



## Legal certainty provisions for the distribution of profit sharing based financing in Qanun Aceh number 11 of 2018 concerning Sharia financial institutions

Muhardi<sup>1</sup>, Yusri<sup>2</sup>, Muhammad Insa Ansari<sup>2</sup>

<sup>1</sup> Department of Law, University of Syiah Kuala, Banda Aceh, Indonesia

<sup>2</sup> Associate Professor, Faculty of Law, University of Syiah Kuala, Banda Aceh, Indonesia

### Abstract

Aceh Qanun No. 11 of 2018 concerning Sharia Financial Institutions (LKS) is a manifestation of the application of Islamic Sharia values in the sharia financial sector in Aceh Province. This regulation is prepared in the form of regional regulations (Qanun) as a legal basis for the operation of sharia-based financial institutions. Based on the LKS Qanun, all transactions carried out by sharia financial institutions must be in line with the principles of Islamic law, including the implementation of Maqashid Syar'iyah values which are the main objective of every sharia regulation. Article 14 of the LKS Qanun requires sharia banks to channel financing to micro, small and medium enterprises using profit sharing based contract. This provision also regulates the minimum percentage of financing distribution, namely 10% in 2020, 20% in 2022, and 40% in 2024. The main objective of this policy is to encourage regional economic growth and increase Aceh's Original Regional Income (PAD). However, the effectiveness of its implementation is still a challenge because Qanun LKS does not provide clarity regarding legal sanctions for financial institutions that do not comply with these provisions. This research aims to examine and analyze profit sharing-based financing arrangements and identify challenges in their implementation. The research results, Aceh Qanun No.11 of 2018 has provided an adequate legal basis to support profit sharing-based financing arrangements. However, its implementation is faced with various challenges, such as lack of uniform understanding among sharia financial institutions, minimal outreach to the community, and technical obstacles in implementing profit sharing-based contracts. In addition, the legal uncertainty arising from the ambiguity in Article 14 of Qanun LKS makes it difficult for banks to implement these regulations effectively. Therefore, to increase legal certainty and effectiveness in the implementation of Qanun LKS, it is necessary to revise or refine regulations that clarify the legal consequences for financial institutions that fail to comply with profit sharing-based financing provisions. In addition, strategic steps such as increasing human resource capacity, intensifying outreach, and strengthening supervision by relevant authorities are important factors in supporting the successful implementation of Qanun LKS.

**Keywords:** Legal certainty, profit sharing financing, Aceh Qanun, sharia financial institutions

### Introduction

Aceh is one of the provinces that enjoys privileges under Law No. 44 of 1999 on the Provincial Special Organization of Aceh and enjoys the power of a Special Autonomous Region under Law No. 11 of 2006 on the Government of Aceh. One of the privileges of Aceh is the perfect implementation of Islamic laws as regulated by Qanun. Qanun is part of the legal hierarchy and is on the same level as local regulations. The Government of Aceh has issued several Qanun related to Islamic law in Aceh, one of which is Qanun No. 11 of 2018 on Shariah Financial Institutions (Qanun LKS).

Qanun LKS is a form of application of Shariah values in the form of regulations. In this context, all transaction processes conducted by any financial institution must comply with the legal values contained in Islam, including the implementation of Maqashid Syar'iyah values, which form the main part of any issued Shariah rules. With the enactment of Qanun LKS, it requires all financial institution operating in Aceh Province to change their financial institutions into Sharia financial institution. The hope is that with the implementation of the Qanun LKS, access to financing for the people of Aceh will become easier so that an Islamic Acehnese economy can be realized, Aceh's economic growth will increase, as well as an increase in Aceh's original income (PAD).

Article 14 of the Qanun LKS explains that Sharia Banks are required to distribute financing to Micro, Small and Medium Enterprises (UMKM) using profit sharing-based contracts that take into account the capabilities and needs of customers, with a minimum financing percentage of 10% in 2020, a minimum of 20 % in 2022, and a minimum of 40% in 2024. There is a gap in the article where the article explains that banks are required to pay attention to customer needs and abilities, but the bank here determines the percentage of the minimum financing amount which varies every year, and it is also not explained what contract it is used for, because there are two contracts that can be used in profit sharing financing.

The LKS Qanun does not explain in detail what forms of contracts are required to be distributed to MSMEs, so there is uncertainty in the distribution of the Qanun. In practice, banks prioritize the distribution of financing using musyarakah contracts, which in practice are often used to finance contracts for contractors. In this contract, the bank has no risk of loss at all, because if there is a problem in carrying out the work, the bank will disburse the collateral that was handed over to the bank when the contract was signed.

Mudharabah contracts are the contracts that are rarely used because of the high risk factor for banks, even though financing schemes using mudharabah contracts really help business development for MSMEs. This phenomenon does

not only occur in newly established banks but occurs in all sharia commercial banks in Indonesia, even Bank Aceh Syaria'ah in its 2019, 2020, 2021 annual report, the distribution of financing using the mudharabah contract scheme is nil, which where the data is empty, in 2022 there will only be mudharabah financing of IDR. 94,879,000,000 (ninety-four trillion eight hundred and seventy-nine million rupiah) but will experience a decrease again in 2023 amounting to Rp. 19,925,000,000 (nineteen trillion nine hundred twenty-five million rupiah). The most frequently used financing distribution is merabahah receivables, which from 2019-2023 ranks highest in financing distribution at Aceh sharia banks (bankaceh.co.id). If this condition is not corrected, then we can see that the mudharabah contract which is one of the icons of sharia banking will be abandoned by sharia banking itself if it continues to decline. The LKS Qanun is expected to increase economic growth and increase Aceh's Original Regional Income (PAD), but in reality the Qanun does not emphasize the obligation to distribute financing in detail, for example regarding the legal consequences if banks fail to comply with the rules contained in the LKS Qanun, what contracts which must be used by banks in distributing revenue-based fees. Due to the lack of firmness in establishing qanuns, these regulations will only become ordinary regulations that cannot have further implications for the development of Aceh's economy. There is legal uncertainty regarding the distribution of financing using the profit sharing system in the Qanun LKS, so there is a need for further study to see what provisions are contained in the distribution of financing and what legal certainty is provided to customers in implementing the Qanun LKS, as well as what impacts will occur to the community's economy.

## Research Method

The research conducted is normative juridical, focusing on the examination of applicable positive legal norms. The primary area of investigation centers on law, conceptualized as the norms or rules that govern societal behavior and serve as a guideline for individuals. Thus, normative legal research emphasizes inventories of positive law, legal findings in specific cases, legal systematics, levels of synchronization, legal comparisons, and legal history (Abdulkadir Muhammad, 2004: 52) <sup>[1]</sup>. This study employs both a statutory approach and a conceptual approach. The statutory approach involves reviewing and analyzing all pertinent laws and regulations connected to the legal issue at hand (Bambang Sunggono, 2015:91) <sup>[3]</sup>. For data collection, this legal research utilizes the liberal research method to gather primary and secondary legal materials, which include statutory regulations, books, articles, and journals relevant to the research topic. Data analysis was conducted qualitatively.

## Results and Discussion

### 1. Provisions for Distribution of Profit Sharing Based Financing in Qanun LKS

Qanun LKS has had a significant impact on the development of sharia banks in Indonesia, especially in Aceh. The ratification of this LKS Qanun is a reflection of Aceh's privilege in implementing Islamic law as a whole (kaffah) in accordance with the provisions of Law No.11 of 2006. This law gives the Aceh Government the authority to

develop a government structure that is in harmony with the customs and culture of the Acehnese people.

Article 21 Paragraphs (1) and (4) Aceh Qanun No.8 of 2014 concerning the Principles of Islamic Sharia states that the principles of Islamic Sharia must be the basis for financial institutions carrying out their operations in Aceh, which is then regulated by the Aceh Qanun. This is the basis for the enactment of Qanun LKS on January 4 2019. Since the enactment of this qanun, all financial institution in Aceh are required to comply with sharia principles, including conventional banking which must adapt its operations to sharia rules.

Qanun LKS provides guidelines for conventional financial institutions to transform to a shariah system. Operational licensing of conventional financial institution is limited to no later than three years after this Qanun is promulgated, namely until 2021. One of the main objectives of ratifying the LKS Qanun is to create an Islamic economy in Aceh and ensure that financial institutions carry out their functions based on Islamic shariah principles.

The sharia values contained in the LKS Qanun are a particular strength for a system, one system that can be developed to support the economy of a region is a profit sharing system. This system is a cooperative concept implemented by two or more parties who have agreed on a collaboration in various fields, where there is cooperation between capital owners and expertise owners or business managers. The profit sharing system is a form of economic system that has very high growth, especially sharia banking. The systems widely practiced by the banking world include 2 (two) types, namely profit sharing with the concept of revenue sharing and the concept of profit and loss sharing. The concept of revenue sharing is a profit sharing calculation based on sales and/or gross income from the business before deducting costs. Meanwhile, profit and loss sharing is a profit sharing calculated from business profits/losses (Zulkarnaini *et al*, 2024:27-29) <sup>[13]</sup>.

The Islamic banking system has a number of advantages compared to conventional banking. Some of the advantages of Sharia banking (Bank Mega Syaria'ah Team, 2023) are:

1. Based on Sharia Principles. In this case, Sharia banking is usury free or avoids usury (interest), which is prohibited in Islam. Transactions are carried out based on the principles of justice and mutual agreement. Sharia banking operations are guided by fatwas and sharia law, thereby providing peace of mind for customers who wish to carry out financial principles according to religious teachings.
2. Transparency in Transactions. With transparent transactions, where banks and customers understand the risks and returns. This creates trust and reduces the risk of asymmetric information, where customers know how the company is growing or developing.
3. Oriented to Social Welfare. Products such as qard hasan (interest-free loans), zakat, and waqaf support the economic empowerment of the people and a more equitable distribution of wealth. Apart from that, it also encourages investment in ethical and productive sectors, such as financing small and medium enterprises (UMKM), thereby supporting economic development. In this way, funds from customers are only used for the benefit of the people.
4. Wise risk management. In profit-sharing based financing (mudharabah, musyarakah), the bank and

customer share risks and profits, so it is fairer than an interest-based system. In this case there is no speculation (gharar) or unclear transactions, so the risk of uncertainty can be minimized.

5. Fairness in Bank and Customer Relations. Regarding the relationship between banks and customers, it is more of a partnership, not like a creditor-debtor relationship. In this case, customers feel more appreciated because they are considered business partners.
6. Economic Stability. The sharia system tends to avoid financial crises caused by economic bubbles or unhealthy speculation, because transactions are based on real assets (underlying assets).
7. Sustainable and Ethical. This means that investment is directed to sectors that are halal, ethical, and do not damage the environment or society, such as alcohol, gambling, or other harmful industries.
8. Product Flexibility. Sharia financial products and services are designed to meet various needs, such as financing for homes, vehicles, businesses, and term savings, while still complying with sharia principles.

With these advantages, the Islamic banking system is an attractive choice, not only for Muslim communities but also for anyone who values transparency, fairness and sustainability in finance.

Sharia banks are one type of bank operating in Indonesia. Just like conventional banks, Islamic banks also have the aim of making profits by maximizing financing. The concept used by Islamic banks is the profit sharing concept, while conventional banks use the interest concept. In Islamic banks there are several types of financing, namely *murabahah*, *mudharabah* and *musyarakah*, *ijarah*, and *tabarru'* (Raden Gilar, 2021:31-35) <sup>[9]</sup>. In the Islamic banking system, profit sharing is a mechanism carried out by sharia banks (*mudharib*) in an effort to obtain results and distribute them back to the fund owners (*shahibul maal*) according to the contract agreed at the beginning together.

The distribution of financing using the profit sharing system in the LKS Qanun has two contracts, namely the *mudharabah* and *musyarakah* contracts. In implementing *musyarakah* financing in sharia banks, the party applies financing by providing a portion in the form of working capital. Sharia banks will only help customers who have applied for this financing by providing the funds needed by their customers. In *musyarakah* financing, both parties will discuss the agreements to be agreed. Initially, customers who wish to apply for this financing are required to first fill out a form according to the wishes that will be submitted to the bank. Then after that the bank will discuss with the customer what agreements will be made. With *musharaka* financing at sharia banks, customers' needs for additional working capital will be met and their business activities will run smoothly. Apart from that, the bank will also benefit from this financing. Because with this financing, the bank will get a share of the profits from the business activities carried out by the customer. In *musyarakah* financing, the bank will only provide a portion of the total capital required. For example, the bank provides 70% of the total and the remaining 30% uses the customer's own capital. The portion of profits obtained by customers is in accordance with the initial agreement that has been mutually agreed, as well as losses in accordance with the contractual agreement that

was agreed at the beginning (Rachmadi Setiawan, 2022: 140-142).

*Mudharabah* is a collaboration between capital providers who provide money to managers to invest in commercial companies. The bank (*shahibul maal*) is required to provide full funding, amounting to 100%, to the manager (*mudharib*), who is only responsible for overseeing the business specified by the bank (*shahibul maal*). The distribution of profits will be allocated according to the agreement established at the outset of the contract. In the event of a loss, it will be the capital owner (*shahibul maal*) who bears the burden, while any risks arising from actions taken by the manager (*mudharib*) are considered accidental. In Sharia Banking institutions, *mudharabah* is categorized into two segments: the mobilization of funds and the distribution of funds. The mobilization of funds refers to the process through which money is collected from customers by the bank, whereas the distribution of funds involves the outflow of money from the bank to its customers, clearly positioning the bank as an intermediary in financial management. When funds are raised from customers, *mudharabah* takes the form of savings and deposits (Rachmadi Setiawan, 2022).

Concerning the provisions for profit-sharing based financing distribution in the Qanun LKS, these are aligned with sharia principles, ensuring no conflict with *maqasid sharia*. There are neither articles nor verses that contradict elements of sharia. *Maqashid al-syari'ah* aims to promote goodness while steering clear of evil, focusing on attracting benefits and warding off harm (*dar'u al-mafasid wa jalb al-masalih*), which is also referred to as *maslahat*. This concept is inseparable from Islam, as they are akin to twins. According to Imam Ghazali, *maqashid al-syari'ah* embodies the practice of eliminating all forms of harm and fostering benefits. Therefore, if the rules are established and executed in harmony with sharia principles, they will not conflict with *maqasid sharia*.

## 2. Legal Certainty Qanun Number 11 of 2018 Concerning Sharia Financial Institutions in Distribution of Profit-Sharing Based Financing

Implementation of Qanun LKS must be carried out by referring to real conditions or things that actually happen in the field, for example understanding the contents of Qanun. After the promulgation of the Qanun LKS there were many pros and cons from various parties and society. The parties who support the LKS Qanun are based on support for the special features of the province of Aceh in being able to implement Islamic law in a *kaffah* manner, including in *muamalah* since the issuance of this qanun. It is hoped that this Qanun LKS can be a solution in fighting the existing capitalist economic system and helping economic growth and development in Aceh.

Opinions against the Qanun LKS mostly emerged after the qanun was implemented. This shows that the objection is not a rejection of the substance of the LKS Qanun itself, but rather the implementation which is deemed not to be in accordance with the provisions stipulated in the Qanun. Some of the problems identified include the process of converting conventional banks to sharia banks which is not in accordance with qanun provisions, deadlines which are considered inadequate for carrying out the conversion, as well as the ability of sharia banks which are not yet able to compete with conventional banks in providing products

that can meet the needs of the community. . Apart from that, the lack of public trust in the operational system of sharia banks is also an obstacle, especially because sharia banks are considered not yet fully capable of implementing the principles of Islamic sharia as a whole (Akla Rizka Alamsyah & Yaser Amri, 2021: 118-130) <sup>[2]</sup>.

Apart from the pros and cons of the LKS Qanun, according to the author, there is one article in the Qanun that contains ambiguity or lack of clarity regarding the rules in the Qanun. Article 14 of Qanun LKS reads:

1. Sharia Bank's business activities include, among others:
  - a. Collect funds in the form of savings and investments in accordance with contracts based on Sharia Principles;
  - b. Distribute financing using a system of profit sharing, buying and selling, rent-buying, services and kindness loans (Qardh Hasan); and
  - c. Marketing financial products from LKS which are regulated in accordance with statutory provisions.
2. Other Sharia Bank business activities refer to the provisions of statutory regulations.
3. Sharia Banks are obliged to implement regulations regarding achieving financing ratios for micro, small and medium enterprises in the context of increasing community economic development.
4. The financing ratio as intended in paragraph (3) is determined in stages as follows:
  - a. Minimum 30% no later than 2020; and
  - b. Minimum 40% no later than 2022.
5. Financing distributed by Sharia Bank prioritizes contracts based on profit sharing by taking into account the customer's capabilities.
6. Ability must pay attention to, among other things:
  - a. Financing applications from prospective customers according to needs;
  - b. Business or enterprise prospects of prospective customers according to financing eligibility criteria; and
  - c. The amount of the customer's installment obligation is a maximum of 1/3 of income.
7. Profit sharing based contracts are carried out in stages as follows:
  - a. In 2020 at least 10%;
  - b. In 2022 at least 20%; and
  - c. In 2024 at least 40%.

Article 14 of the LKS Qanun is ambiguous. Regarding the Qanun regulations, it determines the percentage of profit-sharing type financing allocation, but the Qanun does not specify what this percentage is. Moreover, it is not stated that this percentage is used to determine what type of contract is profit-sharing financing, because there are basically two types of profit-sharing financing contracts, namely Musyarakah and Mudharabah. Musyarakah contracts do not pose a risk to the banking industry, but the contract has little impact on the society. Although Mudharabah contracts pose a high risk to the bank, the value of these contracts can improve the economy of the community. On the one hand, Article 14 of the LKS Qanun requires banks to distribute financing based on profit sharing with a certain percentage, but on the other hand

there are the same provisions in the Qanun which free banks to see what suits the needs and abilities of customers, which means banks can still take refuge in this article.

Basically, legal certainty will provide a basis for what society can and cannot do, as well as protection for every individual in society from the state's authoritarian actions. However, what is no less important is that the value of legal certainty does not only take the form of articles in statutory regulations, but rather there is a correlation between one legal rule and another, both hierarchically and substantively. This means that one legal rule must not overlap and conflict between the general and the specific, both hierarchically and in the substance of the rule, so that it can create legal certainty in its implementation.

An article or legal rule that has an ambiguous value does not have legal certainty in it. Legal certainty must be implemented, therefore, with the ambiguous value in Article 14 Qanun LKS, it can be ensured that this article cannot be implemented by banks, so that the aim of the law to have benefits is not achieved because when banks do not implement the provisions of the Qanun then the benefit value is cannot be felt by the community so that the main objective of implementing Qanun LKS to improve the community's economy and increase BAD growth will not be achieved. So here the bank will only take refuge in other contracts which have direct implications for the community's economy. The regulations regarding profit sharing-based financing that are good and correct so that they can provide legal certainty to the community can be carried out in the following way: a) Have no ambiguity; b) The rules made must be clear in their aims and objectives; c) Considering the profit and loss for the bank or the existence of *loss sharing* for the bank, because the bank itself does not want to distribute financing if in the financing there is *loss sharing* for the bank, such as *mudharabah* contracts which have very large *loss sharing* and must be borne by the bank; d) Apart from that, these rules must also be able to be implemented by all parties; e) And these rules must not be contradictory between the articles being regulated.

## Conclusion

The distribution of profit sharing-based financing as regulated in the Qanun LKS is in accordance with sharia principles, where its implementation does not conflict with maqasid sharia. There were no articles or verses found in the qanun that substantively conflicted with sharia principles. Thus, rules that are prepared and implemented in accordance with sharia principles are considered not to be contrary to maqasid sharia. The effectiveness of a legal sistem, including Islamic law, is measured by the extent to which it is able to achieve its stated goals, namely maqasid sharia.

However, Article 14 in the LKS Qanun contains ambiguity, especially regarding determining the percentage of profit sharing based financing distribution. The Qanun does not explicitly state that the percentage is calculated from what amount and from what type of contract, giving rise to ambiguity in its implementation. This ambiguity has implications for the lack of legal certainty in the substance of the article. Legal certainty is an important element in implementing regulations, because without certainty, legal implementation will not be effective.

Due to the ambiguous value in Article 14, banks are unable to implement these provisions optimally, so that the main

objective of Qanun LKS, namely improving the community's economy and encouraging the growth of Regional Business Entities (BAD), cannot be achieved. As a result, banks are more likely to rely on other contracts that are not directly related to empowering the community's economy. Therefore, revision or clarification of this article is needed to ensure legal certainty, so that the main objectives of Qanun LKS can be realized effectively and provide real benefits for society.

## Reference

1. Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Bandung, Citra Aditya Bakti, 2004.
2. Akla Rizka Alamsyah dan Yaser Amri, Pro dan Kontra Konversi Bank Konvensional Menjadi Perbankan Syariah Berdasarkan Qanun Nomor 11 Tahun 2018, *Jurnal Investasi Islam*, 2021, 6(2).
3. Bambang Sunggono, *Metodologi Penelitian Hukum*, Jakarta, Rajawali Pers, 2015.
4. <https://bankaceh.co.id/category/laporan-tahunan/>, diakses pada 15 Desember 2024.
5. M Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHP Penyidikan dan Penuntutan*, Jakarta, Sinar Grafika, 2002.
6. Qanun Nomor 11 Tahun 2018 tentang Lembaga Keuangan Syariah.
7. Qanun Nomor 8 Tahun 2014 tentang Pokok-Pokok Syariat Islam.
8. Rachmadi Setiawan, Bagi Hasil Pada Pembiayaan Musyarakah dan Mudharabah di Bank Syariah Sesuai Syariah Islam, *Jurnal Margin*, 2022, 2(2).
9. Raden Gilar, Pengaruh Net Operating Margin (Nom), Inflasi Dan Bi Rate Terhadap Pembiayaan Murabahah Pada Bank Umum Syariah Di Indonesia Periode 2016-2018, *Jurnal Prosiding Ilmu Ekonomi*, 2021, 7(1).
10. Undang-Undang Nomor 11 tahun 2006 tentang Pemerintahan Aceh.
11. Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.
12. Undang-Undang Nomor 44 Tahun 1999 tentang Penyelenggara Keistimewaan Propinsi Daerah Istimewa Aceh.
13. Zulkarnaini dkk, Sistem Bagi Hasil Berbasis Syariah (Implementasi Qanun Nomor 11 Tahun 2018 Tentang Lembaga Keuangan Syariah pada Koperasi Berbasis Simpan Pinjam di Kota Lhokseumawe), *Jurnal Proceeding Seminar Nasional Politeknik Negeri Lhokseumawe*, 2024, 7(1).