

ANALYSIS OF THE CHARACTERISTICS OF FINANCIAL RISK IN CONTRACT WITH THE PRINCIPLE OF PROFIT-SHARING IN SHARIA BANKING

Fauzia P. Bakti, Achmad, Aulia Rifai

Faculty of Law, Hasanuddin University, Makassar, Indonesia
fauziabakti75@gmail.com, achmad@unhas.ac.id, auliarifai@unhas.ac.id

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Abstract

Risk is a loss born as a result of a specific condition. Islamic banking, a financial institution that bases its operational activities on Islamic law, cannot be separated from risks. This risk can threaten operational continuity, the worst consequence of which can be closure because it cannot operate. Mudharabah and musyarakah contracts are contracts with the principle of profit-sharing. At the beginning of the operation of Islamic banking were the mainstay products to eliminate the interest system practiced in conventional banking. Musyarakah and musyarabah contracts are very strategic products to help advance the people's economy by distributing funds for the trade and industry sectors. Lately, musyarakah and mudharabah contracts have not become the leading service. Banking services are more on consumptive contracts such as murabahah, ijarah, Qardh, and others. The high-risk character attached to the profit-sharing contract triggers the unpopularity of this contract in Islamic banking services. This paper is intended to describe the characteristics of contract risk with the principle of profit-sharing and the identification of potential risks that accompany it. Therefore, it makes it easier for interested parties to undertake risk management efforts. In contrast, they continue to ensure whether these efforts run according to sharia.

Keywords: *contract, financial risk, profit sharing.*

INTRODUCTION

Islamic teachings comprehensively and universally regulate all human life, both human relations with the Creator (*hablumminallah*), relationships with other humans (*hablumminannas*), and even with other creatures created by Allah. Islamic teachings are regulated in three main pillars, namely Islamic teachings about the belief in the oneness and power of Allah SWT (Aqeedah). These Islamic teachings contain instructions for how to worship and how to practice it and life instructions in carrying out daily muamalah activities whose main guideline is the Qur'an and Al-Hadith (Sharia) and Islamic teachings about the procedures for behaving, acting as a reflection of a Muslim (morals).

Various Islamic guidelines in regulating economic life, among others: work and earn a living to meet the needs of life, not just a recommendation but an obligation. It comes to the teaching that in the acquisition of property there are other people's rights so the obligation to pay zakat is born. So that a person is forbidden to remain silent and then dies of hunger: in the activities of fulfilling the necessities of life, it is not allowed to contain prohibited elements, such as haram, usury, speculation (gambling), uncertainty (*gharar*), bribery (*riswah*), cheating, property not may settle and revolve around certain people, in commerce it must be transparent, honest, carried out on a consensual basis, the obligation to record transactions that are not made in cash.

The development of the Islamic economy is identical to the development of Islamic financial institutions, this is because the driving force of the economy is Islamic banking. The early development of Islamic banking began in the 1970s. The establishment of the Islamic Development Bank (IDB) in Jeddah, became a pioneer in establishing Islamic banks in other countries, including Indonesia, which first established an Islamic bank in 1992, namely Bank Muamalat Indonesia (BMI). Islamic economic discourse is introduced to the concept of non-ribawi economics and business. This economic movement is present as an alternative to the capitalist system and the socialist system.¹ For Muslims, it is hoped that the presence of Islamic banking is only as an alternative to the existence of conventional banking, which was already present, but a priority to encourage the economic progress of the people. In the context of developing sharia banking, the vision of activities is to realize a sharia banking system that is competitive, efficient, fulfils the precautionary principle and can significantly encourage the real sector through profit-sharing-based financing activities and real transactions in the context of justice, mutual assistance, and towards goodness for the sake of achieving the benefit of society.² The scholars agree that profit in the form of interest in conventional financial institutions fulfils the element of usury, and every usury is haram. The Indonesian Ulema Council, through the National Sharia Council (DSN), issued Fatwa Number 1 of 2004 concerning interest (interest/Fa'idah), which states that; "The practice of paying interest today has met the criteria for usury that occurred at the time of the Prophet Muhammad, namely usury nasi'ah. Thus, the method of interest-bearing money is a form of usury, and usury is unlawful."

Contracts with the principle of profit-sharing are contracts by Islamic financial institutions to eliminate the concept of Riba. In its development, contracts with the profit-sharing principle do not receive priority as the leading service in Islamic banking. Various reasons were put forward from writings sourced from books, journals, articles or research results that stated the reasons for the low level of Islamic banking services using profit sharing. The inherent character of Musyarakah and mudharabah contracts which are uncertain contracts affect the birth of risk in this contract. Musyarakah and mudharabah contracts are categorized as high-risk contracts. Risk is generally defined as a loss due to a particular condition. The nature of the uncertainty/uncertainty of the profit-sharing contract lies in the acquisition of profits. The result of the business has delayed whether it will be profitable or vice versa. Thus, it is necessary to describe the characteristics of profit-sharing contracts to which risks are attached to build and create a risk management culture that can minimize or even eliminate potential losses due to unavoidable circumstances.

METHOD

The research is normative-legal research. It applies the statute approach to elaborate on the financial risks in the contract. Primary and secondary legal materials are used to collect information related to the financial risks in the contract. They are then analyzed qualitatively.

ANALYSIS

Contract Concept of Profit-Sharing Principle

Tijarah/mu'awadah contract (compensational contract) is an agreement concerning for-profit

¹ Adiwarmar Karim, *Bank islam, Analisis Fiqih dan keuangan*, 2nd ed., Jakarta: Rajawali Pers, 2004, p. XVI

² Ikatan Bankir Indonesia, *Memahami Bisnis Bank Syariah*, Jakarta: Gramedia, 2018, p. 4

transactions that aims to seek profit because it is commercial.³ Based on the certainty of the results obtained, the *tijarah* contract is divided into:⁴

1. *Natural Uncertainty Contracts (NUC)* where the cash flow and timing are uncertain because it is very dependent on investment returns.
2. *Natural Certainty Contracts (NCC)*, *cash flow* and the timing can be predicted with relative certainty because it has been agreed upon by the parties at the beginning of the contract (*fixed and pre-determined*)

At NUC, the transacting parties mix each other's assets (both tangible assets and financial assets) into a single entity and then share the risk to earn a profit. Included in this contract are investment contracts, such as: *musyarakah*, *mudharabah*, *muzara'ah*, *muzaqah* and *mukharabah*.⁵

Financing, defined as the provision of funds or equivalent claims, can be in the form of: a. profit-sharing transactions in the form of *mudharabah* and *musharakah*; b. lease transaction in the condition of *ijarah* or lease purchase in the form of *ijarah* vomiting *bittamlik*; c. sale and purchase transactions in *murabahah*, *salam*, and *istishna'* receivables; d. lending and borrowing transactions in the form of *qardh* receivables; and e. service lease transactions in the form of *ijarah* for multi-service transactions. The said financing is based on an agreement or agreement between a Sharia (Islamic) Bank and/or UUS and another party which requires the party being financed and/or provided with a fund facility to return the funds after a certain period in exchange for *ujrah*, without compensation, or profit-sharing.⁶

Based on OJK Regulation Number 31/POJK.05/2014 concerning the Implementation of Sharia Financing Business, Sharia Financing activities include Sales and Purchase Financing, Investment Financing, and/or Service Financing. Investment Financing activities are carried out using the following contracts: *mudharabah*, *musyarakah*, *mudharabah musyarakah*, and/or *musyarakah mutanaqishoh*, the profits of which are obtained on the principle of profit-sharing.

The principle of profit-sharing is the distribution of profits/profits between fund owners and fund managers according to an agreement, which is determined by a ratio (percentage), not in a certain amount/nominal. The profit-sharing system can be carried out with four main types of contracts, namely *Musyarakah*, *Mudharabah (Qiradh)*, *Muza'arah*, and *Al Muzaqah*. In practice, the commonly used are *al-musharaka* and *al-mudharabah*.⁷ The form of financing that is expected to provide equitable distribution of community welfare is *mudharabah* and *musyarakah* financing with the principle of profit sharing.⁸ The following will present the concept of the *Musyarakah* and *Mudharabah* Contracts:

Al Musyarakah

Al Musyarakah is a cooperation agreement between two or more parties for a particular business in which each party contributes funds with an agreement that the profits and risks will be shared according to the contract.⁹ *Syirkah* is prescribed based on the arguments of the Qur'an, hadith, *ijma'* and reason.¹⁰ One of the foundations of *al-musharaka*, as the Word of God in Q.S An-Nisa Verse 12, which translates: "...then they associate in a third ..."

Based on Article 20 (3) of the Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Law, hereinafter referred to as KHES, *Syirkah* is a collaboration between two or more people in terms of capital, skills, or trust in a certain business with profit sharing based on a ratio agreed by unionized parties. Referring to DSN Fatwa No. 114/DSN-MUI/IX/2017, regarding *Syirkah* Contracts, *musyarakah* is defined as: "financing based on a cooperation agreement between two or more parties for a particular business, where each party contributes funds provided that the benefits and risks will be shared in accordance with deal".

Syirkah according to the views of the Ulama of the School, as follows:¹¹

1. Hanabilah scholars, *syirkah* is the collection of rights and authorities to *tasharruf* the business
2. Malikiyah scholars, *syirkah* is the granting authority to the parties working together. It means that each party gives power to its partner over jointly owned assets while

³ Adiwarmar Karim, *Op.Cit.*, p. 70

⁴ *Ibid*

⁵ *Ibid*, p. 75

⁶ See Article 1 sub-paragraph 25 Law No. 21 Tahun 2008 on Syariah Banking.

⁷ Muhammad Syafi'i Antonio, *Bank Syariah dari Teori ke Praktek*, Jakarta: Gema Insani Pers, 2001, p. 90.

⁸ Rizki Tri Anugrah Bhakti, "Pemberdayaan Umkm Melalui Pembiayaan Dengan Prinsip Bagi Hasil Oleh Lembaga Keuangan Syariah", *ARENA HUKUM*, Volume 6, No. 1, April 2013, p. 126

⁹ *Ibid*.

¹⁰ Andri Soemitro, *Hukum ekonomi syariah dan Fiqh Muamalah di Lembaga Keuangan dan Bisnis Kontemporer*, Jakarta: Kencana, 2019, p. 98.

¹¹ *Ibid*, p. 97.

- retaining control over their respective assets.
3. Hanafiyah scholars, syirkah is a contract between two people united in capital and profits.
 4. Syafi'iyah scholars, syirkah is the existence of rights in a business owned by two or more people.

The pillars and provisions of sharia in a musharakah contract are as follows:¹²

- a. The elements that must exist in a musharakah contract are 4: (1) The actors consist of partners (2) The object of the musharakah is in the form of capital and work (3) Ijab qabul (4) Profit ratio (profit sharing)
- b. Sharia provisions (1) Actors: partners must be legally capable and mature (2) Musyarakah objects:
- c. Capital: (1) Capital provided must be in cash (2) Capital submitted can be in the form of cash, gold, trading assets or intangible assets such as patents and licenses. (3) If the capital submitted is in the form of non-cash, the cash value must be determined in advance and must be mutually agreed upon. (4) The partners' capital must be mixed, not separated.
- d. Work: (1) Partner participation is the basis for the implementation of musharakah (2) It is not justified if one partner does not participate (3) Each partner works for himself or on behalf of a partner" (4) Although the share of partners with one another does not have to be the same, partners who work more may ask for a larger share of the profits.
- e. Ijab qabul Ijab qabul here is a written statement and an expression of mutual pleasure between the contract participants
- f. The partners must agree to the ratio (1) of Profit sharing. (2) The partners must agree on changes in the ratio.
- g. The shared profit must not use the projected value but the realized value of the profit.
- h. At the end of the musharakah contract (1) If one of the parties terminates the contract (2) One of the partners dies or loses his mind. In this case, it can be replaced by the heirs if the other partners agree. (3) Musharakah capital runs out.

Scholars of the schools have various views regarding the types of musharakah, which are put forward as follows:¹³

1. Shirkah is limited in the form of combining assets and making a profit. Earnings outside of this, do not include syirkah. For example, gifts or grants or other acquisitions. Syafi'i scholars divide syirkah into two types, namely: first: Muwafadah Syirkah, unlimited syirkah in the form of combining assets and businesses to gain profit and also covering the acquisition of each party in other ways such as grants and gifts. Second, Inan's syirkah.
2. Malikiyah scholars divide syirkah into nine types, namely: (a.) Milk syarikah (owned joint venture); (b) Syarikatul-Irtsi (heritage syirkah); (c) Syarikah Ghanimah (spoiled property); (d) Syarikah Muwafadhlah (syarikah in the field of commerce, with an agreement that each will benefit without difference; (e) Syarikah Inan, each party may only act with the permission of the other. And if violated one party can cancel it; (f) Amal Sharia, a partnership to work together and each gets results according to his work (eg pearl divers with boat builders); (g) West Java Sharia, where a trader buys other merchandise who also trades these goods and he (h) Syarikah mudlarabah (Qiradh), sharikah Between the owner of capital and people who do not have capital on condition that the capital is handed over in cash; (i) Syarikah Dziman, a partnership without capital but buys goods on credit, then resells them then the profits are shared with the kongsi. This type is valid if it only concerns one item which is the object.
3. Hambali scholars divide syirkah into 2 types, namely Fi'i-Maal Syirkah (wealth syirkah) for example sourced from inheritance, grants, purchases and other sources and the second is Fil 'uqud Syirkah, namely syirkah between two or more people in a business. and the parties will benefit. This Syirkah is divided into: Syirkah 'Inan (limited partnership) each submits their capital. Profit is determined by the size of the

¹² Heru Meruta, "Akad Mudharabah, Musyarakah dan Murabahah Serta Aplikasinya dalam Masyarakat." *Iqtishaduna: Jurnal Ilmiah Ekonomi Kita*, Volume 5, No. 2, December 2016, p. 87

¹³ Abd. Shomad, *Hukum Islam Penormaan Prinsip Syariah dalam Hukum Indonesia*, Jakarta: Kencana, 2012, pp. 131-137.

contribution of the parties, Syirkah Wujud (Trust) and syirkah Abdan (syirkah between two or more people to do the same work (e.g., two or more architects working on the same project)).

4. Hanafi scholars divide syirkah into 4 types, namely: (1) Owned syirkah, syirkah that is not born out of an agreement. This syirkah can be born from a natural relationship, for example, brothers and sisters will share in inheriting their parents' property. It can also be in the form of optional syirkah, for example two friends together buy a plot of land; (2) Syirkah 'uquud (agreement), in the form of syirkah of capital, syirkah of energy and syirkah wujud (trust); (3) capital syirkah consisting of muwafaawaddah syirkah and Inan bil Amwal syirkah; (4) Abdan syirkah (energy/body syirkah), can be divided into abdan muwafadhah syirkah (not limited to the provision of services, one member becomes the guarantor of the other member and I' Abdan Inan syirkah, limited syirkah regarding the provision of services where one member does not to be in charge of another.

Al Mudharabah

Ulama Abu Hanifah and Ahmad, ratified mudharabah muqayyad (bound), where its implementation must not pass the specified conditions.¹⁴ There is also the term mudharabah musytarakah contract, a form of mudharabah contract in which the manager (mudharib) also includes his capital in investment cooperation. In the DSN Fatwa No: 50/DSN-MUI/III/2006 concerning Mudharabah Musytarakah Contracts, several provisions regarding Mudharabah Musytarakah are stated, namely: 1) Mudharabah Musytarakah contract, which is a combination of Mudharabah contract and Musytarakah contract; 2) As mudharib, LKS includes its capital or funds in joint investment with customers; 3) the party that includes the funds (musytarik), namely LKS, gets a share of the profits based on the portion of the capital included; 4) The share of profits after being taken by LKS as musytarik is divided between LKS as mudharib and fund customers under the agreed ratio; 5) if there is a loss, it will be borne according to the portion of the capital included.

Characteristics and identification of Profit-Sharing Contract Risk

In language, the risk is an unpleasant (harmful) result of an action or action. To understand the principles of Risk, Onfield and Santomero classify risks into three types: risks that can be eliminated, risks that can be transferred to other parties, and risks that the company can manage.¹⁵ Ten types of risks have the potential to be experienced by Islamic banking in its operations. It is contained in the Financial Services Authority Regulation (POJK), Number 65/POJK.03/2016, concerning the Application of Risk Management for Islamic Commercial Banks and Sharia Business Units, Article 1 Paragraph, namely: credit risk, market risk, liquidity risk, operational risk, legal risk, reputation risk, strategic risk. Compliance risk, return risk and investment risk.

Musytarakah and mudharabah contracts have different characters from other contracts such as murabahah, ijarah, salam and istisna'. The difference is based on the certainty of the results to be obtained. In Murabahah, ijarah, salam and istisna contracts, there is certainty about the amount of income and the time, so they are categorized as certainty contracts. As for the Musytarakah and Mudharabah contracts, there is no certainty of results/income in terms of amount and time (uncertainty contracts). The level of payment can be in the form of profits or losses. This contract does not offer a fixed and definite return.¹⁶ The following are the characteristics of the profit-sharing contract, as well as the difference between service contracts in other Islamic banking, as presented in the following table:

	Contract	
	Musytarakah-Mudharabah	murabahah, ijarah, salam or istisna'
Source of assets/capital	Mixing services/skills or capital	capital with Asset exchange
Yield/revenue	Uncertain amount and time of payment	Must be in the form of payment, both amount and payment
Profit/profit sharing	Profits are divided based on the profit-sharing ratio	Profit is earned from profit margin

¹⁴ *Ibid.*, p. 145

¹⁵ *Ibid.*, p. 10

¹⁶ Adiwarmar Karim, *Op.Cit.*, p. 44

Loss loading	Losses are divided according to portion	Potential loss if you incorrectly determine the margin. For example, the selling price is less than the purchase price
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From the table above, it can be explained that the source of capital/assets, in the mudharabah contract, is in the form of a combination of capital from the capital provider with personnel/skills from other parties. In a musharaka contract, it is in the form of combining capital with capital or each providing capital as well as energy. whereas in an exchange contract, each party exchanges assets by first agreeing on the type of goods exchanged, quality, quantity, price, method of delivery, payment and time period. The results/revenues of the mudharabah and musyarakah contracts are uncertain. Business activities carried out by mudharib can only generate profits as expected but also have the opportunity to experience losses. Profits and losses are shared. If the business activity generates profit/profit, then the profit is divided based on the ratio agreed at the beginning of the contract. Meanwhile, if the business suffers a loss, the loss is borne according to the share of capital (especially for the Musyarakah contract). For a mudharabah contract if the business activity is at a loss to the owner of the capital (shahibul mal) who will bear the financial loss. While the manager (mudharib) in the form of loss of work that has been trying.¹⁷ In the eighth part, point 4 of the DSN Fatwa, No. 115/DSN-MUI/IX/2017, Regarding the Mudharabah Agreement, that the loss of the mudharabah business is the responsibility of the shahibul mal unless the loss occurs because the mudharib takes actions that include at-ta'addi, at-taqshir (not doing something that should be done or on the other hand do something that is not supposed to, and/or mukhalafat ash-syuruth, or mudharib violates the limits in the mudharabah muqayyadah. In order to avoid losses due to the mudharib's actions, the shahibul maal is allowed to ask the mudharib for certain things, as collateral. Basically, it requires guarantees musyarakah and mudharabah contracts are prohibited. Scholars are of the opinion that guaranteeing capital in a mudharabah contract causes the mudharabah contract to become a fasid contract. Among the scholars who think so are Ibn Qudamah, Abdul Wahhab, Ibn Al Harith al Kindi, Ad Dasuqi, Al 'Arabi, and Ash Syaikani. One of the opinions expressed by Ibn Qudamah is that: "If the owner capital (shahib al-mal) requires the manager (mudharib) to be responsible for business risk, then the requirement is fasid because it is not part of the benefit and is contrary to the characteristics of the contract. I05/DSN-MUI/X/2016 concerning Guaranteed Return on Mudharabah, Musyarakah, and Wakalah Bil Istitsmar Financing, in the second part, Special Provisions points 2-4, it is stated that: "Equity owners may not ask the Manager to guarantee a return on capital. The Manager may guarantee a return of capital at his own will without a request from the Capital Owner. The owner of the capital may ask a third party to guarantee a return on capital.

The nature of uncertainty about profits and losses as well as the distribution of gains and losses in musyarakah mudharabah contracts are not owned by contracts that are capital/asset exchange. In this type, profits are obtained with certainty with a profit margin. Musyarakah and mudharabah contracts are categorized as high-risk contracts. This nature is one of the challenges in applying the contract. there are four challenges that could lead to obstacles in the implementation of musharakah and mudharabah financing concepts in general. Among them are: high risk, selection, demand and capital security.¹⁸ The results of research conducted on two Islamic banks in Malaysia, namely Bank Islam Malaysia Bhd (BIMB) and Bank Rakyat (BR), showed that the high risk that became a challenge in applying Profit and Loss sharing contracts was born due to several factors, namely:¹⁹ lack of skills and experience entrepreneurs in business, lack of skills in selecting customers, operational and monitoring costs, asymmetric information, production costs, banks must replace the position of depositors in the event of losses, economic conditions and moral hazard.

Accounting and Auditing Organizations for Islamic Financial Institutions (AAOIFI) as an international sharia accounting standard organization that functions to standardize the accounting treatment of global sharia financial institutions, formulates some potential risks of sharia compliance in musyarakah and mudharabah contracts, which are stated in the following table:²⁰

¹⁷ Adiwarman Karim, *Op.Cit.*, p. 70

¹⁸ Aisyah Abdul-Rahman and Shifa Mohd Nor, "Challenges of profit-and-loss sharing financing in Malaysian Islamic banking", *GEOGRAFIA OnlineTM Malaysian Journal of Society and Space* 12 issue 2, 2016, (39 - 46)

¹⁹ Themed issues on contemporary financial, business, investment and entrepreneurial facets of Malaysia's development, 2016, p. 44

¹⁹ *Ibid.*

²⁰ Darmawan, *Manajemen Risiko Keuangan Syariah*, Jakarta: Sinar Grafika, 2021, p. 152

Musharaka contract	Mudharabah Contract
<p>The contract clause stipulates that the managing partner or certain partners are required to guarantee capital against financial losses</p> <p>The amount of capital that must be contributed by each partner is not determined and determined at the time of execution of the contract</p> <p>The contract clause stipulates a pre-determined fixed amount of profit to the partner</p> <p>Certain partners are required to purchase shares of other partners with par/par value</p>	<p>Mudharib does not meet the terms and conditions set by the lender</p> <p>Mudarib does not act in the interest of capital</p> <p>The capital provider sets the conditions to guarantee the capital or profit</p> <p>Midal value is not determined and agreed upon at the time of execution of the contract</p> <p>Profit sharing ratio is not agreed upon and determined at the time of contract execution</p> <p>Profits are related to the amount of mudharabah capital</p> <p>The mudharabah contract stipulates that any losses in the project will be borne by the capital provider.</p>

Table Analysis and Identification of Types of Musyarakah Contract Risks:²¹

Risk Type	Risk Analysis
<p>Financing Risk: The Risk caused by the failure of the Customer to fulfill his obligations to the BUS/UUS/BPRS or if the Customer defaults on the terms of the contract.</p>	<p>There is a possibility when the Customer does not pay the Profit-Sharing portion of the BUS/UUS/BPRS according to the agreed contract due to a lack of information owned or obtained by the BUS/UUS/BPRS for the Musyarakah business run by the Customer.</p> <p>The customer is unable to fulfill part or all of the obligation to return capital or Profit Sharing owned by the BUS/UUS/BPRS.</p>
<p>Market Risk (Market Risk); is the risk caused by movements in macroeconomic market conditions, both related to inflation, currency exchange rates and interest rates, even though BUS/UUS/BPRS ignore the calculation of Profit Sharing based on interest rates, but the effect of interest rates themselves must be considered because of their impact which tends to spread in all directions, including the real sector financed by the BUS/UUS/BPRS.</p>	<p>If financing is in foreign currency while income is not entirely denominated in foreign currency or the majority is denominated in rupiah (IDR) then when the rupiah weakens, income will decrease and the revenue target will not be achieved.</p> <p>The Musyarakah Agreement states that the loss is caused by natural factors such as natural disaster or macroeconomic conditions, and the loss is not due to negligence or an intentional mistake made by the Customer, then the BUS/UUS/BPRS will also bear the loss.</p>
<p>Operational risk is the risk caused by internal fraud, such as incorrect financial records of position values, intentional discrepancies in tax records, errors, manipulation and mark ups in accounting and reporting as well as bribery and bribery activities.</p>	<p>Internal fraud activities such as incorrect financial recording of position values, intentional discrepancies in tax records, errors, manipulation and mark ups in accounting and reporting as well as bribery and bribery activities cause losses which in turn result in the value of profit Sharing for BUS/UUS/BPRS being higher. smaller than the target.</p>

²¹ Otoritas jasa Keuangan (OJK), *Standar Produk Buku 1: Musyarakah Buku 2: Musyarakah Mutanaqishah*, 2016.

<p>Legal/Legal Risk (Legal Risk); Risk of loss due to non-fulfillment of legal aspects, both in terms of the identity of the Customer as the subject of financing; terms of the object of financing; in terms of guarantees as well as aspects of the contract and the financing agreement itself.</p>	<ol style="list-style-type: none"> 1. Prospective Customer's legal documents are incomplete and valid. 2. Legal documents for business licenses for Prospective Customers are incomplete and valid. 3. Collateral and guarantee legal documents submitted by Prospective Customers are incomplete and valid. 4. The BUS/UUS/BPRS is harmed by the Notary or the Independent Appraisal Service partner of the BUS/UUS/BPRS itself.
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Analysis and Identification of Types of Risks for Mudharabah contracts:²²

Risk Identification	Risk Analysis
<p>Credit Risk (Credit Risk); Risk due to failure of customers or other parties to fulfill obligations to the Bank in accordance with the agreed agreement. Including credit risk due to debtor failure, among others; credit concentration risk, counterparty credit risk, and settlement risk.</p>	<p>Islamic Banks face the risk when the Customer is unable to fulfill the obligation to repay the capital or the realization of the Customer's income does not reach the projected income Sharia Banks face credit risk because the Customer does not pay the Profit-Sharing portion that should belong to the Bank</p>
<p>Market Risk (Market Risk); Risks on balance sheet and off-balance sheet positions due to changes in market prices, among others Risks in the form of changes in the value of assets that can be traded or leased.</p>	<p>Sharia Banks face risks originating from financing to customers who carry out activities that contain potential exchange rate risk Islamic Banks face risks to customer financing which are affected by changes in commodity prices. Islamic banks face basis risk because they are not appropriate in determining the basis of financing pricing.</p>
<p>Operational Risk (Operational Risk); Risk of loss caused by inadequate internal processes, failure of internal processes, human error, system failure, and/or external events that affect the Bank's operations.</p>	<p>Islamic banks face risks caused by internal fraud activities such as incorrect financial recording of position value, intentional discrepancies in tax records, errors, manipulation and mark ups in accounting and reporting as well as bribery and bribery activities that cause losses and ultimately result in profit Sharing value for the Bank is smaller than the target. Sharia Banks face the risk of misselling, both for products and calculating the ratio because Sharia Bank HR does not understand the mudharabah contract comprehensively. Islamic Banks face operational risk because the system cannot accommodate the calculation of the ratio in the Mudharabah contract, the calculation of the projected profit sharing and the bookkeeping of the realization of the profit</p>

²² Otoritas Jasa Keuangan, *Seri Standar Produk Perbankan Syariah 5 Standar Produk Mudharabah*, pp.167-181

	<p>sharing. the system has not been able to accommodate the calculation of the ratio in the Mudharabah contract, the calculation of the projected profit sharing and the bookkeeping of the realization of the customer's profit sharing</p> <p>Islamic banks face operational Risk because HR is not able to identify product risks with mudharabah contracts properly. One of them does not take into account fluctuations in customer income</p>
<p>Investment Risk (Investment Risk); Investment Risk (Equity Investment Risk) is the risk due to the Bank participating in the loss of the customer's business which is financed in profit-sharing-based financing, either using the net revenue sharing method or using the profit and loss sharing method.</p>	<p>Islamic banks face investment risk because the realization of profit sharing for mudharabah contracts is volatile, depending on the customer's business conditions. In the event that the realized value of the profit sharing is less than the projected value of the profit sharing, the Bank may only recognize the value of the realized profit sharing.</p>
<p>Compliance Risk; is the risk due to the Bank not complying with and/or not implementing the applicable laws and regulations as well as Sharia Principles</p>	<ol style="list-style-type: none"> 1. Islamic Banks face compliance risk because the products/transactions of Islamic Banks do not have a legal basis or rules/fatwas that clearly regulate the products/transactions. 2. Sharia Banks face the risk of violating the rules or regulations governing the related business.
<p>Legal risk; is the risk due to lawsuits and/or the weakness of the juridical aspect.</p>	<p>Islamic banks face legal risks due to weak engagements/agreements made by Islamic banks. Among the causes include: Violation of laws or regulations; Insufficient supporting documents; and/or Insufficient identification of rights and obligations between the bank and other parties</p>
<p>Reputational risk; is the risk due to a decrease in the level of stakeholder trust originating from negative perceptions of the Bank.</p>	<p>Islamic banks face the risk of losing public trust because Islamic banks do not carry out their operations in accordance with sharia principles. So that in the long term it will affect the reputation risk of Islamic Banks.</p>

The risk analysis carried out by financial institutions is adjusted to the characteristics of each financing product, namely for financing the characteristics of natural uncertainty contracts, the risk assessment includes (3) three aspects, namely:²³

1. Business risk, namely the risk that occurs in the first way out. Which consists of industry risk, namely the risk that occurs in the type of business which is determined by the characteristics of each type of business and the financial performance of that type of business. Business risk is also influenced by other negative factors, such as the condition of the business group,

²³ Adiwarman Karim, *Op.Cit.*, p. 246

- force majeure, legal problems, strikes, and others.
2. Shrinking Risk, Risk of decreasing the value of mudharabah/musyarakah financing, namely the risk that occurs in the second way out. Which is influenced by unusual business risk, the type of profit-sharing that is carried out, whether profit and loss and revenue sharing and Disaster risk or force majeure.
 3. Character Risk, namely the risk that occurs in the Third Way Out, which is influenced by:
 - a. Customer negligence in running the business;
 - b. Violating the agreement that has been agreed upon so that the customer in running his business is no longer in accordance with the contents of the agreement;
 - c. The company's internal management, such as management, organization, marketing, production techniques, and finance are not carried out professionally according to the management standards agreed upon between the bank and the customer.

CONCLUSION

Islamic banking has the potential to experience risks as in conventional banking. However, Islamic banking has additional risks that can be experienced by Islamic financial institutions, namely credit risk, market risk, liquidity risk, operational risk, legal risk, reputation risk, and strategic risk. Compliance risk, return risk, and investment risk. Risk identification can be seen Based on each character. The contract with the principle of profit-sharing (musyarakah-mudharabah) has a different character from other contracts. Each of these existing characters has potential risks. Based on its character, musyarakah financing risks include financing risk, market risk, operational risk, and Legal Risk. Meanwhile, mudharabah financing has the potential for fiduciary risk, displaced commercial Risk, Risk of yield sharing, equity investment risk, Compliance Risk, Legal Risk, and Reputational Risk.

REFERENCES

- Abd. Shomad, *Hukum Islam Penormaan Prinsip Syariah dalam Hukum Indonesia*, Jakarta: Kencana, 2012.
- Adiwarman Karim, *Bank islam, Analisis Fiqih dan keuangan*, 2nd ed., Jakarta: Rajawali Pers, 2004.
- Aisyah Abdul-Rahman and Shifa Mohd Nor, "Challenges of profit-and-loss sharing financing in Malaysian Islamic banking", *GEOGRAFIA OnlineTM Malaysian Journal of Society and Space* 12 issue 2, 2016, (39 - 46) 39 Themed issues on contemporary financial, business, investment and entrepreneurial facets of Malaysia's development, 2016,
- Andri Soemitro, *Hukum ekonomi syariah dan Fiqh Muamalah di Lembaga Keuangan dan Bisnis Kontemporer*, Jakarta: Kencana, 2019.
- Darmawan, *Manajemen Risiko Keuangan Syariah*, Jakarta: Sinar Grafika, 2021.
- Ikatan Bankir Indonesia, *Memahami Bisnis Bank Syariah*, (Jakarta: Gramedia, 2018).
- Heru Meruta, "Akad Mudharabah, Musyarakah dan Murabahah Serta Aplikasinya dalam Masyarakat." *Iqtishaduna: Jurnal Ilmiah Ekonomi Kita*, Volume 5, Nomor 2, Desember 2016: 87.
- Muhammad Syafi'i Antonio, *Bank Syariah dari Teori ke Praktek*, Jakarta: Gema Insani Pers, 2001.
- Otoritas jasa Keuangan (OJK), *Standar Produk Buku 1: Musyarakah Buku 2: Musyarakah Mutanaqishah*, 2016.
- , *Seri Standar Produk Perbankan Syariah 5 Standar Produk Mudharabah*, pp.167-181
- Rizki Tri Anugrah Bhakti, "Pemberdayaan Umkm Melalui Pembiayaan Dengan Prinsip Bagi Hasil Oleh Lembaga Keuangan Syariah", *ARENA HUKUM*, Volume 6, Nomor 1, April 2013:126