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Execution of Security Rights in Islamic Banking at the Religious Court of Purbalingga

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Abstract: This article examines the execution of a security interest in Islamic banking in the Islamic economic disputes in the Purbalingga Religious Court. The case of non-performing loans in the world of Islamic banking is often the case, this was due to the debtor defaults. Mortgages used as collateral can be executed based on the decision of the Religious Court. The method used in this research is a kind of field research with the approach of Socio Legal Research, including in the realm of non-doctrinal study. The results show the execution of a security interest in dispute sharia economy in Purbalingga Religious Court has been run in accordance with the mandate of the Act: On the substance of the Implementation of the decision of execution is the end of a case that is the result of what is required by the plaintiff are determined in a court of Religion with using the guidelines do not separate from the disciplinary proceedings contained in HIR or Rbg. On the Structure of Purbalingga Religious Court carry out executions by institutions that are available from the start to the filing of the petition to the Chairman of the Religious Courts, judges who will examine the final verdict, Executor who will call and will execute and when the auction Clerk role of the mentor State Property Office and Auction (KPKNL). Culturally law. Purbalingga Religious Court carry out the execution-based approaches to religion and culture. This approach proved to facilitate execution. Obstacles that faced in general, form, creditors often receive a guaranteed land and buildings where the land certificate is no longer appropriate to the actual situation, the Debtor is not willing to leave the place right dependents, barriers to the sale of objects auction execution which does not go unsold objects auction / auction. Constraints that normally occurs in the execution of this economic security rights dispute, can be resolved by various reinforcement structures / institutions and culture through the law chosen by the Purbalingga Religious Courts.

Keywords: *execution, security right, islamic banking, islamic economics dispute*

A. Introduction

Conflict or dispute is a natural event that can happen to anyone, whether individuals, groups, or institutions of economic, social or political. Addressing the needs, interests, and rights became a source of conflict or dispute mankind. Throughout a person, group, or institution has the interests and rights, when the fulfillment touching, cheek by jowl, or compete with any person, group, or another entity, then the dispute becomes a threat. Although many people do not want to conflict

or dispute with another person, but the dispute was not uncommon to come and unavoidable and had to be faced.

Likewise disputes in Islamic economic. Disputes be often occurs along with the development of economic sectors sharia business in Indonesia. Business has entered every aspect of Islamic economic regions of the country, ranging from major region region, district to district. In the District, for example there Muamalah Bank, Bank of Shari'ah, the Shari'ah BRI, BNI Syariah, Bank Danamon

Syari'ah, Bank Mandiri Syari'ah, BPR Shari'ah, Insurance Shari'ah, the Islamic pawnshop, Cooperative Sharia and so on other.

Banks that use the label in addition to his duties Shari'ah raise public funds, also distributed by offering loans to the public. Borrowed money that is given to people who need (debtor), must be accompanied by requirements that can guarantee to avoid bad loans that could harm the bank as a creditor.

One of the conditions that serve as collateral is in the form of land titles. In case of bad debts, the consequences of such guarantee can be used as repayment of loans by way of cashing in what became the credit guarantee. In banking practice usually guarantee certificate encumbered encumbrance of the land, in order to provide legal protection for creditors if the debtor event of default or breach of contract. In case of bad credit, bank Parties who want to return the money from the debtor is in default / breach of contract, will submit the petition to the Religious Court.

Execution Mortgage, can be seen from its goal an Encumbrance Certificates that have executorial title. If the debtor is declared broken promises (defaults) and it is earnestly to be proved and proved that he could not pay his debt until maturity, the creditor can use the road through the petition Mortgage to the Chairman of the Religious without having to go through the procedures lawsuit. So this is a shortcut that quick and inexpensive to solve the problem of debts jammed in repayment. Thus it can be expected through the ease and certainty in the execution of the object of Mortgage as a legal safeguard against the creditor can be realized¹.

Filing execution in the Islamic economic dispute is based on the Religious Courts Law No.3 of 2006 on the Religious Court, which gave full authority to the Religious Court to implement the sharia economic dispute resolution, banking, finance and insurance

based on sharia law. This is expected to ensure the ruling courts that generated really fit sharia law.

In this side of the Religious Courts in Indonesia must be prepared to accept and carry out the execution encumbrance requested by banks. Almost certainly will each Chairman of the Religious will receive a request for the execution of this responsibility rights, and will be tested ability and quality by raising authority, given the banking sharia many opened for business in many districts, that there are Religious Courts.

On the other hand, the absolute authority of the Religious Courts to resolve the dispute in the economy sharia its execution, is not without its challenges. In terms of legal substances discovered some overlap between the Religious Court District Court. In terms of banking culture itself, there seems to be reluctance Banking actors to resolve outstanding issues sharia economy, by reason of a doubt will be the implementation of execution². From the rise of Islamic economic institutions in regions throughout the former karasidenan Banyumas. Religious Court registrar Purbalingga occupy most Islamic economic disputes, but even then only 25 (twenty five) Islamic economic disputes. While on the other Religious Courts of data showed a smaller number of disputes related to sharia economy ever entered. The facts on the ground indicate that the level of effectiveness of the settlement of economic disputes sharia execution in Religious Cout is still very low³. This condition is ironic in the hope that the Religious Court is able to function in resolving disputes maximal sharia economy due to execution problems.

Based on these descriptions, it is necessary a deeper study of how the role of the Religious Courts in the process of execution of a security interest in Islamic banking, and some of the constraints that faced the Religious Court in carrying out this execution, so that it can be built model of execution

¹ Yahya.M.Harahap. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Sinar Grafika, Jakarta. 2007. Hlm 102

² Nita Triana, *Mengembangkan Mediasi Sebagai Penyelesaian Konflik Ekonomi Syariah Untuk Mewujudkan Kemaslahatan*. Laporan Hasil Penelitian

Individual P3M STAIN Purwokerto.2014. Hlm 35.

³ Ikhsan Al Hakim. *Penyelesaian Sengketa Ekonomi Syariah di Pengadilan Agama*. Jurnal Pandecta. Vol.9 Nomor 2 Tahun 2014. UNNES Semarang. 2014. Hlm. 270.

better, Issues of interest to be presented, namely:

1. What is the role of the Religious Courts Purbalingga in carrying out the execution of a security interest in Islamic Banking.
2. What constraints are faced by the Religious Courts Purbalingga in running execution encumbrance on Islamic Banking.

The method used is a field research (field research). Grouped in the realm of socio legal research study, a non-doctrinal legal research that examines the law by using a legal approach and the social sciences. Legal Studies approach is used to perform textual studies, articles and regulations of legislation and policies⁴ related to the authority of the Religious Court and execution encumbrance on Islamic banking and other law related social science approach will be in this study are in the realm of methodology, namely to uncover aspects of external outside the law, such as the economic, cultural aspects, which are often those things into factors that influence the effectiveness of the passage of a legislation, which in this case will affect the effectiveness of the Court religion in carrying out the execution in the islamic economic disputes.

B. Dispute Islamic Economics in the Purbalingga Religious Court

Needs of society in the service of Islamic bank financing from time to time continue to increase. This is due to the ease of which is quoted in lending based on the principles of the Shari'a. In addition to the convenience offered to finance the productive, it also provides financing services to meet the needs of consumer loans. The distribution of funds in the form of financing, in practice have a fairly high level of risk, then in providing financing to customers, the bank must be sure that the financing provided can really receipt of return. Therefore the guarantee in the financing agreement is in need to protect the interests of the bank if the customer defaults.

Default occurring on the debtor (customer) is possible because two things are the fault of the debtor, either due to deliberate or due to negligence (called defaults), and because circumstances force that occurs outside the ability of borrowers (called coercion). Since the Religious Courts jurisdiction over economic disputes shari'a in 2006, Purbalingga Religious Court has accepted the case of economic shari'ah disputes as many as 25 cases.

Default originate Dutch wanprestatie which means that the poor performance is a condition that is due to negligence or failure or fault any of the parties being unable to meet achievement as specified in the agreement. According to J. Satrio⁵ default is the debtor does not fulfill his promise or do not meet properly, and all of it can be blamed him. One party or both parties in the contract agreements are in a state of default, if it meets the following requirements: a.Syarat material, namely wrongdoing on the debtor's failure to discharge his achievements, this error there are 2 kinds of errors are caused: intentional and negligence. b.Syarat formal, namely the existence of a notice or warning or admonition from creditors asking for the fulfillment of achievement to the debtor.

In agreement / financing agreement is not easy to declare someone in default, because the agreement is often not stated exactly when the parties are required to fulfill such a feat, if a person (the debtor) is considered in default then given a letter peringantan in writing in advance of the other party (creditors), a warning letter is called the subpoena. The summons is a notice or the inclusion of the creditor to the debtor which contains provisions that lenders require the fulfillment of accomplishment when tau within the period as specified in the notification⁶.

The legal consequences of this breach is creating rights for creditors to sue the debtor. These demands can be: Implementation of the

⁴ Lincoln and Guba. dalam Otje Salman, *Teori Hukum (mengingat, mengumpulkan dan membuka kembali)*, Refika Aditama, Bandung, 2009

⁵ J. Satrio, *Hukum Perikakatan, Perikatan Pada*

Umumnya, (Bandung: PT. Alumni, 1993), hlm 44

⁶Remi Sutan, *Hak Tanggungan : Asas-Asas, Ketentuan Pokok dan Masalah yang dihadapi oleh Perbankan(Suatu Kajian Mengenai Undang-Undang Hak Tanggungan)*. Penerbit Alumni. Bandung .1999

agreement; Compensation; Implementation of the contract and compensation; Declaratory decision; Cancellation of the contract and compensation; Cancellation of the contract only. In the Civil Code, legal consequences for borrowers who are in default to pay the damages suffered by the creditor, the cancellation of the agreement, intermediate risk (section 1237 subsection (2) of the Civil Code), and to pay court costs if sued in front of the judge. This can be seen in article 1243 of the Civil Code, namely: "the replacement cost of damages and interest for non-fulfillment of an engagement then started obligatory if the debtor after the declared failure to fulfill perikatannya, fixed relent, or if something should be given or made, may only be given or made in a certain period of time that has passed. "So who is negligent is a warning or a statement from the creditor on the debtor no later than the time required to do the feat, while the warning was passed the new debtor is declared broken a promise or breach of contract (wanprestatie).

Default, Sanctions, Compensation and Force Condition in Muamalah Fiqh Perspective. In agreement / contract negligence can occur, either when the contract takes place or at the time of the fulfillment of achievement. Islamic law in the branches of fiqh muamalahnya also acknowledge / accommodate the defaults, penalties, damages as well as the state of force, following one of the ideas presented jurisprudents Muamalat Indonesia. For negligence that there is a risk that should be borne by the party which fails, other forms of negligence that according to scholars, including the contract Bay 'goods sold does not belong to the seller (eg goods wadiah or ar-Rahn), or goods are stolen, or by the agreement must be submitted at a particular time home buyers, but it was not delivered or is not timely, or items are damaged in transit, or goods delivered are not in accordance with the approved sample.

In cases like this the risk is compensation from the negligent party. If the item does not belong to the seller, then he must pay compensation to the price he had received. If negligence with regard to the delay of delivery

of goods, so it is not in accordance with the agreement and carried out with the element of intent, the sellers also have to pay damages. If the damage occurs in the delivery of goods (intentionally or not), or goods carried are not in accordance with the agreed sample the goods are to be replaced. Damages in the contract muamalah known by adh-Dhaman, which literally means a guarantee or dependents.

Ulama or Scholars say sometimes adh-Dhaman form of goods or money. Importance of adh-Dhaman in agreement that in the contract that has been agreed by both parties do not dispute. Any losses occurred both before and after the contract then the risk is borne by the parties to incur losses. However, in circumstances force Islamic law does not menghukumi doers accidental and does not want the negligent act, provided that the person has done the maximum to meet the performance, and Islam appreciates those who give spaciousness in the payment of debt.

The case of non-performing loans in the banking world is often the case, this is because the debtor Cidra appointment / default. At first the current loan payments, and the banks benefited, even some debtors who have not yet paid off, creditors back offer loans to debtors, who was considered successful in doing business and current in the payment of credit. Customers Debtors, only willing to provide additional collateral land certificates as collateral required by the bank to get a loan additional money.

No wonder there are some land certificates as collateral, the object of the object located in several areas, the most important borrowers can pay the loan in accordance with the agreement. If the debtor once either for what, making him unable to pay the loan agreement (credit crunch), nasab debtors rated in default / breach of contract, then the bank if it can not negotiate with the customer, or not found a way out, to take legal although it is going to take a long time and was wasting huge costs. Completion of a problem like this, usually the bank as the lender will ask the Religious Court to carry out executions⁷

⁷ Manan Abdul, *Penerapan Hukum Acara Perdata di*

Lingkungan Peradilan Agama. Penerbit Prenada Media.

C. Implementation of Execution Mortgage Purbalingga Religious Court

The effectiveness of the law in action or in reality the law can know if someone states that a rule of law is successfully implemented or reached their end, to see both the statement then it usually starts with the question of whether the rules of the law was implemented, and how do they affect managed to set the attitude acts or certain behavior that conformed to the goal or not⁸.

According to Lawrence M. Friedman, a legal system includes three components or sub-systems, the components of the structure, the substance of the law and legal culture⁹. Simply put, the theory of Friedmann was indeed difficult to deny the truth. Friedman's theory is actually based on the sociological perspective (sociological jurisprudence). Who want it describes the theory of the three sub-system structure, substance and legal culture that simply was that the basis of all aspects of the legal system it is a legal culture. Based on the theory of the legal system can be described execution encumbrance Islamic economic disputes in the Religious Court Purbalingga:

1. Substance Per Rule of Law Economics Execution Mortgage Dispute Islamic Purbalingga Religious Court.

When viewed from the substance in terms of the execution of a security interest in dispute sharia economy in the Religious Purbalingga, can be expressed as follows: As

the legal basis is Act No. 3 of 2006 on the Amendment of Act No. 7 of 1989 About Religion Court was wrong only stipulates that the Religious Court examine, decide and resolve specific cases among people who are Muslims in the field of Islamic Economics.

This was followed by the Constitutional Court Decision No. 93 / PPU-X / 2012 which canceled the elucidation of Article 55 paragraph (2) d of Law No. 21 Year 2008 on Islamic Banking, then its jurisdiction to investigate and adjudicate cases in sharia economy is certain and indisputable. And with the decision of the Court, eliminating the choice of forum for the settlement of disputes in litigation.

The legal basis asserted, who is authorized to carry out the execution right tanggungan sharia, the laws and the decisions of this Court answer the questions that often arise, because there is a presumption of majority of Islamic banking that are entitled to carry out the execution is General Jurisdiction. Given this legal basis, the question is now answered, that the execution of the security rights are within Religious Court jurisdiction.¹⁰

Execution of a security interest in the Religious Purbalingga, starting from post beralakunya Law No. 3 of 2006 on the Amendment of Act No. 7 of 1989 About the Religious Courts. Data in Purbalingga Religious Court in execution of the security rights are as follows:

Tabel 1. Execution Mortgage Dispute Islamic Economics in the Purbalingga Religious Court

No	Nomor Putusan Sengketa Ekonomi Syariah	Eksekusi /Lelang
1	No.1044/Pdt.G/2006/PA.Pbg	
2	No.1045/Pdt.G/2006/PA.Pbg	
3	No.1046/Pdt.G/2006/PA.Pbg	
4	No.1047/Pdt.G/2006/PA.Pbg	Eksekusi-Lelang
5	No.1165/Pdt.G/2010/PA.Pbg	

Jakarta. 2006.

⁸ Chambliss J Williem and Robert B Seidman. *Law, Power and Order*, Addison-Wesley Publishing Company, Philipine, 1971

⁹ Friedman .M.Lawrence . *The Legal Syste, A Social Science Perspective*. New York, Russel Sage Foundation, 1975.

¹⁰ Hal ini disampaikan Hakim Agung YM Dr. H. Purwosusilo, SH., MH. dalam Workshop yang dilaksanakan PTA Jambi dan OJK Jambi di Hotel Aston Jambi (Maret- 2012)

No	Nomor Putusan Sengketa Ekonomi Syariah	Eksekusi /Lelang
6	No.0518 /Pdt.G/2011 /PA.Pbg	
7	No.1740/Pdt.G/2011/PA.Pbg	
8	No.1178/Pdt.G/2012/PA.Pbg	
9	No.1321/Pdt.G/2012/PA.Pbg	
10	No.2129/Pdt.G/2012/PA.Pbg	
11	No.1719/Pdt.G/2013/PA.Pbg	
12	No.1720/Pdt.G/2013/PA.Pbg	
13	No.1721/Pdt.G/2013/PA.Pbg	Proses
14	No.1722/Pdt.G/2013/PA.Pbg	
15	No.0310 /Pdt.G/2014/PA.Pbg	Eksekusi-Lelang
16	No.0311 /Pdt.G/2014/PA.Pbg	Eksekusi-Lelang
17	No.0312 /Pdt.G/2014/PA.Pbg	Eksekusi-Lelang
18	No.1039/Pdt.G/2014/PA.Pbg	Eksekusi-Lelang
19	No.1040/Pdt.G/2014/PA.Pbg	
20	No.1100/Pdt.G/2014/PA.Pbg	
21	No.1101/Pdt.G/2014/PA.Pbg	
22	No.0320 /Pdt.G/2016/PA.Pbg	
23	No.0325 /Pdt.G/2016/PA.Pbg	
24	No.0326 /Pdt.G/2016/PA.Pbg	
25	No. 0868 /Pdt.G/2016/PA.Pbg	

Based on the above data the implementation of the Execution of a security interest in the Religious Court have been implemented in accordance with the mandate of the Act. As for the other Islamic economic disputes, the decision is executed with no execution and auction, in because the defendant has carried out the decision of the judge in accordance with the decision. Execution is actually not necessary if the defeated party voluntarily obey the sound of a court decision.

Their execution Mortgage, is due to the obligation of the debtor to the creditor is not fulfilled, because previously made an agreement between a debtor and a creditor with the signing of the Deed Granting Mortgage made before Deed Official Land (PPAT), and

registered in Land office. A situation where the debtor does not carry out his achievements in accordance with what has been promised, because of his fault and he was reprimanded, the execution would be carried out. As for the so-called execution encumbrance is if debtors default, the object of encumbrance sold through a public auction in accordance with the procedures specified in legislation in force and the rights holder dependents are entitled to take all or part of the proceeds to the repayment of loans, with precedes of other creditors.

Thus, if the debtors default security rights holders can directly ask the Office of the State Auction to sell at a public auction object security rights are concerned. The procedure for this is the easiest and brief, because

creditors do not have to submit the petition to the Court. And this is one of the advantages of the auction execution without going through the process of establishing the Court, in addition to the auction's implementation costs. Despite the fact, the execution through a court warrant has eksekutorial strong force. Especially with regard to the execution with the help of judges who make Article 224 HIR / 258 RBg as essentially requires the involvement and role of religion court where the debtor silent or live, in this case the local authority Chairman of the Religious. Following completion of the procedure execution encumbrance in the Religious Court Purbalingga:

Execution of Mortgage Settlement Procedures in the Religious Court Purbalingga:

a. Applicant submit the petition to the Chairman of the Mortgage Religion, accompanied by:

- 1) Photocopy of the Certificate of Mortgage containing irah-irah "For the sake of justice by Almighty God"
- 2) Photocopies of the letter of agreement (contract shari'a) of debts between the Parties to the Debtor Creditor.
- 3) Photo Proof of Registration Mortgage coffee at the Land Office.
- 4) Photocopy papers reproof / warning from the Bank to the Debtor about the negligence of debt repayments.
- 5) Power of Attorney is still valid, if the Applicant invoked using a power law.

b. Aanmaning.

After receiving the petition Encumbrance of the Applicant (the Bank), Chairman of the Religious, ordered Interpreter Sita / Interpreter Sita Substitute to call Debtor broken promises for a reprimand (aan maning), and this strike should be done 2 times and within 8 days to be meet its obligations, namely to pay the debt voluntarily. And if the debtor spouses, then both should be invoked in order to know what factors cause non-fulfillment of the agreement, and be given a warning so that they can quickly meet the treaty.

c. Execution Sita.

If the debtor can not meet its obligations voluntarily, then Chairman of the Religious Court ordered that the land be confiscated

objects Encumbrance with confiscation eksekutorial by the Registrar or his successor with the assistance of two witnesses who meet the requirements under the Act. Registrar or a successor who has conducted the seizure makes an official report about the arrest and informing means to the person whose goods are confiscated when he was present at the time. When seized in the form of immovable goods (land) that have been registered in the land registry office, then the minutes of the confiscation was reported to the Head of the Registry of the land concerned. However, if the confiscated land was not registered, then the minutes of foreclosures announced by the Registrar or replacement. In addition, the Registrar / successor asked the village chief / local village chief to announce the widest in place in a manner commonly used in that area. If after seized turns Debtor remain lax, then the land will be sold at auction.

d. Auction Sales.

Auctions on immovable property of the Borrower in the form of land as collateral, is done through the help of the Office of State Auction is no area in question.

The procedure for the auction filed.

- 1) Applicant / Seller (Religious Court) apply in writing to the auction of the State Property Office and Auction (KPKNL) enclosing the terms as follows: a. Determination Agama; b President of the Court; Aanmaning / teguran; c. Determination of Sita on the Rights Object Tanggungan; d. Minutes Sita; e. Details hutang; f. Notice to Respondent auction auction; g. Photocopy of proof of ownership (certificate Encumbrance).
- 2) The Head of the State Property Office and Auction set the day and date of the auction after analysis and documentation requirements.
- 3) Applicant implement bidding announcements through newspapers or electronic media with the provisions of the first and second announcement within 15 days, and the second announcement with the auction can not be less than 14 days.
- 4) Bidders kerekening KPKNL deposit bail.

- 5) Submission of the minutes of the auction excerpts and other supporting documents to the auction winner and a copy of the minutes of the auction the auction to the applicant in this case is the Religious Courts.

The results of the auction sales will be used to pay the bills to banks / creditors, having paid / issued in advance fees for auction and if there is an excess, then the money will be returned to the Insurer's debt / debtors.

2. Structure / Organization / Execution Mortgage Institution Implementing Sharia Economic Disputes in the Religious Court Purbalingga

Structurally, in Law No. 3 of 2006 on courts that the Court of First have tabled Organization Religious Court consisting of the Chairman, Vice Chairman, Judges, Registrar / Secretary, Deputy Registrar, Deputy Secretary, Deputy Registrar lawsuit, Deputy Registrar Request Junior Registrar Law, Public Kasubbag, Kasubbag Officer, Subsection Head of Finance, Registrar and bailiff / bailiff Substitute.

Organizational Structure of the Religious Court Purbalingga

Chairman	: 1 Person
Vice Chairman	: 1 Person
Judge	: 4 People
Registrar / Secretary	: 1 Person
Deputy Registrar	: 1 Person
Deputy Secretary	: 1 Person
Deputy Registrar	: 3 People
Registrar	: 3 People
Head of Public Affairs	: 1 Person
Head of Perenc. and Finance	: 1 Person
Head of Personnel	: 1 Person
Bailiff	: 1 Person
Bailiff Substitute	: 2 People
Honoree	: 9 People

In the case of sharia economy, the judges must carefully read the contract in the agreed form, because the incidence of disputes initiated the non-fulfillment of the contract. "All the agreements made legally valid as law for those who make it," he explained citing Article 1338 of the Civil Code. Judges not only

fiqh oriented, but should also refer to the Act, DSN and BI Regulation.

The next order of the Purbalingga Religious Court related to task execution encumbrance Islamic economic disputes is the Registrar. The principal tasks of this secretariat is not separated with the principal task of the court to receive, examine, hear and resolve the case, all these activities will be run effectively and efficiently by operating the secretariat tasks. Start the registration process, the court deciding the case up to the execution, in this case requires intelligence work in the organization of administration, whether the administration is carried out manually or with computerized systems administration. Hence in late secretariat personnel are required to master and develop kemandirian in the field of information technology and this would be in line with the Chief Justice's Decree No. 193 / KMA / SK / 2014 concerning the reform of Promusi Patterns and Environmental Movements in Religion Court Registrar's Office.

Institutions that run the executable on the field is the bailiff / bailiff Substitute. The bailiff has the duty Implement Principles bailiff duties. His job description is as follows: 1. Implement calls to the litigant parties at the behest of the Chairman of the Assembly. 2. Submit Relas call to the Chairman of the Assembly. 3. Implement assistance calls from other Religious Court. 4. Send Relas call to the courts that the call for help. 5. Carry out orders for sequestration of the Chairman of the Assembly. 6. Implement the execution of confiscation orders Chairman of the Religious. 7. Deliver the notification of the decision. 8. Make the minutes confiscation / execution. 9. Registering confiscation fixed objects to instantsi authorities. 10. Conduct the auction (execution payment of a sum of money) within limitsare allowed. 11. To perform other tasks on the orders of the leadership.

3. Culture Law Economics Execution Mortgage Dispute Islamic Religious Court Purbalingga.

Legal culture of execution encumbrance developed in the Religious, is through religion and personal approach. The bailiff and the Religious Courts do not just run the executable normative, but also approaches that

incorporate the values of the religious approach of the obligation for a debtor. This approach proved successful execution support the effectiveness of security rights in the Islamic economic disputes Purbalingga Religious Court. Execution runs without a fight even the defendant voluntarily assist the parties of the Religious Courts as bailiff to immediately complete execution.

This is in accordance with the new mechanisms are developed in various courts which find the middle road (win-win) executed between the parties that the losing party in the trial as well as those who win, in order to create a harmonious balance between the parties. This means that both parties can accept and simultaneously execute the ruling. In line with this Adi Sulistiyono and Muhammad Rustamaji¹¹ say that the paradigm of non-litigation settlement in reaching a consensus and berusahamempertemukan interests of the parties to the dispute and aims to get the dispute towards a win-win solution.

Mediation is a dispute resolution process that is more cepat dan inexpensive, and can provide greater access to the parties to find a satisfactory settlement and sense keadilan. Pengintegrasian mediation in court proceedings can be one of the main instruments buildup effectively address the problem of the court sertamemperkuat and maximize the function of the judiciary in penyelesaian sengketa next formal court process to decide (adjudicative).

D. Constraints Implementation of Execution Mortgage Dispute Islamic Economics in the Religious Court Purbalingga

Mortgage object of the petition addressed to the Chairman of the Religious, nothing can be done execution and some are not workable. This shows that the problem of execution on the ground Mortgage objects and objects that exist on the ground that in practice is not as easy as expected or in other words the execution Mortgage problems are still many obstacles in practice.

In practice, creditors often receive land security, land and buildings where the land

certificate is no longer appropriate to the actual situation, because of the soil, the soil and the building has been sold to make PPAT deed, but behind the name has not been made by the Land Office concerned. If there is a binding guarantee such things can be done simultaneously with the process behind the name after it's done registration rights dependents by the Land Office concerned.

Mortgage providers are not willing to carry out discharge voluntarily. To address such cases, if truly Giver rights dependents, or their families are not willing to vacate or out of objects that have been executed it, then the implementation is done at the behest of Chairman of the Religious in which the object Mortgage is situated, after their application for discharge of the winners auction as the holder of the right to land or land of the new building.

Mortgage holders of the second, third and so did resistance. It often happens where when the execution is done at the request of the holder of Mortgage Firstly, or at the time of seizure of execution, Holder Encumbrance second, third and so on to fight with the argument that the holder of Encumbrance second, third and so on are also entitled to object seized the execution, considering debtor Cidra promise it has made the execution object as collateral to the mortgage Holders second, third and so on. Against this kind of problem Act Encumbrance no set, but the solution can be done through the material civil law.

Barriers auction sales of objects unsold execution is not being object of auction / auction no interest caused by several things. In terms of the auction no bids as described above, then the auction officials issued a decree re TODO auction, which is based at Surat Permohonan Auction Birthday submitted by the applicant to the Office Auctions Auction. However, in the case despite repeated auction has several times held and objects of execution has not been sold, in practice, usually a solution that can be achieved are: a. Penurunan limit value gradually in order to reach the highest price shoppers, and the auction can be implemented as intended though overall followed only 1 (one) of bidders

¹¹ Hal ini disampaikan Hakim Agung YM Dr. H. Purwosusilo, SH., MH. dalam Workshop yang dilaksanakan PTA Jambi dan OJK Jambi di Hotel Aston

Jambi (Maret- 2012)

.b.Melaksanakan execution in advance by the emptying of the petitioner, given the usual auction enthusiasts can not see and examine the object of the auction because it is still controlled by their owners. Thus, a solution that can be taken is to execute the emptying prior to the auction sale conducted. While emptying the execution costs while paid by the petitioner, which will be replaced some of the money spent by the defendant of execution at the time of the auction object had been legally sold.

The verdict is unclear and incomplete. This can happen because the investigation is not equipped with on-site inspection (deescente) or because the injunction was not equipped with an affirmation if it can not be divided in kind, then the object of dispute will be sold at auction and the result divided according to their share. On the other side of the problem often arises when the execution of the auction carried out while the object of dispute is beyond the jurisdiction of courts that concerned. One problem that arises is the cost, both the cost of execution, foreclosure fees, auction fees and security costs.

Constraints that normally occurs in the execution of this economic security rights dispute, can be resolved by various reinforcement structures / institutions and culture through the law chosen by the Religious Courts Purbalingga. Currently the bailiff as the spearhead of execution is only available one person plus two substitute bailiff. Currently, the number of bailiffs were deemed to be sufficient, but if more and more Islamic economic disputes in the Religious Purbalingga, there should be additional position of bailiff. As for when the auction, the bailiff will be accompanied by the Registrar¹².

E. Conclusions and Recommendations

1. Implementation of the execution of the security rights in the Islamic economic disputes in the Religious Purbalingga has been run in accordance with the mandate of Law No. 3 of 2006 on the Amendment of Act No. 7 of 1989 About the Religious Courts, one of which stipulates that the Religious Court examine, decide and

completing certain cases among people who are Muslims in the field of Islamic Economics:

- a. In substance implementation of the decision or should we say execution is the end of a case that is the result rather than what is demanded by the plaintiff (usually the creditor / Bank Syariah) who feel aggrieved to be decided by the State in this case that the court Religion using guidelines are not separate from the disciplinary proceedings contained in HIR or Rbg.
 - b. On the Structure of the Religious Court Purbalingga carry out executions by institutions that are available from the start to the filing of the petition to the Chairman of the Religious Courts, judges who will examine the final verdict, Speaker Sita will memaggil and will execute and when the auction the role of the Registrar as a companion Savior Sita and Hall auction (KPKNL)
 - c. Culturally law. Religious Court Purbalingga carry out the execution-based approaches to religion and culture. This approach proved to facilitate execution. Debtor voluntarily hand over the goods to be executed voluntarily and without resistance. This is in accordance with the guidelines used in the Religious, which include the mediation model in execution.
2. Constraints faced that in general, the form, the creditors often receive land security, land and buildings where the land certificate is no longer appropriate to the actual situation, because of the soil, the soil and the building has been sold, the Borrower was not willing to leave the place right dependents, barriers auction sales of objects unsold execution is not being object of auction / auction no interest caused by several things. Constraints that normally occurs in the execution of this economic security rights dispute, can be resolved by various

¹² Wawancara dengan Panitera Muda Rosiful S.Ag., di Pengadilan Agama Purbalingga, pada tgl 28 juli 2016.

reinforcement structures / institutions and culture through the law chosen by the Religious Courts Purbalingga

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