



Juridical Analysis of the Role and Mechanism of Islamic Banks in Syndicated Financing at Bank Syariah Indonesia in Bogor City

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Abstract

The increasing sharia-based economy indicates that the development of sharia zones continues to expand. Through the introduction of various product innovations, one of which is about financing products, with the existence of financing facilities to be able to support residents to prosper their lives. One of the banks' plans is to increase its assets, by advancing financing into the corporate zone. However, by making financing into the corporate zone, it can have a big effect as well. The research method used is descriptive analytical with the type of normative legal research, and there are several data collection methods used are literature studies and field research, syndicated financing is financing carried out by Islamic banks in collaboration with other banks, both fellow Islamic banks and with conventional banks. This collaboration is needed to provide financing for a large project owned by the debtor which otherwise cannot be done by 1 bank alone. not only that, related to securities, therefore it is necessary to do financing simultaneously, Syndicated Financing has been carried out by BSI for a long time, many national-scale development projects are financed by BSI in syndication, as the legal basis is to make an agreement or contract. Valid for Islamic banks or conventional banks., there are rights and obligations between the parties. The debtor's obligation is a right for the creditor, on the contrary, the creditor's obligation is a right for the debtor.

Keywords: *Sharia Sector, Risk, Syndicated Financing*

Introduction

The increasing sharia-based economy shows that the development of sharia zones continues to grow. Through the introduction of various product innovations, one of which is about financing products, with the existence of financing facilities so that they can support residents to prosper their lives. Next, the Indonesian government created an agreement for Islamic banks to have the opportunity to expand their business wings, and become part of the process of public welfare.

One of the banks' plans to increase their assets is to advance financing into the corporate zone. However, with the financing done into the corporate zone, so that it wants to cause a large risk (*High risk high return*), that is why Islamic banks need to implement fund sharing and risk sharing with other banks. In the application of financing to the corporate zone, Islamic banks are not able to fund one particular project singly, but must cooperate with other parties (banks), so in conclusion, Islamic banks spread their wings into the corporate zone by using a syndicated financing system. Through syndication as a way to

spread securities, in order to minimize the risk of financing. Because through syndication so that the financing risk can be borne by other syndication participants where if there is syndication cooperation among Islamic banks to impose a profit sharing system, it is to carry out profit and loss sharing, which in using a concept where in experiencing losses and in getting profits to be tried together. If there is a syndicated cooperation that links Islamic banks with conventional banks, as long as they do not violate and contradict sharia principles so that they can be tried, as long as there are separations and restrictions on certain aspects. (OJK, 2015)

The best solution for banks, especially Islamic banks in managing the Maximum Credit Lending Limit (BMPK) and avoiding idle funds, is to be a syndicated participant that provides corporate products as an alternative in order to perfect the interests of large-scale financing, as well as the bank's plan to increase its revenue because competition between banks has become sharper, thus demanding Islamic banks to catch up with banks Conventional. The Bank as an institution that works based on public belief, has a very strategic position and position in national development. If public confidence has begun to disappear in the banking zone, then this section will collapse and will no longer be able to provide funds for national development. The Bank has a position as a public financial intermediary institution, namely mobilizing population funds and channeling these funds to efficient and effective utilization or investment.

Indonesia's financial system is run by the central bank, banks, pawnshops, insurance industry, pension funds, capital markets, and financing institutions. Each of these institutions has a very significant role in protecting the Indonesian economy so that it is always in good condition and continues to raise the level of the economy in Indonesia. Indonesia is one of the countries with the most Muslim population in the world. With the ability of the population, it is clear that it is a very promising Islamic financial development market. This matter is also supported by the continued emergence of Islamic Financial Institutions, especially Financial Institutions in Islamic Banks. Sharia Bank is a bank that operates in line with the principles contained in Islamic teachings, which acts as a business entity that distributes funds to citizens or as a financial intermediary institution. Sharia banking has a strategic position in advancing the welfare of the people, through the intermediation process of collecting activities and distributing funds or providing other financial services based on sharia principles.

Regarding the implementation of national development in the provisions of Article 4 of Law No. 10 of 1998 concerning banking, it is stipulated that:

"Bank Indonesia aims to support the implementation of national development in order to increase equity, economic growth, and national stability towards improving the welfare of the people".

From this provision, it proves that banking institutions have a meaningful and strategic role in moving the wheels of the national economy and also focusing on supporting the implementation of national development. Position means syndicated financing for economic development and population welfare in terms of infrastructure, commercial or investment is a form of direct contribution in increasing national development. Because syndication does not only play a role in increasing assets but to fulfill customer business.

Methodology

The author in this case conducted research using the Analytical – Juridical method. This method is carried out by examining a legal issue and then after research using legal principles, theories and legal provisions related to juridical analysis, the participation and mechanism of Islamic banks in syndicated financing at Bank Syariah Indonesia in Bogor City.

Analysis and Results

1. Sharia Banking

Banking is one of the dominant and essential business activities in today's world economy. Because as a fundraiser, it is very helpful in economic development. As fundraisers, banking institutions can participate and help grow by channeling capital into government projects. Banking institutions also provide capital to private entrepreneurs to finance their businesses, banking institutions are also very important in the development of small and medium enterprises by transferring capital to them. (Halil Khusairi, 2015) Banking as one of the pillars of the economy is the embodiment of Islamic values, especially in the field of "muamalah – sharia Al umummiyah", where economic issues become public domain, the public is free to formulate them. have a concept, master and realize their own ideas as long as they do not conflict with the types of Islamic Sharia, Islamic banks including Universal Sharia Banks and Sharia Banks finance Sharia. For Ahmad Rododi, "Sharia Bank is a bank in its activities, both in raising funds and in the context of remittance, distribution and use of rewards based on sharia principles". Then, for Imamudin Yuliadi, "Sharia Bank is a bank that operates based on sharia principles". Islamic banks in carrying out their activities cannot be separated from the concept of sharia which regulates their products and operations. The concept of sharia is used as the basis for the development of Islamic banking products. (Halil Khusairi, 2015) Based on Bank Indonesia Regulation No. 2/8/PBI/2000, Article 1 stipulates that Islamic banks are global banks as referred to in Law No. 7 of 1992 which are concerned to become banks and have been replaced by Law No. 10 of 1998 to conduct business activities based on sharia principles, listing sharia business units and branches of foreign banks that conduct business activities based on sharia principles.

The Islamic economic system is one of the alternative options for the Indonesian economic system. Universally, the interpretation of Sharia Bank (Shari' a Bank) is a bank whose operations are in accordance with the principles of Islamic law. There are many designations given to refer to other Sharia Bank entities, namely *Interest-Free Bank*, *Bank Without Riba (Lariba Bank)*, and *Sharia Bank (Islamic Bank)*, or fully said "Bank Based on Sharia Principles". In other words, Sharia Bank is a financial institution whose main business is to distribute financing and other services in payment traffic and money circulation whose operations are adjusted to the provisions of Islamic law.

2. Understanding the General Principles of Sharia Banks

The law provides limits on the interpretation of sharia principles as provisions of agreements based on Islamic law between banks and other parties for the storage of funds and / or financing business activities, or other activities that are declared in accordance with sharia, among others, financing sourced from the principle of profit sharing (*mudharabah*), *financing sourced from the principle of capital participation* (*musharakah*), The principle of buying and selling objects by getting a profit (*murabahah*), or financing capital objects based on the principle of pure lease without *option (ijarah)*, or with the *option of transferring ownership of objects rented from the bank by other parties (ijarah wa iqtina)*.

Contracts between customers and banks usually explore the terms as required in contract law. In order for a contract by law to be declared valid so that it binds both parties, until the contract must meet certain conditions. The terms of validity of the contract can be classified as follows:

First, universal legal provisions, consisting of:

- a. Agreement of will,
- b. Authority to do,
- c. Specific subjects, and
- d. Legitimate causa.

Not only that, there are also other provisions, namely:

- a. Good faith provisions,
- b. Provisions in accordance with Routine,
- c. Provisions in accordance with propriety, and
- d. Provisions in accordance with the public interest.

Second, the exclusive legal Provisions, consisting of:

- a. Written provisions for certain contracts,
- b. Notarial deed provisions for certain contracts,
- c. Provisions for deeds of certain officials (who are not notaries) for certain contracts, and
- d. Terms of permission from the authorities.

In the General Explanation of Law 21/2008 it is also said that sharia principles are based on the values of justice, expediency, balance, and universality (*rahmatan lil 'alamin*). These values are applied in banking arrangements based on sharia principles called Islamic Banking. Sharia Banking principles are part of Islamic teachings related to economics. One of the principles in Islamic economics is the prohibition of *riba* in its various forms, and using a system such as the principle of profit sharing (*mudharabah*).

Syndicated Financing

Financing can be defined as a form of providing funds from the lender to the borrower with the aim of helping a planned investment, the executor of this investment can be from individuals or industries. It can also be mentioned that financing is the provision of funds for an investment. (Muhammad, 2015) Definitely syndicated financing is several banks joining forces to channel large-scale financing. There are 3 forms of syndicated financing, namely lead syndication, club deal and sub syndication. Lead syndication is a group of banks that are syndicated to finance customers' businesses/projects and are guided by bank leaders who have been appointed by customers. Club deals are syndicated groups but between each bank there are no business ties. And the last form is sub syndication is syndication between fellow syndication participating banks, although there is no bond with other syndication participants.

Syndicated financing can be a promotional facility for Islamic banks. Sharia syndicated financing is relatively large, generally to be published by the mass media. So that it becomes a free promotional facility for Islamic banks. It has become common in any syndicated financing, both conventional and sharia, to always be covered by the media, such as syndicated loans for the construction of the Semarang Solo toll road worth Rp 4.7 trillion. Syndication is also a form of Islamic banking contribution to national development. The contribution of Islamic banks in this context can be seen in the financing of infrastructure projects both owned by the government and the private sector, such as the construction of toll roads, airports or ports, PLN, PLTU, etc. This syndicated financing is more secure because it is ensured by the State Budget (APBN). Not only that, syndication fosters a cooperative bond with a business team. The syndication wants to increase partnerships with debtors or debtor business teams. If Islamic banks carry out syndication until they want to be better known and closer, to debtor customers or debtor business teams, both private and government-owned business entities. So that in the future they can partner again with them.

3. Participation of Parties in Syndicated Financing at Bank Syariah Indonesia

The search for association can be found in some of the *taqrir* (agreement) of the Prophet SAW regarding the activities of *shirkah* that took place during the time of the Prophet SAW, moreover in one of

the *hadith qudsi* it is mentioned that Allah SWT wants to be with anyone who is *shirkah* as long as that person does not equally betray others (Sharia cooperation that does not have a factor of immorality and justifies the *haram* or vice versa). (Gilang Samudra, 2022) One of the business activities adapted from conventional banks is syndicated financing. If in conventional banks the term used is syndicated loans, so that in Islamic banks, syndicated loans are exchanged for syndicated financing, whose management is also adjusted to the sharia system. Syndicated financing is a type of financing that links some banks to finance a large project that is impossible to finance by the bank itself because it exceeds the optimal limits of lending or financing. In addition, with large capital, of course, the effects that may be intertwined can also provide large losses. Therefore, with a syndicated system, some banks or financial institutions can share capital funds and share consequences.

Syndicated financing can be tried by fellow Conventional Banks or fellow Sharia Banks, where in the system one of its members is appointed as the lead manager who controls and connects syndicated members and customers. Sharia bank is one of the financial institutions that carries out its activities in accordance with sharia principles. Universally, business activities in Islamic banking include 3 sides. The initial side is the collection of funds (funding), the second side is the use of funds (financing). On the contrary, the last side is a service. In this study, the author limits sharia principles to the collection of funds, such as the principle of *wadi' ah* in deposits and savings, the principle of *mudharabah* in deposits. (Faithful, 2010) *Wadi' ah* etymologically means to place something that is placed not on its owner, the plural form *wadia' ah* is *wada' i*. On the contrary, in terms of *wadi' ah* is a transaction that places a place to be maintained or a protected entrustment object. For the Compilation of Sharia Economic Law, *wadi' ah* is a custody of funds between the owner of the fund and the recipient of the entrustment who is trusted to collect the funds. Universally, what is defined as a *giro* is a deposit whose withdrawal can be made at any time using checks, *bilyet giro*, other payment order facilities, or by bookkeeping. Current accounts can be opened by industry or individuals, and will be given bonuses or voluntary gifts. Current accounts can only be tried by commercial banks (Conventional Commercial Banks), Sharia Commercial Banks or Sharia Business Units and cannot be tried by rural banks or Sharia People's Financing Banks.

Islamic banks can form syndicated financial institutions for large-scale financing needs needed by corporate customers. The agreement used can be in the form of *ijarah* and *istishna*, for example in oil terminal factory projects. First, the consortium or syndicated members and contractors who build the factory make an *istishna* agreement. After that, the consortium appointed an oil terminal operator to oversee the construction of the oil terminal and made an *ijarah* agreement. In syndication, banks can also provide long-term financing for existing industries based on *musharakah* contracts, with the bank method of buying shares from the industry, so that the bank becomes a partner of the customer in the investment project concerned. Specific requirements regarding the syndication of Islamic banks and conventional banks are only mentioned regarding separate accounts and different/certain documents, even with collective agreements. (Mirah Endraswari, 2022) In the contract, sharia syndication can be tried with some contracts between syndicated participants (syndicated entities) and customers as formalized in the fatwa of DSN MUI NO 91 / DSN-MUI in 2014, otherwise between syndicated participants and their leaders can be tried with only 3 contracts, namely *musharakah*, *mudharabah* and *wakalah*. If Sharia Banks and Conventional Banks cooperate in a syndicated system, unite joint capital with *musharakah* contracts as fellow syndicated members / participants and receive joint securities until a mixture of assets is established between the capital provided by Conventional Banks and capital provided by Islamic Banks. Although using a separate account that is not mentioned in the fatwa whether the capital has been transferred to the customer from the accounts of the parties or whether Islamic Banks and Conventional Banks receive the results and obligations of the customer's business with the accounts of the parties, but in the merger of capital with *musharakah* contracts, there will definitely be a unification of capital to be given to customers through leaders, and Sharia Banks also want to accept payment obligations and results sought by these customers from the mixture of capital they receive from Sharia Banks and Conventional Banks. In principle, syndication can only be carried out between Islamic financial institutions, as long as there is no sharia prohibition that includes conventional banks in syndicated

financing cooperation with the provisions used in accordance with sharia principles and requirements. Syndicated financing is indeed a trend in the banking group when financing large corporate projects, so that this form of syndicated financing is right to be applied, so that Islamic banks can share funds and *share* risks.

The roles and duties of the parties in the syndication also have their respective roles and duties, namely:

a. Debtor

The debtor is a party who needs funds or a syndicated financing loan customer. In syndicated financing, debtors are required to carry out some things, including:

- 1) Distribute mandates to *arranger(s)* in order to create syndications;
- 2) Teach offers to the bank if the debtor is a party who approaches the bank in order to find a party who is willing as its *arranger*;
- 3) Distribute approvals to banks that offer themselves to form syndications;
- 4) Distribute information to *the arranger(s)* in order to compile the data memorandum;
- 5) Sign syndicated financing agreements;
- 6) Carry out publicity; and
- 7) Fulfill the *condition precedent clause*, in order to utilize syndicated funds

b. Arranger(s)

Arranger is a bank that controls everything, from the start (financing) processed, offers participation to other banks, monitors to the signing of syndicated loans (financing) and monitors after syndicated loans (financing). (Helina Suyati B, 2000) The *arrangers* formed a credit syndication, without having to be a participant or member of the syndication. That is, there is no need *for arrangers* to be lenders for the syndication that is built. There are also duties of arrangers, including:

- 1) Conduct an in-depth evaluation of the debtor's credit rating.
- 2) Carry out various negotiations with the debtor as a continuation of the *arranger(s)* initial contract with the credit recipient.
- 3) Together with the debtor prepare the data memorandum
- 4) Send invitations to syndication participants accompanied by data memos to each syndication participant and *feasibility* studies on projects or transactions to be financed with the syndicated credit.
- 5) Put credit documentation, especially in the form of credit agreements and collateral documentation.
- 6) Requesting a convention of syndicated participants about who to appoint as bank agent.
- 7) Organizing a syndicated credit agreement signing ceremony and determining where the ceremony will be held.
- 8) Prepare a tombstone of approved syndicated credits.
- 9) Organizing a *conference* process on syndicated credit that has been signed by the agreement.

c. Lead Manager

Lead manager is a bank that manages syndication, can also concurrently act as *arranger*. *Lead manager* or *lead bank* is one of the banks among *arrangers*. *Lead managers* are tasked with generating cooperation among banks that are desired by debtors to participate in credit syndication which must be adjusted to what the debtor dreams of. Sutan, p. 40)

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4. Mechanism for the Establishment and Provision of Syndicated Financing

Syndicated loans must first go through several stages before being processed by the bank. The establishment of syndicated financing is carried out through the formation of management, appointment of president director and formation of leadership team for making offers and receiving orders, making bulletins and loan agreements, appointing bank agent management, signing ceremony of syndicated loan agreement and after syndicated financing agreement, then After signing the recipient of funds, it will be announced for the formation of syndicated financing. Meanwhile, according to Stanley Hurn, sharia syndicated financing is in the form of financing through several banks that distribute funds under terms and conditions and use the same documents and are managed by the same agent. In syndicated financing, financing serves two purposes: investment and working capital. As for each financing, a separate contract is used, the investment financing contract is the *Murabahah*, *Ijarah Mutahiyah Bitamlik* (IMBT) and *Musyarakah Mutanaqisah* (MMQ) contracts. For working capital, *musharakah*, *mudharabah*, *kafalah*, and *wakalah* contracts are used. Bank Indonesia Regulation No. 15/13/PBI/2013 states that Islamic banks are allowed to raise funds together with conventional banks by providing Islamic banking services where conventional banks raise funds based on sharia principles and/or provide other banking services. Customers of Islamic banks, however, the distribution of funds, both in the form of subsidies and others, is not allowed. The purpose of this regulation is at least to avoid mixing profits/results between Islamic banks and conventional banks, avoid using conventional bank money for sharia business and prevent Islamic bank customers from contracting with conventional bank money. In syndicated financing, there are three stages of the process, starting from the emergence of the organizer, signing the syndicated loan agreement, to withdrawing the debtor. The three phases are the phase before the assignment of the debtor and the phase after the signing of the financing agreement. (Sutan) Basically, the concept of prudence still exists in the Islamic business, so steps are still taken to distribute funds as well. Keeping Islamic banking alive. In Islam, the principles of *Muamalah* are defined, namely mutual pleasure (*an-Tarâdhin*), *halal and thayyib* (*halâlan Thayyiban*), freedom from *riba* and exploitation (*zhulm*), freedom from manipulation (*gharar*), mutual benefit (*ta'awun*), non-harm (*Mudharat*) and antitrust and anti-speculation (*Maysir*).

The provision of syndicated financing is seen in banking based on the need for large amounts of financing that cannot be provided by banks if only one bank provides financing. On the other hand, large financial amounts must also be accompanied by great risks. One way to minimize risk is syndicated financing, because financing is provided by two or more banks so that it is in accordance with the principle of risk sharing. Islamic banking in Indonesia has financed many large investments that have a major impact on the economy. For example, syndicated financial products *iB Hasanah* at BNI Syariah, syndicated loans at Bank Syariah Mandiri, syndicated BCA Syariah and syndicated financing of other Islamic banks in Indonesia. Islamic banks cannot finance these investments on their own, but must cooperate with other banks. Bank Syariah Mandiri's syndicated financing program has a minimum period of six months. There are syndicated funding requirements in BSM, namely proof of customer application, proof of applicant validity, proof of business validity, financial statements for the last two years and

current annual financial statements as well as proof of collateral ownership and other supporting documents. (good). These requirements must be met by prospective customers who want to obtain syndicated financing through BSM, and BSM applies these provisions as bank solvency standards to minimize the risk of bank losses. If these requirements are met, the following process can be performed. The process of obtaining syndicated financing consists of two levels: primary market syndication and secondary market syndication. The primary syndication market is the market where the syndication process takes place from the beginning before the signing of the syndicated financing agreement. While secondary syndication is a market that arises when one syndication participant sells part or all of his participation to another bank.

The syndicated parties when they become leaders are:

- a. *Mudharib* (customer),
- b. *Shahibul mal* (investor),
- c. *Arranger* (leader / syndication leader),
- d. *Participant / lender* (syndicated participant) in which there is a lead manager (coordinator) and manager,
- e. Furthermore, there is a bank agent (*agencies / intermediary bank*) in which there is a *facility agent* (*facility agent / business administrator*),
- f. *Security agent* (agent in charge of collateral) and *escrow agent* (*agent who monitors escrow accounts*),
- g. *Underwriters* (guarantors carried out from the *arranger*) which include *fully underwriting* and *partially underwriting*, *guarantor* (guarantees made by a business entity). While syndication when becoming a *club deal* is *lead bank* (chairman of syndication), *bank agent* (bank intermediary), *participant* (*syndication participant*), and *customer*.

The risks in syndicating are *financing risk*, *market risk*, *liquidity risk*, *legal risk*, *reputation risk*, *operational risk*, *rate of return risk*, *equity investment risk*, *strategic risk*, and *discipline risk*.

Conclusion

In general, funding through syndication has the same legal basis as credit that does not use a syndication mechanism. According to the applicable legal rules in Indonesia, syndicated credit or funding refers to the rules of engagement law regulated in Book III of the Civil Code (KUHPerdata). In syndicated funding, there are three stages that must be passed, namely the pre-mandate phase, the post-mandate phase, and the post-signing phase. Broadly speaking, the stages in syndicated funding start from the emergence of regulators to the stage of signing syndicated funding agreements. The three stages in the syndication process are the main conditions that must be met in order for a credit facility to be formed. In the syndicated loan funding carried out by Bank Syariah Indonesia Bogor (Bank BSI Bogor), to several of its customers/debtors, there is also a legal relationship between the debtor and the regulator (Bank BSI Bogor). The relationship that occurs is carried out by the debtor providing a letter to Bank BSI Bogor Branch to form syndicated funding related to the application for credit facilities desired by the debtor, such as for financing a certain project of large value. In the appointment letter, there is usually also a period of time to form funding, for example, the debtor gives a period of time to Bank BSI Bogor for 2 months since the appointment letter is submitted. So that within this period of time, it is expected that the desired funding has been formed by the debtor. In the syndication agreement, the creditor is required to be able to provide funds in accordance with the purpose of the debit. But if in the middle of financing, the debtor cannot fulfill all the conditions in the agreement, this is not a problem because the creditor has the right to violate the existing provisions. Including if the debtor violates the agreement, the creditor has the right to terminate the syndication. From this provision, it can be seen that the position of the creditor is stronger than the position of the debtor. The creditor's obligations are only related to providing funds for a

certain period of time as promised in the agreement. In syndicated financing by Bank BSI Bogor, both parties must make a credit agreement or Loan Agreement containing their respective rights and obligations, the term of the agreement, the loan nominal, and others. BSI must be more careful in providing credit facilities in syndicated financing so that funds provided by banks can be returned in accordance with the agreement.

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