



Hybrid Contracts in Islamic Banking: A Shariah and Fiqh Mu‘āmalāt Perspective

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Abstract

The use of hybrid contracts in Islamic banking, where combining several contracts in one transaction is an important need in dealing with the complexity of the modern economy. The development of Islamic banking products continues to innovate to meet the community's demands. However, the hybrid contract concept often raises controversy regarding its compliance with Sharia principles. The purpose of this study is to analyze the application of hybrid contracts in Islamic banking and assess whether its application is by the provisions of Islamic law. This research uses a descriptive-analytical method with a qualitative approach, in which data is collected from primary and secondary literature relating to Islamic law and Islamic banking. The results show that product innovation through hybrid contracts contributes to the growth of the Islamic banking market. Although there are diverse views regarding the permissibility of contract combinations, this study concludes that hybrid contracts are allowed in Sharia as long as they do not contradict the basic principles of fiqh muamalah. Thus, hybrid contracts can be an important tool in the development of Islamic banking as long as they are applied carefully.

Keywords: Hybrid Contract, Islamic Banking, Muamalah Fiqh

Abstrak

Penggunaan hybrid contract dalam perbankan syariah, di mana kombinasi beberapa akad dalam satu transaksi menjadi kebutuhan penting dalam menghadapi kompleksitas ekonomi modern. Perkembangan produk perbankan syariah yang terus berinovasi guna memenuhi tuntutan masyarakat. Namun, konsep hybrid contract seringkali menimbulkan kontroversi terkait kesesuaiannya dengan prinsip-prinsip syariah. Tujuan dari penelitian ini adalah untuk menganalisis penerapan hybrid contract dalam perbankan syariah dan menilai apakah penerapannya sesuai dengan ketentuan hukum Islam. Penelitian ini menggunakan metode deskriptif-analisis dengan pendekatan kualitatif, di mana data dikumpulkan dari literatur primer dan sekunder yang berkaitan dengan hukum Islam dan perbankan syariah. Hasil penelitian menunjukkan bahwa inovasi produk melalui hybrid contract berkontribusi pada pertumbuhan pasar perbankan syariah. Meskipun terdapat pandangan yang beragam terkait kebolehan kombinasi akad, penelitian ini

menyimpulkan bahwa hybrid contract diperbolehkan dalam syariah selama tidak bertentangan dengan prinsip-prinsip dasar fiqh muamalah. Dengan demikian, hybrid contract dapat menjadi alat penting dalam pengembangan perbankan syariah selama diterapkan dengan hati-hati.

Kata Kunci: hybrid contract, perbankan syariah, fiqh muamalah

INTRODUCTION

Islamic banks have essentially undertaken a series of innovative efforts, one of which is the “engineering” of contracts (*akad*) within *fiqh muamalah*. Several contracts in *fiqh muamalah* are not adopted directly by Islamic banking institutions, but are instead “adapted” to meet society’s needs for banking services. This engineering and adaptation are indeed a necessity, because if adoption were carried out exactly as they are, Islamic banking products might be unable to provide appropriate benefits to the public. The principle of flexibility in conducting transactions (*muamalah*) in Islam constitutes a primary foundation for addressing the complexity of economic issues as well as the growing public demand for the role of Islamic banking.¹

The growth of Islamic banking is marked by the emergence of creative products offered to the public. The offering of these new products serves as one of the marketing strategies to increase the number of customers amid increasingly open competition in the banking sector. One way to assess whether a product complies with sharia principles is by examining the contracts (*akad*) and their various provisions used in the product. In Islamic banking products, several – or even the majority – are found to contain multiple contracts. For example, sharia credit card transactions involve *ijarah*, *qardh*, and *kafalah* contracts; sharia bonds contain at least *mudharabah* (or *ijarah*) and *wakalah* contracts, and are sometimes also accompanied by *kafalah*.

In each transaction, these contracts are executed simultaneously, or at least every contract contained in a product cannot be omitted, as they all constitute an integrated whole. Transactions of this nature are referred to in this paper as **multi-contracts**, which in contemporary *fiqh muamalah* terminology are known as *al-‘uqud al-murakkabah*.

According to Mabid Al-Jarhi, former Director of the Islamic Development Bank (IDB), the combination of contracts in the modern era is an inevitability. However, the

¹ Ruslan Abdul Ghofur, “Konstruksi Akad dalam Pengembangan Produk Perbankan Syariah di Indonesia”, *Al-‘Adalah*, Vol. 12, No. 3 (Juni, 2015), 493.

issue faced is that the existing Islamic economics literature in Indonesia, in particular, has long developed the theory that sharia does not permit two contracts within a single transaction (*two in one*). In fact, the prohibition of *two in one* applies only to three specific cases mentioned in hadiths related to the prohibition of using hybrid contracts. These three cases contain three prohibitions: (1) the prohibition of *bai'ataini fi bai'atin*; (2) the prohibition of *shafqataini fi shafqatin*; and (3) the prohibition of combining *bay'* and *salaf*. These three hadiths are consistently used as references by scholars, consultants, and Islamic bankers regarding the prohibition of *two in one* contracts within a single transaction. However, this prohibition applies only to particular cases. Even the first hadith (*bai'ataini fi bai'atin*) and the second (*shafqataini fi shafqatin*) convey the same meaning, although they differ in wording. The intent of the hadith *shafqataini fi shafqatin* is essentially *bai'ataini fi bai'atin*. The concept of *two in one* should not be extended to other issues that are irrelevant or contextually inappropriate. Unfortunately, this prohibition has been generalized to all contracts, resulting in the view that any contract containing two or more agreements is considered contrary to sharia.²

RESEARCH METHODOLOGY

This study employs a qualitative approach using a descriptive-analytical method.³ Approach is chosen to explore and gain an in-depth understanding of the concept of hybrid contracts in Islamic banking and to analyze their implementation based on the principles of Islamic law. Primary data sources are obtained directly from key literature related to Islamic law and Islamic banking, including the Qur'an, Hadith, as well as classical and contemporary fiqh books. Secondary data sources are derived from supporting literature such as journal articles, books, seminar papers, and other relevant sources related to the topic of hybrid contracts in Islamic banking.

² Ali Amin Isfandiar, "Analisis Fiqih Muamalah Tentang Hybrid Contract Model dan Penerapannya Pada Lembaga keuangan Syariah", *Jurnal Penelitian*, Volume 10 (2) 2013, hlm. 206

³ Albi Anggito dan Johan Setiawan, *Metodologi Penelitian Kualitatif*, (Sukabumi: CV Jejak, 2018) hal 10

RESEARCH RESULTS AND DISCUSSION

There is a strong relationship between product innovation and market development in Islamic banking. This means that the more innovative banks are in creating products, the faster the market will develop. Therefore, weak product innovation in Islamic banking will have a significant impact on the slow pace of market expansion. However, it is important to emphasize whether the contracts used in these products violate the rules and principles of Islamic law.⁴ From this point, it is necessary to conduct a more in-depth examination of the concept of contracts, or hybrid contracts.

A. Concept of Hybrid Contracts

1. Definition

In linguistic terms, a contract (*akad*) is “al-‘aqdu,” which means a binding agreement, covenant, or mutual understanding. In technical terms, a contract refers to an agreement of *ijab* (offer) and *qabul* (acceptance) in accordance with sharia law, which has an effect on the object of the binding agreement.⁵

In *fiqh* studies, multi-contracts or hybrid contracts are known as al-‘uqud al-murakkabah.⁶ *Al-‘uqud al-murakkabah* consists of two words: *al-‘uqud* and *al-murakkabah*. The term *‘aqd* etymologically means to strengthen, bind, connect, or link.⁷ Meanwhile, *murakkabah*, according to Hasanudin (2009), is interpreted as to assemble or gather, derived from the word *rakkaba-yurakkibu-tarkiban*, which carries the meaning of placing something on top of something else so that it becomes layered, with one thing on top and another underneath.⁸

The term *akad* can be found in the Qur’an in Allah’s statement in Surah Al-Maidah, verse 1, as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ ۖ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ وَأَنْتُمْ حُرْمٌ ۗ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

⁴ Siah Khosyiah, *Fiqh Muamalah Perbandingan*, (Bandung: Pustaka Setia, 2014), hlm. 181

⁵ Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, (Jakarta: PT Ichtiar Baru Van Hoeve, 1996), hlm. 63

⁶ Harun, “Multi Akad dalam Tataran Fiqih”, *SUHUF*, Vol. 30.2 2018, hlm. 179

⁷ Ahmad Warson Munawwir, *Kamus Al-Munawwir Arab-Indonesia Terlengkap*, (Surabaya: Pustaka Progresif, 1997), hlm. 953

⁸ Hasanudin, *Multi Akad dalam Transaksi Syariah Kontemporer pada Lembaga Keuangan Syariah di Indonesia*, (Ciputat: UIN Syahid, 2009), hlm. 24

“O you who believe! Fulfill your promises. Livestock is permitted for you, except for what will be mentioned to you, and do not hunt while you are in a state of ihram (pilgrimage or ‘umrah). Indeed, Allah decrees laws as He wills.”

Multi-contracts can mean double contracts or multiple contracts. A multi-contract or hybrid contract is an agreement between two parties involving more than one contract,⁹ that is, to carry out a *muamalah* transaction encompassing two or more contracts.¹⁰ According to Abdullah al-Imrani, as cited in the book *“Al-‘Uqud al-Murakkabah dalam Perspektif Ekonomi Syariah”*, a hybrid contract is a collection of several material contracts contained within a single contract, either in a combined or reciprocal manner. Thus, all rights and obligations arising from it are regarded as legal consequences of that contract.¹¹

Thus, it can be concluded that a multi-contract is an agreement between two parties to carry out a *muamalah* transaction that involves two or more contracts.

2. Legal Basis

There has not yet been a detailed study or discussion by earlier scholars that can serve as a foundation for mapping and further developing the theory of multi-contracts.¹² However, multi-contracts are valid and permissible under Islamic law. This view is widely accepted among Hanafi scholars, some Maliki scholars, Shafi’i scholars, and Hanbali scholars.¹³

The ruling on multiple contracts is valid according to Islamic law. Those who permit it argue that the original ruling of a contract is valid and allowed, as long as there is no legal evidence that prohibits or invalidates it.¹⁴ Furthermore, Nazih Hammad (2005) states that when there is evidence that forbids it, the

⁹ Tim Penyusun, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 1996), hlm. 671

¹⁰ Najmuddin, “Al-‘Uqud Al-Murakkabah dalam Perspektif Ekonomi Syariah”, *Jurnal Syariah*. Vol. II. No. II, hlm. 5-7

¹¹ Lutfi Sahal, “Implementasi Al-‘Uqud Al-Murakkabah atau Hybrid Contract (Multi Akad) pada Perbankan Syariah”, *Al-Taradhi Jurnal Studi Ekonomi*. Volume 6, Nomor 2 Desember 2015, hlm. 141-162

¹² Abdulahanaa, *Kaidah-kaidah Keabsahan Multi Akad (Hybrid Contract) dan Desain Kontrak Ekonomi Syariah (Cet. 2)*, (Yogyakarta: TrustMedia Publishing, 2020), hlm. 57

¹³ Wahbah al-Zuhaili, *Fiqh Islam Terjemahan*, (Jakarta: Gema Insani, 2011), hlm. 26

¹⁴ Muhammad bin Abdullah al-Imrani, *Al-‘Uqud al-Maliyah al-Murakkabah: Dirasah Fiqhiyyah Ta’shiliyah wa Tathbiqiyah*, (Riyadh: Dar Kunuz Esbheliah, 2006), hlm. 69

evidence does not apply universally; however, there are exceptions in cases that are explicitly prohibited according to that evidence. This relates to the freedom to enter into contracts and to carry out agreements that have been mutually agreed upon.

As for the scholars who prohibit multiple contracts, they base their argument on the hadith that forbids two sales within a single sale (bai'atain fi bai'atin). As stated in the hadith of Prophet Muhammad (peace be upon him):

عَنْ أَبِي هُرَيْرَةَ قَالَ نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعَتَيْنِ فِي بَيْعَةٍ (رواه أحمد)

"From Abu Hurairah (may Allah be pleased with him) who said: The Messenger of Allah (peace and blessings be upon him) prohibited two transactions in a single transaction." (Narrated by Ahmad)¹⁵

In the following narration from Abu Dawud:

مَنْ بَاعَ بَيْعَتَيْنِ فِي بَيْعَةٍ فَلَهُ أَوْكُسُهُمَا أَوْ الرِّبَا (رواه أبو داود)

"Whoever sells two prices in a single transaction should use the lower of the two prices; otherwise, it is considered usury (riba)." (Narrated by Abu Dawud)¹⁶

There is also a prohibition of two agreements in one contract (shafqataini fi shafqatin), as stated in the following hadith of Prophet Muhammad, peace be upon him:

عن عبد الرحمن بن عبد الله بن مسعود، عن أبيه، قال: نهى رسول الله صلى الله عليه وسلم عن صفتين في صفقة واحدة (رواه أحمد)

"From Abdurrahman, from Abdullah bin Mas'ud, from his father, he said: The Messenger of Allah (peace be upon him) forbade two agreements in one agreement." (Reported by Ahmad)¹⁷

The meaning of "two prices" in the prohibition above is as follows: First, setting different prices for cash and credit sales. For example, when someone (A) offers their product to someone else (B) for 1 million Rupiah in cash and 1.5 million if paid in installments/credit. An agreement occurs between them

¹⁵ Ahmad bin Hanbal, *Musnad al-Imam Ahmad*, hadiths No. 9584, juz 15, hlm. 358

¹⁶ Abu Daud, *Sunan Abi Daud*, hadiths No. 3461 juz 3 (Beirut: Al-Maktabah al- 'Ashriyyah), hlm. 274

¹⁷ Ahmad bin Hanbal, *Musnad al-Imam Ahmad*, hadiths No. 3783 juz 6, (Muassasah Ar-Risalah, 2001), hlm. 324. Lihat juga dalam Hamam Abdurrahman Sa'ide & Muhammad Hamam Abdurrahim, *Mausu'ah Ahadits Abkam al-Mu'amalat al-Maliyyah (cetakan I)*, (Saudi: Dar al-Kautsar, 1431 H), hlm. 233

without clarity on which contract is agreed upon – cash or credit – this is where the prohibition lies. However, according to Hasan (2010), this is acceptable or allowed if the transaction is approved by one of the parties (the buyer).¹⁸

Second, setting a sale at a certain price with a condition that the buyer must also sell a product to the seller at a certain price. For example, if someone (A) wants to sell something to someone else (B) with the condition that B must also sell a product they own, or B is obligated to sell something they have to A at a certain price. This is clearly prohibited because in a sale, there is no obligation for the buyer to sell something to the person from whom they are buying.

Third, buying something for cash at a lower price than the price of the same item sold on credit. An example of this case is when A sells a book to B for 100,000 Rupiah, payable in installments over 6 months. Then, A buys the same book back from B for 50,000 Rupiah in cash. The prohibition in this transaction lies in selling the same item twice in a single transaction, which can lead to trickery (*hilah*) that results in usury (*riba*). This is also known as a '*inah* sale.

The conditions for a valid multi-contract (*multi-akad*) transaction that must be fulfilled are as follows: a. Occurrence of the contract (*syurth al-In'iqad*), b. Validity of the contract (*syuruth ash-Shihah*), c. Certainty of the contract (*syuruth al-Luzum*), d. Execution of the contract (*syurut an-Nafadz*).¹⁹

The pillars of a multi-contract (*al-úqud al-murakkabah*) are:²⁰

- a. Áqid, the person who performs the contract.
- b. Ma'qud álaih, the objects of the contract.
- c. Maudhu' al-áqd, the purpose or intent behind the contract.
- d. Shighat al-áqd, the offer and acceptance. The offer (*ijab*) is the initial statement made by one party entering the contract, while the acceptance (*qabul*) is the statement made by the other party after the offer has been presented.

¹⁸ Sekh Hasan A'yub, *Fiqh Muamalaati al-Maliyati Fil Islami*, (Mesir: Darus Salami, 2010), hlm. 67

¹⁹ Ali Amin Isfandiar, "Analisis Fiqih Muamalah Tentang Hybrid Contract Model dan Penerapannya Pada Lembaga keuangan Syariah", *Jurnal Penelitian, Volume 10* (2) 2013, hlm. 209

²⁰ Hendi Suhendi, *Fiqh Muamalah*, (Jakarta: Raja Grafindo Persada, 2010), hlm. 47-48

3. Limitations

There are limitations and standards in the use of multi-contracts. Some scholars who permit it do not mean that it is allowed without restrictions. According to Hasanudin in *“Multi-Akad dalam Transaksi Syariah Kontemporer Pada Lembaga Keuangan Syariah di Indonesia”* (2009), there are boundaries that must not be crossed when using multi-contracts. Ignoring these limitations can make the multi-contract prohibited. These limitations may lead to several issues, including:²¹

a. Prohibited by Religious Texts

This prohibition is based on the hadith of the Prophet Muhammad (peace be upon him) as follows:

لَا يَحِلُّ سَلْفٌ وَبَيْعٌ وَلَا شَرْطَانِ فِي بَيْعٍ وَلَا رِبْحٌ مَا لَمْ تَضْمَنْ وَلَا بَيْعٌ مَا لَيْسَ عِنْدَكَ

*“It is not permissible to combine debt with a sale, nor to include two conditions in a sale, nor to gain profit without any sacrifice, nor to sell something you do not own.”*²²

b. As a Riba Trick (Hilah Riba)

Hilah refers to an effort or method used to shift a certain situation into another. Ibn al-Qayyim (2003, p. 122) defines it as a form of deception, presenting something permissible in order to achieve something forbidden. The hilah referred to here is the prohibited kind, meaning it is done according to what is allowed in the Sharia, but the action is used to accomplish something that is forbidden.

c. Leading to Riba

The basic ruling of several contracts combined may be permissible, but if it leads to something forbidden, it becomes prohibited. For example, a *qardh* (loan) contract that comes with a requirement for extra compensation. Giving a gift or additional payment to the lender as a condition contains an element of *riba*, namely the excess over the principal loan that must be repaid.

²¹ Lutfi Sahal, “Implementasi Al-Úqud Al-Murakkabah atau Hybrid Contract (Multi Akad) pada Perbankan Syariah”, *At-Taradhi Jurnal Studi Ekonomi. Volume 6*, Nomor 2 Desember 2015, hlm. 141-162

²² HR. *Abmad 6671, Abu Daud 3506, Turmudzi 1279 dan dibasankan Syaib al-Arnauth*

d. Presence of Conflicting Contracts

This prohibition is based on the Prophet's warning against combining a *salaf* contract and a sale (*jual beli*). These two contracts have different rulings.

A sale is a commercial activity with elements of profit and loss, whereas *salaf* is a social transaction emphasizing compassion and brotherhood.

B. Types of Hybrid Contracts

According to Al-Imrani (2006), multi-contracts can be divided into five (5) types, including:

1. Homogeneous Contracts (*al-'Uqud al-Mutajanisah*)

Homogeneous contracts are contracts that can potentially be combined into a single contract. The combination of two contracts into one does not affect the legal ruling or its consequences. This type of multi-contract can consist of the same type of contract, such as a sale combined with another sale, or different types, such as a sale combined with a lease (*ijarah*).

Contracts included in *al-'uqud al-mutajanisah* are similar or related contracts that do not affect the legal ruling and its consequences. They may consist of two contracts with the same ruling (e.g., sale with sale) or contracts with different rulings (e.g., sale with lease or sale with *ijarah*).

An example of this type of contract is a sale combined with another sale, known as *bay' al-inah*. For instance, Ahmad sells his car to Salman for Rp 10,000,000 over six (6) months. When the due date arrives, Ahmad buys back the same car from Salman for Rp 8,000,000 in cash, even though Salman has paid Rp 10,000,000 over six months.

Another example of this type of contract is *bay' al-wafa'*, such as when Ahmad and Eko enter into a sale contract for a movable item, such as a motorcycle, with the condition that the motorcycle can be repurchased once a specified time arrives. According to Haruan in *Fiqh Muamalah* (2017), the ruling of this contract is valid.

2. Aggregated Contracts (*al-'Uqud al-Mujtami'ah*)

This type of contract is a multi-contract combined into a single contract. It can occur in several ways: combining two contracts with different legal

consequences in one contract for two objects at two prices, or combining two contracts with different rulings on a single object for a single consideration, either simultaneously or at different times.

For example, A sells a house to B and also rents another house to B for one year at a price of one million Rupiah. Another example of this type of contract is *al-murabahah bil wakalah*. In Islamic banking, *al-murabahah bil wakalah* is conducted as follows: *Wakalah Contract*, This occurs when a customer needs money to buy a laptop. The bank delegates the customer to act on behalf of the bank, go to the laptop store, and purchase the required laptop. After the laptop is purchased, the customer reports back to the bank on what was bought. *Murabahah Contract*, This takes place after the bank confirms the purchased item. The bank then sells the item to the customer at the cost price plus a profit margin agreed upon by both the bank and the customer.

According to Suhendi, *murabahah* is a sale agreement between the bank and the customer, in which the bank buys the goods needed by the customer and then resells them to the customer at the acquisition cost plus an agreed profit margin.²³

3. Conditional/Dependent Contracts (*al-'Uqud al-Mutaqabilah*)

In fiqh tradition, this type of contract has long been known and widely practiced. Many scholars have discussed this topic, both regarding its ruling and its exchange models. For example, exchanges between a *mu'awadah* contract (reciprocal exchange) and a *tabarru'* contract (donation), or between a *tabarru'* and another *tabarru'* contract. Scholars commonly define this as a conditional contract (*isytirath 'aqd bi 'aqd*).²⁴ This type of multi-contract requires the second contract to respond to the first, where the validity or completeness of the first contract depends on the second contract through a reciprocal process. *Mu'awadah* contracts²⁵ are those that involve mutual delivery or exchange performed by both parties, such as sales (*bay'*), leasing (*ijarah*), and *salam*

²³ Hendi Suhendi, *Fiqh Muamalah*, (Jakarta: PT Raja Grafindo Persada, 2007), hlm. 73

²⁴ Muhammad bin Abdullah al-Imrani, *Al-'Uqud al-Maliyah al-Murakkabah: Dirasah Fiqhiyyah Ta'shiliyah wa Tathbiqiyah*, (Riyadh: Dar Kunuz Esbheliah, 2006), hlm. 57

²⁵ Enang Hidayat, *Fiqh Jual Beli*, (Bandung: PT Remaja Rosdakarya, 2015), hlm. 12

contracts.. Tabarru' contracts²⁶ are those that involve a gift or donation from one party without any compensation, such as grants (*hibah*), wills (*wasiat*), and charity (*shadaqah*). Included here is the *qard* contract, a loan without compensation. In practice, the party performing the good act in a *tabarru'* contract²⁷ is not entitled to request any compensation from the other party. There are four types of prohibited conditional contracts: 1. Tabarru' conditioned on a Mu'awadah contract – For example, a *shadaqah* that requires an *ijarah* contract. E.g., A gives money to B on the condition that B rents a good back to A. 2. Tabarru' conditioned on another Tabarru' – For example, a *shadaqah* conditioned on another *shadaqah*. E.g., Eko gives money to Joko on the condition that Joko also gives money to Eko. 3. Mu'awadah conditioned on Tabarru' – For example, a sale conditioned on a donation. E.g., Ahmad sells coffee to Mahmud on the condition that Mahmud gives tea he owns to Ahmad. 4. Mu'awadah conditioned on Mu'awadah – For example, a sale conditioned on another sale. E.g., Sutanto sells a laptop to Tukiman on the condition that Tukiman also sells a phone he owns to Sutanto.

4. Different Contracts (*al-'Uqud al-Mukhtalifah*)

Al-'Uqud al-Mukhtalifah is a type of multi-contract in which two or more contracts have differences in all or some of their legal consequences. For example, a lease (*ijarah*) contract requires clarity regarding the period of time, whereas a sale (*bay'*) contract does not specify a time. There are two consequences of *al-'Uqud al-Mukhtalifah*: 1. This type of contract may give rise to a new contract while still referring to the original contracts. For example, a combination of *mudharabah* and *musyarakah* results in a new contract called *mudharabah musyarakah*. 2. This type does not produce a new contract, such as *rahn* (pledge), *qardh* (loan), and *ijarah* in pawning products at Islamic banks.

5. Opposing Contracts (*al-'Uqud al-Mutanaqidhah wa al-Mutadhadah wa al-*

The terms above have similar meanings, referring to contracts that involve opposition or contradiction. *Mutanaqidhah* means opposing, *mutadhadah* means

²⁶ Ibid hal 12

²⁷ Adiwarman Karim, *Bank Islam: Analisis Fiqh dan Keuangan (cet. Ke-2)*, (Jakarta: Raja Grafindo Persada, 2004), hlm. 58

two things that cannot occur at the same time, and *mutanafiyah* means negating, the opposite of affirming.²⁸ An example of this type is a sale combined with a loan. For instance, Mulyadi sells a phone to Ahmad, while on the other hand Ahmad must lend money to Mulyadi. This is not allowed. Another example is a *qardh* (loan) combined with *ijarah*, which is considered invalid because the contracts contradict each other.

C. Implementation of Hybrid Contracts in Islamic Banks

There are elements that must exist in a contract (*akad*), namely: 1) *Shighat* (offer and acceptance / *ijab* and *qabul*), 2) *Áqid* (the contracting parties), 3) *Ma'qud 'Alaihi* (the object of the contract), and 4) *Maudhu al-Áqd* (the purpose of the contract).²⁹ *Ijab* refers to a confirmation of willingness and consent, while *qabul* can mean good faith in acceptance.³⁰ Furthermore, *ijab* is the initial statement made by one of the contracting parties to express their intention to enter into a contract, whereas *qabul* is the statement issued by the other party in response to the *ijab*.³¹ According to Ali Amin Isfandiar (2013), the meaning of these elements is interpreted as follows: 1) Something that uses one name is not appropriate or suitable for two opposing matters. 2) Something intended for one name is not suitable to be used for two contradictory matters. 3) Two contracts that are contradictory in practice should not be combined. 4) It is forbidden to combine *sharf* (currency exchange) and sale contracts in a single contract. 5) Regarding *ijarah* (lease) and sale contracts, there are two opinions: the first states that both contracts are invalid because their legal rulings conflict, while the second holds that both contracts are valid and the compensation is divided for each contract based on the price of each contract object. 6) Combining two contracts involving objects with different prices but a single compensation, such as *sharf* and *bai'* (sale) or selling an item declared to be binding

²⁸ Muhammad bin Abdullah al-Imrani, *Al-Úqud al-Maliyah al-Murakkabah: Dirasah Fiqhiyyah Ta'shiliyah wa Tathbiqiyah*, (Riyadh: Dar Kunuz Esbhelia, 2006), hlm. 57

²⁹ Sahrani, Sohari dan Ru'fah Abdullah, *Fikih Muamalah*, (Bogor: Ghalia Indonesia, 2011), hlm. 43-44

³⁰ Vheithzal Rivai, dkk, *Islamic Transaction Law in Business: Dari Teori ke Praktek*, (Jakarta: Bumi Aksara, 2011), hlm. 16

³¹ Hendi Suhendi, *Fiqh Muamalah*, (Jakarta: Raja Grafindo Persada, 2010), hlm. 47-48

before delivery, is legally valid, as each contract can claim compensation corresponding to its own price³²

1. Akad al-Murabahah bi as-Salam

Murabahah is a transactional contract in muamalah that applies the principle of buying and selling goods at the acquisition cost plus a margin (profit) agreed upon by the parties. The acquisition cost of the goods is also communicated or disclosed by the seller to the buyer.³³ It can also be interpreted as a sale contract for a specific item, where the seller states the purchase price of the item to the buyer and then specifies a profit margin in a certain amount.

2. Akad al-Wadiah wa al-Mudharabah

A current account (giro) is a deposit account from which withdrawals can be made at any time using checks, giro slips, other payment order instruments, or via book transfers. There are two types of current accounts: those not permissible under Shariah law and those permissible under Shariah law. Non-permissible current accounts are based on interest calculations. Shariah-compliant current accounts, on the other hand, are based on mudharabah and wadiah principles.³⁴

The contract in a Shariah-compliant current account is based on the principles of mudharabah and wadiah. The combination of mudharabah and wadiah in a Shariah-compliant current account is known as automatic transfer mudharabah and wadiah.³⁵ In practice, customers have two account numbers: a savings account and a current account combined (two accounts in one product). Each account can automatically transfer funds if one of them requires it. In the mudharabah contract, the customer acts as shahibul mal (capital owner) and the bank acts as mudharib (fund manager). As the mudharib, the bank can manage the funds in various productive ventures as long as they do not contradict Shariah principles. Meanwhile, wadiah is a pure safekeeping deposit in which

³² Ali Amin Isfandiar, "Analisis Fiqh Muamalah Tentang Hybrid Contract: Model dan Penerapannya Pada Lembaga Keuangan Syariah", *Jurnal Penelitian Vol. 10*. 2 2013, hlm. 215-216

³³ Otoritas Jasa Keuangan, *Standart Produk Perbankan Syariah Murabahah*, (Jakarta: OJK, 2016), hlm. 16.

³⁴ Fatwa Dewan Syariah Nasional MUI, No. 01/DSN-MUI/IV/2000 *Tentang Giro*.

³⁵ Enny Winarni, dkk, "Hukum Penggabungan Kontrak (Multi Akad) dalam Transaksi Keuangan Syariah", *Al-Azhar Islamic Law Review, Vol 1* (1), Mei 2022, hlm, 10

the funds deposited by the customer can be withdrawn at any time without any required compensation.

3. Akad al-Murabahah bil al-Wakalah

Murabahah is defined as a buying and selling activity at the cost price plus a profit agreed upon by the parties.³⁶ In practice, murabahah can be conducted in cash, on a deferred payment basis, or in installments.³⁷

Wakalah is a representation contract between two parties, in which the first party authorizes the second party to act on behalf of the first party³⁸ The types of wakalah include:

- a. Wakalah al-Mutlaqah, absolute representation, without a time limit and for all matters.
- b. Wakalah al-Muqayyadah, appointing a representative to act on behalf of the principal in certain specific matters.
- c. Wakalah al-Ammah, a broader type of representation than al-muqayyadah but simpler than al-mutlaqah.

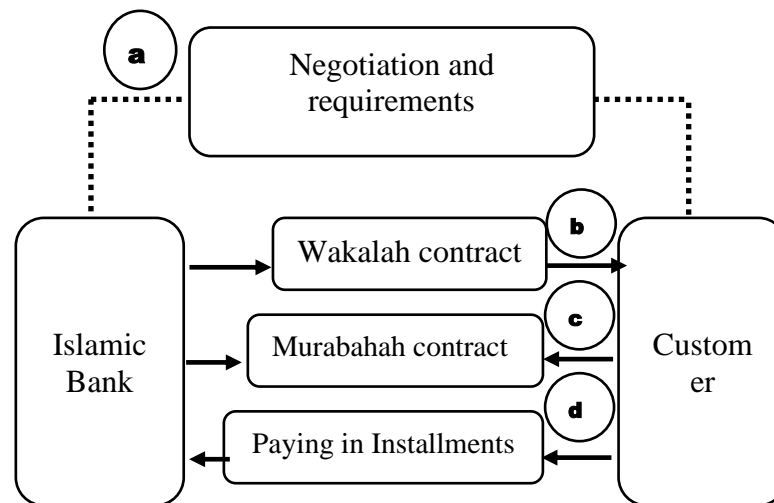
According to Muammar (2018), the practice of wakalah in Islamic Financial Institutions (IFIs) is carried out as one form of Shariah banking service to customers. The wakalah agreement must be accompanied by ijab and qabul, expressed by the parties to indicate their consent to enter into the contract. Wakalah with compensation is binding and cannot be canceled unilaterally.³⁹ The scheme of Akad al-Murabahah bil al-Wakalah is as follows:

³⁶ Kasmir, *Bank dan Lembaga Keuangan Lainnya*, (Jakarta: PT Raja Grafindo Persada, 2013), hlm. 252

³⁷ Heri Sutanto dan Khaerul Umam, *Manajemen Pemasaran Bank Syariah*, (Bandung: CV Pustaka Setia, 2013), hlm. 129

³⁸ Muhammad Syafii Antonio, *Dasar-Dasar Manajemen Bank Syariah (cet.7)*, (Tangerang: Azkia Publisher, 2009), hlm. 34

³⁹ Muammar Arafat Yusmad, *Aspek Hukum Perbankan Syariah dari Teori ke Praktek (cet.1)*, (Yogyakarta: CV Budi Utama, 2018), hlm. 62-63



The above scheme can be explained as follows:

- a. The customer applies for Murabahah bil Wakalah financing.
- b. The bank acts as a representative to purchase the goods on behalf of the customer.
- c. Next, a Murabahah contract with installment payments is made.
- d. The customer pays the installments to the bank.

4. Akad Ijarah Muntahiya Bittamlik

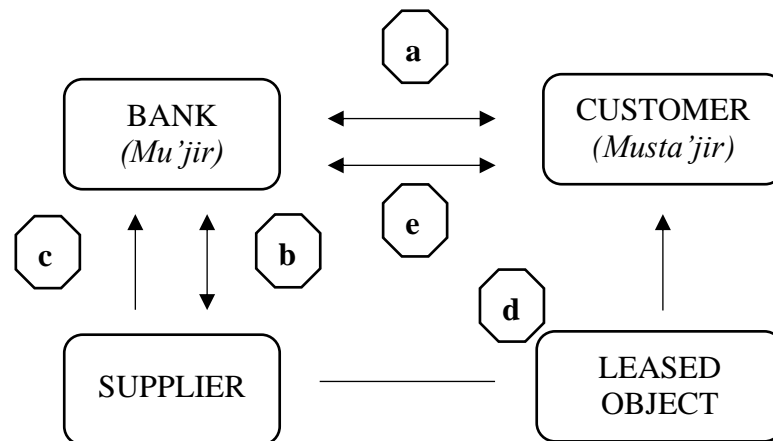
Ijarah Muntahiya Bittamlik (IMBT) is a lease contract that ends with the ownership of the leased object. The difference between IMBT and credit-based sales lies in the ownership of the object: in IMBT, ownership transfers at the end of the installment period, whereas in credit sales, ownership transfers as soon as the sale transaction is agreed upon..⁴⁰ Hammad (2005) classifies IMBT as a type of combined contract, while Aryanti (2016)⁴¹ considers it a muta'addidah (multiple) contract, meaning that IMBT consists of two separate contracts, each distinct from the other.

IMBT is a mixed contract of ijarah (leasing) with an option for sale or gift at the end of the lease, which is non-binding. The rules regarding IMBT are as follows:

⁴⁰ Yosi Aryanti, "Multi Akad (Al-Uqud Al-Murakkabah) di Perbankan Syariah perspektif Fiqh Muamalah", *Jurnal Ilmiah Syariah*, Vol. 15 (2) Desember 2016, hlm. 186

⁴¹ Ibid hal 185

- The party entering into an al-ijarah al-muntahiyah bi al-tamlik contract must first carry out the ijarah (lease) contract.
- The transfer of ownership, whether by sale or gift, can only occur after the ijarah period is completed.
- Any promise to transfer ownership agreed upon at the beginning of the ijarah is considered a wa'd (promise), which is not legally binding.
- If the promise is to be fulfilled, a separate ownership transfer contract must be executed after the lease period ends.
- If either party fails to fulfill their obligations or a dispute arises, it is resolved through the Shariah Arbitration Body if mutual discussion (musyawarah) fails.⁴² Regarding the permissibility of IMBT, most scholars allow this type of contract.⁴³ The scheme of Ijarah Muntahiya Bittamlik is as follows:



The above scheme can be explained as follows:

- First, the IMBT contract is executed between the Bank and the Customer.
- Second, the Bank purchases the leased object from the Supplier.
- Third, the Supplier sends the documents to the Bank.
- Fourth, the Customer uses the goods/services provided by the Supplier.
- Fifth, the Customer fulfills their obligations by paying the Bank.

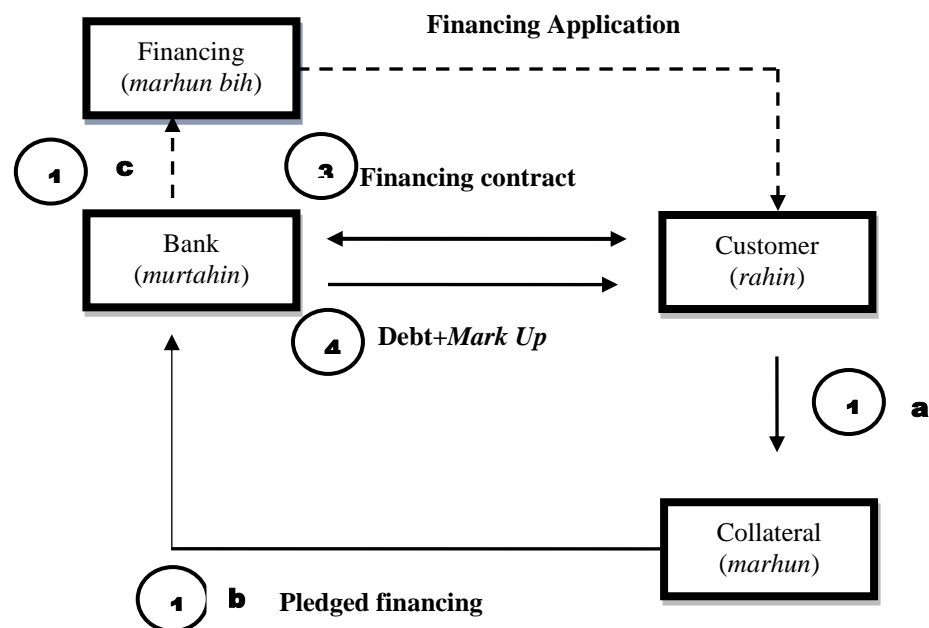
⁴² Fatwa Dewan Syariah Nasional MUI, No. 27/DSN-MUI/III/2002 *Tentang Al-Ijarah AlMuntahiyah Bi Al-Tamlik*.

⁴³ Nasrulloh Ali Munif, "Analisis Akad Ijarah Muntahiya Bittamlik dalam Perspektif Hukum Islam dan Hukum Positif di Indonesia", *Abkam*, Vol. 4 (01) Juli 2016, hlm. 78

Based on the above scheme, DSN-MUI Fatwa No. 27 states that any promise to transfer ownership agreed upon at the beginning of the ijarah contract is non-binding. Therefore, the transfer of ownership from the lessor (mu'ajir) to the lessee (mu'jir) occurs only after the end of the ijarah period, either through a sale or a gift.⁴⁴

5. Akad ar-Rahn wa al-Qardh wa al-Ijarah

Rahn etymologically means permanence, continuity, or collateral. In positive law, rahn is referred to as a guarantee, pledge, or security. In Islam, rahn serves as a means of mutual assistance among Muslims without any service fee.⁴⁵ In technical terms, rahn means using an item as collateral for a debt, which can be used to settle the debt if the debtor is unable to pay. Therefore, according to Muhammad (2011), the item held as collateral must have economic value.⁴⁶ Rahn scheme:

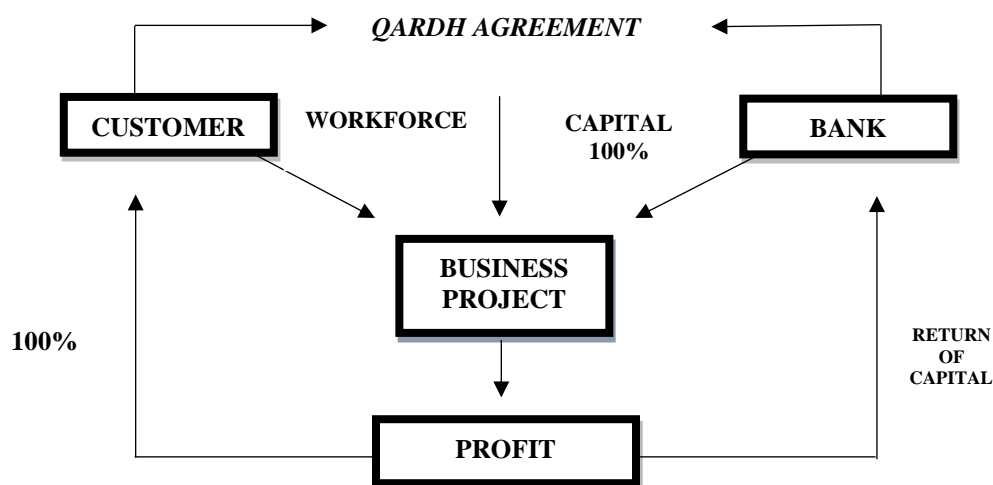


⁴⁴ Firdaus Muhammad Arwan, "Ijarah Muntahiyah Bittamlik Sebagai Konstruksi Perjanjian Sewa Beli", *Millab, Jurnal Studi Islam*, Vol. 19 (1) Agustus 2019, hlm. 45

⁴⁵ Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2007), hlm. 251

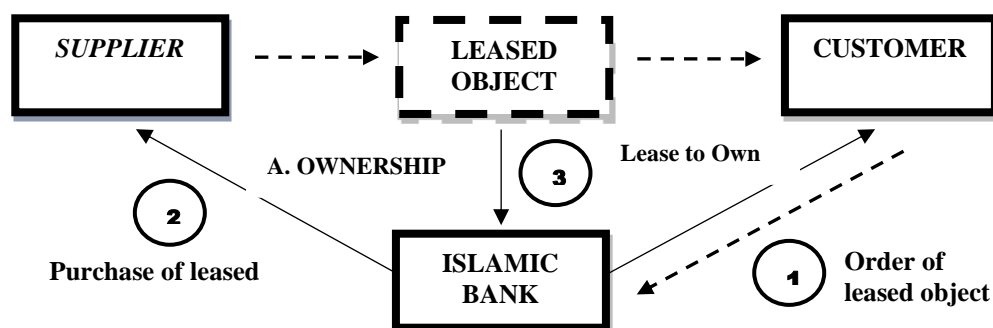
⁴⁶ Muhammad Syafii Antonio, *Bank Syariah: Dari Teori ke Praktik*, (Jakarta: Gema Insani, 2011), hlm.

Qardh is a contract of lending assets to another party without expecting any return.⁴⁷ It is also defined as providing a loan to someone, which can be



repaid at any time without any compensation, because the purpose of the qardh contract is to provide assistance. Qardh scheme:

Ijarah originates from the Arabic word "al-ajru", which means wage.⁴⁸ It can also refer to wages, leasing, services, or compensation.⁴⁹ The lease referred to here is a contract that grants the right to benefit from an asset for a specific period, in exchange for compensation that is not derived from the asset's benefits.⁵⁰ Ijarah scheme:



⁴⁷ Taufik Hidayat, *Buku Pintar Investasi Syariah*, (Jakarta: MediaKita, 2011), hlm. 47

⁴⁸ Sayyid Sabiq, *Fiqih Sunnah 13*, (Jakarta: Pena Pundi Aksara, 2006), hlm. 203

⁴⁹ Nasrun Haroen, *Fiqih Muamalah*, (Jakarta: Gaya Media Pratama, 2007), hlm. 228

⁵⁰ Ahmad Wardi Muslich, *Fiqh Muamalah*, (Jakarta: Amzah, 2010), hlm. 31

6. Musyarakah Mutanaqishah

Musyarakah mutanaqishah is a partnership in which the ownership of an asset or capital of one party gradually decreases due to the other party's gradual purchase of that share.⁵¹ An example of this contract is when a customer and a bank jointly purchase an asset, which the customer then uses to run a business. The purchase is made using joint capital contributed by both the customer and the bank. Subsequently, the customer pays installments to acquire the bank's share of the capital.

Ownership transfers from the bank (partial share) as the customer gradually increases the amount of capital/funds paid to the bank. The reduction of the bank's share due to the customer's payments is called mutanaqishah,⁵² derived from the Arabic words *yatanaqishu-tanaqish-taanqishan-mutanaqishun*, which means gradually decreasing.

The implementation of MMQ in Shariah banking operations involves a partnership between the Islamic bank and the customer for the acquisition or purchase of an asset, where the ownership of the asset is shared jointly. The proportion of ownership is determined according to the amount of capital or funds contributed in the partnership contract.

Subsequently, the customer pays installments to acquire the bank's share of the capital. The transfer of ownership from the bank's portion to the customer occurs gradually, in proportion to the increase in the customer's capital through these installment payments. In other words, the bank's share in the asset decreases proportionally according to the installments paid by the customer. Once the installment payments are completed, full ownership of the asset is transferred to the customer.

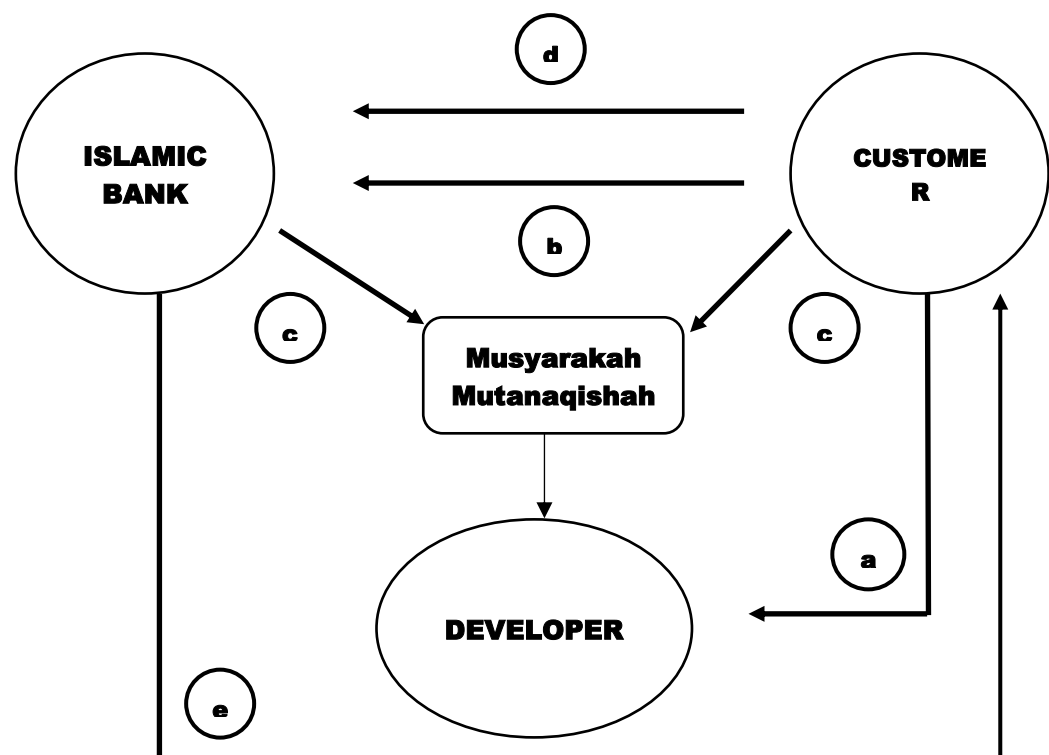
An MMQ asset can be leased (*ijarah*) to a partner (*sharik*) or another party. If a musyarakah asset becomes the object of *ijarah*, the partner (customer) can lease the asset at an agreed *ujrah* (rental fee). The profit from the *ujrah* is

⁵¹ Fatwa DSN-MUI No. 73/DSN-MUI/XI/2008 *Tentang Musyarakah Mutanaqishah*

⁵² Enny Winarni, dkk, "Hukum Penggabungan Kontrak (Multi Akad) dalam Transaksi Keuangan Syariah", *Al-Azhar Islamic Law Review*, Vol 1 (1), Mei 2022, hlm, 8

distributed according to the profit-sharing ratio agreed upon in the contract, while losses are borne according to the proportion of ownership.

The profit ratio can change in accordance with changes in the ownership proportion as agreed by the partners. The proportion of ownership of the musyarakah asset that decreases due to payments made by the partner (customer) must be clearly defined and agreed in the contract. The acquisition cost of the musyarakah asset is a joint responsibility, while the cost of ownership transfer is borne by the buyer. The financing scheme of Musyarakah Mutanaqishah is as follows:⁵³



Explanation of the above Musyarakah Mutanaqishah (MMQ) scheme:

- a. Identify and select the asset.
- b. Submit an application for a Musyarakah Mutanaqishah contract.
- c. Enter into a Musyarakah Mutanaqishah agreement, with each party contributing capital.
- d. Pay for the ownership of the asset in installments.
- e. The Islamic bank transfers its ownership rights to the customer.

⁵³ Ainul Imronah, "Musyarakah Mutanaqishah", *AL-INTAJ*, Vol. 4 (1), Maret 2018, hlm. 45-47

7. Mudharabah Musyarakah

Mudharabah Musyarakah is also called a combination contract. In this contract, the Islamic banking institution acts as the mudharib (fund manager) for the funds provided by the customer (shahibul mal) and contributes its own capital to invest in a third party (mudharib).

According to Utsman (2001), the Islamic bank can act both as mudharib and shahibul mal. The parties involved are the customer, the bank, and the fund manager. In this contract, the bank earns dual profits as both mudharib and shahibul mal, but it also bears losses as shahibul mal if the business venture fails.⁵⁴

The combination of mudharabah and musyarakah contracts creates a new contract, while still referring to the original contracts, thus called mudharabah musyarakah.

An example can be seen in Islamic insurance, where the insurance participant acts as shahibul mal and the insurance company as mudharib. As mudharib, the insurance company can also invest in a third party using a musyarakah contract. Therefore, the combination of these two contracts gives rise to a new contract, named mudharabah musyarakah.

Conclusion

Hybrid contracts in Islamic banking are an important innovation that helps develop banking products to be more relevant to the needs of modern society. Although initially this concept sparked debates regarding its compliance with Sharia principles, this study concludes that the use of hybrid contracts is permissible as long as it meets the requirements of fiqh muamalah and does not conflict with Islamic law. Therefore, hybrid contracts can serve as a solution to address the complexities of banking transactions, provided they are used carefully and continue to uphold fair and transparent Sharia principles.

⁵⁴ Muhammad Utsman, *Buku Pintar Investasi Syariah*, (Jakarta: Media Kita, 2001), hlm. 375

Suggestions:

To optimize the implementation of hybrid contracts in Islamic banking, it is recommended that Islamic banks continue to strengthen their understanding of the principles of fiqh muamalah. In addition, stricter supervision by Sharia authorities is needed to ensure that every product innovation remains compliant with Sharia rules. Further research is also necessary to explore various types of contracts that can be combined, as well as their impact on the development of the Islamic banking industry in the future. Public education is also important so that people deeply understand the mechanisms and benefits of hybrid contracts in Sharia-compliant financial transactions.

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