

# Rechtsidee

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## **Standard Contract in Financing at Sharia' Bank**

### *Kontrak Standar Pembiayaan di Bank Syariah*

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#### **Abstract**

Standard contract is a contract which is merely made by one of the parties and other parties agree to a contract. In practice Indonesia sharia bank, all financing contracts are made by Islamic bank in the form of Islamic standard contract. As a result, there is no negotiation between the parties. Therefore, this research will analyze standard contract in financing at sharia bank X and sharia bank Y in Indonesia. This research employs statute approach, conceptual approach and contractual approach. The outcome of this research is Islamic standard contract of financing at Sharia' Bank are not contrary to Islamic principles throughout the contract meets the validity of contract, there is no element of which is prohibited according to the Shariah, namely gharar, maysir, usury and does not violate the principles of sharia agreement. Islamic standard contract at sharia bank X and sharia bank Y in Indonesia had described the characteristic of each Islamic financing and has met the minimum requirements accordance with the fatwa of Sharia' supervisory board (DSN-MUI) which is regulated by the regulations of Bank Indonesia.

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## Introduction

Islamic bank is one of the financial intermediary institutions. Once people possess more money than they require to spend, they might choose to save their money. They may deposit their money in a bank account at an Islamic bank and the Islamic bank may offer profit loss sharing basis or interest-free banking. Then, the Islamic bank uses their money which has been deposited to offer loan that is interest-free banking. For instance, Islamic bank finances the purchase of expensive things, such as a car. It can buy a car for a customer, and the customer will repay the bank at a higher price later on.

According to article 1 (25) the Act of Islamic banking, No. 21 of 2008, a loan is money that is available for someone to borrow. It may involve :

1. A profit sharing basis (Mudharabah and Musyarakah)
2. A leasing basis (Ijarah and Ijarah Muntahiyah Bit Tamlik)
3. A sale basis (Murabaha, Salam and Istishna)
4. A credit basis (Qardh)

An Islamic bank and a customer agree to a contract in which the Islamic bank buy an item for a customer and the customer repay the fund to Islamic bank with a service charge (*ujrah*).

Pertaining to the provisions of Bank Indonesia, No 7/46/PBI/2005 and the provisions of Bank Indonesia, No. 9/19/PBI/2007 amended by the provisions of Bank Indonesia No. 10/16/PBI/2008, the Islamic bank as a financial intermediary institution must obey Islamic principle. This regulation reveal that the products for customer who deposit their money at Islamic bank are wadi'ah and mudharabah and Investment financing and trade financing are done on a *mudharabah*, *musharakah*, *murabahah*, *salam*, *istishna'*, *ijarah* and *qardh*. Furthermore, Islamic banks offer a service to customers using *kafalah*, *hawalah*, *sharf*.

The Holy Qur'an encourages people to do business by mutual consent, fair and justice (Al Jumuah:10; An Nisa:29; Al Baqarah:282). [1] Prophet Muhammad run business ethics and norms based on Islamic law. They are

1. A vital business principle is honest
2. The objective of people who run a business is to not only make huge profit but also help other people (service oriented)
3. Do not commit a perjury
4. People who do business should be kindly
5. There is no monopoly
6. Business must be riba-free transactions
7. Goods must be *halal*

In addition, Mervyn K Lewis dan Lativa M Algoud argued that there are several Islamic principle in financing which involve [2]

1. There is no riba in financing
2. There is a *zakah*
3. Goods must be halal
4. There is no maysir and gharar
5. There is an Islamic insurance in financing

Based on fiqh muamalah, [3] Islamic contract is divided into several classifications. One of them is *tijarah/mu'awadah* and *tabarru'*. [4] Firstly, *tijarah/mu'awadah* is an Islamic contract which is to generate a profit, particularly a sale contract (*murabaha*, *salam* and *istishna*), a profit sharing basis (*mudharabah* and *musharakah*), and a leasing basis (*Ijarah*). Secondly, *tabarru'* is an Islamic contract which relates to non profit transactions. This transaction does not make a profit, but it is to help the others due to Allah SWT. Take *qardh*, *rahn*, *hiwalah*, *wakalah*, *kafalah*, *wadiah* as an example.

In practice, all Islamic banks in Indonesia offer standard contract in financing to customer. It is an Islamic contract that is made by one party, Islamic bank and the customer have to agree to a contract. Therefore, there are several hypotheses of standard contract that involve :

1. To analyze standard contract in Islamic bank regarding Islamic law.
2. To analyze standard contract in financing at sharia bank X and sharia bank Y.

## The Research Methodology

This research methodology employs normative or legal approach based on the characteristic of law study. This

includes descriptive and prescriptive legal methodology. So, the methodology and procedure of social science can not be employed for law study. [5] This is related to academic research. That is to say, this research is to differentiate from practical analysis that address the difficulty of practical law. [6] The location of research is at sharia bank X and sharia bank Y in Surabaya. The research methodology employ statute approach, conceptual method, and contractual approach. Firstly, statute approach would employ the analysis of the holy Qur'an, Hadist, and all provisions and regulation of Islamic bank and Islamic contract. The provisions consist of The Act of Bank, No. 10 of 1998, The Act of Islamic Bank, No. 21 of 2008, The Act of Consumer Protection, No. 8 of 1999, Burgerlijk Wetboek and all provisions that regulate Islamic banks. Conceptual approach comes from the doctrine of law study so as to analyze and recognize Islamic standard form contract. This would analyze the example of Islamic standard form contract at Islamic bank.

The law sources of this research consist of primer origins and secondary sources. The primer sources originate from all provisions related to the topic. This includes The Act of Bank, No. 10 of 1998, The Act of Islamic Bank, No. 21 of 2008, The Act of Consumer Protection, No. 8 of 1999, Burgerlijk Wetboek and all provisions that regulate Islamic banks. Secondary origins come from the view of the scientist that could be seen in the literature, journal and Islamic contract at Sharia' bank.

## Basic teory

All Islamic contract must obey Islamic principle and avoid several prohibitions which include :

1. Gharar (uncertainty, or risk)
2. Maysir (gambling)
3. Riba (increase or addition)
4. Goods that is not *halal* (*haram*)

Islamic bank is not similar to Conventional bank. Islamic bank offers riba-free banking whereas conventional bank offers interest. According to article 2 the Act of Islamic Bank, No. 21 of 2008, Islamic bank must not disobey not only Islamic law but also prudential principle. Regarding the explanation of article 2 this Act, prudential principle is the provisions of bank management so as to improve both the soundness and the safety of banking system. Many argued that prudential principle is one of the risk management that introduce regulation, policy, and law consistently in the banking sector.

After customer meets the standards of requirement and assessment that are analyzed succesfully by bank, the customer will enter into a contract of financing with the bank. This contract that is signed by both parties must meet the Islamic principle. Furthermore, it should involve the right and obligation of the parties. In practice, Islamic bank provides a standard contract which ought to be signed by the customer. In other words, the customers do not have a freedom of contract and they have to sign a contract that is made by Islamic bank. With regard to the explanation of the provisions of Bank Indonesia, No 7/46/PBI/2005 and the provisions of Bank Indonesia, No. 9/19/PBI/2007 amended by the provisions of Bank Indonesia No. 10/16/PBI/2008, Islamic contract must fulfil both Islamic law and the basic requirement which is established by Shari'a supervisory board (Dewan Syariah Nasional) in Indonesia. Moreover, article 26 the Act of Islamic Bank, No 21 of 2008 states that

1. Banking activities which are expressed by article 19, 20 and 21 must meet Islamic principle.
2. Islamic principle which is referred by section 1 is established by Sharia' supervisory board (Majelis Ulama Indonesia).
3. Fatwa which is mentioned by section 2 and made by MUI is imposed by the regulation of Bank Indonesia.
4. Bank Indonesia establishes the committee of Islamic bank so as to construct and introduce the regulation of Bank Indonesia.

Therefore, standard contract in Islamic bank must fulfil not only the Islamic principle but also the basic requirement which is regulated by the provisions of Bank Indonesia, No 7/46/PBI/2005 and the provisions of Bank Indonesia, No. 9/19/PBI/2007 amended by the provisions of Bank Indonesia No. 10/16/PBI/2008

## Discussion

### Islamic standard contract in financing

Financing which is provided by Islamic bank to finance items that are required by customer must meets both prudential principle and the standards of requirement and assessment that are analyzed succesfully by bank. Islamic banks has to assess or calculate the risk involved. In addition, Islamic bank has to fulfil prudential principles that include the assessment of character, capital, collateral, condition, and capacity. [7] **Muhammad Syaffi Antonio** argued that the objective of financing assessment is to ensure Islamic bank in which financing that is provided by Sharia' bank for customer is feasible and not fictive. It has to carry out several risk assessment methods [8] that includes



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1. Is the good *halal* or *haram*?
2. Does the business involve *maysir*?
3. Is the business against the benefits of the public at large?
4. Does the business relate to illegal industry?

In addition, **Zainul Arifin** stated that Islamic bank has to avoid several businesses which are : [9]

1. Business disobey Islamic principle
2. Business consists of *maysir* and *gharar*
3. Business has insufficient information
4. Bank has no professional

In general, a loan is provided by Islamic bank for the customer who has business experience in several years. That is to say, Islamic bank does not give customer a loan if customer has new business, or no experience. Once customers have met the standard of credit assessment, they have to enter into written financing contract with Islamic bank and must sign financing standard contract which is made by Islamic bank. Regarding article 8 (2), the Act of Islamic bank, No. 21 of 2008, commercial bank must fulfil the Islamic principle accordance with both policy and provisions that are established by Bank Indonesia. Furthermore, the explanation of this article, the principle provisions regulated by Bank Indonesia involve a. Islamic financing that provided by Islamic bank has to be in the form of written contract.....". Pertaining this explanation, in practice, a loan which is provided by Islamic bank must be entered into a written financing contract due to their objective function as a documentary evidence.

The Holy Qur'an reveals that each business transactions have to be in the form of written contract. Furthermore, the Qur'an (Al Baqarah 282) states that

"O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write (it) between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation (i.e. the debtor) dictate. And let him fear Allah, his Lord, and not have anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men (available) then a man and two women from those whom you accept as witnesses - so that if one of them (i.e. the women) errs, then the other can remind her. And let not the witnesses refuse when they are called upon. And do not be (too) weary to write it, whether it is small or large, for its (specified) term. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction which you conduct among yourselves. For (then) there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is (grave) disobedience in you. And fear Allah. And Allah teaches you. And Allah is Knowing of all things." [10]

According to M. Quraish Shihab, this provide advice in which a loan has to be in the form of written contract and has to be witnessed by a third party or notary public with specific term contracts, notably time, the amount of loan, and etc. [11] A loan which has been received by a customer is more riskier than a loan which is still arranged by Islamic bank. In order to avoid credit risk, Islamic bank needs to do adequate supervisions that involve both active and passive supervisions. Active supervisions include visiting customer regularly, checking and examining frequently a company's financial records, and providing call report to supervisor. In contrast, passive supervisions contain monitoring monthly customer's repayment, providing advice and information in order to avoid the event of a default in payment.

In Sharia Bank X, the a loan and a contract of security should be legalized by notary publik into legal document. Similarly, Sharia Bank Y uses notary public to legalize these documents. The facility of "back to back" loan which is provided by Sharia Bank Y do not need to be legalized by notary public due to no risk of this credit. Regarding article 1868 *Burgelijk Wetboek* (BW), legal document has to be notarized by notary public. whereas non legal document does not need to be legalized by notary public.

**H.R.Daeng Naja** argued that the parties should draw up a proper contract so as to avoid a dispute. [12] Based on the Act of Notary public, No 30 of 2004 amended by law No.2 of 2014 (UUJN), the anatomy of contract has to involve several account of the rules for the formation of contract: [13]

Deed or Deed initial head;

1. Deed body; and
2. End or cover deed.

Early Head Deed or Deed contains:

1. Title deed;
2. Deed number;
3. Hours, day, date, month and year; and
4. Full name and domicile of the Notary.

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Agency Deed contains:

1. Full name, place and date of birth, nationality, occupation, office, position, place of residence of the parties and/ or the peopel they represent;
2. Information about the position of the parties;
3. contentsts of the deed which is the will and desire of the parties concerned; and
4. Full name, place and date of birth and occupation, position, status and residence of each witness indentification.

End or closing load Deed:

1. Reading the description of the Deed referred to in article 16 paragraph (1) letter m or article 16 paragraph (7);
2. Decription of the signing and the signing of the deed or translation if any;
3. Name full name, place and date of birth, occupation, position, status and residence of each witness Deed; and
4. No decription of the changes occurring in the manufacture of paper or a description of nay changes that may include the addition, deletion or replacement and the number of changes.

Any business activity should be covered by a contract that is agreed by the parties. [14] There is a contractual relationship between Islamic bank and customer. A contract that might bear on relationship between them is a standard form contract. In practice, it is done by not only conventional bank but also Islamic bank. This reveals that a standard form contract is generally adopted by banks and their customer. One party employs this contract in order to obtain more benefits using specific contract clauses. [15]

Generally, a contract should be made by the parties using the principle of freedom of contract in which the parties have equal right and obligation through negotiation procedure. Nowdays, they do not negotiate the clauses equally. That is to say, one party make and give a contract in order to be signed by other party. This reveals that one party does not provide a freedom to negotiate the terms of contract with other party. Therefore, this could be defined as a standard form contract. A standard form contract might be the principle of a freedom of contract once they include :

1. Determining the object of contract
2. Determining the form of contract
3. Offering the terms that express the rights and obligation
4. Determining how to settle a dispute

According to **Moch.Isnaeni**, the principle of freedom of contract is to achieve the business objective. A standard form contract possesses positive and negative aspect due to less consensual principle and unequal position between the parties. One of legal basis of freedom of binding contract regarding Islamic law is that " Moslem must fulfil the term of contract they make, except "haram" things" (HR. Tirmidzi, Tabrani, and Baihaqi). [16]

**Hasanuddin Rahman** argued that a standard form contract is a contract that is made in the form of standard contract by one party so as to not provide opportunity to other parties to negotiate a contract. [17] Therefore, they would agree to a contract that have been made.

The Act of customer protection, No 8 of 1999 does not express a standard form contract, but it clarifies the standard clauses. According to article 1 (10) this act, this is a provisions and the terms of contract that have been made by one party in the legal document, and or, is a binding contract that must be fulfilled by the customer. In addition, article 18 (1) this act states an entrepreneur is prohibited to make the standard clauses if :

1. declare the transfer of responsibility of businesses;
2. states that business is entitled to refuse delivery of the items returned bought by consumers;
3. stated that businesses are entitled to reject the handover to money paid for the goods and / or services purchased by consumers;
4. express authorization from consumers to businesses either directly or indirectly to any unilateral action relating to goods purchased by consumers in installments;
5. arranging concerning proof of loss of use of goods or utilization services purchased by consumers;
6. entitles businesses to reduce benefits or services reducing the wealth of consumers who becomes the object of sale and purchase of services;
7. stating the submission of consumers to the regulations in the form of new rules, In addition, the advanced and / or advanced conversion made unilaterally by the perpetrator business in the future consumers to use services purchased;
8. stating that the consumer authorizes the businesses to loading encumbrance, lien or security interest against goods purchased by consumers in installments

Furthermore, article 18 (2) this act reveals that an entrepreneur is prohibited to make the standard clauses that is not clear or is difficult to be recognized.

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There are some view about the validity of standard form contract which are:

1. Pitlo argued that a standar form contract is dwang contract due to no freedom of contract.
2. Sluyter contended that a creditor who make a standard form contract would introduce a new "legio particuliere wetgevers).
3. Stein asserted that a legal basis of standar form contract is "de fictie van will of vertrouwen, so there is no freedom of contract between the parties, particularly the debtor.

According to article 1320 jo 1338 BW, one of the negative impact of the violation of consensual principle is contract would be null and void. Furthermore, **Hardijan Rusli** argued that a standar form contract would be invalid and unfair once it is made by no equal conditions.

With regard to the research of financing contract at sharia bank X and sharia bank Y, all contracts are made in the form of standar contract. In other words, this is made by sharia bank X and sharia bank Y and the customer can not negotiate the terms of contract. This contracts obey Islamic principle if :

1. It is a valid contract
2. There is no gharar, maysir, and riba.
3. There is a consensual principle, freedom of contract, justice, and equal condition.

In practice, there is an exemption clause or exoneratie clausule (dutch). That is to say, it is a contract clause that provides a freedom or restrict obligation of one party if he/she breaks a contract. [18] **Sutan Remy Sjahdeini** argued that a standard form contract generally involve contract terms and clauses which compel customers to agree to a contract, notably an exemption clause. Therefore, this contract is invalid, null and void. [19] If there is an exemption clause in financing contract at Islamic bank, it disobey not only Islamic principle, particularly equal and justice principle, but also article 18 (1a) the Act of Customer Protection, No 8 of 1999 about invalid contract of this clauses.

## Analysis of Islamic standard form contract at Sharia Bank X and Sharia Bank Y

Acting as an intermediary institutions, financing product is generally classified into several different categories regarding the purpose of its use :

1. Sale financing (murabaha, salam and Istishna)
2. Leasing financing (Ijarah and Ijarah Muntahiya Bittamlik)
3. Profit sharing financing (Mudharabah and Musharaka)
4. Loan financing (Qardh)

The principle of sale financing is to own a good, whereas, the principle of leasing financing is to obtain service. Furthermore, the principle of profit sharing financing is to gain both goods and services regarding partnership between the parties. In the first and second categories, bank's profit level is determined by the price of good or service which are sold or offered. Take not only sale products, notably murabaha, salam and istishna but also leasing products, particularly ijarah and ijarah muntahiya bittamlik as an example. In contrast, regarding the third categories, bank's profit level is determined by the profit of business accordance with profit sharing principle. A good example of this product categories would be musharakah and mudharabah. In addition, pertaining to the last categories, Islamic contract of loan financing can not involve, offer or provide profit guarantee to the parties.

### Murabahah

Sale contract at Islamic bank includes murabaha, salam and istishna. The popular facility that is used and offered by Islamic bank is sale product or murabaha. This transaction is largely used by the Prophet. Generally, murabaha could be defined as gain or profit. In other words, a seller must expose his cost and the agreement takes place at an agreed profit. [20] At sharia bank X and sharia bank Y, Islamic standard form contract must satisfy a minimum requirement, particularly :

#### Article 2

Islamic bank promise to sell a good which is ordered by the customer and deliver to customer, and the customer promise to buy, receive a good and pay its price to Islamic Bank.

#### Article 3

According to article 2, a good has to meet and consist of specifications which are agreed, and this can not separate from Islamic contract that is made by Bank in order to be sold to customer.

#### Article 4

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1. Bank's cost is approximately Rp. ....
  2. Bank's profit is roughly Rp. ....
- 
1. Regarding article 4 (1), the price is agreed by the parties, bank and customer, and can not be modified or altered due to any reasons.
  2. Based on article 4 (2), the price does not include other cost, particularly the cost of notariil and insurance that is agreed by customer.

## Mudharabah

Mudharabah could be defined as a particular type of Shirkah that a shareholder or investor grants funds to an agent who has to do business with it, and the gain is shared regarding the pre-agreed percentage. [21] Islamic standard form contract of mudharabah financing at sharia bank X and sharia bank Y must meet several minimum requirements :

### Article 2

1. Bank promises to provide facility of mudharabah financing to customer approximately Rp ..... all at once or gradually accordance with the request of customer and can not separate from this Islamic contract.
2. The time period of mudharabah facility is approximately ..... month, since the sign of Islamic contract

### Article 4

1. Customer and Bank agree that the percentage of profit sharing is .....% for customer and .....% for bank based on the principle of net revenue sharing or profit sharing\*)
2. Customer and bank agree that the implementation of profit sharing percentage will cover the period and date agreed by these parties.
3. Bank promises to cover financial loss, except due to immorality of the customer associated with article 11 this Islamic contract, and or the breach of contract done by customer accordance with article 12 this Akad.
4. Bank will cover financial loss accordance with article 4(3), after bank has investigated and considered the report that is made by customer to Bank and bank has given this written report to customer.
5. Customer promises to give business analysis and report financed by mudharabah facility based on this Islamic contract periodically
6. Bank promises to reassess and reconsider customer's business analysis and report with the customer's data and evidence.
7. If bank does not give this reassessment and review to customer, bank will accept this analysis and report that is made by customer.

### Article 8

In order to assure the repayment of mudharabah facility and the amount that is agreed by the parties on time, customer promises to provide guarantee to bank accordance with the provisions and act, which can not separate from this Islamic contract

## Musharakah

Based on article 1 (6) the provisions of Bank Indonesia, No 7/46/PBI/2005 and the provisions of Bank Indonesia, No. 9/19/PBI/2007 amended by the provisions of Bank Indonesia No. 10/16/PBI/2008, musharakah is a common partnership conducted with joint fund of the partners, with the percentage of profit sharing agreed by the parties, and financial and business loss will be covered by shareholder accordance with their proportion. Musharakah is a partnership where two or more people share the profit and loss accordance with a contract that is agreed by the parties, bank and customer. Musharakah financing shares the profit accordance with the proportion of profit sharing agreed by the parties, and financial loss based on the capital invested by the parties. Islamic standard form contract of musharakah financing at sharia bank X and sharia bank Y must meet several minimum requirements :

### Article 2

1. Bank and customer take full responsibility to run a business, and each party works as a representative of other parties, and each party provides right to other parties to run business transaction based on this Islamic contract.
2. Bank and customer own right to make and take several financial and operational decision. Furthermore, they are prohibited to invest fund for their own interest, except the terms of contract that agreed by the parties.
3. Bank and customer own the asset in order to generate profit from running business
4. Bank and customer own right to take the proportion of profit sharing that is agreed by the parties accordance with the terms of this Islamic contract
5. Bank and customer will take full responsibility of financial and business losses together, except the terms of contract that is regulated by this Islamic contract, particularly speculation, gharar, and monopoly and

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customer will take full responsibility if he/she breaches or disobey the terms of contracts accordance with article 2 this contract.

## Article 3

1. The capital of Bank is approximately Rp. .... (.....%)
2. The capital of customer is around Rp. .... (.....%)

## Article 5

1. Customer and bank agree that the percentage of profit sharing for customer is roughly .....%, and the proportion of profit sharing for bank is around .....% based on the principle of net revenue sharing or profit sharing
2. Customer and bank agree that the implementation of profit sharing percentage will cover the period and date agreed by these parties.
3. Bank promises to cover financial loss proportionally accordance with the proportion of capital that is invested by the parties, except due to immorality of the customer associated with article 2 (2) this Islamic contract, and or the breach of contract done by customer accordance with article 13 this Akad.
4. Bank will receive and cover the financial and business losses accordance with article 5 (3), if bank has reassessed and reconsidered the business analysis and report and bank has given the written result of reassessment to customer.
5. Customer promises to give business analysis and report financed by musharakah facility based on this Islamic contract periodically
6. Bank promises to reassess and reconsider customer's business analysis and report with the customer's data and evidence.
7. If bank does not give this reassessment and review to customer, bank will accept the analysis and report that is made by customer.
8. The percentage of profit sharing (nisbah) can not be modified or altered once the musharakah facility still exists, except based on the agreement between the parties.

## Ijarah

According to the fatwa of sharia' supervisory board in Indonesia (Dewan Syariah Nasional), No 9/DSN/MUI/IV/2000, and the explanation of article 1 (1)(e), the Act of Islamic bank, No 21 of 2008, ijarah could be described as an Islamic contract of proposed usufruct of any commodity in exchange of ujarah, wages, and rent, without no transfer of property ownership. Islamic standard form contract of ijarah financing (ijarah wa iqtina or ijarah muttahiyyah bittamlik) at sharia bank X and sharia bank Y has to fulfil several minimum requirements :

## Article 2

Bank agrees and promises to provide ijarah facility in order to grant and deliver goods to a customer with the option in which a customer can purchase goods back in due course.

In order to provide goods, a customer must provide written information once prepurchasing them to Bank, with granting much enough time to bank to implement.

The notification or written information can not be canceled, if there is no bank's mistake, a customer agrees to cover all risks, notably all cost as a result of canceled transactions.

## Article 3

Goods that is provided by bank to customer is obtained from the seller of goods accordance with the Islamic contract of its purchase. Bank and customer agree to a contract and sign an agreement due to the delivery of goods from banks to customer. Once there is a damaged good before delivering and bank has financed to gain this good, a customer must repay this fund to bank and bank has no obligation to customer associated with the claim of Insurance. All cost of the purchase of goods and good delivery will be covered by customer.

## Article 4

Bank promises and agrees that the time period of this facility will take place .....(.....) month, since the sign of this contract or the delivery of goods to customer.

A customer promises to repay the fund to bank in payment of installment approximately Rp.....(.....) based on the terms of this contract which has been signed.

## Article 5

A customer promises to cover all cost of goods, insurance, and other cost to implement this contract.

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A customer promises to give saving guarantee as around Rp. .... to bank, and this will be hold by bank as a downpayment once a customer use his option right in which a customer can purchase goods back in due course.

## Article 13

A customer must assert his motivation to take or cancel his option right that is provided by bank based on this contract to repurchase the goods in written agreement, with the contract requirements:

A customer has repaid all cost of goods based on this contract and other related agreement.

A customer has met all the terms of this contract and other related contract.

Once all the terms of these contract has been met, a customer must repay all the fund of goods that has not been repaid by customer to bank plus the amount of saving guarantee accordance with article 5 this contract. Bank promises to give all its right of goods to customer.

## Qardh

Al - Qardh could be categorized as *aqdtathawwior* non commercial contract. It is giving any commodity or the amount of money to other person with liability to pay these similar amount back to creditor. According to the provisions of Bank Indonesia, No 7/46/PBI/2005 and the provisions of Bank Indonesia, No. 9/19/PBI/2007 amended by the provisions of Bank Indonesia No. 10/16/PBI/2008, qardh is a loan with no addition. In other words, debtor has liability to pay similar amount of money to creditor. Islamic standard form contract of qardh financing at sharia bank X and sharia bank Y has to fulfil several minimum requirements :

### Article 1

The amount of principal debt is Rp.....

The amount of administration cost isRp. ....

The total amount of debtRp.....

1. Based on the terms of this contract, bank agrees to provide a loan to customer as Rp. ...., and bank would apply registration of Sistem Komputerisasi Haji Terpadu for a customer. Therefore, bank obtains ujah or fees, and a customer owes a debt to bank :
2. Regarding article 1 (1), a customer promises that a loan is to .....

Example : qardh contract from sharia bank Y

### Article 1

The amount of principal debt is Rp.....

The amount of administration cost is Rp. ....

The total amount of debtRp.....

1. Based on the terms of this contract, bank agrees to provide a loan to customer almost Rp. ....  
Therefore, bank obtains ujah or fees, and a customer owes a debt to bank :
2. Regarding article 1 (1), a customer promises that a loan is to .....

### Article 2

Customer promises to repay all his debt to bank based on article 1 for ..... months, since the sign of this contract and this would end in ....., through paying all at once or in payment of installment that is agreed by the parties.

The fee or ujah of qardh facility is for customer's interest and will be repaid all at once when customer receive a loan from bank

In due repayment of a loan in weekends, customer promises to repay a loan at the first day after the weekends.

Once customer make late repayment of his debt to bank, customer promises to repay all late administration cost to bank as Rp ...../ day, since the obligation of repayment in due time until date of repayment that is made by customer.

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## Article 5

In order to assure the repayment of his debt that is provided by bank, a customer promises to provide guarantee as ..... Once the Islamic contract is signed by the parties, this contract provides specified right to a customer as a representative of bank, and this contract can not be cancelled due to any reasons accordance with article 1813 Burgelijk Wetboek (BW).

Based on the analysis of Islamic standard form contract at sharia bank X and sharia bank Y the clauses of each financing contract not only have described each financing characteristic but also involve the minimum requirements based on Islamic principle accordance with the fatwa of DSN-MUI that is regulated by the provisions of Bank Indonesia, No 7/46/PBI/2005 and the provisions of Bank Indonesia, No. 9/19/PBI/2007 amended by the provisions of Bank Indonesia No. 10/16/PBI/2008.

## Conclusion and recommendation

1. Islamic standard form contract at Shari'a Bank does not disobey Islamic principle if this contract must fulfil the validity of this contract, and avoid gharar, maysir, riba, and haram goods, and does not disobey the principle of Islamic contract.
2. Islamic standard form contract at Sharia Bank X and Sharia Bank Y have involved both the clauses of contract that shows its financing characteristic, and the minimum requirements determined by the fatwa of sharia supervisory board in Indonesia (Dewan Syariah Nasional) regulated by the regulation of Bank Indonesia.
3. There is a need of harmonization of Islamic standard form contract for all Sharia' Bank based on the characteristic of Islamic financing and the implementation of freedom of contract accordance with Islamic law, and this harmonization does not disobey Islamic principle and the act of Islamic banking and the provisions of Bank Indonesia.

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