

Research Article

# Mudharabah and Musyarakah Financing in Indonesian Islamic Banking Practices: Is It Equity or Debt Financing?

Budi S Purnomo<sup>1\*</sup>, Arim Nasim<sup>1</sup>, Mohd. Hairul Azrin Haji Besar<sup>2</sup>, Edi Suryadi<sup>3</sup>

<sup>1</sup>Accounting Study Program, Faculty of Economics and Business Education, Universitas Pendidikan Indonesia, Bandung, Indonesia

<sup>2</sup>Accounting and Finance, UBD School of Business and Economics (UBDSBE), Universiti Brunei Darussalam, Bandar Seri Begawan, Brunei Darussalam

<sup>3</sup>Office Management Education Study Program, Faculty of Economics and Business Education, Universitas Pendidikan Indonesia, Bandung, Indonesia

## ARTICLE INFO

## ABSTRACT

### Keywords

Islamic Banking, Mudharabah, Musyarakah, Equity Financing, Debt Financing

### \*Correspondence

budi.purnomo@upi.edu

### Article History

Received 5 August 2023

Accepted 26 November 2023

Published online 22 February 2024

The purpose of this paper is to examine whether Mudharabah and Musyarakah financing from Islamic banks in Indonesia is capital or debt financing, based on legal, accounting, and fiqh perspectives. To achieve this goal, a review is carried out on laws, Sharia Accounting Standards, MUI and DSN Fatwas, the Al Quran and Hadith, articles, the Financial Reports of Islamic Banks in Indonesia, and other relevant documents. This study concludes that the law as stipulated in Act No. 21 of 2008 limits Islamic banking operational activities only to the financial sector, and it is almost impossible to implement in a real economy. The current provision does not allow Islamic banking to act as an investor in a mudharabah contract or as an asset owner in a musyarakah contract. This is confirmed in the financial reports of Islamic banks, which do not report mudharabah financing and musyarakah financing as investments. In addition, in practice, Contract musyarakah cannot stand on its own but must be carried out in a multi-contract (hybrid) manner. Even though the Prophet had forbidden the practice of two contracts in one transaction. On the other hand, in distributing financing, banks do not have a sharia contract basis to act as shaibul mal. The bank's status as Al-Wakil or Mudharib does not justify it changing its status to Shahibul Mal when disbursing funds. As a result, the Contract of mudharabah and musyarakah financing carried out by banks with customers as mudharib becomes void.

## 1. INTRODUCTION

A bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms to improve the people's standard of living (Law No. 21 of 2008 concerning Islamic Banking). In its operational activities, the Bank receives funds from the public by providing interest in return. The bank then distributes these funds to the public as credit or loans. For the use of these funds, the public must pay interest, which is the income of the Bank.

The problem for Muslims is that interest received from or payable to banks is usury, which is forbidden and is one of the major sins that must be avoided. The Fatwa of the Indonesian Council of Ulama (MUI) No. 1 of 2004 has determined bank interest as usury and forbids it. Riba is an addition to one of the contracting parties in an exchange agreement without any replacement, and usury is an addition as a substitute for time. (Abdul Aziz al-Khayyath, Asy-Syakat, 2/168). Or: "Every debt that produces benefits is usury". (Narrated by Baihaqi.) Bank interest includes Riba Nasi'ah because it is an addition given as a substitute for time.

To meet people's demands to avoid usury, Islamic banks are here to offer financing products, including those based on syirkah contracts. According to the meaning of the language, Syirkah is mixing two or more parts in such a way that one part cannot be distinguished from another (An-Nabhani, 1996). This means that if the two parties have



agreed to make a syirkah, then all the assets invested by the parties as capital and business results obtained from the syirkah that have not been distributed are the joint property of the syirkah. Two forms of financing based on syirkah are financing with mudharabah and musyarakah contracts.

According to Kayed (2012), Mudharabah and Musyarakah are the two main instruments with defined profit-loss sharing (PLS) rules designed to meet the risk-sharing requirements necessary for the promotion of entrepreneurship and the formation of SMEs. The implementation of profit-sharing Contracts in the form of mudharabah and musyarakah from Islamic banking is expected to be a solution for Muslims in Indonesia, especially in meeting the need for riba-free funding.

Mudharabah is a partnership agreement where one party provides capital while the other party manages the business. The financier and manager will share profits based on the agreed ratio, and if a loss occurs it will be borne by the financier. (Mia, Hasnat, & Mahjabeen, 2016; Karim, 2016; Jais, Faizah, & Asmaou, 2019). Four elements must be present in a mudharabah contract. First, there are actors consisting of fund owners (shahibul mal) and business managers (mudharib). Second, there are objects in the form of capital and management. The capital handed over by investors can be in the form of money or goods that can be valued in monetary. Meanwhile, management will be carried out by the Manager (mudharib) based on expertise, skills, management, and other competencies. The third is an agreement between both parties to bind themselves in a mudharabah contract, both as shahibul maal (financier) and mudharib. Finally, there is an agreement regarding the proportion of profit to be shared by both parties, which is expressed in percentages. Losses that may occur will be borne according to their respective roles and responsibilities, so that investors may lose or have their funds reduced, while managers will lose business, energy, and time because they do not receive income from the business. (Karim, 2016; Arsyadona, Siregar, Harahap, & Ridwan, 2019).

Musyarakah is a cooperation agreement between two or more parties, each of whom contributes capital (funds) and management of an asset/business, and shares profits in accordance with an agreed ratio or losses according to the proportion of capital invested. (Arsyadona et al., 2019; Jais et al., 2019). In this way, the partners will jointly own an asset, where each has ownership of the smallest part of it according to the share given to him. (Jais et al., 2019; Mia et al., 2016).

This research aims to test whether Sharia Banks can act as funders (shahibul maal) in Contract mudharabah or as asset owners in musyarakah contracts based on the perspective of Law, Accounting, and Fiqh.

Although most researchers view mudharabah and musyarakah financing disbursed by Islamic banks as equity financing, this research explores the question of whether this financing is, in its essence and form, equity financing or debt financing. Clarity on this issue is very important because it has consequences for whether the returns paid by customers to Sharia banks are halal or haram. Therefore, it is worth asking whether Islamic banks have the legitimacy to act as shahibul maal which provides equity in mudharabah and musyarakah. The analysis is carried out not only from the perspective of Muamalah Fiqh but also from Law and Accounting.

## 2. RESEARCH METHODS

This study adopts a qualitative method, which requires researchers to review and analyze documents that are relevant to the research question. Document analysis is a systematic procedure for reviewing or evaluating documents, both printed and electronic (computer-based and transmitted via the Internet). As with other analytical methods in qualitative research, document analysis requires that data be examined and interpreted to derive meaning, gain understanding, and develop empirical knowledge (Corbin & Strauss, 2008). The document contains text (words) and images that have been recorded without the intervention of the researcher. Documents are 'social facts', that are produced, shared, and used in a socially organized way (Atkinson and Coffey, 2011). The documents in this study are laws, MUI and National Sharia Council (DSN) fatwas, financial reports, books, and articles.

Some books not only review the history and development of Sharia Banks, which were created to protect Muslims from usurious practices in the conventional financial system but also criticize certain practices of Sharia banks that violate Sharia law. These books also offer ideas to improve and perfect the framework of thought for Sharia banks that truly comply with Islamic law, rather than simply Islamizing conventional banking practices.

## 3. RESULTS AND DISCUSSIONS

Until the late 1980s, banking practices in Indonesia only used an interest-based system. For some Indonesian Muslims who understand that interest is usury, which is categorized as a grave sin, this banking practice is, of course, very troubling. The need for financial institutions that can provide services according to Islamic law so that people avoid usury practices is becoming increasingly urgent. After going through a long process, on November 1, 1991, Bank

Muamalat Indonesia was established. This bank then began operating on May 1, 1992, with an initial capital of IDR 106,126,382,000.

At the beginning of its operational period, the existence of Islamic banks had not received optimal attention in the national banking sector. The legal basis for bank operations that implemented the sharia system at that time was only based on one paragraph regarding "banks with a profit-sharing system" in Law No. 7 of 1992 concerning Banking. Of course, without detailing the basis of sharia law and the type of business that is allowed,

In 1998, the government and House of Representatives (DPR) made improvements to Law No. 7 of 1992 through Law No. 10 of 1998. This change in law emphasizes the existence of two banking systems in the country, namely the conventional banking system and the Islamic banking system. It was only in 2008 that the Government and the DPR issued Law No. 21 concerning Islamic Banking, which specifically regulates the existence and operations of Islamic Banks in Indonesia.

Law Number 21 of 2008 defines an Islamic Commercial Bank as a Bank that carries out its business activities based on Sharia principles, consisting of Islamic Commercial Banks and Islamic Rural Banks. Sharia principles are principles of Islamic law in banking activities that are based on fatwas issued by institutions authorized to issue fatwas in the field of sharia.

As released by the Financial Services Authority (OJK), as of December 2022, in Indonesia, there are 13 Islamic Commercial Banks (BUS), 20 Conventional Banks with Islamic Business Units (UUS), and 167 Islamic Rural Banks (BPRS). To serve its customers throughout Indonesia, BUS has opened offices (both in the form of Branch Offices, Sub-Branch offices, and Cash Offices) totaling 7,500 units. While the number of UUS offices is 438 and that of BPRS is 668.

Even though around 229 million Indonesians or 87% of the population are Muslim and the MUI has banned usury, based on the information gathered, it shows that the role of Sharia banking in the banking system in Indonesia and its acceptance is still low. Even though it shows a positive trend, the size and contribution of Sharia banking are still very small compared to conventional banking. For example, in collecting third-party funds (DPK), as can be seen in Table 1, until December 2022, the contribution of Islamic banking had only reached 8.3%. This is actually an increase compared to the first decade of the operation of Islamic banking in Indonesia, which only reached around 5%.

**Table 1.** Comparison of Third Party Funds (IDR) 2020-2022

Banks	(in billion Rp)					
	2020		2021		2022	
	Rp.	%	Rp.	%	Rp.	%
Shariah	475,796	7.7%	548,244	7.9%	619,508	8.3%
Conventional	5,729,410	92.3%	6,399,069	92.1%	6,885,439	91.7%
<b>Total</b>	<b>6,205,206</b>	<b>100.0%</b>	<b>6,947,312</b>	<b>100.0%</b>	<b>7,504,948</b>	<b>100.0%</b>

Source: Sharia Banking Statistics Book, OJK. February 2023 & SEKI BI

### 3.1. Islamic Banking Business Activities in Indonesia

In achieving their goals, both BUS, UUS, and BPRS carry out business activities that are also regulated in Law No. 21 of 2008. If one looks closely, the business activities that can be carried out by BUS, UUS, and BPRS are "almost" identical to the business activities that can be carried out by conventional Commercial Banks and Rural Banks, as presented in Table 2. The difference is the phrase "based on a certain Contract that does not conflict with Sharia Principles". In addition, Islamic banking does not use the word "credit" but uses the word "financing" instead.

**Table 2.** Comparison of Conventional Commercial Bank with Islamic Bank Business Activities

Conventional Banks	Islamic Banks
a. collect funds from the public in the form of deposits in the form of demand deposits, time deposits, certificates of deposit, savings, and/or other equivalent forms;	a. collect funds in the form of Deposits in the form of Current Accounts, Savings, or other equivalent forms based on wadi'ah contracts or other contracts that are not against Sharia Principles; b. collect funds in the form of Investments in the form of Deposits, Savings, or other equivalent forms based on a Mudharabah Agreement or other contracts that do not conflict with Sharia Principles;
b. give credit;	c. disbursing profit-sharing financing based on mudharabah contracts, musyarakah contracts, or other contracts that do not conflict with Sharia Principles; d. disbursing Financing based on a murabahah Contract, a salam Contract, an istishna' Contract, or other Contracts that do not conflict with Sharia Principles; e. disbursing Financing based on Qardh contracts or other Contracts that do not conflict with Sharia Principles; f. disbursing movable or immovable property leasing Financing to Customers based on ijarah Contracts and/or purchase leases in the form of ijarah Muntahiya bittamlik or other Contracts that do not conflict with Sharia Principles;

Conventional Banks		Islamic Banks	
c.	carry out factoring activities, credit card business, and trustee activities.	d.	take over debts based on Contract hawalah or other Contracts that do not conflict with Sharia Principles;
		e.	conduct debit card business and/or financing cards based on Sharia Principles;
		f.	perform the function as Trustee based on the Wakalah Agreement;

### 3.2. Sharia Banking Financing Products

Financing is the provision of funds or claims equivalent to them (UU No. 21 of 2008). Types of financing that can be provided by BUS, UUS, or BPRS according to the scope of their respective business activities are:

1. Profit Sharing Financing to Third Parties, consisting of:
  - a. profit-sharing transactions in the form of mudharabah and musyarakah;
  - b. leasing transactions in the form of ijarah or lease-purchase in the form of ijarah muntahiya bittamlik;
  - c. leasing transactions of services in the form of ijarah for multi-service transactions based on agreements or agreements between Islamic Banks and/or UUS and other parties that require parties who are financed and/or given funding facilities to return the funds after a certain period of time in exchange for ujah, without compensation, or profit sharing.
2. Receivables to Non-Bank Third Parties, including:
  - a. sale and purchase transactions in the form of murabahah, salam, and istishna' receivables, and
  - b. lending and borrowing transactions in the form of qardh receivables.
3. Equity Participation (Investment) in other entities

From time to time, the value of each form of BUS Financing fluctuates. As presented in Table 3, for the last three years, BUS financing has been dominated by financing based on Musyarakah and Murabahah agreements.

**Table 3.** Financing Proportion

Indicator	(in billion Rp)				
	2020	2021		2022	
<b>Profit sharing Financing to Non Banks</b>	<b>96,377</b>	<b>99,615</b>	<b>3.4%</b>	<b>125,012</b>	<b>25.5%</b>
a. Mudharabah	4,098	3,629	-11.4%	3,623	-0.2%
b. Musyarakah	92,279	95,986	4.0%	121,389	26.5%
<b>Receivables from Non Banks</b>	<b>147,436</b>	<b>154,580</b>	<b>4.8%</b>	<b>194,775</b>	<b>26.0%</b>
a. Murabahah	136,990	144,180	5.2%	183,286	27.1%
b. Qardh	10,425	10,396	-0.3%	11,486	10.5%
c. Istishna	21	4	-81.0%	3	-25.0%
<b>Investment in other entities</b>	<b>412</b>	<b>431</b>	<b>4.6%</b>	<b>722</b>	<b>67.5%</b>

Source: Sharia Banking Statistics Book, OJK. February 2023 & SEKI BI

### 3.2. Analysis of Profit-Sharing Financing to Third Parties

For a Muslim entrepreneur, funding needs can be met through debt (qard) and/or syirkah. Syirkah is an agreement between two or more parties who agree to carry out a business with the aim of obtaining profit. According to Triono (2020), there are at least five forms of syirkah, two of which are Syirkah Mudharabah and Syirkah Inan (Musyarakah). Mudharabah and Musyarakah, are two popular Islamic contracts whose practice began at the time of the Prophet (Jais, 2019).

Mudharabah contracts between two or more parties with the provision that one party contributes work ('amal), while the other party contributes capital (Arsyadona et al., 2019; Triono, 2020). Both parties agree that profits will be shared between them, or the latter is entitled to a certain share of the profits (Sadique, 2009; Mansori, 2015; Arsyadona et al., 2019). In mudharabah, the authority to perform tasharruf is only the right of the manager (mudharib or 'âmil). Investors have no right to interfere in tasharruf, but managers are bound by conditions set by investors. Mudharabah requires that the loss be fully borne by the shahibul mal (National Sharia Council, 2000; Triono, 2020). Sharia prohibits determining initial profits for investors because investors (including Islamic banks) must bear the risk of losses that may arise from partnership activities unless the loss is caused by an error or negligence by Mudharib (Mia et al., 2016). On the other hand, Mudharib does not bear any losses as long as he does not violate the conditions set by Shahibul Mal. However, the mudharib is not entitled to wages other than a share of the profits (Arsyadona et al., 2019).

Musyarakah is a contract between two or more parties, each of whom contributes work ('amal) and capital (mâl). Capital must be in the form of money (nuqûd). If the capital is in the form of goods (urûdh), then the value must be calculated (qîmah al-'urûdh) at the time of the contract, and these goods then become the joint property of the Syariks.

The form of Inan's syirkah includes a reference to one of the Islamic Financial Institutions (LKS) financing products, which later became known as financing based on Contract Musyarakah (Arsyadona et al., 2019).

From the perspective of financial management, efforts to meet funding needs are part of financing activities. One source of financing is equity financing, which is obtained from company owners. In capitalist companies, equity financing is in the form of capital investments that are not timed and do not have to be returned. This means that capital will continue to be invested as long as the company exists. In the Financial Statements, equity financing will be presented in the Equity section. The consequence of the use of equity financing is that when making a profit, the company must share profits (dividends) with investors.

Apart from equity financing, another source of funds that companies can use is debt financing by obtaining loans or credits. In the financial statements, loans received by the company are presented as liabilities, which must be returned someday. With debt financing, the company must pay interest. Whereas, based on Islamic law, interest, which is an overpayment of debt (qard), is categorized as usury, so it is forbidden.

Therefore, it is very important to know clearly whether the financing channeled by Islamic banking is debt financing or equity financing. The answer to this question is important considering the consequences of the two types of financing are very different. If it turns out that Islamic banking financing is debt financing, then the overpayment is usury, which is forbidden.

### **3.2.1. Legal Perspective**

PSAK 105 Concerning Mudharabah Accounting defines mudharabah as a contract of business cooperation between two parties where the first party (the fund owner) provides all the funds while the second party (the fund manager) acts as manager, and profits are shared between them according to the agreement while financial losses are only borne by the owner of the funds (Sharia Accounting Standards Board, 2016). The question is, when there is financing based on the Mudharabah Contract, are the funds provided by Islamic banks a capital contribution so that Islamic banking really acts as a shahibul maal that invests its capital? Or are the funds "only" a loan, so Islamic banks are more of a creditor and not really an investor?

Law No. 21 of 2008, Article 24 paragraph (1) letter c, prohibits Sharia Banks from making equity participation, except for BUS or financial institutions that carry out business activities based on Sharia Principles or as temporary capital participation activities to overcome the consequences of failure of Financing based on Sharia Principles, with the condition that they must withdraw their participation. The meaning of this stipulation is that Islamic banking may only make equity investments in companies that are not Islamic banks or Islamic financial institutions when the company that is the debtor experiences default. This investment can only be temporary, and as soon as possible to withdraw it. Thus, when a BUS, UUS, or BPRS disburses funds with a mudharabah financing agreement (also called musyarakah financing), the funds are actually not a capital contribution (equity financing) from the bank but are loans (debt financing). This confirms Yusof's statement (2017) that there are not many products available on the Islamic financial market that are structured as pure Mudharabah. Both because of regulation and their willingness to take risks, Islamic banks tend not to provide equity financing.

To accommodate the needs of the community, which is a market opportunity for banks, and comply with banking regulations, with reference to the fatwa of the National Sharia Council (DSN) No. 73/DSN-MUI/XI/2008, this musyarakah contract was later developed into a Musyarakah Mutanaqishah (MM) contract. In the fatwa, a musyarakah mutanaqishah is a musyarakah whose ownership of assets or capital by one party (syarik) decreases due to gradual purchases by the other party.

The musyarakah mutanaqishah contract is used to channel financing to people who intend to own a certain asset. In this financing scheme, the bank and the customer agree to own the asset (which the customer wants) and then rent the asset to the customer (Arsyadona et al., 2019). So in its implementation, the musyarakah mutanaqishah contract cannot stand alone, it is still implemented in a multi-contract (hybrid) manner, which simultaneously applies the following contracts:

- ijarah mawsufah fi zimmah (advance/forward lease), which is a lease on an object whose existence is unclear, namely the asset to be financed. In this Contract, the Bank and the customer, on the one hand, act as the owner of the asset that is leased to the customer.
- Buying and selling either with Contract bai al musawamah (which is an ordinary sale and purchase transaction carried out by bargaining and the seller does not disclose the cost of the goods and the profits obtained) or an istisna contract (sale and purchase by order for new goods to be made based on wishes or buyer criteria)

According to Yustiardi et al. (2020), MM consists of two agreements: First, the client enters into an agreement with an Islamic bank with the concept of shared ownership (Shirkat-al-Milik), whereby the client will then buy back the bank's shares gradually with the agreed portion periodically until the property or assets are fully owned by the client. Second, Islamic banks lease their share of property ownership to clients under Ijarah contracts by charging

rent. The client agrees to pay rent to the bank for the use of his share of the property or assets until the bank's portion of ownership decreases.

In purchasing assets with an MM contract as stated in the DSN, the Bank, and the Customer own the assets jointly, and at the time of purchase, it is also agreed that the Bank must sell its share of ownership (hishshah) in stages to the Customer. On the other hand, customers are gradually required to purchase and pay in stages for the portion of Bank ownership being sold.

If this fatwa is practiced, then the Bank at certain times buys and becomes the owner of real assets, which is outside the scope of Islamic banking business as stipulated in Law No. 21 of 2008. Article 19 paragraph (1) of Law No. 21 of 2008 states that among the business activities of BUS are channeling profit-sharing financing based on mudharabah contracts, musyarakah contracts, or other contracts that do not conflict with Sharia Principles. Not owning assets together to be resold in stages to the sharik (customer) is the meaning of Contract musyarakah mutanaqishah, which is stated in the DSN fatwa.

Referring to the provisions of Article 19 paragraph (1) mentioned, in fact, when the Bank has Contract musyarakah mutanaqishah, it does not make purchases and becomes the owner of assets, but "only" distributes Financing (Credit) to customers. This opinion is confirmed in Article 40 paragraph (1) of Law No. 21 of 2008, which states, "In the event that a Facility Recipient Customer does not fulfill its obligations, Sharia Banks and UUS can purchase part or all of the Collateral, either through or outside an auction, based on voluntary submission by the Collateral owner or based on authorization to sell from the Collateral owner, provided that the Collateral purchased must be disbursed within a period of one year at the latest." That is, the Bank makes a purchase not when it is in a musyarakah mutanaqishah agreement but when the customer fails to fulfill its obligations, both in paying profit sharing and in installments for the purchase (loan principal).

### 3.2.2. Accounting Perspective

In line with the provisions in Law No. 21 of 2008 above, as can be seen in Table 4 quoted from the Financial Report of one of the Islamic Banks, mudharabah and musyarakah financing transactions are reported as part of Profit Sharing Financing. In fact, if Contract mudharabah is an investment from a bank, then in accordance with PSAK No. 105, which states that mudharabah funds disbursed by fund owners are recognized as mudharabah investments, the bank should report this transaction as an investment (based on the mudharabah Contract) in its statement of financial position. From the recipient side of the funds (mudharib), Mudharabah-based funds are more like conventional deposits, which are classified as liabilities because they must be repaid and are not treated as investors' equity shares (Mia et al., 2016). The fact that banks do not invest and provide debt financing is in line with Farooq's (2007) opinion that banks are basically devoted to financial intermediation, not to participate in business as partners or on the basis of equity financing.

**Table 4.** Part of the Financial Position Report of a Sharia Bank

<b>LAPORAN POSISI KEUANGAN</b> <b>31 DESEMBER 2021</b> (Disajikan dalam jutaan Rupiah, kecuali dinyatakan lain)		<b>STATEMENT OF FINANCIAL POSITION</b> <b>31 DECEMBER 2021</b> (Expressed in millions of Rupiah, unless otherwise stated)			
	Catatan/ Notes	31 Desember/ December 2021	31 Desember/ December 2020 <sup>1)</sup>	1 Januari/ January 2020 <sup>1)</sup>	
<b>ASET (lanjutan)</b>					<b>ASSETS (continued)</b>
Pindahan		201,682,367	178,446,464	148,261,456	Carry forward
<b>PEMBIAYAAN</b>					<b>FINANCING</b>
<i>Mudharabah</i>	11,42				<i>Mudharabah</i>
Pihak ketiga		1,154,595	1,460,923	2,625,499	Third parties
Pihak berelasi		473,842	1,210,059	1,112,121	Related parties
Jumlah <i>mudharabah</i>		1,628,437	2,670,982	3,737,620	Total mudharabah
Cadangan kerugian penurunan nilai		(36,123)	(72,195)	(63,224)	Allowance for impairment losses
Bersih		1,592,314	2,598,787	3,674,396	Net
<i>Musyarakah</i>	12,42				<i>Musyarakah</i>
Pihak ketiga		37,198,108	35,725,705	31,917,719	Third parties
Pihak berelasi		20,356,328	17,622,828	16,154,888	Related parties
Jumlah <i>musyarakah</i>		57,554,436	53,348,533	48,072,607	Total musyarakah
Cadangan kerugian penurunan nilai		(3,651,313)	(2,452,358)	(1,678,832)	Allowance for impairment losses
Bersih		53,903,123	50,896,175	46,393,775	Net
Jumlah pembiayaan		59,182,873	56,019,515	51,810,227	Total financing
Cadangan kerugian penurunan nilai		(3,687,436)	(2,524,553)	(1,742,056)	Allowance for impairment losses
Bersih		55,495,437	53,494,962	50,068,171	Net

Source: <https://www.idx.co.id/id/perusahaan-tercatat/laporan-keuangan-dan-tahunan/>

This is also the case with Contract Musyarakah Mutanaqishah. As long as the customer has not purchased all of the Bank's ownership of the assets purchased together, PSAK No. 106 stipulates that the share of the bank's ownership

is reported as a Musyarakah investment. If the musyarakah mutanaqishah object is land and/or a building, taking into account its characteristics, it can be reported as part of investment property. Referring to PSAK No. 13, Investment property is property (land or a building or part of a building or both) held (by the owner or the lessee through a finance lease) to earn rentals or for capital appreciation or both and not for (a) use in the production or supply of goods or services or for administrative purposes; or (b) sale in the ordinary course of business.

This opinion is strengthened by the obligation of Islamic banking to report non-performing financing (NPF). NPF is one of the risks of financing distribution. NPF occurs when the Debtor is late or no longer pays the financing he receives from the bank. The NPF value is usually directly proportional to the value of the financing itself. Table 5 illustrates changes in BUS NPF from each type of financing distributed during the 2020–2022 period.

**Table 5.** Sharia Banks Non-Performing Financing

Indikator	(in billion Rp)		
	2020	2021	2022
Profit Sharing Financing:	3.16%	2.45%	2.27%
a. NPF Mudharabah	2.61%	1.18%	0.99%
b. NPF Musyarakah	3.19%	2.50%	2.30%
Receivable:	2.95%	2.54%	2.39%
a. NPF Murabahah	2.97%	2.50%	2.33%
b. NPF Qardh	2.69%	3.00%	3.40%
c. NPF Istisna	0.00%	0.00%	0.00%

Source: Sharia Banking Statistics Book, OJK. February 2023

If we understand Mudharabah and Musyarakah as partnerships that require capital, then the investment risk is the occurrence of business losses which can lead to bankruptcy. The potential loss that may arise from joint asset ownership transactions (musyarakah) is damage or destruction of some or all of the assets that are jointly owned.

Meanwhile, the risk of non-performing receivables is only one of the triggers for losses. Bad receivables (non-current or bad) only occur if the company has receivables, either due to selling on credit or due to lending money. As required by the Regulator, Islamic banking reports the presence of NPF from financing based on Mudharabah and Musyarakah agreements (see Table 5). The existence of an NPF post in Islamic banking confirms that the money channeled by Islamic banking is financing (credit) or loan money and not investment (investment). Thus, all Islamic bank products that begin with the word "financing" are a metamorphosis of the word "credit or loan" in conventional banks.

### 3.2.3. *Fiqh Perspective*

In 2000, DSN, through Fatwa No. 7 Concerning Mudharabah Financing, defined Mudharabah Financing as financing channeled by Islamic Banks (IB) to other parties for a productive business. This Fatwa has also stipulated the pillars and conditions (financing) of mudharabah, the shahibul maal obligation to bear losses, the prohibition for shahibul maal to be involved in active business management (tasharruf), forms of capital that can be invested, and several other forms of provisions that are in line with mudharabah law.

However, there are several notes on the substance of the fatwa: Status of IB for funds channeled through Mudharabah financing agreements Funds disbursed come from third-party funds (DPK) collected by IB. At the time of receiving the DPK, the status of the Islamic Bank may be Al-Wakil for DPK with a Wadiah Contract or Mudharib for DPK with a Mudharabah Contract. As Al-Wakil, Sharia Banks cannot simply become Shahibul Mal (Abdurrahman, 2016). Likewise, when an Islamic bank has the status of a mudharib, it is supposed to manage the funds directly and not hand them over to other parties to be managed. Because the IB does not have a clear Contract basis to act as Shahibul Mal, the mudharabah (financing) agreement between the IB and the beneficiary customer becomes null and void.

Consequently, the profit that the bank gets from the results of mudharabah financing is actually not the bank's because the real shahibul maal is the depositors. According to Abdurrahman (2016), the argument stating that the bank has the right to benefit from a mudharabah financing agreement because it has agreed wakalah bi al-ujrah is not appropriate because when the bank receives funds from depositors, it is likely to use a mudharabah agreement, where the bank is positioned as a mudharib. As a mudharib, banks should manage their own funds and not hand them over to other parties. Second, the bank does not perform any ujah, either as mudharib or ajir.

Musyarakah mutanaqishah contract, where the customer and the bank agree to own an asset, followed by an agreement in the form of an obligation for both the customer to buy and the bank to gradually sell the bank's portion of ownership of the asset, can be categorized as a multi-Contract transaction. According to Jais et al., 2019, Musyarakah Mutanaqishah financing products combine several contracts, such as partnership contracts (Musyarakah), leasing (Ijarah), and buying and selling (al-Bay). Therefore, conceptually as well as in practice, the musyarakah mutanaqishah contract cannot stand alone but must be accompanied by an ijarah contract in the form of a lease between the Bank and the customer as the owner of the asset with the customer as the lessee. So the implementation of this transaction gave birth to at least two multi-Contracts. Even though Rasulullah SWA has prohibited two agreements (contracts) in one agreement (contract).

رَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ صَفَقَتَيْنِ فِي صَفَقَةٍ وَاحِدَةٍ (HR. Imam Ahmad).

#### 4. CONCLUSION

As one of the highly regulated business sectors, the existence and operation of Islamic banking are closely tied to Law No. 21 of 2008 concerning Sharia Banking. This law limits the operational activities of Islamic banking to the financial sector, and it is almost impossible to operate in the real sector.

This limitation does not allow Islamic banking to act as real investors in a mudharabah contract or as an asset owner in a musyarakah contract. In addition, in practice, Contract musyarakah cannot stand alone but must be carried out in a multi-contract (hybrid) manner. Even though the Prophet had forbidden the practice of two contracts in one transaction.

Banks cannot act as shahibul mal in distributing financing because they do not have a sharia contract basis. Although the bank's status as Al-Wakil or Mudharib when receiving funds from savers is acknowledged, it does not permit it to change its status as shahibul mal when distributing funds. Consequently, the financing agreement between the bank and the customer as mudharib in the form of mudharabah or musyarakah becomes null and void by law.

#### REFERENCES

- Abdurrahman, H. (2016). *Red Report Card of Islamic Banks. Criticism of Sharia Banking Product Fatwas*. Bogor: Al-Azhar Press.
- Agustin, H., Hariswanto, H., & Bustamam, N. (2018). The effect of nonperforming financing mudharabah and musyarakah and ownership of banks on the profitability of sharia banks. *Jurnal Tabarru': Islamic Banking and Finance*, 1(2), 33-45. <https://journal.uir.ac.id/index.php/tabarru/article/view/2814>
- Al-Khayyath, Abdul Aziz. (1982). *Syarikât fi asy-Syari'ah al Islâmiyyah wa al Qânûn al-Wâdh'i. Mua'ssarah ar-Risalah*, Beirut, Lebanon.
- An Nabhani, T. (2004). *Nidzamul Iqhtishadi fi Islam*. Beirut: Darul Ummah.
- Arsyadona, A., Siregar, S., Harahap, I., & Ridwan, M. (2019). The effects of mudharabah and musyarakah financing on the profitability of sharia commercial banks in Indonesia. *Proceeding International Seminar of Islamic Studies*, 1(1), 682-689. <https://jurnal.umsu.ac.id/index.php/insis/article/view/4234>
- Atkinson, P.A., & Coffey, A.J. (2011). *Analyze the reality of documents*. In *Qualitative Research* (pp. 56–75). Bank Indonesia. *Indonesia Economic and Financial Statistics 2022*. Retrieved from <https://www.bi.go.id/id/statistik/ekonomi-keuangan/seki/Pages/SEKI-FEBRUARI-2023.aspx>
- Corbin, J., & Strauss, A. (2008). *Fundamentals of qualitative research: techniques and procedures for developing grounded theory (3rd ed.)*. Thousands of Oaks.
- Farooq, M. O. (2007). Partnership, equity-financing and Islamic finance: whither profit-loss sharing?. *Review of Islamic Economics (Special Issue)*, 11, 67-88. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1415239](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1415239)
- Financial Services Authority. (2023). *Book of Sharia Banking Statistics Feb. 2023*. Retrieved from <https://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/statistik-perbankan-syariah/Pages/Statistik-Perbankan-Syariah---Februari-2023.aspx>
- Indonesian Council of Ulama. *Fatwa No. 1 of 2004 concerning Interest*. Retrieved from [//efaidnbmnnnibpcjpcglclefindmkaj/https://nuris2006.files.wordpress.com/2014/01/hukum-bunga\\_fatwa-mui-januari-2004.pdf](http://efaidnbmnnnibpcjpcglclefindmkaj/https://nuris2006.files.wordpress.com/2014/01/hukum-bunga_fatwa-mui-januari-2004.pdf)
- Jais, M., Faizah S., Asmaou M.B. (2019). *Mudharabah and Musharakah as an Equity Financing Model: Issues in Practice*. Proceedings of the 2nd Aceh Global Conference on Business Economic and Sustainable Development Trends (AGC-BEST) 2019, October 17-18, 2019 (pg. 107-114). Banda Aceh, Indonesia. Universitas Syiah Kuala.
- Karim, A.A. (2000). *Incentive Compatible Constrains for Islamic: Banking Some Lessons From Bank Muamalat*. Conference Papers, Fourth International Conference on Islamic Economics and Banking, August 13-15, 2000, (pp 579-598). UK: Loughborough University.
- Kayed, R.N. (2012), The entrepreneurial role of profit-and-loss sharing modes of finance: theory and practice. *International Journal of Islamic and Middle Eastern Finance and Management*, 5(3), 203-228. doi:10.1108/17538391211255205



- Law No. 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Retrieved from <https://peraturan.bpk.go.id/Home/Details/45486/uu-no-10-tahun-1998>
- Law No. 21 of 2008 concerning Sharia Banking. Retrieved from <https://www.ojk.go.id/id/kanal/perbankan/regulasi/undang-undang/Pages/undang-undang-nomor-21-tahun-2008-tentang-perbankan-syariah.aspx>
- Law No. 7 of 1992 concerning Banking. Retrieved from <https://peraturan.bpk.go.id/Home/Details/46599/uu-no-7-tahun-1992>
- Mansori, S., Kim, C. S., & Safari, M. (2015). A Shariah Perspective Review on Islamic Microfinance The Predictive Effect of Positive Emotion on the Individual Work Performance In Banking Industry In Malaysia View project Intrapreneurial Behavior and Individual Characteristics View project A Shariah P. *Asian Social Science*, 11(9), 1-8.
- Mia, M. R., Hasnat, M. A., & Mahjabeen, W. (2016). Mudharabah and musharakah from the accounting perspective by referring to AAOIFI, IFRS, and MFRS. *IOSR Journal of Business and Management*, 18(7), 67-72. doi: 10.9790/487X-1807036772
- National Sharia Council. Fatwa No. : 07/DSN-MUI/IV/2000 Concerning Mudharabah Financing (Qiradh). Retrieved from <https://tafsirq.com/fatwa/dsn-mui/pembiayaan-mudharabah-qiradh>
- National Sharia Council. Fatwa No. 73/DSN-MUI/XI/2008 Concerning Musyarakah Mutanaqisah. Retrieved from <https://tafsirq.com/fatwa/dsn-mui/musyarakah-mutanaqishah>
- PT. Bank Syariah Indonesia Tbk. (2022). *Financial Report 2021*. Retrieved from: [https://efaidnbmnnnibpcjpcglclefindmkaj/https://ir.bankbsi.co.id/newsroom/PT\\_Bank\\_Syariah\\_Indonesia\\_Tbk\\_31\\_Dec\\_22.pdf](https://efaidnbmnnnibpcjpcglclefindmkaj/https://ir.bankbsi.co.id/newsroom/PT_Bank_Syariah_Indonesia_Tbk_31_Dec_22.pdf)
- Sadique, M. A. (2009). *Essentials of Musharakah and Mudarabah: Islamic texts on the theory of partnership*. Kuala Lumpur, Malaysia: IIUM Press.
- Sharia Accounting Standards Board. (2016). *Islamic Financial Accounting Standards*. Indonesian Accountants Association.
- Triono, D.C. (2020). *Sharia Market Economy*. Yogyakarta, Indonesia: Irtikaz
- Yusof, A. A. (2017). *Shariah Standards & Operational Requirement*. (PDF file). Retrieved from <https://islamicbankers.files.wordpress.com/2017/09/shariah-standards-mia-280917-final.pdf>
- Yustiardhi, A. F., Diniyya, A. A., Faiz, F. A. A., Subri, N. S., & Kurnia, Z. N. (2020). Issues and challenges of the application of Mudarabah and Musharakah in Islamic bank financing products. *Journal of Islamic Finance*, 9(2), 26-41.