

LEGAL ANALYSIS OF AUCTION ON NEGLIGENCE OF HOME OWNERSHIP CREDIT CUSTOMERS WAHBAH AZ-ZUHAILI'S PERSPECTIVE AT BTN SYARIAH MEDAN

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Abstract. The procedure for pasting auction marks should go through court procedures and has the legal force of remaining in the decision. Unfortunately, this did not happen in the act of negligence of home ownership loans organized by BTN Syaria'h. Every customer who starts acting in bad faith, BTN Syariah Medan starts putting the sticker on the customer's home who starts to be uncooperative. The act was considered to be beyond the limit according to Wahbah Az Zuhaili because it had passed the rules of the auction procedure. This journal is compiled using empirical legal research methods. The results of the study showed that BTN Syariah Medan was considered unprocedural in carrying out auction procedures and BTN Syariah was considered to exceed the limit in collection efforts according to Wahbah Az Zuhaili

Keywords: auction, negligence, mortgage, Wahbah Az zuhaili

I. INTRODUCTION

The term auction comes from Dutch, namely *vendu*, while in English, it is called the term auction. The other term is a translation from the Dutch *openbare verkooping*, *openbare veling*, or *openbare verköpingen*, meaning "auction" or "public sale". [1] The method of buying and selling with an auction system in *fiqh* is called *Muzayyadah*. [2] *Muzayyadah* is a type of buying and selling where sellers offer their merchandise in the middle of a crowd, then buyers bid each other at a higher price to the highest price from one of the buyers, then a contract occurs and the buyer takes the goods from the seller. Types of auctions are distinguished by the cause of the goods sold and the seller in relation to the goods to be auctioned. The nature of auctions is viewed from the point of view because auction items are distinguished, including execution auctions, voluntary non-execution auctions and mandatory non-execution auctions [2]. There are two ways used in the auction system, namely open and closed auctions. A closed auction is an auction conducted where the applicant submits a price for the property of interest in a sealed and undisclosed envelope. In a closed auction system, the highest bidder is unknown. Winners are only known after the bidding process is carried out and the results are announced. An open auction is an auction held by an auction house where property enthusiasts are gathered somewhere to participate in auctions.

The auction model in the Islamic buying and selling system is also known, as long as what is done by providing prices and bids is not an attempt to deceive that the price of goods is high which is actually not desired by the bidders involved. That is, in a *syar'i* transaction what is done is really

a transaction. This is where *gharar* or fraud is spared [3]. The highest price of the bidder will be the auction price, after being determined by the auction officer, the item has become the property of the bidder. If the auction results have not been able to cover the customer's loan money, then the customer still has the obligation to pay it off. Vice versa when the auction results have more value than the customer's loan money, the Pawnshop will return the excess. [4].

The basis of this auction is on the principle of buying and selling in *surah al baqarah* verse 275:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلَ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

It means: *Those who eat usury cannot stand except for the establishment of a person whose entry of the devil is due to the madness. Their condition is because they say, indeed, the sale and purchase is the same as usury, while Allah has legalized the sale and purchase and prohibited usury. Those who have come to him the prohibition of his Lord, then stop usury, so for him what he has taken. and his affairs to Allah. Those who return, they are the inhabitants of the Fire; they remain in it. (QS. Al Baqarah: 275)*

From this verse, it can be seen that buying and selling is an activity that is allowed in Islam, including the auction system. Auctions are allowed on condition that they do not contain usury and ugliness as described by the above

paragraph. This is also supported by the hadith of the Prophet SAW as follows:

The argument for the permissibility of auction is a hadith narrated by Abu Dawud, At-Tirmidhi, An-Nasa'i and also Imam Ahmad:

عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَجُلًا مِنَ الْأَنْصَارِ جَاءَ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْأَلُ لَهُ فَقَالَ لَكَ فَبَيْتِكَ شَيْءٌ قَالَ بَلَى جِئْتُ تَلْبِسُ بَعْضَهُ وَقَدْ خُتَّ فِيهِ الْمَاءُ قَالَ انْتِنِي بِهِمَا فَأَعْتَا هُ بِهِمَا فَأَخْرَجَهُمَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِيَدِهِ ثُمَّ قَالَ مَنْ يَشْتَرِي هَذَيْنِ فَقَالَ رَجُلٌ أَنَا خُذْهُمَا بِدِرْهَمٍ قَالَ يَزِيدُ عَلَيَّ دِرْهَمٍ مَرَّتَيْنِ أَوْ ثَلَاثَ قَلَّ رَجُلٌ أَنَا خُذْهُمَا بِدِرْهَمَيْنِ فَأَعْطَا هُمَا إِيَّاهُ وَأَخَذَ الدَّرَاهِمَيْنِ فَأَعْطَا هُمَا الْأَنْصَارَ [5]

It means: "It is from Anas bin Malik (may Allah be pleased with him) that there was a man of Anshar who came to see the Holy Prophet (peace be upon him) and he asked the Prophet for something. The Holy Prophet (peace be upon him) asked him, "Is there nothing in your house?" The man replied, "There is. a piece of cloth, one worn and the other for a place to sit, as well as a cup for drinking water." The Holy Prophet (peace be upon him) said, "Then bring these two things to me." The man came to bring her. The Holy Prophet (peace be upon him) asked, "Who wants to buy this thing?" One of his friends replied, "I want to buy it for one dirham." The Holy Prophet (peace be upon him) asked again, "Anyone want to buy it at a higher price?" The Holy Prophet (peace be upon him) offered it up to two or three times. Suddenly one of his friends said, "I want to buy it for two dirhams." So the Holy Prophet (peace be upon him) gave the two things to him and he took the two dirhams and gave them to the Anshar man.

According to Shafi'i, auctions only occur when there is pawn activity. Auction sale and purchase of lien collateral will be carried out if the debtor really cannot pay the debt and is considered bankrupt or bankrupt after being declared by a judge or the authorities in handling pawnshop problems. In *Al-um* which is a book written by Imam Shafi'i states that this auction is called *ba'i al muzayyadah* which is interpreted as a method of selling goods or services based on the highest price offer. In this *bai al muzayyadah*, the seller will offer the goods with a number of buyers who will compete to offer at the highest price with the occurrence of the contract and the buyer takes from the seller [6]. The auction case by BTN Syariah Medan without procedural procedures became a very crisis problem only because the customer did not have good faith during the one-month billing period. The installation of the auction sticker is not in accordance with Wahbah Zuhaili's views in the auction sale.

Wahbah Zuhaili said that based on this as in his words as follows:

فإذا كان الدين القائم مستحقاً للسداد، فإن المرشحين طلب من الرهين سداد الدين. إذا كان الرهين مستعداً لسداد دينه، فلا مشكلة بعد الآن " ولكن إذا لم

يسددها الرهين بالمماطلة مع أنه كان قادراً على سدادها، أو لأنه لم يتمكن من سدادها بسبب ضيق الظروف الاقتصادية، أو لأن الرهين لم يكن هناك، فإن [6] القاضي أجبره على سداد المرهون

That is: then if the existing debt is due for repayment, then al-Murtahin asks ar-Raahin to pay off the debt. If ar-Raahin is willing to pay off his debt, then there is no problem anymore. But if ar-Raahin does not pay it off by procrastinating when he is able to pay it off, or because he has not been able to pay it off because of the narrow economic conditions, or because ar-Raahin is not there, then the judge forces him to sell al-Marhuun.

II. RESEARCH METHODS

The type of method in this study is empirical legal research, which is a legal research method that seeks to see the law in a real sense and to examine how the law of workers in society. This research includes field research (Efendi & Ibrahim [7]), because it makes direct observations based on facts. According to Ronny Hanitijo Soemitro [8], empirical legal research is legal research that obtains data from primary data or data obtained directly from the public. Empirical research is based on realities in the field or through direct observation. Empirical legal research or socio-legal (socio legal research) which is an approach in researching law as an object of research is not only seen as a mere prescriptive and applied discipline, but also empirical or legal reality. Therefore, empirical legal research is intended to invite researchers not only to think about normative legal issues (law as written in book). From the point of view of the types of data used in legal research, normative legal research is often equated with library research when viewed from its tendency to use documents as research material. Meanwhile, empirical legal research is often equated with field research, seen from its tendency to use primary data. According to Deddy Mulyana [9], field research refers to research methods which are sometimes called participant observation, direct observation, and case studies. This field research aims to understand concretely the legal issues that take place in society. This type of research focuses on the formal aspect, no longer on the material side, because what matters is the cause. In field research is not about new discoveries but how researchers are able to approach a concrete problem [10].

III. RESULTS AND DISCUSSION

Auction In View Of Wahbah Zuhaili

Ar-rahn linguistically means *ats-tsubuut* and *ad-Dawaam* (fixed), it says, 'maun raahinun (water that is still, reminiscing, not flowing) 'haalaton raahintun (fixed state), or sometimes it means *al-habsu* and *al-luzuum* (restraint) [6]. The issue of pawn can be said that rahn (pawn) is a form of agreement that is carried out cashlessly or in the form of receivable debt by using objects as collateral for the debt and if within a predetermined maturity time the debt has not been paid, then the collateral can be sold to pay off the debt. Pawn

can also be interpreted as a contract of someone who has a debt to another person and makes his property as collateral for the debt until he pays off his debt in its entirety. Wahbah Zuhaili's view sees that pawn and auction are a whole that actually has the same correlation. A pawn will always end with an auction of the pawned item to cover the debt of the pawn owner. Wahbah Zuhaili argues that if the mortgage time runs out, then Murtahin has the right to collect debts from rahin. If it pays it off, then the pawn must be returned to him. Meanwhile, if Rahin is unable to pay off his debt, then Murtahin has the right to sell it. If the price exceeds rahin's debt, then murtahin must return the excess to rahin. But if the sales price cannot pay off rahin's debt, then the shortfall is rahin's responsibility [6]. According to Wahbah Az-Zuhaili himself, auctions always go hand in hand with pawns, although sometimes these two things run separately, which can be done by auctioneers themselves. The auction can run alone without any lien accompanying the activity while the pawn will not run alone without the implementation of the auction in it.

Auction For Negligence Of Home Ownership Loan Customers At Btn Syariah Medan

The case in BTN Syariah Medan itself is a form of execution auction whose rules have been regulated in Indonesia with a series of procedures that include it. The execution auction to be carried out on assets is assumed to be in the realm of Execution Auction on Dependent Rights as referred to Article 6 of Law Number 4 of 1996 concerning Land Liability Rights and Objects Related to Land ("Law on Dependent Rights") if the collateral object is land and/or buildings; or Fiduciary Execution Auction as referred to Article 29 paragraph (1) point b Law Number 42 of 1999 concerning Fiduciary Guarantee ("Fiduciary Law") if the object of guarantee is movable property, such as vehicles. The method of Execution Auction based on the Dependent Rights Law and the Fiduciary Law is through the Execution Parate [11] where the Execution Parate is carried out based on the executory title contained in the Certificate of Liability and Fiduciary Guarantee Certificate according to the procedures specified in the laws and regulations. Basically, the Execution Auction Method has the principle of the Execution Auction process without Court intervention. In this case, the execution is carried out without an execution order from the Chief Justice of the District Court (fiat execution). In accordance with the above foundation, BTN Syariah Medan City applies *Standard Operating Procedure* (SOP) for billing and auction with procedures that have been previously set in the contract as follows:

1. As long as the CUSTOMER has not paid off all KPR BTN Platinum iB arising from this Agreement, the CUSTOMER gives permission and approval to the BANK at any time deemed appropriate by the BANK, conducts an inspection of the collateral and asks for the necessary local information.
2. In the event that the BANK requires information from other parties related to the Customer's Collateral, the

CUSTOMER promises and agrees to authorize the BANK to obtain information from the other party

3. If the CUSTOMER defaults as referred to in Article 14 point 1 of the Terms & Conditions of this Financing Agreement, the CUSTOMER grants permission and approval to the BANK to take action against the pledged landed house/apartment at any time, namely:
 - a. Entering the environment and yards of collateral objects.
 - b. Take actions as referred to in Article 14 point 2 of these Terms & Conditions of the Financing Agreement;
 - c. Inspect the condition of the Collateral carefully and as a whole and obtain information directly or indirectly from the CUSTOMER and or other occupants of the Collateral or from any party regarding matters that need to be known by the BANK.
 - d. Install warning signs (in the form of spraying, boards, planks, stickers or other media that are considered common) on objects that are used as collateral.
 - e. submit an oral or written reprimand that must be immediately obeyed / carried out by the Customer, if the CUSTOMER does not meet the provisions as stated in this article.
4. The CUSTOMER acknowledges and agrees that the actions of the BANK as referred to in number 2 and number 3 of this Article, are not acts of defamation, unpleasant acts and are not unlawful.
5. The CUSTOMER undertakes and agrees not to damage, obstruct, or hinder the implementation, regarding the actions of the BANK as referred to in number 2 and number 3 of this Article.
6. The CUSTOMER undertakes and agrees to provide correct information on the BANK's questions in the context of supervision and examination of Collateral.
7. The CUSTOMER undertakes and agrees to sign a separate letter of approval to the BANK to take actions as stipulated in number 3 of this Article.

So it can be seen that the installation of stickers and spraying objects into auction objects is indeed an SOP from BTN Syariah Medan itself as a form of preventive action for customers who start not having good intentions in installment payments.

Auction Law For Negligence Of Home Ownership Loan Customers Perspective Wahbah Az-Zuhaili

The auction of the house must certainly get prior approval from the owner of the house even though the owner of the house has in fact committed a default due to being unable to pay the arrears that have been mutually agreed. Wahbah Zuhaili said that based on this, then if the existing debt was due for repayment, then al-Murtahin asked ar-Raahin to pay off the debt. lika ar-Raahin is willing to pay off his debt, then there is no problem anymore But if ar-Raahin does not pay it off by procrastinating even though he is able to pay it off, or because he has not been able to pay it off due to the narrowness of his economic condition, or because ar-Raahin was not around, the judge forced him to sell al'Marhuun [6]. According to the results of research at BTN

Syariah Medan, there are 2.8% of customers who default on the agreement. Actually, BTN Syariah Medan itself has an element of force in attaching the auction sticker. This is used as a preventive measure for customers to immediately respond to payments that have been in arrears for quite a long time. In addition, according to BTN Syariah Medan, this action itself is the right action because it makes customers who already look bad intentions in stepping over the contract. Then BTN Syariah Medan said that the sticker procedure is actually in the contract if the customer starts acting in bad faith.

Wahbah Zuhaili's own view is not to judge this to be a good but rather an act out of bounds. Although BTN Syariah Medan did this not a crime, this action was considered out of bounds. The sticking of the auction sticker should go through civil law procedures in an area and has permanent legal force. This means that the auction cannot be carried out at will by BTN Syari'ah Medan. instead, it must go through procedures that have been established by the Minister of Finance Regulation Number 27/PMK.06/2016 Auction Implementation Guidelines where auctions can only be carried out on movable or immovable objects provided that there has been a court decision on default and confiscation of collateral. Wahbah Zuhaili himself is in line with his thoughts with the Minister of Finance Regulation Number 27 / PMK.06 / 2016 Auction Implementation Guidelines where all objects used as auctions are not forced results of confiscation of collateral from debtors. If analyzed from POJK Number 76/POJK.07/2016 [12]. POJK on Increasing Financial Literacy and Inclusion in the Financial Services Sector for Consumers should be a case of late payment so that the house can be confiscated and auctioned if the default of the customer has been more than 90 days without good faith and has been visited many times by the collection party, then this case can only be raised to the District Court. In addition, Wahbah Zuhaili considered that there was coercion by attaching auction stickers at home on the grounds that customers did not have good faith in paying off their debts. According to Wahbah Zuhaili, this act is considered excessive because the auction must follow court procedures, not with rules set by private parties. This means that Wahbah Zuhaili is in line with the Minister of Finance Regulation Number 27 / PMK.06 / 2016 Auction Implementation Guidelines where all auction results and items auctioned can only be auctioned if they have passed court procedures and have permanent legal force the customer is determined to be in default and has also been determined a decision on the seizure of collateral.

IV. CONCLUSION

The auction conducted by BTN Syariah Medan itself has actually not fulfilled the procedure where there are auction items that have not passed court procedures. This means that the auction carried out is not in accordance with the Minister of Finance Regulation Number 27 / PMK.06 / 2016 Auction Implementation Guidelines. In addition, the actions of BTN Syariah Medan itself are considered too excessive in providing repressive actions to bad credit customers. even so, BTN itself does not need to give a

warning even though it is only an auction sticker that can eventually make many parties misunderstand. Even in Wahbah Zuhaili's own view, this action is considered to be beyond the limit because BTN Syariah Medan's own actions are considered too excessive in the process of crediting customers.

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