

The implementation of profit and loss sharing in the *Mudarabah* financing agreements at *Baitul Maal Wat Tamwil* (BMT) tumang

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Abstract

This study aimed to determine the implementation of profit and loss sharing in the *mudarabah* financing agreements at BMT Tumang. The research method employed juridical empirical descriptive. The primary was obtained from interviews with the Managers and members of BMT Tumang. The secondary data was obtained from statutory regulations. The data collection techniques used interviews and literature studies. The interviews were conducted at the BMT Tumang office, Boyolali, Central Java. Based on the research and data analysis results, the implementation of profit and loss sharing in the *mudarabah* financing agreements at BMT Tumang was based on the two parties' agreements as outlined in the contract. Members gave the profit and loss sharing to BMT Tumang according to the agreed portion ratio. If there were a loss, BMT Tumang would bear the financial risk, as long as it was not caused by the risk of bad character from the members, there was an error or violates the terms of the agreement.

Keywords: *Mudarabah* financing, profit sharing, loss, BM

Introduction

In dealing with the problem of capital for the poor in rural areas, the government has established a microfinance institution. The 2004 Consensus Guidelines Key Principle of Microfinance (CGAP) stated that microfinance is an effective instrument to fight poverty. According to Bahrum and Nugrahani, microfinance institution is an institution that provides financial services to small and micro-entrepreneurs as well as low-income people who are not served by formal financial institutions^[1].

Baitul Maal Wat Tamwil (BMT) is Micro Finance Institutions are cooperative legal entities that operate based on sharia principles with the aim of providing capital for the micro and small business community^[2]. In addition, BMT uses the ratio system (profit sharing), not the interest system (interest) as in conventional financial institutions in general. *Baitul Maal Wat Tamwil* (BMT) product schemes vary so that the members can choose based on their needs. For the production or business category in which members want a higher return, there are options for profit sharing (*mudarabah*) and cooperation agreements (*musyarakah*), while the distribution of product benefits; is carried out through buying and selling (*murabahah*) and leasing schemes (*ijarah*).

Mudarabah is a contract known by Muslims since the Prophet Muhammad's era. It has even been practiced by the Arabs before the advent of Islam when the Prophet Muhammad was a trader. At that time, the Prophet

Muhammad was about 20-25 years old and was not yet a Prophet. He made a *mudarabah* agreement with Khadijah. Therefore, in terms of Islamic law, the practice of *mudarabah* is permissible according to Al-Quran, Sunnah, and Ijma'^[3].

Mudarabah financing is urgent in the community, given the character of the type of business and the pattern of transactional activities that are pro to the lower class, driving the dynamics of the micro-economy in the form of small and medium business partnerships, and more social justice because it is without complicated interest and contains sacred religious values for the majority Muslim community in this country.^[4] In addition, the distribution of *mudarabah* financing is one of the populist economic empowerment efforts believed to increase economic growth^[5].

A partnership agreement or cooperation in the *mudarabah* occurs between the capital (*rabbul maal*) owner and the managers of the capital (*mudarib*) with a mutually agreed profit sharing. Meanwhile, the financial loss is borne by the owner of the capital. The capital managers do not bear financial risk because they have borne other losses in the form of energy and time (non-financial) unless the loss occurs due to fraud by the managers^[6].

Mudarabah is a contract based on the principle of profit-sharing so that the concept of *mudharabah* financing is not a debt or loan between creditors and debtors or between owners of capital and business managers. In this case, there

¹ Bahrum, A. dan Nugrahani. T.S, 2014, Pendampingan Bernasis Lokal Untuk Pemberdayaan Ekonomi Masyarakat Glagaharjo, dan Argomulyo Kecamatan Cangkringan, Kabupaten Sleman, DIY. Prosiding Seminar Nasional Riset Ekonomi VI di STIE Perbanas Surabaya

² Novita Dewi Masyithoh, Kajian Recht dog matik Empiric Undang-undang Nomor 1 Tahun 2013 Tentang Lembaga Keuangan Mikro (LKM) atas Status Badan Hukum dan Pengawasan Baitul Maal wat Tamwil (BMT), diakses dari journal.walisongo.ac.id/index.php/economica/article/view/768/679 tanggal 3 Desember 2020, jam 11.05.

³ Adiwirman A.Karim, 2004 Bank Islam Analisis Fiqh dan Keuangan, Jakarta, PT Raja Grafindo Persada, hlm.204.

⁴ Khudari Ibrahim, Penerapan Prinsip Mudharabah dalam Perbankan Syariah, Jurnal IUS, Vol.II, No.4, April 2014, hlm.44

⁵ Arinal Rahmati, dkk., Analysis of Low Realization For Mudharabah Financing at Muamalat Indonesia Bank, Banda Aceh, BIRCI journal, Vol.I, No.4, December 2018, hlm.223

⁶ Wabah Zuhaili, Al-Fiqhu Al-Islami wa-Adilatu, jilid 5, Damaskus : Al Matba'ah al- Islamiyah, 1969, hlm.836

is no profit and loss sharing. Based on the description above, the author raised the problem of the implementation of profit and loss sharing in the *mudarabah* financing agreements at BMT Tumang

Research Methods

This study employed an empirical juridical approach. The data analysis was descriptive. This study used two types of data from different sources, namely primary data and secondary data.

The primary data came from interviews with members and managers at the BMT Tumang office, Boyolali, Central Java. The secondary data came from primary, secondary, and tertiary legal materials. The primary legal materials included statutory regulations such as Fatwa DSN MUI Number 115/DSN-MUI/IX/2017 concerning *Mudarabah* Agreements, Fatwa DSN MUI Number 07/DSN-MUI/IX/2000 concerning *Mudarabah* financing. The secondary legal materials included journals and scientific research. The tertiary legal materials were in the form of legal dictionaries, legal encyclopedias.

The data collection techniques used interviews and literature studies. The interview was conducted at the Head Office and Branch Offices of BMT Tumang, Boyolali, Central Java. Moreover, the data analysis techniques included data reduction, data presentation, and drawing conclusions.

Research Result and Discussion

The term “*akad*” (English; agreement) in Islamic law is called an Indonesian law agreement. The word “*akad*” comes from the word *alaqd*, which means to tie, connect, or link (*ar-rabt*). Furthermore, according to Article 262 Mursyid al-Harian, the agreement is a meeting of consent proposed by one party with Granted from another party, which has legal consequences on the contract's object. The definition of a contract according to Syamsul Anwar is a meeting of consent and Granted as a statement of the will of two or more parties to produce a legal effect on the object [7].

According to contemporary Islamic jurists, four pillars form the agreement, namely (1) the parties forming the agreement or agreement subject (*al-'aqidain*), (2) the statement of the parties' will (*shigatul-'aqd*), (3) the agreement object (*mahallul-'aqd*), (4) the agreement objective (*maudhu 'al-'aqd*) [8].

Mudarabah is a partnership agreement or cooperation between the capital (*rabbul maal*) owner and the capital (*mudarib*) managers with a mutually agreed profit sharing. In the *mudarabah* agreement, *rabbul maal* gives 100% funds to *mudarib*, who have expertise. The results of the capital management of *mudarabah* financing can be calculated in two ways; namely, the results of the business are divided by agreement in the agreement, and the bank has the right to supervise the work but has no right to interfere with the customer's work/business affairs [9].

The legal basis for the *mudarabah* agreement is regulated in the Al-Quran, Sunnah, and the consensus of Muslim scholars (“*Ijma*”). The pesimissibility of *mudarabah* (profit

sharing) contract has been mentioned in the following verse of the al-Quran: “...*others traveling the land seeking of Allah's bounty*” (Surah Al-Muzzammil: 20). The hadith that holds *mudarabah* is the hadith narrated by Ibn Majah Number 2280, from Shalih bin Shuhaib r.a. that Rasulullah SAW. Said, “Three things in it there are blessings: tough trading, *muqaradhah* (*mudarabah*), and mixing wheat with flour for household needs, not for sale.”

Several *mudarabah* conditions must be fulfilled so that in *syar'i* and according to the agreement, as stated in the agreement's material can be carried out properly. In the case of capital, (1) the amount of capital must be clearly stated if capital in the form of goods must be clearly priced at the current price in the money supply (2) the capital must be in the form of open cash receivables. The capital must be handed over to the *mudarib*/managers to enable doing business. The profits in *mudarabah*, (1) profit-sharing must be expressed as a percentage of the profit that may be generated, (2) the percentage ratio agreement must be reached through negotiation and outlined in the contract, (3) distribution of new profits can be done after the *mudarib* returns all (part) capital to *rabbul maal* [10].

Mudarabah financing is financing channeled by Sharia Financial Institutions (LKS) to other parties for a productive business. There are two main elements contained in the *mudarabah* principle. First, a form of financial cooperation between two parties, one of them is the owner of the capital, and the other is the managers. Second, the parties involved in the cooperation must share in the profits, and if a loss occurs, the owners of the capital must bear it.

Mudarabah financing is divided into two parts, namely *mudarabah mutlaqah* and *mudarabah muqayyadah*. In conducting financing, BMT Tumang uses the *mudarabah muqayyadah* type. *Mudarabah muqayyadah* is a *mudarabah* whose scope is limited by the specifications of the type of business, time, and business area. *Mudarib* is bound by the conditions given by *rabbul maal* in negating the capital entrusted to him. In this case, it is an effort to protect the interests of depositing members, members of investors and as an application of the precautionary principle [11].

Trust in *mudarabah* transactions is a very important component. Therefore, a *mudarabah* agreement is also called trust financing. The capital owners who are investors in the agreement are called beneficial ownership, while *mudarib* is called managing trustees or labor partners [12].

Zamir added that the principles of Islamic financial institutions include: (1) prohibiting interest; (2) risk-sharing; (3) money as potential capital; (4) prohibits speculative elements; (5) the correctness of a contract; and (6) carry out activities according to sharia [13].

Based on the researcher's data, the implementation of the *mudarabah* agreement at BMT Tumang was contained in working capital financing products that were productive in the fields of livestock, agriculture, trade, and others [14].

⁷ Anwar, S., 2007, Hukum Perjanjian Syariah Studi tentang Teori Akad dalam Fikih Muamalat, Jakarta: Rajawali Pers, hlm.65

⁸ Syamsul Anwar, 2007, Hukum Perjanjian Syariah, Jakarta : Raja Grafindo Persada, hlm.96

⁹ M. Sholahuddin, 2006, Lembaga Ekonomi dan Keuangan Islam, ,Surakarta: Muhammadiyah University Press,, hlm.36

¹⁰ Rachmadi Usman, 2002, Aspek-aspek Hukum Perbankan Islam di Indonesia, Bandung: Citra Aditya Bakti, hlm.25-26

¹¹ Yahman dan Trisadini Prasastinah Usanti,2011, Bunga Rampai Hukum Aktual Dalam Perspektif Hukum Bisnis Kontraktual Berimplikasi Pidana dan Perdata, Surabaya : Mitra Mandiri, hlm.63

¹² Sutan Remy S, 2999, Perbankan Islam dan kedudukannya dalam tata Hukum di Indoensia, Jakarta : Grafiti, hlm.28

¹³ Zamir Iqbal, 1997, Islamic Financial System, World Bank : Finance and Development

¹⁴ Manager RnD BMT Tumang on November 16, 2020.

The purpose of the *mudharabah* agreement at BMT Tumang was to help and develop capital and financing for members. In the *mudharabah* financing, BMT Tumang was the owner of the fund or *rabbul maal*. This first party gave trust to members known as *mudharib*. The trust in managing funds was used to carry out productive and profitable businesses, by sharing the profits according to a mutually agreed profit sharing ratio and outlined in the *mudharabah* financing agreement. The rights and obligations of the parties were regulated in the *mudharabah* financing agreement.

According to the researcher, the pre-contractual preparation of the *mudharabah* agreement has shown the parties' equal position because matters relating to the harmonious contract were communicated by *Baitul Maal Wat Tamwil* (BMT) to members. The members could bid on BMT's concepts until an agreement was reached between BMT and members. Regarding the amount of capital, the amount of profit, the profit-sharing, the percentage ratio between members and BMT Tumang was carried out by deliberation so that the parties agreed on it. At BMT Tumang, *mudharabah* financing was applied with a certain period, usually six months or one year. When the business was due, the members returned the mutual funds for the agreed results.

Based on the Fatwa DSN MUI Number 15/DSN-MUI/IX/2000 concerning the principle of profit-sharing distribution in Islamic financial institutions, it stipulates that basically Islamic financial institutions may use the principle of both net revenue sharing and profit-sharing in the business distribution with its client partners. In the case of BMT Tumang, the method of calculating the profit sharing for the result is using the revenue sharing.

Mudharabah business profit is the business income in the form of an increase from an investment after deducting capital, or capital and costs. The Fatwa DSN MUI Number 07/DSN-MUI/IV/2000 regulates the benefits of *mudharabah*. *Mudharabah* profit is the amount obtained as an excess of capital. The benefits that must be met are as follows ^[15].

1. Must be for both parties and must not be required for one party.
2. The proportionate share of profits for each party must be known and stated when the contract is concluded and must be in the form of a percentage (ratio) of the profits according to the agreement. The change in ratio must be based on agreement.
3. The fund provider bears all losses resulting from *mudharabah*, and the managers may not bear any loss unless it is caused by deliberate mistakes, negligence, or violation of the agreement.

Article 2 of the *mudharabah* financing agreement at BMT Tumang regulates sharia financing and provisions. Article 2 paragraph 4 regulates the portion of the profit-sharing ratio between BMT and members. The distribution of the profit-sharing ratio is known and stated at the contract's time, which both parties mutually agreed upon. The distribution of the proceeds from the profits is expressed as a percentage.

The members make periodic financial reports every month; thus BMT Tumang as *rabbul maal* can supervise and monitor the performance of business or projects of members who carry out *mudharabah* financing.

According to Sulistyono ^[16], *mudharabah* financing at BMT Tumang is mostly carried out on a non-installment basis. Most of the term of *mudharabah* financing at BMT Tumang is six months. The profit-sharing is shared between the two parties, namely members and BMT Tumang. The percentage (*nisbah*) of profits in the agreement is based on mutual agreement between BMT Tumang and members. The members and BMT Tumang conduct negotiations to determine the profit-sharing ratio percentage before the agreement is stated. The amount of the profit ratio is obtained based on the realized value of operating income. The profit sharing will be given by members as *mudharib* to BMT Tumang at each period according to the capital provided by BMT Tumang. Suppose within the period of financing a business or project carried out by a member. In that case, it experiences a profit that exceeds what has been agreed upon; the excess profit belongs to the member. The profit-sharing is made after members return all or part of the capital to BMT Tumang.

According to Sharia, legitimate profit criteria are profit-taking because there is a business and no usury, no fake contract or *gharar*, and providing *maslahah* for BMT and members. According to the values in Islamic law, it is permissible to take advantage if it meets three criteria, namely: (1) the existence of a business being run, (2) the existence of risk responsibility.

According to Syafi'i Antonio, *mudharabah* business profit is divided according to the agreement stated in the contract. If the loss is borne by the owner of the capital as long as the loss is not the result of the manager's negligence. If the loss is due to fraud or negligence of the manager, the manager must be responsible for the loss ^[17].

Losses in business have also been regulated in the *mudharabah* financing agreement at BMT Tumang. The article 2, paragraph 5 states that BMT Tumang is willing to bear the losses arising from implementing the *mudharabah* agreement. BMT Tumang will only bear the maximum loss as much as the financing provided to members ^[18].

Mudharabah business losses are business results where the amount of invested venture capital has decreased, or the amount of capital and costs exceeds the amount of income. Loss is the part of the capital lost because the loss will be divided into the part of the invested capital and will be borne by the owners of that capital. This shows that none of the capital providers can avoid responsibility for losses and those who do not invest are not responsible for any losses. Losses that occur are shared risks ^[19].

The owner of the capital bears the principle of *mudharabah* in terms of financial losses. The capital manager does not bear financial risk because it has borne other losses in the form of energy and time (non-financial) unless the loss occurs due to fraud by the manager ^[20].

According to Woro Anggorowati, ^[21] if in the *mudharabah* financing, the business actors (members) states that his business suffers a loss, BMT Tumang will only bear the loss if it is not due to deliberate mistakes,

¹⁶ Manager BMT Tumang Branch Kartasuro on November 17, 2020.

¹⁷ Muhammad Syafi'i Antonio, 2001, *Bank Syariah: Dari Teori ke Praktik*, Jakarta: Gema Insani Pers, hlm.95

¹⁸ *Mudharabah* financing contract at BMT Tumang

¹⁹ Hendi Suhendi, 2016, *Fiqh Muamalah*, Jakarta: PT Raja Grafindo Persada, hlm.134

²⁰ Wabah Zuhaili, *Al-Fiqhu Al-Islami wa-Adilatuhu*, jilid 5, Damaskus: Al Matba'ah al-Islamiyah, 1969, hlm.836

²¹ Manager BMT Tumang Branch Cepogo on November 18, 2020.

¹⁵ Fatwa DSN MUI Number 07/DSN-MUI/IV/2000 about *mudharabah* financing.

dishonesty, negligence, and or violations committed by members.

BMT Tumang will assess and re-check all calculations that have been made and submitted by members who have suffered business losses, then followed up by BMT Tumang. If, in conducting field checks and financial reports find that the loss is caused by a risk of the member's bad character, for example, the occurrence of an error or violation of the terms of the contract causing business losses, the member will bear the loss. The members must bear the loss as much as their negligence as the sanction and responsibility, while BMT is not responsible for the loss.

If the business loss that occurs is not due to the members' intention or negligence, then the loss is borne by BMT Tumang. For example, a member of BMT Tumang, on behalf of Siti Zumrotun with a financing contract number 4420207353, carried out *mudharabah* financing of 3 million rupiahs sandal trading business. On September 17, 2020, her business suffered a loss due to a fire, so that the merchandise becomes exhausted. BMT Tumang finally took full responsibility for the *mudharabah* financing in financing 3 million rupiahs. BMT bore the loss of members because there was no element of intent or negligence on the business actor's part (member). The members, as business actors, only suffered a loss of time, energy, and thoughts. In this case, BMT Tumang has implemented the principles of *mudharabah*, which were in accordance with the sharia that in the *mudharabah*, there was profit and loss sharing.

Conclusion

The implementation of profit and loss sharing in the *mudharabah* financing agreement between members and BMT Tumang is based on both parties' agreement. Members give the profit-sharing to BMT Tumang according to the agreed portion ratio. If there is a loss, BMT Tumang is the one who bears the risk as long as it is not caused by the risk of bad character of the members, the occurrence of errors, or violating the terms of the contract. BMT Tumang does not bear business losses due to deliberate or negligent occurrences of the members so that the members bear the business losses.

References

1. Adiwarman A Karim. Bank Islam Analisis Fiqh dan Keuangan. PT Raja Grafindo Persada, Jakarta, 2004, 204.
2. Anwar S. Hukum Perjanjian Syariah Studi tentang Teori Akad dalam Fikih Muamalat, Rajawali Pers, Jakarta, 2007, 65.
3. Arinal Rahmati. Analysis of Low Realization for Mudharabah Financing at Muamalat Indonesia Bank, Banda Aceh, BIRCI journal. 2018; 1(4):223.
4. Bahrum A. dan Nugrahani. T.S, Pendampingan Bernasis Lokal Untuk Pemberdayaan Ekonomi Masyarakat Glagaharjo, dan Argomulyo Kecamatan Cangkringan, Kabupaten Sleman, DIY. Prosiding Seminar Nasional Riset Ekonomi VI di STIE Perbanas Surabaya, 2014.
5. Fatwa DSN MUI Number 07/DSN-MUI/IV/2000 about *mudharabah* financing.
6. Hendi Suhendi, Fiqh Muamalah, Raja PT. Grafindo Persada, Jakarta, 2016, 134.
7. Khudari Ibrahim. Penerapan Prinsip Mudharabah dalam Perbankan Syariah. Jurnal IUS. 2014; 2(4):2014-44.
8. Sholahuddin M. Lembaga Ekonomi dan Keuangan Islam. Muhammadiyah University Press, Surakarta, 2006, 36.
9. *Mudharabah* financing contract at BMT Tumang.
10. Muhammad Syafi'i Antonio. Bank Syariah: Dari Teori ke Praktik. Gema Insani Pers, Jakarta, 2001, 95.
11. Novita Dewi Masyithoh, Kajian *Rechtsdogmatik Empiric* Undang-undang Nomor 1 Tahun Tentang Lembaga Keuangan Mikro (LKM) atas Status Badan Hukum dan Pengawasan Baitul Maal wat Tamwil (BMT), <http://journal.walisongo.ac.id/index.php/economica/article/view/768/679,3Desember2020>, 2013.
12. Rachmadi Usman. Aspek-aspek Hukum Perbankan Islam di Indonesia. Citra Aditya Bakti, Bandung, 2002, 25-26.
13. Sutan Remy S. Perbankan Islam dan kedudukannya dalam tata Hukum di Indoensia. Grafiti, Jakarta, 1999, 28.
14. Syamsul Anwar. Hukum Perjanjian Syariah. Raja Grafindo Persada, Jakarta, 2007, 96.
15. Wabah Zuhaili, Al-Fiqhu Al-Islami wa-Adilatuhi, jilid 5, Al Matba'ah al- Islamiyah, Damaskus, 1969, 836.
16. Yahman and Trisadini Prasastinah Usanti. Bunga Rampai Hukum Aktual Dalam Perspektif Hukum Bisnis Kontraktual Berimplikasi Pidana dan Perdata. Mitra Mandiri, Surabaya, 2011, 63.
17. Zamir Iqbal. Islamic Financial System. World Bank: Finance and Development, 1997.