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ALTERNATIVE PROFIT-SHARING SYSTEM IN THE *MUDHARABA* SCHEME IN SHARIA BANKING PERSPECTIVE M. BAQIR AL-SADR

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ABSTRACT

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The profit-sharing system with a mudharaba scheme is an early concept of Islamic banking. However, mudharaba is starting to be abandoned by customers and sharia banks because it carries high risks. This research will discuss Muhammad Baqir al-Sadr's thoughts on the profit-sharing system in the mudharaba scheme. The method used is descriptive qualitative by taking primary data sources in the form of a book written directly by al-Sadr entitled: Al-Bank al-Laribawi fi al-Islam. This research found several results, namely: (1) the profit-sharing system in al-Sadr's version of the mudharaba scheme is different from the mudharaba concept in general. This research further shows al-Sadr's prominence in the field of sharia economics, because al-Sadr also has an original concept about Islamic banking. (2) This research found that al-Sadr's thoughts have significance for efforts to develop sharia banking in the future, especially regarding strengthening moral values in the relationship between sharia banks and customers. (3) This research further shows al-Sadr's prominence in the field of sharia economics, because al-Sadr also has an original concept about Islamic banking.

INTRODUCTION

The global sharia financial industry currently continues to experience quite rapid growth every year, especially in the banking sector. The Islamic Financial Services Industry (IFSI) report in August 2023 shows that global Islamic financial industry assets in the final quarter of 2022 experienced growth of 6.2% annually (year-on-year). The total assets of the global Sharia financial services industry are estimated at USD 3.25 trillion, of which 69.3% are sharia banking assets. (IFSB, 2023)

This shows the ability of the global sharia banking industry to develop in an era of economic slowdown due to the Covid-19 pandemic and the threat of a global recession. In 2025, growth in global sharia financial assets is expected to reach 8%, namely USD 4.94 trillion (OJK, 2022). This phenomenon shows that the intellectual work of Islamic banking conceptualists since its inception has been more or less successful.

Basically, the initial idea of establishing a sharia bank was to use a fairer banking system based on the concept of profit and loss sharing (Nofinawati, 2016). Most of the Islamic banking circles as well as the majority of scholars agree that profit sharing is considered the most appropriate financing scheme that can be used as the prime mover of accelerating the development of economic welfare in society as emphasized by Monzer Kahf. Hence, in essence,

the use of the profit-sharing principle as contained in the *mudharaba* concept is a manifestation of the Islamic banking spirit (Supriatna et al., 2020).

However, the facts show that Islamic banks prioritize non-profit sharing schemes in financing products rather than profit sharing schemes. One reason is that banks do not want to accept the risk of high profit-sharing financing (Hadi, 2015). It cannot be denied that Islamic bank financing is more focused on the *murabaha* financing scheme (Sabrina & Abd. Majid, 2019).

The results show that a similar situation also occurs in the world's top Islamic banks which also tend to use the *murabaha* scheme as a mainstay of financing, such as Bahrain Islamic Bank, Faysal Islamic Bank, Islamic Bank of Malaysia, Kuwait Finance House, and others, where the average usage reaches 70% of the total financing. (Supriatna et al., 2020). The *murabaha* scheme is considered to give high preference to Islamic banks, because it provides relatively accurate profits and of course has a positive impact on increasing capital and asset value. The statement that financing fixed-return contracts such as *murabaha* is a favorite of Islamic banks is relevant in this context (Widodo, Sugeng; Basyariah, 2020). Many scholars said that the most widely used financing option provided by Islamic banks is *murabaha* (Wijaya & Moro, 2022), (Khotijah, 2020), (Umardani, 2019) (Rimadhani & Erza, 2017).

In fact, the profit-sharing financing pattern, apart from being the essence of sharia financing, is also more suitable for activating the real sector, because it increases direct relationships and risk sharing between investors and entrepreneurs (Qotrunnada & Yazid, 2022). Most scholars and experts also agree that Islamic banks are banks whose main principle is profit sharing. So, profit sharing financing should be prioritized and dominant compared to non-profit sharing financing (Ascarya & Yumanita, 2007).

In the context of contributing to answering these problems, the thoughts of Muhammad Baqir al-Sadr, as one of the initial conceptualizers of the emergence of Islamic banks, have a strategic position to be studied. Muhammad Baqir al-Sadr is an Islamic economic scientist who has unique ideas that are important to explore in efforts to build a conception of the Islamic economic system (Hendrianto & Yakin, 2023).

In line with his criticism of the capitalist ideology that dominated the banking system at that time, he proposed a banking system that appreciated the human performance element more than the capital element by using a profit-sharing system (Mayer & Mallat, 1994). Mazin Isa's study also concludes that it is time for sharia banks to return to al-Sadr's sharia banking concept (Isa et al., 2017). This research is important as a form of searching for alternatives to the profit-sharing system in financing schemes in sharia banking, because al-Sadr has a different concept regarding this matter.

MATERIALS AND METHOD

This research uses a library study method by taking primary data sources in the form of al-Sadr's work entitled *Al-Bank al-Laribawi fi al-Islam: Utruhah li at-Ta'wid 'an ar-Riba wa Dirasah li Kaffah Awjuh Nasyatat al-Bunuk fi Dhau' al-Fiqh al-Islami*. Meanwhile, secondary data sources are books or equivalent, which have a direct or indirect connection with the main research theme. The secondary sources in question are Muhammad Baqir al-Sadr's other books and other sources that can support research. The data analysis was carried out using descriptive methods.

RESULT AND DISCUSSION

1. Problems of the Profit-Sharing System in Mudharabah Schemes in Sharia Banking

National Sharia Council Fatwa No: 07/DSN-MUI/IV/2000 explains that Sharia Financial Institutions can channel their funds to other parties by means of *mudharaba*, namely a business cooperation agreement between two parties where the first party (*shahibul mal*) provides all capital, while the second party (*mudharib/customer*) acts as manager and business profits are shared between them according to the agreement outlined in the contract (Budianto, 2022).

The *mudharaba* contract in sharia banking is known as "two-stage *mudharaba*" where the bank can become *shahibul mal*, but can also become *mudharib*. This is because sharia banking is an "intermediary" institution as a basis for collecting public funds to be distributed back to the community in various forms of financing and capital participation (Nandaningsih & Anugrah, 2021).

Mudharaba contracts in the conventional paradigm include agency relationships which can cause problems, namely, (1) When the agent (*mudharib*) has different interests from the principal (*shahibul mal*) so that each party tries to maximize their interests. The agent who is supposed to carry out the principal's trust has violated his commitment by not always acting in the principal's best interests. (2) It is difficult and expensive for the principal to prove the efforts made by the agent. (3) Risk sharing problems when the principal and agent have different risks borne (Nur Maharani, 2008).

The risk faced by Sharia Banks in financing with *mudharaba* agreements is the risk of Asymmetric information, namely the imbalance in the information received by the bank compared to the information held by the customer. This is because the customer in this contract knows more information about the business he is running, whereas the sharia bank can only see the business from the outside and does not intervene in the customer's business being run (Musdalifah & Muchran, 2020).

Asymmetric information can occur in the form of activities or information. Problems related to activities are called hidden action, while problems related to information are called hidden information. Hidden action will give rise to moral hazard and hidden information will give rise to adverse selection. In other words, asymmetric information is an agent condition in financial contracts that usually takes the form of moral hazard and adverse selection (Jasmin et al., 2018).

2. Sharia Bank Operational System in the al-Sadr Concept

The main function of banks in general is to collect non-productive funds by giving interest to their owners, then channeling them as debt to capital seekers with a certain additional interest. So, banks have two main functions. First, raising funds by way of debt. Second, the channel of funds by way of giving debt. Both patterns run with a flower system (al-Sadr, 1962).

According to al-Sadr, if viewed from an economic perspective, the bank's position in this case is as an intermediary or mediator between capital (investors) and work (managers). However, if viewed from a formal legal perspective, there are actually two independent relationships, namely first, the relationship between the bank and investors, and second, the relationship between the bank and the borrower. This means that there is no legal relationship between savings customers and financing customers. As a consequence, the bank as the borrower will reward investors with interest and the bank as the lender will receive interest rewards from the borrower. This pattern is what al-Sadr tried to correct (Mallat, 2010).

So, to remove the element of usury from banking, al-Sadr offered a new relationship pattern for banks in their role as intermediary institutions at the legal level by first dividing the savings funds received by banks from customers into three; *al-wadi'ah ats-tsabitah* (deposits), *wadi'ah at-taufir* (savings account), and *al-wadi'ah al-jariyah* (ordinary savings or current accounts). These three types of deposits will differentiate the operational patterns of sharia banks and customers, whether savings or financing customers (al-Sadr, 1962).

1. *Al-Wadi'ah Ats-Tsabitah* (Deposits)

Deposits are an amount of funds that the owner entrusts to the bank with the aim of obtaining certain profits by investing capital. These customers may invest continuously or periodically by paying attention to the right time and moment to invest. Conceptually, this type of savings adopts a *mudharabah* scheme from the perspective of the capital owner.

In this type, the bank will manage the funds with permission from the party entrusting the funds (*mudi'*) with a profit-sharing system in the form of an adjusted *mudharaba* contract, where the bank acts as an intermediary between deposit customers and financing customers. The profits obtained will be divided in a percentage ratio between depositors as *sahibul mal* and financing customers as *'amil*. Meanwhile, the bank will receive a commission for its work as a mediator.

2. *Al-wadi'ah al-Jariyah* (Ordinary Savings or Current Account)

This type is an amount of funds that the owner entrusts to the bank with the aim of being able to transfer or withdraw when needed, as an instrument for business financial transactions or for personal needs. So, the bank must be able to provide these funds whenever requested. However, this type of customer does not get any return.

In this type, deposits are assessed as debt to the bank from customers. So, ownership of the funds is transferred to the bank. al-Sadr offers three options for banks in operationalizing these savings funds, namely:

- a. Banks use it as reserve savings to maintain liquidity. This can be called CAR (Capital Adequacy Ratio) or capital adequacy ratio.
- b. The bank places these funds in investments using *mudharabah*. In this case, the bank acts as the owner of capital (*sahibul mal*). However, banks must pay attention to the liquidity aspect. This means that only part of the funds are included in the investment. Apart from that, banks must prioritize *mudharabah* on *al-wadi'ah Ats-Tsabitah*.
- c. Banks can lend these funds to customers who apply for credit (financing customers) as *qard*. This is done if the *mudharaba* pattern is not possible, for example because the purpose of the financing is not for investment, but to pay project bills, employee salaries, and others.

However, the bank must ensure that the customer meets the following requirements:

- a. Trustworthy and has a good track record
- b. Have the ability to repay the debt
- c. The debt maturity is not more than three months
- d. The amount owed does not exceed the maximum limit
- e. Submitting collateral (collateral)

The bank does not take interest from this contract, but is entitled to a commission as a debt guarantee fee (*ujrah at ta'min*), administration fee (*ujrah al-kitabah*). Considering the cost of the fee is very small, the bank can oblige the creditor when returning the funds, to give a long-term loan to the bank. Later, the bank will use the funds to invest in conventional banks or central banks, where sharia banks can take interest from them. al-Sadr bases this on the opinion

of Shia Imamiyyah and Hanafiyyah jurisprudence which allows muamalah on the basis of riba with non-Muslim parties.

3. *Wadi'ah at-Taufir* (Savings)

This type is in the form of a sum of funds entrusted by the bank by creating an account in a special book, where every withdrawal or income must be recorded. This type has similarities with current savings in that it can be withdrawn at any time, as it also has similarities with term savings in terms of providing interest to the account owner. Usually, the bank will determine interest based on the smallest balance in one month. (Muhammad Baqir al-Sadr, 1962)

According to al-Sadr, this type of savings is also included in the *mudharaba* pattern as is the pattern for the type of deposit savings. However, banks do not require this type of customer to save their funds for a certain period, but allow them to withdraw their funds at any time, as the savings progress. In order for banks to be able to maintain their liquidity, banks must not include all of these funds in *mudharaba* projects, but only part of them. This means that if the *wadi'ah at-taufir* funds are usually withdrawn by the customer in the amount of ten percent of the total savings each year, then the ten percent may be included in mudharabah investments (al-Sadr, 1962).

3. Al-Sadr's Concept of Profit-Sharing Schemes in Sharia Banking as an Alternative

The profit-sharing system in al-Sadr's view is rooted in the mudharabah agreement in the view of classical jurisprudence. Mudharabah can be applied to all three types of savings. In current savings, the mudharabah pattern applied in the al-Sadr concept is still the same as the classic mudharabah pattern. However, the concept of mudharabah al-Sadr which is applied to types of savings still has differences with classic mudharabah, because in the al-Sadr concept there are three parties to the transaction, namely: *sahibul mal*, '*amil*', and deputy *sahibul mal*. (Muhammad Baqir al-Sadr, 1962)

Deposit savings are the most ideal type of savings to be placed in a profit sharing system in al-Sadr's view. So, to apply this pattern to the mudharabah contract, the parties concerned must be explained as well as the obligations and rights of each party. There are three parties in this type of savings, namely: 1). *mudi'* (saving customer) as owner of capital (*sahibul mal*), 2). *mustasmir* (capital manager) as '*amil*', and 3). The bank acts as an intermediary between the two as well as a representative of the capital owner when agreeing to a contract with '*amil*'.

1. First Party

The first party in this *mudharaba* is the *mudi'*, namely the customer who owns the deposit. Each deposit remains the property of each customer. Ownership is not transferred to the bank by way of receivables, as is the concept of conventional banks. However, each deposit does not stand alone separately, but the bank combines all the deposits into a deposit with shared ownership (*al-milk al-masha'*) for all customers with their permission. However, each deposit customer has their own profit ratio according to the amount of their savings. In short, what is meant *sahibul mal* in the concept of al-Sadr is the entire depository customer, who delegates his funds to sharia banks. Each savings will be combined with other savings, until there is a very large amount of savings.

Furthermore, the *mudi'* must fulfill his obligations, namely:

- a. willing to entrust the funds to be distributed by the bank for a period of more than six months

- b. willing to follow the provisions made by the bank in the *mudharabah* contract pattern
- c. willing to become a customer by opening an account (*al-hisab al-jari*). This third condition is only conditional, depending on investment performance. Then, there is no minimum limit for funds in this *mudharabah*, no matter how small you can accept it, because later it will be combined with funds from other investors. The *mudharabah* agreement will run on all funds collected.

After *mudi*' fulfilling his obligations, he will obtain three rights. First, get guarantees for their funds stored in sharia banks. This role will be assumed by the bank voluntarily. Conventional banks guarantee these funds as debt which must later be paid. This means that ownership rights to the funds have been transferred to the bank. The Islamic banks guarantee it voluntarily. The bank does not impose this guarantee on *'amil*, because *'amil* cannot be a deposit guarantor in the *mudharaba* contract pattern which is a trust contract. So, the bank guarantees the nominal savings capital entrusted to it if there is a loss from the business run by *'amil*. This is because banks do not act as *'amil*, but intermediaries between *'amil* and capital owners.

Second, get results. *Mudharaba* profit distribution. Deposit customers at conventional banks will receive income in the form of interest. Meanwhile, sharia banks provide income to deposit customers with their status as *shahibul mal* in *mudharaba* contracts in the form of a predetermined percentage ratio. This income depends on the results of the business run by *'amil* (financing customer). If the business makes a profit, *Sahibul mal* is entitled to a predetermined profit-sharing ratio. But if they don't make a profit, they don't get anything. However, al-Sadr assumes that the possibility of no profit in this *mudharaba* is very small, or is only a theoretical possibility, not reaching the level of reality. This is because each deposit is not related to just one business, but will be combined with others.

So, every deposit customer is a *sahibul mal* for all *mudharaba* contracts carried out by the bank for all financing customers. After that, the bank is tasked with dividing it according to the nominal savings of each deposit customer. So, the possibility of no profit only occurs in one situation, namely that all the *mudharaba* carried out do not produce any profit. Because, if only some do not make a profit, the profit will be shared among all deposit customers according to the ratio of their savings.

According to al-Sadr, the ratio given by sharia banks to deposit customers must be greater than the interest offered by conventional banks. If this were not the case, customers would definitely be more interested in saving at conventional banks. Because if the ratio and interest are the same, conventional bank deposit customers will definitely get interest. Meanwhile, sharia bank customers will not get returns unless the *mudharaba* business makes a profit (al-Sadr, 1962).

Third, get certainty to withdraw your savings at the end of the specified deadline. Banks are obliged to ensure that deposit customers (capital owners) can withdraw their deposits at the end of the specified deadline. This needs to be taken into account, considering that Islamic banks usually place *mudharaba* contracts on companies or large long-term projects, not short-term projects. However, sharia banks must ensure that at the end of the term, customers who place funds can withdraw their deposits and cancel the *mudharaba* contract. These funds must be in cash, not in the form of investment letters (al-Sadr, 1962).

In order to carry out this task, sharia banks need to pay attention to the following things:

- a. It is not necessary that all savings will mature at the same time. It could be that each deposit has its own maturity date for withdrawal.

- b. Sharia banks usually only deal with a few customers who have matured at any time. This amount is no more than ten of the total savings entrusted by deposit customers.
- c. Savings withdrawn at maturity are not placed in one type of business, which will have an impact on that business. However, all savings are combined and placed in various types of businesses.
- d. Banks require projects that rotate deposits to maintain bank liquidity at certain times each year. This is aimed at projects that are not seasonal. As for seasonal projects, banks also determine certain times to maintain liquidity. This can be done by requiring the seasonal project to open a current account whose balance must not be less than a predetermined amount and placing the funds in this savings. If each party running its business does this, the bank can maintain its liquidity risk.
- e. Banks do not have to withdraw these deposits from capital invested in business actors who carry out *mudharaba* contracts with these funds, but may withdraw from their cash assets, which consist of: uninvested deposits, current savings, and initial capital.

2. Second Party

The second party is *mustatsmir* (*mudharib*), whose job is to ensure that the capital makes a profit. *Mustatsmir* can be an individual, but usually in the form of a company. The conditions that *'amil* must fulfill are as follows:

- a. have the nature of trust. This nature was confirmed by two witnesses known to the bank
- b. have certain abilities and expertise to rotate funds and generate profits from those funds in small risky ventures, or at least the bank must ensure that the ventures to be carried out have great opportunities. In addition, financing customers must already have experience in the field of business to be carried out,
- c. the business to be carried out must be clearly determined until there is an understanding between the bank and the financing customer, so that the results can be calculated and the possibilities that might occur can be studied,
- d. customers who have had a good relationship with the bank must be prioritized,
- e. willing to follow the conditions provided by the bank, namely:
 - 1. provisions relating to profit sharing
 - 2. all transactions carried out must be done through a bank, by opening an account at the bank and entrusting it as a current deposit,
 - 3. must record all transactions in detail when turning over *mudharaba* money (if necessary, witnessed by an accountant),
 - 4. always be in contact with the bank from the beginning to the end of the contract, by reporting all transactions carried out, prices obtained, price changes, etc. This method of communicating with the bank can be determined by the bank itself, for example by giving the right to make telephone calls with the bank.
 - 5. There are also special requirements for each business and its conditions.

If the *mudharaba* is successful in making a profit, *amil* is entitled to all profits after the bank and investor's share is given, according to the ratio determined at the beginning of the *mudharaba*.

3. Third party

The third party in al-Sadr's profit-sharing system is the bank, which acts as a representative of the capital owner. The bank is entitled to receive a commission on the basis

of *ju'alah*. The mediation work carried out by sharia banks is a form of *khidmah muhtaramah* (service) for financing customers, so it deserves to be reciprocated. This commission consists of two components, namely, a fixed commission at the start of the transaction and a conditional additional commission from *'amil*.

The first commission can be compared to the commission received by conventional banks from the difference in the amount of interest given to deposit customers and the amount of interest received from creditor customers. This commission is fixed, meaning it does not depend on whether the business being run makes a profit or not. The difference lies in Islamic banks guarantee the savings of their deposit customers, whereas conventional banks do not bear losses from investment businesses, but the potential losses are borne by creditor customers. From this point of view, it is appropriate for Islamic banks to receive more commissions than those received by conventional banks.

Moreover, the funds guaranteed by Islamic banks when depositing them with financing customers are the type of capital whose value and income are at stake (*ra's al-mal al-ladzi yukhathar bihi qimatan wa dakhlan*). Namely insurance against the risk of loss (reduced savings) and risk of income (lack of profit). So, apart from getting a fixed commission, the bank is also entitled to receive an additional commission.

The second commission received by sharia banks is *ju'alah marinah* (flexible commission) from *'amil* (financing customers) in the form of a ratio of the profit share that *'amil* is entitled to receive. All remuneration that must be paid by financing customers to Islamic banks is taken from profits. This means that if a financing customer does not succeed in making a profit, he is not obliged to pay anything, except for a fixed commission as a *ju'alah* for the performance of the bank that has given him access to investors. This fixed commission is determined at the beginning of the contract when determining the profit ratio that the financing customer will receive after deductions for the bank and deposit customer's share (al-Sadr, 1962).

Al-Sadr's concept is different from the concept of Sami Hamud, an Al-Azhar academic. Sami Hamud, although he agreed with Al-Sadr in considering the bank as a mediator, he said that the bank's status as a mediator did not remove it from the status of *'amil* or *mudharaba* mediator. Hamud also does not accept Al-Sadr's opinion that banks can voluntarily guarantee funds that basically cannot be guaranteed by other parties (Hamud, 1982).

Therefore, Hamud offers the concept of *mudharabah musytarakah*. According to him, *al-mudharabah al-musytarakah* is different from classic *mudharaba*. This opinion is based on the al-ajir al-musytarak pattern. In Hamud's view, the bank makes a *mudharabah* contract with the capital owner, where the bank has the status of *'amil*. Then, the bank has the right to manage the funds. The management can be done by doing a new *mudharaba* contract, *musytarakah al-muntahiyah bi at-tamlik*, or *murabahah li al-amir bi asy-syira'* contract. As far as the researcher understands, this Hamud concept is used by almost all sharia banks in the world.

However, there is a problem in the concept of *mudharabah musytarakah*, namely that sharia banks basically do not guarantee *shahibul mal* funds. Because, if the second *mudharabah* experiences a loss, the loss will ultimately be borne by the depositor. In fact, when the second *mudharabah* makes a profit, the bank is entitled to a *nisbah*. This makes the bank the party that does not bear the risk. Second, this pattern does not really reflect the role of banks as mediators. Because there will be a severing of the relationship between deposit customers and creditor customers. In fact, the purpose of using a *mudharabah* contract is to unite the relationship between the two in a formal legal aspect.

Al-Sadr places the bank's position as a mediator in profit-sharing based contracts (*mudharaba*) in the banking concept he created. According to him, this concept can improve the relationship pattern between depositors and creditors in conventional banks. This concept also requires that all parties to a transaction have the same potential for profit and loss. Banks have the potential to gain profits in the form of *ju'alah*. The bank also has the potential to incur losses because it bears losses from *'amil's* business. Depositors have the potential to gain profits in the form of *mudharabah* business profit ratios, but they also have the potential to suffer losses because the funds they invest do not produce anything. Then, *mudharib* has the potential to gain profits from the agreed ratio, but has the potential to suffer losses, namely that his hard work will not be paid if the *mudharaba* business does not make a profit.

The concept of sharing potential profits and losses in investment work is a form of justice approved by Islam. Researchers view the concept of sharing potential profits and losses as a moral idea of the bank's role as a mediator in the profit sharing system that Al-Sadr wants to achieve. This sharing of potential profits and losses is in accordance with the concept of solidarity put forward by Al-Sadr in *Iqtisaduna* (al-Sadr, 1987).

CONCLUSION

This research found that al-Sadr's thoughts have significance for efforts to develop sharia banking in the future, especially regarding strengthening moral values in the relationship between sharia banks and customers. The theoretical implications of this study affirm that Al-Sadr's unique *mudharaba* concept can be used as an alternative in financing schemes in sharia banking. This research supports the study of Mazin Isa et al. that sharia banking needs to revisit the concept of banking based on a profit-sharing system put forward by al-Sadr in the sixties.

The limitation of this research is that it only discusses al-Sadr's concept from a theoretical perspective. It is hoped that further research will be able to formulate a profit-sharing system in al-Sadr's perspective *mudharaba* scheme at a practical level. However, this research further shows al-Sadr's prominence in the field of sharia economics, because al-Sadr also has an original concept about Islamic banking.

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