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The Completion of The Financing Problems in Islamic Banks

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Abstract: This article aims to examine the factors that cause the occurrence of financing problems and solution in islamic Bank is a financial institution that serves as intermediary between parties with excess funds with those who lack the funds in practice every year also experienced a credit crunch. This research is a literature study, namely the academic research which main objective is to develop the theoretical aspect or aspects of the practical benefits. The object of study in this research is the completion of the financing problems in islamic Banks. Problems in financing may occur caused by several factors, among others: the internal factors of the bank, factors internal customers, external factors, failure factors of business as well as the inability of the management. In order to save islamic banks from financing problems and help the customer in order to complete its obligations then the islamic bank can perform restructuring through: rescheduling (rescheduling); reconditioning systems (terms back); restructuring (re-structuring). However if the third restructuring effort was not successful, then the islamic bank can conduct settlement financing problems through: foreclosure of the collateral, the arbitration board of the national sharia, and settlement through litigation. The completion of the financing problems in Islam run through the mechanism of the peace (al-sulh), arbitration (tahkim), and/or the court (al-Qadha).

Keywords: *financing problems, islamic banks*

A. Introduction

Banking is one sector which has an important role in various fields, among others in the community activities especially in the field of financial and economic activities to meet the personal needs of a person. This adult community as if it can not be separated from the world of banking because it is no longer a public secret that the banking services are very helpful to economic activity.

Since the enactment of Law Number 7 Year 1992 About banking there is a form of alternative to the conventional banks which are already known to the public that the bank is based on the principles for results. Law Number 7 Year 1992 about Banking did not use expressly the term islamic bank or bank

Islam. It still uses the term “principle of sharing”. Yet there is a provision that is more detailed for banks conducting business based on sharia principles.¹ M. Fahim Khan stated, “*Islamic bank are also responsible for promoting the establishing of investment companies or other business enterprises as long as the activities of these companies are not forbidden by Islam*”.²

Like conventional banks, islamic banks also serves as an intermediary institution, that serves to collect funds from the public and channel back the funds to the communities that need it in the form of financing. Financing or financing, that is funding given by one party to the other party to support the investment that has been

¹ Since July 16, 2008 has been enacted the Law Number 21 Year 2008 About Sharia Banking hereinafter referred to with the Laws of Islamic Banking.

² Sudin Haron, *Islamic Banking Rules & Regulation* (Pelandung, Malaysia, 1997), 7.

planned, either by themselves or the institution. In other words, financing is the funding issued to support the investment that has been planned.³

Financing is is the most of the assets of the islamic banks so that such financing should be preserved quality, as mandated in Article 2 of the Law of Islamic Banking that islamic banking in conducting its business activities based on sharia principles, economic democracy and the principle of prudence. In the explanation of Article 2 of the Law of Islamic Banking which is meant by the precautionary principle are the guidelines for the management of the Bank that must adopted in order to realize the banking of a healthy, strong and efficient in accordance with the provisions of the legislation. From various sources it can be concluded that what is meant by the principle of prudence is the control of risk through the implementation of laws and regulations and the applicable provisions consistently.⁴ The application of the precautionary principle spelled out in the form of signs of the health of the bank.

The embodiment of the principle of prudence stipulated in the signs of health as in Article 23 of the Law of Islamic Banking. In Article 23 (1) of the Act islamic Banking set that “syariah Bank and/or UUS must have confidence in the willingness and ability of the prospective customer the Recipient of Services to pay off the entire obligation in time, before the Islamic Bank and/or UUS distribute funds to the Beneficiary customer Facilities”. To get a conviction then the islamic bank is obliged to perform the assessment thoroughly on the character, ability, capital, collateral, and business prospect of the prospective customer the recipient of services (character, capacity, capital, collateral, condition). On Article 36 of the Law of Islamic Banking is regulated that “In providing the financing and performing other business activities, Islamic Banks and UUS must take the ways that are not detrimental to Sharia Banks and UUS and

the interests of clients who entrust their funds”, so that islamic banks in providing the financing must have confidence in the willingness and ability of the customer receiving facilities. The purpose of the enactment of the principle of prudence that banks are always in a healthy state, so that, among others, always in a state of liquid, solvent and profitable. With the enactment of the principle of prudence, it is expected the levels of public trust in banking is always high so that the public is willing and does not hesitate to keep their funds in the bank.⁵

Although islamic banks have implemented a variety of businesses through investment management, and investment analysis, as well as monitoring and surveillance to anticipate the occurrence of problem loans, but in practice still also we find the credit experience problems or crashes.

This article will discuss the associated with the completion of financing problems in the Bank's shari'ah, starting from the discussion of financing problems, the factors that cause the problematic financing, rescue financing problems, and the completion of financing problems in the Bank's shari'ah.

B. Discussion

1. Financing Problems

Financing or financing, that is funding given by one party to the other party to support the investment that has been planned, either by themselves or the agency. In other words, financing is the funding issued to support the investment that has been planned.⁶ Financing is the provision of money or bills that can be equated with it in the form of:

- a. Investment transactions in the contract Muḍarābah and Musyārah;
- b. Lease transactions in the contract of Ijārah;

³ Muhamad, *Manajemen Pembiayaan Bank Syariah* (Yogyakarta: Unit Penerbit dan Percetakan (UPP) AMP YKPN, 2005), 17.

⁴ Yahman dan Trisadini Prasastinah Usanti, *Bunga Rampai Hukum Aktual Dalam Perspektif Hukum*

Bisnis Kontraktual Berimplikasi Pidana dan Perdata (Surabaya: Mitra Mandiri, 2011), 136.

⁵ Sutan Remy Sjadeini, *Kapita Selecta Hukum Perbankan*, (Jilid I, t.t.), 53.

⁶ Muhammad, *Manajemen Pembiayaan Bank Syariah* (Yogyakarta: UPP AMP YKPN, 2016), 17.

- c. The sale and purchase transactions in the contract Murābahah, Salam and Istitna;
- d. Transactions of lending and borrowing in the contract Qard; and
- e. Transaction multi-services with a contract of Ijarah or Kafalah, based on approval or agreement between the bank and the customer financing that requires customer financing to pay off the debts or obligations in accordance with the contract.⁷

The words of the financing which means trust (the trust), which means finance institutions as *ṣaḥībul māl* put your trust in someone to carry out *ammanah* given. The principal task of financing institutions is to collect funds from the community and distribute it back to the people who need him. In Islamic banking, the financing provided to the users of the funds or to the community based on Islamic principles. The rules used are in accordance with Islamic law.⁸

Financing according to Article 1 item 12 of the LAW No. 10 of 1998 jo. LAW No. 7 of 1992 about banking, are: the provision of money or bills equivalent to it based on approval or agreement between banks with other party that requires the financed party to return the money or bill after certain period of time with a reward or for the results.⁹ From the above definition can be drawn the conclusion, that the financing is the funding given by the bank to the customer's needs based on the agreement of both parties, where the customer is obliged to return these funds after a certain period of time in return *ujrah*, without reward, or for the results.

In a variety of banking regulations not found the definition of non-performing loans, Non-Performing Financings (NPFs) to financing and Non-Performing Loan (NPL) to credit facilities. However in the Statistics of Islamic Banking found the term NPFs which

is defined as: Financing of non-current ranging from less smoothly to a standstill. Thus financing is problematic is the financing of which the quality is in the category of substandard, doubtful and loss.¹⁰ Or in other words, financing is problematic is financing the customer's payment to the bank is not smooth at maturity.¹¹

According to Karim, the financing of troubled is as a distributor of funds that do Islamic institutions in the implementation of the payment by the customer occurs such financing is not smooth, the financing that the debtors did not meet the requirements promised, as well as such financing does not keep the schedule of installments to give a negative impact for both parties.¹² In other words, financing is problematic is financing which describe the situation will happen the risk of failure in repayment of the obligations, even showing the symptoms will be a failure.

According to the explanation Djamil, financing is problematic in terms of productivity, namely in relation to its ability to generate income for the bank, is reduced or decreased and may even no longer exist. Even in terms of the bank itself, of course, reduce revenue, increase cost reserves, namely PPAP (Allowance for Earning Assets), while in terms of national, reducing its contribution to development and economic growth.¹³

Based on the above definition, it can be concluded that financing is problematic is financing that has been occurring congestion between the debtor could not meet its obligations to its creditors. Financing problematic this can be in the form of; financing is not smooth, the financing where debtors do not meet the requirements of the promised financing that did not keep installment schedule, as well as financing that has the potential of harming the Bank's *shari'ah*.

⁷ Khotibul Umam, *Penyelesaian Sengketa di Luar Pengadilan* (Jakarta: Penerbit Pustaka Yustisia, 2011), 88.

⁸ Ismail, *Perbankan Syariah* (Jakarta: Kencana, 2011), 106.

⁹ Fathurrahman Djamil, *Penyelesaian Pembiayaan Bemasalah di Bank Syariah* (Jakarta: Sinar Grafika, 2012), 64-65. An explanation of the financing and distribution can be seen in Muhammad Syafii Antonio, *Bank Syariah dari Teori ke Praktik* (Jakarta:

Gema Insani, 2001), 160- 168.

¹⁰ Fathurrahman Djamil, *Penyelesaian...*, 66.

¹¹ Malayu Hasibuan, *Dasar-dasar Perbankan* (Jakarta: Bumi Aksara, t.t.), 115.

¹² Adiwarmanto A. Karim, *Bank Islam: Analisis Fiqih dan Keuangan* (Jakarta: RajaGrafindo Persada, 2010), 260.

¹³ Fathurrahman Djamil, *Penyelesaian...*, 66.

2. The Classification of The Collectability of Financing

The main issue that always accompanies business activity financing by banks is the financing of the current return or not healthy. Although the bank already as much as possible applying the principles of prudential banking, but the bank can not avoid the presence of financing problems. Financing is problematic is the general framework of the financing of the current return of its obligations or the payment of the current installment of obligations or financing that is not healthy. Financing problems in a narrower sense, i.e. financing of which refund obligations or installment obligations is delayed or not in accordance with the payment schedule has been agreed, in such a way due to the existence of problems:

- a. Customer's business is not as good as at the beginning of the process of the filing of the financing. The financing that has been overdue but the customer can't pay it off, but still allow it to be billed.
- b. The character of the customer then it turns out not good, so although the company has the ability to pay but the customer does not or have less willingness to pay.

Of bad financing and the financing of problematic has always been seen and measured from the collectability of financing concerned. Collectability is the state of the payment of principal or installment and profit margins financing by the customer as well as the level of likelihood of receipt of these funds back.¹⁴ Bank Indonesia as the central bank while supervisory banks in Indonesia, issued a circular letter Number 7/3/DPNP dated 31 January 2005 concerning assessment of asset quality of banks in general in the attachments there are the provisions about the classification of financing smoothly, financing problems and the financing of the crash. Financing problems can be categorized as follows:

- a. Smoothly (Lancar)

The Current category is financing for which no arrears of Margin or installment

of principal, and the loan not yet due or proper time. Installment payments future estimated smoothly or according to schedule, and no doubt at all. A credit can be said to be smooth if:

- 1) Timely payment of, the development Bank account and no arrears and in accordance with the requirements of the credit.
- 2) The relationship of the debtor with the Bank better and the debtor is always deliver the financial information regularly and accurately.
- 3) Loan documentation is complete and the binding collateral strong.

- b. In Special Attention (Dalam Perhatian Khusus)

Category In Special Attention (TPF) is a financing that indicates the presence of weakness in the financial condition or the feasibility of the debtor. It is for example characterized by the downward trend in profit margin and sales turnover of the customer which affect the payment of the installments. Attention early and the talks are intensive with the debtor is required to correct this state of affairs. It is said in the special attention if it meets the criteria, among others:

- 1) There are arrears in the payment of principal and/or interest up to 90 days.
- 2) Rarely have overdraft overdraft.
- 3) The relationship of the debtor with the Bank better and the debtor is always deliver the financial information regularly and still accurate.
- 4) Documentation does full credit and a binder of the collateral is strong.
- 5) Violation of the credit agreement is not the principal.

- c. Less Smoothly (Kurang Lancar)

Category Less Smoothly is the financing where the margin payment and the installment of principal may be or

¹⁴ Kasmir, *Bank...*, 115.

already disturbed due to the presence of an unfavorable change in financial terms and in management of the debtor, the policy of economic and political harm, or very inadequate collateral. At this stage it has not seemed loss on the bank. However, if the condition is protracted, then it is likely to be getting worse. Corrective action quickly and accurately must be taken to strengthen the bank, among others, by reducing the bank's exposure and ensure the debtor also take meaningful action. Said to be substandard if it meets the criteria including:

- 1) There are arrears in the payment of principal and / or interest that has exceeded 90 days up to 180 days.
 - 2) There is an overdraft or overdraft repeatedly, especially to cover operational losses and lack of cash flow.
 - 3) The Relationship of the debtor with the Bank is deteriorating and financial information of debtors can not be trusted, the loan documentation is less complete and binding of collateral are weak.
 - 4) Violation of the requirements of the principal.
 - 5) The Extension of credit to connect to financial difficulties.
- d. Doubt (Diragukan)

Category of is Doubtful financing are financing the entire loan began to doubt, so that potential losses on the bank, it's just not can be determined large to take time. The action is carefully and precisely should be taken to minimize losses. Said to be in doubt if:

- 1) There are arrears in the payment of principal and / or interest that have exceeded the 180 days up to 270 days.
- 2) Occurs overdraft or overdraft which is permanent in particular to cover operational losses and lack of cash flow.
- 3) The Relationship of the debtor with the Bank worsened and the

financial information the debtor is not available or can not be trusted.

- 4) The loan Documentation is not complete and binding of collateral are weak.
 - 5) Violation of the principal against the essential requirements in the credit agreement.
- e. Jammed (Macet), is financing the assessed could not be charged back. The Bank will bear the losses on the financing provided. Said to be jammed if it meets the criteria, among others:
- 1) There are arrears in payment of installment of principal or interest that goes beyond 270 days;
 - 2) Operational losses covered by the guarantee; and
 - 3) In terms of the law and market conditions, the guarantee can be availed at a reasonable value.
 - 4) Documentation of credit and / or binding of collateral is not there.

From the categorization of the financing above, then based on the Decision Letter of the board of Directors of Bank Indonesia No. 31/147/KEP/DIR, financing is divided into financing problems and financing problems. Financing is not problematic if included in the current category and special attention. While the financing is said to be problematic if belongs to the category of substandard, doubtful, and loss.

3. Factors That Cause The Occurrence of Financing Problems

As smart as any financial analysis in analyzing the petition financing, the possibility of financing problems is definitely there. It is more or less caused by two factors, namely from the bank (internal factors) in a less rigorous analysis, or even can also occur the cooperation of the dishonest among the analysts of the financing with the debtor so that the analysis is done subjectively. Then the elements of the second-party customers (external factors), i.e. omission of the customer which lead to financing problems,

which can be caused by the wilfulness or inadvertence.

The internal factors of the bank, according to Ismail, which can cause financing problems can be in the form of analysis conducted by the officials of the bank are less precise, so it can not predict what will happen in the period of time during the credit period, the collusion between the officials of the bank that handles the credit and the customer, so the bank decides that credit should not be given, the limitations of the knowledge of the bank officials against the type of business debtor so that it can not perform the credit analysis with precise and accurate, the interference is too large from the tops so that the officer is not independent in deciding credit, and weak in fostering and monitoring the financing.¹⁵

As for external factors, namely the aspects that affect the financing/ credit from outside financial institutions, which include:

- a. Disaster, is the event or the sad events that befell. Events that are not deliberate can occur at any time, which may hamper the smooth payment instalment or the credit repayment.
- b. The season, is a time certain to survive with the state of the climate, which became the cause of the loss or barriers of a business are run. But in this climate can be anticipated with careful planning.
- c. Government regulations, are the rules made by the ruling to set something up rules-the rules, the instructions created by the government.¹⁶

External factors that can lead to financing problems can be either the debtor intentionally did not make installment payments, fraud use of credit funds is not in accordance with the intended use, the presence of the elements of the accident such as natural disasters or economic instability of

the Country so that the high inflation.¹⁷ Symptoms of the presence of financing problems can also be detected when the occurrence of the irregularities of the various provisions in the credit agreement, the decline in the financial condition of the company, the frequency of alternation of the leadership and core personnel, the presentation of the material input incorrectly, decreasing the cooperative attitude of the debtor, decrease in the value of the collateral provided as well as financial problems or personal.¹⁸

Before the bank determines the steps that need to be taken in the face of financing problems, first need to be investigated the causes of the occurrence of financing problems. If financing is problematic due to external factors, such as natural disasters, the bank does not need to perform further analysis. Important how to help the customer to immediately obtain a replacement from the insurance company. But when the cause of the congestion is internal factors, namely congestion occurs because of managerial it need to be investigated. If the bank has made the supervision of carefully months and from year to year, and then arise financing problems, then a little more related to the weakness of the supervision itself. Except when surveillance has been done in depth, it is possible the management company activities not to be honest. For example the management of the company deliberately divert the use of funds for other business activities outside of the agreed project.¹⁹

4. The form of Settlement in the Financing of Problematic

Rescue financing is a technical term commonly used among the banking to the efforts and steps performed by banks in an effort to overcome the problems of financing faced by debtors that still have business prospects that better, but experience difficulty principal payments and other obligations, so that the debtor can meet the return obligations.²⁰

¹⁵ Ismail, *Akuntansi Bank: Teori Dan Aplikasi Dalam Rupiah* (Jakarta: Kencana Prenada Media Group, 2011), 224.

¹⁶ Mahmoedin, *Melacak...*, 34-35.

¹⁷ Ismail, *Akuntansi Bank...*, 224-225.

¹⁸ Siswanto Sutojo, *The Management Of*

Commercial Bank (Jakarta: Damar Mulia Pustaka, 2007), 173.

¹⁹ Fathurrahman Djamil, *Penyelesaian...*, 74.

²⁰ Fathurrahman Djamil, *Penyelesaian...*, 82-83.

Faith of the customer is the most dominant factor, why it is said so because faith is belief, trust or willingness of a firm. Then the faith of the customer in fulfilling the rights and obligations of the financing determine the good or bad the customer itself that will affect the bad credit. In addressing the financing problems of management of bank should remain steadfast on the basic guidelines for the handling of the financing problems that the business rescue financing to the maximum.²¹

Suhrawadi K. Lubis, a way the settlement of disputes in the field of islamic economics with two alternatives, namely: peace (assulhu) and arbitration (tahkim).²² Siswanto Sutojo, a banking expert explains in his book about the symptoms of financing problems, their causes and ways of settlement used by conventional banking. He explained in detail all about credit problems and issues that may arise and the solutions. In resolving problem loans including bad credit appointed officials of the bank who is known by the name of the Account Officer.²³ Furthermore, in order to the resolution of problem loans can be divided in two ways of settlement, namely: on the outside of the court process and through the court process.

One of the rescue efforts of financing through the non-legal is the restructuring. The restructuring is an effort to minimize potential losses due to financing problems. The legal basis of the restructuring is the Letter of the board of Directors of Bank Indonesia number 31/150/KEP/DIR dated 12 November, among others, include:

a. *Rescheduling*

Rescheduling is an action that shaped the rescheduling of the obligations of the customer. Resheduling can be done for the condition:

- 1) The Potential of the business is still pretty good.
- 2) The Ability of customers to meet the obligation is still there.
- 3) Financing that has not changed.

Rescheduling is done by the way, is the following:

- 1) Rescheduling of payment term.
- 2) Change the schedule of installment.
- 3) the Provision of the grace period.
- 4) Change the number of installments.

b. *Reconditioning*

Reconditioning s the act of the terms of the financing and the requirements that have been agreed. Action reconditioning systems can be carried out in the conditions:

- 1) The Potential of the business is still pretty good.
- 2) a Means business is still adequate.
- 3) The Business experienced the problems of cash flow management.
- 4) Financing is fixed.

Reconditioning systems is made through changes in guarantees and aid management.

c. *Restructuring*

Restructuring is the action that shaped the preparation of all obligations of the customer. Action restructuring can be carried out in the conditions:

- 1) The Potential of the business is still pretty good.
- 2) The Ability of customers to meet the obligation is still there.
- 3) The only Business experiencing problems of cash flow that is temporary.
- 4) Financing is changed.²⁴

Settlement through court proceedings is mainly done if there is an element of fraud (criminal) or if credit is develop into bad loans.

Zainul Arifin added some ways that can be taken the Bank, in addition to the three above ways, namely:

- a. The analysis of the causes of congestion: the Financing given to customers who can not pay, should

²¹Mahmoedin, *Melacak...*, 35.

²² Suhrawardi K. Lubis, *Hukum Ekonomi Islam* (Jakarta: Sinar Grafika, 2000), 178.

²³ Siswanto Sutojo, *Menangani Kredit Bermasalah:*

Konsep Teknik Dan Kasus (Jakarta: Pustaka Binaman Pressindo, 1997), 124-125.

²⁴ Siswanto Sutojo, *Menangani...*, 126-128.

be analyzed why the customer can not meet its obligations to the bank, this is because the internal aspects of such borrowers are less competent in the business, the management is not good, the financial report is not complete, the use of funds not in accordance with the planning. While the external aspects include the aspects of the market the less market support, the ability of the purchasing power is less, government policy, other influences from outside the business, a borrower's delinquency.

- b. Explore the potential borrower: the Customer is experiencing bottlenecks in meeting the obligation should be motivated to re-start or fix and anticipate the causes of the congestion of business that need to be explored the potential that exists on the borrower that the funds have been used more effectively.
 - c. Do the transfer or financing of re in the form of financing of Al-Qorḍul Ḥasan.
 - d. If the congestion is due to the negligence, breach or fraud of the customer, then the bank can request that the client complete immediately included to hand over the goods pledged to the bank.²⁵
- b. The Bank must detect early the presence of financing problems or suspected will be financing problems.
 - c. Handling financing problems or suspected will be the financing problems also should be done early and as soon as possible.
 - d. The Bank does not make the financing problems by increasing the plafond financing or arrears-arrears of interest and capitalize the arrears of such interest or which is commonly known as the practice of plafondering financing.
 - e. The Bank may not make an exception in the completion of financing problems. In particular for the financing problems to the related parties with the bank and the debtor-the debtor.²⁷

In addition to performing actions through the non-legal in the above, the approach is curative also performed when the approach restrukturisasi to no avail. Curative action is rescue financing through handling using the approach of the formal legal aspects. Curative measures, include:

- a. Execution
 - The type of execution that can be done is:
 - 1) Parate Execution (Non Ligitasi): the Process of execution of guarantees is done voluntarily without going through the court process. There are 2 (two) options that can be done, namely:
 - a) The Customer sells the goods the guarantee which the Bank or BMT still holds the legality of the guarantee until the transaction takes place.
 - b) The Customer gives the trust to the Bank or BMT to sell the collateral. And after deducting the liabilities of the rest of the payment,

If in the discretion of the bank, the financing problem may not be saved and be smoothly returned through the efforts of the rescue so that eventually financing is being jammed. Then the bank will do the actions of the settlement or billing of financing problems, it is an attempt of the bank to recover the payment from the customer of the debtor or the guarantor on the bank credit which has become problematic or without liquidate the installment.²⁶

Therefore, to resolve the financing problems need to use the following approach:

- a. The Bank does not allow or even cover-up the existence of financing problems.

²⁵ Zainul Arifin, *Dasar-Dasar Manajemen Bank Syariah* (Jakarta: Alvabet, 2003), 208.

²⁶ Rachmadi Usman, *Aspek-aspek Hukum Perbankan di Indonesia* (Jakarta: Gramedia Pustaka

Utama, 2003), 296.

²⁷ Rachmadi Usman, *Aspek-aspek...*, 302-303.

then the rest of the money will be refunded.

- 2) Execution of the Formal (Ligitasi): is the process of execution of collateral by force through the institution of applicable law.

b. Liquidation

Liquidation is the act through the closure and sale of the entire asset or wealth of the customer's business and the results are used to complete the entire obligations of the customer financing problematic.

c. Collection Agent

Collection Agent is the process of billing financing bermasalah through the help of a third party. Basically, the purpose of doing the above is in order the bank's efforts to help its customers at the moment experiencing difficulties in managing their business, which resulted in the reduction or weakening of the ability to meet the obligations of the installment payments. Thus the above actions are expected to give the middle way is best for both parties.

In financial institutions shari'ah, the solution to the financing problems can also be resolved through the Arbitration board of the National Sharia (BASYARNAS). Based on a clause in the financing agreement, where if one party does not fulfil its obligations or there is a conflict between the two parties and no agreement is reached through consultation, then penyelesaiannya through the Arbitration board of the National Sharia (BASYARNAS).²⁸ BASYARNAS authorities:

- a. Resolve in a fair and quick dispute over muamalah (civil) which arise in the areas of trade, finance, industry, services and others according to the law and legislation is fully controlled by the parties to the dispute, and the parties agree in writing to submit the

resolution to the BASYARNAS in accordance with the procedure BASYARNAS.

- b. Give an opinion binding at the request of the parties in the absence of a dispute regarding the question of pleased with an agreement.

An agreement to submit dispute settlement to BASYARNAS, carried out by the parties:

- a. With include clauses arbitase in the text of the agreement; or
- b. With the arbitration agreement of its own that is created and approved by the parties, both before and after disputes arise.²⁹

The decision of the arbitration is the decision final and binding. The Foundation Of Sharia:

In al-Qur'an Surat al-Hujurāt [49] ayat 9, reads:

وَإِنْ طَآئِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقْتُلُوا الَّتِي تَبَغَى حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ³⁰

In al-Qur'an Surat An-Nisā [4] ayat 35, Allah says,

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا

²⁸ All the National Sharia Board fatwa Majelis Ulama Indonesia before the 2008 always include the settlement through Arbitration of Sharia, but since the year 2008 in the fatwa stated: "If one party does not fulfill its obligations or in case of any dispute between the parties, then the settlement is performed through the Agency of Arbitration Sharia or Religious Court after no

agreement was reached through deliberation".

²⁹ Widespread exposure about BASYARNAS can be read in Fathurrahman Djamil, *Penyelesaian...*, 139-162.

³⁰ QS. Al-Hujurāt [49]: 9. Yayasan Penyelenggara Penterjemah Al-Qur'an, *Tasnim...*, 851.

إِصْلَاحًا يُوفِّقُ اللَّهُ بَيْنَهُمَا ۗ إِنَّ اللَّهَ كَانَ

عَلِيمًا خَبِيرًا ۝³¹

Specifically regarding the conversion of contract Murābahah, the fatwa DSN No. 49/DSN-MUI/11/2005, among others, stated that Islamic Financial Institutions can perform the conversion contract murābahah for customers who can not complete the/pay off the financing murābahah based on the amount of time that has been agreed upon, but he is still prospective, with the following provisions: (a) the Contract murābahah stopped selling object murābahah to the LKS with the market price; customers pay off the remaining debt on the LKS of the sales results; if the sale proceeds exceed the remaining debt, then the excess can be used as a down payment for the contract of ijārah or muḍārabah and musyarakah; if the sale is less than the remainder of the debt then the remainder of the debt remains a debt of the customer which way of repayment agreed upon between the LKS and the customer.³² (b) LKS and customer eksmurābahah can create a new contract by making the contract of ijārah muntahiya bit tamlik (IMBT) on such goods or muḍārabah or musharaka. The conversion contract murābahah to the financing agreement muḍārabah or musyarakah or IMBT as mentioned in the fatwa, is part of the restructuring of the financing as stipulated in PBI No. 8/21/PBI/2006.³³

5. The opinion of Fiqh Scholars in the Completion of Financing problems

The Islamic sharia is the view of life that is balanced and integrated, created to deliver human beings to happiness in this world and the hereafter (falah) through the enforcement of a variety of exclamations that have been kodifikasikan in al-Quran and as-Sunnah. The rules contained in the qur'an and as-

Sunnah the set of human in various aspects. Setting in various aspects as described above, corroborated by Imtiaz Pervez stating that:

*[Islam] is a comprehensive way of life, religious and secular; it is a set of beliefs and a way of worship; it is a vast and integrated system of laws; it is a culture and a civilization; it is an economic system and commercial norm; it is a polity and a method of governance; it is a society and a family conduct; it prescribes for inheritance and divorce, dress and etiquette, food and personal hygiene. It is spiritual and human totality; thus worldly and other-worldly.*³⁴

With regard to financing problems or bad credit, in Islam has been explained in general terms about bad credit, as in the qur'an God has said:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ ۖ إِنْ كُنْتُمْ تَعْلَمُونَ ۝³⁵

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From the above verse it can be understood that if the debtor is in a difficulty then the lenders give the time of the tempo until the debtor is able to reinstate the loan, brother, on the contrary, if the debtor is in the state of the field, then he shall immediately bring it back.

Every person is obliged to perform what has been diakadkan, either word or deed. In the contract is affirmed to obtain related to halal, should hold moral values and the value of the administration. In Islamic law, any person who borrow something to someone else means the borrower has debt to a loan. Any debt is payable, so berdosalah people who do not want to pay the debt, even neglecting the payment of debt also includes the deeds of mayhem.³⁶

³¹ QS. An-Nisā [4]: 35. Yayasan Penyelenggara Penterjemah Al-Qur'an, *Tasnim...*, 123.

³² Fathurrahman Djamil, *Penyelesaian...*, 86-87.

³³ Fathurrahman Djamil, *Penyelesaian...*, 87. The ordinances of the restructuring of the financing can be checked in Fathurrahman Djamil, *Penyelesaian...*, 87-94. Compare in Muhammad, *Manajemen...*, 267-268.

³⁴ J. Michael Taylor, "Islamic Banking-The

Feasibility of Establishing an Islamic Bank in The United States", *American Business Law Journal*, 40 *Am. Bus. L.J.* 385, Winter, 2003, hlm. 387.

³⁵ QS. Al-Baqarah [2]: 280. Yayasan Penyelenggara Penterjemah Al-Qur'an, *Tasnim...*, 67.

³⁶ Hendi Suhendi, *Fiqh Muamalah* (Jakarta: RajaGrafindo Persada, 2010), 250.

Islamic law strongly recommends to be able to resolve problems and disputes with the deliberation of peace and kinship, so that can prevent from the destruction of the relationship between the parties, and at the same time will be able to end the dispute between the parties. Allah says:

طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ فَاصْلِحُوا
بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى
فَقْتُلُوا الَّتِي تَبَغَى حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ
فَإِنْ فَاءَتْ فَاصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ
وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

37

From the above verse, explains that if there are two groups of believers who mutually dispute because of the existence of a problem, then should be sought a way out through peace between the two parties to the dispute, in accordance with the provisions of the law of God. Peace here is a peace based on justice for the sake of the common good (i.e. the parties to the dispute). If peace was achieved then both must apply thoughtful and fair. Further, Babback Sabahi stated that: "Basic principles of Islamic law applicable to a loan agreement: (1) the prohibition on charging or paying interest (riba) and (2) the prohibition on undertaking an unreasonable level of risk or uncertainty (gharar)".³⁸

In the view of Islam the completion of the financing problems can be reached by actions and based on sharia principles, as follows:

a. Peacefully (*Al-Sulh*)

Islah (Peace) is a mechanism for conflict resolution provided by al-Quran. Basically every conflict that occurs between those who believe should be resolved with peace (*islah*). *Islah* is a way of conflict resolution that can eliminate

and stop all forms of hostility and conflict between human beings. But the word *islah* is to emphasize the meaning of a peace process between the two parties. While the word *sulh* is to emphasize the meaning of the result of the process of reconciliation that is in the form of *sulh* (peace).³⁹

Peace in Islam is highly recommended. Therefore, with peace will terhindarlah the destruction of the relationship (relationship) as well as enmity in between the parties to the dispute will be ended. As for the basis of legal advice for the holding of peace can be seen in the provisions of the Qur'an, Sunnah, and scholarly Consensus. There is in the hadith of the Prophet narrated by Imam al-Tirmizi and Ibn Majah from 'Amr bin 'Auf al-Muzani, the holy Prophet said: حدثنا الحسن بن علي الخلال. حدثنا أبو عامر العقدي. حدثنا كثير بن عبد الله بن عمر وابن عوف المزني عن أبيه، عن جدّه، أنّ رسول الله قال: «الصلح جائز بين المسلمين. إلا صلحاً حرم حلالاً أو أحل حراماً. والمسلمون على شروطهم، إلا شرطاً حرم حلالاً أو أحل حراماً قال أبو عيسى هذا حديث حسن صحيح.

"Al-Hasan ibn Ali al-Hilal narrated the hadith to us, from Abu Amir al-Aqdi from Kathir ibn Abdullah ibn 'Amr ibn 'Awf al-Muzni, from his father, from his father (his grandfather), from the Messenger of Allah said: al-Sulh it is jaiz (allowed) between (for) muslims, except sulh that forbids what is permissible or otherwise (justify him). And muslims can make peace (with the infidels) on condition that they submitted, except a condition that forbids what is permissible or otherwise." Abu 'Isa argues that the Hadith is classified as Hasan-Saheeh".

The expression above can be received, for the settlement of the case through the courts essentially to ensure the completion is a mere formality. Parties to a dispute is forced to accept the verdict even though sometimes the ruling

³⁷ QS. Al-Hujurat [49]: 9. Yayasan Penyelenggara Penterjemah Al-Qur'an, *Tasnim...*, 851.

³⁸ Babback Sabahi, "Islamic Financial Structures as Alternatives to International Loan Agreements: Challenges for U.S. Financial Institutions", *Annual*

Review of Banking and Financial Law, 24 Ann. Rev. Banking & Fin. L. 487, 2005, 489.

³⁹ Fathurrahman Djamil, *Penyelesaian...*, 114.

body of the judiciary that does not meet the sense of justice. In between the law of the shulh is as follows:

- 1) *Shulh against something that is alleged to not take any compensation from him is like selling something that gived the benefits.*
- 2) If one of the parties that is at peace knowing the lie itself, then the shulh be null and void and what he take because of the shulh is haram.
- 3) whoever recognizes the existing rights on him, but refused to pay him unless he was given something of such a right, then it is not allowed.⁴⁰

b. In The Arbitration (*Al-Tahkim*)

In the Islamic perspective, arbitration can be paired with the term tahkim. First, none has the same sense with arbitrase namely the appointment of a person or more as a bequest by two people at odds or more, to resolve their disputes peacefully, people who complete the called hakam. The scope of arbitration is closely related to the issue that concerns huququl 'ibad (rights of individuals) in full, i.e. legal rules which regulates the rights of natural persons (individuals) relating to the property. For example, require redress for a person who has damaged someone else's property, rights concerning the debt, as in the sale and purchase, and lease-rent.

If it is connected with the scope of the task hakam, then that is included in the authority just sengektasengketa related to the rights of the individual, where he (the individual) plenipotentiary whether he will sue or not, or he to forgive or not. One of the things that become the main purpose for the practice of arbitration is to resolve disputes in the way of peace. In line with the principle of it, the dispute will be resolved by hakam just disputes which by their nature receive to be

reconciled. Disputes can be reconciled such as the dispute pertaining to the property (in the field of mu'amalah) and of the same nature with it (private).⁴¹

c. Through The Institution Of The Judiciary (*Al-Qadha*)

According to the language, Al-Qadha means to decide or define. According to the term means of setting a legal personality' of an event or dispute to resolve in a fair and binding. If the parties to the dispute, not managed to do shulh or none, or the parties do not want to do the second way, the amka one of the parties can submit the problem to court. The command of God that human resolve, decide the cause and punish correctly according to what he commanded is the nature of imperasif, something that should be enforced in accordance with the rules and regulations of Allah SWT.

The duties and authority possessed by the institution up to this is to resolve matters associated with certain problems mudaniat and al-ahwal asyasykhsiyah (issue on civil, including family law), and the problem jinayat (offenses). Judges at the court (*Al-Qadha*) also never given additional tasks not in the form of the settlement.

The three systems also seem to live in the tradition of positive law in Indonesia. As-Sulh (peace) in the doctrine of dispute resolution in Islam, the existence of a structure of peace in the context of Indonesia is popular with the name of the Alternative Dispute Resolution (ADR) and supported scara legal with the LAW No. 30 Year 1999 On Arbitration and alternative dispute resolution. In this ACT, in addition to the settlement of disputes in litigation through the judiciary (qadha), the state also gives freedom to its citizens to resolve the issues of the dispute out of court, (nonlitigasi) either through consultation, mediation, negotiation, or valuation experts.⁴²

Based on the above description, the completion of financing problems in Islam run through the mechanism of the peace (al-sulh),

⁴⁰ Fathurrahman Djamil, *Penyelesaian...*, 127.

⁴¹ Fathurrahman Djamil, *Penyelesaian...*, 128-129.

⁴² Suyyud Margono, *ADR dan Arbitrase: Proses*

Pelebagaan dan Aspek Hukum (Jakarta: Ghalia Indonesia, 2000), 82.

arbitration (tahkim), and/or the court (al-Qadha).

C. Conclusion

Islamic Bank is a financial institution that serves as intermediary between parties with excess funds with those who lack the funds in practice every year also experienced a credit crunch. Problems in financing may occur caused by several factors, among others: the internal factors of the bank, factors internal customers, external factors, failure factors of business as well as the inability of the management.

In order to save islamic banks from financing problems and help the customer in order to complete its obligations then the islamic bank can perform restructuring through: rescheduling (rescheduling); reconditioning systems (terms back); restructuring (re-structuring). However if the third restructuring effort was not successful, then the islamic bank can conduct settlement financing problems through: foreclosure of the collateral, the arbitration board of the national sharia, and settlement through litigation. The completion of the financing problems in Islam run through the mechanism of the peace (al-sulh), arbitration (tahkim), and/or the court (al-Qadha).

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