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

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Abstrak:

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 system\(^2\) 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.

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 said\(^5\) as cited by Anton Athoillah\(^6\) et.al in their article. Some studies concerning *mudharabah* financing in banking have been rising\(^7\) 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 *mudarabah* have been carried out, such as conducted by Abraham L. Udovitch\(^11\), Walter M. Weiss and Kurt-Michael Westermann\(^12\). The study was

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also carried out by Ramli Mohd. Hilmi, Jonathan G. Ercanbrack, Simon Howard, and Ebrahim and Sheikh. However, all the above-mentioned studies were focused more on the relationship between mudarabah 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 sharing and revenue sharing schemes 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.

According to observations made by observers, the implementation of revenue sharing schemes in mudharabah, which calculates the profit-sharing based on gross profit is the center of the issue. Furthermore, the implementation of revenue sharing schemes is an embodiment of the Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000 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 mudhabib.

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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://fatahhidayat75.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.
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 which is taken from the word al-qardh which means to cut, 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. 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. 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. Adiwarman A. Karim 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

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26 Syarif Hudayatullah, Qawa'id Fiqiyyah dan Penerapannya dalam transaksi keuangan Syari’ah kontemporer (Depok: Gramata Publishing, 2012), 103.
28 Hudayatullah, 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 Syafii Antonio\(^{30}\). Likewise, Sa’ad bin Gharir as-silm\(^{31}\) has the same thought. Meanwhile, according to Frista Armanda Widodo\(^{32}\), mudharabah is a form of partnership in \(muamalat\) 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


\(^{30}\) Antonio Muhammad Syafii, 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.


\(^{36}\) Khaerul Umam, Islamic Banking Management (Bandung: Pustaka Setia, 2013), 32–33.

economic structure. In today’s modern banking practice, the term *mudharabah-muqayyadah* has been changed to *mudharabah-muqayyadah on-balance sheet* and *mudharabah-muqayyadah off-balance sheet*. 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. Thus, transactions with a *mudharabah* agreement on Islamic banking products currently have a juridical basis. 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. The National Sharia Council (DSN: Dewan Syariah Nasional) 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. 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.
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 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-amin54 (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.
mandate entrusted by *shahib al-Maal* to *mudharib*. 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.

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. What’s more, to protect funders, banks are required to comply with various kinds of government and central bank regulations. 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. Currently, the only operational cost standard that can be verified is “regional minimum wage” (*upah minimum regional*), 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’s 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

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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”, *Atenda*, (29 Jan 2020), https://www.atenda.id/berita/Pengertian-dan-Perbedaan-UMR-UMP-UMK/23#.

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

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64 Perwataatmadja, “Upaya Memurnikan Pelayanan Bank Syariah, Khusus Pembiayaan Murabahah Dan Mudhârabah di Indonesia.”
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. 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. 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 climate coupled with the opening of employment opportunities that will reduce the unemployment rate and increasing people’s income. (3) Profit-sharing financing schemes will automatically encourage the growth of entrepreneurs who dare to make risky business decisions. According to Ascarya, 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.
Based on the results, nowadays the capital investment agreement can be chosen based on profit/loss-sharing or revenue-sharing principles. 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. 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. 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 bank 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 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. 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.

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79 Suherman.

80 Suherman.

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

Indonesia) and or Sharia Supervisory Board (Dewan Pengawas Syariah). Therefore, Presley and Session in Karim 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). 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. 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.

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. 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 for security for the funds channeled. This collateral system has been implemented by most Islamic banks in some countries. International Islamic Bank for Investment and Development (IIBID)

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83 Hadi, “Problematika Pembiayaan Mudhârabah di Perbankan Syariah Indonesia.”
86 See Fatwa DSN-MUI No. 07 of 2000 concerning Mudharabah Financing, First Decree, number (9): Operational costs are charged to mudharib.
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, tafirth, or mukhalafat al-syuruth.95

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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.”
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 Arabia, 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. 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? Hanif, 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. Therefore, the results indicate that the Islamic banking authority urgently needs to make breakthrough efforts to improve its

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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.
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 funds\textsuperscript{100} and profit/loss-sharing could be applied for channeling working capital financing.\textsuperscript{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.\textsuperscript{102} Umer Chapra\textsuperscript{103} 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).\textsuperscript{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:

\textsuperscript{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.

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


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

\textsuperscript{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 intermediary\(^{105}\) 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 argues\(^{107}\) 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-Hambali\(^{108}\) 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-maal*).

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\(^{106}\) 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-Syaribini 2/314, and Syarikah al-Mudharabah Fi 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”. SeeArie 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-
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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Mudharabah Scheme Within the Islamic Banking


