



Risk Mitigation in Cooperation Through Channeling Financing between Sharia Companies and Sharia Banks

Nur Utari Setiawati

Mahasiswa Magister Kenotariatan, Fakultas Hukum Universitas Airlangga, Indonesia

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Abstract

Cooperation through channeling between Sharia (Islamic) company and financial institutions can be done as long as it does not conflict with the principles of sharia. The purpose of this research is to analyze the risk mitigation of financing, especially in the cooperation between Islamic companies and financial institutions regarding the channeling financing. This research is normative study by statutory approach and a conceptual approach. Channeling financing should be done by fulfilling the principles of justice, balance, beneficence and universalism and not contain any gharar, maisir, usury, wrongdoing and haram objects. The contract that frames this collaboration is wakalah bil ujah. Sharia companies as representatives of financial institutions that distribute sharia financing to customers receives compensation (ujrah) from managing the funds. Channeling financing, does not rule out the risk of mistakes (wanprestasi), therefore, if there is a mistake the one that took the risk is financial institution while Sharia Company does not take the risk. However, it is possible for Sharia Company to take the risks if Sharia Company does not mitigate the risk that should be carried out by the Sharia Company. It is concluded that, it is possible for Sharia Company to take the risks if Sharia Company does not mitigate the risk that should be carried out by Sharia Company in channeling Sharia financing to its customers.

Keywords: *Cooperation; Sharia Company; Financing; Channeling; Risk*

A. Introduction

Based on statistics, to the end of 2018, there were 35 Sharia companies, consists of 3 companies in pure sharia form and 32 being sharia business units, by the addition of three new sharia business unit licenses and revocation of 5 sharia business unit licenses¹. Business activities of Sharia Financing Companies was done based on Financing Services Authority Regulation Number 10 / POJK.05 / 2019 concerning on the Implementation of Sharia Financing Company Businesses and Sharia Business Units of Financing Companies (POJK 10/2019) which consist of financing progress of sales and purchases agreement, investment financing and service financing. Since 2010, several Sharia companies such as

¹ Asosiasi Perusahaan Pembiayaan Indonesia, "Statistik Lembaga Pembiayaan," last modified 2018, accessed February 5, 2020, <https://www.ifsa.or.id/id/statistics>.

WOM Finance have opened a Sharia financing business in form of a Sharia business unit, which aims to accommodate market demand that cannot be accommodated through conventional financing. Thus, Adira Finance has done Sharia business since 2012 by unit that provides consumer financing based on Sharia principles with *murabahah* agreement for motorbikes and cars financing. while, Al Ijarah of Indonesia Finance (ALIF), Citifin Multifinace Syariah, Trihamas Finance Syariah are purely sharia financing companies.

The level of dependence of Sharia Financing Companies on the loan sector is very large, especially in obtaining the fund, it can be seen by the fund that provided by loan is 12.116,15 billion while subordinate loan is around 28,45 billion and the published securities was around 1.503,66 at 2018. Compared to 2017, the source of loans funding was higher, which gained to 19,094.74 billion, while subordinated loans is 24.42 billion and securities issued is 941.00 billion². Only a small proportion of Sharia Financing Companies use their own funding to run their business.

In the process of implementing their activities, sometimes Sharia Financing Companies collaborate with other financing institutions in terms of funding. As what has been done by several sharia banks, they choose to distribute the financing progress by the partner of cooperation through executing and channeling patterns. The financing scheme is implemented by Muamalat Bank of Indonesia, Syariah Mandiri Bank, Syariah Bukopin Bank to grow their financing aspect. Executing and channeling financing has been carried out by Muamalat Bank of Indonesia. For executing pattern, the bank will provide the financing through partner companies, and then it passes to customers. Customer financing is recorded as the partner company's financing exposure. While channeling pattern, the partner companies act as the agent of financing bank. Muamalat Bank is working with a number of national finance companies to increase their company funding.³

POJK 10/2019 obliged Sharia Company to fulfill the Sharia principle on it implementation. Sharia principles should be carried out by Sharia companies in collaborating with other parties through channeling or joint financing. What it means by other parties consist of banks, housing secondary finance companies, micro financing institutions, Sharia companies, information technology-based lending and borrowing services companies, venture capital companies and / or other institutions⁴. This study only focuses on channeling financing method. The collaboration between Sharia companies and financing institutions does not rule out the risk of financing, such as defaults mistake by customers at Sharia companies, and causes financing problems on Sharia companies and financing institutions. Besides, it also has an effect on the decrease of companies condition, whether sharia company or guarantee agency. Based on the description above, the problem of this analysis is risk mitigation of channeling that carried out by sharia company.

B. Research Methodology

This research is normative research; this research was done by the approach of statute approach and conceptual approach. This research was done based on the constitution or legal norm which is binding to the nature and has relevance to the discussed material. This study analyzes the legal rules in form of Law Number 21/2008 concerning on Sharia Banking, Bank Indonesia Regulations and Financing Services Authority Regulations, Compilation of Sharia Economic Laws (KHES), Fatwa DSN-MUI and

² Ibid.

³ Muhammad Djibril, "Bank-Bank Syariah Memanfaatkan Executing -Channeling," *Republika*, last modified 2015, accessed February 5, 2020, <https://republika.co.id/berita/ekonomi/syariah-ekonomi/15/09/15/nupyt6254-bankbank-syariah-manfaatkan-executingchanneling>.

⁴ Susanto Burhanuddin, *Hukum Bisnis Syariah* (Yogyakarta: UII Press, 2011).

concepts related to risks in financing, Channeling and cooperation between Sharia companies and financing institutions.

C. Discussion

1. Characteristic of Sharia Company and Financing Cooperation

Sharia companies include Sharia financing companies and Sharia business units. All the activities that carried out by Sharia financing companies, the financing system is included as Sharia financing. Activities performed by Sharia companies should meet the principles of justice ('adl), balance (*tawazun*), welfare (*maslahah*) and universalism (*alamiyah*) and did not contain *gharar*, *maysir*, *riba*, *zhulm*, *risywah* and *haram* objects. This principle will be applied if Sharia Company willing to cooperate with other parties, the cooperation should not be conflicted with Sharia principles. The meaning of Sharia principles refers to the constitution Number 21/2008 concerning on Sharia Banking, which is a business activity that does not contain the elements of *usury*, *maysir*, *gharar*, *haram* and *zalim*. *Sharia*, *Syari'at*, means "way" or *path to the water source*", which has the further meaning as a clear path. Furthermore it means a clearly visible path or a path that should be followed⁵ in Arabic language, *Sharia* means "path to a source of water".

Based on Article 37 Paragraph (1) POJK 10/2019 channeling financing should be framed with the contract of *wakalah bil ujah* contract. Then Sharia Company acts as the representative of attorney who performs tasks on behalf of the financing institution (*muwakkil*). In financing channeling, Sharia Company can have a position as:

- a. a side that distributed through the activities of Sharia financing which is called as representative; and
- b. As the fund provider, the side who represent other sides/parties

In the Article 37 paragraph (3) POJK 10/2019, it is emphasized that if Sharia Company is the party that distributes funds / capital / goods through Sharia financing, the Sharia Company is only positioned as a manager and obtains a compensation (*ujrah*) from its management. If a risk arises from the financing side, the funds provider is responsible for it. It means that Sharia Company does not take the risk if Sharia Company as the representative distributes the funds to customers through Sharia financing system. The party that took the risk is financing institution as the fund provider. However, if the Sharia Company acts as a provider of funds, then the Sharia Company who takes the risk when there is a loss happen, it was emphasized in Article 36 paragraph (4) POJK 10/2019.

The term of *channeling* in the list of 2018 Statistic Financing Institution Book means that funds in financing business activities for this scheme come from other parties who collaborate with financing companies that consist of Banks, housing secondary finance companies, microfinance institutions, and other finance companies. The risks that happen from this activity is borne by the party who owns the funds, while the Financing Company only acts as a fund manager and obtain a reward for this. Besides, it can be found inside the regulation of Indonesian bank 14/22/2012 regarding the credit provider and financing process by Commercial Banks and Technical Assistance in the Context of Micro Business Development, which stated that the distribution of MSME credit or financing can be carried out by commercial banks through:

⁵ A Shomad, "Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia," *EduTech: Jurnal Ilmu Pendidikan dan Ilmu Sosial* (2018).

- a. Directly to micro, small and medium enterprise;
- b. indirectly through cooperation in executing pattern, channeling pattern, and / or joint financing (syndication)

Based on SEBI No. 15/35 / DPAU Jakarta, 29 August 2013 Concerning on Provision of Credit or Financing by Commercial Banks and Technical Assistance in the Context of Micro Business Development, Small, and Medium enterprise, *Channeling* pattern is the distribution of MSME Credit or Financing to MSME debtors through financing institutions, such as:

- a. Citizen Credit Bank;
- b. Sharia Citizen Financing Bank; and/or
- c. Other financing agency non-bank, such as saving and Loans Cooperatives, *Baitul Maal Wa Tamwil* and other equivalent institutions.

These financing institutions do not have the authority to decide on credit or MSME financing. The Commercial Bank as the owner of funds is the authorized party to decide the provision of MSME Credit or Financing and took the risk if MSME debtor has done the breach of contract.

The legal relation between Sharia companies and financing institution can be shown as the figure below:



Description:

1. Financing institutions collaborating with Sharia companies through channeling financing was framed by *wakalah bil ujah* contract. Sharia companies as representatives channeling funds to customers (consumers) through Sharia financing. Sharia companies as representatives of channeling funds to customers through Sharia financing. Sharia Company exists to act as representative, thus it gets a reward (*ujrah*) from the management.
2. Sharia companies financing customers includes buying and selling financing, investment financing and service financing. Therefore, at the time of signing the agreement with customer, Sharia Company is the power of financing institution on behalf of financing institution.

The financing agreements between sharia companies and customers must be officially written. Generally, the agreement is made in such a way by finance company that regulates payment procedures, payment times, dispute resolution and other matters that settled in standard form. Standard agreements often used by financing institutions, while customers do not have the opportunity to negotiate and only need to sign the agreement that has been made. If the customer did not sign the standard agreement, the customer will not get the required items. The sharia financing agreement should contain provisions which implemented without coercion and based on voluntary principle (*ikhtiyari*). In Financing Services Authority Regulation Number 1 / POJK.07 / 2013 concerning on Customer Protection in Financing Services Sector and Financing Services Authority Circular Letter Number 13 / SEOJK.07 / 2014 concerning on the Standard Agreement that prohibited standard agreement is an agreement that contains the aspect as following below:

- a. menyatakan pengalihan tanggung jawab atau kewajiban indicated the transfer of responsibility or obligation of financing services business subject toward Customer;
- b. Stated that the financing subject has the right to refuse the refunds that have been paid by Consumer for products and purchased service;
- c. declared that the grant of authority from Consumer either directly or indirect, to take all unilateral actions on collateralized object by Consumer, unless the unilateral act is carried out based on statutory regulations;
- d. Required the Consumers to prove the argument which states that the loss of product or services uses was purchased by consumers is not the responsibility of the financing subject person;
- e. Provided the right to financing subject person to reduce the use of products or services and reduce the assets of Consumers which is the object of product and service agreements;
- f. Stated that the consumer is subject to new regulations, additions, continuation and / or changes made unilaterally by the subject during the period when consumer takes advantage of products or services they have purchased; and
- g. Declared that consumer is subject to recent regulations, additions, continuation and changes that made unilaterally by the subject person during the period of consumer takes advantage of the products or services they have purchased.

Wakalah contract is a contract to grant power from the attorney (*muwakkil*) to the representative in the aspect that could be represented, the representative side did not take any risk, unless there is a breach of contract happen and that was done by the attorney as representative, thus the representative should take the risk. *wakalah bil ujah* means *wakalah* (devolution of power) by the imposition of fees (*ujrah*). Based on the explanation of Law Number 21/2008 concerning on Sharia Banking, "*wakalah*" contract defined as a contract to grant power of attorney from the representative to the authorized person to carry out a task on behalf of authorizer.

According to DSN fatwa number 10/DSN-MUI/IV/2000 *wakalah* contract is a delegation of power by one party to another in matters that can be represented. The provision in DSN Fatwa states that *wakalah* with rewards is binding and cannot be canceled unilaterally. The pillars and terms of *wakalah* consist of:

- a) Authorized Person
 - b) Attorney (Representative)
 - c) Wakalah Object
 - d) Contract
1. *Muwakkil* (who represent/give the power to attorney), which have requirements as below:
 - a. the legal owner who can act on something on behalf of
 - b. *mukallaf* or *mumayyiz* in certain standard, which the matters that are beneficial to him such as representing to receive grants, alms and others.
 2. Requirements for Representative:
 - a. Have a good understanding on Law
 - b. Able to do the required task
 - c. Representative is a person who is given the mandate.
 3. The aspect that being mandate should be:
 - a. Clearly known by the representative person
 - b. Does not have conflict with Sharia
 - c. Can be represented according to Sharia regulation.

Wakalah contract occurs when there is an agreement. The ability to accept the authority can be done verbally, or nonverbal, by signs or actions. *wakalah* is canceled if the party that received the authority refuses to become the recipient. Practically, *wakalah bil ujah* contract is widely used by Sharia financing institutions, which is Sharia banking and it is applied when the customer gives the authority to Sharia bank to perform certain service work, such as money transfers, inside a *letter of credit* (L / C). It has been regulated in the Fatwa National Sharia regulation that the agreement on *ujrah* must be made at the time of contract and should not be in form of percentage but in nominal form.

Al wakalah or *Al wikalah* means *at Tafwidh* (submission / delegation / mandating). The legal basis stated that Islam requires *wakalah* because humans need it. Not every human has the ability to pursue their personal affairs. Sometimes they need to delegate the mandate of others to do on his behalf⁶. Inside the fiqh, based on the scope *wakalah* divided into three types, such as:⁷

- a. *Wakalah al mutlaqah*, that is absolutely represent the case, without limitation of time and happen for all problems.
- b. *Wakalah al muqayyadah*, the appointment of representatives to act on behalf of certain problems/cases.
- c. *Wakalah al amah*, a representative range that wider than *al muqayyadah* but more simple than *al mutlaqah*.

Wakalah contract has the similar character with the regulated system of article 1792 BW to article 1819 BW that granting the authority is an agreement which a person gives (authority) to another part that receive it on his behalf carry out a certain case. What is meant by "carrying out a certain case" is doing a legal act that has a legal effect. Based on Article 1797 BW, the attorney should not do anything beyond his power. Which means if the recipient of power exceeds the limit of his authority, the risk that is happen will be his own responsibility.

2. Risk Mitigation on Channeling Financing

One of the financing institutions that can cooperate with Sharia companies system is a bank, in this case is a Sharia bank. This happen because the requirements in the cooperation among sharia companies and other parties are prohibited from contradicting sharia principles, in this case the other party is a financing institution which implemented based on sharia principles. It is not possible to collaborate with financing institutions that are not based on sharia principles, for example a sharia company collaborates with conventional banks. Conventional Banks are Banks that carry out their business activities conventionally and based on their types consist of Conventional Commercial Banks and Rural Banks where in their activities either in raising funds in form of deposits or channeling funds.

Sharia banks as Islamic financing institutions in their business activities, try to find profits, however on the other hand, they do not deny that there is a risk arise on their business progress. What is meant by Risk in Financing Services Authority Regulation Number 65 / POJK.03 / 2016 concerning on the Implementation of Risk Management for Sharia Commercial Banks and Sharia Business Units (POJK 65/2016) is potential losses which came from certain incidents. The risks faced by Islamic banks are different from conventional banks. Sharia bank risks include liquidity risk, credit risk, operational risk, legal risk, reputation risk, strategic risk, compliance risk, service risk, investment risk. The risk regarding bank interest is not faced by Islamic banks as conventional banks have to face.⁸

⁶ Sayyid Sabiq, *Fikih Sunah 13* (Bandung: Alma'arif, 1987).

⁷ Abdul Ghofur Anshori, *Perbankan Syariah Di Indonesia* (Yogyakarta: Gadjah Mada University Press, 2007).

⁸ Trisadini Prasastinah Usanti, "PENGELOLAAN RISIKO PEMBIAYAAN DI BANK SYARIAH," *ADIL: Jurnal Hukum* (2019).

In the collaboration between Sharia Companies and Islamic banks on financing channeling, the ones that took the risk are Islamic banks. Therefore, sharia banks are obliged to minimize this risk by taking actions that are not detrimental to sharia banks and the interests of customers entrusting their funds. It could not be denied that the risk of problematic financing may arise in such cooperation and sharia financing channeled by Sharia Companies to its customers. According to POJK 65/2016 the financing risk called as credit risk. Credit risk is defined as the risk due to the failure of a customer or other party to fulfill their credibility to Sharia bank related with their agreements.

It can be said that there is *wanprestasi* (breach of contract) happen if there is a failure of Customer to fulfill their credibility or everything that is determined and agreed inside the agreement, thus it can cause any losses for Islamic banks, which can be depreciation of capital value or reduction in profit of sharing value for Sharia banks. In an agreement, if the debtor does not carry out the agreement due to his mistake, then it is said that the debtor is doing *wanprestasi* (breach of contract).⁹ There are 4 (four) legal process of *wanprestasi* such as:¹⁰

1. The commitment still exists; the creditors can sue the debtor for the implementation of their achievements and have the right to claim any compensation, if the debtors are late in fulfilling their achievements.
2. The Debtor should pay their compensation to creditor (article 1243 BW).
3. The burden of risk is transferred to debtor's loss if the obstacle arises after the debtor mistakes, unless there is an intentional or serious mistake from creditor, therefore the debtor is not liable to carried on to a state of overmacht / force majeure.
4. If the agreement is born from a reciprocal agreement, the creditor can liberate himself from the obligation to provide counter-performance by Article 1266 BW

On the article 36 on the Law of Economic Sharia compilation, that the Party can be deemed to have broken the contract, if their fault consists of:

1. Did not do what it was promised to do;
2. Do what it promises, however it is not based on what it should be;
3. Did what it promised, but too late; and
4. Did something which based on the agreement they should not do.

Islamic banks minimize the risk of financing, by conducting a financing analysis. Financing analysis is an in-depth and thorough study to determine the feasibility of financing application submitted by a customer. Through the results of this study, it can be seen that the customer's business include as feasible or not which means that it is believed that the business could return the given financing funding or not, the amount of financing is suitable for the needs both in terms of amount and use and whether the financing structure is correct or not, Therefore, Sharia banks can minimize the risk and has the potential to provide benefits for Sharia banks and customers. In analyzing Islamic bank financing, customers

⁹ Nur Utari Setiawati and Trisadini Prasastinah Usanti, "KRITERIA INGKAR JANJI PADA PEMBIAYAAN MUSYARAKAH DI BANK SYARIAH," *Lex Journal: Kajian Hukum & Keadilan* 2, no. 2 (December 23, 2018): 15, <https://ejournal.unitomo.ac.id/index.php/hukum/article/view/1410>.

¹⁰ Umul Khair, "Analisis Yuridis Perjanjian Pembiayaan Konsumen Dan Akibat Hukum Jika Terjadi Wanprestasi Dalam Perjanjian Pembiayaan Konsumen Di Indonesia," *JCH (Jurnal Cendekia Hukum)* 3, no. 1 (September 28, 2017): 32, <http://ejournal.stih-pm.ac.id/index.php/cendekiahukum/article/view/7>.

should pay attention to the willingness and ability of customers to fulfill their obligations and the aspects of sharia provisions.¹¹

Preventive efforts by analyzing the financing carried out by sharia banks must also be carried out by sharia companies to provide the financing progress to customers. This effort is quite important and should be professionally carried out because it can act as the standard of Sharia banks and Islamic companies in fending off problematic financing. The results of financing analysis are important for Islamic banks and Islamic companies to make decisions whether the financing is appropriate or not. Besides, it is really important to decide the financing quality and the payment continuity. When Sharia banks collaborate with Sharia Companies in the framework of channeling financing, Sharia banks should take preventive measures by conducting in-depth and thorough analysis of that Sharia companies. Through the results of this analysis, it can be seen whether the business of Sharia Company is feasible or not.

An assessment of the character, capability, capital, collateral and business prospects of a prospective customer receiving financing facility, known as the 5 C analysis, by the explanation as following below:¹²

1. **Character:** The character of prospective Customer Recipient is the first assessment that must be carried out by sharia bank, it can be seen from the established relationship between Sharia Bank Customer or the potential Customer by obtaining information from other reliable parties therefore Sharia Bank can conclude that the prospective Customer Recipient of Facility is the right person to obtain the funds and will not burden Sharia bank in the future progress.
2. **Capacity:** the assessment of the capability of prospective Customer can be identified by Islamic banks by examining the expertise of Customer in manage their line of business and / or the management ability of the prospective Customer. Thus, Sharia Banks will feel confident that the financed business will be managed by a professional.
3. **Capital:** Sharia banks will assess the capital owned by the prospective Customer Facilities, thus it can be seen that the capital capacity of prospective Customer in supporting project or business financing.
4. **Collateral:** Sharia banks should analyze the collateral from its economic and juridical aspects. Whether the collateral has the economic value or not, is not currently under legal action can be burdened by the material guarantee agency and it collateral is easy to transfer. This is important for sharia banks to pay attention, because collateral can be used to guarantee the repayment of financing if the customer is doing wanprestasi (breach of contract).
5. **Condition of economy:** assessment on the prospective business prospects of a Facility Recipient Customer, by analyzing the market condition, to understand the marketing prospect and project result or the effort of prospective customer.

Collateral, though it not the main thing to be analyzed by Sharia banks because the character of prospective customer is the priority for financing analysis. However, collateral becomes important when a customer experiences a failure of paying because collateral is a source of repayment for financing problem by executing the collateral system. Known in banking scope, collateral is a second way out, while the customer's operating income is called the first way out. *Second way out* is a certain guarantee of an object, If there is a problem on financing, Sharia bank has the right to execute the collateral that has been burdened with the right to guarantee the material and take the proceeds from the sale of object in

¹¹ Trisadini Prasastinah Usanti and Prawitra Thalib, "Asas Ikhityati Pada Akad Pembiayaan Mudharabah Di Lingkungan Perbankan Syariah," *Yuridika* 31, no. 2 (August 24, 2017): 297, <http://e-journal.unair.ac.id/index.php/YDK/article/view/5190>.

¹² Trisadini Prsastinah Usanti and Abdul Shomad, *Hukum Perbankan* (Surabaya: Lutfansah Mediatama, 2015).

order to pay the financing and if there is any residual, the remaining sale of the object must be returned to the owner of the object.¹³

Sharia companies in collaborating with Islamic banks through channeling are also obliged to mitigate the risk of channeling to customers. Risk Mitigation of Sharia financing is the effort that was done by Sharia Company to minimize the risk that burdened from financing company because of their failure on fulfilling the obligation of Sharia Company. The obligation to mitigate risks by Sharia Company is stated in a clause of the cooperation agreement between Sharia bank and Sharia Company.

Risk mitigation efforts that must be carried out by Sharia (Islamic) company before financing is disbursed to its customers by doing:

1. Financing analysis as what have done by Sharia bank.
2. Financing provided by Islamic companies to their customers include as an obligation

Compared to the verbal agreement, the written agreement will make it easier for the parties to prove when there is a dispute occurs. The clause in Sharia financing agreement contains of:

- a. The title of sharia financing agreement that describes the type of sharia financing contract used;
 - b. The number and the date of agreement;
 - c. The identity of every parties;
 - d. The object of financing agreement (fund, object and services);
 - e. The financing purposes;
 - f. The value of object in financing agreement (fund, object and services);
 - g. Mechanism of payment and the amount of payment;
 - h. The current active exchange rate, if it needed;
 - i. The duration of sharia financing;
 - j. Ratio, margin and service fee (*ujrah*) of sharia financing;
 - k. Guarantee object (optional);
 - l. The details of related cost on sharia financing;
 - m. Clear fiduciary charging clause if there is a fiduciary charge in sharia financing;
 - n. Mechanism of further cases (in case there is a conflict) and the place of settle the conflict;
 - o. Provisions regarding the rights and obligations of the parties to the funds
 - p. The provision of penalties (*ta'jira*) or compensation (*ta'widh*).
3. In sharia company carries out sale and purchase financing under *murabahah*, *salam* or *istishna* agreement for vehicles, it is obliged to apply the down payment for consumers.
 4. Sharia companies has to be done a mitigation risks by transferring their financing risk through sharia guarantee mechanism, object insurance of guarantee and fiduciary security on the financed object.
 5. Islamic companies are required to calculate the allowance for earning assets losses.
 - a) 1 % of the balance of earning assets classified as current, after deduction for collateral;
 - b) 5 % of productive assets that has quality of certain cases which have been deducted from collateral;
 - c) 15 % of the balance of earning assets classified as substandard, after deducting by the collateral value;

¹³ Sawitri Putri Nursakti, "Jaminan Hak Tanggungan Pada Produk Pembiayaan Murabahah Dan Musyarakah Di Bank Muamalat Indonesia," *Jurnal Ilmu Hukum* 14, no. 27 (2018): 95.

- d) 50 % of the outstanding quality productive assets, after deducting by the collateral value;
- e) 100 % of the balance of earning assets classified as loss, after deducting collateral.

A sharia company as the channeling (manager / representative) party of sharia bank that carries out sale and purchase financing for vehicles to customers (consumers) with *murabahah* agreement, thus the vehicle is burdened by fiduciary guarantees. Therefore the fiduciary recipient is Sharia Company because it is the one who signed the sharia financing agreement as principal agreement to customer. Moreover, the parties of fiduciary guarantee agreement are sharia companies as fiduciary recipients and customers as fiduciary providers. Sharia companies are required to register fiduciary guarantees electronically in order to obtain their material rights. Registration of fiduciary guarantees provides legal certainty for sharia companies as preferred creditors that inherent in superior characteristics of material rights, which consist of absolute principle, *droit de suite* principle, *droit de preference* principle and priority principle. if the customer breach the contract of sharia financing, Sharia Company has the authority to carry out the execution as regulated in Article 29 of Law Number 42/1999 concerning on Fiduciary Guarantee (Fiduciary Guarantee Law).

The execution of fiduciary guarantee can be done by executorial title, The sale was done by public auction or underhand sale with the consent of both parties, However, practically, based on research conducted by Setiabudi, there are times when executing the fiduciary guarantee object it turns out that the object of fiduciary security has been transferred and controlled by third party without any approval from bank.¹⁴ This is quite possible because the real control of fiduciary security object is under the debtor (owner of the object).

If Sharia Company as the representative of Sharia bank in channeling financing does not impose a perfect fiduciary collateral as mitigation effort, thus the financing risk can cause Sharia Company only obtain a position as concurrent creditor, and if a financing problem arises due to the mistakes by customer, Sharia Company cannot doing any execution as what implied on the article 29 of Fiduciary Guarantee Law. This point is emphasized inside the article 17 of PJOK 31/2014, if the fiduciary registration office has not issued any fiduciary guarantee certificate and submitted it to a Sharia Company; Sharia Company is prohibited from executing the object of fiduciary guarantee. Therefore, the incurred party that losses is a Sharia (Islamic) company and not sharia bank because Sharia Company has breaking the contract of cooperation agreement in channeling financing without any mitigation risk.

Conclusion

Sharia companies can cooperate with other parties, such as Sharia banks in financing channeling. *Wakalah bil ujah* contract have to be legalized due to the frame of legal relationship between Sharia Company and Sharia bank in channeling financing. Sharia company is a party that distributes (manager/representative) through Sharia financing, the Sharia Company will receive a reward (*ujrah*) from management of the funds. Sharia companies do not bear the risk if the Sharia Company as the party (manager/representative) channeling funds to customers (consumers) through Sharia financing activities has mitigated risks. Sharia companies do not support the risk if the Sharia company as the manager / representative channeling funds to customers through Sharia financing activities has been mitigated the risks. The side that should take the risk is Sharia bank as the fund provider. However, it is possible for Sharia Company to take the risks if Sharia Company does not mitigate the risk that should be carried out by Sharia Company in Sharia channeling financing to its customers.

¹⁴ Setia Budi, "Permohonan Eksekusi Kepada Pengadilan Negeri Berkaitan Dengan Perjanjian Fidusia Terhadap Jaminan Yang Digelapkan," *JCH (Jurnal Cendekia Hukum)* 3, no. 1 (September 28, 2017): 99, <http://e-jurnal.stih-pm.ac.id/index.php/cendekiahukum/article/view/15>.

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