
MUDHARABAH SCHEME WITHIN THE ISLAMIC BANKING: PROFIT SHARING AND ASSOCIATED PROBLEMS IN IT

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Abstrak:

Artikel ini membahas prinsip bagi hasil dalam skema mudharabah di perbankan syariah dan permasalahan yang terdapat di dalamnya dengan metode deskriptif-kualitatif melalui studi kepustakaan dan eksploratif literatur. Skema mudharabah biasanya diterapkan pada produk pembiayaan dan investas yang melibatkan dua pihak: *shahib al-maal* dan *mudharib*. Kedua belah pihak bekerjasama untuk mendapatkan keuntungan yang akan dibagikan sesuai dengan nisbah yang telah disepakati di awal akad. Apabila terjadi kerugian finansial, *shahib al-maal* akan menanggung semuanya, tetapi jika disebabkan oleh kelalaian pengelola modal maka kerugian tersebut harus ditanggung oleh *mudharib*. Hasil penelitian menunjukkan bahwa dalam akad mudharabah mayoritas bank syariah menerapkan prinsip *revenue-sharing* yang secara tidak langsung direstui oleh Fatwa DSN 07/2000. Penerapan prinsip ini dapat memicu timbulnya rasa ketidakadilan karena bagi hasil dihitung berdasarkan laba kotor yang lebih menguntungkan pihak *shahib al-maal* dan kurang menguntungkan bagi *mudharib*. Kondisi ini membuat nasabah kurang termotivasi untuk memilih bank syariah ketimbang bank konvensional. Dilihat dari perspektif *fiqh*, bagi hasil dihitung berdasarkan keuntungan bersih sebagaimana diterapkan pada prinsip *profit/loss-sharing*, yang penerapannya juga direkomendasikan oleh OKI. Pada akhirnya, penyempurnaan pada Fatwa DSN 07/2000 perlu dilakukan untuk memberikan rasa keadilan bagi semua entitas mudharabah: *shahib al-maal* dan *mudharib*.

Kata Kunci: *Mudharabah; Shahib al-maal; Mudharib; Bagi hasil; Bank Islam*

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Abstract:

This article was created to discuss the principle of profit-sharing in the mudharabah scheme in Islamic banking and the problems contained therein using descriptive-qualitative methods through library study and literature exploratory. Mudharabah schemes are usually applied to financing and investment products that involve two parties: shahib al-maal and mudharib. Both parties collaborate to get profits which will be shared according to the nisbah agreed at the beginning of the contract. If there is a financial loss, shahib al-maal will bear everything, but if it is caused by the negligence of the capital-user then the loss must be borne by the mudharib. The results showed that in the mudharabah contract, the majority of Islamic banks apply the principle of revenue-sharing which is indirectly blessed by Fatwa DSN 07/2000. The implementation of this principle could trigger a sense of injustice because the profit-sharing is calculated based on gross profit which is more beneficial for the shahib al-maal and less profitable for the mudharib. This condition makes customers less motivated to choose Islamic banks rather than conventional banks. From the perspective of fiqh, profit-sharing is calculated based on net profit as it's applied to the principle of profit/loss-sharing as well as recommended by the OIC. At the end, improvements to the Fatwa 07/2000, needs to be done to provide a sense of justice for all mudharabah entities: shahib al-maal and mudharib.

Keywords: *Mudharabah; Shahib al-maal; Mudharib; Profit-sharing; Islamic banking*

INTRODUCTION

Mudharabah is one of the main products of Islamic banking that is most agreed upon the ulama besides *musyarakah*¹, and it is considered as one of the main components supporting the Islamic economy which is developing quite rapidly in Indonesia. However, this development was not accompanied by an evaluation of its application and criticism of the improvement of the system² or its supporting devices in the form of regulations, services, and the application of its concepts and principles. Especially in the case of profit-sharing there is still a lack of justice among the parties. *Mudharabah*

¹ Ascarya, *Sharia Bank: Contracts and Products* (Jakarta: RajaGrafindo Perkasa, n.d.), 102.

² Suherman, "Penerapan Prinsip Bagi Hasil Pada Perbankan Syariah Sebuah Pendekatan al-Maqasidu al-Syariah," *Jurnal Hukum Pranata Sosial Islam Al- Maslahah* 2, no. 3 (2014): 295–304.

agreement, in its implementation, involves the owner of the fund (*shahib al-maal*) and the fund manager (*mudharib*) who is working together in a partnership relation with the aim of gain mutual profit (*al-ribh*)³, then the profits are distributed to the parties following the ratio (*nisbah*) which was agreed in advance.⁴

Mudharabah, in the Islamic economic system, especially in Islamic finance, currently is becoming one of the promising financing schemes, Nagaoka said⁵ as cited by Anton Athoillah⁶ et.al in their article. Some studies concerning *mudharabah* financing in banking have been rising⁷ as well as business has also been carried out.⁸ Some experts in finance and contemporary Islamic economics have already written their opinions on *mudharabah*⁹, as a reasonable financing scheme.¹⁰ Previous studies of *mudharabah* have been carried out, such as conducted by Abraham L. Udovitch¹¹, Walter M. Weiss and Kurt-Michael Westermann¹². The study was

³ Wahbah Al-Zuhayli, *al-Fiqh al-Islami wa-Adillatuh* (Damascus: Dar al-Fikr, 1997).

⁴ Khudari Ibrahim, "Mudharabah Principle of Banking Products," *Jurnal IUS Kajian Hukum dan Keadilan* 2, no. 1 (2014): 42–53.

⁵ Nagaoka, S., *The Future of Capitalism and the Islamic Economy*, in Yamashita, S.; Tadashi, Y., S. Hill (Eds.) "The Kyoto Manifesto for Global Economics: The Platform of Community, Humanity, and Spirituality," *Journal Springer*, 2018.

⁶ Mohamad Anton Athoillah et al., "Muḍārabah in the Historical Trajectory of the Development of Islamic Finance : Ḥadīth Sciences Perspective," *Journal TEST Engineering & Management* 83 (2020): 6472–6492, Published by The Mattingley Publishing Co., Inc.

⁷ M. Mohamed, A.; Iqbal, *The Foundations of Islamic Banking: Theory, Practice, and Education*, Edward Elgar (2011), 198, <http://www.elgaronline.com/view/9781849807920.xml>.

⁸ B. A. Oshodi, *An Integral Approach to Development Economics: Islamic Finance in an African Context*, Gower (2014), 159–60.

⁹ A. el-Ashker, *Islamic Economics: A Short History* (Brill, 2006), 22, 143–144; N. W. Haron, S.; Azmi, *Islamic Finance and Banking System: Philosophies, Principles & Practices* (McGraw Hill, 2009), 369; Abbas Askari, Hossein; Iqbal, Zamir; Mirakhor, *Introduction to Economics: Theory and Application* (Singapore: John Wiley & Sons, 2015), 87; Mohd. M. Billah, "Islamic financial products: Principles, Instruments, and structures," *Journal Springer*, 2019, 143–151.

¹⁰ Abdullah, D. V.; Chee, K, *Islamic Finance: Why It Makes Sense (for You): Understanding Its Principles and Practices* (Singapore: Marshall Cavendish International Asia Pte Ltd., 2010).

¹¹ Abraham L. Udovitch, "At the Origins of the Western Commenda: Islam, Israel, Byzantium?," *Journal Speculum* 37, no. 2 (1962): 198–207; Abraham L. Udovitch, "Credit and a Means of Investment in Medieval Islamic Trade," *Journal of the American Oriental Society* 87, no. 3 (1967): 260–64; Abraham L. Udovitch, "Commercial Techniques in Early Medieval Islamic Trade," in *Islam and the Trade of Asia Colloquium*, ed. D. S. Richards (Pennsylvania: University of Pennsylvania Press., 1970), 37–62.

¹² Kurt-Michael Weiss; Walter M. Westermann, *The Bazaar: Markets and Merchants of The Islamic World*, ed. Kurt-Michael Westermann (Thames and Hudson. Weiss & Westermann, (1998).

also carried out by Ramli Mohd. Hilmi¹³, Jonathan G. Ercanbrack¹⁴, Simon Howard¹⁵, and Ebrahim and Sheikh.¹⁶ However, all the above-mentioned studies were focused more on the relationship between *mudharabah* with ancient roman business traditions.

Nowadays, in the Islamic banking system, there are two types of profit-sharing schemes that are implemented in the concept of *mudharabah*, i.e. profit/loss sharing¹⁷ and revenue sharing schemes¹⁸ that give advantages and disadvantages in both respectively. Currently, based on some considerations, many Islamic banks apply the principle of revenue sharing as a basis for profit sharing's calculation in a *mudharabah* agreement. By looking at reality, profit sharing and or margin is currently becoming one of the main issues in the Islamic banking system.¹⁹

According to observations made by observers, the implementation of revenue sharing schemes in *mudharabah*, which calculates the profit-sharing based on gross profit²⁰ is the center of the issue.²¹ Furthermore, the implementation of revenue sharing schemes is an embodiment of the Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000²² concerning *Mudharabah* Financing. The analysis results indicate one of the provisions in the fatwa, indirectly, encourages Islamic banking to use revenue sharing schemes which turned out to be more beneficial to the *shahib al-maal* and can cause a sense of injustice towards *mudharib*.

¹³ Ramli Mohd. Hilmi, "Commercial Partnership in Islam: A Brief Survey of Kitab al-Mudharabah of al-Mabsut by al-Sarakhsi (d. 483/1090)," *TAFHIM: IKIM Journal of Islam and the Contemporary World* 11 (2018): 79–111.

¹⁴ Jonathan G. Ercanbrack, "The Law of Islamic Finance in the United Kingdom: Legal Pluralism and Financial Competition," *Journal SOAS (School of Oriental and African Studies)*, 2011.

¹⁵ Simon Howard, "Islamic Mudharabah: Back to the Future," *Jersey & Guernsey Law Review*, 2013.

¹⁶ Ebrahim, M.-S.; Sheikh, M., "The Muḍaraba Facility: Evolution, Stasis and Contemporary Revival," *Journal of Arab Law Quarterly* 29, no. 3 (2015): 246–60.

¹⁷ The principle of revenue sharing is applied based on Syafi'i's opinion. See in Fahida, "Profit Sharing dan Revenue Sharing," Fak. Syariah IAIN Raden Fatah, n.d., <https://fatahridayat75.wordpress.com/2014/06/18/profit-sharing-dan-revenue-sharing/>.

¹⁸ The principle of loss/profit sharing is implemented based on Abu's opinion Hanifah, Malik, Zaidiyah. See in Fahida.

¹⁹ Ike Purnamasari, "Analisis Perbandingan Revenue and Profit Sharing pada Sistem Mudharabah pada PT. BPRS Hijrah Rahmah Samarinda (Kesesuaian dengan Fatwa DSN No. 15/DSN-MUI/IX/2000 Tentang Prinsip Bagi Hasil Usaha Dalam Lembaga Keuangan/Perbankan Syariah)," *Mazahib: Jurnal Pemikiran Hukum Islam* 13, no. 1 (2014): 101–114.

²⁰ Muhammad Aswad, "Skema Bagi Hasil Mudharabah: Studi Feasibility Terhadap Pemberdayaan Usaha Mikro Syari'ah," *Jurnal ADDIN* 8, no. 1 (2014): 29–52.

²¹ Suherman, "Penerapan Prinsip Bagi Hasil Pada Perbankan Syariah Sebuah Pendekatan al-Maqasidu al-Syariah."

²² Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000, First Decree, number 9.

Based on the above description, the author is interested in studying the implementation of profit-sharing in the *mudharabah* scheme within the Islamic banking system in Indonesia including the associated problems in it. In addition, the author also tries to conduct a critical review of the problems of profit-sharing pattern in Islamic banking that are require a separate and professional handling from the Islamic banking authority with the guidance of the Islamic jurisprudence (*fiqh*) scholars.

This study was conducted using descriptive methods, in which data collection was carried out through library study and literature exploratory. The data used are secondary data from various sources, such as laws and regulations and or scholars jurisprudences (fatwa), books, encyclopedias, academic journals, web pages, proceedings, and others contained in printed and electronic media, which is then analyzed. As an additional, based on the literature obtained, the authors also try to conduct, -descriptively-, a critical review of profit-sharing pattern in Islamic bank which can be used as an entry point for further research carry out separately.

DISCUSSION

Mudharabah in Islamic Bank

Mudharabah is also called *qiradh*²³ which is taken from the word *al-qardh* which means to cut²⁴, because humans (i.e. investors and recipients of capital) basically can not be separated from the goal of achieving profits in order to develop their business.²⁵ *Mudharabah*, according to the term Islamic jurisprudence (*fiqh*), is a contract that involves two parties in a business alliance. Business profits will be shared based on the agreement between the two of them.²⁶ Implicitly, the word *dha-ra-ba* which is the basic word of *mudharabah* has been mentioned in the al-Qur'an as much as fifty-eight times.²⁷ Adiwarman A. Karim²⁸ defines that *mudharabah* is a form of joint-contract between the owner of the capital and another party who acts as a user of capital for a business that can generate profits, then the

²³ Sayyid Sabiq, *Fiqhu al-Sunnah, Juz III* (Beirut: Dar al-Tsiqafah Islamiyah, n.d.), 147.

²⁴ Ahmad Dahlan, *Bank Syariah Teori, praktik, kritik* (Yogyakarta: Teras, 2012), 128.

²⁵ Enang Hidayat, *Transaksi Ekonomi Syari'ah* (Bandung: Remaja Rosdakarya, 2016), 156–57.

²⁶ Syarif Hidayatullah, *Qawa'id Fiqiyyah dan Penerapannya dalam transaksi keuangan Syari'ah kontemporer* (Depok: Gramata Publishing, 2012), 103.

²⁷ Abdullah Saeed, *Bank Islam Dan Bunga Studi Kritis Dan Interpretasi Kontemporer tentang Riba dan Bunga* (Yogyakarta: Pustaka Pelajar, 2008), 91.

²⁸ Hidayatullah, *Qawa'id Fiqiyyah dan Penerapannya dalam transaksi keuangan Syari'ah kontemporer*, 104.

profits are divided based on the ratio (*nisbah*) agreed at the beginning of the contract agreement.²⁹

The same statement was also made by Ahmad asy-Syarbasyi, as quoted by Syafi'i Antonio³⁰. Likewise, Sa'ad bin Gharir as-silmi³¹ has the same thought. Meanwhile, according to Frista Armanda Widodo³², *mudharabah* is a form of partnership in *muamalah* that combines financial experience with business experience, and the profits are divided based on the ratio determined at the beginning of the agreement. In the case of business loss, the investor (*shahib al-maal*) bears all financial risks and the executor (*mudharib*) only loses his work value if the loss is beyond the executor's control.³³

In practice, *Mudharabah* products are divided into: (1) *Mudharabah-Mutlaqoh*³⁴, cooperation between parties with a wider scope that is not limited by time, business specifications, and business area; and (2) *Mudharabah-Muqayyadah*³⁵, this type of *mudharabah* is limited by time, business specifications, and areas of doing business.³⁶ The majority of Islamic banks currently implement *mudharabah-mutlaqah* which provides flexibility for banks to channel these funds to customers.³⁷ Whereas, *mudharabah-muqayyadah* is still not maximally implemented, even less popular because many customers consider it has a complicated path and difficult to be run, even though this type of *mudharabah* can be a solution for the nation's

²⁹ Dendy Herdiyanto, "Akad Mudharabah : Pengertian, Dalil, Contoh, Praktik Kontemporer," Artikel Ekonomi Islam Qazwa, n.d., <https://qazwa.id/blog/mudharabah/>.

³⁰ Antonio Muhammad Syafi'i, *Bank Syariah dari Teori ke Praktik* (Jakarta: Gema Insani Press., 2003), 95.

³¹ Muhammad Arifin Badri, *Riba dan Tinjauan Kritis Perbankan Syariah* (Bogor: Pustaka Darul Ilmi, 2010), 131.

³² Frista Artmanda Widodo, *Kamus Istilah Ekonomi* (Jombang: Lintas Media, n.d.), 447.

³³ Ascarya & dan Diana Yumanita, "Bank Syariah: Gambaran Umum," *Pusat Pendidikan dan Studi Kebanksentralan (PPSK) BANK INDONESIA* (Jakarta, 2005), 21, <https://doi.org/Seri Kebanksentralan No. 14>.

³⁴ Fariz Al-Hasni, "Akad Mudharabah Mutlaqah dalam Praktik Perbankan Syariah," *Muamalat: Jurnal Hukum Ekonomi Syariah* 9, no. 2 (2017): 208–222; Edison Sutan Kayo, "Prinsip Mudharabah Bank Syariah (Mutaqlah, Muqayyadah)," Artikel Saham OK, n.d.

³⁵ Sanabila, "Mudharabah Muqayyadah," Artikel Sanabila.com, diakses 1 September 2020, <http://www.sanabila.com/2015/08/mudharabah-muqayyadah.html>; Nurjamal, "Kenali Pengertian Akad Mudharabah Muqoyyadah," Article gomuslim.co.id, n.d., https://www.gomuslim.co.id/read/investasi_syariah/2019/09/10/14550/-p-kenali-pengertian-akad-em-mudharabah-muqoyyadah-em-p-.html.

³⁶ Khaerul Umam, *Islamic Banking Management* (Bandung: Pustaka Setia, 2013), 32–33.

³⁷ Rifka Abadi, "The Power of Mudharabah Muqayyadah," Artikel Kompasiana, n.d., <https://www.kompasiana.com/rifkadejavu/57c4f772bd22bd2b3e19c5ea/the-power-of-mudharabah-muqayyadah#>:

economic structure.³⁸ In today's modern banking practice, the term *mudharabah-muqayyadah* has been changed to *mudharabah-muqayyadah on-balance sheet*³⁹ and *mudharabah-muqayyadah off-balance sheet*.⁴⁰ Nowadays, most of the Islamic banks implement the *mudharabah-muqayyadah on-balance sheet* scheme in their operations.

Currently, transactions with the *mudharabah* scheme have been regulated in Law No 21 of 2008 which introduces several new legal institutions appointed to support the implementation of national development to improve justice, togetherness, and equitable distribution of social welfare.⁴¹ Thus, transactions with a *mudharabah* agreement on Islamic banking products currently have a juridical basis.⁴² In accordance with the provisions in Law No. 21 of 2008, the *mudharabah* financing agreement can be elaborated by the DSN-MUI Fatwa No. 07/DSN-MUI/IV/2000 as a reference for the *mudharabah* financing contract.⁴³ The National Sharia Council (*DSN: Dewan Syariah Nasional*)⁴⁴ has the authority to give reprimand or warnings to Islamic bank entities that deviate from the established guidelines and are not comply with sharia principles.⁴⁵ A reprimand or warnings will be given to Islamic banking after receiving a report from the Sharia Supervisory Board (*DPS: Dewan Pengawas Syariah*) regarding any deviation from the guidelines or principles outlined by sharia.⁴⁶

³⁸ Abadi.

³⁹ *Mudharabah-muqayyadah on-balance sheet* illustrates a single flow of fund to a group of entrepreneurs in several limited business sectors, such as agriculture, manufacturing, and services, whose activities are recorded on the bank balance sheet. See Adiwarman A. Karim, *Bank Islam Analisis Fiqih dan Keuangan* (Jakarta: RadjaGrafindo Persada, 2006), 121–123.

⁴⁰ *Mudharabah-muqayyadah off-balance sheet* is specifically for single customer financing, and the bank only acts as arranger. See Nun Harrieti, "Pelaksanaan Akad Mudharabah Muqayyadah Off Balance Sheet pada Perbankan Syariah dan Pengaturannya di Indonesia," *Jurnal Hukum POSITUM* 1, no. 2 (n.d.): 244–264.

⁴¹ Khotibul Umam, *Perbankan Syariah (Dasar-Dasar dan Dinamika Perkembangan di Indonesia)* (Jakarta: RajaGrafindo Persada, 2015), 8–9.

⁴² Ach Faqih Supandi, "Optimalisasi Akad Mudharabah Dalam Perbankan Syariah (Analisis Terhadap Akad Mudharabah Dan Relevansinya Pada Fatwa Dsn-Mui Di Indonesia)" 5, no. 1 (2019): 72–82.

⁴³ Fanni, Alfina Taswirul & Prasetyo, Ari, "Kesesuaian Fatwa DSN MUI No. 7/DSN-MUI/IV/2000 dalam Produk pembiayaan kepada Koperasi untuk Anggota (PKPA) di Bank Jatim Syariah Cabang Darmo Kota Surabaya," *Jurnal Ekonomi Syariah Teori dan Terapan* 4, no. 1 (2017): 27–43.

⁴⁴ Navirta Ayu, "Dunia Perbankan Syari'ah, Mengapa Adanya DSN dan DPS?," Artikel Kompasiana, n.d., <https://www.kompasiana.com/navirtaayu/5a58a6abf133440bf06e23a3/dunia-perbankan-syari-ah-mengapa-adanya-dsn-dan-dps?page=all>.

⁴⁵ Irwan Misbach, "Kedudukan dan Fungsi Dewan Pengawas Syariah dalam Mengawasi Transaksi Lembaga Keuangan Syariah di Indonesia," *Jurnal UIN Alauddin*, 2015, 79–93.

⁴⁶ Muhammad Syafi'i Antonio, *Bank Syariah dari Teori ke Praktik* (Jakarta: Gema Insani Press., 2009), 235–236.

Profit-Sharing Principles with Associated Problems in *Mudharabah*

In Islamic financial system, all financial arrangement are based on sharing risk and return.⁴⁷ This concept underlies the *mudharabah* contract. Suherman⁴⁸ said, in *mudharabah* contract, profit/loss-sharing is a term for sharing profit between *shahib al-maal* (fund owner) and *mudharib* (fund beneficiary) which can be interpreted as the distribution of income for the business that has been carried out.⁴⁹ Profits will be shared according to the *nisbah* that has been agreed between the parties⁵⁰ on the basis of *antarodin*.⁵¹ In the event of a financial loss in this alliance, then the *shahib al-maal* will bear all such losses, but if the loss occurs due to *mudharib*'s negligence, then the entire loss must be borne by the *mudharib* mercilessly.⁵² The result showed this situation put the *shahib al-maal* in a position not to get back his investment as a whole, and on the other side, *mudharib* did not get any benefit from the efforts they had already put in.

According to al-Shan'ani⁵³, In the perspective of fiqh the *mudharabah* contract is carried out based on trustworthy (*amanah*) and *wakalah*, therefore the role of *mudharib* in this case is as *al-amin*⁵⁴ (a trusted person) in the front of *shahib al-maal*. Hence, the funds delivered were an embodiment of the

⁴⁷ Hossein Askari; Zamir Iqbal; Abbas Mirakhor, *Introduction to Economics: Theory and Application*, 165.

⁴⁸ Suherman, "Penerapan Prinsip Bagi Hasil Pada Perbankan Syariah Sebuah Pendekatan al-Maqasidu al-Syariah."

⁴⁹ Yahya, Muchlis & Agunggunanto, Edy Yusuf, "Teori Bagi Hasil (Profit and Loss Sharing) dan Perbankan Syariah dalam Ekonomi Syariah," *Jurnal Dinamika Ekonomi Pembangunan* 1, no. 1 (2011): 65–73; Fahrurrozi, "Konsep Perjanjian Profit and Loss Sharing dalam Ekonomi Islam," *Jurnal Ekonomi dan Perbankan Syariah Iqtishadia* 3, no. 2 (2016): 307–323.

⁵⁰ Sri Abidah Suryaningsih, "Aplikasi Mudharabah dalam Perbankan di Indonesia," *Jurnal Ekonomika Bisnis* 4, no. 1 (2013): 13–24; Heru Maruta, "Akad Mudharabah, Musyarakah, dan Murabahah serta Aplikasinya dalam Masyarakat," *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 5, no. 2 (2016): 80–106; Iin Fadilatul Imamah, "Penentuan Nisbah Bagi Hasil pada Pembiayaan Mudharabah dan Perlakuan Akuntansinya (Studi Kasus pada KSPPS BMT NU Cabang Wringin Kabupaten Bondowoso)," *E-Jurnal Ekonomi dan Bisnis Universitas Udayana* 8, no. 2 (2019): 199–220.

⁵¹ Muhamad Kholid, "Prinsip-Prinsip Hukum Ekonomi Syariah dalam Undang-Undang tentang Perbankan Syariah," *Jurnal Asy-Syari'ah UIN SGD* 20, no. 2 (2018): 145–62.

⁵² Noraina Mazuin Sapuan, "An Evolution of Mudharabah Contract: A Viewpoint From Classical and Contemporary Islamic Scholars," in *7th International Economics & Business Management Conference* (Procedia Economics and Finance 35 (2016), n.d.), 349 – 358, www.elsevier.com/locate/procedia; Friyanto, "Pembiayaan Mudharabah, Risiko dan Penanganannya (Studi Kasus pada Bank BTN Kantor Cabang Syariah Malang)," *Jurnal Manajemen dan Kewirausahaan* 15, no. 2 (2013): 113–122: See Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000 concerning *Mudharabah* Financing, 2nd Decree, number 4, (c).

⁵³ Al-Shan'ani, *Subul al-Salam*, Cet. V, Juz III (Dar al-Kutub al-'Arabi, 1990), 178.

⁵⁴ Heriyansyah, "Perjalanan Bisnis Nabi Muhammad Saw," *Jurnal Ekonomi dan Bisnis Islam Ad-Deenar* 2, no. 2 (2018): 190–205.

mandate entrusted by *shahib al-Maal* to *mudharib*.⁵⁵ Consequently, *mudharib* has no obligation to be responsible for any risk of loss arising from these funds, except in cases of abuse, negligence, or deviant *mudharib* acts.⁵⁶

In practice, the *mudharabah* contract may result in consequences that pose a risk to the owner of funds against the possibility of a bank business loss. However, according to Karnaen A. Perwataatmadja, the risk is relatively light due to the central bank's tight supervision to the banking operations.⁵⁷ What's more, to protect funders, banks are required to comply with various kinds of government and central bank regulations.⁵⁸ But, on the contrary, the results show that when a bank acts as a *shahib al-maal* in a *mudharabah* financing contract, the bank faces a higher risk due to the absence of standard provisions regarding operating costs, unforeseen fees, for various types of businesses. This expense is very difficult to verify.⁵⁹ Currently, the only operational cost standard that can be verified is "regional minimum wage" (*upah minimum regional*)⁶⁰, while the standard for other operational costs is not available yet. This condition has the potential to create a considerable high risk for banks.

This high risk consideration that makes Islamic banks prioritize the channeling funds to the public in the form of non-profit sharing trade financing (*murabahah*) rather than profit sharing capital investment (*mudharabah and musyarakah*). This opinion is in line with the results of Cut Faradila's⁶¹ research shows that *murabahah* financing has a positive and significant effect on the profitability of Islamic banks, while *mudharabah* partially does not affect the profitability of Islamic commercial banks in Indonesia. The one that has a direct impact on economic growth is financing

⁵⁵ Purnamasari, "Analisis Perbandingan Revenue and Profit Sharing pada Sistem Mudharabah pada PT. BPRS Hijrah Rahmah Samarinda (Kesesuaian dengan Fatwa DSN No. 15/DSN-MUI/IX/2000 Tentang Prinsip Bagi Hasil Usaha Dalam Lembaga Keuangan/Perbankan Syariah)."

⁵⁶ Yahya Hidayat Putra, "Tinjauan Hukum Islam terhadap Pola Bagi Hasil (Mudharabah) pada BUMP (Studi Kasus di Pondok Pesantren Al-Luqmaniyyah Umbulharjo Yogyakarta)," *Jurnal Al-Mazahib* 5, no. 2 (2017): 345–358.

⁵⁷ Karnaen A. Perwataatmadja, "Upaya Memurnikan Pelayanan Bank Syariah, Khusus Pembiayaan Murabahah Dan Mudharabah di Indonesia," *Makalah, Komisi Ahli Perbankan Syariah Bank Indonesia*, 2002, 13.

⁵⁸ Perwataatmadja.

⁵⁹ Friyanto, "Pembiayaan Mudharabah, Risiko dan Penanganannya (Studi Kasus pada Bank BTN Kantor Cabang Syariah Malang)."

⁶⁰ Regional Minimum Wage is a minimum standard used by industry players to pay wages to employees or laborers, regulated by the Minister of Manpower Regulation. Please see: Atenda, "Pengertian dan Perbedaan UMR UMP UMK", *Artikel Atenda*, (29 Jan 2020), <https://www.atenda.id/berita/Pengertian-dan-Perbedaan-UMR-UMP-UMK/23#>:

⁶¹ Cut Faradila et.al, "Pengaruh Pembiayaan Mudharabah, Ijarah, Mudharabah dan Musyarakah terhadap Profitabilitas Bank Umum Syariah di Indonesia," *Jurnal Magister Akuntansi Pascasarjana Unsyiah* 6, no. 3 (2017): 10–18.

in the form of capital investment, such as *mudharabah* and *musyarakah* schemes, said Chairul Hadi.⁶²

Capital direct investment can strengthen the state budget (APBN) posture and the government's fiscal policy design that have an impact on employment opportunities and increase in society incomes.⁶³ This opinion is in line with the opinion of Karnaen A. Perwataatmadja⁶⁴ and the majority of scholars as well as other experts who emphasize that financing with profit sharing schemes (*mudharabah/musyarakah*) must be prioritized and dominating Islamic bank financing products rather than non-profit schemes (*murabahah*)⁶⁵ because profit sharing is the main principle of Islamic banking.⁶⁶ Data obtained from BI (Bank Indonesia) clearly shows that the non-profit sharing financing scheme is still dominating the national Islamic banking today.⁶⁷ It cannot be denied that Islamic bank financing is more focused on the *murabahah* financing scheme. The results show that a similar situation also occurs in the world's top Islamic banks which also tend to use the *murabahah* scheme as a mainstay of financing⁶⁸, such as Bahrain Islamic Bank, Faysal Islamic Bank, Islamic Bank of Malaysia, Kuwait Finance House, and others, where the average usage reaches 70% of the total financing.⁶⁹

⁶² A. Chairul Hadi, "Problematika Pembiayaan Mudhârabah di Perbankan Syariah Indonesia," *Jurnal Al-Iqtishad* 3, no. 2 (2011): 193–208.

⁶³ Renny Jaurino; Wulandari, "The Effect of Mudharabah and Musyarakah on The Profitability of Islamic Banks," in *3rd Parahyangan International Accounting & Business Conference* (Bandung: piabc.fe.unpar.ac.id, 2007), 69–84; Muhammad Jais, "Mudharabah and Musharakah as an Equity Financing Model: Issues in Practice," in *2nd Aceh Global Conference on Business Economics and Sustainable Development Trends (AGC-BEST)* (Banda Aceh, 2019), 107–114; Taudlikhul Afkar, "Influence Analysis of Mudharabah Financing and Qardh Financing To The Profitability of Islamic Banking In Indonesia," *AJIE - Asian Journal of Innovation and Entrepreneurship* 2, no. 3 (2017): 340–351.

⁶⁴ Perwataatmadja, "Upaya Memurnikan Pelayanan Bank Syariah, Khusus Pembiayaan Murabahah Dan Mudharabah di Indonesia."

⁶⁵ M. Shabri Sabrina & Abd. Majid, "Mengapa Pembiayaan Berbasis Bagi Hasil Rendah di Perbankan Syariah? (Suatu Kajian Menggunakan Pendekatan Grounded Theory)," *Jurnal Ilmiah Mahasiswa Ekonomi Islam*, *Jurnal Ilmiah Mahasiswa Ekonomi Islam* 1, no. 1 (2019): 51–71.

⁶⁶ Ascarya & dan Yumanita, "Bank Syariah: Gambaran Umum," 7.

⁶⁷ Ana Toni et.al, "Pembiayaan Bagi Hasil, Pembiayaan Jual Beli dan Risiko Pembiayaan serta Margin Laba pada Bank Syariah," in *Seminar Nasional dan Call for Paper: Manajemen, Akuntansi dan Perbankan*, 2018, 1289–1310.

⁶⁸ Lukmanul Hakim & Amelia Anwar, "Pembiayaan Murabahah pada Perbankan Syariah dalam Perspektif Hukum di Indonesia," *Jurnal Ekonomi Syariah dan Filantropi Islam Al-Urban* 1, no. 2 (2017): 212–223.

⁶⁹ Ascarya et.al, "Working Paper: Domination of Non-Profit Sharing Financing in Islamic Banking: Problems and Solutions," Center for Education and Study of the central bank of Bank Indonesia (Jakarta, 2004), 9.

The dominance of non-profit sharing financing is not an ideal condition. Most of the Islamic banking circles as well as the majority of scholars agree that profit sharing is considered the most appropriate financing scheme that can be used as the prime mover of accelerating the development of economic welfare in society as emphasized by Monzer Kahf.⁷⁰ Hence, in essence, the use of the profit-sharing principle as contained in the *mudharabah* concept is a manifestation of the Islamic banking spirit. This is caused by (1) Profit sharing in Islamic banks can reduce the possibility of an economic recession and financial crisis because Islamic banks are asset-based financial institutions.⁷¹ It means, Islamic banks make transactions based on real assets, not solely based on working papers and documents, unlike transactions that occur in conventional banks which are solely based on working paper and documents, then burdening prospective customers with interest rates; (2) Improving the investment climate⁷² coupled with the opening of employment opportunities that will reduce the unemployment rate and increasing people's income.⁷³ (3) Profit-sharing financing schemes will automatically encourage the growth of entrepreneurs who dare to make risky business decisions.⁷⁴ According to Ascarya⁷⁵, the reasons mentioned above can certainly encourage the emergence of various new business innovations, which in turn can enhance the nation's competitiveness, both nationally and internationally, which leads to the country's economic growth.⁷⁶

⁷⁰ Hakim, Hakim, A. (2013). *Rendahnya Realisasi Pembiayaan Mudharabah Dalam Perbankan Syariah di Indonesia: Studi Kritis atas Relevansi Perbankan Syariah Terhadap Misi Gerakan Ekonomi Islam* (Surabaya, 2013); Gurhanawan, "Strategi Optimalisasi Pembiayaan Mudharabah Pada Bank Syariah," *Indonesian Journal of Religion and Society* 2, no. 1 (2020): 59–73.

⁷¹ Siti Mujibatur, "Prospek Ekonomi Syari'ah Melalui Produk Mudharabah dalam Memperkuat Sektor Riil," *Jurnal Economica* 4, no. ed. 1 (2013): 141–155.

⁷² Hermawan Riyanto, "Optimalisasi Pembiayaan Berbasis Bagi Hasil pada Bank Devisa Syariah di Indonesia," *Jurnal Ekobis* 17, no. 1 (2016): 54–65; Muhammad Aswad, "Ekonomi Politik Keuangan Syariah di Indonesia," *Jurnal Dinamika* 15, no. 1 (2015): 29–48; Ahmad Danu Syaputra, "Hubungan Sistem Bagi Hasil di Lembaga Keuangan Syariah dengan Keinginan Nasabah untuk Berinvestasi di BPR Syariah Bangun Drajat Warga Yogyakarta," *Islamadina: Jurnal Pemikiran Islam* 18, no. 2 (2017): 21–40.

⁷³ Hadi, "Problematisasi Pembiayaan Mudharabah di Perbankan Syariah Indonesia."

⁷⁴ Romario Pangaribuan, "Entrepreneur Muda dengan Sistem Syariah: Mendidik atau Mencekik?," Artikel Kompasiana, 2017, <https://www.kompasiana.com/romariopangaribuan/59ad8b8a12c55b492d6cafc2/entrepreneur-muda-dengan-sistem-syariah-mendidik-atau-mencekik>.

⁷⁵ Ascarya et.al, "Working Paper: Domination of Non-Profit Sharing Financing in Islamic Banking: Problems and Solutions."

⁷⁶ M. Arief Khumaidi, "Potensi Keuangan Syariah Dalam Mendukung Pertumbuhan Ekonomi," Artikel Sekretariat Kabinet R.I., 2015, <https://setkab.go.id/potensi-keuangan-syariah-dalam-mendukung-pertumbuhan-ekonomi/>.

Based on the results, nowadays the capital investment agreement can be chosen based on profit/loss-sharing or revenue-sharing principles.⁷⁷ In the principle of revenue-sharing, the share of profit is calculated based on total revenue before deducting other expenses as well as management and operational costs.⁷⁸ To make it clearer, revenue-sharing in the banking definition is the calculation of profit-sharing based on overall revenue before deducting other costs incurred. In other words, profit sharing is calculated based on total income before deducting operating costs.⁷⁹ Revenue in the definition of the conventional banking system is the amount of bank interest received upon loans or deposits charged by the bank. Whereas in Islamic banking, what is meant by revenue is the proceeds received by the bank from channeling funds (investment) into earning assets activa, i.e. the placement of funds with other parties. This is the added value obtained from the difference between earning assets and the receiving value of bank⁸⁰ that is commonly known as the gross profit.

The choice of a profit-sharing scheme generally becomes a problem in itself when the bank plays the role of a *shahib al-maal* who delivered the financing capital to the entrepreneur customers (*mudharib*). The bank has the potential to face risks if the bank is not allowed to interfere in the business activities carried out by the *mudharib*⁸¹ as the provisions contained in Fatwa DSN-MUI No. 07 of 2000. The most common explanation is that there is moral hazard as a manifestation of *mudharib*'s bad behavior that is less transparent to run its business capital.⁸² It should be noted that this is a high risk for the bank because the bank provides capital to *mudharib* who does the work and management, and the *mudharib* only becomes the guarantor in the event of negligence and the violations caused by it. Meanwhile, when banks play the role of *mudharib*, banks as required by the rules to be transparent, and also are always monitored by the central bank (*Bank*

⁷⁷ Wika Ramdhani Hafid et.al., "Penerapan Prinsip Profit Sharing dan Revenue Sharing Program Tabungan Mudharabah dan Deposito Mudharabah (Studi pada PT Bank Muamalat Kantor Cabang Makassar)," *Jurnal Ekonomi, Keuangan dan Perbankan Syariah Al-Mashrafiyah* 2, no. 1 (2018): 65–81; Wardiah & Azharsyah Ibrahim, "Mekanisme Perhitungan Keuntungan dan Pengaruhnya terhadap Bagi Hasil (Studi terhadap Pembiayaan Mudharabah pada BPRS Hikmah Wakilah Banda Aceh)," *Jurnal SHARE* 2, no. 1 (2013): 26–45.

⁷⁸ Suherman, "Penerapan Prinsip Bagi Hasil Pada Perbankan Syariah Sebuah Pendekatan al-Maqasidu al-Syariah."

⁷⁹ Suherman.

⁸⁰ Suherman.

⁸¹ See Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000, 2nd Decree, number 5, letter (a).

⁸² Maulida Dwi Agustin & Abdul Mukti Thabrani, "Meminimalisir Resiko Moral Hazard pada Pembiayaan Mudharabah di Koperasi Syariah Nuri Jawa Timur (KSN Jatim) Plakpak Kecamatan Pegantenan Pamekasan," *Jurnal Iqtishadia* 2, no. 2 (2015): 191–202.

Indonesia) and or Sharia Supervisory Board (*Dewan Pengawas Syariah*).⁸³ Therefore, Presley and Session in Karim⁸⁴ said: to control or minimize the possibility of the occurrence of information asymmetric risk (moral hazard), Islamic banks need to apply the principle of revenue-sharing.

The choice between profit/loss-sharing and revenue-sharing has different consequences. If a profit/loss-sharing scheme is chosen, the profit sharing will be calculated based on the difference between the earning assets and the receiving value of the bank that have been deducted by all the necessary costs incurred in advance (net-profit based). When the choice goes to the revenue-sharing scheme, the consequence is that the amount to be shared could be more (gross profit based).⁸⁵ The choice of the revenue-sharing scheme will reduce the amount of profit-sharing received by *mudharib* because all operational costs should be borne by *mudharib*.⁸⁶ When the revenue-sharing is implemented, *shahib al-maal* is the one who's always getting more benefits. On the contrary, the selection of profit/loss-sharing will make *mudharib* more profitable, and put *shahib al-maal* on a disadvantaged position if the operational costs incurred by *mudharib* are fully uncontrollable.⁸⁷

The implementation of a revenue-sharing scheme is allowed based on an agreement between DSN-MUI and the Financial Accounting Standards Board of Indonesian Institute of Accountants.⁸⁸ The choice of this scheme is carried out with consideration that the role of the bank as a trustee as well as a mandate's holder of the capital has difficulty recognizing the expenses conveyed by *mudharib* who act as a business actor. Nevertheless, in current *mudharabah* financing, the *shahib al-maal* is allowed to ask for collateral from the *mudharib* as a guarantee of security for the funds channeled. This collateral system has been implemented by most Islamic banks in some countries.⁸⁹ *International Islamic Bank for Investment and Development* (IIBID)

⁸³ Hadi, "Problematika Pembiayaan Mudhârabah di Perbankan Syariah Indonesia."

⁸⁴ A. Karim, "Perbankan Syari'ah: Peluang, Tantangan dan Strategi Pengembangan," *Jurnal Agama, Filsafat dan Sosial* 3, no. 3 (2001): 33.

⁸⁵ Suherman, "Penerapan Prinsip Bagi Hasil Pada Perbankan Syariah Sebuah Pendekatan al-Maqasidu al-Syariah.;" See the comparison between profit/loss-sharing and revenue-sharing in: Ahardi, "Profit Sharing and Revenue Sharing in Islamic Banks", Sharinvest.com Article, (4 April 2020), <https://www.sharinvest.com/profit-sharing-and-revenue-sharing/>

⁸⁶ See Fatwa DSN-MUI No. 07 of 2000 concerning Mudharabah Financing, First Decree, number (9): Operational costs are charged to *mudharib*.

⁸⁷ Eka Jati Rahayu, "Mitigasi Resiko Akad Pembiayaan Mudharabah pada Perbankan Syariah," *Jurnal Muqtasid* 4, no. 1 (2013): 55–73.

⁸⁸ Erty Rospyana Rufaida & Alamsyah, "Metode Pengakuan Pendapatan Bagi Hasil," *Jurnal Hukum Ekonomi Syariah J-HES* 3, no. 1 (2019): 27–39.

⁸⁹ Iraj Toutouchian, "Collateral in Islamic Finance," *IslamicMarket*, diakses 2 September 2020, <https://islamicmarkets.com/education/collateral-in-islamic-finance>.

in carrying out *mudharabah* financing requires collateral from *mudharib* to the bank. Just like in the *mudharabah* financing agreement at the Faisal Islamic Bank of Egypt (FIBE) which one of the requirements is: in case it's proven that *mudharib* does not utilize the funds properly or, does not maintain its business as per terms and conditions have been determined by *shahib al-maal*, then *mudharib* must bear the losses entirely or, the collateral will be disbursed as a compensation for the loss he experienced.⁹⁰ In Indonesia, provisions concerning collateral that should be submitted by *mudharib* to *shahib al-maal* in the context of *mudharabah* financing is regulated in Central Bank Regulation (*Peraturan BI*) No. 7/46/PBI/2005.⁹¹

When viewed from a sharia perspective, what is desired is a profit/loss-sharing scheme because this profit-sharing model was exemplified by the Prophet Muhammad Saw when he became a *mudharib* for Siti Khadijah r.a. But, the bank firmly believed that it was very difficult to find *mudharib* who had personal qualities close to the Prophet.⁹² Furthermore, when viewed from the Islamic jurisprudence (*fiqh*) perspective, actually profit-sharing in *mudharabah* is based on net-profit that has already been deducted from all costs, it should not be based on gross-profit.⁹³ In the *mudharabah* agreement, the sharing of profit can only be released after its value is clear. It means the profits gained have been deducted from the other expenses other than capital costs. This opinion is under the statements of the *fuqaha* from the mazhab Hanafiyyah, Malikiyyah, and some of Hanabilah schools who argue that *'amil (mudharib)* is not entitled to a share of the profits unless the *shahib al-maal* has been obtaining a full return of the capital/fund he invested.⁹⁴ This gives an understanding that the return of capital to *shahib al-maal* must take precedence, after that the profits can be shared according to the *nisbah* agreed at the beginning of the contract. *Mudharib* is not obliged to fully return the business capital when a loss occurs, except for losses due to *ta'addi, tafrih, or mukhalafat al-syuruth*.⁹⁵

⁹⁰ Ibn Rusyd, *Bidayah al-Mujtahid*, Vol. II (Bayrut: Dar al-Fikr, n.d.), 179; Al-Zuhayli, *al-Fiqh al-Islami wa-Adillatuh*, (Bayrut: Dar al-Fikr, 1997), 3945.

⁹¹ Article 6, letter (o): Banks can ask for guarantees or collateral to anticipate risks if the customer cannot fulfill the obligations as stated in Contract due to negligence and/or fraud.

⁹² Hadi, "Problematika Pembiayaan Mudhârabah di Perbankan Syariah Indonesia."

⁹³ Suherman, "Penerapan Prinsip Bagi Hasil Pada Perbankan Syariah Sebuah Pendekatan al-Maqasidu al-Syariah."

⁹⁴ DSN-MUI, *Himpunan Fatwa Dewan Syariah Nasional untuk Lembaga Keuangan Syariah*, h. 87-90; Danang Wahyu Muhammad & Mega Mustika, "The Charging of Administrative Fee for Customers of Mudharabah Saving Depositors," *Jurnal Media Hukum* 26, no. 1 (2019): 98–111.

⁹⁵ Oni Syahrani, "Konsultasi Syariah: Bagi Hasil dengan Syarat Balik Modal," Artikel *Republika.co.id*, n.d., <https://republika.co.id/berita/ekonomi/syariah-ekonomi/18/04/05/>

The opinion of the majority of fiqh scholars is in line with the initiation of some OIC (Organisation of Islamic Cooperation) member countries in collaboration with the *Fiqh* Academy and IRTI (Islamic Research and Training Institute) - IDB (Islamic Development Bank) that was held in April 1993 in Jeddah, Saudi Arabia⁹⁶, as an effort to purify Islamic bank's services back to the profit/loss-sharing principle. However, is it possible to apply the profit/loss-sharing principle to Islamic banks in Indonesia? Taking into account the high operational costs of Islamic banks in Indonesia making the profits to be shared with depositors (funders) who act as *shahib al-maal* will be smaller than when the previous revenue-sharing scheme was implemented. Then, will it be able to compete with conventional bank deposit interest rates?, and can it motivate customers to choose Islamic banks as the last resort landing for their funds? To answer the above questions, a separate study can be conducted.

Every entrepreneur (*mudharib*), in running a business, expects a good profit accompanied by the smallest possible capital and operating costs. In business, this desire looks normal. Thus, in choosing the source of financing, an entrepreneur will be very careful to make comparisons between the expected rate of return offered by Islamic banks with conventional bank interest rates.⁹⁷ Entrepreneurs as business actors will be very happy and prefer the *mudharabah* financing scheme if they realize that the profit-sharing pattern applied by Islamic banks is more profitable than conventional bank interest rates.

Although the trend of Islamic banking has shown encouraging results, is the market demand for Islamic banking services greater than conventional banking? Hanif⁹⁸, has tried to assess the performance of Islamic banks by looking at the driving factors that motivate customers to choose Islamic banks. And then he found differences in the financial performance of Islamic and conventional banks as well as customer motivation towards the two banks.⁹⁹ Therefore, the results indicate that the Islamic banking authority urgently needs to make breakthrough efforts to improve its

p6poza416-konsultasi-syariah-bagi-hasil-dengan-syarat-balik-modal.

⁹⁶ Rahayu, "Mitigasi Resiko Akad Pembiayaan Mudharabah pada Perbankan Syariah."

⁹⁷ Ascarya et.al, "Working Paper: Domination of Non-Profit Sharing Financing in Islamic Banking: Problems and Solutions.;" Expected rate of return is the ratio between annual profit-sharing received by the fund managers with the lending capital provided by Islamic banks.

⁹⁸ Hanif Muhammad; Mahris Tariq Arsshiya Taher Wajesh ul Momeneen, "Comparative performance study of conventional and Islamic banking in Pakistan," *International Research Journal of Finance and Economics*, no. 83 (2012): 62–73.

⁹⁹ Ely Masykuroh, "Penduduk Muslim sebagai Potensi Pasar Perbankan Syariah (Studi Komparasi Kekuatan Pasar Perbankan di Indonesia)," *Jurnal Kodifikasia IAIN Ponorogo* 11, no. 1 (2017): 131–55, <https://doi.org/10.21154/kodifikasia.v11i1.1138>.

services to be able more effective and efficient, as the spirit contained in Islamic teachings. In the current circumstances, to encourage customers to choose an Islamic bank in Indonesia, both schemes of profit sharing might be applied as stipulated in Central Bank Regulation (*Peraturan BI*) No. 7/46/PBI/2005. Revenue-sharing maybe be applied in collecting funds¹⁰⁰ and profit/loss-sharing could be applied for channeling working capital financing.¹⁰¹ Of course, this compromise method can be backed up by implementing a collateral system that has been implemented by most Islamic banks in several countries.

As time goes by, the profit/loss-sharing scheme in *mudharabah* could be a raw model in the Islamic banking system in Indonesia. The application of an appropriate profit-sharing pattern, without any partiality to one of the parties in the *mudharabah* entity, is essentially a manifestation of justice in profit sharing that is enjoyed by (1) bank customers as *shahib al-maal* and the bank as *mudharib* by implementing a revenue-sharing scheme in collecting funds, and (2) the bank as *shahib al-maal* and the entrepreneur customers as *mudharib* by implementing profit/loss-sharing scheme in channeling working capital financing. Furthermore, the Islamic banking industry together with the government and central bank should synergize each other.¹⁰² Umer Chapra¹⁰³ said, one of the efforts that need to be watched out for is by preparing various infrastructures that can support business activities both in the real sector and real transaction based on profit-sharing to encourage national economic growth in line with the mission and vision of national Islamic banking development, and finally creating a prosperous society both materially and spiritually (*falah*).¹⁰⁴

Critical Review of the Profit-Sharing Patterns in Islamic Bank

The following is a critical review regarding the profit-sharing pattern in *mudharabah* products in Islamic banking, including:

¹⁰⁰ Article 5, letter (f): The bank as a mudarib bears the operational costs of the savings or deposits by using the ratio that is part of it.

¹⁰¹ Article 6, letter (k): Profit is shared by applying profit/loss-sharing or revenue-sharing.

¹⁰² Bank Indonesia, "The Role of Bank Indonesia in Sharia Banking Development," in *Sharia Economic Gathering Seminar 4, Bank Indonesia, "The Role of Bank Indonesia in Sharia Banking Development", Article Sharia Economic Gathering Seminar 4, Kajian Ekonomi Syariah Persada, UKM Ishlah LPT UPI YAI* (Jakarta, 2006), 6–7.

¹⁰³ M. Umer Chapra, *Prohibition of Interest: Does It Make Sense?*, (Durban: IDM Publication, 2001), 28.

¹⁰⁴ Bank Indonesia, "The Role of Bank Indonesia in Sharia Banking Development."

1. Dual-Role of Islamic Banking

The function of the Islamic bank as an intermediary¹⁰⁵ allows the bank to play a dual-role, as *shahib al-maal* and *mudharib*.¹⁰⁶ This position allows the bank to organize a double *mudharabah* agreement, one with depositors/funders and another one with fund managers in which funds are channeled. In practice, the double *mudharabah* agreement is prohibited by scholars as Imam Nawawi's statement that is quoted in many classical *fiqh* books of the *salaf* scholars. Imam Nawawi argues¹⁰⁷ that the party who acts as *mudharib* is not allowed to conduct a dual *mudharabah* agreement. Otherwise, the second agreement is *bathil*. A similar statement also was conveyed by Imam Ibn Qudamah al-Hambali¹⁰⁸ as well as an affirmation from Imam Ahmad, followed by the same opinion of Imam Abu Hanifa and Imam Asy-Syafi'i, and some other scholars.

2. Fatwa DSN-MUI in favorable to *Shahib al-Maal*

Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000 concerning *Mudharabah (Qiradh)* Financing, in the 1st decree, number 9, that read: "Operational costs are to be charged to *mudharib*" indirectly represents the alignment of DSN with *shahib al-maal* in terms of implementation of the revenue-sharing scheme. This fatwa indirectly recognizes the implementation of revenue sharing scheme that is more profitable for *shahib al-maal*, and detrimental to the *mudharib* who act as fund managers. This fatwa also contradicts the OIC's recommendation and the principle of profit-sharing from a *fiqh* perspective which suggests the application of a profit/loss sharing scheme. Also, taking a fatwa only on one party (*shahib al-*

¹⁰⁵ Naendhy Sunaendy & Lilla Fadhilah, "Syariah Bank Financing," *Munich Personal RePEc Archive Paper No. 90855*, 2018, https://mpr.a.ub.uni-muenchen.de/90855/1/MPRA_paper_90855.pdf.

¹⁰⁶ Lukman Dendawijaya, *Banking Management* (Jakarta: Ghalia Indonesia, 2009), 14.

¹⁰⁷ Imam Nawawi says: "It is not justified for the party who acts as *mudharib* to channel the capital he receives to third parties in *mudharabah* agreement. If it is done with permission upon the capital owner so that he leaves the first *mudharabah* agreement and changes his status becoming the representative for the capital owner in the second *mudharabah* agreement. Then it is justified. However, he is not justified in setting up the benefit for himself even the slightest. In case he still requires it, then the second *mudharabah* agreement is *bathil*". *Raudhah ath-Thalibin* by Imam an-Nawawi 5/132, please also read *at-Tahdzib* by Imam al-Baghawi 4/392, *Mughni al-Muhtaj* by Asy-Syarbini 2/314, and *Syarikah al-Mudharabah Fii al-Fiqhi al-Islami*, by Dr. Sa'ad bin Gharir bin Mahdi as-Silmu, 202, <https://pengusahamuslim.com/1939-rukunrukun-akad-mudharabah-33.html>

¹⁰⁸ Imam Ibn Qudamah al-Hambali says: "It is not justified for business actors (fund managers; *mudharib*) to channel funds (he has been received) to others in the form of *mudharabah* agreement". See Arie Syantoso, "Konsep Bagi Hasil (Mudharabah)," *Artikel ariesyantoso.wordpress.com*, 2012, <https://ariesyantoso.wordpress.com/2012/07/01/konsep-bagi-hasil-mudharabah/>.

maal) is a manifestation of injustice. Of course, this state of affairs was not something to be expected in the *mudharabah* agreement. Even this condition is against the *maqashid al-shariah*.

3. All Bank Customers, without any Exception, are Getting Benefit

The sharia banks mix all the collected funds into one without sorting which one has been channeled, which one is still settled in the bank, or has not been channeled respectively. But, surely, at the end of each month, all bank customers, without any exceptions, together are getting benefit from the bank profits (sharing calculated based on the cumulative profits as Irwin says¹⁰⁹). This is due to the bank's consideration in sharing profits based on the total funds they have been collected that were coming in from customers, not the profits derived from each customer funds partially. It means all bank customers get profit-sharing regardless of whether the overall funds have been channeled or not. All bank customers are enjoying the benefits without any exception. This disproportionality in profit sharing creates a sense of injustice certainly as expressed in the theory of justice that is revealed by John Rawl in his book *The Theory of Justice*.¹¹⁰ Supposedly, the profits have to be shared following the profits gained by each customer funds that have been channeled proportionately.

4. Untransparent Profit-Sharing Calculation Method

The profit-sharing method applied by Islamic banks is quite convoluted and less transparent, especially those related to the calculation of average investment income¹¹¹ to be shared with customers who play the role of *shahib al-maal*. The amount of profit-sharing obtained by customers is only slightly different from conventional bank interest rates, even smaller. This fact makes Islamic banks less popular in front of customers (investors) and makes them reluctant to place their funds in Islamic banks through the *mudharabah* contract.

CONCLUSION

In the *mudharabah* concept, profit could be shared based on either profit/loss-sharing or revenue-sharing principles, in which each calculation is based on the net-profit and the gross-profit respectively. The implementation of profit/loss-sharing is surely more beneficial to *mudharib*, while revenue-

¹⁰⁹ Irwin Ananta, "Tinjauan Kritis Praktek Mudharabah pada Perbankan Syariah," in *Seminar Nasional Inovasi dan Teknologi (SNIT)* (Jakarta, 2012), 79–90, <http://seminar.bsi.ac.id/snit/index.php/snit-2012/article/view/344>.

¹¹⁰ John Rawl, *A Theory of Justice*, Revision (Cambridge: The Belknap Press of Harvard University Press., 1999).

¹¹¹ Badri, *Riba dan Tinjauan Kritis Perbankan Syariah*, 173–175.

sharing is more beneficial to *shahib al-maal*. In current days, due to some reasons, most Islamic bankings generally apply the revenue-sharing principle. Implementation of the revenue-sharing principle, in disguise, is the embodiment of Fatwa DSN-MUI No. 07/DSN-MUI/IV/2007, which is not in line with OIC's recommendations and profit-sharing pattern in term of *fiqh* perspective which suggests implementing the principle of profit/loss-sharing. The use of the revenue-sharing principle, basically, can lead to a sense of injustice between the parties involved in the contract. Also, the convoluted method of profit-sharing calculation makes Islamic banks are less attractive and less desirable, and get difficulty to compete with conventional banks. Then, the high-risk possibility is also an obstacle why the use of *mudharabah* is not as much as *murabahah*, even though *mudharabah* can be the prime mover in economic growth. In the current situation, to encourage customers to choose Islamic banks, the both schemes can be applied proportionally, i.e. revenue-sharing maybe be applied in collecting funds and profit/loss-sharing in channeling working capital financing. To protect banks against *mudharib*'s fraudulent, a collateral system maybe implemented as stipulated BI regulations No. 7/46/PBI/2005. Last but not least, Fatwa No. 07/DSN-MUI/IV/2000 needs to be improved in order to be able to provide a sense of justice for the parties in *mudharabah*.

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