

The Juridical Analysis of Default Actions Made by *Mudharib* in *Mudharabah* Financing with Mortgage Guarantees

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Abstract. Any financing issued by KSPPS carries the risk of non-return of the disbursed funds or is called non-performing financing which results in default debtors. , and if the financing is jammed due to the default customer not being resolved, it will affect the business continuity of KSPPS BMT An Najah Pekalongan. Therefore, in order to avoid the risk of loss in providing financing facilities, KSPPS BMT An Najah Pekalongan in channeling financing requests the imposition of collateral from its customers, including Mudharabah financing. The approach that the author uses in this study is a Juridical Sociological approach. The Sociological Juridical Approach emphasizes research aimed at obtaining legal knowledge empirically by going directly to the object. Sociological Juridical Research is legal research using secondary data as initial data, which is then followed up with primary data in the field or on the community. The results obtained from this study are that the implementation of Mudharabah financing with mortgage guarantees at KSPPS BMT An Najah includes submission of financing applications, financing analysis, financing approval, financing agreements, disbursement of financing, and monitoring. All of these steps are carried out using the 5C principles which include Character (characteristics of prospective financing members, such as honesty, behavior and obedience), Capital, Capacity (ability), Collateral, Condition of economy. Furthermore, for the settlement of default Mudharib at KSPPS BMT An-Najah is the settlement of Mudharabah financing disputes at KSPPS BMT An Najah, including rescheduling (rescuing), reconditioning, restructuring (rearrangement).

Keywords: Guarantees; Financing; Mortgage; Mudharabah.

1. Introduction

The Indonesian nation has its own way of expressing ideal goals as written in the Preamble to the 1945 Constitution concerning the goals of the Unitary State of the Republic of Indonesia that is independent, sovereign, just and prosperous based on Pancasila, namely to protect the entire Indonesian nation and all of Indonesia's bloodshed, and to promote public welfare, educating the life of the nation and participating in carrying out world order based on freedom, eternal peace and social justice for all Indonesian people.

Indonesia as a developing country in achieving these goals carries out development in various fields, including development in the economic field, because this field can contribute to the progress of other fields in all aspects of the life of the nation and state, including one of them, namely in the field of Islamic economics.

Development in the economic field is not only a task for the government, but the private sector is also expected to participate. In order to maintain and continue sustainable development, development actors, both the government and the community, as individuals and legal entities, really need large amounts of funds. One of the facilities that has a strategic role in procuring these funds is a cooperative, and one form of business from a cooperative is a savings and loan cooperative.

The rapid development of savings and loan cooperatives began with the enactment of Act No. 25 of 1992 concerning Cooperatives, with one form of business being savings and loans. In the governance of savings and loan cooperatives in Indonesia, two management systems are known, namely savings and loan cooperatives based on conventional principles and savings and loan cooperatives based on sharia principles.

Based on the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 11 of 2017 concerning Implementation of Savings and Loans Business Activities and Sharia Financing by cooperatives. Article 1 paragraph 2 explains that "Sharia Savings and Loans and Financing Cooperatives (KSPPS) are cooperatives whose business activities include savings, loans and financing according to sharia principles, including managing zakat, infaq, alms, and waqf".

One of KSPPS's business activities is financing distribution, which can be interpreted as providing funds in the form of an agreement or agreement consisting of a principal agreement and additional agreements with the provision of compensation or profit sharing with a predetermined repayment period. Every financing provided by the KSPPS to the debtor always carries a risk in the form of non-return of the money that has been distributed, this can affect the continuity of the KSPPS.

The additional agreement which is an integral part of the main agreement contains a guarantee agreement. The collateral used is usually in the form of collateral for land certificates because in general land has an ever-increasing value, is difficult to embezzle, and can be encumbered with a mortgage as a source of repayment if the customer is no longer able to pay and gives priority to the creditor holding the mortgage.

Mortgage rights are regulated in the Act No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, abbreviated as UUHT. According to the Indonesian dictionary, dependents are defined as goods that are used as collateral. While the guarantee itself means dependents on the loan received¹.

The imposition of collateral in a mudarabah financing contract is intended as a transfer of wealth or a statement of the mudarib's ability to bear the repayment of the capital provided.

Article 1 of Act No. 21 of 2008 concerning Sharia Banking, states that the guarantee in question is additional collateral, both in the form of movable and immovable objects submitted by the collateral owner to the Sharia Bank and/or Sharia Business Unit, in order to guarantee payment of the obligations of the beneficiary customer. facility. Likewise, according to Article 1 of Act No. 10 of 1998 concerning Banking, collateral is additional collateral provided by debtor customers to banks in the context of providing credit facilities or financing based on sharia principles.

The explanation of the two laws above contains two types of guarantees, namely the main guarantee and additional guarantees in the form of tangible objects of economic value to be used as payment for financing based on sharia

¹Oting Supartini and Anis Mashdurohaturun, The Legal Consequences of the Credit Agreement Deed Made by a Notary With Guaranteed Mortgage Rights of Legal Certainty and Fairness of the Parties, *Journal of Legal Renewal*, Volume III No. 2, (May – August 2016), p. 204.

principles if the customer defaults. The main collateral can be in the form of goods, securities, or guarantees that are directly related to the object being financed with the relevant financing, such as goods purchased in collateralized installments, projects financed with the relevant financing being used as collateral. While additional guarantees are in the form of goods, securities or guarantees that are not directly related to the object being financed by credit or the financing concerned which is added as collateral².

Islamic economics has the potential to replace the position of conventional economics, but in practice there are many obstacles and challenges faced, including the implementation of double taxation in Islamic banking, the unprepared support of Islamic economic human resources, there is no Islamic economics curriculum in public schools, so that public understanding, awareness and concern low, negative perceptions of a group of Muslims and non-Muslims who are afraid to apply sharia law in a comprehensive manner, not yet strong support from Islamic political parties to implement sharia economics, increased public appreciation and enthusiasm to expand the sharia economic market have not been followed by adequate education³.

Any financing issued by KSPPS carries the risk of non-return of the disbursed funds or is called non-performing financing which results in default debtors. , and if the financing is jammed due to the default customer not being resolved, it will affect the business continuity of KSPPS BMT An Najah Pekalongan. Therefore, in order to avoid the risk of loss in providing financing facilities, KSPPS BMT An Najah Pekalongan in channeling financing requests the imposition of collateral from its customers, including *Mudharabah* financing.

KSPPS BMT An Najah Pekalongan is a cooperative legal entity financial institution engaged in financing, investment and savings in accordance with a profit-sharing pattern that will be channeled back to the community in the form of financing. In this case, KSPPS BMT An Najah Pekalongan participates in realizing the development of sharia-based finance. One of the activities carried out by KSPPS BMT An Najah Pekalongan is to assist members in increasing business capital in order to expedite the business run by members using a *Mudharabah* contract.

²Djawahir Hejazziey, *Sharia Banking Law*, First Edition, (Yogyakarta, Deepublish, 2013), p. 163.

³Anis Mashdurohatun, *Islamic Economic Challenges in Facing Indonesia's Future in the Era of Globalization*, *Journal of Legal Dynamics*, Vol. 11, (February 2011 Special Issue), p. 80.

A *Mudharabah* contract is a business cooperation agreement between the capital owner and the entrepreneur, in which the first party provides all the necessary funds and the second party manages the business with profit (margin) that has been agreed upon by both parties (*shohibul maal* and *Mudharib*).

The provisions in Article 37 paragraph (1) of the Sharia Banking Law state that channeling funds based on sharia principles carries a risk of failure or congestion in repayment so that it can affect the soundness of the bank. As is the case with Islamic banks, KSPPS BMT An Najah Pekalongan also has financing risks, namely the non-return of principal financing and *ujrah* or profit sharing as agreed in the financing agreement between KSPPS BMT An Najah Pekalongan and members of the recipients of the facility. In fact, in the last 2 (two) years, some of the *Mudharabah* financing at KSPPS BMT An Najah Pekalongan has experienced a breakdown which has resulted in the customer being declared in default. The occurrence of problem financing can be caused by several factors, such as weaknesses in analyzing customer capabilities.

The process of preventing problematic *Mudharabah* financing from occurring by KSPPS BMT An Najah Pekalongan is not only at the time of providing the financing, but while the financing is in progress, so that the *Mudharabah* financing provided to members can be returned on time and there will be no default. However, based on the facts, KSPPS BMT An Najah Pekalongan during the course of its business there were still several *Mudharabah* financing that experienced defaults so that it was declared default, which then forced the mortgage guarantee to be executed to return or pay *Mudharib*'s debts.

2. Research Methods

The approach used in this study is a sociological juridical approach. While the research specifications in writing this thesis are in the form of analytical descriptive research, which describes the problems that are the object of research based on the data obtained when this research was carried out. The data collection method used in this study was to find the necessary data from the actual research object through interviews and documentation. While the method of data analysis used is data obtained from field studies and document studies which are basically level data which are analyzed descriptively qualitatively.

3. Results and Discussion

3.1. Implementation of *Mudharabah* financing with guaranteed mortgage rights at the *Baitul Maal Wattamwil An Najah Pekalongan Sharia Savings and Loans Cooperative*?

Microfinance institutions (MFIs) in Indonesia are currently growing rapidly and have an important role in improving the people's economy. The rapid development of MFIs is because almost 51.2 million units or 99.9% of business actors in the Indonesian economy are dominated by micro and small business units. as well as production and also store the results of their efforts.

Based on the definition above, it can be understood that an MFI is a financial institution that functions as an intermediary institution that aims not only to seek profit (profit motive), but has other goals, namely social motives whose activities are more of a community development nature.

In addition to carrying out conventional activities, MFIs can also operate based on sharia principles. Specifically for Islamic microfinance institutions (LKMS), the activities they carry out are in the form of financing, not savings. Financing here is defined as the provision of funds to the community which must be returned in accordance with what was agreed according to sharia principles (see Article 1 (4) of the LKM Law). LKMS in carrying out their business must refer to the fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). In addition, MFIs are also required to form a Sharia Supervisory Board (DPS) which is tasked with providing advice and suggestions to directors or management, and overseeing MFI activities in accordance with sharia principles (see Articles 12 & 13 of UU-LKM).

Before operating, MFIs must first obtain permission from the Financial Services Authority (OJK) (see Article 9 of the LKM Law). The form of legal entity can be in the form of cooperatives and limited liability companies (see Article 5 UU-LKM). MFI business activities can include business development services and community empowerment, either through loans or micro-scale business financing to members and the community, managing deposits, as well as providing business development consulting services (see Article 11 UU-LKM). MFIs that are about to operate must submit an application to obtain a business license from the OJK since the enactment of the LKM Law on January 8, 2015. As for MFIs that have been operating before the enactment of Act No. 1 of 2013 concerning Microfinance Institutions, they must obtain a business license with confirmation as an MFI by the OJK no later than January 8, 2016 (see Article 29 paragraph 1 POJK number 12/POJK.05 / 2014 concerning Business and

Institutional Licensing of Microfinance Institutions). Currently, based on OJK data as of January 31 2017, there are 138 Microfinance Institutions that are already in OJK.

LKMS in carrying out their business are in the same village, sub-district, or district/city area. If an LKMS conducts business activities in more than 1 (one) regency/city area, it is obliged to change its form to become a bank (see Articles 16 & 27 of the UU-LKM). In terms of fostering, regulating and supervising MFIs, both those with cooperative legal entities and limited liability companies, it is carried out by the Financial Services Authority (OJK). Regarding the guidance of MFIs with cooperative legal entities, OJK will coordinate with the ministries in charge of cooperative affairs.

Before the issuance of Act No. 1 of 2013 concerning Microfinance Institutions, LKMS in Indonesia are known as *Baitul Mal wa Tamwil* (BMT) or Savings and Loans Cooperatives and Sharia Financing (KSPPS). The institutions mentioned above are generally incorporated as cooperatives. Based on Act No. 25 of 1992 concerning Cooperatives which is specifically regulated in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 16/Per/M.KUM/IX/2015 concerning Implementation of Savings and Loans Business Activities and Cooperative Financing, concerning licensing, establishment, supervision and guidance KSPPS-type cooperative bodies must be carried out by the Government.

As outlined, that financial institutions based on sharia principles must carry out their activities based on Islamic law. Thus, according to the relationship that occurs between the financial institution and the customer, it must be based on Islamic law. The relationship pattern based on the desire to uphold the sharia system is believed to be a solid pattern of relationship between sharia cooperatives and customers. If there is a disagreement, both in the interpretation and implementation of the contents of the agreement, both parties will try to resolve it by deliberation according to Islamic teachings.

BMT has an important role in the national economy. BMT grows and develops rapidly, so that its existence contributes to increasing small and medium community businesses. Some of the functions carried out by the BMT apart from collecting funds also function as channeling funds accompanied by fees for services the funds are collected/distributed and have a social function as *Baitul Maal*.

In addition, in relation to the above issues, MFIs with cooperative legal entities have legal consequences of being subject to two different laws and regulations, namely the law on cooperatives and the law on microfinance institutions. This

causes a double rule for Islamic MFIs. This dualism of legal regulation has implications for overlapping authorities between the governing agencies, inconsistencies and contradictions in the regulation, supervision and guidance of Islamic MFIs. Given the importance of the existence of microfinance institutions in improving the community's economy, it is important to pay attention to the laws and regulations that govern them. It is hoped that all regulations related to MFIs will further strengthen their presence and facilitate their performance so that they become better, not the other way around

The distribution of funds collected from members is channeled in the form of financing, occupying the dominant amount of all cooperative productive assets. Earning assets are investments in banks, distribution of financing, participation and other investments, with the aim of obtaining income. In providing financing, attention needs to be paid in order to protect and secure the funds of cooperative members which are managed and entrusted to the cooperative.

It should also be noted that the savings and loan and sharia financing business activities are carried out based on sharia principles with good governance, applying the principles of prudence and risk management, and complying with regulations related to the management of sharia savings and loan and financing businesses.

In gaining confidence that members are bankable after going through analysis and research. The references in the analysis and research include character, ability, capital, collateral, and business prospects of prospective members of the financing, which are then known as the 5C principles which include Character (characteristics of prospective members of the financing, such as honesty, behavior and obedience); Capital (capital), which is related to the capital structure including the performance of the results of the capital itself; Capacity (ability) concerning leadership and performance in the company; Collateral (collateral), namely the ability of prospective financing members to provide collateral that is good in value, both legally and economically and this Condition of economy (economic conditions) includes government policies, politics, social, culture,

In principle, the 5C concept will be able to provide information regarding the good faith (willingness to pay) and ability to pay (ability to pay) members of the financing in repaying the financing along with margin and other expenses⁴.

One important aspect of KSPPS is a healthy financing process, namely a financing process that has implications for halal and good investment. Therefore, in this

⁴Rachmadi Usman, 2001, *Legal Aspects of Banking Engagements in Indonesia*, Gramedia Pustaka, Jakarta, p. 246.

case the author will convey the mechanism for implementing *Mudharabah* financing to KSPPS BMT An-Najah from the application submission process until the business is running in *Mudharabah* financing transactions between KSPPS BMT An-Najah as the owner of the funds and the customer as the manager of the funds, the mechanism for implementing the financing is as follows:

1. Submission of financing applications

Applications for financing are made by customers or prospective customers with the aim of obtaining financing according to what is needed. Before submitting an application for financing, the applicant must already be a member and have a savings account of at least IDR 50.000.00,- This application must be made in writing and shown to the cooperative. This application describes the desired financing needs and the type of financing expected

2. Financing Analysis

Financing analysis is the process of processing basic information that has been obtained into complete information. Complete information consists of several factors including opportunities and threats that will affect the business and the smoothness of installments. Financing analysis is also equipped with an evaluation of the capital requirements required by customers. Concerning confidence based on an in-depth analysis of the good faith and ability and ability of the debtor to pay off his debts according to what was agreed.

3. Approval of Financing Applications

After the Financing Analysis was carried out by the KSPPS BMT An Najah Pekalongan marketing department, a meeting was then held by the financing committee in order to determine the status of the financing application by using survey results and financing analysis calculations.

If the application is rejected or postponed, the financing committee signs the rejection column in the committee's approval sheet and provides the response letter made by the financing administration. However, if the application for approval is approved, the financing committee signs the approval column in the committee's approval sheet. Of course, the approval for the provision of financing must be based on a thorough assessment of all types of credit facilities provided by the cooperative simultaneously or in stages. This is mainly related to financing analysis, financing administration and documentation, financing monitoring or supervision, review or collectibility of financing and financing guidance.

4. Financing agreement

Carried out by cooperatives as *shohibul maal* and prospective customer members as capital managers. Made in writing before a notary deed. This section is very important for *Mudharib* customers to know because on the basis of a financing agreement, the cooperative can declare the credit problematic or not so that it can take certain steps that can be burdensome to the customer.

5. Funding Disbursement

In this process, the customer as *Mudharib* submits the conditions in the form of SKMHT along with other administrative requirements. After all administrative requirements have been approved, the disbursement of funds is submitted to the customer through the account concerned.

6. Monitoring

The stage after disbursement is monitoring customers by monitoring the progress of the customer's business. If the target is not achieved, KSPPS employees take rescue actions, namely going down to the field to meet customers to find out the problems experienced by customers.

3.2. Settlement of *Mudharib* defaults in *Mudharabah* financing with collateral rights

As outlined, that financial institutions based on sharia principles must carry out their activities based on Islamic law. Thus, according to the relationship that occurs between the financial institution and the customer, it must be based on Islamic law. The relationship pattern based on the desire to uphold the sharia system is believed to be a solid pattern of relationship between sharia cooperatives and customers. If there is a disagreement, both in the interpretation and implementation of the contents of the agreement, both parties will try to resolve it by deliberation according to Islamic teachings.

The role of the Sharia Supervisory Board is very strategic in the application of sharia principles in Islamic banking institutions. According to the Decree of the National Sharia Council - Indonesian Ulema Council (DSN MUI) No.Kep-98/MUI/III/2001 that DSN assigns DPS tasks to:

1. Perform periodic supervision of Islamic financial institutions
2. Submit suggestions for the development of Islamic financial institutions to the heads of the institutions concerned and to the DSN

3. Report on the development of products and operations of the 101 Islamic financial institutions they supervise to the DSN at least twice in one fiscal year
4. Formulate problems that require discussion with DSN.

The problems experienced by microfinance institutions such as KSPPS BMT are no different from financial institutions in general. in Bank Indonesia Regulation Number: 5/7/PBI/2003 Concerning the Quality of Earning Assets for Islamic Banks, article 2 paragraph (1) which reads "Investments of Islamic Bank funds in Earning Assets must be carried out based on the principle of prudence". In his explanation, the business feasibility analysis is based on the precautionary principle at least using the 5 C principle.

In minimizing the risk of *Mudharabah* financing at KSPPS BMT An-Najah Pekalongan, the financing division and managers of KSPPS BMT An-Najah Pekalongan conduct an analysis of the feasibility of financing prospective members using the 5 C principle. This is like most things done by micro and macro financial institutions. The 5 C principles are:

1. Character

In this principle, the KSPPS BMT An-Najah Pekalongan looks at the prospective member's personality. Usually the personality type of prospective members can be seen during interviews between customer service and prospective members who wish to apply for financing. This can be seen from the behavior, background, lifestyle and related to the personality of the prospective member. The purpose of this principle is to assess whether prospective members can be trusted in collaborating with KSPPS BMT An-Najah Pekalongan.

2. Capacity (Ability)

In this case, marketing must know the extent of the member's ability to repay funds. This principle assesses members in terms of their ability to manage finances in the business they are running. In the analysis it will be known whether the member has experienced a financial or financing problem before or not.

3. Capital

This principle is related to the condition of the assets and wealth owned by members. Capital is assessed from the annual report on businesses managed by members, from this assessment KSPPS BMT An-Najah Pekalongan can see and determine the eligibility of these prospective members to obtain financing and from this analysis can also be considered for the period of time that the

prospective member will take in the application financing.

4. Collaterals

In this principle the assessment includes guarantees or collateral for prospective members which are charged to members for guaranteeing financing to KSPPS BMT An-Najah Pekalongan. This is done to avoid the risk of default or problematic financing and losses that will be experienced by KSPPS BMT An-Najah Pekalongan if prospective members cannot pay the financing installments. Collateral can be in the form of movable objects such as motorized vehicles and immovable objects such as certificates of houses and or buildings owned by prospective members. Guarantees given by prospective members are guarantees that are legally owned by members and have value from an economic and juridical perspective. It is a financing task to analyze the guarantee by checking the completeness of the documents and their authenticity from a juridical perspective so that the guarantee can be bound according to the type of guarantee. The binding for guarantees in the form of movable objects is carried out with a fiduciary deed. While guarantees in the form of immovable objects are tied to the deed of SKMHT (Power of Attorney for Imposing Mortgage Rights) or APHT (Deed of Granting Mortgage Rights).

5. Condition

This principle relates to the economic condition of prospective members. Where is the KSPPS BMT An-Najah Pekalongan financing section assessing the prospects for the business being run by prospective members, whether the business will be successful in the future or vice versa. The business of prospective members is also heavily affected by economic policies from both the regional and central governments, because there is indeed a very strong correlation between fluctuations in community businesses and micro and macroeconomic conditions.

However, even though the KSPPS BMT An Najah has taken these steps, the potential for default will still occur, namely the act of breaking a promise by one of the parties to the agreement on stamp duty as a result of negligence so that they cannot fulfill their obligations. Or the term for this negligence is default

Default is a term from the Dutch language "wanprestatie" which means not fulfilling the achievements or obligations in an agreement. According to KBBI, the definition of default means that one of the parties agrees in the agreement to have poor performance as a result of their negligence.

Default article 1234 in the Civil Code states that, "Reimbursement of costs, losses and interest due to non-fulfillment of an agreement begins to be

required, if the debtor, even though he has been declared negligent, remains negligent in fulfilling the said agreement, or if something that must be given or done can only be given or carried out within a time that exceeds the specified time. Meanwhile, a lawsuit for default can be filed according to the provisions of the Criminal Code article 1267 of default.

Apart from that, other articles of default include Article 1243 BW regarding the obligation to compensate for losses suffered by one of the parties, Article 1267 BW regulates the termination of the contract agreement together with the payment of compensation, Article 1237 paragraph (2) BW regarding acceptance of the transfer of risk since default, Article 181 paragraph (2) HIR regarding the coverage of case costs in court

Examples of cases of default are often found in debts, cooperation in a project/business, and so on. Usually, cases of debt are often encountered where creditors are unable to pay their obligations for various reasons. The result is detrimental to the debtor.

Meanwhile, examples of cases of default in project or business cooperation, for example, occur between investors and business actors. When a business generates profits, the percentage of profit sharing is not according to the agreement at the beginning. So that one party is harmed.

Defaults can occur for several reasons. The factors causing the default are as follows:

1. *Force Majeure* or Force Majeure

The first point that causes default is being trapped in a coercive situation. This factor occurs when one party is unable to fulfill its obligations due to conditions beyond that party's control. The inability to carry out the agreement is not at the will of the party. Thus the perpetrator cannot be blamed. Elements of default in forced circumstances include natural disasters, objects destroyed by accident, objects lost or stolen, and so on.

2. Negligence of One Party

Another cause of default is the negligence of one of the parties. The party as the perpetrator of the agreement takes actions that harm the other party as a result of negligence or intentional violation of the agreement.

3. Parties Deliberately Violating the Agreement

The fatal cause of default is one of the parties deliberately violating the

agreement. Parties do things that are contrary to the initial agreement. As a result, one of the parties is affected by the loss.

To avoid defaults as mentioned above, efforts to save troubled *Mudharabah* financing carried out by KSPPS BMT An-Najah Pekalongan are as follows:

1. The first written warning is given to customers/*Mudharib* who are late in repaying by 1 (one) month from the installment due date or who have not carried out business activities for 3 (three) consecutive months without any explanation that can be accounted for.
2. A second written warning is given to the customer/*Mudharib* if within 30 (thirty) days the first written warning is not heeded.
3. The third written warning is given to the customer/*Mudharib* if within 30 (thirty) days the second warning is not heeded.
4. Rescheduling

Namely saving problematic financing by rescheduling the installment due date and changing the amount of the installment.

5. Reconditioning

The process of rearranging the initial agreement or contract that has been previously agreed upon is added with a decrease in profit sharing or margin, then the margin becomes the principal debt, postponement of margin payments until the margin is released.

6. Restructuring

Namely the addition of financing capital if members are considered to have good prospects in the future

When involved in an agreement with potential default, we can file a default claim and submit it to a civil court. How to file a lawsuit for default is as follows:

1. Registering a Default Claim to Court

The first way to file a lawsuit for default is to register a lawsuit in writing with the court. Based on Default Article 118 paragraph 1 HIR explains that the plaintiff must choose a district court whose level is in accordance with the capacity of the lawsuit.

2. Paying Down Payment Fees

If the lawsuit is accepted by the court, the next way to file a lawsuit for default is for you to make a down payment for the case. Down payment costs are funds when the final case is calculated after a court decision is issued. In the initial stages, these costs will be borne by the plaintiff. However, at the end of the court decision, the losing party will bear the down payment. This fee is required by the court to fulfill administrative matters such as preparing documents, summoning witnesses, stamp duty, and other costs

3. Register Cases

If you have already paid the down payment fee, please register the case. The default lawsuit that you submit will be recorded in the Case Register Book to obtain a lawsuit number. The claim number will later be used in the process of settling defaults in court.

4. Submit case files to court

Your lawsuit will be processed by the Head of the District Court according to the claim number. The process of handing over this case must be carried out no later than 7 days after registration. This is done so as not to violate the principles of settling cases.

5. Waiting for the Assembly's Determination

Furthermore, the way to file a lawsuit for default is to wait for the stipulation of the Trial Council. After examination, your claim document will be decided by the Judge no later than 7 days after receipt of the file

6. Following the Court Procession Well

The last step is to carry out the trial process according to applicable regulations. You and the related parties will be tried by the court to resolve the case. Try to follow the court procession with a good and cool head.

Settlements made through rescheduling, reconditioning, and restructuring are expected to allow the financing to be saved, not to lose the *Mudharabah* financing funds provided beyond the expected calculation. Efforts to save or settle troubled financing (restructuring) can be made a maximum of 3 (three) times within the initial financing contract period. The second and third financing restructuring can be carried out no sooner than 6 (six) months after the previous financing restructuring (BI Regulation No.10/18/PBI/2002 article 6).

After making efforts to save or settle the problematic financing above, if the member still defaults, then the last resort is in the form of execution of the guarantee.

4. Conclusion

Implementation of *Mudharabah* financing with guaranteed mortgage rights at KSPPS BMT An Najah includes submission of financing applications, financing analysis, financing approval, financing agreements, disbursement of financing, and monitoring. All of these steps are carried out using the 5C principles which include Character (characteristics of prospective financing members, such as honesty, behavior and obedience); Capital, which is related to the capital structure including the performance of the results of the capital itself; Capacity (ability) concerning leadership and performance in the company; Collateral, namely the ability of prospective financing members to provide collateral that is good in value, both legally and economically and this Condition of economy includes government policies, politics, social, cultural, and other aspects that can affect the economic conditions themselves. The settlement of *Mudharabah* financing disputes at KSPPS BMT An Najah includes rescheduling (rescue), which is a legal effort to make changes to some of the terms of the financing agreement relating to the repayment schedule or the financing period including the grace period. Reconditioning, namely making changes to all terms of the agreement which are not only limited to changes in installments of funds or the financing period, but changes to the financing without providing additional conversion financing for all or part of the financing into company equity.

5. References

Journals:

- [1] Anis Mashdurohatun, Tantangan Ekonomi Syariah Dalam Menghadapi Masa Depan Indonesia di Era Globalisasi, Jurnal Dinamika Hukum, Vol. 11, (Special Edition February 2011), p. 80.
- [2] Oting Supartini dan Anis Mashdurohatun, Akibat Hukum Akta Perjanjian Kredit Yang Dibuat Notaris Dengan Jaminan Hak Tanggungan Adanya Kepastian Hukum dan Keadilan Para Pihak, Jurnal Pembaharuan Hukum, Volume III No. 2, (May – August 2016), p. 204

Books:

- [1] Djawahir Hejaziey, Hukum Perbankan Syariah, Cetakan Pertama, (Yogyakarta, Deepublish, 2013), p. 163.

- [2] Rachmadi Usman, 2001, *Aspek-Aspek Hukum Perikatan Perbankan Di Indonesia*, Gramedia Pustaka, Jakarta, p 246.

Regulation:

- [1] Civil Code (KUHPperdata).
- [2] Act No. 1 of 2013 concerning Microfinance Institutions
- [3] Act No. 21 of 2008 concerning Sharia Banking.
- [4] Act No. 25 of 1992 concerning Cooperatives
- [5] Act No. 4 of 1996 Concerning Mortgage Rights on Land and Land-Related Objects
- [6] Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 16/Per/M.KUKM/IX/2015.
- [7] Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 11 of 2017 concerning Implementation of Savings and Loans and Sharia Financing Business Activities
- [8] Decree of the National Sharia Council - Indonesian Ulema Council (DSN MUI) No.Kep-98/MUI/III/2001