

A CONTEMPORARY ISLAMIC LEGAL REVIEW OF MUḌĀRABAH CONTRACTS BASED ON THE DSN-MUI FATWA

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Abstract

Purpose: This study aims to review the muḌārabah contract from a contemporary Islamic legal perspective, particularly through the fatwas of the National Sharia Council (DSN-MUI), given its strategic role in Islamic financing practices in Indonesia. This study aims to analyze the development of the muḌārabah concept from a classical fiqh understanding to a more contextual and systematic regulation, as outlined in the DSN-MUI fatwas.

Method - This study uses a qualitative research method with a normative-juridical approach, analyzing classical fiqh texts, contemporary literature, and DSN-MUI fatwas related to muḌārabah.

Findings - The research findings show that although the basic concept of muḌārabah in Islamic jurisprudence emphasizes the principle of profit-sharing and full responsibility for losses on the part of the owner of the capital, the National Sharia Council (DSN-MUI) has developed it through more systematic regulations, such as recognizing legal entities as parties to the contract, guarantee mechanisms under certain conditions, and adapting muḌārabah to modern financial instruments such as sukuk, convertible bonds, and Islamic insurance.

Research Contribution—This study provides a comprehensive understanding of the transformation of the muḌārabah contract from a classical concept to the context of Indonesian Islamic economic law. The limitation of this research lies in its limited focus on DSN-MUI fatwas without exploring their practical implementation in Islamic financial institutions.

Originality: This study's originality lies in its attempt to critically connect classical fiqh studies with contemporary fatwas, thereby enriching Islamic legal discourse in responding to modern challenges.

Keywords: DSN-MUI Fatwa, Islamic Law, Modern Sharia Contracts, Sharia Financial Institutions, MuḌārabah

Abstrak

Tujuan - Penelitian ini dilatarbelakangi oleh kebutuhan untuk meninjau kembali akad muḌārabah dalam perspektif hukum Islam kontemporer, khususnya melalui fatwa DSN-MUI, mengingat peranannya yang strategis dalam praktik pembiayaan syariah di Indonesia. Tujuan penelitian ini adalah untuk menganalisis perkembangan konsep muḌārabah dari pemahaman fiqh klasik menuju regulasi yang lebih kontekstual dan sistematis sebagaimana tertuang dalam fatwa-fatwa DSN-MUI.

Metode- Metode penelitian yang digunakan adalah kualitatif dengan pendekatan normatif-yuridis, yaitu menganalisis teks-teks fiqh klasik, literatur kontemporer, serta fatwa-fatwa DSN-MUI terkait *muḍārabah*.

Temuan - Hasil penelitian menunjukkan bahwa meskipun konsep dasar *muḍārabah* dalam fiqh menekankan prinsip bagi hasil dan tanggung jawab kerugian sepenuhnya pada *shahibul maal*, DSN-MUI melakukan pengembangan melalui pengaturan lebih sistematis, seperti pengakuan badan hukum sebagai pihak akad, mekanisme jaminan dalam kondisi tertentu, serta adaptasi *muḍārabah* dalam instrumen keuangan modern seperti *sukuk*, obligasi konversi, dan asuransi syariah.

Kontribusi Penelitian - Kontribusi penelitian ini adalah memberikan pemahaman komprehensif mengenai transformasi akad *muḍārabah* dari konsep klasik ke konteks hukum ekonomi syariah Indonesia. Keterbatasan penelitian ini terletak pada fokus yang masih terbatas pada fatwa DSN-MUI tanpa eksplorasi praktik implementasinya di lembaga keuangan syariah.

Keaslian - Nilai orisinalitas penelitian ini terletak pada upaya menghubungkan kajian fiqh klasik dengan fatwa kontemporer secara kritis, sehingga memperkaya diskursus hukum Islam dalam merespons tantangan modern.

Kata kunci: Fatwa DSN-MUI, Hukum Islam, Kontrak Syariah Modern, Lembaga Keuangan Syariah, *Muḍārabah*.

INTRODUCTION

Islam, as a comprehensive religion, does not only address ritual worship but also provides comprehensive guidelines in matters of *mu'āmalah*, including economic and financial transactions. One prominent form of transaction in the study of Islamic jurisprudence on economic transactions is the *muḍārabah* contract, which is a partnership between the capital provider (*ṣāhib al-māl*) and the business manager (*muḍārib*) based on the principles of trust and profit-sharing according to the initial agreement. This contract reflects the values of justice, transparency, and responsibility that characterize the Islamic economic system (Abdullah et al., 2024).

Currently, *muḍārabah* contracts are not only used in traditional community practices but have also become an important part of the management of Islamic financial institutions (LKS), such as Islamic banks, Islamic business units, and BPRS. Law No. 21 of 2008 concerning Islamic Banking makes *muḍārabah* contracts one of the bases for

Islamic banking operations in Indonesia.

This demonstrates that *muḍārabah* plays a crucial role in pooling and channeling funds according to Islamic principles. The *muḍārabah* agreement is based on several key principles, including mutual trust between the capital provider and the business manager (*amānah*), profit sharing in accordance with mutual agreement (profit sharing), and the capital provider bearing the risk of loss as long as the manager is not negligent. Additionally, this contract emphasizes honesty, fairness and transparency in all business activities (Hakim, 2019).

However, the dynamics of the economy and the complexity of the contemporary financial system present challenges to the implementation of the *muḍārabah* contract. The practice of *muḍārabah* is no longer simple; it is subject to various regulations, risk management, and increasingly complex legal compliance. This is where the role of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) becomes strategic in ensuring that the

contracts used by LKS remain within the authentic Sharia corridor and are adaptive to developments in the era (Chasanah, 2020).

To address these needs, the DSN-MUI has issued more than 160 fatwas as of August 8, 2025, and around 30 fatwas specifically regulate and develop legal provisions for *muḍārabah* contracts. These fatwas are a separate source of law in Indonesia's Sharia economic legal system and serve as an important reference for Sharia financial industry players. However, a crucial question arises: to what extent can these fatwas address contemporary issues, and to what extent is the *muḍārabah* contract implemented in accordance with the ideals of classical *fiqh* (Pricilia et al., 2025)?

The gap in contemporary Islamic legal studies on *muḍārabah* contracts is increasingly apparent, as most previous studies focus on certain dimensions without linking them in depth with DSN-MUI regulations and modern Islamic banking practices. There are studies that emphasize philosophical aspects by discussing the principle of justice in the distribution of profits and losses, (Aris Munandar, 2023) There are also those who examine the differences in the views of the *madzhab* scholars regarding *muḍārabah* guarantees which often cause problems when applied in the financial industry (Abdullah, et al., 2024). Other research is more textual, normatively examining the DSN-MUI fatwa on *muḍārabah* (Setiya Afandi,

2024). Some studies emphasize practical-empirical aspects by reviewing the application of the principle of justice in the practice of Islamic financial institutions (Srisusilawati & Eprianti, 2017). Meanwhile, some studies raise the perspective of Abdullah Saeed's critical thinking by highlighting *muḍārabah* as a financing product within the framework of modernity, emphasizing flexibility, market needs, and adaptation to the contemporary economic system (Qomar, 2018). In contrast to these approaches, the study of contemporary Islamic law on *muḍārabah* contracts based on the DSN-MUI fatwa seeks to combine normative analysis with an applicative review, so that it does not only limit itself to theory, but also maps the dynamics, complexity, and inconsistencies between classical concepts and industrial practices, to bridge the gap between *fiqh* ideals and the needs of regulation and implementation in the field.

The novelty of this research lies in its critical approach to DSN-MUI regulation of *muḍārabah* within the framework of normative Islamic law. This research will not only analyzes the legal structure and content of the DSN-MUI fatwa and examines its relevance, consistency, and development potential in responding to the demands of Islamic economic development. Thus, this research seeks to fill the void in the literature that has tended to be descriptive and less evaluative.

The urgency of this research is reinforced by the minimal understanding of business actors, customers, and legal apparatus regarding the legal position of *muḍārabah* based on the DSN-MUI Fatwa (Astari et al., 2021). This has resulted in several cases of deviation from the *muḍārabah* contract, which then led to legal conflicts. Therefore, a more complete and comprehensive understanding is needed of the legal position of the DSN-MUI fatwa in the Islamic legal system, as well as how the *muḍārabah* contract can be used as a sharia instrument that is economically useful and has strong legal legitimacy (Fitri, 2025).

Against this background, this study aims to examine the concept and application of the *muḍārabah* contract from an Islamic legal perspective by referring to the DSN-MUI decision, as well as identifying challenges, opportunities, and new formulations that can strengthen the position of *muḍārabah* in the sharia economic legal system in Indonesia. This study is expected to provide academic and practical contributions to the preparation of regulations that are fair, adaptive, and in accordance with *maqāṣid al-sharī'ah*.

Method

This study employs a qualitative approach with a normative legal method, examining the concept of *muḍārabah* contracts in Islamic law through doctrinal and historical analyses

based on the DSN-MUI fatwa (Abdullah, Nurhasanah, et al., 2024). This study aims to trace the normative basis of the DSN-MUI fatwas on *muḍārabah* and understand their transformation and application in the context of Indonesia's sharia economic legal system. The data used are in the form of primary legal materials, such as DSN-MUI fatwas and related laws and regulations, and secondary legal materials in the form of scientific literature, textbooks, and academic journals. The analysis is carried out through a juridical-qualitative approach by interpreting the normative content of legal texts and linking them to historical and social contexts, in order to produce a deep understanding of the consistency and relevance of *muḍārabah* fatwas in the contemporary practice of Islamic financial institutions (Abdullah et al., 2024).

RESULTS AND DISCUSSION

The Concept of Muḍārabah in Fiqh

The term *muḍārabah* originates from classical Islamic commercial law and has been known since the early days of Islam as a form of cooperation between capital owners (*ṣāḥib al-māl*) and business managers (*muḍārib*) (Lamusu, 2021). In fiqh literature, this contract is also known as *qirād* and has been an important topic of discussion among scholars of various schools of thought, such as Imam Malik, Imam Shafi'i, and Imam Abu Hanifah. Although the *muḍārabah* contract has strong roots in

Arab commercial practices, similar forms of cooperation were known in various previous civilizations, including in the Jewish Talmud, indicating that this business partnership model was not entirely new to Islamic law. However, Islam adopted and perfected it in accordance with the principles of Sharia. At that time, the city of Mecca served as a hub for international economic activity, where merchants from various regions gathered to conduct transactions. Since there was no rejection or contradiction from authentic Islamic legal sources, scholars subsequently established *muḍārabah* as a valid contract within the Islamic legal system (Qomar, 2018).

In the linguistic sense, the term *muḍārabah* derives from the phrase *ḍarb fī al-arḍ*, which means to travel for trade (Rambe 2024). According to Wahbah Zuhaili, two terms are commonly used

for this concept: *muḍārabah* and *qirāḍ/muḍārabah*. In the language of the Iraqi people, it is referred to as *muḍārabah*, while in the Hijaz dialect, it is called *qirāḍ*, derived from the word *qarḍ*, meaning to cut, as the capital owner allocates a portion of their wealth to the capital manager (*muḍārib*) for management and receives a share of the profits in return (Wahbah Zuhaili, 2011).

According to Sayyid Sabiq, *muḍārabah* is also known as *mu'āmalah*, which is a cooperation agreement between two parties, where one party provides capital to the other party for trading, with a profit-sharing system that has been agreed upon. Hakim adds that the terms *qirāḍ*, *muḍārabah*, and *mu'āmalah* essentially refer to the same concept, and the differences are more due to geographical background than substantive differences in meaning (Sayyid Sabiq, 2008).

Table 1: Comparative Terminology of Muḍārabah in Islamic Jurisprudence

Term	Source	Meaning	Notes
Muḍārabah	General (Islamic Jurisprudence)	A contract between a capital provider and a business manager with a profit-sharing agreement.	The most commonly used term in Islamic finance.
Qirāḍ/ Muḍārabah	Maliki & Hanafi Schools	A synonym for <i>muḍārabah</i> in classical jurisprudence traditions.	Commonly used in Hijaz and Iraq regions.
mu'āmalah	Sayyid Sabiq	A business partnership where one party provides the capital and the other manages the trade.	Appears in some contemporary Islamic legal literature.

The understanding of *muḍārabah* in *fiqh* has varied interpretations from the classical to contemporary eras, both

among the imams of the *madzhab* of thought and their successors. The Hanafiyah *madzhab* interprets *muḍārabah* as a contract for sharing profits, with one party providing capital and the other

managing the business. The Malikiyah *madzhab* defines *muḍārabah* or *qirāḍh* in a Shari'ah context as an agreement to delegate the capital held by the asset owner to the asset manager for business purposes, using specific forms of capital such as money, gold, or silver that can be used for transactions. The asset owner is obliged to hand over the capital to the manager as soon as possible, in accordance with what has been agreed. The Syafi'iyah *madzhab* describes *muḍārabah* as a contract that involves the transfer of funds from one party to another for business purposes, with both parties entitled to a share of the profits under specific conditions. The Hambali *madzhab* states that *muḍārabah* is a declaration for the transfer of specific assets from their owner, taken from their own wealth, to another individual who will conduct the business, with profits being shared in a general manner from the gains obtained (Al-Jauzairi, 2017).

Based on the opinions of the four *madzhab* of *fiqh*, there is no significant difference in meaning, particularly in the interpretation of *muḍārabah* among the Hanafi, Shafi'i, and Hambali *madzhabs*, where all three understand *muḍārabah* as a form of cooperation in which one party contributes capital and the other contributes through management. This is somewhat distinct from the Maliki school, which interprets *muḍārabah* as a contract delegating capital management (Abdullah, Nuraeni, et al., 2024).

In its development, the interpretation of *muḍārabah* has been understood

differently by contemporary scholars. Fatwa al-Azhar explains that *muḍārabah* refers to a contract for sharing profits, whereby the capital is provided by one party and the work is performed by another according to certain stipulated conditions. This aligns with the definition of *muḍārabah* in the *fatāwā al-mu'āṣirah*, which states that *muḍārabah* is a type of partnership that involves a capital contribution (*ra's al-māl*) from one party and work (*'amal*) from another party. (Fadillah Mursid, 2023)

Muḍārabah, according to *fiqh* scholars, is an agreement whereby the capital owner entrusts their capital to a worker (trader) for trading purposes, while the trading profits are shared according to mutual agreement. In the event of a loss in trade, the capital owner bears the entire loss. This definition indicates that what is entrusted by the worker (trader) is in the form of capital, not benefits such as rental income. This view is consistent with that expressed by Sheikh Wahbah Zuhaili, who states that *muḍārabah* is a contract whereby the capital owner entrusts their capital to the worker for management, and the profits belong to both parties in accordance with their agreement. However, losses are solely borne by the capital owner, while the worker incurs no loss except for their effort and labor (Zuhaili, 2011).

According to Ahmad Asy-Syarbasyi, as cited by Syafi'i Antonio, *muḍārabah* is practically a partnership agreement between two parties, where the first party (the investor) provides all the

capital (100%), and the second party acts as the worker. The profits of the business in *muḍārabah* are distributed according to the agreement stipulated in the contract, while losses remain the responsibility of the capital owner, provided that the losses are not due to the negligence of the manager. If the losses arise from fraud or negligence, the manager must be accountable for those losses (Antonio, 2001).

The definition of *muḍārabah* has evolved based on several definitions provided by contemporary *fiqh* scholars. Classical scholars have tended to define *muḍārabah* as a partnership between two individuals with a profit-sharing arrangement. However, as business ventures do not always yield profits, contemporary scholars have refined this definition by expanding the interpretation of *muḍārabah* to include the stipulation that the capital owner is solely responsible for any losses incurred during the partnership.

Legal Foundations, Principles, and Conditions of Muḍārabah
Islamic jurists agree that the *muḍārabah* contract is a permissible form of cooperation. Although some jurists cite Quranic verse 20 of Surah Al-Muzzammil as supporting evidence, the verse does not explicitly mention *muḍārabah* but rather provides a general reference to economic activities such as “walking on the earth seeking Allah’s bounty.” Therefore, if this verse is used as the basis for *ijtihād*, it must be clarified that its permissibility is based

on the implicit meaning (*mafḥūm*) of the verse, not the explicit text (*naṣṣ*) (Abduroman, 2021). To strengthen the argument, the historical record of *muḍārabah* practices carried out by Prophet Muhammad Saw with Khadijah before his prophethood can serve as more concrete historical evidence, while also demonstrating the social and religious legitimacy of such contracts in the economic practices of Arab society during the early days of Islam (Mursid, F. (2020).

Following the validation of these agreed-upon legal sources, which are adhered to by the majority of Islamic jurists (*the Qur’an, Sunnah, Ijma’, and Qiyas*), scholars of *fiqh* have differing opinions concerning the principles and conditions of *muḍārabah* (Abdullah et al., 2021). According to Hanafi scholars, the principles of *muḍārabah* consist of an offer (*ijāb*) and acceptance (*qabūl*) articulated in terms that convey the meaning of both. Scholars from the Shafi’i school identify five principles: (1) capital, (2) labor, (3) profit, (4) contract form (*sighat*), and (5) the parties involved. However, the majority of scholars assert that the principles of *muḍārabah* comprise three elements: (1) the parties to the contract (the capital provider and the worker), (2) the subject matter of the contract (capital, work, and profit), and (3) the contract form in the offer and acceptance (Chasanah, 2020).

Based on the principles of *muḍārabah* according to the majority, the conditions that must be fulfilled are:

a. Conditions pertaining to the parties entering into the contract (the capital provider and manager of the capital). Both the capital provider and manager must meet legal qualifications, which means they must possess sound reasoning.

b. Conditions related to the contract form (*ijāb and qabūl*). The contract form of *muḍārabah* is an agreement of offer and acceptance, which can be expressed verbally, in writing, or through any communication means acceptable to both parties. However, it is advisable for all *muḍārabah* contracts to be documented in writing with appropriate witnesses to prevent disputes or misunderstandings.

c. Conditions concerning the subject matter (capital, profit, and work). Regarding capital, most scholars believe that it must be in the form of cash. Thus, it is invalid if the *muḍārabah* capital consists of assets in the form of receivables. Moreover, the capital must be fully entrusted to the entrepreneur, and its amount and type must be clearly defined by the contract. Concerning the distribution of profits, it must be based on the agreed-upon method of profit sharing, rather than as a lump sum or percentage of the capital. Conditions related to the *muḍārib*'s perspective and the *muḍārabah* contract can be categorized into two types. First, *Muḍārabah Al-Muthlaqah* (Unrestricted *Muḍārabah* Contract) is a contract wherein the fund provider permits the *muḍārib* to utilize the *muḍārabah* funds without restrictions on the type of work to be undertaken, the location, time,

payment method, and other management aspects. Second, *Muḍārabah Al-Muqayyadah* (Restricted *Muḍārabah* Contract) is a contract wherein the investor limits the activities of the *muḍārib* to a specific location or type of investment or other restrictions deemed appropriate by the capital provider, but not in a manner that overly constrains the *muḍārib* in their activities (Srisusilawati and Eprianti, 2017).

The End of *Muḍārabah*, the termination of the *muḍārabah* contract, is declared upon the occurrence of the following events:

- a. The parties agree to terminate the contract.
- b. One of the contracting parties passes away.
- c. One of the contracting parties becomes mentally incapacitated, as a person who is insane is no longer competent to undertake legal action.

The capital has been exhausted in the hands of the capital provider before being utilized by the worker. Similarly, if the capital provider utilizes the capital such that there is nothing left for the capital provider to control, then there is nothing left for the worker to manage, thus invalidating the *muḍārabah* (Mazuin, 2020).

In addition to the four aforementioned points, according to Sayyid Sabiq, the termination of the *muḍārabah* contract may also occur due to the failure to fulfil the valid conditions of *muḍārabah* and the *muḍārib* not conducting their business activities

in accordance with the agreement in the contract (Munandar, 2023).

The Concept of Muḍārabah Contracts in the Fatwa of DSN-MUI

The National Sharia Council of the Indonesian Ulema Council (DSN-MUI), since its establishment in 1999, has issued 160 fatwas since its establishment in 2000 until early 2025. Among them, more than 30 fatwas are related to *muḍārabah* (Pricilia et al., 2025). Of the fatwas related to *muḍārabah*, only eight specifically use the term *muḍārabah* with more detailed legal provisions and discuss it comprehensively (Hamdan et al., 2024). The legal provisions of these eight fatwas can be summarized as follows:

Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000 concerning *Muḍārabah* Financing (*qirādh*)

This fatwa does not provide a written definition of *muḍārabah* as a contract, however. However, it explains what *muḍārabah* financing involves. Essentially, it describes *muḍārabah* financing as a collaborative effort in a productive business with a specified duration, in which the financial institution acts as the capital provider (*ṣāhib al-māl*) financing 100% of the needs of a project (business) with a clearly stated amount of cash, while the entrepreneur (customer) acts as the *muḍārib* or business manager, managing the agreed-upon business form in accordance with Sharia. In this partnership, should losses occur, they

will be borne entirely by the financial institution unless the *muḍārib* commits intentional misconduct, negligence, or breaches the agreement (Rambe, 2024). *Muḍārabah* financing in this fatwa is established with several principles and conditions.

- a. The parties involved. The condition is that they must be legally competent to do so.
- b. The contract (*ijāb* and *qabūl*). The clarity of the contract's purpose must be considered, the agreement must be made at the time of the contract, and it should be in writing or in a recognized manner (Handi & Abdullah, 2024).
- c. Capital. It must be known in terms of amount and type, and the capital must be in the form of cash or valuable goods at the time of the contract and cannot be in the form of receivables.
- d. Profit. The condition is that profits must be shared between both parties, and their proportions must be known from the outset of the contract. Losses are the responsibility of the capital provider, except for losses resulting from negligence, errors, or breaches of agreement by the *muḍārib* (Anggraeni, 2024).
- e. Business activities by the *muḍārib*. The condition is that the capital provider must not interfere or restrict the *muḍārib* in management, and the *muḍārib* must not violate Sharia in managing the capital.
- f. In addition to the five principles and their conditions, several other matters are addressed in this fatwa, including those concerning

compensation and guarantees. Guarantees are provided to ensure that the *muḍārib* does not engage in deviations and as a precautionary measure for the *muḍārib* in the case of intentional losses. Thus, if losses occur due to mistakes, negligence, or breaches of the agreement, the capital provider can request compensation (Kamaruddin, 2022).

1. Fatwa DSN-MUI No. 33/DSN-MUI/IX/2002 concerning *Muḍārabah Sukuk*

This fatwa on *muḍārabah Sukuk* discusses *muḍārabah* solely as a contract within the framework of *Sukuk*, while the provisions of *muḍārabah* itself continue to refer to the provisions of Fatwa DSN-MUI No. 07/DSN-MUI/IV/2000 concerning *Muḍārabah Financing (qirāḍh)*.

2. Fatwa DSN-MUI No. 38/DSN-MUI/X/2002 concerning *Muḍārabah Investment Certificates Between Banks (IMA Certificates)*

This fatwa on *Muḍārabah Investment Certificates Between Banks (IMA Certificates)* merely touches upon *muḍārabah* as a contract permitted under *Sharia*, while contracts based on interest are prohibited, but does not delve further into the mechanisms and provisions for executing the contract.

3. Fatwa DSN-MUI No. 50/DSN-MUI/III/2006 concerning the *Muḍārabah Musytarakah Contract*

The *Muḍārabah mushāarakah Contract* represents a combination of the *Muḍārabah* and the *mushāarakah* contracts. In this agreement, both parties (the provider of capital and the *muḍārib*) contribute capital. Consequently, in the event of losses, they will be borne in proportion to the capital invested by each party.

4. Fatwa 51/DSN-MUI/III/2006 on *Muḍārabah Mushāarakah Contract in Islamic Insurance*

This fatwa discusses the provisions regarding the use of the *muḍārabah mushāarakah* contract in insurance, stipulating that the policyholder acts as the investor (*ṣāhib al-māl*), while the insurance company serves as the fund manager (*muḍārib*) and contributes its own capital (*mushtarak*). Subsequently, the company will manage the total funds. The returns are distributed according to the proportion of capital and effort, and in the event of losses, the insurance company bears the losses in accordance with the proportion of capital.

5. Fatwa DSN-MUI No.59/DSN-MUI/V/2007 on *Convertible Muḍārabah Bonds*

Convertible Muḍārabah Bonds are Islamic bonds issued by the issuer based on the *muḍārabah* principle to augment working capital needs, with an option for investors to convert the bonds into

the issuer's shares at maturity. Therefore, the contract used is the *muḍārabah* contract, taking into account the substance of on *Muḍārabah* Financing, Fatwa DSN-MUI Number 32/DSN-MUI/IX/2002 on Islamic Bonds, and Fatwa DSN-MUI Number 33/DSN-MUI/IX/2002 on *Muḍārabah* Islamic Bonds. The issuer in Convertible *Muḍārabah* Bonds acts as the *muḍārib*, while the holders of the Convertible *Muḍārabah* Bonds act as *ṣāhib al-māl*. In cases where the holders of the convertible bonds exercise their right to convert the bonds into shares of the issuer, the contract used is the *mushārah* contract, whereby the holders of the Convertible *Muḍārabah* Bonds (CMBs) act as shareholders.

6. Fatwa DSN-MUI No.105/DSN-MUI/X/2016 on Guaranteeing the Return of Capital in *Muḍārabah*, *Mushārah*, and *wakālah bi al-istithmār* Financing

This fatwa essentially guarantees the full return of the capital of the *ṣāhib al-māl* in the event of losses. The fatwa elaborates on the concept of the *muḍārabah* contract as a form of partnership between two parties, where the first party (*malik*, *ṣāhib al-māl*, LKS) provides all the capital, while the second party (*'amil*, *muḍārib*, customer) acts as the manager. The profits from the venture are shared between them according to the ratio agreed upon

in the contract, while losses are borne by the *ṣāhib al-māl* alone.

The return of capital in this *muḍārabah* must be executed if losses occur due to *ta'addī*, *tafrīt*, or *mukhālafat al-shurūṭ* and can be proven in court. Prior to any binding decision, losses remain the responsibility of the manager.

7. Fatwa DSN-MUI No. 115/DSN-MUI/IX/2017 on the *Muḍārabah* Contract

This fatwa provides a conceptual framework for the *muḍārabah* contract as a partnership between the capital owner (*ṣāhib al-māl* I), who supplies all the capital, and the manager (*muḍārib*), with profits from the venture shared according to the ratio agreed upon in the contract. The *muḍārabah* outlined in this fatwa may take the following forms:

- a. *Muḍārabah-muqayyadah*.
- b. *Muḍārabah-muṭlaqah*.
- c. *Muḍārabah-thanā'iyah*.
- d. *Muḍārabah-mushtarakah* (Setiya Afandi, 2024).

The *muḍārabah* contract in this fatwa is established under several stipulations and conditions.

- 1 Contract (*ijāb* and *qabūl*). It must be stated clearly and unequivocally and be comprehensible to both parties, which may be done verbally, in writing, or through gestures. Specifically, for *muḍārabah thanā'iyah*, re-*muḍārabah* is not permitted unless authorised by the

- owner of the capital (Nuraini et al., 2025).
- 2 The parties involved (*ṣāhib al-māl* and *muḍārib*) may be individuals or entities, whether legal or otherwise, provided that they are legally competent in accordance with applicable laws. The shahibul maal must possess *muḍārabah* capital, and the *muḍārib* must have the necessary skills and competencies.
- 3 Capital. It must be transferable and can be in the form of cash, goods, or a combination of both. If in the form of goods, their value must be converted, and if different currencies are involved, conversion is also required; it cannot be in the form of receivables.
- 4 Profit-sharing ratio. The profit ratio must be agreed upon and known from the outset of the contract, expressed in a ratio rather than a nominal amount or percentage of capital. Losses are the responsibility of the capital provider, except in cases of negligence, error, or breach of the agreement by the *muḍārib*.
- 5 Business activities. The business must be halal (in accordance with Sharia and legal regulations). The *muḍārib* must conduct *muḍārabah* activities in the name of the *muḍārabah* entity, not in their own name. Expenses arising from business activities in the name of the *muḍārabah* entity may be charged to it. The *muḍārib* must not borrow, lend, donate, or gift capital and profits to others except with the permission of the *ṣāhib al-māl*. The *muḍārib* must not engage in actions that constitute *ta'addī*, *tafrīt*, or *mukhālafat al-shurūt* (exceed
- 6 Distribution of profits and losses. Profits must be calculated clearly, and the total results must be shared according to the agreed ratio. The *muḍārib* may propose additional profits or a percentage of profits to be allocated to them if the profits exceed a certain amount. Losses from the *muḍārabah* venture are the responsibility of the *ṣāhib al-māl* unless those losses arise due to actions by the *muḍārib* that involve *ta'addī*, *taqshir*, and/or breaches of the terms, or if the *muḍārib* violates the limits set in the *muḍārabah muqayyadah* contracts.
- 7 Provisions on the Activities and Products of Financial Institutions.
- 8 If the *muḍārabah* contract is executed in the form of financing, the provisions of fatwa DSN-MUI 07/DSN-MUI/IV/2000 on *Muḍārabah Financing (Qiradh)* apply. If the *muḍārabah* contract is realized in the form of *muḍārabah musytarakah*, the provisions stated in fatwa DSN-MUI Number 50/DSN-MUI/VIII/2006 on *Muḍārabah Musytarakah* apply. If the *muḍārabah* contract is realized in the form of *muḍārabah musytarakah* in Islamic insurance activities, the provisions as stated in fatwa DSN-MUI Number 51/DSN-MUI/III/2006

on *Muḍārabah Musytarakah* in Islamic Insurance apply (Anggraeni, 2024).

The following is a brief table of the discussion regarding the DSN-MUI

fatwas relating to the *Muḍārabah* contract:

Table 2: Summary and Legal Dimensions of DSN-MUI Fatwas on Muḍārabah Contracts

N o	Fatwa Number	Type of <i>Muḍārabah</i>	Related Parties	Main Legal Aspects	Classical Fiqh Notes / Differences	Key Information Summary
1	07/DSN-MUI/IV/2000	<i>Muḍārabah</i> Financing (<i>Qiradh</i>)	<i>Ṣāhib al-Māl</i> and <i>Muḍārib</i>	Capital from one party (<i>ṣāhib al-māl</i>); profit shared; loss borne by capital owner if no negligence	Aligned with majority opinion in classical <i>fiqh</i> ; rooted in Maliki and Hanafi traditions	Explains basic principles of <i>muḍārabah</i> including profit-sharing and risk allocation
2	50 & 51/DSN-MUI/III/2006	<i>Muḍārabah Musytarakah</i>	Both parties as capital contributors	Both parties contribute capital; profit and risk shared proportionally	Considered extension of <i>muḍārabah</i> concept; debated in classical <i>fiqh</i> as hybrid with <i>syirkah</i>	Capital-sharing model that blends <i>syirkah</i> and <i>muḍārabah</i>
3	59/DSN-MUI/V/2007	Convertible <i>Muḍārabah</i> Bonds	Issuers (<i>Muḍārib</i>) and Bondholders	Capital invested by public via bonds; potential conversion to equity	Not found in classical texts; modern adaptation of <i>muḍārabah</i> to Islamic capital markets	Links to previous fatwas (07 and 33); emphasizes conversion rights to shares
4	105/DSN-MUI/X/2016	Capital Return Guarantee	<i>Shahibul Maal</i> and <i>Muḍārib</i>	Capital must be returned in case of negligence or contract violation	Classical <i>fiqh</i> prohibits capital guarantee unless due to misconduct	Clarifies when the capital return is allowed due to breach of contract or mismanagement
5	115/DSN-MUI/IX/2017	General Guidelines: <i>Muqayyadah</i> , <i>Muthlaqah</i> , <i>Musytarakah</i>	Individuals or legal entities	Comprehensive structure including types, conditions, and parties involved	Systematization of <i>fiqh</i> forms into practical guidelines; includes multiple classical views	Standardizes all <i>muḍārabah</i> types in DSN fatwas with clear terms and distinctions

The table shows that the DSN-MUI fatwas on *muḍārabah* contracts have significantly developed from classical concepts to more modern and complex applications in the Islamic financial system. Starting from the basic principles of *muḍārabah* as known in classical *fiqh*, these fatwas have evolved to include new forms, such as *muḍārabah musytarakah*, convertible sukuk, and capital return guarantees. Each fatwa emphasizes key legal aspects such as capital distribution, responsibility, and risk, and accommodates contemporary practical needs without compromising Islamic principles.

The Development of *Muḍārabah* Contracts in *Fiqh* into DSN-MUI Fatwas

Based on an examination of approximately 30 DSN-MUI fatwas that reference the use of *muḍārabah* contracts, only eight fatwas specifically include *muḍārabah* in their titles. Among these Eight fatwas, only three provide an in-depth discussion of *muḍārabah* contracts (Safa et al., 2024). In the context of *muḍārabah* financing, there is a significant difference between classical *fiqh* understanding and the provisions stipulated in the DSN-MUI fatwa. Classical *fiqh* bases the *muḍārabah* contract on the principle of a simple partnership, with the main pillars being the *ṣāhib al-māl* (capital owner), *muḍārib* (manager), *māl* (capital), and *sighat (ijab qabul)*. This emphasizes that the *muḍārib* does not bear losses except as a result of

negligence or deviation (Adriana et al., 2023). However, DSN-MUI fatwas, such as Fatwa No. 07/2000, No. 115/2017, and No. 105/2016 provide a more systematic and contextual elaboration of this contract, including the allowance of a guarantor under certain conditions, the recognition of legal entities as parties to the contract, and adjustments to the contract structure to align with modern economic practices and the Indonesian legal system (Fallah, S2025). Thus, the DSN-MUI not only reinterprets classical concepts in a normative manner but also accommodates the needs of Islamic financial institutions to conduct safe and adaptive financing without compromising the fundamental principles of Sharia (Mursid, 2023).

Among these three fatwas related to *muḍārabah*, only fatwas (1) and (2) provide a detailed explanation of *muḍārabah* contracts. Fatwa number (3) merely addresses the guarantee of capital return in the event of losses caused by *ta'addi*, *tafrith*, or *mukhalafat al-syuruth*, which must be proven in court. Apart from these three fatwas, the remainder merely mentions *muḍārabah* as an option for contracts that may be used in transactions concerning the provisions, referring to the initial fatwa on *muḍārabah*.

Although the fatwas of the DSN-MUI do not explicitly state that the pillars of the *muḍārabah* contract refer to the Shafi' i school of thought, they substantively and structurally reflect the classification of the five pillars of the

contract as explained by Imam Shafi'i. This can be seen from the content of fatwas related to *muḍārabah*, such as Fatwa No. 07/DSN-MUI/IV/2000 on *Muḍārabah* Financing, which includes provisions regarding capital (*ra'sul maal*), labor (*'amal*), profit sharing (*ribh*), the contract terms (*ijab-qabul*, which is the expression of intent to enter into the contract), and the clarity of the parties involved in the contract (*ṣāhib al-māl* and *muḍārib*). Two pillars that have undergone significant development are: (1) Capital, which in the DSN-MUI fatwa is expanded to include not only cash but also assets that can be valued and used productively, and (2) Labor, which in modern implementation includes professional roles and specific expertise explicitly stated in the contract. Thus, it can be concluded that, although not explicitly referenced in theoretical terms or explicitly attributed to Imam Shafi'i, the DSN-MUI has normatively adopted these *fiqh* principles in the structure of its fatwas, and its adaptations reflect contextual *ijtihād* in response to the needs of contemporary Islamic economic practices (Lamusu, 2021).

An important development in the practice of *muḍārabah* contracts has occurred in determining the parties to the contract. In classical *fiqh*, the only parties legally competent to enter into a *muḍārabah* contract are individuals with legal capacity (Mahmudah, 2020). However, with the passage of time and the needs of the modern business world, DSN-MUI Fatwa No. 115 of 2017

broadened the meaning of legal subjects in contracts. Explicitly stated in Article 2 of the General Provisions, the fatwa states: "The parties are individuals or entities, whether legally incorporated or not." This provision marks a significant change, as the parties to the contract are no longer limited to individuals but may also include legal entities such as cooperatives, limited liability companies, or foundations, thereby opening opportunities for modern institutions to legally participate in *muḍārabah* contracts in accordance with Sharia principles.

Second, there is a development regarding the responsibilities and accountability of the *muḍārib*. The concept of *muḍārabah* has always been understood as a form of agreement to share profits, with capital provided by one party and work (effort) provided by the other. Traditionally, losses were considered the sole responsibility of the capital provider. The *muḍārib* is not liable for any losses except those related to their efforts and work. This conception is also reflected in the DSN-MUI fatwas concerning *muḍārabah*, stating that losses are entirely the responsibility of the capital provider, except for intentional losses (due to *ta'addi* or failing to perform required actions (*taqshir*), negligence, or breaches of the *muḍārabah* agreement (Arifudin & Karmawan, 2025).

The development of the *muḍārib's* accountability lies in the obligation to return capital in *muḍārabah* if losses arise

due to *ta'addi*, *tafrith*, or *mukhalafat al-syuruth*, which must be proven in court. Prior to the establishment of binding decisions, losses were the responsibility of managers. The development of *mudārabah* contracts in contemporary Islamic financial institutions shows a paradigm shift from the classical *fiqh* approach to a more pragmatic and risk management-based approach. In classical *fiqh*, trust in *mudārib* is based entirely on moral integrity and trustworthiness in fund management. However, in modern practice, to maintain financial security and minimize moral hazard risks, financial institutions require material guarantees from the *mudārib*. This approach, although not fully aligned with the classical *mudārabah* principle that rejects any liability for losses on the part of the *mudārib* except in cases of negligence or breach, is still considered relevant in terms of the public interest. This demonstrates the adaptation of Islamic economic law to the needs of the modern banking system, which demands greater accountability and risk mitigation. Therefore, it can be concluded that imposing material guarantees on the *mudārib* is a form of contemporary *ijtihad* that balances Islamic principles with the demands of financial system stability.

CONCLUSION

Developments in *mudārabah* regulations show a significant shift from classical *fiqh* principles toward an

approach that is more responsive to modern economic challenges and realities. One of the most notable examples is the provision in Fatwa DSN MUI No. 115 of 2017 on *Mudārabah* Contracts, which expands the legal subjects in the contract from individuals to legal entities or groups of people, whether incorporated or not. This reflects the adaptation of Sharia law to a more complex and organized contemporary economic structure. Furthermore, the application of material guarantees in *mudārabah* contracts imposed on the *mudārib* also indicates a shift in orientation from an individual moral-ethical approach toward systemic financial security. In classical *fiqh*, material guarantees were not recognized in *mudārabah* because capital security was entirely dependent on the honesty and integrity of the *mudārib*. However, in modern practice, the potential for moral hazard and the increasing need for legal certainty have prompted Islamic financial institutions to request guarantees for risk mitigation. Thus, regulations such as Fatwa No. 115 not only provide legal legitimacy for the involvement of legal entities in Sharia contracts but also accommodate the need for greater financial stability and security. This adaptation strengthens the position of Sharia financial institutions in building a secure and competitive financing system without substantially departing from the basic principles of Sharia.

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