APPLICATION OF FINANCING RISK MANAGEMENT IN MUDHARABAH CONTRACTS IN SHARIA BANKING TO ENSURE SHARIA COMPLIANCE IN THE PERSPECTIVE OF ISLAMIC LAW

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Abstract: This study aims to analyze the determination of financing risk management in mudharabah contracts in Islamic banking in ensuring sharia compliance based on the perspective of Islamic law. The method used in this study is a qualitative method with a descriptive-analytical approach. The data was collected through in-depth interviews with Islamic banking practitioners, Islamic law experts, as well as literature studies from fiqh books, DSN-MUI fatwas, and Islamic banking regulations applicable in Indonesia. The results of the study show that the application of risk management in mudharabah contracts involves identifying, analyzing, mitigating, and evaluating potential risks, such as moral hazard risks, unclear profit sharing ratios, and defaults. The principles of sharia compliance implemented include justice ('adl), transparency (tabayyun), and trust which are the basis for carrying out financing contracts. The implementation of good risk management in accordance with Islamic legal principles can help prevent practices that are contrary to sharia and protect the rights and obligations of both parties in the mudharabah contract. Thus, the determination of structured risk management in the mudharabah contract plays an important role in maintaining sharia compliance, increasing customer trust, and creating a sustainable Islamic banking system in accordance with Islamic legal principles.

Keywords: Risk Management, Akad Mudharabah, Sharia Banking, Sharia Compliance, Islamic Law

INTRODUCTION

Bank Syariah was established with the aim of promoting and developing the application of Islamic principles in the field of muamalah into financial and banking transactions. The main principles followed by Islamic banks are the prohibition of the practice of riba in various forms of transactions, conducting business and trade activities based on legitimate acquisition, and efforts to nourish zakat as a means of wealth distribution (Yahya, 2011). stated that the prohibition of interest in sharia has the consequence of the absolute elimination of interest. The Profit and Loss Sharing (PLS) theory was built as a new offer outside the interest system that tends not to reflect justice (injustice/tyranny) because it discriminates against the sharing of risks and profits for economic actors. PLS is a business contract where profits and/or losses that may arise from such business activities will be borne together.

Financing is one of the functions of financial institutions, especially Islamic banks, by distributing funds with the aim of meeting the needs of parties who lack funds (deficit) to support planned investments. Mudharabah is a business cooperation contract between two parties where the first party (shahibul maal) provides all the capital (100%), while the other party is the manager. The profits of the joint venture are divided according to the agreement outlined in the contract in the form of a profit-sharing ratio. Meanwhile, if it suffers a loss, it will be borne by the owner of the capital as long as the loss is not due to the negligence of the manager. But if he has a share in the loss, then he is obliged to bear it (Antonio 2001: 365).

The definition of a bank according to Banking Law No. 10 of 1998 is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of many people. Meanwhile, Islamic banks are banks that operate with sharia principles, which refer to the Qur'an and the Prophet's Hadith[2], meaning that Sharia banks operationally and theoretically follow the Sharia provisions contained in the Qur'an and the Prophet's Hadith, namely the procedure for believing in Islam.

The MUI fatwa on the prohibition of bank interest some time ago has been able to generate considerable optimism about the role and prospects of Islamic banks in the future. Islamic banks have become a rational alternative to conventional banks. If conventional banks operate with an interest system, then Islamic banks work based on the principle of willingness to be willing or consensual (between addin minkum) and there can be no wrongdoer and wrongdoer. This is why Islamic banks are the right solution in the midst of today's global monetary and financial crisis.

One of the main functions of Islamic banks is to distribute funds. The distribution of funds carried out by Islamic banks is the provision of financing to debtors in need, both for business capital and for consumption. The financing practice that is actually carried out by Islamic financial institutions is financing with a profit-sharing system. This profit-sharing practice is packaged in two types of financing, namely mudharabah financing and musharakah financing. Another type of financing is packaged in contracted financing or a buying and selling system, namely murabahah financing, bai' assalam and bai isthisna' (Muhamad, 2002).

Islamic law is seen as an expression of God's command for Muslims. In its application, the understanding of Islamic law is a system that is an obligation for all Muslims. As mentioned earlier, the meaning of Islamic law is the same as sharia. Sharia literally means "a clean and well-traveled road to water". The linguistic meaning of Sharia is echoed in its technical usage: just as water is essential to human life, so the clarity and truth of Sharia is a means of life for the soul and mind (Hilda Sanjayawati, et al. 2024).

The formulation of the problem is a question to be solved, the formulation of the problem in this study is how to apply Financing risk management in Islamic law used by Sharia Banks and how to handle in the event of Financing Risk/bad credit in Sharia Banks in Islamic law. A sharia financing that has received approval from the financing committee, then an official letter will be made regarding the contract agreement that has an important role in financing. This is the basis for the financing agreement. In fiqh terminology, the contract is defined as the relationship between ijab (statement of making a bond) and qabul (statement of getting a bond) in accordance with the will of sharia which affects the object of the bond. Compilation of Sharia Economic Law, an agreement is a convention on an agreement between two or more parties to do or not to do a legal act.

LITERATURE REVIEW

Risk management is a systematic process applied to identify, analyze, assess, control, and monitor risks. The main goal of risk management is to minimize the negative impact that may arise and maximize the profitable opportunities for the company. The risks faced by companies can come from a variety of sources, such as financial uncertainty, legal obligations, strategic management errors, accidents, and natural disasters. Etimololgi belrasal from the English language is management, which comes from the word manage which means to manage. Management in KBBI has the meaning of a process in using all resources clearly and efficiently. Risk Management is a massive identification until its control is in the face of all activities of the bank by paying attention to all risks so that it is normal and well intelligent. Risk management can be understood as a reasonable and sensible method.

In the entire process of identifying and supervising all activities and providing reports if there are problems in their activities from the explanation above, it can be described and outlined that risk management in financing is a process of managing negative possibilities that can occur in financing practices, related to the fulfillment of loan payment obligations. Risk management for Muslims has a function that needs to be applied in daily activities. This is shown as proof in this life that all activities are carried out in accordance with the commands of Allah swt. And not afraid of all problems in the form of factors in terms of the economy that result in bankruptcy. Because of the creator who always gives the blessings of life (Hilda Sanjayawati, et al. 2024).

Financing Risks

The risk in question is the risk contained in Islamic banking activities. Risks in financing include one of the risks that arise due to the inability of customers to return all loans taken from banks in accordance with existing agreements. In general, financing is closely related to Islamic financial institutions, this is because the word credit is very incompatible with the situation of Islamic institutions that are firmly committed to Islamic values in the entire lending process which is a solitary contract (Hilda Sanjayawati, et al. 2024).

Akad Mudharabah

Mudharabah is a contract for the sharing of profits It is not mentioned in the Qur'an but the permission comes from the Sunnah of the Prophet Muhammad (PBUH). The Mudharabah transaction permit is due to the fact that there are some surplus capital investors (rabbul maal) who lack business and investment skills, and there are entrepreneurs who have business skills but lack capital. Mudharabah is an agreement between financiers and business managers who have expertise in their fields to carry out business activities with agreed provisions on profit sharing and loss sharing. Mudharabah is an agreement between sohibul mal and mudharib to work in business, the bank provides capital and the customer as the business manager, the profits are divided according to the agreement and the losses are borne by the financier when it is not the negligence of the manager (Dedy Rachmad, 2021).

Mudharabah is a contract legalized by shariah, in which one party of the financier provides capital, while the other party, provides expertise in entrepreneurship. The profits obtained from the business are shared by both parties according to a predetermined profit sharing ratio. Losses must be borne by financiers if they are not due to mudharib's negligence. Unlike a sales contract, Mudharabah is not binding, that is, any party can terminate the Mudharabah agreement. Mudharib has all the responsibility to run the business, therefore financiers are not allowed to interfere (Bank Indonesia, 2013. "Analysis of the Transition of Profit Sharing Calculation Practice from the Revenue Sharing Principle to the Profit and Loss Sharing Principle", Bank Indonesia Research, Jakarta).

According to Law No. 21 of 2008 Article 1 of Sharia Banks are banks that carry out their activities based on sharia principles which in their activities provide payment traffic services. The emergence of Islamic banking is an alternative in the financial system with an interest-free character. Article 3 states that Sharia Banking aims to support the implementation of national development in order to increase justice, togetherness, and equitable distribution of people's welfare. Therefore, Islamic banking implements a profit-sharing system that is considered to be able to increase justice in society. However, in terms of whether or not there is compensation (profit), fiqh muamalat further divides the contract in Islamic banks into two parts, namely the tabarru' contract and the tijarah/mu'awadah contract (Adiwarman Karim, 2011).

However, the current practice of Islamic banking is far from this theoretical model, in the sense that on the asset side of the use of mudharabah financing is minimal and on the side of the obligation to use it, there are those who argue that mudharabah financing has serious problems, does not have the effect of debt financing bonds and can cause negative incentives. Mudharabah will be the best on the other hand, for financiers who are faced with the same three alternatives, Mudharabah financing will be the worst. These factors can explain the decline of Mudharabah as a financing vehicle by Islamic banks (M. Umer Chapra and Habib Ahmed, 2008).

Sharia Compliance

Compliance is fulfilling the request of another person, defined as an action or act that is carried out based on the wishes of another person or doing anything requested by another person, compliance refers to behavior that occurs in response to a direct request and comes from another party. Based on Bank Indonesia Regulation No.13/2/PBI/2011 concerning the implementation of the compliance function of Commercial Banks, what is meant by compliance is the values, behaviors, and actions that support the creation of compliance with Bank Indonesia's provisions and applicable laws and regulations, including sharia principles for sharia commercial banks and sharia units. Sharia compliance is the fulfillment of all sharia principles in all activities carried out as a manifestation of the characteristics of the institution.

This compliance is monitored through an extra layer of oversight from a special council of Islamic scholars, which has a consultative and supervisory role. The consultative role is mostly in the development of Sharia-compliant products, while the purpose of the supervisory function is to ensure that operations and activities are carried out in accordance with what has been previously approved by the Sharia Council. For example, the Sharia Council issues a statement in the annual report of a compliant company to prove whether the Islamic bank has conducted its business in accordance with Sharia. Islamic banks have been widely criticized by Islamic scholars and Islamic finance experts because they are strongly believed to be non-compliant with Islamic law (Dedy Rachmad, 2021).

Sharia compliance is a comparison of the sharia economic system with the conventional economic system or between sharia banking and conventional banking. In the context of banking, this is a crucial issue, because currently, the Islamic bank system still follows the conventional bank system in terms of products, human resources or operations. The public still views Islamic banks as the same system as conventional banks. There are factors that cause this perception to still be attached from the community itself, Islamic bank practitioners or regulators.

Indonesia, like other countries, still recognizes the dual banking system, where conventional and sharia are equally recognized and applicable.

Islamic Law

Islamic law or sharia is a system of rules based on the revelation of Allah SWT and the Sunnah of the Prophet. The meaning of Islamic law is a law that regulates behavior, which is binding for all its adherents. Islamic law is seen as an expression of God's command for Muslims. In its application, the understanding of Islamic law is a system that is an obligation for all Muslims. As mentioned earlier, the meaning of Islamic law is the same as sharia. Sharia literally means "a clean and well-traveled road to water". The linguistic meaning of Sharia resonates in its technical usage: just as water is essential to human life, so the clarity and truth of Sharia is the means of life for the soul and mind. Islamic Shari'a according to language means the path that mankind takes to reach Allah. The definition of Islamic law acts as a guideline for life that must be obeyed by all Muslims, including prayer, fasting and alms to the poor (Hilda Sanjayawati, et al. 2024).

After understanding the meaning of Islamic law, you must of course know the source of Islamic law. Here are some sources of Islamic law:

1. The Qur'an The first source of Islamic law is the Qur'an. The Qur'an is the word of Allah revealed to the Prophet Muhammad SAW. The Qur'an contains contents that contain commandments, prohibitions, encouragements, Islamic stories, provisions, wisdom and so on. The Quran explains in detail how humans should live their lives.
2. Hadith is something based on the Prophet Muhammad SAW. This law is obtained through the words, actions, and example of the Prophet. In the hadith, there are rules that detail all rules that are still global in the Qur'an.
3. Ulama Agreement In addition to the Qur'an, the source of Islamic law that can be considered is the agreement of ulama or Ijma. The agreement of scholars that can be accounted for as Islamic law is what happened in the time of the Prophet's companions.
4. Qiyas or legal analogies are a powerful tool for obtaining a verdict on a new issue. Qiyas explains something that has no evidence in the Qur'an or hadith by comparing something similar to something that is intended to be known by the law. For example, drugs have been considered impermissible, through a legal analogy of the prohibition of alcohol regulated in the Qur'an.

METHOD

This study uses a qualitative method with a descriptive-analytical approach to analyze the determination of financing risk management in mudharabah contracts in Islamic banking to ensure sharia compliance in the perspective of Islamic law. Data collection was carried out through library research by reviewing fiqh books, DSN-MUI fatwas, OJK regulations, scientific journals, and other relevant literature, as well as through in-depth interviews with Islamic banking practitioners and Islamic jurists. Data analysis is carried out thematically by reducing data, categorizing it into themes such as risk identification, risk mitigation, and principles of sharia compliance, to drawing conclusions. To ensure the validity of the data, a triangulation technique is used by comparing data from literature studies, interviews, and observations. This approach is expected to provide a comprehensive understanding of the role of risk management in maintaining sharia compliance with the mudharabah contract in Islamic banking.

RESULT AND DISCUSSION

Financing Products A form of financing that is basically in accordance with the ability and convenience in a contract that is focused on the Murabahah contract, where the contract and the benefits obtained are clear. If seen from the form, it is in line with the conditions of the environment or society. where trust and credibility are not good enough and the economic condition of the community expects more instant finance. The various forms of financing in Sharia Banks are also generally more dominant in funding in collaboration with sharia-based institutions, although there are also various forms of funding that fully cover many people regardless of their religious orientation (Putra, P. A., 2021).

Sharia Banking Risk Management

Based on language, risk has the meaning of unpleasant consequences (harmful, harmful) from an act or action (Adiwarman Karim, 2013).

Meanwhile, Risk management means efforts to reduce the impact of the element of uncertainty. If the above words are added with the words investment and financing, it becomes investment and financing risk, it will give the meaning of unpleasant consequences (detrimental, harmful) of an investment and financing transaction. Thus, investment and financing risk management means an effort to reduce the impact of the element of uncertainty and the potential to cause financial losses from investment and financing transactions (Muhammad Syarif Surbakti, 2016).

Risk in the context of banking is a potential event, both anticipated and unanticipated, that negatively impacts the bank's revenue and capital. These risks cannot be avoided, but they can be managed and controlled. Therefore, like banking institutions in general, Islamic banks also require a series of procedures and methodologies that can be used to identify, measure, monitor, and control risks arising from business activities, or commonly referred to as risk management (Adiwarman Karim, 2010).

Risks and Mitigation of Mudharabah Financing Risks

(Fatwa DSN NO:07/DSN-MUI/IV/2000 concerning Mudharabah). The risks found in mudharabah financing in Islamic banking, from field findings in Islamic banks that were studied were financial risk, investment risk, compliance risk, and legal risk.

1. Financial Risk

   Mudharabah financing is possible to face the risk of default payment from mudharib. The failure can be due to mudharib suffering losses in his business, mudharib suffering losses due to deliberate default, or force majour circumstances.

   Based on information, mudharib from Micro, Small and Medium Enterprises (MSMEs) does not have financial statements for their business. Financial statements are a control tool for shohibul maal (Islamic banking) to mitigate risks and at the same time to determine the level of mudharib risk.

   However, with such conditions, Islamic banks (Bank Muamalat) do not provide much financing with mudharabah contracts. Because this mudharabah contract is high risk, Islamic banks do not dare to distribute mudharabah financing to individual customers even though their turnover is large. (Muhammad Syarif Syrbakti, 2016)

2. Compliance Risks

   Compliance risk is a risk due to non-compliance with regulations that have been made, both internal and external regulations. Compliance risks that occur if the funds submitted are not in accordance with the realization, for example when the mudharib fund application says that the funds are used to finance members with murabahah contracts, but in reality the funds are used by, for example, one of the administrators to pay his debts.

   Compliance risks in mudharabah financing usually occur because there is one stage of the financing procedure that is not carried out. At the financing application stage, after the requirements of the documents are met by the customer, direct monitoring should be carried out in the field to see the actual business condition of the customer but the monitoring stage is not carried out, then the bank faces internal compliance risks. If this is not supervised, the bank will suffer losses if the customer really does not have the ability to manage the business.

3. Legal Risks

   Legal Risk is a risk caused by weaknesses in the juridical aspect, such as lawsuits, the absence of supporting laws and regulations or imperfect collateral binding.

   This risk occurs if the mudharib does not meet the conditions of the agreed contract, for example the mudharib falsifies documents or falsifies business legality. The guarantee submitted to the bank is also in dispute. This is mitigated by being careful about the legality of the guarantee, as well as the legality and completeness of the required documents. Based on the information obtained from you.

4. Investment Risks

   In mudharabah financing, it also faces investment risks. Investment risks arise because Islamic banks have profit-sharing-based financing, which conventional banks do not have. The investment risk faced is the risk of dishonesty of mudharib in reporting the results of his business. In this mudharabah financing, it is feared that there is an intransparency from mudharib in reporting the results of their business.

   The risk faced in the mudharabah contract is the risk of dishonesty of the customer over the results of the business or profits obtained. For example, customers manipulate financial statements or business income reports that must be paid to the bank every month, so that the profits shared are smaller than they should be, so that the bank gets a smaller profit share and the debtor gets a larger profit share. Even worse, if the customer displays a loss, the bank will not get a profit share. (Fatwa DSN NO:07/DSN-MUI/IV/2000 concerning Mudharabah).

According to (Joko Hadi Purnomo, 2017). So to ensure that investment risks can be managed properly, it is necessary to take the following steps:

1. Feasibility test by looking at the records of the financial statements, past records of management (annual reports or quarterly reports), and business plans, as well as aspects of human resources or employees.
2. Banks need to ensure that prospective mudharib can prepare financial statements. This means that Islamic banking only distributes financing to businesses that have a clear and directed system and their human resources are highly educated.
3. Banks need to ensure that the funds are used in accordance with the initial agreement of the contract, not used for other purposes and contrary to the agreement.

4. Banks can involve mudharib in determining the profit sharing ratio between mudharib and banks. This is done so that mudharib has a moral attachment in determining profit sharing, then mudharib will also appreciate the funds distributed by the Bank by managing it as best as possible. But this can only be done to mudharib who really have a good track record.

Mudharabah Contract Based on Sharia Compliance

Sharia compliance is a comparison of the sharia economic system with the conventional economic system or between sharia banking and conventional banking. In the context of banking, this is a crucial issue, because currently, the Islamic bank system still follows the conventional bank system in terms of products, human resources or operations. The public still views Islamic banks as the same system as conventional banks. There are factors that cause this perception to still be attached from the community itself, Islamic bank practitioners or regulators. Indonesia, like other countries, still recognizes the dual banking system, where conventional and sharia are equally recognized and applicable (Harahap. A. S., et al., 2020).

The role and function of the Sharia Supervisory Board (DPS) in Islamic financial institutions is very strategic to realize sharia compliance complaints, these roles and functions are contained in the decision of the MUI Central Executive Board regarding the composition of the DSN-MUI management No. Kep-98/MUI/III/2001 among its functions, namely:

1. Conduct periodic supervision of Islamic financial institutions under its supervision
2. Submit proposals for the development of Islamic financial institutions to the leaders of the institutions concerned and to DSN
3. Report the development of the products and operations of the Islamic financial institutions it supervises to DSN at least twice in one fiscal year
4. The Sharia Supervisory Board formulates problems that require discussions by the National Sharia Council.

The Sharia Supervisory Board is an extension of MUI as an institution mandated by Law No. 21 of 2008 concerning Islamic Banking. The function of DPS is to be a supervisor who ensures that bank products are in accordance with sharia, it does not stop there, DPS will also supervise how this product is marketed and implemented. The Sharia Supervisory Board is independent, no one can influence when carrying out its duties and who will ensure that the processes and products offered by Islamic banks are Sharia. Thus, this is where the very far difference lies between Islamic banks and conventional banks, where the presence of DPS is a notification of how Islamic financial institutions, especially Islamic banks, will be supervised by the OJK and DPS.

Indeed, in practice, there are still many things that need to be fixed, especially regarding the role of DPS in Islamic banks, where it can be found that Islamic banks do not comply with sharia which results in questions for DPS where its position when violations are committed, DPS should move in accordance with its Independence as a sharia supervisor appointed by law. Of the various problems faced by customers, compliance is one of the most conveyed. When these things are not quickly responded to by DPS or Islamic banks, it will have an impact on public trust in this institution because it has violated what is the bank's motto according to sharia (Ahmad, F. R., 2020).

A very important position by DPS to advance Islamic banks is expected to have a high contribution, because everything done by Islamic banks must not run away from sharia in the slightest, even all must adhere to what is the strength of Islamic banks themselves, namely sharia. This DPS is the key to the development of this Islamic bank, a very strategic position, why, because in the eyes of the community, the sharia label is no longer a bargain when once the Islamic bank slips and makes a mistake whatsoever, that's the name here, the role of the sharia supervisory board is needed quickly and precisely. So in its implementation, strengthening DPS is one of the variables that needs to be studied and improved, its duties and functions must be so involved in supervising the activities of Islamic banks, not only supervising when there is a report from the bank, it should pick up the ball to see firsthand how the implementation of sharia compliance is carried out.

CONCLUSION

Based on the results of the study, it can be concluded that the determination of risk management in the financing of mudharabah contracts in Islamic banking has an important role in ensuring compliance with sharia principles. The implementation of risk management that includes risk identification, analysis, mitigation, and evaluation helps prevent deviations such as unclear profit sharing ratios, moral hazards, and defaults that can be detrimental to both parties. The principle of sharia compliance in the mudharabah contract can be realized by applying values such as justice ('adl), transparency (tabayyun), and trust in every stage of financing. The implementation of risk management in accordance with Islamic law principles not only protects the rights and obligations of the parties, but also strengthens the integrity of Islamic banking in implementing sharia principles consistently. Thus, effective risk management in mudharabah contracts is an important instrument in maintaining operational stability, increasing customer trust, and creating a sustainable Islamic banking system in accordance with Islamic legal principles.

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