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Sharia Bank Management's Problems

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Abstract

This paper aims to qualitatively examine the reasons for the insecurity of sharia bank implementation. This paper is a criticism of Sharia Banks' current practice to implement the fiqh rules properly. The study uses descriptive analytics methods using databases published by Sharia Banks on their websites and other publications. This study concludes that the definition of an akad in Law no. 21/2008 does not conform to MUI's fatwa; the use of Wadiah and Mudharabah agreements for funding is potentially dholim. Murabahah financing products are potentially haram, Musyarakah application is not appropriate, Ijarah can violate fiqh; Ijarah Muntahiyya Bi Al Tamlik provides uncertainty for customers. This paper suggests regulators change the definition of an akad in Law no. 21/2008. Sharia Bank does not use akad wadiah in funding activities, makes adjustments to mudharabah's share of profit, improves the profit murabahah procedures and pricing, and MUI amends Fatwa no. 27/2002.

Keywords: Sharia Bank, Wadiah, Mudharabah, Murabahah, Ijarah.

INTRODUCTION

Disagreements about bank interest being considered as *riba* or not have been widely discussed for years. Until today, the issue of bank interest still reaps the pros and cons. The discussion of bank interest certainly cannot be discussed without a strong knowledge about finance and *fiqh*. This debate impacts the selection of a person to become a customer of a conventional bank or a Sharia bank. This decision is an individual decision that must be objective and rational. One's hope of becoming a customer of Sharia Bank is to avoid usury that may exist within conventional banks (Mardhiah et al., 2018; Nurhadi, 2017; Wartoyo, 2015).

The profit-sharing of sharia bank's profit is also not necessarily sharia because someone should have a very strong argument. This study is used primarily to support the education of Sharia Banks to distribute their profit to the customers. The Muslim community should support the development of sharia banks to operate properly and fully sharia. In other words, the use of the term profit sharing is not just a substitute term for interest but must be in accordance with the guidance of the Qur'an or Hadith (Ahyani et al., 2020; Kafabih & Manzilati, 2018, Surya & Nurlaeli, 2014).

The customer's assessment of sharia bank operations is based not only on *khusnudzon* but also on facts. Being *khusnudzon* without finding out the actual data should no longer be done, especially by highly educated Muslim communities. The management transparency of shortcomings or mistakes in the management of sharia banks is not a good reason for like or dislike but should be done to improve the *barakah* for the customer's income (Fathiyah & Nurhasanah, 2019; Setyowati, 2016).

Indonesian Law No. 21 of 2008 on Sharia Banks allows banks to conduct trading activities that are not allowed to conventional banks. This law permits Sharia Bank to do trading activities (buying and selling things) to eliminate *riba* claims for credit activities. In the fundraising activities, Sharia Bank uses *wadiah* and *mudharabah* agreements so that there is no fixed interest as in conventional banks savings or deposits (Hafidah, 2012; Kurnianto, 2017; Sarpini, 2019).

Indonesian Islamic Council (MUI) declared a lot of *fatwas* to support Sharia Banks activity. Those *fatwas* were needed to let people know that certain bank's activity is *haram* or *halal*, allowed or not allowed. Some *fatwas* were very detailed that Sharia Banks might directly use for daily activity, but some were global and needed some interpretation before being implemented (Rosida,

2017; Tahmid et al., 2019). The current problem: Is the implementation of Sharia Bank funding and lending functions can be categorized as *halal*?

RESEARCH METHOD

This research is descriptive research based on scientific publications and Sharia Bank publications. The theoretical bank practice data is taken from the Sharia Bank's website compared to the actual bank practices from various scientific publications. This research then performed a descriptive analysis focused on the daily implementation of each contract.

RESULTS AND DISCUSSION

By Article 4 of Law No. 21 of 2008 on Sharia Banking, Sharia Bank shall carry out the collection and distribution of public funds as the main business function and carry out social functions and *Baitul maal* or *waqf* management. In carrying out social functions, no one is questioned whether Sharia Bank is sharia or not. However, in conducting its main functions that are funding and lending, many parties argue whether the Sharia Bank's already shar'i or not.

Funding

On funding activities, Sharia Bank has Checking Accounts, Savings, and Time deposits. The agreement or *akad* that commonly used for Checking Accounts is *wadiah* (Bank Muamalat, 2020; Bank Syariah Mandiri, 2020; CIMB Niaga Syariah, 2021; Bank Jateng Syariah, 2021). The customer can take this *akad* allowed funds, and Sharia Bank does not provide returns or impose burdens on customers. By using this agreement, Sharia Bank can give gifts to customers. Sharia Bank Savings Accounts agreement usually uses *wadiah* (Bank Syariah Mandiri, 2020; Bank Muamalat, 2020, BNI Syariah, 2020) or *mudharabah* agreement (Bank Muamalat, 2020; Bank Jateng Syaariah, 2021; CIMB Niaga Syariah, 2021), while the Time Deposit agreement uses *mudharabah* agreement (Bank Muamalat, 2020; Bank Syariah Mandiri, 2020; BNI Syariah, 2020; CIMB Niaga Syariah, 2021).

a. *Wadiah* agreements

Funding activities that use *wadiah* agreements do not pose an obligation for Sharia Banks to provide returns for customers so that no one disputes the *halal*-ness of the product. However, in a deeper view of Bank activity, the funds stored in the Sharia Bank are utilized. They will provide a profit for the bank so that the bank should provide returns as profit share portion (to not saying interest) to the customer. By not giving returns to the customer, even the agreement does not require to do so; the bank has *dholim* to the customer. The bank has taken advantage of the customer's funds and made a profit, but it does not provide returns. Because of this *dholim* indication, there are two options that Sharia Bank can take. The first option is not to use the *wadiah* agreement, and the other option is to oblige itself to give a return to the customer. The gift of this yield is not promised in advance, so it will be categorized as *sadaqah*, which is permitted.

The *wadiah* agreement offered by Bank Syariah is a good offer, but sometimes the real condition is not in line with (Zuhaily, 1987). The real meaning of this agreement is to leave goods by *muwaddi'* to *wadii'* to be kept, maintained, or stored in a short time (temporary). Any time *muwaddi'* want to use the goods *wadii'* should give them back in good condition as when they were left. Based on the *wadii'* responsibility, *the wadiah agreement is distinguished into Wadiah yad amanah and Wadiah yad dhomanah*. The difference between the two lies in liability in the event of damage. In *wadiah yad amanah* agreement, the damage of goods that are not caused by *wadii'*s negligence, is not *wadii'*s responsibility. While in *wadiah yad dhomanah* the damage of goods should be *wadii'*s responsibility when *wadii'* do things such as mixing it with other goods or utilizing it (MUI, 2000; Ridawati, 2017; Yusma F., 2018).

In funding activities of Sharia Bank, *wadiah* agreement is applied to checking account or savings account (BNI Syariah, 2020; Bank Muamalah, 2020). The problem in bank activity is the sense of 'goods left behind', because it is about money. If the definition of money is the 'money' physically itself, then *wadii'* or the Bank must give the money back to the

customer the same money as the time they were handed over. This definition is very difficult for the Bank activity because the Bank should identify physically each money received from customers and give them back when they were needed. The supposed definition of money is the purchasing power of that paper. Using this definition, even the paper is different since it has the same purchasing ability, the customer will accept them and not against the *wadiah* agreement. This second definition of money is easier to manage by the Bank, but it still contains some considerable consequences. One of the consequence is the 'damage' of the money caused by decline of its purchasing power. The decline in purchasing power capacity is due to inflation or other reasons. When the Bank use *wadiah yad dhomanah* agreement, should the decline in purchasing power capacity is due to inflation be responsible by the Bank? This because the Bank has mixed customers' money with other customers, as well as utilizing *wadiah* goods.

The practice of mixing customer money (?) is commonly done by the bank and is very difficult to avoid. The answer is definitely yes. The Bank should responsible from the decline of money's purchasing power. When the definition of money is the ability to buy, then, the Bank should give the *wadiah* goods back to the customer' at the same purchasing power as it was received. The Bank should calculate the new value which have a same purchasing value before give them back to the customer. This practice is so complicated and it is better to avoid *wadiah* agreement or not use, even MUI and Sharia Banking Law allow to do it.

Another definition of 'money' that may be used is the value in rupiah or local currency units. If this definition is used, then the decrease in currency purchasing power capability can be ignored. The money will never be 'damage' because the face value will be the same over time. In fact, there is a *dholim* atmosphere in this case. The Bank can freely mix someone's money with other customers' money, then use them in the business and get profit. On the other hand, based on *wadiah* agreement the Bank has no obligation to provide returns to the owner of goods/money (customer). To reduce the *dholim* sense, the Bank should give some money as *shadaqah*. Based on the above analysis, it can be concluded that there are several definitions of money that may have an impact on the implementation of *wadiah* agreements. Given the above concerns, it is recommended that *wadiah* agreement not to be used in funding products of Sharia Bank.

b. Mudharabah

Bank's funding products that use *mudharabah* agreements are Saving Accounts and Time Deposit (BNI Syariah, 2020; Bank Muamalah, 2020; CIMB Niaga Syariah, 2021). *Akad mudharabah* asking an agreement between Banks and Customers on the profit sharing ratio. The composition ratio is different among banks or customers. It is possible that the customer A's ratio different to customer B's ratio even at the same bank. The different treatment among customers is allowed, because there is no rule or regulation about it. The most important thing is the agreement between the bank and the customer about the composition of profit sharing ratio.

Sharia Bank daily practice on *mudharabah* agreement, for BUS, UUS, BPRS, BMT or other bank look like organization, the customer's portion of profit on *mudharabah* is distributed to customers on a monthly basis, based on the estimated or forecast of the current month's profit. This estimated profit is taken because the real profit calculation will be calculated by the end of the year. If the profit distribution is done at the end of the year, then the customer is harmed and Bank is in a *dholim* position. Another condition that 'requires' profit estimation is the high of the customers turn over. Some customers just place the funds for only one or several days, weeks or months. If the Banks have to wait until the end of the year, the customer is very likely to no longer be a customer. The Banks will have a big difficulty in the profit distribution.

The payment of the bank's profit sharing to the Customer is usually in the form of adding a savings account balance or checking account, taken in cash or even transferred to another Bank. From the Bank's side, these transactions are usually recorded as a cost of operation (operating cost). This is where sharia issues arise. By recording these expenses as operating cost, Sharia Bank will feel that the obligation to the customer related to the profit sharing has been completed. In fact, the profit sharing that have been given to the customer, is

based only on the forecast of the profit and not the actual profit. The profit forecast can be higher or lower than the fact, but usually the bank takes low prediction, if the bank chooses high prediction and cannot reached the profit, then the payment to the customer will be excessive. Overpayment of the expenses is hurting the bank profit. If the anticipation of low results and realization is high, then the profit sharing given to customers every month is actually lacking. Underpayment of profit sharing, should be paid by Sharia Bank after completion of the preparation of Financial Report and Audit process by public accountant is completed.

In the Sharia Bank practice, there has not been found any adjustment in the payment amount of monthly profit sharing, based on the anticipation of annual results in real terms. No adjustment for the profit sharing given to the Customers, indicating that Sharia Bank had acted *dholim* and the practice had injuring the shar'i-ness of Sharia Bank's.

Based on the above analysis, it is known that the practice of *mudharabah* agreement in Sharia Bank has not been carried out properly. In order to carry out the *mudharabah* agreement properly, at the end of the year Sharia Bank should make an adjustments of the monthly profit sharing payment. Adjustments can increase or decrease the profit sharing that have been given. The absence of profit distribution adjustments at the end of the year will result in the Sharia Bank's practice is not shar'i.

Lending

Sharia Bank financing products are several types depend on the choice of agreement. Sharia Bank financing products are *Murabahah*, *Mudharabah*, *Musyarakah*, *Ijarah*, *Salam*, *Istishna'*, and *Qard*. Here's a discussion of each agreement. *Salam* financing is not discussed, because until July 2020 no Sharia Bank provide financing with *salam* agreement (OJK, 2020). *Qard* financing is also not discussed because this type of financing is for charity, so the chances of not shar'i are very small.

a) *Murabahah*

Akad Murabahah is a very popular financing agreement and ranks first compared to other agreements (OJK, 2020). *Akad Murabahah* is a trading agreement, so customers can pay in cash, delay or installment of the thing that he or she need to have. The Bank will take a profit from the difference between the purchase price from the supplier and the selling price to the customer. Base on the theory, the customers' orders the needed goods to the Bank and after the bank has purchased the goods, a new sale transaction is made to the customer. When the application of *Murabahah* agreement in Sharia Banks is evaluated, there are some problems arise. The problems are on sharia principle and some on *khilafiah*. The issue of shariah principle, is likely to break the *fiqh* and finally the transaction become *haram*; whereas the problem of *khilafiah* only requires the agreement of *ulama'*.

Sales price. Some Sharia Banks determine differently on the selling price of goods among cash, credit or installment sales. For example, if the purchase paid in cash the price of goods is Rp.120,- if paid in installment for a year, then the price changes to Rp. 132,- so that the installment per month is $Rp.132,- : 12 = Rp. 11,-$. If the customer wants to have a 2 years credit, then the price is set at Rp. 144,- and the monthly installment is $Rp.144,- : 24 = Rp. 6,-$. This practice is actually not acceptable, because this kind of pricing contains *riba* and almost similar to interest on conventional Bank. Another practice is asking the customer first about the due date, then the Bank determines the selling price based on due date. The longer the installment time price will be the higher. This trick is really unacceptable. In substance there remains an additional price caused by the difference in payment time. To avoid *riba*, sharia banks should not differentiate between cash and credit prices.

Guarantee. Some Sharia Banks asking guarantees on *murabahah* financing. The presence of this warranty request resulting logical confusion. *Murabahah* agreement is a trading agreement, so it is illogical if there is a guarantee in the implementation of trades. In trading transactions especially for B to B (Business to Business) transactions there are almost no cash transactions and based on trust. If the seller does not trust the customer that he will pay, then the transaction is not resumed or cancelled. *Fatwa* of Indonesian Council of Ulama' (MUI) No. 04/DSN-MUI/IV/2000 allows for guarantees as a purchase guarantee, not payment (MUI, 2000). Based on this *fatwa*, Sharia Banks may ask for guarantee of the transaction of

purchase by the customer, if the sale transaction has been executed the guarantee must be returned to the customer. The use of guarantees in *murabahah* agreement for customer payment guarantee is a deviation of MUI's *fatwa*. However, MUI does not have sufficient equipment or authority to take certain actions. Therefore, Sharia Banks should not ask customers for guarantees for the payment of *Murabahah* agreement.

Procedure. In most cases, Sharia Bank did not have the needed goods, so the Bank must find or buy first. This process requires the Bank to have a special section or division to do the purchase or purchasing division. In practice, almost no Sharia Bank has a purchase division. To buy the needed goods the Sharia Banks issue *wakalah* to customers (BNI Syariah, 2020; Bank Muamalah, 2020; BNI Syariah, 2020; BRI Syaiah, 2020). With this *wakalah*, Sharia Bank appoint the Customer to find and purchase the goods for and on behalf of Sharia Bank. The issuance of *wakalah* makes the possibility of error in purchasing goods is minimum or even zero. The Customer knows exactly the specification of the goods, including the replacement of other goods, if the goods are not available in the market.

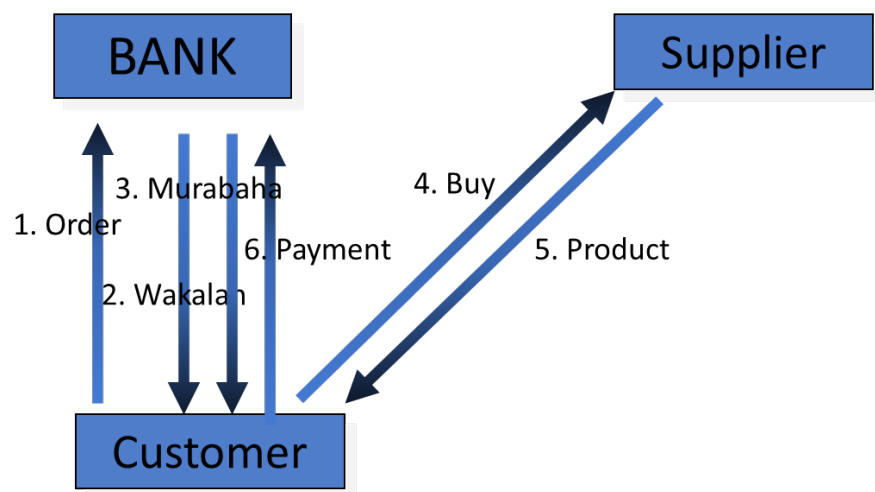


Figure 1. *Murabahah* – real practice

Another problem with *wakalah* is that the goods were sent directly to the customer and the customer did not make any report to Bank Syariah, that the purchase of the goods has been made. The Customer usually do the payment of his/her obligations on the due date. The practice is widely done, Sharia Bank records the sale to the customer at the time of the realization of *wakalah*. Recording the sales and receivables at the time of the issue of *wakalah* agreement, actually contains a fundamental *fiqh* problem. At the time of *wakalah* the issue, the goods required by the customer have not been controlled or not owned by Sharia Bank, and the Sharia Bank records the sale and receivable at that time. This means that the Sharia Bank sold goods that have not been controlled or owned by the Sharia Bank. This practice is a practice of violation *fiqh* and resulting an incorrect transaction and finally make this transactions *haram*.

Even if there is a *wakalah* and the one who made the purchase is the customer, the goods must be controlled and owned by the Sharia Bank before the sales was made. For this case, the time of sales is the time when the *Murabahah* agreement was signed. In minimum condition is legally owned by Sharia Bank, even actually the goods itself already hold by customer, before being sold with *Murabahah* agreement. When Bank Syariah issues *wakalah*, the Bank should record that there is a down payment instead of a sale. Recording into down payment account is possible, because in the presence of *wakalah*, the customer acts for and on behalf of Sharia Bank not in his own. Thus, even if the goods have been purchased by the customer, the customer has not been able to owned the item because it is not yet his or hers, until the *Murabahah* agreement was signed. In order to legalize the

transaction, the customer must report if the transaction of the purchase of goods has been executed, and at that time a *Murabahah* agreement can be signed, and the down payment account is deleted and replaced with a sales account.

Based on the above analysis, when Sharia Bank issuing *wakalah* to customers, Sharia Bank may only record the transaction of giving down payment. *Murabahah* agreement can only be signed after *wakalah* is accounted for by the customer. This procedure is more 'troublesome', but if not executed it will interfere with the *halal*-ness of the transaction.

b) *Mudharabah*

Mudharabah financing agreement is a cooperation agreement made based on trust between the cooperating parties. By using *mudharabah* agreement, Sharia Bank will get profit sharing from the customers. In Indonesian Sharia Banking Statistics as of July 2020 *Mudharabah* Financing in second place after *Musyarakah* Financing. The volume difference between of the two is very far *Mudharabah* only 6.5% *Musyarakah* (OJK, 2020). The small size *Mudharabah* agreement shows that Sharia Bank actually does not trust customers on business reports. Sharia Banks do not have much concern about collectability, because it is permissible to ask for guarantees.

This fact shows that Sharia Bank lacks confidence in the customer's business report or Financial Statement. In order to increase trust in customers, Sharia Bank can actually ask customers to be audited by public accountants. If this is done this will increase the burden on the customer. Sharia Bank get profit sharing portion monthly, based on monthly Financial Statement. This monthly Financial Statement is not a final Financial Statement but estimated one. By the end of the year, customers make a yearly Financial Statement and customers should recalculate the profit sharing and make an adjustment when needed. This adjustment was not found on the practice of *Mudharabah* agreement.

c) *Musyarakah*

Financing with the *Musyarakah* agreement is the highest financing for the profit sharing group. The *Musyarakah* Financing Agreement is actually a two-party cooperation agreement to establish a new business. The two parties here are Sharia Bank on one side with the Customer on the other. MUI *fatwa* no. 08/2000 explains that: "2 b. Each partner must provide funds and work, and each partner carries out work as a representative. 2 c. Each partner has the right to manage *musyarakah* assets in normal business processes. 3 a. 3) In principle, in the financing of *musyarakah* there are no guarantees, but to avoid irregularities, Sharia Bank may ask for guarantees." (MUI, 2000) In this MUI *fatwa*, it is explained that each party has the right to be active in the management of the alliance, if one of the two is inactive then it makes similar to *Mudharabah*.

In practice at Bank Syariah it is not exactly the same as Fatwa MUI no. 08 / 2000. On the BPRS Syariah Way Kanan page is given the following example:

Al Musyarakah (Profit Share) is a financing/cooperation agreement between BPRS Syariah Way Kanan as the funder and customer as a funder as well as a funder for the agreed business. The profit share is calculated from the agreed ratio and paid monthly in accordance with the corresponding monthly profit.

For example,

Mr. Burhan has run a restaurant business with a capital of Rp. 100,000,000,- to enlarge his business, Mr. Burhan agreed to cooperate with BPRS Syariah Way Kanan by getting additional funds of Rp. 100,000,000,-. The profit sharing ratio is 75% for the manager and 25% for Bank BPRS Syariah Way Kanan. In the first month of the business obtained a net profit of Rp. 5.000.000,- then the profit distributed for Mr. Burhan Rp. 3.750.000,- and for BPRS Syariah Way Kanan is Rp. 1,250,000,- while in another month according to the profit of the month (Bank Syariah Waykanan, 2020).

On bank Muamalat's page is explained as follows:

Musyarakah Akad between two or more owners of capital to unite their capital in a particular business, while the executor can be appointed one of them. This agreement is applied to businesses/projects that are partly financed by financial institutions, while the rest are

financed by customers. *Musyarakah Mutanaqisah Akad* between two or more parties who are united or share against an item, where one party then buys the other party's part gradually. This agreement is applied to the financing of projects financed by financial institutions with customers or other financial institutions, where the financial institution is gradually purchased by other parties by means of installments. This agreement also occurs in *mudharabah* whose principal capital is installment, while the business continues with fixed capital (Bank Muamalat, 2020).

On bank Bukopin Syariah's page (2020) is explained as follows:

It is the cooperation of 2 (two) parties or more for a particular business, each party contributes funds and/or works/expertise with the agreement of profit and risk to be jointly dependent as agreed.

The agreement used is *Musyarakah*, which is a collaboration between the Bank and the Customer to mix their funds/capital in a particular business, with the distribution of profits based on the agreed profit sharing ratio.

Benefits:

- Can be used for business working capital financing.
- Profit-share system according to project/business results.
- Payment can be made in accordance with cash-flow.
- The financing period in accordance with the project completion schedule

Provisions

- Is intended for individuals and business entities.
- Self-financing is at least 30%.
- The time frame according to the completion of the project.
- The collateral value is 125% of the financing ceiling.

From these three pages of Sharia Bank above, we can make a conclusion that there was an inaccuracy in the application of *musyarakah* agreement by Sharia Bank. On all three pages, seems look like that the Sharia Bank is passive, so *musyarakah* agreement is close to the *mudharabah* agreement, while the *musyarakah* agreement requires all parties to be active in the alliance.

Base on the meaning of *musyarakah* is alliance, this agreement is unlikely to produce working capital financing. Working capital financing is an injection of funds into a company that is already running. The nature is additional funds, not mergers. This injection of funds will be managed by the customer, so that the bank is passive and close to *Mudharabah*. Moreover, banks want a guarantee of 125% of the financing ceiling. There is a considerable guarantee, indicating that the agreement is not actually a *Musyarakah* agreement, but rather a similar credit agreement that is common in Conventional Banks. The existence of guarantees in the *musyarakah* agreement is somewhat strange, although it is allowed by the MUI Fatwa. *Musyarakah* is an alliance that has the same position, so it would be strange if one party asked guarantee for assurances from the other. The request for assurance indicates a difference in caste in the alliance.

In the SPS (Sharia Banking Statistics) data issued by OJK, below the value of *Musyarakah* Financing there is an NPF amount. NPF is short for Nonperforming Finance which in Conventional Banks is known as NPL (Nonperforming Loan). This is similar to Allowance for Bad debt for Account Receivable. This account was estimated and treat as uncollectable, something very strange in the *syirkah*. If the *Musyarakah* is really a business establishment cooperation, then NPF does not exist, because in such cases there is no financing, the establishment of a new company for an indefinite time. If cooperation is agreed for a specific purpose with a limited time frame, then the time limit should be the age of the company. Bank's Funds will have paid, if the joint venture is closed or liquidated. In case the Bank's ownership of the joint venture is systematically reduced, this is possible if agreed upon at the time of the agreement. With the agreement, the agreement will be changed to *Musyarakah*

Mutanaqisah. This practice can be done by the way the customer buys shares owned by the Bank, and the share is according to the stock market price at that time not decided in advance.

Based on the above analysis, further discussion or study of *musyarakah* commitment in practice is required. From those study we will know definitively the truth or error of implementation of the agreement. The study should be able to find the root of the problem from all parties ranging from OJK as a regulatory institution to Sharia Bank as the implementing institution. On these findings, Sharia Banks should be willing to make adjustments. The hope is that Sharia Bank can be itself not a shadow of conventional banks.

d) *Ijarah*

Ijarah financing agreement in accordance with MUI Fatwa no. 09 of 2000 is an agreement of rental of goods or services without transfer of property rights. If at the end of the lease period there is a transfer of ownership of goods, the agreement is changed to the agreement of *Ijarah Muntabiyah bi Al-Tamlik* (MUI, 2000). The explanation of Law No.21 of 2008, Article 19 paragraph (1) letter f explains that “*ijarah* agreement” is an agreement of provision of funds in order to transfer the right of use or benefit of a goods or services based on a rental transaction, without being followed by the transfer of ownership of the goods themselves. *Ijarah Muntabiyah bi Al-Tamlik* is an agreement of provision of funds in order to transfer the right of use or benefit of a goods or services based on a rental transaction with the option of transferring ownership of goods.

From the above two citations, there are very fundamental differences. MUI’s fatwa emphasizes that *Ijarah* is the rental of goods or services, while Law no. 21/2008 *Ijarah* is the provision of funds in order to transfer the right of use or benefit of a goods or services based on rental transactions. Understanding of *Ijarah* meaning needs to be a straightened. *Ijarah* has a basic meaning of rent, so in Law no. 21/2008 the meaning needs to be rearranged. As a consequence of the definition in Law no. 21/2008, Sharia Bank only needs to provide funds for rental transactions, without conducting the lease or rental transaction itself. While in the sense of MUI’s fatwa Sharia Bank should conduct lease or rental transactions, not just provide funds for it. With the following understanding in Law no. 21/2008, it will have an impact on banks renting out goods to customers which is not belong to the bank yet. This practice will have an impact on the violating of basic *fiqh* and finally the transaction is *haram*.

MUI’s Fatwa no. 27/2002 on *Al-Ijarah Al-Muntabiyah Bi Al-Tamlik* explains that: 1. The party that performs *al-Ijarah al-Muntabiyah bi al-Tamlik* must carry out the *Ijarah* agreement first. The transfer of ownership agreement, either by trade or gift, can only be done after the period of *Ijarah* is complete. 2. The promise of transfer of ownership agreed at the beginning of *ijarah* agreement is *wa’id* (وعد), whose law is not binding. If the promise is to be implemented, then there must be a transfer of ownership agreement made after the period of *Ijarah* is completed (MUI, 2002).

MUI’s fatwa no. 27/2002 was made at the request of the Financial Accounting Standards Board (DSAK IAI), but this fatwa has weaknesses that have an impact on the difficulty of transaction being executed or recorded. The weaknesses include: 1. The obligation to carry out *ijarah* agreement first, will complicate the implementation of the transaction. *Ijarah* is a regular rental agreement that at the end of the lease period the goods must return to the owner, so the rent amount is only as big as the benefit used by the tenant. While in *Ijarah Muntabiyah Bil Attamlik* which rental period is under the economical age, then the regular payment will be the rent itself plus the installment of the purchase of rental goods. 2. The promise of transfer of ownership agreed at the beginning of *ijarah* agreement is *wa’id* (وعد), whose law is not binding. This fatwa greatly weakens the tenants position. In accordance with the agreement, the tenant will pay rent plus installments to pay the goods, but at the end of the agreement the tenant or customer has no certainty about the ownership of the goods. The clause in this fatwa should be amended, so as not to weaken the customers position.

Referring to the above analysis, a change of definition is required in Law no. 21/2008, so that the basic *fiqh* will not accidentally violate. The statement in MUI’s Fatwa no. 27/2002 must also be adjusted to have a better protection for customers.

e) *Istishna'*

The realization of financing using *Istishna's* agreement is the lowest compared to other agreements (OJK, 2020). Akad *Istishna'* is a buy and sell agreement but the goods must be made or produce by the seller after the agreement. This characteristic is highly unlikely did by the Bank. To realize the agreement the Bank will place an order to third parties to have the necessary goods. This procedure is called *Istishna' Parallel*. Law no. 21 of 2008 provides the following meaning: "*Akad istishna'*" is a Financing Agreement of goods in the form of ordering the manufacture of certain goods with certain criteria and requirements, which are agreed between the booker or buyer (*mustashni'*) and the seller or maker (*shani'*).

The *Istishna'* definition in this Law is somewhat inappropriate when linked to the basic understanding of *Istishna's* trade, because the Bank only serves as a provider of funds to complete transactions. In such cases, it is necessary to rearrange the definition so that the position of sharia bank in *Istishna's parallel* agreement can be clearer.

CONCLUSION

The results and discussion above indicated that the definition of an agreement or *akad* in Law 21/2008 is not conform to the definition in the MUI's Fatwa. *Wadiah's* commitment for funding products such as Checking Accounts or Savings Accounts has a high probability to be *dholim* to customers, due to the damage of goods left behind. *Mudharabah* Agreement for funding products, both in the Savings Accounts or Deposits has a probability to be *dholim* to customers, due to a lack of profit sharing payment. *Murabahah's* agreement for financing has the potential to violate *fiqh* for selling goods that do not yet belong to the Bank. *Mudharabah's* agreement for financing has very little volume, suggesting that Sharia Bank lacks confidence in customer reports. The use of *musyarakah* agreement for financing is much less appropriate, closer to *mudharabah* agreement. *Ijarah* has the potential to violate *fiqh*. MUI's fatwa about *Ijarah Muntahiya Bil Attamlik* resulting uncertainty for customers.

Based on these findings, some suggestions can drawn for better practice in Indonesia Islamic banks. *Akad* definition in Law no 21/2008 should be revised. *Wadiah* should not be used for funding product. Sharia Bank should adjust for *Mudharabah* profit sharing. The implementation *Murabahah* must be done after the goods are fully owned by Sharia Bank. Sharia Bank should be more careful to use contracts under *Ijarah*.

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