

## PROFIT EQUALIZATION RESERVE AND DSN MUI NO: 127/DSN-MUI/VII/2019 IN MAQASHID SYARIAH PERSPECTIVE

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**Abstract:** *This study aims to analyze the application of Profit Equalization Reserve (PER) and its relationship with the DSN MUI fatwa NO: 127 / DSN-MUI / VII / 2019 in the view of maqashid sharia. PER is used to maintain the competitiveness of yields in Islamic banking. The reserve fund can be used when the sharing of financing results goes down. That way, depositors' interest is maintained, because the reduced profit sharing can be covered with reserve funds. Based on existing sources, the authors argue that PER can be applied in the Islamic economic financial system as long as it does not violate existing regulations. However, the application of PER is not only applied to Islamic banking but also applies to the sukuk wakalah bil al istithmar. This is evidenced by the existence of the term PER which is allowed in DSN MUI NO: 127 / DSN-MUI / VII / 2019 concerning Sukuk wakalah bi al-Istithmar. The reason for the inclusion of PER in DSN MUI NO: 127 / DSN-MUI / VII / 2019 is because the result of the consideration of the meaning of Wakalah bi al-Istithmar is the wakalah contract to invest and develop Muwakkil's assets either in return (Wakalah bi al-Ujrah) or without compensation (Wakalah bi ghairi al-Ujrah).*

**Keywords:** *Profit Equalization Reserve, Maqashid Syariah, Islamic Economic*

### The Introduction

Indonesia as a country with the largest Muslim population in the world has the potential to develop Islamic financial inclusion in which sukuk is part of the object. One of the contracts used in the sukuk is the wakalah contract with a profit sharing scheme carried out by muwakkil and representatives. This is closely related to agency. This is inseparable from displaced commercial risk (DCR), which is risk due to changes in customer behavior, where third party fund customers transfer their funds to other Islamic banks that provide higher yield equivalent rates or to conventional banks, because of the savings interest rate. and time deposits are higher than the equivalent rate of returns.

Displaced Commercial Risk (DCR) is a consequence of the application of Profit and Loss Sharing or the risk of returns. One of the efforts to mitigate the risk of returns is the establishment of a reserve fund or Profit Equalization Reserve (PER). PER according to The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) is a portion of the gross income from Murabahah income that is issued or set aside, before allocating it to the mudharib section with the aim of providing a more equitable return or results to account owners and shareholders (Bambang Rianto Rustam, 2013).

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Even though it has become an issue in Indonesian Islamic banking, the use of an urgent reserve fund or Profit Equalization Reserve (PER) does not yet have its own fatwa. So far the existence of PER is only listed in the DSN MUI NO: 127 / DSN-MUI / VII / 2019 regarding Sukuk Wakalah Bil Al Istitsmar. reserve fund and whether this PER instrument is in accordance with the elements of Maqasid Sharia.

According to Archer (2010) PER is allocated from profits before those profits are shared between IAH and Islamic banks, which give PER two components: the shareholders, and unrestricted IAH aspects. On the other hand, IRR is set aside from profits available for distribution to the IAH. The accumulated IRR, which belongs entirely to IAH, can be used to cover any losses attributable to IAH that might arise (Ahmed & Kohli, 2014). *Based on this statement, Archer stated that PER was allocated from the profit before the profit was shared between the Investment Account Holders (IAH), in this case the investors and the Islamic Bank.*

Regarding the PER mechanism according to Archer et al. (2010), the allocation of PER which comes from profit reduces the amount of profit that will be attributed to investors where the bank as mudharib is entitled to shares in return for investment management. PER (including the shareholder component through donations) can be used to stabilize periodic profit payments to investors, but not to cover periodic losses (because mudharib may not cover losses caused by managers) (Ahmed & Kohli, 2014).

The opinion of Archer, et al. (2010) provides the view that what is stabilized is the payment of profits, not the profit itself (because PER is a reserve, not a provision). However, PER must be disclosed in the form of a report to avoid misunderstanding of the material of fraud (fraud). PER is used to maintain the competitiveness of yields in Islamic banking. The reserve fund can be used when the sharing of financing results goes down. That way, depositors' interest is maintained, because the reduced profit sharing can be covered with reserve funds (Solissa, 2017).

In Qs. An-Nisā (4): 164, and Al-Anbiya (21): 107 have discussed about Maqāṣid having basic words; Qaṣd which means aiming or towards something. Whereas Sharia etymologically means the road to a water source. Then, the word sharia connotes by the Arabs in the sense of the straight path that must be followed, namely the law of God (Maftukhatulosolikhah & Rusydi, 2018). According to Dusuki&Abozaid (2017) Maqasid al-shari'ah describes a holistic view of Islam as a life guide for individuals and society. In recent years, the discussion about the objectives of maqashid al-shari'ah has done a lot to increase significantly in the halal economy or industry. According to Imam Al-Ghazali in Ascarya&Sukmana (2014) maqasid al-shari'ah is divided into five important elements, namely faith, life, intellect, lineage and wealth, while according to Al-Syatibimaqasid sharia is classified into two categories, namely objectives. sharia and human purposes.

According to BitohMaqasid al-shari'ahis the purpose and wisdom of the Shari'a, following the secrets established by Allah in each of its laws (Purnomo, 2020). If viewed from the objective, it consists of three parts, namely necessities, complements, and embellishments. On the other hand, Abu Zahrah's theory argues that the purpose of maqasid sharia consists of three parts, namely educating the individual (educating individuals),

establishing justice (building justice), and promoting welfare (improving welfare) (Ibrahim & Abdul Ghafar Ismail, 2015).

The concept of maqashid al-shari'ah has been used in the business world to measure compliance with sharia businesses. Previous research on Islamic finance also applies the concept of maqasid al-syari'ah to see social performance (Harningtyas, 2015), business protection (Abubakar, 2016), risk management (Rafikov & Saiti, 2017), unsecured financing (Arafah & Nugroho, 2016), and microfinance performance (Alam & Said, 2015). Based on the existing phenomena, this research discusses profit equalization reserve and DSN MUI NO: 127/DSN-MUI/VII/2019 in maqashid syariah perspective.

### **Wakalah Bi Al-Istitsmar**

Wakalah Bi Al-Istitsmar is a wakalah contract or power to invest Muwakkil's capital either in return (Wakalah bi al-ujrah) or without reward (wakalah bi ghairi al-ujrah). The Wakalah Bi Al-Istitsmar Scheme can be briefly understood as follows:

- 1) Investor (Muwakkil) gives wakalah (power) to the Representative to invest (manage and develop) the funds (Akad Wakalah bi al-istitsmar)
- 2) The representative invests the Muwakkil fund with various contracts in accordance with sharia principles
- 3) Investments can yield results or risks
- 4) All proceeds and risks are the right and burden of Muwakkil
- 5) Return of Investment Funds to Investors (Muwakkil)

### **Sukuk**

According to the Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI, 2002), a Sukuk is a certificate that shows the same value after closing the subscription, receiving the value of the certificate and placing it for use as planned, share ownership and rights to visible assets, use and services, and equity on the mentioned projects or equity on certain investment activities.

According to Law Number 19 of 2008 concerning State Sharia Securities (SBSN), State Sukuk are state securities issued based on sharia principles, as evidence of the share of investment in SBSN assets, both in rupiah and foreign currencies. According to the DSN fatwa No. 69 / DSN-MUI / VI / 2008, State Sharia Securities or can be called Sukuk Negara are Government Securities issued based on sharia principles, as evidence of share (IOÉ) of asset ownership.

### **Research methods**

The method used in this research is a qualitative method using a descriptive analysis approach which aims to provide an overview of the Profit Equalization Reserve in the Perspective of Maqashid Syariah: Case Study of DSN MUI NO: 127 / DSN-MUI / VII / 2019. The data collection technique is by collecting literature reviews related to the principles of Profit Equalization Reserve in the Perspective of Maqashid Syariah: Case Study of DSN MUI NO: 127 / DSN-MUI / VII / 2019.

## Discussion and Results

### Islamic Maqasid Review of Profit Equalization Reserve (PER) at DSN MUI NO: 127 / DSN-MUI / VII / 2019.

Referring to Imam Al-Ghazali in Ascarya & Sukmana (2014) maqasid al-shari'ah is divided into five important elements, namely faith, life, intellect, lineage and wealth. In addition, if viewed from the PER's objective, it is to maintain the competitiveness of yields in Islamic banking. The reserve fund can be used when the sharing of financing results goes down. That way, depositors' interest is maintained, because the reduced profit sharing can be covered with reserve funds (Solissa, 2017). then it can be ascertained that there is a link between the Maqasid Sharia and PER where there are efforts to safeguard property which is the fifth element of the maqasid sharia.

According to Sadari (2017), one of the aspects of maqashid sharia divides three complementary priority scales, namely Dharuriyyat, Hajiyyat, and Tahsiniyyat (Surakarta, 2018). The First, *dharuriyyat (al-daruriyyat: necessities or inevitability)*, which is something that must exist for the continuation of human life. If something does not exist, then human life will inevitably be destroyed. The goals of dharuriyyat (al-maslahah al-dharuriyyat) are to save religion, soul, mind, property, descent and honor.

The Second, hajiyyat (al-hajjiyyat: needs), which is something needed for the continuity of human life. If that something does not exist, then human life will not be destroyed, but difficulties will arise. The Third, tahsiniyat (al-tahsiniyyat: ornamental decorative processes). That is, the absence of any ornamental decorative matters will not destroy the purpose of the thorn, but its presence will beautify the accomplishment of this purpose of the thorn.

From the distribution based on the level, the PER (Profit Equalization Reserve) instrument is included in the third level masalah, namely masalah tahsiniyat, where the existence of the PER (Profit Equalization Reserve) instrument is a support and complement used in risk mitigation efforts aimed at maintaining the competitiveness of returns on Syariah banking. The reserve fund can be used when the sharing of financing results goes down. That way, depositors' interest is maintained, because the reduced profit sharing can be covered with reserve funds. However, if the instrument is not used, this will not directly destroy the 5 basic human needs, namely religion, soul, mind, descent and property and also indirectly damage the contract process.

Of course, the application of PER is inseparable from economic transactions which are part of fiqh, namely fiqh muamalah. The basic law in muamalah fiqh is a principle that can be said to be a theory that shapes laws in the economic field. Dr. Abbas Arfan in his book 99 kaidah fiqh muamalah kulliyah writes five principles (Abbas Arfan, 2013).

The first principle is *Taba'dul al-Mana'fi*, which is that all forms of muamalah activities must provide benefits and benefits to the parties involved..

- 1) The second principle is the principle of equity and justice, namely the principle in the form of the principle of justice in the field of muamalah which requires that assets are not only controlled by a handful of people so that the assets must be distributed evenly among the people, both rich and poor.

- 2) The third principle is willingness and willingness, this principle states that every form of muamalat between Muslims or between parties must be based on the willingness of each.
- 3) The fourth principle is the absence of fraud or it can be said that the principle of honesty in transactions.
- 4) The fifth principle is the principle of kindness and piety, in which case Muslims must do everything for good and increase their devotion to Allah SWT.

The existence of these principles strengthens the reasons for permitting PER in transactions as long as it fulfills the principles of muamalah fiqh which aims to fulfill the maqasid of sharia, namely safeguarding assets.

The results of this author's research also agree with previous research conducted by M.Rofi Udin NF and Rully Trihantana (2015) which states that PER can be done because based on the level of the mashlahah, the PER (Profit Equalization Reserve) instrument is included in masalahah tahsiniyyat, which where kemashlahatan in mashlahah is a complement and support for the benefit of others and its absence is not destructive. In terms of whether or not there is a syar'i argument, the PER (Profit Equalization Reserve) instrument is included in the masalahah mursalah because this PER instrument does not yet have a syar'i argument that specifically instructs or prohibits it. Based on the existing basis, the PER (Profit Equalization Reserve) instrument is allowed to be applied with conditions, namely that it must be with the approval / permission of the customer or investment account holder, if these requirements are not met then this PER (Profit Equalization Reserve) instrument may not be applied because will harm the other party.

Based on existing sources, the authors argue that PER can be applied in the Islamic economic financial system as long as it does not violate existing regulations. However, the application of PER is not only applied to Islamic banking but also applies to the sukuk wakalah bil al istithmar. This is evidenced by the existence of the term PER which is allowed in DSN MUI NO: 127 / DSN-MUI / VII / 2019 concerning Sukuk wakalah bi al-Istithmar. The reason for the inclusion of PER in DSN MUI NO: 127 / DSN-MUI / VII / 2019 is because the result of the consideration of the meaning of Wakalah bi al-Istithmar is the wakalah contract to invest and develop Muwakkil's assets either in return (Wakalah bi al-Ujrah) or without compensation. (Wakalah bi ghatri al-Ujrah). The definition is that the reason PER is allowed as an effort to empower the assets of the muwakkil, in this case the person who invests by the representative, in this case is the capital manager.

In addition, the application of PER in DSN MUI NO: 127 / DSN-MUI / VII / 2019 is allowed because with the permission of the Sukuk Holder (Muwakkil), the Sukuk Issuer as a Representative may form a reserve (Profit Equalization Reserve) of a portion of the profits to mitigate possible risks. investation.

In addition, there are several grounds for permitting the wakalah contract, namely: *"Wakalah is validly done either with a reward or without a reward, this is because the Prophet sallallaahu 'alaihi wa over wasallam once sent his employees to collect alms (zakat) and he gave them rewards. If wakalah is done by giving compensation, the law is the same as the law of ijarah. "*

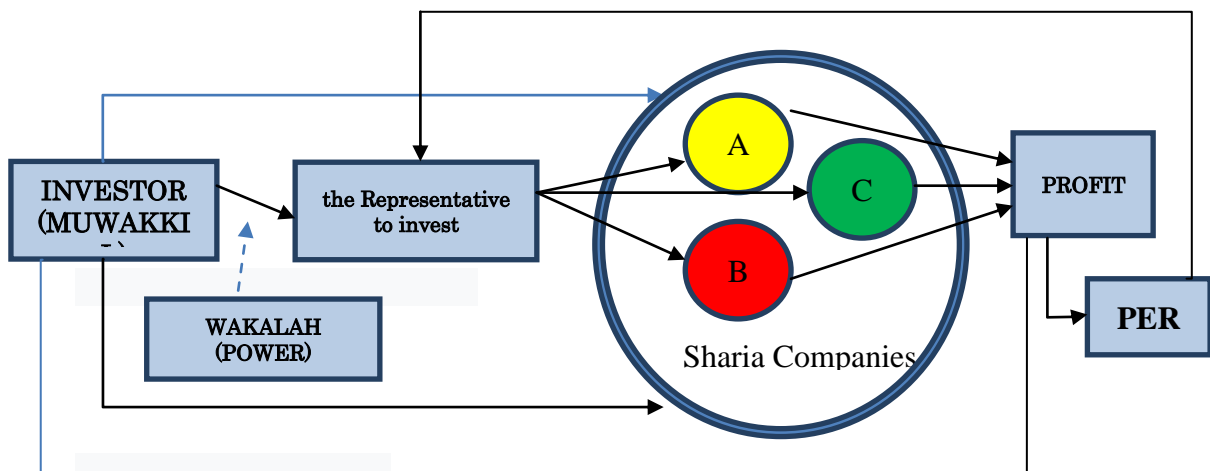
In addition, the application of PER in DSN MUI NO: 127 / DSN-MUI / VII/2019 is allowed because with the permission of the Sukuk Holder (Muwakkil), the Sukuk Issuer as a Representative may form a reserve (Profit Equalization Reserve) of a portion of the profits to mitigate possible risks. investment. The DSN MUI NO: 127 / DSN-MUI / VII / 2019 also explains the Al-Qur'an Verses and hadiths, namely:

- 1) Ijma 'Ulama Regarding the Allowance of Wakalah. (Al-Mughni, Chapter Wakalah, Volume 5, P.74)  
*"DR. Ibn Qudamah said: 'and the Ummat (the scholars) have agreed' (agreed) on the ability of the al-wakalah contract in general'."*
- 2) Fiqh Rules  
*"Basically, all forms of muamalah are allowed to do unless there is evidence that prohibits it."*
- 3) AAOIFI's provisions in al-Ma'ayir al-Syar'iyah (Shori'ah Standards), Mi'yar (Standard) No. 46 regarding al-WakalahbiIstitsmar, part of the meaning of al-WakalahbiIstitsmqr and its sharia law:  
*"Al-Wakalah bi al-Istrtsmar is legally allowed on terms in accordance with the provisions of the sharia."*  
*The Sharia provisions are as follows:*
  - a) *The contract used in the Sukuk Wakalah bi al-Istitsmar is the AkadWakalah bi al-Istitsmar following and in accordance with the substance of the DSN-MUI Fatwa No: 126IDSN-MUIN {2019 concerning the Wokalah bi al-Istitsmar Agreement;*
  - b) *The type of business carried out by the Sukuk Issuer must not conflict with sharia principles by following, submitting, and obeying the substance of the DSN-MUI Fatwa No: 20IDSN-MUI/IX/2000 concerning Investment Implementation Guidelines for Sharia Mutual Funds, Fatwa DSN-MUI No: 40 / DSN- MUI/2003 concerning the Capital Market and General Guidelines for the Application of Sharia Principles in the Capital Market Sector and Fatwa DSN-MUI No: 80 / DSN-MUI/2011 concerning the Application of Sharia Principles in Equity Securities Trading Mechanisms on the Stock Exchange Regular Market;*
  - c) *Issuer of Sukuk Wakalah bi al-Istitsmar is obliged to declare that he is acting as a representative of the Sukuk holder, to manage the proceeds from the Sukuk issuance in various activities that generate profits;*
  - d) *Guarantee of funds of Sukuk Holders by the Issuer, following, submitting, and obeying the substance of the provisions of the DSN-MUI Fatwa No: 105 / DSN-MUI | X / 2016 concerning Guarantee of Returns of Capital Financing Mudharabah, Musyarakah, and IstitsmarbiIWakalah;*
  - e) *For the purchase of Sukuk Assets before maturity, the parties amend or terminate the Sukuk Wakalah bi al-Istitsmar Asset contract.*
  - f) *By the permission of the Sukuk Holder (Muwakkil), the Sukuk Issuer as a Representative may form a reserve (Profit Equalization Reserve) of a portion of the profits to mitigate the possibility of investment risk occurring.*

Sukuk is a Sharia Securities in the form of a certificate or proof of ownership of the same value, after the receipt of the sukuk funds, the closure of the order and the use of the funds according to the allocation is commenced. Avoiding mafsadat (damage / danger) must take precedence over bringing about the packaging of the problem.

- 4) Opinion of Ibn Qudamah in al-Mughni. Wakalah can be done, either with a reward or without returns. This is because the Prophet sallallahu'alaihi waoveri wa sallam once represented Unais for carry out punishment, to Urwah to buy a goat, and to Abu Rafi 'to carry out the qabul of marriage, (all of them) without giving anything in return. The Prophet had also sent people.

PER In Sukuk Wakalah Bi Al-Istitsmar Can Be Illustrated Like This:



Source : created by author, 2021

The contract used in the Sukuk Wakalah bi al-Istitsmar is the Akad Wakalah bi al-Istitsmar following and in accordance with the substance of the DSN-MUI Fatwa No: 126/DSN-MUI/2019 concerning the Wakalah bi al-Istitsmar Agreement. The type of business carried out by the Sukuk Issuer must not conflict with sharia principles by following, submitting, and obeying the substance of the DSN-MUI Fatwa No: 20/DSN-MUI/IX/2000 concerning Investment Implementation Guidelines for Sharia Mutual Funds, Fatwa DSN-MUI No: 40 / DSN- MUI/2003 concerning the Capital Market and General Guidelines for the Application of Sharia Principles in the Capital Market Sector and Fatwa DSN-MUI No: 80 / DSN-MUI/2011 concerning the Application of Sharia Principles in Equity Securities Trading Mechanisms on the Stock Exchange Regular Market.

Issuer of Sukuk Wakalah bi al-Istitsmar is obliged to declare that he is acting as a representative of the Sukuk holder, to manage the proceeds from the Sukuk issuance in various activities that generate profits. Guarantee of funds of Sukuk Holders by the Issuer, following, submitting, and obeying the substance of the provisions of the DSN-MUI Fatwa No: 105 / DSN-MUI / X / 2016 concerning Guarantee of Returns of Capital Financing Mudharabah, Musyarakah, and Istitsmar bi Wakalah. For the purchase of Sukuk Assets before maturity, the parties amend or terminate the Sukuk Wakalah bi al-

Istithmar Asset contract. By the permission of the Sukuk Holder (Muwakkit), the Sukuk Issuer as a Representative may form a reserve (Profit Equalization Reserve) of a portion of the profits to mitigate the possibility of investment risk occurring. In this scheme, PER certainly plays a very important role in the economy and the financial health of the company.

### Conclusion

PER is used to maintain the competitiveness of yields in Islamic banking. The reserve fund can be used when the sharing of financing results goes down. That way, depositors' interest is maintained, because the reduced profit sharing can be covered with reserve funds. Based on existing sources, the authors argue that PER can be applied in the Islamic economic financial system as long as it does not violate existing regulations. However, the application of PER is not only applied to Islamic banking but also applies to the sukuk wakalah bil al istithmar. This is evidenced by the existence of the term PER which is allowed in DSN MUI NO: 127 / DSN-MUI / VII / 2019 concerning Sukuk wakalah bi al-Istithmar. The reason for the inclusion of PER in DSN MUI NO: 127 / DSN-MUI / VII / 2019 is because the result of the consideration of the meaning of Wakalah bi al-Istithmar is the wakalah contract to invest and develop Muwakkil's assets either in return (Wakalah bi al-Ujrah) or without compensation (Wakalah bi ghairi al-Ujrah). The definition is that the reason PER is allowed as an effort to empower the assets of the muwakkil, in this case the person who invests by the representative, in this case is the capital manager.

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