

Application of the Principle of Al-Adah Muhakkamah in Mudharabah Practice

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Abstrak. : Customs that have taken root in society can be the basis for the formation of law. Such customs often arise because of human simplicity and because of their compatibility with human nature and needs in general. In the Islamic context, this view shows that Islam recognizes some good habits that have existed before in society by making modifications and renewals in accordance with better principles. This research aims to find out how the application of the Al-Adah Muhakkamah rule in mudharabah practices, as well as its impact on the fairness and efficiency of Islamic economic transactions. This research uses a literature study approach and content analysis to explore the application of the principle of Al-Adah Muhakkamah in mudharabah practice. Data were collected from various relevant literature sources, including journals, books, and relevant legal documents. The main findings show that the application of the Al-Adah Muhakkamah rule in mudharabah practice provides clarity and balance of rights and obligations between capital owners and business managers. Widely accepted customs in the community can fill in legal gaps that are not explicitly regulated in sharia texts, thereby improving the fairness and efficiency of transactions. The application of the Al-Adah Muhakkamah rule in mudharabah practice allows for fairer and more efficient transactions, and is in accordance with sharia principles. This shows that Islamic law can adapt to the times without disregarding the basic values of justice and benefit.

Keywords: Al-Adah Muhakkamah; Mudharabah; Sharia Economic Transactions; Islamic Law; Transaction Fairness

Introduction

Islam is a perfect religion, which regulates all aspects of human life very well. Islamic Shari'a, which is sourced from the Qur'an and As-Sunnah, is dynamic, making it a guideline for humanity in action. From the perspective of jurisprudence, Allah has established sharia as a legal norm that Muslims are obliged to follow, understand and apply. Faith that is relevant to morals is very important, both in interactions with God, fellow humans, and objects around the community. Some of the laws that

need to be understood by the community are 'adah and muamalah (law and order).¹

In people's lives, there are many customs or traditions that are popular among them. These traditions can be in the form of words or actions that are generally accepted, and this kind of thing is called 'adah. These customs can be taken into consideration in determining Islamic law, especially in economic transactions that are increasingly developing, related to issues that do not have legal firmness in the Qur'an and al-Hadith.²

In Islamic economic transactions, the rules of Islamic law are the main basis governing every economic activity, including the practice of Mudharabah. Mudharabah, which is a form of economic cooperation between capital owners (rabbul mal) and business managers (mudharib), requires clear and precise rules so that the transaction is in accordance with sharia principles.

In the Muslim community, the practice of Mudharabah has long been recognized and used as one of the fair and transparent financial instruments. However, with the development of the global economy and the complexity of modern financial transactions, various problems have emerged in the application of Mudharabah. Many cases show that there is a lack of clarity in the agreement, an imbalance of rights and obligations between the parties, as well as a lack of understanding of the sharia principles underlying this practice. The rule of Al-Adah Muhakkamah, which recognizes custom as a source of law, can be a solution to overcome this uncertainty by referring to generally accepted customs in society.

Al-Adah Muhakkamah, which means "Custom can become law," is a principle in Islamic law that recognizes that good habits that do not conflict with sharia can be used as a basis for law. In the context of Mudharabah, this rule provides flexibility in its management.

¹ Farhan Rajal Tuha Rea and Rachmad Risqy Kurniawan, "Kaidah Al-Adah Al-Muhakkamah : Implementasi 'Urf pada Aktivitas Transaksi secara Online," *OSF Preprints*, OSF Preprints, December 7, 2021, <https://ideas.repec.org/p/osf/osfxxx/xubp5.html>.

² Khikmatun Amalia, "'Urf sebagai Metode Penetapan Hukum Ekonomi Islam," *Assalam: Jurnal Studi Hukum Islam & Pendidikan* 9, no. 1 (June 26, 2020): 75–90, <https://doi.org/10.51226/assalam.v9i1.187>.

The purpose of this study is to analyze how the Al-Adah Muhakkamah rule can be applied in Mudharabah practice and its impact on the fairness and efficiency of the transaction.

The concept of Al-Adah Muhakkamah

Shara' Meaning of Jurisprudence *العادة محكمة* The rule of Al Adah Muhakkamah is one of the principles relating to customs that are recognized by Sharia. According to al-Jurjani (2012), what is meant by custom is:

مَا اسْتَمَرَ النَّفْسُ عَلَيْهِ عَلَى حُكْمِ الْمَعْفُولِ وَغَادُوا إِلَيْهِ مَرَّةً بَعْدَ أُخْرَى

It is something that is continuously practiced by humans, is acceptable to the mind, and humans repeat it over and over again".

Some scholars equate adat with al-'urf because both have the same substance. This can be understood from the definition of al-'urf according to al-Jurjani (2012):

مَا اسْتَقَرَّتْ النَّفْسُ عَلَيْهِ بِشَهَادَةِ الْعُقُولِ وَتَلَقَّتْهُ الطَّبَائِعُ وَهُوَ حُجَّةٌ أَيُّ ضَا لِكِنَّهُ أَسْرَعُ إِلَى الْفُهْمِ بَعْدَ أُخْرَى

It is something that the soul feels at ease in doing because it is in line with logic and is acceptable to its human nature. Hence it can be used as proof, but it is more quickly understood.

The agreed rules of fiqh to handle the dialectical-social process and natural human creativity, including in economic activities, are the rules of fiqh *العادة محكمة* (customs can be used as a legal basis).

In relation to this rule, the Fuqoha set limits, namely traditions or customs that can gain legitimacy from the Shari'ah are those that do not have shar'i restrictions (qayyid syar'i) or language restrictions (qayyid lughawi) (Sidqi: 1983). That is, if the Shari'ah only provides general provisions, then the determination is left to the judgment of customs. (al-Suyuthi: 1988) *Ta'shil Kaidah العادة محكمة*

All fiqh rules are basically based on the texts of the Qur'an and Sunnah when formed into a legal rule. Including the rules *العادة محكمة* which is based on the following shara' arguments:

Al-Qur'an

a) Surat al-'Araf verse 199

خُذِ الْعُقُورَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

“Be thou forgiving, and enjoin men to do good, and turn away from those who are foolish”.

According to al-Suyuthi, the word al'urf in the verse can be interpreted as a habit or custom that does not contradict the Shari'ah (Syibir: 2007).

b) Surat al-Baqarah verse 233

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُبَيِّمَ الرِّضَاعَةَ
وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا
...الاية

Mothers should breastfeed their children for two full years, for those who wish to complete breastfeeding. And it is the duty of the father to feed and clothe the mothers in a reasonable manner. A man is not burdened except according to his ability...

The word ma'ruf in the verse indicates that Sharia recognizes a mother's habit of breastfeeding according to her ability. This verse is also the legal basis for the obligation to provide maintenance according to the ability that has become a habit. This can be understood from the sentence of the verse *إِلَّا وُسْعَهَا*. (Syibir: 2007)

2) Sunnah

a) Hadith from Ibn Mas'ud

مَا رَأَاهُ الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ

“What the Muslims consider good is good in the sight of Allah”.

The Hadith shows that the Muslims' positive perception of an issue can be used as a basis that it is also positive in the sight of Allah. Therefore, it does not need to be challenged or abolished, but rather used as a basis in designing legal products. This is based on the belief that the general view of the Muslims does not contradict the will of Allah as the creator of the law. This Hadith also serves as a basis that the Muslims, especially the Companions and Taabi'in, are the chosen people of Allah to draft laws that may not have been explained in detail by the Prophet. Hadis riwayat al-Baihaki (t.th.)

الْمَكِّيَّاتُ مَكِّيَّاتُ أَهْلِ الْمَدِينَةِ ، وَالْوَزْنُ وَزْنُ أَهْلِ مَكَّةَ

The weight measurement (scales) used is the weight measurement of the experts of Mecca, while the content measurement used is the content measurement of the experts of Medina.

The Hadith confirms that the Prophet recognized the condition of the profession of the people of Medina as farmers of dates and grain, so that in buying and selling transactions they are required to continue using measurements. Meanwhile, to the people of Mecca, who were mostly traders, the Prophet emphasized that they should continue to use scales. This shows that the Prophet gave legitimacy to the traditions that prevailed in Medina and Mecca, without erasing or imposing the traditions of one region to be applied in another.

Hadith narrated by Imam Bukhari

أَنَّ فَاطِمَةَ بِنْتَ أَبِي حُبَيْشٍ، سَأَلَتِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَتْ إِنِّي
أَسْتَحَاضُ فَلَا أَطْهُرُ أَفَادْفَعُ الصَّلَاةَ فَقَالَ لَا إِنَّ ذَلِكَ عَرَقٌ عَرَقٌ، وَلَكِنْ دَعِيَ
الصَّلَاةَ فَنَدَرَ الْأَيَّامَ الَّتِي كُنْتَ تَحِيضِينَ فِيهَا، ثُمَّ اغْتَسَلِي وَصَلِّي

Fatimah bint Abi Hubasyi asked the prophet (PBUH), she said: "I am in a state of menstruation that does not stop, should I leave the prayer?" the prophet replied: "No, it is the blood of disease, but leave the prayer based on the size of the days you used to menstruate. Then take a bath and pray."³

Conditions for Applying the Rule of Al-Adah Muhakkamah

The reality in society shows the diversity of customs and culture, so the rule of al-adah muhakkamah cannot be applied absolutely in a wide variety of contexts. However, the universal character of fiqh rules allows its application in various spaces and times. Therefore, the scholars have set the conditions that must be considered in applying the rule of al-adah muhakkamah. These conditions are:

- a. It does not contradict stronger shar'i evidence, because if a custom contradicts stronger shar'i evidence, then the shar'i evidence is to be

³ Ramdan Fawzi, "Aplikasi Kaidah Fikih محكمة العادة dalam Bidang Muamalah," *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah* 2, no. 1 (January 31, 2018): 147–67, <https://doi.org/10.29313/amwaluna.v2i1.3279>.

relied upon, not the custom. For example, the custom of some people who do usury business with the mutual consent of each other. This custom contradicts the stronger shar'i evidence, which is what Allah, may He be glorified and exalted, says (interpretation of the meaning): "Allah has justified buying and selling and forbidden usury." (Al-Baqarah: 275)

Therefore, the legal standard used here is the word of Allah, not custom. Thus, the law of usury remains haram even though it has become a custom in a community.

- b. The custom is practiced more often than it is abandoned, or more people do it than do not do it. If a custom is more often abandoned than practiced, or more people do not do it than do it, then this custom cannot be used as a reference to the law. Muhammad Az-Zuhaili explains that a custom can be a reference in shar'i law if it is *muttaridah* (always practiced) or *galibah* (more often practiced than abandoned). The spread of this custom in the majority of people is enough to make it a reference to the law without considering minority customs.
- c. The absence of speech from the customary actor that contradicts the custom. The utterance of the customary practitioner indicates his or her will with certainty, so it has more power than the custom itself. Therefore, if there is a conflict between a person's custom and his speech, it is his speech, not his custom, that should be used as a legal reference. For example, a furniture merchant has a custom in every transaction that he is responsible for delivering the goods from the shop to the buyer's house. This custom can be used as a legal reference when there is a dispute between the seller and the buyer. However, if the trader tells the buyer that the delivery of the goods from the shop to the house is the responsibility of the buyer, not the seller, then the custom can no longer be used as a legal reference because the trader's words contradict the custom.
- d. The custom must have existed at the time of the contract, because a custom that did not exist at the time of the contract cannot be used as a legal reference.

Mudharabah Concept

Linguistically, Mudharabah comes from the phrase “dharaba fil ardh,” which means traveling to trade. In the National Shari'ah Council Fatwa No: 07/DSN-MUI/IV/2000 concerning Mudharabah Financing (Qiradh), it is stated that Mudharabah is a business cooperation agreement between two parties in which the first party (shahibul mal, LKS) provides all the capital, while the second party (mudharib, customer) acts as manager. Business profits are divided between them according to the agreement outlined in the contract.

Technically, Mudharabah is a business cooperation contract between two parties in which the first party (shahibul maal) provides all (100%) of the capital, while the other party acts as the manager.⁴ The term al-mudharabah comes from the word “dharab,” which means to walk or strike. Technically, al-mudharabah refers to a business partnership between two people in which the first party (shohibul maal) provides all the capital, while the other party acts as the manager.⁵

Mudharabah in Arabic is a form of wazan mufa'alah from the word “dharaba,” which means beating and traveling..⁶ The notion of hitting or walking more precisely refers to the process of someone moving his feet in running a business. According to Zuhaily, mudharabah is a cooperation contract between two parties: the first party as the owner of the funds (shahibul mal) who provides all the capital; and the second party as the business manager (mudharib). The profit obtained from the mudharabah contract is divided based on the agreement stated in the contract, usually in the form of a percentage (nisbah). If the business suffers a loss, the loss is borne by the owner of the capital (shahibul mal), as long as the loss is not due to the negligence of the mudharib. Meanwhile, the mudharib bears the loss in the form of effort, hard work, and time that has been spent to run the business. However, if the loss is caused by the negligence of the mudharib, then the mudharib must be responsible for the loss..⁷

⁴ Antonia, Syafi'i.M, Bank Syariah dari Teori ke Praktik, (Gema Insani: Jakarta, 2001) hal.95

⁵ Erni Susana and Annisa Prasetyanti, “Pelaksanaan dan Sistem Bagi Hasil Pembiayaan Al-Mudharabah pada Bank Syariah,” *Jurnal Keuangan Dan Perbankan* 15, no. 3 (2011), <https://doi.org/10.26905/jkdp.v15i3.1039>.

⁶ Ahmad Sarwat, *Fiqih Muamalat* (Jakarta: Kampus Syariah, 2009), hlm. 106.

⁷ Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer*, (Bogor: Ghalia Indonesia, 2012), hlm. 141.

Sabiq states that mudharabah is a contract between two parties in which one party provides a sum of money to be traded on the condition that the profits are shared according to the agreement. Al-Jazairi argues that cooperation in capital (mudharabah) or loans occurs when party A gives a sum of money to party B for business capital, and the profit is divided according to the agreement of both parties. If there is a loss, then the loss is only borne by the investor (party A), because the loss of party B (worker) has been represented by the fatigue he experienced. Therefore, party B does not need to bear additional losses.

The mudharabah contract is also a form of equity financing, but it has different features compared to musyarakah. In mudharabah, the contractual relationship is not between the capital providers, but between the fund provider and the entrepreneur. In a mudharabah contract, an entrepreneur (which can be an individual, household, company, or other economic unit) obtains capital from another economic unit for the purpose of trade or commerce. The entrepreneur in this contract acts as a “trustee” of the capital and uses it to generate profits. Both parties agree in advance on how the profits will be shared. When the project is completed, the entrepreneur returns the capital to the provider of funds along with a pre-agreed portion of the profit. If there is a loss, the entire loss is borne by the shahibul mal.⁸

Legal Basis of Mudharabah

The legal basis for mudharabah is the Qur'an, although the Qur'an does not explicitly mention mudharabah. However, Muslim scholars agree that this form of business cooperation is permissible. In general, the legal basis of mudharabah reflects the recommendation to do business. This can be seen in the following legal basis for mudharabah:

a) Al-Qur'an

⁸ Nufi Mu'tamar Almahmudi, “Analisis Implementasi Pembiayaan Mudharabah dalam Perkembangan Hukum Ekonomi Syariah di Indonesia,” *Al-Huquq: Journal of Indonesian Islamic Economic Law* 2, no. 2 (September 24, 2020): 208–30, <https://doi.org/10.19105/alhuquq.v2i2.3166>.

“...and others walk the earth seeking the bounty of Allah” (Qur'an, 73:20).

“...When the prayer has been performed, then scatter you over the earth; seek the bounty of Allah.” (Al-Qur'an, 62:10)

“... It is not a sin for you to seek the bounty of your Lord...” (Al-Qur'an, 2:198)

Although the Qur'an does not directly mention the validity of mudharabah, its verses have been interpreted to include those who travel for trade and seek lawful income.

b) Al-Hadith

It was narrated by Ibn Majah that the Prophet said, “There is blessing on three transactions: credit sales, mudharabah and mixing wheat with barley for household consumption, not for trade”. From the Sunnah, a clear evidence of the validity of mudharabah is the Prophet's own act of working as a mudharib for Khadija. Another implicit evidence can be seen from the following case: Ibn 'Abbas narrated that whenever his father, Al 'Abbas bin 'Abdal-Mutallib, gave money for mudharabah, he set some conditions that the mudharib should not take the money across the sea, to any village, or give a weak animal. If the mudharib did any of these things, he could be held accountable. The Prophet heard about this practice and authorized it (Al-Bayhqi, Al-Sunan, Al-Kubra, 6/184 (No.11611)).

c) Ijma'

Another proof of the validity of mudharabah is the practice of mudharabah by the Companions, which was an ijma' (consensus) among them. It was narrated by Zayd bin Aslam from his father that Abdullah and Ubaydullah, two sons of Umar, while traveling with the Iraqi army, visited Abu Musa al-Ash'ari, the Governor of Basrah. Abu Musa welcomed them and offered to help by giving them some state money to be handed over to the bayt al-mal (treasury). They were allowed to trade with the money, keep the profits, and hand over the original capital to the Caliph. They followed this advice. When they arrived in Medina and informed the Caliph, Umar was disappointed and asked if Abu Musa gave similar capital to all the other soldiers. As

the answer was no, Umar was angry and judged that Abu Musa gave the money only because they were the Caliph's sons. Ubaydullah argued that if the money was lost, they would bear the loss. However, Umar insisted that the profits be handed over to the bayt al-mal and not kept. As Ubaydullah repeated his argument, one of the companions suggested, "O Caliph, perhaps you could make it a qiradh." Umar agreed to the arrangement. Umar then took the capital and half the profit for bayt al-mal, while the other half was shared between Abdullah and Ubaydullah (Al-Bayhaqi, Al-Sunnah, Al-Kubra, 6/183).

d) Qiyas

Some scholars make an analogy to the validity of Al-Musaqah (farmer partnership), where the owner of an orchard transfers a number of fruit trees to another person who will care for them, in return for a portion of the total harvest of those trees, rather than the harvest of specific trees.

Pillars and Conditions Mudharabah

There are three pillars of mudharabah, namely: a) The form of contract (shighah, i.e. ijab and qabul), b) The contracting parties (rabbul mal and mudharib), c) The object consisting of capital, work, and profit. The difference in the number of pillars is only technical. Although shighah is the only pillar according to the Hanafi scholars, the contract cannot be executed without the existence of the contracting parties as well as the mention of capital, work, and profit. Based on these pillars, there are conditions that must be met, namely:

- a. Conditions relating to the shighah (Ijab and Qabul). Shighah mudharabah is an ijab and qabul contract that involves an offer and acceptance. This offer and acceptance can be made orally, in writing, or through other means of communication acceptable to both contracting parties. However, it is recommended that all mudharabah agreements be in writing and accompanied by appropriate witnesses to avoid disputes and misunderstandings.

- b. Conditions relating to the contracting parties (rabbul mal and mudharib). Mudharib and rabbul mal must be legally qualified individuals, which means they must have sound mind.
- c. Conditions relating to the object (capital, work and profit)
 - 1) Some important requirements relate to mudharabah capital. The majority of scholars are of the opinion that mudharabah capital must be cash.
 - 2) Some important conditions relating to mudharabah profit. Profit distribution should be based on an agreed percentage of profit, not on a lump sum or percentage of capital.
 - 3) Some important conditions relating to labor in the contract. From the perspective of the mudharib's work, mudharabah contracts can be divided into two categories:
 - a) Al-Mudharabah Al-Muthlaqah (Unbound Mudharabah Contract)

This is a contract in which the capital provider grants permission to the mudharib to manage the mudharabah funds without restrictions on the type of work to be done, location, timing, method of payment, etc.
 - b) Al-Mudharabah Al-Muqayyadah (Related Mudharabah Contracts)

This mudharabah contract involves the capital provider restricting the actions of the mudharib to a particular location, a particular type of investment, or other restrictions as deemed appropriate by the capital provider. However, these restrictions are not made in such a way that they unduly restrict the mudharib's operations.

Contract Termination Mudharabah

Mudharabah contracts are void in the following cases:

- a. Each party declares the contract void, the worker is prohibited from acting legally with the capital, or the owner of the capital withdraws his capital.
- b. One of the parties to the contract dies. According to the majority of scholars, if the owner of the capital dies, the contract is invalidated,

because a mudharabah contract is similar to a wakalah (representative) contract, which is invalidated by the death of the person who represents. In addition, the majority of scholars are of the opinion that mudharabah contracts cannot be inherited. However, the scholars of the Maliki madhhab are of the view that if one of the contractors dies, the contract is not invalidated, but it is not continued by his heirs because, according to them, mudharabah contracts can be inherited.

- c. One of the people making the agreement becomes crazy, because a crazy person is no longer competent to take legal action.
- d. Capital owners apostate (leave the Islamic religion). According to Imam Abu Hanifah, the mudharabah contract was void.
- e. The capital runs out in the hands of the capital owner before being managed by the worker. Likewise, mudharabah is void if the capital is spent by the capital owner so that there is nothing left for the worker to manage. The party declares the contract void, the worker is prohibited from taking legal action against the capital provided, or the capital owner withdraws his capital..⁹

Funding By Principle Mudharabah

a. Mudharabah Savings

Banks can integrate savings accounts with investment accounts based on the principle of mudharabah, where profit sharing is mutually agreed upon. Mudharabah is a principle of profit sharing and loss sharing where the customer as the capital owner (shahibul mal) hands over his money to the bank as the manager (mudharib) to be managed. Profits are shared according to the agreement, while losses are borne by the fund owner or customer.

b. General Deposits/Investments (Not bound)

Islamic banks accept term deposits (usually for one month or more) into general investment accounts with the principle of mudharabah al muthlaqah. This general investment is often referred to as an

⁹ Chasanah Novambar Andiyansari, "Akad Mudharabah dalam Perspektif Fikih dan Perbankan Syariah," *SALIHA: Jurnal Pendidikan & Agama Islam* 3, no. 2 (July 20, 2020): 42–54, <https://doi.org/10.54396/saliha.v3i2.80>.

unrestricted investment. Investment account customers focus more on seeking profit than simply securing their money. In *mudharabah al muthlaqah*, the bank as the *mudharib* has absolute freedom in managing its investment.

c. Special Deposit/Investment (Bound)

Islamic banks also offer special investment accounts to customers who want to invest their funds directly in projects of their choice, which are run by the bank with the principle of *mudharabah al muqayyadah*. This special investment is often referred to as a tied investment. This special investment account is usually intended for large and institutional customers or investors. In *mudharabah al muqayyadah*, the bank invests the customer's funds in a specific project desired by the customer. The investment period and profit sharing are mutually agreed upon, and the results are directly related to the success of the selected investment project.

d. Sukuk Al-Mudharabah

The *mudharabah* contract can also be used by Islamic banks to raise funds by issuing Sukuk, which are Islamic bonds. Through sharia bonds, banks obtain alternative sources of long-term funds (five years or more) that can be used for long-term financing. (Ascarya, 2007: 117).¹⁰

Types of Mudharabah

There are three types of *Mudharabah* which differ from each other both in terms of concept and procedures, namely:

- a. *Mudharabah Muthlaqah*, where the fund owner gives full freedom to the fund manager in managing his investment. This *mudharabah* is also called an unbound investment.
- b. *Mudharabah Muqayyadah*, where the fund owner gives restrictions to the manager, such as regarding the location, method, and/or object of investment or business sector. This *mudharabah* is also known as a tied investment.

¹⁰ Hidayati Nasrah, "Analisis Akad *Mudharabah* di Perbankan Syariah," *Jurnal Al-Iqtishad* 11, no. 1 (April 12, 2017): 16–30, <https://doi.org/10.24014/jiq.v11i1.3120>.

- c. Mudharabah Musytarakah, where the fund manager also includes capital or funds in investment cooperation. This type of mudharabah, which is a combination of mudharabah contracts and musyarakah contracts, is called mudharabah musytarakah.¹¹

Application of the Principle of Al-Adah Mahakkamah in Mudharabah Practices

Al-adah muhakkamah is a fiqh principle that states that good customs or habits that do not conflict with sharia can be used as a legal basis in resolving muamalah cases. This principle is based on the principle that customs that have become a community habit can be accepted as law as long as they do not conflict with the basic principles of Islam. The significance of al-adah muhakkamah in Islamic finance lies in its flexibility to adapt Islamic laws to the situations and conditions that exist in society. In the context of Islamic finance, this principle allows the use of financial practices that are common in society, as long as they do not conflict with sharia. Its application includes determining transaction conditions, payment methods, and profit-sharing mechanisms that are in accordance with local customs, but remain within the framework of Islamic law.

According to Kamali (2008), the application of the Al-Adah Muhakkamah principle provides the flexibility needed in a modern context without sacrificing sharia principles. This is reinforced by Siddiqi's statement (1981) that widely accepted customs in society can help fill legal gaps that are not explicitly regulated in sharia texts.

Allamah Fakhruddin Al-Zaila'i in his argument regarding the legality of mudharabah stated, "Mudharabah is prescribed because of the great need of both parties. Some people have wealth but do not have knowledge in conducting transactions, while others have knowledge but do not have wealth. Therefore, mudharabah is prescribed to regulate their welfare. Because the Messenger of Allah was sent and people conducted transactions with him, he allowed them to conduct transactions with mudharabah.

¹¹ Asri Dewita Abd Jalil, "Analisis Penerapan Pembiayaan Mudharabah Menurut PSAK 105 pada Perbankan Syariah," *Al-Mizan : Jurnal Ekonomi Syariah* 2, no. 2 (December 24, 2019): 16–28.

The application of the Al-Adah Muhakkamah principle in modern mudharabah practices can be seen from various aspects. In the financing structure, Islamic banks provide mudharabah financing to customers who need business capital with terms and conditions that are adjusted to applicable customs and regulations. In this practice, Islamic banks act as shahibul maal who provide funds, while customers act as mudharib who manage the business. Islamic banks apply the Al-Adah Muhakkamah principle by adjusting the terms and conditions of financing based on customs and general practices in society. For example, the amount of profit sharing agreed between the bank and the customer is determined based on applicable norms, thus creating fairness and comfort for both parties.

opportunities in mudharabah practices. Islamic banks now use digital technology to facilitate mudharabah transactions, such as through digital banking applications and online platforms. The use of this technology allows for more effective and efficient business management and supervision. For example, digital banking applications allow customers to monitor business developments in real time, report profits, and communicate with the bank. This reflects the application of the Al-Adah Muhakkamah principle in the context of modern technology, where the habits and general practices of an increasingly digital society are accommodated in mudharabah transactions.

In terms of legal arrangements, regulations governing mudharabah practices are adjusted to positive law in each country. This is a manifestation of the Al-Adah Muhakkamah principle in the context of national law. In Indonesia, for example, mudharabah practices are regulated by the Islamic Banking Law and various regulations from the Financial Services Authority (OJK). These regulations govern various aspects of mudharabah transactions, such as contract requirements, business supervision, and dispute resolution. With this regulation, the practice of mudharabah can run well and in accordance with sharia norms, while still fulfilling national legal provisions. This ensures that the interests of all parties are protected and transactions are carried out fairly and transparently.

Overall, the application of the Al-Adah Muhakkamah principle in modern mudharabah practices shows the flexibility and adaptability of Islamic law to changes and developments in the era. Adaptive financing structures, the use of digital technology, and comprehensive legal arrangements highlight how sharia principles can be applied in a modern context without ignoring the basic values of justice and welfare. Thus, mudharabah remains a relevant and effective instrument in supporting sustainable economic growth in the digital era.

Conclusion

The principle of Al-Adah Muhakkamah is a principle in Islamic jurisprudence that legitimizes the customs or habits of a society as long as they do not conflict with Islamic law. This concept emphasizes that customs that have become common can be accepted as law in resolving muamalah cases, including in the practice of mudharabah. This principle is based on the evidence from the Qur'an and Sunnah, which recognize the importance of good customs and are in line with Islamic principles.

In the practice of mudharabah, the principle of Al-Adah Muhakkamah provides flexibility in determining transaction conditions, payment methods, and profit-sharing mechanisms that are in accordance with local customs. This reflects the ability of Islamic law to adapt to different social and economic conditions in various societies. The regulations governing the practice of mudharabah, as applied in Indonesia, are also adjusted to national positive law to ensure fairness and transparency in transactions.

Overall, the application of the principle of Al-Adah Muhakkamah in the practice of mudharabah shows that sharia principles can be applied flexibly and relevantly in facing the development of the times. Thus, mudharabah remains an effective instrument in supporting sustainable economic growth in the digital era, while maintaining the basic values of justice and welfare in accordance with Islamic principles.

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