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# The concept of contract in financial technology era connected with sharia principles

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## Abstract

The purpose of this research is to describe the sharia principles as the basis of sharia banking in Indonesia. The approach was qualitative with the nature of normative juridical research. As a result, the economic relationship based on Islamic sharia consists of five concepts of contract, namely Al Wadiah (deposit), Syirkah (profit sharing), At Tijarah (selling and buying), Al Ijarah (rent), and Al-Ajr wal umummah (service or fee). In conclusion, Sharia Principles as the foundation of Islamic banking law in Indonesia refers to the general principles of Islamic law, the principles of sharia law, and general principles of Islamic Economics.

**Keywords:** Contract, Financial, Technology, Islamic, Banking.

# El concepto de contrato en la era de la tecnología financiera relacionado con los principios de la sharia

## Resumen

El propósito de esta investigación es describir los principios de la sharia como la base de la banca de la sharia en Indonesia. El enfoque fue cualitativo con la naturaleza de la investigación jurídica normativa. Como resultado, la relación económica basada en la sharia islámica consta de cinco conceptos de contrato, a saber, Al Wadiah (depósito), Syirkah (participación en los beneficios), At Tijarah (venta y compra), Al Ijarah (alquiler) y Al-Ajr wal umummah (servicio o tarifa). En conclusión, los Principios de la Sharia como base del derecho bancario islámico en Indonesia se refieren a los principios generales del derecho islámico, los principios del derecho islámico y los principios generales de la economía islámica.

**Palabras clave:** Contrato, Financiera, Tecnología, Islámica, Banca.

## 1. INTRODUCTION

Bank is one of the financial intermediary institutions that have a traditional function to collect funds from people who have a surplus of funds and distribute to people who have lack of funds (IMANIYATI, 2013). The aspects of Islamic Economic Law, which are developing rapidly, are Islamic banking and finance that are not only developed in Indonesia but are also growing around the world. The International Monetary Fund says that Islamic banking is one of the fastest-growing segments in financial industry that has 10-15% growth over the last

decade and globally. Islamic banking assets are estimated to grow around 15% annually from \$1 trillion in 2016 (ABDUH, 2011).

The Southeast Asia region is one of the most developed regions of the world's Islamic banking and finance industry. Indonesia and Malaysia are two countries that drive the development of Islamic banking and finance industry in the Southeast Asia Region (RAMA, 2015). In Indonesia, until August 2017, there were 13 Islamic Commercial Banks, 21 Islamic Business Units and 167 Islamic Rural Banks. Islamic banking services amounted to 2618 office networks that are ready to serve Indonesian society spread over 33 provinces, including conventional bank branch offices that provide sharia services. Islamic banking services are also connected to ATM Bersama and ATM Prima and mobile banking facilities, 2017.

Nowadays, technology has changed people's lives and disrupted the establishment of various industry sectors, including the financial and banking industry. Companies that do not have the capability to develop technology will not be able to compete. The rapid increase in technology generates a new business model of digital technology-based financial services.

The activities of the global community economy cannot be separated from the use of financial technology (Fintech). The ease and comfort offered by Fintech in every economic transaction encourage people's interest to use it. According to RORO (2017), the advantages of Fintech applications are management transparency, user experience, time efficiency, and lower cost. In Indonesia, the rapid development of Fintech can be seen by the growth of Start-Up companies or

businesses, which in a relatively short time have a high turnover or income. Fintech has also been included in all forms of economic activities or transactions, such as selling and buying, investment, insurance, and others. Business initiatives in the field of Fintech have changed the way people pay, send money, get loans, and invest.

Fintech that has been included in the conventional financial system slowly enters the Islamic financial system. Sharia-based Fintech in recent years has grown rapidly. Beehive in Dubai declares itself as the world's first Islamic Fintech with sharia certificate (IMANIYATI & NURHASANAH, 2017). This condition raises several problems, including regulatory issues related to sharia banking industry that can effectively follow the times but still in accordance with sharia principles. The purpose of this research is to portray sharia principle as the fundamental of Islamic banking in Indonesia. Describe regulations related to financial technology and sharia financial technology in Indonesia, and formulate the concept of contract in the implementation of sharia Fintech in accordance with sharia principles in Banking Law in Indonesia.

## **2. METHODOLOGY**

This research is a descriptive analysis, which is analyzing and interpreting sharia principles as a fundamental of Islamic banking law in Indonesia, regulations related to existing financial technology, and the concept of akad that can be used in the implementation of sharia

Fintech (IMANIYATI & ADAM, 2017). The approach was qualitative with the nature of normative juridical research. The type of data was secondary data. Data collection methods were literature study and documentation. Data analysis techniques used qualitative analysis through interpretation and legal analogy (HUSAENI, 2018).

### **3. RESULTS**

Financial technology, which has been included in the conventional financial system, is slowly entering the Islamic financial system. Basically, the Islamic system is the same as conventional financing systems, which are available to anyone who needs financial assistance, to support various consumption needs for personal or business capital. Even so, both Islamic and conventional financial financing both have differences that can be used as comparison materials, and considerations to make choices according to their respective convenience. If you need additional funds as a loan to meet consumption needs, there is nothing wrong with comparing the two financial financing systems. This is the difference between Islamic and conventional Fintech:

In conventional financing, loans given to consumers are made as loan contracts so that the customer will have an obligation to repay the loan along with the interest determined by the borrower, depending on the size of the loan taken. This will be a little different in Islamic finance financing, where interest is something that is not allowed

because in interest there is an element of usury. In Islamic finance, there will be no credit given by the contract as a loan but with murabahah, ijarah wa iqtina, and musyarakah mutanaqishah contracts.

Each of these contracts must have different arrangement procedures. Murabahah contract can be interpreted as a contract of sale and purchase or Fintech will act as a buyer of objects or products desired by customers. Then the borrower will sell the product to the customer with a certain margin. This margin will be a profit and not as interest as in conventional financial financing (DEVI & RUSYDIANA, 2016; USAK, KUBIATKO, SHABBIR, DUDNIK, JERMSITTIPARSERT, & RAJABION, 2019).

While the ijarah wa iqtina contract is a leasing contract. This means that Fintech acts to buy objects that customers want, then Fintech rents these items to customers within a certain period of time. Later customers can buy these items so that they change ownership. While musyarakah mutanaqishah, both Fintech and customers put together capital for something that customers can later buy a part of Fintech to own the object fully. By looking at several contracts in Islamic financing, do not use loan agreements and there is no interest (ANTONIO, 2011; ASAD, SHABBIR, SALMAN, HAIDER, & AHMAD, 2018).

Banking in Indonesia in the early independence days until the deregulation of banking in 1988 was a bank that established its management on the interest system. Along with the many demands of society who want a financial institution that is free of interest (riba), it takes a series of juridical and institutional efforts to meet social needs.

Thus, the establishment of sharia banking institutions reflects the desire of Muslims to perform financial aspects of life in accordance with Islamic teachings (ANWAR, 2007; MAHMOOD, ARSHAD, AHMED, AKHTAR, & KHAN, 2018).

Sharia provisions that become the fundamental reference are in sharia principles in which principle is the beginning, place of departure; starting point or al-mabda. According to FIRMANSYAH & RAMDANI (2018), the principle means an inherent universal truth in Islamic law and becomes the starting point of its coaching; principle forms Islamic law and every branch. The principle of Islamic law includes general and specific principles. The general principle is the universal principle of Islamic law, while the specific principle is the principles of every branch of Islamic law.

Therefore, in sharia banking products, fundamental references refer to general and specific principles of Islamic law (in this case general and specific principles of muamalah (all regulations governing the relationship between fellow humans, both religious and non-religious, between humans and their lives, and between humans and the surrounding environment)), general principles of Islamic economics and the principles of Islamic engagement. The relationship between the principles of Islamic law and the principles of association that form the fundamental of Islamic banking products in sharia economic law can be seen in the following figure:

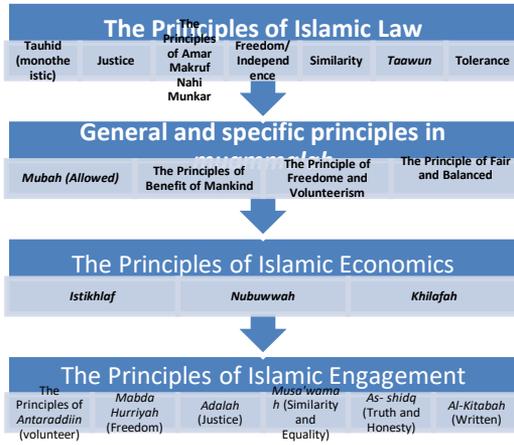


Figure 1: Principles of the agreement as the fundamental of sharia bank products

It will further elaborate on the principles of engagement in Islam, namely:

1. The principle of Antaraddiin
2. The principle of Mabda Hurriyyah at Ta'aqud is freedom in performing or creating a contract or agreement, as long as it does not justify the haram and forbid the lawful. The parties are free to determine the object of agreement, are free to determine who will make the agreement, and how to determine the settlement of dispute if it happens later.
3. The principle of 'Adalah; in the law of Islamic engagement, each party must obtain profit or loss proportionally in accordance with iwadh or achievement it did.
4. The principle of Musa'wamah: This principle implies that the parties have the same position, hence in determining the terms

and conditions of a contract or an agreement, each party has equality or balanced position. It is prohibited to determine contract contents done by the one-sided party or based on the willingness of strong party position.

Substantially, the material objects that are bound in the law of Islamic engagement have a far broader effect than the western civil liability. Based on the regulatory aspect, the law of Islamic engagement does not only regulate the relationship of engagement between human beings or an individual with other individuals but also manages individual relations, human being with God. This is why the principle of *hablunminnallah* and *hablunminnannas* become the principle of balancing in the law of Islamic engagement (DARSONO, 2017 & MAHMOOD, ARSHAD, AHMED, AKHTAR, KHAN, 2018).

One of the differences between sharia and conventional financial institutions is that in sharia financial institutions there must be a clear Underlying Transaction, hence money should not bring profit by itself without any basis of transactions. Selling and buying contract will cause margin, rent will cause fee and capital participation will get a profit share. In other words, the difference between sharia and conventional financial institutions lies in contracts or transactions.

The term *akad* in Islamic law, especially in Indonesian law, is called contract or agreement. The word *akad* is derived from the word *al aqd* which means binding, link or connecting. The contract is a meeting of *ijab* and *kabul* as a will statement of two or more parties to generate a legal effect on the object and produce three things. First, the

contract is the linkage between *ijab* and *kabul* resulting in the appearance of law. *Ijab* is an offer submitted by one party and *kabul* is the agreement given by the contract partner in response to a given offer. A contract will not occur if the statement of each party is not related to each other. Second, the contract is a two-party legal act because the contract is a meeting of *ijab* that represents the will of one party and *kabul* is a statement of the other's will. Third, the purpose of the contract is to produce a legal effect. More firmly, it is a shared purpose and intended to be realized by the parties through the contract creation.

In connection with the contract, Article 21 of the Compilation of Islamic Economic Law regulates the principles of the contract, namely:

1. Principle of *ikhtiyari*; every contract is performed on the will of the parties and avoided the compulsion of the pressure of one party or other parties;
2. Principle of trust; every contract must be executed by the parties in accordance with the agreement set by the concerned subjects and at the same time avoided the promise of injury;
3. Principle of *ikhtiyati*; every contract is performed with careful consideration and carried out in a careful and accurate way;
4. Principle of *luzum*; every contract is conducted with clear objectives and careful calculations to avoid the practice of speculation or *maysir*;

5. Principle mutually beneficial, every contract is made to fulfill the interests of the parties, hence it can prevent the practice of manipulation and harm one party;

In Banking Institution, the above principles are implicated into Sharia Principles as stated in Article 1 Section 12 of Law Number 21 the Year 2008 concerning Sharia Banking, namely: The principle of Islamic Law in banking activities based on fatwas issued by institutions having authority in determination of fatwa in sharia banking.

According to the explanation of Article 2 of the Sharia Banking Law, Sharia Principles in the business of a bank, i.e. business activities that do not contain elements:

1. Riba (usury) is the additional unauthorized income (vanity), among others, in the exchange of similar goods transactions that are not equal to the quality, quantity, and time of delivery (fadhl), or in lending and borrowing transactions that require the recipient of the facility to refund the received funds beyond the principal loans due to the passage of time (nasi'ah);

2. Maysir is a transaction that hangs on an uncertain and speculative circumstance;

3. Gharar is a transaction whose object is unclear, not owned, not known to exist, or cannot be delivered at the time of transaction unless otherwise stipulated in sharia;

Sharia principle is included in the Islamic Banking Law; hence it has become positive laws. Article 24 section (1) sub-section a, Article 24 section (2) sub-section an and Article 25 sub-section an of

the Law expressly stipulates that sharia banks are prohibited from conducting business activities that are contrary to sharia principles. Thus, sharia contracts made between Islamic banks (BUS, UUS, and BPRS) and the customers must not contain terms and conditions contrary to sharia principle.

In line with the principle of agreement law regulated in the Civil Code, an agreement must not be contrary to law. If the contents of an agreement contradict to law, the agreement is invalid by law. If an agreement or provision contradicts to law, the agreement is considered never existed (DJAMIL, 2012).

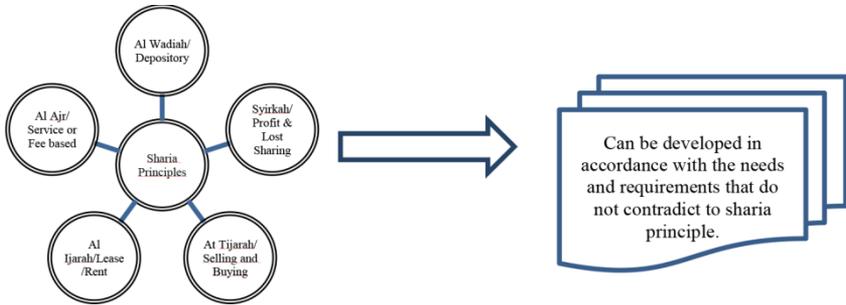


Figure 2: The concept of contract in Islamic banks

Sharia principle is a fundamental legal relationship between sharia banks and customers. One of discussion (international ijma) results of Muslim economists and fiqh experts and Academic Fiqh in Mecca in 1973 is that the economic relationship based on Islamic sharia in the Islamic economic system can be applied in the operational financial institutions of banks and non-bank financial institutions. Broadly speaking, the economic relationship based on Islamic sharia

consists of five concepts of contract, namely Al Wadiah (deposit), Syirkah (profit sharing), At Tijarah (selling and buying), Al Ijarah (rent), and Al-Ajr wal umummah (service or fee). They can develop products of sharia financial institutions in accordance with society needs and development. They can be applied in accordance with the principal business activities of the bank as a financial intermediary institution, namely in funding, lending and services.

#### **4. CONCLUSION**

The Sharia Principles in Islamic Banking Laws in Indonesia refer to the general and specific principles of Islamic law in the muamalah, the principles of Islamic engagement law and general principles of Islamic Economics. Sharia Principles are regulated in Article 1 number (12) of Law No. 21 the year 2008 on Islamic Banking. This principle serves as a guideline in the business activities of Islamic banks, namely the prohibition of activities or contracts that contain elements of usury, maisir, ghoror, haram and zalim. Contracts on Islamic banking products are classified into five concepts of contracts, namely Al Wadiah (deposit), Syirkah (profit sharing), At Tijarah (selling and buying), Al Ijarah (rent), and Al-Ajr wal umummah (services or fee).

To support the development of Fintech, OJK has issued OJK Regulation No77 / POJK.01/2016 on Information Technology Borrowing Services (LPMUBTI). OJK regulation that regulates

conventional Fintech does not include sharia. Thus, for sharia Fintech, there is no regulation either in the form of Fatwa DSN-MUI and OJK regulation. The concept of the contract has been used in the current sharia fintech, namely hawalah and kafalah. Other concepts of contracts that may be used in sharia fintech are Al Wadiah (deposit), Syirkah (profit sharing), At Tijarah (sale and purchase), and or other contracts as long as it is not contrary to Sharia Principle, ie there is no element of usury, maysir, gharar, haram, and zalim. The suggestion from the researcher is as below:

1. Islamic banks are expected to have a commitment to implement sharia compliance as an effort to anticipate reputational risk, namely the loss of public confidence in Islamic banks.

2. The Islamic Bank is expected to innovate the product to compensate for the growth of Fintech, sharia Fintech, while maintaining the sharia principles as stipulated in the petrics-invitation law.

3. DSN-MUI is expected to immediately issue a Fatwa related to sharia Fintech, hence sharia Fintech products have a legal basis. Based on Fatwa DSN-MUI is expected OJK immediately made OJK Rules.

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