

**The Settlement of Al-Murabahah Non Performing Financing (NPF)
(Case Study in PT. Bank Syariah Mandiri, Tbk , Bandar Lampung Branch)**

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Islamic bank serves as a financial institution that collects funds from the community and redistributed the funds to the community based on sharia principles. Not only for Muslims, with the universality of islamic bank, non-Muslims can also apply for financing or access other bank service products from islamic bank. Al-Murabahah financing to debtor is one of the services of islamic bank. The meaning of Al-Murabahah itself is a financing by the bank to the debtor in a buying and selling transaction process, which if the debtor does not have the capital to transact directly with the seller of goods (suppliers), the debtor can make a sale and purchase process with the payment suspension (in installments) through the intermediary of islamic bank. The financing provided by such islamic bank certainly has the risks so that in its implementation, the bank must apply prudential principles. Nevertheless, Non Performing Financing (NPF) of islamic bank is still present even still in low percentages.

This research aims to obtain a complete, detailed and systematic description of the efforts handled by PT. Bank Syariah Mandiri, Tbk Branch of Bandar Lampung to Al-Murabahah Non Performing Financing (NPF). This research is normative law research by using descriptive method. The problem approach is done by applied process study and using secondary data. The data obtained than analyzed qualitatively.

The result of this research shows that the requirements of Al-Murabahah Financing Agreement in PT. Bank Syariah Mandiri, Tbk Branch of Bandar Lampung are differentiated based on productive (investment) and consumptive objectives. Procedures that must be passed by the prospective debtor is the application stage, the investigation stage, the financing analyses stage, the financing decision stage, the disbursement stage and the supervision stage (monitoring). The factors causing Al-Murabahah Non Performing Financing (NPF) itself consists of internal bank factors, internal debtor factors, and external factors. The efforts taken to handle the Non Performing Financing (NPF) by PT. Bank

Syariah Mandiri, Tbk Branch of Bandar Lampung are divided into 2 parts, which are the financing rescue and the financing completion. Both rescue effort and completion effort resulting the realization of the Al-Murabahah Non Performing Financing (NPF) settlement.

Keywords : financing, Al-Murabahah, Non Performing Financing (NPF), islamic bank, islamic banking

I. Introduction

A. Background

Islamic bank serves as a financial institution that collects funds from the community and redistributes to the community based on sharia principles where not only Muslims who can apply for financing or access other bank service products but also the general public is not limited to the tribe, race and religion. This is due to the nature of the universality of islamic banking itself.

Based on Bank Indonesia¹ dictionary, the definition of Islamic bank is a bank that uses the system and banking operations based on islamic sharia principles, which follow the rules of business and the business agreement guided by Al-Qur'an and Al-Hadith, and follow the rules of business and the business agreement that do not banned by Al-Qur'an and Al-Hadith. Therefore, islamic banks in their activities do not use the interest (*interest free banking system*) but impose rewards or profit sharing on its products and services including financing. In Islam itself, the system of interest or *usury* has been strictly forbidden by the Al-Qur'an and Al-Hadith, among others, in Surah Al-Baqarah verse 278 - 279 which forbids any additional types taken from financing as follows :

278. O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers.

279. And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged.

As with conventional bank loan, the financing provided by islamic bank has the risks so that in implementation, bank must apply the prudent banking principles in order to prevent Non Performing Financing (NPF). According to Bank Indonesia dictionary, Non Performing Financing, hereinafter referred to as NPF, means the financing that not accompanied by the

¹Central bank of the Republic of Indonesia as referred to in applicable law.

fulfillment of principal and / or interest payments as required in the financing agreement (*kredit tak lancar*).

Moreover, in relation to prudential principles, NPF of islamic banks is quite low. In fact, for the latest data based on Sharia Banking Statistics of the Financial Services Authority of Indonesia (OJK) at the end of 2016, NPF gross of islamic bank reached 4.42 percent, while NPF net is still maintained at the level of 2.17 percent. More details, PT. Bank Syariah Mandiri, Tbk even recorded an improved ratio of non-performing financing. NPF gross of PT. Bank Syariah Mandiri, Tbk shrank to 4.9 percent from a year earlier at 6.1 percent. The net NPF also improved to 3.1 percent from 4.1 percent.² The data also illustrates that in its implementation, although the bank has been using prudential principles and has conducted the financing analysis, but it still has to face considerable risks such as the financing with repayment that is not on time, NPF or even become impaved financing³.

The risk of non-performing financing also lies in the distribution of financing of PT. Bank Syariah Mandiri, Tbk Branch of Bandar Lampung, hereinafter referred to as BSM. Based on the data obtained, it can be seen that during the period of one year since it was inaugurated, from May 2003 to May 2004, BSM has distributed Al-Murabahah to 108 debtors of 207 total debtors' accounts. Of the 108 debtors of Al-Murabahah financing, there is 1 NPF financing. This means that there is only 0.93 percent of total Al-Murabahah financing channeled by BSM which became non-performing financing.

Although the percentage of NPF is still low, the corresponding islamic bank officers should constantly improve the supervision of ongoing financing so as to reduce the potential risks of non-performing financing in the future.

As a bank that provides islamic banking services in a group of companies a large bank that is PT. Bank Mandiri (Persero), Tbk, BSM certainly can be one of the role model for both islamic banking industry itself and also society in general so therefore researcher choose this company as the object of the research in case of its efforts in order to complete Al-Murabahah Non-Performing Financing (NPF) that exists.

² Tempo.Co, "Pembiayaan Bermasalah Bank Syariah Turun", <https://bisnis.tempo.co/read/854609/pembiayaan-bermasalah-bank-syariah-turun>, accessed 6 October 2017.

³ Impaved financing means the financing which the collectability or collectibility is classified as *doubtful* or *bad*. This financing is called as impaved financing because there is doubt in its return.

B. Research Questions

This research aims to unravel a complete, detailed and systematic description of the efforts handled by PT. Bank Syariah Mandiri, Tbk Branch of Bandar Lampung to complete Al-Murabahah Non Performing Financing (NPF) settlement.

C. Research Method

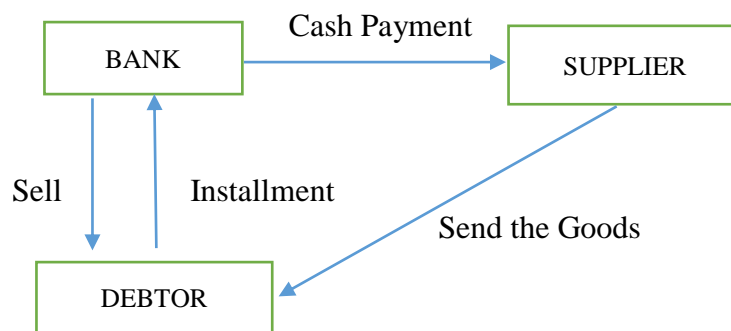
This research is using applied process study approach that is the study about applying normative law provision on legal event which still on progress or unfinished or not yet ended. The type of research applied is descriptive, that is to describe clearly and detail about the settlement of Al-Murabahah Non Performing Financing (NPF), whereas this type of research includes applied normative legal research that is legal research by reviewing normative legal provisions such as the legislation, the internal policies of BSM and *akad* or financing agreement and its implementation in day-to-day operations. The data required in this research is secondary data, while the primary data is only as a supporter. The secondary data is collected through library research that is sourced from relevant documents and references. The collection method for literature study is done by analyzing the law and reference rules related to the operationalization of islamic banking financing.

Furthermore, document studies are conducted by reading and studying the application of Al-Murabahah agreement or financing contract as well as financing guidelines or internal financing circular letter of BSM. Interviews are structured in the form of check lists and unstructured guidelines in an effort to support secondary data. Interviews were conducted on the Internal Audit and Compliance Officer (Pengawas Intern dan Kepatuhan), Financing Administration Officer (Petugas Administrasi Pembiayaan) and (prospective) debtor client of BSM Bandar Lampung Branch. After the data collected, the data is processed in the following ways : a.Data Identification, b.Data Selection, c.Data Reconstruction, d.Data Systemized, d.Data Analyses which conducted qualitatively, namely by describing the data in the form of sentences are arranged systematically and clearly to make easier in interpreting the data.

II. Results and Discussions

The definition of Al-Murabahah is a financing by the bank to the customer in a buying and selling process. If the customer does not have the cash (capital) to deal directly with the seller of goods (suppliers), then the customer can make a sale and purchase with the

payment suspension (in installments) through the Islamic bank as a provider of Al-Murabahah financing. See the picture below.



Al-Murabahah⁴ is an agreement of sale and purchase of an item in which the seller specifies the selling price consisting of the cost of goods and a certain level of profit on the goods, where the sale price is approved by the buyer. The characteristic is that the seller must inform the price of the product he sells and determine a profit level in addition.

1. Terms and Procedures of Al-Murabahah Financing Agreement

The distribution of Al-Murabahah financing by BSM to debtor refers to the BSM Financing Culture of Professional, Objective, Independent, Normative, and Responsibility (POINT). Basically the debtor must meet the requirements and standard procedures that have been made by BSM in SE BSM No. 4/012/PEM which contains :

a. Application Letter

This Al-Murabahah application letter outlines the identity of prospective debtor, the amount of financing ceiling (*cap*), the general description of the business and the future business plan and the source of the financing return.

b. Legality

Legality requirements consist of documents that provide information on the legality of the business concerned, evidence of employment information, as well as proof of the collateral ownership.

c. Financial Statements

The financial statements of prospective debtors are informed, among others, through the balance sheet and profit and salary slips.

⁴ Institut Bankir Indonesia, 2001.

- d. The legality requirements and the financial statements are included as an attachment of the Al-Murabahah financing proposal.

The requirements to apply for Al-Murabahah financing are divided into two, which are for consumptive and for productive (investment) purposes. The requirements to be met by prospective debtor can be seen more clearly in the following tables.

a) Consumptive Financing

Entrepreneurship	Worker
<ol style="list-style-type: none"> 1. Photocopy of identity card (husband and wife), family card, excerpt of marriage certificate or certificate of marriage. 2. Photocopy of business legality. 3. Financial statements of the last 2 years. 4. Business plan for 12 months to come. 5. Photocopy of data financing object. 	<ol style="list-style-type: none"> 1. Photocopy of identity card (husband and wife), family card, excerpt of marriage certificate or certificate of marriage. 2. Salary slips of the last 2 months. 3. The last employment appointment letter. 4. Photocopy of bank accounts for the last 3 months. 5. Photocopy of data financing object.

b. Productive (Investment) Financing

Business Entity	Individual
<ol style="list-style-type: none"> 1. Photocopy of deed establishment in accordance with the prevailing laws. 2. Photocopy of business legality according to the type of business field. 3. Photocopy of identity of the board. 4. The financial report of the last 2 years and or has been audited for more than 2.5 billion financing. 5. Past performance business in the last 2 years. 6. Business plan for 12 months to come. 7. Photocopy of collateral ownership. 	<ol style="list-style-type: none"> 1. Photocopy business legality. 2. Photocopy of identity card (husband and wife), family card, excerpt of marriage certificate or certificate of marriage. 3. The financial report of the last 2 years and or has been audited for more than 2.5 billion financing. 4. Past performance business in the last 2 years. 5. Business plan for 12 months to come. 6. Photocopy of collateral ownership.

At the time the application has been submitted, it has provided a form that includes the requirements that must be fulfilled by the prospective debtor. The completeness of the

requirements is very important because it can affect the acceptance or absence of the letter of application and also must through the procedures of financing as follows :

1. Application Stage

At this stage, the prospective debtor submits an Al-Murabahah financing proposal consisting of a letter of application for financing containing the amount of the financing ceiling (*cap*) and the attachment of required documents. This financing application letter serves as evidence of customer financing request.

2. Investigation Stage

Investigation constitutes all the activities that include collection of data related to the prospective debtor and examination of the correctness of the data. The object of investigation includes all information about the prospective debtor and his business. The implementation may be by site visit or on the spot (*OTS*), Bank Indonesia Checking, Trade Checking, and Market Checking.

3. Financing Analyses Stage

Financing analyses based on willingness to pay and ability to repay and anticipate the risk of financing to be given (risks assessment). The scope of the analyses includes the 5 C aspects : (1) The character of the debtor (character), (2) Capacity, (3) Capital, (4) Economic Condition (Condition) and (5) Collateral.

4. Financing Decision Stage

At this stage, the Al-Murabahah financing proposed by a prospective debtor has two possibilities:

- a. Not approved. The bank will notify the prospective debtor that the request was rejected.
- b. Approved. The bank makes the documents of approval of the financing including the financing agreement. Then prospective debtor is given the opportunity to study the provisions contained in these documents.

5. Disbursement Stage

If a prospective debtor agrees, then both parties engage in the agreement / signing the contract and fulfill the completeness of other documents. After that the customer can withdraw the approved financing.

At this stage, as part of the prudential principal, BSM applying the principles of disbursement as follows :

a. Dual Control Principle

The disbursement process shall be carried out by another unit separate from the unit of analyses and the financing decision. With the separation of this function will occur rechecking process by other units of the debtor financing process.

b. Principle of Compliance with Requirements (Comply with)

At each disbursement process stipulates the requirements that must be fulfilled by the debtor, then any disbursement process must be comply with the requirements specified in the financing agreement and other financing documents.

6. Supervision Stage (Monitoring)

The monitoring stage includes the supervision of payments due date, debtor's business activities, correctness and accuracy of the collectibility report of financing as well as making steps for improvement or completion and monitoring of the completeness and duration of insurance coverage.

2. The Causative Factors of Non Performing Financing (NPF)

Although the financing of Al-Murabahah has been declared eligible to be given to the debtor, the possibility of its failure in return still always there. The incidence of non-performing financing as mentioned in SE BSM No.4/003/PEM can be caused by various factors that are internal factors of the bank, internal factors of debtor, and external factors.

2.1 Bank Internal Factors

Circumstances classified as internal bank factors include :

1. Inadequate financing policies.
2. Quantity, quality, and integrity of inadequate human resources.
3. Provide special treatment to debtors that are less appropriate / excessive so that the evaluation of financing is not independent.
4. The weakness of the management and system as well as the procedure of financing allows the misuse of authority in the approval of the financing and the inability of the bank to identify and supervise the early problem financing.
5. Others available infrastructures and facilities are less supportive of both technical and administrative work.

2.2 Internal Factors of Debtor Customers

Causes originating from internal debtors can be seen from various aspects, among others :

1. Legal / Juridical Aspect. For example, there is no requirement on the authenticity / validity of financing documents (including document forgery).
2. Management Aspects. For example, deviations from the purpose of the use of financing, errors in corporate policies such as too expansive, the existence of bad faith from debtors.
3. Financial Aspects. For example, errors in expenditure policies and inefficient business activities of debtors.
4. Technical / Production Aspects. For example, production targets are not achieved, inability to meet Environmental Impact Assessment (*AMDAL*), and technical weakness of production / inability to produce goods / services according to the market needs.
5. Marketing Aspects. For example, market conditions are turning over (over supply), there are potential new competitors, and marketing strategy mistakes.
6. Collateral Aspects. For example, the assigned collateral can not (have a weakness) be tied juridically and the collateral value is not appropriate (marked up).

2.3 External Factors

The causative factors of the non-performing financing from external factors, among others economic / monetary / macro and micro economic crisis, regulation of technological developments that can not be followed by both banks and debtors, the inability of debtors to meet the requirements of Environmental Impact Assessment (*AMDAL*), natural disasters and / or security disturbances (riot period) that befell debtors.

Generally, non-performing financing grows gradually, giving some symptoms as the indicator (red flag) to the bank officers concerned. Factors causing the occurrence of Al-Murabahah non-performing financing at BSM is the internal factor of the debtor which is the existence of bad faith of the debtor in terms of installment payments. The internal factors of the bank, based on an interview with Mr. Hendro Kusworo who is the Internal Audit and Compliance officer, for approximately 1 year BSM operates, there is no or has not shown a negative impact on the financing that has been distributed to the public. From external factors, it has not significantly affected the quality of financing provided by BSM to the debtor.

From the description above, the incidence of Al-Murabahah non-performing financing at BSM influenced by the internal factors of debtor and the bad faith of debtor itself in term of repayment to the bank.

2.4. Efforts to Prevent Al-Murabahah Non Performing Financing (NPF)

In order to prevent the occurrence of Al-Murabahah non-performing financing, BSM perform these following steps :

1. The application of financing from a prospective customer is always carefully examined, especially regarding fulfilled requirements, completeness and authenticity of legal documents (such as certificate of ownership, deed of establishment and business legality).
2. Avoiding subjectivity in analyzing and deciding on financing. The bank officer must be completely objective so as not to produce a wrong decision.
3. Complete the documents before the realization (disbursement) of financing. Document control is the juridical strength of the bank, if there is a collateral it will be guaranteed binding under the applicable law.
4. At the time the debtor signs the financing agreement, the debtor's concerned is fully informed of the rights and obligations of both the bank and the debtor.
5. Supervising (monitoring) of debtor must be done well in the sense of the intensity and its weight.
6. Seeking the collateral submitted by the prospective debtors which is their own, this is intended to give the debtors burden to pay off the financing more.

The above preventive measures were undertaken to reduce the risk of Al-Murabahah non-performing financing at BSM.

4. The Settlement of Al-Murabahah Non Performing Financing (NPF)

At the stage of supervising (monitoring), it will be known the level of collectibility of ongoing financing, including the presence or absence of troubled financing symptoms that might become a non-performing financing in the future.

All Al-Murabahah financing which classified as non-performing financing is managed objectively and professionally. Bank can not make exceptions in handling non-performing financing. The handling of non-performing financing at BSM is regulated in the financing guideline of circular letter of BSM No.7.4/003/PEM and No.4/012/PEM includes:

1. Rescue Financing

Rescue action is carried out to continue the relationship with debtors who still have good prospects and / or good faith. Rescue is done by :

a. Intensive billing.

Rescue financing through intensive collection to debtors in order to fulfill all their obligations, whether done by own bank or using third party services.

b. Rescheduling.

Rescue of financing which only concerns the schedule of principal payments and / or arrears on the payment of margin and / or the term of financing.

c. Reconditioning.

Financing rescue by altering part / all of the financing requirements as long as it does not concern the maximum change of financing.

d. Restructuring.

Based on Bank Indonesia Regulation No.10/18/PBI/2008 concerning Financing Restructuring for Sharia Commercial Banks, Sharia Business Units and Circular Letters relating to Rescheduling or Restructuring, Bank Indonesia Regulation No.13/9/PBI 2011 and the amendment of Bank Indonesia Regulation No.10/18/PBI/2008 before, restructuring is the change of payment schedule of customer obligations or time period.

In line with the above definition, Circular Letter of Bank Indonesia No.13/18/DPbS as the amendment of Circular Letter of Bank Indonesia No.10/34/DPbS is one of the efforts to minimize the potential losses caused by non-performing financing by making changes to the payment schedule of the debtor's obligations and the time period.

The definition of the financing restructuring based on sharia principles is the bank's efforts to enable customers to fulfill their obligations to banks, based on Circular Letter of Bank Indonesia No.31/12/UPPB dated November 12nd, 1998, among others, covering :

- (1) Decrease in profit / margin sharing.
- (2) Reduction in arrears on yield / margin.
- (3) Reduction in arrears principal.
- (4) Extension of term of financing.
- (5) Additional financing facilities.
- (6) Takeover of debtor's assets in accordance with applicable provisions.

(7) Conversion of financing to investment in the debtor's company.

The restructuring action is taken because the financing that is given exceeds the ability of the debtor (over financing) or debtor is still under-funded (under financing), provided that the collateral held by the bank can cover and fulfill the juridical requirements.

2. Completion Financing

If the handling of non-performing financing can not be done through one of the above mentioned rescue forms, financing completion and / or termination measures must be taken.

a. Management Assistancy

Management Assistancy is a professional advisory and management assistance provided by a bank to debtors who still have prospects and have good faith to pay off their obligations but weak in the management of the company.

b. Temporary Equity Participation.

Based on Bank Indonesia Regulation No.7/2/PBI/2005, the temporary equity participation is equity participation by bank in debtor's company to resolve financing failures (*debt to equity swap*), including planting in the form of convertible bonds with stock options (*equity options*) or certain types of transactions that result in the bank having or will have shares in the debtor's company.

c. Novation

Novation is a contract that causes the removal of an engagement which at the same time arises another engagement in lieu of the original engagement. There are 3 concepts of novation which are :

a) Objective Novation

Objective reasoning is the novation where the object in the old contract is replaced to a new object that listed in a new contract.

b) Passive Subjective Novation

Passive subjective novation is happened when the debtor is substituted by other debtor, which can happen in 2 ways :

i. Expromissie.

Old debtor is replaced by new debtor at the initiative of the bank (as financier). Thus this novation is more profitable for old debtor.

ii. Delegatie.

The position of the old debtor is replaced by the new debtor on the initiative of the old debtor. For the occurrence of such novation, the bank must explicitly give its consent and release the old debtor from the obligation to repay the financing based on the old contract.

c) Active Subjective Novation

Active subjective novation is the novation where the old debtor is replaced by the subject of a new debtor. Substitution of the subject of this debtor needs to involve 3 parties which are the old financier, the new financier, and the debtor. The debtor's involvement in this case is to provide approval for the replacement of the financier so that the debtor knows where the payment should be made.

The criterion or requirement to do novation is to involve 3 parties which are the bank, the old debtor, and the new debtor (who takes over the financing / novator). With the holding of financing novation, the old financing contracts made between the bank and the old debtor and the *accessoir* contracts (collateral bonding, personal guarantee, etc.) become invalid. The novation must be explicitly stated in an agreement. This is in line with the provisions of Article 1415 of the Indonesian Civil Code.

d. Liquidation.

Liquidation is the sale of collateral whose proceeds are used to settle the debtor's liabilities to the bank, either by the respective debtor or by the owner of the collateral with the consent and under the supervision of the bank.

e. Subrogation.

Subrogation⁵ is the transfer of the financier (bank) rights to the third party due to the repayment to the financier (bank) by such third party. In the presence of subrogation, the bonds of payable between the financier and the debtor is not loose, nor are all the *accessoir* and agreements attached to the old contract remain valid and transfer to the new financier making the payment.⁶

f. Collateral Liquidation and Granting Relief

A non performing financing settlement can be made by liquidating collateral by bank auction or by collateral redemption by the debtor or the owner of the collateral.

⁵Subrogation arrangements in the Indonesian Civil Code are contained in Articles 1400, 1401 and 1402.

⁶The Indonesian Civil Code Article 1403.

g. The Settlement through The Courts

Against the debtors who have no prospects and no goodwill to settle their obligations, the financing settlement can be done by the court.

h. The Settlement through the Indonesian National Sharia Arbitration Board (Basyarnas).

The settlement of disputes between the bank and the debtor is strived for a peaceful / consensus agreement, but if no agreement is reached then it is done according to the choice of law which is stated in the financing contract.

Based on interviews with Mr. Ahmad Muzakkir, the settlement efforts made against Al-Murabahah NPF are collateral liquidation, granting relief, the settlement by court, and the settlement through the Indonesian Sharia Arbitration Board (Basyarnas), but in handling Al-Murabahah non-performing financing, the BSM using intensive billing efforts by prioritizing consensus and rescheduling reshuffle.

III. Conclusion

Based on the description of research results and previous discussions, it can be concluded as follows :

1. Terms that must be fulfilled by the prospective debtor in the filing of Al-Murabahah financing through 6 stages of the application stage, investigation stage, financing analyses stage, financing decision stage, disbursement stage, and supervision (monitoring) stage.
2. Factors causing financing Al-Murabahah to be Non Performing Financing (NPF) can be classified into 3, namely internal factors bank, internal factors debtor and external factors.
3. The efforts for the settlement of the Al-Murabahah Non-Performing Financing (NPF) at PT. Bank Syariah Mandiri, Tbk Branch of Bandar Lampung covers 2 efforts which are the rescue and the completion.

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