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**Comparative Analysis of Malaysia's Islamic Bank Aqad with Indonesia**

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**Abstract**

Malaysia and Indonesia are countries in Southeast Asia that have experienced fairly rapid developments related to Islamic banking. But behind the success of Islamic banking, in the implementation and implementation of each country has a different interpretation. The study in this paper tries to perform a comparative analysis of contracts Murabaha, Mudharabah and Musharakain two countries, namely Malaysia and Indonesia. The research method used is normative legal research using a statutory and conceptual approach. The results showed that there were differences in interpretation in the application of the three contracts. In Malaysia Akad Murabaha is applied in three ways, namely: *Bai Al Inah*, *Bay Al Dayn* and *Bay Bitthaman Ajil* while in Indonesia *bai' li al-amri bi al-syira'* and *Bai Al-Dayn*. Mudharabah in Malaysia uses two namely: *Mudharabah Mutlaqah* is a contract in which the rabbul mal allows the mudarib to manage the capital of the mudarabah without special restrictions and the *mudharabah muqayyadah* is a contract in which the rabbul mal imposes special restrictions on the terms of the mudarabah. Meanwhile, in Indonesia, the *mudharabah muqayyadah*, *mudharabah muthlaqah*, *mudharabah tsuna`iyah* and *mudharabah musytaraqah* contracts are used. The last *musharaka* contract. In Malaysia using *Shirkah al-Milk* and *Syirkah al-`Aqd* while in Indonesia using *Syirkah amwal* and known as *syirkah inan*.

**Keywords:** Aqad, Bank, Sharia, Indonesia, Malaysia

**PRELIMINARY**

The theoretical concept of Islamic banking first emerged in the 1940s, with the idea of banking based on profit sharing. In this regard, it can be mentioned the thoughts of writers such as Anwar Qureshi (1946), Naiem Siddiqi (1948) and Mahmud Ahmad (1952). A more detailed description of the preliminary ideas on Islamic banking was written by the great Pakistani scholars, namely Abul A'la Al-Mawdudi (1961) and Muhammad Hamidullah (1944-1962).

The first modern attempts to set up an interest-free bank began in Pakistan to manage Hajj funds in the mid-1940s, but these efforts were unsuccessful. The next development of the effort to establish the most successful and innovative Islamic bank in modern times was carried out in Egypt in 1963, with the establishment of Mit Ghamr Local Saving Bank. The bank was well received by farmers and rural communities. But unfortunately, due to political turmoil in Egypt, Mit Ghamr began to decline, so that its operations were taken over by the National Bank of Egypt and the Central Bank of Egypt in 1967. This takeover caused the interest-free principle of Mit Ghamr to be abandoned, so this bank returned operate on an interest basis. In 1971, Finally, the concept of interest-free was revived during the Sadat regime through the establishment of the Naseer Social

Bank. The purpose of this Bank is to re-run the business based on the concepts that have been practiced by Mit Ghamr.

Jumhur (majority/most) Ulama' agree that bank interest is usury, therefore it is haraam. The meeting of 150 leading Ulama' at the Islamic Research conference in the month of Muharram 1385 H, or May 1965 in Cairo, Egypt agreed by acclamation that all profits on various types of loans are all forbidden usury practices including bank interest. Various international ulama forums also issued fatwas forbidding bank interest.

Indonesia is one of the largest Muslim countries in the world which introduced new Islamic banking in 1992. Meanwhile, Malaysia has been running Islamic banking with a dual banking system since 1983. Malaysia started its Islamic banking since the government made Islamic banking laws. The name of their first bank was the Islamic Banking Act in 1983. This Malaysian Islamic banking law regulates many things, for example the role of the central bank of Malaysia, namely Bank Negara Malaysia which is given the authority to regulate and also supervise the emerging Islamic banks. In the same year the Malaysian government enacted the Government Investment Act. This law also gives the government the authority to issue Government Investment Letters which are categorized as securities that adhere to Sharia principles. This Government Investment Act is a Sharia financial instrument in order to support the liquidity needs of Islamic banks.

After enacting the Islamic Banking Act and the Government Investment Act, the Malaysian government also enacted the Sharia Insurance Act, known as the Takaful Act. This law was enacted a year after the two previous laws. Sharia Insurance is a Sharia non-bank financial institution that is useful to support the operations of Sharia banking in Malaysia.

The development of Islamic banking in Malaysia has gone through two stages. The first stage of the span is the time span between 1983 and 1993. During these ten years is the development stage of Islamic banking. The next stage is the second stage where at this stage the Malaysian government makes a No-Profit Banking Scheme. This scheme gives authority to conventional banks to conduct transactions or offers of various Islamic banking products known as Islamic Windows. With the existence of Islamic Windows, this is one of the distinguishing characteristics between Malaysian Islamic banks and Islamic banks in the world, including Indonesian Islamic banks.

Indonesia only established sharia banking in 2008. In that year the government issued Law Number 21 of 2008 concerning Sharia Banking. Both the theory and practice of implementing Islamic banking operating in Indonesia have characteristics that distinguish it from other countries, including Malaysia. Indonesia, like Malaysia, uses a dual banking system, but Indonesia has also established Islamic banking under the name Bank Muamalat. The dual banking system is used because this model banking system was born from the womb of conventional banking. The difference lies in the interest system, whereas conventional banking uses the name interest, while in Islamic banking the term profit and loss sharing system is used. The most distinguishing thing between conventional banks and Islamic banks is the contract.

Islamic banking contracts that are applied in various countries of the world in general cover There are three contracts, namely the mudharabah contract, the murabahah contract and the musyarakah contract. Contracts have different meanings and concepts from one another. According to Law Number 21 of 2008 concerning Sharia banking, it is defined that a contract is a

written agreement between a Sharia Bank or UUS and another party that contains rights and obligations for each party in accordance with Sharia Principles.

According to its understanding, a murabahah contract is a financing agreement in the form of a sale and purchase transaction of an item at the cost of the goods plus a margin agreed upon by the parties, where the seller informs the purchaser of the purchase price in advance.

Mudharabah contract is a financing/investment agreement from the fund owner (shahibul maal) to the fund manager (mudharib) to carry out certain business activities in accordance with sharia, with the distribution of operating results between the two parties based on a pre-agreed ratio.

Meanwhile, the Musyarakah contract is defined as an agreement for financing/investing funds from two or more owners of funds and/or goods to run a certain business in accordance with sharia with the distribution of operating results between the two parties based on an agreed ratio, while the distribution of losses is based on the proportion of each capital.

The concept of a different contract in each country makes the author interested in examining the comparison of contracts. The author tries to conduct a comparative study related to Islamic banking contracts carried out by Bank Syariah Indonesia (BSI) and Islamic Banks in Malaysia. This comparison is only carried out on three contracts commonly found in Islamic banking, namely the Murabahah contract, the Mudharabah contract and the Musyarakah contract.

## METHODS/IDEAS

The type of legal research used is normative legal research. The approach used in this research is the statute approach and the conceptual approach. Data analysis uses qualitative analysis of all legal materials obtained through laws, regulations, libraries and research results in journals. The legal materials are processed qualitatively to find differences and similarities between Islamic banking contracts in Indonesia and Malaysia which include the three contracts mentioned above.

## RESULTS AND DISCUSSION

### **Murabaha contract**

As previously explained, the murabahah contract is a financing agreement in the form of a sale and purchase transaction of an item at the cost of the goods plus a margin agreed upon by the parties, where the seller informs the buyer in advance of the acquisition price. According to Syafi'i Antonio, the murabahah contract is known as bai al murabahah. According to him, bai al murabahah is the sale and purchase of goods at the original price with an agreed additional profit.

*Murabahah* which is one type of buying and selling that is trustworthy in Islamic law is the most dominant contract scheme used in Islamic banking practices in Indonesia. However, in practice, murabahah has undergone many modifications compared to the basic concept in classical muamalat fiqh. There are some modifications that do not cause problems in terms of the basic principles of Islamic law so that the scholars do not object, but there are not a few modification models that

cause debate because they are carried out solely to fulfill juridical formal provisions for consideration of the effectiveness and efficiency of banking administration.(1)

Puneri, et al explained that the murabahah contract is an Islamic financial instrument that allows the buyer to buy goods from the seller with a certain profit margin. In contemporary banking practice, Murabaha has been widely used by Islamic financial institutions as a financing contract.(2)

Indonesian Islamic banks and Malaysian Islamic banks have different views regarding the concept of this murabahah contract. In the view of Islamic banks in Malaysia, the murabahah contract is interpreted in three contracts, namely: *Bai Al Inah*, *Bay Al Dayn* and *Bay Bitthaman Ajjil*.(3) According to the Malaysian Sharia Council or NSAC, the *Bai Al Inah* contract is a sale and purchase contract in which the seller resells his assets with a promise to repurchase with the same party. So, *Bai Al Inah* is interpreted with cash sales and also continued with purchases on credit. According to them, the contract is like entering into a sharia contract with the terms and conditions that the customer sells his assets to the Islamic bank at a specified price. Then the Islamic bank pays a predetermined price. After that, the Islamic bank will resell the purchased asset at a price that has been added by the Islamic bank. The addition or this price difference can reach 20% of the price of the goods. Final,

The next interpretation of the murabahah contract is the *Bay Al Dayn* contract. *Bay al dayn* is a debt sale and purchase contract or *Dayn*. *Bay al Dayn* in this contract is traded at the same price. NSAC Malaysia stated that it can accept the principles of *Bay Al Dayn* which is expected to be able to accelerate the concept of the Islamic capital market. Malaysia's NSAC states that debt can be considered the same as property. Because debt is the same as assets, debt can be traded at any price. It even includes a discounted price. The following is a description of *Bay Al Dayn*. The views of the NSAC or Malaysian scholars regarding *Bay Al Dayn* are permissible because they consider that this contract is in accordance with Sharia provisions.

Last *Bay Bitthaman Ajjil Akad* This contract is the old name of the murabahah contract. It can be said that this contract is a sale and purchase contract where payments are made in *Tanggung* or installments, and payments are made in the long term. It can be said that murabahah is murabaha credit for the long term. In connection with this *Bay Bitthaman Ajil* contract, there are 4 steps of the process that must be carried out, namely, the customer identifies the asset he wants to own or buy. The bank purchases the assets desired by the customer. The bank sells the asset to the customer by setting a selling price equal to the acquisition price from the Islamic bank plus the desired profit margin by the bank.

According to Law Number 21 of 2008 concerning Islamic banking, it is stated that: Murabahah contract is a financing agreement in the form of a sale and purchase transaction of an item at the cost of the goods plus a margin agreed upon by the parties, where the seller informs the purchaser of the purchase price in advance.

This Murabahah contract is basically regulated in the Fatwa of the National Sharia Council Number 04/SDSN-MUI/IV/2000 which states that, 1) Banks and customers must enter into a usury-free murabahah contract. 2) Goods that are traded are not prohibited by Islamic law. 3) The Bank finances part or all of the purchase price of goods whose qualifications have been agreed upon. 4) The bank purchases the goods needed by the customer on behalf of the bank itself, and this buyer

must be legal and free of usury. 5) Banks must submit all matters relating to purchases, for example if the purchase of goods is made on a debt basis. The bank then sells the goods to the customer at a price equal to the price plus the profit. In this regard, the bank must honestly tell the customer the cost of goods and the costs required. 6) The customer pays the price of the goods within a certain agreed period of time. 7) To prevent misuse or damage to the contract, the bank may enter into a special agreement with the customer. 8) If the bank wants to represent the customer to buy goods from a third party, the murabahah sale and purchase contract must be made after the goods in principle become the property of the bank.(4)

The interpretation used by the Malaysian government in understanding the murabahah contract actually contradicts the provisions used by Middle Eastern and Indonesian scholars. This is because these scholars agree with the view held by Islamic Fiqh Academy scholars which states that bay Al Dayn is not permitted. In a meeting of the Institute, which is a representative of muamalah fiqh scholars around the world, it has been agreed that the concept of Bay Al Dayn should be banned. And they have agreed to carry out the ban by acclamation.

In Indonesia and also in the Middle East, the Bay al Dayn contract is not allowed. The reason why this contract is not allowed elsewhere is because there are 3 elements of iwad that are not in this contract, namely work and business risks and responsibilities, which are not mentioned in this contract. In addition, there is also controversy that in this contract the two parties involved in the contract actually never intended to use the assets they have and this is considered a violation of the contract based on Islamic sharia principles. So that gave birth to the assumption that the Bai Al Inah contract is a way to legalize the concept of usury or interest on money which is prohibited in Islamic Sharia.

Seeing that murabahah is a type of lawful sale and purchase contract, the terms and conditions of the murabahah contract must meet the general terms of sale and purchase, namely: (1) Two people who are in contract (seller and buyer) / al-aqidani, (2) Sighah contract (ijab and kabul) / ghah, (3) goods and prices / ma'qud alayh and al-thaman. In addition, there are some special conditions for him, namely: (1) The seller must state the actual cost or capital price of the goods to be sold to the buyer, (2) the seller and the buyer agree on the amount of profit that is determined in addition. for capital, between the two are (3) If there is an error in determining the actual amount of the cost or capital of the goods, the buyer can cancel the contract, (4) The goods and the price must not be from the usury goods that are happening.(5)

From these various views, it can be seen that the Bai Al Inah concept in Malaysia is a sale and lease back concept which is carried out without involving a third party who should act as a liaison between the seller as the creditor and the buyer as the debtor. This is not allowed by the majority of schools. Malaysia allows this contract because of the Syafii School which is held by the Malaysian National Sharia Council, or NSAC. While in Indonesia this contract is also prohibited because Indonesia, although many adhere to the Syafii school, but in determining muamalah contracts in Sharia business, it is more concerned with the opinion of the majority sect.(3)

The results of Prabowo's research say that the significant difference in the concept of murabahah contract between Indonesia and Malaysia in the adoption of bai' ail-inah in Malaysia which cannot be applied in Indonesia. The National Sharia Institute in Indonesia confirms that this

type of agreement is haram (fraud) so it is prohibited to apply. In this case, the contract is divided into two parts, namely from the bank to the customer and from the customer to the bank. It is clear that this is hidden usury.(6)

Maulidizen's research results show that; (1) Murabaha financing uses the bai' li al-amri bi al-syira' scheme using a wakalah contract intermediary. (2) In the distribution of murabahah financing, there are several mistakes that violate sharia principles, including; a) The signing of the wakalah contract and the murabahah contract is carried out simultaneously. b) Bank Muamalat Indonesia has not fully mastered the murabahah object at the time of entering into a murabahah contract with a customer. c) Bank Muamalat Indonesia approves the customer's murabahah financing process where the customer has previously entered into a sale and purchase agreement with the developer/home owner.(7)

Although the main principle of Islamic financial institutions is the prohibition of usury, there are still Islamic financial institutions that practice usury in their transactions as evidenced in Iran, Malaysia and Indonesia. However in the case of Malaysia, BBA home financing is used by Islamic financial institutions and the rate of profit is still dependent on market interest rates due to arbitration activities. There is no transparent framework for Murabaha contracts in Islamic banks. There is indeed a need for banking standards regulators to establish a clear and disciplined framework for this type of banking contract. Currently, Murabahah securities (Sukuk) are for finance, Murabahah securities (Sukuk) are for liquidity, Murabahah securities products (Sukuk) and Murabahah mortgages (Sukuk) are in the Islamic financial market niche.(8)

Islamic banks are supposed to act as partners under Murabaha contracts but in practice, Islamic financial institutions keep their commercial role to a minimum so as not to deviate from their traditional financial functions. For example, an agency might avoid building inventory. Islamic financial institutions are indeed faced with the commercial risks inherent in their ownership of goods, which cannot be completely avoided under Murabaha contracts due to their role as partners. However, they can minimize risk by setting standards and negotiating terms and conditions. Based on the literature review, we find that there are several problems in the operations of Islamic banks. In Murabaha there are issues of pricing, the use of interest rates as a benchmark issue, sales contracts between importers and exporters, problems in converting letters of credit to trade Murabaha and problems in the implementation of Murabahah financing. As for Bai Al-Dayn, the problem lies in the nature of the contract itself rather than the operational mechanism. Issues such as the legitimacy of contracts, sales of debt to discounts and non-standardization of rules are keeping banks away from them.(9)

### **Mudharabah contract**

According to Bank Negara Malaysia, it defines that mudarabah is a contract based on a fiduciary relationship between the financier (rabbul mal) and the entrepreneur (mudarib). Under the mudarabah, any profit generated from the capital is shared while the financial loss is borne by the financier of the financier.(10)

Then it is explained that the mudarabah is a contract between the capital provider (rabbul mal) and the entrepreneur (mudarib) in which the rabbul mal provides capital to be managed by the

mudharib and any profits generated from the capital are divided between the rabbul mal and the mudharib according to the agreement. Profit sharing ratio (PSR) is mutually agreed upon, while financial losses are borne by rabbul mal as long as the loss is not due to mudharib (ta'addi) error, negligence (taqsir) or violation of certain provisions (mukhalafah al-shurut).(3)

*Mudharabah* in the understanding of Malaysian scholars it is divided into two types (a) Unlimited Mudharabah (Mudharabah Mutlaqah). Unlimited mudharabah is a contract in which the rabbul mal allows the mudharib to manage the mudharabah capital without any special restrictions. (b) Limited Mudharabah (Mudharabah Muqayyadah) Limited mudharabah is a contract in which the rabbul mal imposes specific restrictions on the terms of the mudharabah. Rabbul mal can determine conditions that limit mudharib such as determining the location, investment period, type of project and mix of funds.

Then a mudharib has the right to manage the mudharabah business. The Mudharib is responsible for ensuring proper management of the mudharabah business and acting in the interests of the rabbul mal. The mudharib mandate must be granted under the terms and conditions of the contract. Mudharabah may transfer the capital of the mudharabah under its management to another mudharib in another mudharabah (mudharib yudharib) or to an agent (representative) on condition that the approval of the rabbul mal is obtained.

Meanwhile, in Indonesia, there are different understandings regarding this mudharabah contract. In the Fatwa of the National Sharia Council it is explained that the mudharabah contract is a business cooperation agreement between the capital owner (malik/shohib al mal) which provides all the capital with the manager (amil/mudharib) and the business profits are divided between them according to the ratio agreed in the contract. The forms of mudharabah contracts are mudharabah muqayyadah, mudharabah muthlaqah, mudharabah tsuna`iyah, and mudharabah musytaraqah.(11)

The provisions regarding the profit sharing ratio are profit sharing must be agreed and clearly stated in the contract, Profit sharing ratio must be agreed at the time of the contract, Profit sharing ratio as number 2 may not be in nominal form or percentage figure from business capital, Profit sharing ratio as number 2 is not may use a percentage figure which results in profits that can only be received by one party while the other party is not entitled to get mudharabah business results, the profit sharing ratio may be changed according to the agreement and the profit sharing ratio may be expressed in the form of multi-nisbah.(11)

Referring to Radzali's research that the implementation of the mudharabah contract at the Pekanbaru Branch of Islamic Bank Indonesia is in accordance with DSN Fatwa No. 07/DSN-MUI/IV/2000. There are obstacles in implementing the mudharabah contract at Bank Syariah Indonesia, namely the inability of the mudharib to return business capital, sanctions that are burdensome to the mudharib, the inclusion of guarantees by the mudharib, and the mudharib's lack of understanding about the implementation of the mudharabah contract.. (8)

Other research shows that mudharaba is not a completely ideal instrument, especially for equity-based Islamic crowdfunding because of its high risk. These include fraudulent projects, inadequate regulations to protect investors' money and the mudharaba structure itself in the form of profit-sharing contracts. The Islamic mudharabah crowdfunding model has the potential to support local businesses, especially for start-ups. By channeling money among the people, it not only creates

a circulation of wealth among the people, which is one of the goals of Shariah in finance, but also promotes cooperation and kindness among the members of the society.(13) The results also show that partially third party funds and mudharabah have a significant negative effect on *non-performing financing*, while inflation has a positive and insignificant effect on non-performing financing.(14)

From the description of the two forms of interpretation of the mudharabah contract above, it can be understood that there are slight differences between Islamic banks in Malaysia and those in Indonesia. In the understanding of Malaysian scholars that the mudharabah contract can include that the losses experienced in investment can be charged only to the owner of the capital. Meanwhile, in the understanding of Indonesian scholars that the mudharabah contract (profit sharing) between losses and profits must be divided between the owners of capital and the managers of capital (Islamic banks). In other words, using a profit and loss sharing system.

Based on Islamic sharia principles, the implementation of the mudharabah contract stipulated by the two countries actually still contains elements of usury or at least the element of gharar. The use of mudharabah contracts requires that a third party be involved in the investment process. This third party will be used as an investment place for the capital owned by the customer, while the Islamic bank only acts as an intermediary and seeker where the capital is to be invested. In this application, Islamic banks are often not carried out so that there is still an element of gharar in mudharabah transactions. Due to the element of gharar (unclearness in investment, both the type of business and the distribution of profit margins with third parties), the mudharabah contract is no longer in accordance with the principles of Islamic law.

### **Musharaka contract**

The basic word of musharaka is syirkah which comes from the words *syaraka-yusyriku-syarkan-syarikan-syirkatan* (syirkah), which means cooperation, company or group / group. *Musyarakah* or *syirkah* is a cooperation between capital and profit. While *mutanaqishah* comes from the word *yatanaqishu-tanaqishtanaqishan-mutanaqishun* which means reducing gradually.(15)

Implementation in sharia banking operations is a collaboration between sharia banks and customers for the procurement or purchase of goods (objects). Where the assets of the goods become joint property. The amount of ownership can be determined according to the amount of capital or funds included in the Cooperation contract. Furthermore, the customer will pay (in installments) a certain amount of capital/funds owned by the Islamic bank. The transfer of ownership from the portion of sharia banks to customers is in line with the increase in the amount of customer capital from the increase in installments made by customers. Until the installment ends, it means that the ownership of an item or object is wholly owned by the customer. The decrease in the share of Islamic bank ownership of goods or objects is reduced proportionally according to the amount of installments.(15)

According to Bank Negara Malaysia, musharaka refers to a partnership between two or more parties, in which all parties will share the profits and bear the losses from the partnership.(16)

In general, there are two types of musharaka (syirkah), namely:(16):

1. *Shirkah al-Milk* (Partnership in joint ownership)



Refers to the ownership of an asset by two or more people with or without prior arrangement to make a division in joint ownership. Under syirkah al-milk, the ownership of each partner is mutually exclusive. In this case, one of the partners cannot handle the assets of the other partner without the consent of the latter.

2. Syirkah al-`Aqd (Partnership Contract)

Refers to a contract entered into between two or more partners to venture into business activities for profit. Under shirkah al-`aqd, a partner is an agent for another partner. In this case, the behavior of one of the partners in ordinary business activities represents the partnership.

The result of the Fatwa of the Indonesian National Sharia Council defines that a syirkah contract is a cooperation agreement between two or more parties for a particular business in which each party contributes funds/business capital (ra's al-mal) provided that the profits are divided according to an agreed ratio or mutually proportionally, while the losses are borne by the parties proportionally. This syirkah is a form of amwal syirkah and is known as inan syirkah.(17)

Provisions for Profit Sharing Ratio, namely; 1. The profit sharing system/method must be agreed and clearly stated in the contract. 2. The ratio may be agreed in the form of a proportionate ratio or in the form of a ni sbah-kes agreement. 3. The ratio as referred to in number 2 is stated in the form of a percentage of profits and may not be in the form of a nominal or a percentage figure of business capital. 4. The ratio-agreement as referred to in point 2 may not use a percentage number which results in profits being only accepted by one partner or certain partners. 5. The ratio of agreements may be expressed in the form of muitinisbah (tiering). 6. The ratios may be changed according to the agreement.(17)

Provisions for Business Activities 1. Businesses carried out by syarik (partners) must be halal businesses and in accordance with sharia principles and/or applicable laws and regulations. 2. Syarik (partners) in conducting syirkah business must be on behalf of the syirkah entity, not on behalf of oneself. 4. The sharik (partners) may not borrow, lend, donate, or give ra's al-mal and profits to other parties except on the basis of the agreement of the partners. 5. Syarik (partners) in doing business syirkah, may not perform actions that include at-ta'addi, at-taqshir, and or mukhalafat ash-syuruth.(17)

The results of research conducted in Malaysia, for example, found that equity-based home financing contracts (particularly Musyarakah Mutanaqisah home financing) had a high risk. If so, is Sharia risk one of the risks that affect the Musyarakah Mutanaqisah home financing contract.(18)

Other research on Musyarakah Sukuk in several Islamic bond investment instruments in Malaysia, where the form of this sukuk is actually based on the restructuring of conventional bonds into Islamic bonds. Sharia compliance is based on the prohibition of the influence of usury, benefits or fixed interest. Despite the prohibition, the daily interest of sukuk is variable and statistically, the data of sukuk interest is said to be time series data that is dependent and autocorrelation is distributed. This kind of data is a crucial issue in both statistics and financing. Sukuk interest can be seen statistically from its volatility, whether it has high volatility which describes dramatically changes in price and is categorized as risky bonds or other.(19)

Musyarakah Sukuk are known as Islamic debt securities which are currently issued on Bursa Malaysia. The uniqueness of this sukuk is that the pre-agreed price between the Musyarakah partners will be equal to the nominal value of the sukuk, if the sukuk does not make a profit. In terms of returns, these sukuk are in accordance with the nature of Sharia securities, where fixed returns and elements of interest are prohibited. Similar to conventional securities, variable returns are usually autocorrelated and categorized as dependent data.(20)

Likewise in other studies that the practice of Islamic banks in Malaysia currently relies on market interest rates as a benchmark for the price of musyarakah mutanaqisah home financing. It has been the subject of intense debate among scholars, researchers, industry players, and policy makers. Although it is not prohibited, Muslim scholars strongly discourage this practice as it can lead to possible convergence between the practice of Islamic banking and conventional banking. This study provides evidence that the proposed rental yield has long-term and short-term relationships with macroeconomic variables and the housing market. The analysis shows that it takes a short time for the model to reach long-run equilibrium.(21)

Research in Indonesia related to the Musyarakah contract conducted by Desatiana which states that both Islamic banks and conventional banks both have the same function and role in terms of collecting funds from the public and then channeling them back in the form of financing. The fundamental difference between the two types of banks lies in the principles in their financial transactions or operations. In conventional banks, the interest system is used with the aim of optimizing the fulfillment of personal interests so that it does not consider the social impact it causes. Meanwhile, the profit sharing system in Islamic banks is oriented to the fulfillment of the benefit of human life.(22) This shows that Islamic banking must prioritize the interests of the community in finding blessed assets so that the elements of usury and gharar in the Musyarakah contract must be eliminated.

Basyariah's research results show that the implementation of MMQ at several points is not in accordance with sharia. In terms of legal and operational analysis based on BI regulations regarding banking laws, it is indicated that there is a discrepancy between the basic rules and implementation in the field. Regarding operations, there is a delegation of all payment obligations for costs that appear to deviate from the AAOIFI standards and DSN fatwas and there is no specific accounting standard related to MMQ.(23)

From the results of research conducted both concerning the Musyarakah contract in Malaysia and in Indonesia, many problems were found related to the limitations of the application of this Musyarakah contract. In some aspects, there are still many that are not in accordance with the provisions of Islamic law which require that it be free from three elements, namely usury, gharar and maisir. So the solution offered as the result of Susanto's research is to:implement the steps of syirkah, namely first, make sure whether each participant of the partnership participates in running the company or not. If they all participate in running the company directly, then the contract used is musyarakah.*Second*, if only the party that runs the company that includes the labor (mudharib), while the party that includes the capital asset (shâhib al-mâl) does not participate in running the company, then the contract used is mudhârabah. In this case, it is necessary to understand that although mudharib only includes energy, their position is remain as the owner of the company. It is

said so, because the mudharib benefits not from wages (ujrah) but from the profit sharing of the partnership.(24)

## CLOSING

### 5. Conclusion

Sharia banking contracts that apply in Malaysia and Indonesia related to murabahah, mudharabah and musyarakah are different which are adapted to the character and religious understanding of the scholars. In Malaysia AkadMurabaha is applied in three ways, namely: *Bai Al Inah*, *Bay Al Dayn* and *Bay Bitthaman Ajjil* while in Indonesia *bai' li al-amri bi al-syira'* and *Bai Al-Dayn*. Mudharabah in Malaysia uses two namely: *Mudharabah Mutlaqah* is a contract in which the rabbul mal allows the mudarib to manage the capital of the mudarabah without special restrictions and the mudarabah muqayyadah is a contract in which the rabbul mal imposes special restrictions on the terms of the mudarabah. Meanwhile, in Indonesia, the mudharabah muqayyadah, mudharabah muthlaqah, mudharabah tsuna`iyah and mudharabah musytaraqah contracts are used. The last musharaka contract. In Malaysia using *Shirkah al-Milk* and *Syirkah al-`Aqd* while in Indonesia using *Syirkah amwal* and known as *syirkah inan*. From the data and research results show similarities that aspects of the implementation of the three contracts in each country still have obstacles in the aspect of violating sharia principles. The implementation of murabahah, mudharabah and musyarakah contracts still contains elements of usury, gharar and maisir.

### 6. Suggestion (optional)

It is hoped that there will be a deeper study related to the comparison of existing contracts in Malaysia and Indonesia to find and formulate contracts that are truly in accordance with the provisions of Islamic sharia principles in the economic and financial fields.

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