

LEGAL CONSEQUENCES OF AGREEMENT IN ISLAMIC ECONOMIC BUSINESS

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Abstract

The purpose of this article is to find out The Essence of Akad in Islamic Economic Business and the legal consequences in applying the sanctions for sharia economic disputes against parties who are in default. The approach method uses normative juridical, the results of research found include economic business engagement must be oriented to the principles of justice, partnership and transparency and does not contain gharar (fraud), maysir (gambling), usury, zhulum (persecution), riswah (bribery), haram and immoral goods, The legal consequences of applying sanctions in cases of sharia economic disputes against parties who default must be considered in the application of sanctions appropriately, whether the application of sanctions is cumulative or alternative sanctions from various kinds of sanctions in the form of paying compensation, cancellation contract, transfer of risk, fines, pay court fees.

Keyword: Agreement; Legal Consequences; Sharia Economic Business.

A. INTRODUCTION

Indonesia is a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia by upholding the moral values, ethics, morals and noble personality of the nation, having faith and fearing God Almighty, and respecting diversity in the life of society, nation and state. as well as protecting the dignity of every citizen.¹

In Realizing the people's welfare, the economic aspect of the country Becomes very important to be organized and strived. The economic aspect is very supportive of the progress of a nation.² The existence of the Sharia Economy or Islamic economy that is developing in Indonesia today, of course, in growth will support the existence of national economic stability based on economic democracy.

One form of exploring the potential and form of community contribution in the national economy is the reality of developing an economic system based on Islamic or sharia values by incorporating its principles into the national legal system.

1 Yuliantoro, Penerapan Unsur Kealpaan Dalam Proses Penyidikan Tindak Pidana Kecelakaan Lalu Lintas, *Jurnal Hukum Unissula*, Vol.35 No.1 (2019), Page.36-51

2 Bambang Suprabowo, Anis Mashdurohatun and Eman Suparman, The Inhibiting Factors on Legal Protection for Recipients of Fiduciary Warranties with Guaranteed Inventory Objects, South East Asian, *Journal of Contemporary Business, Economics and Law*, Vol. 13, Issue 4 (August), 2017, Page.117.

Initially, sharia principles were present as an option as well as a solution for Muslims who want to avoid the practice of conventional banks or financial institutions that use the Ribawi system, but in the end they can also be an option for other than Muslims.³ Sharia principles are based on the values of justice, benefit, balance and universality and rahmatan lil-alamin. These values are of course applied in the regulation of the sharia economic legal system including Islamic banking.

Shari'ah economic matters are the absolute authority of the religious court. Syari'ah economy is a business or activity carried out by individuals, groups of people, business entities that are legal entities or not legal entities in order to fulfill commercial and non-commercial needs according to the principles of syari'ah. A case becomes a matter of shari'ah economics, if it is based on shari'ah principles.⁴

In the event of a dispute over property or other civil rights in cases as referred to in Article 49, specifically regarding the object that becomes the dispute, it must be decided first by the Court in the General Court. Article 49 is the absolute authority (absolute) of the Religious Courts which includes cases: marriage, inheritance, grants, waqf, zakat, infaq, shodaqoh, and shari'ah economics.⁵ In the elucidation of Article 49 of Law Number 3 of 2006 it is stated that the Religious Courts in resolving disputes between Muslims are not only limited to the field of syari'ah banking, but also in other areas of sharia economics.

Islamic economic business can also be called Islamic economic business. Islamic economics has actually emerged since Islam was born. Islamic economics is not a separate discipline, but an integral part of Islam. As a complete teaching of life, Islam provides guidance for all human activities, including the economy. Various Muslim economists provide a definition of Islamic economics that has a fare, but basically contains the same meaning. In essence, Islamic economics is a branch of science that seeks to view, analyze, and ultimately solve economic problems in Islamic ways. What is meant by Islamic methods are methods that are based on the teachings of the Islamic religion, namely the Al Qur'an and the Sunnah of the Prophet Muhammad.⁶

The pressure point of shari'ah economics provides views and solutions to various economic problems faced by humans in general, also related to the values derived from the teachings of Islam itself, including the birth of a contract in a shari'ah economic business which is the main guide in doing business. syari'ah economy, if the agreed contract has been realized, then there is a breach of promise or a breach of promise, then the

3 Arief Budiono, Penerapan Prinsip Syariah Pada Lembaga Keuangan Syariah, *Jurnal Law and Justice*, Vol. 2 No. 1 April 2017, Page.54-65

4 Achmad Irwan Hamzani, *Asas-asas Hukum Islam Teori dan Implementasinya dalam Perkembangan Hukum di Indonesia*, Thafa Media, Cet. I, Yogyakarta, 2018, Page.144

5 Sumadi Matrais, Kemandirian Peradilan Agama Dalam Perspektif Undang-Undang Peradilan Agama, *Ius Quia Iustum*, No. 1 Vol 15 Januari 2008, Page.121-144

6 Pusat Pengkajian dan Pengembangan Ekonomi Islam (P3EI), UII Yogyakarta Bekerja sama dengan Bank Indonesia, *Ekonomi Islam*, Raja Grafindo Persada, Ed. 1, Jakarta, 2008, Page. 16- 17.

person or legal entity that default will bear the legal consequences so that there is the application of sanctions as a result of the law.

The value system is essentially something that will give meaning to human life in every role it performs. The system is built in a complete series that are very closely intertwined with one another. This value system includes a world view and morals that influence, guide and help humans realize just and prosperous human goals.⁷

The purpose of writing is to find out the sharia economic business engagement and the legal consequences in applying the sanctions for sharia economic disputes against parties who are in default.

B. RESEARCH METHODS

The approach method used is normative juridical, namely legal research that places law as a norm system building. The norm system in question is about the principles, norms, rules of legislation and doctrine. Normative juridical research examines the rule of law as a system building related to certain legal events. The type of data used in this research is secondary data which consists of primary legal materials, secondary legal materials, and tertiary law materials obtained from books, literature, papers, laws and regulations, and other data sources.

C. RESULTS AND DISCUSSION

1. The Essence of Agreement in Islamic Economic Business.

Recent developments, especially after the reformation, the Islamic economy is gaining momentum to develop. The strengthening of the issue of sharia, can be called a form of new awareness for the Indonesian Muslim community to understand sharia, where sharia is no longer interpreted as something abstract normative, but something that is real-empirical in life.⁸

The development of Islamic business (syari'ah) is now booming and mushrooming in Indonesia. One of the drivers is due to the awareness of the majority Muslim community to use and utilize products (goods and services) that are *halāl* and *ṭayyib*. So the role of producers or shari'ah-based business companies is a promising alternative. On the one hand, these developments should be grateful, but on the other hand, we also need to be aware of. Because it is not impossible that the various variations of syari'ah products that have sprung up today are not more than just 'changing names'. That is, paradigmatically, a company may remain based on the secular-capitalistic business concept, but be

7 Lili Puspita Sari, Pemikiran Ekonomi Islam: Analisis Pemikiran M.Yasir Nasution Tentang Etika Dalam Bisnis Perbankan Islam, *Jurnal Perspektif Ekonomi Darussalam*, Volume 2 Nomor 2, September 2016, Page.108-124

8 Muhammad Ramadhan, Politik Hukum Perbankan Syariah di Indonesia, *Miqot*, Vol. XL No. 2 Juli-Desember 2016, Page.267-287

polished with the label of syari'ah or rather the label of Islamic ethics, such as: honest, trustworthy and the like.⁹

The objectives in a business or business activity in Shari'ah economics describe individual behavior that is guided by Islamic teachings, starting from determining life goals, ways of viewing and analyzing economic problems, as well as the principles and values that must be held to achieve these goals. Unlike the Islamic economy with conventional economics. Islamic economics covers human economic behavior that is conscious and tries to achieve mashlahah or falah, which is known as *homo Islamicus* or Islamic man.¹⁰

The concept of shari'ah economic rationality is an argument that must be built, as long as it complies with existing logical rules, and therefore makes sense, then in this case it can be considered as part of the expression of rationality. Islamic economic rationality is generally built on the basis of axioms derived from Islam. Even so, some of these axioms are general and universal rules that apply to the universality of Islam, in general the concept of Islamic economic rationality

The scope of the sharia economic business includes Muslim communities or the Muslim State itself, meaning that the economic behavior of the people or Muslim countries in which Islamic values can be applied. In other words, the emphasis of Islamic economics is how Islam provides views and solutions to various economic problems faced by humans in general, also related to the values derived from the teachings of Islam itself, including the birth of a contract in a shari'ah economic business. which is the main guideline in doing sharia economic business.

Ideally, Sharia Financial Institutions will not be possible to finance businesses which contain things that are prohibited; projects that cause harm to the wider community, such as gambling, liquor, drug trafficking, illegal firearms and others, as well as projects that can harm the syiar Islam must be avoided. Therefore, in the organizational structure of Islamic financial institutions, there must be a Sharia Supervisory Board that oversees the products and operations of the institution.

Islamic economics is an implementation of an Islamic ethical system in economic activities aimed at the development of moral society. In this version, Islamic economics does not merely provide legal justification for existing economic phenomena, but rather emphasizes the importance of the Islamic spirit in every economic activity. On the other hand, Islamic economics is a representation of the economic behavior of Muslims to implement Islamic teachings in a kaffah manner. In this case the Islamic economy is an interpretation and practice carried out by Muslims who avoid mistakes and weaknesses. In economic analysis, at least it is carried out in several aspects, namely,

9 Choirul Huda, Model Pengelolaan Bisnis Syari'ah: Studi Kasus Lembaga Pengembangan Usaha Yayasan Badan Wakaf Sultan Agung Semarang, *Walisongo: Jurnal Penelitian Sosial Keagamaan*, Vol. 24 No. 1, Mei 2016, Page.165-190

10 *Ibid*, Page.19

among others: basic Islamic norms and values, economic limitations and legal status, and application and historical analysis.

Broadly speaking, Islamic financial institutions or the Islamic economic system are mentioned in the explanation of Article 49 letter (i) of Law Number 3 of 2006 concerning Religious Courts, but this includes Baitul Maal Wattamwil (BMT), Syarikat Takaful Indonesia, Sharia Capital Market, etc.¹¹ The normative application of the term Akad is contained in Act Number 21 of 2008 concerning Sharia Banking and Bank Indonesia Regulation Number 9/19 / PBI / 2007 concerning Implementation of Sharia Principles in Fundraising and Fund Distribution Activities as well as Sharia Bank Services and Compilation of Economic Law Sharia based on Supreme Court Regulation No. 2 of 2008.¹²

The contract (engagement) that is in accordance with the principles of sharia is a contract that does not contain gharar (fraud), maysir (gambling), usury, zhulum (persecution), riswah (bribery), haram stuff, and immorality.¹³

According to the Hanafiyah Ulama, the contract has 3 (three) pillars, namely:

- a) *Aqid* (people who act) sometimes each only consists of one person, and sometimes consists of several people;
- b) *Ma'qud Alaih* (something that is accredited), is an object that becomes the object of the contract, such as things that are traded in the bai 'contract, which are given in the grant contract, which are pawned in the rahn contract, and others
- c) *Sighat al aqad*, consent and qabul saying that show the will of both parties,

Meanwhile, the elements of the contract are something that constitutes the formation of the contract, namely:

- a) *Sighat al-aqad* can be done with lafad (speech), aqad by writing, a contract with deeds and a contract with a sign
- b) *Al-Aqid* (perpetrator), namely the person who performs the contract. Its existence is very important because it does not say a contract if there is no 'aqid. Likewise there will be no consent and qabul without' aqid
- c) *Al-Ma'qud 'Alaih*, namely the object of the contract or objects that are used as a contract, the shape is visible and imprinted. These goods can be in the form of property, such as merchandise.¹⁴

11 Abdul Manan, Hukum Perbankan Syariah, *Mimbar Hukum dan Peradilan*, Edisi No. 75, Th. 2012, Page. 7

12 Habib Adjie and Muhammad Hafidh, *Akta Perbankan Syariah Yang Selaras Pasal 38 UUJN-P*, Pustaka Zaman, Cet. I, Semarang, 2014, Page.22

13 Abdul Manan, *Op. Cit.* Page.238

14 Muhammad Firdaus NH, *Cara Mudah Memahami Akad-akad Syariah*, Renaisan, Cet. I, Jakarta, 2005, Page.14-17

The conditions that must be contained in all kinds of contracts are:

- a) permitted by syara 'is done by a person who has the right to do it and carry it out, even though he is not the' aqid himself.
- b) *Alla yakunal 'aqdu au madh'uhu mamnu'an binashin Ahliyatul' aqidaian* (both parties who carry out the contract are capable of acting or being expert)
- c) *Qabiliyatul mahallil aqdi li hukmihi* (the object of the contract can receive punishment).
- d) *Al Wilayatus syar'iyah fi maudhu'il aqdi akad is syar'iyin* (do not be a contract that is prohibited by syara').
- e) *Kaunul aqdi mufidan* (the contract provides benefits).
- f) *Baqaul ijabi shalih ila mauqu'il qabul* (consent continues, not revoked, before qabul occurs)
- g) *Ittihadu majalisil 'aqdi* (met at the contract assembly). Then the consent is canceled if one person separates from another and no qabul has occurred).¹⁵

Therefore, in sharia economic business activities or sharia bank businesses, the contract carried out is very artistic and very decisive in an agreement / agreement he has done and has worldly and ukhrawi consequences, because the contract is carried out based on Islamic law.

Often customers dare to violate agreements / agreements that have been made if the legal basis is only based on positive law, but this is not the case if the contract is based on Islamic law, because the agreement has an accountability to yaumul qiyamah later.¹⁶

2. Legal Consequences of Default in Islamic Economic Business

According to Article 1313 of the Civil Code. It is stated that an agreement is an act in which one or more people bind themselves to one or more people. Meanwhile, the terms of the validity of the agreement are regulated in Article 1320 The Civil Code, namely:

- a) There is an agreement. For an agreement to be made, free will is required. In Article 1321 KUHPdt. It is stated that an agreement does not have binding power if the agreement contains errors (dwaling), coercion (dwang) and fraud (bedrog).
- b) Ability to act, it means that the two parties to the agreement must be people who according to law are deemed capable of acting independently. In Article 1130 KUHPdt.
- c) On a certain matter. That is, what is promised must be stated quite clearly or certain. This is to determine the clarity of the agreed object.
- d) Because it is lawful. Article 1335 KUHPdt. it is stated that an agreement made with a false or prohibited cause has no legal force.

¹⁵ *Ibid.*

¹⁶ Muhammad Syafiii Antonio., *Bank Syariah Dari Teori Ke Praktik*, Gema Insani, Cet. XXIII, Jakarta, 2015, Page.29

Causes or purposes that are not allowed (not lawful) are causes that are contrary to law, morality, or public order.

As for the term of breaking the promise and the criteria mentioned in Article 36 KHES, as well as the consequence it is stated that the agreement, while according to Article 6 of Law Number 4 of 1996 concerning Land Rights and objects related to land, it is called the term of breach of promise.

In Article 6 of Law Number 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land, with regard to contract injury, it is stated that: "If the debtor is injured, the first Mortgage Holder has the right to sell the object of the Mortgage on his own power. through a public auction and collect the receivables from the sales proceeds".

According to Subekti, the party entitled to sue is called the debtor or "creditor", while the party who is obliged to fulfill the claim is called the debtor or "debtor". As for items that can be prosecuted, they are called "achievements", which according to the law can be:

- a) Delivering an item;
- b) Doing an act;
- c) Not doing an act.

If a person in debt does not fulfill his obligation to pay a debt, according to the language of law he commits "default" which causes him to be sued before a judge.¹⁷ As a result of the default, the debtor must:

- a) Compensate for losses;
- b) Objects that are used as the object of the engagement since the time the obligations are not fulfilled becomes the responsibility of the debtor;
- c) If the agreement arises from a reciprocal agreement, the creditor can request cancellation (termination) of the agreement.¹⁸

In the Sharia Economic Law Compilation (KHES), the criteria for breaking a promise is stated in Article 36 that:

- a) Not doing what was promised to do;
- b) Do what he promised but not as he promised.
- c) Does what it promises, but is too late;
- d) Doing something that according to the agreement may not be done;

According to Article 38 of the Compilation of Sharia Economic Law, sanctions against parties in the contract who break a promise can be subject to sanctions:

- a) Pay compensation;

17 Subekti, *Pokok-Pokok Hukum Perdata*, Intermedia Cet.XV, Jakarta, 1980, Page.123

18 Purwahid Patrik, *Dasar-dasar Hukum Perikatan*, Mandar Maju, Cet.IV, Bandung, 1994, Page.11

- b) Cancellation of the contract;
- c) Transfer of risk;
- d) Fines, and / or
- e) Paying court fees.

The legal consequence for a debtor who has defaulted is related to the compensation demanded by the creditor, in this case the creditor can take action based on Article 1234 of the Civil Code which states that the debtor is obliged to pay compensation, after being declared negligent but he still does not fulfill the achievement. Based on the intent of Article 1244 s. d 1246 The Civil Code states that compensation consists of costs, losses and interest.

Referred to as costs in legal provisions are expenses that have actually been incurred by a party; whereas what is meant by loss is a loss due to damage to goods belonging to the creditor due to negligence of the debtor, and what is meant by interest is a loss in the form of loss of profits that have been paid or calculated by the creditor.¹⁹

It can be explained that there are provisions related to compensation due to default, which are:

- a) Compensation must have a direct relationship (causal relationship) with broken promises (Article 1248 KUH Pdt.) And the loss can be suspected or reasonably suspected at the time the contract was made;
- b) There is a possibility that the broken promise (default) occurs not only because of the debtor's fault (negligence or deliberately), but also due to coercive circumstances. Negligence is an act in which the maker knows the possibility of a detrimental effect to others, while deliberate action is an act that the perpetrator knows and wants.

D. CONCLUSION

The purpose of this article is to find out The Essence of Akad in Islamic Economic Business and the legal consequences in applying the sanctions for sharia economic disputes against parties who are in default, The findings obtained state that the sharia economic business engagement must be oriented towards the principles of justice, partnership and transparency and does not contain *gharar* (fraud), *maysir* (gambling), *usury*, *zhulum* (persecution), *riswah* (bribery), haram goods, and immoral, the legal consequence in the application of sanctions in cases of sharia economic disputes against parties who break their promises or defaults or in default is to be considered in the application of sanctions appropriately, whether the application of sanctions is cumulative or alternative sanctions from various types of sanctions, namely: Paying compensation loss; cancellation of the contract; transfer of risk; fines, and / or pay court fees;

19 Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah Teori dan Praktek*. Cet.I, Kharisma Putra Utama, Jakarta, 2017, Page.133

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