

Mudarabah Contract in The Property Investment: Critical Legal Review

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Abstract. This research aims to find out how the legality of the mudarabah system based on Law No. 21 of 2008 and how the implementation of mudarabah contracts in property investment. To get answers to the above problems, the author uses descriptive qualitative research (library research), which focuses on manuscript and text studies using normative, juridical and historical approach methods with deductive data analysis. The results show that legally, the mudarabah system has been regulated in Law No. 21 of 2008 through Articles 19 and 20 related to the collection and distribution of funds by Islamic banks. However, the implementation of mudarabah contracts in property investment has not fully complied with the provisions of the law, especially in the aspects of profit-sharing transparency (Article 21 letter b), risk monitoring (Article 26), and dispute resolution mechanisms (Article 55). This finding theoretically confirms the strength of the Islamic Banking Law in distinguishing partnership-based contracts from the conventional interest-based system. Practically, the implementation of mudarabah contracts in accordance with sharia principles can increase customer trust and loyalty, while non-compliant implementation has the potential to reduce the credibility of Islamic financial institutions.

Keywords: Mudarabah; Property Investment; Islamic Banking

1 Introduction

Islam is a comprehensive religion that comprises three fundamental components: faith, Sharia, and morals. These three aspects are interconnected in the formation of an ideal

way of life. Islamic sharia, a system of law derived from the Qur'an and Sunnah, governs not only the relationship between humans and Allah (worship), but also relationships between humans (muamalah).¹ In muamalah, the original law is permissible (mubah) as long as there is no evidence to prohibit it.²

Muamalah jurisprudence is defined as the rule of Allah swt., which is intended to regulate people's lives in both social and economic aspects. Muamalah endeavors to ensure the safeguarding of human interests,³ emphasizing the fulfillment of physical needs in a halal manner and the promotion of maslahat.⁴ In this case, Islam instructs adherents to seek halal sustenance, as outlined in the Qur'anic verse Q.S. al-Jumu'ah verse 10, which encourages Muslims to seek Allah's bounty after praying.⁵

Islamic economic activities are inextricably linked to Sharia principles, and Islamic economic methodology is derived from Islamic teachings found in the Quran, Sunnah, and Ijtihad.⁶ The Islamic economic system has also been incorporated into state policies, as evidenced by the establishment of the Sharia banking system by Bank Indonesia as a fundamental component of the dual banking system in Indonesia.⁷ The development of the Islamic capital market is also evident from the issuance of various fatwas by the DSN-MUI regarding the buying and selling of stocks, mutual funds, Islamic bonds, and the application of Sharia principles in the capital market.⁸

Moreover, Law No. 21 of 2008 on Islamic Banking delineates a bank as an institution that collects and channels funds for the enhancement of the standard of living of the community. Islamic banks fulfill three primary functions: accepting deposits, channeling financing, and providing financial services. However, it is imperative that all of these functions are based on Islamic principles. These fundamental principles liberate Islamic banks from the practices of *riba* (usury), *garar* (uncertainty), and *maysir* (speculation), emphasizing principles of justice and mutual consent among parties.⁹

¹ Muhammad Bagir Al-Habsyi, *Fikih Praktis Panduan Lengkap Muamalah Menurut Al-Qur'an, Sunnah Dan Pendapat Para Ulama*, I (Jakarta: Raja Grafindo Persada, 2016), 6.

² Abdul Azim bin Badawi bin Muhammad Al-Bānī, "Al-Wajīz Fī Fiqh Al-Sunnah Wa Al-Kitāb Al-'Azīz," III (Mesir: Dār Ibnu Rajab, 2001), 333.

³ Al-Habsyi, *Fikih Praktis Panduan Lengkap Muamalah Menurut Al-Qur'an, Sunnah Dan Pendapat Para Ulama*, 1.

⁴ Risdayani Risdayani et al., "Maqāṣid Al-Syarī'ah Analysis of the Implementation of Food Social Assistance on Multidimensional Welfare in Indonesia (2020-2023)," *AL-IKTISAB: Journal of Islamic Economic Law* 8, no. 2 (November 5, 2024): 139–56, <https://doi.org/10.21111/aliktisab.v8i2.12972>.

⁵ Abdullāh bin Muḥammad Al-Ṭayyār, "Al-Fiqh Al-Muyassar Qism Al-Mu'amalāt, Mausū'ah Fiqhiyyah Ḥadīṣah Tatanāwalu Aḥkām Al-Fiqh Al-Islāmī Bī Uṣlūb Wāḍih Li Al-Mukhtaṣṣin Wa Gairihim," I (Riyāḍ: Dār al-Watan, 2011), 5.

⁶ Moh. Mufid, *Ushul Fikih Ekonomi Dan Keuangan Kontemporer: Dari Teori Ke Aplikasi* (Jakarta: Prenadamedia Group, 2018), 9.

⁷ Amir Machmud and Rukmana, *Bank Syariah: Teori, Kebijakan, Studi Empiris Di Indonesia* (Jakarta: Erlangga, 2010), 3.

⁸ Veithzal Rivai and Dkk, *Islamic Transaction Law In Business: Dari Teori Ke Praktek* (Jakarta: Bumi Aksara, 2011), 371.

⁹ Republik Indonesia, "Undang-Undang RI No. 21 Tahun 2008 Tentang Perbankan Syariah," Pub. L. No. Lembaran Negara Republik Indonesia Tahun 2008 Nomor 94 (2008), 2–8.

The development of Islamic finance in Indonesia is also growing rapidly. This suggests that the Islamic economic and financial ecosystem in Indonesia is robust and possesses the capacity to compete on a global scale. The Islamic banking system is characterized by its dualistic nature, encompassing both profit-oriented objectives and a social welfare and justice-oriented dimension. In Islamic transactions, the *mudharabah* contract constitutes a significant form of business cooperation. *Mudharabah* constitutes a cooperative agreement between the capital owner (*ṣāhib al-Māl*) and the capital manager (*mudārib*), whereby a profit-sharing system is implemented.¹⁰ The implementation of *mudharabah* is currently widely used in property investment and financing in Islamic banks. Sharia banking products based on *mudharabah* include savings and deposits, as well as business financing. However, it is imperative to ensure that all implementations adhere to Law No. 21 of 2008, thereby ensuring that they do not contain elements of usury and still align with the principles of Islamic law.

Islamic property investment, too, is subject to the principle of compliance with applicable laws and regulations. Investors, developers, and related parties must ensure that all investment activities are conducted in compliance with the relevant laws, government regulations, and other provisions governing property investment practices, whether from a business, financial, or regulatory perspective. This principle of compliance is of paramount importance in ensuring stability, legal certainty, and credibility in all sharia-compliant property investment practices.¹¹

The problem statement that is posited in this study is concerned with the implementation of *mudharabah* contracts in property investment and the review thereof from the provisions of Law No. 21 of 2008 concerning Sharia Banking. The objective of this study is to examine the implementation of *mudharabah* contracts in property investment by Islamic financial institutions and to evaluate their adherence to the legal provisions outlined in Law No. 21 of 2008. This analysis aims to provide a comprehensive overview of Islamic banking practices in property sector financing based on profit-sharing principles. The findings of this study are anticipated to furnish recommendations for stakeholders in the Islamic financial industry, regulators, and the academic community in the development of a financing system that is in accordance with Islamic law and positive law in Indonesia.

2 Literature review

The *mudharabah* contract constitutes a form of collaboration between the capital proprietor (*ṣāhib al-māl*) and the manager (*mudārib*), whereby profits are distributed in accordance with the terms of the agreement, and losses are shouldered by the capital

¹⁰ Mardani, *Aspek Hukum Lembaga Keuangan Syariah Di Indonesia* (Jakarta: Prenamedia Grup, 2012), 19.

¹¹ Faizal, "Penerapan Prinsip Syariah Dalam Investasi Properti," *Jurnal Ekonomi, Bisnis, Dan Manajemen* 1, no. 1 (2023): 44.

proprietor, with the exception of instances of negligence on the part of the *mudārib*.¹² The concept of *mudarabah* is a critical component of Islamic economics, extensively utilized within the Islamic financial sector, encompassing various domains such as banking, investment, and business financing. *Mudarabah* constitutes a form of collaboration between the capital proprietor (*sāhib al-māl*) and the business operator (*muḍārib*), whereby profits are distributed in accordance with an established proportion, and losses are shouldered by the capital proprietor, provided that the business operator has not committed negligence. In the context of legal practice in Indonesia, *mudarabah* contracts are frequently the subject of cases in Religious Courts. Supardin et al. (2025) observe that judges in the Jakarta Special Capital Region employed the *ijtihad* approach to interpret and construct the law in cases involving *mudarabah* contracts from 2016 to 2022. This resulted in variations in rulings based on different interpretative approaches, including grammatical, systematic, and teleological.¹³

Sharia property investment in Indonesia encompasses a wide range of forms, including residential financing, shop houses, apartments, renovations, and commercial area development. These investments can utilize various sharia contracts, such as *mudarabah*. In the context of Islamic banking practices, such as BSI Griya products, the predominant contracts are *murabahah* and *musyarakah mutanaqisah* due to their structural simplicity and the predictability of installment payments. However, there has been an emerging trend of developing the *mudarabah* scheme in a cooperative model, wherein the bank functions as the capital provider (*sāhib al-māl*) and the developer as the manager (*muḍārib*). This scheme is applied in commercial property development projects, housing capital syndicates, rental properties (boarding houses and apartments), and productive investments based on profit-sharing agreed upon from the outset. Research by Najmah Salamah et al. (2024) confirms that although *murabahah* is more preferred by customers due to its fixed installment structure, the *mudarabah* agreement remains relevant within the framework of productive property investment, especially when property is not merely an object of sale and purchase but also a business tool that generates sustainable profits. Consequently, the *mudarabah* agreement possesses considerable potential in the context of collaborative and performance-based property financing.¹⁴

The implicit risks inherent in *murabahah* based mortgage financing encompass a range of potential factors that have the capacity to impact the stability and feasibility of financing, despite the fact that this contract is characterized as a sale and purchase agreement with a fixed margin. Credit risk, defined as the possibility that a customer will default on their financial obligations, is a primary concern for financial institutions. To mitigate this risk, banks adhere to the 5C principles, which encompass Character, Capacity, Capital, Condition, and Collateral. These principles form the foundation of

¹² Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Jakarta: Gema Insani, 2001), 137.

¹³ Muhammad Ikhlas Supardin et al., "Legal Reasoning by Judges in the Decision of the Religious Court in the DKI Jakarta Area Regarding Sharia Financing," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (April 25, 2025): 1–29, <https://doi.org/10.29240/jhi.v10i1.10917>.

¹⁴ N Salamah, I Permana, and ..., "Implementasi Akad Musyarakah Mutanaqisah Pada Produk Pembiayaan BSI Griya," *Junral Riset Ekonomi Syariah* 4, no. 1 (2024): 9–16, <https://proceedings.unisba.ac.id/index.php/BCSSEL/article/view/10264>.

rigorous verification and analysis processes, aimed at assessing the creditworthiness of potential customers. Additionally, securing collateral is employed as a mitigation strategy against the potential for problematic financing. Conversely, operational risk emanates from potential errors in data input, verification, and legal processes. If not addressed with the requisite degree of caution, these errors have the potential to result in financial losses or legal disputes. Furthermore, the necessity of ensuring legal and Sharia compliance has been identified as a crucial aspect for financial institutions. This obligation arises from the need to guarantee that the structure and implementation of murabahah contracts adhere to the directives outlined in DSN-MUI fatwas. The primary objective of this adherence is to prevent the occurrence of usurious practices or violations of Sharia principles. Such noncompliance could have deleterious consequences for the institution, potentially leading to legal challenges and a tarnished reputation. Concurrent with this process is the evaluation of the market value of property as collateral, which also signals the presence of implied market risk. This risk is characterized by the potential for fluctuations in property prices to impact the efficacy of collateral in safeguarding banks against potential losses. A comprehensive mitigation system and strict procedural compliance are imperative to maintain the integrity and sustainability of Sharia financing products.¹⁵

In the realm of small and medium-sized enterprise (SME) financing, Ramli et al. (2024) contend that mudarabah has the potential to serve as an alternative to private equity financing. This approach enables SME entities to acquire financial resources without contravening sharia principles, while establishing a equitable risk-sharing framework.¹⁶ Abedeen and Salman (2024) posit that profit-sharing systems, such as mudarabah, exhibit intrinsic resilience in the face of economic turbulence, thereby fortifying the sustainability of Islamic banking. The fundamental tenet of this agreement, namely the correlation between risk and return, is consistent with the fiqh *al-Gumm bi al-Gurm* rule, which stipulates that profits are only valid if accompanied by risk.¹⁷ Ghazali et al. (2024) have offered a critique of contemporary interpretations of this principle, which are often misunderstood in modern Islamic finance practices, particularly in the measurement of investment risk.¹⁸

A body of research has emerged in recent years on the application of mudarabah contracts. This research has been contributed to by several scholars, including Imam Alfurqan et al. (2022), Tasya et al. (2022), and Hellen Lie Grace et al. (2024). These

¹⁵ Neng Rima Windy Astuti and Mila Sari Oktapianti, "Mekanisme Penggunaan Akad Murabahah Dalam Pembiayaan Pemilikan Rumah Pada PT. Bank Syariah Indonesia KC Purwakarta Gandanegara," *JAMMIAH (Jurnal Ilmiah Mahasiswa Ekonomi Syariah)* 3, no. 1 (2023): 28–51, <https://doi.org/10.37726/jammiah.v3i1.459>.

¹⁶ Razli Ramli et al., "Shariah Contracts in Private Equity and Its Prospect for Small and Medium Enterprises (SME)," *PaperASIA* 40, no. 5b (September 11, 2024): 165–79, <https://doi.org/10.59953/paperasia.v40i5b.217>.

¹⁷ Zafar Ahmed Abedeen and Syed Ahmed Salman, "Factors Affecting Islamic Banking Sustainability," 2024, 137–56, <https://doi.org/10.4018/979-8-3693-5426-1.ch007>.

¹⁸ Nasrun Mohamad Ghazali et al., "Fiqh Maxim of 'Al-Ghurm Bi Al-Ghunm': A Critique on the Interpretation of the Maxim Relating to Risk-Return Concept in Islamic Banking and Finance," *ISRA International Journal of Islamic Finance* 16, no. 2 (June 28, 2024), <https://doi.org/10.55188/ijif.v16i2.412>.

scholars have contributed to the understanding of various aspects of the application of mudarabah contracts. The mudarabah contract constitutes a form of cooperation between the capital owner (*sāhib al-māl*) and the manager (*mudārib*). Under this contract, profits are shared according to agreement, and losses are borne by the capital owner, except in cases of negligence by the *mudārib*.¹⁹ The focal point of Imam Alfurqan's research endeavors lies in the domain of mudarabah contracts, particularly their implementation within the paradigm of productive financing. A significant aspect of his research is the in-depth exploration of legal safeguards for the parties involved in these financial transactions.²⁰ Conversely, Tasya's study centers on the legal and historical examination of the establishment of Islamic banks, with a particular emphasis on the profit-sharing system and the flexibility in negotiating the ratio applied in the mudarabah contract.²¹ Concurrently, Hellen Lie Grace's research endeavors concentrate on the collection of funds in hajj savings products utilizing the mudarabah mutlaqah contract. This contract is guided by the provisions stipulated in the DSN MUI Fatwa, which serves as a normative reference for its implementation.²²

The novelty of this research lies in the combination of a legal analysis of Law No. 21 of 2008 with empirical practices in the application of mudarabah contracts in the property investment sector. Although prior studies have examined the technical and legal aspects of mudarabah contracts in Islamic banking products, few have specifically researched the implementation of mudarabah contracts in the property investment sector from a legal-normative perspective. The novelty of this research lies in its combinative approach, which integrates positive legal analysis (Islamic Banking Law) with implementation practices in the property sector area that has not been extensively explored in previous literature. Furthermore, the present study endeavors to fortify the legal safeguards available to the parties involved in mudarabah property contracts. To this end, it undertakes a comprehensive examination of the extant dispute resolution mechanisms, both litigious and non-litigious, in accordance with the provisions enshrined within Law No. 21 of 2008. Another novelty is the proposal for a sustainable and equitable mudarabah contract implementation model in property investment, an innovation that has not received sufficient attention in previous studies.

¹⁹ Antonio, *Bank Syariah: Dari Teori Ke Praktik*, 137.

²⁰ I Alfurqan, "Implementasi Akad Pembiayaan Mudharabah Di Perbankan Syariah (Studi Di PT. Bank NTB Syariah Mataram)," *Jurnal Education and Development* 10, no. 1 (2022): 628–36, <https://journal.ipts.ac.id/index.php/ED/article/view/3892%0Ahttps://journal.ipts.ac.id/index.php/ED/article/download/3892/2489>.

²¹ Tasya Aprilia Sarah and Mustapa khamal Rokan, "Analisis Penerapan Sistem Bagi Hasil Pada Pembiayaan Mudharabah Di Bank Syariah Indonesia Cabang Perdagangan," *Pusat Studi Pendidikan Rakyat* 2, no. 1 (2022).

²² Hellen Lie Grace Ghautama and Zela Prabawaning Tias, "Implementasi Akad Mudharabah Tabungan Haji IB Masalah Di Bank Jabar Banten Syariah KP Braga," *PRESTISE* 4, no. 2 (2024): 100–121, <https://doi.org/https://doi.org/10.15575/prestise.v4i2.40824>.

3 Research Methods

The research method employed in the study, entitled "Implementation of Mudarabah Contracts in Property Investment (An Analysis of Law No. 21 of 2008 on Islamic Banking)," utilizes a descriptive library research approach. The objective of this approach is to provide an in-depth description of the characteristics and implementation of mudarabah contracts in accordance with Islamic law and national regulations. The present study is supported by a comprehensive array of primary sources, encompassing classical and contemporary fiqh books, legal codes, and secondary sources, including journals, articles, and legal literature. The methodological approach employed in this study encompasses a normative approach, which involves the examination of Sharia provisions in light of the Qur'an, Hadith, and the perspectives of scholars. Additionally, a historical approach is utilized to trace the evolution of mudarabah practices. Finally, a legal approach is adopted to analyze the legal implications of Law No. 21 of 2008. The data is then subjected to a deductive analysis, a methodical process that seeks to elucidate the intricacies of mudarabah contracts within the property sector. This systematic approach ensures the production of conclusions that are both precise and objective.²³

4 Results and Discussion

4.1 The Concept of Mudarabah Contract

The term "mudarabah" is derived from the Arabic word ضرب, which carries the connotation of traversing or exploring the earth in pursuit of sustenance bestowed by Allah swt. This concept is analogous to that of *al-Qirāḍ* (equality).²⁴ Mudarabah constitutes a partnership between the owner of funds or investor and the manager of capital to carry out a specific business venture with profit sharing.²⁵

The fundamental objective of the mudarabah contract is to establish a framework for collaboration between the capital provider and an individual who possesses expertise in the management of financial resources. A considerable number of individuals possess capital yet lack the expertise necessary for its effective management and utilization. Conversely, there are others who, despite possessing expertise in commerce, lack the necessary capital. Islam, a religion that emphasizes the collective management of capital, facilitates cooperation between capital owners and individuals skilled in capital management and utilization.²⁶

One of the legal bases for mudarabah that is narrated by Ibn Majah from Ṣuḥaib ra. is that the Prophet Muhammad saw. said:

²³ Suryana, *Metodologi Penelitian: Model Praktis Penelitian Kuantitatif Dan Kualitatif*, 1 (Bandung: Universitas Pendidikan Indonesia, 2010), 34.

²⁴ Abū al-Faḍl Jamal al-Dīn Muḥammad bin Mukarram bin Alī ibn Manẓūr al-Anṣarī, "Lisān Al-'Arab," III (Beirut: Dār Ṣādir, 1994), 544.

²⁵ Mahkamah Agung Republik Indonesia, "Kompilasi Hukum Ekonomi Syariah" (2011), 10.

²⁶ Nasrun Haroen, *Fikih Muamalah* (Jakarta: Gaya Media Pratama, 2007), 176.

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: ثَلَاثٌ فِيهِنَّ الْبَرَكَةُ: الْبَيْعُ إِلَى أَجَلٍ، وَالْمُقَارَضَةُ، وَخَلْطُ
الْبُرِّ بِالشَّعِيرِ لِلْبَيْتِ لَا لِلْبَيْعِ²⁷

Meaning:

There are three blessed things: deferred sales, providing capital (mudarabah), and mixing wheat with barley for family consumption, not for sale.

The concept of mudarabah has existed since the pre-Islamic era and remained permissible as a practice during the Islamic era. Ibn Hajar stated, "It is evident that the concept of mudarabah was in existence during the era of the Prophet, peace be upon him, and he was cognizant of its presence and acknowledged its significance. In the absence of such a condition, the act would undoubtedly be deemed unequivocally proscribed."²⁸ The Companions frequently engaged in mudarabah contracts by providing property owned by orphans as capital to others. There is no record indicating that the other Companions objected to this practice. Consequently, this phenomenon can be regarded as a consensus.²⁹

The elements of mudarabah are as follows: The contracting parties are defined as the entities that enter into the agreement. The statement of intent is the document that formally expresses the purpose or objective of the agreement. Capital refers to the financial resources or assets available for investment or utilization within the context of the agreement. Work encompasses the actions or services to be performed under the agreement, while profit refers to the financial gain or benefit expected as a result of the execution of the agreement. The following classification of mudarabah contracts is proposed. The investor's authority granted to the entrepreneur is the basis for the distinction between the two types of contracts.

- a. The following assertion is made: Mudarabah Muṭlaqah constitutes a form of cooperation between *ṣāhib al-māl* and *muḍārib* that is characterized by its extensive scope, devoid of limitations pertaining to the nature of business, temporal constraints, or geographical boundaries. This unrestricted investment in banking or other Islamic financial institutions (non-banks) is applied to savings and deposits.³⁰
- b. Mudarabah Muqayyadah is a particular type of mudarabah contract in which the capital owner stipulates specific conditions or restrictions concerning the geographical scope of the business, the nature of the enterprise, the goods that are the subject of the business, the temporal framework, and the source of the goods. These restrictions are often indicative of the general tendency of *ṣāhib al-māl* in entering the business world.³¹

In practice, two distinct categories of mudarabah schemes are identified:

²⁷ Abū 'Abd Allāh Muḥammad Yazīd Ibn Mājah al-Rab'ī Al-Qazwīnī, *Jāmi' Al-Sunan (Sunan Ibn Mājah)*, II (Al-Jubayl: Dār al-Ṣiddīq li al-Nashr, 2014), 490.

²⁸ Sayyid Sābiq, "Fiqh Al-Sunnah," I (Beirut: Dār al-Kitāb al-'Arabī, 1977), 27.

²⁹ Abū 'Umar Dubyān bin Muḥammad Al-Dubyān, "Al-Mu'amalat Al-Māliyyah Aṣālah Wa Al-Mu'aṣarah," III (Riyād: Maktabah Malik, 2011), 49.

³⁰ Muḥammad bin Aḥmad al-Khaṭīb Syarbīnī Al-Syāfi'ī, "Mugnī Al-Muhtāj Ilā Ma'rifah Ma'anī Alfāz Al-Manhāj," I (Lebanon: Dār al-Kutub al-'Alamiyyah, 1994), 310.

³¹ Abū 'Umar Dubyān bin Muḥammad Al-Dubyān, "Al-Mu'amalātu Al-Māliyyah Aṣālah Wa Mu'aṣarah," I (Riyād: Maktabah al-Mālik, 2011), 133.

- a. The following assertion is made: Direct financing is a scheme that applies directly between two parties, namely *ṣāhib al-māl* in direct contact with *muḍārib*. This scheme is a conventional one that can be found in classical Islamic fiqh books. This is the mudarabah practice that was carried out by the Prophet and his companions, as well as by Muslims after them. In the context of direct financing, the role of financial institutions is rendered superfluous. A classical mudarabah is characterized by a specific relationship between the *ṣāhib al-māl* and the *muḍārib*, which is typically a personal and direct relationship based on mutual trust. The *ṣāhib al-māl*, or "the merchant of gold," as he is often referred to in Islamic finance, is known to exercise discernment in entrusting his capital. He is said to prefer entrusting his capital to an individual with whom he is well-acquainted, and this is said to be based on both professional competence and moral integrity.
- b. Indirect financing, otherwise known as mudarabah, involves three parties. This additional party is played by a sharia financial institution as an intermediary that brings together the *ṣāhib al-māl* and the *muḍārib*. These funds can be deposited into savings accounts or invested in other financial instruments. In addition, financial resources that have been amassed are subsequently reinvested by the banking institution in the form of earning assets.³²

4.2 Law No. 21 of 2008

The enactment of Law No. 21 of 2008 (Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah) has established a legislative framework that provides a legal foundation for Islamic banking operations in Indonesia. The absence of a distinct legal framework to govern Islamic banking has historically impeded its development.³³

The fatwa of the National Sharia Council (DSN-MUI) on profit-sharing through mudarabah stipulates that it is a cooperative agreement between two parties. The first party, designated as the "*mālik*," provides all the capital, while the second party, known as the "*āmil*," functions as the manager. The profits from the business are distributed between the parties in accordance with the terms outlined in the contract.³⁴

The National Sharia Council (DSN) has also elucidated the concept of mudarabah in Fatwa No. 07/DSN-MUI/IV/2000, defining it as a form of financing provided by Islamic Financial Institutions to other parties for the purpose of conducting productive businesses. In this financing arrangement, the Islamic financial institution (IFI) assumes the role of the *ṣāhib al-māl* (owner of the funds), providing the entirety of the necessary capital for the project (business). The entrepreneur (nasabah) functions as the *muḍārib* or business manager.³⁵

³² Adiwarman Karim, *Bank Islam Analisis Fiqih Dan Keuangan*, IV (Jakarta: PT Raja Grafindo Persada, 2011), 210.

³³ Muhammad, *Manajemen Pembiayaan Bank Syariah*, II (Yogyakarta: UUP YKPN, 2005), 109.

³⁴ Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI), *Fatwa Nomor 07/DSN-MUI/IV/2000 Tentang Pembiayaan Mudharabah* (Jakarta: DSN-MUI, 2000).

³⁵ Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI).

According to Article 20, paragraph (1) of the KHES, the term "contract" is defined as an agreement between two or more parties to perform or refrain from performing certain legal actions.³⁶ The business activities of Islamic commercial banks include:

- a. The following assertion is made: The collection of funds is executed through the medium of deposits, encompassing current accounts, savings accounts, and analogous instruments based on a wadiah contract or other agreements that do not contravene sharia principles.
- b. The collection of funds is achieved through investments such as deposits, savings, or other forms equivalent to these based on a mudarabah contract or other contracts that do not conflict with sharia principles.
- c. The distribution of financing for profits is contingent upon the utilization of mudarabah contracts, musyarakah contracts, or other contracts that do not contravene sharia principles.
- d. The distribution of financing is to be executed in accordance with the principles of murabahah, salam, or istisna', and other contracts that do not conflict with sharia principles.
- e. The following assertion is made: The distribution of financing is to be conducted in accordance with qard or other contracts that do not conflict with sharia principles.
- f. The purchase, sale, or guarantee of third-party securities issued on the basis of real transactions based on Sharia principles is subject to the condition that the transaction is undertaken at its own risk. The aforementioned transactions include, but are not limited to, ijarah, musyarakah, mudarabah, murabahah, kafalah, or hawalah contracts.³⁷

4.3 Application of Mudarabah Contracts in Property Investment by Sharia Financial Institutions

Investment, in the context of Islamic banking, refers to funds entrusted by customers to Islamic banks or Sharia Business Units (SBUs) through mudarabah contracts or other contracts in accordance with Sharia principles. These funds are typically deposited or saved by the customers, and the investment is subject to the specific regulations and guidelines set forth by Sharia law. As indicated by recent studies, investment has become a prevalent financial practice among Indonesians. This investment can be categorized into three primary forms: fixed business investment, which refers to the acquisition of physical assets; fixed residential investment, encompassing residential property; and inventory investment, involving raw materials or finished goods.³⁸ In the property sector, investment has exhibited an upward trend on an annual basis. This is due to the sector's perception as a lucrative opportunity and its reflection of the sustainable enhancement of the national economy.³⁹

³⁶ Tim Redaksi, *Kompilasi Hukum Ekonomi Syariah (KHES)* (Bandung: Fokus Media, 2010).

³⁷ Republik Indonesia, Undang-Undang RI No. 21 tahun 2008 tentang Perbankan Syariah.

³⁸ Eduardus Tendelilin, *Analisis Investasi Dan Manajemen Portofolio* (Yogyakarta: BPFE, 2001), 1.

³⁹ Nurul Huda and Mustafa Edwin Nasution, *Investasi Pada Pasar Modal Syariah* (Jakarta: Kencana Prenada Media Group, 2008), 16.

The implementation of mudarabah contracts in property investment by Islamic financial institutions in Indonesia is a significant innovation in the development of the national Islamic economy. The mudarabah contract constitutes a form of collaboration between the capital proprietor (*ṣāhib al-māl*) and the business operator (*muḍārib*), whereby the capital is furnished by the *ṣāhib al-māl* and managed by the *muḍārib* to cultivate a halal business, in this instance, property investment. The distribution of profits is governed by the terms stipulated in the contract, while losses are shouldered by the capital owner, unless there is evidence of negligence or misconduct on the part of the business manager.⁴⁰

Property investments made through mudarabah agreements exhibit distinct characteristics when compared to conventional investments. A property can be defined as an object that can be used as an investment. Such properties include tangible assets, such as land, buildings, machinery, vehicles, and office equipment, as well as intangible assets, such as goodwill, franchises, copyrights, and securities, including shares and promissory notes. The range of property types that are subject to financing is extensive, encompassing commercial buildings (e.g., offices, hotels, shop houses), residential properties (e.g., houses, apartments), industrial properties (e.g., warehouses, factories), public facilities (e.g., hospitals, schools, petrol stations), and entertainment facilities (e.g., cinemas, convention centers).⁴¹

In practice, there are several mudarabah contract schemes applied by Islamic financial institutions in property investment. These schemes include the following: bilateral mudarabah, which is a partnership between one capital owner and one business manager; multilateral mudarabah, which involves several capital owners with one business manager; and tiered mudarabah, which involves an intermediary between the capital owner and the final manager. These schemes offer a degree of flexibility in the management of financial resources and the development of real estate projects. Additionally, they facilitate the involvement of multiple stakeholders in Sharia-compliant investment.⁴²

This contract is frequently utilized in productive projects, including the construction of boarding houses, apartments, and Sharia housing. Concurrently, the general public functions as a constituent element within this scheme, in the capacity of mudarabah deposits, which financial institutions subsequently allocate to property development projects.⁴³ The implementation of mudarabah contracts in property investment has been observed in various regions of Indonesia, particularly in major cities that have demonstrated significant growth in the property sector, such as Jakarta, Surabaya, and Bandung. This practice witnessed a marked increase following the enactment of Law No. 21 of 2008 concerning Sharia Banking, which granted legal legitimacy for sharia banks to operate profit-sharing contracts, including mudarabah. According to Tasya et al. (2022), there has been a significant surge in the use of this contract from 2010 to 2025,

⁴⁰ Karim, *Bank Islam Analisis Fiqih Dan Keuangan*, 114.

⁴¹ Iggi H. Achsien, *Investasi Syariah Di Pasaar Modal*, II (Jakarta: PT. Gramedia Pustaka Utama, 2003), 50.

⁴² Makhalul Ilmi SM, *Teori & Praktek Lembaga Mikro Keuangan Syariah: Beberapa Permasalahan Dan Alternatif Solusi* (Yogyakarta: UII Press, 2002), 32.

⁴³ Alfurqan, "Implementasi Akad Pembiayaan Mudharabah Di Perbankan Syariah (Studi Di PT. Bank NTB Syariah Mataram)."

especially after the issuance of Fatwa DSN MUI No. 07/DSN-MUI/IV/2000, which further strengthened its Sharia legitimacy.⁴⁴

The mudarabah contract is selected for property investments due to its provision of a equitable risk and profit-sharing system that is consistent with Sharia principles. This approach contrasts with the conventional interest-based system, wherein financial institutions persist in generating revenue even in instances where a project results in losses. In their 2024 study, Najmah Salamah et al. demonstrate that mudarabah contracts are well-suited for investment in productive properties, such as rental apartments and boarding houses, due to their capacity to generate sustainable profits. Furthermore, the mudarabah contract offers a degree of flexibility in investment structures, particularly in contexts involving multiple parties and collaborative financing models.⁴⁵

In Indonesia, Sharia financial institutions including Sharia banks and Sharia business units within commercial banks have historically utilized mudarabah contracts as the primary instrument for the collection and distribution of public funds. The financial resources amassed through mudarabah deposits or savings are subsequently allocated to the real estate sector in the form of investment financing, working capital, and consumer loans. Investment and working capital loans are typically allocated to developers for property projects, while consumption loans are granted to individuals as consumers of these property products.⁴⁶ Islamic financial institutions do not merely function as lenders; they also act as business partners, sharing both risks and profits with property project managers.

According to Law No. 21 of 2008 on Islamic Banking, the collection of public funds by Islamic banks is permitted under the condition that the principles of mudarabah contracts do not conflict with Islamic law (Article 5, point 24). This legislative framework establishes the legal foundation for Islamic financial institutions to offer mudarabah-based property investment products. However, the legal interpretations of mudarabah disputes in Islamic courts remain diverse, necessitating harmonization of these interpretations and enhancing legal literacy in practice.⁴⁷

The Shariah principles that are applied in mudarabah contracts place significant emphasis on the clarity of capital, profit sharing, and fair risk management. The capital utilized in a mudarabah contract must be in the form of cash, as opposed to goods or receivables, in order to circumvent the potential risks of *garar* or uncertainty of value. The terms of the capital and profit-sharing scheme must be explicitly delineated and mutually agreed upon at the inception of the contract. In the absence of negligence or violation by the business manager, losses are borne by the owner of the capital. Islamic financial institutions are only permitted to supervise, and they are not directly involved in project management. This is done in order to maintain the independence and professionalism of business managers. Profit sharing must be equitable and commensurate

⁴⁴ Sarah and Rokan, "Analisis Penerapan Sistem Bagi Hasil Pada Pembiayaan Mudharabah Di Bank Syariah Indonesia Cabang Perdagangan."

⁴⁵ Salamah, Permana, and ..., "Implementasi Akad Musyarakah Mutanaqisah Pada Produk Pembiayaan BSI Griya."

⁴⁶ David Cernelis and Hendri Setiadi, *Bisnis Dan Investasi Properti Indonesia* (Jakarta: PT. Elex Media Komputindo, 2001), 145.

⁴⁷ Supardin et al., "Legal Reasoning by Judges in the Decision of the Religious Court in the DKI Jakarta Area Regarding Sharia Financing."

with the terms of the agreement to cultivate a robust partnership between capital owners and business managers.⁴⁸

The principle of mudarabah financing can be defined as a form of productive financing in which Islamic financial institutions function as the owners of the funds, while entrepreneurs act as business managers. Despite the application of the mudarabah contract, the practice in the field frequently exhibits inconsistency in the implementation of the profit-sharing scheme. Consequently, financial institutions are compelled to undertake active supervision and guidance to uphold sharia principles in accordance with the DSN MUI fatwa No. 07/DSN MUI/IV/2000. In the context of Islamic banking, profit loss sharing instruments, such as mudarabah, have been observed to effectively mitigate credit risk when compared to alternative contract models. This observation underscores the pivotal role of financial institutions in the execution of mudarabah contracts, particularly their function as supervisors and risk managers.⁴⁹

A number of challenges have been identified in the implementation of mudarabah contracts in property investment. These challenges have led to a situation in which not all aspects of the contracts are in accordance with the applicable legal provisions. A lack of understanding regarding investment risks and profit-sharing mechanisms has been identified as a contributing factor to disputes. The conditions for the success of this contract are the clarity of the capital, the professionalism of the muḍārib, and the agreement of the ratio from the beginning of the contract.⁵⁰

A review of the extant literature reveals indications that the implementation of the contract in question only partially fulfills the provisions in Article 20, paragraphs (1) and (2), of Law No. 21 Year 2008. This partial fulfillment is evidenced by the findings of Imam Alfurqan (2022) and Su-pardin et al. (2025). The aforementioned partial fulfillment is evidenced in terms of mudarabah-based fundraising and the implementation of business cooperation. However, in practice, the application of the principles of transparency, supervision, and profit sharing as outlined in Article 21, letter b (regarding the distribution of funds based on sharia principles), as well as Article 26 (regarding the obligation of risk management and sound governance), is often not optimally implemented. One indication of this phenomenon is the limited engagement of banking institutions in the supervision of property development projects. Additionally, the financial statements of these projects frequently exhibit deficiencies, which can result in reduced profits for shareholders. Furthermore, a significant number of mudarabah contracts are executed without explicit clarity regarding standard nisbah ratios and transparent dispute resolution mechanisms, despite the stipulations outlined in Article 55 of the Sharia Dispute Resolution Code. Conversely, the practice of raising funds through mudarabah deposit products is in accordance with Article 19 letter b and Article 5 of the Islamic Banking Law, which stipulates that fund-raising activities must be based on

⁴⁸ Ganjar Isnawan, *Jurus Cerdas Investasi Syariah* (Jakarta: Laskar Aksara, 2012), 45.

⁴⁹ Sakti Arief Wicaksono, Permata Wulandari, and Nur Dhani Hendranastiti, "The Effect of Industry Sector and Profit-Loss Sharing Financing on Credit Risk of Islamic Banks in Indonesia Considering COVID-19 Pandemic," *Journal of Islamic Accounting and Business Research*, June 27, 2024, <https://doi.org/10.1108/JIABR-04-2023-0135>.

⁵⁰ Mohamad Ghazali et al., "Fiqh Maxim of 'Al-Ghurum Bi Al-Ghunm': A Critique on the Interpretation of the Maxim Relating to Risk-Return Concept in Islamic Banking and Finance."

contracts that are not contrary to sharia principles.⁵¹ It is evident that enhancements are imperative with respect to the internal regulations of Islamic banks. These enhancements should encompass the augmentation of the supervisory function of the Sharia Supervisory Board and the provision of technical training for project managers. The implementation of mudarabah contracts in property investment must be guided by the principles of justice, transparency, and sustainability, as outlined in Law No. 21 of 2008 and Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000.

5 Conclusion

A thorough analysis of the implementation of mudarabah contracts in property investment, as outlined in Law No. 21 of 2008, reveals certain shortcomings in the execution of these contracts. A close examination of the findings indicates that the implementation does not fully align with the stipulated legal provisions, particularly with regard to the transparency of profit sharing (Article 21 letter b), risk monitoring (Article 26), and dispute resolution mechanisms (Article 55). However, it is noteworthy that the collection and distribution of funds with mudarabah contracts have been executed in accordance with Articles 19 and 20. From a theoretical standpoint, this finding serves to reinforce the position of the Islamic Banking Law as a legal instrument that distinctly differentiates between conventional contracts, which are based on interest, and sharia contracts, which are based on partnership and shared risk. In practice, the implementation of mudarabah contracts in accordance with sharia principles has a significant effect on increasing consumer confidence, especially among investors and customers who seek a fair, transparent, and usury-free financing system. This, in turn, contributes to the continued improvement in the credibility of Islamic financial institutions through the application of contracts that are consistent with sharia principles and regulations.

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⁵¹ Alfurqan, "Implementasi Akad Pembiayaan Mudharabah Di Perbankan Syariah (Studi Di PT. Bank NTB Syariah Mataram)"; Supardin et al., "Legal Reasoning by Judges in the Decision of the Religious Court in the DKI Jakarta Area Regarding Sharia Financing."

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