

THE SUPERVISION ON FUND USE IN MURABAHAH SALE-PURCHASE COVENANT WITH AUTHORITY IN UNIT LAYANAN MODAL MIKRO OF PT PERMODALAN NASIONAL MADANI (PERSERO) SURAKARTA

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ABSTRACT

The present study was aimed at discovering the supervision on fund use in murabahah sale-purchase covenant with authority in unit layanan modal mikro (ULaMM) of PNM (persero) Surakarta. The study aims to find out the mechanism of supervision of financing in murabahah covenant with authority and to discover the attempts made by unit ULaMM in settling the deviant fund use. The financing activities that were carried out refers to sharia principles, one of the services is Murabahah with Authority. The present study was categorized as an empirical legal study, studying law in action in society. The subject of the study was the customer supervisory and guidance division (PPU). The data were collected through interview and documentation. The data were analyzed through data reduction, data display, and data verification. The result of the study found that the supervision of financing in murabahah sale-purchase covenant with authority in ULaMM refers to three stages, namely supervision on planning, implementation, and evaluation. While, the attempt to settle the deviant use of fund of murabahah with authority was done by direct survey to the customer, ta'zir (fine) approach, and tahkim discussion.

Keywords: **Supervision, Murabahah, fund use**

A. INTRODUCTION

Financial crisis in 1997 significantly affects the political system and social condition in Indonesia, including economic its development. At the same time, the negative effect of that crisis results in various non-economic problems. Social riots resulted in various destruction, both in the production sector and distribution network. This led to continuous price increment. In banking sectors, depreciation of rupiah followed by interest rate worsened the debtor's performance so non-performing loans increased. The slump of banking sector disturbs further intermediating function namely, the decrease of fund source for real sector, including small business and cooperative sector.

The government had made attempts of national recovery through strategic policies to strengthen financial sector, especially banking. Banking sector possesses a pivotal role in the whole economic recovery. Comprehensive restructuring strategy does not only emphasize on the attempt of financial aspect recovery but also on the consistency of macro-economic recovery program. This condition increases the community's and investor's trust gradually, which finally trigger Indonesian economic development.¹

In Indonesia, Sharia banking came when the state's economy slumped to financial crisis, whose effect remains until now. In general, the function of sharia banking is not different from that of conventional banking, it functions as intermediating institution, an institution whose function is to gather fund from the community, then distribute the fund to another community through financing scheme.²

In 1998, the improvement on Law no. 10 of 1998, firmly state that there are two systems of banking namely, conventional banking system and sharia banking system. The effect of financial crisis in Indonesia is indicated by the liquidation of many conventional banks, on the other hand, Bank Muamalat carried out its operation steady. This was the rising phase of modern Islamic based-financial in Indonesia.

Indonesia, as a country whose majority of the citizen adhere to Islam, had hungered for the presence of financial system that satisfies not only financial interest but also moral interest. The desired financial system is a banking system that is free from interest or riba.³ The validation of a number of acts has provided legal certainty and improve the activity of Islamic financial market. Since it was first developed in Indonesia, Sharia banking system has experienced advancement both in institutional aspect and supporting infrastructure, regulating devices and supervisory system, as well as the community's awareness and literacy on sharia financial service.

¹ Syahril Sabirin, *Perjuangan Keluar Dari Krisis Percikan Pemikiran Dr, Syahril Sabirin* (Yogyakarta: BPFE. 2003), Hlm 225

² Wardah Yuspin, Penerapan Prinsip Syariah Dalam Pelaksanaan Akad Murabahah (Surakarta jurnal ilmu hukum, vol. 10, No 1, Maret 2007), pp. 66

³ Muhammad, *Manajemen Dana Bank Syariah*, jakarta PT, Rajagrafindo persada,2014. pp. 302

The historic journey of the development of Economy in Indonesia, including financial crisis, has encouraged the awareness of the strength of micro, small, and medium enterprise and cooperatives (UMKMK). This strategic value is realized by the government through the establishment of PT. Permodalan Nasional Madani (persero) (PNM). It is established as a strategic solution of the government for economic equity and enhancing people's prosperity. PT.PNM (Persero) is Indonesia's State-Owned Enterprise. PNM business activities cover financing service, management, and other activities based on the Financial Service Authority (OJK)'s approval. In August 2008, PNM published a direct financing program called ULaMM (Micro Capital Service Unit). The financing activities done by referring to sharia principle, one of the activities is Murabahah with Authority.

Murabahah is derived from ar-ribhu (arab language) which means benefit. Terminologically, Murabahah is a sale-purchase covenant between two parties where the first party as the seller (bai) is obliged to sell needed by the customer, while the second party as buyer (musytari) is obliged to pay the object to purchase.⁴ In this context PT.PNM ULaMM does not give money to the customers to buy the object they need, instead, PT PNM ULaMM is obliged to buy the object as ordered by the customer to the third party, then sell it to the customer through an agreed price. Murabahah is a commodity sale-purchase, not a transaction by giving loan with interest.

Legally, it is important for PT. PNM to carefully implement sharia principle in Murabahah authority to purchase. Murabahah may not contain clause contradicting sharia principle. If any of the clauses contradicts the sharia, the covenant is annulled. The legal consequence of the implementation of the sharia principle is the murabahah financing product completely adheres to sharia principle. However, in realization, there are some obstacles in murabahah implementation. Pre-observation conducted by the writer found that PT. PNM ULaMM has conducted supervision in the form of, visitation, warning letter on bad credit, and monitoring by supervisory division. However, the writer is interested in studying the supervision of fund use on Murabahah sale-purchase covenant with authority. On one side, PT. ULaMM in Surakarta just possessed 1 (one) unit of financial institution implementing sharia principle. Accordingly, it is necessary to find out how the supervision on fund use is carried out to prevent deviation of use of Murabahah fund. Supervision performed by Unit ULaMM of PT PNM should be in accordance with Law on Sharia Banking.⁵ Therefore, the writer is interested in finding out how the supervision on fund use in murabahah sale-purchase covenant with authority in PT.PNM Surakarta by focusing on Unit ULaMM of PT. PNM (persero) Surakarta.

B. RESEARCH METHODOLOGY

The present research was categorized as empirical legal study, a legal study that is aimed to see the law in real life, and study the law in action among society.⁶ Since it studies individuals in the life relation in society, it can be said as taking the facts existing in a society, legal body, or government. The source of the data of the study was primary data, or the data directly obtained from the subject of the study namely divisi pengawasan dan pembinaan/ PPU (Supervisory and Guidance Division), and the customer. The data were collected through interview and documentation.⁷ The data were analyzed using analytical descriptive, a technique that describes and interprets the collected data to obtain a general and comprehensive picture related to the actual condition. In the present study, the data were processed by referring to theory proposed by Miles and Huberman by three stages namely data reduction, data display, and verification or drawing of a conclusion.

C. DISCUSSION

1. Monitoring on Financing in Murabahah Sale-Purchase covenant with authority.

Financial supervision refers to the activities of controlling financing administration, starting from the financing is granted until the financing is paid off by the customer. After the financing is granted, the next step is to ensure that the financing may impact on the customer's business and to ensure that the customer possesses a capability to fulfill their responsibility in paying the installment to the bank.

The mechanism of financial supervision are as follow: (1) first, financing planning stage, in this stage, research on the applicant's data is conducted, financing analysis on the applicants. Juridically, analysis possesses a strategic position in determining the aspects so that the financing agreement with the customer is binding the subject who signed the financing agreement. (2), The Financing Implementation, the supervision should still be performed intensively, starting from the reimbursement, until the installment that passed the due date, or other payment obligations. (3) financing evaluation stage, the supervision that was done in evaluation aims to compare the planning stage and the implementation stage regarding its effectiveness in achieving the result.

Murabahah financing refers to a product offered by Unit ULaMM of PT PNM. Murabahah financing should be adhered to by the customer. In Unit ULaMM of PT.PNM in carrying out murabahah financing which is a sale and purchase, is economic cooperation between two parties having several provision that should be adhered to, in order to improve the cooperation where the bank finances the purchase needed by the customer by the installment payment system.

⁴ Danang Wahyu Muhammad dkk, *Kajian terhadap Akad Murabahah dengan Kuasa Membeli dalam Praktek Bank Syariah*, Jurnal

Media Hukum Vol.25.No.1/Juni 2018.

⁵ See UU No. 21 tahun 2008 tentang Perbankan Syariah (article 1 number 13)

⁶ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Jakarta, Sinar Grafika,2002, pp.15

⁷ Salim HS. *Teori Hukum Pada Penelitian tesis dan disertasi*, jakarta, PT Rajagrafindo,2013.pp 26

Murabahah carried out by unit ULaMM was done by providing an object based on the customer's needs. This object is then used by the customer to support his/her business activities. The customer applies for murabahah financing on a certain object to Unit ULaMM of PT.PNM. After that, Unit ULaMM approves the application by purchasing the needed object. This is in line with the regulation in DSN-MUI's fatwa no. 4 Of 2000 on Murabahah. It is stated that if the bank intends to give the customer authority, the object should be possessed by the bank in principle. "Possessed by the bank" here refers to regulation of Bank Indonesia (PBI), it is proven by the receipt before murabahah covenant is carried out.

The mechanism of financial supervision in Unit ULaMM covers three stages namely:

a. Supervision on planning stage

Based on the Supervision on Murabahah sale-purchase covenant in Unit ULaMM of PT PNM, this stage covers:

1) Supervision with Survey Analysis

Supervision with Survey is the first step of unit ULaMM of PT PNM, it is performed by reviewing the financing proposed by the applicant in accordance with the security of his business capital. The purpose of survey to house or business place of the applicant is to ensure whether the customer holds willingness and ability to satisfy his obligation to the bank regularly, as well as his principal in accordance with the agreement. The survey carried out by the surveyor team aims to find out the economic condition of the business, the ability to pay installment, and the applicant's income.

2) Supervision with Character Analysis

The supervision through this approach is carried out to understand and to reveal the applicant's characteristic, survey on the applicant's family. In analyzing the applicant's character, the aspect being measured is the applicant's honesty and responsibility to be discipline in paying the installment. In analyzing the applicant's character, Unit ULaMM of PT.PNM employed the following methods: 1) Interview, 2) Performing BI Checking, 3) Seeing the applicant's status, and 4) Checking with supplier.

3) Supervision with Economic Feasibility Analysis.

This type of supervision aims to see whether or not the customer deserve the financing, whether the customer is categorized as priority or as forbidden for financing. In Unit ULaMM of PT PNM needs o analyze the effect of economic condition on the applicant's business in the future.

4) Supervision with Sharia Analysis.

The analysis is related to Islamic sharia law that is implemented on the economy and make conclusions whether the application can be given a recommendation for consideration. After the survey is performed, the financing division issues the application letter to be delivered to the Financing Committee meeting.

b. Supervision on financing implementation

This supervision is carried out during the fund reimbursement. In this case, it should be secured with important collateral so that when the agreement is immediately ended while the customer cannot pay the loaned, the collateral will be sold cover the rest of the payment. Unit ULaMM carries out financial supervision o minimize non-performing loan. The security is necessary to minimize the risks harm unit ULaMM, and to see the customer's ability in paying off the fund loaned by the bank. Security in murabahah sale-purchase financing is allowed to make the customer serious with his order, the bank is allowed to ask the customers collateral. The implementation of this financing cannot be separated from trust between the two parties, accordingly ULaMM gives a guarantee in the application of murabahah financing.

The procedure of financing covers: a) Professional and rational recommendation from the relating account officer on the financing application to be proposed to the Financing Committee. b) Financing Committee Meeting, they are authorized to approve the application. c) Based on the committee's approval, AO delivers the approval letter of murabahah financing to the applicant. Then, calls the supplier and asking for a letter of commitment to goods procurement.

c. Supervision on Evaluation stage

This supervision is performed toward the customer who receives the financing, it is done to monitor the customer in using the funds, to prevent deviation in carrying out the business.

2. Attempts to Settle the Deviant Use of Fund of Murabahah with Authority

The attempts made by Unit ULaMM of PT PNM in performing supervision found some hindrances such as in selecting the financing applicant, the bank only relies on the applicant's personal information. It is difficult to see the applicant's real character and capability in carrying out the business/needs to be given by through murabahah covenant. The bank should spend cost to examine and to obtain the truth of customer's applicant. The supervision on the use of murabahah with authority, the strategy carried out to prevent the problems is direct survey to the customer, conducted by Unit ULaMM of PT PNM.

Another attempts in solving the problem for the customer who postpone the payment, if the customer does not pay in accordance with the agreement, unit ULaMM holds a right to incur fine to the customer who are actually capable of making the payment, except if it is proven that the customer is not capable of making the payment. The fine is incurred to the customer who is capable of making the payment but he/she postpone it. Accordingly, the fine is made based on Ta'zir approach which aims to make the customer become more responsible of his/her obligation. The amount of the fine is in accordance with the covenant, and the fine will be used for social purposes.

The attempts made in case of bad credit, from its productivity, it is related to the decrease of ability to produce income for the customer. Regarding the troublesome murabahah financing, the supervision is performed by categorizing customers into several categories based on the payment quality: category I (one) is for the customer who makes payment regularly (current), category II

(two) refers to special mention, category III (three) refers to less current, category IV (four) refers to doubtful, and category V (five) refers to bad credit. The explanation is as follow:

- 1) Someone is categorized in current if the payment is on time, no arrears, in accordance with the covenant requirement, always reporting accurate and regular financial report.
- 2) Someone is categorized in special mention if there is arrear or margin up to 90 (ninety) days, always accurately and regularly delivers financial report.
- 3) Someone is categorized as less current if there is arrear of principal or margin exceeding 90 (ninety) days up to 180 days, and the financial report is irregular and doubtful.
- 4) Someone is categorized as doubtful if there is arrear of principal or margin exceeding 180- 270 days, and the customer does not report financial report, or cannot be trusted.
- 5) Someone is categorized as bad credit if there is an arrear of principal or margin exceeding 270 days, and there is no documentation on credit agreement and/or there is no binding on collateral.⁸

The strategy to settle disputes in Murahabah financing can be minimized in the distribution of fund of murabahah financing covenant, in Islamic law, is called a peaceful settlement (sulhu). It means that in settling a problem between the customer and the bank, it is done through a peaceful way between the two parties. If it cannot solve the problem, the bank will settle it through legal oath. Based on the regulation, in settling the disputes, ULaMM appoints an individual to be the third party as the middleman in settling the disputes between the two parties. In this case, the appointed individual is capable of being just, it means he/she is capable of putting something in its place.

D. CONCLUSION

The supervision of Murahabah sale-purchase covenant with authority by Unit ULaMM of PT PNM was done in three stages, first, the supervision on the planning stage through survey, character analysis, economic feasibility analysis and sharia analysis. Second, supervision on the financing implementation, it covers professional and rational recommendation from the relating account officer on the financing application to be proposed to the Financing Committee to be approved. Third, supervision on evaluation stage, it was done by monitoring the financing administratively using data analysis. Attempts to Settle the Deviant Use of Fund of Murahabah with Authority was done by direct survey to the customer, ta'zir (fine) approach, and tahkim discussion.

E. RECOMMENDATION

Supervision on the fund use carried out by Unit ULaMM of PT.PNM Surakarta should be stricter under sharia principle to prevent deviant fund use or to prevent legal consequence that may harm the two parties.

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