

# The Urgency of Understanding Maqashid Al-Syariah In the Musyarakah Mutanaqishah Contract

MUGNI MUHIT

University of Islam Negeri Sunan Gunung Djati, Bandung  
INDONESIA

MUHAMMAD YUNUS

University of Islam Negeri Sunan Gunung Djati, Bandung  
INDONESIA

JAJANG HERAWAN

University of Islam Negeri Sunan Gunung Djati, Bandung  
INDONESIA

\*Corresponding Author: [mugnimuhit77@gmail.com](mailto:mugnimuhit77@gmail.com)

*Abstract:* - From the standpoint of maqasid sharia, this study aims to investigate whether it is urgent to implement the musyarakah mutanaqishah contract in Islamic banking in Indonesia. This study collects data using a descriptive qualitative technique with documentation. Secondary information on sharia standards, legislative provisions, operational requirements for sharia banking, sharia fatwas, operational and implementation standards, and research findings pertinent to the topic of discussion were utilised in this study. The data is then analyzed inductively. Analysis of the urgency of understanding maqasyid sharia in applying the musyarakah mutanaqishah contract. The results of the study found that the importance of understanding maqasyid sharia in a musyarakah mutanaqishah contract is necessary, considering that the spirit of msyarakah mutanaqisyah is rukhshah as a form of relief, while Islam always encourages lightening the burdens of others in a way that is mutual profit and loss sharing. From the perspective of risk imposition and equitable cooperation, this is also seen to be an alternative to mudharabah financing in Islamic banking, although it is not in conformity with the maqashid sharia and the regulations that have so far been in place in Indonesia.

*Key-words:* Urgency, Maqashid Syariah, Musyarakah Mutanaqishah

Received: Januari 24, 2022. Accepted: February 8, 2022. Published: March 7, 2023

## 1. Introduction

The development of various types of Islamic financial services industry, especially Islamic banking, has recently experienced increasingly significant and encouraging progress, [1] As a developing bank financial institution in a country with a dual banking system, Islamic banking is faced with competitive challenges that encourage Islamic banking to be more innovative in creating new products that can attract customers to use Islamic banking services. In addition, Islamic banking must ensure that the products offered are in

accordance with Islamic principles, because this is the main thing that distinguishes Islamic banks from conventional banks, [8].

Developing more innovative and competitive banking products is one strategy being used to improve the market share of Islamic banking in Indonesia. Competitive products will lead to higher public interest in using Islamic banking. One of the sharia banking products that has the potential to be widely applied to sharia banking in Indonesia is musyarakah mutanaqishah. Musyarakah mutanaqishah (diminishing partnership), this agreement is a cooperation

contract that stresses the ownership partnership between the bank and the client over the acquisition of certain assets. It includes the profit sharing and a progressive transfer of asset ownership over a predetermined period of time. Compared to traditional finance, this agreement is lower risk and easier for both the bank and the consumer, [6].

Musyaraqah muntanaqishah transactions can be used as an alternative to murabahah financing and bai' bitsaman ajil contracts, which have always dominated sharia banking financing, especially property financing. Musyarakah mutanaqishah contracts are seen as fairer for both banks and customers, [4]. Even so, the musyarakah mutanaqishah contract still has several problems and challenges to face. Meera and Razak show that in musyarakah mutanaqishah contracts there is still a tendency for bankers to use interest in assessing rental rates, [21]. Osmani and Abdullah discovered that there is still opportunity for development even if there are still problems with rental prices, wa'ad, damage to assets, taxes, and land ownership with the introduction of musyarakah mutanaqishah contracts in Malaysian banks. Otherwise, the musyarakah mutanaqishah contract is just a replication of a conventional loan, [25].

In Indonesian Islamic banking, Ridwan and Syahrudin underlined that the musyarakah mutanaqishah contract may be used as an alternative to murabaha finance, particularly for financing real assets like homes or property, [20]. However, there are several aspects that need to be analyzed related to the suitability of sharia and positive law in Indonesia. However, there are a number of places where the musyarakah mutanaqishah contract is carried out that are not compliant with sharia. There are evidence of a mismatch between the fundamental legislation and execution in practice, according to operational legal analysis based on Bank Indonesia regulations relating banking laws. There are no special accounting standards associated to musyarakah mutanaqishah, but all payment duties for costs that appear to differ from AAOIFI norms and DSN fatwa are delegated in terms of operations, [26].

Given the numerous references found, it is clear that the musyarakah mutanaqishah contract can

be used as a substitute for murabaha financing in Islamic financial institutions, including Islamic banking. However, more research is required to determine whether these contracts are compliant with sharia law, particularly those that pertain to maqasid sharia. Based on an examination of sharia maqasid, this search aims to determine the use of musyarakah mutanaqishah contracts in Islamic banking in Indonesia.

This essay is divided into five discussion sections. The first portion discusses problems with the musyarakah mutanaqishah contract's execution, and the second section discusses the study's research methodology. The fourth section of this thesis discusses the idea of musyarakah mutanaqishah, implementation, and maqasid examination of the application of musyarakah mutanaqishah in Islamic banking in Indonesia. The findings are then presented in the fifth portion.

## **2. Research Method**

The descriptive qualitative methodology is used in this study. The documentation approach was employed to gather research information. Secondary information about sharia fatwas, sharia standards, rules and regulations, operational standards and practices in sharia banking, as well as pertinent research and publishing findings, were gathered for this study. The inductive technique is then used to assess the data. Based on the maqasid sharia methodology, analysis of the musyarakah mutanaqishah contract's execution is conducted.

## **3. Research Result**

### **3.1. Maqashid Syariah**

Maqashid and syari'ah are the two terms that make up the phrase. Maqashid, which implies goal, desire, or intention, is the plural version of the term maqshud in language. In other words, there is a goal that must be met through specific, quantifiable actions. Meanwhile, the word shari'ah literally means the way to water.

The terms maqashid and al-shariah, which are connected to one another in the forms of mudhaf and mudhafuvalue, make up Maqashid al-Syariah. The word maqashid, which indicates

the objective and purpose of sharia, or Allah's law, whether it be a decision of Allah SWT, is the plural version of the word maqshad, which signifies Allah's law, or determined by the Prophet as an explanation of legal provisions determined by Allah SWT or is an ijtihad produced by mujtahid based on what ordained by Allah or explained by the Prophet. Because what is connected to the word shari'at is the term intent or purpose, the word shari'ah means law maker or syar'i, not the law in question, [18].

The phrase "maqashid asy-Syari'ah" refers to the objectives of Islamic doctrine or the objectives of the creators of Islamic law. He was then referred to as the first figure of Maqasid al-Syari'ah by Syathibi, who claimed to be the founder of Maqasid Science, [20]. Maqashid sharia, also known as sharia goals, has five agreed-upon primary benefits that address the five aims of Islamic law: 1) Hifdz Ad-Din, or protecting religion; 2) Hifdz An-Nafs, or protecting the soul; 3) Hifdz Al-'Aql, or protecting the mind; 4) Hifdz Al-Mal, or guarding property; and 5) Hifdz An-Nas It is for our own benefit as people, both in this life and the next, that Allah SWT established Islamic principles and regulations, [28].

Ibn Taimiyyah (1263-1328 AD) emphasized that all the Shari'a brought by the Prophet Muhammad must have the goal of realizing benefit in this world and in the hereafter. So that it is necessary that several provisions that are contrary to the Shari'a are legally null and void. It is also certain that the Shari'a is a measure that must be used to weigh a benefit and mafsada that is not contained in the text as an embodiment of obedience to Allah and His Messenger.

In looking at shari'a, Ibn Taimiyyah also necessitates the existence of maqâsîd in every legal decision contained in the text. However, ignorance of the maqâshid of a command or prohibition does not have to negate these two things. The principle of complete obedience and submission to Allah and His Messenger must be prioritized. On the other hand, explicitly Ibn Taimiyyah wants to show that the existence of maqâshid ash-shariah in the text must be carried out according to the instructions in the text. Don't be careless by bumping into the text and don't overdo it in obeying the

provisions of the text. So that running a text whose maqâsîd is unknown means that he has carried out God's commandment.

Meanwhile, Ibn al-Qayyim al-Jauziyyah (d. 751 H/1350 AD), in his book "Ilam al-Muwaqqi'in 'an Rabb al-'Alamin" states that a person will not know which qiyas is correct and where qiyas is wrong without knowing the secrets and objectives of the shari'ah. The maqâshid study in the hands of Ibn al-Qayyim al-Jauziyyah shows its significance in knowing the truth of qiyas, namely by making adjustments to the spirit of sharia.

Although explicitly, there is no maqâshid working procedure as a parameter of mushawwibah and muqathi'ah in the operational process of qiyas as claimed by Ibn al-Qayyim, it can be drawn the common thread that maqâshîd asy-syari'ah gives signs of qiyas practice for mujtahids so that right on target.

### 3.2. Musyarakah Mutanaqishah

The term "musyarakah" is derived from the term "syirkun wa syarikatun," which denotes a commercial partnership or the blending of ownership, [7]. Syirkah according to language means mixing, namely mixing one person's property with another person's property so that one part cannot be distinguished from another. Musyarakah is translated by the term partnership.

While Islamic financial institutions articulate it with the term participation financing. In Indonesian terminology it can be translated as a partnership, alliance or partnership, [34]. Thus syirkah mutanaqishah is also called decreasing participation or diminishing participation. Musyarakah mutanaqishah (diminishing partnership) is a type of collaboration for ownership of a good or asset between two or more people. With this collaboration, one party's ownership rights will decline while the other party's ownership rights rise.

From the perspective of the term, the notion of musyarakah has different opinions among fiqh scholars. According to Hanafiyah scholars, syirkah are people who work together in terms of capital and profits. Meanwhile, among the Malikiyya scholars, syirkah is defined as

permission to utilize (taşarruf) assets that are jointly owned by two people, that is, the parties who are in partnership allow one of them to utilize the property of both, but each has the right to taşarruf, [16].

Syirkah is nothing more than a contract that applies between two or more persons to work together in a business for a variety of rewards in line with the agreement, according to Hasbi ash-Shiddieqy, [17]. The explanation offered by the academics above differs only in editorial style; the idea behind it, namely a cooperative bond carried out by two or more persons in commerce, is the same. All parties that bind themselves have the right to sue the union's assets and are entitled to benefits in line with the agreement that has been agreed upon with the syirkah contract that has been agreed upon by both parties.

Syirkah is a form of cooperation that can be carried out between two parties who own capital or more to carry out a joint business with an unequal amount of capital, each party participates in the company, and profits or losses are shared equally, according to Article 136 of the Compilation of Sharia Economic Law (KHES). or based on the percentage of capital, [27].

Although musyarakah agreements can be dissolved with or without the closure of the firm, they are often continuous so long as the jointly financed business is in operation. If the business is closed and liquidated, each business partner receives the proceeds according to their proportional share of the assets, and if the business is still operating, the business partner who wants to end the agreement may sell his shares to another business partner at a price that has been mutually agreed upon, [10]. Syirkah is described as finance based on a cooperation agreement between two or more parties for a certain company, where each party contributes cash with conditions and risks will be shared in accordance with the agreement, according to DSN-MUI fatwa No. 08/DSN-MUI/IV/2000, [15].

From this explanation, it can be taken from the common thread that musyarakah is a collaboration to work on something between two or more parties, where both of them

contribute capital or funds to each other with agreed profit sharing and risks to be borne jointly.

Syirkah can drive the wheels of the economy with income derived from business management so as to minimize poverty levels. As opposed to this, mutanaqishah is derived from the verb yatanaqishu, which meaning to progressively diminish (tanaqish, tanaqishan, mutanaqishun). This ownership transfer is accomplished by the payment of other ownership rights, [2]. The rights of one party are transferred to another after the conclusion of this type of collaboration.

The DSN-MUI Fatwa has provisions that authorize musyarakah mutanaqishah contracts. A syirkah contract and a bai', or purchasing and selling contract, make up the musyarakah mutanaqishah contract (which is done in parallel). The sharia wealth (musyarakah) provisions include the following: (a) The obligation to include assets to be used as business and working capital based on the agreement in the deed; (b) The right to earn profits based on the agreed ratio at the time of the contract; and (c) the responsibility to bear losses in accordance with the proportion of capital.

The sharik must agree to sell all of his hishash gradually in the musyarakah mutanaqishah contract, and the other sharik must agree to purchase it. Also, buying and selling are done in accordance with the agreement, and after that is done, all Islamic Financial Institutions/LKS will convert their hishash to another sharia. It is stated in the requirements of the Accounting and Auditing Organization for Islamic Financial Institutions that a sale and buy contract cannot be inferred in a musyarakah mutanaqishah contract. To put it another way, the partner who will purchase may pledge (wa'ad) to buy. The musyarakah contract must be separate from this wa'ad. Separating the sale and purchase agreement from the musyarakah is also necessary. It is not allowed for one contract to become a prerequisite for signing another one, [12].

The DSN-MUI Fatwa also specifies that assets that are musyarakah mutanaqishah may be transferred to the Sharia or other persons. The syrik/customer can rent the asset for an ujah

(rent) value depending on the agreement if the musyarakah mutanaqishah asset turns into an ijarah object. Moreover, the contract stipulates how the profit gained will be split, while the way losses are distributed must take into account the initial contribution. In accordance with the sharik, the profit ratio may correspond to the capital ratio. The cost of acquiring musyarakah mutanaqishah assets becomes a shared burden, while the costs of transferring ownership are borne by the buyer. Points of reduced share/portion of ownership of musyarakah assets owned by Islamic Financial Institutions as a result of customer payments must be clear and agreed upon in the contract.

General provisions for musyarakah must be applied to musyarakah mutanaqishah, especially provisions regarding syirkah 'inan. It is therefore not permissible that the contract of musyarakah mutanaqishah includes a provision which gives a privileged right for any party to withdraw its participation in capital. The next provision is that it is not permissible to mention that one of the partners must bear all insurance or maintenance costs on the basis that one of the partners will eventually own the musyarakah object. Each partner must provide a share of capital. The provision of capital may take the form of money or assets with a monetary worth that can be calculated, such as land for a building or machinery needed for musyarakah activities. As one party's share (share) declines and the other party's share (share) grows, losses, if any, must be borne regularly by the parties in accordance with each partner's provision ratio.

A clear understanding must be reached on the rules outlined in the Accounting and Auditing Organization for Islamic Financial Institutions regarding the percentage of profit or revenue from musyarakah that is each party's legal entitlement. The parties may, however, agree on profit ratios that do not always correspond to the equity/share ratio. The parties may also agree to modify the profit ratio in response to changes in the capital ownership ratio or to retain the agreed profit ratio notwithstanding changes in the ownership ratio. They must make sure the concept of dispersing losses in line with the share ownership ratio is upheld in doing so.

It is important to note that it is forbidden to set up a situation where one party has the right to

profits based on a specific quantity, according to the Accounting and Auditing Organization for Islamic Financial Institutions (lump sum). Nonetheless, it is acceptable for one of the partners to make legal commitments (under a sale and buy agreement) that grant the other partner the right to acquire his equity share over time at a price agreed upon at the time of transfer or at market value. Nevertheless, stipulating that the share of ownership be transferred or bought at the asking price (face value) is not permitted since doing so would amount to a guarantee of the value of one partner's (or institution's) share of ownership by another partner, which is prohibited by sharia.

The Accounting and Auditing Organization for Islamic Financial Institutions' (AAFI) standards for partners can set up the purchase of ownership shares from an institution in a way that can serve both parties' interests. For instance, the institution's customer may agree to guarantee to set aside a portion of any earnings or gains he may obtain from the musyarakah in exchange for the transfer of a percentage or portion of the institution's ownership (equity). Musyarakah objects can be divided into shares, and institutional partners can purchase a set number of shares at predetermined intervals until they own all of the shares and are the only owners of the musyarakah object as a result. Last but not least, it is acceptable for one of the partners to lease the other partner's ownership share for a certain sum of time, as long as each partner is still liable for routine maintenance of his share.

### **3.3. Risk Coverage On Musyarakah Mutanaqisah**

The risk coverage for musyarakah mutanaqisah financing is the same as for other financing, which is shared by both parties, but if the customer defaults due to negligence, the risk or loss will be fully borne by the customer. This risk coverage is also inseparable from the agreement or engagement that has been made by both parties when working together.

The 5C word is used in banking and refers to the standards that bankers use to evaluate their clients. Clients that fulfill the 5C standards are ideal candidates for financing. The 5C guidelines include:

- a. *Character*, is information on a potential customer's personality, including traits, routines, way of life, circumstances, family history, and interests. This characteristic, or desire to pay, is used to determine whether a potential client is sincere in his efforts to meet his responsibilities.
- b. *Capacity*, is the capacity of potential clients to run their business, which may be judged by their business management training and experience. This ability to pay is measured by this capacity.
- c. *Capital*, is the state of the assets that belong to the business it oversees. This may be observed in the capital structure, income statement, balance sheet, and ratio of profits earned. The bank can determine if the potential consumer qualifies for financing based on the aforementioned requirements.
- d. *Collateral*, is a promise that may be revoked if it becomes clear that the potential client will not be able to meet his responsibilities.
- e. *Condition*, The finance offered must also take into account the economic circumstances related to the potential for the prospective customer's business. It is vital to connect economic conditions with potential clients because one industry is highly dependent on them.

Understanding of "Profit and Loss" BUS/UUS/BPRS must exercise sound risk management while participating in partnership financing that is based on profit sharing with a *musyarakah mutanaqisah* contract. What's more, BUS/UUS/BPRS as institutions must be accountable for the funds they have from third party depositors. Therefore, it is necessary to have a risk management system that can be effectively implemented in the entire *musyarakah mutanaqisah* process.

### **3.4. Implementation of Musyarakah Mutanaqishah Contracts in Sharia Banking**

Fiqh literature showed three terms that refer to the notion of mixing, partnership, alliance and partnership, namely *al-musyarakah*, *al-syirkat*, and *al-syarika*. The more correct of the three terms is *al-shirkat*. Therefore, the fiqh literature uses this term more, while Islamic banking

regulations use the term *musyarakah*. In language, *al-shirkat* means *al-ikhtilat* (mixed). This is interpreted because someone mixes his wealth with other people's assets so that they cannot be distinguished and separated from one another. This meaning shows that two or more people collect capital to finance an investment. Here, a bank that provides *musyarakah* facilities to customers participates (takes part) in a new project or in a company that has been established by buying shares of the company. The implementation of *Syirkah* in LKS must fulfill the following principles:

- 1) It is practicable and does not violate sharia to carry out the project or economic activity.
- 2) *Musyarakah* funds are among the parties collaborating under certain restrictions:
  - a) may take the shape of money or other liquid assets.
  - b) The accumulating money become corporate funds instead of belonging to any specific people.

*Musyarakah* or *syirkah* in the context of banking is a financing cooperation agreement between an Islamic bank (Islamic Banking), or several finances together, and a customer to manage a business activity. Each includes the participation of funds according to the agreed portion. Management of business activities, trusted to customers. As managers, customers are required to submit periodic reports regarding business developments to banks as owners of funds. Besides that, fund owners can intervene in business policies.

*Syirkah* financing in the world of Islamic banking, among others, is as follows:

- 1) Financing in working capital; can be allocated to companies engaged in construction, industry, trade and services.
- 2) Investment financing; can be allocated to companies engaged in the industrial sector.
- 3) Indicated financing; both for working capital and investment purposes.

Several Islamic banks, including Islamic Commercial Banks and Sharia Business Units, have implemented the *Musyarakah Mutanaqishah* product in order to meet the needs of the community through profit-sharing partnership-based financing between the Customer and the Bank, with the agreement that all financed assets ultimately belong to the Customer. Products produced with the intention

of financing the ownership of assets like new or used homes and cars are known as *musyarakah mutanaqishah*. The *musyarakah mutanaqishah* contract serves as the foundation for a multi-contract (hybrid) product structure that also includes *ijarah* (leasing) contracts, *ijarah mawsufah fi zimmah* (advanced/forward lease), *bai al musawamah* (sales), and *istisna'* contracts (manufacturing), [24].

Islamic banking in Indonesia allows the use of *Musyarakah Mutanaqishah* products for both productive and consumptive finance. This type of financing can be applied to vehicle financing, as well as property or home financing. *Musyarakah mutanaqishah* in its implementation in Indonesian Islamic banking is intended for financing the purchase of new property (ready stock), old property (second) or indenting new property, take-over and refinancing, [24].

Islamic banks enter into financing contracts with individual or corporate clients that include *musyarakah mutanaqishah* contracts for a specific amount of time and profit sharing ratios in line with the parties' agreement. In compliance with relevant laws and the parties' agreement, the Bank distributes money in an amount equivalent to its capital portion (*hishshah*). When a bank and a client enter into a joint venture and exchange money in the form of rented automobiles or homes (*ijarah*), this is known as *musyarakah mutanaqishah* finance.

Customers who are lessee consumers (*musta'jir*) can rent *musyarakah mutanaqishah* assets by paying rent (*ujrah*), the revenues of which are split between the bank and the client in accordance with the predetermined ratio. Customers who are tenants in business partnerships (banks and *musyarakah mutanaqishah* customers) must pay rent (*ujrah*) to them as the lessor. The agreed-upon profit sharing ratio governs how the bank and the client divide any company earnings from leasing *musyarakah mutanaqishah* assets.

Profit sharing revenue for the customer, who is a *musyarakah mutanaqishah* partner customer, is one of the sources of installment payments that must be made in order for the client to receive the bank's share of capital (*hishshah*), which must be deposited to the bank. The client makes monthly principle installments for

assuming the bank's capital part (*hishshah*) in addition to profit sharing until the conclusion of the *musyarakah mutanaqishah* financing arrangement, at which point all *musyarakah mutanaqishah* assets become entirely held by the customer, [24].

### **3.5. Implementation of Musyarakah Mutanaqishah Financing in Islamic Maqasid Studies.**

According to the literature, the *musyarakah mutanaqishah* contract is regarded as the ideal contract model to be applied to Islamic banking. However, in practice, it differs from the literature, and there are still numerous criticisms and challenges that must be overcome in order to implement the *musyarakah mutanaqishah* contract in Islamic banking. The primary issue is that of double taxation, in which the property tax will be assessed twice. The buyer will thereafter be charged for this tax. When ownership is passed from the bank to the consumer, first, as a charge paid to the bank that is included in the purchase of the property, and second, [14]. Because the bank and the client jointly own the property that is the subject of the partnership, they are required to pay the first tax in terms of property ownership (*musyarakah mutanaqishah*). So, the common norm is that only consumers who pay taxes are fair and may not be. The purpose of shariating rules in *muamalah* is for the benefit of humans, especially those who make contracts.

Problems can be achieved if the implementation of the contract is worth justice for each party, if justice is not achieved in a contract implementation, then it is difficult to get balanced benefits for both parties. Thus, the burden of tax is only on the customer as one of the sharia, on the other hand, the bank as a sharia does not pay the tax burden, which is against the goals of Islamic law.. Whereas the second tax is when the transfer of property to the customer is because the transfer of ownership is in accordance with tax regulations. Therefore, twice the tax in *musyarakah mutanaqishah* there is no problem if it is borne by the parties who own the property which is the object of the *syirkah*.

The issue of price independence when *musyarakah* finance is coupled with a transfer

of ownership is the next issue. There has been an increase in the market price of the property agreed upon at the beginning of the contract when the price is set for a period of time up until the transfer of ownership often happens. As a result, there is a binding and independent relationship between the price at the time of financing and the transfer of ownership, [11]. The majority of academics agree that market forces should set prices and that they must represent appropriate pricing. This implies that when a consumer pays rent or shares, the rental price and share price must comply with the terms. So, how do you calculate the share price and rental price? Establishing rental and share prices in advance is against sharia and the profit-sharing concept, [14].

Selling shares in musyarakah mutanaqishah contracts at a fixed price is against the Accounting and Auditing Organization for Islamic Financial Institutions' rules. The partners in this situation do not split the gains and losses from their venture, [2]. As a result, the rental price must be regularly updated in accordance with the property's market value. It may be assessed once a year or every six months. The rental price may not be set at the beginning of the constant until the end of the agreement. However, if during the agreement the property price does not increase significantly, there is no need to update the rental price.

In practice, when the bank determines the rental or price of the property, it has calculated in economics about the increase in the selling price in the future, the bank does not practice updating prices every year, the background is to reduce the costs that will arise as a result of the price update, and usually the costs will be charged to customers. an increase in costs in financing due to price updates will also be bad for the bank, namely customers are less interested in financing. So that means, price updates will be increasingly burdensome for customers as well as detrimental to the bank. banks as business institutions have taken into account the pros and cons when they set the rental price and selling price.

Not only that, in the implementation of musyarakah mutanaqishah in banking, banks tend to execute collateral immediately because the customer fails to fulfill the lease obligation

without the customer's approval. This becomes a problem when the initial agreement is joint ownership of goods with the promise of a transfer of ownership by buying and selling by one of the syrik, but when the customer/syrik is unable/fails to fulfill obligations, to be precise the agreement on the goods/property contract which is also used as direct collateral executed. This shows that there is inequality in the case of ownership of goods. In syirkah, each syirkah has the same rights and obligations in proportion to equity participation, the relationship between syirkah is partners. If there is a problem in the musyarakah, then it is discussed together and agreed on what actions will be taken to overcome the existing problem.

Besides that, there are two ways to settle responsibilities as a tenant, namely 1) if the tenant cannot pay the rent due to his economic condition being bankrupt, then the obligation of the property owner is to give time to the tenant until the agreed time. 2) if the tenant doesn't pay the rent because he doesn't want to pay, not because he can't pay (the economy is in bankruptcy), then the landlord can ask for rent and if he doesn't have good intentions, he can go to court. Allah declares in the verses of the Qur'an that He would benefit those who work together:

*“O you who believe, do not violate the symbols of Allah, and do not violate the honor of the forbidden months, do not (disturb) hadya animals, and qalaaid animals, and do not (also) disturb people -people who visit Baitullah while they are seeking grace and pleasure from their Lord and when you have completed the pilgrimage, then it is permissible to hunt. and never hate (your) against a people because they prevent you from Masjidi al-Haram, encourage you to do wrong (to them). and help you in (doing) virtue and piety, and do not help each other in committing sins and transgressions. and fear Allah, verily Allah is Severe in punishment” (QS. Al-Baqarah: 280)*

According to the verse's explanation, Allah is with people who cooperate as long as they have faith in one another and do not turn on one another). if anyone betrays his co-workers Allah will leave them. Thus, working together is highly favored by Allah swt. Collaborating with each other will lead to the nature of mutual help, compassion between those who work



together and these values are in accordance with the goals of sharia. On the other hand, those who work together to insult Allah will leave them, there is no pleasure and blessing in this collaboration. So that the cooperation ends with harm and hostility.

The implementation of leasing agreements (ijarah) in sharia banking is an integral part of the Musyarakah contract. Although the rental agreement will be made separately. This indicates that there is an element of ta'alluq in the transaction. The second contract becomes a requirement of the first contract if Ta'alluq (connectedness, linking aqad) happens, according to Nuhbatul, and as a result of this contract, syirkah cannot be carried out if the ijarah is not agreed upon. This means that the first contract becomes a condition for the occurrence of the second contract. In fact, it is not permissible for one contract to become a condition for entering into another contract, [11]. In the practice of musyarakah mutanaqishah it is clear that each contract is separated, beginning with a syirkah contract that stipulates that the consumer would pay for the bank's equity portion in installments (wa'ad). After their agreement to lease the syirkah item, the bank and the consumer will share the rental income in accordance with their agreement..

Syirkah objects can be rented by customers (shari'a) or other parties (however the majority are rented by customers as well as syirik). The consumer pays the bank the ujah that belongs to them as a capital purchase for their participation in the syirkah. If it is relevant to the ta'alluq contract, it could become one of the ta'alluq practices because ijarah and buying and selling will exist if there is a syirkah contract. However, ta'alluq in this case is not prohibited because the illat prohibition of ta'alluq (gharar) does not exist in this case, This is consistent with the fiqh guidelines of al-hukmu yadurru ma'a al-'illah wujdan wa 'adaman, according to which the law is continually modified to reflect contemporary changes and needs. This is the elasticity of law which will always be friendly to situations and circumstances, without harming the substance of sharia, [13].

#### 4. Conclusion

Based on the foregoing discussion, it was determined that the necessity of maqashid al-syari'ah in musyarakah mutanaqishah contracts as a substitute for murabahah financing in Islamic banking, from the perspective of imposing taxes only on customers and the perspective of equal partnership, is not in accordance with maqashid sharia and the country's current laws. According to maqasyid syari'ah musyarakah mutanaqishah, the bank is assisting by easing the load on clients. So that the ownership of capital provided by banks to customers gradually decreases. And reducing bank capital because customers pay it gradually is mutanaqishah (decreasing). Thus mutanaqishah is very well implemented in mutually beneficial economic and financial transactions in a transparent manner.

#### References:

- [1] A Jajang dkk, *Ekonomi Pembangunan Islam*, (Jakarta: Departemen Ekonomi dan Keuangan Syariah - Bank Indonesia, 2021), h. 16.
- [2] AAOIFI, *Shari'a Standards, Accounting and Auditing Organization for Islamic Financial Institutions* (Bahrain, 2004)
- [3] Abdullah Saeed, *Menyoal Bank Syariah Kritik Atas Interpretasi Bunga Bank Kaum Neo-Revivalis*, (Jakarta: Paramadina, 2004), h. 88.
- [4] Ahamed Kameel Mydin Meera and Dzuljastri Abdul Razak, "Home Financing through the Musharakah Mutanaqisah Contracts: Some Practical Issues, *Journal of King Abdulaziz University, Islamic Economics*, no. 1, 2009: 3–25.
- [5] Ahamed Kameel Mydin Meera and Moussa Larbani, "Ownership Effects of Fractional Reserve Banking: An Islamic Perspective," *Humanomics* 25, no. 2, 2009: 101–116;
- [6] Alam Asadov et al., "Musharakah Mutanaqisah Home Financing: Issues in Practice," *Journal of Islamic Accounting and Business Research* 9, no. 1, 2018, h. 91–103.
- [7] Al-Garib al-Ashfahani, *Mu'jamu Mufradati al-Fadzi al-Qur'an* (Lebanon: Dar al-Kutub al-Ilmiyah, 2008), h. 291
- [8] Amri Amir, *Ekonomi dan Keuangan Islam*, (Jambi: Pustaka Muda, 2015), h. 6.
- [9] Asadov, Alam, Zulkarnain Bin Muhamad Sori, Shamsheer Mohamad Ramadilli, Zaheer Anwer, and Shinaj Valangattil

- Shamsudheen. "Musharakah Mutanaqisah Home Financing: Issues in Practice." *Journal of Islamic Accounting and Business Research*.
- [10] Ascarya, *Akad dan Produk Bank Syariah* (Jakarta: PT Raja Grafindo Persada, 2008), h. 52.
- [11] Basyariah, Nuhbatul. Analisis Implementasi Pembiayaan *Musyarakah mutanaqishah* Pada Perbankan Syariah Di Indonesia. *Muqtasid: Jurnal Ekonomi dan Perbankan Syariah*.
- [12] DSN-MUI. 2008. Fatwa Dewan Syariah Nasional MUI NO:73/DSN-MUI/XI/2008 Tentang *Musyarakah mutanaqishah*.
- [13] Duski Ibrahim, *Al-Qawaid Al-Fiqhiyah (Kaidah-kaidah Fiqh)*, Palembang: CV. Amanah, 2019, h. 149.
- [14] Edib Smolo and M. Kabir Hassan, "The Potentials of Mushārah Mutanāqisah for Islamic Housing Finance," *International Journal of Islamic and Middle Eastern Finance and Management* 4, no. 3 (2011), h. 237–258.
- [15] Fatwa MUI No. 8/DSN-MUI/IV/2000 Tentang Pembiayaan *Musyarakah*.
- [16] Harun Nasution, *Fiqh Muamalah* (Jakarta: Media Pratama, 2007), h. 165.
- [17] Hasbi ash-Shiddieqy, *Pengantar Fiqh Muamalah*, Cet. ke-1 (Semarang: Pustaka Riski Putra, 1997), h. 99.
- [18] Jasser Auda, *Maqasid Al-Shariah Asphilosophy Of Islamic Law A Systems Approach*, London Office, 2007, h. 21.
- [19] Kameel Mydin Meera, Ahamed, and Moussa Larbani. "Ownership Effects of Fractional Reserve Banking: An Islamic Perspective." *Humanomics*.
- [20] M Ridwan and Syahrudin, Implementasi Musya Rakah Mutanaqisah Sebagai Alternatif Pembiayaan Mura Bahah," *Jurnal TSAQAFAH* 9, no. May 2013 (2013): 101–122;
- [21] Meera and Razak, "Home Financing through the Musharakah Mutanaqisah Contracts: Some Practical Issues. h. 3–25
- [22] Meera, Ahamed Kameel Mydin, and Dzuljastri Abdul Razak. "Home Financing through the Musharakah Mutanaqisah Contracts: Some Practical Issues." *Journal of King Abdulaziz University, Islamic Economics*.
- [23] Mohammad Osmani, Noor, and Md Faruk Abdullah. "Musharakah Mutanaqisah Home Financing : A Review of Literatures and Practices of Islamic Banks In Malaysia." *International Review of Business Research Papers*.
- [24] Mulya E. Siregar and Ahmad Buchori, "Standar Produk Buku 1: Musyarakah Buku 2: *Musyarakah mutanaqishah*" (2016), h. 298.
- [25] Noor Mohammad Osmani and Md Faruk Abdullah, "Musharakah Mutanaqisah Home Financing : A Review of Literatures and Practices of Islamic Banks In Malaysia," *International Review of Business Research Papers* 6, no. 2, 2010, h. 272–282.
- [26] Nuhbatul Basyariah, "Analisis Implementasi Pembiayaan *Musyarakah mutanaqishah* Pada Perbankan Syariah Di Indonesia, *Muqtasid: Jurnal Ekonomi dan Perbankan Syariah*, No. 2, 2018, h. 120
- [27] Pusat Pengkajian Hukum Islam dan Masyarakat Madani, *Kompilasi Hukum Ekonomi Syariah* (Jakarta: Kencana, 2009), h. 50.
- [28] Qardhawi, Yusuf. 2010. *Tujuh kaidah Utama Fikih Muamalah*, (Jakarta: Pustaka Al-Kaustar).
- [29] QS. Al-Baqarah ayat 280; Hadis Rasulullah saw Riwayat Muslim Nomor 3006; Riwayat Ibn Majah nomor 1965; Riwayat Bukhari nomor 2076
- [30] Ridwan, M, and Syahrudin. 2013. Implementasi Musyarakah Mutanaqisah Sebagai Alternatif Pembiayaan Mura Bahah." *Jurnal TSAQAFAH*
- [31] Sarwat, Ahmad. 2019. *Maqsyid Syariah*, Jakarta, Rumah Fiqih Publishing.
- [32] Smolo, Edib, and M. Kabir Hassan. "The Potentials of Mushārah Mutanāqisah for Islamic Housing Finance." *International Journal of Islamic and Middle Eastern Finance and Management*.
- [33] Sutan Remy Sjahdeini, *Perbankan Islam dan Kedudukannya Dalam Tata Hukum Indonesia* (Jakarta: Pustaka Utama Grafiti, 1999), h. 57.