

Overcoming Of Non-Performing Financing As Causes Debtor Default (Case Study At Pt. Brisyariah Magelang Branch Office)

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ABSTRACT

Islamic Banks in general applied murabaha contract in that's products with the aim for costumers to giving a short term in buying goods, though the costumers doing transaction buy a goods without having a capital. Islamic banks doing business activity for disbursing the funds will be faced with a financing risk. If the Islamic bank confronted with financing risk causes of non-performing financing by internal factors and external factors. This study is to analyze the mechanisms applied by PT. BRISyariah Magelang Branch Office in overcoming of non-performing financings caused by debtors' default (Wanprestasi) were reviewed with Islamic law.

The debtor defaults (Wanprestasi) in Murabaha financing activities caused by several factors such as customer revenue decreased because of competition of business, customers who hampered revenue for government projects that make the land less than adequate job or customer fooled by his business associates. The efforts from PT.BRISyariah Magelang Branch Office in overcoming of non-performing financings by approach to customers to inquire issues become an obstacle in payments financing. However, if the customer does not provide measures of achievement its obligations in paying the installments financing, then the party of PT.BRISyariah Magelang Branch Office will consider measures to overcome by giving the form of convenience to meet its obligations in installments, like giving full rights to customers in the sale of collateral voluntary or give full rights to customers in recourse to the closest relatives of the customer to meet its obligations in installments, Kinship system becomes the main thing in treatment is applied to the PT.BRISyariah Magelang Branch Office. These efforts of non-performing financing causes by debtor defaults on PT.BRISyariah Magelang Branch Office when viewed with the laws of Islam and DSN-MUI has appropriate provision although not impose sanctions on defaulting customers. DSN-MUI fatwa in accordance with the problematic financing handling PT.BRISyariah Magelang Branch Office is DSN 48 / DSN-MUI / II / 2005 on reschedule murabaha and fatwa 47 DSN / DSN-MUI / II / 2005 about overcoming of non-performing financing.

Keywords: Non-Performing Financing, Overcoming, Debtor Default, Fatwa MUI

1. INTRODUCTIONS

Islamic banks and conventional banks have similar function as intermediary institution, which is collecting funds from the public and redistributing these funds to whom in need by financing form According to Article 1 paragraph 25 in the Law of Islamic banking, finance is a supplying the funds or claims of that. Between banks and other Islamic business unit have made an agreement to require financed party or by facilities fund to return the funds after a predetermined period of time with retainer (*Ujroh*).¹

In 2017 shown each financing increasingly in Indonesian Islamic banks compared to previous years. *Murabaha* contract increasingly to 13,96% or Rp.17,03 Trillion as a higher financing nominal at Islamic banking. Afterwards, *Musyaraka* contract with the percentage to 27,72% or Rp.16,89 Trillion.² *Murabaha* Financing has increased shown the best part of financing those given in banking sectors in Indonesian rest on consumptive sectors.

Islamic banks doing business activity for disbursing the funds will be faced with a financing risk. If the Islamic bank confronted with financing risk, so will had an affected-on bank's rating assessment it's measuring by finance working indication that's shows through non-performing financing ratio.

In PT.BRISyariah Annual Report 2017 tells us that in 2013 the percentage of Non-Performing Financing reached 3.26% and increased 3.65% next years, afterwards in 2015 increased to 3.89%. However, in 2016 the percentage of Non-Performing Financing decreased to 3.19%. And increased in 2017 to 4.72%.³

Also, in financing report of PT. BRISyariah on *murabaha* financing if looked specific, in 2015 *murabaha* financing hit Rp.8,741 million, has increased to Rp.9 million in 2016 and in 2017 increased hit Rp.9,128 million. However, increasingly financing at PT.BRISyariah on *murabaha* financing make increasingly non-performing financing ratio at PT.BRISyariah too. Data of Non-performing financing at PT.BRISyariah shown in 2015 total loss financing hit Rp.302 million, in 2016 hit Rp.314 million, and increasingly hit Rp.389 million it 2017.⁴

¹Trisadini P.Usanti and Abd. Shomad, **Hukum Perbankan**, (Jakarta: Kencana, 2017), p. 155

²Estu Suryowati, **Ini Alasan Pembiayaan Macet Perbankan Syariah Cukup Tinggi**, <https://www.ekonomi.kompas.com/>, accessed on 1 September 2018, At 22.31 WIB)

³BRISyariah Annual Financial Report 2017

⁴BRI Syariah Annual Financial Report 2017

Risk can occurred in bank financing caused by several factors. One of the factors of non-performing financing is a debtor default who act inapplicable on his obligation. The debtor who act be that called by debtor default (*wanprestasi*). The effort from bank parties for overcoming of non-performing financing to push the debtor paying the installment financing according to over a particular period or to give a sanction to debtor by fines (*ta'zir*) on financing payment installment delay. This regulation written on Fatwa DSN-MUI No.17/DSN-MUI/IX/2000 concerning ability costumer sanctions who delay a paying installment.

2. DISCUSSION

2.1. Signification of Murabaha Financing

In Act No. 10 of 1998 on banking in Article 1 number 12 included financing according to Islamic principles is a funding or claims based on agreement between bank parties and orthers who require the financed party to return the money or the bill after a certain period of time by cost benefit or profit sharing. But financing signification on article 1 paragraph 25 of Law Islamic banking is a funding or claims such as:

- a) Profit sharing transaction in *mudharabah* and *musyarakah* form.
- b) Leasing transaction in *ijarah* or lease purchase in *ijarah mutahiyah bit tamlik* form.
- c) Sale and purchase in *murabaha*, *salam* and *istisna'* form.
- d) loan transaction in *qard* form
- e) Leasing service transaction in *ijarah* form

Based on agreement between bank parties or Sharia Business Unit (UUS) and others who require the financed party to return the money or the bill after a certain period of time by cost benefit (*ujroh*), without cost benefit or profit sharing.⁵

Murabaha is from Arabic language is *ribh* (الربح) is means that the growth or additional. But according to *murabaha* term is the possession of capital seller used to purchase an item and then resold by giving announcing capital employed and profits.⁶ *Murabaha* can

⁵Trisadini P.Usanti and Abd Shomad, *Transaksi Bank Syariah*, (Jakarta: Bumi Aksara, 2013), p.97.

⁶مجموعة من المؤلفين، *فقه المعاملات (موسوعة فقه المعاملات)*، ص: ٣٦٤

also be interpreted as trading form which the seller said the price of the goods to the buyer and the buyer set the profit according to the agreement.⁷

According to Syafi'i Antonio concluded that *murabaha* is selling goods by original price with the added advantage that is agreed upon, so the seller must notify the cost and some profit as enhancements.⁸ And according to the Fatwa No.4/DSN-MUI/IV/ 2000 about *murabaha*, *murabaha* is selling an item by confirming the purchase price to the buyer and the buyer pays the price as profit.⁹

2.2. Signification of Non-performing Financing

Indicators show losses caused by financing risk reflected in Non-performing Financing (NPF) large scale. Non-performing Financing (NPF) is a loan repayment experiencing difficulties caused by internal factors is the existence of a deliberate and external factors is an event beyond the control ability of creditors.¹⁰ Mia Muraya Auliani concluded NPF is the ratio between the substandard financing with total financing provided by Islamic banks.¹¹

In Regulation of Bank Indonesia No 07/05/2003 states that the quality of earning assets in financing categorized by five groups is current financing, special mention financing, substandard financing, doubtful financing and loss financing. Categorized as non-performing financings when the quality of financing is classified as substandard until the loss financing, often called with Non-performing Financing/ NPF.¹²

2.3. Indication of Non-performing Financing

Non-performing financing typically preceded by some indications of non-performing financing; these indications include:¹³

⁷أبو الوليد محمد بن أحمد بن محمد بن أحمد بن رشد القرطبي الشهير بابن رشد الحفيد، بداية المجتهد ونهاية المقتصد، (دار الحديث - القاهرة: بدون طبعة، ٥٢٤١ هـ - ٤٠٠٢ م)، ص: ٩٢٢

⁸Muhammad Syafi'i Antonio, **Bank Syariah dari Teori ke Praktik**, (Jakarta: Gema Insani, 2001), first edition, p. 101.

⁹Fatwa No. 4 / DSN-MUI / IV / 2000 tentang Murabaha

¹⁰M. Kasmir, **Manajemen Perbankan**, (Jakarta: Raja Grafindo Persada, 2011), p.73

¹¹Mia Maraya Auliani, **Analisis Pengaruh Faktor Internal dan Faktor Eksternal Terhadap Tingkat Pembiayaan Bermasalah pada Bank Umum Syariah di Indonesia Periode 2010-2014**, Diponegoro Journal of Management, 2016 Volume 3 No. 5, p. 3.

¹²Trisnadi P.Usanti and Abd. Shomad, **Hukum Perbankan**, (Jakarta: Kencana 2017), first edition, p. 234.

¹³Azharsyah Ibrahim and Arinal Rahmawati, **Analisis Solutif Penyelesaian**

a) Account Attitudes

This indicate explain about the beginning of the problem, such as account balances often experienced overdrafts, current accounts with an average decline, a decline in the balance dramatically, payment of principal installments of halting, schedule of disbursement of funds is not in accordance with the financing agreement, often request a delay or extension of the payments, the misuse of financing, proposed the financing and propose the rescheduling of financing.

b) Financial Statement Attitudes

Based on financial statement attitudes of the non-performing financing can be a decline in liquidity, reduced turnover of capital financing, an increase in accounts receivable, a decrease in inventories, a decrease in the ratio of current assets to total assets, a decrease in fixed assets, sales increased but profit decreased, Debt Equity Ratio increased, long-term debt increased sharp, emerging debt from other banks, the financial statements are not audited, the sales price is too low and is below the breakeven point.

c) Business Activities Attitudes

Non-performing financing characterized by a decrease in the supply of goods, customer relations deteriorated, the sale price is too low, losing the right as a distributor, loss of key customers, involved in the speculation business, relationships with banks increasingly tenuous, reluctant to visit, involvement with other businesses, there is negative information from the other party, no claims of third parties, no labor strikes, declining collateral values, the customer over the main business and looking for a new loan.

d) Customer Attitudes

These indications usually appear in categories such as customer health deteriorated, there is a dispute household, call from the bank often does not answer, the customer has a specific activity, and others.

2.4. Non-performing Financing Factors

Although the financing may be feasible provided to customers, is possible to occurrence the non-performing financing in banking. The emergence of non-performing financing caused by internal and external factors which have been listed in Circular Islamic Bank Management No.4/003/PEM is as follows:¹⁴

a) Internal Factor from Bank

1. Financing policy is inexactly
2. The quantity, quality and integrity of the human resources is unequal.
3. Giving special treatment to customers who are less precise or excessive that financing is not an independent evaluation
4. The weakness of financing organization, system and procedure enabling the termination of abuse of authority in granting approval of financing and the inability of banks in identification and monitoring of non-performing financings on early stage
5. Infrastructure and other facilities provided less support both with regard to the technical work and that administrations.

b) Internal Factors from Debtor

1. Legal Aspect (juridical)
In the legal aspect of client perform actions such as non-fulfillment of the requirements on the authenticity of documents or actions financing falsification of documents.
2. Management Aspect
Customer make from the intended use of financing, such as an error in the company's policy is not good faith from customers
3. Financial Aspect
Customers experiencing errors in expenditure policies and inefficient customer's business activities.
4. Technical Aspect
For example is the production target is not achieved, the production of technical weakness or inability to produce

¹⁴Annawaty and Siska Liana, **Aspek Hukum Penyelesaian Pembiayaan Al-Murabaha (Jual-Beli) Bermasalah (Studi Pada PT Bank Syariah Mandiri Cabang Bandar Lampung)**, Journal of Law and Economics Sharia, 2014, No. 1 Volume 2

goods or services in accordance with market needs

5. Marketing Aspect

Changing market conditions become saturated (over supply) resulting in customers getting new competitors with huge potential and a marketing strategy error.

6. Collateral Aspect

Customers submit collateral that can't or have weaknesses to be tied up legally perfect and the collateral value does not correspond (mark-up).

c) External Factor

External factors of non-performing financing caused by crisis economy or monetary macroeconomics, the regulations changes by the monetary authorities and other relevant agencies imposed to bank or debtors, the development of technology can't be followed by bank and customer, the inability of customers in comply, natural disasters or security disturbances (riots period) affecting customer.

But according to Robert H.Behrens, non-performing financings may occur with the causes as follows:¹⁵

- 1) Adversity is a change of the business cycle beyond the control of banks and customers such as natural disasters, illness and death.
- 2) Mismanagement is the inability of customers to manage their business activities and maintain financial condition in accordance with the ways of healthy activities of daily.
- 3) Fraud is the debtor dishonesty in providing information and its reports on its operations, financial position, debts, inventories, and others.

2.5. Overcoming of Non-performing Financing

If the non-performing financing occur at Islamic bank, so the bank parties will effort to overcome of non-performing financing for distributing the funds by Islamic bank can be accepted back. In Bank Indonesia Regulation (PBI) No.13/9/PBI/2011 about financing restructure for Islamic bank and Sharia Business Unit concluded

¹⁵Robert H.Barrens, **Problem Loan Commercial Bankers**, (Boston: Publishing Company), p.46

financing restructure is the bank's effort to help costumer in repayment financing.¹⁶ The steps applied by Islamic bank as follows:¹⁷

- a) rescheduling
- b) reconditioning
- c) restructuring

In addition, Faturrahman Djamil concluded overcoming of non-performing financing can be doing by bank to include the steps as follows:

- 1) Solution from the bank it self

The bank effort to overcome of non-performing financing can step by step. The first step can by collection of non-performing financing has did the bank party in persuasive manner as follows:

- a. The costumer paid off/ installment solvency financing.
- b. The costumer/ third parties who have a collateral to sell by voluntary for solvency financing
- c. To carry out of compensation
- d. To carry out of transfer of debts
- e. To sell under hand based on agreement of purchaser and fiducia receiver

But if the first step is unsuccessfully, so the bank party can by the two steps in the form of stressing to debtor as providing a warning letters (somasi) with threat of financing for paid off instalment financing based on applicable regulations.

- 2) Solution by Debt Collector

This is based on KUHP regulation article 1320 about qualifying of contract and article 1792 about legitimacy to debt collector for doing the effort of non-performing financing collection.

- 3) Solution by Collateral Execution

This is held with Islamic bank based on evaluation of refinancing, costumer business prospect, facilities financing receiver uncooperative to overcome of financing.

- 4) Write off and Bill off

Write off is bank administration action for write off the report in

¹⁶Peraturan Bank Indonesia (PBI) No.13/9/PBI/2011 tentang Restrukturisasi Pembiayaan Bagi Bank Syariah dan Unit Usaha Syariah

¹⁷Trisnadi P.Usanti dan Abd. Shomad, **Hukum Perbankan**, (Jakarta: Kencana, 2017), first edition, p. 161-162.

loss financing. Bill off is bank action in costumer payment cannot be resolved, its mean costumer liabilities is cannot be resolved and cannot be billed.

5) Foreclosed collaterals

Foreclosed collaterals can be provided if costumer has loss financing.

6) Dispute Resolution

In Compilation of Islamic Economic Law based on the Republic of Indonesia Supreme Court No.02 in 2008, to formulate on Article 20 Number 1 agreement is agreement on the contract between two parties or three for doing legal action.¹⁸

If the non-performing financing is occurred, then the bank party will do the effort to overcome of non-performing financing by recovery financing and overcome of non-performing financing. Overcoming of non-performing financing tend to repayment financing by collateral execution, foreclosed collateral, write off or bill off. But for dispute resolution has two steps is non-litigation and litigation.

a. By Litigation

According to Abdul Manan, the peace produce the law to each parties for doing. The peace contract has agreed cannot be canceled unilateral. The peace contract can be cancel in agreed by two parties.¹⁹

Based on the lawn in 1999 article 46 number 8 about costumer protection concluded the dispute resolution out of the court to consensus can by indemnity form or special action to guarantee against costumer losing. The dispute resolution out of the court called by alternative dispute resolution made on the contract before dispute occurred.²⁰

In the law 1999 No.30 about arbitration and alternative dispute resolution article 1 number 1 concluded arbitration is dispute resolution of civil based on arbitration contract written by hand of

¹⁸Peraturan Mahkamah Agung Republik Indonesia No.02 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah, Pasal 20 Ayat (1).

¹⁹Abdul Manan, **Hukum Ekonomi Syariah dalam Perspektif Kewenangan Peradilan Agama**, (Jakarta: Kencana, 2012), p. 427.

²⁰Meita Djohan OE, **Penyelesaian Sengketa dalam Perjanjian Pembiayaan Konsumen Sebagai Akibat Wanprestasi**, Pranata Hukum Journal, Januari 2012, Nomor 1 Volume 7, p.46.

dispute parties.²¹

b. Litigation

Dispute business resolution as a litigation by court institution. In the law 2008 No.21 article 55 concluded that dispute resolution can do by religion court. But the dispute resolution must be agree by negotiation, banking mediation, Islamic arbitration agency and civil court.²²

The bank effort of dispute resolution is to bring a lawsuit to the court for debtor cause defaulted on financing payment or the bank can bring to collateral execution of debtor financing.²³

2.6. Fatwa Regulations about Overcoming of Non-performing Financing

In overcoming of non-performing financing that's occurred at Islamic banking has some regulations of fatwa used as a base. Fatwa regulations based on overcoming of non-performing financing as follows:

- a) Fatwa DSN-MUI No.17/DSN-MUI/IX/2000 about sanction of costumer able in procrastinate of financing
- b) Fatwa DSN-MUI No.48/DSN-MUI/II/2005 about rescheduling *murabaha* financing provided that no add amount of billing exist, load financing in rescheduling process, prolongation of period in repayment financing based on agreement both parties.
- c) Fatwa DSN-MUI No.49/DSN-MUI/II/2005 about conversion *murabaha* contract is renewal contract for costumer who unsolved the *murabaha* financing according to amount and period.
- d) Fatwa DSN-MUI No.47/DSN-MUI/II/2005 about overcoming of *murabaha* non-performing financing provided that determinate of *murabaha* object or others guarantee to sell by costumer to or by bank with agreement of market price, the costumer finished the debt to bank from profit selling, if the profit is more than the debt so the bank party must to return the rest of profit to costumer,

²¹Undang-Undang No.30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa

²²Wardah Yuspin, **Aspek Hukum dan Kelembagaan Perbankan Syariah**, (Yogyakarta: Genta Publishing, 2016), p.159.

²³Hardy Taher, **Penyelesaian Sengketa Antara Bank Syariah dan Nasabah Berdasarkan Akad Murabahah di PT.Bank Syariah Mandiri**, Journal of Lex Privatum, July-September 2015, Nomor 3 Volume III, p. 145.

if the profit selling is less than the debt so the debt decided to costumer debt, but if the costumer not able to pay the instalment financing then the bank party can disburden the costumer.

2.7. Verdict Letter PT.BRISyariah about Overcoming of Non-performing Financing

Murabaha financing scheme in PT. BRISyariah may General provisions in performing financing to customers. Before receiving the financing granted, customers need to meet requirement as follows:²⁴

- a) To require have Holding Number of population (NIK) as evidenced by the form of identity card (E-KTP)
- b) To copy of KK/marriage license/certificate or married of wards
- c) Letter of permission micro or micro enterprises and license/description micro and small local Government published and/or other license
- d) Affidavits paid off/Roya with attachment prints current account from the bank's previous financing, for the giver of customer financing productive and government programs or financing including KUR recorded on SID BI, but the customer already pay it off.
- e) To submit affidavit about KUR facilities and productive financing at financing other financial institutions for customers that are not listed on the SID BI and sign in front of a Bank officer.
- f) To submit List of Financing Plan (DRP) for the purposes of the working capital financing and the budget plan costs (RAB) for the purpose of financing investments.

With the terms of disbursement documentation:

- 1) Financing Contract and its attachments-attachment of the contract
- 2) Installment
- 3) Letter of Acknowledgement of indebtedness (SPH) that are handwritten by the customer

And the base about overcoming of non-performing financing by PT.BRISyariah as follows:

- 1) Verdict Letter NoKep.B004-MBD/08-2017 about KUR micro ib financing PT.BRISyariah concluded about restructure as follows:

²⁴Surat Keputusan NoKep.B004-MBD/08-2017 tentang pembiayaan KUR Mikro ib PT.BRISyariah

- a. To receipt non-performing financing of *murabaha* financing made possible for restructuring accordance to government provisions.
- b. The period of restructure for working capital maximal 4 years and infestations maximal 7 years calculated from the date of contract financing.
- 2) Form letter SE No.S.26-DIR/FSG/06/2010 about fines as follows:
 - a. The calculation of fines is effective Margin/(divided) 360 x (multiplied) Total instalment per month (multiplied) x number of days of delay
 - b. The fine the day of delay in rupiah and poured in the contract financing, funds from fines included in social funds.
- 3) Form letter SE.B.46-MDO/10/2012 about indemnification form (*ta'widh*) as follows:
 - a. Should only be imposed on parties who intentionally or due to gross negligence do something deviating from the provisions of the contract and cause harm to the other party.
 - b. Loss that may incur real losses Ta'widh is calculated with a clear
 - c. The real Loss is the real costs incurred by the Islamic Bank in order of billing rights which should be paid
 - d. The real Loss is the real costs is definitely experienced in such transactions and not the estimated losses will occur due to missing opportunities
 - e. The amount of compensation should be fixed in accordance with the magnitude of the losses in the real procedures and the payout depends on the agreement of the parties.
 - f. Indemnification received can be recognized as a right (revenue) for the Bank.
 - g. The magnitude of damages not noted in the contract
 - h. The parties missed appointments are responsible for the fees and other costs incurred due to the process of settlement of the matter.

2.8. Significations of Default(Wanprestasi)

Default is derived from the Dutch language, which means poor achievement. Default is an attitude which a person does not fulfill or

fails to perform the obligations as specified in the agreements between creditor and debtor.²⁵ Default in contract law has meaning is debtor does not perform its obligations or do not perform as it should then the lender does not get what was promised by the counterparty.

Fulfillment of achievement is the nature of a treaty. Achievement of the debtor's obligation to meet the always followed with responsibility, it means risking wealth debtor as guarantee the fulfillment of the debt to the creditor.

In carrying out the achievements, sometimes the debtor is unable to perform achievements or obligations. There is a barrier when the debtor intended to implement achievement. Non-fulfillment, there are two possibilities, namely:²⁶

- 1) Because debtor default, caused by deliberate or negligence.
- 2) Because circumstances force (*force majeure*), something that happens beyond the ability of the debtor, the debtor is not guilty.

3. Research Method

This study is a qualitative research. The method used is descriptive analysis method to describe the data that has been collected. This type of research is a field research using interview data collection techniques, and documentation. In this case describe the data regarding the overcoming of non-performing financing causes by debtor defaults (wanprestasi) at PT.BRISyariah Magelang Branch Office are reviewed by Islamic law.

4. Discussion and Analysis of Results

4.9. Causes of Non-performing Financing (NPF) at PT. BRISyariah Magelang Branch Office

Non-performing financing occurred at PT.BRISyariah Magelang Branch Office by shows the percentage of non-performing financing below 5%. This is occurred causes by internal factors and external factors at PT.BRISyariah Magelang Branch Office.²⁷

²⁵Trisadini P. Usanti and Abd. Shomad, **Transaksi Bank Syariah**, (Jakarta: PT. Bumi Putra, 2013), p.102-103.

²⁶Ridwan Khairandy, **Hukum Kontrak Indonesia**, (Yogyakarta: FH UII Press, 2014), p. 278

²⁷Eko Sulistyono, Pimpinan Cabang PT.BRISyariah Kantor Cabang Magelang, Hasil Wawancara Pribadi, 14 Januari 2019 di Kantor BRISyariah Magelang.

a) Internal Factors

Internal factors of non-performing financing at PT.BRISyariah Magelang Branch Office is the default from the party of bank when financing analysis. As an Account Officer, Mr. Ferry Adi as a informant in the study stated that the process of financing activities undertaken in PT.BRISyariah must be done carefully and cautiously. Before financing provided to customers, such financing need to go through several procedures, stages and analysis in accordance with the provisions Indonesian Bank regulations, provisions PT.BRISyariah, and fatwas DSN-MUI applicable. Financing process run and provided to customers must be accurate and apply the precautionary principle to safeguard financial stability and minimize the risk of financing. But is possible factors causes to problem financing can occur beyond bank predictions has doing prudential principle in banking activities. And for continuing and viewing factors in order to causes risk more for financing activity process at PT.BRISyariah Magelang Branch Office.²⁸

b) External Factors

Others mistaken from the bank parties on initiation of costumer in financing, non-performing financing can occur as result of debtor default (wanprestasi) on repayment of financing. At PT.BRISyariah Magelang Branch Office categorized the debtor default if the costumer fall the requirement accordance to contract has agreed by both parties. The default (wanprestasi) occurred causes the costumer had a problems till incapability for paying installment financing. The reason doing default (wanprestasi) causes the profit of costumer decreased causes by competition, customer receivables are not collectible, business customers affected by roadwork, customers deceived by a business associate. So the bank consider the preventive effort for handling default by observe the costumer factors by giving dispensations for prefer to maintain customer confidence with the funds financing.²⁹

4.10. Overcoming of Non-performing Financing at PT.BRISyariah Magelang Branch Office

The conclusion from interviews about overcoming of Non-

²⁸Ferry Adi S, Account Officer Mikro Pembiayaan, Hasil Wawancara Pribadi, 14 Januari 2019 di Kantor BRISyariah Magelang

²⁹Fera Febriningrum, Costumer Service PT.BRISyariah Kantor Cabang Magelang, Hasil Wawancara Pribadi, 15 Januari 2019 di Kantor BRISyariah Magelang

performing Financing (NPF) is the effort to overcome of non-performing financing are many differences and according to causes of non-performing financing factors.

a) Internal Factors

The efforts for overcoming of non-performing financing by reviewing the costumer's ability in installments (collectable) are categorized into five groups: smooth, need attention, substandard, doubtful and loss. Financing is categorized into loss financing if the obligations of customer is no longer able for paying installments.

Non-performing financing at PT.BRISyariah Magelang Branch Office irregularly causes by costumer. The bank party itself ever be causes of non-performing financing factor. Failure if bank party at BRISyariah Magelang as the fault in initiation of prospective costumer. The initiation or ability analysis more important and more applied by prudence principle causes had an effect on smooth of financing costumer. If from scratch the initiation of costumer is fault then the non-performing financing will confront be more risk. Effectiveness prospect is in initiations of costumer applied by bank. The effort to overcome of non-performing financing causes by fault of bank party with do the initiations by rescheduling, reconditioning, and restructuring steps. But if the costumer categorized to costumer no hope then the bank party will do write off and bill off to that costumer.

b) External Factors

Moreover, at PT.BRISyariah Magelang Branch Office the costumer be the most factor of non-performing financing. The effort at PT.BRISyariah Magelang Branch Office to overcome of non-performing financing is by doing approach to customers by visiting the residence of the customer for collect the installment payment, then if the customer has not paid, the bank gives a warning letters till three times by interval of a week, the warning letter given to costumers if not reaction from customer then the bank will call the costumers to the office for asking why the costumer intentional for paying installment, and then negotiated and resolved by amicable way, and then if still not reaction from customer, the bankers will do collateral execution. This case to save a financing. PT.BRISyariah Magelang branch office for saving the trust from costumer, that

give a dispensation for costumer to make easy in paying installment financing as sell a collateral voluntary and or give full rights to the customer in the closest relatives appealed to customers to meet repayment obligations.

Others effort to overcome of non-performing financing is to give the sanction to debtor default. Debtor (customer) that has been considered in default are liable to the customer's order not to repeat his mistake. Determination of penalties for customers defaults written on Form letter SE No.S.26-DIR/FSG/06/2010 describes The calculation of fines is effective Margin/(divided) 360 x (multiplied) Total instalment per month (multiplied) x number of days of delay and the fine the day of delay in rupiah and poured in the contract financing, funds from fines included in social funds.

But at PT.BRISyariah Magelang Branch Office if the debtor default on repayment financing, the parties of bank never applied the sanction to costumer, causes the costumer the banks do not want to complicate or increase the burden of the debtior to perform the obligations to pay installments of financing. The bank party just put in mind of paying installment financing to costumer and try the end by amicable way. Although, PT.BRISyariah Magelang Branch Office not applied fines form to costumers, but PT.BRISyariah Magelang Branch Office has a provisions about applying fines form has written on the contract. As such at any time if the sanction by fines form are applied to costumer so the funds from fines form will be used to Qard Financing, or will be used to social activities as zakat and shodaqoh.

Determinations of fines to customers are written in the contract in accordance with the provisions contained in the Regulation of Bank Indonesia and Fatwa MUI No.17 / DSN-MUI / IX / 2000 about provision of sanctions for customers capable who delay payment. Although written in the contract and that accordance with the existing provisions, PT.BRISyariah prefer to settle cases with amicable way. PT.BRISyariah itself emphasizes customer confidence and help the growing economic needs of society.

4.11. Overcoming of Non-performing Financing Analysis causes Debtor Defaults According to Islamic Law and Fatwa DSN-MUI

Non-performing financing where there is a major discrepancy in the repayment of financing that cause delays in refunds, or juridical actions required in the return or the possibility potential loss. The

legal relationship between the customer and Islamic banks will go well and smoothly if the parties obeying what they already agreed on in the contract that they create. In Islam, it is basically the entire transaction (sell and purchase) of human law is allowed unless there are propositions that forbid it. In Fiqh Rules explained

الأَصْلُ فِي الْمُعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا

“Basically all muamalah form can be done unless there is evidence again outlaw.”

Murabaha financing so conducted by PT. BRISyariah Magelang Branch Office is allowed as long as the implementation of the financing provided to customer murabaha erred with the provisions of Islamic jurisprudence.

Murabaha financing to conduct undertaken by PT. BRISyariah was faced with such high risk customer intentionally do not pay installments, comparative price fluctuations, customer rejection of goods shipped and sold because of the nature of the murabaha sale with debts so that when the contract signed then the item becomes the property of the customer.

Murabaha financing risks faced by PT. BRISyariah as the customer deliberately late or not paying an installment shows no fulfillment of obligations as a whole in fulfilling the agreed financing. If viewed in the perspective of Islamic law, the occurrence of murabaha financing causes of contract between the customer and the bank. The contract agreed upon is a form of a promise to keep for both parties. If the customer is late in making payment financing, borrowers can be said to pick up the time of its implementation. In the Quran surat Al-Maidah verse 1 explains:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُنْتَلَى عَلَيْكُمْ غَيْرِ مُحْلِي الصَّيْدِ وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

Meaning: O ye who believe, fulfill that contract. Lawful for you cattle, but will be read to you. (Such) does not justify the hunt when you are working on the Hajj. Indeed, God established the laws by which He wills. (Surat Al-Maidah: 1).

The verse has notified that the person who has the contract obliged to fulfill. Fulfillment of the contract has become the foundation for customers to meet the financing payment. Therefore, the intention in the paragraph above suggestion is by no matter where someone in performing the agreement (contract), it is mandatory

for him to continue to perform in accordance with what is stated in the contract. In other word of God in the fulfillment of the contract description contained in the letter of Al-Isra 'verse 34:

....إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

Meaning: "Indeed, the promise is surely be questioned". (Surat al-Isra': 34).

This verse means that in an agreement that occurred between the two sides have a responsibility. So that if the customer defaults, the customer may be held accountable in meeting the given bank financing to customers. Such liability to repay or return the financing has been received. In the letter al-Baqarah verse 283 states

فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلَیُوَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلَیَتَّقِ اللَّهَ رَبَّهُ

Meaning: "Some of you believe some of the others, then let believed it to fulfill its mandate (debts) and let him fear Allah his Lord". (Surah Al-Baqarah: 283).

Explanations in Surat Al-Baqarah verse 283 more emphasis to the customer so that the customer must to perform financing obligations in making payments to finish with a time defined.

Murabaha of non-performing financing Incidence make the party of PT. BRISyariah Magelang branch office has efforted to overcome by reviewing at the factors of non-performing financing that occurs in banking.

1) Internal Factors

Internal factors that lead to problematic of murabaha non-performing financing is the fault of bank parties when initial analysis of financing. The early analysis of murabaha financing is initiation of a costumer or prospective costumer analysis of all aspects. The effort to overcome of non-performing financing has did by PT.BRISyariah Magelang Branch Office like rescheduling, reconditioning, restructuring which when reviewed by DSN-MUI Fatwa then those actions were in accordance with Fatwa No.48 DSN/DSN-MUI/II/2005 about scheduling a return payment settlement terms with the murabaha may conduct rescheduling is a customer billing for murabaha could not finish/pay off financing appropriate amount and the agreed time with the provisions do not add to the number of bills that remained, the imposition of fees in the process of scheduling a return, extension of payment must be based on the

agreement of both parties. Apart from that effort of PT.BRISyariah Magelang Branch Office in accordance with the DSN-MUI Fatwa No.46 / DSN-MUI / II / 2005 on murabaha bill with provisions pieces may give a discount from the total payment obligations to customers under murabaha transactions that have done mortgage payment obligations in a timely and customer decreased ability of payment, the amount of pieces adapted to the policies of the bank and granting discounts may not be agreed on in the contract.

Non-performing financing caused by internal factors in accordance with the description in the hadith narrated by Ibn Abbas regarding customers who have not been able to meet its obligations to repay part or all of its obligations, namely:

رَوَى ابْنُ عَبَّاسٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ لَمَّا أَمَرَ بِإِخْرَاجِ بَنِي النَّضِيرِ جَاءَهُ نَاسٌ مِنْهُمْ، فَقَالُوا: يَا نَبِيَّ اللَّهِ، إِنَّكَ أَمَرْتَ بِإِخْرَاجِنَا وَلَنَا عَلَى النَّاسِ دُيُونٌ لَمْ تَحِلَّ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ: ضَعُوا وَتَعَجَّلُوا (رواه الطبري والحاكم في المستدرک وصحيحه)

Meaning: Abnu Abbas reported that the Prophet when he was ordered to evict the Bani Nadir, come some of them saying: "O Nabiyallah, in fact you have been ordered to evict us while we have accounts on those who are not yet due." So Prophet Muhammad said, "Give relief and billable faster."

In the hadith explains that the parties give accounts to quickly resolve the case of debts by providing for reduced or charging. So that the treatment has been carried out by the PT.BRISyariah Magelang Branch Office in accordance with the DSN 48 / DSN-MUI / II / 2005 on rescheduling payments murabaha and DSN-MUI Fatwa No.46 / DSN-MUI / II / 2005 on pieces of the bill and the legal basis of Islamic murabaha.

2) External Factors

Murabaha financing in PT.BRISyariah Magelang Branch Office provides capital for business needs or the productive and consumptive managed halal according to sharia agreed profit beginning. If the customer does not meet the agreed contract then the customer is negligent in the agreement (default). Completion of default is done by family, by doing approach to customers by visiting the residence of the customer to collect the installment payment, then if the customer has not paid the bank provides a warning letter

(subpoena) three times at an interval of one week, the subpoena that has been provided to customers if not addressed then the bank will call the customer to the office to inquire the cause of why customers deliberately delay payments, then negotiated and resolved by amicable way, and then if still no action from the customer, the bank will execute the guarantee (sequestration). This is done in order to save such financing.

Debtor default action for factors beyond its remit, so that the bases of Islamic law financing transactions undertaken by the bank is to help each other in accordance with the explanation of the word Allah in the Qur'an Surat Al-Ma'idah verse 2

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

Meaning: "And cooperate in righteousness and piety, but do not cooperate in sin and aggression."³⁰

With the verse above states that the form of the transaction is done is to help each other. Therefore, when customers have difficulty in making payments to the bank then it is recommended to give the drought and help in solving customer problems. In the Qur'an has been taught in Surah Al-Baqarah verse 280 describes to provide relief to the debtor, namely

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

Meaning: " And if someone is in hardship, then (let there be) postponement until (a time of) ease. But if you give (from your right as) charity, then it is better for you, if you only knew".

In the final stage of treatment efforts on behalf of customers defaulting financing problems is to bring customers into the office and conduct negotiations for resolving the case. This is in accordance with the provisions of Islamic law which PT.BRISyariah Branch Office Magelang conduct agreement between the bank and the customer to resolve the problem in meeting the financing obligations. Islamic law has been advocated in the Qur'an in the settlement efforts between the two sides to make peace. Perdamaian arise due to the occurrence of an agreement between the two sides in resolving the problem. In the Qur'an describes Surat An-Nisa 'verse 128 which is associated with peace

³⁰Juhaya S.Pradja, Ekonomi Syariah, (Bandung: Pustaka Setia, 2012), first edition, p. 97.

فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا

The meaning there is no sin upon them if they make terms of settlement between them - and settlement is best. And present in (human) souls is stinginess. "(Q.S.An-Nisa: 128).³¹ In the Hadith, the Prophet describes in Tirmidhi bin ' Amr bin ' Auf:

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَالًا أَوْ أَحَلَّ حَرَامًا وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَالًا أَوْ أَحَلَّ حَرَامًا

The meaning "The agreement can be made between the Muslims except to denounce peace that halal or Haram and justifies the Muslims are bound by their terms except the halal Haram in terms or condone the unlawful."³²

Verses of the Qur'an and Hadith describes something resolved by agreement of both parties will provide relief and convenience to the customer and the bank in carrying out contractual. So that efforts to overcome of non-performing financing causes by the debtor defaults on PT.BRISyariah Magelang Branch Office in accordance with applicable provisions of Islamic law.

In addition to terms with Islamic law, if verified by MUI, such efforts have been in accordance with the DSN 47 / DSN-MUI / II / 2005 about the settlement of murabaha financing problems with the terms of the settlement for customers who are not biased accomplishing / repay the financing in accordance with the number of and the agreed time such an object murabaha or other collateral is sold by the client to or through the bank to the market price being agreed, the customer pay the remaining debts to the banks of the proceeds, if the sale proceeds exceed the remainder of the debt then the bank returns the remainder to the customer, if results sales of the remaining debt is smaller than the rest of the debt remains a debt the customer and if the customer is unable to pay the remainder of its debt, the bankers will be able to free him.³³

5. CONCLUSION

After doing some research regarding the overcoming of non-performing financing causes by debtor defaults in PT.BRISyariah

³¹ إبراهيم بن محمد بن عبد الله بن محمد ابن مفلح، أبو إسحاق، المبدع في شرح المقنع، (بيروت - لبنان: دار الكتب العلمية، ١٤١٨ هـ - ١٩٩٧ م)، ص. ٢٥٨.

³²Fatwa DSN-MUI No.4/DSN-MUI/IV/2000 about *murabahah*

³³Fatwa DSN-MUI No.47/DSN-MUI/II/2005 tentang Penyelesaian Piutang *Murabahah* bagi Nasabah yang tidak mampu Bayar.

Magelang Branch Office, the researcher can illustrate the following conclusion:

5.12. Cause of the Non-performing Financing in PT.BRISyariah Magelang Branch Office writer produced after discussion are the factors causing non-performing financing causes by internal and external factors.

- a) Internal factors of non-performing financing in murabaha form is the default from the party of bank when financing analysis. Before financing provided to customers, such financing need to go through several procedures, stages and analysis in accordance with the provisions Indonesian Bank regulations, provisions PT.BRISyariah, and fatwas DSN-MUI applicable. Financing process run and provided to customers must be accurate and apply the precautionary principle to safeguard financial stability and minimize the risk of financing.
- b) And external factors is causes by debtor default (wanprestasi) on repayment of financing. At PT.BRISyariah Magelang Branch Office categorized the debtor default if the costumer fall the requirement accordance to contract has agreed by both parties. The default (wanprestasi) occurred causes the costumer had a problems till incapability for paying installment financing. The reason doing default (wanprestasi) causes the profit of costumer decreased causes by competition, customer receivables are not collectible, business customers affected by roadwork, customers deceived by a business associate.

5.13. Efforts are being made PT.BRISyariah Magelang Branch Office in overcoming of Non-performing Financing adjusted by a factor of Non-performing Financing (NPF) it occurred.

- 1) The effort to overcome of non-performing financing causes by internal factors like the fault of bank party with do the initiations by rescheduling, reconditioning, and restructuring steps. But if the costumer categorized to costumer no hope then the bank party will do write off and bill off to that costumer.
- 2) If causes by external factors, so the bank party do the effort for overcoming by doing approach to customers by visiting the residence of the customer for collect the installment payment, then if the customer has not paid, the bank gives a warning letters

till three times by interval of a week, the warning letter given to costumers if not reaction from customer then the bank will call the costumers to the office for asking why the costumer intentional for paying installment, and then negotiated and resolved by amicable way, and then if still not reaction from customer, the bankers will do collateral execution. This case to save a financing. PT.BRISyariah Magelang branch office for saving the trust from costumer, to give a dispensation for costumer to make easy in paying installment financing as sell a collateral voluntary and or give full rights to the customer in the closest relatives appealed to customers to meet repayment obligations.

5.14. So that efforts of non-performing financing at PT.BRISyariah Magelang Branch Office when viewed with the laws of Islam and DSN-MUI as a follows:

- 1) The effort to overcoming of non-performing financing causes by internal factors like rescheduling, reconditioning, restructuring is accordance with the DSN 48 / DSN-MUI / II / 2005 on rescheduling payments murabaha and DSN-MUI Fatwa No.46 / DSN-MUI / II / 2005 on pieces of the bill and the legal basis of Islamic murabaha.
- 2) When viewed Fatwa DSN-MUI for overcoming of non-performing financing causes by external factors in have been in accordance with the DSN 47 / DSN-MUI / II / 2005 about the settlement of murabaha financing problems. And this is in accordance with the provisions of Islamic law which PT.BRISyariah Branch Office Magelang conduct agreement between the bank and the customer to resolve the problem in meeting the financing obligations. Islamic law has been advocated in the Qur'an in the settlement efforts between the two sides to make peace.

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