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RESEARCH ARTICLE

RECONSTRUCTION OF MURABAHA SALE AND PURCHASE AGREEMENT WITH WAKALAH IN ISLAMIC BANK BASED ON JUSTICE VALUE

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Abstract

In general, Murabaha transactions in Islamic banks in Indonesia are by Wakala, i.e. the Sharia Bank appoints to the customer to buy the goods to be sold. When the bank appoints the customers, it is suspected that there are many violations of sharia lawAs the customers who become the representatives generally do not understand the requirements and principles of Murabaha and wakala contract, many violations might occur so that the wakala given to the customer can be invalid. If so, then subsequently, the Murabaha contractbetween bank and customer may also be invalidThus, according to the presumption, there is a gap between what should be (das Sollen) and the existing social facts (das Sein).Based on the above reasons, the researcheris interested in conducting research with the main problem are what the weaknesses in the implementation of a Murabaha sale agreement with Wakalah in Islamic Banks in Indonesia currently and how to reconstruct the sale and purchase of Murabaha with Wakalah in Islamic banks based on Justice value. The study was done using the constructivism paradigm and the type of research is a qualitative study with a socio-legal approach.Research shows that the weaknesses are that The bank handing over cash to customers to buy goods to third parties or suppliers in cash causes customers to become bank representatives often purchase goods to third parties not in accordance with what is intended by the bank as the party who appoints; and customers who become bank representatives commit tyranny, or injustice by consuming property that is not their right, do not return the excess money to the bank if the goods purchased are below the agreed price. Reconstruction carried out is through Murabaha contract with non-cash wakāla, i.e customers are only a bank representative to buy goods, the bank does not hand over money to the customer, but the price of goods is directly paid by the bank through the supplier's account.

Introduction:-

Law is a part of society. Even the law can also be seen as a simplification of the realization of circumstances, incidents and events that take place in society.

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The law existence is demanded to respond to all problems and various community interests. To achieve these objectives, legal certainty is needed so that the basic needs of welfare, prosperity and justice are met. This istoensure that the law is not in a vacuum.In addition, EsmiWarassih saidthat :

If the law does not want to be said as lagging behind the development of its society, then the law is demanded to respond to all the intricacies of the social life that surrounds it. That means, the role of law is becoming increasingly important in dealing with social problems that arise.

According to Van Apeldoorn, the purpose of law is to regulate public order in a peaceful and justice manner. Peace among humans is maintained by law by protecting certain human interests, honor, independence, life, property and so on against those who harm them.

Aristotle said: Law must be obeyed for the sake of justice. Justice as general virtue (natural law), and justice as special moral virtue. Justice determines how good therelationships between human beings including justice in the distribution of positions and public property, justice in sale and purchase transactions, justice in criminal law, justice in private law.For Socrates, according to human nature, law is the order of virtue. An order that emphasizes virtue and justice. The law is not a rule made to perpetuate the desires of strong people, nor itis a rule to fulfill the instincts of self-hedonism. Law is an objective order to achieve general virtue and justice.Therefore, the word justice, of course, is also used in a legal sense, in terms of compatibility with positive law, especially, compatibility with law.

Speaking about law, Indonesia, with the recognition of the concept of the rule of law as contained in the constitution of the Republic of Indonesia, in article 1 number 3 of the 1945 Constitution, it isstated explicitly that the Republic of Indonesia is a state of law, indeedithas juridical consequences which must be accounted for in the practice of community, nation and state life.As a consequence, in state of law of Indonesia in all aspects, there must be a law governing it. Likewise, in terms of economics, because economic development which is part of the development of the social life of society as a whole, it cannot be separated from its relationship with legal issues, the legal and economic ties are one of the classic ties between law and social life.

In everyday life, economics is the wheel of life, both in individual and social life. Islam requires its people to practice the teachings of Islam comprehensively in all aspects of life, therefore as devout Muslims, the various business activities must be based on Islamic financial transactions.Moreover, since Muslims must involve in economy according to sharia economics, then there must be a law governing sharia economics in Indonesia, as a consequence that the state guarantees the independence of each population to embrace their respective religions, and to worship according to their religion and belief.

As a consequence of the state of law to uphold the Islamic economy, the Indonesian Government on November 1, 1991 issued a permit/approved the establishment of Bank Muamalat Indonesia, as the first commercial bank in Indonesia to implement Islamic Sharia principles in carrying out its operations, initiated by the Indonesian Ulema Council (MUI).

The development of Islamic banking in the reform era was marked by the approval of Law No. 10 of 1998 on Banking. The law is regulated in detail based on the legal basis and types of businesses that can be operated and implemented by Sharia Banks. Law No. 10 of 1998 also provides direction for conventional banks to open sharia branches or even convert themselves totally into sharia banks.

In an effort to improve Islamic banking institutions, in 2008, the government issued Law No. 21 of 2008 on Islamic Banking. This law is considered as a fresh air, as well as a form of government seriousness in efforts to support the growth of Islamic banking.

Islamic banks are banks that carry out their business activities based on sharia principles. The sharia principle is the principle of Islamic law in banking activities based on fatwa issued by institutions that have the authority to determine fatwa in the field of sharia.Sharia principles that must be obeyed by Islamic banks, according to the Sharia Banking Law are sharia principles that have been indicted by the National Sharia Council - Indonesian Ulema Council.

Products and services offered by Islamic banks include: fund raising, fund distribution and services. The most favorite product according to the customers is the distribution of funds in the form of Murabahacontract.

Murabahacontract is known as sale and purchase in which the profits have been determined from the beginning.The seller must tell the price of the product he buys, and also determine the profit level.

Sharia banks generally do not provide goods to be purchased by customers, but customers request/ask the Sharia Bank to buy the goods they will be bought. Therefore, in classical literature it is referred to as sale and purchase Murabahalil-amir bi asy-syira'.

However, in practice the general Islamic banks in Indonesia do not buy goods ordered by customers, but Islamic bank appoints these customers to buy goods to be bought to third parties (sellers). Therefore, in general, Murabaha transactions in Islamic banks in Indonesia are by wakala, i.e. the Sharia Bank appoints to the customer to buy the goods to be sold. When the bank appoints the customers, it is suspected that there are many violations of sharia law.As the customers who become the representatives generally do not understand the requirements and principles of Murabaha and wakalacontract, many violations might occur so that the wakala given to the customer can be invalid. If so, then subsequently, the Murabahacontractbetween bank and customer may also be invalid.

Thus, according to the presumption, there is a gap between what should be (das Sollen) and the existing social facts (das Sein).

Based on the above reasons, the researcher is interested in conducting research with the main problem as follows:

1. What are the weaknesses in the implementation of a Murabahah sale agreement with Wakalah in Islamic Banks in Indonesia currently?
2. How to reconstruct the sale and purchase of Murabahah with Wakalah in Islamic banks based on Justice value?

Method of Research:-

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge. Paradigm also looked at the science of social as an analysis of systematic against Socially Meaningful Action through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research . Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of Socio-Legal , which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation .

As for the source of research used in this study are :

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study , researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion:-

Weaknesses In The Implementation Of A Murabahah Sale Agreement With Wakalah In Islamic Banks In Indonesia Currently

Murabaha is a sale and purchase agreement between a bank and a customer. Islamic banks buy goods needed by customers and then sell them to the customers concerned at the acquisition price plus the profit margin agreed between the Islamic bank and the customer.

Murabaha, in Islamic connotation basically means sales. One thing that distinguishes it from other sales methods is that the seller in Murabaha clearly tells the buyer what the principal value of the goods is and how much profit they are charged at that value. These benefits can be either lump sum or percentage based.

If someone sells a commodity / item at a lump sum price without telling him what the principal value is, then it is not considered Murabaha, even though he also takes advantage of the sale. This sale is called musawamah. By borrowing the theory of Lawrence Friedman, the weakness of the implementation of the muharabah sale agreement can be seen from 3 types of aspects as follows:

Substance Weakness

The substance of sharia banking legal system is the laws and regulations in the field of sharia banking.So the substantial weaknesses in the execution of Murabahacontract with wakāla in Sharia Banks are weaknesses in the execution of Murabahacontracts with wakāla that violates the laws and regulations in the field of Islamic banking, which include the Law of the Republic of Indonesia Number 21 of 2008 on Sharia Banking, Financial Services Authority Regulation Number 31/POJK.05/2014 on Sharia Business Financing, and fatwa of the National Sharia Council - Indonesian Ulema Council (DSN-MUI).

Among the substantial weaknesses that occur in the execution of Murabahacontract with wakāla in Islamic Banks are:

1. The bank and customer enter into a Murabahacontract when there is no object of the contract or goods being traded. In other words, the Murabaha contract is carried out before in principle the goods become the property of the bank as the seller.
2. Customers as bank representatives often do not carry out their duties in accordance with what is agreed by both parties such as:
3. Some customers do not use bank's money to buy goods that have been agreed between the bank and customer. For example, funds provided by banks to buy building materials are not used to buy building materials, but rather to buy land.
4. Some customers use money only part of what is agreed between the bank and customer, for example; (a) money that is supposed to buy goods given by the bank is only used half and the other half is saved, (b) money that is supposed to buy building materials isused only partially and the half isto pay workers.

Structure weakness

In the Islamic banking system, there is a legal structure, including the following: Sharia Bank financial institutions which include: Board of Commissioners, Directors, Employees, and Sharia Supervisory Board. So the structural weaknesses in the execution of Murabahacontract with wakāla in Sharia Banks today are weaknesses in the execution of Murabahacontract with wakāla which is performed or not performed by the Board of Commissioners, directors, employees or the Sharia Supervisory Board, among others are:

1. When the bank gives the authority or authorizes the customer to buy the goods to be purchased to a third party or supplier, the bank hands over the money to the customer at the price of the goods to be purchased by the customer to a third party or supplier, in other words, the bank gives wakālato customers to buy goods to third parties in cash.
2. Banks as muwakkil often do not reprimand or call customers who do not report to the bank after carrying out their duties as bank representatives, so the contract is often not conducted.
3. Discrepancy in Murabahacontract documents with wakālais found, there is a possibility that employees do not make specific documents for Murabahacontract, but only copy and paste from other contracts.

Culture Weakness

Legal culture involves culture which is a human attitude towards law and the legal system. No matter how well the legal structure is structured to carry out the established legal rules and no matter how good the quality of the legal substance that is made, without the support of legal culture by people involved in the system and society, law enforcement will not run effectively. In short, legal culture is habits, opinions, ways of thinking and ways of acting, both from law enforcers and citizens. In the context of Islamic banking, what is often carriedout by Sharia Bank

customers is a legal culture. So the cultural weaknesses in the execution of Murabahacontract with wakāla in Sharia Bank are the weaknesses in the execution of Murabahacontract with wakāla by customers, among others are:

1. After customers accept the job as a bank representative to buy goods to be purchased, and they receive cash from the bank to pay for the goods, customers often feel that the money is their property, not the bank's, so customers often use the money as they want.
2. When customers have performed their duties as representatives, most customers do not report the results of their purchases to the bank, so the Murabahacontact is not carried out;
3. When the goods are cheaper than the amount of money given by the bank, the customers generally do not return the remaining money to the bank; but they take the remaining money that should be returned to the bank as the party who appoints.

Reconstruction of The Sale And Purchase Of Murabahah With Wakalah In Islamic Banks Based On Justice Value

On the execution of Murabaha contract with wakālain Sharia Bank as mentioned above, there are several things that need to be analyzed: (1) bank gives wakālaletter to the customer for the purchase of goods, (2) bank transfers the funds to the customer's account at the price of the goods to be purchased by the customer to the supplier; (3) bank as seller and customer as buyer, most carry out Murabahacontract before the goods are traded by signing a deed of Murabahacontract.

When a customer comes to a Sharia Bank to buy goods, at that time the bank does not yet have the goods to be sold, therefore, the bank gives a letter of authority or appoints the customer to buy the goods to be traded between the bank and the customer to a third party or supplier.

Wakāla is allowed in any case that may be represented, provided that it meets the requirements and principlesofwakāla.

A muwakkil gives an amount of money to a representative to buy something for a third party in cash and that is legal, as long as it is not the cause of illegality of wakala.

Murabahacontract made by banks and customers before any goods become the object of the agreement as mentioned above are not yet valid, because they have not fulfilled the requirements and principlesof sale and purchase agreement, where there is no object of sale and purchase (goods), or in principle the goods do not belong to the bank as the seller. This contradicts the DSN-MUI fatwa on Murabaha, which states: If the bank wants to appoint the customers to buy goods from third parties, the Murabaha contract must be carriedout after the goods, in principle, become the property of the bank.

After conducting in-depth research, it turns out that in the execution of Murabahacontract with wakālain Sharia Bank, many weaknesses that could potentially be the cause of the illegality of Murabahacontract and wakāla contract, as well as the loss of justice values in the transaction are found.

The first weakness is when banks and customers mostly make a sale and purchase agreement when the goods has not been exist yet, i.e. before the goods in principle become the property of the bank.

The sale and purchase agreement, which is conducted when the goods has not been existed yet, does not meet requirements and principlesof the sale and purchase agreement, so the sale and purchase agreement is canceled.

The second weakness is when many customersas bank representatives on the first purchase, do not carry out their duties in accordance with the agreement between the bank as muwakkiland the customer as wakil.

If customers as the representative do not carry out what has been determined by the bank as muwakkil, then the customers as the representative are considered to have bought the goods for themselves.

If the goods purchased by the wakil become the property of wakil (the customer), not the bankwho appoints, then when the Murabaha contract is made, the contract is invalid since it does not meet the requirements and principles of agreement which are seller and buyer.

The third weakness is when the customers generally do not return the rest of the bank's money given to customers when the price of goods is lower than agreed or money is not used all to buy goods.

The remaining purchase money is the bank's money, so in this case, the customers commit wrongdoing or injustice, because they misused the bank's property in a wrong way.

"Consuming wealth in a wrong way is haram".
If examined carefully, the weaknesses in the execution of Murabahacontract with wakālain Sharia Bank starts from the existence of: (1) sale and purchase agreements which are mostly carried out before the existence of one of the sale and purchase objects which is goods; (2) customers as bank representatives often do not carry out their purchasing duties in accordance with those determined by the bank; and (3) customers generally do not return the rest of the money that should belong to the bank, it is because the bank appoints the customers as representative to buy goods to third parties by handing over the price of the goods to be purchased. In other words, since the bank hands over money to the customers, the contract is forcedly bind to the customer even though there are no goods. By handing money to the customers, they willingly buy something they want without regard to the terms agreed between them and the bank. And with the bank handing over the money to the customers, the customers can illegally take the money left over from the sale and purchase that should belong to the bank.

Therefore, the main cause of the weak execution of Murabahacontract with wakāla in Sharia Bank is because when the bank appointsthe customers to buy goods to a third party or supplier, the bank hands over money to the customers to buy goods to the supplier in cash. So, the execution of the Murabahacontract with wakālain cash becomes the cause, the driving force and the support of the Murabahacontract with wakālathat deviates from the provisions of Islamic economic law.

There is an Islamic jurisprudence that says:
"Something that leads to the forbidden is haram".
If the reconstruction is associated with a concept or ideas regarding the Murabahacontract law in Sharia Bank, it means that the reconstruction of law is interpreted as a process to rebuild or re-arrange ideas or concepts about the law in relation to the Murabahacontract with wakālain Sharia Bank.

After researching and analyzing the execution of Murabaha contract with wakālain Sharia Bank, the findings are as follows:
1. When the bank gives the authority or time to the customer to buy goods on behalf of the bank, to a third party or supplier, the bank as a muwakkilgives the money to the customer as a representative for the price of goods to be purchased, with the aim that customers buy goods to suppliers in cash.
2. To bind the bank's money handed over to the customer, the bank as the seller along with the customer as the buyer mostly enters into a Murabahacontract even though the goods being traded have notyet existed yet.
3. Many customers who become bank representatives, do not carry out their duties as agreed between bank and customer.
4. Customers generally do not return the remaining bank's money if the price of goods is lower than the money received by the customers, so that they commits wrongdoing or injustice in the transaction.

Fatwa of the National Sharia Council - Indonesian Ulema Council (DSN-MUI) on Murabaha in General Provisions number 9 states: If the bank wants to appoint the customers to buy goods from third parties, the Murabaha contract must be carriedout after the goods, in principle belongs to the bank.

The compilation of Sharia Economic Laws state: (1) If the person receiving the power of attorney violates the contract, the authorizeris entitled to refuse or accept the stated act; (2) Although the goods purchased as mentioned in paragraph (1) benefit the authorizer, the recipient of the power of attorney is deemed to have bought the goods for themselves.

Islamic jurisprudence states:
"Consuming wealth in a wrong way is haram".
In doing muamalat (transaction), Muslims must fulfill the principle of justice, there must be no elements of tyranny or injustice, then the sale and purchase agreement must not contain gharar, maisir, and riba (usury).

There seems to be a gap between what should be (das Sollen) and the existing social facts (das Sein). Therefore, it must be reconstructed so that the execution of Murabaha contract with wakāla in Sharia Bank is legal and based on justice value. Therefore the Reconstruction that are carried out is through Murabaha contract with non-cash wakāla, i.e customers are only a bank representative to buy goods, the bank does not hand over money to the customer, but the price of goods is directly paid by the bank through the supplier's account.

With this the customers as a bank representative to buy goods to third parties, will carry out their duties properly and it is impossible to commit injustice by robbing bank's money in a wrong way, and the Murabahacontract with wakala can only be carriedoutafter the goods in principle become the property of the bank.

After the Murabahacontract with wakalais reconstructed, from Murabaha contract with cash wakala to Murabahacontract with non-cash wakala, then "Murabaha Contract with Wakala in Sharia Bank that is based on Justice Value".

Conclusion:-

The bank handing over cash to customers to buy goods to third parties or suppliers in cash also causes customers to become bank representatives often purchase goods to third parties not in accordance with what is intended by the bank as the party who appoints; and customers who become bank representatives commit tyranny, or injustice by consuming property that is not their right, do not return the excess money to the bank if the goods purchased are below the agreed price.

Reconstruction carried out is through Murabaha contract with non-cash wakāla, i.e customers are only a bank representative to buy goods, the bank does not hand over money to the customer, but the price of goods is directly paid by the bank through the supplier's account.

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