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IMPLEMENTATION OF RESTRUCTURING ISTISNA HOUSING: CONTROLLING THE FINANCING RISK IN SHARIA BANKING

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ABSTRACT:

The development of human population is proportional to the increasing need for housing as a place to live. The high cost of home financing serves the cause for Islamic banking to provide an alternative, in the form of istisna contracts. In carrying out the operational practice of istisna housing, Islamic banking is never free from risks which may at any time cause the bank some losses. The purpose of this study is to analyze the risk management of istisna housing and efforts to save issues in financing. This is a theoretical and doctrinal research, using legal and conceptual approaches. Istisna housing restructuring becomes a main point in an attempt to implement risk management and rescue problematic financing. Istisna restructuring includes rescheduling, reconditioning, and restructuring. The success of istisna restructuring in minimizing risk and overcoming financing problems will become a symbol of a good Islamic banking system and can increase customer trust.

INTRODUCTION

Based on Indonesia Central Statistics Agency, the total population in Indonesia is increasing to 237,641,326 people. The increase in population is proportional to the increase in needs of basic living such as housing as a place to live. The housing business is considered as a promising business to meet housing needs collectively. This is supported by Indonesia's economic growth which is improving until the Q3 2019 which was 5.02 percent. The positive outlook for housing business in Indonesia, support the emergence of housing business products that implements a sharia-based system.

The development of Islamic banking system in Indonesia has increasingly strengthen its role within the dual-banking system framework as an alternative

banking service to people in Indonesia (Zulkhibri and Sukmana, 2017; Herianingrum *et al.*, 2019). Islamic banking in Indonesia has received a legal basis with the issuance of Law No. 221 of 2008 regarding Sharia Banking (Sharia Banking Law). (Islam, 2017). Islamic banking carries fundamental function, namely intermediary function or financial intermediary, which is collecting funds in the community and then channeling them back. (Shabbir, Ghazi and Akhtar, 2016). Islamic bank channels funds through financing structures which are based on sharia principles, namely the prohibition of usury and profit sharing.(Herianingrum *et al.*, 2019). Islamic banking provides an alternative related to financing housing under an istisna contract.(Arianza, 2006; Bahasuan, 2012).

Istisna financing provides funds from a Bank to its customer to buy goods based on customer's order which confirms the purchase price to the buyer (customer), and the buyer (customer) pays at a higher price and the difference is the bank's profit (Zulkhibri and Sukmana, 2017). Fund distribution in the form of financing is a risky business activity. An Islamic bank must be able to analyze the risks of problem financing, so it can pursue to smooth back the quality of financing. Based on the above description, the problem formulation in this study is the risk management of istisna financing on housing by Islamic banking and the endeavor to rescue problematic istisna financing.

METHOD

The study uses both theoretical and doctrinal research method. The theoretical research is used to seek a complete understanding of the conceptual foundation of the legal principle, the legal consequences of the rule of law, as well as the legal procedures governing the restructuring of istisna problematic financing on housing. The doctrinal research is used to achieve a systematic discussion on the rule of law as a basis for analyzing the risk and risk management, related to the restructuring and financing of problematic istisna housing.

This study uses two approaches, namely the statutory approach and the conceptual approach. The legislative approach is carried out by examining all relevant laws and regulations on the restructuring of istisna problematic financing to housing. The conceptual approach is carried out by examining the developed doctrine in order to find an idea framework for the issue of istisna housing restructuring.

RESULTS AND DISCUSSIONS

Risk Management of Istisna Financing

Islamic banking provides an alternative in the form of financing with various principles based on the type of contract. (Ibrahim and Kamarudin, 2014). Generally, the products of Islamic banking financing are divided into four categories, namely financing with principle of buying and selling, principle of rent, principle of profit sharing, and on the basis of lending and borrowing (Fianto *et al.*, 2018). The financing product is preceded with financing analysis which is an essential preventive measure to minimize the risk (Hanif, 2014). The financing analysis is carried out on the willingness to pay (qualitative) and

ability to pay (quantitative). To avoid any financial failure, coaching and regular monitoring is mandatory, namely both actively and passively monitoring (Hanif, 2014; Herianingrum *et al.*, 2019).

Istisna is a sale and purchase agreement through putting an order to make a certain goods with a specific criteria and conditions agreed between a person placing the order (buyer) and the producer (seller) Both parties must agree on a payment mechanism. (Hasmawati and Mohamad, 2019). Istisna agreements are often used within manufacturing industry (Herianingrum *et al.*, 2019). The legal basis for istisna is stated in Law No. 21 of 2008 regarding Islamic Banking; Bank Indonesia Regulation No.: 6/24/PBI/2004 on Commercial Banks which conduct their business activities based on sharia principles; Bank Indonesia Regulation No.: 6/17/PBI/2004 on Rural Credit Banks which conduct their business activities based on sharia principles; National Sharia Council Fatwa No: 06/DSN-MUI/IV/2000 regarding Sale and Purchase of istisna; and National Sharia Council Fatwa No: 22/DSN-MUI/III/2002 regarding Sale and Purchase of parallel istisna (Zulkhibri and Sukmana, 2017).

Istisna is considered valid when the applicant and the producer give their consent (Sukmana and Ibrahim, 2017). The applicant is called Mustashni; the party producing or fulfilling the order is called Shani; and the goods or object agreed upon is called Mashnu (Ibrahim and Kamarudin, 2014; Herianingrum *et al.*, 2019). The type of istisna that is often used within home financing is parallel istisna. This stems from the fact that a bank can act as a buyer and seller, thus involving a third party (subcontractors) (Sukmana and Ibrahim, 2017). Istisna Parallel agreement is a separate contract between a bank and its customer, and between a bank and the subcontractors (Hanif, 2014). The agreement stands alone and is not interdependent as it has different rights and obligations. The risks to parallel agreement will remain separate and shall be borne by the parties concerned as long as the assets are not transferred to other parties (Herianingrum *et al.*, 2019).

The risks in sharia banking and the types of risks are listed in Bank Indonesia Regulation No. 13/23/PBI/2011 regarding Application of Risk Management for Sharia Commercial Banks (BUS) and Sharia Business Units (UUS) (Zulkhibri and Sukmana, 2017). In managing the complexity of risks, risk management is essential to manage the risks (Diallo, Fitrijanti and Tanzil, 2015). A risk management as standardized by Bank Indonesia Regulations carries four stages, namely risk identification, risk measurement, risk monitoring and risk control (Zulkhibri and Sukmana, 2017).

The Endeavor to Save The Istisna Financing Problem

Problems may occur in an istisna housing finance transaction, if customer and producer fail to fulfill the obligations agreed in the istisna agreement (Hasmawati and Mohamad, 2019). Financing issues always begin with a warning sign of several factors involved (Havidz and Setiawan, 2015). Financing problems affect the *rentability* and *solvency*(Fianto *et al.*, 2018; Hasmawati and Mohamad, 2019). Factors that influence financing problems are

intermediary factors (Islamic banks), buyer factors (customers), and external factors (contractors) (Fianto *et al.*, 2018). The main causes of problematic financing include a poor legal aspect, inadequate supervision from the early stage, and ineffective customer guidance (Havidz and Setiawan, 2015).

It is important to assess the quality of financing that could have potential problems (Shabbir, Ghazi and Akhtar, 2016; Sukmana and Ibrahim, 2018). The assessment of financing quality must be in line with the provisions of collectability assessment governed by article 7 letters a, b, and c, Financial Services Authority Regulation (OJK) No. 16/POJK.03/2014 regarding Quality Assessment of Sharia Commercial Bank Assets and Sharia Business Units (Zulkhibri and Sukmana, 2017). Assessment on asset quality shall include several aspects, including business prospects, customer performance, and the ability to pay. The quality of a productive asset determines the condition of the bank and the level of customer confidence (Herianingrum *et al.*, 2019).

When a bank has customers with problem paying their principal installments and profit sharing, the problem will lead to issues in collectability of financing (Yusoff and Kamdari, 2016). Based on the said collectability of financing, an Islamic bank is required to establish an allowance for Bad Debt (PPAP) as a special reserve to cover the risk of loss for each financing (Havidz and Setiawan, 2015). In this case, the Islamic bank carries an important role to ensure that there shall be no failures between parties that may result in losses between the two and the bank (Fianto *et al.*, 2018).

Istisna Financing Restructuring

The risk management applied to Islamic banks is not only limited to institutional risk management, but also to every financing that uses certain agreement (Diallo, Fitrijanti and Tanzil, 2015; Zulkhibri and Sukmana, 2017). An optimal management of sharia bank could certainly minimize any losses incurred so as to generate income and sources of funds (Shabbir, Ghazi and Akhtar, 2016).

A Financing restructuring is an anticipatory measure against the impact of risk of financing problems (Yusoff and Kamdari, 2016; Sukmana and Ibrahim, 2017). In accordance with Article 54 and Article 55 of Financial Services Authority Regulation No. 16/POJK.03/2014 regarding Assets Quality Assessment of Sharia Commercial Banks and Sharia Business Units, whenever there is a problematic financing, a Sharia Bank must restructure the problematic financing by means of financing restructuring. (Zulkhibri and Sukmana, 2017).

A financing restructuring may be applied to a customer if it meets several criteria, including declining ability to pay and having good business potentials to meet the restructuring obligation (Yusoff and Kamdari, 2016; Sukmana and Ibrahim, 2018). This is in line with Article 1 paragraph (37) of Financial Services Authority Regulation No. 16/POJK.03/2014 regarding Assets Quality Assessment of Sharia Commercial Banks and Sharia Business Units which states that Financing Restructuring is an effort undertaken by Banks in order to help customers to settle their obligations (Zulkhibri and Sukmana, 2017).

An istisna restructuring includes rescheduling, reconditioning, and restructuring (Havidz and Setiawan, 2015; Sukmana and Ibrahim, 2017). Format of rescheduling is to extend the period without changing the remaining customer's obligations. A reconditioning is an act to re-establish financing terms as long as they do not add to the customer's remaining obligations. A restructuring is the last measure which is to convert an istisna receivable as the customer remaining obligations to be an IMBT or *mudharabah* or *musyarakah* (Havidz and Setiawan, 2015; Shabbir, Ghazi and Akhtar, 2016; Sukmana and Ibrahim, 2017).

A Restructuring must be supported by an analysis, sufficient proof and well documented (Havidz and Setiawan, 2015). Based on Article 5 paragraph (3) Bank Indonesia Regulation No.: 13/9/PBI/2011 regarding Amendments to Bank Indonesia Regulation No. 10/PBI/2008 regarding Financing Restructuring for Sharia Banks and Sharia Business Units (Diallo, Fitrijanti and Tanzil, 2015; Zulkhibri and Sukmana, 2017). A Restructuring can only be done upon written request by the customer. A funding that has been restructured must be monitored continuously.

CONCLUSION

A financing provided by an Islamic bank to its customers always carries a risk, namely the non-performing finance. This condition is influenced by several factors, both from the internal bank, internal factors of customers, and external factors. A risk management must be carried out by Islamic banks to minimize financing problems, which can disrupt the continuity of istisna housing. The success of istisna restructuring in minimizing risk and overcoming financing problems will become a symbol of a good Islamic banking system and can increase customer trust.

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