

CHAPTER I

INTRODUCTION

1.1 Background of Study

Islamic banking in Indonesia continues to experience annual growth and development, supported by 14 Islamic Commercial Banks, 19 Islamic Business Units, and 173 Islamic Rural Banks, with the total distribution of assets as follows:¹

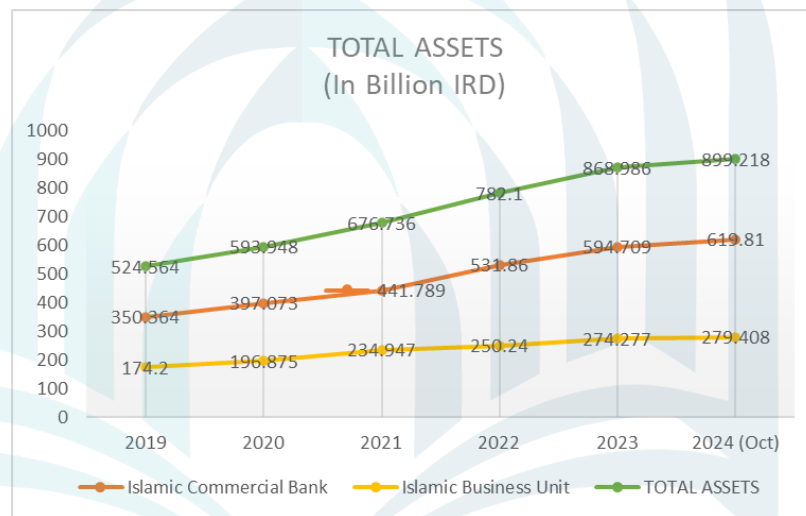


Figure 0-1 Total Assets

Source: Sharia Banking Statistics, OJK, August 2024

The chart above demonstrates that the state of Islamic finance in Indonesia continues to develop positively, particularly in the case of Islamic Commercial Banks, which have shown steady growth over time despite the pressures of global uncertainty.² This financial

¹ Otoritas Jasa Keuangan (OJK), "Sharia Banking Statistics October 2024," in *Otoritas Jasa Keuangan, Republik Indonesia*, 2024.

² Ilhamdi Ilhamdi And Deni Pandu Nugraha, "Analisis Tinjauan Bibliometrik Pada Literatur Sistem Moneter Islam," *Asy Syar'iyah: Jurnal Ilmu Syari'ah And Perbankan Islam* 8, No. 2 (November 28, 2023): p.115.

development has become a driving force behind the rapid growth of Islamic financial institutions.³

An Islamic bank is a financial institution that conducts business activities based on Islamic legal principles as stipulated in the fatwas of the Indonesian Ulema Council. These activities exclude elements of usury (*riba*), gambling (*maisir*), uncertainty (*gharar*), prohibited (*haram*), and injustice (*zulm*). Instead, they embody justice, cooperation, equity, and benefit values.⁴

Islamic banking plays a significant role in the global economy, particularly for a nation, by providing financial services, driving economic business advancements, supporting social initiatives, enhancing welfare, and upholding economic justice.⁵ In carrying out its role, Islamic banks are governed by Law Number 21 of 2008 on Islamic Banking, hereinafter referred to as UUPS. This law regulates Islamic banks based on profit-sharing principles. It mandates their compliance with Sharia rules and principles in all aspects of their business, products, operations, instruments, and practices, ensuring proper Islamic governance.⁶

Islamic financial institutions offer various products based on contracts aligned with Sharia principles to fulfill their services. These

³ Alfina Sindy Pastiani, "Perkembangan Perbankan Syariah di Indonesia," *Universitas Djuanda*, 2019, p.23.

⁴ Presiden Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 21 tahun 2008 tentang Perbankan Syariah*, 2008.

⁵ M H A Masduqie, "Kiprah And Peranan Lembaga Keuangan Syariah Dalam Ekonomi Global: Faktor Pendukung, Penghambat And Peluang Yang Dimiliki," ... *Islamic Economics Studies And Practices* 1, No. 2 (2022).

⁶ Laksita Sela Srimaya Et Al., "Penerapan Tata Kelola Islam Dalam Perbankan Syariah Di Indonesia: Sebuah Studi Kepustakaan," *Jurnal Ilmiah Ekonomi Islam* 9, No. 01 (2023): p.120.

products are categorized into funding, financing, and service products.⁷ One of the innovations in the Islamic finance industry is the introduction of hybrid contract products, which offer benefits in product development, represent innovation in service delivery, and become a leading product solution.⁸

Hybrid contract is a contract referring to the implementation that involves more than one contract (agreement). Examples of multi-contracts used in Islamic banking include *Ijarah Muntahiyah Bi Tamlik* (IMBT), *Musyarakah Mutanaqishoh* (MMQ), and *Rahn* (pawn or collateral).⁹

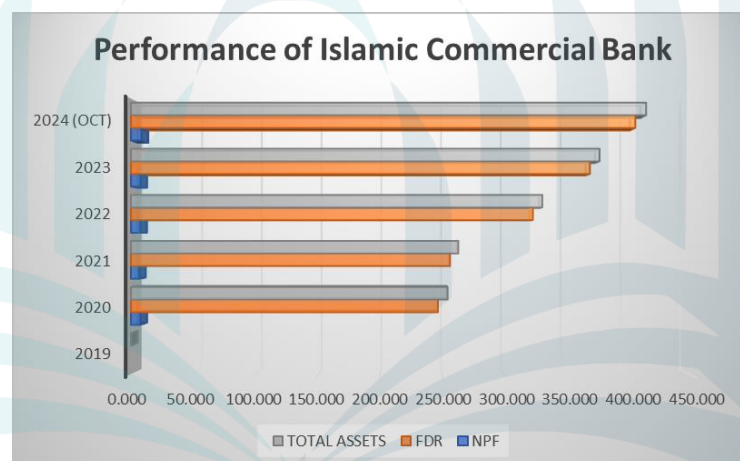


Figure 0-2. Data of Islamic Commercial Bank Performance

Source: Sharia Banking Statistics, OJK, August 2024

The figure above illustrates that performance of Islamic banking, particularly Islamic Commercial Banks, continues to grow and provide services to the public through various products.

⁷ Wiroso, *Produk Perbankan Syariah* (LPFE Usakti, 2011), p.17.

⁸ Shofy Liza Nurul Arafah dan Muhamad Yogi Hamdani, "Multi Akad (Hybrid Contract) Inovasi Produk Lembaga Keuangan Syariah," *EKSISBANK: Ekonomi Syariah dan Bisnis Perbankan* 2, no. 2 (2018): p.50.

⁹ Ali Amin Isfandiar, "Analisis Fiqh Muamalah Tentang Hybrid Contract Model And Penerapannya Pada Lembaga Keuangan Syariah," *Jurnal Penelitian* 10, No. 2 (2014).

However, in its development, the Islamic finance sector still faces numerous challenges,¹⁰ with the emergence of increasingly complex issues faced by stakeholders.¹¹

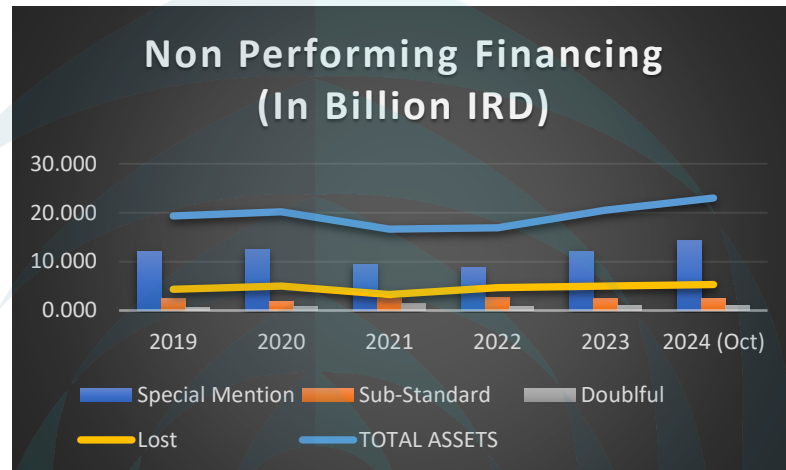


Figure 0-3 Non-Performing Financing

Source: Islamic Banking Statistics, OJK, August 2024

The figure above proves that the asset quality of Islamic Commercial Banks, which was previously below standard, has improved over the past three years. The leading cause of this improvement is related to financing with varying levels of quality, including those under attention, less smooth, doubtful, and non-performing loans.¹² Therefore, it is undeniable that disputes in Islamic Banks regarding financing products have contributed to the increase in poor quality.

Islamic financial institutions must be closely monitored to prevent the potential threat of failure in Islamic financial institutions

¹⁰ Otoritas Jasa Keuangan, "Siaran Pers Mendorong Potensi Pengembangan Perbankan Syariah 'OJK Mengajar' di UIN Syarif Hidayatullah," no. November (2023): p.5–6, <https://ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/Mendorong-Potensi-Pengembangan-Perbankan-Syariah.aspx>.

¹¹ Januariansyah Arfaizar et al., "Inovasi Dan Tantangan Perbankan Syariah Pada Era Digital Di Indonesia," *WADIAH: Jurnal Perbankan Syariah* 7, no. 2 (2023): p.97.

¹² Otoritas Jasa Keuangan (OJK), "Sharia Banking Statistics October 2024."

from affecting the economic system's stability.¹³ Islamic financial institutions are governed by numerous regulations that have already been established, such as the regulations from the Financial Services Authority (OJK), Central Bank of Indonesia, relevant legislation, the Compilation of Sharia Economic Law, the Sharia National Council of the Indonesian Ulema Council (DSN-MUI), and the Sharia standards set by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). These serve as favorable laws and financial standards for Islamic finance in carrying out their activities.¹⁴

However, it cannot be denied that there are negative impacts on the governance of Islamic banks after such actions are implemented, including the failure to fully achieve Sharia compliance in banking, which poses a risk to the bank's asset value and credibility.¹⁵ This Sharia issue can become a polemic or Sharia-related problem if not correctly anticipated by Islamic banks in their operations. It could impact Islamic banking products, particularly multi-contract financing, which involves complex agreements and requires intricate resolution processes.

It is undeniable that financing activities in Islamic financial institutions are prone to experiencing non-performing financing.

¹³ Iwan Triyuwono Et Al., "Konsep Dasar Penilaian Kinerja Bank Syariah," *Simposium Nasional Akuntansi Xviii* (2015): p.13.

¹⁴ Otoritas Jasa Keuangan (OJK) Kantor Regional 4, "Buku Pintar Keuangan Syariah," *Departemen Otoritas Jasa Keuangan*, 2018, p.14.

¹⁵ Syamsul Idul Adha, Hafas Furqani, dan Muhammad Adnan, "Konversi Bank Konvensional menjadi Bank Syariah di Indonesia," *Journal of Sharia Economics* 1, no. 1 (2020).

This occurs due to both internal and external factors.¹⁶ Internal factors include the bank's negligence in monitoring customers and insufficient thoroughness in explaining the contract to customers. External factors include customer negligence, such as intentionally failing to pay installments, poor financial management, customers experiencing layoffs (PHK), or unfavorable working conditions that hinder their ability to make payments.¹⁷**No table of figures entries found.**

One reason for the sector's non-compliance with such decisions lies in Sharia aspects, particularly concerning the Sharia products being offered to ensure their sustainability and security, especially in consumer protection. Therefore, legally established regulations must address various financial issues. This ensures that disputes are resolved effectively, correctly, and fairly, preventing legal loopholes and multiple interpretations.¹⁸

This research is crucial as it proposes establishing regulations within the Sharia framework for Islamic financial institutions. These regulations should adhere to national Sharia standards, including the fatwas of the DSN-MUI and international Sharia standards, such as those of AAOIFI and IFSB, to avoid legal loopholes and multiple interpretations when making decisions.

¹⁶ Gama Pratama, Nur Haida, And Sukma Nurwulan, "Strategi Penanganan Pembiayaan Bermasalah Pada Produk Bank Syariah," *Ecobankers : Journal Of Economy And Banking* 2, No. 2 (2021).

¹⁷ Gama Pratama, Nur Haida, And Sukma Nurwulan, "Strategi Penanganan Pembiayaan Bermasalah Pada Produk Bank Syariah," *Ecobankers : Journal Of Economy And Banking* 2, No. 2 (2021): p.101.

¹⁸ Erie Hariyanto, "Penyelesaian Sengketa Ekonomi Syariah," *Jakarta, Indonesia: Prenada Media Group* 1, No. 1 (2018): p.32, <https://Repo.lainbatusangkar.Ac.Id/Xmlui/Handle/123456789/18585>.

This study aims to examine and analyze various disputes arising from hybrid contract arrangements, including *Ijarah Muntahiyah Bi Tamlik (IMBT)*, *Musyarakah Mutanaqishah (MMQ)*, and *Rahn*. The analysis is conducted based on national Sharia standards, including the fatwas of the DSN-MUI, and international Sharia standards such as those of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB).

This research serves as a recommendation and foundation for the formulation of regulations for the Sharia Supervisory Board (DSN), the Financial Services Authority (OJK), and the Central Bank of Indonesia (BI) as regulators of the Islamic financial sector, its aim to develop the performance of Islamic banks and address Sharia aspects in hybrid contract products to anticipate potential disputes.

As the result, this study becomes Thus, the research is titled **"Analysis of Sharia Disputes Potential of Hybrid Contract Financing in Islamic Banks."**

1.2 Research Scope

Based on the explanation of the background of the problem above, the author limits this research to the following scope of discussion:

1. Hybrid contract: *Musyarakah Mutanaqishoh (MMQ)*, *Ijarah Mutahiyah bi tamlik (IMBT)*, *Rahn (include Akad Ijarah and Qardh)*

In this study, hybrid contract financing is the main issue because hybrid contract arrangements in Islamic financial products represent

a complex yet flexible challenge.,¹⁹ Implementing hybrid contract arrangements in various banking products is highly prone to disputes, particularly concerning Sharia issues. It also requires specific regulations or provisions as guidelines, as it cannot simply refer to the single contract that serves as the foundation for creating these hybrid contracts.

2. Islamic Finance Standard: Fatwa DSN-MUI, POJK, PBI, UU P2SK, KHES, AAOIFI, and IFSB

Islamic finance standards in question are financing regulations that apply to Islamic banks in Indonesia with national standards, namely the DSN MUI fatwa, the P2SK Law, and the rules from banking supervisory institutions, POJK and PBI. It also refers to international Islamic banking standards, namely AAOIFI and IFSB.

1.3 Problem Formulation

Based on the background and scope of the research outlined above, the researcher formulates the main issue to be studied and analyzed in this paper as follows: "How do potential sharia disputes in Islamic finance of hybrid contract financing based on Islamic Economic Law?"

1.4 Research Purposes

In this research, the researcher aims to achieve the following objective: "To uncover potential Sharia disputes in Islamic finance of hybrid contract financing based on Islamic Economic Law."

¹⁹ Muhammad Nurbadrudin, "Analisa Sengketa Atas Hukum Kontrak Hybrid (Multi Kontrak) Pada Bank Syariah," *International Jurnal Of Halal Economic* 1, No. 1 (2024): p.29.

1.5 Research Benefits

This research is conducted, compiled, and written with the hope of providing valuable and positive benefits for readers or regulators, with the following benefits:

1.5.1 Theoretical Benefits

For Students

1. To explain the potential of Sharia disputes in hybrid contract financing products at Islamic banks.
2. To explain the regulatory alignment of potential disputes with the fatwas of DSN-MUI, AAOIFI standards, and IFSB standards.

1.5.2 Practical Benefits

For regulators of Islamic financial institutions

1. To explain the potential of Sharia disputes in hybrid contract financing products at Islamic banks from the perspective of Sharia Economic Law.
2. To offer proposals for regulations, provisions, and guidelines in potential Sharia aspects for the Islamic finance sector based on the perspective of Sharia Economic Law, as a preventive measure against potential disputes.

For Costumers

1. To explain the potential of Sharia disputes in hybrid contract financing products at Islamic banks based on Islamic Economics Law perspective.

1.6 Definition of Research Title

This research, titled “Analysis of Potential Sharia Disputes of Hybrid Contracts Financing in Islamic Banks,” means that the

researcher will examine and analyze disputes in multi-contract products in the Islamic finance sector. The analysis is conducted from a Sharia perspective based on Islamic Economic Law, with regulations that serve as national standards, such as the fatwas of the National Sharia Board (DSN-MUI), Financial Services Authority Regulation (POJK), Bank Indonesia regulation (PBI), legislative regulations (PERPU), and international standards such as those set by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB).

1.7 Systematization of Writing

The structure of the thesis proposal is organized into five chapters, as outlined by the author as follows:

Chapter I: Introduction: this chapter includes the background of the problem, the scope of the research, the formulation of the problem, the research objectives, the benefits of the research, and the research structure.

Chapter II: Literature Review and Theoretical Framework. This chapter identifies the issues in previous studies and establishes the theoretical framework related to the data variables.

Chapter III: Research Methodology. In this chapter, the researcher summarizes the necessary aspects, including the type and approach of the research, data collection techniques, and data analysis methods.

Chapter IV: Discussion. This chapter contains the analysis and discussion, including general findings, data presentation, and the analysis of the research results based on the findings.

Chapter V: Conclusion. The final chapter includes the conclusion and recommendations.

This study concludes with a bibliography containing various references used in the study and appendices that include evidence and documentation related to the research.

