of the concept of justice and equality in life (Abdul Rasyid & Nurizal Ismail, 2020).

The murabahah contract is one of the financing schemes most frequently used in transactions in Islamic banking compared to other types of contracts (Mardani, 2013), This happens because the bank in the murabahah contract is able to implement the principle of prudence in its function as an intermediary institution efficiently so that the risk of bank losses can be minimized. Although it has been carried out in accordance with the principle of prudence of Islamic banking in order to maintain the security of the contract, the risk of default customers have the opportunity to occur (default) (Rahmadi Indra Tektona Dkk, 2020). The consequences of default result in several things, such as the customer having to pay compensation as a sanction (which can be in the form of purchasing collateral), settlement of cases, transfer of risk, and cancellation of contracts (Yuni Harlina, 2017).

Settlement of default in sharia contracts takes into account the provisions in the considerations regarding letter b of DSN Fatwa No. 47/DSN-MUI/II/2005 concerning Settlement of Murabahah Receivables for Customers Who Are Unable to Pay, which states that if the customer is unable to pay, settlement is carried out with reference to sharia principles which contains the value of justice. There are at least three cases that have permanent legal force regarding the murabahah contract dispute against the claim for compensation, namely Decision No. 1 / Pdt.G.S / 2020 / PA.Cms, Decision No. 01 / Pdt.GS / 2019 / PA.Jr, and Decision No. 1291 / Pdt.G.S / 2019 / PA. Btm. In the three cases, the sharia principle was not explicitly applied in the judge's legal considerations which should have been embodied in the sharia principles in

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determining compensation as regulated by the DSN MUI Fatwa No. 43 / DSN-MUI / VIII / 2004 concerning Compensation (*Ta'widh*).

Several decisions in resolving cases of default on murabahah contracts in Islamic banks, namely Decision No. 1/Pdt.G.S/2020/PA.Cms, Decision No. 01/Pdt.GS/2019/PA.Jr, Decision No. 1291/Pdt.G.S/2019/PA. Btm. Several main considerations in the three decisions are:

1. Decision No.1/Pdt.G.S/2020/PA.Cms, that in the decision, there is no consideration referring to a settlement with sharia principles that considers the values of justice for the parties, but focuses on default and compensation. This decision states default on the 13th installment of 60 months, but the Defendant is charged with making compensation until the full due date and/or is entitled to the object of the mortgage right which is assessed according to the due date, not on the real loss at the time of default;
2. Decision No.01/Pdt.GS/2019/PA.Jr, that in this decision the judge considered compensation for default based on the delay caused by being able, but in the answer that the Defendant was unable to pay because the Defendant was bankrupt in running his business. The judge did not consider justice in the principles of sharia. This decision stated default on the 4th installment of 36 months, but the Defendant was charged with paying compensation until the full time due and or was entitled to the object of the mortgage rights assessed with the condition at the time of maturity;
3. Decision Number 1291/Pdt.G.S/2019/PA.Btm, that the decision considers one party in deciding the case, namely referring to the principle of pacta sumt servanda and does not consider the Defendant's response to the occurrence of default. In the Defendant's response and there was no denial that the Defendant was not working and was having difficulty paying the financing, the value of justice as the basis of sharia principles was not considered in the decision. This decision ignores the principles of sharia as in the DSN MUI Fatwa as an embodiment of the Sharia Banking Law.

The sharia principle in which the reference is made as compensation must be adjusted to the amount of loss both in terms of quantity and quality suffered by the injured party. This means that compensation payments are only made to debtors who are in default and the debtor has a relationship with the creditor in terms of cause and effect. Islam in the concept of compensation emphasizes the losses suffered by the creditor because the debtor did not carry out the agreement and the amount of compensation is compensation for the actual loss.

RESEARCH METHODS

The use of legal research types by researchers is normative legal research or can be called doctrinal legal research. This type of research is research with the object of study on regulatory documents and library materials. This article contains three approaches to the problem, namely the statute approach, the conceptual approach, and the case approach.


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RESULT

Characteristics of Compensation in Disputes over Breach of Murabahah Contract

The characteristics of compensation in a murabahah contract default dispute are fundamental things that need to be studied to comprehensively understand the form of compensation based on sharia principles. This sharia principle is the main difference between sharia banks and conventional banks, because it refers to the main guidelines of the Qur'an and Hadith as the legal basis for resolving disputes and applying compensation (OJK, 2024).

The characteristics of compensation in a dispute over a murabahah contract default with sharia principles in Indonesia are stated in the DSN MUI Fatwa on Compensation, which is the legal basis issued by the MUI with the authority to answer legal issues based on sharia principles. The Sharia Banking Law also provides legitimacy to the binding power of the DSN MUI Fatwa on Compensation, making it a legal basis that must be implemented by sharia financial organizers (Soleh Hasan Wahid, 2016). Furthermore, compensation that goes through the Religious Court process has been regulated in Perma Number 14 of 2016 concerning Procedures for Settlement of Sharia Economic Cases, so that it has legal implications for the obligation to apply the DSN MUI Fatwa on Compensation as the basis for sharia principles. In this regard, Judges in applying the law must be in accordance with sharia principles and need to emphasize the basis of the DSN MUI Fatwa in it.

Before discussing the characteristics of compensation in a murabahah contract default dispute specifically, the cause of the compensation will be explained first, namely the existence of a default. This research is based on several cases of default that are used as a reference for analysis, namely, Decision No. 1 / Pdt.GS / 2020 / PA.Cms, Decision No. 01 / Pdt.GS / 2019 / PA.Jr, and Decision No. 1291 / Pdt.GS / 2019 / PA.Btm. The three decisions have a similar case, namely related to the default of the murabahah contract with compensation. First, Decision No. 1 / Pdt.GS / 2020 / PA.Cms began with a murabahah contract dispute between the Plaintiff and the Defendant. On February 28, 2018, the Defendant received a murabahah receivable facility of Rp200,000,000, with a profit margin of Rp122,319,680, so that the total payment became Rp322,319,880. The term of the contract is 60 months with monthly installments of Rp5,371,998, and collateral in the form of land and buildings in Ciamis under the name of Hadi Mulyadi. The Defendant carried out its obligations as many as 13 of the 60 required installments, even though it had received a warning letter from the Plaintiff.

Second, Decision No. 01/Pdt.GS/2019/PA.Jr relates to the murabahah contract dispute between the Plaintiff and the Defendant. On August 12, 2016, the Defendant received a receivable facility of Rp 75,000,000 with a profit margin of Rp 39,149,935, so that the total payment became Rp 114,149,935. This agreement has a term of 36 months with monthly installments of Rp 3,170,832. As collateral, the Defendant handed over 1,000 m² of rice fields based on the Deed of Grant in the name of B. Latifah. However, the Defendant only paid 4 of the 36 required installments.

Third, Decision No. 1291/Pdt.G.S/2019/PA.Btm regarding the murabahah contract dispute between the Plaintiff and the Defendant. On February 24, 2011, the Defendant received a


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receivable facility of Rp 234,120,000 with a term of 120 months. However, the Defendant failed to fulfill its obligations, so the remaining obligation was Rp 115,357,519. If paid in full in cash, the amount could be reduced to Rp 85,000,000. The Plaintiff has given three warning letters to the Defendant.

The three decisions began with a legal relationship through a contractual financing of a murabahah agreement at a sharia bank whose value and profit margin had been agreed upon, but during the process the customer was constrained by payment, resulting in a default. The default is a decision for compensation in the mubahah agreement (Muhammad Ikhlas Supardin & JM Muslimin, 2022). Default is defined as the debtor's non-compliance or deliberate failure to carry out obligations in accordance with a written contract (Salim HS, 2008). Default in a financing contract occurs when the Debtor does not perform any performance at all, the debtor makes a mistake in performing, which results in the performance not being achieved in accordance with the previously determined agreement (I Putu Juliawan Priyanto & I Made Dedy, 2020).

The qualifications for default, both conventionally and from an Islamic sharia perspective, based on the reference sources above, are divided into two main qualifications, namely:

1. There is a contract between the Parties, one of the parties breaks the promise regarding the agreed contractual relationship;
2. There is material responsibility for the loss of one of the parties.

In relation to several meanings of default above, that default is one party does not carry out the contents of the agreement as agreed between the parties. Three cases in Decision No.1/Pdt.GS/2020/PA.Cms, Decision No.01/Pdt.GS/2019/PA.Jr, Decision No.1291/Pdt.GS/2019/PA.Btm, have met the qualifications of default both conventionally and according to sharia.

R. Setiawan argues that compensation is the impact of default, resulting in actual losses. The amount of compensation is determined based on the comparison between wealth before the default occurred and after the default occurred (R Setiawan, 1977). Yahya Harahap expressed something similar, that compensation is "real loss" or "fietelijke nadeel" which is caused by an act of default (M Yahya Harahap, 1986). The term in contemporary Islamic jurisprudence refers to compensation as (al-Ta'widh). Ta'widh is a replacement for damage with something of the same value or something of a similar kind (Iza Hanifuddin, 2020). Another definition of ta'widh is replacing losses due to errors or violations (Oni Sahroni & Adiwarman A Karim, 2025).

Compensation in some of the definitions above clearly arises due to the default of one of the parties in implementing the contents of the agreement. The definition has significant differences, especially in determining compensation, between conventional compensation as regulated in the Civil Code which contains three main elements of compensation, namely costs, losses, and interest, while compensation in sharia principles provides special limitations, namely only limited to real losses (not expected profits) which are calculated in the matter of compensation.

At first glance, the three verdicts do not have significant differences. If analyzed in more detail, there are different verdicts regarding the value of compensation that must be borne by the Defendant, namely in Decision No. 1291 / Pdt.GS / 2019 / PA.Btm where the value of the


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Plaintiff's loss in the lawsuit is Rp. 115,357,519, but in the judge's decision, it was decided at Rp. 85,000,000 as compensation from the Defendant to the Plaintiff. This is different from the other two decisions, namely Decision No. 1 / Pdt.GS / 2020 / PA.Cms and Decision No. 01 / Pdt.GS / 2019 / PA.Jr which were decided according to the value of the loss in the main lawsuit. The three decisions show that the difference in the value of compensation borne by the Defendant still benefits the Plaintiff on the grounds that the calculation of compensation is adjusted to the due date.

The difference between conventional principles and sharia principles in terms of compensation is clear, where sharia principles prioritize the aspect of recovering actual losses. In sharia principles, agreements or contracts are not seen as a tool to benefit one party, but aim to protect the other party so that they continue to receive their rights proportionally. Thus, the sharia principle in compensation confirms that it is different from conventional principles, which prioritize the values of justice in their application.

The mechanism and provisions related to determining the amount of compensation due to default have been regulated in the DSN-MUI Fatwa on Compensation. The fatwa emphasizes that the determination of compensation is limited to compensation for actual losses (real loss) as a result of default in a transaction, and not based on the estimated loss value (potential loss) or due to lost opportunities (opportunity loss).

This is different from Decision No.1/Pdt.GS/2020/PA.Cms, Decision No.01/Pdt.GS/2019/PA.Jr, and Decision No.1291/Pdt.GS/2019/PA.Btm which emphasize on lost future profits. The three decisions make the Defendant the guarantor of the loss of previously calculated profits until the future. It is undeniable that one of the decisions provides a different decision in determining the value of the loss, but in the decision the judge does not explicitly and clearly provide a definite legal basis regarding the decision on the value of the loss borne.

Analysis of Decisions No.1/Pdt.GS/2020/PA.Cms, No.01/Pdt.GS/2019/PA.Jr, and No.1291/Pdt.GS/2019/PA.Btm shows fundamental differences between conventional and sharia compensation in murabahah contracts. First, conventional compensation includes costs, losses, and interest, while in sharia it only covers real losses. Second, the principle of conventional compensation can include fines and interest and aims to provide a deterrent effect, while the sharia principle focuses on recovering real losses without fines or interest. Third, the calculation of compensation in conventional takes into account costs, losses, and interest, while in sharia it only considers real losses, without taking into account potential losses in the future.

Compliance of Compensation in Disputes of Breach of Murabahah Contract with the Principle of Justice

Important attention needs to be emphasized on the aspect of resolving sharia economic disputes. These disputes arise between parties involved in sharia-based business activities, so that their resolution must be returned to the basic principles of sharia, namely through a resolution mechanism that is in accordance with sharia provisions (Zaidah Nur Rosidah & Lego Karjoko, 2021). Religious courts have absolute competence in conducting examinations and making decisions in Islamic economic cases, Islamic economics in this case is related to contracts based on

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Islamic principles. The principle of Islamic law based on Article 1 number 12 of the Islamic Banking Law, namely the authority to determine fatwas is only carried out by institutions recognized and determined by the government to carry out banking activities in accordance with Islamic principles, the Indonesian Ulema Council is an institution that has this authority.

The main principle in resolving sharia economic cases that must be understood and observed is that the resolution of cases is not allowed to conflict with sharia principles. This principle is a fundamental principle and must be maintained at every step in resolving sharia economic problems (Amran Suadi, 2017). Furthermore, the sharia principle is explicitly defined as the principle of Islamic law in banking activities based on fatwas only carried out by institutions recognized and appointed by the government to carry out banking activities in accordance with Islamic principles.

The judge's consideration plays a very important role before making a decision. Strong legal considerations carried out by the Judge aim to provide the best solution in resolving a case. The decision made by the Judge must have an element of justice and provide legal certainty. In addition, the usefulness of the decision must be beneficial to the parties involved and the wider community (Muslim Dkk, 2021).

The compensation decision as described above is a compensation decision in the murabahah contract which is the authority of the Religious Court to adjudicate as mandated by law. The mandate of the Religious Courts Law, the Sharia Banking Law and other laws and regulations that are binding on sharia economic cases is to decide fairly in accordance with the sharia principles therein which are manifested through the DSN MUI Fatwa and related Bank Indonesia Regulations.

1. Calculation of compensation: if based on DSN Fatwa No. 43/DSN-MUI/VIII/2004 concerning Compensation (Ta'widh) and Bank Indonesia Regulation Number: 7/46/PBI/2005 concerning Fund Collection and Distribution Contracts for Banks Carrying Out Business Activities Based on Sharia Principles, then compensation is only limited to compensation for actual losses (real loss) as a result of default in a transaction, and not based on the estimated loss value (potential loss) or due to lost opportunities (opportunity loss).
2. Calculation of profit margin: Based on the profit obtained as part of the bank's rights when carrying out transactions with customers based on the agreed agreement. The margin value obtained is based on the principal of the financing.
3. The Judge's legal considerations with sharia principles: in line with Article 5 of the Supreme Court Regulation on the Procedures for Settlement of Sharia Economic Cases, the three decisions in the context of legal considerations with sharia principles emphasize more on binding agreements, not taking into account the Defendant's response with sharia principles including in terms of compensation as regulated in DSN Fatwa No. 43/DSN-MUI/VIII/2004 concerning Compensation (Ta'widh) and Bank Indonesia Regulation Number: 7/46/PBI/2005 concerning Fund Collection and Distribution

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Agreements for Banks Carrying Out Business Activities Based on Sharia Principles, so that the decisions do not explore sharia principles much in their decisions.

Based on the description related to the three decisions above, in the aspect of the application of sharia principles in dispute resolution which is considered to provide a value of justice and the absence of sharia principles in the decision. Justice as in sharia principles if reviewed in general in the theory of justice, as follows:

1. Fair means balance, interpreted in the settlement of a dispute over a murabahah contract breach with a lawsuit for damages through litigation by the Defendant so that it can survive and be established in balance in the sense of the proper portion. Not in line with this, damages in the decision are more about considering formal law;
2. Fair means equal interpretation, meaning in a dispute over breach of contract of murabahah, that the Plaintiff and Defendant remain mutually responsible for the rights and obligations after the verdict;
3. Fair means maintaining rights, interpreted as the Defendant as the party responsible for the breach of the murabahah contract, his rights as an individual are still maintained in the respect and enforcement of the law. The sharia principle does not eliminate or reduce the responsibility of the defaulting party, but it also does not eliminate or reduce the rights of the defaulting party to calculations in accordance with sharia principles. The rights lost in the three decisions are the absence of sharia principles in the calculation of compensation as rights that should be obtained by the parties in determining the quantity of the value of the loss;
4. Fair means existence, interpreted as between the Plaintiff and the Defendant getting a guarantee of rights for the continuation of their existence. In the Defendant's answer, the majority was due to economic difficulties which in the trial facts there was no rebuttal in it, so it is quite difficult to be fair in the meaning of existence if the basis of calculation refers only to formal law.

Justice as built on the basis of sharia principles for breach of contract, a lawsuit for damages should be tried on the basis of the mandate of laws and regulations that specifically regulate it. John Rawls emphasized that fairness is a form of justice by emphasizing the principles of equality, rationality, and freedom. So that the requirements of the principle of justice according to Rawls are that rights are the main thing when compared to interests (Andre Ata Ujan, 2005). In line with John Rawls' thinking, speaking of justice in the three decisions of the Ciamis Religious Court Decision No. 1/Pdt.G.S/2020/PA.Cms, Jember Religious Court Decision No. 01/Pdt.GS/2019/PA.Jr, Batam Religious Court Decision No. 1291/ Pdt.G.S/2019/PA. Btm clearly emphasizes the interests of creditors in obtaining maximum profit, this is far from the value of justice as John Rawls' thinking which prioritizes rights.

Aristotle explained that each person obtains their respective rights based on their achievements and abilities so that there is proportional equality, where in the three decisions there does not appear to be any equality of rights obtained, as the three decisions decide by imposing


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losses in the future which are charged at the time of the decision so that it becomes unfair in the calculation as per the DSN MUI Fatwa and Bank Indonesia Regulations (Ana Suberi, 2018).

Justice does not require that the procedures and involvement of each person must be the same for the same results, but rather a process that is appropriate and does not harm others is considered fair, so that in this case everyone is not required to produce the same thing as others. Because the concept of true justice in every process does not conflict with the general public. In contrast to the three decisions above, the application of which can be formally justified, however, something that is fair cannot be accepted on the basis of not applying material law in calculating the amount of losses in terms of sharia.

The fulfillment of the elements of justice in the context of compensation for murabahah contracts in Islamic banks lies in, first, the implementation of legal procedures as regulated in laws and regulations relating to the procedures for resolving Islamic economic disputes which require the DSN MUI Fatwa on Compensation and Bank Indonesia Regulation Number: 7/46/PBI/2005 on Fund Collection and Distribution Contracts for Banks Carrying Out Business Activities Based on Islamic Principles as the legal basis for deciding Islamic economic cases. Second, the use of compensation calculation methods which are specifically regulated in the DSN MUI Fatwa on Compensation and Bank Indonesia Regulation Number: 7/46/PBI/2005 on Fund Collection and Distribution Contracts for Banks Carrying Out Business Activities Based on Islamic Principles as well as other supporting elements, so that justice arises based on Islamic principles and substantive by prioritizing the values of the burden of responsibility according to what should be borne by the parties.

CONCLUSION

The characteristics of compensation in a murabahah contract default dispute in Islamic banking focus on compensation for real losses without including elements of speculation or potential future profits. This principle, based on Islamic law, aims to restore the condition of the injured party without a deterrent effect or punishment, thus maintaining justice and conformity with Islamic principles that emphasize balance and prohibition of exploitation.

Justice in compensation for breach of contract disputes in murabahah contracts in Indonesia reflects the dominance of conventional legal approaches that focus on contracts, while the sharia principles of the DSN MUI Fatwa on Compensation tend to be ignored. As a result, justice based on sharia principles is not achieved, although there are cases in decisions that reduce the amount of losses, but without direct reference to the sharia principles therein.

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