

**PRINCIPLES OF AL-MUDHARABAH: A REVIEW  
ISLAMIC BANKING AGREEMENTS IN INDONESIA  
(Case Study of Bank Rakyat Indonesia Syariah)**

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**ABSTRAK**

Lahirnya perbankan *Syariah* di kancah Industri Perbankan Konvensional adalah untuk menawarkan system perbankan alternatif bagi masyarakat yang membutuhkan layanan jasa perbankan tanpa harus khawatir atas persoalan “bunga”. Perbankan *Syariah* didirikan dengan tujuan untuk mempromosikan dan mengembangkan penerapan prinsip-prinsip Islam dan tradisinya ke dalam transaksi keuangan dan perbankan serta bisnis yang terkait. Dengan demikian Perbankan berdasarkan prinsip *Syariah* adalah Bank-Bank yang mendasarkan produk-produk dan pelaksanaannya kepada Hukum Islam (Al-Qur'an dan *Hadist*). Untuk mengawasi kegiatan operasionalnya dibentuklah Dewan Pengawas *Syariah* yang berfungsi untuk memberikan masukan kepada perbankan berdasarkan Prinsip *Syariah* guna memastikan bahwa Bank tidak terlibat dalam unsur-unsur yang tidak sesuai dengan prinsip-prinsip Islam.

Salah satu Prinsip *Syariah* dalam Praktik Perbankan adalah *Al-Mudharabah* atau prinsip bagi hasil, dimana Bank dan nasabahnya dapat melakukan kerjasama dalam mengadakan suatu usaha. Bank sebagai pemilik dana (*Shahibul mal*) menyediakan sejumlah dana untuk suatu usaha yang akan dikelola oleh nasabah (*Mudharib*). Pada pra akad keduanya telah menyepakati *nisbah* yang akan dibagikan dari hasil keuntungan yang akan diperoleh dari hasil keuntungan yang akan diperoleh dari usahanya.

**Kata Kunci: Perjanjian Perbankan Syariah, Prinsip Al-Mudharabah**

**ABSTRACT**

The development of Islamic banking system in Conventional Banking industry is to offer those alternatives banking system for people in need of banking services without having to worry over the issue of "interest" Sharia. The Banking system established have aim to promote and develop the application of the principles of Islam and its traditions into the financial transactions and kind of banking transactions. Within Banking business based on Sharia principles was Banks who based products and their implementation of Islamic Law (Qur'an and Hadist) whereas Sharia Supervisory Board will supervise the operational activities and provide some input to the banking system based on Sharia principles in order to ensure that the Bank is not involved in the elements that are not in accordance with the principles of Islam.

One of the Sharia Principles in Banking Practice is *Al-Mudharabah* or profit sharing principle, which the Bank and its customers can carry out cooperation in the conduct of a business. Bank as the owner of the funds (*Shahibul mal*) provides funds to a business that will be managed by the customer (*Mudharib*). In the pre-contract both have agreed ratio will be distributed from the profits to be gained from the advantages to be gained from his efforts.

**Keywords: Islamic Banking Agreement, Principle of Al-Mudharabah**

## PRELIMINARY

Islamic Banking Agreement is part of Islamic law that governs human behavior in running economic relations and perdagangan. Islamic Bank lauched in Indonesia in 1992 made the government continued to roll out a number of laws relating to Islamic Banking.

The activities of Islamic Banking regulated in Law Number 10 of 1998 concerning amendments to the Law No. 7 of 1992 concerning Banking in Article 1 paragraph 3 explained that the Commercial Bank as "Bank conducting conventional business and or based on Sharia principles in activities providing services in payment traffic. Law No. 10 of 1998 and its implementation regulations reflected by the clear and certain about the status, functions and role of Islamic Banking and not on interest, but rather on the basis of an investment based on a system for the results.

Principle Conventional Banking tends to make the legal position of the bank to its customers more powerful and dominant, while contract-contract environment Islamic Bank of equality and fairness between the bank and the client must always be adhered to and should always be reflected either in the articles that contain aspects of law materilnya as well as formal legal aspects.

Based on Law No. 21 of 2008 concerning Islamic banking, which is defined as Islamic banking is anything that involves Sharia Bank and Sharia Business Unit, covering institutional, business activities, as well as the manner and process of carrying out its business activities. Specificity Islamic Bank is associated with the operating system Islam. Peran Bank Syariah law and not on

interest, but is based on a revenue sharing system.

Discussion on the Sharia agreement relating to the transaction of the material or property, therefore Commitments Islamic law is a set of legal norms derived from the Qur'an, Al-Sunna and Al-Ra'yu (ijtihad), which regulates the relationship between two people or more on an object that is permitted by the object of a transaction.

Contract in Islamic law is one way that many used to acquire property in everyday life. Akad a way that blessed Allah and must be upheld contents. In Surah Al-Maidah verse (1) described: "O ye who believe, fulfill the contract-contract". The word "contract" is derived from the Arabic al-aqdun, in the plural is called al-Uquud which means a bond. In the Qur'an Surah An-Nisa verse (29) explained: "O People who believe, do not eat each other neighbor's property by way of vanity, except by way of commerce prevailing consensual among you".

One of the Sharia Principles in Banking Practice is Al-Mudharabah or profit sharing principle, which the Bank and its customers can carry out cooperation in the conduct of a business. Bank as the owner of the funds (Shahibul mal) provides funds to a business that will be managed by the customer (Mudharib). In the pre-contract both have agreed the nisbah that will be distributed from the profits to be gained from the advantages to be gained from his efforts.

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from the profits to be gained from the advantages to be gained from his efforts.

If the business carried on at a disadvantage, then the loss is borne by shahibul malls throughout the loss was not due to negligence if the damages caused by negligence mudharib. Except mudharib, then mudharib be held responsible for the losses. Bank Syariah Bank Rakyat Indonesia (BRI Syariah hereinafter) is one of the Financial Institutions Banking conducting banking practice based on the principles of Sharia that is preferred by the public, but not all people understand the concept of Islamic Banking in particular with the principle of profit sharing.

Based on the description in the background of the problem, then the problem can be formulated as follows:

- 1) How is the process of implementation of the Al-Mudharabah agreement on BRI Syariah?
- 2) How does the completion of the event of default against Al-Mudharabah agreement at BRI Syariah?
- 3) How expiry of the Al-Mudharabah PT BRI Syariah?

As for the scope of science in this article are included in the main study areas of civil law regarding the agreement based on the principles of Islamic Banking Al-Mudharabah. So that the scope of the substance of the research does not deviate from the formulation of the problem, the research focus is directed to the third formulation of research problems tersebut. Research Location was at BRI Syariah Branch Office in Tanjung Karang.

## **THEORY**

Article 1 Paragraph 13 of Law No. 10 of 1998 determines that the reference to Sharia principles is: "The

rules of the agreement based on Islamic law between the bank and other parties to save money and or finance business activities or other activities stated in accordance with sharia, among others financing based on the principle of profit sharing (Mudharabah). Furthermore, under Article 6 letter (m) of the Banking Act determines that the Banking activities based on Sharia Principles previously confined to the principle of sharing, is now extended to any activity of banking based on Sharia principles set by Bank Indonesia.

Agreements Al-Mudharabah based on Sharia Principles is sharing agreement also called Syirkah Mudharabah or Qiradh the form of limited partnership is a company between power and wealth, a person (first party / Supplier / capital owners / mudharib) gives his property to another party (second party / user / manager / dharib) used to do business with the provision that the gains or profits earned will be shared by each of the parties in accordance with the agreement. In the event of the loss of its provisions by Personality 'that damages charged to the mudaraba assets and are not charged at all by the manager of the work. In legal language mudharabah means a cooperation contract, one party (the owners) are entitled to a share of the profits, because as the owner of the goods (Rabbimal) and other partners (Dharib / manager) entitled to receive the profits of the work itself.

In the Al-Mudharabah agreement are valid terms that must be met in performing the contract, namely:

1. Investors and business
  - a. Investors and managers should be able to conduct transactions and legally
  - b. Both should be able to act as a representative and kafil from each party
  - c. There are three categories of action for mudharib is as follows: 1) The action is

entitled to do mudharib based on a contract that involves all the main job and secondary needed in business management based on the contract, 2) The action is entitled to do mudharib based power representation in general, that actions nothing to do with the primary activity but help smooth business operation, 3) actions that are not entitled to do mudharib without permission eksplisit dari fund providers, for example, borrow or use funds mudharabah for personal purposes, and 4) actions taken shahibul maal in mudaraba include actions associated with the operational technical policy decisions such as buying and selling.

#### 2. sighthat

Sighthat considered invalid if one party rejected the conditions proposed in the bid, the contract may be made verbally or in writing.

3. Capital represented by cash and cash need.

4. Ratio profit must be shared both piha and known at the time the contract is based on a presentation

In the Al-Mudharabah agreement terms and conditions must be based on the Sharia Board Fatwa Nasional. Fatwa National Sharia Council is an opinion issued by the National Islamic Council to provide guidelines for banks that utilize the principles of Islam and can perform tasks in accordance with the teachings of Islam.

### Conceptual Framework

Conceptual are concepts that illustrate the relationship among concepts, which is a collection of special significance meaning to the term is used as an operational definition on the reserach concept. The Conseptes are:

- a. Analysis is: an investigation into an incident to find out the real situation (Indonesian Dictionary third edition, 2000)

- b. Agreements are: an agreement is an act whereby one (1) or more persons bind himself to one (1) or more other person (Article 1313 of the Civil Code)
- c. Islamic Banking is: everything concerning the Sharia Bank and Sharia Business Unit, covering institutional, business activities (Abdulkadir Muhammad, 2004).
- d. Based are: under, wear it as a base, is the basis, the basis (Indonesian Dictionary third edition, 2000)
- e. Al-Mudharabah principle is: a partnership contract between the owner of the funds (Shahibul Maal) with employers (Mudharib) to conduct a joint venture, in which the profits are divided between the two by comparison previously agreed ratio.

### RESEARCH METHODS

This study is a normative legal-empirical. According to Abdulkadir Muhammad (2004), a normative legal research empirical research is the law regarding the adoption or implementation of the provisions of normative law (codification, or legislation) are inactionpada any event certain law in society, which is associated with the agreement of Islamic banking is based on the principle of Al -Mudharabah. While the type of research is descriptive explanatory, research that is exposure and aims to obtain a full picture, a clear, detailed and systematic as to the subject matter to be studied. Legal research is descriptive exposure and aims to obtain a complete picture of the state of the applicable law at any given point or the symptoms juridical, or events that occur in the community.

#### 1. Approach Problems

Referring to that this research is a kind of normative-legal research, the empirical research strategy is normative approach-applied (applied normative law). The approach used is the approach problem cases, which is a case study approach to the legal events that take place in a state or not yet expired, namely Al-Mudharabah principle at BRI Syariah. The approach was implemented by taking steps as follows: a) Identification of the case object of study that meet the criteria as written in the title of the study, b) Inventory-entry clauses laws that are used as benchmarks normative (inabstracto) in the case of the research object c) Inventory with the recording of legal acts (in concreto) against normative benchmarks are applied, and d) Description of the results of analysis of the application of Al-Mudharabah agreement based on islamic principles.

## 2. Types and Sources of Data

Two types of data used in this study are primary data and secondary data. Primary data used in connection the Al-Mudharabah agreement obtained by conducting interviews with Mr. Mr. Jamali Acting Branch Tanjung Karang and Mr. Kiki S.T, part BRI Syariah services in Tanjung Karang. Secondary data collected through the study of literature (library research), with data sources consist of three classifications material source of law, which is the source of primary legal materials, secondary sources of legal materials and sources of tertiary legal materials, which consist of:

- a. Primary legal materials, ie materials to law, consisting of: 1) of the Constitution of Islamic Banking Number 21 of 2008, 2) Banking Act No. 10 of 1998, 3) Rules of the Supreme Court of the Republic of Indonesia Number 2 Year 2008 concerning Economics Islamic Law

compilation (KHES), and 4) documents that are relevant to the formulation of the problem.

- b. Secondary law is a legal substance that supports the primary legal materials and provide an explanation of the primary legal materials, ie books of literature of jurisprudence and other legal writings that are relevant to the formulation of the problem.
- c. Tertiary legal materials are materials that provide guidelines as well as an explanation of the primary and secondary sources of law, namely the Law Dictionary, English Dictionary, journals and internet.

## 3. Collection and Processing Data

Data in the form of primary legal materials, secondary law, and tertiary legal materials collected from the literature review that consists of legislation, documents, books of jurisprudence, law journals, and a dictionary or encyclopedia related to the research problem.

The steps taken in the literature review are as follows: 1) Identify the source of the law, whether in the form of legislation, documents, books of jurisprudence, legal journals, internet sites, dictionaries and encyclopedia related to the research problem; 2) systematic recording of inventory in legal material necessary to flagging; and 3) Develop a systematic legal material collected by the systematic order of the research problem.

After data collection, further processing of the data so that it can be used to analyze the problems studied. The data has been collected, processed through the processing stages as follows: a. Examination of the data (Editing) are re-examined activity records information to know perfection and completeness,

atausebagai activities improve data quality and eliminates hesitations data. Editing activities include checking the suitability of the information (data) acquired if it is appropriate, clear, perfect and complete to be compiled into a perfect sentence, b. Data classification, which puts data in accordance with the group and the rules stipulated in the subject in order to obtain objective data, and c. Systematization of data, preparation of the data based on the sequence data that has been determined and in accordance with the scope of the subject systematically with a view to make it easier to analyze the data.

#### 4. Data Analysis

The data were analyzed qualitatively, comprehensive and complete, ie decipher the data in the form of sentences that are arranged in a systematic, complete and detailed according to terms of the discussion that has been determined by a sequence of numbers, making it easier to give meaning to the data in accordance with the purpose of research, and finally it can be deduced.

## DISCUSSION

### 1. Implementation Agreement On Al-Mudharabah Sharia PT.BRI Cape Coral

Customers active BRI Syariah Branch Tanjung Karang about 2000 people, with the number of BRI Syariah Branch Tanjung Karang optimistic able to collect third party funds (DPK) of Rp 70 billion (the interview with Mr. Jamali Acting Branch Tanjung Karang).

Based on the interview with Mr. Kiki part of services, products offered at BRI Syariah especially with Al-Mudharabah principle consists of:

- a. Form of deposits such as deposits and savings
  - b. The savings such as financing
- BRI Syariah Branch Tanjung Karang will explore new business

opportunities in the finance portfolio Agribusiness Market. Real Estate entered into a collaboration with Indonesia in terms of portfolio mortgage loans with mortgage margin fixed for 15 years.

Based on the interview with Mr. Kiki part of the ministry explained that the savings with mudharabah are deposits at Bank Syariah which may be withdrawn in accordance with the terms of certain agreed bersama. Profit of customer deposits based on the principle of profit sharing based on the ratio proportionally in accordance with the agreement in mudharabah.

Procedure savings deposits that form on BRISyariah Tanjung Karang Branch is already prepared Fill out the form and identity cards of prospective customers, while for deposits in the form of deposits plus deposits mudaraba contract, whereby gains for mudharib and Shahibul mall agreed based on the ratio as stipulated in the contract.

While untukmemperoleh financing from the bank there needs to be an analysis and assessment of candidates mudharib namely: 1) The business license and tax ID for the company, 2) Fill out the form provided by Shahibul Mal, 3) study the feasibility, 4) Goods warranty, and 5) Special requirements set by Shahibul Mal

Once the application is received by Shahibul Mal next step performed checks on the validity of the guarantee and when they fulfill all the criteria, then made a credit agreement.

According to the explanation of Mr. Jamali as the acting leader of the branch BRISyariah Tanjung Karang that stage of credit for business development are as follows:

1. Mudharib submit a written application file into following identities proposal containing a brief description kind of business,

plans, prospects and details of the use of funds and term funds.

2. Conducting interviews with mudharib to believe some files including completeness checking documents collateral.
3. Conduct a review of the field to the object to be used as a business
4. Analysis and approval of financing
5. The signing of the financing agreement
6. Disbursement of funds, monitoring and control.

If mudharib not meet the requirements that have been determined, then the mall shahibul prepare rejection with the procedures set out in the rules of financing. Furthermore, if mudharib meet the criteria specified by Shahibul mall, then the finance committee issued a consent decree in the form of Letter of Affirmation of Financing Agreement.

Article 23 of Law No. 21 of 2008 concerning Islamic Banking confirms that Bank Syariah must have confidence in the willingness and ability to prospective customers receiving facility to repay all obligations in due time before the bank disburses funds to customers receiving facility, to gain confidence that Islamic banks are required to conduct a careful assessment of the character, capacity, capital, collateral and business prospects of prospective customers receiving facility.

Based on the interview with Mr. Lindos Acting Branch Manager BRISyariah Tanjung Karang said that the implementation of the agreement BRISyariah Al Mudharabah in accordance with the basic concepts of the Al-Mudharabah financing, namely: 1. Business financing 100% funded by bank financing, 2. Bank responsible for losses but their misuse and outside the agreement financed business plan, and 3) Agreement for the results calculated from

business earnings projection based on a ratio agreed in advance

2. How the completion of the event wan achievements against Al-Mudharabah agreement on BRI Syariah

Event of default resulting in the injured party has the right to receive compensation and the party that caused the breach of contract is obliged to pay compensation.

Based on the interview with Mr. Lindos Acting Branch Manager BRISyariah Tanjung Karang, completion of the defaults in the settlement agreement Al-Mudharabah analysis of observation and calculation of the real condition of mudharib (fund manager). The solution by means of rescheduling the change in credit terms which concerns only the payment schedule and terms, conditions back that changes in some or all of the credit terms and the realignment of the change in credit terms relating to changes in bank funds, conversion of all or part of the arrears of interest will be the principal new loans or conversion of all or part of the credit to investment in the company, which may be accompanied by rescheduling and / or return requirements.

According Usmadi Usman (2000) Banks based on Sharia Principles should run activities based on Islamic law. In case of disagreement, both in the interpretation and the implementation of the agreement, both parties will try to solve it musyawaran according to Islamic teachings.

3. How expiry of the Al-Mudharabah PT BRI Syariah.

Based on the interview with Mr. Kiki, service parts BRISyariah Branch Tanjung Karang that the expiry of the Al-Mudharabah caused financing Al-Mudharabah had expired term of the financing that has matured and agreed by both parties, deposits in the form of

savings or deposits expiry of the Al-Mudharabah disebabkan because it has been the closing of accounts by mudharib.

Al-Mudharabah financing can also end up on the decision Shahibul mall, if it deems their commitment penyimpangn aberration business and owner of the funds withdraw some funds that have been included. The end of the Al-Mudharabah financing agreements can also occur because of a declaration of bankruptcy.

## CONCLUSION

As of the previous discussion, it concluded as follows:

a. Al-Mudharabah Implementation Agreement On Islamic PT.BRI Cape Coral

Implementation of the agreement BRISyariah Al Mudharabah in accordance with the basic concepts of financing Al-Mudharabah are: Financing 100% funding effort funded by the bank must first perform an analysis of mudharib ability to implement its obligations. Bank responsible for losses but their misuse and outside the agreement dibiayai. The plan of business agreement for the results calculated from business earnings projection based on a ratio agreed in advance.

b. Settlement in case of wan achievements against Al-Mudharabah agreement on BRI Syariah

Completion of default in the settlement agreement Al-Mudharabah analysis of observation and calculation of the real condition of mudharib (fund manager). The solution by means of rescheduling the change in credit terms which concerns only the payment schedule and terms, conditions back that changes in some or all of the credit terms and the realignment of the change in

credit terms relating to changes in bank funds, conversion of all or part of the arrears of interest will be the principal new loans or conversion of all or part of the credit to investment in the company, which may be accompanied by rescheduling and / or return requirements.  
c. How expiry of the Al-Mudharabah PT BRI Syariah.

Al-Mudharabah agreement ends due to the financing of Al-Mudharabah financing period had expired which has matured and agreed by both parties, in the form of deposits or savings deposits Al-Mudharabah agreement ends due to have been closing accounts by mudharib.

Al-Mudharabah financing can also end up on the decision Shahibul mall, if it deems their deviations business commitments and fund owners withdraw some funds that have been included. The end of the Al-Mudharabah financing agreements can also occur because of a declaration of bankruptcy.

Based on these conclusions, the suggestions can be given is: that in the event of agreement signing Al-Mudharabah should BRISyariah Branch PT Tanjung Karang (shahibul mal) read out the contents of the agreement is mainly explained by the ratio of profit sharing to its customers (mudharib). Thus, the financing should be based on the fundamental principle of the validity of the terms of the agreement and the principles of sharia does not relinquish the principle of Prudential Banking Principle of the security protection of Funds.



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