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## The Implementation of *Musyarakah* by PT Bank Aceh Branch of Banda Aceh, Indonesia

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**Abstract:** According to Article 19 Paragraph (1) of the Law Number 21 of 2008 concerning Sharia Banking, one of the activities of Sharia Banking is to provide financial funding based on *musyarakah* (profit sharing). The implementation of *musyarakah* by PT Bank Aceh Syariah in Banda Aceh has been covered up to 85 customers from the period of 2015 to 2017. In *musyarakah* contract the customers have to fulfil their obligations to pay the payments to the bank. However, the fact shows that the customers could not fulfil their obligations to pay their payments to the bank because they have income problems in running their businesses. From 2015 to 2017 there were seven customers were not well performed *musyarakah*. This condition has resulted in breach of contract by the customers which is known as non-performing *musyarakah* funding. This study aims to scrutinize legal consequences arising from non-performing *musyarakah* funding and identify the efforts taken in the settlement of this problem. This study is an empirical juridical research. Data required for this study were collected through field research by interviewing respondents or informants. The result shows that the legal consequences arising from this non-performing *musyarakah* funding were pledges or defaults by the customers because they violate the Article 12 of *Musyarakah* contract. The efforts taken in settling this problem among others are collecting the arrear obligations and handling non-performing *musyarakah* to the bank's officer to be analysed based on legal analysis. Therefore, it is advised that the customers should fully fulfil their obligation to pay their payments to the bank based on *musyarakah* contract. Then, the bank officers are suggested to fully analyse the arrear obligations of the customers based on legal analysis. By doing so it could reduce non-performing *musyarakah* funding in the future.

**Keywords:** Bank Aceh Syariah; Customer; *Musyarakah*; Sharia Banking.

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### INTRODUCTION

Article 1 of the Regulation Number 7 of 1992 concerning Banking as amended by the Regulation Number 10 of 1998 defines that "Bank is a business entity collecting funds from the public in the form of deposits and distributing them to the public in the form of credit and/or other forms in the framework of improving people's lives ". In order to meet this need, in 1963 the Provincial Government of the Special Province of Aceh established the Regional Regulation

Number 12 of 1963 concerning the Aceh Regional Development Bank with the intention of creating it to provide funding for the implementation of regional development efforts within the framework of the Planned Universe National Development.<sup>1</sup>

The Regulation Number 21 of 2008 concerning Sharia Banking<sup>2</sup> provides that one of the activities of *Unit Usaha Syariah* (UUS) – Sharia Business Unit - is to distribute financing based on *murabahah*<sup>3</sup>, *musyarakah*<sup>4</sup> contract or other contracts which are not contradictory with sharia principles. Article 1 of this regulation states that:

Financing is the provision of funds or bills equivalent to them in the form of:

1. Shared transaction in the form of *mudharabah*<sup>5</sup> and *musyarakah*;
2. Leasing transactions in the form of *ijarah*<sup>6</sup> or leasing purchase in the form of *ijarah muntahiya bittamlik*<sup>7</sup>;

3. Buying and selling transaction in the form of *qard* receivable; and
4. Leasing transaction in the form of *ijarah* for multilateral transactions.

The basis of *musyarakah* law has been regulated in the Qur'an in Surah Shaad: 24<sup>8</sup>, hadith<sup>9</sup>, *ijma*<sup>10</sup> and the Regulation Number 21 of 2008 concerning Islamic Banking, the Fatwa of the National Sharia Council - Majelis Ulama Indonesia Number 08/DSN-MUI/IV/2000, 13<sup>th</sup> April 2000 concerning *Musyarakah* Financing; Number 17/DSN-MUI/IX/2000 concerning Sanctions on the Possible Customer for Procrastinating Payments; and Number 43/DSN-MU/VIII/2004 on Indemnification (*Ta'widh*<sup>11</sup>).

In the explanation of the Regulation Number 21 of 2008 on concerning Islamic Banking, "*Akad musyarakah*" refers to a Cooperation Agreement between two or more parties for a certain business in which each party provides portion of fund under the condition that the profit would be divided according to the agreement, while the

<sup>1</sup> [http://www.bankaceh.co.id/?page\\_id=82](http://www.bankaceh.co.id/?page_id=82), (retrieved: September 17, 2017).

<sup>2</sup> Sharia Banking is everything that concerns Sharia Bank and Sharia Business Unit (UUS) including institutions, business activities, as well as ways processes in carrying out their business activities (The 2008 Law No. 21 Article 1 (1) on Sharia Banking).

<sup>3</sup> *Murabahah* is a financing contract for an item by confirming its price purchase to the buyer and the buyer pays it at a price that is more as an agreed profit.

<sup>4</sup> *Musyarakah* is a partnership agreement between two or more parties for a particular business by which each party provides a portion of the fund provided that the profit will be divided according to the agreement, while the loss is borne in accordance with the portion of each fund.

<sup>5</sup> *Mudharabah* is a contract of corporation between the first party that provides all capital and the seconde party acting as the fund manager and dividing the business profits in accordance with the agreement set forth in the contract. Whereas the loss is borne entirely by the Sharia Banking unless the seconde party makes a deliberate, negligent or violating the agreement.

<sup>6</sup> *Ijarah* is a contract for the provision of funds in the context of transferring use rights or benefits from an item or service based on a lease transaction, without being followed by the transfer of ownership the goods themselves.

<sup>7</sup> *Ijarah muntahiya bittamlik* is a contract for the provision of funds in order to transfer the usufructual rights or benefits of an item or service based on a lease transaction with the option of transferring ownership of goods.

<sup>8</sup> Surah Shaad :24 reads "And in fact most of the people who gathered together were some of them committed doing wrong to some others except those who believed and do righteous deeds".

<sup>9</sup> Hadith by Abu Hurairah RA, Rasulullah SAW said "Verily Allah SWT said that I am a third party of two people who are unionized as long as one of them does not betray the other party".

<sup>10</sup> *Ijma* by Ibn Qudamah in his book. Al Mughni said that "consensus Muslims have on the legitimacy of the *musyarakah* globally even though there are differences of opinion from several elements".

<sup>11</sup> *Ta'widh* is to cover losses incurred due to violations or mistakes.

loss is borne according to the portion of fund owned by each party. The definition of *akad musyarakah* is contract cooperation between the bank and the customer to bind themselves in a capital union in the same or different amount as agreed. The mixing of capital is used for proper business management and in accordance with sharia principles.

*Musyarakah*, the origin word is *syirkah*<sup>12</sup>, means mixing. According to the *fuqaha*<sup>13</sup> scholar, *musyarakah* means a contract between people who are unionized in terms of capital and profit.<sup>14</sup> Technically, *musyarakah* is a cooperation agreement between two or more parties for a particular business under the condition that each party contributes funds, provided that the profit is divided in agreement and the loss is based on the contribution of the fund; while in *mudharabah* the capital only derives from one party.<sup>15</sup>

In this matter *musyarakah* financing is a financing in the form of rupiah currency at Bank Aceh Syariah using Sharia principles with *Musyarakah* contract, which is cooperation from two or more parties to run a certain business. Both parties contribute funds and expertise, as well as earn profit sharing and loss according to the agreement contained in the contract.<sup>16</sup> Based on the preliminary research results, from 2015 to

2017, PT Bank Aceh Syariah, Branch of Banda Aceh delivered *musyarakah* financing to 85 customers for businesses or projects with a total amount of IDR 58,497,000,000.

Furthermore, at the time of repayment and repayment after the expiry of the financing period, the work proceeded is not yet completed or the undertakings are constrained so that the customer could not fulfil the agreed obligations and resulted in non-performing financing. With regard to results of the study from 2015 to 2017, the amount of *musyarakah* financing that experienced stagnancy amounted to IDR 10,640,000,000.<sup>17</sup> This could lead to default because the customers did not fulfil the obligation as agreed in the contract agreement. Hence the problems highlighted in this study are as follows:

- a. What are the legal consequences arising from non-performing *musyarakah* funding?
- b. What efforts are taken by the bank in settling non-performing *musyarakah* funding?

## RESEARCH METHODS

This study is analytically descriptive—disclosing legislation relating to the legal theories and becoming the object of the study using the empirical juridical approach. The empirical juridical or legal sociology approach is an approach conducted by observing a legal reality in society. In accordance with the nature of this study, the primary and secondary data were analysed using a qualitative approach. The descriptive, including the content and structure of positive law, was an activity undertaken by the author to determine the contents or meaning

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<sup>12</sup> *Syirkah* is a collaboration between two or more people in a business whose benefits and losses are shared.

<sup>13</sup> *Fuqaha* is a compound word for *faqih*, which is a jurist.

<sup>14</sup> Sayyid Sabiq, *Fiqh Sunnah*, 1998, 13, p174.

<sup>15</sup> Wiwin Koni, 2014, "Sistem Bagi Hasil *Musyarakah* dalam Perspektif Amanah (Studi pada Bank Muamalat Cabang Gorontalo)," *Jurnal AL Buhuts*, 10 (1), p4.

<sup>16</sup> [http://www.bank.aceh.co.id/?page\\_id=557](http://www.bank.aceh.co.id/?page_id=557), (retrieved: September 17, 2017).

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<sup>17</sup> Fadhlun Salim, Account Officer PT Bank Aceh Syariah Branch of Banda Aceh (interview: January 8, 2018).

of the rule of law that was used as a reference in solving legal problems that became the object of the study. Since this study was a juridical empirical research or legal sociology, the data collection technique used field research which was conducted to obtain primary data and concrete materials by interviewing respondents or informants related to this study.

## ANALYSIS AND DISCUSSION

Financing could be interpreted as an activity given by others to support an improved investment, either by themselves or institution.<sup>18</sup> *Musyarakah* is a joint venture contract between two parties or more owners of capital to finance *halal* and productive businesses.<sup>19</sup>

*Musyarakah* is a contract of cooperation between two or more parties for a particular business, in which each party provides a fund together (or charity/expertise) with an agreement that profits and risks will be shared together in accordance with the clause set under the agreement.<sup>20</sup>

*Musyarakah* financing is conducted by two or more capital owners for a particular project. All parties are entitled to participate in the project management. The proportion of income cannot be proportional to the percentage of capital participation because, in principle, the participation is not only capital but also expertise and time; in the event of loss, each party is responsible ac-

ording to the proportion of the capital provided.<sup>21</sup>

In *musyarakah* the profit is divided according to the agreement of the parties.<sup>22</sup> The scholars and banking practitioners describe that the pillars of *musyarakah* are the form (*shighat*)<sup>23</sup> of offer and acceptance (*ijab qabul*)<sup>24</sup>, contractors and objects of agreement on capital and work.<sup>25</sup> According to the contemporary Islamic jurists, there are four pillars making up the contract, namely the parties making the contract (*al-'aqidan*)<sup>26</sup>, the will of the parties (*shigatul-'aqd*)<sup>27</sup>, the object of the contract (*mahallul-'aqd*)<sup>28</sup> and the purpose of akad (*maudhu 'al-'aqd*)<sup>29, 30</sup>.

<sup>18</sup> Rivai Veithzal, Arviyan Arifin, *Islamic Banking: Sebuah Teori, Konsep dan Aplikasi*, Jakarta: Bumi Aksara Publisher, 2010, p168.

<sup>19</sup> Julius R Latumaerissa, *Bank dan Lembaga Keuangan Lain*, Jakarta: Salemba Empat Publisher, 2011, p334.

<sup>20</sup> Amir Machmud, Rukmana, *Bank Syariah Teori, Kebijakan, dan Studi Empiris di Indonesia*, Jakarta: Erlangga Publisher, 2010, p27.

<sup>21</sup> Totok Budi Santoso, Sigit Triandaru, *Bank dan Lembaga Keuangan Lain*, Jakarta: Salemba Empat Publisher, 2006, p172.

<sup>22</sup> Ascarya, *Akad dan Produk Bank Syariah*, Jakarta: Rajawali Pers Publisher, 2011, p51.

<sup>23</sup> *Shighat* is consent and qabul.

<sup>24</sup> *Ijab Qabul* is harmonious for buying and selling or other transactions. *Ijab* is the statement of the first party regarding the contents of the desired agreement. *Qabul* is the statement of the second party to accept it.

<sup>25</sup> Sharia Banking Development Team, *Konsep, Implementasi, Operasional Bank Syariah*, Jakarta, Institut Bankir Indonesia Publisher, Djambatab, 2003, p181.

<sup>26</sup> *Al-'aqidan* is the parties that carry out the contract are the main factor in the formation of a contract (agreement).

<sup>27</sup> *Shigatul-'aqd* is a statement of will that can be done orally, in writing, a gesture or action that has become a habit in *ijab* and *qabul*.

<sup>28</sup> *Mahallul-'aqd* is often also called achievement which is something that must be fulfilled in connection with the making of an agreement.

<sup>29</sup> *Maudhu 'al-'aqd* is the goal of each contract according to Islamic Jurisprudence, only known through *syara'*. On that basis, all contracts that have objectives or consequences legal that are not in accordance with *syara'* become invalid.

<sup>30</sup> Syamsul Anwar, *Hukum Perjanjian Syariah Studi Tentang Teori Akad dalam Fikih Muamalat*, Jakarta, Raja Grafindo Persada Publisher, 2007, p96.

PT Bank Aceh Syariah made an adjustment of its business activities from the conventional system to a sharia system entirely through the results of the Extraordinary General Meeting of Shareholders (EGM) on May 25, 2015. The conversion operation license was determined based on the Decree of the Board of Commissioners of the Financial Services Authority Number KEP-44/D.03/2016 dated September 1, 2016. This adjustment of the operating system was executed on September 19, 2016. One of the branches that distributed *musyarakah* financing is PT Bank Aceh Syariah, Branch of Banda Aceh. This bank was formerly a Sharia Business Unit known as *Unit Usaha Syariah (UUS)*<sup>31</sup> based on the letter of Bank Indonesia No. 6/4/Dpb/BNA dated October 19, 2014, commencing its operations on November 5, 2004.

The result shows that PT Bank Aceh Syariah, Branch of Banda Aceh has delivered *musyarakah* financing to 85 customers for both businesses and projects. By 2015, there were 31 customers enjoying this *musyarakah* financing facility, 27 for the projects and 4 for businesses. In the following year 2016, there were 20 customers in which 18 for the projects and 2 for the businesses. While in 2017, this financing was

delivered to 34 customers, 29 for the projects and 5 for the businesses.<sup>32</sup>

The process of delivering *musyarakah* financing, consists of several stages as follows:<sup>33</sup>

1. Application for Financing
2. Checking on the Spot
3. Financing Analysis
4. Financing Recommendations
5. Financing the Decision-Making Process
6. The process of liquefaction.

PT Bank Aceh Syariah disbursed *musyarakah* financing as much as IDR 58,479,000,000 for the last three years from 2015 to 2017. The actual ceiling costs were IDR 19,275,000,000 in 2015, and IDR 12,890,000,000 in 2016 and IDR 26,332,000,000 in 2017.

The realization of *musyarakah* financing was financed in two sectors, namely projects and businesses. Both sectors were considered beneficial in *musyarakah* financing; however, sometimes they had the risk of non-performing financing. Non-performing financing is defined as financing that has occurred due to the debtor who could not fulfil its obligations to the creditor. It could include non-current financing, in which the debtor does not meet the promised terms; the debtor does not keep up with the instalment schedule, and financing with a potential disadvantage.<sup>34</sup>

Moreover, the Decree of the Board of Managing Directors of Bank Indonesia No. 31/147/Kep/DIR dated November 12, 1998, on Earning Quality Assets; Article 6 Paragraph 1 divides the level of credit classification or financing based on collectability to

<sup>31</sup> Sharia Business Unit, here in after referred to as UUS, is a work unit of the head office of a Conventional Commercial Bank that functions as the parent office of an office or unit that conducts business activities based on Sharia Principles, or work units at branch offices of a Bank domiciled abroad carrying out activities conventional business which functions as the main office of the sharia sub-branch office and /or sharia unit (The 2008 Law No. 21 Chapter I General Provisions Article 1 (10) on Sharia Banking).

<sup>32</sup> Fadhlun Salim. *Note 17*.

<sup>33</sup> Abdullah, Account Officer PT Bank Aceh Syariah Branch of Banda Aceh (interview: June 4, 2018).

<sup>34</sup> Kasmir, *Bank dan Lembaga Keuangan Lainnya*, Jakarta: Raja Grafindo Persada Publisher, 2012, p85.

Current, Special Attention, Substandard, Doubtful and Loss. Loans are categorized as non-performing loans (NPLs) in case that the credit quality is classified as Sub-standard, Doubtful or Loss.<sup>35</sup>

The result of the study shows that out of 85 customers receiving the *musyarakah* financing facility from PT Bank Aceh Syariah, Branch of Banda Aceh, there were 7 customers to be in the category of non-performing financing, 2 in the Sub-standard category, 2 in Doubt category and 3 in the Loss category.<sup>36</sup>

There are internal and external factors of non-performing financing<sup>37</sup>, as follows:

1. Bank Internal Factors such as Inappropriate Analysis, collusion between bank officials handling credit and customers, limited knowledge of bank officials on the type of business, too large intervention from the parties and weaknesses in conducting guidance and monitoring credit debtors.
2. Bank External Factors such as the customer deliberately not paying the instalment payments to the bank, the customer expanding too much and deviating from the agreement.

Article 12 of *Musyarakah* Financing Agreement of PT Bank Aceh Syariah, Branch of Banda Aceh states that:

"Notwithstanding the provisions of Article 2 of this Agreement, the Bank shall be entitled to demand/collect payment from the Customers and/or anyone else obtaining rights thereof, in partial or in whole the amount of the Customer's liability to the Bank under this Agreement, to be paid instantly or simultaneously, without required notice, reprimand, or other letters, in the

event of any of the following matters or events:

1. The Customer fails to pay its obligations to the Bank in accordance with the period specified in Articles 2 and 6 of this Agreement;
2. Documents, proof of ownership or other rights on goods as collateral, and/or recognition statements as referred to in Article 11 of this Agreement are found to be false or false in content, and/or the Customer commits an act which violates or contradicts one of the matters determined by Article 10 and/or Article 13 of this Agreement;
3. Some or all of the Customer's property is seized by the Court or the authorities;
4. The Customer shall act as a spender, a drunkard, placed under ability, in an insolvency state, declared bankrupt, or liquidated."

Article 1338 of the Civil Code stipulates that all legally-made agreements apply as regulations for those making them and the agreements must be performed in a good faith. The principle of good faith is the one that the parties, namely creditor and debtor, must implement the substance of the contract based on a firm belief or conviction as well as goodwill from the parties.<sup>38</sup> In addition, Article 1366 of the Civil Code describes the legal responsibilities derived from the basis of default, starting with the existence of agreements regulating the rights and obligations. In the event of a legal relationship under the agreement, the party who violates the obligation (debtor) and does not execute it could be declared negligent and must take legal responsibility regarding the default incurred. The concept of legal responsibility is closely related to

<sup>35</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia*, Jakarta: Kencana Publisher, 2005, p75.

<sup>36</sup> Fadlhun Salim. *Note* 17.

<sup>37</sup> Ismail, *Manajemen Perbankan dari Teori Menuju Aplikasi*, Jakarta: Kencana Prenada Media Group Publisher, 2011, p124-124.

<sup>38</sup> Syamsudin Qirom Meliala, *Pengertian Asas Itikad Baik di Dalam Hukum Indonesia*, Surabaya: Mitra Ilmu Publisher, 2007, p38.

the concept of rights and obligations.<sup>39</sup> The financing recipient is entitled to the trust of the financier so that the financier is obliged to recover the financing it has received in accordance with the time period already agreed upon in the financing contract.<sup>40</sup>

In order to prevent the occurrence of credit or non-performing financing in the future, the valuation of a bank to approve a loan or financing application is based on Formula of 4Ps (Personality, Purpose, Prospect and Payment) and 5Cs (Character, Capacity, Capital, Collateral, and Condition of Economy).<sup>41</sup> Regarding the recovery of non-performing loans, it could be performed according to Bank Indonesia Circular Letter No. 26/4/BPPP dated May 29, 1993, which principally regulates the recovery of non-performing loans before processing settlement through legal institutions such as through rescheduling, reconditioning, and restructuring.

There are various attempts to solve the non-performing *musyarakah* financing at PT Bank Aceh Syariah, Branch of Banda Aceh as follows:

### **Billing Arrears of Liability**

Collecting delinquent liabilities to customers is conducted by the proposing financing officer and special officer. Billing could be conducted:<sup>42</sup>

1. By phone to remind customers that their obligations have not been settled if with-

in 3 days they have not settled their obligations.

2. Using Letter of Warning I (First) if, on the 4th day after arrears payment, the customers have not been able to settle the obligations.
3. Using Letter of Warning II (Second) if, on the 12th day after arrears payment of obligations, the customers have not been able to settle the obligations as well.
4. Using any collection activities either by telephone or by sending a Warning Letter which must be recorded in the Customer Financing History Form.

Should within 18 days after delinquent customer obligations have not settled their obligations, a visit could have proceeded if the arrears of customers' obligations have entered the 25th day or previously to be deemed necessary. The on-the-spot visit aims to see the customer's condition. Each collection activity is recorded in the Customer Financing History Form.<sup>43</sup>

PT ATT (N) (initials) was one of the customers having arrears with a collectability of 3 (Substandard). The financing ceiling was IDR 1,000,000,000,- with a period of 36 months. It had a travel business. The finance officer sent Warning Letters I and II to warn it to settle its obligations. However, the method was unsuccessful resulting in a field visit. It admitted experiencing difficulties in fulfilling its obligations to pay instalments due to the stagnancy of its business, resulting in the decrease of company's monthly financial statements.<sup>44</sup>

<sup>39</sup> Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Publisher, 2000, p55.

<sup>40</sup> Farikhah Ilmi Zakiyah, Suhadak and Achmad Husaini, 2014, "Pengendalian Intern pada Prosedur Pembiayaan *Musyarakah* untuk Pemberian Modal Kerja (Study at PT Bank BNI Syariah Branch of Malang)", *Journal of Brawijaya University*, p2.

<sup>41</sup> Hermansyah. *Note* 35.

<sup>42</sup> Samsul Bahri, Vice of Branch Manager PT Bank Aceh Syariah Branch of Banda Aceh (interview; June 25, 2018).

<sup>43</sup> Reza Fahlevi, Legal Officer PT Bank Aceh Syariah Branch of Banda Aceh (interview; June 4, 2018).

<sup>44</sup> Director of PT ATT (Initial), Customer PT Bank Aceh Syariah Branch of Banda Aceh (interview; may 14, 2018).

### Handling the Non-Performing Financing

Customer handling must be submitted to the Legal and Financing Settlement Division if it has made a classification of collectability financing of 2 or 3 or is still in the collectability class 1. On the other hand, if it is clearly non-billable, it is handles as follows:<sup>45</sup>

1. Recovery of Financing requires:
  - Good customer's goodwill;
  - Prospect of business or project; and
  - Sufficient value of the collateral.
2. Financing Settlement requires:
  - A fact that the customer is in difficulties to fulfil its obligations to the bank;
  - The customer has no good faith to settle its obligations;
  - The customer is difficult to find or the address is unclear;
  - The customer always avoids communication with the bank; and
  - The customer never conducts the agreement.

The submission of handling to the Legal and Completed Financing Section shall be made on the basis of the proposal of the financing officer and have the approval of the Head of Funding Section and Branch Leader. The financing facility is classified as collectability 5 and from other collectible classifications that are 1 to 4 which could not be saved and must be settled in any way and must be submitted to the Legal and Financing Settlement Division after the problems are terminated by the Financing Committee. For non-performing *musyarakah* financing that has been recovered it must be in a smooth condition (collectability 1) for 6 months.<sup>46</sup>

<sup>45</sup> Mirza, Head of Legal Division PT Bank Aceh Syariah Branch of Banda Aceh (interview; June 25, 2018).

<sup>46</sup> Mirza. *Note* 45.

There were two customers of *Musyarakah* financing whose collectability status is 4 (Doubtful). As for PT BPM (S) (initials), the financing was used for the work of constructing an ecological building in one of the hospitals in Banda Aceh. The proposed ceiling cost was IDR 2,000,000,000,- with a period of 6 months. The obligation was already paid off 65%, but it admitted that it was not able to pay off the remaining obligations due to the remaining budget for the project work that was not yet delegated by the Budget User Authority.<sup>47</sup> The former officers still charged PT BPM. In addition, there was also a gentleman (M) of the company of PT LCS (initials). The *Musyarakah* financing he facilitated was used for the work of restoration of sacred groves in the city of Sabang. The proposed ceiling cost was IDR 540,000,000,- with a period of 6 months. He was unable to fulfil his obligations due to the late payment of the Budget User Authority. He admitted that the delay because his work did not complete in time (too late) so that he had to wait for the new budget from the centre to fulfil his obligations<sup>48</sup>

### Analysis of Non-Performing *Musyarakah* Financing

At the stage of analysing the non-performing *musyarakah* financing, the completion of officer must conduct an analysis on each troubled customer. The result of the problem analysis, the cause, and the solution should at least provide some recommendations.

<sup>47</sup> Director of PT BPM (Initial), Customer PT Bank Aceh Syariah Branch of Banda Aceh (interview; June 26, 2018).

<sup>48</sup> Director of PT SKB (Initial), Customer PT Bank Aceh Syariah Branch of Banda Aceh (interview; July 6, 2018).



The recovery of *musyarakah* financing could be performed in the following ways:<sup>49</sup>

1. Assisting or management changing and/or financial management.
2. Rescheduling, i.e. changing the payment schedule including the time limit of payment in order to reduce or decrease the amount of instalments and the time of commencement of instalments.
3. Reconditioning, that is, a partial or complete change to the terms of the financing which is not limited to changes to the repayment schedule, duration and/or other terms to the extent that it does not concern the maximum change of the *musyarakah* financing balance.
4. Restructuring, i.e. amendment of *musyarakah* financing terms concerning profit sharing, an extension of *musyarakah* financing period, financing of *musyarakah* financing facility, and executing customer assets in accordance with the prevailing regulations.

*Musyarakah* financing settlement could be performed in the following ways:<sup>50</sup>

1. Selling collateral goods that are executed underhand.
2. Compensating the collateral goods.
3. Settlement process through the State Wealth Service Office and Auction (*KPKNL*).
4. Settlement process through the Prosecutor's Office.
5. Claims by the court (Litigation) must be approved by the Branch Manager and Head of Financing Section and Board of Directors.

Article 40 Paragraph 1 of the Regulation Number 21 of 2008 concerning Sharia Banking states that:

“In the event that the Facility Receiving Customer does not comply with its obligations, Sharia Bank and UUS may purchase part or all of the Collateral either through or outside the auction, on the basis of voluntary submission by the owner of the Collateral or under authorization to sell from the owner of the

<sup>49</sup> Reza Fahlevi. *Note* 43.

<sup>50</sup> Reza Fahlevi. *Note* 43.

Collateral, provided that the collateral is required to be disbursed at the latest within 1 (one) year”.

MH customers also enjoyed *musyarakah* financing facility of PT Bank Aceh Syariah, Branch of Banda Aceh for Bajaj procurement project handled by PT GP (initials). The proposed ceiling cost was IDR 500,000,000,- for 6 months. Nonetheless, at the due date, he could not pay off the financing because his work was not completed, resulted in the budget for the project was not delegated by the Budget User Authority. In the period of collecting delinquent liabilities, PT GP did not undertake payment of its obligations which resulted in a decrease in the quality of its financing from Collectability 1 (Current) to collectability 5 (Loss). This financing was then settled by restructuring, namely it was agreed to extend the term for 6 months with the agreement to pay its obligations after it has benefited from other completed projects.<sup>51</sup>

Another company, PT GH (MH) (initials), was also a project financing client of *musyarakah*. This financing facility was used to run the road construction project in Aceh which was being undertaken. The realization of the financing ceiling cost was IDR 6,000,000,000,- with a period of 17 months. However, PT GH had constraints while working on the project so that its work was not completed. The Budget User Authority as a third party did not withdraw the project's money its obligation of paying the instalment was not fulfilled.<sup>52</sup> The status of PT. GH, thus far, was in collectability 5

<sup>51</sup> Director of PT GP (Initial), Customer PT Bank Aceh Syariah Branch of Banda Aceh (interview; May 28, 2018).

<sup>52</sup> Director of PT GH (Initial), Customer PT Bank Aceh Syariah Branch of Banda Aceh (interview; July 5, 2018).

(Loss). The first attempt made by the officer was the Billing Process in Arrears of Liability but there was no change to the arrears of existing obligations. During the Financing Handling period, the customer still had good intentions to pay and was responsible for the arrears. However, the prospect of the project was unfulfilled because the Budget User Authority terminated the employment contract so that it did not have the ability to pay.<sup>53</sup> Previously, the financing analysis was undertaken with the decision making to take over the collateral guaranteed by the company. The collateral was submitted to the State Wealth Service Office and Auction (KPKNL) for an auction.<sup>54</sup>

In addition to the project sector, there was also a customer of *musyarakah* financing for business sectors having arrears, namely sharia cooperative or Kopsyah BQA (initials) with the amount of IDR 600,000,000,- with a period of 60 months or 5 years. This financing was used for working capital in the cooperative. But its classification status grew into collectability 5 (Loss).<sup>55</sup> The factor causing the stalled financing was due to the death of the chairman of the cooperative management so that the management of the cooperative was not well-managed and the new management board was not appointed. It had 2 years of non-fulfilment of payment obligations because there was no member of it was willing to pay the arrears. There was no goodwill and responsibility from the members of the board so that the process of dispute settlement was conducted by taking over the collateral guaranteed by one of the members

of the board followed by the auction proceeded in the State Wealth Office and Auction (KPKNL). The status of the collateral was auctioned until the confirmation of Auction Minutes from KPKNL was accepted.<sup>56</sup>

The write-off of non-performing *musyarakah* financing is performed in the event of the payment which could not be settled or collected, at least after considering the issue that the collateral had been controlled by the bank and was in the process of selling. Any collections of *Musyarakah* financing that have been written off shall be deposited on behalf of the respective customer in order to be administered by the Financing Department and if any of the above billing results, it must be returned to the respective customer.<sup>57</sup>

## CONCLUSION

The legal consequences arising in non-performing *musyarakah* financing of PT Bank Aceh Syariah, Branch of Banda Aceh are pledges or defaults due to the violation of Article 12 of the Agreement of *Musyarakah* pursuant to Article 1338 of the Civil Code. Moreover, the efforts are taken in the settlement of non-performing *musyarakah* financing of PT Bank Aceh Syariah by collecting arrears of obligations, handling of non-performing financing, and analysing non-performing *musyarakah* financing analysis. The result of *musyarakah* financing analysis, the cause, and the solution must deliver a satisfactory result at the minimum by recovering the finance or financing settlement.

It is suggested that in the implementation of *musyarakah* financing distribution,

<sup>53</sup> Makhyaruddin, Head of Financing Division PT Bank Aceh Syariah Branch of Banda Aceh (interview; June 25, 2018).

<sup>54</sup> Reza Fahlevi. *Note* 43.

<sup>55</sup> Makhyaruddin. *Note* 53.

<sup>56</sup> Reza Fahlevi. *Note* 43.

<sup>57</sup> Mirza. *Note* 45.

the officer should understand more details about the background of the prospective customer so that it could assist in performing the financing analysis accurately with the guidance of Formula 4P and 5C. In addition, the officer should also consider anything happening within the financing period so that it can reduce the financing of non-performing *musyarakah* due to failure of fulfilling the obligation. It is also advice that the officer resolves the delinquent liabilities of customers in the collection stage of arrears of obligations that could reduce the risk quality and collectability of customer financing and also take over the collateral guaranteed if the recovery process could not be resolved.

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