

Reconstruction of the *mudharabah* financing contract in sharia banking based on justice value

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Abstract

The main objective of this research is the first is to examine the weaknesses of the contents of the *mudharabah* financing contract on Islamic banking, and to reconstruct the contents of the *mudharabah* financing agreement on Islamic banking based on fair value where the theory used to analyze is the Islamic justice theory, and the type of research is qualitative research using analytical descriptive nature. The method used is an empirical juridical approach. The research subjects were BNI Syariah Indonesia Hasanah Bank in Purwokerto City, Muamalat Bank of Purbalingga City, Arta Leksana people's credit agency of Purwokerto City and their customers, while the research object was the contents of the sharia *mudharabah* financing agreement. Data were collected by interview technique and literature study, while data analysis was done by inductive qualitative analysis methods.

The results showed that the reconstruction of the content of *mudharabah* financing contracts in Islamic banking based on fair value is to realize the preparation of the contents of the contract in order to meet the pillars and conditions and meet minimum standards and prioritize the principle of balance as the implementation of the principle of justice and in order to do that the reconstruction of the existing law must be made in Article 1 regarding financing and use, Article 2, concerning the period and installments, Article 4, concerning the provisions for the profit sharing ratio, Article 5, concerning losses, Article 6, concerning *mudharib* obligations, Article 7, guarantees, addition of articles concerning rescue of financing and Article 12 concerning disputes. The reconstruction of the contract is expected to make the contents of the contract substantially better reflect the value of justice.

Keywords: reconstruction, contract, *mudharabah*, justice value

Introduction

One form of Islamic banking financing is *Mudharabah*. The definition, is as mentioned in Article 20 Number 4 the Compilation of Sharia Economic Laws:

"*Mudharabah* is a collaboration between fund owners or investors and capital managers to conduct certain businesses with profit sharing."

Mudharabah comes from the word *dharb* which means to hit. Or rather is the process of someone hitting his feet on a business trip. Technically, *mudharabah* is a contract of cooperation between parties, namely the first party (*shahib al-mal*) provides all (100%) of capital, while the other party becomes the manager. The same thing was expressed by Abdurrahman Al Jaziri who gave the meaning of *mudharabah* as an expression of giving wealth from one person to another as business capital. But the profits obtained will be shared by both of them, and if the loss is borne by the owner of the capital.

Mudharabah business profits, divided according to the agreement set forth in the contract. If the loss is borne by the capital owner as long as it is not due to negligence of the manager. If the loss is caused by negligence or fraud of the manager, the manager must be responsible for the losses incurred. In the *mudharabah* agreement, for financing products, it is also called profit sharing. The legal aspect (legal aspect) *mudharabah* is sourced from the Qur'an Al-Muzammil verse 20 which states: "And some of them are people who walk on earth looking for some of God's gifts..."

In addition, it is then supported with the Hadith of the

Prophet Muhammad PBUH, which states:

"It was reported from Ibn Abbas that Sayyidina Abbas bin Abdul Muttalib, if giving funds to his business partners in a *mudharabah* he required that funds not be carried across the sea through dangerous valleys or buying cattle. If violating these rules, the person responsible for the funds, the conditions are conveyed to Rasullullah, he allowed it. "(The purpose of the hadith HR. Tabrani) ^[1].

Mudharabah is divided into two parts, First, *mudharabah mutlaqah*, that is the cooperation agreement between *sahibul mal* and *mudharib* is not limited to business specifications, place and time while within the limits justified by sharia law'. Secondly, *mudharabah muqayyadah*, which is a cooperative effort in the agreement will be limited according to the wishes of *sahibul mal*, while in the form of lawful.

Mudharabah philosophy, namely humans were created by Allah SWT with various advantages and disadvantages. There are people who have excess assets, there are people who lack assets, there are people who have expertise, but do not have the capital to carry out any work, there are people who have capital but do not have time to take care of some of their assets. For the balance to occur, those who have it need to help the less well-off people in a fair way. The principle of profit sharing in *mudharabah* is different from the principle of fixed interest where the bank will collect the

¹ HR. Tabrani in Arifin. Zainul,(2002), Dasar-Dasar Manajemen Bank Syariah, Jakarta : Alva Bet.p.72.

recipient of financing (the customer) a fixed amount regardless of the profit generated by the customer, even if there is a loss and economic crisis occurs. With the principles applied in *mudharabah* financing as outlined in the form of a contract, it must prioritize the principle of justice and not be allowed to violate sharia guidelines. The problem is that not all customers / managers of shohibul mall capital / capital owners in *mudharabah* financing do not yet have an understanding of *mudharabah* financing risk management contracts.

Based on the explanation above, the writer feels it is very necessary to study about how the *Mudharabah* Financing Agreement in Sharia Banking Based on Justice Value into a study with the following issues :

1. What Are the Weaknesses of the Current *Mudharabah* Financing Contract in Sharia Banking?
2. How to Reconstruct the Content of *Mudharabah* Financing Agreement in Sharia Banking Based on Justice Value?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge ^[2]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (*approach*) the research is to use the approach of *Socio-Legal* ^[3], which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation.

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data ^[4]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

1. Weaknesses of the Current *Mudharabah* Financing Contract in Sharia Banking

In the study of classical fiqh, *mudhârabah* contract is based on the element of trust (trust) so that in the application of *mudhârabah* financing is not required for collateral. Along with the times and human character in running a business, there is a shift in people's thinking regarding to it so that a new *ijtihad* is needed. DSN-MUI (Islamic organization authorized by the country to Interpretate islamic law) as an institution that has the authority to determine fatwas (Interpretation of islamic law), issued DSN fatwa no. 07 / DSN-MUI / IV / 2000 concerning *Mudhârabah* Financing in consederiums and fatwa considerations stipulates that The Islamic financial institutions can request collateral / collateral from customers or third parties. Therefore, there is a gap between the opinions of classical Jurists and the DSN-MUI fatwa regarding the existence of collateral in the *mudhârabah* financing agreement. The results of this study concluded that, first, the position of collateral in the *mudhârabah* financing agreement according to DSN-MUI Fatwa No. 07 of 2000 concerning *Mudhârabah* (Qirâdh) serves to avoid the occurrence of deviations from the fund management customers so they do not play in managing *mudhârabah* financing funds, and guarantees are not necessary and mandatory conditions on every *Mudhârabah* financing. Therefore, the Islamic financial institutions may stipulate a guarantee to the customer that serves to avoid moral hazard from the negligent *mudhrib* party or breach the contract. So the guarantee / collateral in *mudharabah* financing when viewed from Islamic law the law is permissible. Second, that in establishing the DSN fatwa No. 07 / DSN-MUI / IV / 2000 concerning *Mudharabah* Financing (Qirâdh) especially regarding the existence of skill for Islamic financial institutions to ask for guarantee from *mudhrib* or third parties, it seems that the legal method used by DSN-MUI is the *mashlahah al-mursalah* method, with the consideration that so that there is no deviation from *mudhrib* and the values of benefit in it.

Islamic Financial Institutions also continue to transform with the times, by renewing cooperative agreements to adjust customer needs. The renewal of the contract cannot be separated from the support of the National Sharia Council (DSN-MUI) in the form of a Fatwa issued by the National Sharia Council related to a new problem, whether it is permitted or prohibited in Islam on the basis of *ijtihad* *ulama* based on the Qur'anic and Hadith argument. Basically, Islamic law regarding *muamalat* only contains basic norms as a guide. While the operational details are left to humanity according to human needs and benefit. Thus, *muamalat* practices can change according to the development of society. However, returning to the goal of Islamic law is to realize benefit and avoid damage. The law of origin is permissible as long as there is no proof that prohibits it, but permissibility is still within the limits of Islam ^[5].

One of the cooperation agreements offered by Islamic Financial Institutions is *mudharabah* agreement. *Mudharabah* is a form of sharia transaction in the form of a business cooperation agreement between the capital

² Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

³ Johnny Ibrahim, (2005), *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya.

⁴ L. Moleong,(2002), *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

⁵ Che Tahrim, Siti Nurzahira & Muhammad, Mohd Zulkifli & Mohd Rosdi, Mohd Syakir & Yusoff, Mohd & Musa, Azizah & Din, Noormariana. (2019). The Revival of *Mudharabah* Contract: A Proposed Framework. *Research in World Economy*. 10. 70. 10.5430/rwe.v10n2p70.

provider (shahibul mal) and the capital manager (*mudharib*) who gives freedom in designing the transaction. Nevertheless, freedom is not absolute but there are limits in Islam. The main principle in the transaction must be to maintain principles of virtue such as the principle of justice, balance, avoiding harm, prioritizing benefits, avoiding eating other people's property in a false and illegitimate way such as Riba (usury) and other things that violate Islamic law.

In the *mudharabah* contract, the relationship between Shahibul Mal and *Mudharib* is a trustful relationship, meaning that the *Mudharib* is a person trusted by Shahibul Mal to manage his assets. The *mudharabah* application at the National Sharia Financial Institution (LKS) requires the customer (*mudharib*) to include a guarantee, this is because the LKS refers to the fatwa of the National Sharia Council (DSN-MUI) No. 7 DSN-MUI / IV / 2000 which states that "in principle, in *mudharabah* financing there are no guarantees, but so that *mudharib* does not make deviations, the bank can ask for guarantees from *mudharib* or third parties". In addition, guarantees are deemed necessary in the *mudharabah* contract aimed at avoiding moral hazard (business actors), namely the occurrence of misuse or irregularities and negligence in the management of *mudharabah* funds. In addition, the collateral requirements become a bond between the bank and the customer in an effort to protect the customer's customer funds (trust) ^[6].

A cooperation agreement in Islam has the concept of profit-loss sharing, which means that profits and losses are shared equally. It would be different if the agreement was in the form of debt, the debtor must repay the debt under any conditions. The *mudharabah* agreement means that an owner of capital surrenders his assets to the entrepreneur for trading with an agreed profit sharing provided that the losses are borne by the capital owner, while the entrepreneur / capital manager is not burdened with the slightest loss, except losses outside the material in the form of labor and time. *Mudharib* will be obliged to bear the loss if it violates the agreement and carries out negligence.

Imam Syafi'i and Malik said that if Sahibul Mal in this case the bank asked for a guarantee from *Mudharib*, the contract was not a *mudharabah* contract and the *mudharabah* contract would be damaged or canceled. There is a guarantee to make the *mudharabah* agreement look more like a rahn (pawn) contract, where someone's property is mortgaged to be used as a loan of money that if something fails, the pawn item will be taken by the pawnshop.

Besides that, there is no standard rule in determining whether a loss is an omission from *mudharib* or not. Because it is very clear, no one in this world who wants to fail in trying, all will try hard and earnest but only his spirit will fluctuate. There is concern that any business losses will later be said to be *mudharib* negligence in managing funds. if it's like this *mudharib* will be the most disadvantaged, has lost time and energy plus have to lose assets that are pledged as a form of returning *mudharabah* funds. So there is no difference between the Islamic economic system and the capitalist economy, where people who have large capital will continue to develop easily. In other words the rich get richer and the poor get poorer.

Even though in the settlement of muamalah disputes there are stages, it is not merely that *mudharib* is declared negligent, but whether the banks can justify the losses suffered while they also have responsibilities to investors. And so far there has never been any news that customer savings with *mudharabah* contracts suddenly have their balance reduced or even used up on the grounds that *mudharib* is losing money. Of course almost all investors will protest, this is also due to the lack of understanding of customers as investors regarding the intricacies of the *mudharabah* contract.

If the precautionary factor is the reason, the principle of mutual trust (mandate) in the *mudharabah* contract has been lost with the requirement of the guarantee. To carry out the precautionary principle, both conventional and Islamic Financial Institutions must have preventive and repressive efforts to minimize risk. One of them is by doing selection for financing approval, it can be done by looking at the track record of *mudharib* and also looking at the future prospects of the business proposal submitted by *mudharib*.

When the submission of *mudharabah* financing has been approved and the business is running, the bank can exercise routine control to oversee and provide input to the *mudharib*. Especially regarding economic issues that occur, certainly banks have more accurate information than ordinary people. Thus mistakes in making decisions by *mudharib* as fund managers can be minimized. And if something goes wrong in business practice in the field, the bank can quickly find out the problem and respond to provide the right solution.

If all procedures are carried out neatly and thoroughly then the possibility of loss will be small. *Mudharib* will not be burdened with fears of losing assets as collateral. And if the loss to the business is absolutely unavoidable until the business run by *Mudharib* is declared bankrupt, the bank can already conclude that the loss occurred is not due to negligence of the *Mudharib*.

For the problem of who should be responsible for clear business losses if it returns to the *mudharabah* contract rules then shohibul mal is the one who bears the material loss. But because shohibul mall invests funds through intermediaries from the bank, the problem of losses can be negotiated with the bank to get a solution that is not burdensome.

Based on its purpose, the *mudharabah* contract is included in the *tijarah* contract, which is a contract whose purpose is to seek profit. For example, a sale and purchase agreement with profit based on margin, rent for profit in return, a *mudharabah* agreement and *musharaka* with the profit sharing principle.

Based on its type, the *Mudharabah* Contract according to Hasbi Ash Shiddieqy in Neneng Nurhasanah are divided into 2 parts, namely ^[7]:

- a. *Uqudun Musammaturun*, the contracts which are named by shara 'and stipulated for them certain laws. There are 25 kinds. For example, buying and selling, *ijarah*, *ariyah*, *mudaraba*, *musharaka*, *rahn*, *wadi'ah* and others. As such, this contract already existed and was known since the time of the Prophet Muhammad.
- b. *Uqudun Ghairu Musammah*, namely contracts which are not given a specific name, or are not specified by

⁶ Isnaini, Isnaini. (2019). Pelaksanaan Jaminan Pembiayaan Mudharabah di Bank Syariah. JUPIIS: JURNAL PENDIDIKAN ILMU-ILMU SOSIAL. 11. 228. 10.24114/jupiis.v11i2.13517.

⁷ Hasbi Ash Shiddieqy in Neneng Nurhasanah, (2015), *Mudharabah dalam Teori dan Praktik*, Bandung. Alva Bet. p.45.

sharia laws', for example *bai al-wafa*. These *mushamah ghoir* covenants at the time of the Prophet Muhammad PBUH were not yet known, because they appeared along with developments, changing times and needs in society such as contracts that occurred in banking, insurance, leasing, factoring and others.

The *mudharabah* agreement uses the principle of profit sharing between the *mudharib* and *shohibul maal*, based on its type, the *mudharabah* agreement belongs to the *musammah* contract, that is, the contract that has been named by the shari'ah itself along with its legal provisions and general rules. This contract was known at the time of the Prophet Muhammad even the cooperation agreement in this trade had been done by humans before Islam.

Mudharabah covenants are permissible because in it there is an element of please helping and complementing one another. In practice, the contract in an Islamic financial institution is oriented as its purpose, such as a grant or endowment of a person to another person / party. The contract is intended for good, not for profit, as is the case with the loan and credit agreement. The goal is solely to help (goodness). If it is followed by a profit search by increasing the amount of payment, then the excess or additional becomes prohibited.

2. Reconstruction of the Content of Mudharabah Financing Agreement in Sharia Banking Based on Justice Value

Mudharabah contract is a form of *muamalah*, as long as the word 'aamala - ya'aamilu - mu'aamalatan which means to act, do charity and act together, then for *mudharabah* which is a form of *muamalah*, it is determined that the party who has capital but has difficulty in rerun his property, allowed to work with parties who have the ability, have the expertise to work that brings profits, but do not have the capital. The profit gained by both parties is the result of the achievements given by both parties in a certain activity.

Including the principles of *muamalah* is first, the principle of permissibility, namely that the type of *muamalah* the basic law is permissible until the proposition is prohibited. Second, the principle of the benefit of mankind, means that every *muamalah* that is done must be based on consideration of bringing benefits and benefits, and avoiding *mudharat* in people's lives. Third, the principle of freedom and volunteerism, which is done freely and voluntarily, without containing the elements of coercion. Fourth, the principle of fair and balanced, that every *muamalah* carried out with the principle of justice, may not contain elements of fraud, oppression, and taking opportunities when other parties experience poverty^[8]. The *mudharabah* financing agreement which is also an *muamallah* is expected to provide the benefit of the people and must reflect the value of justice. So that if the *mudharabah* contract meets the terms and conditions of the contract, the following laws will apply:

- a. The capital in the hands of the worker / manager has a mandate status, and all his actions are the same as the actions of a representative in buying and selling. If there is profit, the status of the worker is changed to a

trade union that has a share of capital in the hands of the trustee worker / manager, and all his actions are from trade profits.

- b. If the contract is in the form of a *mudharabah* *muthlaqah* contract, workers are free to manage capital with any type of merchandise, in any area, and with anyone, provided that what is done will bring benefits. However, it is not permissible to repay the capital to others and may not also transfer the capital to someone else.
- c. In the *mudharabah* contract, workers are entitled to benefit according to the collective agreement, but the nature of the worker's livelihood during the *mudharabah* contract takes place, whether taken from capital or not, there are differences of opinion among the scholars of *fiqh*.
- d. If the cooperation brings profit, then the capital owner gets profits and the capital returns, but if the cooperation does not produce profits, the capital owner does not get anything. The general and specific conditions of the contract must be fulfilled in its implementation.

Based on *muamalah*, contract and *mudharabah*, then there are also *mudharabah* principles specifically as follows:

- a. The principle of sharing profits between parties who carry out *mudharabah* agreements.

In a *mudharabah* agreement, net income must be divided between *shohibul maal* and *mudharib* based on a proportion and fair as previously agreed and explicitly mentioned in the *mudharabah* agreement. Distribution of profit should not be done before the losses are covered with equity of *maahibul maal* fully returned. All losses incurred on a business trip must be closed with profit before they are covered by *shohibul maal* equity. Net losses must be borne by *Sahibul Maal*, while *mudharib* losses are a loss of time, energy and effort. If agreed upon, that the entire profit will be enjoyed by *mudharib* or the given capital must be returned in full. In this case, *Shohibul maal* is seen as a lender so that this agreement is called a virtue agreement. Thus, it must be distinguished between the types of *muamalah* which aims for profit and only social / *ta'awun*.

- b. The principle of sharing losses among the parties to the agreement.

In *mudharabah*, the principle of balance and fairness lies in the distribution of losses between parties in the contract. Financial losses are entirely borne by the owners of capital, unless there is evidence of negligence, error, or fraud committed by *mudharib* / managers. Meanwhile, the *mudhorib* / manager. Bear the loss in the form of time, energy, and effort he did. *Mudhorib* will not gain anything from his hard work. This is where *mudharabah* differs from credit loans at conventional banks that guarantee the safety of the money / assets it manages. In *mudharabah*, *mudharib* functions as the holder of the mandate, not the guarantor. *Mudharib* is responsible for assets / capital only if negligent or fraudulent / wrong. If included in the requirements, that *mudharib* guarantees the safety of *mudharabah* money / assets, it will result in the cancellation of the *mudharabah* agreement and loss of legality.

⁸ Rauf, Muhammad. (2019). Optimalisasi Pembiayaan Mudharabah Wirausaha Berbasis Humanisme. Jurnal Diskursus Islam. 7. 214-238. 10.24252/jdi.v7i2.7117.

c. The Principle of Clarity.

In *mudharabah*, the problem of the amount of capital that will be given by Shohibul maal, the percentage of profits to be distributed, the conditions desired by each party, and the term of the agreement must be stated clearly and clearly. Clarity is a principle that must be contained in this contract, for that the written agreement must be implemented in the form of a *mudharabah* agreement.

d. Trust and Trust Principles.

The issue of trust, especially on the part of the owners of capital, is a determining element in the occurrence of *mudharabah* contracts. If there is no trust from *shohibul maal* then *mudharabah* transactions will not occur. To that end, Shohibul maal can end the *mudharabah* agreement unilaterally if *mudharib* no longer has trust in *mudharib*. That trust must be balanced with the attitude of trust from the manager.

e. Prudential Principle.

Caution is an important and fundamental principle in *mudharabah* contracts. If caution is not exercised by the capital owner, he may be deceived and suffer financial losses. If caution is not held by the manager, then the business will suffer losses and will also lose financial gain, loss of time, energy, and effort that has been dedicated and will also lose trust.

The Birth of Law No. 10 of 1998 on changes to Law No. 7 of 1992 concerning Banking provides space for Islamic banking to be more flexible in implementing Islamic principles. In this Banking Act, *mudharabah* is referred to as profit sharing principle which can be used as an instrument of contract between the bank and the customer.

The Birth of Law No. 21 of 2008 concerning Islamic Banks makes Islamic banks more free to conduct their business activities. Sharia principles that become guidelines according to this Law are Islamic legal principles in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia. For *mudharabah* financing, refer to MUI National Sharia Board fatwa no. 7 / DSN-MUI / IV / 2000 concerning *Mudharabah* Financing. Besides that, the Compilation of Sharia Economic Law (KHES) is an effort of Indonesian Muslims to provide guidance for people who implement and become sharia economic actors in Indonesia. With regard to *mudharabah*, the provisions in the KHES are found in Chapter II concerning the Covenant. In general provisions Article 20 KHES is explained in Article 20 namely:

"A contract is an agreement in an agreement between two or more parties to do and / or not do certain legal actions."

The *mudharabah* is a collaboration between the owner of the fund or the investor and the capital manager to carry out a certain business with profit sharing based on the ratio. In this study, the authors conducted a reconstruction effort on the contents of the *mudharabah* contract between shohibul maal / syariah bank and *mudharib* / its customers. As explained in the previous section, Islamic values and the principle of justice in *mudharabah* contracts are not fulfilled in relation to the process of making contracts that do not involve the customer. It's just that through the reconstruction of the *mudharabah* contract it is hoped that the substance of the contract can better reflect the values of Islam and the principle of justice. Agreements made legally according to Islamic law have two kinds of juridical consequences. First, the agreement must be carried out by

the parties voluntarily and in good faith. In the event that an agreement is not carried out by one of the parties or there is a default, then it gives the other party the right to demand compensation and / or decide on the agreement through the court. Second, that the agreement is ignored by one of the parties, then he will get sanctions from Allah in the hereafter. This shows that the agreement made by a Muslim has implications both in the world and in the hereafter.

As in the Contract law, according to the Civil Code that recognizes the principle of freedom of contract, the principle of personality, and the principle of good faith, while in customary law recognizes the principle of light, cash and real. Islamic law also recognizes the principles of contract law as follows: *Al Hurriyah* Principle (*Kebesana*) This principle is a basic principle in Islamic treaty law in the sense that the parties are free to make an agreement or a contract of freedom (making contract). Free to determine the object of the agreement and free to determine with whom he will make the agreement, and free to determine with whom he will make the agreement, and free to determine the resolution of disputes if it happens later. The principle of freedom of contract in Islamic law is limited by Islamic sharia provisions. In making this agreement there must be no element of coercion, oversight, and fraud. The *Al Musawah* Principle (equality and equality), the *Al Adil* Principle (justice), the *Al Ridha* Principle (willingness), the *Ash Shidq* Principle (truth and honesty). *Al Kitabah* Principle (written). The parts of the contents of the Islamic banking financing contract for *mudharabah* that have not been reconstructed are related to the Definition, which contains definitions of several concepts used in the *mudharabah* financing agreement, including the following :

1. The contract clause, that is: the *mudharabah* agreement;
2. The legal subjects, that is: the parties who carry out *mudharabah* financing agreements;
3. Financing and Utilization which means that: in this contract *mudharib* acknowledges receiving capital from shohibul maal and the use of funds rather than;
4. The term and installments, as follows:
 - a. mentioning the time of giving capital for investment funds
 - b. *Mudharib* is obliged to make profit-sharing payments to the shohibul maal according to the agreed schedule and ratio;
 - c. The repayment of investment funds by *mudharib* to *shohibul maal* will be carried out through the *mudharib* account so that the *mudharib* authorizes to debit the *mudharib* account for repayment and other costs;
 - d. Delay in paying the principal payment in accordance with the agreement, then the payment is carried out in the next period, consequently *mudharib* divides the ratio that has been regulated in the provisions of the profit-sharing ratio;
 - e. Early payment in the case of *mudharib* returning to shohibul maal does not reduce or become a loss on the income that is a part of it.
5. Administration fee, that is:
 - a. *Mudharib* is required to pay administrative costs;
 - b. In the event that notary services, insurance and / or other services are required in connection with the agreement, the said costs and / or costs will be borne by *mudharib*;
 - c. Any evidence issued by Shohibul maal or his attorney is evidence that is recognized by *Mudharib*.
6. Provisions for profit sharing ratio: that is between

- Shohibul maal and *Mudharib* agreeing to set profit sharing ratio with percentage. Adjustment ratio if the principal amount has not been paid in full and in full.
7. Losses: that is where the Shohibul maal will bear the losses incurred, unless caused due to negligence and Shohibul maal will accept and acknowledge the loss after receiving, reassessing and submitting the assessment results in writing to the *mudharib*.
 8. *Mudharib* obligation is that *mudharib* is required to return the entire principal amount of financing, provide prior notification, withdraw investment funds through *mudharib* account in Shohibul maal, manage all of his assets free and free from all burden of guarantee except for the interests of *shohibul maal*, correctly managing an separate bookkeeping, Sending materials or documents requested and carrying out its business without violating the principles of shari'ah.
 9. Guarantee is: provisions to guarantee the repayment of *mudharib* installments to *shohibul maal*.
 10. In the Event of Broken Injury^[9]: *mudharib's* negligence to carry out obligations, if there is a promise, statement, guarantee, or agreement *shohibul maal* according to this agreement turns out to be true, incorrect or misleading, if *mudharib* violates the terms of the agreement.
 11. In Violation of the terms of the agreement^[10]: if *mudharib* uses investment funds to be used outside the needs and interests of the loan, if *mudharib* transfers its business, if *mudharib* does not run the business according to the technical provisions required by *shohibul maal*.
 12. Examination: is when *shohibul maal* or the power he appoints to examine the books and everything.
 13. Governing law: means that the agreement is made and interpreted in accordance with the provisions of Indonesian law.
 14. Disputes between the parties; in case of this then they are settled by deliberation and family and if they are not reached as a final decision, they will be settled by the Religious Court.
 15. Additional provisions are other matters that have not been sufficiently regulated in the agreement.

Based on the explanation above, it is necessary to carry out reconstruction on the contents of *mudharabah* financing contracts in Islamic banking based on justice values. and in order to realize it, the preparation of the contents of the contract must be needed in order to meet the harmony and conditions and meet minimum standards and prioritize the principle of balance as the implementation of the principle of justice. The article which is reconstructed is Article 1 regarding financing and use, Article 2, concerning the period and installments, Article 4, concerning the provisions for the profit sharing ratio, Article 5, concerning losses, Article 6, concerning *mudharib* obligations, Article 7, guarantees, addition of articles concerning rescue of financing and Article 12 concerning disputes. The reconstruction of the contract is expected to make the contents of the contract substantially better reflect the value of justice.

Conclusion

- a. For a contract to be valid, it must meet the terms and conditions as well as the provisions contained in the contents of the contract. If the pillars and conditions are not fulfilled, the contract becomes invalid, meaning that the contract does not fulfill the conditions of the contract formation, the validity of the contract and has no legal consequences for both parties and is not binding so that the contract can be canceled. The contract must fulfill the legal requirements for the contract stated in Article 1320 of the Civil Code. The contract is made in writing so that it has legal force for the parties.

It is necessary to carry out reconstruction on the contents of *mudharabah* financing contracts in Islamic banking based on justice values. and in order to realize it, the preparation of the contents of the contract must be needed in order to meet the harmony and conditions and meet minimum standards and prioritize the principle of balance as the implementation of the principle of justice. The article which is reconstructed is Article 1 regarding financing and use, Article 2, concerning the period and installments, Article 4, concerning the provisions for the profit sharing ratio, Article 5, concerning losses, Article 6, concerning *mudharib* obligations, Article 7, guarantees, addition of articles concerning rescue of financing and Article 12 concerning disputes. The reconstruction of the contract is expected to make the contents of the contract substantially better reflect the value of justice.

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