

Comparative Analysis of Malaysian Islamic Bank Agreements with Indonesia

Iksan

Universitas Muhammadiyah Bima
iksan687@gmail.com

Wardah Yuspin

Universitas Muhammadiyah Surakarta

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Corresponding Author:

Iksan

iksan687@gmail.com

ABSTRACT

Malaysia and Indonesia are countries in Southeast Asia which are experiencing quite rapid developments related to Islamic banking. However, behind the success of Islamic banking, in its application and implementation, each country has different interpretations. The study in this paper tries to carry out a comparative analysis of *Murabahah*, *Mudharabah* and *Musyarakah* agreements in two countries, namely Malaysia and Indonesia. The research method used is normative legal research using statutory and conceptual approaches. The results of the study show that there are differences in interpretation in the implementation of the three agreements. In Malaysia, *Murabahah* agreements are implemented 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 agreement whereby *rabbul mal* permits the *mudharib* to manage the *mudharabah* capital without any special restrictions and *Mudharabah Muqayyadah* is an agreemt whereby *rabbul mal* imposes special restrictions on the terms of the *mudharabah*. While in Indonesia using *mudharabah* agreements combined with *murabahah* and *musyarakah* agreements. The last is *musyarakah* agreement. In Malaysia, they use *Syirkah al-Milk* and *Syirkah al-'Aqd* and use the *Mutanaqishah musyarakah* agreement. whereas in Indonesia it uses *Syirkah amwal* and is known as *syirkah inan* by using *musyarakah* and *musyarakah Mutanaqishah* agreements. From this research it was also found that the implementation of both countries in Malaysia and Indonesia related to *murabahah*, *mudharabah* and *musyarakah* agreements still contains elements of *usury*, *gharar* and *maisir*.

Keywords: Agreement, Bank, Syariah, Indonesia, Malaysia

INTRODUCTION

The initial idea of Islamic banking was born in the 1940s, using a profit-sharing system between customers and the banking sector. Thoughts about Islamic banking started with writers such as Anwar Qureshi (1946), Naiem Siddiqi (1948) and Mahmud Ahmad (1952). The

thoughts of the three great scholars above were then developed by Abul A'la Al-Mawdudi (1961) who was also followed by Muhammad Hamidullah (1944-1962).

In the 1940s the Pakistani state pioneered Islamic banking by utilizing the collected hajj funds to be managed according to sharia and this became the first modern attempt to establish an interest-free bank. However, along the way the business did not go well. Then in 1963 this effort was continued by Egypt by establishing *Mit Ghamr Local Saving Bank*. This first Islamic bank's success in running banking could not be separated from the support of farmers and rural communities as its customer base. The political turmoil that occurred in Egypt in 1967 caused this interest-free bank to be acquired by the Central Bank of Egypt so that the interest-free concept began to be abandoned.

The birth of Islamic banking, which was originally from *Mith Ghamr* in Egypt, then developed extraordinarily. Even various non-Muslim majority countries have begun to implement the Islamic banking system in their respective countries. Do not miss also countries with a Muslim majority, including Malaysia and Indonesia.

Indonesia is one of the largest Muslim countries in the world that introduced Islamic banking only in 1992. Meanwhile, Malaysia has run sharia banking with a dual banking system since 1983. Malaysia started its sharia banking since the government made a sharia banking law. 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 Malaysia's central bank, namely Bank Negara Malaysia, which is given the authority to regulate and also supervise Islamic banks that will emerge. In the same year the Malaysian government made the Government Investment Act. This law also authorizes the government to be able to issue Government Investment Certificates which are categorized as securities that adhere to Sharia principles. This Government Investment Act is an Islamic financial instrument in order to support the liquidity needs of Islamic banks.

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The development of Islamic banking in Malaysia has gone through two stages. The first stage spans the time span between 1983 and 1993. During those ten years, it was the development stage of Islamic banking. The next stage is the second stage in which at this stage the Malaysian government creates a Zero Profit Banking Scheme. This scheme authorizes 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 characteristics that distinguishes Malaysian Islamic banks from Islamic banks in the world, including Indonesian Islamic banks.

Indonesia only established Islamic banking in 2008. In that year the government issued Law Number 21 of 2008 concerning Islamic 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 also established Islamic banking under the name *Bank Muamalat*. The dual banking system is used because this model banking system was born from conventional banking. The difference lies in the interest system, conventional banking uses the name interest, while in Islamic banking the term profit sharing or profit and loss sharing system is used. The thing that most distinguishes between conventional banks and Islamic banks is the agreement.

Islamic banking agreements that are implemented in various countries of the world generally include three agreements, namely *mudharabah* agreements, *murabahah* agreements and *musyarakah* agreements. Agreements have different meanings and concepts from one another. According to Law Number 21 of 2008 concerning Islamic banking, it defines that an agreement is a written agreement between an Islamic Bank or an Islamic Business Unit (UUS) and another party that contains rights and obligations for each party in accordance with Shariah Principles.

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

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

Whereas a *musyarakah* agreement is defined as a financing/investment agreement from two or more owners of funds and/or goods to run a certain business in accordance with shariah with the distribution of business results between the two parties based on an agreed ratio, while the distribution of losses is based on the proportion of each capital.

The different contractual concepts in each country make the writer interested in examining agreement comparisons. The researcher tries to do a conceptual comparative analysis related to

Islamic banking agreements carried out by Islamic Banks in Indonesian and Islamic Banks in Malaysia. This comparison is only made on three agreements that are commonly found in Islamic banking, namely *Murabahah* agreements, *Mudharabah* agreements and *Musyarakah* agreements.

RESEARCH METHOD

The type of research used is normative legal research using a conceptual approach and statute approach. Data analysis used a qualitative analysis of all legal materials obtained from laws, regulations, literature and research results in journals. These legal materials were processed in order to find differences and similarities between Islamic banking agreements in Indonesia and Malaysia which include three agreements, namely *murabahah*, *mudharabah* and *musyarakah* agreements.

RESULTS & DISCUSSION

Murabahah Agreement

As previously explained, a *murabahah* agreement is a financing agreement in the form of a sale and purchase transaction of an item at the acquisition price of the item 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, a *murabahah* agreement is known as *bai al murabahah*. According to him, *bai al murabahah* is buying and selling of goods at the original price with an additional agreed profit.

Murabaha, which is a type of buying and selling that is trustworthy in Islamic law, is the most dominant agreement scheme used in Islamic banking practices in Indonesia. However, in practice, *murabahah* has undergone many modifications compared to the basic concepts contained in classical *muamalat fiqh*. Some of these modifications do not cause problems in terms of the basic principles of Islamic law so that scholars do not object, but there are not a few modification models that cause debate because they are carried out solely to comply with formal juridical provisions for the sake of consideration of the effectiveness and efficiency of banking administration.(1)

Puneri, et al explained that a *murabahah* agreement is an Islamic financial instrument that allows buyers to buy goods from sellers with certain profit margins. In contemporary banking practice, *Murabahah* has been widely used by Islamic financial institutions as a financing agreement.(2)

Indonesian Islamic Banks and Malaysian Islamic Banks have different attitudes regarding the concept of *murabahah* agreements in terms of being represented and based on the fatwas of their respective Shariah Councils. In the view of the Shariah Council in Malaysia, *murabahah* agreements are interpreted in three agreements, namely *Bai Al Inah*, *Bay Al Dayn* and *bay Bitthaman Ajjil*.⁽³⁾ According to the Malaysian Shariah Council or NSAC, *Bai Al Inah agreement is a sale and purchase agreement in which the seller resells his assets with a promise to repurchase with the same party. So, Bai Al Inah is interpreted as selling cash and also continuing with purchases on credit. According to them, an agreement like this is included in a shariah agreement 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 assets purchased at the price that has been added by the Islamic bank. This addition or the price difference can be up to 20% of the price of the goods. Finally, the customer will pay on credit to the Islamic bank based on the agreement.*

The next interpretation of the *murabahah* agreement is with *Bay Al Dayn* Agreement. *Bay al dayn* is a debt sale and purchase agreement or *Dayn*. *Bay al Dayn* means a trading agreement with the same price. The Malaysian Sharia Council stated that this *bay al dayn* agreement is to get good performance in the Islamic capital market concept. The Malaysian Sharia Council considers debt to be equated with property. Because debt is the same as property, debt can be traded in accordance with existing offers, in this case giving discounts can also be applied. The interpretation of *murabaha* with *Bay Al Dayn* in the view of the Malaysian Shariah board is permissible because it departs from the assumption that debt is the same as assets so that it is considered in accordance with Shariah provisions.

Lastly is *Bay Bitthaman Ajjil agreement*. The interpretation of a *Murabahah* agreement with this agreement is not something new from a *murabahah* agreement. *Bay Bitthaman Ajjil* agreement is defined as a sale and purchase agreement made in installments or deferred in the long term. So, with this *bay bitthaman ajil* agreement, it requires 3 steps to be taken, namely 1) the customer identifies the assets that he wants to own or buy. 2) The bank purchases the assets desired by the customer. 3) The bank sells the asset to the customer by setting a selling price that is the same as the acquisition price from the Islamic bank plus the profit margin desired by the bank.

According to the interpretation in Indonesia as stated in Law Number 21 of 2008 concerning Islamic banking, it states that a *murabahah* agreement is a financing agreement in the form of a sale and purchase transaction of an item at the acquisition price of the goods plus

a margin agreed upon by the parties, where the seller informs in advance the acquisition price to buyers.

Meanwhile, in the view of the Indonesian Shariah Council, *Murabahah* agreement is basically regulated in *Fatwa* of the National Shariah Council, which applies two *murabahah* concepts, namely *Bai' li al-amri bi al-syira'* and *bai al dayn*. *Bai' li al-amri bi al-syira'* is an agreement transaction that must have, firstly a party ordering to buy, two banks, and third a seller. In fact, in the studies of previous Islamic scholars, usually in one contract there are only two who enter into a contract, namely the buyer and the seller.

The National Sharia Council Number 04/SDSN-MUI/IV/2000 stipulates seven things related to this *Murabahah* agreement. 1) Banks and customers must enter into a usury-free *murabahah* agreement. 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) Banks buy goods needed by customers on behalf of the bank itself, and these purchases must be legal and usury-free. 5) The bank must submit all matters relating to purchases, for example if the purchase of goods is made on account of debt. The bank then sells the item to the customer at a price equal to the price plus the profit. In this regard, the bank must honestly notify the cost of goods to customers along with the costs involved. 6) The customer pays the price of the goods at a certain agreed period. 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 *murabaha* sale and purchase contract must be carried out after the goods in principle belong to the bank.(4)

The interpretation used by the Malaysian government in understanding *murabahah* agreements actually contradicts the provisions used by Middle Eastern and Indonesian scholars. This is because these scholars agree with the views held by *Islamic Fiqh Academy* scholars which state that *Bay Al Dayn* is not permitted. In a meeting of the Institute which is a representative of *muamalah fiqh* experts from all over the world, it was agreed that the concept of *Bay Al Dayn* must be banned. And they have agreed to ban it by acclamation.

Bay al Dayn agreement is actually prohibited in Islamic law. The reason why this agreement is not permitted elsewhere is because there are three elements of *iwad* which are not included in this contract, namely work risk, effort and responsibility which are not mentioned in this agreement. In addition, there is also controversy that in this agreement, the two parties involved in the agreement actually never intend to use the assets they own and this is considered a violation of the agreement based on Islamic shariah principles. This gave rise to the notion

that *Bai Al Inah* agreement is a way to legalize the concept of usury or the interest of money which is prohibited in Islamic Shariah.

From these various views, it can be seen that *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 also the buyer as the debtor. This is not allowed by the majority *Mazhab*. Malaysia allowed this contract because of Syafii *Mazhab* which is held by the Malaysian National Shariah Council. Whereas in Indonesia this contract is also prohibited because even though Indonesia adheres to Syafii *Mazhab* of thought, in determining muamalah agreements in Shariah business it looks more at the opinion of the majority *mazhab*.(3)

Prabowo's research results show that the significant difference in the concept of a murabahah agreement between Indonesia and Malaysia lies in the concept of *bai' ail-inah* which is not applied in Indonesia. The National Shariah Institute in Indonesia confirms that this type of agreement is haram (fraud) so it is prohibited to apply. In this case, the agreement 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 usury in disguise.(5)

In Maulidizen's research related to murabahah agreements in Indonesia, it shows that murabahha financing uses *bai' li al-amri bi al-syira'* scheme using a *wakalah* agreement intermediary. According to him, there are several mistakes in the distribution of *murabahah* financing that violate sharia principles, such as the signing of a *wakalah* agreement and a murabahah agreement carried out simultaneously. The bank has not mastered *murabahah* object perfectly at the time of *murabahah* agreement with the customer. And the bank approves the customer's *murabahah* financing process where the customer has previously entered into a sale and purchase agreement with the developer/home owner.(6)

Islamic banks are supposed to act as partners under a *Murabahah* contract but in practice, Islamic financial institutions keep their commercial role to a minimum so as not to deviate from their traditional financial function. For example, an agency might avoid building an inventory of goods. Islamic financial institutions are indeed exposed to commercial risks attached to their ownership of goods, which cannot be completely avoided under a *Murabahah* contract due to their role as partners. However, they can minimize risks by setting standards and negotiating terms and conditions. Based on the literature review, we found that there are several problems in the operations of Islamic banks. In *Murabahah* there are problems in setting prices, using interest rates as a benchmark issue, sales contracts between importers and

exporters, problems in converting letters of credit to trade Murabaha and problems in implementing *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 contract legitimacy, selling debt to discounts and non-standardization of rules keep banks away from it.(7)

Up to this point, it can be understood that the concept and application of aspects of *murabahah* agreements in Islamic banking in Malaysia and Indonesia have different interpretations. In Malaysia, three concepts are used, namely *Bai Al Inah*, *Bay Al Dayn* and *Bay Bitthaman Ajgil*. While in Indonesia using *Bai' li al-amri bi al-syira'* with a *wakalah* agreement. From the aspect of implementing *murabahah* agreements, almost all research results show that there is still an element of usury in both Islamic banking in Malaysia and in Indonesia.

Mudharabah Agreement

According to *Bank Negara Malaysia*, *mudharabah* is an agreement based on a fiduciary relation between the capital provider (*rabbul mal*) and the entrepreneur (*mudharib*). Under *mudharabah*, any profits generated from capital are shared while financial losses are borne by the financier.(8)

Then it was explained that *mudharabah* is a contract between the provider of capital (*rabbul mal*) and the entrepreneur (*mudharib*) in which the *rabbul mal* provides capital to be managed by the *mudharib* and any profits generated from the capital are shared between the *rabbul mal* and the *mudharib* according to the agreement. The profit-sharing ratio (PSR) is mutually agreed upon, while the financial losses are borne by the *rabbul mal* as long as the loss is not due to *mudharib* (*ta`addi*), negligence (*taqsir*) or violation of certain provisions (*mukhalafah al-shurut*). (3)

Mudharabah in the understanding of the Malaysian Shariah Council is divided into two types (a) Unlimited *Mudharabah* (*Mudharabah Mutlaqah*). Unlimited *mudharabah* is a contract whereby 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 special restrictions on the terms of *mudharabah*. *Rabbul mal* can determine conditions that limit *mudharib* such as location determination, investment period, type of project and mix of funds.

A *mudharib* has the right to manage a *mudharabah* business. *Mudharib* is responsible for ensuring the proper management of *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 *mudharabah* capital under its management to another

mudharabah at another *mudharabah* (*mudharib yudarib*) or to an agent (representative) on condition that the *rabbul mal's* approval is obtained.

While in Indonesia, they have a different understanding regarding this *mudharabah* agreement. In the Fatwa of the National Shariah Council it is explained that a *mudharabah* agreement is a cooperation agreement in a business between the owner of capital (*malik/shohib al mal*) who provides all the capital with the manager (*amil/mudharib*) and the business profits are shared between them according to the ratio agreed in the agreement. (9)

Provisions regarding profit sharing ratios are profit sharing must be agreed upon and stated clearly in the agreement, profit sharing ratios must be agreed upon at the time of the contract, profit sharing ratios as referred to in number 2 may not be in the form nominal or percentage figure of business capital. The profit-sharing ratio as referred to in number 2 may not use a percentage figure which results in profits only being received by one of the parties while the other party is not entitled to the results of the *mudharabah* business. The profit-sharing ratio may be changed according to the agreement and the profit-sharing ratio may be expressed in the form of a multi-*nisbah*.(9)

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

Based on the results of the analysis, it shows that the application of the principle of proportionality in *mudharabah* agreements in Islamic banking in Indonesia has not been carried out according to the standards set according to shariah principles because in fact some of the clauses contained in *mudharabah* agreement seem to provide an opportunity for the *shahibul maal* (Islamic banks) to break away from financial losses that occur in the future, which are as if the financial losses are only borne by the *mudharib* (business actors), so that this deviates from the spirit of the principle of proportionality which should be the basis for upholding the nomenclature of *mudharabah* agreement. (11)

From the description of the two forms of interpretation of *mudharabah* agreement mentioned above, it can be understood that there is little difference between Islamic banks in Malaysia and those in Indonesia. In the understanding of Malaysian scholars that a *mudharabah* agreement can include that losses experienced in investments can be borne only by the owner

of the capital. Whereas in the understanding of Indonesian scholars that what is called a *mudharabah* agreement (profit sharing) between losses and profits must be shared between the owner of capital and the manager of capital (Islamic banks). In other words, using a system of profit and loss sharing.

Furthermore, the difference between the Malaysian and Indonesian *Mudharabah* agreements is in the type. In Malaysia, dividing and implementing two forms of *mudharabah*, namely unlimited *mudharabah* (*Mudharabah Mutlaqah*) and limited *mudharabah* (*Mudharabah Muqayyadah*). While in Indonesia using a *mudharabah* agreement combined with a *murabahah* and *musyarakah* agreement, this is as stated in the standard *mudharabah* agreement book issued by the Financial Services Authority (OJK).

When examined in more detail regarding the application of *mudharabah* agreements in the two countries and based on Islamic sharia principles, the application of *mudharabah* agreements established by these two countries actually still contains elements of usury or at least there is still an element of *gharar*. The use of a *mudharabah* agreement requires a third party to be involved in the investment process. It is this third party that will be used as a place of investment for capital owned by customers, while Islamic banks are only intermediaries and seekers of where the capital is to be invested. Besides that, there is ambiguity in the contract where the customer never knows where and what type of business is used by the Bank to make investments. Things like this are not implemented by Islamic banks so that they are considered not in accordance with the principles of Islamic law.

Musyarakah Agreement

The basic word for *musyarakah* is *syirkah* which comes from the words *syaraka-yusyriku-syarkan-syarkan-syirkatan* (*syirkah*), which means cooperation, company or group. *Musyarakah* or *syirkah* is a collaboration between capital and profits. While *mutanaqishah* comes from the word *yatanaqishu-tanaqishtanaqishan-mutanaqishun* which means to reduce gradually.(12)

Implementation in Islamic banking operations is a collaboration between Islamic banks and customers for the procurement or purchase of goods (objects). Where the assets of the goods are jointly owned. 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 (install) an amount of capital/funds owned by Islamic banks. The transfer of ownership from the portion of Islamic 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 fully belongs to the customer. The decrease in the portion

of Islamic bank ownership of goods or objects decreases proportionally according to the number of installments.(12)

According to *Bank Negara Malaysia*, *musyarakah* refers to a partnership between two or more parties, in which all parties will share the profits and bear the losses from the partnership.(13)

In general, there are two types of *musyarakah (syirkah)*, namely (13):

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

Refers to the ownership of an asset by two or more persons with or without prior arrangement to enter into a sharing in joint ownership. Under *syirkah al-milk*, each partner's ownership is mutually exclusive. In this case, either partner cannot handle the assets of the other partner without the latter's approval.

2. *Syirkah al-'Aqd* (Contract Partnership)

Refers to contracts entered into between two or more partners to venture into business activities to generate profits. Under *syirkah al-'aqd*, partners are agents for other partners. In this case, the behavior of one of the partners in ordinary business activities represents a partnership.

The results of the Fatwa of the Indonesian National Shariah Council define 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 profits are shared according to an agreed ratio or proportionately, while losses are borne by the parties proportionately. This *syirkah* is a form of *syirkah amwal* and is known as *syirkah inan*.(14)

Profit-Sharing Ratio Provisions namely; 1. The profit-sharing system/method must be agreed upon and clearly stated in the agreement. 2. The ratio may be agreed in the form of a proportional-ratio or in the form of an agreed ratio. 3. The ratio as referred to in number 2 is stated in the form of a percentage figure for profit and may not be in nominal form or a percentage figure for business capital. 4. The ratio-agreement as referred to in number 2 may not use percentage figures which result in profits only being received by one particular partner or partners. 5. The ratio-agreement may be stated in the form of multi-ratio (tiered/tiering). 6. The ratio-agreement may be changed according to the agreement.(14)

The provisions for business activities are 1. The business carried out by partners must be lawful and in accordance with sharia principles and/or applicable laws and regulations. 2. The *syirkah* (partner) in conducting *syirkah* business must be on behalf of the *syirkah* entity, not on his own behalf. 4. The *syarik* (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 conducting *syirkah* business, may not perform actions that include *at-ta'addi*, *at-taqshir*, and or *mukhalafat asy-syuruth*.(14)

Referring to the *musyarakah* product standards in Indonesia, it is explained that Islamic banking applies *musyarakah* agreements and *musyarakah mutanaqishah* contracts. A *musyarakah* agreement is a general form of a profit-sharing business in which two or more people contribute to the financing and management of the business, with the proportions being the same or not. Profits are shared according to the agreement between the partners, and losses will be shared according to the proportion of capital. Whereas *musyarakah mutanaqishah* occurs because two agreements are carried out in parallel. First, between the customer and the bank that enters into a *musyarakah* agreement through capital participation in managing a business that will bring in profits and secondly, the customer purchases capital goods belonging to the bank gradually so that the bank's capital in the *syirkah* gradually decreases.

Research on *Musyarakah Sukuk* in several Islamic bond investment instruments in Malaysia, where this form of *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. Even though there is a prohibition, daily interest on *sukuk* is variable interest and statistically, the data on *sukuk* interest is said to be time series data that is dependent and distributed autocorrelation. This kind of data is a crucial problem both in the field of statistics and financing. Statistically, *sukuk* interest can be seen from its volatility, whether it has high volatility which describes a dramatic change in price and is categorized as a risky bond or something else. (16)

Musyarakah Sukuk is known as a shariah securities debt instrument that is currently being issued on the Malaysia Exchange. The uniqueness of this *sukuk* is that the price previously agreed upon between the *Musyarakah* partners will be equivalent to the face value of *sukuk*, if only *sukuk* does not generate a profit. In terms of returns, this *sukuk* is in accordance with the nature of Shariah securities, where fixed returns and the element of interest are prohibited. Similar to conventional securities, variable returns are usually autocorrelated and are categorized as data dependent.(17)

Likewise in other studies that the practice of Islamic banks in Malaysia currently relies on market interest rates as a benchmark for *musyarakah mutanaqisah* house financing prices. It has been the subject of intense debate among scholars, researchers, industry players and policy makers. Even though it is not prohibited, Muslim scholars strongly discourage this practice as it could lead to a possible convergence between the practices of Islamic and

conventional banks. This study provides evidence that the proposed rental yield has a long-term and short-term relationship with macroeconomic and housing market variables. The analysis shows that it takes a short time for the model to reach long-run equilibrium. The findings of this study will provide important insights into the feasibility of rental yields as an alternative to interest rates in pricing *musyarakah mutanaqishah* house financing.(18)

Research in Indonesia relates to *musyarakah* contracts conducted by Desatiana which states that the fundamental difference between the two types of banks (conventional and Shariah) lies in the principles of financial or operational transactions. Conventional banks use an interest system intended to enrich themselves and do not consider the social aspect. Meanwhile, the profit-sharing system in Islamic banks is oriented towards fulfilling the benefit of human life.

Research conducted by Basyariah showed that the implementation of *Musyarakah Mutanaqishah* at several points is not in accordance with sharia. In terms of legal and operational analysis based on Bank Indonesia regulations regarding banking laws, there are indications of a discrepancy between the basic rules and implementation in the field. Regarding operations, there is delegation of all payment obligations for costs that appear to deviate from the standards of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and DSN *fatwa* and there is no specific accounting standard related to *Musyarakah Mutanaqishah*.

From the results of research conducted both regarding *musyarakah* agreements in Malaysia and in Indonesia, many problems were found related to the limitations of the application of this *musyarakah* agreement. In several aspects there are still many that are not in accordance with economic principles in Islamic law which require freedom from three elements, namely usury, *gharar* and *maisir*. So, the solution offered according to Susanto's research results is to implement *syirkah* steps, namely *first*, make sure whether each fellowship participant also runs 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 includes labor (*mudharib*) is running the company, while the party that includes assets (*shâhib al-mâl*) does not participate in running the company, then the agreement used is *mudharabah*. In this case it needs to be understood, that even though the *mudharib* only includes workers, their position remains as the owner of the company. It is said so, because the *mudharib* gains not from wages (*ujrah*) but from the results of the partnership.(21)

This shows that in many aspects the application of *musyarakah* agreements in both Malaysia and Indonesia is still inseparable from the element of usury. *Musyarakah* agreements that apply two agreements in one transaction or one item are prohibited in Islamic Shariah principles. In addition, the Customer's obligation to continue to make profit-sharing payments according to the installment schedule for accelerated repayment is still the same as the conventional bank interest mechanism.

CONCLUSION

The Islamic banking agreements that apply in Malaysia and Indonesia are related to *murabahah*, *mudharabah* and different *musyarakah* which are adapted to the character and understanding of the religion of the scholars. In Malaysia, *Murabahah* agreement is implemented 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 an agreement in which *rabbul mal* permits the *mudharib* to manage the *mudharabah* capital without any special restrictions and *Mudharabah Muqayyadah* is a contract in which *rabbul mal* imposes special restrictions on the terms of *mudharabah*. While in Indonesia using *mudharabah* agreements combined with *murabahah* and *musyarakah* contracts. And the last is *musyarakah* agreement. In Malaysia, they use *Shirkah al-Milk* and *Syirkah al-'Aqd* and use *Mutanaqishah musyarakah* agreement. While in Indonesia it uses *Syirkah amwal* and is known as *syirkah inan* by using *musyarakah* and *musyarakah Mutanaqishah* agreements. From the data and results of the research, it shows that the aspects of the implementation of the three contracts in each country still have problems in terms of violating shariah principles. The implementation of the two countries, both in Malaysia and in Indonesia, related to *murabahah*, *mudharabah* and *musyarakah* agreements still contains elements of usury, *gharar* and *maisir*.

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