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## Legal study non performing financing murabahah financing agreement on BPRS Tgk Chiek Dipante Sigli

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### Abstract

Attachment to Financial Services Authority Regulation Number 42/POJK.03/2007 concerning Obligations to Prepare and Implement Bank Credit or Financing Policies for Commercial Banks concerning Financing Agreements, that the banking financing agreement must be stated in the form of a written contract/agreement. This study aims to explain the implementation murabahah financing agreement against Non Performing Financing (NPF) at BPRS Tgk Chiek Dipante and preventive measures and NPF disputes. The method used in this research is empirical juridical, that is by combining legal materials as secondary data with primary data obtained directly from field activities. The results showed that the implementation of murabahah financing agreement on BPRS Tgk Chiek Dipante has been implemented based on sharia principles. That before realizing the financing application, first explained the stages in full and transparent. However, there are still some problems that arise from both internal and external factors of the bank. The prevention and settlement of npf is carried out through the application of preventive efforts consisting of 2 stages of settlement, namely a light approach and a heavy approach (through the court). Therefore, the bank must continue to optimize its performance to produce healthy financing in accordance with non-performing financing standards set by Bank Indonesia.

**Keywords:** law financing, financing contract

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### Introduction

Banking has an important role in a country's economy. Law Number 7 of 1992 on Banking as amended by Law Number 10 of 1998 on Banking (hereinafter abbreviated as UUP), states that "Banks are business entities that collect funds in the form of deposits and distribute them to the public in the form of credit and or other forms, in order to improve the standard of living of many people" (Muhammad Abduh & Mohd Azmi Omar, 2012) <sup>[10]</sup>.

The role of the community in using financing facilities is as a customer, who is entitled to receive financing facilities from the bank. In this case the position of the bank and its customers is equal in a debt receivable agreement. However, in terms of economic and social, the position of the bank is higher than the customer because the bank has facilities utilized by its customers (Gatot Supramono, 2009) <sup>[5]</sup>

The bank's capacity to expand financing depends on its capacity to collect assets outside of the general public. This condition encourages rampant competition between banking institutions in collecting investment funds and in diverting financing to productive business fields (Muhammad Iryanto, 2018) <sup>[11]</sup>.

Based on the Annex of The Financial Services Authority Regulation No.42/POJK.03/2007 on Obligations for the Preparation and Implementation of Bank Credit or Financing Policy for Commercial Banks on Financing Agreements, in banking financing agreements must be outlined in the form of written agreements. Financing agreement is an agreement between the bank and other parties as borrowers, the borrower provides guarantees or collateral to the bank and in addition the bank must pay attention to the character, ability, capital, collateral and business prospects of the debtor customer and debtor customer must return some money that has been received from the bank and the interest that has been set together (Tinawati & Erwin Arif, 2007) <sup>[19]</sup>.

Before using the financing facilities provided by the bank, the customer must comply with the provisions that have been made and agreed between the customer and the bank contained in an agreement. *Akad* is an agreement or agreement contracted between an Islamic bank and the customer. To provide financing facilities to consumers or customers, banks as creditors have various assessments of debtors including debtor trust issues. Before using the financing facilities provided by the bank, the customer must comply with the provisions that have been made and agree between the customer and the bank contained in an agreement. *Akad* is an agreement or agreement contracted between an Islamic bank and the customer. To provide financing facilities to consumers or customers, banks as creditors have various assessments of debtors including debtor trust issues (Gatot Supramono, 2009) <sup>[5]</sup>. Based on KHES rules each contract must be implemented by the parties in accordance with the agreement set by the concerned and at the same time avoid the injury of the promise. With the development of Islamic financial

institutions in Indonesia, it is likely that there will be disputes between Islamic financial institutions and their customers will be even greater, one of which is the increasing percentage of NPF in banks.

In distributing financing, Islamic banks will face financing risks, so it is important to analyze the financing risk. NPF is the most important issue for banks to survive. According to Bank Indonesia Regulation (PBI) Number 13/3/PBI/2011 on The Application of Status and Follow-up of Bank Supervision, that for npf ratio in commercial banks has been determined by 5% (five percent). NPF is a foundation that becomes a gauge of the health level of a bank and is closely related to the application of financing channeled by the bank to its customers (Novia Nurul Firdaus, 2017) <sup>[12]</sup>.

Operationally, although there are different schemes in the submission financing between Islamic banks and conventional banks, but the problem in the distribution of financing funds to the public remains the same, namely the existence of non-performing financing, until it is finally declared non-performing financing (Siti Salmiah, 2021).

In its implementation in making financing applications, previously between BPRS Tgk Chiek Dipante Sigli (hereinafter abbreviated as BPRS TCD), and the customer as a borrower must make an agreement approved by both parties, and the agreement is contained in a financing agreement. Thus both are automatically bound by agreements and laws that have been made and mutually agreed upon. However, in practicing, there are some problems committed by the customer because they do not carry out their obligations to the bank in accordance with the agreement that has been agreed before, some are due to coercive circumstances, intentionally or unintentionally. (Subekti, 2010) <sup>[17]</sup>

BPRS TCD continues to get an increase in the number of customers every year, but if the focus on problematic of financing based on data accumulation every year, that number of problem financing customers also increase. The most dominant problematic financing occurs in financing of consumptive, namely financing used to buy consumer goods such as, motorcycle purchases, computer purchases, laptops, washing machine purchases, refrigerators, televisions, and all kinds of consumer goods that are not prohibited by Shariah.

Customers become entered as customers of the jam financing occurs due to many factors, some are sick so that payments are used for working capital such as buying merchandise, there for the needs of school children and others. Completion of NPF is a must to maintain the quality of financing at the bank (Veithzal Rivai and Arviyan Arifin, 2010) <sup>[21]</sup>.

Based on data obtained from BPRS TCD, that in 2020 current financing amounted to 334 customers from all 403 customers. Then, for the amount of problematic financing as many as 69 customers consisting of financing qualifications in special attention, doubtful, less smooth, and stuck.

One of the NPF financing cases that occurred at BPRS TCD was a customer on behalf of Mister Jamal who was an entrepreneur by profession (Sayid, interviewed on 24 January 2022). The customer is one of the customers of consumptive financing products. Basically consumptive financing is only seen from the customer's ability to pay for the financing. In this case the bank looks at the income or salary of prospective customers. That Mister Jamal applied for financing for home renovations.

Based on the application, the bank then explained the procedures and conditions in the submission of consumptive financing. Then the bank conducts an analysis stage on prospective customers starting with a visit to prospective customers for data collection about prospective customers as a feasibility assessment material to be able to receive financing from the bank.

In its analysis, the financing staff applied the principles of 5C's feasibility (Character, Capacity, Capital, Collateral, Condition of Economy) to ensure the smooth monitoring and security process of financing carried out. The last stage is the realization of financing. However, after being realized several months into the process of fulfilling the customer's obligations to the bank into default, the circumstances in which the customer has the intention to pay, but the economic situation of the customer does not allow to perform its obligations to the bank, the customer uses the money for other needs that may be more important (or urgent needs). That is a form of the importance of analyzing the ability to pay customers seen from the salaries earned by members every month, to avoid customers doing default.

Financing agreements have an important role in the implementation of financing applications between banks and customers. Factors that cause breach of contract, namely from the banking and customer. Factors on the part of the bank, namely in the stage of analysis, the analysis side lacks rigor so that what should happen is not predicted in advance. The factors that arise from the customer are caused by two things, namely the existence of intentional elements and accidental elements (M. Nasir Yusuf, 2008).

These factors become the sole responsibility of banking in the submission of financing, that banks, especially financing parties, have an important role in the smooth application of this financing. Before the financing application was disbursed that there had been a process of agreement between the two parties concerned with the financing agreement.

### **Research Method**

The research method used in this research is law empirical juridical. Empirical juridical research is law field research, namely examining the applicable legal provisions and what is happening in reality in society. In analyzing the problem, it is done by combining legal materials with data obtained directly from field activities in this study, namely at BPRS TCD. (Suharsimi Arikontu, 2012). The approach method used in this research is a

sociological juridical approach, namely conceptualizing law as a real and functional social institution in a real life system. (Soerjono Soekanto, 1968).

### Result and Discussion

Bank Indonesia as the banking supervisor in Indonesia has provided a provision of the bank's health level assessment measure, that based on Bank Indonesia's provisions regarding NPF is that banks must have npf less than 5%. The NPF standard that must be achieved by the bank is 5%. The high percentage of NPF indicates that the bank is not professional in managing its financing in this case that the most dominant financing arises, namely *murabahah* financing, that the level of risk on financing to banks is quite high in line with the high NPF faced by banks.

*Murabahah* financing facility is the provision of funds or bills that can be equated with it for the transaction of buying and selling an item of the principal price coupled with the profit margin agreed by the bank with the customer that requires the customer to pay off the debt or pay the bill in accordance with the agreement (Tri Setiady, 2014). *Murabahah* provides many benefits to Islamic banks, one of which is the existence of profits that arise from the difference in the purchase price of the seller with the selling price to the customer. In addition, the *murabahah* system is also very simple (Duduh Sujana, 2018) <sup>[3]</sup>.

Article 33 Paragraph (4) of the 1945 Constitution States that: "The national economy is organized based on economic democracy with the principle of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining the balance of progress and national economic unity". The principle of bank prudence should be interpreted as the bank's compliance with all laws and regulations applicable to banks, whether regulating institutions, processes and products, including Standard Operating Procedures and Bank Financing Policies made by banks (Lastuti Abubakar, 2018) <sup>[7]</sup>.

Based on Article 19 Paragraph (1) of uups, determined as one of the business activities of Sharia Commercial Bank, namely "Channeling financing based on *murabahah*, wadi'ah, mudharabah, musyarakah, salam, istishna, ijarah and qardh". Regarding the *murabahah* agreement, explained by the provisions of Article 19 which is referred to as "*Akad murabahah* is the financing agreement of an item by affirming its purchase price to the buyer and the buyer pays it at a price that is more as an agreed profit.

The distribution of funds in the form of *murabahah* financing agreements requires a provision in the form of procedures and requirements between Islamic banks and their customers. The precautionary principle is an important foundation for the banking world in terms of financing distribution. NPF often occurs due to lack of accuracy and accuracy in the process of applying for financing. The higher the percentage of problematic financing in a bank, the lower the profitability of the bank. This will affect the operation of the bank. One of the bank's main sources of income is sourced from financing channeled to customers (Lyla Rahma Adyani, 2011).

In every financing provision, consideration and precautionary principles are needed so that the trust that is the main element in the financing provided can hit the target and guarantee the return of the financing in time in accordance with the agreement (Rahmat Firdaus & Maya Ariani, 2011) <sup>[15]</sup>. If one of the parties does not fulfill the performance in the contract it will cause a break of promise or default, if it can be proven not because of overmacht or forced circumstances. breach of contract often causes conflict even though the agreement has been outlined in detail in the agreement, but in practice still the fulfillment of obligations are not in accordance with the time period stated in the agreement or agreement so as to make the customer not carry out the achievements.

The financing application is made when the bank already feels confident that the financing provided will actually return to avoid the customer breach of contract in the future. The confidence is obtained from the results of the financing assessment before the financing is channeled. Financing assessments by banks can be done in various ways to gain confidence about their customers. 9 Kasmir, 2016). The collectibility of problematic financing in BPRS TCD is as follows (Dani, interviewed on 24 January 2022):

In Special Mention, namely there are arrears in payment of principal installments that have exceeded 32 days, but have not exceeded 90 days.

Substandard, namely there are arrears in payment of principal installments that have exceeded 90 days, but have not exceeded 180 days. Doubtful, namely there are arrears in payment of principal installments that have exceeded 180 days, but have not exceeded 270 days.

Loss, namely financing that has passed the time limit of 270 days or arrears in payment of principal installments that have exceeded the time limit. Based on npf rating assessment data at BPRS TCD during 2020 to 2021, that during 2020 the percentage of NPF is in a very insecure position with the rating information based on the provisions of Bank of Indonesia is ranked 5th with very bad information, that in 2020 the bank's internal parties especially continue to optimize the stages in bprs product financing submission, One of them is by increasing supervision that is carried out systematically and gradually at least once a month, to avoid the occurrence of things unexpected and avoid default in the future so as to affect the collectibility of NPF in banks.

That the efforts made by the internal bank then showed very good results in the following year, namely in 2021, that BPRS managed to achieve a very good rating I, starting from April to August. Although the bank has not been able to maintain its level, but the results and changes provided have given good performance to the bank.

### Precautions taken by BPRS TCD

Prevention of problematic financing is one of the efforts to minimize NPF in banks. Rescue of problematic financing is a technical term commonly used among banks against the efforts and steps taken by banks in an

effort to overcome financing problems faced by customers who still have good business prospects, but have difficulty paying principal and / or other obligations. That for the customer to be able to fulfill its obligations, the first step to avoid problematic financing is preventive / prevention, namely by doing the customer analysis stage to obtain confidence that the financing provided can be returned by the customer.

The principle of assessment used by BPRS TCD in financing submissions is the 5C's principle, namely (Dani, interviewed on 24 January 2022):

Character, is a characteristic or nature of a prospective customer, the application of this principle is done by analyzing the character to find out how or the characteristics of the prospective customer. By looking at the character of the prospective customer, this can be used as a benchmark for the prospective customer's willingness to pay.

Capital, the application of the principle, namely the process of capital analysis carried out to see whether the use of capital is effective or not, to assess its effectiveness, namely monitoring from the financial statements, namely the balance sheet and income statement presented.

Capacity, is the ability of customers to pay according to their obligations.

Collateral, is a guarantee given to prospective customers in the form of assets that can be linked as collateral to ensure certainty of debt repayment if in the future the debtor does not pay off his debt.

Condition of Economy, the application of this principle is based on current economic, social and political conditions and predictions for the future.

Based on NPF data from 2019 to 2022, the NPF at BPRS TCD for 4 consecutive years is still at a high NPF number. In accordance with the NPF rating criteria, the bank is ranked 5th, namely 12% NPF. That the NPF percentage figuring is in a vulnerable position and is able to have a negative impact on the growth of the bank's profitability. The realization of a financing is carried out by following the policy in fulfilling the financing. Whereas TCD BPRS has carried out all stages but has not been able to fully provide guarantees to avoid the emergence of NPFs in the future. For this reason, TCD BPRS then also prepares stages to anticipate the occurrence of non-performing financing.

### **Non Performing Financing Dispute Resolution Efforts**

The Bank Indonesia regulations emphasize that every time there is non-performing financing or NPF, Islamic banks will try to save the financing based on PBI Number 13/9/PBI/2011 concerning Amendments to PBI Number 10/18/PBI/2008 concerning Financing Restructuring for Sharia Banks and Sharia Business Units.

A dispute is essentially a form of actualization of a distinction and/or between two or more parties. Disputes arise as a result of deeds that violate agreements, lack of achievement, violations, differences in interpretation of the rule of law, unfair competition, counterfeiting, fraud and so on. But with the dispute, the parties are given the freedom to determine the mechanism of choice for disputes that occur, both through the court and outside the court (Thalis Noor Cahyadi, 2011) <sup>[18]</sup>.

### **The efforts to resolve disputes over NPF or non-performing financing carried out by BPRS TCD, namely (Rusyda, interviewed on 24 January 2022)**

Rescheduling, this stage is carried out by extending the initial financing period.

Reconditioning, this stage is carried out by making changes to the requirements in the agreement that has been agreed between the bank and the customer.

Restructuring, this stage is carried out by rearranging, namely the changes related to financing requirements, not limited to rescheduling or reconditioning.

Foreclosure of collateral, this stage is the last option taken if the customer is really no longer able to pay all his debts and does not have good faith.

Settlement of non-performing financing can be distinguished based on the condition of the relationship between the bank and the debtor in good faith or not. If in the settlement of the financing the customer is cooperative and there is good faith, then the settlement is carried out by establishing cooperation between the customer and the bank or referred to as amicable settlement or kinship. On the other hand, if in the settlement of the financing, the customer is not cooperative and there is no good faith anymore, then the settlement of the financing is carried out with the stage of coercion or forced settlement (Dani, interviewed on 24 January 2022).

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Data on NPF figures from 2017 to 2020 at BPRS TCD settlements with this light approach have a strong influence on healing customers classified as non-performing loans. Whereas based on the accumulation of data for the past 5 years, the bank in the NPF settlement stage for all of its customers really prioritizes settlement with a light approach, this is also one of the efforts to fulfill the main principle of BPRS TCD that prioritizes settlement without causing new problems and prioritizing settlement in an efficient manner. Kinship to avoid the emergence of continuous disputes as well as facilitate and provide relief to customers with this approach (Sayid, interviewed on 24 January 2022).

Basically TCD BPRS has two stages of NPF dispute resolution approach, namely heavy approach and light approach. A mild approach, which is an approach with the implementation stages of the 3R principle and foreclosure. While the heavy approach, which is the stage of settlement through the court. The heavy approach is applied when the light approach is unable to address the problem of problematic financing.

### Conclusion

Based on the results of the study that the implementation of the *murabahah* financing contract at the TCD Sigli BPRS has been carried out properly, namely based on sharia principles. Whereas BPRS TCD Sigli, prior to realizing a financing application, must first explain completely and systematically about its financing products, that the explanation given to prospective customers is transparent and complete. In the application for financing, the bank is obliged to pay attention to and may not even expand financing if the bank is not sure of the ability of the prospective debtor to be financed. So this is an effort to minimize the occurrence of NPF in banks. The monitoring stages carried out by banks on financing are an effort to avoid future defaults at BPRS TCD Sigli, namely by applying the 5C'S principle (Character, Capital, Capacity, Collateral, and Condition of Economy).

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