

# HYBRID CONTRACT DESIGN IN SHARIA BANKING PRODUCT DEVELOPMENT

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## ABSTRACT

*The development of Islamic banking and finance has progressed very quickly and is facing increasingly complex challenges. Islamic banking and financial institutions must be able to meet the needs of modern businesses by presenting innovative and more varied products and satisfying services. Hybrid contracts are not actually a new theory in the Muamalah fiqh repertoire. Islamic classical scholars have long discussed this topic based on the arguments of syara 'and valid ijihad. However, in the study of Muamalah fiqh at Islamic boarding schools and even Islamic universities, this issue has not been widely discussed as it has not had much contact with the realities of business in society. During the rise of financial institutions and banking in the present, the concept and subject of hybrid contracts came back to the fore and became the inevitable theories and concepts. A number of books and scientific works have also been published that discuss and formulate the theory of al-'ukud, al-murakabah (hybrid contracts), especially Middle Eastern scientific works. The aim of this research is to study and analyze the opinion of experts on hybrid contracts and hybrid contracts in the development of Islamic banking products. This type of research is normative legal research, in which primary, secondary and these types of legal materials are examined. The results showed that the opinion of these experts mainly stated that hybrid contracts should be designed in the context of developing Islamic banking.*

**Keywords:** Hybrid Contract; Islamic Banking

## INTRODUCTION

The development of Islamic banking and finance has progressed very quickly and is facing increasingly complex challenges. Islamic banking and financial institutions must be able to meet the needs of modern businesses by presenting innovative and more varied products and satisfying services. This challenge requires that practitioners, regulators, advisers, Sharia boards and academics in the field of Islamic finance are always active and creative in responding to these developments Agustianto (2020).

Practitioners must be creative in product innovation; regulatory bodies set regulations that regulate and control the products executed by practitioners, sharia administrations are required to actively and creatively issue fatwas that the industry needs according to the demands of the time, and academics are also required to provide scientific enlightenment and provide guidance so that products and regulations support the needs of modern and correct industries - really does not deviate from the principles of Sharia.

Akad in Arabic means "a string or knot connecting two parties". A contract is a statement made by offering and accepting at the same time. Islamic law was developed through the work of

Islamic jurists, based on the principles mentioned in the Al-Quran and the guidance of the Prophet

Muhammad. There are many verses in Al-Quran that mention some covenants and different applications in parts that have a contractual relationship. This includes various commercial agreements such as sales, wages, guarantees, securities and deposits Muslich (2010).

The considerations in the Islamic contract can include money, goods or services must be something that can be given or in terms of service. This is the law of the benefits one person receives and the costs imposed on another. To respond to the development and public needs of Islamic banking, contract development and design is imperative. Here is the role of academics, practitioners and experts to implement different types of innovations, including the hybrid contract.

Hybrid contracts are not actually a new theory in the Muamalah fiqh repertoire. Islamic classical scholars have long discussed this topic based on the arguments of syara 'and valid ijihad. However, in the study of Muamalah fiqh at Islamic boarding schools and even Islamic universities, this issue has not been widely discussed as it has not had much contact with the realities of business in society. During the rise of financial institutions and banking, the concept and subject of hybrid contracts re-emerged and became the inevitable theories and concepts. A number of books and scientific articles have also been published that discuss and formulate the theory of al-'ukud al'murakabah (hybrid contracts), especially scientific works from the Middle East Al-Syatibi.

## METHOD

The type of research carried out in this research is normative legal research, this study examines/examines legal material, both primary legal materials consisting of laws, regulations related to the problem under investigation as well as secondary legal material consisting of literature and opinions of scientists with respect to the problem being studied. The type of legal material examined in this research is primary legal material consisting of legal regulations, secondary legal material case law that can provide an explanation of primary legal material in the form of research results from textbooks, scientific journals, expert opinions, letters news, brochures and Internet news and tertiary legal material, are also legal material that can explain both primary and secondary legal material in the form of dictionaries and encyclopedias. The approach used in this research is the legal approach (Statute approach), Concept approach (Conceptual approach) and Analytical approach (Analytical approach) and philosophical approaches.

## RESULT AND DISCUSSION

### Expert Opinions on Hybrid Contracts

Akad or al-'aqd=bond, agreement and consensus (al-ittifaq). The relationship of consent (declaration of bond) and Kabul (declaration of bond acceptance) is in accordance with the will of Sharia which affects the object of the betrothal. What is meant by "in accordance with the will of Sharia" is that all agreements executed by two or more parties cannot be if they are not in accordance with the will of syarak, for example an agreement to execute profiteering transactions, mislead other people or rob others' wealth While the inclusion of the phrase "affects the purpose of the engagement" means the transfer of ownership from one party (who gives consent) to another party (who states that it has been granted) Islamic Bank Products (2002).

Mustafa Ahmad az-Zarqa (a Jordanian lawyer from Syria) stated that legal actions carried out by people come in two forms, namely

1. Actions in the form of acts and
2. Acts of expression.

Actions in the form of words are split in half, for those who are contractual and those who are not contractual. Actions in the form of words that are contractual take place when two or more parties commit to perform an agreement Dewi, et al., (2005).

Meanwhile, actions in the form of words that are not contractual are divided into two types.

1. Contain the owner's will to determine/delegate, cancel or abort rights such as waqf, grants and talak. A contract like this does not require kabul, even though it is a contract according to some fiqh scholars. The Hanafi School clergyman said that this type of legal action only binds the party that gives consent.

2. Which does not contain the will of the party determining or invalidating a right, but his words give rise to legal proceedings such as a lawsuit brought before a judge and someone's confession in court. Such actions result in a legal relationship, but are not binding. Therefore, the jurisprudence scholars have determined that an act like the latter cannot be considered a contract because no one is bound by it.

Meanwhile, qabul is the other party's consent statement showing that he agrees to commit himself. On this basis, any initial statement by one of the parties seeking to commit to a contract is called a mujib (perpetrator of the consent) regardless of which party initiated the first statement. For example, in a purchase and sale contract: if the statement to make a buy and sell comes and the seller, then the seller is called a mujib while the buyer is called a qabil.

The Quran uses two terms to refer to matters pertaining to promises or agreements, namely the terms al-'ahdu (promise) and al-'aqdu (agreement). According to Fathurraman Djamil, as quoted by Gemala Dewi, the word al-'aqdu is synonymous with bondage, while the word al-Ahdu is synonymous with agreement (agreement) in general civil law Shiddieqy (2000). Commitment is an engagement involving two or more parties whereas agreement is a person's promise to do or not do something so that the parties are not involved. The word Sharia is used in this article to emphasize that the meaning of a contract in this discussion is a contract based on Sharia principles. This emphasis is considered important because in the practice of economic activity, particularly in banking, there are currently two forms of contract, namely those based on conventional systems and those based on Sharia principles.

As part of Muamalah law, Islamic jurists have provided many definitions of the contract. According to Wahbah Zuhaili, a contract is an agreement of two wills to have legal effect, be it creating an obligation, moving it, transferring it or stopping it Abidin, et al. Ibn Abidin defines a contract with the relationship between consent and qabul, in accordance with the will of Sharia, which affects the purpose of the betrothal Rosyadi (2017). What is meant in accordance with the will of the syari'ah is a contract made by two or more people that must not be contrary to the syara ', such as an agreement to determine usury in a trade being carried out. The contract affects its purpose, which is the change of legal status as a result of the contract, such as transfer of ownership, existence of rights of use, and so on. According to Syamsul Anwar, a contract is a meeting of consent and qabul as a statement of the will of two or more parties to have legal effect on the object Antonio (2001).

The definition of a contract put forward by Islamic jurists is similar to the concept of a contract in general civil law. Subekti gives the meaning of an agreement to an event where someone promises to another person or where the two people promise each other to do something Muhammad (2018). Two parties binding this promise result in an obligation on each of them to do something or not, in other words, the two parties are bound by the agreement they made al-Syaukani, et al. In civil law, an agreement leads to an engagement, and the agreement becomes one of the sources of the engagement. Subekti therefore defines an engagement as a legal relationship between two persons or two parties on the basis of which one party has the right to demand something from the other party, and the other party is obliged to comply with that requirement Al-'Uqud (1992).

The Hanafi School defines only one pillar of the contract, namely consent and qabul, while the terms include the subject of the contract (Al-'Aqidaini) and the subject of the contract (mahal al-'aqd). The reason put forward by the Hanafi School is that these two things are not part of the performance of the contract Anwar (2007). The number of scholars, including the Shafii and Maliki schools, makes it a pillar, so that there are three pillars of the contract, namely the subject of the contract (al-'aqidaini) and the object of the contract (mahal al-'aqdi) and the words of the contract (sighatal-'aqdi). Hasbi ash Shiddieqy, added one more, so that the validity of the contract must comply with four pillars, namely the subject of the contract (al-'aqidain), the subject of the contract (mahal al-'aqdi), agreement (sighat at-'aqdi) and muqowimah al-'aqdi Agustianto (2020).

Article 22 KHES states that there are four pillars of the contract, namely;

- a. Parties that have been contracted;
- b. The subject of the contract;
- c. Main objectives of the contract;
- d. Agreement.

If we rely on the provisions of the Civil Code, there are similarities in the elements that determine the validity of the contract. The Civil Code describes four conditions for the validity of the agreement, namely;

- a. Their binding agreement (the consent of both who bind);
- b. The ability to enter into an engagement (the ability to commit to pressure);
- c. A particular subject (a particular subject), and
- d. A cause that may or may not be permissible (a permissible cause).

Civil law and Islamic law, both of which recognize the principle of freedom of contract (hurriyah al-'aqd), article 1338 subsection (1) of the Civil Code states that all legally made agreements count as laws for those who make them (all legally made agreements last days who have made it into law). In Islamic law, the principle of contractual freedom is based on the history of Amn bin Auf, which reads; that 'Muslims are bound by the promises they make except the promises that forbid the lawful and justify the haram Muslich (2010). Also based on the hadith related by Abu-Huirah; that any content of the agreement which has no basis in the Al-Qur'an is void Al-Syatibi.

Multi-Akad, or hybrid contract (English) or Al-'Aqd, Al-Murakkabah (Arabic), is a fundamental requirement in current Islamic banking practice. Hybrid contracts are both a solution and an alternative to replace the usurious interest rate system. In other words, a hybrid contract is a "breath" for the business of Islamic banking or other Islamic financing institutions to monitor market developments without sacrificing identity in implementing Shariah principles. On the other hand, we are not very familiar with hybrid contracts because so far when studying Islamic

law, especially in the field of Muamalah, more have been introduced with a single contract rather than a hybrid contract.

As explained earlier, in the term *fiqh al-'aqd* the hybrid contract is called *al-murakkabah*, consisting of two words, namely *Al-'Aqd* and *Al-Murakkabah*. The word *Al-'Aqdu* has been discussed in the previous discussion, while the word *al-murakkabah* means *al-jam'u*, which is to gather or to gather. In terms, the *murakkabah* contract is defined by an agreement between two parties to perform a *Muamalah* that includes two or more contracts, for example, a sales and purchase contract with *Ijarah*, a sale and purchase contract with a subsidy and so on, so that all legal consequences and joint contracts, as well as all the rights and the obligations it creates, are considered as an inseparable unit, which is equivalent in position to the legal consequences of a contract Islamic Bank Products (2002).

Before there was rapid progress in the Shariah economic sector, particularly Islamic banking, only one contract was recognized in the discussion of Islamic law in the field of *Muamalah*. And with different types of contracts by name that are discussed in different *fiqh* books, we see that the discussion of contracts is only one time. We can do this *maldum* because the practice of *Muamalah* was very simple then, unlike today Dewi, et al. (2005). With the rapid advancement in the banking industry, the concept of one contract is considered insufficient to meet the modern demands of Islamic banking. The current development of Islamic banking and financial institutions requires hybrid contract designs so that Islamic banking and financial products in Indonesia do not lag behind and can meet the needs of modern businesses. In essence, the development of hybrid contracts is considered one of the important pillars for creating innovative Islamic banking and financial products to meet the demands of modern society.

The practice of hybrid contracts in Islamic banking is a necessity in practice. For example, when running a sharia bank, there is a contract called *al-Murabahah lil Aamir bi asy-syira* '(*murabaha* to the buyer or deferred payment). Three parties are involved in this contract, namely buyers, financial institutions and sellers. Initially, the buyer (customer) submits a request to a financial institution to purchase goods, for example, to buy a motorized vehicle, a house, etc., then the financial institution buys the goods and the seller (motorcycle dealer) in cash, and sell the goods then to the buyer at a higher price either in cash, on installment or in tempo Shiddieqy (2000).

In this *Murabahah* there are two agreements that are combined, namely a purchase and sale agreement between a financial institution (bank) and a seller (motorcycle dealer), and a purchase and sale agreement between the financial institution and the giver (customer). These two contracts are combined into one contract in a hybrid contract called *Murabahah* (to the buyer). It should be noted here that the *Murabahah* contract with the buyer (*Murabahah KPP*) is not exactly the same as the original *Murabahah* contract, which is buying and selling at the top price (principal) with additional profits known and agreed upon by the seller and the buyer. So in the original *Murabahah* there are only two parties, namely sellers and buyers, while *Murabahah* in Islamic financial institutions or Islamic banks is three parties, namely sellers, buyers and Islamic financial institutions or Islamic banks.

In the sharia pledge contract, combining the *rahn* (pledge) contract with the *Ijarah* contract (deposit service for goods). Due to the merger of the *Ijarah* contract with the *rahn* contract, the sharia principle does not receive interest that is considered usury, so an *Ijarah* contract is created in which the financial institution benefits from the lease of the goods being pledged. Sharia insurance contracts, which combine a subsidy contract (*Tabarru*) with an *Ijarah* contract (insurance premium fund management services), or sometimes combined with a third contract, namely the *Mudharabah Syirkah* contract. In the financing contract for the hajj rescue operation,

there are two contracts that combine into one, namely the (payable) qardh contract with the Ijarah contract (hajj management service). A sharia lease contract, or IMBT (Ijarah M Vomiyahbi Tamlik), which combines an Ijarah (asset lease) contract with a grant or asset sale and purchase contract at the end of the contract. In short, the application of hybrid contracts is indeed quite numerous and varied in today's Muamalah.

Some of these hybrid contracting practices are carried out in the practice of sharia banking or other financial institutions, due to the need on one side of the bank as a financial institution that manages public funds with excess capital, receives trusts and clients. Of course, customers don't want their money to shrink or burn, and on the contrary, the money saved will receive benefits and methods justified by religion. On the other hand, Islamic banks or financial institutions are not allowed to use the usurious practice of conventional banks. The application of a hybrid contract is a necessity that cannot be avoided, and its application is supported by the Muamalah principle which enforces the admissibility principle as long as there is no prohibition on texts Abidin.

According to Syatibi, the difference between the original law of worship and Muamalah is that in worship it is Ta'Abbudi, namely carrying out what is ordered and not interpreting the law, while the original law outside of worship, namely Muamalah, is based on its substance and spirit (Iltifati Ila Al-Ma'ani) Rosyadi (2017). In the field of Muamalah there are wide opportunities to make changes and discover new laws, because the basic principle is permissible (Alidzn).

Ibn Taymiyyah argued that on the basis of research on the basis of Sharia, it can be concluded that in matters of worship it can only be performed on the basis of the determination of syara '(nash), while with regard to adat (Muamalah) the law of origin is not prohibited and that there is no habit of any kind that is prohibited except what Allah has forbidden. Imam Bukhari, in one of his books, makes a separate discussion about the judge who judges the problems of the townspeople based on the customs and traditions well known among them in terms of buying and selling, renting. On that basis, he allowed the sentence of Shuraih (died 78 hijriyah) and explained it based on local traditions.

Unavoidable necessity can put something in an emergency position. A rule of Islamic law (legal theory) explains that an urgent need can occupy a state of emergency, so based on these principles, it is legitimate to apply a hybrid contract in the Sharia contract. Ibn Taymiyyah stated that in essence Al-'Aqd Al-Murakkabah and other conditions are permitted and valid, nothing is prohibited or considered null and void except what has been haram and nullified by sharia. Moreover, Ibn Al-Qayyim also stated that the law of origin of the contract and terms is valid except for those canceled or prohibited by religion" Syafi'I (2001).

Although the National Sharia Council (DSN-MUI) and some Islamic jurists allow the application of hybrid contracts, according to Agustianto, there are several enforcement provisions to be taken into account so that their implementation can be grouped into four, namely Muhammad (2018):

1. Al-Aqdal-murakkabah Al-Mukhtalith and gave rise to new names such as bai'al-Istighlal, Bai'tawaruq, Musyarakah Mutanaqishah, and Bai 'Al-Wafa. Buying and selling istighlal is a mixture of three contracts, namely two contracts of sale and purchase and an agreement of Ijarah so that the three contracts are mixed. The sale and purchase of Tawaruq is a mixture of two sale and purchase agreements, in which the first sale and purchase is carried out with the first party and the second sale and purchase with a third party. Musyarakah mu tanaqisha is a mixture of a syirkah contract belonging to a mutanaqishah Ijarah or a mutanaqishah sale and purchase. The mixing of these contracts gave birth to a new name, namely musyarakah mutanaqishah. The substance is almost the same as Ijarah Munta Hiya Bit Tamlik because at the end of the period the

goods belong to the customer, but the form of Ijarah is different, because the transfer of title is not with a promise of a grant or purchase, but because of a Mutanaqishah transfer of title, because it is called Ijarah, not IMBT. As for bai wafa, it is a mixture (combination) of two sale and purchase agreements that give birth to a new name. At the beginning of its birth in the fifth century Hijriyah, this contract was a multi-Akad (hybrid), but in the historical process it became one contract, with a new name, namely Bai al-wafa.

2. Al-Aqd, Al-Murakkabah, Al-Mukhtalith with the name of the new contract but mentioning the name of the old contract, such as lease and purchase or Bai Alta'jiri or lease and purchase, Mudharabah Musytarakah on life insurance and Islamic bank deposits. Another interesting multi-contract is combining Wadiah and Mudharabah in current accounts, which are commonly called savings and Automatic Transfer Mudharabah and Wadiah Transfers. In this case the customer has two accounts, namely savings and current accounts at the same time, where each account can be moved automatically if one of the accounts requires.

3. Al-Aqd Al-Murakkabah Al-Mukhtalith which the contracts are not mixed and do not give birth to a new contract name, but the name of the basic contract remains and is practiced in a transaction, such as; Kafalah Wa Al-Ijarah on credit cards, Hiwalah Bi Al-Ujrah on factoring, and Qardh, Rahn and Ijarah contracts on gold pawn products in Islamic banks.

4. Al-Aqd, Al-Murakkabah, Mutanaqidhah, where the contracts are opposite each other. This form of combination of contracts like this is prohibited in sharia, such as combining sale and purchase agreements and loans (Bai 'Wa Salaf) and combining Qardh Wal Ijarah in one contract. Both of these examples are prohibited by the hadith of the Prophet Muhammad.

Some Islamic jurists object and even tend to ban contracts containing hybrid contracts and base their opinions on different traditions, among other things; The hadith of Hakim bin Hizam which reports that the Prophet forbade four kinds of buying and selling, namely; combine salaf, two conditions in one sale and purchase, sell what is not on your side, take advantage of what guarantees you no loss. Moreover, they also base the Tirmizi priest's history that the Prophet forbade two purchases and sales in one sale and purchase. There are also those who base the history of Abu Dawud, who forbade the Prophet to combine salaf with buying and selling, and two conditions in buying and selling.

We can actually interpret the hadith from a different angle, which is the basis for the ban on contracts with hybrid contracts. Firstly, the hadith does not contain the prohibition of hybrid contracts as a whole, but there are texts that prohibit the combining of certain contracts, then the prohibition must be enforced and for whatever reason these contracts cannot be combined. Certain contracts that are expressly prohibited naturally have a rational basis, for example, the prohibition of combining a loan contract with a purchase and sale agreement, because if this is allowed, the lender can get usurious interest by increasing the price by a certain amount in the sale and purchase transaction that can be purchased at a lower price. Second, the hadith prohibiting two agreements in one agreement as a basis for the prohibition of all forms of hybrid contracts is not entirely correct. The hadith implies that if more than one option (contract) is offered, the parties must clearly choose one of the options offered, because if they do not make a choice, the chosen will create uncertainty (Gharar), this is prohibited in the sharia contract

Gharar is the cause of transaction defects and therefore every transaction must be free from Gharar. According to Sarakhsi, Gharar is done in the name of the consequences of a transaction unknown to the parties. Ibn Rushd said that Gharar can occur in buy and sell transactions, such as the price and important criteria in the contract that should be known while according to Ibn Abidin, Gharar is the uncertainty about the existence of goods when buying and selling. Based on the understanding of Gharar as given above by Islamic jurists, it can be

concluded that Gharar contains characteristics in the form of risk, danger, speculation, uncertain results, so that it can cause losses for other parties.

Aliudin Za'tary in the book *Fiqh Muamalah, Al-Maliyah, Al-Mu Qaran* said "There is no prohibition in sharia regarding the merging of two contracts in one transaction, both the exchange (business) contract and the Tabarru contract". This is based on the generality of the arguments that order to fulfill (WAFI) the conditions and contracts" Al-Syaukani.

The majority of Hanafiyah Ulama, some opinions of Malikiyah Ulama, Syafi'iyah Ulama, and Hanbali argue that hybrid contract law is valid and permissible under Islamic law. Ulama who permit it claim that the original law and contract are permissible and valid, not prohibited and canceled, as long as there is no legal argument prohibiting or canceling it. Except combining two contracts that give rise to usury or that resemble usury, such as combining Qardh with another contract, due to the prohibition of hadiths to combine buying and selling and Qardh. Likewise, buying and selling installments and buying and selling cash combine in one transaction.

According to Ibn Taymiyyah, the law of origin of all Muamalat in the world is permissible except what is forbidden by Allah and His Messenger, nothing is haram except what is forbidden by Allah, and there is no religion except what is stated. Nazih Hammad writes in the book *al-Uqild al- Murakkabah fi al-Fiqh al-Islamy*: "The basic law in syara 'is allowed to conduct hybrid contract transactions, as long as any contract it builds when performed individually, the law is permissible and there are no arguments that prohibit it. If there is an argument prohibiting it, then that argument is not generally applied, but it excludes cases that are prohibited by that argument. The case would therefore be an exception forms of the general rule that applies, namely with regard to the freedom to perform the agreement and to perform the agreed agreement.

Likewise with Ibn al-Qayyim, he argued that the original law and contract and terms were valid except those canceled or prohibited by religion. Al-Syatiby explains the difference between the law of origin and worship and Muamalat. According to him, the law of origin and worship is to perform (Ta'abbud) what is commanded and not to interpret the law. Meanwhile, Muamalat's law of origin is based on its content, not practice (Iltifat Ha Ma'any). In the case of worship there is no discovery or change of what has been determined, while in the field of Muamalat there is ample opportunity to make changes and new discoveries because the basic principle is that it is permissible (Al-Idzn) to not (Ta'abbud).

This advice is based on various texts that demonstrate the ability of additional contracts and contracts in general. First, the word of Allah in Surah Al-Maidah verse 1 which means "O you who believe, fulfill the covenants."

## Hybrid Contract Design in Islamic Banking Product Development

Contract design is an effort to find the right contract form for a financing activity in an Islamic bank. Therefore, one of the requirements to design a contract is the need to understand the contracts that apply to BMT. In the discussion of this chapter will discuss various techniques for designing an Islamic financing contract. There are four techniques that need to be done to design a sharia financing contract Nazih (1992), namely

1. Understanding the characteristics of customer needs;
2. Understand customers' capabilities;
3. Understand the characteristics of the source of third party funds for banks, and
4. Understand the proper fiqh contract.



## **Understand Customer Needs Characteristics**

The first technique to be applied to design an Islamic finance contract is to understand the characteristics of the client's needs. In this case, there are two things to consider Anwar (2007).

### **Object**

The first thing to look at to understand the characteristics of a customer need is an object. If the financing object required by the customer is in the form of goods, it must be viewed from the perspective whether the goods are ready for inventory or work in progress. If the goods are ready for inventory, the proper financing to be given to the customer is the Murabahah financing. However, if the goods are in the form of work in progress, it should be reconsidered whether the time required to process the goods is less than 6 months or more. If the processing of the goods takes less than 6 months, the financing that can be provided is Salam financing, assuming that the customer will be able to fulfill his obligations in one go. However, if the goods are processed for more than 6 months, the financing that can be provided is Istishna 'financing with the assumption that the new customer can fulfill his obligations after making several payments. On the other hand, if the object of financing that the customer needs is not in the form of goods, but services, then the financing to be provided to the customer is Ijarah financing.

### **Uses**

The second thing that must be seen to understand the characteristics of the customer's needs is the usefulness of the goods or services that are required. In this case, the most important thing to observe is whether the goods or services required by customers will be used for productive or consumptive activities. If the use of financing required by customers is for productive activities, the point of view must be whether the goods are used for working capital or investment.

Apart from the two things above, the use of funds by customers or partners of Islamic banks can be done in the following forms.

### **Working Capital**

If the use of the goods or services is used for working capital, it must be considered whether the customer has a contract with a third party or not. If the customer already has a contract, it should be checked whether the financing is used for construction work or purchasing goods. If for construction work the funding that can be provided by a sharia bank is Istishna 'funding. However, when it comes to the purchase of goods, the financing that the bank can provide is Mudharabah financing, with the exception of the productive financing of small-scale businesses. This exception is only made as a strategy for the bank to avoid high risk. If the customer does not have a contract, it must be seen whether the financing is used for ready inventory or work in progress. If it is for stock, the funding provided by Islamic banks is Murabahah. However, if it is not finished stock, but work in progress, then it must be reconsidered from the point of view whether the processing of these goods takes less than 6 months or more if less than 6 months, the funding provided is Salam funding. However, if the processing of the goods takes more than 6 months, the financing provided is Istishna'.

## **Investation**

In the event that the use of the goods or services is used for investment, it must be considered whether the financing is intended for ready inventory or work in progress. When it comes to ready-made stock, the next factor to consider is whether the goods are sensitive to tax issues or not. If so, the funding provided by the bank is Ijarah Muntahiya Bittamlik (IMBT) funding. However, if not sensitive, the funding provided is Murabahah funding. If the investment financing is not intended for finished stock, but for work in progress, then it must be reconsidered whether the processing of these goods takes less than 6 months or more. If less than 6 months, the funding provided is Salam funding. However, if the processing of the goods takes more than 6 months, the financing provided is Istishna'.

If the financing required by customers is not used for productive activities but for consumption purposes, it must be seen from the perspective whether the financing is in the form of buying goods or services. When it comes to buying goods, the next factor to consider is whether the goods are in the form of stock ready or work in progress. When the stock is ready, the funding provided will be Murabahah funding. However, if it is in the form of work in progress, the next thing to look at is whether the process of the goods takes less than six months or more. If less than 6 months, the funding provided is Salam funding. If the processing of the goods takes more than 6 months, the financing provided is Istishna'. If the funding is intended to meet customer needs in the service sector, the Islamic funding that can be provided is Ijarah funding.

## **Understand Customer Capabilities**

The second technique to be done to design an Islamic finance contract is to understand the client's capabilities. In this case, the highly predictable side must be taken into account, namely whether the source of the customer's income is highly predictable or not. If the customer's source of income is highly predictable, the next factor to consider is whether the financing is for construction work or the purchase of goods. If the funding provided for construction works is istishna' funding, the funding provided for the purchase of goods is Mudharabah funding, except for small-scale business production. If the customer's source of income is not in the highly predictable category, the next factor to consider is whether the financing is for ready inventory or work in progress. When the stock is ready, the funding provided will be Murabahah funding. However, when it comes to work in progress, this should be seen again in terms of the processing time of the goods. If it is less than 6 months, the funding provided is Salam funding. However, if it is more than 6 months, the funding provided is Istishna's funding Zuhaili.

## **Understand, the Characteristics of Sources of Funds for Third Parties, Banks**

The third technique to be applied to design a syariah financing agreement is to understand the characteristics of external funding sources for banks. The essence of the analysis of the need for third-party funding sources is aimed at obtaining:

1. Bank security with regard to the fulfillment of the disbursement needs of banks when providing funding can be covered by payments (cash in) and accounts receivable;
2. The bank's security of the profit-sharing obligation to be given to the fund holder (third party) can be covered by payment (cash in) from the debtor.

So based on these two objectives, in order to understand the characteristics of external fund sources, banks need to perform a cash flow analysis, both in terms of cash in the bank

(which also means as debtor payouts) and cash flow from the bank's payouts (which means also means as cash in accounts receivable).

In the case of cash in banks (customer cash out), the factor that must be considered is whether it is in the form of a grace period or not. Grace period is a grace period given by banks to debtors not to make installment payments until a certain time.

To meet service needs, the funding provided is Ijarah. However, if the financing is not intended to meet the need for goods or services, but rather capital participation (Syirkah), then the next factor to consider is whether the Syirkah is in the form of a syndication or not. Syndication refers to a group of investors who work together to finance a project. If it is in syndication form, the funding provided is Musharaka funding. However, if not in syndication form, the funding provided is Mudharabah funding.

If the bank is cash out (cash in customer) not in the form of a lump sum, but rather a term, then the factor to consider is whether the financing should meet the needs of goods or services. In order to meet the needs of goods, the next factor to consider is whether the goods are in the form of stock ready or in work in progress. When the stock is ready, the funding provided will be Murabahah funding. However, if the goods are work in progress, this should be seen again in terms of the processing time of the goods, if it is less than 6 months, the financing provided is Salam financing. However, if more than 6 months the funding provided is Istishna 'funding.

If the funding is intended to meet the service needs, the funding provided is Ijarah, however, if the funding is not intended to meet the needs for goods or services, but rather capital participation (Syirkah), the next factor to consider is whether the Syirkah is in the form of syndication or not is considered. If it is in syndication form, the funding provided is Musharaka funding. However, if not in syndication form, the funding provided is Mudharabah funding.

### **Understand the Right FIQH Covenant**

The fourth technique to be done to design a sharia finance contract is to understand the correct Fiqh contract. The execution of a transaction must not be in violation of Islamic Sharia, whether it is prohibited because it is haram other than its content, which includes Tadlis, Ikhtikar, Ba'i Najasy, Gharar and Usury, or because the contract is invalid is, namely Rukun and unfulfilled conditions, it happens Ta 'Alluq, and two contracts occur simultaneously in one transaction.

On the other hand, the application of a contract in a transaction must also pay attention to the characteristics of the contract in question, namely whether the contract is included in the Tabarru 'or tIjarah contract category. If it is a Tabarru contract, the bank cannot ask for compensation from the customer for the implementation of a transaction. Conversely, if it is a tIjarah contract, the bank is entitled to receive compensation from the customer for the execution of the transaction. In other words, from the results of this identification, we will get certainty about which contracts can be expected for compensation and which contracts cannot be expected.

With respect to transactions included in the TIjarah contract category, we can further identify which ones are included in the TIjarah contract based on natural collateral contracts and which ones are also TIjarah contracts based on natural uncertainty "excerpts. The purpose of this identification is to obtain certainty of payment, both in terms of amount (amount) and time (timing).

As indicated in the previous section, natural collateral contracts are contracts or contracts in the business world that provide certainty about payment, both in terms of amount (amount) and time (timing). In other words, in natural security contracts, both parties exchange their assets.

Therefore, at the beginning of the contract, the exchange item must be determined with certainty in terms of quantity, quality, price and delivery time. These contracts therefore naturally yield a fixed and certain return. Included in this category are Murabahah, Ijarah, Ijarah Muntahiyah bittamlik, Salam and istishna'.

Natural uncertainty contracts meanwhile mean contracts or contracts in the business world that do not provide certainty about income (return), both in terms of amount (amount) and time (timing). In this NUC, the return can therefore be positive, negative or zero. Included in this category are mudharabah, musyarakah, muzara'ah, musaqah and mukhabarah.

## CONCLUSION

On the basis of the above Uraia, it can be concluded that the opinions of experts about the Hybrid Contract mainly state that hybrid contracts may be designed in the context of developing Islamic banking. Contract design is an attempt to find the right form of contract for a financing activity at an Islamic bank. Hence, one of the requirements to design a contract is the need to understand the contracts that apply in BMT. There are four techniques to be applied to design a sharia finance contract, namely

1. Understanding the characteristics of the client's needs;
2. Understand customer capabilities;
3. Understand the characteristics of the source of third-party funds for the bank, and
4. Understand the correct fiqh contract.

## REFERENCES

- Agustianto. (2020). Principle of Akad development in sharia economics. Retrieved from [www.iqtishadcounseling.net](http://www.iqtishadcounseling.net).
- Ahmad, W.M. (2010). *Fiqh Muamalat*. Amzah, Jakarta.
- Al-Syatibi, AL-Muwafaqat, F.U., & Al-Syariah. Volume I, Dar al-Ma'rifah, Beirut.
- Anonymous. (2002). Islamic bank products, karim sonsulting working in collaboration with Bank. Indonesia, Jakarta.
- Gemala, D., et al. (2005). Islamic bonding law in Indonesia, Kencana, Jakarta.
- Hasbi, A.S. (2000). Understanding Islamic sharia, pustaka rizki putra. Semarang.
- Abidin, I., Radal, A., Mukhtar, & Al-Mukhtar, A.A.D. Vol. III, Amiriyah, Egypt.
- Rosyadi, I. (2017). Material guarantee based on sharia contract (engagement aspect, loading procedure and execution). Kencana, Jakarta.
- Antonio, M.S. (2001). Sharia bank from theory to practice, Gema Insani, Jakarta.
- Sharia, M. (2018). Business transactions and binding patterns. Rajawali Pers, Depok.
- Al-Syaukani, M.B.A., & Al-Authar, N. Juz 6, Dar-Al-Fikr, Beirut.
- Hmmad, N., Al-Murakkabah, A.U., Al-Fiqh, F., & Al-Islami. (1992). Subekti, agreement law, Cet. 14. Intermasa, Jakarta.
- Anwar, S. (2007). Sharia agreement law. Raja Grafindo Persada, Jakarta.
- Zuhaili, W., Al-Fiqh, & Al-Islami, W. Adillatuhu, Jus IV.
- Agustianto. (2020). Principle of akad development in sharia economics. Retrieved from [www.iqtishadcounseling.net](http://www.iqtishadcounseling.net).
- Muslich, A.W., & Muamalat, F. (2010). Amzah, Jakarta.
- Al-Syatibi, AL-Muwafaqat, F., & Al-Syariah, U. Volume I, Dar al-Ma'rifah, Beirut.

- Anonymous. (2002). Islamic bank products, karim sonsulting working in collaboration with bank Indonesia, Jakarta.
- Gemala, D. et al. (2005). Islamic Bonding Law in Indonesia, Kencana, Jakarta.
- Shiddieqy, H.A. (2000). Understanding Islamic Sharia, Pustaka Rizki Putra, Semarang.
- Abidin, I., Al-Mukhtar, R., & Al-Mukhtar, D.A.A. Vol. III. Amiriyah, Egypt.
- Rosyadi, I. (2017). Material guarantee based on sharia contract (engagement aspect, loading procedure and execution). Kencana, Jakarta.
- Antonio, M.S. (2001). Sharia bank from theory to practice. Gema Insani, Jakarta.
- Muhamad. (2018). Sharia business transactions and binding patterns. Rajawali Pers, Depok.
- Al-Syaukani, M.B.A., & Al-Authar, N. Juz 6. Dar al-Fikr, Beirut.
- Hmmad, N., Al-'Uqud, A.M., Al-Fiqh, F., & Al-Islami. (1992). Subekti, agreement law, Cet. 14, Intermasa, Jakarta.
- Anwar, S. (2007). Sharia agreement law. Raja Grafindo Persada, Jakarta.
- Zuhaili, W., Al-Fiqh, Al-Islami., & Adillatuhu, W. Jus IV.