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Shariah Compliance Review: Case Study on Saving Contract and Funding Contract on Financing Shariah Cooperative Al-Mubarak

Ali Farhan

Abstrak

Penelitian ini ditujukan untuk mengurai dan memberikan penilaian mengenai kepatuhan syariah pada KSPS Al Mubarak. Riset ini menggunakan pendekatan studi kasus dengan alat analisis teori fiqh muammalah. Hasil analisa dan evaluasi menunjukkan bahwa akad tabungan dan akad pembiayaan yang dilakukakan pada KSPS Al-Mubarak tidak memenuhi azas syar'i dalam transaksi bisnisnya, adapun beberapa aspek yang tidak memenuhi dan tidak sesuai dengan syariat diantaranya; tidak melakukan kontrak secara tertulis atas akad tabungan, menggabungkan akad bisnis dan akad social, dan menggunakan harta titipan tanpa persetujuan pemilik harta

Keyword; Kepatuhan Syariah, Keuangan Islam, Fiqh Muammalah

Abstract

This study aims to explain and assess sharia compliance in KSPS Al Mubarak. The research method used is a case study with muammalah fiqh theory analysis tools. Based on the results of the analysis, it shows that the savings contracts and financing agreements made at KSPS Al-Mubarak do not fulfill the syar'I principles in their business transactions, some things that are not syar'I include; not enter into a written contract on a savings contract, combine business contracts and social contracts, and use entrusted assets without the consent of the owner of the assets

Keyword; Sharia Compliance, Islamic Finance, Fiqh Muammalah

1. Background

Apart from banking institutions, Non-Bank Financial Institutions (NBFI) have an important role in the financial system (Akber et al., 2021). Non-Bank Financial Institutions fill the void in the range of financial services to communities that cannot be reached/managed by the banking industry. Like banking financial institutions in Indonesia, non-bank financial institutions also run their business with two business models, namely sharia-based NBFIs and conventional Non-Bank Financial Institutions (Latifah & Nugroho, 2020). According to Nelly and Smoemitra (2022), Islamic Non-Bank Financial Institutions have several advantages compared to banks, Islamic Non-Bank Financial Institutions process customer credit requests quickly and more flexibly. In addition, some customers cannot have access to bank finance because they do not meet certain predetermined requirements, in sharia NBFIs customers get many conveniences.

Islamic Non-Bank Financial Institutions play an important role in Indonesia by providing additional financial services that are not always provided by banks. Islamic NBFIs, with a wider range of products and services provided, have taken their place in the competitive financial market to meet customers' needs for financial services.

Sharia Cooperatives and BMT (Baitul Mal wa Tamwil) are a form of Non-Bank Financial Institutions. As an embodiment of an economic 'aqidah' that has experienced significant growth, OJK noted that during the period December 2019 to October 2020, the

assets of Islamic Commercial Banks and Islamic Business Units experienced a growth of 4.7% (Zainur, 2020). Islamic Non-Bank Financial Institutions are present and become one of the strengthening factors of the Islamic financial industry in Indonesia. In general, there is no visible difference in contrast between sharia and conventional NBFIs or Cooperatives. The obvious difference arose from the special characteristics of sharia NBFIs, namely operating according to Islamic sharia principles. So that the types of products, services, transactions carried out are in accordance with the sharia compliance. In addition, sharia cooperatives are also subdivided into various types according to the business they are running and compliance with the permits granted. There are various issues that are of great concern to researchers related to sharia NBFIs. Such as research conducted by (Susianti, 2017) which examines the problem of optimizing the principles of sharia NBFIs. The results of his research show that the implementation of transactions carried out by sharia NBFIs is contrary to sharia principles, such as, the implementation of transactions still does not fulfill the principle of prudence and still carries out speculation and manipulation which contains gharar, usury, maisir. In line with Susianti (2017), Purnomosari (2016) and Hidayat (2016) found something similar, that there are still issues regarding compliance with sharia, in non-bank sharia financial institutions, in this case, BMTs and Sharia Cooperatives. Issues related to sharia compliance in sharia NBFIs are still an interesting study for researchers. Because of this, further research in this article will discuss compliance with sharia, especially in savings contracts (fundraising) and financing contracts (distribution of funds).

2. Literature Review

Islamic Financial Institutions

Based on the instruction letter of finance ministry, mentioned SK Menkeu RI No. 792/90, Financial institutions were described as an entity which activities are in the financial sector, these activities are belonging on collecting and distributing funds to the public, especially to finance company investments, their activities also referred as an institution that facilitates the exchange of services and goods using money or credit and helps channel the savings of everyone who financially surplus to the people who need funding for investment (hakim, 2016). While an Islamic Financial Institution is a Islamic principles financial institution. In its operations, as mentioned by Soemitro (2009) those Islamic financial institution had to avoid elements of gharar, usury, maisir and false contracts. The main goals of organized an Islamic financial institution is to carry on Allah's commands in the economic and muamalah fields and also liberating moeslems from activities that are prohibited by Islam. To carry out this noble task as well as to solve problems that ruined Muslims and every person who are falling down by manipulated business, unfair financial distribution and usury practice, is not only the duty of a person or an institution, but is the duty and obligation of every Muslim (Rival, 2010). Several types of models of Islamic Financial Institutions are;

1. Islamic Banks
2. Sharia Cooperative
3. Baitul Mal wa Tamwil
4. Sharia Insurance
5. Sharia mutual funds

6. Sharia Peer to Peer Financing

7. Sharia Leasing

Sharia Transaction Contracts

The operational practice of these Islamic financial institutions are applying the contract principles in fiqh muamalat, which in essence is to avoid elements of maisir, usury, gharar, and false contracts. The contract principles that are usually applied according to Antonio (2007) are:

1. Musyarakah

Musyarakah is a cooperation contract between two or more parties for a particular business, by implementing musyarakah, each party that being involved, should contribute funds or assets to the business with the condition that profits are shared based on an agreement while risks are based on the portion of the contribution of funds.

2. Mudharabah

Mudharabah is a business cooperation agreement between two parties with two different roles, the first party (fund owner) provides all the funds for the business, called as *Shahibul Mal*, while the second party (fund manager) acts as manager, called as *mudharib*, and business profits are shared between them according to the agreement. Financial losses are only borne by the fund manager. Contract principle many mudharabah in Islamic banking.

3. Ijara

Is an agreement for transferring the right to use (benefit) of an item or service within a certain time with the payment of fee (ujrah), without being followed by a transfer of ownership of the item. Most of *ijarah* activity in Islamic banking were delivered as a service to the customers, such as carried out by leasing deposits (safe deposit boxes) and document administration management services (custodian), in this case the bank gets a rental fee from these services. Leasing (Leasing) implements this *ijarah* contract.

4. Wadiah

The application of the wadiah principle that is carried out is wadiah yad dhamanah which is applied to checking account product partners. In contrast to wadiah amanah, where the party being entrusted (the bank) is responsible for the integrity of the deposited property so that he may utilize the deposited property, *wadiah yad dhamanah* giving the permit to utilize the deposit, while the risk was fully taken by the trusted party (the bank). Wadiah contracts are widely applied in Islamic banking as the deposit contract.

5. Rahn

Rahn described as the delivery of goods carried out by the muqtaridh (indebted person) as collateral for the debt he receives. Thus the debtor gets a guarantee to take back all or part of his receivables if the borrower is unable to pay his debts. This contract principle is applied in Sharia Pawnshops.

6. Hiwalah

Is a contract of transferring debt obligations from the first party to the second party who has debts to the first party. This contract forms the basis of the Sharia Factoring Institution,

7. Wakalah

Wakalah was the contract of assigning the attorney power from a muwakkil (who represents) to the recipient of power (representative) on behalf of the muwakkil (authorizer). Most of the time, this contract being used for representing the financial institution to do the business with the third party, since of the bank doesn't have any permission to do a business exclude collecting and distributing funds. This contract principle is almost used or required in the operations of all types of Islamic financial institutions.

8. The caravan

Kafalah is a guarantee service, namely the ability to fulfill rights that have become obligations of others. Or the ability to bring goods that are guaranteed or to present people who have obligations to other people. The principle of this contract is primarily the basis for the operations of Islamic insurance institutions

9. Bai'.

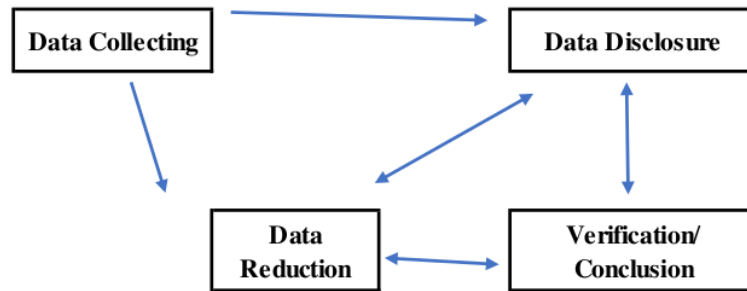
It is a sale and purchase agreement, namely the exchange of property for other assets in ways determined by syara'. The bai' contract can be used as a means to own goods or the benefits of an item forever. The bai' contract has several forms including:

- a. Murabahah, namely the contract of sale and purchase of goods by stating the price and profit agreed between the seller and the buyer.
- b. Salam, namely the sale of an item using the word salam or salaf, mentioning its characteristics as a condition for buying and selling, while the goods are still at the responsibility of the seller. On Salam contract, goods that been transactioned was not ready yet, it was ordered before by buyers, how many price, how much the quantity is, and so on. Mostly it was practiced on agricultural business.
- c. Istisna', namely a sale and purchase contract with the provision that the seller was assigned to make an item by the customer, by tied up on Istisna' contract, the product was 'financed' by the seller, either cost of raw materials or manufacturing capital.

3. Research methods

Qualitative methods was the research approach that been conducted on this research. This type of Qualitative method is a case study. There are two sources of data, namely primary data and secondary data. Primary data will be collected through observation and interviews with respondents using modules and a list of questions that have been prepared. While secondary data will be collected from documentation and other supporting data from agencies (institutions) related to the problem to be studied. Data analysis in this study refers to the model of Miles and Huberman (1992) using the Muammalah Fiqh approach as an analytical tool to examine adherence to sharia practices. The Miles and Huberman analysis model is as follows;

The researcher must be prepared to move between 4 main processes:



1. Data Collection

In the data collection process, data analysis can also be carried out at the same time. The data is everything that is seen, heard and observed. The data obtained is not final data which can be directly analyzed to draw a final conclusion.

2. Data reduction

This stage takes place continuously as the implementation of the research takes place. Intended to further sharpen, classify, direct, remove data that is not needed and organize it.

3. Data Presentation

Data presentation is a set of structured information that serves the possibility of evolving conclusions and taking action. By paying serious attention to the data's presentation, it is easier for researchers to understand what happened and what should be going to do. The form of data presented can be in the form of charts, brief descriptions, graphs, charts or tables.

4. Drawing Conclusions/Verification

Based on the data that has been reduced and presented, the researcher clarify conclusions that are supported by strong evidence at the data collection stage. The conclusion is the answer to the formulation's problems and questions that have been mentioned by the researcher from the start.

4. Discussion

A Brief Overview of the Al Mubarak Sharia Cooperative

The savings and loan and sharia financing cooperative which was established in November 2011 and has a legal entity number: 1141/BH/XVI.24/PAD/518/IV/2016 has developed, and until 2020 has a total of 10,350 customers (Kartika and Oktafia, 2021). KSPPS Al-Mubarak has two main activities, namely fundraising and distribution of funds. For fundraising, Sharia Cooperatives use wadiah contracts and mudharabah contracts with products called Education Savings and Community Savings. If it's education savings, then the withdrawal of funds may only be done once every semester, but if it's the people's savings then it can be taken at any time. During the interview process, the main resource person for the researcher here was Ms. Lila, Operational Manager of the Al Mubarak Savings and Loans Cooperative, she has completed her education in Islamic Law.

"Yes, we have education savings products, people savings, indeed we make sales so there are wadiah, education and community savings products. So if we have Education savings, oh yes, we take them every semester, if people's savings can be taken at any time. If the means are the same, only the terms of sales products."

In wadiah contracts, saving customers are not entitled to profit sharing while saving customers using mudharabah contracts are entitled to profit sharing, as stated by Ms. Lila

"If wadiah does not get profit sharing, only mudharabah."

The percentage of operating profit sharing (nisbah) from operating profit is 95:5, meaning that 95% of the profits are for the cooperative, while 5% of the business profits are distributed to customers.

"...Depending on office profits, every month is not absolute, so indeed the program for the distribution of cooperative profit sharing is 95% of the cooperative's rights, for customers 5% if distributed can go up and down depending on company profits and every month it is distributed at closing of the book."

The profit sharing is distributed every month automatically from the system for mudharabah customers. This profit sharing is different from SHU, SHU (Residual Results of Operations) is distributed annually to all members of the cooperative, while Mudharabah Profit Sharing is not distributed to all members. As for the handover contract of savings funds in the form of a wadiah or mudharabah contract, it is not accompanied by a written contract/written agreement,

"...Only if the contract is from the customer we leave the money with us, so it's up to us to manage where and to whom and we ourselves have managed and earned profits, those profits are what we distribute to customers."

".....I'm just saying that we received a deposit of funds which later we will give the funds from the profit sharing we get, the results can be seen in the savings transaction."

In addition to fundraising products, sharia cooperatives also have products for distributing funds (financing), the Al-Mubarak Sharia Savings and Loans Cooperative uses a murabaha contract in carrying out its distribution/financing practices.

"..Yes, there is an agreement if it's a murabaha contract."

"In practice, we should have an officer to buy the needs of the customer, so we are at the same time entrusting those needs to the customer himself."

"..so we wakalakan in this contract, this is a murabaah contract for the needs we immediately wakalakan it to the customer."

So the procedure carried out is as follows;

1. The customer comes to apply for credit
2. The cooperative conducts an assessment of customer submission data
3. If it is agreed to do a Murabaha Contract accompanied by Wakalah, with an agreed margin of 20%

4. Funds are handed over to the customer to be used as agreed.

Sharia Review

In carrying out its business, the Al-Mubarak Sharia Savings and Loans Cooperative has made several deficiencies in conducting contracts with customers, some of which are;

1. Handover of Funds and Wadiah Contracts

When handing over savings funds (wadiah/mudharaba) from customers, the Al-Mubarak Sharia Savings and Loans Cooperative does not enter into a clear contract, as mentioned in the review above, this is certainly not in accordance with Allah's commandments. in the Al-Quran letter Al-Baqarah: 22, which means;

“O you who believe! If you pay debts for a specified time, you should write it down. And let a writer among you write it correctly. Let not the scribe refuse to write it down as Allah has taught him, so let him write down.”

Furthermore, the handover contract does not mentioned whether what is handed over in the wadi'ah contract is distributable or not by the Al-Mubarak Sharia Savings and Loans Cooperative, even though in the wadi'ah contract the item entrusted cannot be handed over to another person/used by Wadi'i (entrusted persons) without the permission of the owner of the goods (Arifin, 1999).

Wadi'ah etymologically is a representative in the maintenance of assets and things that are stored in other people's places that do not belong to them so that they are maintained (Hikmah, et al 2020). Furthermore, in Hikmah et al (2020), it is also stated that in the Wadi'ah Yad Dhamanah contract it is permissible to use entrusted goods, as long as the loss/damage of the goods is fully the responsibility of the recipient of the goods. However, in practice the Al-Mubarak KSPS does not mention/contract on this matter, besides, due to the absence of a contract (contract) in the handover of the money, the Al-Mubarak Sharia Savings and Loans Cooperative becomes unclear as to its legal status when wadi'ah funds used in the business process, according to Saepudin (2022), in the Syafiiyah school of law, taking advantage of goods deposited is illegal, while for Hanifiyah and Malikiyah scholars it is permissible as long as this has been agreed upon from the start in the contract. The distribution of financing by the Al-Mubarak Syariah Savings and Loans Cooperative is clearly an activity that has added value (potential to earn profits), but when the activity occurs outside the boundaries of sharia, such as not being recorded, not conveyed to the owner of the goods, then the action is an act of wrong in the context of Islamic financial institutions.

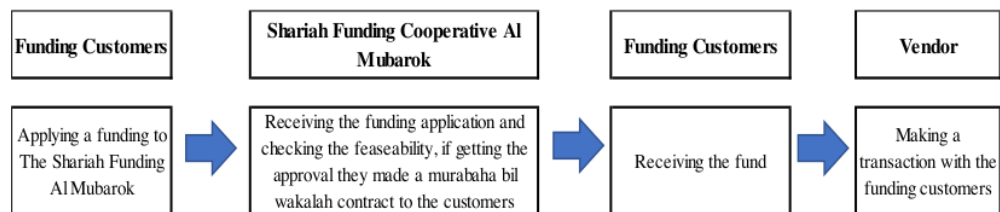
A different opinion regarding the use of funds in a wadi'ah contract was conveyed by Aisyah (2016), that in a wadi'ah contract there is the authority to utilize goods, own the results and bear damage or loss is the main difference between wadi'ah and dain (debts). Thus, if these three characters have been embedded in a wadi'ah contract, then in fact and legally this contract turns into a debt and credit contract and not a wadi'ah. with all its consequences, various laws. accounts payable apply to wadi'ah practices implemented by sharia banking. Receivables (al-qardhu) is a contract in the form of giving assets to people who will use them and then he is obliged to return the compensation. The savings or wadi'ah contract is to hand over assets to the person who guards them/keeps them (read Mughni al-Muhtaj, 3/79, Kifayah al-Akhyar by Taqiuddin al-Hishny, 2/11 and asy-Syarhu al-Mumti', 10 /285).

2. Murabaha and Wakalah agreements

The Al-Mubarak Sharia Savings and Loan Cooperative uses a murabaha contract when conducting financing (distribution of funds), meaning that the contract mechanism that should occur in a murabaha is; 1. Vendors own goods to their customers, 2. Contracts between sellers and buyers (sighat, in the view of Malikiyah scholars, contracts in buying and selling may not be mixed with other contracts that are salaf (social) in nature (Harahap, 2016)), 3. Sellers receive money and hand over to the buyer.

In Islamic Financial Institutions, the murabaha contract mechanism is as follows; the buyer (customer) asks the financial institution to buy goods, then the financial institution buys goods from the seller in cash, then the financial institution resells the goods to the buyer at a higher price, either in cash, in installments, or over time (Antonio, 2007). Meanwhile, in the Al-Mubarak Sharia Savings and Loans Cooperative, the mechanism is as follows;

Figure 1. Chart of Al Mubarak KSPS Credit Application Process



Resource: data processing by author

There is no procurement process At KSPS Al Mubarak by buying goods to vendors, purchases of goods to vendors are represented by the financing customer conducted to a *wakalah* contract, therefore a findings in this case, that there is no handover of goods from the vendor to KSPS, what happens is a mere handover of money. Basically buying and selling is an act of transferring property rights so that if KSPS Al Mubarak doen not have goods to be sold to customers, there will be no transfer of ownership rights so that they cannot be classified in a murabahah financing contract because a murabahah financing contract is a contract based on the principle of buying and selling and there is an element of transferring ownership of goods in it. In terms of the terms of the object in the murabaha financing contract as explained in fiqh and the concept of murabaha in Islamic banking which is spelled out in the Fatwa of the National Sharia Council Number 04/DSN-MUI/IV/2000 concerning Murabahah, it can be concluded that the terms of the contract object or goods are as quoted from Yunita (2018), among others, as follows:

1. The object exists at the time of the contract (Ba'i must already own the object to be sold).
2. The goods are legally owned by Ba'i.
3. Goods can be specified.
4. Goods must be tangible and transferable.
5. Does not conflict with the provisions of sharia principles.

In the fiqh etymology, Ownership of goods has consequences for the risk of damage which is insulated by the goods's owner, the phenomena that been discovered by the research, when a

murabaha contract is made first between the customer and KSPS Al Mubarak before the wakalah, the risk of the goods becomes the responsibility of the customer, even though Rasulullah salallahu alaihi wassalam said ,

"Gain is a reward for loss." (Narrated by Abu Daud)

Thus what actually happens is the handover of money, cause the transaction is a money handover, so it's not differ as well to Qardh (debt) transaction and if the transaction generates profits for the creditor, then this arise a usury, as the words of the Prophet Muhammad Peace Be Upon Him

"Any debts in which there is profit, then it is considered illegitimate." This hadith was narrated by Al-Harith Ibn Abi Usamah.

In addition, the sale and purchase contract process carried out from KSPS Al-Mubarak to the financing customer is without the availability of goods, in the sense that KSPS Al-Mubarak does not make a purchase contract in advance with the vendor, the absence of ownership of goods through a purchase agreement with the vendor is a form of violation of sharia. As conveyed by Rasulullah salallahu wa alaihi wassalam

"There is no sale and purchase with orders, nor profit for something that cannot be guaranteed, nor is there sale and purchase of goods that are not yet on your side."
HR Ibn Majah

"Whoever buys food, then don't sell it again so he accepts it." Narrated by Umar Radiyallahu anhu.

"According to Jabir bin Abdillah ra, if you buy something, don't sell it before you receive it perfectly." (HR. Ahmad and Muslim; Al-Muntaqa)

Furthermore, the KSPS Al-Mubarak procedure for combining a murabaha contract together with a wakalah contract should receive more attention, because the merging of two contracts with different natures is an act that is prohibited in Islam.

Malikiyah scholars forbid multiple contracts between contracts that have different legal provisions and/or have conflicting or contradictory legal consequences (Harahap, 2016). This prohibition is based on the Prophet's prohibition on combining salaf contracts and buying and selling. These two contracts contain different laws. Buying and selling is a muamalah activity that is thick with nuances and efforts to calculate profit and loss, while salaf is a social activity that emphasizes aspects of brotherhood and affection as well as noble goals. Because of this, Malikiyah scholars prohibit multiple contracts from contracts with different legal terms, such as buying and selling with ju'alah, sharf, musaqah, syirkah, qirâdh, or marriage.

3. Mudharabah, Profit Sharing and Profit Remaining

Furthermore, regarding profit sharing for business contract, it was conveyed by KSPS AL-Mubarak that profit sharing is carried out on mudharabah savings products, but as stated above KSPS Al-Mubarak also does not tied up the transaction with a mudharabah contract, thus making this transaction along with profit sharing null and void. Since the money being saved or deposited in the KSPS Al-Mubarak account was being owed to deposit customers, when the money is distributed.

Suggestions for KSPS Al-Mubarak

1. To ensure the status of customer deposit funds, KSPS Al-Mubarak must ensure that the contracts used, write them down and make the contracts clear, so that all forms of distribution of financing are legally clear and can prevent KSPS Al-Mubarak from gharar, unjust and usury transactions.

a. If the form of savings is not intended for profit sharing, then the contract made can use Wadi'ah, which is accompanied by permission to use and utilize it.

b. If the form of savings is intended for profit sharing, then the contract made can use Mudharabah mutlaqah, which does not require certain businesses to be financed.

2. For a murabaha financing contract, it is better for KSPS Al-Mubarak to make a sale and purchase in advance with the intended vendor, so that the ownership of the goods becomes clear and the sale and purchase scheme actually takes place. If KSPS Al-Mubarak represents buying and selling transactions while the buying and selling itself has not occurred between KSPS Al-Mubarak and vendors, then this creates only ordinary qardh transactions, and taking profits on qardh is usury. Meanwhile, if you want a wakalah contract, there should be no sale and purchase beforehand between the Financing Customer and KSPS Al-Mubarak, so that the ownership of the goods in the sale and purchase transaction with the vendor already becomes the ownership right of KSPS Al-Mubarak first, then it can be resold to the customer.

5. Conclusion

Based on the above review, it can be understood that there are contracts made by KSPS Al-Mubarak that are not in accordance with sharia, some of which are;

1. A deposits contract, that has not ben written

2. Using the deposit funds that have not received permission from the customer

3. Murabaha financing contract that are not accompanied by a purchase transaction contract for goods to vendors, it leads to qardh (conventional debt) caused by distribution money without any goods or services transaction, if these transaction generating profits, the profit was a usury

4. Combining the tabarru (social contract) contract and the tijari (business) contract.

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