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Legal Thoughts on Murabahah and Mudharabah Financing Contracts in Islamic Financial Institutions

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ABSTRACT

Financing based on murabahah and mudharabah contracts is the main instrument in the operations of Islamic financial institutions in Indonesia. Murabahah, as a sale contract with an agreed-upon profit margin, dominates financing practices because it provides certainty of repayment and relatively low risk. In contrast, mudharabah, as a profit-sharing partnership contract between the capital owner (shahibul maal) and the capital manager (mudharib), offers an ideal participatory economic model but faces challenges in its implementation, such as moral hazard, limited business oversight, and lack of transparency in customer financial reporting. This study aims to analyze Islamic law and positive law perspectives on both contracts by highlighting the fiqh basis, views of classical and contemporary scholars, national regulations, and practical issues in the field. Normatively, murabahah and mudharabah have Sharia legitimacy based on the Qur'an, hadith, ijma', and the fatwas of DSN-MUI. Positive regulations such as Law Number 21 of 2008 on Sharia Banking as well as the Compilation of Sharia Economic Law (KHES) also provide a clear legal basis for their implementation. Nonetheless, there is a tendency for the overdominance of murabahah, which results in the profit-sharing based Sharia economic idealism not being fully realized. Mudharabah financing is considered more in line with the principles of distributive justice and the strengthening of the real sector, but it requires regulatory reformulation and the strengthening of supervisory mechanisms

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INTRODUCTION

The development of Islamic financial institutions in Indonesia has experienced significant acceleration over the past two decades. Their presence is considered an alternative financial system based on the principles of justice, partnership, and the prohibition of usury. Its philosophical foundation is derived from Islamic teachings that emphasize balanced transactions, as stated in the words of Allah SWT:

ٱلَّذِينَ يَأۡكُلُونَ ٱلرِّبَوٰاْ لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ ٱلَّذِي يَتَخَبَّطُهُ ٱلشَّيۡطَٰنُ مِنَ ٱلۡمَسِّۚ ذَٰلِكَ بِأَنَّهُمۡ قَالُوٓاْ إِنَّمَا ٱلۡبَيۡعُ مِثۡلُ ٱلرِّبَوٰاْۗ وَأَحَلَّ ٱللَّهُ ٱلۡبَيۡعَ وَحَرَّمَ ٱلرِّبَوٰاْۚ فَمَن جَآءَهُۥ مَوۡعِظَةٞ مِّن رَّبِّهِۦ فَٱنتَهَىٰ فَلَهُۥ مَا سَلَفَ وَأَمۡرُهُۥٓ إِلَى ٱللَّهِۖ وَمَنۡ عَادَ فَأُوْلَٰٓئِكَ أَصۡحَٰبُ ٱلنَّارِۖ هُمۡ فِيهَا خَٰلِدُونَ ٢٧٥

"Those who consume (take) interest cannot stand except as one stands who is being possessed by Satan out of madness. That is because they say, 'Trade is just like interest.' But Allah has permitted trade and forbidden interest. Whoever receives an admonition from his Lord and then stops, let him have what he earned before, and his affair is up to Allah. But whoever returns [to it], those are the companions of the Fire; they will abide therein forever." (Q.S. Al-Baqarah: 275). (Ministry of Religious Affairs, 2024)

The verse serves as a normative basis for the emergence of Islamic financial contracts such as murabahah and mudharabah. Murabahah is positioned as a sales scheme with an agreed-upon profit margin, while mudharabah is a profit-sharing cooperation model between the capital owner and the manager. In the context of Islamic financial institutions, these two contracts dominate financing practices and drive the national Islamic banking industry.

Although the potential for Islamic financing continues to grow, various issues need to be examined in depth. One of the biggest problems is the gap between the ideal of fiqh and the reality of practice. The murabahah contract, which is supposed to place the bank as the actual seller of goods, often becomes merely a financing instrument similar to conventional credit. (Muhammad Syafi'i Antonio, 2001) In practice, banks do not always purchase the goods first; instead, they provide funds directly to customers and then charge a fixed profit margin. This creates the impression that murabahah is merely a cover for conventional interest. (Ascarya, 2006) On the other hand, the mudarabah contract, which is expected to support the principle of profit-loss sharing, faces implementation challenges due to high risks, limited supervision, and lack of transparency from the customer's business partners.

Islam also teaches the principle of justice and the elimination of gharar practices in transactions. The Qur'an states: "And cooperate in righteousness and piety" (Q.S. Al-Maidah: 2). (Muhammad Quraish Shihab, 2003) This verse emphasizes that a muamalah contract should not burden any party. The Prophet Muhammad (peace be upon him) also said: "A Muslim's wealth is not permissible except by his consent." (Imam Nawawi, 1999) This hadith provides a moral basis that murabahah and mudarabah transactions must be founded on clarity, honesty, and mutual agreement without coercion. However, in practice, power relations often tend to favor financial institutions over customers.

The dominance of murabahah over mudharabah raises epistemological issues concerning the objectives of Islamic economics. According to data from the Financial Services Authority (OJK), more than 50–60% of national Islamic financing still uses murabahah, while mudharabah and musyarakah, which are associated with productive partnerships, are much lower (Financial Services Authority (OJK), 2023). This situation indicates that Islamic financial institutions tend to take the safe route through sales contracts rather than profit-sharing schemes that are more in line with the values of distributive justice in Islam. The question is to what extent such practice choices still reflect the maqashid al-shariah, particularly the aspects of public interest, asset protection (hifz al-mal), and contractual justice?

Legally, the operational basis for Islamic financing is guaranteed by law. Law No. 21 of 2008 concerning Islamic Banking provides legitimacy for the use of sharia contracts in financial transactions. On the other hand, the fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), such as Fatwa No. 04/DSN-MUI/IV/2000 on Murabahah and Fatwa No. 07/DSN-MUI/IV/2000 on Mudharabah, serve as direct references for the practices of Islamic financial institutions. However, at the implementation level, many Islamic banks and cooperatives face a dilemma between sharia compliance and modern business considerations that require payment certainty, risk minimization, and procedural efficiency. (DSN-MUI, 2000b)

The imbalance between theory and practice gives rise to its own legal problems. First, murabahah is often criticized because, in substance, it resembles interest-based financing, differing only in formal contracts and terminology. Second, mudharabah contracts are often subordinated by banks through collateral and unilateral determination of profit-sharing ratios, even though, in fiqh principles, both require trust and risk-sharing. (Adiwarman A Karim, 2007) Third, there is still no uniform technical guideline on accounting records, problematic financing, and dispute resolution related to these contracts. Various cases of default and financing disputes in Islamic financial institutions have repeatedly entered both litigation and non-litigation arenas, indicating a gap in the reconstruction of the enforcement mechanism of sharia law.

Socially, the public still has diverse understandings of murabahah and mudharabah contracts. Some consider that Islamic banks merely replace the term 'interest' with 'margin' without any substantive change. (Dr. Wahbah Az-Zuhaili, 2011) This perception has the potential to reduce public trust and hinder the development of the Islamic finance industry. Additionally, the lack of customer education, the dominance of a transactional mindset, and the low compliance in business reporting by mudharabah partners further complicate the effectiveness of implementing Sharia principles. This indicates the need for a review not only from a normative-legal perspective but also from structural and cultural perspectives.

From the perspective of Islamic economics, murabahah and mudarabah should serve as mediums for distributive justice, economic empowerment, and the elimination of exploitation. This concept is closely related to maqashid al-shariah, which aims to realize the welfare of the people. However, in reality,

murabahah is more dominant because it is considered low-risk, while mudarabah is actually eroded by concerns over moral hazard and high supervision costs. This phenomenon reflects a dilemma between idealism (normative) and pragmatism (economic). (M. Umer Chapra, 2000) This is where the study of legal thought becomes important to assess the extent to which these contract practices align with the spirit of sharia.

Murabahah financing is also often criticized because in practice it resembles a consumer financing scheme more than a productive one. Islamic financial institutions frequently use this contract for the purchase of vehicles, homes, or other consumer goods, rather than for business development. On the other hand, mudharabah, which should be the driver of productive economic activity, only contributes a small portion of national financing. (Bank Indonesia, 2022) This raises questions about the effectiveness of the Islamic economic development strategy and its alignment with the agenda of community empowerment.

From the perspective of Islamic contract law, murabaha requires clarity regarding the object, cost price, and profit margin. If any of these elements are not fulfilled, the contract can be considered invalid (fasid). Ignoring this principle may be considered to involve gharar (uncertainty), which is prohibited by Sharia. Similarly, a mudarabah contract requires profit-sharing based on an agreed ratio, not a fixed nominal amount. If one party imposes a loss guarantee without a Sharia-compliant reason, the contract loses the essence of the partnership (Setiady, 2015). The lack of firmness in enforcing these principles often causes a disconnect between fiqh theory and technical implementation in practice.

In addition to issues of Sharia compliance and implementation, regulatory aspects also influence the development of this contract. Supervision by the OJK, DSN-MUI, and the Sharia Supervisory Board (DPS) still faces limitations, especially regarding oversight of the substance of contracts and transparency of financial reports. In some cases, financing contracts prioritize protection for the bank rather than establishing an equal partnership. (Hafidhuddin & Tanjung, 2019) This indicates that policy reconstruction and regulatory harmonization are urgent needs to maintain the integrity of the system.

Amid these challenges, there arises an urgency to conduct a study of legal thought that is more responsive, contextual, and based on maqashid. This study is not only intended to assess the conformity of murabahah and mudharabah contracts with normative evidence but also to evaluate their relevance to legal, social, and economic realities. By understanding the root of the problems and developing a more just and proportional legal paradigm, Islamic financial institutions can become instruments of fundamental economic transformation for the community.

LITERATURE REVIEW

Although the potential for Islamic financing continues to grow, various issues need to be examined in depth. One of the biggest problems is the gap between the ideal of fiqh and the reality of practice. The murabahah contract, which is supposed to place the bank as the actual seller of goods, often becomes merely a financing instrument similar to conventional credit. (Muhammad Syafi'i Antonio, 2001) In practice, banks do not always purchase the goods first; instead, they provide funds directly to customers and then charge a fixed profit margin. This creates the impression that murabahah is merely a cover for conventional interest. (Ascarya, 2006) On the other hand, the mudarabah contract, which is expected to support the principle of profit-loss sharing, faces implementation challenges due to high risks, limited supervision, and lack of transparency from the customer's business partners.

METHODOLOGY

This research uses a normative juridical approach because the focus of the study lies in the analysis of the concepts of sharia law and positive regulations regarding murabahah and mudarabah contracts in the practice of Islamic financial institutions (Soerjono, 2019). This approach allows researchers to examine classical fiqh muamalah norms, the fatwas of the National Sharia Council-MUI, as well as national banking regulations that form the basis for the implementation of these contracts. The primary legal materials include: DSN-MUI Fatwa Number 04/DSN-MUI/IV/2000 on Murabahah, DSN-MUI Fatwa Number 07/DSN-MUI/IV/2000 on Mudarabah Financing, Law Number 21 of 2008 on Islamic Banking, and the Compilation of Sharia Economic Law (DSN-MUI, 2000b). The secondary legal materials consist of journals on Islamic economic law, opinions of fuqaha, previous research results, and literature on contemporary fiqh muamalah (Ascarya, 2006). Data collection was conducted through library studies to trace legal views, theological foundations, and practical applications in the Islamic finance industry. The data analysis is qualitative-descriptive, with deductive and comparative reasoning to compare normative Sharia principles with their implementation in the field (Marzuki, 2017). In addition, this study employs conceptual and historical approaches to understand the transformation of murabahah and mudharabah contracts from normative texts into modern financial instruments. The results of the analysis are aimed at finding conformity, interpretative problems, and recommendations for the reconstruction of legal thought in the practice of Islamic financing in Indonesia (Dr. Wahbah Az-Zuhaili, 2011).

DISCUSSION

A. Philosophical and Normative Foundations of Murabahah and Mudharabah Contracts

Basic Sharia Principles in Financial Transactions

Murabahah and mudharabah contracts are the main instruments of Islamic financial institutions, functioning to uphold the principles of justice and public benefit in transactions. Its philosophical foundation is tauhid, which places all economic activities as a form of obedience to Allah, the prohibition of usury, justice (al-'adl), and social welfare (al-mashlahah al-'ammah) (Dr. Wahbah Az-Zuhaili, 2011). In QS. Al-Baqarah verse 275,

ٱلَّذِينَ يَأۡكُلُونَ ٱلرِّبَوٰاْ لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ ٱلَّذِي يَتَخَبَّطُهُ ٱلشَّيۡطَٰنُ مِنَ ٱلۡمَسِّۚ ذَٰلِكَ بِأَنَّهُمۡ قَالُوٓاْ إِنَّمَا ٱلۡبَيۡعُ مِثۡلُ ٱلرِّبَوٰاْۗ وَأَحَلَّ ٱللَّهُ ٱلۡبَيۡعَ وَحَرَّمَ ٱلرِّبَوٰاْۚ فَمَن جَآءَهُۥ مَوۡعِظَةٞ مِّن رَّبِّهِۦ فَٱنتَهَىٰ فَلَهُۥ مَا سَلَفَ وَأَمۡرُهُۥٓ إِلَى ٱللَّهِۖ وَمَنۡ عَادَ فَأُوْلَٰٓئِكَ أَصۡحَٰبُ ٱلنَّارِۖ هُمۡ فِيهَا خَٰلِدُونَ

It means:

"Those who consume usury cannot stand except as one stands who is being driven mad by Satan's touch due to (the pressure of) insanity. Allah has permitted trade and forbidden usury. Whoever receives a warning from their Lord and then stops, they will have what has passed; and their matter rests with Allah. But those who return (to committing usury), they are the companions of the Fire; they will abide therein forever.

Allah emphasizes that buying and selling are allowed, whereas usury is prohibited (Ministry of Religious Affairs, 2024). This principle serves as the main foundation for the development of interest-free Islamic banking products.

Classical fiqh muamalah divides transactions into permissible and prohibited contracts, including murabahah (sale and purchase with an agreed margin) and mudharabah (profit-sharing partnership) (Syarifuddin, 2014). Murabahah is a sale transaction with the cost price plus profit, while mudharabah is a capital partnership, where profits are shared according to the agreed ratio, and losses are borne by the capital owner (Ascarya, 2006). Since the time of the Prophet Muhammad (peace be upon him), the practices of murabahah and mudharabah have been used in trade to ensure fairness for both parties (Al-Fadhilah et al., 2011).

In the modern era, Islamic banking adopts both of these contracts to comply with national regulations. Murabahah has become the dominant product because it is easy to implement and provides certainty of profit, while mudharabah is used in profit-sharing schemes that require transparency and a high level of trust (Adiwarman A Karim, 2007).

1. Positive Regulatory Basis in Indonesia

In the national legal system, the strengthening of murabahah and mudarabah contracts is based on Law Number 21 of 2008 concerning Islamic Banking (Law Number 21 of 2008 concerning Islamic Banking, 2008). The Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) serves as a normative guideline, for example, DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 concerning murabahah and No. 07/DSN-MUI/IV/2000 concerning mudarabah (DSN-MUI, 2000b). This fatwa regulates the requirements for a valid contract, ownership of goods, margin transparency, as well as profit-sharing and risk mechanisms, thereby serving as a reference for Islamic financial institutions in practice.

The Compilation of Sharia Economic Law (KHES) enacted by the Supreme Court strengthens the position of these contracts within the Indonesian legal system (SUPREME COURT, 2008). This makes the murabahah and mudharabah contracts not only valid according to fiqh, but also legally recognized under positive law.

2. The Value of Justice and Welfare

The murabahah and mudarabah contracts aim to realize contractual justice and prevent excessiveness in transactions. Murabahah provides price certainty without an element of usury, while mudarabah encourages the circulation of productive capital and fair risk distribution (Mubarok, 2017). QS. Al-Maidah verse 2:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُحِلُّوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا آمِّينَ الْبَيْتَ الْحَرَامَ يَبْتَغُونَ فَضْلًا مِنْ رَبِّهِمْ وَرِضْوَانًا ۚ وَإِذَا حَلَلْتُمْ فَاصْطَادُوا ۚ وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ أَنْ صَدُّوكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَنْ تَعْتَدُوا ۘ وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۚ وَاتَّقُوا اللَّهَ ۖ إِنَّ اللَّهَ شَدِيدُ

It means:

"O you who have believed, do not violate the symbols of Allah, nor the sacred month, nor the sacrifices, nor the garlands, and do not harm those who seek the Sacred House, seeking the bounty and pleasure of their Lord. But when you finish Ihram, then you may hunt. Do not let the hatred of a people because they prevented you from the Sacred Mosque incite you to transgress. And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty. (QS. Al-Maidah: 2)

The verse emphasizes the importance of helping each other in good deeds and the prohibition of harming others. These two contracts are expected to empower the community's economy while maintaining moral integrity.

B. Implementation in Islamic Financial Institutions

1. Murabahah Contract Practice

Murabahah contract is one of the most widely used forms of financing in Islamic banks due to its simplicity and the certainty of profit for the bank (Ascarya, 2006). In practice, Islamic financial institutions purchase goods needed by customers and then sell them back to the customers at the cost price plus an agreed-upon profit margin. The clarity of the profit margin and the ownership of the goods by the bank before being sold are requirements for the validity of a murabahah contract according to the DSN-MUI fatwa (DSN-MUI, 2000b).

Murabahah practices in Islamic financial institutions face a number of challenges, including the potential for gharar or uncertainty regarding the transaction object. For example, if the goods are not yet available at the time the contract is made, the transaction could be considered invalid according to fiqh principles (Dr. Wahbah Az-Zuhaili, 2011). Therefore, Islamic banks always ensure ownership of the goods before conducting a murabahah sale, and draft contracts transparently to avoid disputes in the future (Adiwarman A Karim, 2016).

2. Mudharabah Contract Practice

Mudharabah contract is a partnership between a capital owner (shahibul mal) and a business manager (mudharib) with profit sharing according to an agreed ratio (DSN-MUI, 2000a). Islamic financial institutions use this contract to finance specific projects or businesses, where the risk is borne by the capital owner unless there is negligence by the manager (Mubarok, 2017). In practice, issues that arise include matters related to profit and loss recording, capital management audits, and ensuring a fair profit ratio (Syarifuddin, 2014).

slamic banks implement a strict reporting and supervision system to ensure that the principles of transparency and fairness are maintained. The DSN-MUI fatwa explains that every mudharabah financing must have a clear written contract outlining the rights and obligations of both parties, profit-sharing mechanisms, and responsibility for risks (Syarifuddin, 2014). This ensures that the contract does not deviate from Sharia principles and positive law.

3. Comparison of Murabahah and Mudharabah in Practice

In banking practice, murabahah is more dominant due to the certainty of income and lower risk compared to mudharabah (Ascarya, 2006). Murabahah provides the bank with certainty regarding profit margins, whereas mudharabah requires higher transparency and risk management. However, from the perspective of maqashid al-shariah, mudharabah is more suitable for economic productivity goals because it encourages efficient and fair use of capital (Mardani, 2018).

Nevertheless, the two contracts complement each other in the portfolio of Islamic bank financing products. Murabahah is used for consumer or capital goods financing with minimal risk, while mudharabah is used for productive business financing with a balanced profit-sharing (Adiwarman A Karim, 2016). Proper implementation requires the bank to integrate fiqh principles, national regulations, and transparent governance practices.

C. Problem Normatif dan Praktik dalam Akad Murabahah dan Mudharabah

1. Challenges in Murabahah Contract

Although murabahah is a relatively simple contract, in practice there are a number of normative and operational problems. One of the main issues is the potential for gharar, or uncertainty regarding the object of the transaction. In some cases, the goods being sold are not fully owned by the bank, raising questions about the validity of the contract according to fiqh principles (Dr. Wahbah Az-Zuhaili, 1989). This can lead to disputes if the goods are not available at the time of the contract or if there are price changes in the market.

In addition, murabahah practices sometimes contain hidden usury when the profit margin is too high or linked to disproportionate deferred payments (Ascarya, 2006). The DSN-MUI fatwa emphasizes the importance of price and profit margin transparency so that the contract remains valid and Sharia-compliant (DSN-MUI, 2000b). Other challenges are related to the customer's ability to meet payments and the credit risk borne by the bank, which must be managed with prudential principles (Adiwarman A Karim, 2016).

2. Challenges in Mudharabah Agreement

The mudharabah contract faces more complex issues due to the profit-sharing nature and risk allocation. One of the main issues is the uncertainty of the profit ratio and the management of capital by the mudharib. Without adequate supervision, the capital owner may suffer losses from poor management performance or dishonesty (DSN-MUI, 2000a). Therefore, Islamic banks implement internal audit systems, regular reporting, and detailed written contracts (Mubarok, 2017).

In addition, there are interpretative difficulties between classical fiqh principles and modern regulations. In classical fiqh, mudharabah can be conducted verbally, but modern banking requires written documentation to be legally accountable under positive law (Syarifuddin, 2014). This has created a need to reconstruct the contract so that it remains valid under sharia while also complying with national legal requirements.

3. The Gap Between Theory and Practice

One of the fundamental problems is the gap between Sharia law theory and financial industry practice. Many Islamic banks use the murabahah contract as a replacement for interest-based conventional financing, so the principle of fairness for customers is sometimes neglected (Ascarya, 2006). Meanwhile, mudharabah, which is ideal for economic productivity, is rarely implemented due to high risks and complicated supervision (Mardani, 2018).

Another issue is the inconsistency in the interpretation of DSN-MUI fatwas in the field. Some institutions modify contracts according to business needs without considering the principles of transparency and ownership of goods, which has the potential to cause discrepancies between fiqh, fatwas, and national regulations (Adiwarman A Karim, 2016).

4. Impact on Legal Certainty

These normative and practical constraints affect legal certainty in Islamic financing. Customers and financial institutions require clarity on rights, obligations, and proportional risks so that contracts can be legally accountable. Without this certainty, the potential for disputes increases and the principles of Sharia may be overlooked (Dr. Wahbah Az-Zuhaili, 1989). Therefore, legal thought research emphasizes the need for harmonization between fatwas, national regulations, and industry practices to ensure that Islamic financing operates in accordance with the objectives of maqashid al-shari'ah.

D. Analysis of Contemporary Legal Thought

1. Legal Thought on Murabahah

From a contemporary legal perspective, the murabahah contract is considered a legitimate financing instrument if it complies with Sharia principles and national law (Adiwarman A Karim, 2016). Modern fuqaha emphasize that bank ownership of goods, margin transparency, and written agreements are absolute requirements for the murabahah contract to be accountable (DSN-MUI, 2000b). Adiwarman Karim states that murabahah often becomes a pragmatic solution for Islamic banks to replace conventional interest-based financing, but it must still uphold fairness for customers (Adiwarman A Karim, 2016).

Contemporary legal analysis also highlights the practice of "tiered murabahah" or murabahah with deferred payment, which is often problematic due to the potential for gharar or disguised riba (Dr. Wahbah Az-Zuhaili, 1989). The normative juridical approach emphasizes the importance of compliance with DSN-MUI fatwas and national regulations to ensure the contract remains valid and to avoid legal conflicts.

2. Legal Thought on Mudharabah

The mudharabah contract is seen as an ideal financing instrument to promote economic productivity and fairness for both parties (DSN-MUI, 2000a). However, profit-sharing complexities and business risks make the implementation of mudharabah more difficult compared to murabahah (Mubarok, 2017). In the context of contemporary law, a mudharabah contract must adhere to principles of transparency, documentation, and clear oversight mechanisms to prevent disputes (Syarifuddin, 2014).

Some modern scholars emphasize the importance of reconstructing the mudharabah contract to align with current banking practices without neglecting Sharia principles (Mardani, 2018). For example, a mudharabah contract should include audit clauses, profit-sharing mechanisms, risk responsibilities, and the bank's right to monitor the performance of the capital manager (Adiwarman A Karim, 2016). Thus, the mudharabah contract remains valid according to fiqh while also being recognized under positive law.

3. Harmonization of Fiqh and Positive Law

Contemporary legal thought emphasizes the harmonization between classical fiqh, DSN-MUI fatwas, and national regulations as the key to legal certainty (Dr. Wahbah Az-Zuhaili, 1989). Sharia banking regulations in Indonesia provide formal legitimacy for murabahah and mudharabah contracts, but field practices require adaptation to remain in line with sharia principles (Law Number 21 of 2008 Concerning Sharia Banking, 2008). Several problems arise when financial institutions adjust contracts to business needs without considering the principles of ownership or profit-sharing transparency (Ascarya, 2006).

For this reason, contemporary legal experts recommend a reconstruction of the law that integrates fiqh theory, industry practices, and national regulations. This approach ensures that sharia financing contracts are not only theologically valid but also provide legal certainty, protect customer rights, and maintain the sustainability of Islamic financial institutions (Mardani, 2018).

4. The Relevance of Maqashid al-Sharia in the Reconstruction of Law

The objectives of Shariah, particularly the principles of justice, welfare, and avoidance of harm, serve as the main reference in the reconstruction of murabahah and mudharabah contracts (Mubarok, 2017). Sharia banks that adhere to the maqashid can draft contracts that minimize risk, ensure fair profit distribution, and build customer trust. This aligns with the Shariah goal of preserving the welfare of the community and avoiding excessiveness in economic transactions (Dr. Wahbah Az-Zuhaili, 1989).

CONCLUSIONS AND RECOMMENDATIONS

A study of murabahah and mudharabah contracts from the perspective of Islamic law and regulations of Islamic financial institutions shows that these two contracts are not only transactional in nature but also carry moral, social, and substantive justice dimensions. The philosophical foundation of murabahah and mudharabah is built on the principles of monotheism, the prohibition of usury, honesty, transparency, and partnership. The prohibition of usury stated in Surah Al-Baqarah verse 275, as well as the principle of helping one another in Al-Maidah verse 2, serves as a normative basis justifying that financial transactions must provide benefits and avoid exploitation.

Murabahah is applied as a margin-based sales scheme, with the obligation for the bank to own the goods first before selling them to the customer. Meanwhile, mudharabah is a partnership contract between the capital owner (shahibul mal) and the manager (mudharib) with profit sharing according to the agreed ratio. Both emphasize the importance of balancing rights and obligations between the parties. The Prophet's hadiths that prohibit fraud, gharar (uncertainty), and coercion reinforce the moral legitimacy of Sharia transactions. Empirically, the implementation of murabahah dominates Islamic banking financing in Indonesia because it is considered to have lower risk, easier to implement, and more certain in returns. However, the dominance of murabahah has drawn criticism for straying from the spirit of profit and loss sharing, which is a key characteristic of the Islamic economy. Mudharabah, although

theoretically ideal, still faces implementation challenges due to lack of business transparency, absence of collateral, and weak risk management.

In terms of regulation, studies show that normative references to DSN-MUI fatwas, Law No. 21 of 2008 concerning Islamic Banking, and the Compilation of Sharia Economic Law have provided a clear legal basis, but have not fully addressed the dynamics of field practice. A reconstruction of legal thought is needed so that murabahah contracts do not end up resembling interest-based conventional credit, and mudharabah contracts can be optimized as instruments for empowering the community's economy.

Thus, murabahah and mudharabah must continue to be placed within the framework of maqashid al-shari'ah, which ensures justice, benefits, and protection for all parties. Policy reorientation, instrument innovation, strengthening of sharia supervision, and financial literacy become strategic agendas so that these two contracts truly reflect the ideals of Islamic law as a mercy to all the worlds.

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