SETTLEMENT OF DEFAULT DISPUTES IN THE IMPLEMENTATION OF AL-QARDH AGREEMENT ON SHARIA BANKING

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Abstract: This writing focuses on qardh contract as one of the contracts applied in sharia banking. In qardh financing, potential disputes between the borrower and the lender may be possible. From the normative point of view, the settlement of disputes in case of default is stipulated in Law Number 21 Year 2008 concerning Sharia Banking. The existence of Article 55 Paragraph (1) of the Sharia Banking Law stipulates that to grant the authority of the Religious Courts as a form of settlement of litigation disputes for the settlement of the first form, then a non-litigation settlement. In fact, in the settlement of disputes that should be done first is a non-litigation settlement in accordance with the principles of deliberation and justice. The Settlement of Default with the financing of al-Qardh contract to the customer which from the beginning has good intention, the sharia bank undertakes the restructuring efforts based on the financing contract, and if the restructuring effort does not bring the result, the syariah bank can execute the guarantee execution. In the absence of a guarantee, the dispute shall be settled through the National Sharia Arbitration Board or litigation, or voluntary efforts may be made to the customer to hand over the collateral.

Keywords: default disputes, al-qardh, sharia banking

I. INTRODUCTION

Sharia banking as well as banking in general is a financial intermediary institution (Financial Intermediary Institution) which is the institution that performs activities to raise funds from the community in the form of savings and channeling to other communities in need in the form of financing. Its presence in various aspects of society's vast efforts has signaled that Islamic principles are highly applicable in the modern business world. Sharia banking in Indonesia is a reflection of the need for a banking system that can contribute stability to the national financial system. The sharia banking industry also reflects the demand of the people who need an alternative banking system that provides banking services that comply with the principles of sharia.

Sharia-based banking emerges as the dynamics of conventional bank development. These developments occur as a consequence of government policy (Bank Indonesia) which provides an opportunity for conventional banks to provide Islamic banking services, provided that the service must be done in full branch level (Full-Pledge Sharia Branch), one form of dual banking system model. The growth of sharia banking in Indonesia is influenced by several factors, among others: First, the legal certainty of banking that protects it; Second, the growing public awareness about the benefits of financial institutions and sharia banking; and third, political support or political will from the government.2

The existence of Islamic Bank has a juridical or legal basis in Indonesia. Since the inception of the idea of sharia banking, the legislation that was born is Law Number 7 Year 1992 concerning Banking which is accompanied by the issuance of Government Regulation Number 72 Year 1992 concerning Bank Based on Profit Sharing Principle. Subsequently, the law was amended by Act Number 10 of 1998 concerning Banking, and then regulated by its own laws, namely Law Number 21 Year 2008 concerning Sharia Banking (hereinafter referred to as the Islamic Banking Law). In addition to legislation, sharia banking is also regulated in Bank Indonesia Regulations, compilations of sharia economic law and the fatwa of the National Sharia Council.3

Sharia banking is anything that concerns about sharia bank and sharia business unit covering institute, business activity, and way and process in conducting its business activity. After the formal legal basis is issued, sharia banking is growing in Indonesia, and began to offer a wide range of products, which can be divided into three major parts: Funding, Financing and Service.4

According to Article 1 paragraph (7) of Law Number 21 of 2008 concerning Sharia Banking, determines that a Bank conducting its business activities based on sharia principles and by type consists of Sharia Commercial Bank and Sharia Rural Bank. The provisions of Article 1 paragraph (12) of the Islamic Banking Law also states the principles of Islamic Banking institutions namely the principles of Islamic law based on fatwas issued by institutions that have authority in the determination of fatwa in the field of sharia. The principle is economic democracy with the principle of prudence, as set forth in the provisions of Article 2 of the Islamic Banking Law. Furthermore, Article 3 of the Islamic Banking Law states that the purpose of sharia banking supports the implementation of national development in order to improve justice, togetherness, and equity of the people's welfare.

The existence of Sharia Bank is a requirement of Indonesian society. First, the majority of the population of Indonesia is a Muslim who needs a bank that is in accordance with the principles of Islam that is sharing the benefits and losses, both sharia banking practices for the results are already part of the culture of Indonesian society in various economic activities always apply "maro, mertelu" in terms of trade, agriculture, marine and livestock.5 Sharia banking has become a sine quanon of its existence in Indonesia, because it is in accordance with the nation's culture and business activities run by the Indonesian nation. The development of sharia law is the

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2 Juhaya S. Pradja, Ekonomi Syariah, Pustaka Setia, Bandung, 2015, p. 52.
4 Awaluddin, Proses Pelaksanaan Akad Qardh Wal Ijarah Pada Produk Talangan Haji Pada Bank Syariah Mandiri Kantor Cabang Pembantu Padjad Panjang, Jurnal Ilmiah Syari'ah, Volume 15, Number 2, July-December 2016
ideal law in fact there are still weaknesses, especially in terms of achieving the goal of justice coveted by the people of Indonesia in establishing Islamic banking institutions.

In Law Number 21 Year 2008 regarding Sharia Banking also regulates the financing provided by the bank to customers. Financing is the provision of equivalent funds or bills with it in the form of:  

a. Shared transaction in the form of mudaraba and musharaka;  
b. Lease transactions in the form of ijara or lease purchase in the form of ijara mutamtiya bittamlik;  
c. Sale and purchase transactions in the form of murabahah, salam, and istishma receivables;  
d. Lending and borrowing transactions in the form of qardh receivables;  
e. Lease transactions in the form of ijara for multilateral transactions.

Financing in Islamic banking is carried out with transactions free of usury or interest because there is always a substitute or underlying transaction, ie a business or commercial transaction that legitimizes a fair addition of property.  

In legal relationships in sharia banking, there are occasions of disputes between the bank and the customer. This happens because of the contract/business agreement, which in sharia banking is known by the contract. A contract is created with the purpose and expectation that the parties may exercise the contents of the contract voluntarily or in good faith, but in reality it is often violated or ignored, resulting in a dispute arising between the parties involved in the agreement. Possible disputes may be caused by default (breach of contract), unlawful acts, and business risk (liability).  

This writing focuses on qardh contract as one of the contracts applied in sharia banking. Qardh may be interpreted by the provision of funds or equivalent claims based on agreement or agreement between the borrower and the lender who obliges the borrower to repay the debt after a certain period of time. In qardh financing, potential disputes between the borrower and the lender may be possible.

Regarding potential dispute, Muhammad Abdul Kadir and Rilda Murniati as quoted by Muh. Nasikhin, states that:  

Potential conflicts or disputes may be caused by differences in perceptions or interpretations of the obligations and rights they must meet, the incidence of such differences may be due to the financial institution wishing to achieve the objective of obtaining profit without considering the needs and capabilities of the users of the funds and the time period for the use of the funds. While the user of the fund wants to achieve

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9 Ibid., p. 95 as cited in Yusna Zaida, the Authority of Religious Courts Against Sharia Economic Disputes, article, without years.  
10 Ahmad Kamil, M. Fauzan, Kitab Undang-Undang Hukum Perbankan dan Ekonomi Syariah, Kencana Prenada Media Group, Jakarta, p. 469  
the goal of obtaining profit without the supervision or control of the financial institution fund provider, the rule of law applicable or the agreement on which the legal relationship between the two parties is unclear, incomplete, there is no implementing rule, or no arrangement at all. Thus both parties think and act according to their own will and way, there is no common perception and a state of emergency (force majeure) that can not be addressed by anyone, including both parties. The financial institution claims the user of the responsible funds, as the fund user refuses responsibility because he feels innocent.

From the normative point of view, the settlement of disputes in case of default is stipulated in Law Number 21 Year 2008 concerning Sharia Banking. However, the existence of Article 55 Paragraph (1) of the Sharia Banking Law stipulates that to grant the authority of the Religious Courts as a form of settlement of litigation disputes for the settlement of the first form, which is then settled in a non-litigation manner. In fact, in the settlement of disputes that should be done first is a non-litigation settlement in accordance with the principles of deliberation and justice. The forms of litigation as mandated by Article 55 paragraph (1) of the Islamic Banking Law should only be made after non-litigation settlement forms.

Similarly, the provisions of Article 55 paragraph (2) of Islamic Banking Law, the researchers view the norm is not clear. This is because the provisions of Article 55 paragraph (2) provide alternative options to the parties to the dispute. The alternative choice of the dispute in question is through deliberation; banking mediation; National Sharia Arbitration Board, or other arbitration body.

Based on the above description of the background then the main issue that emerged in this writing is the settlement of disputes wanprestasi disputes in Al-Qardh in Islamic Banking.

II. RESEARCH METHODS

This study includes normative legal research, namely the type of legal research that analyzes and reviews the legislation related to sharia banking.

This research uses approach is statute approach (statute approach) and conceptual approach (conceptual approach). Types of data sources used in the study consisted of primary data and secondary data. Primary data is obtained directly from the first source in the field through research, ie from covering official documents, books, research results, reports, diaries and so on.12

III. RESULT AND DISCUSS

3.1 Setting Default In Financing Al-Qardh Agreement on Sharia Banking

Based on Bank Indonesia Regulation Number 13/9 / PBI / 2011 concerning Amendment to Bank Indonesia Regulation Number 10 / PBI / 2008 concerning the Restructuring of Financing for Sharia Banks and Sharia Business Unit, the restructuring of financing is an effort made by the bank in order to assist customers to settle their obligations among others through rescheduling, return and reordering requirements. Sharia banks may only restructure financing to customers that meet the following criteria; 1) the customer experiences a decrease in payment ability; and 2) the customer has a good business prospect and is able to fulfill the obligation after restructuring. Restructuring for consumer financing can only be made to customers with the criteria that customers experience a decrease in payment ability and there is a source of clear

installment payments from customers and able to meet obligations after restructuring. The restructuring of financing shall be supported by adequate and well documented analysis and evidence.

In addition, sharia banks will conduct rescue financing problems with restructuring efforts if the customer still has good faith in the sense of still willing to be invited to cooperate in efforts to rescue problematic financing, but if the customer is not in good faith in the sense cannot be invited to cooperate in the effort to save the financing problematic then sharia bank will make efforts to settle problem financing.

Financing in the form of receivables, namely *murabaha* and *istishna* can be restructured also with 3 (three) ways of rescheduling, reconditioning, and restructuring. Rescheduling is done by extending the maturity period of the financing without changing the remaining obligations of customers to be paid to the bank. Reconditioning is done by re-adjusting the terms of financing including changes in repayment schedule, installment amount, and duration and / or granting of a discount as long as it does not increase the remaining liabilities of the customer to be paid to the bank.\(^{13}\)

Restructuring by converting *murabahah* receivables or *istishna* receivables by the remaining obligations of customers into *ijara muntahiyah bit tamlik* or *mudharabah* or *musyarakah*. Based on the fatwa of the National Sharia Board, the conversion of receivables is done in the following manner: If the contract is *murabaha* then it is stopped by way of; 1) *Murabahah* objects are sold by customers to LKS at market prices; 2) The Customer shall settle the remaining debts to the LKS from the proceeds of sale; 3) If the proceeds exceed the remaining debts, the excess can be used as advance payment for the ijarah agreement or part of capital from *mudharabah* and *musyarakah*; 4) If the proceeds of sale are smaller than the remaining debt, the remaining debt remains the debt of the customer whose settlement method is agreed between the LKS and the customer.

LKS and its ex-*murabaha* clients may create a new contract with the following agreement: 1) Ijarah muntahiyah Bit Tamlik on the goods mentioned above by referring to the Fatwa DSN No.27/DSN-MUI/III/2002 on Al Ijarah Muntahiyah Bit Tamlik; 2) *Mudharabah* by referring to the DSN No. /DSN-MUI/IV/2000 Fatwa concerning mudharabah financing; 3) *Musyarakah* with reference to Fatwa DSN-MUI No.8/DSN-Mui /IV/2000 about musyarakah financing. *Mudharabah* and *musyarakah* financing can be restructured by rescheduling, reconditioning, restructuring, and restructuring. Rescheduling is done by extending the maturity period without changing the remaining liabilities of the customers to be paid to the bank. Reconditioning, which is done by re-establishing the terms of financing, among others, changes in repayment schedule, installment amount, timeframe and/or discounting. Restructuring with the addition of funds by the bank to customers so that the business activities of customers can be re-run.

Restructuring by converting into temporary equity is performed as follows: 1) Temporary equity participation may only be made to a customer who is a legal entity in the form of a limited liability company; 2) The Bank terminates the financing contract in the form of mudaraba or musharaka; 3) The Bank establishes a musyarakah contract with the customer for temporary equity participation in accordance with the agreement with the customer for the business undertaken; 4) The Bank conducts temporary equity participation in the amount of the remaining customers’ liabilities.

\(^{13}\) Fatwa of the National Sharia Council Number 46 / DSN-MUI / II / 2005 on Murabahah Charges Cut (Khashm Fi Al-Murabahah).
The remaining liabilities of the customers in the restructuring of the mudharabah and musyarakah financing contracts represent the principal amount not paid by the customer at the time of restructuring. The qardh financing can be restructured by rescheduling by extending the maturity period without altering the remaining liabilities of the customers to be paid to the bank and reconditioning by re-assigning the terms of financing including schedule changes payment, installment amount, duration and/or granting of the deductions shall not increase the remaining liabilities of the customer to be paid to the bank.

In the Fatwa of the National Sharia Council No: 19 / DSN-MUI / IV / 2001 on Al-Qardh. If the customer is unable to return part or all of its obligations at the agreed time and the LKS has confirmed its inability, the LKS may extend the repayment period or write off some or all of its liabilities.7 LKS may impose sanctions on the customer in the event that the customer does not show the wish returns part or all of its obligations and not due to incompetence. Sanctions imposed on customers as referred to in point 1 may be and are not limited to the sale of guarantee goods. If the warranty is insufficient, the customer must still fulfill its obligations in full.14

Ijarah and ijarah muntahiah bittamlik can be restructured by rescheduling done by extending the maturity period and the bank can re-establish the ujrah to be paid by the customer with the longest extension period up to the economic life of the ijarah assets. Then re-done (reconditioning) is done by re-establishing the terms of financing, among others, the number of installments, duration, payment schedule, giving ujrah pieces and/or other. After the requirement can be done restructuring by converting akad ijarah or ijarah muntahiyah bittamlik become mudharabah or musyarakah. Islamic banks are restructuring into new financing agreements by considering customer conditions which include: 1) Collectability of customers; 2) Type of business; 3) Customer's cash flow. Restructuring (restructuring) by converting into temporary equity participation can only be done to customers which is a business entity in the form of a limited liability company.

The Bank terminates the financing agreement in the form of ijara or ijarah muntahiyah bittamlik by taking into account the fair value of ijarah assets. The Bank shall create a musyarakah contract with the customer for temporary equity participation in accordance with the agreement with the customer for the business undertaken. The Bank conducts temporary equity investments in the fair value of ijarah assets. Restructured financing shall be monitored on an ongoing and timely basis by analyzing the progress of the settlement and taking the necessary preventive measures if new potential problems are discovered, by providing guidance and direction to customers to promptly improve their financial condition.

3.2 Settlement of Default Disputes in Sharia Banking

The effort to solve non-performing financing is done when the effort to rescue the problematic financing that has been done by sharia bank does not bring the result or since the beginning of the customer receiving the facility is not in good faith to solve the problem financing, the effort made by the sharia bank is the effort to solve the problem financing, can be done by sharia banks depending on the conditions faced by the customer.

The terminology used in Bank Indonesia Regulation Number 10/PBI/2008 concerning Financing Restructuring for Sharia Banks and Sharia Business Units is Collateral Taken Over which hereinafter referred to as OREA are assets acquired by the Bank, either through auctions

14 The general provisions in the fatwa on al qardh are also stipulated the same in Articles 612 through Section 617 of the Compilation of Islamic Economic Law, Supreme Court Regulation No. 2 of 2008.
or out of auctions on the basis of voluntary submission by the owner of the collateral or based on the power to sell outside the auction of the collateral owner in the event that the customer does not fulfill his/her obligations to the Bank. The settlement of non-performing financing through the mechanism of voluntary surrender (Offset) with the customer's criteria has bad business prospects/the ability to pay is no longer there, the character of the customer is not good (do not want to pay the installment) and the quality of collectability is substandard, doubtful and loss.

The objective of settlement through the transfer of collateral and financing measures through this settlement is carried out if the restructuring or billing effort is unsuccessful or difficult to perform. Implementation by approaching the customer or the owner of the collateral in order to be willing to pay or pay off his obligations to the sharia bank and make more intensive settlement efforts to the customer or the owner of the collateral either through the provision of notices or warning letters and so forth aimed at the customer is willing to pay or paying off his obligations to the sharia bank. The process of financing settlement through the sale of goods into collateral financing/assets of other customers is that the proceeds can be used as repayment or payment of obligations on Islamic banks. The sale of collateral may be made to other parties (unrelated to the legal relationship with the sharia bank), either by the customer or the owner of the collateral, or with the help of a sharia bank in its capacity as an intermediary for the sale of goods.

The sale of collateral may also be made to a Sharia Bank or in other words purchased solely by a Sharia bank through an officer / employee appointed to it or directly by a sharia bank, commonly known as Offset Collateral as stipulated in Article 40 of Law no. 21/2008 with the note, the collateral purchased shall be disbursed not later than 1 (one) year period. In the event that the purchase price of the collateral exceeds the total liabilities of the customer to the sharia bank and UUS, the excess of such amount shall be returned to the customer after deducting the auction fee and other costs directly related to the collateral purchase process.

The sale of collateral to third parties or other parties shall be carried out with due regard to the following matters: 1) The position of the bank shall only be the party assisting in finding prospective buyers and assisting the smoothness of the sale transaction and not directly involving the sale and purchase of the buyer and the prospective buyer; 2) The position of the bank shall give approval in the meaning of the bank as the creditor holder of the guarantee; 3) The position of the bank only regulates the money from the sale of the object so as not to fall into the hands of the owner but directly paid to the bank as the repayment of its debts.

The sale of collateral to the bank or appointee (in banking known as offsetting shall be implemented with due regard to the following matters: 1) That offset is only one form of problem financing settlement which is conducted by collateral sale with the bank or officer appointed as the buyer. 2) That offset is intended to settle the customer's obligation to the bank; 3) That the sale and purchase must pay attention to legislation. The purchase of collateral may be executed after the collateral is retracted and the value of the collateral purchase is maximized at market value after the bank has relaxed.

3.3 Financing Settlement Issues Through Warranties

Settlement through collateral is performed by syariah bank where based on re-evaluation of financing, the customer's business prospect is absent, and or the uncooperative client to complete the financing or rescue effort with restructuring efforts does not result in the re-launch

15 See article 11, paragraph (2) g of Law Number 4 Year 1996 regarding Mortgage Rights
16 See section 40 of Law no. 21/2008
of the financing. Then the effort to settle the financing problem with the execution of the object of the guarantee will be done by the sharia bank with the note that the object of the guarantee is burdened by the guarantee institution in accordance with the procedure determined by the law.

3.4 Settlement Through National Sharia Arbitration Board

In Article 20 Paragraph (2) of Bank Indonesia Regulation Number 7/46 / PBI / 2005 concerning Agreement on Collection and Channeling of Funds for Banks Conducting Business Based on Sharia Principles states that: "In the event that the deliberations do not reach agreement, further settlement can be done through alternative dispute settlement or Sharia Arbitration Board." Similarly, in Article 4 paragraph (3) of Bank Indonesia Regulation Number 9/19 / PBI / 2007 concerning the Sharia Principle in Sharia Fund and Fund Disbursement Activities and Sharia Bank Services, dispute resolution of sharia banking through a new sharia arbitration mechanism can be undertaken if dispute settlement through mediation, including banking mediation does not reach agreement. Thus, a new sharia arbitration mechanism can be conducted if the dispute resolution of sharia banking through deliberation and mediation does not reach an agreement.

The Bank Indonesia Regulation states that the Islamic banking dispute settlement forum is arranged in stages, beginning with the settlement through deliberation, then through mediation including banking mediation. If the deliberations do not reach an agreement. It can then proceed through sharia arbitration or judicial institution when dispute settlement through bank mediation also does not reach agreement.

As noted above, based on the fatwa-fatwa of the National Sharia Council, that when there is a dispute between the Islamic financial institutions and their clients, the settlement is made through deliberation, except not reaching agreement, to be settled through Basyarnas. The decisions made by Basyarnas had binding power. The court is not authorized to adjudicate the disputes of the parties which have been bound by the arbitration agreement. The arbitral award is final and binding, which means having a permanent and binding legal force, no appeal, no appeal or no review. Therefore, the parties must implement the decision of Basyarnas voluntarily.

3.5 Settlement Through Litigation

The Bank will take the settlement through litigation if the customer is not in good standing, i.e. does not indicate willingness to fulfill its obligation while the customer actually still owns assets that are not controlled by the bank or deliberately hide or have other sources to settle the bad credit. Based on the provisions of Article 49 of Law Number 3 Year 2006 concerning Religious Courts (UU No. 3/2006), the authority to settle the dispute over sharia banking is also the absolute competence of the Religious Courts within the religious court, even covering other sharia economics in outside the field of sharia banking. Based on the explanation of Article 49 of Law no. 3/2006, then all customers of financial institutions and sharia financing institutions, or conventional banks that open a sharia business unit by themselves are bound by the provisions of sharia economy, both in the implementation of the contract and in the settlement of disputes.

In Law no. 21/2008 re-affirmed that the dispute of sharia banking is one of the jurisdiction of courts within the religious court as specified in Article 55 paragraph (1) of Law

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17 Based on Article 60 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Settlement, which provides that “arbitral award is final and has permanent legal force and binds the parties.”
no. 21/2008, namely: "Settlement of sharia banking disputes conducted by courts within the religious court".

Article 55 paragraph (2) of Law no. 21/2008 states "In the event that the parties have agreed to settle the dispute other than as intended in Article 55 paragraph (1) of Law no. 21/2008, dispute resolution is done in accordance with the contents of the Agreement ". Explanation of Article 55 paragraph (2) of Law no. 21/2008 states that the meaning of dispute settlement in accordance with the contents of the contract is an effort by deliberation, banking mediation, national sharia arbitration body or other arbitration institution as well as through the courts within the general judicial environment.

Based on the law of the agreement, the provisions of Article 55 paragraph (2) of Law no. 21/2008 was born because of the principle of freedom of contract. Islam gives freedom to the parties to engage in an engagement. The form and content of the engagement are determined by the parties. If it has been agreed upon the form and contents of the agreement shall be binding on the parties that have agreed and shall be exercised all rights and obligations. But this freedom is not absolute, as long as it is not contrary to Islamic sharia, then the engagement may be implemented.18

The existence of forum selection in the settlement of sharia banking dispute based on Article 55 paragraph (2) of Law no. 21/2008 shows the inconsistency of legislators in formulating the rule of law. Article 49 of Law no. 3/2006 clearly provides the competence of the Religious Courts to prosecute sharia economic disputes, including sharia banking as an absolute competency. The provision of Article 55 paragraph (2) of Law no. 21/2008 and its explanations have been tested by the Constitutional Court in its Decision Number 93 / PUU-X / 2012 on 29 August 2013 that: 1) Elucidation of Article 55 paragraph (2) of Law no. Law No. 21/2008 concerning Sharia Banking (State Gazette of the Republic of Indonesia of 2008 Number 94, Supplement to the State Gazette of the Republic of Indonesia Number 4867) is contradictory to the 1945 Constitution of the State of the Republic of Indonesia; 2) Elucidation of Article 55 paragraph (2) of Law no. Law No. 21/2008 concerning Sharia Banking (State Gazette of the Republic of Indonesia of 2008 Number 94, Supplement to the State Gazette of the Republic of Indonesia Number 4867) has no binding legal force.

The Constitutional Court is of the opinion that there is a choice of dispute (resolution of forum) to resolve the dispute in sharia banking as mentioned in the Elucidation of Article 55 paragraph (2) of Law no. 21/2008 a quo will ultimately lead to overlapping authority to prosecute because there are two courts granted the authority to resolve the dispute over sharia banking while in another law (Religious Courts) it is expressly stated that the religious courts are given the authority to resolve Sharia banking disputes also include sharia economic disputes.

According to the Court, it is the right of the customers and also the Sharia business unit to obtain legal certainty as stipulated in Article 28 D Paragraph (1) of the 1945 Constitution. The Court assessed the provisions of Elucidation of Article 55 Paragraph (2) of Law No. 7 Year 1999, 21/2008 a quo does not provide legal certainty. In light of this fact, although the Court has not adjudicated a concrete case, it is sufficient that the provisions of the Explanatory Elucidation of the article have resulted in fair legal uncertainty and the loss of the constitutional right of the client to obtain a fair legal certainty in the resolution of the Islamic banking dispute causing it to be contrary to the constitutional principles.

IV. CONCLUSION

From the normative point of view, the settlement of disputes in case of default is stipulated in Law Number 21 Year 2008 concerning Sharia Banking. The existence of Article 55 Paragraph (1) of the Sharia Banking Law stipulates that to grant the authority of the Religious Courts as a form of settlement of litigation disputes for the settlement of the first form, then a non-litigation settlement. In fact, in the settlement of disputes that should be done first is a non-litigation settlement in accordance with the principles of deliberation and justice. The settlement of breach of contract with the financing of al-Qardh contract to the customer which from the beginning has good intention then the sharia bank undertakes restructuring efforts based on the financing contract, and if the restructuring effort does not bring the result then the sharia bank can execute the guarantee execution. In the absence of a guarantee, the dispute shall be settled through the National Sharia Arbitration Board or litigation, or voluntary efforts may be made to the customer to hand over the collateral.

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