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Analysis of the Role of Fatwa Institutions in Developing Alternatives to the Mudharabah Agreement in Sharia Financial Institutions

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Abstract*: This study aims to examine fatwas from various organizations on alternative mudharabah contracts in Islamic economics. The mudharabah contract implements a profit-sharing mechanism between capital owners (rabbul mal) and business managers (mudharib). Fatwa institutions provide change and alternatives because these contracts often face obstacles such as the possibility of moral hazards and supervision problems. The methods used are qualitative, such as document analysis, comparative studies, legal analysis, historical research, in-depth interviews, and focus groups. The researcher studied nine fatwas from various organizations, including the World Sharia Economic Council, Bank Indonesia's Sharia Committee, DSN-MUI, AAOIFI, JAKIM, MUI, Al-Azhar University, and the Muhammadiyah Tarjih Council. The test highlights the importance of regulatory compliance, innovation, openness, accountability, and flexibility in profit-sharing arrangements. Concepts such as mudharabah musytarakah, mudharabah muqayyadah, and hybrid schemes between mudharabah and other contracts such as musharakah and ijarah are proposed by these fatwas. The results of the study concluded that these fatwas provide creativity and adaptation to build fairer, more transparent, and effective corporate collaborations in line with sharia principles. They also provide insight to scholars and practitioners in making and implementing mudharabah contracts in various circumstances.*

Keywords*: fatwa institutions, mudharabah contracts, alternative contracts, sharia financial institutions, sharia maqashid.*

INTRODUCTION

Islamic economics has grown rapidly in recent decades and now provides a wide range of financial instruments that adhere to sharia. The Mudharabah Agreement is an important Islamic financial instrument. This contract is an example of a business partnership where one party, rabbul mal, provides financing and the other party, mudharib, provides business and skills. Through the profit-sharing system, both parties can share profits according to the initial proportion that has been agreed upon [1].

However, in practice, mudharabah contracts often experience problems and obstacles that require repair and modification. Some of the concerns that arise are the possibility of moral hazards, supervisory problems, and changes in business results that may have an impact on the fairness of both parties. To overcome this problem, some fatwa organizations have issued fatwas that provide improvements or modifications to the mudharabah contract [2].

Various choices and innovations of mudharabah contracts that are more in line with everyone's needs are provided by the Islamic Development Bank (IDB), the World Sharia Economic Council, Al-Azhar University, the Muhammadiyah Tarjih Council, the Malaysia National Fatwa Council (JAKIM), the National Sharia Council of the Indonesia Ulema Council (MUI), and the National Sharia Council of the Indonesia Ulema Council (DSN-MUI) [3].

In the previous decades, the Islamic finance sector had grown rapidly. This development shows a firm dedication to comply with sharia principles in all matters. In the course of this evolution, mudharabah contracts have evolved into important financial instruments. In this scenario, one party provides funding while the other party runs the company and divides the revenue according to the terms of the contract. However, to promote diversified and sharia-compliant financial practices, some fatwa bodies and regulators around the world have created and promoted alternative sharia-compliant contracts, such as musharakah [4]–[7].

General guidelines regarding the application of these contracts in different business contexts are given by fatwas issued by organizations such as the Islamic Financial Services Board (IFSB), the Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI), the National Sharia Council-Indonesia Ulema Council. (DSN-MUI), and other monetary authorities. For example, DSN-MUI provides a comprehensive explanation of how to conduct musharakah as an alternative to mudharabah in Fatwa No. 115/DSN-MUI/IX/2017 concerning the Syirkah Agreement, where two or more parties contribute capital and share rewards and risks. of the company [8].

AAOIFI and IFSB have issued governance standards and principles for a while to regulate the use of musharakah. Guidelines regarding the rights and responsibilities of each party in deliberations, as well as the importance of transparency in the distribution of profits, are regulated in AAOIFI Standard No. 12. In addition, risk management and compliance with sharia standards in fund investment management are prioritized in the IFSB sharia collective investment management guidelines [9].

Without having to use it, Bank Negara Malaysia (BNM) in Malaysia can stand and utilize an operating system that can be used both directly and indirectly. In addition, the Central Bank of Bahrain (CBB) and the Financial Services Authority (OJK) of Indonesia have developed regulations to ensure that Islamic banking practices, including the use of mudharabah and musharakah, are carried out following Islamic principles [10]–[14].

These diverse organizational rules and regulations ensure that Sharia-compliant financial transactions will continue to be fair, transparent, and compliant while providing financial institutions with the flexibility they need to create cutting-edge goods and services. Therefore, various alternative contracts, including musharakah and mudharabah, can be used to promote fair and sustainable economic growth [15].

LITERATURE REVIEW

The purpose of this study is to investigate and evaluate fatwas from various institutions to understand the range of available mudharabah contract substitutes. To maintain the values of justice, transparency, and efficiency in the Sharia economy, an in-depth study of these fatwas is intended to find more practical and efficient ways to implement the mudharabah contract [16]–[18].

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Figure 1. Literature Review About Analysis of the Role of Fatwa Institutions in Developing Alternatives to the Mudharabah Agreement in Sharia Financial Institutions

METHODOLOGY

All printed material, including text, illustrations, and charts, must be kept within the parameters of the 8 15/ This study uses a qualitative methodology that includes document analysis, comparative studies, in-depth interviews, focus group discussions (FGD), legal analysis, historical analysis, and literature study techniques. This method is expected to provide a comprehensive and detailed overview of the opinions and suggestions given by various fatwa organizations on the replacement of mudharabah contracts and their influence on sharia economic practices [19]–[21].

RESULTS AND DISCUSSION

Getting to Know the Mudharabah Contract

Al mudharabah is interpreted as a business cooperation agreement between two parties in which the first party (shahibul maal) contributes all (100%) of its capital and the other party acts as a manager, according to economic experts that the profits of Mudharabah's business are divided according to the terms of the contract, while the losses are borne by the owner of the capital as long as the manager is not guilty. Even if dishonesty or carelessness of management results in losses, managers must still be held accountable. Mudharabah according to Sa'ad bin Gharir as Silmi in Ananta states that a trade agreement between two parties. The financier is the first party, and the implementer is the second party. The profits are divided among them according to a predetermined percentage. While the pillars of mudharabah consist of [22]:

1. Ijab and Qobul

The speech or ijab of the first party shows his desire to complete the mudharabah contract, while the answer or qobul of the second party or his representative shows approval. Mudharabah is a form of interhuman interaction, so technically it shows that the agreement between the two parties can be expressed in anything according to applicable customs, both oral and written. There is no special word in this case, for example, religious practices such as prayer, hajj, and so on.

2. Financiers And Business Actors

Four conditions must be met before a person can perform a mudharabah contract: must be independent (slaves are not allowed to transact without the consent of their master), have reached puberty (men are not allowed to perform a contract until they are fifteen years old), or have dreamed of junub. (the beginning of the cycle marks this point for women). Menstruating (menstruating), pregnant, or having reached the age of fifteen, the sound mind of those suffering from mental illness or the like are not entitled to a business contract and the ability to manage assets wisely is the last need [23], [24].

3. Capital

Capital is property given by the first party (financier) to the second party (business actor) to fund the operations of the second party (business actor). Because the result of the mudharabah contract is that the capital is returned to the financier and then both parties share the profits, the scholars have set several conditions for the assets that become the capital of the mudharabah contract, including knowing the amount of capital by both. The parties so as not to cause disputes in the distribution of profits. The second prerequisite is the provision of capital to business actors, who are then given full autonomy to use it as funding their businesses [25]–[27].

4. Effort

Scholars usually divide the mudharabah contract into two parts: Mudharabah al muthlaqah (free mudharabah) and Mudharabah al muthlaqah. In the mudharabah system, the manager receives funds from the owner of the capital (Shahib al mal or investor) without restrictions on the type of business, location, or time of the transaction. In this way, capital managers or mudharib are allowed to take any action that they believe will generate profits. Mudharabah al muqayyadah (limited mudharabah) is another option. Here, the owner of the capital (investor) transfers his capital to the management, who then chooses what type of enterprise, where it can be run, when it can be implemented, and who can trade with Mudharib.

5. Advantage

Holding a mudharabah contract has the main purpose of benefiting both parties: the entrepreneur earns the company's income (profit) from operations, and the investor's funds increase along with the profit.

In the language of Sharia economics, a mudharabah contract is a form of cooperation where one party provides capital (shahibul maal) and the other party provides energy and knowledge (mudharib). The profits of the business are divided according to a predetermined ratio, and the losses are borne by the shahibul maal as long as it is not due to carelessness or mudharib mistakes. But in reality, some organizations have issued fatwas or opinions on substitute contracts that can be applied as a substitute for mudharabah contracts [28].

Fatwas supporting the use of mudharabah contracts in Islamic banking and other financial organizations were issued by the Indonesia Ulema Council (MUI). MUI states that mudharabah is a type of honest and open investment, where the capital is owned by the owner of the capital and the profits are divided according to the initial agreement, there is no fraud or carelessness of the mudharib party. This is expected to encourage more equitable and sustainable economic growth [29].

Likewise, in the implementation of mudharabah, the National Sharia Council (DSN) emphasizes the importance of adhering to Sharia principles. DSN highlights that there should be no maisir (speculation) or gharar (uncertainty) aspects in any transaction. The conditions that must be met by both parties in the mudharabah contract, such as liability for losses, transparency in fund management, and clarity in the distribution of profits, are also regulated in the DSN fatwa [30].

Regulations on mudharabah contracts are also issued by international financial organizations such as *the Accounting and Auditing Organization for Islamic Financial*

Institutions (AAOIFI). AAOIFI highlights the importance of strict supervision and audit procedures to ensure that mudharabah practices are implemented following Sharia principles. Guidelines for handling losses and calculating and sharing income are also included in this standard [31].

In general, many organizational fatwas emphasize the importance of mudharabah contracts as a substitute for sharia funding. They underlined that for this agreement to be a useful instrument in promoting fair and sustainable economic growth, it must be transparent, fair, and comply with sharia law. This is the outline of his conversation [32]:

Alternatives to Akad Mudharabah

1. **Musharakah:** All parties to this agreement provide funds and play an active role in running the company. Based on the agreement and capital commitment of each party, profits and losses are distributed.
2. **Wakalah:** In a wakalah contract, one party (muwakkil) appoints another party (representative) to carry out certain duties on his behalf. Wakilah is a financial tool that can be used to manage certain assets or investments.
3. **Murabahah:** This agreement includes a predetermined profit margin in addition to buying and selling. Murabahah is often used in Islamic banking to finance assets through instalment plans.
4. **Istisna:** Istisna is an agreement between a buyer and a seller to order a product to the exact specifications; the goods will be made or manufactured according to the order.

Islamic financial institutions have a variety of alternative contracts that can be used to meet customer needs and ensure compliance with Sharia principles thanks to fatwas and instructions from these various institutions.

Some fatwa institutions have issued innovative and alternative fatwas to improve and strengthen the implementation of mudharabah contracts. A discussion of nine fatwas from various organizations that emphasize alternatives to the mudharabah contract is presented below [33]:

1. Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI)

   Fatwa No. 07/DSN-MUI/IV/2000: The idea of mudharabah musytarakah was conveyed by DSN-MUI; in this case, mudharib can refer to capital other than rabbul mal. By combining the ideas of musharakah and mudharabah, this alternative allows both parties to invest capital and divide income according to their respective capital contributions.

2. AAOIFI (*Accounting and Auditing Organization for Islamic Financial Institutions*)

   AAOIFI Standard: Profit-sharing ratios should be determined flexibly, according to AAOIFI. Based on its guidelines, AAOIFI supports the modification of the mutually agreed profit-sharing ratio based on the company's conditions. This makes the profit-sharing plan more flexible and allows for increased efficiency and fairness.

3. Dewan Fatwa Nasional Malaysia (Jabatan Kemajuan Islam Malaysia - JAKIM)

   JAKIM Fatwa: JAKIM suggests using a mudharabah muqayyadah contract, where rabbul mal money is limited to certain industries or types of companies. By choosing this option, investments are guaranteed to be made in areas that are considered strategically important or following national economic policies.

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4. Majelis Ulama Indonesia (MUI)

   MUI Fatwa: MUI supports the use of mudharabah muqayyadah contracts in industries such as halal or agro. Therefore, the funding is intended to encourage the halal economy and food security, which is in line with national development goals.

5. Al-Azhar University Fatwa Institute

   Fatwa of Al-Azhar University: The idea of a hybrid between mudharabah and musharakah that allows both parties to increase capital is presented by Al-Azhar University. This strategy combines aspects of capital cooperation and expertise, to increase the commitment and accountability of both parties in the joint venture.

6. Muhammadiyah Tarjih Council

   Fatwa of the Muhammadiyah Tarjih Council: The importance of accountability and openness in the mudharabah contract was emphasized by the Muhammadiyah Tarjih Council. To ensure that both parties are informed about the company's developments, they suggest frequent contract updates and reporting. This is important to reduce the likelihood of moral hazard and increase mutual trust among participants.

7. Sharia Committee of Bank Indonesia

   Fatwa of the Sharia Committee of Bank Indonesia: The Sharia Committee of Bank Indonesia combines mudharabah contracts with other contracts such as ijarah (rent) or murabahah (buying and selling) to encourage innovation in Islamic financial products. The goal is to increase the commercial appeal of Islamic financial products by developing products that are more adaptable and aligned with consumer demand.

8. Islamic Development Bank (IDB)

   IDB Guidelines: The IDB publishes guidelines for the implementation of international mudharabah contracts while taking into account national laws and policies. To protect both sides in international cooperation, the IDB also suggests including a protection clause against potential dangers such as uncertain economic policies or exchange rate changes.

9. World Shariah Economic Council

   Fatwa of the World Sharia Economic Council: The application of mudharabah contracts in microfinance is recommended by the World Sharia Economic Council. A flexible profit-sharing system is used to offer cash to micro and small businesses based on their ability to receive funds. This replacement program aims to improve the economic empowerment of small communities and financial inclusion [34]–[36].

Comparative Analysis

The techniques and solutions presented in fatwas issued by various entities vary. However, the purpose of each of these fatwas is the same, namely to increase the sustainability, equity, and efficiency of the implementation of the mudharabah contract. Some of the visible and prominent features are [37]:

- **Flexibility**: The importance of flexibility in determining the profit-sharing ratio and the use of capital is emphasized by several Islamic institutions. It describes how the contract should be modified to take into account certain circumstances and requirements.

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- **Transparency and Accountability**: The importance of trust in mudharabah cooperation is demonstrated by recommendations to encourage openness and accountability through frequent reporting and contract updates.
- **Innovation and Diversification**: The use of hybrid schemes in conjunction with contracts shows efforts to make Islamic financial products more attractive and relevant to market needs.
- **Regulation and Compliance**: The importance of legal considerations and compliance in the implementation of mudharabah contracts is shown by the attention to local and international laws and regulations, as well as risk protection [38], [39].

Basic Concepts and Values in Mudharabah Transactions

In general, Mudharabah is divided into two types, namely [40]:

a. Mudharabah Mutlaq is a type of contract that is very flexible and is not limited by the time, place, or material requirements of the business. Here, the mudharib (the recipient of the money) receives funds from the shahibul maal (property owner), thus giving them great power.

b. Mudharabah Muqayyad is subject to restrictions on the number of business materials, time, and place of business. In this case, limitations often signal Shahibul Maal's entry into the commercial sector.

For mudharabah to be considered valid, all its terms and conditions must be met. Hanafiyah argues that the correct wabul and permission are the two pillars of mudharabah, but the Jumhur scholars assert that there are three pillars [41]:

a. The capital owner and the entrepreneur/mudharib are the two parties to the agreement.

b. The agreed material consists of profits and business capital. Sighat (agreement and prayer)

Meanwhile, property/capital, work/entrepreneurship, profits, Sighat (permits and qabul), and contracts for two people are the pillars of mudharabah according to Shafi'iyah.

In connection with the pillars of mudharabah, the conditions need to be fulfilled [42].

a. Managers and financiers. When two people perform a mudharabah contract, they must meet certain requirements:

   1). Both positive law and Islamic law require investors and managers to carry out legally legitimate operations.

   2). Both must be able to act as spokespersons for each side [43], [44].

b. Sighat, or agreement. For the contract to be perfected and function as it should, both parties must declare their offer and acceptance. The following conditions must be met by this scene:

   1). Clarify the intent of the contract, both express and implied.

   2). If any party rejects the provision, then Sighat is void.

   3). Oral or oral agreements can also be made, as well as written and signed agreements [45], [46].

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c. Capital. The following conditions must be met for cash to be transferred from the owner of the fund to the recipient of the funds to be used in mudharabah activities:
    1). The type and amount of capital must be understood.
    2). Although some academics allow midharabah capital in the form of trading assets, the capital must be given in cash. It should be considered as the capital of Mudharabah during the time mentioned in it.
d. The amount obtained as excess capital, or profit is the ultimate goal of mudharabah. However, this is subject to certain criteria, including
    1). The necessity of splitting the profit in half.
    2). The share of each party's income must come from profits and must be known at the time of the contract.
    3). If the musyarabah contract has a long period, it can be agreed to evaluate the profit ratio periodically for at least three years.
    4). The costs that will be borne by the manager and the investor must also be agreed upon by both parties. Costs have an impact on the value of profits, so this agreement becomes important [47]–[49].

CONCLUSION

The conclusion of this study highlights the importance of flexibility and innovation in the implementation of mudharabah contracts to overcome various obstacles faced in practice. Fatwas from various organizations such as the World Sharia Economic Council, Bank Indonesia Sharia Committee, DSN-MUI, AAOIFI, JAKIM, MUI, Al-Azhar University, and the Muhammadiyah Tarjih Council provide various alternatives to increase transparency, accountability, and efficiency in profit sharing. These alternatives, such as mudharabah musytarakah, mudharabah muqayyadah, and hybrid schemes between mudharabah and other contracts such as musharakah and ijarah, offer solutions that are more in line with sharia principles and market needs. Thus, these fatwas provide valuable guidance for scholars and practitioners in implementing mudharabah contracts in various business contexts.

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Author Contribution

All authors contribute equally to the publication of this paper, all authors read and agree to this paper, and all authors declare no conflict of interest.

Conflicts of Interest

All authors declare no conflict of interest.

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