



**PROBLEMS OF MUDHARABAH FINANCING IN ISLAMIC BANKING
AFTER THE IMPLEMENTATION OF QANUN OF ISLAMIC FINANCIAL
INSTITUTIONS IN ACEH**

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Abstract: The *mudharabah* contract has become one of the Islamic banking products legitimated by The National Sharia Board and Financial Services Authority. The Aceh government, through the *Qanun* of Islamic Financial Institutions, has emphasized that banking practices in Aceh must rely on sharia principles. The consequence of this regulation is that banks are only allowed to use sharia contracts in every financial and financing transaction. This research is an empirical juridical study with a sociological and normative approach. This approach was employed to analyze the use of *mudharabah* contracts from both practical and theoretical aspects. The results of this study indicate that although the *mudharabah* contract has been designated as one of the financing products in Islamic banking, the *mudharabah* contract is not fully applied for financing. The *mudharabah* contract is only implemented for corporate purposes, not for small traders. This is due to several things, including the high risk in *mudharabah* financing, low bank confidence in customers, fluctuating profits, and low-risk management. This study aims to analyze the problems of *mudharabah* financing after implementing the 2018 Qanun of Islamic Financial Institutions in Aceh. The results of this study can answer the main problems in the *mudharabah* contracts. Thus the *mudharabah* contract can be optimized in the financing system of Islamic banking in Aceh.

Akad *mudharabah* sudah menjadi salah satu produk perbankan syariah yang mendapatkan legitimasi dari DSN-MUI dan OJK. Pemerintah Aceh melalui qanun lembaga keuangan syariah telah menegaskan bahwa praktik perbankan di Aceh harus menggunakan prinsip-prinsip syariah. Konsekuensi dari peraturan tersebut yaitu pihak perbankan hanya dapat menggunakan akad bernuansa syariah dalam setiap transaksi keuangan

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dan pembiayaan. Penelitian ini merupakan kajian yuridis empiris dengan pendekatan sosiologi dan normatif. Pendekatan ini digunakan untuk menganalisis penggunaan akad *mudharabah* baik dari aspek praktik dan teoritis. Hasil penelitian ini menunjukkan bahwa, meskipun akad *mudharabah* telah ditetapkan sebagai salah satu produk pembiayaan pada perbankan syariah, namun nyatanya akad *mudharabah* tidak sepenuhnya di gunakan dalam pembiayaan, akad *mudharabah* hanya digunakan untuk korporasi saja, tidak untuk pedagang kecil dan UMKM. Hal ini disebabkan oleh beberapa hal; *pertama*, tingginya resiko dalam pembiayaan *mudharabah*; *kedua*, rendahnya kepercayaan perbankan terhadap nasabah; *ketiga*, keuntungan yang fluktuatif; *keempat*, lemahnya manajemen resiko. Penelitian ini berkontribusi untuk mengatasi persoalan pembiayaan *mudharabah* pasca penerapan qanun lembaga keuangan syariah tahun 2018 di Aceh. Sehingga dengan hasil penelitian ini dapat menjadi jalan keluar terhadap permasalahan utama dalam akad *mudharabah*, dan akad *mudharabah* dapat dioptimalkan dalam sistem pembiayaan pada perbankan syariah di Aceh.

Keywords: *Qanun*; Islamic bankings; Financing; *Mudharabah*.

INTRODUCTION

Islamic banking in Aceh is increasingly applied along with implementing Islamic law. Starting with the enactment of Law No 44 of 1999, this law further strengthened the specificity of the Aceh region,¹ followed by the issuance of the law of 2006 on the governance of Aceh and the law on special autonomy in 2001, which further reinforced the application of Islamic law in Aceh. Moreover, the role of Islamic scholars and mass organizations also underpins the imposition of Islamic law in Aceh.² Many Islamic regulations range from regulations on Muslim dress, worship, Islamic crime (*Jinayat*), and the banking world. This shows that the Aceh government is seriously treating Aceh as Islamic law.³

In 2018, the people of Aceh were surprised by the issuance of the *Qanun* of Islamic Financial Institutions (IFI). This *Qanun* emphasizes that banking practices in Aceh must follow the provisions of Islamic law. Consequently, the term “banking shariatization” arises.⁴ These stipulations demand conventional banks leave Aceh or convert to Islamic banking. Despite the pros and cons, the *Qanun* of IFI remains to be executed in Aceh since this is the Aceh government’s commitment to introducing Islamic banking. The next oddity arose when the financing practice of Islamic banking in Aceh did not fully apply the contracts stated in the DSN-MUI *fatwa*,

¹ Arskal Salim, “‘Sharia from below’ in Aceh (the 1930s–1960s): Islamic Identity and the Right to Self-determination with Comparative Reference to the Moro Islamic Liberation Front (MILF),” *Indonesia and the Malay World* 32, no. 93 (March 2004): 80–99, <https://doi.org/10.1080/1363981042000263471>.

² Arskal Salim, “Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh,” *The Journal of Legal Pluralism and Unofficial Law* 42, no. 61 (January 2010): 1–29, <https://doi.org/10.1080/07329113.2010.10756640>.

³ Salim, 3–4.

⁴ M. Nur A. Birton et al., “Theory of Shariahization on Conceptual Accounting Framework: A Substantive Theory,” *Procedia - Social and Behavioral Sciences* 211 (November 2015): 723–30, <https://doi.org/10.1016/j.sbspro.2015.11.093>.

such as the *mudharabah* contract. The contract is helpful for small entrepreneurs in starting their business, yet the *mudharabah* contract is not fully utilized; only certain parties obtain the *mudharabah* contract financing.⁵

Noraina Mazuin Sapuan's research on *mudharabah* explained that *mudharabah* financing is less attractive to banks since it causes many losses for investors. The research results of Titi Dewi Warninda, *et al.* on 63 Islamic banks in the Middle East, South Asia, and Southeast Asia demonstrated that *mudharabah* contracts are no more risky than *musyarakah* contracts.⁶ Even the research of Beng Soon Chong and Ming-Hua Liu conducted in Malaysia emphasized that the practice of Islamic banking in *mudharabah* and *musyarakah* contracts is similar to the practice of deposits in conventional banking since both contracts also contain an element of interest.⁷ Research by Noraziah Che Arshad and Abdul Ghafar Ismail also explained that problems in *mudharabah* financing were caused by a lack of understanding and trust from the bank and customers.⁸

A Study by A. Chairul Hadi on the issues of *mudharabah* financing addressed that the practice of *mudharabah* in principle is profitable for the banking sector if it is managed well.⁹ Meanwhile, the weakness lies in the high risk and the absence of guarantees in the financing, the lack of morality for the *mudharib*, and the minimum human resources in managing *mudharabah* financing. Arinal Rahmati *et al.* mentioned that the cause of the low realization of *mudharabah* financing was due to the difficulties experienced by Islamic banking in obtaining accurate, transparent, and routine profit and loss reports.¹⁰ Arinal Rahmati *et al.* added that *mudharabah* financing could potentially cause moral hazards from *mudharib*. Research by Muhannad A. Atmeh and Abdulhadi H. Ramadan described that utilizing an accounting system in managing *mudharabah* financing with the unrestricted investment account holders (UIAHS) model could minimize the risk of *mudharabah* financing.¹¹ The weakness in *mudharabah* financing lies in accounting

⁵ Muhammad Aswad, "Skema Bagi Hasil Mudharabah: Studi Feasibility Terhadap Pemberdayaan Usaha Mikro Syariah," *ADDIN* 8, no. 1 (November 15, 2015): 32, <https://doi.org/10.21043/addin.v8i1.588>.

⁶ Titi Dewi Warninda, Irwan Adi Ekaputra, and Rofikoh Rokhim, "Do Mudharabah and Musharakah Financing Impact Islamic Bank Credit Risk Differently?," *Research in International Business and Finance* 49, no. 166 (October 2019): 166-75, <https://doi.org/10.1016/j.ribaf.2019.03.002>.

⁷ Beng Soon Chong and Ming-Hua Liu, "Islamic Banking: Interest-Free or Interest-Based?," *Pacific-Basin Finance Journal* 17, no. 1 (January 2009): 127, <https://doi.org/10.1016/j.pacfin.2007.12.003>.

⁸ Noraziah Che Arshad and Abdul Ghafar Ismail, "Regulation on The Parameterized of Mudharabah Contract: A Critical Analysis," *International Journal of Economics and Research (IJER)* 2, no. 3 (2011): 175.

⁹ Ahmad Chairul Hadi, "Problematika Pembiayaan Mudharabah di Perbankan Syariah Indonesia," *Al-Iqtishad: Journal of Islamic Economics* 3, no. 2 (November 5, 2015): 207, <https://doi.org/10.15408/aiq.v3i2.2129>.

¹⁰ Arinal Rahmati, Deni Mulyadi, and Januddin Januddin, "Analysis of Low Realization For Mudharabah Financing at Muamalat Indonesia Bank, Banda Aceh," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 1, no. 4 (December 22, 2018): 215, <https://doi.org/10.33258/birci.v1i4.111>.

¹¹ Muhannad A. Atmeh and Abdulhadi H. Ramadan, "A Critique on Accounting for The Mudharabah Contract," *Journal of Islamic Accounting and Business Research* 3, no. 1 (April 13, 2012): 7-19, <https://doi.org/10.1016/j.jiab.2012.04.001>.

and management, as well as research by Hifzur Rab suggesting modifications in the *mudharabah* contracts¹²

This study aims to analyze the use of *mudharabah* contracts in Islamic banking in Aceh after implementing the *Qanun* of Islamic Financial Institutions. This paper is the result of empirical research employing a normative sociological approach to analyze and describe the practice of *mudharabah* contracts in Islamic banking and the normative approach to analyze the legal aspects of sharia economics law regarding the use of *mudharabah* contracts. The data sources in this study were mainly Islamic banking practitioners in Aceh. This paper also examined substantial research results directly associated with *mudharabah* financing.

SCHEMES AND LEGAL PROVISIONS OF MUDHARABAH CONTRACTS

The academics and practitioners of Islamic economics should be familiar with *mudharabah* contracts. The scholars have discussed the concept of *mudharabah* in terms of law and the provisions of the *mudharabah* contracts. However, in today's modern era, the practice of *mudharabah* financing mainly captivates business and Islamic banking practitioners.¹³ The *mudharabah* contracts have undergone modernization in the object of financing and its management system. Several countries, such as Malaysia and Middle Eastern countries, have implemented *mudharabah* contracts in business financing, although the risk of loss is also significant.¹⁴ In principle, *mudharabah* is a form of profit-sharing distinguishing conventional banking from Islamic banking. *Mudharabah*, in the study of *fiqh*, is understood as a form of cooperation between *shahibul maal* and *mudharib* with the provision that profits are divided in two according to the initial agreement.¹⁵ In the Shafi'i school of jurisprudence, the word *al-qirad* is also interpreted as *mudharabah*, and even Imam Nawawi used these two words.¹⁶ Etymologically, the word *mudharabah* comes from the word *al-dharb*, meaning a long journey, while using the term *al-qirad* in *mudharabah* means cutting.¹⁷ *Mudharabah* contract is a type of partnership business involving a joint venture relationship between the creditor (*rabb al-mal*) and the debtor (*mudharib*).¹⁸ The Hambali school defined

org/10.1108/17590811211216032.

¹² HifzurRab, "Impact of Inflation on Mudarabah Profits: Some Observations," *Journal of King Abdulaziz University-Islamic Economics* 17, no. 2 (2004): 21–25, <https://doi.org/10.4197/islec.17-2.2>.

¹³ SaadAzmat, Michael Skully, and Kym Brown, "Can Islamic Banking Ever Become Islamic?," *Pacific-Basin Finance Journal* 34 (September 2015): 7, <https://doi.org/10.1016/j.pacfin.2015.03.001>.

¹⁴ Warninda, Ekaputra, and Rokhim, "Do Mudarabah and Musharakah Financing Impact Islamic Bank Credit Risk Differently?" 166

¹⁵ Rahman Ambo Masse, "Konsep Mudharabah Antara Kajian Fiqh Dan Penerapan Perbankan," *DIKTUM: Jurnal Syariah Dan Hukum* 8, no. 1 (January 9, 2010): 79, <https://doi.org/10.28988/diktum.v8i1.300>.

¹⁶ Hadenan Bin Tupek, "Konsep Mudarabah Menurut Syekh Daud Al-Fatani," *Al-Risalah* 12, no. 02 (December 1, 2018): 5, <https://doi.org/10.30631/al-risalah.v12i02.450>.

¹⁷ Try Subakti, *Akad Pembiayaan Mudharabah Perspektif Hukum Islam*, 1st ed. (Malang: Literasi Nusantara, 2019).13

¹⁸ R. Bhala, "Overview of Islamic Finance," in *Handbook of Key Global Financial Markets, Institutions, and*

mudharabah as a form of surrendering an object to another person with an exact amount of goods to be managed and profit from the management of the goods.¹⁹ For Imam Malik, a *mudharabah* contract is a representative contract managed by another person for trading and the determined payment.²⁰

The legal basis used in *mudharabah* financing is QS. An-Nisa' (4): 29, QS. Al-Ma'idah (5):1, QS. Al-Baqarah (2): 283 dan QS. Al-Muzammil (73): 20.²¹ Furthermore, several hadiths underlying *mudharabah* contracts are:

Amru bin Zurarah has told us, Isma'il has told us, Ibn 'Aun has told us he said: Muhammad once said: "My land is like *mudharabah* property, what is suitable for *mudharabah* property is suitable for my land, and what is not suitable for *mudharabah* property is not suitable for my land." He considered that it was allowed if he handed over his land to the plowman to be worked on by the plowman himself, his son, and the people who helped him and his cows. The plowman did not provide any fees, and all the financing was from the landowner.²²

Ibn Rumh has told us, Al-Laitshas told us from Muhammad bin Abdurrahman, from Nafi', from Abdullah bin Umar, from the Prophet Muhammad that he once handed over a garden of dates to the Jews in Khaibar so that they could cultivate their own expense with some conditions; half of the crops they produced was given to the Prophet.²³

Al Hasan bin Ali Al Khallal has told us, Bisyr bin Thabit Al Bazzar has told us, Nasr bin Al Qasimhas told us from 'Abdurrahman bin Dawud, from Salih bin Shuhaib, from his father he said, "Rasulullah said: "Three things in which there is *barakah* (blessings); buying and selling that gives a due date, borrowing, and mixing wheat with barley for consumption by householders, not for sale."²⁴

These verses and hadiths are the primary references in the *mudharabah* contracts. Moreover, Indonesia also has a legal basis in the form of a *DSN-MUI fatwa No. 07/DSN-MUI/IV/2000* concerning *Mudharabah* Financing and a *DSN-MUI fatwa no. 115/DSN-MUI/IX/2017* concerning *Mudharabah* Contracts. The legal basis for the *fatwa* refers to the *Al-Quran*, *Hadith*, *Ijma'* (agreement), *Qiyas*,

Infrastructure (Elsevier, 2013), 466, <https://doi.org/10.1016/B978-0-12-397873-8.00039-6>.

¹⁹ Mahmudatus Sa'diyah, "Mudharabah Dalam Fiqih Dan Perbankan Syari'ah" 1, no. 2 (2013): 305.

²⁰ Popon Srisusilawati and Nanik Eprianti, "Penerapan Prinsip Keadilan Dalam Akad Mudharabah Di Lembaga Keuangan Syariah," *Law and Justice* 2, no. 1 (June 21, 2017): 17, <https://doi.org/10.23917/laj.v2i1.4333>.

²¹ Any Widayatsar, "Akad Wadiah dan Mudharabah dalam Penghimpunan Dana Pihak Ketiga Bank Syariah," *Economic: Journal of Economic and Islamic Law* 3, no. 1 (June 17, 2013): 4-6.

²² Sayyid Kasrawi Hasan and Ahmad ibn Shu'ayb Nasai, *Is'ad al-rai bi al-Afradwa al-Zawaid al-Nasai 'al al-Kutub al-Khamsah* (Bayrut: Dar al-Kutub al-Ilmiyah, 1998). 289

²³ Abu Husien Muslim bin Hajjaj bin Muslim Al-Qusyairi Al-Naisaburi, *Shahih Muslim*, vol. 4 (Madina: Dar al-Nawadir, 2014).1746

²⁴ Al-Imam Abu Abdillah Muhammad bin Yazid Ibnu Majah Al-Quznawi, *Sunnan Ibnu Majah*, vol. 2 (Beitut: Dar al-Fikr, tt).

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and the scholars' opinions regarding the *mudharabah* contracts.²⁵ The DSN-MUI *fatwa* in 2000 regarding *mudharabah* financing contains three provisions, financing provisions, the pillars and terms of financing, third several provisions of the financing law. Meanwhile, the 2017 DSN-MUI *fatwa* contains ten terms, including general provisions, the forms of *mudharabah*, the provisions of *shighat* contract, the provisions of the parties, the provisions of *ra's al-mal* (capital), profit sharing ratio, the provisions for business activities, advantages and disadvantages, activities and products of Sharia Financing Institutions, and closing.

In the *fiqh* literature, several provisions must be fulfilled in carrying out a *mudharabah* financing contract. These terms are appertaining to the pillars and conditions. *Fiqh* talks about *halal*, *haram*, legal, and invalid (void).²⁶ Therefore, the pillars and conditions in the study of *fiqh muamalah* are closely related to whether or not a contract is valid. The pillars of *mudharabah* generally consist of three: *aqid*, *ma'qud 'alaih*, and *shighat*.²⁷ Meanwhile, the Shafi'iyah school divides them into five: capital, labor, profit, *shighat*, and *'aqidain*. Furthermore, the conditions are divided into parties with a contract and capital.²⁸

The *mudharabah* financing scheme in Islamic banking is aimed at the real sector. *Mudharabah* contracts are focused on financing and funding. In general, *mudharabah* is used for capital business activities and investment forms.²⁹ The DSN-MUI *fatwa* No: 07/DSN-MUI/IV/2000 concerning *Mudharabah* Financing states that the financing model employed follows a revenue-sharing scheme.³⁰ This scheme is considered effective in minimizing moral hazard and easy to use in profit sharing practice, although it cannot effectively avoid moral hazard behavior.

²⁵ Nining Sri Wahyuni, "Analisi IFIKih Sistem Pembiayaan Mudharabah Dalam Praktik Dan Peraturan Perundang-Undangan Perbankan Syari'ah," *FITRAH: Jurnal Kajian Ilmu-ilmu Keislaman* 2, no. 1 (June 1, 2016): 109, <https://doi.org/10.24952/fitrah.v2i1.458>.

²⁶ Mahathir Muhammad Iqbal, "Merumuskan Konsep Fiqh Islam Perspektif Indonesia" 2, no. 1 (June 30, 2017): 8, <https://doi.org/10.22515/al-ahkam.v2i1.820>.

²⁷ Sri Wahyuni, "Analisi IFIKih Sistem Pembiayaan Mudharabah Dalam Praktik Dan Peraturan Perundang-Undangan Perbankan Syari'ah." 108

²⁸ Chefi Abdul Latif, "Pembiayaan Mudharabah Dan Pembiayaan Musyarakah Di Perbankan Syariah," *AKSY: Jurnal Ilmu Akuntansi Dan Bisnis Syariah* 2, no. 1 (February 28, 2020): 12-13, <https://doi.org/10.15575/aksy.v2i1.7857>.

²⁹ Bambang Waluyo, "Implementasi Pembiayaan Mudharabah Pada Bank Syariah Untuk Merealisasikan Tujuan Ekonomi Islam," *JEBIS: Jurnal Ekonomi dan Bisnis Islam* 2, no. 2 (December 31, 2016): 195-96, <https://doi.org/10.20473/jebis.v2i2.3167>.

³⁰ Hadi, "Problematisasi Pembiayaan Mudharabah di Perbankan Syariah Indonesia." 204-205

Figure. 1 Scheme of Mudharabah Financing Contracts³¹

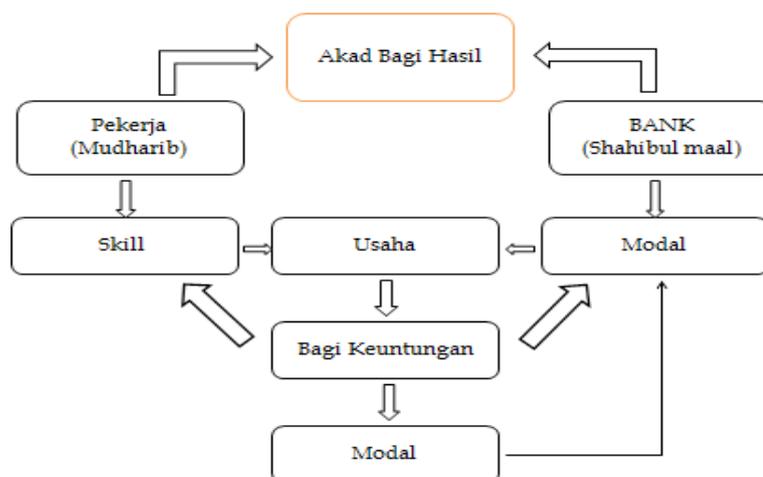


Figure 1 explains that the banking sector fully provides the capital in mudharabah contract financing, while the customer is a business actor (employee). Referring to this scheme, the risk of loss will be shared jointly, yet the bank will suffer a significant loss if it suffers. In terms of financing, it determines the foresight and analysis of losses (business risk) from *Shahibul Maal* (Bank). Moreover, skills and expertise are highly demanded by *mudharib* in managing the business to be initiated.³²

Islamic banking in Indonesia mainly applies *Murabaha* financing more than *mudharabah* financing. In 2017, profit-sharing contracts only reached 38.2 percent, and the rest was used for profit and loss-sharing financing.

Figure 2. Financing Contracts in Islamic banking in 2017
(In Billion Rupiah)³³

Product	Total	Percentage (%)
<i>Murabahah</i>	141,274	56.21
<i>Ijarah</i>	9,017	3.59
<i>Mudharabah</i>	14,316	5.69
<i>Musyarakah</i>	81,709	32.51
<i>Qard</i>	5,026	2.00
Total	251,342	100

³¹ Aji Prasetyo and Ninik Muti'ah ningsih, "Model Pengembangan Skema Pembiayaan Mudharabah Di Koperasi Simpan Pinjam Dan Pembiayaan Syariah (KSPPS) Sidoarjo," *Seminar Nasional & Call For Paper, FEB Unikama "Peningkatan Ketahanan Ekonomi Nasional Dalam Rangka Menghadapi Persaingan Global"* Malang, 17 Mei, 2017, 297.

³² Supriatna and IrpanHelmi, "Skema Pembagian Keuntungan Konsep Mudharabah Pada Bank Syariah Di Indonesia," *Al-Intifa' :Jurnal Ilmiah Ilmu Syariah* 1, no. 2 (December 3, 2019): 13.

³³ Trimulato Trimulato, "Eksistensi Perbankan Syariah Melalui Dominasi Pembiayaan Profit And Loss Sharing," *JPS (Jurnal Perbankan Syariah)* 2, no. 1 (April 9, 2021): 33, <https://doi.org/10.46367/jps.v2i1.287>.

Figure 2 illustrates that the *Murabaha* contract remains a top priority in Islamic banking in Indonesia. *Murabahah* contract is highly preferred due to the low risk experienced by banks. *Murabahah* contract provides clarity of benefits for the bank.³⁴ In addition to *Murabaha*, *musyarakah* financing is also one of the priorities since the capital comes from both parties. Even so, each financing has its level of risk. Hence, banks tend to use safer contracts with clear profits. In a *mudharabah* contract, the banking sector is quite careful. It does not even provide the financing when the customer feels they do not have business clarity, thus explicit profit and management.

PRACTICE OF MUDHARABAH FINANCING IN ISLAMIC BANKING IN ACEH AFTER IMPLEMENTING QANUN OF SHARIA FINANCING INSTITUTIONS

Aceh is one of the provinces in Indonesia that strictly stipulates the implementation of Islamic banking and prohibits conventional banking practices. This condition illustrates that Aceh, as an area applying Islamic law, is attempting to eliminate the practice of usury in every transaction. Banking is the main object of the Aceh government since financial transactions in conventional banking are considered usurious practices. The *Qanun* of Sharia Financing Institutions is the main project in reconstructing banking practices.

The *Qanun* on Islamic financial institutions that have been enacted in Aceh Province has immediately changed the model of financial transactions from a conventional system to a sharia system as mandated by the *Qanun* as explained in article 2 paragraph (1) of financial institutions operating in Aceh under Sharia principles, and paragraph (2) of financial contracts in Aceh using sharia principles. This *Qanun* applies to every person, including Muslim or non-Muslim, business entities and/or legal entities carrying out financial transactions or running businesses in Aceh or financial institutions outside Aceh, of which head office in Aceh must comply with the mandate of this *Qanun*. However, the authors limit the research to the existing *Mudharabah* financing at the Branch Office of PT. Bank Aceh Syariah Langsa.

The Aceh government owns Bank Aceh. To fulfill the wishes of the Acehnese people, as conveyed by the Governor of Aceh, Dr. H. Zaini Abdullah, at the National Seminar on Sharia Banking on Monday, 7 December 2015, the Governor emphasized that the conversion of Acehnese banks from the conventional system to the sharia system must be completed in 2016. Aceh bank has transformed its business from a conventional bank to a sharia bank under the name PT. Bank

³⁴ Rita Yuliana and Shelly FebrianaKartasari, "Dominasi Akad Murabahah Pada Praktik Penyaluran Dana di Bank Syariah" 6, no. 2 (2012): 86.

Aceh Syariah. Bank Aceh, in September 2016, was converted into a sharia bank, and it is the first bank converted into a sharia bank in Aceh Province.³⁵

With this transformation, all activities at the Aceh bank have shifted to sharia principles as mandated by Law No 11 of 2006 on the Government of Aceh and the mandate of *Qanun* No 8 of 2014 on Principles of Islamic Sharia. As we know, at the time of the conversion of Bank Aceh to Bank Aceh Syariah, *Qanun* No 11 of 2018 had not yet taken effect. However, at this time, Bank Aceh Syari'ah must comply with the *Qanun* of IFI and the financing products currently applied to Bank Aceh. Sharia must be adjusted to the financing rules according to the *Qanun* of IFI. In *Qanun* Number 11 of 2018 concerning Islamic banking in Article 1 point 16, it is explained, "Financing is the provision of funds by IFI to customers whose principal and profits or equivalents must be returned following the financing agreement contract following sharia principles."

Article 14 paragraph (1) states that the business activities of Sharia Banks include, among others:

- a. It is collecting funds in the form of savings and investments with contracts that do not conflict with sharia principles.
- b. Distributing financing following profit sharing, purchasing and selling, leasing, services, and kindness loans (*Qardh Hasan*), and
- c. The provisions of laws and regulations regulate the marketing of financial products from IFI.

Article 1 point 16 explained that IFI uses a financing agreement based on sharia principles. Sharia principles are the legal basis that must be used by IFI, including Bank Aceh Syariah, in distributing financing products. Nevertheless, the sharia principles referred to in the *Qanun* of IFI are not explained in more detail, whether *mudharabah* contracts according to *fiqh* or *mudharabah* contracts according to the *DSN MUI fatwa*.

Mudharabah financing, according to Bank Aceh Syariah, is a cooperation agreement between the bank as the owner of the funds (*shahibul maal*) and the customer (*mudharib*) who has the expertise or skills to manage a productive and *halal* business. Profits from the use of these funds are shared under an agreed ratio.³⁶ *Banks use Mudharabah contracts* to facilitate the fulfillment of capital needs for customers to run a business or project using equity participation for the business or project concerned.

³⁵ Taufan Prasajo Wicaksono Setiadi et al., "Pengaruh Konversi Bank Konvensional Menjadi Bank Syariah Terhadap Risiko Kebangkrutan Studi Kasus Pada Bank Aceh," *E-Jurnal Ekonomi dan Bisnis Universitas Udayana*, June 20, 2019, 550, <https://doi.org/10.24843/EEB.2019.v08.i06.p02>.

³⁶ "Bank Aceh," n.d., https://www.bankaceh.co.id/?page_id=550.

Since converting to Bank Aceh Syariah in 2016 until now, there have been several financing contracts, including *murabahah*, *musyarakah*, *mudharabah*, and multi-service *ijarah* contracts. From the results of interviews with employees in the financing sector of Bank Aceh Syariah Langsa Branch, current percentages of financing are 70%, 25%, 5%, and 0% (never happened) for *murabahah*, *musyarakah*, multi-service *ijarah*, and *mudharabah* financing, respectively. The results of the snapshot of Islamic banking in Indonesia released by the financial services authority in 2018 demonstrated that in contract transactions, *murabahah* contracts were dominated by 51.77%, while *mudharabah* contracts were 5.27%, and *ijarah* contracts were 3.18%.³⁷

The high percentage for *murabahah* financing is due to its safety and easiness of being understood by customers since the contract is a sale and purchase. Hence, the banking sector has no risk if problems occur in the future. Islamic banking not only benefits from financing activities but also faces risks. Therefore, risk management is needed to control the risks that banks will face.³⁸ In line with the research conducted by Yoesrizal and Khairisma, referring to the results of interviews conducted with employees in the financing sector of Bank Aceh Syariah, there was no *mudharabah* financing, and only a few customers received *qardul hasan* financing.³⁹

The customer's lacking knowledge of sharia financial contracts is one of the reasons that banks prefer *murabahah* financing contracts, and for now, those banks have not made *mudharabah* financing contracts. Moreover, the banking sector's low trust in the customer also becomes an obstacle in *mudharabah* financing. This is due to the principle of *mudharabah* financing, where the funds come entirely from the *shahibulmaal*/fund owners/banking parties. At the same time, the customer/*mudharib* only acts as an employee or provides services in carrying out the agreed business.⁴⁰

Although PT Bank Aceh Syariah has not implemented *mudharabah* financing, it has started a financing product following profit sharing according to sharia principles, namely an MMQ (*Musyarakah Muthanaqisah*). This product is a solution where the financing is tailored to the customer's needs. Since 2020, the Aceh Syariah bank has started to move from *Murabaha* financing to financing with this MMQ principle since it is considered safer, while the principle in *musharaka* is a partnership, meaning that both parties have the same responsibility and rights for the loss and profit. The profits and risks depend on the number of funds provided,

³⁷ Moh. Nurul Qomar, "Mudharabah Sebagai Produk Pembiayaan Perbankan Syariah Perspektif Abdullah Saeed," *MALIA: Journal of Islamic Banking and Finance* 2, no. 2 (December 25, 2018): 201, <https://doi.org/10.21043/malia.v2i2.4890>.

³⁸ Marliyah, *Strategi Pembiayaan Mudharabah Sektor Usaha Mikro, Kecil Dan Menengah (UMKM): Studi Kasus Perbankan Syariah Di Sumatera Utara*. (Disertation: UIN Sumatera Utara, 2016), 53.

³⁹ Yoesrizal Muhammad Yoesoef, "Eksistensi Bank Aceh Pasca Konversi Terhadap Kesejahteraan Masyarakat Aceh" 8 (2020): 15.

⁴⁰ M. Safri Antoni, *interview*, Employee PT. Bank Aceh Syariah, April 24, 2021.

which means that both parties will attempt to run their business and avoid loss. This is different from *mudharabah* financing, where 100% of the capital comes from the bank (*shahibul maal*). At the same time, the *mudharib* only manages it, and thus the risk of the capital loss is only the responsibility of the capital owner (*shahibul maal*/bank).

However, it is possible that over time and after the people in Aceh have understood more about contracts in IFI, the Aceh bank will perform *mudharabah* financing contracts, which are needed by the community, especially people who do not have capital but have the expertise and the ability to do business. All this becomes a duty for the Aceh Government and all financial institutions operating in Aceh to enhance socialization in the community further, one of which is improving Islamic financial literacy and inclusion.⁴¹

In addition to improving human resources, banking is also a matter of concern, especially knowledge about IFI contracts and how to overcome the risks encountered when implementing sharia principles, especially in providing customer financing. One of the ways to reduce this is by enhancing knowledge about risk management. The banking sector must be firm in examining the conditions that customers should meet. If the customer cannot accomplish the terms and conditions, the officer should be able to cancel the contract.

Furthermore, in the technique of providing financing with the principle of profit-sharing to customers, Islamic banking must do and use the principle of prudence selectively to avoid default from customers as described in Article 1 paragraph (5) of *Qanun* Number 11 in 2018 that “Financing disbursed by Islamic Banks prioritizes profit-sharing-based contracts and pays attention to the customers’ capabilities and needs.

The customers’ capabilities and needs, as referred to in paragraph (5), must take into account, among others:

- a) financing proposals from prospective customers based on needs
- b) business prospects of prospective customers fulfilling the eligibility criteria for bank financing; and
- c) the amount of the customer’s total installment obligations is a maximum of 1/3 (one-third) of the official income.

Mudharabah financing at Islamic banks in Aceh is not used for individual financing. However, the object of *mudharabah* financing is only provided by Bank Aceh Syariah in the form of channeling (companies) and executing (groups). Even that requires in-depth study for companies and groups with clear track records. For *mudharabah* financing, the banking sector must prioritize the precautionary

⁴¹ M. Safri Antoni, *interview*, Employee PT. Bank Aceh Syariah, April 24, 2021.

principle since in a *mudharabah* contract, the bank will distribute 100% of funds without any collateral from customers.⁴² The difficulty in obtaining honesty from customers has resulted in *mudharabah* financing being unable to be distributed by Bank Aceh Syariah to customers. Moreover, the low level of customers' knowledge about Islamic financial literacy causes this contract to be unable to be distributed by the banking sector. Bank Syariah does not distribute *mudharabah* financing, for it does not know its customers well.⁴³

It can be observed that the problematic *mudharabah* financing in Aceh is caused by several things, including first, the high risk of loss experienced by banks when financing is given to all business managers. It is known that small and medium enterprises do not have precise management in business management. The majority of businesses are managed traditionally. This condition is likely to cause losses or bankruptcy if it is not managed correctly. This shows that the bank is careful in providing *mudharabah* financing.

Second, *mudharabah* financing is often vulnerable to moral hazards as most customers are not honest in managing their business with the *mudharabah* system. The term moral hazard comes from the term of economists engaged in insurance. Economists use moral hazard to describe the customers' behavior in creating losses arising in the business sector.⁴⁴ A moral hazard is a tendency that results in losses for guaranteed customers.⁴⁵ In principle, moral hazard is a dishonest attitude from one of the parties in fulfilling the production sharing agreement contract that was previously agreed upon.⁴⁶ This is what banks are worried about.

Third, the lack of trust from the banking sector towards customers makes banks careful to prevent the wrong allocation of funds. In principle, Islamic banking seeks profit and avoids losses.⁴⁷ This is natural since customers investing

⁴² Antoni.

⁴³ Mukhlis, *interview*, Head of Bank Syariah Adeco Branch office Langsa, Agustus 24, 2021.

⁴⁴ David Rowell and Luke B. Connelly, "A History of the Term 'Moral Hazard,'" *Journal of Risk and Insurance* 79, no. 4 (2012): 1051–1075, <https://doi.org/10.1111/j.1539-6975.2011.01448.x>.

⁴⁵ Mark V. Pauly, "The Economics of Moral Hazard: Comment," *The American Economic Review* 58, no. 3 (1968): 535.

⁴⁶ Douglas E. Stevens and Alex Thevaranjan, "A Moral Solution to The Moral Hazard Problem," *Accounting, Organizations and Society* 35, no. 1 (2010): 125, <https://doi.org/10.1016/j.aos.2009.01.008>.

⁴⁷ Muhammad Maulana, "Jaminan Dalam Pembiayaan Pada Perbankan Syariah Di Indonesia (Analisis Jaminan Pembiayaan Musyarakah Dan Muḍārabah)," *Jurnal Ilmiah Islam Futura* 14, no. 1 (August 1, 2014): 82, <https://doi.org/10.22373/jiif.v14i1.80>. Islamic banks have a mandate to manage customer funds with the prudential principle that creditors are able to generate profits that can be shared with creditors. Although the use of rahn and kafalah contract are not well-known in the implementation of musyarakah and muḍārabah contract, using the theory of freedom of contract all the parties can still contract in the main of dictum because the basic principle of contract is permitted in fikih muamalat during the contract or requirement that are made do not contradict with shari'a. The presence of security systems in the theory of musyarakah and muḍārabah doesn't mean to prohibit using the guarantee, because the use of musyarakah and muḍārabah contract in fikih muamalat is still carried out on the basis of personal trust between the parties. The existence of the guarantee in the contract of muḍārabah and musyarakah are good effort to promote preventive measures using sadd al-zarī'ah pattern so that the funds of creditors which should be protected in according with the concept of maqāsid syariah should be protected because it is in dharūry level." "container-title": "Jurnal Ilmiah Islam

in Islamic banks certainly expect the maximum profit. Consequently, when the *mudharabah* contract is applied to business actors who do not have precise management, it will harm financial health. In this condition, it is difficult for the bank to employ *mudharabah* as the main product in business financing.

Fourth, in some financing, customers experience many losses. This, of course, cannot be avoided, for the business sector sometimes declines. In such a condition, it can harm the bank, and there is no clarity in risk management for *mudharabah* financing. *Mudharabah* is performed with a natural uncertainty contracts (NUC) financing system that does not have certainty in obtaining profits considered risky.⁴⁸

Fifth, the weakness of risk management in using *mudharabah* contracts also hinders the implementation of the contract since losses may occur. Moreover, this contract takes into account the customer's honesty aspect. Furthermore, there are many studies illustrating that the use of *mudharabah* contracts suffers many losses. The bank will experience losses when the payment is stuck for more than 180 days.⁴⁹

Sixth, there is no guarantee that banks do not dare to provide *mudharabah* financing. When it comes to sharia financing, a guarantee is practically needed to increase the trust of the *shahibul maal* in the *mudharib*. This is possible even though it is not legally justified. When the guarantee is removed, *mudharabah* financing requires banking accuracy in supervising and assisting in asset management. The bank is positioned as investors, while customers as managers. This position illustrates a reciprocal relationship and cooperation (partnership) in venture capital management.

The problems of *mudharabah* financing do not only occur in Islamic banking in Aceh. Even national banks converted to Islamic banks are also experiencing challenges in *mudharabah* financing. The impression that *mudharabah* financing is a high cost compared to conventional bank financing often arises from customers. The profits taken by banks in *mudharabah* financing are considered too high compared to conventional bank financing. Dyan Rosni's research explained that there is no significant difference between Islamic and conventional bank financing except liquidity since there are not many instruments that can be utilized by Islamic banking.⁵⁰ The difference in financing conducted by Islamic banking only lies in

Futura", "DOI": "10.22373/jiif.v14i1.80", "ISSN": "2407-7542", "issue": "1", "language": "en", "note": "number: 1", "page": "82", "source": "www.jurnal.ar-raniry.ac.id", "title": "Jaminan Dalam Pembiayaan Pada Perbankan Syariah di Indonesia (Analisis Jaminan Pembiayaan Musyarakah Dan Mudharabah

⁴⁸ M Sholahuddin, "Risiko Pembiayaan Dalam Perbankan Syariah," *BENEFIT* 8, no. 2 (2004): 135.

⁴⁹ Rina Destiana, "Analisis Dana Pihak Ketiga dan Risiko Terhadap Pembiayaan Mudharabah dan Musyarakah Pada Bank Syariah di Indonesia," *JURNAL LOGIKA* 17, no. 2 (2016): 48.

⁵⁰ Dyah Rosna Yustani Toin, "Analisis Kinerja Perbankan (Studi Komparasi Antara Perbankan Syariah Dan Konvensional)," *Jurnal Siasat Bisnis* 18, no. 2 (2014): 208, <https://doi.org/10.20885/jsb.vol18.iss2.art6>. pendanaan yang diberika, dan total aset. Selama krisis ekonomi, perbankan syariah juga menunjukkan kinerja yang lebih baik dibanding dengan bank konvensional. Tujuan riset ini adalah untuk menguji apakah terdapat perbedaan kinerja antara perbankan syariah dan konvensional. Variabel kinerja bank diuji dengan kapital yang diprosikan oleh kapital adequacy ratio (CAR

the use of contracts and the exemption of fines if there is a delay in payment. The following is the difference between Islamic and conventional banking financing.

Figure 3. Difference between Islamic and Conventional Banking⁵¹

Form	Islamic Bank	Conventional Bank
Role	Entrepreneurs and Investors	Borrowers&Lenders
Financing	Purchasing-Selling and Financing	Credit
Profit	Profit-Sharing	Interest
Contract	Sharia Contract	Contract/Agreement
Connection	Equal Rights	Debtors and Creditors ⁴

Banking has the primary goal, namely to seek profit. The contract is used only as a form of contract transfer from the term interest to profit sharing. However, in the case of *mudharabah*, it is possible to apply collateral to foster confidence and seriousness between the bank and the customer. This can be implemented, although, in the study of *fiqh*, there is no guarantee element in the *mudharabah* contract. Collateral can be used to foster an honest attitude and avoid moral hazards for debtors often default, resulting in losses from the bank when there is no guarantee.⁵² The legal basis used is the Supreme Court Decision Number in this case. 272/K/AG/2015 concerning *Mudharabah* Financing.

⁵¹ Mei Santi, "Bank Konvensional vs Bank Syariah," *EKSYAR : Jurnal Ekonomi Syari'ah & Bisnis Islam* 2, no. 1 (June 1, 2015): 1–22. lie, lie, seems to have become an indispensable longer of any movements of society. A seller, with culasnya deceive the buyer. Though in principle the seller has the obligation to: maintain and care for material to be delivered to the buyer until the time of delivery; submit material that is sold during the predetermined time, at the request of the buyer; bear the material being sold", "container-title": "EKSYAR : Jurnal Ekonomi Syari'ah & Bisnis Islam", "ISSN": "2407-3709", "issue": "1", "language": "en", "note": "number: 1", "page": "1-22", "source": "ejournal.staim-tulungagung.ac.id", "title": "Bank Konvensional vs Bank Syariah", "volume": "2", "author": [{"family": "Santi", "given": "Mei"}], "issued": {"date-parts": [{"2015", 6, 1}]}}", "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

⁵² Mhd Yadi Harahap, "Pengikatan Jaminan Kebendaan Dalam Kontrak Pembiayaan Mudharabah Sebagai Upaya Penyelesaian Sengketa Debitur Wanprestasi (Analisis Putusan Mahkamah Agung Nomor 272/K/AG/2015 Tentang Pembiayaan Mudharabah)," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 1 (June 2, 2020): 51, <https://doi.org/10.24090/mnh.v14i1.2999>. but in practice, collateral is one of the elements that must be met by business actors in *mudharabah* financing contracts. When the collateral is not applied, problems often arise in the case of debtor default. The problem in this study is whether the imposition of collateral can be used as an effort to resolve debtor disputes in *mudharabah* financing contracts. To answer the research question, the method used is a normative juridical research method where the law is not only seen as law in books but also the law in action with the statutory approach and case study approach, namely the decision of the Mahkamah Agung. The results of the study presented that binding guarantees in *mudharabah* financing contracts can be used as anticipation to minimize the risk of loss based on article 39 of Law no. 21 of 2008 concerning Islamic Banking. When the business actor defaults, neglects, and breaches the contract in *mudharabah* financing, the guarantee can be used as an effort to mitigate the settlement of *mudharabah* financing disputes to pay off obligations to Islamic banks.", "container-title": "Al-Manahij: Jurnal Kajian Hukum Islam", "DOI": "10.24090/mnh.v14i1.2999", "ISSN": "2579-4167", "issue": "1", "language": "en", "note": "number: 1", "page": "51", "source": "www.ejournal.iainpurwokerto.ac.id", "title": "Pengikatan Jaminan Kebendaan dalam Kontrak Pembiayaan Mudharabah sebagai Upaya Penyelesaian Sengketa Debitur Wanprestasi (Analisis Putusan Mahkamah Agung Nomor 272/K/AG/2015 tentang Pembiayaan Mudharabah

From the aspect of benefit in the study of Islamic law, guarantees on financing become permissible regarding the aspects of harm caused by the absence of the guarantee.

الضرورات تبيح المحظورات

This rule emphasizes that an emergency condition will allow something initially prohibited. A person is allowed to do an *amaliyah* which is usually prohibited since if he does not perform it, it is likely to cause harm to him. Therefore, the *dharurat* (emergency) rule in Islamic law is an exception to general sharia (general law).⁵³

Collateral in *mudharabah* financing, when looking at the context of benefits, can be used due to the possibility of moral hazard. The problem in *mudharabah* financing is caused by the dishonesty of the *mudharib*, and sometimes the *mudharib* tends to use venture capital outside the agreed contract. Collateral is provided to guarantee when *mudharib* is negligent. This is a benchmark in considering *mudharabah* products to be given to customers. Guarantees in *mudharabah* financing at least provide the bank confidence in customers.⁵⁴ Determination of collateral in *mudharabah* financing can be used to anticipate the losses incurred. Collateral can be used to mitigate liability for *mudharib* negligence in business management. Therefore, a particular scheme is necessary for *mudharabah* financing by including a guarantee element in each financing. This, of course, can raise the seriousness of the *mudharib* and the trust of the *shahibul maal* in *mudharabah* financing.

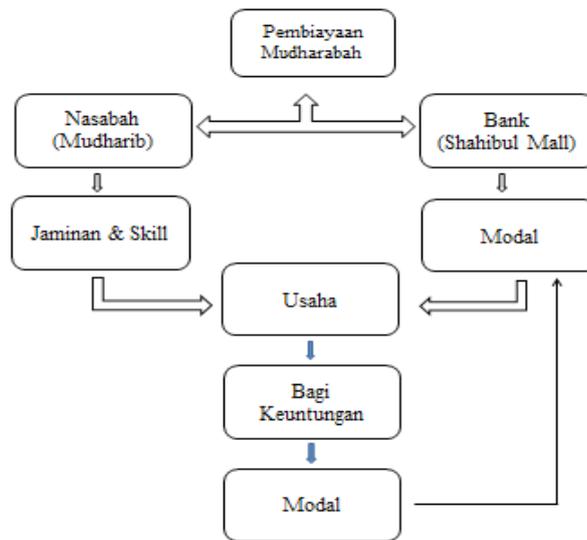
DSN-MUI also considers the significance of guarantees in every financing provided by Islamic banking, in contrast to conventional banks which can withdraw collateral when there is a bottleneck in the loan process. However, Islamic banking theoretically does not intend to do this. This difference is a concern for Islamic banking in developing aspects of risk management. The *DSN-MUI* dares to synergize *fiqh* and social aspects. Hence, it is normatively contrary to the concept of *muamalah*.

It is necessary to strengthen the *mudharabah* financing in Islamic banking in Aceh by re-arranging the *mudharabah* financing, as shown in the following figure.

⁵³ Dahlan Tamrin, *Kaidah-Kaidah Hukum Islam Kulliyah A-Khamsah*, 1st ed. (Malang: UIN Maliki Press, 2010).160

⁵⁴ Erni Susana and Annisa Prasetyanti, "Pelaksanaan Dan Sistem Bagi Hasil Pembiayaan Al-Mudharabah Pada Bank Syariah," *Jurnal Keuangan Dan Perbankan* 15, no. 3 (2011): 470, <https://doi.org/10.26905/jkdp.v15i3.1039>.

Figure 4. Scheme of Mudharabah Financing



Source: Bank BPRS Adeco Langsa in 2021

Figure 4 illustrates that collateral is one of the conditions in *mudharabah* financing. In a legal study, the guarantee can be executed when the *mudharib* commits negligence, causing a risk of loss. The guarantee can be used to replace the loss suffered by the bank. Of course, this is theoretically contrary to the *mudharabah* theory in *muamalah*. Nevertheless, to bring benefits to customers and banks, guarantees can be applied. The application of guarantees is allowed in the *DSN-MUI fatwa* No: 07/DSN-MUI/IV/2000 concerning *Mudharabah* Financing, explaining that guarantees can be implemented and the guarantee execution process can only be carried out when the *mudharib* is proven to have violated the agreed agreement.

CONCLUSION

Mudharabah financing is a form of financing with profit-sharing principles highly recommended in Islamic finance. However, until now, Bank Aceh Syariah Langsa Branch has never distributed *mudharabah* financing to customers due to several obstacles in *mudharabah* financing, including 1) the low level of customer's knowledge of sharia financing contracts, 2) the low trust of Islamic Banking towards customers, and 3) the high risk in *mudharabah* financing. *Mudharabah* financing is only for companies with clarity in business, management, processing, and legal entity.

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