

Home Ownership Loan Agreement in the Labuha Branch of Bank Syariah Indonesia

Dahlai Hasim,¹ Fatma Faisal,² Arief Budiono³

^{1,2}Faculty of Law, Universitas Khairun Ternate, Ternate, Indonesia

³Faculty of Law, Universitas Muhammadiyah Surakarta, Surakarta, Indonesia
ab368@ums.ac.id

Abstract

In this paper, the authors will analyze: (1) the details of the home ownership loan agreement in the Labuha Branch of Bank Syariah Indonesia (The Indonesian Sharia Bank/BSI) and (2) how to resolve the issue of default carried out one of the parties in the home ownership loan agreement in the Labuha Branch of BSI. Members of society who wish to own a home but lack funds may utilize the credit facilities provided by BSI by making a credit agreement (home ownership loan). It is one of the solutions for prospecting housing consumers to quickly have a house. This paper is urgent because the increasing Indonesian population leads to an increase in demand for housing. Banks like BSI can help society obtain house ownership loans amid the increasing house prices. This paper employed the normative empirical legal research method. Results showed that the agreement carried out by the debtor and creditor is already according to the applicable regulations. It was shown that there was an increase in the number of debtors who obtained home ownership loans from the Labuha Branch of BSI. In total, 83 debtors obtained such facilities from 2021 to 2023. In the case of problematic debtors, ten debtors experienced a default in the Labuha Branch of BSI from 2021 to 2023. In the case where debtors fail to carry out their obligations in paying installments or in repaying their debt, then the bank will sell the collateral object or the house.

Keywords: Bank; Bank Syariah Indonesia; Default; Home Ownership Loan; Law

1. INTRODUCTION

In Indonesia, societal welfare is closely related to primary needs. These primary needs are staple necessities, namely the needs for food, clothing, and shelter. Due to the increasing number of the Indonesian population, society's demands for primary needs, including shelter or housing, have also increased.

As an intermediary institution, banks become a mediator between parties that have a surplus of funds and those with a lack of funds. Therefore, banks work in the activity of giving loans. It also provides various services, such as providing payment services as well as easing the development system in all economic sectors.¹

Bank Syariah Indonesia (The Indonesian Sharia Bank/BSI) provides a service that is known as the Sharia home ownership loan in Indonesia, which is a program in the sector of people's housing. This bank has been proven to make a contribution to the state's development. It has eased citizens in achieving welfare by providing homeowner loans to fulfill one of the people's

¹ N. R. W. Astuti and M. S. Oktapianti, "Mekanisme Penggunaan Akad Murabahah Dalam Pembiayaan Pemilikan Rumah Pada PT. Bank Syariah Indonesia KC Purwakarta Gandanegara," *Jammiah (Jurnal Ilmiah Mahasiswa Ekonomi Syariah)* 3, no. 1 (2023): 28–51, <https://doi.org/10.37726/jammiah.v3i1.459>.

basic needs. This is so that Indonesian society may have proper and worthy houses to achieve a tranquil and prosperous life.²

Members of society who wish to own a home but lack funds may utilize the credit facilities provided by BSI by making a credit agreement in the form of a home ownership loan. This facility has certainly fulfilled the criteria issued by BSI.³ The minimum down payment for a home ownership loan in Indonesia is 30% (without a requirement on the frequency of paying the down payment) so the number of installments and interests can be suppressed. The higher the down payment, the smaller the installments and interests that must be paid monthly. This will certainly give ease to debtors in repaying their debt to the bank.

Home ownership loans offered by developer companies with funding that is supported by banks are one of the solutions for prospecting housing consumers to quickly own a house. The process of purchasing a home through the home ownership loan is as follows:⁴ (1) there is an initial agreement between the consumer and the developer company on the first payment as the down payment; the type and location of the house that will be purchased; the price of the land and building; the time needed to build the house; and the time when the house is handed over to the consumer and (2) there is the home ownership loan application submission by the developer company for and under the name of the consumer to the bank that provides home ownership loan facilities. The period of the home ownership loan is between five to ten years. This will be adapted to the consumer's capabilities in paying monthly installments.

Based on the description above, some issues that require solutions to the home ownership loan process have occurred. One of the issues that emerged in the home ownership loan agreement is the issue of collateral of the loan that banks will give as well as the binding method. Therefore, based on the statements above, in this paper, the authors aim to analyze the home ownership loan agreement in the Labuha Branch of *Bank Syariah Indonesia*, Limited Company.

Previous research was conducted by Mahmudi,⁵ who studied home ownership loans from *Bank Syariah Indonesia* from the perspective of contemporary *muamalah fiqh* (the Islamic legal science on the relationship with other people). Mahmudi's research was different from the authors' research as the latter studies the home ownership loan legal agreement. The authors' research has an advantage as it studies the agreement which is the most vital aspect of a home ownership loan.

² Nurjannah Septyanun and Bambang Setiaji, "Law Enforcement on Sharia Compliance: A Case Study on The Murabahah Consumptive Financing Agreement of Bank A Syariah," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 2 (2021): 299–309, <https://doi.org/10.29303/ius.v9i2.895>.

³ Ina Andriyani, M. Fuad Hadziq, and Rini Febrianti, "Analisis Perbedaan Antara Pembiayaan Bank Syariah Dengan Kredit Bank Konvensional: Analisis Variabel Utama Pembiayaan," *SANTRI: Jurnal Ekonomi Dan Keuangan Islam* 2, no. 3 (2024): 105–114, <https://doi.org/10.61132/santri.v2i3.585>.

⁴ A. Syathori, S. Febriyani, and A. K. Umam, "Sistem Dan Prosedur Produk Pembiayaan Kredit Pemilikan Rumah (KPR) Di BTN Syariah KCPS Indramayu," *JSEF: Journal of Sharia Economics and Finance* 2, no. 1 (2022): 20–25, <https://doi.org/10.31943/jsef.v2i1.23>.

⁵ I. Mahmudi, "Pembiayaan Pada KPR Syariah Di BSI Perspektif Fiqih Mu'amalah Kontemporer: Pembiayaan Pada KPR Syariah Di BSI Perspektif Fiqih Mu'amalah Kontemporer," *At-Ta'awun: Jurnal Ekonomi Syariah* 1, no. 1 (2024): 28–35.

Another previous research was conducted by Putri and Martana,⁶ who studied the loan procedures at *Bank Syariah Mandiri* (now *Bank Syariah Indonesia*). It focused on the requirements and administrative needs in proposing for home ownership loans in *Bank Syariah Mandiri*. The authors' research has an advantage because apart from procedures, it also discusses the agreements and consequences of that home ownership loan agreement.

Based on the background above, the authors will analyze: (1) the details of the home ownership loan agreement in the Labuha Branch of *Bank Syariah Indonesia* and (2) the methods to resolve the issue of default carried out by one of the parties in the home ownership loan agreement in the Labuha Branch of *Bank Syariah Indonesia*.

2. METHOD

This paper employed the normative empirical legal research method. It was also called legal research which utilized primary legal sources, where the data were directly obtained from society as the first source through field research with observation and interview methods. Legal research was carried out to find a resolution to the occurring legal issues. Therefore, the legal research was researched in the know-how framework. In the legal research, the obtained results were in the form of prescriptions on the proposed issue.⁷

The research location in which the authors obtained data and information related to the research problem was the Labuha Branch of *Bank Syariah Indonesia* in South Halmahera Regency, Indonesia. This location was purposively chosen under the consideration that there were issues in the home ownership loan agreement in this BSI branch.

Just like other research, this research requires techniques in collecting research data. Thus, the researcher tried to collect field research data which consisted of both primary and secondary data that were used as research materials. The types of data sources in this research are as follows: (1) Primary source of data: Primary data were in the form of facts or information that were directly obtained from the data source. The data were according to the aim of the research. This was so that the authors could obtain the real results from the analyzed object; (2) Secondary source of data: Secondary data were those which supported the information or supporters that can complete the primary data, which consist of the Indonesian Civil Code, Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 on Banking; as well as literature materials related to credit agreements; and (3) Tertiary source of data: Tertiary data were materials which provide information on primary and secondary data.

To obtain accurate data for this research, the authors prepared two types of instruments that become the facilities to ease the data collection and analysis processes. These data collection techniques were: (1) Field research (interviews): To obtain primary data, the authors carried out

⁶ Yunita Putri and I Ketut Martana, "Prosedur Pembiayaan Kredit Pemilikan Rumah (KPR) Griya Pada PT. Bank Syariah Mandiri Kantor Cabang Mayestik Jakarta," *Jurnal Administrasi Bisnis* 1, no. 1 (2023): 62–66, <https://doi.org/10.31294/jab.v1i1.382>.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2023).

direct research on the research object through the interview method. The interview method was a data collection method that was carried out by directly asking and obtaining answers from figures who had a direct relationship with the researched object; (2) Participative observation technique: In this technique, the authors carried out a direct observation related to the issue that will be answered by the researchers; and (3) Library Research: It was a data collection technique where the authors collected literary materials, including legal regulations and documents related to the above issue. This method aimed to seek conceptions, theories, or opinions related to the core issue.

3. RESULTS AND DISCUSSION

3.1 The Home Ownership Loan Agreement in the Labuha Branch of *Bank Syariah Indonesia*

The home ownership loan facility from *Bank Syariah Indonesia* (BSI) is provided for societal members who need a payment scheme to buy houses, home stores, home offices, apartments, and other types of residences (new or second-hand houses).⁸ When customers wish to use the home ownership loan facility from BSI, the bank asks the customers what type of loan specifications they want. Then, the bank will order the house from the developer according to the specifications that the customer wants. After the bank obtains the house according to the customer's wishes, the bank will offer it to the customer. If the customer agrees with the house and the previously agreed-upon price, the customer will pay the down payment of that home ownership loan and pay the mortgage installments to the bank.⁹

In providing the home ownership loan facility to debtors, banks, especially the Labuha Branch of BSI, may demand debtors to achieve prestation. Apart from that, banks have the right to demand compensation for debtors' lateness in carrying out their obligations, i.e., when debtors cannot fulfill the loan in building a house. The rights and obligations in the Labuha Branch of BSI are the same as those in other Sharia banks in Indonesia.¹⁰

Payment is one of the determining factors of home ownership. There is an increase in land, construction, environmental facility, and infrastructure prices which influences the increase in home ownership prices. Housing complexes that provide the facility of home ownership loans through cooperation with BSI are located in various villages in Labuha, namely Tomori Village (25 units), Hidayat Village (15 units), Gandasuli Village (20 units), and Panambuang Village (23 units).

Lower-income societies commonly have a high interest on home ownership loans as they lack the capability to own a house. In response to this condition, the government made policies so that

⁸ Bambang Hermanto and Syahril, "Persepsi Masyarakat Terhadap Perbankan Syariah Di Kabupaten Sumenep," *Performance: Jurnal Bisnis Dan Akuntansi* 10, no. 1 (2020): 77–92, <https://doi.org/10.24929/feb.v10i1.973>.

⁹ Nabilah Safitri, Muhammad Iqbal Fasa, and Is Susanto, "Analisis Pembiayaan Pemilikan Rumah (PPR) Melalui Akad Akad Pada Bank Syariah Indonesia (BSI) KCP Lampung," *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 5 (2024): 7224–36.

¹⁰ F. Azmi, "Faktor Internal Dan Eksternal Yang Mempengaruhi Pembiayaan Murabahah Pada Perbankan Syariah Di Indonesia," *Garduasi* 34, no. 1 (2015): 53–70.

groups with medium-to-low income including Civil State Servants may obtain proper housing that is affordable to their purchasing power through the provision of home ownership loan facilities. Home ownership loan provisions for Civil State Servants may be implemented well if it is carried out according to the procedures determined by the government. In this case, the home ownership loan implementation by BSI is already according to the specified standard.¹¹

Before obtaining these loans, debtors must fulfill the requirements that were determined by the Labuha Branch of BSI, namely: (1) Applicants must return and approve the requirements and stipulations stated in the Credit Provision Agreement Statement Letter; (2) Applicants must pay the processing fee and other fees, including the bank provision with an amount of 0.5% of the home ownership loan, insurance premium fees, notary fees, appraiser/assessment fees, and installment of the first month; (3) Applicants must become a bank account owner. The minimum amount of deposit that must first be given is the same amount as the processing fee.

The provision of loans must truly pay attention to society's interests. It must not only have an orientation for the benefit and profit of the bank. There must be an assessment of whether or not its application in society has followed the determined procedures. The provision of home ownership loans was most recently determined in the decision of the Minister of Residences and Areal Infrastructure No. 20/KPTS/M/2004 dated January 8th, 2004 on the Provision of Housing and Residences with the support of subsidized housing.¹²

BSI is one of the banks that was appointed by the government to have a role in distributing of home ownership loans. In channeling these loans, there are procedures and stipulations contained in a loan agreement that debtors must fulfill and comply with. One of these requirements is that debtors are obliged to pay monthly installments according to the determined period.¹³

According to Article 1338 clause (1) of the Indonesian Civil Code, every valid agreement that was created applies as a law for its makers. In the case where the home ownership loan has been agreed upon by two parties, namely the Labuha Branch of BSI as the creditor and the customer as the debtor, this agreement validly applies as a law for both parties. It binds the parties to fulfill the content of the previously-made agreement.

In obtaining loans from BSI, prospecting debtors must fill in a certain form that was given by the bank. Apart from that, they must fulfill the requirements indicated by the Labuha Branch of BSI as follows: (1) passport photos of the husband and the wife; (2) a copy of the husband and the wife's identification cards; (3) a copy of the family card or the marriage/divorce certificate; (4) a copy of the 100% Decree and the Decree of the last work position; (5) a work statement letter from an institution/company they work in; (6) The wage slip and statement letter of husband and

¹¹ Safitri, Fasa, and Susanto, "Analisis Pembiayaan Pemilikan Rumah (PPR) Melalui Akad Akad Pada Bank Syariah Indonesia (BSI) KCP Lampung."

¹² Mhd. Aziz Alfarisi Hasibuan, "Analisis Penerapan Akad Murabahah Di Bank Syariah Indonesia (BSI) KCP Medan Sukaramai," *Moneter: Jurnal Ekonomi Dan Keuangan* 2, no. 2 (2024): 96–107, <https://doi.org/10.61132/moneter.v2i2.461>.

¹³ Mahmudi, "Pembiayaan Pada KPR Syariah Di BSI Perspektif Fiqih Mu'amalah Kontemporer: Pembiayaan Pada KPR Syariah Di BSI Perspektif Fiqih Mu'amalah Kontemporer."

the wife's income; (7) a copy of the bank savings account in the last three months; (8) business legality data; (9) business financial report; and (10) professional license.

Before providing applicants with the home ownership loan, the Labuha Branch of BSI carefully observes the capacity, capital, collateral, and condition of the applicant. This credit provision stage in the form of an assessment is carried out through a step-by-step and sustainable procedure. It must be in line with the principles in the agreement law, especially concerning the principle of trust.¹⁴

Then, the next stage in the home ownership loan agreement procedure is guidance for debtors who have obtained credit. In the first stage, the bank carried out preventive monitoring by collecting information from prospecting debtors' application letters. After obtaining such an information, the Labuha Branch of BSI will make a decision to grant or reject the application.¹⁵

In the case where a prospecting debtor fails to fulfill the criteria, his application is directly rejected. However, if the application is accepted, the credit scheme starts. At this stage, the bank organizes guidance through approach methods that debtors can accept, namely through counseling and guidance. Banks also motivate debtors so that they carry out their obligations to routinely pay installments in an orderly manner.¹⁶ The last action that the Labuha Branch of BSI carries out in the home ownership loan agreement procedure is carrying out efforts to save credit, which is the bank's effort to: (1) protect problematic credits from becoming bad credits; (2) help debtors with non-performing or doubtful credit or credit which has been categorized as bad credit and making it become performing. This is for debtors who have the capability to pay either the interest or the principal debt.

The Labuha Branch of BSI has the main function to provide aid in the form of home ownership loans. It is one of BSI's facilities in aiding people with a lower economic level to fulfill their needs for a house. Through this credit scheme, debtors may obtain funds or goods through the Labuha Branch of BSI. It was found that in the last three years, there was an increase in the number of home ownership loan receivers as shown in Table 1.

Table 1 shows that from 2021 to 2023, there was a total of 83 debtors who obtained home ownership loans from the Labuha Branch of BSI. In 2021, there were 20 debtors with a percentage of 19%. Then, in the next year, there was an increase to 27 debtors with a percentage of 32%. In 2023 there was a steep increase to 36, reaching 49% of the total home ownership loan

¹⁴ Nirmadarningsih Hiya, Saparuddin Siregar, and Sanusi Gazali Pane, "Analisis Penerapan Akuntansi Murabahah Dalam Pembiayaan KPR Syariah Ditinjau Dari PSAK No.102 Pada Bank Syariah Indonesia," *Ekonomi, Keuangan, Investasi Dan Syariah (EKUITAS)* 4, no. 1 (2022): 70–73, <https://doi.org/10.47065/ekuitas.v4i1.1298>.

¹⁵ D. O. Viani et al., "Strategi Pemasaran Pembiayaan Kredit Kepemilikan Rumah (KPR) Griya Hasanah Di Bank Syariah Indonesia KCP Demang Pada Masa Pandemi Covid-19," *Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA)* 2, no. 1 (2022), <https://doi.org/10.36908/jimpa.v2i1.48>.

¹⁶ Mustafa Kholbi, Sitti Rahmah, and Mahendra Romus, "Analisis Penerapan Akad Mudharabah Di Bank Syariah Indonesia Cabang Pekanbaru," *Kutubkhanah* 21, no. 1 (2021): 33, <https://doi.org/10.24014/kutubkhanah.v21i1.13353>.

receivers from the Labuha Branch of BSI from 2021-2023. This showed that in this branch, there was an annual increase in the number of home ownership loan receivers.

Table 1. The Number of Home Ownership Loan Debtors in the Labuha Branch of *Bank Syariah Indonesia* from 2021 to 2023

No	Year	Amount of Debtors	Percentage (%)
1	2021	20	19
2	2022	27	32
3	2023	36	49
	Total	83	100

Source: Primary data, 2024 (Edited).

The authors conducted interviews with Rahmat Sutrisno from the Credit Acceptance Department in the Labuha Branch of BSI. Sutrisno stated that every year, a relatively increasing number of debtors apply for loans to BSI. It is just that some application documents were returned to the applicant as their documents did not pass the document examination stage and they failed to fulfill some requirements. Thus, the total number of debtors who obtained home ownership loans from the Labuha Branch of BSI from 2021-2023 was 83 people.¹⁷

In the home ownership loan agreement between debtors and the Sharia bank, there was a special form that BSI created. A credit agreement is an initial agreement that starts from the handing over of the money that was a result of an agreement between loan givers and receivers. It contained the legal relationships between the two parties. Without a credit agreement that is signed by the bank and debtor, no loan can be given.¹⁸ This agreement contains general requirements in the credit scheme. Debtors only need to fill in the blanks and sign the form. Article 1457 of the Civil Code states "A transaction is an agreement where one party binds itself to yield an item and another party pays the price according to the agreement." These differences are clear in the case that there is a third party, namely the bank. The bank has the role of providing funds. It has a crucial position and role in the implementation of that agreement.¹⁹

In carrying out its functions as the servicer of home ownership loans, banks may appoint a third party for and under the name of the bank as the home ownership loan servicer. This is limited to the establishment of the home ownership loan document administration. In establishing home ownership loan document administration by a third party, banks must at least pay attention to the following points: (1) there are criteria that lack attention on the aspect of security and

¹⁷ Rahmat Sutrisno, interview by Dahlai Hasim, January 27th, 2024.

¹⁸ Sandrina Maya, Meli Marlia, and Siti Zaleha, "Analisis Penerapan Akad Pembiayaan Murabahah Pada Perbankan Syariah," *Jurnal Multidisiplin Indonesia* 2, no. 6 (2023): 880–885, <https://doi.org/10.58344/jmi.v2i6.242>.

¹⁹ Nadia Safitri, Mawardi Mawardi, and Nina Ramadani, "Analisis Implementasi Pembiayaan KPR Syariah Dengan Akad Murabahah Pada Bank Syariah Indonesia Kc. Bandar Lampung Kedaton," *Mu'amalatuna Jurnal Ekonomi Syariah* 5, no. 1 (2022): 36–50, <https://doi.org/10.36269/muamalatuna.v5i1.1087>.

confidentiality in debtors' home ownership loan documents in the process of selecting the third party that became the bank's partner as the establisher of the home ownership loan document administration and (2) there is a written agreement between the bank and the establisher of the home ownership loan document administration that must at least contain the authority and responsibility of both parties, the dispute resolution mechanism, and conditions that lead to the end of the cooperation agreement.²⁰

In establishing the home ownership loan installment payment resolution or in establishing the execution of collateral by a third party, banks must at least pay attention to the following items: (1) there are selection criteria for third parties who will become the bank's partners in establishing collection or collateral execution; (2) the bank provides written guidelines as a reference in establishing collection or collateral execution by third parties; and (3) there is a written agreement between the bank and the party that establishes collection or collateral execution that must at least contain the authority and responsibility of both parties, dispute resolution mechanism, and conditions that lead to the end of the cooperation agreement.

Article 1457 of the Civil Code states "A transaction is an agreement where one party binds itself to yield an item and another party pays the price according to the agreement." These differences are clear in the case where there is a third party. In this case, the bank becomes the vessel of fund provision that has a crucial position and role in the implementation of that agreement.²¹

In an interview, Rahmat Sutrisno as a Credit Analyst of BSI stated that in the banking world, it is deemed as a commonly-known fact that the standard agreement between banks and society is made according to the will that is solely determined by the party of the bank. This pattern is made because a simultaneous service for the interest of many people must be carried out well.

If debtors do not agree with the requirements stipulated in the agreement, they can revoke their credit applications. Banks will not coerce applicants into signing that agreement. In the case of the application revocation, there is no agreement between the two parties. Thus, even though banks determine the requirements, this does not mean that debtors do not have the freedom to determine their next action.²²

The first step that needs to be considered in guiding debtors is priorly carrying out reconciliation or confirmation with debtors on the record of installment payment. This is because it might be the case that the installment payment by the debtors has not been received or that it has not been recorded in the debt account. This may be because the debtor number was written incorrectly. Or, it may be because the payment was carried out by collector treasurers who have not carried out payment/transfer, which results in arrears in the debit column recording on the payments

²⁰ D. Mulada and A. Rahman, "Peralihan Kredit Kepemilikan Rumah Subsidi Tanpa Persetujuan Pihak Bank," *Petitum* 8, no. 2 (2020): 89–99.

²¹ Rahmat Sutrisno, interview by Fatma Faisal, April 4th, 2024.

²² M. Sitorus and M. A. Y. Utama, "Sistem Pengajuan Pinjaman Pada Bank Bri Unit Citayam Dengan Menggunakan Metode Waterfall," *Innotech: Jurnal Ilmu Komputer, Sistem Informasi Dan Teknologi Informasi* 1, no. 1 (2024): 9–18.

made through another bank as the payment transfer was not made.²³ This reconciliation or confirmation aims to avoid unwanted issues in the case that there are incorrect installment payment records or debt balances between the debtor and the Branch Office.

3.1 The Resolution of Default in the Home Ownership Loan Agreement in the Labuha Branch of *Bank Syariah Indonesia*

Unfortunately, it is not always the case that the agreement between the two parties is carried out according to plan. The failure to implement an agreement according to the plan may be caused by some obstacles or issues during the valid application of that agreement. However, with the good faith of the related parties, these issues or obstacles may be well resolved. An issue that the Labuha Branch of BSI faced concerning home ownership loans includes the case where debtors experience a default. In this case, debtors fail to carry out their obligations to the creditor. As a bank that provides home ownership loans to debtors, the provision of loans brings a risk to the bank. The risk is that debtors fail to pay installments due to certain reasons, a condition which is called a default. The number of debtors that experienced default in the Labuha Branch of BSI from 2021 to 2023 is shown in Table 2.

Table 2. The Number of Debtors Experiencing Defaults in the Sharia Home Ownership Loan in the Labuha Branch of *Bank Syariah Indonesia* from 2021 to 2023

No	Year	Amount of Debtors	Percentage (%)
1	2021	2	20
2	2022	3	30
3	2023	5	50
	Total	10	100

Source: Primary data, 2024(Edited).

Table 2 showed that from 2021 to 2023, the number of debtors who experienced a default in the Labuha Branch of BSI reached 10 people. In 2021, there were two debtors or 20%. In the next year, it increased by one person into three people (30%). Finally, in 2023, five customers or debtors experienced a default (50%).

Based on the interviews that the authors conducted with Fadli, a Credit Cashier in the Labuha Branch of BSI, it was found that the default happened because the debtors failed to routinely pay the installments on time. Thus, the bank summoned the debtors via correspondence. After the debtors are summoned three consecutive times and the debtor fails to be present in the last

²³ Nur Asia Azis, Muhammad Yaasiin Raya, and Bariiek Ramdhani Pababbari, "Tinjauan Hukum Islam Terhadap Mekanisme Pembiayaan BSI Griya Hasanah," *Istishaduna* 3, no. 4 (2022): 282–93, <https://doi.org/10.24252/iqtishaduna.vi.27560>.

summoning, the bank will automatically revoke the house as it is deemed that the debtor is no longer able to pay the installments.²⁴

According to the writer, in failing to pay the installments, debtors have violated the agreement that they have signed with the Labuha Branch of BSI. Default happens when debtors: (1) fail to carry out the requirements in the agreement; (2) are late in carrying out what was written in the agreement; (3) carry out the requirements in the agreement in an inappropriate manner; and (4) carried out things that were deemed prohibited by the agreement.²⁵ Based on the elements of default above, it can be concluded that default happens when the party of the debtors neglects their obligations that were stipulated in the standard clauses made by the party of the creditor.

The agreements made by the two parties are not always well-implemented according to the plan. The failure to carry out the agreement according to the plan may be caused by some obstacles or issues that happened during the period in which that agreement is effective. However, if both parties have good faith, the occurring issues or obstacles may be resolved well.

As one of the banks that provide home ownership loan facilities to debtors, BSI often faces the issue of debtors' default where debtors fail to carry out their obligations to the creditor. Debtors are deemed to not fulfill their prestation (i.e., experienced a default) when:²⁶ (1) Debtors are late in paying the principal installment plus interest according to the determined agreement. The lateness in payment is proof that the debtor has neglected his obligation. Thus, the creditor needs to remind the debtor to pay the principal installment plus interest to the creditor; (2) Within three consecutive months, the debtor failed or is negligent in paying his obligation, namely the payment of principal installment plus interest; (3) There is an unwanted event. For instance, the house that became the collateral was burned; and (4) If the debtor that became the decedent died but the home ownership loan has not been repaid or has not ended.

To resolve the issue of default carried out by the debtor, the creditor carries out a persuasive approach to the debtor. This approach is carried out by calling the debtor to ask for the reason or the causes that make the debtor fail in fulfilling his obligation. They also remind the debtor to pay his obligation, namely principal installment plus interest. In the case of lateness in payment, creditors must also remind debtors of the fines that must be paid according to the loan agreement.²⁷

Based on the interview results with Windu Anggara, the Head of the Labuha Branch of BSI, he stated that if the above approach does not work, then BSI as the creditor will send a warning letter. This letter demands the debtor to immediately pay the principal installment plus interest

²⁴ Fadli, interview by Arief Budiono, April 24th, 2024

²⁵ R. A. Rahmadiyahanti, "Akibat Hukum Penolakan Rencana Perdamaian Debitor Oleh Kreditor Dalam Proses Penundaan Kewajiban Pembayaran Utang," *Notarius* 8, no. 2 (2015): 252–73, <https://doi.org/10.14710/nts.v8i2.10266>.

²⁶ Asriadi Arifin, "Produk Kredit Pemilikan Rumah Bank Syariah Indonesia Parepare (Antara Peran Dan Risiko)," *Banco: Jurnal Manajemen Dan Perbankan Syariah* 6, no. 1 (2024), <https://doi.org/10.35905/banco.v6i1.8919>.

²⁷ S. A. M. Kurniawan and S. Suhermi, "Kredit Macet Dalam Perjanjian Kredit Pemilikan Rumah," *Zaaken: Journal of Civil and Business Law* 3, no. 3 (2022): 378–91, <https://doi.org/10.22437/zaaken.v3i3.18647>.

which is due with a confirmation letter of arrears from 1 day to 60 days. If the bank has sent the first warning letter to the debtor but there was no response from day 61 to day 90, then the bank will send the second warning letter from day 91 to 120. Then if the debtor still fails to give a response, the bank will send the third warning letter after 120 days. If there is still a lack of response after this third letter, then the bank will insert the name of the debtor into the list of debtors with bad credit.²⁸

According to the regulations, this issue will be forwarded to the Division of Troubled Credit Rescue in BSI. In the case of bad credit, banks will usually try to find a solution so that debtors may still pay the installments. In other words, this is so that the home ownership loan does not stop before the indicated time. If debtors still fail to give a response after the issuance of the first, second, and third warning letters, then the party of the bank will issue a letter to the State Auction and Wealth Service Agency.²⁹

In the case where after the bank conducts the first and second methods the debtor still fails to pay their obligations to the creditor, then BSI will carry out a direct home visit to the debtor.³⁰ In this case, there will be a discussion on the issues that the debtor faces in carrying out their obligations that were stipulated in the home ownership loan agreement in a friendly manner. Then, the bank tries to find a solution so that the home ownership loan may still be repaid. For instance, the bank may offer to change the loan term of the debt repayment period, change the installment payment schedule, and carry out other methods to ease the debtor in repaying his debt.³¹

When the home ownership loan agreement is signed by the creditor and the debtor, the debtor obtains credit facilities for home ownership loans from the Labuha Branch of BSI. This credit agreement also creates the rights and obligations of each party. The home ownership loan agreement from the Labuha Branch of BSI is a standard agreement where the content and form of the agreement have been determined and the related parties only need to read and sign it. The house mortgage payment is carried out every month in a period that was previously determined in an agreement by the bank and the debtor. However, some debtors experienced a default as they failed to repay the credit installments for several months.

Based on the results of interviews, it was found that there were twelve debtors who had issues with the ownership loan agreement due to failure to pay mortgage installments. Their income

²⁸ Windu Anggara, interview by Dahlai Hasim, April 4th, 2024.

²⁹ Syaifuddin Zuhdi et al., "Ijarah And Riba In The Sharia Card: Analysis Of 'Illat Hukmi Of Sharia Card In The Adz-Dzari'Ah Perspective," *Jurnal Jurisprudence (Jurisprudence Journal)* 10, no. 2 (2020): 221–33, <https://doi.org/10.23917/jurisprudence.v11i2.15307>.

³⁰ Athiya Sinta Wulandari and Arin Setiyowati, "Identification of Problems and Handling of Home Ownership Financing (PPR) Through Murabahah Contracts at Bank Syariah Indonesia (BSI) KCP Rungkut 1 Surabaya," *Perisai Islamic Banking and Finance Journal* 7, no. 2 (2023), <https://doi.org/10.21070/perisai.v7i2.1644>.

³¹ P. P. Endriasari and M. Nashirudin, "Analisis Kriteria Nasabah Mampu Terhadap Penerapan Sanksi Wanprestasi Pada Produk Pembiayaan KPR Syariah (Studi Kasus Pada Bank BSI Dan BCA Syariah Kantor Cabang Solo)," *Al-Fikru: Jurnal Ilmiah* 6, no. 1 (2022): 34–55, <https://doi.org/10.51672/alfikru.v16i1.69>.

decreased and their business went bankrupt due to competition from other business owners. Thus, the Labuha Branch of BSI has resolved these issues using certain methods so that the debtors can carry out their obligations.

From the explanation above, it can be said that every obligation or prestation to carry out a certain thing must be fulfilled by the party who are responsible for them. The fulfillment of the prestation or debt is guaranteed by the wealth of the person responsible. Therefore, the responsible party is often called the party who have the debt or the debtor.³²

There must be a consideration that in the process of agreement implementation, good faith (*te goeder trouw*) has a truly important meaning. According to Subekti, good faith is the most crucial point of the agreement law. This can be understood as good faith is the main basis to carry out an agreement correctly and properly.

Article 1338 clause (3) of the Civil Code stipulated that “An agreement must be carried out with good faith.” This principle of good faith is the most basic and important principle to be paid attention to in agreeing.³³ This good faith means that debtors must act with a good personality. In a very subjective definition, good faith can be defined as one’s honesty, namely a character that one has when carrying out a legal action. Then, in the objective sense, the implementation of that agreement must be carried out under the norm of appropriateness or whatever is deemed appropriate in society.³⁴

From the description above, it can be concluded that good faith (*te goeder trouw*) in establishing a legal relationship or when carrying out an agreement is no less than a subjective mental attitude of a person. Apart from subjective good faith, there is also objective good faith, which is appropriateness (*billikheid, redelijkheid*).³⁵ Even so, the percentage of bad credit/default in the Labuha Branch of BSI is very small and below the standard. It is difficult for the Labuha Branch of BSI to avoid this issue. Thus, there needs to be a regulation that protects the Labuha Branch of BSI from cases of default in loan agreements.³⁶

4. CONCLUSION

Based on the research above, it can be concluded that the agreement carried out by the debtor and creditor is already according to the applicable regulations. It was shown that there was an

³² Nisrina Mutiara Dewi, “Tinjauan Tentang Keadaan Memaksa (Force Majeure) Dalam Sengketa Perjanjian Murabahah Di BNI Syariah Cabang Medan,” *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 3, no. 1 (2020): 1–16.

³³ R. J. Akyuwen, W. N. Panjaitan, and S. H. Nabila, “The Principle of Good Faith In Transactional Agreements In The Community of West Seram Regency,” *Batulis Civil Law Review* 4, no. 2 (2023): 119–28, <https://doi.org/10.47268/ballrev.v4i2.1842>.

³⁴ S. I. Istiowati and M. Muslichah, “Pembiayaan Mudharabah, Musyarakah, Murabahah, Dan Tingkat Profitabilitas Bank Syariah Di Indonesia,” *AFRE (Accounting and Financial Review)* 4, no. 1 (2021): 29–37, <https://doi.org/10.26905/afr.v4i1.5476>.

³⁵ A. W. Hubbi and A. P. Hrp, “Analisis Pembiayaan Kredit Pemilikan Rumah (KPR) Dengan Penggunaan Akad Murabahah Bil Al-Wakalah Di BSI KCP Medan Juand,” *Jurnal Inovasi Penelitian* 3, no. 8 (2022): 7373–80, <https://doi.org/10.47492/jip.v3i8.2389>.

³⁶ S. Dewi et al., “Analisis Pembiayaan Pada Bank Syariah Indonesia Tahun 2020-2022,” *Jambura Accounting Review* 5, no. 1 (2024): 13–26, <https://doi.org/10.37905/jar.v5i1.106>.

increase in the number of debtors that obtained home ownership loans from the Labuha Branch of BSI. In total, 83 debtors obtained such facilities from 2021 to 2023. In the case of problematic debtors, ten debtors experienced a default in the Labuha Branch of BSI from 2021 to 2023. In the case where debtors fail to carry out their obligations in paying installments or in repaying their debt, then the collateral object will be sold. Then, the proceeds from the sales will be used to pay for the debtors' debt in the Labuha Branch of BSI. If this problem cannot be resolved using the first method, then the bank will sue the debtor in court. It is recommended that future research is carried out by analyzing the home ownership loan application and the dispute resolution methods regarding this loan in other banks both in Indonesia and abroad. This study implies that it can become a reference for future studies of the same theme. Then, it can also be used as a source of information for people who are interested in taking home ownership loans on how the issue of bad credit will be resolved in case they are unable to pay the installments.

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