

## The Foundation of a Fair Mudarabah Profit Sharing Ratio: A Case Study of Islamic Banks in Indonesia

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Received: November 30, 2020 Revised: February 20, 2021 Accepted: March 02, 2021

### Abstract

This research aims to expose the Islamic perspective on the concept of justice on the *Mudarabah* contract's profit-sharing ratio. In certain verses in Al-Qur'an, Islamic values in *Muamalah*, the rules dictated by the Qur'an and its practices, and explanations rendered (more commonly known as *Sunnah*) by the Prophet Muhammad (pbuh) and Sahabah (the companions of the Prophet Muhammad), and Fiqh Axiom (rules) in *Muamalah* (Islamic jurisprudence), are used as the instruments of sharia to achieve the study objective. Islamic monetary establishments in Indonesia are still not in full consistency with the Shariah principles, significantly as far as satisfying equity and justice by Islamic banks in *mudarabah* contract (with clients). The ignominy is the *nisbah* (ratio) between the capital proprietor and the capital director. There are models or propositions to decide the benefit (profit)-sharing proportion. Nevertheless, none of them explains or specifies the possibility of equity/justice in the profit-sharing ratio. This research utilizes an explorative and subjective methodology that contributes to the philosophical premise of deciding the profit-sharing fairness. The elements of a just ratio for the *Mudharabah* contract are mutual willingness, the existence of negotiation, and the level of advantages and risks of the labor.

**Keywords:** Islamic Economics, Fairness of Profit-Sharing *Nisbah*, *Mudarabah* Contract, Islamic Bank, Indonesia

**JEL Classification Code:** D45, D63, E30, L16, N35

### 1. Introduction

Islamic financial institutions are expected to deliver a range of innovative Islamic financial products with a voice for promoting justice to improve community welfare. As mentioned in Qur'an Surat Al-Nahl verse 90, imposing this justice is the command of Allah. Justice and fairness are basic values of the Islamic economic order, distributive justice is a

major concern of the system. The underlying explanation is that justice would lead people to prosperity (Shihab, 1998).

Islamic banking, also referred to as Islamic finance or shariah-compliant finance, refers to finance or banking activities that adhere to shariah (Islamic law). Two fundamental principles of Islamic banking are the sharing of profit and loss, and the prohibition of the collection and payment of interest by lenders and investors. This concept differentiates Islamic financial institutions from traditional financial institutions. There are no manipulating and predatory actors in the profit-sharing scheme, improving economic conditions and a declining economy (Ryandono, 2009).

The interest mechanism is exploitative and predatory in traditional economics and finance. The debtor will only get tiny gains and might even face a loss as the economy deteriorates. In this case, the borrower abuses the debtor and becomes a predator. Debtors get high returns as the economy grows but pay low interest. In this situation, the debtor exploits creditors and becomes a predator. Interest leads to a mechanism of injustice, namely that there are both manipulating and predatory groups, both in an economic condition that is improving and declining.

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Furthermore, the interest has to be paid to the creditor by the debtor. Some parties receive income in the interest system, while some parties are not sure of receiving income. There are risk-free parties, namely lenders, and there are parties that are not risk-free, namely borrowers (Ryandono, 2009). The Islamic financial system is not much different from the products and services in the traditional financial system but its operations are essentially based on a certain set of moral and ethical principles that determined what is viewed as morally 'right' implying actions and transactions that promote the public good, and 'wrong' implying actions and transactions likely to be against the public good.

Islam offers a logical concept, namely a profit-sharing arrangement in the economy. This is consistent with the rule of Heaven (*sunnatullah*). According to this, in line with the effort, an individual obtains results. Furthermore, the next day's outcomes of human efforts are God's provisions and rights. As stated in the Quran Surah Al Luqman verse 344, there will be a situation of ups and downs in the human efforts that cannot provide certainty of benefit or loss. Therefore, the effects of human effort must represent the equilibrium; accept the outcome conditions as *sunnatullah* in the form of benefit and loss (Shihab, 1998). Benefit and loss must be shared equally between economic players in excellent and impoverished circumstances.

Currently, in the competitive Islamic financial system, *Mudarabah* (profit sharing) is seen as an alternative mechanism in financing techniques that differentiate it from the conventional financing that consist of interest mechanism. Since its introduction, *mudarabah* (profit sharing) has gone through various evolution to fulfill the needs of the fast-developing Islamic financial market. In Islamic economics, this profit-sharing arrangement is reflected by the contract of *Mudarabah*. *Mudarabah* is a partnership in profit in which one partner provides capital (*Rab-al-mal*) and the other provides labor and business expertise (*Mudarib*). In reality, the profit-sharing scheme of *Mudarabah* in economic activity has not been a new idea in history (Hassan & Lewis, 2007). The Messenger of Allah decided when it came to Islam, trade must be done as per *Mudarabah* and many followers adopted this concept when trading with other nations. *Al-Murabahah* is done based on the verses of the Qur'an and Hadith as follows: "It was narrated from Salih ibn Suhaib from his father he said: *The Messenger of Allah said:*" *Three things in which there is a blessing: Buying and selling is tough, muqaradhah, (mudaraba), and mixed with wheat flour for home, open for sale*" (Hassan & Lewis, 2007). The mandate of Law Number 21 the year 2008 concerning Sharia banking gives authority to the National Sharia Council-Indonesian Ulama Council (DSN-MUI) to make fatwa in the field of Sharia Banking. One of them is fatwa number 02/DSN-

MUI/IV/2000 about Savings. In the stipulated fatwa, the contracts used for savings in sharia banks are *Mudharabah* and *Wadi'ah* contracts (Imaniyati et al., 2020).

Kusuma (2018) find out the phenomenon of injustice experienced by Islamic bank consumers in dealing with the profit-sharing ratio of the *mudarabah* contract. The author provided empirical data about the consumers' familiarity of unfairness in the profit sharing ratio of the partnership contract of Indonesia Islamic banks based on an interview with the banks' consumers. The consumers' feeling of injustice occurred when the Islamic banks did not perform the execution of the *Mudarabah* contract strictly to its requirements which was based on Islamic jurisprudence. Other findings were that there are gaps between the conventional and Islamic banks in terms of pricing standardization and also within the Islamic banks themselves in determining the profit-sharing ratio which then creates injustice in the *Mudarabah* contract. The finding of these phenomena would inform the policymaker and banks' manager to regulate a juster profit-sharing ratio.

The public perception of Islamic financial institutions in Indonesia, concerning the equal benefit ratio, is still dominated by the view that traditional financial institutions are still better than Islamic financial institutions. The public feels that the distribution of their ratio does not offer a sense of fairness. The comparison between Indonesia Islamic banks' profit-sharing ratios and the conventional counterpart can be observed in Table 1.

The table above it can be observed the profit-sharing ratio of Islamic banks in Indonesia. It has ratios that apply to the customer and the bank, which are close to the conventional counterparts.

## 2. Literature Review

In the traditional method, some scholars had done some pricing system analysis. Rahman et al. (2017) found that brand was rated as the most important factor in purchase decisions. Other factors, arranged in decreasing order of importance comprise price, product quality, features, durability, availability, promotion, and post-purchase service. Other pricing studies in Korea provide evidence of a hierarchical system in price rivalry, with different countervailing forces due to commodity capital. Baek et al. (2019) suggested that the hotels with longer operational history pose an asymmetric impact on the price of the newer hotels. The asymmetry is also found in chain hotels over the independent, further implying the possibility of predatory pricing. The findings of this study provided evidence of a hierarchical structure in the price competition, with different countervailing power by the resources of the hotels.

**Table 1:** Comparison between Profit Sharing Ratio and Interest Rate

Profit-Sharing Ratio (Nisbah) of Islamic Indonesia Banks				Interest Rate of Indonesia Conventional Banks	
<b>Bank Syariah Mandiri</b>	<b>Customer (%)</b>	<b>Bank (%)</b>	<b>EQ. Rate (%)</b>	<b>Bank Mandiri</b>	<b>Rate (%)</b>
1 Month	50	50	N/A	1 Month	4.8
3 Month	51	49	N/A	3 Month	5.1
6 Month	52	48	N/A	6 Month	5.8
12 Month	53	47	N/A	12 Month	5.4
<b>Bank Negara Indonsia Syariah</b>	<b>Customer (%)</b>	<b>Bank (%)</b>	<b>EQ. Rate (%)</b>	<b>Bank Negara Indonesia</b>	<b>Rate (%)</b>
1 Month	46	54	4.69	1 Month	5.6
3 Month	47	53	4.8	3 Month	5.8
6 Month	49	51	5	6 Month	6.3
12 Month	50	50	5.1	12 Month	6.1
<b>Bank Rakyat Indonesia Syariah</b>	<b>Customer (%)</b>	<b>Bank (%)</b>	<b>EQ. Rate (%)</b>	<b>Bank Rakyat Indonesia</b>	<b>Rate (%)</b>
1 Month	44	56	5.1	1 Month	5.1
3 Month	45	55	5.22	3 Month	5.6
6 Month	46	54	5.34	6 Month	5.6
12 Month	47	53	5.46	12 Month	5.6
<b>Bank Tabungan Negara Syariah</b>	<b>Customer (%)</b>	<b>Bank (%)</b>	<b>EQ. Rate (%)</b>	<b>Bank Tabungan Negara</b>	<b>Rate (%)</b>
1 Month	40	60	5.41	1 Month	6.1
3 Month	43	57	5.81	3 Month	6.3
6 Month	44	56	5.95	6 Month	6
12 Month	44	56	5.95	12 Month	5.5

Nguyen et al. (2020) examined factors affecting apartment prices in the real estate market of Ho Chi Minh City, Vietnam. The results revealed that five significant factors affect positively the price of apartments in Ho Chi Minh City - apartment area, toilet and bedroom, apartment floor, reference price, and apartment interior. Besides, three significant factors are affecting negatively the price of apartments - next price trend, distance to the city center, and potential building. From the results, the research proposed solutions in the pricing of apartments in the real estate market in Ho Chi Minh City - a better information system, a real estate transaction index, and stricter management of small brokerage activities.

There are several scientific articles by scholars of Islamic economics concerning the *Misbah* of the Mudarabah. Hasan

(1985) suggested a formula for determining *Mudarabah's Misbah* in a scheme that coexists with interest and PLS support. He argued, in a system where interest and PLS financing co-exist, the aggregate profit-sharing ratio is a function of the overall rate of return on investment, rate of interest, degree of leverage, and risk premium. PLS financing is more profitable to financiers in the long run than interest financing.

A paper by the International Shari'ah Research Academy (ISRA) for the Islamic Finance team suggested a model for pricing the commodity of Islamic banks as an alternative to the benchmarking model (Omar et al., 2010). For example, Ghazali (1994) presented a model known as the rate of benefit mechanism model; Usmani (1998) suggested the idea of the development of an inter-Islamic

bank market based on Islamic principles; while Hassan (2009) suggested a Benchmark that can match both Islamic and traditional banks.”

A group of sixteen banks working with industry associations and data provider *Thomson Reuters* provided another concept known as the “Islamic Interbank Benchmark Rate (IIBR)”. However, nearly all of these alternatives are based on indicators of the money market without underlining how they are connected to the real economy. The ISRA research team tested two models based on CAPM (Capital Asset Pricing Model) and APT (The Arbitrage Pricing Theory) after evaluating all previously offered models for Islamic benchmark (Omar et al., 2010).

Ghuri (2015) emphasized that the interest-rate benchmark cannot be used for the pricing of Islamic financial products. This paper helped in pricing the basis for Islamic financial products, which are currently based on interest-rate benchmarks. Shariyah’s perspective and ground realities are considered as evidence of the viewpoint. It was analyzed that interest-based benchmarks do not represent real economic activities.

Ali and Zahid (2015) proposed a model by linking the bank’s profitability with prices determined in the commodity market for *Ijarah*, and diminishing *Musharakah* and *Murabaha* contracts. However, a study conducted on this subject that interviewed Islamic finance and banking clients, managers, and experts showed signs of a pattern of discrimination faced by clients in the financing or financing banking goods.

However, most of the literature review studies have not mentioned how the philosophical aspect of the profit-sharing ratio is the very basis of a just profit sharing ratio. This becomes the research’s point of concern. The question presented is what is the philosophy of the *Mudharabah* contract, a fair profit-sharing ratio?.

### 3. Research Methodology

This research aims to expose the Islamic perspective on the concept of justice on the *Mudarabah* contract’s profit-sharing ratio. In certain verses in Al-Qur’an, Islamic values in *Muamalah*, the rules dictated by the Qur’an and its practices, and explanations rendered (more commonly known as *Sunnah*) by the Prophet Muhammad (pbuh) and Sahabah (the companions of the Prophet Muhammad), and Fiqh Axiom (rules) in *Muamalah* (Islamic jurisprudence), are used as the instruments of sharia to achieve the study objective.

This is a descriptive analysis with a qualitative approach focused on Islamic ideas in the form of this study. The purpose of a descriptive analysis is to actually and accurately explain the facts of the studied object (Nazir, 2005). Moreover, qualitative analysis data is orally stated

and evaluated without any statistical instruments (Sangadji & Sopiah, 2010).

Qualitative methodology is the technique used in this study; one of its tasks is understanding the sensitive issues and doing some evaluation (Moleong, 2017). This study’s technique is first carried out by understanding and exploring the details, and the analyzed issue is discovered from these measures. The problem is solved by writing it descriptively after the evaluated variables are understood.

The next step in solving the problem is study literature; it is achieved by looking for Al-Qur’an verses about the Islamic principles in *Muamalah* that contribute to the analysis. Those verses’ interpretations are debated and interpreted to search for solutions after those verses are found. Besides, by discussing the Prophet Muhammad PBUH and Caliph Umar bin Aziz, another solution is also looked for.

Survey literature and interview techniques are the set of data techniques used in this analysis. The goal is to ensure that there is no primary variable that has consistently affected the problems solved in the past (Sekaran, 2007). Content analysis is a research tool used to determine the presence of certain words, themes, or concepts within some given qualitative data (i.e. text). Using content analysis, researchers can quantify and analyze the presence, meanings, and relationships of such certain words, themes, or concepts. It is a methodology used for normative studies (the study of the law as an object and removes any non-legal material from the scope of this research). It is intended as a tool for explicitly, objectively, and systematically interpreting and defining an order’s characteristics (Stemler, 2001).

Studying the problems of injustice faced by Islamic financial institutions related to the *Mudarabah* product is the first step in analyzing data. It is essential to solving the issue using Islamic instruments because it has sharia to direct its operation. The next step is to research literature looking for Al-Qur’an verses on Islamic justice principles against benefit-sharing ratio. These steps are taken to obtain the scientific facts (Narbuko & Achmadi, 2004).

### 4. Results and Discussion

To express the message of Islam, which is a blessing to the entire world, Allah sent Rasulullah Muhammad SAW (Zahrah, 1994) that Islam is a religion for all humanity which, according to its nature, totally rules human life, *Kāffah*. The purpose of *Kāffah* is to call upon Muslims with all sincerity to move their lives to devote themselves entirely to Allah. With a warrant for Muslims to enter Islam in *Kāffah*, as stated in Al-Quran, Al-Baqarah: 208, Allah establishes the totality of this execution. The word *al-Silm* in verse is Islam. The root word of Islam is “*al-Silm*” which means “submission” or “surrender.” It is understood to mean

“submission to Allah. Taking one element and leaving the other section is not justified. In this situation, *muamalah* was included in finance.

An Islamic financial institution uses some contracting mechanisms, such as purchasing and sale, partnership, lending, pawning, etc. There are contracts, such as *Murabahah*, *Salam*, and *Istisna*, in the buying and selling system. In this deal, between the seller and the buyer, there are two parties. The price and profit earned are then calculated by the seller. At the same time, the collaboration arrangement (*syirkah* / partnership) is a contract for money and work. The determination of the ratio or profit-sharing ratio set at the beginning is one of the primary aspects needed for this partnership (Zuhaily, 2011). There are two contracts in this scheme, namely the *Musyarakah* and *Mudarabah* contracts. It is important to evaluate the profit-sharing ratio related to the concept of sharing an equal ratio that is the subject of this research study.

*Mudarabah* is a type of partnership where one party provides capital and the other party provides labor and management skills. So, there are two parties: capital provider and manager. The one who provides capital is called “*Rabbul Mal*” / Capital provider. And the working partner is called “*Mudarib*” or Manager. A mutual arrangement specifies the proportionate share of the profits of a business contract. However, the loss is only incurred by the money owner, in which case the businessman does not earn a share of his work income. Two forms of *Mu'arabah* exist:

1. *Mudarabah Al Muqayyadah* (Restricted *Mudarabah*). Under this scheme, *Rab ul-māl* (capital owner) can determine a particular business choice or place of business for *Mudarib* (capital manager), in which case he must invest money in a particular business or place. It is a form of *Mudarabah* contract where the capital provider restricts the manager to a particular type of business or a particular location. In this case, the manager has to work or invest capital within the given boundaries.
2. *Mudarabah Al Mutlaqah* (Unrestricted *Mudarabah*). However, if *Rab-ul-Maal* gives full freedom to *Mudarib* to undertake whatever business he deems fit, this is called *Al Mudarabah Al Mutlaqah* (unrestricted *Mudarabah*). However, *Mudarib* cannot, without the consent of *Rab-ul-Maal*, lend money to anyone. *Mudarib* is authorized to do anything, which is normally done in the course of business. However, if they want to have an extraordinary work, which is beyond the normal routine of the traders, he cannot do so without express permission from *Rab-ul-Maal*.

The nature of the profit-sharing investment system lies fundamentally in good cooperation between capital

owner and manager. In the Islamic economic community, collaboration or partnership is a character. International cooperation must take place in all economic activity fields: production, distribution of goods, and services. *Qirad* or *Mud'arabah* are one type of cooperation in business or Islamic economics. *Qirad* or *Mudarabah* is a relationship with the entrepreneur who has the experience or skills or labor in executing economic units or business ventures between the owners of capital/cash. Through *Qirad* or *Mudarabah*, both parties who are partnering will not get interest, but get profit from economic projects mutually agreed upon (Muhammad, 2001).

#### 4.1. Profit-Sharing Ratio of *Mudarabah*

*Nisbah* is the ratio, or comparison, linguistically. In this case, this ratio is between capital owner and manager in terms of benefit sharing (profit-sharing). This ratio shows comparable figures between one value and other relative values, which is not a contrast in the financial statements between two positions and can determine its situation. The profit-sharing ratio is the percentage of profit that capital owner and manager would receive, calculated based on the agreement between the two. If the company loses due to business risk, not due to the negligence of the manager, the loss is entirely borne by the capital owner. Because all capital invested in the manager's effort belongs to the capital owner. The profit-sharing ratio is also called the profit ratio (Muhammad, 2001).

Based on the fatwa of the National Sharia Council (DSN) No: 15 / DSN-MUI / IX / 2000 Concerning Principles of Distribution of Business Results in Islamic Financial Institutions, Islamic Financial Institutions are given the freedom to choose an approach that divides the results of operations among parties the form of cooperation may be based on the principle:

1. Islamic financial institutions may, in principle, use the Net Revenue Sharing Principle as well as Profit Sharing (Profit Sharing) in the distribution of operating results with their partners (customers).
2. As far as the benefit (*al-ashlah*) is concerned, the distribution of business results should at present be used following the Revenue Sharing principle (Net Revenue Sharing).
3. Determination of the principle of distribution of the selected business results must be agreed upon in the contract.

In the case of *Muamalah*, Islam demands that humans be granted relief. It is economically understood, in this case, that some people have properties but are unable to generate income. Moreover, people do not have land, but they can

generate income. This *Muamalah* makes Islamic Shari'ah so that all parties will profit from each other. The mixture of the two, then, becomes *Mudarabah*. Therefore, the owner of the property benefits from *Mubarib* (the individual entrusted with capital experience and knowledge, while the capital manager will benefit from the *Rab-ul-Māl* (capital owner/investor resources). Cooperation between capital and work has thus been established. And not all forms of contract are set by God, but for the sake of making a profit and stopping difficulties (Al-Faifi, 2014).

The *Mudarabah* contract is a contract that prioritizes the trust of the property/capital owner (*shabibul māl*) and the property manager's mandate (capital manager). The proportionate share in profit is determined by mutual agreement. But the loss, if any, is borne only by the owner of the capital, in which case the entrepreneur gets nothing for his labor. The financier is known as '*Rab-ul-Maal*' and the entrepreneur as '*Mudarib*'. However, if the company's loss is due to the capital manager's incompetence, he is responsible for returning commercial capital to the capital owner. Therefore, it is essential that *Mubarib* is a trustworthy entity so that the owner of the capital must not ask for collateral. If the loss is not due to the capital manager's incompetence, the capital owner cannot demand any promise from the capital manager to return capital with benefit. If the capital owner includes the assurance of the capital manager and states this in terms of the contract, according to the Maliki and Syafi'i Mazhab scholars, then their *Mudarabah* contract is null (Harahap, 2006).

Since its inception, Islamic finance has grown and evolved in Indonesia as a financial intermediary responsible for finance funds. The main function of the bank is collecting and distributing money (Kasmir, 2013). Islamic banks have fulfilled the requirements as a bank in this context, namely an institution that has a role as a party that collects funds (fund/financing pooling) and distributes funds (financing distribution) so that in this case, Islamic banks are referred to as Islamic financial intermediary institutions.

#### 4.2. Philosophy of Islam in Fair Ratio to the Contract of *Mudarabah*

The scheme of benefit sharing is a system of partnership or joint bond in the execution of business activities carried out by Islamic Financial Institutions (IFIs); Islamic banking with its customers is part of this study. A particular function provided by the Islamic bank to the public is the sharing of gains and losses in the Islamic banking system. This then characterizes the traditional banking system that uses interest that is viewed as a percentage of the loan principal. There is a guarantee in this profit-sharing-based company that the gains and losses obtained will be shared between the parties

concerned, namely the owners of capital (*Rab ul-Māl*) and capital managers (*Mudarib*). The method of profit sharing is described in the ratio or portion of the business outcomes or percentages. This percentage shall be determined following the agreement of the parties concerned, whose decision shall be made at the beginning of the agreement.

It is essential to split the benefit ratio between the two parties. One party is not permitted without splitting it with the other party to take all money. Furthermore, when contracting, each party's proportion of profit must be understood, and the proportion must be dependent on income. It is necessary for the validity of *mudarabah* that the parties agree, right at the beginning, on a definite proportion of the actual profit to which each one of them is entitled. No particular proportion has been prescribed by the Shariah; rather, it has been left to their mutual consent. They can share the profit in equal proportions, and they can also allocate different proportions for the *Rab ul-Mā* and the *Mudarib*. However, they cannot allocate a lump sum amount of profit for any party, nor can they determine the share of any party at a specific rate tied up with the capital (Az-Zarqa, 2012).

The profit/ benefit-sharing ratio between the two parties shall be decided based on the mutually agreed outcomes of the contact and negotiations, such that each party's willingness, mutual support, is born without any element of coercion. God obligates believers to abandon pride or prohibit it. This is written in Verse 29 of Al-Quran Surat Annisa. The Indonesian Ulema Council's (MUI) National Syari'ah Council (DSN) stressed that the key factors are contract and negotiation, the incidence of such '*taradhinhin*' (mutual willingness). In Quran Anisa 29, reciprocal willingness is indirectly clarified by communication, negotiation, and cooperation. Furthermore, negotiations must be based on a shared desire to assist "*Wa ta awanu all birri wattaqwa*" and *Mudarabah* negotiations are a negotiation for the profit-sharing ratio. This also includes Al Maidah: 1-2 "*aufu bil uqud*" (fulfilling the contract), describing the competency and complete engagement of each party in the commercial contract (*tijarah*), and not cheating plus not false.

Negotiation is carried out using dialogue and communication to reach a decision and agreement. This negotiation is relevant in the *Mudarabah* contract because it seeks to: 1) match the things that emerge in an agreement; 2) decide what the parties need; 3) prevent disputes or differences of opinion that may arise; 3) unite different viewpoints to find a win-win solution for both parties.

Zartman and Rubin (2002) presented 5 (five) analytical approaches: systemic approach, strategic approach, method approach, behavioral approach, and integrative approach, and this refers to the analysis formed in the negotiation of the *Muadārabah* agreement ratio. Of the five approaches, an integrative approach is suitable in this study in Islamic

construction. This approach emphasizes problem-solving, value formation, communication, and negotiation outcomes as win-win solutions, assuming win-win solutions have limitations in the use of time. All parties should pay attention and be prepared for counterattacks by non-integrated solutions.

Collateral in *mudharabah* financing is needed to minimize the level of risk that may arise. Because these risks can be detrimental to Islamic banks and *Mudharib*. The guarantee requirements in *mudharabah* financing are, in principle only intended to strengthen cooperation and increase the trust of both parties. As determined by DSN-MUI. In Fatwa No. 07 / DSN-MUI / IV / 2000, in principle, in *Mudharabah* financing, there is no collateral, so that *Mudharibs* do not make irregularities, Islamic Financial Institutions can request collateral from *mudharib* or third parties. This collateral can only be disbursed if it is proven that the *mudharib* has violated the matters agreed in the contract.

The principle of mutual willingness must also be reflected in justice and communication and negotiation between *Ms al-Mali* and *Ms al-Mali*. Terms of cooperation by using *mudharabah* contracts are established by prioritizing the elements of mutual trust, honesty, and willingness between the provider of capital and capital manager. The agreement between *Shahibul Mal* and *Mudharib* occurs not because of the element of compulsion, kinship is preferred but it does not mean heeding the rules, terms, and conditions already known and mutually agreed upon. For example, if there is negligence from the *mudharib* then the manager must fully bear all forms of loss (Patria, 2009). From this hegemony, it can lead to, consciously or unconsciously, one of the parties experiencing injustice or injustice in such a way that the exploitation of one party or one of the parties will be improper to what it should receive. This is undoubtedly in violation of Allah's command in Al-Quran Surah An-Nisa: 29, because it acted violently by taking or accepting what is not their right.

To anticipate this kind of thing, a third party called a negotiator might be added to the negotiation process. These negotiators are people with good negotiating skills and good business ethics. Usually, negotiators are mediators for those who negotiate. In this context, the negotiator acts as a consultant, whether in terms of risk management or material work, to be carried out in such a way that, in determining the ratio, he or she can be transparent according to the meaning of justice. This is then agreed between the two parties to the agreement of *Mudharabah*, and a true relationship (based on justice) can be established purely according to Islam. In negotiations using negotiators, this is an effort or perceived negotiation process that needs to be carried out by the parties concerned to reach a final fair agreement.

In determining the fairness of the ratio, based on the meaning of justice discussed by Shihab (1998), i.e., equality,

acceptance following their rights, balance, and justice attributed to God must be considered. Procedural justice consists of four parts that surface during the negotiation process: fair play, fair representation, transparency, and voluntary decisions. Distributive justice also consists of four parts that are reflected in the terms of the agreement: equality, proportionality, compensation, and need. The concept of distributive fairness focuses on the criteria that lead people to feel that they have received their fair share of available benefits i.e., that the outcome of a negotiation or other decision-making process is fair. This is reflected in the following verse of Al-Quran, such as Surat Al-Baqarah 286, Surat At tur: 21, Al Najm 38-39.

In addition to the Al-Quran verse, the Hadith of Messenger of Allāh explained a person's acquisition according to his effort level. In a Hadith, which the Muslim Imam carries out in his *Sunan*, the Messenger of Allah said, "Ajruka' alā Qadri nashbika" which means "Your reward is based on your level of effort." This is followed in everyday life, including in economic practice during the time of the Prophet. There are many Hadiths who confirm this. Amongst them,

1. From Abdullah bin Amr bin Ash RA, the Prophet SAW said: "*There should be no profit without risking loss.*" (reported by Ahmad 6831, Nasa'i 4647);
2. Then the Hadith of A'isyah RA, the Prophet SAW, said, "*The result of the profit is in exchange for the risk he has.*" (reported by Ahmad 24956, Nasai 4507,); also the argument about whether to take wages because he had worked, the Hadith of Abu Hurairah RA, the Prophet SAW said, "*The three factions that I have are a person who swears on my behalf, then he does not fulfill it, and someone who sells human beings free yet takes the price, and someone who hires a worker then completes the work but does not pay his wages*" (reported by Bukhari 2227 and Ahmad 8926) In this Hadith, God defends the rights of employees who have worked, but his employer does not pay him.

In other hadith, as narrated by Ahmad, Abu Dawud, At-Tirmizi, Ibn Majah, and Ibn Hibban from Aisha, ra. said: "*That a man sells a slave, then the slave resides in the place of the buyer within a few days the buyer finds a disability in the slave and reports to the Prophet Muhammad SAW; the Prophet returns the slave to the seller. So the man said, "O Messenger of Allah, he (the buyer) has hired (benefited) my slave." The Messenger of Allah said: "The right to get results is due to the obligation to bear losses"* (Reported by Abu Dawud).

The hadith says that there were friends who bought slaves at the time of the Prophet SAW. After being hired for a couple of days, the buyer saw a defect, which the seller

did not say. He finally handed this slave back to the seller. Nevertheless, the seller does not want to accept it unless the buyer pays the rental value of a slave whom the buyer has hired for several days.

Both of them complained to the Prophet SAW. Moreover, he decided that seller had to accept the return because of the defect and that the buyer was not obliged to pay the rental fee. The seller was not satisfied with this decision until he said, “O Messenger of Allah, he enjoyed the ‘results’ of my slave.” Then the Prophet SAW replied, “The results are proportional to the risk burden.” (reported by Abu Daud & Ibnu Majah) With this answer, the Prophet SAW won the buyer. The buyer is not obliged to pay the rent value as long as the slave with him. The slave’s safety is his responsibility. Therefore, as long as he is responsible for his slaves’ safety, he has the right to enjoy the results of the slaves’ work. The results that he enjoyed paid off with the risks that were his responsibility.

Hence, *Al-Kharaj* is everything that comes out of something in the form of work, benefits, and things like fruit from trees, milk from goats, and all of them are the property of those who bear them because if there is a loss, they will bear it. Another example: the purchaser returns an animal on the grounds of disability. The seller cannot claim payment for the animal’s use because the animal’s use has become the right of the purchaser.

According to Djazuli (2010), the meaning of *al-kharāj* (tax) is the right to derive benefit from a property if one assumes the responsibility for its maintenance. It states the principle of the Islamic jurisprudence that the yield from an asset is for the one who is liable for that asset and one who does not bear the liability has no claim to the yield. An example in the book of fiqh is that the purchaser returns an animal on the grounds of disability. The seller cannot request payment for the use of the animal because animals have become the purchaser’s right.

The rule of *al-kharāj bi al-kamān wa al-gunmu bi al-gurmi* states that the right to derive benefit from a property if one assumes the responsibility for its maintenance. It states the principle of the Islamic jurisprudence that the yield from an asset is for the one who is liable for that asset and one who does not bear the liability has no claim to the yield. For example, if a person buys a house and then rents it out, but subsequently notices a defect in the house and returns the house to the seller, the seller has no claim on the rent during the period the house remained with the buyer.

This is also consistent with the rules of *fiqhiah: al-ni’matu bi Qadri and nuqmati wa aal-nuqmatu bi Qadri al-ni’mati* (Karim, 2003). “Enjoyment is achieved based on the level of difficulty, and the difficulties faced based on the level of enjoyment that will be achieved.” From the above argument, the scholars set a shorter rule:

“*The profit is given because there is a risk of loss.*”

From these various verses and Hadiths, in general, the principle taught by the Shari’a is that the benefits of a person are directly proportional to the sacrifices and risks they incur. This is explained briefly as a rule relating to the right of a person to benefit. States of the rule:

“*People are entitled to a profit, because of property, work, or risk of loss.*”

### 4.3. The Rationality of Justice over Profits and Losses

#### 4.3.1. Rights of Profit Due to Investment Assets

The person who invests has the right to take advantage of his capital increase. Because there is also a risk of loss if his capital decreases. If there is a *Mu-Papārabah* contract, where the financier requires, if there is a loss or the project fails, the capital must be returned to the investor and the *Mu-Papārabah* contract is canceled. It is because investors are only willing to share profits while they are not willing to share losses. Furthermore, with the requirements, return the capital when a default occurs, the status of the contract becomes *qar* (debt) and is therefore not eligible for profit-sharing

#### 4.3.2. Rights of Profit Due to Employment

The person who has worked has the right to receive a reward for the work he does. This applies to the contract of the *Ijarah*. While in the case of a *ju’alah* contract (a kind of competition), In Islamic finance, *ju’alah* is a contract whose subject matter is work or task to be done. More specifically, one of the parties (general offeror or ja’il) offers specified compensation (ju’el) to anyone (worker or ‘amil) against achieving a predetermined work, task, or result in a period of time, whether predetermined or not. In principle, *ju’alah* is not a binding contract; that is, the offeror or the worker can rescind the contract unilaterally before the worker sets to work. However, it becomes binding on the offeror when the worker commences work. It is also binding on the worker if he undertakes not to revoke the contract during a specified period. Once the work initiates, the property of the offeror is transferred to the possession, not ownership, of the worker, and therefore, the worker is deemed as a trustee, not a guarantor as to that property. In other words, the worker will not be liable for any losses or damages that may occur except in the case of negligence, misconduct, or violation of the conditions stipulated by the offeror.

#### 4.3.3. Benefit due to Dependents

A person who bears certain risks or is liable for specific responsibilities is entitled to profit. *Mukamārib* (business



actor), who manages the property of others, is responsible for the property. Therefore, he has the right to share profit.

## 5. Conclusion

The profit-sharing system in Islamic economics is an economic system that upholds justice. One of the dominant contracts used at the Prophet's time and his companions are the *Mudharabah* contract. In this case, the agreement between the two parties, *Rab ul-Mal*, and *Mudarib*, is entitled to profit based on the ratio agreed earlier in the contract. This ratio will be the basis for the profit resulting from the division.. Philosophically, fair distribution reflects the value of mutual willingness, bargaining, profit, and risk.

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