

Hak milik kebendaan atas obyek pembiayaan bank syariah : suatu tinjauan yuridis pembiayaan line facility oleh PT. Bank Syariah Mandiri = The substantive ownership right of syariah banking financing object: A judicial review of line facility financing by PT. Bank Syariah Mandiri

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Abstrak

Salah satu produk perbankan syariah di bidang penyaluran dana adalah dengan fasilitas line facility sebagai bentuk komitmen (wa'd) penyediaan plafon pembiayaan secara bergulir dalam jangka waktu tertentu. Komitmen tersebut dilaksanakan dalam berbagai prinsip, rukun dan syarat instrumen pembiayaan syariah sesuai kebutuhan nasabah yang satu sama lain memungkinkan timbulnya masalah hukum. Persoalan-persoalan tersebut diteliti dalam tipologi problem identification dengan pendekatan kualitatif menggunakan metode kepustakaan dan lapangan. Dalam kerangka pembiayaan line facility oleh bank syariah, konsep hak milik menjadi hal yang penting karena akan menentukan jenis akad-akad pembiayaan yang akan dilaksanakan dari pembiayaan line facility sebagai bagian dari struktur pembiayaan dan pada akhirnya juga menentukan jenis lembaga jaminan yang perlu dilakukan sebagai bentuk pengelolaan resiko oleh bank. Hasil studi kepustakaan dan lapangan menunjukkan bahwa praktek pemberian fasilitas pembiayaan line facility dalam jenis qardh, hawalah wal murabahah di bank syariah dari beberapa sisi telah menyalahi konsep sesuai syariat, terutama mengenai struktur pembiayaan, prinsip perikatan, rukun dan syarat akad dan konsep hak milik. Pelanggaran tersebut mengakibatkan konsep wa'd line facility seolah-olah tidak dilaksanakan secara menyeluruh. Line facility tidak difungsikan sebagai wa'd yang mengikat secara moral tetapi menjadi akad pokok yang telah menimbulkan hubungan utang piutang antara para pihak yang pelunasannya telah dijamin dengan lembaga jaminan fidusia dan hak tanggungan. Untuk itu perlu adanya pengaturan setingkat undang-undang bagi perbankan syariah dan produk-produknya agar konsep muamalah Islam dapat benar-benar dilaksanakan sesuai syariat. Itikad dan ketaatan para pihak atas rukun dan syarat yang telah digariskan menjadi hal yang penting selain terus dilakukannya usaha sosialisasi atas mekanisme pembiayaan perbankan syariah.

.....One of the sharia banking systems in the realm of financing is the so-called line facility, considered as the manifestation of commitment (wa'd) of the provision of financing plafond conducted sequently in a certain period of time. The commitment is conducted in various principles, laws and requirements of the sharia financing instrument in accordance with the customers' needs, which could occur a legal problem. Such problems are scrutnized in the problem identification typology with a qualitative approach, using the library as well as field study. In the line facility financing framework provided by a sharia bank, the concept of ownership becomes an important issue, since it will determine the types of financing agreement (akad) that will be implemented from the line facility financing as the part of the financing structure, which will eventually also determine the type of guarantee institution applied as the risk management for the bank. The study, both library and field, shows that the implementation of the line facility financing provision under the type of qardh, hawalah wal murabahah in the sharia bank has violated the sharia concept itself in several aspects, particularly on the financing structure, binding principles, procedures and requirements of the akad, as well as concept of ownership, which causes the wa'd line facility seem to be implemented in a

mere partial way. Line facility doesn't function anymore as a wa'd that binds morally, but instead as a main akad which cause a debt-credit relation between the concerned parties, the payment of which is guaranteed by the fiduciary guarantee institution as well as security right. Therefore, there is a need to create a law-level regulation for sharia banking and its products in order to ensure that the Islamic muamalah concept can be really applied according to the sharia. Furthermore, the good will and conformity of the parties involved on the pillars and requirements determined would be important in ensuring the sustainability of this matter, besides by socializing the mechanism of sharia banking financing.