

MUSYARAKAH MUTANAQISHAH CONTRACT CONCEPT: REVIEW OF PRODUCT REFINANCING AND TAKE OVER

(KONSEP KONTRAK MUSYARAKAH MUTANAQISHAH: REVIEW REFINANCING PRODUK DAN TAKE OVER)

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Abstract

Musarakah mutanaqishah is a modified contract from a musarakah contract that is implemented in Islamic financial institutions as one of their financing products. As for one of the products that accompany it, namely refinancing and transfer of debt (take over). This paper aims to review the musarakah mutanaqishah concept and its concept in Islamic financial institutions and examine briefly related to refinancing and take over products, these two products are products that cannot be separated from the musarakah mutanaqishah contract whose implementation in Islamic financial institutions is currently widely used. The approach used in this paper is a normative juridical approach, then the type of research used is qualitative and the method chosen is descriptive analysis research method while the data is collected by literature study. Musarakah mutanaqishah implemented in Islamic Financial Institutions is in accordance with sharia principles, this is supported by the existing DSN MUI fatwa and refinancing and take over products are also one of the conveniences in applying a musarakah mutanaqishah contract (:).

Info Artikel

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Abstrak

Musarakah mutanaqishah merupakan akad modifikasi dari akad musarakah yang diterapkan di lembaga keuangan syariah sebagai salah satu produk pembiayaannya. Adapun salah satu produk yang mengiringinya yaitu pembiayaan ulang (refinancing) dan pengalihan utang (take over). Tulisan ini bertujuan mengulas konsep musarakah mutanaqishah serta konsepnya dalam Lembaga keuangan syariah dan sedikit menelaah terkait produk refinancing dan take over, kedua produk ini merupakan produk yang tidak bisa dipisahkan dari akad musarakah mutanaqishah yang implementasinya di Lembaga keuangan syariah sekarang ini ramai digunakan. Pendekatan yang digunakan dalam penulisan ini adalah pendekatan yuridis normatif, kemudian jenis penelitian yang digunakan kualitatif dan metode yang dipilih adalah metode penelitian deskriptif analisis sedangkan data dikumpulkan dengan studi kepustakaan. Musarakah mutanaqishah yang diimplementasikan di Lembaga Keuangan Syariah telah sesuai dengan prinsip syariah, hal itu didukung oleh fatwa DSN MUI yang ada dan produk refinancing serta take over pun menjadi salah satu kemudahan dalam mengaplikasikan akad musarakah mutanaqishah (:).



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INTRODUCTION

Al-Musyarakah, also known as *syirkah*, is a contract of collaboration between two or more parties for a specific company in which each party contributes capital with the understanding that the profits and risks would be divided according to the agreement. This kind of contract is also known as a *syirkah* (Faizal, 2017, p. 59). Cooperation between two or more individuals in terms of money, expertise, or trust in a specific company, with profit sharing depending on a ratio agreed upon by the involved parties, is known as *syirkah* (Takdir, 2019, p. 85). Compliance among partners in the execution of business ethics is one of the most important factors determining the existence of a partnership. When seen in this light, the parties directly participating in the partnership are the ones who are directly responsible for ensuring that they have the fundamentals of good business ethics, which are mutually understood and shared as a starter in the execution of the partnership (Taufiqulhakim & Hendratmi, 2020, p. 2148). Economic activity in Islamic teachings is part of muamalah (Shalihah, 2016, p. 144). Islam as a religion that is very perfect in regulating matters of worship to Allah SWT has also regulated matters relating to the rules of interacting with fellow human beings (Dinata, 2021, p. 22). Partnership-based products with profit sharing such as *musyarakah* as a competitive superior product for Islamic banking have not experienced growth like other products (Husein, 2019, p. 80).

Scholars of the four schools of thought divide *syirkah* into two parts namely; *syirkah amlak* and *syirkah 'uqud*. The two types of *syirkah* are divided into seven types of *syirkah*. *Syirkah amlak* is split to 2 distinctive types: which are *syirkah ikhtiyariyah* and *ijbar*, while *syirkah 'uqud* is divided into five, namely *syirkah 'inan*, *mufawwadhab*, *wujub*, *abdan*, and *mudharabah* (Yarmunida, 2014, p. 61). All of these *syirkah* in concept and implementation in general are still basic and limited to cooperation in managing assets.

In contemporary developments, *syirkah* is not limited to collaboration between individuals, furthermore, *syirkah* includes collaboration between individuals and an institution, institutions and companies, and so on. The current development of the Islamic economy demands a modification of this contract. One that is used in Islamic banking as a form of product modification is the emergence of a *musyarakah mutanaqishah* contract in some financing. The practice of *musyarakah* in Islamic banking has undergone many modifications, some are even considered to deviate from the basic concept of *musyarakah* in classical *muammalah fiqh*. Bank Syariah Indonesia as one of the largest BUS in Indonesia

implements a *musyarakah mutanaqishah* contract in two financing, namely refinancing and retail financing or procurement of goods and take over.

In the context of implementing *musyarakah mutanaqishah* contract-based financing products that comply with sharia principles, provisions and standards, a comprehensive and consistent product operational standard framework is needed in line with sharia principles. On that basis, this paper aims to review the concept of *musyarakah mutanaqishah* and a simple study of refinancing and take over products.

RESEARCH METHODS

The approach used in this paper is a normative juridical approach, which is an approach based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to this research. The type of research used is qualitative, namely research that is descriptive in nature and tends to use analysis. While the method chosen is a descriptive analytical research method that functions to describe or give an overview of the object under study through data or samples that have been collected as they are. In collecting data, the authors use literature studies from articles and scientific works that contain elements that can be used in studying *musyarakah mutanaqishah*. The data analysis technique used is data condensation, data presentation, and drawing conclusions (Miles & Huberman, 1984; Miles, Huberman, & Saldaña, 2014).

RESULTS AND DISCUSSION

Musyarakah mutanaqishah (MMQ) concept

In Indonesian, the term *Al-Musyarakah* is interpreted as a partnership or partnership or alliance, and in economics, it is related to the theory of mixing. Where the *musyarakah* theory concerns two pillars: the object of mixing and the time of mixing (Ainul Imronah, 2018, p. 35).

The science of fiqh distinguishes mixing objects into 2 types, first, mixed objects of *'ain* (real assets) in the form of goods and services, consisting of a mixture of *'ain* and *'ain* or real assets with real assets, then mixing real assets with financial assets. Whereas in terms of the time when the mixing occurred, fiqh grouped it into two times, namely the time of delivery right away and the time of postponed delivery or *muajjal* (Hakim, 2011, p. 244). So, a *musyarakah* contract is part of banking products which is "a financing/investment of funds from two or more owners of funds and/or goods to run a certain business in

accordance with sharia with the distribution of business results between the two parties based on an agreed ratio, while the distribution of losses is based on the proportion of each capital” (Aziz, 2015).

A *musyarakah* contract is a kind of cooperation agreement that may include two or more parties. A *musyarakah mutanaqishah* is a derivative product that comes from a *musyarakah* contract (Solihin & Suarsa, 2019, p. 139). The *musyarakah mutanaqishah* (MMQ) is considered to be either a continuation of the *musyarakah* contract or an integral element of that contract (Ascarya, 2008, p. 49). The word *syirkah* is more widely used in Islamic *fiqh*; however, the term *musyarakah*, which is used in sharia finance schemes, has a limited meaning (‘Ainul Imronah, 2018, p. 35). In the terminology of Islamic *fiqh*, there are two different types of *syirkah*: *syirkah al-milk*, also known as *syirkah* of ownership, refers to the joint ownership of a property by two or more parties, and *syirkah al-uqud*, also known as *syirkah* akad, refers to a partnership that develops as a result of a joint contract or business venture.

The development of MMQ is inextricably linked to the advent of subsidized house purchases made available by the government at the same time (Agustiar, 2021, p. 28). The term “*Musyarakah*” is used in Islamic banking, and it refers to a type of business that is both legitimate and fruitful, and it entails an agreement that the profits from a collaboration or mixing between two or more parties to carry out something will be shared according to the agreed ratio, and that the risks will be borne according to the portion of the cooperation that each party will be responsible for (Andriani, 2019, p. 104). In *musyarakah* applications, Islamic banks offer *musyarakah* certificates comparable to *mudharabah* bonds. In order to ensure the distribution levels that are needed by the project, these certificates range in both price and term. Even though it is common knowledge that *musyarakah* and *mudharabah* are not interchangeable in terms of the amounts given (Hasanah & Ichfan, 2021, p. 6).

While the term *mutanaqishah* derives from the phrase *yatanaqishu-tanaqish-tanaqishan-mutanaqishun*, which may be translated as “to progressively diminish.” A *musyarakah mutanaqishah* is a kind of *musyarakah* or *syirkah* in which the ownership of assets (goods) or capital of one party (the syarik) gradually reduces as a result of progressive acquisitions. In accordance with what is said in the Fatwa Number 73/DSN-MUI/IX/2008 on *Musyarakah*.

Because, similar to *ijarah muntiyah bi-al-tamlik*, *musyarakah mutanaqishah* is based on a promise from the bank to its customer partner that the bank will sell to the partner its share of ownership in *syirkah* if the partner has paid the bank the price of the bank's portion, *musyarakah mutanaqishah* is permitted by sharia. During this period, the bank considers the *musyarakah mutanaqishah* to be a *syirkah 'inan*, and it distributes the responsibility of managing commercial activities to its clients and partners. After the *syirkah* has been completed, the bank may sell all or a portion of its share to partners, provided that the sales transaction is carried out independently and is not constrained by a *syirkah* contract (Zuhaily, 2002, pp. 436–437).

According to DSN-MUI No. 73 concerning *musyarakah mutanaqishah*, this contract consists of *musyarakah* and *bai'* contracts, in which the partners have the same rights and obligations as in general *musyarakah* financing. These rights and obligations include providing capital and work based on agreement at the time of the contract, obtaining profits based on the ratio and agreed upon at the time of the contract, and bearing loss in proportion to the amount of capital

The sharia or LKS is required to make a guarantee in the *musyarakah mutanaqishah* contract that they would sell all of their *hishab*, and the *sharik* or client is required to purchase it. Therefore, after the sales transaction has been finalized, the whole *hishab* is considered to be the property of the purchaser. In a *musyarakah mutanaqishah*, assets may be *ijarah'd* to *syrik* or another party with an agreed-upon *ujrah* value. The *ujrah* is split according to the agreed-upon nisbah in the will, but if there is a loss, it is distributed according to the percentage of ownership in the asset.

Musyarakah mutanaqishah(MMQ) in Islamic Financial Institutions

Musyarakah (cooperations) is the next type of profit sharing executed in Islamic banking system (Sa'diyah, 2016, p. 320). *Musyarakah mutanaqishah* financing is a type of system in sharing profit in partnership financing between the BUS/UUS/BPRS and the customer in terms of collective ownership of some assets in accordance to the *syirkah 'inan* principle where the bank's *hishab* degrades and switches to the customer from mechanism of purchase of commercial installments or transfers.

Implementation in Islamic banking operations is a collaboration between Islamic banks and customers for the procurement or purchase of an item (object) (Hosen, 2016, p. 48). The purpose of the *musyarakah mutanaqishah* financing agreement at the Sharia Financial

Institution is to purchase a new property (Ready Stock), old property (Second) or New Indent Property, then as take-over financing and refinancing. While the objects of financing (type of property) that use *musyarakah* financing agreements are residential houses, flats, shop houses, office houses, apartments and condominiums.

The stages of the MMQ financing process in Islamic financial institutions are as shown in the following table:

No	Stages	Implementation
1	Stage 1 Financing submission	<ol style="list-style-type: none">1. Prospective Customers fill out the submission form/SP32. Prospective Customer submits the required documents
2	Stage 2 Document verification of prospective customers	<ol style="list-style-type: none">1. LKS verifies customer data2. LKS performs analysis of: customer profiles, juridical and contract analysis3. LKS evaluates guarantees provided by customers4. LKS makes financing proposals based on analysis and verification of prospective customer documents
3	Stage 3 Financing Submission Approval	<ol style="list-style-type: none">1. LKS makes decisions regarding whether or not prospective customers are given financing2. If appropriate, LKS provides a letter of approval in principle for financing to the prospective customer3. If it is not feasible, LKS immediately confirms and provides a letter of rejection of financing to the prospective customer
4	Stage 4 Financing binding and collateral binding	<ol style="list-style-type: none">1. If the customer is eligible for financing, the customer is asked to go to the LKS to make a commitment2. The LKS checks the authenticity of the guarantee documents3. The customer will carry out the binding

		<p>of financing and guarantees which are carried out and made by a notary partner of LKS</p> <p>4. After the binding is done, the LKS keeps the original financing and collateral binding documents</p>
5	<p>Stage 5</p> <p>Payment of fees before disbursement</p>	<p>1. Prior to setting up a financing facility, the customer and LKS will agree on all costs incurred</p> <p>2. Costs that may arise include: Administrative fees, life insurance costs (if required), fire insurance, financing insurance (if required), notary fees, collateral appraisal fees, stamp duty fees</p>
6	<p>Stage 6</p> <p><i>Musyarakah</i> financing facility settings</p>	<p>1. After all costs incurred have been debited by the LKS, the LKS will make settings on the current account so that the customer can use funds from the customer's account</p> <p>2. The customer is required to use these funds to fulfill the financing needs as proposed</p>
7	<p>Stage 7</p> <p>Profit Sharing Payment</p>	<p>1. The customer pays according to the agreed profit sharing payment date</p> <p>2. LKS capital return payments are made automatically when there are funds in the customer's checking account</p>
8	<p>Stage 8</p> <p>Payment of financing</p>	<p>1. The financing facility is declared paid off when:</p> <ul style="list-style-type: none"> a. Paid off according to the financing period b. The customer makes the payment before the maturity date of the financing facility <p>2. The customer makes repayments by depositing funds in accordance with the remaining profit-sharing funds</p> <p>3. After all of the customer's obligations</p>

		are paid off, the LKS will release the guarantee and stop the request for profit sharing
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MMQ Products in Refinancing and Take Over Products

a. Refinancing

1. Refinancing General Provisions

Refinancing is the provision of new financing facilities for new customers or customers who have not paid off the previous financing. Sharia refinancing (sharia refinancing) is refinancing based on sharia principles. Sharia refinancing (sharia refinancing) covers two circumstances: 1) financing provided to prospective customers who already have full assets; and 2) financing provided to prospective customers who have received financing that has not been paid off. As with the DSN Fatwa Number 89/DSN-MUI/XII/2013 concerning Sharia Refinancing.

2. Scheme in Refinancing

The scheme for refinancing is as follows:

Scheme 1: *Musyarakah mutanaqishah* contract with the following provisions:

- All pillars, terms and principles of the *musyarakah mutanaqishah* contract (DSN-MUI fatwa number 73/DSN-MUI/XI/2008 about *musyarakah mutanaqishah*) apply to the refinancing contract.
- Syirkah* capital in *musyarakah mutanaqishah* may take the form of money or products (*'urudh*), depending on the terms of the arrangement.
- In the case of *syirkah* capital in the form of goods (*'urudh*), *taqvim* al-*'urudh* (evaluation of the price of goods/assets in an agreed-upon currency) must be performed.

Scheme 2: Akad *al-bai' wa al-istijar* with the following provisions:

- All pillars, terms and conditions contained in the Akad *al-bai' wa al-istijar* (Fatwa Number: 71/DSN-MUI/VI/2008 about Sale and Lease Back) apply to refinancing.
- All the pillars, terms and conditions contained in the *ijarah* contract *Muntahiyah bi tamlik* (DSN-MUI fatwa Number: 27/DSN-MUI/III/2002 about *al-Ijarah al-Muntahiyah bi al-Tamlik*), apply in the case of *al-istijar* which The contract used is the *ijarah Muntahiyah bi al-tamlik* contract.

- c. Ownership transfer of the leased object (*intiqal milkiyyah al-ma'jur*) after the ijarah contract is completed, must use a grant contract and may not use an *al-bai* contract. Scheme 3: Akad *al-bai'* in the context of *musyarakah mutanaqishah*, the provisions are:
 - a. All pillars, terms and conditions contained in the *Akad al-Bai'* (among other things Fatwa Number: 71/DSN-MUI/VI/2008 concerning Sale and Lease Back) apply to refinancing.
 - b. All pillars, terms and conditions and guidelines contained in the *musyarakah mutanaqishah* contract (DSN-MUI fatwa Number: 73/DSN-MUI/XI/2008 concerning *Musyarakah mutanaqishah*), apply in the refinancing contract.

3. Mechanisms in Refinancing

Meanwhile the MMQ mechanism for refinancing is as follows:

- a. Prospective Customers apply for financing to Islamic Financial Institutions in the context of refinancing.
- b. Islamic Financial Institutions conduct an appraisal (*taqvim al-'urudh*) of the goods or assets of prospective customers to determine a fair price, in order to determine the business capital (*ra'sul mal*) that the customer includes in *syirkah* with Islamic Financial Institutions.
- c. Islamic Financial Institutions include a certain amount of funds that will be used as *syirkah* business capital with customers; accompanied by conditions for the Customer to settle obligations and/or debts for previous financing if any.
- d. Islamic Financial Institutions give power of attorney (*wakalah* contract) to customers to do business that is lawful and good, including through ijarah contracts.
- e. Customers and Islamic Financial Institutions share business profits according to the agreed ratio or share of included capital (proportional), and losses are divided according to the portion of capital.
- f. The customer makes a commercial transfer of *bisbah* owned by an Islamic Financial Institution in stages according to the agreement.

b. Transfer of Debt (Take Over)

1. Definition of Debt Transfer (Take Over)

In the DSN Fatwa No. 31/DSN-MUI/VI/2002 concerning debt transfers, it is stated that debt transfer is the transfer of customer debt from conventional banks/financial institutions to Islamic banks/financial institutions. Financing based on take over itself is a form of Islamic bank financial services in helping the community to transfer non-sharia transactions that have been running into sharia-compliant transactions (Karim, 2010, p. 249).

Islamic banks in handling take over financing take over customer debt by providing *hiwalah* services or can also use *qard*, adjusted for the presence or absence of an interest element in customer debt to conventional banks. After the customer pays off his obligations to conventional banks, the transactions that occur are transactions between customers and Islamic banks. Thus, what is meant by take over financing is financing that arises as a result of the take over of non-sharia transactions that have been carried out by Islamic banks at the request of customers (Karim, 2010, p. 249).

2. Contract Provisions Related to Debt Transfer (Take Over)

In the DSN fatwa No. 31/DSN-MUI/VI/2002 about debt transfers mentions several alternative debt transfer schemes, these alternatives are:

Alternative 1

- a. LKS offers *qardh* to clients. With this *qardh*, the consumer pays off his credit (debt), therefore acquiring complete ownership of the assets acquired with the credit.
- b. The customer sells the assets described in (a) to the LKS, and then pays off his *qardh* to the LKS using the revenues from the transaction.
- c. LKS offers murabahah assets that it already owns to clients in exchange for installment payments.
- d. The DSN fatwas 19/DSN-MUI/IV/2001 regarding *al-Qardh* and 04/DSN-MUI/IV/2000 regarding Murabahah also apply to the implementation of Debt Transfer Financing as an alternative.

Alternative 2

- a. LKS buys some of the client's assets, with LKK's permission; so that in this way, *syirkah* al-milk occurs between the LKS and the customer for the asset.

- b. The portion of assets purchased by the LKS as referred to in point (a) is the portion of assets equivalent to the debt (remaining installments) of the customer to the LKK.
- c. LKS sells a murabahah portion of the assets that belong to it to customers, with payments in installments.
- d. DSN fatwa number: 04/DSN-MUI/IV/2000 concerning Murabahah also applies to the practice of Debt Transfer Financing as referred to in this alternative II.

Alternative 3

- a. Customers may engage into an Ijarah contract with LKS in order to secure complete ownership of assets, in line with DSN-MUI Fatwa number 09/DSN-MUI/IV/2002.
- b. If required, LKS may assist with customer duties utilizing the *al-Qardh* principle in accordance with Fatwa 19/DSN-MUI/IV/2001.
- c. The Ijarah contract mentioned in (a) may not be needed by (must be distinct from) the bailout mentioned in (b).
- d. The amount of Ijarah service fees referenced in (a) may not be dependent on the amount of bailouts given by the LKS to clients, as referenced in (b).

Alternative 4

- a. LKS supplies consumers with *qardh*. Through this *qardh*, the consumer pays off his credit (debt), therefore acquiring complete ownership of the assets acquired with the credit.
- b. The customer sells the assets described in (a) to the LKS, and then pays off his *qardh* to the LKS using the revenues from the transaction.
- c. LKS leases its acquired assets to consumers under the *al-Ijarah al-Muntakiyah bi al-Tamlik* contract.
- d. The DSN fatwas 19/DSN-MUI/IV/2001 regarding *al-Qardh* and 27/DSN-MUI/III/2002 regarding *al-Ijarah al-Muntakiyah bi al-Tamlik* also apply to the implementation of Debt Transfer Financing as described in this option IV.

CONCLUSION

The *Musyarakah mutanaqishah* contract with one of its products is refinancing and debt transfer (take over) is part of product innovation in Islamic financial institutions, the current existence of this contract provides convenience and also other financing alternatives. The existing fatwas support and are in accordance with sharia principles, it's just a matter of now how the actors, both LKS employees and customers and observers, keep an eye on each other for the continuity of this contract, so that this contract really becomes a solution in the midst of the rapid development of the sharia economy.

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