

Legal Reconstruction Settlement of Mudharabah Receivables at KSPPS BMT Muamalat Mulia Kudus: Masalah Mursalah Perspective

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Abstract

One of the current challenges faced by the Sharia Financing Savings and Loan Cooperative (KSPPS) Baitul Maal Wat Tamwil (BMT) Muamalat Mulia Kudus is that many members fail to meet their obligations in providing mudharabah financing, which affects the operational health of the institution. This study aims to explore the settlement model implemented by KSPPS BMT Muamalat Mulia Kudus for members with mudharabah receivables and analyze it from the perspective of masalah mursalah. This research employs a sociological juridical approach with a qualitative methodology. The findings reveal that KSPPS BMT Muamalat Mulia Kudus addresses the issue of mudharabah receivables through dialogue, offering financing restructuring, continuous monitoring of members, issuing warnings and legal summons, and executing collateral confiscations. From the perspective of masalah mursalah, these policies are seen as a solution that balances the institution's need to maintain property ownership by providing relief to members. To prevent financing issues in the future, Sharia Microfinance Institutions are encouraged to thoroughly assess the financial condition of prospective members before approving any form of financing.

Keyword: legal reconstruction; mudharabah; masalah mursalah; baitul maal wat tamwil

Abstrak

Salah satu masalah sampai saat ini dihadapi Koperasi Simpan Pinjam Pembiayaan Syariah (KSPPS) Baitul Maal Wat Tamwil (BMT) Muamalat Mulia Kudus adalah banyak dari anggota tidak memenuhi prestasi dalam pemberian pembiayaan mudharabah sehingga berimplikasi terhadap kesehatan operasional lembaga tersebut. Penelitian ini bertujuan untuk mengeksplorasi model penyelesaian yang dilakukan KSPPS BMT Muamalat Mulia Kudus terhadap anggota dalam piutang mudharabah, dan menganalisisnya dalam perspektif masalah mursalah.

Penelitian ini termasuk dalam jenis penelitian yuridis sosiologis dengan basis pendekatan kualitatif. Hasil penelitian menunjukkan bahwa dalam menyikapi permasalahan piutang mudharabah kebijakan yang diterapkan KSPPS BMT Muamalat Mulia Kudus yaitu berdialog, menawarkan restrukturisasi pembiayaan, monitoring secara berkelanjutan terhadap anggota, memberikan peringatan dan somasi hukum, serta melakukan eksekusi sita jaminan. Kebijakan yang diterapkan tersebut dalam perspektif masalah mursalah sebagai solusi mewujudkan kemaslahatan bersama dalam menjaga kepemilikan harta bagi lembaga dan memberikan keringanan beban kepada anggota. Untuk mencegah timbulnya permasalahan pembiayaan diharapkan Lembaga Keuangan Mikro Syariah menganalisis terhadap kondisi calon anggota sebelum mengambil keputusan dalam memberikan segala bentuk pembiayaan.

Kata kunci: rekonstruksi hukum; mudharabah; masalah mursalah; *baitul maal wat tamwil*

I. Introduction

The existence of Sharia Microfinance Institutions (LKMS) in the financial system has an important role in helping the micro and small business sector by providing loans and financing based on Sharia principles.¹ The Sharia principles refer to the principles of Islamic law in banking and financial activities based on fatwas issued by institutions authorized to determine fatwas in the field of Sharia.² Several main principles applied by Sharia financial institutions in carrying out their operations include freedom (*maghrib*), *gharar*, haram, usury, and vanity.³

One of the LKMS is BMT (*Baitul Maal Wa Tamwil*), which is a non-bank microfinance institution based on Sharia

principles that integrates the principles of the country and *tamwil* in one institutional activity.⁴ As an LKMS, in carrying out its operations, BMT refers to Law Number 1 of 2013 on Microfinance Institutions, specifically regulated in the provisions of Article 39 paragraph (1).⁵ Furthermore, in Article 5, it is explained that if BMT is in the form of a cooperative legal entity then in its operations it is also subject to Law Number 25 of 1992 on Cooperatives. If it is a PT legal entity, it is subject to Law Number 40 of 2007 on Limited Liability Companies.

So far, the existence of BMT is considered to be of great benefit to people who need funds, especially those with low incomes or who are poor in developing their businesses.⁶ Distribution of funds generally

1 Andri Soemitra, *Bank dan Lembaga Keuangan Syariah* (Jakarta: Kencana, 2009), 37.

2 Haniyah Lubis, *Lembaga Keuangan Syariah*, Cetakan 1 (Pekalongan: Nasya Expanding Management, 2021), 10.

3 Dudi Badruzaman, "Prinsip-Prinsip Muamalah dan Implementasinya dalam Hukum Perbankan Indonesia Muamalah," *Jurnal Ekonomi Syariah dan Bisnis* 1, no. 2 (November 2018): 110, <https://jurnal.unma.ac.id/index.php/Mr/article/view/1114/1021>.

4 Nourma Dewi, "Regulasi Keberadaan Baitul Maal Wat Tamwil (BMT) dalam Sistem Perekonomian di Indonesia," *Jurnal Serambi Hukum* 11, no. 1 (July 2017): 96, <https://www.neliti.com/publications/163544/>.

5 Undang-Undang RI, "Undang-Undang Nomor 1 Tahun 2013 tentang Lembaga Keuangan Mikro" (Jakarta: Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, 2013).

6 Kiki Kurnia, Ahmad Hasan Ridwan, and Fithri Dzikrayah, "Pembiayaan Mudharabah bagi UMKM di Baitul Maal Wa Tamwil (BMT)," *LIKUID: Jurnal Ekonomi Industri Halal* 3, no. 2 (2023): 63, <https://doi.org/10.15575/likuid.v3i2.25174>.

takes the form of loans and financing, one of which is in the form of a *mudharabah* agreement (contract) based on DSN MUI Fatwa Number 07/DSN-MUI/IV/2000.⁷ According to the fatwa, *mudharabah* financing is financing provided by Islamic Financial Institutions (LKS) to other parties which are used for productive business or business activities. The *mudharabah* contract is defined as a cooperation agreement between fund providers (*shahibul maal*) and fund managers (*mudharib*) for certain business activities, and business profits are shared between them based on a mutually agreed ratio in the agreement.⁸ With the *mudharabah* financing provided by LKS to the community, it is hoped that it can also break the chain of poverty because the community is helped with funding so that they can develop their businesses and increase their income.⁹

However, what is expected is far from burning, meaning that empirically, distributing funds through *mudharabah* financing is often faced with problems where members have broken promises (default) on what has been mutually agreed upon, whether intentionally or not, for certain reasons. This kind of condition also occurs at KSPPS BMT Muamalat Mulia

Kudus, where many members do not carry out their obligations (achievements) in paying *mudharabah* financing, which has implications for the operational health problems of KSPPS BMT Muamalat Mulia Kudus which ultimately threatens the development of BMT itself. Financing is only problematic if it meets smoothly, is substandard, and is doubtful.¹⁰ In this case, Dehotman¹¹ stated that default is a crucial challenge for bank and non-bank microfinance institutions and can even threaten the existence of these institutions. In line with Dehotman's opinion, Zulfa¹² said that default is a big risk for the banking world and non-bank financial institutions because it can potentially cause profit losses due to customers or members defaulting on loans, so risk management is needed to overcome this.

In another study, Purbowanti and Hendrawan¹³ revealed that members' failure to pay loans or financing was caused by several possibilities, including forced circumstances or disasters that befell members, misuse of loans, lack of good faith in returning loans or financing, unstable economic conditions of members, and inability to pay back loans or financing. Meanwhile, Firmanto¹⁴ said that the

7 Fatwa DSN-MUI, "Fatwa Dewan Syari'ah Nasional No. 07/DSN-MUI/IV/2000 tentang Pembiayaan Mudharabah (Qiradh)," *DSN MUI* (Jakarta, 2000).

8 Wardah Yuspin and Arinta Dewi Putri, *Rekonstruksi Hukum Jaminan pada Akad Mudharabah* (Surakarta: Muhammadiyah University Press, 2020), 21.

9 Kurnia, Ridwan, and Dzikrayah, "Pembiayaan Mudharabah Bagi UMKM di Baitul Maal Wa Tamwil (BMT)," 57.

10 Fathurrahman Azhari, "Mekanisme dan Cara Penyelesaian Pembiayaan Bermasalah," *AT - TARADHI Jurnal Studi Ekonomi* 3, no. 1 (2012): 88, <https://jurnal.uin-antasari.ac.id/index.php/taradhi/article/view/581>.

11 Khornelis Dehotman, "Tantangan Pengembangan Baitul Mal Wat-Tamwil di Pekanbaru Riau," *Maqdis: Jurnal Kajian Ekonomi Islam* 1, no. 2 (July-December 2016): 200, <https://ejournal.uinib.ac.id/febi/index.php/maqdis/article/view/45/57>.

12 Moh Solachuddin Zulfa, "Analisis Tentang Manajemen Risiko dalam Operasional Pembiayaan Murabahah di BMT Amanah," *Iqtishadia* 7, no. 1 (June 2014): 173, <https://www.neliti.com/publications/91839/>.

13 Rachyu Purbowati and Suluh Agus Hendrawan, "Menganalisis Permasalahan Kredit Macet pada Koperasi Simpan Pinjam," *Management and Business Review Journal* 2, no. 1 (2018): 1, <https://doi.org/10.21067/mbr.v2i1.4612>.

14 Fakhry Firmanto, "Penyelesaian Kredit Macet di Indonesia," *Jurnal Pahlawan* 2, no. 2 (September 2019): 29, <https://journal.universitaspahlawan.ac.id/index.php/jp/article/view/577/495>.

problem of payment failure caused by several possibilities could ultimately have implications for the macroeconomic sector. Therefore, strategic steps are needed to settle *mudharabah* receivables caused by members not carrying out their obligations, one of which is by reconstructing the agreement that previously became the parties' legal basis. Based on a search of the literature review, there are few journal articles that discuss the theme of this article. However, several studies have similarities in discussing the resolution of *mudharabah* financing problems; for example, Nasrulloh and Hosen¹⁵ in their research, show that Sharia arbitration can be an alternative for Sharia financial institutions in resolving problematic financing disputes against members after the non-litigation (deliberation) approach does not reach an agreement. Problem-solving using the Sharia arbitration method can at least provide benefits; among others, the parties can choose applicable law according to their mutual wishes; the problem-solving time is relatively fast (30 days) after the examination is closed and oriented towards a win-win solution. The suggestion to resolve *mudharabah* financing problems by Sharia arbitration through the National Sharia Arbitration Board is following DSN MUI Fatwa Number 07/DSN-MUI/IV/2000 on Mudharabah Financing (*Qiradh*).

The results of Sudarto's¹⁶ research show that the steps taken by BMT AL-Hasanah in resolving problematic financing products were by carrying out intensive billing to members, giving warnings, rescheduling, and restructuring. Meanwhile, Nuansyah,¹⁷ in his study, stated that the relationship marketing strategy was considered quite good in handling problematic *mudharabah* financing at BMT Fajar Kota Metro. After all, apart from solving problems, it could also maintain good relations with members because it was more familiar than taking legal action, which tended to drain energy, time, money, and hostility. Although some of these studies have similarities, as mentioned above, they do not discuss the implications of the various strategies Sharia Microfinance Institutions (LKMS) carry in resolving problematic *mudharabah* financing. For this reason, this research tries to examine from the other side with the *masalah mursalah* approach so that it is expected to complement the previous studies. Conceptually, *masalah mursalah* is defined as everything good according to reason with the consideration of realizing good (*jalbul maslahah au manfa'ah*) or avoiding evil (*dar'ul mafasid*) for humanity.

Based on the description of the problems and approaches used above, this study tries to formulate several issues in the form of questions to be discussed, among others: what factors cause members not to

15 Muhamad Nasrulloh and Muhamad Nadratuzzaman Hosen, "Penyelesaian Pembiayaan Bermasalah pada Akad Mudharabah di BMT Duta Jaya," *Al-Mikraj: Jurnal Studi Islam dan Humaniora* 4, no. 1 (July-December 2023): 415, <https://doi.org/10.37680/almikraj.v4i1.3830>.

16 Aye Sudarto, "Penyelesaian Pembiayaan Bermasalah pada Lembaga Keuangan Syariah Studi di BMT AL-Hasanah Lampung Timur," *Islamic Banking* 5, no. 2 (February 2020): 99, <https://doi.org/10.36908/isbank.v5i2.118>.

17 Mustika Putri Nuansyah, "Efektivitas Relationship Marketing dalam Menyelesaikan Pembiayaan Mudharabah Bermasalah di Baitul Mal Wa Tamwil Fajar Kota Metro," *Business and Entrepreneurship Journal (BEJ)* 3, no. 2 (February 2022): 46, <https://doi.org/10.57084/bej.v3i2.884>.

fulfill mudharabah receivables to KSPPS BMT Muamalat Mulia Kudus, and how do KSPPS BMT Muamalat Mulia Kudus make the solutions in settling mudharabah receivables to members. In line with the formulation of the problem, this research aims to explore and explain the causes of members not fulfilling KSPPS BMT Muamalat Mulia Kudus mudharabah receivables, KSPPS BMT Muamalat Mulia Kudus solutions in the settlement of mudharabah receivables against members and analyze with a masalah mursalah point of view. It is hoped that the results of this research can be useful in the development of Islamic law, especially the science of Sharia Economic Law, and become a foothold for Sharia Microfinance Institutions (LKMS) in carrying out business activities to avoid problems arising from mudharabah financing practices.

II. Research Method

This research is included in sociological juridical research based on a qualitative approach. This type of research is used to explore directly in the field the problems formulated in this research to obtain information and data related to problematic *mudharabah* financing as a social fact and examine it based on applicable legal provisions. According to Waluyo,¹⁸ sociological juridical research analyzes existing legal determinants (*right established*) and empirical problems that occur in society. The data sources used are primary data and secondary data. Through in-depth interviews, primary

data was obtained directly from informants (Chairman of KSPPS BMT Muamalat Mulia Kudus, employees in the financing sector, and members).

Meanwhile, secondary data comes from scientific literacy searches. Secondary data in this research includes primary legal materials in the form of Law Number 1 of 2013 on Microeconomic Institutions, DSN MUI Fatwa Number 07/DSN-MUI/IV/2000 on *Mudharabah (Qiradh)* Financing, DSN MUI Fatwa Number 115/DSN-MUI/IX/2017 on *Mudharabah* Agreements, DSN MUI Fatwa Number 17/DSN/DSN-MUI/IX/2000 on Sanctions for Affordable Customers who Delay Payments, DSN Fatwa Number 43/DSN-MUI/VIII/2004 on Compensation (*Ta'widh*), and several related regulations. Secondary legal materials include books, journal articles, magazines, and others. Meanwhile, tertiary legal materials are in the form of encyclopedias and legal dictionaries. All data obtained was then tested for validity using a credibility test, including extending observations, increasing persistence, and triangulation of sources, techniques, and time. According to Suharsimi,¹⁹ a validity test is needed so that the data produced can be trusted and scientifically justified. After the data has been tested for validity, the next step is to analyze it using data analysis techniques. According to Muhammad,²⁰ qualitative data analysis techniques are carried out to describe the data in a quality manner in sentences that are orderly, coherent, logical, and do not overlap, making it easier for readers to understand the analysis results.

16 Bambang Waluyo, *Penelitian Hukum dalam Praktik* (Jakarta: Sinar Grafika, 2002), 17.

17 Arikunto Suharsimi, "Prosedur Penelitian : Suatu Pendekatan Praktik (Edisi Revisi)," Jakarta: Rineka Cipta, 2013, 236.

18 Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004), 127.

III. *Mudharabah* Agreement Law in Indonesia

In Indonesia, agreements *mudharabah* as a financing instrument for LKMS in its development have been regulated in separate regulations. This arrangement is intended as a basic foundation for the institution to apply Sharia principles in business activities to realize social justice through a profit-sharing ratio system.²¹ Sharia principles in business activities, as intended, do not contain elements including usury, *maisir*, *gharar*, haram, and unjust. Meanwhile, fairness in the profit-sharing ratio system is reflected in the method used in terms of profits and losses (*profit and loss sharing*) borne jointly by LKMS as the full fund provider (*shahibul maal*) and members as fund managers in entrepreneurship (*mudharib*).²²

The *Mudharabah* agreement is valid when both parties desire it based on *consent* and *qabul*. In Islam, the agreement made by the parties has no strict limits on how the agreement is formed, meaning that everyone has the freedom to agree in any form as long as the content does not conflict with the teachings of Islamic Sharia.²³ Furthermore, there are two conditions for agreements in the Civil Code, namely subjective conditions and objective conditions.

Subjective terms *mudharib* a *mudharabah* agreement/contract; you must be able to carry out business to obtain profits as the purpose of the contract.²⁴ In this regard, the practice of profit-sharing ratios in Islamic law must pay attention to related principles, which means working together and helping each other among community members who are oriented towards goodness.²⁵ The ratio determination is generally done at the beginning and is included in the agreement. In determining the ratio, there may be bargaining and negotiation on the division of the ratio.²⁶ In practice, the amount of profit sharing must be determined based on mutual agreement (*at-tarodhim*) without coercion, behaving honestly, and both parties upholding justice.²⁷

The arrangements for *mudharabah* agreements/contracts for micro LKS financing products can be found in the DSN MUI Fatwa Number 115/DSN-MUI/IX/2017 on *Mudharabah* Agreements. According to the considerations, the stipulation of the fatwa aims to serve as a guide in implementing the contract *mudharabah* in business activities to develop sharia financial products in Indonesia through raising and distributing funds. Meanwhile, the contract *mudharabah* is

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- 19 Iin Marleni and Sri Kasnelly, "Penerapan Akad Mudharabah pada Perbankan Syariah," *Al-Mizan: Jurnal Ekonomi Syariah* Vol 2, no. No. 2 (December 2019): 52, <https://ejournal.an-nadwah.ac.id/index.php/almizan/article/view/110/82>.
 - 20 Popon Srisusilawati and Nanik Eprianti, "Penerapan Prinsip Keadilan dalam Akad Mudharabah di Lembaga Keuangan Syariah," *Law and Justice* 2, no. 1 (April 2017): 12, <https://doi.org/10.23917/laj.v2i1.4333>.
 - 21 Muhammad Rosid, "Penerapan Perjanjian Akad Mudharabah Muqayyadah dalam Skema Pembiayaan Perspektif Hukum Islam," *Lan Tabur: Jurnal Ekonomi Syariah* 3, no. 1 (September 2021): 63, <https://doi.org/10.53515/lantabur.2021.3.1.55-73>.
 - 22 Jaih Mubarak dan Hasanudin, *Fikih Mu'amalah Maliyah Akad Syirkah dan Mudharabah* (Bandung: Simbiosis Rekatama Media, 2017), 9.
 - 23 Zaenal Arifin, *Akad Mudharabah (Penyaluran Dana dengan Prinsip Bagi Hasil)* (Indramayu: Adanu Abimata, 2021), 13.
 - 24 Nufi Mu'tamar Almahmudi, "Analisis Implementasi Pembiayaan Mudharabah dalam Perkembangan Hukum Ekonomi Syariah Di Indonesia," *Journal of Indonesian Islamic Economic Law* 2, no. 2 (December 2020): 216, <https://doi.org/10.19105/alhuquq.v2i2.3166>.
 - 25 Yuspin and Putri, *Rekonstruksi Hukum Jaminan Pada Akad Mudharabah*, 22.

defined as a business or business cooperation agreement between the capital owner, who provides all the capital, and the manager, where the profits from the business are shared based on a mutually agreed ratio or stated in the form of a multi-ratio at the time of the contract.²⁶ If the *mudharabah* agreement is realized by financing *mudharabah (qiradh)*, then *dhawabith* and *hudud* are regulated in the DSN MUI Fatwa Number 07/DSN-MUI/IV/2000. The practice can be carried out in writing, verbally, deeds/actions, and gestures, and can also be carried out electronically following sharia principles and applicable laws and regulations.

From the perspective of contract law, *mudharabah* as regulated in the DSN MUI Fatwa Number 115/DSN-MUI/IX/2017 is used and developed in 4 (four) concepts, namely *mudharabah muqayyadah*, *mudharabah mutlaqah*, *mudharabah tsuna'iyah*, and *mudharabah musytarakah*. *Mudharabah muqayyadah* is an agreement *mudharabah* whose management efforts are limited by certain characteristics/conditions. These restrictions are closely related to determining the parties involved, place of business, and time of doing business. *Mudharabah mutlaqah* is a *mudharabah* contract that is not limited in terms of time, type, and place of business. *Mudharabah tsuna'iyah* is a *mudharabah* contract between the capital provider and the manager. *Mudharabah musytarakah* is a *mudharabah* contract in which the manager's management system includes capital in business or business

cooperation. Realization of the contract concept *mudharabah musytarakah* specifically regulated in DSN-MUI Fatwa Number 50/DSN-MUI/III/2026.

Contract arrangements *mudharabah* in the practice of financing or raising funds, apart from being found in the DSN MUI Fatwa Number 115/DSN-MUI/IX/2017, it is also found in Law Number 21 of 2008 on Sharia Banking, Article 19 paragraph (1) and (2) letter a and b states that Sharia Banks and Sharia Business Units carry out their functions, namely collecting and distributing funds to the community based on *mudharabah* agreements or other contracts that do not conflict with sharia principles.²⁹ The application of the *mudharabah* contract in the business activities of Sharia Banks and Sharia Business Units is further emphasized in the general provisions that the *mudharabah* contract in raising funds is a cooperation agreement between the first party (fund provider/*shahibul maal*/customer) with a second party (fund manager/*mudharib*/Sharia Bank) in business activities whose profits are shared according to the agreement and stated in the agreement.

Meanwhile, what is meant by a *mudharabah* agreement in financing is a cooperation agreement between the first party (fund provider/*shahibul maal*/Sharia Bank) with a second party (fund manager/*mudharib*/customer) in business activities whose profits are shared according to the agreement and stated in the agreement. The

26 Fatwa DSN-MUI, "Fatwa Dewan Syariah Nasional - Majelis Ulama Indonesia No: 115/DSN-MUI/IX/2017 tentang Akad Mudharabah" (Jakarta: DSN-MUI, 2017), 3.

27 Undang-Undang RI, "Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah" (Jakarta: Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, 2008), 11–13.

losses are fully borne by the Sharia Bank, except if the customer makes negligence or intentional mistakes and violates the agreement.

IV. Reasons for Members Not Fulfilling *Mudharabah* Receivables Against KSPPS BMT Muamalat Mulia Kudus

Sharia Financing Savings and Loans Cooperative (KSPPS) *Baitul Maal Wat Tamwil (BMT)* Muamalat Mulia Kudus, hereinafter abbreviated as KSPPS BMT Muamalat Mulia Kudus, is one of the non-bank Sharia microfinance institutions in Indonesia. It provides financial services to the public in the form of savings/*wadi'ah* products and financing by applying Sharia principles. The institution is located in Megawon Village, Jati District, Kudus Regency.

Based on initial investigations, it is known that KSPPS BMT Muamalat Mulia Kudus has savings products, including voluntary savings consisting of market and central deposits and student savings. Meanwhile, financing products include *mudhrabah*, *musyarakah*, and *murabahah financing*. Of all the types of products and financing offered, KSPPS BMT Muamalat Mulia Kudus' operations are based on Sharia principles following Islamic teachings related to economic activities. The application of sharia principles aims to avoid usury in its various forms.

The results of the research findings show that of the several products described above, in practice, there is one problematic financing product, namely financing in the form of *mudharabah*, which has implications

for decreasing income and improving its operational costs, which in turn have the potential to cause financial health problems for the institution. Aulia Rahman,³⁰ as Chairman of KSPPS BMT Muamalat Mulia Kudus, said that *mudharabah* financing has so far been a challenge in itself due to many members not fulfilling their achievements (default) of what was promised according to the mutual agreement contained in the contents of the agreement. As a result, the institution suffered both material and immaterial losses. Material losses involve the loss of the right to receive payments and profit sharing that should have been received. Meanwhile, immaterial losses involve the costs of legal consultants and lawyers for handling the case.

Aulia Rahman added that in 2023, *mudharabah* financing will be provided to 42 members with the type of *mudharabah mutlaqah* agreement/contract, the majority of whom are farmers and entrepreneurs with a total amount of financing of "Rp1,352,705,500" (one billion three hundred fifty-two million seven hundred five thousand five hundred rupiahs). The financing is stated in the form of a written agreement referring to the provisions of the DSN MUI Fatwa agreement number 115/DSN-MUI/IX/2017. Of the total financing disbursed to members, the total principal arrears reached "Rp872,000,000" (eight hundred and seventy-two million rupiah), and the margin arrears amounted to "Rp95,300,000" (ninety-five million and three hundred thousand rupiah). The condition of *mudharabah* financing is

28 Interview with Aulia Rahman, Chairman of KSPPS BMT Muamalat Mulia Kudus, 25 August 2023.

caused by several things. *First*, members did not fulfill their payment obligations to KSPPS BMT Muamalat Mulia Kudus. *Second*, members' debt is paid according to the payment schedule, but the amount does not match what was agreed upon. *Third*, the member pays the debt as agreed but exceeds the agreed time limit. *Fourth*, a member intentionally violates the contents of the agreement.

Based on the results of interviews with members of KSPPS BMT Muamalat Mulia Kudus, it is known that, on average, members fail to pay *mudharabah* financing because farmers experience crop failure caused by natural disasters such as prolonged drought and floods. Likewise with entrepreneurs, due to tight price competition (*price war*). Sunarto,³¹ one of the farmers, revealed that his party was unable to pay the debt to KSPPS BMT Muamalat Mulia Kudus from *mudharabah* financing due to natural conditions, namely high rainfall which resulted in flooding and submerging his rice fields, resulting in crop failure. Meanwhile, the business capital has been used to purchase seeds, fertilizer, agricultural equipment, and operational costs.

Maryatun,³² also expressed the same thing; according to her confession, the failure to fulfill debt payment obligations in the *mudharabah* financing provided by KSPPS BMT Muamalat Mulia Kudus was that her rice plants were damaged due to being submerged by floods, resulting in

crop failure. Rumani³³ conveyed a different statement; he said that the failure to fulfill the financing achievements of the *mudharabah* agreement was due to the fall in grain prices, so he experienced large losses. The losses he experienced meant that he could not cover the operational costs he had incurred and meet his achievements within the specified time. However, his party said he still had good intentions to settle all arrears in payments to KSPPS BMT Muamalat Mulia Kudus by asking for an extension.

Meanwhile, Parsini,³⁴ an agricultural business owner, said that he found it difficult to market his agricultural equipment due to tight price competition (*price war*). Moreover, more and more agricultural equipment providers are selling their goods on online applications at low prices, far from market prices, making it difficult for them to compete due to the influence of fluctuations in customer/consumer preferences. This condition has caused the authorities to experience a decrease in income, resulting in difficulties in returning business capital, which has prevented them from fulfilling obligations as agreed with the KSPPS BMT Muamalat Mulia Kudus.

Whatever obstacle a member faces in fulfilling the above obligations towards *mudharabah* financing is the member's responsibility (*self-imposed obligation*) to make payments due to the legal relationship in the agreement (*agreements are to be kept*). *Agreements are to be kept* the legal principle

29 Interview with Sunarto, Member of KSPPS BMT Muamalat Mulia Kudus, 27 August 2023.

30 Interview with Maryatun, Member of KSPPS BMT Muamalat Mulia Kudus, 30 August 2023.

31 Interview with Rumani, Member of KSPPS BMT Muamalat Mulia Kudus, 28 August 2023.

32 Interview with Parsini, Member of KSPPS BMT Muamalat Mulia Kudus, 30 August 2023.

of agreements as regulated in Article 1338 paragraph (1) of the Civil Code, which implies that every agreement/contract that is legally made becomes law for the parties who make it. Based on this understanding, an agreement is the rules of the game or the basis for the parties to do or act something and/or not act something as stated in the written agreement document.³⁵

Subekti in Setiawan said that an agreement is an event where someone has promised to carry out something. From this event, a legal relationship arises between the parties, called an engagement.³⁶ Meanwhile, default (broken promises) are defined as obligations that are not carried out on time or are inappropriate.³⁷ Abdulhay believes that default (broken promises) is not fulfilling obligations as specified in the agreement made by the receivable party (fund provider/creditor) with the party. Owe (fund manager/debtor).³⁸

To carry out obligations, Atiyah, as quoted by Muhtarom,³⁹ said that the obligation to carry out obligations specified in the contract is purely a civil matter for the contracting parties, the implementation of which requires good faith. In the study of Civil Law, good faith in carrying out all obligations contained in an agreement is an objective element for assessing the implementation of the agreement,

meaning whether the implementation of the agreement is following the norms of propriety and decency.⁴⁰

In fact, according to the Compilation of Sharia Economic Law as regulated in PERMA RI Number 2 of 2008, Article 47 states that parties who owe when proven to have violated the content of the agreement (*unlawful act*) which causes the receivable party to suffer a loss, then the agreement can be canceled.⁴¹ Article 38 further emphasizes that apart from canceling the agreement, the parties owe Sanctions that can also be imposed in the form of paying compensation after being declared a broken promise, fines, risk transfer, or paying court costs if the case is resolved through litigation.

Therefore, to prevent a greater negative impact on profitability losses caused by members breaking promises or not fulfilling their obligations, the initial step for KSPPS BMT Muamalat Mulia Kudus is to conduct an analysis of members' financial conditions and take a persuasive approach by providing consultation services to ensure root causes of members not being able to meet achievements. According to Zumaroh, Secretary and Financing Administration of KSPPS BMT Muamalat Mulia Kudus, said this step was taken as a form of strategy to find out the conditions that should occur

33 Jamal Wiwoho and Anis Mashdurohatun, *Hukum Kontrak, Ekonomi Syariah dan Etika Bisnis* (Semarang, 2017), 10–11.

34 I Ketut Oka Setiawan, *Hukum Perikatan* (Jakarta Timur: Sinar Grafika, 2015), 5.

35 Dermina Dsalimunthe, "Akibat Hukum Wanprestasi dalam Perspektif Kitab Undang-Undang Hukum Perdata (BW)," *Jurnal Al-Maqasid* 3, no. 1 (June 2017): 13, <https://jurnal.uinsyahada.ac.id/index.php/almaqasid/article/view/1444/1177>.

36 Marhainis Abdulhay, *Hukum Perdata Materil* (Jakarta: Pradnya Paramita, 2004), 53.

37 M Muhtarom, "Asas-Asas Hukum Perjanjian : Suatu Landasan dalam Membuat Kontrak," *Suhuf* 26, no. 1 (Mei 2014): 54, <https://publikasiilmiah.ums.ac.id/xmlui/handle/11617/4573>.

38 Lukman Santoso AZ, *Aspek Hukum Perjanjian Kajian Komprehensif Teori dan Perkembangannya*, Penebar Media Pustaka (Yogyakarta: Penebar Media Pustaka, 2019), 60–61.

39 Peraturan Mahkamah Agung RI, "Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah" (Jakarta: Mahkamah Agung RI, 2008).

in the field, whether there is an element of intent or not on the part of members and help find the right solution so that members can still fulfill their obligations. Apart from that, this method is also considered a humanist step in solving problems while simultaneously trying to maintain good relations with members.

V. KSPPS BMT Muamalat Mulia Kudus Solution in Settlement of *Mudharabah* Receivables Against Members

Every agreement that arises from an agreement in principle has legal consequences for the parties to fulfill their rights and obligations.⁴² The implementation of these rights and obligations is a form of commitment and responsibility that is in line with religious teachings, treaty law, and respect for humanity.⁴³ However, in practice, agreements in all forms of transactions, including *mudharabah* financing transactions, are often held by the fund/debt manager (*mudharib*) not carrying out obligations as stated in the agreement/contract so that it can harm the provider of funds/receivables (*shahibul maal*) both material and immaterial.

Material losses, as referred to, are losses suffered by the injured party in the form of capital or profits that should be obtained from business activities.⁴⁴ Meanwhile, immaterial losses are in the form of a decrease in the level of public trust in the performance of capital providers

(microfinance institutions) due to bad financing. In fact, in many cases, due to financing problems that impact economic instability or the health of LKMS, people feel worried and decide to withdraw their savings at the institution.

In the context of overcoming losses caused by problematic financing above, the settlement of *mudharabah* agreement receivables carried out by KSPPS BMT Muamalat Mulia Kudus against members (broken promises) is through a strategy of saving funds and settling the profit sharing ratio. According to Aulia Rahman, using this strategy in receivable settlement aims to prevent greater losses due to *Mudharib* not fulfilling its obligations. Regarding this problem, he added that the first step in resolving receivables was to carry out monitoring in the field to ascertain the root of the problems members faced so that they could not fulfill their obligations. In monitoring activities, he also analyses members' financial reports, which will later be used for decision-making to resolve problems.

After knowing the root of the problem and the results of the analysis of the members' financial reports, the next step is to take a persuasive approach by inviting the *mudharib* to negotiate or deliberate together to resolve financial problems faced by members. From these deliberation efforts, it is hoped that both parties will obtain the

40 Reza Al Fajar and Ashar Sinilele, "Urgensi Penyelesaian Sengketa Wanprestasi," *Alauddin Law Development Journal* 2, no. 1 (March 2020): 54, <https://doi.org/10.24252/aldev.v2i1.13271>.

41 Ramli Semmawi, "Urgensi Akad dalam Hukum Ekonomi Islam," *Jurnal Ilmiah Al-Syir'ah* 8, no. 2 (December 2010): 515, <https://doi.org/10.30984/as.v8i2.23>.

42 Andreas Andrie Djatmiko, Fury Setyaningrum, and Rifana Zainudin, "Implementasi Bentuk Ganti Rugi Menurut Burgelijk Wetboek (Kitab Undang-Undang Hukum Perdata) Indonesia," *Nomos : Jurnal Penelitian Ilmu Hukum* 2, no. 1 (Januari 2022): 3, <https://doi.org/10.56393/nomos.v1i7.350>.

best solution that is mutually beneficial. In this regard, Zumaroh explained to researchers that in the deliberation process, KSPPS BMT Muamalat Mulia Kudus offered a solution in the form of restructuring *mudharabah* financing to members, for example: rescheduling, reconditioning, and restructuring.

Hardi and Ilham,⁴⁵ in their article, explain that financing restructuring is part of agreement renegotiation as a step and strategy in saving financing to improve the financial condition of members/customers by reinstating previous financing through renegotiation of agreements and *refinancing* in the financing agreement. Meanwhile, financing restructuring according to OJK Regulation Number 2/POJK.03/2022 on Asset Quality Assessment of Sharia Commercial Banks and Sharia Business Units, Article 1 paragraph (7) states that Sharia Banks and Sharia Business Units take corrective steps to help customers. Who experience difficulties in fulfilling their obligations.

In connection with the restructuring policy offered in *rescheduling*, KSPPS BMT Muamalat Mulia Kudus makes a policy by rescheduling or allowing a tolerant time according to the member's ability to pay obligations. Policy *Reconditioning* involves partially or completely changing the terms of the agreement regarding the payment schedule and number of installments, time, and reduction of profit-sharing arrears. Meanwhile, policy *restructuring* involves

providing additional funds for business activities, converting financing agreements, and converting installments into temporary capital participation.

The restructuring policy was carried out by KSPPS BMT Muamalat Mulia Kudus so that members who experienced difficulties in fulfilling their obligations could start businesses again to ease the burden experienced by members. If, in reality, the method used does not produce significant progress, meaning that members remain in the same situation as not carrying out their obligations, then KSPPS BMT Muamalat Mulia Kudus will issue a warning letter and legal summons to the member. This step was taken to encourage members to be aware of and heed the financing restructuring agreement previously agreed upon so that KSPPS BMT Muamalat Mulia Kudus is protected.

Aulia Rahman said the warning letter or SP was issued three times, each with a grace period of two weeks. The warning letter contains the number of outstanding installments and a summons for members to be willing to come to the office to complete the *mudharabah* financing payment. If, in this case, the members still do not heed the warning letter, then the step taken by KSPPS BMT Muamalat Mulia Kudus is to take firm legal action by resolving the *mudharabah* financing through the Religious Court, namely by submitting a lawsuit for the execution of collateral confiscation of the mortgage guarantee.

43 Dody Wijaya Hardi and Muhammad Ilham, "Analisis Restrukturisasi Pembiayaan Perbankan Syariah Dimasa Covid-19 Tahun 2020," *Wahana Islamika: Jurnal Studi Keislaman* 7, no. 2 (December 2021): 227, <https://wahanaislamika.staisw.ac.id/index.php/WI/article/view/32/28>.

However, he revealed that in connection with the process of resolving the case of a lawsuit for the execution of collateral confiscation in court and the absence of a court decision that has permanent legal force, KSPPS BMT Muamalat Mulia Kudus still opens opportunities for members to settle in good faith to pay off the payment so that the lawsuit for the execution of the collateral confiscation will be revoked. Settlement through the Religious Court is once again carried out as a last alternative if the member is no longer cooperative in settling his obligations. In addition to efforts to execute collateral confiscation using the Religious Court (litigation), it also uses non-litigation channels through the KPKNL (State Property and Auction Service Office) to resolve *mudharabah* financing problems.

VI. Perspective *Maslahah Mursalah* Regarding the Settlement of *Mudharabah* Receivables at KSPPS BMT Muamalat Mulia Kudus

Before discussing further regarding the KSPPS BMT Muamalat Mulia Kudus policy in settling *mudharabah* receivables from members by analyzing it from the perspective of *maslahah mursalah*, First, this research will explain what and how *maslahah mursalah*. In the literature review, *maslahah mursalah* is used by some scholars as a method of establishing law in addressing, responding to, and providing solutions to problems in the field of

muamalah.⁴⁶ In another study, it was said that *maslahah mursalah* can be accepted as a method of determining Islamic law if it is in line with and does not contradict the Qur'an and Hadith.⁴⁷ Abd al-Halim Uwais in Rusfi⁴⁸ presented *maslahah mursalah* as a consideration for humanitarian issues in law to maintain the five main things: religion, reason, soul, heredity, and religion. In other words, it is a characteristic inherent in the legal structure that takes positive things and leaves negative stuff for humans.

Placement *maslahah mursalah* as a source or method of legal *istinbat* makes Islamic law supple and flexible so that it can be applied at any time and space in all social fields, namely limited to the field of *muamalah*. The concept of thinking using *maslahah mursalah* in the reality of social life is based on Islamic law in its various regulations and laws, oriented towards the realization of benefits, namely the needs and interests of humans in their life in this world. Therefore, striving to realize benefits and prevent harm is very important and needed in every human life. It is regulated in the Shari'a that Allah SWT revealed to all His Messengers, so this is also the main target in Islamic law.

In theory, *maslahah mursalah* consists of two words viz *problem* and *mursalah*. Say *problem* linguistically; it means benefits and activity contains benefits or brings goodness.⁴⁹ While the word *mursalah* has

44 Hendri Hermawan Adinugraha and Mashudi Mashudi, "Al-Maslahah Al-Mursalah dalam Penentuan Hukum Islam," *Jurnal Ilmiah Ekonomi Islam* 4, no. 01 (March 2018): 64, <https://doi.org/10.29040/jiei.v4i1.140>.

45 Syarif Hidayatullah, "Maslahah Mursalah Menurut Al-Ghazali," *Al-Mizan: Jurnal Hukum dan Ekonomi Syariah* 2, no. 1 (February 2018): 124, <https://ejurnal.iiq.ac.id/index.php/almizan/article/view/49/35>.

46 Mohammad Rusfi, "Validitas Maslahat Al-Mursalah sebagai Sumber Hukum," *Al-'Adalah* XII, no. 1 (September 2014): 64, <https://doi.org/10.24042/adalah.v12i1.175>.

47 M. Usman, "Zakat Distribution for Handling Transgender in Indonesia: A Perspective of Maslahah Mursalah," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (March 2023): 365, <https://doi.org/10.22373/sjhk.v7i1.16934>.

the meaning of being free or detached.⁵⁰ If both meanings are used, *mursalah* is associated with *maslahah*, which has an independent meaning regardless of the statement that shows whether or not it can be done. In the view of Imam al-Ghazali, the problem is interpreted as taking advantage of and rejecting all forms of damage (harm) that follow the objectives of Sharia.⁵¹ The objectives of Sharia as intended include maintaining religion, reason, soul, property, and offspring.⁵²

Meanwhile, according to Syarifuddin,⁵³ *maslahah* can be categorized into two forms: realizing benefits, which means pleasure, and goodness aimed at humans. (*jalb al-manafi*) and protect humanity from evil and damage (*dar'u al-mafasid*). Ajuna⁵⁴ stated in his study that *Maslahah Mursalah* draws laws on a problem not discussed in the text but has beneficial implications for human life. Based on several opinions about *maslahah mursalah*, then the essence of *maslahah mursalah* is, whatever is good according to reason, with consideration that it can bring about goodness (*jalbul mashalih or benefit*) or avoid evil (*dar'ul mafasid*) for humanity.⁵⁵ So all good things according

to reason follow *hearing shari'ah* (sharia objectives).⁵⁶

In principle, every legal relationship established by a person through an agreement is intended to run harmoniously and be carried out voluntarily or in good faith.⁵⁷ The meaning of this statement is that agreements in all their forms that are made legally require the parties to carry them out as a form of responsibility and commitment to realizing the common good. Even in Islamic law, it has been emphasized that the law of owning or borrowing is permissible while paying off debt is obligatory.⁵⁸ However, under certain circumstances, parties owe. It is not uncommon to experience financial difficulties when paying debts. In this regard, Islam has recommended that receivable parties provide a tolerant time so that a person can complete their responsibility in paying off debts.

The relevance of the statement above is that the resolution of receivables problems undertaken by KSPPS BMT Muamalat Mulia Kudus is by implementing various policies so that members can carry out their *mudharabah* financing payment obligations

48 Husdiana and Isnaini Harahap, "The Implementation of Maslahah Mursalah in the Circular Economy of Waste of UKM Tempe Berkah in Hampan Perak Village," *Istinbath: Jurnal Hukum dan Ekonomi Syariah* 22, no. 1 (June 2023): 25–26, <https://doi.org/10.20414/ijhi.v22i1.581>.

49 Abdul Atsar, "Implementation of Fiqh Based on the Maslahah in Murabahah Financing in Sharia Banking," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 18, no. 1 (June 2018): 123, <https://doi.org/10.18326/ijtihad.v18i1.119-136>.

50 Nasrun Haroen, *Usul Fiqih*, Cetakan ke (Jakarta: Logos Wacana Ilmu, 2001), 114.

51 Amir Syarifuddin, *Ushul Fiqh*, Cetakan ke (Jakarta: Kencana Prenada Media Group, 2008), 35.

52 Luqmanul Hakiem Ajuna, "Maslahah Mursalah Implementasinya pada Transaksi Ekonomi," *Asy Syar'iyah: Jurnal Ilmu Syari'ah Dan Perbankan Islam* 4, no. 2 (December 2019): 177, <https://doi.org/10.32923/asy.v4i2.1001>.

53 Nizaita Omar and Zulkifly Muda, "The Application of the Rule of Istihsan Bi Al- Maslahah (Juristic Preference by Interest): A Practical Approach on Some Medical Treatment," *International Journal of Academic Research in Business and Social Sciences* 7, no. 5 (2017): 365, <https://doi.org/10.6007/IJARBS/v7-i5/2975>.

54 Issa Qaed et al., "Maslahah as an Islamic Source and Its Application in Financial Transactions," *Journal of Research in Humanities and Social Science* 2, no. 5 (2014): 66, <https://www.questjournals.org/jrhss/v2-i5.html>.

55 Sherly Nur Salsabilla and Aristoni Aristoni, "Kajian Hukum Ekonomi Syariah dalam Penyelesaian Wanprestasi Praktik Jual Beli Kayu Jati Secara Kredit pada Usaha Dagang Berkah Jati Mlonggo Jepara," *TAWAZUN : Journal of Sharia Economic Law* 6, no. 2 (December 2023): 268, <https://doi.org/10.21043/tawazun.v6i2.22229>.

56 Hardi and Ilham, "Analisis Restrukturisasi Pembiayaan Perbankan Syariah Dimasa Covid-19 Tahun 2020," 231.

again; in the study, *masalah mursalah* can be interpreted as having created good benefits for members. These benefits are reflected in the implications arising from the restructuring policy, where members have free time to pay *mudharabah* financing debts, which are their obligations.

According to the researchers, the restructuring policy implemented by KSPPS BMT Muamalat Mulia Kudus also helped rebuild harmonious relations between the parties, which had been strained due to members' default. The benefits that impact the parties are essentially good things that align with the objectives of Sharia, namely realizing benefits in the field of *muamalah* so that prolonged disputes can be avoided.

If seen in terms of type *problems*, the restructuring policy provided to members is part of *masalah hajjiah*, which means that the restructuring policy at least has a positive influence on members' psychology because members receive relief from the pressure of financial difficulties at the time the installment payment is due. Abdul Hadi in Adinugraha and Mashudi, reveals that *masalah hajjiah* is a benefit intended for perfection *masalah daruriyyah* previously in the form of relief to maintain and maintain basic human needs.

Providing relief from difficulties in dealing with debts and receivables has been ordered in Islamic law as expressed by Hamka in Hardi and Ilham, which states that providing relief to someone who experiences difficulties in fulfilling their obligations to pay debts has become a demand for believers. In other words, only

believers provide convenience to members/customers. The order provides flexibility to the parties *shahibul maal* (funding provider) against *mudharib* (fund managers) who experience difficulties in fulfilling their obligations in paying debts is also reflected in Al-Qur'an Surat Al-Baqarah: 280, which means "And when those who owe is in a difficult situation, then give him a grace period until he gets a chance. And when you give charity, it is better for you if you know it".

However, the meaning of the above sentence cannot be used as a justification for the party *mudharib* to forget the obligation that must be fulfilled to the party *shahibul maal*, in this case, KSPPS BMT Muamalat Mulia Kudus. As explained above, Islamic law places importance on paying debts. This is reflected in the Al-Qur'an Surah Al-Maidah: 1, which means, "O you who believe, fulfill the covenants...". So, it is quite clear that the meaning of this verse is an order for the party's *mudharib* to immediately carry out the obligation to pay debts if they can and are not allowed to delay, even in Islamic law, *qiyas*, a person's *mudharib*/debtor who does not want to pay the debt to a thief. On the other hand, Allah SWT will provide facilities for one person, *mudharib*, to pay off his debt as long as he makes efforts in good faith to complete it.

Meanwhile, the KSPPS BMT Muamalat Mulia Kudus's policy of executing collateral confiscation of mortgage guarantees can, in principle, be understood as the institution's effort to protect or maintain the benefit of property/asset ownership from members' default actions. As the concept

is problematic according to the purpose of sharia, that preserving property is a must for a person for the sake of life, even Islam itself forbids in *muamalah* activities a person to eat other people's property in a way that is not allowed according to sharia.

VII. Closing

A. Conclusion

Based on the presentation of the results and previous discussion, this research concludes that the cause of members/*mudharib* unable to carry out obligations in paying *mudharabah* financing due to financial difficulties due to business failure influenced by natural factors (disasters), the selling value of goods fluctuates due to intense price competition (*price war*) This results in economic instability for members. Responding to members' failure to pay in carrying out their *mudharabah* financing payment obligations, KSPPS BMT Muamalat Mulia Kudus implemented some policies as a strategy to obtain receivables from members through continuous monitoring of members, negotiations or deliberations to find the root of the problem, providing warnings and legal summons, and carrying out executions. confiscate collateral. Policies as applied in resolving *mudharabah* financing receivables problems against members in perspective *masalah mursalah* is an effort to create benefits for members and KSPPS BMT Muamalat Mulia Kudus. The realization of benefits for members is reflected in members' ease in carrying out payment obligations, while the benefit for the institution is maintaining ownership of assets.

B. Recommendation

In resolving the problem of *mudharabah* receivables caused by members not carrying out their obligations as agreed, it is recommended that BMT Muamalat Mulia Kudus continue to prioritize humanist aspects and justice, especially if it is resolved through the execution of collateral confiscations. Then, in responding to the problems that occur in the future, the institution should be more selective in providing financing to prospective members by implementing principles, being careful, and analyzing the conditions of prospective members, for example, the source of income and background of prospective members. This is intended as a preventive step to avoid financing problems that could cause losses in the future.

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