

CHAPTER IV

CONCLUSIONS AND SUGGESTIONS

A. Conclusions

Based on the description above, two conclusions can be drawn as follows:

1. The form of standard contract clause which has been applied at BTN Sharia is the general anatomy form. It consists of the opening, the title, the comparison, the explanation, the content, the closing, the time, the place of *aqad*. and also the Signatures of parties. But overall, it has the advantages and the disadvantages.

There are two advantages from this clause. *First*, it is simple and easy to understand. *Second*, there are the definitions and the explanations from complicated terms to help the parties understand in contract. For this reason, the advantages of clause retain in the construction of contract clause. On the other hand, there are five disadvantages in this contract clause: the first is the unification of interpretation concept from two different contracts: the concept of fund deposit which is closer to the concept of *wadiah yad dliamanah* or *tabarru'*. It uses the principle of *Al-Mudlârabah Al-Muthlaqah* which is

included in *syirkah* concept or the contract of *tijarah*. The second is an imbalance of the Customers' obligations. It incriminates customer with the statement that customer must agree to the agreement of the general terms in the opening account and the provisions which are contained in savings book, but Bank is must not. The third one is the laying of recital is not located in the head of contract. The fourth one is the unilateral policy to change the profit sharing ratio. The fifth one is the elements of contract which are applied random and insequential. For all the disadvantages of clause, it should be removed or repaired.

2. The ideal concept form of standard contract clause at BTN Sharia in the sharia contract law is described as follows:
 - a. The contract clause must be simple and easy to understand. It is the implementation of good willingness, freedom of contract, and mutual benefit principle.
 - b. The contract clause must define the complex terms. It is the implementation of good willingness, and '*amanah*' (circumspection) principles.
 - c. The contract clause must be consistent with the contract used. It is the implementation of permitted cause, and *luzum* principles.
 - d. The contract clause must be clear and not to burden one of the parties. It is the implementation of transparency and mutual benefit principles.
 - e. There is no contrary clause in the contract. It is the implementation of trust, mutual benefit, *Taswiyyah* (equality) principles.

- f. The placement part of contract clause must be coherent and clear. It is the implementation of *Al-hurriyyah* (freedom of contract), *luzum*, mutual benefits, and ability principles.
- g. The elements of contract clause must be coherent. It is the implementation of *Taisîr* principles.

Based on the description of the restrictions concept above, the form of standard contract clause entitled “*Akad Pembukaan Rekening Tabungan Batara Syariah Berdasarkan Prinsip Mudlârabah*” (The contract of opening savings account based on *Mudlârabah* principle) is able to accommodate all field of positive law relevance, to remove logical contradiction in it and finally, it provides clear and simple description.

B. Suggestions

1. For the practitioner of contract drafter. The reconstruction concept above is the restriction to used in consideration in detail about the contract. Particularly, the contract drafting of sharia standard clause should be referred to the principles of sharia agreement because it is the beginning of the terms in agreement. If there is a violation of these principles, it results legal consequences, namely the termination of the contract, either void or rescind.
2. For the customers or the people who do not make the standard contract yet. They may read it carefully, then they understand the content. When they have signed up, it means that they have agreed. Automatically, these clauses bind

themselves in the contract achievements. If they unable to perform the contract, then they must ask someone to represent or to assist.

For the academics in the field of conventional economics, Islamic economics or jurisprudence. This research can be developed more, then it can be used as general guidelines of contract drafting in Indonesia, both in linguistic and anatomy contract.

