

Muḍāraba Fund of Bank Jateng Syariah Cabang Surakarta (BJSCS) According to Dewan Syariah National-Majelis Ulama Indonesia (DSN-MUI)

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ABSTRACT

This study aims to illustrate the concept of muḍāraba fund applied by BJSCS. The type of this research is descriptive and qualitative. This study describes the procedures and implementation of *muḍāraba* fund as well as its compliance with the Fatwa of DSN-MUI. The employed data in this study was obtained through interviews with the financial officer as representatives of BJSCS who act as key informants. The results reveal that the concept of *muḍāraba* fund in BJSCS has not been fully in compliance with the Fatwa of DSN-MUI. It is based on firstly, Fatwa of DSN-MUI number (6) stating that “The Sharia Financial Institution as the provider of funds shall bear all losses resulting from *muḍāraba* unless the *muḍarib* (entrepreneur) makes a deliberate, negligent or counterproductive mistake.” Secondly, Fatwa of DSN-MUI number (4c) stating that “*Provider shall bear all losses resulting from muḍāraba, and the entrepreneur shall not bear any harm except from consequential errors, negligence or breach of consent.*” In such cases the borrower shall bear the principal repayment. However, there is one thing that can bring BJSCS closer to Sharia compliance, that is, that the Bank does not do restructuring unilaterally. Rather, the bank and the customer come and sit together to discuss what is good for them. This initiatives finally eliminates the discrepancies. Although in fact we expect that the bank should be bearing all losses because the losses incurred are not the fault of the entrepreneur.

Key Words: *Muḍāraba* fund, BJSCS and Fatwa of DSN-MUI.

INTRODUCTION

Islam provides complete rules and guidance for our life in this world. The rule consists of three things, namely Aqidah, Sharia, and Morals which are inseparable unity. The Believers should practice Sharia as proof of their faith. One role of Sharia is to regulate how to conduct economic activities, including religious obligation on how to conduct economic transactions according to Sharia (Sri Nuhayati and Wasilah 2013).

In view of paragraf above, we can say that in this context the existence of financial institutions is needed, because it serves as an intermediary between supply unit and demand unit. It can not be denied that a country's economy can not be separated from financial institutions because it has the cash needed to develop a country's economy. Without cash, the economy will be jammed. However, the system of these financial institutions still leaves some problems, *i.e.* interest issue. Many people disagree with the interest system, because there are certain implications following the application of interest. Due to this problem, there emerged an effort to find an alternative to get the solution, that is by offering Sharia-based financial institutions (Syarafuddin et al 2013).

One of Sharia-based financial institution is a Sharia Bank. According to Indonesian Constitution 21/2008 concerning Sharia banking, Sharia banking is everything that concerns Sharia Bank and Sharia Business Unit covering its institutions, business activities, and processes in conducting its business activities (Muhammad 2009).

In conducting its business activities, Sharia financial institutions, including banks, are supervised by the National Sharia Board (DSN). DSN serves as the supervisor of Sharia bank assuring that the business activities of Islamic banks are in

accordance with Islamic values, including in financing activities. For example, DSN specifies a fatwa on muḍāraba fund (Fatwa DSN, 2000).

The Fatwa of the National Sharia Council (DSN) with respect to *muḍāraba* fund, some of which are: 1) Fatwa of DSN Number 07 / DSN MUI / IV / 2000, stating that, “LKS (Sharia Financial Institution) as the provider of funds shall bear all losses resulting from muḍāraba, unless the muḍarib (entrepreneur) makes a deliberate, negligent or counterproductive mistake. 2) The fatwa of the National Sharia Council number: 07 / DSN-MUI / IV / 2000 on muḍāraba *fund (qiradh)*, harmonious and financing terms in the fourth point explains that, “The profit of muḍāraba is the amount obtained as the excess of capital” (Ichwan Sam 2014).

As we all know, one of the banks that provide muḍāraba fund services is BJSCS. In addition to muḍāraba, some other financing services used in BJSCS are: musyāraka and murabaha. However, muḍāraba transactions are often used for business capital or BMT development.

However, majority of the public view that Sharia Banks are only a matter of label, while the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI) as controls within the system is implemented within the Sharia Bank. In order to remove this image, it is necessary to have a match between muḍāraba fund applied by BJSCS with muḍāraba theory which has been specified by the National Sharia Council Fatwa of the Indonesian Ulema Council (DSN-MUI).

With this as background, the research will survey those banks applying muḍāraba contracts and find out whether their implementation and performance are in compliance with the National Sharia Council Fatwa of the Indonesian Council of

Ulama (DSN-MUI) or not. Based on the above explanation, the question being investigated would be Is the muḍāraba fund in BJSCS in accordance with the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI)? Departing from the formulation of the problem, this study aims to find out the analysis of Fatwa DSN-MUI about muḍāraba in BJSCS.

LITERATURE REVIEW

Previous Studies

To begin with, we will refer to previous researches as a reference in conducting further research. There are no previous research is done in the same manner with what we would be conducting now. However, some previous research can be used as a source of reference and as a preparation ground before doing another advanced research.

Try Subakti (2016) in his research entitled *Tinjauan Hukum Islam terhadap Pelaksanaan Akad Pembiayaan Muḍāraba di Bank Syariah Mandiri Cabang Sumenep* discusses the merging of muḍāraba with murabaha contract. This agreement is contrary to Islamic law and it was implemented only to the muḍāraba fund at Bank Syariah Mandiri Branch of Sumenep. That research is different from the research being conducted here. The research done by Try Subakti discusses the merging of muḍāraba contract with murabaha, while in this research we will discuss muḍāraba fund and its conformity with Fatwa of DSN. However, previous research also provides benefits for us in that it gives description of the contract in Islamic law.

Lutfiana (2015) in his research entitled *Analisis Pelaksanaan Fatwa DSN Nomor: 07/DSN-MUI/2000 tentang Pembiayaan Muḍāraba (Studi di Koperasi Jasa Keuangan Syariah Cemerlang*

Weleri) discusses the mechanism for determining margin of muḍāraba fund at Cooperation for Sharia Finance Service (KJKS) Weleri Branch. The practice of muḍāraba fund in KJKS Weleri Branch are inappropriate because some of that financing resemble debt contract. Mudāraba financing in KJKS has not been based on profit-sharing that is purely Sharia, but it still uses revenue sharing principle. From this we know that there are some practices that have not been in accordance with jurisprudence. This research is almost identical to the research that we will do here. While that research focuses on the margin or profit obtained by the KJKS, our current study will focus more on the conformity of muḍāraba transaction to the Fatwa of DSN-MUI.

Definition of Muḍāraba Contract

According to the Fatwa of DSN-MUI, muḍāraba is a contract of cooperation between two parties where the first party (*ṣhaḥib al-māl*, Sharia Financial Institution) provides all capital, while the second party (amil, muḍarib, client) acts as the manager, and the business profit is divided among them according to the agreement set forth in the contract (Ichwan Sam 2014).

Etymologically, the word *muḍāraba* comes from the word ḍarab. In Arabic, this word is among the words that have many meanings, including: hitting (*ḍharaba Ahmad al-kalba*); flowing (*ḍaraba damuhu*); swimming (*ḍaraba fi-al mā'*); and walking (*ḍaraba fi al-ard*). The changes that occur in the word depend on the following words and the context that make them. In the Qur'an, the word muḍāraba is not mentioned clearly. The Qur'an only reveals the *musytaq* of the word ḍarab which is repeated as much as 58 times (Mujahideen, 2016).

Technically, muḍāraba is a business agreement between the owner of the fund and the fund manager to conduct the business; profit is divided on the basis of profit-sharing ratio according to the agreement of both parties, whereas in case of loss it will be borne by the owner of the fund, unless caused by misconduct, negligence, and violation by the fund manager. The muḍāraba contract is a funding based on trust, namely trust from the owner of the fund to the fund manager. In English, Muḍāraba is known as Silent Partnership. The owner of the fund which is the investor is called beneficial ownership, and the fund manager is entrepreneur (Salman, 2012).

According to the scholars, muḍāraba or qiraḍh is defined as follows (Suhendi, 2007):

1. According to the fuqaha, muḍāraba is a contract between two parties (persons) bear each other, one party surrenders his property to another to trade with a predetermined portion of the profits, such as a half or a third under predetermined conditions.
2. According to Hanafi scholars, muḍāraba is looking at the purpose of two committed parties who are united in profit because the property is left to the other and has the services of the treasure manager. So muḍāraba is a syirkah contract in profit, one party owner of property, and the other party the service owner.
3. The Malikiyya scholars argue that muḍāraba is a representative contract, in which the owner of the property issues his property to the other for trading with the prescribed payment (gold and silver).
4. Imam Hanabilah argues that muḍāraba is like the owner of a property surrendering his property of a certain size to a

person who trades with a share of the known gains.

5. Sayyid Sabiq is of the opinion that *muḍāraba* is a contract between two parties in which one party issues a sum of money to be traded provided that the profits are divided into agreements.
6. According to Imam Taqiyuddin, *muḍāraba* is a financial contract to be managed by trade.

Having known some of the notions described by the scholars above, it may be understood that *muḍāraba* or *qiraḍh* is a contract between two or more persons, where the first party provides business capital, while the other provides labor and expertise provided that profit is shared between them by agreement which they have set together. In the contract *muḍāraba* there is an element of *syirkah* or cooperation. It's just not the cooperation of wealth with wealth or energy with energy, but between the wealth with energy.

Types of *Muḍāraba* Contract

The DSN-MUI fatwa does not explain the types of *muḍāraba* contracts, but generally the *muḍāraba* contract is divided into two types: Unrestricted Silent Partnership (*muḍāraba mutlaqah*) and Restricted Silent Partnership (*muḍāraba muqayyadah*).

1. *Muḍāraba Mutlaqah*

In principle, this type of *muḍāraba* is loose in nature, in which *ṣhaḥīb al-māl* does not specify any restrictions or conditions to *muḍarib*. This form of *muḍāraba* is called ***muḍāraba mutlaqah*** or in English known as Unrestricted Investment Account (URIA) (Karim, 2004).

As for the type of *muḍāraba mutlaqah*, it is a form of cooperation between *ṣhaḥīb al-māl* and *muḍarib* whose scope is very wide and not limited by the specification of business type, time, and business area. In the expression of jurisprudence, it is often exemplified by the expression *if'al ma syi'ta* (do as you please) (Mujahidin, 2016). In *muḍāraba mutlaqah*, fund managers have the authority to do anything in the conduct of business for the success of *muḍāraba* objectives. However, if it turns out that the fund manager is negligent or fraudulent then the fund manager must be responsible for the consequences. In addition, if there is a loss that is not the negligence or fraud of the fund manager then the loss will be borne by the owner of the fund.

The type of *muḍāraba mutlaqah* employed by Sharia Banks, enables customers who deposit their funds not to impose restrictions over Syariah Banks in using the funds they keep. Islamic banks are free to design what kind of contracts to whom the financing is given, when channeling the fund, and what kind of business they should be financing. Therefore, the principle of *muḍāraba mutlaqah* gives more flexibility for the bank (Salman, 2012).

2. Muḍāraba Muqayyadah

It is a type of *muḍāraba* where the owner of the fund provides restrictions to the manager concerning fund, location, manner and or object of investment or business sector. If the fund manager acts contrary to the conditions given by the fund owner, then the fund manager must be responsible.

The type of *muḍāraba muqayyadah* employed by Syariah Banks, enables customers who deposit their funds in Syariah Banks to give certain restrictions to Islamic banks in using the

funds stored. On this principle, the customer provides one or several restrictions such as what business should be financed (Salman, 2012).

In the practice of modern Sharia Banking, *muḍāraba muqayyadah* is divided into two, namely (Mujahidin, 2016):

- a. *Muḍāraba muqayyada* on balance-sheet. In this type of *muḍāraba* the flow of funds is recorded in the bank balance sheet. Aside from bringing together investors and entrepreneurs, banks are also involved in the business project. Profit-sharing involves three parties, namely banks, investors, and entrepreneurs. The amount of the ratio of each party depends on the agreement.
- b. *Muḍāraba muqayyadah* off balance-sheet. In this type, bank only acts as arranger only and the transaction is not recorded in bank balance, but only recorded in administrative account only. Profit-sharing involves only investors and entrepreneurs. The profit-sharing ratio depends on the agreement between the two parties and the bank only earns a commission from bringing the two together.

Pillars and Conditions of Muḍāraba Contract

1. Pillars of Muḍāraba

According to the Shafi'iyah scholars (Suhendi, 2007), the pillars of *muḍāraba (qiradh)* are six, namely: 1) The owner of the goods who handed over his goods. 2) The person who works, that is managing the goods received from the owner of the goods. 3) *Muḍāraba* contract, done by the owner with the goods manager. 4) The principal or capital. 5) *Amāl*, *i.e.* the work of treasury management to generate profits. 6) Profits.

Meanwhile, according to the Hanafi scholars, the pillars of *muḍāraba* are only the consent (from the owner of capital) and the *qabul* (from the merchant or the executive) (Ali Hasan, 2003), using a pronunciation that indicates the meaning of *muḍāraba*. According to majority of the scholars, there are three *muḍāraba* pillars: 1) *Āqaid*, the owner of capital and manager (*‘amil / muḍarib*), 2) *Ma’qud ‘alaih*, *i.e.* capital, labor (power) and profit. 3) *Ṣigt*, *i.e.* *ijab* and *qabul*.

Considering some opinion regarding pillars of *muḍāraba* above, it can be understood that basically the factors that must exist (pillars) in the *muḍāraba* contract is:

a. The Doer (owners of capital and business executors)

The parties involved in *muḍāraba* contract is the same as those involved in the sales contract, plus an additional component, namely the profit ratio. With regard to the first component (the parties involved), it should be clear by now. In the *muḍāraba* contract, there must be at least two parties. The first party acts as the owner of capital (*ṣhaḥib al-māl*), while the second party acts as the executing business (*muḍarib or ‘amil*). Without these two actors, the *muḍāraba* contract is deemed invalid.

b. The Object of Muḍāraba Contract (Capital and Labor)

The second pillar is a logical consequence of the actions taken by two parties. The owner of capital gives up his capital as the subject of *muḍāraba*, while the business actor gives up his work as the object of *muḍāraba*. Capital can be given either in the form of money or in the form of goods equivalent to a given value of money. While the labor offered could be one’s skill, like: skill to sell a good, skill to manage and run a company, and so

forth. Without these two, the *muḍāraba* contract will not exist

The jurists actually do not allow the capital of *muḍāraba* in the form of goods. It must be cash money. It is because price of goods can not be estimated, and that would result in uncertainty (*gharar*) of *muḍāraba* capital (Karim, 2004). However, the Hanafi scholars allow it and the value of the goods must be agreed upon the moment the contract takes place. The jurists have agreed not to allow *muḍāraba* with debt. Without a capital deposit, the provider of capital (*ṣhaḥīb al-māl*) is considered contributive, even though the capital manager (*muḍarib*) has worked. The Shafi'i and Maliki scholars forbade it because it corrupted the legality of the contract.

c. Consent of Both Parties (*ijab-qabul*)

The agreement of both parties is a consequence of the principle '*an taraḍi minkum* (as both please). Here both parties must be willing to agree to bind themselves in the *muḍāraba* contract. The fund owner agrees with his role to contribute funds, while the business actor agrees with his role to contribute his labor.

d. Profit Ratio

Ratio is the unique pillar in the *muḍāraba* contract, which is not there in the contract of sale. This ratio reflects the reward to be accepted by both *muḍāraba* parties. *Muḍarib* gets rewarded for his labor, while *ṣhaḥīb al-māl* gets rewarded for capital inclusion. It is this profit ratio that will prevent disputes between the two parties regarding profit-sharing (Karim, 2004).

2. Conditions for *Muḍāraba*

As for conditions of *muḍāraba* are as follows: 1) Capital or goods delivered are in the form of cash. If the goods are in the form of gold or silver bars, gold ornaments, or other articles, the *muḍāraba* is void. 2) The person involved in the contract is required to do *taṣharruf*, therefore the contracts are invalid for small children, crazy people, and people who are inability. 3) The share of profit that will go to the manager and the owner of capital must be clear in term of its percentage, for example half, one-third, or quarter, 4) Labor (*al-a'māl*), 5) Profit.

Muḍāraba Contract Employed by Sharia Bank

Fatwa of DSN-MUI does not discuss *muḍāraba* contract of Sharia Banking. However in general, the explanation of *muḍāraba* contracts can be summarised in what follows. The scheme discussed is a scheme that applies directly between two parties, namely *ṣhaḥīb al-māl* who is directly connected to *muḍarib*. This scheme is normal scheme that can be found in the jurisprudence literature. The practice of *muḍāraba* is exemplified by the Prophet and the Companions and the Muslims afterward. In this case what happens is direct financing between *ṣhaḥīb al-māl* (as surplus unit) with *muḍarib* (as deficit unit). In direct financing like this, the role of bank as intermediary institutions did not exist.

These classical *muḍāraba* have special features, namely that the mutual relation between *ṣhaḥīb al-māl* and *muḍarib* is personal and direct, and is based on mutual trust (*amanah*). *Ṣhaḥīb al-māl* just wants to give his capital to people whose profession and character is known well.

Such *muḍāraba* contracts are inefficient and less likely to be applied by the modern bank because of the following:

- a. The banking system is a group investment, where they do not personally meet each other. So it is very unlikely that there will be a direct and personal relationship.
- b. Nowadays, many investments require large amount of funds, so it takes tens or even hundreds of thousands of *ṣhaḥīb al-māl* to become funders for a specific project.
- c. Poor teaching of Islamic values has made it difficult for banks to assure guarantee for their distributed capital.

To overcome these problems, especially the first and second ones, the contemporary scholars devise new innovations on the *muḍāraba* scheme, i.e. the *muḍāraba* contract which involves three parties. This additional one party is played by a Sharia Bank as an intermediary institution that brings *ṣhaḥīb al-māl* with *muḍarib*, resulting in the evolution of the concept of direct financing into indirect financing.

In the scheme of indirect financing above, bank receives funds from *ṣhaḥīb al-māl* in the form of third party funds. These funds could be in the form of savings or deposits of *muḍāraba* with varying periods of time. Furthermore, these collected funds are re-channeled by the bank into the form of financing that generates money. The profit from this financing channeling will be shared between banks and their third party or fund owners (Karim, 2004).

Cancellation of Muḍāraba Contract

The explanation of this contract the *muḍāraba* is not found in the DSN-MUI Fatwa, but there are some explanations in what cases *muḍāraba* is being void. The explanation are as follows (Suhendi 2007):

1. One or more pillars and conditions of muḍāraba is missing. If one of the conditions muḍāraba is not fulfilled, while the capital has been held by the entrepreneur and has been traded then the entrepreneur gets some of the benefits as wages. If there is a profit then the profit is for the owner of capital. If there is a loss then the loss is the responsibility of the owner of the capital because the entrepreneur is a worker who is only entitled to receive wages and not responsible for anything except for negligence.
2. Entrepreneur intentionally abandon their duties as capital managers or contrary to the purpose of the contract. In such circumstances entrepreneur is responsible if there is a loss because he is the cause of loss.
3. If the executive or owner of the capital dies or one of the owners of capital dies, muḍāraba partnership becomes void.

RESEARCH METHOD

The type of research used in the preparation of this paper is field research, *i.e.* research by collecting data directly from the activities that have been done in the research work field (Supardi 2005). This current research is analysing muḍāraba fund in BJSCS. This study uses qualitative descriptive approach, *i.e.* research that observes some objects and then explains what he observed (Morissan 2012). Descriptive data are in the form of words gained from people's writing. In another words, the compiler will describe systematically and accurately about the facts about muḍāraba transaction based on Fatwa of DSN-MUI.

The method of collecting data in this research is by interview. Interview is a way of collecting data by asking questions directly by the interviewer to the respondent about the data needed, and

the respondent's answer was recorded by tape recorder (Irawan Soehartono 1998). Researchers will conduct interviews directly to parties involved such as managers and employees who are responsible or understand about the mechanism of muḍāraba contract in BJSCS. This interview was conducted to obtain data on the management of muḍāraba contract in BJSCS. Documentation of data collected are in the form, documents and brochures of BJSCS.

The method of data analysis is done by qualitative descriptive method. It aims to describe current problem based on data about implementation of muḍāraba contract in BJSCS. Analysis of the data is done by recording, analyzing, and applying inductive approach. Those activities are used to describe the results of research that is specific in nature. Afterwards, the general conclusions are withdrawn.

DISCUSSION

Muḍāraba in the perspective of jurisprudence is where the owner of capital (ṣhaḥīb *al*-māl) handing his capital to the workers (*muḍarib*) for trading. While the trade advantage is divided according to mutual agreement (Muhammad 2007). Muḍarib in this case contributes his labor, time, and management of its business in accordance with the provisions written in the contract, one of them is to achieve profit that are divided between capital owners and muḍarib based on mutually agreed proportions. However, in case of any loss the bearer of it is the owner of the capital only (Saeed, 2004).

Muḍāraba-based financing is a business contract between Sharia Financial Institution (LKS) as the owner of fund and customer as entrepreneur or fund manager. BJSCS and its

customers use a ratio of profit-sharing in its business activities. The profit or loss will be determined during the designing of contract.

DSN-MUI issued a fatwa regarding the implementation of *muḍāraba* fund to be a guide for the parties involved. *Muḍāraba* fund as stated in the DSN-MUI Fatwa is the financing channeled by LKS to other parties in order to finance a productive business. In this financing, the LKS as *ṣhaḥīb al-māl* (owner of the fund) will finance 100% of the needs of a project, while the entrepreneur (client) acts as *muḍarib* or business manager (Ichsan Sam, 2014).

In this *muḍāraba* fund, there is a common goal to achieve, namely to gain profit (called profit-sharing) which is gained as a surplus of business capital. Conditions of profit to be met in the revenue share, are: 1) Profits must be shared for both parties and should not be enjoyed for one party only. 2) Both parties shall know each others when the contract is agreed upon; shall decide proportionate ratio for profit-sharing. Changes in the ratio should be based on agreement. 3) The provider of the fund shall bear all losses resulting from *muḍāraba* and the manager shall not be liable for any damages except as a result of deliberate misconduct, negligence or breach of agreement.

Analysis of Financing Side

In *muḍāraba* fund, BJSCS as the owner of capital channels funds to customers for productive enterprises. The business run by customer must generate profit for both parties. It can be seen from the Fatwa of DSN-MUI with regard to the conditions of financing in points (1), which states: “*Muḍāraba fund is a financing channeled by LKS to other parties for a productive*

business.” Therefore at this point BJSCS has been in accordance with DSN-MUI.

BJSCS provides 100% funds to customers who apply for *muḍāraba* fund for running a business. The amount of financing is stated at the beginning of the contract and money will be provided in cash by BJSCS. Therefore, BJSCS as *ṣhaḥībal-māl* is only supervising and customers as *muḍarib* only contribute his labor and expertise.

Funds provided by BJSCS to customers are in accordance with the Fatwa of DSN-MUI in points (2) and (5). The point (2) states that, “*In this financing the LKS as ṣhaḥīb al-māl (the owner of the fund) will finance 100% of the needs of a project, while the entrepreneur (client) acts as muḍarib or business manager.*” While point (5) states “*The amount of financing funds should be clearly stated in cash and not receivables.*”

BJSCS (as *ṣhaḥīb al-māl*) agrees with the customer (*muḍarib*) for the business or project undertaken. Distribution of financing benefits, duration, *muḍāraba* repayment system is done by installments or paying respite. It can be said that in determining the period of time and refund, BJSCS has complied with the Fatwa of DSN-MUI at point (3), stating that: “*Business duration, refund procedure, and profit-sharing are determined based on agreement of both parties (LKS with employers).*”

BJSCS provides funding, then hands it over to customers as *muḍāraba fund* and customers must honestly notify all matters relating to the results of its management. In this case BJSCS refers to the principles of Sharia, namely the principle of transparency, ease, and also not off with supervision, although BJSCS does not supervise directly in its management. BJSCS parties provide freedom in the management of their business.

This is what distinguishes BJSCS from conventional banks. Although the concept is almost the same, but both differ in terms of contracts devised and profit taking. Another difference lies in its organizational structure, where a Sharia Supervisory Board (DPS) is set up to oversee BJSCS products. In principle, the product must be free from elements that are not allowed by Sharia. The products offered are based on the Fatwa of DSN-MUI in point (4) stating that *“Muḍarib may conduct various business which has been mutually agreed and in accordance with sharia, and LKS does not participate in the management of the company or project, but has the right to coach and supervise”* and on point (5a) stating that *“Business activities are the muḍarib’s executive rights without the funder’s intervention, but he has the right to do supervision”* and point (5b) stating that *“The fund provider shall not narrow the manager’s actions in such a way as to impede the achievement of the muḍāraba objective, i.e. the profit.”*

In muḍāraba fund in BJSCS, there are times when customers experience a loss or failure in the business they are running. If the customer suffers a pure loss such as fire then the customer’s principal deposit in BJSCS will be stalled as agreed at the beginning of the contract. Failure of customers will also bring effect to operational activities of BJSCS. If the financing is getting worse then it is said that muḍāraba fund is at stake.

Profit-sharing in muḍāraba fund, as carried out by BJSCS, depends much on muḍarib’s business, while muḍarib income depends on the business condition and the incurring cost in the process of business realization. In this muḍāraba fund, muḍarib earns profit or profit-sharing because of their labor. Şhaḥib al-māl gains profit-sharing because of the capital given to muḍarib and muḍarib undertakes business well and does not neglect. When

muḍarib is bankrupt and there is no profit-sharing, muḍarib is still required to restore initial capital financing even though the loss is not caused by muḍarib errors. This fact shows that the muḍāraba fund is still not based on ethics, effort, work, and responsibility that must exist in all forms of cooperation in Islam.

In BJSCS, there is a term called “*discretion*”. It is a facilitation of installment payment for customers who experience business failure such as fire that is not caused by engineering or negligence muḍarib. When the business starts over, BJSCS will restructure its financing. The monthly payment for installment is reduced, or the payback period is extended according to customer’s ability. If the customer is still unable to pay the financing, then the financing amount will be lowered. That is so as to lightens the financing customer’s expense. However, if the customer is still unable to pay the principal repayment, BJSCS will issue a warning letter. The first warning, second warnings, and last warnings. If the customer still cannot pay, then BJSCS is allowed to confiscate physical asset of customer or in other words, it was under bank supervision.

The action taken by the BJSCS in dealing with those problems should refer to the DSN-MUI Fatwa in the first part of the financing provision, point (6) which states “*LKS as the provider of funds shall bear all losses resulting from muḍāraba unless the muḍarib (customer) makes a deliberate, negligent or counterproductive mistake,*” and in the second section on the terms and conditions of financing point (4) number (c) which states “*Providers bear all losses the consequences of muḍāraba and managers shall not be liable for any damages except as a result of deliberate misconduct, negligence or breach of agreement.*” In such cases, the customer shall bear the principal

installment. However, there is one thing that can bring the BJSCS closer to Sharia compliance, that is, that the Bank does not make restructuring unilaterally. Rather, the Bank and the customer come and sit together to discuss what is good for them. This initiatives finally eliminates the discrepancies. Although in fact we expect that the Bank should be bearing all losses because the losses incurred are not the fault of the customer.

Basically, all Islamic financial institutions are the same. Each financial institution must have its own rules in serving the customer. BJSCS is of macrofinance institutions because it provides considerable funding for customers. BJSCS imposes rules to customers applying for muḍāraba fund to submit their land certificate.

Referring to the Fatwa of DSN-MUI, the collateral given by BJSCS to the customer is in accordance with the DSN-MUI Fatwa in the first section of point 7, stating that: “In principle, in muḍāraba fund there is no collateral. However, in case of muḍarib is deviating, LKS may request a guarantee from muḍarib or a third party. This collateral can only be disbursed if muḍarib is proven to be in violation of matters agreed upon with the contract.”

BJSCS analyses customers who apply for funding. The analysis will be carried out by the finance analyst with assessment and results of interview, fulfilment of requirement, collaterals and surveys. The customer will be notified regarding payment procedures as well as profit-sharing, also the agreement of both parties. Profit margins have been set by the bank. The minimum percentage is 12.5%. The bank can sell more than 12.5%, depending on the customer’s ability. Margin applied to each person may change, although the stipulation is the same, *i.e.* margin does not change and is the same as what was agreed at

the beginning of the contract until the contract reach its maturity. With regard to the profit-sharing calculation, BJSCS depends on the agreement at the beginning of the contract.

With regard to the funding procedure, BJSCS has been in compliance with the DSN-MUI Fatwa. It can be seen in in points (8). The entrepreneur criteria, financing procedures, and profit-sharing mechanisms are regulated by the LKS by considering DSN-MUI Fatwa.

The margin payment system in *muḍāraba* fund uses regular and irregular means. If the installment is irregular then the customer will pay the margin first. Customer takes one year to pay margin. After one year the customer will pay the principal financing. BJSCS operational activities are not charged to customers. Basically, operational costs, margin payments or profit-sharing, as well as administrative costs are the same. So it can be said that this is in accordance with the Fatwa DSN-MUI on terms of financing points (9), namely: *“Operational costs that are charged to muḍarib.”*

BJSCS has never committed a violation to its customers. In its operational activities, BJSCS Branch is supervised by the Financial Service Authority (OJK) and Sharia Supervisory Board (DPS) so it will be very unlikely to commit fraud to customers. If any errors or defects are of an administrative nature and are not of a financial nature, then they are not detrimental to the customer. Considering the Fatwa of DSN-MUI, this concept has been in accordance with the DSN-MUI. It can be seen in point (10), which states that: *“In the case of funding (LKS) not performing obligations or violating agreements, muḍarib shall be entitled to compensation or expenses incurred.”*

Analysis of the Pillars and Terms of Financing

The aptness in legal action can be seen when the BJSCS and the client are able to work on a *muḍāraba* contract. Maturity and age are the benchmarks in determining *muḍāraba fund*. BJSCS provides an age restriction on customers, which is 21 years. BJSCS is a Shariah financial institution overseen by Syariah Supervisory Board, Financial Services Authority, and simultaneously BJSCS act as *ṣhaḥib al-māl*. Customers who will apply the *muḍāraba fund* will be asked for a photo of their ID and collateral. In this case it can be said that both parties are competent in the the matter of law. Referring to the Fatwa of DSN-MUI, then this has been in accordance with the Fatwa of DSN-MUI. It was in the points (1) on the Pillars and Terms of Financing which states that, *“Providers of funds (ṣhaḥib al-māl) and entrepreneur (muḍarib) must be proficient in before law.”*

BJSCS will ask customers who apply for *muḍāraba fund* on the purpose of the financing. BJSCS will not provide financing without knowing its purpose and usefulness. BJSCS should also know how the customers' daily lives are, whether they can be responsible or not. Therefore, if BJSCS accepts the *muḍāraba fund* request then *ijab* and *qobul* will be held. At the moment of *ijab* and *qobul*, customers will be notified information about accounts receivable, margin, and monthly installments. He will also be notified about the agreement of both parties on what date the customer must pay his installments is. Referring to the Fatwa of DSN-MUI, the *ijab* and *qobul* made by BJSCS with the customers have been in accordance with the DSN-MUI Fatwa. It was in point (a) on the Pillars and Conditions, Points (a), *“Bid and acceptance must explicitly indicate the purpose of the contract.”*

The margin percentage is already determined by BJSCS.

The minimum percentage is 12.5% and the bank can sell to customers more than 12.5%. This depends on the customer's ability and his acceptance. The offer is made at the time of the contract with the same terms, i.e. the margin does not change and the same as what was agreed at the beginning of the contract. Margin provisions in muḍāraba fund in BJSCS are determined on the basis of mutual agreement. Nominal percentage depends on the amount of financing proposed by the financing customer. Referring to the Fatwa of DSN-MUI, then *ijab* and *qobul* in BJSCS with the customer has been in accordance with the DSN-MUI Fatwa. It was in points (b) on the Terms and Conditions of Financing, which states that: *“Receipts from the offer is made at the time of contract.”*

When the contract takes place, BJSCS will check the identity of customer and completeness of the requirements for muḍāraba fund. BJSCS also takes photographs and recording during agreement of the contract for documentation purpose. The financing agreement will be made by a notary if the finances is valued more than 100 million rupiah. In implementing muḍāraba fund agreement, BJSCS uses a written agreement signed by both parties. Referring to the Fatwa of DSN-MUI, then *ijab* and *qobul* in BJSCS with the customer has been in accordance with the DSN-MUI Fatwa. It was in points (c) on the Terms and Conditions of Financing, which states that: *“The contract should be put in writing form, by correspondence or by means of modern means of communication.”*

BJSCS provides capital to customers. Capital given to customers is in the form of money and it is given to him in cash. BJSCS will provide the needed amount of capital depending on what business will be run by customers. Referring to the Fatwa

of DSN-MUI the *ijab* and *qobul* at BJSCS with the customer have been in accordance with the DSN-MUI Fatwa. It was on the Terms and Conditions of Financing in points (a), which states that “*Capital clearly known number and type*”, and in points (b) which states that “*Capital may be in the form of money or goods assessed. If capital is provided in the form of an asset, then the asset must be valued at the time of the contract*”, and in points (c) which states that “*Capital shall not be in the form of receivables and shall be paid to *muḍarib*, whether gradually or not, in accordance with the agreement in the contract.*”

Profit-sharing between the customer and the BJSCS has been agreed at the beginning of the contract or has been established during *qobul* and *ijab* moment. The ratio of profit-sharing later on will be the basis for dividing loss and income of customers. The revenue share may change accordingly at the earlier agreement and profit is shared proportionally to both parties.

According to our point of view, the determination of profit-sharing in *muḍāraba* fund in BJSCS is in accordance with the principles of *muḍāraba* in Islamic law. It is based on the DSN-MUI Fatwa on the Pillars and the Terms of Financing in point (a) which stated that: “*It shall be reserved for both parties and shall not be required for one party only*”, and in point (b), which states that: “*The proportionate share of profits to each party shall be known and declared at the time of the agreed contract and shall be in percentage) of the profits as agreed. Changes in the ratio must be in agreement.*” Thus, the profits of the business will be distributed according to the proportion of equity participation of each party or in mutual agreement.

The team of analysts from BJSCS will analyze the customer, whether the customer who will perform the financing *muḍāraba*

are honest and trustworthy when doing the contract. BJSCS will also disclose letters of agreement to customers regarding the rules that must be obeyed by customers. Referring to the Fatwa of DSN-MUI, then then BJSCS has been in accordance with the Fatwa of DSN-MUI. It was in points (5c) which states that: *“The manager must not violate the sharia law in his actions relating to muḍāraba, and must comply with the customs of that activity”*.

Analysis of Several Legal Financing Terms

If the customer proposes *muḍāraba fund*, BJSCS will conduct the analysis. *Muḍāraba fund* is analyzed according to customer needs. If the capital is for a project, then the financing is in accordance with the value and time of the project. Considering the DSN-MUI Fatwa on the legal provisions of financing, the bank will analyze the needs of customers, only then it can make a decision. According to the Fatwa of DSN-MUI, this legal provision has been in accordance with the Fatwa of DSN-MUI in points (1) which states that: *“Muḍāraba can be limited to a certain period.”*, and point (2) which states that: *“Contracts should not be linked (mu’allaq) with an event in the future that is not necessarily the case.”*

In principle, BJSCS does not specify any compensation. However, the customer is obliged to pay the principal installment. This financing will be given to people who are entrusted to manage funds by BJSCS. Considering the DSN-MUI Fatwa, the legal provisions in the financing has been in accordance with the Fatwa of DSN-MUI. It was in the third part of the legal provisions of point financing (3), namely: *“Basically, in muḍāraba there is no compensation because basically this contract is amanah (yad*

al-amanah), except the result of accidental mistakes, negligence, or violation of agreement.”

So far, customers and BJSCS have never experienced disputes. BJSCS as the owner of capital and syariah financial institutions is always overseen by DPS. Customers as capital managers are also given agreement and monitored by BJSCS. In this case, the disputes between BJSCS with the customer can not be said appropriate or inappropriate. It can be seen in the DSN-MUI Fatwa in point (4), stating that: *“If either party does not fulfill the obligation or if there is a dispute between the two parties, the settlement is made through the Sharia Arbitration Board after no agreement is reached through deliberation.”*

CONCLUSION

After analysis is done, it can be concluded that the concept of muḍāraba fund applied in BJSCS is less appropriate and not fully in accordance with the Fatwa DSN-MUI. We can say that if we are to see DSN-MUI Fatwa in point (6) stating that, *“LKS as the provider of funds shall bear all losses resulting from muḍāraba, unless the muḍarib (customer) makes a deliberate,”* and in point (4c), which states that: *“The Provider bears all losses resulting from muḍāraba, and the manager shall not bear any harm except from consequential errors, negligence or breach of agreement.”* the customer must bear the principal installment. However, there is one thing that can bring the BJSCS closer to Sharia compliance, that is, that bank does not make restructuring unilaterally. Rather, the Bank and the customer come and sit together to discuss what is good for them. This initiatives finally eliminates the discrepancies. Although in fact we expect that bank should be bearing all losses because the losses incurred are not the fault of the customer.

In BJSCS, there is a term called “*discretion*”. It is a facilitation of installment payment for customers who experience business failure such as fire that is not caused by engineering or negligence muḍarib. When the business starts over, BJSCS will restructure its financing. The monthly payment for installment is reduced, or the payback period is extended according to customer’s ability. If the customer is still unable to pay the financing, then the financing amount will be lowered. That is so as to lightens the financing customer’s expense. However, if the customer is still unable to pay the principal repayment, BJSCS will issue a warning letter. The first warning, second warnings, and last warnings. If the customer still cannot pay, then BJSCS is allowed to confiscate physical asset of customer or in other words, it was under bank supervision. However, it can be said that BJSCS is in accordance with the DSN-MUI Fatwa because prior to the restructuring, the bank and the customer have conducted deliberation first so that the decision is not taken unilaterally.

Suggestion

After doing this research, the writer can provide input in the form of suggestions that benefit to all parties involved in research. According to the researchers there are some suggestions that might help BJSCS to run and maintain muḍāraba fund under the DSN-MUI fatwa as follows:

1. BJSCS is advised to refine the muḍāraba contract about the principal installment imposed to the customer, if he fails with the condition that the failure is not from the mistake of the muḍarib. BJSCS must find other solutions for the issue of principal payments, although there are many difficulties and obstacles in applying it.

2. Products that are in compliance with the Sharia and the Fatwa of DSN-MUI should be maintained and developed.
3. For the sake of BJSCS advancement, the Bank is always required to serve its customers well in providing services. In order to achieve that aims, the Bank should do socialization, so that the community understands the principles of channeling funds held by different Sharia Banks.

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