

APPLICATION OF HYBRID CONTRACT CONCEPT IN GIRO PRODUCT

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Abstract

An agreement is a form of agreement between parties to do something. An agreement always gives birth to an agreement, where the agreement is a concrete form and the agreement is an abstract and binding form. The concept of contract product innovation has emerged by combining several existing contracts and is called a hybrid contract. A hybrid contract is a combination of two or more contracts into one contract for a specific purpose. This research was conducted to determine the application of hybrid contracts in sharia financial institution products, especially Giro. This research also analyzes whether the application of Giro products in sharia banking is in accordance with Islamic law. The type of research used is library research by describing qualitative data obtained from research documents. This research uses qualitative methods combined with analytical methods. The research results show that the implementation of hybrid contracts in Giro products in sharia banking is in accordance with the provisions of Islamic law. Combination contract products are permitted in accordance with religious texts so that Giro products can be claimed to be included in the contract category which applies to several contracts, especially wadiah and mudharabah contracts. In the Sharia Bank Giro product, there is a basic contract, namely a deposit and includes additional fees contracts, especially benefits. From this agreement there will be an agreement to determine profits with the mudharabah giro.

Keywords: *Contract, Current Account, Hybrid Contract*

1. INTRODUCTION

Indonesia's Islamic banking sector is entering a growth phase and urgently needs public trust and loyalty to further increase productivity. Trust and loyalty are absolutely necessary for Islamic banking to enter a mature stage in global competition. If you don't have a product that meets people's needs, you won't gain trust and loyal (Lateh, 2016).

Islamic banking products must be able to serve all sectors of society, both in terms of credit, financing, and service products. Therefore, product innovation in Islamic banks is an absolute requirement as an indicator of whether Islamic banks can adapt to the needs of modern society. Product innovation is a key element in maintaining the sustainability of the company. Product innovation represents the company's ability to meet market needs and efforts to generate company profits. Islamic banks have basically carried out many innovative initiatives, including the "structuring" of contracts in Fiqh Muamalah. Some contracts in Muammara Fiqh are not only adopted from Islamic banking, but are "adapted" to the needs of the community for banking services (Molina-Jimenez et al., 2018).

This evolution and adaptation is important because it is doubtful whether Islamic banking products will provide adequate benefits to society if introduced in this way. The principle of freedom of expression in Islam is the most important capital in facing complex economic problems and high public demands for the role of Islamic banks. In order to meet the needs of the community and develop an increasingly competitive banking and finance industry, business innovation carried out

by Islamic banks through a series of adaptations has become a business need. Examples include Islamic credit cards, Islamic insurance, Islamic bonds, FX iB, and Islamic swaps (Busni, 2002).

Islamic financial business products include many contracts. For example, sharia credit card transactions include Ijarah contracts, Cardo contracts, and Kafala contracts. Islamic bonds include at least mudarabah (or ijarah) and wakalah contracts, and sometimes kafala and wa'ad. Islamic Exchange or Islamic Swap includes several contracts of Tawarruq, Bay, Wakalah, Shaaf, and sometimes accompanied by wad. In each transaction, the contract is executed simultaneously. Or at least it can't be eliminated, because every contract included in the product all represents one unit.

Such transactions are called multi-contracts (Indonesian), hybrid contracts, or al-'uqud al-murokkabah. Hybrid contracts remain a hot topic of debate among Muslim scholars to determine their legal validity. The first opinion states that this law may be based on the rules of fiqh al-ashlu fi al-mu'amalat al-ibahah (the law as long as mu'amalah is permissible). The second opinion is forbidden in the hadith which forbids two sales in one sale (bai'atani fi bai'atin) or two contracts in one contract (shafqatain fi shafqatin). Of course, as a corporate entity that is an important part of the Islamic economic system as its parent company, the Islamic banking industry must not deviate from Islamic values. Although implementing innovation is certainly a business need, sharia compliance is also an obligation of all sharia business actors, including Islamic banks. Profit orientation can only be used as a medium (tool) to achieve a goal, in other words profit orientation. Islamic banking products have several advantages, including: Material Gain, Emotional Gain, Spiritual Gain (Atmaja, 2018).

2. IMPLEMENTATION METHOD

This study used qualitative descriptive method. Therefore, the research method uses qualitative data and is interpreted descriptively. This type of qualitative descriptive research is often used to analyze events, phenomena, or social situations. Qualitative descriptive research is a combination of descriptive research and qualitative research. This type of qualitative descriptive research displays the results of the data as they are without manipulation or other processing procedures (Sugiyono, 2018).

3. RESULT AND DISCUSSION

Hybrid Contact

Hybrid contract is a popular term that is a translation of the Arabic word, namely al-'uqud al-murakkabah (double contract). In addition to the term akad murakkab, there are several other terms used by fiqh experts that have relationships, similarities, and similarities with the meaning of akad murakkab. These terms include al-'uqud al-mujtami'ah (accumulated contracts), al-'uqud almuta'addidah (multi-type contracts), al-'uqud almutakarrirah (repeated contracts), al-'uqud almutadâkhilah (contracts mixed with each other), and al-'uqud al-mukhtalithah (mixed contracts). Likewise, in Indonesian, in addition to hybrid contracts, there are also several other terms used, including multi-contract and double contract (Notland et al., 2020).

Hybrid contracts that exist in business and financial transactions have many forms and varieties. In general, the hybrid contract is divided into the following forms: First, the hybrid contract is in the form of a mixture of two or more contracts that give rise to a new name. This hybrid contract is for example buying and selling tawarruq, bay' al-wafâ', and so on. Tawarruq buying and selling is a mixture of two buying and selling contracts, buying and selling with the first party and buying and

selling with a third party. Second, a hybrid contract that is mujtami'ah/mukhtalithah with the name of the new contract, but mentions the name of the old contract as the basis.

This type of hybrid contract is for example mudlârabah musyarakah on life insurance and shari'ah bank deposits, as well as on musyârah mutanâqishah products. Third, hybrid contracts, whose contracts do not mix and do not give birth to new contract names, but two or more contracts become one package of agreements with the name of the basic contract remaining. This hybrid contract is an example of murâbahah wa wâkalah on murâbahah financing in shari'ah banking; kafâlah wa ijârah on credit cards, letters of credit, bank guarantees, multi-service financing, and credit cards; Qardh, Rahn, and Ijârah on pawn products and so on (Giro-Paloma et al., 2016).

The permissibility of a hybrid contract based on the original legal principle of the contract is permissible and permissible with the law of the contract that builds it, taking into account the religious provisions that limit it. That is, although hybrid contracts are allowed, there are restrictions that must not be violated, because these limits become a signpost for hybrid contracts not to fall into the practice of mu'âmalah which is forbidden.

In his book Nazih Hammad provides several criteria for hybrid contracts to be allowed shari'i. The criteria are as follows:

- a. The hybrid contract is not prohibited in the nash.
- b. The hybrid contract is not a means to something that is forbidden.
- c. The hybrid contract is not used as a hîlah (strategy) to take riba by other means.
- d. Hybrid contracts are not included in mutanâqidlah (the contracts are opposite).

Fiqh Review of Prohibited Hybrid Contracts

Scholars place restrictions on the practice of hybrid contracts. This limitation should not be bypassed, as it will cause hybrid contracts to be banned. In general, the limits agreed upon by the scholars are as follows:

- a. Hybrid contracts banned due to religious nash

In the hadith, the Prophet clearly stated three forms of hybrid contracts that are forbidden, namely hybrid contracts in buying and selling (ba'i) and loans, two contracts of buying and selling in one contract and two transactions in one transaction. A contract is permissible as long as the object, price, and time are known to both parties. If one of them is not clear, then the law of the contract is prohibited.

Imam al-Shafi'i gave an example, if a person wants to buy a house for one hundred, on condition that he lends (salaf) to him one hundred, then in fact the sale and purchase contract is not clear whether it is paid with one hundred or more. So the price of the sale and purchase contract is not clear, because the one hundred received is a loan ('ariyah). So the use of the benefits of one hundred is not clear, whether from buying and selling or borrowing.

- b. Hybrid contract as hilah ribawi

Hybrid contracts that become hilah ribawi can occur through the agreement of sale and purchase 'inah or vice versa and hilah riba fadhl.

1) Inah

An example of a contract in the form of 'inah that is prohibited is to sell something at a price of one hundred in installments on the condition that the buyer must resell it to the seller at a price of eighty in cash. In this transaction it seems that there are two contracts of sale and purchase, when in fact they are usury hilah in loans (qardh), because the object of the contract is pseudo and not factual

in this contract. So that the purpose and benefits of buying and selling determined by sharia are not found in this transaction.

2) Hilah riba fadhil

This happens when a person sells a certain amount (e.g. 2 kg of rice) of ribawi property at some price (e.g. Rp 20,000) on condition that he at the same price (Rp 20,000) must buy from the buyer a quantity of similar ribawi property of a greater (e.g. 3 kilograms) or less (e.g. 1 kilogram). Such transactions are a model of forbidden riba fadhil. Such transactions are prohibited based on events in the time of the Prophet where the inhabitants of Khaibar traded perfect quality dates one kilo with low quality dates two kilos, two kilos with three kilos and so on. Such a practice was forbidden by the Prophet and he said that when selling low quality dates are paid at their own price, so is it when buying perfect quality dates also at their own price. The point is that the first and second sale contract must be separated.

3) Hybrid contracts cause a fall into usury

Any hybrid contract that leads to the haram, such as usury, is haram, although the contracts that establish it are permissible. The association of some contracts whose original law is permissible but bringing it to the prohibited causes the law to be prohibited. This happens like the example:

a) Hybrid contract between salaf contract and buying and selling

As explained earlier, the Prophet forbade hybrid contracts between sales and salaf contracts. This prohibition is due to efforts to prevent (dzari'ah) from falling into the forbidden in the form of usury transactions. Jumhur ulama prohibits this hybrid contract practice, namely the collection of buying and selling contracts (mu'awadhah) with loans (qardh) if required. If this hybrid contract transaction occurs accidentally, it is permissible (due to the absence of plans to perform qardh containing usury).

b) Hybrid contract between qardh and grant to lender (muqridh)

Ulema agreed to ban qardh accompanied by the requirement of more rewards, in the form of grants or others. For example, a person lends (gives a debt) a property to another person, on condition that he occupies the borrower's house (muqtaridh), or muqtaridh gives a gift to the lender, or gives an additional quantity or quality of the qardh object when returning. Such transactions are prohibited because they contain elements of usury. If this loan transaction is then accompanied by a gift or excess, but is carried out voluntarily by the person who is given the loan, without any previous conditions and agreements, then the law is lawful (because it does not contain usury elements in it).

c) Hybrid contracts consist of contracts whose legal consequences are opposite or opposite

This hybrid contract ban is because the collection of two contracts that differ in terms and law causes asynchronous obligations and results. This happens because two contracts are for one object and one time, while the laws are different. For example, the combination between the contract to give something and sell it. It is these opposing contracts (mutadhadah) that are prohibited from being collected in one transaction (Zahid et al., 2019).

Fiqh Review of Permitted Hybrid Contracts

Although there are hybrid contracts that are forbidden, the principle of this hybrid contract is permissible and the law of the hybrid contract is related to the law of the contract that builds it. This means that every muamalat that collects several contracts, the law is halal as long as the contracts that build it are permissible. This provision provides an opportunity for the creation of a transaction model containing hybrid contracts. The majority of Hanafi scholars, some Malikiyya scholars, Shafi'iyah scholars, and Hanbali scholars argue that hybrid contract laws are valid and permissible according to Islamic law.

For those who allow reasoning that the original law of the contract is permissible and valid, it is not forbidden and canceled as long as there is no legal proposition that forbids or cancels it. The original law of sharia is that it is permissible to make a hybrid contract transaction, as long as each

contract that builds it when done individually is legal and there is no reason that prohibits it. When there is a prohibitive proposition, it does not apply generally, but excludes it in cases that are forbidden according to that proposition. Therefore, the case is said to be an exception to the general rule that applies to the freedom to perform contracts and carry out agreements that have been agreed. Of course, scholars who allow the practice of hybrid contracts do not mean allowing freely, but there are still restrictions that cannot be bypassed as explained above (Hardiati et al., 2021).

a. **Current Account Product Concept**

Current deposit products or more popularly called current accounts according to Banking Law Number 10 of 1998 are deposits whose withdrawals can be made at any time using checks, bilyet giro, other means of payment orders or by way of book transfer. Current account is a bank product in order to collect third party funds, usually current account interest rates are much lower when compared to savings and deposits, this is because current account deposits can be taken or withdrawn at any time to the deadline limit determined by the bank and current or peripheral customers are usually a legal entity that requires ease in payment traffic in carrying out their daily business activities.

A cheque is an unconditional warrant from a customer to the bank maintaining the customer's current account, to pay a sum of money to the party named therein or to the holder of the cheque. While the definition of bilyet giro (BG) or better known as giro is a warrant from the customer to the bank that maintains the customer's current account, to transfer a certain amount of money from the account concerned to the recipient named or account number at the same bank or other bank. The terms of the bilyet giro include the name of the bilyet giro and its serial number, Unconditional order to transfer a sum of money at the expense of the account concerned, Name and place of interest of the bank, The amount of funds moved in numbers and letters, Name of the receiving party, Signature of the drawee or stamp of the drawee if the drawee is a company, Date and place of withdrawal, Name of the bank receiving the transfer (Fatah et al., 2022).

The validity period and effective date of BG is 70 days starting from the date of withdrawal, If the effective date is not stated then the withdrawal date also applies as the effective date, If the effective date is not listed, the effective date is considered as the withdrawal date and other required requirements.

In the calculation of current account services, every fund deposited in a current account will get remuneration from the bank in the form of interest (conventional system) and profit sharing (sharia system). The amount of interest or profit sharing and current account services to be received is calculated by various calculation methods. Generally use the lowest balance in the month concerned. There are also those who use the average balance in the month concerned.

Types of Current Account Holders. Current account holders can be opened by customers, namely: Individuals or households, foundation institutions, business entities, government entities, banks, and other financial institutions.

The characteristic of the Current Account is that the nature of the current account can be withdrawn at any time, so its deposition in the bank is also very fluctuating so it is very difficult to be budgeted by the bank in order to use it for investment. So the interest rate given to current account holders is relatively the lowest when compared to other banking fund products.

General Current Account Requirements that must be met by individuals and business entities to become Current account holders are: The name of the prospective Current Account holder is not listed in the Black List issued by Bank Indonesia, Agree to each article listed in the "General Conditions for Opening a Current Account at the Bank", Fill out the "Application for Opening an Account at the Bank" form, Prospective account holders must fill out a Sample Signature Card, Have a Taxpayer Identification Number (NPWP), Submit a photocopy of self-proof (KTP/SIM/Passport

and KITAS for foreigners) and their power of attorney (if authorized), Especially prospective customers who are business entities must submit the latest Deed of Establishment and/or Deed of Amendment, Endorsement from the Ministry of Justice specifically for business entities in the form of PT, and Trade Business License (SIUP), Company Registration Certificate (TDP) and other licenses.

The opening of a current account is carried out if the prospective customer has met the requirements set. A Current Account can only be opened if all Current Account opening documents are complete and approved by the Section Leader Customer Service and Service Leader.

b. Fatwa of DSN MUI on Current Account

Current accounts are of two types:

- 1) Demand deposits that are not allowed by Shari'ah, namely demand deposits based on interest calculations.
- 2) Shari'ah-justified giro, i.e. giro based on the principles of Mudharabah and Wadi'ah.

General Conditions of Current Account based on Mudharabah:

- 1) In this transaction the customer acts as shahibul maal or owner of funds, and the bank acts as mudharib or fund manager.
- 2) In its capacity as a mudharib, the bank can conduct various kinds of business that do not contradict the principles of shari'ah and develop it, including mudharabah with other parties.
- 3) Capital must be expressed by its amount, in cash and not receivables.
- 4) Profit sharing must be stated in the form of a ratio and stated in the account opening contract.
- 5) The bank as a mudharib covers the operational costs of the current account by using the profit ratio to which it is entitled.
- 6) Banks are not allowed to reduce the customer's profit ratio without the relevant consent.

General Provisions of Giro based on Wadi'ah:

- 1) Entrustment.
- 2) Deposit can be taken at any time (on call).
- 3) No reward is required, except in the form of voluntary giving ('athaya) on the part of the bank.

Mudharabah giro is a deposit product at an Islamic bank with a mudharabah contract whose withdrawal can be made as agreed using cheques, bilyet giro, other means of payment orders, or by book-entry.

Application of Hybrid Contract in Current Account Products

A giro is a deposit of funds whose withdrawal can be made at any time with the use of cheques, bilyet giro, other means of payment orders, or by bookkeeping. There are two types of giro, namely demand deposits that are not allowed by sharia and those that are justified by sharia. Demand deposits that are not allowed by shari'ah are demand deposits based on interest calculations. Meanwhile, sharia justified demand deposits are demand deposits based on principles Mudharabah and Wadi'ah.

Weighing giro according to fiqh literature Wadhi'ah Applied that principle Wadhi'ah In classical Islamic literature as a pure entrustment with the principle of trust by banks. Thus, the provision applies, if there is damage to the entrusted goods by the bank, the bank compensates, but if it is not negligence, the depositing bank is not obliged to replace the goods.

Contract Wadhi'ah is the custody of funds between the owner of the fund and the recipient of the entrustment who is trusted to maintain the funds. Wadhi'ah divided into two, namely the contract wadhi'ah al-amanah and wadhi'ah yad-Dhamanah, both are the same contract for the deposit of goods

or money, but the difference is that there are goods or money stored in LKS, wadhi'ah al-Amanah is a deposit of goods or money the customer does not In giro, the contract used is to combine Wadi'ah and Mudharabah, which can be called savings and giro Automatic Transfer Mudharabah and Wadi'ah. Customers have two accounts, namely savings and current accounts at the same time (two accounts in one product). Each account can be moved automatically if one of the accounts requires.

In current account transactions based on Mudharabah, the customer acts as Shahibul Maal or the owner of the funds, and the bank acts as Mudharib or fund manager. In his capacity as Mudharib, banks can conduct various kinds of business that do not contradict sharia principles and develop them, including Mudharabah with the other party. While current account transactions are based on Wadi'ah is entrusted. The deposit can be taken at any time (On Call). No reward is required, except in the form of giving ('Athaya) which is voluntary on the part of the bank (Müller et al., 2017).

The author's analysis that Akad Wadiah and Mudharabah In the Islamic Bank Current Account product, there is a main contract, namely deposits, and accompanied by an additional contract, namely profits. From this contract there is a contract or agreement in determining profits. This agreement is included in Hybrid Contract The contract category is collected and allowed because it does not violate the NASH and the principles of Islamic economic law transactions (Benvenuti et al., 2008).

In this current account product, Islamic banks using goods or money deposited are basically not allowed in cases Wadhi'ah pure but there are things that allow with the existence of wadhi'ah yad-dhamanh So that Bank Syaria can use goods or money deposited by customers. Islamic banks mix deposits with other types of savings money or are used with investment mudharabah, therefore it can be said that there is a buffer Hybrid Contract on this current account product. Islamic banks do not return the same type of money when deposited but with different money or with bonuses from the agreement of both parties (Bennett et al., 2021).

4. CONCLUSION

From the explanation above, the author can conclude that the application of Hybrid Contract Current account products in Islamic financial institutions are allowed and have a positive impact on the community or customers and provide blessings to Islamic economic thought so that many product innovations are in accordance with Islamic law sharia regulations, in this giro product that there are multi-contracts, namely Akad Wadiah who uses Wadhiah Yad-Dhama-no and Mudharabah In the Islamic Bank Current Account product, there is a main contract, namely deposits, and accompanied by an additional contract, namely profits. From this contract there is a contract or agreement in determining profits. And it's clear there is Hybrid Contract on the product Giro Mudharabah Because in it there are multi contracts that are combined in transactions, namely contracts Wadhi'ah and Mudharabah.

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