



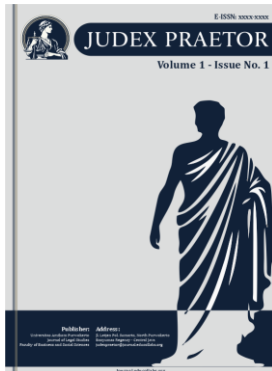
Implementation of the Consensual Principle of Financing Agreements at BPRS Buana Mitra Perwira Purbalingga

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ABSTRACT

Agreement can take two forms: written and unwritten (oral). Both forms are binding, provided they meet the requirements stipulated in Article 1320 of the Civil Code, namely, the existence of an agreement. The principle of consensualism is reflected in the agreement made between the parties, which is described as a statement of free will approved by the parties. BPRS Buana Mitra Perwira is a Sharia financial institution that engages in fundraising and distribution of funds, which involves direct or written agreements. This study aims to examine the implementation of the principle of consensualism in the agreements applied by BPRS Buana Mitra Perwira Purbalingga. The research employs a sociological juridical approach, involving field activities to gather real-world data, making it a case study. The study uses a descriptive approach, with data collection methods including in-depth interviews, participant observation, and documentation. The sampling technique used is purposive sampling and snowball sampling. The results of the study show that the principle of consensualism is applied in the financing agreements of BPRS Buana Mitra Perwira Purbalingga, which take the form of consumptive financing (sale and purchase, such as murabahah, IMBT, or istisna') and productive financing (cooperation, such as mudharabah or musyarokah). The agreement draft is typically prepared by BPRS Buana Mitra Perwira, and customers only need to read and sign the agreement based on their agreement.

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INTRODUCTION

The existence of the Islamic economy contributes to economic growth in Indonesia, as evidenced by the establishment of Bank Muamalat Indonesia (BMI) as a macro financial institution on May 1, 1992, which was followed by the growth of other Islamic financial institutions such as BPRS, Islamic cooperatives, and Baitul Maal wa Tanwil (BMT). At that time, the Islamic financial institution system obtained a formal legal basis with the enactment of Law No. 7 of 1992 concerning banking, as revised in Law No. 10 of 1998 and supplemented by Law No. 23 of 1999 concerning Bank Indonesia.

Sharia Financial Institutions are an element of the sharia economic system, which is inseparable from sharia rules. Therefore, in their operations, Sharia Financial Institutions are not allowed to do anything that is not permitted by sharia, such as acts that cause harm to society, prostitution, gambling, drugs, and acts that can harm the wider community (moral hazard).

In general, Sharia Economics products are implemented through five (5) principles, namely: a. The principle of Wadi'ah (deposit), b. The principle of Syarikah (profit sharing), c. The principle of Tijarah (sale and purchase of profit returns), d. The principle of Al-Ajr (fee collection), and e. The Principle of al-Qard (administrative fees). Based on these five principles of product development, Islamic Economic products vary greatly, depending on which principle is used as a reference in product development.¹

BPRS Buana Mitra Perwira Purbalingga is one of the Sharia Financial Institutions located in Purbalingga. One of the products offered by BPRS Buana Mitra Perwira Purbalingga is financing. Based on Law Number 10 of 1998 concerning Sharia Banking, Article 1 paragraph (2), financing is the provision of money or securities that can be equated with it, based on an agreement or loan agreement between a financial institution and another party that requires the borrower to repay the debt after a certain period. When conducting financing, the community cannot be separated from an agreement. In this case, a contract will arise due to an agreement between the BPRS Buana Mitra Perwira Institution and the community who agreed to conduct the transaction.

As we know, based on the Civil Code, contracts are formed by agreement or by law. An agreement that arises from a consensus is inseparable from a contract. Contracts come in two forms: written and unwritten (verbal). Both written and unwritten contracts are binding², as long as it meets the requirements stipulated in Article 1320 of the Civil Code.

¹ Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Jakarta: Gema Insani, 2001), p. 123–125.

² Rahman A., "Analisis Hukum Perjanjian Dalam Perspektif Hukum Islam," *Jurnal Hukum Dan Ekonomi*, Vol. 5, No. 1 (2018), p. 12.



Verbal agreements are less popular in practice because they are difficult to prove in the event of a dispute.³ Meanwhile, written agreements in the form of authentic deeds and/or private deeds can be used as evidence if one of the parties denies the contents of the agreement that has been made.

In conducting all of its business relationships, BPRS Buana Mitra Perwira Purbalingga requires written proof of agreement. An agreement must be based on the principle of freedom of contract, which contains a mutual intention in any form, as long as it does not conflict with norms, laws, and public order. Furthermore, with regard to what has been agreed upon, each party must respect what they have agreed to. If someone has committed an unlawful act (breach of contract), then the perpetrator may be subject to sanctions/punishment. This can occur for several reasons, including failure to fulfill the agreement and failure to properly apply the principles of the agreement. The principle of consensualism is implemented once an agreement has been reached between the parties to the agreement, and the agreement is described in a statement of free will agreed upon by the parties.

A fundamental problem with consensualism was found at BPRS Buana Mitra Perwira Purbalingga in relation to the implementation of multi-service ijarah financing agreements. One case that occurred was when BPRS Buana Mitra Perwira provided financing of Rp 250,000,000 to a customer with an ujah of Rp 180,000,000 for 60 months for tabloid printing costs, but did not apply the multiservice ijarah contract. The judge in the Purbalingga Religious Court ruling stated that the agreement made was actually a qardh agreement, not a multi-service ijarah agreement.⁴

Several issues that arise in relation to the principle of consensualism at BPRS Buana Mitra Perwira Purbalingga are: 1) Lack of socialization: The public still lacks understanding about BPRS Buana Mitra Perwira's products and services, including the multiservice ijarah contract. 2) Unclear contracts: The contracts are unclear, leading to misunderstandings between customers and BPRS. 3) Lack of supervision: Supervision of the implementation of multiservice ijarah financing contracts is still weak, allowing for irregularities to occur.⁵

Based on the above explanation, it is important for the author to examine the case that occurred at the Institution and discuss the implementation of the principle of consensualism in written agreements in sharia contract law, particularly as applied to the BPRS Buana Mitra Perwira

³ Suryanto, "Perlindungan Hukum Terhadap Perjanjian Lisan Dalam Hukum Perdata," *Jurnal Hukum Dan Masyarakat*, Vol. 3, No. 2 (2020), hlm. 56.

⁴ Hiqmah Uluqul, "Problematika Pelaksanaan Akad Pembiayaan Ijarah Multijasa Di BPRS Buana Mitra Perwira Dalam Putusan Pengadilan Agama Purbalingga Nomor: 1721/Pdt.G/2013/Pa.Pbg", Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember., (2024).

⁵ *Ibid.*



Purbalingga Sharia Financial Institution. The focus of this case study is the implementation of the principle of consensualism in financing agreements at BPRS Buana Mitra Perwira Purbalingga and a review of Sharia Economic Law regarding the application of the principle of consensualism in (written) financing agreements at BPRS Buana Mitra Perwira Purbalingga.

METHOD

This type of research is qualitative. Qualitative research is research in which researchers study informants as research subjects in their everyday living environment.⁶ This study aims to find information about written agreements between financing partners and financial institutions at BPRS Buana Mitra Perwira Purbalingga.

The data sources in this study are described in two forms, namely primary data and secondary data. The primary data in this study was obtained directly from BPRS Buana Mitra Perwira, in this case through the Director and Financing Analyst at BPRS Buana Mitra Perwira Purbalingga. Meanwhile, secondary data for this study was obtained from brochures, written financing agreements, and/or the contents of lawsuits filed by BPRS Buana Mitra Perwira against its customers.

The data collection techniques used in this study include the following methods:

- a. Participant observation, which involves direct observation and systematic recording of the focus of the research, namely the financing procedure mechanism at BPRS Mitra Buana Perwira Purbalingga.
- b. In-depth interviews are systematic question and answer sessions that refer to the objectives of the investigation. They are conducted to obtain detailed and in-depth information from sources regarding the issues being researched. The consideration with the interview technique is that it is undeniable that when a writer conducts research, there will be issues where the writer is required to interact with the research subject in order to obtain the necessary data. As stated by Suhardi Sigit, interviews are used to discover things that cannot be observed or monitored, such as thoughts, feelings, as well as things that have happened in the past.⁷
- c. In-depth interviews were used to obtain data from respondents who had been determined by the author through purposive sampling. In-

⁶ Idrus M., *Metode Penelitian Kualitatif*, Yogyakarta: Penerbit Andi, (2010), p. 265–266.

⁷ Soehardi Sigit, *Pengantar Metode Penelitian Sosial Bisnis Manajemen*, Yogyakarta: Lukman Offset, (1999), hlm. 159.



depth interviews are a process of obtaining information for research purposes through face-to-face questioning between the interviewer and the interviewee, with or without the use of interview guidelines, in which the interviewer is directly involved.

- d. Documentation is a way to obtain data related to variable matters. To obtain data in the form of documents regarding written agreements for BPRS Mitra Buana Perwira Purbalingga financing products, researchers sometimes collect data manually, namely by re-recording data available at the bank, through brochures or financing document data.

The data analysis technique used in this study is content analysis according to Miles & Huberman. The mechanism of Miles & Huberman's content analysis technique is shown in the following figure:

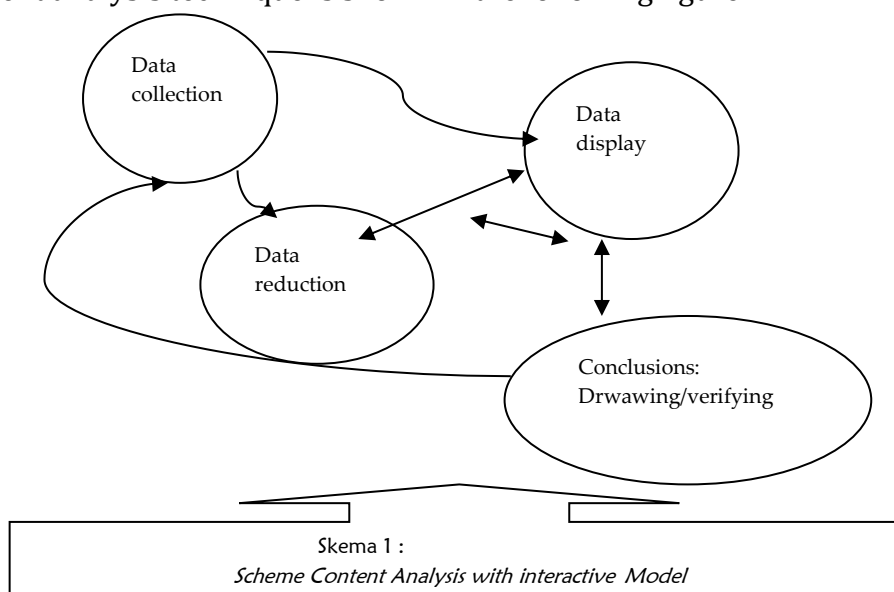


Figure 1. Data Analysis Technical Scheme

The above scheme can be defined as follows⁸:

- a) Data collection is the process of collecting as much data as possible related to the research to support the research being conducted.
- b) Data reduction is data obtained from the field in sufficient quantity to require further study and detail. Reducing data means summarizing, selecting key points, and focusing on important matters in order to find themes and patterns.

⁸ H. Hardiansyah, *Metodologi Penelitian Kualitatif Untuk Ilmu-Ilmu Sosial* (Jakarta: Salemba Humanika, 2012), 180–81.



- c) Data presentation is a process carried out after reducing data, which is often in the form of brief descriptions, charts, relationships between categories, flowcharts, and the like.
- d) Verification is the process of drawing conclusions or verification. Initial conclusions are temporary and will change if no strong evidence is found to support them at the data collection stage. However, if the initial conclusions are supported by new evidence, the conclusions that have been put forward are considered credible.

RESULT & DISCUSSION

A. Agreements and their Principles

Financial institutions play an important role in economic development and public welfare. Loans and financing are core products for both conventional and Islamic financial institutions. In this chapter, the author will discuss agreements and contracts/financing agreements made by Islamic financial institutions.

1. Agreement / Contract

An agreement, often referred to as a contract, comes from the Dutch terms *verbintenis* and *overeenkomst*. In general, a contract is an action taken by two or more parties, whereby each party is required to perform one or more obligations. In this sense, a contract is an agreement. However, a contract is an agreement in written form.

Civil law experts have arguments regarding contracts:

- a. According to Lawrence M. Friedman, a contract is a set of laws that only regulates certain aspects of the market and governs certain types of agreements;⁹
- b. According to Michael D. Bayles, a contract is a legal rule relating to the execution of an agreement or consent;¹⁰
- c. According to Van Dunne, a contract is a legal relationship between two (2) or more parties based on an agreement to create law;¹¹ dan
- d. According to Article 1313 of the Indonesian Civil Code, a contract is an act whereby one or more persons bind themselves to one or more other persons.

⁹ L. M. Friedman, *Contract Law in America: A Social and Economic Case Study*, Louisiana: Quid Pro Books, (2011), p. 10-15.

¹⁰ M. E. Bayles, *Principles of Law: A Normative Analysis (Vol. 5)*, Dordrecht: Springer Science & Business Media, (2012), p. 123-128.

¹¹ H. S. Salim, *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak*, Jakarta: Sinar Grafika, (2021), p. 40.



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In Black's Law Dictionary, a contract is defined as an agreement between two or more persons creating an obligation to do or refrain from doing something specific. "*Contract: An agreement between two or more persons which creates an obligation to do or not to do a peculiar thing.*"¹²

Another definition of contract according to Charles L Knapp and Nathan M. Crystal is: "*Contract is an agreement between two or more persons- not merely a share belief, but common understanding as to something that is to be done in the future by one or both of them*".¹³ This means that a contract is an agreement between two or more people, not only giving trust but also mutual understanding to do something in the future by one or both of them.

In the al-Mawarid dictionary, *al 'aqd* is defined as contract and agreement, while *akad* is defined as an agreement or commitment that is legally binding in its implementation, a meeting of *ijab* mentioned by one party with the acceptance of the other party in accordance with the terms and conditions and resulting in legal consequences for the object.¹⁴

Thus, an agreement contains the following elements: competent parties, agreed terms, legal considerations, mutual consent, and mutual obligations. The main characteristic of a contract/agreement is that it is a document containing the agreement of the parties, complete with terms and conditions, and serves as evidence of the existence of obligations. The elements of a contract as detailed above clearly distinguish a contract from a unilateral statement.

Subekti, in his book *Hukum Perjanjian (Contract Law)*, states that a contract must be considered to have been formed at the moment when the party making the offer (*effertter*) accepts the terms stated in the letter, because that moment can be considered as the moment when the agreement was formed. The fact that the parties to the agreement may not have read it is their own responsibility.¹⁵ Therefore, it is considered appropriate to read the letters received as soon as possible. According to Wirjono Prodjodikoro, as quoted by Riduan Syahrani, *ontvangs theorie* and *verneming theorie* can be combined in such a way that, under

¹² H. C. Black, *Black's Law Dictionary*, Minnesota: West Publishing Co., (1990), p. 322.

¹³ C. L. Knapp and N. M. Crystal, *Problems in Contract Law: Cases and Materials*, Boston: Little, Brown and Company, (1993), p. 4.

¹⁴ A. R. Al-Jaziri, *Fiqh 4 Madzhab*, Jakarta: Pustaka Al-Kautsar, (2019), p. 123.

¹⁵ Subekti, *Hukum Perjanjian*, Bogor: Intermasa, (2002), p. 35.



normal circumstances, the agreement must be considered to have taken place when the acceptance letter arrives at the offeror's address (ontvangs theorie), but in extraordinary circumstances, the offeror is given the opportunity to prove that it may have been possible to know the contents of the letter of acceptance when it arrived at the address, but only a few days or months later, for example due to travel or serious illness.

2. Principles in agreements

There are several principles in the agreement, namely:

a. The Principle of Consensualism

The principle of consensualism can be inferred from Article 1320 paragraph 1 of the Civil Code. Article 1320 of the Civil Code: for an agreement to be valid, four conditions are required: 1) Agreement between the parties binding themselves, 2) Competence to make an agreement, 3) A specific subject matter, 4) A lawful cause. The meaning of agreement is described as a free expression of will that is agreed upon by the parties involved in the agreement.

b. The principle of Pacta Sunt Servanda

The principle of pacta sunt servanda relates to the consequences of an agreement. Article 1338 paragraph (1) of the Civil Code: Agreements made legally are valid as law...." This means that agreements made by the parties become a reference for their actions.

c. Principle of Freedom of Contract

In this case, anyone is free to enter into an agreement with the existing terms and conditions. These provisions give the parties the freedom to: 1) Enter into or not enter into an agreement, 2) Enter into an agreement with anyone, 3) Determine the content of the agreement, its implementation, and its requirements, 4) Determine the form of the agreement, whether written or verbal.

The existence of an agreement cannot be separated from the principles that bind it. To reach an agreement, the parties must have good intentions and give each other the freedom to decide what should be included in the agreement without coercion, because this agreement will serve as a law for the parties who make it. The freedom referred to in the agreement is freedom related to the principle of freedom of contract. Ignoring the principle of freedom of contract also has an impact on the fulfillment of other principles, namely the principle of



consensualism and the principle of justice. Therefore, the parties must not ignore the existence and fulfillment of the principle of freedom of contract in an agreement.¹⁶

One of the conditions of the agreement is that it must be in accordance with the principle of consensualism. A similar explanation can be found in Q.S An-Nisa verse 29, which means¹⁷: “O you who believe, do not consume one another's wealth unjustly, except in a manner that is mutually agreed upon.” It is clear that this verse states that all transactions must be based on mutual consent and without pressure or coercion from any party. If this condition is not met, then the transaction is invalid.

3. Financing agreements/contracts made by Islamic financial institutions

The passage of time has made humans dynamic, demanding change. One aspect of this change is the need for concepts in conducting transactions. Therefore, the concept of a contract based on the Qur'an was formed as the objective of maqashid assyariah, which states that an agreement or contract must be stated in writing.

“.....and do not tire of writing down the debt, whether small or large, until the time of payment. That is more just in the sight of Allah and stronger as evidence and less likely to cause doubt.... (QS. al-Baqarah {2} 282).

The agreement referred to is a translation of the word `uqud, the plural form of the word akad, which means to bind, agreement, or contract. The word “akad” in fiqh is a bond between ijab and kabul. The application of the contract is the bond between the parties contained in the major premise and minor premise in the content of the agreement. Therefore, if we enter into a contract or agreement, it should be read carefully to avoid misunderstandings in the future that could ultimately harm the parties.

All forms of transactions are basically permissible, as long as they do not conflict with the principles of muamalah in Islam. Ahmad Azhar Basyir formulates the principles of muamalah as follows¹⁸:

¹⁶ I. P. Sari, “Asas Kebebasan Berkontrak Dalam Perjanjian,” *Jurnal Hukum Dan Pembangunan*, Vol. 50, No. 2 (2020), p 123-140.

¹⁷ I. Maulana, “Asas Konsensualisme Dalam Perjanjian,” *Jurnal Hukum Dan Masyarakat*, Vol. 13, No. 1 (2018), p. 45-60.

¹⁸ A. Syarif, “Prinsip-Prinsip Muamalah Dalam Islam,” *Jurnal Hukum Dan Ekonomi Syariah*, Vol. 7, No. 1 (2019), p. 1-15.



- a. Basically, all forms of muamalat are permissible, except those specified by the Qur'an and Sunnah.
- b. Muamalat is conducted on a voluntary basis, without any element of coercion.
- c. Muamalat is carried out based on considerations of bringing benefits and avoiding harm in human life.
- d. Muamalat is carried out by considering the value of justice, avoiding elements of retribution in times of hardship.

In general, financing in Islamic financial institutions is divided into two forms, namely the sale and purchase system (Murabahah, Ijarah, IMBT, and Istisna) and the cooperation system (Mudharabah and Musyarakah).¹⁹ Both forms are explained in detail in the following presentation:

- a. Buying and Selling System

In the buying and selling system, Islamic financial institutions generally use murabahah, ijarah, IMBT, or Istisna` contracts. The explanation of these products is as follows:

- 1) Murabahah

Murabahah comes from the word ar-ribhu (الرِبْحُ), which means excess and addition (profit). Meanwhile, according to the term Murabahah, it is a form of buying and selling goods at the original price with an agreed profit margin. In another sense, murabahah is a transaction involving the sale of goods by stating the acquisition price and profit (margin) agreed upon by the seller and buyer. Payment for a murabahah sale and purchase agreement can be made in cash or in installments. What distinguishes murabahah from other sales and purchases is that the seller must inform the buyer of the base price of the goods being sold and the amount of profit earned.

- 2) Ijarah

Ijarah is a lease agreement between the owner of the ma`jur (leased object) and the musta`jir (lessee) to obtain compensation for the leased object and the lessee to obtain compensation for the leased object. The definition of ijarah as stated by the madhab scholars is as follows²⁰:

- a) According to Hanafi scholars, the definition of ijarah is:

¹⁹ F. Rahmawati, "Sistem Pembiayaan Pada Lembaga Keuangan Syariah," *Jurnal Ekonomi Dan Bisnis Islam*, Vol. 4, No. 2 (2018), p. 123-140.

²⁰ Mardani, "Ijarah Dalam Perspektif Hukum Islam," *Jurnal Hukum Dan Ekonomi Syariah*, Vol. 5, No. 1 (2017), p. 1-15.



عقد يفيد تملك منفعة معلومة مقصودة عن العين المستأجرة معوض

Meaning: An agreement to allow the known and intentional ownership of benefits from a leased substance accompanied by compensation.

- b) The definition of ijarah according to the Malikiyah scholars is:

تسمية التناقد على منفعة الأدمى وبعدها المنقولات

Meaning: Names for contracts for human benefits and also for transferable items.

- c) Pengertian ijarah menurut Sayyid Sabiq ialah:

عقد على المنافع بعوض

Meaning: A type of contract to obtain benefits through compensation.

- 3) Ijarah Mutahiyah Bittamlik (IMBT)

IMBT is a lease agreement between the owner of the leased object and the lessee to obtain compensation for the leased object and the lessee to obtain compensation for the leased object with the option of transferring ownership of the leased object at a certain time in accordance with the lease agreement.²¹

- 4) Istishna`

Derived from the word *عنى* (shana'a) which means to make, then adding the letters alif, sin and ta' to become *عنصتسا* (istashna'a) which means to ask for something to be made. Istishna' or ordering in language means to ask for something to be made. According to fiqh terminology, it means an agreement on goods for sale that are in the seller's possession, with the condition that they are made by the seller, or requesting that they be made specifically while the raw materials are provided by the seller.²²

- b. Cooperation system

In the cooperation system, there are only two products, namely:

- 1) Mudharabah

Etymologically, the word mudharabah comes from the word *ad-darb* (الضرب), which has various meanings.

²¹ I. P. Sari, "Ijarah Muntahiyah Bittamlik (IMBT) Dalam Perspektif Hukum Islam. ,Volume: 8, Nomor: 2, (2020)," *Jurnal Hukum Dan Ekonomi Syariah*, Vol. 8, No. 2 (2020), p. 123-140.

²² I. Kusuma, "Istishna' Dalam Perspektif Hukum Islam," *Jurnal Hukum Dan Ekonomi Syariah*, Vol. 7, No. 1 (2019), p. 45-60.



The meaning changes depending on the context of the sentence in which it is used. For example, the word al-darb can mean traveling or journeying or as-safar (السفر), because trade is usually carried out by traveling from one area to another. In addition, mudharabah can also be referred to as al-qirad (القراض) or al-muqaradah (المقارضة), which comes from the word qarada, which means al-qath'u (القطع) or cut. This meaning is derived from the fact that the capital owner cuts a portion of his wealth for the worker in exchange for a share of the profits, while the worker cuts a portion of the profits for the capital owner generated from his efforts based on that capital. According to the fuqaha, several synonyms for the word mudharabah are found in the customary usage of each Islamic region. The people of Iraq use the term mudarabah or sometimes muamalah, while the people of Medina and other regions of Hijaz refer to it as muqaradah or qirad.²³

According to several scholars such as Imam Syafi'i, Mudharabah is an agreement whereby one person entrusts their assets to another for investment. Technically, mudharabah is a business partnership agreement between two parties whereby the first party (sahib al-mal) provides all (100%) of the capital, while the second party acts as the manager. Business profits are divided according to the agreement set out in the contract, while losses are borne by the capital owner as long as the losses are not the result of negligence on the part of the manager. If the losses are the result of negligence on the part of the manager, the manager must be responsible for those losses.

Mudarabah is a business cooperation agreement between two parties whereby the first party (the fund owner) provides all the funds, while the second party (the fund manager) acts as the manager, and the business profits are divided between them as agreed, while financial losses are borne solely by the fund manager.

2) Musyarakah

Etymologically, the word musyarakah comes from the Arabic word syaraka, which means to unite and agree. As-syarikah or al-musyarakah contains the meaning of al-

²³ M. S. Antonio, *Bank Syariah: Dari Teori Ke Praktik*, Depok: Gema Insani Press, (2001), p. 95-96.



ikhtilāt wa al-imtijāz, which is mixing. In the Arabic language, as-syirkah and as-syarikah have the same meaning, mukhalaṭatu as-syarikaini (the mixing or joining of two people) to carry out cooperation.²⁴

Meanwhile, according to the term, *musyarakah* is a cooperation agreement between two or more parties for a specific business where each party contributes funds (expertise) with an agreement that the profits and risks will be shared in accordance with the agreement. Lewis and Algaoud also define *musyarakah* as a form of partnership in which two or more people combine their capital or work to share profits and enjoy the same rights and responsibilities. In other words, *musyarakah* is an agreement between people who are partners in terms of capital and profits.

In principle, there is no significant difference between *musyarakah* and *mudharabah* because both are partnership systems between two or more parties to manage a particular business with profit sharing according to a ratio agreed upon at the beginning of the agreement. In a *mudharabah* contract, the *sahib al-mal* provides all the funds needed by the *mudarib*, and in terms of management, the *sahib al-mal* is not allowed to intervene in any way other than exercising supervisory rights to prevent fraud. Profit sharing is given after the project or business run by the *mudarib* is completed.

Meanwhile, in *musyarakah*, both parties participate in capital (*equity participation*) and each party can participate in management, so that the portion of profit sharing obtained is largely determined by the amount of capital spent and the frequency of participation in the management process. If the business suffers a loss, then both parties bear the loss equally.

B. Implementasi Asas Konsensualisme Perjanjian Pembiayaan pada BPRS Buana Mitra Perwira

The principle of consensualism is reflected in Article 1320 of the Civil Code, which states that one of the requirements for a valid agreement is mutual consent (agreement between both parties), and that the agreement comes into existence once mutual consent has been

²⁴ *Ibid*, p. 90-92.



reached between the parties entering into the agreement. This principle explains that agreements are generally not made formally, but rather simply through the agreement of the parties entering into the agreement. The agreement or harmony between the intentions and statements made by the parties to the agreement is also found in Article 1338 of the Civil Code in the sentence “The agreement cannot be revoked except by mutual agreement of both parties,” in other words, the agreement will be binding once agreement on the subject matter of the agreement has been reached.

The principle of consensualism in Islam is better known as the principle of mutual consent (*ridha/willingness*), in which the parties to an agreement must mutually consent/agree without coercion.

The financing mechanism at BPRS Buana Mitra Perwira, as explained earlier, is carried out by customers coming to BPRS Buana Mitra Perwira with a financing application letter. If the customer agrees to the terms offered by BPRS Buana Mitra Perwira, the customer will be asked to prepare the complete contract documents in accordance with the financing requested by the customer. In the drafting of written agreements, BPRS Buana Mitra Perwira has traditionally taken the lead in preparing the agreement (which is provided in advance), and customers are expected to read and comply with the terms of the agreement without being given the opportunity to amend it. If the customer agrees to the terms offered, the agreement process proceeds; otherwise, the agreement will not be fulfilled.

The contents of a written agreement cover various aspects of the agreement, including the title, introduction, comparison, premise, content, and conclusion.²⁵ The contents of a written agreement cover various aspects of the agreement, including the title, introduction, comparison, premise, content, and conclusion.

If we look at the agreement applied by this financial institution (BPRS Buana Mitra Perwira), generally prospective customers/customers will agree and sign the contents of the agreement, because customers are in a position where they need the service (without reading the contract carefully). If the principle of consensualism is truly applied, prospective customers/customers should be given the opportunity to negotiate the contents of the agreement or change parts of the draft that are considered not in accordance with their wishes, so that an agreement and willingness are still reached without coercion from either party.

²⁵ Anggita, *Contract Drafting*, Ponorogo: Myria Publisher, (2019).



Conclusion

The validity of an agreement can be proven by fulfilling the provisions of the agreement as explained in Article 1320 of the Civil Code. An agreement is a form of consensualism in an agreement created on the basis of mutual consent between the parties to the agreement without coercion from any party. The findings of this study show that:

1. Until now, draft agreements have been predominantly prepared directly by BPRS Buana Mitra Perwira, with customers simply reading and complying with the contents of the agreement without being given the opportunity to change it. If the customer agrees with what is offered, the agreement process proceeds; otherwise, the agreement will not be finalized. The same applies to determining the amount of profit offered in financing products, such as Mudhorobah or Musyarokah agreements, which are collaborations between BPRS Buana Mitra Perwira and its customer partners to determine the percentage of profit earned by both parties (profit sharing).
2. The Sharia legal review of the principle of consensualism should be in line with the terms of the agreement itself. The existence of an agreement between both parties constitutes a mutual consent in the implementation of the agreement that is made and executed. According to Islamic law, in an agreement, the parties must mutually consent/agree without coercion. This has not been fully realized in the agreements made by BPRS Buana Mitra Perwira, because in general, prospective customers/customers will agree to and sign the contents of the agreement made by BPRS Buana Mitra Perwira due to the position of the customer who is in need (as if under duress). If the principle of consensualism is to be truly applied, then customers should be given the opportunity to negotiate the contents of the agreement or change them.

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