THE PROBLEM OF SHARI'AH BANKS IN APPLYING ISLAMIC LAW

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Abstract

Syari'ah Bank was established to be an alternative for Muslims who consider bank interest to be illegitimate with a variety of products. The concept of image and position of Islamic banks is more than just a bank that runs the principles of justice, honesty, transparency, and is free from usury, gharar (fraud), maysir (speculation), and other things that are not in accordance with sharia. However, why is the pace of Islamic banks stagnant. Islamic banks do not seem to work as they should, which still smell of usury, gambling and injustice and extortion. It is hoped that the supervisory role of Islamic banks can be increased and there is a renewal of the system so that Islamic banks can be released from usury, gambling and actions that violate other Shari'a. Islamic banks should be able to carry out their activities in the real sector so that they can also help these Islamic banks regardless of the things that are prohibited by syara '.
***Keyword**: Problems, Shari'ah, Bank, Islamic Law*

Abstrak

Bank Syari'ah didirikan untuk menjadi alternatif bagi umat Islam yang menganggap bunga bank tidak sah dengan berbagai produk. Konsep citra dan posisi bank syariah lebih dari sekedar bank yang menjalankan prinsip keadilan, kejujuran, transparansi, dan bebas dari riba, gharar (penipuan), maysir (spekulasi), dan hal-hal lain yang tidak sesuai dengan syariah. Namun, mengapa laju bank syariah stagnan. Bank-bank Islam tampaknya tidak berfungsi sebagaimana mestinya, yang masih berbau riba, judi dan ketidakadilan serta pemerasan. Diharapkan bahwa peran pengawasan bank syariah dapat ditingkatkan dan ada pembaruan sistem sehingga bank syariah dapat dilepaskan dari riba, perjudian dan tindakan yang melanggar syariah lain. Bank syariah harus dapat melakukan kegiatannya di sektor riil sehingga mereka juga dapat membantu bank syariah ini terlepas dari hal-hal yang dilarang oleh syara '.
Kata kunci: Masalah, Syariah, Bank, Hukum Islam

A. Introduction

God has given halal sustenance to Muslims and has given way and how to get it right. Allah has also explained to them what can protect their benefit. Financial institutions are important sectors in a country. This institution regulates state reserves and reserves that provide a variety of other financial and financial services such as savings and loans, investment and foreign exchange facilities, financing of production, exports and imports in various forms. Islamic financial institutions can operate more simply which have become rivals for conventional financial institutions..(meirison 2017)

Ask questions about the ability and performance of Islamic banks in carrying out activities and the ability to adjust to the conditions and systems that exist in the modern world today. Is the Islamic Bank able to manage deposits originating from individuals in Muslim communities as well as deposits from outside, whether the problems that will be faced by Islamic Banks, how is the vision and prospects of Islamic Banks in the future. This discussion will focus on the problems faced by Islamic Banks and the vision of Islamic Banks in the future. Do you have the distinction from conventional banks? Is it that in spreading the vision and mission of the Shari'ah bank, it is not much different from conventional banks that use the usury system or even inefficiencies that have weakened the enthusiasm of Muslims to invest in Islamic banks that have not yet dared to plunge directly into the real sector?
This discussion aims: find the problems that exist in the Islamic Bank and the obstacles and challenges it faces so that it can be described the hopes and goals that will be achieved in the future. As well as explaining whether the differences between Islamic Banks and Conventional Banks.

B. Discussion

1. Islamic economics, is a collection of basic and economic principles that are understood from the Qur'an and Hadith and the opinions of the schools of the existing scholars from time to time. In this way the principles and basis of understanding Islamic economics will suit all places and times.

   It can be understood from the above definition that there are two parts, namely principles and provisions that cannot change and will continue to be constant concomitant which are rules imposed from the Qur'an and al-hadith, and this one which is called the school of economics, whereas the second is the economic system that is applied in the field that is guided by the principles and provisions that exist in Islam, adapted to space and time.

   The basic principles are:(Muhammad Arifin 2018)

   a. The principle originates from the Qur'an and al-Hadith of Islam.
   b. Following this rule is part of the faith in Allah S.W.T.
   c. Confidence in the obligation to mobilize all efforts in seeking fortune.
   d. Sustenance from Allah and every human being is given different levels of sustenance by Allah S.W.T.
   e. Free competition carried out by individuals and groups still refers to the prescriptions that exist in the Islamic Shari'ah
   f. Islamic economics stands above values and morals and equality and justice.
   g. The nature of ownership in Islam belongs to Allah alone, humans are only given the authority and mandate to manage and utilize these assets.

2. Islamic Bank

An Islamic bank is a part of a banking institution that does not use interest in its operational system, both saving and borrowing. Islamic banks basically refer to Islamic shari'a in all forms of activities they carry out. There are several signs in the Shari'ah bank so as not to fall into violations of Islamic shari'a:

a. Must be free from all forms of activities related to mu'amalah ribawi.
b. Keep adhering to Islamic shari'ah principles in all economic activities and beyond.

The emergence of the Shari'ah Bank

Islamic banks are still in the form of an obsession and theoretical discussion of the initiators and academics in the fields of Islamic law (fiqh) and economics. The realization that Islamic banks are one of the solutions to economic problems to achieve prosperity, justice and social welfare has long emerged, but the real effort to make it happen to the real world is almost lost to the global economic system which continues to force us to use the usury system. The efforts made by academics and practitioners are worthy of respect and must be accompanied by good intentions and support from Muslim entrepreneurs who have a large capital to participate in it. Several trials continue to be carried out starting from simple project forms to large-scale cooperation. From this effort the initiators of Islamic banks can think of creating an interest-free banking system infrastructure. (الغنم بالغرم) means that who gets the benefits of something he must dare to bear the risks arising from these benefits .

The bank acts as a business actor, namely when dealing with customers as owners of capital. But in an instant this status changed, namely banks acted as financiers when the banks faced business actors who needed funds to develop their businesses.

The dual status played by this bank proves that the contract that is actually carried out by banks has been a debt agreement, and not a mudharabah contract. That is because, if he acts as a business actor, then the status of the funds available to him is a mandate that must be safeguarded as appropriate to safeguard other mandates. And what is meant by the mandate of investors, is to manage the funds in a real effort that will bring results (profits), so that the bank, should not channel the capital that it receives from customers (investors) to other entrepreneurs with mudharabah contracts. So, if he acts as a financier, then this denies the real reality, that is, most of the funds managed are owned by the customer.(Layish 2014)

Imam an-Nawawi rahimahullah said, "The second law: it is not justified for business people (mudharib) to channel the capital he receives to third parties with mudaraba agreements. If he does this with the permission of the investor, so that he exits the mudharabah (first) contract and changes the status to become a representative for investors in this second mudharabah contract, then that is justified. However, he is not justified in requiring him at all from the profits obtained. If he still requires that, then the second spiritual mudharabah contract ".(Ibn Qudamah dkk. 1986).

Similar statement was also expressed by Imam Ibn Qudamah al-Hambali rahimahullah, he said, "It is not justified for business people to channel capital (which he receives) to others in the form of mudaraba, as stated by Imam Ahmad. . . . This opinion is the opinion of Imam Abu Hanifah, Ash-Syafi'i and I do not know that there are scholars 'other than that'.(Ibn Qudāmah dkk. 1986).

In a mudharabah contract, if the bank plays a dual role like this, with the permission of the investor, while he does not participate in running a business carried out by a second business actor, the bank is not entitled to a share of profits, because the status is only an intermediary (brokers). The scholars explained that this legal reason was: because the results / profits in the mudharabah contract were only the rights of the owners of capital and business actors, while those who did not have capital, and did not participate in the business, he was not entitled to get a share of the proceeds.(DeLorenzo 2006).

What needs to be considered in the transactions of modern financial institutions, whether it is the Shari'ah bank or other institutions, which always conduct transactions without taking risks. These banks and other financial institutions sell murabahah which are said to be free from usury that is forbidden by Islam, namely profits earned by debtors who are reluctant to enter the risk area.(Rivai dan Ismal 2013:115) Most banking institutions hold on to murabaha which is still being disputed by the scholars about their halality which adheres to the opinion of the Shafi'i school that allows murabahan in the form of the practice of shari'ah financial institutions that combine the buying and selling of greetings and murabaha by several financial institutions in generally. Namely al-amir bi-syira (request for ordering goods). However, in some banks the profits accrued by the bank exceeded 90% which caused some people to say the sale and purchase transactions were like usury. Arabs before Islam actually said that buying and selling was like usury and this was denied by Allah "Allah justifies buying and selling and prohibiting usury" there must be significant differences in buying and selling and usury that will bring benefits and benefits to Muslims and not bring harm more than conventional banks.

Conventional banks use one pattern, namely loans with usury not the same as the pattern used by Islamic banks. As compensation for Islamic banks using, murabahah, leasing, profit sharing (مضاربة), musyarakah and others. But Islamic banks, however, only limit their role in taking the risk of loss, Islamic banks only play a role in the funding sector. Islamic banks do not bear the risks posed by buying and selling except a little, such as in the import sector, with the balance of trade imbalances and changes in the value of the local currency.(Rivai dan Ismal 2013).

Salih Kamil said "the issue of usury is in Islamic banks because Islam encourages its people to bear the risk in accordance with the rules of al-ghanam bi al-gharam and not just sit waiting for the guaranteed profits to be estimated in advance. Transactions do not depend on time limits, maturity acceptance of profits that take precedence or after completion of all forms of agreement and transaction processes There are two forms in the activities of Islamic banks in general, namely murabahah and leasing.The wisdom of Islamic principles is clear, land management, growing agricultural, mining and so on are the objectives of Islamic economic activities This will not be realized except by taking the risks of the business from an exploitation that creates employment, empowering natural and human resources which will result in stable economic growth.(Abdullah 2017).

Obeying God's command by avoiding usury not only by avoiding it, even if it should be eliminated by doing real trading and at risk of loss and enjoy profit. This justice is what Islamic banks must have from the ribavan levy system banned by Allah S.W.T. The lender receives profits while the sufferer loses only the borrower. This is the ultimate form of tyranny. The shari'ah bank of the al-ghanam rule of al-gharam and adhering to a pattern that holds the magnitude of capital gains without any risk makes us doubtful of the intention of the shari'ah bank that wants to work with the thayiban. This will open the door for people who are skeptical of the magic of usury and they make the shari'ah bank as justification for the ringgit transactions carried out by conventional banks. Thus no longer distinguishes the shari'ah bank with conventional banks and lost the normative legalistas of the shari'ah bank which claims to have performed the mu'amalah syar'iy.(meirison 2017).

Shareholders dominate depositors, though shareholder capital is less than the depositors. Even so we sometimes get the shareholders' money controlling bank management and determining the profit percentage is greater than what the depositors get. Depositors are owners of capital that do not have the right to determine their investment or cancel. It is different from the fiqh law that the depositors may cancel the mudharabah. This is due to the absence of standard mudharabah definitions in Islamic banks or those that are eligible for such policy, whether shareholders, board of commissioners, bank management or advisors. Shaykh Salih Kamil gave an opinion

1. Appointment of regulatory bodies and consultants by depositors
   This is related to the benefits of depositors who can realize the justice and ordering of the mandate. It is not limited to depositors who are willing to get less than it should be, but Islamic banks are also earning non-Muslim depositors. With the existence of a new structure in realizing the problem with the designation of the depository body and investors participating in key meetings in bank management and they have the right to speak in the decision of the bank to safeguard the property of the party it represents.(Çizakça 2011)
2. Renewal of Bank Islam's structure of Joint Stock Company into a General Partnership Company
   The joint stock company, with the capital of stock investors, is not the appropriate medium to safeguard the assets and investments of depositors. Depositors do not get the appropriate collateral. A suitable body is a partership company (التضامن) in the form of law to manipulate the property of those involved in the activities of the company. Another one that is a problem with Islamic banks is the excess liquidity in some of the shari'a banks while the other banks suffer from deficits. What is the surplus of liquidity does not know where the excess will be used it has only two options:
   a) Money stays in bank cash without interest because interest is forbidden in Islam.
   b) The excess liquidity is exchanged for foreign currencies in accordance with the central bank's preference to maintain liquidity levels against foreign currencies and take advantage of short-term investments in Islamic banks or benefit from differences in currency values.

Sometimes cash shortages are caused by banks being unable to withdraw savings, as brokers, not as parties that have debts and receivables. When a shari'ah bank needs funds for disbursement, the bank cannot do it with the central bank because of usury, unlike the case with banks that use usury systems.

What is also a problem for Islamic banks is the supervision of loans originating from the central bank that have regulated credit limits for each country. Any bank presented deposits its funds in the amount of 25-30% of the total deposit amount to the central bank. The central bank is the center of all banks that control and oversee the mobilization of money. In this way most of the capital turnover was stalled because the capital had stagnated at the central bank as reserves. Islamic banks do not take advantage of the existing reserve funds at the central bank which is different from the conventional banks that use the usury system.

While the other problem is the hegemony of the bangkir who uses the usury system for decision makers without considering the Islamic economy. The absence of an informed cadre in the Islamic economy will cause difficulties in converting between the Shari'ah and the economy. It is difficult to bring together the central bank's policy with Islamic banks that use the usury system and its policies that foster the activities of all banks.

Future Hope and Vision

Dr. Ahmad Haji al-Kurdi said "the newly growing Islamic bank is in a land full of mud that is very difficult to grow properly. Because the usury system has long been expanding into the financial world so Islamic banks are growing with a very heavy burden on their shoulders Other institutions are ready to derail it and derail it.It is the obligation of Islamic banks to keep their steps so as not to slip into Riba which is forbidden by Allah even though the advances of profits and trials continue to hit.(Suhendi 2002:51)

Islamic banks have no real business

Financial institutions that call themselves sharia banks seem to be not wholehearted in implementing Islamic economic systems. These bodies are trying to avoid the sunnatullah that Allah Ta'ala has determined in the business world. The Sunnatullah is a couple of lovebirds that cannot be separated, namely profit and loss. Sharia banking operators always stop the Shari'a steps at a safe and not risky stage.

Therefore, existing Islamic banking - usually - does not or does not have a real business that can generate profits. All types of banking products that they offer are limited to financing and funding. Thus, in each business unit managed, the role of banks is only to channel customer funds.

As a concrete example of existing banking products is mudaraba. The banking operator does not play a role as a business actor, but as a channel for customer funds. This they do, for fear of various business risks, and only want to get a profit. If this is the case, then the profits obtained or required by banks for business executing customers are unlawful, as confirmed by the ulama, including as stated by Imam an-Nawawi above.

Bank Does Not Bear Losses

If we turn a blind eye to the two things above, then there is still a big problem facing the steps of Islamic banking in our country. This is, the unpreparedness of banking operators to share the risks of mudaraba that they have established with business people.(Ebrahim dan Sheikh 2015) If the business actor suffers a loss, even though it is accidental, surely we will get the bank to immediately take a thousand steps by asking for the return of the capital that he has fully disbursed.(Waeibrorheem Waemustafa 2016) This is an indication that the contract between banks and business customers is not mudharabah, but interest-bearing debts or usury. The benefits are guaranteed in advance without any effort to grow assets in the real sector that causes the infidel to say "buying and selling with usury", so Allah answers "Allah justifies buying and selling and forbids usury."

The new form of Islamic banks should be realized in terms of the relationship between the lender and the debtor who turns into a party that cooperates in obtaining profits and bearing losses. Once, let the bank keep away from the profit guarantee transaction. As part of the transaction that mostly applies to Islamic banks, namely buying and selling murabahah, either in the form of credit or installments or cash and al amir bi as-syra ', (order by bank). Musawamah buying and selling is better because there is no element of fraud and deception in the sale and purchase. Whereas murabahah transactions are easier to enter by ambiguities that end in fraud and injustice.(DeLorenzo 2006:115).

While the problem of liquidity in Islamic banks after especially after the rise of Islamic banks opened their branches to conventional banks, what must be done was the agreement between shari'ah banks to establish a large money market. That way the Shari'ah bank has excess liquidity and can easily borrow and withdraw. Likewise, with a surplus in the Shari'ah bank, he can pressure the central bank to issue Islamic sukuk, which can be utilized by Islamic banks: (Rivai dan Ismal 2013:115)

1. Investment in Islamic banks in the real sector in building infrastructure
2. Relieve the burden of changes in value in the exchange of local currencies with foreign currencies.
3. There is a fair balance between Islamic banks and conventional banks
4. Determining the risks imposed on Islamic banks with so little will influence the banking sector.

To deal with liquid excess, the local currency investment market should be established seriously.

The relationship between Islamic banks and the central bank in the matter of deposit reserves that can reach 25-30% requires cooperation between Islamic banks and central banks in a country to establish a commission to empower deposits based on partnerships to at least prevent the impact of losses from freezing funds that is. Unlike the case with conventional banks that continue to benefit from the foreign exchange reserves of interest generated. Islamic banks should be allowed to carry out trading activities, own assets, housing, leasing, this is the real activity of Islamic banks. Supervision of Islamic banks must be effective rather than theoretically the supervisory board should conduct supervision in the field of practices carried out by banks in carrying out all types of transactions. Let this syar'iy supervisory board stand alone not under the bank's management.(Rivai dan Ismal 2013)

The last proposal of Sheikh Kamil was to build an Islamic bank specifically for the poor who came from funds collected by the poor from zakat. Then they bought equipment and capital to try to reduce poverty. This is expected to reduce the number of recipients of zakat from year to year.

The scholars of various schools have emphasized that the owners of capital are not justified in requiring that business actors provide guarantees for all or part of their capital. So what is applied to Shari'ah banking, which requires the business actor to return all capital in full if a business loss occurs is a vanity requirement. And in the science of jurisprudence, if in a contract there are vanity requirements, then the solution is one of the following two things:

1. The contract and the requirements are invalid, so that each party concerned must return all the rights of the opponent to the contract.
2. The contract can be continued, but by leaving the requirement.

For example, for example, the Yogyakarta Syariah Bank disbursed capital to Mr. Ahmad - for example, Rp. 100,000,000, - with a 60% profit sharing agreement compared to 40%. After the business runs and has matured, Mr. Ahmad has been stolen, or the warehouse is burning or something similar, so the capital he receives from the bank is only Rp. 20,000,000. In this situation, the Yogyakarta Syariah Bank will continue to ask that Ahmad return the capital in full, which is Rp. 100,000,000.(Reza al-Fatah 2018)

Maybe the Sharia banking operators will argue, that in the business world, money returns as before without any profit is a loss. Thus banks have participated in bearing the losses incurred. So we say: A similar reason can also be expressed by business executives: in the business world, someone working without getting the slightest result is a loss. If he worked for a company, surely he would get an agreed salary, even though the company was losing money. Even in mudharabah contracts with sharia banking, business people lose twice, namely: First, he has worked hard on his bones, squeezed sweat, and in the end did not get the slightest result. Second, he still had to cover the shortfalls that had occurred in the capital he had received from the bank.(Waeibrorheem Waemustafa 2016)

Another example of sharia banking products is bai 'al-Murabahah. The form is more or less like that; if there is someone who wants to own a motorbike, he can submit an application to one of the Islamic banks so that the Bank buys him. Furthermore, the bank will review the feasibility of prospective customers. If the request is received, the bank will immediately hold the item in question and immediately hand it over to the buyer, with the conditions previously agreed upon.

At a glance, this contract is not problematic, but if we look more closely, it will clearly appear that the bank is trying to cover all risks. Therefore, before the bank holds the intended goods, the bank has made a sale and purchase agreement with all its provisions with the customer. Thus, the bank has sold goods that it does not already have, and that is prohibited.

عَنِ ابْنِ عَبَّاسٍ قَالَ : قَالَ رَسُوْلُ اللهِ : (مَنِ ابْتَاعَ طَعَامًا فَلاَ يَبِعْهُ حَتَّى يَقْبِضَهُ) قَالَ ابْنُ عَبَّاسٍ :وَأَحْسِبُ كُلَّ شَيْءٍ بِمَنْزِلَةِ الطَّعَامِ .

Narrated Ibn `Abbas:

The Prophet (ﷺ) forbade the selling of foodstuff before receiving it. I consider that all types of sellings should be done similarly.

عَنْ ابْنِ عُمَرَ قَالَ ابْتَعْتُ زَيْتًا فِي السُّوقِ فَلَمَّا اسْتَوْجَبْتُهُ لِنَفْسِي لَقِيَنِي رَجُلٌ فَأَعْطَانِي بِهِ رِبْحًا حَسَنًا فَأَرَدْتُ أَنْ أَضْرِبَ عَلَى يَدِهِ فَأَخَذَ رَجُلٌ مِنْ خَلْفِي بِذِرَاعِي فَالْتَفَتُّ فَإِذَا زَيْدُ بْنُ ثَابِتٍ فَقَالَ لَا تَبِعْهُ حَيْثُ ابْتَعْتَهُ حَتَّى تَحُوزَهُ إِلَى رَحْلِكَ فَإِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى أَنْ تُبَاعَ السِّلَعُ حَيْثُ تُبْتَاعُ حَتَّى يَحُوزَهَا التُّجَّارُ إِلَى رِحَالِهِمْ رواه أبو داود والحاكم

Narrated Ibn Umar:

I bought olive oil in the market. When I became its owner, a man met me and offered good profit for it. I intended to settle the bargain with him, but a man caught hold of my hand from behind. When I turned I found that he was Zayd ibn Thabit. He said: Do not sell it on the spot where you have bought it until you take it to your house, for the Messenger of Allah (ﷺ) forbade to sell the goods where they are bought until the tradesmen take them to their houses.

The scholars mentioned the wisdom of this prohibition, among others, because the goods that have not been received to the buyer could be canceled, for some reason, for example the item was destroyed by fire, or damaged by water and so on, so that when he resold it could not submit it to the second buyer.(al-Zuhayli dan Al-Kattani 2010)

The second lesson, as stated by Ibn ‘Abbas Allah be upon him‘ anhu when his student, Thawus questioned the reason for this ban:

صحيح البخاري - كتاب ٣٤ حديث ٢١٧٣حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ، حَدَّثَنَا وُهَيْبٌ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ - رضى الله عنهما - أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى أَنْ يَبِيعَ الرَّجُلُ طَعَامًا حَتَّى يَسْتَوْفِيَهُ. قُلْتُ لاِبْنِ عَبَّاسٍ كَيْفَ ذَاكَ قَالَ ذَاكَ دَرَاهِمُ بِدَرَاهِمَ وَالطَّعَامُ مُرْجَأٌ.

Sahih Bukhari - Book: 34 Hadith: 2173Narrated Tawus: Ibn `Abbas said, “Allah’s Apostle forbade the selling of foodstuff before its measuring and transferring into one’s possession.” I asked Ibn `Abbas, “How is that?” Ibn `Abbas replied,“It will be just like selling money for money, as the foodstuff has not been handed over to the first purchaser who is the present seller.”

Ibnu Hajar explained Ibn 'Abbas's words above as follows: "If someone buys food for 100 dinars - for example - and he has paid the money to the seller, he has not received the food he bought, then he sells it back to someone else for 120 dinars and he immediately received the payment, even though the food was still in the first seller, as if this person had sold / exchanged 100 dinars for the price of 120 dinars. And based on this interpretation, this prohibition does not only apply to food ingredients. "(Çizakça 2011)

All customers get profit sharing

Islamic banking mixes all the funds that go into it. So that customers cannot know that their funds have been channeled from customers whose funds are still frozen at the bank. However, at the end of each month, all customers get a share of the results / profits.(Waeibrorheem Waemustafa 2016)

This is a big problem in the truly Islamic *mudharabah* method. (Saharuddin dan Rama 2017) Because the consideration in distributing profits to customers is the profit derived from each customer fund. So that customers whose funds have not been channeled, are not entitled to get a share of the results. Because the profits obtained are a result of managing the capital of customers other than them. Distribution of results to customers whose funds have not been channeled is clearly detrimental to customers whose funds have been channeled.

This is the fact that Islamic banking is in our country. Therefore, it is not surprising that Islamic banking is haunted by over liquidity. That is a situation where the bank is flooded with public funds / customers, so it is unable to channel all the funds collected from its customers. This situation forced the Shari'ah banking to deposit the non-channeled funds at Bank Indonesia (BI) in the form of a Wadiah certificate. For example, in the period of January 2004 it was reported, Sharia banking managed to raise funds from customers amounting to IDR 6.62 trillion, however, the funds they managed to roll out were only 5.86 trillion rupiah.(Abdullah 2017)

Convoluted profit sharing method

If we come to one of the closest sharia banking offices to our homes, surely we will get a brochure explaining the method of sharing the results. To be able to understand the method of sharing the results is not an easy thing, especially for those with low levels of education. (Reza al-Fatah 2018)

The following is a profit sharing method applied by one of the Islamic banking in Indonesia:(Muhammad Arifin 2018) Customer profit sharing = funds / customer balance x E x ratio / customer ratio ………………………… .. 1000 …………………………… .. 100 E = average investment income from every 1000 rupiah from customer funds.

It can be seen clearly, that one of the multipliers in calculating the results in the scheme above is the total capital (funds) of the customer. As for the mudharabah contract, what is calculated is profit or result, therefore this contract is called profit sharing.

Muhammad Nawawi al-Bantaani said, "The fifth pillar of mudaraba is an advantage. This pillar has several requirements, including, profits only belong to investors and business actors. Both of them should have it, and each part of them should be determined in percentage. "

This is what makes the method of calculating the results in mudharabah that really syar'i very simple, and easy to understand. The following is the scheme of sharing results in mudharabah contracts:

Customer profit sharing = net profit x customer ratio x customer capital ratio of total money managed by the bank. The difference between the two methods above can be clearly understood through the following example. Mr. Ahmad invested capital of Rp. 100,000,000, - with an agreement of 50% for investors and 50% for businesses (banks), and total money managed by banks totaling 10,000,000,000 (10 billion). Thus, Pak Ahmad's capital is 1% of the total funds managed by the bank.

At the end of the month, the bank managed to record a net profit of 1,000,000,000 (1 billion). Bank operators - after a complicated calculation - determine that investment income from each Rp. 1,000, - is Rp. 11.61. If we use the Shariah banking method, the results are as follows: 100,000,000 x 11.61 x 50 = Rp. 580,500, - …… 1000 ……………. 100 With this method, Pak Ahmad only gets a profit of Rp. 580,500, - only. Whereas if we use the actual mudharabah method, the results are as follows:(Muhammad Arifin 2018)

1,000,000,000 x 1 x 50 = 5,000,000, - ………………… 100 100 With the actual mudharabah calculation method, Mr. Ahmad has the right to get a profit share of Rp. 5,000,000. The method of distribution applied by the bank is convoluted and detrimental to the customer. Even more complicated is the bank's method of determining the average investment income of every 1,000 rupiah. Following is one example of the method applied by one of the Shari'ah banks in Indonesia:(Reza al-Fatah 2018) E = (total customer funds - Minimum Required Current Account) x Total income x 1000 …………………. Total Investment …………………… .. Total customer funds

This convoluted method of calculating profit sharing proves that the existing Sharia banking does not apply the actual mudharabah method. From the little explanation above, we can conclude that the existing Sharia banking is just a big name without its essence. Even what actually happened was an attempt to play with the terms of the shari'ah.

C. **Conclusion**

To get around some of the criticisms above, then here are some suggestions that might be implemented by banks that really want to implement an Islamic banking system.

1. **Segregating Customers Based on Each Purpose.**
   Globally, we can group customers who save their funds in banks into two large groups. The first group, customers who solely aim to secure their property. The second group, customers who aim to seek profits by investing their funds through existing banking channels. Each of these customer groups has different rights and obligations, as described above. Based on this sorting, the banking operators can determine their rights and obligations to each group. The funds collected by the bank from the first type of customer can be utilized in financing various profitable businesses, and the full profits obtained belong to the bank. From the investment results with the first type of customer funds, banks can finance their operations. In fact, it does not rule out the possibility that the bank will get a surplus that is surplus compared to its operational funds. Among the advantages of this sorting, banks will avoid over liquidation, because the bank

will never receive investment funds, but after opening business opportunities that are truly lawful and justified. As banks are not obliged to provide benefits to customers, unless the funds have actually been channeled and generate profits. In this way also, the mudharabah principle will truly be implemented, so that the calculation of results will be achieved by a simple and transparent method, namely by multiplying the number of profits that have been recorded with the ratio of each customer.

2. **Banking Plunges Directly into the Real Sector.**

   As we all know, that to run operations, a bank will definitely need not small amounts of funds. Therefore, in order for the bank to be able to meet these needs, it must have various real business units that can generate profits. It is not appropriate for banks to just make themselves available by merely channeling funds, without going directly into real business. Thus, the profits obtained by the bank are truly a lawful profit and not the result of paying funds to third parties. As long as banks do not go directly into the real business world and only provide themselves as a channel for customer funds, then usury can never be avoided.

   In this way, the existence of Islamic banking will truly revive the economy of Muslims. Because in this way, banking will definitely open up new jobs for the community. As Islamic banking will become a producer and consumer of products circulating in the community. As a consequence of this, of course both parties are customers who invest their funds into banking projects and also the operator of the bank is ready to bear all the risks of the business world. Investors bear losses in material form, and business actors bear skiil losses.

3. **Banks Implement Unilateral Mudharabah.**

   At present, trust and trust are difficult to obtain, even what often happens in our society is the opposite; betrayal and lies. Therefore, it is very difficult for us, moreover for a business entity to implement the mudharabah system fully. To anticipate this heartbreaking situation, I propose that the existing Islamic banking system implements unilateral mudharabah.

   What I mean by unilateral mudaraba is that banks receive capital from the community to run various business units that they manage, but banks do not channel their capital to the community with mudaraba schemes. In this way, customer funds channeled to Shari'ah banking can be clearly accounted for, and the banking sector is spared from various crimes of those who do not have the trust and fear of Allah Ta'ala.(Ebrahim dan Sheikh 2015)

Suggestions

While the problem of liquidity in Islamic banks after especially after the rise of Islamic banks opened their branches to conventional banks, what must be done was the agreement between shari'ah banks to establish a large money market. That way the Shari'ah bank has excess liquidity and can easily borrow and withdraw. Likewise, with a surplus in the Shari'ah bank, he can pressure the central bank to issue Islamic sukuk, which can be utilized by Islamic banks:

a. Islamic bank investment in the real sector in building infrastructure
b. Relieve the burden of changes in value in the exchange of local currencies with foreign currencies.
c. There is a fair balance between Islamic banks and conventional banks
d. Determining the risks imposed on Islamic banks with so little will influence the banking sector.

To deal with liquid excess, the local currency investment market should be established seriously. The relationship between Islamic banks and the central bank in the matter of deposit reserves that can reach 25-30% requires cooperation between Islamic banks and central banks in a country to establish a commission to empower deposits based on partnerships to at least prevent the impact of losses from freezing funds that is. Unlike the case with conventional banks that continue to benefit from the foreign exchange reserves of interest generated. Islamic banks should be allowed to carry out trading activities, own assets, housing, leasing, this is the real activity of Islamic banks. Supervision of Islamic banks must be effective rather than theoretically the supervisory board should conduct supervision in the field of practices carried out by banks in carrying out all types of transactions. Let this syar'iy supervisory board stand alone not under the bank's management.(Rivai dan Ismal 2013)

The last proposal of Sheikh Kamil was to build an Islamic bank specifically for the poor who came from funds collected by the poor from zakat. Then they bought equipment and capital to try to reduce poverty. This is expected to reduce the number of recipients of zakat from year to year.

- Islamic economy is a collection of general economic rules derived from the Qur'an Al-Karim and as-Sunnah, economic development should be based on these rules at every place and time. The problem faced by Islamic banks is the problem of usury that must be shunned even out of the usury environment will make Islamic banks cleaner than all its influence.
- To build public opinion that Islamic banks are different from conventional banks, Islamic banks should be free from overall usury transactions and adhere to Islamic law in a kafah manner. The rules of al-ghanam bi al-gharam must be applied.
- Let Islamic banks be free from guaranteed benefits and know murabahah transactions wherever possible because this transaction is very similar to usury.
- Let the money market be established a large money market that can accommodate investments from surpluses on Islamic banks and distribute securities as supporters.
- Establish Islamic banks for the poor,
- The depositors should participate in taking policies in the Shari'ah bank and not allowing the shareholders to make unilateral decisions.

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