



ANALYSIS OF COMPARATIVE FIQH: CONVENTIONAL BANK VERSUS ISLAMIC BANK

¹Lutfiyah, ^{2*}Nazih Sadatul Kahfi, ³Nilal Muna Fatmawati, ⁴Muhammad Abdul Rahman Hakim, ⁵Muhyar Fanani

¹⁻⁵ UIN Walisongo Semarang Indonesia

¹lutfiyah@walisongo.ac.id, ²kahfinazih1@gmail.com, ³nilalmuna33@gmail.com,

⁴rahmanhakm92@gmail.com, ⁵muhyarfanani@walisongo.ac.id

* Corresponding Author

Submission: 29-09-2024

Accepted: 15-11-2024

Abstract: What happens in the community about the concept of bank interest and profit sharing there are different perspectives. Bank interest is often regarded as usury in Islam, as it is contrary to Sharia principles. In contrast, the profit-sharing system in Islamic banks is seen as fairer because it is in accordance with Islamic teachings. Understanding the difference between conventional bank interest and the mudharabah system in fiqh law is very important in the context of justice in Islam. So, the focus of this research is the analysis of the interest system in conventional banks and profit sharing in Islamic banks in the perspective of fiqh law. The method used is library research, as it has reviewed from several reading materials articles and books. The results of this study indicate that the majority of scholars consider bank interest as usury, which is prohibited in Islam, because it causes injustice and economic exploitation. Meanwhile, mudharabah is considered in accordance with Sharia principles because it fulfills the concepts of justice, transparency, and partnership in sharing risks and profits.

Keywords: Comparative fiqh, conventional bank, Islamic bank, interest, mudharabah

A. Introduction

People's views in terms of social context assume that bank interest and profit sharing can be influenced by religious and cultural backgrounds.¹ Bank interest is often referred to as usury according to Islamic views, because it is contrary to Sharia principles. Meanwhile, the profit-sharing system in Islamic banks is considered fairer because it is in

¹ Muhammad Arif Fadhillah Lubis and Muthmainnah Muthmainnah, "Systematic Literature Review Tentang Loyalitas Nasabah Bank Syariah Di Indonesia," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 13, no. 2 (September 5, 2023): 237–48, <https://doi.org/10.47200/ulumuddin.v13i2.1856>.

accordance with Islamic principles.² Understanding the difference between conventional bank interest and the mudharabah system in the view of fiqh law is important in relation to the concept of justice in Islam. Regarding usury, it is discussed in fiqh (Islamic law) which suggests that conventional bank interest is called usury transactions which are prohibited in Islam.³ Usury is an addition in savings and loan transactions that is determined without seeing the business contribution of the borrower. The view in Islamic law regulates that it is permissible or not for Muslims to conduct transactions with banks in accordance with established Sharia law.

This review compares the conventional and Islamic banking systems, focusing on the interest and profit sharing mechanisms. Traditional banks operate with interest-based transactions, which some researchers consider to be the practice of usury.⁴ However, Islamic banks use a profit-sharing contract or mudharabah, where one party provides the capital and the other party manages it, and the profits are shared according to agreed terms. The legality of banking practices is still debated among scholars, some prohibit it, some allow it, and some consider it ambiguous or syubhatic.⁵ A comparative study found that the ratio of interest expense to interest income is higher for conventional banks than for Islamic banks.⁶ Islamic banks operate on the principle of profit-sharing

² F. Setiawan Santoso, "Pola Pembiayaan Modal Ventura Di Indonesia, Ekplorasi Bagi Upaya Pengembangannya Di Ekonomi Syariah," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 5, no. 2 (2015): 38–50.

³ Doli Witro, "Nilai Wasathiyah Dan Harakah Dalam Hukum Ekonomi Syariah: Sebuah Pendekatan Filosofis Sikap Dan Persepsi Bankir Terhadap Bunga Bank," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 3, no. 1 (2021): 14–33, <https://doi.org/10.19105/alhuquq.v3i1.4570>.

⁴ Abd Wahid, "Bunga Bank Konvensional: Analisis Ulama Persepektif Ushul Fiqh," *Suajana: Jurnal Perbankan Syariah Dan Ekonomi Syariah* 3, no. 01 (2021): 71–85, <https://doi.org/10.59636/saujana.v3i01.35>.

⁵ Muhammad NK Al Amin et al., "Metode Interpretasi Hukum Aplikasi Dalam Hukum Keluarga Islam Dan Ekonomi Syariah," *Asas Wa Tandhim: Jurnal Hukum, Pendidikan Dan Sosial Keagamaan* 2, no. 1 (December 2023): 15–36, <https://doi.org/10.47200/AWTJHPSA.V2I1.1347>.

⁶ Gytha Nurhana Dhea Praadha Gitama et al., "Analisis Perbandingan Rasio Bunga Antara Bank Konvensional Dan Bank Syariah (Studi Kasus Pada Bank Mayapada Dan Bank Muamalat)," *Jurnal Digit* 12, no. 2 (2022), <https://doi.org/10.51920/jd.v12i2.292>.

based on partnership in reduction (*musyarakah mutanaqisah*) under Islamic law, offering an alternative to traditional banking.⁷

A bank is a business entity that collects funds from the public in the form of deposits and functions to channel them to the public as a form of credit in order to provide an increase in the standard of living for many people.⁸ The types of banks in Indonesia are divided into two, namely conventional banks and Islamic banks. Conventional banks are business entities whose activities collect and distribute funds by getting rewards in the form of bank interest obtained from customers within a certain period.⁹ Meanwhile, an Islamic bank is a bank that runs its business activities based on Sharia principles. The purpose of Islamic banks is to provide economic welfare to Muslims. Products offered at Islamic banks are in the form of deposits and financing with a profit-sharing system or what is called *mudharabah*.¹⁰

According to Article 3 of Law Number 7 of 1992, it is stated that banks function as collectors and distributors of public funds. In addition, banks have functions, namely first, banks function to collect funds from the public in the form of deposits. The existence of banks according to the community is considered to save money safely. Second, banks can function as a distributor of funds for the community. The distribution of funds for the community is a financial governance activity to obtain income from customers who give interest on borrowed funds.¹¹

⁷ Miftahur Rahman and Defi Widayanti, "Pengaruh Pembiayaan Bank Wakaf Mikro Terhadap Peningkatan Kesejahteraan Ekonomi Nasabah," *Nuansa Akademik: Jurnal Pembangunan Masyarakat* 6, no. 2 (August 2021): 139–54, <https://doi.org/10.47200/jnajpm.v6i2.886>.

⁸ Gitama et al., "Analisis Perbandingan Rasio Bunga Antara Bank Konvensional Dan Bank Syariah (Studi Kasus Pada Bank Mayapada Dan Bank Muamalat.)"

⁹ Budi Rustandi Kartawinata, Wijayangka Candra, and Muhammad Hasan Rabbani, "Analisis Perbedaan Revenue Bunga Bank Konvensional Dengan Bagi Hasil Bank Syariah," *Economy and Bussiness* 1, no. 3 (2019): 196–202.

¹⁰ Erni Susana and Annisa Prasetyanti, "Pelaksanaan Dan Sistem Bagi Hasil Pembiayaan Al-Mudharabah Pada Bank Syariah," *Jurnal Keuangan Dan Perbankan* 15, no. 3 (2011): 466–78.

¹¹ Sokhikhatul Mawadah and Tria Pibriani, "Implementasi Wakalah Pada Surat Kredit Berdokumen Dalam Negeri Di Perbankan Syariah," *Ulumuddin : Jurnal Ilmu-Ilmu Keislaman* 12, no. 2 (December 2022): 285–304, <https://doi.org/10.47200/ULUMUDDIN.V12I2.1372>.

In previous studies there was no discussion that referred in detail to the analysis of the interest system in conventional banks and profit sharing in Islamic banks in the perspective of fiqh law. So, the purpose of the research is to provide confirmation of the analysis of findings related to the views of fiqh on the conventional bank system and Islamic banks. Problems in previous studies only discussed the application of Islamic law. So, the focus of this research is to analyse as a strengthening of the conventional bank system and Islamic banks.

B. Methods

This type of research is library research or commonly called library research. Library research is research that can be done by utilising literature sourced from libraries to obtain research data by limiting its activities to library collections without having to use field research.¹² While the approach that the author takes is to use a qualitative approach, which is research that uses descriptive data data linked to written or spoken words from the object being observed.¹³ The purpose of this qualitative approach itself is to make existing facts easier to understand, even if it is possible to produce a hypothesis that has never existed before. By using a very detailed explanation in the form of a description of the use of words that are easy to understand, it will help this goal run well. The author choose this approach because it aims to describe, elaborate, and identify the fiqh law of interest in conventional banks, the fiqh law of mudharabah in Islamic banks, and also the differences in systems and implications for both.

C. Results and Discussions

Conventional Bank

From a fiqh perspective, conventional bank interest is often regarded as riba, which is legally prohibited in Islam. Scholars, both classical and contemporary, agree that riba is a necessary addition in debt and credit transactions and is contrary to the principles of economic

¹² Zed Mestika, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2014).

¹³ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Jakarta: Prenada Media, 2018).

justice espoused by Islamic law. However, there are differing views among scholars as to whether all forms of interest can be categorised as usury. Some scholars propose a more flexible interpretation, given the dynamics of the modern economy, and consider that interest charged by conventional banks may not be classified as usury if it fulfils certain conditions, such as its impartiality to one party and its existence within the framework of a fair economic system.¹⁴

Interest and usury are concepts that are often discussed in the context of finance and economics, especially in the view of Islamic law. Lexically, interest is the translation of the word interest. Interest, in a general sense, refers to the return received by a lender for money lent to another party. This return is usually calculated as a percentage of the principal amount of the debt and is paid periodically by the borrower. Interest is often used by central banks as a monetary instrument to control inflation and economic stability, and is an important component in the conventional financial system, where it is considered a cost of using money or compensation for the risk taken by the lender.

On the other hand, usury in Islamic law is any form of addition required or received beyond the principal debt in debt and credit transactions. Usury is expressly prohibited in the Qur'an and Hadith, because it is considered an unfair practice and harms one party, especially the borrower. In the Islamic view, usury contains elements of exploitation and injustice, because the lender benefits without making a real contribution or taking risks in productive activities. Therefore, usury is seen as an act that contradicts the principles of justice and balance promoted by Islamic law. Although in practice interest and usury are often considered similar, Islam views that not all forms of interest automatically fall into the category of usury, depending on the context and conditions of the transaction taking place.¹⁵

¹⁴ Eny Latifah and Rudi Abdullah, "Hukum Ekonomi Syariah Atas Bunga Bank," *JIDE: Journal Of International Development Economics* 01, no. 02 (2022): 102–16.

¹⁵ A. Taufiq Buhari, "Bank Dan Riba: Implikasinya Dalam Ekonomi Islam," *Jurnal Al-Insiyiroh: Jurnal Studi Keislaman* 6, no. 1 (2020): 127–36, <https://doi.org/10.35309/alinsiyiroh.v6i1.3824>.

Scholars' opinions regarding the bank interest law can be divided into three groups, namely the opinion of prohibiting, the opinion of justifying, and the opinion that considers the law shuhbat.¹⁶ This discussion seeks to explore these views and analyse them in the context of fiqh law, by reviewing the arguments used and their implications for conventional banking practices in the Islamic world.

The opinion that prohibits

Most scholars who oppose conventional bank interest argue that interest is a type of usury prohibited by the Qur'an and Hadith. They speak of the verses in the Qur'an that prohibit usury and state that all additional interest charged on the principal of a debt without any tangible contribution from the lender falls under the category of usury. These scholars assert that the practice of bank interest, which is based on profit on borrowed money, not only violates the principles of justice laid out in Islamic sharia, but also has the potential to give rise to wider economic injustices, such as the exploitation of less well-off borrowers.¹⁷ Moreover, avoiding usury is essential to maintaining fairness and harmony in financial transactions. Scholars caution that accepting bank interest can undermine the morality and faith of Muslims as it is considered a violation of Allah's law. As such, they encourage Muslims to avoid transactions involving conventional bank interest and seek financial solutions that are in line with sharia principles. According to the opinion of this group, bank interest is the same as riba, so it is haram.¹⁸

Allah SWT says in the Qur'an regarding the prohibition of eating usury in stages. Here are 4 stages of the prohibition of usury, Allah gives the understanding that usury will not add anything to your good deeds (QS. Ar-Rum: 39). Allah gives a description of the punishment of the Jews with a character who likes to eat usury (QS. An. Nisa' 160-161). Allah

¹⁶ Wahid, "Bunga Bank Konvensional: Analisis Ulama Persepektif Ushul Fiqh."

¹⁷Abdurrahman Kasdi, "Analisis Bunga Bank Dalam Pandangan Fiqih," *Iqtishadia: Jurnal Kajian Ekonomi Dan Bisnis Islam STAIN Kudus* 6, no. 2 (2013): 319–42.

¹⁸ Sunarto Zulkifli, *Dasar-Dasar Akuntansi Perbankan Syariah* (Jakarta: Zikrul Hakim, 2013).

forbids eating usury that is doubled (QS. Al-Imron: 130). Allah strictly forbids all types of usury (QS. Al-Baqarah 275- 279).

The prohibition of usury is for the following reasons:¹⁹ 1) Usury is the appropriation of another's property without any constructive value. 2) Usury prevents participation in active professions. 3) Usury agreements lead to strained relations between people. 4) Usury has the consequence that the rich remain rich and the poor remain poor. By prohibiting usury, Islam seeks to build a society based on justice and honesty.

The opinion that permits

Some modern scholars who support conventional bank interest argue that interest does not always have to be considered as prohibited usury. They argue that contemporary financial systems have evolved to be more complex than in the past, thus requiring a more contextualised approach to understanding the law of usury. These scholars emphasise that bank interest is acceptable under Islamic law if it is treated as reasonable compensation for the financial services, administration, and risks taken by the bank. They also note that in today's global economic system, the function of interest as a monetary instrument for economic stabilisation and inflation control is the reason why bank interest can be considered a practical necessity rather than oppressive usury. According to Syafruddin, bank interest is not usury because it is basically a service issued or collected from funds to finance bank administration. Apart from not being able to find elements of extortion in the interest system, it is also because of the mutual willingness at the beginning of the contract between the two parties, namely the bank and the customer. This is different from usury, where there is no willingness on the part of the debtor.

In addition, scholars who allow conventional bank interest are often of the view that as long as the interest charged is not burdensome or oppressive to the borrower, it is justified.²⁰ They also consider that in some cases, the conventional banking system provides wider financial access to

¹⁹ L. Algaoud and M. Lewis, *Perbankan Syariah* (Jakarta: PT Serambi Ilmu Semesta, 2013).

²⁰ Wahid, "Bunga Bank Konvensional: Analisis Ulama Persepektif Ushul Fiqh."

the public, which in turn can improve general welfare. Therefore, these scholars propose that bank interest be understood as part of a dynamic economic reality, where its application should be adapted to the principles of social justice and balance taught in Islam, without ignoring the essence of the prohibition of usury. The scholars who justify bank interest because the bank is in a state of emergency or other reasons, they also say that neither bank fees nor interest are *riba*. So the existence of something as a tool is the same as the law with the original existence. In this case, the law of bank levies is the same as that of bank interest, which is permissible (it does not fall under the category of usury).²¹

Mutually contradictory opinions

Some scholars argue that conventional bank interest falls under the category of *shubhat*, which is an area where it is unclear whether it is *halal* or *haram*. They argue that although conventional bank interest has similarities to usury, its application may not fully fulfil the definition of usury which is expressly prohibited in the Qur'an and Hadith. Therefore, conventional bank interest is considered as *shubhat* due to the uncertainty or doubt in determining the law. These scholars emphasise the importance of prudence and prefer to avoid bank interest, as *shubhat* is a grey area that can bring one closer to acts prohibited by religion. The scholars also realise that in modern economic practices, it is difficult for some Muslims to avoid transactions involving conventional bank interest. Therefore, clerics must be realistic in dealing with daily economic challenges and continue to seek the best ways to resolve them in accordance with Islamic teachings.

Bank interest given by state-owned banks to their customers or vice versa is included in a case that looks like a business is a *syubhat* (neither *haram* nor *halal*). Muhammadiyah's opinion refers to the results of the Muhammadiyah Assembly Conference in Sidoarjo, East Java, which was decided in 1968: First, usury is prohibited by the sharia of the Qur'an and as-Sunnah. Second, banks with usury systems are *haram*, and banks

²¹ Wahid.

without usury are halal. Third, the interest given by state-owned banks to their customers or vice versa, is included in doubt (doubtful / shubhat). Fourth, advising the Muhammadiyah Central Leadership to try to realise the conception of the economic system, especially banking institutions, which are in accordance with Islamic principles.²²

Muhammadiyah states that usury, which is forbidden by religion, is the nature of interest that is always accompanied by elements of abuse of opportunity and oppression.²³ These scholars emphasise the importance of being cautious when transacting as shubhat is an unclear area that can lead one to do things that are prohibited in Islam. However, they also recognise the challenges of the modern economy which often make it difficult for Muslims to completely avoid engaging with conventional bank interest. Hence, they encourage the use of Islamic alternatives and limit engagement with the conventional system to truly urgent situations, while still endeavouring to maintain the principles of sharia in daily life.

Mudharabah at Islamic Bank Syariah

The definition of an Islamic bank itself is contained in Law No. 21 of 2008, which is a bank that conducts business based on sharia principles or Islamic legal principles that have been regulated in the fatwa of the Indonesian Ulama Council, such as the principles of justice and balance, benefit, universality, and do not contain gharar, usury, zalim, and haram objects.²⁴ Sharia banking offers several basic principles that must be carried out in the steps of running its operations. This is because Islamic banking must carry out its sharia activities by looking at certain elements, namely elements that are in line with the provisions of Islamic law and elements of legality as a financial institution. Shariah banks have two basic principles that are very important. First, the prohibition of conducting transactions or services that have haram elements in religious insight. This

²² Wahid.

²³ Nurul Mahmudah and Ririh Sri Harjanti, "Analisis Capital Adequacy Ratio, Financing to Deposit Ratio, Non Performing Financing, Dan Dana Pihak Ketiga Terhadap Tingkat Profitabilitas Bank Umum Syariah Periode 2011-2013," *Seminar Nasional Iptek Terapan* 1, no. 1 (2016): 134–43.

²⁴ Andrianto and M. Anang Firmansyah, *Manajemen Bank Syariah* (Jakarta: Qiara Media, 2019).

is also one of the basics in doing business, which is that there must be no harm in it. As for the provision of financing, Islamic banks are required to be able to ensure by surveying the halalness of the type of business assisted by this bank. In other words, in an Islamic bank, it is impossible to find financing for a business that is engaged in a field that has a clear MUI fatwa forbidding it, such as pig farming, alcohol, and pornography.²⁵ Second, the prohibition is based on the transaction of something that has been forbidden by the system and the procedure for obtaining profit. In addition to the prohibition of transactions whose substances are forbidden, Islamic banks also prohibit or forbid transactions that are forbidden by the system, such as *tadlis*, *gharar*, *bai' ikhtikar*, *bai' najasy*, *maysir*, and *usury*. That way, transactions in Islamic banks can be guaranteed to avoid forbidden profit procedures.

The purpose of establishing a bank that adheres to a sharia-based operational system is an effort to support the implementation of national development with the ideals of presenting the welfare of an evenly distributed, equitable, and jointly built society. . In addition, shariah banking also has three functions, namely first, collecting funds from the public which are usually in the form of deposits in the conception of *al-Waḍi'ah* contracts and in the form of investments using the concept of *al-Muḍarabah* contracts. Second, it functions as a distributor of funds to the community. Third, it functions to channel banking services to its customers.²⁶

Islamic banks were first established in the world pioneered by the formation of *Mit Ghamr* in 1963 in Egypt, a financial institution that operates with a profit sharing system. While the first establishment of Islamic banks in Indonesia was pioneered by the emergence of *Muamalat* bank in 1992.²⁷ In the Islamic bank system there are products in the form of funding, financing and services that have rules based on the MUI

²⁵ Andrianto and Firmansyah.

²⁶ Andrianto and Firmansyah.

²⁷ Adam Mukharilr Bachtiar, "Pengaruh Al-Qawaid Al-Ushuliyah Dan Fiqhiyyah Terhadap Perbedaan Pendapat Dalam Fikih (Studi Tentang Riba Dan Bank Syari'ah," *Et-Tijarie* 5, no. 2 (2018).

fatwa. The following is a table illustration of Islamic banking activities in funding, financing and service products:²⁸

**Table 1
Funding or Fund Raising**

No.	Products	Immediate
1.	Demand Deposit	<i>Wadi'ah Yad Dhammanah</i>
2.	Savings	<i>Wadi'ah Yad Dhammanah dan Mudharabah</i>
3.	Deposito	Mudharabah
4.	Special Deposits	Mudharabah Al Muqayyad

**Table 2
Financing or Distribution of Funds and Services**

No.	Products	Immediate
1.	Bailout Fund	<i>Qardh</i>
2.	Inclusion	<i>Musyarakah</i>
3.	Lease Purchase	<i>IMBT (Ijarah Muntahiyah Bit Tamlik)</i>
4.	Working Capital Financing	<i>Mudharabah, Musyarakah, Murabahah</i>
5.	Project Financing	<i>Mudharabah, Musyarakah</i>
6.	Agricultural Sector Financing	<i>Salam</i>
7.	Asset Acquisition Financing	<i>IMBT</i>
8.	Export Financing	<i>Mudharabah, Musyarakah, Murabahah</i>
9.	Factoring	<i>Hiwalah</i>
10.	Letter of Credit	<i>Wakalah</i>
11.	Garansi Bank	<i>Kafalah</i>
12.	Transfer	<i>Wakalah Dan Hiwalah</i>
13.	Social Loans	<i>Qarhdul Hasan</i>
14.	Securities	<i>Mudharabah, Qardh, Ba'i Al Dayn</i>
15.	Save Deposit Box	<i>Wadi'ah Amanah</i>
16.	Buy and Sell Forex	<i>Sharf</i>
17.	Pawn	<i>Rahn</i>

Analysis of Comparative Fiqh: Conventional Bank and Islamic Bank

The fiqh analysis of conventional bank interest shows that there are different views among scholars. The majority of scholars consider bank interest as *riba*, which is prohibited in Islam, as it causes injustice and economic exploitation. They argue that any addition to a debt without

²⁸ Edi Wibowo and Untung Hendy, *Mengapa Memilih Bank Syariah* (Bogor: Ghalia Indonesia, 2015).

productive contribution is considered unfair. However, some contemporary scholars argue that not all bank interest is *riba*, depending on the intention and application. They emphasise the importance of fairness in the modern economic system while seeking solutions that comply with *sharia* principles. The evolution of the concept of usury in the banking world is inseparable from financial institutions. Financial institutions arose because of the need for capital to finance industry and trade. The capital mainly came from the merchants (*shohibul maal*). Because, at that time the bankers generally came from traders while the pioneers of the founding of the bank were the Jews who were followed by the Italian natives.²⁹

In *fiqh*, “The original law in all forms or business of *muamalah* is allowed, unless there is evidence that prohibits it”.³⁰ Whereas basically all forms of transactions are *halal* and lawful, until there is evidence that changes the law of *halal* to *haram*. Of course this also applies to banking transactions that use the interest system, which is basically a *halal* transaction, unless there is another argument that can prohibit it. Now let's look at the next *fiqh* rule related to this, “Conviction cannot be lost by doubt”. Bank interest is a new case, there is no *shari'ah* or *saheeh* text that mentions it. Hence the scholars used the *qiyas* method to determine the ruling on bank interest as explained above. So, once again, the prohibition of bank interest does not come from the *sharih* and *shahih nash*, but from the *ijtihad* of the scholars using the *qiyas* method.

Banks are honourable institutions, and the interest system is the bank's way of controlling how money circulates in society. Even members of the public who have capital can be encouraged to leave their capital to be used and then the bank lends the funds to other members of the public who need business capital for a certain period of time. The loaned funds are usually used as business capital rather than to fulfil their consumptive needs. With this capital, the entrepreneur who borrows the funds will

²⁹ Buhari, “Bank Dan *Riba*: Implikasinya Dalam Ekonomi Islam.”

³⁰ Lukita Fahriana and J.M. Muslimin, “Penerapan *Al-Qawā'id Al-Uṣuliyyah* Dan *Al-Qawā'id Al-Fiqhiyyah* Dalam Kasus *Riba* Dan Bank *Syari'ah*,” *Jurnal Indo-Islamika* 10, no. 2 (2020): 92–106, <https://doi.org/10.15408/idi.v10i2.17527>.

benefit from the business financed by the bank.³¹ Banks are considered a way to avoid usury by removing the prohibited element. The usury prohibited in the Penal Code is the practice of lending money without a licence and without following the law. To achieve development goals, especially income equality and poverty eradication, it is important to understand how the conventional banking system operates. The negative impact of bank interest is usually felt in the long run and at the macro level. Therefore, Islamic banking should be a means of educating about the negative effects of bank interest and encouraging the development of the Islamic economic system.

The agreement used by Islamic banking is *mudharabah*. Financing that can be categorised into the superior products of Islamic banking.³² In addition, the *muḍārabah* contract is also related to the profit-sharing system. This system will distinguish it from bank interest in conventional banks. The following is a slightly more detailed explanation of *muḍārabah*. The pillars and conditions of *muḍārabah* according to the Shafi'i scholars include five elements: capital, work, profit, *sighat*, and two contracting parties. Most other scholars identify three pillars: the two contracting parties (*ṣāhib al-māl* and *muḍarib*), the subject matter of the contract (capital, work, and profit), and *ijab qabul* (submission and acceptance of capital). The capital requirements in *muḍārabah* include: the amount of capital is clear, the capital is in cash, and the capital is delivered to *muḍarib*. Profit requirements include: profit sharing is expressed as a percentage, agreed upon through negotiation, and profit is shared after the capital is returned.³³

Regarding whether bank interest is categorised as usury or not, there are some opinions that say that bank interest can be included in the type of usury *naṣi'ah*. On the other hand, with the existence of contracts in sharia banks, especially *muḍarabah* and *musyarakah* contracts, usury

³¹ Buhari, "Bank Dan Riba: Implikasinya Dalam Ekonomi Islam."

³² Sri Sudiarti, *Fiqh Muamalah Kontemporer* (Sumatra Utara: FEBI UIN-SU Press, 2018).

³³ Sudiarti.

transactions can be avoided. This is because in principle, both contracts require an agreement between the customer and the bank. The agreement emphasises a profit-sharing system (not a bank interest system), whereby if a business is profitable, the proceeds are shared between the customer and the bank according to mutual agreement. Meanwhile, if there is a loss, it will be borne together, according to which side the loss comes from. Thus, there is no element of mutualisation in a transaction, because everything has been regulated through a contract at the beginning of the transaction.³⁴

In this case there are many *al-Qawā'id al-Fiqhiyah* that underlie the problems of sharia banking problems, among others. One of the fiqh rules used in the issue of savings, deposits, and the approach of ushuliyah and fiqhiyah rules is important in assessing the products and contracts found in Islamic banks, such as: In Islamic banks, the contracts used in the distribution of funds in Islamic banks based on buying and selling, such as: *istisna* and *murabahah* usually use general rules, namely, "In transactions, the origin is permissible, until an argument is found that forbids it"³⁵

One of the fiqh rules used in *mudharabah* contracts in the context of guaranteeing the return of capital by the manager against the owner of the capital. *Mudharabah* is basically based on trust, therefore the owner of the capital may not ask the manager to guarantee the return of capital, the following rule, "Profit comes with risk or risk accompanies the profit".

By referring to the above rules, it can be understood that *Muḍārabah* has two interrelated nodes, namely between obtaining profits through a partnership system and a responsibility for the risks that may occur if a business fails. Failure in the concept of *Muḍārabah* itself is divided into two forms, first, if the failure is due to pure business competition, the loss is borne by the owner of the capital. And secondly, if the business loss is caused by an element of intent between the business

³⁴ Fahriona and Muslimin, "Penerapan Al-Qawā'id Al-Uṣuliyyah Dan Al-Qawā'id Al-Fiqhiyah Dalam Kasus Riba Dan Bank Syari'ah."

³⁵ Thalhah, "Kaidah Fiqhiyah Furu'iyah: Penerapannya Pada Isu Kontemporer," *Tahkim* 10, no. 1 (2014).

actors, then the compensation value for the existing loss is the responsibility of the business actors.³⁶

The fiqh rules that discuss murabahah in the context of forced withdrawal, the following rules, “An object cannot be withdrawn from someone's hands, except on the basis of a fixed law”. this rule is the basis for Islamic banks in implementing standard operating work by not forcibly taking customer goods due to late payments or arrears, unless they bring proof of fedusia certificate.³⁷

It can be concluded from the explanation above that as Muslims who are guided by the Qur'an and Sunnah it would be good for us to stay away from shubhat in all types of transactions and stay away from disputed transactions in order to behave ihsan in muamalah as the opinion of Sheikh al-Izz bin Abdussalam in his book syajaratul ma'arif wal ahwal, as follows:

Avoiding shubhat in all transactions. The Prophet SAW said, ‘whoever leaves shubhat then he has kept the world and his religion.’ The good of the world in the hadith includes buying and selling, especially buying and selling with people around must be careful in transactions. Stay away from transactions that are disputed. Rasulullah SAW said, ‘Leave what doubts you to get what does not doubt you.’³⁸

Legal Comparison: Advantages and Disadvantages of Both Systems and Implications for Customers and Banks. We can know the differences between the two systems as follows:³⁹

**Table 3
Interest and Profit Sharing**

Interest	Profit sharing
The amount of interest is fixed at the outset of the agreement and is binding on both parties to the agreement, with the assumption that the party receiving the loan will	Profit sharing is determined by a ratio agreed upon by the contracting parties, taking into consideration the possibility of profit and or loss.

³⁶ Iwan Permana, “Penerapan Kaidah-Kaidah Fikih Dalam Transaksi Ekonomi Di Lembaga Keuangan Syariah,” *Tahkim: Jurnal Peradaban Dan Hukum Islam* 3, no. 1 (2020).

³⁷ Sumarjoko and Hidayatun Ulfa, “Kaidah Fiqh Bidang Muamalah Mazhab Syafi’i (Kajian Teoritis Dan Praktik Serta Kehujjahannya,” *Jurnal Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 6, no. 1 (2019).

³⁸ Sumarjoko and Ulfa.

³⁹ Fhriana and Muslimin, “Penerapan Al-Qawā’id Al-Uṣuliyah Dan Al-Qawā’id Al-Fiqhiyah Dalam Kasus Riba Dan Bank Syari’ah.”

always make a profit.	
The amount of interest received is based on the calculation of the percentage of interest itself multiplied by the amount of funds lent.	Profit sharing, the amount is calculated on the ratio that has been made in the agreement then multiplied by the amount of income and or results obtained.
The interest received will always remain fixed, even if the lending business goes up or down.	The amount of profit sharing is influenced by the amount of income and or profit earned. This profit sharing is also fluctuating
The interest system is unfair because it is not related to the results of the borrower's efforts.	Sistem dalam bagi hasil terbilang adil karena perhitungannya atas prosentase hasil usaha.
Interest is questionable from the perspective of all religions.	All religions agree on the permissibility of profit-sharing systems.

D. Conclusion

Based on legal analyses and fiqh perspectives, a key recommendation for conventional banking systems in Muslim-majority countries is the need for a more inclusive approach to the development of Islamic banking. While some scholars equate conventional bank interest with prohibited *riba*, a more flexible contemporary view suggests that interest may be acceptable if it fulfils conditions of economic justice. Given this divergence of views, it is necessary to formulate operational guidelines for conventional banking that can minimise the element of injustice, as well as encourage the use of Islamic banking models that offer usury-free alternatives. Conventional banks should also consider implementing profit-sharing-based financing models, such as *mudharabah* and *musyarakah*, to create a financial system that is in line with Islamic principles of justice, while encouraging Islamic financial literacy in the community.

Based on Sharia law, the profit-sharing system in Islamic banks involves the sharing of profits based on the customer's business income. However, according to different people's views, there is an opinion that the interest system in conventional banks is considered a generally accepted business practice, but in Islamic law it is still considered as usury which is prohibited. The majority of scholars consider bank interest as usury which

is prohibited in Islam because it causes economic injustice. However, some contemporary scholars see that not all bank interest is classified as usury, depending on the intention and application. The importance of fairness in the modern economic system is a major concern, with attempts to find solutions that are in accordance with sharia principles. The evolution of the concept of usury in banking is closely linked to the need for capital initiated by merchants, where financial institutions developed to fulfil this need. In the context of economics and Sharia law, it can reflect that it is important to choose a financial system that is fair, transparent, and in accordance with the principles of Islamic values.

References

- Al Amin, Muhammad NK, Agung Abdullah, Fattah S Santoso, Muthmainnah Muthmainnah, and Cipto Sembodo. "Metode Interpretasi Hukum Aplikasi Dalam Hukum Keluarga Islam Dan Ekonomi Syariah." *Asas Wa Tandhim: Jurnal Hukum, Pendidikan Dan Sosial Keagamaan* 2, no. 1 (December 2023): 15–36. <https://doi.org/10.47200/AWTJHPSA.V2I1.1347>.
- Algaoud, L., and M. Lewis. *Perbankan Syariah*. Jakarta: PT Serambi Ilmu Semesta, 2013.
- Andrianto, and M. Anang Firmansyah. *Manajemen Bank Syariah*. Jakarta: Qiara Media, 2019.
- Bachtiar, Adam Mukharilr. "Pengaruh Al-Qawaid Al-Usuliyah Dan Fiqhiyyah Terhadap Perbedaan Pendapat Dalam Fikih (Studi Tentang Riba Dan Bank Syari'ah." *Et-Tijarie* 5, no. 2 (2018).
- Buhari, A.Taufiq. "Bank Dan Riba: Implikasinya Dalam Ekonomi Islam." *Jurnal Al-Insyiroh: Jurnal Studi Keislaman* 6, no. 1 (2020): 127–36. <https://doi.org/10.35309/alinsyiroh.v6i1.3824>.
- Efendi, Jonaedi, and Johnny Ibrahim. *Metode Penelitian Hukum: Normatif dan Empiris*. Jakarta: Prenada Media, 2018.
- Fahriana, Lukita, and J.M. Muslimin. "Penerapan Al-Qawā'id Al-Uṣuliyah Dan Al-Qawā'id Al-Fiqhiyah Dalam Kasus Riba Dan Bank Syari'ah." *Jurnal Indo-Islamika* 10, no. 2 (2020): 92–106. <https://doi.org/10.15408/idi.v10i2.17527>.
- Gitama, Gytha Nurhana Dhea Praadha, Suwandi Suwandi, Sudadi Pranata, and Turini Turini. "Analisis Perbandingan Rasio Bunga Antara Bank Konvensional Dan Bank Syariah (Studi Kasus Pada Bank Mayapada Dan Bank Muamalat." *Jurnal Digit* 12, no. 2 (2022). <https://doi.org/10.51920/jd.v12i2.292>.
- Kartawinata, Budi Rustandi, Wijayangka Candra, and Muhammad Hasan Rabbani. "Analisis Perbedaan Revenue Bunga Bank Konvensional Dengan Bagi Hasil Bank Syariah." *Economy and Bussiness* 1, no. 3 (2019): 196–202.

- Kasdi, Abdurrahman. "Analisis Bunga Bank Dalam Pandangan Fiqih." *Iqtishadia: Jurnal Kajian Ekonomi Dan Bisnis Islam STAIN Kudus* 6, no. 2 (2013): 319–42.
- Latifah, Eny, and Rudi Abdullah. "Hukum Ekonomi Syariah Atas Bunga Bank." *JIDE: Journal Of International Development Economics* 01, no. 02 (2022): 102–16.
- Lubis, Muhammad Arif Fadhillah, and Muthmainnah Muthmainnah. "Systematic Literature Review Tentang Loyalitas Nasabah Bank Syariah Di Indonesia." *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 13, no. 2 (September 5, 2023): 237–48. <https://doi.org/10.47200/ulumuddin.v13i2.1856>.
- Mahmudah, Nurul, and Ririh Sri Harjanti. "Analisis Capital Adequacy Ratio, Financing to Deposit Ratio, Non Performing Financing, Dan Dana Pihak Ketiga Terhadap Tingkat Profitabilitas Bank Umum Syariah Periode 2011-2013." *Seminar Nasional Iptek Terapan 1*, no. 1 (2016): 134–43.
- Mawadah, Sokhikhatul, and Tria Pibriani. "Implementasi Wakalah Pada Surat Kredit Berdokumen Dalam Negeri Di Perbankan Syariah." *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 12, no. 2 (December 2022): 285–304. <https://doi.org/10.47200/ULUMUDDIN.V12I2.1372>.
- Mestika, Zed. *Metode Penelitian Kepustakaan*. Jakarta: Yayasan Pustaka Obor Indonesia, 2014.
- Permana, Iwan. "Penerapan Kaidah-Kaidah Fikih Dalam Transaksi Ekonomi Di Lembaga Keuangan Syariah." *Tahkim: Jurnal Peradaban Dan Hukum Islam* 3, no. 1 (2020).
- Rahman, Miftahur, and Defi Widayanti. "Pengaruh Pembiayaan Bank Wakaf Mikro Terhadap Peningkatan Kesejahteraan Ekonomi Nasabah." *Nuansa Akademik: Jurnal Pembangunan Masyarakat* 6, no. 2 (August 2021): 139–54. <https://doi.org/10.47200/jnajpm.v6i2.886>.
- Santoso, F. Setiawan. "Pola Pembiayaan Modal Ventura Di Indonesia, Ekplorasi Bagi Upaya Pengembangannya Di Ekonomi Syariah." *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 5, no. 2 (2015): 38–50.
- Sudiarti, Sri. *Fiqh Muamalah Kontemporer*. Sumatra Utara: FEBI UIN-SU Press, 2018.
- Sumarjoko, and Hidayatun Ulfa. "Kaidah Fiqh Bidang Muamalah Mazhab Syafi'i (Kajian Teoritis Dan Praktik Serta Kehujjahannya." *Jurnal Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 6, no. 1 (2019).
- Susana, Erni, and Annisa Prasetyanti. "Pelaksanaan Dan Sistem Bagi Hasil Pembiayaan Al-Mudharabah Pada Bank Syariah." *Jurnal Keuangan Dan Perbankan* 15, no. 3 (2011): 466–78.
- Thalhah. "Kaidah Fiqhiyah Furu'iyah: Penerapannya Pada Isu Kontemporer." *Tahkim* 10, no. 1 (2014).
- Wahid, Abd. "Bunga Bank Konvensional: Analisis Ulama Persepektif Ushul Fiqh." *Saujana: Jurnal Perbankan Syariah Dan Ekonomi Syariah* 3, no. 01 (2021): 71–85. <https://doi.org/10.59636/saujana.v3i01.35>.

- Wibowo, Edi, and Untung Hendy. *Mengapa Memilih Bank Syariah*. Bogor: Ghalia Indonesia, 2015.
- Witro, Doli. "Nilai Wasathiyah Dan Harakah Dalam Hukum Ekonomi Syariah: Sebuah Pendekatan Filosofis Sikap Dan Persepsi Bankir Terhadap Bunga Bank." *Al-Huquq: Journal of Indonesian Islamic Economic Law* 3, no. 1 (2021): 14–33. <https://doi.org/10.19105/alhuquq.v3i1.4570>.
- Zulkifli, Sunarto. *Dasar-Dasar Akuntansi Perbankan Syariah*. Jakarta: Zikrul Hakim, 2013.

**Lutfiyah, NS. Kahfi, NM Fatmawati,
MAR. Hakim, M. Fanani**