

The Dualism of Murabahah Contract on Saving-Loan Cooperative and Syariah Financing in Indonesia in Legal Certainty Perspective

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Abstract— *The Saving-Loan Cooperative and Syariah Financing (KSPPS) in business activity applies murabahah contract for its financing, in order to give more legal certainty, the syariah cooperation asks for guaranty from the customers that they can be more serious in their orders. The problem appears when the customers fail to pay the financing in certain time based on agreed and signed contract from two parties. Which rules are used? The agreement on Murabahah contract bases on UUJF or contract object guaranteed on fiduciary guaranty board and made Fiduciary guaranty contract in notarize, and Murabahah contract obeys on the Rule of Cooperative Minister and Small and Medium Business of Indonesian Republic Number 16/Per/M. KUKM/IX/2015 on The Implementation of Business activity of Saving-Loan and Syariah Financing By Cooperation Act 1 number 6 that all business activity of syariah cooperation based on Instruction of the National Syariah Board of Indonesian Council of Religious Scholars.*

Keywords— *Murabahah contract, saving-loan cooperative and syariah financing, legal certainty.*

I. INTRODUCTION

Although today Islamic economical development shows very prospective, however, in its implementation, there seem many obstacles and challenges, in theoretical and practical levels, internal and external ones.

In theoretical level, for example, there is not complete formulated yet on various economic concepts in Islamic economy. Meanwhile, in practical level, there is not available some wider institutions and boards in implementing Islamic Economy. From the internal aspect, the Moslem attitude has not been maximal in applying Islamic economy. Then, based on external aspect, the economic life practices have been familiar with the concepts of conventional economy.

In Indonesia, the Financial Institution divides into two (2) groups, Bank Financial Institution and Non-Bank Financial Institution. The bank financial institution is financial institution in the form of bank. The Bank refers to financial institution collecting fund from the society or accepting saving from them then distributing to the society who need fund in form credit or loan. Whereas, the non-bank financial institution does not mean this institution does not do financial activity as what bank does, however, this financial institution refers to institution that gives service in financial matter but it is not a bank. This institution can also withdraw fund from the society however in indirect way like financial institution such as pawnshop, insurance, cooperation and others.

The cooperation grows and develops in countries following democratic idea. For in these countries, people have chance to do something based on their choice. Cooperation is formed and constructed by people who have same interest and goal and conducted in democratic way (Sudarsono, 2005). According to Muhammad Syaltut, cooperation refers to new

syirkah formed by economic experts and has many benefits that are giving profit to the stakeholder's members, giving work opportunity to its employees, giving financial assistance from part of cooperative result to build places of business, praying, school and many others. Thus, it is clearly that in cooperation there is no despotism and blackmail element. Its management is democratic and transparent and also divides its profit and loss to the members based on applied regulation known by all members of stakeholders (M. Ali Hasan, 2003).

The Islamic syariah institution has existed since 1992 by the founding of the first syariah bank in Indonesia, the Indonesian Muamalat Bank. Even, since 1980s, there were many syariah institution appeared such as BMT (Baitul Tanwil) or ruah financing managed by profit share based on syariah. Therefore, today many syariah banks and BMT appear in the society. Also, the Cooperation of Syariah Financial Service refers to financial institution based on Islamic syariah principle supported by skillful and expert employees using system and program and being ready to serve in managing each banking transaction in line with Islamic economy law.

The Cooperative of Syariah Financial Service builds in order to give service and assistance to the society of micro and small business to increase the society life quality with medium economy level and strategy in conducting the cooperation of saving-loan (KSP). After the Minister Regulation of Cooperation and Small and Medium Business of Indonesian Republic number 16/Per/M.KUKM/IX/2015 on the Implementation of Business Activity of Syariah Saving-Loan, the Cooperation of Syariah Financial Service is changed into Saving-Loan Cooperative and Syariah Financing.

The legal correlation between syariah cooperation and its customer or member is contractual. Thus, if there has been

legal correlation between the customer and syariah cooperation, it appears right and duty between syariah cooperation as creditor and customer as debtor becoming feedback to the creditor right and duty, applied in a written agreement or the document of financing contract in the concept of murabahah financing signed by two parties.

In general, clause in syariah contract covers (Irma DaVita Purnamasari and Suswinarno, 2011):

1. Guaranty Clause
2. Break a Promise
3. Sanction
4. Compensation and Fine
5. Choice of Law
6. Problem resolution

The next step is credit association in form of Notaries document. Notary is general officer having authority to make authentic document as long as its construction not specific for other general officers. The construction of authentic document is a must from the regulation in order to create legal certainty, orderings and protection. Moreover, authentic document made by or in front of notary is not only because of a must as ordered by the regulation, but also because of a will of related parties to make sure the right and duty of all parties for the legal certainty, regularity and protection for related parties as well as a whole society.

Guaranty in positive law has position as giver of legal certainty to creditor on giving back loan that creditor gives to debtor, meaning that the guaranty property is available anytime to be executed, if needed, it may be changed in to cash to settle the debtor debt. The value of guaranty object must be higher than amount of credit loan, hopefully when there is breaking a promise or stuck credit, the guaranty can cover the loan given by the (Dewi Nurul Musjtari, 2012).

The problem of guaranty in *fiqih* perspective relates to the problem of legal correlation (debt-credit) between someone and other party. In this perspective, the guaranty in murabahah financing is allowed, when we review from regulation aspect in this case the regulation of the Instruction of DSN-MUI as the basic guidance of Syariah Financial Institution in conducting its activity.

Guaranty refers to a bail that can be valued with money, that is certain object given by debtor to creditor as result of a correlation of debit and credit or other agreements (Rachmadi Usman, 2009).

In general, the murabahah financing to syariah cooperation usually uses institution of fiduciary guaranty, in its financing guaranty agreement. The guaranty object being burden using fiducially document created in notary with purpose to give more binding power in line with the content of the Law Number 42 of 1999 on the Fiduciary Guaranty or UUFJ, in purpose that the object of fiduciary guaranty will have executorial power if the debtor break a promise or conduct violation on the agreement to the creditor (*parate eksekusi*) based on Act 11 jo Act 37 UUFJ creditor does not have right to be priority (*preferent*) in or outside broken and or liquidity.

Based on above fact, syariah cooperation makes two agreements, namely financing contract (murabahah) agreed and signed by the two parties based on syariah principle or the

Instruction of National Syariah Committee of the Indonesian Council of Religious Scholars and document made in front of notary, following the guaranty being guaranteed using fiduciary guaranty document, that when the debtor stuck, in line with the content of Fiduciary Law Number 42 of 1999 on the Fiduciary Guaranty Law, the guaranty object is sold off in KPKNL, in other hand, KSPPS obeys on the Regulation of Cooperation and Small-Medium Business Minister of the Indonesian Republic Number 16/Per/M. KUKM/IX/2015 on the Implementation of Business Activity on Saving-Loan and Syariah Financing by Cooperation Act 1 number 6 that any business activities of syariah cooperation are based on the Instruction of National Syariah Committee of the Indonesian Council of Religious Scholars. While, the agreement document created based on syariah principle is managed in line with the Instruction of Syariah Committee.

Therefore, the writers believe that in line with above problem there is vague of norm resulting in legal uncertainty and injustice, where there is not yet regulation arranging certainly in the form of legislation that arranges on syariah cooperation following with implementation rules of syariah contract. The agreement on Murabahah contract focuses on UUFJ as the contract object guaranteed to fiduciary guaranty institution made in front of notary, and also follows the Regulation of Cooperation and Small-Medium Business Minister of the Indonesian Republic Number 16/Per/M. KUKM/IX/2015 on the Implementation of Business Activity on Saving-Loan and Syariah Financing by Cooperation Act 1 number 6 that any business activities of syariah cooperation are based on the Instruction of National Syariah Committee of the Indonesian Council of Religious Scholars.

II. RESEARCH METHOD

The research focuses or gives priority on normative legal study, analyzing legal substance that it relates to analysis normative method, based on legislation having authority power as primary legal material. This study applies statute approach, case approach and conceptual approach. The research materials comprise primary legal and secondary legal materials.

The primary legal materials refer to authoritative legal ones, meaning that they have aurity. These materials needed in this study cover:

1. Al- Qur'an
2. Al- Hadits
3. The Civic Code (*Burgerlijk Wetboek*), translated by R. Subekti and R. Tjitrosudibyo.
4. The Law Number 25 of 1992 on Cooperation (Paper of Indonesian Republic No. 112)
5. The Law No. 42 of 1999 on Fiduciary (Paper of Indonesian Republic No. 168, Additional State Paper no. 3889. Decided on 30 September 1999)
6. The Law No. 12 of 2011 on the Formulation of Rule of Legislation (Paper of Indonesian Republic No. 82)
7. Perma No. 2 of 2008 on Compilation of Syariah Economic Law (KHES)
8. The Regulation of Cooperation and Small-Medium Business Minister Number 19/Per/M.KUKM/XI/2008 on

the Guidance of Implementation Saving-Loan Business Activity by Cooperative

9. The Regulation of Cooperation and Small-Medium Business Minister Number 16/Per/M.KUKM/IX/2015 on Implementation Saving-Loan Business Activity and Syariah financing by Cooperation
10. The Instruction of DSN-MUI /II/2005 on solving Murabahah Financing of Customer Failed to Pay

The collecting analysis of research legal materials covers the following steps:

First step, to collect primary and secondary legal materials as long as the contents relevant to the research main problem (topic). Second step, to conduct systematize and interpret the primary legal materials and then conduct analysis qualitative judicially, or legal analysis focusing on legal reasoning and legal argumentation systematically. Third step, to draw conclusion in argumentation form that answer the Legal issues. The fourth step, to give prescribe (recepty/formula) based on argumentation being constructed in the conclusion.

III. FINDING AND DISCUSSION

The legal correlation between syariah cooperation and its customers of members is contractual. Thus, if there has been legal correlation, it appears right and duty between syariah cooperation as creditor and the customer as the debtor with feedback between right and duty creditor, in this process, there is no necessary problem, meaning that as long as the two parties conduct their right and duty based on what being agreed, the problem will not appear.

The new problem appears when the debtor negligent in conducting his right and duty based on the content of agreement in certain time decided and creditor ignore to take the risk that it needs guaranty. In this case, the position of guaranty is as accesoir (additional) agreement of the main agreement, that is financing agreement.

The agreement in syariah cooperation forms in contract constructed based on agreement between syariah cooperation and its client. Whereas, various forms of contract in syariah cooperation missing in the positive legal system become development of contract freedom principle, as stated in Act 1338 of the Civic Code. The contract freedom refers to widely freedom given by the Law to the socieity to do any agreements, unless they do not againts the regulation, appropriatness and general dicipline (Act 1338 Jo 1337 the Civic Code). The freedom to make contract becomes essencial basic, for individual in self-developing in his personal life and social life in the society, thus, some experts state that freedom to make contract is part of human right that must be honor.

Whereas the substance included in the agreement (contract) has to appropriate with the syariah principle, it is not because of the syariah cooperative interest in this case as the party of fund financer or as stronger one though it cannot be made relative. The reason for it has been recomanded by the Syariah Watcher Committee as arranged in the law or other regulations below it. However, in the agreement made by two parties, majority it gives benefit to the syariah cooperative in distributing and obtaining the fund. The customer in this case always poses in lower bargaining

position moreover in the financing contract, or murabahah one. The position results in customer unable to apply his right eventhough there is willingness on each party, but if one party places in suffered losses position and has to accept the fact, the character of *riba fadhil* has embeded in this contract.

The meaning of *riba* etimologically is *ziyadah* (addition). Liguistically, *riba means* getting bigger and growing. Whereas, based on technical term, *riba* refers to taking addition from the main property or capital rudely.

The meaning of *Riba Fadhl* is *riba* resulting from the effect of the same goods exchange that does not fulfill the criteria in: quality, quantity and transfer using non cash. The exchange contents unfairness for two parties toward the goods exchanged (Heri Sudarsono, 2005).

The substance of payment contract based on syariah principle generally the same as the content of conventional credit agreement. However, it is different in loan purpose and specific clause that only appear in the payment contract. The significant difference are such as the replacement format of credit interest (conventional), between margin and relativity of profit sharing or profit. Like in conventional financing, the syariah financing also contents contract made in notary document form.

In syariah financing, if constructed using two agreement, it seems to be waste (*mubazir*) of time and cost. Does the agreement or willingness of two parties resulting in financing contract not have legal power yet or indeed does not have it? As stated in Act 1338 verse 1 of the Civic Code, it states that “any agreements formulated legally apply as the law for those who formulate it.” In other words, it is known as the principle of freedom to contract.

The principle of freedom to contract refers to a principle giving freedom to the party to make or not make agreement, conduct agreement with anyone, decide the content of agreement/implementation and its requirements, decide its form, written or orally.

In line with legality of syariah contract or contract, there must be any statements of Agreement and Answering. These statements can be oral statement, text, and even sign only.

However, as a sales contract based on Islamic law, when included in the Civic Code systematic, the contract is legal if it formulated based on agreement, there is capability of the two party, there is certain object that does not against the syariah principles, and it must be motivated (availability of *causa*) allowed by the *syara'* law (Abdul Ghofur Anshori, 2010).

Final offer is statement stated by the seller or on behave in expressing his will related to contract being conected. Qabul is statement said by the buyer or on behaves as the expression of his will relate to the contract (Ahmad Azhar Basyir, 2009).

Final offer and Agreement (*Ijab Kabul*) refers to principle for sales or other transaction. Thus, in sales or other transaction, Final offer and Agreement is a must. The rule of Final offer and Agreement is matter of willingness between the seller and buyer in the transaction, that: “Unless with trading way applying by mutual agreement between you.” (QS. An-Nisa: 29)

Murabahah contract formulated based on agreement and made in notary in order to be authentic document will not

result in legal problem as long as the financing the customer can pay to the syariah cooperative in line with period being agreed in the contract.

The principle of *murabahah* refers to Islamic concept in conducting sell-buy contract. This concept has been widely used in Islamic financial institutions to give work capital and trading financing of its customers including syariah cooperative.

It states in QS. Al-Baqarah (2): 275 that translated as follow:

“And Allah has allowed sell-buy and forbidden *riba*”

Basically, syariah cooperative can give *murabahah* financing if the contract of *murabahah* financing fulfill the principle and requirements as allowed in legal principles of Islamic science. Moreover, it also has to fulfil the general requirements arranged by the syariah cooperative. The general regulation of *murabahah* in syariah bank stated in the Instruction of National Syariah Committee No.04/DSN-MUI/IV/2000 on *murabahah*. This regulation consists of; with the customer, the cooperative must conduct contract *murabahah* that free from *riba*; for the Syariah Financial Institution, the goods being traded are not forbidden by the Islamic law; the Syariah Financial Institution pays a part or all goods buying price as agreed their qualify; and the bank buy the goods needed in the name of the bank and the buying must free from *riba*.

A guaranty is not one absolut principle or requirement in *murabahah* financing, it purposes to keep that the customer is serious in conducting the *murabahah*.

After the contract *murabahah* done, it conducts contract of guaranty association, as the additional product of financing contract *murabahah*, using guaranty institution facility available depend on the goods or objects being guaranteed, for example using institution of fiduciary guaranty.

Fiduciary guaranty in Indonesia is arranged in the Law Number 42/1999 on fiduciary guaranty, in act 1 of the Law, it states that fiduciary refers to transferring ownership right of a goods based on a trust in condition that the goods being tranfered its ownership right still in authority of the goods owner. Whereas, fiduciary guaranty is guaranty right on the tangible and abstract mowing goods and real estate goods specially buildings that cannot be weighted its right waranty as stated in the Law Number 4 of 1996 on the right of waranty that still in the authority of the fudiciary giver, as the guaranty of certain debt settlement, giving priority position to the fudiciary receiver toward other creditor (Gunawan Widjaja & A. Yani, 2003)

The *murabahah* financinf concept of guaranty giver is not a must. However, in order the customer fulfills his contract, the syariah cooperative can ask for certain guaranty in the contract of financing. The guaranty used purposes that the customer conducts dicipline payment based on agreed schedule. It is in line with the the Instruction of DSN-MUI Number 4 of 2000 hopefully the customer being serious in his order.

The principle of *murabahah* refers to a form of sell-buy contract that has to follow the rule and general law of sell-buy existing in Islamic science.

The contract of *murabahah* can be applied by selling the contract object to the Syariah Financial Institution with market price, or the customer pays his debt to the Institution from the result of selling the contract object.

Based on the above fact, there are two contradictive contracts if stuck credit happens on the customer toward the syariah cooperative resulting in legal uncertainty. The existence of two contracts followed by KSPPS become deviation of legal certainty.

Certainty is a fix thing (condition), rule or decision. The hyrarcy law must be certain and fair. Certain as guidance of behavior and fair because the the behavior guidance must support a normal system. Only with justice and conducted with certain does the law do its function well. As stated, the certainty and justice is not merely morality demand, but factually it reflects the law. An uncertain and unfair law is not only bad law, but also it is not a law. The two characters includes the legal idea (*den begriff des Rechts*)(Cst Kansil, Chlmristine S.t Kansil,Engelien R, 2009).

According to Gustav Radbruch, justice, legal certainty, and beneficial (Gustav Radbruch: *Gerechtigkeit, Rechtssicherheit, Zweckmäßigkeit*) refer to three terminologies often stated in the lectural and court rooms, however, they hardy understood their core or agreed their meaning, the justice and legal certainty, for example. Briefly, the two terms is contradictive, but they may not that so. The word of justice can be analogical term, that it provides term of procedural justice, legal justice, commutative justice, distributive justice, vindicative justice, creative justice, substantive justice, and many others. Procedural justice, as stated by Nonet and Selznick to call one of indicators of autonom legal type, after deeply viewed results from legal certainty for the upholding of the rule of law. Thus, in this context, justice and legal certainty are not contradictive, but they are go together (Sidharta, 2010).

Legal certainty belongs to unsperable character of the law, specially to the written law norm. Law without value of certainty will lose its meaning because it cannot be the behavior guidance for anyone, *Ubi jus incertum, ibi jus nullum* (when legal certainty does not exist, there is no law).

The law upheld by the institution of legal upholder given that duty must guarante “the legal certainty” for upholding the dicipline and justice in social life. The legal uncertainty will result in disorder in social life and anyone will does anything he likes and take the law into his own hands. This condition makes life in the position of *social disorganization* or social disorder.¹ (¹M. Yahlmya harahap, 2002)

The legal certainty refers to “*sicherheit des Rechts selbst*”(certainty of the law itself). There are four (4) things relating to the meaning of legal certainty. First, that the law is regulation (*gesetzliches Recht*). Second, that the law is based on the fact (*Tatsachen*), not a formula of estimation that in the following time will be conducted by the judge, such as “good will”, “good manners”. Third, that the fact must be formulated clearly, thus, it avoid mistake in definition, and also make it

¹M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHP Penyidikan dan Penuntutan*, (Jakarta, Sinar Grfika, 2002), hlm 76.

easier to conduct. Fourth, the positive law may not be changed frequently.²

In the practice of syariah payment specially in syariah cooperative to give facility of payment, the legal correlation between syariah cooperative and the customer is stated in written contract. When the legal correlation stated in contract, it applies the stipulation and general requirements, where it includes that the customer must follow to the stipulation and general requirements based on letter of statement signed by the customer in line with the contract between the customer and the syariah cooperative. Being self surrender of the customer to the stipulation and general requirements, if there is any different idea on the legal correlation between the customer and the syariah cooperative, the two parties will review to the stipulation and general requirements stated.

In line with legal assistance between the syariah cooperative and the customer, there will be question, in the conflict happens, what law is applied? The Islamic law or the stipulation and requirements stated in the contract?

In the Indonesian law administration, Indonesia is not Islamic country (but Indonesia is a country with majority Moslem citizen), the Islamic law is not positive legal (it does not apply officially and can be forced on the violation by the court) in Indonesia. In this case, if conflict happens, the law applied is the contract law arranged in the Civic Code referring positive law.

There is other basic needed to focus in the contract law. The basic decides that when the contract does not arrange the matter being debated by two parties, but the matter is (has been) arranged by the contract in the Civic Code, the rule of the Civic Code is applied. However, if the conflict matter has been arranged in the contract, but the content of contract different from its arrangement in the contract law in the Civic Code, the rule in the contract is applied, in condition that the rule in the contract law is not rule that can be deviated (the rule is forcing/*dwingend recht*). When the rule of the contract law in the Civic Code refers to rule that can be deviated (the rule is forcing), based on the basic that the content of contract cannot againts the law, the rule of contract law has to be applied, whereas rule of the contract is fail for the law.

Based on principle of freedom to make contract and other principles, the writers have opinion that it needs to arrange in detail and clear on using certain service in line with the Syariah Principle that appropriate to parties' will that apply to the legal correlation using the transaction, in absolut condition that the stipulation and requirements do not againts the law, obedience and general dicipline. In this case, all parties have to make sure what included in the contract does not deviate from the forcing regulation of the contract law (*Dwingend rechts*).

According to Islamic law, a contract (*akad*) refers to what stated by Islamic legal experts (*fuqaha*), the word *akad* is defined as correlation of *ijab* (final offer) and *kabul* (agreement) based on principle purpose deciding the existence of legal effect in correlating object. The formula of contract

gives sign that a contract must be a agrrement of two party to tie themselves on action that will be done in certain thing. This contract is formed in final offer and agreement (*ijab kabul*), based on principle and the existence of legal effect on the correlating object (Hirsanuddin, 2008).

Thus, it can say that there is firm correlation between association law (civic correlation) and principle of obedient in being responsible to do Islamic religion with its rules stated in Al-Qur'an and Hadits of the Prophet Muhammad SAW (As-Sunnah). Therefore, the law is value rule consisting of good and bad, allowed or forbidden, right or wrong, stated by the law maker formed in a rule of the national law.

Based on the above legal definition, it shows that what urgent the existence of the law is. The need of legal approach to achieve islamic association law in the form of the availability of positive legal giving guidance to any parties in doing syariah transaction, giving guaranty of legal certainty, legal protection for any parties and legal fundamental (*enforcement fundamental*) if the violation or deviation happens in transaction. Moreover, it needs rule arranging strictly the way and facility to resolve dispute or conflict that may appear between two parties in a contract.

Syariah cooperative has great prospect and potential in developing the national cooperative system. Therefore, the legal norm construction of syariah cooperative becomes necessary to conduct as what happens in the case of syariah banking.

The legal norm of syariah cooperative as a unity of norm that not only based on syariah principle but also based on the pancasila values and Act 33 of the Indonesian Fundamental Constitution of 1945, as the constitutional judicial fundamental in facing significant syariah economic development in Indonesia, it needs a set of regulation giving legal certainty to all syariah economic practitioner in conducting syariah economy. If viewed from several regulation above, it shows the existence of support in Indonesia whether from the government or society toward implementation of Islamic Regulation.

However, in fact, practically it still uses legal transplantation specially in line with association that it results in uncertainty and injustice for any parties doing the transaction in this case the Moslem. The existence of special regulation in Syariah Contract no need in codification form and happen in shor time, purpose to avoid legal trasplantation and to guarante legal protection and certainty in the society.

The arragement in syariah contract in the form of law, should include general matters, such as arrange the fundamental³ of association definition, and official requirement of the syariah association. The arrangement in the form of law will be legal protection of the Syariah Association Law and must not againts the Al-Qur'an and Sunnah of the Prophet Muhammad SAW.

The formulation of syariah contract law specifically not only gives legal certainty, but also avoids multi-understanding

²Satjipto Rahlmardjo, *Hukum Dalam Jagat Ketertiban*, (Jakarta, UKI Press, 2006), hlm. 135-136.

³ Mardani, *Hukum Perikatan Indonesia*, (Jakarta : Sinar Grafika, 2013), hlm. 20

(*multi-tafsir*), becoming norm system that not againts each other or result in conflict.

The legal arrangement is not enough by focusing on doctrine, to resolve conflict of syariah economy, but it needs standard references, having legal power to resolve syariah economic conflict. Moreover, the Law number 7 of 1989 on the Religion Court as having been changed with the Law Number 3 of 2006, and rechanged based on the Law Number 50 of 2009 on the Second Change on the Law Number 7 of 1989 on the Religion Court, that resolution of syariah conflict is absolute competency of the Religion Court and syariah cooperative, in resolving murabahah payment for the customer who cannot pay (stuck), should use regulation focusing on the Regulation of the Supreme Court of Republic Indonesia Number 02 of 2008 on the Compilation of Syariah Economic Laws (KHES) and the Regulation of Cooperative and Small-Medium Business Minister of Indonesian Republic Number 16/Per/M. KUKM/IX/2015 on the Implementation of Saving-Loan Business Activity and Syariah Payment by Cooperative that focus on the Instruction of the National Syariah Committee to solve the stuck credit, knowing that the syariah cooperative is based on Islamic law, if it uses the rule of fiduciary guaranty, its *Maqashid syariah* will not be fulfilled.

The islamic Principle so far is only understood by some people as normative law not having judicial sanction of binding power for the society. The normative law is only considered as behavior pattern for someone with moral sanction from the society. Thus, implementation of Islamic principle as Islamic law is given to the level of someone belief. It becomes contraproductive when this country plans to run Islamic rule in right way (*kaffah*). The misunderstanding makes Islamic rule only becomes morality than legal binding that must be uoheld or implemented as belief demand. However, the Islamic rule is from Allah to all human being to be applied in life. The power of Islamic rule in govern social dicipline and peace has normative character in fields of praying ritual (*ubudiah*) and science (*muamalah*), and must be supported in field of *jinayah* that it can bring back all social rights being taken away.

IV. CONCLUSION

The syariah cooperative party in making the payment contract uses two contracts forms that are Murabahah contract based on syariah principle and contract made in notarized and the guaranty object embedded fiduciary that focus on the Law Number 42 of 1999 on the Law of Fiduciary Guaranty (UUJF) purposing that syariah cooperation has power of perfect

proving, however it against the murabahah contract made based on syariah principle or the Instruction of National Syariah Committee of the Indonesian Council of Religious Scholars. There is no specific Syariah Contract Rule that results in legal vacuum and legal uncertainty for all parties, thus, it possible reveals treaty dualism in murabahah financing on the Cooperative of Saving-Loan and Syariah Financing, and rule transparency for implementation of the syariah agreement.

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- [19] The Instruction of DSN-MUI /II/2005 on the Resolution of Murabahah Debt of Customer who Fail to Pay