

**MINISTRY OF FINANCE OF REPUBLIC OF INDONESIA  
CAPITAL MARKET AND FINANCIAL INSTITUTIONS SUPERVISORY  
AGENCY**

**DUPLICATE OF  
DECISION OF CHAIRMAN OF CAPITAL MARKET AND FINANCIAL  
INSTITUTIONS SUPERVISORY AGENCY  
NUMBER: KEP-131/PM/2006**

**CONCERNING**

**CONTRACTS USED IN ISSUANCE OF SHARIA-BASED SECURITIES IN  
CAPITAL MARKET**

**CHAIRMAN OF CAPITAL MARKET AND FINANCIAL INSTITUTIONS  
SUPERVISORY AGENCY,**

Considering : a. that sharia-based economic activities shall be conducted based on consensus among parties involved;  
b. that based on sharia, principles of consensus of economic activities are regulated in various form of agreements;  
c. that in order to provide sufficient legal framework for sharia-based contracts in Indonesian Capital Market, it is necessary to issue Decision of Chairman of The Capital Market and Financial Institutions Supervisory Agency concerning Contracts Used In Issuance Of Sharia-Based Securities in Capital Market;

In view of : 1. Law Number 8 of 1995 Concerning Capital Market (Statute Book Year 1995 Number 64, Supplement to the Statute Book Number 3608);  
2. Government Regulation Number 45 of 1995 Concerning Capital Market Organization (Statute Book Year 1995 Number 86, Supplement to Statute Book Number 3617) as revised by Government Regulation Number 12 of 2004 (Statute Book Year 2004 Number 2007, Supplement to Statute Book Number 4327);  
3. Government Regulation Number 46 of 1995 Concerning Capital Market Format Investigative Procedure (Statute Book Year 1995 Number 87, Supplement to Statute Book Number 3618);  
4. Decree of the President of the Republic of Indonesia Number 45/M Year 2006;  
5. Rule Number IX.A.13 Concerning Issuance of Sharia-Based Securities;

**HAS DECIDED:**

**MINISTRY OF FINANCE OF REPUBLIC OF INDONESIA  
CAPITAL MARKET AND FINANCIAL INSTITUTIONS SUPERVISORY  
AGENCY**

To enact : **DECISION OF CHAIRMAN OF THE CAPITAL MARKET  
AND FINANCIAL INSTITUTIONS SUPERVISORY  
AGENCY CONCERNING CONTRACTS USED IN  
ISSUANCE OF SHARIA-BASED SECURITIES IN  
CAPITAL MARKET**

Article 1

Provision concerning Contracts Used In Issuance Of Sharia-Based Securities In Capital Market is regulated in Rule Number IX.A.14 as stipulated in the Attachment of this Decision.

Article 2

This Decision shall become effective since the date of its promulgation.

In order that all may be informed, this Regulation will be promulgated by publication in the State Gazette of the Republic on Indonesia

Enacted in : Jakarta  
Date : November 23, 2006

Chairman of Capital Market and Financial  
Institutions Supervisory Agency

Signed

**A. Fuad Rahmany**  
NIP 060063058

Based on the original documents  
Acting Executive Secretary

Signed

**Robinson Simbolon**  
NIP 060047831

**ATTACHMENT:**

Decision of the Chairman of Capital Market and Financial Institutions Supervisory Agency (CMFISA)

Number: Kep-131/BL/2006

Date : November 23, 2006

**RULE NUMBER IX.A.14 : CONTRACTS USED IN ISSUANCE OF SHARIA-BASED SECURITIES IN CAPITAL MARKET**

1. In this Rule, what is meant by:
  - a. Ijarah is contract where a party owning goods or services (lessor or service provider) promises a lessee or service user to deliver right to usufruct of goods and or provide services owned by service provider within a certain period of time along with the payment and or fee, without change of ownership of goods being leased.
  - b. Kafalah is a contract where a guarantor (*kafuil*) promises a guaranteed party (*makfuul 'anhu/ashil/debtor*) to fulfill a guaranteed party's liability to other parties (*makfuul lahu/creditors*).
  - c. Mudharabah (*qiradh*) is a contract where a party providing fund (*Shahib al-mal*) promises business manager (*mudharib*) to deliver capital and where business manager promises to manage the capital.
  - d. Wakalah is a contract where a party is delegating his/her authorization (*muwakkil*) to a person given mandate (*wakil*) to do a certain action.
2. Ijarah shall fulfill the following requirements:
  - a. Qualification of a party who is eligible as a lessor or service provider and a lessee or service user.

A party who is eligible as a lessor or service provider and a lessee or service user is someone who has legal capability and power to conduct legal activities based on both sharia and incumbent regulations.
  - b. Rights and obligation of a lessor or service provider and a lessee or service user.
    - 1) Rights and obligations of a lessor or service provider are:
      - a) to receive leasing payment or fee (*ujrah*) as agreed in the Ijarah contract;
      - b) to provide leased goods or services;
      - c) to incur leased goods maintenance cost;
      - d) to guarantee on any defected leased goods;

- e) to be liable for the damage of leased goods that is not caused by usage violation or negligence of lessee; and
  - f) to declare in writing that a lessor or service provider to deliver his/her rights to usufruct of goods and or provide services owned to a lessee or service user (*ijab*).
- 2) Rights and obligations of a lessee or service user are:
- a) to utilize goods and or services as agreed in the Ijarah contract;
  - b) to pay the leasing payment or fee (*ujrah*) as agreed in the Ijarah contract;
  - c) to be responsible for maintaining the goods and using them as agreed in the Ijarah contract;
  - d) to incur immaterial leased goods maintenance cost as agreed in the Ijarah contract;
  - e) to be responsible for the damage of leased goods caused by usage violation or negligence of lessee; and
  - f) to declare in writing that a lessee or service user receives rights to usufruct of goods and or services owned by lessor or service provider (*qabul*).
- c. Qualification of Ijarah objects
- Ijarah objects may be in the form of goods and or services that fulfill the following provisions:
- 1) benefits of goods or services shall be able to be valued in monetary unit;
  - 2) benefits of goods and services may be delivered to the lessee or service user;
  - 3) the nature of benefits of goods or services shall not be prohibited by sharia;
  - 4) benefits of goods or services shall be clearly defined; and
  - 5) specifications of goods or services shall be clearly stated, among other things, through identification of physics, feasibility, and usage duration.
- d. Qualification on determination of leasing payment or fee (*ujrah*)
- Determination of leasing payment or fee (*ujrah*) shall fulfill the following provisions:
- 1) the amount of leasing payment or fee (*ujrah*) and the method of payment shall be written in the Ijarah contract;
  - 2) tool of leasing payment or fee (*ujrah*) is money or other forms, including services (other benefits) of other goods or services equivalent to goods or services which are the object of Ijarah contract; and
- e. Other provisions that may be regulated in Ijarah

Besides fulfilling provisions as stated in number 2 of this rule, other provisions that may be agreed in Ijarah, among other things, are:

- 1) parties may determine leasing payment or fee for a certain period and reconsider the leasing payment or fee of the next period; and or
- 2) appointment of other parties to settle dispute between a lessor or service provider and a lessee or service user.

3. Kafalah shall fulfill the following provisions:

a. Qualification of a party who is eligibly involved in Kafalah

Guarantor (*kafil*), guaranteed party (*makfuul' anhu/ashiil/debtor*), and other parties (*makfuul lahu/creditor*) involved in Kafalah shall have legal capability and power to conduct legal activities based on both sharia and incumbent regulations.

b. Obligation of parties involved in Kafalah:

1) obligation of guarantor (*kafil*) are as follows:

- a) possessing asset that is sufficient for guaranteeing the liability of guaranteed party (*makfuul ' anhu/ashiil/debtor*) to other parties (*makfuullahu/creditor*);
- b) having full authority to use their asset as a guarantee to fulfill the obligation of guaranteed party (*makfuul' anhu/ashiil/debtor*) to other parties (*makfuullahu/creditor*);
- c) Stating in writing that guarantor (*khafil*) guarantees the obligation of guaranteed party (*makfuul' anhu/ashiil/debtor*) to other parties (*makfuullahu/creditor*) (*ijab*);

2) Obligations of guaranteed party (*makfuul ' anhu/ashiil/debtor*) are as follows:

- a) rendering his/her liabilities to guarantor (*kafil*); and
- b) stating in writing that the guaranteed party (*makfuul' anhu/ashiil/debtor*) receives guarantee from guarantor (*kafil*) (*qabul*);

c. Guarantee form in Kafalah

Guarantee in Kafalah may be in the form of tangible asset and or general guarantee, such as corporate and personal guarantee.

d. Qualification of object in Kafalah (*makfuul bihi*)

Kafalah object is liability (receivables) of guaranteed party (*makfuul ' anhu/ashiil/debtor*) to other party (*makfuul lahu/creditor*) which satisfies the following provisions:

- 1) Such obligation may be in the form of payment liability in a certain amount of money, delivery of goods, and or duties performance;

- 2) Such obligation shall be clear in value, amount/number and specification;
  - 3) Such obligation is not that that incurs from matters which are in contrary with sharia; and
  - 4) It shall be binding receivables (*lazim*) that cannot be waived unless it has been fully paid or discharged.
- e. Other provisions that may be regulated in Kafalah
- Besides fulfilling provisions as stated in number 3 of this rule, other provisions that may be agreed in Kafalah, among other things, are:
- 1) parties may determine the amount of fee for guarantee provided by guarantor (*kafil*). In the event parties agree on the fees as mentioned above, then the Kafalah is binding in nature and cannot be unilaterally terminated;
  - 2) appointment of other parties to settle dispute between parties involved in Kafalah; and or
  - 3) Duration of guarantee in Kafalah.
4. Mudharabah shall fulfill the following provisions:
- a. Qualification of parties who are eligible as *shahib al-mal* and *mudharib*  
Parties who are eligible to be *shahib al-mal* and *mudharib* shall have legal capability and power to conduct legal activities based on both sharia and incumbent regulations
  - b. Rights and obligations of *shahib al-mal* and *mudharib*
    - 1) Rights and obligations of *shahib al-mal* are as follows:
      - a) to receive certain part of profit as agreed in Mudharabah;
      - b) to ask for guarantee from *mudharib* or third party that may be used if *mudharib* breaches Mudharabah contract. Such guarantee may be in the form of tangible asset and or general guarantee, such as corporate and personal guarantee;
      - c) to supervise the performance of business activities run by *mudharib*;
      - d) to provide all capital that has been agreed;
      - e) to be liable for all business operating loss that is caused by negligence, deliberation, and or violation of *mudharib* against the Mudharabah contract; and
      - f) to state in writing that *shahib al-mal* renders capital to *mudharib* which is then to be managed by *Mudharib* as agreed (*ijab*).
    - 2) Rights and obligations of *mudharib* are:
      - a) to receive certain part of profit as agreed in Mudharabah;
      - b) to manage business activities to pursue the objective of mudharabah without any interference of *shahib al-mal*;

- c) to manage capital that has been received from *shahib al-mal* as agreed by considering sharia and existing customs;
  - d) to be liable for all business operating loss that is caused by negligence, deliberation, and or violation of mudharib against the Mudharabah contract; and
  - e) to state in writing that *mudharib* has received capital from *shahib al-mal* and promise to manage the capital as agreed (*qabul*).
- c. Capital requirement that may be managed in Mudharabah
- Capital that may be managed in Mudharabah shall meet the following provisions:
- 1) It should be in a certain amount of asset, both tangible and intangible, which can be valued in monetary unit;
  - 2) If capital is rendered in the form of other than money, the value of such asset shall be set upon agreement;
  - 3) It shall not be receivable, both receivable for both *mudharib* and other parties; and
  - 4) It may be rendered to mudharib, either in full or partial amount, at agreed time and place.
- d. Qualification of business activities in Mudharabah
- Business activities that may be carried out in Mudharabah shall meet the following provisions:
- 1) It shall not be in contrary with provision stated in number 2 letter a Rule Number IX.A.13 concerning Issuance of Sharia-Based Securities; and
  - 2) It shall not be linked (*mu'allaq*) with future events.
- e. Profit sharing in Mudharabah
- Profit sharing in Mudharabah shall fulfill the following provisions:
- 1) Profit of Mudharabah is surplus of Mudharabah asset over Mudharabah equity and liability to other parties related to Mudharabah activities;
  - 2) Profit of Mudharabah is a rights of *shahib al-mal* and *mudharib* in which its proportion is based on the contract; and
  - 3) Profit proportion of each party shall be writtenly stated in percentage (*nisbah*)
- f. Other provisions that may be regulated in Mudharabah
- Besides fulfilling provisions as stated in number 4 of this rule, other provisions that may be agreed in Mudharabah, among other things, are:
- 1) Mudharabah contract duration;
  - 2) *Mudharib* shall provide operational cost as agreed in Mudharabah contract; and or

- 3) Appointment of other parties to settle dispute between *Shahib al-mal* and *Mudharib*
5. Wakalah shall fulfill the following provisions:
- a. Qualification of parties who may become someone that delegates his/her authorization (*muwakkil*) and to a person given mandate (*wakil*).  
A party delegating his/her authorization (*muwakkil*) and a party given mandate (*wakil*) to do a certain action shall have legal capability and power to conduct legal activities based on both sharia and incumbent regulations.
  - b. Obligation of a party delegating his/her authorization (*muwakkil*) and a party given mandate (*wakil*) in Wakalah
    - 1) Obligations of a party delegating his/her authorization (*muwakkil*) are as follows:
      - a) He/she shall have the authority to conduct legal activities on mandated matters; and
      - b) to state in writing that party delegating his/her authorization (*muwakkil*) gives power to a party given mandate (*wakil*) to conduct certain legal activities (*ijab*).
    - 2) Obligations of a party given mandate (*wakil*) are as follows:
      - a) To have capability to conduct legal activities that have been mandated;
      - b) To perform legal activities that have been mandated and is prohibited from delegating such authorization to other parties without any approval from *muwakkil*; and
      - c) To state in writing that *wakil* accepts authorization from *muwakkil* to conduct certain legal activities (*qabul*).
  - c. Requirements of Wakalah objects  
Wakalah objects are legal activities that fulfill the following requirements:
    - 1) The type and the way of executing the mandated legal activities are clearly recognised;
    - 2) It is not in contrary with sharia; and
    - 3) It may be delegated in according to sharia.
  - d. Other provisions that may be regulated in Mudharabah  
Besides fulfilling provisions as stated in number 5 of this rule, other provisions that may be agreed in Wakalah, among other things, are:
    - 1) The parties may determine the amount of fee on the execution of mandated legal activities. In the case the parties agree on the amount of fee, then the wakalah will be binding in the nature and cannot be unilaterally terminated;



- 2) Appointment of other parties to settle disputes among parties in Wakalah; and or
- 3) Duration of mandate.

Enacted in : Jakarta  
Date : November 23, 2006  
Chairman of Capital Market and  
Financial Institutions Supervisory  
Agency

Signed

**A. Fuad Rahmany**  
NIP 060063058

Based on the original documents  
Acting Executive Secretary

Signed

**Robinson Simbolon**  
NIP 060047831