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Ekonomi Syariah Dalam Perspektif Aliran Realisme Hukum, Dalam Penyelesaian Kredit Macet

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Article

Abstract

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Pinjaman macet masih ada terjadi dalam suatu proses kegiatan peminjaman modal di koperasi syariah BMT usaha bersama dimana hal-hal yang berkaitan dalam perjanjian tidak dapat terpenuhi oleh pihak nasabah. ketidak mampuan pihak nasabah untuk membayar suatu kewajiban yang telah disepakati bersama oleh pihak koperasi syariah dapat juga menimbulkan kerugian pada koperasi sehingga pihak koperasi harus memiliki cara-cara yang tepat dalam penyelesaian masalah. Penelitian yang dilakukan adalah penelitian lapangan dengan menggunakan pendekatan deskriptif kualitatif. Hasil penelitian ini menunjukkan bahwa penyelesaian pinjaman macet dilakukan dengan penanganan preventif, analisa sebab munculnya pembiayaan bermasalah, dan mendalami masalah kemampuan pembayaran nasabah. Penanganan yang dilakukan yaitu dengan cara rescheduling, reconditioning, penyelesaian melalui jaminan, dan Write Off Final.

Kata Kunci : Kredit, Macet, Koperasi, Syariah

Bad loans still occur in a process of capital lending activities in the BMT cooperative, a joint venture, where matters relating to the agreement cannot be fulfilled by the customer. The customer's inability to pay an obligation that has been agreed upon by the Islamic cooperative can also cause losses to the cooperative so that the cooperative must have the right ways to solve the problem. The research conducted is field research using a qualitative descriptive approach. The results of this study indicate that the settlement of bad loans is carried out with preventive handling, analysis of the causes of problematic financing, and exploring the problem of customer payment ability. The handling carried out is by rescheduling, reconditioning, settlement through collateral, and Write Off Final

Keywords : Loan, Bad, Company, Syariah

INTRODUCTION

The phenomenon of bad debt in debt payments often occurs due to several factors, including: economic difficulties experienced by credit, a mismatch between the amount of financing provided and the ability to pay credit, and external factors such as macroeconomic changes (inflation, unemployment, natural disasters, or economic crises). This problem is increasingly complex because sharia cooperatives, which operate based on sharia principles, must ensure that every step in handling debt does not conflict with Islamic teachings¹.

Sharia cooperatives operate on the principles of Islamic sharia, which prohibit usury (interest) and practices that are contrary to Islamic teachings. Financing in sharia cooperatives uses concepts such as:

1. Murabahah, namely financing with a buying and selling system where the cooperative sells goods or assets to credit at a price higher than the cost price and the profit margin is agreed upon in advance,
2. Mudarabah: Financing based on cooperation between cooperatives and credit, where the cooperative acts as a financier and credit as a business manager,
3. Musyarakah: Financing based on profit sharing between cooperatives and credit that invest in a joint venture,
4. Ijarah: A lease agreement made on the basis of sharia law, where the cooperative (as the lessor) grants the right to use a good or service to credit (as the lessee) with a previously agreed return

Sharia cooperatives as economic institutions based on Islamic sharia principles, aim to provide fair financial solutions in accordance with Islamic values, such as avoiding usury (interest), gharar (uncertainty), and maysir (gambling). The sharia cooperative system generally provides various financing products, including loans for credit that prioritize profit sharing and transparent transactions and prioritize partnerships (musyarakah and mudarabah) compared to interest which is generally found in conventional financial institutions.

However, in practice, Islamic cooperatives are also not free from challenges in financing management, especially related to handling credits that have difficulty in paying debts or what is called bad credit. Bad debt payments by credit can threaten the continuity of Islamic cooperatives, because in addition to being risky for the financial stability of cooperatives, it can also create tension in social relations between credits which ultimately have an impact on the reputation of the cooperative itself.

¹ Fatwa Dewan Syariah Nasional (DSN) MUI tentang Pembiayaan Koperasi Syariah – memberikan pedoman mengenai prinsip-prinsip syariah dalam pembiayaan koperasi syariah.

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Sharia cooperatives must comply with the laws and regulations in force in Indonesia, such as Law Number 25 of 1992 concerning Cooperatives and Law Number 21 of 2008 concerning Sharia Banking, which regulate the governance of cooperatives and sharia financial institutions in general. In addition, sharia cooperatives must also pay attention to sharia principles in resolving debt disputes, such as justice, leniency, and deliberation. In this context, it is important to understand how sharia cooperatives handle credit that is unable to pay debts in accordance with sharia provisions, without harming both parties².

The problem of debts and receivables in Islamic cooperatives also requires a legal approach that not only prioritizes positive legal mechanisms, but also respects moral and ethical values in Islamic teachings. Therefore, it is important to conduct a more in-depth study on how Islamic cooperatives can resolve the problem of bad debt payments effectively and in accordance with Islamic principles, and avoid practices that can harm credit or the cooperative itself, such as imposing fines that are not in accordance with Islamic provisions.

FOCUS OF PROBLEMS

In writing this paper, the topic of the problem and will be described in the discussion are:

1. How is the application and contribution of Islamic economics in the national banking system?
2. How is the process of handling problematic/bad credit according to Islamic economics?

RESEARCH METHODS

In this study, the author uses a type of research that is qualitative research with a descriptive approach. This study uses a qualitative research type. "Qualitative research is research that intends to understand the phenomena experienced by the research subjects, for example

² Undang-Undang Republik Indonesia Nomor 25 Tahun 1992 tentang Perkoperasian – mengatur tentang prinsip-prinsip koperasi, termasuk koperasi syariah.

behavior, perception, motivation, actions and others." (Moleong 2011) Qualitative research is research that is descriptive in nature that uses analysis, namely first analyzing the problem and then describing it specifically. This study describes the Islamic view of bad debt and the process of handling bad debt in banks. The data sources used in this study are primary and secondary data. Primary data consists of laws and regulations, the Qur'an and hadith. Primary legal materials in the form of the Qur'an include Surah Al-Baqarah verses 245 and 280, the Hadith of the Prophet, and legal regulations that regulate, namely Law No. 10 of 1998 concerning banking. Secondary data consists of books, legal journals, research reports related to the problem of bad debt. The research used is a case study, namely research on an object where the researcher takes research at a financial institution and looks for existing data and problems to be researched further, then the data is processed and analyzed so that the conclusions drawn only apply to the object being researched.³

FINDING & DISCUSSION

1. Theoretical References

In writing this paper I try to review the problem of bad credit using the Legal Realism approach. The word realism means something related to the real world, namely the world as it actually happens. Legal realism is a theory that believes that law is something that is really done, not just a collection of rules contained in laws but not implemented.⁴ Legal realism argues that law is the result of empirical experience, especially that which can be obtained through the court process. Law in this view is considered a product of social power and control.⁵

Based on social reality, this school of thought views that law is formed from the power and control that exists in society. Thus, legal realism is not only limited to the study of law alone, but also includes factors such as human personality, business interests, and economic situations. This school of thought only believes in law as what happens in court and in the actions of the parties involved in it, and rejects the normative legal view.⁶

³ Guspul, A., Mutmainah, K., Machfud, Y., Affandi, A., & Khusna, N. (2023). Peran Manajemen Kredit, Pengendalian Internal, Kinerja Pengelola Kredit Terhadap Resiko Kredit: Kasus Pada Koperasi Syariah di Wonosobo. *Journal of Economic, Management, Accounting and Technology*, 6(2), 270-285

⁴ Achmad Ali dan Wiwie Heryani, *Sosiologi Hukum Kajian Empiris Terhadap Pengadilan* (Jakarta: Kencana, 2012).h.45

⁵ Dharma, I. (2015). *Legal Realism: Perspektif Hukum dalam Kontrol Sosial*.

⁶ Rahmatullah, M. (2021). *Legal Realism dan Penerapan Hukum di Pengadilan*.

Vidya Prahassacitta stated that legal realism originates from the neo-positivist view, which places more emphasis on logic and the close relationship between logic and language.⁷ The entry of positivism into law causes law to become a rigid structure and lose its essence. Legal realism adherents disagree with the positivism and naturalism views, which view judges only as implementers of the law set by the authorities in the law. In the legal realism view, both positivism and naturalism/formalism underestimate the role of judges in implementing the law. On the contrary, according to this school, judges not only apply or interpret the law, but also create law through their decisions, which are based on social reality, not solely on existing laws.

2. Understanding Islamic Economics in relation to the Legal Realism School.

a. Sharia Economic

Sharia Economics is an economic system based on the principles of Islamic teachings contained in the Qur'an, Hadith, and other sources of Islamic law such as *ijma'* (consensus of scholars) and *qiyas* (legal analogy). The main objective of sharia economics is to create human welfare in a fair, transparent manner, and in accordance with Islamic moral and ethical values. This system emphasizes justice, the elimination of usury (interest), the prohibition of speculative transactions (*maysir*), and ensuring that all forms of transactions do not contain elements of *gharar* (uncertainty that is detrimental). Legal realism is a school of thought in legal theory that emphasizes the importance of implementing laws that are practical and in accordance with existing social realities. Legal realism focuses on how the law is applied in practice, not just on theory or norms written in regulations.⁸

b. Flow of Law Realism

Sharia economics is not only based on religious texts, but must also be able to be applied in real social and economic contexts. Legal realism emphasizes the importance of law to function well in existing situations and conditions, which means that sharia economics must be able to be adjusted to the current socio-economic conditions of society without ignoring sharia principles.⁹ In legal realism, it is accepted that law can develop and change over time according to the needs and conditions of society. In the case of Islamic economics, this can mean that although the basic principles of Islamic economics are fixed, the application and implementation of Islamic economic law can be adjusted to changes in economic and social

⁷ Prahassacitta, V. (2018). *Neopositivisme dan Legal Realism dalam Pemikiran Hukum*.

⁸ Oliver Wendell Holmes Jr.. *The Path of the Law*. (1897). Karya klasik ini merupakan salah satu karya dasar dalam aliran realisme hukum yang menjelaskan bahwa hukum harus mencerminkan realitas sosial dan bukan sekadar teori.

⁹ Muhammad Nejatullah Siddiqi. *Riba, Bank Interest, and the Rationale of Its Prohibition*. (2004). Buku ini membahas secara mendalam mengenai larangan riba dalam ekonomi Islam dan bagaimana sistem keuangan syariah beroperasi.

conditions that occur. For example, in the case of Islamic financial products, the law must be able to respond to new innovations such as Islamic fintech¹⁰.

Legal realism focuses on achieving social justice in the application of law. In Islamic economics, the main goal is to create economic justice by reducing inequality and exploitation. Therefore, in legal realism, it is important to see how Islamic economics can be implemented fairly, avoid inequality, and protect the rights of the weak, such as consumers or workers.¹¹ Legal realism also emphasizes the importance of evaluating the application of law. Likewise in Islamic economics, although the basic teachings of Islam are clear, it is necessary to evaluate existing Islamic economic practices so that they are more in line with the needs of society and do not become a burden for economic actors. In Islamic economics, the role of the state is very important in ensuring the sustainability of this system, such as supervision of Islamic financial institutions, implementation of zakat, and prevention of detrimental practices such as usury or gharar. From the perspective of legal realism, law must be viewed as an instrument used by the state to create a prosperous and just society, which also applies to Islamic economics.¹²

3. Understanding of bad debt and its implementation methods.

a. Bad Debt

Handling of bad debt payments in Islamic cooperatives is a relevant issue because it is related to the sustainability of cooperative operations and the welfare of its credit. If not handled properly, this problem can cause losses for both parties, both the cooperative and the credit concerned. Therefore, a comprehensive legal review is needed to understand how the mechanism for resolving debt disputes in Islamic cooperatives can be carried out in a fair manner and in accordance with Islamic principles, and to what extent Indonesian positive law can provide space for Islamic cooperatives in handling this problem¹³.

Bad debt is one of the problems often faced by financial institutions, including Islamic cooperatives. Islamic cooperatives have different basic principles from conventional

¹⁰ Muhammad Nejatullah Siddiqi. *Riba, Bank Interest, and the Rationale of Its Prohibition*. (2004). Buku ini membahas secara mendalam mengenai larangan riba dalam ekonomi Islam dan bagaimana sistem keuangan syariah beroperasi.

¹¹ Abdul Azim Islahi. *The Principles of Islamic Economics*. (1997). Buku ini menawarkan wawasan tentang prinsip-prinsip ekonomi dalam perspektif Islam, termasuk konsep-konsep seperti keadilan, larangan riba, dan distribusi kekayaan.

¹² Muhammad Nejatullah Siddiqi. *Riba, Bank Interest, and the Rationale of Its Prohibition*. (2004). Buku ini membahas secara mendalam mengenai larangan riba dalam ekonomi Islam dan bagaimana sistem keuangan syariah beroperasi.

¹³ Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 **tentang Perbankan Syariah** – mengatur tentang operasional lembaga keuangan syariah, yang juga mencakup koperasi syariah.

financial institutions, namely operating by prioritizing Islamic principles in every financial transaction, which is based on justice, honesty, and avoiding usury. In practice, Islamic cooperatives also face the risk of bad debt, namely when cooperative members cannot pay their obligations according to the agreement. Therefore, it is important for Islamic cooperatives to have a settlement mechanism that is in accordance with Islamic principles.

b. Implementation Methods

One way that can be done by sharia cooperatives to resolve bad debts is by visiting the homes of members who are having difficulty paying their loans. The purpose of this visit is to collect payments while also making a personal approach to members who have problems with bad debts. In this case, sharia cooperatives can provide a more in-depth explanation of payment obligations and provide an opportunity for members to complete their obligations within a certain period of time. Through home visits, sharia cooperatives can have direct dialogue with members, understand the conditions and difficulties they face, and provide more flexible solutions such as rescheduling or qardhul hasan. In addition to collecting payments, this visit also opens up space for deliberation, which is a basic principle in resolving problems in sharia cooperatives. If members have legitimate problems, the cooperative can provide relief or alternative solutions. Sometimes, this more humanistic and personal approach can be more effective than an approach that is only administrative or legal.¹⁴

However, this visit needs to be done carefully, taking into account ethics and sharia principles, such as not causing conflict or excessive pressure on members. There are two methods commonly used by sharia cooperatives in resolving bad debts, namely rescheduling and qardhul hasan. Rescheduling provides time relief for debtors to pay off their obligations by increasing the payment duration and reducing the amount of installments. Meanwhile, qardhul hasan is a facility that allows cooperatives to write off some or all receivables that cannot be paid off, especially in certain conditions, such as death or the debtor's business not running. Rescheduling in Sharia Cooperatives is a mechanism that provides time relief for debtors to pay off their obligations. In practice, rescheduling is done by extending the loan repayment period and reducing the amount of

¹⁴ Sari, N. L. A. S. H., Indrawati, A. S., & Putrawan, S. (2019). Penyelesaian Kredit Macet Pada Koperasi Simpan Pinjam Karya Artha Sedana dan Ksp. Wirartha Utama di kota Denpasar Selatan. *Journal Ilmu Hukum*, 7(8), 1-17.

installments that must be paid each month. This aims to allow debtors to complete their loan payment obligations even in difficult circumstances.¹⁵

Rescheduling aims to allow debtors to continue their business or life without having to be burdened with excessive installments, the rescheduling process must be carried out with the principle of mutual benefit, where the cooperative provides relief to debtors without harming the cooperative. In rescheduling, sharia cooperatives are expected to be able to resolve this problem through deliberation and mutual agreement between the cooperative and the debtor. Qardhul Hasan in Sharia Cooperatives is a loan provided by the cooperative to its members with the aim of helping them in financial difficulties, without being burdened with interest or profit. In the context of resolving bad debts, qardhul hasan can be used as a solution by writing off some or all of the debt that cannot be paid off by the debtor, especially if the debtor faces certain conditions that make him unable to pay, such as death or a failed business. Qardhul hasan is based on the principle of mutual assistance (ta'awun) and not to seek material gain, there is no interest charged on qardhul hasan loans, so it is in accordance with the sharia principles that avoid usury, and write off debts in emergency situations: If a cooperative member experiences very great difficulties, such as death or business failure, the cooperative can provide qardhul hasan to write off some or all of their debts.¹⁶

If the home visit does not provide adequate results and members still do not pay attention to their obligations, the Islamic cooperative can take further steps in the form of sending a warning letter. This warning letter is a formal way to inform members that they have passed the agreed payment deadline. If the warning letter is still ignored by the member, the sharia cooperative can take further steps, namely by using the right to seize assets or execute member savings. If the member has collateral in the form of assets that are used as collateral in a loan agreement, the sharia cooperative can seize the assets in accordance with the provisions applicable in sharia law. Seizure must be carried out with the principle of justice and not harm the debtor excessively. If the member has savings in the cooperative, the sharia cooperative has the right to use it to pay off unpaid debts. This is done in accordance with the provisions applicable in the agreement and after going through various legitimate deliberation efforts

¹⁵ Suardana, I. K. G., Budiarta, I. N. P., & Ujjianti, N. M. P. (2022). Penyelesaian Kredit Bermasalah dengan Metode Restrukturisasi Pada Koperasi Simpan Pinjam Merta Sari di Denpasar Utara. *Jurnal Interpretasi Hukum*, 3(1), 1-7.

¹⁶ Syaikh, M. (2017). *Prinsip-Prinsip Syariah dalam Koperasi: Sebuah Tinjauan Hukum Islam*.

The execution process must be carried out with transparent, fair procedures, and based on agreements that have been made previously in the financing agreement. All confiscation or execution actions must be carried out by prioritizing the principle of justice (adl) and not harming members unfairly, if members have the right to object or appeal, the cooperative must provide this opportunity in the specified procedure. All of these actions must be carried out in accordance with sharia principles, which prioritize deliberation and mutual agreement.

In the event that members of the sharia cooperative are still unable or unwilling to pay off their debts even though they have been given the opportunity through deliberation and a warning letter, the sharia cooperative can use collateral or member savings as an effort to cover the debt. This action can be in the form of confiscation of assets or execution of savings owned by members in the cooperative

Warning Letter Stages:¹⁷

1. First Warning Letter: Usually, the first warning letter serves as a reminder for members to immediately pay or contact the cooperative to find a solution to their bad debts. This letter gives members the opportunity to pay within a certain period of time.
2. Second and Third Warning Letters: If after the first warning letter the member still has not responded or paid, the cooperative can send a second and third warning letter. This warning letter is more assertive and can include the legal consequences that members will face if they still do not fulfill their obligations.
3. Clear Deadline: Each warning letter must include a clear deadline for making payments or settling existing obligations.

The warning letter must be written in appropriate language and not cause tension or conflict, giving members enough time to pay or settle debts is very important to remain fair, and the warning letter must also prioritize the principle of deliberation to resolve existing problems.

If efforts to deliberate and resolve through warning letters and execution of assets/savings do not produce results, the sharia cooperative can take this problem to court to obtain a more formal decision. This is usually the last step after various attempts at resolution through negotiation have failed

¹⁷ Tasya, Y. R., & Nasution, J. (2021). Penyelesaian Kredit Macet Pembiayaan Murabahah Pada Masa Pandemi Covid-19 Di Bank Sumut Syariah Cabang Pembantu Lubuk Pakam. *Account: Jurnal Akuntansi, Keuangan dan Perbankan*, 8(2).

Sharia cooperatives can take this issue to court to obtain a valid and binding decision. The court will examine the case based on the available evidence and decide whether the member is obliged to pay his debt or whether there is another solution that can be taken. In the legal process, the principle of justice must be upheld, so that both parties, the cooperative and members, receive fair legal protection in accordance with applicable regulations. This process must be carried out efficiently and by prioritizing sharia principles that do not harm any party.

4. Case Studies in Cooperatives

Bad Debt in Sharia Cooperatives occurs when the debtor or member of the sharia cooperative is unable to pay the loan installments according to the agreed time. The causes can vary, such as unfavorable economic conditions, job loss, death, or problems in the business being run. Sharia cooperatives, as sharia-based financial institutions, must handle this problem in a fair manner and in accordance with sharia principles. Therefore, sharia cooperatives develop several mechanisms to resolve bad debts that do not harm both parties, both the cooperative and the debtor. Example of Rescheduling Case: A member of a sharia cooperative who has a loan for business capital experiences difficulties due to a decrease in business income. After conducting an evaluation, the cooperative provides rescheduling by increasing the loan repayment period for 12 months and reducing the amount of monthly installments. This allows cooperative members to continue their business without feeling burdened by obligations that cannot be met

Case Study of Qardhul Hasan: A member of a sharia cooperative died before being able to pay off his business loan. The cooperative, after conducting an evaluation, provided qardhul hasan to write off the remaining unpaid debt, as a form of solidarity with the deceased's family. Implications and Challenges Although both of these mechanisms – rescheduling and qardhul hasan – provide good solutions for cooperative members facing difficulties, there are several challenges in their implementation:¹⁸

- 1) Sustainability of cooperatives: Cooperatives must ensure that the provision of rescheduling and qardhul hasan does not harm the cooperative's finances. There needs to be a thorough evaluation of the financial impact of providing relief.
- 2) Misuse of facilities: There is a risk that some debtors may not use rescheduling and qardhul hasan with good intentions, so cooperatives need to establish a clear monitoring mechanism.

¹⁸ Utomo, A. S., Maharani, N. K., & Octavio, D. Q. (2016). Faktor-faktor Keuangan yang Mempengaruhi Pertumbuhan Pembiayaan Qardhul Hasan pada Bank-Bank Syariah di Indonesia. *Academia. Edu*.

- 3) Limited cooperative funds: Providing qardhul hasan which is intended to whiten debt can reduce the cooperative's cash reserves, so good risk management is needed.

CONCLUSION

Sharia economics, as an economic system based on Islamic teachings, can be seen as an effort to create prosperity through principles that prioritize justice and social balance. Meanwhile, legal realism teaches that law must be oriented towards social reality and be practical in its application. Therefore, there is a close relationship between sharia economics and legal realism, where the application of sharia economic principles must be adjusted to the real conditions of society, and implemented in a fair manner and in accordance with existing socio-economic needs.

In dealing with the problem of bad debt, sharia cooperatives have two main mechanisms that are in accordance with sharia principles, namely rescheduling and qardhul hasan. Rescheduling provides relief in time and reduced installments to help debtors pay off their debts, while qardhul hasan can be used to write off debts in certain very difficult conditions, such as death or business failure. These two mechanisms aim to maintain the sustainability of sharia cooperatives and provide relief for members who are experiencing difficulties, while maintaining the principles of justice and mutual assistance that are the basis of the sharia economic system.

However, the implementation of these two mechanisms must be carried out carefully so as not to harm the cooperative and maintain the trust of members. Good management is also needed to avoid misuse and maintain the financial stability of Islamic cooperatives. The settlement of bad debts in Islamic cooperatives does not only depend on the rescheduling and qardhul hasan mechanisms, but can also involve other more direct approaches, such as home visits, sending warning letters, and using asset or deposit executions. Islamic cooperatives have an obligation to resolve this problem in a fair and transparent manner, always prioritizing the principles of deliberation and agreement. However, if all efforts to resolve peacefully fail, legal channels can be the last alternative to resolve bad debt problems in accordance with applicable laws

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Undang-Undang Republik Indonesia Nomor 25 Tahun 1992 tentang Perkoperasian – mengatur tentang prinsip-prinsip koperasi, termasuk koperasi syariah.