JURIDICAL ANALYSIS OF FINANCING CONTRACTS POST CONVERSION OF BANK NTB INTO BANK NTB SHARIAH

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Abstract

Islamic banking shows great potential, this is indicated by the large number of conventional banks converting to sharia-based banks. The conversion of conventional commercial banks to Islamic commercial banks has its own terms and procedures because it has quite basic differences, especially in the characteristics between interest calculation and profit sharing. Likewise, regarding the legal consequences that arise after conventional commercial banks are converted into Islamic commercial banks, of course, they also have their own characteristics. This research aims to find out how legal certainty over the Post-Conversion Financing Contract of NTB Bank into Bank NTB Shariah. This type of research is normative juridical research. This research uses a statute approach. Sources of Legal Materials used are primary, secondary, and tertiary legal materials. The collection of legal materials is carried out by methods of documentation studies and literature studies. The material is analyzed descriptively. The agreement in the financing contract at Islamic banking system is identical to the agreement in the credit contract at conventional banks, because the agreement's concept still refers to the Civil Code's Book III on General Engagements. According to Article 1233 of the Civil Code, an engagement occurs as a result of an agreement or by legislation. However, it should be noted that while financing Islamic banks, they must adhere to the Islamic economic rules that govern all banking activities.

Keywords: Financing Contract, Conventional Bank, Shariah Bank, Bank Conversion

1. INTRODUCTION

Law No. 10 of 1998 on banking regulates in detail the legal framework, as well as the sorts of operations that Islamic banks may operate and implement. The law directs conventional banks to convert to the sharia system by opening sharia branches and fully converting them. The conventional banking community immediately embraced this chance (Ali, 2008).

A considerable number of conventional banks have converted to sharia-based banks as a sign that Islamic banking has great potential. Islamic and conventional financial institutions are both responsible for collecting funds from the public and distributing them to the community. Conventional institutions often refer to this as finance or credit.

One of the banks that was converted from a conventional commercial bank to a sharia bank is the Bank Pembangunan Daerah Nusa Tenggara Barat. Bank Pembangunan Daerah Nusa Tenggara Barat (Bank NTB Shariah) is a bank owned by the Provincial Government of West Nusa Tenggara together with the City/Regency Governments throughout West Nusa Tenggara. In accordance with the decision of the General Meeting of Shareholders on June 13, 2016 which approved PT Bank NTB Shariah to carry out the conversion of Bank NTB Shariah, it gave new hope for strengthening a just people's economy in West Nusa Tenggara. In accordance with the decision, the Bank's conversion process must be carried out through a comprehensive study and in accordance with applicable regulations. Bank NTB officially operated as a Sharia Commercial Bank on September 24, 2018.

The process of converting conventional banks to Islamic banks is technically not found in Law Number 10 of 1998 concerning Banking. Provisions regarding technical conversion are found in Bank Indonesia Regulation Number 8/3/PBI/2006 which essentially states that a bank can only change its business activities into a bank that carries out business activities based on Sharia principles with the permission of the Governor of Bank Indonesia (Saliman, 2011).

The existence of the process of acquisition and conversion of the bank in general must pay attention to and heed Law No. 40 of 2007 concerning Limited Liability Companies (*PT*) and their implementation regulations, as well as special provisions in the laws and regulations in the banking sector.

Because of the fundamental differences between interest calculation and profit sharing, the conversion of conventional commercial banks to Islamic commercial banks has its own rules and procedures. Consequently, the legal ramifications that arise when conventional commercial banks are converted to Islamic commercial banks have their own set of features. Furthermore, it concerns the two commercial banks' positions in Indonesia's banking system, as well as Bank Indonesia's policies in developing banking activities, particularly their contribution to the conversion process, because conversion of conventional banks to Islamic banks can currently be used as an alternative choice for banks seeking to transition from conventional to sharia operational systems (Rahmawati & Putriana, 2020).

The main activity of banking institutions, both conventional and Islamic bank is to collect funds and distribute the funds in the form of credit or financing to the public (Indonesian Bankers Association, 2014). The term credit is used in the conventional banking system based on interest (interest based), while in Islamic banking law it is better known as financing based on the desired real profit (margin) or profit sharing (Ghofur, 2007).

The concept of Islamic banking is based on the principle of interest prohibition (interest-free) and the concept of profit sharing as a substitute. According to Islamic philosophers, the foundation of interest is forbidden since it might lead to inequity in the community's economic environment. Islamic banking, on the other hand, is founded on the principles of collaboration based on equality, justice, honesty (transparency), and halal profit. In addition, macro's objective is to carry out the *tarbiyah* (community financial administration) process, as well as to promote healthy competition, revive zakat institutions, and develop *ukhuwah* (networking) with other Islamic financial institutions both at domestically and abroad (Sari, 2015).

In addition, financing in Islamic banking is not absolutely the same as debt/credit. In conventional banking, the absolute provision of funds is debt/credit. Meanwhile, in Islamic banking, the provision of funds is not absolute debt/credit, but it must first be seen in the form of contracts in Islamic banking itself. In sharia banking, there is no known credit agreement, but it is known as financing as referred to in Article 1 Number 25 of Law Number 21 of 2008 concerning Sharia Banking (hereinafter referred to as UUPS) and collateral can be provided for such financing. In the provisions of Article 1 Number 25 of the UUPS it is stated that: "Collateral is an additional guarantee, both in the form of movable and immovable objects submitted by the owner of the collateral to the Sharia Bank and/or UUS, in order to guarantee the settlement of the obligations of the Customer Recipient of the Facility."

There are no interest rates in Islamic banking, but rather a profit-sharing structure. According to the majority of Islamic academics, interest is forbidden in Islam, and this is a fundamental part of Islamic banking's foundational legislation, which prohibits the use of the term "interest."

Contract (*Akad*) becomes something important in every transaction, including contracts/transactions in sharia business. In order for a contract to have legal force, the sharia financing contract is expected to pay attention to the pillars and conditions for the validity of the contract as determined by Islamic law. The clauses contained in each sharia contract article can be seen if the legal construction is in accordance with or not in accordance with sharia contract law.

The contracts that are most often encountered in practice in Islamic banking include *musyarakah*, *mudharabah* and *murabahah* contracts (Mujahidin, 2016). The contracts offered by Islamic banking are not the same as debt/credit. *Musyarakah* is a cooperation agreement between two or more parties for a particular business in which each party provides a portion of the funds provided that the profits will be divided according to the agreement, while the losses are borne in accordance with the respective portion of the funds (Elucidation of Article 19 paragraph (1) letter c of the Sharia Banking Law). Meanwhile, *Mudharabah* is a business cooperation contract between the first party (malik, *shahibul mal*, or sharia bank) who provides all the capital and the second party (*'amil*, *mudharib*, or customer) who acts as the fund manager by dividing the business profits in accordance with the agreement stated in the contract, while the loss is fully borne by the Islamic bank unless the second party commits an intentional mistake, is negligent or violates the agreement (Mardani, 2014).

Based on this background, this research was conducted with the aim of finding out how the legal certainty of the Post-Conversion Financing Agreement of Bank NTB to Bank NTB Shariah.

2. THEORITICAL FRAMEWORK

2.1. Islamic Banking Concept

According to Law no. 21 of 2008 concerning Islamic Banking, Sharia Banks are banks that carry out business activities based on sharia principles, or Islamic legal principles regulated in the fatwa of the Indonesian Ulema Council such as the principles of justice and balance (*'adl wa tawazun*), benefit (*maslahah*), universalism (*alamiyah*), and does not contain *gharar, maysir*, usury, injustice and unlawful objects. In addition, the Sharia Banking Law also mandates Islamic banks to carry out social functions by carrying out functions such as baitul mal institutions, namely receiving funds from zakat, infaq, alms, grants, or other social funds and distribute it to the waqf manager (*nazhir*) according to the will of the waqf giver (*wakif*) (Andrianto & Firmansyah, 2019).

Islamic banks have an operational system that is different from conventional banks. Islamic banks provide interest-free services to their customers. In the operational system of Islamic banks, interest withdrawals are prohibited in all forms of transactions. Islamic banks do not recognize the interest system, whether it is interest earned from customers who borrow money or interest paid to depositors of funds in Islamic banks (Andrianto & Firmansyah, 2019). The interest system applied to banks is considered to contain usury (*riba*).

Islamic banking aims to support the implementation of national development in order to improve justice, togetherness, and equitable distribution of people's welfare. Islamic banks have three main functions, namely the function of Islamic banks to collect funds from the public in the form of deposits and investments, the function of Islamic banks to channel funds to people who need funds from banks, and also the function of Islamic banks to provide services in the form of Islamic banking services (Andrianto & Firmansyah, 2019).

In carrying out its operational activities, Islamic banking has basic principles that must be adhered to. This is because Islamic banking in carrying out its sharia activities must be carried out by several elements that are bound by basic principles. These elements include elements of conformity with Islamic sharia and elements of legality of operations as a financial institution. These principles have become a strong foundation for Islamic banking managers. The basic principles in Islamic banking are the prohibition of transactions containing goods or services that are prohibited and the prohibition of transactions that are forbidden by the system and procedures for obtaining profits (Andrianto & Firmansyah, 2019).

2.2. Contract (*Akad*) Theory

The term contract in Indonesian law is called "*akad*" in Islamic law. The word contract comes from *al-"aqdu*, which means binding, connecting or connecting. As according to the etymology of *Wahbah al-Zuhaili*, the contract means "a bond between two things, both real and meaningful, from one side or two sides" (Anwar, 2010). Meanwhile, as a term of Islamic law, the definition given for the contract is the meeting of consent and *qabul* as a statement of the will of two or more parties to give birth to a legal consequence on the object.

In Islamic banks, financing contracts consist of *murabahah* contracts, *mudharabah* contracts, *musyarakah* contracts, *salam* contracts, *istishna* contracts, *ijarah* contracts and *qardh* contracts (Andrianto & Firmansyah, 2019).

1) *Murabahah* contract

Murabahah financing is financing in the form of a sale and purchase transaction of goods at the cost of the goods plus a profit margin as agreed by the parties (seller and buyer). The profit margin is expressed in the form of nominal rupiah or a percentage of the purchase price. Financing under a *murabahah* agreement includes home ownership financing, motor vehicle financing, working capital financing, investment financing and multipurpose financing.

2) *Mudharabah contract*

Mudharabah contract is an investment-based transaction contract or investment in one particular business activity. The bank and the customer agree to cooperate in a business/project where the bank provides funds/capital, while the customer provides the expertise/skills to work on the project. If in *murabahah* financing the bank acts as a seller, in a *mudharabah* contract the bank acts as an investor or owner of funds (*shahibul maal*). The customer who receives the financing acts as the fund manager (*mudharib*). *Mudharabah* contract financing is financing in the form of investment transactions from banks to customers as fund managers to carry out a business activity with the distribution of operating results determined based on a predetermined ratio or profit sharing. The business activity in question must be a sharia-compliant business activity. Examples of *mudharabah* financing include: working capital financing, investment financing.

3) *Musharaka contract*

Musharaka financing is almost the same as *mudharabah* financing, namely profit-sharing based financing. In *musyarakah* financing, the bank and the customer cooperate in a business/project where the bank provides capital/funds, while the customer provides the expertise/skills and capital to work on the project. So customers are not only managers, but also investors. The definition of a *musyarakah* financing contract is an investment transaction from a bank to a customer as a fund manager to carry out an activity/project with the distribution of operating results determined based on a pre-agreed ratio or profit sharing portion. Examples of financing with a *musharaka* contract include: working capital financing, investment financing and syndicated financing.

4) *Salam contract*

Salam contract is a transactional contract based on buying and selling similar to *murabaha*h financing. The difference lies in the delivery of goods that are the object of the transaction. If in *murabahah* the goods are delivered at the beginning, in the case of financing the goods which are the object of the transaction are later. *Salam* contract financing is the financing of buying and selling goods in the form of ordering goods/commodities with payment and delivery according to the agreement, namely payment at the beginning and delivery some in later. *Salam* contract financing occurs mostly in agricultural/agricultural commodities. Examples of *salam* financing include financing for working capital for agriculture/plantation/livestock, financing for capital goods investment, financing for consumer goods industries, and others.

5) *Istishna contract*

The *Istishna* contract is almost the same as the *salam* contract, namely a sale and purchase transaction whose payment is made at the beginning, and the delivery of the goods that are the object of the transaction is left behind. The difference lies only in the object of the goods being transacted. If in a *salam* contract the object of financing is generally in the form of commodity goods/products. earth, in an *istishna* contract generally in the form of manufactured goods or physical goods with certain specifications. So, financing with an *Istishna* contract is bank financing with a sale and purchase transaction contract of goods in the form of an order for the manufacture of goods with certain agreed criteria and conditions with payment in advance and delivery behind.

6) *Ijarah contract*

Ijarah contract is a transaction agreement for the use of usufructuary rights without any transfer of ownership. *Ijarah* contract financing is bank financing to customers for leasing transactions of goods or services to obtain compensation for the leased object used by the customer. Examples of financing with an *ijarah* contract: working capital financing, multipurpose financing of goods benefits, multi-service financing, such as education costs, health costs, tourism and others; sharia financing card, personal financing.

7) *Qardh contract*

Qardh transactions are borrowing and borrowing funds. There are similarities between this contract transaction and conventional bank financing, namely that there is a transaction of a person/party borrowing from another person/party. The difference lies in the absence of compensation in the form of additional / interest charged on the principal of the loan.

2.3. Financing

Financing in sharia banking or in technical terms productive assets, according to Bank Indonesia regulations, is investment in Islamic Bank funds both in rupiah and foreign currencies in the form of financing, receivables, *qards*, sharia securities, placements, equity participation, temporary equity participation, commitments and contingencies in administrative accounts and Bank Indonesia *wadiah* certificates (Muhammad, 2014).

According to Law no. 7 of 1992 concerning banking as amended into Law no. 10 of 1998 concerning Banking in Article 1 Numbers 12 and 13, which reads:

> "Financing based on sharia principles is the provision of money or equivalent claims based on an agreement or agreement between the bank and another party that requires the party being financed to return the money or claim after a certain period of time with compensation or profit sharing. sharia principles are the rules of agreements based on Islamic law between banks and other parties for depositing funds and or financing business activities, or other activities stated in sharia, including financing based on the principle of profit sharing (*mudharabah*), financing based on the principle of equity participation (*musyarakah*), the principle of buying and selling goods by obtaining profit (*murabahah*) or financing of capital goods based on the principle of pure lease without choice (*ijarah*), or with the option of transferring ownership of goods rented from the bank by another party."

2.4. Conversion of Conventional Banks to Islamic Banks

Conversion is the change of a business entity from one system to another. The conversion of a conventional bank to an Islamic bank is a form of conversion. In POJK No. 16/2016, conventional banks are allowed to change their business activities to become Islamic banks, but Islamic banks are prohibited from converting to conventional banks.

Changes from conventional banks to Islamic banks in practice can be done in several ways, including the following:

1) Takeover (Acquisition)

Acquisition is a legal institution which in the context of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) is known as takeover, which is a legal act carried out by a legal entity or individual to take over the shares of the company which results in the transfer of control over the company.

2) Conversion Change

Conversion is a change from one system to another, the conversion of a conventional bank to a sharia bank by conversion results in a complete change. Therefore, all assets in Conventional Banks are converted into Islamic Bank assets (Rasyid, 2017). According to the Financial Services Authority Regulation article 4 paragraph 1 number 36/POJK.03/2016, changes in the business activities of a Conventional Bank to a Sharia Bank can only be carried out with a permit from the Financial Services Authority.

3) Sharia Business Unit

The definition of a Sharia Business Unit is contained in Article 1 number 10 of the Sharia Banking Law, namely a work unit from the head office of a conventional commercial bank that functions as the main office of an office or unit that carries out business activities based on sharia principles, or a work unit at a branch office of a bank that domiciled abroad that carries out conventional business activities that function as the main office of the sharia sub-branch office and/or sharia unit.

4) Spin-off

The spin-off is a new institution regulated in Law Number 40 of 2007 concerning Limited Liability Companies (Limited Company Law) and Sharia Banking Law. In the Limited Liability Company Law, separation is defined as a legal act carried out by a company to separate its business which results in the legal transfer of all assets and liabilities of the company to one or more companies or part of the company's assets and liabilities are transferred by law to one or more companies (Article 1 number 12 of Law Number 40 of 2007 concerning Limited Liability Companies). In the context of a bank, this spin-off institution is defined as the separation of business from one bank into two or more business entities, in accordance with the provisions of the legislation (Article 1 number 32 of Law Number 21 of 2008 concerning Islamic Banking).

3. METHOD

This type of research is normative juridical research or known as doctrinal legal research, namely research based on existing legal rules. This research uses a statutory approach. The statutory approach is carried out by reviewing and analyzing all laws and regulations related to the legal issue being investigated.

The types and sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The collection of legal materials is carried out by means of documentation studies and literature studies. This research uses descriptive analysis.

4. RESULTS AND DISCUSSION

4.1. Legal certainty regarding the rights and obligations of the parties after the conversion of conventional banks to Islamic Banks

Legal certainty is inextricably linked to the existence of the parties to an agreement in a conventional banking system or to a contract in a sharia-based banking system. Conversion of conventional banks to Islamic banks affects the uncertainty regarding the parties' rights and obligations. The bank and the customer are the parties in this case. A contract governs the legal relationship between the consumer and the bank. As a result, it is entirely reasonable that the interests of the customer involved receive legal certainty, similar to the certainty provided to banks by law.

According to Law Number 10 of 1998, Article 1 states that customers are parties who use bank services, including depositors and debtor customers. Depositing customers are customers who place their funds in a bank in the form of deposits based on the bank's agreement with the customer concerned. Meanwhile, debtor customers are customers who obtain credit or financing facilities based on Sharia Principles or equivalent based on the bank's agreement with the customer concerned.

In principle, the provisions regarding the rights and obligations of partners or customers of Islamic banks are no different from debtors in conventional banks. Everything is regulated by the Financial Services Authority as the institution in charge of supervising the activities of the financial services sector. However, what needs to be emphasized in financing in Islamic banks is the existence of Islamic economic principles that underlie all activities in the banking world.

Financial Services Authority Regulation Number 1 concerning Consumer Protection in the Financial Services Sector. This provision issued by the OJK (Financial Service Authority) regulates at least 5 principles or rights that must be obtained by every FSI consumer, namely the right to obtain transparent information, the right to get fair treatment, the right to get reliable service, the right to protection of confidentiality and data security, and the right to file a complaint if there is an issue.

In Article 4 of Law Number 8 of 1999 concerning Consumer Protection it is also explained that the rights of financing customers are: (1) the right to receive documents as collateral as long as the credit agreement is paid off, (2) the right to choose and obtain goods and/or services in accordance with the exchange rate and the conditions and guarantees promised by consumers, (3) The right to comfort, security, and safety in using the goods and/or services, (4) The right to correct, clear information regarding the conditions and guarantees of the goods and/or services. services, (5) The right to get advocacy, protection and efforts to settle consumer protection disputes properly, (6) and others.

While the partner's obligation is to pay installments in an orderly manner every month until the period ends and fulfill all administrative requirements. In *murabahah* financing, partners are usually required to submit guarantees for financing facilities provided by Islamic banks. If it is a house that is being financed, the partner must submit a Certificate of Ownership (SHM) of the dwelling as proof of the seriousness of the partner in fulfilling his obligations. If it is a car that is being financed, then the partner is required to submit the Motor Vehicle Ownership Book (BPKB) of the vehicle.

Apart from the bank, partners should also understand the Islamic values underlying the financing practices at the bank. The reason that distinguishes financing in conventional and Islamic banks is the final estuary. The conventional banking system emphasizes solely on profit orientation, while the Islamic banking system emphasizes two aspects, namely world orientation and hereafter orientation. Thus, it will be very easy to implement a truly sharia Islamic bank if all the subject components are related to *murabahah* financing.

For the bank as the provider of financing facilities, as regulated in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, it explains the rights and obligations of banks, namely: (1) receiving installment payments that run in an orderly manner every month until with the completion of the credit deadline, (2) receiving or storing collateral for credit guarantees, (3) obtaining provisions for services provided to consumers (customers).

Whereas in Article 1131 of the Civil Code there is a general principle of the rights of a creditor, namely the creditor's right to the debtor to regulate all the objects of the debtor (the debtor), both movable and immovable objects. The obligations of the Bank are: (1) providing financing, (2) submitting documents when the credit is paid off, (3) returning collateral when the credit is paid off, (4) providing convenience for consumers to be able to own and carry out the contents of the credit agreement.

Referring to Law 21/2008, Law Number 8 of 1999 concerning Consumer Protection ("Consumer Protection Law"), and Regulation of the Financial Services Authority Number 1/POJK.07/2013 of 2013 concerning Consumer Protection in the Financial Services Sector ("POJK 1 /2013"), basically there is no provision that explicitly requires FSBs (Financial Services Business

Actors), both those conducting conventional and sharia business activities, to provide a copy of the agreement or contract to customers.

However, there are a number of obligations of business actors in the Consumer Protection Law that need to be considered. One of them is the right of consumers to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services. On the other hand, these things have also become the obligations of business actors, in addition to the obligation to provide explanations on the use, repair and maintenance of goods/services.

In POJK 1/2013 it is stated that the FSB is required to provide and/or convey information about products and/or services that are accurate, honest, clear, and not misleading as set out in documents or other means that can be used as evidence. This information must be conveyed when providing an explanation to consumers regarding rights and obligations, when making agreements with consumers, and published when delivered through various media, including through advertisements in print or electronic media.

In addition, before the consumer signs the product and/or service document and/or agreement, the FSB must submit a document containing the terms and conditions of the product and/or service to the consumer, which at least contains: a) details of costs, benefits, and risks; and b) procedures for service and settlement of complaints at the PUJK.

Therefore, based on the explanation above, although basically there is no obligation to provide a copy of the contract to customers in general, the FSB has an obligation to provide accurate, honest, clear, and not misleading information regarding its products and/or services which must be stated in the document or other means that can be used as evidence.

In the process of providing financing, the Bank (*shahibuul maal*) and the customer (*mudharib*) jointly make an agreement to carry out a certain business activity which is then stated in the contract. Upon granting the agreement, the parties have rights and obligations for what must be fulfilled and must not be violated. In addition, due to the nature of cooperation, in its implementation the profits are shared, the ratio is mutually agreed upon, and the losses are fully borne by the *shahibuul maal* unless the *mudharib* commits a mistake, negligence or intentional mistake.

The customer is declared in default when the financing is due, because the SPK employer has unilaterally terminated the contract, resulting in the customer's ability to pay for achievements to the Bank. The creation of legal protection for the parties who have carried out the agreement is an example of the realization of legal certainty.

In the theory of legal protection, there are two types of legal protection, namely preventive and repressive legal protection. In the process of providing such financing, Islamic banks are required to refer to the provisions of the UUPS and general banking principles. As stated in Article 35 paragraph (1) UUPS, Islamic banks and UUS in carrying out their business activities are required to apply the precautionary principle. The precautionary principle referred to in accordance with sharia principles is to fulfill the principles of justice (*'adl*), balance (*tawazun*), benefit (*maslahah*) and universalism (*alamiyah*). Article 36 of the UUPS also states that in channeling financing and carrying out other business activities, Islamic Banks and UUS are required to take methods that are not detrimental to the Sharia Bank and/or UUS and the interests of the customers who entrust them.

Banks need to conduct financing analysis in accordance with the 5C principles, namely Character, Capital, Capacity, Collateral and Condition of economic. In the case of providing financing, such as using a *mudharabah* contract, a bank officer must understand the basic introduction of the customer's character, whether the prospective customer is eligible for financing. If the precautionary principle has been implemented and the Bank approves the financing of the prospective customer, the application can be continued with the contract process. Bank NTB Shariah has implemented the 5C principle before approving the financing application to prospective customers, so that the Bank believes that the financing disbursed is truly in accordance with the benefits and provides a proportional profit sharing.

However, because the customer failed to pay, especially the financing object in the form of an SPK, the contract was terminated and resulted in a loss event. Banks need legal protection, whether given by law or born because of the engagement itself, as stated in Article 1338 paragraph (1) of the Civil Code, all agreements made legally apply as law for those who make them. This means that an agreement is born, it can be said as law for the parties who make it. From a legal point of view, the relationship between the Bank and the customer is contractual or an agreement and a relationship of trust (Nopriansyah, 2019). In an agreement that is equated with contract in Islamic law it is defined as "the relationship between *ijab* and *qabul* (*Ijab* means proposal and *Qabul* means acceptance in presence of proper witnesses) in accordance with the will of the Shari'a which stipulates the existence of a legal influence (effect) on the object of the engagement".

Because the contract has a legal effect on the impact of the implementation of the agreement, the contract can be equated as law for the parties who make it. Back to the problem, if the Bank suffers a loss when the customer defaults, the Bank will collect payments to the customer and approach the customer. If the customer after taking these actions cannot produce results, the Bank will take repressive actions.

Whereas in repressive legal protection, it is defined as protection obtained after a problem/dispute occurs. In *mudharabah* financing, for example, Banks need to provide opportunities for customers with a restructuring pattern in accordance with POJK No.16/POJK.03/2014 concerning Asset Valuation of Islamic Commercial Banks and Sharia Business Units, which states in Article 55 paragraph (2) that Banks need to conduct financing rescue by rescheduling, reconditioning and restructuring. This has been done by the Bank as the first effort to save financing so that it does not fall into the collectability of Non-Performing Financing (NPF). After that, the Bank needs to reorganize whether the customer can return smoothly according to the agreed addendum. If it is unable to generate results, the Bank will carry out the guarantee efficiently.

4.2. Changes in the credit agreement into a financing agreement after the conversion of conventional banks to Islamic Banks

In conventional banks using the term credit instead of the term financing, the definition of credit in conventional banks with financing at Islamic banks is different, namely: (a) In conventional banks, the reward given to the owner of the funds (the bank) is in the form of a fixed percentage of interest, while in Islamic banks using profit sharing; (b) Repayment of funds borrowed at conventional banks is paid in installments within a predetermined time with the same amount, while financing at Islamic banks does not require installments every month or a certain time but must be paid off at the agreed time; (c) If it turns out that the debtor is able to pay off his debt before the stipulated period, conventional banks are subject to a discount on the loan

Besides having to fulfill the legal requirements of the agreement as stated in Article 1320 of the Civil Code. The practice of *muamalah* in Islam in principle must be in accordance with and not conflict with sharia norms. Fiqh experts agree that in business activities (*muamalah*) Islam must avoid elements that are prohibited by *syara*' namely, *maisir* (gambling), *gharar* (uncertainty), usury (riba) and *batil* (injustice). This also applies to banking activities, particularly Islamic banking. The *maisir* (gambling) and *batil* (injustice) elements in *murabahah* can be eliminated with project certainty and a clear rate of return, in accordance with the contract agreed at the beginning of the collaboration. In this case, the customer is not burdened with fluctuations in bank interest rates.

Thus, it is certain that the number of monthly installments can be predicted according to the financing period, because in this case Islamic banks do not recognize the interest system. The element of usury in *murabahah* can be eliminated by the concept of buying and selling, because basically Islam justifies buying and selling and forbids usury. In the technical element, the customer does not feel aggrieved by the bank, there is clarity regarding the price of the object to be purchased by the customer and the profit taken by the bank. Likewise, the object being traded must already exist at the time of signing the contract. Thus, it can be concluded that the application of *murabahah* products is in accordance with the principles of financing based on Islamic principles, namely that it does not contain *maisir* (gambling), *gharar* (uncertainty), usury (*riba*) and *batil* (injustice) (Bahri, 2008).

The agreement in the financing contract at a sharia bank is no different from the agreement in credit at a conventional bank, because the principle of the agreement still refers to the Civil Code contained in Book III concerning General Engagements. The engagement according to Article 1233 of the Civil Code is born out of an agreement or by law. From these two sources, the most important is the engagement that arises from the agreement (covenant law) (Badrulzaman, 1991). Because the parties have the freedom to enter into any type of engagement, as long as it does not conflict with the law, morality or public order (Article 1338 of the Civil Code paragraph (1) jo. Article 1337 of the Civil Code) (Meliala, 2007).

In a process of providing financing, the most important thing is the making of a financing agreement, or what in Islamic banking is usually called a financing contract. The interpretation of the agreement is regulated in Articles 1342 to 1351 of the Civil Code. According to Article 1342 of the Civil Code: "If the words of an agreement are clear enough, then it is not allowed to deviate from it by way of interpretation". Then according to Article 1343 of the Civil Code: "If the words of an agreement can be given various interpretations, then what must be seen is the intention of the parties who made the agreement".

Conventional bank credit agreements and financing agreements have similarities in the nature of the agreement, which is really consensual in nature. The form of the agreement is written and uses a standard contract. Other similarities, among others, can be seen from the contents of the agreement, namely, the determination of the amount of money, the amount of the profit-sharing portion, the method of payment, the time of repayment and collateral.

In the practice of sharia financing, there is the application of contracts that are modeled on credit agreements from conventional banks, as well as the form of facilities that are always sought to mirrorring with facilities in conventional banking. Whereas if it is supposed to apply sharia principles correctly and purely, then the deeds made for both sharia financing contracts and the types of financing facilities must also independent which supported by clear and adequate sharia banking laws.

The Civil Code (*KUHPerdata*), Criminal Code, UUPT, SK (Decree) and SE (Circular letter) Bank Indonesia are the legal basis for conventional bank agreements, credit agreements are an agreement system that uses an open system and contains the principle of freedom of contract as long as does not conflict with applicable laws and regulations, public order and morality (Ghofur, 2007). According to the principle of freedom of contract, an agreement can be made either orally or in writing. For the banks as an organization that has been established and in relation to the orderly organization as well as evidence in written form. Regarding the written agreement, it has been regulated in Article 1320 of the Civil Code, then regarding the cancellation of the agreement, it is regulated in Article 1381 of the Civil Code.

The form of clauses in credit agreements in conventional banks can be seen from certain conditions set forth in clauses that need to be included in the credit agreement, including: (Kansil, 2009)

1) Terms for the first-time credit withdrawal (*predisbursement* clause)
   This clause concerns:
   a. Payment of provisions, credit insurance premiums, and collateral insurance as well as the cost of binding collateral in cash.
   b. Submission of collateral and its documents as well as the implementation of the binding of the collateral.

c. Implementation of the closure of collateral insurance, and credit insurance with the aim of minimizing risks that occur outside of the debtor's or creditor's fault.

2) Clause regarding maximum credit (Amount Clause)

This clause has important meaning in several ways, namely:

a. It is the object of the credit agreement so that changes to the agreement regarding this material have the consequence that it is necessary to make a new credit agreement (in accordance with Article 1381 point 3 and Article 1413 of the Civil Code).
b. It is the limit of the creditor's obligation in the form of providing funds during the grace period of the credit agreement, which also means the limit of the debtor's right to withdraw the loan.
c. It is the determination of the amount of collateral value that must be submitted, the basis for calculating the determination of the amount of the provision or commitment fee.
d. This is the limit for the imposition of an overdraft fine.

3) Clause regarding credit term

This clause is important in several ways, namely:

a. It is a time limit for the bank, when the obligation to provide funds in the maximum amount of credit ends and after the expiration of that period, giving rise to the right to collect/refund credit from the customer.
b. It is a time limit when a bank may issue warnings to debtors if they do not fulfill their obligations on time.
c. This is the right time for the bank to review, or re-analyze, whether the credit facility needs to be extended or needs to be billed again.

4) Clauses regarding loan interest

This clause is expressly regulated in the credit agreement with a view to:

a. Provide certainty regarding the bank's right to collect loan interest in an amount that has been mutually agreed upon because interest is the bank's income which will directly or indirectly be calculated with the cost of funds for the provision of the credit facility.
b. Approval of interest collection above 6% (six percent) per year. By basing on the information guidelines of Article 1765 and Article 1767 of the Civil Code which allows the collection of loan interest above 6% (six percent) per year as long as it is agreed in writing.

5) Clauses regarding credit collateral

This clause is intended so that the debtor does not make withdrawals on the replacement of collateral goods unilaterally, but there must be an agreement with the bank.

6) Insurance clause

This clause aims to transfer the risk that may occur, both on collateral goods and on its own credit.

7) Clause regarding actions prohibited by the bank (Negative Clause)

This clause consists of various things that have juridical and economic consequences for securing the bank's interests as the main objective. Examples of actions that are not permitted by debtors include:

a. Prohibition of asking for credit from other parties without the bank's permission.
b. Prohibition of changing the legal form of the debtor's company without the bank's permission.
c. Prohibition of dissolving a company without the bank's permission.

8) Tigger Clause or *Opeisbaar* Clause

This clause regulates the right of the bank to terminate the credit agreement unilaterally even though the term of the credit agreement has not yet expired.

9) Clause regarding fines (Penalty Clause)

This clause is intended to emphasize the rights of banks to collect levies both in terms of the amount and condition.

10) Expense Clause

This clause regulates the costs and expenses incurred as a result of granting credit, which are usually charged to customers, including but are not limited to: the cost of binding collateral, making credit agreement deeds, acknowledging debts and collecting credit.

11) Debit Authorization Clause

Debiting a loan account must be with the permission of the debtor.

12) Representations and Warranties

This clause is often referred to as a material adverse change clause. The point is that the debtor promises and guarantees that all data and information provided to the bank is correct and not distorted.

13) Clause of compliance with bank provisions

This clause is intended to guard against the possibility that if there are things that are not specifically agreed upon but are deemed necessary, then they are considered generally agreed upon.

14) Miscellaneous or Boiler Plate Provision Additional articles.

15) Dispute Settlement (Alternative Dispute Resolution)

Clauses regarding the method of settlement in the event of a dispute or dispute between creditors and debtors.

16) Closing article

The closing article contains a copy of the credit agreement with the intention of making arrangements regarding the amount of evidence and the date of entry into force of the credit agreement as well as the date of signing of the credit agreement.

While the form of the Clause of the Financing Contract at Islamic Banks can be seen from certain conditions set forth in the clauses of the financing contract which are included in the *murabahah* financing contract at the Islamic bank, including:

1) Terms for the first-time credit withdrawal (*predisbursement* clause)

   This clause concerns:

   a. Terms and methods of withdrawing the financing facility.
   b. Submission of customer documents, signing of financing contracts and guarantee agreements required by the bank.
   c. Submission of collateral and its documents as well as the implementation of the binding of the collateral.
   d. Opening of financing accounts by customers.
   e. Fees and taxes.

2) Clauses regarding prices and financing facilities in the maximum credit agreement (Amount Clause)

In contrast to credit agreements in conventional banks, Islamic bank financing contracts regulate the acquisition price, margin, selling price, bank financing, and *murabahah* receivables.

3) Clauses regarding repayment and fines

This provision regulates the period of repayment of customer obligations, and fines for late returns of customer payment obligations to the bank.

4) Clauses regarding credit collateral

This clause aims to ensure orderly payment of debts/obligations of customers to the bank. This clause regulates the delivery of collateral by the customer to the bank, the method of binding the collateral, and returning proof of ownership of the collateral to the customer.

5) Clause regarding actions prohibited by the bank (Negative Clause)

This clause consists of various things that have juridical and economic consequences for securing the bank's interests as the main objective. Examples of actions that are not permitted by debtors include:

a. Prohibition of asking for credit from other parties without the bank's permission.
b. Prohibition of changing the legal form of the debtor's company without the bank's permission.
c. Prohibition of dissolving a company without the bank's permission.

6) Clause regarding Risk

This clause regulates the customer's obligation to carry out a physical inspection and the validity of the goods purchased and the transfer of risk to the customer.

7) Clause regarding fines (Penalty Clause)

This clause is intended to emphasize the rights of banks to collect levies both in terms of the amount and condition.

8) Expense Clause

This clause regulates the costs and expenses incurred as a result of granting credit, which are usually charged to customers, including among others: the cost of binding guarantees, making sharia financing contracts, debt recognition and credit collection.

9) Representations and Warranties

This clause is often referred to as a material adverse change clause. The point is that the debtor promises and guarantees that all data and information provided to the bank is correct and not distorted.

10) Applicability clause of legal provisions

This clause stipulates provisions regarding the implementation of agreements that are subject to the provisions of the applicable laws and sharia provisions, including Bank Indonesia Regulations, Fatwa of the National Sharia Council of the Indonesian Ulema Council.

11) Clause of compliance with bank provisions

This clause is intended to guard against the possibility that if there are things that are not specifically agreed upon but are deemed necessary, then they are considered generally agreed upon.

12) Dispute Settlement (Alternative Dispute Resolution)

Clauses regarding the method of settlement in the event of a dispute or dispute between creditors and debtors.

13) Closing article

The closing article contains a copy of the credit agreement with the intention of making arrangements regarding the amount of evidence and the date of entry into force of the credit agreement as well as the date of signing of the credit agreement.

4. CONCLUSION

Because both have been regulated by the OJK, the laws governing the rights and obligations of Islamic bank partners or customers are essentially the same as those governing debtors at conventional banks. However, when it comes to financing Islamic banks, they must adhere to the Islamic economic principles that underpin all banking activity. Sharia financing involves the use of contracts that are modeled after credit agreements from traditional banks, as well as the creation of facilities that are always designed to resemble those found in conventional banking. If it is to apply sharia principles correctly and purely, then the deeds issued for both sharia finance contracts and the sorts of financing facilities must stand alone, supported by clear and adequate sharia banking rules.

Thus, the agreement in the financing contract at Islamic banks is identical to the agreement in the credit contract at conventional banks, because the agreement's concept still relates to the Civil Code's Book III on General Engagements. According to Article 1233 of the Civil Code, an engagement occurs as a result of an agreement or by legislation. According to this source, the most critical aspect of the agreement is the involvement that results (covenant law). Because the parties are free to enter into any sort of engagement, as long as it does not violate the law, morals, or public order (Article 1338 of the Civil Code, paragraph (1) jo. Article 1337 of the Civil Code).

REFERENCES

Ali, Z. (2008). *Hukum Perbankan Syariah*. Sinar Grafika.

Andrianto, & Firmansyah, A. (2019). *Manajemen Bank Syariah (Impementasi Teori dan Praktek)*. CV Penerbit Qiara Media.

Anwar, S. (2010). *Hukum Perjanjian Syariah*. Rajawali Pers.

Badrulzaman, M. D. (1991). *Perjanjian Kredit Bank*. Alumni.

Bahri, S. (2008). *Penerapan Prinsip Syariah: Dalam Lembaga Keuangan, Lembaga Pembiayaan dan Perusahaan Pembiayaan*. Retrieved from: http://ekonomikonvensionaldanekonomiislam.blogspot.com/2011/10/normal-0-false-false-false.html

Ghofur, M. (2007). *Potret Perbankan Syariah Indonesia Terkini*. Biruni Press.

Indonesian Bankers Association. (2014). *Understanding Bank Business (General Banking Level I Certification Module), 2nd edition* (2nd ed.). Gramedia Pustaka Utama.

Kansil, C. S. T. (2009). *Seluk Beluk Perseroan Terbatas Menurut Undang-Undang No. 40 Tahun 2007*. Rineka Cipta.

Mardani. (2014). *Hukum Bisnis Syariah*. Kencana.

Meliala, D. S. (2007). *Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan*. CV. Nuansa Aulia.

Muhammad. (2014). *Manajemen Dana Bank Syariah* . Rajawali Pers.

Mujahidin, A. (2016). *Hukum Perbankan Syariah*. Rajawali Press.

Nopriansyah, W. (2019). *Hukum Bisnis di Indonesia: Dilengkapi dengan Hukum Bisnis Dalam Perspektif Syariah*. Prenada Media.

Rahmawati, R., & Putriana, K. (2020). Tantangan Konversi Bank Konvensional Menjadi Bank Syariah di Aceh Berdasarkan Qanun Lembaga Keuangan Syariah No 11 Tahun 2018. *TAWAZUN : Journal of Sharia Economic Law*, *3*(2). https://doi.org/10.21043/tawazun.v3i2.7725

Rasyid, A. (2017). Konversi Kegiatan Usaha Bank Konvensional menjadi Bank Syariah. *Jurnal Binus University*.

Saliman, A. R. (2011). Hukum Bisnis Untuk Perusahaan. In *Kencana*.

Sari, N. (2015). Kontrak (Akad) dan Implementasinya pada Perbankan Syariah di Indonesia. *Yayasan PeNA Banda Aceh*, *1*.