

IMAM SYAFI'S PERSPECTIVE ON DEBT SETTLEMENT WITH PARKING LAND MANAGEMENT RIGHTS ASSURANCE (Case Study of Medan Perjuangan, Medan City)

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Abstract

The Medan Perjuangan community has a practice of disputed debts, but they are unable to pay off these debts, so they provide guarantees in the form of parking space rights as collateral for their debts. The purpose of this research is to respond to the author's main problem formulation, which is the settlement of debt disputes with guaranteed rights to manage parking areas from the perspective of Imam Syafi'i. In this study, a qualitative method was used to analyze Imam Syafi'i's perspective and how Islamic law views debt settlement transactions with guaranteed rights to manage parking lots in Medan's battlefield. According to the findings of this study, in Medan Perjuangan, Medan City, debtors with good intentions to settle their credits can settle their disputes over problematic receivables amicably, and the method used to settle these debts is seen as better than other alternative settlements by providing guarantees in the form of parking space rights in battlefield because the debtor does not have the ability to pay off.

Keywords

Settlement of Debt Disputes; Guarantee of Parking Land Rights; Imam Syafi'i

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1. INTRODUCTION

As we now know, accounts payable, or what we know as a credit agreement, is an obligation that must be paid by the person who borrows from the party who has lent money for a specific period of time in accordance with what has been agreed, whereas receivables are funds that can be collected. (Dewi, 2016) Debt and credit are no longer foreign concepts in everyday life; the terms are known not only to urban communities, but also to people in rural areas. In the implementation of debts and receivables at the Bank, a guarantee or collateral that can be used as a guarantor for debt repayment if the debtor defaults or defaults in the future is required. Because of the risks that may arise, lending money (debt) included in the creditor-to-debtor debt agreement is not without risk, especially because the debtor is not obliged to pay the debt in full or in cash, unless the debtor is entrusted with paying later in installments or installments. That risk is usually detrimental to the creditor, so in the process of granting credit, the creditor's confidence in the debtor's capacity and competence is required. Pay off the debt until it is completely paid off. Basically, an agreement will go well if the parties carrying out the agreement are acting in good faith (Wibowo, 2021), but if one of the parties does not act in good faith or does not carry out its obligations, a default will occur. What occurred in Case No. 97/Pdt.G/2015/PN Skh was a default lawsuit. The creditor takes security/protection measures and asks the debtor to bind a specific item as collateral in the debt/credit agreement in order to obtain certainty



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and security from the debtor in repaying installments/installments. Debts owed by creditors to debtors are not risk-free, as risks can arise, particularly because the debtor is not required to pay off his debt in full or in cash, but is instead entrusted with paying later in stages or in installments. The most common risk is failure or congestion in debt repayment. The risks that are generally detrimental to the creditor must be carefully considered by the creditor, so that when granting credit, the creditor must have confidence in the debtor's ability and ability to pay the debt until it is fully paid off. Wibowo (2021)

In order to settle cases of debt agreement default, the creditor must file a lawsuit with the District Court against the debtor on the grounds that the debtor has defaulted on the debt agreement. If the Court's Decision states that the debtor has defaulted, the creditor can only execute the goods/objects used as collateral for the debtor's debt if the Court's Decision has permanent legal force. Where the proceeds from the sale of collateral goods/objects are used to pay off all of the debtor's debts, including interest.

Guarantees for debt receivables are guarantees for debt repayment given to creditors by debtors through the execution of credit guarantee objects. There are various debt guarantees available, such as houses, land, rice fields, motorized vehicles, and so on. Land is the most commonly used collateral in credit facilities because it is generally easy to sell and the price continues to rise economically when compared to other types of collateral, and land can be encumbered with Mortgage Rights.

According to Imam Syafi'i himself, making something or goods as collateral for a debt that can be used as a debt payment if the person who owes cannot pay the debt is permitted. The giving of power, also known as delegation of powers, is known as wakalah in Islamic law. Wakalah is a contract in which a person (muwakkil) grants power of attorney to the recipient of the power of attorney (representative) to carry out a task (taukil) on behalf of the authorizer (muwakkil). Another definition is the delegation of power by someone known as the first party to another person known as the second party in order for the second party to do something based on the power or authority granted by the first party.

It is impossible for humans to do all of the work on their own; everyone requires the assistance of others in doing their business, whether directly or indirectly, such as being represented in purchasing goods, sending money, sending goods, paying debts, collecting debts, and so on. Representatives in contracts (contracts, agreements, and transactions) who can be replaced by others are permitted as long as the pillars are met. (Dewi, 2016). Allah SWT declares in the Qur'an that meaning:

Meaning: O you who believe! Do not violate the symbols of the sanctity of Allah, and do not (break the honor) of the sacred months, do not (disturb) hadyu (sacrificial animals) and qala'id (marked sacrificial animals), and do not (also) disturbing people who visit Baitulharam; they seek the grace and pleasure of their Lord. But when you have finished ihram, then you may hunt. Do not let (your) hatred of a people because they hinder you from the Masjidil Haram, pushing you to do excess (to them). And help you in (doing) virtue and piety, and do not help each other in sin and enmity. Fear Allah, indeed, Allah is very severe in punishment. (Q. S Al-Maidah: 2).

For a long time, the people of Medan Perjuangan, Medan City, have practiced borrowing and borrowing money or accounts receivable. They do this to help each other and other people make ends meet. Debt is a form of economic activity in this country because it is from these debts that they get money to make ends meet and to run their businesses.

2. METHODS

This is a qualitative study in which data is described in a series of sentences. The descriptive method was used in this study. The descriptive method uses words, pictures, and data from books, journals, and other scientific works as its data sources. Furthermore, everything gathered is likely to be the key to what has been researched. As a result, the use of this method produces descriptive data rather than numerical data. This study makes use of written data from scientific journals and previous research.

3. FINDINGS AND DISCUSSION

1. Settlement of Debt Disputes Based on Court Legal Views

Litigation or other forms of justice are regarded as the most effective means of resolving disputes. So, whenever a conflict or problem arises, the first thing that comes to mind is that the resolution must go through the courts. Cases settled in court are typically lengthy, time-consuming, and expensive. Furthermore, when resolving cases, the court follows a win-lose solution system. As a result, there will be parties who benefit and are harmed, such as losing and winning, which sometimes causes dissatisfaction with one of the parties because he believes the judge's decision is unfair.

The court's role in resolving cases is to provide the justice that the disputing parties require. Supreme Court Regulation Number 1 of 2016 (PERMA), because PERMA is mandatory in every District Court that handles civil cases by mediation, and in this case, several articles that are related and in accordance with the main issues contained in the case - civil dispute cases - have been included. If a civil case does not proceed through the mediation stage, it can be declared null and void (Anggun et al., 2021).

In the event of a dispute over accounts payable in the Medan City of Struggle, a decision to mediate without conflict is made by providing a guarantee of parking space rights. However, the community currently does not understand mediation, which will continue as long as the case is not decided by a judge. Obstacles encountered in court when resolving disputes through mediation include the fact that one party is frequently not present at mediation, and the principal always authorizes attorneys to mediate. Actions taken to overcome these obstacles include recommending to attorneys that the principal parties themselves attend mediation.

Based on the author's interviews and literature studies with the Medan Perjuangan community, as well as various scientific articles, it is possible to conclude that the use of mediation in the Medan District Court is quite optimal, and the outcomes of the successful mediation process are accompanied by legal provisions, namely in the form of deeds of determination and deeds of agreement peace.

2. Review of Islamic Economic Law on Settlement of Debt and Receivable Disputes

Islamic economic law offers many ways to resolve disputes either by litigation or non-litigation. Litigation is the process of resolving disputes in court, all parties to the dispute face each other to defend their rights (YULIANA, 2019). The end result of dispute resolution through litigation is a decision stating that one of the parties wins and someone loses. Litigation is a process of resolving a conflict that is ritualized to replace the real conflict, where the parties in conflict or the parties to the dispute give other people outside of their conflict to make decisions on two conflicting choices. In Islam, dispute resolution through litigation is called wilayat al-qadha. Wilayat al-qadha consists of three institutions, namely:

- a. Al-hisbah is an official state institution that is authorized to resolve issues which by their nature do not require a judicial process to resolve them.
- b. Al-madzalim is an official institution formed by the government to defend people who are persecuted due to the arbitrary nature of state or family officials which are difficult to resolve by ordinary courts and al-hisbah powers.
- c. Al-qadha is establishing syara' law on a dispute to be resolved in a fair and binding manner. Islamic Shari'a tends to encourage the parties to use sulh (peace) in ending their disputes in order to achieve peace. Settlement of disputes through the sulh route is far better than resolving disputes through the courts, because the court's decision will result in malice between the two parties to the dispute.

The dispute resolution mechanism that is carried out with guaranteed parking space rights is in accordance with Islamic economics. which is the settlement of disputes by means of sulh, namely the settlement of disputes which is applied according to the word of Allah SWT in the Qur'an in surah Al Hujarah verse 9:

وَأِنْ طَافْتَنَ مِنَ الْمُؤْمِنِينَ فَاصْلِحُوا بَيْنَهُمَا فَإِنْ بَعَثَ إِحْدَاهُمَا عَلَى الْآخَرَىٰ فَقَاتِلُوا الَّذِي تَبَغَىٰ حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ إِنَّهُ فَأَعْتَصِمُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Meaning: And if there are two groups of those who believe that you are fighting, you should reconcile between the two, but if one violates the agreement against the other, let the one who violates the agreement you fight until it recedes again at the command of Allah SWT, if he has receded, reconcile between the two according to justice, and you should be fair, indeed Allah SWT loves those who act justly (QS. Al-Hujurat verse 9).

This means that if someone has a disagreement, it should be resolved fairly. According to the author's analysis, peaceful dispute resolution by force is not yet effective because one of the parties does not necessarily accept the peace wholeheartedly because they are not satisfied and still feel aggrieved by the other party. Peace is possible if both parties desire and are willing to make it. If peace is made against the wishes of the two disputing parties, the dispute is likely to continue because they are dissatisfied with the decision of the village head and the parties regarding their forced peace. If the dispute reoccurs, it is likely that it will be more complicated because the party who suffers the loss holds a grudge.

3. Imam Shafi'i's view

Mediation is used in Medan Perjuangan, Medan City, to settle disputes over problematic receivables amicably against debtors who have good intentions to settle their credit. Because the debtor does not have the ability to pay off, both due to the debtor's intention and declining business prospects, uncertain financial and economic conditions, thus affecting the debtor's ability to pay, as previously stated in the criteria for understanding bad credit or default, mediation in settlement of this debt is seen as better than other alternative settlements by providing guarantees in the form of parking rights on the battlefield. According to Syafi'i scholars, the guarantee of parking rights cannot be paid or repaid. Land disputes are frequently resolved by guaranteeing their parking space rights. Imam Syafi'i interprets debt as "making something as collateral for a debt that can be used as a debt payment if the debtor cannot pay his debt" in his own debt.

Imam Syafi'i's definition implies that goods that can be used as collateral for a debt are only material assets, not including benefits, despite the fact that benefits are included in the definition of assets. In his book "Al-umn," Imam Syafi'i states that if a man pawns a mortgage, then the mortgage is received or accepted with pleasure by a just person, then the mortgage is damaged in his hands or the hands of a fair person, then it is the same because the mortgage is a mandate, and debt is like a mortgage, not deducted in the least. It is the same if the debtor dies while carrying the debt or is in the hands of someone else. The person who receives the share has a stronger claim to the mortgaged property and can exercise his rights to it. If the excess is on him, the person who made the loan is punished. If it is less than the debt, the person who owes it has his debt reduced in proportion to what is left for him in the deceased's estate (Febriani, 2020).

According to Imam Syafi'i, using collateral is permissible as long as the debtor or pawnbroker gives permission and as long as it does not reduce or damage the material value of the goods, such as using the parking lot to the extent that it damages the structure of the land or territory (Febriani, 2020). This permissibility is based on the legal argument that the benefits and outcomes of the debt collateral belong to the person giving the debt and cannot be linked to the debt he bears. They supported their position with a hadith from the Prophet Muhammad, as related by Imam Bukhari.

"Animals can be ridden based on their living and maintenance requirements." When the animal is financed. Animal milk can be consumed if properly maintained and cared for.

They define prohibited use of goods as any use that reduces the moral value of the item. Building structures or managing land that is still in debt collateral status are examples. However, they state that using this type is permissible if the guarantor agrees. According to Syafi'iyah scholars, if the item pledged as a debt is something very important to the debtor's life, such as a house or land for parking every day, the pawnbroker may use these items until his needs are met. Allah SWT says in Surah Al-Baqarah 283 of the Qur'an

وَأِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنَ مَقِضَاتَهُنَّ آمِنَ بَعْضِكُمْ بَعْضًا فَلَئِذٍ الَّذِي أُوتِئْتُمْ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آتَمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

Meaning: And if you are on a trip and you don't get a writer, then there should be collateral held. However, if some of you trust some of the others, let that trusted person fulfill his trust (his debt) and let him fear Allah, his Lord. And do not hide testimony, because whoever hides it, verily, his heart is dirty (sinful). Allah is All-Knowing of what you do. (Q. S Al-Baqarah: 283)

The verse above shows that anyone who has reached an agreement with another person, but has not yet found a writer who can be used as a guardian or guarantee, should hand over the goods that serve as collateral to the creditor so that the debtor can be calm and the debtor is able to pay off his debt.

"From Anas, he said: The Messenger of Allah pawned his armor to a Jew in Medina and then took grain for his family from that mortgage." (Narrated by Ibn Majah).

For cases of debt disputes with guaranteed parking lots in the field of struggle, this is similar to a pawn system where both make an item as collateral for a debt, as exemplified by the Prophet above. Al-Misbah's interpretation (Shihab, 2012) interprets surah Al-Baqarah verse 283 that it is permissible to pawn or give collateral as collateral for a loan. Even though the verse is about travel, it does not mean that pawning is only justified during travel. The Prophet SAW once mortgaged shields to Jews, even though the Prophet SAW was in Medina. Therefore, the mention of the word on the way only because it is often not found a writer during the trip. Guarantees are not formed in writing or witnesses, but mutual trust and trust. The debt is received by the debtor and the collateral is handed over to the debtor.

So the point is based on the understanding of the Imam Syafi'i school of thought, it is possible for goods to remain in the possession of the creditor for their own use as long as with the permission of the debtor or parking space on the battlefield, their value does not decrease. This means that it contains the principle of fiduciary (Adibah et al., 2021), because according to Islamic civil law the land can be used by both the lender and the debtor. Based on the hadith of the Prophet Muhammad, he failed to cover the owner of the parking lot from the benefits of the parking lot, the benefits belong to him, and he is obliged to pay the fine.

If the collateral is a parking lot on the battlefield, then the recipient of the guarantee may use the parking lot as long as it is just making use of it and does not reduce the value of the parking lot. So if it is more than just utilization, then the excess is considered usury. Regarding the hadith of the Prophet, the problem of using fiduciary collateral has raised several opinions, including according to the Syafi'i school of thought, the creditor has the right to benefit from the parking lot which is collateral if he has obtained permission from the parking lot owner/debtor. The collateral is still held by the debtor unless the collateral is used by the creditor. It is lawful for the debtor to take advantage of his assets without the creditor's permission, especially if the collateral in question does not decrease in value after being used. However, if the parking area has decreased or its condition has decreased after being used, then it is illegal for the creditor to use it without the debtor's permission.

4. CONCLUSION

According to court precedent, the best way to resolve disputes is through litigation or other forms of justice. Which is the best option for resolving debt disputes through mediation? Where mediation is possible due to a guarantee in the form of parking space rights on the battlefield.

According to Imam Syafi'i, mediation in the settlement of this debt is seen as better than other alternative settlements because the debtor does not have the ability to pay off, both due to the debtor's intention and business prospects that continue to decline, the condition uncertain financial and economic conditions that affect the ability to pay debtors as previously stated in th According to Syafi'i scholars, the guarantee of parking rights cannot be paid or repaid. Land disputes are frequently resolved by guaranteeing their parking space rights.

So, according to the Shafi'i school of thought, goods can remain in the possession of the creditor for their own use until the debtor has enough money to pay off the debt. The creditor can benefit from

the collateral parking lot as long as the debtor gives permission or there is parking space on the battlefield.

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