Application of Sharing Risk in Musharakah Contracts

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direvisi: 24/12/2023 ***dipublikasikan***: 05/01/2024

Abstract. *This study provides new empirical evidence regarding the application of sharing risk in Islamic banking in Indonesia. The focus of this research is to analyze the application of sharing risk in musyarakah financing, formulating sharing risk in musyarakah financing. The research method used is descriptive research which is analyzed qualitatively. Data sources were obtained from employees of Bank Syariah Indonesia account maintenance unit, Risk unit and collection unit, as well as documentation. Data analysis was done by data reduction, data presentation and conclusion drawing. The results showed that: 1) the implementation of risk sharing in musharakah financing at Bank Syariah Indonesia has not been fully fulfilled; 2) The risk sharing formulation can be implemented by proposing several improvements including the existence of a communication room where every customer's business development will be reported per period with the concept of joint business, then if a risk occurs it should be included in the communication room so that it can be discussed with both parties to formulate the best steps; Our evidence suggests that regulators further strengthen the Islamic banking system through musharakah contract reform and focus on the risk sharing system, especially the contracting parties.*

Keywords*: Sharing Risk, Islamic Banking, Musharakah*

Introduction

In the Islamic banking sector, the concept of risk sharing plays an important role in the development of products and services (El-Gamal, M. A, 2006). In Islamic banking, the basic principle of the Islamic financial system is to share risks and profits between the bank and its customers. Risk sharing allows the bank and the customer to share responsibility for the outcome of the business or investment (Hasan, Z, 2014). Research often find that conventional banking system performed better than its counterpart. Our evidence suggests that the regulators should strengthen Islamic banking system through more reforms and mergers to improve its capital, assets, management, earnings and liquidity. (Samsudin Hazman, Nawawi Mohd Nasir, Abd Halim Zairihan & Md Said Ahmad Syahmi, 2018).

Therefore, an alternative banking system concept is needed that can accommodate the demands and needs of the community, with a profit and loss sharing system or commonly known as profit and loss sharing, which prioritizes the principles of justice and togetherness in business, both in obtaining profits and in facing the risk of business losses, one of the causes is that participants fail to repay their debts because there are losses in their economic activities and then cannot pay the accumulated interest (usury). (Sumarti N, Fitriyani V, & Damayanti M, 2014) Meanwhile, Islamic banks are healthier and more financially stable than non- Islamic banks.

Based on the results of research by Nadi Irawansyah 2019 with the title: Analysis of the Causes of Musharakah Products not applied at Bank Muamalat Harkat Sukaraja. The results of the study are known, musharakah financing at Bank Muamalat Harkat Sukaraja is no longer applied because of the lack of supervision of the Bank so that there are loopholes for customers to commit fraud. Less precise determination of the business to be financed and the limited nominal amount of financing so that it cannot reach larger businesses or projects (Irawansyah, Nadi, 2019).

Table 1. NPF Data of Musyarakah Account

Year	NPF Rate
2018	3,169
2019	4,696
2020	5,230

Source: Sharia Banking Statistics, June 2021

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p-ISSN 1979-7567
e-ISSN 2614-4328

BI Regulation Number 23/2 / PBI / 2021 the NPL / NPF ratio for total credit / financing on a gross basis is less than 5%, this data can be concluded that the NPF for the musyarakah contract in 2020 has passed the 5% mark so it is very bad. Judging from Net Performing Financing (NPF) which reflects financing risk, the higher this ratio, the worse the quality of Islamic bank financing. Financing management is needed by banks, considering that financing is the biggest contributor to income. The increase in NPF will result in a loss of opportunity to obtain income from the financing provided and can result in a loss of trust in the bank due to the poor quality of the financing provided (Edhi Satriyo Wibowo, 2013) This is because the level of risk of musharakah financing is very high and the return is uncertain, causing distrust in its realization. This is where it is important for us to examine and find the ideal concept of the principle of risk sharing in Islamic banking, especially in the musharakah contract, where both parties, both banks and borrowing customers, can run their business or business safely without excessive worry or fear, the bank is not worried about the funds channeled to the right customers, as well as the customers who get funds from the bank can run their business well and safely because the risk sharing is clearly stated in the contract, so that musyarakah products remain the main financing products of Islamic banks in the future. (Usmani, M. T, 2005).

In this context, research conducted in Indonesia provides new insights into the implementation of risk sharing in Islamic banking. This study focuses on analyzing the implementation of risk sharing in musharakah financing, which is one of the commonly used financing instruments in Islamic banks. Musharakah financing involves cooperation between a bank and a customer in a business or project, where profits and risks are shared according to a

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e-ISSN 2614-4328

predetermined agreement.

Research Methods

This study provides new empirical evidence on the implementation of sharing risk in Islamic banking in Indonesia. The focal point of this research is to analyze the implementation of sharing risk in musharakah financing, formulating sharing risk. Bogdan and Biklen, use a term referred to as para-paradigm. Paradigms are defined as a loose collection of logically shared assumptions, concepts, or propositions that direct ways of thinking and ways of research. There is a phenomenological pattern in this study to ensure that researchers understand the meaning of events and their relation to people who are in the situation of deciding on Islamic bank products, especially musharakah contracts in understanding sharing risk. The focus of this research is to analyze the application of sharing risk in musharakah financing, formulating sharing risk in musharakah financing.

Table 2. Data Source and Data Type

Data Source	Data Type
Bank employees (Manager, and bank staff)	1. Knowledge of Risk Sharing Implementation 2. Musharakah Agreement Process 3. Knowledge of handling complaints related to musharakah contract 4. Risk sharing problem solving
Customer	1. Musharakah Agreement Process 2. Knowledge of Risk Sharing Implementation

Source : Author 2022

Data sources were obtained from employees of Bank Syariah Indonesia account

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mentenance unit, Risk unit and collection unit, and documentation was carried out every time conducting in-depth interview sessions where there was a voice recorder (already obtained approval from the informant). Data analysis is carried out by data reduction (interview data for each informant will be grouped to carry out the coding process, then after that data reduction will be carried out in accordance with field findings), data presentation and conclusion drawing.

Results and Discussion

Implementation of Risk Sharing in musharakah financing at Bank Syariah Indonesia (BSI)

According to Mohammed Iqbal, 2017: "Islamic banks are financial institutions whose main business is to provide financing and other services in payment traffic and money circulation whose operations are in accordance with Islamic sharia principles." (Mirzet Seho 2013, p.2) stated in his research: In theory, profit and loss or risk sharing financing (RSF) is considered the cornerstone of Islamic finance. But in practice, this feature of Islamic finance products has been debated by many as negligible. Instead, debt-based instruments, with conventional features, have overwhelmed the Islamic finance industry.

Based on the problems faced related to how the implementation of risk sharing in musharakah financing at BSI bank. The interviews conducted with employees regarding the practice of sharing risk at BSI bank are that: One question: What if the customer is at risk of business failure or going out of business, is there a third party that cooperates with BSI or is there another scheme ?

"*Mrs. RH, the account meintenance department of BSI bank answered: "so far we have used insurance, namely fire insurance, so for financing problems, we must be given collateral. related to collateral, it must have risks, especially if the collateral is for business, it must be covered by insurance during financing, if for the musharakah contract so far I have used fire insurance. protect only business assets, for the credit contract there is a guarantee.*" Mrs. RH explained that there is already insurance but the insurance used is fire insurance not credit insurance, the reason for not using credit insurance is because the contract already has a guarantee from the customer in the form of a certificate or certificate equivalent.

Mr. FD as an employee of the Risk and business staff of BSI bank answered: "In accordance with our SOP, if the customer is unable to carry out the obligations as stated in the AKAD, we will first socialize to the customer about the pluses and minuses of the problems and schemes that we propose, then the customer will choose from several schemes which are profitable for the customer, but of course we do not object because all productive contracts (Musharakah) have guarantees that cover the contract."

However, when viewed from sharing risk, research conducted by Mahmudatus Sa'diah suggests that where business risk is the responsibility of the customer because the bank in this case only acts as a source of funds and monitoring and consultants in business. If on the way there is unsteadiness in the business, the bank will take action whether the capital disbursement is stopped or the capital is added to nourish the company, by renewing the contract, this decision depends on the bank (mahmudatus Sa'diyah.2014). If there is a loss in running the business, it is the responsibility of the customer. Whereas in the DSN Fatwa No. 08/DSN-MUI/IV/ 2000 section of the Object of the Accad in point (d) regarding losses has been described, namely losses must be divided among the partners proportionally according to their respective shares in capital (DSN-MUI,2000).

Table 3. Findings of Risk Sharing Implementation in musharakah contracts at BSI bank.

No	Transfer Risk	Sharing Risk
1	Asuransi	Risk Shared with agreement model

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2	Guarantee (already an obligation)	This is permissible but not mandatory, but the basis is to protect each other with the concept of mutual agreement.

Source : Author 2022

The results of the interview can be concluded that in the implementation of risk sharing, it is found that fire insurance is used to protect assets, but if there is a default due to a declining business or even threatened with business closure due to other things, then the bank transfers it to collateral. In the book of musharakah and musharakah mutanaqishah product standards (OJK), it is explained in point 3.11. Insurance standards, at point (1) insurance related to musharakah contract financing is insurance related to the possibility of financing risks in the future which will be borne by the insurance company. Point (2) Payment of insurance premiums through a musharakah contract is shared and borne jointly by both parties, namely the BUS/UUS/BPRS and the customer proportionally based on the agreement. So in this case, the payment of insurance premiums should be divided according to the portion of the agreement, but in reality the customer bears the full payment of insurance premiums.

The guarantee is in accordance with the National Shari'ah Council Fatwa No: 08/DSN-MUI/ IV/2000 concerning Musharakah Financing, in number 3 of the contract object (capital, work, profit and loss). Capital section point 3. In principle, in musharakah financing there is no guarantee, but to avoid deviations, LKS can ask for collateral. In the standard book of musharakah and musharakah mutanaqishah products, it is explained in point 3.10. Guarantee and Collateral Standards. Point 3.10.1 the main guarantee for musharakah financing is BUS/UUS/BPRS confidence in the customer's ability to pay off the financing as agreed.

Research by M Rhyza Leonardo H, 2017 entitled: Implementation of Musharakah Agreements and Application of Collateral at Bank Rakyat Indonesia Syariah in Bandar Lampung, suggests that the settlement of default by customers (sharia) at BRI Syariah in Bandar Lampung prioritizes non-litigation channels, namely deliberations between banks and customers. The consequences of default require that the collateral pledged by the customer will be auctioned to pay off the financing provided by the bank.

The findings of the implementation of risk sharing at BSI bank are that Risk Sharing is not implemented, what applies at BSI bank is Risk Transfer and Risk Mitigation conventionally, characterized by insurance that covers assets and collateral that is an obligation for customers to cover defaults or businesses that go out of business. So that the mindset of the bank has become risk sharing in the musharakah contract, but the findings are that it is a conventional risk transfer and risk mitigation.

Formulation of Risk Sharing in Musharakah

The risk sharing formula presents deliberations that increase customer confidence by adhering to the concepts of transparency, honesty and responsibility. Looking at the concept applied, there are three important points, namely transparency regarding openness to all predetermined actions and policies. In this case, creating trust in customers through the provision of information and ensuring easy access to information.

In this case, the musharakah contract financing product scheme that has been running in general does not fulfill the element of justice where the transparency aspect has been fulfilled with an explanation and discussion at the beginning before the contract occurs and the results of the discussion between the two parties will be stated in the musharakah contract. For the aspect of honesty, the bank will remind if it is due and the customer will carry out the process of depositing profit sharing to the bank. As for the responsibility aspect, this scheme has not carried out the responsibility process where only the deposit process from the customer and the process of reminding the installment schedule by the bank without looking at the risk sharing aspect in the event of a risk.

So that the author formulates a scheme that the author believes can fulfill the three aspects of the principle of al adl with the concept of sharing risk. For more details, the following is a scheme for the formulation of al adl-based risk sharing in the musharakah contract as follows:

Table 4. Scheme of risk sharing formulation in musharakah contract

Musharakah contract-based product schemes which are generally	Scheme of risk sharing formulation based on al adl in musharakah contract
1. Musharakah contract financing agreement	• Musharakah contract financing agreement
2. Participation of each capital portion according to the portion agreement stated in the musharakah contract.	• Participation of a portion of each other's capital according to the portion agreement stated in the musharakah contract, including the portion of risk sharing.
3. Purchase of musharakah assets/assets or disbursement of working capital on business projects	• Purchase of musharakah assets/assets or disbursement of working capital on business projects
4. Proceeds from capital or operating investment assets	• Proceeds from capital or operating investment assets
5. Profit sharing income	• Discussion form (report on the progress of the business whether it is profit sharing or risk sharing)
6. Installment of principal (capital by the	• Profit sharing income

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customer) as a sharia partner in stages.	• Installment of principal (capital by the customer) as a sharī'ah partner in stages. • Risk Sharing in case of risk. • Joint regulation (credit restructuring or credit relaxation or other schemes according to mutual agreement from the results of the joint discussion form)

Source : Author 2022

In this case, the musharakah contract financing product scheme fulfills the element of al adl where the transparency aspect has been fulfilled with an explanation and discussion at the beginning before the contract occurs and the results of the discussion of both parties will be stated in the musharakah contract. For the aspect of honesty, the bank will remind if it is due and the customer will carry out the process of depositing profit sharing to the bank. As for the responsibility aspect, it will be fulfilled by considering that if there is a risk, risk sharing will be carried out by first conducting a discussion forum to analyze the problems of the business being run together, after analyzing the problem, both parties will propose several decisions that are considered appropriate and suitable for both parties. And the best decision will be taken by joint regulation where it will be decided whether to do restuk-turisasi or relaxation or there are other schemes that are considered to be able to solve the problems of the business sluggishness experienced.

Conclusion

The implementation of the risk sharing principle in the musharakah contract in Indonesian

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Islamic banks has not been fully carried out properly, this is characterized by only using the principle of risk transfer, where the risks that will occur are transferred to the insurance where the Indonesian Islamic banks use fire insurance specifically for the use of musharakah contracts. As for risks other than fire risk, for example the risk of default due to the decline or sluggishness of the business being undertaken, there is no conversation to lead to improvement or risk mitigation at the beginning, but only maintenance is carried out with the aim of installments or obligations to be paid by the customer by reminding the due schedule each month without any maintenance in the development of a joint business according to the musharakah contract, namely a joint business or partnership.

In the musharakah contract carried out by Islamic banks, it is a general contract that shows starting from the discussion of the two parties and then pouring it into a contract, then purchasing assets for business use, then depositing the profit-sharing obligations to the bank in accordance with the agreement stated in the contract, with this, when viewed from the concept of sharing risk, there is a lack of risk mitigation in practice, banks carry out the concept of risk transfer by transferring risk to third parties using Islamic insurance in a musharakah contract. So that it should be proposed that the formulation of a musharakah contract in accordance with the principle of sharing risk with the concept of al-adl to ensure that neither party is harmed, where it is added to the obligation to report business results to the bank within a certain period according to the agreement and discussions will be held between the two parties between the customer and the bank to see joint business prospects where the bank becomes a partnership for the customer so that if there is a risk, mitigation will be carried out at the beginning by taking several alternative decisions that are best for both parties and for business continuity.

suggestions for further research, can compare the application of *risk sharing with risk transfer and risk distribution*. then it is very good to analyze how the application of the three theoretical concepts in Islamic banks and conventional banks.

Thank-you note

We would like to thank all those who have provided their participation and support so that this research can be completed, especially to 1) promoters who always discuss in solving problems. 2) to colleagues who participated in discussions and provided critical suggestions in this research. 3) Especially to the journal leaders and managers who have provided opportunities in the process of publishing this journal.

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