

## IMPLEMENTATION OF LEGAL SUBSTANCE AND SHARIA VALUES IN ISLAMIC BANKING IN A MUSLIM-MINORITY REGION

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**ABSTRACT:** This study aims to investigate the factors that impede the application of Islamic law in the operation of Islamic banking in a non-Muslim region in Indonesia, i.e., Papua. The readiness of human resources in Islamic banking, both in quantity and quality, to support Islamic banking operations in this specific case is not well investigated. This study employs a descriptive-analytical normative legal study, with technical analysis of primary and secondary data qualitatively. The investigation indicates that the application of Islamic law to the operation of Islamic banking has not gone well, contrary to the goal of establishing Islamic banking with a profit-sharing system. The progress of Islamic banking falls short, despite the national growth target.

**Keywords:** Legal Substance; Islamic Banking; Sharia Values; Non-Muslim Area

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## INTRODUCTION

Financial institutions, particularly the banking sector, are strategically bridging the need for working capital and real-estate investment with fund owners (agents of economic development) (Mehran & Mollineaux, 2012; Wu et al., 2020). The tendency of banks to design their products with all their benefits and offer them in various ways and media is to create a potential market to accumulate capital in bank vaults. It is combined with the banking industry's proclivity to compete to improve public services (Schueffel & Vadana, 2015), with the primary goal of creating justice and prosperity, improving people's living standards, and realizing the quality of reliable and professional human resources. The concept of this development is essential to enhance human dignity (Imaniyati et al., 2021; Rizqi, 2019).

Various circles acknowledge that the government's policies aim to improve the banking system's working mechanism, but reality shows otherwise during the implementation phase. Deregulation started as of the prolonged national banking crisis by the flaws in supervision and the inability to apply sanctions straightforwardly and consistently (Sulaiman et al., 2020). Thus, alternative banking to address the problems resurfaces based on religious values, i.e., Islam.

Concerns about the rampant usury system, which has been proven to be the source of the global economic crisis, prompted Islamic scholars to create a banking system based on the principles of the Quran and *Sunnah*, in comprehensive Islamic teaching, or sharia-compliant bank. The development of Islamic banking in Indonesia has become a barometer for the success of the Islamic economy (Heryanti et al., 2020; Wahyudi & Sani, 2014). Furthermore, during the global financial crisis, Islamic financial institutions demonstrate their resilience, maintain their stability, and provide benefits, comfort, and security to their shareholders, security holders, borrowers, and depositors of funds in Islamic banks (Randhawa, 2011). According to Indonesian banking statistics, the total financing disbursed by Islamic banks amounted to IDR 46.26 trillion as of June 2010. The number increased from 34.2% compared to the funding at the end of December 2009, which amounted to IDR 34.45 trillion. Compared to financing in June 2009, which amounted to IDR 29.71 trillion, the performance of financing distribution until June 2010 has soared to 55.70%.

The existence of Islamic banking, which has begun to gain the trust of the Indonesian people, should be fully supported by the government through the issuance of supporting regulations. This study investigates a neglected conversation concerning Islamic banking in Indonesia by its legal substance in Islamic values and the tendency that Islamic banking does not follow the inherent value of Islamic law. Moreover, the conversation in the Muslim-minority area will aid further knowledge by taking the case of Papua Province. The challenges in implementing and maintaining the gold standard of Islamic values in this context are presented.

## LITERATURE REVIEW

### *Sources of Islamic Law*

Sharia, or Islamic law, is based on the teachings and example of the Prophet Muhammad and governs all aspects of life, ethics, and social life, and applies to both criminal and civil cases (N. Alam et al., 2017b; Bisri, 2020). Sharia is all-encompassing, governing all human activities and regulating human relationships with God and with one another. As a result, *sharia* regulation incorporates what is considered civil and criminal law in Western society (Henner, 2011; Naff, 2009). God and governmental rules in Islam are one, rather than having separate jurisdictions as in Christianity. One of the characteristics of Islamic law is that it is a manifestation of God's will, which was conveyed to humankind at various times in history through the Prophet Muhammad SAW. As a result, Islamic law does not rely on any worldly law-making authority, and the source of Islamic law, aside from the Quran, is a decree of the Prophet Muhammad that reflects the application of the rules, principles, and commands (Sambo & Kadouf, 2014).

The Quran is the foundation and primary guideline for social life for Muslims. Every problem and every matter should be returned to and searched for answers and relevance in the Quran so that the revelation given to the Prophet Muhammad SAW is the only final answer. Individuals, families, communities, people, countries, and humanity are all covered by Islamic law; for humans, it governs the mind, body, spirit, emotions, interactions, worldly affairs, and the afterlife. Islamic law is broad, eternal, and all-encompassing. It is general in space, infinite in time, and all-encompassing. It includes everything that can provide benefits and happiness to humans. As a result of its elastic power, Islamic law is essentially a field of law that is always up to date. The elasticity of Islamic law can be seen, for example, in the small number of legal verses (verse *al-ahkam*) in the Quran and legal traditions (*al-hadith al-ahkam*), which, in general, only contain global norms.

Therefore, incorporating Islamic law into Islamic Sharia banking is a non-negotiable requirement because such Sharia banks must cater to Muslim customers and non-Muslim communities. The presence of Sharia banks is genuinely expected to spread mercy to all. Islamic banks are intermediaries between economic units with excess funds (surplus units) and those lacking funds (deficit units). The excess can be channeled through the bank to parties in need, benefiting both parties. The ability of bank management to carry out their roles determines the quality of Islamic banks as intermediary institutions. In essence, the various functions of modern financial institutions, such as accepting deposits, lending money for consumption and business purposes, and making money transfers, were well known and widely practiced in the early days of Islam. True, the term used at the time was not banking as we know it today. However, the primary functions of modern banking have been an inseparable part of Muslims' lives since the first generation.

### *Sharia Banking Legal Basis*

In Indonesia, the legal basis for adopting Sharia banking is normatively based on the Quran, the Sunnah of the Prophet Muhammad, and other sources of Islamic law. It is also legally based on the Indonesian constitution, rules, and regulations. The existence of Islamic law in the context of the Unitary State of the Republic of Indonesia can provide a formal basis and foundation for thinking about the relationship between the state, religion, and its adherents. It can be applied appropriately, such as in Islamic banking, directly related to improving the Islamic economy. The state's role is required to facilitate the implementation of Islamic law. Technically, Islamic banking operations are governed by Law No. 10 of 1998 relating to amendments to Law No. 7 of 1992 relating to banking, Law No. 3 of 2004 relating to amendments to Law No. 23 of 1999 concerning Bank Indonesia, which has now been strengthened by the enactment of Law No. 21 of 2008 of Islamic banking, and Government Regulation Law No. 6 of 2009 relating to Bank Indonesia.

Specific operational rules are required for Islamic banks to function correctly. In this regard, Bank Indonesia, as the central bank, has issued several regulations that serve as the operational foundation for Islamic banks in carrying out their functions as financial intermediaries (K. Alam et al., 2019; Izhara & Asutay, 2013). Regulations governing bank business activities in Indonesia are generally based on Articles 6, 7, 10, 13, 14, and 15 of Law No. 10 of 1998 relating to amendments to Law No. 7 of 1992 governing banking. Specifically, regarding business activities that Islamic banks can carry out, this rule was later refined and confirmed in Bank Indonesia Regulation No. 6/24/PBI/2004 concerning commercial banks conducting business activities based on Sharia principles, and Bank Indonesia Regulation No. 6/17/PBI/2004 concerning rural banks operating business activities based on Sharia principles. According to Article 39 of Bank Indonesia Regulation No. 6/24/PBI/2004 and Article 36 of Bank Indonesia Regulation No. 6/17/PBI/2004, Islamic commercial banks and Islamic people financing banks are prohibited from engaging in conventional business activities or converting to traditional banks. Following Law No. 21 of 2008, the prohibition on Islamic banks was expanded in Articles 24 and 25 of the Law.

### *Sharia Banking Human Resources*

Human resources (HR) refer to the employees of an organization. Human resource strategy refers to the organizational benefits of human resources to achieve a competitive edge in the job market (Alserhan & Al Shbail, 2020). Some generic areas of most strategic decision choices are essential when managing HR. Excellent HR is urgently needed in the Islamic finance industry and the Islamic banking industry in particular. This need also prompts the world of national education, particularly universities, to expand the availability of courses or study programs that teach knowledge and expertise in economics, finance, and Islamic banking. In general, all organizations desire high-quality

human resources. Human resources can bring non-existent organizational efforts to life or transform ordinary corporate life into organizations capable of doing more for the organization's progress (Pasmore & Woodman, 2017; Yukl & Becker, 2006). The true essence of HR investment should remain the obsession of all organizations. The term "capital in the form of human resources" refers to human resources with specific professional and technical abilities.

Human resources are significant on both a micro (organizational) and macro (global) scale (country). Developed countries that rank first in economic and other categories cannot be separated from the dependability of their human resources. The human resource division places concerned with the process of economic growth. To become effective, efficient, and productive human beings, efforts to obtain quality human resources must be trained and improved (Lazear & Shaw, 2007; Yahya & Goh, 2002). What patterns can be used for human resource training and development? There are many verses in the Quran that describe human characteristics. Human characteristics have benefits and drawbacks. Capabilities (capabilities), attitudes (attitudes), values (values), needs (needs), and demographic characteristics are all components of HR (population). The surrounding environment strongly influences HR elements such as community norms and values, level of education, and available opportunities. These elements will, in turn, affect the role and behavior of managers in the organization, and people in the organization can be distinguished from one another based on these variables. Human resources become a critical issue for a country if it is not given serious attention regarding the economic problems faced by developed countries such as America and other countries in general, the real economic challenges faced by several countries around the world in the future, namely increasing the potential value of what its citizens can contribute to global economic development.

## **METHODOLOGY**

This study is a legal study that seeks to analyze the implementation of sharia values in the operation of sharia banking in Papua Province from a variety of legal perspectives, including *Rechtsdogmatiek* (Legal Dogmatics), *Rechtstheorie* (Legal Theory), and *Rechtsfilosofie* (Legal Filosofie) (Legal Philosophy) (Bouckaert, 1987). A study on the substance of the legislation in the field of sharia banking will be conducted at the dogmatic legal level for further systematics and consistency between the content and the legal form, as well as its character with other laws and regulations.

It is intended to analyze several legal theories related to Sharia values in the operation of Islamic banking at the level of legal theory, particularly ideas relevant to the subject matter studied. At the level of legal philosophy, it is intended to examine the fundamental principles that underpin Islamic banking regulations as a means of bringing about social change so that the incorporation of these sharia principles into the creation of laws and rules demonstrates that these regulations cannot be divorced from the context of Islam. Furthermore, because this is a socio-juridical study (socio-legal study), the reality and

implementation of Islamic banking law will be analyzed through empirical symptoms that can be observed in the performance of Islamic banking law by the community members who are customers of Islamic banks.

Furthermore, because this is a socio-juridical study (socio-legal study), the reality and implementation of Islamic banking law will be analyzed through empirical symptoms that can be observed in the performance of Islamic banking law by community members who are customers of Islamic banks. This study was conducted in Jayapura City, Papua Province, understanding that the native population in Jayapura City is predominantly non-Muslim. However, the development of Islamic banking in Jayapura City has seen a significant increase in customers. Some of the customers of Islamic banking in Jayapura City are non-Muslim communities, implying the possibility of violations of the application of sharia values in the operation of sharia banking.

In this study, the population consists of those involved with the subject of study. The study included Bank Indonesia officials, Bank Muamalat Indonesia (BMI) officials, Mandiri Syariah Bank officials (BSM), Islamic Banking Practitioners, and people who have savings in BMI and BSM in Jayapura City were included in this study. The group, as mentioned above, has enough homogeneity that determining a positive sample of a certain amount from the entire population is considered representative enough to be studied.

This study's samples included: 1) as many as two Bank Indonesia officials; This sample was chosen based on the fact that they have knowledge and experience in supervising Islamic banking; 2) officials of Bank Muamalat Indonesia and Bank Syariah Mandiri who were chosen on purpose. Two Bank Muamalat Indonesia officials and two Syariah Mandiri Bank officials, four people, and three Bank Muamalat Indonesia and Bank Syariah Mandiri customers are purposefully determined. The sample consists of 40 Bank Muamalat Indonesia customers and 40 Bank Syariah Mandiri customers, totaling 80. Purposeful informants were identified among Islamic banking experts and MUI. There were four people in the sample: two banking experts and two Indonesian Ulema Council members. As a result, the total number of samples is 90.

The study's data sources are classified into two types: primary data and secondary data, as follows: a) preliminary data, gathered directly from respondents designated as samples. The information is presented in the form of interviews and a list of questionnaire responses. The interview techniques (interview guide) and questionnaires were used to collect data; b) secondary data, obtained through the study of documents or official archives compiled by Bank Indonesia, Bank Muamalat Indonesia, and Bank Syariah Mandiri related to the study material. The information is in the form of a collection of laws and regulations, information on the number of bank customers, and other archives relevant to this study.

Using a theoretical basis guide, primary and secondary data were processed and analyzed using qualitative and descriptive analysis techniques. This analysis is performed on the overall formulation of the problem under consideration. Meanwhile, secondary data has been analyzed through

interpretations based on comparisons to legal materials and legal concepts relevant to the study in question. Material obtained from the field study in the form of numbers has been processed and described in tables, which will then be analyzed descriptively and qualitatively.

Because the data collection technique used is interviews with a limited number of respondents, the qualitative descriptive analysis method is ideal. Furthermore, in this study, the comparative analysis method is used to compare several opinions regarding the problems studied, both those obtained through library study and those obtained through field study, to produce a view that is accurate and can be accounted for by not ruling out other existing opinions.

## RESULTS

### *Sharia Banking Law Update*

In general, Islamic law was revealed for the benefit of humanity. As a result, *muhaqqiqin* scholars agree that Islamic law is enforced in this world to uphold justice and create happiness for humans here and in the hereafter. Al-Gazali and Ash-Syatibi categorize the benefits as primary, secondary, and complementary. Furthermore, Ash-Syatibi stated that the imposition of sharia (*taklif*) benefits the preservation of goals in creatures, and these goals are *dharuriyat* (primary), *hajiyyat* (secondary), and *tahsiniyat* (complimentary). This means that Islamic law students work on perfecting the instruments of human life, meet human needs, ensure tranquillity and happiness, and reflect as an ideal *ummah* in which all elements of adequate power, steadfastness, and a good life, as well as significant progress, are accumulated. Because Islam is transcendent and divine, their lives will feel beautiful in the eyes of Islamic law if they add the *mahasin* factor to them (Auda, 2008). For example, in Islamic law students, a mukallaf (perpetrator) is expected to prioritize good (halal) over evil (haram/forbidden) when conducting business activities. However, because the role of reason is so important, it is necessary to distinguish between the two. In addition to the position of intention (motivation) that encourages, it is also essential to remind perpetrators that business activities can be of worship value (*ta'abbudiyah*) if the purpose is for Allah SWT (transcendent divine). *Mahasin* of Islamic law in life can be captured with a religious attitude, specifically in the context of something forbidden. Islam does not explicitly state that it is not permissible (haram), but there is another option, namely makruh, which means to abandon something in the context of recommended. Islam provides an alternative between sunnah and obligatory, while the perpetrator will be rewarded.

Before the passage of the Banking Law, the position of Islamic banking in Indonesia was quite volatile, as the constitution supported it but was not regulated by the laws and regulations enacted under it. Islamic banking operates following the inventiveness of its supporters and opponents, with all manner of tricks and errors. In Indonesia, there is already Law Number 7 of 1992 on banking, as amended by Law Number 10 of 1998. However, the

provisions on sharia banking in this law are so limited that they cannot address the uniqueness and specificity of sharia banking. The Act only provides a hazy indication of the possibility of a bank providing profit-sharing banking facilities. With the ratification of Law Number 21 of 2008 on Sharia Banking, it regulates sharia compliance (Syariah compliance), whose authority lies with the Indonesian Ulema Council (MUI) and is presented through the Sharia Supervisory Board (DPS) that must be established at each sharia bank and sharia business unit. To monitor the implementation of the MUI fatwa into Bank Indonesia regulations (PBI). Internally, Bank Indonesia has established a Sharia Banking Committee comprised of representatives from Bank Indonesia, the Ministry of Religion, and a diverse range of societal elements (Erliyani, 2020).

According to Article 1 paragraph (1) of Sharia Banking Law No. 21 of 2008, the legal substance of Sharia Banking is everything related to Sharia Banks and Sharia Business Units, including institutions, business activities, methods, and processes for carrying out their business activities. Furthermore, according to Article 1 Paragraph (7) of the Sharia Banking Law, a Sharia Bank is a bank that conducts its business activities following Sharia principles and is comprised of Sharia Commercial Banks (BUS) and Sharia People's Financing Banks (BPRS), which means Sharia Banks only include BUS and BPRS. At the same time, the Sharia Business Unit (UUS) is excluded. Law Number 21 of 2008, as a law that explicitly regulates sharia banking, also holds in a limited manner sharia banking products and services, which are sharia banking business activities.

Banks, as the engines of economic development, have several goals. Metwally, 1995 suggests that the purpose of Islamic banks is to encourage and accelerate a society's economic progress by carrying out all banking, financial, commercial, and investment activities by Islamic principles (Said & Hamid, 2018). (1) to improve the quality of the community's socioeconomic life and reduce socioeconomic disparities to increase business activity, job opportunities, and community income; and (2) to increase community involvement in the development process, particularly in the financial economy. This goal is intended to alleviate people's economic problems, as most are hesitant to deal with traditional banks because they believe bank interest is usury.

As a financial institution based on Sharia principles, the actions of Islamic banks are bound by strict rules, so they must implement policies and measures by Islamic teachings and be prudent, both in terms of financing (credit) to the community (customers) in investment selection. According to Giat Waluyo, Deputy Branch Manager of BMI Jayapura, Islamic law is being implemented in Islamic banking through banking products and contracts used by the Bank Muamalat Indonesia (BMI) Jayapura Branch. BMI bank products must first obtain fatwa approval from the MUI National Sharia Council (DSN) and Bank Indonesia in the form of a Bank Indonesia Regulation before being marketed to consumers (PBI). The products available at the BMI Jayapura Branch include fundraising products (savings, time deposits, and demand deposits), as well as product distribution of funds in the form of Home Ownership Loans (KPR),



Hajj/Alqard bailouts, and Al-Murabahah). Customers are most interested in the following products: savings (share), financing (KPR), and Hajj Qard. Meanwhile, BMI uses Mudharabah contracts for savers, Musyarakah contracts for (KPR), and Murabahah contracts for buying and selling (interview, April 21, 2020).

Furthermore, Giat Waluyo explained that the contract applied at BMI Jayapura Branch to Muslim and non-Muslim customers is the same, but what is being considered here is the benefit or use of the financing for what is halal or haram. The financing disbursed by BMI Jayapura Branch must follow Islamic principles (halal). BMI distributes credit through profit-sharing, Ijarah (lease), and murabahah systems. Meanwhile, Yusak Laksana, Branch Manager of Bank Syariah Mandiri (BSM) Jayapura, explained that the products applied to BSM Jayapura based on instructions from BSM Jakarta head office consisted of (1) fundraising products, namely; (a) Rupiah savings, (b) USD savings, (c) Cendikia Investment savings, (e) Planning savings, (f) Mabrur savings, and (g) Current accounts), while financing transfers, RTGS, Net Banking, SMS Banking, Clearing, and Payment Point are all examples of bank services. The most popular products among BSM customers are the TIC (Cendikia Investment Savings) and TB (Planned Savings) products. At the same time, the contract used is the standard BSM head office form with a profit-sharing system (interview dated April 06, 2020), summarized in Table 1.

Table 1. Respondents' opinions about the existence of sharia banking (N = 80)

Respondent's Opinion	Syariah Banking							
	B M I				B S M			
	Confirm	%	Not conform	%	Confirm	%	Not conform	%
1. The profit sharing system is higher than the interest system	26	65	14	35	24	60	16	40
2. Transparent and more secure fund management system	28	70	12	30	22	55	18	45
3. Pure Sharia	40	100	-	0	40	100	-	0
4. Avoiding usury, but the risk is shared	38	95	2	5	36	90	4	10
5. Providing financing facilities according to customer needs	28	70	12	30	32	80	8	20
6. Low bank administration fees	30	75	10	25	28	70	12	30

According to the responses in Table 4, it can be explained as follows: (1) the profit-sharing system for BMI and BSM is higher than the interest applied to conventional banks, with an average value of 62.50%, indicating that most

people in Jayapura City understand the profit-sharing system used to Islamic banking. However, 37.50% said it was inappropriate, arguing that while the profit-sharing system in BMI and BSM was high, if there were a risk, it would be shared, resulting in customer losses because the bank controls business activities. Furthermore, the group that said this was not appropriate compared to a traditional bank system that operates on an exciting system, where customers are more flexible in managing business finances, even though it is high risk. It suggests that some people are still confused about the profit-sharing system used by BMI and BSM; (2) BMI and BSM's fund management system is more transparent and convenient, with 62.50% saying it is appropriate because they have never had problems with BMI and BSM's financial management system as long as they do business with BMI and BSM. It was not following the reason they did not feel transparent in managing funds because they were not sent bank statements from BMI and BSM every month, according to 37.50% of respondents; (3) BMI and BSM are strictly sharia-compliant, according to 100% of respondents. (4-6) On average, 80% of respondents said they were appropriate because BMI and BSM avoid usury but share risk, provide financing based on customer needs, and have low administrative costs, as stated in the official contract before the customer transacts with the BMI and BSM.

Bank Syariah Mandiri (BSM) has been in business in Jayapura City, Papua Province, since 2005, and Bank Muamalat Indonesia (BMI) began operations in 2006. Bank Indonesia Jayapura has not found any severe violations in its supervision, either in product marketing or contracts and banking services provided to customers in Jayapura City. Sharia banking in Jayapura City is always guided by the DPS MUI fatwa and Bank Indonesia regulations regarding sharia banking, and the products marketed at the BSM and BMI Jayapura Branch follow the instructions from the BSM and BMI Head Offices in Jakarta and are of a national nature (interview in May 2020).

#### *Product and Contract Implementation*

Only banks are permitted by statute to raise funds from the general public directly. Savings, time deposits, and current accounts, which are commonly referred to as third-party funds, are used by traditional banks to collect funds from the public. In Islamic banks, funds are collected from the people using the principles of wadiah and *mudharabah* without regard to the name of the product in question. The Sharia principle must be considered when raising funds because it is closely related to the rewards given to the fund's owner or investors. Whatever the product's name, if the fundraising uses the *mudharabah* principle, the fund's owner will receive profit sharing. On the other hand, the owner of the wadiah fund does not accept any compensation unless the Islamic bank provides a bonus at the discretion of the Islamic bank and not previously agreed.

Islamic bank funding products are designed to efficiently mobilize and invest savings for economic development, ensuring a fair profit for all parties.

The effective mobilization of funds aims to achieve Islam's socioeconomic goals. In this case, Islamic banks do so not based on the principle of interest (usury) but based on Islamic law, specifically *wadi'ah* (deposit), *gardh* (loans), *mudharabah* (profit sharing), and *ijarah*, as seen in Table 3.

Table 3. Funding Product Principle

	<i>Wadi'ah</i>	<i>Qardh</i>	<i>Mudharabah</i>	<i>Ijarah</i>
Current Account	✓	✓		
Savings	✓	✓	✓	
Deposits/Investments			✓	
Bonds/Items			✓	✓

According to Table 3, there are four types of Islamic bank funding products: (1) current accounts with the *wadi'ah* or *gardh* principle, (2) savings with the *wadi'ah*, *gardh*, or *mudharabah* principles, and (3) deposits/investments with the *mudharabah* principle, and (4) bonds/introductions with the *mudharabah*, *ijarah*, and other principles.

Banks have a more significant opportunity to profit because withdrawals are less flexible than *wadi'ah* demand deposits. As a result, the bank's bonus for *wadi'ah* savings customers is typically more effective than the bonus for *wadi'ah* current account customers. The bonus amount is also not required and is not predetermined (interview in June 2020). Furthermore, the bank integrates savings and investment accounts using the *mudharabah* principle and mutually agreed-upon profit sharing. *Mudharabah* is the profit-sharing and loss-sharing code that applies when a customer, as the owner of capital (*shahibul mal*), submits his money to the bank as an entrepreneur (*mudharib*) to be cultivated. Profits are split as agreed, and losses are borne by the owner of the funds or the customer. In practice, *wadi'ah* and *mudharabah* savings are widely used by Islamic banks (interview in June 2020 with Della, marketing manager of BSM Cab Jayapura).

Sharia transactions are based on the fundamental belief that God created the universe as a trust (divine trust) and a means of living happiness for all humankind to achieve accurate material and spiritual prosperity (al-falah) (El-Bassiouny, 2014; Haetami, 2021; Ibrahim, 2018). The substance is that every human activity has accountability and religious values that use sharia and moral instruments to define what is good and evil, right and wrong in business. It will foster integrity, which will eventually shape the character of good governance and market discipline (Beekun, 2019).

According to Article 1 paragraph (6) of Law Number 10 of 1998, demand deposits can be withdrawn using cheques, billet giro, other means of payment orders, or book entry. (1) Deposits are funds entrusted by customers to sharia banks and sharia business units (UUS) based on *wadi'ah* contracts or other contracts that do not conflict with sharia principles in the form of demand deposits, savings, or other equivalent forms, according to Law Number 21 of 2008. (2) Demand deposits are deposits for *wadi'ah* or other contracts that do

not violate sharia principles and can be withdrawn using cheques, billet giro, other payment orders, or book-entry orders.

According to Muhammad Syafi'I Antonio, the profit-sharing principle in Islamic banking can be carried out in four central contracts: *al-musharakah*, *al-mudharabah*, *al-muzara'ah*, and *al-musaqah*. *Al-musharaka* and *al-mudharabah* are the most commonly used principles. A *musyarakah* is a collaboration agreement between two or more parties for a specific business in which each party contributes funds (or charity/expertise) with the understanding that profits and risks will be shared according to the agreement (Hasan & Harahap, 2021; Mashuri, 2014).

Bank Muamalat Indonesia (BMI) Jayapura Branch is in charge of raising funds. The *mudharabah* principle is one of the principles used by the BMI Jayapura Branch in fundraising transactions. BMI Jayapura Branch acts as a fund manager (*mudharib*) in this fundraising transaction, while an investor/depositor acts as a fund owner (*shahibul maal*). The distribution of operating results is carried out between investors and BMI Jayapura Branch, with the calculation of profit-sharing carried out by BMI as the fund manager because the work is entirely left to BMI as the fund manager so that BMI is aware of the business's results. The BMI determines the fund manager at the end of the calculation. This principle is applied in Islamic banking to *mudharabah* savings and *mudharabah* deposits (Giat Waluyo, Deputy Chief of BMI Jayapura, Interview: May 19, 2020). According to Giat Waluyo, profit sharing is one of the disbursement patterns of funds at the BMI Jayapura Branch. This profit-sharing pattern can be made using the *mudharabah* principle or the *musharaka* principle. If BMI distributes funds using the *mudharabah* guide, BMI is the owner of the funds (*shahibul maal*), while the debtor's customer is the fund manager (*mudharib*). BMI is only permitted to supervise and is not allowed to intervene in managing these funds. As a result, the debtor customer serves as the fund manager in calculating the distribution of operating results. This principle is applied to investment in Islamic banking (*mudharabah* financing).

Furthermore, according to Giat Waluyo, the profit-sharing principle has not yet been implemented in BMI, either at the head office or in all branches in Indonesia. There is not even a sharia bank that calculates profit-sharing using the profit-sharing principle. Because in profit sharing, the income from operating results is divided into net income, gross profit minus expenses related to *mudharabah* fund management. One of the impediments to the profit-sharing principle is determining the calculated costs in the *mudharabah* honestly, transparently, and objectively. If Islamic banks apply the profit-sharing code, two reports must be made: (1) reports on the management of *mudharabah* funds, namely the bank as a manager, and (2) reports on Islamic banks as sharia entities manage funds and their activities.

It is recommended to use the revenue sharing principle to support the current development of Islamic banks because revenue sharing makes it impossible to reduce the *mudharabah* capital submitted by customers to Islamic banks as long as they are running or operating continuously. It is because

revenue or results (gross profit) is shared in revenue sharing, and income cannot be harmful in theory. The worst-case scenario is that revenue or results are zero because all assets do not produce or all customers do not pay installments or rewards. If the Islamic bank does not create any results, there is no profit or loss at the break-even point. However, if the revenue sharing principle is used, the owner of the mudharabah fund bears the loss (the capital is reduced) if the Islamic bank is dissolved or liquidated. The total assets are less than the total liabilities.

Banking service products with other patterns typically use Tawarru's contracts, which are not intended to make a profit but rather to provide customers with convenience when conducting banking transactions. As a result, the bank only charges administrative fees as a service provider. The *sharf* contract, which is an exchange contract for money, which is part of the *ijarah* (rent) and is intended to earn wages (*ujroh*) or fees, is an example of banking services that are not included in the *tabarru*'s contract (Hasnat & Alom, 2017; Hidayati et al., 2021; Maksum et al., 2020).

In Islamic law, the formation of a legal and binding contract (agreement) requires the fulfillment of (1) the contract's pillars and (2) the contract's terms. The contract terms are classified into four categories: (a) the conditions for contract formation (*syuruth al-in'iqad*); (b) the conditions for contract validity (*syuruth ash-shihhah*); (c) the conditions for the validity of the contract's legal consequences (*syuruthan-nafadz*); and (d) the conditions for contract binding (*syuruth al-luzam*) (N. Alam et al., 2017a; Anggraeny & Rahmadanti, 2020; Moqbel & Ahmed, 2020).

## FURTHER STUDY

In substance, there are still flaws in the laws and regulations governing the operation of Islamic banking in Indonesia, both in terms of the legal foundation and the authority granted by the state through Bank Indonesia to accelerate the growth of Islamic banking in Indonesia. Sharia banking operations in Jayapura City are not yet following sharia because the quality of bank employees lacks particular expertise in Sharia economics and Sharia banking, making it difficult to persuade people to save and transact their business through Sharia banking. Many people in Jayapura City are unaware of the products and contracts used in Islamic banking, which operates on a profit-sharing system.

Implementing regulations as a description of the provisions in the UUPS is urgently needed to implement Law Number 21 of 2008 concerning Islamic banking effectively. There is still room for conventional banks to open a sharia business unit in UUPS (UUS). It will harm the growth of Sharia-compliant banks. To dispel the public perception that Islamic banks are the same as conventional banks and accelerate the development of Islamic banking in Indonesia. It is suggested that the UUPS be revised by removing paragraph (10) in Article 1 concerning Sharia Business Units after this, referred to as UUS, which is a work unit of the head office of a conventional commercial bank that

functions as the main office of an office or branch that carries out business activities based on Islamic principles.

Furthermore, more research can be conducted to examine the development of Islamic banks with a focus on the level of acceptance of the non-Muslim community. The application of the acceptance model may identify further issues in the implementation.

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