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Legal Argument About the Imposition of Collateral within the *Mudharabah* Financing Contract Perspective of Law Number 21 of 2008 on *Syaria* Banking

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Abstract

The problematic collateral of classical jurisprudence developed by imams of the jurisprudence school is clear that in the case of *mudaraba* financing, *shahibul maal* cannot demand assurances from *mudharib* to restore invested capital. If the *shahibul maal* requires a guarantee of *mudarib* and makes the guarantee as a condition of a contract, then the contract of cooperation is null and void. The problem that arises in the world of *syariah* banking is not only about the question of whether or not to impose *mudharabah* financing contract guarantee, but concerning the problem that the variable is very complex. For that reason, it is necessary to conduct a research that underlies the rationale for the loading and binding of guarantee in the *mudharabah* financing contract. The legal issue that needs to be addressed is whether the rule of law embodied in the articles of *sharia* banking law has implemented the essence of *sharia* guarantee arrangements. This study uses the method of juridical-normative research to conduct an analysis of Law No. 21 of 2008 concerning *sharia* banking. The imposition of guarantees in *mudharabah* financing contracts in the perspective of *sharia* banking law is conducted to apply prudential principles and risk principles that are to avoid unlawful capital disbursement of contracts.

Keywords—collateral, contract, mudharabah financing, sharia bank, UU No. 21 of 2008 on Syaria banking

1. Background

Financing by a profit-sharing system can be done through a mudharabah contract with characteristics consisting of a first party as owner of capital called by shahibul maal, and a second party as a business manager called mudharib. In the mudharabah contract in syariah banking, known as the two-tier or two-stage mudaraba, *sharia* banking institutions are intermediaries or intermediaries as the basis for the collection of public funds to be channeled back to the community in various forms of financing and equity participation (Ali, 1992). The principle is a *sharia* bank is a bank whose main basis is the principle of profit sharing in all its forms of operations, both in the collection and distribution of funds. Collection of funds obtained from third parties through wadi'ah yad dhmanah, savings and mudharabah deposits and others. Then channeled through the form of financing with the principle of mudaraba, murabahan, isthis'na or salam (Ascarya, 2005).

The statement confirms what in Islamic banking is known as the two sides of the role of Islamic banks, one side as a collector of funds from the community in this case the bank acts as a business manager through a *mudharabah* contract with the owner of savings and deposits of *mudharabah* as *shahibul maal*. On the other side, *syariah* bank acts as a channel of funds to the community, in this case the bank serves as a *shahibul maal* through which the customer as *mudharib* (Manzoor, 2006). When *sharia* banks act as owners of capital, of course there is a possibility of various risks that will be faced by *sharia* banks. Therefore, Islamic banks need to impose and bind the guarantee of *mudharabah* financing considering the capital owned by Islamic banks is not entirely owned by the bank. Another factor is the absence of standardized financing for different types of businesses that are different from the imposition of collateral. In addition, there is no institution that guides and supervises customers who act as *mudharib* (Iqbal & Mirakhor, 2011).

From the data obtained, the composition of financing distribution given to the community is dominated by *murabahah* financing, this is happening in all *syariah* banking in Indonesia (see Table 1).

Table 1. The composition of financing distribution from 2011-2015

Type of Contract	2011	2012	2013	2014	2015
Akad Mudharabah	10,229	12,023	13,625	14,354	14,906
Akad Musyarakah	18,960	27,667	39,874	49,387	54,033
Akad Murabahah	56,365	88,004	110,565	117,371	117,777
Akad Salam	0	0	0	0	0
Akad Istishna	326	376	582	633	678
Akad Ijarah	3,839	7,345	10,481	11,620	11,561
Akad Qardh	12,937	12,090	8,995	5,965	4,938
Total	102,655	147,505	184,122	199,330	203,894

The foregoing data shows that murabahah financing is the most dominant form of financing, comprised of one type of nonprofit sharing financing. In fact, the presence of the *sharia* banking principal mostly emphasizes the principle of a profit-sharing system, because mudharabah financing is a financing pattern that reflects the spirit of *sharia* banking itself for the following reasons: First, mudharabah financing can reduce the chances of economic recession and financial crisis. This is because a syariah bank is an asset-based financial institution, meaning that a *sharia* bank transacts based on real assets instead of relying on paper only and profit from interest impositions to investors. Secondly, investment will increase when accompanied by the opening of new jobs, consequently the level of unemployment will be reduced, and the income of the community will increase. Third, mudharabah financing will encourage the growth of business or investors who dare to take risky business decisions. This form will lead to the development of innovation that can, in turn, improve competitiveness (Ascarya, 2004).

A proper financing scheme serving as an accelerating engine for the development of the economic well-being of the community is *mudharabah* financing when it is professionally carried out. The dominance of non-profit-sharing financing is clearly not an ideal condition, so *sharia* banking with the government and the Bank of Indonesia should prepare the system by finding the right solutions to improve *mudharabah* financing. Moreover, one of the visions and missions of *sharia* banking is to achieve a material and spiritual society that supports the real sector through profit-sharing activities and real transactions in order to promote economic growth (Bank Indonesia, 2006).

According to Dwi Agung, there are several factors that cause financing for unattractive results for Islamic banks, among others: First, the source of funds of *sharia* banks are mostly short term and thus cannot be used for financing results that are usually realized over the long-term. Secondly, entrepreneurs with high profit-level businesses tend to be reluctant to use the profit-sharing system, because entrepreneurs assume that credit by using the interest system is more profitable with a certain amount of calculation. Third, entrepreneurs with low-risk businesses are reluctant to ask for revenue sharing. Fourth, to convince banks that the project will provide high profits, entrepreneurs make business projections that are too optimistic. Fifth, many entrepreneurs who keep two sets of books, bookkeeping given to the bank shows little profit (Agung & Arianto, 2011).

The risk in the case of a *mudharabah* financing contract is the responsibility of the capital owner of the *syariah* bank, unless the risk is caused by negligence, manipulation, and violation of the agreement's provisions, and it is necessary to verify whether the loss is purely due to *mudharib* factors or not. When the loss is caused by economic factors such as natural disasters, the losses are charged to *sharia* banks. But if the losses are caused by some negligence factor or manipulation, which violates the agreement, then the loss is charged to *mudarib*. Fifth, profit sharing is also an important element to be considered in *mudharabah* financing contracts, so there is no doubt about the differences between *sharia* banks and *mudharib*. Therefore, the revenue share must be stated as a ratio (Jonsson, 2006).

From the foregoing explanation, it may be concluded that the argument favoring the imposition of collateral in a *mudharbah* financing contract is based on an effort to manage the risk of loss caused by the negligence factor of *mudarib*. Risk-based losses involving *dikamsudkan* are those provided by the actions of *mudarib*. The Islamic banking context of *mudharib* is declared negligent in the *mudharabah* financing contract if it has been proven that *malakukan* is one of three categories. First, *mudharib* is found not to follow the terms and conditions in the *mudharabah* financing contract. Secondly, *Mudharib* is proven to conduct business activities contrary to the norms and principles in *mudharabah* financing contracts. Thirdly, *Mudharib* has been proven to include committing malicious acts, such as manipulation, non-transparency in the management of *mudharabah* financing contracts, such as hiding profits or revenues, and so forth (Ayyub, 2009).

Considering the above conditions, the research questions to be investigated are: First, what is the basis for thinking of the imposition of collateral in a *mudharabah* financing contract? Second, what are the legal arguments in terms of imposition of collateral in *mudharabah* financing contracts? To analyze the answers of the research questions raised, it is necessary

to use appropriate research methods to find a systematic and measurable answer. For that research method used in this research using normative juridical method (socio-legal research) with type of research being qualitative. The purpose of law is not only seen as law written in books but also in action. The approach used in this study uses a statutory approach, namely Law Number 21 (2008) about *sharia* banking. It aims to focus on the study of legal norms that are directly related to the legal issues studied—especially Islamic banking laws. Consequently, finding the answer to the research questions is found in the formulation of the problem. In addition, this approach aims to discover how law and legislation can be implemented properly in accordance with its function and role in solving legal problems in the community.

2. The Grounds for Thinking on the Imposition of Collateral in Mudharabah Financing Contracts According to Law No. 21 (2008) Concerning sharia banking

Article 15 of Law N°10 (1998) states that in the case of banks providing credit or financing based on *sharia* principles, banks are required to have confidence based on a thorough-going analysis of the willingness and ability of borrowers to settle their debts or to refund the financing in accordance with the agreed upon terms (Triandaru & Santoso, 2007). Credit guarantees or financing assurances based on *sharia* principles are the last alternative sources of repayment of credit and financing in the case of credit and financing cannot be repaid by the debtor or customers from troubled businesses. An in-depth assessment of information and analysis was conducted by the bank to *mudharib* through the five Cs of credit concepts: character, capacity, capital, collateral, and the condition of economy. Character relates to the good faith of the recipient customer of the facility to repay the use of funds disbursed by *sharia* and/or UUS banks (Bahsan, 2008).

Assessment of character or personality of the prospective customer of the facility is based on the relationship between the *syariah* bank and/or the UUS and the respective customer or information obtained from another reliable party so that the *syariah* bank and/or UUS may conclude that the receiving customer of the facility concerned is honest, acting in good faith, and not complicate the *sharia* bank and/UUS in the future. Assessment of character is done to know the level of honesty, integrity, and willingness of *mudharib* candidate to fulfill obligation and run their business. This information can be obtained by a *syariah* bank through the life history of *mudharib* customers, business history, and information pertaining to similar efforts. Assessment of the capacity of the beneficiary customer, especially for the *sharia* bank, should examine the expertise of the beneficiary or customer in the field of business and his capability of managing the funds so that the *sharia* bank and/or UUS are confident that the business will be financed and managed by the right person. For *mudharabah* financing the bank must really consider legal aspects, marketing aspects, aspects of management and environmental impact analysis (Usman, 2001).

Assessment of the capital owned by the beneficiary customer, especially in the *syariah* bank and/or UUS must analyze its financial position as a whole, for both the past and for its forecast so that it can know the capital capabilities of the beneficiary or customer in supporting the project financing or business. *Sharia* banks must first conduct research on capital owned by the credit applicants based on *sharia* principles. The purpose of the investigation is not solely based on the amount of capital, but is even more focused on how the distribution of capital placement undertaken by the entrepreneur, so that all existing sources can be run effectively (Ansori, 2011).

Capacity is the ability of potential borrowers to manage their business activities and their abilities to see future perspectives, so that the business will be able to run well and provide benefits that ensure that *mudharib* customers are able to pay off their obligations in the amount and duration that has been determined (Subagya & Purnomo, 2009). *Mudharib* ability can be done with various approaches such as a material approach, i.e., by assessing the balance sheet, income statement, and cash flow statement over the last few years. Through this approach will be discovered the level of solvency, liquidity, and rentabilities business and the level of risk. In general, the assessment of the capacity of a *mudharib* customer is based on his experience in the business world associated with the education of the *mudharib* candidate, as well as the company's ability and excellence in conducting a competitive business (Hermansyah, 2009).

Assessment of collateral within the guarantee context applies to the principle that all forms of financing may be required for security except for *mudaraba* financing. Due to the risk of *mudharabah* financing, the advantages and disadvantages are clearly imposed on the *shahibul mall* and *mudharib*. *Mudharabah* financing practices are requested solely for the guidance of prudent principles. Assessment of warranties, *sharia* banks and UUSs shall assess the goods, projects or assignable rights financed by the *mudharabah* financing facility concerned. The security is not only a guarantee of principal, but it requires additional guarantees to avoid possible omissions and fraud. When *mudharib* makes a mistake and cannot recover its obligations, the duty assurance is made to cover the *mudharbah* financing provided by the collateral bank in the *mudharabah* financing contract, a form of anticipation of possible risks of *mudharib wanprestation*, for example problematic *mudharabah* or misfire. To anticipate this, the guarantee is expected to pay off the remaining financing capital provided by the *sharia* bank both principal and profit sharing (Ansori, 2008).

Codition Economic conditions may be understood in terms of giving capital for *mudharabah* financing by *syariah* banks to *mudharib*, wherein the economic situation and business sector conditions pertaining to the applicant or *mudharib* need to be attended to by the bank to minimize possible risks caused by economic circumstances in the country. Assessment of

business prospects (a condition of the economy) is required for bank financing for the debtor, wherein the situation of the business sector will be managed by the debtor, in order to minimize the risks that may be caused by economic conditions. The conditions in question are the social, economic conditions that can affect the state of the economy and the smooth running of the *mudarib* business. Article 8, paragraphs (1) and (2) of Law N°10 (1998), concerning the foundation for banks is to divert financing based on *sharia* principles, including *mudharabah* financing to prevent problematic Islamic banking by applying the guidance of 7P analysis formulas and 5C analysis formulas, and feasibility studies (Hermansyah, 2011).

P is referred to as personality, in this case the bank seeks to find complete data about a person's credit or financing history based on *sharia* principles, among others: the applicant's life history, the applicant's experience in terms of trying, social associations, and other elements. It is necessary to determine the credit approval and financing based on *sharia* principles applied to the applicant. Purpose, in addition to the personal identification of the applicant, should seek to find out data for the purpose of using credit or financing based on *sharia* principles, in line with the business of the bank in question (Mustjari, 2012).

Prospecting, in this case the bank must conduct a thorough and in-depth analysis of the form of business to be performed by the applicant. As to whether the business carried out by the applicant has a prospect in the future in terms of economic aspects and needs of the community. Payment, that in lending or financing based on *sharia* principles the bank must know clearly about the ability of the applicant to repay the debt in the amount and time specified. Party, which classifies the customer *mudharib* based on capital, loyalty and character, so it can be known as far as managing the loyalty level and customer honesty. Profitability to analyze the ability of *mudharib* in seeking fortune. Protection, how to keep the financing can be protected by the guarantee of goods or personal guarantees (Rivai & Permata, 2008).

In connection with the principle of *mudharabah* financing in *sharia* banks, Islamic banks are guided by two principles: First, the principle of trust as introduced Law No. 21 (2008) on Islamic Banking, that the provision of capital for *mudharabah* financing by *syaria* bank to *mudharib* customers is always based on the principle of trust. *Sharia* banks must have confidence and belief that the capital given to *mudharib nsabah* will be useful in accordance with its allocation, especially Islamic banks believe that the *mudharib* customers concerned can *malunasi* capital provided through *mudharabah* financing and profit within a predetermined period. Secondly, the prudence principle, *sharia* banking in terms of running its business including *mudharabah* financing to *mudharib* customers must always be guided and apply the principles of prudence. The principle can be realized in the form of consistent consent on the basis of both the terms and regulations related to the provision of *mudharabah* financing by the *sharia* bank concerned (Hermansyah, 2011).

3. Legal Argument About the Imposition of Collateral in Mudharabah Financing Contract Perspective of Law No. 21 (2008) Concerning sharia banking

Syariah banking is an institution whose existence needs trust and confidence from the society of the capital entrusted to him through various products and financing of *sharia* banking. This requirement is because the spirit of *sharia* banking is a belief that if the trust of the community is lost then it can be ascertained that banking operations including *sharia* banking will stop, because the principle of funds owned by *sharia* banking is largely the funds owned by various customers. To maintain the trust of the banking community implement policies with optimal principles for good governance of banking (or good corporate governance). The governance in question is needed to implement good direction that includes the principles of transparency, accountability, responsibility, professionalism, honesty, fairness, and objectivity in running business activities (BNI Syariah, 2006).

The principle that is very important in order to maintain public confidence in Islamic banks is the prudence principle. This principle is set forth in Article 35 paragraph (1) of Law No. 8 (2008) concerning *sharia* banking, given to ensure the implementation of decision making in the management of *sharia* banks in accordance with the prudence principle by applying internal care. Similarly, in Article 8 paragraph (1) and paragraph (2) of Banking Act No. 10 (1998). The same may be said of Article 35 of *sharia* banking law concerning prudential principles, affirming the obligations of *sharia* and UUS banks to apply the prudence principle in conducting the business of a *syariah* bank. Prudence principles in question are guidelines for the management of *sharia* banks and UUS in order to realize a healthy *sharia* banking, strong, and efficient in accordance with the provisions of legislation. In addition to Article 35 paragraph (1), Article 2 of Law No. 21 (2008) on *sharia* banking stipulates that banks in conducting their business shall apply *sharia* principles and prudential principles based on established signs.

Furthermore, in order to implement prudential principles in distributing *mudharabah* financing and conducting other business activities, Islamic banks and UUS shall pursue ways that are not detrimental to *sharia* and / or UUS banks and the *kepentinagn* customers who entrusted their funds. Furthermore, Article 37 of *sharia* banking law stipulates that the Bank of Indonesia shall stipulate provisions concerning the maximum limit of fund disbursements based on *sharia* principles, the granting of guarantees, the placement of *sharia*-based securities investments, or other similar matters, and

may be performed by a *sharia* bank and/or UUS to the recipient customer of the facility which is related. Including companies within the same group as the *sharia* bank and UUS concerned. The maximum limit in question shall not exceed thirty percent of *sharia* bank capital in accordance with the provisions stipulated by the Indonesian bank in question.

The important meaning that can be concluded from the precautionary principle above is, that *sharia* banking in terms of channeling Islamic banking financing—including *mudharabah* financing contracts—must be managed properly, covering the principles of transparency, accountability, responsibility, independence, and fairness in running its business activities based on *sharia* banking law. Financing should be based on economic considerations and professionalism, not based on other considerations outside the economic interests. In connection with the management of *sharia* banking based on the principle of transparency, accountability, responsibility, professional, and fairness in carrying out its business activities have heavier risk, because the perpetrators will be held responsible during the afterlife (Hasan, 2009).

The notion of transparency in question is being open to disclose material and relevant information in executing the decision-making process. Accountability is the clarity of functions, execution and financial accountability so that the management of the company runs effectively. Accountability is the conformity of the management of the main entity and the financial services institution with legislation and sound management principles. Independence is the management of financial conglomerates in a professional manner without the influence or pressure of any party. Fairness is justice and equality in fulfilling the rights of stakeholders arising under the agreement and the laws and regulations.

The aim of the prudence principle to keep Islamic banks solvent and always in a healthy condition, so that public confidence in banking is high and people will not hesitate to keep their funds in *sharia* banks. The principle of prudence applied by *sharia* banking is not only because it is connected with the bank's obligation not to harm customers who entrust their funds to *sharia* banks, but also concerns the interests of the general public and banking in particular for the bank to run its business properly and correctly by complying consistently in compliance with the provisions and legal norms prevailing in banking (Sjahdeini, 1993).

It can be concluded that the principle of prudence is a very important principle in *mudharabah* financing contracts, because the prudent principle in the distribution of *mudharabah* financing contracts is a necessity for banks in managing public funds to succeed optimally and be able to provide benefits to customers. Considering the relationship between the owner of capital and *mudharib* in the *mudarabah* financing contract is a contractual relationship that is commensurate with the principle of prudence. Implementation of that principle will certainly raise the level of public confidence in Islamic banks, if done consistently in accordance with applicable legislation. The explanation of *sharia* banking law concludes that the principle of prudence in terms of Islamic banking finance—especially *mudharabah* financing—must be consistently held to avoid loss of public confidence with entrusted funds (Ansori, 2011).

Applying the *kahtai-hatian* principle in bank management, *sharia* banking is obliged not to do any kind of harm to *sharia* banking and customers who have entrusted their funds in conducting their business activities. This policy is in line with the provisions of Article 36 of the *sharia* banking laws. Basically, the provisions in Article 36 of *sharia* law are in line with the provisions of Article 29 paragraph (3) of Law No. 7 (1992) as amended by Act No. 10 (1998), explaining that *sharia* banking is required to indemnify the interests of customers and banks from all acts that can cause losses when the bank does not apply methods of prudence and soundness of *sharia* banks in conducting financing activities. The regulation on prudential principles in Islamic banks is done because the customer is not in a position to assess and know the safety and health of the *sharia* bank itself (Rahman & Naja, 2005).

In addition, the *mudharabah* financing contract is actually never separated from the risk that at any time can cause losses for Islamic banks. It could happen because in *sharia* banking operational practices there is always a tradeoff between service and risk, so it will experience default risk. *Sharia* banking needs to pay attention to the application of the 3K element in *mudharabah* financing contracts, i.e., trust, openness, and caution. Trust is necessary because *sharia* banking is a business that performs its function as a financial intermediary that brings the surplus units of funds with a deficit unit. Thus, with the existence of trust, openness is required as a form of accountability in the *mudharabah* financing contract (Silvanita, 2009).

The legal argument that can be conveyed that the financing distribution be based on *sharia* principles by *sharia* banks and/or UUS contains the risk of failure or congestion in settlement, so it can affect the health of *sharia* and/or UUS banks. Given that the channeling of funds in question is sourced from public funds deposited in Islamic banks and UUS, the risks faced by *sharia* banks and UUSs can also affect the security of public funds. To maintain its health and to bear in mind its durability, banks are required to spread risks by administering the distribution of financing based on *sharia* principles, the provision of guarantees, or other facilities in such a way that they are not centered on the debtor's customers, or certain groups of borrowers.

Elements of trust and openness inherent in *sharia* banking business especially in *mudharabah* financing contract, then every Islamic banking finance transaction should be accompanied by attitudes of caution. This is indeed the principle of prudence is a consequence of the element of trust and openness in addition to the fact that *sharia pebankan* law also requires it. Of the three elements in practice, in the *mudharabah* financing contract is always faced with a tradeoff between risks, because tradeoffs are unlikely to be practically avoided by the management of the banking system that is trying to do the ideal combination of risk and service, resulting in the imposition of collateral (Wijaya, 2000). One of the efforts that can be done by Islamic banks is to minimize risks, hence very strict *mudharabah* financing requirements, because if *sharia* banks do not apply strict requirements in terms of financing *mudharabah* will be faced with risks such as non-performing loans. The risk in *mudharabah* financing contracts arises when a *sharia* bank cannot recover a bill of capital given to *mudharib*. Possible causes of the risk, due to inadequate attenuation of various business risks that are financed (Muhammad, 2014.)

To For *mengantisipaasi mudharabah* financing, even problematic *sharia* banking laws have provided arrangements on risk management set forth in articles 38 to 40. Article 38 explains that *sharia* banks and UUS must apply risk management, the principle of knowing their customers, and protection of customers, technically has been regulated by Bank Indonesia regulation. The risk management in question is a set of procedures and methodologies used by *pegangkan* to identify, measure, monitor, and control risks arising from the activities of *sharia* bank. Know-your-customer principles are those that should be applied by the banking system at least covering the activities of receipt and identification of customers as well as monitoring of customer transaction activities, including reporting of suspicious transactions.

In relation to risk management, it is further stipulated in PBI No. 7 / 25 / PBI / 2005 on risk management for Bank of Indonesia officials and PBI No. 8 / 9 / PBI / 2006 concerning amendment to PBI No. 7 / 25 / PBI / 2005 concerning risk management for the management and officials of the Bank of Indonesia, namely conventional commercial banks and commercial banks conducting business based on *sharia* principles. Whereas in the event that banks are required to apply risk management principles effectively, banks with human resources must possess competencies and expertise in risk management. Assessment of the customer's ability to return the financing provided through *mudharabah* financing includes assessment of the following components: (a) accuracy of principal payments, profit sharing, and or fees, (b) availability and accuracy of financial information of *mudharabah* beneficiary customers, (c) completeness of *mudharabah* financing documentation, (d) compliance with *mudharabah* financing agreements, and (e) the suitability of the user of the funds, and the reasonableness of the source of the obligation's payer.

Determining the quality of financing is done by analyzing the valuation factors by considering the components of the assessment of business prospects, customer performance, and ability to pay. The determination of the quality of *mudharabah* financing shall be made by considering the significance and materiality of each valuation factor and component, as well as the relevance of the valuation and component factors to the respective customer. Assessment of the quality of *mudharabah* financing made by means of ability to pay refers to the determination of principal repayment and/ or achievement of the ratio between the income reality and projected income. The calculation of revenue realizations and projected revenues for assessment of the quality of *mudharabah* financing is calculated based on the accumulated average during the current *mudharabah* financing period.

The income projection is calculated based on business feasibility analysis and the customer's cash inflows during the *mudharabah* financing period. The bank may change the projected income based on its agreement with the customer in the event of any change in the economic conditions affecting the business of the customer, the bank shall include the projected income and the change of projected income in the *mudaraba* agreement between the bank and the customer and shall be fully documented. The principal installment of *mudharabah* financing can be made during the financing period in accordance with the agreement between the *syariah* bank and the customer. If the *mudharabah* financing period is more than one year, the principal installment payment shall be paid periodically in accordance with the projection of the cash inflow of the customer's business. The payment of principal installments shall be included in the *mudharabah* agreement between the bank and the customer and shall be fully documented.

Sharia banks and UUS banks shall explain the possibility of risk of loss to customers, related to customer transactions conducted through the *sharia* bank and/or UUS.

The explanation is given to the customer about the possibility of the risk of loss of the intended customer to ensure the transparency of bank products and services. If such information has been provided, the bank shall be deemed to have carried out this provision. If the beneficiary customer fails to comply with its obligations, the *sharia* bank and UUS may purchase part or all of the collateral, either through or outside the auction, on the basis of voluntary submission by the owner of the collateral or under authorization to sell from the collateral owner, provided that the collateral is purchased shall be liquidated within a period of one year. The purchase of collateral by the bank through the auction is intended to assist the bank in order to accelerate the settlement of the obligations of the beneficiary customer.

When the bank as the buyer of collateral for the recipient of the facility, the bank's status is the same as the other non-bank buyers. Banks are allowed to purchase collateral outside the auction intended to accelerate the settlement of the obligations of the beneficiary customer. Collateral that can be bought by a bank is a collateral whose financing has been categorized as loss for a certain period of time. The *sharia* and UUS banks shall consider the purchase price of collateral as referred to in paragraph (1) with the customer's liabilities to the *sharia* bank and/or UUS concerned. In the event that the purchase price of collateral as referred to in paragraph (1) exceeds the total liabilities of the customer to the *sharia* bank and/or UUS, the excess amount shall be returned to the customer after deducting the auction fee and other costs directly related to the collateral purchase process.

Further provisions concerning the purchase of collateral as referred to in paragraph (1), paragraph (2) and paragraph (3) shall be regulated by the Bank of Indonesia. The principal provisions which are further stipulated by the Bank of Indonesia's regulations contain among other elements: (a) collateral that can be purchased by *sharia* banks and/or UUSs is collateral whose financing has been categorized as loss for some time, and (b) the period of disbursement of collateral purchased. Urgency of risk management is done in order to minimize the tradeoff between service and risk as specified in the legislation. Risk management is also a banking endeavor to prevent problematic financing.

4. Conclusion

After The imposition of collateral in mudharabah financing contracts in principle to protect and maintain the assets of third parties that have entrust their capital to Islamic banks, since the capital given to mudharib is not entirely ilik bank. Moreover, the idea of imposing a guarantee in a mudharabah financing contract to avoid the mudharib's behavior from moral hazard means that the owners of capital are concerned that mudharib might misappropriate the provided capital and breach the agreement. Perspective of Law No. 21 (2008) concerning *sharia* banking, that legal arguments about guarantee loading should be conducted to apply the prudence and risk principles. The distribution of mudharabah financing by *sharia* banks carries the risk of failure or congestion in settlement, so it can affect the health of *sharia* banks. Given that the channeling of funds in question is sourced from public funds deposited in Islamic banks, the risks faced by *sharia* banks and can affect the security of public funds. To maintain the security and health of banks, Islamic banks are required to spread risk by administering the distribution of financing based on *sharia* principles with the requirements of collateral.

Acknowledgment

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