

# **JURNAL INTERNASIONAL**

**ISLAMIC LAW PERSPECTIVE OF AKAD MUDHAROBAH  
FINANCING MODEL ON THE SUBSTANCE OF STANDARD CLAUSE  
IN ISLAMIC BANK SURAKARTA**



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# ISLAMIC LAW PERSPECTIVE OF AKAD MUDHAROBAH FINANCING MODEL ON THE SUBSTANCE OF STANDARD CLAUSE IN ISLAMIC BANK SURAKARTA

Amir Junaidi

## I. BACKGROUND

Islamic banks is a banking institution based on Islamic law. According to Sutan Remy Sjahdeini "Islamic Bank was the same as Islamic banks are banks like conventional banks but its operating system based on Islamic principles". (Islamic Banking and Its position in the Indonesian National Law Procedure, 1999. page 42). According Karnen Perwata Atmadja and Shafi Antonio "Islamic Bank is that Islamic banks are banks operational, system in accordance with the principles of Islamic Sharia" (What and how Islamic Bank, 2008.. 1) Medium according to 7th points of Article 1 act No; 21, 2008, About Islamic Bank is in operation based on Islamic or Sharia law.

Islamic banks in Indonesia came after conventional banks Indonesia experienced a financial crisis in 1998. The emergence of Islamic banks in Indonesia made one of the alternatives that can be a bank as one of the options that can be after exiting Act No: 10 of 1998 on the strong legal basis Banking in Indonesia and now the reality of Islamic banks is growing very rapidly in Indonesia.

Why Islamic banks may be one alternative banks are confronted by the current financial crisis, this is not another is due to the products of Islamic banks themselves are different from conventional banks, among others, the sharia banking products include funding products, among others, Wadi 'ah, Savings / savings, deposits, and demand deposits. Financing products that include among others, Mudhorobah, musyarokah, murobahah, Muzaro'ah, etc., and Product Services include,

among others, courier service other valuable goods.

In Islamic banks in the benefit system does not recognize interest but with profit-sharing system between shohibulmaal and mudhorib in benefit for benefit with the system of interest is not allowed or prohibited in Islamic law.

Provisions for results between shohibulmaal with mudhorib in Islamic banks poured in an agreement or a contract or agreement agreed voluntarily without any element, Khilaf (Gholat), deception (proof), Compulsion (Ikroh), and free / vague (Guben).

Contract according to Ibn Rosyid is "mutually agreed contract without any element, lies, deception, and so forth in accordance with Islamic syareat" Bidayatul Mujtahia, 2006. page.797). And according to Abu Bakr al-Jabir said that "the Agreement or contract or promise that is the agreement of both parties or the association in accordance with business syareat or Islamic law. (Ensiklopedin Minhajul Muslim, 2006.. 516) According to WJS Poeradarmanta said that "the Agreement is agreement or promise or contract made by the parties" Discuss Indonesian Dictionary, 1977. Pg.16). According to the provisions of Article 20 paragraph 1 Court Rules Court no: 2 of 2008 on the Islamic Law Compilation "Akad is agreement in an agreement between two parties or more to do and / or do not do certain legal actions" and then under the provisions of Article 1 items to 13 of Act No. 21 of 2008 about islamic Bank "akad is a written agreement between Islamic banks or islamic business and other parties efforts

containing their rights and obligations of each party in accordance with Islamic principles".

Because the contract is made between shohibulmaal and mudhorib in Islamic banks is as an agreement in the spirit of Islamic law, when in fact that the contract which is valid in Islamic banks in Surakarta is an agreement with the standard clause means that the contract was a Form / forms have been made in advance by the parties Islamic banks, even though the contract with the standard clause is still be a polemic between the pros and cons. Called standard contract or agreement with the standard clause pursuant to Article 1 item 10 of Law No. 8 of 1999 on Consumer Protection, "standard clause is any rules or terms and conditions that have been prepared and determined in advance unilaterally by the perpetrator effort poured in a in a document and / or binding agreement and shall be met by the consumer".

## II. FORMULATION OF THE PROBLEM

The problem now is:

1. How does the model of financing agreement mudhorabah in Islamic banks in Surakarta?
2. Why mudhorabah financing agreement with standard clauses are not allowed in Islamic law?
3. How should the mudhorabah financing agreement model in accordance with Islamic law?

## III. RESEARCH PURPOSES

The purpose of this research is 1) . To know the model / shape of mudharobah financing agreement in Islamic banks in Surakarta. 2). To find mudharobah financing agreement with the standard clauses contract Islamic banks in Surakarta is in accordance with Islamic law or not. 3). To find a mudhorabah financing agreement model of Islamic banks in accordance with Islamic law.

## IV. RESEARCH METHODS

Research in the field of law is very broad in scope, and includes five legal concepts. (Setiono, 2002) and because the study aims to reveal the truth systematic, consistent with the methodology and research process conducted through analysis and construction of the data collected and processed (Soerjono Sukanto and Sri Mamuji, 1985) so that these legal research focus, the results of research this law, then the law of this research is the study of doctrinal law. The researchers use the concept of law is the law as a principle of truth and justice that is both natural and valid universal (Religious Law) and the Law is a manifestation of the symbolic meanings of social behavior as seen in the interaction between them. Relation with the legal concept, the method research that I use is the doctrinal legal research methods to the analysis of deduction.

## V. CONCEPTUAL FRAMEWORK

### 1. Perspective

In a large dictionary Indonesian, "Perspective is defined as a view or perspective" (Az-Zuhaili Wahbah. Th. 2011). In this case I would see or look at Mudharobah financing agreement which is valid in Shariah banks in Surakarta, seen from the perspective of Islamic law if the mudharobah financing agreement in accordance with Islamic law or not.

### 2. Islamic Law

In general, most people assume that between Islam and Shari'a law and jurisprudence, it is the same. In fact, if we look deeper and clearer understanding of each other's differences and language coverage.

The word "law", in the Indonesian used is of Arabic. That

is, norms or rules, namely size, benchmarks, guidelines are used to assess the behavior or actions of people and objects. Hazarın say, that the relationship legal sense of the word in both languages very closely, because, every rule, of any kind and source contains norms or rules as a core (Muhammad Daud Ali, 2000).

In the teachings of Islam known there are five rules or premises known as Al-Ahkam al-Khomsa which form the basis or standard or guideline for human actions both in worship and muamalah. Five rules that is, 1) .Wajib. 2). Sunna. 3). Permissible. 4). Makruh and 5). Haram (Rasjid Solomon, 2000) Fifth rules are commonly referred to as Al-Ahkam Al-Khomsah or five law.

### 3. Shariah banks

Bank according to Law No. 10 of 1998, there are two major parts, the First; Conventional banks are banks which rely on the system of interest. This means that the benefits obtained by the conventional banks are basing the calculation of interest. second; is a Shariah bank is a bank that uses the principles of Shari'ah operational system means that the income derived from calculations mudharobah (profit sharing).

In relation with this dissertation, the author only has conducted a special study on Shariah banks, especially in the field of financing agreement Mudharobah.

Islamic banks are "Islamic bank is a bank that operates in accordance with the principles of Islamic Shariah. More is said by Karnaen, the bank is operating in accordance with the principles of Islamic Shari'a is the bank in its operations following the provisions of the Islamic Shari'a,

especially regarding the muamalah procedures in Islam ". (Karnaen Perwata Atmadja and Shafi Antonio, 2008).

Shariah bank is a financial institution that serves as an intermediary as the party with the surplus funds and lack of funds for operations and other activities in accordance with Islamic law ". (Zainuddin Ali, 2007)

Shariah bank named the same as Islamic banks are banks like conventional banks but its operating system based on the principles of Shariah, (Sutan Remy Sjahdeini, 1999)

According to the bank's Shariah Law No. 21 of 2008, declared in Article 1 of the 7th item, that the Shariah bank is a bank in operation based on the principle of Shariah and by type consists of Commercial Shariah Banks and Finance People's Shariah.

### 4. Mudharobah

Mudharobah derived from Arabic, dharoba-yadribu that means hit or walk or stomping his feet in the way of Allah. In another sense means the person in carrying out his foot on the road in an effort to seek the gift of God. (Dzakiyah Darajat, 1984)

"Mudharobah was the same as that for capital Qiradh one person to another to run, while the profits are determined by mutual agreement (agreement) as well as if the losses are borne by the owners of capital unless the recipient and khilaf" (Sulaiman Abdullah, 1995 )

According Zaenal Arifin, called Mudharobah is an agreement between the owners of capital (shoohibul maal (لامل اب حص)) with employers (mudhorib) to undertake a joint venture. The advantage gained is

divided between them by a ratio comparison is agreed previously. (Zaenal Arifin, 2000)

According to Sutan Remy, mudharabah it is a financing transaction involves at least two parties, namely:

- a. Parties that have and provide capital to finance projects or businesses that require financing, the party called or Robb Shohibul Maal Al-Mal.
- b. The employers who need capital and running projects or enterprises are financed by the Shohibul maal such parties called Mudhorib. (Sutan Remy Sjahdeini, 1999)

According Karnaen called Mudharabah is a mudharabah financing is a financing agreement between the Shariah bank with employers, in which the bank provides venture capital financing or project managed by the employer or the basic agreement for the results. (Karnaen Perwata Atmadja, 1992)

Meanwhile, according to Antonio M. Shafi, Mudharabah venture is an agreement between two parties in which the first (Shohibul maal) provides a whole (100%) of capital, while others became manager. Mudharabah business profits are divided according to the agreement set forth in the contract, whereas if the loss is borne by the owners of capital losses not due to negligence of the manager, the manager should be responsible for the losses. (M. Shafi Antonio, 2001)

#### 5. Financing Mudharabah

What is meant by financing is one of the parties who have excess (Shohibul maal) provide loans to those who need funds (Mudhorib) in order to meet their business needs. In terms of

financing in Islamic Shari'a mudharabah there a procedure and rules.

#### 6. Pillars of Funding Mudharabah

Pillars of mudharabah financing or borrowing is allowed in the Islamic Shari'a shall comply with the following conditions, namely:

- 1) There is lafaz (ذفل) (consent (لوجب) and qobul (لوجب))

Lafaz or consent and qobul sentence in a loan that must be clearly spelled out in the front so that between the debtor and the lender is obviously no doubt (Ghuben). For example, I borrow money to you Rp. 100.000, - (one hundred thousand rupiah) later answered by receivables, yes I lend you money Rp. 100.000, - (one hundred thousand rupiah).

- 2) There are those who borrow and there are also those who lend.

The parties undertake lending and borrowing must exist and must clear his / her part, the both of parties Islamic law should be people who are adult (mukallaf (مكلم))

- 3) There are goods and / or money lent as objects to be loaned items.
- 4) The size of the goods or money borrowed it should be clear. (Muchsin, 2002)

According to Sulaiman Abdullah, Muhammad has hinted in his saying, which means: "And verily you are the best of the best at the time to pay the debt" (Mutafaqun 'Alaih) (Sulaiman Abdullah, 1995)

#### 7. Akad

How does understanding the Akad according to Islam. The word "Akad" is actually from the

word 'aqod (Arabic) which means the straps or ties. The word aqod 'everyday being said Akad is a contract or agreement. (Isiriani Hardani and Muhammad Giharto, 2007)

According to Ibn Rosyid, Akad is mutually agreed contract without any element of deceit, fraud and so on in accordance with syareat Islam (Ibn Rosyid, 2002). Try to compare with Abu Bakr Jabir al-Jazairi, said that the Akad or contract or agreement that is the agreement of both parties or the business association in accordance with Islamic law Sharia (Abu Bakr Jabir al-Jazairi, 2006)

According to Muhammad that, Akad, or Al-aqod, together with the engagement, treaty or agreement, (al-itifaq (قفتوى)). Ijab linkage (Statement perform bonding) and Kabul (statement of receipts bond) in accordance with the willness of syarak. (Mohammed, 2006)

Muslim jurists (jumhur Ulama') gives the definition of the Akad is "linkage of Ijab and Kabul are justified by Personality' which can lead to legal consequences of the object". (Gufron Al Mas'adi, 2002)

Akad in accordance with the provisions of Article 1 13rd item, Law No. 21 of 2008, concerning Sharia Banking is a written agreement between Shari'ah banks or Shari'ah businesses and others who load their rights and obligations for each parties in accordance with the principles of Shari'ah.

#### 8. Standard Clauses

According Hondius, standard agreement is the concept of promises written, compiled without discussing its contents and usually poured into a limited number of texts given its

agreement. According to Mariam Darus, standard contract is an agreement whose contents are standardized and poured in a form.

According to Sutan Remy, almost the entire agreement clauses has been standardized by the wearer and others basically do not have the opportunity to negotiate or ask for a change.

According fuadi Munir, a written contract made by only one party to the contract, and often has been printed (boilerplate) in the forms of a particular form by either party, the parties signed contract generally just fill in the data specific informative with little or no change in the clauses, the other party to the contract does not have the opportunity or just a little chance to negotiate / change clauses that have been made by one of the parties, so that the standard contract is usually very biased.

Under the terms of Article 1 item 10, the Consumer Protection Act no. 8 In 1999, declared "Standard Clauses are any rules or terms and conditions that have been prepared and determined in advance unilaterally by businesses set forth in a document and / or binding agreement and shall be met by the consumer".

## VI. RESULT

As for the results in the study are as follows:

- 1) That the model of Akad financing models mudharobah in Islamic banks in Surakarta that during this same average, namely;
  - a The akad have the same draft been made by bank sharia.
  - b In the beginning of the form / draft financing agreement mudharobah same section was written "Akad complete and clear identity.

- c The existence of Articles initial understanding of Sharia, pe, mudharobah financing, profit sharing ratio, the pillars of the contract, the contract period, weekdays.
  - d Article provisions concerning the use of financing.
  - e Article provisions of the contract period.
  - f Article provisions concerning the results.
  - g Article provisions for repayment by Mudhorib / customer.
  - h Article provision of guarantees / koleteral of mudhorib / customers.
  - i Article provisions on liability mudhorib / customers.
  - j Article provision broken promise.
  - k Article provisions on penalties.
  - l Article provisions on dispute settlement. And
  - m Article Cover.
- 2) Akad mudharobah with standard clauses in Islamic banks in Surakarta is not in accordance with Islamic law. Because the financing agreement mudharobah made it must qualify and pillars of agreement that there should be a). The existence of parties b). The existence of the contract object. c). The existence of consent and qabul contract. d). Purpose contract. and covenants made by the parties who made the contract is Islamic law should be no element, Gholat (err), Ghuben (doubt/ vague), proof (deception) and Ikroh (Compulsion). Akad mudharobah with standard clauses when viewed from theory of maslahah by Imam Al-Satibi, can not protect religion, soul, intellect, lineage and property, because there are elements that are contrary to

Islamic law, namely, Gholat, Ghuben, proof and Ikroh.

- 3) In this study the authors have constructing models in accordance with mudharobah financing agreement in Islamic banks in accordance with Islamic law based on the Quran and the hadith and the Indonesian Ulema Council Fatwa and Sharia Board of the National Fatwa Number: 07 / DSN-MUI / IV / 2000

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