

## **Wakalah Financing Guarantee Law and Risk Management In Sharia Financial Institutions**

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### **Abstract**

This paper discusses the theory of guarantees on financing associated with wakalah contracts and also risk management in Islamic Financial Institutions (LKS). This research is a qualitative research using a normative juridical approach. Analysis and presentation of data will be using analytical descriptive method. The data collection method used in this paper is a library study or documentation study. The author is of the view that the *shahibul maal* financial institution in the form of *shahibul maal* gains the trust of everyone to carry out the mandate to use funds in a fair and correct manner and must be followed by the correct bonds and conditions in accordance with Islamic law, so as to be able to benefit all those concerned. Islamic banks as one of the sharia financing institutions must have guidelines for Islamic provisions, as well as for carrying out economic activities. Islamic banks must always pay attention to obtain profits, so that it is good if banks and customers are in accordance with Islamic law and regulations.

**Keywords:** Islamic banking; Islamic financing; Islamic concept; Wakalah; LKS risk.

### **Abstrak**

Tulisan ini membahas teori tentang jaminan pada pembiayaan dikaitkan dengan akad wakalah dan juga manajemen resiko pada Lembaga Keuangan Syariah (LKS). Penelitian ini merupakan penelitian kualitatif dengan menggunakan pendekatan yuridis normatif. Analisis dan penyajian data menggunakan metode deskriptif analitis. Metode pengumpulan data yang digunakan dalam tulisan ini adalah metode studi kepustakaan atau studi dokumentasi. Penulis berpandangan, lembaga pembiayaan syari'ah yang berupa *shahibul maal* mendapatkan kepercayaan dari semua orang untuk melaksanakan amanah untuk menggunakan dana dengan cara yang adil, benar serta harus diikuti oleh ikatan dan syarat yang benar sesuai dengan Hukum Islam, sehingga mampu untuk menguntungkan semua yang bersangkutan. Bank syariah/ Bank

Islam sebagai salah satu lembaga pembiayaan syariah, harus mempunyai pedoman kepada ketentuan Islam, begitu juga untuk melaksanakan kegiatan ekonomi, Bank Syariah/Islam harus senantiasa memperhatikan perolehan keuntungan, sehingga baik bagi bank dan juga nasabah sesuai dengan Hukum Islam dan regulasi yang berlaku.

**Kata kunci:** Perbankan syariah; Pembiayaan Syariah; Konsep Syariah; Wakalah; Resiko LKS.

## INTRODUCTION

In a country, banking is one of the centers of development in the economic sector (*agent of development*), because banking functions as a collector of money from all people or institutions in the form of savings or in the form of financing which is then channeled back to institutions or individuals in the form of financing. Looking at the banking function, it can be said that banks are one of the sectors that commonly develop the economy in a country (*financial intermediary function*).<sup>1</sup>

Islamic banking is relatively new in Indonesia, but its development from year to year is very significant and provides a large marketing contribution to Indonesian banking. This of course must always be developed plus if the majority of the Indonesian people are predominantly Muslim so that it has the potential to continue to improve marketing.<sup>2</sup>

In the development of banking in Indonesia, of course there are several factors that are driving forces in terms of supporting the development of the banking world in Indonesia, while one of the factors driving the development of Islamic banking in Indonesia according to the Deputy Governor of Bank Indonesia, Mr. Halim Alamsyah, *"He stated that the driving force behind the development of banking in Indonesia is the existence of several legislative products that provide legal certainty in increasing all Islamic financial market activities, such as: (i) Law No. 21 of 2008 concerning Islamic Banking; (ii) Law No. 19 of 2008 concerning State Sharia Securities (sukuk); and (iii) Law no. 42 of 2009 concerning the Third Amendment to Law No. 8 of 1983 concerning VAT on Goods and Services. The birth of the Sharia Banking Law encouraged an increase in the number of BUS from 5 BUS to 11 BUS in less than two years (2009-2010)"*.<sup>3</sup>

As long as conventional banks are established in Indonesia, it is felt that they are not

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<sup>1</sup> Abdul Ghofur Anshori, *Kapita Selektta Perbankan Syariah Di Indonesia* (Yogyakarta: UII Press, 2008).hlm. 3.

<sup>2</sup> Rahadi Kristiyanto, "Konsep Pembiayaan Dengan Prinsip Syariah Dan Aspek Hukum Dalam Pemberian Pembiayaan Pada Pt. Bank Rakyat Indonesia (Persero) Tbk Kantor Cabang Syariah Semarang," *Jurnal Law Reform* Vol. 5. No (2010): 99–117, <https://doi.org/https://doi.org/10.14710/lr.v5i2.12496>.

<sup>3</sup> Halim Alamsyah, "Perkembangan Dan Prospek Perbankan Syariah Indonesia: Tantangan Dalam Menyongsong MEA2015.," 2015.

making a good contribution to the people's economy. We know this when Indonesia was being hit by a monetary crisis. At that time the process of recovering the economy in Indonesia took too long. This is caused by the small sectors that have not yet moved from cheap credit as applied by Islamic banks, so referring to this, it seems that the existence of Islamic banks is very much needed by the people of Indonesia, even for the world.<sup>4</sup>

Shari'ah banks were established to address an important issue that is detrimental to many people, namely the issue of interest. For Muslims, of course, interest violates the Shari'a because it falls on usury. Therefore, one of the tasks of Islamic banks is to eliminate public concerns about conventional banks in Indonesia, a country which are predominantly Muslim, because this falls into the category of haram. As explained by Allah in QS. Ali-Imran verse 130:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُّضَاعَفَةً وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ ۝ ١٣٠

*"O you who believe, do not eat usury multiplied (118) and fear Allah so that you will be successful."*

Islamic banking in Indonesia is relatively new because the growth of Islamic banks is not as intense as the growth of conventional banks, but in terms of growth from year to year, Islamic banking has experienced a very drastic increase, both in terms of number and in terms of income, so that Islamic banking is growing quite rapidly in Indonesia. Seeing this, business people see a huge opportunity to develop their wealth in accordance with sharia principles, considering that the majority of the population in Indonesia are Muslims or Islam.<sup>5</sup> From here, the writer will examine further about this financing in Islamic banks, then the author will relate it to the urgency of the inclusion of *wakalah* contracts in the financing system, and the authors will also discuss risk management that will occur in Islamic banking. This research is a qualitative research using a normative juridical approach. Analysis and presentation of data using analytical descriptive method. The data collection method used in this paper is a library study or documentation study.

<sup>4</sup> Ammirudin K., "Perbankan Syariah Dalam Perspektif Hukum," *Jurnal Al Risalah* 11 (2011): hlm. 70.

<sup>5</sup> Rahadi Kristiyanto, "Konsep Pembiayaan Dengan Prinsip Syariah Dan Aspek Hukum Dalam Pemberian Pembiayaan Pada Pt. Bank Rakyat Indonesia (Persero) Tbk Kantor Cabang Syariah Semarang."

## RESULTS AND DISCUSSION

### Definition of Financing

In the Indonesian banking system, apart from knowing the term debt and credit, it is also often known as financing or installments, both in Islamic banking and conventional banking. Accounts payable is used in society in the context of providing loans for financing to customers, such as if someone has lent his property to another person, then it can be said that that person has given credit to that person. In the world of banking, most people do not use the term debt and credit but they use the term credit or financing, so that in terms of its meaning, debt is usually known in conventional banks while financing is known in the Islamic banking system.<sup>6</sup>

Financing is the distribution of funds provided by the bank to people or institutions in developing the business being developed, both micro and macro businesses. Banks act to provide these funds and then give them to those who need funds in the form of financing.<sup>7</sup>

According to banking law no. 10 of 1998, financing is the provision of funds or claims that can be equated with that, based on an agreement or agreement between the bank and other parties being financed to return the funds or claims after a certain period of time in return or profit sharing (Government of the Republic of Indonesia, 1998.<sup>8</sup> In Islamic banking, the financing provided to the users of funds is based on sharia principles. The rules used are in accordance with Islamic law.<sup>9</sup>

According to Law no. 21 of 2008 concerning Sharia Banking article 1 paragraph 12, sharia principles are Islamic legal principles in banking activities based on fatwas issued by institutions that have authority in establishing fatwas in the sharia field. Apart from being based on sharia principles, sharia banking and sharia financial institutions are also based on the principles of economic democracy and the principle of prudence.<sup>10</sup> Based on the definition of financing above, it can be concluded that the distribution of funds by Islamic banks or Islamic financial institutions (LKS) must be carried out based on sharia principles.

The term financing essentially means “*I trust, I trust.*” The word financing in the

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<sup>6</sup> Kasmir, *Manajemen Perbankan* (Jakarta: PT. Raja Grafindo Persada, 2011)., hlm. 73.

<sup>7</sup> Muhammad, *Manajemen Pembiayaan Bank Syariah* (Yogyakarta: UPP AMP YKPN, 2005)., hlm. 17

<sup>8</sup> Pemerintah Republik Indonesia, “Undang-Undang Perbankan No. 10 Tahun 1998 Tentang Perbankan,” 1998.

<sup>9</sup> Ismail, *Perbankan Syariah* (Jakarta: Kencana Prenadamedia Group, 2011)., hlm. 105-106.

<sup>10</sup> Pemerintah Republik Indonesia, “Undang-Undang Perbankan No.21 Tahun 2008 Tentang Perbankan Syariah,” 2008.

context above is putting trust in both the bank and the customer by implementing a trust system in the form of financing, where the bank provides financing in the form of funds for the customer and the customer repays or repays the funds that have been given by the bank.<sup>11</sup>

### Types of Financing

Banking is one of the financial institutions whose job is to collect and distribute funds from the public for the community, private business entities and state-owned enterprises. In addition, banking is also a place for the public and business entities to save their funds, and banking also serves the needs of the community in terms of financing and to improve the mechanisms of the existing economic system in Indonesia.<sup>12</sup>

There are several types of financing in banking, which can be grouped based on their aspects, namely:

1. Financing according to its purpose in Islamic banking is divided into several provisions, including:
  - a. Working capital financing in order to develop the business being carried out.
  - b. Investment financing to invest in the procurement of consumer goods
2. Financing according to the time period is divided into several groups, including:
  - a. Relatively short term financing carried out in a short time, the distance between 1 month to 1 year.
  - b. Medium term financing that is carried out within a period of 1 year to 5 years
  - c. Long term financing. This financing takes more than 5 years with very large capital.<sup>13</sup>

Apart from the types of financing above, financing in Islamic banking can also be realized in the form of earning assets as well as non-earning assets, the types of financing are as follows:

1. Financing in the form of productive assets, namely:
  - a. Financing with the principle of profit sharing, in this financing there are several forms of financing, namely: *First*, financing with a mudharabah contract where a mudharabah contract is an agreement between two or more people, one as a *shahibul maal* and one as a *mudharib* doing a contract to run a business, where one person provides capital in the

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<sup>11</sup> Veithzal Rivai dan Andria Permata Veithzal, *Islamic Financial Management* (Jakarta: PT. RajaGrafindo Persada, 2008)., hlm. 3

<sup>12</sup> Abdul Ghofur Anshori, *Pembentukan Bank Syariah Melalui Akuisisi Dan Konversi: Pendekatan Hukum Positif Dan Hukum Islam* (Yogyakarta: UII Press, 2010)., hlm. 5.

<sup>13</sup> Veithzal Rivai dan Arviyan Arifin, *Islamic Banking* (Jakarta: PT. RajaGrafindo Persada, 2008)., hlm. 686.

form of money and the other provides labor to work and process these funds and the results are divided according to the agreement.<sup>14</sup> The second is financing with a *musyarakah* contract, where a *musyarakah* contract is an agreement between two or more people where the people who are in the contract both issue capital and work together and the profits are shared according to the agreement (Karnaen Perwaatmadja and Muhammad Syafi'i.<sup>15</sup>

- b. Financing with the principle of buying and selling. The principle of buying and selling is carried out in connection with the transfer of ownership of goods or objects. The bank's profit rate is determined in advance and becomes part of the goods sold.
  - c. Financing with the principle of leasing in an *ijrah* contract or leasing based on the transfer of benefits.
2. Financing in the form of non-productive assets, namely related to payment assets in the form of loans, namely *qard* loans or accounts payable. Financing in non-assets is the provision of funds or bills between an Islamic bank and a borrower which requires the borrower to make payments at once or in installments within a predetermined period.<sup>16</sup>

### **Murabahah Financing in Wakalah Contracts**

In the banking system, the term financing is always related to *murabahah* financing which is explained in Law Number 21 of 2008 concerning Islamic Banking, in the Law it is explained that *murabaha* is contained in Article 19 paragraph (1) letter d in the article which explains that the contract *murabaha* is a financing contract on an item by confirming the purchase price to the *mustyari* and paying it at a price that is more than the price he purchased to get a profit according to the agreement.<sup>17</sup>

Financing in Islamic banking is divided into two types, namely: *First, murabaha* financing without an order, namely buying and selling that is carried out whether there is a *musytari* or there is no buyer who ordered the item. So as a banking institution, the bank is responsible for providing these goods to customers. *Second, murabaha* financing is based on orders, that is, a customer orders the item from the bank, then the bank buys the item for the

<sup>14</sup> Zainul Arifin, *Dasar-Dasar Manajemen Bank Syariah* (Jakarta: Azkia Publisher, 2009)., hlm. 19.

<sup>15</sup> Karnaen Perwaatmadja dan Muhammad Syafi'i Antonio, *Apa Dan Bagaimana Bank Islam* (Yogyakarta: Dana Bhakti Prima Yasa, 1992)., hlm. 23.

<sup>16</sup> Adiwarmann Karim, *Bank Islam: Analisis Fiqih Dan Keuangan*, 4th ed. (Depok: RajaGrafindo Persada, 2008)., hlm. 106.

<sup>17</sup> Burhannuddin H, "Kedudukan Fungsi Dan Problematika Jaminan Dalam Perjanjian Pembiayaan Mudharabah Pada Perbankan Syariah," *Yusticia*, 2006, 60.

customer, then after the item is available, the customer buys the item from the bank, they negotiate and make an agreement on the item to be traded. In buying and selling orders or not orders, customers may make payments via cash or credit, of course with the contract agreed upon by both parties. The most frequently used financing banking product is *murabahah* financing by making payments on credit or invoices within an agreed timeframe.<sup>18</sup>

Islamic banking provides *murabahah financing* in which *murabahah financing* in Islamic banking can be done through installments or installments with an agreed period of time. In this case the author concludes that in carrying out a *murabaha* contract in Islamic banking, a customer comes to the bank and then asks the bank to finance both the purchase and repair of a damaged house, the payment of which is made by way of installment to the bank within the determined agreed time. In this case a customer needs funds to buy a house or needs funds to repair the house. So, in this case, the bank sells the house or materials needed to the customer in the form of goods by adding prices to these goods to make a profit.<sup>19</sup>

*Murabaha* financing product system and also in practice. Today's *murabahah* financing products do not only use a *murabahah* contract in them but also include a *wakalah* contract. The combination of a *murabahah* contract and a *wakalah* contract made by an Islamic bank shows that there are irregularities in the financing contract. According to DSN-MUI Fatwa No. 10 of 2000 concerning *wakalah*, it is explained that *wakalah* is the giving of authority and power by the seller to the customer to buy the goods he wants while the banking system only gives money to the customer.<sup>20</sup> The seller (*musytari*) often does not have the goods desired by the buyer and the seller also does not order the goods the buyer needs from figures or suppliers, the seller instead delegates his authority to buy his needs to the buyer using the *wakalah* contract in it. In this case the bank only provides money to buy goods, then it is the customer who will go to the shop or *supplier* to buy goods needed.

Ulyana Masykurin said that *Muamalah Fiqh scholars* agreed that in financing made by banks to customers it is not appropriate to use a *wakalah* contract in it, because in financing a *wakalah* contract it is not appropriate to apply it in a *murabaha* contract, because the scholars gave reasons, if the *wakalah* contract is included In a *murabahah* financing contract, the function of the *murabahah* will be eliminated, namely as a provider of goods to customers who

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<sup>18</sup> D. N. Yuniarlin, Prihati & M, *Hukum Jaminan Dalam Praktek Perbankan Syariah* (Yogyakarta: LAB FH UMY, 2009).

<sup>19</sup> Rahmat Ilyas, "Konsep Pembiayaan Dalam Perbankan Syari'ah," *Jurnal Penelitian* Vol. 9, No (2015).

<sup>20</sup> DSN MUI, "Fatwa DSN-MUI 10/DSN-MUI/IV/2000 Tentang Wakalah," 2000.

need it, this is done by ordering goods from suppliers needed by the nalah, then the goods are resold to customers with profit margins in accordance with the agreement.<sup>21</sup>

In addition to the opinion above, Dimyauddin Djuwaini also criticized the *wakalah contract* in the *murabahah financing contract*, " he said that the *murabahah contract* in banks does not act as a lender, in other words, the bank does not lend money to customers to buy goods that are needed, but here banking has an obligation to provide goods needed by customers from suppliers and then resell them to customers at an increased selling price to get profits according to the agreement".<sup>22</sup>

*Murabaha* practices will certainly raise doubts in recognizing the status of ownership of goods by banking options. If the banking party continues to use *wakalah contracts* in *murabahah contract* transactions, the seller is deemed not to own the goods he has purchased, in which case the seller provides a deviation from his obligation, namely to provide goods for customers. This statement actually deviates from the actual concept of *murabahah financing*, where the bank has an obligation to provide these goods to customers. Basically, in a *murabaha financing contract*, there must be clarity regarding the status of the ownership item and that is very important because basically a *murabaha contract* is the same as a sale and purchase contract, where there is a seller who provides the goods and there is also a buyer to buy or order the goods, so in this concept ownership rights must be clear and transparent, banks that provide these goods must hand them over to the customer in the form of goods not money. If you still use a *wakalah contract* in the *murabahah financing system*, it will eliminate the substance of the *murabahah contract*.<sup>23</sup> Therefore, the author in this article says that a *murabaha contract* or *murabaha financing* in the Islamic banking system may not be paired or combined with a *wakalah contract* , because that will eliminate the concept of the *murabahah contract* itself and its later ownership is not clear.

### **Risk Management in Islamic Financial Institutions**

Risk management in financing is an effort made by banks in carrying out activities to provide facilities, both channeling funds and collecting public funds. In this risk management, banks will provide facilities to the public or customers who experience problems in making

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<sup>21</sup> U Masykurin, *Murabahah: Antara Teori Dan Praktik* (Malang: UIN Maulana Malik Ibrahim Malang, 2012).

<sup>22</sup> D Djuwaini, *Pengantar Fiqh Muamalah* (Yogyakarta: Pustaka Pelajar, 2008).

<sup>23</sup> Nezammudin, "Risk Management And Challenge In Islamic Banking," *Journal Of Islamic Economic, Banking And Finance*, 2014.



payments or have difficulty paying their obligations to the bank. to customers so that customers can pay off their obligations to the bank.<sup>24</sup>

The main cause of this risk for financing is that it is too easy for banks to provide loans or make investments, because banks always demand to take advantage of the excess or profit from customer loans, so that these loans are less thorough, making it difficult to anticipate various possible risks to the loans given.<sup>25</sup>

In overcoming these risks the bank can make efforts to manage these risks, including:

#### 1. Rescheduling

*Rescheduling*, namely changing the date of payment of customer obligations and or the term (*tenor*) of payment. Specifically for rescheduling financing customers with a *murobahah* contract, according to the provisions of the DSN-MUI Fatwa No. 48 of 2005 concerning *Rescheduling of Murobahah Bills*, it is explained that Islamic banks or Islamic financial institutions may *reschedule* debts to customers who cannot make repayments or customers who cannot make settlements in accordance with a predetermined time, provided that:

- a. The amount of remaining debt is not added
- b. Charging fees in *rescheduling* is a real fee
- c. The extension of the payment time must be agreed upon by both parties in the contract.<sup>26</sup>

#### 2. Terms of return (*reconditioning*)

*Reconditioning*, namely changing part or all of the contract in terms of *murabahah* financing which is not limited to changing the payment schedule, number of installments, term, granting of principal/margin *grace period*, granting of margin discounts, as long as it does not involve adding to the maximum financing ceiling. The application of *reconditioning* for customers with *murobahah* contracts refers to the DSN-MUI Fatwa No. 49 of 2006 concerning *murabahah* contract conversions, Islamic banks or Islamic financial institutions may convert by making new contracts for customers who are unable to complete or pay off their *murobahah* financing according to the amount and time specified. agreed upon, but still prospective.<sup>27</sup>

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<sup>24</sup> Khan and Ahmed, "Risk Management: An Analysis of Issues in Islamic Financial Industry," *Occasional Paper, No. 5, Jeddah: Islamic Development Bank (IRTI).*, 2001.

<sup>25</sup> Zainul Arifin, *Dasar-Dasar Manajemen Bank Syariah* (Jakarta: Pustaka Alvabet, 2006)., hlm. 263.

<sup>26</sup> DSN MUI, "Fatwa DSN MUI No. 48/DSN-MUI/II/2005 Tentang Penjadwalan Kembali Tagihan Murobahah," 2014.

<sup>27</sup> DSN MUI, "Fatwa DSN MUI No. 49/DSN-MUI/II/2005 Tentang Konversi Akad Murobahah," 2014.

### 3. Rearrangement (*restructuring*)

*Restructuring*, namely restructuring all financing requirements in the addition of financing facilities, all arrears of installments or part of arrears of installments to become the principal of new installments accompanied by *rescheduling*, granting of discounts or margin discounts and or *reconditioning*.

Financing restructuring actions cannot be carried out haphazardly without an assessment of the customer concerned. Financing restructuring is carried out on the basis of a written and objective assessment of the customer's condition. An assessment of the customer's condition is set forth in a *call report* working paper which includes an analysis of the customer's commitment and ability to settle obligations to the bank. The commitment and capabilities of customers can be reflected in the character, business prospects and financial condition with an emphasis on *cash flow projections*.<sup>28</sup>

The explanation above can illustrate that there are several ways to carry out risk management in Islamic financial institutions, starting from rescheduling, returning requirements or making new contracts and finally restructuring between the customer and the bank. After all of these methods have been carried out, but in financing the customer is still unable to pay off the financing, there are other ways, including auctioning or selling collateral or settling through litigation or non-litigation in accordance with applicable regulations.

## CONCLUSION

Through the explanation above, the writer can conclude several things from the results of the analysis that has been carried out, including:

Institution in the form of *shahibul maal* gains the trust of everyone to carry out the mandate to use funds in a fair and correct manner and must be followed by the correct terms and conditions in accordance with Islamic law, so as to be able to benefit all concerned.

Islamic banks/ Islamic banks as one of the sharia financing institutions must have guidelines for Islamic provisions, as well as for carrying out economic activities, Islamic banks must always pay attention to obtaining profits, so that it is good for banks and customers in accordance with Islamic law and regulations apply.

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<sup>28</sup> Nurnasrina dan Adiyes putra, *Manajemen Pembiayaan Bank Syariah* (Pekanbaru: Cahaya Firdaus Publishing and Printing, 2018)., hlm 173-174.

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