

Completion of the Execution of Collateral Objects in Sharia Commercial Bank Murabahah Financing

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Abstract

One type of financing that is quite developed in sharia commercial banks is murabahah financing which often uses fiduciary collateral, because the payment is considered simple, easy and relatively fast. The aim of writing this article is to elaborate on how to complete the execution of collateral objects in murabahah financing at Sharia Commercial Banks. The main focus of this article is a description of various solution options in resolving disputes in the form of executing collateral in murabahah financing. Research data was collected using library study techniques and then analyzed to produce descriptive conclusions. This research concluded that the settlement strategy for murabahah collateral objects can be carried out in two ways, namely through litigation and non-litigation processes. These two routes certainly have their own characteristics according to the nature of the solution.

Keywords: *Execution, Guarantee, Murabahah, Sharia Commercial Bank.*

INTRODUCTION

One type of financing that is quite developed in sharia commercial banks is murabahah financing which often uses fiduciary collateral, because the payment is considered simple, easy and relatively fast. Murabahah financing is a sharia commercial bank product that is based on the principle of buying and selling. According to the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) NO.04/DSN-MUI/IV/2000, murabahah is selling goods by stating the purchase price to the buyer, and the buyer pays the excess of the agreed price as a profit.

In practice, banks provide products that creditors need through purchases, the bank then resells them by stating the purchase price and profit requested by the bank. To guarantee payment of receivables to the bank, the bank can ask the customer for a guarantee in accordance with DSN-MUI No.04/DSN-MUI/IV/2000, guarantees in murabahah are permitted, so that the customer is serious and does not neglect his obligations.

Fiduciary in a murabahah contract, in general there are two groups financed, namely murabahah whose object is movable objects and murabahah for home ownership (KPR). For murabahah financing where the object is a movable object, the binding is carried out with a fiduciary guarantee, whereas, murabahah financing where the object is an immovable object, for example in purchasing land and the house on it, is carried out by binding a mortgage.

METHOD

This research is included in the qualitative type with a descriptive nature, namely research to examine a study from various literary sources and then provide a general overview and description. By using a descriptive-analytic approach, this research attempts to present an analysis related to the settlement of execution of collateral objects in Islamic commercial banks. Data collection was carried out using library study techniques, namely using library literacy, in the form of books, documents and journals that are related to the problems discussed. (Etta, 2010) This research data was then analyzed using content analysis techniques to obtain conclusions.

RESULTS AND DISCUSSION

The concept of Murabahah in Islam

Murabahah is a sale and purchase contract of certain goods, where the seller clearly states the goods being traded, including the purchase price of the goods to the buyer, then he requires a profit/profit in a certain amount. (Muhammad, 2014) Etymologically, *murabahah* comes from the verb *rabih* {a-yarbah}u which means profit. Meanwhile, in Islamic jurisprudence terminology, *murabahah* is a form of buying and selling goods by stating the purchase price of the goods and a determined profit margin. *Murabahah* is a form of buying and selling which is specifically included in the type of buying and selling or 'bay' (Martono, 2002). In terms of language, *murabahah* comes from the word *ar-ribh* which means profit in commerce. According to the *fuqaha'* term, *murabahah* is selling goods at the initial price (purchase price) with the addition of a known profit. (Sofyan, 2017).

Basically, most scholars agree that *murabahah* is a form of buying and selling that is permissible because of the generality of the verse "Allah has permitted buying and selling and forbidden usury". However, there are differences of opinion in the Hanbali school regarding *murabahah* law. Hanabilah scholars argue that there are two forms of *murabahah*. Firstly, if the profit is known from the full form of capital, for example the seller says "From the capital of 100 dirhams I added a profit of 10 dirhams", then this is permissible without any *ikhtilaf* among the Hanabilah scholars. Second, if the profit is calculated from each part of the capital, for example the seller says "From capital of 100 dirhams, then I take a profit of 1 dirham from every 10 dirhams", in this case most Hanabilah scholars hate it.

This is different from Ibn Hazm, who said that *murabahah* is a false form of buying and selling because according to him it requires an explanation of the profit which is mentioned as not being in the text, while the existing text is buying and selling without any requirement to mention profit. However, this is permissible (*murabahah*) if in a country no buying and selling takes place, except by clearly mentioning capital and additional profits. (Surayya, 2021).

Based on the description above, it can be interpreted that *murabahah* in sharia banking is the sale and purchase of goods at the original price with additional profits agreed between the bank and the customer. In *murabahah* the seller states the purchase price of the goods to the buyer, then he requires a certain amount of profit. In the glossary of the DSN (National Sharia Council) fatwa book, it is explained that what is meant by *murabahah* is selling an item by confirming the purchase price to the buyer and the buyer buys it at a higher price as a profit. (Nizar, 2015).

Murabaha Financing

In the technical terms of sharia banking, *murabahah* is a sale and purchase agreement that occurs between a sharia commercial bank and a customer. In this case, the sharia commercial bank is the provider of goods that sells to customers who order to purchase the goods. The profit obtained by the sharia commercial bank in this transaction is a mutually agreed sale and purchase profit, where in this case the bank as the seller must notify the buyer (customer) in advance about the cost of purchasing the goods and include the amount of profit added to the costs. the.

Buying and selling in the form of *murabahah* is in the form of an order which Imam Syafi'i terms *al-amir bi al-shira* or can also be equated with *bay' bi s\aman ajil* or *bay' muajjal* (buying and selling where the goods are delivered immediately with payment postponed or carried out gradually). Therefore, *murabahah* is a form of buying and selling that is permitted. In Indonesia, the application of *murabahah* buying and selling in sharia banking is based on the Fatwa Decree of the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI), namely DSN Fatwa Number 04/DSN-MUI/IV/2000 concerning *murabahah* provisions in sharia banking and Bank Indonesia Regulations (PBI), namely PBI Number 9/19/PBI/2007 and BI Circular Letter Number 10/14/DPBs dated 17 March 2008.

The *murabahah* financing mechanism can be used for procurement of goods, working capital, house construction, and so on. Sharia commercial banks generally adopt *murabahah* to provide short-term financing to customers to purchase goods. In sharia banking practice, the majority of *murabahah* contracts carried out are using the *murabahah* to Purchase Order (KPP) system. This is so called because sharia commercial banks solely provide goods or assets to meet the needs of customers who order them. So, in general the scheme of this *murabahah* application is the same as *murabahah* based on orders.

There is also the development of murabahah financing applications in Islamic commercial banks, namely in terms of procurement of goods. In this case, sharia commercial banks use wakalah contract media to give customers authority to purchase goods on behalf of the bank from suppliers. In this case, if the bank represents the customer to purchase goods from the supplier, then both parties must sign an agency contract, where the bank authorizes the customer to become its agent to purchase commodities from a third party on behalf of the bank. (Surayya).

In other words, customers become bank representatives to buy goods. Ownership of goods is limited to being an agent of the bank. Next, the customer provides information to the bank that he has purchased the goods, then the bank offers the goods to the customer and a sale and purchase contract is formed, so that the goods change ownership to the customer's property with all the risks.

The Position of Collateral in Murabahah Financing

Basically, in murabahah financing, collateral is permitted and is not a basic thing that must be present in murabahah financing. The existence of guarantees in sharia banking, especially in murabahah financing, is only to provide certainty to the bay' party that the musytari party in murabahah financing will be serious about their orders in accordance with what has been agreed in advance. Based on these provisions, the position of the guarantee is not to cover the capital issued by the bank and the guarantee is not a principle/main thing in murabahah financing, in the sense that murabahah financing without collateral can already be approved/valid. So the position of collateral according to the DSN-MUI Fatwa is to avoid deviations from the musytari and so that the musytari does not play around or is serious about his order in accordance with what was agreed in advance, and the guarantee is not something that must be there and is a mandatory condition for murabahah financing. (Restudiyani, 2018).

To be able to analyze the position of collateral objects in murabahah financing, it cannot be separated from the agreement between the creditor and debtor. The urgency of sharia product financing is an agreement made in an agreed agreement, therefore, apart from having to fulfill the requirements and harmony of financing according to sharia, it is also mandatory to fulfill the conditions for the validity of the agreement which are regulated by positive law. The existence of collateral objects in murabahah payments is assessor or as a complement to the main agreement, namely financing.

The position of objects as collateral in banking can consist of regulations regarding pawning Article 1150 of the Civil Code, regulations regarding Fiduciary namely number 42 of 1999 and regulations regarding mortgage rights number 4 of 1996. These three guarantee laws have their own characteristics depending on the object used as collateral and the legal relationship between them. during the murabahah agreement. (Supriyadi, 2020).

From a civil law perspective, murabahah financing creates a legal relationship that must be carried out by the parties who have rights and obligations to both. This obligation is an achievement in the form of giving something, doing something or not doing something. If the promise is not fulfilled, a breach of promise will arise. If a default occurs then he has an obligation to pay compensation as a result of the default. However, a force majeure or accidental event, a claim for compensation for damages, interest and other costs, even if it is proven to be a breach of contract, can be rejected under Article 1245 of the Civil Code. The force majeure situation states that "No loss or interest costs must be reimbursed, if due to compelling circumstances or unintentional events the debtor is unable to provide or do something that is required, or because of the same things he has committed a prohibited act."

Based on the principle of freedom of contract, a business practice arises known as a standard agreement, namely an agreement that has been standardized in the agreement. Meanwhile, the clauses can be changed based on the agreement of the parties. In practice, this standard agreement is stated in the form of a form prepared by the business actor which must be filled in or signed by the debtor. (Supriyadi, 2018)

Although a standard agreement arises from the freedom of the parties to make an agreement, on the other hand it actually limits the freedom of the parties to reach an agreement. There is an impression of an imbalance in the position of the parties entering into the agreement. Where the creditor can freely determine the conditions or achievements that the debtor must fulfill, while the debtor has no bargaining room regarding the conditions or achievements requested by the creditor. However, creditors do not necessarily lose their freedom in making agreements, because they still have the freedom not to agree to the agreement or not to bind themselves to the

agreement. It is not permissible to make an agreement by forcing the other party to agree to an agreement. The existence of coercion shows that there is no agreement between the parties so that the fiduciary is given the right to enter into another agreement. This is where there is still room for freedom for fiduciaries which is the basis for justifying the existence of standard agreements, because the existence of standard agreements cannot be separated from the business world today. (Abdul Kadir, 2000)

Standard agreements emerged because of the demands of the business world which wants every transaction to be efficient and effective, so it requires speed in transactions. This was stated by Sultan Renny Sjahdeni that the existence of frozen agreements is often used in business, so that their existence does not need to be debated by those making the agreement. The use of standard agreements has been widely used in order to speed up the agreement process. If the agreement is not standardized then you can imagine the agreement process will take quite a long time. Sutan Reny, 1993)

Even though there is freedom of contract, it does not mean that the parties do not make a standardized agreement. Because the parties may also not agree to the standard agreement, namely by withdrawing as parties. This shows that there is freedom in contracting. This principle has even developed internationally. By agreeing to a standard agreement, an agreement has occurred that binds the parties to agree to the agreement. (J Satrio, 1993).

In the aspect of legal protection from the debtor's perspective, the existence of a standard agreement also does not conflict with the law. Even though creditors have the freedom to set out standard agreement terms or standard clauses, they are substantially not permitted to include clauses that are detrimental to the debtor's interests, which are called exoneration clauses. Mariam Darus Badrulzaman stated that one of the contents of an exoneration clause is: "A clause included in an agreement whereby one party avoids fulfilling its obligation to pay full or limited compensation, which occurs due to a broken promise or unlawful act." (Mariam, 1994)

Article 1338 does not conflict with the murabahah contract which basically states that every agreement must be carried out honestly or in good faith, which further states that the agreement must be in accordance with the customs existing in society. Article 1339 of the Civil Code states that the agreement must pay attention to customs or customs. customary laws and regulations. Furthermore, Article 1337 of the Civil Code states that every agreement that has become a custom must be implemented honestly because local community customs must be considered inherent in making the agreement. Honesty is carried out when making an agreement and after the agreement. Often people who enter into an agreement are only honest when making the agreement, but once it has been agreed, they do not want to carry it out in good faith. The honesty referred to here is the expectation in the heart of the party holding the goods or objects as the object of the agreement to carry out the contents of the agreement in good faith as agreed between the parties. (Supriyadi).

The position of objects in financing in sharia banking is to provide guarantees if the debtor does not have the ability or defaults in returning the financing that has been received. The urgency of collateral in this financing is that the creditor is worried if the financing that has been issued is not repaid by the debtor. When the debtor is unable to pay off the financing that has been received, the collateral can be used to pay off the financing. In Sharia transactions, it is known as rahn tasjily which uses movable objects as collateral to reduce the risk of loss in the event of default. Halimatus Sa'diyah, 2018)

Default due to Rahin's inability to pay off his debt to Murtahin. If there is no collateral object, the creditor will experience huge losses, but with the collateral object, the collateral object can be used as repayment of the debtor's debts. To reconstruct the objects of existence in murabahah financing, it is necessary to differentiate the types of objects that are the objects of collateral for murabahah financing, including pawns, fiduciaries, mortgage rights.

The birth of a fiduciary is determined by the main agreement, namely the money financing agreement carried out by the debtor and creditor. So its nature is as a complement to the main agreement. If there is no debt then there cannot be a fiduciary. Fiduciary guarantees are based on the principle of trust because the collateral object is controlled by the fiduciary. To protect their interests and guarantee legal certainty regarding this matter, a legal product is needed, namely Law Number 42 of 1999 concerning Fiduciary Guarantees (UUJF). Article 1 paragraph (1) UUJF essentially states that the transfer of ownership of objects is based on the trust given by the creditor to the debtor because control is still under the debtor. Furthermore, Article 1 paragraph 2 essentially states that fiduciary is a guarantee for movable objects consisting of tangible and intangible objects and usually in the form of buildings which are not included as objects of mortgage rights.

According to Article 1 paragraph (1) of the Mortgage Rights Law Number 4 of 1996 (UUHT), basically these are debts and receivables secured by land and matters relating to land as regulated in Law Number 5 of 1960 concerning the Basic Agrarian Law. Creditors have priority rights to pay off debts compared to other debtors. This main right is in order to provide legal certainty to creditors. This guarantee includes those related to land and what is above it. Budi Harsono, 1996). This means that buildings, plantings, or works in the form of temples, reliefs are one unit with the land, so they can be categorized as having mortgage rights in Article 4 paragraph 4 UUHT.

The legal construction of the three forms of objects that serve as collateral for financing shows that the creditor has the right of precedence (*droit de preferent*) to the object of collateral for repayment of the financing that has been provided to the customer. The object that is used as collateral for the debt is land with executory power as repayment of the financing. However, this does not mean that if the debtor does not pay off the object then the object passes to the creditor, but there must be legal action, namely in the form of an auction.

In Islam itself, it is known as *Rahn*, which normatively there are several parties involved, including the person giving the pawn (*rahin*), the recipient of the pawn (*Murtahin*), the object of collateral (*marhu>n*) and the debt (*marhun bihi*). (Maman Suhahman, 2017) In every contract, the elements and pillars must fulfill these conditions, namely being of sound mind or good sense, mature or mature, not forced or coerced as regulated in Article 330 KHES. According to sharia, *rahn* itself means holding property that is used as collateral which functions as ransom. The aim of the *rahn* contract is actually so that the person providing the financing believes that the customer will pay off his obligations.

Dispute Resolution Options for the Execution of Collateral Objects in Murabahah Financing

The strategy for resolving murabahah collateral objects can be carried out in two ways, namely through litigation and non-litigation processes. These two routes certainly have their own characteristics according to the nature of the settlement, the process via the non-litigation route is a settlement carried out outside of court. The solution is usually to find a middle way that is acceptable to the parties involved. The parties must work together to resolve. There must be good faith to complete it. This is different from litigation settlement, namely that the settlement is carried out in the judicial process. This settlement is the last alternative if non-litigation efforts have been maximized and there is a deadlock in settlement. (Usman Rohmadi, 2009)

Litigation

The rapid development of sharia economics is directly proportional to the number of existing sharia economic disputes. The resolution of sharia economic disputes has become the authority of the Religious Courts since the Supreme Court Decision Number 93/PUU-X/2012. This authority is a new authority so that instruments for resolving sharia economic disputes must also be prepared. The new instruments are the infrastructure of religious justice institutions, improving the technical capabilities of human resources, collaborating with universities, forming formal and material laws so that they become guidelines for religious justice officials in examining, adjudicating and deciding sharia economic disputes and finally improving systems and procedures so that disputes involving sharia economics are carried out simply, easily and at low cost (Sinta Noer, 2020).

The principle of fast, simple, low-cost justice has not been reflected in the procedural process using civil procedural law, and on average the resolution of sharia economic disputes takes 5-6 months at the first level in the Religious Courts. If you add time for legal appeals and cassation, the time could be longer. So the principle of speed is not fulfilled in the examination stage of sharia economic disputes using civil procedural law or better known as the ordinary handling process, because it takes a long time. Thus it can be said that the solution is procedurally inefficient and the implications are expensive. Meanwhile, Islamic rules require that the process of handling cases be fast, simple and cheap.

Restructuring is a method of resolving problematic financing by extending or increasing the maturity period of the financing without changing the customer's remaining obligations that still have to be paid to sharia commercial banks. This restructuring is carried out by increasing the maturity period to provide relief to the borrower, then redistributing the remaining obligations to find out how many installments must be paid with the new maturity period. Next, namely rescheduling where this settlement is carried out by changing the financing terms related to the monthly payment schedule or payment period.

Reconditioning(adjusting conditions) for problematic financing by changing part or all of the problematic financing conditions which are not limited to changes in the payment due schedule, financing time period, or other requirements as long as they are not related to changes in the maximum financing balance. (Juliana Idris, 2020).

The practice of resolving bad financing in sharia banking can use one of these three methods or other methods which result in the debtor's obligations being discharged. However, if the efforts made by the bank do not produce results, executing the collateral is the last alternative so that the debtor can pay off his obligations. The resolution focuses on how the debtor can pay back the debt and if he cannot then execution will be carried out.

The Compilation of Sharia Economic Law states that Article 129 states that the settlement of a murabahah contract is carried out by selling collateral objects by a financial institution at an adjusted market price or sold by the customer and then the proceeds of the sale are used to pay off the debt. The price of the collateral object is determined based on the type of object being sold. Types of objects can include movable objects and immovable objects. The sales proceeds are used to repay and the remainder of the settlement will be returned to the debtor.

Absolute rights are attached to collateral as the principle of *droit de suite* of objects as repayment of a debt or financing. This guarantee can be cashed in at any time to pay off the customer's debt if the customer defaults. The collateral can be the debtor's own property or someone else's which is used as collateral for the debtor's debt. The guarantee agreement is for the benefit of the creditor so that it gives special rights to the creditor.

Settlement of collateral objects in financing can be carried out based on what was agreed in the financing. In making an agreement, the parties are free to enter into an agreement in any form and content as long as it does not conflict with the law. This is the principle of freedom of contract. The agreement usually stipulates sanctions if one of the parties defaults, including the execution mechanism if the customer is unable to pay off the financing. A persuasive approach is always used by creditors when debtors are in default. Auction of collateral is the last alternative if the debtor is unable to carry out his obligations. If the debtor is able to complete his obligations, the creditor will not hold an auction.

Normatively, there are three alternative models for resolving bad financing in sharia banking, namely private sales, auction sales by creditors and through the courts. Underhand sales aim to obtain the highest price from the guarantee. Therefore, this sale must have an agreement between the debtor and creditor. Sales are carried out by parties who make an agreement with a third party who will make the purchase. It is hoped that the sales proceeds at the highest price can be used to pay off debtors' debts. The remainder of the repayment will be returned to the debtor. This is a win-win solution because when the debtor is stuck in payment, the parties (debtor and creditor) look for a middle way to resolve the financing so that it does not burden the debtor and also does not harm the creditor. (Muchdarsyah Sinungan, 1999).

Sale through public auction is under the creditor's authority over the collateral. The executory principle in guarantee law is the gross implementation of a deed containing *irah-irah*. These *Irahs* are equated with judicial decisions so that the auction does not require permission from the district court. (Patrik, 2008).

Collateral holders can come directly to KPKNL to auction collateral objects that are collateral for financing without having to ask for approval from the debtor. In fact, the debtor has given authority to conduct an auction at the time of the financing agreement. After the auction is held, the creditor can take payment for the financing that was given to the debtor. The remainder of the auction of collateral objects remains the debtor's right. The type of auction is determined based on the objects to be auctioned by the auctioneer, which in this case can be carried out by the State Property and Auction Services Office (KPKNL). (Salim HS, 2014). An auction is a sale carried out publicly with written (online) bids increasing or decreasing to obtain the highest price

Auctions do not always run as expected. One of the causes of obstacles to this auction is because the objects that are used as collateral are being disputed in court. When objects cannot be auctioned, the auction can be resolved in court, although not all court decisions require execution. Execution is the implementation of a court decision which is *condemnatoir* (punishment) which has permanent legal force.

This court is the last alternative if sales or auction efforts have failed. The judicial process is very long, which is why this effort is avoided wherever possible by the parties. Execution through the court can occur because there is resistance (*verzet* execution) against the collateral object to be executed, resulting in the execution being delayed. The execution is pending pending a judicial decision with permanent legal force.

Next is the execution of the guarantee which is carried out if the customer is truly unable to complete his obligations under the financing contract and has agreed in writing to hold an auction for what he has guaranteed. This is the final solution which is relevant to the guarantee function that is part of the financing contract.

Third, write-offs, known as write-offs, are carried out by sharia commercial banks for customers with very little potential for settling their obligations or for customers who have been truly confirmed as unable to complete their obligations using various settlement models. This type of settlement can only be done for customers who have gone bankrupt, customers who are stuck in a legal case and have to spend time in prison, or customers who have died.

Non-litigation (Alternative Dispute Resolution)

Alternative Dispute Resolution is regulated in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In Article number 10 of the Law, it is determined that Alternative Dispute Resolution is the resolution of disputes or differences of opinion through procedures desired by the parties, which can be carried out by means of consultation, negotiation, mediation, conciliation, expert assessment and arbitration.²⁸

A 'personal' action between a certain party (client) and another party who is a consultant, where the consultant gives his opinion to the client in accordance with the client's needs and requirements. An effort to resolve disputes between parties without going through court proceedings with the aim of reaching mutual agreement on the basis of more harmonious and creative cooperation. The way to resolve disputes is through a negotiation process to obtain agreement between the parties with the assistance of a mediator.

CONCLUSION

From the explanation above, it can be concluded that guarantees are permissible and not a basic thing that must be present in murabahah financing. However, the existence of a guarantee in murabahah financing serves to provide certainty to the bay' party that the musytari party in murabahah financing will be serious about their orders in accordance with what has been agreed in advance. This also becomes a vital reason for the dispute resolution mechanism if in the future there is a dispute over the existence of collateral objects. So for this matter, the strategy for resolving murabahah collateral objects can be carried out in two ways, namely through litigation and non-litigation processes. These two routes certainly have their own characteristics according to the nature of the solution.

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