

IMPLEMENTATION OF RAW CONTRACT FOR FINANCING IN MANDIRI SYARIAH BANK

Enjang Sudarman

Lecture, College of Management IMMI Jakarta

Email: sudarmanenjang@yahoo.co.id

Abstract

This research is motivated by the existence of a standard contract which is a written agreement made or provided by one party, by including various contract clauses that have been standardized by one party without giving the other party the opportunity to negotiate them. The existence of a standard contract in the sharia business world is a pros and cons among the public, especially among legal experts, because in addition to making it easier and saving time, it is also considered to be against the principles of sharia, namely persecuting other parties. The theory used in this research is that the grand theory uses the rule of law theory; Middle Rangge Theory uses the Shahadah Theory from al-Syafli then the Social Justice Theory; and the application theory uses a legal system supported by the theory of legal change. This study uses descriptive qualitative research, in collecting data, the authors use the method of observation, interviews and documentation using descriptive analysis to describe and describe the data obtained by using words or sentences that are separated according to the research data category in order to obtain a conclusion. The result of the research shows that the standard contract is legally valid because it has fulfilled the terms and conditions of contract in Islam which are marked by the signing of the standard contract by both parties as proof that both parties are equally pleased.

Keywords: Financing, Bank Syaria, Raw Contract, Al-Syafii, Law Theory.

A. INTRODUCTION

The financial system in the economic structure of a country has a major role in providing financial services by financial institutions and other financial supporting institutions. In principle, the financial system in Indonesia can be divided into two types, the banking system and the non-bank financial institution system. Financial institutions that are included in the banking system, namely financial institutions that based on statutory regulations can collect funds from the public in the form of deposits and distribute them to the natural community in the form of credit or other forms and in their activities provide services in payment traffic (Lestari, 2015 : 19-20).

Because this financial institution can accept deposits from the public, it is also called a depository financial institution, which consists of commercial banks and public banks. Non-bank financial institutions are financial institutions other than banks, which in their business activities are not allowed to collect funds directly from the public in the form of deposits. Non-bank financial institutions are called non-depository financial institutions (Siamat, 2000 : 21).

Especially for sharia banking, apart from carrying out the business function of collecting and distributing public funds, it is also possible for sharia banking to carry out social functions as regulated in Law Number 21 of 2008 concerning Islamic Banking.

The tendency to use standard contracts, namely in the form of contracts previously by certain parties (companies) have unilaterally determined their contents with the intention of being used repeatedly with various parties / consumers of the company. In the standard contract, most of the contents have been determined by the company which does not allow for further negotiation, and some are deliberately left blank to provide negotiation opportunities with the consumer, which are only filled in after an agreement is obtained.

Standard agreements in the banking industry are made unilaterally by the bank. Because it was made unilaterally by the bank, the agreement was often one-sided, namely that it only contained the bank's rights and the obligations of the customer, and did not contain the customer's rights and the bank's obligations. In the standard agreements prepared by the bank, clauses that emphasize the customer are often contained, such that it is contrary to the principle of appropriateness and the principle of justice, in which the principle of justice is one of the principles in sharia principles that must be obeyed and implemented by Islamic Bank.

Thus, it is hoped that the agreements made by sharia banks pay careful attention to the regulations related to the agreements set forth in each of their products, both in terms of sharia principles and also the supporting legal regulations. The goal is so that the agreement will not cause things that can be detrimental to both parties.

Islamic law as a rule of life regulates the law of contracts or al-'aqd to achieve benefit for each party ('aqidain) based on the principles of freedom, justice and voluntary. A standard contract or standard agreement is a form of agreement made by one of the parties and has been applied to the banking world in Indonesia, including in Islamic banking. A standard contract that harms the customer is against the Consumer Protection Law and the principle of freedom of transaction. Therefore, standard contracts in Islamic banking are required in accordance with Islamic legal principles and demands for benefit.

B. METHOD

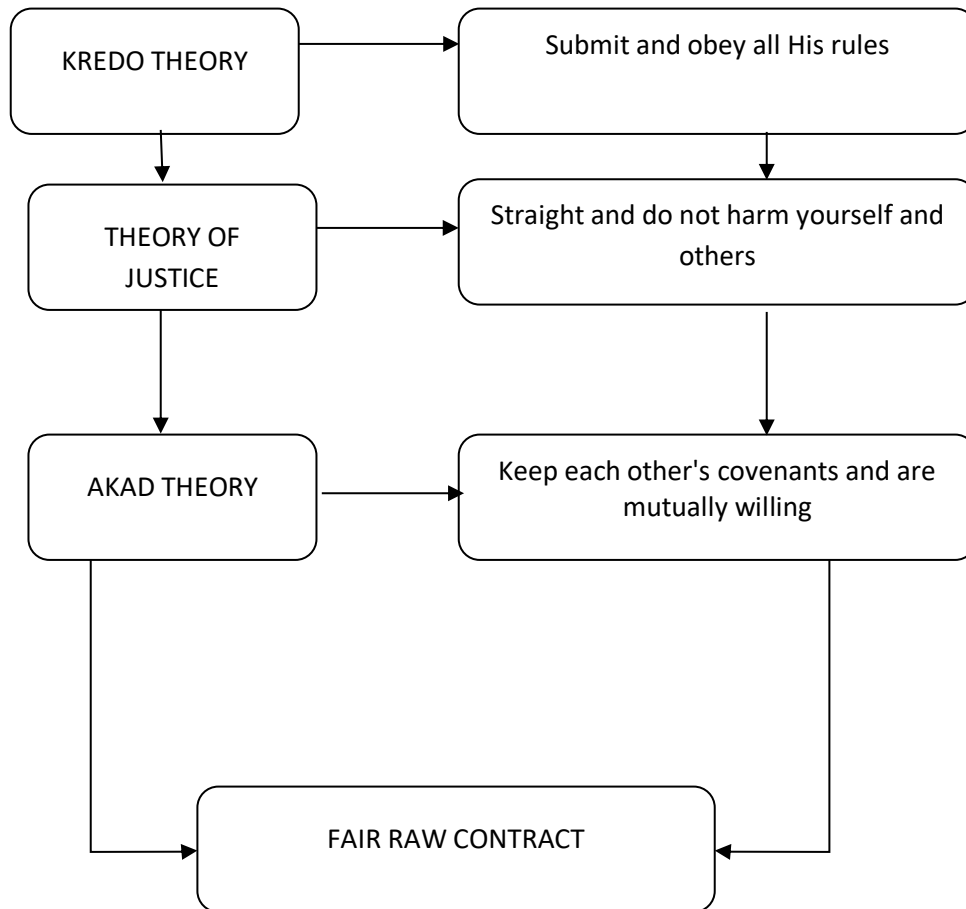
This research uses the juridical normative-empirical method, namely by studying or analyzing secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in applicable legislation, so this research is understood as library research, namely research. to secondary materials (Soekanto & Mamudji, 1985 : 15). The reason this research uses the normative juridical method is because this study uses secondary data which aims to analyze secondary data in the form of legislation in accordance with the focus of this study.

To answer the problems described in the introduction above, the authors use the following theories: First, for the grand theory, the theory of Creed theory or creed from H.A.R. Gibb. Second, for the middle theory, the theory of justice is used on the theory of al-salah wa al-aslah and the theory of al-husn wa al-qubh. Third, Applicative theory uses theory about Akad.

Realizing the basic law of the contract, the parties bear several obligations which are also the rights of the other party. For example, in a sale and purchase agreement, the seller is obliged to submit the price which is the right of the buyer, and the buyer is obliged to submit the price which is the right of the seller. These rights and obligations are called contract rights, and are also called the additional legal consequences of the contract. The legal consequences of this additional

contract are divided into two types, namely legal consequences determined by Sharia and legal consequences determined by the parties themselves. What has just been stated earlier is the effect of the additional law prescribed by Sharia. Meanwhile, additional legal consequences determined by the parties themselves are clauses that they make in accordance with their interests, for example the delivery of goods at the buyer's house and delivery by and at the seller's expense.

Based on the theory used, the following picture can be made:



C. RESULTS AND DISCUSSION

Currently, most of the contracts contained in Islamic banking are standardized where some of the clauses contained in the contract can be burdensome to only one party. Incriminating one of the parties means the inclusion of a contract clause which should also be borne by the bank, but only borne by the customer, especially in this case, namely the partnership contract (cooperation).

According to Ahmadi Miru, Pitlo classifies a standard contract as a dwang contract. (Miru, 2016: 44). Usually, there is physical coercion and psychological coercion. However, coercion referred to here is psychological force. It is called psychological coercion because the customer as a

consumer does not have the opportunity to change or revise the contract clause, the customer can only accept all the clauses in an inevitable (forced) way because of an urgent need and feel worried or afraid that if they do not agree to it, they will not receive financing which will result in the project (his) failed. So that those with a weak economic position do not have freedom of speech in it and are forced to accept it because they are unable to do anything else. Given that the standard contract only requires an agreement signed by the party receiving the contract or another option is to refuse and leave the cooperation contract.

If you look back at the principles of contract according to Islamic law, it can be seen that there is no freedom of contracting or in Arabic it is called *mabda 'hurriyah at-ta'auq* in it. On the principle of freedom of contract, the parties must have a bargaining position (bargaining position) that is balanced, fair and impartial. Customers as partners (contract partners) of the bank, both of them exchange interests between rights and obligations which take place in a balanced (proportionate) manner. Both parties must be based on consensual or willingness between each party, there should be no pressure, coercion, and mis-statements. As in QS. An-Nisa: 29 which reads:

"you who believe, do not eat each other's wealth in an evil way, except by way of commerce which is mutually exclusive between you. and do not kill yourselves, verily Allah is Most Merciful to you".

Prophet SAW. also said: "In fact, buying and selling is only legal if you like it together." (History of Ibn Hibban). One example of a sale and purchase contract transaction also applies to other types of contracts such as a production sharing agreement (Rasyid, 1994 : 282).

The above verses and hadiths clearly explain that the agreement must be based on consensual or willingness between the parties. Meanwhile, in standard contracts there tends to be an element of compulsion on the part of the customer to accept every standard contractual clause of financing they submit because the customer's position is a weak party so that inevitably the customer will accept and agree to every condition stated in the contract clause. Article 31 of the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Laws, explains that coercion is anything that encourages a person to do something that is not pleasing to him and is not his free choice. (Kompilasi Hukum Ekonomi Syariah, 2011 : 19).

The following is an example of a clause in a standard Musyarakah financing contract at Bank Syariah Mandiri Banda Aceh Branch which is deemed to deviate from the concept of musharaka and is burdensome for one party:

Article 6 "Refunds"

In the event that the payment is made through the customer's account at the bank, the customer hereby grants power of attorney which cannot expire due to the reasons stipulated in Article 1813 of the Civil Code to the bank to debit the customer's account in order to pay / settle the customer's obligation to the bank.

This clause contains an element of coercion for the customer, where the customer must agree that the bank has the right to debit (take money) from the customer's account to pay off the customer's

obligations, and like it or not the customer must be willing if at any time the bank debits the customer's account. This financing is more like financing with a debt agreement.

Article 7 "Fees, Deductions and Taxes"

The first paragraph, the customer promises and hereby binds himself to bear all costs required in connection with the implementation of this Agreement, including Notary services and other services, as long as this is notified by the bank to the customer prior to the signing of this Agreement, and the customer expresses his consent.

The clause above imposes any costs for the implementation of the contract to the customer who is his partner (bank). So that there is a sense of being unfair to customers because every notary service and other services are charged to the customer. It is marked by the words "other services" that must be borne by the customer, it is not clear what services will be borne later. It should be that fellow partners in a cooperation agreement, it is borne jointly and not by a single customer.

Article 14 "Insurance"

The Customer promises and hereby binds himself to continue to cover insurance for his expenses on all goods that are guaranteed for Financing under this Agreement, at the insurance company appointed by the bank, by appointing and determining the bank as the party entitled to receive payment of the insurance claim (banker's clause).

In the clause above, the customer is charged to pay the insurance premium for the collateral itself to the insurance company appointed by the bank by determining the bank as the party receiving the claim payment (compensation) for events that occur on the collateral. Meanwhile, the status of collateral that is guaranteed to the bank is essentially the property of the bank, although physically there are collateral items that are not controlled by the bank. So that the bank is supposed to insure the collateral (Laksmana, 2009 : 217).

Usually this clause appears as a result of a debt and credit relationship between debtors and creditors because the payment of claims received by the bank will go into the bank account to pay off the customer's debt to the bank, but the financing contract that is carried out is not a debt agreement, but a cooperation contract. This causes this clause to conflict with the financing contract executed by the customer and the bank, which causes the position between the two partners to be unbalanced and burdensome for one party. Therefore, the author's analysis is more concerned with insuring the customer's business in order to protect his business from failure or disappearance, in which case the bank does not participate in compensating losses (based on Article 5 paragraph 6 of the musharaka contract) if it occurs due to dishonesty, negligence and violations committed by the customer to the provisions. -the provisions stipulated in Articles 9, 10 and 12 in the musyarakah contract.

The existence of examples of the clauses above causes injustice to customers, such as the bank transferring its responsibility to the customer (there is an executive clause). An exception clause is an additional clause contained in a standard contract that tends to harm the customer, because the burden that should be borne by the bank, with this clause becomes the burden of the customer (Miru, 2012 : 59).

According to Islamic law, when viewed from the harmonious contract in the form of al- 'aqidain (two parties who contract), the object of the contract (mahallul' aqd), the purpose of the contract (maudhu'ul aqd), and the agreement (shigat al-'aqd), then These pillars have been fulfilled in the standard musyarakah financing contract at the Banda Aceh branch of Bank Syariah Mandiri which is marked with; there are two parties having contracts, namely the bank and the customer; the object of the contract, namely musyarakah financing in the form of capital, business, profit and loss; The purpose of the contract is to finance a business, and an agreement is marked by the signing of the contract by both parties. So that the cooperation contract is considered valid. Even though the standard contract for musharaka financing does not contain several principles of contracting in Islamic law, namely the principle of benefit (not burdensome), the principle of justice (balance) and the principle of freedom of contract, this does not make this contract null, because both parties are both willing to cooperate. through this standard contract.

In the previous chapter it was explained that, according to Sayyid Sabiq, one of the legal conditions for a contract is that one must be pleased and there is a choice. In that sense, both parties must agree with each other (both are happy) and it is the free will of each party not because they are forced to. So if it is a legal condition of the contract, then the contract becomes invalid if there is an element of coercion from one of the parties in the implementation of the contract. However, coercion referred to here is not compulsion due to threats from the bank which can cause the contract to be null and void, because the bank still gives choices to customers, namely take it or leave it (accept or leave it). Force that is meant is compulsion to carry out an obligation that is borne by the customer in order to achieve the benefit by obtaining such financing. For example, by obtaining this financing, the customer can build a project to invest in in the future.

Musyarakah contracts in practice are increasingly developing along with the times, especially in the world of Islamic banking, which is an intermediary institution (intermediary) between parties with a surplus of funds and parties with a deficit of funds. The bank is certainly more careful in protecting the funds provided to its customers through this standardized contract. There are several clauses above, presumably it is still in a reasonable stage if it is imposed / burdened on the customer, because the customer's position is not only a business partner but also a user of banking services. Although it is not like the musyarakah contract which is actually applied in muamalah fiqh, this contract is increasingly developing according to the times and the level of need. Based on the principle of ibahah "In principle everything may be done until there are arguments against it", then this standard musyarakah contract may and is valid until there are arguments against it..

D. CONCLUSION

A review of Islamic law on the application of standard agreements on financing at Bank Syari'ah Mandiri is basically valid because the pillars and conditions of contract in Islamic law have been fulfilled. Even though it does not fulfill some of the principles of contracting in Islamic law, namely the principle of freedom of contract, the principle of benefit (not burdensome) and the principle of justice (balance), it does not cause this musharaka financing contract to be canceled, in the sense that this standard contract is still valid to apply, because there are elements mutual approval (mutually willing / interodhim) between the two parties is indicated by the signing of the musyarakah financing contract..

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