Principle of Balance of Relationship Between Banks and Customers in Mudharabah Agreements

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Abstract.
Banks carry out their business activities in the form of accepting deposits in the form of savings and time deposits as well as conducting business activities by channeling funds in the form of financing and providing services in the form of remittances, save deposits and other banking services. Islamic banks in carrying out their business activities and functions, namely channeling funds in the form of providing financing to their customers, are carried out in the form of musharaka and mudharabah. The use of the mudharabah and musharaka principles is the main principle for Islamic banks. The research method used in this research is the normative legal method which is carried out by examining library materials, emphasizing on primary legal materials, namely legal materials consisting of basic regulations and legislation with an approach to legislation relating to with the principle of the balance of the relationship between the bank and the customer in the mudharabah financing contract, which is the implementation of the principle of good faith and the principle of freedom of contract which places the parties in a balanced manner (at-tawazun) with respect to their rights and obligations in determining the clauses of the contract contents.

Keywords: *Banking, sharia principles, balance, business*

I. INTRODUCTION

Banking institutions, banks carry out their business activities in the form of accepting deposits in the form of savings and time deposits as well as conducting business activities by Of course, you will get a profit, so ensuring that you get a profit from a debtor's business whose results are not certain is as tyranny. Meanwhile, Islamic banks prohibit the mechanism of interest (interest rates) and encourage channeling investments with mudharabah and musharaka (Algaoud & Lewis, 2003). The profit-sharing mechanism system in Islamic banking, the bank is a business partner who will share in the profits and losses created from the existence of a cooperative relationship that requires each other. Capital is needed for mudharib to do a business with the expertise/skills possessed. Capital is given in the form of money to finance the business by the bank. Through this collaboration, one party provides capital (bank) while the other party (customer/mudharib) runs a business which then distributes profits from the results of the business carried out (Algaoud & Lewis, 2003).

The use of mudharabah and musharaka principles is the main principle for Islamic banks. Mudharabah is a cooperation agreement between shahibul maal (owner of capital) and mudharib (manager of funds) whose profit sharing is based on profit sharing according to the initial agreement. If the business being run suffers a loss, all losses are borne by the shahibul maal, unless it is found that there are negligence or mistakes made by the mudharib, such as fraud, fraud, and misuse of funds. The principle of mudharabah is divided into two, namely mudharabah mutlaqah and mudharabah muqayyadah. Musyarakah is a cooperation agreement between two or more shahibul maal to establish a joint business and jointly manage it. The profit is divided according to the agreement, while the loss is borne according to the respective capital contribution. There are four types, namely Syirkah Mufawadhah, Syirkah 'inan, Syirkah amal, and Syirkah Wujuh.

The mudharabah principle is the principle and mechanism with a profit-sharing system with a calculation or profit and loss sharing method (profit and loss sharing) (Algaoud & Lewis, 2003). In the profit-sharing mechanism system, the bank is a business partner who will share in the profits and losses created from the existence of a cooperative relationship that requires each other. Doing business mudharib who have expertise/skills requires capital which in this case is provided by the bank to finance the business. Through this collaboration, one party provides capital (bank) while the other party (customer/mudharib) runs a business which then distributes profits from the results of the business carried out.The business profit obtained from the mudharabah contract is based on the agreement as outlined in the contract in the form of a ratio/percentage (Algaoud & Lewis, 2003). As explained in the concept, Mudharabah is a collaboration between fund owners or investors and capital managers to carry out certain businesses with profit sharing, while in the event of a loss it is the responsibility of the capital owner (Sjahdeini, 1999).

In practice in Islamic banking, financing activities can also pose risks as in mudharabah. According to Sutan Remy Sjahdeini that mudharabah financing is financing that has risks, this is because the financing Mudharabah Islamic banks only pay attention to the first way out. Meanwhile, according to Muhammad Syafe'i Antonio, the risks that can occur in a mudharabah financing contract are (Syafe'i, 2002):

1. Side streaming, where the customer uses the funds not as stated in the contract.
2. Negligence and willful misconduct (Direktorat Penelitian dan Pengaturan Perbankan Bank Indonesia, 2006).
3. Moral hazard (actions that cannot be observed) and adverse selection (entrepreneurs' ethics which are inherently unknown to the owners of capital) (Direktorat Penelitian dan Pengaturan Perbankan Bank Indonesia, 2006).

Thus, mudharabah can lead to non-performing financing and risks, so Islamic banks also apply risk in banks to avoid losses. Islamic banking activities in Indonesia take into account the recommendations issued by the Bank for International Settlements through the Basel Committee on Banking Supervision regarding standard setting for banks to operate prudently, including the issuance of Basel 1 in 1988 accord, namely the application of the measurement framework. for credit risk by requiring a minimum capital standard of 8% which was later refined by the issuance of Basel II which provides a capital calculation framework that is more risk sensitive and provides incentives to improve the quality of risk management implementation in banks, which is achieved by adjusting capital requirements with the risk of loss of credit by introducing changes to the calculation of capital of the exposure caused by the risk of losses due to operational failure.

Mudharabah is a financing product that is implemented in the form of a contract/contract (Al-Zuhaily, 1989). According to the mixed theory (real assets and financial assets), there are contracts that are categorized as uncertainty contracts (uncertain or do not provide certaint income/return), which states that profits and losses should be shared. It was explained by Ibn Qudamah as quoted by Wahbah al-Zuhaily that mudharabah is divided into two, namely mudharabah mutlaqah and mudharabah muqayyadah. Mudharabah mutlaqah is a business cooperation agreement for providing capital between two parties, namely the first party as the owner of capital and the second party as the manager (borrower) of capital with profits divided by both parties, namely 1/3 for capital borrowers and 2/3 for capital owners, in other words In mudharabah mutlaqah, the owner of the capital (shahibul maal) hands over the assets (capital) to the manager (mudharib) with no conditions, the right of the mudharib is to be free to manage the capital for the type of business, time and place of the mudharabah. As for the mudharib obligation, it is to run the business as much as possible and the shahibul maal has the right to return the assets (capital). This is as explained by Imam Syafe'i and Imam Hambali, that the shahibul maal is allowed to ask for a return of the business capital (Al-Zuhaily, 1989).

In the provisions of the mudharabah muqayyadah, the shahibul maal has the right to his capital and determines the provisions such as the type of business, the time and place where the mudharabah is carried out, while the mudharib has the obligation to run the business as much as possible by being bound by the provisions given by the shahibul maal to the place, type of business and time. From this definition, it can be concluded that mudharabah is divided into two, namely mudharabah mutlaqah and mudharabah muqayyadah (Karim, 2006).Mudharabah financing contract is a form of cooperation agreement between two parties, namely shahibul maal and mudharib, then mudharabah is a form of cooperation agreement to gain profits from a business, while losses are the responsibility of the owner of the capital (shahibul maal), or in other words, mudharabah is a contract that contains surrender of capital from a capital owner (shahibul maal) to the manager (mudharib) to be used in a business provided that if the business brings profit (profit) then the profit is divided based on the agreement and in the event of a loss (bankruptcy) borne by the owner of the capital with certain terms and conditions (Al-Zuhaily, 1989).

In Mudharabah both parties are bound and have consequences that must be obeyed. In the mudharabah financing contract/contract, there are elements or pillars, namely Ijab and Qabul, meaning that there is a suitability of the desires and intentions of the two parties to establish a cooperative bond. The elements and conditions of the mudharabah are mandatory provisions that can cause the mudharabah to be valid or invalid in the contract. Mudharabah is a financing product in the form of a contract/contract. According to the mixed theory (real assets and financial assets), there are contracts that are categorized as uncertainty contracts (uncertain or not providing certainty of income/return), which states that profits and losses should be shared. So that it can be said that even though in concept the loss is the responsibility of the owner of the capital (the bank) unless it is due to the negligence of the manager, it is the responsibility of both parties (Nyazee, 1997). The development of standard contracts in contracts has led to the introduction of the term standard bank agreement which is made with standards in its manufacture and content by one of the parties. It is better for a contractual relationship to provide clear boundaries in the making and its contents as well as in its rights and obligations so that it does not harm one party and provides justice and balance for both parties (Karim, 2006).

II. METHODS

The research method used in this research is the normative legal method which is carried out by researching library materials, emphasizing on primary legal materials, namely legal materials consisting of basic regulations and legislation with an approach to legislation and concepts related to "The principles of the balance of the relationship between the bank and the customer in the Mudharabah Agreement and the analysis of legal materials in this study are qualitative descriptive in nature, namely describing or explaining the subject and object of research as the results of research conducted using words to explain phenomena or data obtained (Creswell in Hasudungan et al., 2020). How is the application of the principle of balance in the mudharabah contract in the cooperative relationship between capital owners and managers in Islamic banking?

III. RESULT AND DISCUSSION

Mudharabah financing contracts are carried out on a profit-sharing basis. This shows that the mudharabah contract is a form of partnership agreement with a legal relationship between two parties. One of the parties (Islamic bank), submits the capital, while the customer (mudharib) does business/work with their energy and skills to make a profit (Undang-Undang No.21 Tahun 2008).The mudharabah contract between the bank and the customer (mudharib) to manage the business and aim at making a profit is stated in a contract/agreement (Iqbal, 1998). If there is a loss in accordance with the business conditions, it will be borne by the capital provider (Islamic bank). That the owner of capital (shahibul mal) (Karim, 2006), entrusts a number of funds (capital) to the manager (mudharib) with the contribution of funds/capital is 100% from shahibul mal (bank/investor) and expertise/skills is from the manager (mudharib). Provisions regarding profit sharing are determined by the bank based on the ratio/percentage of profit sharing in the form of 1/3 for capital borrowers or managers and 2/3 for capital owners or it can be based on revenue sharing in the financing contract.

One of the obligations to implement risk management is related to credit/financing risk.The risk that occurs in mudharabah financing is that the customer does not fulfill the obligations in accordance with the agreed agreement or the customer's failure to finance that cannot be paid at maturity (principal installments and profit/profit sharing) and the occurrence of problematic mudharabah financing. There is an investment risk (equity investment risk), namely the bank provides profit-sharing financing to customers where the bank also bears the risk of the customer's business losses financed by the profit and loss sharing calculation, and is based on the amount of income or sales obtained by the customer but calculated from the business profits generated by the customer (revenue sharing).Islamic banks apply the precautionary principle in their business activities, so that in their implementation, Islamic banks apply risk management. The implementation of risk management starts from the process of identifying, measuring, monitoring and controlling risks.

The Bank also conducts a business feasibility analysis (character, capital, capacity, condition of economy and collateral) as well as an assessment of business prospects, performance and ability to pay, because financing products can pose risks (Joosub, 2006).In mudharabah the form of legal relationship is contractual, namely the parties agree to bind themselves to make an agreement/achievement (Nurhadi, 2020). As for the agreement will give rise to rights and obligations for the parties. In a mudharabah contract, the bank has rights and obligations to the mudharib, and vice versa there are rights and obligations of the mudharib to the bank (Usanti et al., 2014). Mudharib is a person who is given the trust to use the funds that have been given by Shahibul Maal. With regard to the funds/capital, the mudharib must maintain the trust that the capital is not misused and used according to the contents of the agreed contract so that there are no dependents for him. Mudharib has the right to get profits with the profit sharing specified in the contract. As for determining the clauses of the contents of the contract, it must be in accordance with the pillars and conditions and not violate sharia principles and provide benefits and not cause harm. harm to one of the parties. To provide a fair contract for both parties, the parties have a balanced and proportional position.The contract is made with the agreement of both parties. The contents of the contract must provide a balance of rights and obligations in a contractual relationship so that one of the parties is not harmed by their rights. The contents of the contract must also not burden the parties, both Islamic banks and mudharib. In the mudharabah shahibul maal contract, the owner of the funds (sharia bank) must understand that every placement of funds with the expectation of a return (profit) also carries an imposition of risk so that Islamic banks also have a risk of loss (Undang-Undang Nomor 21 Tahun 2008).

For the financing provided, the mudharib must return the financing provided and are entitled to profits and if there is an error or negligence in its management, the mudharib also bears the risk of loss. The principle of balance is oriented to the context of the relationship and interests of the parties, so the criteria for finding the principle of balance in the contract are as follows:

1. Contracts that contain the principle of balance (at-tawazun) are contracts that provide recognition of equal rights, opportunities and opportunities to contractors to determine fair exchanges for them. Equality is the position of the parties as equal in position and rights (al-musawah).
2. Contracts that contain the principle of balance are contracts based on the freedom of the contractors to determine what is fair and what is unfair to them.
3. Contracts that contain the principle of balance (at-tawazun) are contracts that are able to guarantee the implementation of rights and obligations in a balanced manner for the parties.

That justice is not always everyone should get something in the same amount, in this case it is possible to have a different end result. The principle of balance (at-tawazun) refers to the fiqh rules which state that profits come with risks and business results come with dependents issued. The principle of balance has a meaning by positioning the parties in a balanced manner in determining rights and obligations.In a mudharabah contract transaction, if both parties carry out the contract in good faith, it can certainly provide benefits and benefits for both parties (Afkar et al., 2020). As a rule in Islamic law, "al-ghurm bi al-ghunm" that profit becomes the right of the person who bears it or the responsibility must be borne by the person who is entitled to the benefit. Thus, the provisions for profit sharing or profit sharing in the mudharabah contract are said to be profit sharing that can be accepted as a balanced result (Syarifuddin, 2020). The balance in this case is that the determination of profit sharing is carried out by giving the mudharib the opportunity to determine the contents of the contract.

IV. CONCLUSION

Principles and products of Islamic banks in general, sharia principles are the rules of agreements based on Islamic law between banks and other parties for depositing funds or financing business activities or other activities that are declared in accordance with sharia. Broadly speaking, economic relations based on Islamic sharia are determined by contractual relationships consisting of 5 (five) basic contract concepts. Based on these five basic concepts, Islamic bank products can be found. The rules of agreement based on Islamic law between a bank and a customer for depositing funds and or financing business activities or other activities that are declared in accordance with sharia. The distribution of Islamic bank profits to deposit customers is based on an agreed ratio every month.

The profit sharing obtained depends on the amount and term of the deposit as well as the bank's income in that period. The amount of profit sharing is calculated based on the bank's income (revenue) so that customers will definitely receive profit sharing and do not lose their principal savings. The principle of balance in the relationship between the bank and the customer in the mudharabah financing contract is the implementation of the principle of good faith and the principle of freedom of contract which places the parties in a balanced manner (at-tawazun) with respect to their rights and obligations in determining the clauses of the contract contents.

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