


## The Contract Of Mudharabah (Qiradh) And Musyarakah (Syirkah) In Fiqh Muamalah

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Article Info	ABSTRACT
<b>Keywords:</b> Mudhrabah, Musyarakah, Fiqh Muamalah	<p>Contract Mudharabah and Musyarakah is form Work The same business between two parties or more, with runway strong law from the Qur'an and Hadith. Research This use approach normative with focus on study Islamic law related contract Mudharabah and Musyarakah. Research data obtained through method studies library research, which involves search primary and secondary sources in the form of literature jurisprudence muamalat, fatwa of the National Sharia Council (DSN), Tafsir of Sheikh Abdul Halim Hasan, as well as document related implementation contract in institution Islamic finance. Analysis done in a way descriptive qualitative For understand runway law, implementation, and settlement dispute in second contract said. The agreement Musyarakah involving two parties or more For Work The same in a business with distribution profit based on agreement. While that, Mudharabah involving capital owners ( shahibul mal ) and managers ( mudharib ) who share profit in accordance agreed portion. Implementation contracts This Lots applied in product sharia financing, such as savings, deposits, up to working capital financing. Completion dispute in second contract the done through peace or court in accordance principle Islamic law. This article to study runway laws, conditions, and implementation contract Mudharabah and Musyarakah, including settlement dispute related.</p>
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### INTRODUCTION

Contract partnership in context sharia economics contract This own strong foundation in the Koran and Sunnah. Contract partnership in business has become an important pillar in build synergy and collaboration between perpetrator business. Through agreement this, various party can merge source power, expertise and network For reach objective more business big. However, the complexity connection partnership demand deep understanding about base law, types contract, and implications law that arises. Journal This aiming For give description comprehensive about contract partnership in business, start from definition, basis law, types common contract used, until analysis to challenges and opportunities faced in practice. In addition, the journal this will also to study development latest in regulation contract partnership, as well as the implications to dynamics modern business. Partnership has be one of solution for business micro, small, medium enterprises (MSMEs) for increase Power compete and expand network business. In the era of globalization, competition business the

more tight, for survive and thrive Lots perpetrator business choose For to weave partnership. Contract partnership be one of form cooperation business, offer opportunity for various.

true purpose of Islamic law is objective Creator Islamic law is itself. The purpose of Islamic law is direction every behavior and actions the human being in frame reach happiness life with obey as well as avoid what has been become His law. Allah SWT's purpose. mandate the law is look after welfare human, at the same time avoid mafsadat, both in this world and in the afterlife. that goal want to achieved through commands and prohibitions ( taklif ), the implementation of which depends on understanding source the main law, namely the Koran and the Hadith.

Rule about dispute to judge in law law This had time cause problem law among expert law. Experts own diverse understanding ( multi - interpretation ) of the existence of Article 55 paragraph 2 of Law No. 21 of 2008 which regulates about dispute to judge, so that cause dualism authority justice, namely justice general and religious courts in finish dispute. Dualism dispute authority to judge This has walk along time so that Then problem dispute to judge This brought and decided by the Court Constitution.

## RESEARCH METHODS

Study This use approach normative with focus on study Islamic law related contract Mudharabah and Musyarakah. Research data obtained through method studies library research, *which* involves search primary and secondary sources in the form of literature jurisprudence muamalat, fatwa of the National Sharia Council (DSN), Tafsir of Sheikh Abdul Halim Hasan, as well as document related implementation contract in institution Islamic finance. Analysis done in a way descriptive qualitative For understand runway law, implementation, and settlement dispute in second contract the.

## RESULTS AND DISCUSSION

### Mudharabah or Qiradh (Trust Financing, Trust Investment )

#### Definition Mudhatabah or Qirad

*Mudharabah* or *qiradh* part from one of form agreement Work same. The term mudharabah is the language used by Iraqi people, whereas qiradh the language of *the Hijab* people. With thus both of them has the same meaning. *Mudharabah* originate from the word *dharb*, which literally means etymological means traveling or walking. The Qur'an does not in a way direct shows the meaning of *Mudharabah* said. However in a way implicit, root word *dha-ra-ba* which is a basic word *Mudharabah* There are fifty mentioned in the Qur'an eight times.

Principles in Islam in muamalah that must be noticed by the perpetrator investment sharia ( party) related ) is No look for sustenance in forbidden things, good from aspect the substance and also method get it, and No use it For matter forbidden things. Then, no oppressive and not oppressed ( *la tazlimūn*) *wow la tuzlamūn*), justice distribution prosperity, transactions done on base consent The same consent ( *' an- taradin*) and not There is element usury, maysir and gharar ( uncertainty) explanation ). As explained in the Al-Qur'an surah An-Nisa' verse 29 :

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بَاطِلًا وَلَا تَكُونُوا سَاقِيَةً إِلَىٰ سَعْيِكُمْ ۚ إِنَّكُمْ عِنْدَ اللَّهِ كَانُونَ ۚ

*"O you who believe, do not eat the property of your fellow man with the wrong path, except with road current business with Like The same Like between you."* (QS. An-nissa ': 29).

This verse with firm prohibit people from eating other people's property or his wealth Alone with road void, meaning No There is right nya. Eating treasure Alone with road void is spend his property on the road sin. Eating other people's property with road void There is various how, such as opinion Suddi, eat his with road usury, gambling, cheating, and abuse. According to Hasan and Ibn Abbas, eating other people's property with No There is changeover. Also included in the cancelled road This all sell prohibited purchases *syara* ', which is not including namely, a way of business that mutually " pleases " ( likes The same like ) between, namely from second party. Already Of course business that is permitted by the *syara* '.

Different scholars opinion about where is the limit of " being content " that. One group said, perfect applicable to consent of both split party is after they separate after done contract. It is the same as one of them said to his friend, " do it now ". in authentic hadith and people selling buy and have right the sham before they separated, or one of them said, " go straight away " That 's it !" information congregation from friends, *tabiin*, and run by Syafi'i, Tsauri, Auza'i, Laits, Ibnu Uyainah, Ishaq and others.

#### **Types of Mudharabah or Qirad**

Mudharabah divided into two types, namely *mudharabah absolute* and *mudharabah the beginning of the story*.

- 1) *Mudharabah Absolute* Mudharabah absolute ( investment) No bound ) is type mudharabah with capital owner ( *shahibul*) *mall*) gives freedom full to manager For manage the capital without existence limitation like type business or industry certain.
- 2) *Mudharabah muqayyadah* ( investment) bound ) is type mudharabah with capital owner ( *shahibul*) *mall*) gives limitation to capital manager ( *mudharib*) for manage the capital with specified requirements, for example condition type business or the industry being run.

Hanafiyah scholars and Imam Ahmad allow it give limitation with time and people, but the Shafi'iyah and Malikiyah scholars forbid it. Hanafiyah and Ahmad scholars also allow it contract if associated with the future, such as, " Effort this capital start month front," while the Shafi'iyah and Malikiyah ulama forbid it.

#### **Legal Basis of Mudharabah or Qirad**

Legal basis Qiradh is allowed, because qiradh is What did Rasulullah SAW do when he make a vow qiradh with site khadijah ( before marriage) for trade his wealth to the Levant and other countries. Friends have too agreed set legitimate his trading like that. Akad qiradh That in accordance with hadith Ibn Majah narrated that the Messenger of Allah SAW once said said : Meaning : *"There are three things that contain blessing, namely sale and purchase, which is given a term ( khiair period ), transfer ( loan ) of money for traded, and mixed wheat with wheat No to be bought and sold. (HR Ibnu Majah)"*. The scholars of various madhhabs have agreed, that *mudharabah* allowed according to law. As for the basis the law used as runway are the Qur'an, al- Hadith, ijma'.

### Pillars and Conditions Mudharabah or Qirad

The scholars have different opinion about harmonious *mudharabah*, according to Hanafiyah scholars, that harmonious *mudharabah* is ijab and qabul. According to the Malikiyah scholars, that harmonious *mudharabah* consists of from ; *ra's al-mal* (capital), *al -' amal* ( form effort ), profit, ' *aqidain* ( parties to the dispute ), and *shighah* ( acceptance accepted ). While the Shafi'iyah scholars share harmonious *mudharabah* consists of from ;

- 1) Capital owners who hand over capital.
- 2) Workers, namely the managing party business.
- 3) Contract *mudharabah*, which consists of from acceptance and acceptance between capital owners and managers business.

Conditions that must be met filled in *mudharabah* related with related conditions with ' *aqidain* ( contracting parties ) and also capital. The conditions set for owner and manager business The same with conditions set for 2 (two) people who enter into a contract in general. They must be a capable person For do action law, and not There is disturbing elements skills, such as crazy, sick, etc. In addition, the majority of scholars also do not requires that both of them must religious Islam, because That contract *mudharabah* can implemented by anyone including non- Muslims. In relation to this with work and efforts carried out by capital managers, contracts *mudharabah* can differentiated become contract *mudharabah absolute* and *contract mudharabah muqayyad*. In the contract *mudharabah muthlaq*, the giver of capital surrenders the capital to manager business For used in business whatever, no restricted type and place. While contract *mudharabah muqayyad*, the owner of capital provides the capital is in the manager For used in efforts that have been determined.

### Implementation Contract Mudharabah in Sharia Banking

*Mudharabah* usually applied to products financing and funding. On the other hand fundraising, *mudharabah* applied to:

- 1) Time deposits, namely the savings in question For objective special, such as hajj savings, savings sacrifice.
- 2) Special deposit ( *special investment* ), namely funds that are deposited Customer special For business certain, for example *murabaha* just or just lease. As for the side financing, *mudharabah* applied For :
  - 1) Working capital financing, such as working capital trade and services.
  - 2) Investment special, also called *mudharabah muqayyadah*, special source of funds with special distribution with the conditions that have been determined by *the shahibul bad*.

### Completion Dispute Contract Mudharabah

Completion dispute in contract *mudharabah* between capital owner with *mudharib* can completed with peace and or court. This is in accordance with settlement dispute economy Islam based on law Islam, namely peace, arbitration and courts.

- 1) Peace ( *Al- Sulh* )

There are three pillars that must be filled in agreement peace that must be done by the person who does it peace namely ijab, qabul and lafadz from agreement peace. Conditions legitimacy agreement peace is :

- a) Matters concerning subject.

- b) Matters concerning object.
- c) Issues that may be reconciled.
- d) Implementation peace.
- 2) Arbitration. Arbitration that is appointment somebody or more as referee (hakam) by two or more people more at odds use finish dispute they in a way peace. In settlement dispute mudharabah can completed through the national sharia arbitration body.
- 3) Court / power judiciary (wilayat *al- Qadha* ) In power judiciary This there is a number of institution that is :
  - a) *Al- Hisbah* It is institution official state given authority For to finish problems or violation light according to its nature No requires a judicial process For finish it.
  - b) *Al- Madzalim* This body formed by the government For defending the persecuted consequence attitude arbitrarily from state officials or his family, which usually difficult For settled by the court ordinary and hisbah power.
  - c) *Al- Qadha* It means is decide or to set the meaning set law syara on a incident or dispute For finish it in a way fair and binding.

### **Musyarakah ( Syirkah ) (Partnership, Project Financing Participation)**

#### **Definition Musyarakah ( Party )**

*Partnership* or *Musyarakah* originate from Language Arabic, shirkatan ( *mashdar* /root word ) and sharika ( *fi'il madhi* / verb ) which means partner / ally / partnership / union. Based on definitions some scholars, such as the Shafi'i and Hambali scholars, for indicates meaning its breadth, which encompasses *syarikah al-milk* ( partnership) ownership ) and *syarikah al-aqd* ( partnership) contractual ). *Sharia al- Aqd* is an agreement between two people or more For combine assets, manpower Work, or liabilities them for a reason produce profit. Partnership This shared become four type that is :

- 1) *Syarikah Al- Amwal* ( capital partnership )
- 2) *syarikah al - 'amal* ( partnership services / labor )
- 3) *syarikah al- wujuh* ( partnership reputation )
- 4) *syarikah al- mudharabah*, literally technical charity is partnership profit, through which One party ( *rabbul mall* ) provides capital and the other party ( *mudharib* ) provides power Work.

In general Language charity often called with meaningful association *ikhtilath* ( mixture ), namely mixing one of them of two treasures with treasure other without can differentiated between both of them. Musyarakah can also means a mix his wealth with other people's property with which one party No divorce from the others. While according to term, musyarakah is contract cooperation between two parties or more For a business certain where each party give financial contribution ( charity / *expertise* ) with agreement that advantages and risks will covered together in accordance with agreement.

#### **Legal Basis of Musyarakah ( Syirkah )**

Foundation law partnership from the Qur'an as mentioned in letter an-Nisa': 12

Fina Canoe And the Lord My name is Allah is the Most Gracious Forgive  
me The Most High FYI O Allah, the Most Gracious

It means ".... so they allied in the third That....".



According to born paragraph this, if you scibu Enough fulfil condition For accept heirloom, then part they come first from part you one thousand father. In case This arise One a well- known problem with Name *Problem Himariyah*. While incident This happens, then come on brothers womb That to Umar and Umar decided as the above division. They said, " Make our father like himar ( donkey ) look at us as you one thousand from the corpse. As for the basis law partnership from text hadith is as the words of the Prophet SAW : Allah says : *"I am party the third of two people in partnership during one of they together No betray to others, if one of them they betrayed, then I go out from him "*.

Whereas runway law based on *consensus* that the majority of scholars agree about existence partnership this, although in a larger area detailed, they different opinion about legal validity ( permissibility ) partnership of course. For example some scholars only allow type partnership certain and not allow type other companies.

#### **Pillars and Conditions Musyarakah ( Party )**

Scholars differ opinion about harmonious partnership. Hanafiyah scholars state that harmonious partnership there are two, namely consent and qabul. As for others like contracting parties and outside assets discussion agreement, as in harmonious sell buy. Condition partnership proposed by the Shafi'iyah scholars in a way general in essence The same with what was put forward by Malikiyah, good For condition in sighah syirkah, contracting parties and capital. While the Hanafiyah scholars set condition partnership There is three types, namely :

- 1) Condition *sahih* ( correct ), namely requirements that are not cause danger and loss, so contract partnership No stopped therefore, like they agreed For No do purchase except For goods certain.
- 2) Condition *fasid* ( damaged ), namely requirements that are not sued There is in contract, such as condition No existence phase partnership If it's time Not yet One year.
- 3) Conditions that must be met There is in agreement, namely : the capital must be known by the parties to the agreement, the distribution profit must set in a way clear, like one third, one quarter, etc.

#### **Types of Musyarakah ( Syirkah )**

The scholars of fiqh share partnership in 2 (two) types that is :

##### **1) *Al Amlak Company***

*Al Amlak Company* is cooperation between two people or more in ownership a property ( goods ) because one of them because ownership.

##### **2) *Partnership al ' Uqud*.**

*The company of al ' uqud* is a contract carried out by two people or more For to tie up self in capital and profit association. There is a difference the opinions of scholars about form *partnership al'uqud*, namely as as follows : First, according to the Hanabilah scholar There are five forms *partnership of al ' uqud*, namely (1) *partnership of al ' inan* is union with merger treasure or capital from two or more people more than that always the amount same, (2) *the commonwealth company* is an association made by two or more people more than all capital party Good from side quality and quantity the capital must same and benefits divided equally, (3) *syirkah al abdan*, namely association of two

or more persons more in form work that produces results shared together, (4) *syirkah al wujuh*, namely union without capital, and (5) *mudharabah partnership* that is form cooperation between capital owner with a person who has skill business, and profits from the capital shared together. Second, according to Malikiyah and Shafi'iyah scholars share form *syirkah al 'uqud* on four form, namely *syirkah al 'inan*, *syirkah al mufawadhah*, *syirkah al abdan*, *syirkah al wujuh*. Third, according to Hanafiyah scholars share the company of *al 'uqud* into the three form, namely *company of amwal*, *company of a'mal*, and *company of The third*. form the company of *al 'uqud* This may happen in form *al 'inan* or *al mufawadhah*.

### Implementation Contract Musyarakah in Islamic Banking

Implementation charity in Islamic banking can found in financing like :

#### 1) Financing Project

Musyarakah usually applied For financing project Where customers and banks alike provide funds for to finance project said, and after project That finished Customer return the funds together for the results that have been agreed for banks.

#### 2) Venture Capital

At the institution finance specifically permitted do investment in ownership company, musyarakah applied in venture capital scheme. Investment is made For term time certain and after that's what the bank does divestment or sell part its shares, good in a way short and also gradually.

### Completion Dispute Contract Musyarakah

Joni Emirzon explain that form or method settlement dispute can done through institution justice and through institutions are regulated institution developing justice moment this, for example negotiation, mediation, conciliation, and arbitration. Disputes the happen in field Islamic banking, of course can completed through institution litigation, and can done through external institutions court (non -litigation ) for example through institution arbitration namely the National Sharia Arbitration Board ( Basyarnas ), and can done through track Alternatives and opinions expert. Actor business / enterprise choose For do settlement the dispute with use method litigation, then must view and comply with Law No. 48 of 2009 concerning Power Justice, Law Number 3 of 2009 concerning Change Second on Law Number 14 of 1985 concerning The Supreme Court and the laws governing it about institution lower court The Supreme Court of the Republic of Indonesia, for example Law Number 7 of 1989 concerning Religious Courts with the changes, good change First with Law Number 3 of 2006 and change second with Law Number 50 of 2009. When the perpetrator business / enterprise choose settlement the dispute done through non- judicial (non -litigation ) institutions, then they must view and comply with Law No. 30 of 1999.

## CONCLUSION

Mudharabah or qiradh part from one of form agreement Work same. Legal basis Qiradh is allowed, because qiradh is What did Rasulullah SAW do when he make a vow qiradh with site khadijah ( before marriage) for trade his wealth to the Levant and other countries. Friends have too agreed set legitimate his trading like that. As for the pillars and conditions

mudharabah or qiradh that is : Assets (capital), Work, Profit, Those who have capital and those who work ( workers ), Sighat ( ijab) granted ), and implementation Mudharabah usually applied to products financing and funding, Settlement dispute in contract mudharabah between capital owner with mudharib can completed with peace and or court. In general Language charity often called with meaningful association ikhtilath ( mixture ), namely mixing one of them of two treasures with treasure other without can differentiated between both of them. The basis law partnership from the Qur'an as mentioned in letter an-Nisa': 12. Hanafiyah state that harmonious partnership there are two, namely consent and accepted, there are several specified conditions in partnership, including related conditions with parties to the contract, shighah ( contract in consent qabul ), capital or distribution benefits. The scholars of fiqh share partnership in 2 (two) types Partnership for Endeavor, Partnership for Endeavor, Implementation charity in Islamic banking can found in financing such as : financing projects and venture capital, settlement dispute can done through institution justice. Both are strong right with the existence of the DSN fatwa: Mudharabah or Qiradh: DSN Fatwa Number 38/DSN-MUI/X/2002 concerning Certificate Investment Mudharabah Interbank (IMA). Musyarakah ( Syirkah ): DSN Fatwa Number 55/DSN-MUI/V/2007 concerning Financing Sharia Musyarakah Current Account.

#### REERENCES

- Adinda Khotifah Sangker. 2021. *Implementasi Akad Pembiayaan Mudrabah Dalam Bank Syariah. Institut Agama Islam Negeri Parepare*. Diakses pada tanggal 27 November 2024 jam 20:00.
- Al Hadi. A. A. 2017. *Fiqh Muamalah Kontemporer*. Depok: PT Rajagrafinda Persada.
- Budi Abdullah, Ansari, Asmuni. 2022. *Penyelesaian Sengketa Ekonomi Syariah Diperadilan Umum Dalam Perspektif Hukum Positif di Indonesia*. diakses pada tanggal 16 Desember pukul 15:21.
- Dani Mochamad Ramdani. 2023. *Implementasi Akad Musyarakah Pada Perbankan Syarian*. UIN Sunan Gunung Djati. Diakses pada tanggal 28 November 2024 jam 08:45.
- Farroh Hasan, A. 2018. *Fiqh Muamalah Dari Klasik Hingga Kontemporer (Teori dan Praktek)*. Malang: RGB Desain.
- Fedry Syahputra dan Amar Maulana. 2021. *Jurnal Syariah Dan Hukum Pemahaman Masyarakat Tetang Mudharabah (Qiradh), Hiwalah, dan Syirkah Dalam Islam*. Diakses pada tanggal 18 Oktober 2024 pukul 10:00.
- Huda Qomarul. 2011. *Fiqh Muamalah*. Yogyakarta: Teras.
- Kurnia Ningsih, P. 2021. *Fiqh Muamalah*. Depok: PT Rajagrafinda Persada.
- MN Iqbal, Faisarananda, Abiwaqqosh. 2023. *Tujuan Hukum Islam Dalam Perspektif Maqashid Al-Syari'ah*. Diakses pada tanggal 14 Desember 2024 pukul 15:00.
- Mohammad, R. 2022. *Fiqh Mu'amalah Kontemporer (Konsep Mudharabah)*. Aceh: Yayasan Penerbit Muhammad Zaini.
- Muhammad Syarif Hidayatullah. 2020. *Jurnal Implementasi Akad Berpola Kerja Sama Dalam Produk Keuangan di Bank Syariah (Kajian Mudharabah dan Musyarakah Dalam Hukum*



*Ekonomi Syariah*). UIN Antasari Banjarmasin. Diakses pada tanggal 17 Oktober 2024 jam pukul 10:30.

Syekh H. Abdul Halim Hasan. 2006. *Tafsir Al-Ahkam*. Jakarta: Kencana.

Yogi, Zainal, Hirsanuddin. *Penyelesaian Sengketa Pembiayaan Akad Musyarakah di PT. BPR Syariah Dinar Ashri*, Universitas Mataram, 2022, hal. 732. Diakses pada tanggal 29 November 2024 jam 16:50.