

**REGULATORY AND LEGAL CONSTRUCTION OF MUDHARABAH  
FINANCING IN ISLAMIC BANKING: A NORMATIVE REVIEW  
OF THE AT-TAWAZUN PRINCIPLE****Any Nugroho<sup>1)</sup> Rollys Suriani<sup>2)</sup>**<sup>1)</sup>Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia, E-mail: any\_canisa@yahoo.com<sup>2)</sup>Fakultas Hukum, Universitas Palangka Raya, Palangka Raya, Indonesia, E-mail: rollys@law.upr.ac.id

**Abstract.** This research examines the legal construction of mudharabah financing in the Indonesian Islamic banking system with a focus on the implementation of the at-tawazun (balance) principle. The research employs a normative legal research method using statutory and conceptual approaches. Primary legal materials include Law Number 21 of 2008 concerning Sharia Banking, regulations issued by the Financial Services Authority, and fatwas of the National Sharia Council of the Indonesian Ulema Council, while secondary materials consist of scholarly works on Islamic law and Islamic banking. The research findings indicate that the legal construction of mudharabah in Indonesia has accommodated the at-tawazun principle through proportional risk and profit sharing between Islamic banks as shahibul maal and customers as mudharib. However, its implementation still faces challenges regarding information asymmetry, moral hazard, and suboptimal legal protection. The at-tawazun principle is reflected in the profit and loss sharing mechanism that requires both parties to share risks fairly according to their respective contributions. This research concludes that regulatory improvements are needed to strengthen the implementation of the at-tawazun principle in mudharabah financing, particularly in aspects of transparency, accountability, and more effective dispute resolution mechanisms to achieve justice and balance in Islamic banking contractual relationships.

**Keywords:** At-Tawazun Principle; Islamic Banking; Legal Construction; Mudharabah Financing; Profit and Loss Sharing.

**1. Introduction**

The development of Indonesia's Islamic economic system has experienced significant progress, particularly after the enactment of Law Number 21 of 2008 concerning Islamic Banking, which provides a strong legal foundation for Islamic banking operations (Apriyandaru, 2018; Siregar, 2024). This transformation is inseparable from the long history of Islamic economic law evolution in Indonesia that began during the independence era, where Muslim community aspirations to have a financial system

aligned with Islamic principles have continuously strengthened alongside the development of religious consciousness and the need for alternative, more equitable financial systems (Hayati, 2014).

The constitutional foundation for Islamic economic development in Indonesia can be traced from Pancasila as the state foundation, particularly the first principle "Belief in the One and Only God," which provides space for developing economic systems based on divine values, including Islamic economics. Article 29 paragraph (2) of the 1945 Constitution, which guarantees religious freedom, also provides constitutional legitimacy for developing economic systems aligned with religious beliefs, including Islamic banking systems. Furthermore, Article 33 of the 1945 Constitution regarding the national economy, which emphasizes principles of kinship and collective welfare, aligns with Islamic economic philosophy that prioritizes distributive justice and social balance (Pinangkaan, 2015; Nurahmani et al., 2018).

In the context of Indonesian civil law, the legal construction of mudharabah financing is regulated through a complex and interconnected hierarchy of legislation (Sudarsono, 2023). Law Number 21 of 2008 concerning Islamic Banking as *lex specialis* provides a comprehensive legal framework governing all aspects of Islamic banking operations, including Islamic financing contracts such as mudharabah. This law not only regulates institutional and operational aspects but also affirms that Islamic banking business activities must be conducted based on Islamic principles, transparency, prudence, public interest, fair competition, and justice, which inherently reflect the *at-tawazun* principle in every transaction (Nugroho & Kartawinata, 2023).

More technical provisions regarding mudharabah contract implementation are regulated in Bank Indonesia Regulation Number 7/46/PBI/2005 concerning Fund Collection and Distribution Contracts for Banks Conducting Business Based on Islamic Principles, which was later refined through various related PBI and SEBI regulations. This regulation details mudharabah contract mechanisms, including requirements, procedures, profit and loss sharing, as well as supervision and risk control aspects (Rasyid, 2021; Safa'ah et al., 2024). Following the establishment of the Financial Services Authority as the sole regulator of the financial services sector, Islamic financing regulation was strengthened through Financial Services Authority Regulation Number 31/POJK.05/2014 concerning Islamic Financing Business Operations, which provides a more comprehensive regulatory framework for the Islamic financing industry as a whole. The material law dimension of mudharabah financing also receives reinforcement through the Compilation of Islamic Economic Law established through Supreme Court Regulation Number 2 of 2008, which serves as guidance for judges in resolving Islamic economic disputes and provides legal certainty regarding the interpretation of Islamic contracts, including mudharabah. KHES not only regulates material aspects but also procedural ones, including dispute resolution mechanisms through Religious Courts that have absolute competence in handling Islamic economic cases based on Law Number 3 of 2006 concerning Amendment to Law Number 7 of 1989 concerning Religious Judiciary.

Supervision and microprudential regulation aspects are strengthened through various technical regulations such as Financial Services Authority Regulations on Minimum Capital Requirements for Islamic Commercial Banks, POJK on Asset Quality Assessment for Islamic Commercial Banks, and POJK on Transparency and Publication of Islamic Bank Reports, which collectively form a multi-layered supervision system to ensure

consistent implementation of Islamic principles (Karim, 2024). Regulations on Sharia Supervisory Boards through related PBI and POJK also provide internal supervision mechanisms to ensure sharia compliance in every Islamic banking product and transaction, including mudharabah financing (Agustina & Nabhan, 2024).

In the context of contract law, *mudharabah* financing is also subject to general provisions of the Civil Code, particularly Book III on Obligations, insofar as they do not contradict Islamic principles. This creates an interesting legal dualism where *mudharabah* contracts must meet general contract validity requirements according to Article 1320 of the Civil Code (consent, capacity, specific object, and lawful cause) while simultaneously fulfilling the pillars and conditions of contracts according to Islamic law. Law Number 8 of 1999 concerning Consumer Protection also provides additional protection for mudharabah financing customers as financial service consumers, strengthening customers' bargaining position in contractual relationships with Islamic banks (Utomo, 2019; Shafira & Saly, 2019). *Mudharabah financing as a cooperation contract between shahibul maal (capital owner) and mudharib (business manager)* has unique characteristics that distinguish it from conventional financing systems (Bahri, 2023). In this contract, Islamic banks act as capital providers while customers serve as business managers with profit sharing based on agreed-upon ratios from the outset, while losses are fully borne by the capital owner as long as there is no negligence from the mudharib. These characteristics reflect the *at-tawazun* principle where each party bears risks according to their role in the business cooperation banks bear capital risk while mudharib bears operational and reputational risks.

The *at-tawazun* principle or balance in Islamic law is a philosophical foundation that requires harmonization between rights and obligations, proportional distribution of risks and profits, and protection of all parties' interests in every mu'amalah transaction. This concept originates from the Quran, Surah Ar-Rahman verses 7-9, which emphasizes the importance of maintaining balance and not exceeding limits in every aspect of life, including economic transactions. Implementation of the *at-tawazun* principle in mudharabah financing should be able to create fair relationships between Islamic banks and customers, where no party is harmed or exploited in the business cooperation process (Sumitro, 2024). However, in the reality of Islamic banking practice in Indonesia, mudharabah implementation still faces various challenges that potentially create imbalance. This phenomenon can be observed from the dominance of murabahah and ijarah financing reaching more than 80% of total Islamic bank financing, while mudharabah and musyarakah financing that better reflect the spirit of profit and loss sharing only reach less than 20%.

This condition indicates Islamic banks' preference for financing schemes that provide return certainty and minimize risk, which actually contradicts the basic philosophy of Islamic economics that emphasizes risk and profit sharing. The problematic implementation of mudharabah is also reflected in frequent moral hazard phenomena, where mudharib tends to take excessive risks because losses are fully borne by banks, while on the other hand, Islamic banks often apply overly strict requirements and guarantees, thus changing mudharabah's character to resemble conventional financing (Agustina & Nabhan, 2024). Information asymmetry between banks and customers, minimal transparency in mudharib business management, weak supervision and risk control mechanisms, and limited human resource capacity in managing profit-sharing

financing become factors hindering optimal implementation of the *at-tawazun* principle in *mudharabah* financing.

This condition becomes more complex with competitive pressure from conventional banking that encourages Islamic banks to adopt more conservative approaches in risk management, which in turn potentially shifts Islamic banks from their mission as institutions operating risk-sharing economics to institutions oriented toward certainty of return. This phenomenon shows that existing legal construction of *mudharabah* financing has not fully guaranteed the realization of the *at-tawazun* principle in practice, thus requiring in-depth study to identify weaknesses in existing regulations and formulate better legal construction to achieve true balance in *mudharabah* financing. Based on the background outlined above, the problem formulation in this research is: how is the legal construction of *mudharabah* financing in Indonesia's Islamic banking system viewed from the perspective of the *at-tawazun* principle according to Islamic law and applicable banking regulations, and what factors cause the suboptimal implementation of the *at-tawazun* principle in *mudharabah* financing and how can juridical solutions strengthen equitable legal construction in the Islamic banking system.

## **2. Research Methods**

This research uses normative legal research method (doctrinal research) that examines the legal construction of *mudharabah* financing in Islamic banking through analysis of Islamic legal norms and applicable legislation. It employs a Statutory Approach that analyzes Law Number 21 of 2008 concerning Islamic Banking, Bank Indonesia and OJK regulations related to *mudharabah*, Fatwas of the National Sharia Council of MUI, as well as a Conceptual Approach that conceptualizes *mudharabah* in *fiqh muamalah*, the *at-tawazun* (balance) principle in Islamic law, and legal construction theory. Primary data sources in this study consist of statutory regulations, including relevant legislation, fatwas issued by the National Sharia Board (DSN-MUI), and regulations of the Financial Services Authority (*Otoritas Jasa Keuangan*/OJK) that govern Islamic financial practices. These primary legal materials serve as authoritative sources for analyzing applicable legal norms. Meanwhile, secondary data encompass various scholarly works on Islamic law, such as textbooks, journal articles, and research reports, as well as literature on Islamic banking principles, products, and operational practices that support doctrinal and contextual legal analysis.

## **3. Results and Discussion**

### **3.1. Legal construction of *mudharabah* in Indonesian Islamic banking and the *at-tawazun* principle**

Based on normative analysis of the applicable legal framework in Indonesia, the legal construction of *mudharabah* financing in the Islamic banking system has a complex foundation in implementing the *at-tawazun* principle. Conceptually, the *at-tawazun* principle or balance in Islamic law requires proportional distribution of rights, obligations, risks, and profits among parties in every *mu'amalah* transaction, which in the *mudharabah* context is reflected through role division where Islamic banks as *shahibul maal* provide capital and bear financial loss risks, while customers as *mudharib* contribute in the form of expertise, labor, and business management and bear operational risks (Srisusilawati & Eprianti, 2017). The legal construction of *mudharabah* in Indonesia has

accommodated the at-tawazun principle through profit and loss sharing mechanisms regulated in Law Number 21 of 2008 concerning Islamic Banking, where Article 19 paragraph (1) letter c explicitly recognizes mudharabah as one of the legitimate financing contracts with profit-sharing principles (Adibah, 2018). The implementation of justice and balance principles ('adl wa tawazun) constitutes fundamental provisions of Islamic law that must be fulfilled in conducting Islamic banking services, which is further elaborated in related Bank Indonesia Regulations and POJK that regulate profit-sharing mechanisms based on ratios agreed upon at the beginning of the contract, while losses are fully borne by the bank as long as there is no negligence or contract violation from the mudharib party (Srisusilawati & Eprianti, 2017; Antonio, 2023).

The at-tawazun principle in the legal construction of mudharabah is also reflected in the provision that banks are not permitted to set specific profit targets or provide return guarantees to customers, as this would change the character of mudharabah contracts into debt contracts that contradict Islamic principles (Rasyid, 2021; Agustina & Nabhan, 2024). The Compilation of Islamic Economic Law through Supreme Court Regulation Number 2 of 2008 further strengthens this legal construction by providing definitions and detailed provisions regarding the pillars and conditions of mudharabah that emphasize aspects of consent, transparency, and justice in business result sharing.

Nevertheless, the implementation of the at-tawazun principle in mudharabah financing practice still faces significant challenges, particularly regarding information asymmetry that causes imbalanced bargaining positions between banks and customers (Nugroho & Kartawinata, 2023). The moral hazard phenomenon from mudharib parties who tend to take excessive risks because losses are borne by banks, as well as banks' tendency to apply strict collateral requirements to mitigate risks, shows that the existing legal construction has not been fully capable of realizing the ideal balance desired by the at-tawazun principle. This indicates the need for regulatory improvements and more effective supervision mechanisms to ensure mudharabah implementation.

That truly reflects the spirit of fairly sharing risks and profits in accordance with Islamic economic philosophy. The legal construction of mudharabah in Indonesian Islamic banking based on the at-tawazun principle begins with the establishment of a philosophical and normative foundation. This stage functions as the ideological basis that determines the direction, values, and characteristics of the entire Islamic financing legal structure. As emphasized by Amelisah and Sholichah (2023), the philosophical and normative foundation is positioned as the first and most fundamental stage because it ensures that the implementation of mudharabah reflects a balance (at-tawazun) between the interests of the parties, sharia principles, and the objectives of Islamic law. The at-tawazun principle as a fundamental value in Islam must be established first as the soul that brings life to every legal provision. Without a clear philosophical foundation, the legal construction of mudharabah risks losing its identity and primary purpose as an economic instrument that reflects divine values and justice.

To ensure that this philosophical orientation is not merely conceptual but also normatively binding, it must be reinforced through a clear normative foundation. Establishment of normative foundation through Al-Quran Surah Ar-Rahman verses 7-9 that emphasizes the importance of maintaining balance provides indisputable theological legitimacy, so that every technical rule derived has strong justification in the Islamic epistemological system. Harmonization between Islamic law and Indonesia's national

legal system becomes inevitable to ensure that *mudharabah* legal construction is not only valid according to sharia but also legally enforceable in Indonesia's judicial system, thus providing legal certainty for all parties involved in mudharabah transactions. Implementation of maqashid syariah in this philosophical foundation ensures that every mudharabah legal provision is directed toward realizing common welfare, not just unilateral profit, so that the at-tawazun principle can manifest in the form of true balance between the interests of Islamic banks and mudharib customers, ultimately contributing to the creation of a just and sustainable economic system (Yusril & Cahyadi, 2024; Anas & Rahman, 2024).

The implementation of justice (*'adl*) and balance (*tawazun*) values in mudharabah contracts is realized through proportional role division where Islamic banks as shahibul maal contribute in the form of financial capital and bear investment loss risks, while customers as mudharib provide contributions in the form of expertise, labor, and business management and are responsible for operational risks (Srisusilawati & Eprianti, 2017; Amelisah & Sholichah, 2023). Contractual justice is reflected in the establishment of profit-sharing ratios agreed upon together based on fair negotiation without coercion or exploitation, where both parties have equal rights to express their preferences and interests. The tawazun principle is also implemented through the prohibition for banks to set specific profit targets or provide return guarantees, as this would create imbalance where banks obtain profit certainty without bearing proportional risks, while mudharib bears the entire operational burden without guarantee of fair compensation.

Harmonization between Islamic law and Indonesia's national legal system in mudharabah construction is realized through constitutional recognition in the 1945 Constitution Article 29 which guarantees religious freedom and Article 33 which mandates an economy based on kinship, which aligns with Islamic economic philosophy (Zahira et al., 2025). This integration is strengthened through Law Number 21 of 2008 concerning Islamic Banking which recognizes sharia principles as a legitimate operational basis in the national banking system, while the Compilation of Islamic Economic Law provides material legal guidance that can be applied in Indonesia's judicial system. Harmonization is also reflected in the recognition of Religious Court competence in resolving Islamic economic disputes based on the Religious Judiciary Law, so that mudharabah contracts have legitimate law enforcement mechanisms in Indonesia's judicial system, while ensuring that dispute resolution is conducted based on sharia principles that do not contradict the national legal system (Rasyid, 2021).

The application of maqashid syariah in mudharabah legal construction is directed toward realizing the five main objectives of sharia: preservation of religion (hifz ad-din), life (hifz an-nafs), intellect (hifz al-'aql), lineage (hifz an-nasl), and wealth (hifz al-mal), where every provision in mudharabah contracts must contribute to achieving welfare in these five aspects. In the context of wealth preservation, mudharabah is designed to optimize capital productivity through mutually beneficial cooperation between capital owners and business managers, thus creating sustainable value creation for both parties and society at large (Wulandari, 2020). The aspects of life and intellect preservation are realized through economic empowerment that provides opportunities for mudharib to develop their potential and skills in managing business, while creating employment that contributes to social welfare. Maqashid syariah also ensures that mudharabah implementation is not only oriented toward profit maximization but also toward social welfare optimization, where contract success is measured not only by financial profit

levels but also by its positive impact on inclusive and sustainable economic development, so that the at-tawazun principle is realized not only in bilateral relationships between banks and customers but also in a broader context, namely balance between economic interests and social responsibility.

The tiered regulatory framework in mudharabah legal construction is designed as a hierarchical system that ensures implementation of the at-tawazun principle through multiple layers of regulation that are mutually supportive and complementary. Law Number 21 of 2008 concerning Islamic Banking functions as the main legal umbrella that provides constitutional legitimacy and basic framework for Islamic banking operations, including explicit recognition of mudharabah contracts as legitimate financing instruments with profit-sharing principles, while establishing the obligation for Islamic banks to operate according to sharia principles, transparency, prudence, and justice that reflect the essence of at-tawazun. At the technical regulation level, Bank Indonesia Regulations and Financial Services Authority Regulations function as implementing regulations that elaborate statutory provisions into more detailed operational procedures, including profit and loss sharing mechanisms, prudential requirements that do not eliminate mudharabah characteristics, reporting and monitoring systems, and governance standards that ensure implementation of transparency and accountability principles in every mudharabah transaction. This level of regulation is very important for bridging abstract norms in legislation with practical needs of the Islamic banking industry (Amelisah & Sholichah, 2023).

The Compilation of Islamic Economic Law through Supreme Court Regulation Number 2 of 2008 serves as material law guidance that provides legal certainty in substantive law aspects, particularly regarding pillars and conditions of mudharabah contracts, dispute resolution mechanisms, and interpretation of sharia principles in the context of Indonesia's legal system. KHES becomes vital because it provides guidance for judges in resolving Islamic economic disputes and ensures consistency of court decisions in interpreting mudharabah contracts according to the at-tawazun principle (Yusmalinda et al., 2020; Zulfahmi et al., 2024). National Sharia Council Fatwas occupy a strategic position as sharia compliance reference that provides authoritative interpretation of fiqh muamalah aspects in modern banking contexts, including fatwas that regulate mudharabah parameters, boundaries that must not be violated, and guidance for special situations not explicitly regulated in formal regulations.

This tiered regulatory system creates checks and balances that ensure each regulatory level mutually supervises and complements each other, so that mudharabah implementation not only complies with formal legal aspects but also sharia substance that prioritizes justice and balance, while providing sufficient flexibility to adapt to industry developments without sacrificing fundamental at-tawazun principles. Law Number 21 of 2008 as the main legal umbrella for Islamic banking, Bank Indonesia Regulations and POJK as operational technical regulations, Compilation of Islamic Economic Law.

The balanced contract structure in *mudharabah* is built on the foundation of clear and proportional role division between parties, where Islamic banks as *shahibul maal* have the main obligation to provide investment capital along with the right to obtain profit shares according to agreed ratios, while customers as mudharib are obligated to manage business with trust and professionalism while having the right to profit shares from their

business management results (Wulandari, 2020). This balance is not only reflected in rights and obligations aspects, but also from the distribution of complementary contributions where banks provide contributions in the form of financial capital that becomes an enabler for business idea realization, while mudharib contributes through human capital in the form of expertise, experience, business networks, and time dedication that becomes the main driver of business success.

The profit-sharing mechanism that forms the core of mudharabah contract structure is designed to reflect the at-tawazun principle through establishment of profit-sharing ratios agreed upon from the beginning of the contract based on fair and transparent negotiation, where no party dominates or imposes their will in determining profit distribution ratios (Rasyid, 2021). This structure ensures that profits obtained from business are shared proportionally according to each party's contribution, not based solely on capital amount, thus recognizing and appreciating value creation generated by mudharib through their skills and efforts in managing business, which in turn creates an incentive structure that encourages mudharib to maximize business performance because it is directly correlated with profits they will obtain. Risk distribution in mudharabah contract structure reflects the justice principle where each party bears risks according to their capacity and role in business cooperation - banks as capital providers bear financial loss risks which are logical consequences of investment, while mudharib bears operational risks, reputation, and opportunity cost in the form of time and energy invested in the business (Zufriani et al., 2023; Safa'ah et al., 2024). This structure prevents moral hazard where one party takes excessive risks because they don't bear the consequences, while ensuring that both parties have shared interest in business success because losses will negatively impact both, although in different forms according to the nature of each contribution.

Contract structure balance is also realized through governance mechanisms that give banks supervision rights without providing excessive operational intervention authority, so mudharib still has freedom and flexibility in running business according to their expertise and business strategy, but still within corridors of transparency and accountability that allow banks to conduct periodic monitoring and risk assessment. This structure creates dynamic equilibrium where both parties' interests are optimally accommodated - banks receive assurance that their capital is managed well and prudently, while mudharib receives adequate capital support without losing autonomy in business management. Thus, synergy is created that optimizes business success potential for mutual benefit through the establishment of clear roles, in which banks act as *shahibul maal* and customers as *mudharib*. The distribution of contributions is proportional, with banks providing capital while the *mudharib* contributes expertise and labor. Profits are shared based on ratios agreed upon from the outset of the agreement, ensuring transparency and fairness. Meanwhile, risk is distributed according to each party's role, whereby financial losses are borne by the bank as the capital provider, while operational risks arising from business management are the responsibility of the *mudharib*.

The multi-layered supervision system in mudharabah legal construction is designed as a comprehensive control mechanism that ensures implementation of the at-tawazun principle through multiple surveillance layers that coordinate and complement each other to prevent deviations from sharia principles and prudential provisions. Internal supervision through Sharia Supervisory Boards at each Islamic bank functions as the

front guard that conducts real-time monitoring of every product and transaction to ensure compliance with sharia principles, including verification that mudharabah contract structures comply with established pillars and conditions, profit-sharing ratios do not contradict sharia provisions, and there are no elements of riba, gharar, or maysir that could eliminate the essence of balance in contracts (Zulfahmi et al., 2024).

Macroprudential supervision by the Financial Services Authority serves as external oversight that conducts systemic supervision of the Islamic banking industry as a whole, including evaluation of mudharabah implementation from the perspectives of financial system stability, consumer protection, and fair competition (Yusmalinda et al., 2020). OJK monitors key performance indicators such as mudharabah financing ratios to total financing, non-performing financing levels, profitability ratios, and profit-sharing ratio distribution to ensure that mudharabah practices not only comply with sharia but are also economically sustainable and do not harm any stakeholders.

Periodic review of sharia principles compliance is conducted through sharia audit mechanisms involving internal auditors with sharia competence, certified external auditors, and periodic review by the National Sharia Council to ensure consistency in interpretation and implementation of sharia principles throughout the Islamic banking industry (Yuliana & Kartasari, 2020). This audit not only focuses on documentation and procedural compliance aspects, but also substantive compliance that evaluates whether implementation actually reflects the spirit of justice and balance, including assessment of profit-sharing ratio fairness, transparency of mudharib financial reports, and effectiveness of risk sharing mechanisms. Evaluation of profit and loss sharing implementation becomes a critical component in the multi-layered supervision system because it serves as a litmus test to measure the extent to which the at-tawazun principle has been realized in mudharabah practice. This supervision includes analysis of actual versus projected business performance, reasonableness of profit and loss distribution, quality of business planning and execution by mudharib, and effectiveness of monitoring mechanisms applied by banks.

This multi-layered supervision system incorporates an early warning mechanism capable of detecting potential deviations from the at-tawazun principle, including indications of moral hazard, asymmetric information, or unfair treatment of one party. Through this mechanism, corrective measures can be implemented promptly before significant losses arise or material violations of sharia principles occur. Such supervision is carried out through internal oversight by Sharia Supervisory Boards within each Islamic bank, macroprudential supervision by the Financial Services Authority, periodic reviews of compliance with sharia principles, and continuous evaluation of the implementation of profit-and-loss sharing arrangements. Collectively, this integrated supervisory framework ensures that mudharabah functions as a financing instrument that is not only sharia-compliant but also institutionally sound and sustainably viable in the long term.

Balanced legal protection in mudharabah construction is realized through a safeguard system that provides proportional protection guarantees for both parties according to their roles and contributions in the contract, where Islamic banks as *shahibul maa* receive protection for their rights as capital providers through transparency and accountability mechanisms that require mudharib to submit periodic financial reports, provide adequate information access for monitoring, and be responsible for fund management according to terms agreed upon in the contract (Karim & Sari, 2024). This

protection also includes the right of supervision that allows banks to conduct oversight of business operations without excessive operational intervention, the right to obtain profit shares according to agreed ratios, and protection against willful misconduct or negligence from mudharib that could harm shahibul maal interests.

Safeguards for mudharib are designed to protect them from exploitation or excessive intervention that could hinder freedom in managing business, including protection of the right to implement business strategy according to their professional expertise and experience, freedom from undue interference in day-to-day operations, and assurance that banks will not unilaterally change contract terms or apply additional requirements not agreed upon initially. Mudharib protection also includes the right to fair treatment in profit distribution, protection against unfair blame for losses that occur due to factors beyond their control, and access to legal remedy through fair and impartial dispute resolution mechanisms.

The dispute resolution mechanism through Religious Courts provides a legitimate and competent forum to resolve mudharabah-related disputes based on sharia principles that prioritize justice and balance, where judges who have competence in Islamic law can provide decisions that are not only legally sound but also in accordance with the spirit of at-tawazun (Romadoni, 2024). The absolute competence of Religious Courts in handling Islamic economic disputes based on the Religious Judiciary Law ensures that dispute resolution is conducted by institutions that understand the unique characteristics of mudharabah contracts and can interpret contract provisions in the context of comprehensive sharia principles (Zufriani et al., 2023).

Alternative dispute resolution through sharia mediation and arbitration provides more flexible, cost-effective, and confidential dispute resolution options, where parties can choose mediators or arbiters who have expertise in Islamic law and Islamic banking to facilitate win-win solutions. This ADR mechanism is very important because it enables preservation of business relationships between banks and mudharib, while ensuring that dispute resolution is conducted based on principles of justice and common welfare that are core values in Islamic law.

Balanced legal protection also includes institutional safeguards through the role of regulatory authorities that ensure both parties receive fair treatment in the Islamic banking system, including consumer protection framework that protects *mudharib* as customers from unfair practices, while prudential regulation protects the interests of banks and depositors from excessive risk-taking. This protection system is designed to foster an environment in which both parties can exercise their respective rights and obligations with confidence, supported by adequate legal remedies in the event of breach of contract or unfair treatment. Through this framework, the at-tawazun principle is realized not only in its substantive dimension but also in terms of procedural justice, ensuring equal access to justice for all parties involved in mudharabah contracts. Such protection encompasses the safeguarding of banks' rights as capital providers, the prevention of exploitation or excessive intervention against mudharib, and the availability of effective dispute resolution mechanisms, both through Religious Courts and alternative forums such as sharia-based mediation and arbitration.

Emphasizes balance of rights and obligations, as well as fair distribution of risks and benefits in a contract. This principle aims to ensure that no party is significantly

disadvantaged and that all parties have equal opportunities to achieve their goals through the contract. The implementation of contractual justice principles includes several interrelated aspects. First, the principle of balance of bargaining power requires equilibrium between the parties involved in a contract, particularly in terms of their negotiating positions. When a significant imbalance exists, such as in consumer contracts, state intervention may be necessary to protect the weaker party (Yuliana & Kartasari, 2020). Second, openness and transparency require that contracts be made in a clear and open manner so that all parties fully understand their respective rights and obligations, including comprehensive information on costs, timelines, and the consequences of breach. Third, justice in the substance of the contract demands that contractual provisions be fair and not contain clauses that unreasonably disadvantage one party, including clauses that eliminate fundamental rights. Fourth, fair dispute resolution mechanisms must be available and accessible to address potential conflicts arising during contract performance, whether through mediation, arbitration, or court proceedings, provided that the process is transparent and impartial. Fifth, the application of contractual justice principles must be aligned with other fundamental principles of contract law, including legal certainty, freedom of contract subject to reasonable limitations, and the principle of good faith.

In many cases, there is power imbalance between parties in contracts, especially in consumer contracts or contracts with parties who have more limited resources. Lack of Legal Awareness - many parties, especially consumers, may not fully understand their rights and obligations in contracts, which can cause them to accept unfair terms. Legal Complexity - contract law can become very complex, and this can make it difficult for parties to understand their rights and obligations. The Importance of Implementing Contractual Justice - implementing contractual justice principles is very important for creating a healthy and sustainable business environment. By ensuring that all parties feel treated fairly, this principle can increase trust, reduce disputes, and encourage inclusive economic growth. Each of these steps is interconnected and must be implemented holistically to realize mudharabah legal construction that truly reflects the at-tawazun principle in Indonesia's Islamic banking system.

### **3.2. Juridical Solutions to Strengthen Equitable Legal Construction in the Islamic Banking System**

Islamic Banking provides financing without interest (*riba*) and avoids investment in businesses prohibited by Islam, such as alcohol, gambling, or industries that do not comply with Islamic ethics (alsum, 2014; Nur, 2015). This helps promote more sustainable economic activities that align with religious principles. Juridical solutions to strengthen equitable legal construction in the Islamic banking system must fundamentally address three interrelated pillars, namely regulation, law enforcement, and legal certainty, all of which must align with the principles of *maqashid al-shariah* the protection of religion, life, intellect, lineage, and wealth. Among these pillars, regulation serves as the primary foundation, as it shapes the normative direction and operational boundaries of Islamic banking practices.

Accordingly, strengthening the regulatory framework can be understood as a systematic effort to reinforce the legal and regulatory instruments that underpin the governance and supervision of the relevant sector or field. This includes the development, updating, or harmonization of regulations to align with evolving societal needs, technological

advances, economic dynamics, and demands for justice. This strengthening aims to create legal certainty, prevent overlapping regulations, and ensure that existing regulations provide protection, regulate behavior, and encourage the achievement of sustainable and equitable.

Harmonization between positive law and sharia principles constitutes a crucial step in strengthening the regulatory foundation of Islamic banking by integrating the Sharia Banking Law (Law Number 21 of 2008) with the Civil Code, the Banking Law, and other financial sector regulations in order to prevent conflicts of law. This harmonization must be accompanied by ensuring that implementing regulations such as OJK Regulations (*Peraturan Otoritas Jasa Keuangan/POJK*), OJK Circular Letters (SE OJK), and DSN-MUI fatwas possess clear and effective binding force. In parallel, the codification of sharia principles into national regulations represents a systematic process of formulating, structuring, and institutionalizing Islamic values, norms, and legal principles, particularly those concerning justice, welfare, and the prohibition of usury, into universally applicable legal instruments (Dewan Syariah Nasional MUI, 2000). Through such codification, sharia principles acquire explicit positive legal authority, enabling their consistent application while ensuring their formal recognition within the national legal system (Husin, 2025).

This codification process typically involves translating normative sharia principles into measurable, operational, and enforceable positive legal language by state institutions. Examples include Law Number 21 of 2008 concerning Sharia Banking or the DSN-MUI fatwa adopted as a regulation by the Financial Services Authority (OJK) and Bank Indonesia (Dewan Syariah Nasional MUI, 2002; Adibah, 2018). Through codification, principles such as contracts, the permissibility of transactions, and the validity of Islamic law are incorporated into the legal framework.

The integration of distributive justice and social responsibility into the national legal system is essential to provide legal certainty for business actors, customers, and law enforcement authorities. This process must be carried out through a systematic identification of sharia principles that are relevant for incorporation into the positive legal framework. The initial stage involves inventorying the core values of sharia, such as the prohibition of *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (gambling), as well as the obligation to uphold valid and fair contracts (Nur, 2015). These principles are derived from authoritative sources including the Qur'an, Hadith, scholarly consensus (*ijma'*), and established Islamic jurisprudence (*fiqh*), thereby ensuring that their integration into national regulations is both normatively grounded and legally coherent.

Following the identification of relevant sharia values, these principles must be harmonized with the national legal system by assessing their compatibility with Pancasila, the 1945 Constitution, and prevailing legal norms. This stage is essential to ensure that the application of sharia principles does not conflict with general legal principles, the protection of human rights, or the universal principle of justice upheld within the national legal order. Once such compatibility is ensured, the normative sharia principles are then translated into positive legal language by formulating clear, operational, and enforceable legal provisions. For instance, the principle that contracts must be free from usury is concretized through the prohibition of interest-based financing in Islamic banking products, which is subsequently replaced with profit-sharing mechanisms such as *mudharabah* or *musyarakah*.

The formulation is incorporated into statutory regulations, including laws, government regulations, and regulations issued by relevant authorities. This is reflected, for example, in Law Number 21 of 2008 concerning Sharia Banking, as well as Financial Services Authority (OJK) regulations governing Sharia banking products. In addition, fatwas issued by the National Sharia Council of the Indonesian Ulema Council (*Dewan Syariah Nasional Majelis Ulama Indonesia/DSN-MUI*) are adopted and function as technical references in the implementation of Sharia banking practices, providing normative and operational guidance for compliance with Sharia principles (Dewan Syariah Nasional MUI, 2003).

The effectiveness of codified sharia principles depends on their proper implementation and enforcement by relevant institutions, including the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*), Bank Indonesia, and the judiciary, which are responsible for ensuring compliance by financial institutions and for supervising and taking corrective action against violations. At the same time, codification is not a static process; sharia-based regulations must be subject to periodic evaluation and updating to remain responsive to economic developments, technological advancements, and evolving societal needs without departing from the core values of sharia. In this regard, provisions governing contracts such as murabahah, mudharabah, musyarakah, and ijarah should be explicitly formulated within laws and regulations rather than relying solely on fatwas, thereby enhancing legal certainty and enforceability.

Sharia consumer protection is an effort to guarantee the rights of consumers who conduct transactions or use products and services based on Sharia principles, ensuring that they receive fair, transparent services that align with Islamic values (Romadoni, 2024). The primary goal is not only to protect against material loss but also to ensure that transactions do not violate the principles of halal (permissible), justice, and the welfare of the people. Narratively, sharia consumer protection encompasses several interrelated aspects that collectively ensure fairness and security for consumers. These include sharia compliance, which requires that products and services be free from elements of riba (usury), gharar (excessive uncertainty), and maysir (gambling), with every contract used being valid under Islamic law (Rahmawaty, 2010). In addition, legal certainty is guaranteed through the protection afforded by national regulations, including the general Consumer Protection Law (Law Number 8 of 1999), as well as more specific legal instruments such as Law Number 21 of 2008 on Sharia Banking, OJK regulations, and DSN-MUI fatwas, thereby ensuring that consumers' rights are safeguarded within both the sharia and national legal frameworks (Utomo, 2019; Shafira & Saly, 2019).

Sharia consumer protection is further strengthened through transparency and education, whereby business actors are obliged to provide clear, accurate, and non-misleading information regarding product characteristics, risks, costs, and contractual mechanisms so that consumers fully understand their rights and obligations. This protection is reinforced by supervision and enforcement carried out by the Financial Services Authority, Bank Indonesia, and Sharia Supervisory Boards, which oversee institutional compliance with sharia principles and facilitate dispute resolution mechanisms such as sharia banking mediation or proceedings before the National Sharia Arbitration Board (BASYARNAS).

In addition, disputes are resolved through fair mechanisms grounded in sharia principles, prioritizing deliberation, justice, and the public interest, whether through Religious

Courts or sharia arbitration institutions. Through these integrated measures, sharia consumers are protected not only from financial loss but also from transactions that may be morally harmful or inconsistent with their religious beliefs, underscoring the need to strengthen consumer protection mechanisms within regulations, particularly those ensuring expeditious and equitable dispute resolution.

Strengthening Law Enforcement Mechanisms is the process of improving and strengthening all systems, procedures, and institutions that play a role in ensuring that the rule of law is implemented effectively, fairly, and consistently (Yuliana & Kartasari, 2020). This strengthening not only focuses on taking action against violations, but also includes prevention efforts, increasing the capacity of officers, and improving regulations to ensure transparent and accountable law enforcement.

Narratively, this strengthening encompasses several interrelated dimensions that focus on the institutional and normative foundations of law enforcement. These include the establishment of strong and independent institutions, ensuring that law enforcement agencies such as the police, prosecutors, courts, and supervisory bodies possess clear authority, operate free from undue interference, and are supported by competent, professional, and integrity-driven human resources. This institutional capacity must be reinforced by adequate legal instruments, in which regulations are equipped with firm yet proportionate norms, sanctions, and procedural rules to close legal loopholes that could otherwise be exploited to evade accountability.

In addition, the effectiveness of law enforcement depends on efficient and transparent procedures that simplify legal processes, ensure timely resolution, and allow public access to information so that enforcement activities can be properly monitored. This is further supported by robust oversight and accountability mechanisms, both internal and external, including meaningful public participation to ensure that law enforcement remains aligned with the objectives of justice (Yusril & Cahyadi, 2024). Finally, strong inter-agency synergy must be developed through coordinated cooperation among law enforcement bodies, supervisory institutions, and related sectors to prevent overlapping authority and accelerate case resolution, complemented by the strategic utilization of information technology for reporting, case monitoring, and evidence management to enhance accuracy, efficiency, and resistance to manipulation.

With this strengthening, the law does not only exist on paper, but is actually implemented to protect the public interest, uphold justice, and maintain social order. Special Sharia economic courts strengthen the authority and capacity of judges in Religious Courts who handle Sharia banking disputes (in accordance with Article 55 of Law Number 21/2008) with intensive training on Sharia contracts and aspects of modern finance (Hayati, 2014). Standardization of evidence and proof of contracts, creating guidelines for evidence in Sharia banking disputes that combine civil procedural law and the principles of muamalah fiqh. Alternative dispute resolution mechanisms (*Alternatif Penyelesaian Sengketa/APS*), expanding the role of the National Sharia Arbitration Board (*Badan Arbitrase Syariah Nasional/BASYARNAS*) as the main forum for dispute resolution, so it is faster and more efficient than litigation.

Legal innovation in the construction of Islamic banking mudharabah financing based on the principle of at-tawazun can be seen in several transformative aspects that adapt classical Islamic jurisprudence concepts to the modern financial system. First, innovation

in the contract structure that develops mudharabah muqayyadah (limited) to provide a balance between customer flexibility and bank risk mitigation, where the principle of at-tawazun is realized through proportional business sector restrictions without eliminating the essence of profit sharing. Second, the development of a more sophisticated profit and loss sharing mechanism that integrates the principles of Islamic distributive justice, where the legal innovation lies in the formulation of the profit-sharing ratio that considers not only commercial aspects but also socio-economic balance in accordance with the maqasid of sharia. Third, the legal construction that

Harmonizing prudential banking provisions with sharia principles, creating a hybrid regulatory framework that enables compliance with Basel III while maintaining the characteristics of mudharabah as a risk-sharing instrument. The next innovation is the development of a dual banking system that enables the integration of mudharabah within the national banking ecosystem, where at-tawazun is implemented through a balance between financial system stability and the principles of Islamic economic justice. Finally, innovation in the dispute resolution mechanism that combines sharia arbitration with conventional litigation, creating a fair and efficient dispute resolution system, thus realizing a balance between legal certainty and substantive justice in contemporary sharia banking practices (Muhaimin et al., 2019).

The digitization of Sharia contracts in Islamic banking is a digital transformation that adapts traditional Sharia contracts to modern technology platforms, while maintaining the essence and fundamental principles of Sharia. The Financial Services Authority (OJK) has issued regulations and guidelines to support the digital transformation of the banking sector, which includes the digitization of Sharia contracts.

**Regulatory Basis for the Digitalization of Sharia Contracts.** The regulatory framework for the digitalization of Sharia contracts in Indonesia is regulated by several key regulations, namely Law Number 21 of 2008 concerning Sharia Banking as the primary legal umbrella, POJK Number 64/POJK.03/2016 concerning the conversion of conventional banking business activities to Sharia banking, and POJK Number 3/POJK.03/2016 concerning Sharia Rural Banks. In addition, OJK Regulation Number Law Number 2 of 2024 concerning the Implementation of Sharia Governance for Sharia Commercial Banks and Sharia Business Units serves as the current foundation governing the digital aspects of Sharia governance. The digitalization of Sharia contracts must meet the principles of lawfulness (*halal*), justice (*adl*), transparency (*ittishal*), and openness of information in accordance with the maqasid (obligatory principles) of Sharia. In its implementation, digital platforms must ensure that the pillars and requirements of the contract are met, such as a clear *ijab-qabul* (consent), a lawful and *non-gharar* (non-obligatory) object of the contract, and the parties possessing legal capacity.

The digital implementation mechanism enables sharia-compliant contracts such as *mudharabah*, *musyarakah*, *murabahah*, *ijarah*, and *istishna* to be executed through smart contracts or electronic contract systems that fully incorporate sharia-compliant provisions. This mechanism is supported by robust identity verification processes utilizing biometric technology, legally recognized digital signatures, and blockchain-based systems to ensure transaction transparency, security, and immutability, thereby enhancing trust, accountability, and legal certainty in the digital application of Islamic finance contracts.

The government continues to strengthen regulations to ensure good governance, strong sharia characteristics, and compliance with sharia principles. Every sharia-compliant digital product must be approved by the Sharia Supervisory Board (*Dewan Pengawas Syariah/DPS*) and comply with the DSN-MUI fatwa. It must also have a sharia audit system integrated into the digital platform to monitor compliance in real time. The digitalization of sharia contracts faces challenges in ensuring contracts do not lose their sharia substance when transformed into digital, the need for customer education about digital sharia products, and the integration of complex IT systems. The solution is the development of a user-friendly interface with comprehensive contract explanations, halal certification for digital platforms, and the use of artificial intelligence to automatically ensure sharia compliance (Siregar, 2024).

Providing a legal umbrella for technology-based contracts (e-contracts, blockchain) so that transactions remain valid under positive law and Islamic law. ESG (Environmental, Social, Governance) integration. Positioning sharia banking as a sustainable financing engine that pays attention to environmental sustainability and community empowerment.

#### **4. Conclusion**

Based on research findings regarding the legal construction of mudharabah financing in the Islamic banking system, with a normative review of the *at-tawazun* principle, it can be concluded that the legal construction of mudharabah financing in Indonesia has accommodated the *at-tawazun* principle through a profit-sharing mechanism that requires a proportional distribution of risks and profits between the Islamic bank as the shahibul maal (capital owner) and the customer as the *mudharib* (customer). The implementation of the *at-tawazun* principle still faces challenges in the form of information asymmetry, moral hazard, and suboptimal legal protection, necessitating regulatory improvements in the aspects of transparency, accountability, and dispute resolution mechanisms. Theoretical contributions to the development of a balanced and practical legal construction of Islamic banking serve as a basis for optimizing the implementation of mudharabah financing that reflects Islamic values. Therefore, harmonization of Islamic ideals and modern banking practices is necessary to realize a stable, fair, and sustainable Islamic financial system through the optimal implementation of the *at-tawazun* principle. Based on the foregoing analysis, this study recommends a comprehensive strengthening of the legal construction of mudharabah financing through an integrated approach that simultaneously reinforces regulation, law enforcement, and legal certainty in line with the principles of *maqashid al-shariah* and *at-tawazun*. Regulatory reforms should prioritize the harmonization and codification of sharia principles within positive law, the enhancement of consumer protection frameworks, and the provision of a clear legal umbrella for digital sharia contracts and technology-based transactions.

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