



The Responsibility for Defaults on Financing Agreements in Shari'a Financial Institutions

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Abstract. The act of default of a debtor in a financing contract at a shari'a financial institution will have a negative impact on creditors, namely losses, so to recover the loss, the debtor is obliged to be responsible for his actions. This study aims to find the concept of the debtor's responsibility for defaulting on the appropriate financing contract for dispute resolution at the shari'a financial institution. The research method used is empirical juridical, with a qualitative descriptive approach, BMT UGT Sidogiri cab Mojo Kediri as data sources and fatwa's ulama on compensation. The results of this study are presented; A. about default; Default is perceived as the act of not carrying out installment payments for three installments either consecutively or intermittently, not carrying out repayment when due. B. on the responsibility, that the debtor who defaulted on BMT UGT Sidogiri is obliged to; Paying off the total remaining installments that have not been paid, responsible for the amount of the remaining installments both principal and for the profit, releasing collateral objects either sold alone or through the power to sell by the BMT UGT Sidogiri cab. Mojo Kediri.

Keywords: Financing agreement · default · debtor responsibility

1 Introduction

Default is the act of breaking the promise of the agreement that has been agreed upon, in the Civil Code the act of default is formulated in article 1238 that "the debtor is declared negligent if he by a warrant, or by a deed of that kind has been declared negligent, or for the sake of his own bond is if he stipulates that the debtor will be considered negligent by the lapse of the prescribed time". The legal effect of the defaulting debtor is to compensate for the losses that have been suffered by the creditor (Article 1234 of the Civil Code). Financial Institutions shari'ah UGT Sidogiri has a financing program known as UGT Modal Usaha Barokah (MUB) which is the provision of working capital financing to members who have micro, small and medium enterprises. While the contract used is the mudharabah/musyarakah contract. In anticipation of debtors who are deemed to be in default, there is an obligation to be legally liable to the creed. It is based on Indonesia's positive law that the responsibility of debtors who have defaulted is two things; 1). Providing all his wealth as collateral as stipulated in Articles 1131 of the Civil Code and 2). Submit the object of dependent rights at the time of execution of dependent rights

based on Article 11 paragraph (2) letter j (concerning promises of dependent rights) of the Dependent Rights Law Number 4 of 1996. BMT-UGT Sidogiri Management has procedures and guidelines for resolving debtors who default and what responsibilities are imposed on them, while the fatwa of the MUI- National Shari'ah Council Number 43 on compensation due to default states that compensation (Ta'wid) is only charged to debtors who are negligent or deliberately violate the provisions of the agreed agreement, with a note that the loss suffered is a real loss (can be taken into account). On the fatwa. There are no express provisions related to the responsibility of customers who default, so with the firmness of the responsibility of the debtor, it will provide clear guidelines for dispute resolution in Islamic financial institutions. Research on the responsibility of default in shari'ah financial institutions is still lacking in attention from researchers, for this reason, the study in this study will try to provide solutions for solving defaults in terms of the responsibility of a debtor to creditors, in general some previous studies focused more on compensation in the perspective of shari'ah economics as in the following studies;

- Hengki Firmanda, Hakikat Ganti Rugi Dalam Perspektif Hukum Ekonomi Syariah dan Hukum Perdata Indonesia [1]. This research raises the theme of compensation, by comparing Indonesian civil law with shari'ah economic law. That according to Indonesian civil law any compensation whether material or immaterial is always added up with a sum of money while the concept of sharia economic law does not mention materially but can be with money or it can be with services and it is even recommended to apologize to the adverse party. The research method used is normative law (legal research) by focusing on legal comparisons.
- Izza Hanifuddin, Ganti rugi perspektif fiqh [2]. This research raises the theme of compensation from the economic perspective of shari'ah according to him there is a difference between denda and compensation therefore the meaning depends on the context whether it is in the context of ta'wid (reimbursement), gharâmah (payment of arrears of debts), or dimân (insurer). Likewise, each of the meanings of the two turns out to have room to complement each other in legal and economic studies. The method of study in this paper uses a library approach, namely exploring various sources, especially the classics (yellow).
- Siti Hayati Analisis Dhaman (Ganti rugi) bagi nasabah wanprestasi dalam perbankan syari'ah (Study Pada Pembiayaan Murabahah) [3] this study examines compensation for defaulting customers, that banks have the right to give sanction customers who are proven to have defaulted as long as the sanctions that can be applied are in the form of fines (ta'zir) and/or compensation (dhaman). The bank may apply one or both to the defaulting customer. This research uses a qualitative descriptive method with a historical approach with a literature data source.

Based on the description above, the researcher wants to examine how The responsibility of the debtor to the financing agreement on the management UGT Sidogiri perspektif Fatwa DSN MUI Nomor.43/DSN-MUI/VIII/2004 concerning Ta'wid (compensation).

2 Purpose

This research was conducted to:

- To find out how the perception of default according to the management of BMT UGT Sidogiri
- To find out how the responsibility for default according to the policy of BMT UGT Sidogiri perspective of DSN MUI fatwa Number.43 /DSN-MUI/VIII/2004 concerning Ta'wid (compensation).

3 Theoretical Studies

Akad of financing with the Mechanism of Mudharabah and Musyarakah in shari'a financial institutions seeks to avoid the practice of usury or principles that lead to usury. The parties in conducting transactions in shari'a financial institutions do not want any losses due to defaults made by debtors, namely by delaying payments so that a default occurs. Therefore, the responsibility of the defaulting debtor is to provide compensation if it has been determined by the creditor against the losses incurred. Meanwhile, the debtor who defaults is obliged to pay compensation, costs and interest [4] as specified in Article 1236 of the Civil Code "Debtor is the obligation to provide compensation for costs, losses, and interest to the debtor, if he has brought himself in a state of incapacity to hand over his treasury, or has not taken care of it appropriately in order to save it "In principle islamic sharia protects the interests of both parties both creditors and debtors so that no party should be harmed by their rights. Here are some principles of indemnity established by DSN MUI fatwa Numb.43/DSN-MUI/VIII/2004 on Ta'wid (compensation). That is:

- That the loss is true to the real thing experienced by the parties then the party causing the loss shall give damages.
- That indemnification may only be imposed on the party intentionally or neglect to do something that deviates from the contract so that inflicting losses on others.
- That the loss can be taken into account clearly as expenses resulting from the settlement of debt collection.
- That the amount of compensation corresponds to the loss suffered (real loss) is not a loss that is expected to occur (potential loss).
- That indemnity should only be imposed on the contract giving rise to accounts receivable; Greetings, istisna, murabah, and ijarah.
- That in the mudharabah and musyarakah contract the indemnity can only be imposed by sohibil mal or one of the parties if the division the benefits are obvious but not given.
- That the indemnity received in the contract due to default is recognized as a right (income) for those who receive it.
- That the mechanism for payment of indemnity on the basis of the agreement of the party.
- That the amount of compensation should not be included in the contract.

In connection with the principle of indemnity established by the DSN- MUI following the opinion of the ‘contemporary Ulama’s on damages due to default one of which is ‘Abd al-Hamid Mahmud al-Ba’li,”Indemnity due to delay in payment by an able person is based on losses incurred in real terms due to delayed payments and the loss is a logical result of late payment [5]. In general, scholars’ who allow compensation (Ta’widh) because they are guided by the syar’iyyah rule that losses must be eliminated and losses will not disappear unless they are reimbursed. as the opinion of ualama’ which allows ta’widh that the Delay in payment of rights is the same as ghashab; therefore, it should be the same statute of law, namely that the ghashab offender is responsible for the benefit of the object ghasab during the time of ghashab, according to the majority of scholars, besides he must also bear the price (value) of the goods if damaged.” [6] Settlement of disputes/disputes due to defaults in shari’a financial institutions, can be done by litigation (religious courts) or non-litigation (Badan Arbitrseshari’ah Nasional) then there are 3 (three) ways in resolving defaults, namely:

- Settlement through a lawsuit to the Religious Court;
- Creditors file a lawsuit with the Religious Court to be declared
- that the Debtor defaulted;
- The debtor filed a lawsuit with the Religious Court on the grounds that the auction process not in accordance with the regulations must be canceled;
- Settlement through an application for execution assistance to the Religious Court;
- Completion of auction execution through the State Wealth and Auction Service Office (KPKNL)

4 Method

This research uses empirical juridical methods, with a qualitative descriptive approach. This study will examine further about how the responsibility for default according to BMT-UGT Sidogiri Cab Mojo Kediri from the DSN MUI’s fatwa perspective concerning compensation (Ta’wid).

5 Discussion

5.1 Profil BMT Sidogiri

Baitul Mal Wat Tamwil (BMT UGT) Sidogiri is a Cooperative of Islamic Boarding Schools (Kopotren) as a Non-Bank Islamic financial institution that is affiliated to cooperative legal entities with the type of All-Business Cooperatives (KSU) No.608/BH/KWK/13/x/97. The background of its establishment is inspired by concerns about the rampant practice of usury in the community around the Sidogiri Islamic boarding school, in this case there are several loan sharks who provide business financing facilities to small and medium enterprises with the practice of usury. The presence of the BMT Sidogiri cooperative received a positive response from the community around the Sidogiri Islamic boarding school, because the mechanisms and systems are more egalitarian and acceptable to the community, especially the Muslim community around the

cottage. The development of BMT UGT Sidogiri is increasingly showing its existence, precisely in 2000 the management of BMT Sidogiri expanded its wings by establishing its new branch in the city of Surabaya under the name BMT. Integrated Combined Unit (UGT) Sidogiri, then in the next stage opened branches in Jember City and other cities which until now have had 277 branches, under the name Integrated Combined Unit (BMT UGT) Sidogiri.

5.2 BMT UGT. Sidogiri the Branch of Mojo Kediri

The opening of the BMT UGT mojo Kediri was inaugurated in 2012, precisely on December 15, 2012, which was addressed at Jl.Melati No.24RT/RW 02/06 Melati Mojo Kediri. One of the basic ideas of opening a branch office in Mojo Kediri is a strategic location because it is close to the people's market as a vehicle for buying and selling transactions. as a proselytizing strategy of the Sidogiri BMT management is to prevent business actors from the practice of ribawi which has been carried out by conventional financial institutions, especially if they are carried out by loan sharks who are very close to small business actors when they need funds for their business development. The goal to be achieved from the establishment of the Mojo Kediri branch is to prosper BMT members and the community in order to help create a stable and conducive national economy based on Pancasila and the 1945 Constitution and was recognized by Allah SWT.

5.3 The Concept of Default According to BMT-UGT Sidogiri Branch of Mojo

Financing agreement in providing credit facilities to financial institutions UGT-BMT Sidogiri Mojo, is essentially a loan bond with the provisions of the provisions that have been mutually agreed upon in the deed of agreement, therefore when the customer has received the desired financing facility, he must be able to accept a glass of risk in the event of abuse from the customer or there is an element of intentionality to violate the contents of the financing credit agreement. In connection with a violation of the content of an agreement, the management of BMT-UGT Sidogiri has a formulation of debtor as default;

- Not performing the obligation to pay installments on the grounds of lack of Income
- Not heeding warning letters (SP 1 and so on)
- The customer does not have good faith and disappears
- Misappropriate financing funds [1]
- Stop paying for 3 (three) consecutive or intermittent
- Not making repayments when it is due
- Violates the terms of the agreement [2]

Management of BMT-UGT Sidogiri branch of Mojo Kediri, in treating defaulting debtors, does not directly provide punishment but takes a humanitarian approach that is expected to provide a solutive way for defaulting debtors. The solutive policies in question are;

- Conducting deliberations, which is an attempt to find a middle ground after a dispute between the debtor and the BMT manegen party from this deliberation is expected to reach an agreement between the two parties so that no one feels aggrieved.
- If no agreement is reached in the deliberations then both parties will resolve through litigation, namely the local district court [3]

5.4 Liability of Defaulting Debtors

Debtors who are declared defaulted by the management of BMT UGT Sidogiri Cab. Mojo Kediri have obligations and responsibilities for the recovery of obligations/achievements that must be fulfilled, this is of course to compensate losses arising from violations of the agreement. The compensation mechanism due to breaking promises made and determined is as follows:

- Pay off the total remaining outstanding installments
- Responsible for the amount of the remaining installments both principal and divide
- Releasing collateral objects whether sold alone or through the power of attorney Sold by BMT UGT Sidogiri cab. Mojo [1]

6 Result

A problem for the financing contract is that if the debtor stops paying installments before maturity, of course this is detrimental to the creditor because the previously planned income is nothing so that it cannot be used to meet routine needs. In the fatwa of DSN MUI Number.43/DSN-MUI/VIII/2004 concerning Ta'wid which states that the compensation allowed is due to violations of the Mudharabah financing agreement which causes real losses to other parties while real losses are losses that can be taken into account such as expenses arising from operational costs in settlement/collection of debts. In addition, compensation can also arise due to delays in installment payments by debtors who are negligent or deliberate. The imposition of compensation due to delayed payments facilitated by the DSN MUI is based on the hadith of the prophet which was narrated by jama'ah (Bukhari of Abu Hurairah, Muslim of Abu Hurairah, Tirmizi of Abu Hurairah and Ibn Umar, Nasa'i of Abu Hurairah, Abu David of Abu Hurairah, Ibn Majah of Abu Hurairah and Ibn Umar, Ahmad of Abu Hurairah and Ibn Umar, Malik of Abu Hurairah, and Darami of Abu Hurairah):

“Procrastinating (payments) made by the capable is a tyranny...”

It is also based on the opinion of a Muslim scholar' Ibn Qudamah who argued that delayed payment of obligations could lead to losses (dharar) and should therefore be avoided; “If the indebted person (debtor) intends to travel, or if the debtor (creditor) intends to prohibit the debtor (from traveling), we need to pay attention to the following. If the maturity of the debt turns out to be before the time of his arrival from the trip-- for example, the journey for hajj where the debtor is still on the hajj journey while the debt is due in the month of Muharram or Dzulhijjah-- then the creditor may forbid him from traveling. This is because he (the creditor) will suffer losses (dharar) due to delays (obtaining) his rights at maturity. However, if the debtor appoints a guarantor or submits

a guarantee (qadai) sufficient to pay his debt at maturity, he may make the trip, as such, the loss of the creditor may be avoided.” [1] The delay in the payment of the debt in the absence of a shari’a reason cannot be justified because this will give the other party a loss so that it can be included in the category of tyranny therefore this act should not have been allowed to happen so that the cleric’ Bahrudin Al ‘aini punished the illegitimate on the delay in payment as in his statement “it’s forbidden to people who are financially enough to delay paying the debt after the debt remains fixed, in contrast to people who have not been able to afford it (to pay) [2] The delay in payment can be forgiven if it can be accounted for in shari’a, meaning that the debtor does not have the ability financially or indeed the expected funds have not been received as stated in the word of Allah surah Al-Baqarah, verse 280 which is: “And if (the person who owes it) is in trouble, then give it tough until he is in good condition.”

As the responsibility of the debtor is to pay the total remaining installments both principal and for the result, in the financing agreement murabahah profit sharing is a margin that can be expected by the creditor so that if the debtor without a clear reason means is derived from paying the installments, it will certainly provide losses to the creditor. In the management of BMT-UGT Sidogiri, if it finds the debtor in default, it will be warned in advance up to three times, if with this warning letter there is no response from the debtor, deliberations will be carried out to find the best solution that relieves the customer to be responsible for paying it off. The strategy used by the BMT management is to carry out a new contract called contract reconstruction. The reconstruction of the contract is presented in order to help the debtor to be able to return the loan easily. The contract reconstruction mechanism is to break the old contract by paying off the amount of delay in paying the installments and then given a new agreement agreement by being given leeway to pay the remaining installments that have been promised at the beginning. As for the term of paying installments of 3 (three) years. There is something interesting about the default settlement process carried out by BMT-UGT Sidogir branch of Mojo Kediri, that there is no imposition of fines/compensation for customers who default. The management only collects the principal loan and divides the proceeds. According to the DSN MUI fatwa No.43/DSN-MUI/VIII/2004 on Ta’wid that the compensation allowed is as follows:

- Other parties of the debtor so as to deviate from the agreed terms of the agreement which results in losses for other parties. While the loss in question is a real loss, the meaning, that the loss can really be calculated clearly, such as the cost of expenses due to operational costs for debt collection that must be paid by the debtor. Meanwhile, losses that are expected to occur due to opportunities that are lost (Opportunity loss) are not included in the allowed category. According to Wahbah al-Zuhaili, it is related to compensation that ta’widh (compensation) is to recoup losses incurred due to violations or errors. The general provisions applicable to indemnity may be: (a) indemnifying losses in the form of objects (dharar, hazards), such as repairing walls... (b) fix the damaged object back intact as long as possible, such as returning the broken object to whole again. If this is difficult to do, it is mandatory to replace it with the same object (similar) or with money. Meanwhile, the loss of profits and the occurrence of uncertain losses in the future or immaterial losses, then according to the provisions of the fiqh law it cannot be replaced (compensation is requested) [3].

- Indemnity is only allowed on contracts that give rise to debt receivables as in; akad-istisna', Salam and Murobahah and Ijarah. In the contract that has been agreed between the creditor and the debtor, there can be potential negligence in the debtor in repaying the loan either in the form of installments or others, then in the istisna' contract, Murobaha greetings and ijarah are allowed to claim compensation in the event of default on the part of the debtor.
- Compensation may be imposed on the part of Shohibul Mal (Creditor) on the Mudharabah and Musyarakah agreements if the creditor does not provide compensation to profit sharing that is not given or if the Creditor defaults without implementing the provisions agreed upon in the Mudharabah or musyarakah agreement.

The position of the collateral has an important position in the financing agreement because it is a form of the borrower's responsibility for the loan received from the creditor so that if the debtor is negligent and unable to return the loan that has been received, the collateral will be sold for repayment of the creditor's debt. Collateral is an essential one in providing credit because it will serve to provide benefits to creditors, so commercial banks must have confidence in the debtor's ability and ability to pay off their debts as promised. [4] Article 8 paragraph (1) of Law Numb. 10 of the year 1998, concerning Banking states: In providing credit or financing based on Sharia Principles, Commercial Banks must have confidence based on an in-depth analysis of the faith and ability and ability of the Debtor Customer to pay off their debts or return the financing in accordance with the promised. This implies the collateral of credit, in the world of banking business practices it is generally defined as collateral [5].

Guarantees/collateral in the practice of Islamic financial institutions are based on DSN Fatwa No. 68/DSN-MUI/III/2008 concerning RahnTasjily, which in financing transactions that cause receivable debts is allowed to provide guarantees for goods provided that the goods are still used by the debtor. Furthermore, the creditor is given the authority to execute the collateral if the debtor defaults. In the general provisions of the DSN MUI's Fatwa about rahnTasyjily is defined as follows, RahnTasyjily is a guarantee in the form of goods on the debt, with the agreement that what is handed over to the recipient of the guarantee (murtahin) is only valid evidence the ownership, while the physicality of the collateral goods (marhun) remains in the possession and utilization of the bailler (rahin).

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