

## PRODUCTS IN ISLAMIC BANKING IN INDONESIA AND THEIR LEGAL BASIS

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### *Abstract*

*Islamic banks are banks that carry out their business activities based on sharia principles, namely Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the sharia field. Islamic bank products in raising funds are current accounts, savings and deposits. Islamic bank products in the distribution of funds, namely financing based on the sale and purchase agreement, namely murabahah, salam, and istishna'; financing based on lease agreements, ijarah and ijarah muntahiya bittamlik; financing based on profit sharing agreements, namely mudharabah and musyarakah; and financing based on a social loan agreement, qardh. Islamic bank products in financial services namely hawalah, kafalah, wakalah, rahn, and sharf.*

**Keywords:** Islamic, Islamic Banking, Products in Islamic Banking

### INTRODUCTION

As mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia, the goal of national development is the creation of a just and prosperous society based on economic democracy by developing economic systems that are based on equitable market mechanisms. In order to realize this goal, the implementation of national economic development is directed at an economy that is in favor of a democratic economy, equitable, independent, reliable, fair, and able to compete in the international economic arena (Abdul Ghofur Anshori, 2009: 28).

In order to achieve national development goals and be able to play an active role in healthy global competition, participation and contribution of all elements of society are needed to explore various potentials in society to support the

process of economic acceleration in an effort to realize national development goals. One form of extracting the potential and form of community contribution in the national economy is the development of an economic system based on Islamic values (sharia) by elevating its principles into the national legal system. Sharia principles are based on the values of justice, expediency, balance, and universality (rahmatan lil 'alamin). These values are applied in banking arrangements based on sharia principles called Islamic banking (Abdul Ghofur Anshori, 2009: 29-30).

Islamic banking principles are part of Islamic teachings relating to economics. One of the principles in Islamic economics is the prohibition of usury in various forms and uses a system including the principle of profit sharing. With the principle of profit sharing, Islamic banks can create a healthy and fair investment climate because all parties can share, both profits and potential risks that arise, so that it will create a balanced position between the bank and its customers. In the long run, this will encourage national economic equality because the profits are not only enjoyed by capital owners, but also by capital managers (Andrew Shandy Utama, 2018: 40).

From the introduction described above, the formulation of the problem that will be discussed in this paper is:

1. What are the Islamic banking products in raising funds?
2. What are Islamic bank products in channeling funds?
3. What are the Islamic banking products in financial services?

## **METHOD OF RESEARCH**

Legal research is a scientific activity that is based on certain methods, systematics, and thoughts that aim to study one or several specific legal phenomena by analyzing it (Soerjono Soekanto, 2007: 43). The method used in this research is normative legal research, using a statutory approach. Normative legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, 2011: 35). Data sources used in this research are secondary data, namely data obtained from statutory regulations, scientific journals, and legal literature. The data collection technique used in this research is literature study. The data analysis technique used in this research is qualitative analysis.

## **RESULTS OF RESEARCH AND DISCUSSIONS**

Islamic banks are banks that carry out their business activities based on sharia principles, namely Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the sharia field. Islamic banks in carrying out their business activities are based on sharia principles, economic democracy, and the principle of prudence. Islamic banks aim to support the implementation of national development in order to improve justice, togetherness, and equitable distribution of people's welfare. Based on Article 1 of Law Number 21 of 2008 about Islamic Banking it is explained that Islamic banks are banks that carry out their business activities based on sharia principles, namely Islamic legal principles in banking activities based on fatwas issued by the National Sharia Council of the Indonesian Ulema Council. As an institution formed by the Indonesian Ulema Council to study Islamic financial institutions, the National Sharia Council of the Majelis Ulama Indonesia (MUI) has issued fatwas that are used as regulations for sharia banking and other sharia financial institutions to carry out their operational activities in accordance with the principles of muamalah in Islamic law (Andrew Shandy Utama, 2018: 109-110).

### **Islamic Bank Products in Fund Raising**

There are three sharia bank products in the collection of funds, namely current accounts, savings and deposits (Rini Fatriani, 2018: 220). Demand deposits are deposits which can be withdrawn at any time by using checks, crossed checks, other means of payment orders, or by overbooking. Current accounts at Islamic banks are regulated based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 01 / DSN-MUI / IV / 2000 concerning Giro. Savings accounts are deposits which withdrawals can only be made according to certain agreed conditions, but cannot be withdrawn by check, giro, and / or other similar instruments. Savings products at Islamic banks are regulated based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 02 / DSN-MUI / IV / 2000 concerning Savings. Deposits are deposits whose withdrawals can only be made at certain times based on the agreement between the depositing customer and the bank. Deposit products at Islamic banks are regulated based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 03 / DSN-MUI / IV / 2000 concerning Deposits.

## **Islamic Bank Products in Fund Distribution**

Funding is based on a sale and purchase agreement, i.e:

1. Murabahah

Murabahah contract is a financing agreement for an item by confirming the purchase price to the buyer and the buyer pays it at a more price as agreed profit.

2. Salam

Salam contract is a financing agreement for an item by means of an order and payment of the price made in advance with certain conditions agreed upon.

3. Istishna'

Istishna' contract is a financing contract for goods in the form of ordering certain goods with certain criteria and conditions agreed between the buyer or buyer (mustashni') and the seller or maker (shani').

Funding is based on a lease agreement, i.e:

1. Ijarah

Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 09/DSN-MUI/IV/2000 tentang Pembiayaan Ijarah, Ijarah agreement is a contract to provide funds in the context of transferring the use rights or benefits of an item or service based on a lease transaction, without being followed by a transfer of ownership of the goods themselves. The object of ijarah is the benefit of using goods and / or services that must be valued and can be implemented in a contract. The specifications of the benefits must be clearly stated, including the time period. The obligation of Islamic banks is to provide assets that are leased and bear the costs of maintaining assets. The customer's obligation is to pay rent and be responsible for maintaining the integrity of the leased assets and using them according to the contract.

2. Ijarah muntahiya bittamlik

Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 27/DSN-MUI/III/2002 tentang Al-Ijarah Al-Muntahiyah bi Al-Tamlik, ijarah muntahiya bittamlik contract is a contract to provide funds in the context of transferring the use rights or benefits of an item or service based on a lease transaction with the option to transfer ownership of goods. The party conducting the ijarah muntahiya bittamlik must first carry out the ijarah agreement. The transfer agreement, whether by sale or purchase, can only be done after the ijarah period is completed.

Financing based on profit sharing agreement, i.e:

1. Mudharabah

Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 07/DSN-MUI/IV/2000 tentang Pembiayaan Mudharabah, mudharabah contract in financing is a cooperation agreement between a first party (malik, shahibul mal, or sharia bank) that provides all capital and a second party ('amil, mudharib, or customer) who acts as fund manager by dividing the profit of the business in accordance with the agreement set forth in the contract, while the loss is fully borne by the Islamic bank, except if the second party makes a deliberate mistake, negligence, or violates the agreement. The business period, refund procedure, and profit sharing are determined based on the agreement of both parties.

2. Musyarakah

Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 08/DSN-MUI/IV/2000 tentang Pembiayaan Musyarakah, musharaka contract is a contract of cooperation between two or more parties for a certain business where each party provides a portion of funds provided that the profits will be divided in accordance with the agreement, while losses are borne in accordance with their respective portion of funds. The participation of partners in the work is the basis for the implementation of musyarakah. However, the similarity in the portion of work is not a requirement.

Funding is based on a social loan agreement:

Islam as a religion that rahmatan lil 'alamin advocates adherents, in addition to making productive efforts to seek the gift of God, must also be sensitive to the circumstances around him. This means that Muslims are encouraged to have a social life. No exception to banking institutions, which in addition to carrying out business missions, also carry social missions as seen in their products that are distributed to the public. One of the sharia banking products which is more towards social mission is qardh (Sutan Reny Sjahdeini, 2005: 63).

Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 19/DSN-MUI/IV/2001 tentang Al-Qardh, al-qardh is a loan given to a customer (muqtaridh) in need. Al-Qardh's funds come from the capital of Islamic banks, the profits of Islamic banks that are set aside, and

other institutions or individuals who entrust their infaq to Islamic banks. Administration fees are charged to customers. Islamic banks can request collateral from customers whenever deemed necessary. In the event that the customer does not show the desire to return part or all of his obligations and not because of his inability, the Islamic bank may impose sanctions on the customer in the form of the sale of collateral. If collateral is not enough, the customer must still fulfill his obligations in full. If one party does not fulfill its obligations or if there is a dispute between the parties, the settlement is carried out through consultation.

### **Islamic Bank Products in Financial Services**

#### **1. Hawalah**

Hawalah is the transfer of debt from someone who owes it to others who are obliged to bear it. In applying the hawalah contract to Islamic banking products, there are at least three parties, one of which is bound by an agreement, namely banks, customers, and parties who have debts to customers. Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 12/DSN-MUI/IV/2000 tentang Hawalah, Pillar of hawalah are Muhil, Muhal or muhtal, Muhal 'alaih, Muhal bih, and Sighat. When it is done must be with the approval of muhil, muhal / muhtal, and muhal 'alaih. The position and obligations of the parties must be stated in the contract explicitly. If one party does not fulfill its obligations or if there is a dispute between the parties, then the settlement is carried out through consultation.

#### **2. Kafalah**

Kafalah agreement is a contract of guarantee given by one party to another party, where the guarantor (kafil) is responsible for the repayment of debts that are the right of the recipient of the guarantee (makful). Statement of consent and qabul must be stated by the parties to show their intention in entering into a contract (contract). In a kafalah agreement, the guarantor can receive a reward (fee) as long as it is not burdensome. Safeguards with rewards are binding and may not be canceled unilaterally. In fiqh, there are three types of kafalah that can be implemented in Islamic bank products, namely:

- a. Kafalah bi nafs, that is, the guarantee from the borrower's self (personal guarantee).
- b. Kafalah bil maal, which is a guarantee of debt payment or debt repayment. Its application in banking can take the form of a guarantee of an advance payment or a payment guarantee.
- c. Kafalah muallaqah, which is an absolute guarantee that is limited by certain periods and for certain purposes. In modern banking, this can be applied to guarantee the implementation of a project (performance bonds) or bid bonds.

### 3. Wakalah

Wakalah contract is a contract of granting power of attorney to the authorized person to carry out a task on behalf of the grantor. Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 10/DSN-MUI/IV/2000 tentang Wakalah, Pillar of Wakalah are Muwakkil (the representative), Representative (representing), and The things represented. Implementation of wakalah in Islamic banking is suitable for service products in the form of Letters of Credit (L / C). The bank opens an L / C at the request of the customer by asking the customer to deposit sufficient funds from the amount of the L / C opened. These funds are deposited by the bank on the principle of wadi'ah. There are three types, namely:

- a. Wakalah al mutlaqah, i.e. to represent absolutely without limitation of time and for all matters.
- b. Wakalah al muqayyadah, namely the appointment of a representative to act on his behalf in certain matters.
- c. Wakalah al ammah, which is a broader representation of al muqayyadah, but simpler than al mutlaqah.

### 4. Rahn

Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 25/DSN-MUI/III/2002 tentang Rahn, rahn is holding something in an justified way that allows it to be withdrawn. Rahn can also be interpreted to make goods that have property values according to sharia view as debt collateral, so that the person concerned may take all or part of his debt. In other words, rahn is a contract in the form of mortgaging goods from one

party to another party with debt instead. Banks may not withdraw any benefits except the maintenance or security costs of the pawned goods.

Murtahin (recipient of goods) has the right to hold marhun (goods) until all rahin debt (which surrenders the goods) is paid. Marhun and its benefits remain the property of rahin. In principle, marhun should not be used by murtahin except permission of rahin, by not reducing the value of marhun and its use is merely a substitute for maintenance and care costs. The amount of marhun maintenance and storage costs should not be determined based on the loan amount. If the rahin still cannot repay its debt, then marhun is forcibly sold / executed through an auction according to sharia. Marhun sales proceeds are used to pay off debts, maintenance and storage costs that have not been paid, as well as sales costs. The excess proceeds from the sale belong to rahin and the shortcomings become rahin obligations.

#### 5. Sharf

Literally, sharf is defined as addition, exchange, avoidance, negation, or sale and purchase transactions. In terms of, sharf is a sale and purchase agreement of one currency with another currency. Currency buying and selling transactions are allowed in principle, with the following conditions:

- a. Not for speculation.
- b. There is a need for a transaction or just in case (deposit).
- c. If there are different types, then it must be done at the exchange rate (exchange rate) in effect at the time the transaction is made and in cash.

Based on the National Sharia Board of Majelis Ulama Indonesia (MUI) Fatwa Number 28/DSN-MUI/III/2002 tentang Jual Beli Mata Uang (Al-Sharf), Sharf contract is practiced by Islamic banks in service products in the form of exchanging foreign currencies based on the selling rate and the buying rate of a currency. The bank will get a reward in the form of the difference between the selling rate and the existing buying rate, plus administrative costs. Spot transactions are legally "permissible", because they are considered cash, whereas forward transactions, swap transactions, and option transactions are legally "haram".



## CONCLUSION

Islamic banks are banks that carry out their business activities based on sharia principles, namely Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the sharia field. Islamic bank products in raising funds are current accounts, savings and deposits. Islamic bank products in the distribution of funds, namely financing based on the sale and purchase agreement, namely murabahah, salam, and istishna'; financing based on lease agreements, ijarah and ijarah muntahiya bittamlik; financing based on profit sharing agreements, namely mudharabah and musyarakah; and financing based on a social loan agreement, qardh. Islamic bank products in financial services namely hawalah, kafalah, wakalah, rahn, and sharf.

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