

Settlement of Default in Sharia Mortgage with Murabahah Contract

Penyelesaian Wanprestasi dalam Pembiayaan Pemilikan Rumah (KPR Syariah) dengan Akad Murabahah

Maryani

ABSTRACT

Sharia financing products have developed in the banking world, in addition to more banking institutions that offer products in Islam such as murabahah contracts. Murabahah contract is a contract of sale and purchase of goods between two parties whose price and profit are mutually agreed upon. In the process of Sharia Mortgage (KPR Syariah) at BTN (Bank Tabungan Negara) Syariah Probolinggo, many use murabahah contracts and various problems or problems that arise and need to be resolved. One of the problems that often arise in the implementation of home ownership loans is the default. The purpose of this study is to explain the form of default in the implementation of home ownership loans, the factors that cause default, and the settlement of defaults in the implementation of home ownership loans at BTN Syariah Probolinggo. The results of the study indicate that the form of default in the implementation of Sharia mortgages at BTN Syariah Probolinggo Branch is that the debtor is late in carrying out its obligations as previously agreed.

Keywords: default, sharia mortgage, murabahah contract

ABSTRAK

Produk pembiayaan syariah telah berkembang di dunia perbankan, di samping itu lembaga perbankan lebih banyak yang menawarkan produk dalam Islam seperti akad murabahah. Akad murabahah adalah akad jual beli barang antara dua belah pihak yang harga dan keuntungan disepakati bersama. Pada proses Kredit Pemilikan Rumah (KPR) Syariah di BTN (Bank Tabungan Negara) Syariah Probolinggo banyak menggunakan akad murabahah dan berbagai persoalan atau masalah yang muncul dan perlu mendapatkan solusi penyelesaiannya. Salah satu masalah yang sering muncul dalam pelaksanaan kredit pemilikan rumah adalah wanprestasi. Tujuan dari penelitian ini yaitu untuk menjelaskan bentuk wanprestasi dalam pelaksanaan kredit pemilikan rumah, faktor penyebab terjadinya wanprestasi dan penyelesaian wanprestasi dalam pelaksanaan kredit pemilikan rumah pada BTN Syariah Probolinggo. Hasil dari penelitian menunjukkan bahwa bentuk wanprestasi dalam pelaksanaan KPR Syariah pada BTN Syariah Cabang Probolinggo yaitu pihak debitur terlambat melaksanakan kewajibannya sebagaimana jangka waktu yang telah disepakati sebelumnya.

Kata Kunci: wanprestasi, KPR syariah, akad murabahah



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1. Introduction

Banking has a very important role in the economy of a country. The role of banking in the country's economy includes Banking as an intermediary institution in economic activity, as a monetary institution, as well as an institution administering the payment system, and as a driver of the national economy. This means that people can save their money in the form of time deposits, current accounts, or checking accounts, as well as savings and also if they need loans.

Islamic banking is developing in Indonesia in line with the awareness of the Muslim community about the importance of transacting using a halal system, namely the sharia system. Conventional and Islamic banking in general includes 3 (three) main aspects, namely funding, financing, and services. Undang-undang Nomor 21 Tahun 2008 concerning Islamic Banking states that Islamic banks to raise funds can conduct business in the form of savings, demand deposits, or other forms based on *wadiah*, *mudharabah* or other contracts that are not contradictory. Meanwhile, in terms of financing, Islamic banking can channel financing based on *murabahah*, *musyarakah*, *salam*, *istishna*, *qardh* or other contracts following sharia principles.

One of the products at the Probolinggo branch of Bank Tabungan Negara (BTN) Syariah is mortgages (KPR). Mortgages have an important role for customers who want to get or own a house, in these mortgages, many incidents of violations occur in the system at BTN Syariah, one of which is the default. Default (negligence) is the implementation of obligations that are not fulfilled or broken promises carried out by the debtor either because they do not carry out what has been promised or carry out what according to the agreement must not be done.

This default has legal consequences for the creditor and debtor and there are consequences for the parties regarding the rights that should be fulfilled but are not fulfilled and to demand those who default to provide compensation for the agreement that has been made, so that by law in the It is hoped that no one party will feel disadvantaged due to the default.

One concept that is widely practiced by Islamic banking is the murabahah contract. Murabahah is a sharia banking financing product by takes advantage of the difference between the purchase price and the selling price. Financing with a murabahah contract in addition to providing benefits to Islamic banks, on the other hand, has the potential to cause problematic financing problems. The main problem with non-performing financing is the debtor's unavailability to pay off or the inability to pay off the financing as agreed. Credit provided by banks is based on trust, thus giving credit is giving trust to customers (Djumhana, 1999). However, it is not easy to know well whether the person applying for the mortgage is a trustworthy person or not. Various risks in providing credit can lead to non-payment of credit when it is repaid, resulting in bad credit or default.

BTN Syariah Probolinggo branch is one of the Sharia banks that implements the Murabahah concept, namely buying and selling of goods with additional profits agreed upon with Murabahah. Murabahah is the most widely used financing product by Sharia banking in business activities, including at BTN Syariah Probolinggo branch. BTN Syariah Probolinggo branch which provides Home Ownership Loan services, KPR products offered by BTN Syariah Probolinggo branch include KPR BTN Syariah Platinum iB and KPR BTN Syariah subsidies. This research focuses on KPR BTN Syariah Platinum iB products. The purpose of the BTN Syariah Platinum iB KPR product here is the purchase of a house with a contract based on the Murabahah principle.

2. Literature Review

2.1 Default

Default comes from the Dutch language "*wanpretatie*" which means bad performance (Soewarsono, 2002), obligations that are not fulfilled, or broken promises. Negligence is committed by the debtor either because it does not carry out what has been agreed upon or even does something that according to the agreement should not be done. This means that the achievements or obligations that have been determined for certain parties in an engagement, either in an engagement that is in an agreement or an engagement that arises because of the law. Default provides legal consequences for the party who commits it and has consequences for the rights of the injured party to sue the party who defaulted to provide compensation so that by law it is expected that no one party will be harmed because of the default. In this case, the obligation is generally in the form of debt and is often experienced by businessmen or entrepreneurs who indeed make a lot of capital loans for businesses or to make mortgages.

Default is regulated in Article 1243 of Kitab Undang-undang Hukum Perdata (KUHP), which reads: "Reimbursement of costs, losses, and interest due to non-fulfillment of an engagement even though it has been declared negligent to fulfill the engagement". then default is a common thing in a lending activity which means, that if anyone is involved in a system that is the party providing or lending funds, then they must know that default is a risk that is very likely to occur.

2.1.1 Form of Default

1. Unable to fulfill achievement at all. In this case, it relates to the debtor who cannot fulfill his achievements, or the debtor is unable to fulfill his achievements.
2. The debtor can meet the default, but it is not done promptly. If the debtor's performance is considered fulfilled, then the debtor is considered capable of fulfilling the performance but not done promptly.
3. The debtor can fulfill the achievement but is deemed inappropriate. In this case, if the wrong performance cannot be corrected, the debtor will be unable to fulfill his achievements.

2.1.2 Form of Default

At BTN Syariah Probolinggo there are elements of default in entering into agreements such as:

1. There is an Agreement on Stamp by the Parties

The default element is the existence of an agreement on stamp duty by the bank parties. An agreement on black and white accompanied by stamp duty provides legal force for all parties to the agreement. If one of the parties violates or acts outside the stamp duty agreement, it is included in the default category.

2. A Party is Violating the Agreement

Because the violation harms a party, such a condition is an element of default. The occurrence of default is when there are parties who violate the agreement.

Based on the description above, it can be concluded that default is a condition in which the creditor or debtor fails to carry out the agreed agreement. Default (negligence) of a debtor can be of four types, namely (Subekti, 2010):

- 1) Not doing what he was promised to do
- 2) Carry out what he promised, but not as promised
- 3) Did what was promised, but it was too late
- 4) Doing something that should not be done according to the agreement.

2.1.3 Factors Causing Default

The cause of the default at BTN Syariah Probolinggo is that the debtor cannot pay the agreed monthly installments according to the applicable maturity period. If this default is not resolved, there will be a non-performing loan, often referred to as bad credit. Bad loans or non-performing loans are one of the causes that can hinder the development of the financial services sector (Siamat, 2003). Bad credit is caused by various factors such as external factors, the emergence of bad credit, namely the debtor's business going bankrupt, the credit received by the customer being misused, personal problems with the debtor such as illness, divorce, death, a decline in economic activity. The debtor is in arrears or no longer pays credit installments to fulfill his achievements which are his obligations to the bank.

2.2 Sharia Mortgage/ Home Ownership Financing (KPR Syariah)

In principle, Islamic banks are the same as conventional banking, namely as intermediaries that receive funds from the public (in the form of fundraising) and distribute them to parties in need (in the form of fund distribution products). So that the products provided by conventional banks, both fund-raising and financing products, can also be provided by Islamic banks. Mortgage financing products used in Islamic banking have differences from KPR in conventional banking. In this home ownership financing product, there are several differences between Islamic banking and conventional banking, including; application of credit systems and markup systems, between customers and banks, financing procedures and so on (Haris, 2007).

Home Ownership Loans or KPR is one way to repay a house within a certain period and interest. Now, you can apply for homeownership loans at financial institutions such as banks and non-bank financial institutions. Through mortgages, people can buy houses without cash at the price of the building. Because what needs to be prepared is only funds for a house down payment. Furthermore, the remaining costs, including interest will be paid in monthly installments for a predetermined period.

KPR is one of the banking products provided by debtors for financing in general, including opening businesses such as shop houses (*ruko*) and home offices (Ristanto, 2016). Through mortgage financing, we do not have to provide funds for the price of a house. It is enough to have a certain down payment, then we can already occupy it because even though we are still paying in installments, the house has become our own home (Ristanto, 2016). In terms of home ownership financing products, it is necessary to think about a relevant form. Because the term mortgage tends to lead to the occurrence of credit, whereas in Islamic banking does not use a credit system. But some Islamic banks use mortgages such as BTN Syariah Probolinggo interpreting mortgages as "Home Ownership". In carrying out mortgage products, Islamic banks

combine and explore transaction contracts that are allowed in Islam with conventional banking mortgage operations.

The contracts that are widely used by Islamic banking in Indonesia in carrying out mortgage financing products are *murabahah* and *istisna* contracts (Helmi, 2007). Implementation of Home Ownership Credit Ownership Credit (KPR) is a loan provided by the State Savings Bank to help members of the community to buy a house.

2.2.1 Mortgage Distribution Procedure at BTN Syariah

3. Credit Preparation In this activity

The bank provides information to prospective debtors regarding the requirements for submitting a home loan application at BTN Syariah Probolinggo through oral interviews. Then provide a home loan application form to prospective debtors. Next, the prospective debtor fills out a home request loan application form and completes other document files.

4. Credit Analysis

At this stage, the bank, namely the Credit Administration, evaluates and checks the files or documents that the prospective debtor has submitted.

5. Credit Decisions At this stage

BTN Syariah Probolinggo has the authority to make credit decisions, namely the marketing manager and branch leaders. The marketing manager and branch managers provide a decision on housing loans submitted by prospective debtors, whether the credit application is appropriate or not.

6. Credit Implementation and Administration At this stage, if the application for home ownership credit submitted by the prospective debtor to the bank has been received, both parties sign a credit agreement along with other documents.

7. Implementation of Credit Supervision and Debtor Guidance

At this stage, the bank carries out efforts to identify and supervise the implementation of home ownership loans to avoid bad loans.

2.2.2 Sharia Mortgage Financing Terms

- a. Open a *mudharabah* savings account BTN iB
- b. The maximum financing is 90% of the selling price for a new house, 80% for a second house.
- c. Apply an application
- d. Copy of KTP, Family Card, Marriage/Divorce Certificate
- e. 1 copy of the latest 3x4 photo of the applicant and spouse (husband/wife).
- f. Copy of savings account / current account Batara sharia / other banks (min last 3 months)
- g. NPWP
- h. Copy of the legality of the object of the house being purchased (certificate, IMB, PBB)
- i. Second hand house (KTP, KK, seller)
- j. Statement format A, B, C (For FLPP)
- k. Budget plan (home renovation)

2.2.3 Procedure for Granting Home Ownership Credit (KPR) Platinum

In applying for a home loan at the BTN Syariah Probolinggo branch office, the customer must undergo several stages. The stages in applying for a home ownership loan include the following:

1. Product Introduction

The bank introduces various credit products owned by the bank to prospective debtors so that prospective debtors can find out the advantages and disadvantages of the products offered to be used as the basis for having credit products that will be taken according to their needs and abilities.

2. Requirements for Platinum Home Ownership Loans

In applying for a Platinum Home Ownership Loan (KPR), the customer must first know the terms and conditions for applying for a Platinum KPR credit, which the Loan Service Analyst explains.

The provisions of the Platinum KPR are as follows:

1. Collateral

Collateral is collateral used by customers to apply for credit. The bank will take over the guarantee if the customer cannot pay the credit installments. Collateral can be in the form of certificates and building permits (IMB).

2. Maximum credit period

This mortgage at Bank BTN provides a very long term of up to 25 years.

3. Maximum credit 70-80% according to the size of the house

The maximum loan ceiling from the house price is 80% of the asset price if the house area is smaller than 70 square meters and 70% if the house area is more significant than 70 square meters, so you have to pay a penalty of 20 or 30 percent depending on the area of the house.

4. Minimum age

Applicants must be Indonesian citizens over 21 years of age or married, and the maximum age is 65 years to apply for a KPR BTN Platinum. Prospective borrowers must also have worked for one year.

5. Credit Allocation

This loan is more suitable for purchasing houses, shops, houses, and home offices.

6. Process Fee:

- a. Provision: 1% of the maximum credit
- b. Notary: IDR 250.000
- c. Insurance:
 - i) Life insurance: According to the maximum credit

- ii) Fire insurance: According to the maximum credit and building price
- 7. Precipitated savings: IDR 50,000
- 8. Administration fee: IDR 400,000
- 9. Minimum standard monthly income: IDR 4,000,000.

3. Methodology

This study uses field research, directly carried out in the field or on respondents (Susuadi, 2014). In this research, the approach used is a descriptive qualitative approach. The descriptive qualitative approach is used to research and describe problems or problems in sharia mortgage financing at BTN Syariah Probolinggo.

In this study, the default is the context in which BTN Syariah Probolinggo occurs. Sources were obtained from two types, namely primary and secondary. Primary data is a source that is obtained directly from the leadership, and employees at BTN Syariah Probolinggo, while secondary data is an indirect source of data that researchers take as supporting material.

4. Results and Discussion

Every bank or financial institution must face the problem of bad loans; talking about non-performance financing is about the risks in every financing provision. Therefore, it can be said that banks cannot avoid non-performance financing (loan problems). Credit congestion will cause difficulties for the bank itself, namely in the form of difficulties related to the soundness of the bank; therefore, banks are obliged to prevent and anticipate and maintain the occurrence of bad loans (Purwahid, 1994). Especially what happened to BTN Syariah Probolinggo, many things happened due to bad loans, or it could be said (default) on the Syariah KPR. Therefore, it is necessary to find out how the settlement strategy is at this NTN bank.

A. Default Settlement Process for KPR Syariah Platinum iB

BTN Syariah Probolinggo KPR customers who cannot pay in installments according to the agreed period are called default customers. The customer is declared in default if he violates and does not fulfill the obligations related to the provisions in the contract. For defaulting customers, the bank has the right to give warnings in the form of the following actions:

1. Provide warnings both verbally and in writing, and in the form of letters or other similar deeds in the form of a statement of negligence/default that is sent to the customer's address, including
 - a. Provide or send one warning letter to the customer, and if the customer does not respond to the first warning letter, the customer will be given a second and subsequent warning letters.
 - b. Provide a summons to the customer if the customer ignores all warning letters.
2. If the summons is not responded to properly, the customer will receive a summons.

Some obstacles occur in the implementation of the default settlement of the Platinum iB Syariah KPR Probolinggo sharia savings account, namely the fulfillment of late performance, obstacles

or disturbances that generally occur from the debtor or customer who is late in fulfilling the installments or unable to pay their debts (default), the intention is not to both from the debtor which is one of the factors constraining the settlement of problematic Sharia mortgages, namely that the debtor will take advantage of the weaknesses that exist in the bank for not paying credit or installments to the bank.

Banks cannot avoid non-performing financing; financing is said to be problematic at first, marked by signs that the customer being financed is experiencing financial difficulties or is done to prevent non-performing financing. Settlement of non-performing financing on a Platinum in Syariah KPR in a *Murabahah* contract by BTN Syariah Probolinggo Before a bank resolves a non-performing Syariah KPR financing, and the bank must first restructure the financing of the problems faced by its customers. Financing restructuring is an effort to improve the activities of providing funds to customers who have difficulty fulfilling their obligations by following regulations such as restructuring.

This restructuring is a very important matter for customers who are in default. Restructuring can be done, among others, through:

1. Rescheduling is a change in the customer's obligation payment schedule or a maximum period of 7 months.
2. Reconditioning, namely changes in part or all of the financing requirements, including changes in the payment schedule, number of installments, and period, as long as it does not add to the remaining customer obligations that must be paid to the bank.

The restructuring can only be carried out by customers who have the following criteria:

1. Customers experience a decrease in their ability to pay.
2. The customer has a good business, responds well, and can fulfill obligations after restructuring.
3. Restructuring of financing must be supported by adequate and well-documented analysis and evidence (BI Regulation).

From the explanation above, it can be understood that restructuring can only be carried out on customers whose businesses or businesses are still running, in the sense that they are still operating and generating income and are considered to have good business prospects for the future. In addition, financing restructuring also needs to look at the customer's character and whether the person concerned has good intentions to settle his obligations. Customers also need to know whether they have future motivation and strategies for running their business after restructuring. This is important to do to give confidence to the bank that restructuring.

5. Conclusions and Recommendations

Based on the explanation above, it can be concluded, first, that the factor of default in the Sharia mortgage agreement at BTN Syariah Probolinggo is the result of negligence on the part of the customer himself or because of economic factors that cause the customer to fail to pay installments or default.

Second, the restructuring mechanism must be carried out by referring to the precautionary principle, namely by considering whether to restructure or not, through various assessment factors. This is because, in restructuring, there are risks that can interfere with bank performance.

Third, the restructuring is carried out to ensure customers can complete their obligations properly and smoothly. In this case, this is done because the bank views that the customer is still entitled to the trust of the bank, both in terms of business or the character it is running.

Furthermore, fourth, restructuring the murabahah financing contract can still be carried out by rescheduling the remaining outstanding debts.

It is essential to give confidence to the bank that restructuring can be a mechanism to save customer financing, which previously experienced obstacles can return to normal. As stipulated above, the restructuring mechanism can only be applied to customers with Substandard, Doubtful, and Loss financing quality. Therefore, for customers with the financing quality category in Special Mention, or Collect-2, the settlement process is through a billing or collection mechanism.

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