

ABSTRACT

Prajamufti, Yunizar. 2012. **The Application of The Freedom Principle Of Contract In Musyarakah Financing Agreement (Case Study in Sharia Koperasi Agro Niaga Indonesia (Kanindo) East Java in Dau Malang)**. Thesis. Department of Business Law Sharia. Faculty of Sharia. State Islamic University Maulana Malik Ibrahim Malang. Mentors: Drs. M. Yasin Nur, M.Ag.

Keywords: The freedom principle of contract, agreement, musyarakah.

In law agreement, the freedom principle in making contract is spirit and breath of an agreement. The freedom principle of contract is mentioned in section 1338 subsection (1), KUH Perdata that says: all agreement are made legally valid as a statute for those who make it. Implicitly, the freedom principle of contract provides guidance that all the parties are assumed to have equal position in making or not making an agreement, having agreement with anyone, implementating and the agreement and its requerments. In its practice, there are many raw agreement models found financial institutions either bank or non-bank such as sharia financial institutions, which tend to be considered unbalanced, one-sided, and unfair because of the weak position just accept the contents of the agreement or to refuse the content of agreement which are already determined.

This research aims to providing an understanding implicitly of the mechanism and the procedures in financing musyarakah and the application of freedom principle of contract in an agreement between customer and Sharia Koperasi Agro Niaga Indonesia (Kanindo) East Java in Dau Malang because of the form of agreement has been printed with the provisions of clauses that has been set for the customers.

The type of research used in this study is an empirical juridical. Research in this study, the basic problem is everything wich is juridical in implementating of the freedom principle of contract of an agreement as meationed in section 1338 KUH Perdata. The impirical aspect is by looking the application of the principle of the freedom principle of contract wich is mentioned in section 1338 KUH Perdata in the practice in cooperative financing musyarakah in Sharia Koperasi Agro Niaga Indonesia (Kanindo) East Java in Dau Malang. And the research approach used in this research is descriptive analytic.

Based on this study it can be concluded that Kanindo Sharia has applied the freedom principle of contract in cooperative financing musyarakah insection 1 that contains about funds financing, profit sharing and \ installment will be paid each month in period of 12, 18 or 24 months because there is a balance of negotiation in determination of these three things.