

MORTGAGE AUCTION AT BANK SYARIAH INDONESIA EX- LEGACY BANK BNI SYARIAH IN YOGYAKARTA

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ABSTRACT

This study analyzes the practice of mortgage auctions at Bank Syariah Indonesia, Ex-BNI Syariah Yogyakarta Branch for the period 2016-2019. The study used a normative-empirical approach with data collection carried out through observation, interviews, and documentation. The informants were selected by purposive sampling and consisted of bank employees who had duties related to mortgage auctions. The results showed that the auction of mortgage rights in its implementation was not in accordance with Law Number 21 of 2008 Article 55 which was confirmed by the Decision of the Constitutional Court Number 93/PUUX/2012. In the harmonization of the law on mortgage auctions, it is necessary to have support with an integral, effective, and relatively low-cost dispute resolution model. On the other hand, in realizing the legal harmonization of mortgage auctions, it is necessary to have a Fatwa from the MUI DSN which can be used as a reference for fulfilling sharia principles for Islamic banks.

Keywords: Mortgage right; Disputes; Sharia Banks; Maqāṣid Syari'ah.

ABSTRAK

Penelitian ini menganalisis praktek lelang hak tanggungan di Bank Syariah Indonesia, Ex-BNI Syari'ah Cabang Yogyakarta periode tahun 2016-2019. Penelitian menggunakan pendekatan normative-empiris dengan pengumpulan data dilakukan melalui observasi, wawancara dan dokumentasi. Informan dipilih secara purposive sampling dan terdiri dari pegawai bank yang memiliki tugas berkaitan dengan lelang hak tanggungan. Hasil penelitian menunjukkan bahwa lelang hak tanggungan dalam pelaksanaannya belum sesuai dengan Undang Undang Nomor 21 Tahun 2008 Pasal 55 yang dipertegas dengan Keputusan Mahkamah Konstitusi Nomor 93/PUUX/2012. Dalam harmonisasi hukum lelang hak tanggungan diperlukan adanya dukungan dengan model penyelesaian sengketa yang integral, efektif, dengan biaya yang relatif murah. Pada sisi lain dalam mewujudkan

harmonisasi hukum lelang hak tanggungan diperlukan adanya Fatwa dari DSN MUI yang dapat dijadikan acuan pemenuhan prinsip syariah bagi bank syariah.

Kata kunci: Hak Tanggungan; Sengketa; Bank Syariah; Maqāṣid Syari'ah.

INTRODUCTION

Banking is an institution that carries out three main functions: accepting deposits, lending money, and providing money lending services (Karim, 2010). Law Number 21 of 2008 concerning Islamic Banking makes the existence of Islamic banking in Indonesia possess clear legal protection in realizing legal certainty and fulfillment of sharia principles (Kholis, 2008). Customers need financing products from Islamic banks to improve welfare so Article 19 of the Sharia Banking Law stipulates that the collection of funds from customers, in the distribution of financing from Islamic banks to customers must not conflict with sharia principles (Anshori, 2007).

Affirmations related to the fulfillment of sharia principles in the operations of sharia banks are contained in the Decree of the Board of Directors of Bank Indonesia Number 32/34/Kep/Dir, dated May 12, 1999, in Chapter VI Article 28, emphasizing that sharia banks are required to apply sharia compliance in running their business (Mu'allim, 2004). In carrying out the distribution of financing from Islamic banks to customers with certificates as collateral as mentioned above, there are two contracts that follow, namely: (1). The financing contract, either in the form of a notarial contract or a financing contract made under the hand, or a notarial agreement is a principal agreement, (2). Mortgage binding contract which is occupied with a notarial Mortgage Granting Deed (APHT) and the issuance of Mortgage Certificate (SHT) by the National Land Agency (BPN) as an additional agreement (*accessoire*) of the contract or financing agreement. The legal position of the notarial Mortgage Granting Deed (APHT) as an additional agreement (*accessoire*) follows the main agreement in the form of a financing agreement.

As for the guarantees submitted by sharia bank customers to guarantee the return of financing as a "*second way out*" as regulated in Law Number 4 of 1996,

Article 4 concerning the object of mortgage rights is in the form of a certificate which is proof of land rights, namely (1). Certificate of Ownership (SHGB), (2). Right to Build Certificate (SHGB), (3). Cultivation Right Certificate (SHGU), (4). Right to use certificate (SHP) with binding mortgage (1996).

If there is a default from a sharia bank financing customer, the settlement by consensus or non-litigation does not produce results, guarantees that are bound with mortgages will be resolved through a mortgage auction through the State Assets and Auction Service Office (KPKNL) with legal protections, among others (1) Law Number 21 of 2008, Article 55 (2008), (2) Law Number 4 of 1996, concerning Mortgage right (1996), (3) Regulation of the Ministry of Finance (PMK) Number 27/PMK.06/2016, concerning instructions for auction implementation (2016), (4) Law Number 5 of 1960, concerning basic agrarian regulations (1960), dan (5) Government Regulation no. 24 of 1997, concerning land registration (1997).

Online media data in May 2020 shows that the settlement of sharia bank financing disputes in Indonesia through mortgage auctions is carried out through the State Property and Auction Service Office (KPKNL). A number of Islamic banks that implement, among others, are Bank BNI Syariah, Bank Muamalat, Bank BRI Syariah, Bank Syariah Mandiri, BJB Syariah, Bank BTN Syariah, Bank Mega Syariah and several BPR Syariah (Table 1). These Islamic banks have conducted direct mortgage auctions without going through the Religious Courts first or under the legal protection of Law Number 21 of 2008 Article 55.

Law Number 21 of 2008, concerning Islamic banking, Article 55, Paragraphs 1 and 3 states that dispute resolution is carried out through the Religious Courts and must not conflict with sharia principles. Article 55, paragraph 2 has been confirmed by the Decision of the Constitutional Court (MK) Number 93/PUU-X/2012 of 2012, that the settlement of litigation financing disputes is carried out through the Religious Courts (2012).

Tabel 1. Sharia Bank Mortgage Auction List

| No. | Name of Sharia Banks | Number of Auction Announcements |
|--------------|----------------------|---------------------------------|
| 1 | Bank BNI Syariah | 11 |
| 2 | Bank BRI Syariah | 4 |
| 3 | Bank Syariah Mandiri | 10 |
| 4 | Bank Muallamat | 4 |
| 5 | Bank BTN Syariah | 1 |
| 6 | BPR Syariah | 4 |
| 7 | BJB Syariah | 1 |
| Total Amount | | 35 |

Source: Directorate General of State Assets, Ministry of Finance of the Republic of Indonesia (2020).

In line with Law Number 3 of 2006, concerning the Religious Courts, Article 49, the Religious Courts have the duty and authority to examine, decide, and resolve sharia economic cases at the first level among people who are Muslims (2006). So that if there is a default by a financing customer at a sharia bank and a consensus or non-litigation settlement cannot be reached, then the dispute resolution is carried out through the Religious Courts. This is in accordance with Law Number 21 of 2008 which was confirmed by the Decision of the Constitutional Court (MK) Number 93/PUU-X/2012 (2012).

As for several other laws and regulations that have relevance to the settlement of sharia bank disputes through the Religious Courts, among others: (1) PERMA-RI No. 14 of 2016, concerning procedures for resolving sharia economic dispute cases (2016b), (2) PBI No. 6/24/PBI/2004, concerning commercial banks conducting business activities based on sharia principles (2004), (3) Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning banking (1998), and (

4) Regulation of the Supreme Court Number 5 of 2016, concerning the certification of sharia judges (2016a).

Based on the relevant laws and regulations above which emphasize that in implementing the settlement of sharia bank financing disputes through mortgage auctions, there must be harmonization between laws and regulations related to mortgage auctions, including Law Number 4 of 1996, concerning mortgage rights and laws and regulations related to sharia banking with Law Number 21 of 2008, especially Article 55, which emphasizes that dispute resolution in sharia banks is carried out through the Religious Courts accompanied by the fulfillment of sharia principles (sharia compliance), in order to achieve legal compliance, fulfillment of sharia principles, fulfillment of legal principles between other principles of justice and equality before the law.

Law No. 21/2008, Article 55, Paragraph (1) states "*Settlement of Sharia Banking disputes is carried out by a court within the Religious Courts*", while Article (3) states "*Dispute settlement as referred to in paragraph (2) may not conflict with Sharia Principles,*" (2008). The decision of Constitutional Court Number 93/PUU-X/2012 also confirms that dispute resolution based on a litigation contract is the authority of the Religious Courts (2012). Based on the above background, this study intends to analyze how Islamic banks carry out mortgage auctions without being preceded by a Religious Court decision as regulated in Law Number 21 of 2008, Article 55, and other related laws and regulations.

PREVIOUS STUDY

Effective sharia economic dispute resolution (win-win solution) is a necessity in every business activity. The more developed the sharia economy and business activities, the more likely the number of disputes will increase as well as the more diverse the patterns and types. The Religious Courts as litigation institutions that have absolute authority in resolving sharia economic disputes are a concern considering that so far it is known as litigation institution that only resolves disputes in the field of family law. The role of the Religious Courts is needed as a litigation institution that

has absolute authority in resolving sharia economic disputes (Supriyatni B & Fariana, 2017).

Another study analyzed the response of Religious Court judges in Gorontalo to the implementation of Law Number 3 of 2006 concerning Religious Courts in relation to the settlement of sharia economic disputes and the readiness of judges to resolve sharia economic disputes (Muhibbudin & Darwis, 2014). The Gorontalo Religious Court has increased the competence of judges in resolving cases, especially those concerning sharia economic disputes. It is known that the readiness of Religious Court judges on their competence in resolving sharia economic disputes is very much needed, especially sharia bank financing disputes through mortgage auctions (Akbar, 2015; Rahmawati, 2018).

Other research shows that the implementation of financing dispute resolution through non-litigation of Bank Syariah Mandiri in Surakarta is in accordance with the provisions of Article 55 of Law Number 21 of 2008. Settlement of Islamic banking disputes can be by litigation and non-litigation methods. Litigation options are carried out through the Religious Courts, while non-litigation dispute resolution through deliberation, banking mediation, through the National Sharia Arbitration Board (BASYARNAS), or through other alternative dispute resolutions (Tresnawati, 2015). In Islamic banks, if a non-litigation settlement or consensus deliberation is not reached, then the dispute resolution is carried out by litigation through the Religious Courts (Fatkhurohman, 2019; Rahman, 2014).

There are a number of factors that cause sharia economic disputes are still often filed in the District Court, namely (1) related to contract clauses in terms of dispute resolution, (2) customers, (3) the competence of Religious Court judges and (4) the attitude of the District Court itself (Zulhefni, 2017). This requires the awareness of all parties that the settlement of sharia economic disputes is the absolute competence of the Religious Courts (Mukarromah & Wage, 2019).

Settlement of Sharia Banking disputes after the decision of the Constitutional Court No. 93/PUU-X/2012, covering the settlement of litigation through the Religious Courts and through non-litigation namely deliberation, banking mediation,

and BASYARNAS. In the settlement of a financing dispute, if the object of the dispute is a *muḍarabah* financing contract, the burden of the disputed costs that arise is the responsibility of the customer and the Islamic bank itself (Taher, 2015). The Religious Courts as an institution that has absolute authority to handle sharia banking disputes in the civil sector and include disputes that occur between Islamic banks and non-Islamic parties in order to enforce civil law and compliance with Islamic sharia according to the Koran and Hadith (Hariyanto, 2016). Thus, the settlement of litigation disputes at Islamic banks outside the Religious Courts is considered not to meet legal compliance and fulfillment of sharia principles (Rasyid & Putri, 2019).

Settlement of Sharia banking disputes through the Religious Courts is recognized and regulated in Article 49 of Law Number 3 of 2006 concerning Religious Courts in conjunction with Article 55 of Law Number 21 of 2008 concerning Sharia Banking. Some of the advantages of resolving disputes in sharia banking through litigation through the Religious Courts are due to having human resources who already understand sharia issues so as to facilitate dispute resolution (Fatahullah, 2014). With the availability of judges who have certification as sharia economic judges, dispute resolution can meet legal compliance and fulfillment of sharia principles (Huda, 2018).

Settlement of sharia economic litigation disputes should be carried out by courts within the Religious Courts and must not conflict with sharia principles. Sharia Arbitration Institution is a body chosen by the disputing parties to give a decision regarding certain disputes, namely disputes in the field of trade and rights which according to laws and regulations are fully controlled by the disputing parties (Hernawan & Abdurohman, 2022; Umam, 2016).

RESEARCH METHOD

This study uses a qualitative research methodology by focusing on the general principles that underlie the manifestation of symptom units that exist in human life, or patterns that are analyzed with objective theory to obtain an overview of the prevailing patterns (Ashshofa, 2010). This qualitative research was conducted in the

field of Islamic law in responding to legal research problems or legal events that are currently happening related to legal harmonization in the settlement of sharia bank financing disputes through mortgage auctions between Law Number 21 of 2008, Article 55, and other laws and regulations.

This research can be categorized as Islamic law research with a normative-empirical namely legal research regarding the enforcement or implementation of normative legal provisions (codification, laws, or contracts) *in action* on certain legal events that occur in society (Muhammad, 2004). The research was carried out at the Bank Syariah Indonesia, Ex-BNI Syariah Yogyakarta with the consideration that (1) Bank Syariah Indonesia, Ex-BNI Syariah is one of the Islamic banks in Indonesia that still implements a dispute resolution mechanism through mortgage auctions, (2) Bank Syariah Indonesia Ex-BNI Syariah. BNI Syariah Yogyakarta is the first Branch Office which is the embryo of the establishment of Bank BNI Syariah in Indonesia, and (3) Bank Syariah Indonesia Ex-Bank BNI Syariah Yogyakarta is still using the dispute resolution mechanism by auctioning mortgage rights through the State Assets Service Office and Auction (KPKNL).

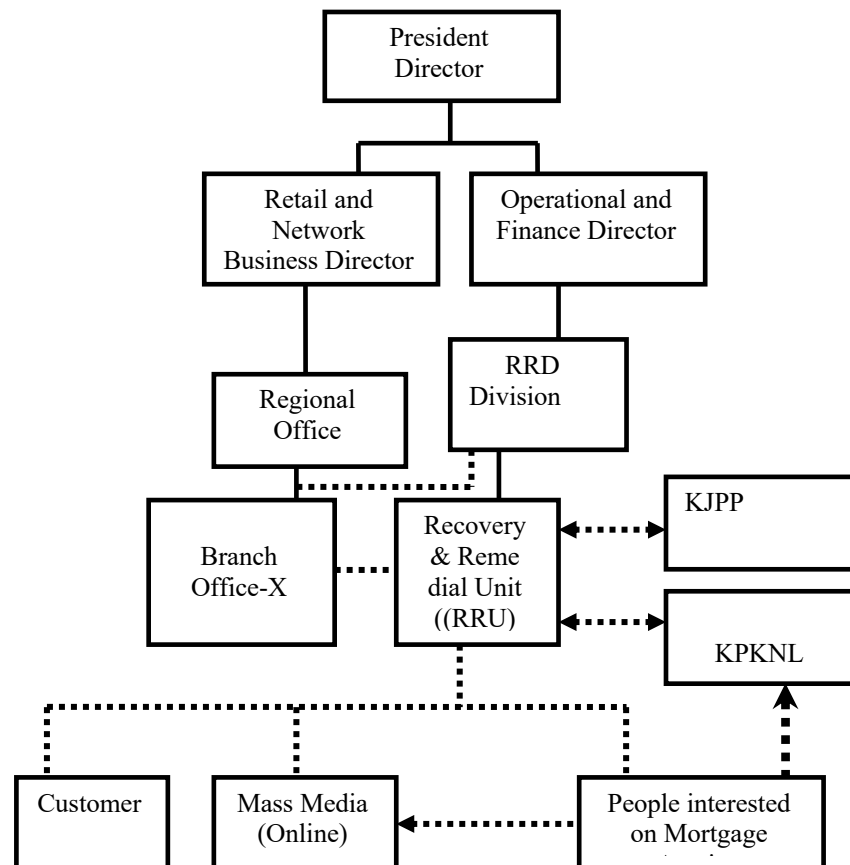
Research informants in this study were employees or management of Bank Syariah Indonesia Ex-BNI Syariah Yogyakarta, from units or sections related to financing dispute resolution, financing contracts, and legislation related to this research. The technique for determining the informants in this study used a purposive sampling technique, namely the sampling technique was based on a specific purpose (Sugiyono, 2013). Data collection methods include observation, interviews, and documentation. The research analysis is carried out by means of data reduction, data presentation, and data analysis or verification so that it becomes a picture of success in sequence from analytical activities that follow one another as part of research activities in the field (Miles dkk., 2014).

RESULT AND DISCUSSION

Mortgage Auction in BNI Syariah Yogyakarta

The auction at the State Assets and Auction Service Office (KPKNL) is carried out in the following stages: (1). Billing subpoena to customers, (2). Independent appraisal for the mortgage auction process, (3). Internal proposal regarding the auction limit value in the mortgage auction process, (4). Filing, (5). Mortgage auction registration, (6). Determination of the auction schedule (7). Announcement of auction in mass media or online, (8). Mortgage auction process, (9). Deposit guarantee bidders, (10). The online mortgage auction process, (11). Determination of winner, (12) Payment and settlement of auction value at the State Property and Auction Service Office (KPKNL), (13). Issuance of Minutes of Auction, (14). Transfer of auction or payment of auction results from the State Assets and Auction Service Office or KPKNL to Bank BNI Syariah, (15). Submission of collateral documents to the winning bidder (Z. Faried, komunikasi pribadi, 9 September 2020). Figure 1 shows the flow of the auction of mortgage rights through the State Property and Auction Service Office or KPKNL.

Figure 1. Steps of Bank BNI Syariah Yogyakarta Mortgage Auction



Source: BSI Ex-BNI Syariah Yogyakarta, 2020.

The settlement of financing disputes at Bank BNI Syariah through mortgage auctions at the State Assets Service Office and Auctions are as follows: (Z. Faried, komunikasi pribadi, 9 September 2020):

- a. Murabahah financing contract number YGS/2013/ 00023/K, Guarantee Certificate of ownership (SHM) Number 07212/ Muja Muju, Deed of Granting Mortgage Number 37/2013, Mortgage Certificate (SHT) Number 774/2013, Auction Schedule Number S-1938/ WKN.09/KNL.06/2018.
- b. Murabahah financing contract number YGS/2013/00042/K, Guarantee Certificate of Ownership (SHM) Number 2520/Sinduadi, Deed of Granting Mortgage Number 37/2013, Mortgage Certificate (SHT) Number 3194/2013, Minutes of Auction KPKNL Number 271 /2016.
- c. Murabahah financing contract number 064/MRB/8010280001/XI/15, Guarantee of Property Rights Certificate (SHM) Number 3129/Trimulyo, Deed of Granting Mortgage Number 64/2016, Mortgage Certificate (SHT) Number 3180/2016, Announcement of the Two Auctions Mortgage Execution, September 29, 2017.
- d. Murabahah financing contract number YGS/2012/00192/K, Guarantee Certificate of Ownership (SHM) Number 1874/Kembang, 1449/Kembang, Deed of Granting Mortgage Number 95/2013, 96/2013, Certificate of Mortgage (SHT) Number 898/ 2013, Bank BNI Syariah Yogyakarta Letter, Second Announcement of Mortgage Execution Auction, September 29, 2017.
- e. Murabahah financing agreement Number YGS/131/MRB80180001/XII/17.a, Guarantee Certificate of Ownership (SHM) Number 11443/Argomulyo, Deed of Granting Mortgage Number 315/2018, Certificate of Mortgage (SHT) Number 03265/2018, Bank Letter BNI Syariah Yogyakarta, Second Announcement of Mortgage Execution Auction, dated, 29 September 2017.
- f. Musharakah financing contract number (2) YGS/002/2012/MSY-PLAFOND, Guarantee of property rights certificate (SHM) Number 2714/Bendosari and 3093/Bendosari, Deed of Granting Mortgage Number 235/HT/BDSR/V/2012 and 093/ 2013, Mortgage Certificate (SHT) Number 3486/2012 and 01778/2013, Bank

BNI Syariah Yogyakarta Letter, Second Announcement of Mortgage Execution Auction, dated June 9, 2016.

- g. Murabahah financing contract number YGS.518.2005.2005, Guarantee certificate of ownership (SHM) Number 944/Gondang, Deed of Granting Mortgage Number 093/2013, Mortgage Certificate (SHT) Number 02368/2005, Bank BNI Syariah Yogyakarta Letter, First Announcement Mortgage Execution Auction, dated, March 14, 2016.

Seven Financing contracts mentioned above are non-performing financing contracts carried out by dispute resolution through an auction of mortgage rights at Bank BNI Syariah Yogyakarta without a prior decision from the Religious Courts as some other Islamic banks or conventional banks while in Law Number 21 of 2008, Article 55, which is confirmed by the Decision of the Constitutional Court Number 93/PUU X/2012 which mandates that dispute resolution in Islamic banks be carried out through the Religious Courts so that the mortgage auction is carried out based on the decision of the Religious Courts so that in the mortgage auction process above there is disharmony between the financing contract, the implementation of the auction. mortgage rights, laws, and regulations related to Islamic banks, laws, and regulations related to mortgage auctions.

The Bank's Right to Terminate the Financing Period

The financing contract states that the bank's right to terminate the financing period if the customer defaults are contained in Article 13 Paragraph (1) (M. A. J. Wibowo, komunikasi pribadi, 15 September 2020). “.....*then the bank may end the term of financing by waiving the provisions of Articles 1266 and 1267 of the Civil Code (KUHAP) so that the customer is obliged to pay off immediately and at once all his debts.....*”, (2). *it turns out that after the end of the financing period for any reason and according to the bank's considerations, the customer does not pay off his debt based on this contract, the Bank has the right to take legal action.* Thus, if the customer defaults before and after the due date, the bank can take the necessary legal action.

Events of Breach of Contract or Default

The financing contract also mentions a clause for actions that can be categorized as a breach of contract or default (M. A. J. Wibowo, komunikasi pribadi, 15 September 2020). The results of the review of the financing contract of Article 14 Paragraph (1) show that the acts of breach of contract or default include: (1). The customer does not fulfill the obligations stipulated in the contract, (2). The customer does not pay off the financing that has matured, (3). The wealth of the customer is transferred to another party, (4). The customer commits an act, which can threaten the continuity of financing payments., (5). The customer is declared no longer entitled to control his assets according to the laws and regulations, bankrupt, or liquidated based on a court decision, (6). There are civil lawsuits or criminal charges that may affect the ability to repay the financing, (7). The existence of debt obligations, and payments between customers and other parties.

Article (14) Paragraph (2) of the financing contract also states that as a result of an event of default or default. In the event of a default, the bank can take unilateral actions in the form of (1) Rescuing and settling financing, (2). Ending the financing period. That the mortgage auction is carried out as a result of the customer defaulting as a unilateral action to save financing as a form of financing dispute resolution which is carried out unilaterally by the bank so that it does not reflect legal certainty and justice.

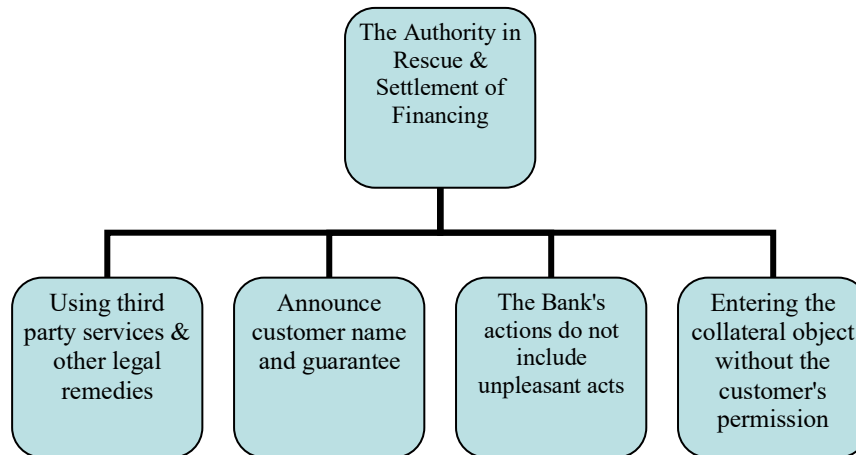
The Authority of The Bank in The Context of Saving and Settling The Financing

From the results of the interview with Zamroni Faried regarding the bank's authority in the context of saving and settling financing as mutually agreed upon between the bank and the customer as outlined in the financing contract due to an act of breach of contract or default of the financing customer, which was preceded by a settlement process by family deliberation or non-litigation, collection either by billing visits to customers, by telephone or electronic media, through invoices, through subpoena letters from internal BNI Syariah and subpoenas from lawyers partnering with BNI Syariah up to three times to customers to settle their obligations (Z. Faried, komunikasi pribadi, 9 September 2020).

As for the authority of the bank in the context of saving and settling financing as mutually agreed upon between the bank and the customer as set forth in the Article 15 financing contract in the form of (1). Using the services of a third party, (2). Announce the name of the customer and the guarantee, (3). Banks can enter the object of collateral without requiring customer approval or permission, (4). That the customer has agreed to the actions taken by the bank, (5). The customer also allows the bank to take other legal actions. In non-litigation financing dispute resolution, if deliberation and consensus are not successful, it can be done through the National Sharia Arbitration Board (BASYARNAS), or litigation through the Religious Courts. Meanwhile, the mortgage auction is carried out based on the decision of the Religious Court.

After the merger of three Islamic banks in Indonesia, namely Bank BNI Syariah, Bank Syariah Mandiri, and Bank BRI Syariah on February 1, 2021, according to Wiryawan, the authority of banks in the context of rescuing and resolving non-performing financing as well as conducting mortgage auctions for customers of Bank Syariah Indonesia Ex Legacy of Bank BNI Syariah Yogyakarta Branch is implemented and adjusted to the provisions of Bank Syariah Indonesia through organizational units in Sharia Bank Area Office in Yogyakarta (Wiryawan, komunikasi pribadi, 31 Mei 2021). With the Islamic bank merger process, it is necessary to make adjustments related to the clauses in the financing contract in accordance with the authorities in resolving financing disputes, both non-litigation, and litigation. If no adjustments are made, there will be legal disharmony because the parties authorized in the contract have undergone changes, including in the settlement of financing disputes through mortgage auctions.

Figure 2. The Authority of the Bank in the Context of Rescue and Settlement of Financing



Source: BSI Ex-BNI Syariah Yogyakarta, 2020.

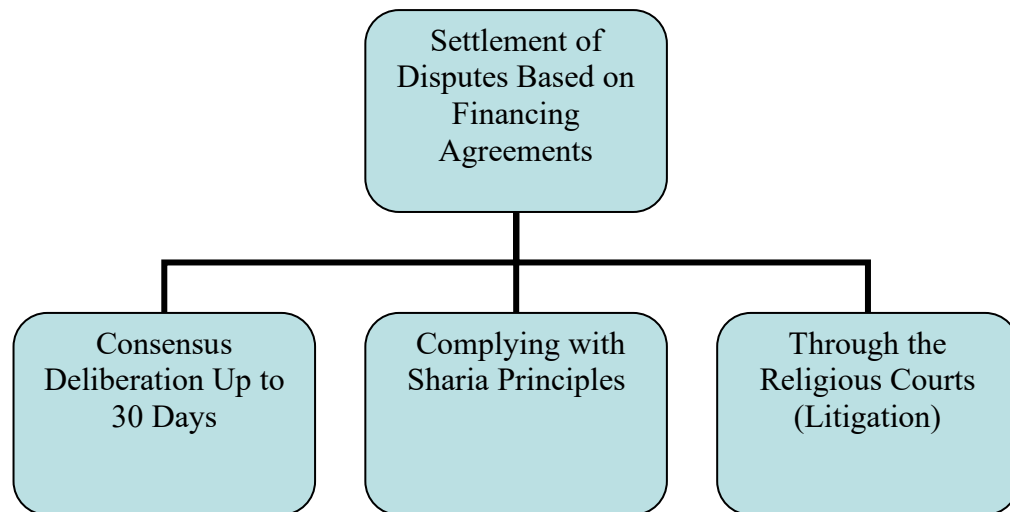
Dispute Settlement

The next interview with Zamroni Faried is related if there is a dispute between the bank and the customer caused by an event of default, including if according to the customer it is related to rescue and financing settlement actions as mutually agreed between the bank and the customer as outlined in the financing contract if not can be resolved by non-litigation, then both banks and customers can take litigation (Z. Faried, komunikasi pribadi, 9 September 2020).

From the review of the Article 18 contract relating to the settlement of disputes between the bank and the customer, it can be concluded as follows: (1). Whereas all disputes that arise based on the financing agreement between the bank and the customer are subject to sharia principles, (2). Furthermore, if within 30 (thirty) calendar days of efforts to make a settlement by deliberation and consensus, no agreement is reached, the dispute resolution is carried out through the Religious Courts. In the financing contract, the Article expressly states that the settlement of disputes is subject to sharia principles which are based on the Fatwa of the National Sharia Council. The National Sharia Council of the Indonesian Ulema Council (DSN MUI), is implemented through the Religious Courts. So dispute resolution through

mortgage auctions without the decision of the Religious Court is a disharmony of laws and regulations related to mortgage auctions allowing dispute resolution through mortgage auctions directly, in the financing contract requires dispute resolution through the Religious Courts as in Law Number 21 of 2008, Article 55, which is confirmed by the Decision of the Constitutional Court Number 93/PUU X/2012

Figure 3. Financing Dispute Settlement Based on the BNI Syariah Financing Agreement



Source: BSI Ex-BNI Syariah Yogyakarta, 2020.

Legal Domicile

Furthermore, from the results of a review of financing contracts related to legal domicile in Article 19, regarding the settlement of disputes between banks and customers, it can be concluded that both banks and customers agree to choose a general and permanent legal domicile at the Registrar's Office of the Religious Courts (Wiryawan, komunikasi pribadi, 31 Mei 2021). In the financing agreement, it is expressly related to the legal domicile of the parties to choose the legal domicile at the Registrar's Office of the Religious Courts where the agreement is executed.

Settlement of non-performing financing Disputes

Related to the settlement of non-performing financing disputes at BNI Syariah according to Ivon Haryanto's explanation, financing is grouped into 6 (six criteria),

namely: (1). Collectability 1 or EWS current is divided into Early Warning System Yes (EWS Yes) meaning that the financing does not have a current month installment savings balance and a blocking balance, (2). Collectability 2 (Special Attention), meaning that the financing has arrears in installments of 1–90 days, (3). Collectability 3 (Substandard), meaning that the financing has 90–180 arrears in installments, (3). Collectability 4 (Doubtful), meaning that the financing has arrears in installments of 181–270 days, (5). Collectability 5 (Loss), meaning that the financing has arrears in installments of 271 days until the arrears are completed or paid off, (3). Write Off (HB), is a sharia bank policy to move financing that is problematic (lost) that is difficult to handle from the bank's balance sheet to become compatible (I. Haryanto, komunikasi pribadi, 16 September 2020). Settlement of financing disputes through mortgage auctions is carried out on Collectability 3 (Substandard) having 90–180 arrears in installments.

Ivon Haryanto further explained that in the management or settlement of consumer financing obligations, Collectability 1 (Current), Early Warning System Yes (EWS Yes) and Early Warning System No (EWS No), and 2) Collectability (Special Attention) are carried out with intensive billing with notification letters, visits, telephone calls, SMS or reconditioning, rescheduling, restructuring, and selling collateral at the customer's initiative if in terms of the ability to pay or first way out (FWO) there is no longer available (I. Haryanto, komunikasi pribadi, 16 September 2020).

Furthermore, as explained by Zamroni Faried regarding customer management strategies with Collectability 3 (Substandard), Collectability 4 (Doubtful), and Collectability 5 (Loss) carried out with intensive billing with summons 1,2,3 either from Bank BNI Syariah or partner lawyer BNI Syariah work, visits, telephone calls, SMS or by reconditioning, rescheduling, restructuring or R3, and selling collateral at the customer's initiative if in terms of the ability to pay or first way out (FWO) there is no mortgage auction through the State Assets Service Office and Auction (KPKNL) (Z. Faried, komunikasi pribadi, 9 September 2020).

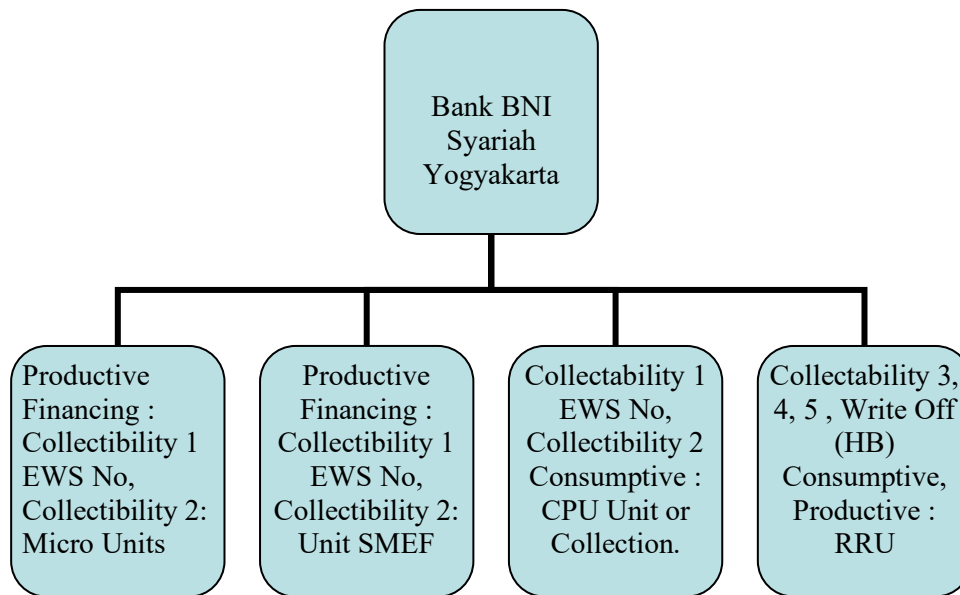
According to the explanation from Muh. Abu Jahid Wibowo for collectibility financing 3, 4, 5, Write Off or HB managed by Remedial Recovery Unit (RRU) (M. A. J. Wibowo, komunikasi pribadi, 15 September 2020). From the explanation above, it can be concluded in the following table:

Table 2. Settlement of Non-Performing Financing Disputes

| No | Financing | Collectibilities 1,2 | Collectibilities 3,4,5, HB |
|----|-------------|----------------------|----------------------------|
| 1 | Consumptive | CPU/ Collection | RRU |
| 2 | Productive | SMEF Unit | RRU |
| 3 | Micro | Micro Unit | RRU |

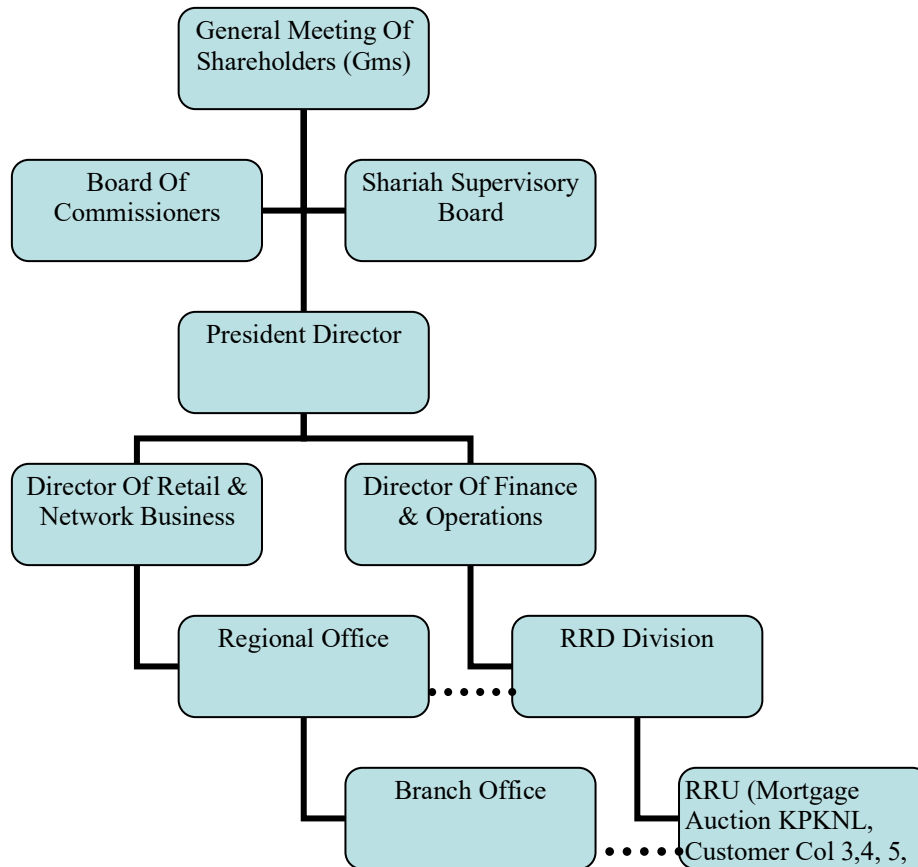
Source: BSI Ex-BNI Syariah Yogyakarta, 2020.

Figure 4. Management or Settlement of Financing Disputes or Problem Financing Bank BNI Syariah Yogyakarta



Source: BSI Ex-BNI Syariah Yogyakarta, 2020.

Figure 5. Structure of BNI Syariah Auction Mortgage at KPKNL



Source: BSI Ex-BNI Syariah Yogyakarta, 2020.

The merger of three Islamic banks in Indonesia, namely Bank BNI Syariah, Bank Syariah Mandiri, and Bank BRI Syariah on February 1, 2021, it is related to the authority of banks in the context of resolving non-performing financing based on contracts and the implementation of mortgage auctions at the KPKNL for Bank customers. Syariah Indonesia Ex Legacy Bank BNI Syariah Yogyakarta Branch will later be implemented and adjusted to the provisions of Bank Syariah Indonesia through organizational units in the Yogyakarta Sharia Bank Area Office (Wiryawan, komunikasi pribadi, 31 Mei 2021).

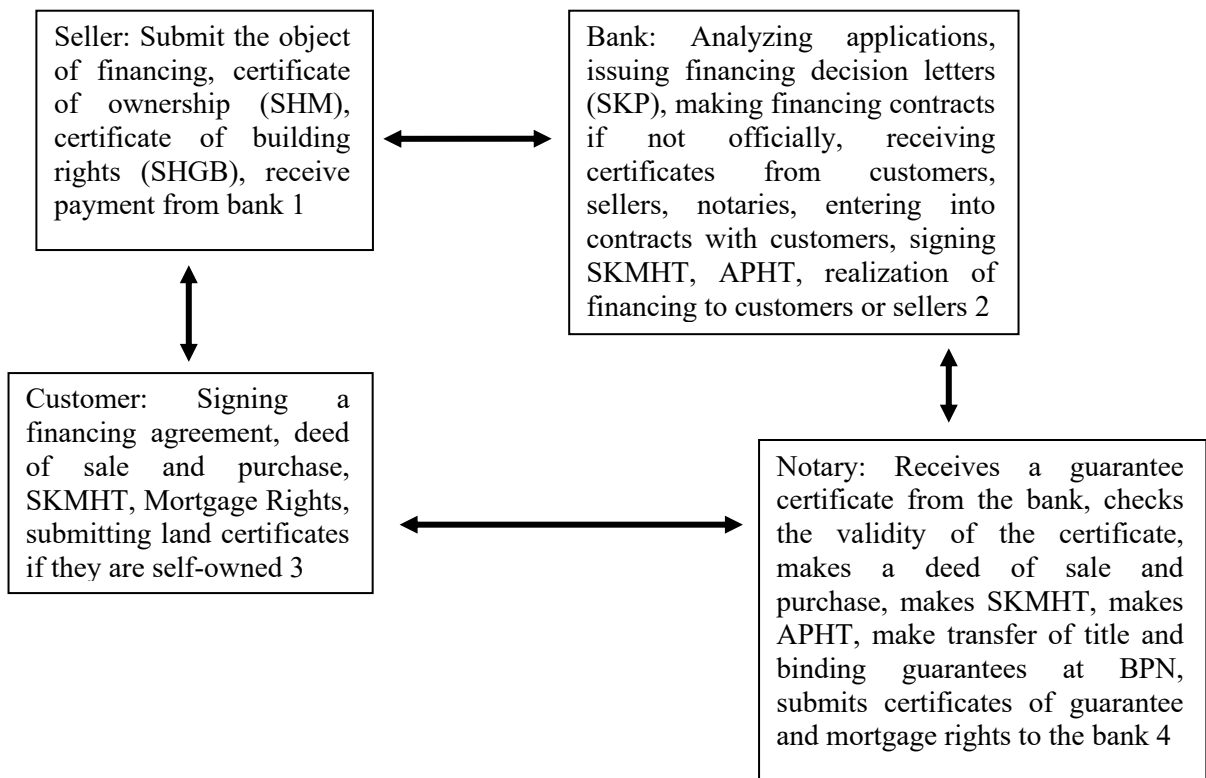
Power of Attorney Burdening The Right of Responsibility

Based on the explanation from Muh Abu Jahid Wibowo regarding the Power of Attorney Charging Mortgage Rights (SKMHT) as a power of attorney issued by a

notary or PPAT, in this case, BNI Syariah partners are given by the mortgage provider, namely the customer or the legal owner of the collateral to the creditor or bank providing financing as the recipient of the mortgage to impose the mortgage on the object of the mortgage. So SKMHT is a special power of attorney that gives creditors the power to impose mortgage rights (M. A. J. Wibowo, komunikasi pribadi, 15 September 2020).

The format of the Power of Attorney Charging Mortgage Right (SKMHT) from a partner notary, according to Muh Abu Jahid Wibowo, consists of (1). Notary Letterhead, (2). Number of Power of Attorney Charging Mortgage Rights (SKMHT) from a notary, (3). Comparison, (4). Granting special power of attorney from the customer to the bank to charge Mortgage Rights, (5). Witnesses for making Power of Attorney Charging Mortgage Rights (SKMHT), and (6). Signatures of parties, witnesses, notary (M. A. J. Wibowo, komunikasi pribadi, 15 September 2020). Furthermore, Muh Abu Jahid Wibowo provides an overview of the financing process up to the binding of mortgage rights at Bank BNI Syariah Yogyakarta as follows:

Figure 6. Mortgage Binding Process



Source: BSI Ex-BNI Syariah Yogyakarta, 2020.

CONCLUSION

Analysis of research data shows that there are several findings that can be used as input in the context of harmonization of the law on mortgage auctions to Law Number 21 of 2008, Article 55. The Islamic bank financing contract in Article 18 is in accordance with Law Number 21 of 2008, Article 55 so Islamic banks should carry out auctions based on the decisions of the Religious Courts. In the financing contract, it is necessary to include an article or agreement that clearly states dispute resolution through mortgage auctions at the State Property and Auction Service Office (KPKNL) based on the decision of the Religious Court. In Law Number 4 of 1996, among others Article 6, Article 11 Paragraph 2 Letters c and e, Article 18 Paragraph 1 Letter c, Article 18 Paragraph 3, Article 19 Paragraph 1 and 3, Article 22 Paragraph 6 and 7, in clauses in articles that are not yet in line with Law Number 21 of 2008, Article 55.

Islamic banks in the research object are still carrying out financing dispute resolutions through mortgage auctions without a Religious Court decision, for several reasons including lower costs, faster dispute resolution processes, a pattern that is implemented as conventional banks, there are no rejections or requirements from the Office of the State Assets and Auction Service (KPKNL). There is no fatwa from the National Sharia Council of the Indonesian Ulema Council (DSN MUI) relating to the settlement of disputes over Islamic bank financing through mortgage auctions.

The important suggestion that can be conveyed from this research is that in the financing contract as the main agreement, an article or agreement is needed that clearly states dispute resolution through mortgage auctions at the State Property and Auction Service Office (KPKNL) based on the decision of the Religious Court. There is a need for a breakthrough effort in the auction of mortgage rights through the Office of the State Assets and Auction Service (KPKNL) based on the decision of the Religious Courts which strives for time and cost efficiency.

To encourage harmonization of mortgage auctions, it is necessary to review Law Number 4 of 1996, including Article 6, Article 11 Paragraph 2 Letters c and e,

Article 18 Paragraph 1 Letter c, Article 18 Paragraph 3, Article 19 Paragraph 1 and 3, Article 22 Paragraphs 6 and 7, on clauses in articles that are not in line with Law Number 21 of 2008, Article 55. It is necessary to have a fatwa from the National Sharia Council of the Indonesian Ulema Council (DSN MUI) relating to the settlement of disputes over Islamic bank financing through mortgage auctions.

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