**IMPLEMENTATION OF MUDHARABAH CONTRACTS IN SYARIAH BANK**

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**Abstract**

In the aspect of Islamic banking, mudharabah contracts are a type of contract that is quite common in various types of products and programs offered by Islamic banks. One of the Islamic bank products that has operational provisions using a mudharabah contract is financing or the process of borrowing capital.One of the highlights is financing using a mudharabah contract. Mudharabah itself can be interpreted as a cooperation contract between two parties in which the first party provides all the funds, while the second party acts as the manager of the funds and profits are shared between them according to the agreement while losses are only borne by the owner of the funds.

Keywords ***: implementation, implementation, mudharabah contracts, banks, sharia***

**1. INTRODUCTION**

Based on Law no. 21 of 2008 concerning Islamic Banking, Islamic banks are banks that carry out business activities based on sharia principles or Islamic law principles. The Islamic sharia principles referred to include the principles of justice and balance ('adl wa tawazun), benefit (maslahah), universalism (alamiyah), and do not contain gharar, maysir, usury, unjust and unlawful objects, as stipulated in the fatwa of the Ulema Council Indonesia. Along with the development of the times, the provisions of the mudharabah contract have also experienced innovation from time to time. When talking about the classic mudharabah concept, a mudharabah contract is an agreement that is only carried out with one type or form of cooperation and cannot be combined with other types of contracts. However, currently the concept of a mudharabah contract has the flexibility to be combined with other contracts such as a murabahah or musyarakah contract in an Islamic banking activity. The purpose of merging other contracts with mudharabah contracts is to be able to adapt to conditions in order to meet the needs of the community to obtain good sharia banking services.

In addition, the Sharia Banking Act also gives a mandate to Islamic banks to always carry out social functions as well as carry out functions such as baitul mal institutions. The baitul mal institution is an institution that receives funds from zakat, infaq, alms, grants, or other social funds and distributes them to waqf managers (nazhir) according to the will of the waqf giver (wakif). In Islamic banking operations, mudharabah is a form of financing contract that will be given to its customers. The mudharabah system is a business cooperation agreement between two parties where the first party provides all the capital, while the second party becomes the fund manager. Business profits are divided according to the initial agreement made in the contract. In making the contract, it must be done at the beginning when starting the mudharabah contract.

**2. LITERATURE REVIEW**

# 2.1. Definition of Mudharabah Agreement

Mudharabah comes from the word adhdharby fl ardhi which means traveling for trade matters. It is also called qiradh which comes from the word alqardhu which means a cut because the owner cuts part of his property to be traded and gets some profit. PSAK 105 concerning Accounting for Mudharabah defines mudharabah as a business cooperation contract between two parties where the first party (fund owner/shahibul maal) provides all the funds, while (fund manager/mudharib) acts as fund manager and profits are shared between them according to the agreement, while Financial losses are only borne by the owner of the funds. The loss will be borne by the fund owner as long as the loss is not caused by the negligence of the fund processor. If the loss is caused by the negligence of the fund manager, the loss will be borne by the fund manager. In mudharabah, the owner of the funds may not require a certain amount for his part because it can be equated with usury, namely asking for excess or compensation without a balancing factor (iwad) that is permitted by sharia. For example, he gave Rp. 100,000,000 in capital and he stated that he would get Rp. 5,000,000 every month. In mudharabah, profit sharing must be in the form of a percentage/nisbah, for example 70:30, 70% for fund managers and 30% for fund owners. So the amount of profit received depends on the profit generated.

# 2.2. Types of Mudharabah Contracts

In PSAK 105, mudharabah contracts are classified into three types, namely:

1. Muthlaqah mudharabah contract, namely where the owner of the fund gives freedom to the owner of the fund in managing the investment. This contract is also known as unrestricted investment.
2. A mudharabah muqayyah contract, namely where the owner of the fund provides limits to the fund manager regarding funds, location, method, form of investment and business location. For example, mixing funds owned by fund owners with other funds, not investing funds in installment sales transactions without a guarantor.
3. Mudharabah musytarakah contract, namely where the fund manager includes capital or funds in investment cooperation.

# 2.3.Sharia Foundation

According to ijma 'ulama, mudharabah is Jaiz (permissible). In this case, it can be taken from the story of the Prophet who once did mudharabah with Siti Khadijah. Cinta Khadijah acts as the owner of the funds and the Messenger of Allah as the manager of the funds. Then the Prophet brought his merchandise to the land of Sham. From this story, it can be seen that the mudharabah contract took place during the Prophet's time before being appointed as an apostle. Mudharabah was widely practiced by pre-Islamic people and some of the companions of the prophet Muhammad SAW. Type This business is very beneficial and very much in line with the basic principles of Sharia teachings, therefore this contract is permissible according to Sharia.

The source or legal basis that becomes a mudharabah contract is:

a. Al-Qur'an

"When the prayers have been performed, then scatter you on the face of the earth and seek the grace of Allah subhanahu

SWT” (QS. Al-Jumuah: 10)

"... So, if some of you trust some others, let those who are trusted carry out their mandate and let them fear Allah

SWT, his Lord...” (QS. Al-Baqarah

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b. Sunnah

From salihin bin isuib Ra that Rasulullah SAW said "three things in which there are blessings: buying and selling in a tough muqaradhah (mudharabah) and mixing wheat with zits for household needs not for sale" (HR. Ibnu Majah)

"Abbas bin Abdul Muttalib, if he hands over part of the mudharabah's assets, he requires the manager of the funds not to cross the ocean and not to descend into valleys, and not to buy livestock. If these requirements are violated, he (fund manager) must bear the risk. When the conditions set by Abbas were violated by Rasulullah SAW., he

justify it” (HR. Tabrani from

Ibn Abbas)

# 2.4. Pillars and Sharia Provisions of Mudharabah Contracts

 There are four pillars of mudharabah, namely:

1. Actors, consisting of: owners of funds and managers of funds.
2. Mudharabah objects, in the form of: capital and work.
3. Consent/handover
4. Ratio sharing

 The sharia provisions of the mudharabah contract are:

1. Perpetrator
	* The perpetrator must understand the law and Baligh
	* Mudharabah contract actors can be carried out as Muslims or with non-Muslims
	* The owner of the funds may not interfere with the management of the business, but he may supervise

 Mudharabah objects (capital and work) Mudharabah objects are a logical consequence of the mudharabah contract

* + Capital

. The capital submitted can be in the form of money or other assets

(valued at fair value) the amount and type must be clear,

. Capital must be cash and not debt. Without capital injection, it means that the owner of the fund does not make any contribution, even though the fund manager has to work

. The amount of capital must be clearly known so that it can be distinguished from profit

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. The fund manager is not permitted to facilitate the return of his mudharabah capital and if this occurs it is considered a violation except with the permission of the owner of the funds. Fund managers are not allowed to lend capital to other people and if this occurs, it is considered a violation except with the permission of the owner of the funds. Fund managers have the freedom to manage capital according to their own policies and thoughts, as long as it is not prohibited by Sharia

- Work

. The fund manager's contribution can be in the form of fairness, skills, etc. Work is the right of the fund manager and may not be invested by the fund owner

. The fund manager must run a business in accordance with sharia

. Island funds must comply with all provisions contained in the contract

. In the event that the owner of the funds does not perform the obligation or violates the agreement, the fund manager has received the capital and is already working, the fund manager has the right to receive it

reward/compensation/wages

1. Solemnization of a marriage

Is a statement and expression of mutual pleasure or willingness between the parties to a contract that is made verbally, in writing, through correspondence or using modern means of communication

1. Ratio sharing
	* Nisbah is the amount used for profit sharing, reflecting the compensation that is entitled to be received by the two parties who make a profit for the profits obtained.
	* Changes in the ratio must be based on the agreement of both parties
	* Fund owners may not ask for profit sharing by declaring a certain nominal value because it can cause usury

# 2.5. Application of Mudharabah Contracts in Sharia Banking

The application of mudharabah in Islamic banking is divided into two parts, namely fundraising and payment of funds. Fundraising is the payment of funds from customers to the bank, while payment of funds is the withdrawal of bank funds by customers. At the time of deployment, mudharabah was implemented in the form of mudharabah savings and mudharabah deposits. Mudharabah savings are activities for saving funds by customers which will be managed by the bank with the aim of earning profits with a ratio mechanism based on mutual agreement. Mudharabah deposits are customer deposits that can be withdrawn based on a predetermined period of time, and the customer has the right to share in the profits or losses experienced by the bank as the fund manager. The intended distribution of funds is a form of mudharabah financing. Mudharabah financing is where the bank provides full investment or working capital financing (continuous financing), while the customer prepares a complete project or business with the management. Profits and losses experienced by the customer are shared by the bank and the customer by mutual agreement.

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# 2.6. The principle of sharing the results of operations (PSAK 105 par.11)

In mudharabah the term sharing of profits and losses (profit and loss sharing) is not appropriate because what is shared is only the profit (profit), not including the loss (loss). Thus, for the following discussion, the term profit sharing principle will be used as used in Law no. 10 years 1998, because if the business fails the loss is not shared between the owner of the funds and the manager of the funds, but must be borne by the owner of the funds himself. The distribution of the results of the mudarabah business can be carried out based on the income from the mudarabah business. In practice, this can be determined based on the profit sharing report on the realization of business income from the fund manager. Not allowed to recognize revenue from projected operating results.

To avoid disputes in terms of costs incurred by the fund manager, in the contract it must be agreed on what costs can be deducted from income.

# 2.7. End of Mudharabah Agreement

The duration of cooperation in mudharabah is uncertain and unlimited, but all parties have the right to determine the duration of the cooperation contract by notifying the other party. However, the mudharabah contract may end due to the following matters.

1. In the event that the mudharabah is limited in time, then the mudharabah

end on time Which has been determined.

1. One of the parties decided to resign.
2. One of the parties dies or loses his mind.
3. The fund manager does not carry out his mandate as a business manager to achieve the goals set forth in the contract. As a party carrying out the mandate, one must act in good faith and be careful.
4. Capital is gone.

**3. RESEARCH METHODS**

The type of research is research literature (*libraries research, ebook*) and data collection techniques using observations of books, records and reports that are related to the problem to be discussed. This technique is used to obtain the basics and opinions in writing which is done by studying various references related to the problem under study. The data sources used in this study are secondary data sources, secondary data through this method are obtained by browsing the internet, reading various references, results of studies from previous researchers, books, articles, journals and other relevant sources.

**4. CONCLUSION**

The mudharabah contract is one of the sharia economic bridges that represents Islamic sharia principles to realize social justice through a profit-sharing system. Mudharabah contracts are used in Islamic banking for short-term trading purposes and for special cooperation. If there is a profit, it will be shared according to the agreed ratio on the basis of realized profit, while if there is a loss that is not caused by the negligence of the fund manager, it will be fully borne by the owner of the fund, while the fund manager will bear the non-financial risk. Financing transactions with the mudharabah scheme are very strategic in efforts to develop the national economy. This is because cooperation with mudharabah contracts provides several benefits for Islamic banking. One of them is that the bank will enjoy an increase in profit sharing when the customer's business profits increase. However, apart from having benefits, mudharabah contracts also have risks such as side streaming, negligence and intentional mistakes, and concealment of profits by the customer if the customer is dishonest.

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