



Research Paper

Solution of Breach of Contract Litigation in Overmacht on Mudharabah Contracts in BMT

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ABSTRACT

The purpose of this study is to analyze the settlement of wanprestasi disputes due to the overmacht factor in the Mudharabah contract.

The type of research used is qualitative research that uses field observation methods. The object of this research is BMT Al-Hikmah Semesta, Jepara, Indonesia. Meanwhile, the subject of this study is the settlement of wanprestasi disputes. Data collection was carried out through observation, interview, and documentation techniques. In this study, the researcher selected informants as data sources, collected data, researched data quality, interpreted the data and made conclusions on his findings.

The results of this study found that the settlement of disputes against customer members who committed wanprestasi by means of peace/family.

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Introduction

The banking sector has a quite strategic position as an intermediary institution that can support the national economy. Therefore, the role of banking needs to be further improved in accordance with its function in distributing public funds and providing other banking services. The development of the banking world in Indonesia before 1992 was dominated by conventional banks, where conventional banks relied more on credit deposits based on "interest" in carrying out their operational activities (Yusuf, 2008). The role of banking is recognized as being able to meet human needs and banking activities as a bridge for modern society to bring them to help activities and avoid idle funds (Iswandi, 2014).

The existence of banking financial institutions based on sharia principles during the conventional banking industry is to offer an alternative banking system for people who need banking services without having to worry about the problem of "interest". Sharia principles in banking financial institutions were established with the aim of promoting and developing the application of Islamic principles and traditions to financial and banking transactions and related businesses (Isfandiar, 2013). Thus, banking based on sharia principles is only banks that underlie their products and their implementation in Islamic Law (Al-Qur'an and As-Sunnah) (Rivai et al., 2012).

As article 1 paragraph 13 of the Banking Law stipulates that what is meant by sharia principles is the rules of agreement in Islamic law between banks and other parties for the deposit of funds and/or financing of business activities or other activities stated by sharia activities, including financing based on the principle of profit sharing (Mudharabah), financing this principle includes capital (Musharakah), buying and selling goods by obtaining profits (Murabahah), or financing of capital goods based on the principle of pure lease without choice (Ijarah), or the selection of transfer of ownership of leased goods leased by the bank by other parties (Ijarah Wa Iqtina) (Masyithoh, 2014).

The presence of the microfinance institution system in the form of Baitul Maal Wa Tamwil (BMT) as one of the pioneers of financial institutions with sharia principles in Indonesia, began in 1984 which was developed by student activists of the Salman Mosque ITB Bandung who tried to roll out a financing institution based on sharia for small businesses, then BMT was more empowered by the Indonesia Muslim Scholars Association (ICMI) and then followed up by the Small Business Incubation Center (PINBUK) (Jufri et al., 2024).

Meanwhile, BMT officially as a sharia financial institution began to be regulated in Law of the Republic of Indonesia Number 25 of 1992 concerning Cooperatives and Regulation of the Minister of Cooperatives and SMEs Number 11/PER/M.KUKM/XII/2017 concerning Sharia Savings and Loan and Financing Cooperatives. BMT is a combination of Baitul Maal (Non-Commercial) and Baitul Tamwil (Commercial), Baitul Maal is a financial institution whose activities manage non-profit (Social) funds whose source of funds comes from Zakat, Infaq, and Shadaqah, or other halal sources, then distributed to mustahiq or those who are entitled, then Baitul Tamwil is a financial institution whose activities collect and

distribute funds from and to the community that are profit motive (Wulandari, 2019). BMT Al-Hikmah Semesta, Jepara, Indonesia plays a role in improving and developing the economy of the people which is aimed at collecting and distributing funds to the community. However, often related to financing, there are always problems in it, one of which is the existence of members who commit wanprestasi (breach of promise).

Wanprestasi occurs because the parties to the agreement do not fulfill their rights and obligations arising from an agreement that has been agreed upon by the parties is a legal relationship established between the parties (Shobirin, 2016). Where it is required to fulfill achievements in accordance with the contract or agreement that has been previously agreed. Several factors cause wanprestasi, first, there is negligence from the debtor, and second, there is an overmacht. Overmacht is a compelling situation that a person experiences. In Islamic law, overmacht is known as dharurah, the term Islamic law gives the meaning of dharurah as an urgent situation that threatens human existence and beyond human ability. Overmacht can also be interpreted as a situation where the debtor is unable to perform his achievements to the creditor after the approval is made, which prevents the debtor from fulfilling his achievements, where the debtor is not blameable and does not have to bear the risk and cannot predict at the time the approval is made due to different events beyond his power.

Based on previous research that has been conducted (Triana et al., 2023), stated that the cause of the customer wanprestasi was the presence of customers who did not really run their business properly so that there was a bad credit which caused difficulties in paying the forest to BMT and caused a wanprestasi because they did not pay as due. However, the research target focuses on customers who commit wanprestasi in general from the perspective of Islamic law. Meanwhile, in this study, the researcher wanted to conduct research on customers who committed wanprestasi due to the overmacht factor.

From the description of the problem, the author is interested in researching more deeply about the forms of wanprestasi in BMT and what efforts can be made to solve this wanprestasi case. The purpose of this study is to find out the settlement of wanprestasi disputes due to the overmacht factor in the Mudharabah contract.

Method

This type of research is field research, which is research conducted in the field. The approach used in this study is qualitative-descriptive. Based on the source, the data sources in the study are grouped into two, namely primary data sources and secondary data sources.

In this study, the primary data is data from the results of direct interviews with leaders, managers, and employees/employees from BMT Al-Hikmah Semesta, Jepara, Indonesia, related to the settlement of wanprestasi disputes due to overmacht factors in the BMT. Meanwhile, secondary data was obtained from BMT documents. In addition, by conducting literature studies through books, such as books on Islamic Banking that discuss wanprestasi in mudharabah contracts. In addition, secondary data can be obtained from articles, the internet, journals and other sources related to this research.

The nature of the research in this study is descriptive analysis, which is a process of

searching and systematically compiling several interview data, field notes and others, which are collected to make it easier for researchers to explain the settlement of wanprestasi disputes caused by over-performance factors and then summarize the data to produce conclusion. The data facts that are then obtained are analyzed using the theory of theory and then will produce a meaningful conclusion (Abdulloh & Ahmad, 2014). The conclusion in this study is to make it easier for yourself and readers to understand. In other words, the data obtained in the field is analyzed using theory and the theory ends with a conclusion.

Literatur Review

Dharurah

According to Al-Jurjani in At-Ta'rifat, dharurah comes from the word dharar. The word dharar itself has three main meanings, namely the opposite of benefits (*dhid al-naf'i*), difficulties/narrowness (*syiddah wa dhayq*), and bad circumstances (*su'ul hal*). The word dharurah in the Al-Mu'jam al-wasith dictionary means need (*hajah*), something unavoidable (*la madfa'a laha*), and difficulty (*masyaqqah*) (Syafe'I, 2018). Dharurah in Al-Zuhaili's definition is "a condition that befalls a person, where that condition is suspected to result in harm to the soul or limbs or honor or intellect or property. With that condition, a person is allowed to do things that are haram or leave things that are obligatory (Wahbah al Zuhaili, 1986).

There is basically only one rule as a central rule, namely the rule that reads "Al-dharuratu yuzaa-lu", the dharurah must be eliminated. But then this central rule gave birth to eight sub-rules of dharurah which thetrically discuss dharurat with its various conditions (Mufid, 2019). The eight sub-rules of dharurat are: 1) Al-Masyaqqatu tajlibu al-taisir, complicated or difficult conditions bring convenience. 2) Idza dhaqa al-amru ittasa'a, everything if it narrows will become spacious. 3) Al-dhatruratu tubihu al-mahduraat, the dharurat allows forbidden things. 4) Al-dharurat tuqaddar biqadriha, dharurat is tolerated only to necessity. 5) Ma jazaa li 'udzrin yabtul bidzawalihi, something that is permissible because of an obstacle will return to its original state with the disappearance of the obstacle. 6) Al-Maysur laa yasqithu bi al ma'suur, ease cannot be defeated by difficulty. 7) Al-idhthirar laa yusqithu haqqa al-ghair, dharurat cannot eliminate the human rights of others. 8) Al-hajatu tunazzilu manzilata al-dharurah, wish/need can occupy the position of dharurat (Djazuli, 2019).

Mudharabah

Mudharabah comes from dharb meaning to hit or walk. The definition of hitting or walking is more precisely the process of a person hitting his foot in running a business (Adam, 2017). Technically, mudharabah is a cooperation agreement between two parties where the first party (*shahibul maal*) provides all capital, while the other party as the manager of business profits is divided according to the agreed agreement. Meanwhile, if the loss is borne by the capital owner if the loss is not the negligence of the manager. If the loss is caused by fraud or negligence from the manager, the manager must be responsible for the loss (Antonio, 2001). As a form of contract, mudharabah is a profit-sharing contract when the owner of funds/capital (financier) commonly called shahibul maal provides capital (100%) to entrepreneurs as managers commonly called mudharib, to carry out productive activities on the condition that the profits

generated will be shared among them according to the agreement predetermined in the contract (the amount of which is also influenced by market forces).

The foundation of sharia mudharabah reflects more of the encouragement to do business.

This is seen in the Qur'an:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا لَعَلَّكُمْ تُفْلِحُونَ

When the prayer (Friday) has been performed, scatter yourselves on the earth, seek the bounty of Allah, and remember Allah as much as possible so that you may be lucky.

(QS. Al-Jumu'ah (62) verse 10)

In general, mudharabah is divided into two types (Isretno, 2011) namely: Mudharabah Mutlaqah, is a form of cooperation between shahibul maal and mudharib whose scope is very broad and is not limited by the specifications of the type of business, time, and business area. Mudharabah Muqayyadah, the opposite of mudharabah mutlaqah, namely mudharib is limited by restrictions on the type of business, time, or place of business.

In fund collectors, mudharabah is applied to 1) term savings, namely savings intended for special purposes, such as hajj savings, qurban savings and so on. 2) Deposits, funds entrusted by members specifically for a specific business. As for financing, mudharabah is applied to financing working capital, such as working capital for trade and services, and special investments, also called mudharabah muqayyadah, where a special source of funds with special distribution with conditions has been determined by shahibul maal (Antonio, 2009).

Wanprestasi

Wanprestasi is a term for the actions of parties who are bound by an agreement that do not perform their obligations in accordance with what is agreed. The word wanprestasi comes from the Netherlands, "Wanprestatie" which means the non-fulfillment of achievements or obligations that have been determined for certain parties in an agreement, whether born from an agreement or arising from the law (Satrio, 1995).

The official definition of wanprestasi quoting the Ministry of Finance website is an act of not fulfilling or negligently carrying out obligations as specified in the initial agreement made by the creditor with the debtor. A debtor's wanprestasi can be in the form of four types, namely: 1) The debtor does not do what he is promised to do. 2) The debtor carries out what he promises, but not as agreed. 3) The debtor carries out what he promises but is late. 4) The debtor performs something that in the agreement he is not allowed to do (Hermansyah, 2005).

The factors that cause wanprestasi are as follows: pertana, intentional or negligence of the debtor (member). First, what needs to be remembered is that what is the basis of the agreement is the agreement, and the arising of the agreement because of the will itself is an abstract and has no meaning before it is stated both words, deeds, and conditions. If both parties have implemented the agreement, it means that since then there is a will, namely in the form of a willingness to fulfill obligations and obtain rights from the agreement held. In connection with this debtor's negligence, it must first be known the various obligations that must be considered negligent if they are not carried out. Judging from the various things that are promised, the debtor's obligations are basically of three types, namely: the obligation to give something that has been promised, the obligation to do an act, the obligation not to carry

out an act.

Second, force majeure. The second factor that causes wanprestasi is the state of force (overmacht). The state of force (overmacht) is a situation beyond the power of the debtor, which is the legal basis for forgiving the debtor's mistakes. There are two types of overmacht: Absolute, that is, when it is impossible to carry out the achievement at all. Relatife is a situation where the agreement can still be implemented but with sacrifices that are too big on the part of the debtor. An overmacht circumstance is usually in a special agreement, so that if the event mentioned in the agreement is not obliged to provide compensation. Circumstances that include overmacht include fires, natural disasters, personal conditions such as falling into poverty, illness. In the Overmacht legal dictionary, it means a coercive state, which is a situation that prevents the fulfillment of an agreement that frees a person from the obligation to compensate for costs, losses and interest. In French, it is called the term Force Majeure which means the same as a coercive situation (Badrulzaman, 1994).

Overmacht

Overmacht comes from the Netherlands language which means a state that is rampant and causes people to be unable to carry out their duties (Isradjuningtias, 2015). Overmacht in a broad sense means a situation beyond human power that results in one of the parties to the agreement being unable to fulfill its achievements. So, this Overmacht is not the fault of the party who does not fulfill its achievements, so that a right or an obligation in a legal relationship cannot be implemented (Sinta & Saprudin, 2016).

In addition to the Civil Code, the term Overmacht is also found in the Criminal Code (KUHP), as stated in articles 48 and 49 of the Criminal Code that an accused cannot be punished if the criminal act committed is in the Overmacht. So in criminal law it is also an act that is onrechtmatige (an unlawful act), but the act is carried out under the pressure or influence of the Overmacht to release the offender from prosecution.

Articles 1244 and 1245 are the legal basis for the Overmacht as a legal basis that exempts the debtor from the obligation to carry out fulfillment (nakoming) and compensation (schadevergoeding) even though the debtor has committed an unlawful act. However, it is also explained in article 1444 (1) and (4) of the Civil Code which explains the fulfillment of compensation which reads: 1) If certain goods that are the subject of the agreement are destroyed, cannot be traded, or are lost until it is completely unknown whether the goods still exist or not, then the bond shall be removed, as long as the goods are destroyed or lost outside of the debtor's fault and before he neglects to hand them over. 2) In any manner whatsoever a good is lost or destroyed, the person who takes the item is never free and obliged to reimburse the price." That is why the Overmacht is referred to as the forgiving legal basis or rechtsvaardigingsground (Fauzi, 2009).

Results

Mudharabah Financing Practice at BMT Al-Hikmah Semesta

One form of financing carried out by BMT Al-Hikmah is mudharabah investment financing. In this case, BMT Al-Hikmah acts as a shahibul maal (capital

provider) and a member as a mudharib (capital manager). The mudharabah investment financing is carried out to support the mudharib business in running its business, it can be in the form of trading businesses, farmers, service businesses and so on. As BMT in general, in mudharabah investment financing BMT Al-Hikmah Semesta asks members to submit guarantees/collateral, because in mudharabah investment financing this has a high risk so that it demands high trust and honesty (amanah) also from members, especially if the funds they borrow are in large amounts.

The mudharabah financing product at BMT Al-Hikmah Semesta provides the disbursement of funds after a member or creditor is eligible for predetermined criteria or conditions. One of them is carried out by BMT Al-Hikmah Semesta to survey, observe and seek information on how much the value of acquisition or income of a prospective creditor or prospective member within one month or a period of one year before making financing. This is done with the aim of minimizing financing problems in Islamic financial institutions, especially BMT Al-Hikmah Semesta.

Wanprestasi Customer Dispute

Before the financing problem at BMT Al-Hikmah Semesta occurred, BMT first conducted a financing assessment so that BMT felt confident that the financing provided could return smoothly without any problems that hindered it. The financing assessment aims to assess the ability of members to return financing. After BMT disburses it, it will at least face risks that cause problematic financing/wanprestasi.

The factors that affect wanprestasi in mudharabah financing at BMT Al-Hikmah Semesta are as follows: First, the financing analysis is not accurate. The financing analysis is not appropriate, namely BMT Al-Hikmah Semesta when conducting the analysis does not pay attention to the character of the members. In addition, BMT did not research the file optimally and surveyed properly. So that it can cause wanprestasi. Second, members are not serious in running their business. In this case, members are not serious in running their business without planning to move forward. Third, a decline in members' income/bad loans. The decline in members' income/bad loans is a factor causing wanprestasi that are widely found in BMT Al-Hikmah. This situation can be caused by natural disasters, weather, failure of members in their business fields, or less decisive market conditions so that a decrease in income can occur at any time. Fourth, members are not trusted. That the members are not serious and dishonest in financing mudharabah, instead abuse the contract, or do not intend to installment or delay payment even though they are able, and run away from the funds that have been given. Fifth, Overmacht, which is a force majeure circumstance that causes members to have difficulty paying off their debts to the BMT due to the business conditions of members who experience disasters beyond

the power of members.

Overmacht Wanprestasi Dispute Resolution Analysis

In a financial institution, the problem of wanprestasi to the flight of members to avoid installment bills by the institution is a natural thing. This fact has become an open secret for banking actors, including for BMT Al-Hikmah Semesta. However, efforts to handle the members' wanprestasi have been carried out in various ways.

The steps taken by BMT to resolve disputes against members who commit wanprestasi are in several ways, including **routine collection**. If there is a delay in the payment/installment of the member for the loan beyond the specified deadline, BMT will continue to contact the member through the Whatsapp network media to continue to remind the member to pay the installment on the agreed due date. If the member still does not respond, the BMT officer will come to the member's house to collect installment payments and ask about the business conditions and reasons for the delay. If the officers deployed in the field come to the member's house and do not provide results, the officer usually gives a delay in payment time according to the member's ability. This collection is carried out by BMT on a regular basis.

The second step is through legal channels, legal channels can be taken by BMT Al-Hikmah in the event of serious wanprestasi. This means that members really violate the rules and mechanisms that apply at BMT Al-Hikmah and eliminate traces in their residences. Members who really don't want to understand their responsibilities can be policed. Usually, the BMT takes legal action only to bully members so that they want to pay installments because they are afraid that the case will be extended to the green table. However, BMT will consider first if they want to take the legal route. Because it is an Islamic Islamic financial institution, BMT Al-Hikmah avoids rigid things. And since its operation, BMT Al-Hikmah has never taken its members to the legal realm.

Third, Mediation. Dispute settlement is amicable with the help of a third party called a mediator, and in carrying it out he must be fair, neutral (impartial) and he is not authorized to decide because he only acts as a facilitator. The purpose of mediation is to: a) produce a future plan (agreement) that is acceptable and feasible for the parties to the dispute, b) prepare the parties to the dispute to accept the consequences of the decisions they make, and c) reduce concerns and other negative impacts of a conflict by helping the parties to the dispute reach a consensus settlement.

From the data above, when a dispute occurs against an engagement, in general, the parties to the engagement will try to find a peaceful settlement without having to involve the court (out of court settlement). However, when the problem or dispute

can no longer be resolved peacefully, the court as a dispute resolution institution agreed upon by the parties in resolving the problem is forced to be involved as a final effort (litigation process). In Islamic teachings, there are three dispute or dispute resolution systems provided in the context of dispute or dispute resolution, namely peace (al-shulh), arbitration (at-tahkim), and justice (al-qadha).

The form of settlement carried out by BMT to the above members is an appropriate form because it is in accordance with Islamic law explained in QS. Ali Imran verse 159 which means "So, by the mercy of Allah you (Prophet Muhammad) have been gentle with them. If you were harsh and rough-hearted, they would naturally stay away from you. Therefore, forgive them, ask for forgiveness for them, and consult with them in all matters. Then, when you have made up your mind, trust in Allah. Indeed, Allah loves those who put their trust."

Thus, the settlement of the mudharib of wanprestasi in BMT Al-Hikmah Semesta is in accordance with Islamic law. Because BMT prioritizes financing settlement by peace/family. Although legal routes can be taken to resolve wanprestasi, BMT Al-Hikmah Semesta has never made efforts to resolve wanprestasi by taking the legal route.

A Review of Islamic Law on the Settlement of Overmacht Wanprestasi Disputes in the Mudharabah Contract

In the final principle, banks have the same goal of saving mudharabah financing which is illustrated in the initial concept which is both based on the concept of prudence (Prudential Banking), only in Islamic banking if the financing is problematic with the profit-sharing financing pattern, the wanprestasi is caused by the circumstances of force (overmacht) then the loss is borne based on what is stated in the agreement.

The Concept of Islamic Law in Wanprestasi Settlement

In Islamic law, dispute resolution between litigants can be done in three ways.

Shulhu

The first way to do it in the event of a dispute in a contract is to use the path of peace (shulhu) between the two parties (Hasan, 2018). In fiqh, the definition of shulhu is a type of contract to end a conflict between two opposing people, or to end a dispute peacefully. The implementation of this shulhu can be done in several ways, including by means of ibra (freeing the debtor from some of his obligations) and by means of mufadhah (replacement with others) (Mustofa, 2010). The recommendation for holding peace (shulhu) is in the Qur'an surah Al-Hujuraat (49) verse 9 as follows:

وَأِنْ طَائِفَتٌ مِّنَ الْمُؤْمِنِينَ آفْتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ فَإِنَّ فَاءَ مَا نَصَلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسَطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Meaning: If there are two groups of believers at war, make peace between them. If one of them persecutes the other, fight the persecutor, so that the

group returns to Allah's command. If the group has returned (to Allah's command), reconcile the two fairly. Be fair! Indeed, Allah loves those who are just.

Tahkim

The term tahkim literally means to appoint as a referee or peacemaker. Meanwhile, in terminology, tahkim means the appointment of one or more, as referees or peacemakers by two or more people in dispute, to resolve their disputes peacefully (Azhar, 2020).

The legal basis of this tahkim is Al-Quran surah Ali Imran (3) verse 159:

فِيمَا رَحْمَةٍ مِنَ اللَّهِ لِنْتَ لَهُمْ ۖ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانْفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ ۚ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ

So, by the mercy of Allah you (Prophet Muhammad) have been gentle with them. If you were harsh and rough-hearted, they would naturally stay away from you. Therefore, forgive them, ask for forgiveness for them, and consult with them in all matters. Then, when you have made up your mind, trust in Allah. Indeed, Allah loves those who put their trust.

Al-Qadha

Al-qadha literally means to decide or determine. According to the term fiqh, this word means to establish sharia law on an event or dispute to settle it fairly and bindingly (Islam, 2020). This kind of judicial institution is authorized to settle civil and criminal cases. The person who has the authority to settle cases in this kind of court is known as a qadhi (judge). The power of the qadhi cannot be limited by the consent of the warring parties and the decision of this qadhi is binding on both parties (Harun, 2017).

The legal basis of al-qadha, in QS. An-Nisa (4) verse 35:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا ۚ إِنَّ يُرِيدَا إِصْلَاحًا يُّوفِّقُ اللَّهُ بَيْنَهُمَا ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

If you (the guardians) are worried that there will be a dispute between the two, send a peacemaker from the man's family and a peacemaker from the woman's family. If both intend to do islah (peace), Allah will surely give taufik to both. Indeed, Allah is All-Knowing, All-Knowing, All-Knowing.

Conclusion

After an analysis of the review of Islamic law on the settlement of wanprestasi disputes in the mudharabah contract, the first in the settlement of mudharib wanprestasi, the steps implemented by BMT Al-Hikmah are by doing: a) Routine billing, b) Legal channels, will be taken if the mudharib really violates the rules and mechanisms applicable in BMT Al-Hikmah and eliminates traces in his place of residence. c) Mediation.

Second, in the concept of Islamic law, the settlement of wanprestasi can be pursued in three ways, namely peace (shulhu/ishlah), arbitration (tahkim) and judicial power court (al-qadha). Efforts to resolve mudharib wanprestasi in BMT Al-Hikmah are in accordance with the concept of Islamic law because the efforts taken by BMT Al-Hikmah prioritize ways of deliberation or peace (shulhu/ishlah).

References

- Abdulloh, S. B., & Ahmad, B. (2014). *Metode Penelitian Ekonomi Islam Muamalah*. CV Pustaka Setia.
- Adam, P. (2017). *Fikih Muamalah Maliyah*. PT Refika Aditama.
- Antonio, M. S. (2001). *Bank Syariah: dari Teori ke Praktik*. Gema Insani Press.
- Antonio, M. S. (2009). *Dasar-Dasar Manajemen Bank Syariah*. Azkia Publisher.
- Azhar, K. B. dan M. (2020). Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Jurnal Gema Keadilan*, Vol. 7, 24.
- Badruzaman, M. D. (1994). *Aneka Hukum Bisnis*. Alumni.
- Djazuli, H. A. (2019). *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah yang Praktis* (G. Azmi, Ed.). Prenadamedia Group.
- Fauzi, A. (2009). Urgensi Hukum Perikatan Islam dalam Penyelesaian Sengketa Ekonomi Syariah. *La_Riba*, 3(1), 74–89. <https://doi.org/10.20885/LARIBA.VOL3.ISS1.ART6>
- Harun. (2017). *Fiqh Muamalah*. Muhammadiyah University Press.
- Hasan, A. F. (2018). *Fiqh Muamalah Dari Klasik Hingga Kontemporer*. UIN Maliki Pers.
- Hermansyah. (2005). *Hukum Perbankan Nasional Indonesia*. Kencana.
- Isfandiar, A. A. (2013). Analisis Fiqh Muamalah Tentang Hybrid Contract Model dan Penerapannya Pada Lembaga Keuangan Syariah. *Jurnal Penelitian*, 10(2), 205–231.
- Islam, F. M. K. K. E. (2020). *FIQH MUAMALAH Kajian Komprehensif Ekonomi Islam*. Duta Media Publishing. <https://books.google.co.id/books?id=aAz5DwAAQBAJ>
- Isradjuningtias, A. C. (2015). FORCE MAJEURE (OVERMACHT) DALAM HUKUM KONTRAK (PERJANJIAN) INDONESIA. *Veritas et Justitia*, 1(1). <https://doi.org/10.25123/VEJ.V1I1.1420>
- Isretno, E. (2011). *Pembiayaan Mudharabah dalam Sistem Perbankan Syariah*. Cintya Press.
- Iswandi, A. (2014). MASLAHAT MEMELIHARA HARTA DALAM SISTEM EKONOMI ISLAM. *SALAM: Jurnal Sosial Dan Budaya Syar-i*. <https://doi.org/10.15408/sjsbs.v1i1.1522>
- Jufri, M. A. B. Al, Pratomo, A. S., & Jufri, M. I. Al. (2024). MUDARABAH IMPLEMENTATION IN SAVINGS PRODUCTS AT BAITUL MAAL WA TAMWIL AL-YAMAN BANYUWANGI. *Tadayun: Jurnal Hukum Ekonomi Syariah*, 5(1), 97–114. <https://doi.org/10.24239/TADAYUN.V5I1.143>
- Masyithoh, N. D. (2014). ANALISIS NORMATIF UNDANG-UNDANG NO. 1 TAHUN 2013 TENTANG LEMBAGA KEUANGAN MIKRO (LKM) ATAS STATUS BADAN HUKUM DAN PENGAWASAN BAITUL MAAL WAT TAMWIL (BMT). *Economica: Jurnal Ekonomi Islam*, 5(2), 17–36. <https://doi.org/10.21580/ECONOMICA.2014.5.2.768>
- Mufid, Moh. Dr. (2019). *Kaidah Fikih Ekonomi dan Keuangan Kontemporer: Pendekatan*

Tematis dan Praktis (I. Fahmi, Ed.). Kencana.

Mustofa, I. (2010). *Fiqh muamalah Kontemporer*. Rajawali Perss.

Rivai, V., Nuruddin, A., & Arfa, F. A. (2012). *Islamic business and economic ethics: mengacu pada Al-Qur'an dan mengikuti jejak Rasulullah SAW dalam bisnis, keuangan, dan ekonomi*. Bumi Aksara. https://books.google.co.id/books?id=zgG_oQEACAAJ

Satrio, J. (1995). *Hukum Perikatan, Perikatan Lahir dari Perjanjian* (2nd ed.). Citra Aditya Bakti.

Shobirin. (2016). Penyelesaian Pembiayaan Murabahah Bermasalah Di Baitul Maal Wa Tamwil (BMT). *IQTISHADIA Jurnal Kajian Ekonomi Dan Bisnis Islam*, 9(2), 398. <https://doi.org/10.21043/iqtishadia.v9i2.1737>

Sinta, N., & Saprudin, S. (2016). TINJAUAN HUKUM ISLAM TERHADAP OVERMACHT DALAM PERJANJIAN PEMBORONGAN PEMBUATAN IRIGASI (STUDI KASUS DI DESA PUNTI KECAMATAN SOROMANDI KABUPATEN BIMA). *Mu'amalat: Jurnal Kajian Hukum Ekonomi Syariah*, 8(2), 171–184. <https://doi.org/10.20414/MU.V8I2.1999>

Syafe'I, R. (2018). *Ilmu Ushul Fiqih*. CV Pustaka Setia.

Triana, Y., Lina, L., Marpaung, R., Samosir, M., Nasution, A. K., Keristian, B., Ramon, F., Arlenggo, A., Tarigan, J., Adri, M., & Juni, J. (2023). Penyelesaian Sengketa Wanprestasi Pada Bank Perkreditan Syariah. *Innovative: Journal Of Social Science Research*, 3(5), 7869–7876. <https://doi.org/10.31004/INNOVATIVE.V3I5.5804>

Wahbah al Zuhaili. (1986). *Ushul Al-Fiqih Al-Islami*. Darl-Fikr.

Wulandari, P. (2019). Enhancing the role of Baitul Maal in giving Qardhul Hassan financing to the poor at the bottom of the economic pyramid: Case study of Baitul Maal wa Tamwil in Indonesia. *Journal of Islamic Accounting and Business Research*, 10(3), 382–391. <https://doi.org/10.1108/JIABR-01-2017-0005>

Yusuf, N. (2008). Penyelesaian Wanprestasi dalam Perjanjian Pembiayaan Bagi Hasil Berdasarkan Prinsip Syariah. *Pranata Hukum*, 3(1), 26773. <https://www.neliti.com/id/publications/26773/>