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Legal implications of debt transfer (*cessie*) in syariah banking: A case study of decision No. 1922/Pdt.G/2020/PA. Btm

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ABSTRACT

Background: The issue of debt transfer (cessie) in Islamic banking has raised legal questions, particularly regarding its conformity with Syariah principles. A case, Putusan No. 1922/Pdt.G/2020/PA. Btm, examines a dispute where a bank transferred a debt to a third party after the debtor failed to make payment, highlighting concerns about the legal validity of such transfers under Islamic law. **Methods:** This research utilizes a qualitative legal analysis approach by reviewing the case judgment of Putusan No. 1922/Pdt.G/2020/PA. Btm, relevant Fatwas, including Fatwa DSN-MUI No. 31/DSN-MUI/VI/2002 on debt transfer, and the Civil Code regulations. The study examines the legal basis of debt transfer within the scope of Islamic banking practices and the application of the pacta sunt servanda principle, comparing it with existing regulations on debt transfer under both conventional and Syariah law. **Findings:** The court's ruling in this case declared the debt transfer to be invalid, as it contradicted Syariah banking principles. The case revealed that the transfer from an Islamic bank to an individual in the conventional sector was incompatible with Islamic financial regulations. The study found that while the civil law allows such transfers, the Islamic law framework, as outlined by National Sharia Council - Indonesian Ulema Council/*Dewan Syariah Nasional - Majelis Ulama Indonesia* (DSN-MUI) Fatwa, does not support this practice. This inconsistency points to a broader issue of alignment between civil law and Islamic banking regulations in debt-related transactions. **Conclusion:** The research concludes that debt transfer (*cessie*) must be assessed within both civil and Islamic banking frameworks. The case highlights the need for adherence to pacta sunt servanda and Syariah compliance, as the bank's debt transfer violated Syariah principles, rendering it invalid. **Novelty/Originality of this article:** This article analyzes the legal conflicts between Islamic law and civil law on debt transfer, focusing on the challenges of harmonizing Syariah banking principles with Indonesia's national civil law system.

KEYWORDS: civil law; debt transfer (*cessie*); islamic law; pacta sunt servanda; syariah banking.

1. Introduction

The development of the Islamic economy in Indonesia has given a great contribution to the Islamic banking sector, which is reflected in its rapid growth (Anwar et al., 2020). Based on Article 1 of Law Number 21 of 2008 concerning Islamic Banking, Islamic banking includes all aspects related to Islamic Banks and Islamic Business Units, including institutions, business activities, and operational implementation. However, the relationship between Islamic banks and debtors does not always run smoothly, sometimes disputes arise

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due to the inability of one party to fulfill its obligations in accordance with the agreed contract. This kind of dispute is often seen as a violation of the law, especially if it relates to non-compliance with applicable regulations (Sari, 2022). Therefore, to understand the main causes of disputes in Islamic banking, it is important to examine the concept of memorandum of understanding or contract as the main element in the Islamic economic system.

In the Islamic economic system, contracts play an important role as the basis for every transaction (Abasimel, 2023; Aravik et al., 2021). In general, a contract can be understood as a commitment between two or more parties to carry out an agreed matter. This contract can involve individuals or legal entities. In the science of fiqh, the scholars give two definitions of the contract, namely the general understanding and the specific understanding (Wahab, 2019). The main purpose of a contract is to produce legal consequences that give certainty to the implementation of the transaction being carried out. For example, in a sale and purchase contract, the objective of both parties is to transfer ownership of the goods from the seller to the buyer for an agreed fee (Zaeni, 2021, 2018). The legal effect arising from this contract is the legal transfer of ownership rights in accordance with existing commitments (Wahab, 2019). Thus, the contract functions not only as a legal instrument, but also as a form of mutual commitment that binds both parties.

Wahbah al-Zuhayli explains that there are four main elements that must be fulfilled for a contract to be considered valid, namely shighah (*ijab and kabul*), *al-'aqid* (the parties involved in the contract), *mahal al-'aqd* (the object of the contract), and *mawdhu' al-'aqd* (the purpose of the contract). In his book Introduction to *Fiqh Muamalah, Hasbi Ash-Shiddiqy* emphasizes that these elements are often referred to as the pillars of the contract (Rachman, 2022). A deep understanding of these elements is very important, given the growing complexity of transactions in Islamic banking (Malik et al., 2021; Riaz et al., 2023). Transactions involving various parties and Islamic financial instruments often bring their own challenges. Therefore, ensuring that the pillars of the contract are valid is an important step to avoid potential disputes. With a good understanding of the pillars and objectives of the contract, parties in Islamic transactions can maintain integrity and compliance with sharia principles. This is also important so that Islamic banking can continue to be trusted by the public and support the development of the Islamic economy in Indonesia.

One of the contracts that often causes disputes in Islamic banking is hawalah, which refers to the transfer of debt. Etymologically, hawalah comes from the word "*At-Tahawwul*," which means transfer or change. According to Hanafiyyah scholars, hawalah is defined as the transfer of debt payment obligations from the debtor (*al-madin*) to another party who is willing to bear it (*al-muhal 'alaih*). Fuqaha understand hawalah as the transfer of debt from one party to another, so that the responsibility for paying off the debt shifts to the party who receives the burden (Nofrianto et al., 2022). In general, hawalah describes the process of changing or transferring debt responsibility within the framework of sharia transactions. Thus, this process involves the party who owes (*al-muhil*) and the party who is willing to accept the responsibility (*al-muhal 'alaih*) (Harahap & Sudarti, 2022). This hawalah concept is very important in the practice of muamalah because it facilitates the clarification of debt and credit issues in accordance with sharia principles.

Idris Ahmad explains that hawalah is a contract that involves a memorandum of understanding of ijab and kabul to transfer a debt obligation from one party to another party who is willing to bear it. This process involves the party who owes the debt to a third party, who also has a debt obligation with the party who transfers the debt. Thus, hawalah can be understood as a mechanism to transfer the responsibility for debt payment from one person to another who is willing to take over that obligation (Hardiati & Januri, 2021). In the view of Islamic law, this contract is allowed because it contains benefits for all parties involved. It contains good values such as helping others, facilitating transactions, and providing peace of mind for individuals who face difficulties. In addition, hawalah contracts reflect a sense of social care in muamalah relationships, which includes efforts to forgive and help meet the needs of others. These values indicate that hawalah is not only a legal mechanism, but also a form of worship with deep social dimensions.

The hawalah contract is based on several sources of law in Islam, including the Qur'an, Hadith, scholarly consensus, and qiyas. One of the verses underlying this contract is Q.S. Al-Maidah verse 1, which emphasizes the importance of fulfilling promises or contracts. The Hadith of the Prophet Muhammad narrated by Al-Bukhari from Abu Hurairah is also a sharia basis that supports hawalah as a legitimate practice. In addition, scholarly consensus and the application of qiyas also strengthen the legal basis for implementing this contract in everyday life (Mardotillah et al., 2021). In the context of positive law, protection for parties involved in hawalah contracts, such as creditors and debtors, is determined in Article 613 of the Civil Code. This article directs the notification obligation after signing the *cessie* deed so that all parties understand their respective responsibilities (Padmasari, 2018). This provision provides legal clarity in the implementation of hawalah contracts, which in turn prevents disputes and ensures fairness in financial transactions, especially in Islamic banking.

In addition, the Religious Courts have new authority related to their absolute jurisdiction since the enactment of Law Number 3 of 2006 which was later updated to Law Number 50 of 2009 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. This authority includes the acceptance, examination and clarification of disputes relating to sharia economics (Oslami, 2022). A proper understanding of the limits of this authority is very important, because mistakes in its application can have a negative impact on law enforcement in the sharia economic sector (Nofiardi, 2021). Therefore, an understanding of the absolute authority of the Religious Courts, especially in clarifying sharia economic disputes, is needed. To support the development of the Islamic capital market, there is a need for clear regulations, such as the Islamic Finance Law, which compiles holistically and in detail from general guidelines to steps to clarify issues. This regulation is intended to hand over full authority to the Religious Courts in handling sharia economic disputes through litigation. It is emphasized that with these regulations, the legal system will be more structured and can deliver certainty and justice for all parties involved in the dispute.

In addition to clarifying disputes through litigation in the Religious Courts, clarification of sharia financial disputes can also be done through non-litigation methods. In this case, the National Sharia Arbitration Board/*Badan Arbitrase Syariah Nasional* (BASYARNAS) acts as an institution that has the authority to handle disputes in a non-litigation manner. This approach offers a more flexible and efficient alternative for the parties involved. Therefore, the legal vacuum that may arise in clarifying Islamic financial disputes can be overcome by combining litigation and non-litigation methods, thus creating legal certainty for all parties. This concept is known as a "win-win solution," which implements the principle of progressive law in the clarification of sharia economic disputes (Nurhadi, 2019). This progressive approach not only delivers practical solutions, but also supports the broader development of Islamic economics. The existence of BASYARNAS as an alternative institution allows for a more inclusive approach and is responsive to the needs of all parties involved in the dispute.

In carrying out their duties, judges in the Religious Courts must adhere to the applicable written law. However, if the written law is deemed insufficient or irrelevant to handle a case, judges have the authority to explore other sources of law, such as doctrine, memoranda of understanding, customs, habits, or unwritten laws that are appropriate to the case (Zein, 2021). Law Number 48 of 2009 Article 10 paragraph (1) on Judicial Power emphasizes that the court cannot refuse to examine and try a case simply because the existing law is not clear enough. Instead, the court is obliged to examine and try every case by referring to the applicable legal principles. This suggests that the Indonesian judicial system prioritizes substantive justice, allowing judges to interpret the law in order to reach a just decision. With this approach, the Religious Courts are emphasized to be more responsive and flexible in dealing with the complexity of sharia economic disputes.

In its exception, Defendant I argued that the Plaintiff had already defaulted by not fulfilling its obligations since March 2018, which was based on Batam Court Decision No. 1922/Pdt.G/2020/PA/Btm. Before a person is declared in default, a subpoena is required, which is an official notification from the creditor to the debtor, asking the debtor to fulfill his obligations within a certain period of time. This subpoena serves as a warning so that the debtor immediately fulfills his obligations. This is in accordance with Article 1238 of the Civil Code, which states that the debtor is deemed negligent if a warrant or deed stating so has been given, or based on the provisions in a particular engagement. This provision provides the legal basis for assessing negligence in the memorandum of understanding.

In its review, the panel of judges found that there were facts related to the commitment to sell and purchase receivables and transfer debt (*cessie*) with Mortgage Rights collateral. The memorandum of understanding was made between Defendant I and Defendant II on April 28, 2020 before a notary. The form of *cessie* agreed by Defendant I and Defendant II is included in the hawalah contract. In the context of Islamic banking law, the contract used is the Murabahah Agreement. Therefore, the transfer of debt along with the Mortgage collateral must involve the consent of the Plaintiff. This is because the debt transfer process needs to be carried out based on the norms and ethics of Islamic banking law. These norms have been determined in the National Sharia Council/*Dewan Syariah Nasional* (DSN) Fatwa Number 31/DSN-MUI/VI/2002. The fatwa explains that debt transfer includes shifting customer obligations from conventional financial institutions to Islamic banks.

DSN Fatwa Number 31/DSN-MUI/VI/2002 is an important guideline in the implementation of debt transfer according to sharia principles. In the fatwa, it is explained that debt transfer must pay attention to certain requirements to maintain justice for all parties. One of the main requirements is that the original creditor, in this case the Plaintiff, must give consent before the debt transfer is carried out. This process is in line with the ethical values that underpin Islamic banking law. With the transfer in accordance with sharia norms, the relationship between the parties can be emphasized and maintained. In addition, this arrangement also provides legal certainty in Islamic financial transactions. Therefore, the panel of judges emphasized the importance of each party to comply with the provisions set out in the fatwa and related regulations.

There was a difference of opinion among the judges in this case, where Member Judge 1 rejected the Plaintiff's claim. The rejection was based on the provisions in Article 18 of the BTN Syariah Home Ownership Credit/*Kredit Pemilikan Rumah* (KPR) Financing. This article states that if the customer defaults, then in the event of a transfer of murabaha receivables to another party, the customer is deemed to have agreed and given full rights to the bank to transfer the receivables. The judge referred to Article 1313 of the Civil Code, which defines a memorandum of understanding as an act by which one or more persons bind themselves to another. In this context, the Plaintiff was deemed to have agreed to the memorandum of understanding because the memorandum of understanding had two legitimacies, namely sharia legality and positive law legality. Both legitimacies must be followed by the parties involved in the memorandum of understanding. Thus, the decision to reject the lawsuit is based on compliance with the provisions of positive law and sharia principles that have been agreed upon.

Based on this situation, this research aims to analyze more deeply the clarification of debt transfer disputes or hawalah in Islamic banking practices. This research will focus on the juridical analysis of religious court decisions that handle related disputes. This study is important considering that Islamic banking transactions are increasingly complex and require legal certainty in their clarification. In addition, this research is emphasized to be able to provide an in-depth understanding of how positive law and sharia principles are integrated in resolving banking disputes. Thus, the results of this study are emphasized to contribute to the strengthening of the legal framework of Islamic banking in Indonesia. The resulting legal certainty is also important to maintain public confidence in the Islamic banking system and harmonize its practices with sharia values.

2. Methods

Research methodology is a science that discusses the stages that must be passed in a research process, especially in exploring, expanding, and assessing the truth of knowledge. The knowledge in question, in this context, is legal knowledge as described by Benuf & Azhar (2020). Therefore, research methods have a very important role in supporting the success of a study, especially to achieve the goals that have been set (Muhaimin, 2020). Without the right method, research will not be able to submit results that are valid and in accordance with scientific needs. In legal research, methodology serves to determine the best approach used in studying the issues raised. Therefore, a good understanding of the methodology is needed so that the research results can be scientifically accounted for. In addition, the use of a systematic method also helps researchers in compiling logical and strong arguments based on the data obtained.

This research uses a literature research approach because all the necessary data and materials are available in literature sources such as books, dictionaries, documents, and magazines. This type of research belongs to the category of normative legal research, which is research that examines the law as norms or rules that apply to direct community behavior (Muhaimin, 2020). The stages in normative legal analysis include various important aspects, such as the formulation of legal principles based on social data and written legal data, as well as the formation of relevant legal norms (Amiruddin, 2006). This process also involves the formulation of legal definitions in accordance with the needs of the study and the development of legal rules that can be used as a reference. With this approach, the research aims to reveal legal concepts in depth based on authoritative documents. In addition, the results of this research are emphasized to contribute to the development of legal literature that is both theoretical and applicable.

This research uses a descriptive type of research that aims to provide a complete and systematic description of the prevailing legal situation or certain legal events in society. Descriptive research is explanatory, with a focus on understanding legal phenomena in detail and in depth (Muhaimin, 2020). In addition, a case approach is also applied, where this approach aims to explore the hidden aspects of a case to make it real and understandable knowledge. This process includes in-depth analysis of relevant cases outlined in court decisions, especially those with permanent legal force and long-term impact (Amiruddin, 2006; Assyakurrohim et al., 2023). This approach not only helps understand a particular case, but also provides insight into how legal principles are applied in practice. Through such studies, researchers are emphasized to be able to submit contributions to the development of legal literature. This research focuses on exploring concrete cases to obtain analytical results that can be used as a basis for making legal decisions.

Data collection in this research is carried out by exploring various sources of literature such as books, journals, and laws and regulations that are relevant to the problems studied (Adlini et al., 2022). Researchers also used the document study method, which examines written documents related to legal outcomes, including documents that are not widely published. The document study in this research is focused on analyzing the Decision of the Batam Religious Court Number 1922/Pdt.G/2020/PA.Btm to gain an in-depth understanding of the case that is the object of research (Rifa'i, 2023). The main purpose of this analysis is to gain a more comprehensive insight into the legal phenomena that occur. The study of court decisions is emphasized to reveal how the law is practically applied in resolving disputes. Thus, this research not only submits descriptive analysis but also recommendations based on empirical studies of legal data.

3. Results and Discussion

3.1 Examination of the process of transferring receivables due to default in decision no. 1922/pdt.g/2020/pa.btm

In the legal review of Religious Court Decision No. 1922/Pdt.G/2020/PA.Btm, the plaintiff filed a claim to state that the transfer of receivables (*cessie*) carried out by defendant I and defendant II was invalid and void according to law. The plaintiff also alleged that the action was unlawful. This case stems from the existence of a legal relationship between the plaintiff and the first defendant, which was based on a memorandum of understanding for a Murabahah Sale and Purchase Agreement with collateral in the form of land and buildings located thereon. This memorandum of understanding was a legal contract prepared based on mutual commitment, in which both parties agreed to fulfill their obligations in accordance with the agreed contract. With the existence of this contract, the plaintiff (debtor) and the first defendant (creditor) have an obligation to mutually carry out the achievements specified in the memorandum of understanding. The legal relationship established shows that the two parties are legally bound to fulfill the terms of the contract. However, in the course of its implementation, problems arose that resulted in the disruption of the implementation of obligations as agreed.

The problems in this memorandum of understanding began when the plaintiff, as the debtor, first defaulted on the obligations agreed in the memorandum of understanding. This action prompted defendant I, as the original creditor, to transfer the receivable to defendant II through a *cessie* mechanism. The plaintiff objected to the transfer and brought the case to the Batam Religious Court to resolve the legal dispute by suing both defendant I and defendant II. In the lawsuit, the plaintiff stated that the transfer of receivables was not only unlawful but also violated the principles of the previously agreed memorandum of understanding. The judges then examined and analyzed the case based on the existing legal relationship, including the validity of the original memorandum of understanding as well as the actions taken by the parties. This decision illustrates the complexity of Islamic economic disputes, particularly in the context of the transfer of receivables involving parties with different legal roles.

During the trial, the plaintiff requested for the court to revoke the transfer of receivables through *cessie* between the first and second defendants. The plaintiff argued that the murabaha sale and purchase agreement that he had agreed to was the main memorandum of understanding that had binding legal force. Based on Article 1313 of the Civil Code, it is stated that a memorandum of understanding is an act in which one party binds itself to another party. Therefore, if a sharia contract has been legally agreed, then all parties involved are bound by the memorandum of understanding. A valid memorandum of understanding becomes the legal basis that directs the relationship between the parties involved, and has legal force that must be respected, in accordance with the principle of pacta sunt servanda. This principle requires each party to comply with and carry out the provisions agreed upon in the memorandum of understanding. Therefore, the transfer of receivables made without the consent of the plaintiff is deemed to violate the existing commitment.

In Article 1338 of the Civil Code, it is emphasized that a valid memorandum of understanding has binding force like a law for the parties involved. This means that the memorandum of understanding cannot be changed or cancelled unilaterally, except with the consent of all parties or based on reasons recognized by law. In addition, the implementation of a memorandum of understanding must be carried out in good faith, which requires each party to fulfill its agreed obligations. In this case, the provisions in the murabaha memorandum of understanding become rules that must be obeyed by both parties. Therefore, the plaintiff argued that the transfer of receivables made without his consent was contrary to the basic principles of the memorandum of understanding that had been mutually agreed upon.

Previously, the bank had attempted to contact the plaintiff because the plaintiff had been late several times in paying monthly installments. Defendant I had also submitted a number of warnings (*somasi*) to the plaintiff. A summons is a notice from the creditor to the debtor reminding the debtor to fulfill their obligations within the specified time period, in accordance with the provisions of Article 1238 of the Civil Code, which states that the debtor is deemed negligent if they fail to fulfill their obligations within the specified time limit. Nevertheless, the plaintiff did not heed the warning. As a next step, respondent I transferred the remainder of the plaintiff's debt, which amounted to approximately 163,063,562 (one hundred sixty-three million sixty-three thousand five hundred rupiah), through a Memorandum of Understanding for the Transfer of Debt (*cessie*) No. 49 witnessed by a Notary.

In its review, the Panel of Judges first referred to Article 613 of the Civil Code which directs the transfer of receivables or rights to intangible goods, which states that such transfer has no effect on the debtor prior to written notification or approval from the debtor. This article directs that the transfer of receivables or rights can only have legal effect if the debtor has been notified or submitted written consent or acknowledged the transfer. According to the provisions of Article 613 of the Civil Code, the debtor's consent to the transfer of receivables is optional, which means that the debtor is not required to submit consent in writing, but if it is only notified, then the transfer is sufficiently valid. Therefore, in this case, defendant I as the bank only needed to notify the plaintiff, and the memorandum of understanding can be considered valid based on Article 613 of the Civil Code applicable in conventional banks.

In the *cessie* procedure, the transfer of collection rights is carried out through the making of a deed, which can be an authentic deed or a deed under the hand, which must then be notified to the debtor in accordance with Article 613 of the Civil Code. This transfer occurs through a levering mechanism, and notification to the debtor plays a very important role. Thus, *cessie* aims to transfer the right of collection from the old creditor to the new creditor. However, this transfer only has legal effect on the debtor if the debtor acknowledges or agrees to the transfer. In the context of Islamic banking law, the Panel of Judges in this decision also needs to consider the principles contained in Fatwa DSN-MUI Number 31/DSN-MUI/VI/2002. This fatwa directs debt transfer as a process of transferring customer obligations from conventional financial institutions to Islamic banks with the aim of avoiding usury practices. However, in this case, the transfer of receivables made by respondent I contradicts this fatwa, because the transfer was made from an Islamic bank to a party that operates conventionally. This action clearly violates the principles of Islamic banking law that should be followed by Islamic financial institutions. As an Islamic financial institution, respondent I should have considered alternatives in accordance with sharia principles before transferring the debt to another party, in accordance with the relevant fatwa.

Fatwa DSN-MUI acts as a guideline that must be applied by Islamic financial institutions/*Lembaga Keuangan Syariah* (LKS) in their operations and interactions with the community. According to Khotib Umam, since the Fatwa of DSN-MUI is specified in the law, the products specified by the fatwa must be followed, and any violation may be sanctioned by the competent authority, such as Bank Indonesia (Nurhasanah & Adam, 2017). In this case, the judge's review showed that the memorandum of understanding for the sale and purchase of debt and the transfer of debt between defendant I and defendant II, which was carried out without the knowledge of the plaintiff, was contrary to the norms of Islamic banking law and the provisions in Fatwa DSN-MUI Number 31/DSN-MUI/VI/2002. Therefore, the Panel of Judges decided to grant the plaintiff's claim related to Unlawful Acts (PMH) against Islamic banking and ordered the defendant I and defendant II to restore the plaintiff's rights in accordance with applicable regulations.

The plaintiff's lawsuit related to the restructuring request approved by the Panel of Judges included the provision of a discount or reduction in the principal of the loan, as well as the waiver of interest / margin, fines, penalties, administrative fees, and other fees up to 0%. In its review, the plaintiff as a debtor is required to meet several conditions to apply for restructuring. The first requirement is the existence of force majeure according to Article 1245 of the Civil Code, which requires the debtor to prove three elements, namely the inability to fulfill obligations due to certain circumstances, that these circumstances were not caused by the debtor's fault, and that these circumstances could not have been predicted in advance. These three elements must be met in their entirety. The second requirement is the impact of the Covid-19 pandemic, which is specified in "Regulation of the Financial Services Authority of the Republic of Indonesia Number 2/Pojk.03/2021 concerning Amendments to Regulation of the Financial Services Authority Number 34/Pojk.03/2020 concerning Policies for Rural Banks and Sharia People's Financing Banks as a Result of the Spread of Covid-19."

However, in this case, the plaintiff was unable to provide evidence to support its request, either in the form of written evidence or witnesses who could explain the existence of compelling circumstances or the impact of the Covid-19 pandemic. As the plaintiff failed to prove the existence of "compelling circumstances" as a condition for the acceptance of the restructuring request, the Panel of Judges decided to approve the plaintiff's restructuring request by considering the principles of justice, sharia economics, and the impact of the Covid-19 pandemic. The Panel of Judges also noted that the plaintiff showed good faith in his debt repayment efforts, so the restructuring request which included rescheduling, changing the payment schedule, the number of installments, and providing discounts, was granted provided that there were no additional obligations to be paid to the Islamic Commercial Bank/*Bank Umum Syariah* (BUS).

Member Judge 1 submitted a dissenting opinion, rejecting the plaintiff's claim regarding unlawful acts (PMH) related to the transfer of the plaintiff's house. In his opinion, the actions of defendant I in transferring the plaintiff's financing receivables to defendant II were legal, because the transfer of receivables (*cessie*) was agreed in the murabahah contract for BTN Syariah mortgage financing that had been accepted by the plaintiff and the defendant. Pursuant to Article 1365 of the Civil Code which directs tortious acts that cause harm to other parties, such acts must be evaluated based on real losses, both material and moral. Therefore, if there is an unlawful act, what can be filed is a claim for compensation calculated based on real losses, to restore the situation to its original state.

According to the review of Judge Member 1 in this case, he was of the opinion that the plaintiff, as the debtor, often defaulted or did not fulfill his obligations in accordance with the memorandum of understanding for sale and purchase in the murabahah contract agreed with the first defendant. Article 1238 of the Civil Code states that a debtor is deemed to be in default if it has been declared so by warrant or similar deed, or if the memorandum of understanding stipulates that the debtor is deemed to be in default after the lapse of a specified time. In this case, respondent I had given three warnings to the plaintiff to fulfill the monthly payment obligations in accordance with the memorandum of understanding for murabaha financing on December 10, 2014 and December 26, 2015, but the plaintiff did not fulfill his obligations in accordance with the commitments that had been set. In accordance with Article 1313 of the Civil Code, a memorandum of understanding is an act by which one or more parties bind themselves to another party, and according to Article 1320 of the Civil Code, the legal requirements for a memorandum of understanding are the existence of a commitment between the parties, capacity to enter into an agreement, a clear object, and a legitimate cause.

The four valid conditions of the memorandum of understanding mentioned earlier can be divided into two categories, namely subjective conditions and objective conditions. Subjective conditions include the commitment and capacity of the parties involved in the memorandum of understanding. Commitment indicates that all parties agree to be bound by the same memorandum of understanding. Meanwhile, capability means that each party involved must have the legal capacity to make a memorandum of understanding. Objective requirements include a clear object of the memorandum of understanding and a legitimate cause. The object of the memorandum of understanding must be in accordance with applicable law and have a value that can be fulfilled. If one of these conditions is not met, the memorandum of understanding can be canceled by the aggrieved party.

If the subjective conditions are not met, the memorandum of understanding can be canceled although it remains binding on the parties until there is a legal decision from the Judge. This can be done by submitting a request for annulment to the Judge. However, as long as there is no decision, the memorandum of understanding remains valid in the eyes of the law and applies between the parties. In this case, the Judge will decide whether the memorandum of understanding can be annulled or remains valid. This shows the importance of fulfilling the subjective requirements for a memorandum of understanding to work. If the memorandum of understanding is void, then all obligations associated with the memorandum of understanding are also void. Therefore, the commitment and capacity of the parties are conditions that must be met for a memorandum of understanding to be legally valid.

One of the legal requirements in a memorandum of understanding is the existence of a lawful cause, which is the basis or purpose of the memorandum of understanding. A lawful cause means that the purpose of the memorandum of understanding does not conflict with applicable legal regulations. The purpose of the memorandum of understanding must be legitimate and based on a legally acceptable reason. Conversely, if a memorandum of understanding is based on an invalid cause, then the memorandum of understanding will be null and void. An illegitimate cause can be a reason that violates laws and regulations or prevailing norms in society. The provision of unlawful cause may include matters that are contrary to decency and public order. If the memorandum of understanding is based on a cause that is not in accordance with the law, then the memorandum of understanding can be canceled and deemed invalid.

The application of the provisions in this case refers to deed Number 70808024 dated December 10, 2014 and deed Number 70809001 dated November 26, 2015, which have met the subjective and objective requirements. Article 18 of the BTN Syariah KPR Financing Agreement explains that the customer gives full consent to the Bank to transfer Murabahah receivables (*cessie*) and bills to other parties appointed by the Bank. This also includes the rights related to the financing collateral that can be handed over by the Bank to other parties if needed. In addition, the customer authorizes the Bank to take all necessary actions for this purpose. If the Bank transfers the Murabahah receivables (*cessie*) to another party, the management of the financing remains in the hands of the Bank without the obligation to notify the customer. However, if the financing management cannot be continued after the transfer of receivables, the Bank is obliged to notify the customer of this.

In this memorandum of understanding, the plaintiff has committed to comply with the two aspects of legality contained in the memorandum of understanding, namely sharia legality and positive law legality. These two aspects must be complied with simultaneously, as they are inseparable. This is in accordance with Article 1338 of the Civil Code, which states that a valid memorandum of understanding shall apply as law to the parties that make it. Based on this provision, as a debtor, the plaintiff is obliged to comply with all provisions in the memorandum of understanding, both those of a sharia nature and those relating to positive law. However, in this case, Judge Member 1 was of the opinion that the plaintiff failed to prove the claim that the first defendant had committed an unlawful act. Therefore, the lawsuit filed by the plaintiff was completely rejected by the panel of judges.

The difference of opinion between Member Judge 1 and the other judges in this case led to a situation where consensus was not reached, despite earnest efforts to achieve commitment. In this case, the dissenting opinion is in accordance with the provisions of Article 14 paragraph (3) of Law Number 48 of 2009 on Judicial Power, which directs that if deliberation does not result in consensus, the dissenting opinion of the judge must be included in the decision. Although there are different opinions, the final decision still refers to the decision taken collectively by the panel of judges. Therefore, even though there is a dissenting opinion, the applicable verdict is still the one that has been decided collectively by the panel of judges in this case. The verdict includes decisions on exceptions, merits, and counterclaims, as well as the fulfillment of obligations by the parties.

This verdict included several main decisions, namely the rejection of the exceptions filed by defendant I and defendant II, as well as the partial granting of the plaintiff's claim.

The panel of judges also stated that defendant I and defendant II had committed unlawful acts in relation to the memorandum of understanding of sale and purchase and the transfer of the plaintiff's debt. In addition, the judges stated that the deed of memorandum of understanding on debt transfer signed by the two defendants before a notary was void and invalid, especially with regard to the murabaha contract on BTN Syariah KPR financing. This decision requires the plaintiff and the first defendant to continue and comply with the previously agreed memorandum of understanding (Imayanti, 2021). The panel of judges also granted the plaintiff's request for restructuring and ordered defendant I to carry out the restructuring in accordance with the murabaha sale and purchase contract. In addition, the panel of judges rejected the plaintiff's claim that was not in accordance with the decision that had been made, and ordered defendants I and II to pay court costs of IDR 930,000. This decision was made through deliberations of the panel of judges on May 20, 2021 and read out in open court on May 27, 2021.

3.2 Analysis of the Judge's Legal Review in the Case of Transfer of Receivables (Cessie) Due to Default in Decision No. 1922/Pdt.G/2020/PA.Btm

In the legal memorandum of understanding between the plaintiff and the defendant in the form of a murabahah sale and purchase agreement, there are provisions that direct the transactions carried out to remain in accordance with the principles of the previously agreed contract. For this reason, the bank can make a special memorandum of understanding with the customer to ensure that the transaction is carried out in accordance with the commitments made by both parties (Ikbal & Chaliddin, 2022). In case No. 1922/Pdt.G/2020/PA. Btm., the core of the lawsuit is the transfer of receivables through *cessie* that occurs due to customer default on the previously agreed memorandum of understanding. The process of transferring receivables can be done through an authentic deed or a deed under the hand, provided that the deed must be submitted to the debtor in accordance with Article 613 of the Civil Code. This aims to maintain transparency and ensure that the debtor's rights are not violated during the process of transferring debt obligations. Thus, it is important to ensure clarity and consent in any memorandum of understanding involving the transfer of receivables, as well as to follow the applicable procedures so as not to violate the agreed terms.

The National Sharia Council/*Dewan Syariah Nasional* (DSN) has provided guidelines related to debt transfer (*hawalah*) in Fatwa DSN-MUI Number 12/DSN-MUI/IV/2000, which is an important reference in this regard. The fatwa directs several things, including the pillars of hawalah which include several parties, such as muhil (the party who owes and is owed), muhal (the party who owes to muhil), muhal 'alaih (the party who owes to muhil), muhal bih (muhil's debt to muhtal), and sighat (*ijab qabul*). For a hawalah contract to be valid, it must involve the clear will of all parties involved through ijab qabul. In this case, the contract must be drawn up in writing or through modern communication media to ensure that the will of the parties is validly expressed. In addition, hawalah can only be implemented with the consent of all parties involved, namely muhil, muhal, muhtal, and muhal alaih. Clarity regarding the position and obligations of each party in the contract is very important to avoid problems in the future. This DSN Fatwa provides a strong legal basis for Islamic financial institutions in carrying out their operations, so that every transaction is carried out in accordance with applicable sharia principles.

DSN-MUI Fatwa No. 58/DSN-MUI/V/2007 provides further explanation of hawalah bil ujrah, which is the transfer of debt with the application of a fee (*ujrah/fee*). In this fatwa, hawalah is divided into two types, namely hawalah muqayyadah and hawalah muthlaqah. Hawalah muqayyadah is a debt transfer in which the debtor (*muhil*) not only owes the debtor (*muhal*), but also has receivables against third parties (*muhal alaih*), in accordance with the provisions in Fatwa No. 12/DSN-MUI/IV/2000. Meanwhile, hawalah muthlaqah is a debt transfer in which the debtor (*muhil*) only has an obligation to owe the debtor (*muhal*) without any obligation to owe the third party (*muhal alaih*). The hawalah bil ujrah involves the application of a fee as part of the debt transfer transaction. This provision aims to provide clearer and more structured guidelines regarding the transfer of debt, as well as ensuring that each party involved can fulfill their obligations in accordance with the memorandum of understanding that has been drawn up. This DSN Fatwa provides clear guidance for Islamic financial institutions in managing debt transfers, either with or without the application of fees, and ensures that each transaction is conducted with transparency and valid consent from all parties involved.

In the concept of hawalah, the transfer in question is the transfer of debt from the debtor (*muhil*) to the person who will assume the debt and make the payment (*muhal alaih*). In this case, hawalah can be understood as a transfer of receivables, which in the context of *cessie* is referred to as hawalah al-muqayyadah (Suadi, 2021). Hawalah al-muqayyadah is a transfer of receivables made by one party to another party in lieu of debt payment. This type of hawalah is also called hawalah al-haqq, because the process of transferring the rights of the creditor (*muhaal*) from the first party (defendant I) to the new party (*muhal alaih or defendant II*) who has the right to collect the receivables. Meanwhile, the party who has a debt obligation (muhil or plaintiff) has not changed or changed in its obligations. Therefore, the concept of *hawalah al-muqayyadah* in this case directs that the rights and obligations between creditors and debtors change hands in a legal way and in accordance with the agreed memorandum of understanding. In this case, it is important to pay attention to the provisions that apply in every transaction involving the transfer of debts or receivables in accordance with sharia principles.

4. Conclusions

The memorandum of understanding between the Plaintiff and Defendant I faced obstacles due to violations of the commitments made. The Plaintiff, as the debtor, failed to fulfill its obligations by making repeated late installment payments. Defendant I (the bank) tried to resolve this issue by issuing several warnings to the Plaintiff, but did not receive an adequate response. As a further step, the bank then transferred the receivables to Defendant II through a Memorandum of Understanding for the Transfer of Debt (*cessie*) which was legalized before a Notary. The Panel of Judges, in its review, referred to Article 613 of the Civil Code which directs the validity of debt transfers in conventional banks. However, the panel of judges also considered Fatwa DSN-MUI No. 31/DSN-MUI/VI/2002 which states that the transfer of receivables by Islamic banks to individuals using the conventional system is contrary to the principles of Islamic banking law.

In the decision of the Panel of Judges No. 1922/Pdt.G/2020/PA. Btm, the transfer of receivables was declared invalid and null and void. In addition to referring to Fatwa DSN-MUI No. 31/DSN-MUI/VI/2002, the judge also considered the contents of the memorandum of understanding agreed between the two parties. Judge Member 1 expressed a view that emphasized the principle of pacta sunt servanda, which states that a valid memorandum of understanding must bind the parties involved to implement it. If this principle is not followed, then the memorandum of understanding may be deemed void or invalid. In this case, based on Article 18 of the BTN Syariah KPR Financing Agreement, the Plaintiff should have agreed to the transfer of receivables to Defendant II, considering that the Plaintiff had defaulted on the previously agreed memorandum of understanding. Therefore, the legal review taken by Judge Member 1 is considered more appropriate, because it is in line with the provisions contained in the memorandum of understanding for the transfer of receivables between Defendant I and the Plaintiff.

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