

Analysis of Riba Potential in The Application of Mudharabah Contracts in Islamic Financial Institutions

Mohammad Ghozali

University of Darussalam Gontor, JL.Raya Siman Km6, Siman, Ponorogo, Indonesia
Email: mohammadghozali@unida.gontor.ac.id

Y. Suyoto Arief

University of Darussalam Gontor, JL.Raya Siman Km6, Siman, Ponorogo, Indonesia
Email: yosa@unida.gontor.ac.id

Cepi Ahmad Wahyudin

University of Darussalam Gontor, JL.Raya Siman Km6, Siman, Ponorogo, Indonesia
Email: capiahmad17@gmail.com

M. Xavier Hidayatullah

Department Social Sciences in International Relations and Peace Studies
Ritsumeikan Asia Pacific University, Jumonjibaru 1-1, Beppu, Oita, Japan
Email: mohammadxavierhpm@gmail.com

Abstract

This study aims to provide a comprehensive analysis that can make a significant contribution to the practice of mudharabah in Islamic financial institutions (IFIs) in accordance with Islamic teachings. One of the issues encountered in its implementation is the potential presence of riba within it. This reflects that the potential for riba may still arise in IFIs as long as these institutions do not implement contracts that fully comply with Islamic principles. This study employs the library research method, which involves collecting data from relevant literature sources related to the subject matter, as well as other references, using a qualitative descriptive approach. The findings of this study indicate that the mudharabah contract is a partnership agreement; therefore, when its substance is compromised, injustice may arise. The potential for riba in mudharabah contracts emerges from both the contract terms and their implementation. The inclusion of certain conditions within the contract can create riba potential, while the absence of proper supervision and a sole focus on commercial objectives in contract execution can also lead to such risks. Through this analysis, it is expected to provide a foundation for the development of more effective policies to ensure compliance with sharia principles and enhance operational transparency.

Keywords: Riba Potential, Mudharabah, Islamic Financial Institutions

1. Introduction

Islamic financial institutions, as financial entities that uphold Islamic principles in all their operations, play a crucial role in today's global economic landscape (Al-Hasni, 2017). One of the key mechanisms that serve as the backbone of Islamic financial institutions is the mudharabah contract. The core concept of this contract lies in the principle of fair profit distribution between the two main parties involved: the capital provider (shahib al-mal) and the capital manager (mudharib). However,

in practice, mudharabah contracts often attract attention regarding compliance with fiqh muamalah principles and the potential for riba that may arise (Qodariah Barkah et al., 2022).

Fiqh muamalah outlines the requirements, rights, and obligations that affect the legitimacy and implementation of the mudharabah contract. Although the fundamental principles have been established, the involved parties often have different interpretations. Fiqh muamalah, a branch of Islamic law that governs transactions and social relations (Sa'diyah & Arifin, 2013), plays a crucial role in developing Islamic banking principles related to contract implementation. It serves as a foundation for economic activities within the Muslim community, including mudharabah, which involves profit determination. Thus, a profound understanding of fiqh muamalah is essential to ensure compliance with sharia principles, which form the foundation of this contract (Kasmawati et al., 2022).

One of the primary concerns in the implementation of mudharabah contracts is the risk of riba. Although the contract is fundamentally designed for fair profit-sharing, the potential for riba remains a critical issue that requires careful attention (Rasyid, 2021). The existence of riba potential within the mudharabah contract highlights the need for a thorough analysis of the implementation mechanisms to ensure full compliance with sharia principles that prohibit riba. This analysis is vital to guarantee that every aspect of the contract aligns with Islamic teachings and upholds the integrity of sharia-based economic transactions. Therefore, a rigorous and transparent approach to managing riba risks in mudharabah contracts not only ensures compliance with sharia principles but also builds trust between the parties involved in the transaction (Rasyid, 2021).

In this context, a study on the implementation of mudharabah contracts in Islamic banking is essential to gain a deeper understanding of how fiqh muamalah principles can be correctly applied without violating sharia guidelines and how the potential for riba can be minimized or entirely eliminated from Islamic banking practices (Thani et al., 2003). This study is not only crucial for exploring theoretical aspects but also carries significant practical relevance in enhancing the sustainability and public trust in Islamic banking (Almahmudi, 2022).

As part of an in-depth study on the implementation of mudharabah contracts in Islamic banking, this paper focuses on a comprehensive review of fiqh muamalah principles and the identification of potential riba aspects that may arise. The objective of this paper is to provide a thorough analysis that can make a significant contribution to strengthening Islamic banking practices in compliance with sharia teachings (Hutagalung, 2020). By offering an in-depth analysis of mudharabah contracts within the field of Islamic economics, this paper aims to enhance the understanding of the underlying sharia principles and provide the necessary insights to ensure compliance and integrity in economic transactions within the Muslim community.

2. Literature Review

Research conducted by Muhammad Rashid reveals that the implementation of the mudharabah contract in Islamic banking in Indonesia still falls short of the guidelines established by the National Sharia Board of the Indonesian Ulema Council (DSN-MUI) through its fatwas. The practice of mudharabah in Islamic banking does not fully adhere to the classical fiqh concept of mudharabah, particularly in terms of capital provisions, management, contract duration, collateral, and the profit and loss sharing principle (Rasyid, 2021). Consequently, this situation gives rise to the potential for riba in Islamic banking practices, which contradicts the sharia principles governing mu'amalah (Islamic commercial transactions). Additionally, a study conducted by Erry Fitria et al. emphasizes that the implementation of the mudharabah contract in technology-based financing services must fully comply with sharia principles and applicable legal regulations (Primadhany et al., 2023).

Meanwhile, research by Eka Jati Rahayu concludes that the implementation of the mudharabah contract in Islamic banking practices presents several challenges related to its application. These challenges involve issues concerning collateral, the roles of investors and

management, as well as asset management, all of which fall within the scope of Islamic banking mu'amalah. Furthermore, the study highlights the fact that Islamic banking institutions tend to prefer alternative financing methods, such as murabaha (sale-based financing) and ijarah (leasing), rather than adopting mudharabah contracts, despite the perception that mudharabah is considered a more ideal model in accordance with sharia principles (Rahayu, 2013).

3. Research Methods

This research is library research, a type of study in which data sources are obtained from relevant literature related to the subject matter, as well as other references, using a descriptive qualitative approach. This approach is conducted by collecting books and journals related to the issues discussed in this study, along with other sources such as textual materials (oral or written), objects, and audiovisual and electronic records (Ormrod, Paul D. Leedy, 2013), all of which pertain to the application of the mudharabah contract in Islamic banking. The collected data is then analyzed to draw meaningful conclusions.

4. Result and Discussion

Mudharabah

Mudharabah, also known as qiradh, refers to a trading practice derived from the term *al-darbu fi ardhi* (Achmad Fageh, 2020), which means traveling for trade purposes. Within this concept, there is the aspect of al-qardhu, meaning a share, where the owner entrusts a portion of their wealth to be traded and takes a share of the profit. In other words, mudharabah is an agreement between two parties in which one party provides capital to another for trade purposes, and the profits are shared according to a mutually agreed ratio.

From the explanation above, it can be understood that mudharabah involves the combination of capital provided by the investor and the skills or expertise contributed by the entrepreneur. The profit is distributed based on a mutually agreed nisbah (profit-sharing ratio in percentage) as stated in the contract, while losses are borne by the investor (shahibul mal) (A. Z. Abidin, M. Rasyid, 2021), provided they are not caused by the entrepreneur's negligence.

In Islamic financial law, the concept of mudharabah has various interpretations that form the basis of a deeper understanding of financial transactions. According to the Hanafiyah scholars, mudharabah is considered a partnership between two individuals aiming to generate profits from wealth entrusted to another person responsible for managing it (Rasyid, 2021). Therefore, mudharabah is regarded as a syirkah (partnership) agreement in which both the capital owner and the entrepreneur participate in the profit-sharing process. Meanwhile, from the Malikiyah perspective, mudharabah is seen as a representation agreement where the capital owner entrusts another party to manage their assets and sell them to others with a predetermined payment, such as gold or silver, as the agreed basis of the transaction (Rasyid, 2021).

The Shafi'i scholars view mudharabah as an agreement in which one party hands over capital to another for trade purposes. Imam Hanabilah describes mudharabah as the process of transferring asset ownership from the owner to the entrepreneur, who then agrees to share the profit based on a predetermined ratio. These differing views illustrate the various ways of understanding the elements of the agreement, ownership, and objectives of mudharabah within Islamic finance.

Mudharabah is not limited to trade or business but can also be applied in various industries, where an investor provides funds to individuals with expertise and skills in a particular field, and these funds grow through the efforts of the skilled individuals. This concept fosters interdependence among various parties, leading to the emergence of diverse businesses such as industries, crafts, and more (Rahayu, 2013). In a mudharabah contract, one party provides capital while the other contributes effort and expertise to grow the business, with profits shared based on a pre-agreed

percentage. Trading reflects effort in business, ensuring that all ventures undertaken are in accordance with the pleasure of Allah SWT.

Mudharabah Contract in Fiqh Mu'amalah

Mudharabah, within the scope of fiqh mu'amalah, is a cooperative agreement between two individuals in which one party provides the capital while the other party is responsible for managing it to initiate a business venture. This contract is based on the trust that the capital manager will use the resources wisely to achieve mutual profit. The validity of this contract is based on fulfilling the pillars (rukun) and conditions (shurut) that have been established, as reflected in the legal maxim (qa'idah fiqhiyah):

الأصل في الامعاملات الاباحة الا ان يدل دليل على تحريمها

"The basic principle in transactions is permissibility unless there is evidence indicating its prohibition." This means that all transactions are fundamentally permissible (halal), except when there is clear evidence proving otherwise. In the context of the mudharabah contract, it is considered permissible, as Islam encourages fair trade and investment. However, there are several conditions and principles that must be adhered to in order to ensure compliance with Islamic principles. Some of these include (Sa'diyah & Arifin, 2013):

1. Justice and Mutual Agreement: All parties must agree voluntarily and without coercion to the terms of profit and loss distribution.
2. Transparency: All transactions and financial matters must be conducted transparently and honestly to prevent fraud or misuse.
3. Shariah Compliance: The business or investment managed by the mudharib must comply with Islamic principles and must not engage in activities prohibited by Islamic teachings.

Profit and Loss Sharing: The distribution of profits and losses must align with the initial agreement, with the mudharib entitled only to a specific share as compensation for their efforts (Musfiroh, 2016).

Potential Riba in the Application of the Mudharabah Contract

The mudharabah contract is a partnership agreement that must be implemented in accordance with the applicable conditions. If not, several potential elements of riba may arise in its implementation. According to Yusuf Qardawi, any loan that includes an additional condition is considered riba (Wafa, 2019). The prohibition of riba in Islam is an essential effort to avoid and reduce injustice and oppression in all aspects of life, particularly in economic practices. Islamic economic teachings prioritize humanitarian principles, so anything contrary to justice—such as the exploitation of the weak who need assistance (Engineer, 2001)—is considered a form of riba that contradicts Islamic economic principles and exacerbates poverty levels (Paldi, 2014).

Some potential riba-related issues in the application of mudharabah in Islamic banking include:

1. Conditional Returns Set by the Capital Provider (Shahibul Mal): If the investor stipulates a fixed monetary return, such as investing IDR 50 million and expecting a fixed monthly return of IDR 5 million as part of the profit, this is not permissible. Any excess without an equivalent return (iwad) is considered riba. Profit distribution in mudharabah should be based on a percentage (nisbah), such as 70% for the entrepreneur and 30% for the investor, or a 50-50 split—based on mutual agreement at the contract's inception (Fageh, 2020).
2. Competitive Pressures Affecting Compliance: Market competition sometimes leads to a relaxation of essential requirements under the pretext of budget efficiency or time effectiveness, increasing the potential for riba. For example, inadequate monitoring of business activities by Islamic financial institutions (IFIs) in cases of mudharabah financing with a ceiling of IDR 100 million or more, or for savings of IDR 1 million or above. The riba potential arises when IFIs fail to supervise the business activities and merely rely on the

financing ceiling and profit-sharing ratio, which contradicts the fundamental principles of the mudharabah contract (Wafa, 2019).

3. Legal Contractual Implementation: Potential riba can also emerge from the practical implementation of legal contracts, such as:
 - a. The legal contract for mudharabah financing is implemented as if it were a murabahah contract, as seen in the case of BMT Pasuryan (Wafa, 2019). This affects the validity of the related contract. Essentially, the Islamic financial institution (IFIs) conducts a sale transaction with the customer, where the purchase of goods is delegated to the customer using funds provided by the IFIS. The transfer of the purchased goods is carried out by the same person acting as both the representative of the BMT and the customer. The profit received by the IFIS in this contract is in the form of a margin rather than a profit-sharing ratio (nisbah), which is the fundamental basis of a mudharabah contract.
 - b. The obligation of the customer to deliver a predetermined profit to the IFIS raises the potential for riba, as a fixed margin is already stated in the mudharabah contract. Ideally, the profit earned by both parties should be based on the agreed-upon nisbah from the business results achieved by the customer, rather than being calculated based on the principal amount plus a desired margin. Such an approach is more appropriate for a murabahah contract, not a mudharabah contract.

The total amount payable by the customer to BMT Pasuryan is as follows:

a) Purchase price:	IDR 7,000,000
b) Margin:	<u>IDR 1,260,000</u> +
c) Customer's obligation:	IDR 8,260,000

(Eight Million Two Hundred Sixty Thousand Rupiah)

- c. The imposition of late payment penalties by the IFIS, which are calculated as a percentage, may lead to riba fadl. This practice places a financial burden on customers who are unable to make timely payments (Wafa, 2019).
 - d. Excessive administrative fees included in the contract should ideally be covered by the IFIS's share of the profit. As the mudharib, the IFIS should take operational costs from its portion of the profit-sharing ratio (Wafa, 2019). The inclusion of unspecified administrative fees suggests that the IFIS is deriving additional profits. These fees are deducted directly from the financing amount applied for by the customer, meaning the customer does not receive the full financing amount.
 - e. The implementation of the mudharabah contract in the agreement outlines a debtor-creditor relationship. If the customer fails to make payments, it is considered a breach of contract. This contradicts the principles of mudharabah, where losses should be borne entirely by the IFIS unless caused by negligence on the part of the customer.
4. The profit-sharing ratio (nisbah) required of the customer by the IFIS is calculated as a percentage of the financing ceiling applied for by the customer, rather than being based on the actual business profits. This approach does not align with the principles of mudharabah.

The aforementioned issues clearly contradict the true principles and conditions of mudharabah, which is supposed to be a partnership contract that provides mutual benefit to both parties without burdening one over the other.

5. Conclusion

Mudharabah is a partnership agreement between a capital owner (shahib al-mal/IFIs) and a fund manager (mudharib) where the business profits are shared based on an agreed-upon ratio (nisbah) in the contract, while the losses are borne by the capital owner (shahib al-mal), as long as they are not caused by the negligence of the entrepreneur (mudharib).

The mudharabah contract is built upon several key principles, including justice and mutual agreement, transparency, adherence to sharia principles, and the fair division of profits and losses. These principles serve as the foundation for executing the mudharabah agreement. Any actions that deviate from these principles can lead to the potential of ribawi (usurious elements), whether it pertains to the legal contract or its implementation. Some factors that may create potential ribawi elements include: 1). Conditions imposed by shahib al-mal (IFIs) on mudharib that may lead to unfair practices, such as predetermined returns or fixed profit-sharing conditions that do not adhere to the true principles of profit and loss sharing. 2). The absence of proper supervision, with a focus only on the financing ceiling and nisbah value, without regard to the actual performance of the business. 3). Profit-sharing ratios that are based on a fixed percentage of the financing ceiling rather than being linked to the actual business profit, which misaligns with the intended principle of mudharabah, where profit sharing should be based on the real outcomes of the venture. 4). Contracts that deviate from the mudharabah principles, such as the implementation of margin-based pricing, penalties, and administrative fees that violate sharia principles. All of these elements impose undue burdens on one party and are inconsistent with the core principles of the mudharabah contract. The essence of mudharabah is to create a fair, cooperative, and mutually beneficial relationship, where risks and rewards are shared equitably.

6. Bibliography

- A. Z. Abidin, M. Rasyid, R. Z. L. (2021). Pembiayaan Mudharabah Bertingkat Pada Bank Umum Syariah. *IQTISADIE: Journal Of Islamic Banking And Sharia Economy*, 1(2), 141–173.
- Achmad Fageh. (2020). Potensi Akad Mudharabah dalam Kondisi Pandemi Covid-19 di Indonesia. *Akademika*, 14(1), 15–72.
- Al-Hasni, F. (2017). Akad Mudharabah Mutlaqah Dalam Praktik Perbankan Syariah. *Mu'amalat: Jurnal Kajian Hukum Ekonomi Syariah*, 9(2), 208–222. <https://doi.org/10.20414/mu.v9i2.2019>
- Almahmudi, N. M. (2022). Transformasi Akad Mudharabah Dari Konsep Fikih ke Akad Perbankan. *Labatila: Jurnal Ilmu Ekonomi Islam*, 6(01), 76–91. <https://doi.org/10.33507/labatila.v5i02.127>
- Engineer, A. A. (2001). *Islam dan Pembebasan* (2nd ed.). LKiS.
- Fageh, A. (2020). Potensi Akad Mudharabah dalam Kondisi Pandemi Covid-19 di Indonesia. *Akademika*, 14(1).
- Hutagalung, M. W. R. (2020). Determinan Pembiayaan Mudharabah Pada Perbankan Syariah Di Indonesia. *Al-Masharif: Jurnal Ilmu Ekonomi Dan Keislaman*, 8(2), 283–298. <https://doi.org/10.37058/jes.v5i2.2041>
- Kasmawati, K., Rivaldi, M., & Saputra, R. A. (2022). Analisis Hukum Jaminan Pembiayaan Modal Usaha Dalam Akad Mudharabah Pada Perbankan Syariah. *PAMALI: Pattimura Magister Law Review*, 2(1), 43–60. <https://doi.org/10.47268/pamali.v2i1.739>
- Musfiroh, M. F. S. (2016). Musyârah dalam Ekonomi Islam (Aplikasi Musyârah dalam Fiqih dan Perbankan Syariah). *Syariati: Jurnal Studi Al-Qur'an Dan Hukum*, 1(3), 173–186. <https://doi.org/10.32699/syariati.v2i01.1127>
- Ormrod, Paul D. Leedy, J. E. (2013). *Practical Research: Planning And Design*. Pearson Education.
- Paldi, C. (2014). Understanding Riba and Gharar in Islamic Finance. *Journal of Islamic Banking and Finance*, 2(1), 250.
- Primadhany, E. F., Baihaki, B., & Makrup, Z. (2023). Akad Mudharabah dan Relevansinya dengan

-
- Ayat Muamalah pada Transaksi Teknologi Finansial Syariah. *TAWAZUN: Journal of Sharia Economic Law*, 6(1), 70. <https://doi.org/10.21043/tawazun.v6i1.16149>
- Qodariah Barkah, Saprida, & Fitri Raya. (2022). Konsep Akad Mudharabah dalam Perbankan Syariah. *Jurnal Ekobistek*, 11, 251–257. <https://doi.org/10.35134/ekobistek.v11i4.380>
- Rahayu, E. J. (2013). Mitigasi Resiko Akad Pembiayaan Mudharabah pada Perbankan Syariah. *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah*, 4(1), 55. <https://doi.org/10.18326/muqtasid.v4i1.55-73>
- Rasyid, M. (2021). Problematics of Implementation of the Mudhārabah Contract on Sharia Banking in Indonesia. *Journal of Islamic Law*, 2(1), 22–42. <https://doi.org/10.24260/jil.v2i1.135>
- Sa'diyah, M., & Arifin, M. A. (2013). Mudharabah Dalam Fiqih Dan Perbankan Syari' Ah. *Equilibrium : Jurnal Ekonomi Syariah*, 1(Desember), 302–323.
- Thani, N. N., Abdullah, M. R. M., & Hassan, M. H. (2003). *Law and practice of Islamic banking and finance*. Sweet and Maxwell Asia.
- Wafa, A. (2019). Potensi Riba Dalam Lembaga Keuangan Syariah (Lks) Di Kabupaten Ponorogo. *Muslim Heritage*, 4(1), 61. <https://doi.org/10.21154/muslimheritage.v4i1.1607>