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Alegal Analysisauthentic Murabahah Deed that does not Include A Dispute Resolution Clause in Sharia Financing Institutions

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Abstract. *Murabahah contracts, as one of the most widely used forms of sharia contracts in financing practices within Islamic financial institutions in Indonesia, are generally embodied in the form of authentic deeds drawn up by a notary in order to provide legal certainty and perfect evidentiary strength. However, in practice, there are still authentic murabahah terms that do not include a dispute resolution clause. The absence of such a clause has the potential to create legal uncertainty, particularly concerning the forum and mechanism for dispute resolution in the event of default between the parties. This issue is important to examine because it relates to legal protection, legal certainty, and the responsibility of notaries in drafting sharia financing deeds. This study aims to analyze the legal position of authentic murabahah deeds that do not include dispute resolution clauses, as well as to analyze the legal implications arising from dispute settlement and the execution of collateral in Islamic financial institutions. This research employs a normative legal research method using statutory, conceptual, and case approaches. The legal materials used consist of primary, secondary, and tertiary legal materials analyzed qualitatively. Research findings indicate that a Notary/PPAT may be held administratively, civillyThe results of the study indicate that the absence of a dispute resolution clause in an authentic murabahah deed does not render the contract null and void as long as it fulfills the legal requirements of an agreement as stipulated in Article 1320 of the Indonesian Civil Code. Nevertheless, the absence of such clause creates legal uncertainty in determining the appropriate dispute resolution forum, whether through litigation or non-litigation mechanisms. In addition, this condition also affects the difficulty in executing collateral due to the potential dispute concerning the authority of the institution competent to resolve the dispute. In the context of notarial responsibility, notaries are obligated to act carefully, thoroughly, and provide legal counseling to the parties so that the deed contains clauses capable of ensuring comprehensive legal protection and legal certainty. Based on the results of the study, greater prudence is required from notaries in drafting Islamic financing deeds, particularly concerning the inclusion of dispute resolution clauses.*

Furthermore, Islamic financial institutions must ensure that every murabahah contract is drafted comprehensively and in accordance with sharia principles and prevailing laws and regulations in order to prevent disputes and obstacles in the implementation of the parties' rights.

Keywords: *Deeds of Sale; False Statements; Legal Protection for PPATs.*

1. Introduction

Legal certainty is one of the main objectives in the concept of a state based on law, in addition to other objectives, namely to create legal order and social order.[1]In the context of civil law, legal certainty is crucial because it regulates private legal relationships between individuals, particularly regarding civil rights and obligations arising from agreements, legal acts, or specific legal events. Without legal certainty, civil legal relationships have the potential to give rise to protracted disputes and undermine public trust in the legal system.

The principle of freedom of contract in drafting contracts is the most prominent principle and is a universal principle and is adopted by almost all countries in the world today. In English-language literature, this principle is expressed in various terms, including Freedom of Contract, Liberty of Contract, or Party Autonomy, in common law countries it is known as laissez faire which is one of the most well-known principles in contract law.

In the provisions of Article 1338 paragraph (1) of the Civil Code, "All agreements that are legally made are valid as law for those who make them." This means that the agreement is a source of law that binds the parties and has permanent legal force like a law, where the parties can express their wishes in the clauses of the agreement. Based on this legal force, the principle of freedom of contract is always used when making authentic deeds, including authentic deeds in the banking sector..

Banking, as a financial intermediary institution, requires the principle of freedom of contract as a legal basis for the implementation of various financial transactions between the bank and its customers, including credit agreements, deposits, and other banking services. The principle of freedom of contract provides legal

[1]Kencana Prenada Media Group, 2007, The Rule of Law: A Study of the Principles *The Principles Viewed from the Perspective of Islamic Law, Their Implementation During the Medina State Period and Present time*., Immanuel Kant.,. Jakarta. Pg. 88.

certainty regarding the rights and obligations of each party and reflects free will based on mutual agreement..One of the most popular financing products among Islamic banking customers is murabahah. Murabahah is the sale and purchase of goods at the original price with an additional profit/margin agreed upon by the bank and the customer.

Murabahah, as a financing contract, must provide legal certainty for both parties. In this case, there must be an agreement that regulates the object of the contract, delivery of goods, payment, guarantees, rights and obligations of creditors and debtors, default and sanctions, and dispute resolution clauses. However, in practice, there are still murabahah deeds that do not include a clear dispute resolution clause. This can certainly cause procedural uncertainty for the parties, which can give rise to differences of opinion regarding dispute resolution in the event of default. Without a dispute resolution clause, the parties are in a state of legal uncertainty regarding the forum, procedures, and applicable law to resolve disputes arising from the murabahah contract

2. Research Methods

In compiling this research, the author used a normative juridical approach. The research specifications used in this study are normative. Data collection methodfrom literature studyand data analysis methodsin this thesis research is descriptive data analysis.

3. Results and Discussion

3.1. Legal Status of the Non-Inclusion of a Dispute Resolution Clause in a Murabahah Deed

A dispute resolution clause is a crucial part of a contract, serving as a legal mechanism in the event of a future dispute between the parties. In civil law practice, this clause serves as a safeguard against potential default, differences in interpretation, or violations of the agreement's terms. Therefore, the existence of a dispute resolution clause is strategic because it directly relates to legal protection and legal certainty for the parties..From a legal perspective, the position of the dispute resolution clause is based on the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code (KUHPerdata) which states that "all agreements made legally apply as law for those who make them."

These provisions give the parties the freedom to determine the content, form, and dispute resolution mechanism to be used in the event of a dispute. Therefore, the dispute resolution clause is a legally binding manifestation of the will and agreement of the parties..

Theoretically, the dispute resolution clause in the murabahah deed is an accidentalia element so that its absence does not affect the validity of the contract. However, based on the principle of legal certainty and the principle of prudence in sharia contracts, the inclusion of the clause is important to determine the forum, mechanism, and procedures for dispute resolution in order to ensure the effectiveness of the implementation of the contract and legal protection of the parties. In the perspective of the theory of contract law, a murabahah deed that does not include a dispute resolution clause is basically still valid and binding on the parties, as long as it meets the requirements for a valid agreement as regulated in Article 1320 of the Civil Code, namely the existence of an agreement between the parties, the capacity of the parties, a certain object, a lawful cause.

The result of the decision was a land dispute lawsuit in PegadThe dispute resolution clause is not an essential condition for the birth of an agreement, but is classified as an accidental clause (accidentalia), namely an additional clause made to regulate the mechanism if a dispute arises in the future. Therefore, the absence of this clause does not cause the murabahah deed to be null and void or can be canceled. However, its legal status has several important implications according to the theory of contract law and Islamic economic law. Remains Valid Based on the Principle of Pacta Suntservanda Explains that a valid agreement applies as a law for the parties. An agreement made legally binds the parties as per the law (Article 1338 of the Civil Code). Therefore, the murabahah deed remains binding even though it does not regulate the dispute resolution forum..

An authentic Murabahah deed that does not include a dispute resolution clause remains a strong evidence as long as it meets the valid requirements of the agreement as stipulated in Article 1320 of the Civil Code. An agreement is born from the time there is an offer and acceptance that meet each other regarding the main things agreed upon. Therefore, an agreement cannot be considered valid if the agreement is given due to an error, coercion, or fraud as stipulated in Article 1321 of the Civil Code "There is no valid agreement if the agreement is given due to an error, or obtained by coercion or fraud". The will of the parties must be given freely as a form of reflection of the principle of freedom of contract in civil law.

In the practice of contract law, the element of agreement can be expressed verbally or in writing, either through a private deed or an authentic deed. In fact, agreement can also be seen from the actions of the parties that indicate acceptance of the agreement's contents. Thus, the element of agreement is the primary basis for establishing a legal relationship because without a conformity of wills, an agreement loses its legal legitimacy and can be revoked.

A murabahah deed that does not include a dispute resolution clause in any of the articles of the agreement remains valid and binding even if it does not contain a dispute resolution clause, as long as it meets the requirements for a valid agreement. A dispute clause is not an essential element in the deed; a dispute resolution clause is usually included as an additional clause (accidentalia) for technical certainty in the event of a default or dispute in the future.

The legal status of a murabahah deed that does not include a dispute resolution clause in the murabahah deed does not affect the validity of the deed. This refers to Article 1320 of the Civil Code, namely that the validity of an agreement is determined by 4 subjective and objective conditions and the dispute resolution clause is not a valid condition of the agreement so that the deed remains valid, authentic, and binding on the parties based on the principle of pacta sunt servanda. In addition, according to him, if viewed from notary law, the essence of an authentic deed lies in the formality of its creation, not in the completeness or incompleteness of certain additional clauses, therefore as long as the formal elements of the deed are fulfilled, the murabahah deed remains in place as a perfect authentic evidence. However, in professional practice, the inclusion of a dispute clause is a form of implementing the principle of prudence, legal certainty and preventive protection for the parties.

Thus, it is understandable that the dispute resolution clause in the agreement has important and binding legal standing as an integral part of the agreement. This clause serves not only as a dispute resolution mechanism but also as an instrument for creating legal certainty, legal protection, and effective implementation of the agreement between the parties.

3.2. Legal Consequences of Not Including a Dispute Resolution Clause in a Murabahah Deed

Normatively, a murabahah agreement is part of a sharia contract that is subject not only to general civil law provisions but also to the principles of sharia economic law. Therefore, the existence of a dispute resolution clause is important because it is directly related to the competence of the institution authorized to resolve the dispute. In the context of sharia economics, the authority to resolve disputes has been affirmed in Article 49 letter i of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, which states that Religious Courts have the authority to examine, decide, and resolve sharia economic cases..

From a Sharia legal perspective, dispute resolution in a murabahah contract should reflect the principles of ishlah (peace), justice, and deliberation. This aligns with Sharia values, which prioritize peaceful dispute resolution before resorting to litigation. Therefore, including a dispute resolution clause is crucial in realizing the principles of ta'awun and legal certainty in Sharia transactions..

Furthermore, the omission of a dispute resolution clause can also impact the notary's position as a public official who prepares authentic deeds. Notaries are fundamentally obligated to act carefully and thoroughly and provide legal advice to the parties, as stipulated in the Notary Law. In this context, notaries should ensure that the murabahah deed contains comprehensive provisions, including a dispute resolution mechanism. If such a clause is not included, it can be considered that the deed does not provide optimal legal protection to the parties..

The first difficulty that arises is the unclear dispute resolution forum. In contracts that do not include a dispute resolution clause, debate often arises as to whether the dispute should be resolved through Religious Courts, General Courts, or Sharia arbitration. Although normatively, Sharia economic disputes fall within the absolute jurisdiction of Religious Courts under Article 49 of Law Number 3 of 2006, in practice, defendants often file objections or exceptions regarding their jurisdiction. These objections lengthen the case examination process because the court must first examine the absolute competence aspect before addressing the merits of the case.

This situation directly impacts the delay in the execution of collateral. Until a legally binding court decision is issued, creditors are generally unable to unilaterally execute collateral, particularly against collateral in the form of mortgages on land and buildings. Consequently, banks must await a lengthy court process, which involves litigation, mediation, evidence gathering, and a final and binding decision. Furthermore, the absence of a dispute resolution clause also weakens legal certainty in the implementation of parate execution. In principle, a mortgage grants the creditor the right to sell the collateral through public auction if the debtor defaults. However, in Islamic financing disputes, parate execution is often ineffective if the customer rejects the recognition of default and challenges the validity of the creditor's actions. In such situations, the bank must ultimately file a lawsuit in court to obtain a ruling or decision legitimizing the execution.

In judicial practice, if the murabahah agreement does not specify a dispute resolution forum, the dispute resolution will refer to the applicable positive legal provisions. Because the murabahah agreement falls within the scope of Islamic economics, the dispute absolutely falls under the jurisdiction of the Religious Court. However, if the parties subsequently agree to choose Islamic arbitration, the dispute can be resolved through an institution such as the National Islamic Arbitration Board based on a new agreement between the parties.

Thus, it is understandable that the omission of a dispute resolution clause in an authentic murabahah deed in a sharia financial institution does not cause the deed to lose its validity, but it does raise legal issues related to the certainty of the dispute resolution forum and the effectiveness of legal protection for the parties. Therefore, the inclusion of a dispute resolution clause in a murabahah deed is important to ensure legal certainty, consistent application of sharia principles, and effective dispute resolution in the future.

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In a murabahah contract, the dispute resolution clause plays a crucial role as it determines the forum, mechanism, and procedure for resolution should a dispute arise between the parties. This clause generally includes options for dispute resolution through deliberation, mediation, sharia arbitration, or the courts. However, in practice, murabahah contracts still lack a clear dispute resolution clause. This often leads to legal issues due to the lack of prior agreement regarding the dispute resolution mechanism to be used.

Dispute resolution related to Islamic banking is directly regulated in at least three laws and regulations. These are Article 49 of Law No. 3 of 2006 concerning Religious Courts, Article 55 of Law No. 21 of 2008 concerning Islamic Banking, and Bank Indonesia Regulation (PBI) No. 9.19/PBI/2007 concerning the Implementation of Sharia Principles in Fundraising, Distribution, and Service Activities of Islamic Banks.

And Article 55 of Law No. 21 of 2008 explains that the resolution of disputes related to Islamic banking can be done by choosing one of several paths, namely: firstly, it is carried out by a court within the Religious Court environment, and secondly, outside the Religious Court in the case where the parties have agreed through a dispute resolution agreement other than through the Religious Court, with the note that the dispute resolution must not be contrary to Sharia principles.

4. Conclusion

An authentic murabahah deed that does not include a dispute resolution clause in one of the articles of the agreement remains valid and binding even though it does not contain a dispute resolution clause, as long as it fulfills the valid conditions of the agreement in Article 1320 of the Civil Code. As a public official authorized to draw up authentic deeds, a notary public has a moral, administrative, and professional responsibility to ensure that all essential elements of the agreement are fully and accurately included, including dispute resolution clauses. If the notary public fails to provide an explanation or clearly state such clauses in the murabahah deed, this can have legal consequences, including a decline in the quality of legal protection for the parties and the potential for future disputes. This situation could potentially require the notary public to assume both civil and administrative, material and non-material, liability. Disputes regarding murabahah contracts that do not include a dispute resolution clause can still be resolved through litigation or non-litigation. However, the absence of such a clause leaves the parties without clear guidelines regarding the authorized forum for dispute resolution. In practice, Islamic financing disputes can be resolved through deliberation, mediation, Islamic arbitration, or through the Religious Courts in accordance with statutory provisions. However, without a written agreement regarding the choice of dispute resolution forum, the case resolution process often becomes more complicated because each party can maintain a clear opinion regarding the authority of the chosen dispute resolution institution.

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