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A STUDY ON THE CONFORMITY OF SHARIA BANK FINANCING AKAD TO SHARIA PRINCIPLES, NATIONAL LAWS, AND CONTRACT DRAFTING TECHNIQUES

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Abstract
The purpose of this manuscript is to explain the application of sharia bank financing contract (akad) in Aceh, Indonesia, which need to conform to sharia principles, national laws, and contract drafting techniques. Therefore, this paper focuses first on the conformity of sharia bank financing akad to sharia principles and national law. Then, it elaborates the conformity of bank financing akad to contract drafting techniques. This paper uses doctrinal legal research, by utilizing primary, secondary, and tertiary legal authorities. The legal authorities are analysed through legal reasoning process. The findings of the paper shows that there are several aspects of sharia bank financing akad which still need to be adjusted to sharia principles, national law, and contract drafting techniques. The adjustment of those aspects is importance for increasing the degree of compliance and the quality of sharia bank financing akad used in the future.

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I. INTRODUCTION

Aceh is an Indonesian province. As part of Aceh special autonomy based on Act Number 11 of 2006 on Governing of Aceh (hereinafter called Act on Governing of Aceh), Aceh has authority to implement sharia in the region. This can be seen in Article 12 paragraph (1) of the Act on Governing Aceh. For this purpose, the local parliament has passed the implementing regulations. One of these is related to the formation and the activities of financial institutions, as regulated in Aceh Qanun Number 11 of 2018 concerning Sharia Financial Institutions (hereinafter called Aceh Qanun Financial Institutions.). One of the obligations based on this Aceh Qanun is that the financial institutions, including sharia banks, should follow sharia principles, and therefore should also use sharia akad in their transactions (Nirwan, 2019).

One aspect of the sharia framework of economic transactions is catagorized as substantive law. The substantive law is the law regulates rights and obligations or interests of both parties to contract. This substantive law sourced from Al-Quran, Al-Hadist, and Ijtihad. The first two is also called divine revelation. Whereas ijtihad includes ijmak dan qiyas. In additions, within the umbrella of ijtihad include also what it is called fatwa, which is created based on nash qath'i (Rasyid & Bahri, 2019). The fatwa here is named Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia (hereinafter called DSN-MUI).

These sources of sharia are scattered in various national legislation, including sharia. Therefore, sharia in Indonesia is applicable through various related statutes. These source of law, including statutes, in various types and hierarchy. Statutes is a written source of law, and systematically arranged from the highest to the lowest hierarchical order. The highest level of law in Indonesia is the 1945 Constitution. Below that includes act, government regulation, presidential decree, ministerial decree, and local laws. In Aceh Province, based on Act on Governing of Aceh, the local laws have specific names, that is, Qanun Aceh in the provincial level and district/city qanuns in county and municipality levels.

The substantive law, particularly is regarding the settlement of dispute of sharia economic dispute, as qanoons follows: Al-Quran, Al-Hadist, Statutes, National Sharia Fatwa, Sharia Akad, Fiqh, Customary law (urf), and Judicial Interpretation (Manan, 2012). For Aceh Province, the implementation of sharia is also regulated in Act of the Republic of Indonesia Number 44 of 1999 on the Specificness of Aceh as Special Province (hereinafter called Act on Specificness of Aceh Province, and Act of the Republic of Indonesia Number 11 of 2006 on Governing of Aceh (hereinafter called Act on Governing of Aceh).

As implementing regulation of Act on Governing of Aceh, several Aceh Qanun have been promulgated. Among the most related is Aceh Qanun Aceh Number 8 of 2014 on the Principle Islamic Sharia and Aceh Qanun Aceh Number 11 of 2018 on Sharia Financial Institution. Besides the substantive law is equipped with the law of procedure. The law of procedure regulates on how to implement the substantive law, in the process of dispute settlement between the parties to contract. On important aspect of the rule of procedure is that in relation to the jurisdiction of the court. This is because in Indonesia several court systems exist, including general court, religious court, administrative court, and military court. The one relates to sharia economic dispute is the religious court system.

However, as also found in other parts of Indonesia, the inplementation of sharia in financial instutions, particularly in sharia banks, in Aceh still faces obstacles (Rofiqoh & Ghozali, 2018). The obstaces including on the aspect of the laws of akad (Rasyid, 2021). This is because, among others, formerly used based only on the national law, mainly Indonesian Civil Code (hereinafter called ICC). The obstacles can be seen in the forms of nonfulfillement of the requirements as stipulated in sharia principles (Yunus, 2021). It is also the unproportionate profit sharing clauses within the applicable akad (Andriani, 2019). This caused by various factors, which need to be solved in the future (Putra, 2019).

Based on the above explanations, the main legal issues in this manuscript are as follows. First, whether the application of bank financing akad has conformed to sharia principles and national laws. Secondly, whether the application of bank financing akad drafting has conformed to general contract drafting techniques.

This manuscript explains the conformity of sharia bank financing akad to sharia principles, national laws, and contract drafting techniques, as part of implementing sharia economic law, in Aceh, Indonesia. After the introductory part above, the second part provides research method. The third part provides result and discussion, which discusses the conformity of sharia bank financing akad to sharia principles and national laws and the conformity of sharia bank financing akad to contract drafting techniques. Finally, the last part is the conclusion.

II. RESEARCH METHODS

2.1. Type and Approach of the Research

This research employs doctrinal legal research type. The doctrinal legal reseach is the research which focus maily on the legal authorities. Therefore, it concentrates on the substantive part of the law, as the core element of the law itself. It is the most focus research in the legal field of study. For this purpose, the approach used in the doctrinal legal reseach includes statute approach, case approach, and conceptual approach.

2.2. Legal Authorities

The legal authorities used includes primary legal authorities, secondary legal authorities, and tertierty legal authorities. The primary legal authorities include the statute and the case law. The secondary legal authorities include journal articles, books, and other similar types of materials. The tertiery legal authorities include dictionaries.

2.3. Analysis

The analysis was performed descriptively and prescriptively. It is based on the legal reasoning or legal intepretation process of the legal authorities above. It is a specific type of qualitative approach, which is typically used in the legal field.

III. RESULT AND DISCUSSION

3.1. The Confirmity of Sharia Bank Financing Akad to Sharia Principles and National Laws

Before proving a more detail discussion on the conformity of sharia bank financing akad to sharia principles and national laws, in term of the substantive law applicability, here will be provide the additional explanation on the procedural law aspect, that is regarding the authority in dispute settlement. The authors will provide a case brief regarding the authority of a special court called religious court, including mahkamah syari'yah in Aceh.

This is because before the Decision of Constitutional Court of the Republic of Indonesia (hereinafter called MKRI Decision) Number 93/PUU-X/2012, there was uncertainty on which court has absolute competence to settle sharia economic cases. This is happened because of inconsistency rules among various related acts. First, Act on Religious Court provides that those who has power to settle shariah economic cases is religious court. Second, Act on Sharia Banking states besides courts within the jurisdiction of religious court, the courts within general court system have also power to settle the sharia economic cases.

At the end, based on the petition for reviewing of Act on Sharia Banking toward certain articles of the 1945 Constitution, the court comes to the conclusion that the only court that has power to settle sharia economic cases is the religious court, which in Aceh called mahkamah syar'iyah. This is based on The Decision of The Republic of Indonesia Constitutional court Number 93/PUU-X/2012.

This case started from the petition of Dadang Ahmad in 12 August 2012, a client of Bank Muamalat Tbk, regarding musyarakah akad. The Applicant applies to review Article 55 paragraph (2) and paragraph (3) of Act on Syariah Banking toward Article 28D paragraph (1) of the 1945 Constitution. According to the Applicant the rules on dispute settlement on Article 55 paragraph (2) and paragraph (3) of Act on Sharia Banking has caused legal uncertainty, as intended by Article 28D paragraph (1) of the 1945 Constitution, regulating human rights regarding legal certainty.

There are two main legal issues in this case. First, whether the Elucidation of Article 55 paragraph (2) and paragraph (3) Act on Syariah Banking contains legal uncertainty which lessen the constitutional right of the Applicant as regulated in Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. Second, whether the availability of the provision of choice of forum for the settlement of dispute as regulated in Article 55 paragraph (2) Act on Sharia Banking can caused the legal uncertainty?

The Constitutional Court of the Republic of Indonesia in its decision declares as follows. First, Article 55 paragraph (2) of Sharia Banking Act is contrary to the 1945 Constitution. Second, the Constitutional Court of the Republic of Indonesia also declares that the Elucidation of Article 55 paragraph (2) has no legal force.

The court reasoned, as follows. First, the rules on dispute settlement, with the right to choose the forum as regulated in Article 55 paragraph (2) of Act on Sharia Banking, "at the end will create overlapping of the authority to settle the dispute because there are two institutions to are given authorities to settle the similar case, whereas in Act on Religious Court is clearly stated that the religious court is given authority to settle sharia banking dispute, including sharia economic dispute." Second, "The Elucidation of Article a quo, has caused just legal uncertainty in the settlement of sharia banking dispute (vide Article 28D paragraph (1) of the 1945 Constitution)."

After clear on the authority, the legal issues faced before the decision regarding the settlement of sharia economic dispute, that is, the overlapping institutional authority is ended. Now, the only court which has the authority is religious court.

Therefore, to achieve good court practices, based on the principle of simple, fast, and inexpensive as intended by Act on Judicial System is opened widely. The implementation of the principle of simple, fast, and inexpensive will create the benefits of efficiency. Efficient because it can cut funding on the management of judicial system. Now the funding used is only focus in one institution, the religious court system.

In the implementation of the authority, the religious court follow the regime of law on civil procedure. This law of civil procedure is regulated mainly in HIR/RBg. Besides, Book IV of the ICC also have provisions on the law of civil procedure. Other important source is Act of the Republic of Indonesia Number 14 of 1985 on the Supreme Court has also rules on the law of civil procedure.

Similar to that in other dispute settlement, the settlement of dispute in the context of private law or economic law in general, beside can be conducted in court, it can also be settled out of court. In fact, the dispute settlement out of court is preferable and most used. It said that the dispute settlement of sharia case out of court as the first choice and the most important mean of settling the dispute. Whereas the settlement of the dispute in court as the last resort ultimum remedium, in the dispute settlements. In this regard, it is depending on the parties themselves to choose court or out of court. It should be based on consent by both parties, before or after the dispute occurs. If there is no agreement between the parties to chouse out of court mechanism, the authority of settling the dispute is automatically vested to courts system.

There is a special arbitration in Indonesia established by the Indonesian Counsil of Islamic scholars/Majelis Ulama Indonesia (hereinafter called MUI), that can settle the sharia economic cases. This institutional arbitration called the Indonesian National Board of Sharia Arbitration/Badan Arbitrase Syariah Nasional Indonesia (hereinafter called Basyarnas). Basyarnas, similar to other institutional arbitrations has also its own procedural rules. If the parties choose arbitration, it is closed the opportunity to settle the dispute by court, as regulated in Act on Arbitration and Alternative Dispute Resolution. The decision of the arbitration is final and binding in nature. Therefore, it is similar to the final and binding decision of the court.

There are various reasons why the parties bring their cases to arbitration, rather than to court system. These reasons include simple procedure, faster in settling the dispute, cost efficient, confidentiality of the process and the decision, the neutrality of arbitrators and its institution, the availability of expert in the field of the disputes to be chosen by the parties themselves.

Akad is a legal source in sharia economic, including in dispute settlement, in court or out of court. Therefore, its existence is essential. However, the quality of akad is not less important. So that akad is functional and effective in achieving its goal, as an important legal source in sharia economic transactions, akad needs to conform with the shariah itself. Therefore, the first thing to evaluate is whether akad has conform to sharia rules and principles.

However, in fulfilling the requirements is not the only indicator in judging akad. Other this the suitability of akad used to the type of the transaction should also be examined. Besides, the contain or the quality of clauses formulation in the akad is also important. This is for example, regarding akad justice or contractual justice should be implemented, both in formulation of the clauses and in implementation of the contract.

About the suitability of the name and the type of akad used is an important aspect to be examined. This is because akad has various form, even more than that in conventional financial transactions. Therefore, the parties to akad should use the suitable akad for a certain transaction, because if not it opens opportunity not to conform with sharia, and become the source of dispute in the future.

Several cases, both in court and out of court, shows about the unsuitability in choosing the right akad for the right transactions. It can be happened that the title or the name of akad, for example, murabahah (sale and purchase) or bai bithaman ajil (credit sale), however the content of akad or the product of the transaction is not as stated, but actually loan transaction or banking credit (qard). This means the title or the name of akad is difference from the content. In this regard, from the contract drafting perspective or dispute settlement the important this is its contents not its title. When the dispute arises, one has to see its contents, not its title. The unsuitability between title and content may be happened because the parties aware or not aware intent to show that the akad conforms sharia, but actually is not.

As known that one of the elements that differentiate sharia economic transactions with conventional economic transactions is that the sharia economic transaction is free from usury. This because based on the massage of Allah that Islam prohibits usury, but legalizes sale and purchase. In fact, the current conventional transactions through loan contract or banking credit contains element of usury (Ningsih & Disemadi, 2019).

In sharia economic concept, the loan contract or banking credit contract is catagorized as social transactions (tabaruk), not for profit. This means Islam acknowledges such kinds of transaction, only for the social purposes of helping others who need it, not to get profit from interest. Therefore, to prevent from usury element, sharia financial institution changes the mechanism from loan contract or banking credit to be sale and purchase (murabahah) and its variants or joint venture (musyarakah) and its variants. When this happened, the whole process of the transactions during precontract, contract, and post contract need to be conformed fully, not partly with sharia.

Besides confirming with sharia, akad should also confirm with relevant national laws. Here, when the two laws (sharia and national law) have not contradicted each other, both laws are applicable to the transactions. Here, the meaning of sharia is broadened to also include the national law. However, when they are in conflict each other, sharia become special law, and here the doctrine of lex specialis derogat legi generali become applicable. Sharia is special law (lex specialis), and national law is general law (lex generalis). Therefore, there should be harmonization between sharia and national law in drafting akad.

Among the national law, on the level of acts, which is relevant to drafting of akad and dispute settlements, includes ICC, Act on Banking, Act on Insurance, Act on Consumer Protection, Act on Prohibition of Monopolistic Practices and Unfair Competition, Act on Information and Electronic Transactions, Act on Limited Liability Company, and Act on Capital Markets.

Ideally akad is not contradict to sharia principles and national law. Besides akad need also to be able to accommodate the present business needs of the parties. Therefore, the creativity is need in drafting akad so that not only in conformity with sharia principles and national law, but also able to accommodate the present needs of business in practices.

When a dispute arises, both sharia and national law can be used to settle the dispute. Here, will be presented a brief of a case as a sample from Indonesian practices, regarding the suitability or the conformity of financial transaction akad and sharia and national law. However, to be more focus on sharia, the brief only focuses on sharia, whereas the discussion on national law has been omitted here.

A dispute decided by National Sharia Arbitration Board/ Badan Arbitrase Syariah Nasional (Basyarnas). This case is registered as the Decision Number 16/Th.2008/Basyarnas/PUT/Ka.JKT. (Hidayat, 2020). The dispute occurs between Applicant Y and Respondent (Bank T). The disputes arise from Akad Murabahah Number 53, with the object of the sharia transaction, sale and purchase materials and services for the development of a project.

However, in implementation of the akad, Respondent cancel in providing funds, the drawing of deposit funds, the drawing of funds from deposit without the permission from the owner of the funds. Based on these facts, the Applicant apply for claim of compensation from Respondent for breach of contract. On the other hand, the Respondent argues that the cancellation of the payment because of the Applicant did not fulfil the requirements based on contract clauses, that is, does not deliver original and photocopy regarding the development license and does not pay instalment and its margin on time (Hidayat, 2020).

In its decision the board of arbiters of Basyarnas, among others, states that Respondent is in default or breach of contract. Therefore, also punish Respondent to return certain amount of funds and the real expenditures paid by the Applicant. In its reasoning, Board of Arbiters, evaluates several aspects regarding Murabaha Akad Number 58, among others, as follows. First, regarding clause on margin ceiling price 21 % per year, can be classified as ghahar, contrary to sharia principles and Article 24 paragraph (1) letter an Act on Sharia Banking. In sharia the ascertaining profit for Respondent should be agreed based on Lum sum, and finished from the beginning of the contract, and cannot be fluctuated as such (Hidayat, 2020).

Second, regarding the transfer of ownership of goods from the Supplier to the Respondent (Bank T) has not been happened, therefore, it contrary to sharia. Third, about compensation, Board of

Arbiters considers that as far it is the real payment of Applicant, it is consistent to sharia, as provided by Al-Quran, Chapter Al-Maidah paragraph (1), Chapter Al-Israk paragraph (34) and Chapter Al-Baqarah paragraph (282), Fatwa Dewan Syariah Nasional (DSN) Number 43/DSN-MUI/VIII/2004, dan Article 36 and 37 KHES (Hidayat, 2020).

3.2. The Confirmity of Sharia Bank Financing Akad to Contract Drafting Techniques

From the prespective of contract drafting, the drafting of sharia bank financing akad in Indonesia is generally based on the general contract drafting techiques. Therefore, it is still based on the transplantation (Gayo, 2015). In general, experts and contract drafters tend to classify the contract drafting phases into three steps, that is, pre-contract, contract, and post-contract. The classification makes studies in contract drafting more comprehensive therefore it can strengthen the understanding and the skills of contract drafting. This mutatis mutandis is also applicable for akad drafting. Therefore, the drafting process of akad in sharia financial institution also involves the three steps of drafting contract, pre-contract, contract, and post-contract.

However, the studies of contract drafting can also only be focussed on the second step, that is contract step. The contract step is the core element or the most important step in drafting contract. If this becomes as the focus, it will not discuss regarding the pre-contractual and the post-contractual step.

The pre-contract phase is the beginning step from the initiation, preliminary negotiation, memorandum of understanding, due diligence, until the final negotiation before the actual contract is written. Based on the latest development in the contract law, to certain extent parties already have rights and obligation during this pre-contractual phase, even though the actual written contract is not yet available.

The next step in the contractual step, where the contract drafting should be focussed. In this step the writing of contract document is begin. The first effort is to prepare first draft. After obtaining enough information from the relevant legal authorities and through counselling or interview the client, the first draft is ready to be prepared. It is often, before writing the first draft, the drafter plans an outline, as a contract framework, first. The outline should be logical and suitable to the type of the business transactions. Then the first draft is made based on the outline. After that the editing process is needed. It could be several times before; it is complete and ready to be signed by the parties.

The last step is the post-contractual. This is the step where the business transactions are implemented based on the contract. Here, the contract which has been sign is used as the manual or compass in the implementation. There is also possibility that the misunderstanding is occur which need to be solved by interpretation of the contract clauses. During this step, it may also occur the dispute which need to be solved. It is often to prepare the clause on dispute settlement in the operative part of the contract. The clause may provide that the settlement of the dispute is performed in court or out of court. If out of court is chosen, then there is alternative mechanism available, including negotiation, mediation, conciliation, and arbitration. It is also possible to is have some combination of the methods are selected. For example, before going to court or arbitration, other more informal mechanism may be started, such as negotiation and/mediation or other mechanism.

When focus on the contract step, there are certain aspects which needed to be examined. First, is the language aspect. Second, the substantive aspect.

The language in drafting akad is one of the focuses on contract drafting and contract reviewing. Here, the language used should follow the general grammatical rules of the language used, and the specific aspects of legal language or contract language. In Indonesia, in this regard, the language used should be at least in Bahasa Indonesia. This as regulated in Act of the Republic of Indonesia Number 24 of 2009 on Flag, Language, State Symbol, and National Anthem (hereinafter called Act on Language). Besides, specifically for akad, it is often used words originated from Arabic, including than that has no good translation in Bahasa Indonesia. Therefore, the definition of akad becomes important in defining the meaning of Arabic or Arabic originated words or concepts. The understanding of basic Arabic words will be helpful in understanding, drafting, and reviewing akad.

The language indicator used is also Indonesian language. However, legal language, including contract language is a specific type of the language. This means that besides general rules of the language, here bahasa Indonesia, there are also additional specific rules for the legal language. Therefore, the drafter needs to follow both rules, First, the general rules of Bahasa Indonesia as provided in Pedoman Umum Ejaan Bahasa Indonesia (PUEBI) dan Kamus Besar Bahasa Indonesia (KBBI). Second, the specific rules for legal language, as for example, available in The Supplementary Notes of Act of the Republic of Indonesia Number 15 of 2019 concerning The Change of Act Number 12 of 2011 concerning the Formation of Statutes (hereinafter called Act on Formation of Statutes). There are also theories on the legal language, including contract language.

The substantive aspect is the most important. It relates to the framework and its content. In relation to the content, its discussion is regarding the conformity of the contract to sharia and national law. Because it has been discussed about the content in the previous part of this writing, here will only focus on the language and on the framework of the contract.

The data from the field research of samples of sharia banks in Aceh, Indonesia, shows that in general the language used is generally good, suitable for its purpose. However, there are several aspects which can be edited or changed to increase the quality of the drafting. The weaknesses are as follows.

First, title. Ideally a title should be short and condensed. However, there are still is found title which is not short and condensed, such as “Perjanjian Giro Mudharabah IB Giro Perusahaaan Umum (Pribumi),” that can be shortened. For example, “Akad Giro Mudharabah.” Another example is “Akad Perjanjian Murabahah,” in which actually can be shortened, such as, “Akad Pembiayaan Murabahah.” Another example, “Akad Al-Qardh untuk Tujuan Pelunasan Hutang,” which can be shortened, such as “Akad A-Qardh.”

As a unique character of akad which differentiate with contract in general, in a title often add with basmallah, that is Bismillahirrahmanirrahim or in Arabic word. Parts of akad available in practice does not us that word.

Second, introductory paragraph. Introductory paragraph consists of sentence or phrase in the very beginning below the title, as the beginning of the phrase content of the contract. In general, the formulation is arranged from date, month, year and/or place where the consensus reached. In general, the akad used is already good and adequate.

Third, parties. Directly after the introductory paragraph is placed parties. This part formulates information on the identity of the parties to the contract. Several notes about regarding to this past as follows. In practice, there are still akad which use very long sentence, it is advisable to be shortened. Short sentence is often more effective.

There are also, akad which use word inconsistently. For example, in one place use the word Pihak Pertama, in other place Pemilik Dana, still in other place Shahibul Maal. It is enough by only say, Pemilik Dana or Pemilik Dana (Shahibul Maal). Similarly, for example, in one place it is mentioned as Pihak Kedua, but in another place mentioned Bank, and another place mentioned as Mudharib. It is enough to only mentioned Bank or Bank (Mudharib). Therefore, there will be more efficient use of words.

Fourth, Recitals. Recitals contain brief explanation of the intent of the parties and to show the consent of the parties has been reached. It is often to start with mentioning the status or something that the parties have in exchange of others. One interesting aspect of sharia bank financing akad is the important of transparency of the process and the object of the transaction based on sharia principle. In sharia economic transaction, transparency is an important element, and can be written also in this recitals part.

This is important, because in practice even though the transaction under the name or the umbrella of sharia, but the process and the object are still similar to the conventional one. For example, there is still element of usury because there is no difference to loan agreement or banking credit, even though under the akad name of murabahah. Sharia principles prohibit akad to contain elements of gambling, obscurity, usury, and injustice (Ningsih & Disemadi, 2019). Therefore, akad need to make clear by stating in the recitals that the transaction is sale and purchase (murabahah), not loan agreement or banking credit (qard).

An example, can be seen in the following recitals, as follows.
(PT Bank Pembiayaan Rakyat Syariah Serambi Mekah, Kota Langsa, Aceh, Model Akad Murabahah, 2021):

> “1. …MITRA has applied to Bank to buy good as defined in this akad, and based on the application of the MITRA, BANK agreed, and with this Akad bound itself to buy, serve,

and then sell the good to MITRA based on terms and condition as stated and regulate in this *Akad*. 2.…, based on sharia, the purchasing of good by BANK from Supplier and the sale of the good by the BANK to MITRA operates with the following terms, as follows:

A. BANK buys good from Supplier, in accordance with the application and for fulfilling the interest of MITRA based on selling price of BANK agreed together between BANK and MITRA and then BANK sells with selling price of BANK to MITRA agreed by BANK and MITRA, not including costs derives in relation to the implementation of this akad.
B. The delivery of good is presented directly by Supplier to MITRA with the informed consent by BANK.
C. If BANK cannot directly buy good from the Supplier as needed by MITRA, BANK will provide power of attorney *(wakalah)*, to MITRA to buy good from Supplier on behalf of BANK then MITRA gives proof of buying to BANK.
D. In the time frame agreed by BANK and MITRA, MITRA pays buying price by BANK from supplier with profit margin for BANK, therefore, before MITRA pays all selling price to BANK, MITRA owes money to BANK.
E. Then, both parties agree to make and sign this Akad *Murabahah* (hereinafter called "*Akad*") all together as follows.:"

Fifth, operative part. The operative part of the akad is the core component of it. This part consists of right and obligation of the parties. In other words, the operative part regulates the interest of the parties. Therefore, the legal relationship between parties become clear after regulating them in the clauses of the contract. This is the operational part consisting of principles and rules applicable for both parties and can be maintained in the courtroom or become manual in implementation and dispute settlement.

Therefore, from the contract drafting perspective this part is the most important one for both parties and for those who will use it in the future, like judges and arbiters or others who involved in the settlement of dispute arise from the contract in the future. Therefore, ideally this part can show most the different between conventional contract and akad. This part can also show on the different between a certain type of akad with others, because each type of akad besides has general similarities as akad, and specific difference among different types of akad.

Akad murabahah finance of Bank Aceh, for example, has the systematic of the framework as follows (PT Bank Aceh Cabang Kota Lhokseumawe, 2021): Definition, Principles of Akad, Object of Akad, Essentialia Rules of Akad, Realization Requirement, Delivery of Object, Procedure for Payment Obligation, Discount from the Supplier, Costs, Fees, and Taxes, Acknowledgement and Proof of Debts, Guarantee and Security, Breach of Contract/Default/Damages, Effect of the Breach of Contract, Representation and Warranties of the Customers, Obligation and Limitation of Customers, Actions, Partial and Expedited Payment, Fine/Compensation (Ta'wid), Insurance, Governing Law, Communication and Correspondence, Rights and Obligations of the Parties, Force Majeure, and Closing Provisions (PT Bank Aceh Cabang Kota Lhokseumawe, 2021).

Whereas Akad Murabahah Finance of Bank Pembiayaan Rakyat Syariah Rahmah Hijrah Agung (2021) has internal framework of the operative part of akad, with the following clauses: Sale and

Purchase Transactions, Administration Fees, Collateral, Event of Default/Breach of Contract, Credit as Security, Separability, Governing Law, Dispute Settlement, and Closing Provision.

Sixth, closing paragraph. Because in the beginning part of akad after the title, the introductory paragraph exists, ideally there should be a closing paragraph before signature part. Similar to that in the introductory paragraph it is separated without the name of clause and article, the closing paragraph should also be that way. Therefore, the closing paragraph which is not part of the operative part has different function to the closing provision, which is as part of the operative part of the akad.

Seventh, signature part. At the end of the akad document there should be rooms for signature of the parties. Below that, can be provided similar rooms for witnesses, based on the need. It is in this part also where the formal stamps and seal used (if any).

IV. CONCLUSION

The explanations and the sample cases presented in this manuscript on the conformity of sharia bank financing akad can be summarized, as follows. First, certain nonconformity between sharia bank financing akad to sharia principles and national laws was still shown (Susilo & Anam, 2018). Secondly, there is also certain nonconformity of sharia bank financing akad to general contract drafting tecniques still can be seen. These can be adjusted for better conformity of bank financing akad to both the sharia principles and national laws, and the contract drafting techniques, in the future. The financial transaction institutions, including sharia banks in Aceh, Indonesia should provide better services by better compliance of sharia bank financing akad with sharia principles and national laws, and general contract drafting techniques. Besides, the related government institutions should provide better facilities and socialization programs.

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