

Legal Consequences of the Merger of Companies on the Implementation of Guarantee Function of Mortgage

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Abstract. *This study aims to: 1) Knowing and analyzing the execution of mortgage guarantees due to the company merger, 2) Knowing and analyzing the legal consequences of the merger on mortgage holders to be executed, 3) Knowing the deed of settlement resulting from the company merger on the implementation of the mortgage guarantee function. The research method used empirical juridical, namely by collecting data or statutory regulations, as well as conducting interviews with related respondents. The specifications used in this study were descriptive analysis. Researchers used empirical specifications with primary and secondary data. The primary data used were obtained directly through the opinions and statements of the respondents through interviews and the reality in the field through observation. The secondary data used by the researcher is carried out by conducting a literature study by reviewing, analyzing and then processing it into a descriptive narrative so that it is easy to understand when read. The data analysis method used by researchers from the stages of primary and secondary data obtained would be descriptive-qualitative analysis. Based on the research, it can be concluded that the legal consequences of the company merger on the implementation of the mortgage guarantee function of the old company that had merged did not renew the credit agreement and mortgage certificate after the merger, so that the new company could not carry out the execution due to the negligence of the old company. Even though the guarantee is in the old company's control, the bank is only the seller of the goods,*

it remains the property of the debtor so that it is against propriety and violates the rights of the owner of the goods if the bank violates it by selling cheap prices. In accordance with developments in Indonesia after the birth of the Mortgage Law, the grosse deed is still maintained by introducing the mortgage certificate which also uses irah-irah so that it has executive power.

Keywords: Court; Execution; Merger; Mortgage; Power.

1. Introduction

Banks play a very important role in national development. The banking industry has the task of ensuring economic equity in order to achieve the state's goal of general welfare in accordance with the mandate of the constitution. As one of the agents of development, the bank¹ has the task as stated in Article 4 of the Banking Law, namely to support the implementation of development towards improving people's welfare.²

One of the banking products with great benefits is credit given by banks to customers. On this basis, the bank continues to provide credit continuously in addition to advancing the community's economy as well as for the sustainability of its operations. The importance of offering credit activities by banks is related to the main function in terms of the banking business, namely the function of distributing funds to people in need after receiving fund collections from depositors. This function also provides the largest income in proportion to the risks faced by banks³. Even data from the Financial Services Authority (OJK) noted that bank credit in March 2021 recorded a growth of IDR 77.3 trillion and was the highest growth in the last 11 months.⁴

In terms of granting credit, banks are required to have confidence in the ability and ability of the debtor to repay the debt in accordance with the agreement which of course pays attention to sound credit principles, considering that credit is an activity that contains risks from both the debtor and creditor.⁵In this case, the bank requires a guarantee that can be used as a guarantee for repayment of debt in the event of default in the future by the debtor.

¹ Yogi Hanapiah, Sri Endah Wahyuningsih, *Hal-Hal Yang Perlu Diperhatikan Oleh Notaris Dalam Membuat Akta Perjanjian Notariil*, Vol 5 No 1 March 2018, Jurnal Akta Unissula

²Usman, Rachmadi. (2003). *Aspek-Aspek Hukum Perbankan di Indonesia. Cet II*. Jakarta: Gramedia Pustaka Utama, p. 28

³ Yusup Sugiarto, Gunarto, *Peran Notaris/PPAT Dalam Pembuatan Surat Kuasa Membebaskan Hak Tanggungan Dalam Perjanjian Kredit Pemilikan Rumah (Studi Di Pt. Bank Tabungan Negara Tbk. Cabang Cirebon)* Vol 5 No 1 March 2018, Jurnal Akta Unissula

⁴Financial Services Authority, "National Banking Statistics" in Indonesia Banking Statistics, Vol. 19 No. March 4, 2021, p. 110

⁵Hermansyah. (2008). *Hukum Perbankan Nasional Indonesia*. Jakarta: Kencana, p. 58

The forms of collateral that are most often used as collateral for bank credit agreements are land rights with the status of property rights, cultivation rights, building rights or use rights. Many land rights are used as collateral because the price is getting higher and will continue to increase so that in the credit agreement process it is a must to obtain legal protection and certainty through a strong guarantee rights institution. Juridically in Article 51 of Act No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA) it is explained that a strong guarantee rights institution has been provided and can be imposed on land rights, namely mortgage rights as a substitute for hypothek and creditverband institutions.

The article in the UUPA is then in its implementation regulated in Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT). UUHT is intended to provide a basis for a strong guarantee rights institution and legal certainty for all interested parties in a balanced manner. The other reasons referred to in (Article 16 paragraph 1 UUHT) are other matters, for example in the event of a takeover or merger of companies causing the transfer of receivables from the original company to the new company. The merging of two companies into one or merger is one of the company's strategies to advance and streamline operations.⁶

The high growth rate of Islamic bank lending certainly shows that the debt agreement contract in Islamic banks is also high, meaning that there is also a guarantee in the form of mortgage rights as one of the guarantees that has a high value. Although sharia banks apply sharia principles in their operations, if the bank undergoes a merger or merger as happened in Indonesian sharia banks, the provisions regarding the transfer of mortgage rights refer to the Mortgage Rights Act and the Limited Liability Company Law.⁷ That is, in sharia contracts as well as in conventional contracts, if the customer does not pay, the guarantee can be executed immediately if the guarantee is properly tied.⁸

However, the case that occurred in BNI Syariah of Surakarta after the merger was that the execution of mortgage rights on credit guarantees at the BNI Syariah bank was not possible due to the change of name due to the merger or merger which later changed the name of Bank Syariah Indonesia. This means that the problem arises because previously the holder of the mortgage guarantee was PT. BNI Syariah, which was about to be executed, had changed its name due to the merger into an Indonesian Sharia bank. This is what underlies the author to write

⁶Ruddy Tri Santoso, "The Effect of Mergers and Acquisitions on Banking Efficiency in Indonesia" *in Journal of Accounting and Finance*, Vol. 12, No. 2, 2010, p. 102-128

⁷Restudiyani, 2018 "The Position of Collateral in Sharia Financing Disputes on Decisions of the Religious Courts in the Special Region of Yogyakarta" in *The National Conferences Management and Business (NCMAB)*, p.589

⁸*Ibid*, p. 590

with the title "Legal Consequences of the Merger of Companies on the Implementation of the Guarantee Function of Mortgage".

This study aims to: 1) Knowing and analyzing the execution of mortgage guarantees due to the company merger, 2) Knowing and analyzing the legal consequences of the merger on mortgage holders to be executed, 3) Knowing the deed of settlement resulting from the company merger on the implementation of the mortgage guarantee function.

2. Research Methods

The research method used is empirical juridical, namely by collecting data or laws and regulations, and conducting interviews with related respondents. The specifications used in this study are descriptive analysis. Researchers used empirical specifications with primary and secondary data. The primary data used were obtained directly through the opinions and statements of the respondents through interviews and the reality in the field through observation. The secondary data used by the researcher is carried out by conducting a literature study by reviewing, analyzing and then processing it into a descriptive narrative so that it is easy to understand when read.

3. Results and Discussion

3.1 Execution of Mortgage Guarantees Due to Merger at BNI Syariah of Surakarta

One of the things that distinguishes Islamic bank financing from conventional banks is that they only give and receive remuneration based on profit sharing agreements (*akad*). Sharia banks will receive profits in the form of profit sharing from projects financed by the bank. If the project stagnates, a solution will be sought. So how do Islamic banks apply these principles in the process of resolving financing disputes. In Islamic Bank 1, the full implementation of the principle depends on the condition of the debtor. If the debtor is unable to share the results in this case, for example the debtor experiences an unexpected loss, the debtor can apply for relief. The relief here is in the form of a reduction in fines or other things such as an extension of the agreement period, and not a reduction in the principal debt. However, if the default occurs due to the debtor's fault, such as violating the agreement by transferring the financing provided, then no relief will be given to the debtor. In Islamic banks, because the contract is profit sharing, the bank must also be responsible for the money intended for financing by offering 3 steps of settlement. First, negotiations between the bank and the debtor. Second, if there is no agreement, the bank will offer to restructure the agreement. Third, if it is not possible to restructure the agreement, the bank will offer a final option, namely auctioning the object of the guarantee.

Regarding the quality of Sharia financing credit, it is regulated in the Financial Services Authority Regulation Number 16/POJK.03/2014 concerning Asset Quality Assessment of Sharia Commercial Banks and Sharia Business Units (hereinafter referred to as "POJK 16/2014"). In Article 9 paragraph (3), the credit quality of debtors is divided into 5 (five) classifications, namely Current, Under Special Mention, Substandard, Doubtful, Loss. The division of debtor credit quality classification based on the accuracy of payments at both Commercial Banks and Islamic Banks is basically the same. One of the efforts to resolve non-performing loans is to execute the object of collateral if based on credit re-evaluation, the debtor's business prospects do not exist, and/or the debtor is not cooperative to save the credit by restructuring efforts or credit restructuring efforts did not bring results to re-launch the credit. Settlement by way of the execution of the object of the guarantee will be carried out by the bank provided that the object of the guarantee is burdened by the guarantee institution in accordance with the procedures established by law.

As for the process of imposing Mortgage Rights on Land Ownership in general, the procedure for granting credit with mortgage guarantees proposed by prospective debtors to creditors goes through several stages, namely¹⁰:

- Prospective debtors apply for credit and submit the necessary files and have been determined by the bank in the credit application;
- Prospective debtors fill out a credit application form provided by the bank. After the form is filled out completely and correctly, the form is then returned to the bank;
- The bank then conducts credit analysis and evaluation on the basis of the data contained in the credit application form. The purpose of this analysis is to ensure the correctness of the data and information provided in the credit application. In addition, the results of this credit analysis and evaluation are used as a basis for considering whether the credit application will be accepted or rejected;
- If the results of the credit analysis and evaluation of the prospective debtor are declared eligible by the bank to obtain credit, then negotiations are carried out between the two parties, namely the bank and the prospective debtor. These credit negotiations include, among others, the maximum credit to be granted, credit requirements, credit period, administrative fees, fines, interest and so on;

⁹ Restudiyani, 2018 *"Kedudukan Jaminan Dalam Sengketa pembiayaan Syariah Pada Putusan Pengadilan agama Di Daerah Istimewa Yogyakarta"* in *The National Conferences Management and Business (NCMAB)*

¹⁰ Otoritas Jasa Keuangan, *"Statistik Perbankan Nasional" dalam Indonesia Banking Statistics*, Vol. 19 No. 4 March 2021 and see Ruddy Tri Santoso, *"Pengaruh Merger Dan Akuisisi Terhadap Efisiensi Perbankan Di Indonesia"* Dalam *Jurnal Akuntansi Dan Keuangan*, Vol. 12, No. 2, 2010

- If there has been an agreement between the two parties, a credit agreement will be signed in the form of a debt acknowledgment letter with a binding guarantee, in this case in the form of a mortgage guarantee, before the PPAT and bank officials;
- After binding the Mortgage Guarantee and PPAT has provided information that the prospective debtor is declared to have met the requirements, then the bank will realize the credit to the prospective debtor.

The dispute resolution method, basically, both Islamic banks use the non-litigation route first, namely the negotiation method. Of course, this path is taken if the debtor responds to the warning letter given to him. In terms of negotiation, Islamic banks will provide 2 options, if they are still able to make payments, a restructuring of the agreement will be carried out, while if they are unable to do so, they will be offered to sell the mortgage object themselves or at the bank's auction. The non-litigation dispute resolution processes carried out by the two Islamic banks are both limited to the negotiation method. No other methods such as mediation, adjudication or arbitration were carried out. So far, both Islamic banks and consumers have never applied for a banking dispute settlement to LAPS.

One of the documents required for the auction of the execution of the Mortgage guarantee is the Mortgage Certificate. In the a quo case, there is no renewal of the credit agreement, so that the Mortgage Certificate states that the holder of the Mortgage on the collateral is Bank BNI Syariah. Due to the absence of renewal of the credit agreement and Certificate of Mortgage on collateral, the settlement of the auction remains with the position of the creditor being Bank BNI Syariah. Although BNI Syariah Bank has become one, not only the rights and obligations of each debtor are transferred to Indonesian Islamic Bank. The decision on the a quo case causes the auction of collateral to pay off all debtors' debts cannot be carried out. The legal position of the debtor in the a quo case becomes weak and cannot take legal action on the collateral and unable to pay off their debts. This situation can occur solely because of the negligence of the BNI Syariah Bank which does not renew the Credit Agreement.

The process of executing non-performing loan guarantees can be pursued through civil lawsuits or auctions. If the execution will be carried out through an auction, then the Bank is required to submit a written request regarding the execution to the Head of the KPKNL, only then can an auction be conducted. The Execution Auction method based on the Mortgage Law and the Fiduciary Law is through the Execution Parate. Execution Parate is carried out based on the executorial title contained in the Mortgage Certificate and Fiduciary Guarantee Certificate according to the procedure specified in the laws and regulations. There are several documents that must be fulfilled in order to carry out the

Execution Auction for the debtor's credit guarantee through the Mortgage Rights institution based on Article 6 UUHT. These documents are a copy or photocopy of the Credit Agreement.¹¹

The abolition of Mortgage is regulated in Articles 18 to 19 of Act No. 4 of 1996. The abolition of Mortgage is the no longer valid Mortgage. Even though the land rights are abolished, the granting of Mortgage Rights is still obliged to pay the debt. The abolition of the mortgage released by the holder of the mortgage is carried out by giving a written statement regarding the release of the mortgage by the holder of the mortgage to the giver of the mortgage. The abolition of the Mortgage due to the clearing of the Mortgage based on the determination of the rank by the Head of the District Court occurred because of the request of the buyer of the land rights burdened with the Mortgage so that the rights to the land he bought were cleared from the burden of the Mortgage.

3.2 Legal Consequences of Merger on Mortgage Holders to be Executed

Company merger is the merger of one or several business entities so that from an economic point of view they form a single entity, without merging the merging business entities.¹² According to Tampubolon, a merger is a combination of two or more corporations into one corporation; where the acquiring company (acquiring company) retains its identity.¹³ Meanwhile, according to the Law on Limited Liability Companies in Article 1 paragraph 9, a Merger is: "Merger is a legal act carried out by one or more companies to merge with another existing Company which results in the assets and liabilities of the merging Company being transferred by law to the Company who accepts the merger and subsequently the legal entity status of the merging Company ends by law."

Conceptually, Islamic bank mergers are more complex than conventional bank mergers. The main thing is because the character of Islamic bank products is in accordance with the complex character of the contract, so it is feared that things will damage the contract along the way. Desy Yusrah, a former employee of a sharia bank, once managed one of the Sharia BPRs in Jakarta. According to him, the differences between customer and bank contracts in relation to the specific parts of the contract need to be considered in the merger of Islamic banks. "It could be that customers of Bank Syariah Mandiri get a bigger profit share than customers of Bank BRI Syariah. However, because the profit sharing is equalized, what happens is the loss of the rights of Bank Syariah Mandiri customers for a

¹¹AD, BNI Syariah Marketing, Personal Interview, January 15, 2022.

¹²Asyhadie, H. Zaeni. (2012). *Hukum Bisnis; Prinsip dan Pelaksanaannya di Indonesia*. Jakarta: RajaGrafindo Persada, p. 134

¹³Tampubolon, Manahan P. (2013) *Financial Management (Finance Management)*. Jakarta, Media Discourse Partners. page 23

larger profit sharing. This means that the principles of fairness and trust in Islamic banking have been tarnished since the beginning of operations.” Another example is related to profit sharing received by depositors. One of the critical points is that the profit sharing in the first month a bank joins cannot be equalized with the equivalent rate because accurate and comprehensive financial consolidation must be carried out. This is because depositors' money is invested in different portfolios according to the origin of the bank before the merger. Not to mention the problem of the different profit sharing ratio between the three banks and their customers.

The solution that can be done is to renew contracts with customers, both savings and deposits that are past due and will be renewed when the customer migrates from the origin bank to a BSI bank account. Of course it takes a long time considering the relatively large number of customers, but this provides more legal certainty to the bank and the customer. A sophisticated banking technology system can certainly accommodate differences in ratios, however, for the sake of fairness in sharia financial transactions, it is important to renew the contract and be willing to enter into a contract. For financing customers, relatively small problems may arise because existing contracts have been agreed upon for a certain time. Problems that may arise are related to financing guarantee documents, such as SHT, Cessie and other Guarantee Documents that have been stated in the financing agreement. This includes the application for the execution of the mortgage right which is currently in court. These things may arise because with the expiration of the merging company entity to the surviving company, the existing documents are considered *mutatis mutandis* with the merger document and are considered publicly known.

This sharia bank merger involves three members of the state bank association (Himbara), namely PT Bank Rakyat Indonesia Tbk (BBRI), PT Bank Mandiri Tbk (BMRI) and PT Bank Negara Indonesia Tbk (BBNI). They have signed a conditional merger acquisition (CMA) agreement to merge PT Bank BRI Syariah Tbk (BRIS), PT Bank Mandiri Syariah, and PT Bank BNI Syariah. The merger of banks carried out by BRI Syariah, Bank Mandiri Syariah and BNI Syariah has legal consequences which are the impact of the current laws and regulations.¹⁴ Every legal act committed by a legal subject will have certain legal consequences for the parties concerned. In this case, the legal consequence of the company merger on the existence of the Limited Liability Company being taken over is ending by law (Article 122 paragraph 1 and paragraph 2 of Act No. 40 of 2007 concerning Limited Liability Companies), while the Limited Liability Company that takes over continue to use their name and identity. If viewed from the distribution of shares, then the shareholders of the merging limited liability company are only entitled to own limited shares of the merged company, while the shareholders of

¹⁴AD, BNI Syariah Marketing, Personal Interview, 15 January 2022

the taking over limited liability company are entitled to have more dominant shares than the merging limited liability company.¹⁵

Discussing the legal consequences of a merger, it is necessary to know what conditions must be met so that a company can merge with another company. The first requirement, according to the explanation of article 126 paragraph 1 of Act No. 40 of 2007 concerning Limited Liability Companies, is that a merger cannot be carried out if it is detrimental to the interests of certain parties. In this case, certain parties include the interests of the company, minority shareholders, employees of the company, the interests of creditors, other business partners of the company, the interests of the community and fair competition in conducting business. The second requirement is based on the explanation of Article 123 paragraph 4 of Act No. 40 of 2007 concerning Limited Liability Companies, for certain companies that will carry out the merger must obtain approval from the relevant agencies. Certain companies are companies that have special business fields, including bank financial institutions and non-bank financial institutions. And what is meant by related institutions is the Financial Services Authority (OJK) for the merger of companies engaged in banking¹⁶.

The characteristics of sharia contracts that are applied in the banking business have a unique and different character from conventional banks. Fund collection and fund distribution products have different characters according to the contract that forms the basis of the engagement between the customer and the bank. In general, in the aspect of raising funds, there are several main contracts, namely *mudharabah* (business cooperation) and *wadi'ah* (deposit). With the end of the existence of one of the parties who have a legal contract, does the contract automatically transfer to another entity? Every credit that has been agreed upon and approved by the parties, namely the creditor and debtor, must be stated in a written credit agreement.¹⁷The banking law does not mention the term credit agreement, but the credit agreement can be found in government instructions which state that in any form of credit granting the bank is obliged to use a credit agreement contract. Credit agreements at Islamic banks themselves have several elements, including, essential elements, natural elements, and accidental elements.

The results of the study regarding the legal consequences of the merger on the mortgage holder to be executed in its entirety are explained that although the

¹⁵ Aprilia Putri Suhardini, Sukarmi, *Pertanggungjawaban Notaris Yang Melakukan Perbuatan Melawan Hukum Dalam Pembuatan Akta Autentik*, Vol 5 No 1 March 2018, Jurnal Akta Unissula

¹⁶ Deen, Thaufiq, Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

¹⁷Djumhana, Muhamad. (2006). *Hukum Perbankan Di Indonesia*. Bandung: Cutra Aditya Bakti, p. 501.

guarantee is in the control of the bank, the bank in this case is only the seller, the goods are still the property of the debtor so that it is against propriety and violates the rights of the owner of the goods if the bank sells it at a low price. Banks should have an obligation to optimize the selling price of the debtor's collateral. In addition to KPKNL, the author will also describe legal protection from the bank's point of view. Banks as creditors have a different way from KPKNL in providing legal protection to debtors. Banks have provided sufficient legal protection to debtors. Because when the debtor has entered the bad category, communication and negotiations are carried out, including offering to the debtor to sell the collateral himself but there are debtors who don't want to care, later when they want to be auctioned they will protest. To conduct an auction, the debtor must be categorized as bad. The provisions for including debtors in the bad category depend on each bank. Based on the regulations from Bank Indonesia, it must be auctioned for 6 months in a row.

3.3 Deed of Settlement Against Mortgage Execution After the Merger In The Company

The results of the research regarding the deed of settlement of the execution of the mortgage right after the merger of the companies in the bank, namely in connection with the execution of the Mortgage, the Supreme Court of the Republic of Indonesia, determined as a guide that the Mortgage Certificate has the same executorial power as a court decision that has permanent legal force, and if the debtor is in breach of contract, based on the executorial title contained in the Mortgage Certificate, the Mortgage holder requests the execution of the Mortgage to the competent Head of the Religious Court. Then the execution will be carried out like the execution of a decision that has permanent legal force.

The execution was an execution of Grosse Deed, which according to the Supreme Court, was given the following guidelines and instructions:

- In accordance with Article 224 HIR/Article 258 RBg, there are two types of grosse that have executive power, namely grosse of deed of recognition of debt and grosse of confiscation of ship mortgages;
- Grosse is the first copy and authentic deed. This first copy is given to the creditor;
- Because the first copy and the acknowledgment of debt made by a Notary¹⁸ have executive power, then this first copy must have a head of *irah-irah* which reads "For Justice Based on the One Godhead". Another copy given to the debtor does not wear the head / *irah-irah* "For the sake of Justice Based

¹⁸ Suwardi, *The Synchronization Necessary of Notary Supervision by Notary Supervisory and Honour Council*, Volume 8 No. 2, June 2021 Nationally Accredited Journal, Jurnal Akta Unissula

on the One Godhead". The original of the deed (minutes) is kept by the Notary in the archive and does not use the head/*irah-irah*;

- Grosse deed of debt acknowledgment with the head "For the sake of Justice Based on God Almighty", by a Notary submitted to Creditors which in the future may be needed can be directly requested for execution to the Head of the Religious Courts¹⁹;
- Execution based on Grosse Deed of Recognition of Debt (Fixed Loan) can only be carried out, if the debtor, when reprimanded, confirms the amount of the debt;
- If the debtor denies the amount of the debt, and the amount of the debt is not fixed, then the execution cannot be continued. Creditors, namely Banks to be able to file claims must go through a lawsuit, in which case, if the conditions are met, a decision can be immediately imposed;
- Article 14 of the Moneylender Act (Galschieters, Ordonnantie S. 1938-523), prohibits a Notary from making an acknowledgment of debt and issuing a grosse deed for a debt agreement with a moneylender;
- Article 224 HIR, Article 258 RBg do not apply to grosse deed of this kind;
- Grosse deed of acknowledgment of debt, which is regulated in Article 224 HIR, Article 258 RBg is a letter made by a Notary between Natural Persons/Legal Entities which in simple words the person concerned admits that he owes a certain amount of money and he promises to return the money within a certain period of time, for example within 6 (six) months, accompanied by an interest of 2% a month;
- The fixed amount in the debt acknowledgment letter is very simple and other conditions cannot be added;
- Creditors who hold grosse for debt acknowledgment with the head "For Justice Based on God Almighty" can directly request execution from the Head of the Religious Courts concerned in the event that the debtor breaks his promise.

In accordance with developments in Indonesia after the enactment of the Mortgage Law, the grosse mortgage deed pattern was maintained by introducing the 'Certificate of Mortgage' which also uses *irah-irah* so that it has executorial power. No exception, the Mortgage Law also recognizes parate execution institutions so that when the debtor defaults, the creditor will carry out the execution of the collateral. Based on the two methods of execution in the UUHT, namely execution according to the grosse deed of Mortgage and parate executie, of course, parate execution takes precedence because that is what is determined by Article 6 and Article 20 of the UUHT, which means that the execution is carried out outside the jurisdiction of the judiciary, this is the Religious Courts. In the execution process, there is only a small role for the Religious Courts because

¹⁹ Sumini, Amin Purnawani, *Peran Notaris Dalam Membuat Akta Perjanjian Notariil*, Vol. 4 No. 4 Desember 2017, Jurnal Akta Unissula

their settlement and implementation is beyond the reach of the law and the authority of the Religious Courts. Likewise, in terms of the legal consequences after execution, in addition to the problem of emptying the object of the auction, namely the object of the Mortgage itself and the resistance of the executed party, there are a number of closely related legal consequences. Resistance to the execution of executions often occurs, even physical violence is not uncommon, given the importance of the object of Mortgage for the executed party and their family.

Whereas according to Article 224 HIR/258 Rbg the grosse title is a condition to be implemented, if it does not exist then the authentic deed alone remains, so that its implementation can be carried out through an ordinary civil lawsuit accompanied by demands that the decision can be carried out immediately, while regarding it is not stated below grosse deed, the words of the name of the person whose request the grosse was given and the date it was given, because the provisions of Article 224 HIR/258 Rbg are not regulated, it does not cause the grosse to be invalid because even though it is not specified in the provisions of Article 224 HIR/258 Rbg that the grosse of the deed must first be completed or perfected in accordance with Article 55 paragraph 4 of the Notary Position Act, in order to maintain or prevent the possibility of giving more than one grosse, because according to Article 55 paragraph 4 in conjunction with Article 856 of the Civil Code, the granting of a second UUJN grosse can only occur first there is a judge's decision.

Parate execution is a direct execution based on the grosse in a debt acknowledgment deed. From here, the creditor can apply for execution to the District Court if the debtor cannot pay off his debt at the specified time without going through a trial process. Although using *irah-irah*, execution cannot be carried out based on a deed of acknowledgment of debt to the debtor's property which is used as collateral. Execution must still be carried out through the District Court. The power of the debt acknowledgment deed is only limited to binding the debtor and creditor. Grosse deed of recognition of debt is still needed today, but its implementation does not have executive power and does not work properly because there is still a lawsuit to court.²⁰

Banks that use sharia principles, material guarantees are not the main guarantee. The existence of a guarantee is not a must, because the financing provided is a bailout to buy goods needed by the debtor, where as long as the goods have not been paid for in full, the goods still have the status of collateral goods. Thus, the function of the guarantee in this case is only as a guarantee for the certainty of timely repayment of fees or loans. This means that this guarantee cannot be withdrawn by the customer before settling the accounts payable because it is

²⁰AD, BNI Syariah Marketing, Personal Interview, 15 January 2022

fixed and only disbursed if needed to replace funds that have been issued by the bank. Thus, the guarantee function in the event of non-performing payments in *murabahah* financing is only as a substitute for funds that have been issued by the bank to the *mudharib* or debtor.

4. Conclusion

The non-litigation dispute resolution process carried out by the two Islamic banks is equally limited to the negotiation method. No other methods such as mediation, adjudication or arbitration were carried out. So far, both Islamic banks and consumers have never applied for a banking dispute settlement to LAPS. If the dispute resolution process is too complicated, then both parties tend to take steps to resolve the dispute through litigation or to court. One of the documents required for the auction of the execution of the Mortgage guarantee is the Mortgage Certificate. Discussing the legal consequences of a merger, it is necessary to know what conditions must be met so that a company can merge with another company. The role of the Head of the Religious Courts in relation to the execution of the Grosse Deed is greater than that of the Execution of Mortgage Rights, because in accordance with the provisions of Article 6 and Article 20 of the UUHT, execution is carried out based on his own power through a public auction. This Parate Executie provision is a form of legal protection for creditors, which is also known for its rules on mortgages.

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