

THE IMPLEMENTATION OF MUSYARAKAH FINANCING IN ISLAMIC BANKS IN INDONESIA IN RELATION TO DEFAULTS BUSINESS PARTNERS

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Abstract

This research aims to analyze the implementation of musyarakah financing in Islamic banks in Indonesia related to the default of business partners. The principal banking law states that the function of banking in Indonesia is to collect and distribute funds. Islamic banking law regulates various types of financing, including musyarakah financing. The method used in this research is descriptive analytical method using qualitative approach. The results of this research discussion show that legal protection for the parties in musyarakah financing in the event of default by business partners consists of: first, legal protection provided by law, namely protected by the Banking Law, especially Articles 1, 7 and 8, second, legal protection based on musyarakah contracts / agreements, in the form of : First, if the business partner has been classified into the collectibility of bad debts, the bank can confiscate the collateral and then proceed with the auction. Second, submitting the dispute to a Islamic arbitration body or court. Meanwhile, the efforts of Islamic banks if there are indications that there will be defaults by business partners in musyarakah financing are to addendum the contract.

Keywords: Default, Islamic Bank, Musyarakah Financing

1. Introduction

The Preamble of the 1945 Constitution (4th amendment) in the fourth paragraph includes the purpose of the establishment of the Republic of Indonesia in order to create a prosperous society, and social justice (Nurwahyu, 2022). In general, there are three important parts in Indonesia's development, which consist of the development of stability in achieving economic growth and equitable development. In order to achieve national development, especially in increasing the growth of the national economy, the Indonesian

government is trying as much as possible to mobilize various potential sources of national capital that can be used as a means of financing for national development, in this case the progress of the Indonesian economy is at a level that is classified as a developing country, this is getting worse after being hit by a monetary crisis and finally a crisis in various fields, the role of the government is required to be maximized in order to restore and improve life in the economic field (Hayashi, 2010).

Jusuf Anwar argues that in building a country's national economy can be carried out through the support of financing both provided by the government and by the community (Ma'ruf *et al.*, 2020), as an effort to maximize the potential of capital, especially in the banking sector since 1997 experienced a period of downturn because the stability of Indonesia's economic growth was disrupted, which resulted in disrupted economic stability as well (Basri & Rahardja, 2010). One of the strategies to restore economic stability is through the creation of legal certainty for economic actors. This condition shows that after all there is a close legal relationship and mutual influence on the economic system of a country (CFG. Sunaryati, 1988).

Legal certainty in the banking sector is provided by the government by reforming policies in this sector, namely by amending "Law Number 7 of 1992 concerning banking to Law Number 10 of 1998" (hereinafter referred to as the banking law) and passing "Law Number 21 of 2008 concerning Islamic Banking". The Basic Banking Law states that the function of banking in Indonesia is as a collector and distributor of funds sourced from third parties, in this case the public, and aims to contribute to the implementation of national development (Rahmadi Usman, 2001). One of the significant changes in Law No. 10 of 1998 is the concept of banking that uses Islamic principles. In Law No. 7 of 1992, the regulations regarding banks that run Islamic principles are not regulated in detail, so that because in its development the growth of Islamic banking has mushroomed, the regulations are more detailed in the law, so the government then issued Law No. 21 of 2008 concerning Islamic Banking which accommodates the characteristics of Islamic banks more specifically.

The Islamic banking law regulates various types of financing, including musyarakah financing, which is joint financing either carried out by banks or by other financing institutions, which can apply various rules that have been agreed upon in a cooperation agreement between the partnering parties (RI, 2008). In this study, we will specify the provision of musyarakah financing to individual companies, especially those engaged in trade and industry. There are several parties in the musyarakah financing agreement, namely the bank as the first party providing financing, the business partner as the second party receiving financing and the depositing customer as a third party who is not directly involved in the financing but has a role as the owner of the funds deposited at the bank.

Financing with the *musyarakah* system provided by Islamic banking in it must implement the principle of prudence in providing financing, especially from the possibility that the business partner cannot do what was agreed upon, or in this case he is said to have committed "default" or committed an act of oppression or betrayal, basically in *musyarakah* financing, the general provision is that the entire capital owned by the parties must be collected to be used as capital in the implementation of the *musyarakah* project and its management is carried out jointly (Emalia, 2023). If in the project carried out by the business partner it turns out to take one of the actions prohibited in the agreement, the business partner is deemed to have committed a default, especially from the possibility of the business partner acting negligently in providing the profit sharing ratio and also returning the capital included by the Islamic bank (Pradesyah, 2017).

One indication of default committed by business partners is negligent action in paying loan installments which will eventually lead to default on financing. Data from 2016 shows that financing in Islamic banks or what is known as the Financing to Deposit Ratio (FDR) has a significant role in increasing the percentage of bad debts or Non-Performing Financing (NPF). So that the massive FDR carried out by Islamic banks can also result in an increase in the level of bad credit risk, especially in *musyarakah* financing of 271,643 billion rupiah (Financing & Hazard, 2020). Thus, the business partner must bear the legal consequences of his actions, one of which is by paying compensation to the bank. However, although the Civil Code clearly regulates the legal consequences of default, in reality, in practice the bank always has difficulties in obtaining its rights in receiving compensation. The consequence of the legal relationship, namely that legal protection must be provided, especially for the bank from the default of business partners, this is intended so that in receiving rights and performing obligations will occur in a healthy manner and be carried out in accordance with the mutually agreed agreement.

The problem in this study is how legal protection for Islamic banks in *musyarakah* financing in the event of default by business partners, and how Islamic banks attempt if there are indications of default by business partners in *musyarakah* financing. Based on the description above, there are several studies related to this, including the first study with the title "Legal Protection Principles for Islamic Banks in Home Ownership Financing with *Murabahah Akad*" by Edi Winarno, the results of this study state that "Fatwa DSN MUI Number: 04/DSN-MUI/IV/2000 concerning *Murabahah* Financing" is used as a basis by institutions that guarantee mortgages used in *murabahah* financing agreements".

The second research by inke widya pangestika entitled "the responsibility of Islamic banks in *musyarakah* financing contracts for *mudharib* who died (analysis of the decision of the Supreme Court of the Republic of Indonesia number: 624 K/AG/2017)" the results of this study say that to avoid the risk of loss between the two parties, they must apply the principle of prudence, this is based on the decision of the Supreme Court of the Republic

of Indonesia number: 624 K/AG/2017, especially when the *mudharib* dies (pangestika; 2019).

The next research by santhy Ainun Adrianty entitled "*Legal Protection of Financiers on Investments in the Provesty Platform with Musyarakah Mutanaqisah Akad*", this study states that the legal relationship that occurs between the manager and the party that provides financing and accepts financing uses standard clauses in the agreement, and the legal consequences in the event of default or breach of promise which results in failure of payment, thus the bank as the party providing the financing can claim compensation, and legal protection for the financing provider is considered still low, this is because the contract has not fully implemented "Fatwa Number 73/DSN-MUI/XI/2008 and DSN-MUI fatwa No. 117/DSN-MUI/II/2018" (Adrianty, 2020). The difference between the research to be conducted by the author and the previous research lies in the aspect of legal protection focused on Islamic banks as financial intermediary institutions that receive deposits from the public from the default of business partners, especially in *musyarakah* financing.

2. Research Methods

The method used in this research is descriptive analytical method, which is a method that analyzes systematically in describing and describing the facts or characteristics of certain populations actually and carefully (Sugiono, 2012). With this method the author will collect all information transparently as shown by what is obtained in the research area in the form of words and narratives not in the form of numbers (Darim, 2013). After the information is collected, it is then described according to its substance and if problems arise in the data obtained, problem solving is carried out. In this case, the author describes the implementation of *musyarakah* financing in Islamic banks in Indonesia in relation to the act of default of business partners.

The research approach used in this research is a qualitative approach which is an approach by producing data in the form of a description or description in the form of words, speech in oral or written form of human behavior patterns that are the object of research (Moeloeng, 2017). This research was conducted at one of the Islamic banks, precisely the Bank Jabar sharia Banten Tasikmalaya branch office Jl. sutisna senjaya number 77 Tasikmalaya city.

3. Results and Discussion

3.1 Scope of Banking

Article 1 number 2 of Law No. 7 of 1992 as amended by Law No. 10 of 1998 concerning banking, provides a definition of a bank as a business entity whose task is to collect funds from the public in the form of deposits and distribute them back to the public in the form of credit and/or other forms in order to achieve an increased standard of living

of the community. This is in line with the definition of a bank in Black's Law Dictionary, which states that a bank is an entity whose formation is intended for the purpose of depositing, lending, exchanging, or issuing money and also for moving funds ("...A financial establishment for the deposit, loan, exchange, or issue of money and for the transmission of funds") (Putera, 2020).

G.M Verryn Stuart argues that the Bank is a business entity whose existence is intended to satisfy the needs of others, by channeling credit in the form of money obtained from other parties, even by issuing new money in the form of banknotes and coins (Bank is a company that satisfies other people by giving a credit with the money they accept as a gamble to the other, even though they should supply the new money) (Malayu S.P.Hasibuan, 2005). Based on this, banks can be said to function actively or passively, meaning that the collection of funds sourced from third parties, in this case, people who have more funds and then channeled in the form of credit for the wider community who are short of funds. Some of the definitions above generally view the Bank as a financial institution that has an important role in society, the role it plays acts as part of a financial institution that has the aim of channeling Islamic credit or financing, as well as various other financial services that are beneficial to the community. The credit provided or Islamic financing is obtained by the bank either from the bank's own capital or through funds entrusted by third parties or by circulating new means of payment in the form of chiral money (Surbakti, 2019).

Article 5 of the Banking Law explains that banks based on their type are divided into two parts, namely: (Law Number 10 of 1998, 1998) first, Commercial Banks, which are banks that conduct business activities both conventionally based and / or based on Islamic Principles, then in carrying out their activities provide services in payment traffic, and second, Rural Banks, which are banks that conduct business activities both conventionally based and / or based on Islamic Principles, then in carrying out their activities do not provide services in payment traffic. One of the advances in service development can be attributed to the bank's function as a lender is channeling funds in the form of credit or financing agreements based on Islamic principles for both companies and individuals (Djumhana, 2003).

The discussion of bank products generally refers to the function of banks as stipulated in Article 1 paragraph (2) of the Banking Law regarding the definition of banks. Furthermore, as stated in Article 6 and Article 7 of the Banking Law which describes in more detail the types of commercial bank business entities, and Article 10 of the Banking Law explains the business restrictions of Commercial Banks. Based on some of the above regulations, the definition of bank products can be interpreted as the entire business of banks in receiving deposits and channeling them back to the public (customers) and other services as regulated in the legislation.

The bank's business must be carried out in accordance with various applicable regulations, besides that the bank must also be transparent in publishing its products, as regulated in Bank Indonesia Regulation No.7/6/PBI/2005 dated January 20, 2005. This is an implementation of one of the principles of good corporate governance, especially in the banking sector, thus maintaining public trust. Based on Bank Indonesia Regulation No.7/6/PBI/2005 Dated January 20, 2005, there are several important things regarding the transparency of bank products, namely in relation to the characteristics of each bank product, the Bank is obliged to provide information in writing in Bahasa Indonesia in a complete and clear manner, the delivery of such information can be provided either orally or in writing, and banks are prohibited from providing misleading information (mislead) and or unethical (misconduct).

In connection with the Islamic Bank also has a strategic role as a financial intermediary institution between parties who have more funds (surplus units) and other parties who need funds (deficit units), through the role of the bank, parties with more funds can channel to other parties in need so that it will be beneficial for both parties (Novianto, A. S., & Hadiwidjojo, 2014). This role can be carried out well, among others, through the distribution of Islamic bank products fairly. Based on the general provisions regarding the products mentioned above, bank products that conduct business based on Islamic principles must in principle follow the provisions mentioned above, but in accordance with their character, namely based on Islamic, the products of Islamic principle banks are not the same as conventional bank products, because bank products based on Islamic must have several principles, including the following (Jaya, 2020):

1. It is not allowed to enjoy bank interest, this applies to both the bank and the customer because this is a basic principle for Islamic banks, and the profit is the result in a good business carried out by the bank's financing customers.
2. Adjusted to the principles of Islamic Law, this is because the background of the birth of Islamic banks is to avoid the usury system.

Based on the basic principles mentioned above, it is generally implemented by Islamic banks through product categories which are divided into two parts, namely: (Sudarsono, 2015) Withdrawal of funds by the Bank and Distribution of Funds by the Bank. One of the Islamic banking financing is *musyarakah*, which is also known as *syirkah* in fiqh science terms. Etymologically *musyarakat* or partnership is *al-ikhthilath* or mixing (Tamiang, 2023).

In terminology, the scholars of fiqh differ in opinion in defining *musyarakah*, as described by Al-Zuhaili, that: (Al-Zuhaili, 1997)

- 1) The Maalikis defined *musyarakah* as partnership, which is permission to use the property of two people jointly, i.e. both of them give permission to the other to use the property of the other, but each of them has the right to use it.

- 2) The Hanbalis are of the opinion that *syirkah* is the right (authority) or management of property (*tasharuf*).
- 3) The Shafi'is define *syirkah* as the determination of rights in something owned by two or more people in a way that is *masyhur* (known).
- 4) The Hanafis defined *syirkah* as an expression of a transaction (contract) between two people who share in the principal and profit.

In general, fiqh scholars divide *musyarakah/syirkah* into two parts, namely *Syirkah Amlak* and *Syirkah Uqud* (Pangestika, 2019).

1) *Syirkah Amlak* (ownership partnership)

That is a forced partnership in positive law, besides that it also contains the notion of co-ownership and its existence arises when two or more people coincidentally obtain joint ownership of an asset without having made an official partnership agreement. *Syirkah Amlak* is essentially a common ownership of property, (Latif, 2020).

2) *Syirkah 'uqud* (contractual partnership)

That is a transaction or contract made by two or more people to join in an asset management and the results are profits. This *Syirkah Uqud* (*contractual partnership*) is considered a true partnership, because the parties concerned voluntarily wish to make a joint investment agreement and share profits and risks (Saripudin, 2016). Based on the type of *syirkah uqud* is divided into 4, namely:

- a. *Syirkah Al-mufawwadhah*, this *Syirkah* requires the partners to be adults, the funds from each partner invested in the partnership business must be equal in amount and also each party has full authority to act.
- b. *Syirkah Al-inan*, which is a partnership agreement in which two or more partners provide capital either in the form of money or in kind or in the form of labor or in the form of a combination of all or part of these forms of investment.
- c. *Syirkah Al-abdan*, in which the partners contribute their expertise and energy to manage the business without spending capital. This means that in this kind of *syirkah* the focus is on requiring the parties who become business partners to have expertise in accordance with the work that will be needed in the management of property, while capital may be sought together.
- d. *Syirkah Al-Wujuh*, where business partners contribute their goodwill, credit worthiness, and relationships (contracts) to promote the business without contributing capital.

Based on several types of *Syirkah uqud* as mentioned above, the scholars have different opinions in dividing the types of *Syirkah uqud*, namely (Sabiq, 1987):

- a) The Hambaliyah scholars divided it into types, namely in addition to the four types above, also adding it to the *Mudharabah Syirkah*.
- b) The Hanafis divide it into three types, namely *Syirkah Amwal*, *Syirkah A'mal* and *Syirkah Wujud*.

c) Egyptian scholars who are mostly Shafi'I and Maliki scholars divide it into four parts, namely *Syirkah Al-mufawwadhah*, *Syirkah Al-inan*, *Syirkah Al-abdan*, *Syirkah Al-Wujuh*.

Musyarakah financing in Islamic banks is basically classified as a type of *syirkah uqud*, this is because the partnership cooperation between the Islamic bank and business partners is made intentionally and begins with a cooperation agreement as outlined in *musyarakah* financing. The practice of *musyarakah* financing carried out by Islamic banks in Indonesia is generally not fully in accordance with the concept of *musyarakah*, this is due to the limitations of Islamic banks on their human resources, so in this *musyarakah* financing the bank is not directly involved in the management of capital, but only limited to supervising the management of the assets. The parties to this *musyarakah* consist of two or more business partners who contribute capital to finance an investment, in this case a bank that provides *musyarakah* facilities to customers participates in a new project or in an existing company by purchasing equity shares or incorporating a certain amount of funds into the company.

Specifically, the form of contribution from the cooperating parties in *musyarakah* financing can be in the form of funds, trading assets, entrepreneurship, skills, property, equipment or intangible assets such as patents or goodwill, credit worthiness and other items that can be valued in money. The things that may and may not be done by the parties in the practice of *musyarakah* financing by *Islamic* banking will be contained in a contract agreement that will first be made by the bank and the business partner, this is an agreement that will be a reference for both parties if one day unexpected things happen.

3.2 Legal Basis of Islamic Banks

The legality of the operation of a bank is one of the most important factors, in general there are several provisions that form the legal basis for the operation of Islamic banks, namely as follows:

3.2.1 Legal Basis in the form of Banking Regulations

Banking regulations for banks that conduct business based on Islamic principles only existed after the birth of Law No.7 of 1992 concerning banking, although it was not clearly stated in the wording of the law regarding banks based on Islamic principles, but after the birth of Law No.21 of 2008 concerning Islamic Banking the definition of Islamic Banks became clear, this is as stipulated in Article 1 paragraph 7 which states that Islamic Principles are used as the basis for Islamic banks in carrying out their business activities, which are further categorized into 2 types, namely Islamic Commercial Banks and Islamic People's Financing Banks. In relation to *musyarakah* financing, it is regulated in Law no.21 of 2008 Article 1 paragraph 23, Article 19 paragraph 1 point C and Article 21 point b.

3.2.2 Legal Basis in the form of Agreement

1. Agreements in General

Basically, Islamic bank financing agreements also apply the provisions of the law of agreements as contained in book III of the Civil Code, based on Article 1320 of the Civil Code, which states that in order for a valid agreement to occur, it is necessary to fulfill four conditions, namely (Anshori, 2018):

- 1) Their agreement binds them
- 2) Capacity to enter into an agreement
- 3) A specific subject matter
- 4) A cause that is not prohibited

The object of the agreement does not conflict with public order and decency. This is as stated in Article 1337 of the Civil Code, which expressly states that: "a cause is prohibited, if the cause is prohibited by law or if the cause is contrary to decency or public order". Debtors who default will be subject to the following sanctions (Nst & Rokan, 2022):

- 1) Paying the loss suffered by the creditor or briefly called compensation;
- 2) Cancellation of the agreement or also called breaking the agreement;
- 3) Risk transfer;
- 4) Paying court costs if the case is litigated in front of the court.

The calculation of compensation is calculated from the time of negligence, this is as stipulated in Article 1237 of the Civil Code which states that: "In an obligation to deliver certain goods, the goods become the creditor's responsibility since the obligation is born, if the debtor fails to deliver the goods concerned, then the goods since the obligation is made, become his responsibility". Types of compensation according to article 1246 of the Civil Code:

- 1) Losses suffered by creditors
- 2) The benefits that will accrue if the agreement is fulfilled;
- 3) Interest compensation (Article 1248 of the Civil Code), Injury Damage (compensation) that can be claimed must be detailed in the form of *Kosten, Schaden en Interesten*.

2. Financing Agreement in Islamic Banking

There are two terms for agreements in the concept of Islamic, the first is called the term *akad (Al-aqdu)* which means an agreement and agreement, as Allah SWT says in *Surah Al-maidah* verse 1, which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

"O you who believe, fulfill your promises."

Al-ahdu which means message, consummation of a promise or agreement," (Wahbah az-Zuhaily, 1997).

The term *'ahdu* in the Quran refers to a person's statement to do something or not to do something and there is no connection with other people, so that the agreement made by the person does not require the approval of others, while the word *aqdu* refers to the occurrence of two or more agreements, namely if someone makes a promise and then there is another person who agrees to the promise, an engagement occurs therefore if there are two promises (*'ahdu*) from two people who have a relationship between one another then between the two people can be said to have occurred an engagement (*aqad*).

A contract will be valid if the following elements of the contract (*rukun 'aqad*) are fulfilled (Suhendi, 2002):

- 1) *Aqid* is the person who makes a contract
- 2) *Ma'qud Alaih* is the object that is dealt with.
- 3) *Maudhu Al-aqd* is the purpose or main purpose of entering into a contract.
- 4) *Shighat al-aqd* is *ijab qabul*, *ijab* is the beginning of the explanation that comes out of one of the contracting parties as a description of his will in making a contract, while *qabul* is the word that the *ijab* comes out of the right to contract as well, which is said after.

3.2 Legal Protection of Banks that operate businesses based on Islamic principles in Musyarakah Financing in the event of Business Partner Defaults

Banks in carrying out their function as financial institutions, can collect and distribute funds from the public, both of these activities will occur if legal actions have first been carried out by the parties which will then lead to legal relationships accompanied by legal consequences (Winarno & Edi, 2017). Basically, there are several parties in *musyarakah* financing, namely the first party is the Islamic bank and the second party is the business partner, besides that there is also a third party who is not directly involved in the financing, namely the customer who saves funds (Pangestika, 2019). As described in the previous chapter, it can be seen that from the beginning of the application for *musyarakah* financing by the business partner, it was submitted directly to the Islamic bank so that the business partner did not meet directly with the customer who saved funds as a third party.

The legal relationship in *musyarakah* financing occurs between two parties, namely the legal relationship between the first party, namely the Islamic bank which acts as *rabbul mal* and the second party, namely the business partner (*syarik*). This legal relationship indirectly places the position of the bank as a creditor party for business partners who enter into a financing agreement, namely the party entitled to the achievements of business partners, while the position of the business partner acts as a debtor, namely the party who must carry out the achievement (Latif, 2020). The mechanism used by Islamic banks in conducting *musyarakah* financing begins with raising funds in the form of deposits from the public/customers who save funds to be managed, then after the funds

are collected, they are managed by Islamic banks to be channeled in the form of providing financing for potential businesses, the financing will occur if a financing agreement is made first.

The consequence of this legal relationship, namely that legal protection must be provided, especially for *Islamic* banks from the possibility of default by business partners, this is intended so that in receiving rights and performing obligations will occur healthily and properly, so that no party will be harmed. In general, legal protection can be seen from two sides, namely (Adrianty, 2020):

- 1) Legal protection provided by the law
- 2) Legal protection based on agreement.

In general, the legal protection provided by law for Islamic banks in *musyarakah* financing is protected by the Banking Law, specifically Article 7 letter (c), which states that Article 7 letter c: "In addition to carrying out business activities as referred to in Article 6, commercial banks may also temporarily invest capital to overcome the consequences of credit failure or financing failure based on Islamic principles on the condition that they must withdraw their participation, by fulfilling the provisions stipulated by Bank Indonesia." Article 8 paragraph (1) "In providing credit or financing based on *Islamic* principles, commercial banks must have confidence based on in-depth analysis of the intention and ability and ability of the debtor customer to repay the debt or return the financing in accordance with the agreement." Article 1 point 12 "Financing based on Islamic principles is the provision of debt or bills that are equated with it based on an agreement or agreement between a bank and another party that requires the financed party to return the money / bill after a certain period of time with a ratio or profit sharing".

Legal protection for Islamic banks based on agreements can be seen from what matters have been regulated in the contract / agreement that must be implemented by the parties, especially in the form of implementing rights and obligations so that with the contract/agreement the interests of the parties, especially the Islamic bank, will be protected.

Based on the *musyarakah* contract/agreement, the Islamic bank as a creditor who provides funds for business partners has several rights and obligations that must be fulfilled, namely the rights that can be received by Islamic banks in the form of: first, *the* Islamic bank is entitled to receive achievements from business partners, in this case there are several achievements that will absolutely be accepted by the Islamic bank from business partners. Second, the Islamic bank has the right to oversee the course of the business managed by the customer, through monitoring business development reports every month. Obligations that must be carried out by Islamic banks in the form of, first, submitting a number of funds to be included in business development financing in

accordance with the agreement, second, implementing the contract / agreement that has been mutually agreed upon based on good faith.

The second party, namely the business partner who acts as a debtor, has rights and obligations that must be carried out, some of the rights of business partners in the *musyarakah* contract / agreement are: first, receiving a certain amount of capital contributed by the Islamic bank in accordance with the agreement, second, getting supervision in business management. The obligations that must be carried out by the first business partner carry out achievements in accordance with what has been agreed in the contract / agreement, Second, the business partner is obliged to manage business operations in accordance with the agreement, third, the business partner is obliged to carry out the contract / agreement that has been mutually agreed upon based on good faith.

3.3 Efforts of Banks that conduct business based on Islamic principles if there are indications of default by business partners in *Musyarakah* Financing

Based on the qualifications of default as mentioned above, it is specifically possible that there will be acts of default committed by business partners as debtors in the *musyarakah* financing agreement, which can include:

1. Return of financing capital is delayed without a justifiable reason.
2. The amount of the guarantee fund is not correct
3. Counterfeit or expired permit and/or license documents
4. Business Management is not in accordance with the Agreement
5. Collateral is partially or wholly seized by a judicial body

In order to reduce difficulties to a minimum, it is necessary to handle problematic loans / financing properly by Islamic banks, this is a preventive measure that must be taken by the bank. As specified in Bank Indonesia circular No.26/4 / BPPP, dated May 29, 1993, operationally handling the rescue of non-performing loans can be pursued in several ways, namely:

1. Rescheduling, which is a change in credit terms regarding the payment schedule of funds or the time period.
2. Reconditioning, which is a change in part or all of the credit terms that are not limited to changes in payment schedules, time periods, and or other requirements as long as it does not involve changes in the maximum credit balance.
3. Restructuring is a change in credit terms in the form of additional bank funds and / or conversion of all or part of the credit into participation in the company accompanied by rescheduling and / or re-requirements. This is based on Article 1 letter d of BI Board of Directors Decree no.31/150/KEP/DIR dated November 12, 1998 concerning credit restructuring.

These three methods in Islamic financing are known as addendum contracts, which are steps taken to renew the agreed contract, in this case the bank has been able to read an

indication of default by business partners because the business partners are unable to fulfill their obligations, especially in providing profit sharing ratios in the amount and time as agreed and are also deemed unable to return capital from Islamic banks while the due date has arrived, so rescheduling is carried out through an addendum contract.

Technically, the first step taken by the Islamic bank is to analyze business development reports and accompanied by an analysis of the obligations of business partners in submitting profit sharing, if there are indications of default, the Islamic bank will summon business partners to renew / addendum the contract. The things contained in it are a review of the agreed contract, especially the renewal of the agreement regarding the time of delivery of the profit sharing ratio and the due date for returning bank capital, and it is possible that the contract will be extended according to the ability of business partners.

The relationship with third parties, namely the depositors of funds in the event of default by business partners, basically does not affect directly, because third party funds along with the profit-sharing ratio of fund management must still be returned by the Islamic bank to third parties, but even so, it will still affect, especially it will appear in the amount of fluctuations in the profit-sharing ratio between the Islamic bank and third parties. Based on this, Islamic banks in relation to the collection of funds are responsible to depositors by providing fair and honest profit sharing, because the system used is a profit sharing system, the benefits that will be obtained by depositors will depend on the bank's income from the management of these funds, therefore if the results of management or bank income are getting bigger automatically the benefits that will be obtained by depositors in the form of profit sharing will also be greater, and vice versa if the bank's profit is small then the profit of depositors will be smaller.

4. Conclusion

Based on the results of the research that has been carried out, the following conclusions can be drawn: Legal protection for the parties in *musyarakah* financing in the event of default by business partners consists of: first, legal protection provided by law, namely protected by the Banking Law, especially Articles 1, 7 and 8. Second, legal protection based on the *musyarakah* contract/agreement, in the form of: First, if the business partner has been classified into the collectibility of bad debts, the bank can confiscate the collateral and then proceed with the auction. Second, submitting the dispute to the Islamic arbitration body or the court. The efforts of Islamic banks if there are indications of default by business partners in *musyarakah* financing are to carry out an addendum to the contract, which is a step taken to renew the agreed contract, and restructuring.

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