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Agreement¹ Based on Musyarakah Financing Fatwa of the National Sharia Council⁸
No: 08/DSN-MUI/IV/2000 Concerning Musyarakah Financing

Aprilianti

Faculty of Law, Lampung University, Indonesia

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Abstract

This research is to examine the related Musyarakah Financing Agreement Based on the Fatwa of the National Syari'ah Council No: 08/DSN-MUI/IV/2000² Concerning Musyarakah Financing is a bank whose operations are based on sharia principles. The sharia principles that form the basis of Islamic bank operations are as stated by the Indonesian Religious Leader. For this reason, it is necessary to study how the implementation of the musyarakah agreement is based on the applicable regulations and the fatwa of the National Sharia Council. Musyarakah has become one of the financing products in Islamic banking. The problem to be discussed in this study is how is the implementation of the Musyarakah Financing Agreement based on the Fatwa of the National Syari'ah Council No: 08/DSN-MUI/IV/2000 Concerning Musyarakah Financing. The research method used is a normative research method with a statute approach and analyzed using content analysis.

Keywords: *Sharia Agreement; Musyarakah Financing*

Introduction

Agreement is an act of agreement between a person/several other people to do a certain action. Human life will not be separated from what is called an agreement, which facilitates us in fulfilling our various interests. [1] Given how important the contract is, every human civilization that has ever appeared must have paid attention to and regulated it. The Islamic religion provides principles and basics regarding the arrangement of agreements as stated in the Al-Quran and the Sunnah of the Prophet Muhammad SAW. [2] These foundations were then developed by Islamic jurists from century to century to form what is now called sharia contract law, especially regarding musyarakah financing agreements in Islamic banks. [3]

Sharia Bank is a bank whose operations are based on sharia principles. The sharia principles that form the basis of Islamic bank operations are as stated by the Indonesian Ulema Council (MUI). [4] The institution at MUI that specifically handles Islamic Financial Institutions (LKS), including Islamic banks, is the National Sharia Council of the Indonesian Ulema Council (DSN MUI). The fatwas issued by the DSN are binding on Islamic banks. [5] This is because Number 21 of 2008 concerning Sharia Banking in article 26 requires that business activities and/or sharia products and services comply with

sharia principles. The Sharia principle in question is as stated in the fatwa of the Indonesian Ulama Council. [6] Islamic banks with a system of profit and loss sharing (profit and loss sharing) have a very appropriate concept in the midst of conditions of injustice experienced by society. The concept of togetherness in facing risks and obtaining profits, as well as fairness in trying to become a very strategic potential for the development of Islamic banks in the future. This is because most or the majority of Indonesia's population is Muslim. [7]

DSN MUI has issued many fatwas which are the operational basis of Islamic banks. [8] These fatwas included fatwas regarding Current Accounts, Savings and Deposits for funding products. Meanwhile, financing products include Murabahah Financing, Mudharabah Financing, and Musyarakah Financing. [9] The relationship between customers and Islamic banks is not that of debtors and creditors, but rather a business partner relationship. Sharia bank products that are in line with the profit and loss sharing system are mudharabah and musyarakah. Musyarakah has become one of the financing products in Islamic banking. [10] Musyarakah Financing has been issued by the National Sharia Council with National Sharia Council Fatwa No: 08/DSN-MUI/IV/2000 concerning Musyarakah Financing and Article 19 Paragraph (1) Letter c of Law Number 21 of 2008 concerning Islamic Banking explains that A musyarakah contract is a cooperation agreement between two or more parties for a particular business in which each party provides a portion of the funds with the provision that profits will be shared according to the agreement, while losses are borne according to the respective portion of funds. [11] Based on this understanding, profits are divided according to the agreement, not according to the proportion of capital. However, in terms of profit sharing, the profit sharing system is not clear. [12] Based on the description above, the problem in this study is how the Musyarakah Financing Agreement is implemented. [13]

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Methods

The research method used is a normative research method, using a statute approach related to the Musyarakah Financing Agreement Based on Fatwa of the National Syaria Council No: 08/DSN-MUI/IV/2000 concerning Musyarakah Financing. The statute approach is to examine matters relating to the principles -Legal principles, views and legal doctrines, and laws and regulations related to musyarakah financing agreements, with accurate data and can be accounted for for the truth. Apart from that, an in-depth examination of the legal facts was also carried out to then seek solutions to the problems that arise in the symptoms in question. [14]

Results and Discussion

Islamic financial institutions are an alternative for some people who want to mu'amalah within the sharia framework. The current developments show something to be proud of, even though the percentage is still small compared to conventional financial institutions.[15] However, the spirit of sharia must always be properly appreciated so that sharia financial institutions can develop, especially sharia banking. Islamic banks with a system of profit and loss sharing (profit and loss sharing) have a very appropriate concept in the midst of conditions of injustice experienced by society. [16] The concept of togetherness in facing risks and obtaining profits, as well as fairness in trying to become a very strategic potential for the development of Islamic banks in the future. This is because most or the majority of Indonesia's population is Muslim. This challenge is also a bright prospect for the development of Islamic banking in society. [17]

In addition, Islamic banks with a profit and loss sharing system prioritize stability over profitability, while conventional banks with an interest system have a major weakness, which is inflationary and tends to be discriminatory. Islamic bank is a financial institution that functions as an intermediary organization between those who have excess funds and those who lack funds which in

carrying out their activities must comply with Islamic principles. [18] Islamic banks or Islamic banks function as an intermediary institution, namely mobilizing funds from the public and channeling these funds back in the form of financing. Islamic banking also responds to customer requests in order to advance investment companies or entrepreneurial businesses, as long as the company's activities are not prohibited by Islam. [19]

Efforts to implement sharia principles in economic activities, especially in the activities of financial institutions are continuously being made. Bank financial institutions, non-bank financial institutions and financing institutions have now implemented sharia principles in their operations. [20] This is meant to have been supported by adequate regulations so that it is expected to provide a legal umbrella for parties conducting financial transactions when using the said institutions. [21]

1. Sharia Agreement

Sharia agreements are often referred to as contracts. Contract comes from the Arabic *al-'aqd* which means bond or knot, both visible (*hissiyy*) and invisible (*ma'nawy*) ties. *Al-Mawrid's* dictionary, translates al-'Aqd as a contract and agreement or contract and agreement. [22] Contract (*al-'aqd*), according to the term is an agreement or joint commitment either oral, gesture, or writing between two or more parties which has binding legal implications to carry it out. And in another sense, the contract is an agreement or joint commitment either verbally, in a sign, or in writing between two or more parties which has binding legal implications to carry it out. [23]

In Islamic law the term contract is not distinguished from an agreement, both are identical and are called akad. So that in this case the contract is defined as a meeting of consent which is stated by one party with the consent of the other party legally according to *syara'* which has a legal effect on the object. [24] However, there are various terms that are often used as references in addition to the term "Law of Engagement" to describe the legal provisions governing transactions in society. Some use the term debt law, agreement law or contract law. Each of these terms has a different articulation from one another. [25] Regarding a transaction that results in a consequence in the form of an event that demands a lawsuit, the term debt law is often used. [26] While the term contract law is an event where a person promises to another person or where two people promise each other to do something. This term is used when looking at the real form of the transaction. If the legal arrangement regarding the agreement in written form is often referred to as Contract Law. [27]

Meanwhile, to describe the abstract form of the engagement of the parties to the transaction, the term engagement law is used. [28] This does not only arise from the existence of an agreement between the parties, but also from the provisions that apply outside the agreement which causes the parties to be bound to carry out certain legal actions. [29] Here it appears that the Law of the Agreement has a broader meaning than just the Law of the Agreement. [30] The term shari'ah contract law here is the whole of the legal principles governing legal relations in the field of mu'amalah, especially behavior in carrying out economic relations between two or more parties based on an agreement to cause legal consequences in writing based on Islamic law. [31] The agreement/contract is not just a moral engagement. However, it is a legal agreement that results in another law. Therefore, the purpose of the contract is to realize the main legal consequences of the contract. [32]

2. Implementation of the Musyarakah Financing Agreement Based on Fatwa of the National Syari'ah Council No: 08/DSN-MUI/IV/2000 Concerning Musyarakah Financing

Musyarakah financing is a cooperation agreement that occurs between fund owners to combine capital, through joint ventures and joint management in a partnership relationship. Profit sharing is determined in accordance with the agreement (usually determined based on the amount of capital provided and the participation of each party). [33] Musyarakah is a profit-sharing contract when two or

more entrepreneurs who own funds/capital work together as business partners to finance new or ongoing business investments. [34] Business partners who own capital have the right to participate in company management, but this is not mandatory. [35] The parties can share the work of managing the business according to the agreement and they can also ask for a salary/wages for the labor and expertise they devote to a particular business. [36]

According to Yadi Janwari, *musyarakah* is an agreement between two or more parties to associate in terms of capital and profits. [37] *Musyarakah* which is understood in Islamic banking is a mechanism of cooperation (accumulation between work and capital) that benefits the wider community in the production of goods and services for the needs of society. [38] Community contracts can be used in a variety of business fields where indications lead to profits. Meanwhile, according to Akhmad Mujahidin al-musyarakah, it is a contract that gives rise to equal rights between unions to act legally on work and profits. [39] The proportion of profits is shared between them according to the agreement predetermined in the contract in accordance with the proportion of capital included, or it can also be different from the portion of the capital they include, the proportion of profits can be different from the portion of capital under normal conditions. [40] However, for a partner who decides to become a sleeping partner, the proportion of profit must not exceed the proportion of capital. Meanwhile, if there is a loss, it will be shared according to the proportion of each capital investment. [41]

Thus, it can be concluded that *musyarakah* is generally an ongoing agreement as long as the jointly funded business continues to operate. Even so, *musyarakah* agreements can be terminated with or without closing the business. [42] If the business is closed and liquidated, then each business partner will receive the results of asset liquidation according to the ratio of their participation. If the business continues, the business partners who wish to terminate the agreement can sell their shares to other business partners at a mutually agreed price. [43] There are two parts to the basis of *musyarakah*, namely *shari'a* considerations and juridical considerations. *Shari'a* considerations for *musyarakah* financing are guided by the Al-Quran and the legal basis based on DSN MUI Fatwa No. 08/DSN- MUI/IV/2000 concerning *Musyarakah* Financing. [44]

This contract is also applied to syndication between cooperatives or financial institutions. So it can be concluded that in *musyarakah* financing in profit sharing, each party receives a share of profits proportionally to their respective capital contributions or a predetermined agreement and if there is a loss, it is charged proportionally to each capital provider. [45] There are several *musyarakah* financing applications for Islamic financial institutions. First, permanent *musyarakah* (continuous *musyarakah*), where the cooperative is a permanent business partner in a project/business. [46] This model is rarely practiced, but this permanent capital investment is an attractive alternative to investment in securities or stocks, which can be used as one of the investment portfolios of Islamic financial institutions. Second, *musyarakah* is used for working capital financing schemes.

Islamic financial institutions are partners in the early stages of a business or production process. In this scheme, Islamic financial institutions will provide funds to purchase assets or means of production, as well as other *musyarakah* partners. After the business is running and can bring profit, the cooperative's portion of ownership of assets and means of production will decrease because it is bought by other partners, and in the end it will be zero, this financing model is better known as *deminishing musyarakah*, and this is what is widely applied in Islamic financial institutions. Third, *musyarakah* is used for short-term financing. This type of *musyarakah* can be applied in the form of trade financing, such as exports, imports, supply of raw materials or other special needs of customers.

Broadly speaking, *musyarakah* is categorized into two types, namely, ownership *musyarakah* (*syirkah al amlak*) and contract *musyarakah* (*syirkah al 'aqd*). *Musyarakah* of ownership is created due to an inheritance, will or other conditions that result in the ownership of one asset by two or more people. Whereas a *musyarakah* contract is created by means of an agreement, where two or more people agree

that each of them contributes to the musyarakah capital, they also agree to share profits and losses. Musyarakah will be divided into: *syirkah al 'inan*, *al mufawadhah*, *al a'maal*, and *syirkah al wujuh*.

- a) *Syirkah al 'inan*, namely two people partnering in a certain matter, not in all their assets, for example partners in buying an item. The law was agreed upon by the mujtahidin and was permissible.³⁰ In the form of *syirkah al-'inan* there is no requirement for equality in the amount of capital, distribution of profits or division of work. If they experience a loss, the loss must be shared based on the percentage of invested capital.
- b) *Syirkah al mufawadhah*, that the partners must be mature, the funds from each partner invested in the partnership business must be equal in amount, each partner's ability to assume responsibility and receive profit sharing and bear losses must be the same, each partner has full authority to act.³² In *fiqh sunnah*, it is stated that the similarity extends to religious issues. This *syirkah* will become legal, if all parties have fulfilled their obligations in full. In the business world, this *syirkah* model can be found in the formation of cooperatives.
- c) *Syirkah al a'maal* is also called *syirkah abdan*, namely the cooperation of two or more people who have the same profession to complete a particular job. For example, two carpenters work together to complete an order for the manufacture of a wardrobe. Profit sharing is mutually agreed upon. Because the nature of this cooperation is only limited to work, it actually does not only apply to similar professions but to different professions but support each other. For example, cooperation between bag tailors and screen printing makers and others. ³³ *Usasha's* results in *syirkah a'mal* will be divided according to the profit sharing ratio that has been agreed between the partnering parties.
- d) *Syirkah Wujuh*, namely cooperation between two or more people to buy something without capital, but only trust capital and profits are shared between them. his character. According to Hanafi and Hambali, this form of *syirkah* is permissible because the parties are united in work, and these figures have influence in work. However, according to Syafii and Maliki, this *syirkah* is invalid, because *syirkah* is only based on capital and work.

Musyarakah is created by means of an agreement where two or more people agree that each of them provides Musyarakah capital. They also agreed to share profits and losses. Musyarakah financing is almost the same as *mudharabah* financing, but musyarakah financing has its own principles that distinguish it from other financing. The principles of musyarakah financing are as follows:

- a) The project or business activity to be carried out is feasible and does not conflict with sharia.
- b) The parties participating in the cooperation include musyarakah funds with the following provisions: Can be in the form of cash or liquid assets, The funds raised no longer belong to individuals, but belong to businesses.

Regarding the musyarakah financing mechanism according to Fatwa DSN No.08/DSN-MUI/IV/2000 concerning musyarakah financing, that statements of consent and qabul must be stated by the parties to indicate their will in entering into a contract (contract), the contracting parties must be competent law, then regarding the object of the contract consisting of capital, work, profits and losses. The capital requirements that must be considered are that the capital provided must be cash, gold, silver or of the same value, but capital can consist of trading assets, such as goods, property, and so on. If the capital is in the form of an asset, it must first be valued in cash and agreed upon by the partners. Regarding the division of labor, it is stated that the participation of partners in work is the basis for the implementation of musyarakah, but the equality in the portion of work is not a requirement. One partner may carry out more work than the other, and in this case he may claim an additional share of the profits for himself. Then for the calculation of profits, that profit must be quantified clearly to avoid differences and disputes at the time of profit allocation or termination of musyarakah.

Each partner's profits must be shared proportionally on the basis of all profits and there is no predetermined amount set for a partner, for the profit sharing system must be clearly stated in the contract. As for the loss, it must be shared among the partners proportionally according to their respective shares in capital. The musyarakah financing mechanism that is, the portion of profits given to partners as management fees varies from one musyarakah to another, depending on the amount of work expended and the level of expertise required by the partner. Of course, it is hoped that the greater the amount of work expended and the higher the level of expertise of the partner, the higher the percentage he will get. If there is a loss at the end of the musyarakah, which is not caused by a mistake in the contract clause by the partner, the loss will be borne jointly by both parties according to the proportion of the capital they have provided. However, when the loss is caused by an error in the contract clause by the customer, the customer himself is responsible for the loss. Each partner's profit must be a proportional share of all musyarakah profits. A partner is not justified in determining his own profit share at the start of the contract, because this weakens the musyarakah and violates the principle of justice. A partner may propose that if profits exceed a certain amount, that excess or percentage is awarded.

Conclusion

Based on research results related to the Musyarakah Financing Agreement Musyarakah Financing Agreement Musyarakah Financing Agreement Based on Fatwa of the National Syaria'h Council No: 08/DSN-MUI/IV/2000 In Sharia Banking that Musyarakah Financing is a contract of cooperation between two parties, namely between members with the bank. Each party contributes capital to a business run by members. Whereas in the distribution of profits, it should not be determined at the beginning, but must be divided when the business is clearly making a profit. Profit sharing must be in accordance with the portion of the capital contribution given by each party. Application of the principle of profit sharing (profit and loss sharing) in musyarakah financing contracts based on DSN-MUI fatwa No. 08/DSN-MUI/IV/2000 is quite good, this is because musyarakah financing is carried out Statements of consent and qabul must be stated by the parties to indicate their will in entering into a contract (contract), taking into account the following matters:

- a) The offer and acceptance must explicitly indicate the purpose of the contract (akad).
- b) Acceptance of the offer is made at the time of the contract.
- c) The contract is stated in writing, through correspondence, or by using modern means of communication.

Each partner's profit must be shared proportionally on the basis of all profits and there is no predetermined amount set for a partner and the profit sharing system must be clearly stated in the contract.

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