

APPLICATION OF THE PRECAUTIONARY PRINCIPLE IN PROVIDING CREDIT WITHOUT COLLATERAL AT THE SHARIA MICRO FINANCIAL INSTITUTION (BANK WAKAF MIKRO) KHAS KEMPEK CIREBON

Mohamad Mafrukhi^{1*}, Wahyudi², Dudung Hidayat³

^{1,2,3}Master of Law, Gunung Jati Swadaya University, Cirebon, Indonesia



DOI: <http://dx.doi.org/10.33603/hermeneutika.v3i2>

Diterima: January 20, 2025; Direvisi: January 30, 2025; Dipublikasikan: February 28, 2025

Abstract: Today, there is a lot of collateral-free financing being offered with the aim of making things easier for the community. Even though it cannot be denied, collateral is one of the 5C analyzes which includes collateral, character, capital, capacity and conditions. Because of this, financing without collateral is an activity that has a very high risk. KHAS Kempek Micro Waqf Bank is a Sharia Microfinance Institution that provides financing without collateral. The problem of this paper is how to apply the principle of prudence and granting credit without collateral at the Sharia Microfinance Institution (Micro Waqf Bank) KHAS Kempek Cirebon. This research approach is a doctrinal approach where the data used is secondary data, then data collection techniques are carried out using document studies and literature studies, after which the data is analyzed qualitatively and presented in descriptive form. Based on the research results, it is known that the application of the principle of prudence and providing credit without collateral at the Sharia Microfinance Institution (Micro Waqf Bank) KHAS Kempek Cirebon has not been fully implemented. Of course, in order to achieve the health of a financial institution, things like this must be used as evaluation material by applying the precautionary principle.

Keywords: Credit Agreement, Prudential Principle, Collatera

I. INTRODUCTION

One of the activities carried out by banks is lending, both credit for consumptive purposes to meet customer needs and satisfaction, as well as productive credit such as in financing business capital.

Providing credit in conventional banking is also carried out in existing Sharia banking. Considering that our country uses a dual banking system, namely conventional banks and Sharia banks, the credit system found in conventional banks is known as financing activities in Sharia banking.

Financing is the activity of providing funds for investment or capital collaboration between cooperatives and members, prospective members, other cooperatives and/or their members which requires the recipient of the financing. to pay off the principal of the financing received to the cooperative according to the contract accompanied by payment of a profit-sharing amount from income or profits from activities financed or users of financing funds (Arif, 2012).

In connection with financing, there is one principle that is very common to serve as a guide, namely the prudent banking principle, which is a principle or principle which states that banks, in carrying out their functions and business activities, are obliged to act carefully (prudent) in in order to protect public funds which are entrusted to them, this is stated in Law No.10 of 1998 as an amendment to Law No.7 of 1992 concerning banking, that Indonesian banking in carrying out its business is based on economic democracy using the precautionary principle.

In connection with the principle of prudence, in order for a financial institution to become a healthy financial institution, it must at least fulfill the following principles: collateral (assessment of the collateral owned by the customer), character (assessment of the character of the prospective customer), capital (assessment of the financial position of the prospective customer), capacity (assessment of the prospective customer's ability in their field of business), and condition (assessment of market conditions in the country or abroad) Law Number 10 of 1998 concerning Banking article 1 point 23 regulates the meaning of collateral, namely:

"Collateral is additional collateral submitted by debtor customers to the bank in order to provide credit or financing facilities based on Sharia Principles."

Based on the definition of collateral above, it can be stated that the main function of collateral is to convince the bank or creditor that the debtor has the ability to repay the credit given to him in accordance with the mutually agreed credit agreement.

Micro Waqf Bank (BWM) is a Sharia Microfinance Institution (LKMS) registered and supervised by the Financial Services Authority (OJK) which aims to provide access to capital for small communities who do not yet have access to formal financial institutions with a mentoring pattern.

As for the Micro Waqf Bank (BWM) itself, in providing financing facilities using a qardh contract, through the Qardh facility provided by the Micro Waqf Bank (BWM), fund recipients are trained to be responsible for the funds they receive and these funds can be used to improve their standard of living.

In receiving financing, the Cooperative does not require applicants to submit collateral as collateral to repay the loan, but applicants are required to submit a personal guarantee, if they do not include a guarantor, the application will be rejected.

The absence of collateral and guarantees in the financing carried out by the KHAS Kempek Cirebon Micro Waqf Bank means that cooperatives bear high risks. This will create losses for the cooperative if debtors are found who do not return the loan according to the agreement, even in 2020 data was found that there was a total financing fund of Rp.

8,700,000 which to this day has not been able to return to BWM. This is very risky for the health of the KHAS Kempek Cirebon Micro Waqf Bank itself. In connection with the problems above, the author formulates the problem as follows: 1) How is the Prudential Principle Implemented in Sharia Microfinance Institutions (Micro Waqf Banks) SPECIALLY Kempek Cirebon? 2) How are the principles of unsecured credit agreements implemented in Sharia Microfinance Institutions (Micro Waqf Banks) KHAS Kempek Cirebon?

II. RESEARCH METHOD

The paradigm for this research uses post-positivism, and this research approach is a doctrinal approach where the data used is secondary data then data collection techniques are carried out using document studies and literature studies, after which the data is analyzed qualitatively and presented in descriptive form.

III. RESULT AND DISCUSSION

A. Implementation of the Prudential Principle in Sharia Microfinance Institutions (Micro Waqf Bank) SPECIFICALLY at Kempek Cirebon

As previously stated in relation to data from various sources, the principle of prudence in the Sharia Micro Financial Institution (Micro Waqf Bank) KHAS Kempek Cirebon has not been fully implemented, this is the author's conclusion because in its work practices, such as filling out forms which only including the potential customer's economic income, not applying collateral as one of the factors to avoid bad credit and then the SOP which apparently does not accommodate the handling of problematic financing in detail is the point where various problems in financing arise.

In relation to deepening information about customers, by implementing the know-your-customer principle, it is hoped that banks will be able to identify suspicious transactions early, to minimize various risks, such as operational risk, legal risk, concentration risk, and reputational risk. In addition, by applying this principle, banks are expected to not only get to know customers literally, but to get to know them more comprehensively, not only knowing the customer's identity but also relating to the profile and character of customer transactions, which are carried out through banking services. If this is implemented, the author concludes that the causes of bad credit can be slightly resolved.

Collateral should also be the capital of a financial institution to avoid bad credit, as stated by Hartono Hadisoeparto and M. Bahsan, a guarantee or collateral is an item that a prospective customer gives to the bank to ensure that the prospective customer will pay his obligations which can be valued in money or the like. The word convincing here means that a financial institution can provide financing to a prospective customer if the customer has provided collateral, and vice versa, if the customer cannot provide collateral then the financial institution can decide not to provide financing to the customer.

Based on the description above, the Sharia Microfinance Institution (Micro Waqf Bank) KHAS Kempek Cirebon has not fully implemented the 5C principles, namely Character, Capacity, Capital, Collateral and Conditions.

B. Application of the Principles of Unsecured Credit Agreements in Syaro'ah Microfinance Institutions (Micro Waqf Banks) KHAS Kempek Cirebon

According to the author, the data related to financing at LKMS (Micro Waqf Bank) KHAS Kempek Cirebon is sufficient to conclude that the application of credit agreement principles in this financial institution has also not been fully implemented. This is the author's conclusion based on existing data, such as the use of tenors that are too high. long, the first stage of financing is IDR. 1,000,000 with installments of Rp. 25,000 and a tenor period of up

to 40 weeks according to researchers is too long, again this is what triggers the emergence of problem loans, if this is not the case, perhaps the Financial Institution through its management will carry out checks on customers again, if the business runs smoothly then the nominal installments can be increased again, p. This is as in one theory which reads:

Degree of Risk, namely the level of risk that will be faced as a result of the time period that separates the award of achievements from the counter-achievements that will be received at a later date. The longer the credit is given, the higher the level of risk (Suyatno, 2003). Furthermore, according to the author, the use of a group system in the financing process is also a bit risky, financial institutions in this case are not very careful in the screening process for potential customers, although in practice all potential customers are required to fill in the existing form, but this does not rule out the possibility of loopholes being found so that potential customers are not included in the financing criteria, on the contrary, the principle of belief ultimately erodes by itself. As has been explained, there is a principle of Trust, namely the belief of creditors that the achievements they provide, whether in the form of money, goods or services, will actually be received back within a certain period of time in the future.

IV. CONCLUSION

The implementation of the precautionary principle in the Sharia Micro Financial Institution (Micro Waqf Bank) KHAS Kempek has not been fully implemented, various data have been collected which then makes the author conclude this, the discovery of bad credit in 2020 for example, is one example that the Waqf Bank Mikro KHAS Kempek Cirebon was negligent in this matter. The application of the 5C principles should be a guideline for financial institutions to support their performance so that bad loans are no longer found. The first principle of 5C is Character, namely deepening the customer's character which is not carried out in detail by LKMS (Micro Waqf Bank) KHAS Kempek Cirebon, then Capacity, namely the ability of prospective customers to run their business, this needs to be done by financial institutions so that they know the customer's economic condition ongoing so that it can be addressed.

The implementation of the principle of the Collateral-Free Credit agreement at the syari'ah microfinance institution (Micro Waqf Bank) KHAS Kempek Cirebon has also not been fully implemented, the most basic of which is related to the elements contained in providing credit, one of which is the degree of risk, namely the longer The tenor given means the higher the level of risk, based on existing data such as giving tenors of 40 weeks and 20 weeks with financing of only Rp. 1,000,000, according to the author as previously explained, is one of the possible points for bad credit, perhaps re-checking the customer's business becomes a benchmark for determining the nominal amount of installments and the repayment tenor, meaning that everything is not equal. whereas in existing facts, when 1 group is funded, the amount of the installments is also the same. Therefore, at BWM KHAS kempek, it is necessary to create a formula whose contents are aimed at determining the amount of installments for each customer.

REFERENCES

- Ascarya, & Yumanita, D. (2005). *Bank syariah: Gambaran umum*. Jakarta: Pusat Pendidikan dan Studi Kebanksentralan (PPSK) BI.
- Afandi, M. Y. (2009). *Fiqh muamalah dan implementasinya dalam lembaga keuangan syari'ah*. Yogyakarta: Logung Pustaka.
- Amalia, E. (2009). *Keadilan distributif dalam ekonomi Islam: Penguatan peran LKM dan UKM di Indonesia*. Jakarta: Rajawali Pers.

- Anam, A. S. (2012). *Problematisasi penerapan hukum jaminan di lembaga keuangan mikro syariah*. Semarang: Rafi Sarana Perkasa.
- Anshori, A. G. (2006). *Pokok-pokok hukum perjanjian Islam di Indonesia*. Yogyakarta: Citra Media.
- Anwar, S. (2007). *Hukum perjanjian syariah: Studi tentang teori akad dalam fikih muamalat*. Jakarta: Rajawali Pers.
- Arsyad, L. (2008). *Lembaga keuangan mikro (institusi, kinerja, dan sustainabilitas)*. Yogyakarta: Andi Offset.
- Kasmir. (2007). *Manajemen perbankan*. Jakarta: PT RajaGrafindo Persada.
- Khairandy, R. (2004). *Iktikad baik dalam kebebasan berkontrak*. Jakarta: UI Press.
- Marzuki, P. M. (2005). *Penelitian ilmu hukum*. Jakarta: Kencana.
- Mertokusumo, S. (2009). *Penemuan hukum*. Bandung: Citra Aditya Bakti.
- Mubarok, J. (2004). *Perkembangan fatwa ekonomi syariah di Indonesia*. Bandung: Pustaka Bani Quraisy.
- Prasastinah Usanti, T. (2013). *Prinsip kehati-hatian pada transaksi perbankan syariah*. Surabaya: Airlangga University Press.
- Prasetyo, T. (2015). *Keadilan bermartabat: Perspektif teori hukum*. Bandung: Nusa Media.
- Raharjo, H. (2009). *Hukum perjanjian di Indonesia*. Yogyakarta: Pustaka Yustisia.