Existence of Dependent Rights Guarantee Binding Related to Financing of Musyarakah Facilities in Islamic Banking

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Abstract

In the musyarakah financing contract, there is the imposition of mortgage rights, which will be auctioned if the customer does not pay the installments to the Islamic bank. However, the concept of musharakah itself does not recognize any mortgage rights, because musharakah adheres to the principle of profit sharing and losses being shared, with the imposition of mortgage rights on musharakah financing creates legal uncertainty for customers, because banks do not want to bear losses together with customers. From the results of the study it was concluded that, the implementation of the binding of mortgage guarantees in musyarakah financing is basically the same as the binding of mortgage guarantees on conventional banks, only regarding the execution of mortgage guarantees musyarakah financing in Islamic banks Courts while in conventional banking in the District Court, and the binding of Mortgage on musyarakah financing is not guaranteed by law, in Law No. 21 of 2008 concerning Islamic Banks it does not regulate mortgage rights in musyarakah financing, and also the imposition of mortgage rights on musyarakah financing proves that Islamic banks do not want to participate in the loss of musharakah financing. With the uncertainty due to the imposition of mortgage rights on musyarakah financing, customers do not get certainty of their rights actually in musharakah financing.

Keywords

Islamic Banking, Dependent Rights Guarantee, Musyarakah Financing.

Introduction

One of law is aimed at promoting general welfare and realizing social justice for all Indonesian people, as stated in the fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia which reads:
"Then from that, to form a Government of the State of Indonesia that protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and social justice, Independence was drawn up. The Indonesian nationality is in a Constitution of the Republic of Indonesia which is sovereign by the people based on the One Godhead, Just and Civilized Humanity, Indonesian Unity and Democracy led by the wisdom of social policies for all Indonesian people.

Advancing general is carried out with development programs in all fields and all aspects of life which are carried out adequately by all elements of the nation. In implementing the development, not all development implementers have sufficient capital. Therefore, capital support is needed from institutions that have authority in the financial sector, not least through Islamic banking institutions.

Banking in the life of a country is one of the agents of development. This is due to the main function of banking itself as an institution. The institution that has the authority in the financial sector to provide capital support is a bank as a financial institution whose main business is providing credit and services in payment traffic and money circulation as well as collecting funds from the public in the form of savings and channel them to the public in the form of credit or other forms of credit. Others to improve people's standard of living. Between banks as financial institutions that provide credit and financial services and debtors, both individuals and companies that receive credit facilities and financial services, the state issues laws as a legal umbrella and at the same time as legal protection for both parties.

Sharia banking is an institution or institution that provides banking services based on sharia principles. Sharia principles are principles in which banking activities are legal based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia. In contrast to conventional banking, which uses a credit scheme in disbursing funds, in Islamic banking the distribution of funds uses credit or financing. Islamic banks must conduct a thorough assessment of the character, ability, capital, collateral, and business prospects of the Debtor Customer. These five elements are often called the 5Cs of credit (Character, Capital, Capacity, Collateral and Condition of Economy).

Therefore, all transactions between banks as creditors and customers as debtors are regulated by law and sharia bank operations are regulated by Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic Banking, as contained in Article 1
number 25 which explicitly confirms that: Financing at Islamic banks is the provision of funds or equivalent claims in the form of:

a. Profit sharing transactions in the form of *mudharabah* and *musyarakah*.
b. Lease transaction in the form of *ijarah* or lease purchase in the form of *ijarah *vomiting *bitamlik*.
c. Sale and purchase transactions in the form of *murabahah* receivables, greetings and *istishna*.

Basically, the activities of Islamic banks are not much different from existing conventional banks. The main difference between the two lies in the basic concept of giving rewards which in turn causes differences in the substance and form of operation. As an institution whose existence is still relatively new, it is undeniable that it is still facing problems in carrying out their activities. This means that there is an obligation for banks to provide sharia financing, have confidence based on an in-depth analysis of the intentions and abilities and ability of the debtor customer to return the financing.

Islamic banks have a function as a financial intermediary institution that carries out a balanced fund distribution mechanism. In the current practice of Islamic banking in Indonesia, there are two forms of business agreements, namely investment and financing. Investment is capital participation based on the principle of profit and loss sharing or *ratio*. While financing is based on two principles, the first is to apply the principle of profit and loss sharing such as *mudharabah* and *musharakah*. Then the second is to apply the principle of buying and selling and renting through a margin or fee scheme such as *murabahah*, *istisna*, *salam* and *ijarah*.

The main characteristic of sharia guarantees is that in the concept of sharia guarantees there is no guarantee interest which is an additional cost that must be paid by the guarantor to the guarantee recipient. Linguistically, MMQ consists of 2 (two) words, namely *musyarakah* and *mutanaqishah*. *Musyarakah* is also known as *syirkah* which means cooperation. *Mutanaqishah* comes from *naqasa* which means reduced; reduced gradually. Thus, *syirkah mutanaqisah* is also called decreasing participation or diminishing participation.

If the study is focused on financing practices in Islamic banks, financing based on the principle of profit and loss sharing (loss and profit sharing or *nisbah*) only uses the type of sharia contract, namely *mudharabah* or *musharakah* which is determined through a
fluctuating ratio scheme because both are highly dependent on the results, effort or profit earned (uncertainty return, unexpected return or un revenue sharing). However, to avoid the risk of loss or bad credit, in fact almost every Islamic bank applies a fixed ratio percentage determination (flat ratio and fixed income rate, certain return, expected return or revenue sharing).

According to Ibn Rushd, *musyarakah* is a cooperation agreement between two or more parties for a particular business in which each party contributes funds (or mal) with the agreement that the profits and risks will be shared in accordance with the agreement. Meanwhile, according to Sutan Remi Sjahdeni, *Musyarakah* is a joint venture or joint venture, venture capital, venture capital whose partners consist of banks or financing institutions and entrepreneurs (customers), profits and losses are divided according to a predetermined proportion, in accordance with Profit and Loss Sharing. Principles.

The *musharakah* criteria are needed to distinguish it from other Islamic bank products which are almost the same as *mudharabah* and *ijarah*. The criteria mentioned above show the specificity of *musharakah*, where two or more people contribute to invest funds for joint capital, jointly participate and work together to manage assets and joint ventures, therefore profits are shared and losses are shared.

The activities of disbursing credit by banks contain risks that can affect the health and business continuity of the bank1. In anticipating the risk of congestion, the bank requires a guarantee or collateral that can be used as a substitute for paying off debt if the debtor defaults in the future. Referring to the above regulations, if it turns out that in the practice of *musharakah* financing in Islamic banks, there are deviations from the principles of prudence and sound banking principles and there is a violation of the provisions of the legislation, the OJK may issue a Cease and Desist Order (CDO). regarding what the bank should or should not do. This is done to provide protection to consumers, the public and the financial services sector.

Arrangements to apply prudential principles to Islamic banking are part of the regulator's efforts to realize sound banking. In addition, ensuring compliance with the precautionary principle is a matter that must be considered by banks providing financing facilities. This matter because every use of funds used in providing financing is funds that come from the community.

To ensure this belief, the law allows Islamic banks to ask customers to provide collateral as collateral that can be held. Collateral is an additional guarantee, either in the form of
movable or immovable property, which is submitted by the owner of the collateral to the Islamic bank in order to guarantee the settlement of the obligations of the customer receiving the facility. In addition, to facilitate the sale of collateral in the form of immovable objects (in the form of land and buildings on it), the Law also allows banks to charge collateral with mortgage rights.

The right to sell the object of mortgage on its own power through a public auction is carried out with the assistance of the State Property and Auction Service Office (KPKNL). Every auction must be carried out by and/or before the Auction Officer unless otherwise stipulated by Law or Government Regulation.

Likewise, in the practice of musharakah financing agreements in Islamic banks, it is generally indicated that there is collateral. The collateral can be in the form of land or building certificates as a form of mortgage object. In the deed of the musyarakah financing agreement, there is usually a default clause which stipulates that if the debtor breaches his contract, the mortgage holder simply submits an application to the State Property and Auction Service Office (KPKNL) to conduct an auction of mortgage rights based on the authority granted by law or powers held by law.

After the enactment of the provisions of Law no. 21 of 2008 real changes can be seen in the legal nomenclature that regulates the provisions on Islamic banking. One of them that looks real is the existence of Collateral in Islamic bank financing which is stated in the provisions of Article 23 Paragraph (2) of Law no. 21 of 2008 relates to the regulation of the Eligibility of Fund Distribution. Based on these provisions, it can be seen that the practice of Islamic banking places great emphasis on the existence of collateral in the assessment of the provision of financing to customers. Law No. 10 of 1998 concerning Banking and Law no. 21 of 2008 concerning Islamic Banking defines the term guarantee as a belief in the faith and ability and ability of the debtor customer to pay off his debt or return the financing in accordance with the agreement.

The majority of debtors provide collateral to creditors in the form of land in the form of land rights certificates, this is because land has a high value relatively stable and will not even experience a decline, very profitable for creditors. As regulated in Article 51 of Law Number 5 of 1960 that property rights, use rights and building rights are burdened with mortgage rights. The Mortgage Institution has not been able to function properly because there is no law that regulates it completely as required by the provisions of Article 51 of the UUPA.
The existence of a debt guarantee institution, namely mortgage rights as regulated in Law Number 4 of 1996 concerning Mortgage Rights. The provisions of Article 1 paragraph (1) of Law Number 4 of 1996 concerning Mortgage on Land and Objects related to land:

_Guarantee rights granted to land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and whether or not including other objects which are an integral part of the land for the settlement of certain debts, which provide an equal position, priority to certain creditors over other creditors._

Based on the definition of the mortgage, that the collateral in the form of land also includes objects found on the land as repayment of certain debts. The imposition of collateral on land with mortgage rights will not be exempt from the credit agreement as the main agreement, then a Mortgage Deed is made (APHT) made by an authorized Land Deed Author as regulated in Government Regulation No. Land certificate. The occurrence of irregularities in the manufacture of APHT. The substance in the APHT is specifically intended for debt and receivable agreements, either in the form of existing debt or has been agreed with a certain amount based on a debt agreement or other agreement that gives rise to a debt and credit legal relationship. While the _Musyarakah_ financing contract is not a debt agreement, but is a cooperation/partnership agreement.

Mortgage rights are subject to the legal rules for guaranteeing debt repayment. If the debtor defaults, the bank as the creditor can directly sell the mortgage object through the KPKNL without requiring the debtor's approval, without going through a trial process, without requiring a court decision, and without considering whether the customer is losing money or not.

Whereas _musharakah_ is subject to the legal rules of cooperation with the Profit and Loss Sharing Principle, profits are shared and losses are shared, collateral can be requested only in the context of implementing the precautionary principle, and can only be auctioned if the fund manager is proven to have violated the things that have been done. agreed together.

However, when it is associated with _musharakah_ financing in Islamic banks, legal problems arise when imposing mortgage rights on _musharakah_ financing. Because the purpose of the mortgage is to guarantee the repayment of debts if the debtor is in default, while in _musyarakah_ financing there are no debtors and creditors, there is no debt and no breach of contract, there is cooperation between two or more people, who are both
contribute to investing funds for joint capital, and jointly participate in managing assets and joint ventures, if the profits are shared together and if the losses are also shared.

Discussion Results

1. Implementation of the Bonding of Mortgage Guarantees in Musyarakah Financing in Islamic Banking in Indonesia.

Islamic banks are banks that are based on Islamic principles, and in carrying out their business, banks adhere to a principle, namely the prudential banking principle. This principle is part of business risk management in Islamic bank operations. The prudential banking principle is a principle which states that banks carry out their functions and business activities in a way that makes banks and customers not suffer losses, and the bank is in a healthy condition. The principle of prudence in banking in Indonesia is stated in Articles 2 and 29 Paragraph (2) of Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking and especially Islamic Banking in Article 2 of Law no. 21 of 2008 concerning Islamic Banking. Within the scope of the Financial Services Authority (OJK) regulation, the existence of the precautionary principle is an application of OJK Regulation No. 65 /POJK.03/2016 concerning the Implementation of Risk Management for Islamic Commercial Banks and Sharia Business Units.

The definition of prudence according to sharia banking is a bank management guideline that must be adhered to in order to realize a healthy, strong, and efficient banking in accordance with the provisions of the legislation.

Islamic banks as intermediary institutions or institutions that collect funds from the public, paying attention to this, Islamic banks need to manage their business activities based on prudential principles with optimal implementation. In contrast to conventional banks in the distribution of funds using the term credit, in Islamic banks the distribution of funds tends to use the term financing.

Law No. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking and Law no. 21 of 2008 concerning Islamic Banking has mandated that Islamic banks always be guided by the principle of prudence in carrying out their business activities, including in financing operations by procuring collateral (collateral). Collateral in the form of the customer's property is something that is taken into account in the analysis of the feasibility of financing which is commonly known as the 5c principle.
In sharia banking, there is no known credit agreement, but it is known as financing as referred to in Article 1 Number 25 of Law Number 21 of 2008 concerning Sharia Banking (hereinafter referred to as UUPS) and collateral can be provided for such financing. *Musyarakah Mutanaqisah* is that the customer and the bank share in the procurement of an item (usually a house or a vehicle) which is jointly owned where initially the ownership of the Bank is greater than that of the Customer. The application of the *musyarakah mutanaqishah* contract has several advantages as sharia financing, including:

1. Sharia banks and customers both own an asset that is the object of the agreement. Because it is a joint asset, Islamic banks and customers will take care of each other for these assets.
2. There is a profit sharing received between the two parties on the rental margin that has been determined for the asset.
3. Both parties can agree on a change in the rental price in accordance with a predetermined time by following the market price.
4. Can minimize the risk of financial costs in the event of inflation and an increase in market interest rates in conventional banking.
5. Not affected by fluctuations in market interest rates at conventional banks, and/or price fluctuations when inflation occurs.

The binding of mortgage rights in Islamic banks is a legal relationship between customers and Islamic banks. In relation to guarantees, Islamic banks take several steps to ensure that the capital and profits to be obtained must be returned in a timely manner as stipulated in the contract. In general, this can be achieved by means of a guarantee (guarantee) either from the *mudharib* or a third party. Although Islamic law does not allow collecting collateral from the *mudharib*, banks generally do. *Rahn* is an agreement for the delivery of goods that are used as collateral to obtain payment facility. Some scholars define *rahn* as property which is used by the owner as collateral for a debt that is binding. *Rahn* is also interpreted as a guarantee against a debt that may be used as a payment to the debtor either in whole or in part if the debtor is unable to pay it off.

In the implementation of financing, banks must apply prudential principles, among others, banks are not allowed to provide financing without a written agreement, banks are not allowed to provide financing that exceeds the maximum financing limit (legal lending limit), and apply the 5 C (Character, Capacity) principle. Capital, Condition, Collateral) as one of the assessment factors for the provision of financing. Basically, the binding of mortgages on *musharakah* financing in Islamic banks is no different from the binding of mortgages on conventional banks. The first step is to make a master contract / agreement which in this case is a *Musyarakah* financing contract. Then proceed with making the Deed of Granting Mortgage Rights (APHT), after the APHT is made, then the APHT is registered at the Land Office in the local district/city. Its implementation in Islamic banks is the same as binding mortgage rights in credit agreements. In Islamic banks the elements
of usury, *gharar and taddlis* must be removed and their operations adjusted to the fiqh concept, that things that are prohibited in business transactions such as usury, *taddlis and gharar* are clearly haram. Islamic banks in Indonesia, being one of the institutions that exist in society, must avoid the element of usury in its system and operations, let alone using a profit-taking system by way of interest, although there is still debate among Islamic law thinkers.

In the author’s opinion, the imposition of mortgage rights is not appropriate when applied in Islamic banking. Because in fact the concept of mortgage is not in line with the concept of sharia. Where the mortgage is a guarantee right on the debt, in accordance with the rights law dependents, while in Islamic banks there is no debt, there is a ratio / profit sharing.

Good law should be able to create justice, benefit and certainty for the community. However, there are still many legal products that do not provide justice, benefit or certainty for the community. Among them regarding the imposition of mortgages on *musyarakah* financing. In order to achieve justice, benefit and certainty for the community, the government should make special legislation that regulates the binding of mortgage rights in musharaka agreements and execution of mortgage rights in sharia banking.

This study uses the al-mashalah theory based on arguments against mudharatat, with the enactment of a Law on the execution of Islamic banking mortgages as a substitute for Law No. 4 of 1996 on Mortgage Rights, and the issuance of the Sharia Economic Procedure Law as a substitute for the Herzien Inlandscg Regulation (HIR) and Rechtreglement voor de Buitengewesten (RBg), can be a solution for improving regulations regarding the execution of mortgages on financing in Islamic banks, if left as the current reality, problems regarding the execution of mortgages that are not in accordance with sharia are resolved using a legal basis that does not In accordance with sharia principles, it is not the benefit that is obtained but the benefit that is obtained.

The legal objective must be achieved, namely the achievement of legal protection for the Bank and the Customer.

2. Legal Certainty of *Musyarakah* Financing Facilities Associated with Bonding Mortgages in Indonesia

In the provisions of Law Number 4 of 1996 concerning Mortgage Rights along with the objects above it is stated that Mortgage Rights on land and objects related to land,
hereinafter referred to as Mortgage Rights, are security rights imposed on land rights. as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or not including other objects which are an integral part of the land, for the settlement of certain debts, which give priority to certain creditors over other creditors other creditors. In short, mortgage rights are additional rights that are imposed on land rights that are used as debt guarantees.

The term debt has been known in conventional banking, while in Islamic banking the term debt is not known. The principle of credit in conventional banking and financing in Islamic banking is very different. In credit agreements, it is known as the existence of interest, but in Islamic banking the term interest is not known, there is only profit sharing, because in Islamic banking there is no known interest.

The main reason for the birth of mortgage rights is also explained in the Mortgage Law, the consideration section considers.

Mortgage rights were born in 1996 based on the Mortgage Law Number 4 of 1996, while the operational musyarakah in Islamic banks in 2000 was based on the Fatwa with National Sharia (DSN) Number 08/DSN-MUI/IV/2000.

Mortgage rights that were born based on the Mortgage Law No. 4 of 1996 are for debt guarantees between debtors and creditors at conventional banks while for musyarakah in Islamic banks there are no legal provisions regarding mortgage rights, both in Law No. 21 of 2008 as well as in the DSN Fatwa Number 08/DSN-MUI/IV/2000 which is directly related to Islamic banks and musharakah. Mortgage rights are given as collateral rights to land as repayment of certain debts, which gives certain creditors a primary position over other creditors. In a sense, if the debtor defaults, the creditor holding the mortgage has the right to sell through a public auction the land that is used as collateral according to the applicable laws and regulations. The right to sell on its own power is a manifestation of the special or preferred position owned by the creditor holding the mortgage.

Musyarakah is one of the contracts implemented by Islamic banking. Musyarakah is implemented through a profit and loss sharing mechanism (profit loss sharing) between the parties (partners/syarik) through profit and revenue sharing methods. The concept of profit loss sharing in the Musyarakah contract is a special feature as a differentiator between Islamic banking activities and conventional banking. Musharaka is governed by a contract, which states in detail the rules and conditions.
In Law Number 21 of 2008 concerning Islamic banking there are only legal provisions regarding guarantees and collateral which are stated in Article 23 paragraph (1):

"Islamic banks in the willingness and ability of prospective customers receiving facilities to pay off all obligations on time, before the Sharia Banks and/or UUS distribute funds to customers receiving facilities", And paragraph (2) which states:

In order to obtain the assurance as referred to in paragraph (1), a Sharia (Islamic) Bank and/or UUS is required to conduct a careful assessment of the character, capital capacity, collateral, and business prospects of the prospective customer receiving the facility.”

The DSN Fatwa Number 08/DSN-MUI/IV/2000 explains that in principle, in Musyarakah financing there is no guarantee, but to avoid irregularities, LKS can ask for guarantees. In accordance with the Standard Book for Musyarakah and Musyarakah Mutanaqisah Financing Products in the Definition of Terms section number (17), Collateral can be in the form of material (collateral) or non-material guarantees. Guarantees can be requested by the Bank to customers / fund managers / third parties in the context of implementing the precautionary principle. Disbursement of collateral can only be done if the fund manager is proven to have violated the mutually agreed terms.

In contrast to the provisions in the Definition of Terms Number (17) section which has been described above, in the Collateral and Collateral Standard section number 3.10.1. The Standard Book for Musyarakah and Musyarakah Mutanaqisah Financing Products which explains that the main guarantee for musyarakah financing is the confidence of the BUS/UUS/BPRS on the customer's ability to repay the financing in accordance with the agreement, and figure 3.10.2 is the “secondary source repayment” (secondary source of payment). or the last source for the repayment of Musyarakah financing if the customer really can no longer fulfill the payment obligations for the financing he received.

Then the next section on the Standard of Collateral and Collateral number 3.10.5. In the book Standards for Musyarakah and Musyarakah Mutanaqisah Financing Products, it is stated that:

"BUS/UUS/BPRS may ask the customer to give power of attorney to the BUS/UUS/BPRS for the imposition of mortgage, lien or guarantee rights".

In this case, Islamic Banks in Musyarakah and Musyarakah Mutanaqisah financing contracts are allowed to ask customers for guarantees from partner customers in carrying out their prudential principles.
In this case, there is a conflict in the Musyarakah Product Standard Book and the Musyarakah Mutanaqisah Product Standard Book, in number 3.10.1. states that the principal guarantee for Musyarakah financing is the confidence of the BUS/UUS/BPRS on the customer's ability to repay the financing in accordance with the agreement but in the next number 3.10.3 Collateral is a "secondary source repayment" or the last source for the repayment of Musyarakah financing if the Customer is serious can no longer meet the payment obligations for the financing it receives.

These two points are very contrary to the concept of Musyarakah itself, Musyarakah has the principle of profit loss sharing. In point 3.10.3 it clearly states that the principal guarantee for musyarakah financing is BUS/UUS.BPRS confidence in the ability of the customer, but in the following explanation it is permissible for collateral in musyarakah financing and collateral to be the last source if the customer really can no longer fulfill his payment obligations. The contradiction here is, the basic concept of musharaka is that profits are shared together, and losses are shared between the bank and the customer, but in fact, if a loss occurs, where the loss causes the customer to fail to make payments to the bank, the collateral will be auctioned off by the bank. This creates legal uncertainty, because basically the bank does not want to bear the loss, the loss is only borne by the customer.

In the Musyarakah and Musyarakah Mutanaqisah Product Standard Book number 17 it is stated that the guarantee can only be disbursed if the fund manager is proven to have committed a violation or something that has been mutually agreed upon. The rule indicates that the guarantee or collateral can only be disbursed if the customer is proven to have committed irregularities, proof can be carried out through a court process that the fund manager / customer has violated the mutually agreed terms, but if the customer's default is caused by the customer's business losers, the bank should also bear the loss, judging from the basic concept of musharaka itself. With the uncertainty due to the imposition of mortgage rights on musyarakah financing, customers do not get certainty of their rights. In fact, in musyarakah financing, the customer has the right to get profits and losses that are equally shared with the bank. However, with the binding of mortgage rights on musyarakah financing, the customer does not get his right to share losses with the bank if the business run by the customer is experiencing a loss.

Law without the value of certainty will lose its meaning, because it can no longer be used as a code of conduct for everyone. Where there is no more legal certainty, there is no law (Ubi jus incertum, ibi jus nullum). The imposition of mortgage rights in musharaka financing causes the musharaka financing to be without legal certainty, so changes are
needed in relation to regulations and legislation related to musyarakah financing and the imposition of mortgage rights. According to the authors, related changes, especially to Law No. 21 of 2008 concerning Islamic Banks, are very necessary to ensure legal certainty for customers from Musyarakah financing, where it is necessary to add rules regarding the prohibition of imposing mortgage rights on Musyarakah financing, it must be emphasized that guarantees can only be requested by Banks to customers only in the context of the precautionary principle, and guarantees can only be disbursed if the customer is proven to have committed a violation, not because the customer is hampered in paying installments, in order to achieve the goal of the initial concept of musharaka hitself, namely profit and loss sharing, profits and losses are shared by the customers and Islamic Banks, and this change must also be harmonized with other regulations related to musyarakah financing, namely the Standard Book for Musyarakah and Musyarakah Mutanaqisah Financing Products by removing the rules that allow BUS/UUS/BPRS to request rights Dependents in the Musharakah contract.

Islamic banks should be consistent and comply with sharia principles. regarding the guarantee in the musharaka contract as stated in in the DSN Fatwa Number 08/DSN-MUI/IV/2000 which states that in principle, in musyarakah financing there is no guarantee, but to avoid irregularities, LKS can ask for guarantees, and the Financial Services Authority (OJK) regulations as set out in the Standard Book Musyarakah and Musyarakah Mutanaqisah Financing Products in the Terms Definition section number (17) Collateral may be requested by the Bank to the Customer in order to implement the prudential principle. The guarantee can only be disbursed if the fund manager is proven to have violated the mutually agreed terms.

In relation to the binding of mortgage rights in musyarakah financing in Islamic banks, it is hoped that the relevant parties, namely customers and Islamic banks. With the parties who have bound themselves to the sharia contract, regarding the rules and settlement of disputes and also their execution using regulations that are in accordance with sharia, this is intended to achieve legal certainty for the parties.

In complying with sharia principles regarding guarantees in the musharakah contract, Islamic banks should apply a guarantee that is already known in Islam, namely al-Rahn which is adapted to musyarakah. In language, al-rahn means holding back something so that it remains, does not disappear and does not change hands, as collateral for a debt. In terms of terminology, according to ad-dardir, Ar-rahn is a property that is used by its owner as a binding debt guarantee. or make an object (goods) as collateral for a debt, which can be used as a debt payer if the debtor cannot pay the debt. According to the
Fatwa of the National Sharia Council Number 25/DSN-MUI/III/2002 concerning Rahn, Al-rahnn is a loan by pledging goods as collateral for debt.

Musyarakah financing becomes legal uncertainty because the imposition of the mortgage has led to a dispute over the execution of the proposed.

Conclusion

1. The implementation of the binding of mortgage guarantees in musyarakah is basically the same as the binding of mortgage guarantees on conventional banks, only regarding the execution of mortgage guarantees on musyarakah financing in the Religious Courts while in conventional banking in District Court.
2. The binding on Musyarakah financing has no legal certainty, in Law No. 21 of 2008 concerning Islamic Banks it does not regulate the Mortgage Rights on Musyarakah financing, and also the imposition of Mortgage on Musyarakah financing proves that Islamic Banks do not want to participate in bearing losses from musharaka financing.

Suggestion

1. It is hoped that the government will revise Law Number 21 of 2008 concerning Islamic Banks, by adding an article that regulates the prohibition of the imposition of mortgage rights on musyarakah. Because mortgages are debt guarantees that can be auctioned off if the debtor breaks his promise, and this is contrary to sharia principles and also musyarakah itself, where musharaka is cooperation with the principle that profits are shared and losses are shared. The imposition of mortgage rights in the musharaka agreement can cause legal uncertainty and can also change the essence of the musharaka.
2. It is hoped that the regulations governing mortgage rights in Musyarakah in the Musyarakah Product Standard Book will be revised in order to create rules that are in harmony and provide legal certainty for the customer.

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