

## JURIDICAL REVIEW OF MUSYARAKAH MUTANAQISAH (MMQ) AGREEMENT ON HOUSE FINANCING TRANSACTIONS ON ISLAMIC BANKING IN INDONESIA

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### ABSTRACT

Islamic financial institutions in general, particularly banks have provided an interesting phenomenon in the last two to three decades. Banking institutions or more often we are familiar with Islamic Banks, is believed to provide something interesting, challenging and a promising model compared to conventional financial systems. With the development of Sharia Banking, it gives a considerable role to the economic development of Indonesian society. The development of Islamic Bank is aimed to fulfill the needs of the people who want banking services in accordance with the Islamic principles believed. The growing development of Islamic Banking encourages the growing also products in it. One of Islamic Banking products that is highly demanded by the public is the housing finance product, known as the Islamic of Share House Ownership Congress (KPRS). The implementation of the Musyarakah Mutanaqisah (MMq) product in Indonesia is in line with Fiqh, but it still needs to be refined in technical terms; because there is a little discrepancy between the MMq product that are already running and the MMq based on Fiqh. In the MMq product in Indonesia, Banks rent the property intact to customer with wakalah contract while the customer pays the rent fee for the use (so, the sharing profit is based on the agreement). On the other side, in the MMq based on Fiqh, the Bank leases 90% of its shares (according to the share of capital entered for purchasing the property) to its customer and the customer pays the lease fee to the bank on the 90% of the property. So, the sharing profit is based on the percentage according to the bank. Musyarakah Mutanaqisah Agreement has advantages in togetherness and justice, both in various advantages and risk of loss, so it can be an alternative in the process of house ownership. Musyarakah Mutanaqisah Agreement in mortgage product will facilitate the customer in financing the KPR. The advantages of this contract for the customer are the longer term of the financing and installment is relatively cheaper, and more appropriate sharia-based profit-sharing principles. Thus, it is interesting to review the application of Musyarakah Mutanaqisah contract as an alternative financing for more suitable property ownership.

**Keywords:** Musyarakah Mutanaqisah Agreement, House Ownership Financing.

### 1. Introduction

#### 1.1. Background of Problem

Today's economic activity is undergoing rapid growth. The rotation of the economic wheel, among others, is influenced by the rotation of business capital. In this case, it is almost inevitable that the cooperation between capital owners and employers, whether between direct individuals and intermediary institutions such as banking, is a must. Sharia banking in Indonesia when viewed in terms of law and its implementation is already quite developed, this can be seen from the increase of the numbers of Islamic banks. From 1992 to 1998, there was only 1 unit of Islamic banks in Indonesia, but in 2005, the banks grew better into 20 units and continue to grow until today. On one hand, this may be due to the number of Muslims in Indonesia who are interested in the sharia banking system. But on the other one hand, this happens because of the growing needs of the sharia banks which their customers are not only muslims but also non-Muslim. In Indonesia, Sharia Banks is also a prima donna for non-Muslims because they realize that Sharia Banks is more profitable in the absence of usury system. One of the sharia bank products without usury is Sharia Ownership Financing with *Musyarakah Mutanaqisah* contract.

By its nature, the ownership financing belongs to the type of consumer credit, consisting short or long term credit given to the debtor to finance the goods or consumption in the household. The repayment then is repaid from the debtor's monthly income. In this case, the ownership financing becomes the embodiment of the banks' role as an intermediary; and the intermediary's role is not only in conventional banks, but also in Islamic banks, namely mobilizing funds from the community and channeling the funds back to the community. The main difference of the Islamic banks and the conventional banks is that the Islamic banks conducts their business activities not based on interest (interest fee), but based on Islamic principles, namely the principle of financing gains and losses (profit and loss sharing principle or PLS principle). One of the Islamic banks' product using this principles is *Musyarakah Mutanaqisah*.

Financing in Islamic Bank in Indonesia is still dominated by *Murabahah* financing. *Murabahah* achieves 58.88% of the total volume of financing or 117.37 trillion rupiah; while other financings such as *Mudharabah* only reaches 7.2% or 14.53 trillion rupiah and *Musyarakah Mutanaqisah* has 24.78% or 49.39 trillion rupiah. Nationally, Islamic banking in Indonesia today uses *Murabahah* scheme as one of the main products of financing. This is because the system and the technique of calculation are easier to apply and easier to understand both by the customer and by the banks, so the clarity aspect is more visible.<sup>2</sup> In fact, *musharaka*, which is considered to be more complicated, has more advantages compared to *Murabahah*, both for the bank and

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<sup>2</sup> Indonesian Banking Statistics and Sharia Banking Statistics, Financial Services Authority, 2014

for the customer. The more complicated calculation system of *Musyarakah Mutanaqisah* is the main reason that makes the *Musyarakah Mutanaqisah* financing less desirable in Indonesia.

The data above reflects the fact that there are huge gaps among *Murabahah* and other contracts. Whereas, for some people, the use of *murabahah* product is considered as a practical deviation of the mission of sharia banking as a profit-sharing-based banking. The gap among *Murabahah* financing and other contracts can be suppressed by the development and modification of Sharia financial contracts. One of the products based on profit sharing better than *Murabahah* is *Musharaka*. *Mushyarakah* is a contract of cooperation between two or more parties for a particular business, in which each party gives a contribution of funds (amal/expertise) with the agreement that the benefits and risks will be shared in accordance with the agreement.<sup>3</sup>

According to the fatwa of DSN MUI Number 73 of 2008, there is the existence of a derivative contract of *musyarakah*, namely the *Musyarakah Mutanaqisah* contract. An interesting contract for us to discuss is the *Musyarakah Mutanaqishah* (MMq) contract, which is with its uniqueness of this contract, can help increasing the profit sharing contract. *Musyarakah Mutanaqishah* is a derivative product of *musyarakah* contract, which is a form of cooperation contract between two or more parties. The basic word of *musyarakah* is *syirkah* derived from the word *syaraka-yusyriku-syarkan-syarik-syirkatan* (*syirkah*), which means cooperation, company or group/collection. *Musyarakah* or *shirkah* is cooperation between capital and profit. While *mutanaqishah* comes from the word *yatanaqishu-tanaqish-tanaqishan-mutanaqishun* which means it gradually decreases. *Musyarakah Mutanaqishah* (also called diminishing partnership) is a form of cooperation between two or more parties for the ownership of a good or an asset. This cooperation will reduce the ownership rights of one party while the other party increases its ownership rights. This transfer of ownership is through the payment mechanism of other proprietary rights. This form of cooperation ends with the transfer of the rights of one party to another.<sup>4</sup>

Based on the above phenomenon, that *Musyarakah Mutanaqisah* contract is less developed in Indonesia because it is considered to as a more complicated in its system and its calculation technique compared with other contracts, the writer feels the need to conduct a research regarding *Musyarakah Mutanaqisah* contract, especially related to house ownership financing in Indonesia. It is particularly important that the people of Indonesia know how the process and implementation of *musyarakah* contracts are in Islamic financing in accordance with Islamic law and the Law of the Republic of Indonesia.

### 1.2. Identifications of Problem

Based on the problem above, that *musyarakah* is less developed because it is considered to as a more complicated product in terms of its system and calculation, the writer formulates the problem into two research questions:

1. How is the construction and implementation of *Musyarakah Mutanaqisah* financing transaction in sharia banking based on prevailing regulation in Indonesia?
2. What are the differences between *Musyarakah Mutanaqisah* and *Murabahah* in terms of its application in the contract for house finance transaction of sharia banking in Indonesia?

### 1.3. Research Method

The research method used in this research is Juridical Empirical. Juridical Empirical is a method used to solve the problem of research by researching secondary data first, then it is continued by conducting the research on primary data in the field, namely the application of financing contract *Musyarakah Mutanaqishah* in House Ownership Financing in Islamic banking in Indonesia. Finally, the research is then tested with the applicable provisions based on positive law in Indonesia.

## 2. Literature Review

### 2.2.1 Previous Researches

Along with this phenomenon, there were some researches exploring Islamic Banks products in house financing transaction. The first research entitles *Study of Murabahah Financing Agreement Analysis of Housing Loan (mortgage) in Bank Muamalat Branch Jember* written by Fitri Hidayati on 2014. Hidayati mainly explores the empirical evidence of how the concept of *Murabahah* h product are run by Bank Muamalat Indonesia Jember branch in providing credit house ownership, and explores whether the empirical evidence get the recognition, measurement, and presentation of loan (mortgage) in accordance with PSAK Jember no. 102.

The second research related to this research comes from Zulia Hanum on 2014 entitles an *Analysis of Implementation of Murabahah Transaction in PT. Bank Funding Committee (bpr) Syariah Gebu Prima Medan*. Hanum investigates the suitability of the implementation of the *Murabahah* transaction financing system of PT. BPR Syariah Gebu Prima Medan and analyzes the recognition and measurement of *Murabahah* transaction income of PT. BPR Syariah Gebu Prima Medan with PSAK No.10

### 2.2.2 Musyarakah Mutanaqishah

According to Fatwa National Sharia Council No 73 / DSN-MUI / XI / 2008 on *Musyarakah Mutanaqisah*, the basic use:

1. The Word of Allah SWT:
  - A. QS. Shad [38]: 24:

<sup>3</sup> Muhammad Syafi'i Antonio, *Bank Syariah dari Teori ke Praktik*, (Jakarta : gema Insani, 2001), 90

<sup>4</sup> [ekonomisyariah.info/blog/2013/09/24/musyarakah-mutanaqisoh-di-perbankan-syariah/](http://ekonomisyariah.info/blog/2013/09/24/musyarakah-mutanaqisoh-di-perbankan-syariah/), April 17, 2017

"... And verily, most of those who are sincere, some of them do wrong to others except those who believe and do righteous deeds, and very little of them ..."

B. QS. Al-Ma'idah [5]: 1:  
"O you who believe! Fill the contracts ..."

## 2. Hadith of the Prophet

A. Abu Daud's Hadith from Abu Hurayrah, Rasulullah SAW said:

"Allah SWT. Says: 'I am a third party of two people who associate as long as one party does not betray the other. If one party has betrayed, I am out of them.'" (Narrated by Abu Daud, who was aligned by al-Hakim, from Abu Hurairah).

B. Tirmidhi hadith narrated from 'Amr bin' Auf:

"Peace can be made among the Muslims except for peace that forbids the lawful or lawful of the haram; And the Muslims are bound by their terms except the conditions forbidding the lawful or lawful haram."

## 3. Ulama's opinion

A. Ibn Qudamah, al-Mughni, (Bayrut: Dar al-Fikr, t.th), juz 5, p.173:

"If one of the two who partner (syarik) buy the portion (part, hishshah) from other shariks, then the law may, because (actually) he bought the property of the other party."

B. Ibn Abidin in the book Raddul Mukhtar juz III page 365:

"If one of the two persons who partner (sharik) in (ownership) of a land sells its portion (hissah) to another party, then the law should not be; Whereas (if selling such portions) to his tariff, then the law is permissible."

C. Wahbah Zuhaili in Al-Muamalah Al-Maliyah Al-Muasirah, p. 436-437:

"Musyarakah mutanaqishah is justified in shari'a, because as Ijarah Muntahiyah bi-al-Tamlik relies on the promise of the Bank to its partners (customers) that the Bank will sell to its share ownership partner in Shirkah if the partner has paid to the Bank the portion price of the Bank. At the time, Musyarakah mutanaqishah is seen as Syirkah 'Inan, because both parties submit the contribution of ra'sul mal, and the Bank delegates to its partners to manage business activities. Upon completion of Syirkah Bank sells all or part of its portion to the partner, provided that the contract of sale is done separately unrelated to the Syirkah contract."

The definition of musharaka or syirkah literally means al-ikhtilat or merger or mixing. According to fiqh scholars, syirkah in term is a merger of property to be used as venture capital and the result in the form of profit or loss is shared.<sup>5</sup> Musyarakah is a cooperation agreement between two or more parties for a particular business, in which each party contributes funds with the agreement that the benefits and risks will be borne together in accordance with the agreement. The understanding according to the scholars is as follows:<sup>6</sup>

According to Malikiyah, "The Agreement is the permission to utilize (tasarruf) the property of two persons jointly by both, that is, mutually allowing one to utilize the property of both, but each has the right to say."

According to Hanabilah, "The Union is the right (authority) or treasure processing."

According to Hanafiyah, "The phrase about the existence of a transaction (akad) between two people who are tribal on the subject of wealth and profit."

The term musharaka is not in Islamic fiqh, but it is only recently introduced by those who wrote about Sharia financing schemes that are usually limited to certain types of shirkah, namely shirkah al-amwal which is allowed by all scholars.<sup>7</sup> According to Ascarya, Musharaka is a profit-sharing agreement where two or more business owners/investors work together as business partners, financing new or existing business investments. The business partner of the owner of the capital is allowed to participate in the management of the company, but it is not a must. The parties may divide the work of managing the business according to the agreement and they may also request salary/wage for the personnel and expertise they devote to the business.<sup>8</sup>

Musharaka is a contract of cooperation among the owners of capital who mix their capital for the purpose of seeking profit. In musharaka, partners and owners of funds, e.g. banks, provide capital to finance a particular business, both existing business and new business. Furthermore, the partner may return the capital, along with the agreed-upon share proceeds gradually or simultaneously to the Bank. Musharaka can be either permanent or declining. In a permanent *musyarakah*, the portion of each partner is determined according to the contract and the amount is fixed until the end of the contract period, whereas in musharaka

<sup>5</sup> Sayyid Sabiq, Fiqh Al-sunnah, Dar al-Fath al-A 'lami al-Arobi, Beirut: 2000, Vol. III, p. 202. (in Molbi F harsanto, Penerapan Akad Musyarakah Mutanaqishah pada bank Syariah, 2017, Page 2)

<sup>6</sup> M Syafi "i Antonio, Bank Syariah: Wacana Ulama dan Cendikiawa, Tazkia Institute, Bogor: 1999, p. 187

<sup>7</sup> Rachmat Syafe"i, Fiqh Muamalah, Pustaka setia, Bandung : 2001, Page 183-185.

<sup>8</sup> Ascarya, Akad dan Produk Bank Syariah: Konsep dan Praktek di Beberapa Negara, p.50, Jakarta: Bank Indonesia, 2006. (in Molbi F harsanto, Ibid, Page 8)

decreases, the share of capital or bank funds is gradually transferred to the partner, so the share of capital of the fund/bank owner will decrease. At the end of the contract period, The partner will be the owner of the business.<sup>9</sup> *Musyarakah* profit is shared between the parties proportionally, either in accordance with the capital deposited or in accordance with the agreed nisabah by the parties. Meanwhile, the loss is charged proportionally in accordance with paid capital.

*Musyarakah Mutanaqishah* is a type of contract of the descending *Musharaka*, in which if the customer pays the installment, the share of ownership of the business/property diminishing will increase. *Musyarakah Mutanaqisah* is *Musyarakah* or *Shirkah* which the ownership of assets (goods) or capital of one party (*syarik*) is reduced due to the gradual purchase by the other party.<sup>10</sup>

### 2.2.2 Murabahah

Allah Almighty believes, "*Allah has justified the sale and purchase and forbid usury.*" (al-Baqarah [2]: 275)

The Prophet said, "*Three kinds got the barakah: Muqaradhah/mudharabah, firm sells and purchase, and mixing wheat flour for home use, not for sale.*" (Ibn. Majah)

In easy word, **Murabahah** is a contract of providing goods based on the principle of sale and purchase, in which the bank buys the goods which customer needs (investment/working capital) and the bank sells back to the customer added by the agreed benefit<sup>11</sup>

### 2.2.3 Ijarah

Allah Almighty believes, "... *And if you want to swallow your son to others, then there is no sin for you to give the payment in the proper way. Dare to Allah and know that Allah is Seer of what you do.*" (az-Zukhruf [43]: 32)

Allah Almighty believes, "*And one of the two women said, 'O my father, make him a worker! (To us), in fact the best person you take as a worker is a strong and trustworthy person. 'He (Syu'aib) said, 'I intend to marry you to one of my daughters, That you work for me for eight years and if you complete ten years, then it is (a favor) from you, and I do not mean to incriminate you. InsyAllah you will find me including good people. '"* (Al-Qashash [28]: 26-27)

The Prophet, said, "*Give workers wages before their dryness dries up.*"<sup>12</sup>

The word *Ijarah* comes from the word *ajr* meaning 'reward'. From here the reward is called *ajr*. In the Shari'a, *Ijarah* (lease) is a contract for benefits with rewards. Therefore, people should not rent a tree to eat its fruit because the moon tree benefits, should not also rent gold and silver, hire food to eat, and rent goods that are usually measured and weighed, because all of this cannot be utilized except by spending it.<sup>13</sup> The benefits itself consist of several forms:<sup>14</sup>

- The benefits of objects, such as residential houses and car usage.
- The benefits of Jobs, such as the work of architects, building posts, weavers, and others.
- The benefits of people who surrender their strengths, such as maids and laborers.

The owners of the benefits which rent its property are called *mu'ajjir*. The other party who issued the reward (tenant) is called *mustajir*. Something of merit is called by *ma'jur*. And the rewards incurred as compensation benefits are called *ajr* or *ujroh*.<sup>15</sup> In the *Musyarakah Mutanaqisah* contract for house ownership, in addition to the *musyarakah* contract, also uses an *Ijarah* contract as a lease agreement between the Bank and the Customer, which is determined by the rent (*ajr/ujroh*) provided by the customer to the Bank and the rent is attributable in part to the deduction of ownership To the bank and increase the portion of the Customer's ownership.

According to Sayyib Sabiq in his *Fiqh Sunnah* works, "the contract of renting a house for a residence permits its use for habitation, whether the tenant lives on it or puts another person in it by lending it or renting it again. It's just that the house cannot be occupied by people who can harm the building or damage it."<sup>16</sup>

There are two types of *Ijarah* in Islamic law:<sup>17</sup>

<sup>9</sup> Slamet Wiyono and Taufan Maulamin, *Memahami Akuntansi Syariah di Indonesia*, p.203, Jakarta: Mitra Wacana Media, 2013. (in Molbi F harsanto, Ibid)

<sup>10</sup> See DSN-MUI fatwa No.73 / DSN-MUI / XI / 2008 on *Musyarakah Mutanaqishah*.

<sup>11</sup> Agustioanto Mingka, presented in training of Notaris syariah with Iqtishod Consulting, Bandung : 22 September 2012

<sup>12</sup> Narrated by Bukhari in *Sahih Bukhari*, Kitab al-Ijarah, Chapter Isti'jar al Musyrikin 'inda adh-dharurah au idza Lam Yujud Ahlul Islam wa' Amal an\_nabiy Yahuda Khaibar (Fathul Bari, Jilil V, p.442), (in Molbi F harsanto, Penerapan Akad *Musyarakah Mutanaqisah*, 2017, Page 9)

<sup>13</sup> Sayyid Sabiq, *Fiqh Sunnah*, Jil. 5.,Page. 145, Jakarta: Pena Pundi Aksara, 2010.

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Ibid, Page 159

<sup>17</sup> Ascarya, *Akad dan Produk Bank Syariah: Konsep dan Praktek di Beberapa Negara*, p.100, Jakarta: Bank Indonesia, 2006.

1. *Ijarah* related to the lease of services, e.g. employing the services of a person for a fee in exchange for services rented. The employer is called *musta'jir*, the worker is called *ajr*, and the wage paid is called *ujrah*.
2. *Ijarah* related to the lease of assets or property, namely transferring the right to use from certain assets or property to others in exchange for rental fees. The shape of *Ijarah* is similar to leasing (rent) in conventional business. The lessee is called *musta'jir*, the lessor is called *mu'jir/muaajir*, while the rental fee is called *ujrah*. The first forms of history are widely applied in sharia banking services. Meanwhile, the second form of *Ijarah* is usually used as investment or financing in sharia banking.<sup>18</sup>

The pillars of the *Ijarah* agreement that must be fulfilled in the transaction are:<sup>19</sup>

- A) The contractor, e.g. *musta'jir* (tenant) is the party who leases the asset and *mu'jir/muaajir* (owner) is the owner who leases the asset;
- B) Object of contract, namely *ma'jur* (leased assets) and *ujrah* (rental price); and
- C) *Shighah*, namely *Ijab* and *Qabul*.

### 3.1. Discussion

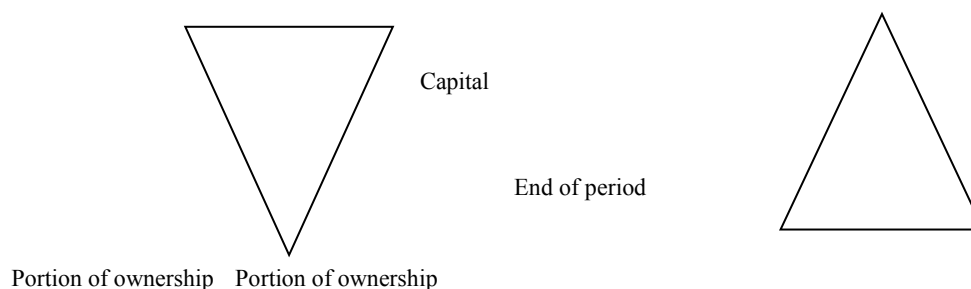
*Musharakah Mutanaqishah* is a derivative product of *Musyarakah Mutanaqisah* contract, which is a form of contractual agreement between two or more parties. The basic word of *musharaka* is *syirkah* derived from the word: *syaraka-yusyriku-syarkan-syarikan-syirkatan* (*syirkah*), which means cooperation. *Musharaka* or *Shirkah* is a cooperation between capital and profit from both parties, both companies and groups. Meanwhile, *mutanaqishah* comes from the word *yatanaqishu-tanaqish-tanaqishan-mutanaqishun*, which means a gradual decrease. *Musharaka Mutanaqishah* is *musharaka* with the provisions of the funds of one of the partners which will be transferred gradually to other partners; so that the funds will decrease and at the end of the contract the other partner will become the full owner of the business.<sup>20</sup>

The legal basis of *Musyarakah Mutanaqisah* can be based on the underlying argument of *syirkah* and *Ijarah*, because *Musyarakah Mutanaqisah* is a joint contract between the two contracts. The legal basis of *Musharaka Mutanaqishah* comes from Al-Qur'an Surat Shad [38], verse 24, which mean:

"... and verily most of those who are sincere, some of them do wrong to another, save those who believe and do righteous deeds; And very little of them ... "

Within its implementation in Indonesia, *Musyarakah Mutanaqisah* (diminishing partnership) is a form of cooperation between two or more parties for the ownership of a good or an asset. This cooperation will reduce the ownership rights of one party while the other party increases its ownership rights. *Musyarakah Mutanaqisah* is constructed within a system and a process of transfer of ownership through the payment mechanism of other proprietary rights. This form of cooperation ends with the transfer of the rights of one party to another.<sup>21</sup>

From that understanding, the concept of *Musyarakah Mutanaqisah* contract becomes a concept in the financing of sharia banking, namely cooperation between Islamic banks with their customers for the procurement or purchase of goods in which the asset of the goods belonging together. The amount of ownership can be determined in accordance with the amount of capital or funds included in the cooperation contract. Furthermore, the customer will pay (installment) a number of capital or funds owned by sharia bank. The amount of sharia bank capital is getting smaller, inversely proportional to the increasing number of customers' capital, due to the installment payments on a monthly basis. At the end of the financing period, the amount of bank capital has been taken over 100% by the customers; so that the ownership of the house is transferred to the customers' behalf. Simply put, the amount of capital between banks and customers can be described as follows:



Picture 1.1 : Diagram of the amount of capital in financing *Musyarakah Mutanaqisah* contract

Transfer of ownership from the portion of sharia banks to their customers in line with the increase in the number of customers' capital from the increase of monthly installments. If the term of the installment expires, the ownership of a good or property shall

<sup>18</sup> Ibid

<sup>19</sup> Ibid, See the fatwa of DSN-MUI No.09 / DSN-MUI / IV / 2000 concerning *Ijarah* Financing.

<sup>20</sup> Atang Abd Hakim, *Fiqh Perbankan Syariah* (bandung : PT Refika Aditama, 2011), p 247-248, (in Putri Kamilatur Rohmi, *Iqtishoduna* Vol 5 No 1, April 2015, page 25)

<sup>21</sup> [www.ekonomisyariah.org/download/artikel/musarakahmutanaqishah\\_nadrattuzaman.pdf](http://www.ekonomisyariah.org/download/artikel/musarakahmutanaqishah_nadrattuzaman.pdf), Juli 2017

become the property of the customer. The Decreasing of share ownership of Islamic banks' goods or objects is reduced proportionally in accordance with the amount of installment. In addition to the number of installments that the customer must take to have the ownership, the customer must pay certain amount of rent to the sharia bank until the expired limit of the sharia banks' ownership. The lease payments are made simultaneously with the installment payment.

Installment payments are a form of expropriation portion of ownership of sharia bank. Meanwhile, the lease payments are a form of profit (fee) for Islamic banks for their ownership of these assets. Rental payments as well as a form of compensation of ownership and compensation services sharia banks.

*Musyarakah Mutanaqisah* is a derivative *musharaka* and its procedure is almost the same as *ijarah muntahia bittamlik* contract. This is because the *Musyarakah Mutanaqisah* contract uses the system of exchanges with rental wages and property rights switched to the hands of customers at the end of the financing period.

*Musyarakah Mutanaqisah* emerges as an alternative housing finance which is a complete package that is profitable for customers as well as sharia banks, especially Bank Muamalat that already used this product. With the implementation in accordance with the fatwa DSN MUI number 73 of 2008, MMQ contract is expected to facilitate the community in terms of house ownership. In the provisions of sharia, the legal terms of the *Musyarakah Mutanaqisah* contract are a combination of *musyarakah* and *Ijarah* contracts. This is because the *Musyarakah Mutanaqisah* contract is the application of the combined contract. The terms of *Musyarakah Mutanaqisah* contract include:<sup>22</sup>

- a. The actors in *Musyarakah Mutanaqisah* must be proficient in law and baligh
- b. *Musyarakah Mutanaqisah* capital must be given in cash
- c. Capital that has been submitted by each partner must be mixed, separation is not allowed for special purposes
- d. The determination of the ratio should be agreed at the beginning of the contract to avoid the risk of disputes between partners<sup>23</sup>
- e. Each party must be willing, meaning there is no element of coercion.
- f. The *Musyarakah Mutanaqisah* object must be clear<sup>24</sup>
- g. Utilization of the object of the promised is allowed by religion
- h. The cost of renting *Musyarakah Mutanaqisah* objects is divided according to the percentage of ownership.

The basic principle developed in *Musyarakah Mutanaqisah* is the principle of cooperation in terms of ownership of a good. The elements that must exist in the *Musyarakah Mutanaqisah* are:

- a. Contractor
- b. The object of *Musyarakah Mutanaqisah*
- c. *Ijab qabul* or handover
- d. Profit ratio
- e. *Ujrah* or rental fee

House financing products are financing products that help people to have a nice and comfortable house. Housing finance products in Banks which are applied in Indonesia are two types, namely KPR Kongsi based on *Musharakah Mutanaqishah* contracts and purchase mortgages based on the *Murabahah* agreement.

#### **Contract that used in KPR Islamic Bank products**

The house financing products preferred by customers is KPR which uses *Musyarakah Mutanaqishah* contract, this is showed by the amount of financing that reach 56% of total financing in one of Sharia Bank using this product in Indonesia. *Musyarakah Mutanaqishah* contract which is implemented by KPR Islamic Bank product is financing facility of house ownership from Bank Sharia with capital cooperation contract. In this contract not all of the capital to buy a house comes from the bank, but the capital also comes from the customer. With the capital cooperation contract, the status of house ownership still belongs together, later on, at the end of the period, the certification of the house will be reversed to customers.

With this *Musyarakah Mutanaqisah* contract, customers who do not have enough money to buy a house can still realize their wishes with a capital of 20% of the total price of the house the customers want to buy. The 20% figure is not a mandatory number but only a minimum. If the customers have more money, they can give more capital as a down payment to the house seller.

Mortgage Product iB has beneficial purpose and benefit both for customers and for bank because this product is used to purchase property which ready stock or indent in the form of house of residence, flats, apartment and shop which will be used for business. With this product, the bank also gets benefits because it can increase the number of consumer financing portfolio, so that funding and lending funds become balanced. In addition to beneficial to the bank, this product is also beneficial to customers

<sup>22</sup> Putri Kamilatur Rohmi, , Iqtishoduna Vol 5 No 1, April 2015, page 28

<sup>23</sup> Sri Nur Hayati and Wasilah, Akuntansi Syariah, page 147-148

<sup>24</sup> Chairuman Pasaribu and Suhwardi, Hukum Perjanjian Dalam Islam, Page 53-54

because it can help customers to have a house as a place of dwelling, to increase their assets, and to pay installments on a certain basis according to sharia principles.

The implementation of *Musyarakah Mutanaqisah* contract on KPR Islamic Bank financing product is a residential financing facility in accordance with sharia principles. The financing based on profit sharing principle and away from usury because all transactions are made transparent to the customers. All terms and conditions are explained at the beginning of the contract, so there is no objection in the future when the contract has been executed. Financing with *Musyarakah Mutanaqisah* contract not only provides benefits but also peace of mind in transacting with a relatively long installment period, so the cost of monthly installment is light. In the implementation of this *Musyarakah Mutanaqisah* contract, Islamic Bank cooperates with a number of developers to ensure easy house ownership process for customers. With a capital of 20%, customers can already apply for KPR Islamic Bank financing.

The implementation of the *Musyarakah Mutanaqisah* product in Indonesia is in line with Fiqh, but it still needs to be refined in technical terms; because there is a little discrepancy between the *Musyarakah Mutanaqisah* product that are already running and the *Musyarakah Mutanaqisah* based on Fiqh. In the *Musyarakah Mutanaqisah* product in Indonesia, Banks rent the property intact to customer with *wakalah* contract while the customer pays the rent fee for the use (so, the sharing profit is based on the agreement). On the other side, in the *Musyarakah Mutanaqisah* based on Fiqh, the Bank leases 90% of its shares (according to the share of capital entered for purchasing the property) to its customer and the customer pays the lease fee to the bank on the 90% of the property. So, the sharing profit is based on the percentage according to the bank.

*Musyarakah Mutanaqisah* has some distinct differences with *Murabahah* in terms of its application in the contract for house finance transaction of sharia banking in Indonesia. The differences are summarized in the following table:

DIFFERENCES	MUSY.MUNTQSH	MURABAHAH
1. Contract	There are two main contracts which are separated: <i>Musharakah</i> and <i>Ijarah</i> . Within the <i>Ijarah</i> , there are several derivative contract which involves the profit sharing ratio, <i>wakalah</i> and <i>bay taqsith</i> (gradual sale)	<i>Murabahah</i> Concept
2. The relationship between the selling price and the market price	It always reflects the market price. The rental price is also determined by the market rental price (Fatwa DSN 57 about Review Ujrah)	It does not reflect the changeable market price because the price is fixed
3. Return Value	Financing companies do not have to be tied up by fixed profit rates, it can be revised periodically to describe the market	It is based on the fixed sale price.
4. Liquidity Risk Management	It can be managed better	It is not flexible because fixed-rate as profit rate is constant throughout the contract
5. Acceptance and Use	It is accepted and used internationally as in accordance with Sharia	It is accepted predominantly in East Asia such as Malaysia, Indonesia, Brunei, etc.
6. The Ability of Consumers to Own Property	It is a more flexible financing structure because consumers can own properties earlier	It is not flexible because there must be rebates if the customers want to pay off faster
7. When a Default Occurs	It causes a constant financier equity and it causes a higher portion of the rental price when the rental installment delays	The penalty could be called
8. Current Opinion	It is considered as Shariah Compliance, the concept of house financing in accordance with Shariah Islam	It is considered the same as conventional debt, with weakness for early redemption (early settlement)

The table above clearly shows that the *Musyarakah Mutanaqishah* clearly gives more benefit than *Murabahah* does, both to the banks and to their customers. For the banks, the MMq provides safer system as both profit and risk of loss are borne together with their customers; while for the customers the MMq gives more advantages on longer term of the financing, relatively cheaper installment, and more appropriate sharia-based profit-sharing principles.

### 3.2. Conclusion

Islamic banks in Indonesia today have been able to move better due to many contracts that can be applied in accordance with the needs of its customers, without having to violate the principles of Islamic Economics. The scheme of *Musyarakah Mutanaqishah* (MMq) comes as a variety of Islamic finance repository in Indonesia even in the world. This Agreement may be another option in the possession of the contract of ownership of assets other than *Murabahah*. Thus, the limitations that exist in the *Murabahah* contract can be taken by this MMq contract. Still at least a share-based financing portfolio in Indonesia, is an opportunity for expansion and growth of the *Musyarakah Mutanaqishah* contract.

The implementation of the MMq product in Indonesia is in line with Fiqh, but it still needs to be refined in technical terms; because there is a little discrepancy between the MMq product that are already running and the MMq based on Fiqh. In the MMq product in Indonesia, Banks rent the property intact to customer with *wakalah* contract while the customer pays the rent fee for the use (so, the sharing profit is based on the agreement). On the other side, in the MMq based on Fiqh, the Bank leases 90% of its shares (according to the share of capital entered for purchasing the property) to its customer and the customer pays the lease fee to the bank on the 90% of the property. So, the sharing profit is based on the percentage according to the bank.

*Musyarakah Mutanaqishah* clearly gives more benefit than *Murabahah* does, both to the banks and to their customers. For the banks, the MMq provides safer system as both profit and risk of loss are borne together with their customers; while for the customers the MMq gives more advantages on longer term of the financing, relatively cheaper installment, and more appropriate sharia-based profit-sharing principles. MMq is a contract based on PLS (profit and loss sharing) in which the risk experienced by the bank is not too large (reduce of risk) due to the following reasons:

1. The monthly profit received from the rental payment is fixed. So that the gap between Profit Sharing and Revenue Sharing is close to '0' (zero).
2. Asset MMq tangible asset form is not a cash-shaped asset, thus minimizing the existence of fraud and misappropriation of funds. Asset MMq used as collateral also protects the bank from loss.

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