



Analysis of Problem Financing Settlement with Collateral of Land Certificate Without Binding Rights of Collaboration in the Perspective of Sharia Economic Law (Case Study at KSPPS Hudatama Semarang City)

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Abstract. In the additional contract agreement, collateral is an important thing to participate in, so that when the guarantee is in the form of a land certificate, it is necessary to be burdened with mortgage rights as a source of repayment if the debtor is no longer able to pay and gives priority to the creditor holding the mortgage in accordance with the Act. Mortgage Law no. 4 of 1996. But in reality there are several financing with land certificate guarantees that are not bound by mortgage rights until in the end there is a default. From this, it attracted the author's interest to conduct research with the title "Analysis of Problem Financing Settlement with Guaranteed Land Certificates without binding Mortgage Rights in the Perspective of Sharia Economic Law (Case Study at Kspps Hudatama Semarang City)". The approach method used in this research is sociological juridical, which is descriptive analysis. Data collection techniques by conducting library research from primary data and secondary data. To analyze the data in this study, the author uses a qualitative method. In the settlement of non-performing financing with land guarantees without being tied to mortgage rights, KSPPS Hudatama uses a family approach, rescheduling, reconditioning, restructuring, sale of guarantees or voluntary submission from members, litigation process. Obstacles and solutions in solving problem financing with land certificate guarantees without being tied to mortgage rights at KSPPS Hudatama Semarang City are as follows: Lack of thoroughness from KSPPS Hudatama in the survey, Guarantor does not sign the contract, Member does not have good intentions, Certificate guarantee has not been tied Mortgage rights, Borrowers are only in name, Members are dishonest, Member conditions are uncertain, due to environmental factors, Members run away or disappear, Judicial process. The solutions that need to be prepared by KSPPS Hudatama are as follows: Indeed, KSPPS Hudatama should be more careful in surveying prospective new members, so that in the future it can minimize fraud committed by customers.

Keywords: Problem Financing Settlement · Land Certificate Guarantee · Mortgage Rights

A. Background

The spirit of economic nationalism in the era of globalization has become increasingly clear that there is an urgency to create a strong, resilient and independent national economy.¹ Economic Democracy based on democracy and kinship, as well as cooperative efforts to animate individual and community economic behavior.²

In business activities, for example, the calculation that is in their minds is only big profits, no longer questioning whether this is obtained through interest which causes so many people and companies to become bankrupt because they are in debt due to interest.³ The ways to obtain this are certainly contrary to Islamic law. Islamic Sharia prioritizes process, work and charity, not solely on the results it achieves.⁴

Economic demands in Islamic sharia, the owners of capital in doing business must always share profits between business partners, both through *muḍarabah* and *musyarakah* systems. Economic activities carried out by someone for his welfare, should not be carried out by ignoring and sacrificing the interests of other people and society in general.⁵

Financial institutions in the form of cooperatives such as BMTs are the best way to empower the poor from a financial perspective, because these institutions are based on the value of cooperation from them and for them. The formal financial approach is incompatible with formal principles such as procedures, mechanisms and payments.⁶

Sharia cooperatives are cooperative business entities that run their business based on sharia principles. Sharia cooperatives became famous and discussed after the rapid growth of Baitul Mal wa Tamwil (BMT) in Indonesia, which appeared almost the same as the establishment of Bank Muamalat Indonesia (BMI), namely in 1992. The emergence of this BMT provided a new color as well as new opportunities in the development of Islamic economics especially in the micro sector.⁷

¹ Musofiana, Ida; Laksana, Andri Winjaya; Sulchan, Achmad, *Pandangan Kritis Terkait Pertanggungjawaban Korporasi Perbankan Terhadap Tindak Pidana Pembobolan Rekening Nasabah*, *JPM: Jurnal Purnama Media*, Vol. 1, No. 1 (2022), page 50-63.

² Zulfi Diane Zaini, *Perspektif Hukum Sebagai Landasan Pembangunan Ekonomi di Indonesia (Sebuah Pendekatan Filsafat)*, *Jurnal Hukum*, Vol. 28, No. 2, 2012. Page 930.

³ Anis Mashdurohatun, *Constructing And Developing The Social Function Principles in Utilising Copyright Products Related To The Fundamental Rights*, *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 7, issue 4 (2015)

⁴ Didin Halidhuddin dan Hendri Tanjung, *Manajemen Syariah dalam Praktik*, Gema Insani, Jakarta, 2005, page 130.

⁵ Mustafa Edwin Nasution, dkk., *Pengenalan Eksklusif Ekonomi Islam*, Kencana Prenada Media Group Jakarta, 2006, page 24.

⁶ Widiyanto, dkk. *BMT Praktik dan Kasus*, (Jakarta: PT Raja Grafindo Persada, 2016), page 122.

⁷ Diah Sasikiran Retno Murniati dan Muhammad Junaidi, *Implementasi Perjanjian Mudharabah Dalam Kerja Sama Simpan Pinjam Serta Pembiayaan Syariah Di Baitul Maal Wattamwil "Binama" Semarang*, *Jurnal Magister Hukum Program Pasca Sarjana Universitas Semarang*. Vol. 2, No.1, 2017), page 3.

So, actually according to the Banking Law, guarantees and collateral are two different things.⁸ The main guarantee is a guarantee, while the additional guarantee is something that the fund strengthens the bank's belief, namely collateral. Regarding collateral as an additional guarantee, realistically in Article 1 number 23, which reads.⁹

Mortgage rights are collateral rights over land for repayment of debts which provide special protection to a creditor against other creditors. The mortgage right can be implemented so that the debtor defaults, the creditor holding the mortgage right has the right to sell through a public auction the land that is used as collateral with the right to precede other creditors.¹⁰

One of the KSPPS business activities is the distribution of financing, financing can be interpreted as providing funds in the form of agreements or agreements 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 guarantee 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 burdened with mortgage rights as a source of repayment if the debtor is no longer able pay and give priority to creditors holding mortgage rights. But in reality there are several members/customers who are financing at KSPPS Hudatama with collateral for land certificates that have not been bound by Mortgage Rights. As it is explained that every financing by KSPPS carries the risk of not returning the funds channeled or is called bad financing, this is also experienced by KSPPS Hudatama Semarang city in providing financing, and if the bad financing is not resolved it will affect the business continuity of KSPPS Hudatama Semarang city.

B. Metode Penelitian

The approach method used in this study is a sociological juridical approach.¹¹ The sociological juridical approach is an approach by looking at a legal reality in society. The sociology of law approach is an approach used to look at legal aspects in social interaction in society, and serves as a support for identifying and clarifying findings of non-legal material for the purposes of legal research or writing.¹²

C. Discussion

KSPPS Hudatama is a sharia financial institution engaged in the economic sector for the general public. In its activities it collects funds from the community and distributes

⁸ Andri Winjaya Laksana, Nur Khasanah, Juridical Review Of The Implementation Of Unsecured Loans On Finansial Technology, *The 2th Proceeding International Conference And Call Paper*, Vol 1, No 1 (2020), page 254-265

⁹ Badriyah Harun, *Penyelesaian Sengketa Kredit Bermasalah*, Pustaka Yustisia, Yogyakarta, 2010, page 70.

¹⁰ *Ibid*, page 73

¹¹ Andri Winjaya Laksana, Sociological Analysis of Narcotics Circulation Treatment on Students, *Jurnal Pembaharuan Hukum*, Vol 8, No 1 (2021), page 105-117

¹² Zainudin Ali, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, 2014, page 105.

them back to the community. In addition to funds from the community, KSPPS Hudatama also supplies its finances from BSI. Because sources of funds other than community or member funds will greatly help the operation of KSPPS Hudatama. As time goes by, the name of a financial institution, of course, KSPPS Hudatama experiences several risks, especially in channeling funds in the form of financing. One of the risks that KSPPS Hudatama accepts is in the form of non-performing financing or bad financing. Where members do not fulfill the agreement according to the contract agreed upon at the beginning.¹³

The financing disbursed by KSPPS Hudatama is used both for working capital and for urgent needs, there are times when there are obstacles to repayment by members of the financing, causing problematic financing. Problem financing occurs due to several factors, both internal and external factors.

Dalam lembaga keuangan pembiayaan bermasalah adalah hal yang wajar dan pasti ditemui. Tapi melihat faktor-faktor diatas, KSPPS Hudatama seharusnya melakukan upaya preventif dengan melakukan analisa terhadap faktor-faktor penyebab diatas sehingga meminimalisir terjadinya pembiayaan bermasalah.

In life, mistakes can't be separated, so KSPPS Hudatama and members must be mutually sustainable, maintaining friendships that have been made, because in principle the Hudatama Islamic Savings and Loans Cooperative Institution (KSPPS) uses the principles of kinship and ta'awun (please help). If both parties can maintain the trust or responsibility that has been given, I think everything will be fine. Usually from the customer's side they underestimate KSPPS Hudatama because they think that cooperatives are not as strict as big banks. In the future, this mindset must be changed, because life is social in nature. And one day for sure between one another need each other. If that person often injures other people, over time that person will be ostracized from an association.

In handling problem financing customers, KSPPS Hudatama also did not just sit in the office and the problem was resolved. KSPPS Hudatama also seeks how problem financing customers can be resolved in the following ways:

1. Family Approach

In a family approach, KSPPS Hudatama will warn troubled customers by reminding customers by communicating via telephone, as well as direct visits to customers' homes as well as giving warning letters and giving directions to customers to seek repayment.

2. Restructuring

Restructuring consists of 3 things, namely Resceduling (rescheduling) where KSPPS Hudatama will extend the installment period according to the customer's ability. Reconditioning where KSPPS Hudatama can provide concessions by delaying margin payments in the sense that the margin is still calculated but the payment or collection of the margin is made after the customer is willing as long as it is still within the installment period and can also get relief in the amount of margin dependents that must be paid by

¹³ Hasil Wawancara dengan Bapak Robi di KSPPS Hudatama Pada Tanggal 23 Juli 2021 Pukul 13.0 WIB

the customer. Restructuring where KSPPS Hudatama can rearrange the contract that has been agreed upon.

3. Guarantee Sales or Voluntary Delivery of Guarantees

The seller of assets under the hand here also intends to ease the burden on members who have problems in financing. In this case KSPPS Hudatama does not necessarily sell the assets that have been guaranteed, but must be with the approval of the owner of the guarantee. The KSPPS Hudatama also gives freedom to members who have problems to sell their own assets or sell them by KSPPS Hudatama, which is basically to resolve the stagnant financing. The sale was also witnessed by the authorities (PPAT)

4. Litigation Process

Settlement of sharia economic disputes is the competence and authority of the Religious Courts which is based on the Explanation of point (1) of Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, and reaffirmed in Article 55 paragraph (1) Law Number 21 of 2008 concerning Islamic Banking which states that if a dispute occurs in the field of Islamic banking, then the settlement of the dispute shall be submitted to the Religious Court. In this case the religious court has the right and authority to accept, try and settle it.¹⁴

In solving problem financing, it has not run smoothly as it should. After seeing the various strategies of Hudatama's KSPPS in handling problems to resolve financing with collateral for land certificates without being bound by mortgage rights, it turns out that there are several obstacles, namely the following:

Factors that become obstacles in solving problematic financing with collateral for land certificates without being bound by mortgage rights:

1. Lack of thorough marketing from KSPPS Hudatama in conducting surveys. Starting from the guarantee survey, the level of ability to pay, environment, and character. Things like that will hinder the settlement of problematic financing.
2. Signature of the collateral owner, as revealed by Achmad Nur Qodin, S.H.I., M.H, as KSPPS Hudatama's attorney, if the collateral owner does not sign a contract agreement used to finance members, then this will be fatal when members experience problems in financing.¹⁵

From the obstacles faced by KSPPS Hudatama in solving them, it is certainly impossible to escape the so-called solution, here are solutions to solve problems in solving problematic financing at KSPPS Hudatama Semarang City:

1. KSPPS Hudatama should be more careful in surveying prospective new members, so that in the future customers can minimize fraud.

¹⁴ M. Nasikhin, *Perbankan Syariah dan Sistem Penyelesaian Sengketanya*. Faawa, Kuala Tungkal, 2010, hlm.141.

¹⁵ Hasil Wawancara dengan Bapak Achmad Nur Qodin, S.H.i.,M.H. selaku kuasa hukum KSPPS Hudatama Pada Tanggal 20 Juli 2021 Pukul 14.00 WIB di Kantor ANQ LAW FIRM KUDUS.

2. It would be nice for the formal legal requirements to be met, at least in accordance with the office SOP.

D. Conclusion

1. Analysis of the settlement of problematic financing with collateral for land certificates without being bound by mortgage rights at KSPPS Hudatama Semarang City. In solving problematic financing with guaranteed land certificates without being bound by mortgage rights, the strategy used by KSPPS Hudatama Semarang City is as follows:

- a. Family approach
- b. Restructurisation

Restructuring consists of 3 things:

- 1) Resceduling
- 2) Reconditioning
- 3) Restructuring
- c. Sale of guarantees or voluntary submission of members
- d. Litigation process
2. Obstacles and solutions in solving problematic financing with guaranteed land certificates without being bound by mortgage rights at KSPPS Hudatama Semarang City
 - a. These constraints are normal in financial institutions. The obstacles faced by KSPPS Hudatama are as follows: KSPPS Hudatama's inaccuracy in surveys, Guarantor does not sign the contract, Members are not in good faith, Collateral certificates have not been bound by mortgage rights, Borrowers are only on behalf of, Members are dishonest, Conditions of members who uncertain, because it is caused by environmental factors, members run away or disappear, judicial process.
 - b. The solutions that need to be prepared by KSPPS Hudatama are as follows: Indeed, KSPPS Hudatama should be more careful in surveying prospective new members, so that in the future they can minimize fraud committed by customers. It would be nice for the formal legal requirements to be fulfilled, at least according to the office SOP. Even if there are problematic financing, the direction of resolution is clear.

Bibliography

- Andri Winjaya Laksana, Nur Khasanah, Juridical Review Of The Implementation Of Unsecured Loans On Finansial Technology, *The 2th Proceeding International Conference And Call Paper*, Vol 1, No 1 (2020)
- Andri Winjaya Laksana, Sociological Analysis of Narcotics Circulation Treatment on Students, *Jurnal Pembaharuan Hukum*, Vol 8, No 1 (2021)
- Anis Mashdurohaturun, Constructing And Developing The Social Function Principles in Utilising Copyright Products Related To The Fundamental Rights, *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 7, issue 4 (2015)
- Badriyah Harun, 2010, *Penyelesaian Sengketa Kredit Bermasalah*, Pustaka Yustisia, Yogyakarta

- Diah Sasikirana Retno Murniati dan Muhammad Junaidi, Implementasi Perjanjian Mudharabah Dalam Kerja Sama Simpan Pinjam Serta Pembiayaan Syariah Di Baitul Maal Wattamwil “Binama” Semarang, *Jurnal Magister Hukum Program Pasca Sarjana Universitas Semarang*, Vol. 2, No. 1 (2017)
- Didin Halidhuddin dan Hendri Tanjung, 2005, *Manajemen Syariah dalam Praktik* Gema Insani, Jakarta
- M. Nasikhin, 2010, *Perbankan Syariah dan Sistem Penyelesaian Sengketanya*. Faawa, Kuala Tungkal
- Musofiana, Ida; Laksana, Andri Winjaya; Sulchan, Achmad, Pandangan Kritis Terkait Pertanggungjawaban Korporasi Perbankan Terhadap Tindak Pidana Pembobolan Rekening Nasabah, *JPM: Jurnal Purnama Media*, Vol. 1, No. 1 (2022)
- Mustafa Edwin Nasution, dkk., 2006, *Pengenalan Eksklusif Ekonomi Islam*, Kencana Prenada Media Group Jakarta
- Widiyanto, dkk, 2016. *BMT Praktik dan Kasus*, PT Raja Grafindo Persada, Jakarta
- Zainudin Ali, 2014, *Metode Penelitian Hukum*. Sinar Grafika, Jakarta
- Zulfi Diane Zaini, Perspektif Hukum Sebagai Landasan Pembangunan Ekonomi di Indonesia (Sebuah Pendekatan Filsafat, *Jurnal Hukum*, Vol. 28, No. 2, 2012

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