

STUDY OF MUDHARABAH LITERATURE IN BANKING IN INDONESIA

Haddad 'Ulum Harahap¹⁾, Rijal Allamah Harahap²⁾

¹Mandailing Natal, State Islamic College
E-mail: haddatulumharahap2@gmail.com¹

²Barumun Raya Islamic College, Indonesia
E-mail: rijalallam@gmail.com²

Abstract

This literature aims to determine the mudharabah in banking in Indonesia. The results of the literature show that Murabahah is considered one of the products that is widely criticized by academics because in this scheme, there is no risk sharing between banks and customers. The absence of risk on the side of Islamic banking causes the risk to be fully borne by the customer, while Islamic banks are relatively safe from risk. The Mudharabah system is actually a promising alternative when compared to the interest system. This is because in the mudharabah system there is a principle of justice in it by positioning the owners of capital (rabb al mal) and entrepreneurs (mudharib) as partners. On the liability side, mudharabah is applied to: Time savings, ordinary deposits and special deposits, while on the asset side, mudharabah is set at: Working capital financing and special investments.

Keywords : Murabahah, Banking

1. INTRODUCTION

The modern financial and banking system has tried to meet human needs to fund their activities, not with their own funds, but with other people's funds, either by using the principle of participation in order to fulfill capital (equity financing) or with the principle of borrowing in order to fulfill financing needs (debt financing). Islam has its own laws to meet these needs, namely through profit and loss sharing contracts as a method of meeting capital needs (equity financing) and buying and selling contracts (al bai') to meet financing needs (debt financing). On the other hand, there are those who argue that debt financing (leveraging) is prohibited because debt financing transfers transaction risk to the borrower (borrower). The preference for profit and loss sharing is based on legal interpretations that developed in response to the prohibition of usury which generally equates it with interest. Capital-based financing (equity financing) in Islamic banking can be done through the mudharabah

scheme.

Mudharabah contract is a cooperation contract between the two parties in which the bank acts as the manager and the customer as the owner of the capital. The profits obtained will be shared in accordance with the agreement. If a loss occurs, it is fully borne by the owner of the capital, the manager only bears the loss for his business and work. The pillars contained in mudharabah are aqid, namely the owner of capital and manager (amil/mudharib), ma'qud 'alaih, namely capital, energy (work) and profits, and shighat, namely consent and qabul. Meanwhile, the conditions for mudharabah are first, conditions related to aqid, namely that aqid, both the owner of capital and the manager (mudharib) must be a person who has the ability to give power. Second, conditions related to capital, namely capital must be in the form of cash, such as dinars, dirhams, rupiah, or dollars and so on, capital must be clear and its size known, capital must exist and cannot be in the form of debt.

Islamic banks are one of the drivers of mudharabah in Indonesia, which is currently growing rapidly, however, the results of the study show that the goals of Islamic banks are mostly profit-oriented, not social-based. Islamic banking should be a financial business that prioritizes morals, ethics, honesty, justice and benefit when compared to its financial benefits, even though as a business entity profit is one of the goals. In Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, it is stated that the business activities of Islamic banks are to provide financing and or carry out other activities based on sharia principles, in accordance with the provisions stipulated by Bank Indonesia. Financing based on sharia principles is the provision of money or equivalent claims based on an agreement or agreement between the bank and other parties that are financed for compensation or profit sharing.

Almost all theoretical models of Islamic banking are based on mudaraba or musharaka or both, but until now the actual practice of Islamic banking is far from this model. Islamic banking should be based on Profit and Loss Sharing (PLS), not based on interest. Theorists argue that Islamic banks will provide their borrowers with a wide range of sources of financing on a risk-sharing basis, unlike interest-based financing where the borrower bears all the risk. PLS in Islamic banks is based on two legal concepts, namely mudharabah and musharaka. To maximize the profit-sharing product that has been the focus of Islamic banks from its inception to this day, it is an interest-free product, but rather a profit-sharing solution offered by Islamic banks. To encourage all sharia compliance as the foundation and instrument of a bank, it should be able to accommodate and convince customers to remain and be the choice as an Islamic bank that is free from usury.

Thus, it can be seen that the purpose of Islamic banks is to save people from the practice of usury, then what will be done by

banks in terms of answering all of these, Islamic banks are born with their flagship jargon, interest-free and offer profit sharing, which will improve the community's economy by using services. Islamic banks in terms of cooperation between banks and customers with profit sharing products. Based on this, in this article, we will discuss in more detail the mudharabah of research conducted on banking in Indonesia.

2. LITERATURE REVIEW

Definition of Mudharabah

Etymologically, mudharabah has the meaning of walking on the earth which can be called traveling. The term mudharabah traveling for trade is used by Iraqi experts (residents). While experts (residents) Hijaz use the term qiradh, which is taken from the word qardh which means cutting. It was so named, because the owner of the capital cut a part of his property to be traded by the amil and cut a part of his profits. Meanwhile, in terms of mudharabah, the fiqh scholars give each other their respective definitions. As Ibn Qudamah defines mudharabah, namely, mudharabah is someone giving up his property to someone else to trade, provided that the profits he earns are divided between the two according to their terms.

From this definition, it can be understood that mudharabah is a contract or agreement between two or more people, in which the first party provides business capital, while the other party provides labor and expertise, provided that the profits are divided between them according to an agreement that they mutually agreed upon.

The Pillars and Conditions of Mudharabah

To ensure the goodness and benefit of the parties to the contract, both parties must pay attention to the applicable provisions. With the applicable provisions, it is hoped that the parties to the contract can understand what are the rights and obligations of each so that no party is harmed. In this case, these

provisions are discussed in the pillars and conditions of mudharabah. The pillars of the mudharabah contract according to Hanafiah are consent and qabul, using pronunciations that indicate the meaning of mudharabah. The pronunciations used for ijab are mudharabah, muqaradhah, and muamalah pronunciations. According to Syafi'iyah scholars, (Mardani 2015) the pillars of qiradh or mudharabah are six, namely:

1. The owner of the goods who handed over the goods
2. People who work, namely managing the property received from the owner of the goods
3. Mudharabah contract, carried out by the owner with the manager of the goods
4. Maal, namely principal assets or capital
5. Charity, namely the work of managing assets so as to generate profit
6. Advantage

For the validity of the mudharabah, several conditions must be met related to aqid, capital, and profits.

1. Conditions relating to 'aqid The conditions relating to 'aqid are that 'aqid, both the owner of capital and the manager (mudharib) must be people who have the skills to give power and carry out wakalah. This is because the mudharib performs tasarruf (management) at the behest of the owner of the capital, and this implies the granting of power of attorney. However, it is not required that the aqidain (the parties) must be Muslim. Thus, mudharabah can be carried out between Muslims and dhimmis or musta'mans in Islamic lands. In addition, it is also required that aqidain (the parties) must be able to do tasarruf. Therefore, mudharabah is not valid for minors, insane people, or people who are forced to do so.

2. Conditions Relating to Capital Requirements relating to capital are as follows:

- a. Capital must be in the form of cash, such as dinars, dirhams, rupiah, or dollars and so on. As is the case in syirkah 'inan. If the capital is in the form of goods, whether fixed or movable, according to the majority of scholars, mudharabah is invalid.
- b. Capital must be clear and known in size. If the capital is not clear then the mudharabah is invalid.
- c. Capital must exist and must not be in the form of debt, but that does not mean it must be in the contract assembly.
- d. Capital must be submitted to the manager, so that it can be used for business activities. This is because the capital is a trust that is in the hands of the manager.

3. Terms Relating to Profits

- a. Profits must be known the level The purpose of holding a mudharabah contract is to make a profit. If the benefits are not clear, the result is that the mudharabah contract can become a fasid. If conditions are made that cause ambiguity in profits, the mudharabah becomes fasid, because the purpose of the contract, namely profit, is not achieved. However, if these conditions do not cause the profit to be unclear, then the conditions are void, but the contract is still valid. If it is required in the mudharabah contract that all profits are for mudharib, then according to Hanafiah and Hanabilah, the contract changes to qardh (debts and receivables) not mudharabah. Meanwhile, according to Syafi'iyah such

mudharabah is a fasid mudharabah. In this case, the amil is given wages/rewards according to his work. According to Malikiyah, if all profits are required for the mudharib or for the owners of capital, then it is permissible, because this is tabarru' or voluntary.

- b. Profits must be a share that is shared with the distribution in a ratio or percentage, for example half and half, one third and two thirds, or 40%: 60%, 35%: 65%, and so on. If the profit is divided according to definite terms, such as the owner gets Rp. 100,000.00 and the remainder is for the manager 36 (mudharib), then the condition is invalid, and the mudharabah becomes fasid. This is because the mudharabah character requires that the profits be jointly owned, while the determination of conditions with definite distribution prevents the joint ownership.

If the owner of the property assigns a share to the manager and says, "for you a third of the profit, or a quarter of it, or a certain share," then the rest belongs to the owner of the property, because he is entitled to profits because of his capital, because the rest is the result that develops from his property. Meanwhile, the manager earns a profit based on conditions, so that however much is required for him, that is how much he gets, while the rest belongs to the investor based on the law of origin.

Prinsip – Prinsip Mudharabah

According to (Nurhasanah 2015) the principles of mudharabah include:

1. The principle of sharing profit and loss between the two parties
The relation is in the sharing of profits in the mudharabah system and losses are divided on the basis of portions and contributions, for investors to bear profits and losses in the form of capital or finance, while managers bear losses in the form of energy and time, the profits themselves will be given if the initial capital submitted is covered while The loss will be borne according to the portion unless there is an element of negligence that causes the loss, so the manager is not entitled to a share.
2. The principle of trust and trust
Trust is the basis in the mudharabah contract, if there is no longer an element of trust in the contract system, it can end the contract or agreement, and of course this trust must be maintained with a mandate to maintain and manage the goods properly.
3. The precautionary principle
Prudence is the basis for investors and managers in entering into cooperation contracts, for investors, they must be careful in placing their trust in providing their capital to be managed, while managers must be careful about the entrusted goods they manage because it is a form of full trust given to them.
4. The principle of clarity
Clarity regarding the amount of capital contribution, terms of the agreement, distribution of profits, losses and clarity of the duration of the agreement.
5. The principle of justice
The principle of justice in Islam includes 3 things, namely a fair and equitable distribution of wealth, the provision of basic needs for the poor, and protection of the weak from the arbitrariness of the strong.¹² Justice

does not always mean equality but justice is *tawazun* (balance) between both sides. Justice in *mudharabah* lies in the distribution of profit-sharing ratios which must be based on equality in obtaining profits in accordance with the portion and contributions and responsibilities imposed.

Types of Mudharabah

Mudharabah is divided into two types, namely *mudharabah muthlaq* and *mudharabah muqayyad*. Which is a different system and the division of tasks and benefits, some of these *mudharabah* include, (Suhendi 2008):

1. Mudharabah Muthlaq

Mudharabah muthlaq is a *mudharabah* contract in which the owner of the capital provides capital to the *'amil* (manager) without being accompanied by restrictions (*qaid*). For example, as the owner of capital said: "I give this capital to you with *mudharabah*, provided that the profits are divided by two or divided by three". In the contract there are no provisions or restrictions regarding the place of business activity, type of business, goods used as objects of business, and other provisions.

2. Mudharabah Muqayyad

Mudharabah muqayyad is a *mudharabah* contract in which the owner of the capital provides provisions or limitations relating to the place of business activity, type of business, goods that are the object of business, time, and from whom the goods are purchased. Restrictions on time and people who are the source of purchasing goods are allowed according to Abu Hanifah and Ahmad, while according to Malik and Syafi'i it is not allowed. Likewise, relying on the contract to the future is permissible according to Abu Hanifah and Ahmad, and not according to Imam Malik and

Shafi'i.

3. DISCUSSION

Mudharabah System in Banking

In the study of *muamalah* law, the issue of contract (*'aqd*) or agreement occupies a central position, because it is the most important method used to obtain a purpose, especially with regard to property or legitimate benefits. In the contract or agreement there is a statement of a positive desire from one of the parties involved and accepted by the other party, which has legal consequences on the object of the agreement. Agreement or contract is one form of legal action or called *tasharruf*. Mustafa Al Zarqa defines *tasharruf* as "everything (action) that originates from a person's will and the *syara'* stipulates a number of legal consequences (rights and obligations)". An action can be called a contract or agreement if it fulfills several pillars and conditions. The pillars of the contract are absolute elements that must exist and are the essence of every contract. If one of the pillars does not exist according to *sharia*, the contract is considered to have never existed. While the condition is a trait that must exist in every pillar, but it is not the essence of the contract.

Mudharabah business profits are divided according to the agreement set forth in the contract, whereas if the loss is borne by the owner of the capital as long as the loss is not the result of the manager's negligence. If the loss is caused by fraud or negligence by the manager, then the loss is fully borne by the manager as liability. In Islamic banking, *mudharabah* is usually set on the product of liabilities and assets. On the liability side, *mudharabah* is applied to:

1. Term savings, namely savings intended for special purposes, such as *hajj* savings, *qurban* savings, and so on.
2. Regular deposits.
3. Special deposits, where the funds deposited by customers are specifically

for certain businesses, for example only murabahah or ijarah only.

Meanwhile, on the asset side, mudharabah is set at:

1. Working capital financing.
2. Special investment

Implementation of Mudharabah Financing in Indonesian Banking

Murabaha is considered as one of the products that is criticized by academics because in this scheme, there is no risk sharing between banks and customers. The absence of risk on the side of Islamic banking causes the risk to be fully borne by the customer, while Islamic banks are relatively safe from risk. Islamic banking theorists argue that investment activities in Islamic banks are based on two legal concepts, namely mudharabah and musharaka, as an alternative in implementing a profit and loss sharing (PLS) system.

This theory states that Islamic banks will provide a broad (financial) source of financing to borrowers (debtors) based on risk sharing (both in terms of profits and losses), which is different from the (financial) interest system financing in the conventional banking world where all risks are borne by the borrower (debtor). The concept of profit sharing, in the face of uncertainty, is one of the very basic principles of Islamic economics, which is considered to be able to support the aspect of justice. By definition, profit sharing activity is a business that is built based on an agreement between investors and entrepreneurs to provide profit sharing based on a certain percentage of operating results. This agreement is carried out fairly and transparently. Fair means that each partner gets profit sharing in accordance with the contribution they make, both capital, skills and labor, while transparent means that investors and entrepreneurs know each other the amount of profit sharing they get and the progress of the business itself.

Islam positions economic activity as one of the important aspects to gain glory (falah), and therefore economic activity-like other activities-needs to be guided and controlled so that it goes in tune with the teachings of Islam as a whole. Islamic banks as one of the developing financial institutions, based on several studies, are still dominated by the goal of making a profit. Islamic banking is also considered not optimal in realizing the mission of the Islamic economic movement. Among the financial innovations that exist in Islamic banking are financing products with the mudharabah scheme.

However, Bank Indonesia stated that the main products of Islamic banking are generally offered using a debt-based financing scheme (murabahah and ijarah). As of December 2014, the largest proportion of Islamic banking financing products were murabahah products (59% of total financing), while ijarah was 6%. For banks, these products are also the bank's favorite product, because the transaction scheme is easy to implement and does not have high risk. Murabahah is a buying and selling scheme with the difference in price in the form of margin.

Mudharabah Financing as a Solution to Financial Problems

(Shaikh 2011) suggests that financial intermediation can be done through equity financing. This can lighten up financially and be a differentiator for debt-based commercial financing, and there is less room to show differences over debt repayments that have been set up front. Agency problems and moral hazard are challenges in implementing Islamic equity financing. Through simulation, this study analyzes the agency problem in mudharabah and its impact on economic rewards among the partners. Based on a review of the proposed alternative solutions, Shaikh presents two possible agreements that could make the mudharabah financing model more acceptable and widely used in financial

intermediation. It will also be more in line with the goals of Islamic economics. The result of the research is that in mudharabah there are two agreements that can be made: a) Mudarib is asked to contribute capital. b) Mudarib is asked to share in the loss to a certain extent. The two agreements will minimize adverse selection, moral hazard and principal-agent conflicts. The conclusion of the study is that with the agreement, equity financing can be used more broadly. However, there is still an irony that Islamic values such as justice, equality, truth, trust, kindness, honesty and responsibility are often mentioned in literature and Islamic economics seminars, in fact, the lack of these values in practice is the main reason why the participatory mode remains unusable.

Meanwhile, (Hakim 2013) stated that the data shows the proportion of the value of mudharabah financing has decreased in the last ten years. Mudharabah financing continues to decline where in 2004 it reached 17.95%, in 2013 it only reached 7.62%. If calculated on average over the last ten years is 14.76% of the total financing. The judge also stated that the mission of the Islamic economic movement in general is the realization of the basic values of Islamic teachings in the economic field. The culmination of the mission is the achievement of a *maslahah* life, a life that is worth *falah* both in this world and in the hereafter. Upholding the value of justice, avoiding the practice of persecution, realizing an advanced and dignified economy, and creating a conducive atmosphere of brotherhood or cooperation. These missions were later proclaimed as missions by Islamic financial institutions. Availability of adequate financing or capital to the business world, through the mudharabah financing product by Islamic banking has a fairly urgent impact both micro and macro, namely: micro urgency, among others: maximizing profits, minimizing the risk of lack of capital in a business, resource utilization economic power,

distribution of excess funds from surplus funds to minus funds.

According to (Waluyo 2016) research, Islamic banks should introduce Islamic economic goals by implementing *maqasid al-shariah* as a whole. Islamic banking institutions should uphold social goals and promote Islamic values including contributing to the social welfare of the community, promoting sustainable development projects and reducing poverty. Mudharabah financing is in accordance with Islamic economic objectives and is considered to be implemented in Islamic banks. Agency problems and moral hazard are challenges in implementing Islamic equity financing. There are two agreements that can be made to overcome this: (i) Mudarib is asked to contribute capital. (ii) Mudarib is required to share in losses to a certain extent. The two agreements will be able to minimize adverse selection, moral hazard and principal agent conflicts.

Application of Mudharabah as a Substitute for Interest in Banking

Even though the journey and development of the Islamic financial system encountered many obstacles, the Islamic banking and finance movement continued to run with *istiqamah* because this movement had a strong foundation. The progress that has occurred over the past three decades is getting more and more painful, as more and more people are involved in this movement and they are generally experts in Islamic finance and economics. They continue to try to think and propose solutions for improving the performance of the modern Islamic financial system. Therefore, there is no doubt that this movement will not only be able to overcome its difficulties, but will be able to guarantee a bright future.

The Mudharabah system is actually a promising alternative when compared to the interest system. This is because in the mudharabah system there is a principle of

justice in it by positioning the owners of capital (rabb al mal) and entrepreneurs (mudharib) as partners. In addition, the mudharabah system requires that the investment must be invested in the production process, so that it will create more job opportunities and answer the shortage of job opportunities that are currently a problem for the people. The only thing left now is to establish a system that puts more pressure on the banking sector so that they are willing to provide a financing pattern in the mudharabah contract, although on the banking side this is a little difficult due to the lack of resources. (Abdurachman 2021)

4. CONCLUSION

1. Murabahah is considered as one of the products that are criticized by academics because in this scheme, there is no risk sharing between banks and customers. The absence of risk on the side of Islamic banking causes the risk to be fully borne by the customer, while Islamic banks are relatively safe from risk.
2. The Mudharabah system is actually a promising alternative when compared to the interest system. This is because in the mudharabah system there is a principle of justice in it by positioning the owners of capital (rabb al mal) and entrepreneurs (mudharib) as partners.
3. On the liability side, mudharabah is applied to: Time Savings, Ordinary Time Deposits and Special Deposits, while on the asset side, mudharabah is defined as: Working capital financing and special investments.

REFERENSI

Abdurachman, Daddy. 2021. "Penerapan Mudharabah Sebagai Pengganti Bunga Di Perbankan Syari'ah

Menurut Mohammad Nejatullah Siddiqi." Jurnal Pendidikan Dan Keislaman Ar-Risalah 7 (2): 41–51.

Hakim, Abdul. 2013. "Rendahnya Realisasi Pembiayaan Mudharabah Dalam Perbankan Syariah Di Indonesia: Studi Kritis Atas Relevansi Perbankan Syariah Terhadap Misi Gerakan Ekonomi Islam." Penelitian Individu.

Mardani, Dr. 2015. Fiqh Ekonomi Syariah: Fiqh Muamalah. Prenada Media.

Nurhasanah, Neneng. 2015. "Mudharabah Dalam Teori Dan Praktik." Bandung: PT Refika Aditama.

Shaikh, Salman Ahmed Ahmed. 2011. "A Critical Analysis of Mudarabah & a New Approach to Equity Financing in Islamic Finance." Journal of Islamic Banking & Finance, Forthcoming.

Suhendi, Hendi. 2008. "Fiqh Muamalah: Jakarta." PT Raja Grafindo.

Undang-undang No 21 Tahun 2008 tentang Perbankan Syariah

Undang-undang No. 10 Tahun 1998 tentang Perubahan Undang-undang No 7 tahun 1992 tentang Perbankan

Waluyo, Bambang. 2016. "Implementasi Pembiayaan Mudharabah Pada Bank Syariah Untuk Merealisasikan Tujuan Ekonomi Islam." JEBIS (Jurnal Ekonomi Dan Bisnis Islam)| JOURNAL OF ISLAMIC ECONOMICS AND BUSINESS 2 (2): 185–204.