

# The Implementation of the Principle of Profit Sharing in the Musyarakah Financing Contract in Islamic Banks

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**Abstract.** Islamic banks must conduct their business activities based on sharia principles, one of which is the prohibition of usury. Consequently, they often use the principle of profit sharing in financing contracts. The principle means Islamic banks and their customers have to share their profits and losses, thus a balanced position is created between the parties. One of financing contracts that uses the principle of profit sharing is musyarakah. However, in practice, many Islamic banks do not apply the principle accordingly. The issues to be discussed in this paper are the implementation of the musyarakah financing contract in Islamic banks and whether the profit-sharing ratio complies with sharia principles. This paper concludes that the implementation of the musyarakah financing contract in Islamic banks has met the provisions of the prevailing laws. The contract has also fulfilled its conditions, which are the subject and object of the contract, the agreement of both parties, and the profit-sharing ratio in the form of a percentage. The profit-sharing ratio is also in accordance with the sharia principles regulated in the Fatwa of the National Sharia Council Number 15/DSN-MUI/IX/2000 on Principles of Business Profits Distribution in Islamic Financial Institutions.

**Keywords :** Musyarakah; Principle of profit sharing; Islamic banks

## 1 Introduction

Nowadays, Islamic banks play an important role in the economy as financial intermediary institutions. They collect funds from the public and channel them to the public. Islamic banks also carry out social functions in the form of a baitul mal institution. It receives funds from zakat, infaq, alms, grants, and other social funds and give them to zakat management organizations, as well as collect cash waqf and distribute them to waqf managers (nazhir) in accordance with the wishes of waqf donors (wakif).[1]

According to Article 1 number 7 of the Law Number 21 of 2008 on Islamic Banking, Islamic banks are banks that carry out their business activities based on sharia principles and consist of Islamic Commercial Banks and Islamic Rural Banks.[2] The elucidation of Article 2 states that business activities based on sharia principles do not contain elements of usury, maisir, gharar, haram, and zalim.[3] Based on these provisions, business activities carried out

by Islamic banks, both raising funds from the public and channeling them to the public, must be in accordance with sharia principles.

According to Muammar Arafat Yusmad, a contract fundamentally is a legal bond in a certain form, which is born from an agreement without coercion made by two or more people called the parties, and which creates rights and obligations for each party.[4] In the world of Islamic banking, a contract is a written agreement that contains the *ijab* (offer) and *qabul* (acceptance) between the bank and another party, also the rights and obligations of each party based on sharia principles.[5]

One type of contract that is often used in financing products in Islamic banks is *musyarakah*, which is a contract for financing/investing funds from two or more owners of funds and/or goods to run a business in accordance with sharia principles, dividing the results and losses based on an agreed ratio and the capital contribution respectively.[6] Thus, in the contract, the distribution of profit and loss between the parties (*syarik*) uses the method of profit sharing and revenue sharing.[7] At this point, financing under a *musyarakah* contract is only around 22% of the total financing in Islamic banks, while financing under a *murabahah* contract is around 60%. This is because financing with a *murabahah* contract is easier for the public to understand and the risk is lower than that with a *musyarakah* contract.

Financing under a *musyarakah* contract is intended as a special financing for working capital, where funds from Islamic banks are part of the customer's business capital and profits are shared according to the agreed ratio. Therefore, it must comply with the sharia principles stipulated in the Law Number 21 of 2008 on Islamic Banking. However, in practice, many Islamic banks do not apply the principle of profit sharing accordingly. In addition to the concept of capital participation with the principle of profit sharing, the *musyarakah* contract also regulates the collateral provided by customers to Islamic banks in order to guarantee the repayment. The collateral can be in the form of movable and non-movable objects. Based on these problems, we will discuss the implementation of the *musyarakah* financing contract in Islamic banks and whether the profit-sharing ratio complies with sharia principles.

## **2 Discussion**

### **2.1 The Musyarakah Financing Contract**

*Musyarakah*, often called *syarikah* or *syirkah*, comes from *fi'il madhi* that means ally of companies and associations. *Syirkah* in terms of etymology means mixing, that someone mixes his/her property with other people's assets so that it is difficult to distinguish one another.[8] *Musyarakah* financing contract is a financing based on a cooperation agreement between two or more parties for a business, where each party contributes funds, provided that the benefits and risks will be shared according to the contract.[9] There is no collateral needed, but to avoid any misappropriation, Islamic banks can ask for collateral.[10] The misuse can occur because of several factors: the customer uses financing that is not in accordance with the purpose of the contract, the customer makes a deliberate mistake so that the company goes bankrupt, the customer hides the profits he/she has earned, and so on.[11]

In the OJK Circular Letter Number 36/SEOJK.03/2015 on Products and Activities of Islamic Commercial Banks and Islamic Business Units, there are conditions that has to be satisfied in a *musyarakah* financing contract:

- a. The bank and customer each act as a business partner by jointly providing funds to finance a business activity.

- b. The customer's business activity does not conflict with sharia principles.
- c. The period of financing, refunds, and profit sharing are determined based on the agreement between the bank and customer.
- d. Profit sharing from fund management is stated in an agreed ratio.
- e. The distribution of business results is made based on the customer's business results reports.
- f. The agreed profit-sharing ratio cannot be changed throughout the financing period, except on the basis of the agreement of the parties.
- g. The bank and customer bear losses proportionately according to their respective capital. In the event that the customer commits negligence, fraud, and/or violates the contract that result in losses, the bank is not responsible for the losses incurred and the customer is required to return the remaining financing provided by the bank and the profit sharing that is the bank's right but has not been paid.
- h. The customer acts as a business manager, while the bank as a business partner can participate in the management in accordance with the agreed duties and authorities, such as conducting reviews and/or requesting business results reports prepared by the customer based on reliable supporting evidence.
- i. The bank analyzes the application for financing from customers, which includes, among others, personal aspects in the form of character analysis and/or business aspects, including analysis of business capacity, capital, and/or prospects.
- j. The bank and customer set out the financing contract in a written form.
- k. The bank implements transparency of product information and customer protection in accordance with applicable regulations.
- l. The bank has policies and procedures for risk mitigation.
- m. The bank has an adequate system for recording and administering accounts.
- n. The bank or customer can propose if the profit exceeds a certain amount, the excess or percentage be given to one of the parties according to the contract.[12]

In addition, the OJK Circular Letter Number 36/SEOJK.03/2015 on Products and Activities of Islamic Commercial Banks and Islamic Business Units regulates the characteristics of the musyarakah financing contract:

- 1. Banks may determine the financing segments: Micro, Small, and Medium Enterprises (MSEs), non-MSEs, individuals, business entities, or legal entities.
- 2. Banks may provide financing in rupiah or foreign currency (financing in foreign currencies only applies to banks that have obtained approval to conduct business activities in foreign currencies).
- 3. Banks may provide financing for working capital and/or investment purposes.
- 4. Banks may set certain ceilings.
- 5. Banks may set certain period of time.
- 6. Banks may request guarantees from customers at the time of financing distribution.
- 7. Banks may charge an administrative fee in accordance with the contract, the amount of which is in accordance with the real costs that are directly related to the financing.
- 8. Profit-sharing ratio can be determined proportionally as well as tiering. The method of determining the ratio is agreed upon at the beginning of the contract and can be changed.
- 9. Disbursement of financing can be done simultaneously or in stages.
- 10. Refinancing can be made in two ways: periodically in accordance with the projected cash inflows of the customer's business, or simultaneously at the end of the financing (for financing with a period of up to one year).

11. The bank or customer can propose if the profit exceeds a certain amount, the excess or percentage be given to one of the parties according to the contract, as long as it does not harm the customer who owns the funds.
12. The financing profit-sharing method refers to the Indonesian Islamic Banking Accounting Guidelines (PAPSI).[13]

Furthermore, Fatwa of the National Sharia Council Number 08/DSN-MUI/IV/2000 on Musyarakah Financing stipulates the distribution of profits and losses in the musyarakah financing contract as follows:

- a. Profits must be clearly quantified to avoid differences and disputes over the allocation of profits or termination of the musyarakah.
- b. Each partner's profit must be shared proportionally on the basis of all profits and no predetermined amount is set for a partner.
- c. A partner may suggest that if the profit exceeds a certain amount, the excess or percentage is given to him/her.
- d. The profit-sharing system must be clearly stated in the contract.
- e. Losses must be divided among the partners proportionally according to their respective shares in the capital.[14]

In the context of Islamic law, the musyarakah contract made by the parties will end if the contract expires or it is canceled by the parties.[15]

## **2.2 The Principle of Profit Sharing**

Profit-sharing ratio is the portion of the profit sharing between the bank and customer for funding and financing transactions based on the principle of profit sharing, the amount of which is in accordance with the provisions set out at the beginning of the contract. In short, the profit-sharing ratio is a ratio or comparison, which in the world of Islamic banking is the profit-sharing ratio between the fund owner and manager. In the Islamic banking mechanism, revenue sharing applies to investment products, either total or partial investment, or cooperation. The parties involved in the business must carry out transparency and partnerships properly and ideally because all routine expenses and income are related to the business, not to the personal interests of those who run the business.[16]

The profit must be shared proportionally between shohibul maal (fund owner) and mudharib (fund manager). All routine expenses related to the business, not to the personal benefit of the fund manager, can be included in operating costs. The net profit must be divided between the fund owner and manager according to the proportions agreed in advance and explicitly stated in the contract. There is no profit sharing until all losses have been covered and the fund owner's equity has been paid back. If there is a profit sharing before the contract expires, it will be considered as an upfront profit sharing.[17] The profit-sharing ratio is developed into the forms of business cooperation in a particular project. This concept is developed based on the principle of profit sharing. The legal basis for this concept is the Al-Qur'an and Hadith.

If the brethren are more than one, then they are united in the one-third. (Surah An-Nisa (4): 2). And in fact most of the people who cooperate do wrong to others, except those who believe and do righteous deeds. (Surah Ash-Shad (38): 24). The grace of Allah SWT is poured out on the two parties who are working together as long as they do not commit treason, when they cheat, their business will be despicable and the blessings will disappear from them (Narrated by Abu Daud).[18]

According to the Fatwa of the National Sharia Council Number 15/DSN-MUI/IX/2000 on the Principles of Business Profits Distribution in Islamic Financial Institutions, there are two profit-sharing systems in determining how much the respective parties will receive. The profit-sharing system is closely related to what the profit-sharing ratio will be:

#### **a) Profit Sharing**

Profit sharing is a calculation of the profit-sharing ratio which results from total net income after deducting the expenses incurred to obtain this income. If a bank implements a profit-sharing system, the probability that will occur is the profit-sharing ratio will become smaller. Thus, shahibul maal will receive smaller amount. In Islamic banking, the terminology of profit and loss sharing commonly called as profit sharing. The profit and loss sharing system is an implementation of cooperation agreement between investors and capital managers (entrepreneurs) in carrying out economic business activities. In the even, there's a profit from the arrangement, the profits will be distributed among two parties based on predetermined profit-sharing ratio. This mechanism also applied when the business experiences a loss. The two parties will be borne a loss based on the ratio. Therefore, in this profit and loss sharing system, if there is a loss, then the investor will not get their investment be recovered and the manager will not get his compensation as well.[19]

#### **b) Revenue Sharing**

Revenue sharing is a calculation of the profit-sharing ratio which results from the total income received before deducting the expenses incurred to obtain this income. In Islamic banking, revenue is the proceeds received from Islamic bank's deposit in other parties. This is the difference or excess of the earning assets with the proceeds from the acceptance of Islamic banks. Indonesian Islamic banking enforced the profit-sharing ratio system which is based on the revenue sharing system. In the application in Islamic banks, these two systems are very different. Thus, the implications in administrative system will also be different.[20]

### **2.3 The Implementation of the Musyarakah Financing Contract in Islamic Banks**

Islamic banks have important role in society. They can provide financing in the form of working capital, investment, and/or by projects which can be needed to support company's activities, development, and advancement. To provide working capital, investment and/or by project financing facilities, Islamic banks use several types of financing contracts. One of which is the musyarakah contract.

According to Article 19 paragraph (1) letter c of Law Number 21 of 2008 on Islamic Banking, the musyarakah contract is financing based on a cooperation agreement between two or more parties for a certain business, where each party contributes funds provided that the profits and the risk will be shared according to the agreement.[21] Based on these provisions, financing based on the musyarakah contract provided by Islamic banks is a cooperation agreement between Islamic banks and customers in the form of a pooling the capital from each party to carry out certain businesses or projects that aim to obtain a number of benefits provided that profits and losses (loss) will be borne together. Profits are shared based on agreement or a portion of the capital, while losses are borne only in the amount of each portion of the capital.

In general, the composition of the Musyarakah Financing Contract in Islamic banks consists of four parts, namely title, composition, content, and closing.[22] The title section contains the title of the contract, the contract number, and the day and date when the contract is signed. The comparative section contains information regarding the parties who have committed legal acts, namely the bank and the customer. The content section contains the definition, maximum financing, form and nature of the financing fund, period, realization of the financing fund, profit sharing ratio, repayment, and so on. The contents of the contract must be based on the agreement of the parties in accordance with the principle of consensualism in the standard contract agreement. The agreement of the parties is a form of blessing (arradhaiyyah) which is expressed in the form of a consent of *ijab qabul* (*sighatul akad*) when binding the contract. In the process of reaching an agreement in the contract, Islamic banks explain the contents of the contract to be signed and provide an opportunity for prospective customers to understand and provide their opinions regarding all standard clauses of the musyarakah financing agreement made by Islamic banks. The closing part is the final part of the contract, which contains the place and date when the contract was signed, the signatures and names of the parties, as well as the signatures and names of the witnesses.

In the Musyarakah Financing Contract, several things are regulated:

- a. Contract subjects are the parties involved in the contract consisting of the Islamic bank as the party providing the musyarakah financing and the customer as the party receiving musyarakah financing.
- b. The object of the contract is in the form of financing capital as stated in Article 2 of the Musyarakah Financing Contract. The article describes several things, namely the value of work, project or effort; prediction of profit to be obtained; capital requirements required; portion of bank capital (in the form of nominal value and percentage); and customer portion of capital (in the form of nominal value and percentage).
- c. The purpose of the contract is stated in Article 3 of the Musyarakah Financing Contract which explains the purpose of financing for working capital, investment, and/or by project.
- d. The term of the contract is stated in Article 5 of the Musyarakah Financing Contract, where the maximum musyarakah financing is thirty six months or three years, and can be extended with the agreement of both parties.
- e. The profit-sharing ratio is stated in Article 7 of the Musyarakah Financing Contract which explains that the determination of the profit-sharing ratio is calculated using the profit sharing system, in which the projection of profits is obtained after deducting costs and taxes.
- f. The rights and obligations of the parties are stated in Article 16 of the Musyarakah Financing Contract. Bank rights are:
  1. Recover financing funds and profit sharing in accordance with the provisions of this agreement.
  2. Overseeing the course of the customer's business either directly or through the services of a third party, in terms of using a third party's services all costs incurred will be borne by the customer.
  3. Collecting profit sharing and financing refunds to the customer.
  4. Conduct an assessment/review of the financial statements submitted by the customer, not later than the ten day after the bank receives the financial statements, accompanied by complete data and evidence from the customer.

5. Reject or approve the results of business calculations that have been assessed/reviewed by the bank to the financing recipient no later than the ten day after the bank receives the financial report from the customer.
6. Manage/take over the course of the business if the customer does not run his business in accordance with this agreement.
7. Terminate this contract unilaterally if the customer in carrying out his business has been negligent, dishonest/fraudulent, defaults and or violates the provisions of this agreement.
8. Receive a refund and the ratio for the results that have not been paid by the customer from the sale/execution of the collateral in the event the customer is negligent, fraudulent, and/or in default.

The bank's obligations are:

- a. Realizing financing funds in accordance with agreed terms.
- b. Bear business losses in the extent of financing funds disbursed in this agreement, except if the loss occurs because the customer is dishonest, negligent, fraudulent, non-performing and/or because he does not implement or violate the provisions of this contract, then all losses will be borne by the customer.

Customer rights are: (1) Propose realization of financing funds as regulated in this contract; (2) Get the profit sharing according to the agreement; (3) Manage your business well.

Customer obligations are:

- a. Conducting business activities based on applicable regulations in the most effective and efficient manner possible and with ethical and correct business practices and not contradicting sharia.
- b. Maintain the existence and continuity of business and will not change ownership without prior approval from the bank.
- c. Cover the company's operational costs.
- d. Responsible for all legal consequences of business relationships with other parties.
- e. Implement sound, honest, prudent, good faith, responsible and professional business management principles to achieve maximum business profit.
- f. Pay the profit-sharing ratio according to a predetermined schedule.
- g. Return the entire amount of funds in this contract to the bank, as required in this agreement.
- h. Submit a financial report every month, on the business financed by this contract no later than the ten day of the following month.
- i. Pay fines if late in repaying financing funds and profit sharing at the bank.
- j. Cover all company operational costs.

In musyarakah financing, customers are required to provide collateral as stated in Article 10 of the Musyarakah Financing Contract. According to Article 1 paragraph (1), collateral is additional collateral, in the form of movable or immovable objects, which the owner of the collateral gives to a sharia bank in order to guarantee repayment of customer financing, and Islamic banks have the right to execute or sell collateral in any way. collateral if the customer violates the terms or conditions specified in this contract, defaults, is negligent, and/or commits a deliberate act that results in a loss in business. In musyarakah financing, there are conditions that result in default (default) as stated in Article 22 of the Musyarakah Financing Contract. In musyarakah financing, the provisions regarding force majeure are regulated in Article 24 of the Musyarakah Financing Contract. Provisions regarding dispute resolution are contained in Article 25 of the Musyarakah Financing Contract which states that:

- a. All disputes arising under this agreement between the parties regarding the interpretation and/or implementation of this agreement, the parties agree to settle them by deliberation and consensus, subject to sharia principles.
- b. If within thirty calendar days since the settlement by deliberation and consensus as referred to in paragraph (1) of this Article no agreement has been reached, the parties agree to settle it through the Religious Court.

From this description, the implementation of the Musyarakah Financing Contract in Islamic banks has met the provisions in the regulations on Islamic banking, the DSN-MUI Fatwa, and the Musyarakah Product Standards issued by the OJK because the Musyarakah Financing Contract has met the elements, among others, the existence of the subject of the contract, the object of the contract, the agreement or agreement between the two parties as evidenced by the signing of the Musyarakah Financing Contract by the Islamic banks and the customer, as well as the determination of the profit sharing ratio as stated in a percentage. In addition, the Musyarakah Financing Contract also regulates several things, including the term of the contract, recognition of debt/repayment of funds given, collateral as a guarantee for accuracy in paying obligations to the bank, rights and obligations of the parties, terms of default, circumstances force majeure, dan dispute resolution.

#### **2.4 The Implementation of the Principle of Profit Sharing in the Musyarakah Financing Contract in Islamic Banks**

The application of the profit-sharing principle in Islamic banks has passed the test from the Sharia Supervisory Board (DPS) in Islamic banks. The implementation of the profit-sharing principle has also been agreed by both parties and is carried out in a transparent and fair manner. In musyarakah financing, the system for calculating the profit-sharing ratio on which the distribution is based may vary, namely based on profit sharing or revenue sharing as stipulated in the National Sharia Council Fatwa Number 15/DSN-MUI/IX/2000 on the Principles of Distribution of Business Results in Islamic Financial Institutions. Profit sharing is a calculation of profit sharing based on the net result (net) of total revenue after deducting the costs incurred to obtain this income, while revenue sharing is a calculation of profit sharing based on the total revenue received before deducting the costs. costs that have been incurred to obtain this income.

The application of the profit-sharing principle in Islamic banks is carried out using the profit-sharing system, where the profit sharing ratio for the financing of musyarakah is determined from the projection of net income after deducting costs and taxes, while the losses are borne jointly according to the share of capital participation. An example of calculating the profit-sharing ratio of musyarakah financing in Islamic banks is as follows:

Value of the net project	: Rp 535,000,000
Profit projections	: Rp 53,000,000
<del>Need for working capital</del>	<del>: Rp 482,000,000</del> —
Share of bank capital	: Rp 300,000,000 (62%)
Share of customer capital	: Rp 182,000,000 (38%)
Bank ratio	: 17% from the profit
Customer ratio	: 83% from the profit

From this example, it can be explained that the project value required by the customer is Rp535,000,000. From the project value, it can be projected that a net profit (after deducting

costs and taxes) is 10% of Rp53,000,000, the working capital requirement for the project is Rp482,000,000 where the customer only has 38% of the total capital required, namely Rp182,000,000 and the Islamic banks provided 62% of the total capital required for the project, namely Rp300,000,000. Islamic banks have a maximum share limit, which is 70%. From this calculation, the profit-sharing ratio of both parties has been agreed upon by mutual agreement, namely the profit-sharing ratio of Islamic banks is Rp9,010,000 (17%) of the profit from the project and the profit-sharing ratio for customers is Rp43,990,000 (83%) of the project profit.

As explained above, that the projection of profits to be obtained from projects financed by Islamic banks and customers is a net profit that has been deducted by costs and taxes so that the profit sharing ratio used by Islamic banks is profit sharing, where the calculation of the profit sharing ratio for the parties, namely the percentage of the agreed profit sharing ratio multiplied by the amount of profit obtained by the entrepreneur (syarikh), whereas if there is a loss it shall be borne together in proportion to the contribution of each party. For this reason, the determination of the profit-sharing ratio using the profit-sharing system used by Islamic banks has fully implemented the profit-sharing ratio provisions in accordance with sharia principles as stipulated in the National Sharia Council Fatwa Number 15 / DSN-MUI/IX/2000 on the Principles of Distribution of Business Results In Sharia Financial Institutions.

### **3 Closing**

#### **3.1 Conclusion**

- a. The implementation of the musyarakah financing contract in Islamic banks has met the provisions in the regulations on Islamic Banking, the Fatwa of the National Sharia Council and the Musyarakah Product Standard issued by the OJK, because the Musyarakah Financing Contract has fulfilled the elements, including the existence of the contract subject, the object of the contract, agreement of both parties, and determination of profit sharing ratio. In addition, the Musyarakah Financing Contract also regulates several things, including the term of the contract, recognition of debt/repayment of funds provided, collateral as a guarantee for accuracy in paying obligations to the bank, rights and obligations of the parties, default requirements, force majeure, and settlement dispute.
- b. The calculation of profit projections used for musyarakah financing in Islamic banks is the net profit that has been deducted by costs and taxes so that the profit-sharing ratio system used is the profit-sharing system, where the calculation of the profit-sharing ratio for the parties is the percentage of the profit-sharing ratio. what has been agreed upon is multiplied by the amount of profit obtained by the entrepreneur (syarikh), whereas in the event of a loss it shall be shared in proportion to the contribution of each party. Therefore, the determination of the profit-sharing ratio using the profit-sharing system used by Islamic banks has fully implemented the profit-sharing ratio provisions in accordance with the sharia principles stipulated in the Fatwa of the National Sharia Council Number 15/DSN-MUI/IX/2000 on Principles of Business Profits Distribution in Islamic Financial Institutions.

#### **3.2 Suggestions**

- a. Islamic banks must explain to their customers the contents of the musyarakah financing contract so that the customers understand their rights and obligations.
- b. Islamic banks must provide up-to-date and easily accessible information to the public about musyarakah financing products to raise awareness of the public.

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