

ANALYSIS OF THE IMPLEMENTATION OF THE BA'I MUSAWWAMAH AND IMBT
AKAD FOR TOP UP TRANSACTIONS

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ABSTRACT

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One type of business in sharia cooperatives is the distribution of funds or often referred to as financing. Sometimes members apply for financing with the desire to pay off the remaining old debt for the reason of not having too much debt or simply reducing the installment burden. This desire is not wrong and is legitimate, aka permitted in the Shari'ah. However, using the contract is not as easy as members imagine. There are many things that need to be studied and analyzed so that the transaction is truly in accordance with sharia provisions. This research aims, firstly, to describe in general terms the contracts that can be used to complete top up transactions in a sharia cooperative. Second, the presentation of this paper is sharing information with other cooperatives when they experience the same case. In this case, it provides an overview and knowledge of the steps that must be taken if you want to top up financing. The research method used in preparing this paper is based on the analytical descriptive research type. Meanwhile, the data collection techniques that the author uses are field observation, interviews and documentation techniques. Also supported by secondary data both from the company directly and from the literature. The research discusses how sharia cooperatives implement or use appropriate contracts for transactions to pay off members' old debts without causing errors that violate the sharia. The conclusion of this research is that top up transactions must be careful in determining the contract so as not to deviate from the provisions. Sharia.

INTRODUCTION

Cooperatives are one of the entities in microfinance institutions. Cooperatives are an inseparable part of the economic life of lower middle class communities. And in Indonesia, cooperatives also exist in the dynamics of the economic life of employees in companies, which are often called employee cooperatives. In its existence, Employee Cooperatives are very helpful in improving the welfare of employees in a company. When employees need fast and cheap funds, the Employee Cooperative is the only solution that can be taken. Employee Cooperatives have recently continued to develop, especially in connection with developments in the sharia economic world. So employee cooperatives are not immune from the influence

of sharia economic thinking. So an employee cooperative emerged which was based on sharia, which is often called the employee sharia cooperative, abbreviated as Kopsyah Syari'ah. Over the course of its journey, Kopsyah Syari'ah has increasingly been chosen by company employees on the pretext of being part of religious life in the economy, in this case the Islamic religion. Especially after the issuance of Law no. 11 of 2020 and PP no. 7 of 2021 which makes it easier for cooperatives to apply sharia principles.

One of the business units in the Employee Sharia Cooperative is the sharia savings and loans and financing unit which is often abbreviated as USPPS. It is through USPPS that employees carry out financing transactions and deposit funds. All kinds of employee needs (cooperative members) are met by this USPPS. Starting from daily goods needs to service needs such as financing for employees' children's school needs. So it cannot be denied that the Employee Sharia Cooperative is the lifeblood of the employee economy.

Transactions at USPPS other than new financing are repayment of the remaining debt from old financing. It is customary in the Employee Sharia Cooperative (Kopkarsyah) for a member to pay off old debts with the aim of ensuring that the amount of debt is not too many branches, or that the financing installments are not too large. However, often the repayment of old debts is not paid from Member funds but from new financing, which in fact the contract often uses *murobahah* (sale and purchase of goods in installments) or *ijaroh* (sale of services/benefits). As a simulation, for example, A, as a member of Kopkarsyah, carries out new financing worth IDR 100 million with the aim of buying a used car. At the same time, he also wants to pay off the remaining debt from the old financing of IDR 25 million. So there is only one debt, namely IDR 100 million. As a consequence, new financing of Rp. 100 million will only be received for Rp. 75 million because it has already been deducted from the old debt. At first glance there is no problem with the transaction above. However, because USPPS is sharia-based, everything must be based on sharia provisions.

So what about the transaction above, is it allowed? Kopkarsyah must provide the best service to Members and serve all Member needs. How does Kopkarsyah find a solution for members who wish to carry out transactions like the one above. This is the topic of this study. Hopefully the results of this study can be used by Kopkarsyah in Indonesia to complete the above transactions without conflicting with sharia provisions.

As explained above, one of the needs of USPPS members is to pay off old debts when applying for new financing. If this happens to a conventional employee cooperative, it is not a significant problem. Everything can be done without having to look at religious rules. However, problems arose when this happened at the Employee Sharia Cooperative. All transactions will be reviewed first according to sharia. Is it allowed or not. This is what becomes an issue when there is a member transaction like the one above.

It is interesting to note that Kopkarsyah still has to find solutions so that members' wishes are fulfilled. And this has become quite a serious study among the Management and Sharia Supervisory Board (DPS). Islam has prepared all the rules for economics, including cooperative life. There is nothing that cannot be done if we want to research the science of *fiqh* which has developed according to its time. It's just a matter of whether members want to conform to sharia provisions or not.

In connection with this problem, a breakthrough is needed by Kopkarsyah who wants to serve its members as best as possible. This problem will be discussed in the paper entitled:

"Analysis of the Implementation of the Ba'i Musawwamah and IMBT Agreements for Top Up Transactions". In discussing top up at Kopkarsyah there are several problems that must be answered and explained, namely: 1. What contracts can be used in top up transactions? 2. What is the mechanism of the recommended contracts used in top up transactions? In this paper we will see how Kopkarsyah finds the right solution to meet the needs of its members without complicating things. The aims of this research are: 1. Providing knowledge to kopkarsyah managers who will have the same problem. 2. Provide solutions to kopkarsyah managers to provide solutions to members without having to violate sharia.

Literature

Understanding Contract

Literally the contract is al-rabth (bond), al-tahakkum (to strengthen) and al-ittifak (agreement). In terms of terms, a contract is a bond between a statement of will from one party (ijab) and a statement of agreement from another party (qobul) which influences the object of the contract. (DR. KH Hasanudin MAg, Prod DR. Jaih Mubarak MAg. MH. Mu'amalah Contract Theory Maliyah, 2020). In the view of the fuqoha, contracts are divided into two, namely special contracts and general contracts.

According to Mushthafa Al-Zarqa, a general contract is a legal act in which the provisions of the Shari'ah apply, whether from one party or from two parties. (Al-Madkhal Al-Fiqh Al-Amm, Damascus, Jami'ah Damascus, 1961, vol 1, p. 71). Meanwhile, according to Muhammad ibn Hammad Abd Al-Hamid, a special contract in the book Majjalat Al-ahkam al-adliiya is a relationship between offer and acceptance in ways that are in accordance with sharia.

Void and Facade Contracts

A void contract is a contract whose terms and conditions are not fulfilled. Meanwhile, a facade contract is a contract that violates the provisions of the Sharia. (DR. KH Hasanudin MAg, Prod DR. Jaih Mubarak MAg. MH. Theory of the Mu'amalah Maliyah Agreement, 2020). A voided contract is easier to detect because it is more related to things that are clearly visible. For example, there are 4 pillars of buying and selling, first the seller, second the buyer, third the goods, and fourth the price (Suprpto, 2023). There are three pillars that are clearly visible, so if they are not there then the contract is void. Meanwhile, the facade contract is broader than the elements in the void contract. Facade contracts are more about irregularities in the implementation of agreed contracts. For example, the contract is murobahah bil wakalah (sale and purchase is represented) but in the implementation the money is not bought as goods as agreed but some of it is used to pay debts. This includes facade contracts (Syekh abdurrahman as Saadi, Syekh abduallah bin Baaz, Fiqh of Buying and Selling, p. 334, 2008)

Ba'i Musawwamah Sale and Purchase Agreement

In linguistic terms, musawwamah comes from the words sama-yasumu-saum-suwum which means to bargain or offer. Buying and selling musawwa, ah as per the DSN MUI fatwa is a sale and purchase that goes through a bargaining process until an agreed price is reached (DR. KH Hasanudin MAg, Prod DR. Jaih Mubarak MAg. MH. Sale and Purchase Agreement, 2017)

Ijarah Muntahia Bit Tamlik (IMBT) Agreement

From a theoretical perspective, the IMBT contract is a combination of the mu'awadhat contract and the tabarru contract (grant contract) interspersed with conditional promises. In terms of terminology, IMBT is an ijarah agreement which is accompanied by a promise to transfer ownership of the leased property at the end of the lease. (DR. KH Hasanudin MAg, Prod DR. Jaih Mubarok MAg. MH. Akad Ijarah and Ju'alah, 2017)

METHOD

The object of research in writing this paper is the transaction of paying off old debts when applying for new financing which is often termed "Top Up". The research for preparing the paper took the title "Analysis of the Implementation of the Ba'i Musawwamah and IMBT Agreements for Top Up Transactions". This research is descriptive analytical research, namely explaining and analyzing the object being studied.

Meanwhile, the data collection techniques that the author uses are field observation, interviews and documentation techniques. Also supported by secondary data from book literature and expert opinions. The research stages were carried out using the following process: 1. The research discusses the theoretical literature of a top up transaction in Kopkarsyah. In this stage, it is explained how the transaction occurs and how the appropriate contract should be used for the transaction. 2. Research on the sampling selected in this case at USPPS Kopindosat and USPPS Bridgestone. How do the two cooperatives handle top up transactions in relation to the contracts used. 3. Research on empirical data, in this case top up transactions that occurred in the two cooperatives. What efforts have been made both internally and in relation to external parties such as banks? From these three stages, a conclusion will be drawn whether the top up transaction has used the correct contract or not. Second, what steps must be taken to handle top up transactions so that they do not violate sharia provisions.

RESULT AND DISCUSSION

In any type of cooperative, top up transactions always exist. In conventional type cooperatives, the top up process does not require difficult thinking because there are no restrictions and prohibitions in the process. But not for sharia type cooperatives which are based on Islamic teachings. All transaction processes must be based on Islamic religious rules, meaning they cannot be haphazard.

Top transactions include the following two items:

- a. The remaining debts of old members will be paid off
- b. New financing proposed

In common practice in most sharia cooperatives, financing transactions that involve paying off old debts are carried out by deducting the value of new financing to cover old debts. In this case, the practice that occurs actually violates the provisions of the Sharia.

Agreement for Top up Transactions

Basically, a top up transaction is paying off old debt and simultaneously applying for new financing. So debt repayment procedures must be strictly observed. Because in the Sharia provisions there are rules for paying debts. For example, debts cannot be paid off. Or there are other contracts which are not actually for paying debts but are used to pay debts. Of course, this will result in damage to the contract and transaction itself.

In cooperatives around us, whether conventional cooperatives or sharia cooperatives, old debts are usually paid from loan/financing transactions that will be submitted. For example, A, as a member of the sharia cooperative (kopsyah) "X", applies for new financing worth IDR 100 million for the purpose of purchasing a car. So the contract used is of course murobahah. Because A will buy his own car, the contract becomes murobahah bil wakalah. On the other hand, A still has old debts worth IDR 20 million. And A wants to pay off the old debt. So the method was taken by deducting from new financing. So the money A received was only IDR 80 million due to a deduction of IDR 20 million. Of course, this is in serious violation of sharia provisions because there are deviations from the agreed contract. The 100 million should be used to buy a car, not pay off debt.

So in this paper the author would like to convey that one alternative to top up transactions is to use a combination of two contracts, namely Bai Musawwamah and IMBT. With this combination contract, A is required to sell the goods he owns to pay a debt of IDR 20 million. For example, A sells his motorbike for IDR 20 million to Kopsyah. The money received from the kopsyah by person A was used to pay a debt of IDR 20 million. Then Kopsyah will rent the motorbike to A with a rental of 24 million for 24 months. This lease is bound by the IMBT contract. At the time of payment of the last month's rent, there is an agreement that Kopsyah will give the motorbike to A. Then the motorbike will return to A's ownership.

Returning to the new financing proposed by A, Kopsyah will make a murobahah bil wakalah contract of IDR 80 million according to the tenor proposed and agreed. So that A's total debt remains 100 million with 2 financing items. The first is debt from the IMBT contract and the second is from the murobahah bil wakalah contract. Basically, this contract requires A to sell his assets. On the other hand, the debt still has two items, such as if the old one is not paid off and new financing is added. Not a few members object to this scheme because their real desire is to want the debt to be one item. And the installments are reduced because the tenor will be longer.

However, that is the consequence of a transaction that is intended to be in accordance with sharia provisions. In the sharia, there are provisions relating to muamalah that cannot be violated under any pretext. If we intend from the start to start muamalah in order to seek Allah's approval and blessings, of course whatever we do, we will carry it out. The road to heaven is sometimes not always easy.

CONCLUSION

Sharia cooperatives are increasingly developing nowadays. Many cooperatives have migrated to become sharia cooperatives. Of course, this transformation does not just change the name and ideology, but more than that it must bring about changes in the management area. It is not easy to implement sharia provisions in a cooperative, because it must involve all aspects and elements. In terms of aspects, the basic budget must also be adjusted. On the sharia element, all members must be disciplined in carrying out transactions in accordance with sharia rules.

One of the transactions that is the object of research is the transaction for repayment of old debts when there is an application for new financing, which often occurs in kopsyah-kopsyah in Indonesia. The practice often carried out by management in connection with this

transaction is to directly deduct the value of new financing to cover old debts. This method is certainly not permitted according to sharia provisions.

The combination contract of Ba'i musawwamah and Ijarah Muntahia Bit Tamlik is a solution for top up transactions in sharia cooperatives. In this way, debt closure can be avoided by a murobahah contract (installment sale and purchase) which clearly deviates from the agreed contract. This combination of contracts has the consequence that members must sell assets to the kopsyah to cover old debts.

Sharia solutions do require struggle and sacrifice. Likewise with this combination of contracts. Having assets that must be sold is a form of sacrifice by a member to be on the path of sharia. That's not easy for all members to do. It requires capital of faith and high awareness to carry it out. Hopefully more and more members will understand this sharia.

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