



# Implementation of Deposit Rights at Indonesian Sharia Bank Banjarnegara

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**Abstract.** Islamic banks have the task of managing public funds by collecting and redistributing the collected funds to be offered to the community with a number of credit loans accompanied by conditions that can guarantee that bad credit does not occur which can harm the bank as a creditor. One of the conditions that can be used as collateral for loans in Islamic Banking is in the form of land and or building certificates. In the event of bad credit, the consequence is that the collateral can be used as credit repayment by way of auctioning the object that is the collateral. The research method that will be carried out by the author is empirical juridical research. Banjarnegara Islamic Bank carries out the execution of mortgage rights, namely due to the Debtor's delay in making installment payments which is a default debtor. With a default debtor, the step taken by Banjarnegara Syariah Bank is by billing the collector of the Bank, if the debtor still has not carried out his achievements by paying installments, then the next step is for the bank to provide a subpoena, which is a minimum of 3 subpoenas in total.

**Keywords:** Islamic Bank · Mortgage · Collateral

## 1 Background

Islamic banks have the task of managing public funds by collecting and redistributing the collected funds to be offered to the community with a number of credit loans accompanied by conditions that can guarantee that bad credit does not occur which can harm the bank as a creditor.<sup>1</sup> One of the conditions that can be used as collateral for loans in Islamic Banking is in the form of land and or building certificates. In the event of bad credit, the consequence is that the collateral can be used as credit repayment by way of auctioning the object that is the collateral. In practice, banking uses the mortgage deed for legal protection for the bank as a creditor if the debtor does not carry out his obligations according to what was agreed (default). The existence of such mortgage rights provides a sense of security to creditors as well as a means of legal protection for creditors<sup>2</sup>. With

<sup>1</sup> [http://accounting.binus.ac.id/2017/06/17/5-lima-pengertian-fungsi-tugas-dan-jenis-bank-umum/diunduh pada Minggu tanggal 6 Desember 2020](http://accounting.binus.ac.id/2017/06/17/5-lima-pengertian-fungsi-tugas-dan-jenis-bank-umum/diunduh%20pada%20Minggu%20tanggal%206%20Desember%202020)

<sup>2</sup> Amran Saudi, *Penyelesaian Sengketa Ekonomi Syariah : Penemuan dan Kaidah*, (Jakarta: Prenada Media Group: 2018) edisi 1, page 361

the reasons and legal basis, article 6 of the Mortgage Law gives authority to Islamic banking as a debtor to be able to carry out executions/parate executions without a court decision.<sup>3</sup>

Islamic banks have the task of managing public funds by collecting and redistributing the collected funds to be offered to the community with a number of credit loans accompanied by conditions that can guarantee that bad credit does not occur which can harm the bank as a creditor. One of the conditions that can be used as collateral for loans in Islamic Banking is in the form of land and or building certificates. In the event of bad credit, the consequence is that the collateral can be used as credit repayment by way of auctioning the object that is the collateral. In practice, banking uses the mortgage deed for legal protection for the bank as a creditor if the debtor does not carry out his obligations according to what was agreed (default). The existence of such mortgage rights provides a sense of security to creditors as well as a means of legal protection for creditors<sup>4</sup>. With the reasons and legal basis, article 6 of the Mortgage Law gives authority to Islamic banking as a debtor to be able to carry out executions/parate executions without a court decision.

Law No. 7 of 1989 concerning the Religious Courts amended by Law no. 3 of 2006. This has positive implications for the development of the institution of the Religious Courts in Indonesia. In Article 49 of Law no. 3 of 2006 affirmed: "The Religious Courts have the duty and authority to examine, decide and settle cases at the first level between people who are Muslim in the field of Marriage, Inheritance, Wills, Grants, Endowments, Zakat, Infaq, Sadaqah, and Sharia Economics. " Since the amendment has now been made, the obligations of the district court have diminished, but this does not rule out the possibility of solving sharia economic disputes in the district court.<sup>5</sup> However, after the amendment was issued, the Religious Courts now have the right and authority to handle shari'ah banking disputes. The Religious Courts are no longer only authorized to examine, decide and settle cases concerning marriage, inheritance, wills, grants, waqf and shadaqah, but are given new authority in resolving sharia economic disputes.<sup>6</sup>

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<sup>3</sup> Anis Mashdurohatun, Tantangan Ekonomi Syariah Dalam Menghadapi Masa Depan Indonesia Di Era Globalisasi, *Jurnal Dinamika Hukum*, Vol 11 (2011), page 76–88.

<sup>4</sup> Amran Saudi, *Penyelesaian Sengketa Ekonomi Syariah : Penemuan dan Kaidah Prenada Media Group*, Jakarta, 2018 edisi 1, page 361

<sup>5</sup> Tri Ulfi Handayani, Agustina Suryaningtyas, Anis Mashdurohatun, Urgensi Dewan Kehormatan Notaris Dalam Penegakan Kode Etik Notaris Di Kabupaten Pati, *Jurnal Akta*, Vol 5 No 2018, page 51-64

<sup>6</sup> Aminsyah Aminsyah, Andri Winjaya Laksana, The Role of Notaries and PPAT in Protecting Gayo Customary Rights, *Sultan Agung Notary Law Review*, Vol 4, No 3 (2022), page 786-797

## 2 Research Methods

The research method that will be carried out by the author is empirical juridical research<sup>7</sup> namely legal research conceptualized as social institutions in real terms linked to aspects of social life and law as empirical social phenomena based on secondary data as initial data then followed by primary data or data obtained in the field.<sup>8</sup>

## 3 Discussion

Creditors often receive collateral for land, land and buildings where the land certificate is no longer in accordance with the actual situation because the land, land and buildings have been sold by making a PPAT Deed but the name transfer has not been carried out by the relevant Land Office, if this happens the binding guarantees can be made simultaneously with the process of transferring names after that the Mortgage is registered by the relevant Land Office. Because land rights are the main credit guarantee object in addition to other objects related to land, the creditor must always be vigilant in binding them, so that he does not have difficulties in executing or selling the land or land and buildings in the future in order to obtain repayment of his debts.

Land certificates are important for the Bank in addition to knowing who owns them, also to find out the rights to the land, whether the land is land with Freehold Rights, Building Use Rights, Business Use Rights or Use Rights, as is currently known as Use Rights over State land registered at the Office Land can be the object of Mortgage Right.

In general, a plot of land is only burdened by one Mortgage Right. However, it can happen that a plot of land is burdened with several Mortgage Rights. The order of position of the holders is determined by the date of registration at the Land Office with the provision that the Mortgage is registered on the same day, the position is determined by the date of making the Deed of Encumbrance of Mortgage by PPAT (Article 5 paragraph (3) UUHT). Collateral in the form of usufructuary rights, building use rights or usufructuary rights, which is very important for the Bank as a creditor to know is the expiration of the validity period of the land rights, and the bank should not forget to include a promise in the deed of credit agreement that the debtor gives power of attorney that cannot be rejected again to the Bank for if it is deemed necessary, the Bank may for and on behalf of the Debtor submit an application for the extension of the land rights.

It is important for the Bank to always pay attention and research continuously if necessary by making a special list regarding when the land rights which are the object of the Mortgage for the credit will expire. The goal is that before the expiration of the land rights, it is easy for the Bank to apply for the extension of the rights to the Office of the National Land Agency. To support the implementation of the aforementioned schedule,

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<sup>7</sup> Tri Ulfi Handayani, Agustina Suryaningtyas, Anis Mashdurohaturun, Urgensi Dewan Kehormatan Notaris Dalam Penegakan Kode Etik Notaris Di Kabupaten Pati, *Jurnal Akta*, Vol 5 No 2018, page 51-64

<sup>8</sup> Amirudin dan Zainal Asikin, 2003, *Pengantar Metode Penelitian Hukum*”, Raja Grafindo Perseda, Jakarta, page 132.

UUHT also regulates provisions regarding administrative sanctions for officials who violate or are negligent in implementing them.

Execution of the Mortgage can only be carried out based on the Mortgage Certificate, which, like a Judge's decision, uses *irah-irah* for the sake of Justice Based on Belief in the One and Only God, which is carried out on orders and under the leadership of the Head of the District Court in the area where the land is located.

In relation to this execution, it should be noted that it is different from sales based on a promise to sell under their own power, which is if the holder of the first Mortgage also promises not to be cleared, and so if the results of the auction are not sufficient to pay for all Mortgage Rights that burden the object of the Right The mortgage, then the mortgage that is not paid, will remain attached and burden the object of the mortgage that has been purchased by the auction buyer. In executing the Mortgage based on the Mortgage Certificate, the auction buyer will obtain the Mortgage object that has been sold through the auction, free of all burdens. The remaining unpaid bills of the Mortgage holders will turn into claims that are not guaranteed by the Mortgage and become concurrent claims against other assets belonging to the Debtor. Against the remaining debt. Debtors whose defaults are not erased, but remain their obligations, on this matter there is already a jurisprudence for the decision of the Supreme Court of the Republic of Indonesia. Civil Case No. 2205 K/Pdt/1996 dated 28 May 1997.

In the auction process, prior to the auction, announcements are made in the newspapers, the announcement must state the day, date and place of the auction, as well as the limit price. After the auction is held, the official of the Auction Office (KP2LN) makes the minutes of the auction, the Registrar or Bailiff who participates in the auction also makes the minutes of the auction. And after the auction is completed, the party whose property is being auctioned must vacate the fixed object (land) in an empty state without any burden to be handed over to the auction winner as the buyer of the goods.

If the auctioneer does not want to submit voluntarily, then *Ketu*. In principle, a price offer through an auction that is carried out verbally is better than in writing, because in addition to being more objective, it can also be obtained that the price of goods can be higher than the limit price/value. While bidding is closed or through a sealed envelope, the written bid price cannot be increased again, so that if the highest bid is above the limit price, then the buyer will be determined as the winner of the auction.

The District Court concerned issues an order for the evacuation to be carried out by the bailiff and if necessary with the assistance of the state apparatus (police). The auction has been completed and the goods have been sold, then the results of the auction are given to the party that has won in a civil case or to the creditor as the holder of the Mortgage to pay the bill and the execution costs, and if there is excess or excess it will be returned to the party that has been subject to execution or Debtors who owe.

Obstacles in the Execution of Mortgage Rights as credit guarantees for legal protection for the interests of various parties are:

1. There is an explanation of Article 20 paragraph 1 of the UUHT which can be concluded that the creditor has the right to collect the guaranteed receivables from the sale of the Mortgage object in the event that the proceeds from the sale are greater than the receivables, which are as high as the collateral value, the rest becomes the right of the Mortgage giver. From this provision, it means that the debt that must be paid

from the proceeds from the auction sale of the object of Mortgage belonging to the Debtor is the highest/maximum in the amount of the collateral stated in the Mortgage Certificate. Whereas usually the creditor determines a larger amount than what is stated in the mortgage certificate, this is due to the imposition of mortgage rights, there are conditions, that the debtor, insofar as the amount is dependent, must receive bookkeeping from the lender for determining the dependent amount, including interest and fines, so that the amount can exceed that stated in the Mortgage Certificate.

2. In carrying out the execution of the Mortgage, unexpected obstacles often arise, namely the Executed parties deliberately exert their mass to hinder the execution, by means of mobilizing the masses to blockade and block the road and location of the execution object so that the Execution Team/Executor cannot enter the location as well as obstructing the security forces by setting fire to used car tires and some were deliberately drunk so that the situation became rowdy and chaotic by shouting and swearing at the Executors and the security forces, so the situation was not conducive because the crowd numbered more than to the security forces in charge of securing the execution. This situation made it difficult for the Executors and the security forces, so it was clear that the execution could not be carried out and even had to be postponed, because if the execution was forced or continued to be carried out, the Executors might become the butt of the supporters of the Executed party. The postponement of the execution is intended to avoid things that are not desirable. The lack of public knowledge about the law makes it easy to be influenced and provoked by the Execution Respondent.

Efforts to solve the obstacles in the Execution of Mortgage Rights as credit guarantees for legal protection for various parties, namely:

1. The first obstacle is based on the provisions of the credit agreement which stipulates the amount of debt and interest and costs related to the credit agreement must be paid by the debtor as debt. If what is meant here is the amount of debt that must be paid by the Debtor or what is often called the overdraft clause in debt and credit relations, then the Head of the District Court in resolving this problem can rely on the provisions of Article 3 paragraph 1 UUHT. Although this debt problem is generally related to the problem of the maximum amount of debt referred to in the Mortgage Certificate. Article 20 (1) which in practice is often questioned by the Debtor as the giver of the Mortgage, with reasons or pretexts to paralyze the execution of the Mortgage, but with the provisions of Article 3 paragraph 1 UUHT it is hoped that the Chairperson of the District Court/Judge will not grant the objection, and still carrying out/carrying out executions, so that the interests of creditors in recovering their money can truly be protected.
2. In carrying out the execution, coordination was carried out between the Village Head, Executors and related security forces before the execution was carried out so that the location of the object of execution was secured/sterilized beforehand from the possibility that the Executed party mobilized mass to obstruct the execution and increase the number of security personnel, so that if the location If the executable object has been secured beforehand, the execution can run smoothly.

## 4 Conclusion

1. That one thing that makes Banjarnegara Islamic Bank carry out the execution of mortgage rights is due to the Debtor's delay in making installment payments which is a default debtor. In the presence of default debtors, the step taken by Banjarnegara Syariah Bank is by billing the collector of the Bank, if the debtor still has not carried out his achievements by paying installments, then the next step is for the bank to provide a subpoena, which is a minimum of 3 (three subpoenas) in total. If with the subpoena step there is also no achievement from the debtor, then the Bank registers for an auction based on the Mortgage Deed to the KPKNL based on the formal requirements documents that have been set by the KPKN.
2. Settlement of mortgage rights is indeed in accordance with laws and regulations, but in practice the Bank is often only concerned with the Bank's profits, not paying attention to the rights of the debtor whose position is weak. And there are no specific regulations made that are in accordance with the basics of Islamic economics. Execution of Mortgage over land and objects related to land is one way for Creditors to obtain legal protection, so that through Execution of Mortgage over land and objects related to land can really provide guarantees to Creditors to obtain return its receivables if the Debtor defaults (default).

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