

# LINGUISTIC CLARITY IN MUDHARABAH CONTRACTS: ENSURING TRANSPARENCY AND FAIRNESS IN INDONESIAN ISLAMIC FINANCIAL INSTITUTIONS

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Article Info	Abstract
<b>Article History</b> Received: November 2023 Revised: January 2024 Published: April 2024	<i>This research aims to analyze the language used in Mudharabah contracts in Shariah banks. The selection of words, phrases, and clauses in Mudharabah contracts is crucial because it serves as a tool to translate Islamic Shariah principles into concrete business practices. The study employs qualitative approach with content analysis technique. The data source consists of Mudharabah contracts conducted in Bank Syariah Indonesia. This data is then organized using the NVivo application to categorize the data into tables. Some of the topics addressed in this study include linguistic aspects, transparency, and linguistic precision within Mudharabah contracts. Therefore, the data is analyzed based on sentence structure and syntax. The research findings reveal that certain vocabulary in Mudharabah contracts used in Shariah banks still contain phrases and clauses that exhibit ambiguity, particularly in the definition of terms, articles related to profit and loss, contract changes, imposed violations and sanctions, and grammatical characteristics related to word usage. Based on these findings, practical recommendations are proposed, including the suggestion for Shariah banks to use Arabic language for key terms in Mudharabah contracts, accompanied by clear and uniform definitions. Furthermore, the contracts should encompass detailed guidelines for profit and loss sharing, including the ratios used, distribution criteria, and whether this applies to profits, losses, or both. Mudharabah contracts should have precise clauses for making changes, including change criteria and the steps to be followed. The contracts should also clearly define violations and associated sanctions, including specific penalties for breaches of provisions. Lastly, periodic reviews and updates of Mudharabah contracts should be conducted to align them with evolving regulatory and Shariah requirements.</i>
<b>Keywords</b> Mudarabah contracts; Language use; Linguistic clarity; Sharia; Financial agreements;	
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## INTRODUCTION

Mudharabah contracts are one of the primary instruments in the Islamic financial system and are widely used in Islamic financial institutions such as Shariah banks or Shariah-based financing companies (El-Gamal, 2006; Abdullah, 2015; Hasan, 2018). Mudharabah contracts play a crucial role as they govern the flow of funds, commercial activities, provision of credit, as well as the settlement of debt obligations. Mudharabah also serves as a tool for profit-sharing in accordance with Shariah principles (Iqbal and Mirakhor, 2007; Ibrahim & Nordin, 2015). Essentially, a Mudharabah contract is a form of financial agreement in Islam involving two parties: the capital provider (shahib al-maal) and the capital manager (mudharib). In this contract, the capital owner provides funds, while the capital manager is responsible for overseeing them in a business venture or project. The profits generated from this venture are then divided between the capital owner and the capital manager according to the initial agreement, while losses are typically borne by the capital owner (Al-Harran, 2014).

In the context of Islamic financial institutions, Mudharabah contracts are often used to facilitate investments and financing that comply with Islamic law. Capital owners seeking to invest their funds in ventures aligned with Shariah principles can use Mudharabah contracts as a means to share profits and risks with experienced capital managers in the respective field. Currently, Mudharabah contracts are not only a financial instrument but also a cornerstone in Shariah finance practices that support economic development in accordance with Islamic values and principles. With the growth of Islamic banking and the increasing availability of Shariah-compliant financial products and services, Mudharabah contracts continue to play a significant role in various financial aspects.

Mudharabah contracts are the most versatile instrument in Islamic finance. They can be utilized in various products and services, including savings, deposits, financing, investments, insurance, and other financial instruments (Iqbal, 2005; Anggraeni, 2010). Its flexibility allows it to cater to a wide range of financial needs for individuals, businesses, and communities. Furthermore, Mudharabah contracts are highly relevant in the context of an economy based on Islamic principles. This is because this agreement enables Islamic financial institutions to pool funds from capital owners and then utilize them to support projects and ventures that comply with Islamic law. Under the Mudharabah framework, capital owners and capital managers share profits and risks as per the initial agreement, with the principle of justice being paramount (Kahf, 1995; Amalia, 2010). With all these advantages, Mudharabah contracts play a central role in promoting Shariah-based economies, fostering financial inclusion, and enabling society to participate in financial practices aligned with Islamic values and principles. Given its crucial role, research on Mudharabah contracts should not only focus on business aspects but also on the contract's content or the language used within the Mudharabah agreement itself. Often, people can become too focused on practical aspects such as fund management, investment, or profit-sharing and overlook the importance of the contract's content or language used within the Mudharabah agreement. This is potentially hazardous because unclear, ambiguous, or non-compliant language can lead to serious issues.

Ambiguous or unclear language in Mudharabah agreements can lead to situations where the agreement does not fully comply with Islamic Shariah principles. This can occur if the provisions in the agreement are not in accordance with Islamic law or unintentionally render the contract usurious (*riba*). Furthermore, ambiguous language in the agreement can give rise to disputes and disagreements between capital owners and capital managers in the future (Kafh, 2015). Misinterpretations or different understandings of the agreement's content can result in legal disputes that can damage business and financial relationships. Unclear language in Mudharabah agreements can also lead to ambiguity in decision-making during the contract's duration. This can be problematic if crucial decisions, such as profit allocation or risk management, are not explicitly addressed in the agreement. Misinterpretation in language or agreement content can also create reputation risks for Shariah financial institutions or businesses involved (Ali, 2013; Al-Jassas, 2006). If the public believes that Shariah financial practices do not adhere to Shariah principles due to such issues, it can harm the reputation and trust in the entire industry. Even worse, inappropriate arrangements in the contract can pose risks of regulatory and legal violations. Therefore, serious attention must be given to the content and language of Mudharabah agreements to align them with Islamic values and principles. Unfortunately, research related to language in Mudharabah contracts has not been widely explored.

Investigation into the language used in Mudharabah contracts is an area that has received limited attention. Nevertheless, given the expansion of Islamic banking, it has become increasingly important for society to develop a more profound comprehension of how the language employed in Mudharabah contracts can align with Shariah principles, promote fairness, and ensure transparency. So far, investigations regarding Mudharabah contracts have

primarily revolved around aspects related to business. For instance, Sapuan (2016) conducted a study on Mudharabah agreements as an alternative financial instrument within the conventional financial system, analyzing the evolution of Mudharabah to meet the demands of the rapidly changing Islamic financial environment. Rahman (2018) delved into the importance of Mudharabah arrangements, emphasizing the combination of financial and managerial assets between the parties. This research examined Mudharabah from a business perspective, including aspects such as investment, project funding, bridge financing, working capital, interbank investment, and structured products. Ibrahim et al. (2023) examined the concept of Mudharabah contracts in financial institutions and practical applications within society. While this study touched upon fairness in Mudharabah contracts, it did not comprehensively analyze linguistic elements. Similarly, Samarrai (2012) provided guidance and recommendations for practitioners and academics in formulating effective Mudharabah contracts concerning language usage. However, this study did not deeply investigate language aspects and primarily focused on clear language use for the development of Shariah-based economic growth.

Previous research endeavors did not give significant attention to conducting comprehensive investigations into the linguistic elements found within Mudharabah contracts. Nevertheless, it is imperative to possess an extensive comprehension of the language and the contents within Mudharabah contracts. This comprehension serves as the bedrock for ensuring robust adherence to Shariah principles, averting conflicts, preserving transparency, safeguarding the rights of all involved parties, and upholding integrity in business dealings guided by Islamic principles. This is a crucial aspect of ensuring that Shariah financial practices align with Islamic values and principles. Therefore, research on the linguistic aspects of Mudharabah contracts becomes highly significant. This study aims to: (1) Analyze the linguistic aspects of mudharabah contracts of bank syariah, (2) Assess the impact of linguistic clarity on transparency and mutual understanding, and (3) Provide recommendations for enhancing the linguistic precision of mudharabah contracts.

## **RESEARCH METHOD**

This study adopts a qualitative approach with a focus on analyzing the language used in mudharabah contracts. The qualitative approach was chosen because the study aims to deeply and comprehensively understand and analyze the linguistic aspects of mudharabah contracts. According to (Creswell, 2018) The qualitative approach is a research method that focuses on in-depth and interpretative understanding of the research subject. In this context, qualitative research is employed to gain a deeper understanding of the language aspects within Mudharabah contracts. This approach allows researchers to explore the nuances of meaning, sentence structures, word choices, key phrases, and other language aspects that can influence the understanding and interpretation of contracts (Merriam, 2009; (Arikunto, 2010). In this study, content analysis techniques are used to explore and analyze the content of Mudharabah contracts, with a focus on analyzing words, phrases, sentences, and other relevant language elements. By using a qualitative approach and content analysis techniques, this research aims to delve deeper into the language and content of Mudharabah contracts in an effort to better understand how these contracts are utilized in Shariah financial practices.

The data collection process begins by identifying the Mudharabah contracts currently in use. In this research, these contracts are sourced from agreements conducted at Bank Syariah Indonesia. The reason for choosing this data source is because Bank Syariah Indonesia is a prominent institution where the community engages in a wide range of business activities, including lending, trade, and financial transactions (Karim, 2014; Khotimah, 2020). After collecting the contract data, the first step involves categorizing them based on words, phrases, and sentences related to legal and business aspects. This data is then organized using the

NVivo application to present data categories in tabular form. Some of the topics and questions addressed in this study include linguistic aspects, transparency, mutual understanding, and the linguistic precision of Mudharabah contracts. Therefore, the data analysis is based on sentence structures and syntax within the contracts (Saeed, 2009; Mustafa, 2014). Words, phrases, and sentences that contain ambiguity, injustice, and conflicts with Shariah principles are identified. Subsequently, thematic analysis is conducted on the identified themes. This involves searching for meaning, identifying patterns, and exploring the relationships among them (Denzin, 2005; Baxter, 2008).

The findings are then presented in descriptive form, explaining the meaning and implications of each theme or pattern found in the data. To ensure rigor and validity, the triangulation process is employed by cross-referencing contract data with relevant legal documents and authoritative sources to validate findings. Strict measures will be taken to protect the confidentiality of the contract documents. Personal and sensitive information will be redacted or anonymized to ensure the privacy of parties involved.

## RESEARCH FINDINGS AND DISCUSSION

### Research Findings

In this part, the findings from the language analysis of Mudharabah contracts at Islamic financial institutions in Indonesia are described and presented. The research aimed to investigate the prevalence of the use of phrases in mudharabah contracts. By referring back to the research questions, our objective is to provide clarity and enhance the understanding of the research purpose and how we address the research questions in this results section. The presented findings will elucidate the significance of linguistic accuracy and its role in upholding Sharia principles in Mudharabah contracts. Additionally, the researchers highlight linguistic aspects that promote transparency and minimize potential ambiguities, thus contributing to more effective and compliant financial transactions in Islamic banking.

Based on the results of data analysis, there are certain words, phrases, and sentences that frequently appear in mudharabah contracts and play a crucial role in interpreting the legal and contractual aspects of the mudharabah agreement.

Table 1  
List of Words/Phrases

No	Indonesian	English
1	Modal	Capital
2	Bagi Hasil	Profit Sharing
3	Tindakan yang sesuai	Appropriate actions
4	Keuntungan bersih	Net profit
5	Kondisi yang tidak terduga	Unexpected conditions
6	Pembagian Keuntungan	Distribution of Profits
7	Risiko	Risk
8	Jangka Waktu	Term
9	Pembayaran	Payment
10	Penarikan dana darurat	Emergency fund withdrawal
11	Kesepakatan yang adil	Fair agreement
12	Keberlanjutan	Continuity
13	Pelaporan	Reporting
14	Penyelesaian Sengketa	Dispute Resolution
15	Pengakhiran	Termination
16	Perubahan Kontrak	Contract Amendment
17	Biaya	Costs
18	Pelunasan	Repayment
19	Pemindahan	Transfer
20	Hasil operasi	Operational results
21	Perubahan	Amendment

No	Indonesian	English
22	Ganti Rugi	Compensation
23	Kepatuhan	Compliance
24	Pembatalan	Cancellation
25	Syarat dan Ketentuan	Terms and Conditions
26	Perhitungan Bagi Hasil	Profit Sharing Calculation
27	Ketentuan yang memadai	Adequate provisions
28	Masa Tenggang	Grace Period
29	Pembayaran Bunga	Interest Payment
30	Pembatasan Pemakaian Dana Mudharabah	Restriction on the Use of Mudharabah Funds
31	Pemberitahuan Perubahan	Notice of Changes
32	Sanksi Pelanggaran	Sanctions for Violations
33	Pengalihan Hak dan Kewajiban	Transfer of Rights and Obligations
34	Pembebanan Biaya	Imposition of Costs
35	Kinerja yang memuaskan	Satisfactory performance
36	Pelanggaran Syariah	Sharia Non-Compliance

From Table 1 above, we can observe several words and phrases within Mudharabah contracts that can lead to ambiguity, lack of clarity, and varying legal interpretations in the implementation of Shariah principles. This ambiguity arises because the words and phrases used are not specific enough or do not clearly define the roles, rights, and obligations of each party. For example, if a contract mentions "fair distribution," this phrase can be ambiguous if not clearly defined. What is considered a fair distribution may differ from the perspectives of different parties. Therefore, without defining what is considered fair, this can result in diverse interpretations and potential disputes in the future (Shamma, 2008; Ali, 2013). The term "reasonable" can also be a source of ambiguity because what is considered a "reasonable" action can differ from one party to another. The term "net profit" needs to be clearly defined so that all parties have the same understanding of what is included in the net profit. "Satisfactory performance," this phrase tends to be subjective and needs a more detailed definition. The term "appropriate investment policy" can vary from the perspectives of the parties involved. And the term "risk management ability", without clear boundaries, risk management ability can become a source of ambiguity. The term "fair agreement" needs further explanation to avoid interpretational doubts. "Unexpected Conditions": uncertainty about what is considered unexpected conditions can be problematic if disputes arise. "Adequate Provisions": this phrase requires a more detailed definition for all parties to understand what is considered adequate. "Prudent Consideration": without clear boundaries, prudent consideration can create uncertainty. "Emergency Fund Withdrawal": the definition and criteria for emergency fund withdrawal need to be explained in detail. "Financial Crisis": this term tends to be ambiguous and needs a more concrete definition. "Appropriate Actions": without proper context, appropriate actions can have various interpretations.

Ambiguous or unclear words and phrases can leave room for diverse interpretations (Al-Samarrai, 2012; Abida, 2016). Mudharabah contracts that are not sufficiently clear in terms of Shariah principles can result in varying views on how the contract should be applied according to Islamic law. This can lead to disagreements and legal disputes in the future. In the context of Mudharabah contracts, it is essential to ensure that all terms and clauses in the contract are clearly defined, especially those related to profit and loss sharing, risk allocation, and contract termination conditions. The use of precise language and specific criteria helps minimize ambiguity and ambiguity, thereby avoiding different legal interpretations. Clarity, accuracy, and compliance with Shariah principles are key elements in designing Mudharabah contracts (Lewis & Algaoud, 2001), (Usmani, 2008). Therefore, these Mudharabah contracts

must meet the requirements of Islamic law and provide the necessary guidance for parties involved in Shariah financial transactions.

Table 2  
List of sentences/clauses used in the Mudharabah contract

No	Indonesian	English
1	Keuntungan akan dibagi sesuai kesepakatan	Profits will be shared according to agreement
2	Keberlanjutan Mudharabah setelah Masa Tenggang	Sustainability of Mudharabah after the Grace Period
3	Pembebasan Tanggung Jawab atas Kekalahan	Exemption of Responsibility for Losses
4	Perubahan Perjanjian tidak memerlukan persetujuan	Agreement Amendment doesn't requires consent
5	Modal yang diserahkan oleh nasabah akan digunakan oleh bank untuk melakukan usaha produktif	The capital provided by the customer will be utilized by the bank for productive business purposes.
6	Tanggung Jawab atas Kerugian ditanggung Bersama	Joint Responsibility for Losses
7	Pelaporan Keuangan secara Berkala	Regular Financial Reporting
8	Masa Berlaku Perjanjian Mudharabah	Term of Mudharabah Agreement
9	Pembayaran Bagi Hasil setelah Deduksi Biaya	Profit Sharing Payment after Deducting Costs
10	Penyalahgunaan Dana Mudharabah dilarang	Misuse of Mudharabah Funds is prohibited
11	Penyelesaian Sengketa melalui Arbitrase	Dispute Settlement through Arbitration
12	Penyelesaian Sengketa melalui Pengadilan	Dispute Resolution through Court
13	Pelunasan Modal Mudharabah	Repayment of Mudharabah Capital
14	Masa Berlaku Perjanjian Mudharabah	Term of Mudharabah Agreement
15	Keberlanjutan Mudharabah setelah Masa Tenggang	Continuity of Mudharabah after the Grace Period
16	Pelanggaran Syariah dan Sanksi	Sharia Non-Compliance and Sanctions
17	Risiko kerugian usaha menjadi tanggung jawab bank sebagai pihak mudharib.	The risk of business losses is the responsibility of the bank as the mudharib party.
18	Kontrak mudharabah ini dapat diakhiri oleh salah satu pihak.	Mudharabah contract can be terminated by either party
19	Pemindahan Hak dan Kewajiban	Transfer of Rights and Obligations
20	Pembebasan Tanggung Jawab atas Kekalahan	Exemption from Liability for Losses
21	Perubahan kontrak mudharabah hanya dapat dilakukan dengan persetujuan kedua belah pihak	Changes to the mudharabah contract can only be made with the mutual consent of both parties

This table has been generated through a content analysis of Mudharabah contracts, pinpointing sentences and phrases that may introduce ambiguity and lack of clarity in comprehending Shariah principles. It serves as a valuable instrument for recognizing potential concerns within Mudharabah contracts that require further elucidation or enhancement. In the context of Mudharabah contracts, it is crucial to ensure that all terms and clauses in the contract are clearly defined, especially those related to profit and loss sharing, risk allocation, and contract termination conditions (Lewis, 2001; Kettani, 2012; Maman, 2020). For instance, a sentence like "Profits will be shared as agreed" can lead to ambiguity and misunderstandings in profit sharing if the phrase "as agreed" is not specifically defined. Similarly, in the sentence "Sustainability of Mudharabah after the Grace Period," it indicates a lack of information about how this sustainability will be determined and whether it may conflict with Shariah principles.

The sentence "Changes to the Agreement do not require approval" contains ambiguity because there is no information about what constitutes a "change" or whether such changes must comply with Shariah principles. Furthermore, "Exemption of Responsibility for Losses" is not clearly defined in terms of what is meant by "exemption" and how it relates to liability

for losses according to Mudharabah principles. "Dispute Resolution through Arbitration" lacks details about the procedures and rules to be used in arbitration, potentially leading to decisions that violate Shariah principles. Similarly, the sentence "Dispute Resolution through the Courts" does not explain how the courts will resolve disputes in accordance with Shariah principles. "This Mudharabah contract can be terminated by either party." This sentence lacks detailed explanations of the reasons or conditions that can serve as the basis for contract termination by either party (Warde, 2000; Usmani, 2008). This could raise questions about when, how, and on what grounds the contract can be terminated. Contract termination by one party without clear agreement or reasons may violate the principles of mutual consent and fairness. It can result in an imbalance of rights and obligations between the parties. "Transfer of Rights and Obligations": It is not explained how the transfer of rights and obligations will be carried out and whether it aligns with Mudharabah principles.

"Joint Responsibility for Losses": This sentence indicates that both parties are jointly responsible for losses. However, without further details on how joint responsibility is defined, it can lead to ambiguity. Mudharabah principles typically dictate that losses should be borne entirely by the capital provider (shahibul maal), while the manager of the capital (mudharib) only bears losses in case of negligence or wrongdoing. "Regular Financial Reporting": This sentence implies an obligation to report finances regularly but does not specify the frequency, content of the reports, or to whom the reports should be submitted. Shariah principles require transparency in financial reporting, so there should be clear provisions in the contract regarding this (Taha, 2015). "Duration of Mudharabah Agreement": This sentence mentions the duration of the contract but does not indicate a specific start and end date. This can create uncertainty about when the contract actually begins and ends.

The clause "profit distribution after deducting costs" indicates that profit distribution will occur after deducting costs but does not specify the types of costs that can be deducted. This provision should be more detailed to ensure compliance with Shariah principles. "Misuse of Mudharabah Funds Prohibited": this sentence includes a prohibition on the misuse of Mudharabah funds but does not clearly define what constitutes "misuse." this can create ambiguity about what is allowed and what is prohibited. "Settlement of Mudharabah Capital": this sentence contains ambiguity because it does not detail how the settlement process will be carried out, including its conditions. "Termination of Mudharabah by the First Party": this sentence mentions the ability of the first party to terminate the contract but does not explain the reasons or conditions that allow termination. This can lead to ambiguity and uncertainty. "Notification of Changes to the Second Party": this sentence implies an obligation to notify the second party of changes but does not explain how these changes should be communicated or whether they require approval from the second party. "Duration of Mudharabah Agreement": this sentence indicates the duration of the contract but should include specific start and end dates to avoid ambiguity. "Shariah Violations and Sanctions": this sentence mentions "Shariah violations" and "sanctions" without providing clear definitions for both terms. This can lead to ambiguity about what constitutes a Shariah violation and how sanctions will be applied. Shariah principles require clear provisions regarding violations and sanctions in compliance with Islamic law.

"The risk of business losses is the responsibility of the bank as the mudharib party." This sentence implies that the bank, as the mudharib party, is responsible for all business loss risks. However, Mudharabah principles allocate business loss risks proportionally according to the initial agreement between the mudharib and the capital provider (shahibul maal). This statement has the potential to violate Mudharabah principles. "Exemption from Liability for Losses": This sentence includes the term "exemption from liability" for losses. Without further explanation, this term can become a source of ambiguity. Mudharabah principles establish that losses should be fully borne by the capital provider (shahibul maal), and the

party managing the capital (mudharib) should only bear losses in case of their fault or negligence. Therefore, the use of the term "exemption" in this context should be explained in more detail to ensure compliance with Shariah principles. "Changes to the Mudharabah contract can only be made with the agreement of both parties": Although this sentence emphasizes that changes to the contract require the agreement of both parties, it does not specify in detail what is considered a "change to the contract" and how the process of these changes will be regulated. This can create ambiguity about what requires agreement and how that agreement will be reached. Shariah principles require clear provisions regarding contract changes that comply with Islamic law.

In the Mudharabah contract, there are specific clauses and sentences aimed at regulating profit-sharing and the responsibilities of the parties involved. However, these clauses often provide ambiguity and lack specific legal provisions, as outlined below:

First Party: Shariah Bank XYZ

Second Party: Individual Investor ACD

Clause 1: Profit and Loss Sharing

- 1.1. Pihak Pertama akan memberikan modal usaha sebesar 1 miliar rupiah kepada Pihak Kedua.
- 1.2. Keuntungan akan dibagi secara adil antara Pihak Pertama dan Pihak Kedua berdasarkan hasil usaha yang diperoleh selama periode kontrak.

In that article, the phrase "dibagi secara adil (divided fairly)" lacks a clear definition. What is considered a fair distribution? The contract does not explicitly state that profits and losses should be shared based on the agreed-upon ratio beforehand. This contradicts Shariah principles, which require clear and unambiguous agreements regarding profit and loss sharing.

Clause 2: Termination of Contract

- 2.1. Pihak Pertama memiliki hak mutlak untuk mengakhiri kontrak kapan saja jika merasa tidak puas dengan kinerja Pihak Kedua.

Meanwhile, in article 2, the phrase "if not satisfied with the performance" lacks objective criteria. This can be subject to misuse and does not align with Shariah principles, which require clear and fair contracts. The contract does not include fair provisions regarding contract termination. Shariah principles require fair treatment of both parties regarding contract termination.

Clause 3: Withdrawal of Funds

- 3.1. Pihak Kedua dapat menarik dana kapan saja tanpa batasan, bahkan jika hal ini mengakibatkan defisit dalam modal usaha.

These provisions may give the impression that the Second Party can withdraw all funds at any time, even if it does not align with the business situation. This contradicts Shariah principles, which require considerations of fairness in fund withdrawals.

The next example is in Article 5 point b:

*"Rab-al-Maal shall have no claim related to Mudaraba Rab-al-Maal Profit (or any part thereof, as applicable) or Mudaraba End of Rab-al-Maal Profit not paid as a result of either (in respect of Mudaraba Rab-al-Maal Profit only) Non-Fulfillment of Payment or (in respect of Mudaraba Rab-al-Maal Profit or Mudaraba End of Rab-al-Maal Profit) Non-Fulfillment of Payment (in each case,*



*regardless of whether notice of Non-Fulfillment of Payment or Non-Fulfillment of Payment has been given in accordance with this agreement or not).*

*Based on the data above, the phrases "Non-Payment Election" and "Non-Payment Event" can lead to different interpretations and implications. Here are two possible interpretations:*

Interpretation 1: In this context, "Non-Payment Election" refers to the decision or choice made by Rab-al-Maal (Capital Provider) to not receive or claim their portion of the Mudaraba Rab-al-Maal Profit or the Final Mudaraba Rab-al-Maal Profit. This implies that Rab-al-Maal voluntarily waives their right to receive profits.

Interpretation 2: On the other hand, "Non-Payment Election" can be interpreted as a situation where Rab-al-Maal declares that they have not been paid their rightful share of profits. This indicates that Rab-al-Maal asserts their claim or dissatisfaction regarding the non-payment of profits.

Similarly, the phrase "Non-Payment Event" can also be subject to different interpretations:

Interpretation 1: "Non-Payment Event" can refer to a specific event or circumstance in which Rab-al-Maal does not receive their rightful share of profits from either the Mudaraba Rab-al-Maal or the final Mudaraba profits. This could imply that the non-payment is due to external factors or specific conditions mentioned in the contract.

Interpretation 2: Conversely, "Non-Payment Event" can indicate a general condition or situation where Rab-al-Maal does not receive the profits they are entitled to. This indicates that there is a failure or delay in payment, regardless of any specific events or circumstances causing it.

The provisions of "Non-Payment Election" and "Non-Payment Event" can lead to different consequences regarding the rights, responsibilities, and actions of the parties involved in the mudharabah agreement. Therefore, it is essential to provide clear and accurate definitions of these terms in the contract to prevent potential confusion or conflicts. The use of words, phrases, and sentences in Mudharabah contracts requires clear, fair, and unambiguous agreements. Therefore, it is important in the creation of Mudharabah contracts to avoid ambiguity and ensure the provisions that can affect the implementation of Shariah principles are detailed in the contract. This will help ensure that the contract aligns with the principles of Mudharabah and Shariah in general, while also avoiding potential issues of interpretation or violations of Shariah principles.

In the profit-sharing clause, the Mudharabah contract may specify that the distribution of profits will be based on a pre-agreed percentage between the Mudharib and the Rabb al-Mal. For instance, the agreement may state that the Mudharib will receive 70% of the generated profits, while the Rabb al-Mal will receive 30%. This clause provides specific and clear provisions on how the profit-sharing will be conducted. This is crucial to reflect Shariah principles that govern equitable distribution of profits among the parties involved in the Mudharabah contract. In addition to the profit-sharing clause, the Mudharabah contract may also include a clause addressing the distribution of losses. This clause explains how losses will be shared between the Mudharib and the Rabb al-Mal (Kettani, 2012), (Obaidullah, 2008).

Provisions regarding the distribution of losses aim to distribute risks fairly between both parties (Siddiqi, 2008; Obaidullah, 2008). For instance, the contract may stipulate that losses will be borne by the Rabb al-Mal up to a certain percentage, while the Mudharib will be responsible for the remaining losses. The Mudharabah contract also includes clauses that govern the responsibilities of the parties involved. These clauses can explain the Mudharib's

obligation to manage the funds prudently and be accountable for any investment actions or decisions to the Rabb al-Mal. The use of these specific clauses provides legal provisions and ensures the validity of the Mudharabah contract. These clauses help regulate the distribution of profits, the distribution of losses, and the responsibilities of the parties involved clearly and accurately. Consequently, these provisions become essential instruments in maintaining fairness, transparency, and understanding among the parties involved in the Mudharabah contract. The sentence structure is crucial to ensure clarity and readability in the understanding among the parties involved. Sentences in the agreement should be designed in such a way that the conveyed information can be understood clearly and does not create ambiguity.

In the context of mudharabah agreements, sentence clarity can prevent misunderstandings among the parties involved. Sentences must be formulated clearly, leaving no room for different interpretations (Shamma, 2008; Mustafa, 2014). The use of standardized and recognized terms in the context of Sharia economics can also help clarify the meaning and intent conveyed. In addition to clarity, the sentence structure in mudharabah contracts should also consider readability factors. Well-structured sentences, using concise and compact phrases while avoiding overly long and complex sentences, will facilitate the parties involved in reading and understanding the content of the agreement more efficiently. The preparation of clear and structured sentences in mudharabah contracts helps ensure accurate understanding between the mudharib and Rabb al-Mal. By using appropriate and unambiguous sentences, the agreement becomes more transparent and can avoid potential misunderstandings (Abida, 2016). Moreover, a well-crafted sentence structure also enhances the sustainability and legal certainty in the implementation of mudharabah contracts.

## **Discussion**

Mudharabah contracts in Islamic banks are crucial documents that govern the relationship between the mudharib (capital manager) and the shahibul maal (capital owner). The purpose of these contracts is to ensure that financial activities adhere to Shariah principles, especially in terms of fair profit and loss sharing, as well as compliance with transparency and mutual agreement principles. However, based on the analysis of words, phrases, and sentences in some Mudharabah contracts in Mataram Islamic banks, ambiguity, lack of clarity, and potential violations of Shariah principles were found. The language's lack of clarity includes: The use of undefined terms; Clauses related to Profit and Loss; Clauses related to Contract Change Provisions; Clauses regarding violations and sanctions to be imposed, and Grammatical characteristics referring to the use of word forms

In general, these five aspects are written in an interpretative language, leading to ambiguity and potential violations of Shariah principles.

The use of undefined terms:

In Mudharabah contracts, it's common for terms to be used without offering additional context or clarification regarding their significance and how they are applied. This can lead to different perspectives and interpretations when reading the contract. For instance, the term "profit-sharing" reflects the concept of partnership between the mudharib (fund/venture manager) and the shahibul maal (capital owner). The profit-sharing mechanism needs to be detailed so that the parties involved in the contract do not have different understandings of what is expected in profit-sharing. Without a clear definition (a detailed explanation of the profit-sharing mechanism), ambiguity can arise in the profit-sharing process and its amount. Additionally, the term "Qardh" (loan contract) is often mentioned in Mudharabah agreements without specifying the amount to be returned. In essence, the term "Qardh" already implies returning the same amount borrowed. This means that if someone borrows 50 million, they should also return 50 million, but in reality, calculations are based on a monthly/yearly

timeframe, so the total amount will definitely be more than the initial loan. The use of the term "Qardh" without associating it with a time period in the same sentence can lead to the borrower's interpretation that they are repaying the exact amount of the initial loan, whereas in reality, they must repay a certain amount more than the initial loan. Therefore, the use of terms should always be accompanied by explanatory narration.

The term "Shariah operational principles" may seem free from ambiguity and differing interpretations because it is based on Shariah principles. However, without an explanation of what these Shariah operational principles entail, Mudharabah contracts containing this term can still lead to different interpretations from the perspective of contract readers. Shariah principles emphasize the need for clear definitions and a uniform understanding of these terms to ensure compliance with Shariah principles. The next term is "nisbah" (profit-sharing ratio). This term frequently appears in several sections of Mudharabah contracts. Nisbah represents the ratio of profit and loss sharing between the mudharib and shahibul maal (Warde, 2000; Ibn Kathir, 2000). This nisbah is specified in the contract and can vary for each Mudharabah transaction. Therefore, phrases like "profits will be shared based on the agreed nisbah" may seem clear, but they are not well-defined; what kind of agreement, what ratio, and whether it applies only to profits, only to losses, or both, are not clearly mentioned. This term is often used ambiguously because nisbah can be defined as profit or profit-sharing, but it can also refer to loss-sharing, even if it is labeled as a "Profit-Sharing Ratio." It's this lack of definition that triggers conflicts and misunderstandings between the parties. Therefore, it's necessary to provide explanations after using the term "nisbah" to avoid misunderstandings and interpretation disputes in the implementation of Mudharabah contracts.

The term "responsibility" can be one-sided or two-way, so this term needs to be defined in detail. In Sharia principles, responsibility for losses in Mudharabah contracts should align with the proportion of capital contributed by each party. However, in some Mudharabah agreements provided by Sharia banks, statements regarding this imply that losses will be shared without specifying how loss-sharing related to faults or negligence will be regulated. This may violate the principle of fair loss-sharing in Mudharabah. The term "operational costs" also has a dual meaning depending on the context. This term has different meanings or interpretations for the two parties involved in Mudharabah, namely the mudharib (manager or executor) and the shahibul maal (investor or capital owner). For the mudharib, "operational costs" include expenses necessary for running business operations, such as employee salaries, electricity bills, office rent, and so on. On the other hand, for the shahibul maal, "operational costs" only encompass expenses directly related to profit-generating business operations, like production or marketing costs. Different understandings of what should be included in "operational costs" can lead to discrepancies in expenditures and profit-sharing between the two parties. Therefore, it's essential to pay attention to how this term is defined and used in various contexts within the contract to ensure clear understanding and consensus among all involved parties.

Regarding sections related to profit and loss, transparency in Mudharabah contracts is a crucial principle in Sharia-compliant business. This means that all aspects related to profit and loss sharing must be clearly and comprehensively disclosed in the contract. However, in practice, it's still common to find terminology that is not defined in detail or specifically. For example, a phrase like "fair profit-sharing" does not provide sufficient guidance on how this sharing should be done. The lack of clarity in the definition of "fair" can lead to different interpretations by parties involved in the contract. This ambiguity can become a source of dispute if both parties do not have a shared understanding of how "fairness" is measured. Therefore, in the profit and loss sections, it's advisable to specify the amounts in numbers or words followed by numbers to make the profit and loss figures clearer. Procedures for profit and loss distribution should also be detailed and specific. Detailed procedures provide the

necessary transparency in business operations based on Sharia principles. This ensures that all parties have a clear understanding of how profit and loss distribution will be calculated and shared. This includes how revenue and expenses will be calculated, how the nisbah calculation will be done, and how the final results will be divided. However, in some examined Mudharabah contracts, there are phrases or sentences that do not provide transparency in the nisbah distribution process. Here are some contract statements that have the potential for ambiguity: "The procedures for loss distribution will be adjusted by the mudharib based on factors affecting the loss calculation." In this statement, the phrase "loss distribution procedures will be adjusted by the mudharib" is ambiguous because it does not explain how these procedures will be adjusted. This can lead to uncertainty about the criteria and methods used in determining loss distribution. In other words, what is meant by "adjusted" is not clearly defined. This sentence also gives the impression that the mudharib has full control over the loss distribution process without limitations or supervision. This violates the principle that a Mudharabah contract should be a fair partnership between the capital owner and the fund/venture manager. Sharia principles require that both parties involved have balanced rights and responsibilities in the contract.

Similarly, the sentence "The procedure for calculating profit and loss will be adjusted by the mudharib in accordance with the Sharia bank's policy" indicates ambiguity in determining profit and loss. This sentence creates uncertainty about how Sharia principles will be applied in the practice of profit and loss calculation. Sharia principles must be strictly followed in Mudharabah contracts, and the understanding of how these principles will be applied must still be explained in the contract. Nisbah provisions should be explained in detail to avoid ambiguity. Therefore, nisbah provisions should be written in detail in the contract. Some vocabulary that indicates potential violations of nisbah provisions include: "The terms of profit and loss sharing nisbah will be changed according to the Sharia bank's internal policy without prior notice to the capital owner." In this statement, there are several elements that indicate ambiguity and potential violations of nisbah provisions in Mudharabah contracts. This includes questions about how the initial nisbah is determined, the criteria used for changes, and the basis for these changes. Furthermore, the phrase "without prior notice to the capital owner" creates ambiguity about how the nisbah change process will be conducted. Without prior notice, the capital owner will not have a clear understanding of how the nisbah they originally agreed to will change, potentially disadvantaging them. In this aspect, the bank also seems to have full authority to change the nisbah without the involvement or approval of the capital owner. This violates the principle of a fair partnership in the Mudharabah contract. The contract should also include provisions for what happens if losses exceed the capital provided by the shahibul maal. Sharia principles require that losses cannot exceed the provided capital, and procedures for handling this situation should be explained (Obaidullah, 2008; Ibrahim, 2023).

Arabic language: "البنك من ضمان بدون"

Literal translation: "Tanpa jaminan dari bank" (Without guarantee from the bank)

In this phrase, ambiguity arises due to the difference in the use of the words "without guarantee from the bank." In its original Arabic language, it refers to the absence of a guarantee from the bank regarding the funds invested in Mudharabah (Setiyadi, 2023). However, in the Indonesian language, it can be interpreted that the bank does not provide any guarantee or warranty related to the Mudharabah contract itself, which can have different consequences. Therefore, it is advisable to retain some terms in Arabic while providing a definition of the intended term. "The First Party commits to providing financial reports at the end of each month."

In this clause, the use of the verb "will provide" indicates a future action. However, it is not clear exactly when, how, or in what format the financial reports will be provided. This can result in ambiguity regarding deadlines and specific procedures. The use of verbs in the past tense can help avoid ambiguity related to the execution of tasks and obligations. Therefore, it is important to draft clauses in the contract with clear and explicit language to avoid potential ambiguity. The use of past tense verbs indicates actions or activities that have already occurred in the past. In a Mudharabah agreement, such verbs are used to recount the history of activities or decisions made by the parties involved. For example, the agreement might use past tense verbs like "has agreed," "has executed," or "has invested" to describe actions that have already been taken. The use of past tense verbs helps establish the chronological sequence of events and provides information about actions that have been previously carried out. This is crucial in a Mudharabah agreement as it allows the parties involved to track and understand the sequence of actions and decisions made within the contract framework. On the other hand, the use of verbs in the imperative form is employed to establish provisions or actions that must be carried out by the parties involved. In a mudharabah agreement, the use of verbs in the imperative form encompasses instructions or obligations that must be followed by the mudharib or Rabb al-Mal. For instance, the agreement may use imperative verbs like "do," "provide," or "inform" to indicate actions or obligations that need to be fulfilled. The use of verbs in the imperative form helps provide clear and direct instructions to the parties involved. By employing this linguistic structure, a mudharabah agreement can effectively communicate the necessary actions without any risk of misinterpretation.

## CONCLUSION

The research findings highlighted significant issues within Mudharabah contracts in Shariah banks, primarily stemming from linguistic ambiguity and a lack of clarity in their terminology and provisions. Several key areas exhibited a lack of clarity and ambiguity are: (1) Undefined Terminology; one of the prominent issues identified was the use of terminology that lacked proper definitions within the contextual framework. This absence of clear definitions led to varying interpretations of these terms among parties involved. (2) Profit and Loss Clauses. Some clauses related to profit and loss sharing were found to be inadequately specific. For instance, phrases like "fair profit distribution" were used without providing a precise mechanism for calculating and distributing profits, resulting in ambiguity. (3) Change in Contract Clauses. Provisions concerning modifications to the contract were found to lack clear criteria and established procedures for implementing changes. This ambiguity could potentially lead to disputes and misunderstandings. (4) Violation and Sanction Clauses. Clauses addressing violations and associated sanctions were often vaguely worded, failing to outline specific penalties or the processes for imposing them. This lack of clarity could hinder the fair and consistent application of penalties. (5) Grammatical Characteristics; translation from Arabic to Indonesian was noted as a contributing factor to varying interpretations. Differences in linguistic structures between the two languages could result in different meanings being attributed to specific terms and clauses. Addressing these linguistic and structural issues is crucial to ensure transparency, mutual understanding, and compliance with Shariah principles in financial agreements.

Clauses related to contract modifications should be precisely defined within the contract itself. This should include clear criteria for making changes and a step-by-step process for implementing modifications. Violations and associated sanctions should be explicitly defined within the contract. Specific penalties for breaching the contract's terms should be outlined to ensure transparency and fairness. When describing actions or decisions that have already occurred, use past tense verbs. This helps establish a chronological sequence of events within the contract, making it easier to understand the historical context of the agreement. The use of

imperative verbs to denote obligations effectively communicates the duties that the parties involved must fulfill. And lastly, prior to finalizing any Mudharabah contract, it is advisable to have legal experts well-versed in Shariah principles review the document. This review can help ensure that the contract is in full compliance with Shariah law and that it maintains the necessary levels of clarity and precision.

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