

Reconstructing the Characters of Mudharabah Contract in the Formation of Limited Liability Companies in Indonesia, Brunei Darussalam, and Malaysia

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ABSTRACT

This research is motivated by the fact that the forms of business entities in Indonesia, Brunei Darussalam, and Malaysia do not currently accommodate a company system based on the provisions of Islamic law. Instead, they still rely on agreements underlying the parties involved in business activities that revolve around a particular product. The integration of sharia principles in the contract to establish a business entity shows superior values that can be used as guidelines for company management based on sharia principles in Indonesia, Brunei Darussalam, and Malaysia. This research aims to find the characteristics of *syirkah mudharabah* contracts that can be used to develop cooperation in agreements to establish limited liability companies. This paper uses normative research methods with a conceptual approach to statutory interpretation. The results of this research show that the characteristics of the *syirkah mudharabah* contract in establishing a limited liability company include four aspects, including the legal subject or position of the parties in establishing the limited liability company, management of business capital, distribution of profits and losses from collaboration results, and capital



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owners responsibility of limited liability company. This research contributes novel findings related to the contracts used in establishing limited liability companies to make them more effective and in line with current sharia business conditions.

Keywords: *Reconstruction; Characteristic; Syirkah Mudharabah; Limited Liability Company*

INTRODUCTION

Sharia economic law continues amidst economic development at the national level and increasing public confidence in various aspects of life. This belief is based on legal sources, and sharia economics is Islamic law. The actual manifestation of Islamic law is an overview of Islamic thought that governs the Muslim way of life and the essence of Islam itself (Ilahi, 2022). Thus, Sharia economic law cannot be set aside in Indonesia's national legal development system (Kasim, 2021). There is no exception in forming internal business entities from a limited liability company (LLC). This legal entity in the form of an LLC has been widely applied to distributor businesses, trading businesses, financial institutions, businesses, and mining businesses whose operations at home and abroad range from small to large scale (Binoto, 2009).

Citing data collected by the National Sharia Council – Majelis Ulama Indonesia (DSN-MUI, *Dewan Syariah Nasional – Majelis Ulama Indonesia*) on its website, there are 518 based companies in sharia. This data includes Sharia People's Financing Banks (BPRS), Sharia Commercial Banks, Sharia Insurance, Sharia Commercial Bank Business Units, Venture Capital, Sharia Pawnshops, Pension Fund Management (DPLK Syariah), Sharia Money Issuance, Fintech, Sharia Hospitals, Hotels Sharia, insurance brokers, Sharia Capital Markets, Sharia Cooperatives, and online trading (DSN-MUI, 2023). This matter proves that the growth of the halal climate in Indonesia is increasing quite rapidly. Several factors drove this increase; the first factor is the large number of Muslims; the second factor is that people are also increasingly aware of the consumption of halal products; the third factor is the government has various strategies and programs to develop halal products and services for the community (Kementerian Perindustrian, 2023).

Furthermore, Bank Indonesia has estimated that the Halal Value Chain (HVC) priority sectors in the country, including the halal food and beverage sector, the agricultural sector, sharia tourism, and the Muslim fashion sector in 2023, will grow by 4.5% - 5%. These sectors can also support the national

economy by more than 25% (Kementerian Perindustrian, 2023). In addition, Sharia Financial Services Institutions (LJK, *Lembaga Jasa Keuangan*) are also encouraged to participate in improving products and services so that they are highly competitive and capable of meeting the needs of the halal industry (Susanti, 2022).

The halal industry trend does not only exist in Indonesia but also in Brunei Darussalam. This country is aggressive in responding to many requests in the halal market. Brunei Darussalam views this halal industry as having huge potential in the economy. This country began to improve “policies, infrastructure, and the development industry” to respond to this potential (Raffi, 2020, p. 104). Various entities serve as monitors and play different roles in developing this halal industry, including the Brunei Islamic Religious Council (MUIB, *Majlis Ugama Islam Brunei*), Ministry of Health, Halal Food Control Division, and Royal Customs and Excise Department (Raffi, 2020, p. 97). Besides that, Brunei Darussalam also has “comprehensive standards” that are useful for meeting the needs of the halal industry both on a local and international scale (Deuraseh, 2019, p. 1). Sharia banking is also paramount in this country, and it is currently experiencing development. This is proven by the rapid growth of sharia banks in Brunei Darussalam. Development of Islamic banking began in September 1990 in a speech government at the Meeting of MUIB (Ghozali et al., 2019, p. 50)

Trends in the halal industry in Indonesia, Brunei Darussalam, and Malaysia in their application still need improvement. This improvement could take the form of establishing an LLC as an internal industry institution. In Indonesia, the establishment of an LLC, or *Perseroan Terbatas* in Indonesia, is still being adopted by provisions in Law Number 40 of 2007 concerning Limited Companies. As for Brunei Darussalam, the offering is blessed with companies in the form of individual companies, cooperatives, partnerships, civil and LLC or *Syarikat Sendirian Berhad* (Sdn. Bhd.), or what are usually called regulated by one statutory regulation, namely the companies. This regulation has been amended 19 times (Prabowo, 2022, p. 1284)

A similar thing also happened in Malaysia. Based on the results of a report from Global Islamic Economy in 2020, Malaysia occupied a high position in several sectors. The acceleration of halal standardization cannot be separated from the awareness of the community in capturing market potential from the producer or company side (Jaswir et al., 2023, p. 115). However, until now, halal certification in Malaysia has been voluntary and is completely handled by the Department of Islamic Development

Malaysia (JAKIM, *Jabatan Kemajuan Islam Malaysia*). The existence of this institution is the key to the successful development of the global halal industry (Afwā & Sulistyowati, 2023, p. 70). The Malaysian government firmly supports the existence of sharia banks. Ninety percent of the capital is provided, while the rest is from the general public. Apart from that, the role of internal management banking, including marketing management tasks. This has a direct effect on the increase in total savings and loans provided to consumers, good Muslims, and non-Muslims, based on Islamic principles (Afwā & Sulistyowati, 2023, p. 69).

Until now, no business entity has been found based on company systems such as *Shirah*, which have various shapes. The consequences of not fully understanding (kaffah) sharia principles on business activities or business activities, for example, in sectors of financial institutions that still use existing business entities. Existing business entities still need to accommodate a company system based on sharia regulations but remain based on contracts, which underlie the parties in business activities that revolve around a product. In particular, the regulatory system still needs to touch on business entities. Meanwhile, in Malaysia, two main legal bases are used, namely: Islamic Banking Act (IBA), which specifically regulates sharia banking and the application of Islamic teachings in the banking business as well as the Banking and Financial Institutions Act (BAFIA) 1989 (Afwā & Sulistyowati, 2023, p. 73).

Business activities do not only rely on products in business activities but must also involve forming an institutional agreement, meaning that the business entity and its governance must be in comprehensive unity according to the principles of sharia. This is like Sharia Banking, where Article 2 of Law Number 21 of 2008 concerning Sharia Banking (Sharia Banking Law). The regulation explains that the basis of business activities in sharia banking is sharia principles, people's economics, and the principle of prudence. However, sharia banking regulations indicate that the form of legal entity is a company limited. This principle also extends to other sharia-compliant financial entities.

In Indonesia, LLCs are based on sharia principles as stated in Article 109, paragraphs (1), (2), and (3) of Law Number 40 of 2007. In this regulation, a Sharia Supervisory Board (SSB), an expert in the field of law, is required. Islam. Those who can provide recommendations to the SSB are the MUI or at the GMS meeting. The SSB will provide direction and guarantee compliance

with sharia principles. Based on this, it appears that LLC regulations still need to accommodate agreements to form business entities, especially for businesses based on sharia. Meanwhile, Brunei Darussalam still needs specific regulations regarding establishing a sharia-based LLC system.

That concept is needed for an LLC whose establishment is primarily based on appropriate business activities with Sharia principles; one of them is establishing an LLC based on a *syirkah mudharabah* agreement. *Syirkah* is a cooperative agreement between two or more people with expertise, capital, or trust to carry out a business with profit sharing based on a ratio agreed upon by the parties involved (Mahkamah Agung Republik Indonesia Direktorat Jenderal Badan Peradilan Agama, 2011). Meanwhile, *mudharabah* is the agreement between capital owners and capital managers, and the profits obtained are a right from both parties adjusted by mutual agreement. At the same time, risks in the form of losses are borne by one of them, the party that owns the capital. Related to this, the exception is when the manager causes a loss; the one who must be responsible is the capital manager (Susanti, 2022).

It is necessary to understand that the implementation of shirkah, including shirkah mudharabah, in an LLC business entity is undoubtedly not a single perspective, as it involves several aspects and distinctions. This view further adds to the treasures of analysis of the existence of shirkah amidst the remaining needs of modern business systems problems until the business reform becomes open towards sharia principles as alternative values, principles, and norms give hope for the realization of economic justice in society. Based on this, integrating Sharia principles through the *syirkah mudharabah* contract in the agreement to establish a business entity such as a Company Limited shows the value of excellence that can be adopted and is practised as a company managed based on sharia principles. On the other hand, the majority of Indonesian people are Muslims. This is in line with economic actors who are also Muslims. This fact is an opportunity to apply sharia business law in running the economy, starting from business entity establishment agreements to alternative dispute resolution.

Previous research on LLCs in Indonesia, Brunei Darussalam, and Malaysia has carried out this. Prabowo (2022) stated that the legal forms of companies in Indonesia and Brunei Darussalam have differences. This difference is due to the different legal systems adopted by the two countries. Indonesia adheres to the civil law system, whilst Brunei Darussalam adheres to common law (Prabowo, 2022, p. 1292). These legal systems also vary, resulting in variances in the legal structures of partnerships in these two

countries. Victoria (2021) provided a clear explanation of the notion of a limited liability partnership in Indonesia, also known as a limited partnership, which is not prohibited by law. Meanwhile, in Brunei Darussalam, it is known as the limited form liability partnership, whose company form is a legal entity (Victoria, 2021, p. 1001). The three studies above have explained the legal system in Indonesia, Brunei Darussalam, and Malaysia. These differences also give rise to differences in the legal form of the company. Although this comparative study has been done before, the use of syirkah mudharabah contracts in the formation of LLCs in Indonesia, Brunei Darussalam, and Malaysia has yet to be studied.

Based on the background and previous studies above, interesting legal issues will be analyzed in this scientific paper: What are the characteristics of the syirkah mudharabah contract on the stand LLCs in Indonesia, Brunei Darussalam, and Malaysia?

LITERATURE REVIEW

The suitability of a contract for syirkah mudharabah with sharia business conditions in the form of an LLC is determined by its adherence to the principles of capital and the equitable distribution of profits and losses. This contract can stand alone and is permitted to be practiced in Islam. Shirkah can be interpreted as *ikhtilah* (mixing) of one asset with another, so distinguishing between them is difficult (Hadi, 2019). Lexical correlation shirkah refers to a deliberate and lawful partnership or collaboration between two or more individuals who collaborate with the aim of generating profits (Saripudin, 2018). It can be concluded that shirkah is a collaboration carried out by two people or more than that number to carry out mutual business, where each party makes a contribution that can be assessed as capital. The profits and risks of the business are shared as agreed by the parties. (Gufron & Fahmiyah, 2019) A similar definition is also regulated in Indonesian positive law Article 20 point 3 of the Compilation of Sharia Economic Law.

Several fiqh scholars define syirkah. According to Malikiyah Ulama, syirkah is a cooperation between two people on property permitted by law (Sulaiman, 2006). In line with the definition of Syafi'iyah Ulama, Hanabillah Ulama also defines syirkah as the right a person has legally to carry out actions mutually agreed upon. On the other hand, Hanafiyah Ulama defines syirkah as being left behind and carried out by people working together for capital and profit (Susanti, 2022).

Besides *shirkah*, *mudharabah* also means cooperation. However, in this context, one party plays the owner of capital (*shahibul mal*), and the other is the manager (*mudharib*) to make a profit (Muhamad, 2017). In line with this meaning, *mudharabah* is also interpreted as an inter-profit sharing agreement *shahibul mal* by providing 100% capital, which is then handed over to *mudharib* to be managed on the condition that the profits generated will be shared according to the agreement in the contract (Hermawan, 2014).

Based on the definition of *syirkah* and *mudharabah* above, *syirkah mudharabah* can be interpreted as a cooperation agreement between two or more parties to conduct business. The first party acts as *shahibul maal*, and the second party is *mudharib* (party who has work skills), which can be more than one *mudharib*. Apart from that, *mudharib* is also permitted to act as *shahibul maal* with conditions based on the agreement of the parties.

The provisions above, when related to the current conditions of contemporary Sharia business with the legal entity of an LLC, require honest management and open concern and cooperation between capital owners and business actors to realize economic justice. This agreement requires equality and justice between the parties. The position of *mudharib* and *shahibul maal* is the same. *Shahibul maal* is not limited to investing in assets but can also provide expertise. The development of this collaboration must be based on principles and provisions of *fiqh muamalah* so that it is more effective and can be by contemporary sharia business conditions in its establishment of an LLC, one of which can be realized by implementing a *mudharabah* contract.

Referring to the explanation as outlined above, the characteristics of the *syirkah mudharabah* contract as a model for developing cooperation in the management of an LLC can be found in the elements of *syirkah mudharabah* contract, which include: legal subjects, business capital, and distribution of profits and losses.

RESEARCH METHOD

In order to address the topic at hand, this research uses doctrinal normative legal research methods to provide a detailed and sequential (coherent) description while analyzing several laws, regulations, and other legal sources (Susanti, 2022). This research examines several regulations and legislation relating to company establishment limited based on the *syirkah mudharabah* contract. Two approaches are employed in this research: the legislative regulation or statutory approach, which examines regulations pertaining to

the formation of limited liability companies and syirkah mudharabah, and the conceptual approach, which explores the perspectives and doctrines that have emerged in sharia and legal sciences regarding contracts in the field of shirkah mudharabah. Through this approach, the essential characteristics of syirkah mudharabah that support the establishment of an LLC can be identified (Marzuki, 2017).

RESULTS AND DISCUSSION

Characteristics Syirkah Muharabah Agreement in the Establishment of the Limited Liability Company

1. The subject of limited liability company law

A limited liability company (LLC) is a capital partnership legal entity that was established based on an agreement (Article 1 of Law No. 40 of 2007 regarding Limited Liability Companies), established by two or more people in front of a notarial deed with Indonesian language agreement (Article 7). From these clauses, it is evident that the business was established by the founders by mutual consent, where they mutually commit themselves to forming the firm (Harahap, 2011). Based on the provisions of the agreement, Article 1338 paragraph (1) of the Civil Code and Article 1320 of the Civil Code, the agreement is binding to the parties. In establishing an LLC, the founders are required to present and sign the deed of company establishment before a notary. The LLC has achieved legal status through confirmation from the Minister of Law and Human Rights. Subsequently, the founding status transitions into that of a shareholder, as stipulated in Article 7, paragraph (2) of the Limited Company Law. This transition is subject to the conditions fully regulated by the LLC law in Indonesia (Bahari, 2010).

Meanwhile, in Brunei Darussalam, the company is called company. The regulations regarding this company are set out in Companies Act Chapter 19, the contents of which regulate limited liability companies and individual companies, cooperatives, and civil partnerships. Based on Article 2, a company in Brunei Darussalam can be defined as a company with entity status law or registered in applicable law, so the Constitution protects all matters relating to the company. Furthermore, the conditions for establishing this company have been arranged in Article 4, paragraph 1 of the same law. The article states

that establishing a limited liability company requires seven or more shareholder members to establish a company (public company) or with two or more shareholders to set up a private company. Next, verse 2 explains that the company has obligations towards its members; the limit is on a predetermined memorandum amount, a memorandum with the amount that each can contribute to the company's assets if one day it closes, or companies that have limits on the responsibilities of their members.

In Malaysia, the term is called a partnership or what could be called an alliance. This partnership is a company founded or owned by two or more people called "allies". This type of business is usually more suitable for professional companies or firms. Similar to a sole proprietorship, only Malaysian citizens can register for this partnership company. Limited Liability Partnership (LLP) is a combination of a partnership with an LLC or *Sendirian Berhad* (Sdn. Bhd.) in Malaysia. An LLC is a company whose entity is separate from the company holder, where the company can be said to be a "legal person" who can make its own contracts or transactions, pay taxes, sell property, and sue or be sued in court. Based on the Malaysian Partnership Act 1961, it is explained that "Partnership is the relationship which subsists between persons carrying on business in common with a view of profit."

There are distinct differences between legal systems in Indonesia and Brunei Darussalam. Indonesia employs a legal system based on civil law, whilst Brunei Darussalam follows a legal system based on common law. Meanwhile, the legal system of Malaysia is based on the common law legal system as well. The legal system utilized in operating an LLC is influenced by variations in legal systems. Indonesia employs a two-tier system based on the LLC Law, which entails a division of authority between company management and supervision. Conversely, Brunei Darussalam adopts a one-tier system, wherein the board of directors performs management and supervision functions (Prabowo, 2022, p. 1287). Meanwhile, in Malaysia, the legal entity is separate from its partners, resulting in management being exempt from the stringent procedures associated with a legal entity.

The legal subject of LLCs in Indonesia consists of General Meetings of Shareholders (GMS), directors, and board of commissioners (*Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, 2007., Article 1 Number 4*). The GMS is a legal entity whose authority is not

delegated to the board of commissioners or directors within the limits set out in statutory regulations and/or in the articles of association. (*Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, 2007.*, Article 1 Number 4). The second LLC organ is the board of directors. The Board of Directors is a company organ that is authorized and responsible for managing the company in the interests of the company, according to its objectives, and acts as the company's representative both inside and outside the court as stipulated in the articles of association (*Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, 2007.*, Article 1 Number 4). The final organ is the board of commissioners, whose task is to carry out general and/or special supervision in accordance with the articles of association. Apart from that, the board of commissioners is also tasked with providing advice to the directors (*Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, 2007*, Article 1 Number 4).

Unlike the legal subject of LLCs in Indonesia, the legal subject of PT in Brunei Darussalam consists of the board of directors and general meeting (GMS). This GMS is regulated in detail in Article 111 Companies Ach Chapter 39. This article explains the implementation of general meetings. As regards summons to meetings, they are regulated in Articles 113A and 113B. Furthermore, Article 114 regulates the quorum results to fulfill the general meeting (Prabowo, 2022, p. 1291). The final organ is the board of directors. According to Article 138 of the Companies Act Chapter 39, a private company is required to have a minimum of two directors, with one of them being a citizen of Brunei Darussalam. Additionally, the functions and obligations of directors are governed by Articles 141 E to G (Prabowo, 2022, p. 1288).

Meanwhile, the legal subject of LLC in Malaysia is regulated in the Companies Act 1965 Section 14 ss (1), which explains that a company can be established by two or more people with purposes that do not conflict with the law. The party listed in the Articles of Association as the company's first secretary must make or propose a letter to the registrar that they have fulfilled and complied with all provisions regulated by the Companies Act 1965 and provided all the necessary information. The registrar will receive this statement document as proof of compliance. Meanwhile, each promoter of a prospective company must make and propose to the Registrar and Official Receiver a statement that he will not take any action contrary to the provisions of Section 125 and Section

130 of the Companies Act 1965.

The establishment of LLCs in Indonesia, Brunei Darussalam, and Malaysia can be analyzed from the point of view of the *shirkah mudharabah* contract. In this contract, the legal subject is the *shahibul maal*, who acts simultaneously as a shareholder and *mudharib*. The *mudharib*, who possesses expertise in capital management, also serves as a director; thus, *mudharib* plays a crucial role in significantly determining the success or failure of a business. It seems that the existing *mudharib* is an independent subject who shares the same position with *shahibul maal* both before the contract, during the contract, and after the contract was implemented this is a reflection of the internal justice *syirkah mudharabah* contract.

The position of internal shareholders is the same as that of the company owner, while *mudharib* is limited to daily administrators appointed at the GMS receive the wages and bonuses that have been received and determined. This means that these *mudharibs* are not paid based on dividends (profit) company. This is when examined from the perspective of the *syirkah mudharabah* agreement. The directors with their expertise capital (*ra'sl maal bil `amal*) have the right to get a share profit or dividends according to the ratio agreed at the beginning stated in the Articles of Association (AD) of the LLC business entity.

Furthermore, in the perspective of *syirkah mudharabah*, the owner of capital is a legal subject who is capable, according to sharia, has assets/tools exchange/money, and understands the company's workflow but does not have the expertise to develop their assets in the form of business. This definition differs for *mudharib*, who are referred to as parties with expertise in running a business so that business collaboration in generating profits per the plan has been set. *Mudharib* has an obligation as a business manager who seeks to gain profits from business activities planned as agreed in the contract (Bintarto & Setiawan, 2021).

Shirkah mudharabah is a contract of mixing property (*amwal*) and expertise (*abdan/'amal*). The main distinctions for developing an LLC mostly depend on the role of the management, who serves as a director rather than a shareholder and has the ability to invest in the company with the consent of the owner of the capital. The success of a business depends significantly on *mudharib* skills. Another aspect to

consider is that an LLC has no profit-sharing provision between the owners' capital and the managers (directors). The managers are only allowed to receive a salary (*ujrah*) as defined. The board of directors is responsible for overseeing the organization's management.

The explanation above is analyzed based on the *shirkah mudharabah* contract. Then, the directors should have a share of the profits or dividends according to the agreed-upon and entitled ratio instead of receiving a salary. This is applicable even if there is a contract of agency (*Wakalah*) between the investor and the manager because the *syirkah mudharabah* contract is a mixture of asset and expertise capital, forming the contract's essence. Justice in the LLC will be achieved by providing a portion of profits (dividends) to the board of directors.

Furthermore, in the study of classical jurisprudence, the subject of law in LLC is known as *al-mahkum `alaih*, which denotes the individual who is responsible for fulfilling legal obligations or burdens (*mukallaf*). At the level of the word "mahkum alaih," the individuals whom God requires for all of His acts are determined according to God's instructions. Thus, the legal subjects in this case are only people per person (*natural person*), the concept of which is regulated in QS. Al Baqarah: 286 confirms that Allah does not burden anyone but according to their ability. There is a guarantee of top rewards for his efforts, and he did not suffer punishment for the crimes committed.

This definition differs from Western civil law, which recognizes legal subjects as parties with authority against all rights and obligations given by law for carrying out legal actions, both in court and in court social life. The subjects of this law include humans (*natural persons*) and legal entities (*right person*) (Santosa, 2019). An LLC can also be called a shareholder association. This legal entity has the authority to receive, hold, and transfer property. Apart from that, it also has the authority to sue and carry out several other authorities granted.

Abdul Kadir Muhammad explained that humans are legal subjects in the biological sense as social creatures. At the same time, body law is a legal subject in the juridical sense as an internal phenomenon. Social life, a human creation based on a legal entity, has rights and obligations like humans' personal (Prananingrum, 2014). About companies, legal entities can have their wealth, participate in legal traffic through their administrators, and be sued before the court.

The legal entity status of an LLC here can be an entity manager (syakhsh mutasarrif) who can collaborate with the manager with the expertise to run a company. In this case, the founder or owner shares the election or appointment of directors (mudharib) using a wakalah contract. It is a legally binding agreement that transfers the rights and responsibilities of a job from one individual to another, where the position is replaceable (Sagaf, Guawan, 2021). This means that the owner of the LLC delegates the duties of managing the company to the directors to manage or regulate company activities with wakalah contracts based on syirkah mudharabah. Companies can use contracts ijarah between directors and employees until the officers under the board of directors receive a salary for their work.

2. Limited Liability Company Capital

Limited liability companies have capital stated in the company's articles of association or deed of establishment, which is called authorized capital. They are divided into shares or holdings (shares, shares, stock), which are entered and paid for by the shareholders or investors as company members (Wardhana, 2019). In Indonesia, there are three company types, including authorized capital, issued capital, and capital in deposit, as regulated by the LLC Law.

Authorized capital (nominal capital) is the total nominal value of the shares in the company (Raharjo, 2009), and it is mentioned in the Articles of Association. It is divided into value shares, definite nominal, and issued capital, which is contributed by the founders or shareholders to pay or deposited into the company's cash. The nominal capital capacity becomes the obligation of the founders or shareholders concerned to pay it off. This amount must be paid in full before the Minister of Law and Human Rights ratifies the Deed of Establishment. Deposit capital can be made in various forms, including tangible or intangible objects, which can be assigned a monetary value. On the other hand, share capital must be paid in a non-monetary form, along with a detailed explanation of its value, price, type, status, location, and any other relevant information.

As regulated by law, the company's capital. The entire limited liability consists of shares or originates from the issuance of shares. There are different definitions of capital and shares. Capital means

the amount of funds paid into the LLC's treasury corresponds to the nominal value of the shares (Dharma Pura & Budiana, 2020). Individuals or groups who invest money into the treasury of a Limited Liability Company receive evidence of their investment in the form of shares. In other words, stocks are letters of proof of capital participation and company ownership based on capital deposited so that someone or several people have the right to make a profit.

The rules related to capital in Brunei Darussalam are regulated in Article 114 of the Companies Act Chapter 39. The article states that in order to achieve a quorum at a meeting, the company must make prior arrangements. This requires the presence of at least two or more members who collectively hold no less than one-tenth of the share capital issued. If the company does not have a share capital, then a minimum of 5% of the total number of company members must be present to hold meetings. Moreover, in the situation of a two-member private corporation, as opposed to a three-member public company, this individual should physically present to constitute a quorum. The selection of the chairperson can be conducted by a vote by the members who are currently present. In companies that initially have share capital, each member will have one vote concerning each share or each \$100 of shares held, and in other cases, each member will have one vote.

Meanwhile, limited company capital in Malaysia is in the form of share capital. This is stated in the Companies Act 1965. The founders of the company make a memorandum stating that they agree to form a company, with the agreed capital of the company and the nominal number of shares determined for each.

The importance of the capital position in the company is business continuity; the syirkah mudharaabah contract calls it shahibul maal. Namely, the required asset-based business capital in the form of money or goods whose amount is straightforward, cash, or has been estimated the price at the time of the contract if it is in the form of goods. Capital is not included in debt because the circumstances are unclear (Armin, 2022). This is in line with Wahbah Azzuhaili, which requires business capital to be in the form of assets in the form of measuring instruments (money). Furthermore, business capital must be cash, can be measured, and can be handed over from shahibul mal to mudharib (Shifa & Mutho'am, 2021).

Technically, syirkah mudharabah capital also requires: 1) The capital submitted can be in the form of money or other assets (valued at fair value); 2) The quantity and type must be precise; 3) Capital must be in cash and not in debt; 4) Capital must be known the amount so that it can be differentiated from the profit; 5) Fund manager not allowed to reinvest capital mudharabah, and if this happens then it is considered a violation except with the permission of the fund owner; 6) Fund managers are not allowed to borrow capital from others and when that happens a violation is deemed to occur unless with the permission of the fund owner; 7) Manager funds have the freedom to manage capital according to discretion and his thoughts (Wasilah, 2014).

The company capital in the syirkah mudharabah agreement is mixed between tangible assets (*ayn*) and financial assets (*dayn*). This is because the contract can take place if a capital owner acts as the provider and provider of business funds. Then, the capital is given to parties with the skills to run a business, where this party provides *ayn* (services/expertise). This mixed character is what differentiates it from other syirkah contracts (Wasilah, 2014).

The relationship between shareholders and directors is seen as Partners are not employees, so they are entitled to the same rights and get a share of company business profits (dividends) by the agreed *nisbah* (income ratio). Capital characteristics in contracts such as syirkah mudharabah differ from conventional company contracts.

3. Advantages and Disadvantages of Limited Liability Companies

Dividends are part of the company's net profit or profits officially announced by the board of directors after obtaining approval from the GMS to be distributed to shareholders or those registered in the list of shareholders (Andani, 2021). Apart from that, companies must set aside a sure net profit each year as a reserve fund.

Net or company profit can be referred to as the company's current year profit after deducting taxes; however, the obligation to set aside the proposal occurs when the company has positively retained earnings. Positive retained earnings are net profit. The company has closed its accumulation of losses from the previous financial year in the current financial year.

Cooperation agreement with akad syirkah mudharabah, shahibul maal and mudharib business profits (dividends) are shared based on the initial agreement. At the same time, losses are borne the responsibility of the capital owner (shahibul maal), or in other words mudharabah is a contract that contains the transfer of capital from a shahibul maal to mudharib for use in a business provided that the business brings in profit (profit) then the profit is divided based on agreement and when losses are borne by the owner capital with the terms and conditions of loss is not a consequence negligence mudharib.

The dividend percentage is in the form of profit sharing and loss sharing. It can be said that shahibul maal lost financially because of capital proportion (financial). At the same time, it is apparent that the mudharib does not have a financial stake in the capital percentage in the contract. Therefore, in the event of a loss, the mudharib does not have any responsibility (Masse, 2020). As a result, the mudharib is required to accept and handle the losses associated with managing the business. Consequently, his work had no results.

4. Liability of Limited Liability Companies Based on Syirkah Mudharabah Contract

In Indonesia, the LLC Law emphasizes that there must be a separation between personal property and property company wealth. The issuance of shares evidences own company ownership or participation capital. Stockholders' liability is limited to the number of shares owned. If the company's debt exceeds the company's assets, shareholders are not responsible for the excess debt (Samriadin, 2022). This has been regulated in Article 3, Paragraph (1) of the Limited Liability Company Law, which explains that no shareholder is personally responsible for the company's assets or any obligations in the name of the company and is not responsible for the company's losses over the shares owned.

Meanwhile, in Brunei Darussalam, Article 4, Paragraph 2 of Companies Act Chapter 39 explains that companies have obligations towards their members are limited only to the memorandum number that has been provided determined, a memorandum with the amount that each can carry out by members to contribute to company assets if and when closed, or a company that has no limits on liability answered the members.

Meanwhile, in Malaysia, Section 16 Sub-section 5 states that from the date of establishment of the company as stated in the memorandum, each person named in the memorandum has the authority to carry out each function as a company and has the authority to sue or can be sued and has the authority to control land and is responsible as part of the company's members to contribute to the company's assets in the event of the company's dissolution as regulated by the Malaysian Companies Act 1965.

Discussing this responsibility is not separated from things that do not reduce the possibility of shareholders being liable to answer with their personal property if proven to be in bad faith by using the company for personal or shareholder interests stock, and then it acts as bail against creditors for debts Company (Alexander et al., 2021).

Directors derive advantages from their experience in their role as managers. Similarly, whether the firm incurs losses or obtains rewards for its labor and effort, both the shahibul maal and mudharib are exposed to risks (Hatta, 2022). This risk is in the form of time, thoughts and hard work in managing a project or business and lost opportunities to gain part of the previously agreed profit sharing. Regarding this, in the contract, syirkah mudharabah, the absolute financial risk responsibility is shahibul maal. Implicit responsibility for capital, which is included or submitted to mudharib profit and loss, will be held responsible by shahibul maal (Istan & Warsah, 2018).

Fundamental responsibility of shahibul maal in LLC is fundamental in avoiding the emergence of arbitrariness mudharib in running the business and minimizing disputes in the future. On syirkah mudharabah, shahibul maal is a mandatory partner, fully surrenders the capital to mudharib until it becomes a passive partner, which should not bear all losses due to directors' negligence (Bank Indonesia, 2014). Accordingly, there is responsibility for shahibul maal, which is limited to mudharib. They are not permitted to commit with third parties exceeding the amount of capital shahibul maal invested (Ria, 2022). If the mudharib surpasses the investment limit in mudharabah without explicit authority or confirmation from the shahibul maal, the mudharib is personally liable for the surplus monies (Ria, 2022). That is, if mudharib is binding the business to a third party that exceeds the amount of capital that has been invested by shahibul maal, losses are

his responsibility if they happen. In this regard, it must be stated or included in the syirkah mudharabah contract to avoid future disputes.

As explained earlier, the concept of the shirkah mudharabah contract is relevant to the principle of limited liability shareholders in an LLC. It specifically pertains to the limited liability of the shahibul maal, who is only liable for the capital invested in a business conducted by the mudharib. This is based on efforts to prevent arbitrariness or irregularities committed by mudharib, thus resulting in losses and disputes in the future.

CONCLUSION

Based on the discussion as outlined above, it can be concluded that the characteristics of the syirkah mudharabah contract on the Limited Liability Companies (LLC) either in Indonesia, Brunei Darussalam, or Malaysia include four aspects. *First*, legal subjects, including shahibul maal (capital owner) and mudharib (manager). *Second*, business capital is the combination of property capital (*ra'sl al mal bil amwal*) and expertise capital (*ra'sl al mal bil `amal*), which is acknowledged in share ownership and stated in the arrangements or the Articles of Association (AD). *Third*, The distribution of profits based on an agreed ratio that corresponds to the level of risk assumed and shared by the parties in proportion has both advantages and disadvantages. In contrast, losses are also based on fair proportions, where the parties shahibul maal bear all property capital losses limited to the fund invested. However, mudharib incurs losses in terms of energy, time, and thought, unless it can be demonstrated that the loss was caused by a deliberate or reckless mudharib. In such cases, the mudharib is held accountable for the loss. *Fourth*, the responsibilities of shahibul maal are limited to the assets invested based on concepts (qiradh/muqaradah), which means *sal-qath* (disconnected) because capital has been given to mudharib to carry out the agreed business.

LIMITATION

The limitations of this study include a focus on the application of limited liability within the context of syirkah mudharabah contracts, particularly in Indonesia, Brunei Darussalam, and Malaysia. This narrow scope may not fully capture variations in the interpretation and implementation of Islamic financial principles across different jurisdictions or under different contractual arrangements. Additionally, the study primarily examines

theoretical aspects and does not delve deeply into empirical data or case studies that could provide a more comprehensive understanding of how these principles are applied in real-world business practices. Furthermore, the research is limited to the examination of existing legal frameworks and does not consider potential future developments or reforms in Islamic finance that could impact the relevance of the findings.

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