



## Constraints to the execution of the object of fiduciary guarantee in murabahah contracts at the Aceh Sharia Bank

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### Abstract

This study aims to determine and analyze about obstacles to the execution of the object of the fiduciary guarantee in the murabahah contract. This research is obtained by conducting or reviewing and reviewing the literature and laws and regulations, especially those relating to the subject matter or discussion. Besides, it also conducts direct observation (field research) in depth on the subject matter studied. The data analysis used is descriptive analysis. The results showed that ham the main obstacle that is often experienced by PT. Bank Aceh Syariah yang relating to the sale of the object of collateral is the difficulty of finding a buyer of the object of the guarantee in the murabahah contract and the other is in the form of resistance by the debtor to the execution effort that will be carried out by PT. Aceh Sharia Bank. Not infrequently when knowing that the bank will make an attempt to execute the guarantee that is guaranteed in the murabahah contract, the debtor will file a lawsuit, resulting in the failure of execution by PT. Bank Aceh Syariah. and it is recommended to PT. Bank Aceh Syariah jIt is also advisable to consider and choose which execution will cause the least amount of disputes in the execution process in accordance with the provisions of the law and the Qanun of Islamic Financial Institutions.

**Keywords:** akad murabahah, fiduciary guarantee, Bank Aceh Syariah

### Introduction

Credit as a term is no longer foreign to the public, credit is not only known by people with higher education but also by those who are low educated. Based on history, it can be seen that the use of the term credit is taken from the Greek word "credere" which is defined as trust, so it is not wrong if in practice the granting of debts as creditors' achievements and counter performance of debtors in the future requires trust. Trust in the debtor's ability to be able to provide counter-achievements (in accounts payable it is understood) as an achievement in the form of returning money owed).

This modern credit has several objectives, namely, firstly, to provide benefits to creditors obtained through interest in conventional credit agreements or in the form of margins in financing agreements, on the other hand, profits are also obtained by customers, especially if the credit is intended to support the sustainability of the debtor's business (credit is made for the purpose of investing in the expansion and development of the debtor's business), or at least in general with credit the debtor can easily obtain the objects he needs, secondly aims to encourage national development in various sectors, with credit increasing the amount of tax revenue, opening or expanding job vacancies, increasing the number of goods and services needed by the community, increasing the amount of foreign exchange and others.

Due to the large role of credit in society and national development, if credit gets the attention of the Government, and the State of Indonesia as a state of law, it is obligatory to establish laws that accommodate these interests, laws that work preventively to prevent things that are detrimental and at the same time restitutive. work to balance the harmony of society that is disturbed or even repressive laws can have a deterrent effect on people who violate the law.

Especiallygluelike a bank or a financial institution requires a guarantee for the provision of credit for the safety of funds and legal certainty.

In the study of civil law, material rights are known to provide guarantees and specifically become the object of the study of the law of guarantees, in contract law relating to guarantees it is understood as an accessoir agreement, an additional agreement that is agreed to back up the certainty of the counter-achievement that was agreed upon in the contract. the main agreement, and because of its dwingen recht nature, the guarantee law that regulates the main points of the accessoir agreement must be able to provide certainty for the realization of the counter-achievement.t.

Jaminan has a very important function in economic activities in general because in providing capital loans from financial institutions (both banks and non-banks) requires the existence of a guarantee, which must be fulfilled by the seeker of capital if he wants to get a loan / additional capital (in the form of credit). both long term and short termk.

Glue Sharia Finance Baga is a financial institution that issues sharia financial products and obtains an operational license as a sharia financial institution. Islamic financial institutions consist of bank and non-bank Islamic financial institutions. Islamic bank financial institutions are bank institutions which are financial intermediary institutions generally established with the authority to accept deposits, lend money, and issue promissory notes, known as banknotes.

Jaminan or also known as collateral is property belonging to the debtor customer that must be submitted to the Bank as a creditor as a guide for the bank to ensure that the debtor customer performs all his obligations and will be confiscated by the Bank if the customer defaults or acts in

non-performing financing (bad credit). With the guarantee or collateral, the debtor customer will have a stronger commitment to carry out all his obligations to the creditor, namely the Islamic Bank.

DeWith material guarantees, Islamic Banks can ensure that their interests and the interests of creditor customers can be well protected. In practice, the management of Islamic banks should be able to confiscate the collateral to cover all bills that should be paid off by the debtor. Although Islamic financial institutions are allowed to ask for guarantees in financing with murabahah contracts, there are still parties who dispute it. Based on the description above, the problems that become the object of study in this research are: adidyang mbecome kendala tagainst pellksanaaneexecutionobjek jaminan fidusia dala mayoud murabahahpthere is bank aceh syariah ?

### Research Methods

This research is intended to systematically describe or describe the object of research. While the type is to use two research methods, namely combining normative (doctrinal) and empirical research using a normative juridical approach that seeks to identify and then explain obstacles to the execution of the object of the fiduciary guarantee in the murabahah contract at a bank owned by the Aceh Government.

The source of data in this research is primary data which is carried out using direct observations in the field related to the material discussed and holding open interviews with related parties. Secondary data is done by using or studying the literature related to the material discussed and related to the substance of the problem. Data analysis,

The data obtained or collected in this study are mainly secondary data which is quantitative data, the data analysis technique used is quantitative analysis, where the data processing process is after the data has been collected and is considered sufficient, then the data is processed and analyzed deductively, namely based on to the basics of general knowledge and then examine issues that are specific in nature from this analysis then a conclusion is drawn.

### Results and Discussion

Indonesia is one of the developing countries, which continues to strive for development in this era of globalization where business transactions are growing so rapidly. With so many business developments, facilitators have emerged who offer credit to a company or individual. Meanwhile, if you hear the word credit, it is not far from debts, where debts or other transactions cannot be based on the principle of trust alone. Therefore, it must be accompanied by guarantees that convince interested parties, both debtors and creditors, namely in the form of fiduciary guarantees. The definition of fiduciary according to article 1 number (1) of Law Number 42 of 1999 reads "fiduciary is the transfer of ownership rights to an object on the basis of trust with the stipulation that the object whose ownership rights are transferred remains in the control of the owner of the object". While the meaning of fiduciary guarantee according to article 1 number (2) is "fiduciary guarantee is the right to movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with Mortgage Rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights (Law No. 4 of 1996 concerning Mortgage Rights) which remain in the

control of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives priority to the Fiduciary Recipient over other creditors.a".

Pelathe execution of fiduciary guarantees is regulated in Article 29 ULaw Number 42 Year 1999 concerning Fiduciary Guarantees which states that the execution of fiduciary guarantees can be carried out by means of execution of executorial titles, sales through public auctions, or underhand sales with the approval of both parties, but in practice sometimes when going to execute fiduciary guarantees on one of the debtors, the guarantee turns out to have been transferred and controlled by a third party without the approval of the bank.

Generally stated in the form of a notarial deed with the aim of providing legal certainty. In practice, the use of fiduciary guarantee institutions is very often used by companies, banks or also individual interests, with the aim of securing assets in a credit agreement. Thus, the binding of an object with a fiduciary guarantee must first have a credit agreement as the main agreement. In this debt-receivable activity, it is also not uncommon if there is no default event where there must be an execution of the goods that are the object of the fiduciary guarantee. Fiduciary guarantees are assessors, which means that the guarantee agreement will always follow the main agreement, when the main agreement is canceled/cancelled, the guarantee agreement will automatically be void/cancelled as well. J. Satrio argued that the assessor agreement was an agreement that was born with a transfer dan expiration/deletion depends on the principal agreement. Fiduciary guarantee is one of the guarantee agreements used at Bank Aceh Syariah Salatiga in order to overcome problem financing carried out by customers. In overcoming the problem financing, Islamic banks can do 2 (two) ways. The first way is for banks to restructure financing and the second way is to execute guarantees. The execution of this guarantee is carried out by Bank Aceh Syariah for customers who have no business prospects and/or ability to pay so that financing restructuring cannot be carried out. Therefore, the bank will execute the guarantee. The sharia economic disputes referred to in the law include disputes related to sharia banks and sharia transactions, so that the execution of fiduciary guarantees in problematic sharia bank financing contracts can be carried out through the Sharia Court. It should be noted that the implementation of sharia fiduciary guarantees is the same as the execution of conventional guarantees which can be carried out in 3 (three) ways, namely direct execution, court execution, and voluntary sales. The execution of fiduciary guarantees can be carried out through the Religious Courts / Sharia Courts. This is because since the issuance of Law Number 3 Taliun 2006 concerning Amendments to Law Number 7 of 1989 the Religious Courts. Based on there are still many findings in the fieldhaThere are obstacles experienced by Islamic Banks, especially Bank Aceh which is the object of this journal's study. In Aceh in the execution of the fiduciary guarantee, there are obstacles in the form of obstacles faced at the beginning of the fiduciary execution, as well as other obstacles faced by Bank Aceh Syariah after the implementation of the fiduciary execution.

#### 1. Bein connection with the sale of the object of guarantee

Hamthe main obstacle that is often experienced by PT.Bank Aceh Syariah yang relating to the sale of the object of

collateral is the difficulty of finding a buyer of the object of the guarantee in the murabahah contract. Not all people understand and know the mechanism for implementing the execution of Fiduciary guarantees, not to mention public concerns about the possibility of disputed ownership of the purchased object, for example there is a lawsuit from the debtor or the old owner who cannot accept the execution of the object that belongs to him. worry masyarakat also arises when the object is physically still in the control of the debtor or other third party.

Efforts made to overcome this obstacle, namely the PT. Bank Aceh Syariah more optimizing the advertising of the sale of collateral objects that can be done through newspapers, leaflets, or other advertising media to be known by the general public. Other efforts that can be made by PT. Bank Aceh Syariah namely by collaborating with private auction centers that have a network of potential auction buyers and good marketing skills so that the collateral that is the object of the auction can be sold quickly.

## 2. There are claims from debtors or third parties

With regards to guarantee execution practice Fiduciary, it should be noted that in general, companies or financing institutions in carrying out the sale of these movable goods to consumers use an agreement that includes a fiduciary guarantee for the object of fiduciary collateral in the form of proof of motorized vehicle owner (BPKB), but in practice there are many of the agreement made by the company is not made in the Notarial Deed (Notarial Deed) and not registered at the Fiduciary Registration Office to obtain a certificate of deed containing the transfer "For Justice Based on the One Godhead." even though in writing the financial institution in entering into a financing agreement includes the words fiduciary guarantee.

Another obstacle experienced by PT. Bank Aceh Syariah is the resistance made by the debtor for the execution effort that will be carried out by PT. Aceh Sharia Bank. Not infrequently when knowing that the bank will make an attempt to execute the guarantee that is guaranteed in the murabahah contract, the debtor with bad intentions makes a fight by filing a lawsuit to the District Court. This lawsuit is expected by the debtor in order to stop the execution process carried out by PT. Bank Aceh Syariah, or at least delay the execution of the execution. The material of the lawsuit filed by the debtor or third party is usually regarding the amount of debt that is considered unclear or uncertain, there is an error in the binding of the guarantee or murabahah contract, the object of the guarantee is owned by a third party,

In this regard, third parties who have objections should be able to file a third party resistance lawsuit (derden verzet) officially through a letter of resistance registered with the relevant District Court by attaching proof of ownership, for example a certificate of ownership of rights to the object of collateral auctioned at the fight. If this resistance lawsuit arises only a trick from the auctioned party, then in that case the auction will continue to be carried out.

In the event that the execution is carried out through the submission of an execution auction to the Banda Aceh KPKNL, upon a lawsuit from the debtor or a third party, usually the Banda Aceh KPKNL, will postpone or even reject the application for an execution auction submitted by PT. Bank Aceh Syariah if there is a lawsuit from the debtor or a third party that has not been resolved in connection with the guarantee that will be the object of the execution

auction. This conservative attitude of the KPKNL is based on their experience in the field, where often the KPKNL Auction Officer who carries out the auction for the execution of Mortgage requested by the bank is used as one of the Defendants in a lawsuit made by the debtor,

In public auctions, the advantage is that the price is competitive and transparent because the auction is carried out by government officials, namely Class I Auction Officers. An obstacle to the implementation of the Mortgage Execution is that if the object of the Mortgage is still occupied by relatives or third parties (tenants), it takes time. it takes a long time and costs a lot to vacate the object of the mortgage right and there is a tendency for the object of the mortgage that is still inhabited not to be sold in a public auction.

Based on the facts mentioned above, then the principles applied by Islamic banking are not in accordance with the principles of the fiduciary law itself, even though this law implies that the execution is carried out by selling under the hands then it may be carried out after 1 (one) month has passed since notified in writing to interested parties and announced in at least 2 (two) newspapers circulating in the area concerned.

This procedure is often violated by financial institutions in carrying out the execution of the object of the guarantee. Usually, finance will use the services of a debt collector who directly goes to the debtor and takes the collateral object vehicle and then by finance will sell it to a trader who has become a relationship. The sale proceeds are not notified to the debtor whether there is a balance or there is still a shortage compared to the debtor's debt.

## Conclusion

Based on the constraints that have been stated above, so that the execution of the object of guarantee in the murabahah contract does not occur obstacles, then before the execution is carried out, PT. Bank Aceh Syariah should approach the object of the guarantee that will be executed as one of the inputs to determine the alternative execution of the Fiduciary Guarantee that will be used by PT. Bank Aceh Syariah.

PT. Bank Aceh Syariah sebaiknya pay attention to the use of the prudential principle (prudential principle), such as the steps of PT. Bank Aceh Syariah in analyzing the guarantee application from the prospective customer and analyzing it carefully by considering the factors of character, ability, capital, collateral, and business prospects of the customer, so that non-performing finance due to financing problems does not occur, besides that PT. Bank Aceh Syariah it is also advisable to consider and choose which execution will cause the least amount of disputes in the execution process in accordance with the provisions of the law and the Qanun of Islamic Financial Institutions.

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