

Reconceptualization and Implementation of Shirkah Muḍārabah: An Islamic Law Analysis

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Abstract

This article seeks to elucidate the fundamental concept of *shirkah muḍārabah* (business partnership based on sharing agreement) within classical and contemporary Islamic legal literature and its historical application in Islamic contexts. It endeavors to reconceptualize this notion and its implementation, particularly within the Indonesian framework, through the lens of Islamic law. Through library research and critical reconstructive analysis, *shirkah muḍārabah* can be effectively implemented, largely devoid of socio-economic and political constraints, particularly in partnership-based business activities between investors-capitalists and proprietors who are committed to conducting business partnerships grounded in trust, founded on the principles of honesty, transparency, and *maqāṣid sharīa* (higher objectives of Islamic jurisprudence) argument.

Keywords: *Shirkah*, *Muḍārabah*, Limited Company, *Maqāṣid Sharīa*, Islamic Commercial Law.

Introduction

According to the Indonesian constitution, the primary goal of development is to realise a just and prosperous society materially and spiritually. It has faced severe challenges, such as the COVID-19 pandemic, to the ability of human resources. The Poverty Profile in Indonesia evidences this as of March 2023, the poverty rate was recorded at 9.36 per cent of Indonesia's total population, or 25.90 million people. In the same month, the Gini ratio rose from 0.381 in September 2022 and 0.384 in March 2022 to 0.388. Inequality is increasing.¹

The problem requires an objective and subjective study, whether it is asking fundamentally about the model of modern human life that raises the problem of unity between the desired goals and the reality of existing resource capabilities.² It also re-questioned the role of religion as one of the main variables in the context of the development agenda in Indonesia. As an important religious entity in Indonesia, Islam should ideally be understood and practised contextually so that its salutary contribution to development is always active, both at the partial and structural levels. This article provides an analysis from the perspective of Islamic legal thought. Islamic law, as an important aspect

¹ Badan Pusat Statistik, "Profil Kemiskinan Di Indonesia per Maret 2023" (Jakarta, 2023).

² M. Habib Chirzin, "Perubahan Sosial, Tata Nilai Islam Dan Pendidikan," *Akademika* VII, no. II (1983): 53.

of Islamic teachings, is eclectic. It continues to function responsively and contribute to every social change³ to realise the ideals of the best and preferred society (*khaira ummah*).

One of the important concepts in Islamic law, especially the legal contract, is business partnership (*musharakah-muḍārabah*), which is practiced separately in Indonesian society, meaning that it seems exclusive, limited to Muslims only. It is similar to the limited practice in Islamic financial institutions today.⁴ However, in Indonesian society, it has long been practised customarily, but it is not identical to Islamic law. If we refer to Kuntowijoyo's epistemological offer with the objectification of Islam, the concept of partnership can apply to everyone. The objectification of Islam itself means making Islam the mercy of the universe (*rahmatan lil 'il'ālamīn*), meaning that there is an internalization of Islamic values to non-Muslims by not imposing subjective views, but objectively, so that the teachings of Islam can be accepted and useful for non-Muslims as well. This objectification makes "Islam that can be transmitted openly and without secrecy."⁵

In the global context, business partnerships have become a common phenomenon that prevails as one of the economic cooperation models throughout the Islamic regions. Because normatively, the primary sources of Syariah, which are the Al-Quran and Hadith, have endorsed it, thus Islamic Jurists in the four Islamic schools (*madhhab*; Ḥanafī, Shafī'ī, and Mālīkī) in the early period of its formative, except Ḥanbalī, formulated this concept systematically in their canonical books of Islamic law (*kutub al-fiqh*).⁶ However, suppose it refers to the rules of Islamic legal maxims (*qawā'id fiqhiyah*). In that case, this formulation of the Islamic Jurist of medieval Islam must be re-actualized in line with changes of time and place.

The actualization of Islamic law on partnership cannot be separated from the political dimension in Indonesia, which has experienced ups and downs along with the legal politics applied by state power. However, the praxis of Islamic law in Indonesia has experienced continuous development through political infrastructure and superstructure with the support of socio-cultural forces. Therefore, this article aims to reconceptualize the concept of Islamic business partnership in the Indonesian context through the perspective of Islamic political economic law. Thus, Islamic jurists' formulation of this concept in their canonical books, which reflects its practice in history and Islamic civilisation, will first be explored and presented.

Research Method

Library research was employed to find *shirkah* that has been conceptualized in the canonical books of Islamic law in the four schools (*madhhab*), along with some modern literature. Reconceptualization (aspires to critique which insists upon the transformation of extant structures), as part of critical reconstructive analysis,⁷ was conducted so that information in the form of concepts in classical and modern Islamic law books, especially in the chapter of *mu'āmalat māliyah*, can be implemented in a special context. Some key concepts and theories to conduct critical analysis included: *maqāṣid shari'a* as a tool of Islamic legal reformation⁸; the gate of ijtihad was closed (*'insidad*

³Satjipto Rahardjo, *Hukum Dan Perubahan Sosial* (Bandung: Alumni, 1979), 25.

⁴Aulia Fitria Yustiardi et al., "Issues and Challenges of the Application of Mudarabah and Musharakah in Islamic Bank Financing Products," *Journal of Islamic Finance* 9, no. 2 (2020): 26–41.

⁵Kuntowijoyo, *Paradigma Islam: Interpretasi Untuk Aksi* (Bandung: Mizan, 2008), 288.

⁶Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton NJ: Princeton University Press, 1970), 16.

⁷Lai Ma, "Critical Methodology and the Reconceptualization of Information," in *Qualitative Research: A Reader in Philosophy, Core Concepts, and Practice*, ed. Barbara Dennis Et.al (Bristol: Peter Lang, 2013), 168–83.

⁸Muhsin & Popi Siti Ropiah. Hariyanto, *Reinterpretasi Makna Kesejahteraan Dalam Perspektif Maqāshid Syari'ah* (Bengkulu-Yogyakarta: Yayasan Sahabat Alam Raflesia, 2023), 115.

bab al-ijtihad)⁹; the Islamic legal maxims¹⁰; Islamic commercial law¹¹; and Islamic political economy as a study of the interactive between polity and market order.¹²

Some inductive and deductive technical processes were carried out after the elaboration of *shirkah* and *muḍārabah* in classic and modern Islamic law literatures by looking at modern partnership institutions in limited companies and then comparing them with the concept of *shirkah*.

Discussion

As the main branch of Islamic law that regulates economic and business activities, Islamic commercial law has introduced economic institutions in various forms,¹³ most of which are pure conceptual ideas, due to the objectification of forms of economic activity in the early Islamic era. Two of these institutions, *shirkah* and *mudharabah*, were already practiced before Islam, such as in the Jewish and Persian traditions, and were later legalized by Islam.

These two institutions can be traced in the early canonical books of the *madhhab*, which represent the legal formulations and requirements of its early formative period. Why did the four Islamic law jurists compile the early formative books? Because after the formative period, the books that were born afterwards experienced stagnation with the characteristics of the emergence of annotated works (*sharah* and *ta'liqāt*), although in the form of comparative Islamic law works in the modern era, such as "*Al-Fiqh al-Islāmī wa Adillatuhu*" and "*al-Mausū'ah al-Fiqhiyah al-Kuwaitiyah*". Thus, the reconceptualization for its reimplementation becomes a necessity.

Shirkah and Muḍārabah Institution in the Classical and Modern Islamic Law

Shirkah/sharikah (partnership) as a common practice of all previous civilizations was endorsed by Sharīah and developed by Islamic jurists using *ijtihad* tools, such as *ijmā'*, *qiyās*, and *'urf*.¹⁴ It reflects Islamic teachings' characteristic universality and totality, which are interrelated and derived from general principles.¹⁵

Shirkah means mixing two properties so they cannot be distinguished. It also means sharing and participation. It also means a property that belongs to several owners or co-proprietors in common, in such a way that each one has ownership of every smallest part of it in proportion to the share allotted to him.¹⁶

The Hanafi and Maliki schools of Islamic law divide the partnership institution into *shirkah al-milk* (proprietary partnership) and *shirkah al-'aqd* (contractual or commercial partnership). Briefly stated, proprietary partnership is concerned exclusively with joint ownership of property. Joint ownership is, in fact, its only qualification, and no joint exploitation of property is involved. In commercial partnership, joint ownership is not necessary for establishing the partnership; the emphasis is on the joint exploitation of capital and the joint participation in profits and losses.¹⁷ These two forms are often identified with *mufāwadhah*, where the capital between the parties must be equal.¹⁸

⁹ Sobkhi Mahmashani, *Filsafat Hukum Dalam Islam*, ed. Ahmad Sujono (Bandung: Al Ma'arif, 1981), 234.

¹⁰ Asjmuni Abdurrahman, *Qaidah Qaidah Fiqih*, (Jakarta: Bulan Bintang, 1976), 71–72.

¹¹ Muhammad Yusuf Saleem, *Islamic Commercial Law* (Singapore: John Wiley & Sons, 2013).

¹² M.A. Choudhury, *Studies in Islamic Science and Polity* (London: Palgrave Macmillan, 1998)

¹³ Saleem, *Islamic Commercial Law*, xi–xii.

¹⁴ Ahmad Azhar Basyir, *Hukum Islam Tentang Wakaf, Ijarah, Syirkah* (Bandung: Al Ma'arif, 1977).

¹⁵ Dochak Latief, "Tata Nilai Ekonomi Islam Dan Persoalan Pembangunan," *Akademika* 1, no. 1 (n.d.): 31.

¹⁶ Saleem, *Islamic Commercial Law*, 96.

¹⁷ Al-Sarakhsi, *Al-Mabsūt* (Beirut: Dar Al-Ma'rifah, 1989), vols. 11, 151; Malik bin Anas, *Al-Mudawwanah* (Beirut: Dar al-Kutub al-Ilmiyah, 1994), vols. 3, 593.

¹⁸ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islāmī Wa Adillatuhu* (Damaskus: Dar al-Fikr, 2006), vols. 7, 3896.

The Shafi'i school, on the other hand, differed by making the concept of *ikhtilāth* the key and valid condition of the *shirkah* contract, that the assets used as business capital must be merged, whether the merger is physical or managerial. From this point, the Shafi'iyah do not approve of this type of *shirkah amwāl* because the capital is not pooled.¹⁹ The Hanbalī school, which does not find this concept in their formative canonical fiqh, later believes that the keywords of the *shirkah* contract are more emphasized on the merger that includes ownership (rights, *shirkah al-milk*) and business actions (*shirkah al-uqūd*).²⁰

In modern Islamic commercial development, *shirkah* is interpreted as a contract between two parties, one of which is an investor (capitalist, financier) and the other a party who runs a business (proprietor) with the provision that profits are shared according to an agreement accompanied by agreed-upon clauses.²¹ This interpretation is likely to make *muḍārabah* a form of *shirkah*.

Muḍārabah (silent partnership), linguistically, one of its meanings is walking on the earth (*al-dharbu fī al-'ardh*) as written in the Qur'an (Al-Muzammil [73]: 20). Another term is "*qirādh*" and "*muqāradhah*" (portion), because the capital owner gives part of his property to trade and gets a share of the profit from this partnership. Another term is "*mu'āmalah*," a contract between two parties, each of whom is the capital owner and the one who runs the company. The legal consequences of the agreement are binding on both parties under the agreement.²² The institution of *qirādh*, which is described in the Islamic law books, has existed since the pre-Islamic era (*jāhiliyyah*). It was Islamized, and Islamic jurists agreed on its validity.²³

Muḍārabah refers to a contract in which one of the parties provides capital (*shāhib al-māl*) and the other contributes expertise, labour, and entrepreneurial skill (*mudhārib*) to conduct a particular business in which both parties would share profit so that the capital owner and the head of the company can lead to a harmonized commercial agreement. The profit from the business is shared between the parties by an agreed agreement, considering the situations and conditions that affect the distribution of profits. If there is no profit, the investor will receive the original capital. At the same time, the head of the company does not get anything from this condition; likewise, if there is a loss that is not due to the full fault of the head of the company, the investor will bear it. In short, there are two forms of capital contracts. The first involves "money" capital, and the second is working capital.²⁴

Ali Fikri²⁵ explained, the form of *shirkah* stated by Islamic Jurists as the initial genealogy of the concept of *muḍārabah* or *qirādh* was practised during the Umar bin al-Khattab Caliphate and recorded in a long hadith transmission in Malik's *Al-Muwathā'* as follows: Malik related to me from Zayd ibn Aslam that his father said, "Abdullah and Ubaydullah, the sons of Umar ibn al-Khattab, went out with the army to Iraq. On the way home, they passed by Abu Musa al-As'ari, Basra's amir. He greeted them and made them welcome and told them that if there were anything he could do to help them, he would do it. Then he said, 'There is some of the property of Allah which I want to send to the *amir al-muminin* so that I will lend it to you, and you can buy wares from Iraq and sell them in Madina. Then give the principal to the *Amir al-muminin*, and you keep the profit'. They said they would like to do it, so he gave them the money and wrote to Umar ibn al-Khattab to take it from them. When they

¹⁹ Al-Shirazi, *Al-Muḥadḍab* (Beirut: Dar al-Fikr, 1994), vols. 1, 481.

²⁰ Ibnu Qudamah, *Al-Mughnīy* (Riyadh: Maktabah Riyad al-Haditsah, 1981), vols. 1, 3.

²¹ Fikri, *Al Mu'āmalat Al-Madiyyah Wa Al-Adabiyyah*, 91.

²² Sayyid Sabiq, *Fiqh Al-Sunnah* (Beirut: Dar al-Kitab al-'Arabi, 1971), 202.

²³ Ibnu Rusyd, *Bidāyah Al-Mujtahid Wa Nihāyah Al-Muqtashid* (Cairo: Isa Al-Halabi, 1971), 236.

²⁴ Muhammad Abdurrahman Sadique, *Essentials of Musharakah and Mudarabah: Islamic Texts on Theory of Partnership* (Kuala Lumpur: International Islamic University Malaysia (IIUM) Press, 2009), 67–76.

²⁵ Fikri, *Al Mu'āmalāt Al-Mādiyyah Wa Al-Adabiyyah*, 180–81.

came to sell, they made a profit, and when they paid the principal to Umar, he asked, 'Did he lend everyone in the army the like of what he lent you?' They said, 'No.' Umar ibn al-Khattab said, 'He made you the loan, because you are the sons of the *Amir al-Muminin*, so pay the principal and the profit.' Abdullah was silent. Ubaydullah said, 'You do not need to do this, *amir al-muminin*. We would have guaranteed it if the principal had decreased or been destroyed. Umar said, 'Pay it.' Abdullah was silent, and Ubaydullah repeated it. A man sitting with Umar said, *Amir al-Mu'minin*, better that you make it a qirad. 'Umar said, 'I have made it qirad.' Umar then took the principal and half of the profit, and Abdullah and Ubaydullah, the sons of Umar ibn al-Khattab, took half of the profit."²⁶

***Shirkah Muḍārabah* as A Synthesis and Its Projection in a Limited Company**

The discussions in the canonical Islamic law books reflect the Islamic Jurist's deep awareness of this concept. Still, it is perceived to have no established functional value. It leaves several study gaps, as follows: the form of mechanization and operationalization into a praxis institution in the current economic situation. Moreover, it is still far behind compared to the various forms of modern companies.²⁷

Consequently, it is necessary to understand that *muḍārabah* is a form of *shirkah* contract as part of cooperation between the parties to obtain profit. Thus, the modern Islamic Jurist introduced the term "*Shirkah muḍārabah*" or *shirkah al-tauṣiyah al-basīthah* (joint stock company).²⁸ Compared to a modern partnership, this *Shirkah muḍārabah* is similar to a limited company, if the company does not participate as a director.²⁹

Muḍārabah is a *syirkah* contract representing a collaborative effort between parties to generate profit. Consequently, the Islamic Jurist introduced the term "*Shirkah mudharabah*" as a distinct topic in Islamic legal literature and acknowledged its legitimacy. The Hanafi jurists do not regard *mudharabah* as analogous to other forms of *shirkah*, as it prioritizes profit derived from commercial endeavors, utilizing capital in the form of money and labour. Consequently, Shafi'i Jurists do not dismiss this form of partnership, but they primarily acknowledge just one sort, specifically the partnership of *'inan*.³⁰ Interestingly, the modern Islamic comparative jurist, Wahbah Az-Zuhaili, categorizes this *muḍārabah* partnership into the form of a joint stock company (*shirkah at-tauṣiyah al-basīthah*).³¹

This institution will positively impact the people's economic welfare, at least it will be closely intertwined with various factors of production to create better production power, compared to individual businesses.³² Moreover, the common ownership or commonwealth that is the substance of *shirkah-muḍārabah* is a conceptual process part of the profit-sharing idea (co-partnership or co-ownership), where individuals switch to owning an "interest" in a joint enterprise.³³

In terms of *ḥikmah al-tasyri'* (philosophy of law), *shirkah-muḍārabah* contains several wisdom and objectives, namely: a) to educate the individual Muslim to do for himself and the surrounding community, as a manifestation of his responsibility (himself and the surroundings), which in economic terms also be called a factor of production and his devotion to God; b) to realize universal justice that can be felt by all parties that reflect the equitable distribution of prosperity and wealth. Where the

²⁶ Al-Zarqani, *Al-Muwatthā' Syarḥ Al-Zarqānī*, ed. Thaha Abdurauf (Cairo: Maktabah Tsaqafah Diniyah, 2003), vols. 3, 515.

²⁷ Hilman Latief Mukhlis Rahmanto (ed), *Genealogi Pemikiran Dan Ekonomi Islam Di Indonesia Konsepsi Keadilan Dan Proyeksi Kebangsaan* (Yogyakarta: Adesy & IB Times, 2021).

²⁸ Al-Zuhaili, *Al-Fiqh Al-Islamiy Wa Adillatuhu*, vols. 7, 3972–3973.

²⁹ Basyir, *Hukum Islam Tentang Wakaf, Ijarah, Syirkah*, 67–68.

³⁰ Fikri, *Al Mu'āmalāt Al-Mādiyyah Wa Al-Adabiyah*, 183–87.

³¹ Al-Zuhaili, *Al-Fiqh Al-Islamiy Wa Adillatuhu*, vols. 7, 3972–3973.

³² Hamzah Ya'qub, *Kode Etik Dagang Menurut Islam* (Bandung: Diponegoro, 1984), 266–67.

³³ E.F. Schumacher, *Kecil Itu Indah*, ed. Afif Muhammad (Bandung: Pustaka, 1984), 261.

capital owner as the supervisor of the business and the proprietor as the executor jointly work together and feel the results of their work, based on the values of economic democracy in Islamic terms; c) the implementation of *shirkah-muḍārabah* by the parties who cooperate with trustworthiness will strengthen the true truth of Islam as an Islamic moral answer for human socioeconomic development; d) Creating division of labor or labor efficiency, with specialization and finally, interdependence on each other.³⁴

At the practical level, the institution of *shirkah muḍārabah*, when compared to modern models of partnership practice, is similar to the limited company.³⁵ The limited company itself, in the Indonesian context, has had a major economic impact because it is supported by several factors, namely: continuity of the business entity, the possibility of electing capable directors, relief of the burden on each party, and the capital is easy to raise, and its fate does not depend on a person.³⁶

Therefore, in terms of projection, this limited company institution and its concept provide the possibility for the transformation and realization of the *shirkah muḍārabah*. Moreover, some general principles of *mu'āmalat* (commercial transactions) are very supportive, namely: (1) Cooperation between humans is permissible, unless otherwise determined by Sharīa; (2) *Mu'āmalat* is carried out voluntarily, without containing elements of coercion; (3) *Mu'āmalat* is carried out based on consideration of obtaining benefits and avoiding risks (*muḍārat*) in community life; (4) *Mu'āmalat* is carried out by maintaining the value of justice, avoiding elements of persecution and elements of taking opportunities in narrowness.³⁷ Even in Indonesian law, the principle of partnership is emphasised in Article 1619: "All partnerships must be about a lawful business, and must be made for the mutual benefit of the parties."³⁸

The process of transformation and realization of this institution must consider the social, political and legal situation, while still embracing the basic values of Islamic economic institutional, namely: 1) the basic value of ownership, in which Islam introduces relative ownership, not absolute material ownership, but "beneficial ownership." When a person dies, the ownership must be distributed to their heirs. However, the authors note that this concept of ownership is correct in the common sense. All materials belong to God (Allah). But in general, Islamic law categorizes between perfect ownership (*milk at-tam*) and imperfect-relative ownership (*milk al-nāqish*), in the definition of material or beneficial ownership; (2) the basic value of balance which is reflected in all economic actions; and (3) the basic value of justice; where justice here means human freedom which requires Islamic morals in all economic dimensions. Justice also goes hand in hand with wisdom in allocating and distributing wealth.³⁹ This basic value is the starting point to uncover the instrumental value of the new institution of *shirkah muḍārabah*.

This new institutional concept for *shirkah muḍārabah* is the reality and operation of its basic concept and must be Islamic with three main foundations viz: faith, law and morals; and aims to realise prosperity and universal brotherhood and justice.⁴⁰

Furthermore, if formulated, the *shirkah muḍārabah* institution consists of four integrated elements contained in an agreement contract, namely: (1) the parties to the transaction; (2) the capital invested; (3) the business undertaken; and (4) the expected profit.

³⁴ Fikri, *Al Mu'āmalat Al-Mādiyyah Wa Al-Adabiyyah*, 182; Hariyanto, *Reinterpretasi Makna Kesejahteraan Dalam Perspektif Maqāshid Syari'ah*.

³⁵ Basyir, *Hukum Islam Tentang Wakaf, Ijarah, Syirkah*, 67–68.

³⁶ Winardi, *Ekonomi Teoritika Mikro* (Bandung: Tarsisto, 1976), 66–67.

³⁷ Ahmad Azhar Basyir, *Asas Asas Hukum Mu'āmalat* (Yogyakarta: Fakultas Hukum UII, 1983), 10.

³⁸ R. Subekti, *Pokok Pokok Hukum Perdata* (Jakarta: Intermasa, 1980), 379.

³⁹ Ahmad Muflih Saefuddin, *Studi Nilai Nilai Ekonomi Islam* (Jakarta: Media Da'wah, 1984), 42–65.

⁴⁰ Basyir, *Asas Asas Hukum Mu'āmalat*, 213–14.

The reality of the *shirkah muḍārabah* institution includes all the institutional instrumentation of the company and its mechanism, which in some respects, especially the technical implementation, is almost the same as a limited company, only with some reductions and additions to the instrument to make this institution remain on its ideal path. The following is a formulation of the proposed concrete form of instruments and mechanisms consisting of seven core aspects:

1. Capital

Capital refers to the funds provided by one or more investors or capitalists to a business partner. Capital in this context refers to shares in a limited liability corporation, which may be supplemented by a new capital request that differs from the existing capital, as it is only valid temporarily. The surplus capital may be retracted if it is no longer required. The former capital may also be considered in allocating the institution's profits and losses. Before the conclusion of the institution, the invested capital cannot be retracted, as doing so will lead to the termination of the membership of the individual whose capital was withdrawn. The capital does not have to be invested all at once, but can be divided into several parts as determined in the previous contract. Capital in *shirkah muḍārabah*, like in a limited liability company, recognises three forms of capital: stipulated capital, capable capital and cash capital.

2. Board of the institution

The board of the *shirkah* institution, in its institutional concept, only recognizes two personalities, one party as the capital owner who is the ruler or holder of supreme power in this institution, where he has the right to choose the executors of the institution's business to oversee the running of the company. If there is fraud, the capital owner can dismiss the business executor.

In the operational form, it can be adjusted to the personnel at the board of a limited company, according to necessity:

- a. As the business manager, the board of directors/management represents the institution as a legal entity.
- b. The board of commissioners, which supervises the running of the company, with the same function as the *ḥisbah* institution in Islamic tradition; the Special officers to supervise the activities of individuals or groups in the fields of morals, religion and economics, to uphold the values of justice and peace, under Islamic law and customs (tradition) that do not conflict with the Sharīa.⁴¹
- c. The general assembly of the Persero, in charge of appointing and dismissing directors and commissioners and holding the highest power.

In the institution of *shirkah muḍārabah* in its practice, this general assembly can consist of one person, if the capital owner is only one person, while the name can be adjusted.

3. Establishment Procedure

This institution is related to the rules of Indonesian civil and commercial law, so that in the process of establishment must follow the method of establishing a limited company, namely:

- a. It must be done by notarial deed authorized by the Minister of Law and announced to the public.
- b. At least twenty per cent of the total capital is available.
- c. At least ten per cent of the capital has been paid up.
- d. Annex to the bylaws as the executor of the Articles of Association.
- e. 2% of the capital must be available at the time of incorporation.

⁴¹ Ahmad Azhar Basyir, *Garis Besar Sistem Ekonomi Islam* (Yogyakarta: FH UII, 1984), 21–22.

The establishment of this can be evaluated in terms of the capital delivery, because the Islamic scholars wanted and argued that the capital should be handed over directly, to avoid the possibility of "*gharar*" (uncertainty, hazards, or risk) in the future. In this case, the authors argue that the Islamic scholars' opinion is only based on concerns. Hence, the *ijtihād* method used is "*saddudz dzari'ah*", which is an effort to mitigate by covering risks likely to arise initially. On the other hand, in the local community's culture, there is a high probability that it will arise in the future, or this is only an aspirational action of the Islamic scholars, so the provision is made. Meanwhile, this is unlikely to happen in today's society or the institutional practice of limited liability companies regulated by the law or the Act. Even if it does, it will not be free from legal sanctions. Therefore, the authors believe this form of capital transfer does not violate the rules of Sharīa.

4. Types of Institutions

The institutional form of *shirkah muḍārabah* consists of two, namely:

- a. Closed *shirkah muḍārabah*, if the business owners consist of Muslims only.
- b. Open *shirkah muḍārabah*, if the owners of the business are not only Muslims, but non-Muslims are also allowed to participate in the company.

5. Profit sharing

The profit of the enterprise is divided among the parties to the *shirkah*: for the capital owners, the directors or executives of the enterprise, and the supervisory unit. If employees or third parties participate in the company with the permission of the capital owners, part of the profit is set aside for their wages, because of their status, as explained in the previous discussion. In addition, the obligation to pay taxes must also be fulfilled.

6. Losses

Losses take several forms. For ordinary losses, which are attributable to the failure of the *shirkah* to make a profit from its business, it is borne by the capital owners, in their position as the supreme authority and true owners of the company. If the losses are partly attributable to the negligence of the board of directors, they must be held liable. Even if it is his full negligence (for example, business manipulation and so on committed by the directors), he is fully obliged to bear the risk of the loss. If the loss is also partly attributable to the commissioner's negligence in carrying out his duties, then he is liable to bear the risk of the *muḍārabah* loss. From the risk shared by negligence, the capital owner, as the highest authority, has the full right to terminate the employment of the directors and commissioners.

The capital owner of the *syirkah*, which consists of more than two people with certain shares, has limited responsibility for the capital he put in. So he is obliged to bear the risk of loss to the extent of his capital in equal measure to each other, based on "the size of his capital."

7. Business Sectors

A Limited Liability Company can cover many business sectors in the trade world. However, of the various business sectors, at least two can cause problems because they are prohibited from the perspective of Islamic law principles. These two lines of business are related to usury and exploitation, which are unavoidable in the insurance and banking businesses, which can also be the lines of business of a Limited Liability Company. By implementing this *shirkah muḍārabah* concept, which is based on the principle of profit sharing with all its implementations, it is hoped

that it will be able to reduce, even eliminate, the two elements (usury and exploitation) in its business.

The seven institutional aspects of *shirkah muḍārabah*, based on the authors, implement the *shirkah muḍārabah* concept in the Limited Liability Company institution not only reasonable, but a necessity if Muslims want to harmonise their business with the principles of Islamic teachings.

Conclusion

To sum up, there are some conclusions from the previous discussion: (1) The institution of *shirkah muḍārabah* is an economic institution whose validity is recognized by Islamic law, as one of the Islamic methods and arrangements in the world of commerce to institutionalize trade cooperation between capital owners and the proprietors, to create socio-economic welfare; (2) The institution was practiced in pre-Islamic and its beginnings in various forms of business, but in the course of its development, there was never any realization and only became material for Islamic Jurist thoughts, because its relevance to the culture and the society was not fulfilled; (3) Meanwhile, the idea of *shirkah muḍārabah* as a material of thought, now has many questions about the possibility of its implementation and has been tried to be operationalized into various forms of cooperation, especially through banking institutions, but so far it is not known with certainty the level of success; (4) In the Indonesian socio-cultural context, the concept of *shirkah muḍārabah*, has more value of possibility and usefulness to be transformed into a similar partnership institution, whose validity is recognized in our society; that institution is "limited liability company (Perseroan Terbatas)" The argument that the authors builds, the realization is quite easy and the value of its benefits can be calculated and will better meet the target for the Islamization of the company, with the application of the principle of profit sharing which is expected to be able to eliminate the elements of usury and exploitation; (5) The successful implementation of this concept is associated with the Muslim attitude in transforming and realising the institutional concept of *shirkah muḍārabah* into the form of Limited liability company units. So, the determining factor lies in the awareness of Muslims themselves; (6) The implementation still requires a series of gradual processes, because there is still a mindset and behaviour of the community that cannot accept changes quickly; (7) In the next study, this *shirkah muḍārabah* can be implemented into the Syariah Insurance business (*takāful*) with the concept of *muḍārabah musyatarakah*.

Some recommendations proposed by the authors for the functionalization of the idea of *shirkah muḍārabah*: (1) Muslim scholars should be more passionate to think about the operationalisation of the concept of *shirkah muḍārabah*; (2) The Muslim entrepreneurs and investors, try to implement the concept into real business activities; (3) The Muslim in general for being passionate about their religious awareness, especially in economic life. So that the validity of this concept does not run one-sidedly; (4) The government to open up more opportunities for Muslims to implement the Shariah, especially in economic life. So that the economic independence envisioned by the government and all stakeholders, including the Muslim community, is realized. It is the spirit of *iḥsan* (benevolence) and *itqān* (precision), which is every Muslim's moral foundation and work ethic.

References

- Abdurrahman, Asjmuni. *Qaidah Qaidah Fiqih*,. Jakarta: Bulan Bintang, 1976.
- Al-Sarakhsi. *Al-Mabsūt*. Beirut: Dar Al-Ma'rifah, 1989.
- Al-Shirazi. *Al-Muhadzab*. Beirut: Dar al-Fikr, 1994.
- Al-Zarqani. *Al-Muwatthā' Syarh Al-Zarqāni*. Edited by Thaha Abdurauf. Cairo: Maktabah Tsaqafah Diniyah, 2003.
- Al-Zuhaili, Wahbah. *Al-Fiqh Al-Islāmiy Wa Adillatuhu*. Damaskus: Dar al-Fikr, 2006.
- Anas, Malik bin. *Al-Mudawwanah*. Beirut: Dar al-Kutub al-Ilmiyah, 1994.
- Basyir, Ahmad Azhar. *Asas Asas Hukum Mu'amalat*. Yogyakarta: Fakultas Hukum UII, 1983.
- . *Garis Besar Sistem Ekonomi Islam*. Yogyakarta: FH UII, 1984.
- . *Hukum Islam Tentang Wakaf, Ijarah, Shirkah*. Bandung: Al Ma'arif, 1977.
- Chirzin, M. Habib. "Perubahan Sosial, Tata Nilai Islam Dan Pendidikan." *Akademika* VII, no. II (1983).
- Choudhury, M.A. *Studies in Islamic Science and Polity*. London: Palgrave Macmillan, 1998.
https://doi.org/https://doi.org/10.1057/9780230378032_5.
- Fikri, Ali. *Al Mu'āmalāt Al-Mādiyyah Wa Al-Adabiyyah*. Cairo: Isa Halabi, 1984.
- Fitria Yustiardhi, Aulia, Aulia Arifatu Diniyya, Fariyah Amirah Ahmad Faiz, Nur Shazni Subri, and Zahra Nabila Kurnia. "Issues and Challenges of the Application of Mudarabah and Musharakah in Islamic Bank Financing Products." *Journal of Islamic Finance* 9, no. 2 (2020): 26–41.
- Hariyanto, Muhsin & Popi Siti Ropiah. *Reinterpretasi Makna Kesejahteraan Dalam Perspektif Maqāshid Syari'ah*. Bengkulu-Yogyakarta: Yayasan Sahabat Alam Raflesia, 2023.
- Hilman Latief Mukhlis Rahmanto (ed), *Genealogi Pemikiran Dan Ekonomi Islam Di Indonesia Konsepsi Keadilan Dan Proyeksi Kebangsaan* (Yogyakarta: Adesy & IB Times, 2021).
- Kuntowijoyo. *Paradigma Islam: Interpretasi Untuk Aksi*. Bandung: Mizan, 2008.
- Latief, Dochak. "Tata Nilai Ekonomi Islam Dan Persoalan Pembangunan." *Akademika* 1, no. 1 (n.d.).
- Ma, Lai. "Critical Methodology and the Reconceptualization of Information." In *Qualitative Research: A Reader in Philosophy, Core Concepts, and Practice*, edited by Barbara Dennis Et.al. Bristol: Peter Lang, 2013.
- Mahmashani, Sobkhi. *Filsafat Hukum Dalam Islam*. Edited by Ahmad Sujono. Bandung: Al Ma'arif, 1981.
- Qudamah, Ibnu. *Al-Mughnīy*. Riyadh: Maktabah Riyadh al-Haditsah, 1981.
- Rahardjo, Satjipto. *Hukum Dan Perubahan Sosial*. Bandung: Alumni, 1979.
- Rusyd, Ibnu. *Bidāyah Al-Mujtahid Wa Nihāyah Al-Muqtaṣid*. Cairo: Isa Al- Halabi, 1971.
- Sadique, Muhammad Abdurrahman. *Essentials of Musharakah and Muḍārabah: Islamic Texts on Theory of Partnership*. Kuala Lumpur: International Islamic University Malaysia (IIUM) Press, 2009.
- Saefuddin, Ahmad Muflih. *Studi Nilai Nilai Ekonomi Islam*. Jakarta: Media Da'wah, 1984.
- Saleem, Muhammad Yusuf. *Islamic Commercial Law*. Singapore: John Wiley & Sons, 2013.
- Sayyid Sabiq. *Fiqh Al-Sunnah*. Beirut: Dar al-Kitab al-'Arabi, 1971.
- Schumacher, E.F. *Kecil Itu Indah*. Edited by Afif Muhammad. Bandung: Pustaka, 1984.
- Statistik, Badan Pusat. "Profil Kemiskinan Di Indonesia per Maret 2023." Jakarta, 2023.
- Subekti, R. *Pokok Pokok Hukum Perdata*. Jakarta: Intermasa, 1980.
- Udovitch, Abraham L. *Partnership and Profit in Medieval Islam*. Princeton NJ: Princeton University Press, 1970.
- Winardi. *Ekonomi Teoritika Mikro*. Bandung: Tarsisto, 1976.
- Ya'qub, Hamzah. *Kode Etik Dagang Menurut Islam*. Bandung: Diponegoro, 1984.