THE ANALISYS OF OBLIGATION DISPUTS ON RETURNED PARTNERSHIP FUNDS IN RELIGIOUS HIGH COURT OF MEDAN

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Abstract

This research is motivated by the partnership dispute on financing contract between PT. Bank Sumut Syariah; Branch Padangsidimpuan and Ongku Sutan Harahap. Its dispute was occurred after the customer death, and so on causing the termination of the financing installment, because the financing is not covered by the insurance, so the bank asks the heir to be responsible for completing the remaining installment of the financing. The settlement of the dispute is settled through a litigation under the agreement of both parties to the dispute. By using the empirical normative law research method, the results of this study obtained that PT. Bank Sumut Syariah Branch of Padangsidimpuan has neglected to apply the principle of prudence in partnership (Mushārakah) financing contract, namely disbursing financing funds without first being insured. Therefore, the Panel of Judges of Medan Religious Court granted the heirs' petition. But the decision was canceled by the Medan High Religious Court, because the Panel of Judges found a formal defect in the form of obscuur libel, error in persona, disqualification in person. The formal defect resulted in the lawsuit not being accepted or N.O. (Niet Ontvankelijk verklaard). With the verdict N.O. (Niet Ontvankelijk verklaard), the case becomes the quo status, it means back to its original state. Thus, the partnership (Mushārakah) financing contract will remain valid and binding on both parties, their rights and obligations must be implemented in accordance with the contract.

Keywords: Partnerships Financing, Mushārakah, Niet Ontvankelijk verklaard

A. Introduction

This research is motivated by the dispute about the partnership financing contract between PT. Sumut Syariah Bank; Branch Padangsidimpuan with a customer named Ongku Sutan Harahap. Where on April 26, 2011 Ongku Sutan Harahap proposed a financing of Rp. 700,000,000.00 with a 12-month installment period with collateral of two certificates of property rights on behalf of Ongku Sutan Harahap. However, in the contract financing musyarakah the instituition of PT. Bank Sumut Syariah; Padangsidimpuan did not apply the principle of prudence which isn't completed the insurance of partnership financing, so when it's institution (PT. Bank Sumut Syariah; Padangsidimpuan) disbursed the financing funds, Ongku Sutan Harahap does not have an insurance policy. So whatever happens to Ongku Sutan Harahap, the insurance could not protect losses (Decision of Medan Religious Court Number 967 / Pdt.G / 2012 / PA.Mdn, n.d.).

Sumut Syariah Bank actions; Branch of Padangsidimpuan is obviously violating the principle of the convenant in partnership financing (Mushārakah) in accordance with the intention of Article 21 letters, a, b, c, d, Supreme Court Regulation No. 02 of 2008 on Compilation of Sharia Economic Law which principally stated that the contract is based on the principle : a) *Ikhtiyārī* / voluntary; every contract is done at the will of the parties, avoid being forced by the pressure of one party or another; b) Trust /

keep promises; each contract must be executed by the parties in accordance with the agreement established by the concerned and at the same time avoid the injuries; c) *Iḥtiyāṭī* / caution; every contract is done with careful consideration and executed precisely and accurately; d) *Luzūm* / unchanged; each contract is done with clear objectives and careful calculations, so avoid the practice of speculation and maysir. Subsequently, in Article 26 (a), b, c, d, it is stated that the contract is not valid if it is contradictory to: a) Islamic Sharia; b) Legislation; c) Public order; d) Decency (Supreme Court Regulation, 2008).

Bank Syariah Bank; Branch of Padangsidimpuan also violates the existing provisions in Law RI Number 21 Year 2008, in Article 2 stated that Sharia Banking in conducting its business activities based on sharia principles, economic democracy, and prudential principles. Article 3 states that Sharia Banking aims to support the implementation of national development in the framework of improving justice, togetherness and equity of the people's welfare. In Article 25 which in essence it is stated that the Sharia Rural Bank is prohibited from conducting business activities that are contrary to sharia principles. Furthermore Article 26 contains that business activities as referred to in the preceding article shall be subject to sharia principles, and the latest in Article 35 shall be clearly stated that Sharia and Islamic Banks in conducting their business activities shall apply prudential principles (Law Number 21 Year 2008 regarding Sharia Banking., n.d.). the Error committed by PT. Sumut Syariah bank;Branch of Padangsidimpuan in the partnership financing contract has also applied the "*Taqḍul bi al-Ḥukm*" which disbursing a partnership financing with the following requirements.

As a result of negligence of PT. Sumut Syariah bank; Branch of Padangsidimpuan who didn't apply a prudential principle in the partnership financing contract with Ongku Sutan Harahap, it caused a dispute between both of two. Because on July 13, 2011 Ongku Sutan Harahap passed away causing the termination of / payment of the partnership (Mushārakah) financing installment to PT. Sumut Syariah bank; Branch Padangsidimpuan, while the deceased; Ongku Sutan Harahap until his death he never had an insurance policy so that the rest of the installment financing cannot be protected by the insurance. Therefore, the PT. Sumut Syariah bank; Branch Padangsidimpuan asked the heirs to settle the obligation of Ongku Sutan Harahap to return the partnership financing. Hj. Saripah Dalimunthe as the heirs ie;mother of Ongku Sutan Harahap objected to being responsible for financing a partnership (musyarakah) the late.Ongku Sutan Harahap with PT. Sumut Syariah bank; Branch Padangsidimpuan. Therefore, Hj. Saripah Dalimunthe brings the dispute on this partneship obligations refund to the Medan Religious Court, in accordance with the agreement between the two parties when implementing a partnership financing contract that if there will a dispute and cannot be resolved peacefully it will be resolved through litigation through the Medan Religious Court.

Any profit-oriented economic activity is undertaken through an agreement. In civil law, agreements (agreements that have been agreed by the parties) have the same binding power as the law for those who make it (Civil Code, article 1338, paragraph 1). However, agreements often result in disputes that cause harm to either party (Simatupang, 2013:41). Dispute resolution process can be done through a litigation and non-litigation lane. The litigation lane is also a court lane, and the path other than the court lane is called a non-litigation lane. Non-litigation paths can be reached through negotiation, mediation, and arbitration. However, in the science of law also introduced another alternative, namely the arbitration path (Simatupang, 2003:41).

There was an option for contracting parties to the Sharia system, whether their dispute will be settled in public courts (District Court and High Court), in Religious Courts (Religious Courts and Religious

High Courts), or outside courts (nonliterary). In general, the authority of Religious Courts as stipulated in Article 49 of Law no. 3 of 2006 whose contents and articles are not amended in Law no. 50 Year 2009 is covered: examining, deciding and resolving the case at the first level between people who are Muslim in the field of marriage, inheritance, will, grant, endowments, charity, infāq, alms, and sharia economy.

B. Method

A legal research cannot be separated from the use of research methods. Because any research must use a method to analyze the problems raised. According to Soekanto (1986:3), research is a scientific activity based on methods, systematics and certain thoughts that aim to study one or several symptoms of a particular law, by analyzing it. Except that, then there is also an in-depth examination of the legal facts to then try to solve a problem that arises in the symptoms concerned.

By adapting legal analysis from several previous studies, such as: Jensen & Meckling, (1976), Dalmácio & Nossa (2004), Todeva, & Knoke (2005), Fontaine (2013), Morley (2014), this article uses the empirical normative law research method, that is basically a combination of normative legal approaches with the addition of various empirical elements (Cf., Drexl, 2010:343).

C. Result and Discussion

1. Dispute Definition

The term "sengketa" in english is called as "conflict" and "dispute", both of which contain an understanding of disputes or quarrel, or differences of interest between two or more parties. The word conflict is absorbed into Indonesian into "konflik", while dispute can be translated into Indonesian as "sengketa". In the book Law of Anthropology translated by Sulistyowati, differentiated conflict with dispute. Conflict is a situation where the parties realize or know about the feelings of its dissatisfaction. while dispute is a state whereas the conflict is stated in public or by involving a third party (Sulistyowati, 2001:225).

In the Court, disputes are opposed to criminal or punishment. Civil disputes might be agrarian or land disputes, environmental disputes, trade disputes involving contract disputes, problems in relation, such as business partnerships in various fields of business, banking, property disputes objects and divorce issues. In this case, a dispute is a civil dispute in the right to operate on domestic investment activities, is the settlement of the matter raised by the plaintiff against the defendant through a public court, after going through the process of filing a lawsuit and dispute resolution under applicable laws and regulations. Dispute resolution can be done in 2 (two) ways, i.e.: a) Settlement through court (litigation); and b) Off-court settlement (non-litigation).

The Settlement of civil disputes through a litigation means a dispute resolution process submitted to the court using the provisions contained and used by court judges in settling cases. The problem of court settlement through litigation becomes one of the public's attention to the judiciary, since the court case is generally perceived as a long-term, inefficient and costly process.

1. The definition of Obligation

The word obligation its formed from the word "mandatory" which is affixed "*ke-an*" (*kewajiban*-in bahasa. In the sense of compulsory word language means: (something) must be done, should not not be implemented. This obligatory is also one of the rules of the law of taklīfī which means law which is burdensome deeds mukallaf. In that sense will provide a very broad understanding. Therefore, the authors focus more on understanding the obligation in terms of legal consequences of a contract commonly termed as "*iltizām*" (Wirdayaningsih & Barlinti, 2005:82-83).

Liabilities arise from past transactions, for example due to the purchase of goods or the use of services that generate business debt and the receipt of bank loans that incur an obligation to repay. Liabilities also arise from the number of future rebates based on the number of annual purchases of customers. For example, the sale of past goods is a transaction that incurs liability in the form of a rebate (Kuswadi, 2005:53-55).

The right of *taklīf* or obligation on the other is called " *al-ḥaqq al-shakhṣī* ", while the right in the form of authority (*al-sulṭah*) on a good is called *haq'aini*. Thus, the desired right in the context of *iltizām* is the right of *shakhṣī* not the right of *'aynī*. The sources of *iltizām* are as follows: a convenat, which's the will of both parties to conduct an engagement, such as contracts of sale and purchase, lease and so forth.

a. The unilateral will (*al-irādah al-munfaridah*), like someone delivering a promise or *nadhar* (the vow).

b. A worthwhile act (*al-fi'l al-nāfi'*), as one sees another person in a state that is in great need of help or help, he is obliged to do something to the extent of his ability.

c. Destructive acts (*al-fi'l al-ḍārī*), such as when a person damages or violates the rights or interests of others, he is burdened with certain obligations (*iltizām*).

The obligations (*iltizām*) sometimes apply to the property (*al-mā*), to debt (*al-dayn*) and to deed (*al-fi'l*). Obligations (*iltizām)* to property must be filled with property to *multazam lah*, the seller handed over the goods to the buyer and the obligation of the buyer to surrender the money to the seller. The obligation (*iltizām*) of a change must be fulfilled with the act which becomes *mawḍū al-iltizām*, such as a worker's obligation, in *ijārah* contract must fulfill certain occupation, or obligation of person lend goods in *'āriyah* contract must be filled with the act of returning the goods borrowed to the owner (Mujahidin, 2008:53).

2. The Platform of Material Law and Formal Dispute Settlement

Material law not only concerns matters relating to the laws and regulations, but also the principles, doctrines, legal theories, and habits in the life of society that has been considered as a law that must be obeyed. Before Law Number 7 Year 1989 on Religious Judiciary has changed, according to Abdul Manan, material law applicable in the Religious Court is Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975 on Implementation of Marriage Law, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law in Indonesia, as well as the legal doctrines and theories both in the jurisprudence books and in other legal books.

After Law No. 7 of 1989 was amended with Act No. 3 of 2006, in addition to the material law as mentioned above, in accordance with the addition of the field of Religious Courts authority in the field of sharia economy, the material law is used to increase. The law of the event used is clearly the same as the procedural law applicable to the General Courts, but the scattered material law; there was no

Legal Code for it, the result of the PPHIM (Pusat Pengkajian Hukum Islam dan Masyarakat [Center for the Study of Islamic Law and Society]) discussion in Jakarta in 2006 agreed that the material law on which to decide disputes, is:

a. Contract
b. Naṣ al-Qur'ān and Ḥadīth;
c. Legislation
d. a binding ruling in religious matters of the National Sharia Council
e. Fiqh and Uṣūl al-Fiqh
f. Customary Habit; and
g. Jurisprudence.

In relation with the contract, there is an opinion that*: "... in judging the case of sharia economic dispute the main source of law is the agreement, while the other is complementary only. Therefore, the judge must understand whether an agreement of the covenant has fulfilled the requirements and the legal terms of the agreement. Whether an agreement of 'aqd has met the principle of freedom of contract, the principle of equality and equality, the principle of justice, the principle of honesty and truth and the written principle of the judge must also investigate whether the agreement contains things that are prohibited by Islamic Sharia, all its forms, there are elements of gharā or deceit, maysir or speculative elements, and elements of ẓulm or injustice. If these elements are contained in the aqad of the treaty, then the judge may deviate from the covenant contents* (Djamil, 2012:175-177)."[1]

In addition, the material laws that can be used is the Compilation of Islamic Economic Law (KHES). *This KHES is based on the Supreme Court Regulation No. 02 of 10 September 2008 on the Compilation of Islamic Economic Law. In this PERMA it is stipulated that: Judges of courts within the Religious Courts who accept, hear and settle matters relating to sharia economics, use as guiding principles of sharia in the Compilation of Islamic Economic Law, as attached in this PERMA. It is also emphasized that although KHES exists as a guiding principle, it does not diminish the responsibility of judges to dig up and find judges to ensure fair and proper judgments* (Djamil, 2012:175-177).

In the Law on Religious Courts, in relation to sharia law dispute procedure / procedural procedure used by Religious Courts environment is not specified. There is no one article that regulates the law of dispute case of sharia economy. The law on procedural law is only regulated in general as contained in Chapter IV of the first part of Article 54 of the Religious Judicature Law. The aforementioned Article 54 is: "The procedural law applicable to the courts within the Religious Courts is the civil procedure law applicable within the General Courts, except as specifically provided for in this law.

3. The analysis of Sharia Law on the Settlement of Dispute Obligation;partnership Financing Refund

[1]Opinion of Drs. H. Taufiq, SH., MH., Former Deputy Chief Justice of the Supreme Court of the Republic of Indonesia in the Settlement of Troubled Financing at Bank Syariah by Faturrahman Djamil.

Based on its matter, the examination process on Sharia lawsuits ranging from the filing of a lawsuit, answer, reply, duplication, verification, and verdict, are all subject to procedural laws applicable to the General Courts environment, as set out in the Het Herzience Indonesie Reglement (HIR) for Java and Madura, and Rechtsreglemet Voor de Buitengewesten (RBg) for areas outside Java and Madura. Likewise, with regard to the applicable legal means, subject to the legal proceedings for the General Courts. In an appeal, it refers to Law Number 20 of 1947 on the Deuteronomy Court (Appeals) in Java and Madura. In appeal the cassation is subject to Articles 43-65 of the UUMA. Similarly, in the review effort (PK) is subject to Articles 66-79 of the UUMA (Apeldoorn, 2011:220).

Basically, any court decision contained in the judgment of the court has the executorial power by itself. If in the verdict contained a *condemnatoir amar* (punish or have to doing or not doing something), then the decision attached to the executive power. If the losing party does not want to obey the verdict voluntarily, the verdict can be enforced by force under the provisions of Article 195 HIR or Article 206 RBg. Included in this case the decision in the environment of Religious Courts. In case the verdict contains condemnatoir judgment, the court in the Religious Courts has the authority to execute the decision. Thus, since the birth of the law in 1989, the Religious Courts have been allowed to execute themselves (Syaripin, 1999:104-105).

As for the dispute on refund obligations of partner financing as described by the author above, judging from the material law according to the author, the financing agreement made by the late. Ongku Sutan Harahap with PT. Sumut Syariah Bank; Branch Padangsidimpuan has violated the principle of a convenat. because both do not apply prudence, not careful and correct. According to this author is the negligence of both parties, because the PT. Syariah Bank Branch Padangsidimpuan disburse funds financing with *taqȃbul bi al-ḥukm* that dilute the funds with the requirements followed later. And the customer was the late. Ongku Sutan Harahap did not ask for the insurance policy first, as a security measure and the implementation of the principle of prudence. The actions of the parties, especially the parties of PT. Bank Sumut Syariah Branch of Padangsidimpuan has evidently violated the principle of contract as stated in the Compilation of Economic Law Article 21, that the contract is based on the following principles: (Supreme Court Regulation, 2008 [The Regulation of the Supreme Court of the Republic of Indonesia Number 02 Year 2008 regarding Compilation of Sharia Economic Law, Chapter II on Contract, Article 21 letters a, b, c, d, and g, 15.]).

a. Ikhtiyārī / voluntary; every contract is done at the will of the parties, avoid the compulsion because stressing one party or other parties.

b. Trust / keep promise; each contract must be executed by the parties in accordance with the agreement established by the concerned and at the same time avoid the promise of injury.

c. Iḥtiyaṭī / caution; each contract is done with careful consideration and implemented carefully and precisely.

d. Luzūm / unchanged; each contract is done with clear objectives and careful calculations, so avoid the practice of speculation or maisir.a. Transparency; each contract is done with the accountability of the parties openly.

In Islamic law, an agreement term is called as "akad". The word “qabūl” is an act or statement to propose a pleasure in the intention between two or more persons, so avoid or escape from a bond that

is not based on al-aqd which means bind, connect, or connect (*al-rabt*) to Sharia. The pillar and the terms of the contract in the Islamic Covenant Law are the subject of the contract (*al-'āqidayn*), the object of the contract (*maḥal al 'aqd*), the final offer (*ṣīghah al-'aqd*) and the purpose of the contract (*mawḍū al-'aqd*) contrary to Sharia (Islamic Law). The legality of a contract as described in Article 26 of the Compilation of Islamic Economic Law states that the contract is not valid if it is contrary to: (Supreme Court Regulation, 2008 [Regulation of the Supreme Court of the Republic of Indonesia Number 02 Year 2008 concerning Compilation of Sharia Economic Law, Chapter III on pillar, Terms, Legal Category, Legal Category Article 26 letters a, b, c, d, 17]). a) Islamic Sharia; b) Legislation; c) Public order; and / or d) Decency.

The agreement of partnership financing between PT. Sumut Syariah Bank; Branch of Padangsidimpuan and Ongku Sutan Harahap if reviewed based on the terms and conditions of the contract, the qualified requirement (t*amyīz*) has been fulfilled, *ṣīghah al-'aqd* (convenant) (*ījāb* and *qabūl*) has been made in written form in the partnership financing contract according to the Allah's decree in Surah Al- Baqarah paragraph 282*. However, there is the contents of the statement in the partnership (Mushārakah) financing agreement stating the bank exempts the responsibility for possible risks in the implementation of insurance coverage and diverts the Mushārakah financing to the heirs if the debtor's customer dies. The contents of the declaration are: "If later in life insurance I have not published insurance policies, something happens to me and threaten my life, my heirs will not sue the bank and all my finances will still be the responsibility of the heir me to finish "* (Judgement of Medan Religious Court Number 967 / Pdt.G / 2012 / PA.Mdn, n.d.)..

The statement was made on 28 April 2011 and signed by Alm.Ongku Sutan Harahap and his wife Yusliana Dalimunthe. This is contrary to purposed the convenant . a contract purposes should not be contrary to the provisions of sharia, law, public order, and / or morals. So, the statement does not meet the element of the purpose of the contract which is one of the pillars in the Law of the Islamic Covenant. It has been contradictory to the principle of transparency as stipulated in Article 21 letter g of KHES that each contract is done with the accountability of the parties openly.

The clause is also not in accordance with Article 21 letter k KHES which is the principle of a lawful cause, that the contract is not contrary to law, is not prohibited by law and not haram. The clause is also contrary to the principle of equality (*taswiyah*) in Article 21 letter f of KHES. The absence of equality between the parties to the agreement creates an imbalance of rights and obligations. The heirs shall remain liable for the repayment of the supposed financing if the financing is covered by the insurance shall be borne by the insurer ("Law Number 30 Year 1999 on Arbitration and Settlement of Disputes," n.d. [It is liberating a person or entity from a claim or responsibility. Simply put, the exoneration clause is defined as the clause of exemption of obligations or responsibilities in the agreement. See also Article 18 of Law 8 Year 1999 on Consumer Protection]).

The application of the exoneration clause This imbalance creates injustice to the heirs. Injustice in Islamic banking transactions is called unjust and contradicts the sharia principles of Islamic legal principles in banking activities based on fatwas issued by institutions that have authority in the determination of fatwa in the field of sharia. As stipulated in the explanation of Article 2 of Law Number 21 Year 2008 concerning Sharia Banking, activities that do not contain elements of usury, gambling, *gharār*/unclearly, proscribe and *ẓalim*/evil (Law Number 21 Year 2008 regarding Sharia Banking., n.d. [See Law Number 21 concerning Sharia Banking, Chapter II Principles, Objectives and Functions,

Articles 2, 6.]). The stipulation in the declaration also conflicts with the Qur'an Surah Shaykh verse 15: (*Ministry of Religious Affairs, Mushaf Al-Qur'an Terjemah*, 2005). "For us the responsibility of our deeds and for you the responsibility of your deeds. There is no need for a quarrel between us and you. Allah is gathering us and to whom we return."

Based on its description, the stipulation in the letter of statement is contradictory to Article 21 KHES, namely the principle of good faith, the principle of transparency, the principle of equality *(taswiyah*), the principle of a lawful cause. The clause is incompatible with the Qur'an and hadith. The clause is also contrary to the purpose of the contract. covenant that does not meet the pillars and requirements is a vanity contract. The application of the exoneration clause to the treaty cannot be binding on the parties, since the basis of a treaty is bound by condition. However, if the terms in the contract are contrary to Sharia principles, then it cannot be implemented. And also, the application of the exoneration clause in the statement of the partnership financing agreement is an inappropriate action (on billijkheid).

The stipulation is contradictory to Article 1338 paragraph 3 of the Civil Code states, an agreement must be carried out in good *faith (goeder trouw, bona fide)* (Munir, 2001:81). Good faith in the doctrine of the law of covenant includes both subjective intentions and good objective intentions. Good subjective intentions are defined in relation to the law of objects called honesty, whereas the objective good faith associated with the execution of the covenant must heed propriety and decency. The clause also contradicts Article 1339 of the Civil Code stipulating that "a covenant is not only binding on things expressly stated therein, but also for everything by the nature of the treaty, necessitated by propriety, custom, or law" (See into the Book of the Civil Code, Chapter II Engagements Born of Contract or Contracting, Section 2 of the Agreement, Article 1339, 242).

Tan Kamello, in Kaligis (2009), in his legal view stated: "In the Civil Code, propriety is a mandatory pillar of law. As the principle of propriety has a role and function, among others, adding or waive the contents of the agreement. This is as contained in Article 1339 of the Civil Code. The contents based on the principle of freedom of contract shall be carried out in good faith (Kaligis, 2009:279-280).

The principle of declaration in Article 1339 of the Civil Code relates to the contents of the agreement. The implementation of the agreement shall be conducted with due regard to the norms of declaration. The stipulation also violates the terms agreed in Article 1321 of the Civil Code, which is " by coercion or fraud. "The agreement in the standard agreement is not as free as the direct agreement involving the parties in the determination of the contents of the clauses in the agreement. In this case the late. Ongku Sutan Harahap cannot refuse the contents of the clause because of the economic dependency to obtain financing from PT. Sumut Syariah Bank; Branch Padangsidimpuan, so the agreement in the letter of statement does not meet the requirements of the validity of the agreement "agree those who commit themselves".

The application of the exoneration clause also contradicts the legitimate requirement of a covenant of a halal cause. Article 1335 states "a covenant without cause, or which has been made for a false or forbidden cause, has no power." Subsequently in Article 1337 it states ", if prohibited by law, or when contrary to good morals or public order. "The statement on the partnership financing agreement contains the transfer of responsibility to the consumer prohibited by law. The requirement of a lawful cause is violated, so it does not meet the legitimate requirements of the fourth element of agreement "a lawful cause". The statement does not meet the objective requirement of a lawful cause in the validity of the agreement, so the statement is null and void.

Regarding to the object of the partnership contract in its instructions; DSN MUI Number 08 / DSN-MUI / IV / 2000dij explained that in principle, in partnership financing there is no guarantee, but to avoid any deviation, LKS can request a guarantee. And in the fatwa is only explained about the guarantee, there is no provision that requires the existence of insurance. Because insurance is a common thing done by the Bank for the purpose of security of both parties. In the partnership financing contract between PT. Sumut Syariah Bank; Branch Padangsidimpuan and the late.Ongku Sutan Harahap there is indeed a guarantee that is two certificates of property rights on behalf of Ongku Sutan Harahap, and the guarantee has been fulfilled by him/Ongku Sutan Harahap. However, in terms of insurance until the financing is disbursed, the PT. Sumut Syariah Bank; Branch Padangsidimpuan not meet the insurance policy. PT. Sumut Syariah Bank; Branch of Padangsidimpuan has violated the laws and regulations. As stated in Article 2 of Law Number 21 Year 2008, the contents are: "Sharia banking in conducting business activities based on sharia principles, economic democracy, and prudential principles."

As the function of Islamic banks to society as above, according to the opinion of the author is very unfortunate when PT. Sumut Syariah Bank Branch Padangsidimpuan must disburse funds for Mushārakah financing of Rp. 700.000.000,00 without checking and paying attention to the customer insurance policy. This is proof that institution not apply the principle of prudence. So, because the customer has submitted the guarantee in the form of two certificates of property rights, PT. Sumut Syariah Bank; Branch Padangsidimpuan feel it is sure and safe to withdraw the funding. But what about the customers who do not have any security other than insurance. It also has violated the function of sharia banks as written in Article 3 of Law RI Number 21 Year 2008, in which Islamic banking aims to support the implementation of national development in order to improve justice, togetherness and equity welfare people (Law Number 21 Year 2008 regarding Sharia Banking., n.d. [Law Number 21 Year 2008 regarding Sharia Banking, Chapter II on Principles, Objectives, and Functions, Article 3, 7.]). Thus, according to Western civil law as well as Islamic civil law, the debt of a deceased debtor (beneficiary) may be transferred to his heirs, whether written in agreement or debt or not written down.

In addition to the judicial review, the author also analyzes the dispute resolution of this partnership financing contract based on the formal law. The lawsuit concerning the dispute on the obligation of partnership financing refund submitted to the Medan Religious Court which subsequently appealed to the High Court of Religion of Medan and the Supreme Court after the process the examination turned out the Panel of Judges found that the lawsuit did not meet the formal requirements of the lawsuit so as to cause the lawsuit to be formally defective. The law of dispute settlement of sharia economy in Religious Court is similar to the procedure in General Court.

The formal law on appeal level is the same as in the first level court that is sourced to HIR and Rbg, it's just that for appeal level there is addition of Law no. 20 of 1947 on the Judicial Court. In the event of a mild mistake in the first instance, the Appellate Court of Justice shall amend it, such as the verdict shall be read in a closed session to the public, which shall be read out in court open to the public, this is not in accordance with the procedural law, so the Panel of Judges appeal shall fix it. However, if the error is danger enough, such as the incomplete legal subject or the vague lawsuit, then the appellate judge must cancel the decision of the first judge, as in the case of the dispute the obligation of this partnership financing refund (The answer of the interview sent by one of the Panel of Judges of the High Religious Court of Medan, i.e.: Dr. Yusuf Buchori, S.H., M.Si via email on 05 April 2016, 08.53 AM).

In general, the formal requirements that must be met in the lawsuit are Addressed to the Court that accordance with Relative Competence. The letter of lawsuit must be assertive and writing clearly the Religious Courts referred to in accordance with the standards of relative competence provided for in Article 118 HIR. Since the parties to the dispute over this obligation of partnership financing are domiciled in Medan, the Medan Religious Court is relatively authorized to examine, hear and resolve a *quo case*. And this dispute is a sharia economic dispute, the dispute is the authority of the Religious Courts. Because the Religious Courts have the duty and authority to examine, decide and solve cases at the first level between the people of Islam in the sector of Islamic economics. (Law Number 3 of 2006, Article 49 letter I, 9.)

The provisions of the law not mentioning the lawsuit must include a date. Likewise, if the letter of lawsuit is associated with the definition of deed as evidence (See Civil Code, Book VI Verification and Expiry, Chapter II Proof by Writing, Article 1868, 340. See also the Civil Code, Book VI Verification and Expiration, Chapter II Proof by Writing Article 1874, 341.) does not mention the inclusion of dates its inside. Therefore, if starting point from the provisions of article 118 paragraph (1) HIR is connected with the definition of deed as evidence, it basically does not require the inclusion of date as a formal requirement. As for the signature firmly called as a formal requirement of a lawsuit letter. Article 118 paragraph (1) HIR (Het Herziene Indonesisch Reglement, Chapter IX Tribunal Civil Court Including the Authority of the District Court, Section 1 on Case Review in Court, Art. 118, 3.) states: a) A civil suit must be submitted to the National court that accordance with the relative competence; and b) Made in the form of a request letter (letter of request) signed by the plaintiff or by his representative (his attorney).

The formal requirement of the next lawsuit is the mention of identity in the lawsuit, which is a formal requirement of the lawsuit validity. A lawsuit that does not mention the identity of the parties, let alone does not mention the identity of the defendant, causes the lawsuit to be invalid and is considered non-existent. The mention of identity in the lawsuit is very simple. Not as required in the indictment in a criminal case which must include the full name, religion, place of birth, age or date of birth, gender, nationality, residence, religion and occupation of the suspect (See Criminal Procedure Code, Chapter XV Prosecution, Article 143 paragraph 2, 41). Not as widely as the identity requirement that should be mentioned in a civil suit lawsuit. Based on the provisions of Article 118 paragraph (1) of the HIR, the identity was listed must be adequately as the basis for: a) Delivering a call; or b) Submit a notification.

Thus, due to the purpose of inclusion in order to be conveyed by a calling or notice, the identity shall be mentioned, including: a) Full Name; and b) Address or Residence. The formal requirements of a lawsuit mentioned above are also contained in the lawsuit filed by Hj. Saripah Dalimunthe (Ms. the late Ongku Sutan Harahap) as the Plaintiff on the dispute on the obligation of the partnership financing refund. However, there are things that are not fulfilled by Hj. Saripah Dalimunthe as Plaintiff between *posita* and *petitum* is not mutually supportive or contradictory. This causes the lawsuit to be formal defectly. Whereas *posita* and *petitum* are the main requirements that must be fulfilled in the letter of lawsuit (See Regular op de Rechtsvordering (Rv), Book I on Procedures for Writing, Chapter I General Provisions, Article 8, paragraphs 3, 5.). *Posita* is also known as the *fundamentum of petendi. Posita* is the basis or reasons rather than a demand. In this section must contain concrete proofs about the legal relationship that is the basis and the reasons rather than the demand (Marbun, 2011:155). A very important element to be considered in the *posita* is the basic of law and the basis of fact. Regarding the legal basis that needs to be emphasized is the legal relationship between the plaintiff with the object of the dispute. As for the basic of its facts is an explanation of the facts that occur between the three (Badriyah, 2009:21). In the case of arrange the *posita* must be subject to norms of systematic, logical and objective scientific rules (Lemek, 2010:18).

According to the author, line of broadly in *posita* should include, i.e.: The object of the case is: a) Regarding what the lawsuit that will be filed; b) Legal facts are issues that cause disputes; c) Qualification of defendant's acts is a formulation about the material deeds and moral of the defendant which may be unlawful; and d) a description of the losses suffered by the plaintiff. While *petitum* is the content of the subject matter of the lawsuit. Without *petitum* it cannot be said as a lawsuit letter. because the *petitum* is the end of the lawsuit containing the request to the Panel of Judges to grant the Plaintiff's wishes for the legal rights that the Defendant violated (Marbun, 2011:157). *Petitum* usually consists of *petitum primair* and *subsidair*. Purpose is made two principal lawsuits so that if *petitum primair* (principal) is not granted, then *petitum subsidair* expected to be granted. The contents of *petitum primair* usually contains the points that are sued while the subsidair usually reads *"ex-aequo et bono"* (please verdict as fair as possible). That is, if the judge later opinion of the final decision is different, then the plaintiffs ask the verdict as fair as fair. Thus, the defendant does not have to worry about all that is required in *primair*'s demand because the judge can refuse the lawsuit or only accept part of the lawsuit alone (Harun, 2009:27).

This *Petitum* must be clear and should not conflict with each other or against the posita of the lawsuit. An accusion *posita* is contradict the *petitum* causes a blurred lawsuit (Mertokusumo, 1988:36). As a consideration of the Panel of Judges of the Medan High Religious Court which stated that the lawsuit concerning the dispute over the obligation of the partnership financing refund is *obscuur libel* (blurred) (Harahap, 2012:448), i.e. between posita and petitum are not mutually supportive. Because in the posita of the lawsuit the Plaintiff clearly recognizes that there is a partnership agreement between The Late Ongku Sutan Harahap with PT Bank Sumut Syariah Cab. Padangsidimpuan, where banks provide funding financing of capital participation of Rp. 700,000,000.00 and the fund has been received by the customer (Ongku Sutan Harahap). But in the *petitum* do not explain who should be responsible for reciprocal the remaining installment of financing of partnership funds, so it is not clear the Plaintiff's lawsuit whether about the heirs, partnership financing, insurance and auction.

Furthermore, the cause of the formal defect suit is the erorr in persona that the Plaintiff wrongly withdraws Aminudin Sinaga as person as Defendant I (gemis aanhoeda nigheid because in the Mushārakah contract No. 120 / KCSY02-APP / MSY / 2011 date April 26, 2011, Aminudin Sinaga acting on behalf of PT Bank Sumut Syariah Branch Padangsisimpuan while PT Bank Sumut Syariah Branch Padangsidimpuan has been legaled entity, then the institution should be lawsuited is not a person's person, even if someone is as leadership (Result of Interview with one of the Panel of Judges of High Court of Religion of Medan, namely Dr. Yusuf Buchori, S.H., M.Si via email on March 17, 2016, 03.13 PM). The Plaintiff also wrongly filed a lawsuit against the Chairman of PT. Asuransi Bangun Askrida Syariah, because PT. Asuransi Bangun Askrida Syariah is a legal subject in the form of a business entity incorporated as a limited liability company incorporated and subject to the provisions of Law Number 40 Year 2007 regarding Limited Liability Company. Therefore, if there is a lawsuit or claim against legal entity PT. Asuransi Bangun Askrida Syariah, the lawsuit or claim must be addressed to the legal entity of PT. Asuransi Bangun Askrida Syariah.

Regarding the subject of law, it is also regulated in the Compilation of Islamic Economic Law, Article 1 Paragraph 2, that the subject of law is an individual, partnership or business entity with legal status or non-legal entity having the legal capacity to support the rights and obligations (Result of Interview with one of the Panel of Judges of High Court of Religion of Medan, namely Dr. Yusuf Buchori, S.H., M.Si via email on March 17, 2016, 03.13. PM).

The term *error in persona* is not contained in the KUH Perdata (Code of Civil law) or any other legislation. But theoretically, the term error *in persona* can be found in the doctrine of the opinions of the jurists. Literally the meaning of error in persona is wrong about the person in question or the error of the person (Marwan & Jimmy, 2009:18). Usually the mistake happens, if there is a similarity to the person in the agreement (Hutabarat, 2010:41). The general principle emphasized is that the action taken out of ignorance of something that is the essence of the act or the absolute requirement is invalid

(Kusumawanta, 2009:286). If in the lawsuit there is an error in persona, then the suit can be deflected or excepted as the relative authority of the court.

Another reason why the lawsuit is unacceptable is the disqualification of in person. Because the subject matter of the dispute in this case isthe partnership contract results No. 120 / KCSY02-APP / MSY / 2011 dated 26 April 2011. Because the dispute arose due to the contract or agreement, then the provision of Article 1340 of the Civil Code (BW) stipulates that: "the agreement is only binding on the parties that make it." In this article there is the meaning of personnel principle, that is basically an agreement made by a person in his capacity as an individual, and or legal subjects, will only apply and bind to those who make the agreement. The parties that are bound by this partnership contract agreement are PT Sumut Syariah Bank Branch of Padangsidimpuan as financiers (creditor) and Ongku Sutan Harahap and his wife (Yusliana Dalimunte) as beneficiaries of financing / equity funds (debtors / customers). Therefore Hj. Shariah Dalimunte (Mother Alm Ongku Sutan Harahap) is not involved in the musyarakah contract, hj. Shariah Dalimunte does not have legal standing as Plaintiff in the *a quo case*. Therefore, the Plaintiff has no right to file a lawsuit in the *a* quo case and for that the Plaintiff's claim is disqualified in persons so that the suit is formally defective and unacceptable (Result of Interview with one of the Panel of Judges of High Court of Religion of Medan, namely Dr. Yusuf Buchori, S.H., M.Si via email on March 17, 2016, 03.13. PM).

C. Conclusion

Based on the analysis of sharia economic law on the settlement of disputes over the refund of the financing, the authors analyze from the material legal and formal aspects of the lawsuit. According to the material law of PT. Sumut Syariah Bank; Branch Padangsidimpuan has violated the principle of a contract because of PT. Syariah Bank; Branch Padangsidimpuan disburse funds financing (Mushārakah) with taqabul bil huqmi that dilute the funds with the requirements followed later. its institution has evidently violated the principle of contract as stated in the Compilation of Sharia Economic Law Chapter II concerning Akad Article 21 letters a, b, c, d, and g. the Action of PT. Sumut Syariah Bank;Branch of Padangsidimpuan also does not apply sharia principles, namely prudential and justice principles as referred to in Article 25 of Law Number 21 Year 2008 concerning Sharia Banking. It has also been contradictory to the shar'i nash, as Allah's decree in surah Al-Maidah verse 1. Whereas according to the formal law the lawsuit contains obscuur libel, error in persona and disqualification in person, so the lawsuit is formally defective and result in the lawsuit not acceptable or NO (Niet Ontvankelijk verklaard).

With the verdict N.O (Niet Ontvankelijk verklaard) means the case becomes the status quo, it means back to the original state, as if there has not been a case. Therefore, the partnership contract is still valid and binding on both parties who have the right, the rights and obligations of each party must be implemented in accordance with the convenant. In this case the syariah bank is entitled to receive return of equity which has been received and utilized by the customer (Ongku Sutan Harahap and his wife) plus the agreed share proceeds, and the customer is obliged to repay capital plus the profit sharing agreed in the contract. If the customer does not perform its obligations on maturity, the sharia bank as the holder of the mortgage can conduct the auction of the collateral to pay the customer's debt.

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