



## Analysis of the Application of Sanctions and Ta'widh in the Murabahah Financing System at the BMT Al-Ishlah

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### Abstract:

This research aims to find out the technical implementation of witnesses for wealthy customers who postpone payments at the BMT Syariah Al-Ishlah Cooperative in accordance with the fatwa of the Indonesian Ulema Majlis sharia council, find out how to deal with wealthy customers who are reluctant to pay their obligations and find out what steps are taken. what must be done if something like that happens. We can also find out what losses impact the cooperative's finances. By looking at the level of bad credit from year to year, we want to know the extent to which sharia financial institutions are implementing the fatwa of the national sharia council because the implementation of a fatwa is an instrument that is used as the basis for muamalah (transactions). Descriptive analysis is used as reference material in this research so that we can convey the results of our research by explaining it in written form taken from interviews and data. The research results show that there are sanctions in the form of infaq imposed on customers who default, and sharia financial institutions will provide free time for those who are late in paying their obligations. As well as rescheduling the records at the agreed time, the control system they implement is to approach the community to find out the reasons why they are late in payments, by visiting their homes intensively, apart from that there are also warning letters which are gradually starting. from the warning to the decision to sell the collateral, or by establishing a new contract.

### Keywords:

Sanctions, Ta'wid, Murabahah, DSN MUI.



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## INTRODUCTION

The growth of the sharia banking industry in Indonesia is very fast, this cannot be separated from the role of the government which gives freedom to the community to carry out their respective beliefs including the wheels of the personal economy, and to carry out this the government must facilitate the Islamic community to provide a forum for banking matters. This has long been discussed by figures involved in this study, including Karnaeb A Perwata Atmadja, M. Dawan Raharjo, AM Saefuddin, Mamin Aziz and others (Syafi'i Antonio, 2001). Sharia banking, based on studies, has now developed rapidly, various products have been offered which prioritize Islamic sharia, of course without containing madhorat, ghoror and usury so that people can choose what products are suitable for them. People can also choose as customers to act as financiers or entrepreneurs. The development of sharia financial institutions itself is supported by one of the products that is in great demand by the public, namely murabahah. Murabahah is the financing product most often provided by Sharia Financial Institutions (LKS) in collaboration with customers.

Murabahah is the purchase of goods with deferred payment, while murabahah financing is financing provided to customers in order to meet production needs (Ali Hasan, 1997).

In language, murabahah is a mutual form (meaning: mutual) of the word ribh which means profit, namely an increase in moral value (so it means mutual benefit). According to the terminology of Islamic jurisprudence, the meaning of murabahah is selling at the original price (purchase price) with additional clear profits (Adiwarman A. Karim, 2004). Murabaha payments can be made in installments and in installments. But most customers use the installment payment method. LKS can provide discounts if customers speed up installment payments, or pay off murabahah receivables before they are due. Then the price agreed upon in the murabahah is the selling price, while the purchasing price must be notified. After all the agreements have been made, the murabahah contract has occurred (Adiwarman A. Karim, 2004).

However, not every business will always get the desired profit/profit. There are times when customers (borrowers) experience bankruptcy/loss. If that happens and causes the customer to be unable to pay his murabahah debt to the Sharia Financial Institution as promised, the Sharia Financial Institution should provide relief to the customer in the form of an extension of time and without any ta'wid. (Muhammad Syafi'i Antonio, 2004) Rasulullah SAW recommended that creditors, when they want to ask for debt back from borrowers, should pay attention to the condition of the person in debt. If the person in debt is still having difficulty paying their debt, the creditor must provide relief for them. In essence, the application of ta'wid and sanctions to sharia financial institutions cannot be applied immediately, but there are morals that must be followed by sharia banking and sharia financial institutions. In his book, Sayyid Syabiq gives an explanation when he discusses people who are insolvent (bankrupt), restrictions are indeed placed on people who are bankrupt, if the difficulties they are experiencing are not clear, then they are not detained, restricted and sued by those who owe money, however given the opportunity until he finds ease because of the word of Allah SWT in Surah Al Baqarah verse 280, "And if (the person in debt) is in difficulty, then give him respite until he is free. And giving in charity (some or all of the debt) is better for you, if you only knew."

In this verse, Allah commands us to be patient with people who are in trouble, where that person has not been able to pay off their debts. Therefore, Allah Ta'ala says (which means), "And if (the person in debt) is in difficulty, then give him respite until he has space." This is not like the treatment of ignorant people in the past. The ignorant person said to the person in debt when the repayment deadline arrived: "You must pay off your debt. Otherwise, you will be subject to usury." Giving a grace period to people in difficulty is obligatory. Furthermore, if you want to get rid of your debt, then this is sunnah (recommended). People with good hearts like this (by waiving some or all of their debts) will receive abundant goodness and rewards. Therefore, Allah Ta'ala says (which means), "And giving charity (some or all of the debt), it is better for you, if you know."

Likewise, several hadiths mention the virtues of people who give grace periods to people who have difficulty paying off debts. The Prophet sallallahu 'alaihi wa sallam said, "Whoever gives a grace period for people who are in trouble to pay off their debts or even get rid of their debts, then he will receive Allah's protection."

From one of the friends of the Prophet sallallaahu 'alaihi wa sallam - Abul Yasar -, that the Prophet sallallaahu 'alaihi wa sallam said, God willing "Whoever wants to receive the protection of Allah 'azza wa jalla, let him give a grace period for people who are having difficulties to pay off their debts or even waive their debts."

However, if the customer deliberately delays payment without clear reasons, the Sharia Financial Institution has the right to impose ta'wid on him in accordance with the previously agreed agreement. Ta'wid is a reward as a result of an action and as compensation for their absence. Based on the notes above, we can be sure that the banks/LKS will always monitor the NPL in order to maintain financial stability. They will always encourage their customers to pay on time, even if they are late, there are strategies to handle it, including paying interest on the interest they owe. has existed (accruing interest), or provides sanctions. In connection with this, the author focuses research on sharia banking/LKS, where LKS sharia banking does not charge interest because it is forbidden by Islam based on the Koranic verse in Surah Al Baqorah verse 275.

## **METHOD**

In this research, the method we chose was a descriptive method with a qualitative approach. And qualitative research is research that is intended to understand phenomena about what is experienced by research subjects, for example, behavior, perceptions, motivations, actions, etc. holistically and by means of descriptions in the form of words and language, in a specific context. naturally and by utilizing various natural methods. According to Vrendenbreg, the purpose of descriptive research is to describe complex social realities in such a way that social relevance is achieved (Jacob Vrenbreg, 1990). Qualitative research is a series of activities or processes of filtering data or information of a reasonable nature regarding a problem in certain conditions, aspects or areas in the life of the object (Hadari Nawawi, 1994).

## **RESULTS AND DISCUSSION**

Cooperative financial institutions are one of several financial institutions that are the cornerstones of the Indonesian economy which can reach lower-middle class people in collecting funds or distributing funds so that, it has become commonplace for defaults to occur, as is the case in our research which we conducted at the BMT Al-Ishlah Cooperative, in our data findings which discuss the implementation of fatwas regarding customers who delay payments and ta'wid (compensation).

### **Results**

#### **1. Customers can be subject to sanctions and ta'wid on murobahah financing**

The Sharia Financial Institution, namely the BMT Al-Ishlah Cooperative, will always control the disbursement of funds and to maintain stability, the BMT Al-Ishlah Cooperative applies sanctions to well-off customers who delay payments. The stages for customers to provide sanctions and ta'wid for murobahah financing are as follows:

a. Notification procedure via short message or SMS (shotmessge service)

Customers will be subject to sanctions and ta'wid provided that if customers who do not pay by the payment due date do not notify the BMT Al-Ishlah Cooperative if they cannot pay by the due date, this is based on an interview with the account officer, namely Mr. Martono: "First there is a notification via SMS that it is due, if there is no response we will come, if there is no response we will give a warning letter" And in line with the words of the chairman of the huwaiza board: "Whether the payments go smoothly every month or not. Later, if there are any arrears, the office will report it to the AO, this lady's AO hasn't paid yet, later with the AO, someone will pay, some won't get it until the end of the re-agreement, the re-agreement is because it's been months, one month, two months, three months until six months, finally the approach was to re-contract, meaning..... for 6 million, for example, yes, it means 6 million with a margin, we asked the mother how strong it was.....finally we offered it like that"

This process is what makes differences between sharia financial institutions in handling financing (credit) which in Islamic economics is murobahah or bai'u bitsamanil ajil. In accordance with the fatwa of the national sharia council "The sanctions mentioned in this fatwa are sanctions imposed by sharia financial institutions on customers who are able to pay, but deliberately delay payment." So, customers can be categorized as customers who delay in carrying out their obligations and have bad intentions. Circumstances like this are the basis for determining sanctions, and it is appropriate for the BMT Al-Ishlah Cooperative to do so.

b. Stages of giving a warning letter and charging

At this stage, the AO will charge like what was done last month, and usually some customers pay and some don't, and for those who don't, usually the customer will notify them if they can't pay today, according to the statement from the head of the management the following: "AO, this lady hasn't paid yet, AO will come by later, some have paid, some haven't." In line with AO's words: "If there's no response, we'll come." Even if someone does not pay because there are no funds to pay, the customer will notify the AO that he cannot pay. This is in line with what the customer said: "Yes, it's okay, tell me who took the money, okay, sorry we're late

c. Stages of giving a warning letter

This stage is carried out after a warning via short message (SMS) and has gone through the second stage by visiting the customer's house. If they cannot pay, AO will find out why they cannot pay, in line with the results of the interview with AO. What's the reason ma'am? What's the reason sir? Sometimes we need to be sick, if we understand the right reason, in the future it will be doubled, or what date without reducing what it's called, remembering how to pay. In its benchmarks, the Al-Ishlah BMT Cooperative divides customers in handling customers who delay in paying their obligations and those who are subject to ta'wid, there are two categories, namely characters who are able and unwilling to pay their obligations, this character is used as a reference in implementing sanctions and ta'wid. 'wid because it is based on the fatwa of the national sharia council which reads: "Customers who are able to delay payments and/or do not have the will and good faith to pay their

debts may be subject to sanctions."

In reality, in the field, customers who do not pay their obligations will always be reminded by the BMT Al-Ishlah Cooperative to settle or pay their obligations so that the office knows that things like this are responded to well by the cooperative by giving a pause or extension of the time in paying obligations. by not imposing sanctions on him. And characters like this include customers who are unable to pay at the due date or can pay but cannot pay in full. In the case of giving free time to pay debts because the person in debt cannot pay the whole amount or cannot pay part of it, it is also in line with the fatwa which refers to the Qur'an.

So, this is the achievement of the BMT Al-Ishlah Cooperative in running its cooperative with a sharia system, as in accordance with the fatwa of the national sharia council. In accordance with the fatwa of the National Sharia Council where sanctions are based on the principle of ta'zir, regarding what causes customers not to pay their obligations and here customers are required to provide confirmation if they cannot pay their obligations and their reasons are relevant to reality, namely aiming to make customers more discipline in carrying out their obligations. "Sanctions can be in the form of ta'wid of a sum of money, the amount of which is determined on the basis of an agreement and made when the contract is signed."

And here it is also in line with the National Sharia Council Fatwa NO 48/DSN-MUI/2005 concerning rescheduling murabahah bills. LKS may rescheduling murabahah bills for customers who cannot complete/pay off their financing according to the amount and time agreed upon with the provisions. does not increase the remaining bill amount. Charges for the rescheduling process are real costs. Extension of the payment period must be based on agreement between both parties.

The form used in carrying out sanctions in this LKS is a sanction in the form of an infaq whose amount is not determined and there is no agreement on the nominal amount according to an interview with the chairman of the Al-Ishlah BMT Cooperative. "Sanctions .....iqob .... in 2015 we set iqob for 1 day delay at 5000 ..... This was not effective, it didn't have a deterrent effect. In the end, we evaluated it, yes, now the IQOB is voluntary, if the arrears are 1,2,3,4, up to 6 months, the infaq is up to you, but we are offering it, here is the IQOB in the form of an infaq, how much do you want? "Yesterday it was big because the financing was big, 150 million which had not been paid, 133 million. In the end, he bought his Iqob. The 2 million was voluntary, so the money didn't come into his income, but he used zis because he couldn't, it was part of usury." This is the strategy of the BMT Al-Ishlah Cooperative in determining sanctions, on the basis of

## **2. Sanction and ta'wid control mechanisms for murobahah financing**

In controlling, the BMT Al-Ishlah Cooperative will always control its customers, especially those who are late in payments, so here there are several characteristics for customers who delay in making payments.

- a. Customers who are truly incapacitated are not because of their wasteful behavior or being unable to manage finances or avoiding the obligation to pay and they do not want to try to

pay using funds either from selling existing goods or borrowing from other people.

- b. Customers who procrastinate postpone it because they behave badly in managing money, such as being wasteful, unable to manage finances or avoiding the obligation to pay and they don't want to try to pay using funds either from selling existing goods or borrowing from other people.

## Discussion

### 1. Analysis of the Application of Sanctions and Ta'widh in the Murabahah Financing System at the BMT Al-Ishlah Cooperative Based on National Sharia Council Fatwa No. 17 and No. 43

In terms of running the finances of the BMT Al-Ishlah cooperative, based on the results of research that has been carried out and the reality in the field, the relevance between events and the national sharia board's fatwa is a reference that must be implemented by sharia financial institutions in terms of handling customers who delay in pay their obligations and in terms of ta'wid towards customers who cannot pay off their obligations, there is a common ground that is in line with what has been issued by the national sharia council, namely in terms of implementing witnesses, in this case the sanctions carried out by the BMT Al-Ishlah Cooperative are carried out. if the customer is able to pay his obligations but he delays the payment. In practice, customers who have been given SMS warnings ignore or do not provide confirmation of the BMT Al-Ishlah Cooperative, this is in accordance with the national sharia council fatwa number 17. Number 1.2 which decides that the sanctions mentioned in this fatwa are sanctions imposed by LKS to customers who are able to pay but deliberately delay payment.

Customers who are not/haven't been able to pay and/or don't pay due to force majeure may not be subject to witnesses. In practice, the BMT Al-Ishlah Cooperative applies sanctions to customers who delay in paying their obligations, but here the cooperative also sometimes provides relief to these customers by not giving sanctions, so that it is also in accordance with what has been decided by the national sharia council which is the institution Sharia finance can provide relief. Different from the form of funds determined by the BMT Al-Ishlah Cooperative in the imposition of ta'wid, funds originating from compensation will be included in the cooperative's income fund because these funds are halal funds, not usury, in line with the DSN MUI fatwa which states that compensation Losses received in transactions at sharia financial institutions can be recognized as rights (income) for the party who receives them, in this case the BMT Al-Ishlah Cooperative because it is a real loss.

In terms of the nominal amount of sanctions, the BMT Al-Ishlah Cooperative applies sanctions in the form of voluntary donations and these funds are not included in the contract because they are voluntary and the fatwa is not obligatory but is permissible so that in practice, the BMT Al-Ishlah Cooperative does not impose nominal amounts and that is according to researchers are legitimate because the fatwa says it is permissible.

## **2. The relevance of justification in terms of witnessing and ta'wid**

The Indonesian Ulema Council is an institution that is used as a reference in the implementation of worship, muamalah and others. In terms of economics, the Fatwa of the National Sharia Council is part of it, so in terms of sharia finance it must be compatible with the fatwa. The compatibility is:

- a. The BMT Al-Ishlah Cooperative applies sanctions in the form of infaq (funds) where these funds are included in the cooperative's income.
- b. Customers who are subject to sanctions are customers who delay paying their obligations.
- c. Sanctions are based on the principle of ta'zir, which aims to make customers more disciplined in carrying out their obligations.
- d. Funds originating from ta'wid are designated as social funds.
- e. Customers who are unable to pay their obligations due to force majeure are not subject to ta'wid by the BMT Al-Ishlah Cooperative.

## **3. Incompatibility of the application of infaq with the fatwa of the national sharia council**

Based on the reality that researchers found that there was an infaq at the beginning, in this case there would be an ambiguous meaning in the infaq, firstly the sanctions in the form of infaq, and the infaq which was imposed at the beginning of the financing. If the infaq made at the beginning of the financing is interpreted as an infaq (sanction) then a fatal error will occur here because the infaq which is considered a sanction should be made after the customer (borrower) experiences default. Sanctions can be in the form of ta'wid of a sum of money, the amount of which is determined on the basis of an agreement and made when the contract is signed.

In this case, the BMT Al-Ishlah Cooperative did not enter into an agreement that was made at the time of the contract, so that the effectiveness intended by the national sharia council was not achieved, because if an agreement was made the cooperative could be more firm and the sanctions applied by the BMT Al-Ishlah Cooperative did not follow the rules. DSN, however, does not injure the sale and purchase because the application of sanctions has a legal status of jaiz (permissible) in accordance with the DSN Fatwa "Customers who are able to delay payment and/or do not have good faith in paying their debts may be subject to sanctions".

What should be done by the BMT Al-Ishlah Cooperative is to enter into an agreement at the beginning of the contract when the contract is signed, this will be in line with the national sharia council fatwa No. 17 concerning sanctions applied to customers who delay in paying their obligations (customer debt) point to 5 "Sanctions can be in the form of ta'wid of a sum of money, the amount of which is determined on the basis of the agreement made at the time of the contract.

## **4. Suitability of implementing ta'wid**

- a. Compensation (ta'wid) may only be imposed on parties who intentionally or through negligence do something that deviates from the terms of the contract and causes losses to the other party.
- b. Losses that can be subject to ta'wid as intended in DSN 43 are real losses that can be

calculated clearly.

- c. The losses referred to in DSN 43 paragraph 2 are the real costs incurred in collecting rights that should have been paid.
- d. The amount of compensation (ta'wid) is in accordance with the value of the real loss (real loss) that is definitely experienced (fixed cost) in the transaction and not the loss that is expected to occur (potential loss) due to missed opportunities (opportunity loss) or other furshah al-dhaia'ah.

In findings related to ta'wid, namely if a customer is no longer able to pay his obligations and there are continuous defaults so that it is no longer possible to wait to pay his obligations, the solution is to sell collateral to pay off his debts.

## CONCLUSION

Based on the results of the research conducted by researchers, the following conclusions can be drawn:

1. Applying sanctions to customers who delay, the BMT Al-Ishlah Cooperative applies sanctions in the form of infaq, the amount of which is voluntary so that in implementing sanctions, the BMT Al-Ishlah Cooperative does not immediately provide sanctions for customers who are late in paying, but the BMT Al-Ishlah Cooperative will first give a warning via SMS and warning letter and continue by checking directly in the field whether it is appropriate or not. Customers will be subject to sanctions if the customer has been given a warning via SMS and the customer does not inform them that they cannot pay their obligations on time. There are up-front donations which will lead to usury, so here there must be an explanation of what is meant by up-front donations because this is not feasible for LKS to do because the donations are categorized as income or as social funds. It can be said that in the murobahah studied there were several fatwas applied relating to sanctions, namely the DSN NO 17 fatwa, namely the fatwa regarding sanctions for well-off customers who delay in paying their obligations and the fatwa regarding rescheduling in billing.
2. There is a provision of time for customers who do not pay at the due date, and there is a re-contract if the customer is unable to pay the obligation and does not increase the nominal amount of the shortfall and is accompanied by a control mechanism that refers to the sharia mechanism. In terms of compensation, it is usually applied to customers whose murobahah financing is not running smoothly and there is no ability to pay off the entire debt or part of it, so the BMT Al-Ishlah Cooperative will sell the collateral to pay off the shortfall and if there is an excess from the sale of the goods the funds will be returned to customers. Some of the concepts that have been regulated by the Fatwa of the National Sharia Council have been implemented by the BMT Al-Ishlah Cooperative, and sharia principles have not been violated, however there are things that need to be considered in the implementation of disbursement and sanctions in the form of donations carried out by the BMT Al Cooperative -Ishlah which is implemented after disbursement which has the potential to become usurious assets.

The control approach carried out by the BMT Al-Ishlah Cooperative is an important note, namely reminding customers by sending SMS when they are due.

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