

CONTRACTS (AKAD) IN SYARI'AH BANKING (Contract Pattern for Profit Sharing and Rent Sharing)

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Abstract: The various types of contracts applied by Islamic banks can be divided into six groups of patterns, namely; Safekeeping patterns, such as wadi'ah yad amanah and wadi'ah yad dhamamah. Loan patterns, such as qardh and qardhul hasan. Profit sharing patterns, such as Mudharabah and musyarakah. Rental patterns, such as Ijarah and Ijarah bittamlik. Buying and selling patterns, such as murabahah, salam and istishna. Other patterns, such as wakalah, kafalah, hiwalah, ujr, sharf, and rahn. There are two types of contract sharing patterns, such as Musyarakah, Mudharabah, Ijarah adn ijarah muntahiya bittamlik, and in this article will explain about those contract of four.

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Introduction

Islamic economic system is a free economic system, but its freedom is shown more in the form of cooperation than in the form of competition (competition). Because cooperation is a common theme in Islamic social organizations. Individualism and social care are so closely interwoven that working for the welfare of others is the most promising way for the development of one's usefulness and in order to get the pleasure of Allah SWT. So Islam teaches its followers to pay attention that good deeds (charity) for the people are worship to Allah and encourage them to do their best for the good of others. This teaching can be found in all parts of the Koran and shown in the life of the Prophet Muhammad himself.

The principle of brotherhood (*ukhuwwah*) is often emphasized in the Koran and the Sunnah, so that many friends consider their personal assets as joint property with their brothers and sisters in Islam. Awareness and compassion for relatives in extended families is also an example of orientation other social Islam, because doing good deeds (charity) to such relatives is not only encouraged but also required and regulated by law (Islam). And Distribution of Akad (contracts) implemented by Islamic banks

The various types of contracts (Akad) applied by Islamic banks can be divided into six groups of patterns, namely:

1. Safekeeping patterns, such as *wadi'ah yad amanah* and *wadi'ah yad dhamamah*.
2. Loan patterns, such as *qardh* and *qardbul hasan*.
3. The profit sharing pattern, such as *Mudharabah* and *musyarakah*.
4. Rental patterns, such as *Ijarah* and *Ijarah bittamlik*.
5. Buying and selling patterns, such as *murabahah*, *salam* and *istishna*.
6. Other patterns, such as *wakalah*, *kafalah*, *hiwalah*, *ujr*, *sharf*, and *rahn*.

But what we are discussing this time is or only the contract of rent pattern and contract of profit sharing pattern.

Contract of profit sharing pattern

The main and most important Islamic bank contract agreed upon by the scholars is a contract with a pattern of profit sharing with the principle of *Mudharabah* (trustee profit sharing) and *musharaka* (joint venture profit sharing). The principle is *al-ghunm bi'l-ghurm* or *al-kharaj bi'l-daman*, which

means that there is no profit section without taking part in riskor for any real economic benefit there must be real economic costs.¹

The issue of results and partnership has been discussed by Muhammad bin Hasan Al-Syaibani who lived on 132-189 AH / 750-804 AD in the context of modern Islamic banking.² The concept of profit sharing described in Fiqh books is generally assumed to be that the collaborating parties intend to start or establish a joint venture when all business partners participate from the start of operations and remain business partners until the business ends on all assets liquidated. It is rare to find a business concept that continues to run (running business) when business partners can come and go at any time without affecting the running of the business. This is due to Islamic jurisprudence books written at the time of business not as big and as complicated as today's business, so the concept of "running business" does not get attention.

However, that does not mean that the concept of profit sharing cannot be applied to finance an ongoing business. The concept of profit sharing is based on several basic principles. As long as these basic principles are met, the details of the application will vary from time to time. The main feature of the profit sharing pattern is that the profits and losses are shared by both the fund owner and the entrepreneur. Some of the basic principles of the concept of profit-sharing described by are as follows:³

1. Profit sharing does not mean lending money, but it is participation in business. In the case of *musharakah*, the participation of assets in the business is limited to the proportion of each party's financing.
2. Investors or fund owners must share the risk of business losses to the extent of their funding.
3. The free business partners determine, with mutual agreement, the profit ratio for each party, which can differ from the financing ratio included.
4. The loss borne by each party must be equal to the proportion of their investment.

¹ Fuad Al-Omar, Mohammed Abdel-Haq. 1996. *Islamic Banking: Theory, Practice, and Challenges*. London: Zed Books Hal, 72

² Muhammad Nejatullah Siddiqi. 1991. *Kegiatan Ekonomi Dalam Islam*. Jakarta: Bumi Aksara. Hal. 13

³ Usmani .M. Taqi. 1999 *An Introduction to Islamic Finance*, Idaratul Ma'arif, Karachi. Hal. 30

5. The loss borne by each party must be equal to the proportion of their investment.

a. **Musyarakah**

Musyarakah is a term often used in the context of the Islamic finance scheme. This term connotes more limited than the term *syirkah* which is more commonly used in Islamic fiqh (Usmani, 1999). *Syirkah* means 'sharing', and in Islamic jurisprudence terminology is divided into two types.⁴

- a. *Syirkah al-milk* or *syirkah amlak* or ownership sharing, which is the joint ownership of two parties or more than a property.
- b. *Syirkah al-'aqd* or *syirkah 'ukud* or *syirkah akad*, which means a partnership that occurs because of a joint contract or joint commercial venture. *Syirkah al-'Aqd* itself consists of four (Hambali School includes the fifth *syirkah Mudharabah* as *syirkah al-'aqd*), one agreed upon and three disputed, namely:
 - *Syirkah al-amwal* or *syirkah al-'Inan*, which is a joint commercial venture when all business partners contribute to capital and work, which does not have to be the same as the portion, into the company. The scholars agreed to allow this form of *syirkah*.
 - *Syirkah al-mufawwadhab*, which is a commercial business together with the condition that there are similarities in capital participation, profit sharing, capital management, and people. Hanafi and Maliki schools allow this form of *syirkah*. Meanwhile the Syafi'i and Hambali schools forbade it because in reality it was difficult to have equality in all its elements, and many contained elements of *gharar* or obscurity.
 - *Syirkah al-a'mal* or *syirkah Abdan*, namely a joint commercial venture when all business partners take part in providing services to customers. The majority of scholars, namely the Hanafi schools, Maliki and Hambali schools, allow this form of *syirkah*. Meanwhile, the Shafi'i school prohibited it because the school only allowed *syirkah* of capital and should not work.

⁴ Usmani .M. Taqi. 1999 *An Introduction to Islamic Finance*, Idaratul Ma'arif, Karachi. Hal. 43

- *Syirkah al-wujub* is a commercial business together when partners have no investment at all. They buy commodities with tough payments and sell them in cash. Hanafi and Hambali schools allowed this form of syirkah, while the Maliki and Syafi'i schools forbade it.

The term musyarakah does not exist in Islamic jurisprudence, but it was only introduced recently by those who wrote sharia financing schemes which are usually limited to certain types of syirkah, namely syirkah al-amwal which is allowed by all scholars.

Musyarakah is a profit sharing contract when two or more entrepreneurs owning funds / capital work together as business partners, finance new or existing business investments. Business partners who own capital have the right to participate in company management, but that is not a necessity. The parties can divide the work manage the business according to the agreement and they can also ask for salary / wages for the energy and expertise they devote to the business.

The proportion of profits is divided between them according to the predetermined agreement in the contract in accordance with the proportion of capital included (opinion of Imam Malik and Imam Shafi'i), or it can also be different from the proportion of capital they include (Imam Ahmad's opinion). Meanwhile, Imam Abu Hanifah argues that the proportion of profits can differ from the proportion of capital under normal conditions. However, partners who decide to become sleeping partners, the proportion of profits should not exceed the proportion of their capital.

Meanwhile, if there is a loss, it will be borne together in accordance with the proportion of the respective capital participation (all scholars agree on this matter). It can be concluded that in musyarakah the profits are divided based on the agreement of the parties, while the losses are jointly borne in accordance with the participation of the proportion of each party's capital.

Musyarakah is generally an ongoing agreement as long as the jointly financed business continues to operate. Nevertheless, the musyarakah agreement can be ended with or without closing the business. If the business is closed or liquidated, each business partner gets the liquidation result of the asset in accordance with the participation ratio. If the business continues, the business partners who want to terminate the agreement can sell their shares to other business partners at a mutually agreed price.

The pillars (Rukun) of the *musyarakah* contract that must be fulfilled in transactions are several, namely:

- a. Actors, namely business partners
- b. Contract object, namely capital (*mal*), work (*dharabah*) and profit (*ribh*)
- c. *Shibghab* (transaction of agreement), namely *Ijab* and *Qabul*

Some of the basic requirements of *musyarakah* recruit include:

- a. Terms of contract
- b. Distribution of profit proportion
- c. Determination of profit proportion
- d. Distribution of losses
- c. Nature of capital
- d. *Musharaka* Management
- g. *Musyarakah* termination
- e. Termination of *musyarakah* without closing the business⁵

b. *Mudharabah*

Mudharabah or investment is the surrender of capital money to people who are trading so that they get a percentage of profits.⁶ As a form of contract, *Mudharabah* is a profit sharing contract when the owner of the fund / capital (investor), commonly called *shahibul mall*, provides capital (100 percent) to the businessman as manager, commonly called *mudharib*, to conduct productive activities on the condition that the profit generated will divided between them according to a predetermined agreement in the contract (the amount of which is also influenced by market forces). *Shahibul mal* (financier) is a party that has capital, but cannot do business, and *mudharib* (manager or entrepreneur) is a party that is good at doing business, but does not have capital.

If there is a loss due to the normal process of the business, and not due to negligence or fraudulent management, the loss is borne entirely by the owner of the capital, while the manager loses the energy and expertise he has devoted. If there is a loss due to negligence and fraudulent management, then the manager is fully responsible.

Managers do not participate in including capital, but include their power and expertise, and also do not ask for salary or wages in carrying

⁵ Usmani .M. Taqi. 1999 *An Introduction to Islamic Finance*, Idaratul Ma'arif, Karachi. Hal. 68

⁶ Abdullah al-Mushlih, Salah ash-Shawi. 2004. *Fikih Ekonomi Keuangan Islam*. Jakarta: Darul Haq. Hal. 135

out their business. The owner of the fund only provides capital and is not allowed to interfere in the management of the business it finances. The willingness of the fund owner to bear the risk if a loss occurs becomes the basis for getting a share of the profit. The *Mudharabah* Terms: Capital:

1. Capital must be clearly stated if the amount of capital is in the form of goods, the goods must be priced at the price of the money in circulation (or the like).
2. Capital must be in cash and not receivables
3. Capital must be left to mudarib, to enable it to do business.

As for some of the benefits obtained from the mudarabah contract are as follows:

1. Distribution of profits must be expressed in percentages of the profits that might be generated later
2. The percentage ratio agreement must be reached through negotiations and outlined in the contract
3. New profit sharing can be done after mudarib
4. returning all (or part of) capital to Rab al'mal.

Contract (Akad) of rental pattern

a. Ijarah

Ijarah is the contract of transfer of usufructuary rights to goods or services through payment of rent without being followed by transfer of ownership of the goods. In practice this activity is carried out by Leasing companies both for operating lease and financial lease activities.⁷

Ijarah is a contract between Islamic banks as a party that rents goods and customers as tenants, by determining the rental fee agreed upon by the bank and the tenant. Goods that can be leased generally, namely fixed assets, such as buildings, machinery and equipment, vehicles and other fixed assets. In banking transactions, banks buy fixed assets from later suppliers that are leased to customers with fixed rental costs for a certain period of time. Banks can buy fixed assets from suppliers designated by Islamic banks, then after the assets are ready to be operated, the fixed assets are leased to the customer.⁸

⁷ Muhammad Asro dan Muhammad Kholid, 2011. *Fiqih Perbankan*. Bandung: Pustaka Setia. Hal 48

⁸ Ismail. *Perbankan Syariah*. 2011. Jakarta: Kencana Prenada Media Group Hal. 24

Sharia foundation on *Ijarah* is contained in QS. Al-Baqarah: 233, which is the argument of the verse is the expression “if you give an appropriate payment”. The expression shows the existence of services provided thanks to the obligation to pay wages (fees) appropriately.⁹ In this case, it includes rental or leasing services. In Islamic law there are two types of *Ijarah*, namely:

1. *Ijarah* relating to leasing services, namely employing someone's services for wages in return for services rented. The employer is called *musta'jir*, the worker is called the driver and the wages paid are called *ujrah*.
2. *Ijarah* relating to the lease of assets or property, namely the transfer of the right to use certain assets or property to others in return for rent. This form of *Ijarah* is similar to leasing in conventional business. The lessee is called *musta'jir*, the lessor is called *mu'jir / muajir* and the rent is called *ujrah*.

The first form of *Ijarah* is widely applied in sharia banking services, while the second form of *Ijarah* is commonly used as a form of investment or financing in Islamic banking. *Ijarah* bears a resemblance to leasing in a conventional financial system because both of them have a transfer of something from one party to another on the basis of benefits. However, the two characters are different, namely:

No.	Item	<i>Ijarah</i>	Leasing
1.	Object	Benefits of goods and services Benefits of goods Only	Benefits of goods only
2.	Payment Method	- depending on the performance of the object of the lease - does not depend on the performance of the object of the lease Does not depend on the performance of the object of the lease	Does not depend on the performance of the object of the lease

⁹ Muhammad Rawwas Qal'aji dan Hamid Sadiq Qumaidi. 1988. *Muj'am Lughat Al Fuqaha Arabi Inklizi*. Beirut: Dar Al Nafa'is Hal. 173

3.	Switch over Clear Ownership	Clear	Everything is not clear
4.	Rent of buying	It can't be because there is an element of gharar (unclear) between rent and purchase	Allowed
5.	Sale and Lease Back	Allowed	Allowed

This form of financing is one of the financing techniques when investors' financing needs to buy assets are met, and investors only pay usage rent without having to spend large enough capital to buy the asset. The pillars of the *Ijarah* contract that must be fulfilled in the transaction are several, namely:

1. The contract agent, namely *musta'jir* (tenant) is the party that rents the asset, and *mu'jir / muajir* (owner) is the owner who rents out assets.
2. The object of the contract, namely *ma'jur* (assets leased), and *ujrah* (rental price)
3. Shighah, namely *Ijab* and *Qabul*¹⁰

Ijarah fatwa object provisions No: 09 / DSN-MUI / IV / 2000 concerning *Ijarah* Financing:

- a. *Ijarah* object is the benefit of using goods / services.
- b. The benefits of goods or services must be assessed and can be implemented in the contract. c. The benefits of goods or services must be permissible (not prohibited).
- c. The ability to fulfill benefits must be real and in accordance with sharia.
- d. Benefits must be identified specifically in such a way as to eliminate grief (ignorance) that will result in a dispute.
- e. Benefits specifications must be clearly stated, including the time period. Can also be identified by specifications or physical identification.
- f. Rent or wages are something that is promised and paid by the customer to the LKS as payment of benefits. Something that can be

¹⁰ Ascarya. 2007. *Akad dan Produk Bank Syariah*. Jakarta. PT. Raja Grafindo. Persada

used as a price (*tsaman*) in buying and selling can also be used as rent or wages in *Ijarah*.

- g. Payment of rent or wages may take the form of services (other benefits) of the same type as object contracts.
- h. Flexibility in determining rent or wages can be realized in terms of time, place and distance.

b. Ijarah Muntahiya Bittamlik

There is also term of *Ijarah muntahiya bittamlik* (IMBT) and it is defined as is a lease transaction with agreements to sell by selling or granting rental objects at the end of the period so that this transaction ends with the ownership of the object of lease. Various forms of ownership of IMBT include:

- a. Grants at the end of the period, ie when at the end of the period the lease of the asset is given to the tenant
- b. The price is valid at the end of the period, that is when at the end of the period the asset is purchased by the lessee at the current price
- c. The price is equivalent to the lease period, ie when the tenant buys the asset in the lease period before the lease contract ends at the equivalent price
- d. Gradually during the rental period, that is, when the leadership is carried out in stages with installments paid during the rental period.

CONCLUSION

There are several contracts based on Islam in *shari'ah* banking including *ijarah* and *mudharabah*. if *mudharabah* emphasizes profit sharing, the *ijarah* places more emphasis on safekeeping of goods with wages.

Both are contracts that are often used in *shari'ah* banking. And it is the contract that distinguishes between Islamic banking and conventional banks, so that existing financial transactions become permissible in Islam.

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