

**TINJAUAN YURIDIS PERTIMBANGAN HAKIM TERHADAP KEABSAHAN AKAD MUDHARABAH MUTHLAQAH DI KOPERASI SERBA USAHA BMT ISRA (STUDI PUTUSAN PA BANTUL No. 0463/Pdt.G/2010/PA.Btl DAN PUTUSAN PTA YOGYAKARTA No. 63/Pdt.G/2011/PTA.Yk)**

Oleh:

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**INTISARI**

Penelitian ini bertujuan untuk mengetahui pertimbangan hakim terhadap keabsahan akad *mudharabah muthlaqah* di KSU BMT Isra ditinjau dari Kompilasi Hukum Ekonomi Syariah pada Putusan PA Bantul No. 0463/Pdt.G/2010/PA.Btl dan Putusan PTA Yogyakarta No. 63/Pdt.G/2011/PTA.Yk, dan untuk mengetahui pertanggungjawaban pengelola dana (*mudhorib*) terhadap *shohibul mal* akibat bubarnya KSU BMT Isra.

Penelitian ini merupakan penelitian hukum yuridis normative. Penelitian dilakukan dengan cara meneliti bahan pustaka atau data sekunder. Dalam penelitian kepustakaan cara pengumpulan data dengan mempelajari peraturan hukum, perundang-undangan, salinan Putusan PA Bantul No. 0463/Pdt.G/2010/PA.Btl *jo.* Putusan PTA Yogyakarta No. 63/Pdt.G/2011/PTA.Yk, buku lainnya yang berkaitan dengan materi penelitian. Untuk menunjang dan melengkapi data maka dilakukan wawancara dengan narasumber. Data yang diperoleh kemudian dianalisis dengan pendekatan kualitatif dan ditulis dengan metode deskriptif.

Berdasarkan penelitian yang telah dilakukan, maka diperoleh kesimpulan bahwa terdapat perbedaan antara pertimbangan Hakim PA Bantul dengan Hakim PTA Yogyakarta terhadap keabsahan akad *mudharabah muthlaqah* pada KSU BMT Isra. Hakim PA Bantul lebih menekankan pada akad tertulis yang tidak dapat ditunjukkan oleh penggugat sehingga hakim menilai penggugat tidak dapat memenuhi asas *Al-kitabah* (tertulis) yang terdapat dalam Pasal 21 huruf m KHES yang menjadikan gugatan tidak diterima, sedangkan Hakim PTA Yogyakarta menyatakan bahwa telah terjadi akad yang sah dengan terpenuhinya rukun dan syarat sahnya akad yang terdapat dalam Pasal 22-25 KHES serta memenuhi pengertian akad yang sah seperti tercantum dalam Pasal 28 KHES. Penulis berpendapat bahwa pertimbangan Hakim PA Bantul lebih menekankan pada bukti tertulis sedangkan menurut KHES, sahnya suatu akad tidak hanya tergantung pada keberadaan akad pada bentuk tertulis melainkan pada terpenuhinya rukun dan syarat akad sehingga menimbulkan keabsahan akad menurut KHES. KSU BMT Isra ini berbentuk koperasi, apabila terjadi bubarnya koperasi maka pertanggungjawaban terhadap dana anggota diambilkan dari kekayaan koperasi. Apabila pengurus maupun direksi dan manajer pengelola yang lalai dalam menjalankan kewajiban dan wewenangnya dalam mengelola BMT, maka mereka sebagai pribadi wajib bertanggung jawab secara pribadi dalam menanggung kerugian usaha koperasi.

**Kata kunci: keabsahan akad, *mudharabah muthlaqah*, tanggung jawab**

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**JUDGE CONSIDERATION'S JUDICIAL REVIEW ON THE VALIDITY OF MUDHARABAH MUTHLAQAH AKAD AT BMT ISRA BUSINESS MULTIPURPOSE COOPERATIVE (STUDIES ON BANTUL RELIGIOUS COURT RULING No. 0463/Pdt.G/2010/PA.Btl AND YOGYAKARTA RELIGIOUS HIGH COURT RULING No. 63/Pdt.G/2011/PTA.Yk)**

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**Abstract**

This study aims to determine the validity of the judge's considerations on *mudharabah muthlaqah* akad at KSU BMT Isra reviewed from the Compilation of Islamic Business Law and Minister of Cooperative and Small and Medium Enterprises Decision No. 91/Kep/M.KUKM/IX/2004 on Bantul Religious Court Decision No. 0463/Pdt.G/2010/PA.Btl and Yogyakarta High Religious Court No. 63/Pdt.G/2011/PTA.Yk, and to know the responsibility of the fund manager (*mudhorib*) against *shohibul mal* due to the dissolution of KSU BMT Isra.

This research is a normative juridical research. It was a research carried out by studying the literature of secondary data. In the library research, the data being collected by studying the legal regulation, regulation, copy of Bantul Religious Court Ruling No. 0463/Pdt.G/2010/PA.Btl *jo.* Yogyakarta High Religious Court Ruling No. 63/Pdt.G/2011/PTA.Yk, other books related to research material. To support and supplement the data, then do the interview with sources. The data obtained was then analyzed using qualitative approach and written with a descriptive method.

Based on the research that has been done, it could be concluded that there is a difference between Bantul Religious Court Judge decision and Yogyakarta High Religious Court Judge decision on the validity of KSU BMT Isra *mudharabah muthlaqah*. Bantul Religious Court Judge emphasized more on the written contract that can not be shown by the plaintiff that made the judge assessed that the claimant couldn't meet the principle of Al-kitabah (written) contained in Article 21 letter m KHES which eventually made the claim unacceptable, while Yogyakarta High Religious Court Judge stated that there had been a valid contract with the fulfillment of the contract validity requirements according to the pillars and conditions set forth in Article 22-25 KHES and also had fulfilled the terms of a legal contract that stated in Article 28 KHES. The author argues that Bantul Religious Court Judge consideration emphasized more on written evidence while according to the KHES, the validity of a contract is not only dependent on the existence of the contract in a written form, but most importantly on the fulfillment of the pillars and the terms of the contract set in the KHES. KSU BMT Isra is a cooperative, in case a dissolution of the cooperative happened, the financial responsibility against the members will be taken from the cooperative wealth. If the management either the directors or the managers are negligent in carrying out their duties and authorities to managed BMT, then they shall be personally liable to bear the lost in cooperative business efforts.

**Keyword: validity of akad or contract, *mudharabah muthlaqah*, responsible**

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