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Position of Dispute Resolution Institutions in the Financial Services Sector: Analysis of Regulation No. 1/POJK.07/2014 in Disputes Over Islamic Gold Payments

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Abstract

The role of Islamic banks in the economy is still relatively small due to several obstacles, namely not yet optimal consumer protection and disruption of the financial system. The development of Sharia-based products is increasingly widespread in Indonesia, and Pegadaian is no exception. The purpose of this research is to identify and study contracts in Islamic banking business activities related to gold pawn services at BRI Syariah banks, to know and understand the position of alternative dispute resolution institutions in the financial services sector in sharia gold pawning product disputes. This research is descriptive analytical research, namely research that conveys an overview of the existing facts supported by applicable and applied provisions. The method used is the Normative Juridical Approach Method, namely the Legal Research Method of Library/Secondary Data. In this study using the Qualitative Method, so that the existing data is then analyzed qualitatively based on the existing laws and regulations as a positive legal norm so that it does not use statistics or formulas. Contracts and Legal Aspects in Islamic Banks, the contracts carried out have worldly and hereafter consequences because the contracts are based on Islamic law. Often customers dare to violate the agreement/agreement that has been made if the law is only based on positive law, but this is not the case if the agreement has accountability until yaumul qiyamah later. Every contract in Sharia Banking, both in terms of goods, transaction actors, and other provisions, must meet the provisions of the contract. What must be noted is that consumers cannot immediately resolve disputes through LAPS. Article 2 of POJK Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector regulates procedures for resolving complaints. Where, the complaint settlement mechanism must first be resolved directly with the PUJK. This step is called the Internal Dispute Resolution (IDR). Islamic banking needs to prepare Human Resources who are not only equipped with Islamic Economics skills, but also have a legal background because Islamic Banking Operational Activities are not only based on Islamic Sharia, but are also bound by statutory provisions in the Indonesian National Legal System.

Keywords: Alternative Dispute Resolution, Sharia Gold Pawn, Gold Pawn Agreement

1. Introduction

Bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit or other forms in order to improve the standard of living of the people at large. a bank based on sharia principles (bps) is a sharia commercial bank (bus) or sharia people credit bank (bprs) that operates in accordance with Islamic sharia principles, or in other words, a bank whose operating procedures refer to Islamic provisions (al -Quran and Hadith). In this

procedure, practices that are feared to contain elements of usury are avoided to be filled with investment activities on the basis of profit sharing from trade financing. Since the enactment of law number 7 of 1992 concerning banking, the existence of Islamic banks in the banking system in Indonesia has actually been recognized and recognized. It can even be said that law number 7 of 1992 is the gateway for the start of Islamic banking in Indonesia, however, this law has not provided a strong enough legal basis for the development of Islamic banks because it has not explicitly regulated the existence of banks based on sharia principles but a profit-sharing bank (Angniyak, 2020; Adnyana & Primasari, 2020).

In 1998, with the enactment of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which was followed by the issuance of a number of implementing provisions in the form of a Decree of the Board of Directors of Bank Indonesia, it was deemed that it had provided a stronger legal basis and more opportunities. area for the development of Islamic banking in Indonesia. The legislation provides wider opportunities for the development of the sharia banking network, among others, through permits to open sharia branch offices by conventional commercial banks. In addition, Law Number 23 of 1999 concerning Bank Indonesia also assigns Bank Indonesia to prepare regulatory instruments and supporting facilities that support the operations of Islamic banks.

The role of Islamic banks in the economy is still relatively small due to several obstacles, namely the lack of optimal consumer protection and disruption of the financial system, which has prompted the need for the establishment of a supervisory institution in the financial services sector. In connection with this, it is necessary to restructure the organizational structure of the institutions that carry out regulatory and supervisory tasks, one of which is banking. This arrangement is carried out so that a more effective approach can be achieved in dealing with problems that arise in the financial system so that it can better ensure the achievement of financial system stability (Damai, 2019; Putra, 2020).

The development of sharia-based products is increasingly widespread in Indonesia, including pawnshops. Perum Pegadaian issues sharia-based products that have characteristics, such as not charging interest in various forms due to usury, setting money as a medium of exchange, not as a traded commodity, and conducting business to obtain compensation for services and/or profit sharing. Sharia pawnshops or known as rahn, in their operations use the fee based income (FBI) or mudharabah (profit sharing) method, because customers in using marhun bih (up) have different purposes, for example for consumption, paying school fees, or additional working capital, the use of the mudharabah method is not appropriate, therefore, the pawnshop uses the fee based income (FBI) method.

As well as institutions labeled sharia, the basis for the concept of sharia pawnshops also refers to Islamic sharia which is sourced from the Qur'an and the Hadith of the Prophet SAW. The basis used is as follows, from Abu Hurairah r.a the Prophet SAW said, the ownership of the pawned item cannot be separated from the owner who pawned it. He benefits and bears the risk (H.R. Asy'syafii, Al-Daraquthni, and Ibn Majah). This foundation was later strengthened by the fatwa of the national sharia board No.25/DSN-MUI/III/2002 dated June 26, 2002 which stated that loans by pledging goods as collateral for debts in the form of rahn are allowed with the following

conditions, Murtahin (the recipient of the goods) has the right to hold the marhun (goods) until all debts of rahin (who delivered the goods) are repaid (Hidayatulloh, 2016; Andrian & Supardi, 2021).

Supervision of sharia practice in sharia pawnshops is carried out by the DPS appointed by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), which is still affiliated with the DPS Bank Muamalat Indonesia (BMI) as its partner. DPS is in charge of supervising the operations of sharia pawnshops and their products to conform to sharia lines. The rapid development of banking products and services with other financial service products has increasingly spurred the level of risk that must be borne by consumers. In dealing with these conditions, the interests of consumers cannot be carried out carelessly, but a more comprehensive method is needed and of course sensitive to new problems, in the event of a dispute between the bank and the customer. this cannot be left alone, because it will have a bad impact on customers.

From there, there is a big responsibility and tough challenge for the financial services authority as the authority that has been given the authority to protect consumers since 2013, the financial services authority officially started its duties as the Indonesian capital market supervisory agency. financial services authority (OJK) is a state institution established under Law number 21 of 2011 whose function is to organize an integrated regulatory and supervisory system for all activities in the financial services sector. OJK is an independent institution and is free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation (Masse & Rusli, 2017).

OJK was established to replace Bapepam-lk's role in regulating and supervising the capital market and financial institutions, and to replace the role of Bank Indonesia in bank regulation and supervision, as well as to protect consumers in the financial services industry. According to anto prabowo, the head of the consumer protection department, OJK has established a special institution for resolving financial services disputes, the aim is to fulfill consumer needs, increase consumer confidence, and so that financial services institutions can grow stably. So based on the description of the background above, the researcher has set a focus on how the contracts in Islamic banking business activities are related to gold pawn services at BRI Syariah Bank based on the regulation of the financial services authority Number 1/POJK.07/2014.

2. Method

This research is an analytical descriptive research, namely research that conveys an overview of the facts that are supported by applicable and applied provisions. This analytical descriptive research will only describe the condition of the object or problem and is not intended to draw or draw generally accepted conclusions regarding the settlement of disputes over sharia gold pawn products. The method used is a normative juridical approach, namely the legal research method of literature/secondary data. This approach method is used considering the problems studied are based on the regulations of the financial services authority and other laws related to the object of research. This research was conducted by means of library research, namely collecting secondary data, both through tracing legislation and documents, related to the problem under study, namely the settlement of disputes over sharia gold pawn products, as well

as scientific literature and the results of this research. research by experts that are appropriate and related to the object of research with data sources in the form of primary legal materials, secondary legal materials and tertiary legal materials (Mulazid, 2012).

3. Result and Discussion

3.1 Contracts in Islamic Banking Business Activities related to Gold Pawn Services at BRI Syariah Bank

Contracts and legal aspects in Islamic banks that are carried out have worldly and ukhrawi consequences because the contracts are carried out based on Islamic law. Often customers dare to violate the agreement/agreement that has been made if the law is only based on positive law, but this is not the case if the agreement has accountability until yaumul qiyamah later. Every contract in Sharia Banking, whether in terms of goods, transaction actors, or other provisions, must meet the provisions of the contract, such as the following (1) The existence of pillars of sellers, buyers, goods, prices, and contracts/ijab-qabul (2) Following the conditions that have been determined, such as, goods and services must be halal so that transactions for goods and services that are haram are null and void for the sake of Sharia law, the prices of goods and services must be clear, the place of delivery must be clear, the goods being transacted must be fully in ownership (Parmasela et al., 2019).

Competition between Islamic banks requires banks as business actors to be more creative and innovative in creating products that can meet the needs of customer trends. Customer demand for gold for hedging needs is quite high, this motive is due to the desire for profit in hedging assets due to the continuity of the increase in gold prices for the long term. In the Sharia Banking Law, all operational activities of sharia banking must be based on Sharia Principles, Economic Democracy, and Prudential Principles. In Article 1 Number 12 of the Sharia Banking Law, Sharia Principles are defined as Islamic Law Principles in Banking Activities based on Fatwas issued by Institutions that have the Authority to Stipulate Fatwas in Sharia

Furthermore, in the explanation of Article 2 of the Sharia Banking Law, it is stated that business activities based on Sharia principles, among others, are business activities that do not contain elements of (1) usury, namely the addition of illegal income (batil) among others in the exchange of goods. a type that is not the same in quality, quantity, and time of delivery (fadhl), or in lending and borrowing transactions that require the customer receiving the facility to return the funds received in excess of the loan principal due to the passage of time (nasi'ah) (2) Maisir, namely transactions that are hung to an uncertain and chancy situation (3) Gharar, namely transactions whose object is unclear, not owned, not known to exist, or cannot be submitted at the time the transaction is carried out unless otherwise stipulated in sharia (4) Haram, namely transactions whose object is prohibited in sharia (5) Zalim, namely transactions that cause injustice to other parties others (Sembiring, 2021).

As for what is meant by the general practice of pawning Islamic gold, it is the practice of pawning gold which is indeed the standard carried out by all Islamic banks, the terms and conditions of general Islamic gold pawning services at BRI Syariah Banks based on information from the website, BRI Syariah gold pawn brochures and author's

confirmation. themselves to BRI Syariah are as follows, customers have a minimum of 2 (two) grams of gold with a minimum quality of 16 carats in the form of jewelry or gold bars (24 carat gold bars). The customer has a valid identity card, such as an Identity Card (KTP) or a driver's license (SIM). The loan period is a maximum of 120 (one hundred twenty) days or 4 (four) months, the loan can be repaid before maturity and can also be extended with a new contract and lease.

The practice of pawning gold plantation investments is a form of investment that utilizes the sharia gold pawn system. Broadly speaking, the way to invest in a gold plantation is to provide some money to buy a certain amount of gold, then the gold is pawned for a certain period of time, the proceeds from the pawn are added again to buy gold with the same weight as the first purchase, then pawned again, and so on until several times as long as it is considered sufficient. All the gold is left in the pawn while waiting for the price to rise, when the price of gold rises and if it is calculated that the sale of all the gold can make a profit after deducting the cost of the pledge, then all the gold is sold (Sirat, 2019).

All forms of pawn agreements in gold plantation investments use gold pawn agreements in Islamic banks. It's just that here the customer (the pawnbroker) outsmarts the existing sharia pawn system. This gold plantation investment is not completely safe, however, the risk is entirely the responsibility of the customer, the bank is still based on the existing sharia gold pawn agreement. Here the unlawful acts committed by Islamic banking are no different as in the general sharia gold pawn agreement that has been described previously, namely because of the clause in the sharia gold pawn certificate which places Islamic banks in violation of their legal obligations.

The increasingly widespread practice of pawning gold plantation investments, ultimately leads to deviations that are actually carried out by Islamic banks, by developing and modifying the gold plantation investment system. The practice is that banks provide an opportunity for customers who do not have gold to buy a certain amount of gold at a minimum price of 10% of the price of gold being purchased. This price is obtained from gold shop partners who can provide gold at the bank before being paid in full based on the principle of trust. If the price of gold has been agreed upon, the partner takes the gold to the bank, the value is estimated by the bank and funds are prepared to become a pawn loan, this fund plus customer funds is the total price of gold that must be paid to the gold shop partner (Siti et al., 2020).

This purchased gold will be stored in a sharia bank with a pledge agreement as if all the gold belongs to the customer, while waiting for the gold price to rise, if the increase in gold price is sufficient to cover the cost of custody and the desired profit, then all the gold pawn is sold. The sale can be done by the customer himself, of course the customer must bring the customer to a sharia bank or resell it to a sharia bank gold shop partner.

The practice of buying a gold pawn is different from investing in a gold garden. In gold plantation investment, Islamic banks only provide sharia gold pawn services, customers who outsmart the sharia gold pawning system. In buying gold pawns, Islamic banks intervene to outsmart the sharia pawn system by providing gold shop partners as third parties. The advantage for Islamic banks is that speculative customers

dare to borrow in large amounts because they are tempted to profit from the difference in the increase in gold prices.

3.2 Position of Alternative Dispute Resolution Institutions in the Financial Services Sector in Disputes on Sharia Gold Pawn Products

The term position is defined as the location, place, high and low rank in office, status and so on. The term position is also defined as the level, rank, position of something in a hierarchy. The definition of a dispute is a dispute between a consumer and a financial service institution in the activities of placing funds by a consumer in a financial service institution or the use of the services and/or products of a financial service institution after going through the complaint settlement process by a financial service institution. Based on law no. 30 of 1999 concerning arbitration and alternative dispute resolution, alternative dispute resolution are methods of settlement out of court by means of consultation, negotiation, mediation and conciliation (Suwandono & Yuanitasari, 2016).

Disputes can also be caused by the negligence of the consumer or LJK in carrying out the obligations in the agreement related to the product or service in question. Dispute resolution must be carried out at the Financial Services Institution first. In the OJK Regulation concerning Consumer Protection in the Financial Services Sector, it is regulated that every LJK is required to have a work unit and/or function as well as a service mechanism and complaint resolution for consumers. If the dispute resolution at the LJK does not reach an agreement, the consumer can settle the dispute out of court or through the court. Out of court dispute resolution is carried out through the Alternative Dispute Resolution Institution (LAPS).

Based on the Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, LAPS has the following principles, the principle of accessibility, the principle of independence and the principle of justice. The mediator in LAPS acts as a facilitator in order to bring together the interests of the parties in obtaining a dispute resolution agreement, while the adjudicator and arbitrator are required to provide written reasons for each decision. If there is a rejection of the dispute resolution application from consumers and Financial Services Institutions, LAPS must provide written reasons. LAPS charges consumers low fees in dispute resolution. Dispute resolution at LAPS is done quickly. The implementation of the decision is supervised by LAPS (Umam, 2021).

As for what must be considered, consumers cannot immediately resolve disputes through LAPS. Article 2 of POJK Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector regulates procedures for resolving complaints. Where, the complaint settlement mechanism must first be resolved directly with the PUJK. This step is called the Internal Dispute Resolution (IDR). If the internal PUJK settlement does not produce results, consumers still have other measures that can be taken, namely settling in court or out of court. If it is resolved through the court, then the consumer simply registers a lawsuit with the commercial court. Meanwhile, if it is resolved outside the court (External Dispute Resolution), consumers still have two steps that can be taken, namely through limited facilitation by the OJK and through LAPS (Pamungkas & Julijanto, 2020; Achmad, 2021).

In resolving disputes internally by the PUJK, the consumer can file a complaint with the PUJK through the work unit or complaint handling function established by each PUJK specifically to handle consumer complaints on the condition that at least, there is an agreement discrepancy, there is a material loss, related to aspects financial condition, as well as in the condition that consumers have fulfilled their obligations to the PUJK. In relation to the process, the PUJK can resolve complaints in the form of an apology or offer compensation (redress/remedies) if the consumer's complaint is true. Especially for compensation, it can be taken if the losses suffered by consumers occur due to financial aspects. In the event that the consumer and the PUJK agree, the consumer is not allowed to take further legal action. Meanwhile, if there is no agreement, the consumer and the PUJK can take dispute resolution to the next stage, namely through the OJK or LAPS.

For information, no later than 20 days after receiving a complaint from a consumer, the PUJK must follow up and resolve the complaint. However, under certain conditions, the PUJK may extend it for another 20 working days by first notifying the consumer in writing before the end of the first 20 days. At this stage, PUJKs are not allowed to charge a penny to consumers. In addition, other requirements that must be considered are the financial losses incurred by the Financial Services Providers specifically for the banking sector, capital market, pension funds, life insurance, financing, pawning or guarantee companies of a maximum of IDR 500 million (Amalia, 2021).

Meanwhile, specifically for losses in the general insurance sector, the maximum amount is Rp. 750 million rupiah. If it is in accordance with the requirements requested by the OJK, the next step is for the OJK to appoint a facilitator to resolve the complaint. Furthermore, between consumers and the FSA jointly agree on a facilitation agreement from the OJK, which is essentially an agreement by both parties to comply with and comply with the facilitation rules set by the OJK, no later than 30 working days from the signing of the facilitation agreement. results. If additional time is deemed necessary, there is an opportunity for an extension of the completion period for the next 30 working days calculated after the first period is completed. From the results of the limited facilitation, it turned out that both parties agreed, then the agreement was stated in the Deed of Agreement signed by the consumer and the PUJK. If there is no agreement in limited facilitation by OJK, consumers can submit a settlement through LAPS.

The completeness of the required documents is not much different from the documents included in the previous two stages. Furthermore, the institution will verify and provide confirmation in the form of receipt of the dispute resolution application. Only then enter the stage of examining the substance of the dispute submitted by the consumer. In the mediation stage, both the consumer and the financial services provider both appoint and determine their own mediator. At this stage of mediation, the mediator is only limited to facilitating and seeking peace between the two parties. The parties themselves agreed to make peace, which then made the Peace Deed. If it doesn't work, consumers still have one last step that can be taken, namely adjudication or arbitration (Aminuddin, 2010).

The difference is that adjudication efforts can be taken if the value of the claim submitted is in the small and retail category. Meanwhile, arbitration efforts can be

taken if the value of the claim is large and the level of complexity of the dispute is complex. For its own expense, settlement through LAPS for small amounts of financial claims where each LAPS institution has its own amount is free of charge. However, the OJK itself claims that the fees charged are not expensive. For information, OJK has determined six institutions from seven LAPS that have been able to operate since early January 2016, including the Indonesian Insurance Mediation and Arbitration Agency (BMAI), the Indonesian Capital Market Arbitration Board (BAPMI), the Pension Fund Mediation Agency (BMDP), the Indonesian Capital Market Arbitration Agency (BAPMI), Alternative for Indonesian Banking Dispute Resolution (LAPSPI), the Indonesian Financing and Pawnshop Mediation Agency (BMPPI), and the Indonesian Guarantee Company Arbitration and Mediation Agency (BAMPPI). Meanwhile, the Indonesian Venture Arbitration Board (BAVI) is still in the process of being designated as an institution by the OJK.

4. Conclusion

Contracts and Legal Aspects in Islamic Banks, the contracts carried out have worldly and hereafter consequences because the contracts are based on Islamic law. Often customers dare to violate the agreement/agreement that has been made if the law is only based on positive law, but this is not the case if the agreement has accountability until yaumul qiyamah later. Every contract in Sharia Banking, whether in terms of goods, transaction actors, or other provisions, must meet the provisions of the contract, such as the following, pillars (seller, buyer, goods, price, and contract/ijab-qabul). The conditions are that goods and services must be halal so that transactions for goods and services that are haram are null and void for the sake of Sharia law. The price of goods and services must be clear, the place of delivery must be clear, the goods being transacted must be fully in ownership. Based on Law No. 30 of 1999 concerning arbitration and alternative dispute resolution, the settlement can be done out of court by means of consultation, negotiation, mediation and conciliation. Dispute resolution must be carried out at a financial service institution first. In the OJK regulations concerning consumer protection in the financial services sector, it is regulated that each LKK is required to have a work unit and/or function as well as a service mechanism and settlement of complaints for consumers. If the dispute resolution at ljk does not reach an agreement, the consumer can settle the dispute out of court or through the court.

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