

Harmonization of Mudharabah Contracts: Study of DSN-MUI Fatwa, Compilation of Sharia Economic Law (KHES), Legislation and Its Application in Indonesian Sharia Banking

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Abstract

The *mudharabah* contract is identical to the profit-sharing scheme in Islamic banking operations. However, in practice, *murabahah* contracts are widely used by Islamic banking, so *mudharabah* contracts and profit-sharing schemes inherent in Islamic banking should be widely used in each of their product offerings. Therefore, this study discusses *mudharabah* contracts from a regulatory perspective and practices in Islamic banking. This research is a sharia economic law research that uses a descriptive method of literature, with the primary data source being the Fatwa of the National Sharia Council of the Indonesian Ulama Council (DSN-MUI) and laws and regulations. This type of research is qualitative research with three stages of data analysis, namely data condensation, presenting data, and drawing conclusions. The results of this study indicate that the statutory regulations (laws, POJK and PBI) that support the position and application of *mudharabah* contracts in Islamic banking originate from the substance of the DSN-MUI Fatwa regarding *mudharabah* contracts. This shows that there is a harmonization of regulations and also the practice of implementing *mudharabah* contracts in Islamic banking. The position of *mudharabah* contracts that are widely used by Islamic banks in carrying out their functions, namely collecting funds, channeling funds with financing schemes, and providing services for certain products, strengthens and makes the existence of Islamic banks as financial institutions that apply profit-sharing schemes.

Keywords: Fatwas; Islamic Banking; Mudharabah; Profit Sharing; Regulations.

Abstrak

Akad *mudharabah* menjadi akad yang identik dengan skema bagi hasil dalam operasional perbankan syariah. Namun dalam praktiknya, justru akad *murabahah* yang banyak digunakan perbankan syariah, sehingga akad *mudharabah* dan skema bagi hasil yang melekat pada perbankan syariah seharusnya banyak digunakan dalam setiap penawaran produknya. Oleh karena itu, penelitian ini membahas akad *mudharabah* perspektif regulasi dan praktik di perbankan syariah. Penelitian ini merupakan penelitian hukum ekonomi syariah yang menggunakan metode deskriptif kepustakaan dengan sumber data primernya berupa Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) dan peraturan perundang-undangan. Adapun jenis penelitian ini adalah penelitian kualitatif dengan tiga tahapan analisis data yaitu kondensasi data, menyajikan data dan menarik kesimpulan. Hasil penelitian ini menunjukkan bahwa regulasi peraturan perundang-undangan (Undang-Undang, POJK dan PBI) yang menopang kedudukan dan

penerapan akad *mudharabah* di perbankan syariah berasal dari substansi Fatwa DSN-MUI tentang akad *mudharabah*. Hal itu menunjukkan bahwa terdapat harmonisasi regulasi dan juga praktik penerapan akad *mudharabah* di perbankan syariah. Kedudukan akad *mudharabah* yang banyak digunakan perbankan syariah dalam menjalankan fungsinya yaitu melakukan penghimpunan dana, penyaluran dana dengan skema pembiayaan dan melakukan pelayanan jasa pada produk tertentu memperkuat dan menjadikan eksistensi bank syariah sebagai lembaga keuangan yang menerapkan skema bagi hasil.

Kata Kunci: Mudharabah, Bagi Hasil, Fatwa, Regulasi dan Bank Syariah



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Introduction

Islamic finance is currently experiencing significant developments and has even received recognition and a position in the global financial system. Since the occurrence of the monetary crisis that hit the global financial system, Islamic finance has been able to survive and provide injections of funds in order to save the banking system, which is collapsing and threatened with liquidation. This has made its existence increasingly eyed by many people as a credible financial system (Augia, 2022). In theory, sharia finance is based on applying sharia principles in its operational system, which demands that all transactions made must be able to promote a level of equity, fairness, and transparency. Apart from that, the profit-sharing mechanism that replaces the interest system enables Islamic finance to apply the principle of justice. Because through a profit-sharing scheme, profits and losses will be calculated relatively based on the size of the capital included (Harahap & Sudiarti, 2022).

Islamic banking, as part of Islamic Financial Institutions (LKS), implements a profit-sharing system in its operational mechanism. *Mudharabah* and *musyarakah* are contracted and synonymous with profit sharing (Maulidizen, 2019). Therefore, the profit-sharing system should be the most dominant mechanism in Islamic banking. However, in practice, the product mechanism that uses production-sharing contracts does not show high enough presentation results. This is due to the nature of the contract, which includes natural uncertainty contracts, which do not provide certainty regarding income, both in terms of the amount and time period indicators (Karim, 2004). So it has a high level of risk for Islamic banking as a party providing funds in the financing mechanism.

On this basis, Islamic banking prioritizes products that use sale and purchase agreements, such as *murabahah*. Apart from being able to apply the precautionary principle, the level of risk of loss incurred is also relatively small. Then deserve Widodo & Basyariyah (2020) and Nurjaman et al. (2021) stated that this is what makes buying and selling *murabahah* the dominant contract in the mechanism of product offerings in Islamic banking.

Seeing these facts, Muhamad Izazi Nurjaman et al. (2022) also stated that there was a shift in the profit-sharing mechanism in Islamic banking. Profit sharing is a differentiating indicator from Conventional Financial Institutions (LKK), which use an interest system. However, it is not a profit-sharing system implemented but a system of buying and selling capital goods through a *murabahah* financing scheme with a substantial profit. Therefore, the question arises, is it still appropriate for Islamic banking to implement a profit-sharing scheme in its operating system? Meanwhile, if we look at the results of previous studies, which state that *murabahah* is the domination of contracts used in product offerings in Islamic banking, then *mudharabah* contracts and other contracts. This applies to the mechanism of the function of Islamic banks, namely channeling funds through financing schemes only, not as a whole in carrying out other functions such as raising funds and providing services.

Table 1.

Sharia Bank Position According to the Financing Product Agreement

No.	Financing Product Agreement	Position of Islamic Bank
1.	<i>Murabahah</i> , Salam and Istishna' Financing	Seller
2.	Ijarah Financing	Lease giver
3.	<i>Mudharabah</i> Financing	Fund Giver (<i>Shahib al-mal</i>)
4.	<i>Musyarakah</i> Financing	Fund Participant (<i>Syarik</i>)

Based on the table above, the position of Islamic banks in the financing mechanism will differ according to the contract. However, in general, the position of Islamic banks is the party providing funds. What needs to be observed is that the funds used by Islamic banks in the financing mechanism are third-party funds generated from the fundraising mechanism through savings, demand deposits, and time deposit products (Nurjaman, 2021). The *mudharabah* contract is used for demand deposits and deposit products in the three fundraising products. So that the position of Islamic banks is as a user of customer funds to be used as business capital in the financing mechanism. Therefore, does this statement answer the previous question?

Seeing the dominance of the contracts used, *mudharabah* is the contract widely used by Islamic banks in product offerings in the mechanism of raising funds and channeling funds or financing. Various regulations have been prepared to support *mudharabah* financing operations and strengthen the implementation of the contract. As for the existing regulations, they all adopt the substance of the DSN-MUI Fatwa, which was previously a reference for Islamic banking. These regulations can be in the form of a Compilation of Sharia Economic Law (KHES) as outlined in the Supreme Court Regulation (PMA) Number 2 of 2008, the Sharia Banking Act, Bank Indonesia Regulations (PBI and

also the Financial Services Authority Regulation (POJK) relating to financing contracts). *Mudharabah*. However, one of the weaknesses of a fatwa's substance, when outlined in the form of a regulation, is that the language is complicated to interpret. So that sometimes the various existing regulations overlap and confuse the interested parties. When this happens, the internal banking policymakers' sharia also, of course, will experience obstacles in pouring existing regulations into contract agreement clauses that will be offered to customers.

Based on this description, this study describes the position of *mudharabah* contracts from a regulatory perspective and practices in Islamic banking. The purpose of this research is to add to the body of knowledge related to Islamic economic law, especially in the *mudharabah* contract, which should be the dominant contract in Islamic banking by looking at it from a regulatory perspective and also practice in the field. The contribution of this research is expected to provide a glimmer of knowledge for practitioners and academics of Islamic economics and finance, especially in the scope of Islamic banking.

Method

This research is a study of sharia economic law research using the library research method. Data sources are in the form of DSN-MUI Fatwas and Legislation regarding *mudharabah*. So this research uses a normative juridical approach, namely a study that uses written legal sources as guidelines or rules for legal subjects. In this study, the authors analyzed the object of research on *mudharabah* contracts from the perspective of regulation and practice in Islamic banking. This type of research is qualitative research (Sugiyono, 2013).

The data analysis technique consists of three stages, namely data condensation, data presentation, and drawing conclusions (Miles & Huberman, 1984; Miles, Huberman, & Saldaña, 2014). First, data condensation or focusing data. That is, from data sources in the form of DSN-MUI Fatwas and Legislations (Laws, Bank Indonesia Regulations (PBI) and Financial Services Authority Regulations (POJK)) regarding *mudharabah* are collected, the author selects filters and focuses on several of these sources according to the object of research. Second, data presentation or data presentation. That is, from the data that has been focused on, the authors present the data in narrative and table form so that it is easy to understand, read and interpret. When, draw conclusions. That is, from the data that has been presented, the author draws a common thread or essence as a conclusion in the form of a narrative of facts that can be accounted.

Result and Discussion

Concept of *Mudharabah* Contract According to DSN-MUI Fatwa

DSN-MUI fatwa regarding *mudharabah* agreements consists of DSN-MUI Fatwa Number 7 of 2000 concerning *Mudharabah* Financing (Fatwa 7/2000)

and DSN-MUI Fatwa Number 115 of 2016 concerning *Mudharabah* Contracts (Fatwa 115/2016) as well as other supporting fatwas. Fatwa 7/2000 was issued by DSN-MUI as a guideline for LKS in implementing *mudharabah* contracts in their products. Therefore, the fatwa is specific to LKS, both within the scope of banking and non-banking. The DSN-MUI issued the fatwa 115/2016 as the main fatwa, which complements the many previous fatwas that have been issued for the scope of banking, finance companies, financial services, and other business activities. Moreover, the position of the fatwa is complementary, namely, the previous fatwa is complemented by a new fatwa.

The *mudharabah* contract in Fatwa 7/2000 is defined as a cooperation contract for a business activity carried out by two parties, the first party is the *shahib al-mal* (LKS) who provides the funds, while the second party, the *mudharib* (customer), acts as the manager and the business profits will be shared accordingly. The agreement is stated in the contract agreement (DSN-MUI, 2000b). According to Fatwa 115/2016, a *mudharabah* contract is defined as a cooperation contract for a business activity between the owner of the capital (*Shahib al-mal*), who provides all the capital, and the manager (*mudharib*) and the business profits are shared between the two according to the agreed ratio in the contract. (DSN-MUI, 2016). Based on these two definitions, as previously explained, Fatwa 7/2000 is more emphasized for applying *mudharabah* contracts within the scope of LKS. This can be seen from the two parties conducting business collaboration, namely the LKS as the provider of funds (*shahib al-mal*) and the customer as the fund manager (*mudharib*). Whereas in Fatwa 115/2016, the two parties conducting business collaboration are not explicitly stated, which indicates that the fatwa is indeed used as the main fatwa of a *mudharabah* contract which can be used as a guideline for business people as a whole. As for the terms, pillars, and types of *mudharabah* according to the two fatwas, it can be seen in table 2:

Table 2.
Terms, Pillars, Conditions, and Types of *Mudharabah* Contracts

No.	<i>Mudharabah</i> Pillars	Provision	Miscellaneous
1.	Parties (Fund Provider/ <i>shahib al-mal</i> (LKS) and Fund Manager/ <i>Mudharib</i> (Customer))	<ol style="list-style-type: none"> 1. Legal Proficient. 2. The person or legal entity/equivalent to it. 3. Sahib al-mal has capital. 4. <i>Mudharib</i> has expertise in conducting business activities. 	Based on Fatwa 7/2000: <ol style="list-style-type: none"> 1. <i>Mudharabah muqayyadah.</i> 2. <i>Mudharabah muthlaqah.</i>
2.	<i>Shighat Aqad (ijab and qabul)</i>	<ol style="list-style-type: none"> 1. Done firmly, clearly, and easily understood. 2. It can be done orally, in writing, and by electronic signals or intermediaries. 	
3.	<i>Ras' al-Mal</i> (Venture)	<ol style="list-style-type: none"> 1. It can be handed over 	

	capital)	(cash or gradually). 2. In the form of money, goods, or a combination of money and goods. 3. If it is in the form of goods, it is necessary to have <i>taqwim al-'urudh</i> . 4. Precise amount, type, and nominal. 5. It may not be in the form of receivables.	
4.	Gains/Disadvantages (Profit Sharing Ratio)	1. Intended for the parties. 2. They are defined clearly in the form of nominal or percentage. 3. They are divided according to the agreed profit-sharing ratio.	Based on Fatwa 115/2016: 1. <i>Mudharabah muqayyadah</i> . 2. <i>Mudharabah muthlaqah</i> . 3. <i>Mudharabah tsuna'iwah</i> . 4. <i>Mudharabah musyarakah</i> .
5.	Business activities	1. Halal business activities. 2. On behalf of the entity, not on behalf of individuals. 3. Expenses may be charged to the entity. 4. Managers may not default.	
6.	Purpose of the Akad	Make a profit.	

Based on the table above, *mudharabah* contracts may be made in several forms, namely First, limited *mudharabah* contracts, both related to the type of business, period, and place of business or are called *mudharabah muqayyadah*. Second, the *mudharabah* contract is not limited, both in terms of the type of business, the period, and also the place of business. This type of *mudharabah* contract is called *mudharabah muthlaqah*. Third, the *mudharabah* contract is carried out without intermediaries. That is, the parties do it directly. This type of *mudharabah* contract is called *mudharabah tsuna'iyah*. Fourth, the *mudharabah* contract, in which the manager also includes capital for business activities. This type of *mudharabah* contract is known as a *mudharabah musyarakah*.

As for practice, this can be seen in two conditions: First, the position of Islamic banks as *mudharib*/fund managers in the fundraising mechanism through current accounts and deposit products. The DSN-MUI Fatwa regarding deposits (Fatwa 3/2000) states that in its capacity as *mudharib*, the bank may carry out various business activities in any field provided that the business carried out does not conflict with sharia principles and applicable laws and regulations, including entering into *mudharabah* agreements with other parties. That is, the *mudharabah* contract that is carried out includes the contract *mudharabah muthlaqah* (DSN-MUI, 2000a). Apart from that, according to the substance of the DSN-MUI Fatwa regarding the *mudharabah musyarakah* contract (Fatwa 50/2006), it states that the position of an LKS/Islamic bank as a

mudharib may include its funds to become business capital or investment capital with the customer. Islamic banks will manage the funds of both parties through Islamic bank business activities in the mechanism of channeling funds with a financing scheme (DSN-MUI, 2006). In these conditions, the *mudharabah* contract carried out is a *mudharabah musyarakah*.

Second, the position of Islamic banks as *shahib al-mal*/fund providers in the mechanism of channeling funds with financing schemes. The DSN-MUI fatwa regarding *mudharabah* financing (Fatwa 7/2000) states the same thing that the customer as a *mudharib* party may carry out business activities that have been agreed upon by both parties in the deed of agreement. So Islamic banks are not allowed to participate in company or project management issues carried out by customers. However, Islamic banks have the right to supervise and guide (DSN-MUI, 2000b). However, in the substance of the same fatwa, Islamic banks are still allowed to place restrictions on *mudharabah* financing within a certain period. Therefore, in the mechanism for channeling funds through this financing scheme, the *mudharabah* contracts that are carried out are *mudharabah muthlaqah* and also *mudharabah muqayyadah* (DSN-MUI, 2000b).

***Mudharabah* Akad Concept According to Compilation of Sharia Economic Law (KHES)**

The *mudharabah* contract in KHES is found in book II regarding the Chapter VII *mudharabah* contract. The substance described in KHES is detailed, starting with the conditions and pillars until the end of the *mudharabah* contract. In this, the terms and pillars of *mudharabah* are located in article 231, namely (Mahkamah Agung, 2008): 1) in order to cooperate, the owner of the capital is obliged to provide funds or goods of value to other parties; 2) the recipient of the capital uses the funds provided by the business in the agreed field; 3) in the contract that has been agreed upon, there is already a business field that has been mutually agreed upon. Furthermore, the pillars of cooperation in business capital are explained in Article 232, namely 1) there is an owner of capital/*shohib al-mal*; 2) business actor/*mudharib*; 3) there is a contract; Article 233 explains that the business field agreement to be carried out is free/absolute and limited/*muqayyad* in specific fields, in certain places, and at certain times. Therefore, following Article 237, the *mudharabah* contract will not be valid if it does not meet the requirements. In this case, the owners and managers of capital must fulfill the conditions set (Mahkamah Agung, 2008).

The following *mudharabah* contract provisions are explained in article 238 (Mahkamah Agung, 2008): 1) the status of the object received by the *mudharib* is capital; 2) the *mudharib* becomes the representative of *shahib al-mal* in using the capital he receives; 3) profits from the business carried out will be shared property. In this case explained in article 239, namely the provisions that are allowed are (Mahkamah Agung, 2008): 1) *mudharib* is allowed to buy or sell the goods obtained to make a profit; 2) the *mudharib* has the right to sell it at the

desired price, either high or low, and in cash or installments; 3) *mudharib* has the right to receive payment for goods by transferring receivables; 4) *mudharib* is not allowed to sell goods that are not clear at the time and are not commonly practiced by traders. In Article 240, it is emphasized that the *mudharib* is prohibited from giving and lending the assets of the Cooperation unless permission is obtained from the owner of the capital (Mahkamah Agung, 2008).

Furthermore, it is still regarding the rights that the *mudharib* is allowed to carry out on the goods he manages, namely in article 241, namely (Mahkamah Agung, 2008): 1) the *mudharib* is allowed to authorize another party to become his representative to carry out mutually agreed sale and purchase transactions of goods using a *mudharabah* contract; 2) *mudharib* is allowed to invest or deposit cooperation assets with the sharia system; 3) the *mudharib* has the right to contact other parties to carry out a sale and purchase transaction of goods following the agreement at the beginning of the contract. Article 242 that the *mudharib* has the right to benefit from the cooperation carried out with an agreed contract, but the *mudharib* does not get the right to compensation if the business he does loses (Mahkamah Agung, 2008). Vice versa for the owner of the capital in article 243 that the owner of the capital has the right to get profits or rewards for the cooperation carried out following the capital he has provided, and if there is a loss from the business carried out by the *mudharib*, the owner of the capital is not entitled to profit from the business (Mahkamah Agung, 2008).

In Article 244, it is explained that *mudharib* is not allowed to mix assets owned with cooperation assets to do business using a *mudharabah* contract unless there is a custom carried out by business actors (Mahkamah Agung, 2008). Then in article 245, *mudharabah* is allowed to mix wealth on condition that it is mutually agreed upon and has received permission from the owner of the capital to carry out certain particular businesses. Regarding the profits that will be shared according to the mutual agreement (article 246), costs in the process of doing business will be borne from the capital provided by *shohibul maal* (247), in this case, the *mudharib* must carry out the *mudharabah* contract that has been agreed with the applicable provisions among capital owners and *mudharibs* (248). Finally, it is explained in article 249, namely, the *mudharib* must be responsible for the risk of loss or damage if the business has exceeded the limits of the mutual agreement and is not in line with the agreed terms, then the *mudharib* as the manager must bear the risk himself due to negligence in carrying out business activities (Mahkamah Agung, 2008).

Concept of *Mudharabah* Contract According to Legislation

1. *Mudharabah* Contract According to the Sharia Banking Law

According to the Law of the Republic of Indonesia Number 21 of 2008 concerning Islamic banking, which discusses the *mudharabah* contract in article 1 concerning savings, deposits, investments, and financing. Article 1 paragraph (21) explains that savings are deposits that use a wadi'ah contract or investment

funds use a *mudharabah* contract or can use other contracts while still prioritizing sharia principles and may not deviate from the rules set by the sharia, even in the case of savings withdrawals are made according to terms and conditions only agreed upon but cannot be withdrawn via giro slips, checks, and/or other tools that are the same as the description above (Pemerintah Republik Indonesia, 2008). Furthermore, in Article 1 paragraph (22) it explains about deposits, namely investment funds that use a *mudharabah* contract or can use other contracts that do not come out of sharia principles and can only be made at a specific time based on the contract agreed between the customer and sharia banking or UUS (Pemerintah Republik Indonesia, 2008).

Article 1 paragraph (24) explains that *mudharabah* contracts are included in investments, namely funds owned by customers and entrusted to Sharia Bank or Sharia Law (UUS) using *mudharabah* contracts or other contracts related to investment and not contrary to sharia principles in the form of deposits, savings, or any other equivalent form (Pemerintah Republik Indonesia, 2008). Furthermore, in Article 1 paragraph (25) regarding financing, namely the provision of funds or equivalent bills like this and using a *mudharabah* contract is a profit-sharing transaction in the form of a *mudharabah* and *musyarakah* contract, this is based on an agreement or agreement between an Islamic bank or UUS and the party that obliges parties who finance and/or are given funding facilities to return the funds at a particular time in return for *ujrah*, without compensation, or profit-sharing (Pemerintah Republik Indonesia, 2008).

2. Mudharabah Agreement According to Bank Indonesia Regulations (PBI)

Bank Indonesia Regulation Number: 7/46/PBI/2005 on Funds Collection and Distribution Contracts for Banks Carrying Out Business Activities Based on Sharia Principles, it explains the importance of Islamic banking in maintaining public trust in holding the mandate in the financial sector from a financial aspect where it is required to continue to carry out following sharia procedures with sharia principles as the basis of its operations (Bank Indonesia, 2005). It is not only the institutions that carry out activities following sharia, but managers, fund owners, fund users, and all authorities within them must have the same view on production contracts for channeling or raising funds in Islamic banking. The importance of understanding sharia principles for all those who carry out activities in banking is a benchmark for sharia carried out in an institution. Considerations in determining the terms of the collection and distribution contract in the banking sector in conducting business must be based on sharia principles according to Bank Indonesia regulations.

Regarding the *mudharabah* contract stated in Bank Indonesia Regulation Number: 7/46/PBI/2005 article 1, namely an investment of funds carried out by a *shohibul maal* (fund owner) to be managed by a *mudharib* (fund manager) to carry out a particular business where the results from this collaboration will be divided using the revenue sharing method between the two parties who

cooperate following a predetermined and mutually agreed ratio, the distribution uses the profit and loss sharing method (Bank Indonesia, 2005). In cooperating with the revenue sharing method, which has many possibilities, three possibilities can be obtained, namely (Bank Indonesia, 2005): 1) *ribh* (profit); 2) *Khasarah* (loss); 3) return on capital is usually referred to as no profit or no loss from the capital used. The commonly used *mudharabah* contract is the profit-sharing method, which will later be agreed upon before doing business, so there are no misunderstandings when sharing profits and losses.

The following are several articles that discuss fundraising activities using *mudharabah* contracts following Bank Indonesia Regulation Number: 7/46/PBI/2005, namely (Bank Indonesia, 2005):

- a. Article 2 it is explained that carrying out fundraising and channeling activities in Islamic banking is required to make contracts that have been determined by Bank Indonesia regulations as described in paragraph (1) that in carrying out transactions in Islamic banking, it is mandatory to use types of sharia transactions which are mandatory. In every Sharia-based activity. Likewise, several prohibitions may not be contained in these transactions, namely, elements of usury, illicit goods, immorality, *gharar*, *risywah*, and wrongdoing. *Mudharabah* contracts carried out by Islamic banking must pay attention to the prohibitions above and avoid them as proof of sharia in a trusted financial institution.
- b. Article 4 stipulates that fundraising activities in the form of demand deposits based on a *mudharabah* contract include several requirements, namely 1) the customer is the owner of the funds (*shohibul maal*), the bank is the fund manager (*mudharib*); 2) Banks are institutions that are allowed to carry out various types of businesses including entering into *mudharabah* contracts with other parties; 3) The existence of capital in the form of cash and expressed in nominal amounts; 4) The customer must have a minimum balance that has been determined by the bank and cannot be withdrawn unless the customer closes the account; 5) profit sharing obtained will be distributed in the form of a ratio and must be stated in the account opening contract; 6) Provision of benefits for customers has been determined on the basis of the lowest balance at the end of each month in the financial statements held; 7) It is the bank's right to cover the operational costs of its current accounts by using its profit ratio; 8) It is not permissible if the bank reduces the customer's profit ratio without the customer's approval. This is the provision described in Article 4 concerning fundraising activities in the form of demand deposits based on a *mudharabah* contract.
- c. Article 5 describes fundraising activities in the form of savings or time deposits based on a *mudharabah* contract, namely that 1) the Bank is the fund manager and the customer is the owner of the funds; 2) There is a total deposit of funds to the bank with the stated nominal amount stated;

3) The form of the ratio as the profit earned; 4) If using a *mudharabah* contract as a savings account, the customer is required to invest a minimum of funds that have been determined by the bank and cannot be withdrawn by the customer except for closing the account; 5) Prohibited from withdrawing funds outside the agreement; 6) Banks as *mudharib* have the right to cover the operational costs of savings or time deposits using profit ratios; 7) there is no right for the bank to reduce the customer's profit share without the approval of the customer concerned; 8) Banks do not guarantee customer funds unless there are different provisions in the legislation (Bank Indonesia, 2005).

Furthermore, following Bank Indonesia Regulation Number: 7/46/PBI/2005 regarding the distribution of funds based on *mudharabah* and *musyarakah* contracts contained in several articles, namely (Bank Indonesia, 2005):

- a. Article 6 describes the activities of distributing funds in the form of financing, in this article, it is explained the distribution of funds in which the bank becomes *shohibul maal*, and the customer becomes the fund manager. In this article, the roles of banks and customers will differ from articles 2, 4, and 5, where the roles of banks and customers are swapped. However, the conditions are almost the same, and some differences may exist. For more details, it will be presented as follows, namely: 1) the bank is *shohibul maal* and the customer is the fund manager; 2) there is a mutually agreed timeframe for financing, refunding, and profit sharing; 3) the bank does not participate in managing the funds but only oversees the business of the customer; 4) financing in the form of cash or goods; 5) if the financing is in the form of cash, it must be stated in the amount; 6) if the financing is in the form of goods, the goods must be valued according to market prices; 7) profit sharing is called the ratio; 8) the bank will bear all risks of loss in the customer's business unless the risk comes from the customer, the customer must bear it himself; 9) the profit sharing ratio cannot be changed except on the basis of a mutual agreement; 10) the profit sharing ratio is determined in stages, the amount of which varies based on the initial agreement; 11) profit sharing using profit and loss sharing method or income sharing method; 12) profit sharing will be adjusted according to the business results of the manager; 13) if the customer adds capital in his business activities called partner and *mudharib*, the profit that will be obtained is adjusted to the portion of the capital, then the remainder will be shared between the bank and the customer's funds; 14) repayment of financing is made at the end of the contract period, namely with a period of one year in installments; 15) the bank asks for collateral in anticipation of customers not being able to pay their obligations in this financing either due to their negligence or fraud.

- b. Article 7, namely channeling funds in the form of financing based on *mudharabah muqayyadah* (restricted investment) for specified requirements, which are different from those above, such as 1) banks as channeling agents for investors (channeling agents) and customers as fund managers, for their businesses have been determined by banks as investors' fund channeling agents; 2) the time period will be determined in accordance with a mutual agreement; 3) the bank does not participate in managing; 4) financing in the form of cash or goods; 5) if it is in the form of goods, it must be valued according to the prevailing market price; 6) sharing of profits in the form of ratios and mutually agreed upon; 7) the bank becomes a channeling agent for investors' funds and does not bear the risk of business losses; 8) investors as owners of *Mudharabah muqayyadah* funds bear all risks of loss of business activities unless the customer commits fraud, negligence, or violates the agreement which results in business losses (Bank Indonesia, 2005).

The explanation above is channeling funds through financing using a *mudharabah* contract following the provisions of Bank Indonesia Regulation Number: 7/46/PBI/2005, which will be used as a reference when conducting banking transactions.

3. *Mudharabah* Contract According to Financial Services Authority (POJK) Regulations

In the Regulation of the Financial Services Authority (POJK) Number 31/POJK.05/2014 concerning the implementation of Sharia Financing Businesses, several articles explain the *mudharabah* contract contained in article 1 that a *mudharabah* contract is a cooperation contract carried out by two parties in which the parties the first is the fund provider/*shohibul maal* and the second party is the fund manager/*mudharib*. The profits will be shared according to a mutual agreement (OJK, 2014). Then regarding the *mudharabah* contract further contained in article 2 regarding the implementation of sharia financing activities where carrying out financing must adhere to several principles, namely the principle of justice (*'adl*), balance (*tawazun*), benefit (*maslahah*), and universalism (*alamiyah*) and not contain *gharar*, *maysir*, usury, *zhulm*, *risywah*, and forbidden objects (OJK, 2014).

When viewed from the explanation in the Financial Services Authority Regulation (POJK) Number 31/POJK.05/2014, article 3 explains that Islamic financing activities include three parts, namely buying and selling financing, investment financing, and service financing (OJK, 2014). Regarding the *mudharabah* contract, it will be included in investment financing, which is explained in Article 4 paragraph (2), namely investment financing activities are carried out with several contracts, namely *mudharabah*, *musyakah*, *mudharabah musyarakah*, and *musyarakah mutanaqishah*, for sharia financing in article 5 that

can be done using a single or combined contract according to the agreement between the two parties (OJK, 2014).

The mechanism for entering into sharia financing agreements using either a single or combined contract is explained in Article 8 paragraph (1) that sharia financing between sharia companies and consumers must be made in writing in order to avoid fraud or negligence on the part of both parties (OJK, 2014). Paragraph (2) in the article explains that sharia financing must comply with the provisions stipulated by OJK Regulations regarding preparing agreements to protect consumers in the financial services sector (OJK, 2014). Article 9 regulates sharia financing agreements, which are carried out without coercion between the two parties to carry out transactions, using objects that follow sharia principles and statutory regulations. In Article 10, it is explained that the financing agreement cannot be canceled unless, based on both parties wanting to terminate and agree, the legal conditions described in Article 9 are not met. Furthermore, the sharia financing agreement in writing is outlined in Article 11 in detail, explaining the terms and conditions (OJK, 2014).

Mudharabah Contract Application in Sharia Banking

Applying *mudharabah* contracts in Islamic banking can be done by raising funds, channeling funds, and providing services. In the fundraising mechanism, *mudharabah* contracts are applied in several products, namely savings, demand deposits, and time deposits. Applying the *mudharabah* contract for the three products emphasizes the principle of *mudharabah mutlaqah*. As previously explained, this follows the DSN-MUI Fatwa and Legislation (POJK and PBI) regarding *mudharabah*. So that the bank can freely use customer funds without any requirements, the consequence of this principle is that profits generated from business development carried out by Islamic banks will be divided in half between the customers as the owners of capital. Profits are shared according to the ratio agreed upon during the contract. As for the risk of loss, there are two provisions: First, if the loss of business development carried out by an Islamic bank is caused without negligence, then the loss is borne by the customer. Second, on the contrary, if elements of bank negligence cause the risk of loss for business development, then the loss will be the responsibility of the Islamic bank (Karim, 2004). The business development of Islamic banks can be carried out in the mechanism of the bank's second function, namely, the channeling of funds through a financing mechanism.

In the fund distribution mechanism, the *mudharabah* contract becomes the contract used in the financing, which is included in the financing category based on the *mudharabah* contract scheme. This financing is the same as the *mudharabah* contract scheme in the fundraising mechanism. However, the position of Islamic banks in the fund distribution mechanism is *shahibul maal*, and the *mudharib* is the customer who uses the facility. That is the bank funds

customers for a specified business activity. To develop these business activities, profits will be shared based on the agreed profit-sharing ratio (Sa'diyah, 2016).

As for the application of the *mudharabah* contract in the service mechanism, it can be seen in one of the alternative contracts offered by DSN-MUI for Sharia Import L/C products, namely following the substance of the DSN-MUI Fatwa Number 34 of 2002 concerning Sharia Import L/C, which is one of the alternative contracts. That is used in the product of Sharia Import L/C services is to use a *wakalah bi al-ujrah* contract scheme with a *mudharabah* contract. The implementation mechanism is that the importer and the bank enter into a *wakalah bi al-ujrah* contract for processing documents and paying the price of imported goods. Banks hand over funds to importers in the amount of the price of imported goods purchased from exporters. Submission of funds is used as capital through a *mudharabah* contract. The bank is domiciled as *shohib al-mal* and the importer as *mudharib*, while imported goods are capital that must be managed by the importer (Suhendar, 2020). Through this hybrid contract scheme, banks will benefit from importers in the form of *ujrah* from *wakalah bi al-ujrah* contracts for document processing and payment services and profit sharing from *mudharabah* contracts for equity participation to importers. Likewise, importers will benefit in the form of profit sharing. For this contract scheme, the bank gets two sources of income in one agreement (Muhamad Izazi Nurjaman, Setiawan, & Herdiana, 2022).

Based on this, *mudharabah* contracts are used in every Islamic banking to carry out its functions: collecting funds, channeling funds through financing schemes, and providing services for specific products. The regulations (laws) that form it originate from the substance of the DSN-MUI fatwa, which indicates that there is the harmonization of regulations that make the application of *mudharabah* contracts in Islamic banking one of the hearts of the Islamic banking operational system. That is, profit sharing is a business consequence arising from using *mudharabah* contracts in each product offering. Islamic banks will receive an additional fee as a source of income. Therefore, the *mudharabah* contract remains one of the central contracts in Islamic banking.

This has indirectly answered the statement regarding *murabahah* contracts widely used by Islamic banking rather than *mudharabah* contracts. Meanwhile, sharia banking should use the *mudharabah* contract widely, which is synonymous with profit-sharing schemes. So that the practice in the field uses many *murabahah* contracts, questioning the profit-sharing scheme inherent in Islamic banking. However, based on this discussion, the authors state that the position of the *mudharabah* contract remains a contract that characterizes Islamic banking as a financial institution synonymous with profit-sharing schemes. The application of *mudharabah* agreements almost colors all functions of Islamic banking through raising funds, channeling funds with financing schemes, and providing services for specific products. In contrast, *murabahah* contracts are only widely used in channeling funds through financing schemes

due to the consequences of the contract, which provide certainty about the time and amount of income of Islamic banks than *mudharabah* contracts.

Apart from that, the funds used by Islamic banking to carry out financing are funds belonging to investor customers, one of which comes from *mudharabah* contracts in savings, demand deposits, and time deposit products. This means that *murabahah* contracts in financing schemes are only limited to contracts used by Islamic banks to carry out their business activities in financing. The position of Islamic banks in using the contract is as a *mudharib* of a *mudharabah* contract carried out in a fundraising scheme. Therefore, the income from the financing mechanism using a lot of *murabahah* contracts will be shared income (Islamic banks and investor customers) which must be shared according to the agreed profit ratio. Thus, *mudharabah* contracts remain synonymous with Islamic banking. Applying the *mudharabah* contract has shown that Islamic banking as a financial institution implements a profit-sharing scheme. Although in the financing mechanism, many contracts are used and will make Islamic banks not only get profits in the form of profit sharing but also in the form of margins and *ujrah*. However, profit sharing is inherent in Islamic banks due to using *mudharabah* contracts in using Third Party Funds (DPK) as capital from the financing mechanism for customers who use the facility. This means that the source of funds generated is in the form of margin, *ujrah*, or profit-sharing from the financing mechanism only as a source of profits that must be shared between Islamic banks (*mudharib*) and investor customers (*shahib al-mal*).

Conclusion

Based on this discussion, the regulations (POJK and PBI) that support the position and application of *mudharabah* contracts in Islamic banking originate from the substance of the DSN-MUI Fatwa regarding *mudharabah* contracts. This shows that there is the harmonization of regulations as well as practices application of *mudharabah* contracts in sharia banking. The position of *mudharabah* contracts, which are widely used by sharia banking in carrying out their functions, namely collecting funds, channeling funds under financing schemes, and providing services on certain products, strengthens and makes the existence of sharia banks as financial institutions implementing profit-sharing schemes.

References

- Augia, A. S. H. A. (2022). Implementasi Akad Mudharabah Muqayyadah Off Balance Sheet Pada Bank Syariah Indonesia KCP Stabat. *JEKSya: Jurnal Ekonomi Dan Keuangan Syariah*, 1(2), 152–162. Retrieved from <https://jurnal.perima.or.id/index.php/JEKSya/article/view/118>
- Bank Indonesia. (2005). *Peraturan Bank Indonesia Nomor: 7/46/PBI/2005 tentang Akad Penghimpunan Dan Penyaluran Dana Bagi Bank Yang*

- Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah*. Jakarta: Bank Indonesia.
- DSN-MUI. (2000a). *Fatwa DSN-MUI Nomor 3 Tahun 2000 Tentang Deposito*. Jakarta: Dewan Syariah Nasional-Majelis Ulama Indonesia.
- DSN-MUI. (2000b). *Fatwa DSN-MUI Nomor 7 Tahun 2000 Tentang Pembiayaan Mudharabah*. Jakarta: Dewan Syariah Nasional-Majelis Ulama Indonesia.
- DSN-MUI. (2006). *Fatwa Nomor 50 Tahun 2006 Tentang Mudharabah Musytarakah*. Jakarta: Dewan Syariah Nasional-Majelis Ulama Indonesia.
- DSN-MUI. (2016). *Fatwa DSN-MUI Nomor 115 Tahun 2016 Tentang Akad Mudharabah*. Jakarta: Dewan Syariah Nasional-Majelis Ulama Indonesia.
- Harahap, M. A., & Sudiarti, S. (2022). Kontrak Jasa Pada Perbankan Syariah: Wakalah, Kafalah dan Hawalah: Tinjauan Fiqh Muamalah Maliyyah. *Reslaj: Religion Education Social Laa Roiba Journal*, 4(1), 42–53. <https://doi.org/10.47467/reslaj.v4i1.482>
- Karim, A. A. (2004). *Bank Islam: Analisis Fiqh dan Keuangan*. Jakarta: PT Raja Grafindo Persada.
- Mahkamah Agung. (2008). *PERMA Nomor 2 Tahun 2008 Tentang Kompilasi Hukum Ekonomi Syariah (KHES)*. Jakarta: Mahkamah Agung.
- Maulidizen, A. (2019). Akad Murabahah: Konsep dan Pelaksanaan di Lembaga Keuangan Islam Modern. *Reslaj: Religion Education Social Laa Roiba Journal*, 1(1), 88–102. <https://doi.org/10.47467/reslaj.v1i1.66>
- Miles, M. B., & Huberman, A. M. (1984). *Qualitative Data Analysis (a Source book of New Methods)*. Beverly Hills: Sage Publications.
- Miles, M. B., Huberman, A. M., & Saldaña, J. (2014). *Qualitative data analysis: a methods sourcebook*. California: SAGE Publications, Inc.
- Nurjaman, Muhamad Izazi. (2021). Fund Ownership of Sharia Banking According to Islamic Economic Political Perspective. *EkBis: Jurnal Ekonomi Dan Bisnis*, 5(2), 113–126. <https://doi.org/10.14421/EkBis.2021.5.2.1377>
- Nurjaman, Muhamad Izazi, Setiawan, I., & Herdiana, N. (2022). Penerapan Akad Wakalah Bi Al-Ujrah Dan Hiwalah Bi Al-Ujrah Dalam Pengembangan Produk Di Perbankan Syariah. *Al-Infaq: Jurnal Ekonomi Islam*, 13(1), 165–180. <https://doi.org/10.32507/ajei.v13i1.1059>
- Nurjaman, Muhamad Izazi, Sofie, H. M., & Istianah, I. (2022). Transformasi Akad Natural Uncertainty Contracts: Analisis Akad Musyarakah Mutanaqishah (MMQ) di Lembaga Keuangan Syariah. *TAWAZUN : Journal of Sharia Economic Law*, 5(1), 92–106. <https://doi.org/10.21043/tawazun.v5i1.13871>
- Nurjaman, Muhammad Izazi, Witro, D., & Hakim, S. Al. (2021). Akad Murabahah di Lembaga Keuangan Syariah Perspektif Regulasi. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, 19(1), 24–35. <https://doi.org/10.32694/qst.v19i1.896>
- OJK. (2014). *Peraturan Otoritas Jasa Keuangan (POJK) Nomor 31/POJK.05/2014 tentang penyelenggaraan Usaha Pembiayaan Syariah*. Jakarta: Otoritas Jasa Keuangan.
- Pemerintah Republik Indonesia. (2008). *Undang-Undang Nomor 21 Tahun*

2008 Tentang Perbankan Syariah.

- Sa'diyah, M. (2016). Musyarakah Dalam Fiqih Dan Perbankan Syariah. *Equilibrium: Jurnal Ekonomi Syariah*, 2(2), 310–327. Retrieved from <https://journal.iainkudus.ac.id/index.php/equilibrium/article/view/727/>
- Sugiyono, S. (2013). *Metode Penelitian Kuantitatif, Kualitatif, dan R & D*. Bandung: Alfabeta.
- Suhendar, M. (2020). Penerapan Hybrid Contract Pada Letter Of Credit. *Jurnal Ilmu Akuntansi Dan Bisnis Syariah*, 2(1), 111–122. <https://doi.org/10.15575/aksy.v2i1.7865>
- Widodo, S., & Basyariyah, N. (2020). Telaah Kritis Implementasi Pembiayaan Murabahah pada Lembaga Keuangan Syariah Berdasarkan KDPPLKS. *AT-TAUZI': Jurnal Ekonomi Islam*, 20(1), 13–22. <https://doi.org/10.37820/attauzi.v20i1.79>