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Position of Notary as Co-Defendant in Murabahah Financing Dispute in Religious Court

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Abstract:
Issues between the parties to *murabaha* financing, namely the bank and the consumer, are common in the practice of sharia banking, and the resolution of these disputes frequently takes place in religious courts. Court practice recognizes that there are additional defendants in the judicial process, in addition to the two litigants. A co-defendant is a party who does not control something but is required to be included in the petitum as a party who is subject to and obedient to the civil judge's decision for the sake of the lawsuit's formality. The purpose of this essay is to look at a notary's standing as a defendant in a murabahah dispute in the Religious Courts. The method employed is normative-empirical legal research with a legal approach, as well as conceptual, with a focus on studying primary data through interview methods and secondary data, which includes both primary and secondary legal documents. The information gathered was examined qualitatively. The findings of the study suggest that if the Notary is related/involved with the financing contract in the form of a position as a public official who prepares the murabahah financing agreement deed in a murabahah financing dispute before the Religious Courts. In this case, the Notary's inclusion as a defendant is not based on the fact that the Notary causes injury to one of the parties, but rather on the best interests of all parties involved in the litigation. As a result, the parties regard the applicant's lawsuit to be complete.

Key Word*:* Notary, Co-defendant, *Murabahah*, Islamic Bank.

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I. Introduction

The rapid development of Islamic banking today makes Muslim-majority countries compete to practice the concept of Islamic economics. It also increases the variety of Islamic financial instruments in Islamic financial institutions, including Islamic banks, Islamic insurance, and the Islamic capital market. The development of the Islamic economy can be seen in the growth of Islamic banking, which is one of the foundations of the country's economy. Currently, Islamic banking has been established in various countries, such as Malaysia, Brunei Darussalam, Thailand, Singapore, and Indonesia (Musyafah. 2019).

The first Islamic bank in Indonesia appeared in 1992, namely Bank Muamalat Indonesia (hereinafter referred to as "BMI"). The emergence of BMI in Indonesia is considered late when compared to other Muslim countries, but its development has continued to grow until now (Karim, 2013). The development of sharia economic practices in various countries has made gradual changes to the legal instruments. At first, there were no legal instruments that regulated sharia economics, but slowly began to emerge various sharia economic law products (Dliya Ul Muharram.at.all, 2021). In Indonesia, regulations regarding sharia banking are specifically regulated in Law Number 21 of 2008 concerning Sharia Banking (hereinafter referred to as the Sharia Banking Law).

Sharia Banking and conventional banking are both business entities that collect funds from the public in the form of savings and distribute them to the public in the form of credit or other forms to improve people's living standards (Sugih Ayu Pratitis, 2020). The basic difference between Islamic banking and conventional banking is inseparable from the point of view of the rewards provided by Islamic banks and conventional banks to customers, but there are other differences. The differences in question include: a. Islamic banks base their calculations on profit margins, while conventional bank results use interest instruments or profit sharing; b. Islamic banks are not only profit-oriented, but also falah-oriented; while conventional banks are solely profit oriented; c. Islamic banks have relationships with customers in the form of partnership relationships, while conventional banks have relationships with customers in the form of debtor-creditor relationships; and D.

Islamic banks place the use of real funds (use of real funds), while conventional banks are the creators of the money supply (Sugih Ayu Pratitis. 2020).

Organizationally, the main difference between Islamic banks and conventional banks lies in the bank's supervisory institutions, both internal to the bank and external supervisors. From the internal side of the bank, there are two supervisory institutions for sharia banks, namely the Commissioner and the Sharia Supervisory Board, while, from an external perspective, a sharia bank will also be supervised by two institutions, namely Bank Indonesia and the National Sharia Council (Tyagita Winaya Mukti, 2019).

From a conventional bank, there are only two commissioners: from an internal perspective and from an external perspective. These two supervisory institutions oversee banking practices in terms of bank compliance with laws and regulations in the banking sector. Meanwhile, in sharia banks, the supervision carried out by the National Sharia Board and Sharia Supervisory Board is on the bank's obedience in implementing Sharia principles in each of its products (Abdul Ghofur Anshori, 2009).

In the practice of economic activities carried out by Islamic institutions, it does not rule out the possibility of a dispute, for example, in the problematic financing process or the risks that arise in any provision of funding by banks to customers. This risk arises if the financing cannot be returned on time, so a settlement is needed (Dliya Ul Muharram.at.all, 2021). One type of financing in Islamic banks is Murabaha financing. Murabahah is a transaction of selling goods by stating the cost and profit (margin) agreed upon by the seller and the buyer (Hirsanuddin, 2000).

Murabahah, as one of the contracts in Islamic banking, has a foundation in the Qur'an, namely in Q.S. Al-Muzammil (73) Verse 20, namely

وَءَاخَرُونَ يَضۡرِبُونَ فِي ٱلۡأَر

The translation:

"And another group traveled the earth seeking some of Allah's bounty"

In addition to the Qur'an, the argument for the implementation of Islamic banking refers to the Hadith of the Prophet Muhammad, namely from Salih bin Suhaib r.a., that the Prophet SAW said:

> *"Three things in which there is blessing: buying and selling tough, muqaradhah (mudharabah), and mixing wheat with flour for household purposes, not for sale"*

In the practice of *Murabahah* financing in Islamic banks, there are often disputes between the parties involved, namely between the bank as the seller of an item and its customer as the buyer of the goods. The resolution of these disputes often goes to court. The Sharia Banking Law stipulates that the settlement of Sharia Banking disputes is carried out by courts within the Religious Courts, but if the parties have agreed on a dispute resolution other than in the provisions of Article 55 paragraph (1), then the dispute resolution is carried out in accordance with the contents of the contract (Dhian Indah Astanti, et.al, (2019).

In the context of Islamic banking transactional activities, disputes between customers and banks are mostly caused by three things: differences in interpretation of the agreed contract, disputes when the transaction is already underway, and losses experienced by one party resulting in a default (Khopiatuziadah, 2013).

Disputes between the parties in the financing of *murabahah* in a lawsuit in a religious court often involve other parties involved in the contract, one of which is a notary based on Article 1 point 1 of Law Number 30 of 2004 concerning the position of a notary as stated above. This is amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (hereinafter referred to as the UUJN) that a notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws. It includes the making of a *murabahah* financing agreement deed between the owner of the capital and the user of the funds as stipulated in Article 15 of the UUUJN.

In the judicial process, apart from knowing the two litigants, there are also other parties to the defendant. Everyone understands that the co-defendant is a party who does not control something, but for the sake of the formality of the lawsuit, it must be involved in the petition as a party who submits and obeys the decision of the civil judge (Lilik Mulyad, 2002).

One of the *murabahah* dispute cases in Islamic banks that involves a notary as a co-defendant is the case of the Cirebon Religious Court Decision Number 0488/Pdt.G/2014/PA.CN. In the Decision of the Cirebon Religious Court Number 0488/Pdt.G/2014/PA.CN, Notary X was made a co-defendant by the plaintiff, who is a debtor or customer of Bank X, who is a creditor. The plaintiff is a customer of Bank X who has been given financing using a *murabahah* contract in the amount of Rp. 101.000.000.-(one hundred and one million rupiah) on January 10, 2012.

However, in 2013, the plaintiff was unable to pay the installments on time because his business was not running smoothly. So Bank X collected the plaintiff, which, according to the plaintiff, was carried out in an unfavorable manner, in the form of billing using arrogant methods such as coming at inappropriate hours to visit, such as at night and when people were performing Friday prayers. In addition, the plaintiff stated that the defendant carried out intimidation efforts until the incident on March 6, 2014, at around 16.00 WIB (Western

Indonesian Time). The defendant committed an unpleasant act by destroying and littering the walls of the plaintiff's house by writing the words as follows: "THIS LAND AND BUILDING ARE UNDER THE SUPERVISION OF PT. BANK X."

The plaintiff's efforts to collect collections in unfavorable ways have caused negative impacts in the form of mental and psychological disorders (Merry Tjoanda, 2010), because the defendant's actions were not regulated and contradicted the *Wakalah* Agreement regarding the purchase of goods in the context of *murabahah* financing. Furthermore, according to the plaintiff, the defendant is a company engaged in banking services business activities with sharia principles. The defendant's efforts should be in accordance with sharia principles.

In the plaintiff's lawsuit against the Cirebon Religious Court Decision Number 0488/Pdt.G/2014/PA.CN, the plaintiff also included Notary X as a public official who made the Wakalah Deed No. 00015/AW/KCC/I/2012 dated January 10, 2012, into the lawsuit as a co-defendant. Notaries are often included as co-defendants in a lawsuit over a *murabahah* dispute between the parties in a *murabahah* financing at a sharia bank, even though the notary has carried out his position in accordance with the provisions of laws and regulations, but if in the future there is a financing that is stuck in payment and must be resolved in court, it always drags the notary into being a co-defendant in the lawsuit.

This, of course, brings harm to the notary because if the notary is often used as a party to the defendant in a lawsuit, it will reduce the level of public trust in him, even though in this case the notary has carried out his position in accordance with the rules. Based on this description, this article focuses on examining the position of a notary as a defendant in a *murabahah* financing dispute in Islamic banking.

II. Methods

The type of research used depends on the study's focus: normative-empirical legal research, normative legal research, namely research focused on inventorying all secondary data consisting of legal materials focused on examining legal principles, legal systematics research, vertical synchronization research, and horizontal synchronization research. Empirical legal study, on the other hand, is legal research that focuses on data gathered directly from sources. The research is descriptive-prescriptive in character, with the goal of obtaining a thorough picture of the legal conditions that apply in specific locations and at specific times in society (MK Hidjaz, et.al, 2020). Primary data is gathered using interview techniques with informants, while secondary data is comprised of primary and secondary legal materials, after which the data is subjectively assessed (M Shuhufi, et.al, 2020).

III. Result

Position of Notary as Co-Defendant in Religious Court *Murabahah* Dispute

Settlement of civil disputes can be done in two ways, namely through litigation and non-litigation (Made Oka Chyadi Wiguna, 2018). Non-litigation dispute resolution is known as alternative dispute resolution, which is a particular institution not formed by the government but rather based on the needs of the community, for example, the National Sharia Arbitration Board (Bincang, 2015). Meanwhile, dispute resolution by litigation is the settlement of disputes through a body formed by the government to resolve disputes within the community, which is usually called the judiciary (Ah. Azharuddin Lathif and Diana Mutia Hibibaty, 2019).

Referring to Article 18 of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Power Act), it is regulated that judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court. One of the judicial institutions in Indonesia is the religious court institution, which is an institution authorized to examine, hear, decide, and resolve cases between people who are Muslim.

The philosophical basis for the existence of religious courts in Indonesia is the values contained in the Pancasila adopted by the Indonesian people, especially the first principle of "Belief in One Supreme God", which animates other precepts, while the sociological basis for the existence of religious courts based on Islamic law is a reflection of the norms of religion. It is the norm of the Indonesian nation, which is predominantly Muslim. Islamic law has become a living law in Indonesian society since Islam began to develop in the archipelago. The juridical basis, which is the constitutional basis for the existence of the Religious Courts in Indonesia, is Pancasila, the Presidential Decree No. 5, July 1959, and the 1945 Constitution of the Unitary State of the Republic of Indonesia (A. Havizh Martius, 2016).

Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, which has been amended again by Law of the Republic of Indonesia Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts (hereinafter referred to as the Law on Religious Courts), provides a definition that the Religious Courts are courts for people who are Muslim.

The Religious Courts are one of the judicial bodies that carry out judicial power to carry out law enforcement and justice for people seeking justice for certain cases between Muslims and non-Muslims in the fields of marriage, inheritance, wills, grants, waqaf, zakat, *infaq, shadaqah*, and sharia economics. "Ah, By affirming the authority of the religious courts, it is intended to provide a legal basis for religious courts in resolving certain cases, including violations of the Marriage Law and its implementing regulations, as well as strengthen the legal basis of the Sharia Court in carrying out its authority in the field of *jinayah* based on *qanun* (Domiri, 2016).

Article 49 of the Religious Courts Law stipulates that religious courts have the duty and authority to examine, decide, and settle cases at the first level between people who are Muslim in the fields of: a. marriage; b. inheritance; c. will; d. grant; e. waqf; f. zakat; g. i*nfaq*; h. s*adaqah*; and i. sharia economy.

Based on the provisions of Article 49 of the Religious Courts Law, it is known that one of the functions of the Religious Courts is to examine, decide, and resolve cases at the first level between people who are Muslim in the field of sharia economics. Islamic economics, also known as Islamic economics, is a social science that studies people's economic problems inspired by Islamic values (Muhammad Abdul Manan, 1997).

One of the scopes of Islamic economics is Islamic banking. The authority of religious courts to examine and decide cases regarding sharia banking disputes can be seen in the provisions of Article 55 of the Sharia Banking Law, which stipulates that the settlement of sharia banking disputes is carried out by courts within the Religious Courts. In the event that the parties have agreed on a dispute resolution other than the provisions of Article 55 paragraph (1) of Sharia Banking Law, the dispute resolution shall be carried out in accordance with the contents of the contract.

In practice, although Islamic banking is carried out using Islamic teachings, it does not rule out the possibility of conflicts or disputes, and not infrequently, these conflicts or disputes must be resolved in court by filing a lawsuit with the court. A lawsuit is a claim for the rights of any person or party (group) or legal entity who feels that their rights and interests have been harmed and causes a dispute that is directed at another person or other party who caused the loss through the court.

A lawsuit against a dispute in court will generally be filed by people who feel that their rights or their rights have been violated by those who are felt to have violated their rights or rights, and who do not want to voluntarily do something that is requested. So, to determine who is right and entitled, a judge's decision is needed. Here the judge functions as a judge, adjudicating and deciding which of the parties is right and who is not (Mrs. Retnowulan Sutantio and Iskandar Oeripkartawunata, 2009). The party who files a lawsuit is called the plaintiff, and the party who is deemed to have caused harm to the plaintiff is called the defendant. In addition, there are plaintiffs and defendants. In a lawsuit, it is also possible to have a defendant. The term "co-defendant" is not found in the legislation but appears in court practice (M. Yahya Harahap, 2004).

Although the existence of co-defendants in the legislation has not been regulated, there have been many experts/legal experts who have discussed it, and there is also a lot of jurisprudence of the Supreme Court that we can use as a basis, including the opinion of the Supreme Court in Decision No. 1642 K/Pdt/2005, which outlines the rule of law that (A. Zahri, 2015):

> "A person is included as the party being sued or at least placed as a co-defendant because of the necessity that the parties in the lawsuit must be complete so that, without suing the others, the subject of the lawsuit will be incomplete."

According to the opinion of the Supreme Court in Decision No. 1642K/Pdt/2005, it is necessary to include the co-defendants in the lawsuit because they are "included as a party being sued or at least placed as a co-defendant. This happens because of the necessity of the parties in the lawsuit to be complete, so that without suing the others, the subject of the lawsuit is incomplete." Because the subject matter of an incomplete lawsuit will be an error in person lawsuit (M. Yahya Harahap, 2004).

According to Retno Wulan Sutantio and Iskandar Oerip Kartawinata, as quoted by A. Zahri, in practice the words "co-defendant" are used for people who do not control the disputed goods or are not obliged to do something. Only for the sake of completeness, a lawsuit must be included. They are only asked in the petition to submit and obey the judge's decision. From the above formulation, three criteria are met: first, a co-defendant is a person/party who: first, does not control the object of the dispute; second, is not obliged to do something; and third, is included to complete the lawsuit.

According to Firman Hakim, the qualifications of the defendants are not regulated in the provisions of the legislation, but in practice, if a party does not commit an act that results in a loss resulting in a dispute, but the party is involved in the legal event of the dispute, it must be included. In this case, as a co-defendant (Interview with Lawyers, Firman Hakim, October 15, 2021). According to the Judge's Word, the difference between a defendant and a co-defendant in a lawsuit lies in their actions and the legal consequences they will receive. The plaintiff in a lawsuit is the party who commits an act that gives rise to a dispute, so that it will bear the consequences or legal responsibility for all losses caused by his actions. Meanwhile, a co-defendant is a party that does not commit an act that causes a dispute but is indirectly related to a legal event in a case so that it

must be positioned as a co-defendant. The legal consequences that were accepted by the defendants were only to submit and obey the contents of the verdict (Interview of lawyer Firman Hakim, October 15, 2021).

According to Nurfadhly, a lawsuit must include several things, namely: a. the identity of the parties, which includes the names, places of residence, and occupation of the parties. In addition, religion, age, and status are also included; b. posita, or Fundamentum, Petendi are concrete arguments about the existence of a legal relationship, which is the basis and reasons for the claim; and c. petitum, or claim, is something that is requested or expected by the plaintiff to be decided by the judge (Interview with lawyer, Nurfadhly Hakim, October 13, 2021).

The provisions regarding the content of the lawsuit are regulated in article 8 Number 3 of the Reglement of de Rechtsvordering, which requires that the lawsuit basically contain: (1) the identity of the parties; (2) concrete arguments regarding the existence of a legal relationship (fondamentum petendi); and (3) a claim (petitum).

In general, banking disputes related to bank business are caused by defaults (broken promises) or acts against the law. Subekti stated that a person can be said to be in default in terms of: (a) not doing what he has been promised to do; (b) carrying out what has been agreed, but not as agreed; (c) doing what was promised but late; and (d) performing an act which, according to the agreement, cannot be done (Subekti, 2002).

Article 1243 of the Civil Code, hereinafter referred to as the Civil Code, stipulates that reimbursement of costs, losses, and interest due to non-fulfillment of an agreement is mandatory if the debtor, even though he has been declared negligent, still fails to fulfill the engagement, or if something has to be given. It can only be given or done at a time that exceeds the specified time. From this provision, it can be seen that a person is said to be in default if he/she does not fulfill or implement the agreed upon things at all, does what has been agreed but is not perfect, or does something that has been agreed upon but is late or not according to the specified time period (Niru Anita Sinaga and Nurlely Darwis, 2015).

Meanwhile, based on the provisions of Article 1365 of the Civil Code, it is regulated that an unlawful act is any unlawful act that causes harm to another person, obliging the person who, because of his mistake, causes the loss to compensate for the loss. An act against the law is an act or not doing something that results in harm to others without previously having a legal relationship, which obligations are aimed at everyone in general, and by not fulfilling these obligations, compensation can be requested (Sri Redjeki Slamet, 2013).

Financing disputes in Islamic banks due to default by one party still often occur, even though Islamic banks before providing financing to their customers always assess the ability of their customers to return the financing provided through the application of the five C/5C principles, namely: 1) character (personality) is a belief that the nature or character of the people to be given financing is truly trustworthy. This is reflected in the customer's background, both work and personal backgrounds, such as the way of life or lifestyle they live, family circumstances, hobbies, and social environment (Thamrin Abdullah and Francis Tantri, 2012). 2) Capacity (Ability and Ability) is the customer's ability to run a useful business to earn a profit or loss. 3) Capital (Capital or Wealth) is an assessment of the amount of capital submitted to the company by prospective customers (Thamrin Abdullah and Francis Tantri, 2012).4) Economic condition (economic condition) to assess the economic condition to assess the factors of the economic condition. 5) Collateral, in the form of guarantees provided by prospective customers guarantees can also be said to be the last bastion of financial safety. With the guarantee, the bank has certainty that the financing provided can be received back at a predetermined time (Ifa Latifa Fitriani, 2017).

In practice, after the bank conducts prospects for its prospective customers with the 5C principle, if the bank approves financing for its customers, a financing agreement will be made between the bank and the customer. In the financing contract at a sharia bank, the financing agreement deed will be made by a notary, as a public official who is authorized to make it.

Broadly speaking, the activities that can be carried out by Islamic banks are divided into three (3), namely: first, fund-raising activities in the form of: (1) activities to save funds from the public in the form of deposits in the form of demand deposits, savings, or other equivalent forms based on the Akad, *Wadi'ah,* or contracts that do not conflict with Sharia principles; and (2) investment in the form of time deposits, savings, or other equivalent forms based on *mudharabah* contracts or other contracts that do not conflict with Sharia principles; Second, Fund Distribution activities are in the form of: (1) profit-sharing financing based on *Mudharabah* Contracts, *Musyarakah* Contracts; (2) financing based on *murabahah* contract, salam contract; (3) Financing *istishna* contract based on *qardh* contract; and (4) financing for leasing of movable or immovable goods to customers based on an Ijarah Agreement and/or belu lease in the form of *ijarah vomitiya bittamlik;* and Third, activities in the service sector in the form of: (1) takeover of debt based on a *hawalah* contract; (2) debit/credit card business or financing card based on Sharia Principles; (3) receive payment from claims on securities; (4) perform calculations with third parties or between third parties based on sharia principles; (5) perform safekeeping for the benefit of other parties based on a contract based on sharia principles; (6) provide a place to save money for both own interests and the interests of customers based on sharia principles; (7) perform

the function as a trustee based on the *wakalah* agreement; and (8) providing letter of credit or bank guarantee facilities based on sharia principles (Santoso and Ulfah Rahmawati, 2016).

One type of financing in Islamic banks is *murabahah* financing, as the author has explained in the previous chapter. If there is a dispute between the customer and the bank in *murabahah* financing, often the notary will be included in the dispute as a co-defendant in the lawsuit, because the *murabahah* financing agreement deed is made by a notary, even though the notary has carried out his duties according to the rules and has not done any harm to one party, usually referred to as an unlawful act as regulated in Article 1365 of the Civil Code (Syukron salam, 2018).

According to Nurjaya, not always in a lawsuit in the Religious Courts, there must be a party who is also a defendant. In the case of *murabahah* financing at Islamic banks, which usually involves a notary as a co-defendant, it is merely to complement the parties in the lawsuit so that the lawsuit is not considered a claim that lacks parties or errors in persona/NOTA (Interview with Judge Nurjaya, October 11, 2021).

According to Nurjaya, the party who is a defendant is a party who has no interest or does not control the object directly, while the party who becomes a defendant is a party who has an interest or a party who controls the object in dispute. So, in the final judge's decision, there is no sanction given to the co-defendant. The sanction is only given to the product he made, for example, a deed from a notary, which may be canceled if the plaintiff's claim is granted. According to him, the notary was made a co-defendant in the *murabahah* financing dispute because it was the notary who made the deed of the *murabahah* financing agreement so that in the lawsuit in the religious court it must include a notary as a defendant so that the parties in the lawsuit are complete (Interview with Judge Nurjaya, October 11, 2021).

According to Firman Hakim, in a civil lawsuit regarding a dispute over *murabahah* financing in the Religious Courts, it is possible for a notary to be a defendant as a party if the notary is involved in the *murabahah* financing agreement. The involvement in question is because the notary made the *murabahah* financing agreement deed. This is so that the lawsuit filed by the plaintiff is not rejected on the grounds of lack of parties or error in persona/NO (Interview with Lawyers, Firman Hakim, June 20, 2021).

Decisions that lack parties or errors in persona/NO can be classified into the following categories (Yahya Harahap, 2012): In person, disqualification occurs if the party acting as the plaintiff is a person who does not meet the requirements (disqualification) because the plaintiff is in a condition. does not have the right to sue the disputed case and is incapable of taking legal action. People who are under the age of guardianship are not capable of taking legal action (Rai Mantili and Samantha Aulia Lubis, 2017). Therefore, they cannot act as plaintiffs without the help of their parents or guardians. One of the targets of the party being sued is another form of error in persona that may occur is to mistakenly attract people as defendants (*gemis aanhoeda nigheid).* Lack of party lawsuits (Plurium Litis Consortium): this condition can occur if the party acting as the plaintiff or being withdrawn as the defendant is incomplete because there are still people who must act as plaintiffs or defendants (Jeri Ariansyah et al., 2021).

The necessity to include the defendant in a lawsuit so that the parties in the lawsuit are complete is the reason for the plaintiff in the Cirebon Religious Court Decision Number 0488/Pdt.G/2014/PA.CN to include Notary X as the defendant so that the lawsuit is accepted. The Notary in the Cirebon Religious Court Decision Number 0488/Pdt.G/2014/PA.CN was made a defendant because Notary X made the *Wakalah* Deed No. 00015/AW/KCC/I/2012 dated January 10, 2012.

Notary X, who is made a co-defendant in the Cirebon Religious Court Decision Number 0488/Pdt.G/2014/PA.CN, will not be sanctioned if the plaintiff's claim is accepted because in the decision, Notary X has carried out his duties according to the rules and Notary X did not do so. an error that harms the other party. Meanwhile, if the plaintiff's claim is accepted, it will only have an impact on the deed made by Notary X. For example, if the judge decides that the deed made by Notary X is null and void or canceled,

It's just that in the decision of the Cirebon Religious Court Number 0488/Pdt.G/2014/PA.CN, the plaintiff's or customer's lawsuit was rejected by the Panel of Judges, with the consideration that the plaintiff has been proven to have defaulted on the *murabahah* financing he took and in accordance with the provisions of Article 11 of the Deed of *Wakalah* Agreement No. 00015/AW/KCC/I/2012 dated January 10, 2012 regarding the consequences of breach of contract, it is regulated that if the customer does not make an immediate payment, the customer authorizes the bank to sell the collateral, and the money from the sale is used by the bank to pay off its obligations.

The Defendant/Bank X in the Cirebon Religious Court Decision Number 0488/Pdt.G/2014/PA.CN only exercised his right to execute the collateral mentioned above by executing the mortgage right, namely submitting an auction request for the collateral goods mentioned above to the Head of the Office of Cirebon State Assets and Auction Services. This is also regulated in Law Number 4 of 1996 concerning Mortgage Rights. Therefore, the defendant's action is not against the law because it is based on the act or the attorney of the customer or plaintiff in accordance with what is stated in the *murabahah* Financing Agreement and in the

Power of Attorney to impose Mortgage, in which the plaintiff also signed the document (Herlien Budiono, 2018).

According to the author, the decision of the Cirebon Religious Court Judge with Decision Number 0488/Pdt.G/2014/PA.CN was correct because the defendant only exercised his right to execute collateral goods because the plaintiff had defaulted. Therefore, the plaintiff must not object to the actions taken by Bank X because they have been approved by the plaintiff as stipulated in the Deed of *Wakalah* Agreement Number 00015/AW/KCC/I/2012 dated January 10, 2012.

After the amendment to the 2014 UUJN, a body was formed whose task was to provide approval if a notary were summoned to the court related to the minutes of the deed or protocol. This body was named the Notary Honorary Council. For the interest of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized to: (a) take a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or the Notary Protocol in the Notary's depository; and (b) summon a Notary to attend an examination related to the Deed or Notary Protocol which is in the Notary's storage (Syarifa, 2011).

Based on the provisions of Article 66A paragraph (2) of the UUJN, it is regulated that the notary honorary assembly consists of seven people, consisting of the following elements: a. three notaries; b. government representatives, as many as two people; and c. two experts or academics.

The Notary Honorary Council, within a maximum period of 30 (thirty) working days from the receipt of the letter of request for approval, is obliged to provide an answer to accept or reject the request for approval (Article 66 paragraph (3) UUJN). In the event that the Notary Honorary Council does not provide an answer within a period of 30 (thirty) days, the Notary Honorary Council is considered to have received the request for approval (Article 66 paragraph (4) UUJN).

According to Asyurah, the Notary Honorary Council was formed to provide protection to notaries from being arbitrarily summoned to court. If the Notary Honorary Council does not give approval to the court, the notary cannot be summoned to court. Based on the provisions of Article 66 A of the UUJN, the notary who is used as a party to the defendant and who will be examined and summoned to the religious court must require approval from the Notary Honorary Council (Interview to Notary, Asyurah, October 16, 2021).

According to the author, even though there is no sanction given to the notary who is made a co-defendant, the Notary Honorary Council must also provide more protection to the notary by considering whether to give approval if the notary is summoned to court. This is because, even though the notary is only a party to the defendant, there are some losses suffered by the notary if he is too often used as a co-defendant in court, especially in murabahah disputes in the Religious Courts, one of which is the decline in public trust in him because he will be considered a problematic Notary.

IV. Conclusion

Whereas in Sharia banking activities, there are legal problems, namely disputes over *murabahah* financing. In this case, a notary can serve as a co-defendant in a *murabahah* financing dispute in a religious court if the notary is related or involved in the *murabahah* financing agreement. The form of the relationship between a notary and a public official is a notary as a public official who makes the *murabahah* financing agreement deed. However, the notary is made a co-defendant not because the notary directly harms one of the parties, but because this is done for the sake of the complete content of the lawsuits of the parties in a lawsuit so that the lawsuit filed by the applicant is considered by the parties to be complete and not lacking in parties, which may even result in an error in persona because it does not formally complete the contents of the lawsuit. If a notary wants to be summoned before a court, he must go through the notary honorary council as regulated in Article 66 of Law Number 2 of 2014 concerning Notary Positions.

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