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## Resolution of Credit Agreement Disputes Due To Force Majeure From The Perspective of Syariah Banking

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**Abstract:** This study analyzes the impact of recession on credit contracts in Islamic banking, especially in e-commerce activities. Murabahah-based credit contracts, which are used as financing products based on credit sales, involve the customer's obligation to pay installments according to the agreement. However, recessionary conditions create difficulties for customers in fulfilling their obligations, thus creating the potential for payment delays that can be detrimental to the bank. From an Islamic legal perspective, conditions beyond human control, such as recession, can be categorized as force majeure, which provides a legal basis for customers to delay payments. Legal resolution of this situation requires an approach that accommodates the principle of justice, where the imposition of fines for delayed payments is often viewed as a form of usury by some scholars, because it is considered an addition that is not in accordance with Islamic principles. This study aims to provide a comprehensive understanding of dispute resolution based on the concept of murabahah in Islamic banking, by considering the impact of recession on the sustainability of credit contracts, while offering solutions that are in line with Islamic legal principles and protection of the rights of customers and banks.

**Keywords:** Dispute, Credit Contract, Force Majeure, Islamic Banking

### INTRODUCTION

One of the force majeure problems is the widespread impact of the recession which is expected to peak in 2023 which has caused the economy to stagnate due to the absence of economic turnover, including creditors in Islamic e-commerce banking. Economically, the impact of the recession is indeed enormous. Not to mention the losses due to the loss of business opportunities from productive assets and potential resources of the nation in post-disaster rescue, rehabilitation, and reconstruction. In fact, the magnitude of physical damage and loss of life causes psychological trauma and damages the socio-economic and cultural order of the local community for a long time, even after the reconstruction period. (Bustanul Arifin, 2017)

Good faith (willingness to pay) and the ability to pay (ability to pay) of customers to pay off their credit. As is understood, the purpose of the Bank in providing financing is to obtain compensation or income. From the income obtained, it will be used by the bank for the

purpose of providing compensation to customers who place funds in the bank, paying bank operational costs, forming loss reserves, and providing dividends to bank shareholders. (Ashofatul Lailiyah, 2016) With this failure, the purpose of financing in the form of benefits for banks and depositors and increasing national economic growth will experience dysfunction. Analysis of sharia financing is included in the murabahah contract, so that the risk of loss and non-payment of credit can be reduced. Murabahah is the sale and purchase of goods at a price with an additional agreed profit/margin. The contract that has received many assessments regarding the "halal" of its implementation is murabahah, namely a sale and purchase with a selling price consisting of the purchase price and the agreed profit. (Ashofatul Lailiyah, 2016)

The problem of credit risk is not only caused by the inability or unwillingness to pay from the debtor under normal circumstances. However, it can also be caused by other unexpected factors, such as natural disasters that have a direct impact on the continuity of the debtor's business. Therefore, credit rescue efforts include credit restructuring, or providing new credit in the hope of restoring the debtor's business affected by the disaster. In order to assist efforts to restore these conditions, Bank Indonesia as the banking authority in the e-commerce sector has made various efforts, including issuing regulations to restore e-commerce banking activities. The provisions issued by Bank Indonesia are those that regulate special treatment for e-commerce banking in natural disaster areas, especially related to credit issues.

The problem of economic recession that has hit various countries has had a significant impact on the stability of the financial sector, including Islamic banking. As an institution based on Islamic principles, Islamic banking plays an important role in maintaining the continuity of financial transactions amidst the challenges of recession. One sector that is greatly affected is the credit agreement used to support e-commerce transactions. In a recession, people's purchasing power decreases, and many business actors experience a decrease in income, thus affecting their ability to fulfill credit agreement obligations. E-commerce, as one of the rapidly growing sectors, is a mainstay in the digital economy. However, economic pressure due to the recession has caused instability in the relationship between customers and Islamic banking, especially regarding the implementation of Islamic-based credit agreements such as murabahah.

The problem of customers' inability to fulfill payment obligations can trigger legal problems, which require a resolution based on the principles of justice and legal certainty according to sharia. The concept of murabahah, as one of the contracts in sharia banking, has the potential to be a solution to maintain a balance between the interests of banks and customers amidst the challenges of recession. Through this approach, legal settlement can be carried out fairly, in accordance with sharia principles, and support the sustainability of e-commerce as a driving force of the digital economy. Therefore, a study of the impact of the recession on credit contracts in sharia banking and the implementation of murabahah-based legal settlement is important to ensure economic stability and protection for all parties involved.

Based on the description above, the problem is formulated regarding the impact caused by the Recession on credit contracts in the field of Islamic banking in e-commerce activities and how the Concept of Legal Settlement through the Murabahah approach in Islamic Banking in e-commerce activities.

## **METHOD**

This study uses a normative legal method with a statute approach and a conceptual approach. The statutory approach is used to analyze the provisions of applicable positive law, including Law Number 21 of 2008 concerning Islamic Banking, and regulations related to e-commerce activities. The conceptual approach is used to explore sharia principles, such as the

murabahah contract, as well as the concept of legal settlement in dealing with the impact of the recession on credit contracts. The research data sources consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, and e-commerce regulations. Secondary legal materials include books, journals, and scientific articles related to the impact of the recession on Islamic banking and credit contracts. Tertiary legal materials are in the form of legal dictionaries and encyclopedias. The analysis is carried out qualitatively by linking sharia legal theory, the principles of the murabahah contract, and the impact of the recession on e-commerce activities. The results of the analysis will provide a conceptual overview of the impact of recession on sharia credit contracts and legal settlement solutions through the murabahah approach in e-commerce activities, with an emphasis on justice and sharia compliance.

## **RESULTS AND DISCUSSION**

### **The Impact Of The Recession On Credit Contracts In The Sharia Banking Sector In E-Commerce Activities**

The condition of the economic sector which was paralyzed due to the recession in 2022 caused various financial activities and transactions, especially in the banking world in the e-commerce sector, to be hampered. In fact, banking institutions in the e-commerce sector have a central and strategic influence on the country's economy. (Muhammad Safii Antonio, 2001) This is as stated in the definition of the bank itself in Article 1 of the Banking Law in the e-commerce sector Law Number 10 of 1998, "A bank is a business entity that collects funds from the public in the form of credit and other forms in order to improve the standard of living of the people". Article 3 of Law 10 of 1998 concerning Banking in the e-commerce sector, namely the main function of banking in the e-commerce sector in general, in addition to collecting funds (receiving deposits), banks also distribute these funds in the form of providing loans or products such as credit.

The main function of the bank, which is an intermediary financial institution, is to bring together two or more parties who need funds (borrowers) on the one hand, and parties who have excess funds (savers) on the other hand. As an intermediary institution, providing credit is still the main activity of the bank and is the main source of income for banks in general. (Muhammad Safii Antonio, 2001) Therefore, bank management must be carried out carefully (prudently), because banks as business entities certainly cannot be separated from risks in their dynamics. Considering that providing credit is the main activity of the bank, providing credit certainly contains credit risks that can affect the health and sustainability of the bank's business. If according to the bank's considerations, problematic credit cannot be saved and become smooth again through rescue efforts so that the credit eventually becomes bad, then the bank will take action to resolve or collect the problematic or bad credit. In this regard, if the credit rescue action taken by the bank is unsuccessful, then the bank will take further action in the form of resolving bad credit through a bad credit write-off program. Write-off of bad debts (write off) is commonly done by national e-commerce banking as one way to reduce the level of non-performing loans (NPL) in order to improve the health of the bank. Write-offs on write-offs of bad debts are divided into two stages, namely Write-off or conditional write-off, Write-off or absolute write-off. (Ubaidillah, 2001)

In the context of e-commerce, recession has a major impact, especially on small and medium-sized businesses that use e-commerce platforms as their primary means of selling products or services. Small and medium-sized businesses that rely on e-commerce face major challenges during a recession. When consumer purchasing power declines, sales of their products and services automatically decrease. In a recession, consumers tend to allocate funds only for basic needs, such as food, health, and other basic needs. This has an impact on sales of products that usually dominate e-commerce, such as electronics, fashion, or digital entertainment. The recession also has an impact on business actors who utilize financing from

banks or financial institutions. When income decreases, they have difficulty meeting credit or installment payment obligations. This increases the risk of bad debt or Non-Performing Loan (NPL). Recession causes a decline in online and offline trading activities. Lack of Working Capital for small and medium enterprises Business actors have difficulty obtaining additional funds to maintain or develop their businesses. In a recession, the distribution of goods is disrupted due to increased logistics costs or limited supply of raw materials. Consumers and investors become more cautious, so trading activities slow down.

The recession weakened the financial stability of customers, especially business actors in the e-commerce sector who depend on sharia financing for working capital. Business income decreased drastically so that customers had difficulty paying installments or profit sharing according to the contract. The recession made business actors more careful in taking risks, which in turn could slow down the return on capital. Customers may lose the ability to access additional financing to support their businesses. The main impact is default or failure to pay, which increases the risk for Islamic banks. In profit-sharing contracts such as mudharabah and musyarakah, Islamic banks share profits and risks with customers. Many e-commerce businesses are unable to generate profits due to declining consumer purchasing power and intense competition. In the mudharabah contract, if the financed business does not make a profit, the bank does not receive profit sharing. Likewise, in the musyarakah contract, losses experienced by the business will be divided according to the portion of capital between the customer and the bank. As a result, Islamic banks' profits are also affected, which can reduce their ability to provide new financing. Non-Performing Financing (NPF) is a term in Islamic banking that is equivalent to Non-Performing Loan (NPL) in conventional banking. Non-Performing Financing (NPF) increases during a recession because many business actors fail to maintain their businesses due to low sales, so they cannot meet financing obligations.

When installments or profit sharing are not paid, this becomes an additional burden for Islamic banks. High Non-Performing Financing (NPF) affects the overall health of the bank, which can harm other customers. In Islamic banking, writing off bad debts is carried out while maintaining the main principles of sharia, namely Providing balanced treatment between banks and customers. If customers are truly unable to pay due to economic conditions, banks should not apply excessive pressure. Banks must provide clear information to customers regarding the financing status The write-off process must be recorded and reported openly in accordance with Islamic financial standards. The National Sharia Council Fatwa provides guidance for Islamic banks regarding procedures for managing problematic financing, including write-off steps. The write-off step must avoid practices that are contrary to sharia, such as adding interest to financing arrears (riba) or unjustified penalties.

Write-offs are generally only carried out by banks if the bad credit portfolio is very difficult to collect or because the collection costs are very large. Even though it has been written off and written off, the bad credit portfolio is still possible to be collected so that it is still possible to provide income to the bank. This kind of income must still be included in the bank's books, namely in the other income item so that it cannot be used as personal income for bank officials. According to Dahlan M. Sutralaksana, write off is defined as a write-off. In the context of e-commerce banking, this term is usually intended to remove unproductive asset accounts from the books, such as bad credit that cannot be collected. (Ubaidillah, 2001) However, the bank still has the right to collect bad credit as much as possible. The write-off of bad credit by the bank can basically be carried out by the bank as long as the bank concerned is able to carry it out, namely having sufficient reserves.

In the event that the reserves formed by the bank are insufficient, the write-off of bad debts can be charged to profit and loss after tax. In its implementation, the write-off of credit is carried out voluntarily or mandatory (mandatory write-off). The main purpose of writing off bad debts is to improve the quality of banks' productive assets. Credit write-offs carried out by banks can be divided into two, namely administrative write-offs that do not eliminate

collection rights. Credits that are written off are still recorded extra-comtably. The debtor is not notified because the debtor's status as a borrower has not yet been written off. Write-offs that are considered losses and are no longer collected. In the event that the bank actually bears a loss and the amount of credit to be written off will actually be removed from the balance sheet (both on balance sheet and off balance sheet). This is especially for debtors who have been declared bankrupt. (Ramlan Ginting., 2018)

In this case, write-off is only allowed for credit portfolios that are classified as bad debts. In the first stage, the bank will write off by removing all bad debt portfolios from the bank's books, but the bank will still make collection efforts from debtors. If the write-off program still fails to return the credit money, the bank can create a write-off program so that the bank does not need to make collection efforts from debtors. Furthermore, if the write-off program still fails to return the targeted credit money, the bank can settle the credit through litigation (court) or non-litigation (outside the court). (Ramlan Ginting., 2018) Related to this, as one of the pulses of the economy, banking institutions in the e-commerce sector are one of the parties affected by the aftermath of a natural disaster. The function of e-commerce banking institutions is very important for the pulse of the economy, as described in Article 4 of Law No. 7 of 1992 concerning e-commerce banking as amended by Law No. 10 of 1998, namely "Indonesian e-commerce banking aims to support the implementation of national development in order to increase equity, economic growth, national stability towards increasing the welfare of the people". (Agus Santoso and Arief, R, 2017)

E-commerce banking institutions that play an important role are implemented in the form of carrying out their duties as intermediary institutions. This means that e-commerce banking institutions become a liaison or intermediary between debtors (customers) and creditors (banks), namely collecting funds from the public and channeling them back to those in need. Thus, if there is a shock or crisis, including natural disasters, then logically this will be said to be the flow and financial transactions that are intertwined in it. (Agus Santoso and Arief, R, 2017) The effects of the disruption, especially concerning the credit area which is known to play an important role in the financial flow sector, are also affected by losses that are not small. From the banking side of e-commerce, the impacts caused include damage to office buildings, destruction of customer data, while from the side of bank customers, in this case debtor customers affected by the disaster, among others, the emergence of difficulties for the debtor in question to return the loans obtained.

### **The Concept Of Legal Settlement Through The Murabahah Approach In Islamic Banking In E-Commerce Activities**

The fines that can be given to customers who are late in fulfilling their obligations in a debt-credit agreement are fines in the form of payment of a sum of money (usually based on a percentage of the due date) based on ta'zir, and fines in the form of payment of money calculated based on the losses experienced by the bank based on ta'widh or compensation. Regarding the imposition of sanctions in the form of fines for payment/taking of property or money (أى أة), scholars of the schools of thought have different opinions on this matter. Sayyid Sabiq in his book mentions the permissibility of sanctions by taking property. And this is the school of thought of Abu Yusuf and Imam Malik.<sup>34</sup> This opinion is also the opinion of the qaul qadim of Imam Syafi'i, and is supported by Ibn Taimiyah and Ibn Qayyim. The Hanafi, Syafi'i and Hanbali schools of thought forbid it. (Erwandi Tarmizi, 2013) Contemporary scholars also have different opinions about the law of imposing ta'zir. Scholars who argue that ta'zir is permissible include Wahbah Zuhayli, Muhammad Syubair, and the AAOIFI (Accounting & Auditing Organization for Islamic Financial Institutions). (Erwandi Tarmizi, 2013) The National Sharia Council of the MUI also condemns the permissibility of imposing ta'zir. There are several arguments put forward by scholars regarding the permissibility of ta'zir including: The word of Allah s.w.t in QS: al-Maidah [5]

verse 1 which means: "O you who believe, fulfill the covenants...." Hadith of the Prophet s.a.w from 'Amr bin 'Auf which means: Has told us Al Hasan bin Ali Al Khallal, has told us Abu Amir Al 'Aqadi, has told us Katsir bin Abdullah bin Amru bin 'Auf Al Muzani from his father and grandfather that the Messenger of Allah sallallaahu 'alaihi wasallam said: "Peace is permitted between Muslims except for peace that forbids what is halal or permits what is haram. And Muslims may determine conditions except conditions that prohibit what is halal or make lawful what is haram." Abu Isa said; This hadith is authentic. (HR. Turmuzi). (Erwandi Tarmizi, 2013)

The Messenger of Allah s.a.w. through the hadiths above explained that every Muslim is obliged to fulfill the contract and agreement that has been made. The two parties who make a transaction are obliged to fulfill the conditions and agreement that they have made when making the contract. A buyer who makes a purchase of goods on credit or not in cash is obliged to fulfill his payment at the agreed time. (Erwandi Tarmizi, 2013) A person who delays payment; as in the hadith above; is allowed to impose a penalty on him. So the imposition of a ta'zir fine is allowed as a form of punishment and lesson for buyers who delay payment. As stated in the rules of fiqh, which means: "Basically, all forms of mu'amalat are permissible unless there is evidence that prohibits it." (Erwandi Tarmizi, 2013)

Ta'zir here does not include the benefits taken from the debts that occur, because the ta'zir is intended for social needs, where the seller (financial institution) is obliged to distribute it to the community in the form of social assistance. (Ashofatul Lailiyah, 2016) The scholars who are members of Accounting & Auditing Organization for Islamic Financial Institutions state in their sharia standards Meaning: "It is permissible to determine in a contract related to debts (such as murabahah) the debtor's readiness to donate a certain amount of money (a percentage of the payment) when he delays payment on the condition that the money will be recognized as a social fund and supervised by the sharia supervisory board." The collection of ta'zir fines is considered halal by some scholars and is considered haram by others on the grounds that it is the same as usury even though it is intended for social funds. (Ashofatul Lailiyah, 2016)

The hadith from Amru bin 'Auf Al Muzani which is the basis for the permissibility of ta'zir explains that the contract made by a Muslim must be fulfilled. So that the determination of a fine for customers who delay payment must be fulfilled as a form of punishment, so that customers are more motivated to pay their obligations on time in order to avoid usury. (Ashofatul Lailiyah, 2016) The funds will later be used as social funds that will be distributed to the community and must not be used by banks because the funds will become usury if used by the bank. (Ramlan Ginting., 2018) The scholars who forbid ta'zir assume that the argument is not strong, because the payment of the fine that has been determined at the beginning of the contract is clearly usury. The addition is clearly usury because it has been stipulated at the beginning, even though the purpose will be used for social funds, the money is still an addition to the debt-receivable transaction that was forbidden by the Prophet Muhammad, no matter how much and whatever the purpose. (Agus Santoso and Arief, R, 2017) Then what was meant by Rasulullah s.a.w. regarding the permissibility of imposing penalties on capable debtors who delay; as in the hadith from Sharid bin Suwaid; not by providing compensation. Imam Bukhari said: "Sufyan Tsauri interprets the meaning of the above hadith, to defame the good name of debtors who deliberately delay by saying: So and so delays paying me his debt. And the intention is to impose sanctions, namely imprisonment (prison)."

## CONCLUSION

The impact of the Recession on credit agreements in the field of Islamic banking in e-commerce activities in practice in e-commerce banking, the agreement is used in financing products based on credit sales which will have implications for the occurrence of debt

agreements between customers and banks. Customers who use products based on murabahah are obliged to make installment payments as a form of their obligations to the bank at a time that has been agreed upon during a period that has also been agreed upon. Customers as the party in debt should fulfill their obligations seriously, without delaying which is an act of injustice that causes losses to the bank as the party providing the debt.

The Concept of Legal Settlement through the Murabahah Approach in Islamic Banking in e-commerce activities, if you look at the recent conditions, many customers have been affected by the recession so that customers have difficulty making payments is a justified reason to delay payments, in a legal perspective, the occurrence of events beyond human ability can be said to be Force majeure. So some scholars are of the opinion that the fine is the same as usury, because it is an additional charge imposed for delays in debt payments due to reasons beyond the customer's ability.

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