

The Insurance Concept on Collateral Object of Sharia Banking Financing

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Abstract- This theme is important to introduce the new concept of sharia insurance which is special use a collateral of sharia banking financing as its object. The methods used to write this article is critical content analysis that base on general concept of sharia insurance derived from fatwa of DSN-MUI and the regulations concerned in Indonesia. From the results of the analysis the authors concluded that there are at least three basic contracts used in the insurance concept on collateral object of banking financing, namely contract of grant (hibah), contract of representative service (wakâlah bil 'ujrah), and debt contract (qardh) which all underlie the relationship between fellow participants or between participants and insurance companies. Through the implementation of the sharia contracts, we hope that this insurance concept will become more Islamic.

Keywords— Insurance, concept, collateral, sharia, banking, financing

I. INTRODUCTION

In providing financing, sharia banks often obliging to customer (nasabah) to insure the asset which is used as collateral. The purpose insuring of the collateral object is to get a replacement from insurance company if there is damaged or lost of it. The collateral object insured by customers can be used by assets directly related to financing or other assets not related to financing. Obligation to insure the collateral object for customer usually as part of bank requirements to approve financing which is proposed. Although determining the requirements for submitting financing is the right of the sharia banking, in principle, its implementation is not burdensome for customers thus they are violating the principle of justice in an agreement.

The obligation to maintain an asset is inherent in its owner. Therefore, if the maintenance effort is carried out by way of insurance, then the obligations arising from the insurance agreement are inherent to the owner. Financing customers of banking if they want to ensure their assets are obliged to pay premiums to insurance companies which have collaborated with the bank. Payment of insurance premium is usually accompanied by payment of bank administration fees before the customer get financing. From the premium payment, the customer has the right to receive a compensation from the object insured. This compensation means that the bank providing the financing can avoid the risk of default.

Sharia financing is financing by banks to customers whose fund distribution is bound by agreements based on sharia principles. If the financing agreement to the customer uses sharia contracts, then the insurance of collateral object attached to the financing agreement must also be based on sharia contracts. Even though the National Sharia Board - Indonesian Ulema Council (DSN-MUI) has made dictums (fatwa) on insurance, but they have not specifically stated about insurance for collateral objects of sharia financing. Neither in the laws or regulations, although there are many regulations governing sharia insurance, but there are no regulations that specifically contain insurance collateral object basing sharia. Therefore, through this article, the author try offers a concept that can be used as a guideline by insurance companies collaborated with banks for insuring collateral object of financing.

II. DISCUSSION

A. General Concept of Sharia Insurance [1]

The term sharia insurance (ta'mîn) originates from الأمن meaning inner peace or the loss of fear [2]. Besides that, ta'mîn derives from al-amânah which is the antonym of treacherous. Ta'mîn agreement is a mutual agreement where the insured (al-muammin) binds to the insurer (al-muamman lahu), who gives insurance guarantee for welfare by financial reimbursement as agreed [3]. According to the DSN-MUI, sharia insurance (ta'mîn, takaful, tadhmun) is an attempt of mutual protection and help between a number people/ parties through investment of assets and/or tabarru' which provides a pattern of repayment to deal with particular risk through contact in accordance with sharia [4].

Indonesian Law Number 40 Year 2014 has stated that sharia Insurance (ta'mîn) is a collection contract which consists of an agreement between the Islamic insurance company and the policyholder and the agreement between the policyholder in order to manage the contribution based on Islamic principles in order to help and protect each other by means of: (a) Reimburse the participant or policyholder for loss, damage, costs incurred, lost profits, or legal liability to third parties that may be suffered by participants or policyholders because of the occurrence of an uncertain event; or (b) Provide payment based on the participant's death or payment based on the life of

participants with a predetermined amount of benefits and/ or based on the results of fund management [5].

Based on the definition as stated above, it can be seen that the objective of ta'mîn is to protect and help each other among insurance participants. The attempt of mutual protection and help through ta'mîn is in accordance with Allah word t'âwanû 'alâ birri wa al-taqwâ, wa lâ t'âwanû alâ al-itsmi wa al-'udwân (QS. Al-Maidah[5]: 2). The quoted verse is Allah order to His servants to help each other when practicing goodness and to forbid helping each other in badness and prohibition. According to Ibnu Jarîr, the meaning of al-itsm is to leave what has been ordered to leave by Allah, while al-'udwân is coming out from Allah provision in religious matters [6]. Thus, to discover whether ta'mîn is a form of mutual help in goodness or badness, validity agreements in insurance concept need to be analyzed further.

Today, ta'mîn does not formed as an individual relationship, but through a great partnership shares (syirkâh musâhamah) for mutual trade among participants to collect large sums of insurance premiums. Collected premiums are a collective right to compensate the unfortunate events occurred among the participants, while the left overs are for investment. If it profits then the results are collected as part of the premium or used for risk compensation [7]. Insurance partnership is run by commercial companies that offer insurance services for a participant who want to get a warranty by sharing of risk from other participants.

In fatwa Number 21/DSN-MUI/X/2001 regarding General Guidelines for Sharia Insurance/ Ta'mîn, it is stated that the underlying contract done by the participants and the company consists of tijârah and/ or tabarru' contract. Tijârah contract is all forms of agreement for commercial purposes. While, tabarru' contract is all forms of agreement for virtue purposes. Tijârah contract in ta'mîn use mudhârabah for equity sharing and tabarru' contract use hibah for charity, both of which are implemented simultaneously when the participants pay their premium. Every participant who pays the premium means automatically has invested through mudhârabah and done the charity through hibah. The participant who pay the premium has a right to claim sharing risk from other participants which must be given by the insurance company as stated in the agreement [4].

In mudhârabah contract, the company acts as the manager (mudhârib) and the participants act as the policyholder (shâhibul mâl). If there are profits of management, they will be shared between company and participants based on the percentage ratio agreed. Profit sharing can be done periodically according to the agreed time and the use of amount capital that is growing along with the premium payment. If there is loss in managing the mudhârabah fund, in fact there is no exact provision in dictum of NSB [4]. But as we know that if there is loss in the investment contract definitely will be shared in accordance portion of capital. In the original concept of mudhârabah, financial capital is only charged to investors while the capital of fund manager is only work competency. But the fact that a basic concept of both

parties leability was not reaffirmed on fatwa in order to avoid negative perceptions of the participants to insurance company.

Investment contract in insurance product (al-ta'mîn) is an interesting concept because it provides guaranty of risks idemnity and to empower the financial of participants. It means that through insurance there is value added of finance that can be expected by the participants who have paid premiums regularly. This motivation can reduce the reluctance of people become participants of insurance product that is considered identical to betting property for guaranting unwanted risks. But this concept has a weakness when it requires updating the data related to the addition amount of capital while premium is paid.

In fatwa had been stated that commercial agreement (tijârah) can be changed into nonprofit agreement (tabarru') if the participant give his financial right to be charity which is managed by insurance company. Tabarru' agreement in insurance is all forms of agreement made among participants as the policy holders. In tabarru' contract, the participants are the parties entitled to receive charity fund individually (mu'amman/ mutabarrah' lahu) from insurers collectively (mu'ammin/ mutabarri') [8]. The participants give charity based on grant contract (hibah) which will be used to help the other participants affected by calamity. In this case, the company acts as manager of charity fund representing the whole participants [8]. Hibah contract is an agreement which must adhere in all insurance products, because without it the sharing of risks in insurance products would not be implemented.

In managing charity funds (tabarru' fund), a contract used by the participants and the insurance company is wakâlah bil 'ujrah. In this case, the company acts as the representative (wakil), while the participants act as the party who represent (muwakkil). Wakâlah bil 'ujrah is the delegation of authority from the participants to the insurance company to manage the charity funds begin to collection, cultivation, until its distribution for sharing of risk if one participant unfortunate. By their work, insurance company will get financial compensation (ujrah) from participants which its amount is determined by based on the appropriateness principle. If the company results in profits, they have to put in tabarru' account belonging to the participants collectively. But, if there is loss without negligence, the company as the representative is not obliged to replace fund by reducing of its compensation because wakâlah is a trustful contract (yad amanah) [8].

When the insurance company managing the tabarru' funds, there are two possibilities, namely a surplus or deficit underwriting. Surplus underwriting take place when the tabarru' funds allocated for the replacement of the risks exceed then the reality risks occurred during the period of one year. According fatwa, if there is a surplus underwriting of charity (tabarru') funds, there are several alternatives as follows: (1) Treated entirely as a reserve fund in tabarru' account; (2) Saved partly as a reserve fund and the rest is distributed to the participants who qualify actuarial/ risk

management; and (3) Saved partly as a reserve fund and the rest is distributed to both insurance companies and all participants based on agreement [8]. According author, provision point (1) and (2) are not only legitimate but also possible to be implemented, whereas point (3) is illegitimate because it fund is for social interest, so each parties is prohibited to convert as a profit interests. Furthermore that concept also difficult to be implemented because of many participants who need to be confirmed their approval concerned its distribution.

Defisit underwriting take place when the tabarru' funds allocated for the replacement of the risks insufficient to cover the reality risks occurred during the period of one year. If defisit occurred, insurance company is required bails deficiency through lending (qardh) temporarily which its repayment will be taken from the reserve of tabarru' fund. As a representative of all participants, the insurance company should mandate when managing all the funds entrusted to him. To ensure public trust, the Insurance law has required not only their internal oversight through the commissioner and sharia supervisory board, but also external oversight through The Financial Services Authority's (Otoritas Jasa Keuangan/ OJK) formed by government.

Besides as manager (mudhârib) to manage mudhârabah funds and as representative (wâkil) to manage charity funds (hibah), the insurance company can also act as the investor by putting his fund for joint investment with the participants collectively. Company fund means a fund derived from shareholders and/ or corporate property which is used to conduct the activities of insurance business, including by investing its own funds. According DSN-MUI, the contracts used to legitimize the insurance company role as investor is mudhârabah musytarakah, namely combination both contract of equity sharing (mudhârabah) and contract of partnership (musyarakah). It contract can be applied into product of sharia insurance both related to investment and charity fund [9]. The purpose permissibility of it concept is to optimize benefits for insurance company, beside get from equity sharing and compensation of management services. The following are the basic concept of investment in the sharia insurance and some related contracts.

The main characteristics of insurance based investments is not only serving indemnity but including distribution of profit sharing in certain periods between insurance company and participants. In same time, insurance companies has some activities in managing investment funds, namely as fund manager for all participants who invest their fund; as fund manager for all participants who own charity fund; and they as an investors who participate in a collective investment with both of participants fund. Multiply roles of course have caused the revenue which is obtained by insurance companies also variety either from profit sharing or compensation of service management. Because there is diversification of business activities so led to this concept is readily accepted for insurance practitioners.

As a fund manager, insurance company must choose where investments can be profitable so it can be shared with the participants as investors and as owners of charity fund. If the investment gets profit, so it shall be shared to the owners of the fund in accordance with the portion of capital (A%), (B%) and (C%). Specifically to the portion of profits sharing from the investment of participants (A%) x (P) should be distributed to all individual participant in accordance with the amount of premiums allocated for investment, charity fund of participants (B%) x (P), and investment fund of insurance company (C%) x (P). This distribution requires careful calculation because there is increasing gradually of investment funds from all participants. The following table is a basic concept correlation between the capital portion of each parties with the level of profit sharing in a collective investment on sharia insurance.

B. The Insurance Concept of Collateral Object In Syariah Banking Financing

Basically the decision to insure or not insure an asset depends on the owner. However, if the asset is used by owner as a collateral object of bank financing, it is possible that the bank asks customers to insure that assets to reduce the possibility of risk. The existence of a requirement to insure the collateral object certainly add to the burden for customers because they have to allocate some money to pay premiums to insurance companies either periodically or in cash. Likewise the opposite, insurance companies that have received premiums are obliged to pay the claims if there is a risk to the collateral object. Therefore, in order to realize problems and avoid the harm of both parties, the construction of contract under insurance agreement needs to be formulated appropriately.

In Islamic law many contracts can be applied to carry out transactions. However, related to insurance agreement on collateral object of bank financing, the most appropriate contracts to use are as follows:

a. Agreement between individual participants and participants collectively use non commercial contract ('aqd al-tabarru') namely contract of grant (hibah). On this legal relationship, the position of individual participants are grants (wâhib) and participants collectively are grant recipients (mauhub lah). Tabarru' funds that are owned by participants

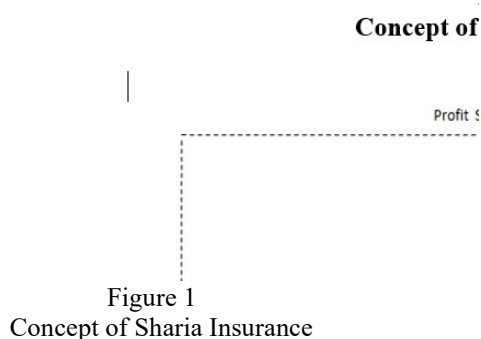


Figure 1
 Concept of Sharia Insurance

collectively will be used to help individual participants who experience disaster. The help from participants collectively given to individual participants affected by disaster is the implementation of the principle of sharing of risks in sharia insurance.

b. An agreement between an insurance participant as a bank financing customer and an insurance company is use a contract of wakâlah bil 'ujrah. In this case, the position of insurance participant is representative party (muwakkil) while the insurance company is as a representative (wakil) in managing the tabarru' funds of participant collectively. For their management services, insurance companies are entitled to receive the appropriate wages ('ujrah).

c. Debt agreements (qardh) between insurance companies and participants collectively as owners of tabarru' funds. In this case, the insurance company is the lender (muqridh), while the participant collectively is the borrower (muqtaridh). A dept agreement is needed if there is an underwriting deficit caused by the tabarru' funds (hibah) being smaller than the claims submitted.

(*muqtaridh*). A dept agreement is n
 by the *tabarru'* funds (*hibah*) being

Insurance of Fina

Figure 2.
 Insurance of Financing Collateral Object

IV. CONCLUSION

Sharia financing of banking must be supported by insurance system basing sharia as well. In providing financing, sharia banks often obliging to customer (nasabah) to insure the aset which is used as collateral object. The purpose that is to minimize the risks that occur on customer assets. The insurance concept of collateral object in syariah banking financing need underlying contract (akad) which is different with concept of sharia insurance in general. There are at least three basic contracts used in the insurance agreement relating to the collateral object, namely contract of grant (hibah), contract of representative service (wakâlah bil 'ujrah), and debt contract (qardh), which all will be underlying the relationship among fellow participants or between participants and insurance companies.

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