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Abstract

Wadi'ah is one of the forms of contract in Islamic financial institutions. Wadi'ah is the storage of goods accompanied by an agreement between the owner of the property or goods and a trusted party to take care of the property or goods. In principle, wadi'ah is to help the custodian of property or goods and the party in charge of the property or goods is as an assistant. Therefore, this wadi'ah contract is trust. This research study used a descriptive qualitative method with previous literature. The results of this study according to the type of wadi'ah are divided into two: namely the first is wadi'ah yad amanah (trust), where a person who receives a deposit is not allowed to use the goods or assets until it is taken back by the person who owns the property. The second type is wadi'ah yad dhamanah (guaranteed savings), which means that assets or goods can be used by the recipient of the deposit as long as they have not been returned to the depositor. However, if the profit is obtained from the utilization, then all of them are entitled to the recipient of the deposit. The status of the contract change from wadi'ah yad amanah to wadi'ah yad dhamanah can occur if: first, the assets in the deposit have been mixed. Second, recipients use the assets deposited. And third, recipients charge a service fee from the depositor.

Keywords: Wadi'ah, Property, Deposits.

Introduction

A Muslim is required to live a life in accordance with the provisions and laws of Allah SWT. In Islamic religion, a Muslim is prohibited from eating falsehood. Falsehood is taking usury or doing transaction using the *ribawi* method. *Riba* is *haram*. Whether done in small or large quantities, or carried out by institutions or

individuals, it is still prohibited.¹

In our life, humans as social creatures cannot live alone, but need help from others. Likewise in terms of safeguarding property or goods. In certain circumstances, someone will need someone else to protect their property for a reason. With the development of the era, humans no longer entrust their assets to someone, but to an institution known as a financial institution, both bank and non-bank.

The development of Islamic banking in Indonesia is growing rapidly, as reflected in the share of Islamic banking assets compared to conventional banking, which currently reaches about 3%. Products offered include fundraising in the form of current savings *wadi'ah* (savings) and *mudharabah* deposits. In this discussion the authors will discuss the various types of savings and savings contracts available in Islamic financial institutions.²

The Concept of Wadi'ah

A. Wadi'ah According to the Fuqaha

Wadi'ah comes from the Arabic word "*wada'a*" which means to leave. To leave means the owner of the price left his property to someone else. In terms, *wadi'ah* means representing the care of a property that has value in a certain way.³ According to al-Bahuti Mansyur quoted by Mufti Afif defines *wadi'ah* as authorization by a person who has goods to be entrusted to someone who takes care of his property without compensation. According to Sjahdeni, the *wadi'ah* contract is an agreement that is helpful in helping fellow humans, that is, helping in fulfilling the mandate.⁴

Legally, the Hanafi scholars define *wadi'ah* as an empowerment to someone for keeping the owner's property explicitly and implicitly. For example, A said to someone else B, "I leave this bag of yours to you," then B replied, "I accept". And, with this the *wadi'ah* contract can be made.⁵

According to the Maliki and Syafii schools of thought, it defined that *wadi'ah* is carried out by representing others in protecting certain assets (which are valuable) in specific way. The word "*certain (valuable*

¹Sakinah, "Investasi dalam Islam", *IQTISHADIA: Jurnal Ekonomi & Perbankan Syariah*, Vol. 1 No. 2, 2015, 23.

⁵Muhammad ath-Thayyar, et. al., *Ensiklopedi Fiqih Muamalah; Dalam Pandangan 4 Madzhab* (Riyadh: Madar al-Wathan, 2004), 97.

property)" includes the skin of the carcass that has been purified (tanned), hunting dogs, manure and so on. Meanwhile, assets such as ordinary pet dogs, dirty clothes that are not suitable for use cannot be deposited because these assets have no value (considered garbage) and this can destroy the law of *wadi'ah*. Whereas what is meant by a specific way is by full guarding, regarding the mechanism for the safeguard being handed over to the recipient of the assets deposited. It can be tied up, kept in the house, or put in a safe box in a lock and in other ways.⁶

B. Basic Rule of Wadi'ah

In Islam, the *wadi'ah* law is permissible, the foundation is written in the Qur'an and Hadith as well as the consensus of the scholars, namely:

21
 إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا

"Indeed, Allah has commanded you to equate the message to those who are entitled to receive it (the owner) ..." (QS. an-Nisa': 58).

فَلْيُوَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ

"... then let the trustee fulfill his mandate (deposit / debt) and let him fear Allah his Lord ..." (QS. al-Baqarah: 283).

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ

"And help one another in virtue and piety" (QS. al-Maidah: 2).

Rasulullah SAW said:

قال رسول الله أد الأمانة إلى من ائتمنك ولا تخن من خانك

"Fulfill the trust of those who entrust you and do not betray those who betray you" (HR. Abu Daud and Tirmidhi, Ahmad and Ashabun Sunan).

Muslim scholars from the past to the present have agreed that *wadi'ah* contracts in Islam are permissible, since all human beings

⁶Wahbah Zuhaili, *Al-Fiqhu'l Islami wa Adillatuhu*, Vol. 2 (Siria: Darul Fikri, 1985), 357.

need each other, and this is the interest of some people.⁷

C. Basics Rule of Sharia Products with Wadi'ah Contract

The National *Sharia* Council (DSN) issued a *fatwa* on *wadi'ah* products with the following considerations:⁸

1. That the needs of the community in improving welfare and in the investment sector, at this time require banking services; and one of the banking products in the field of raising funds from the public is *giro*, that is savings of funds that can be withdrawn at any time through cheques, *giro* tickets, other payment methods, or by transfer.
2. Even though not all current accounts can be permitted by Islamic law (*sharia*).
3. Therefore, the National *Sharia* Council (DSN) considers it necessary to set a *fatwa* on the form of *sharia* in *muamalah* to be used as a guide in the implementation of demand deposits in Islamic banks.

D. The Pillars of Wadi'ah

In Islam every agreement made by Muslims must fulfill conditions and pillars. If one of the pillars or conditions is not met then the agreement is void or invalid. Pillars of *wadi'ah* according to Hanafiyah scholars are *ijab qabul* only. It is hand over to someone by saying "I entrust this property to you", or "Please take care of this property for me" or other expressions that contain the meaning of deposit and then the *wadi'ah* contract occurs.⁹

According to *jumhur ulama* the pillars of *wadi'ah* are divided into 4:

1. *Muwaddi'* (custodian or owner of property) and *wadi'* (recipient of deposit).
2. Property entrusted.
3. *Shighah* i.e. Offer (*ijab*) and acceptance (*qabul*).¹⁰

⁷Mohammad Omar Farooq, "Qard al-Hasana, Wadiah/Amanah and Bank Deposits: Applications and Misapplications of Some Concepts in Islamic Banking", *SSRN Electronic Journal*, 2008, 12.

⁸Fatwa Dewan Syariah Nasional MUI No: 01/DSN-MUI/IV/2000.

⁹Siti Aisyah, "Penghimpunan Dana Masyarakat dengan Akad Wadi'ah dan Penerapannya pada Perbankan Syariah", *Jurnal Syariah*, Vol. 5 No. 1, 2016, 16.

¹⁰Any Widayatsari, "Akad Wadiah dan Mudharabah dalam Penghimpunan Dana Pihak Ketiga Bank Syariah", *Economic: Jurnal Ekonomi dan Hukum Islam*, Vol. 4 No. 1, 2013, 18.

E. Legal Condition of Wadi'ah

The legal condition of *wadi'ah* according to the scholars is divided into 2, namely:¹¹

1. Hanafiyah, the subject of *wadi'ah* must be wise, so that even a small child but is considered to have been wise and obtained permission from his guardian, his *wadi'ah* contract is considered valid.
2. *Jumhur*, the subject of *wadi'ah* must be puberty (*baligh*), wise, and intelligent. This is because the *wadi'ah* contract has many risks, so even if he/she is wise and has reached puberty (*baligh*) but is not smart according to *jumhur* then the *wadi'ah* contract is considered invalid.

F. Types of Wadi'ah

According its type, *wadi'ah* is divided into 2: the first is *wadi'ah yad amanah* (safe custody based on trust), where a person who receives a deposit is not allowed to use the goods or property of the deposit until it is taken back by the person who owns the property or goods.¹² This *wadi'ah* has the following characteristics:¹³

1. The custodian is a trustee.
2. The property or goods in the deposit must be separated.
3. The property or goods in the deposit cannot be used.
4. The recipient does not have the right to take advantage of savings.
5. The recipient of the deposit is not obliged to replace all risks of loss or damage to the stored property unless the damage or loss is the result of the negligence of the recipient or if the status of the deposit changes to *wadi'ah yad dhamanah*.

The second type is *wadi'ah yad dhamanah* (guarantee safe custody). This is the combination between safe-keeping (*al-wadiah*) and guarantee (*daman*), where assets or goods can be used by the recipient of the deposit as long as it has not been returned to the depositor. However, if the profit is derived from its use, then

¹¹Muslihah, "Penyelesaian Sengketa Akad Yad Dhamanah di Pengadilan Agama Blitar Menurut Hukum Ekonomi Syariah", *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah*, Vol. 3 No. 1, 2019, 15.

¹²Rahayu Indriasari, et. al., "Persepsi Nasabah Tentang Tabungan Wadiah", *Journal of Research and Applications Accounting and Management*, 2018, 16.

¹³Widayatsari, "Akad Wadiah dan Mudharabah dalam Penghimpunan Dana Pihak Ketiga Bank Syariah" ..., 18.

everything is entitled to the recipient of the deposit.¹⁴ Typically, Islamic banks use the principle of *wadi'ah yad dhamanah* for savings products and current accounts. The following are the characteristics of *wadi'ah yad dhamanah*, namely:¹⁵

1. Trusted deposit recipients and guarantors of entrusted goods.
2. Assets or goods seized are inseparable.
3. Assets or goods seized can be used for trade.
4. Depositors are entitled to income earned from the use of assets entrusted in trade.
5. The owner of an asset or goods can withdraw his deposit at any time.

The status of the contract change in *wadi'ah yad amanah* to *wadi'ah yad dhamanah* can occur if:¹⁶

1. Assets in the deposit have been mixed.
2. The recipient of the deposit uses the assets deposited.
3. Charge depositors a service fee.

G. Furu'iyah Problems in the Wadi'ah Contract

Some branches (*furu'iyah*) of the problems that arise in the *wadi'ah* contract according to Ibn Jizyi from *madzhab* Imam Malik are as follows:¹⁷

1. Producing or selling and buying property: the opinion of Abu Hanifah is that profits should be donated. While scholars other than Abu Hanifah stated the full benefit of the right of *muwaddi'*. *Wadi'ah* is entitled to receive a wage limit on the costs incurred to maintain property.
2. It is not permissible to ask for wages from the *muwaddi'* for hard work (keeping the mandate). Because the basic foundation of *wadi'ah* is to help, not to seek profit. If you need the cost to buy security equipment, then the full cost is borne by *muwaddi'*.

¹⁴Jihan Destia, *Implementasi Akad Wadiah Yad Dhamanah pada Produk Tabungan Amanah Pelajar (Simpel) IB di PT Bank BRI Syariah Tbk Kc. Medan S. Parman* (t.t.p.: Program Studi D-III Perbankan Syariah Fakultas Ekonomi dan Bisnis Islam, 2019), 13.

¹⁵Zaida Rizqi Zainul and Khairannis, "Analisis Pengelolaan Dana Haji pada PT Bank Aceh Syariah", *Equilibrium: Jurnal Ekonomi Syariah*, Vol. 7 No. 2, 2019, 45.

¹⁶Bambang Murdadi, "Menguji Kesyariahan Akad Wadiah pada Produk Bank Syariah", *Maksimum*, Vol. 12 No. 11, 2015, 34-38.

¹⁷Afif, "Tabungan Implementasi Akad Wadi'ah atau Qard?"..., 253.

Sharia Banking Products with Wadi'ah Contracts

The *wadi'ah* contract is one of the contracts used in raising funds in Islamic banking. In accordance with the book codification of Islamic banking products issued by Bank Indonesia (2008). Mentioning the definitions of various products that are applied in Islamic Commercial Banks and *Sharia* Business Units (UUS), among others.¹⁸

A. Sharia Giro

Sharia giro is defined as a deposit which can be withdrawn at any time using a bilyet/*giro* cheque and other government payment instruments or by transfer. Meanwhile, the *wadi'ah* contract is a deposit of funds made by the owner of the funds to a depositor of funds or goods with the fund depositor obliged to return the funds at any time.¹⁹ The mechanism and features of current accounts based on the *wadi'ah* contract are as follows:²⁰

1. Recipients of deposited funds, namely banks and customers act as depositors of funds.
2. Banks are not allowed to give any bonus or reward to customers.
3. Customers may be charged for the administrative fees in the form of fees that are directly related to account management costs, including cheque/*bilyet giro* fees, stamp fees, print transaction reports, and opening and closing accounts.
4. Banks are required to guarantee funds deposited by customers.
5. Funds can be withdrawn at any time by the customer.

Objectives and benefits for the bank and customers:²¹

1. As a source of funding in the form of both Rupiah and foreign currency.
2. As one of the sources of fund income in the form of services (fee base income) from the continued activities of using current accounts by customers.

For customers:

¹⁸Ardiana Wahyu Febriyanti, et. al., "Analisis Pengaruh Giro Wadiah, Tabungan Mudharabah dan Deposito Mudharabah terhadap Profitabilitas Bank Syariah yang Terdapat di BEI", *E-Jra*, Vol. 16 No. 02, 2019, 23-25.

¹⁹Bagus Ahmadi, "Akad Bay', Ijarah dan Wadi'ah Perspektif Kompilasi Hukum Ekonomi Syariah (KHES)", *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, Vol. 7 No. 2, 2012, 314.

²⁰Widayatsari, "Akad Wadiah dan Mudharabah dalam Penghimpunan Dana Pihak Ketiga Bank Syariah" ..., 8.

²¹*Ibid*, 9.

1. Streamlining activities of payment or receipt of funds.
2. Receiving bonuses.

B. Wadi'ah

Wadi'ah is savings in the form of deposits that can only be withdrawn with certain agreed conditions, and cannot be withdrawn by cheque or demand deposit or other similar means.²² While the *wadi'ah* savings contract is a transaction for the deposit of funds or goods with the obligation for those who save to return funds or goods at any time. The mechanism and features of current accounts based on the *wadi'ah* contract are:²³

1. The bank functions as a recipient of deposited funds and as a depositor of funds is the customer.
2. Banks are not allowed to promise giving rewards or bonuses to customers.
3. Customers may be charged administrative fees in the form of fees that are directly related to account management fees, including cheque/*bilyet giro* fees, stamp fees, sacchlorek accounts, print transaction reports, and opening and closing account.
4. Banks are required to guarantee funds deposited by customers.
5. Funds can be withdrawn at any time by the customer.

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For customers:

1. Streamlining activities of payment or receipt of funds.
2. Receiving bonuses.

²²Muhammad Wanto, "Implementasi Akad Produk Tabungan Rencana di PT Bank Syariah Mega Indonesia Gallery Cianjur: Pendahuluan Islam yang Dibawa oleh Rasulullah SAW Adalah Agama Humanistis", *Jurnal Muqtasid*, Vol. 5 No. 02, 2014, 89.

²³Murdadi, "Menguji Kesyariahan Akad Wadi'ah pada Produk Bank Syariah" ..., 7.

²⁴Wanto, "Implementasi Akad Produk Tabungan Rencana di PT Bank Syariah Mega Indonesia Gallery Cianjur: Pendahuluan Islam yang Dibawa oleh Rasulullah SAW Adalah Agama Humanistis" ..., 90.

Sharia Compliance with Wadi'ah Contract

Savings are deposits whose withdrawals can only be made with certain conditions, but cannot be withdrawn by cheque or *bilyet giro* or other means. Certain conditions here referred to the withdrawals are limited to few Rupiahs a day. In this case what must be considered is the principle of *wadi'ah* itself because in the *wadi'ah* contract, the funds that are deposited can be retrieved at any time.²⁵ And, for the depositor should not expect a bonus because the *wadi'ah* contract is only a deposit, not an investment. And in this case the bank is obliged to provide an explanation to the customer about the meaning and difference between *wadi'ah* savings and *mudharabah* savings.²⁶

Conclusion

Wadi'ah is the handing over of one's assets to another to protect one's assets, either by clear expression, through action, or by instinct. According to the type, *wadi'ah* is divided into two, *wadi'ah yad amanah* (trust) and *wadi'ah yad dhamanah* (guaranteed savings). However, if the profit is derived, then everything is entitled to the recipient of the deposit. The status of the contract change from *wadi'ah yad amanah* to *wadi'ah yad dhamanah* can occur if the assets in the deposit have been mixed, recipients use deposits and charges a service fee to the depositor. Islamic banking used the principle of *wadi'ah yad dhamanah* for savings products and current accounts (*giro*).

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²⁵Murdadi, "Menguji Kesyariahan Akad Wadi'ah pada Produk Bank Syariah" ..., 8.

²⁶Febriyanti, et. al., "Analisis Pengaruh Giro Wadi'ah, Tabungan Mudharabah dan Deposito Mudharabah terhadap Profitabilitas Bank Syariah yang Terdapat di BEI" ..., 15.

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