



INCONSISTENCY CASE SETTLEMENT BANKRUPTCY AND SUSPENSION OF PAYMENT DEBT SHARIA ECONOMY IN INDONESIA

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Abstract:

One of legal products inspired by sharia economic practices in Indonesia birth is Law no.21 of 2008 concerning Islamic Banking. Since of establishment Islamic banks in Indonesia in 1992, the government has made laws and regulations related to Islamic banking. Sharia Banking is regulated in Law no.21 of 2008 concerning Islamic Banking. Two systems regarding banking apply in Indonesia, namely of conventional system and sharia system. One of legal products inspired by sharia economic practices in Indonesia birth is Law no.21 of 2008 concerning Islamic Banking. Since of establishment Islamic banks in Indonesia in 1992, the government has made laws and regulations related to Islamic banking. Sharia Banking is regulated in Law no.21 of 2008 concerning Islamic Banking. Two systems regarding banking apply in Indonesia, namely of conventional system and sharia system.

Keywords:

Bankruptcy; sharia; bank

1. Introduction

One of legal products inspired by sharia economic practices in Indonesia birth is Law no.21 of 2008 concerning Islamic Banking. Since of establishment Islamic banks in Indonesia in 1992, the government has made laws and regulations related to Islamic banking. Sharia Banking is regulated in Law no.21 of 2008 concerning Islamic Banking. Two systems regarding banking apply in Indonesia, namely of conventional system and sharia system.

This law regulates in legal detail basis and types of businesses that can be operated and implemented by Islamic banks more Islamic Financial Institutions develop in Indonesia, the greater possibility disputes between Islamic financial institutions and customers.[1]

Completion of disputes in the Sharia Economy can be reached by litigation and non-litigation pathways. The litigation path is a dispute resolution through of trial process in court, while non litigation is a completion disputes without a trial that is outside court. This is based on the Article 55 paragraph (1) Law no. 21 of 2008 on Sharia banking stating that completion the Sharia banking disputes was conducted by court in a religious judicial environment in paragraph (2) stated that in terms parties have been commemorated a dispute completion as well as referred to in paragraph (1),dispute resolution will done in accordance with the contents acad. After decision of MK number 93 / PUU-X / 2012, the completion Sharia banking dispute is litigated by religious court, a while non-litigation be handled by arbitration or dispute alternatives.

In Law no. 21 of 2008 the Sharia banking was not at all regulating bankruptcy dispute and delays of debt payment (PKPU) in Sharia banking. As for asset bankruptcy and PKPU in Sharia banking has a reference of Law Court by Court Commerce in public justice. UK-PKPU are used as a reference in completion bankruptcy dispute and delays of debt payments obligations in their before or after impression of Law no.21 Year 2008 on Sharia banking.[2]

When referring to Article 2 paragraph (1) Law no.37 in 2004 on Bankruptcy and delays debt payment obligations (UK-PKPU), it's that stated debtor has two or more credits and does not pay at least one debt that has been incompartured and billed, stated by bankruptcy, and for pleasures its own or above persecution of one or more credits.[3] If the intended case is critericity sharia bankruptcy economy,the court in question shall be Rural Religious Court. This is in accordance with mandated article 49 letter (i) Law no.50 Year 2009 on the Second Changes No.7 years 1989 on Religious Courts, which

Declare that authority and task to check, adjust, and completed the problem Muslims, including among of sharia economic crimes given to Rights Court.

The existence of civil courts aims to complete be matter that arises among community members.Cases that occur has a variety forms; that are with regard to denial or solving agreement,legal acts,proprietary disputes, divorce, bankrupt,abuse authority by authorities that are detrimental to be particular part, and so forth.[4]

Throughout in civil laws the Syariah economic dispute, including it's concerned that original accompaniment is based on Islamic law, it remains the authority Rights Religious Assistance. If it is concerned with criminal issue, the general court is authorized to solve it. With regard to middle-parties, both of Muslims and non-Muslims,if held shariah, non-termimmen must be subject to existing law. This means of subdued ourselves to volunteer Islam.

2. Methods

This type research is normative legal research with legislation approach and conceptual approach.[5]

3. Discussion

Description of completion Sharia Economic Dispute Change which is absolute authority Rights Religious Court,the District Court has no authority to resolve Syariah's economic dispute. For that,the sharia economic crops are largely dominated by sharpening shares that have also inserted a dispute agreement by inserting District Court as an institution that has authority in execution should be reviewed.[6]

Completion Islamic Bankruptcy Distribution Threaty Haits can be solved by palace Dilan Religion based on mandate existing laws. Especially on issue Pailit Paper (PPP) and delay debt payments (PKPU) Semeketet Sharia Economics who became authority Religious Court, applicable law. The event shall not fully use applicable law in District Court and not fully using law event specifically Rights Court, but specifically using the laws event regulated by UU.37 Year 2004 on Bankruptcy and delays of debt payment obligations.[6] This is what causes inconsistent because this time crochetic in shariah economy becomes authority commercial court (District Court) and not authority Rights Religious Court.

The point of intersection authority that occurs between Commercial Court and the Religious Court in examining and adjudicating bankruptcy cases and PKPU in sharia economic disputes actually lies in the realm mixing of general civil law (conventional) into the realm of special civil law which uses sharia economic law principles. As a result, the expansion of the application of general civil law to area of Islamic economic law creates an element of legal uncertainty. Bankruptcy law that has been applied so far is in a general perspective, namely all individuals or corporations that experience bankruptcy so that it does not distinguish whether bankruptcy is conventional or bound by sharia economic contracts in the contract. Bankruptcy in the perspective of sharia economic law itself, occurs in sharia financial institutions or individuals who enter into agreements with sharia economic contracts seen as part of a form of "dispute" which is the jurisdiction of the Religious Courts in the general sense of article 49 letter (i) of Law no.3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning the Religious Courts. According to M. Natsir Asnawi, as long as the details are not explained, the meaning of word "dispute" must remain in its general meaning, namely covering all forms of disputes that have occurred and may occur in the field of sharia economics.[7] The linking point of authority in religious courts and commercial courts in dealing with sharia economic bankruptcy disputes occurred as a result of expansion the competence in Religious Courts into the realm of public law in context of sharia economic law. The principle of Islamic personality is no longer understood as an individual Muslim an sich, but has been interpreted as a non-Muslim personality or a conventional legal entity that voluntarily submits itself and

binds its contractual agreements based on sharia economic contracts. The expansion of competence Religious Courts into the realm of sharia economic law has penetrated the boundaries of the general civil law area which has so far been a role model law for Indonesian people so that the potential for mixing of general civil law areas with sharia economic law is increasingly clear.[8]

The point of link by authority to adjudicate in bankruptcy cases and PKPU in Islamic financial institutions lies in the occurrence sharing of authority between Commercial Court and the Religious Courts, wherein the UUK-PKPU is decided by Commercial Court by not distinguishing between bankruptcy in conventional financial institutions and Islamic financial institutions, while based on UU no.3 Year 2006 mandates the settlement of sharia economic disputes to Religious Courts and the phrase words sharia economic disputes in law referred to are all other types of civil disputes in field of sharia economics, including in this case bankruptcy disputes and PKPU based on sharia contracts.

After the Decision Constitutional Court Number: 93/PUU-X/2012 dated 29 August 2013, which basically states that sharia banking disputes are absolute authority in religious courts, it is no longer possible to settle sharia banking disputes through litigation within General Courts including through the Commercial Courts. All types of Islamic banking disputes have become absolute authority of Religious Courts to try them, including PKPU disputes and Islamic banking bankruptcy. In accordance with legal provisions of sharia economic bankruptcy should be with decision of Religious Court. Several cases of bankruptcy and/or postponement of sharia economic debt payment obligations (PKPU) were actually settled in the Commercial Court which incidentally is a special court within general court environment.[9] Some examples of bankruptcy cases in sharia contracts that were resolved in commercial courts include the following:

1. Case of Note: 13 / Pailit / 2013 / Pn. Jkt.pst. Between Petitioners PT. Bank Syariah Bukopin with Pond. Haseda Braindindo, type bankruptcy case, registered to Court Commerce Jakarta on February 18, 2013

2. Case of Note number: 6 / Pkpu / 2013 / PN.JKT-PST between applicant PT. Bank Syariah Bukopin with Pond. Haseda Braindindo, type Clay debt debt payment, registered to Code Commerce Jakarta Center dated March 6, 2013

3. Case of Note number: 10/PDT.SUS/PKPU/2013/PN.NIAGA.JKT.PST JIS No.10 / PDT.SUS/PAILIT/2013/PN.NIAG.JKT.PST and No.421K/PDT.SUS-PAILIT/2013, BETWEEN PT applicant. Bank BNI Syariah with Pondi E Chandra, type Clay debt debt payments, registered to Jakarta Niaga Court on March 6, 2013

4. Case of Note number : 57 / Pkpu / 2013 / PN.JKT.PST Between Petitioners PT. Bank BNI Syariah with Pond. Rolika Caterindo, CS, Type Clay Delay Debt payment obligations, registered to Court Commerce Jakarta on September 10, 2013

5. Case of Note 20/18/201/2015 PT.JKT.PST Between Petitioners PT. Bank BNI Syariah with Pond. Prahaja Panca Vano, type Change Change Total Number 20 / Pkpu / 2014 / PN.JKT.PST Between Petitioners PT. Bank BNI Syariah with Pond. Prahaja Panca Vano, type Clay Delay Debt Obligation Plan

6. Case No. 12 / PDT.SUS-PILITIL / 2017 / PN.NIAGA.SMG Between Applicants Soeparno Hadi Martono With Panesta Cooperative Savings Borrowing BLOP Formabillah as Respondent. Type of application is bankruptcy.

One of the cases above which has become the concern of the general public regarding bankruptcy cases and postponement of sharia debt payment obligations is Case Number: 10/Pdt.Sus/PKPU/2013/PN.NIAGA.JKT.PST Jis No.10/Pdt.Sus/PAILIT /2013/PN.NIAGA.JKT.PST and No. 421 K/Pdt.Sus-Bankrupt/2013, between the Petitioners PT. Bank BNI Syariah with the respondent Purdi E Chandra. The Commercial Court at the Central Jakarta District Court in this case has handed down the Provisional PKPU Decision Number: 10/Pdt.Sus/PKPU/2013/PN.NIAGA.JKT.PST.

Purdi E Chandra through his attorney filed an appeal to the Supreme Court for the Decision of the Central Jakarta District Court Number: 10/Pdt.Sus/PKPU/2013/PN.Niaga.Jkt.Pst. jo. Number: 10/Pdt.Sus/Bankrupt/2013/PN.Niaga.Jkt.Pst. The Supreme Court read out the Decision of the Supreme Court of the Republic of Indonesia Number: 421 K/Pdt.Sus-Bankrupt/2013 which was pronounced on 13 November 2013.

Decision of Supreme Court Republic of Indonesia Number: 421 K/Pdt.Sus-Bankrupt/2013 pronounced on November 13, 2013, HOLDING:

1. Declare that the cassation request from Cassation Petitioner PURDI E. CHANDRA cannot be accepted;
2. Punish Case Application to pay cost case in this cass level Rp 5,000,000.00 (five million rupiah);

The financing agreement signed by PT BNI Syariah and Purdi E Chandra is a Murabahah Financing Agreement.[2] This Murabahah Financing Agreement should refer for Fatwa of the National Sharia Council of Indonesian Ulama Council Number 04/DSN-MUI/IV/2000 concerning Murabaha. The decision of Panel of Judges at Central Jakarta Commercial Court is not in sync with the Murabahah Agreement which was fatwaed by DSN MUI where in Fatwa of National Sharia Council of Indonesian Ulama Council Number 04/DSN-MUI/IV/2000 concerning Murabahah, especially point Seven concerning Bankruptcy in Murabahah, it is stated: "If the customer has been declared bankrupt and fails to settle his debt, the Bank must postpone bill until he becomes able to return, or based on an agreement.

Fatwa of National Sharia Council the Indonesian Ulama Council Number 04/DSN-MUI/IV/2000 concerning Murabaha is a technical guideline for all Islamic financial institutions that provide financing with a Murabaha contract to their customers and is based on the legal basis of Al-Quran and the Hadith of Rasulullah SAW. So that even though it is a fatwa in nature, because it is based on the legal basis of the Al-Quran and Hadith which are legal values that live in society, especially Islamic law, it must be used as a reference by judges in dealing with bankruptcy disputes in Islamic banking.[2]

The discrepancy between the contract and settlement of this dispute is due to fact that none of judges who tried Purdi E Chandra case had a background in handling sharia economic disputes, so it is very possible that settlement disputes in this case, especially materially, does not adhere to sharia economic principles. The background of judges in field of handling sharia economic disputes is very necessary so that dispute resolution adheres to sharia economic principles. Article 55 paragraph (3) Law no.21 of 2008 which confirms "Dispute settlement as intended in paragraph (2) may not conflict with sharia principles", so that a background in field handling sharia economic disputes must be owned by the judge adjudicating this sharia banking bankruptcy dispute.

The example in case above is sharia economic case that should be resolved with Religious Courts. The facts explain that case was decided by Commercial Court. From the perspective of position and scope of classification, the existence of Commercial Court is a general court environment. The Commercial Court is a special court, similar to other special courts within general court environment.[10] Settlement of bankruptcy and sharia economic PKPU by Commercial Court as a special court within general court environment is not in accordance with and not in sync with formulation of Article 49 letter (i) of Law no.3 of 2006 concerning Amendments to Law No.7 Year 1989 concerning the Religious Courts which mandates that sharia economic disputes become absolute authority of religious courts.

Courts judge according to law without discriminating against people.[11]The authority to adjudicate of sharia economic cases absolute authority Religious Courts. Absolute authority concerns the distribution of powers between judicial bodies, judging from type of court, concerning the granting powers to adjudicate.[12] Islamic economic bankruptcy contains elements of Islamic economics, so that it becomes part of Islamic economics [13] which should be absolute authority of Religious Courts to decide on it as long as said bankruptcy case contains elements of Islamic economic disputes, including bankruptcy cases with elements of Islamic banking disputes.

Based on what has been explained above, there are several inconsistencies in Settlement of Bankruptcy Cases and Suspension of Obligations for Payment of Sharia Economic Debt in the commercial court. The first inconsistency is contract used in bankruptcy cases and the sharia economic PKPU, because everything related the sharia economy used is a contract in accordance with sharia principles such as Mudharabah, Murabahah, Wadiah, Musyarakah, Salam, Istisna, Ijarah, Ijarah Muntahiyah bit Tamlik, Hawalah, and Qardh. Second, is the authority to adjudicate where based on Article 49 of Law no.3 Year 2006 concerning Amendments to Law no.7 Year 1989 concerning the Religious Courts and Constitutional Court Decision No. 93/PUU-X/2012 that authority of the sharia economy is absolutely the authority of religious court. Third, related to be competence of judges in handling sharia economic disputes which include sharia economic bankruptcy cases. Judges in their decisions are obliged to consider every case according to Islamic sharia by presenting syar'i arguments which form the basis for examining and deciding cases.

4. Conclusion

The inconsistency Bankruptcy Case Settlement and Postponement of Sharia Economic Debt Payment Obligations in the commercial courts, as explained above, is a challenge for the religious courts in handling bankruptcy disputes and Islamic economic PKPU. So to answer challenge of bankruptcy authority and sharia economic PKPU, on the one hand it is absolute for religious court officials, especially judges, to work even harder to increase knowledge, improve skills in field of bankruptcy law and sharia economic PKPU and recognize operationalization the sharia economic

activities, and on the other hand another is responsibility of Supreme Court to conduct judicial technical improvement training in field of bankruptcy and sharia economic PKPU for judges and clerks of religious courts as soon as possible.

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