Profit: Jurnal Inovasi Ekonomi dan Bisnis
Vol 2, No. 1, 2024
https://journal.das-institute.com

IMPLEMENTATION OF THE Al-MUDHARABAH AL-MUSYTARAKAH AGREEMENT IN ISLAMIC BANKING FINANCIAL INSTITUTIONS

Kholilur Rahman*[1], Naerul Edwin Kiky Aprianto[2], Muhammad B. Jasmi[3]

[1,2]UIN Saizu Purwokerto, Indonesia
[3]Universiti Kebangsaan Malaysia, Malaysia
E-mail: kholilur.rahman@uinsaizu.ac.id*[1], naerul.edwin@uinsaizu.ac.id[2],
muhammadbjasmi@ukm.edu.my[3]

DOI: 10.53866/profit.v2i1.505

Abstract

Profit and loss sharing is a system used as an operational activity in Islamic banking. Therefore, the most important theory to be raised in this research is the mudharabah contract. Departing from the character of banking in general which is closely attached to Islamic banking as an intermediary institution, a new breakthrough is needed through the study of contemporary mudharabah contracts called al-mudharabah al-musytarakah as the most relevant theoretical basis. This is because the working mechanism of Islamic banks cannot be separated from funding and financing activities, and the bank's position is in the middle of these funding and financing activities. The mudharabah that we know from time to time only involves two parties, whereas in banking it involves three parties. With this qualitative casuistic research, the aim is to obtain data regarding the implementation of the al-mudharabah al-musytarakah contract in Islamic banking. The implementation of the al-mudharabah al-musytarakah agreement in Islamic banking is realized in various funding products, both savings and deposit products, and is related to mudharabah financing as a financing product.

Keywords: al-mudharabah al-musytarakah, profit and loss sharing, islamic banking

1. Introduction

In the mid-twentieth century, the need for Islamic banking slowly began to emerge in direct proportion to the growth of natural resources and the increase in wealth in Muslim countries. Therefore, Muslims immediately looked for halal alternatives to haram instruments of economic activity so as to obtain a pattern that was in accordance with Sharia law. Tests and analyses in Islamic banking laboratories began to be carried out in various Islamic countries. Based on the demands of this need, the birth of Islamic banking was immediately prepared through operational standards based on Islamic teachings.

On the basis of this need, Islamic jurists, researchers and thinkers built a legal istinbath so that they could formulate theories that could be implemented in Islamic banking, various types of contract patterns as instruments that could process investment, including musyarakah, murabahah, ijarah, mudharabah, and others.

Mudharabah is the most ancient and urgent instrument as a source of economic income for the community. This instrument is believed to be an Islamic instrument in the fiqh methodology called *sunnah taqririyyah,* so it is shaded by the great name of Islam. In the history of human civilization, the mudharabah pattern has become an instrument of traditional market mechanisms. With various implementation models, laws and aspects of theoretical study, there are various differences that are adapted to the development of civilization through which it has passed. There is data that states that the mudharabah system has been used by Chinese people since 4000 years before Christ, in Egypt it has also been used by the people since 1600 years before Christ, and in India mudharabah has been known since 1000 years before Christ (As-Sa'aty, 1992).

The term *mudaraba* in the economic literature is conventionally translated as "speculation", as mentioned by many experts and the founding fathers of economics. However, there are fundamental differences regarding the meaning of mudharabah (speculation) in conventional economics and Islamic economics. This is due to differences in basic principles, namely differences in paradigms about the universe and the relationship between humans and economic activities. Economic thought has made a start in providing a definition of the concept of mudharabah (speculation) and all its activities, which at a substantive and practical level are far from ethical theory, where mudharabah is equated with gambling. This can be traced through the thoughts of capitalist economists, Adam Smith (1981) regarding speculation that a process is equipped with a method of gaining abundant wealth in a short time, without having to have high skills, but simply by engaging in trading so that it will a prediction appears where a profit will be obtained in a higher amount than usual.

Several studies have proven, one of which is as shown by Anshori (2007), that sharia compliance in Islamic banking is closely related to reputation risk management, namely risks that can cause customer trust to decrease due to non-compliance carried out by Islamic banking itself. In society, currently there is a lot of criticism regarding sharia compliance, which may be felt to be less in accordance with sharia principles. People think that there is a dissimilarity between theory and practice, which has given rise to many opinions and quite a few people think that conventional and Islamic banking are the same. This could be due to a lack of socialization about Islamic banking, so an understanding of Islamic banking itself is still lacking.

In an international research journal written by Ullah (2014), it was stated that 76.05% of respondents strongly agreed and 22.16% agreed that sharia compliance had become the first priority in carrying out all transactions in Bangladeshi Islamic banks. On the other hand, the leader/highest authority of Bangladesh's Islamic banks has not provided enough programs to increase employee knowledge in the scope of sharia, where three out of four banks are still below the average of 0.583. More specifically, there were 50.90% of employees who responded negatively said that they always 100% try to comply with sharia in all transactions. From this research, it is also known that 69.16% strongly agree that sharia compliance is the main reason why people are attracted to Islamic banks in Bangladesh.

One of the strategies for developing sharia financial institutions is building a public perception that Islamic banks have characteristics that can significantly differentiate between conventional and Islamic banks. This is through prophetic and humanistic instruments in the form of funding and financing using mudharabah (profit and loss sharing) agreements.

Basically, Islamic banks are banks whose working mechanism uses a profit-sharing mechanism that does not use interest. Thus, profit sharing should be the dominant mechanism in Islamic banks. However, the profit-sharing product mechanism does not show a fairly high percentage. Currently, the most dominant financing is murabahah financing, which is a type of non-profit sharing financing (mudharabah). It cannot be denied that, in reality Islamic bank financing is more focused on the murabahah scheme. Even the world's top Islamic banks also have a tendency to use the murabahah scheme as the main financing. For example, Bahrain Islamic Bank, Faysal Islamic Bank, Bank Islam Malaysia, Kuwait Finance House and others where on average, the murabahah scheme reaches 70% percent (Perwataatmadja, 2002).

While we initially saw in the literature on Islamic economics and Islamic banking published in the period between the 1960s and 1970s, the main objective of Islamic banks was conceptualized as financial institutions, where all business loans applied to entrepreneurs (customers) were based on the principle of profit sharing (profit and loss sharing) (Saeed, 2003). There are several public perceptions about Islamic banks that are still wrong: first, Islamic banks are social banks that help the economic development of the people; second, Islamic banks are profit-sharing banks. This second perception will be the focus of this research study because it is a theme that is in accordance with the *mudaraba* that will be raised theoretically.

The implication of the second perception is the emergence of more complex derivative effects, including that to meet all the needs of the community (customers), they only use mudharabah products, and technically Islamic bank employees tend to oversimplify the concept of Islamic banking in the field, so that Islamic banks give the impression of being just conventional banks. with Arabic terms, wearing the hijab, greeting with *assalamualaikum*. In carrying out their activities, this means that Islamic banks do not reach the true essence of Islamic banking.

Islamic banks' mistakes also get worse when their financing products predominantly use murabahah or al-ba'i bissamani al-ajil contracts to become universal sweep contracts that can be used to meet the needs of the community (customers) in any form. Therefore, don't be mistaken if some ulama, kiai, and the Islamic community in general think that Islamic banks only want to sell or do business in the name of sharia. In addition, the Islamic community prefers conventional banks on the grounds that Islamic banks have not been able to meet the needs of the community (Muhammad, 2005).

Based on the background above, it is very important to discuss the theme of this research in order to create the reputation of Islamic banks. This bank will highlight significant differences with conventional banks, namely products based on mudharabah theory, both in its funding products as the funding side and its landing products as the financing side.

2. Research Methods

This research aims to analyze implementation*al mudharabah al-musytarakah*in Islamic banking. The methodology used in this research is descriptive qualitative. In qualitative research, the writer functions as the main instrument and collects data about the background to interpret the phenomena that occur (Albi & Johan, 2018). This research will describe a phenomenon in narrative text based on the data collected. This research writing includes factual information found in the field to support what is said in the report (Albi &

Johan, 2018).

The primary data source for this research is secondary data which is then supplemented with data from literature and other research. The collection strategy used is to identify discourse from books, papers, news, journals, and official websites. In addition, using secondary data to evaluate the actual situation that exists with the problem formulation taken.

.

3. Results and Discussion

3.1. The Concept of Mudharabah in Islamic Jurisprudence

Mudharabah Etymologically, it comes from *wazan mufa'alah* and comes from the basic verb, namely *daraba* (Manzur, nd). The word *darb* contains two categories of meaning, *essential* and *majazi* (Al-Ardabily, 2000). In the Al-Qur'an, the word *darb* functions as the essential meaning located in Surah An-Nisa verse 34. Meanwhile, the meaning of *majazi,* which refers to the semantics of the Al-Qur'an, which contains the meaning of traveling or traveling far away is generally shown in Surah An- Nisa verse 101.

Mudharabah is a form of the word derived from the word *darb*, which has two meanings. First, wandering the earth to trade in order to gain profits or incentives by looking for investors as a variable that influences the emergence of cooperation that produces profits. Second, managing funds because in mudharabah itself there is the meaning of managing funds (capital) and the profits or incentives generated from these funds so that workers in mudharabah activities are called mudharib, while the term for capital owners is not taken from the derivation of the word mudharabah, because indeed the Arabic language experts did not find it (Al-'Amili, 1995).

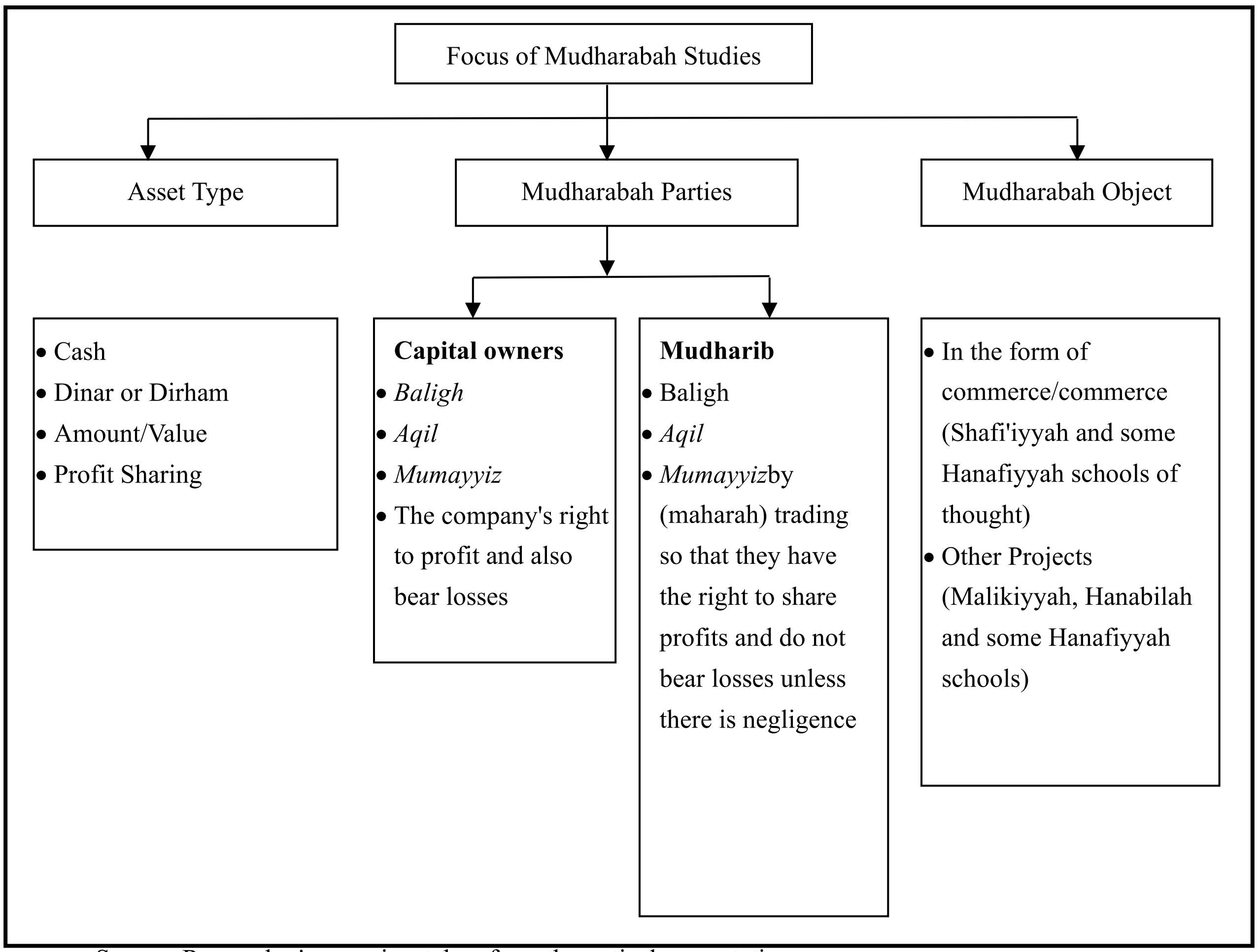
The term mudharabah was used by Iraqis in the past and was adopted by the Hanafiyyah and Hanabilah schools of thought. The people of the Hijaz (including Mecca and Medina) use the same terminology as the term qirad. Qirad comes from the derivation of the word *qard,* which means a certain part, when it is narrated the shahibul mal takes part of his personal assets for landing or gives it to the workers who are working on their work projects (in the form of commerce or certain projects). Meanwhile, muqaradah means togetherness and balance, which means both parties equally give a portion from the muqarid and muqarad parties. Muqarid means the owner of capital, while muqarad means the worker. And both parties are equally entitled to profit even if the percentage is different (Zaid, 1996).

Mudharabah can be described in several important points. First, the mudharabah contract is built on two parties. Second, the first party offers funds/capital to the second party and the second party is committed to the provisions contained in the contract to carry out its projected work with that capital. Third, the actual purpose of the mudharabah contract is a partnership/cooperation to produce a profit with various conditions agreed upon by both parties.

In other, clearer terminology, mudharabah is a sighah contract (contract pattern) which has the essence of an economic activity that involves interaction with capital with a known value along with the amount and type (certain goods or currency), of the parties involved. Has capability *(jaiz at-tasarruf)*, is intelligent and has *rushd (aqil and rasyid)*, where the management sells it with the right to share profits, with a percentage amount known to both parties, in accordance with all mutually agreed terms.

So that the discourse regarding mudharabah contracts can be understood clearly, we will describe it in three discussion focuses which form a comprehensive study system. First, it relates to the basic characteristics of a mudharabah contract. Second, it relates to the interested parties in the mudharabah contract. Third, it relates to the object of the mudharabah contract *(majalat al-mudharabah)* with various conditions that bind both parties.

Scheme. 1
Focus of Mudharabah Studies



Source: Researcher's overview taken from theoretical presentation

3.2. Islamic Banking Products in Using Mudharabah Agreements

a. Mudharabah Savings

Savings with mudharabah characteristics cannot be withdrawn at any time. Therefore, savings that use mudharabah principles do not need to be provided with an ATM or similar card. In its application, savings that use this principle include Hajj savings, which can be withdrawn when the saver wants to perform the Hajj; qurban savings, which can be withdrawn only during qurban holidays; education savings can only be withdrawn when you want to pay education costs; Walimah savings can only be withdrawn when completing the marriage contract; and other similar savings (Wiroso, 2005). Mudharabah savings are stated in the National Sharia Council Fatwa Number 02/DSNMUI/IV/2000, dated April 1, 2000.

b. Mudharabah Deposits

Deposits are savings from which withdrawals can only be made at certain times according to the agreement between the depositor and the bank concerned. Mudharabah deposits are stated in the National Sharia Council Fatwa Number 03/DSNMUI/IV/2000, dated April 1, 2000. There are two types of term deposits:

1) Ordinary term deposits. For deposits that expire within the agreed period, extensions can only be made after a new request/notification from the depositor.
2) Automatic time deposits (automatic rollover). At maturity, it will automatically be extended for the same period without notification from the depositor.

c. Mudharabah Financing

Mudharabah financing is financing where all working capital required by the customer is borne by the bank. The profits obtained are divided according to the agreed ratio in the form of working capital and investment. The requirements for Islamic banking mudharabah financing consist of personal and partner identity; family card and marriage certificate; photocopy of bank statements for the last three months; deed of business establishment; administrator's identity; business legality; financial statements for the last two years; past performance in the last two years; business plan for the next 12 months and financing object data. Meanwhile, the requirements for personal and partner identity, family card, and marriage certificate do not apply to business entities, while the deed of business establishment and identity of management do not apply to individuals.

Mudharabah financing facilities are financed in rupiah or US Dollars. Profits are shared according to the agreement, flexible financing return mechanism (monthly or all at the end of the period), profit sharing based on revenue sharing calculations, financing can be in Rupiah and US Dollars. The profit-sharing ratio will remain in effect between the bank and the debtor customer by financing the total business capital needs without any fines in the event of default and there are also no penalties for those who wish to cover installments before the agreed time period.

3.3. Al-Mudharabah al-Musytarakah as a Substitute for the Classical al-Mudharabah

In the context of an academic struggle based on scientific responsibility to implement mudharabah contracts that are adapted to the existing empirical dynamics of finance and banking (fiqhul waqi'), we offer al-mudharabah al-musytarakah with characteristics that are inherent and identical to it. This is an effort to develop the mudharabah contract, which until now has shackled and limited its work role as a characteristic of sharia financial jurisprudence with the classic Suna'i contract pattern. One of the initiating scientists was Dr. Sami Hamud, who is trying to implement a new mudharabah contract pattern that is in line with the development of the existing financial system, an investment direction that is compilation in the name of dynamics.

Likewise, in relation to the injection of funds from creditor customers who wish to invest according to their desires and tendencies, the researchers above see that there is an urgent need to create a new theory about mudharabah so that a new theory about mudharabah musytarakah emerges in which there are parties mudharib musytarik, both in the form of concrete and abstract figures, his role is as an intermediary between creditors and debtors, creditors are groups of customers who have the capital to be entrusted to Islamic banks in the form of savings deposits with the aim of mudharabah (profit sharing) as shahibul mal in mudaraba theory. Meanwhile, mudharib parties are Islamic bank debtors who will submit themselves to obtain mudharabah savings funds from Islamic banks as financing for them in accordance with the mudharabah model agreement used by the mudharib.

3.4. Implementation of Al-Mudharabah Al-Musytarakah with Funding and Financing

The mudharabah intermediation role carried out by al-mudharib al-musytarik, also called *al-mudharib al-wasith* is the most urgent and influential point in the operational process of implementing al-mudharabah al-musytarakah. This party also has the power to determine the profit-sharing ratio, and carry out cash flow management with mudharib customers (debtors), with agreements made peer-to-peer (not collectively).

Al-Mudharabah Al-MusytarakahThis is a contemporary contract breakthrough that is most relevant to the management of Islamic banking operations because the position of Islamic banks is only as an intermediary between shahibul mal customers and mudharib customers. This is if we look at the classical and conventional mudharabah contract paradigm, bearing in mind that the breakthroughs made by Islamic banking jurisprudence experts cannot be separated from the use of conventional classical contracts by the fuqaha, especially the madhhab fuqaha which is popular among sharia experts.

If Islamic banks are positioned as mudharib in the abstract or as shahibul mal in the abstract, this becomes concrete because of positive legality. Likewise, if we return to the original characteristics of banking in general, it is an intermediary institution that carries out funding and financing with solid financial management tools. Meanwhile, the realm of jurisprudence is required to be able to adapt flexibly *(marinah)* and be relevant and able to adapt to existing financial dynamics whenever and wherever they are (*salih likulli masa wa makan).*

It is from this aspect that the concrete school of thought in mudharabah contracts criticizes the maturity of the al-mudharabah al-musytarakah theory in Islamic banking that this theory has an impact on the distillation of the relationship between the shahibul mal and mudharib parties directly. The answer is the relationship between al-mudharib al-musytarik and the group of savers. However, with the additional duty, he provides services as an intermediary in general without distinguishing and separating one creditor from other creditors collectively. The service is provided to all customers who save money. Then, the contemporary nomenclature of mudharib musytarik emerged. From the basis of this philosophy, as an adjustment to its financial and operational configuration, it can be categorized as mudharib, while its position as mudharib wasith or intermediary means that cash flow will not run naturally and perfectly in the context of mudharabah investment unless its existence can be confirmed in Islamic muamalah frame (Ar-Rumani, 1999).

The position of al-mudharib al-musytarik for the debtors or mudharib customers is that of the owner of capital (shahibul mal). He has the authority and discretion to decide, determine and establish a tsuna'i agreement between al-mudharib al-musytarik and mudharib customers on a peer-to-peer basis according to each individual's agreement. Therefore, the intermediary plays the role of custodian of mudharabah agreements with groups of creditor customers (shahibul mal) and aligns the agreement with debtor customers (mudharib) without any standard rules that must be followed by the intermediary, because of their position as al-mudharib al- Musytarik represents the figure who has the highest and broadest authority in operationalizing the contract system, or can provide the points of agreement that must be agreed in the form of an agreement form to implement al-mudharabah al-islamiyyah.

After brainstorming ideas and the results of the analysis carried out by Dr. Sami Hamud, we can conclude that from the financial aspect, an intermediary has the right to get profits from both customers, shahibul mall and mudharib. The intermediary partners with the mudharibs in the form of an agreed profit-sharing ratio where their position is considered the same as the capital owner (shahibul mal), and the intermediary also shares with the saving customers in terms of the ratio of profits obtained from the entire mudharabah process with the mudharibs in the market because of their status as managers of their funds and have contributed as work activities (Zaid, 1996).

The hard work of the intermediary (al-mudharib al-musytarik) must be legally guaranteed that he is an institution that has the right to manage mudharabah funds. Intermediaries are service activities, not investment activities (Zaid, 1996). Then there are other experts who contribute the view that the mudharabah contract pattern in Islamic banking is musytarakah (sharing) and *mustamirrah* (sustainable), which is the factor that causes the difference between al-mudharabah al-fardiyyah which is *tsuna'i* in nature and al-mudharabah al-musytarakah. Apart from that, there is also the possibility of allowing collateral to carry out mudharabah in Islamic banking as per the al-ijarah al-musytarakah agreement (Ghadah, 1996).

Other binding requirements in terms of work contributions or investment agreements with mudharabah agreements. Likewise, in terms of determining the priority scale in terms of parties implementing work projects or limiting mudharabah work objects, which are limited according to the agreement, Several Islamic banks have also implemented this kind of agreement model in the form of agreements in legal form.

4. Conclusion

Islamic banking can implement mudharabah contracts in the form of various types of savings, both on call, or savings with a certain nominal amount with a certain deposit within a certain time period, and collecting funds with mudharabah deposits. Apart from that, Islamic banking can also implement mudharabah financing, so that the al-mudharabah al-musytarakah contract is programmed and implemented using this model. Therefore, it can be concluded that the implementation of the al-mudharabah al-musytarakah contract in Islamic banking is realized in various funding products, both savings and deposit products, and is related to mudharabah financing as a financing product.

Bibliography

Abu Ghadah, Abdus Sattar. (1996). *al-Wasail al-Masyru'ah litaqlili Makhatir al-Mudharabah,* Majallatu al-Iqtishad al-Islami, No. 180. Naesan

Abu Zaid, Muhammad Abdul Mun'im. (1996). *Al-Mudharabah Wa Tatbiqatuha Al-Amailiyyah Fi Al-Masarif Al-Islamiyyah*. kairo: Al-Ma'had Al-A'lami Li Al-Fikr Al-Islami.

Al-'Amili, Muhammad Hasan Tarhini. (1995). *Az-Zubdah Al-Fiqhiyyah Fi Syarhi Ar-Raudah Al-Bahiyyah*. Vol. 8 Bairut: Dar Al-Hadi

Al-Ardabily, Abdul Karim Al-Musawi. (2000). *Fiqhul Mudharabah. Qum: Matba'ah 'itimad*, Muassasah An-Nasyr Li Jamiatil Mufid

Anshori, Abdul Ghofur. (2008). Perbankan Syariah di Indonesia, Yogyakarta: Gadjah Mada University Press.

Cet. Pertama

Antonio, Muhammad Syafi'i, (2008). Bank Syari'ah Dari Teori Ke Paktik. Jakarta: Gema Insani

Arikunto, Suharsini. (1998). Prosedur Penelitian Suatu Pendekatan Praktis. Jakarta: Bineka Cipta

Ar-Rumani, Zaid Muhammad. (1999). *Atsarul Aqdil Mudharabah fil Hayat al-Islamy*, Majallat as-Syari'ah Wa ad-Dirasat al-Islamiyyah, No. 37, Naesan

As-Sa'aty, Abdurrahim Abdulhamid. (1992). *Al-Mudharabah Wa Al-Qimar Fi Al-Aswaqi Al-Maliyah Al-Mu'asirah: Tahlil Iqtisady Wa Syar'i*, Jilid. 20, Riyad: Majallah Jamiah Al-Malik Abdil Aziz, Al-Iqtisadu Al-Islmay No. 1.

Moleong, Lexy. (1996). "Metodologi Penelitian Kualitatif'. Bandung: Remaja Rosdakarya

Muhammad. 2005. Manajemen Bank Syari'ah, Yogyakarta: UPP AMP YKPN, Edisi Revisi

Perwataatmadja, Karnaen A. (2002). "Upaya Memurnikan Pelayanan Bank Syariah, Khusus Pembiayaan Murabahah Dan Mudharabah Di Indonesia", Jakarta: Makalah Pada Komisi Ahli Perbankan Syariah Bank Indonesia

Saeed, Abdullah. (2003). Bank Islam Dan Bunga Bank, Studi Kritis dan Interpretasi Kontemporer tentang Riba dan Bunga, Yogyakarta: Pustaka Pelajar

Smith, Adam. (1981). An Inquiry Into The Nature And Caouses Of The Wealth Of Nation, R. H. Campbell & A. S Skinner (Ed), Vol. 1, Indianapolis: Liberty Fund

Samuelson, Paul A. And Nordhous, William D. (1985). Economics, 12th. Ed, Mc Graw-Hill New York

Sugiyono, (2009). Memahami Penelitian Kualitatif. Cet. 5. Bandung: Penerbit Alfabeta

Ullah, Hafij. (2014). *Syariah Compliance In Islamic Banking; An Empirical Study On Selected Islamic Bank In Bangladesh, International Journal of Islamic And Middle Eastern Finance And Management*, Vol. 7. No. 2

Wiroso, (2005). Penghimpunan Dana dan Distribusi Hasil Usaha Bank Syari'ah, Jakarta: Gramedia Widiasarana Indonesia