

Solving Breach of Contract in the Implementation of Murabahah Financing in Sharia Micro Financial Institutions in Banda Aceh

Nadia Ardani¹, Teuku Ahmad Yani², Zahratul Idami³

Law Faculty of Syiah Kuala University, Indonesia

Law Faculty of Syiah Kuala University, Indonesia

Abstract:

Discussion: This study aims to explain the factors that cause customers to do breach of contract on murabahah financing.

Research Method: This research is empirical juridical. Research data obtained through literature and the field.

Discussion: Based on the results, the factors that cause customers to do breach of contract on murabahah financing was the bad intention of the customers, customer business failure, the occurrence of force majeure on the customer's business.

Conclusion: Therefore, this study suggests that Islamic microfinance institutions are required to apply the precautionary principle in providing financing to their customers. Customers in taking financing must know and learn the contents of the murabahah financing contract, so that customers do not act as they wish without regard to the agreement that was agreed in advance.

Key Word: Islamic microfinance institutions, murabahah financing, breach of contract

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I. INTRODUCTION

The influence of the rapid development of Islamic financial institutions is fast along with the eagerness of Muslim community towards financial institutions that are free of usury and in accordance with Islamic principles or Islamic law, so that the existence of financial institutions in Islam is needed. The main purpose of the establishment of Islamic financial institutions was as an effort of Muslims to underlie all aspects of economic life based on Qur'an and Sunnah.

Fulfilling economic needs of the community was constrained by limited income, causing the community to need an institution to be able to help improve the economy with the existence of sharia-based financial institutions, especially in terms of micro so that people can get financing using sharia system to avoid usury practices.

One of government role in improving the standard living of the community is to establish a legal entity, both in the form of cooperatives or limited liability companies (PT), which are a financial institution for the community, one example of these is Islamic microfinance institutions (LKMS).

Article 1 (1) of Law Number 1 of 2013 concerning Microfinance Institutions explains that what is meant by microfinance institutions are financial institutions specifically established to provide business development services and community empowerment, either through loans or financing in micro scale businesses to members and the community, savings management, and business development consulting services that do not solely seek profit.¹

Based on Article 3 of Law Number 1 of 2013, MFI aims to:

- a. Increase the access to micro scale funding for the community;
- b. Help increasing economic empowerment and community productivity; and
- c. Help increasing the income and welfare of the community, especially the poor and/or low income earners.

Sharia financial institutions according to the National Sharia Board are financial institutions that issue sharia financial products and decide who can obtain operational licenses as sharia financial institutions. This definition

¹Undang-undang Nomor 1 Tahun 2013 tentang Lembaga Keuangan Mikro [Law Number 1 of 2013 concerning Microfinance Institutions]

states that an LKM must meet two elements, namely compliance with Islamic law and legality of operating as a financial institution.

Mahirah Muamalah Syariah is a Sharia Microfinance Institution with a limited liability company (PT) formed by Banda Aceh City Government to help the low economy community by providing loans in terms of financing. Mahirah established on 15th December 2017 and began operating on 27th April 2018. The legal basis of mahirah formation is Banda Aceh City Qanun Number 6 of 2017 concerning the Establishment of Mahirah Muamalah Micro Microfinance Institution.

Micro Finance Institution (MFI) in Banda Aceh, beside in the form of Limited Liability Company (PT) like Mahirah Muamalah Syariah, there is also Baitul Qiradh. Mahirah Muamalah Sharia is different from Baitul Mal Wattamwil (BMT). Baitul Qiradh is a Micro Finance Institution incorporated as a cooperative, where legal basis for Baitul qiradh refers to Cooperative Law No. 25 of 1992 concerning Cooperatives. But both of them are the same that is a Sharia Microfinance Institution.

Baitul Qiradh also has a very important role in people's lives to empower the community's economy in micro-enterprise setting. In other word, this financial institution (Baitul Qiradh Baiturrahman) directly enters economic life of small communities.

The purpose of establishing Baitul Qiradh Baiturrahman is to create a better life for the community through the provision of venture capital or financing to a low economy community, to increase community income through the development of small businesses in the trade, home industry and services sectors.

Based on Article 1 (1) of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, that Micro Business is a productive business owned by individuals or business entities that have fulfilled the criteria as a micro business. Whereas what financing means according to Article 1 number 11 of UMKM Law is the provision of funds by Government, Regional Government, Business World, and community through banks, cooperatives and non-bank financial institutions to develop and strengthen the capital of Micro, Small and Medium Enterprises.

Based on Law Number 21 of 2008 concerning Sharia Banking, article 1 (25) also explains that financing is the provision of funds or claims based on an agreement between Islamic Banks and or UUS and other parties that require the parties that was financed and or given fund facilities to return the funds after a certain period in exchange for *ujrah*, without compensation, or profit sharing.²

The types of sharia financing according to its purpose are divided into Sharia working capital financing, Sharia investment financing, and Sharia consumptive financing. Covenants or principles that form the basis of Islamic bank operations in channeling financing are divided into 4 types, namely the principle of buying and selling (*murabahah*, *salam* and *istishna'*), profit sharing principles (*mudharabah* and *musyarakah*), rental principles (*ijarah* and *ijarah munthiyah bittamlik*), and supplementary contract (*hiwalah*, *rahn*, *qardh*, *wakalah* and *kafalah*).³

Based on DSN Fatwa No.04/DSN-MUI/IV/2000, *Murabahah* is financing using sale and purchase principle. Selling an item by confirming its purchase price to the buyer and the buyer pays it at a price more as profit. *Murabaha* (*al-bai bi tsaman ajil*) is a transaction of buying and selling goods plus a margin agreed upon by the parties.⁴

Murabahah was originally just a sale on the cost-plus basis. But after the concept of delayed payment or often called *murabahah* receivables, *murabahah* has been used as a capital or financing method for clients to buy a commodity by paying in installments.⁵

² Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah [Law Number 21 of 2008 concerning Sharia Banking]

³ Aulia Fuad Rahman, Ridha Rochmanika, *Jurnal Ekonomi dan Bisnis Universitas Brawijaya, Pengaruh Pembiayaan Jual Beli, Pembiayaan Bagi Hasil, dan Rasio Non Performing Financing terhadap Profitabilitas Bank Umum Syariah di Indonesia [The Effect of Purchasing and Selling Financing, Profit Sharing Financing, and Non-Performing Financing Ratio towards Profitability of Sharia Commercial Banks in Indonesia]*. <http://ejournal.uin-malang.ac.id/index.php/ekonomi/article/download/1768/3133> diakses tanggal 15 september 2019, pukul 15.00 WIB

⁴ Muhamad, *Manajemen Dana Bank Syariah [Sharia Bank Fund Management]*, Jakarta: Rajawali Pers, 2015, h. 46.

⁵ Maskur Rosyid, Fitriana Nurdina, *Jurnal islaminomic*, Vol. 6 No.2, Agustus 2015, *Mudharabah dan Murabahah; Pengaruhnya Terhadap Laba Bersih BUS [Mudharabah and Murabahah; Effect on BUS Net Profit]*, <https://media.neliti.com/media/publications/267934-mudharabah-dan-murabahah-pengaruhnya-ter-e6bb32da.pdf> diakses tanggal 16 september 2019, pukul 20.00 WIB

To determine whether or not a murabahah financing agreement is valid, it must meet certain pillars and conditions in accordance with Islamic shariah. Therefore, murabahah financing use a sale and purchase agreement, then in murabahah financing there must be a pillar and trading condition as follows:

- a. Ba'i or seller, the seller is a person who has merchandise or someone who offers an item
- b. Musytari or buyer, is a person who makes a request for an item offered by the seller
- c. Mabi' or goods, are commodities, objects, objects that are traded
- d. Tsaman or selling price, is as a measurement to determine the value of an item
- e. Ijab and Qabul as outlined in the contract ⁶

Murabahah conditions are as follows:

- a. The seller tells the customer about the cost of capital
- b. The first contract must be valid according to the set pillars
- c. The contract must be free from usury
- d. The seller must explain to the buyer if there is a defect in the goods after purchase
- e. The seller must disclose all matters relating to the purchase, such as if the purchase was made on a debt basis ⁷

The most widely evaluated akad about implementation legality is murabahah, which is a sale and purchase agreement with the sale price based of agreed purchase price and profit. This is due to the perceptual error in murabahah. Murabahah is often likened to regular credit agreement, but the name is change into murabahah or sale and purchase. Aside of the higher selling price than the price on a conventional bank loan application and on the execution procedure, there is no difference between murabahah and conventional banking credit. ⁸

Based on Article 1320 of the Civil Code, an agreement is said to be valid and binding on the parties, if the agreement has fulfilled the terms of the agreement including:

1. Agreed to make the agreement
2. The skills of parties that make the agreement
3. The object of the agreement must be clear
4. The agreement was made based of allowable caused

Brench of contract is not carried out the achievement or obligation as it should be charged by the contract to certain parties as stated in the contract. ⁹

In conducting previous financing transactions between Islamic Microfinance Institution and customer, an agreement agreed by both parties is made. The agreement is contained in a financing agreement so that both parties are automatically bound by the agreement and the law that has been made together.

This financing issue is closely related to legal issues, because it is because in the process of providing financing, there is a relationship and agreement which stated that there is an obligation for customers to return the financing received. ¹⁰

This view is in line with Subekti's opinion, that an engagement is a legal relationship between two people or two parties, based on one party party and the other party are obliged to fulfill these demands. The relationship

⁶ Jurnal Ekonomi dan Bisnis Islam-Volume 1, Nomor 2, Juli-Desember 2016

<http://journal.febi.uinib.ac.id/index.php/jebi/article/download/32/40> diakses tanggal 25 oktober 2019 pukul 20.00 WIB.

⁷ Muhammad Antonio Syafi'i, *Bank Syariah dari Teori ke Praktek [Islamic banks from theory to practice]*, Jakarta: Gema Insani, 2001. Hal.102.

⁸ Wardah Yuspin, "Penerapan Prinsip Syariah dalam Pelaksanaan Akad Murabahah" [*Application of Sharia Principles in Murabahah Implementation*] , *Jurnal Ilmu Hukum Vol. 10, No.1* (2007): h. 55-67

⁹ Munir Fuady, *Hukum Kontrak (dari sudut pandang hukum bisnis) [Contract Law (from a business law perspective)]*, Citra Aditya Bakti, Bandung, 1999. Hal.89

¹⁰ Gentur Cahyo Setiono, *Jurnal Ilmu Hukum (Yuris) Vol.2, No.1, April 2013, Penyelesaian Kredit Bermasalah Dalam Perbankan*, http://hukum.unik-kecridi.ac.id/wp_content/uploads/2016/05/JURNAL-YURIS-KREDIT-BERMASALAH-GENTUR-CAHYO-SETIONO-SH-MH.pdf diakses tanggal 3 september 2019, pukul 20.00 WIB

between the two parties is a legal relationship, where the right of the debtor (creditor) is guaranteed by law. Thus if the claim is not fulfilled voluntarily, the debtor can sue him before the judge.¹¹

Murabahah financing is included in long-term payments, so banks and non-bank financial institutions must be more careful in analyzing the provision of financing because the decision concerning expenditure of funds now is with the hope to be able to earn income in the future.¹²

The quality of financing is essentially based on the risk to the customer's compliance in meeting their obligation. This is referred to PBI Regulation No. 9/9/PBI/2007 and PBI No. 10/24/PBI/2008 concerning the determination of payment quality, in which payment quality is assessed based on aspects of business prospects, customer performance and the ability to pay. Determination of quality is conducted by considering materiality and significance of component evaluation factors and relevance of assessment factors to accuracy characteristics of customer's installment payments.

Based on fatwa Number 04/DSN-MUI/IV/2000 1st April 2000 about Murabaha that Debt in Murabaha are:

1. In principle, settlement of customer's debts in murabahah transactions has nothing to do with other transactions made by customers with third parties for the goods. If the customer resells the item with profit or loss, he is still obliged to settle the debt to the bank
2. If the customer sells the item before the installment period ends, he is not required to immediately pay off all installments
3. If the sale of the item causes loss, the customer must still settle the debt according to the initial agreement. He must not slow down the installment payment or ask for the loss to be calculated¹³

To obtain murabaha financing, what have to be conducted by prospective customers is to complete the requirements for submitting murabaha financing both for working capital and purchase goods, then the marketing team of LKMS will analyze business feasibility/report on the debtor's assessment (financial statements, place of business and residence) as well as the customer's collateral, to determine whether the financing is feasible or not, but the mandatory requirement for customers in taking murabaha financing for working capital is to have a business. Financing by LKMS is not only based on trust but there are other aspects that are seen as benchmarks in the provision of financing for, example character, the purpose of the customer to take financing, and his ability to pay for the financing. But, in reality many fields do not match the data with the field survey.

In murabahah financing, financing problems are classified into several categories, including:

1. Smoothly, that is if the late of installments payment ranges from 0 (zero) to three months
2. Substandard, that is if the late installments payment ranges from three to six months
3. Doubtful, that is if the late installments payment ranges from six months to nine months
4. Stuck, that is if the late installments payment is late for more than nine months

Cases or problems often arise in financing if the financing does not occupy an installment schedule, so that arrears occur, entering the stage of congestion so the debtor or customer is considered to do breach of contract. In principle, the relationship between customer and Sharia Microfinance Institution is a contractual relationship, so it is not surprising in practice that the customer often does not keep his promise in paying off the agreed financing. Breach of contract is a condition where the customer does not fulfill or fails to carry out the obligations as specified in the agreement made between the parties.

¹¹ Subekti, *Jaminan-Jaminan untuk Pemberian Kredit Menurut Hukum Indonesia [Guarantees for Provision of Credit Under Indonesian Law]*, Alumni, Bandung, 1982, Hal. 1

¹² Azharsyah Ibrahim, Arinal Rahmati, *Jurnal Kajian Ekonomi dan Bisnis Islam (IQTISHADIA) Vol.10 Nomor 1 2017, Analisis Solutif Penyelesaian Pembiayaan Bermasalah di Bank Syariah: Kajian Pada Produk Murabahah di Bank Muamalat Indonesia Banda Aceh [Solutive Analysis of Problem Solving Financing in Sharia Banks: A Study on Murabaha Products at Bank Muamalat Indonesia Banda Aceh]*. <https://media.neliti.com/media/publications/91301-ID-analisis-solutif-penyelesaian-pembiayaan.pdf> diakses tanggal 4 september 2019, pukul 17.00 WIB

¹³ Fatwa Nomor 04/DSN-MUI/IV/2000 Tanggal 1 April 2000 tentang Murabahah

Table Murabahah Financing Collectibility Report of 2018

No	LKM	Financing Name	Number of Stuck Payment Costumer	Nominal
1	Mahirah Muamalah	Murabahah	12 people	91.083.301
2	Baitul Qiradh Baiturrahaman	Murabahah	3 people	73.901.000

II. MATERIAL AND METHODS

This type of research used in this study is empirical juridical research that is conducted by looking at the reality that exists in the field. This approach is known as sociological approach.¹⁴ Data sources in this study were obtained from secondary, primary and tertiary data.

III. RESULT

A. Factors that cause customers to do breach of contract on LKM Mahirah Muamalah Syariah and Baitul Qiradh Baiturrahman in Banda Aceh.

Fulfillment of the community economy is currently constrained by limited income, especially middle to lower class, causing the community to need funding from sharia-based financial institution. Along with times, economy development not only relies on macroeconomic sector but also the micro economy, namely small and medium businesses. LKM in the form of limited liability companies and cooperatives are one of the most famous non-bank financial institutions currently exist to provide services to the public, especially UKM sector. This has been proven long ago that cooperative is the cornerstone of national economy. Currently, cooperative has been spread in all districts and cities in all provinces of Indonesia. This certainly has positive impact, especially on community economic sector and can increase employment so that it can reduce poverty.

Based on the results of the study, it can be said that the factors that cause customers to do breach of contract on Mahirah Muamalah Sharia LKM and Baitul Qiradh Baiturrahman in Banda Aceh City are as follows:

1. factor of bad intention from the customer
2. The factor of customer business failure
3. The factor of the occurrence of force majeure

Ad.1 The factor of bad intention from the customer

The principle of good intention generally becomes the fundamental basis for the making and execution of a contract, because without being based on good intention from the parties involved in the agreement, it is impossible that the agreement will run well as agreed upon. The emergence of this principle starts with an agreement made by both parties as the agreement implementation. The similar thing was stated by Mufid Akmal, who confirmed that if an agreement was reached, the parties must have good intentions in carrying out the agreement as stated in legal contract, but there are some customers who do not fulfill their obligations.¹⁵

If the principle of good intention is not carried out properly in an agreement, especially a financing agreement, there will be a lot of problematic financing that will certainly result in losses towards the financial institution itself. Problematic financing is something that is very frightening for all financial institutions including banks. The emergence of problem financing is also caused by both financial institutions and non-bank financial institutions that do not apply prudence principle in the provision of financing and imperfectly apply analysis in the acquisition of financing, so it is not uncommon for these financial institutions to go bankrupt.

The application of the principle of good intention in an agreement especially credit agreement, cannot be separated from the understanding of both parties about the agreement that has been made, as the article 1338 (1) of the Civil Code concerning "All agreements made legally apply as a law for those who make it". So, based on the article Article 1338 (1) above, it is clear that the agreement made by the two parties will act as a law for them. This reflects the existence of legal certainty in agreement made by both parties. Without legal certainty in a form of an agreement or a partial understanding, it will have implications for the lack of intention of one party in carrying out the achievements as stated in the agreement made. The principle of good intention implies that creditors and debtors must carry out the contract substance based on firm belief or confidence or goodwill from the parties. Furthermore, good faith is divided into 2 types, namely good intention and absolute good intention.

¹⁴Johny Ibrahim, *Teori Metode dan Penelitian Hukum Normatif [Method and Research Theory of Normative Legal]*, Cetakan Pertama, Bayumedia Publishing, Malang, 2005, hl., 33

¹⁵ Mufid Akmal, *Direktur LKM Mahirah Muamalah Syariah, Wawancara*

Ad.2 The factor of customer business failure

Provision of financing for the purchase of goods or working capital is used to help customers who lack working capital so that when the customer gets an injection of financial assistance, it is expected that the customer's business can continue. When the customer's business is smooth, it will be possible for customers to expand so that it will further increase customer productivity meanwhile the provision of financing for investment is used by customers to support the business they are running.

In addition to assisting small communities in obtaining capital for consumptive and working capital, financing is also a vein of financial institutions so that they are still able to carry out their operations. Because every time it provide financing, there is an opportunity for LKM to get profitability. However, in addition to getting profit opportunities, LKM also faced with a problematic financing opportunity that if it gets worse, it will result in bad loans. Surely this greatly affects the operational activities of LKM, so LKM must be extra careful in providing financing.

The failure of a customer's business can be a threat to the LKM because it is likely that the customer who has received the financing is unable to pay off the financing that he has received.

Ad.3 The factor of the occurrence of force majeure

According to Nurfajri, the financing provided by microfinance institutions to customers (debtors) is actually a risk faced by LKM because the higher the profit that LKM will expect, the higher the risk that the LKM will face. The risk is related to personal, outside personal and unexpected conditions. Personal risks can arise in the form of unusual customer in maintaining the mandate given by LKM (moral hazard) and this will also have an impact on the emergence of problematic financing. Whereas unexpected conditions are such as earthquakes, floods, landslides, etc. (force majeure) which paralyzes almost all areas of life which will also have an impact on the real economic sector.¹⁶

The principle of caution is needed in this case, because the risk is very high in providing financing as the main business of financial institutions. In addition, failure in the field of financing can result in the impact of health and continuity of banking business, due to the emergence of problematic financing.

IV. CONCLUSION

Based on the results of this study, it can be concluded that the factors that cause customers to do breach on contract on Mahirah Muamalah Syariah LKM and Baitul Qiradh Baiturrahman in Banda Aceh City are the factors of bad intention from the customer, the factor of customer business failure, and the factor of force majeure. Therefore, Islamic microfinance institutions are required to apply the precautionary principle in providing financing to their customers. Customers in taking financing must know and learn the contents of murabahah financing contract so that customers do not act as they wish without regard to the agreement that was agreed in advance.

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¹⁶ Nurfajri, Kepala bagian umum Baitul Qiradh Baiturrahman. *Wawancara*

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