

Collateral As Expired Solution a Risk of Mudharabah Financing (Case Study of Bank Syariah Mandiri Bank KCP. Ponorogo)

May Shinta Retnowati
Lecturer in Faculty of Sharia,
In Program The Law of Islamic Economic,
University of Darussalam (UNIDA) Gontor
Email: mayshinta@unida.gontor.ac.id

Abstract

The practice of bank or non-bank financial institutions, seen from its development, is constantly changing. Since the growth of the Islamic economic system that emerged since 1992, using the usury-free system or profit sharing operated by Islamic banks, was developed to create even economic stability among the people. Sharia bank operational systems include funding, lending (financing), and services using muamalah contracts. The financing system for sharia banking products uses mudharabah contracts, but the implementation of collateral is one of the mudharabah financing solutions This research was conducted to determine mudharabah financing practices in BSM KCP. Ponorogo, how to settle defaults and balance collateral and profit sharing, using a qualitative research method that is descriptive and tends to use analysis. In the technique of collecting data with interviews, observation and documentation. In this study the implementation of contract in BSM, the customer does not know the intent by clearly the contents of the contract that has been signed and the customer does not get a copy of the contract documentation, so that it can lead to a risk of default later, in resolving disputes practiced at BSM to customers Paying is by continuous billing, restructuring, and strategy execution, while the more BSM is more often used by BSM is the execution of strategies in a family manner that can benefit both parties, but BSM leaves hands on the sale value of collateral carried out by the customer. On the balance of collateral risk and profit sharing that occurs in the practice of Islamic bank financing. Shows more collateral value than the value of financing received by the customer so that if there is a default financing or a customer fails to pay more to the bank, because the assets of the collateral are held by the bank, while for the results determined at the beginning of the contract consideration that the customer's business is in good condition because of obtaining additional funds from the bank, that this is the case of unclear division (gharar).

Keyword: *Solution a Risk, Mudharabah, Financing.*

Introduction

Before the presence of Islamic banks in Indonesia, banking practices had existed since the time of the Prophet and his companions. Such as raising funds (*zakat*, *ushr*, *kharaj*, *fay*, and *ghanimah*) carried out in *baitul maal*, as well as banking practices in the days of Khulafaur Rashdin, the Abbasid Dynasty in Europe, and various countries. While the initial practice of Islamic banks in Indonesia, its founding idea has existed since 1970.¹

Islamic banking institutions have 4 principles in their operational systems, there are:² *First*, the principle of pure savings, with products such as *wadiah*. *Second*, the principle of profit sharing, with its *mudharabah* and *murabaha* products. *Third*, the principle of buying and selling and profit margins on products such as *musyarakah mutanaqisah*. *Fourth*, the principle of leasing with products such as *ijarah muntahiyah bittamlik*.

According to Muhammad Syafi'i Antonio *Mudharabah* financing is a contract of business cooperation between two parties in which the first party (*shahibul maal*) provides all capital (100%) while the other party becomes the manager. *Mudharabah* business profits are divided according to the agreement set forth in the contract, whereas if the loss is borne by the capital owner as long as the loss is not due to the manager's negligence. If the loss is due to fraud or negligence of the manager, the manager must be responsible for the loss.³

Many parties consider the profit sharing system to be fairer than the interest system, because in principle this concept is a fair investment partnership in the division of labor, profit sharing, and risk. financing in banks is currently the concept of *mudharabah* or

¹Some sources said that the beginning of the idea of Islamic-based banking was started by KH. Masas Mansur, a major board of Muhammadiyah in the period 1937-1944. In the Muhammadiyah organization this was followed by the Mu'tamar Khusus in Sidoarjo in 1968 which discussed bank law, and the Majelis Tarjih's decision on banks consisted of three parts: consideration or consideration (academic, social, and postulate), decisions or provisions, and explanations. See Nurul Huda dan Mohamad Heykal, *Lembaga Keuangan Islam: Tinjauan Teoretis dan Praktis* (Jakarta: Kencana Prenada Media Group, 2013), 29-30.

²Ahmad Rais, *Tinjauan Yuridis Perbandingan Akad Ijarah Muntahiyah Bit Tamlik (IMBT) dan Akad Musyarakah Mutanaqisah dengan Jaminan Hak Tanggungan dalam Pembiayaan Pembelian Rumah (Studi Penerapan Akad pada Bank Syariah (Bank X) dan Unit Usaha Syariah Bank Konvensional (Bank Y))*, Tesis: Universitas Indonesia, 2012.

³Syafi'i Antonio, *Bank Syariah: Suatu Pengenalan Umum* (Jakarta: Tazkia Institute, 2001), 95.

investment, but the practice in it of the guarantees imposed on customers as *mudharib*. If the practice used by banks at this time can result in contract disability. The practice of financing funded by Islamic banks is a form of investment that requires a lot of time so that the investment can benefit. In the form of investment financing is financing in the form of partnerships that are built on trust.⁴ The current practice of trust in the field is no longer in the form of mere speech or testimony, but is preferred in the form of goods that have material values that can be traded.

In the financing process or financing of *sharia* principles that need to be considered by banking institutions is how Islamic banks channel funds to customers without collateral, if at any time there is a risk of investment loss or default failure in *mudharabah* financing. The occurrence of a default customer there are many factors that occur, both internal and external, if there is a default, this will affect the banking operational system. Therefore the bank provides a guarantee, whereas in the *mudharabah* concept if there is a risk, the one who bears the risk is *shohibul maal* (bank).⁵

Collateral is one part of collateral based on the type of debt agreement to guarantee as one of the trustworthiness of creditors to the debtor, so that the concept applied to *mudharabah* financing on the action is more to the concept of mortgage/*rahn*, because the provision of collateral trust, while the concept of *mudharabah* and *rahn* in Islam is different. Therefore, based on the above background, the author intends to critically analyze the current *mudharabah* financing practices in terms of the implementation of collateral for *mudharabah* financing, the handling of collateral risks, and the balance between collateral risk and *mudharabah* financing profit sharing practices at BSM Ponorogo Branch Office.

Contract on The Muamalah Perspective

Every transaction in banking requires a legal contract, so that the activity gives a legal burden to the perpetrator, namely the customer and the bank. Allah also commands for His servants to fulfill the contract or agreement that has been carried out, as in QS.

⁴Adiwarman A. Karim, *Bank Islam: Analisis Fiqh dan Keuangan* (Jakarta: PT.Raja Grafindo Persada, 2011).

⁵*Ibid*, 220.

Al-Maidah verse 1 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

“O believers, fulfill your agreement.”

In *muamalat fiqh* distinguishes *wa'ad* and contract. *Wa'ad* is a promise between one party and another, whereas a contract is a contract or contract in a broader sense often referred to as an agreement. A contract is an event where two people or more mutually promise to do or not commit an act very transaction in banking requires a legal contract, so that the activity gives a legal burden to the perpetrator, namely the customer and the bank. In *muamalat fiqh* distinguishes *wa'ad* and contract. *Wa'ad* is a promise between one party and another, whereas a contract is a contract or contract in a broader sense often referred to as an agreement. A contract is an event where two people or more mutually promise to do or not do a certain act, so that the contract raises the rights and obligations of the parties that make the contract.

Guarantee Concept

The concept of guarantee in Islam is not much different from the concept of guarantee in civil law. In the Islamic concept the guarantee according to the material is also divided into two, namely guarantees in the form of people (personal guaranty) known as *dhaman* or *kafalah* and guarantees in the form of property known as *rahn*.

In *kafalah* means *ad-dhaman*, *hamalah*, and *za'amah*, the three terms have the same meaning, namely guaranteeing or bearing. *Kafalah* is a guarantee given to *kafil* (guarantor) to third parties for obligations/achievements that must be fulfilled by the second party (the insured). The term of *rahn* in Indonesian is called Gadai Syariah. *Rahn* in Arabic means *al-tsubut wa al-dawam* (permanent and eternal), some of the *luhgat* scholars give the meaning *al-hab* (stuck), and can be stretched like *ma'oun raahunun* (still, soothing water does not flow), or sometimes means *al-habsu and luzum* (holding). In QS. Al-Mudatsir: 38 which reads:

كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ

“Each self is held captive (responsible) by what he has done.”

*Al-rah*n according to the term that is to make an object that has a value of assets in a *syara'* view to trust a debt, so it is possible to take all or part of the debt from that object. So as to make goods, assets whose goods are concrete tangible that have value according to *syara'* as *watsiqah* or the inauguration of debt guarantees that if the goods are possible to be used to pay all or part of the debt.

The Syafi'iyah Ulama defines guarantees as follows:⁶

جعل عين وثيقة بدين يستوفى منها عند تعذر وفائه

"Making عين (goods) *watsiqah* (collateral) a debt for which the item is used to pay the debt, when the debtor cannot pay the debt."

Something that is made into *watsiqah* must be something that has a value, then the *watshiqah* must be an item which has value. The definition of *watsiqah* in *muamalah fiqh* is not written specifically and complex, but the term *watsiqah* is often referred to in the *rahn* section.

Rahn is a guarantee in the form of a moving object or not that has material values, such as a car, motorcycle, gold, land, etc., while *watsiqah* in Arabic is a document or deed. Then *watsiqah* better interpreted the form of material material in the form of documentation, such as securities (BPKP, Certificates, etc).

The practice of guarantee in the form of *rahn* and *watsiqah* is the same, the only difference is the object of the object. In the *rahn* contract or *watsiqah* guarantee is carried out by surrendering property to the party who owes as collateral for the person who owes, and the assets that are used as collateral in the dependence of the debtor.⁷ Different from *kafalah* makes the other party a guarantee as a way of facilitating accounts payable transactions.⁸

Jumhur Ulama agreed to state that the criteria for collateral goods are goods that have material value and can be sold, clearly and definitely known, can be submitted, held, can be controlled, not mixed with something that is not guaranteed, both assets *mithly* and *qimy*.⁹

Sheikh Muhammad Ali in his book Zainudin Ali, that guarantees can be made when both parties are on a journey (*musafir*),

⁶Rachmad Saleh Nasution, "Sistem Operasional Pegadaian Syariah Berdasarkan Surah Al-Baqarah 283 pada PT. Pegadaian (Persero) Cabang Syariah Gunung Sari Balikpapan," *Jurnal Al-Tijary*, Vol. 1 No. 2, 2016.

⁷Wahbah Zuhaily, *Al-Fiqih Islam wa Adillatuhu*, Juz 9 (Damaskus: Dar al-Fikr, 1989), 187.

⁸*Ibid*, 187.

⁹مئلي kepemilikan pribadi, يمك kepemilikan umum

and such transactions must be recorded in a ceremony (there are writers and witnesses). Even Ali as-Sayis considers that with the guarantee, the precautionary principle is guaranteed, rather than the written evidence made, even though there have been additional witnesses in it. Because the guarantee avoids the existence of harm caused by the betrayal of either party or both in conducting debt transactions receivables.¹⁰

The function of collateral in financing operations is as an object that will be the second way out or the last way to save financing. So the bank must evaluate the collateral carefully (prudent) by using certain measures. The valuation of collateral is usually based on fair market prices at the time the financing is due, and the price if at any time the item is sold, anticipates the possibility of depreciation (decrease) price, and find out the return (resale value).

1. Risk

Risk is an unpleasant result (detrimental, harmful) of an action or action.¹¹ Islamic banks in conducting investment practices have the principle of never losing money and this possibility will not occur if the bank does not participate in bearing the losses suffered by its customers (commanditeringsbod).¹² Therefore, banks as financial institutions must be prudent in implementing their operational systems, regarding funds managed not only by shareholders, but also by third party deposits. In order to stay awake and the bank can act as an entrepreneurial institution, it is necessary to manage risk.

According to Adiwarman A. Karim stated that risk in the banking context is a potential, predictable or unpredictable event that can have a negative impact on income and capital. Risks cannot be avoided but can be managed and controlled. There are several types of sharia banking risks including: Credit risk, Market risk, Liquidity

¹⁰Harun Nasution, *Perkembangan Modern dalam Islam* (t.tp.: Yayasan Obor Indonesia, t.th), 6.

¹¹Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia* (Jakarta: Departemen Pendidikan dan Kebudayaan Republik Indonesia), 751.

¹²Commanditeringsverbod is a prohibited term for banks to avoid risk and loss from the customer's business. This is a provision that applies in conventional public banks, because banks cannot lose so the customer's business risks are borne by themselves and the customer still has an obligation to pay off installments or obligations to the bank. See Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan di Indonesia: Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan* (Yogyakarta: Liberty Offset, 2003), 46.

risk, Operational risk, Compliance risk, Legal risk, Reputation risk, and Strategic risk.¹³

In order to provide customer protection in accordance with the provisions of article 39 of Act Number 21 of 2008 Islamic banks and UUS must explain to customers about the possibility of future risks arising in connection with customer transactions conducted to ensure transparency of bank products and services. If the information has been carried out by Islamic banking, the bank is deemed to have implemented the provisions of Article 39 of Act No. 21 of 2008, which reads: “*Sharia* banks and UUSs are required to explain to the customer the possibility of risk of loss in connection with customer transactions made through the *sharia* bank and/or UUS.”

2. Credit Risk Settlement

The handlers for solving non-performing loans through legal channels include:¹⁴

- a. Through the Committee for State Receivables Affairs and the State Debt Affairs Agency.

These receivables are usually in the form of state receivables through the State Debt Affairs Committee (PUPN), which is the payment of state receivables handed over by the government to state-owned banks, then negotiated by a group of debt settlers and their agreement is obtained.

- b. Through the Judiciary

In this case the debtor does not carry out his obligations, then the creditor can make his claim in court. Courts that can handle bad financing or have problems through the general court through civil lawsuits. If a court decision has been made which then has the legal force to be implemented under the law.

- c. Through Arbitration or Alternative Agency for Dispute Resolution

Settlement of a dispute through an arbitration institution, namely through a body chosen by the disputing parties to give a decision regarding a particular dispute. The parties can choose the arbitrator according to their wishes according to their belief that

¹³Adiwarman A. Karim, *Bank Islam: Analisis Fiqh dan Keuangan* (Jakarta: PT Raja Grafindo Persada, 2006), 255.

¹⁴Zainal Asikin, *Pengantar Hukum Perbankan Indonesia* (Jakarta: PT Raja Grafindo Persada, 2015), 208-211.

they have good skills, knowledge, experience and background to the parties.

d. Through the National Bank Restructuring Agency

This settlement is carried out through credit monitoring, review, payment, cancellation, termination and participation of credit documents and collateral.

The handling of this bad financing includes temporary capital participation, as explained in Article 15 of Government Regulation No. 17 of 1999 concerning the Indonesian Bank Restructuring Agency. Credit settlement in Islamic banking as stipulated in Law No.21 of 2008 is in Chapter IX, Article 55, which reads:

- a. Settlement of *Sharia* Banking disputes is carried out by judges within the Religious Courts.
- b. In the event that the parties have agreed to resolve the dispute other than as referred to in paragraph (1), dispute resolution is carried out in accordance with the contents of the Agreement.
- c. Dispute resolution as referred to in paragraph (2) may not conflict with *Sharia* Principles.

DSN Fatwa MUI No. 105/DSN-MUI/X/2016 concerning guarantee of capital returns *mudharabah*, *musyarakah* and *wakalah bil istitsmar* financing settlement of disputes between parties can be carried out through consensus deliberations. If the consensus agreement is not reached, then the dispute resolution is carried out through the *shariah*-compliant dispute settlement body in accordance with the applicable regulations.¹⁵

Collateral Implementation Practices for Mudharabah Financing at BSM Ponorogo Branch Offices

Mudharabah contract practices at the BSM KCP Ponorogo include: first, *mudharabah* financing in the form of working capital needed by customers in meeting the needs of increasing productivity such as shops, cooperatives, industries and so on. The provision of working capital is only used for business or trade that is lawful, does not contain *gharar* elements, and is prohibited by Islamic law; such as liquor sales, drugs, gambling, pig wearing, salons, etc. are prohibited by *syara'*. The duration of financing for this working capital is usually

¹⁵Fatwa DSN MUI No. 105/DSN-MUI/X/2016.

5 years.¹⁶ Second, *mudharabah* financing in the form of investment that is intended for customer investment with a funding duration of 8 to 10 years. Usually this investment takes the form of movable or immovable objects, and investments in legal entities such as cooperatives. 1 year, or commonly referred to as annual financing.¹⁷

Before agreeing to the cooperation of *mudharabah*, the bank made several ways to assess customers, among others: first, recognizing customers was the first way to do by looking at the physical and mental or psychological forms of the customer. Second trackchecking, usually the bank comes to the home or business location of customers without the knowledge of the customer and asks the neighbors about the customer and the development of the customer's business. Fourth, the Bank checks the assessment of customers with a history of financing at other banks about the consistency of customers in fulfilling their obligations in installments of financing in previous banks.¹⁸

Some of the terms and conditions for financing based on *mudharabah* contracts include: photocopy of husband/wife ID card, photocopy of marriage certificate, photocopy of family card (KK), business certificate, photocopy of collateral (land certificate, SPPT, BPKB and STNK), and photocopy of personal NPWP if financing is above 50 million.¹⁹

Financial transactions at BSM KC Ponorogo always use written contracts that are known to the customer and the bank. The contract in the form of writing has been provided by the bank in the form of an approved form and in accordance with the bank's internal policies supervised by the *Sharia* Supervisory Board (DPS) and Bank Indonesia (BI).

The form of contract that should contain principles, among others, is the principle of consensualism, namely an agreement that has taken place, if there has been a consensus between the parties holding a contract. The principle of freedom, namely a person is free to make agreements, is free about what is agreed upon, and determines the form of the contract. These principles also exist in the contractual practice in BSM because customers are given the freedom to choose the type of product and contract that is carried

¹⁶M. Ghani Wicaksono, Interview, Ponorogo, June 26, 2018.

¹⁷Ardit, Interview, Ponorogo, May 21, 2018.

¹⁸Financing Brochure at BSM.

¹⁹*Ibid.*

out, which then binds customers and banks to fulfill their respective rights and obligations. Legal contracts or agreements that have been approved and signed can become laws for those who transact or *Pacta Sunt Servanda*.

In banking, it is usually in the form of a standard contract, where the contents or clauses of the agreement have been standardized and poured in the form of blanks or forms, but not bound in a certain form (*vorm vrij*). Implementation of the contract in writing (form/legal contract) what happened in the practice of financing at BSM had been decided in advance by the internal bank or in accordance with the standard agreement made on previous customers. Usually the customer only reads, understands and signs the contract and the draft contract is kept by the bank, so that after making financing the customer does not remember correctly on each contract points this can also cause problems in the future. Even though the agreement between the customer and the bank is done by other people (*like it likes*). Therefore, in order to minimize the risk of future problems, the bank should provide a copy of the form or draft legal contract agreed with the customer.

The urgency of guarantees in this transaction is as a binder so that the work partners have good intentions and are serious in carrying out their business and trust in accordance with the provisions of Islamic law. In the *ushul* jurisprudence rules are also explained:

أَيْنَمَا وُجِدَتِ الْمَصْلَحَةُ فَتَمَّ حُكْمُ اللَّهِ

“Where there is benefit there is God’s law.”

Apart from being a good bond to the debtor, the other objective is moral hazard carried out by business partners. In banking, there is a guarantee as one of risk mitigation, because the funds used by the debtor are funds from third parties that are withdrawn at any time, so the bank must be able to liquidate the funds. In the practice of this *mudharabah* transaction, it should be if the debtor can fulfill its obligations in providing a profit report from the efforts made on time. And the bank contributes to controlling the report and fulfilling the human resource needs so that they produce more productive impacts, thus creating a balance rights and obligations of both parties.

Handling Collateral Top Risks in Mudharabah Financing at BSM Ponorogo Branch Office

Most of the financing risks in BSM are customers who fail to pay or have difficulty paying in paying off credit. There are a number of things that underlie customers who fail to pay, including declining customer business, natural disasters, and defaults. There are many cases of customers failing to pay at BSM KC. Ponorogo, to handle cases of bank defaults usually find out why the customer cannot fulfill these obligations, such as a decrease in business or default. After knowing the various kinds of causes, the bank can determine the solution to resolve the customer's default so that it does not harm any party.

To handle cases of bank default customers do several ways, among others: first, continuous collection through billing letters, second, restructuring, if the condition of the customer is in a difficult situation by paying installment obligations to the bank, the bank restructures or decreases the amount installment obligations without changing the contract. Third, strategy execution is if a restructuring has been carried out but the customer still cannot carry out his obligations. The stages of strategy execution include:²⁰

1. SP 1, the first stage carried out by the bank to remind delays in installments made by customers.
2. The second stage SP 2 conducted by the bank to remind of late installments on the financing made by the customer.
3. The third stage SP 3 conducted by the bank to remind delays in installments made by the customer.
4. Auction notification (familial), the fourth stage is carried out by the bank to remind delay of installments on the financing made by the customer explicitly and familial to find solutions to solve problems, usually by selling customer collateral by the customer himself. The customer can sell the collateral in 3 months, if it cannot be sold, collateral collection will be applied.
5. Empty collateral, the fifth stage that is carried out by the bank after not getting a solution from the familial stage.
6. Auction, the last stage carried out by the bank to conduct an auction with the auction hall to execute collateral for customers who default on their obligations.

²⁰M. Ghani Wicaksono, Interview, Ponorogo, June 26, 2018.

The precautionary principle includes: character, capacity, capital, collateral, and condition. First, our character looks at the customer's character from meeting (face to face), track checking, and BI Checking. Second, capacity can be seen from the pay slip slip attached to the customer. Third, capital is valued from the number of suppliers or buyers. Fourth, the collateral bank assesses that customer collateral has a selling price or not so that it can be executed when a default occurs. Fifth, condition, the bank continues to see the condition of the customer's business development, if a bank default occurs, it will still see the customer's business condition, and in resolving disputes, the bank prefers a family way.

Usually the settlement of many customers reaches this stage, namely settlement in a family manner. Customers are permitted to sell their own collateral items for a period of 3 months. When customers sell collateral goods, customers are allowed to set prices according to the customer's wishes and the bank only asks the customer to pay off the customer's obligations, if there is an excess profit from the sale the bank does not ask for a part. Based on the definition of the Hanabilah Ulama defines the guarantee as follows:

المال الذي يجعل وثيقة بالدين ليستو في من ثمنه إن تعذر استيفاؤه ممن هو عليه

"Assets that are used as watsiqah (collateral) are debt which is immediately the party that bears the debt cannot pay it off, then the debt can be paid at the price of the sale of the watsiqah."

This method is more effective, inexpensive, and efficient than auction execution that requires a lot of cost and energy. In this way the bank also does not interfere in the sale of collateral goods transactions, so the bank also benefits because the customer can pay off his obligations.

Balanced Between Security Risk and Mudharabah Funding Benefit Sharing at BSM Ponorogo Branch Office

The proportion of profit sharing value given to customers and banks can be determined by the customer and the bank itself, usually 12% or 13% per year. Payment of loan installments can be made by the customer each month, with the details of the payment being the principal installments and margins. The balance of collateral value

and the amount of financing obtained by the customer is assessed first the price or market value of customer collateral and the provision of liquidation up to 80% of the collateral value, this can give rise to collateral risk value with the overall value of profit sharing on *mudharabah* financing.

For example, the funding submitted by a customer is 100 million, per year 12%: 12 months = 1% per month. The loan period is from 1-10 years, depending on the type of financing used by the customer. If 3 years means 36 months. So the monthly principal installment of the financing of customers of 100 million / 36 months = 2.7 million plus the profit of the bank each month of 1% of the principal is 1 million, so the total installment is 3.7 million.²¹

In the above calculation it has been mentioned that the customer pays installments to the bank in the form of principal installments and profits on a monthly basis without knowing the customer's income each month. Although the profit sharing determined at the beginning of the contract is 12-13% per year and approximately 1% each month, this profit can be obtained from the customer's net income every month. If the first month customers get a net income of 3 million, the profit sharing given to the bank is 1% from 3 million, if the second month the customer earns 1 million, then the profit share is 1% of 1 million, and so on during the contract. If the customer installment payment model with the ceiling model is not much different from the existing financing in conventional banks.

The amount of collateral risk provided by the bank is assessed from the value of collateral provided by the customer, so that the risk of collateral is smaller than the value of collateral provided by the customer because the bank can provide a financing amount of 80% of the collateral value. Banks can use the concept of annuity where profit sharing is given earlier on a large scale, considering that after the granting of working capital the customer's business increases well and in recent months the profit sharing for the bank is reduced or even the customer only pays the principal. A models of *mudharabah* guarantee practices used in the form of securities, so that in *fiqh muamalah* is *watsiqah*.

The Hanafiyah ulama defines guarantees as follows:

جعل عين لها قيمة مالية في نظر الشرع وثيقة بدين بحيث يمكن اخذ الدين

²¹Financing Customers, Interview, Ponorogo, June 26, 2018.

كأها أو بعضها من تلك العين

“Make something to be guaranteed and can pay the debt with the guarantee.”

The opinion expressed by the Hanafiyah scholars is that the amount of collateral does not have to be proportional to the size of the loan, meaning that the guarantee given can be of greater or lesser value than the loan so that all forms of guarantees are permitted provided they do not conflict with *syara'*.

The practice carried out at the BSM KCP Ponorogo form of *watsiqah* must be more than the value of funding received by the customer. This is applied in banks as collateral is used as a binder and risk mitigation not as a form of trust in customers. This is done because the bank is also a trustee holder of third parties who deposit their funds with banks. This is in accordance with Islamic legal theory which reads:

أضرر يدفع بقدر الإمكان

“All harm must be avoided as much as possible.”

While the risk of collateral and profit sharing that occurs in the practice of Islamic bank financing, if a customer fails to settle can be settled with collateral deferred to the bank can be resold by the customer, the customer benefits from assets sold and can pay off obligations to the banking or restructuring, while if the customer experiences unexpected things, dies or because of a natural disaster then covered in insurance. The profit sharing given to the bank either by the annuity system or monthly installments has many benefits obtained by the bank, while the losses incurred by the bank do not get, because the customer completes his own obligations, whereas in the *mudharabah* concept if the loss is *shahibul maal* or the bank. Many of these practices also occur in other Islamic banking, even though at the beginning of the contract, a contract model, profit sharing negotiation, and settlement of disputes have been packaged beautifully, but in practice there are still profit alignments for *shahibul maal* or the bank.

Conclusion

The practice of Islamic banking also uses contracts or contracts based on sharia provisions. In *mudharabah* contract transactions, especially in the financing concept, it always uses collateral to

safeguard banking risk. The guarantee guarantee in this transaction is a binder so that the partners have good intentions and are serious in running the business and trust in accordance with the provisions of Islamic law, although in practice *mudharabah* is an investment based on trust, but still uses guarantees such as the concept of debt.

The practice of guarantee in the form of *rahn* and *watsiqah* is the same, the only difference is the object of the object. In the contract of *rahn* and *watsiqah* the guarantee is carried out by surrendering the property to the party who owes as collateral for the person who owes, and the assets that are used as collateral in the dependence of the debtor. BSM conducts financing risk management by applying the precautionary principle, in order to minimize risk. In solving the problem of customers defaulting on *mudharabah* financing, first, billing continuously through billing letters, second, restructuring, if the condition of the customer is in a difficult situation by paying installment obligations to the bank, the bank restructures or reduces the installment obligations without changing the contract. Third, strategy execution.

Collateral risk balancing and profit sharing that occur in the practice of Islamic bank financing, from the amount of collateral risk provided by the bank in the estimation of the collateral value provided by the customer, so that the collateral risk is smaller than the collateral value provided by the customer because the bank can provide financing amount 80 % of the collateral value.

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