

The Principal of Risk and Profit Sharing in Islamic Banking

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Abstract

The role of banking that is very strategic in achieving Indonesia's economic development goals recently, requires a careful study of banking concepts that have been operationalized, both conceptually and their applications, so as to create a strong banking system in the era of globalization in the future. The existence of Islamic banks in Indonesia has not been fully accepted, there are still some people who equate with conventional banks. Based on the background of the problem above, which is the identification of the problem in this paper, namely: 1) What is the application of the principle of sharing the results and risks in fundraising activities in Islamic banking? 2) What are the operational constraints faced in implementing profit sharing and risk principles in Islamic Banking?. Based on the discussion above, conclusions can be drawn, as follows: 1) The implementation of fundraising using the profit sharing principle in Islamic Banking is carried out using the principles of Wadiah and *Mudharabah*. The Wadiah principle uses the Wadiah Current Account using products such as: Singapore BSM Dollar Current Account, BSM Current Account, BSM Currency Current Account, BSM Ouro Current Account, Bank Muamalat Wadiah Deposit Account in Rupiah and Foreign Currency, personal and corporate, and Wadiah Savings Account using products like: Junior Community Savings which is a special savings for students, Simpatik Savings, BSM Dollar Savings. While the *mudharabah* principle uses the Tabungan *Mudharabah* contract using products such as: *Mudharabah* Savings Accounts are Hajj Savings, Investa Scholar Savings, Qurban Savings and Savings Cards and time deposits for *mudharabah* use products such as: Bank Syariah Mandiri Savings, BSM Foreign Currency Deposits and *Mudharabah* deposits. In calculating profit sharing only in *Mudharabah* principles, the wadiah principle is only a bonus given to the bank's willingness. The pattern of calculation for results is to use the principle of profit sharing, which means that the results are calculated from the total income of the fund management and the amount of profit sharing depends on the initial agreement, 2) There are a number of operational constraints faced by Sharia Banking in financing Financing Results such as limited human resources, Islamic Banking management, limited Office Networks, and still weak government regulations on Islamic Banking.

Keywords: *principal, risk and profit, sharing, Islamic banking*

A. Introduction

The shift in national economic policy that follows the development of the global economy has made the government increase its economic activities. One of the increasing economic activities is banking activities because banking is an important activity in supporting national development activities.

The corrected legal instrument is the issuance of Law No. 7 of 1992 concerning Banking. In this Act, Islamic banking began to accommodate the names of banks for profit, which was then responded to by Muslims represented by the Indonesian Ulama Council and community organizations by forming Bank Muamalat Indonesia (BMI). This bank is the first Islamic commercial bank to implement a different profit-sharing system from the banking system known to the Indonesian people. The presence of BMI is a separate answer for Muslims who want usury-free transactions in conventional banks, Islamic banks are considered late compared to other Islamic banks in other countries such as Malaysia, Sudan, Pakistan and other Gulf countries.

The presence of Bank Muamalat Indonesia was responded enthusiastically by the majority of Muslims in Indonesia, this was marked by an increase in BMI assets from year to year, and it turned out that customers were not only among the Muslim community but also non-Muslims, especially Chinese descendants. This is because BMI provides greater profit sharing compared to conventional bank interest.

It has been a long time for Indonesian Muslims, and other parts of the world, to want an economy based on values and Sharia Principles to be applied in all aspects of life and in inter-ummah transactions based on Sharia rules. This desire is based on the awareness to apply Islam as a whole in all aspects of life, as explained in QS. Al-Baqarah verse (208) which means the following: *"O you who believe, convert to Islam as a whole (complete/holictically)"*. This verse explicitly reminds Muslims to run Islam in a simultaneous way, Islam is not only realized in the form of worship rituals. and marginalized from the world of politics, economics, banking, insurance, capital markets, project financing, export-import transactions and others, if this happens, Muslims have distanced Islam from their lives Muhammad Safi'i Antonio (Antonio, 1999, p. 26) stated that: *"Unfortunately, there are still many people who see that Islam does not deal with banks and the money market, because the first is the white world while the second is the black world, full of deception and cunning"*.

Based on the results of Bank Indonesia's (Indonesia, 1999) research there are still people who are reluctant to deal with banks because of the interest imposition system which is believed to be *riba* which is prohibited. Therefore, the concept of alternative banking systems is needed that can accommodate the demands and needs of the community, with a profit and risk sharing system, which promotes the principles of fairness and togetherness in business, both in generating profits and in the face of risk. Concrete evidence that needs to be taken by *ibroh* (lessons) when interest is applied by

conventional banking, so that the Indonesian people experience an economic and monetary crisis that destroys the life of the nation, which in the end Indonesia is very affected in various sectors. life. One of the most astonishing sectors was when conventional banking with its interest system went bankrupt since 1997, around 30 banks were closed or liquidated and then 55 banks were included in the supervision category by BPPN. To help banks, the government was forced to help by channeling credit assistance known as Bank Indonesia Liquidity Assistance (BLBI) which until now has not been repaid by its creditors.

This condition is very different from banks operating in accordance with sharia principles, this is because Islamic banks are not burdened to pay interest on customer deposits. The Shari'ah Bank only pays the results in accordance with the agreed ratio from the beginning and the level of profits obtained by Islamic banks. With a profit-sharing system, it is clear that Islamic banks have survived the negative spread. Indeed, the monitarian crisis is the first step for Islamic banks to show their existence, if Islamic banks are able to survive a crisis. Islamic banks are not as messy as conventional banking in general, while the economic and monetary crisis actually has a positive impact on the development of Islamic banks. In 2007 the number of sharia commercial banks was 3 units; the sharia business unit was 24 units and BPRS was 105 units. A number of economists and banking practitioners acknowledge and state that the Shari'ah Bank is a resilient bank against the storm of economic and monetary crises. Therefore, banking institutions need to be developed in the future, one of which is former Bank Indonesia Governor Syahril Sabirin stating that (Sabirin, 1999, p. 6):

"... The experience during this economic crisis provides a valuable lesson for us that the principle of risk sharing, or sharing profit and loss, is a principle that can play a role in increasing the resilience of economic units, ... Disbursement of funds through Sharia principles by using the principle of profit sharing or risk sharing between fund owners and users of funds have been clearly agreed upon from the beginning, so that if there are business difficulties due to the economic crisis for example, then the risk of business difficulties is automatically borne jointly by the fund owner and users of funds .. " .

Behind the development of Islamic banks is growing in quantity, but in practice, the basic principles in Islamic banking activities are profit sharing systems that are less interested in financing Islamic banking activities. National *mudharabah* and *musyarakah* financing in 2003 was only 20.3% (percent) compared to *murabahah* financing (sales and purchases) of 71.2% (percent), of the total financing of 5, 47 Trillion. In terms of assets, if in 2000 the assets of new Islamic banking reached 1.2 trillion, but in November 2004 it increased to 14 trillion. Likewise, with third party funds (DPK) from 669 billion in 2000, then increased to 10.4 trillion in November 2004, or 1.1 percent of the total assets of national banks which reached 1,000 trillion rupiah (Kumpulan Artikel BNI Syariah, 2006, p. 47).

The role of banking that is very strategic in achieving Indonesia's economic development goals recently, requires a careful study of banking concepts that have been operationalized, both conceptually and their applications, so as to create a strong banking system in the era of globalization in the future. The existence of Islamic banks in Indonesia has not been fully accepted, there are still some people who equate with conventional banks.

Profit and loss sharing basically fund the principle of trust and pure agreement between two or more parties, namely the capital owner (investor) in this case the Islamic bank with the business owner in this case the business management customer. Theoretically, the principle of profit sharing and risk is the main or main characteristic of Islamic banking activities. However, in financing activities for profit sharing and the risk of *Musyarakah* and *Mugharabah* products are less interested in funding activities, this can be seen from the data above. This is because *Musyarakah*, *Mudharabah* and the level of financing risk are very high (high risk) and uncertain results, even though the bank is a business institution, an intermediary institution where the bank serves as an intermediary for lack of funds and others excess party capital (surplus funds), besides that the bank must also return the customer's deposit funds at any time. Banks with customers must understand well about the philosophy of financing with *mudharabah* and the musharaka system, because Islam provides a fair solution for both parties with the principle of clear accountability, not just to get their own benefits while others suffer losses even to the point where nothing is economically powerless anymore. This is where we examine and find the ideal concept of profit and loss sharing in Islamic banking, so that both banks and debtors can run their business or business safely without excessive fear or worry, so that *Mudharabah* and *Musyarakah* products will remain the main financing products for Islamic banks in the future.

1. Problem Identification

Based on the background of the problem above, which is the identification of the problem in this paper, namely:

- a. What is the application of the principle of sharing the results and risks in fundraising activities in Islamic banking?
- b. What are the operational constraints faced in implementing profit sharing and risk principles in Islamic Banking?

B. Literature Review

a. The History of Islamic Bank

Banks are intermediary institutions between fund owners and people who need funds. Banks in general have existed since 2000 BC in Babylon, known as the Temple of Babylon. This bank is only limited to lending gold and silver with an interest rate of 20% every month (Djumhana, 1993, p. 38). At that time the payment instrument was gold and

silver besides that as a tool to determine prices. Whereas in Indonesia, the bank itself has existed since the Dutch era as the *De Nederlandsche Handel Maatschappij* (NHM) in 1824. Then in 1827 the Dutch government established *De Javasche Bank* and now became Bank Indonesia while NHM was changed to the Indonesian Import Export Bank. In 1857 the first private bank was established, *NV Escompto Bank*, which was later nationalized to become the State Trade Bank.

After the Indonesian nation became independent, the Indonesian government established a circulation bank in the form of a state-owned bank with the name of the Central Bank of Indonesia Foundation on October 14, 1945, after that on August 17, 1946 Bank Negara Indonesia was inaugurated by Government Regulation in Lieu of Law Number 2 of 1946. BNI, besides commercial banks, it also functions as a central bank (Fuady, 1999, p. 26). During the New Order government, the problems of economic development and monumental reform were developed seriously, so that the principle of budget was balanced and free foreign exchange was used. Then the government issued a policy package known as the Pakto 1988 which facilitated the formation of private banks. Among the materials regulated in the Pakto 1988 are:

- a. The establishment of private banks and private development banks is released on condition that having a deposit capital is only 50 billion rupiah.
- b. All national bank banks can open branch offices in all parts of Indonesia as long as meeting the requirements of the last 24 months is classified as healthy.
- c. Expand opportunities to form Rural Credit Banks and expand their authority.
- d. Facilitating recognition or giving status to banks as foreign exchange banks.
- e. Facilitating foreign banks to open branch offices in six major cities, namely Jakarta, Bandung, Semarang, Surabaya, Medan and Ujung Pandang.
- f. Facilitating the formation of joint venture banks in six cities.

Islamic banks in Indonesia stand side by side with reforms in the banking sector which is marked by the birth of Law Number 7 of 1992, when Islamic banks have not been called Islamic banks are only referred to as profit sharing banks. However, this is a historical stick that needs to be noted in the phase of establishing Islamic banks in Indonesia. Islamic banking in Indonesia has experienced rapid development, people are getting to know what is called the Shari'ah Bank. Starting with the establishment in 1992 by a bank called Bank Mu'amalat Indonesia (BMI), as a pioneer in the establishment of a banking system based on the sharia system, now Islamic banks that doubt the operation of the system, have shown great fascination.

The Syari'ah Bank was initiated in Indonesia in the early 1980s, starting with testing on a relatively smaller bank scale, namely the establishment of Baitut Tamwil-Salman, Bandung. And in Jakarta was established in the form of a cooperative, namely Koperasi Ridho Gusti (Antonio, 1999, p. 278). As this circumstance begin, the Indonesian Ulama Council (MUI) took the initiative to initiate the establishment of a sharia bank, resulting

from the Bank's Banking and Interest Interest Workshop in Cisarua, and subsequently discussed with and formed a team working group at the MUI IV National Conference which took place at Syahid Hotel Jakarta on August 22-25 1990 (Hamid, 2007, p. 134).

b. Legal Basis of Sharia Banking

The legal basis for the implementation of Islamic banking in Indonesia is divided into two parts, namely the normative legal basis and the formal legal basis. Both simultaneously provide legal force for the implementation of Islamic banking in Indonesia. The normative legal basis is derived from Islamic law derived from the Qur'an, Sunnah and Ijtihad. This provision will be issued in the form of the National Sharia Council Fatwa.

The binding power of fatwas is normative, which means that the fatwa is only binding, first for those who issue or who do it, and the second binds those who receive it or who submit to the fatwa (Hamid, 2007, p. 134). Because of its nature and strength, endorsement is not absolute for all Muslims. Unlike the case if the provisions are directly from the Qur'an and Sunnah, it automatically binds directly to Muslims in Indonesia. Islamic law which is built from the main source and formed from the process of ijtihad is a norm or rule of law that only has binding power if it is recognized, accepted, and carried out by Muslims in accordance with the level of awareness and belief. Whereas the formal legal basis is the provision that has gone through a process of positivisation or formalization by the State through the Legislative institution and Bank Indonesia as the authoritarian institution of Indonesian Banking National legal basis:

- a. The first Pancasila of the monism of Godhead
- b. Article 29 of the 1945 Constitution

Islamic economics teaches the enforcement of the values of justice, honesty, transparency, anti-corruption and exploitation which means that the main mission is the formation of moral values in the business activities of individuals, companies and the State. The application of Islamic economic law has a very strong basis. The provisions of Article 29 paragraph (1) of the 1945 Constitution by stating that the State based on God Almighty basically contains three meanings (Agustianto, 2008):

- 1) The state may not make laws and regulations or carry out policies that are contrary to faith in God Almighty;
- 2) The State is obliged to make laws and regulations or to implement policy policies for the exercise of trust in the Almighty God from a group of believers who receive it;
- 3) The State is obliged to make laws and regulations that prohibit anyone from harassing religious teachings.

Through the provisions in Article 29 paragraph (2) of the 1945 Constitution, all Islamic law, especially those concerning the law of muamalah, can basically be

carried out legally and formally by Muslims both directly and indirectly by adopting national positive law.

- c. Act Number 7 of 1992 concerning Banking which is amended by Act Number 10 of 1998 concerning Banking

Ratification of Law No. 7 of 1992 Islamic banks were accommodated in the Act with the name of the profit-sharing bank. So since then, Indonesia has known a dual banking system, namely conventional banks and profit-sharing banks. In Law Number 7 of 1992 Article 6 letter m jo Article 13 letter c expressly opens the possibility for banks to carry out activities based on the principle of profit sharing with their customers, both commercial banks and village banks. Then in Law Number 10 of 1998 specifically Article 1 number 3 states that commercial banks are banks that conduct business activities conventionally and / or based on sharia principles which in their activities provide services in payment traffic. Furthermore, number 13 states that:

"The Sharia principle is an agreement based on Islamic law between banks and other parties for the storage of funds and / or financing of business activities, or other activities stated in accordance with sharia, including financing based on profit sharing (*mudharabah*), financing , based on the principle of capital participation (*musyarakah*), the principle of buying and selling goods by obtaining profit (*murabahah*), or financing of capital goods based on the principle of pure rent without choice (*ijarah*), or by transferring ownership of goods rented from banks by another party (*ijarah wa iqtina*)".

- d. Civil Code Article 1338

That all agreements made legally apply as laws for those who make them. This means that in addition to what is stipulated in the Law which is not regulated in the law but included in the agreement, it is as strong as the law and if violated, can be prosecuted before the court. In addition, the Civil Code also regulates the principle of freedom of contract that parties can make agreements / contracts beyond what is stipulated in the Act provided they do not conflict with propriety and public order.

- e. Bank Indonesia Regulation Number 6/24/PBI/2004 dated October 14, 2004 concerning Commercial Banks conducting business based on sharia principles. And for BPRS, namely Bank Indonesia Regulation Number 6/17/PBI/2004 dated July 1, 2004 concerning Sharia Commercial Banks.

3. Sharia Banking Business Activities

Sharia Bank business activities are regulated in Bank Indonesia Regulation Number 6/24/PBI/2004 concerning commercial banks conducting business based on sharia principles. Article 36 regulates Banks must apply sharia principles and prudential principles in carrying out their business activities, which include the following:

- a. To raise funds from the public in the form of savings and investments, among others:
 - 1) demand deposits based on the principle of wadi'ah;
 - 2) savings based on the principles of wadi'ah or *mudharabah*;
 - 3) time deposits based on the *mudharabah* principle or;
- b. Conduct funds including the following:
 - 1) the principle of buying and selling under contract, among others:
 - a) *murabahah*
 - b) *istishna*
 - c) *salam*
 - 2) the principle of profit sharing based on contracts, including:
 - a) *mudharabah*
 - b) *musyarakah*
 - 3) The principle of leasing is based on contracts, including:
 - a) *ijarah*
 - b) *ijarah muntahiya bittamlik*
 - 4) The principle of borrowing is based on a qard contract.
- c. Providing banking services based on principles, including:
 - 1) wakalah,
 - 2) hawalah,
 - 3) kafalah,
 - 4) rahn.
- d. Purchases, sales and / or safeguards on their own risk effects from third party securities are issued based on the underlying transaction based on sharia principles.
- e. Purchase securities based on sharia principles issued by the government and / or Bank Indonesia.
- f. Issuance of securities based on sharia principles.
- g. Transfer of money for self-interest and / or clients based on sharia principles.
- h. Receiving payment of receivables from securities issued and calculating with or between third parties based on sharia principles.
- i. Providing a place to store goods and securities based on the principle of Wadi'ah Yad Amanah.
- j. Carry out maintenance activities including managing their business for the benefit of others based on a contract with the principle of wakalah.
- k. Provide letter of credit (L / C) facilities based on sharia principles.
- l. Providing bank guarantee facilities based on sharia principles.
- m. Do a debit card business (change card) based on sharia principles.
- n. Conduct trust fund activities based on wakalah contract.

- o. Conduct other activities normally carried out by banks as approved by Bank Indonesia and obtain a fatwa from the National Sharia Council.

Article 37:

- a. In addition to conducting business activities as referred to in Article 36, banks can also:
 - 1) Conduct activities in foreign foreigners based on Sharf contract.
 - 2) Conduct capital investment activities in banks or other financial services based on sharia principles such as leasing, joint venture, securities companies, insurance and clearing and settlement clearing of housing.
 - 3) Conduct temporary investment activities based on sharia principles to overcome the consequences of financial failure provided they have to withdraw their participation with the provisions stipulated by Bank Indonesia.
 - 4) Acting as the founder of pension funds and pension funds based on sharia principles in accordance with the provisions of the applicable pension fund regulations.
- b. Islamic banks in carrying out social functions can act as recipients of social benefits in the form of zakat, infaq, shadaqah, endowments, grants and distribute them according to sharia on behalf of banks or zakat institutions appointed by the government.

Article 38:

- a. Banks must submit approval to Bank Indonesia for new products and services to be issued.
- b. The application for approval of new products and services to be issued as referred to in paragraph (1) must be accompanied by a fatwa of the National Sharia Council.

Article 39:

- a. Banks are prohibited from carrying out conventional banking activities.
- b. Banks are prohibited from changing business activities into conventional banks.

C. Discussion

1. Implementation of Profit-Sharing Principles and Risks in Islamic Banking Fundraising

Banking is a financial institution whose main function is to collect and channel funds to the public. In addition to this function the banking institution is also directed as a development agent (agent of development), namely as an institution that aims to support

the implementation of national development in order to improve equitable development and its results, economic growth and national stability towards improving the standard of living. This is the elaboration of Article 4 of Law No. 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking, namely: "Indonesian Banking aims to support the implementation of national development in order to improve equity, economic growth and national stability to improve people's welfare".

In general, sources of banking funds can be divided into three, namely:

- a. Source of funds originating from the bank itself, such as capital deposits from shareholders, bank reserve reserves, and bank profits that have not been distributed (profit in the current year that has not been distributed because it has not reached the end of bookkeeping so that it can be used as capital);
- b. Sources of funds originating from the wider community such as demand deposits, savings and time deposits;
- c. Funds are sourced from other institutions, such as Bank Indonesia liquidity loans, interbank loans, loans from foreign bank banks.

Based on the provisions in Law No. 7 of 1992 concerning banking and amendments to the law, forms of fundraising can be done through savings from the public. Deposits are funds entrusted by the community to banks based on storage agreements / contracts in the form of demand deposits, savings, time deposits and other similar forms.

Fundraising and financing activities are the main activities of Islamic banking services from all activities of Islamic banking financial institutions. Service services in the form of raising funds from the public can be done with the principles of Wadi'ah and *Mudharabah*. In addition to obtaining funds from the Islamic Banking community, it will also get funds in the form of capital deposited at the time of establishment of Islamic banks. Capital is the fund submitted by the owner (Antonio, 1999, p. 146). At the end of the financial year period, after calculating the profit earned in that year, the owner of the capital will get a share of the business results which are generally known as dividends. Capital funds can be used to buy buildings, land, equipment, etc. It was not immediately produced. In addition, capital can also be used for productive matters, which are channeled into financing. Funding from capital will result in capital ownership and not distributed to other customers. In Islamic banking, the mechanism for the participation of shareholders of capital can be carried out through *musyarakah fi sahm asysyarakah* or *equity participatio* in bank shares (Antonio, 1999, p. 147).

Contracts in fundraising activities are wadiah and *mudharabah* contracts. Wadiah in terms (terminology) is the delegation of authority from the owner or representative to another person to protect and maintain property (Mubarok, 2001, p. 46). While in the dictionary the term Islamic Economic Law explains that wadiah is the storage of property to someone who can maintain it while the goods or stored objects remain the property of the entrusted party (Tim Pengajar Fakultas Syariah, 1995, p. 59).

Fundraising products with this Wadiah agreement are Current Accounts and Wadiah Savings. Wadiah Giro, the Customer entrusts his funds every time the customer has the right to take it and is entitled to get a bonus from the benefits of using bank checking account funds. The bonus amount is not predetermined but actually is the bank's "policy". Wadiah demand deposits must be pure deposits, banks do not use them for investment and financing. If it is later modified by giving a recommendation to the bank to use it and use the results, it depends on the agreement of the parties (*Shahibul maal's* wishes). However, giving a bonus by the bank as currently done even though it is not specified in the context of the wadiah is not acceptable. In such conditions, there is no need to use the "wadiah" model, but only with the *mudharabah* contract. In an Islamic contract known as a wadiah yad amanah, is a pure deposit, the assets stored are stored in separate books with bank assets. Depositors are not responsible for damage or loss of stored items that are not caused by storage or errors, while in wadiah savings are easier than wadiah demand deposits because they can be withdrawn can be danced through an ATM.

Another agreement in fundraising is *Mudharabah* in *Mudharabah* terminology, in which the property owner surrenders the assets to another party to get two benefits according to the agreement and the loss is only charged to the second party owner (Mubarok, 2001, p. 51). This definition is considered the most complete because it takes into account 3 things, namely: first, the delivery of objects from the owner to the other party, secondly, the existence of provisions concerning profit sharing, namely profits for both with a percentage in accordance with the agreement, and third, a statement of loss.

The fundrising product with *Mudharabah* agreement is savings and *Mudharabah* time deposits. *Mudharabah* savings, funds deposited by customers will be managed by the bank, to get profit. Banks as mudarib share profits with shaib al-mal in accordance with the applicable ratio (percentage). Distribution is usually done every month based on the balance deposited. *Mudharabah* savings contain elements of uncertainty (gharar), because customers can withdraw funds from the bank at any time, causing fluctuations in customer funds stored in the bank. To eliminate the element of gharar which is prohibited in Islam, in practice Islamic banks determine the time limit for withdrawal of customer funds, which means that customers cannot withdraw their funds at any time such as using an Automated Teller Machine (ATM) but there will be an agreement on withdrawal of funds.

Mudharabah investment deposits, third party deposits whose regulations can only be made within a certain period (maturity), in return for profit sharing in the form of various revenues from the use of these funds. Haji *Mudharabah* Savings, third party deposits that are withdrawn when customers will perform Hajj or under certain conditions in accordance with customer agreements are deposits by obtaining profit sharing (*mudharabah*). Qurban Savings, third party deposits collected for qurban worship with withdrawals are made when customers will perform qurban worship, or on agreements

between banks and customers. Also deposits that will get profit sharing (*mudharabah*). These last three forms have not found any doubtful elements.

According to Gemala Dewi, in collecting funds from conventional banks and Islamic banks, there is a very basic paradigm difference, namely (Dewi, 2006, p. 108):

- a. The purpose of the community to surrender their funds to conventional banks is intended to save and secure funds from the possibility of things that are not expected in addition to expecting interest from the funds saved.
- b. The purpose of the community to channel funds to Islamic banks is to invest in various financing. If profits are obtained, it will be divided according to the profit-sharing ratio, whereas if you suffer losses, the community will bear the losses.

The existence of this paradigm difference causes people who submit funds to conventional banks will not bear the loss if conventional banks suffer losses, precisely in the condition of a moniter crisis where the interest rates of larger customers get greater profits because the interest income received is higher. On the contrary conventional banks are getting worse because they have to pay higher interest rates so the losses are greater. This can be seen when there was a monetary crisis in 1997 where many conventional banks suffered losses and eventually went bankrupt and the government was forced to provide assistance to banks that lost money to continue operating with Bank Indonesia Liquidity Assistance (BLBI).

That is not the case with Islamic banks because the public will get the profits obtained by the bank and if the bank experiences a loss then the customer will not get a profit-sharing ratio. This is fair enough because between banks and customers get the same benefits and if the losses are the same, they will incur losses. This principle is in accordance with the main objective of Islamic Banking is justice and transparency.

According to Bank Indonesia Sharia Banking Deputy, there are two types of Islamic bank customers, namely rational customers and emotional customers / loyalists (Fadrijah, 2007). Rational customers are those who can read business opportunities, if in favorable conditions they will use Islamic Banking services and if unfavorable conditions prefer conventional banks that provide a definite interest rate. While emotional customers / loyalists are customers who use Islamic Banking services because of religious demands, especially Islamic law which prohibits bank interest.

In general, customers and banks have a legal relationship, which is to enter into agreements or contracts where the customer hands over the money to be used and managed by the bank. The agreement according to Yan Pramadya Puspa is an action in which someone or more ties themselves with other people or more (Pasaribu & Lubis, 1996, p. 1). This self-binding action will create rights and obligations between the parties involved in the agreement. This agreement is a legal action that can be enforced and if

violated it will get legal sanctions. According to C.S.T. Kansil said that there were two kinds of legal actions, namely:

- a. Unilateral legal actions, namely legal actions taken by one party only and give rise to rights and obligations on the one hand, for example: making wills and grants.
- b. Two-party legal actions, namely legal actions taken by two parties and creating rights and obligations for the parties (reciprocity) such as making agreements to buy and sell, rent.

This legal action can be carried out by individuals or by groups of people and or companies. Legal action taken by a company is a corporation which is a legal entity in which those who represent the company are directors.

An agreement that causes legal consequences can only be done by people who are old enough or capable and not under supervision. To measure one's maturity in Islam, *aqil* is defined as having a wet dream, while in national positive law, in marriage law, a person is said to be an adult if he is 19 years old for a man and 16 years for a woman and / or is married. While in a savings agreement, for example is the Simpatik Savings Account at Bank Syariah Mandiri where savings are allocated to children with the aim of preparing their future. Minors cannot take legal action in accordance with Article 1330 of the Civil Code. In this case the child can represent a parent or guardian to take legal action on behalf of the child. Likewise, a wife cannot take legal action except with permission from her husband.

Profit sharing in fundraising is basically only found in *Mudharabah* agreement whereas in Wadi'ah's contract there is no profit sharing only in the form of bonuses given voluntarily by the bank without prior approval. When the business competition is very tight and competitive for banks like today, bonuses seem to be something absolute, this is intended to stimulate customers to use this contract. According to Adiwarman A. Karim, Islamic Banking in Arabic sometimes provides wadiah bonuses to its customers in the form of cars (Karim, n.d.). This bonus is different from prizes as is often done by conventional banks to stimulate customers to save on banks.

In consideration of the fatwa of the National Sharia Council of the Indonesian Ulama Council No.15 / DSN MUI / IX / 2000 states that in the sharing of results there are two principles, namely, first, the profit principle (profit sharing), namely the profit sharing is calculated from income after deducting management costs and secondly, the principle of profit sharing is profit sharing calculated from total funds management income.

Payment of sharia bank benefits to depositors (fund owners) in the form of profit sharing depends on the income received by the bank as *mudharib* in managing *mudharabah* fund, if the Islamic bank receives large business results then the distribution of business results will also be large, if not, the bank Islamic banks get very small business results. Unlike conventional banks where payment of benefits in the form of interest paid

in a fixed amount is not affected by the income received by the bank. This really depends on the performance of Islamic banks in investing these funds in the form of financing. Islamic banks carry out the function as fund manager of the fund owner (*shahibul maal*) because the size of income or returns received by the fund owner is very dependent on the expertise or professionalism of the managers of Islamic banks.

This concept has an element of justice, where only one party is profitable while the other party loses between the fund owner and the fund manager so that the amount of benefits obtained by the depositor depends on the bank's ability to invest the funds mandated to him. For the results of Islamic banks with customers (*shahibul maal*) based only on *Mudharabah* agreement, the business division is based on the agreed ratio at the beginning of the contract. The party that calculates Profit Sharing is Mudharib (bank) because of one of the rules in the *mudharabah* mutlaqah principle that the fund owner gives mudharib full authority to manage funds. In other words, the owners of funds are not permitted to interfere in the management of *mudharabah* funds.

Mudharabah cooperation is trustworthy cooperation, therefore mudharib as a party that is mandated and trusted to manage the business must imitate the nature of the Messenger of Allah: STAFF; *Siddiq* (right, honest), *Tabligh* (communicative, open, transparent), *Amanah* (responsibility, trust, credibility), and *Fathonah* (smart, wise, intellectual). Without this, there is no justice between the fund owner and the fund manager. Honesty, openness, trust is needed by managers of Islamic banks, especially those relating to the distribution of business results which are the main characteristics of Islamic banks.

Islamic banks are not allowed to collect *mudharabah* funds if Islamic banks cannot disburse funds, especially in productive and productive distribution because with the increase in funds raised with non-increasing income, the old owner of the funds will bear the risk. Although basically Islamic banks can save funds that are not distributed to Bank Indonesia Wadi'ah Certificate (SWBI), but the distribution of profits is very small. This is different from conventional banks if they are not able to channel funds collected in conventional banks, they can still store them in the form of Bank Indonesia Certificates (SBI) whose interest is confirmed. This is what is often done by conventional banks so that the funds collected are not channeled into productive investments that can drive the country's economy. This kind of practice will only burden the state finances because the funds stored in the form of certificates will be paid by the interests of the state.

2. Solutions and Strategies in Developing Islamic Banking

Abdul Gani Abdullah, stated in the legal analysis and evaluation of Islamic banking, found at least four things that were the goal of banking development based on sharia principles, namely (Hamid, 2007, p. 129):

- a. To meet the needs of banking services for people who cannot accept the concept of interest;

- b. Creation of a dual banking system in Indonesia that accommodates the application of the conventional banking system and sharia banking in a fair competition process, which is also supported by a pattern of business behavior that is valuable and moral;
- c. Reducing the risk of financial system failure in Indonesia;
- d. Encouraging the role of banks in moving the real sector and limiting all forms of exploitation that are unproductive and ignoring moral values.

The development of Islamic banking in Indonesia in the last few years shows a significant development. If in 2000 the number of new Sharia commercial banks were 2 units, 3 Sharia Business Units, and 78 Sharia Commercial Banks. Whereas based on BI data until May 2007 there were 3 Sharia Commercial Banks, 24 Sharia Business Units and 105 Sharia Commercial Banks. Banking growth as of October 2007 was 481.02 billion, growing 57% compared to 307.27 billion in the same period of the previous year. While in terms of assets up to October 2007 reached 33.03 trillion grew by 32% compared to the same period the previous year valued at 25.06 trillion (Gatra, 2007, p. 7).

The rapid growth of Islamic banking is caused by several factors. In addition to the quite good performance of Islamic banks and stressed, the profit-sharing system offered by Islamic banks is relatively more stable against macroeconomic turmoil. This is evidenced by the ability of *Bank Muamalat Indonesia* to maintain its existence during the monetary crisis that occurred in 1997, although at the height of the crisis in 1998 it suffered losses of up to 72 billion, but in 1999 it has recovered and was able to generate a profit of 2 billion. In addition, the profit-sharing system is more stable against economic turmoil, profit sharing margins from Islamic banks are able to provide higher profits than conventional banks, especially when conventional bank interest rates decline.

The development of Islamic banking must also be balanced with professional growth, namely those who meet certain qualifications are not only conventional financial industry players who are given Islamic financial training. From the 2003 study of the Faculty of Economics, University of Indonesia on the Report of Human Resources in Islamic financial institutions, the result was that most (59%) employees of Islamic financial institutions graduated from S-1, only 10% were from sharia. There are no Islamic economics graduates. Most (70%) came from conventional financial institutions, the rest were new graduates (20%) and moved from other Islamic financial institutions (5%) (Antonio, 2007, p. 82).

From this study it can be seen that most professional staff in Islamic financial institutions are still dominated by workers with conventional economic backgrounds as a result of the lack of development of Islamic financial products and services. The potential of public funds that can be transferred to Islamic banks also cannot be absorbed optimally and cannot compete with other conventional economic institutions. The creation of professional personnel plays an important role in driving performance and

competitiveness. Innovation in the Islamic finance industry requires expertise and expertise. Not only operational aspects, professional personnel are also needed to support research and development to strengthen capacity and innovation.

Furthermore, according to Shafi'i Antonio, there are several things that must be controlled by professional Islamic financial institutions, namely (Antonio, 2007, p. 82):

- a. Must master the technical aspects,
- b. Must master the philosophical aspects of Islamic economics. The operation of Islamic financial institutions must be in line with the objectives and philosophy of Islamic economics. As a sharia economy professional, it is not permissible to conduct financial transactions involving usury, maysir (speculation), risywah (bribery), and other prohibited matters. Islamic Economics is a system that supports the development of small and medium economic groups. This part of society must be a top priority to be served.
- c. Mastering Sharia law. The Islamic economic system is classified as a normative economy, therefore industrial players must know the rules of sharia rules and not violate them.
- d. Ethical aspects, Islamic financial institutions are institutions whose operations are based on the Qur'an and Hadith. Both of these sources are also a source of ethics in the Islamic financial profession. Islamic finance professionals must carry out the moral values contained in the Qur'an and Hadith.

Ali Yafie's view emphasizes that the development and success of Islamic banking as a form of Islamic economy is determined by five factors, namely (Hamid, 2007, p. 127):

- a. capital and increase;
- b. adequate regulation;
- c. socialization and education system;
- d. readiness and availability of Human Resources; and
- e. community commitment and participation.

The development of Islamic banks in the future is no longer focused on the socialization of the existence of Islamic banking. From the results of a survey conducted by Indonesian banks and other academic studies, it was stated that almost all levels of society had known the existence of Islamic banks as banks based on sharia law. The thing that needs to be done in the future is to explain the added value offered by Islamic banking so that it invites public interest because after all the main purpose of using Islamic banking is other than life after death by not consuming something that is usury as well. because people want something better and more profitable. This is done for prospective customers (debtors) but also entrepreneurs (borrowers) and the community as a whole.

Successful requirements for the implementation of *Mudharabah* and *Musyarakah* financing can be done either through competent Human Resources recruitment or in collaboration with private institutions to assess the feasibility and progress of ongoing

financing. Debtor information systems, credit information systems and credit potential that have been developed by Bank Indonesia can be one of the other supporting factors.

Another obstacle that makes Islamic banks less understanding of customers is fear of default and lack of product variation, product promotion, and product flexibility. Default problems can be overcome provided there is honesty, trust and goodwill from Islamic financial actors. Similarly, for large-scale financing with high risk, this requires government involvement in addition to Islamic banks as intermediaries that issue sukuk (Islamic bonds). When the sukuk legal basis was issued, it was hoped that high-risk financing would no longer be a significant obstacle. Even the potential of Islamic savings funds invested in the form of sukuk can be channeled to finance long-term government development projects (Ismail, 2007).

According to the Deputy of Bank Indonesia, there are several things that need to be done in developing Islamic banking, namely (Gatra, 2007, p. 12):

- a. Human Resources and bank leadership readiness,
- b. The commitment of the parties to increase capital capacity,
- c. Infrastructure ranging from the existence of outlets to information and technology systems,
- d. Encourage product dissemination, because it is impossible if each bank conducts research to produce new products. So, the alternative is to innovate superior products and then shared together.

In the context of Indonesia's economic recovery, the role of the intermediary of the banking sector is as a driver of the national economy. This role is only applied if the bank operates in a healthy condition and in a conducive business environment. There are several strategies in developing Islamic banking, namely:

- a. It must be understood that Indonesia's economic condition is the people's economy, so it is time for Islamic banks to start looking for cooperation with small and medium-sized businesses in the community,
- b. To touch the lowest layers of society and efforts to socialize and educate, Islamic banks can conduct training and education for the community to create reliable and competent entrepreneurs. To realize this strategy, Islamic banks can establish cooperation with universities or institutions that are competent in the field of entrepreneurship education and training.
- c. Optimizing Qardhul Hasan which can be taken from the zakat, infaq and shadaqah funds. It is time for the financial potential stored is no longer a consumptive fund but this huge potential is used as capital and managed into productive funds.
- d. Islamic banking is also required to establish solid cooperation in financing with small businesses, especially with Sharia Rural Banks and Baitul Maal wa Tanwil, both of which are in direct contact with the small people.

D. Conclusion

Based on the discussion above, conclusions can be drawn, as follows:

1. The implementation of fundraising using the profit-sharing principle in Islamic Banking is carried out using the principles of Wadiah and *Mudharabah*. The Wadiah principle uses the Wadiah Current Account using products such as: Singapore BSM Dollar Current Account, BSM Current Account, BSM Currency Current Account, BSM Ouro Current Account, Bank Muamalat Wadiah Deposit Account in Rupiah and Foreign Currency, personal and corporate, and Wadiah Savings Account using products like: Junior Community Savings which is a special savings for students, Simpatik Savings, BSM Dollar Savings. While the *mudharabah* principle uses the *Tabungan Mudharabah* contract using products such as: *Mudharabah* Savings Accounts are Hajj Savings, Investa Scholar Savings, Qurban Savings and Savings Cards and time deposits for *mudharabah* use products such as: Bank Syariah Mandiri Savings, BSM Foreign Currency Deposits and *Mudharabah* deposits. In calculating profit sharing only in *Mudharabah* principles, the wadiah principle is only a bonus given to the bank's willingness. The pattern of calculation for results is to use the principle of profit sharing, which means that the results are calculated from the total income of the fund management and the amount of profit sharing depends on the initial agreement.
2. There are a number of operational constraints faced by Sharia Banking in financing Financing Results such as limited human resources, Islamic Banking management, limited Office Networks, and still weak government regulations on Islamic Banking.

BIBLIOGRAPHY

- Agustianto (2008, February 4). *Opini Republika*.
- Antonio, M. S. (1999). *Bank Syari'ah Suatu Pengenalan Umum*. Jakarta: Bank Indonesia dan Tazkia Institute.
- Antonio, M. S. (1999). *Bank Syari'ah: Wacana Ulama' dan Cendekiawan*. Jakarta: Tazkia Institut dan Bank Indonesia.
- Antonio, M. S. (2007). *Tantangan Profesional Industri Keuangan Syariah*. Gatra.
- Dewi, G. (2006). *Aspek-Aspek Hukum dalam Perbankan dan Perasuransian di Indonesia*. Jakarta: Kencana.
- Djumhana, M. (1993). *Hukum Perbankan di Indonesia*. Bandung: Citra Aditya Bakti.
- Fadrijah, S.C. (2007, October 24). *Gatra Edisi Khusus*.
- Fuady, M. (1999). *Hukum Perbankan Modern Berdasarkan Undang-Undang Tahun 1998*. Bandung: Citra Aditya Bakti.

- Gatra. (2007). Gatra edisi Khusus 2007 No. 48 Tahun XIII 11-24 Oktober 2007.
- Hamid, M. A. (2007). *Hukum Ekonomi Islam (Ekonomi Syariah) di Indonesia*. Bogor: Ghalia Indonesia.
- Indonesia, B. (1999). *Potensi dan Preferensi Bank Syariah di Jawa Barat, Jawa Tengah dan Jawa Timur*.
- Ismail, R. (2007). *Ganjalan Bank Syariah*. Opini Republika. Senin 10 Desember 2007.
- Kumpulan Artikel BNI Syariah. (2006). *Peluang, dan Tantangan Bank Syariah di Indonesia*. Al Kautsar Prima.
- Mubarok, J. (2001). *Perkembangan Fatwa Ekonomi Syariah di Indonesia*. Bandung: Pustaka Bani Quraisy.
- Pasaribu, C., & Lubis, S. (1996). *Hukum Perjanjian dalam Islam*. Jakarta: Sinar Grafika.
- Sabirin, S. (1999). *Perbankan Islam dalam Tata Hukum Perbankan di Indonesia, Karangan Sutan Remy Sjahdeini*. Jakarta: Grafiti.
- Tim Pengajar Fakultas Syariah. (1995). Bandung: IAIN Sunan Gunung Djati.