

Consumer Legal Protection in Gold Buying and Selling Transactions at Bank Syariah Indonesia Aksara Medan

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Abstract

The rules in the consumer protection law No. 8 of 1999 in buying and selling transactions regarding buying and selling law analyze how consumer protection rules and economic law, especially sharia-based concepts, apply to Indonesian sharia banks. The type of research is qualitative with a normative juridical and empirical juridical research approach, collecting data, rules/regulations, and in reality, in practice in the field where the research was carried out, namely at Indonesian sharia banks, with data collection techniques used namely library research and interview. The research results show that Indonesian sharia banks are one of the sales places for buying gold, where customers can carry out gold buying and selling transactions anywhere and anytime from mobile banking. Furthermore, consumers/customers who feel disadvantaged by Indonesian sharia banks can report to the party Civil Servant Investigator (PPNS) ITE Directorate of Information Security, and the form of supervision by CoFTRA, namely preventive supervision then repressive supervision. The implementation of consumer protection at Indonesian sharia banks focuses on 2 things, including returning the product (return) and returning the funds (refund). Implementation of consumer protection for Indonesian sharia banks in accordance with the UUPK, where the bank has given its rights to its consumers in accordance with the provisions contained in the UUPK. Meanwhile, its application in the view/perspective of Sharia Economic Law is appropriate from the point of view of consumer rights in Islamic rules, Indonesian sharia banks provide khiyar rights (cancel/continue the sale and purchase agreement) if there is an error/mistake by the bank. The resolution if there is a dispute chosen by the Indonesian sharia bank is through peace and resolving it internally, this is in accordance with the concepts of Islamic buying and selling.

Keywords | Legal protection, buying and selling, consumers

INTRODUCTION

The classification of banks known in the Banking Law consists of two types, namely Commercial Banks and Rural Banks. Commercial Banks are banks that carry out their business activities conventionally and use sharia principles in their activities of providing payment services. Meanwhile, Rural Credit Banks are banks that carry out conventional business activities and use sharia principles and do not provide payment services in carrying out their activities.¹

The word Sharia comes from Arabic, from the root word syara'a, which means path, method and rule. Sharia is used in a broad and narrow sense. In a broad sense, sharia is meant as all the teachings and norms brought by the Prophet Muhammad SAW. which regulates human life both in the aspect of belief and in the aspect of practical behavior. In short, sharia is the teachings of the Islamic religion itself, which is divided into two aspects, namely

¹Abdul Ghofur Anshori, 2008, Questions and Answers on Sharia Banking, Ull Press Yogyakarta, Yogyakarta, p.1



teachings about belief (akidah) and teachings about behavior (amaliah). In this case, sharia in a broad sense is synonymous with Syarak (asy-syair') and ad-din (Islamic religion).²

The basis of what conventional banks use is the interest system, then the principle used by Indonesian sharia banks is the system of buying and selling, profit sharing and leasing. Conventional banks are profit oriented. If sharia banks are profit oriented and (falsh oriented).

Consumer protection is an inseparable part of good business activities. In good business activities there must be a balance of legal protection between consumers, business actors and the government, otherwise this could weaken the position of consumers. Moreover, if the products produced by business actors are limited types of products, business actors can abuse their monopolistic position. This will certainly be detrimental to consumers. The fate of consumers who are harmed requires greater protection efforts so that consumer rights can be upheld.³

The history of the development of consumer protection begins with the rise of the world economy. "Historically, consumer protection began with consumer movements in the early 19th century. Consumers at that time needed protection, so the consumer protection movement was born."⁴

The definition of consumer according to the provisions of Article 1 point 2 of Law Number 8 of 1999 concerning Consumer Protection is every person who uses goods and/or services available in society, whether for the benefit of themselves, their family, other people or other living creatures and not for trading.⁵

There are two legal relationships between business actors and consumers. The first legal relationship may have previously existed between business actors and consumers in the form of a contractual relationship (agreement relationship), but it is also possible that there has never been a legal relationship before, and the legal attachment was actually born after an event occurred. which is detrimental to consumers.⁶

From several juridical bases for buying and selling in the Shari'a which are permitted in Islam, it can be understood that buying and selling activities to meet the needs of life are permitted in the Shari'a. Likewise in other laws as stated in the Criminal Code. Islam prohibits usury and emphasizes that buying and selling activities need to be carried out consensually, meaning there is no coercion between parties.⁷

LITERATURE REVIEW

A bank is a financial intermediation institution generally established with the authority to accept money deposits, borrow money. The word bank comes from the Italian word banco

²Syamsul Anwar, Sharia Contract Law, Study of Contract Theory in Muamalat Fiqh, PT. Raja Grafindo Persada, Jakarta, 2007, p. 5.

³Haris Hamid, Indonesian Consumer Protection Law, (Makassar: Sah Media, 2017) pp.1-3

⁴Gunawan Widjaja and Ahmad Yani, Law Concerning Consumer Protection, (Jakarta: PT. Gramedia Pustaka Utama, 2003),p.12

⁵Consumer Protection Law Number 8 of 1999 Article 1 number 1 concerning Consumer Protection

⁶Janus Sidabalok, Consumer Protection Law in Indonesia, Ed.1. Cet. Ke-II (Bandung; Citra Aditya B a k t i , 2 0 1 0) p . 1 0 1

⁷Muhammad Djakfar, Business Law, (Malang: PT LKiS Printing Cemerlang, 2009), p. 175.

meaning bench, the bench here is intended as an operational desk for safe bankers first in serving all their customers, after this bench then became popular with Bank name.

Republic of Indonesia Law No. 10 of 1998 concerning banking (article 1 paragraph 2), banks are business entities that collect funds from the public in the form of savings and distribute them 3 to the public in the form of credit and/or other forms in order to improve people's living standards. Many According to Dr. Kasmir (2014,12) "Financial institutions whose main activities are collecting funds from the community and channeling these funds back to the community as well as providing other banking services."

According to Drs. H. Malayu SP Hasibuan, according to Hasibuan, the definition of a bank is "a business entity whose wealth is mainly in the form of financial assets and has profit and social motives, so it is not just looking for profit." Apart from that, banks are also known as places to store money, exchange money, send (transfer) money or receive all forms of payments such as salaries, pensions, electricity, water, taxes, tuition fees, installments and other payments.

Customer relationships in Islamic banks are realized through contracts that occur between the bank and the customer which are divided into several types, namely:⁸

1. Mudharabah and musyarakah contracts are cooperation agreements between two or more parties. In banking practice, the application of this contract is realized in terms of financing and profits from the project being shared according to the agreement, for the Bank this is done after returning the funds used by the customer. This agreement is used in a partnership system that requires commitment from both the customer and the bank.
2. Wadiah contract, namely the bank accepts savings in the form of savings from the customer, the customer's deposit does not bear the risk of loss and the bank gives a bonus to the customer.
3. Murabahah contract, which is a practice in the form of a sale and purchase agreement between the bank and the customer. The Bank will purchase or order goods according to the customer's request and then sell them to the customer at the purchase price plus the profit obtained by the Bank according to the agreement.⁹

In sharia banking, the contracts used have worldly and spiritual consequences because the contracts are carried out based on Islamic sharia law. Often customers violate the contract that has been agreed upon if the law is only based on positive law, but this is not the case if the contract has accountability until yaumul qiyamah later.¹⁰

From an institutional perspective, it started with the establishment of Bank Muamalat Indonesia (BMI) in 1991. Then followed Bank Syariah Mandiri which was a conversion of

⁸Heri Sudarsono, 2003, Sharia Banks and Financial Institutions, Ekosiana, Yogyakarta, p.86

⁹Yukri Iska, 2012, "Sharia Banking System in Indonesia from the Perspective of Economic Jurisprudence", Fajar Media Press, Yogyakarta, Pg 200.

¹⁰6 Afzarul Rahman, 1990, Economic Doctrines Of Islam, Lahore: Islamic Publication, Aceh, Law Journal p.10.



Bank Susila Bakti. These two banks are banks that carry out business activities based purely on sharia principles.¹¹

Since the issuance of the Banking Law, it has been possible for banks to operate entirely based on sharia principles or by opening special sharia branches. The characteristics of the sharia banking system are that it operates based on the principle of profit sharing which is able to provide an alternative banking system that is mutually beneficial between the community and the bank, and prioritizes aspects of fairness in transactions, ethical investment, prioritizing the values of togetherness and brotherhood in production, and avoiding speculative activities in transactions. finance.¹²

METHOD

The type of research used is normative legal research supported by interviews with descriptive research type. The method for analyzing and constructing legal materials is a qualitative method, because this qualitative method is a research method that produces analytical descriptive legal materials and aims to understand or understand the phenomena to be studied.¹³

In this research the author took a research approach, namely:

a. Legislative approach (Statue Approach).

A legislative approach is carried out by examining all laws that are related to the legal issue being raised.¹⁴In this paper the author takes a research approach by examining laws relating to pawning and sharia banking.

b. Case Approach.

The case approach in normative research aims to study the application of legal norms or rules in legal practice. This type of approach is usually used regarding cases that have already received a decision. In normative research, it allows a researcher to utilize the findings of empirical legal science and other sciences for legal purposes and analysis and explanation without changing the character of legal science as a normative science.¹⁵

RESULTS AND DISCUSSION

Consumer Legal Protection in Gold Buying and Selling Transactions at Bank Syariah Indonesia Aksara Medan

The term consumer comes from the language translation of the word's consumer (American English) or consumer/consumer (Dutch). The meaning of consumer and consumer only depends on where he is located. The literal meaning of the word consumer is (the opposite of producer), everyone who uses goods and services. The purpose of using

¹¹Abdul Ghafur Anshori, 2007, *Sharia Banking in Indonesia*, Gadjah Mada University Press, Yogyakarta, p.40.

¹²Ahmad Mulidizen, 2016, "Shari'ah Gold Pawn Application: Case Study of BRI Syari'ah Pekanbaru Branch", *Universiti Malaya Malaysia Syari'ah Economic Journal*., Law Journal, p.2

¹³Soerjono Soekanto, 2007, *Introduction to Legal Research*, University of Indonesia Publishers (UI Press), Jakarta, p.250.

¹⁴Dyah Ochtarina Susanti, and Aa'an Effendi, 2015, *Legal Research*, Sinar Graphics, Jakarta, Pg. 110.

¹⁵Johni Ibrahim, 2007, *Normative Legal Research Theory & Methodology*, Bayumedia Publishing, Malang, p. 321.

goods and services will determine which group of consumers the user belongs to, as well as the Big Indonesian Dictionary giving the meaning of the word consumer as user or consumer. Consumers are generally defined as the final user of the product handed over to them, namely everyone who gets goods to use and not to trade or buy and sell again.¹⁶

The legal rules in sharia banking are the Sharia Banking law, which is regulated by the government, a sharia banking business entity cannot be separated from the rules of other laws, such as agreements that occur in sharia banks which are part of Indonesian civil law.

Several reasons why the Indonesian people's need for sharia banking services is increasing, include:¹⁷

1. To meet the needs of banking services for people who consider conventional bank interest to be usury (usury/interest);
2. Accommodating the holding of capital flows from domestic fund owners and from international financial institutions that require the implementation of sharia principles.
3. Sharia banking products and services can be more varied, because they can be a combination of commercial bank products (commercial bank business activities), finance companies (Ijarah), investment banks (mudharabah and musyarakah);
4. Complementing services in the banking sector other than conventional banking services.

When buying and selling or investing in gold, buyers can buy gold in cash or in installments. In buying and selling gold in installments, there is a difference of opinion among the jurists, divided into 2 opinions, namely the ulama who do not allow buying and selling gold on credit, including Taqiyuddin An Nabhani and the imams of the school such as Abu Hanifah, Malik, Syafi'i and Ahmad Hanbali. According to Taqiyuddin An Nabhani, he assesses the prohibition of buying and selling gold without cash in terms of ijtima, Hanafi, Maliki, Syafi'i and Hanbali scholars. An Nabhani prohibits buying and selling gold without cash because according to him gold is a usurious item even though times and places change. (Kusuma: 2019:64)

Meanwhile, Ibn Taimiyah, Ibn Qayyim and contemporary ulama are of the opinion that gold is not included in the tsaman category as in the time of the apostle, but rather that sil'ah (goods) can be bought and sold like other goods, so they support the practice of buying and selling gold. (Gustina: 2018 :86)

The Indonesian Ulema Council has carried out ijtihad by issuing DSN MUI fatwa No. 77 in 2010 and allowing buying and selling gold on credit but still establishing several rules so that these transactions remain in accordance with Sharia. If seen from neighboring countries, it has been regulated that "buying and selling transactions must be free from the elements of usury, gambling, excessive gharar and injustice. If these elements are present, the sale and purchase transaction is considered not to meet the sharak criteria" (96th National Fatwa Muzakarah, 2011).

In Indonesia and other countries, there have been many implementations of buying and selling gold on credit, whether in accordance with Sharia or not. Investment products at

¹⁶Rosmawati, Basics of Consumer Protection Law, (Depok: Prenada Media, 2018), p.2.

¹⁷A. Wangsawidjaja Z. Sharia Bank Financing, PT. Gramedia Pustaka Utama. Jakarta, 2012, p. 17



Indonesian sharia banks start from IDR 50,000. which can be done via mobile banking and is in accordance with Sharia principles. Explaining that the non-cash gold buying and selling mechanism at PT Bank Syariah Indonesia is in accordance with Sharia.

The general description of investment in Indonesian sharia banks is¹⁸:

1. The investment feature in Sharia Bank is deposit-based (wadhiah yad amanah) with a balance in the form of grams of gold.
2. Transactions that can be carried out using this feature are registering to open a gold account, buying gold, selling gold, transferring gold, physically withdrawing gold, history information, updating NPWP and account data and closing gold accounts via BSI Mobile.

Regarding Applications For prospective customers who wish to submit an application to purchase gold. Either cash or installments according to the employee of Bank Syariah Indonesia, Medan city branch, in the name of Fatirisa Doanty, is¹⁹, you can visit Bank Syariah Indonesia in Indonesia. Regarding the availability of Gold Installment financing facilities, first follow the procedures/rules set for customers.

Bank Syariah Indonesia, Medan city branch, here are the methods/procedures for Gold Installment fees at Bank Syariah:

1. The customer submits an application for Gold Installment financing and meets with the assessing officer and fills in the application form.
2. Officers are required to explain to customers about all product features and characteristics verbally and in writing regarding the following matters:
 - a. Requirements for prospective customers.
 - b. Fees that will be charged.
 - c. Financing management and administration fees are paid at the time of signing the financing agreement.
 - d. The amount of the down payment that the customer must pay.
 - e. Repayment procedures.
 - f. Settlement procedures if installment arrears occur or the customer is unable to pay.
 - g. Consequences if there are installment arrears or customers who are unable to pay.
 - h. Customer rights and obligations in the event of execution of gold collateral.
3. The customer submits all documents related to the financing application.
4. The officer receives the customer's Gold Installment financing application documents and checks their completeness.
5. Next, the officer verifies the customer's documents and income which will then be included in the Financing Analysis Note (NAP). In preparing the NAP, prospective customers are required to check the quality of financing through the BI Checking process. Prospective customers can have their financing processed further if the quality of financing from the BI Checking process shows collectibility (smooth). If there is a non-current result, the customer must complete the financing first by showing proof of

¹⁸<https://www.bankbsi.co.id/produk&service/tipe/digital-banking/parent/produk/e-mas>

¹⁹Interview with an employee of Bank Syariah Indonesia, Medan city branch, on behalf of Fatirisa Doanty, January 10 2024

- payment from the bank concerned. The NAP is then submitted to the Branch Head for approval.
6. The Branch Head reviews the NAP and makes a decision on the proposed financing.
 7. After the financing is approved, the officer contacts the customer to provide information to the customer to carry out the financing agreement.
 8. The customer and bank enter into a financing agreement. After that, the customer is required to pay a down payment of 0.2 of the gold prices agreed upon at the time of the contract and also administration fees.
 9. The officer contacts the gold supplier to ensure gold availability and prices for customer gold orders. If the goods are not available, it remains to be confirmed first by the gold supplier. If the goods are available, the gold ordered by the customer will immediately be available.
 10. The gold supplier delivers the gold to BSI and hands it over to the appraiser for collateral appraisal. The results of these estimates affect the value of financing proposed by customers.
 11. Financing disbursement:
 - a. The customer already has an account at Bank Syariah Mandiri.
 - b. Before disbursement of financing, customers are required to pay all costs, such as administration fees, guarantee insurance and stamp fees.
 - c. The results of the financing disbursement are credited to the customer's account, then transferred to the gold supplier's account.
 - d. Proof of gold purchase must be kept by the bank.
 - e. Customers can identify collateral in the form of gold bullion/bars which are the object of financing through photos of the collateral after the disbursement process. If customers want to see the collateral in person, they can come to the bank after the financing has been disbursed. Especially for gold purchased from PT Antam, customers can see the guarantee approximately working days after the disbursement process.

The relatively constant price of gold makes it a very popular investment choice. Gold investment cannot be separated from the immunity element of commodity prices which tend to rarely experience drastic declines even though there is a price influence from ongoing inflation. Apart from that, investing in gold can also open up opportunities that investing in gold can provide returns and results or profits beyond high-risk investments, situations and conditions that allow such as a surge in inflation and rising world gold prices.²⁰

Law No. 8 of 1999 concerning Consumer Protection is contained in article 4 which contains the rights of a consumer including:²¹

1. The right to comfort, security and safety for goods and services
2. The right to choose goods and services.

²⁰Nunung Uswatun Habibah, "Development of Gold Pawning to Gold Investment in Sharia Pawnshops", *Journal of Sharia Economics and Finance*, Vol 1, Number 1, January 2017, page 83

²¹Law Number 8 of 1999 concerning Consumer Protection Article 4



3. The right to obtain correct, honest and clear information about goods or services.
4. The right to have opinions and complaints heard.
5. The right to obtain legal assistance, protection and dispute resolution.
6. Rights in consumer guidance and education
7. The right not to be discriminated against
8. The right to receive compensation or services for harm.
9. Rights specified in other legislation.

The main cause of consumer weakness is that consumers are still not aware of their rights due to poor consumer education. Therefore, the Consumer Protection Law is intended to be a solid legal foundation for government and non-government consumer protection institutions to commit to empowering consumers through consumer guidance and education. This consumer protection law is not intended to stop business actors from moving, but to encourage a good business atmosphere that creates strong companies that compete to provide quality goods or services.²²

Entrepreneurs/traders who violate the prohibitory provisions in Article 8 of the Consumer Protection Law, in this case by selling gold that does not match its actual value as written in the purchase letter, can be punished with a maximum imprisonment of 5 (five) years or a maximum fine of 2 billion Rupiah. ²³Article 63 regarding criminal sanctions may be subject to additional penalties as in Article 62 UUPK, namely:

- a) Confiscation of certain goods;
- b) Announcement of the judge's decision;
- c) Payment of compensation costs;
- d) Orders to stop certain activities that cause consumer losses;
- e) Obligation to withdraw goods from circulation; or
- f) Revocation of business license.²⁴

Article 28 Number 21 of 2011 of the Financial Services Authority (OJK) Law also provides legal protection in the form of preventing consumer and public losses carried out by the OJK, namely:²⁵

1. Providing information and education to the public regarding the characteristics of the financial services sector, its services and products.
2. Requesting Financial Services Institutions to stop their activities if these activities have the potential to harm the public.
3. Other actions deemed necessary in accordance with the provisions of laws and regulations in the financial services sector.

Bank Syariah Indonesia is a bank whose banking business activities are based on sharia principles. General explanatory rules of Law No. 21 of 2008 on Sharia Banking, namely business activities that are in accordance with sharia principles and do not conflict, including business activities that do not contain elements of usury, maisir, gharar, haram and unjust.

²²CST Kansil, Basic Knowledge of Indonesian Commercial Law, (Jakarta: Sinar Grafa, 2006) p. 211

²³Consumer Protection Law Number 8 of 1999 Article 62 paragraph 1 concerning Consumer Protection

²⁴Consumer Protection Law Number 8 of 1999 Article 63 concerning Consumer Protection.

²⁵Fadlia, Dian Husna, Yunanto, "The Role of the Financial Services Authority (OJK) in Legal Protection for Investors for Alleged Fictitious Investments, Law Reform Journal, Vol 11, Number 2, 2015, page 208

CLOSING

Conclusion

Commodities in Indonesian sharia banks include investing/buying and selling gold, which are products that are very popular among the community. The Indonesian Sharia Bank considers the sale and purchase of gold without cash to be permissible and does not include usury in buying and selling. Then the product is in mobile banking or e-mas savings, namely buying and selling gold in installments, the law/rules are gold installments, the difference is in the e-mas savings transaction mechanism which uses BSI Mobile. The rules provided by the bank are in accordance with consumer protection.

Suggestion

The rules for legal protection for customers/consumers in investing/buying and selling gold at banks or online from Indonesian sharia bank mobile banking via the m-banking application are regulated in more detail in legal norms and regulations. In the sense that it is mandatory to have a legal umbrella to protect consumers which strictly regulates the method/mechanism of purchasing gold which has been approved by the OJK in Indonesia, even in the application. In this way, all parties get more legal certainty and legal protection is created automatically/immediately.

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