

## Transforming *Musyarakah Mutanasiqah* Contract: An Analysis of Refinancing Products in Islamic Financial Institutions

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### Abstract

This study reviewed the Implementation Analysis of The *Musyarakah Mutanaqishah* Agreement on Refinancing Products in Islamic Financial Institutions. This type of research is conducted through normative legal research. The theoretical basis is derived from laws, norms, fatwas, and matters related to theories that align with the problem's object being discussed. This approach is in the form of laws, fatwas, and conceptual. The data collection technique is sourced from library studies. Analysis of legal sources is presented descriptively and systematically. From this research, it can be concluded that implementing the *musyarakah mutanaqishah* agreement on refinancing products becomes part of product innovation at Islamic institutions expected to add to the portfolio of institutions that can be accepted and absorbed by financial markets and impact mutual benefits to customers and financial institutions.

**Keywords:** *Refinancing, Musyarakah Mutanaqishah, Sharia Finance.*

### INTRODUCTION

Economic development with sharia principles has recently been growing rapidly. This can be seen from the number of Islamic financial institutions born in the banking and non-banking sectors. Many people respond positively and want to apply sharia principles in managing their finances, increasing the demand for sharia financial products (Khan et al., 2020).

However, despite the rapid developments in the Islamic finance sector, Islamic financial institutions face several problems that must be addressed. One of the main problems faced is the limited product innovation at Islamic financial institutions (Le et al., 2022). This has an impact on the products offered to be limited, so they cannot meet market needs and demands to the fullest. Islamic financial institutions must continue to innovate and develop new products that can meet the needs of society and the market (He & Harris, 2020).

There are still sharia issues (sharia compliance) which are also a problem for sharia financial institutions. Even though sharia financial institutions are committed to following sharia principles in managing their finances, several cases of violations still have occurred (Khan & Rabbani, 2022). Therefore, Islamic financial institutions must tighten supervision and take strict action against violations. In dealing with this problem, Islamic financial institutions can cooperate with supervisory

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institutions and related authorities to improve supervision and compliance with sharia principles (Babicci & Wongsurawat, 2020).

To answer the challenges of product innovation in the Islamic financial sector, several efforts have been made by Islamic financial institutions. One is the issuance of the MUI DSN fatwa No. 89 of 2013 regarding sharia refinancing products. This fatwa is a breath of fresh air for Islamic financial institutions in Indonesia because it can expand the reach of their market segments and answer one of the existing problems (Rabbani et al., 2021).

This sharia refinancing product has several contract schemes, including the *musyarakah mutanaqishah* (MMq) contract. This MMq contract is a development of a sharia transaction based on a *musyarakah/syirkah* contract. In the MMq contract, two contracts are carried out in parallel: the *musyarakah* contract between the customer and the bank in the form of equity participation to mutually manage a profitable business (Riwajanti et al., 2022). The customer from the business he runs will get a profit which is then shared between the customer and the bank based on the agreement that was made before. In addition, the customer will gradually buy bank-owned assets that have been given away until they are fully owned by the customer (Cachon, 2020).

In its implementation, the guidelines for implementing sharia refinancing products also have several obstacles that need to be overcome. One of the obstacles faced is the low public awareness of sharia financial products, so it is necessary to conduct more intensive outreach regarding these products (Azad et al., 2022). In addition, there needs to be strict supervision and a better understanding of sharia principles in financial management so that this product can continue to develop and benefit society.

## LITERATURE REVIEW

### Definition of *Musyarakah Mutanaqishah*

In principle *Musyarakah Mutanaqishah* consists of the words *musyarakah* (*syirkah*) and *mutanaqishah*. *Musyarakah* can be interpreted as *al-ikhtilath* (mixed) and *Al-nashib, al-hishshah* (portion). Meanwhile, *Mutanaqishah* means reducing gradually (Wahab, 2020).

Whereas *Musyarakah* in sharia, according to Hanafiyah scholars, has the meaning of combining two or more parts of assets which has an impact on not knowing each other's parts. According to Malikiyah scholars, *musyarakah* is a contract agreement between two parties to manage each other jointly. Meanwhile, according to Syafi'iyah and Hanabilah, more emphasis is placed on the authority of each union against the agreed contract (Mohd Noor et al., 2019). According to other jurists, *musyarakah* is an agreement between unionized parties regarding capital and profits. According to the Syari'ah Economic Law Compilation (KHES), *musyarakah/syirkah* is a form of agreement contract between two or more parties in the mixing of capital, skills, or

trust in a particular business together and the sharing of the results of the business refers to the *nishab* (Khandelwal & Aljifri, 2021).

The fundamental thing in a *musyarakah/syirkah* contract is implementing the principle of profit and loss sharing. Apart from that, this contract, in terms of giving profit from the bank, is not based on and sourced from interest but is obtained based on profit sharing (Ajmi et al., 2019).

Along with the developments in the business world, this *syirkah* contract was developed into a more sophisticated *mutanaqishah musyarakah* contract because it can be used for various purposes and can add to the portfolio in Islamic banking itself. Among them are for refinancing purposes, transferring debt between Islamic banks, investment, takeover, consumer financing, and so on (Felix & Abubakar, 2019).

According to Nadrattuzaman Hosen, quoted by Dadin Solihin and Abin Suarsa, *Musyarakah Mutanaqishah (MMq)* is a cooperation contract with more than two parties involved owning a common asset. Then with this contract, there is a reduction in the ownership of one of the sharks and gives additional ownership rights to the other shark. This transfer process is carried out through a periodic payment for the rights held over other *sharik* (Muneeza et al., 2020).

Whereas in the DSN MUI fatwa number 73 of 2008, *MMq* is defined as a *syirkah* where the assets or capital of one *sharia* becomes reduced due to the gradual purchase process by another *syirik*. In the *Musyarakah and Musyarakah Mutanaqishah Products Standard Book* mentioned that *MMq* is one of the financing products available in Islamic banking based on the *syirkah 'inan* contract with *hishshah* from the bank (*syarik*), which is reduced due to purchases or transfers made commercially and gradually to other customers (*syarik*).

### **Definition of Sharia Refinancing**

Sharia refinancing, as a form of refinancing that refers to sharia principles, can benefit Islamic financial institutions and their customers. For Islamic financial institutions, providing Islamic refinancing services can be a business strategy to expand the market, increase customer confidence, and help manage credit risk (Asni, 2022). Meanwhile, for customers, sharia refinancing can solve problems in paying previous obligations, obtaining new financing at a lower cost, and obtaining a more flexible solution in managing finances (Tahiri Jouti, 2019).

Even though sharia refinancing has been implemented in Indonesia since 2015, the number of sharia financial institutions that provide these services is still limited. Therefore, there is a need for more intensive promotion and education regarding the benefits and procedures of sharia refinancing services to encourage more sharia financial institutions to provide these services and expand customer access (Raeni et al., 2022).

In addition, it is also essential for sharia financial institutions to continue to improve product innovation and sharia refinancing services and improve sharia compliance at every stage of the transaction (Liu & Lai, 2021). This is done to increase public trust in sharia products and services and maintain sharia compliance in every transaction made by sharia financial institutions. That way, Islamic financial institutions can continue expanding the market and providing better customer services (Alam et al., 2019).

### **Islamic Financial Institutions**

In the Islamic economic system, a business identity, such as an Islamic financial institution, is an instrument used to apply economic rules. As part of the economic system, the institution is part of the entire social system. Therefore, the existence of society (humans) and the values that apply in the community are concerned. Therefore, Islam rejects the view that economics is a value-free science (Ghulamallah et al., 2021).

Islamic economic rules in conducting a business are not only related to the prohibition of doing business on commodities of alcohol, pornography, gambling and other immoral/social activities but they are also aimed at making a positive contribution to achieving better socio-economic goals for society (Yesuf & Aassouli, 2020). Business is dysrishly run to create a good business climate free from fraudulent practices. These rules are made based on God's commands in the Qur'an, the instructions of the Prophet Muhammad in the hadiths, and the *ijma'* and *qiyas* of the scholars (Asghar et al., 2020).

One form of the business run according to sharia is the financial business carried out by various financial institutions, both banks and non-banks. Islamic Financial Institutions (LKS) are one of the Islamic economic sectors that have developed rapidly in the last few decades (Supiandi et al., 2022). This rapid development was driven by the deteriorating world economic system driven by the conventional system, the religious spirit, and practical importance in developing the people's economy (Chin et al., 2022).

Because LKS stands on sharia foundations, it must always align with sharia (shariah compliance) in spirit and technical aspects. In Islamic teachings, financial transactions must be free from unlawful transactions, with the principle of benefit (*tayyib*), for example, free from usury, *gharar*, *riswah*, and *masyir* (Darmalaksana, 2022). In general, it can be said that Islamic finance must follow the rules and regulations in *fiqh muamalah*. These requirements will result in relatively substantial differences between Islamic and conventional finance. Another distinguishing factor is the existence of a Sharia Supervisory Board (DPS) in the organizational structure of LKS, which oversees its products and operations (Ishak & Asni, 2020).

In its conventional view, a financial institution is a business entity whose main wealth is in the form of financial assets, providing credit and investing funds in securities, and offering other financial

services such as savings, insurance, investment, financing, and financing others. According to Warde, no single definition can perfectly explain the notion of a financial institution from a sharia perspective (Mejia-Escobar et al., 2020). However, Warde provides several criteria for a sharia-based financial institution: a financial institution owned by Muslims, serves Muslims, has a sharia board, is a member of the International Association of Islamic Banks (IAIB) and so on.

From the explanation above, it can be concluded that an Islamic financial institution is an institution, both bank and non-bank, which has the spirit of Islam in both its services and products, in which its implementation is supervised by an institution called the Sharia Supervisory Board. From this understanding, it can be concluded that Islamic financial institutions cover all aspects of finance, both banking issues and financing cooperation, company security and insurance, and so on, outside the banking context (al Rahahleh et al., 2019).

Some operational principles in LKS are:

1. Fairness, namely the principle of sharing profits based on actual sales based on the contribution and risk of each party.
2. Partnership, namely the principle of equality between the parties involved in cooperation. The position of investor customers (savings of funds), the use of funds, and the financial institutions themselves are equal as business partners who synergize with each other to gain profits (Roro et al., 2019).
3. Transparency, in this case, an LKS is required to provide financial reports openly and continuously to investor customers or parties involved so that they can find out the actual condition of the funds.
4. Universal is the principle in which LKS is required to provide ethnicity, religion, race, and class in society in providing its services per Islamic principles as *rahmatan lil alamin* (Ibragimova & Korjonen, 2019).

In its operations, LKS must also pay attention to the following matters:

1. Payments on loans with a value different from those with a predetermined value are not allowed.
2. The fund's donor must share in the profits and losses due to the business of the institution that borrowed the funds.
3. Islam does not allow "making money from money". Money is only a medium of exchange, not a commodity because it has no intrinsic value.
4. Elements of *gharar* (uncertainty, speculation) are not permitted. Both parties must know the results they will get from a transaction.
5. Investments may only be given to businesses not forbidden in Islam, so liquor businesses, for example, cannot be funded by Islamic banking (Liu et al., 2022).

## METHOD

This paper is a research with a normative juridical approach. Namely in library law research by examining library materials or secondary data sources. A deductive thinking method uses a descriptive-analytic method, library research (library research). This type of research is qualitative research with data search steps from various references in books, journals, or other materials supporting the discussion.

## RESULT AND DISCUSSION

### Legal Basis of Musyarakah Mutanaqishah

This Musyarakah Mutanaqishah contract refers to QS al-Maidah (5): 1 regarding the command to believers to fulfill contracts made and agreed upon and also QS Shad (38): 24 regarding the understanding of the caliph in that verse regarding the prohibition of doing injustice when cooperating or association for any matter as well as an affirmation to have faith and do good deeds to be able to avoid tyrannical acts. In addition, several hadiths also mention syirkah, including the history of Tirmidhi's faith from 'amr ibn 'Auf al-muzanny; that the Messenger of Allah s.a.w, although many hadith scholars rejected his narration because there was a narrator by the name of Kasir Ibn Abdullah Ibn Amr ibn Auf who was considered weak, At-Timidzi considered him hasan because of the many ways that were narrated. In the Hadith, Rasulullah s.a.w said that ash-shulhu (peace) is permissible among Muslims because the ash-shulhu does not justify what is unlawful and forbids what is lawful. Rasulullah s.a.w also required his people to fulfill and obey the conditions between them, including their fellow associations.

### Tracing the History of Musyarakah Mutanaqishah

The Musyarakah Mutanaqishah contract was initially discussed and discussed at al-majma' al-fiqh in 1997, a concept that combines musyarakah/syirkah contracts and the need to respond to fast business developments.

Musyarakah Mutanaqishah is included in the al-uqud murokkabah (multi-contract) group because it combines syirkah al-inan, grants, and ba'i which are carried out based on promises or mutual disclosure of promises. The musyarakah mutanaqishah contract scheme can be described as follows:

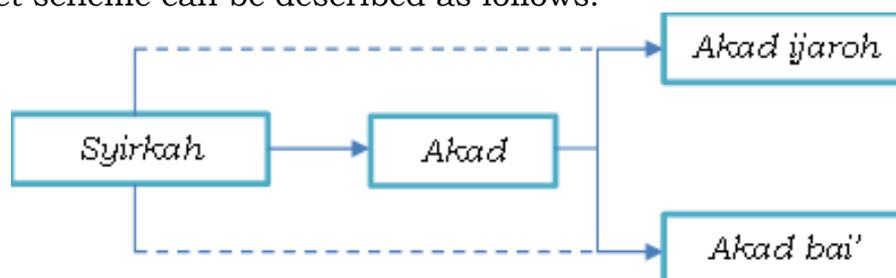


Figure 1. Musyarakah Mutanaqishah Contract Scheme

### **Terms and Pillars of Musyarakah Mutanaqishah Contract**

Wahbah al-Zuhaili, in his book *al-Fiqh al-Islam wa Adillatuhu*, mentions the opinion of the scholars who agree and allow transactions with this MMq contract with conditions that must comply with the conditions that have been mutually agreed upon at the Islamic Finance Conference in Dubai, United Arab Emirates, namely: First, in the MMq contract there is no distribution of funds which contains camouflage, meaning that the financing results in the birth of new debt (*ad-Dain*). This contract must be clear and clear in the form of the provision of capital from those who have entered into the contract. The sharik carry out profit-oriented business activities, with the profits then distributed as they are willing to bear any losses that occur proportionally. Second, the capital from Islamic financial institutions must be fully controlled and owned by the LKS. Third, LKS parties are prohibited from requiring guarantees from customers that function as a return on capital to LKS parties when they experience losses in the business. The contract is categorized as semi-usury (*syibh al-riba*), which must be avoided.

The DSN MUI fatwa number 73 of 2008 states the pillars of MMq as follows: First, there is an MMq contract in which assets or capital from one syrik has decreased due to a gradual purchase from another syrik. Second, some people are syirkah. Third, there is *hishshah* in the *musya'* capital. Fourth, *Musya'* is a portion of shared assets or capital whose value cannot be determined physically.

The MMQ Pillars are also regulated by the OJK in the *Musyarakah and Musyarakah Mutanaqishah Product Standards* with the following provisions: first, the person who enters into the contract, both the bank and the customer are mutually affiliated with each other in capital ownership, the customer also plays the role of an executor in the contract. Second, regarding the capital of each of the unionized parties, both include capital that is oriented toward buying certain assets, or it could also be toward carrying out specific projects. Third, in terms of the object of the contract, it can be a profit-oriented asset or project that will be distributed to the contracting parties. Fourth, there is a consent *qabul* which is stated (in writing) by each party as a form of the contracting parties will. Fifth, the profit-sharing ratio of the profits obtained is agreed upon as a percentage, not a fixed nominal amount.

### **Characteristics of a Musyarakah Mutanaqishah (MMq) Contract**

Characteristically, this MMq contract has its characteristics compared to other contracts in Islamic financial institutions, and these characteristics include: first, equity participation from sharia is expressed in the form of *hishshah*, which is then divided back into several *hishshah* units. Second, the total capital participation in the *hishshah* must be constant and cannot decrease as long as the MMq contract is valid. Third, the bank must make a promise to the customer, which contains a statement that the bank will commercially and gradually transfer its entire *hishshah* to the customer (*syarik*) (Herijanto, 2022). Fourth, the existence of *intiqaal al-milkiyyah*, namely

funds deposited by customers to Islamic banks, it is understood that each deposit value whose amount is the same as the nominal Islamic hishshah unit is stated as a form of transfer of Islamic commercial bank hishshah units, while the value which is more from the hishshah unit is stated as profit sharing as the property of Islamic banks (Darmalaksana, 2022).

This is in line with the direction from DSN MUI regarding the implementation of financing using the MMq contract model in fatwa number 01 of 2013 concerning the characteristics of the MMq contract by illustrating the distribution of hishshah.

### ***Musyarakah Mutanaqishah based on DSN-MUI Decision Number 01 of 2013***

DSN MUI decision number 01 of 2013 was born as a form of uniforming the process of implementing MMq contracts in Islamic financial institutions which is also inseparable from previous fatwas that are interrelated, namely fatwa number 8 of 2000 regarding musyarakah, fatwa number 73 of 2008 regarding MMq, fatwa 09 of 2000 regarding ijarah, fatwa number 27 of 2003 regarding IMBT, fatwa number 85 of 2012 concerning promises in sharia financial transactions.

In the decision of the DSN MUI number 01 of 2013, several matters regarding the implementation of MMq contracts in Islamic financial institutions include product definitions, MMq characteristics, product objectives, financing objects, principles and provisions.

In this decision, the musyarakah mutanaqishah contract was redefined clearly and entirely to affirm the previous fatwa regarding MMq. This type of syirkah in MMq uses syirkah inan, where the hishshah of one of the musyarakah (banks/LKS) is reduced due to commercial and gradual transfers to other syirkah participants, namely customers.

This MMq contract has the function and objective of providing facilities to customers to obtain and increase assets and capital based on the principle of profit sharing. These assets can be in the form of houses/properties, motorized vehicles, or other assets, either new or used, that are not against sharia. The object of this contract financing is used for commercial business activities that do not conflict with sharia, the application of the musyarakah mutanaqishah principle is outlined in a fatwa and becomes a reference for sharia financial institutions by applying the syirkah al-'inan principle.

### **Legal Basis of Sharia Refinancing**

The legal basis for the permissibility of sharia refinancing is as stated in the DSN fatwa guided by QS.5: 1 regarding Allah's commands to believers to fulfill and perfect the contracts that have been mutually agreed upon. Also, QS.4:29 regarding the prohibition of eating something falsely and Allah's instructions for doing business are based on mutual pleasure between them. In addition, in the hadith qudsi

narrated by Abu Dawud from Abu Hurairah, Allah s.w.t will give blessings to two people who associate as long as they do not betray one another.

### **Akad Provisions related to Refinancing Refer to DSN MUI Fatwa number 89 of 2013**

Based on the DSN MUI Fatwa number 89 of 2013, the terms of the refinancing contract are carried out in three schemes:

1. First, using the MMq contract with provisions starting from the pillars, conditions, and guidelines referring to fatwa number 73 of 2008, the capital participation can be in the form of money or goods ('urudh); when this syirkah contract is in the form of goods, an appraisal process must be carried out on the goods in the agreed currency.
2. Second, using the bai wa al-isti'jar (sale and lease back) contract with the provisions referring to fatwa number 71 of 2008 concerning sale and lease back. When bai wa al-isti'jar used the IMBT contract, fatwa number 27 of 2002 became the basis for refinancing when using the contract. After the ijarah contract is completed, transferring ownership of the leased object must be carried out using a grant contract (not a sale and purchase contract).
3. Third, using a sale and purchase contract within the framework of MMq with the pillars and conditions referring to fatwa number 71 of 2008 and 73 of 2008.

### **Sharia Refinancing Procedure using MMq contract (*Musyarakah Mutanaqishah*)**

Referring to the guidelines set by the DSN MUI, in general, the practice of sharia refinancing used in Indonesia uses the *musyarakah mutanaqishah* contract as follows: First, the sharia party, in this case, is the customer carrying out the process of applying for financing (financing) to banks or Islamic financial institutions in the context of refinancing (refinancing). Second, to determine the customer's ro'sul mal for unionization, the bank or sharia financial institution *taqvim al-'urudh* (asset appraisal) of the customer to determine the price of the customer's assets. Third, the banking or Islamic financial institution participates and pools capital/funds with the customer with a statement that if the customer still has previous arrears, the customer is obliged to settle it (Rohman et al., 2021). Fourth, the Islamic banking or financial institution then gives the mandate or power of attorney to use the wakalah contract to the customer to manage and carry out sharia-based business activities, in this case, among the contracts, one can use the ijarah contract. Fifth, the contracted parties (customers and banks/LKS) are committed to sharing the profits obtained based on the previously agreed portion (nisbah), and if they experience a loss, the loss will be shared based on the portion of each party's equity participation. Sixth, from the distribution of profits, the customer

transfers hishshah owned by a bank or LKS in stages (Khasanudin, 2022).

## CONCLUSION

Sharia refinancing, as a result of continuous product innovation in Islamic financial institutions, can answer customer needs and business aspects in Islamic financial institutions, meaning that from the customer's point of view, their needs can be fulfilled by covering their lack of capital. As for Islamic financial institutions, they are a source of additional profit by mitigating risk through refinancing to customers who have a good track record. In carrying out refinancing product financing with a *musyarakah mutanaqishah* contract, the banking sector or LKS generally chooses a sale and lease back scheme and a buying and selling scheme in the context of an MMq contract. This is because banks or Islamic financial institutions generally carry out the purchase process on customer assets as bank-owned hishshah, which the customer will later repay.

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