

ANALYSIS OF FIDUCIARY COLLATERAL TAKEOVER IN TROUBLED MURABAHAH FINANCING PROGRAM TO RESOLVE NON-PERFORMING FINANCE: A CASE STUDY OF SUNGAI PUA SHARIA RURAL FINANCING BANK, BUKITTINGGI CITYSri Wahyuni¹, and Auliya Fithry²¹ Islamic College of Islamic Propagation Foundation Lubuk Sikaping, Pasaman, Indonesia² Mahmud Yunus State Islamic University of Batusangkar, Batusangkar, Indonesia**Corresponding Author:**

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Abstract

Collateral or collateral is an asset owned by the debtor that is used as collateral to the debtor, when one day the creditor cannot fulfill its obligations and the collateral can be taken over by the creditor as a replacement for the loan that cannot be completed. Or as collateral if the creditor cannot return the loan to the debtor at the specified time. At BPR Syariah (BPRS) various types of credit facilities are provided to customers as debtors by providing collateral ranging from SHM (Certificate of Ownership), BPKB (Proof of Motor Vehicle Ownership), SHGB (Building Use Rights Letter), Stratatitel (Building or apartment Ownership). The method in this research uses the Juridical and Empirical approach. Where in this analysis by combining analysis with existing laws and regulations with data obtained in the field. This research is descriptive analysis. In the results of the research found in the field it is known that many Fiduciary guarantee executions are carried out in the Murabahah contract carried out at BPR Syariah, namely by submitting an execution request through the Bukittinggi Religious Court Clerk's Office. The court responded to this by issuing a notification letter and taking over based on the warning letter that has been given by the BPRS Syariah, in the form of SP1, SP2 and SP3. Before taking over the guarantee, the Religious Court gives the Debtor an opportunity to pay off the obligation. If the Debtor does not fulfill his obligation, the court issues an Executorial beleg or what is called a Seizure or confiscation carried out by the process of executing a court decision that has permanent legal force. Furthermore, the Court will issue a determination of the execution of the object of the Murabahah guarantee and carry out the sale in general. The obstacle encountered in the implementation of Murabahah collateral confiscation is the difficulty in locating the collateral, which can be overcome by optimizing collateral sales advertising. Debtor lawsuits can be subject to careful scrutiny of documents related to the Murabahah contract.

Keywords: Execution, Guarantee, Murabahah Contract



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INTRODUCTION

Currently, banks play a crucial role in meeting the needs and capital needs of businesses, acting as capital owners known as creditors (Ervina dkk., 2023; Sudjana & Rizkison, 2020; Suretno & Bustam, 2020). Credit is the provision of money or equivalent debt based on a loan agreement between the bank and the borrower (debtor) who then repays the debt within a predetermined timeframe with interest (Octavia, 2020; Sirait & Wahyuni, 2020; Siregar & Ismayani, 2024). Interest is the largest component compared to other service income, excluding fee-based income (Niu dkk., 2020; Rahmadani dkk., 2024; Saad, 2024). Financing agreements contain regulations regarding the rights and responsibilities of the borrower or debtor that must not be violated.

The existence of Sharia Banks, based on Banking Law No. 7 of 1992 and reinforced by Law No. 10 of 1998 concerning Banking, aims to meet the needs of the community without the concept of interest, open financing opportunities through the concept and principles of partnership, and meet the need for banking products and services that offer comprehensive advantages by eliminating interest charges on an ongoing basis (Rahmany, 2020; Samsudin & Hadiat, 2024; Yudhira, 2023). To address this issue, Sharia financing has emerged, utilizing various contracts tailored to meet the community's needs for business capital, including Murabahah financing.

Murabahah financing is considered affordable and simpler compared to other financing options (Fakhrunisa & Muhit, 2023; A. N. N. Millah dkk., 2025; H. Millah & Hayati, 2021). This is due to the similarity of facilities with other types of credit products offered by conventional banks. Murabahah financing is highly beneficial for meeting the community's need for capital or goods. The goal is to improve the standard of living and the businesses they operate daily. Based on this principle, customers can request that the bank fulfill their needs through an installment payment agreement over a predetermined period agreed upon by both parties, the customer and the bank. Once the agreement is finalized, legal consequences will arise, and these consequences can affect both parties.

The legal definition of the Murabahah contract is explained in Article 19, letter d, of Law Number 21 of 2008 concerning Sharia Banking (Muyasaroh, 2022; Nugroho, 2020; Zulfiyanda dkk., 2020). A Murabahah contract is a financing contract for an item by stating the purchase price to the buyer, and the buyer pays a higher price in accordance with an agreed profit margin (Diah & Zulhamdi, 2022; Fauziah dkk., 2021; Fitri, 2021). In other words, a Murabahah contract is a sale and purchase agreement with a statement of the purchase price and the amount of margin (profit) made by the parties involved in the agreement. A Murabahah contract is a sale and purchase agreement that states the purchase price and the agreed profit

margin. Banking Law No. 10 of 1998 explains that financing carried out by a bank is supplemented by an agreement made between the bank and the customer.

On January 16, 2020, the Constitutional Court of the Republic of Indonesia issued Decision Number 18/PUU/-XVII/2019 (Constitutional Court Decision), which determined that "executory power" and "equal to a court decision with permanent legal force" in Article 15 paragraph (52) of Law Number 42 of 1999 concerning Fiduciary Guarantees. The term "Fiduciary" is the official legal term in Indonesia. However, in Indonesian, Fiduciary is referred to as Fiducaire Eigendom Overdracht.

Fiduciary comes from the word "fides," which means trust (Manggala, 2023). Therefore, the legal relationship between debtors and creditors is based on a relationship of trust. A. Hamzah and Sejum Manulang explain that fiduciary is a method of transferring ownership rights by a creditor based on trust in the principal agreement (debt agreement) to the creditor, while the object of the collateral remains in the hands of the debtor. However, the legal rights and ownership rights are transferred by the creditor through trust, and the collateral remains in the debtor's possession. However, not as owner or bezitter, but only as detenor or houder, and in the name of the credit owner.

Collateral is property or assets owned by the customer, acting as debtor, that must be submitted to the bank, acting as creditor. This collateral can take the form of movable or immovable assets such as savings, deposits, and securities, proof of ownership of an object. Collateral serves as a guarantee for the bank to ensure the customer fulfills its obligations within the specified time period agreed upon in the credit agreement.

The existence of a fiduciary guarantee is an effort to resolve Murabahah financing at the Sharia Rural Financing Bank (BPP Syariah). If a customer defaults and the customer has good faith to settle the obligation, the bank will first conduct an interview to determine the background of the problem with the payment of the financing facility at the Sharia Rural Financing Bank (BPP Syariah). The bank will then reschedule, or restructure the customer's debt or obligations, and offer a discount known as Muqasah. Banks rarely resort to enforcement.

RESEARCH METHOD

The method used in this research is the Empirical Juridical method. "Juridical" means that this research is analyzed using various books, laws and regulations in the field of civil notaries, and secondary data. This study employs a sociological or empirical legal method.

This research focuses on descriptive analysis, with the aim of systematically explaining and analyzing the data obtained. The data used in this study are primary and secondary data, obtained through fieldwork and library research. These data are then analyzed using qualitative methods.

RESULTS AND DISCUSSION

Murabahah financing at the Sungai Pua Sharia Rural Financing Bank in Agam Regency is disbursed through a sale and purchase method. In this case, the bank purchases all the goods needed by the prospective customer, provided they are halal. The bank then resells them to the prospective customer at a selling price with a profit margin agreed upon by both parties. Payments are made in installments, based on the customer's ability to pay within the agreed timeframe.

In this Murabahah contract, payments are made in installments. Variations in the price and payment method are also permitted. Installment payments are the dominant method of murabahah transactions. This is because customers will not come to the bank unless they are seeking financing and making installment payments.

Problematic financing is an event, situation, or risk that the bank must face and cannot be avoided in any financing disbursement. This can be caused by failure to fulfill obligations or performance to the bank. The debtor fails to operate the business, resulting in a lack of income. Some debtors even deliberately refuse to make installment payments as previously agreed due to the debtor's poor character.

Performance is an obligation that must be carried out and fulfilled by the parties to the agreement. According to the Civil Code, there are three types of performance that can be agreed upon for each agreement: providing something for doing something and not doing something. Default is when a person is unable to fulfill an obligation based on a contract. Article 1234 of the Civil Code states that compensation for costs, losses, and interest due to failure to fulfill an obligation, starting from the failure to fulfill the obligation, if the debtor, after being declared negligent in fulfilling the obligation, neglects to do so, or if something is given or made, can only be given or made by him, or can only be given or made by him after a grace period has elapsed. At Bank Pembiayaan Rakyat Syariah Sungai Pua, the execution of assets and collateral is the final step taken to resolve problematic financing. Prior to executing the collateral, Bank Pembiayaan Rakyat Syariah took several steps, including:

1. Rescheduling: Bank Pembiayaan Rakyat Syariah Sungai Pua provides an extension for installment payments, reducing the amount of the installment to a smaller amount than previously agreed upon. The goal is to ease the monthly payment burden on customers. This installment schedule extension method allows customers experiencing problems to have smaller and more manageable installments.
2. Reconditioning: This situation involves changes to credit/financing requirements, such as changes to interest rates, margins, or waivers on fines or interest payments. Therefore, customers experiencing business difficulties can be reconditioned with reduced interest rates and waived fines, thus easing their obligation to repay all arrears.
3. Restructuring: This is a more complex and comprehensive change to the entire financing structure. Restructuring can combine changes in capital composition, changes in the form of the business entity, or even additional capital from the bank to assist customers in overcoming financial difficulties. In such cases, the Sungai Pua Sharia Rural Financing Bank typically provides additional capital to the businesses of customers experiencing financial difficulties. The primary source of income for these payments is the customer's current business. The bank provides various measures and solutions for customers to prevent bad debts.

The bank issues a first warning letter to the customer with a period of 7 days from the scheduled installment payment due date. Within the 7-day period given, but the customer has not fulfilled the obligation, then the Sharia Rural Bank issues a second warning letter. In the second warning letter, the Sharia Rural Bank provides a period of 15 days after the letter is given. Within the specified period of 15 days, the customer has not paid off his obligations, then a third warning letter will be issued. If there is no response to the third warning letter and if the bank has completed all the requirements and administrative procedures, the customer is not cooperative, then the bank will execute the guarantee. The bank will provide a letter of installation of a sign to the customer and then make a guarantee auction letter submitted to the State Assets and Auction Service Office. Next, the State Assets and Auction Service will follow up by sending a letter to the customer stating that the guarantee will be auctioned at the specified time. Based on the above incident, the actions taken by the Sharia Rural Financing Bank are not in accordance with the Fiduciary Law itself. The Fiduciary Law implies that execution can be carried out through a private sale. Therefore, it may be carried out within a period of one month after written notification from the interested party and publication in at least two newspapers circulating in the area. Many financing institutions violate this process in executing collateral. Financing institutions typically employ the services of debt collectors who

issue assignment letters and directly visit the customer's premises to retrieve the vehicle used as collateral during the murabah financing agreement. The collateral collected is then sold to a partner of the financing company. The proceeds from the sale of the vehicle pledged as collateral to the financing company are not disclosed to the customer whether the sale proceeds will cover the customer's obligations or whether there is a shortfall.

Fiduciary collateral is one of the collateral agreements also used by the Sungai Pua Sharia Rural Financing Bank to address problematic financing issues. In handling problematic financing, Bank Pembiayaan Rakyat Syariah Sungai Pua employs three methods: rescheduling, reconditioning, and restructuring. After these three steps are completed, the bank will execute the collateral. The collateral is taken over by the customer if the customer is unable to pay and the business ceases to exist, thus preventing rescheduling, reconditioning, and restructuring. Therefore, the bank takes over the collateral. However, the Sharia economic disputes referred to in the law are disputes related to Sharia banks and Sharia transactions. Therefore, the execution of the fiduciary guarantee in the murabahah financing contract at the problematic Bank Pembiayaan Rakyat Syariah can be carried out through the Religious Court. It is important to note that the implementation of Sharia fiduciary guarantees is the same as the implementation of conventional fiduciary guarantees, which can be carried out in three ways: direct execution, execution through the courts, and voluntary sale. Fiduciary guarantee execution can be carried out through the Religious Court. This is because since the issuance of Law Number 3 of 2006, it has given the Religious Courts greater latitude. One way to achieve this is by expanding the competence of Religious Courts, extending beyond Islamic family law to encompass Islamic economic transactions. Article 49 of Law No. 3 of 2006 grants Religious Courts new authority in Islamic economics, including marriage, inheritance, wills, zakat, infaq, sadaqah, and Islamic economics. This expansion of legal authority aligns with developments in societal law, particularly in the Muslim community.

The process that the Religious Court can follow to assist in executing the Fiduciary Guarantee is as follows:

1. Submitting an Application to the Religious Court

The first procedure that must be followed by a person requesting assistance from the Religious Court to take over a Fiduciary Guarantee is to submit an application. The application must be based on law and events that explain the law so that the applicant is given the right and is legally justified in requesting the Head of the Religious Court to execute the Fiduciary Guarantee. The legal basis in question is the financing contract as the principal agreement, followed by the Fiduciary Guarantee encumbrance contract. The event described, which is explained by the legal relationship, is the failure to fulfill the agreed-upon performance in the Sharia financing contract (murabahah contract).

2. The Court Issues a Warning (aanmaning)

After the execution application has been received by the Religious Court, the execution process begins by summoning the debtor and issuing a warning (aanmaning) to comply with the terms of the contract. If a debtor has been summoned but the debtor fails to appear and provides a valid reason, an ex officio warning hearing is not necessary, as the Religious Court can issue an executorial beslag (seizure order) for execution upon payment of a sum of money. If the debtor's absence is based on a valid or justified reason, the Religious Court will issue another summons. If the debtor appears in response to the summons, a warning hearing will be held and a deadline for fulfillment of the obligation or performance will be announced. For example, a deadline of eight days will be set, in accordance with the maximum time limit stipulated in Article 196 HIR or Article 207 Rbg.

3. The Chief Justice issues an execution order.

After the warning has been issued by the Religious Court, the Chief Justice issues an execution order. Fiduciary security execution is an execution order for payment of a sum of money (executory verkoop), where the fiduciary security will be publicly sold to satisfy the debtor's/customer's debt, not an actual execution from the debtor to the creditor. If the debtor is reluctant to hand over the goods that are the object of the Fiduciary guarantee, the Religious Court will take coercive measures and, if necessary, will require state force, in this case the National Police.

4. General Auction Submission

Based on the provisions of Article 200 paragraph (1) HIR or Article 215 paragraph (1) RBg, the sale of collateral is carried out through an auction office intermediary and cannot be carried out solely by the Religious Court.

There are several stages carried out to take over collateral or execute fiduciary collateral by the Sungai Pua Sharia People's Financing Bank against debtors who are late in making payments. First, if the customer is late in making payments for 5 (five) days after the due date, the Sharia People's Financing Bank will check via telephone. Second, when the customer is late for 7 (seven) days, the Sharia People's Financing Bank will visit the customer's residence and hand over the first notification letter. Third, if the first notification letter has been given and the customer does not fulfill their obligations or achievements, the Sharia People's Financing Bank will give a second notification letter by giving a period of 15 (fifteen) days to fulfill the obligations from the issuance of the first warning letter. Third, if the first and second warning letters have been given, the Sharia People's Financing Bank will visit the customer again and give a final warning or third warning letter calculated 30 (thirty) days from the issuance of the first notification letter. If, within 30 (thirty) days of the first warning letter, the customer fails to fulfill their obligations, then on the 30th day, a sign will be placed on the fiduciary collateral. However, the Sharia Rural Financing Bank has its own policy for dealing with problem debtors. This policy involves summoning the customer and providing them with the opportunity to sell the fiduciary collateral privately. The customer can sell the collateral themselves at a fair and reasonable price, allowing them to reclaim any excess proceeds. The sales transaction process is directly supervised by the Sharia Rural Financing Bank. If the customer is unable to complete the sale, the Sharia Rural Financing Bank will conduct the sale by auction.

In practice, the Sharia Rural Financing Bank still faces numerous obstacles in the implementation of the fiduciary collateral takeover process. These obstacles include those encountered at the outset of the fiduciary collateral execution process. The obstacles faced by the Sungai Pua Sharia Rural Financing Bank in the field are:

1. Related to the sale of collateral.

The obstacle encountered in the field is the difficulty in selling the fiduciary collateral. Not everyone understands the fiduciary collateral takeover mechanism, and there are also concerns about the potential for disputes by the collateral owner. For example, there have been lawsuits filed by the previous collateral owner who refused to accept the takeover of their collateral. To address this, the Sungai Pua Sharia Rural Financing Bank placed advertisements for the sale of collateral in newspapers and other publicly visible social media platforms. Furthermore, the Sungai Pua Sharia Rural Financing Bank collaborated with private parties with networks of potential buyers for the collateral and utilized its marketing capabilities to ensure the collateral sold quickly.

2. Lawsuits from Debtors or Third Parties

The next obstacle frequently encountered by Sungai Pua Islamic Rural Financing Bank is lawsuits or resistance filed by debtors against the execution of collateral by Sungai Pua Islamic Rural Financing Bank. It is not uncommon for debtors to resist and file lawsuits with the Religious Court upon learning that collateral under a

Murabahah contract will be taken over. These lawsuits are filed by debtors in the hope of halting the collateral takeover process by Sungai Pua Islamic Rural Financing Bank and at least delaying the execution of the collateral takeover process. The lawsuits submitted by third parties, or the debtors themselves, usually concern the uncertain amount of outstanding debt and interest, which are considered unclear. There may be errors in the collateral binding process in the Murabahah contract, such as whether the collateral does not belong to the debtor or belongs to a third party, issues with joint ownership of the collateral, or whether the collateral is inherited.

Based on these issues, the third party objected and filed a formal lawsuit (*derden-verzet*) with the High Religious Court, then attached proof of ownership of the collateral. If the lawsuit is merely a ruse by the plaintiff, the auction process will proceed.

If the collateral is executed through a request for execution to the State Assets and Auction Service Office, upon a lawsuit from the debtor or third party, the State Assets and Auction Service Office will postpone or reject the auction application submitted by Bank Pembiayaan Rakyat Syariah Sungai Pua regarding the collateral in dispute. The State Assets and Auction Service Office adopts a conservative approach based on their experience. Often, auction officials from the State Assets and Auction Service Office, who conduct mortgage auctions requested by banks, are named as defendants in a lawsuit filed by a debtor. The police will be involved in summonses and even investigations, as debtors sometimes bring criminal charges through police reports.

To ensure smooth execution of collateral under murabahah contracts, Bank Pembiayaan Rakyat Syariah Sungai Pua (Sri Pua Sharia Rural Financing Bank) prior to the collateral takeover, approaches the debtor holding the collateral as an alternative to executing the fiduciary guarantee.

Bank Pembiayaan Rakyat Syariah Sungai Pua (Sri Pua Sharia Rural Financing Bank) should apply the Prudential Principle and employ the 5C analysis in disbursing Murabahah financing: character, nature, capacity, capital, economic conditions, and external factors, and finally, collateral. This can help prevent non-performing loans (non-performing loans). Bank Pembiayaan Rakyat Syariah Sungai Pua also considers the best steps to take in taking over the fiduciary guarantee. Minimize the risk of disputes during the execution process and comply with statutory provisions and Islamic law.

CONCLUSION

The implementation of the takeover of fiduciary collateral in a murabahah contract conducted by the Sungai Pua Sharia People's Financing Bank involves submitting an application to the Agam Regency High Religious Court. The application will first be processed and analyzed for the subject matter of the fiduciary collateral. In response, the High Religious Court will issue two warning letters to the customer or debtor, followed by a third summons. The next step is to issue an execution order. During the execution process, if the debtor is reluctant to voluntarily surrender the fiduciary collateral, the court can take coercive measures. The next step is a public auction sale through a state auction office or the State Assets and Auction Service.

Obstacles often experienced by the Sungai Pua Sharia People's Financing Bank in the process of executing fiduciary guarantees in murabahah contracts are: First, the difficulty of finding prospective buyers of fiduciary guarantee objects at the Sharia People's Financing Bank. Actions that must be taken are to maximize advertising for fiduciary guarantee objects in murabah contracts, collaborate with private parties in seeking prospective buyers of guarantee auctions and increase marketing strength in offering fiduciary guarantee objects. Second, there are lawsuits or resistance from debtors or involving third parties. Resistance is carried out by providing documents that serve as fiduciary guarantees. Efforts that can be made can minimize

this by conducting an approach process to the guarantee object to be taken over as input to determine alternative takeovers of fiduciary guarantees that will be carried out and applying the principle of prudence (Prudential Principle).

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