

ABSTRAK

Mahmudi, Imam. 2017. NIM 2821133007. *Pelaksanaan Perjanjian Baku dalam Akad Murobahah Perspektif Kitab Undang-Undang Hukum Perdata dan Hukum Perikatan Islam (BMT Istiqomah, Karangrejo Tulungagung*. Skripsi. Hukum Ekonomi Syariah. Fakultas Syariah Ilmu Hukum. Institut Agama Islam Negeri (IAIN) Tulungagung. Pembimbing: Indri Hadi Siswanti, SH., MH.

Kata Kunci: Perjanjian Baku, Akad *Murobahah*, Perspektif KUH Perdata, Hukum Perikatan Islam.

Penelitian ini dilatarbelakangi oleh semakin pesatnya praktik perjanjian yang telah dibakukan oleh pihak yang mempunyai kedudukan perekonomian yang kuat. Perjanjian baku ini sangat populer dikalangan bisnis. Namun demikian, dalam perkembangannya pihak yang mengikatkan dalam suatu perjanjian yang mempunyai kedudukan ekonomi yang lemah tidak memiliki kebebasan dalam menentukan isi perjanjian tersebut, isi perjanjian sebelumnya atau jauh-jauh hari sudah disiapkan oleh lembaga yang dituangkan dalam bentuk formulir. Hal ini menjadikan tidak seimbang posisi kedua belah pihak dan sangat bertentangan dengan salah satu asas perjanjian menurut KUHPerdata yaitu asas kebebasan berkontrak dan menurut Hukum Perikatan Islam yaitu asas keseimbangan (*huriyah*) dan *Al Musawah* (persamaan atau kesetaraan)

Fokus penelitian ini adalah: (1) bagaimana mekanisme pemberlakuan perjanjian baku dalam akad *Murobahah* di BMT Istiqomah, Karangrejo Tulungagung. (2) Bagaimana Tinjauan Hukum Positif (Kitab Undang-Undang Hukum Perdata) Mengenai Perjanjian Dalam Akad *Murobahah* di BMT Istiqomah, Karangrejo Tulungagung. (3) Bagaimana Tinjauan Hukum Islam (Perikatan Islam) Mengenai Perjanjian Baku di BMT Istiqomah, Karangrejo Tulungagung.

Penelitian ini merupakan penelitian kualitatif, proses pengumpulan data dengan menggunakan metode observasi, wawancara dan dokumentasi Sedangkan teknik analisis data yang digunakan dalam penelitian ini adalah reduksi data, penyajian data, dan verifikasi kesimpulan.

Hasil penelitian ini menunjukkan bahwa: (1) perjanjian baku pada akad *Murobahah* di BMT, Istiqomah Karangrejo tidak semua ditetapkan sepihak oleh lembaga ada beberapa pasal yang mengarah kepada kebebasan berkontrak perjanjian pada akad *Murobahah* terkait dengan, angsuran pokok, *Mark Up*/keuntungan, simpanan wajib, simpanan pembiayaan dan infaq apabila dari nasabah ada yang terlambat dalam pembayaran angsuran pokok sehingga perjanjian ini termasuk jenis perjanjian baku timbal balik. (2) pembayaran kembali pokok jaminan dan margin keuntungan yakni bentuk hak lembaga dan kewajiban nasabah merupakan bentuk pelaksanaan ketentuan pasal 8 ayat (1) dan (2) Undang-Undang No. 1998 tentang perubahan Undang-Undang No. 7 Tahun

1992 tentang perbankan yaitu tentang ikhtikad baik (3) Pemenuhan kewajiban tentang jaminan dalam hukum islam maupun dalam KUHPerdara diperbolehkan seperti FATWA DSN- MUI Tentang *MUROBAHAH*, dan Dalam pasal 1131 KUH Perdata.

Sedangkan yang kurang sesuai dalam akad perjanjian baku pada akad *Murobahah* perspektif KUHPerdara adalah nasabah tidak bisa menentukan tawar terhadap pasal II, IV V dalam perjanjian baku pada akad *Murobahah* di BMT Istiqomah disinalah asas kebebasan berkontrak belum mutlak diterapkan di BMT Istiqomah.

Sedangkan dalam Hukum Perikatan Islam ada 2 asas yang belum mutlak diterapkan oleh pihak lembaga antara lain adalah asas keseimbangan (*huriyah*) dan *Al Musawah* (persamaan atau kesetaraan) seperti halnya (1) belum adanya aturan tentang pertanggung jawaban cacat tersembunyi dalam perjanjian baku pada akad *Murobahah*, (2) belum adanya aturan secara tegas tentang pelunasan di awal waktu sebelum jatuh tempo sehingga nasabah debitur mengetahui tentang hak untuk segera melunasi pembiayaan dan memperoleh potongan margin keuntungan agar tidak memberatkan nasabah, (3) belum aturan tentang ketentuan khusus mengenai penyerahan kembali dokumen/objek jaminan kepada nasabah.

ABSTRACT

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Keywords: akad's representative, cost-plus financing, KUH Perdata's Perspective, Perikatan Islam Law

This study was conducted since the more contract practice which legated by the people whom strong position in the economy. Akad's representative is very popular for businessmen. However, in its practice, people who has lower position in a contract, they do have less chance in determining the content of the contract. It has been prepared or determined by the institution in the form of application the days before. This phenomenon raised an unbalance position between the businessmen and opposed with one of the principle of agreement based on KUH Perdata that is the principle of being free in conducting contract and according to the law of Perikatan Islam, the principle of balance (*huriyah*) and the equivalence (*Al Musawah*).

This study was focused on: (1) How the mechanism of akad's representative in *Murobahah* agreement in BMT Istiqomah, Karangrejo Tulungagung is. (2) How the perspective of positive law (Kitab Undang-undang Perdata) about the agreement in *Mrobahah* contract in BMT Istiqomah, Karangrejo Tulungagung is. (3) How the perspective of Islamic Law (Perikatan Islam) about akad's representative in BMT Istiqomah, Karangrejo Tulungagung is.

The research design applied in this study was qualitative, in which the data were collected from observation, interview, and documentation. Moreover, technique of data analysis in this study was started from data reduction, data presentation and ended with data conclusion.

The result of this study reveals that: (1) Akad's representative in *Murobahah* agreement in BMT Istiqomah Karangrejo is not always determined by the institution itself. There are some sections which refer to the freedom of concluding a contract in *Murobahah* agreement. It includes main instalment, profit/*Mark Up*, legal deposit, defrayal deposit, and *infaq*. Furthermore, if there was a customer who was fall into areas of main instalment (deferred payment), it then classified into akad's representative feedback. (2) The repayment of main assurance and profit margin that is in the form of institution's right and customer's obligation are the implementation of the provision in section 8 verse (1) and (2) of Undang-undang No. 1998 about the alteration of Undang-undang No. 7 year 1992 about banking, especially about gentle agreement. (3) The

obligation fulfilment about the assurance both in Islamic law or KUH Perdata was allowed as stated in FATWA DSN-MUI about *Murobahah*, and in section 1131 KUH Perdata.

Whereas the limitation of akad's representative in *Murobahah* from the perspective of KUH Perdata is where the customer could not drive the bargain based on section II, IV and V in akad's representative of *Murobahah* in BMT Istiqomah. Based on this practice, it shows that the principle of the freedom in making contract has not been implemented yet in BMT Istiqomah.

However, according to the law of Perikatan Islam, there are 2 principles which are not been implemented by the institution. They are principle of balance (*huriyah*) and the equivalence (*Al Musawah*) such as (1) there is no rules the responsibility of hidden flawed in akad's representative of *Murobahah* yet, (2) there is no clear rules of repayment in the beginning before the yield to maturity in order to ease debtor in understanding his/her right to repay the defrayal and to get the cut of profit margin so it will not burden the customer. (3) There is no rules of specific determinate about delivering right of the letter of guarantee to the customer.