

## Executorial Power of Guarantee of Mortgage Rights Due to Merger of PT. Bank Syariah Indonesia

Berry Pratiwi

Faculty of Law Sultan Agung Islamic University Semarang, Email:  
[berrypratiwi.std@unissula.ac.id](mailto:berrypratiwi.std@unissula.ac.id)

**Abstract.** *This study aims to analyze the executive power of collateral rights guarantees that have undergone mergers in Indonesian Islamic banks and the implementation of execution of collateral rights in banks that have undergone mergers. The type of research used is Normative Juridical research. The problem approach that the author uses in this research is: 1). Statute approach and 2). Conceptual approach. Based on the research results, the executive power of mortgage rights has the same executive power as a court decision which has obtained permanent legal force, and if the debtor breaks the contract then based on the executive title contained in the certificate of mortgage rights, the holder of mortgage rights requests execution of the certificate of mortgage rights to the head of the competent religious court. Then the execution will be carried out like the execution of a decision that has permanent legal force. In connection with the execution of mortgage rights after a merger, refer to the provisions of Article 16 of the Mortgage Law, paragraphs (1) to paragraph (3), which state that what is meant by other causes are things-other than what is mentioned in the paragraph, such as takeover or merger of companies that cause the transfer of receivables between BNIS, BSM, and BRIS as the parties carrying out the merger, there is a transfer of receivables to the new creditor which in this case is Bank Syariah Indonesia. Then the collateral for the mortgage is also transferred to the new creditor, namely Bank Syariah Indonesia. The transfer of the Mortgage must be registered by the new creditor with the Land Office, by recording it in the Mortgage Land Register and the Land Title Register which is the object of the Mortgage and copying the record on the Mortgage Certificate and the Mortgage Recipient Certificate in this case is Bank Syariah Indonesia.*

**Keywords:** Bank; Executive; Syariah.

### 1. Introduction

Banking activities in general are commercial actions carried out conventionally and in accordance with Islamic sharia principles, the function of Islamic banks is

to encourage the economy in a balanced and strategic manner, with the existence of conventional banks and Islamic banks having an important role as financial intermediary institutions that provide payment services. In Indonesia, the existence of Islamic banking is one of the implementations of the wishes of the Islamic community which requires a system that provides banking services in accordance with Islamic principles that are free from usury.

The growth and development of sharia-based banking institutions in Indonesia are improving from year to year and have become a benchmark for the success of the existence of the sharia economy. Strengthening the regulation of sharia banks in Indonesia with the enactment of Law Number 21 of 2008 concerning Sharia Banking (Sharia Banking Law), is said to be a system and process in carrying out something related to sharia banks and sharia business units based on the nature of Islamic law, the function of sharia banks is to collect funds from the community in the form of deposit savings, savings and then distributed in the form of financing, in addition, the function of sharia banks is also a provider of electronic shopping payment services.<sup>1</sup>The growth of Islamic banking is influenced by the ability to collect funds from the community on an adjusted scale.

Increasing bank capital is one form of effort to strengthen the banking system, with strong capital banks can reduce vulnerability, therefore capital adequacy remains the main focus of regulators in creating healthy and safe banks. The importance of capital adequacy for banks is because capital can absorb unexpected losses, capital protects unsecured creditors in the event of insolvency or liquidation, capital can also protect the funds of the Deposit Insurance Agency and banks can make investments for the purpose of facilitating services.<sup>2</sup>

Entering the era of globalization, business competition between one another is getting tighter, with the condition of companies trying to develop their company strategies in order to maintain their popularity and performance. One of the methods used by entrepreneurs for development is through mergers. Mergers are further regulated in Law Number 40 of 2007 concerning Limited Liability Companies and Government Regulation Number 57 of 2010 concerning Mergers, Amalgamations, and Acquisitions of Limited Liability Companies.

Several companies engaged in the banking institution sector have carried out mergers, as carried out by Bank Rakyat Indonesia Syariah, Bank Syariah Mandiri and Bank Negara Indonesia Syariah with the following profiles, Bank Rakyat Indonesia which was established in 1895, previously named Bank Djasa Arta, and has carried out several changes in name and business activities based on sharia principles called Bank Rakyat Indonesia Syariah (BRIS). ), BRIS is the first sharia

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<sup>1</sup>*Ibid.*,p.4.

<sup>2</sup>*Ibid.*,p.6.

bank that distributes the most KUR activities and has the status of a company that has previously experienced an IPO (initial public offering), BRIS has obtained a business license as a sharia public bank in 2008, which has highly competitive products and services that support the field of Sharia banking. Hereinafter referred to as Bank Syariah Mandiri (BSM), BSM was first established under the name PT Bank Industri Nasional which has carried out several types of The name of the bank was changed from PT Bank Industri Nasional abbreviated as PT BINA or also called PT National Industrial Banking Corporation Ltd, to PT Bank Maritim Indonesia so that the last name change used was Bank Syariah Mandiri. In 1999, BSM obtained a business license from Bank Indonesia, the products and services offered by BSM Bank can be categorized into 3 products, namely financing products, funding products, and digital banking services. About the General Overview of Bank Negara Indonesia Syariah (BNIS), BNIS officially started its banking activities in 2010 after obtaining a business license as a sharia-based banking institution in Indonesia, BNIS's business growth in general has always supported above average growth in the sharia banking industry, the product activities offered by BNIS are categorized into 4 products, namely, fundraising, financing products, service products and transactional products.<sup>3</sup>

Merger is a process of diffusion or merging of two or more companies, which provides an opportunity for companies to increase their existence in the company. This action is a legal act that contains comprehensive civil law and public law aspects, so that it is necessary to pay attention to the interests of the company, minority shareholders and employees of the company, the interests of the community and healthy competition in conducting business. The merger of companies also does not reduce the rights of minority shareholders to do something with their shares.<sup>4</sup> Merger is an effort made by a company to understand the economic conditions by merging one company with another existing company and can encourage the company's business. In the banking sector, the need for efforts to carry out these activities, namely to be able to realize a Limited Liability Company in a banking institution by carrying out direct and joint renewal so as to form the desired company and can provide existence to the banking institution system which is efficient and can be in the economic sector and the global market.

The reasons for conducting a merger are, firstly for the growth and development of the Limited Liability Company Institution in the banking sector to grow more rapidly, in terms of share size or market, and can also reduce competing companies or competition, secondly synergy can be achieved, by producing economies of scale. Therefore, by combining costs, the company's income will

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<sup>3</sup>Muhammad Nabawi Marpaung, 2021. SWOT Analysis of the Merger of Bank Mandiri Syariah, Bank Bri Syariah and Bni Syariah to Become Bank Syariah Indonesia. (Thesis). Yogyakarta: Islamic Economics Study Program, Islamic Studies Department, Faculty of Islamic Studies, Islamic University of Indonesia. pp. 36-48.

<sup>4</sup>Sri Redjeki Hartono, 2000. Company Sales Chapter. Bandung: Mandar Maju. p. 38.

increase, the company's funds can be increased by merging with a company that has high liquidity so that it can cause an increase in the company's borrowing capacity and a decrease in financial bank liabilities.<sup>5</sup>

Banking institutions, in addition to collecting funds, banks also play a role in channeling these funds back to the community. In carrying out the function of channeling these funds, customers as recipients of facilities are customers who obtain funding facilities or financing loans based on Sharia principles, as has happened with the merger of Bank Syariah Indonesia (BSI), resulting in a change in the name of the old bank to a new one. One of them is BNIS, which has provided financing facilities to customers and vice versa, customers receiving financing provide collateral to BNIS in the form of land titles so that they are burdened with mortgage rights which will later be registered with the land office. BNIS, which is one of the institutions Islamic banking that has merged into BSI has an obstacle, namely that the financing agreement and collateral are still attached to the name BNIS and after the merger or amalgamation, it results in a change in the name of BNIS to BSI. This results in a change in the name of the creditor and the recipient of the mortgage, this of course also has an impact on the mortgage certificate.

As explained in Article 23 of the Sharia Banking Law, in providing a financing agreement to a debtor, the bank is required to have confidence or an assessment obtained from an in-depth analysis of the debtor's ability and capability to pay off his obligations in accordance with what was agreed. One of the important assessment elements in this analysis is collateral or security.

The clause regarding the guarantee is stated in the form of a guarantee agreement which is an accessory agreement to the financing agreement which is the main agreement. The function of the guarantee for creditors is:

1. Can provide rights and powers to creditors in order to achieve repayment with the provision of the intended collateral.
2. Can provide a guarantee that the debtor acts in the agreement not to neglect his business activities which could harm himself and his company.
3. Can provide encouragement and enthusiasm to debtors to fulfill the agreed financing agreement.<sup>6</sup>

The collateral object is in the form of a land title, as intended in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), then the collateral institution used is the Land and Building Institution. Mortgage Guarantee. Article 10 of the Land Deed Making Law regulates that the granting of Mortgage Rights

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<sup>5</sup>Budi Untung, 2019. Merger Law. Yogyakarta: Andi. p. 4.

<sup>6</sup>Rachmadi Usman, 2001. Legal Aspects of Banking in Indonesia, Jakarta: Gramedia Pustaka Utama. p. 287.

is carried out by making a Deed of Granting of Mortgage Rights (APHT) by a Land Deed Making Official (PPAT) in accordance with applicable laws and regulations. In accordance with property rights, this can be proven in the Land Deed Making Law as stated in Article 1 point 1 and Article 20 paragraph (1) which contains the principle of *droit de preference*, Article 5 contains the principle of priority, and Article 7 contains the principle of *droit de suite*. Every financing agreement is always followed by an accessory agreement, which is stated in Article 10 paragraph (1) and Article 18 paragraph (1). The existence of Mortgage Rights as a supporting agreement is very dependent on the principal agreement, if the principal agreement ends then the accessory agreement automatically ends.<sup>7</sup>

The merger carried out by the three Islamic banks, namely BSM, BNIS, and BRIS with Bank Syariah Indonesia (BSI), resulted in a change in the name of the Islamic Bank, so that when analyzed, in the banking merger, the guarantee agreement...After the granting of Mortgage Rights is carried out before the PPAT, the Deed of Granting of Mortgage Rights must be registered at the local land office to meet the publicity requirements, namely "No later than seven working days after the Deed of Granting of Mortgage Rights is signed by both parties, the PPAT must send the APHT along with other documents to the land office." The registration is mandatory, because it determines the birth of the Mortgage Rights in question. This means that from the date of registration the creditor becomes the holder of the Mortgage Rights. As proof of the existence of the Mortgage Rights, the Land Office issues a certificate of proof of rights, called a "Mortgage Rights Certificate". In relation to this, the deed of granting of mortgage rights (APHT) which has been signed by the customer with The old creditor's name is BNI Syariah, but the deed of granting the mortgage has not been registered at the land office, there has been a change, the BNI Syariah bank has changed to BSI through the merger process, what is BSI's position as a preferred creditor for the subject of the mortgage which is still the old Sharia bank and also if the financing facility customer breaks the promise while the financing agreement and collateral agreement have not been changed to BSI, it is still the name of the old Sharia bank. This makes it difficult for BSI to carry out execution on the object of the mortgage considering that the mortgage certificate still states the recipient of the mortgage, namely the name of the old Sharia bank. The merger of a bank directly affects the legal documents for the new creditor who joins will change, but will the change in the legality of the bank

## 2. Research Methods

This type of research is normative legal research. According to Mukti Fajar and Yulianto Achmad, normative legal research is research that places law as a building of a norm system. The norm system in question is about the principles, norms, rules of the Laws and Regulations, court decisions, agreements and

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<sup>7</sup>Trisadini Prasastinah Usanti, 2014. Guarantee Law (Second Printing). Surabaya:RevkaPetraMedia.p.92.

doctrines (teachings). 23 This research is an effort to describe (reveal and explain) the executive power of post-merger mortgage rights at PT. Bank Syariah Indonesia.

The data sources used in this study are secondary data. Secondary data are obtained from the opinions, writings of experts or other authorized parties or other parties who obtain formal information or official manuscripts. As for secondary data, legal materials consist of primary legal materials of an authoritative nature, namely consisting of laws and regulations including minutes in their preparation and official notes from their compilers.

Data analysis in this study uses qualitative analysis, namely data that is not in the form of numbers that can be obtained from recordings, observations, interviews, or written materials (laws, documents, books, etc.) in the form of verbal expressions.

### **3. Results and Discussion**

#### **3.1. Executorial Power of Guarantee of Mortgage Rights Due to Merger at Bank Syariah Indonesia**

The Collateral Guarantee that was previously burdened in the name of the recipient of the collateral from the 3 (three) banks before the merger, namely, BNI Syariah, BSM, and BRI Syariah, shows that the position of the collateral continues to follow the main agreement and needs to be changed due to the merger by Bank Syariah Indonesia. So that the position of BSI remains as a preferred creditor as in the legal principle of collateral, namely the principle of preference which has a position that is prioritized over concurrent creditors as intended. Article 1 of the Mortgage Law. Even BSI as the recipient of the mortgage still has the right to carry out direct execution of the object of the mortgage guarantee if the debtor experiences default or there is problematic financing. 49 This is expressly regulated in Article 6 of the Mortgage Law in conjunction with Article 14 paragraph (2) of the Mortgage Law which states that the object of the Mortgage is sold through a public auction according to the procedures determined in the statutory regulations for the settlement of the receivables of the Mortgage holder with priority rights over other creditors.

The merger that occurs results in changes to the creditors resulting from the merger. This must be accompanied by the preparation of attachments which are the complete requirements for the process of changing creditors on collateral, namely:<sup>8</sup>

1. Original letter of request for change of creditor name from PT. Bank Syariah Indonesia, Tbk,

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<sup>8</sup>Interview with, Area Retail Collection Officer, Bank Syariah Indonesia Tbk, Muh. Maulana Rizal, in Kendari, June 15, 2022.

2. Original certificate of ownership and certificate of mortgage,
3. Photocopy of the bank's management.
4. Photocopy of the bank's management's decree (SK),
5. Original power of attorney from the bank management to the PPAT Notary
6. The deed of merger is deed Number 103: Date: December 16, 2020, made before JOSEDIMASATRIA,.SH,.M.Kn Notary in Jakarta,
7. Deed of statement of decision of meeting on amendment of articles of association of change of name of PT. Bank BRISyariah Tbk, to become PT. Bank Syariah Indonesia Tbk, deed Number: 38 Date: 14 January made before JOSEDIMASATRIA,.SH,.M.Kn Notary in Jakarta,

The creditor name change registration system for 3 banks (BNIS, BSM, BRIS) is as follows:

1. Change of creditor name to the name of PT. Bank BRISyariah, Tbk. Is carried out once, namely by registering a statement of decision of the meeting on changes to the articles of association, change of name of PT. Bank BRISyariah Tbk, deed Number: 38 Date: January 14, 2021, made before JOSEDIMASATRIA,.SH,.M.Kn Notary in Jakarta,
2. Change of creditor name to the name of PT. Bank Negara Indonesia Syariah and PT. Bank Syariah Mandiri. Registration was carried out twice, namely the merger registration of PT. Bank Rakyat Indonesia Syariah, Tbk based on the merger, namely deed Number 103: Date: December 16, 2020, which was made before JOSEDIMASATRIA,. SH,. M.Kn Notary in Jakarta, and
3. Registration of name change based on the statement of decision of the meeting on amendment of the articles of association of the name change of PT. Bank BRISyariah Tbk, to PT. Bank Syariah Indonesia Tbk, deed Number: 38 Date: January 14 made before JOSEDIMASATRIA,.SH,.M.Kn Notary in Jakarta.

Likewise, for certificates that are subject to mortgage rights, if the debtor pays off the financing, BSI will issue a letter of name deletion to each creditor before the merger to become the creditor resulting from the merger, namely Bank Syariah Indonesia, based on the Deed of Merger, by attaching:

1. Statement of Decision of the Meeting on Amendments to the Articles of Association, Change of Name of PT.BANKBRISYARIAH, Tbk to PT.BANKSYARIAHINDONESIA, Tbk, Number 38 dated January 14, 2021;
2. Notification Decree of the Minister of Law and Human Rights Number AHU-0048485.AH.01.02.Year 2021 dated September 8, 2021 Concerning Approval of Amendments to the Articles of Association of the Limited Liability Company PT.BANKSYARIAHINDONESIATbk;

3. Financial Services Authority Letter Number 4/KDK.03/2021 dated January 27, 2021 concerning the Granting of Permit for the Merger of PT. Bank Syariah Mandiri and PT. Bank Bni Syariah into PT. Bank Bri Syariah Tbk and Permit for Name Change by Using the Business License of PT Bank Bri Syariah Tbk to Become a Business License in the Name of PT Bank Syariah Indonesia Tbk as the Bank Resulting from the Merger.

The above requirements are absolute requirements that must be met by the debtor if he wishes to cancel (delete) the mortgage certificate at the National Land Agency/Head of Agrarian Affairs. Including if the customer experiences a default on BSI, then the creditor (BSI) will attach the document as a basis for the Auction Officer to make a Deed of Auction Minutes in the implementation of the mortgage execution.

In connection with this, Bank Syariah Indonesia stated that:<sup>9</sup>

1. All legal relationships, agreements/contracts that have been made with customers or business partners (business clients/vendors) which still use the Bank's name and/or logo before the Merger change to PT. BANKSYARIAHINDONESIA Tbk;
2. Bank Letters such as Checks, Giro Bills, Savings or other bank letters containing the names and/or logos of the three banks before the merger change and are valid according to the follow-up notification;
3. ATM cards containing the names and/or logos of the three banks before the name change to PT. BANKSYARIAH INDONESIA Tbk at Automated Teller Machines (ATMs) until further notice;
4. Credit cards that still use the name or logo of the three banks before the merger changed to PT. BANKSYARIAH INDONESIA Tbk dan will be used until further notice;
5. All facilities, benefits and characteristics as well as other terms and conditions currently in effect, related to banking services, will not experience any changes, only changes to the name and logo until further notice.

In relation to collateral rights after a merger, refer to the provisions of Article 16 UUHT which states that:

1. If the receivables secured by the Mortgage are transferred due to cession, subrogation, inheritance, or other reasons, the Mortgage is also transferred by law to the new creditor.

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<sup>9</sup>Interview with, PPAT in Southeast Sulawesi, as a Partner, Bank Syariah Indonesia Tbk, Sudirman, in Kendari, June 15, 2022.



2. The transfer of mortgage rights as intended in paragraph (1) must be registered by the new creditor with the Land Office.

3. Registration of the transfer of Mortgage Rights as referred to in paragraph (2) is carried out by the Land Office by recording it in the Mortgage Rights land register and the land title register which is the object of the Mortgage Rights and copying said records on the Mortgage Rights certificate and the relevant land title certificate.

Based on the provisions mentioned above, it can be seen that the explanation referred to by other causes is things other than what is mentioned in the paragraph, such as a takeover or merger of companies that causes the transfer of receivables from the original company to the new company. The legal action of the merger that occurred between BNIS, BSM, and BRIS as the parties carrying out the merger resulted in a transfer of receivables to the new creditor, which in this case was Bank Syariah Indonesia. Then the collateral of the mortgage is also transferred to the new creditor, namely Bank Syariah Indonesia. The transfer of the Mortgage must be registered by the new creditor with the Land Office, by recording it in the Mortgage Land Register and the Land Title Register which is the object of the Mortgage and copying the record on the Mortgage Certificate and the relevant Land Title Certificate so that there is legal certainty for the position of the recipient of the mortgage, in this case Bank Syariah Indonesia.

## 2) The Legal Position of Subjects in the APHT Has Changed

An agreement is an action, namely a legal action, an action that has legal consequences. With this action, the perpetrators will be bound in a legal relationship and obtain a set of rights and obligations within it.<sup>10</sup>

Related to Article 1320 BW, if the subjective requirements (agreement and competence) are not met, then the agreement can be canceled, if the objective requirements are not met, then the agreement is null and void, meaning that the agreement is considered to have never existed from the start. Cancelable means that one party can request the cancellation. The agreement itself remains binding on both parties, as long as it is not canceled (by a judge) at the request of the party who has the right to request the cancellation (the incompetent party or the party who gave his/her agreement not freely). Meanwhile, if an agreement does not meet the objective requirements, then the agreement is "Void and Void". Void and Void means that from the start it is considered to have never existed, an agreement and no obligation has ever existed.

That from the description above, it can be concluded that there is a difference between an agreement that is null and void and an agreement that can be canceled, namely that it is seen that there are elements as in the provisions of

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<sup>10</sup>Interview with, Branch Manager of PT Bank Syariah Indonesia Tbk, EkaJatiRahayuFirmansyahRA, in Kendari, 15 June 2022.

Article 1320BW, namely two elements that involve subjective elements and two elements that involve objective elements and this cancellation can be carried out by filing a lawsuit with the Court.

In connection with the merger of Bank Syariah Indonesia, there are obstacles felt by stakeholders with this Notary who is authorized to make all forms of agreements, including making APHT which will be registered with the Land Office. There is a delay in the processing of mortgage registration with the Land Office, due to a change in the name of the creditor as the holder of the mortgage guarantee for the APHT which has been made and signed by the debtor receiving the mortgage facility. costs. This was due to a merger with Bank Syariah Indonesia. In connection with this matter, the minutes and copies of the APHT that had been signed, a renvoi or amendment was carried out in the name of the creditor holding the collateral rights which were originally written in the name of B akBNIS Syariah is changed to Bank Syariah Indonesia, then the copy is completed with other documents and then the mortgage can be registered with the land office with the guarantor of the mortgage rights in the name of Bank Syariah Indonesia.

Therefore, an agreement regarding collateral can always be made between a creditor and his debtor, and the collateral or guarantees the fulfillment of the debtor's obligations. This collateral agreement is to prevent the risk of financial loss to be borne by the creditor as a result of the debtor's failure to carry out the promised performance for financing, because an obligation or performance that cannot be carried out will cause a loss. Thus, the purpose and objective of the collateral agreement is to secure financing and provide certainty to the creditor that the debtor is truly responsible for carrying out the promised performance.

Banks as creditors certainly want strong and perfect collateral for their loans, but still pay attention to the requirements for good and ideal collateral, namely:

1. Can easily help those who need credit to obtain it.
2. Does not weaken the potential (strength) of the credit recipient to carry out and continue his business.
3. Providing certainty to the creditor, in the sense that the collateral is available for execution at any time, that is, if necessary, it can be easily cashed in to pay off the creditee's debt.<sup>11</sup>

Recipients of financing facilities from banks, debtors must provide collateral that can be valued with money and are easy to cash, and can be transferred to other people. With this happening between BNIS, BSM, and BRIS banks which merged into BSI, and in the Deed of Mortgage Encumbrance (APHT) the name of the old

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<sup>11</sup>Dadang Sukandar, 2011. Making a Letter of Agreement. Yogyakarta: Andi Offset, Yogyakarta. p. 8.

bank is still listed, it can be concluded that if the subject does not exist, then this is included in the subjective requirements, so that the agreement can be canceled, which means that it can be canceled, meaning that one party can request the cancellation. The agreement itself remains binding on both parties, as long as it is not canceled (by a judge). )at the request of the party entitled to request cancellation. So that with the form of change made by both parties, the change is related to the name of the creditor in the APHT which will be registered at the land office, it is a form of agreement between the two parties by carrying out a renvoi or deletion of the name of the old creditor as the holder of the collateral for the mortgage, replaced by a new creditor as the embodiment of Article 1338 BW, which in the article explains that the agreement is a law for both parties bound by it as the agreement is based on the word agreement.

### **3.2. Legal Consequences of Execution of Mortgage Rights in Banks Undergoing Mergers**

There are several reasons why companies merge to increase the company's rapid growth in terms of stock market size, can mathematically increase the company's income, in the discipline of describing several synergy factors obtained such as financial synergy, marketing synergy, sales synergy, and others.<sup>12</sup> Working capital for a company is used to carry out short-term financing, financial conditions will increase positively if the company decides to merge with the target company. A company has limitations in obtaining loan funds from third parties, by making moves to increase the company's opportunities to make loans through the target company, sales are expected to increase with the merger.<sup>13</sup>

There are many ways that a company can do to overcome financial difficulties or improve the company's performance as a whole or in part of a business unit. Actions to resolve company problems through restructuring, namely by carrying out a merger together, namely a merger of finance, management and organization in order to increase competitiveness.<sup>14</sup>In this case, it can be prepared with the company data needed to carry out the merger, the party that will carry out the merger must consider various things, so that the implementation of the merger that will be carried out can be successful and also profitable for the parties concerned. Islamic banks are one of the containers for Muslims in carrying out their muamalah activities, the merger policy should reflect the interests of Muslims in muamalah without releasing their own business interests by carrying out a merger or amalgamation of Islamic banks, it is better to form a state-owned Islamic banking institution, in which the Islamic banking institution will hold the status of a State-Owned Enterprise

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<sup>12</sup>Budi Untung, Op. Cit., p. 34

<sup>13</sup>*ibid*,p.40

<sup>14</sup>AdrianSutedi,2007.Banking Law: A Review of Money Laundering, Mergers, Liquidation and Bankruptcy.Jakarta:SinarGrafika,p.83.

(BUMN).<sup>15</sup>The government established Sharia State-Owned Enterprises so that banking players in the field experience an increase in the hope that these Sharia State-Owned Enterprises can encourage the productivity of Sharia Banks to increase optimally.<sup>16</sup>In terms of assets, Sharia BUMN Banks should be adjusted to the average of each sharia banking asset so that healthy competition is achieved.

Based on Law Number 21 of 2008 concerning Islamic Banking, it is required that Islamic Business Units carry out Spin-Offs. The definition of separation or (spin-off), according to Article 1 number 32 of the UUPS is the separation of a business from one banking institution into two or more banking institutions with statutory provisions. Based on this, it can be said simply that what is meant by separation (spin-off) is the process of separating a UUS from its parent banking institution into an independent Islamic banking institution. In Article 1 Number 12 of the UUPS, separation is interpreted as a legal act carried out by a Company to separate a business that results in all assets and liabilities of the Company being transferred by law to 2 (two) or more Companies or Part of the Company's assets and liabilities. transferred by law to 1 (one) or more companies. Spin-off or separation is part of company restructuring. Article 1 Number 12 of the UUPT explicitly explains that a company separation carried out by a company to separate a business can result in the transfer of control of one company to another company.<sup>17</sup>Companies have motivations for conducting spinoffs, namely management, risk, and regulatory reasons. Some major companies decide to spin off their subsidiaries because they feel that the business they are doing is not accurately valued in the capital market. Spinoffs require each banking institution company to obtain stable capital based on its own activities or each company in an effort to increase capital in accordance with capital market methods.<sup>18</sup>

With the existence of new Islamic Banking Institutions, the growth of Islamic Banks is increasingly competitive with other Conventional Banks, one of the strategies carried out is by offering financing contract products, one of which is mudharabah and musyarakah, many policies support the development of Islamic banking institutions by providing an understanding of Islamic economics to customers and the general public who do not yet know the system in Islamic banking institutions, where the main principle of Islamic banks is to avoid usury, and prohibit the implementation of anything that is related to usury in any form of transaction.<sup>19</sup>The existence of Bank Negara Indonesia Syariah (BNIS), Bank Syariah Mandiri (BSM), Bank Rakyat Indonesia Syariah (BSI), provides its own value to banking institutions that run Islamic banking institutions by providing

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<sup>15</sup>NurmaGupitasari,2016.Consolidation Mechanism of Islamic Banks of State-Owned Enterprises (BUMN) Subsidiaries from a Legal Perspective. LawJournal.Vol.5No.3.pp.2-4.

<sup>16</sup>SetiaBudhiWilardjo,2005.Definition, Role and Development of Islamic Banking in Indonesia.Jurnal Hukum,Vol.2No.1.pp.4-6.

<sup>17</sup>Khotibul Umam and Veri Antoni, 2015. Corporate Action Establishment of Islamic Banks (Acquisition, Conversion, and Spin-Off). Yogyakarta: Gadjah Mada University Press. p. 21.

<sup>18</sup>*Ibid*,p.24.

<sup>19</sup>SetiaBudhiWilardjo, Op.,.Cit, p.6.

facilities to capital owners with parties who need capital, customers who are given loans must be responsible for the security of funds that are stored or lent through financing provided by Islamic banking institutions.

The merger between the three banks, namely Bank Negara Indonesia Syariah (BNIS), Bank Syariah Mandiri (BSM), and Bank Rakyat Indonesia Syariah (BRIS), to become Bank Syariah Indonesia (BSI), which was carried out at the end of 2020 and has been announced by the Indonesian government through the Minister of SOEs, the merger carried out has the aim of national Islamic banking to become one of the 10 largest Islamic banks in global market investment in the next 5 (five) years.<sup>20</sup>The merger that is carried out is one of the business strategies to unite joint ownership, so the strategy that is carried out is a horizontal merger strategy carried out by similar businesses (the same business). There are several cases that need to be considered in the merger process, there can be a failure due to a drastic decrease in income, it can cause an increase in costs that should not have occurred with the merger, so for banks that have branches there can be an overlap in location, and it can also happen to customers who have been given financing product facilities from small-scale banking institutions are neglected.<sup>21</sup>

Bank merger procedures are regulated based on UUPT and PP No. 27 of 1998 concerning mergers, amalgamations, and takeovers of PTs concerning the rules and procedures for company mergers. PP No. 28 of 1999 concerning Bank Mergers, Consolidations and Acquisitions, namely:

1. There was an acquisition proposal for a merger plan.
2. The proposal referred to must obtain the approval of the Commissioner and must at least contain:
  - a. Name and position of the Bank to be merged
  - b. The reasons are accompanied by an explanation from each Bank Director so that a merger can be carried out.
  - c. Share conversion rules from each bank to the shares of the merged bank.
  - d. Drafting changes to the Articles of Association.
  - e. Balance sheet, profit and loss calculation consists of the last financial year of all merged banks.
  - f. Things that shareholders of each bank should know

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<sup>20</sup>Wiwin Muchtar Wiyono, 2021. Impact of Merger of 3 (Three) State-Owned Islamic Banks on the Development of Islamic Economy, *Jurnal Cakrawala Hukum*. Vol. 23, No. 1, p. 65.

<sup>21</sup>Ika Atikah, Maimunah, Fuad Zainuddin, Op., Cit, p. 518.

2. Banks can carry out mergers within one group or between groups, the proposed merger plan consists of a Consolidated Balance Sheet and a Proforma Balance Sheet of the Merged Bank.
3. The proposal as referred to in, is material for compiling a Merger Plan which is jointly prepared by the Board of Directors of the Banks that will carry out the Merger. The Merger Plan must at least contain an affirmation from the bank that will accept the merger regarding the acceptance of the transfer of all rights and obligations of the bank that will merge.
4. The conditions for implementing the proposed merger are:
  - a. The contents of the merger plan are a merger plan.
  - b. The purpose of the general meeting of shareholders of the companies carrying out the merger is to approve the merger plan.
  - c. The results of the GMS which also include an application to change the company's articles of association which are the result of the merger so that approval is obtained from the Minister of Justice.
  - d. After obtaining approval at the General Meeting of Shareholders, the changes to the articles of association must be reported to the Minister of Justice.
5. Before holding a General Meeting of Shareholders for each Bank, the board of directors has an obligation to announce a summary of the Merger Plan at least 30 days before the GMS in 2 widely circulated daily newspapers and 14 days before the GMS to Bank Employees in writing. Especially for People's Credit Banks with assets <Rp. 10,000,000,000 or ten billion as in paragraph 1.
6. At the GMS, presentations should be made regarding the results of the Merger planning. The design and concept of the Merger Deed that have been approved at the GMS are stated in the Merger Deed made before a Notary in Indonesian.

Merger Consolidation can only be obtained on the basis of a General Meeting of Shareholders (GMS) which produces a decision to declare approval to carry out a merger of companies, this is explained in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). The decision to carry out a merger is the result of a valid General Meeting of Shareholders (GMS) and at least or at least  $\frac{3}{4}$  (three quarters) of the total number of shares, with voting rights present or represented, the decision of the GMS can be declared valid and approved by at least  $\frac{3}{4}$  (three quarters) of the total number of shareholders who have attended, this is explained in Article 89 of the UUPT.

In the regulation of the UUPT there are two things that are focused on regarding mergers, namely procedural issues and protective issues, the first is an explanation of procedural issues according to the UUPT that is the regulation of

mergers, the first regarding the proposed merger or consolidation, regarding the General Meeting of Shareholders, changes to the Articles of Association, announcement of changes to the Articles of Association in the State Gazette in the company register, and liquidation of the company. Regarding mergers that require liquidation, both protective issues, in the UUPT also regulate matters that are protective in nature, namely aiming to protect the interests of certain parties by making efforts to protect the interests of the company, protect the interests of minority shareholders, protect the interests of company employees, protect the interests of the community, and protect the interests of fair competition.<sup>22</sup> One of the most important methods of protection is the public interest by making announcements in various information media such as newspapers or print media as well as state news regarding certain actions or stages in the merger implementation process, so that interested parties can know and immediately take steps to protect everything that could impact them with the merger.

Regulation and Supervision of mergers carried out on Islamic banking institutions are the duties and authorities of the Financial Services Authority (OJK) based on Law Number 21 of 2011 concerning the Financial Services Authority, so that the implementation of the merger of the three banks, namely BNIS, BSM, and BRIS, into Bank Syariah Indonesia (BSI) can provide dedication to the community and also the country's economy, with the declining global economic conditions caused by the Covid-19 pandemic cases that occurred in all countries so that the merger or amalgamation can help stabilize the economy in Indonesia. Ot Financial Services Authority (OJK) was born as an institution that actively acts in the process of supervision, regulation, and licensing of the financial industry. Before the birth of OJK, the financial system in Indonesia was run by several independent institutions, such as the Capital Market and Financial Institutions Supervisory Agency (Bapepam-LK), Bank Indonesia and the Ministry of Finance, but over time it has been changed and a new Independent Institution has been formed that plays a role in supervising financial institutions in Indonesia such as securities companies, the banking sector, insurance companies, pawnshops, and pensions, multifinance companies, and other financial institutions.<sup>23</sup>

The Financial Services Authority (OJK) regulates the definition of merger in the Financial Services Authority Regulation Number 74/POJK.04/2016 concerning Business Mergers or Amalgamations of Public Companies, that a merger is a legal act carried out by a company that results in the assets of the limited liability company with the merger because the law on limited liability companies will accept the merger. The companies that will merge are expected to make a manuscript or merger plan containing a merger plan, the merger implementation plan must be approved by all GMS holders from each company. companies that

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<sup>22</sup>Budi Untung, Op. Cit, p. 61.

<sup>23</sup>KhatibulUmum, 2016. Basics and Dynamics of Its Development in Indonesia, Jakarta: RajaGrafindo Persada, p. 282.

will merge, shareholders who have agreed then attach an application for the articles of association of the merged company until approved by the Minister of Justice, the merger plan that will be stated in the merger plan contains the names of the companies that will merge, includes an explanation of each director of the company that will merge, merger requirements, share transformation procedures, draft changes to the articles of association, balance sheets and profit and loss calculations of each company that will merge, and things that shareholders need to know.

The implementation of a company merger must take into account various things that can encourage the implementation of a successful and mutually beneficial movement, where both the merging company and the target company that will merge will both benefit from the merger.<sup>24</sup>The data that needs to be prepared is firstly economic data, where the market conditions in the market development and export-import situations, company profits in the form of financial reports and finances, technology in the form of assets, financing in the form of liquidity figures, secondly legal aspects, namely consisting of ownership, the legal structure of the company, the board of commissioners and its composition that runs the company, management structure, reporting or licensing requirements, thirdly social data consisting of job availability, job security, overlapping jobs due to mergers, and consular procedures. The merger of banking institutions can be implemented by following every applicable legal regulation, in this case it is very necessary related to the agreement or cooperation contract for the company, this is very important to know the development in providing certainty in the economic field and economic stability. The implementation of the merger according to Article 109 of the UUPT concerning the implementation of the merger is further regulated in the Government Regulation, as it is known that the aspect of the merger is openness which can provide protection to the parties by carrying out several methods to protect themselves.

The agreement is an important thing that must be implemented in the merger of the three Islamic banks. In any form, whether or not there is a change in the company's articles of association after the merger, the agreement is an important document and can be used as a basis for relations between one party and another, and is also needed in the merger of companies, namely the Approval of the General Meeting of Shareholders (GMS).<sup>25</sup>

The merger of banks carried out by BRIS, BSM and BNIS has its own reasons, which are listed in the Summary of the Merger Plan Between PT. Bank BRISyariah, PT. Bank Syariah Mandiri and PT. Bank BNI Syariah which was published on October 21, 2021 by providing an explanation of various reasons for the merger, namely by implementing the merger of BUMN Sharia Banks

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<sup>24</sup>TomanSonyTambunan&WilsonR.G,2019.Tambunan,Business Law.Jakarta:Kencana.p.264.

<sup>25</sup>Indriatmini Noegroho, 2017. Mergers Are Challenges or Opportunities for the Indonesian Economy, Journal of Economic and Accounting Research, Vol 2, No. 3. p. 547.



which are more efficient in fundraising, operations, financing, and spending. The merger of BUMN Sharia Banks provides quite bright prospects and allows for sharia banking in the midst of a pandemic, so that The assets owned by BUMN are getting stronger, the merged bank has the potential to become the top 10 Islamic banks globally. With the merger of BUMN banks, the movement has a complete product and the implementation of the merger is not only a foundation or commitment to developing the Islamic economy but also a pillar of national economic strength, providing encouragement to Indonesia as a global Islamic financial center and a merger that makes it easier for all people to access financial services that are in line with Islamic principles.

The Financial Services Authority has its own reasons for implementing the merger of state-owned Islamic banks, namely to increase the OJK's Islamic assets and not yet finding an Islamic banking institution in Indonesia that has the ability, both in terms of finance and technology, to be able to meet customer needs and sales of banking institution products.<sup>26</sup>With this, the three banks which are subsidiaries merged by conducting a GMS approval which is an absolute part that must be carried out for the merger of a company as has occurred in the Islamic banking sector in this case, namely Bank BNIS, BSM, and BRIS which have conducted a GMS between the shareholders of each bank, in the meeting it has been confirmed that: "Approve the changes and adjustments to all articles of the Company's Articles of Association, and to restate all of the Company's Articles of Association in accordance with the proposed changes to the Company's Articles of Association, and including Changing the Company's Name to PT. BANKSYARIAH INDONESIA".<sup>27</sup>The merger of Islamic banking institutions that are public companies, meaning that all provisions of the merger require approval in order to give birth to strengthening the merger of Islamic banks, and the directors in the company obtain a statement from the OJK and the GMS holders to consider common interests, then notify the merger plan and results and submit an application for approval to the Ministry of Law and Human Rights, legal issues, namely the transfer of rights and obligations, problems, and others to the bank regarding the results of the merger.

#### **4. Conclusion**

The executive power over the collateral is the same as a court decision that has obtained permanent legal force, and if the debtor defaults, then based on the executive title contained in the collateral certificate, the collateral holder requests execution of the collateral certificate to the head of the authorized religious court. Then the execution will be carried out like the execution of a

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<sup>26</sup>Based on approval from the Minister of Law and Human Rights on 21 September 2020, see the proposed merger of BRISyariah, Bank Syariah Mandiri and BNIS Syariah.

<sup>27</sup>Deed of Statement of Meeting Decisions Changes to the Articles of Association, Change of Name PT. BANKBRISYARIAHTbk. Becomes PT. BANKSYARIAHINDONESIA Tbk. Number 38, January 2021.

decision that has permanent legal force. In connection with the execution of mortgage rights after a merger, refer to the provisions of Article 16 of the Mortgage Rights Law paragraphs (1) to paragraph (3) which state that what is meant by other causes are things other than those mentioned in paragraph This includes taking over or merging companies which results in the transfer of receivables from the original company to the new company. new creditor, in this case Bank Syariah Indonesia. Then the collateral of the mortgage is also transferred to the new creditor, namely Bank Syariah Indonesia. The transfer of the Mortgage must be registered by the new creditor with the Land Office, by recording it in the Mortgage Land Register and the Land Title Register which is the object of the Mortgage and copying the record on the Mortgage Certificate and the relevant Land Title Certificate so that there is legal certainty for the position of the recipient of the mortgage, in this case Bank Syariah Indonesia.

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