Implementation of Musyarakah Financing Agreement On Sharia Banking (Case Study at Bank BRI Syariah Purwokerto Branch Office)

Muh Rifqi Iqsohayadinur
Faculty of Law, University of Jenderal Soedirman

Abstract
Act of Republik Indonesia Number 21 of 2008 concerning Sharia (Islamic) Banking Article 1 Number 13, require all of contract should be written. Thus the implementation of musyarakah financing contract on Islamic banking is needed a notary to make a notariil deed, although there is no a special rule that require a contract must be made with notariil deed. The research is empirical research law to analyzes the data systematically, factual and accurate. The approach used in the research is descriptive qualitative approach. Result of this research indicates that implementation of musyarakah financing contract at PT. BRI Sharia branch of Purwokerto, normatively has been following the elements of the contract, and especially used standard contract from Financial Services Authority (FSA) regulation Number 31/POJK.5/2014 concerning Implementation of Sharia Multi-Finance Business, but substantially there are deviations in which the position of the parties is unbalanced, the nisbah ratio is done unilaterally and is fixed during the funding period, calculation of nisbah is determined at the beginning, and the use of witnesses in contract is not in accordance with sharia principles.

Keywords: Contract, Musyarakah Finance, Sharia (Islamic) Banking.

Introduction
Economic growth in Indonesia, accompanied by an escalation of the growth of sharia banks influenced by several factors, among them: the increasing socialization of Sharia Bank propaganda by Muslims and the political will of the government in response to people’s demands for banking with sharia principles (Ningsih, 2017). Along with the growth of Sharia banks in several places,
including in the Purwokerto area, conceptually accepted by the community, as well as an alternative for people who have the confidence to reconcile based on sharia principles.

The term sharia principle in banking has only emerged since the enacting of Law No. 10 of 1998 on Changes to Law No. 7 of 1992 on Banking. Thus, since Law No. 10 of 1998, this is the existence of Sharia banking recognized its existence in the national banking system. Based on Article 6 letter (m) junction Article 13 letter (c) of the law expressly opens the possibility for the bank to conduct activities based on the principle of yield-share with its partners. The financing activities for the proceeds are then regulated by Law No. 10 of 1998, to further be enhanced by the birth of Law No. 21 of 2008 concerning Sharia Banking which is the basic source of law for the existence of Sharia banks and is specially regulated regarding the implementation of sharia financing business by the Financial Services Authority (hereby abbreviated as OJK).

Besides, the presence of the National Sharia Council (hereby abbreviated as DSN) becomes an amplifier in all economic and financial life in Sharia banking institutions, as the DSN continues to play a proactive role in responding to the dynamic development of Indonesian society in the field of economics and finance. Based on financing arrangements based on sharia principles, DSN issued a fatwa on musyarakah financing as a form of effort to develop and increase the funds of Sharia financial institutions (hereby abbreviated as LKS).

The legal basis for the existence of Sharia banking in Indonesia proves that sharia economics is accepted and earned a place among Indonesians, even some conventional banks and other financial institutions open sharia business units (hereby abbreviated as UUS) (Ningsih, 2017). Juridical recognition is intended, providing opportunities to grow and develop broadly sharia banking business activities, including giving opportunities to commercial banks (conventional) to open branch offices that specifically conduct business activities based on sharia principles. As implemented by Bank BRI Syariah Purwokerto Branch Office.

One of the business activities at Bank BRI Syariah Purwokerto Branch Office as done by other banks is to raise and distribute funds to the community. This form of channeling funds to Bank BRI Syariah Purwokerto Branch Office is called "financing", the term financing is used to distinguish with the term "credit". On this issue, the term "credit" is better known by the public in general than the term "financing". Sharia banks apply the term "financing" to carry out their functions as a banking institution that distributes funds to the public based on sharia principles.
Sharia principle is the principle of Islamic law in banking activities based on fatwas issued by institutions that have authority in the determination of fatwas in the field of Sharia (Fajri, 2016). One of the business activities of channeling sharia banking funds using the principle of profit-share is *musyarakah* financing. *Musyarakah* financing is financing based on a cooperation agreement between two or more parties to conduct a partnership bond. The business results of both profit and loss on *musyarakah* financing will be divided between sharia banks and partners based on the agreement at the time of the agreement.

The legal consequence of the use of sharia principles in banking operations is that sharia banking products are more varied than conventional banking products. That conventional banking products, especially fundraising and disbursing products only based on the interest system as a form of achievement and counter presentation of the use of funds (Imaniyati, 2016), while in Sharia banking basing on traditional Islamic agreements whose existence depends heavily on the real needs of partners.

The implementation of *musyarakah* financing agreements in sharia banking practice has shown that the needs of people in Indonesia are starting to vary, so that with the growing demand for legal certainty in sharia banking practice, then in the manufacture of the contract notary officials must provide legal certainty for the parties involved in the contract in the form of an authentic deed. Through an authentic deed that determines rights and obligations, guarantees legal certainty (Hendra, 2012), as well as an authentic deed aimed at avoiding future disputes.

Article 1 number 13 of Law No. 21 of 2008 on Sharia Banking only requires that the contract or deed in Sharia banking must be written. As for the substance of the written agreement, it contains rights and obligations for the parties following sharia principles. In sharia banking practice, the agreement in writing is made in the form of a deed underhand, but some banks make notarial financing agreements, however, there are no rules specifically governing certain financing using notarial deed.

The creation of *musyarakah* agreements made by Sharia banks with notaries has generally been prepared a standard contract by the bank, as well as applied to Bank BRI Syariah Purwokerto Branch Office, from interview with Staff Legal Bank. A default contract is a written agreement made by one party in the form of a particular clause. The standard contract that has been prepared by either party hardly gives the partners the freedom to negotiate. Limited negotiating space in the default agreement will likely provide an opportunity for the creditors to abuse the circumstances to inflict losses on either party.
Based on this, such a unilateral treaty model has weaknesses based on its character, as it is usually more unilaterally determined (Subekti, 2014). It should be that the balance of the parties in the agreement or agreement in general always gives the same authority and position before the law. The meeting of wills between the parties can be realized in the form of offers and acceptances, the two actions have the same consequences that need to obtain legal protection if either party reneged on the agreement contained in the content of the agreement.

Broadly the relationship between sharia banks and partners can be seen from the clause stipulated in the agreement, especially the agreement with the financing model for the proceeds of *musyarakah*. Sharia banking should heed the prohibitions in Islam. On the other hand, it should also pay attention to matters related to the state of the partner concerning the principle of 5C, including character, capital, capacity, collateral, and condition of the economy (Mansyur, 2011). Departing from the problem, the emergence of problems in sharia economic transactions, more occurred due to undisciplinedness from the parties, including in the making of the agreement and the implementation of the agreement.

**Research Problems**

Based on the issues outlined above, it is interesting for the authors to carry out this research, so the legal issue raised in this study is "Implementation of *musyarakah* financing agreement on sharia banking."

**Research Method**

This study uses a type of empirical legal research. Empirical legal research is a research method done to obtain primary data. Empirical legal research aims to look at the law in a real sense or can examine how the law works in a society that then uses a descriptive qualitative approach, namely research that aims to describe or describe and analyze data obtained from field findings systematically, factually, and accurately, including applicable laws and regulations associated with legal theories and practices of the implementation of positive laws related to this study.

The selected research location is Bank BRI Syariah Purwokerto Branch Office, with several considerations: 1) Strategic location, 2) Bank BRI Syariah Purwokerto Branch Office gives easy permission to do research because not all Sharia banks are willing to be research materials. The data collection techniques used in this study are through observation and interviews to obtain primary data.
and supported by the collection of secondary data in the form of literature, documents related to research problems through literature studies. The data obtained is qualitatively analyzed about the implementation of *musyarakah* financing agreements in Sharia banking, to then conclude deductively.

**Discussion**

1. **Research Results**

   A covenant is a term of the agreement in Islamic law, essentially a contract or agreement made by the parties applies as a law to those who make it, therefore in agreeing is necessary thoroughness and carefulness of the parties. The things that are considered by the parties who will enter into and make agreements are the legal authority of the parties, dispute resolution, termination of contracts, and the form of standard agreements, in this case, the creation of a contract made by Bank BRI Syariah Purwokerto Branch Office with its partners, involving the general official authorized in making the authentic deed, namely the notary. That is, the agreement made by the sharia bank uses a notarial deed or an authentic deed.

   The reason Bank BRI Syariah Purwokerto Branch Office applies the rules for *musyarakah* financing is required by notarial deed is to provide legal certainty for both parties, provide security for the bank as a financing party, and apply the principle of prudence, considering that not all partners can carry out their obligations to fulfill its achievements. Sharia banking laws are limited to regulating the contract stipulated in sharia banking must be done in writing, without being required by notarial deed.

   Any agreement made by the parties involving a public official such as a notary must be properly designed. The design of the contract needs to be considered at various stages of design. According to experts, there are 3 (three) stages in the design of contracts in Indonesia, namely the pre-designed stage of the contract, the design of the contract, and the post designation of the contract (Salim, 2009). Based on the results of the research obtained data in the form of the mechanism of making *musyarakah* financing agreement, that Bank BRI Syariah Purwokerto Branch Office offers *musyarakah* financing through the following stages:

**Contract Predesignation Stage**

The pre-designed stage of the contract is the stage before the contract is designed and drafted. Before the contract is drafted it is necessary to pay attention to Article 1320 of the Criminal War on the legal terms of an agreement,
the agreement of the parties, the ability to perform legal acts, the absence of objects, and the halal cause. To reach an agreement of the parties, it is necessary to negotiate between the parties to determine the form of agreement in the content of the agreement.

The pre-planning phase of the contract carried out by Bank BRI Syariah Purwokerto Branch Office in implementing the *musyarakah* financing agreement includes; partners (*syarik*) come to Bank BRI Syariah Purwokerto Branch Office to convey the intention of obtaining financing for working capital purposes, namely financing intended to obtain capital to develop the business. Partners can convey their intentions and objectives to customer services staff or can convey directly to the marketing staff.

Through the marketing agency (Account Officer), the partner will be given directions for the appropriate financing model, as well as the partner can apply for business financing with *musyarakah* principles. After the partner approves the financing model used is the *musyarakah*, then the marketing institution will explain the terms and conditions of *musyarakah* financing which will be used as the basis for the creation of the *Musyarakah* Application Letter (hereby called SPM). The individual partner/sharik after filling out the SPM is required to complete the requirements document to the bank in the form of:

a) Copy of ID Card  
b) Copy of Family Card  
c) Copy of NPWP  
d) Copy of Marriage Certificate  
e) Copy of SIUP (trade business license)  
f) Copy of TDP (Company Register)  
g) Copy of Partner’s Financial Statements  
h) Copy of current account/savings account  
i) Guarantee in the form of a bundle of land submitted as collateral  
j) Copy of IMB (building permit)  
k) Copy of UN/Earth and Building Tax.

For partners in the form of legal entities after filling out SPM is required to submit company data containing:

a) Copy of Deed of Establishment of Legal Entity  
b) Copy of current account/savings account  
c) Identity of the administrator  
d) Legality of business  
e) Financial statements of the last 3 (three) years
f) Business plan 12 (twelve) months to come  
g) NPWP Legal Entity  
h) Guarantee of land certificate submitted as collateral.

The legality data and financial data of the partner will then be analyzed by 3 (three) institutions, namely marketing institutions, support agencies that are divided into two parts namely legal and Appraisal (appraisal), and committee institutions. Marketing agencies are tasked with examining legality data and creating SPM, while support agencies, legal parts are tasked with managing financial data by conducting track checking and BI checking. On the other hand, the Appraisal (assessor) section is responsible for the assessment of collateral financing. Track checking is a check related to a business run by a partner while ensuring the business is truly existing and profitable. The marketing agency will go directly to the business place to ensure that the business is running properly. BI checking is done to ensure that there are or is not a partner loan to another bank as well as a partner's track record with other banks.

Furthermore, the Appraisal (appraiser) section is tasked with conducting a direct review of the guarantee object to prove the truth of collateral documents that have been submitted to the bank by the partner. A direct review is also conducted with the aim of whether the guarantee is worth it as collateral and whether collateral value can close the financing ceiling. The things that need to be considered in the collateral assessment, namely:

a) Whether the collateral submitted complies with the applicable provisions  
b) What about the financing risk that must be borne by the bank in the absence of such a guarantee  
c) Whether the completeness of the document regarding the warranty has been fulfilled  
d) Is it possible to obtain another guarantee if the previous guarantee does not cover the financing ceiling.

After the analysis of the data is complete and according to the requirements, then all analyses of the data will be submitted to the marketing institution to be used as supporting data and as the basis for the creation of SPM. After SPM is created by the marketing institution, then the marketing institution will apply for approval to provide financing to the committee institution of Bank BRI Syariah Purwokerto Branch Office. The committee has a duty and authority to discuss the SPM submitted by the marketing agency and has the right to issue a decree to reject or approve the proposed SPM.

The committee will then issue a decree containing:
a) The decision on rejection or approval of *musyarakah* financing based on SPM
b) Requirements that must be met by a partner whose financing has been approved
c) Number of approved financing facilities
d) The mechanism of disbursement of financing is done at once or gradually.

The decree was signed by the Chairman of the Committee, namely the Head of BRI Syariah Branch of Purwokerto Branch Office and the Secretary of the Committee, for which the committee institution will issue a Letter of Approval of Financing Principles. The contents of the Financing Principles Approval Letter contain about the type of business, the amount of financing, the financing period, binding, guarantees, and other things that have been agreed upon by the parties. The Letter of Approval of Financing Principles is a letter informing the partner that the application for *musyarakah* financing has been approved, as well as the Letter of Approval of Financing Principles as a "letter of order" to be submitted by the bank to the notary who becomes the bank's partner. The Letter of Approval of financing principles is signed by the Branch Leader and the partner above the stamp duty of 6,000 with the approval of the partner's spouse if the partner agrees to the terms specified by the bank. At this stage, the partner is allowed to negotiate before the signing related to the terms submitted by the bank.

**Contractual Stage**

The next stage is the contractual stage which is the implementation of *musyarakah* financing agreement. All *musyarakah* financing agreements at Bank BRI Syariah Purwokerto Branch Office binding are made in the form of a notarial deed, however, at the implementation level the notary only pours draft standard agreements or standard contracts that have previously been prepared by Bank BRI Syariah Purwokerto Branch Office through "order letter." Of course, this narrows the negotiating space for partners to determine the content of the agreement. This is because partners can only negotiate the amount of financing, while the division of bank ratios has determined the amount of profit-sharing ratio unilaterally, terms and conditions, rights and obligations, as well as other provisions in the financing agreement *musyarakah* has been determined by the bank in writing through the Letter of Approval of Financing Principles. This is in line with the statement of the financing partner *musyarakah*, that the position of the partner has little role in determining the content of the agreement, due to the many terms and conditions submitted by the bank to the partner.
After the partner approves the entire contents of the Financing Principle Approval Letter, the partner with the staff appointed by Bank BRI Syariah Purwokerto Branch Office will face a notary to sign the *musyarakah* financing agreement. According to the partner notary of Bank BRI Syariah Purwokerto Branch Office, that the role of notary not only at the time of signing of the deed but before the signing of the deed of the contract of *musyarakah* usually the bank asks the notary to prepare the necessary deed of *musyarakah*, by first providing order in the form of a Letter of Approval of financing principles along with the identity documents of the parties, guarantees and other completeness. Furthermore, it is explained, that in the Letter of Approval of Financing Principles including *musyarakah* financing facilities usually contain about the number of financing facilities provided to partners, and other things that have been agreed by the parties to be included in the standard contract that was first awarded to the notary. The standard of the contract is given to the notary in advance on the grounds of efficient service to the partner.

After the deed is made by the notary, then on the day specified, the parties are present before the notary to hear the reading and explanation of the contents of the deed of the certificate of financing *musyarakah* that has been prepared in advance by the notary, although in practice often the reading of the deed by the notary is not carried out in its entirety from the deed, usually, the notary reads only things that are considered important to the notary, such as the identity of the parties, the amount of financing, the distribution of ratios, business objectives, and descriptions of the objectives of the guarantee. This is done in order to shorten the time, while the implementation of the contract can be done at Bank BRI Syariah Purwokerto Branch Office as well as in the notary office in question in accordance with the situation and conditions.

After the reading and explanation of the deed by the notary to the parties, the next stage is to be signed by the parties, witnesses, and then followed by a notary. The reading, explanation, and signing of the deed is carried out by a notary as stipulated in the law of the notary department and nothing other than with the intention that the deed can be used as a means of authentic evidence for the parties if there is a dispute between the parties in the future.

An authentic deed is a deed whose form has been determined by law, made by or before the authorized public official for it in which the deed is made, therefore in sharia banking practice including in the making of the deed of financing contract *musyarakah*, the bank asks for the deed of binding to be made in the form of an authentic deed, as at the time of the implementation of the contract, the parties are present before the notary to be explained about the deed.
he made, then signed by the intercept (the parties), witnesses and the latter by a notary whose process has been described above.

**Post-Contractual Stage**

The next stage is the post-agreement/post-contractual stage which is the implementation of the agreement or the process of realization of the *musyarakah* financing agreement, then the bank financing administration will conduct the disbursement of financing facilities. The disbursement of the financing facility can be done simultaneously or gradually. This is seen according to the condition of the partner's needs as stated in the SPM. The disbursement of financing facilities at the same time means that all financing funds listed in the *musyarakah* financing agreement are disbursed to the one-time partner, while for the gradual disbursement of financing facilities, the financing funds listed in the *musyarakah* financing agreement will be disbursed to the partners at some stage, depending on the decision of the committee board.

After the financing facility is disbursed by the bank to the partner, the partner is then obliged to refund the financing along with the revenue share of the bank's rights based on the ratio agreed in the contract in each month, as well as the amount of the ratio has been determined permanently and known every month, thus making it easier for the bank to deduct the balance of the financing partner that has been deposited in the partner's account.

2. **Analysis**

Based on the results of the research, it is known that at the pre-agreement stage, partners who want to carry out the form of *musyarakah* financing at Bank BRI Syariah Purwokerto Branch Office, will first be checked the completeness of documents in the form of legality data from the partner. The legality data is needed to ensure the legal prowess and acting authority of the partner applying for *musyarakah* financing, as well as to analyze the partner whether or not to receive *musyarakah* financing.

At the pre-agreement stage, it is also necessary to analyze bank BRI Syariah Purwokerto Branch Office against its partners using the principle of 5C which is the standardization of the bank's introduction process to its partners, the 5C analysis is:

a) **Character**

This principle is done to assess the morale and sense of responsibility in the personal life of the partner in carrying out his business activities. This assessment is carried out in a way that includes the identity of the partner, the information of the environment around the partner, as well as the information between banks.
b) Capacity
This principle is done to assess the ability of the partner's business to carry out its obligations in time, as well as ensure the ability of the partner in carrying out the business activities.

c) Capital
This assessment is done to see partners based on financial capabilities. This assessment is done by analyzing the financial statements of recent years, salary slips, NPWP, as well as copies of savings accounts.

d) Collateral
An assessment is based on the partner to submit a guarantee in connection with the financing facility provided. At Bank BRI Syariah Purwokerto Branch Office as the party that provides financing, the bank asks for guarantees and is determined the value of 125% of the financing ceiling. Based on Article 1 number 26 of Law No. 21 of 2008 on Sharia Banking regulates that collateral is an additional guarantee, either in the form of moving or non-moving objects handed over by collateral owners to Sharia banks or sharia business units to ensure the repayment of partner obligations.

e) Condition of Economy
This assessment of banks can analyze macro-financial conditions affected by economic, social, and political conditions at certain times or periods including local government regulations.

The analysis is used so that the bank can do its activities properly, and if a bank does not carry out any of these principles, then the risk of crime against the bank will be possible. From the results of the research, it shows that Bank BRI Syariah Purwokerto Branch Office always adheres to the 5C principle, so that to the maximum can avoid risks that directly impact the banking business activities carried out.

After the analysis of 5C above, the bank to further negotiate the contents of the financing agreement musyarakah. Based on the results of the research, it is known that the negotiations conducted only about the amount of financing only, while the other provisions have been determined unilaterally by the bank, given that the provision is already raw that comes from the head office of PT. BRI Syariah, whereas based on the fatwa of DSN MUI No. 8/DSN-MUI/IV/2000 on Musyarakah, stipulates that the partner's profits must be distributed proportionately based on all profits and no amount stipulated in advance is set for a partner.
Based on the projected income that has been pegged by the bank and the amount is certainly known in each month, making the profit-share ratio similar to interest on conventional banks. Sharia determination of profit percentage from the beginning of financing is not allowed, because the division must be based on the real profit from the business run by the partner. Determining the exact amount of profit in the form of such percentages may result in the contract becoming *fasid* (damaged).

Another problem faced by the partner in running his business is the uncertainty of what happens in his business. People may plan business activities, but we cannot ascertain what we will get from the results of the business, whether profit or loss. This is in accordance with the word of Allah SWT delivered to the Prophet Muhammad in the Qur'an Surah Luqman verse 34 which means as follows:

“and no one can know for sure what he is doing tomorrow (QS. Luqman verse 34).”

The verse becomes the basis of the concept of risk in Islam, the concept of uncertainty in the Islamic economy becomes one of the important pillars in the Islamic risk management process. Naturally, in business activities no one wants the business to suffer losses. The basic concept in Sharia banking is the concept of sharing, both profit and loss sharing. This concept should be used as a guideline for Sharia banking because, in the revenue-share system, Sharia banking in taking its profits is not expected to get caught up in the interest rate pattern applied by the government. *Musyarakah* financing with the concept of profit share and loss share until now is financing that is rarely applied to Sharia banking (*Wahyudi, 2013*). This means that in this case, sharia banks should split profits and split losses proportionally based on the agreement. The Partner always does not always run his business smoothly, sometimes he may risk loss, therefore dividing the proceeds of losses fairly must also be done, given the principle of *musyarakah* using the principle of partnership that means "weight equally carried lightly equally carried."

According to Taqyuddin, the meaning of *musyarakah* as a relationship of economic aspects is shown to work in the field of trade (*muamalah*) which is managed directly with the principle of working together to seek wealth on a dependent way, but as such other transactions work together with this pattern of renteng responsibility requires the absence of *ijab* and *qabul* (*Pandoman, 2017*). The pattern of partnership in financing *musyarakah* must uphold the principle of justice and help, if one of the parties has problems in running his business, then the other party must help the party that is experiencing such difficulties. The
principle of \textit{musyarakah} always puts the position of the parties in balance before the law, in this case, the banking system that carries out its operations must apply the principle of togetherness in carrying out the risk of its partner’s business and sharing profit/loss fairly.

There is a right of coverage for the guarantee in the financing agreement of the \textit{musyarakah}. Bank BRI Syariah Purwokerto Branch Office requires partners to submit guarantees in the form of property on behalf of partners. According to the classical fiqh, there is no guarantee in the financing of \textit{musyarakah}, because in the contract of \textit{musyarakah}, the position of the parties is as a faithful partner whose position is the same, the two trust each other, and thus the agreement made together to be obeyed together.

The results of the author’s interview with the legal staff of Bank BRI Syariah Purwokerto Branch Office that in the current conditions, there is a guarantee is necessary to carry out the principle of prudence to ensure as a safeguard of funds. This is to ensure that the loan in this case the partner can return the capital that has been lent by the bank and anticipate the irregularities made by the partner.

The Bank has a responsibility or trust to manage and secure the partner’s funds from possible risks that will arise in the future, the concept of pure \textit{musyarakah} cannot be applied in Sharia banking. The application of purely in banking results in banks being targeted by people who do bad faith. Banking institutions recognize legal umbrellas in the form of laws, Bank Indonesia Regulations, Financial Services Authority Regulations, and National Sharia Council Fatwas governing how to protect funds from third parties. Banking agreements should not be without guarantees, although textually in the regulation do not mention having to use guarantees, rather banks must have confidence that partners are able to manage and return the funds used with the form of collateral.

Perspective from the concept of pure \textit{musyarakah}, it is not appropriate if applied to an institution or institution, however, in Islamic law, there are several principles that the provisions of the law developed and developed changes that are considered valid by strengthened rules in Islamic law that state that there is no denied change in the law due to changes in the place and time that have changed. The law can change, \textit{musyarakah} develops.

The application of \textit{musyarakah} based on the agreement of two parties outside the institution or institution then can be applied to the concept of pure \textit{musyarakah}, that the parties have known and know the type of business to run and know the consequences of profit and loss. The background of knowing each
other and the trust that makes the guarantee is not necessary, but when musyarakah is applied to the banking institution as a financial intermediary, then it can not be the original concept applied, because if the concept is applied, then it is possible to commit a crime in banking.

The concept of pure musyarakah if applied to banks, will cause banks to potentially be targeted for crime because the parties who do good faith will easily take the financing facilities in various modes. There are three parties to banking, namely fund owners (depositors), users, and fund managers (banks). The funds that the bank distributes to partners are funds owned by depositors. At the time of the loss, the harm is not only the bank but also the owner of the fund (depositor). The protected wealth, in this case, is the wealth of the depositors, thus there needs to be a guarantee to protect the funds from the partners because in the event of a loss it will directly impact the owner of the fund (depositor).

Based on this, the concept of musyarakah becomes developed and adapts to the current conditions. The existence of guarantees in financing products in Sharia banking is very important considering that banks are intermediation institutions that receive financial mandates from their partners, as well as guarantees, are a manifestation of the bank’s prudence in managing partner funds. Islamic law recognizes the term sharia maqashid which is the purpose of Sharia of Allah SWT for His beings to preserve religion, soul, reason, descendants, and property. The circumstances of the absence of regulations that govern specifically related to the binding of sharia guarantees, thus making an emergency reason in Islamic Law for the application of dependent rights on the financing agreement musyarakah. This is done to ensure al-Mashlahah’s position in the Sharia Maqashid (benefit in sharia purposes). Mashlahah in the Islamic economy is common welfare that can be interpreted as all things beneficial to the people for the common good and avoiding evil for people in line with the purpose of sharia in establishing the law.

The principle of Islamic Law aims to realize mashlahat. One of the mashlahat that arises as manifest towards the protection of wealth. The protected wealth, in this case, is the wealth of the depositors in Bank BRI Syariah Purwokerto Branch Office, so there is a guarantee to protect the funds from the partners because, in the event of losses, the impact is on the third party.

The next stage is the contractual stage, it can be known that the financing agreement musyarakah in the form of a notarial deed which means in the making of the contract involving the general office of the notary, but the draft agreement used is the default agreement that has been prepared by Bank BRI Syariah Purwokerto Branch Office. Based on Article 8 of POJK No. 31/POJK.05/2014 The
Implementation of Sharia Financing Business, it is regulated that sharia financing agreements must be made in writing.

The contents of the agreement in sharia financing are regulated by Article 11 of the POJK as follows:

a) The title of the sharia financing agreement describing the type of sharia financing agreement used in the
b) Sharia financing agreement number and date
c) Identity of the parties
d) The object of sharia financing agreement (capital, goods and/or services)
e) Financing objectives
f) Value of sharia financing agreement objects (capital, goods and/or services)
g) Mechanisms and means of payment and the amount of
h) The currency exchange rate used, if necessary
i) Sharia financing period
j) Ratio, margin and/or return on sharia financing
k) Object guarantee (if any)
l) Details of the costs related to sharia financing provided include:
   1) Survey costs
   2) Insurance/guarantee/fiduciary costs
   3) Provision fee
   4) Notary fees
m) Clear fiduciary charging clause, if there is a charge of fiduciary guarantee in sharia financing
n) Mechanisms in the event of disputes and the selection of dispute resolution venues
o) Provisions regarding the rights and obligations of the parties
p) Provisions regarding fines (ta’jir) and/or gati losses (ta’widh).

Based on the above POJK provisions, the *musyarakah* financing agreement applied to Bank BRI Syariah Purwokerto Branch Office must follow the provisions of the POJK, with the purpose of the contract on sharia banking done in writing and the substance can accommodate the interests of the parties through the clauses that must be in the contents of the default agreement. Based on this, researchers get a model of agreement that tends to be used in Bank BRI Purwokerto Branch Office, namely Akta *Musyarakah* Number 007. Part of the agreement model used is a representation of the agreement at Bank BRI Syariah
Implementation of Musyarakah...
Muh Rifqi Iqsobayadinur

Purwokerto Branch Office which is a standard form. Further explanation will discuss the Deed of Musyarakah No. 007, that the substitution of The Deed of Musyarakah No. 007 presented as an example is made by notarial deed, the overall substance of The Deed of Musyarakah No. 007 has been following the rules applied by POJK No. 31/POJK.5/2014 on the Implementation of Sharia Financing Business, that in the deed are listed complete clauses following the provisions of POJK. According to the author, although the deed of musyarakah is normatively appropriate based on POJK No. 31/POJK.05/2014, however, the contents of the musyarakah financing agreement can be said to be unequal, as the contents of The Deed of Musyarakah Number 007 and its attachment in its entirety contain 23 articles, which in each article more regulates the obligations of the partner and the rights of the bank, while the obligations of the bank and the rights of the partners are only contained in a few chapters, thus the agreement guarantees the strong position of Bank BRI Syariah Purwokerto Branch Office.

According to the authors, although from a positive legal perspective, the legal aspects of the financing of musyarakah stipulated in the default agreement are not in question, given that for the efficiency of time and energy in terms of the smooth operational activities of banking institutions, it is necessary to underline the form of the default agreement will tend to benefit the parties who make the default agreement and may harm the other parties involved in the agreement. Based on this, it is necessary to homogenize the standard contract in detail and clearly regarding the terms and conditions used by sharia banks and their partners. The institution authorized to conduct the homogeneity of the default contract is Bank Indonesia with the help of the National Sharia Council, thus the contract stipulated by Bank Indonesia can be helpful for parties who generally do not master sharia provisions, as well as can be used as a reference for judges in handling cases in the event of a dispute in the Religious Court.

At the next contractual stage will discuss the pillars and terms of the financing agreement musyarakah, among others is ijab and qabul (offer and acceptance), in this case indicating the agreement of the parties in the contract struck. The provisions concerning ijab and qabul must be clearly stated in the musyarakah agreement by mentioning the purpose of the agreement made by the parties. This is based on the provisions of Article 9 letter a PJOK No. 31/POJK.05/2014 which stipulates that sharia financing agreements must be implemented without the element of coercion from the parties who agree. Based on this, the agreement of the parties is contained in the premise of the deed and
the signing of the *Musyarakah* Act has normatively shown that the parties agree and are willing to carry out the financing agreement of *musyarakah*.

Furthermore, when it comes to the legal relationship struck between the parties involved in an agreement, the basis is due to the element of offer and acceptance. After the other party submits an offer and is then accepted by the other party in the agreement, then at that time there has been a "word of agreement" between the parties no matter what is agreed following conscience or not, although herein contains incriminating elements. In every aspect of human life, whoever has a stronger bargaining position, will be more able to impose his will on the other party.

The covenant of Islamic law, knowing the principle of willingness (Al-Ridha), means the agreement struck must be based on the willingness of each party and must be based on the agreement of the parties. There should be no element of coercion, pressure, and deception (Anshori, 2009). Islam wants in any way any action to be based on the freedom to act, as long as it is not contrary to sharia values. This is in line with the hadeth of Qudsi narrated by Abu Hurayrah that Rasulullah SAW said:

He said: 'I am the third of those who have been in a relationship for as long as one of them has not betrayed his friend. If one has betrayed his friend, then I leave the union." (HR. Abu Dawood).

Based on the results of the research, that the purpose of the partner to obtain additional capital of his business by applying for *musyarakah* financing to Bank BRI Syariah Purwokerto Branch Office is because of the need, with the need, then the partner needs additional capital to increase his business, therefore the partner agrees to the terms and conditions submitted by the bank, although due to the combination of the need, whereas if the partner submits financing other than to the bank, for example to the individual, it will be very unlikely that the partner will get the capital amounting to the value of the proposed financing.

In addition to the reason for the partner in applying for financing to the sharia bank, financing with sharia principles is also seen as more humane than the concept of interest used in conventional bank loans, however, the partner is required to follow the terms and conditions submitted by the bank, so that the partner has a burden, because the partner in addition to having to return the amount of financing along with the profit share of the bank, the partner is also required to carry out its obligations based on the terms of the provisions offered by the bank, such as making financial statements of business results every month, paying administrative fees, insurance, notary fees and other conditions of provision. This is burdensome for the partner because the partner has no choice
but to comply with the terms and conditions proposed by the bank. Partners can generally agree, it is rare to find a partner who disagrees with such an agreement, because the partner is faced with circumstances that will make it difficult for him, if financing is not provided, then the project will be hampered. Based on this, Bank BRI Syariah Purwokerto Branch Office still tends to practice conventional bank culture, in which the bank always positions partners as parties that need banks, so that the bank can just make its policy regardless of the principle of fairness in its implementation.

The creation of a deed of financing musyarakah with the notarial deed can cause the cost to increase because the financing facility received by the partner must be deducted for a variety of other costs the partner has been charged administrative fees, insurance costs, and notary fees, then the partner will receive a financing facility that is much-deducted costs, including the cost of making SKMHT (Power of Attorney Charging Dependent Rights) if the land guarantee object is not located from the notary authority of the bank partner.

Based on this, according to the authors, the legal position for partners with sharia banks should be done in a balanced manner, considering that partners who are always partners of sharia banks should be charged against the costs arising from such legal events, while the fatwa DSN MUI No. 08/DSN-MUI/IV/2000 on Musyarakah is explained that operational costs should be charged to the common capital. The concept of musyarakah implemented by Bank BRI Syariah Purwokerto Branch Office is to position the parties as a balanced, fair, and trusting partner. The principle of musyarakah upholds fairness and equality. That is, placing the position of partner with the bank in a balanced manner, both in terms of the proportional distribution of business proceeds, as well as charging costs arising from the operation of the business conducted in a balanced (fair) manner.

According to Agus Pandoman, the concept of thinking about sharia financing is to help people or entrepreneurs who need capital, reflecting that the existence of the norm applied in financing is more containing the policy of what choice the partner wants and what is best for the partner (Pandoman, 2017). The costs incurred in the implementation of the musyarakah contract should not only be charged to the partner but can be carried by each party by dividing the operating expenses fairly so that the sharia principles that are carried out can be reflected optimally. This is a fatwa order DSN MUI Number 08/DSN-MUI/IV/2000 on Musyarakah which regulates that operational costs should be charged on the joint capital.
The next finding that the authors got from the study at Bank BRI Syariah Purwokerto Branch Office is related to the witnesses used in the musyarakah agreement, that the testimony in the *musyarakah* financing agreement presented as an example listed in the Deed of *Musyarakah* No. 007 has used the testimony of two women. Regarding the procedure for the appointment of witnesses, in the Law of the Notary Department (hereby called UUJN) is expressly unregulated regarding the mechanism of determination of witnesses in the notarial deed, Article 40 UUJN only determines in the reading and signing of the deed, the notary must be attended by at least 2 (two) witnesses, without mentioning the gender. As a solution to avoid problems related to the mechanism of determination of the witnesses, then on the initiative of the notary itself, the witnesses are determined by the notary by appointing their officers to act as witnesses in the making of the deed.

According to Islamic law, the terms of the witness are regulated, including regarding the number of witnesses and their gender in the agreement implemented not in cash, as in Surah Al-Baqarah verse 282:

"And bear witness with two witnesses of the men among you. If there are not two men, then a man with two women from the witnesses you are pleased with, that if one forgets, then another remembers him."

According to the above verse, if the witness uses two male witnesses, then his testimony is acceptable, but if his testimony with a man and a woman, then the testimony of a woman can only be accepted if with only two women, or the testimony of the woman half the testimony of the man so that the testimony of the woman in Islamic law is invalid and causes null and void because it does not meet the terms of the witness based on the Qur’an.

Based on this, Bank BRI Syariah Purwokerto Branch Office has not fully implemented the principle of *musyarakah* well, so the bank only applies to labels only in various financing products. One of them is Allah SWT's command on testimony, namely in Surah Al-Baqarah verse 282 which is one of the valid conditions of the treaty in Islam nor is it necessarily applied in Sharia banking because the position of the witnesses is not based on sharia, even though the order of the law does not govern the gender of a witness, which is notable the rule of man-made law, so that the law that should adhere to the highest law is based on the law of Allah SWT, but the law of Allah SWT is ruled out for the use of man-made laws. It can be concluded that at this time humans are more afraid of man-made laws than the laws of Allah SWT.
Conclusion

Implementation of *musyarakah* financing agreement in Sharia banking, divided into several stages, namely pre-contract or stage, contractual stage, and post-contractual stage. At the pre-contractual stage starting with the partner will be given the direction of financing model by the marketing institution following its business. If the financing model has been approved, the partner is required to submit documents relating to the terms of the *musyarakah* financing provisions. The document will be examined by marketing institutions and support agencies, then made a Letter of Financing Application by the marketing institution, and reviewed by the committee and will be issued a Letter of Approval of Financing Principles signed by the Head of Branch of Bank BRI Syariah Purwokerto Branch Office and partners. At the contractual stage, the *musyarakah* financing agreement is made in the form of a notarial deed, in which the bank gives an order letter to the partner notary appointed to make the deed of *musyarakah*. In the post-contractual stage, the realization of the contract through the disbursement of financing by the bank to the partner. The disbursement can be done simultaneously or gradually.

Based on the results of the analysis concluded that the implementation of *musyarakah* financing agreement at Bank BRI Syariah Purwokerto Branch Office, normatively following the elements of the fulfillment of a contract, especially the use of standard contracts have been following the provisions of POJK No. 31/POJK.5/2014 on the implementation of Sharia Financing Business, but in substance there are several irregularities, including the position of the parties is not balanced, the distribution of ratios is determined unilaterally and permanently during the financing period, the calculation of ratios is determined at the beginning of the contract, and the use of witnesses in the contract is not following sharia principles.

Suggestions

a. There needs to be a revamp of the financing contract system especially regarding the share of the results and the position of the balanced parties, to use the principle of partnership that is upheld by sharia banks.

b. It is recommended that sharia banks do not impose burdens on partners, such as the burden of paying administrative fees, insurance, and notary fees should be borne jointly. It is considered unfair to partners, therefore it is necessary to reconsider the principle of help-help.
c. There is expected to be uniformity regarding standard agreements for sharia banking. This is important because the standard agreement will tend to weaken the partner's side, especially if in the default agreement there is an unbalanced clause, as well as with the standard agreement stipulated specifically by the government, then it is expected to accommodate the interests of the parties.

d. It is expected that the use of witnesses in the agreement should be adapted to the order of the Qur'an.

References


