ANALYSIS OF THE MUTANAQISAH MUSYARAKAH CONTRACT AS A SOLUTION FOR HOME OWNERSHIP FINANCING IN ISLAMIC BANKING

Yuli Nurhayati¹
Universitas Islam Negeri Syarif Hidayatullah, Ciputat, Indonesia
ayu.yulieasuna20@gmail.com

Asyari Hasan²
Universitas Islam Negeri Syarif Hidayatullah, Ciputat, Indonesia
asyari.hasan@uinjkt.ac.id

Abstract

The need for residential houses is currently increasing. Islamic financial institutions, especially Islamic banking, offer a variety of products and services to face the needs of the community. Murabahah contracts are still a prima donna product in Indonesia, but it has many weaknesses in its implementation. The presence of musyarakah mutanaqisah can be the best solution for property ownership for the community. The research method used is a qualitative approach with descriptive analysis and literature. The study aims to analyze the implementation and advantages of musyarakah mutanaqisah contracts in financing home ownership in Islamic banking. The results of the analysis show that the implementation of MMQ can be a solution for the community in fulfilling their prerequisites, but there are many things in musyarakah mutanaqisah that must be understood so that the product can run well in Indonesia. The benefits of musyarakah mutanaqisah contracts for customers are financing with relatively longer terms and additional spare parts that are more affordable.

Keyword: Musyarakah, Mutanaqisah, Home Ownership, Financing
INTRODUCTION

Public interest in Islamic banking is currently getting higher. With the increasing public energy for the presence of Islamic banking in Indonesia, the progress of Islamic banking in Indonesia is increasing experience with a very rapid increase. In 2019, there were 184 Regional Development Bank BUS and 1721 National Private Bank BUS (Badan Pusat Statistik, 2019). One of the efforts of Islamic institutions in creating a higher market share is by providing several banking products which are more variative and competitive. Islamic banking is expected to be able to guarantee about the things implemented aim to and meet sharia guidelines so that they can be a differentiator between Islamic banks and conventional banks.

Efforts and trial in implementing matters related to Islamic finance require special skills and a difficult process because they must combine and unify several knowledge disciplines (Shinkafi & Ali, 2018). Limited human resources resulted differences understanding between Islamic banks in implementing their products. Islamic banks must have standard products that are capable of being a reference and able to guarantee favorable operational term and customer protection and so platform to develop and provide product innovations that are increasingly varied in order to be able to grow better. The effort is very important considering how Islamic banks have recently experienced a very sharp degradation and slowdown in the portion of general business compared to conventional. The superior product in Islamic finance today are partnership-based products, such as *mudharabah* and *musyarakah* (ojk.go.id).

The issue concerned by government today is the need for home ownership. Vice President Ma’ruf Amin said that general experts have a lot of work to do in housing needs today. The reason is that there are still many people who do not own a house. In 2020, the number of families in Indonesia owning a house is 80.10%. For the time being, the remaining 19.90% are still living by renting a house, staying at a relative’s house, or maybe choosing to live abroad (bps.go.id) Meanwhile, a house can be livable with the hope of meeting 4 (four) sizes, such as: a) (BPS-RI, Susenas 2016-2020); b Adequate living space at least 7.2 m² per capita; c) Access to proper drinking water; d) Access to appropriate disinfection.
Public interest is increasing for the fulfillment of residential houses, even the ongoing development is still not able to meet the current demands of society today, especially when someone who wants to claim a house but has not been able to pay it in cash (de Nichilo, 2021). Home loan products offered by conventional banks still use the usury system clearly forbidden in Islamic law. Besides that, the special need for ownership of a house is increasing every year. As written by Mayang Sari in the book on housing and settlement statistics by BPS data in 2019, 1 of 10 families with their personal structure obtains a house by buying, 3 of 10 families buy a house with a sharing agreement, and the percentage of people who want to own a house but does not have a money is at 36.94% (Sari, 2020).

Islamic banking provides one more innovation in response to these problems by providing Musyarakah Mutanaqisah (MMQ) contract products. The implementation of musyarakah mutanaqishah is expected to be able to solve community problems in housing ownership and can help the environment get a decent life.

REVIEW OF LITERATURE

Musyarakah Contract

Musyarakah (syirkah) comes from the word syaraka-yusyriku-syarkan-syarikan-syirkatan, which means company or group cooperation. Musyarakah or syirkah is a collaboration between capital and profit (Hosen & Jihad, 2009). In fiqh, there are three terms regarding the understanding, namely al musyarakanat, syirkah, and syarakat. However, in Islamic banking regulations, the term musyarakah is used more often (Hakim, 2011).

The basic guideline that underlies the completion of the musyarakah contract is the principle of cooperation between participants planned to achieve the goal of helping everyone. The pillars of syirkah itself are: (Tokopedia dictionary) a) Ijab Qabul, which is an agreement between two parties; b) Two meetings that have an agreement and have the ability to manage assets; c) The object of the agreement, including capital or work; d) Proportion of profit sharing.

The participation of all partners in work is the basis for the implementation of musyarakah. It is inconsistent with the notion that one of the partners is not related to the business created by the affiliate. The work section between one and the other not be
something essentially equal, partners who work more can demand a larger share of profits. Certainty of profit sharing must be agreed before the underlying agreement to avoid the danger of disputes. If there is a change in profit sharing, it must be based on mutual agreement. Partners are not allowed to determine their own share of profits by disclosing actual special characteristics, as this is same to usury and is contrary against the value guidelines in musyarakah (Kamilatur, 2015).

Sayyid Sabiq in Fiqh al Sunnah book mention 2 kinds of syirkah (cooperation) (M. Syafii. Antonio, 2001): a) Syirkah Al-Milk or Amlak Partnership. Amlak partnership is a joint ownership that arises due to the presence of two or more people who get joint ownership rights over something. The amlak partnership has ijbari or coercive nature. b) Syirkah Uqud means that there are two or more people who work together to achieve the same goal, contribute funds or energy, and share losses and profits. This syirkah has the nature of ikhtiari or choice. The cooperation contract can be divided into several things, as follows: 1) Syirkah Abdan, which is a form of syirkah between two or more parties from among workers or professionals where they agree to work together on a job and share the income received. The syirkah is permitted by Malikiyah, Hanabilah and Zaidiyyah scholars on the grounds that the purpose of the collaboration is to gain profit this cooperation is not only in property but also in work. Meanwhile, the Syafi’iyah, Imamiyah and Zafar scholars from the Hanafiyah group stated that this type of syirkah was invalid because the syirkah was devoted to assets (capital) and not to work; 2) Syirkah Wujuh, namely cooperation between two parties where each part does not include any capital and runs its business based on the trust of a third party. The naming of wujuh because buying and selling does not occur in cash. The collaboration is only in the form of joint responsibility, not capital or work. Hanafiyah, Hanabilah and Zaidiyah scholars allow this syirkah because it contains a representative element of a partner in sales and purchases. Malikiyah, Syafi’iyah schoolars argue that it is not valid because it has no elements of capital cooperation or work; 3) Syirkah Inan which is an alliance in position and composition of the parties involved are not equal, both in terms of capital and work. Fiqh scholars allow it; 4) Syirkah Muwafadah, which is an alliance where the position and composition of the parties involved in it must be the equal, both in terms of capital, work, religion, profit and risk of loss. If the composition of the capital is not equal then it is invalid. In the opinion of Hanafi
and Maliki scholars, it is permissible. However, according to Syafi’i and Hanabilah and most other fiqh scholars reject because it is not justified by sharia. Besides, the requirement to equalize capital is very difficult to do and invites an element of gharar.

Continuous Musyarakah (permanent contract) is musyarakah with the provisions that the share of funds for each partner is determined at the time of the contract and the amount remains until the end of the contract period (PSAK No. 106 par 04). For example: Between partner A and partner P who have entered into a musyarakah contract, each initial amount of capital is 20 million, so until the end of the syirkah contract their respective capital remains 20 million.

Musyarakah mutanaqisah is musyarakah with the provision that part of the funds of one partner will be transferred gradually to another partner so that the share of the funds will decrease and at the end of the contract period the other partner will become the full owner of the musyarakah business. For example: Partner A and partner P enter into a musyarakah contract, partner P invest 100 million and partner A invests 200 million. As the musyarakah contract collaboration progresses, partner P capital of Rp 100 million will be transferred to partner A through gradual repayments made by partner A.

Musyarakah Mutanaqisah Contract

Musyarakah Mutanaqisah according to language comes from two words Musyarakah and Mutanaqisah. Musyarakah comes from the word syaraka-yusriku-syarkan-syarikan-syirkatan-syirkah, which means to share, cooperate, or partner and mutanaqisah comes from the word yatanaqishu-tanaqishan-mutanaqishun which means to reduce gradually or to diminish (Husein, 2019). Thus, Musyarakah Mutanaqisah is a partnership/cooperation contract in which the ownership of assets (goods) or capital of one party (syarik) is decrease and moved gradually due to gradual purchases by the other party (Ascarya, 2013).

Musyarakah mutanaqisah occurs between the customer and the bank who share in the procurement of goods that are jointly owned, where initially the bank’s ownership is larger than the customer, but over time the bank’s ownership will gradually decrease and the customer will increase or it is also called a shrinking partnership (Muhammad Syafi’i Antonio, 1999). There are two stages, the first, between the customer and the bank carrying out the musyarakah contract through productive business administration, and second, the
customer purchases the bank’s capital goods in stages so that the capital emphasized by the
bank is *syirkah*.

The main idea of *Musharakah Mutanaqisah* is *hishah*. It is the business capital of all
parties that must be expressed in the form of *hishah* then divided into several *hishah* units.
It can be said, for example, that the original and substantial size of the venture capital stated
in the *hishah* should not be reduced as long as the agreement is enforceable. *Wa’d* is
Islamic banking that is committed to transferring commercially and gradually all its *hishah*
to other parties or customers. And *Intiqal al milkiyyah* is every deposit of money by a
customer to an Islamic bank, up to the value of which is equal to the value of the *hishah*
unit, in sharia it is stated as a commercial transfer of the *hishah* unit of the Islamic bank, on
the other hand the value which is more than the value of the *hishah* unit, is declared as a
share of the *hishah* unit, the results that are the rights of Islamic banks (Divisi
Pengembangan Produk dan Edukasi Departemen Perbankan Syariah, 2016)

It tends to argue that the resources purchased are the common property of the bank
and the customer. The size of the actual ownership is not determined by the size of the
capital or resources associated with the cooperation contract. In addition, customers will
pay (in segments) a certain amount of capital/deposits guaranteed by the bank. The transfer
of ownership from the Islamic bank’s allotment to the client coincides with the increasing
amount of client capital from the additional installments made by the client. Until the
installment payment ends, it means that the ownership of an object or the item entirely
belongs to the client. Depreciation of the share of Islamic bank ownership of objects or
goods decreases commensurate with the amount of installments. In addition to several
installments that customers must try to take over ownership, customers must pay several
rents to Islamic banks until the expiration of the Islamic bank ownership limit. Installment
payments are tried to coincide with installment payments. The installment payments are a
form of taking over the share of ownership of Islamic banks. On the other hand, rental
payments are a form of profit for Islamic banks for their ownership of the inheritance
(Divisi Pengembangan Produk dan Edukasi Departemen Perbankan Syariah, 2016)

**The Differences Between Musharakah Mutanaqisah and Murabahah**

In general, *musharakah mutanaqisah* and *murabahah* contracts can be distinguished
as follows (Husein, 2019):
Transfer of Assets Ownership

In financing using a *musyarakah mutanaqisah* contract, the assets ownership by the new bank will be transferred to the customer after the installment payment period has expired, because the bank’s share of ownership will decrease in line with the installments purchased by the customer. Whereas in financing using a *murabahah* contract, the asset ownership by the bank will automatically switch when there is a deed of sale and purchase by including the customer’s name in it.

Agreement Characteristic

The financing of home ownership with a *musyarakah mutanaqisah* contract includes 3 contracts: a *musyarakah* (cooperation) contract, a deferred *bai’/sell-buying* contract, and an *ijarah* contract (lease). Meanwhile, in financing home ownership by using a *murabahah* contract, there is only one contract in it, namely a sale and purchase contract with payment in installments.

*Nisbah* (Sharing Profit)

Musyarakah mutanaqisah and murabahah, both of which are included in the type of *ijarah* contract, a contract that aims to gain profit. In *musyarakah mutanaqisah* contracts, the return offered is not fixed or uncertain. The *nisbah* for both parties are determined at the rental price (*ijarah*). Therefore, it can be said that if the house rental price is high, the return for both parties also higher. On the other hand, if the rental price is low, then the return for the bank and customers also relatively less. Whereas in a *murabahah* contract, the return offered is fixed/definite.

Installment Payment

In financing home ownership using a *musyarakah mutanaqisah* contract, the installments may change or will be evaluated annually or in several years in accordance with the initial agreement. Whereas in financing using a *murabahah* contract, the installments are more fixed during the financing period. In *musyarakah mutanaqisah* financing, the amount of payment is calculated according to the amount of financing issued by the bank. Whereas in financing with a *murabahah* contract, installment payments are calculated from the bank’s purchase price for the house plus a profit margin for the bank. For customers who want to pay off their installments before maturity on a *musyarakah mutanaqisah*, the customer simply pays off the remaining
installments. However, in a murabahah contract, the customer is required to pay the total installment payments plus the profit installments for the bank.

RESULTS AND DISCUSSION

Ulama’s View According to The Musyarakah Mutanaqisah Contract

M. Ridwan and Syahruddin explained in their journal, Wahbah al-Zuhaily explained that this musyarakah mutanaqisah is justified legal in sharia, because like ijara muntahiyah bi al- tamlik, it relies on promises from banks to partners (customers) if the bank wants to sell to partners. allotment of ownership in syirkah if the partner has paid to the bank the portion price owned by the bank (Bakar, 2017; Khairul Hafidzi & et.all, 2017). When it processes, the musyarakah mutanaqisah is seen as syirkah ‘inan, because both parties provide capital donations (ra’su al-mal), and the bank delegates to customers to manage business activities. After the end of syirkah, the bank then sells all or part of its portion to partners, provided that this sale contract is carried out separately and is not linked to the syirkah contract (Ridwan, 2013)

Regarding this musyarakah mutanaqisah, until Ibn Qudamah said that if one of the two partners (syarik) buys a share (part, hishah) from another partner, then the law is allowed, because (in fact) he is buying what belongs to the other party (Ibn Qudamah, chapter 5).

In the DSN Fatwa Number 73 of 2008, it is stated that what is meant by musyarakah mutanaqisah is ownership of assets (objects) or capital of one party (syarik) decreases due to gradual purchases by other parties.

Legal Basis Musyarakah Mutanaqisah

The Islamic legal basis for financing musyarakah mutanaqisah contracts, basically there are two elements, namely the syirkah element (partnership) and the ijarah element (lease).

Legal Basis of Musyarakah
“Hey, you who believe! Fulfill promises. Livestock is lawful for you, except what will be mentioned to you, by not lawful hunting while you are in ihram (Hajj or Umrah). Verily, Allah sets the law according to what He wills” (Al-Maidah Verse: 1)

Hadith narrated by Abu Daud from Abu Hurairah, Rasulullah SAW said:

إِنَّ اللَّهَ تَعَالَى يَقُولُ: أَنَا ثَالِثُ الشَّرِّيكَيْنِ مَا لَمْ يَخْنَ أَحَدُهُمَا صَاحِبَهُ، فَإِذَا خَانَ أحَدُهُمَا صَاحِبَهُ خَرَجْتُ مِنْ بَيْنِهِمَا.

“Allah SWT says: “I am the third party of two people who are in association as long as one of the parties does not betray the other. If one of the parties has betrayed, I am out of them” (Narrated by Abu Dawud, authenticated by al-Hakim, from Abu Hurairah) (Shohih & Setyowati, 2021).

Legal Basis of Ijarah

وَالْوَلِيدَاتِ يُرْضِعْنَ أَوْلَدَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَن أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ لِمَنْ أَرَادَ أَن يُتِمَّ الرَّضَايَةَ وَعَلَى الْمُوْلَدِ لَهُ يُرْضِعُ أَوْلَدَهُنَّ حَوْلَيْنِ L

“And mothers should breastfeed their children for two whole years, for those who want to breastfeed completely. And it is the duty of the father to provide for their maintenance and clothing in a proper manner. A person is not burdened more than he can bear. A mother should not suffer because of her child and neither should a father suffer because of his child. The heirs are (obligated) like that too. If both want to wean by agreement and deliberation between them, then there is no sin on either of them. And if you want to nurse your child to someone else, then there is no sin for you to pay it in a proper way. Fear Allah and know that Allah is All-Seeing of what you do” (Al-Baqarah Verse: 233)

Quoted from the hadith narrated by Abu Daud from Sa’d ibn Abi Waqqash
‘We once rented out land with (paid) agricultural produce, so the Messenger of Allah forbade us to do that and ordered us to rent it out with gold or silver.’ (HR. Abu Daud).

Referring to the Fiqh rules, it can be concluded as follows: a) Basically, all forms of *muamalah* are allowed unless there is evidence that forbids it; b) Avoiding *mafsadat* (destruction, danger) must be prioritized over providing benefit.

**Mechanism of *Musyarakah Mutanaqisah* Contract**

![Mechanism of Musyarakah Mutanaqisah Contract](image)

**Description:**

a) The bank and the client both enter capital for the property; b) The client’s representative on the bank to deal with the property; b) The client rents the property; c) The client then, at that time, little by little bought the plot of land until within a certain period of time all the bank’s shares became the property of the customer. In that condition, the property is fully claimed by the client.
In the special regulation contained in the DSN fatwa No.73, it was also disclosed that in the implementation of musyarakah mutanaqisah there are several provisions, including: a) Musyarakah mutanaqisah goods can be rented out to different syarik or associations; b) If the musyarakah item turns into an ijarah object, the syarik (client) can rent the item at the agreed ujrah price; c) Benefits derived from ujrah are divided according to the proportion agreed in the agreement, while losses must be based on the level of ownership. The proportion of benefits can follow changes in the area of ownership as agreed by the syarik; d) The amount/size/portion/part of responsibility for the musyarakah goods reduced due to installments by the syarik (client), must be clear and settled in the agreement; e) The cost of acquiring musyarakah assets is a shared responsibility, while the cost of transferring ownership is the buyer’s expense.

From the following explanation, it is very clear that the musyarakah mutanaqisah contract is more suitable to be applied as a murabahah financing option, especially those identified with property financing (Peraturan Menteri Pekerjaan Umum Dan Perumahan Rakyat Nomor 14 Tahun 2021 Tentang Perhimpunan Pemilik Dan Penghuni Satuan Rumah Susun, 2021).

In Fiqh, the musyarakah mutanaqisah contract basically uses several hybrid contracts. With a mixture, the agreements used in Islamic banking can be consolidated in contemporary business muamalah, but in the merger they must meet 2 (two) conditions, namely: (Abdullah, 2006). There is no sharia prohibition in the merger (there are two hadiths that prohibit the merging of two contracts). There is no wasilah (hilah) to those who are prohibited (usury) in merging these contracts.

There are 4 (four) joint contracts contained in musyarakah mutanaqisah, namely: a) Syirkah ‘inan (musahamah); b) Ijarah; c) Representative (wakalah) in rental management; d) Purchase in stages.

It is also important to emphasize several things that must be fulfilled in order for this agreement to truly meet sharia standards, namely (Al-Kawamelah, 2008): a) The assets must be completely clear in their form. Thus, goods/properties that do not exist are not allowed to be used as objects of exchange; b) The amount of benefit for each party must be explicit and not based on the size of cash; c) Each party must share the profits and losses of the property; d) The Sharia Supervisory Board has special rights in regulating the
agreement; e) Cooperation and purchase agreements must be carried out independently; f) There is an authoritative arrangement where one party will buy the other party’s share in stages.

**Issues Related to Musyarakah Mutanaqisah Contract**

In the application of the *musyarakah mutanaqisah* contract, there are many issues related to it that need attention. These issues include:

**Indent Property Financing**

Property indent financing is financing made by banks for customers who need a house where the bank will get a share from the customer even though the house has not been completed. In conventional banking, this portion should be possible considering that conventional banks apply payments so they don’t think it is difficult to collect quotas from customers. The association is called Interest During Construction (IDC). Obviously, Interest During Construction cannot be applied to Islamic money which deducts point income. For this reason, basically Islamic banking has the opportunity to get a profitable portion of the customer even though the house is still under construction. The agreement that can be used is *Ijarah Mausufah Fi al-Zimmah* (IMFZ).

The agreement is also called a forward lease or *salam fi al-manafi’* as is the case with a sale and purchase with a *salam* contract (forward deal). Unlike *salam*, IMFZ is an installment of profits that will be obtained in the not-too-distant time. In buying and selling with *salam* contracts, there is a shortage of *al-‘ain*, while at IMFZ there is a sale and purchase of excess/administration (*bai’ al-manfa’ah*) where the cost is paid first, while the excess product is obtained later. As in the sale and purchase of *salam*, the value (cash) is paid in advance, while the product is frozen and becomes the obligation (*zimmah*) of the merchant.

Judging from the number of legal experts from Malikiyah, Syafi’iyah and Hanabilah, the IMFZ agreement may be finalized. They see it as *salam fi al-manafi’* (service). The recommendation to accept IMFZ is *istihsan*. In addition, according to Hanafiyah, IMFZ is not allowed (Nashshar, 2009).

**Musyarakah Mutanaqisah in Take Over Financing**
Take-over financing is financing that applied by banks for clients who take home loans to ordinary banks and then want to move to Islamic banks. In cases like this, customers occasionally also need additional assets (top up) to Islamic banks.

To be able to resolve this, the MMQ agreement is used with the following details: a) For example, the size of the assets that must be deposited by an Islamic bank to a conventional bank is Rp. 450 million, then Islamic banks provide assets of Rp. 550 million. That means, Rp100 million is intended for clients. (The expenditure of Rp. 550 million was the purchase of shares (hishah) by the bank for some (hishah) customers. By assets of Rp. 550 million, there was syirkah between the bank and the customer); b) The next stage, the client rents a house which is paid month by month, after the client agrees the bank to handle the house ijarah activities or vice versa, the bank approves the client to supervise it, so that the bank maintains a strategic distance from fees; c) Profit from month to month rental portion is split in half between bank and client depending on the agreed proportion; d) The allotment/share obtained by the customer is used step by step purchase the bank’s ownership segment, while the other portion is for the bank. It runs until the end of the ijarah period; e) When the ijarah period ends, the financing and all goods become the property of the customer.

Interestingly, takeovers between Islamic banks are also possible with musyarakah mutanaqisah contracts. Basically, takeovers between Islamic banks are not allowed, but if they have to be carried out, for reasons of need or damage, on the grounds that the aim is to avoid the risk of difficulty, the customer is allowed to take over financing (Ramli et.all, 2016). Therefore, there must be an explanation that is smart and quite reasonable, then take over from fellow Islamic banks is allowed.

The assumption of control over the system is: a) The client takes a house loan from Islamic bank X, due to crisis reasons he comes to Islamic bank Y asking to take control of his home financing; b) Islamic bank Y buys part of the client’s assets with the approval of Islamic bank X so that the assets become joint property (syirkah/value) between Bank Y and the client; c) The client then, at that time, rented out the house to an Islamic bank. The results are divided depending on the proportion of benefit sharing as agreed. The client portion is used to gradually buy the bank’s share, as a result of
which the bank’s segment continues to decrease; d) At the end of the lease, the resource is automatically turned into the full property of the client.

**Issues in the Mutanaqisah Musyarakah Contract Application**

In the implementation of financing using *Musyarakah* and *Musyarakah Mutanaqisah* contracts, Islamic banks must ensure that the financing application is in accordance with sharia as specified in various legal actions according to Islam including the DSN fatwa. However, some issues that often arise are identified with the consistency of sharia (Basyariah, 2008; Ridwan & Syahruddin, 2013). Several things that distinguish the use of *Musyarakah* and *Musyarakah mutanaqisah* in Islamic banking in Indonesia are divided into 3 problems, namely specific sharia issues, legitimacy issues, and functional issues.

Some of these problems include: Firstly, the issue of sharia which is identified with the standard “two agreements in one item” is when a lease and purchase contract is agreed simultaneously. Secondly, the issue of legitimacy is identified with the difference between Fiqh rules and Indonesian positive law in terms of recording ownership authentication. And thirdly, the functional problem which is identified with the problem of price freedom when *musyarakah* financing is combined with the transfer of ownership (Husein, 2019).

*Musyarakah Mutanaqisah* has special characteristics that can distinguish it from other financing models in Islamic banking. The main characteristics of *Musyarakah Mutanaqisah* contract are as follows: a) *Hishah*, to be more specific the working capital of all parties must be communicated as *hishah* separated into various *hishah* units; b) **Be consistent**, for example, the size of the business capital stated in the *hishah* should not be reduced as long as the agreement is still running strongly; c) *Wa’d*. In particular, Islamic banks guarantee economically and gradually transfer the entire *hishah* to the client; d) *Intiqal al milkiyyah*, for example, every deposit of money by a customer to a Islamic bank whose value is equivalent to the value of the *hishah* unit, in sharia it is declared as a business transfer of the *hishah* unit of a sharia bank, while for a value that is more than the value of the *hishah* unit it is referred to as profit sharing which is a right for Islamic banks.

The *musyarakah mutanaqisah* product can be applied as a productive financing. In Indonesia (Division for Product Improvement and Preparation of Sharia Money Offices, 2016), this kind of product can be applied to motor vehicle financing (KKB), and home
loan financing (KPR). MMQ standard matters described in the review are still limited to MMQ financing for property ownership, especially houses (KPR iB) considering the needs and practices in the Islamic monetary industry market (Otoritas Jasa Keuangan, 2017)

There are relatively few Islamic banks in Indonesia that provide products with *musyarakah mutanaqisah* contracts. From a search through the website, 13 Islamic Commercial Banks in Indonesia, there are four banks that contribute to the *musyarakah mutanaqisah* contract, namely Bank Muamalat, Maybank Syariah, Panin Bank Syariah and Bank Mega Syariah. The four banks offer items of ownership of goods, especially ownership of houses and vehicles. Where in the four banks, they also offer ownership of goods using a murabahah contract. Thus, clients can decide which contract they will use. Other banks still only use *murabahah* contracts for ownership of goods such as houses and vehicles. An example is the BTN Syariah which has launched a new program entitled *Musyarakah Mutanaqisah* (MMQ). Head of the Sharia Division of Bank BTN Joni Prasetyanto explained when launching their latest property financing product entitled KPR Hits, the contract used was *Musyarakah Mutanaqisah* (MMQ). (republika.co.id)

The fatwa that determines *Musyarakah* and *Musyarakah Mutanaqisah* contracts in Indonesia is Fatwa No DSN. 08/DSN-MUI/IV/2000 dan Fatwa DSN No: 73/DSN-MUI/XI/2008. The guideline states that ownership of goods must be made possible by utilizing a *musyarakah mutanaqisah* contract. In the exchange of *musyarakah mutanaqisah* contract, the principal (*syarik*) is obliged to swear to sell the entire *hishah* (segment) in stages and the next party (*syarik*) is obliged to buy it. Upon completion of the agreement, all *hishahs* change to the ownership of another *syarik* (client) (Ali & Rahman, 2016). *Musyarakah mutanaqisah* goods can be rented out to different *syarik* or associations. In the event that the *musyarakah* goods turn into the object of *ijarah*, the *syarik* (client) can lease the goods at the agreed *ujrah* price. The benefits derived from *ujrah* are divided by the proportion agreed in the agreement, while the losses must be based on the level of ownership. The proportion of benefits can follow changes in the area of ownership according to sharia understanding (Husein, 2019).
### Table 1

**MMQ Implementation Issues in Islamic Banking**

<table>
<thead>
<tr>
<th>No</th>
<th>Syariah Issue</th>
<th>Legitimation Issue</th>
<th>Functional Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The principle of “two agreements in one item” when the lease and purchase contracts are agreed simultaneously</td>
<td>The difference between Fiqh rules and Indonesian positive law in terms of recording ownership authentication</td>
<td>The issue of value autonomy when <em>musyarakah</em> financing is combined with an exchange</td>
</tr>
<tr>
<td>2</td>
<td><em>Ta’allaq</em> (connecting contract) appears if the ijarah is applied to the second contract after the <em>musyarakah</em> is formed.</td>
<td>The weak legal situation of Islamic banks cannot take advantage of the affirmation of obligations, or freedom of contract for the exchange of ownership.</td>
<td>Banks will often carry out insurance immediately on the grounds that the client failed to fulfill the lease commitments without the client’s consent</td>
</tr>
<tr>
<td>3</td>
<td><em>Musyarakah mutanaqisah</em> objects/products are used as collateral</td>
<td>The DSN and PBI or SEBI fatwas are not yet complete enough to regulate the substance of Islamic banking regulations required by public accountants and Islamic banks</td>
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</tr>
<tr>
<td>4</td>
<td>The leased object is not yet substantial at the time the agreement is completed</td>
<td>the customer’s obligation to buy the entire object when the event of default has deviated from the principle of profit loss sharing <em>musyarakah</em></td>
<td>There are no specific accounting standards related to MMQ</td>
</tr>
<tr>
<td>5</td>
<td>Financing management in the event of an offer agreement by the customer to the bank or vice versa</td>
<td>Some statements of understanding still fully refer to conventional financial ideas</td>
<td>The client’s commitment to financing profit sharing according to the payment schedule, managing profit sharing according to the plan, accelerating repayment the same as instruments in conventional banks</td>
</tr>
<tr>
<td>6</td>
<td>The cost of maintenance and protection of goods is fully borne by the client</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Advantages of Financing *Musyarakah Mutanaqisah* Contracts

The use of *musyarakah mutanaqisah* contracts has several benefits, including: a) The child and the client both own the goods/assets which are jointly owned. Since this is a joint ownership, the bank and the client will deal with each other over the item; b) There is a division of profits between the two parties from the rental that has been determined for the goods; c) Both parties are able to complete the rental fee adjustment according to the agreed time by following the market price; d) Able to limit the dangers of monetary spending in terms of expansion and increase in market borrowing costs in conventional banking; e) Not affected by fluctuations in market borrowing costs at commercial banks, and also changes in value when expansion occurs.

The shortcomings in the *musyarakah mutanaqisah* contract when applied as a type of sharia financing are: a) The risk of the formation of delegation of the burden of the transaction budget and payment of taxes, both taxes on mortgages or taxes on buildings, and other costs that may be able to become a burden on the goods; b) There is a reduction in the income of the Islamic bank on the rental proceeds charged to the goods that are the object of the contract. Installments expenses in the early years will feel burdensome for customers, but will be lighter in the following years.

**CONCLUSION**

From the problems that have been described previously, conclusions can be drawn including: firstly, MMQ products can be used as a solution in financing the fulfillment of housing needs that depend on sharia standards, but still require coordinated and comprehensive administrative assistance. In practice, Islamic banking is still not ideal in utilizing MMQ due to various variables, including the status of human resources and information innovation, regulations and public understanding which is still minimal.

Secondly, the guidelines that are valid reasons to advance MMQ items are still half way through and not strong yet. There are still many conventional regulations that are touted as a valid rationale, but over time they contradict the characteristics of MMQ.
REFERENCES


Analysis of the Mutanaqisah Musyarakah …..


