



The Concept of *Wadiah* and its application in Islamic Banking

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ABSTRACT : *The idea of the existence of Islamic banking is an alternative to the muslim society from the conventional banks in practices and brands of products. One of the products of Islamic banking is wadiah account. Therefore, this paper aims at explaining the concept of and its application of wadiah in Islamic bank. The methodology of this paper is through qualitative research based on relevant literatures on wadiah in Islamic bank. The general finding of this paper shows that there are four types of wadiah in the application of Islamic Bank.*

Keywords:- *wadiah, Islamic banking, deposit, Islamic Finance, Masharif Islamiyah.*

I. INTRODUCTION

In economic development in Muslim countries today, the role of Islamic banks is very important, specially, when the banks non-Islamic banking transactions are not allowed on the basis of Islam. Deposit, or better known in Arabic as wadiah, is major products in both the banking world by Islam or not. Of course, the Islamic banks are very concerned halal element in this deposit transaction. By it, this paper aims to explain what exactly it is safe, as well as the views of scholars about the legal basis allow it. And most importantly, it is its own form of deposits in Islamic banking as well as any contract that sustains this deposit transaction.

II. THE CONCEPT OF WADIAH

Deposit in Arabic is called wadiah. The term wadiah is derived from the verb wada'a, which means to leave, lodge or deposit (Al-Farabi, 1987). Legally, the hanafy scholars define it as an empowerment to someone for keeping the owner's property explicitly and implicitly. Whereas according to shafi'i and Maliki scholars, wadiah is presentation in keeping possession of respectable private goods in specific way. Hanbali scholars add the element of charity when they define wadi'ah as representation in keeping (other's property) and it is done (by the keeper) as charity (ISRA, 2012). Sayyid Sabiq (1983) stated al-wadiah is keeping something from someone to another, either from an individual or organization that has to be guarded safe and give back on the demand.

Basic rule and condition of Wadiah (deposit)

1. Contracting parties: the depositor and the custodian must be person of sound mind. The hanafi school views that attaining the age of maturity is not compulsory provided consent from parents to do business is obtained. On the other hand, the majority of Muslim jurists share the common view that the contracting parties must be eligible to be a wakil (agent), i.e., they must be a person of sound of mind, and have attained the age of maturity and intelligence (ISRA, 2013)
2. The depositor is able to the take the property whenever he wants (Irsyid, 2007)
3. Offer (ijab) and acceptance (qabul): the majority of jurists are the view there is must be a valid offer and acceptance made in wadiah contract
4. Deposited property: it must be owned and deliverable. The item must be also form of property that can be physically possessed (ISRA, 2013).

Types of Wadiah (Deposit)

Wadiah can be classified into two types:

1. Safe custody based on trust (Wadiah yad Amanah)

Originally term of deposit is amanah (trust) where it is charitable and divinely rewarded. It is basically a trust to keep. So, the custodian shall keep the deposit as his keeping and taking care of his own property. He is not responsible for any damages except due his negligence. He does not gain any profit from the contract. The permission will be required of the utility of the property. Last, the he is must return the property at any time upon demand of the owner.

2. Guaranteed Safe Custody (Wadiah yad Damanah)

This is the combination between safe-keeping (al wadiah) and guarantee (daman). This type deposit facilities wider application in the Islamic banks system, particularly where the deposits are the sources of funds for banks. Some of the features: the custodian is entitled to use the deposit property for trading or any other purposes. So, has right to gain some profit derived from the utilisation of the property and the sometime he is fully responsible for the damage (ISRA, 2013).

Legality of Wadiah (deposit)

Deposit is among the permissible contracts and dealing in Islam. Its legality is enshrined in the Quran, Hadith Ijma,

...إن الله يأمركم أن تؤدوا الأمانت إلى أهلها...

“Indeed, Allah commands you to render trust to whom they are due and when you judge between people, to judge with justice” (Al Quran. Al-Nisa, 4:58)

... فإن أمن بعضكم بعضا فليؤد الذي أؤتمن أمانته وليتق الله ربه...

“If you trust one another, then let him who is trusted fulfil his trust, and let him be conscious of God, his sustainer” (Al Quran. Al-Baqarah. 2:283)

The meaning of above verses has been strengthened by saying of the prophet SAW:

عن أبي هريرة رضي الله عنه قال قال النبي صلى الله عليه وسلم أد الأمانة إلى من أئتمن ولا تخن من خانك ...

“And perform the trust to those who entrusted you and do not betray those who betrayed you” (Abu Daud)

In addition to the evidence from the Quran and Sunnah, all Muslim scholars unanimously agree on the permissibility of wadiah. This kind of transaction is necessity and a requisite for protecting mankind and such should be allowed (Zuhaily, 1985). The proprietor of the thing is known as mudi (depositor). The person entrusted with is known as the wadi or mustawda' (custauda') and deposited asset is wadiah. It is encouraged for anyone who has trust in himself to take the wadiah to help others.

III. APPLICATION OF WADIAH IN ISLAMIC BANK

Saving deposit

All Islamic bank operate savings deposit account, however, the operation of these accounts vary at different banks. Generally, a saving deposit permits costumer to deposit and withdraw their money at any time and does not require a minimum balance in deposit account. It does not have maturity date; therefore the cash can be withdrawn at any time based on the costumer's demand (Irsyid, 2007). Generally, Islamic financial institution structure their saving deposit account based on sharia principle, either I form of qard, wadiah yad damanah or mudarabah saving deposit.

Current deposit

Current deposit account is a form of demand deposit that offers users safe keeping of their cash deposit, and the choice to be paid in full upon demand. Current account deposit facilities are usually offered the either individuals or companies. It also shares similar features with saving deposit as it permits for the cash to be withdrawn at any time. The main point of departure between current deposit and s saving deposit is the presence of cheque book and multi-functional card used in the former. If the account holders were to withdraw more than what is sufficient in their balance, there will also be no charges incurred. In the US, current deposit is prominently known as checking account or demand deposit. The three common structures of a current deposit in Islamic financial are Qard wadiah yad dhamanah and mudarabah current deposit.

Generally, no return is given in this deposit in the ground that such deposit take the form of loas given to Islamic banks and the loan cannot carry any return. They are kept as amanah. Bank shall guarantee the principal amount of deposit. A further condition for such such an incentive is that they should not to be offered regularly. This is because, with the passage of time, the practice will become customary and, in return, take on ruling benefits stipulated in a contract of deposit (Ayub, 2007)

Term deposit

A term deposit is a type of arrangement where the customer's deposits are held at a bank for fixed terms. There deposits will be then deposited to a number of investment pools where it will be invested in business activities which are accordance to the sharia. The money deposited in a term deposit can only be withdrawn at the end of the terms as stated in the contract or by giving a predetermined number of days as notice. Usually, term deposits are short-term deposits where the maturities are within a period of one month to a few years. Islamic term deposit are commonly structured based on the commodity murabahah, wakalah unrestricted investment and mudarabah general investment (ISRA, 2013).

Investment deposit

The investment deposit is usually known as profit and loss sharing (PLS) account or simply, the investment account. The ratio of profit distribution between the bank and depositor shall be agreed at time of accounting opening subject to the sharia that a partner may agree on ration of profit and losses have to be shared

strictly in the ratio of capital (Ayub, 2007). The main point of departure between the investment deposit and both saving and current deposit is the former is normally structured based on either the *mudarabah* and *wakalah bi istismar* principle which do not entail a guarantee of either principal or the return of profit. Nevertheless, the investment account holders have an opportunity to earn more attractive returns although there is also likelihood having to bear the risk of capital losses (ISRA, 2013).

Comparisons between Islamic Banks and Commercial Banks

The difference in the current account and saving account:

1. Commercial Bank is giving usurious interest for the client on the current account, while the Islamic bank does not give the client anything on the current account, but it may take a simple versus expenses to keep this money.
2. The customer may in the Islamic Bank and Commercial Bank to withdraw his current account whenever he wants, but the commercial bank can allow the client to withdraw an amount greater than the amount owned in his account. The additional withdrawals will be seen as loan interest, and this does not happen in the Islamic bank.
3. There is a difference in the returns achieved by the client to open a current account between the Islamic Bank and Commercial Bank, in the Islamic bank does not achieve Light current account (deposit upon demand), but to save money and facilitate business dealings without getting any return on profit, while in commercial banks realize the benefit of usury, except for keeping his money and facilitate commercial transactions.
4. The current account in the Islamic bank is not only creates a client account with the bank, but also deposit a sum of money in this account. In the commercial bank, we could open a current account in the manner aforesaid, called the current accounts payable, or to open an account overdraft. This means that the bank is the one that begins with the establishment of this account by opening a bank to adopt his predecessor for the client, or the overdraft. Second type of current accounts is forbidden in Islam as decided by the contemporary jurists, so it does not deal in Islamic banks.
5. The Islamic bank deposits has governed by Islamic law, through the Committee of legitimacy, so the only Halal can be transacted, while the commercial banks do not bother usury provisions of the law, and be a lot of dealings ungodly (Al-Hiti, 2007).

The differences in investment deposit:

1. The Islamic bank acts as a deputy agent in dealing these accounts, while the Commercial Bank serves as the debtor in these accounts, which pay any interest to customers on this type of account. The Islamic bank operated and invested to achieve earnings and then distributing profits to depositors after deducting administrative expenses.
2. The possibility of the loss of the client Light This account is featured in dealing with Commercial bank. As the agreement between him and the commercial Bank requires that the bank pays for the client specific benefit, regardless of the amount of the gain or loss realized by the Commercial Bank. While the client in dealing with the Islamic bank, the probability of loss and improbable as the possibility of profit.
3. Money will be invested in bank deposits, the Islamic way only, without the use of legitimate taboos, and oversees the legitimacy of Islamic bank transactions. While no qualms commercial bank deposits for investment in land, especially usury through the process of lending and borrowing interest rate.
4. In case the customer wants to withdraw his money, the banks often drag them in order to preserve its reputation with her rights not withdrawn. And the way the clouds in the Islamic bank can be a process of withdrawing normal without getting the client on earnings as a result of withdrawing early and can pull him with a pledge the bank for the customer to give him a profit when you know the final results of the profits or the end of the session, versus the Customer undertakes to reference it at a loss in if lost Islamic bank, and be tolerated by the amount that has been withdrawn, and the period in which he was the amount owed by the bank, this method does not deal with commercial Bank of usury, but the withdrawal of the depositary pull plain, or does lend depositor against the interest of usury and this way you do not follow the bank Muslim in his dealings, because it contrary to Islamic law.
5. Most of the transactions of commercial banks on the process of assembling depositors' money, then lend an interest rate for the needy from the merchants, governments and individuals, institutions and companies. While the Islamic banks to invest deposits have saved investment projects in industrial, agricultural and commercial serve the community (Al-Hiti, 1998)

IV. UNDERLYING CONTRACT STRUCTURE OF WADIAH IN ISLAMIC BANK

Qard based deposit

As defined by AAOIFI sharia standard No. 19 qard is the transfer of ownership in fungible wealth to a person upon whom it is binding to return wealth similar to it. The essence of qard is to provide on loan the

wealth or property to one who will gain from this act. By giving, the receive party will employ and consume it in pursuit of his aims and then return back its equivalent value (Irsyid, 2007).

The qard structure is predominantly used by Islamic financial institution in the Middle East and Europe. Essentially, the aim is to provide the depositors with guaranteed safe-keeping of the amount deposited, and the same time allows banks to utilise it for their banking and business activities. In qard structure, the depositor is deemed as a lender to the bank to the bank who acts as the borrower and the bank guarantee such return even if there is negligence or loss of wealth (ISRA, 2013).

Wadiah yad Dhamanah Deposit

As mentioned before, the term wadiah is defined as empowerment to someone for keeping the owner's property explicitly and implicitly. It can be further divided into types namely wadiah yad amanah and wadiah yad damanah. Wadiah yad amanah is trust contract where the trustee will be authorised to keep the funds of the depositors in his or her safe custody by explicit or implicit terms. However, there is paradigm shift from a trust contract to a guaranteed wadiah contract. The modification of the wadiah yad amanah contract is made by attaching the contract wadiah with a guaranteed element. The guaranteed elements converts the original concept of wadiah, which is based on trust, "to guaranteed to custody", also known as wadiah yad damanah. The element of guarantee is deemed necessary since the bank is allowed to utilise the funds at its own risk. However of depositors eventually decide to withdraw their money; the bank needs to assure that the money is made available upon demand. The profit gained from utilisation of the deposit funds belongs to exclusively to the bank. However, the bank may voluntarily choose the share the profits obtained with depositors as a form of discretionary hibah (Antonio, 2001)

Mudarabah deposit

A mudarabah deposit is a form of investment account. Under this principle, the depositor who acts as rabbul mal (wealth/property owner) deposits his money into the bank which acts as mudarib (fund manager) that will subsequently use the money for investments purposes. The distribution of profit between the bank and the depositor is in accordance to a mutually pre-agreed profit sharing ratio. This must be disclosed and agreed upfront by both parties at the time of opening of the account. According to the mudarabah principle, the capital of depositor cannot be guaranteed since any financial loss shall be borne entirely by depositor as the capital provider unless proven negligent or there is breach of the terms of the mudarabah contract on the park of the bank. This is striking difference between a mudarabah deposit and a wadiah yad damanah deposit where the latter entails capital guarantee while the formers does not allow banks to guarantee capital return to the depositor.

The mudarabah deposit can be divided into two types. It is the restricted mudarabah (mudarabah muqayyadah) and the unrestricted mudarabah (mudarabah mutlaqah). In the first one, the actions of the mudarib (fund manager) are restricted. However, it should not be in a way what would unjustifiably constrain the actions of the mudarib in his operations. While the second one, the mudarib can employ his own good judgment and has complete authority on the management of the capital entrusted to him for any type of investment activities (ISRA, 2013).

Commodity Murabahah Term Deposit

It is a form of fixed deposit that comprises a series of murabahah contracts also known in classical terms as tawarruq (ISRA, 2013).

Wakalah unrestricted investment deposit

It is an agency concept whereby the mutawakkil (depositor) will appoint the bank as his wakil (agent) with respect to the investment of the mutawakkil funds in sharia-compliant transactions. Based on unrestricted wakalah, the wakil will use the invested funds for its general corporate purposes; mainly investment in any of the assets on the bank balance sheet. The investment will be full discretion of the wakil. The wakil will notify the mutawakkil on the profit expected to be generated upon the placement of funds. However, any profits exceeding the quoted expected profits will be retained as incentives by the wakil. This based on the principle of tanazul whereby certain rights of claim will be waived in favour of another party in a contract. The wakil will be entitled to draw an agency fee from the incentives obtained. Since wakalah is just a form of agency contract, the mutawakkil as principal shall bear all risks associated with the transaction except for those risk resulting from the wakil's misconduct or negligence.

To attract depositor, bank may sometime provide explicit guarantee of minimum return. This should be avoided as it contravenes the principle of sharia. Instead, bank should be clear to the mutawakkil that in occasions where there are losses, the will try to fill the gap with it bank reserves, and not guarantee a minimum return. However, this may potentially create legal issues on how to document the payment obligations (ISRA, 2013).

Wakalah Restricted Investemet Deposit

This form of this wakalah allows the will to use the invested fund within the restriction of the fund scheme, for example, the existence of investment parameters, the types of investments to be made by the scheme, etc. the wakil must be also identify the limitation of mutawakkil (depositor)

Mudarabah General Investment Account

A mudarabah general investment account provides an investment opportunity that operates under the Islamic banking principle of mudarabah. As discussed earlier, mudarabah is form of partnership contract whereby a customer known as the rabbul mal who is looking for investment opportunities for his or her funds will invest through the bank who acts the manager of fund. Under the general investment account, no minimum tenure of investment is required and the investment will not be unique. The mudarib has a broad range of trade or business freedom on the basis of trust and the business expertise he or she has acquired. However, the action of mudarib must be in accordance to the custom of the mudarabah operation and the subject matter of contract (ISRA, 2013).

Mudarabah Special Investment Account

The main departure between this account and general investment account is in the special form; the rabbul mal will be advised on where the funds will be invested, what is the minimum amount that they can invest in the project return and what is the loyalty risk that comes with it. Also the returns on special investment accounts are generally much higher than the mudarabah general investment account (ISRA, 2013).

V. CONCLUSION

All banks, whether Islamic or not to use the deposit as one of its products. Keep a safe-deposit, which has a certain criteria based on the type of application and later on the Islamic and conventional banks. In fact there is no term differences between scholars of the Salaf, Imam Hanbali only provide suppression that deposit is one form of transaction on the basis of tabarru. Practice deposits in Islamic banks in general are 4, current deposits, savings deposits, term deposits and investment deposits. Transactions are used on each type of deposit were varied. There Qard, mudarabah, wakalah, and Commodity Murabah. The most fundamental difference in practice between the Islamic Bank and Bank conventional is usury. In Islamic banks, element of usury was replaced with the grant profit and loss sharing.

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