

RECONSTRUCTION PRINCIPLES OF JUSTICE FUNDING AQAD BANKING SYSTEM IN PARTNERSHIP WITH SHARI'AH

Atin Meriati Isnaini

Faculty of Law, Islamic University Al-Azhar, Mataram,
INDONESIA.

ABSTRACT

Islamic bank is a financial institution that serves facilitate economic mechanisms in the real sector through its business activities in terms of financing this (partnership) which is based on Islamic principles that rule by Islamic law agreement between the bank and other parties to the venture financing in accordance with the stated values sharia.

Keywords: Basic principles muamalah, , voluntary, riba free, islamic banking, law

INTRODUCTION

Issues related to the contract or agreement amongst the muamalah system is an integral part of the content of the Qur'an and the Sunnah of the Prophet, whether in the form kiasik and most actual cases and contemporary. Principles and rules of the game have been set to be applied in life.

Based on the muamalah system, a new system or the old-fashioned apply to life is not to be a problem, which is important, as long as the system meets the rules *Syar'i* not contain elements that are banned, such as: *usury*, *gharar*, and *qimar* (speculation) of new issues should not be decided by the new sharia law was, but decided to Sharia law a comprehensive policy that can be overcome and decide how complicated the problem. One of the areas of business transactions, the economy is banking problems.

Islam is a religion that has the form and take the teachings of the sharia in it, have the property that contains the meaning of universality of Islam, which can be applied at any time and every time, and every place to yaumil end. This universality is clearly visible, especially in the area of transactions, or, where sharia is not only vast but flexible, but do not give *special treatment* for distinguishing Muslims and non-Muslims. While other qualities of Islamic law is *Comprehensive*, meaning that Islamic law is included all aspects of the ritual life is good (*worship*) as well as the social (*muamalah*).

The nature of possible transactions, occur in the same industry with the certainty of economic policies such as ban usury, speculation, *mendzalimi*, and so on. This is a different interpretation muamalah, because *postulation* is that built into the category muamalah only to the current activity between two or more parties on the question of objects, property and contract. But because the definition is very general, giving the impression that there is an *ambiguity* in particular fiqh muamalah. There are several things that a basic principle muamalah them lawful, voluntary, and free from riba.

Islamic bank is a financial institution that serves mempelancar economic mechanisms in the real sector through its business activities in terms of financing this (partnership) which is based on Islamic principles that rule by Islamic law agreement between the bank and other parties to the venture financing in accordance with the stated values sharia.

Sharing system is a particular feature of investment financing is to ensure fairness and expediency, which is in operational financing nobody is exploited or oppressed. Character for the results of the sharia principles can be found in the form of financing

Mudaraba and *Musharaka* in a wide range of variation. The system is a system of profit-sharing agreement or covenant with the implementation of the cooperation in business activity

Sharing system is a particular feature of the investment financing that ensures fairness and expediency, that the financing of the operations there can be exploited or victimization. The Character for the results of the sharia principles can be found in the form of *Mudaraba* and *Musharaka* financing in a wide range of variation. The system is a system of profit-sharing agreement or covenant with the implementation of the cooperation in business activity

The agreement in principle for the financing contract with the results of *Mudaraba* is a fair agreement or contract for the position between the two sides balanced, this is because:

1. Both sides have a balanced position in determining the ratio of profits;
2. In case of loss, capital providers will suffer loss of money, while *mudharib* will lose benefits, time and effort;
3. Both sides agreed to a balanced agreement that the treaty was not there things that make a business fail.

Emphasis on the concept of sharing is one of the distinguishing features of Islamic banking operations in *Mudaraba* financing investment products / other banking institutions. Islamic banking oriented cooperation and Islamic financing instruments, ideally based on the results show a good partnership and alignment between the mall and *mudharib Shohibul* in accordance with the principles of justice. Similarities in the status of a contract is agreed upon, both parties have the bargaining power balance and reflects the transparency and honesty in every action taken, which became the distinguishing factors of Islamic banks and conventional banks.

Islamic economics in the context of cooperation must be based on the principle of mutual benefit to be honest and provide equal benefits for both parties and does not justify the ways that only benefit a person, the more that can cause harm to others or the benefits turned out to harm the public interest.

The essence of *Mudaraba* and *Musharaka* partnership contract (profit and loss sharing) are working together to achieve a profit (profit) based on the accumulation of basic components and jobs and capital, where profits can be determined by two components, the investors bear the risk of loss of capital and have given while the *mudharib* bear the risk did not benefit and revenue sharing work and effort undertaken by the records if the business does not generate profit (profit). Therefore the Islamic contract law to determine that the distribution of profits must satisfy the principle of equality and mutual balance in order to protect the parties involved in the agreement and usury or fraud risk (*gharar*).

Ibn Taymiyyah said "that the contract in Islam is built on the basis of justice and avoid persecution. Because basically another property of a Muslim is not lawful unless transferred its rights to the people he loved. but his heart did not like because he gave as deceived or misled. The justice of which can be known by reason alone, such buyer shall pay the seller bought and handed over the goods sold to the buyer and banned deceive, betray, and that the debt must be repaid and utter praise "..

Impartial justice as something not necessarily always the same in terms of weight, but also in the sense of harmony between the parts or the parties so as to form a harmonious whole. Financial management based on justice and the results (profit loss sharing) is an essential part of cooperation in order to realize justice. That would make the investors share the risk of business as the division of business profits, and thus teaches discipline in the use of capital resources. As long as the banking and financial institutions play an important role in the modern economy it is important to re-construct the basis for the system of justice and the result (profit loss sharing), so as to realize the fulfillment of needs, optimum growth and full employment, and equitable distribution.

RESULTS AND DISCUSSION

Some understanding of the terminology is presented by the four schools of jurists are as follows:

According Malikiyah jurists, al-syirkah is permissibility (or permission) bertasharruf for each party that association. It means each party mutual consent and other parties mentasharufkan property (object) union. According Hanabilah jurists, al-syirkah is communion in terms of rights and tasharruf. According Syafi'iyah jurists, al-yirkah is enactment of the right to something for two or more parties with the purpose of fellowship. According Hanafiyah jurists, al-syirkah is an agreement between the parties that association in terms of capital and profits.

Syirkah prescribed sourced ijma / konsensus Muslims. Seibu's brothers allied ally in having a third or inheritance before distributed to the other:

"You know, actually what you can earn as spoils of war, lo-fifth to God, Apostle, Apostle relatives, orphans children, poor people and ibnusabil, if you beri'nan to God and to the right, which We have sent down to Kam servant (Muhammad) in furqaan han, han that in the meeting of the two forces. And Allah has power over all things (QSA1-Anfal: 41)

Spoils of war belong to Allah and Muslims collectively Kaun before distributed. All brand alliance in the history of ownership of the property that al-Barra shoheh Azib and Zaid bin Arqam bersyarikat both in commerce. They buy goods in cash and nasi'ah. The news reached the Prophet. So he ordered that receive the items they buy with cash and refuse the goods they buy with nasi'ah.

Meanwhile, according to Antonio, Al-Musharaka is a partnership agreement between two or more parties to a particular business in which each party meruberikan contribution fund (or charitable / expertise) with the agreement that the benefits and risks will be shared in accordance with the agreements.

Syirkatulmilk basic element is a mixture of ownership, either compulsorily or by choice. Two or more persons are joint owners of goods He further subdivided into two categories: mandatory and choice. Partnerships based on ownership choice can be explained in the following words: "where two people making purchases together on a specific object or object is given to them as gifts, and they accept it, or objects that are left to them, together, through inheritance, and they accept it". Basically, it is not intended for profit sharing. One owner can use these objects together or alone. Capital required is when a partnership or an object and the two men into the action without them and difficult or impossible to distinguish them or when two people pass on one thing.

In another partnership, a partnership is treated as a representative for other parts of the partner, but the partnership is based on ownership, the partners (fellow owner) is not

representative of other counterparties; here, one partner is a foreigner, he does not even have the right to using objects that no partner is, or anyway not responsible for any liability derived from the counterparty no. He cannot even use the parts if it undermined the interests of the other partners section. However, it is permissible for a partner to sell his share to the other partners, without the consent of the partner concerned, except in the case of an association or a mixture of properties, for both of these examples; a partner cannot legally sell the other parts of partners to third parties without permission of the partner. If bensama property used by a partner, the owner can ask for the rent on his part and partners who use the property. Income distribution Syinkatulk always follows the proportions of ownership.

Various Syirkah

Syirkah that there are two kinds:

First: Syirkah Property (Syirkatul Amlak). That is a unity between two people or more in the possession of one item with one of the causes of ownership, such as the sale and purchase, donation or inheritance.

Second: Syirkah Transactional (Syirkatul Uqud). Namely the cooperation agreement between the two allied brang capital and profits.

Various Kinds of Transactional Syirkah.

Transactional Syirkah according to the majority of scholars are divided into the following sections:

1. Syirkatul 'Inan, that communion in the capital, business and profits. Ie cooperation between two or more people with the capital they have together to open uaha they do themselves, and then share the profits with. So they all came from the capital, efforts are also made them together, and then profits are also shared together anyway. However, the portion of each party, both in funds and labor or for the results, not necessarily the same and identical in accordance with their agreements.
2. Syirkatul Abdan (syirkah effort). Ie cooperation between two or more parties in the efforts made by their bodies, such as the cooperation of doctors in the clinic, or a fellow tailor or barber in one job. Everything is permitted. Yet Imam Syafi'ie banned. Wat called Sirkah Shanai Taqabbl.
3. Syirkatul Wujuh. Believe cooperation of two parties or more in profits than what they bought with their good name nobody who has capital. However, each having an excellent name in the middle msyarakat. They buy something (for resale) in debt, and then the advantage gained is shared. Such Syirkah also allowed under the Hanafiyah and Hanbaleeyyah, but illegal according to the Malikiyah and Syafi'iyah. They share in the profits and losses based on the guarantees provided by the supplier of each partner. This type of al-Musharaka capital because it does not require the purchase of credit based on the guarantee, therefore, this contract also commonly referred to as Musharaka receivables.
4. Syirkatul Mufawadhah. Ie any cooperation in which each party has berliansi capital, business and accounts payable are the same, from the beginning until the end of the passage of the same work. Namely that contains elements of cooperation and guarantee equal rights in the capital, and venture debt. This cooperation is also permitted under the majority of scholars, however, are prohibited by Shafi. Possibilities that were rejected by Imam Srafi'i is another application form and Syirkatul Mufawadhah, ie when two agreements ". For fellowship in having all the

advantages and disadvantages, as well as property or other causes. Each party to share profits and losses equally. Thus, the main requirement and the type of al-Musharaka in common fund of funds provided, work, responsibility, and the burden of debt divided by each party.

The partners strive to meet their obligations under the percentage specified by the counterparties. They also approved the ratio of liabilities to be borne by each partner in addition to pay such debts. According to Imam Shafi'i, it is not valid. Maliki jurists observed that such partnership has a random chance element and therefore not valid, They do, however, allow it as long as the liability element really made very clear before the contract becomes effective force, for example, cooperation credit for the purchase of certain commodities and penkngan certain advantages.

Hanafi and Hanbali jurists, however, agree to the validity of this form such partnerships. Losses in the form of this Syirkah will be borne by the obligations taken at first. If the contract (Agreement) is thus implemented without initially determine the extent to which the obligations of each partner, they will be responsible for the loans taken by each individual and partner work will still get rights to the wages of perkerjaannya and not for the inside advantage.

The experts have discussed the basics of contract conditions. Therefore, based on the characteristics distinguished fellowship, and in particular the conditions and entrepreneurs and kontrakkeuangan. That way, all employers about the format of the financial contract; setting, the lack harmony and cooperation affecting the contract and lead to dissatisfaction and eliminate such duress, the contract can be used for fellowship. That way it can be concluded contractual arrangements actually or potentially, and be specific. Subject matter and the consideration for the contract must be lawful.

Principal in a partnership contract is approved capital and profit when it will be divided. Consideration in the contract in a partnership is the ability of each partner to provide part of its capital.

A partnership or a company basis and the proposal is revenue positive. This can be used as an example, with one saying to the other partners. "Go to the alliance with capital and should be set and the resulting profits are shared among a certain fare level (to be determined), 'as a positive proposal statement. If a person who is intended by the statement has been answered positively in the manner specified alliance signed with the receipt of a positive proposal.

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