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Juridical and Managerial Review of Fiduciary Guarantee Execution in Murabahah Contracts Based on DSN-MUI Fatwa No. 68 of 2008 at Bank Syariah Indonesia

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A B S T R A C T

In light of the conclusions drawn from this study, it is advisable for Islamic banking institutions to formally register fiduciary guarantees with the Ministry of Law and Human Rights in order to provide legal protection for creditors and mitigate potential losses resulting from debtor default. Furthermore, it is essential that the implementation of murabahah financing involving fiduciary guarantees is aligned with the principles of Sharia, thereby ensuring both regulatory compliance and the upholding of ethical standards in Islamic financial practices

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INTRODUCTION

In daily life, people have needs that must be fulfilled, including primary, secondary, and tertiary needs. At times, individuals may not have sufficient funds to meet these needs. Therefore, banking institutions play a strategic role in providing financing. A bank is a financial institution whose main activity is collecting funds from the public and distributing financing, along with offering other financial services in payment transactions and money circulation, with its operations aligned with Islamic sharia principles (Maulidya et al., 2025, p. 28). Islamic banks, or what is commonly referred to as Sharia banks, operate without relying on interest. Also known as interest-free banks, these institutions function based on the teachings of the Qur'an and the Hadith of Prophet Muhammad (SAW) (Ali, 2008, p. 1). In essence, a Sharia bank is a financial institution that provides financing and other services within the framework of payments and monetary circulation, operated under Islamic principles (Nur'aini, 2022, p. 175).

As institutions that collect and distribute funds, Sharia banks play a crucial role in offering various financing products to meet the community's needs, including business capital, consumer goods, future savings, and recreational needs (Wulandari et al., 2025, pp. 32–33). Expectations are placed on these institutions by the general public, investors, entrepreneurs, and the government. The primary function of Sharia banks is to collect funds from the public and redistribute them through financing mechanisms based on sharia principles (Rizki et al., 2024, p. 74).

One of the most commonly used financing contracts in Islamic banking is the murabahah contract. In practice, this contract involves financing risks, which necessitate guarantees to minimize potential default (Astari et al., 2021, p. 342). Accordingly, Indonesia's positive legal system, through the Banking Law, requires banks to conduct thorough assessments and analyses of the collateral whether tangible or intangible before approving any financing facilities (Aurora, 2022, p. 4). These collaterals must then be formally bound in accordance with prevailing legal provisions.

Murabahah is a sale contract in which the seller (in this case, the bank) discloses the purchase price of a good along with a profit margin agreed upon with the buyer (customer) (Marzuki et al., 2024, p. 715). Technically, the bank purchases the goods from a third party (supplier) based on the customer's request and sells it to the customer with a predetermined markup. Although murabahah can be conducted on a cash basis, it is commonly implemented through installments, making it appealing to customers who need specific goods but lack sufficient funds (Nasution et al., 2022, p. 146).

Murabahah financing significantly helps customers in accessing economic resources to improve their welfare or expand their businesses. Once the contract is agreed upon, it creates legal consequences based on the principle of consensualism, meaning a mutual agreement between the parties that forms a binding legal relationship. Thus, murabahah results in a civil relationship between the bank as creditor and the customer as debtor (Lie et al., 2023, pp. 921–922).

In practice, installment payments made by customers establish a legally binding lending relationship. When financing involves collateral, one of the commonly used forms of collateral is fiduciary security, as regulated under Law No. 42 of 1999. Fiduciary security is the transfer of ownership rights to an object based on trust, whereby the object remains in the possession of the fiduciary giver (the customer) (Raja et al., 2021, p. 148). Fiduciary objects are generally movable goods, such as motor vehicles, and are typically secured by submitting proof of ownership (e.g., BPKB) without physically handing over the item.

The legal relationship between the fiduciary giver and receiver is accessoir in nature, meaning it depends on the principal agreement namely, the loan agreement (Alifiya & Reykasari, 2025, p. 5). Formal ownership is temporarily transferred to the bank as collateral and reverts automatically to the customer upon repayment, without requiring a retro-overdracht process (Amin, 2022, p. 42). However, before the enactment of the Fiduciary Law, execution procedures lacked legal certainty, often necessitating lengthy and costly court proceedings.

From a managerial perspective, banks must implement a dual-layered monitoring system: preventive supervision (before default risk arises) and repressive supervision (after default occurs). Default risks often result from the customer's inability to fulfill installment obligations, influenced by external factors such as business failure, job loss, or family conflict, and internal factors such as poor character (Kholidah, 2023, p. 166).

In the context of murabahah financing at Bank Syariah Indonesia, fiduciary guarantees are often combined with additional contracts such as rahn tasjily and ijarah. Rahn tasjily involves collateral (goods/documents) remaining in the possession of the rahin (customer), while ownership documents are handed over to the murtahin (bank) (Irwansyah, 2021, p. 3). DSN-MUI Fatwa No. 68 of 2008 allows banks to charge maintenance fees for marhun (collateral), though the amount must not be tied to the financing value.

A practical example can be seen at Bank Syariah Indonesia KCP Serang A. Yani, where default occurred in murabahah-based BSI Oto financing involving fiduciary guarantees. Customers failed to make payments due to various reasons, such as job termination, business failure, or other breaches of contract. This highlights the importance of strict selection and managerial analysis before granting financing.

LITERATURE REVIEW

However, in practice, discrepancies were found regarding compliance with regulations, particularly concerning the imposition of fiduciary document maintenance fees. This calls for a juridical evaluation of the implementation of murabahah financing contracts involving fiduciary guarantees, to ensure alignment with Islamic principles, national law, and sound banking governance.)

METHODOLOGY

1. Type of Research

In this study, the author uses a normative-empirical research method. Normative research can also be referred to as doctrinal legal research, while empirical research is commonly known as field research (Efendi & Rijadi, 2022, p. 149). The research observes how the provisions of the DSN fatwa are applied and how Islamic law views the execution of fiduciary guarantees at Bank Syariah Indonesia, Serang A. Yani Branch Office.

2. Data Collection Techniques

There are two main factors that influence the quality of research data: the quality of the research instruments and the quality of the data collection process. The quality of the instrument relates to its validity and reliability, while the quality of data collection pertains to the accuracy of the methods used to gather data. The author employs two techniques:

a. Interview

Interviews are used to gather in-depth information from a limited number of respondents, either through structured interviews with fixed guidelines or unstructured interviews with more open-ended conversations. In this study, the author interviewed representatives from BSI KCP Serang A. Yani to gain an accurate understanding of the execution of fiduciary guarantees and to avoid any misinterpretation of the issues being studied.

b. Documentation

Documentation is a qualitative data collection method involving the examination or analysis of documents prepared by the subjects themselves or by others about the subject (Sugiyono, 2014, pp. 137–145). The author referenced banking brochures and conducted searches on the official website of Bank Syariah Indonesia, Serang A. Yani Branch.

3. Research Approach

This study adopts a descriptive qualitative approach, which means that the findings are not derived from statistical procedures or other quantitative calculations. Instead, the aim is to reveal phenomena by collecting data from a natural setting (Efendi & Rijadi, 2022, p. 145). The researcher describes the existing conditions regarding the implementation of fiduciary guarantee execution at Bank Syariah Indonesia, Serang A. Yani Branch.

4. Data Sources

These are sources of data obtained directly from the locations where the activities are conducted.

a. Primary Data

Primary data is information obtained directly from research subjects using data collection tools designed for direct interaction with the source (Nashrullah et al., 2023, p. 6). Primary data serves as the main evidence or testimony of the studied events.

b. Secondary Data

Secondary data is obtained indirectly through books, journals, and relevant documents related to the execution of fiduciary guarantees at Bank Syariah Indonesia, Serang A. Yani Branch.

5. Teknik Analisis Data

Data analysis in qualitative research is carried out during and after data collection. During interviews, the author immediately begins analyzing the respondents' answers. If the answers are deemed unsatisfactory upon analysis, the author proceeds with further questions until credible data is obtained (Sugiyono, 2014, pp. 246–249).

RESULTS AND DISCUSSION

A. Mechanism for Granting Fiduciary Guarantees in Murabahah Financing at Bank Syariah Indonesia KCP Serang A. Yani

Murabahah financing provided by Islamic banking serves as a means to facilitate consumptive financing. The use of collateral in murabahah financing is one way to reduce risk mitigation that may be faced by Islamic banks (Djamil, 2012, p. 42). The presence of collateral in murabahah financing ensures the customer's ability to fulfill their financial obligations.

Based on an interview with Mr. Anggi Septi, Bank Syariah Indonesia KCP Serang A. Yani applies the principle of prudence in granting financing to prevent potential non-performing loans by using the 5C analysis:

1. Character, Refers to the character or personality of the prospective customer, indicating whether they are trustworthy (Anggraini, 2021, p. 159). This can be reflected through their employment background or personal aspects such as lifestyle, family situation, hobbies, and social life.
2. Capacity, Assesses the customer's ability to manage their business and repay the financing (Maharani, 2022, p. 16).
3. Capital, Refers to the amount of capital required by the borrower. It also involves evaluating the effective use of capital based on financial reports using indicators such as liquidity, solvency, profitability, and other financial ratios.
4. Collateral, Refers to the asset provided as security for the financing. The value of the collateral should exceed the amount of financing given.
5. Condition, Refers to the prospects of the customer's business. The bank must consider the current and future economic and political conditions before granting financing.

The registration of a fiduciary guarantee establishes a property right, giving the creditor the status of a separatist creditor with the privileges granted by law. Because registration indirectly benefits the creditor, the obligation to register falls on the fiduciary recipient (creditor), while the debtor has no legal interest in whether the collateral is registered or not (Mandagi et al., 2024, p. 6). Apart from the fiduciary recipient themselves, the registration can also be carried out by an authorized representative appointed by the fiduciary recipient (Witanto, 2015, p. 174). Article 13 paragraph (2) of the Fiduciary Law states that the registration statement must include:

1. He identities of the fiduciary provider and recipient;
2. The date, number of the fiduciary guarantee deed, name and domicile of the notary who prepared the deed;
3. Details of the principal agreement secured by the fiduciary;
4. A description of the object of the fiduciary guarantee;

5. The value of the guarantee;
6. The value of the object secured by the fiduciary guaranteen (Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia, 1999).

Murabahah financing at Bank Syariah Indonesia (BSI) KCP Serang A. Yani, particularly for the BSI Oto product, is carried out through a murabahah contract with collateral secured via a fiduciary arrangement. This process includes several structured stages. First, the customer selects a vehicle from their preferred dealer, and the sales representative inputs the customer's data. Second, the data is processed in the system as a financing application. Third, the bank analyzes the application. Fourth, if approved by the branch manager, a SP3 (Financing Purchase Offer Letter) is issued as formal approval for the customer. Fifth, once the SP3 is issued, the bank instructs the notary to process and register the fiduciary guarantee, provided that the required documents—such as the BPKB (vehicle ownership certificate), chassis number, and engine number—are complete and the vehicle is available (not under indent status). Finally, if all conditions are met, BSI schedules the murabahah contract signing and the fiduciary agreement simultaneously. This process demonstrates that BSI KCP Serang A. Yani applies prudence and legal compliance in every stage of sharia-based financing.

According to the Standard Operating Procedures for fiduciary guarantee registration issued by the Ministry of Law and Human Rights of the Republic of Indonesia in 2012, the registration process involves the following steps:

1. Submission of the application;
2. Verification of requirement completeness;
3. Payment of registration fees at the PNBP cashier;
4. Signing of the fiduciary guarantee statement;
5. Document scanning process;
6. Preparation of certificate cover and registry book;
7. Perforation of the certificate and registry book;
8. Initialing by the Subdivision or Division Head of Legal Services (Yakum);
9. Signing of the fiduciary guarantee certificate by the Head of the Legal Services Division (Kadiv Yakum);
10. Entry of the fiduciary certificate document into the register;
11. Archiving and documentation;
12. Certificate collection by the applicant at the service counter.

B. Execution of Fiduciary Guarantee in the Event of Debtor Default at Bank Syariah Indonesia KCP Serang A. Yani

Execution does not always involve a court decision and is not solely carried out by judicial institutions. Execution is essentially a continuation of the entire civil procedural law process. Fundamentally, there are two forms of execution:

1. Real execution, which can only occur based on a court decision requiring a concrete or specific action.
2. Verkoop execution, which involves the payment of a sum of money through the sale of the debtor's property at a public auction, either through the court or by the creditor themselves using parate executie authority (Witanto, 2015, p. 226).

In general, creditors prefer to establish guarantees in the form of proprietary security (real collateral) to ensure certainty in case the debtor defaults. This type of guarantee provides a more effective and simpler way to settle debts than general guarantees (Setiono et al., 2021, p. 62). A holder of proprietary collateral (a preferred or separate creditor) has several options to execute the debt recovery, including:

1. Selling the collateral on their own authority, known as parate executie, where the creditor can publicly sell the object without court involvement if the debtor fails to fulfill their obligations.
2. Using executorial title through the authorization of the Head of the District Court based on Article 224 HIR/258 Rbg concerning grosse akta execution.
3. Selling through a private agreement (underhand sale) based on mutual consent to obtain a higher price (Witanto, 2015, p. 179).

According to Article 29(1)(c) of the Fiduciary Law, an underhand sale means the sale does not involve public officials such as a notary or public auction. Only the debtor, creditor, and buyer are involved in the transaction. The agreement may be recorded in a contract signed solely by the involved parties without the presence of an official authorized to issue authentic deeds (Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia, 1999).

The use of guarantees is part of the bank's prudential principle when providing financing facilities. Risk management is a core responsibility of Islamic banking. Article 40 of Law No. 21 of 2008 on Islamic Banking outlines that (Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 Tentang Perbankan Syariah, 2008):

1. If a customer fails to meet their obligations, Islamic Banks or Islamic Business Units may purchase all or part of the collateral, either through or outside of an auction, based on voluntary handover or a power of attorney to sell from the collateral owner, with the condition that the purchased collateral must be liquidated within one year.
2. The value of the collateral must be calculated against the customer's debt.
3. If the value exceeds the debt, the surplus must be returned to the customer after deducting auction and related costs.
4. Further regulations will be stipulated by Bank Indonesia.

At Bank Syariah Indonesia KCP Serang A. Yani, execution is the last step in resolving problematic financing. Prior to execution, the bank performs several efforts, including:

1. Melakukan call kepada nasabah pembiayaan yang bermasalah.
2. Calling the customer with delinquent financing.
3. Issuing three written warnings (Surat Peringatan or SP).
4. Visiting and collecting directly often referred to as silaturahmi to engage the customer in dialogue and seek a win-win solution.

In addition to these efforts, BSI KCP Serang A. Yani also applies financing restructuring, which is a recovery effort to help customers meet their obligations (Wangsawidjaja, 2012, p. 447). These include:

1. Rescheduling, changing the repayment schedule or installment amount.
2. Reconditioning, modifying some or all financing terms without increasing the principal debt, such as:
   a. adjusting the payment schedule,
   b. modifying installment amounts,
   c. extending the loan term,
   d. offering discounts.
3. Restructuring, which involves changes such as additional financing, currency conversion, or refinancing.

If restructuring fails and the debtor remains uncooperative, the bank will proceed with execution. In practice, the execution process at BSI KCP Serang A. Yani follows fiduciary law, with guarantees being bound by notarial deeds and internal procedures, while financing contracts and pre-execution steps follow Islamic principles per DSN-MUI fatwas and the Islamic Banking Law.

The type of execution conducted by BSI KCP Serang A. Yani for BSI Oto financing (car purchases) is fiduciary in nature, where the vehicle remains in the customer's possession but may be repossessed and sold by the bank if the customer defaults. This is carried out based on Article 29(1)(c) of the Fiduciary Law: "Underhand sales based on agreement between fiduciary giver and recipient may be conducted if such a method yields the best price for both parties" (Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia, 1999).

This confirms that the fiduciary recipient (creditor) holds the executorial right to sell the collateral without the fiduciary giver's consent. According to Article 15(3) of the same law: "In the event of default, the fiduciary recipient has the right to sell the fiduciary object under their own authority" (Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia, 1999). This provision affirms the creditor's right to directly execute the collateral without a court ruling.

However, the executorial title requires prior registration of the fiduciary object at the fiduciary registration office, as stated in Article 11(1): "Objects encumbered with fiduciary security must be registered." At BSI KCP Serang A. Yani, fiduciary deeds are made by notaries and internal bank staff, as confirmed in the interview: "After the SP3 is issued, we proceed with fiduciary notarization."

In practice, the fiduciary agreement is made through a notary but not registered in accordance with fiduciary security law and its regulations. This means the deed is considered a private agreement. In Islamic finance, as long as the parties carry out a legal act and form a financing contract, it has binding legal force similar to law for the parties involved. This aligns with the pacta sunt servanda principle under Article 1338(1) of the Indonesian Civil Code: "All legally formed agreements shall bind the parties as law" (Fidhayanti, 2017, p. 50).

C. Perspective of DSN-MUI Fatwa No. 68 of 2008 on Rahn Tasjily Regarding Fiduciary Collateral at Bank Syariah Indonesia KCP Serang A. Yani

In Islamic finance, fiduciary collateral is known as rahn, which is a debt contract accompanied by collateral (guarantee). The National Sharia Council (DSN-MUI) has issued a fatwa on rahn tasjily, which differs from conventional rahn. Rahn tasjily closely resembles fiduciary collateral commonly used in Islamic banking.

Rahn tasjily refers to collateral in the form of assets for a debt, with an agreement that only valid proof of ownership is handed over to the creditor (murtahin), while the physical asset (marhun) remains under the control and use of the debtor (rahin) (Fatwa Dewan Syariah Nasional NO: 68/DSN-MUI/III/2008 Tentang Rahn Tasjily, 2008). This type of guarantee is based on mutual consent, and in the event of default or inability to repay the debt, the fatwa stipulates: "The marhun may be sold forcibly via auction or to a third party, in accordance with Sharia principles."

Although rahn tasjily has not been fully implemented in practice, its provisions align with the current practices at Bank Syariah Indonesia KCP Serang A. Yani, as follows:

1. The bank uses fiduciary collateral that aligns with the rahn tasjily contract, wherein the debtor (rahin) submits only legal proof of ownership as collateral to the creditor (murtahin), while the vehicle remains in the debtor's possession.
2. In BSI Oto financing, the collateral documents are submitted after the financing agreement. The bank purchases the car in the customer's name, and the customer repays in installments—thus creating a fiduciary arrangement. The fiduciary deed is signed only after the murabahah sale and purchase agreement is executed.
3. If a customer is unable to repay the debt, several stages are followed:
   a. The bank contacts the customer.
   b. After 60 days of non-payment (equivalent to about 3 months), a formal warning (somasi) is sent and followed by a personal visit.
   c. If the customer remains uncooperative, the bank proposes a private sale after the warning. If this fails, an auction is conducted.
   d. In principle, the bank explains that if the customer cannot fulfill the obligation, the asset must be sold.
4. In BSI Oto financing, the creditor (murtahin) charges the debtor for the maintenance and storage of collateral documents (e.g., vehicle ownership proof). Ideally, such fees should be based on mutual agreement between the bank and the customer, especially since the contract is strictly murabahah with fiduciary collateral as a supplementary agreement.
5. The DSN-MUI fatwa on rahn tasjily clearly states that the maintenance fee should not be linked to the amount of the debt. In practice, however, Bank Syariah Indonesia KCP Serang A. Yani stores fiduciary certificates in a strongroom and files them according to customer records. The cost of document maintenance and notarization is calculated along with the total loan and other charges. This practice does not fully comply with Sharia

principles, especially regarding the prohibition of tying maintenance costs to the loan amount.

6. Defaults often occur in financing agreements. If the customer fails to pay BSI Oto installments for 2–3 months, the bank first sends a warning and then attempts a private sale. If this fails, the asset is auctioned. This practice aligns with the fatwa, which allows the rahin to authorize the murtahin to sell the marhun, either via auction or private sale, in line with Sharia law (Fatwa Dewan Syariah Nasional NO: 68/DSN-MUI/III/2008 Tentang Rahn Tasjily, 2008).

Based on the analysis, several aspects of fiduciary collateral implementation at Bank Syariah Indonesia KCP Serang A. Yani are in line with the fatwa:

1. The collateral agreement involves legal proof of ownership (e.g., BPKB), while the asset remains in the customer's possession.
2. The execution of collateral is conducted through private sale or auction, consistent with the fatwa which states: "The marhun may be sold forcibly via auction or to a third party, in accordance with Sharia principles."

However, one non-compliant practice involves calculating the collateral document maintenance fee as part of the total debt along with other costs like notary fees. According to Sharia guidelines, such maintenance costs must not be tied to the loan amount.

CONCLUSION AND RECOMMENDATION

Based on the explanations provided in the previous chapters, the following conclusions can be drawn:

a. The provision of fiduciary guarantees in financing at Bank Syariah Indonesia KCP Serang A. Yani is carried out using the principle of prudence to prevent non-performing financing, through the application of the 5C analysis: Character, Capacity, Capital, Collateral, and Condition. The stages of fiduciary guarantee registration begin when the customer wishes to purchase a vehicle, and the sales staff inputs the customer’s data into the system. The data is then analyzed by the bank. Upon approval by the bank leadership, a SP3 (Financing Purchase Offer Letter) is issued to inform the customer that their application has been approved. The process continues with the appointment of a notary to handle and register the fiduciary guarantee. Once all requirements are complete, BSI schedules the murabahah (sale and purchase) contract along with the fiduciary agreement.

2. In the event of default by the debtor, the execution of the fiduciary guarantee at Bank Syariah Indonesia KCP Serang A. Yani involves several steps: initiating calls to the customer, issuing a warning letter (SP) or summons up to three times, and conducting visits to seek a win-win solution with the defaulting customer. The efforts made by BSI KCP Serang A. Yani for customers in default include restructuring the financing, which may involve rescheduling, reconditioning, or restructuring. If the customer remains uncooperative, BSI proceeds with execution through private sales.

3. From the perspective of DSN-MUI Fatwa No. 68 of 2008 concerning Rahn Tasjily (collateral guarantee), the implementation of fiduciary guarantees at Bank Syariah Indonesia KCP Serang A. Yani is generally in accordance with the provisions outlined in the fatwa. However, one aspect that does not fully comply is the imposition of document maintenance fees. The bank determines the amount based on the total debt and charges the debtor additional costs such as notary fees and goods maintenance fees, which is not fully aligned with the fatwa's guidance.

FUTHER STUDY

Based on the above conclusions, the author suggests that banking institutions should register fiduciary guarantees with the Ministry of Law and Human Rights to protect creditors from losses caused by defaulting debtors. Additionally, the implementation of murabahah financing accompanied by fiduciary guarantees should be in accordance with sharia principles.

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