

Analysis Implementation of DSN Fatwa Number: 07/DSN-MUI/IV/2000 Regarding the Implementation of Mudharabah Financing in Islamic Banking

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Abstract

Abstract: This article aims to analyze the implementation of mudharabah financing in Islamic banking in accordance with the DSN fatwa statement. Mudharabah is a muamalah that involves two parties who act as property owners (shohibul mal) or property managers (mudharib) in seeking profits to be divided according to the agreed agreement. The legal basis that allows the financing of mudharabah is to refer to the arguments from the Qur'an and Sunnah, as well as ijma' unless the mudharabah contains something that is gharar and the division is not clear. In the implementation of mudharabah there are pillars and conditions that must be understood. Mudharabah contracts are divided into two, namely mudharabah muthlaqah (unbound mudharabah) and mudharabah muqayyadah (bound mudharabah). Scholars agree on the validity of the mudharabah muthlaqah contract. Mudharabah contracts are part of the mandate, namely contracts that are based on trust, but according to positive laws, sharia banking is required to mitigate the risk of the financing carried out, and one way is by including guarantees in each financing. The method used in this study is a qualitative method, namely research using scientific methods to reveal a phenomenon by describing data and facts through words as a whole to the research subject. mudharabah financing in Islamic banks in its implementation, it has applied the sharia principles contained in the DSN fatwa on mudharabah financing.

Keywords: mudharabah, legal basis, terms and pillars, types of mudharabah, mudharabah guarantees, implementation of mudharabah contracts in Islamic bank financing.

I. INTRODUCTION

A broad economy in which a variety of people from ethnicity, culture, and religion will create many differences, but with a system that refers to the common good will create the expected prosperity. Then the values of an Islamic economic system are needed, as the word of Allah SWT:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْزَمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ ٨٧ وَكُلُوا مِمَّا رَزَقَكُمُ اللَّهُ حَلَالًا طَيِّبًا وَاتَّقُوا اللَّهَ الَّذِي أَنْتُمْ بِهٖ مُؤْمِنُونَ ٨٨

Meaning: O you who believe, do not forbid what is good which Allah has made lawful for you, and do not transgress. Verily, Allah does not like those who transgress. And eat lawful and good food from what Allah has provided for you, and fear Allah in whom you believe. (Surat al-Maidah: 87-88)

This verse is the determination of the rationale of the message of the Qur'an in the field of economics. From the above verse it can be understood that Islam encourages its adherents to enjoy the gifts that have been given by Allah. These gifts must be utilized to increase growth, both material and immaterial. Because Islam always encourages its adherents to struggle to get material or property in various ways as long as it is in accordance with the signs that have been set.¹

To start a business in the economic field, even though small capital is needed. There are people who get capital from their wealth or from their families. There are also those who borrow from their friends. However, if there is none, then the role of financial institutions or institutions becomes important because they can provide capital for people who want to open businesses in the economic field.

However, not all financial institutions in terms of providing funds use a system that does not conflict with religious law, so that many people are in debt because the interest on funds lent by financial institutions cannot be paid, which results in prosperity which is the goal of not being achieved. In this case, the government issued Law 10 of 1998 concerning amendments to Law 7 of 1992 concerning banking by considering the following:

- a. that national development is a sustainable development effort in the context of realizing a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution;
- b. that in the face of the development of the national economy which is constantly moving fast, competitive, and integrated with increasingly complex challenges and an increasingly advanced financial system, it is necessary to adjust policies in the economic sector, including banking;
- c. that in entering the era of globalization and with the ratification of several international agreements in the field of trade in goods and services, it is necessary to make adjustments to the laws and regulations in the economic sector, especially the banking sector;
- d. where as based on the considerations referred to in points a, b, and c above, it is deemed necessary to amend Law Number 7 of 1992 concerning Banking.

This is where financial institutions that use the sharia system or what are called LKS (Islamic financial institutions) began to emerge. Institutionally, the first sharia bank to be established in Indonesia was PT Bank Muamalat Indonesia (BMI), then followed by other banks which opened a sharia window in carrying out their business activities. Through this *Islamic window*, conventional banks can provide sharia financing services to their customers through products that are free from elements of *usury* (usury), *gharar* (uncertainty), and *maysir* (speculative) by forming a Sharia Business Unit (UUS).²

In 2008 the Indonesian government ratified Law No. 21 of 2008 concerning Islamic banking. In article 2 of the law, it is stated that Islamic banking in carrying out its business activities is based on sharia principles, economic democracy, and the principle of prudence. Then in Article 3 it is stated that Islamic banking aims to support the implementation of national development in order to increase justice, togetherness, and equitable distribution of people's welfare.³

From the law above, it can be understood that the purpose of establishing a sharia bank is to support national development by carrying out activities based on sharia principles.

In Islamic banks, businesses and businesses that are carried out cannot be separated from sharia filters. Therefore, it is impossible for Islamic banks to finance the business contained in the things that are forbidden.⁴ If the conventional economic mechanism uses interest instruments, then in the Islamic economic mechanism it uses profit sharing instruments.

¹Muhammad Syafi'I Antonio, *Islamic Banking From Theory to Practice*, (Jakarta: Gema Insani Press 2007), p. 11-12

²Panji Adam, *Sharia Economic Fatwas*, (Jakarta: Amzah 2018)h. 233

³Ibid. h. 235

⁴Muhammad Syafi'I Antonio, *op.cit.*, h. 33

The core of the profit-sharing mechanism basically lies in good cooperation between the fund channeling party (bank) and the fund manager. Cooperation or partnership is a characteristic in an Islamic economic society. One form of cooperation in Islamic economic business is *mudharabah*. Through *mudharabah*, both parties who partner will not get interest but will get *profit and loss sharing* (PLS) from economic projects that have been mutually agreed upon.⁵

In Law 21 of 2008 *Mudharabah* is a facility in the form of a contract used by Islamic banks to raise funds. And for *mudharabah*, it is usually used as a contract in the distribution of funds or financing.⁶ *Mudharabah* financing contract profit sharing ratio must be expressed in the form of a percentage between the two parties, not stated in the nominal value of Rp. certain. Suppose the profit ratio is 50:50, 70:30, or 60:40, or even 99:1.⁷

According to the fatwa of the National Sharia Council number: 07/DSN-MUI/VI/2000 regarding the financing of *mudharabah* (*Qiradh*) in the pillars and terms of financing in the fourth point that " *mudharabah profit* is the amount obtained as an excess of capital. The following profit conditions must be met:

- a. Must be intended for both parties and should not be required for only one party.
- b. The proportionate profit share for each party must be known and stated at the time of the agreed contract and must be in the form of a percentage (*ratio*) of the profit as agreed.
- c. fund provider bears all losses resulting from *mudharabah*, and the manager must not bear any loss unless it results from a willful mistake, negligence, or breach of agreement.⁸

However, in the implementation of financing, in general, LKS and Islamic banks cannot issue financing funds directly, there are terms and conditions that must be completed by the customer as an applicant to issue financing funds. In this case the terms and conditions set by Islamic banks must be based on fiqh law so as to avoid the elements that are haram.

There are still many people who do not clearly understand how the implementation of this *mudharabah* financing contract is, therefore this article is expected to help explain to the public about the implementation of the *mudharabah* financing contract in Islamic banking.

II. LITERATURE REVIEW

Syafii Antonio (2010), In Islamic banks, businesses and businesses that are carried out cannot be separated from sharia filters. Therefore, it is impossible for Islamic banks to finance the business contained in the things that are forbidden. If the conventional economic mechanism uses interest instruments, then in the Islamic economic mechanism it uses profit sharing instruments. Akhmad Mujahid (2017) Cooperation or partnership is a characteristic in an Islamic economic society. One form of cooperation in Islamic economic business is *mudharabah*. Through *mudharabah*, both parties who partner will not get interest but will get *profit and loss sharing* (PLS) from economic projects that have been mutually agreed upon. According to the fatwa of the National Sharia Council number: 07/DSN-MUI/VI/2000 regarding the financing of *mudharabah* (*Qiradh*) in the pillars and terms of financing in the fourth point that " *mudharabah profit* is the amount obtained as an excess of capital. Jaih Mubarak and Hasanuddin (2017) *Mudharabah* contracts are part of the mandate, namely contracts made based on trust, but according to positive law that applies,

⁵Akhmad Mujahidin, *Sharia Banking Law* (Depok, Rajawali Pers, 2017) p.67

⁶ Atang Abd. Judge, *Islamic Banking Jurisprudence* (Bandung, PT Refika Aditama, 2011) p.202

⁷Adiwarman Karim, *Islamic Bank; Fiqh and Financial Analysis* (Jakarta: RajaGrafindo Persada, 2010)p.195

⁸National Sharia Council Fatwa No: 07/DSN-MUI/IV/2000 on *mudharabah* financing (*qiradh*)

among others, Islamic banking is required to mitigate risks for financing carried out, and one of the ways is by including guarantees in every financing. So we can draw the conclusion that the implementation of mudharabah contracts in Islamic bank financing has been adjusted to the DSN/MUI fatwa regarding mudharabah contracts.

III. METHODOLOGY

The method used in this study is a qualitative method, namely research using scientific methods to reveal a phenomenon by describing data and facts through words as a whole to the research subject.⁹ Qualitative methods are used to obtain in-depth data, data that contains meaning.¹⁰ The results of this study are descriptive of speech, writing or implementation that can be observed from the place of research.

IV. RESULT AND DISCUSSION

1. Definition of Mudharabah

Mudharabah is also referred to as Al Qardh, namely Al qath'u (pieces) because the owner of the property cuts off part of his property for trading and part of the profit. And mudharabah is also called muamalah, which means a contract between two parties where one party gives money (capital) to the other party to be traded on the condition that the profits are divided between them according to their agreement.¹¹

Abdurrahman al-Juzairi in his book " *al-fiqh 'ala al-mazahib al-arba'ah* " writes about the different meanings of mudharabah from the scholars of *al-mazahib al-arba'ah*. In his book he explains the meaning of the mudharabah contract according to the Hanafi, Malikiyah, Syafiiyah, and Hanabilah school of thought, the following is the definition of mudharabah in the opinion of the scholars:

الحنفية: قالوا: عقد المضاربة بالنظر لغرض المتعاقدين يكون شركة في الربح لأنه دفع من جانب المالك، ويذل عمل من جانب المضارب، بأن يتجر في المال ليشترك مع صاحبه في ربحه

According to the Hanafiyah school, the mudharabah contract in terms of the purpose of the perpetrator is to make the perpetrators associate in profit, because the payment is made from the *al-malik* party and the management is from the *mudharib* so that the property is liberated so that it can associate with the owner in profit.¹²

المالكية - قالوا: المضاربة أو القرض في الشرع عقد توكل صادر من رب المال لغيره على أن يتجر بخصوص النقدين (الذهب والفضة) المضروبين يعامل به ولا بد أن يدفع رب المال للعامل القدر الذي يريد أن يتجر فيه عاجلاً.

According to the Malikiyah school, mudharabah or qiradh in sharia is a *tawakkul contract* from *rabb al-mal* to another person to be deposited with a certain currency (gold and silver) to be managed, and *rabb al-mal* must give the amount of the assets to *al-amil* in accordance desired to be managed directly.¹³

الشافعية: قالوا: المضاربة أو القراض عقد يقتضى أن يدفع شخص لآخر مالا ليتجر فيه على أن يكون لكل منهما نصيب في الربح بشروط مخصوصة.

⁹ Deddy Mulyana, *Metode Penelitian Kualitatif*, (Bandung : Remaja Rosdakarya, 2008) p, 151

¹⁰ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*, Catakan Ke- 23,(Bandung: Alfabeta, 2016),p.9

¹¹ Sayid Sabiq, *Fiqh Sunnah volume 3*, (Qohiroh: Daarul Fatih Lililmi Al Arabi: 2000) p.147

¹² Abdurrahman Al Juzairi, *al Fiqhu a'la al mazahib al Arba'ah volume 3*, (Beirut : Darul Kitab al Ilmiyyah : 200

3) p.3 4

¹³ Ibid, h. 37

According to the Shafi'i school, mudharabah or qiradh is a contract in which a person gives his property to another person to be distributed by making both parties get a portion of the profits with applicable conditions.¹⁴

الحنابلة - قالوا: المضاربة عبارة عن أن يدفع صاحب المال قدراً معيناً من ماله إلى من يتجر فيه بجزء مشاع معلوم من ربحه ولا بد من ذلك المال من أن يكون نقداً مضروباً ويقوم مقام دفع المال أن يكون قد أودع عند شخص مالا ثم قال له: اعمل في هذا المال المودع مضاربة فتصبح المضاربة عندهم بالوديعة.

According to the Hanabilah school of thought, mudharabah is an example of a *shahibul mal* who gives part of his property to a person who trades with the property in return for a known profit, and the assets given must be in the form of currency that can be managed and the gift of the property is a deposit which is then pronounced : "Manage this deposited property so that it can be traded" then mudharabah is achieved between them and the deposited property.¹⁵

From the opinions of the scholars above, we can understand that mudharabah is a muamalah that involves two parties who act as property owners (*shohibul mal*) or property managers (*mudharib*) in seeking profits to be divided according to the agreed agreement.

2. Mudharabah Legal Basis

Scholars from various schools have agreed on the permissibility of mudharabah by referring to the arguments from the Qur'an, and Sunnah, as well as ijma' unless the mudharabah contains something that is *gharar* and the division is not clear.¹⁶

A. Al-Qur'an

... وَآخِرُونَ يَصْرَبُونَ فِي الْأَرْضِ يَنْتَعُونَ مِنْ فَضْلِ اللَّهِ ... ٢٠

Meaning: ... And those who walk on the earth seeking some of Allah's bounty ... (Surah Al Muzammil: 20)

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

Meaning: O you who believe, do not eat each other's wealth in a vanity way, except by way of commerce that applies mutually between you ... (QS. An-Nisa: 29)

B. Al-Hadith

عن صهيب رضي الله عنه أن النبي صلى الله عليه وسلم قال : ثلاثة فيهن البركة : البيع إلى أجل و المقارضة و خلط البر بالشعير للبيت لا للبيع (رواه ابن ماجه)

Meaning: From Suhaib RA, the Prophet SAW actually said: three things that contain blessings: buying and selling not in cash, muqharadah (mudharabah), and mixing wheat with barley for household purposes not for sale. (Narrated by Ibn Majah) Mudharabah is also based on the hadith narrated by Suhaib RA¹⁷ where Rasulullah SAW explained that there are blessings in three things, one of which is *muqaradhah* (mudharabah) . So it can be understood from the hadith narrated by Suhaib RA that mudharabah is allowed.

¹⁴ Ibid, h. 42

¹⁵ Ibid, h. 40

¹⁶ Wahbah Zuhail, *al Fiqh al Islami wa Adillatuhu* (Beirut: Dar al Fikri: 2002), p.3925

¹⁷ Ibn Hajar al Asqolani, *Bulughul Maram min Adillatil Ahkam*, (Ar Riyardh: Darul Falaq: 2002) h.269

C. Ijma'

دليل المضاربة الإجماع فقد أجمع المسلمون على جواز ذلك النوع من المعاملة ولم يخالف فيه أحد وقد كان معروفاً في الجاهلية فأقره الإسلام لما فيه من المصلحة وذلك شأنه في كل تشريعة فهو دائماً يبحث عن المصلحة ليقرها ويحث على تحصيلها ويحذر من المفسدة والدنو منها.

The proposition of mudharabah al ijma' Muslims agree that mudharabah is permissible and there is nothing that contradicts one and mudharabah has also been known in the jahiliyah era, Islam justifies it as long as there is benefit in it which is a characteristic of sharia, namely always seeking benefit and ordering its achievement and keeping it away from damage.¹⁸

D. Fiqh Rules

الأصل في المعاملات والعادات الحل والإباحة.

"Basically all forms of muamalah and adat are lawful and permissible"¹⁹

3. Pillars and Conditions of Mudharabah

A. Mudharabah Pillars

According to *jumhur al fuqaha*, the pillars of mudharabah consist of *al 'aqidani* (person who carries out the contract), *ra'sul mal* (capital), *'amal* (business), *al ribhu* (profit), and *sighoh* (agreement).²⁰

According to Malikiyah, *sighoh* is not included in the pillars or conditions, mudharabah is said to be valid without having to recite the agreement. Meanwhile, according to Syafiiyah, agreement is sufficient with actions (*fi'il*) if the consent uses a command sentence. And according to Hanafi, the pillars of mudharabah are consent and qabul with a sign that means to him.²¹

The opinions of the scholars above are in line with the provisions of the DSN-MUI Fatwa in the statement of *ijab* and *qabul* which are included in the pillars and terms of financing (number 2): The statement of *ijab* and *qabul* must be stated by the parties to show their will in entering into a contract (*akad*), taking into account the following:²²

- The offer and acceptance must explicitly indicate the purpose of the contract (*akad*).
- Acceptance of the offer is made at the time of the contract.
- The contract is stated in writing, through correspondence, or by using modern means of communication.

B. Mudharabah terms

The terms of mudharabah are as follows:

First ; The requirements relating to the person conducting the transaction in the DSN-MUI Fatwa must be a person who is legally capable. The Malikiyah and Syafiiyah schools are of the opinion that the legal requirement for mudharabah is if the people involved are legally competent, that is, people who are free (not slaves), mature, and have reason who can be trusted in dealing with this matter. Because every one of them is willing to represent his friend and is represented by his friend. And according to the Hanafiyah

¹⁸ Abdurrahman Al Juzairi, *al Fiqhu a'la al mazahib al Arba'ah volume 3*, (Beirut : Darul Kitab al Ilmiyyah : 2003) h. 46

¹⁹ Muhammad bin Ibrahim al Tawijri, *Mausu'at al Fiqh al Islami*, (Baitul Afkar al Dauliyah:2009)h.305

²⁰Wizaratul Awqaf wa al Syuun al Islamiyah, *al Mausu'ah al Fiqhiyyah al Kuaytiyah juz 38*, (Egyptian: Darul Shofwah: 2005)h. 40

²¹ Ibid., h. 40

²² Fatwa of the National Sharia Council No: 07/DSN-MUI/IV/2000 concerning mudharabah financing (qiradh)

school, it is required that the rabb al mal and mudharib can understand the principle of surrender and representation, because the mudharib carries out orders from rabb al mal, it is required that the person who is made the representative (mudharib) has business for what is represented to him, because the form of his representative is to hand over expertise to rabb al mal, then it is not valid if the one who does it is a person who does not have that expertise.²³

Second ; Conditions relating to capital, The fuqaha agree that it is required in the mudharabah capital that the amount, nature, and type are known by the two mudharabah actors. If it is not known by both parties, the mudharabah is declared fasidah (damaged).²⁴ In the DSN-MUI Fatwa it is explained that what is meant by capital is the amount of money or assets given by the fund provider to the mudharib for business purposes with conditions; a) the amount of capital must be known, b) capital can be in the form of money or goods that are valued, if capital is given in the form of assets then the assets must be valued at the time of the contract, c) capital cannot be in the form of receivables and must be paid to mudharib either gradually or not according to the agreement in the contract.

Third ; Profit is also explained, The scholars agree that profits are determined by ratios such as 1/2 (50:50), 1/3 (70:30), and so on because the purpose of mudharabah is to associate in the profits generated. Because if the profit is stated in a certain nominal, then there is no profit for the mudharib except for that nominal, so the profit will only be owned by one of the parties.²⁵ And it is also important in a mudharabah contract if a loss occurs, the loss is borne by the owner of the capital and not the mudharib, because the mudharib has lost in his business and work, except in mudharabah muqayyadah and has been given restrictive conditions, if the mudharib violates these requirements then he is declared responsible. according to the principle agreed upon by the fuqaha that in fact the hands of the mudharib are the hands of the trustees, and the hands of the trustees in Islamic fiqh do not bear anything except tadrith (negligence), or ta'addi (exceeding limits), or taqshir (lazy).²⁶ In the DSN-MUI Fatwa as one of the conditions for mudharabah, what is meant by profit according to the Fatwa is the amount obtained as an excess of capital. And the following conditions relating to profits are; a) must be intended for both parties and may not only be unilateral, b) the profit share of each party must be known and stated at the time of the contract and must be in the form of a percentage (ratio) according to the agreement, c) the fund provider bears the loss due to mudharabah and the manager does not may bear any loss except as a result of willful misconduct, negligence, or breach of agreement.

Fourth: The business activities carried out by mudharib are described, Hanafiyah, Malikiyah, and Syafiiyah scholars agree that the requirement for the owner of capital to participate in the mudharabah business can damage the contract, because the capital is a trust that cannot be carried out unless it is handed over to the mudharib as a deposit, and if it is required that the owner of capital participate in the business then he has not completely surrendered his property. And the Hanabilah school justifies anyone who spends wealth to be used as a business for him and others with mutual benefits.²⁷ In the DSN-MUI Fatwa as a balance of

²³ Wizaratul Awqaf wa al Syuun al Islamiyah, *op.cit*, h.41

²⁴ Ibid, h.48

²⁵ Majmu'atun minal Muallifiin, *Fiqh al Mu'amalat*, h. 404

²⁶ Husain al Maghribi, *Qurratul Aini Bifatawa Ulama'il Haramain*, (Mesir: Maktabah at Tijariyah: 1937)h.130

²⁷ Wizaratul Awqaf wa al Syuun al Islamiyah, *op.cit*, h.63-64

capital provided by the fund provider and must pay attention to the following things; a) business activities are the exclusive right of the mudharib without the intervention of the fund provider, but he has the right to supervise, b) the fund provider must not overly narrow the actions of the manager which may hinder the purpose of the mudharabah, namely profit, c) the manager must not violate sharia law in his actions and must comply with the prevailing customs.

4. Kinds of Mudharabah Forms

Mudharabah contracts are divided into two, namely *mudharabah muthlaqah* (unbound mudharabah) and *mudharabah muqayyadah* (bound mudharabah). Scholars agree on the validity of the *mudharabah muthlaqah contract*. However, scholars differ on the legal status of *mudharabah muqayyadah*. Differences of opinion among scholars regarding the law of *mudharabah muqayyadah*, including:²⁸

- a. Malikiyyah and Syafi'iah scholars are of the opinion that *mudharabah muqayyadah* is invalid.
- b. Hanafiah scholars are of the opinion that the *mudharabah muqayyadah* contract is valid with several conditions: if the mudharabah *muqayyadah* is related to the time of the business, the party doing the business, and the time to come.
- c. Hanabilah and Zaidiah scholars allow unconditional *mudharabah muqayyadah contracts*.

What is meant by a mudharabah mutlaqah transaction is a form of cooperation between *shahibul maal* and *mudharib* whose scope is very wide and is not limited by the type of business, time or place of business.

²⁹However, if the *shahibul maal* feels the need for certain requirements to save his capital from the risk of loss, then the mudharib must fulfill the conditions or limitations in the mudharabah contract. If the *mudharib* violates these limits then he must be responsible for the losses incurred. This type of mudharabah is called *mudharabah muqayyadah (Restricted Investment Account)*.³⁰

5. Mutual Guarantee

Mudharabah contracts are part of the mandate, namely contracts made based on trust, but according to positive law that applies, among others, Islamic banking is required to mitigate risks for financing carried out, and one of the ways is by including guarantees in every financing.³¹

The provisions for this collateral item are contained in the DSN-MUI Fatwa on the financing provisions as follows:

- a. In principle, in mudharabah financing there is no guarantee, but so that the mudharib does not commit fraud, the LKS can ask for guarantees from the mudharib or a third party. This guarantee can only be disbursed if the mudharib is proven to have violated the things that have been mutually agreed upon in the contract.
- b. Basically, in mudharabah there is no compensation because basically this contract is trustworthy (*yad al-amanah*), except as a result of intentional mistakes, negligence, or breach of agreement.

²⁸Jaih Mubarak and Hasanuddin, *Jurisprudence of Muamalah Maliyah Syirkah and Mudharabah Contracts*, (Bandung: Symbiosa Rekatama:2017)h.161

²⁹ Muhammad Syafi'I Antonio, *Islamic Banking from Theory to Practice*, (Jakarta: Gema Insani Press, 2007) p.97

³⁰ Adiwarman A. Karim, *op . cit* p.212

³¹ Jaih Mubarak and Hasanuddin, *op . cit* h. 198

The guarantee for mudharabah business capital is that the manager guarantees to return the business capital if the business carried out suffers a loss either at the request of the capital owner or without a request from the capital owner.³²

Looking at the fatwa above which requires managers to provide guarantees for business capital received from capital owners, Nazih Hammad in his book " *Fii fiqh al-mu'amalat al-maliyah al-musharafiyyah al-mu'ashirah* " explains about the permissible requirements for guarantees in mudharabah contracts with the intent and purpose of protecting the invested capital from *ta'addi* and *ifrath* by mudharib or poor management of business capital, especially in this era in which there is a lot of damage and betrayal by humans.³³

So the problem is that the form of guarantee referred to is either as *qardh* (receivables) originating from mudharib which makes this come out of the mudharabah concept, or the collateral in question is as *rahn* (pawnshop) as contained in the DSN-MUI Fatwa number 92 of 2014 regarding financing accompanied by *Rahn*, in the following conditions:

- a. In principle, there is no guarantee in a trust contract. However, so that the trust holder does not commit a *moral hazard*, Islamic financial institutions may request collateral from the trust holder or a third party.
- b. The collateral in the trust contract can only be executed if the trust holder commits a *moral hazard act*, namely:
 - 1) *Ta'addi (ifrath)*, namely doing something that is not allowed or should not be done.
 - 2) *Taqshir (tafrith)*, namely not doing something that is permissible or should be done.
 - 3) *Mukhalafat al syuruth*, namely violating the provisions (which are not against sharia) agreed upon by the contracting parties.

6. Implementation of Mudharabah Contracts in Financing in Islamic Banks

Bank Indonesia as the holder of banking authority has regulated the requirements that must be met by Islamic banks wishing to channel funds to the public through *mudharabah contracts*. In accordance with Bank Indonesia Regulations (PBI), namely PBI No. 10/16/PBI/2008, in article 1 number 3, among other things, it is stated that financing is the provision of funds or claims that are equivalent to investment transactions based on, among other things, *mudharabah* and *musyarakah contracts*.³⁴

The technical provisions and implementing regulations of the PBI are Bank Indonesia Circular Letter (SEBI) SEBI No. 10/14/DPbS dated 17 March 2008 with the following requirements:³⁵

- 1) Banks act as fund owners providing funds with a function as working capital and customers act as fund managers;
- 2) Banks have the right to supervise and develop the customer's business even though they do not participate in the management of the customer's business, among others, the bank can conduct a *review* and request a report on the results of the customer's business that can be accounted for;

³² Ibid, p.200

³³ Nazih Hammad, *fii fiqh al-mu'amalat al-maliyah al-musharafiyyah al-mu'ashirah*, (Damascus: Dar al Qalam: 2007) p.281

³⁴ Khotibul Umam, *Islamic Banking Fundamentals and Dynamics of Its Development in Indonesia* (Jakarta: PT. Grafindo Persada: 2016), p.141

³⁵ Ibid, p.141

- 3) Banks are required to explain to customers about the characteristics of financing products under mudharabah contracts, as well as the rights and obligations of customers as stipulated in bank Indonesia regulations regarding transparency of bank product information and the use of customers' personal data;
- 4) In terms of financing the mudharabah muqayyadah contract, namely the provision of funds to customers where the owner of the funds provides special requirements to the fund manager;
- 5) Banks are required to conduct an analysis of requests for financing of mudharabah contracts from customers which include personal aspects in the form of character, and business aspects which include business capacity, finance and business prospects;
- 6) The distribution of business results from fund management is stated in the agreed ratio;
- 7) The agreed ratio cannot be changed throughout the investment period, except on the basis of the agreement of the parties;
- 8) Banks and customers are required to set forth an agreement in the form of a written agreement in the form of a financing contract on a mudharabah basis;
- 9) The term of financing, refund and distribution of operating results is determined based on the agreement between the bank and the customer;
- 10) Financing based on a mudharabah contract is provided in the form of money or goods, and not in the form of receivables or bills;
- 11) Giving in the form of money must be in the form of money with a clear amount;
- 12) If the gift is in the form of goods, then the goods must be valued on the basis of market prices and the amount clearly stated;
- 13) Refunds are made in two ways, namely in installments or all at once at the end of the contract period;
- 14) The distribution of operating results is carried out on the basis of a report on the results of the operation of the fund manager accompanied by evidence that can be accounted for;
- 15) The business loss of fund management customers that can be borne by the bank is a maximum of the amount of financing provided.

V. CONCLUSION

Mudharabah is a muamalah that involves two parties who act as property owners (shohibul mal) or property managers (mudharib) in seeking profits to be divided according to the agreed agreement. The legal basis that allows the financing of mudharabah is to refer to the arguments from the Qur'an and Sunnah, as well as ijma' unless the mudharabah contains something that is gharar and the division is not clear. In the implementation of mudharabah there are pillars and conditions that must be understood. Mudharabah contracts are divided into two, namely mudharabah muthlaqah (unbound mudharabah) and mudharabah muqayyadah (bound mudharabah). Scholars agree on the validity of the mudharabah muthlaqah contract. Mudharabah contracts are part of the mandate, namely contracts that are based on trust, but according to positive laws, sharia banking is required to mitigate the risk of the financing carried out, and one way is by including guarantees in each financing. Financing mudharabah in Islamic banks in its implementation have implemented the sharia principles contained in the DSN fatwa on mudharabah financing.

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