

Implementation of Sharia Financing Agreements with Fiduciary Submission of Property Rights to KSPPS BMT Al Hikmah Semesta

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Abstract. *The research objective is to determine the role of the implementation of the Islamic financing agreement with the transfer of property rights in a fiduciary manner and how to solve the problem if there is default by the debtor, as well as the constraints and solutions in implementing the sharia financing agreement by means of musyarokah. The approach method uses empirical juridical. The data collection technique uses library research and field research. Data were analyzed descriptively qualitatively. The results of the study stated that the implementation of the sharia financing agreement with the transfer of property rights in fiduciary manner to the KSPPS BMT AL HIKMAH SEMESTA Jepara Regency consists of several stages, namely the application stage, checking and field inspection, making customer profiles, committee meetings, committee meeting decisions, binding, ordering goods consumers, payments to suppliers, collection of payments, and taking guarantee letters. The resolution of the problem if there is default by the debtor, namely given 3 warning letters if during 12 months of non-payment, and finally the guarantee will be auctioned if it is not immediately paid. Constraints and solutions in implementing the sharia financing agreement through musyarokah are document falsification by the customer, fictitious business, misuse of financing, the customer does not make payments or defaults on his obligations to the BMT according to the agreed time, BMT if there is default, namely stages that takes too long from reporting to the police to the District Court.*

Keywords: Financing; Sharia; Right of ownership; Fiduciary.

1. Introduction

Financial institutions in Indonesia can be divided into two, namely Bank Financial Institutions and Non-Bank Financial Institutions. Banks are a form of financial institution that aims to provide credit, loans and other financial services, so it can be argued that the function of banks in general is to serve financing needs and to

streamline payment system mechanisms for many economic sectors.¹Financing institutions are also regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 30/PMK.010/2010 concerning Application of Know Your Customer Principles for Non-Bank Financial Institutions and Presidential Regulation Number 9 of 2009 concerning Financing Institutions. In accordance with its nature, financing institutions are used as a marketing channel for high-value consumer goods, one of which is vehicles.

A financing institution as a business entity has business products that are intended to assist the community in meeting their needs other than by cash. These business products include leasing, venture capital, factoring, consumer finance, credit cards and securitie companies. ²The products of this business will make it easier for people to fulfill their personal needs, including fulfilling the need for vehicles such as cars. One of the most frequently used products is consumer financing.

The fiduciary guarantee makes it easy for the parties who use it, especially for the fiduciary, but on the other hand, because the fiduciary guarantee is not registered, it does not guarantee that the interests of the party receiving the fiduciary giver of fiduciary may not guarantee that objects that have been burdened with fiduciary to other parties without the knowledge of the fiduciary recipient. Before the Fiduciary Law was formed, in general, objects that became fiduciary objects were movable objects consisting of merchandise in inventory, receivables from machine tools and motor vehicles.³In its development, fiduciary security is very widely used in a financing institution. Until now, access to financial institutions, especially the middle to lower class, is still quite limited. There are still many poor people or who have not been able to take advantage of financial facilities, especially credit extensively and cheaply.

In practice, financial institutions are in great demand by most people. This is because the process of submitting applications for financing credit is very easy and there is no need for collateral for other items other than the goods concerned to be the object of collateral which is bound to be carried out in a fiduciary manner. Likewise with the provision of credit by banks, the provision of consumer financing also requires guarantees in the sense of the principle of trust in consumers by the financing company. So that companies directly put their trust in consumers in fulfilling their achievements. Because this obligation is also contained in the financing agreement that will be signed by the consumer. The provision of consumer financing is stated in an agreement which is commonly called a financing agreement.

This fiduciary grant agreement is an agreement between the fiduciary and the fiduciary, in which the fiduciary gives the collateral based on trust to the fiduciary as collateral for a debt. What is generally submitted by the fiduciary is the BPKB of the motorized vehicle that is the object (goods) of the consumer financing agreement. This

¹Muhammad, Abdul Kadir and Murniati, Rilda. (2000), *Financial and Financing Institutions*. Bandung: Citra Aditya Bakti, p. 58.

²Fuady, Munir. (1995), *Law of Financing in Theory and Practice*, Bandung: PT Citra Aditya Bakti, p. 3.

³Subekti, R. (1982), *Guarantees for Providing Credit under Indonesian Law*, Bandung: Alumnii, p. 11.

BPKB is held by the fiduciary recipient until the fiduciary is able to pay off his debts.⁴ However, if in the implementation of the credit the debtor defaults in accordance with the provisions of the credit agreement and the fiduciary grant agreement, then in practice the creditor has the right to execute the fiduciary guarantee. In order to secure the execution of the execution of fiduciary guarantees, POLRI issued the Chief of Police Regulation Number 8 of 2011 concerning Securing the Execution of Fiduciary Guarantee, which with the aim and objective of carrying out the execution of guarantees in a safe, orderly, smooth and accountable manner, as well as protecting the safety of Fiduciary Guarantee Recipients. , Fiduciary Guarantee Provider, and/or the public from actions that can cause property loss and/or life safety.⁵

Based on Article 1 Point 2 Decree of the Minister of Cooperatives and SMEs No. 91/Kep/M.KUKM/IX/2004 concerning Guidelines for Implementation of Sharia Financial Services Cooperative Business Activities KSPPS BMT AL HIKMAH SEMESTA is a Sharia Financial Services Cooperative hereinafter referred to as KJKS is a cooperative whose business activities are engaged in financing, investment, and savings according to the profit sharing pattern (Sharia). KSPPS BMT AL HIKMAH SEMESTA has products, one of which is consumer financing.

Consumer financing agreement at KSPPS BMT AL HIKMAH SEMESTA, is a payable agreement between KSPPS BMT AL HIKMAH SEMESTA and the consumer with a fiduciary delivery of collateral, in the sense that the delivery of the goods is based on trust.

In practice, consumer financing agreements use standard and standard agreements, which are set forth in a form (legal document). In terms of cost and time, the form of this agreement is indeed more efficient, but if it is observed that this agreement will benefit the KSPPS BMT AL HIKMAH SEMESTA because the contents of the agreement are determined unilaterally, so in such circumstances the applicant is only passive, that is, he only has to say that he accepts or rejects the contents of the consumer financing agreement. Implementation of Sharia Financing Agreement with Fiduciary Submission of Property Rights to KSPPS BMT AL HIKMAH SEMESTA is carried out by 3 parties, namely KSPPS BMT AL HIKMAH SEMESTA, dealers and consumers. The birth of a fiduciary agreement basically begins with a sale and purchase agreement, in this case a sale and purchase between the consumer or debtor and the dealer.

The aim of this research is:

1. To find out the role of implementing the sharia financing agreement with the transfer of property rights in fiduciary manner to KSPPS BMT AL HIKMAH SEMESTA, Jepara Regency.
2. To find out about how to solve problems if there is default by the debtor in the implementation of the sharia financing agreement by handing over property

⁴*Ibid*, Thing. 136.

⁵Devita, Irma. Fiduciary Security Execution Based on the Chief of Police Regulation Number 8 of 2011. <http://irmadevita.com>, accessed October 2, 2018.

- rights by fiduciary transfer to KSPPS BMT AL HIKMAH SEMESTA, Jepara Regency.
3. To find out the constraints and solutions in implementing the Islamic financing agreement by musyarokah.

2. Research Methods

The approach method used is an empirical juridical approach with descriptive analytical research specifications. The data in this study were collected using library research techniques and field research. After the data was collected, it was analyzed descriptively qualitatively.

3. Results and Discussion

3.1. Implementation of Sharia Financing Agreement with Fiduciary Submission of Property Rights to KSPPS BMT AL HIKMAH SEMESTA Jepara Regency

The stages of implementing the sharia financing agreement with the transfer of property rights in fiduciary manner to KSPPS BMT AL HIKMAH SEMESTA, Jepara Regency:⁶

1. Application Stage

To be able to obtain consumer financing facilities in the form of goods needed by consumers, debtors (consumers) usually already have good businesses and/or have permanent jobs and have adequate income. The conditions that must be met by debtors (consumers) in order to apply for consumer financing facilities are:

- a. Copy of the prospective borrower's KTP
- b. Copy of the prospective borrower's husband/wife's KTP
- c. NPWP (Taxpayer Identification Number)
- d. Family Card/Marriage Certificate for married consumers
- e. Salary slip or Salary Certificate (if the prospective borrower works)
- f. Electricity Account/Telephone Account/Water Account (PDAM)
- g. Other certificates required Applications for consumer financing are usually made by debtors (consumers) at dealerships/suppliers that supply motorized vehicles for consumer needs who have collaborated with financing companies.

2. Checking and Field Inspection Stage

Based on the application from the applicant, the Finance Department will check the correctness of filling in the application form by analyzing and evaluating the data and information that has been received, which is then followed by a visit to the

⁶ Interview with Mr. Sukrisyanto as Manager of the Suwawal KSPPS BMT Al Hikmah Jepara Branch on Saturday, November 28, 2020.

prospective borrower's place (plan visit), checking elsewhere (credit checking) and make other general/specific observations. The purpose of field inspection is to ensure the existence of debtors and ensure consumer goods, to study the existence of consumer goods needed by the debtor, especially the supplier/supplier credibility price and after-sales service, to calculate with certainty how much is the correctness of the prospective debtor's report compared to reports that have been submitted.

3. Customer Profile Making Stage

Based on the results of field inspection, the Finance Department will create a Customer Profile which will describe the following:

- a. Name of prospective debtor and wife/husband
- b. Address and telephone number
- c. ID card number
- d. Profession
- e. Office address
- f. Financing conditions proposed
- g. Types and types of consumer goods

4. Committee Meeting Stage

At this stage the Finance Department will hold a meeting with the Branch Manager regarding proposals for applications submitted by the debtor to the Finance Department. The proposals submitted usually consist of:

- a. The purpose of providing consumer financing facilities.
- b. Financing facility structure that includes the price of goods, down payment, net financing, profit sharing, time period, type and type of goods.
- c. The debtor's background is accompanied by a description of the conditions of work and the environment in which he lives.
- d. Risk analysis.
- e. Suggestions and conclusions.

5. Committee Meeting Decisions

The decision of the Committee Meeting is the basis for creditors to finance or not. If the debtor's application is rejected, it must be notified through a rejection letter, while if it is approved, the Department of Finance will continue the next stage.

6. Binding Stage

Based on the decision of the Committee Meeting, the Legal department will usually prepare for the engagement as follows:

- a. Consumer Financing Agreement and its attachments.

- b. Personal Guarantee (if any)
- c. Company Guarantee (if any)

The binding of the consumer financing agreement can be done under the hand which is legalized by a notary public or can be said to be notarized.

7. Stage of Ordering Consumer Needs Goods

After the agreement signing process is carried out by both parties, the creditor will then do the following:

- a. Creditors place orders for goods from suppliers, which orders are contained in a Confirm Purchase Order, Proof of Delivery and Receipt of Goods.
- b. Especially for used financing objects, such as Use Vehicle (UV), BPKB will be examined by the Credit Administration Department.
- c. Receipt of Payments from debtors to creditors (can be through suppliers/dealers) which includes:
 - 1) First Payment, among others: down payment, first installment (if in advance), insurance premium for the first year, administrative costs, and other first payments if any.
 - 2) The next payment which includes: the following installments in the form of a reverse check/bilyet giro, payment of insurance premiums for the following year, and other payments if any.

8. Payment to Supplier Stage

After the goods are submitted by the supplier to the debtor, the supplier will then collect the creditors by attaching: full receipts, advance receipts and/or proof of advance payment, confirm purchase orders, proof of delivery and receipt of goods, scraping frame and machine numbers, BPKB statement, duplicate keys and passport (if any). Before payment of goods is made by a creditor to a supplier, the things that the creditor will do are:

- a. Close insurance coverage to the designated insurance company.
- b. Review all consumer financing agreement documentation by the Credit/Legal Administration Department by using the Check List Document Form.

9. Billing or Payment Monitoring Stage

After the entire payment process to the supplier/dealer has been carried out, the next process is the installment payment from the debtor according to the predetermined schedule. The payment systems that can be done are: by way of cash, check/bilyet giro, transfer and direct billing. Please note that the determination of the installment payment system was determined at the time the marketing process was carried out. Installment payment monitoring is carried out by the Collection Department based on a predetermined payment maturity and based on the payment system applied. It

should be explained that monitoring by creditors is not limited to monitoring the installment payments of the debtor, but creditors also monitor the guarantee, the period of the guarantee and the period of insurance coverage.

10. Collateral Letter of Guarantee

If all debtor obligations have been paid, the creditor will return to the debtor: guarantee (BPKB, and/or certificates and/or invoices/invoices along with other documents if any).

According to Sukrisyanto, Manager of the KSPPS BMT Al Hikmah Suwawal Branch, Jepara Regency, that if the applicant is going to apply for a financing credit and has submitted documents of financing requirements in the form of KTP, Family Card, Electricity Account, Salary Slip, and other required documents, the applicant must sign a contract. Financing Agreement Application.

The Financing Agreement in KSPPS BMT Al Hikmah which is tied to Fiduciary, is the loan amount of more than 10 million, if it is below 10 million, only an agreement is made under the hand. But it does not rule out if loans under 10 million can also be tied up in a Fiduciary manner, because it is seen from the results of field surveys and the history of the applicant/customer.

3.2. Problem Resolution if there is Default by the Debtor in the Implementation of the Sharia Financing Agreement with Fiduciary Submission of Property Rights to KSPPS BMT AL HIKMAH SEMESTA Jepara Regency

In positive law according to Article 1267 of the Civil Code, the party who breaks the promise or Default can be burdened to fulfill the agreement or the cancellation of the agreement accompanied by compensation for costs, losses and interest. It can also be interpreted that the party who breaks the promise can only be burdened with the obligation for compensation only or fulfillment of the agreement with compensation only.⁷

If the debtor and/or provider of fiduciary defaults (Default), the transfer proceeds and/or claims arising from the transfer of the inventory objects for the sake of law become the object of fiduciary security in lieu of the transferred fiduciary security object.⁸ The giver of fiduciary is prohibited from transferring, pawning or leasing to other parties, objects which are the object of fiduciary security which are not inventories except with the prior consent of the fiduciary.⁹

If the fiduciary agrees, the fiduciary may use, combine, mix or agree to collect or make compromises on the receivables. However, the agreement does not mean the recipient of the fiduciary waives the fiduciary guarantee.¹⁰ The giver of fiduciary is obliged to hand over the object which is the object of the fiduciary security in the context of executing the fiduciary security. If the fiduciary does not hand over the

⁷Subekti, (1999), Civil Code, Jakarta: Pradnya Paramita, p. 329.

⁸ Article 21 of Act No. 42 of 1999 concerning Fiduciary Security

⁹ Article 23 (2) of Act No. 42 of 1999 concerning Fiduciary Security

¹⁰ Article 23 (1) of Act No. 42 of 1999 concerning Fiduciary Security

objects which are the object of the fiduciary security, if necessary, he can ask for help from the authorities.

In borrowing made by the debtor, of course, the BMT party makes an agreement that can guarantee that the distribution of financing can be returned by the debtor, every time the loan is carried out by the debtor, it must have a guarantee. Considering that the financing provided by BMT contains risks, the financing is based on the ability, ability and good faith of the customer to be able to pay off the debt as promised. In order to gain this confidence, customers need to make a careful assessment of the debtor customer's character, ability, capital, collateral, and business prospects because with a good analysis process it is hoped that the financing given to the debtor will run smoothly and be returned on time.

In the event that the debtor is no longer able to meet his performance, it is said that the debtor has not fulfilled the achievement at all, whereas if the achievement of the debtor can still be expected to be fulfilled, then it is classified as late in fulfilling the achievement, if the debtor meets the achievement not well, he is considered late in fulfilling the achievement, if the performance can still be improved and if not, then it is considered as not fulfilling the achievement at all. Forfeiting the promise has an adverse effect on the debtor, because since then the debtor is obliged to compensate for any losses arising from the failure of the promise.

This compensation can be a substitute for the main achievement, but can also be an addition to the main achievement. In the first case compensation occurs, because the debtor does not fulfill the achievement at all, while in the latter, because the debtor is late in fulfilling the performance

Forfeiting the promise does not occur immediately from the time the debtor does not meet his performance, for this reason, a reasonable grace period is required, for example, one week or one month. So in agreements, where there is no time period for achievement, broken promises do not happen for the sake of law. Although in the agreement the time for achievement is determined, this does not mean that this time is the deadline for the debtor to fulfill his performance, because often the determination of the time is meant that the debtor is not obliged to meet his achievements before that time. Determination of negligence is a condition for determining the occurrence of broken promises, to determine in what cases whether or not the determination of default must be connected with two forms of broken promises, namely:

1. Does not meet achievement at all.

In this case there is no need for a negligent determination. The debtor can immediately be sued for compensation, in addition, a determination of negligence is not required in the event that. If the debtor's achievement in the form of giving or doing something only has meaning for the BMT, if it is carried out within a predetermined time.

2. Too late to fulfill my achievements

In the event that a debtor is late in fulfilling his/her performance, it is necessary to establish an ingerbreadelling. The debtor can only be burdened with

compensation after he has been given the determination to be negligent to fulfill his performance. With the agreement, the obligation to give a determination of negligence can be eliminated, that is, by determining in the agreement that by delaying achievement, the debtor must be deemed to have broken his promise. If the agreement stipulates a certain time for the debtor to perform, this does not mean that with the breach of that time the debtor has broken his promise, it is still necessary to determine the default.

In fact, from a banking point of view, the efforts taken by the bank if the credit given is experiencing problems or is classified as non-performing loans, in this case the bank needs to make a rescue so as not to cause losses. Rescues made by providing period relief or installments, especially for loans affected by disaster or confiscating loans that deliberately neglected to pay.¹¹

KSPPS BMT Al Hikmah Semesta Jepara Regency is one of the sharia financial institutions which is engaged in the economy for the general public. In its activities of collecting funds from the community and channeling them back to the community, of course the KSPPS BMT Al Hikmah Semesta Jepara Regency experiences several risks, especially in channeling funds in the form of financing. The risks received by KSPPS BMT Al Hikmah Semesta Jepara Regency are in the form of financing problems or non-performing financing. Where members do not keep the agreement according to the contract that was agreed at the beginning.

It can be seen that in every provision of financing, consideration and caution is required so that trust, which is the main element in financing, is truly realized. So that the financing provided is right on the target and the guarantee of the return on the financing is on time according to the contract that was promised at the beginning.

The non-return of financing provided by a KSPPS means directly threatening the survival of the KSPPS itself. This is because the main income of the Bank is from profit sharing and margin (profit from buying and selling) which is imposed on the financing it provides. It should be noted that the financing funds given come partly from public savings in the form of demand deposits, savings and member deposits where the KSPPS BMT Al Hikmah Semesta Jepara Regency will provide profit sharing to members. The financing channeled by the KSPPS BMT Al Hikmah Semesta Jepara Regency is used both for working capital and for urgent needs. There are times when there are obstacles to repayment by financing customers, causing financing problems. Problematic financing occurs due to several factors, both internal and external factors. Internal factors cause financing problems in terms of factors caused by the KSPPS BMT Al Hikmah Semesta itself, including:

1. Lack of marketing skills in assessing the ability of prospective customers.

This factor can lead to problematic financing where marketing is not maximal in applying the 5C principles (Character, Capital, Capacity, Collateral, Condition) to get to know and assess potential customers more.

2. *Marketing* being chased by the target.

¹¹Kasmir, (2003), Basics of Banking, Jakarta: Raja Grafindo Persada, p. 241.

This factor is a factor that is often the reason for the emergence of problematic financing at KSPPS BMT Al Hikmah Semesta, Jepara Regency where marketing is being pursued by the target so that marketing uses various methods so that the financing proposed by the prospective customer is disbursed. Marketing conducts in-detail surveys of prospective customers who apply for financing even though the survey already contains procedures provided by the company. Marketing is only focused on goals where the target set by the company must be met

3. *Marketing* provide financing to own relatives or familiar people.

This factor can also cause problematic financing in the KSPPS BMT Al Hikmah Semesta, Jepara Regency. This happens because marketing provides financing based on trust which is sometimes misused by customers and usually marketing does not conduct surveys according to procedures or is not detailed.

4. Not checking the guarantee in detail and misrepresenting the value of the guarantee.

This factor is something that often happens where marketing does not research or check whether the guarantee provided by the prospective customer is appropriate or not, besides that it does not rule out the frequent occurrence of marketing errors in appreciating the value of the collateral provided by the prospective customer as collateral for debt, causing KSPPS BMT. Al Hikmah Semesta, Jepara Regency suffered a loss.

Apart from several internal factors, there are also external factors that can cause problematic financing at the KSPPS BMT Al Hikmah Semesta, Jepara Regency. These external factors include:

1. The members' business management is not good.

Customers cannot manage their business well, because customers cannot read market segments well, competition is getting tighter and there is a lack of promotion of customers' products or businesses so that the business they are running does not develop.

2. Business failure

Failure of member businesses can lead to financing problems. Business failure can occur in the form of business bankruptcy or crop failure. So that if this happens continuously it will result in the customer being unable to pay their obligations in accordance with the contract and can cause financing problems.

3. Natural disasters

Natural disasters that affect the customer's business can affect the occurrence of financing problems because the customer no longer has maximum income, resulting in difficulties for the customer to fulfill his obligations.

The operational activities of the KSPPS BMT Al Hikmah Semesta Jepara Regency in providing services to the community through financing will generate income in the form of margins, profit sharing and fees. This income is the driving force for the operational continuity of KSPPS BMT Al Hikmah Semesta, Jepara Regency. Distribution of funds in the form of financing cannot be separated from the risks of problematic financing.

One of the problems that often occurs is default by debtors in the implementation of the sharia financing agreement with the transfer of property rights in a Fiduciary manner. Based on an interview conducted by the Manager of the Suwawal KSPPS BMT Al Hikmah Jepara Branch that¹²

1. If there is a Default on financing where the partner has been in arrears for 3 consecutive months, the BMT will first come to the partner to find or provide the best solution so that the partner immediately carries out its obligations. However, if within 12 consecutive months or until the due date the partner does not fulfill its obligation to pay, the BMT will issue a First Warning Letter (SP 1). SP 1 (Warning Letter 1), which contains reminders or appeals to customers regarding the dependents that must be fulfilled in giving SP 1 along with details of accounts payable or notification of arrears.

2. One month after the issuance of the First Warning Letter (SP 1), the partner does not also carry out the obligation, the BMT will issue a Second Warning Letter (SP 2). SP 2 (Warning Letter 2), SP 2 is given if SP 1 does not produce common ground or solutions and there is no change at all. SP 2 contains a reminder as well as a little warning.

3. One month later the Partner does not also carry out the obligation, the BMT will provide a Third Warning Letter (SP 3) with a photo copy of the Fiduciary Agreement Deed attached and a photo copy of the Fiduciary Certificate as a deterrent effect so that the partner will immediately carry out the obligation to pay installments before the collateral is withdrawn. the time given is 7 days after the issuance of the Third Warning Letter. SP 3 (Warning Letter 3), SP 3 is given if SP 1 does not have any effect. SP 3 contains a strong warning that the guarantee will be confiscated and that a bail auction will be held

In every gift or delivery of SP 1, SP 2, and SP 3, there must be proof of acceptance by the customer. Shipments can be sent directly by marketing or sent via the post office, or else. If the customer is not present, it can be addressed to the village head or authorized community leader. If, after being given the warning letters, they arrive at SP 3 but the customer is still in default and does not have good faith, the KSPPS will immediately take care of the auction registration process with the KPKNL.

The auction implementation system from 2017 to the present uses the Close Bidding system where the auction and bidding system takes place in a closed manner. When registering the auction at the KPKNL, there are several document requirements that

¹² Interview with Mr. Sukrisyanto as Manager of the Suwawal KSPPS BMT Al Hikmah Jepara Branch on Saturday, November 28, 2020.

must be met by the KSPPS BMT Al Hikmah Semesta, Jepara Regency as the auction applicant. These documents include:

1. Application for Auction
2. Photocopy of Warning Letter along with proof of receipt of warning letter by the customer, SP 1, SP 2, SP 3 and proof of receipt.
3. Sales officer appointment letter.
4. Debt details.
5. Determination of the guarantee limit value.
6. Account Certificate.
7. Photocopy of Savings Book.
8. Photocopy of NPWP KSPPS BMT Al Hikmah Semesta
9. Photocopy of KTP of appointed and designated Official.
10. Photocopy of financing agreement.
11. Photocopy of SHM (Ownership Certificate), SHT (Mortgage Certificate), SPPT (Tax Payable Tax Return) and Appreciation Report of guarantee value.
12. Auction Object Photo (Minimum from 3 sides)
13. SKT (Land Certificate) which is requested from the Local Land Agency.

If all the documents have been fulfilled, the KSPPS BMT Al Hikmah Semesta must register directly by visiting the local KPKNL. The Jepara Regency area is included in the Semarang KPKNL.

3.3. Constraints and Solutions in Implementing the Sharia Financing Agreement by Musyarakah

Musyarakah is a joint venture agreement between BMT and members as owners of capital (shahibul maal) to finance a type of business that is lawful and productive by sharing the results according to the agreement. This musyarakah contract is the same as a mudharabah contract which is usually used for investment-based financing. The musyarakah contract is the same as the mudharabah contract, which is an investment-based financing contract, the application system is also the same, namely the distribution of the profit sharing ratio according to the agreement, what makes the difference is the mudharabah contract where BMT (shahibul maal) provides all the capital while, the musyarakah contract where the venture capital is a joint venture between BMT and customers.

In the implementation of a musyarakah sharia financing agreement, there may be something that can hinder the implementation of the musharaka financing agreement itself. Likewise, the implementation of the rights and obligations between BMT and

customers contained in the musyarakah agreement is not spared and something that can hinder the implementation of these rights and obligations.

The obstacles that often arise in implementing sharia agreements in musyarokah and how to overcome them are as follows:

1. There is document falsification by customers

The existence of document falsification by the customer to be able to meet the requirements for a financing application, to overcome this the BMT checks the wetness and validity of the document legally.

2. There is a fictitious business

BMT, with the principle of prudence, ensures the correctness of the business run by customers. The BMT does not immediately believe in the type of business of the prospective customer, to know clearly the business the prospective user of funds is doing, the BMT will conduct a business feasibility study, business reputation, and the customer's ability and business prospects before the BMT provides financing.

3. There is misuse of financing

The customer misuses the financing provided by the BMT which is not in accordance with the business plan made by the customer. To overcome this, the BMT supervises the financing given to the customer so that the target business plan that the customer has made.

4. The customer does not make payments or defaults on his obligations to the BMT according to the agreed time, the customer is often late in paying the principal financing along with the profit sharing ratio.

5. In solving the problem of the sharia financing agreement, the BMT in case of default occurs, namely the stages that are too long from reporting to the police to the District Court. This is then resolved by increasing the attitude of discipline and employee performance towards their duties.¹³

4. Closing

Based on the results of the research and discussion above, it can be concluded that:

1. The implementation of the sharia financing agreement with the transfer of property rights in fiduciary manner to the KSPPS BMT AL HIKMAH SEMESTA Jepara Regency consists of several stages, namely the application stage, the checking and field inspection stage, the customer profile creation stage, the committee meeting stage, the committee meeting decision, the binding stage, the ordering stage goods needed by consumers, the stage of payment to suppliers, the stage of billing or monitoring of payments, and taking the guarantee letter.

¹³ Interview with Mr. Sukrisyanto as Manager of the Suwawal KSPPS BMT Al Hikmah Jepara Branch on Saturday, November 28, 2020.

2. Problem solving if there is default by the debtor in the implementation of the sharia financing agreement with the transfer of property rights in fiduciary manner to KSPPS BMT AL HIKMAH SEMESTA, Jepara Regency. to find or provide the best solution so that partners immediately carry out their obligations. However, if within 12 consecutive months or until the due date the partner does not fulfill its obligation to pay, the BMT will issue a First Warning Letter (SP 1), One month after the issuance of the First Warning Letter (SP 1), the partner not also carrying out its obligations, the BMT will issue a Second Warning Letter (SP 2),
3. Constraints and solutions in implementing the sharia financing agreement through musyarokah are the first, falsification of documents by the customer to overcome this, BMT checks the wetness and validity of the document legally. Second, the existence of a fictitious business, the BMT will conduct a business feasibility study, business reputation, and customer ability as well as business prospects before the BMT provides financing, third, there is misuse of financing. Fourth, the customer does not make payments or defaults on his obligations to BMT according to the agreed time. Fifth, in solving the problem of the sharia financing agreement, the BMT if there is default, namely the stages that are too long from reporting to the police to the District Court.

4.2. Suggestions

Based on the above conclusions, the authors provide the following suggestions:

1. We recommend that to further reinforce the regulations regarding the registration of the fiduciary guarantee deed contained in Act No. 42 of 1999 concerning Fiduciary Security, sanctions must be imposed if the fiduciary guarantee deed is not registered.
2. It is recommended that Act No. 42 of 1999 concerning Fiduciary Security also regulates the execution procedure by means of the executorial title if the object of guarantee is in the power of a third party, so that the creditor continues to carry out the execution in accordance with applicable norms and safeguards the rights of the third party.
3. For people who want to make credit with fiduciary guarantees, it is better to understand the regulations regarding fiduciary guarantees first so that they will not take actions that violate the regulations and do not harm other people, both BMT creditors and third parties.

5. References

Books:

- [1] Devita, Irma. Fiduciary Security Execution Based on the Chief of Police Regulation Number 8 of 2011. <http://irmadevita.com>, accessed October 2, 2018.

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- [5] Muhammad, Abdul Kadir and Murniati, Rilda. (2000), Financial and Financing Institutions. Bandung: Citra Aditya Bakti.
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- [7] Subekti, R. (1982), Guarantees for Providing Credit according to Indonesian Law, Bandung: Alumni.

Regulation:

Act No. 42 of 1999 concerning Fiduciary Security

Interview:

Interview with Mr. Sukrisyanto as Manager of the Suwawal KSPPS BMT Al Hikmah Jepara Branch on Saturday, November 28, 2020.