



Sharia conformity for mudharabah financing practices in sharia banks based on the DSN-MUI Fatwa Number 07 year 2000: A case study

 Santi Lamusu^(a)  Aulia Fuad Rahman^(b)  Noval Adib^(c)



^(a,b,c) Accounting Departement, Faculty of Economics and Business, University of Brawijaya, Indonesia

ARTICLE INFO

Article history:

Received 10 May 2021

Received in rev. form 25 May 2021

Accepted 27 May 2021

Keywords:

Fatwa, Financing, Mudharabah,
Islamic Bank.

JEL Classification:

E44, G10, G20

ABSTRACT

This study aims to uncover and analyze the suitability of sharia mudharabah financing practices at Bank Muamalat Semarang Branch with Fatwa DSN MUI Number 07 year 2000. To achieve this goal, the research was pursued using a qualitative method with a case study approach. The primary data of this research is interviews and is supported by secondary data. The key informants are bank employees. Data analysis was performed by using qualitative data analysis namely reduction, display and conclusion. The results showed that Bank Muamalat Semarang branch in carrying out the practice of mudharabah financing was in accordance with the DSN MUI Fatwa Number 07 year 2000 and the applicable SOP. Meanwhile, the recommendations in the Fatwa which are optional are still carried out in accordance with the prevailing regulations. For example, by requiring guarantees, channeling mudharabah financing only in the form of cash assets, only financing productive businesses such as BPRS and BMT, as well as the criteria for entrepreneurs, financing procedures and profit sharing mechanisms. The decision to choose the policy is accompanied by certain considerations, especially for the sustainability and security of LKS and does not conflict with fatwa rules so that it does not go out of the corridor of sharia principles in muamalah

© 2021 by the authors. Licensee SSBFNET, Istanbul, Turkey. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

Introduction

The achievements of the growth of Islamic banking nowadays have not been able to compete with the growth rate of conventional banks which have previously dominated the banking market. Although enthusiasts in Islamic banking are said to be growing from year to year, the sharia fever that has occurred in recent years seems to be still common fever. Various policies and regulations made by the government have not seen any real benefits in the sharia industry. The market share of the Islamic economy in Indonesia is only 8.29% of Indonesia's total financial assets. The market share of the Islamic banking industry has not increased. It is not more than 5% since 2016, and in August 2019, the share of Islamic banking assets only reached 5.86% of total national banking assets. Total assets of Islamic banking have slowed down in line with the decline in financing distribution from previous years. In the last three years, the average growth in Islamic banking financing has reached 14.57% and in August 2019, the financing channeled only grew 10.84%. It can be said that the share of Islamic banking has stagnated (Infobank, 2019:36).

The inhibiting factor for the growth of the Islamic banking industry in Indonesia are the limited capacity of the Islamic banking industry, both in terms of capital and infrastructure; Islamic banking also lacks innovation in terms of products; public perspective that the products of Islamic banks are not much different from conventional bank products. The other reason is that conventional products are considered easier to obtain, more profitable, the facilities cover all customer needs, and may also be cheaper than Islamic bank products. The point is that conventional bank products are considered more competitive and comparable.

Sharia bank products that can realize the growth and development of the community's economy are products based on profit sharing. Mudharabah financing is one of them that is considered to be a product that can improve the standard of living of the community as

* Corresponding author. ORCID ID: 0000-0003-4977-5045

a real activity of the trading business. The growth of mudharabah financing has declined from year to year due to the lack of interest in Islamic banking circles. According to the Sharia Banking Statistics (SPS) data published by the OJK until October 2019, the asset component of BUS and UUS is the distribution of mudharabah financing of Rp13.4 billion, which is only 8.1% of total profit-sharing based financing. Meanwhile, the component of murabahah receivables is Rp159.4 billion. The portion of the mudharabah portfolio as the core product of Islamic banking is very small when compared to murabahah products. This shows that there is a gap in the theory and practice of implementing mudharabah products. This gap is of course strongly influenced by several factors, namely the bank assessing that the mudharabah product is an investment product that is loaded with high risk. There are agency problems and moral hazard inherent in this product. This is due to the limited understanding by bankers of the concept and mechanism for profit sharing as well as the time to educate customers about mudharabah products.

The phenomenon of mudharabah in Islamic banking needs to be traced and examined more closely in the suitability of its sharia values. Especially in the operating system mechanism, because it boils down to conformity to sharia values. If it is only based on readiness, economic stability, and the credibility of the honesty of the community, but leaving sharia values, it means that there is no difference between Islamic Banking and conventional banking (Nurohman, 2008). The operating system must be equipped with established muamalah fiqh which has been borne by the DSN-MUI in kaffah and Falah transactions for the realization of benefit, to avoid prohibited transactions (tadlis, gharar, bai' ikhtikar, bai' najasy, maysir) in obtaining profits.

The existence of the label "sharia" in banking institutions, has the consequence of applying sharia principles to all products and operational activities that are sourced from the Al-Quran and Hadiths through the Fatwas. Indeed, these two sources only regulate general matters, the rest is needed for 'ijtihad' in regulating specific mechanisms. If not, it will cause problems in the systemization of these financial institutions (Nur, 2007). Moreover, the forerunners of most Islamic banks came from conventional banks that adopted the sharia system. This is evident that the current Syariah banking operational system is still in a conventional bank environment that is not yet fully compliant with Islamic sharia provisions. It causes the position of Islamic banking is still a sub-system of the monetary system which does not rule out being separated from elements of ribawi practice. Based on the above arguments, this study intends to trace the suitability of Sharia Mudharabah Financing Practices at Bank Muamalat Semarang Branch with Fatwa DSN MUI number 7 year 2000.

Literature Review

Akad/Agreement/Contract

All economic activities in any economic system can be seen from the contract between economic actors. In Islam, an akad or contract agreement is considered legal and legally enforceable by sharia if the articles in the contract are free from anything that is prohibited, in which there is the protection of property rights and commitment to obligations and responsibilities (Muhammad, 2016:49). One of the principles of muamalat is 'an-taradin or a principle of the willingness of the parties who carry out the contract. Willingness is a human inner problem that is difficult to measure the truth of. Therefore consensual attitude is manifested in the form of a contract (akad). Akad becomes one of the processes in terms of ownership. The word "akad" comes from Arabic which means bonding or binding (*al-rabth*) can also be interpreted as establishing and strengthening.

In the Islamic financial contract (akad), there is no standard classification in the Islamic legal system, but when viewed from a business and commercial perspective, akad can be grouped according to their functions and objectives in the economy and financial system (Muhammad, 2016:50). In a contract, there are pillars and terms of the contract, while the conditions are; 1) the person who has the contract; 2) the object of the contract; 3) the shighat of the contract (ijab-qabul).

Financing

Financing is funding provided by one party to another party to support an investment that has been programmed, either by an individual or entity. The technical term in Islamic banking is referred to as productive assets (Muhammad, 2016:41). In the activities of channeling funds, Islamic banks make investments and financing; 1) it is called an investment because the principle used is the principle of investment of funds or participation, and the profits obtained depend on the performance of the business that is the object of the investment and then adjusted to the agreed profit sharing ratio; 2) it is called financing because Islamic banks provide funds to finance the needs of customers who are deemed to need them and deserve them (Arifin, 2005:185). Islamic banks have many types of financing including; 1) Types of productive assets; 2) Types of non-productive assets.

Classical and Contemporary Mudharabah Concepts

Kasmir (2014:6) defines mudharabah as a cooperation contract between two parties, where the first party provides capital and the other party becomes the manager. Profits are divided according to the agreement outlined in the contract. If a loss, it will be borne by the owner of the capital as long as the loss is not the result of the management's negligence.

According to the jumhur in the mudharabah contract, capital is in the form of money and may not be in the form of goods, this is because the nature of the price fluctuates (changes) as a result, it will affect the results of the profits that will be received and the amount cannot be ascertained, which in the end will be for the results obtained. the profit from the business to each party is unclear.

However, some scholars refer to the opinion of the Imam Maliki school that allows business capital to be in the form of goods/inventory and is not required to be in cash.

The current concept of mudharabah has undergone many transformations. If in the classic mudharabah concept, mudharabah is only done with one type or form, but in the contemporary mudharabah concept it can be combined with other contracts, for example with a murabahah or musyarakah contract. This can be done to adapt to the current conditions of society to meet the needs of sharia banking services. It can be seen that the mechanism that is carried out in contemporary mudharabah today is different from the classical mudharabah practice. For example, in the case of principal capital installment payment mechanisms and loan profit sharing received by mudharib from shahib al-maal, this is done only once the contract period. As for the sharia bank products based on the mudharabah agreement, currently being carried out according to the fatwas issued by the DSN-MUI, the Authority Regulation in the Compilation of Shari'ah Economic Laws (OJK, 2019).

Fatwa DSN-MUI No: 07/DSN-MUI/2000 Mudharabah Financing

In terms, the definition of a fatwa is essentially an answer that contains an explanation of the sharia laws obtained from the istimbath results on the arguments related to that law. because a fatwa is an answer, then basically the fatwa does not stand alone but is preceded by a question from a party. The detailed determination of mudharabah financing is divided into three parts, namely the terms of financing, pillars, and terms of financing as well as the legal provisions of financing.

In determining the terms of financing, there are ten important points that are based on it, namely:

- i. *Mudharabah financing is financing channeled by LKS to other parties for a productive business.*
- ii. *In this financing, the LKS as shahibul maal finances 100% of the needs of a project while the entrepreneur acts as the mudharib.*
- iii. *The business period and the procedures for returning and sharing the profits according to the agreement of both parties.*
- iv. *Mudharib can conduct businesses that are mutually agreed upon and in accordance with sharia, and LKS does not participate in its management, but has the right to provide guidance and supervision.*
- v. *Amount of financing funds must be clearly stated in cash and not receivables.*
- vi. *LKS as a fund provider bears all losses resulting from mudharabah unless the mudarib makes a deliberate mistake, neglects, or violates the agreement.*
- vii. *In principle, mudharabah funds are not guaranteed, but in order for the mudharib not to deviate, the LKS can ask for guarantees from the mudharib or a third party. Collateral can only be disbursed if the mudarib is proven to have violated the things that have been mutually agreed in the contract.*
- viii. *Criteria for entrepreneurs, financing procedures and profit sharing mechanisms shall be regulated by the LKS with due observance of the DSN fatwa.*
- ix. *Operational costs are charged to mudharib.*
- x. *If the LKS does not fulfill its obligations or violates the agreement, the mudarib is entitled to receive compensation or expenses that have been incurred.*

In the pillars and terms of financing, there are five underlying points, namely:

- i. *Shahibul maal and mudharib must be competent with law.*
- ii. *Statement of consent and qabul must be stated by the parties to show their will in entering into a contract (akad), by offering and accepting the contract and made at the time of the contract either in writing, correspondence or modern communication.*
- iii. *Capital is an amount of money and/or assets given by shahibul maal to mudharib for business purposes on condition that the amount and type of capital must be known, capital can be in the form of money or goods being valued. If the capital provided is in the form of an asset, then the asset must be valued at the time of the contract, the capital cannot be in the form of a receivable.*
- iv. *Mudharabah profit is the amount obtained as an excess of capital. The terms of the profits must be reserved for both parties, the proportional profit share for each party must be known and stated at the time the contract is concluded and must be in the form of a percentage (nisbah) of the profits. Changes in the ratio must be based on an agreement, shahibul maal shall bear all losses resulting from mudaraba, and mudharib may not bear any losses unless they result from a deliberate mistake, negligence, or a breach of agreement.*
- v. *Business activities by the mudharib as a balance (muqabil) of capital provided by shahibul maal must pay attention to business activities as the exclusive right of the mudharib, without interference from shahibul maal and must not narrow down the mudharib actions in such a way that can hinder the achievement of profits, mudharib must not violate the law Islamic sharia.*

In the provisions of the financing law there are four points, namely:

- i. *Mudharabah may be limited to a certain period.*
- ii. *The contract must not be linked (mu'allaq) with an event in the future that does not necessarily occur.*

- iii. Basically, in *mudharabah* there is no compensation, because basically this contract is a mandate (*yad al-amanah*), except as a result of a deliberate mistake, negligence, or a violation of the agreement.
- iv. If one of the parties does not fulfill its obligation or if there is a dispute between the two parties, the settlement shall be made through the Syari'ah Arbitration Board after no agreement has been reached through deliberation.

Conception of Analysis

This research was conducted at Bank Muamalat Semarang Branch, Central Java, Indonesia. This research uses qualitative research with a case study approach. Through qualitative research, researchers can understand subjects and feel what they experience in daily life (Furchan, 1992: 21-22). The case study is a research strategy in which researchers carefully investigate a phenomenon in the form of activities, processes, or a group of individuals who are limited by time and activity, then researchers collect complete data using various data/information collection and verification procedures (Creswell, 2010:20), Denzim and Lincoln 2011:303). This study aims to see the suitability of *mudharabah* financing practices carried out by Bank Muamalat Semarang Branch based on the DSN MUI Fatwa No. 07 of 2000. Thus, the case study approach is an appropriate choice to answer research problems.

Sources of data in this study are primary data obtained from direct interviews with some informants and partly conducted online interviews because when the research was still ongoing the Covid 19 pandemic occurred which required the application of social distancing. In addition, some secondary data are in the form of DSN-MUI Fatwa, SP3 Akad Attachments, Annual Report 2020 Bank Muamalat Indonesia Tbk, general financing requirements, flow of part of the financing process taking place, Funding Principle Approval Letter (SP3) and other supporting documents to strengthen the findings and complementing information obtained through interviews is also used in research. Other data in the form of observations at Bank Muamalat conducted during interviews. The researcher did not make special observations on the practice of *mudharabah* financing because when the research was taking place, there were no new *mudharabah* financing transactions. Instead, the researcher made observations on the previous *mudharabah* financing data.

The informants in this study consisted of 5 people, namely as follows:

Table 1: Informant Identity

No.	Name	Position
1	Mr. Atta	Region Head
2	Mr. Sahran	Branch Manager
3	Mr. Nurman	Relationship Manager Financing SME
4	Mr. Yono	Appraisal
5	Mr. Fatih	Officer Operation

Source: Authors

The stages of analyzing case study data with the patterns and models proposed by Miles and Huberman (1994) are using interactive models. This model confirms that the flow of activities and data collection is an interactive cycle process consisting of three steps, namely; 1) reduction; 2) display; 3) conclusion.

Discussion

In carrying out financing activities, especially *mudharabah*, Bank Muamalat Semarang Branch regulates an agreement in the form of a written contract known as a *akad*. The *akad* is a starting point as well as a sign of an agreement between *mudharib* and *shahib-al-maal* as well as a reference during the contract period. The *akad* provides information and formulations that describe the rights and obligations of each party and their role in realizing the objectives of the agreement which is the goal of both parties. The rights and obligations that are owned bind the object of the engagement down to matters relating to the settlement process, in the event of a dispute or default in the future.

MUI DSN Fatwa Number 07 in the pillars and terms of financing related to the contract states that: The statement of consent and *qabul* must be declared by the parties to show their will in entering into a *akad*, with due regard; a) The offer and acceptance must explicitly indicate the purpose of the contract (*akad*). b) Acceptance of the offer is made at the time of the contract. c) The contract is stated in writing, by correspondence, or by using modern communication methods.

In practice, the *mudharabah* contract at Bank Muamalat is carried out narratively. This is in line with the answers given by Mr. Atta and Mr. Sahran when asked about the status of the contract whether it was done underhand or notarized. Thus, both parties must be legally competent as required by the fatwa. Mr. Atta in a written interview revealed that both *shahib-al-maal* and *mudharib* should understand the contents of the *mudharabah* contract.

"They should understand because the contract was read at the time of the akad, its aims and its objectives."

The results of the interview above show that the mudharib should understand the contents of the contract that becomes the agreement because the contract is read out at the time of the akad. Even if there are parts that are not understood by the mudharib, they can ask the officer about it before finally deciding to accept and sign the contract. Thus, they will not be disadvantaged due to reasons of not understanding the contract.

Most of the mudharabah contracts at Bank Muamalat are carried out at BMT or BPRS and are not individuals. This is based on several considerations, among others, as expressed by Mr. Nurman as follows:

"We can see from the customer business and their needs. We are more focus about the customer business because we have several financing products. In sharia, it must be clear what kind of business it is. Then we see what the customer exactly needs are. after that we direct it, in essence, for business profiles and criteria, we already have rules for every financing channeled. For example BMT, now we have to know also the capital/funds channeled and what for it is used? Mudharabah financing is channeled more to productive businesses, for example to BMT. "

"Maybe in terms of safety, it will be higher if the distribution goes to BMT or BPRS. If it goes to UMKM., the monthly income's UMKM will not be recorded. Expenditures and income are sometimes not carried out. Well, as long as the money goes into shopping again. So administratively, he was not fulfilled, he was asked about his monthly report, he did not have a record. Meanwhile, our administrative requirements must be fulfilled, both in terms of business legality and recording financial statements. Another case to BMT or BPRS is administratively fulfilled."

Mr. Nurman's explanation above shows that Bank Muamalat's decision to only distribute Mudharabah to BMT or BPRS is inseparable from safety considerations. In addition, BMT and BPRS administratively are better able to meet the requirements than individuals or UMKM. The management decision of the Bank Muamalat Semarang branch is still following the MUI DSN Fatwa Number 07-year 2000 which allows mudharabah to be distributed to individuals or institutions such as BMT and BPRS because of their nature of running productive businesses. The provisions in the MUI DSN Fatwa Number 07 year 2000 regarding mudharabah (*qiradh*) financing are made clear in points 1 and point 8 regarding the terms of financing.

In this case, although the mudharib capital comes from Bank Muamalat as a shahib-al-maal, the regulations are as stated in the qiradh fatwa that business activities are the exclusive right of the mudharib. The Shahibul Maal has no right to interfere in the management of the Mudharib. The responsibility of shahib-al-maal is only to supervise the way the mudharib business is under the principles of sharia. The fatwa is as follows:

"Business activities by the manager (mudharib), as a balance (muqabil) of capital provided by the fund provider, must pay attention to the following matters: a) Business activity is the exclusive right of the mudharib, without the interference of the provider of funds, but he has the right to exercise supervision. b) Providers of funds must not limit the manager's actions in such a way as to hinder the achievement of the mudharabah goal, namely profit. c) Managers must not violate Islamic Shari'ah law in their actions related to mudharabah, and must comply with the prevailing customs in that activity."

The implementation of the distribution of mudharabah financing funds is carried out by the principles above. In distributing mudharabah financing funds to BMT, Bank Muamalat gives full rights to mudharib in running their business, including the decision on what type of contract the BMT will use with customers, continue to use mudharabah, murabahah, or other contracts. This is as explained by Mr. Nurman. The following are the results of the interview.

"For the mechanism of distributing mudharabah financing funds, we do not regulate BMT as the manager of funds in distributing funds to its customers. It is enough only to know that the financing funds are used for a productive business and guaranteed halalness. Mudharabah is more into the distribution business. Of course, some covenants must be fulfilled by BMT. So we do not limit what BMT does to the members who use the contract. It's different with murabahah, right murabahah is a system of buying and selling (investment) so we limit the distribution of funds by BMT to members using the murabahah contract as well. Mudharabah is more flexible when it comes to mudharabah or other contracts."

In line with Mr Sahran's explanation of the reasons why he prefers to channel mudharabah financing to BPRS and BMT only, the quotation is as follows:

"The first reason is that the risk of mudharabah financing is quite high, such as side streaming the use of financing funds that are not following the submission, then reports on business results that are not suitable even though the customer is profitable, which is reported at a loss, or the profit is small even though there is a lot to avoid profit sharing as agreed. The second risk is that the financial reports or financial records of UMKM are relatively minimal most of them do not even have financial reports. Even if they do, they only record how much capital and costs and how much profit. Not specific and detailed, so it is difficult for us to calculate the return from his business. Unlike the BPRS, BMT or cooperation, they are relatively better and more detailed in terms of financial reporting."

The explanation from Mr Nurman and Mr Sahran above shows the consistency of Bank Muamalat in carrying out business activities as stated in the fatwa. Although this is still a debate because of changes to the initial contract from the first party (bank) to the second (BMT) and from the second party (BMT) with a third party (customer) if using a different contract with mudharabah.

For settlement, if one of the parties, the Bank or the Customer performs a default on the contract agreement without complying with its obligations resulting in a dispute, according to point 4 in fatwa the settlement is carried out through the Sharia Arbitration Board. In fact, Mudharib often does the default. It as according to the informant Mr. Fatih that:

"Customers who are more likely to violate the agreement of the contract, for example, are late in paying installments. This is already categorized as a default, especially until it is in arrears for a long time and eventually gets stuck. In this case, we take a humanist approach, as much as possible maybe there is no violence, that everything can be discussed through deliberation to find the best solution that does not harm both parties. We have Standard operation for handling problematic financing customers, well, of course, we don't immediately play guarantee execution if the customer is stuck. There are strict procedures and a long process. If possible, we could involve the Sharia Arbitration Board even to the Court to resolve disputes."

So far, in terms of handling problematic financing, Bank Muamalat Semarang Branch has continued to prioritize the principle of kinship, as long as there is a good intention from the customer. In the event of a dispute between the Bank and a financing customer, steps taken by the Semarang BMI to conduct deliberations with the mudharib/customer to find a solution that certainly does not harm both parties, but if it does not get a solution from the deliberation, the bank/customer can submit to a dispute resolution institution, namely the National Syari'ah Arbitration Board for mediation and if deliberation cannot be reached, it can submit to the local Religious Court to get justice between the two parties.

The suitability of the Semarang Branch of Bank Muamalat Mudharabah Financing Practices with the general terms of financing

In its operational activities, Bank Muamalat Semarang Branch is not only carrying out saving activities, but also managing funds in the form of financing, namely mudharabah. Mudharabah financing is a type of financing that differentiates LKS and non-LKS by the profit-sharing principle. Mudharabah is financing carried out through a business collaboration between two parties, the bank as the owner of the capital and the customer as the manager of a with a shared profit-sharing ratio business that has been mutually agreed.

Distributed mudharabah financing is only aimed at productive financing as working capital to meet the needs for increased production, both quantitatively to increase the amount of production and qualitatively to increase the quality of production as well as trade needs and increase the utility of place of an item (Antonio, 2001: 160). This is also following the DSN MUI fatwa Number 7 year 2000 on the financing provisions point 1 that: "Mudharabah financing is financing channeled by LKS to other parties for a productive business". Productive activities are needed to get income/profit to share through profit sharing.

In practice, Bank Muamalat Semarang branch only distributes mudharabah financing funds to BPRS and BMT. The distribution of financing funds to BPRS and BMT is in line with what is stated in the DSN MUI Fatwa Number 07 to channel mudharabah financing for productive businesses only and prohibits the distribution of capital to businesses that contain forbidden (*haram*) elements. The bank may provide financing to individual businesses as long as it meets the criteria and requirements. Although in practice it is very difficult to finance individual customers because they do not meet requirements such as the availability of financial reports for the previous 2 years. Another reason for giving priority to channeling financing to BMT and BPRS is due to security considerations.

Point 2 in the financing provisions explains that "in this financing LKS as shahib-ul-maal (fund owner) finances 100% of the needs of a project (business), while the entrepreneur (customer) as a mudharib or business manager. Bank Muamalat in distributing mudharabah financing does not necessarily finance 100% of the working capital required by the customer. There are certain underlying conditions, for example applying for working capital according to the customer's count of 100 million but according to real bank calculations, it is only 80 million even smaller. This is influenced by several considerations, both cash flow, and collateral. As long as these two things are fulfilled, it is okay for a bank to channel its financing funds amounting to 100% of working capital.

In the DSN MUI Fatwa Numb 07 year 2000 regarding the terms of financing in point 3 and point 5, it explains that the business period, procedures for repayment, and profit-sharing are determined by both parties and that the amount of the fund must be cash, not accounts receivable. The maximum term of mudharabah financing is up to 5 years. Bank Muamalat Semarang Branch conducts a survey of prospective customers and businesses that will be financed before providing financing. The initial survey was carried out by RMF as a marketing financing that went directly to the field to find out the truth of the business and the credibility of potential customers. To find out the credibility of a prospective RMF customer, it is conducted a financing analysis which includes analysis of 5C + 1 (Character, Capital, Capacity, Collateral, Capable + Condition) and analysis of company aspects.

Determination of the period of business management depends on the customer's business cash flow cycle, namely from cash, raw materials, production processes, finished goods, accounts receivable, and finally cashback. This can be seen from the customer's business cash flow, with the capital injection, we can determine margin or profit expectations so that we can measure the payback period + business profits. The cash conversion cycle affects the company's profitability and liquidity. This is because all policies related to the cash conversion cycle will have a positive or negative impact on the company's profitability and liquidity. In financial theory, the shorter the period a company has in converting its inventory of goods and receivables into cash, the more the company's profitability will increase (Sharma & Kumar, 2011).

The bank is not directly involved in the management of the customer company but is only in charge of supervising and providing guidance to customers. The absence of far enough interference from Bank Muamalat as a capital donor for customers is a form of

compliance and conformity with the MUI DSN Fatwa No.7 of 2000 at point 4 that mudharib may carry out various businesses that have been mutually agreed upon and following sharia principles; LKS does not participate in company or project management but has the right to supervise.

In addition to obtaining profit sharing, mudharabah financing also applies the principle of loss sharing. This happens because not always a business will get profit. Customers may get losses in their business and for the sake of a sense of justice, both profits and losses must be shared. Point 6 of DSN MUI Fatwa Number 07 explains the distribution of losses and responsibilities of the bank to customers if they neglect to carry out their responsibilities. Although the fatwa explains the conditions in which the LKS must bear the losses suffered by the customer, an exception occurs when the loss is caused by client's willful error, negligence, or breach of covenant. Bank Muamalat Semarang branch bears these losses through in-depth cross-checks, for example in conditions of unpredictable natural disasters. Losses caused by natural disasters will be borne by Islamic banks. A similar provision in point 10 explains that if the LKS as the funder violates the agreement, then the mudharib has the right to get compensation for the costs that have been incurred. However, in practice, as acknowledged by the bank, the violation is often from the mudharib. The factors that influence the existence of deliberate violations or negligence by Mudharib are such as adverse selection, moral hazard, and side streaming.

MUI DSN Fatwa No. 7 of 2000 explains the nature of collateral in the mudharabah contract. In fatwa point 7 it is said that in mudharabah financing there is no guarantee, but so that mudharib does not deviate from contract, the bank can ask for guarantees from mudharib or third parties. Collateral will only be disbursed when the customer violates the agreement or becomes a last option when the customer is unable to fulfill his obligations. The discourse on the obligation to provide guarantees in the mudharabah agreement is still a difference of opinion among scholars (Hulam, 2010). According to classical scholars, the guarantees are not needed and are not justified in mudharabah because mudharabah transactions occur based on mutual interest to partner in a business that is based on mutual need and trust.

In its development, in modern or contemporary economic practices in mudharabah transactions, especially in Indonesia, a mudharib will be burdened with guarantees and even must be guaranteed by the customer. This is as stipulated in Bank Indonesia regulations Number: 7/46/PBI/2005 Article 6 letter (o) which explains that; Banks can ask for guarantees or collateral to anticipate risks if the customer is unable to fulfill the obligations as stated in the contract due to negligence and/or fraud. This Bank Indonesia regulation is no different from the Fatwa of the National Sharia Council Number: 07/DSN-MUI/IV/2000 on the stipulation of the Financing provisions point 7 that states there is no guarantee in principle for mudharabah financing. However, for the sake of security and mutual benefit, the LKS is allowed to ask mudharib for guarantees when they want to apply for mudharabah financing.

The implementation of guarantees in mudharabah financing at Bank Muamalat Semarang branch is not something wrong or forbidden. That applies both in general rules and regulations in the MUI DSN fatwa because the two rules allow for guarantees. Guarantee is an absolute requirement that customers must fulfill to receive financing. It is also stated that the amount of capital that will be disbursed by the bank is determined by the value of the guarantee. Bank Muamalat in determining guarantees is also based on careful considerations and for safety, just in case the customer violates the contract that has been agreed upon. The guarantee will minimize the risks that the Bank may face in the future.

Moreover, according to an informant who is also an internal party of Bank Muamalat that the extent of trusting especially people who come to the bank to apply for financing is not an easy matter. For the sake of mutual comfort and security, a guarantee is needed. The following is Mr. Nurman's explanation:

"I think that in distributing financing, both mudharabah, and others, trust is not the main thing. Why? It is because we did not know the customer in-depth, there was no record of contact so far, suddenly someone came asking to be trusted to manage funds. In the trash itself there must be controlling how we can trust this person. There are elements that must be fulfilled by other things. Covenants appear that can bind both parties in terms of cooperation."

In some policies, DSN MUI only explains the common rules and leaves it entirely to the LKS to regulate these policies. For example, in point 8 of the MUI DSN Fatwa No. 07 of 2000 it is revealed that the criteria for entrepreneurs, financing procedures, and profit-sharing mechanisms are regulated by the LKS by taking into account the DSN fatwa. In this case, policies related to the criteria for entrepreneurs who can apply for mudharabah financing, the financing procedures performed, and the profit mechanism is regulated by the Bank by still referring to the DSN fatwa. In practice at Bank Muamalat Semarang branch, the type of business financed by this Bank is a non-individual organization. This is still under the DSN MUI Fatwa Number 07/DSN-MUI/IV/2000 regarding the provision of financing point 1 which allows distributing mudharabah financing to individual and institutional productive businesses.

Point 9 of the MUI DSN Fatwa No. 07 of 2000 also mentions the operational costs borne by mudharib. In making a mudharabah contract between customer and the bank, various operational costs arise. These costs include paper costs, electricity costs, salaries + employee overtime, etc. These costs are included in the administrative fees charged on each financing application, namely 1% of the proposed financing ceiling. This is an internal regulation of the Muamalat bank (adjusted to the decision of the financing committee). Administrative costs are charged to financing customers and paid in advance before disbursement of financing funds deposited through the agreed customer's account.

Conformity of Mudharabah Bank Muamalat Semarang Financing Practices with Pillars and Conditions

In connection with article 1320 of the Civil Code, especially on the second requirement regarding legal proficiency above with point 1 of the MUI DSN Fatwa No. 7 of 2000, the two parties involved in the mudharabah agreement should understand the law, especially those related to the contents of the contract and the power of law that binds it. Considering that the contract has a legal impact on both parties, the parties must be careful in understanding the contents of the contract so that in the future it does not cause problems that can be detrimental. The position of the person who will manage the capital is the representative of the owner of the capital so the requirements for a representative also apply to capital managers in carrying out a mudharabah contract, the terms of mudharabah, following the principles put forward by *jumhur ulama* (Sharma & Satish, 2011: 159-173).

A contract (*akad*) is a very important pillar for the realization of such a transaction, so that the substance of the contract or agreement in each transaction becomes real and determines whether the transaction is legal or not, namely with a statement of consent and *qabul* of each party working together to achieve second favor/willingness. The statement of the consent *qabul* is stated by the related parties in writing through a contract. The agreement contains various information regarding the agreement between the two parties. The contents of the contract in mudharabah financing as outlined in the offering letter or what is known as the *Al-Mudharabah Financing Approval Letter (SP3)* by Bank Muamalat, include: stated the purpose and purpose of the collaboration, this is following what is stated in Point 2 of MUI DSN Fatwa Number 07 of 2000 concerning *Kabul consent (Ijab Kabul)* statement which was stated by both parties. *Ijab* is a word uttered by the first party who wants a mudharabah contract to be established, while *qabul* is an answer that contains an agreement uttered by the second party or the representative, as stated by Wahbah Zuhayli (1985: Juz 5: 3792).

In the mudharabah financing contract, some clauses are agreed upon between the two parties stated in the financing contract, including; there is a bid submission from one party and the other party provides an answer to approval/acceptance of the proposed bid response. The contents of the contract include the use of financing funds as working capital, financing period, ratio portion, how to receive and pay obligations, administrative costs, fines, guarantees, and supporting documents required, as well as other requirements before the contract, conditions before disbursement, requirements. during other financing periods that are binding in agreements using correspondence or using modern communication methods. In terms of the pillars and terms of financing for the MUI DSN fatwa No. 7 of 2000 point 3, it is explained about the conditions for distributing mudharabah capital. In practice at Bank Muamalat Semarang Branch, the amount of capital disbursed is following the number of calculations that have been made by the bank. This means that the bank cannot simply channel an amount of capital with the exact amount requested by the customer but must go through a calculation process and with various considerations. The agreed amount of capital that has been agreed upon to distribute to the customer is clearly stated in the contract and using what type of capital, money or assets and is not justified in the form of receivables. The type of capital that is commonly used in the mudharabah agreement at Bank Muamalat is cash financing. The capital that is transferred can be done gradually or one time distribution depending on the needs of the mudharib and previously it was agreed at the beginning of the contract.

In mudharabah, business activity is the exclusive right of the mudharib, while the provider of funds has the right to supervise. Bank Muamalat Semarang Branch, as a provider of funds, they has right to supervise and to controll as well as to ensure that financing funds are channeled or used for productive businesses and guaranteed halalness. Providers of funds do not limit the manager's actions in such a way as to hinder the achievement of the mudharabah goal, namely profit. Managers must not violate Islamic sharia law in their actions related to mudharabah and must comply with the prevailing habits in their activities. This is in line with the MUI DSN Fatwa No. 07 of 2000, especially in point 5. Mudharabah financing at Bank Muamalat Semarang Branch is carried out using the mudharabah *mutlaqoh* contract. According to the DSN-MUI Fatwa Number 115/DSN-MUI /IX/2017 regarding the mudharabah contract in the first provision of point 7 that Mudharabah *mutlaqoh* is a mudharabah contract that is not limited to the type of business, period (time), and/or place of business. The inadequacy of the implementation of mudharabah financing at Bank Muamalat Semarang Branch lies in the limitation of the period of the financing period. The provisions for mudharabah *mutlaqoh* do not limit the period and type of business being financed with a payment period of 1 to 5 years for the working capital management period. The type of business is also limited, only for productive business types such as BPRS, BMT, and cooperatives, for UMK is not recommended because it is considered to be riskier, but this provision is an internal regulation of the Semarang branch of Muamalat bank with consideration of the principles of prudence and safety.

On the pillars and terms of mudharabah financing points 4a to 4c Fatwa No. 07/DSN-MUI/IV/2000 explained that mudharabah profit is the amount obtained as an excess of capital, provided that the profit is met. Profit ratio; Profits are an important part of the contract. therefore, a mudharabah contract cannot be carried out without discussing profit. If all profits are given to the owner of the capital, the contract is called *bazat*. If it is entirely assigned to the manager, it is considered a loan (Rahman 1996: 380).

The suitability of the Semarang Branch of Bank Muamalat Mudharabah Financing Practices with the Legal Provisions for Financing

The legal provisions for mudharabah financing point 1 of the MUI DSN Fatwa No. 07 of 2000 state that mudharabah may be limited to a certain period. Mudharabah financing carried out on LKS such as banks is limited by a certain period. Bank Muamalat, for example, limits the period of mudharabah financing from 1 to 5 years according to the customer's ability as shown in research conducted by Susana and Prasetyanti (2011). This financing is used for productive financing as working capital is needed to meet the needs for increased production, both quantitatively. to increase the amount of production as well as qualitatively to improve the

quality or quality of production results as well as trade needs. The type of business that can be submitted for financing is productive financing that generates profits and prohibits the distribution of capital for businesses that contain illegal elements.

Point 3 of the legal provisions for financing the DSN-MUI fatwa No. 07/DSN-MUI/IV/2000 explained that there is no compensation in the mudharabah, because basically, this contract is a mandate (*yad al-amanah*). The losses in the mudharabah contract are borne by the owner of the funds, but if the loss is caused by negligence of the customer, then the loss is borne by the customer/mudharib. The risks involved in mudharabah, especially in its application in financing are relatively high, including a. Side streaming, the customer uses the funds not as stated in the contract; b. Negligence and deliberate mistakes; c. Concealment of profits by customers if customers are not honest (Antonio, 2001: 129).

Point 4 of the legal provisions for financing Fatwa No. 07/DSN-MUI/IV/2000 also states that if one of the parties does not fulfill its obligations or if there is a dispute between the two parties, then the settlement will be made through the Syari'ah Arbitration Board after no agreement has been reached through deliberation. In the event of a dispute between the Bank and the customer, steps taken by the Semarang BMI to conduct deliberation to find a solution which of course does not harm both parties, but if there is no solution from the deliberation, the bank or customer can submit it to the settlement agency. Dispute, namely the National Syari'ah Arbitration Board to mediate and if consensus is not reached, it can be submitted to the local Religious Court to get justice between the two parties.

Efforts to resolve problematic financing can be pursued in two ways, namely financing rescue and financing settlement. Financing rescue is a step to resolve problematic financing through renegotiation between the bank as the creditor and the borrowing customer as the debtor, while another financing settlement is a step towards resolving problem financing through a legal institution. Regarding the rescue of non-performing loans, it can be done by referring to Bank Indonesia Circular Letter No. 26/4/BPPP dated May 29, 1993, which in principle regulates the rescue of problem loans before they are resolved through legal institutions. It is done through alternative handling by rescheduling, reconditioning, and restructuring (Djamil, 2012:82). The contract made by BMI is not related to Mu'allaq/destiny of future events which may not occur. Mu'allaq means something that has not been happen and unpredictable. So mu'allaq destiny is the provision of Allah SWT. Humans are given the role to try, while the result will be determined by Allah SWT. This is in line with what was stated in the MUI DSN Fatwa No. 07 of 2000 point 2 that a contract should not be linked (*mu'allaq*) with an event in the future that does not necessarily happen. Mu'allaq what is happening today is the Covid'19 pandemic that is experienced by all countries in the world including our country, this has resulted in many businesses or industries experiencing a drastic decline in profits and income which impact the ability to pay customers and the continuity of the banking industry with the increase in non-performing loan (NPL) of a bank.

The regulator issued a policy to minimize the impact of Covid'19 through the OJK issued a National Economic Stimulation Policy as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019, issuing POJK No.11/POJK.03/2020. The stimulation policy is the policy for assessing the quality of financing based solely on principal accuracy and margin/profit sharing/ujrah with financing up to Rp10 billion and a financing restructuring scheme. Financing restructuring is a loan repayment assistance. Restructuring is not a write-off but provides concessions to pay off debt payments. Loans still have to be paid but are given relief based on an assessment and agreement with the bank (Mardhiyaturositaningsih & Mahfudz, 2020).

Conclusions

In terms of conformity with the Fatwa, what is carried out in the Semarang Branch of Bank Muamalat is based on the SOP that refers to the Fatwa of the DSN-MUI. Bank Muamalat Semarang Branch in carrying out mudharabah financing is generally following the MUI DSN Fatwa No. 07 of 2000. This is also as said by informants and the results of research investigators through secondary data in the form of financing contracts sourced from SP3 and the main financial statements of Bank Muamalat Indonesia Tbk. The results of this study can help to break the public and academic perceptions that the SOP for Islamic bank mudharabah financing, especially Bank Muamalat is not fully following the principles of sharia. Bank Mumalat continues to improve itself through innovation in its operating systems so that it is following the DSN-MUI Fatwa as an institution that has the authority in determining and maintaining the application of sharia principles in LKS operations. The results of this study help practitioner of the Islamic banking sector in revealing the suitability of sharia mudharabah financing practices carried out by Islamic banks, namely Bank Muamalat Semarang Branch in particular.

Some of the limitations of this study are, 1) the absence of informants who were obtained directly from financing customers of Bank Muamalat Semarang Branch due to the Covid'19 pandemic situation which made the researcher have to change the research strategy so that the researcher could only made interview with the Bank's internal parties and could not cross-check to the customer. 2) Research conducted during the pandemic so that the direct interviews that would have been carried out on all informants, eventually had to turn into online interviews for some informants. This condition made it difficult for researchers to collect more in-depth information and stuck to closed questions because for each answer that was given. sent by informants inevitably raises new and important questions to be explored further. The results of this study have both theoretical and practical implications. The theoretical implication of this research is to provide empirical evidence of the importance of the MUI DSN fatwa No. 07 of 2000 in running a sharia-based business. What is carried out by Bank Muamalat Semarang Branch shows that both the DSN-MUI fatwas function as a means of control to ensure LKS operations run as recommended. The practical implication of this research is to show that the practice

of mudharabah financing carried out by Bank Muamalat is following sharia principles as in the DSN-MUI fatwa. By knowing the suitability of sharia which is carried out in mudharabah financing, the findings in this study can be considered as material for assessing whether the mudharabah financing carried out by Bank Muamalat is still in the corridor of sharia or not.

Researchers suggest that further researchers who want to take the same theme and research topic to expand the reach of information, for example by involving customers as informants so that the information obtained is more credible and can be proven from one another, especially between the owner of the capital and the manager (mudharib). Triangulation of data between owners of capital and customers can be done in more depth. In addition, this research can be carried out in a more in-depth study using other qualitative approaches such as interpretive and critical.

References

- Al-Zuhayli, Wahbah. (1995). *Al-Fiqh al Islami wa Adillatuhu*. Kajian Berbagai Mazhab (Agus Efendi & Bahrudin Fannany, Trans.) Bandung: Remaja Rosda Karya.
- Antonio, Muhammad Syafi'i. (2001). *Perbankan Syari'ah dari Teori ke Praktik*. Jakarta: Gema Insani Press.
- Arifin, Zaenul. (2005). *Dasar-Dasar Manajemen Bank Syariah*. Jakarta: Pustaka Alvabet.
- Bank Muamalat Indonesia Tbk. *Annual Report (2020)* <https://www.bankmuamalat.co.id/en/investor-relations/annual-report>.
- Creswell, J.W. (2010). *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research (4th ed.)*. NJ: Pearson Education Upper Sadle River
- Denzin, N. K. and Lincoln, Y. S. (2011). *Introduction: The Discipline and Practice of Qualitative Research. The Sage Handbook of Qualitative Research (4th ed)* CA: Sage Thousand Oaks.
- Djamil, Faturrahman. (2012). *Penyelesaian Pembiayaan Bermasalah Di Bank Syariah*. Jakarta: Sinar Grafika.
- Fatwa Dewan Syariah Nasional nomor: 07/DSN-MUI/IV/2000 Tentang Pembiayaan Mudharabah (*Qiradh*). <https://dsnmu.or.id/kategori/fatwa/page/14/>
- Fatwa Dewan Syariah Nasional nomor: 115/DSN-MUI/IX/2017 Tentang Akad Mudharabah. <https://dsnmu.or.id/kategori/fatwa/page/3/>
- Furchan, Arief. (1992). *Pengantar Metode Penelitian Kualitatif*. Surabaya: Usaha Nasional.
- Hulam, Taufiqul. (2010). Jaminan dalam Transaksi Akad Mudharabah pada Perbankan Syariah. *Jurnal Mimbar Hukum UGM*. Vol 22 No.3
- Infobank, Majalah (2019). *Analisis Strategi Perbankan dan Keuangan 500 Financial Institutions Simpul Rawan di Sektor Keuangan* No. 500 Edisi Desember Vol.XLI
- Kasmir. (2014). *Bank dan Lembaga Keuangan Lainnya Edisi Revisi*. Jakarta: PT RajaGrafindo Persada.
- Mardhiyatur, Rositaningsih. and Mahfudz Muhammad, Syarqim. (2020). Dampak Pandemi Covid-19 terhadap Manajemen Industri Perbankan Syari'ah: Analisis Komparatif. *Jurnal Ekonomi dan Manajemen. POINT* Vol. 2 No.1.
- Miles, M. B. and Huberman, A. M (1994). *Qualitative Data Analysis: A Sourcebook of New Methods (2nd ed)*. CA: Sage. Thousand Oaks
- Muhamad. (2016). *Manajemen Pembiayaan Bank Syariah*. Yogyakarta: UPP STIM YKPN.
- Nur, A.Waluyo. (2007). Sistem Pembiayaan Leasing di Perbankan Syariah. *Jurnal Ekonomi Islam* Vol.1 (2).
- Nurohman, Dede. (2008). Undang-Undang Perbankan Syariah: Makna, Implikasi dan Tantangan. *La_Riba Jurnal Ekonomi Islam* Vol. II No.2
- Otoritas Jasa Keuangan. *Peraturan Bank Indonesia Nomor 9/19/PBI/2007*. Retrieved from <https://www.ojk.go.id/id/kanal/perbankan/regulasi/peraturan-bank-indonesia/Pages/peraturan-bank-indonesia-nomor-9-19-pbi-2007.aspx>
- _____ (2020). POJK No.18/POJK.03/2020 tentang Perintah Tertulis untuk Penanganan Permasalahan Bank. Retrieved from <https://www.ojk.go.id/id/regulasi/Documents/Pages/Perintah-Tertulis-untuk-Penanganan-Permasalahan-Bank/pojk%2018-2020.pdf>
- Rahman, Afzalur. (1996). *Doktrin Ekonomi Islam*. Yogyakarta: Dana Bhakti Wakaf.
- Sharma, A. and Satish, K. (2011). Effect of Working Capital Management on Firm Profitability. *Global Business Review*, 12, 159-173
- Susana, Erni. and Prasetyanti Annisa. (2011). Pelaksanaan dan Sistem Bagi Hasil Pembiayaan Al-Mudharabah pada Bank Syariah. *Jurnal Keuangan dan Perbankan* Vol.15, No. 3. 466-478.

Publisher's Note: SSBFNET stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.



© 2021 by the authors. Licensee SSBFNET, Istanbul, Turkey. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

International Journal of Research in Business and Social Science (2147-4478) by SSBFNET is licensed under a Creative Commons Attribution 4.0 International License.