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MUSYARAKAH MUTANAQISAH-BASED HOME FINANCING: SHARIA COMPLIANCE, LEGAL LEGITIMACY, AND OPERATIONAL CHALLENGES IN ISLAMIC BANKING

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Abstract

Musyarakah mutanaqisah—based home ownership financing (KPR) has become increasingly popular, although this contract was initially developed for productive activities. This study aims to examine the suitability of *musyarakah mutanaqisah* for home financing under Sharia principles and applicable positive law, analyze its implementation in Islamic banking, and identify problems arising in practice. Using normative legal analysis with conceptual and practical approaches, this study examines the legitimacy and implementation of *musyarakah mutanaqisah* based on Bank Indonesia regulations and relevant DSN—MUI fatwas. The findings indicate that the existing regulatory framework provides legal legitimacy for applying *musyarakah mutanaqisah* to home financing. Although originally associated with productive activities, *musyarakah mutanaqisah* may also be applied to consumptive financing, provided that its pillars, conditions, and Sharia principles are fulfilled. In practice, home financing through *musyarakah mutanaqisah* employs a modified parallel contract model adapted to the characteristics of residential financing. Nevertheless, its implementation presents several legal and practical challenges, particularly regarding costs imposed on customers, taxation, and collateral arrangements. The study concludes that *musyarakah mutanaqisah* is legally and Sharia—compliant for home financing when implemented according to applicable regulatory requirements and contractual principles. Academically, this study contributes to the discussion of contemporary Islamic banking by clarifying the transformation of *musyarakah mutanaqisah* from a predominantly productive financing instrument into a Sharia—compliant mechanism for residential ownership. It also highlights the need for regulatory and contractual improvements to address cost, tax, and collateral issues and strengthen legal certainty and fairness for customers.

Abstrak

Pembiayaan kepemilikan rumah (KPR) berbasis musyarakah mutanaqisah semakin populer, meskipun akad ini pada awalnya dikembangkan untuk kegiatan produktif. Penelitian ini bertujuan untuk mengkaji kesesuaian musyarakah mutanaqisah dalam pembiayaan kepemilikan rumah berdasarkan prinsip syariah dan hukum positif yang berlaku, menganalisis penerapannya dalam perbankan syariah, serta mengidentifikasi permasalahan yang muncul dalam praktik. Dengan menggunakan analisis hukum normatif melalui pendekatan konseptual dan praktis, penelitian ini mengkaji legitimasi dan penerapan musyarakah mutanaqisah berdasarkan peraturan Bank Indonesia dan fatwa DSN-MUI yang relevan. Hasil penelitian menunjukkan bahwa kerangka regulasi yang ada telah memberikan legitimasi hukum terhadap penerapan musyarakah mutanaqisah dalam pembiayaan kepemilikan rumah. Meskipun pada awalnya berkaitan dengan kegiatan produktif, musyarakah mutanaqisah juga dapat diterapkan pada pembiayaan konsumtif sepanjang rukun, syarat, dan prinsip syariah terpenuhi. Dalam praktiknya, pembiayaan kepemilikan rumah melalui musyarakah mutanaqisah menggunakan model akad paralel yang telah dimodifikasi dan disesuaikan dengan karakteristik pembiayaan *perumahan. Namun, penerapannya masih menghadapi sejumlah tantangan hukum dan praktis, terutama terkait biaya yang dibebankan kepada nasabah, persoalan perpajakan, dan pengaturan jaminan. Penelitian ini menyimpulkan bahwa musyarakah mutanaqisah dapat diterapkan secara sah dan sesuai syariah dalam pembiayaan kepemilikan rumah apabila dilaksanakan berdasarkan ketentuan regulasi dan prinsip kontraktual yang berlaku. Secara akademik, penelitian ini berkontribusi pada kajian perbankan syariah kontemporer dengan menjelaskan transformasi musyarakah mutanaqisah dari instrumen pembiayaan yang terutama ditujukan untuk kegiatan produktif menjadi mekanisme yang sesuai syariah untuk kepemilikan rumah. Penelitian ini juga menekankan perlunya penyempurnaan regulasi dan kontrak untuk mengatasi persoalan biaya, pajak, dan jaminan serta memperkuat kepastian hukum dan keadilan bagi nasabah.*

INTRODUCTION

Poverty remains a persistent global challenge affecting many developing countries alike. Individuals living in poverty generally possess extremely limited financial resources, while some lack productive capital altogether. Moreover, access to formal financial services is often unattainable for low−income communities due to the absence of collateral, which commonly constitutes a primary requirement in conventional lending mechanisms.[1] In this context, Islamic financing has increasingly been promoted as an alternative approach to poverty alleviation, particularly because it avoids interest−based financing systems that are widely criticized for imposing significant financial burdens. Nevertheless, despite its potential advantages, Islamic financing is not entirely free from operational and structural challenges.

This research stems from the problems and debates that arise between theory and practice in Home Ownership Financing (KPR) using the *musyarakah mutanaqisah* contract in Islamic banking. Financing such as KPR, based on its characteristics, can be classified as consumptive credit financing.[2] Consumptive means providing financing facilities to customers to meet their needs for goods that can be enjoyed on a household scale. Meanwhile, when referring to its original principles and laws, *musyarakah mutanaqisah* financing is intended for specific activities or businesses that are productive. The development of *musyarakah mutanaqisah* contracts is carried out by combining several contracts into one,[3] which combines a *musyarakah* contract, an *ijarah* contract, and a sale *(bai')* contract.

To provide a thorough explanation of the issues raised in this paper, it is important to note that the object of KPR financing, a house is a consumer good. This statement refers to the opinions of several experts. Yusuf Qardawi's view, as cited by Sofyan Mei et al., states that a house is used for personal residence and is therefore a consumer good, not a productive good, even though its value increases annually. The house serves as a

[1] Pupun Saepul Rohman Et Al., "A Review On Literature Of Islamic Microfinance From 2010−2020: Lesson For Practitioners And Future Directions," *Heliyon* 7 (2021): 1−11.

[2] Miroslav Gabrovski And Victor Ortego−Marti, "Home Construction Financing And Search Frictions In The Housing Market," *Review Of Economic Dynamics* 55 (2025): 1−29, Https://Doi.Org/10.1016/J.Red.2024.101253.

[3] Rosylin Bt Mohd Yusof Et Al., "Rental Index Rate As An Alternative To Interest Rate In Musharakah Mutanaqisah Home Financing: A Simulation Approach," *International Journal Of Islamic And Middle Eastern Finance And Management* 9, No. 3 (2016): 397−416, Https://Doi.Org/Doi:%2010.1108/Imefm−11−2015−0141.

means of fulfilling fundamental human needs.[4] Muh Turizal Husein's view emphasizes that the financing object referred to in KPR financing is consumer goods.[5] He also notes that public interest in home ownership is increasing every year, and that current developments are still unable to meet the increasing demand. This is especially concerning when someone who wants to own a home cannot afford to buy it outright due to limited funds.

In principle and legal origin, *musyarakah mutanaqisah* is a derivative of the *musyarakah* contract, which means cooperation in combining assets to be used as business capital, and the results can be profits or losses shared together. In banking operations, this type of financing is often referred to as Profit and Loss Sharing (PLS).[6] When referring to the National Sharia Council (DSN—MUI) issued fatwa Number 73/DSN—MUI/XI/2008 concerning *Musyarakah Mutanaqisah*, normatively it can be understood that the provision states that *musyarakah mutanaqisah* is a *musyarakah* contract where the ownership of one *sharik* is reduced due to gradual purchase by another *sharik*. All provisions contained in the *musyarakah* contract also apply to the *musyarakah mutanaqisah* contract.[7] There are three main provisions in the *musyarakah* contract: capital participation from the shareholders, division of labour among the shareholders, and profit sharing. These three provisions can be realized through productive activities. This clearly demonstrates that the *musyarakah mutanaqisah* contract is implemented for productive transactions.

The development of Islamic financing requires Islamic banks to continue innovating by developing existing contracts, thereby providing a wider range of contract options for Islamic banks in conducting financing activities.[8] In fact, Islamic banks extensively utilize *musyarakah mutanaqisah*—based financing despite the various advantages and challenges associated with its implementation. The literature generally contends that the Islamic banking industry should expand the provision of this KPR financing scheme to the public due to its distinctive economic and sharia—compliant benefits.[9]

Islamic banks should exercise prudence in structuring and implementing contractual arrangements within financing products.[10] Therefore, several factors must be considered first through Sharia screening, including whether the object to be financed is halal (permissible), whether the financing project will cause harm to the customer, and whether

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[4] Sofyan Mei Utama Et Al., "Penerapan Akad Musyarakah Mutanaqisah Pada Perumahan Syariah Aster Village Ciwastra Menggunakan Produk Pembiayaan Kredit Bank Syariah Indonesia," *Jurnal Ilmiah Ekonomi Islam,* 9, No. 3 (2023): 4177—91.

[5] Muh Turizal Husein, "Telaah Kritis Akad Musyarakah Mutanaqisah," *Al Maal : Journal Of Islamic Economics And Banking* 1, No. 1 (2019): 79—88.

[6] Erty Rospyana Rufaida, "Profit And Loss Sharing: Konsep Dalam Perspektif Islam Dan Teori Perbankan Syariah," *Abdurrauf Social Science* 1, No. 2 (2024): 126—44, Https://Doi.Org/Https://Doi.Org/10.70742/Arsos.V1i2.36.

[7] Adhyt Pratama Febriansyah Asshiddiqie Et Al., "Legal Protection For Customers In The Musyarakah Contract In The Sharia Financial Institution Sector Is Linked To Law Number 21 Of 2008 Concerning Sharia Banking," *Formosa Journal Of Applied Sciences* 4, No. 9 (2025): 3185—98, Https://Doi.Org/Https://Doi.Org/10.55927/Fjas.V4i9.368.

[8] Ani Yunita Et Al., "Strengthening Of Sharia Savings, Loans, And Financing Cooperative Institutions: Friedman's Legal System Theory Framework," *Jurnal Media Hukum* 32, No. 2 (2025): 320—38, Https://Doi.Org/Https://Doi.Org/10.18196/Jmh.V32i2.28410.

[9] Abdul Salam Al—Muhtasib And Muhajirin, "Konsep Akad Musyarakah Mutanaqishah Dalam Pengembangan Sistem Murabahah Terhadap Bisnis Property," *Himmah: Jurnal Kajian Islam Kontemporer* 8, No. 1 (2024): 897, Https://Doi.Org/Https://Doi.Org/10.47313/Jkik.V8i1.3818.

[10] Nihal Touti And Asмвa Alaoui Taпb, "Research Status And Prospects Of Shariah Compliance Impact On Firm Risk, Performance And Resilience," *Journal Of Islamic Monetary Economics And Finance* 10, No. 4 (2024): 679—708, Https://Doi.Org/10.21098/Jimf.V10i4.2152.

the financing project is based on contracts permitted by Islamic Sharia. This process is crucial for Islamic banks to avoid problematic financing caused by non−compliance with muamalah principles.

This research refers to previous research by Lisa Nuralisa (2019), who argued that if there is a lack of conformity in the practice of Islamic banking contracts with Islamic contract theory, then it must be recognized that the fault lies with the actors or banking practitioners.[11] Furthermore, research by Emi Sri Rahayu Fatimah (2023) stated that the implementation of KPR financing with the *musyarakah mutanaqishah* contract often gives rise to several problems and issues related to sharia compliance. Some of the issues relevant to this research and touched upon include the principle of "two contracts in one" when the lease and purchase contracts are agreed upon simultaneously. Furthermore, legal issues related to the differences between fiqh rules and Indonesian positive law regarding the object of financing.[12] Then, research by Ina Naila Sakina et al. (2025) concluded that although KPR financing with the *musyarakah mutanaqishah* contract is an alternative and contributes to improving social and economic welfare, its implementation still faces challenges such as the risk of default, inconsistencies with Islamic contract theory, and the need to strengthen the risk management system.[13] Previous research has not fundamentally addressed the original intent of the *musyarakah mutanaqisah* contract as a form of financing that is productive. This study aims to fill this gap.

This research is significant because the sharia contract formulated by the parties serves as the legal and spiritual foundation for determining the permissibility of transactions conducted without elements of usury, gharar (uncertainty), and injustice, thereby ensuring that the resulting assets generate both legitimacy and blessings. The focus of this research is whether KPR financing using a *musyarakah mutanaqisah* contract in sharia banking has fulfilled its original rules and principles and how the *musyarakah mutanaqisah* contract, which is originally a productive partnership contract, can be implemented in consumer mortgage financing products in sharia banking.

METHODS

This study employs a normative juridical approach combined with conceptual and practical approaches to examine the implementation of the *musyarakah mutanaqisah* contract in home financing (KPR). The normative juridical approach is utilized to analyse the Islamic financing theory on *musyarakah mutanaqisah* financing and legal norms governing *musyarakah mutanaqisah* financing schemes practices in Indonesia, such as fatwas of the DSN−MUI. Through this approach, the study evaluates the conformity between the applicable law and the principles of sharia, especially with regard to partnership−based financing and legal certainty in Islamic home financing practices. A conceptual approach is further applied to examine the theoretical foundations of *musyarakah mutanaqisah* as a hybrid contract within Islamic finance. This approach enables the study to explore fundamental perspectives concerning profit−sharing principles and the distinction between *musyarakah mutanaqisah* and conventional mortgage systems. In addition, a practical approach is employed to assess the

[11] Lina Nur Alisa, "Akad Dalam Perbankan Syari'ah: Antara Konsep Dan Aplikasi," *Al Mabsut: Jurnal Studi Islam Dan Sosial* 13, No. 2 (2019): 115−26.

[12] Emi Sri Rahayu Fatimah Et Al., "Penerapan Akad Musyarakah Mutanaqisyah Sebagai Alternatif Solusi Pembiayaan Kpr Dalam Perbankan Syariah," *Iqro: Journal Of Islamic Education* 6, No. 2 (2023): 193−204.

[13] Ina Naila Sakinah Et Al., "Analisis Komparatif Pembiayaan Mmq Dan Kpr Konvensional," *Ebisnis (Jurnal Ilmiah Ekonomi Dan Bisnis)* 18, No. 1 (2025).

implementation of *musyarakah mutanaqisah* in Islamic banking institutions and to identify practical challenges arising in financing practices. The data utilized in this study consist of primary and secondary legal materials. Primary legal materials include Law Number 10 of 1998 on Banking, Law Number 21 of 2008 on Sharia Banking, Bank Indonesia Regulation Number 18/16/PBI/2016, DSN−MUI Fatwa Number 73/DSN−MUI/XI/2008 on *Musyarakah Mutanaqisah*, and DSN−MUI Fatwa Number 01/DSN−MUI/X/2013 on Guidelines for the Implementation of *Musyarakah Mutanaqisah* in Financing Products. Secondary legal materials are derived from scientific journals, books, previous studies, legal commentaries, and contemporary academic publications relevant to Islamic banking law and sharia financing contracts. Data collection is conducted through library research by examining legal documents, academic literature, court decisions where relevant, and official publications issued by regulatory and financial institutions. The collected data are subsequently analysed using qualitative content analysis of legal documents and scholarly literature. The analytical process is conducted systematically through stages of data reduction, interpretation, and verification in order to obtain a comprehensive understanding of the legal construction and practical implementation of *musyarakah mutanaqisah* in home financing.

RESULT AND DISSCUSSION

RESULT

Musyarakah Mutanaqisah Financing: An Overview

Musyarakah Mutanaqisah is one of the innovative financing products derived from the *musyarakah* contract. The term *mutanaqisah* itself originates from the Arabic word *yatanaqiu-tanaqusan—mutanaqisun*, which means to gradually decrease.[14] *Musyarakah Mutanaqisah* refers to a financing structure applied in Islamic banking based on the principle of *syirkah 'inan*, in which the capital share (*hishshah*) of one partner (Bank) gradually decreases as a result of a step−by−step commercial transfer or purchase (*naql al-hishshah bi al-'iwadh al-mutanaqisah*) by the other partner (customer).[15] Practically, *musyarakah mutanaqisah* (diminishing partnership) is a form of partnership between two or more parties for the joint ownership of an asset. In this arrangement, the ownership share of one party gradually decreases, while the ownership share of the other party correspondingly increases over time.[16] The transfer of ownership in this scheme is conducted through a gradual payment mechanism for the ownership portion held by the other party. Consequently, the partnership concludes when full transfer of ownership rights from one party to the other has been completed. Based on this understanding, the *musyarakah mutanaqishah* contract is implemented as a financing instrument in Islamic

[14] Azmi Nur Naila Najah And Muhammad Fauzan Januri, "Norms And Applications Of The Combination Of Contracts And Promises (Wa'ad) In Musyarakah Mutanaqisah Contracts," *Mabahits Al-Uqud* 1, No. 1 (2024): 31−40, Https://Doi.Org/Https://Doi.Org/10.15575/Mau.V1i1.941.

[15] Oyo Sunaryo Mukhlas Hidayat And Ayi Yunus Rusyana, "Implementasi Pembiayaan Musyarakah Mutanaqisah Di Perbankan Syariah Indonesia," *Alahyan Publisher* 2, No. 1 (2024): 74−87, Https://Doi.Org/Https://Doi.Org/10.61492/Cantaka.V2i1.141.

[16] Istianah Zainal Asyiqin Et Al., "Mush rakah Mutan qiṣah (Diminishing Partnership) Regulation For Housing Finance In Indonesian And Malaysian Law," *Al-Ahkam* 34, No. 1 (2024): 147−68, Https://Doi.Org/Https://Doi.Org/10.21580/Ahkam.2024.34.1.20133.

banking with a cooperative agreement for the purchase of an asset, in which the asset is initially owned jointly by both parties.[17]

The ownership proportion of each party is determined according to the amount of capital or funds contributed in the contractual agreement. Subsequently, the customer makes periodic payments or installments to acquire the ownership portion held by the Islamic bank. Over time, the bank's ownership share gradually decreases, while the customer's ownership share correspondingly increases through installment payments. At the end of the financing period, the bank's ownership portion is fully transferred to the customer, thereby granting the customer full ownership rights over the asset, such as a house.[18]

In *musyarakah mutanaqishah* agreement, the customer's ownership share in the capital asset does not gradually decrease. Instead, it increases over time as the customer purchases the bank's ownership portion through installment payments. Therefore, from the customer's point of view, this agreement should not be regarded as *musyarakah mutanaqishah* but rather as a *musyarakah ziyadah* contract.[19] The term *ziyadah* or *zada* refers to an increase. In this context, the transfer of ownership from the Islamic bank to the customer occurs in line with the increasing portion of the customer's capital, which grows through monthly installment payments.[20] When the installment period ends, full ownership of the asset becomes vested in the customer. The Islamic bank's ownership portion in the asset decreases proportionally in accordance with the amount of instalment payments made. In addition to the instalments required for the transfer of ownership, the customer is also obligated to pay rental fees to the Islamic bank until the bank's ownership share is fully relinquished.

With regard to the *musyarakah mutanaqishah* contract, it is permissible if one of the two partners *(sharik*) purchases the share (*hishshah*) of the other partner, as it essentially constitutes the purchase of the other party's ownership right. Furthermore, if two individuals are partners in the ownership of a building and one of the partners sells his share (*hishshah*) to a third party, such a sale is impermissible; however, if he sells his share to his co−partner, then the transaction is permissible. Wahbah al−Zuhaili also provides his opinion regarding the *musyarakah mutanaqishah* contract. He states that *musyarakah mutanaqishah* is permissible in Sharia, due to the similarity to *Ijarah Muntahiyah bi-al-Tamlik* which based on a promise made by the Bank to its partner (the customer) that the Bank will sell its ownership portion in the partnership once the partner has paid the price of the Bank's portion. During the validity of the contract, *musyarakah mutanaqishah* is regarded as a *Syirkah 'Inan*, as both parties contribute capital (*ra's al-mal*), and the Bank delegates to its customer−partner the authority to manage the business activity. Upon the termination of the partnership, the Bank sells all or part of its

[17] Istianah Zainal Asyiqin And Fe Fikran Alfurqon, "Musyarakah Mutanaqisah: Strengthening Islamic Financing In Indonesia And Addressing Murabahah Vulnerabilities," *Jurnal Media Hukum* 31, No. 1 (2024): 1−18, Https://Doi.Org/Https://Doi.Org/10.18196/Jmh.V31i1.20897.

[18] Abdul Hakim Muntashir And Cupian Cupian, "Analisis Faktor−Faktor Yang Memengharuhi Npf Pembiayaan Umkm Di Perbankan Syariah Periode 2019−2022," *Ekonomis: Journal Of Economics And Business* 8, No. 1 (2024): 101, Https://Doi.Org/Https://Doi.Org/10.33087/Ekonomis.V8i1.1268.

[19] T. Abrar Za, "Etika Transaksi Bisnis Perspektif Islam (Penerapan Di Lembaga Keuangan Syari'ah)," *Istikhlaf: Jurnal Ekonomi, Perbankan Dan Manajemen Syariah* 6, No. 1 (2024): 1−13, Https://Doi.Org/Https://Doi.Org/10.51311/Istikhlaf.V6i1.532.

[20] Salimatur Rahmah And Anna Zakiyah Hastriana, "Conceptual Analysis Of Musyarakah Mutanaqishah Contract And Its Implementation In Islamic Banking," *Al-Hiwalah: Journal Syariah Economic Law* 4, No. 1 (2025): 76−87, Https://Doi.Org/Https://Doi.Org/10.47766/Al−Hiwalah.V4i1.5258.

ownership share to the partner, provided that such sale is executed through a separate contract that is not tied to the partnership agreement.[21]

Aishath Muneeza el al asserts that *musyarakah mutanaqishah* can generally be regarded as one of the types of *musyarakah* financing. *Musyarakah* financing, in its general form, consists of various forms and categories.[22] As Aghilasse Kashi et al opines that the nature (*tabi'at*) of *musyarakah* is akin to a form of sale, as *musyarakah* is regarded as the purchase of an unspecified portion (*hishshah*), an undivided share (*musya'*) of an asset or principal property.[23] Accordingly, if one of the partners (*sharik*) wishes to withdraw their rights from the partnership, they may sell the portion they own, whether to a third party or to the remaining partner who continues the *musyarakah*.[24]

Scholars have expressed diverse views regarding *musyarakah mutanaqishah*. Dadin Solihin et al., further cite a number of scholars, among them Ibn Qudamah, who contends that if one of the partners (*shark*) in a partnership purchases the portion (*hishah*) of the other, such a transaction is permissible, as it constitutes the acquisition of the other party's share of ownership and Ibn Abidin, who asserts that the sale of a partner's share in jointly owned property, such as a building, to a third party is impermissible; however, if the sale is made to the existing partner, it is lawful.[25] Wahbah al−Zuhayli, as cited by Islam Asadov Alam et al., further affirms that *musyarakah mutanaqishah* is permissible under Islamic law, as the contract is based on the commitment of the bank to sell its ownership share to the customer once the customer has paid the agreed price.[26] Throughout the duration of the contract, *musyarakah mutanaqishah* is characterized as *shirkah 'inan*, as both parties contribute capital (*ra's al-mal*) and the bank authorizes the customer to manage the venture.

Another view is presented by Kamal Taufiq Muhammad Hathab as cited by Muhammad Izazi Nurjaman et al., Who states that *musyarakah* has the nature of a sale, when one of the partners (*shark*) intends to withdraw from the partnership, he may sell his ownership share either to a third party or to the other partner.[27] Meanwhile, according to Chuzaimah Batubara, *musyarakah mutanaqishah* constitutes one form of *musyarakah* financing in its general sense, wherein *musyarakah* financing encompasses various types. From the perspective of financing continuity (*istimrariyah al-tamwil*), *musyarakah* can be classified into three categories, namely single−transaction financing, permanent *musyarakah* financing, and *musyarakah mutanaqishah* financing.[28]

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[21] Alam Asadov Et Al., "Musharakah Mutanaqisah Home Financing: Issues In Practice," *Journal Of Islamic Accounting And Business Research* 9, No. 1 (2018): 91−103, Https://Doi.Org/Https://Doi.Org/10.1108/Jiabr−08−2015−0036.

[22] Aishath Muneeza Et Al., *House Financing: Contracts Used By Islamic Banks For Finished Properties In Malaysia*, 11, No. 1 (2020): 168−78.

[23] Aghilasse Kashi And Azhar Mohamad, "Does Musharakah Mutanaqisah Converge With Bai Bithamin Ajil And Conventional Loans?," *International Journal Of Law And Management* 59, No. 5 (2017): 740−55.

[24] Imran Mehboob Shaikh And Kamaruzaman Noordin, "Acceptance Of Islamic Equity−Based Mortgage Product: An Extension Of Decomposed Theory Of Planned Behaviour," *Journal Of Islamic Monetary Economics And Finance* 6, No. 2 (2020): 403−18, Https://Doi.Org/Https://Doi.Org/10.21098/Jimf.V6i2.1164.

[25] Dadin Solihin And Abin Suarsa, "Bentuk Pembiayaan Musyarakah Mutanaqishah Di Lembaga Keuangan Syariah," *Jurnal Ilmiah Mea (Manajemen, Ekonomi, & Akuntansi)* 3, No. 1 (2019): 136−60.

[26] Alam I. Asadov And Mansor H. Ibrahim, "Theoretical Impact Of Enhanced Musharakah Mutanaqisah Home Financing On Real Estate Prices," *Journal Of Islamic Monetary Economics And Finance* 4, No. 1 (2018): 133−60, Https://Doi.Org/Https://Doi.Org/10.21098/Jimf.V4i1.747.

[27] Muhamad Izazi Nurjaman Et Al., "Transformasi Akad Natural Uncertainty Contracts: Akad Musyarakah Mutanaqishah (Mmq) Pada Lembaga Keuangan Syariah," *Tawazun: Journal Of Sharia Economic Law* 5, No. 1 (2022): 92−106.

[28] Chuzaimah Batubara, *Trend Issues Dan Principles Dalam Fiqh Muamalah* (Merdeka Kreasi, 2025).

The Application of *Musyarakah Mutanaqisah* Contracts in Sharia Banking Home Financing

In carrying out its function as a distributor of funds and financing facilities to the community as regulated in Law Number 10 of 1998 on Banking and Law Number 21 of 2008 on Sharia Banking, banks must have legitimacy and a legal basis in providing certain financing which is regulated through applicable laws and regulations.[29] Regarding home financing activities carried out by Islamic banks, *musyarakah mutanaqisah* is not the only financing contract to provide home financing facilities. Long before that, many Islamic banks used other financing models based on *Ijarah Muntahiya Bitamlik* and *Murabahah bil Wakalah*. The difference lies in the combination and modification of the contracts. *Ijarah Muntahiya Bittamlik* is a form of financing contract that combines leasing (*ijarah*) with a sale and purchase (*murabahah*) or a grant at the end of the lease period. This shows that there are two forms of contract combination: leasing with a sale and purchase and leasing with a grant, which is an agreement between two parties to carry out a transaction that includes two or more contracts. Meanwhile, *Murabahah bil Wakalah* is a sale and purchase with a *wakalah* system. In this buying and selling system, the seller represents his purchase to the customer, the first contract is a wakalah (representative) contract. After the wakalah contract ends, which is marked by the delivery of goods from the customer to the Sharia bank, then the institution provides a *murabahah* contract.

Specifically, the home financing model using the *musyarakah mutanaqisah* contract is a type of financing that has recently become widely used. Regulators have provided legal certainty through Bank Indonesia Regulation Number 18/16/PBI/2016. Article 1, paragraph 12, states that the *musyarakah mutanaqisah* contract is a *musyarakah* financing facility where ownership of assets (goods) or capital by one party is reduced due to gradual purchases by the other party. This means that legally, home financing conducted by Islamic banks through the *musyarakah mutanaqisah* scheme has been recognized and has strong legal legitimacy.

However, in practice, Islamic banks need to pay close attention to the provisions of several DSN—MUI fatwas. As is known, fatwas are not originally binding like positive law, but their status changes to binding positive law when they are adopted into legislation. The MUI fatwa has been stipulated in the Islamic Banking Law and therefore explicitly has legal force. DSN—MUI Fatwa Number 73/DSN—MUI/XI/2008 on *musyarakah mutanaqisah*, which fundamentally regulates the provisions of contracts both in general and specifically. In addition, the Islamic banking industry also needs to refer to the fatwa Number 01/DSN—MUI/X/2013 on Guidelines for the Implementation of *Musyarakah Mutanaqisah* in Financing Products, which clarifies the objectives, objects, fine provisions, and resolution of problematic financing in *musyarakah mutanaqisah*.

Accordingly, from the standpoint of the prevailing legal framework, the implementation of *musyarakah mutanaqisah* financing within the Indonesian banking sector does not encounter significant juridical barriers. The existing regulatory structure, particularly through the provisions issued by Bank Indonesia and the fatwas promulgated

[29] Siti—Nabiha A.K. And Noval Adib, "An Institutional Analysis Of The Emergence And Institutionalisation Of Islamic Banking Practices In Indonesia," *Journal Of Islamic Accounting And Business Research* 11, No. 9 (2020): 1725—38, Https://Doi.Org/10.1108/Jiabr—06—2016—0069.

by DSN—MUI, has provided sufficient legal legitimacy for the application of *musyarakah mutanaqisah* contracts in home financing practices. Consequently, Islamic banking institutions are legally permitted to adopt and implement such contractual arrangements within the framework of positive law in Indonesia.

Table 1. The Practice of Home Financing in Several Islamic Banks Reviewed from Previous Research

Bank	**Application of Financing**
Bank Syariah Indonesia[30]	The implementation of mortgage financing based on *Musyarakah Mutanaqishah* in BSI branch office X uses a hybrid contract scheme consisting of *musyarakah* and *ijarah* contracts. The *musyarakah* contract is used as a partnership in asset ownership between the bank and the customer, while profits are obtained through the *ijarah* contract for leasing assets to the customer. A portion of the customer's is then diverted to purchase the bank's portion (*hishah)* in stages.
Bank Muamalat[31]	*Musyarakah mutanaqishah* financing at Bank Muamalat branch office X begins with a partnership agreement in which the bank and customer both contribute capital to acquire assets. In practice, the financing process includes executing the *musyarakah* contract, verifying collateral documents, determining margin levels and down payment requirements, agreeing on administration and insurance fees, disbursing funds, and establishing a profit—sharing payment schedule, including the purchase (*B'ai*) of bank *hishah* by customers.
Bank Tabungan Negara Syariah[32]	The implementation of mortgage financing with *musyarakah mutanaqisah* at BTN Syariah branch office X begins with an agreement between the bank and the customer to jointly purchase the property with musyarakah contract. Then, an *ijarah* contract is applied, where the customer rents a portion of the bank's ownership. Customer promises (*wa'ad*) to bank, he will purchases it in stages until acquire full ownership. BTN Syariah has implemented this scheme by using two main documents, *musyarakah contract* for initial ownership and an *ijarah* contract for the rental mechanism.

In practice, by referring to various previous studies, it can be explained that the implementation of *musyarakah mutanaqisah* on home financing consists of several parallel contracts, but has a different combination of contracts.[33] In essence, m*usyarakah mutanaqishah* can consist several contracts: the *musyarakah 'inan* contract, the *wa'ad* (promise) from the customer to the bank to purchase the capital goods, an *ijarah* for leasing assets/bank's *hishah* to the customer, and the instalment—based purchase of the capital goods by the customer (*Ba'i*). In its implementation, Islamic banks do have a role in determining and regulating the combination of contracts in *musyarakah mutanaqisah* financing in such a way that it remains within the corridor and principles of sharia. This is because the DSN—MUI fatwa does not explain the technical details further. In general,

[30] Utama Et Al., "Penerapan Akad Musyarakah Mutanaqisah Pada Perumahan Syariah Aster Village Ciwastra Menggunakan Produk Pembiayaan Kredit Bank Syariah Indonesia."

[31] Muhammad Yaasiin Raya And Haidir Setiawan, "Musyarakah Mutanaqishah (Diminishing Partnership) In Kpr Ib At Bank Muamalat Gowa," *Tadayun: Jurnal Hukum Ekonomi Syariah* 6, No. 1 (2025): 64—76.

[32] Yuni Sartika Et Al., "Analisis Implementasi Akad Musyarakah Mutanaqisah Dalam Pembiayaan Rumah Di Bank Btn Syariah Kc Makassar," *Saujana: Jurnal Perbankan Dan Ekonomi Syariah* 8, No. 1 (2026): 153—67.

[33] Yuli Nurhayati And Asyari Hasan, "Analysis Of The Mutanaqisah Musyarakah Contract As A Solution For Home Ownership Financing In Islamic Banking," *Indonesian Interdisciplinary Journal Of Sharia Economics* 5, No. 1 (2022): 390—408, Https://Doi.Org/Https://Doi.Org/10.31538/Iijse.V5i1.1770.

it can be explained that the implementation of *musyarakah mutanaqisah* financing in home financing by sharia banks is in accordance with sharia principles.

Therefore, the *Musyarakah mutanaqishah financing model on KPR Financing in Sharia banks can be explained as follows: Musyarakah contract represents a form of cooperation between partners (sharik), the bank and the* customer for joint ownership of an asset. In such joint ownership, it is agreed by the *Wa'ad* contract that the house ownership portion of one partner will gradually decrease, while the portion of the other party correspondingly increases.[34] The transfer of ownership occurs through a payment mechanism for the ownership rights. This form of partnership concludes with the transfer of one party's ownership rights to the other. The transfer of ownership over the asset is executed by entering into a *Bai'* (sale and purchase) contract between the parties.[35]

Hence, in theory, it is justified if the *musyarakah mutanaqisah* agreement can be applied in mortgage financing by sharia banking because the financing contains aspects of cooperation.[36] Meanwhile, its implementation adheres to the principles of Sharia contract theory. The parallel contract in musyarakah mutanaqisah represents a modification and has been adapted to meet the needs of the community. Furthermore, the presence of musyarakah mutanaqisah financing can provide benefits, fairness, and convenience for individuals in need.

However, the authors believe that the financing object, a house, will indeed be productive and generate profits for the bank when viewed from the use of its accompanying contracts, namely *ijarah* (rent) and *bai* (sale and purchase). However, in our analysis, the essence of the *musyarakah* contract as a cooperation contract in certain productive business activities is not realized. Nevertheless, the regularity of the *musyarakah* contract, as the parent contract of *musyarakah mutanaqisah*, is very strong from the aspect of cooperation between the *sharik*. Therefore, the logical consequence is that KPR financing, when viewed from the customer's perspective, becomes unproductive.

Based on the Islamic Finance Conference in Dubai, which stated that the contract may be used provided that the *dhawabit* (criteria/parameters) are fulfilled, namely:[37]

1. The *musyarakah mutanaqishah* contract should reflect a genuine partnership arrangement rather than a disguised debt−based financing mechanism, requiring capital contribution, joint business participation, and proportional profit−and−loss sharing among the partners.
2. The capital contributed by the bank or Islamic Financial Institution must constitute fully owned assets.
3. Banks are not permitted to require guarantees ensuring the full return of capital in the event of business losses, as such arrangements may indicate elements of concealed usury.

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[34] Dhea Agustin And Anna Zakiyah Hastriana, "Implementasi Akad Musyaraah Mutanaqisah Dalam Kredit Pemilikan Rumah Pada Perbankan Syariah," *Dalwa Islamic Economic Studies* 3, No. 2 (2024): 128−40, Https://Doi.Org/Https://Doi.Org/10.38073/Dies.V3i2.2236.

[35] Tuti Anggraini Et Al., "Implementation Strategy Of The Mutanaqishah Musyarakah Academic At Home Ownership Financing In Sharia Banks In Indonesia," *Budapest International Research And Critics Institute (Birci-Journal): Humanities And Social Sciences* 4, No. 2 (2021): 2394−415, Https://Doi.Org/Https://Doi.Org/10.33258/Birci.V4i2.1941.

[36] A. R. Saafi, "Diminishing Partnership (Musharakah Mutanqisah) Product For Islamic Home Financing: The Concept For Islamic Financial Institutions In Afghanistan," *International Journal Of Islamic Economics And Finance Research* 4, No. 2 (2021): 14−24, Https://Doi.Org/Https://Doi.Org/10.53840/Ijiefer58.

[37] Muhammad Ali Akbarsyah Et Al., "Implementasi Konsep At−Taisir Dalam Fatwa Akad Mudharabah Dewan Syariah Nasional," *Al-Afkar: Journal For Islamic Studies* 7, No. 4 (2024): 1681−94, Https://Doi.Org/10.31943/Afkarjournal.V7i4.1164.

From point 1, it can be understood that in a *musyarakah mutanaqishah* contract, the principal or underlying contract is the *musyarakah* contract. In a *musyarakah* arrangement, the fundamental concept is intended for productive financing, as the partnership is established between parties who possess capital and the capability to operate a business. Each party contributes capital to establish a business, which is then jointly managed. If the business yields profit, such profit is distributed among the parties according to the agreed ratio; conversely, if the business incurs a loss, such loss is borne proportionally by the parties based on their respective capital contributions and participation in managing the business.[38] As the principal contract, the fundamental principles inherent in the *musyarakah* contract should likewise serve as the foundational concept in a *musyarakah mutanaqishah* contract. Accordingly, the *musyarakah mutanaqishah* contract is also intended for productive financing.[39]

Except in two possibilities: *first*, the customer becomes both the buyer of the ownership portion and the tenant. The lease aspect of mortgage financing creates a profit, making it productive. However, this poses a dilemma: how can a customer, who is part of the "owner" of the financing object, rent out their own property? Second, if, after financing, the customer intends to rent the house to another party, the essence of the cooperation agreement is clearly evident, and the object of the agreement becomes productive, generating profits that can be shared between the bank and the customer.[40] Then, ownership of the financing object will gradually transfer from the bank's portion to the customer's portion.[41]

Legal and Operational Challenges

It was revealed in this study that the *musyarakah mutanaqisah* approach in home financing is a relative new concept and strictly follows shariah guidelines. The *musyarakah mutanaqisah* approach is based on welfare for all rather than profit.[42] *Musyarakah mutanaqisah* in home financing is considered an alternative to other types of financing because financing such as *Ijarah Muntahiya Bitamlik* and *Murabahah bil Wakalah* is argued to be much more expensive and faces difficulty in working within a conventional framework. Nevertheless, there are some issues spotted with *musyarakah mutanaqisah* model when implemented on the ground.[43]

As noted by Rahmawaty, issues spotted in the practice of *musyarakah mutanaqishah* financing relate to the transfer of various transaction costs to the customer.[44] These costs generally include administration, insurance, notary fees, and appraisal fees. Conceptually,

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[38] Anas Maulan Et Al., "Comparative Analysis Of Murabahah Financing Agreement With Musyarakah Mutanaqisah Financing Agreement In Indonesia's Sharia Banking System," *International Journal Of Law And Society* 2, No. 1 (2023): 43–51, Https://Doi.Org/Https://Doi.Org/10.59683/Ijls.V2i1.31.

[39] Putri Tri Cahyani Et Al., "Musyarakah Mutanaqisah As A Financing Solution For Working Capital And Productive Property In Islamic Financial Institutions In Indonesia," *Mabahits Al-Uqud* 1, No. 2 (2025): 94–112, Https://Doi.Org/Https://Doi.Org/10.15575/Mau.V1i2.1238.

[40] Miti Yarmunida, "Musyarakah Mutanaqishah Pada Perbankan Syariah Di Indonesia : Pendekatan Maqasid Syariah," *Jurnal Baabu Al-Ilmi* 5, No. 2 (2020): 216–24.

[41] Muhammad Wahyu, "Implementasi Prinsip Syariah Pada Akad Pembiayaan Musyarakah Mutanaqishah Dalam Produk Kredit Pemilikan Rumah," *Aktualita* 1, No. 2 (2018): 416–31.

[42] Kevin Loke Ke Wei And Hassanudin Mohd Thas Thaker, "A Qualitative Inquiry Into Islamic Home Financing: Evidence From Malaysia," *Qualitative Research In Financial Markets* 9, No. 2 (2017): 147–67, Https://Doi.Org/10.1108/Qrfm–07–2016–0020.

[43] Hasnan Baber, "A Comparative Study Of Islamic Housing Finance Models And Issues," *Qualitative Research In Financial Markets* 9, No. 2 (2017): 168–80, Https://Doi.Org/10.1108/Qrfm–12–2016–0053.

[44] Rahmawaty, "Implikasi Akad Musyarakah Mutanaqisah Perbankan Syari'ah (Studi Peluang Dan Resiko Di Bank Mu'amalat Cabang Manado)," *Jurnal Ekonomi Syari'ah* 3, No. 2 (N.D.): 226–36.

the *musyarakah mutanaqishah* contract is built on the principles of partnership and risk−sharing, meaning the bank and customer act as partners who jointly own the financing assets. This raises fundamental questions about the consistency of financing practices with Sharia principles. One contributing factor to this situation is that banks tend to position customers as those who directly benefit from the use of assets, thus deeming the associated costs appropriate to be passed on to customers. However, this approach has the potential to shift the substance of *musyarakah mutanaqishah* from a partnership model to a relationship resembling conventional financing.

According to Husein, one of the challenges that arises in financing *musyarakah mutanaqisah* is related to tax administration.[45] When we examined in practice, there is indeed no clarity regarding who bears the tax liability, such as property tax (*Pajak Bumi dan Bangunan* − PBB), during the financing period. Normatively, the property owner is obligated. This problem arises because the characteristics of the *musyarakah mutanaqishah* contract place the bank and customer as joint owners of the financing object until the bank's entire ownership portion is transferred to the customer. This joint ownership status creates ambiguity regarding which party is legally obligated to bear the PBB burden, especially when the asset certificate is still held in joint names or in the name of one party for administrative purposes. Although this contract is fundamentally based on the concept of joint ownership, the burden of taxation is often shifted entirely to the customer.

In our previous unpublished research, we identified a fundamental problem with Islamic financing in Indonesia. In practice, many financial institutions, particularly Islamic banks, still use material collateral. This can be understood as collateral not intended to guarantee a return on capital, but rather to ensure that clients conduct their businesses responsibly and diligently. Furthermore, according to Sharia principles, collateral, particularly in partnership financing, is actually prohibited. However, the DSN−MUI holds a differing opinion. In Fatwa Number 08/DSN−MUI/IV/2000 concerning *musyarakah* financing, it is determined that to prevent deviations or misconduct, the bank or Islamic Financial Institution may request collateral.

CONCLUSION

The application of *musyarakah mutanaqisah* in home financing through Islamic banking is legally and Sharia−compliant when implemented according to the applicable contractual requirements, regulatory framework, and relevant DSN−MUI fatwas. Although the contract was initially associated primarily with productive activities, its partnership structure allows adaptation to residential financing because it facilitates joint ownership followed by the gradual transfer of property ownership to the customer. The existing regulatory framework provides sufficient legal legitimacy for its application in home financing, while Islamic contract principles ensure that the arrangement remains based on mutual consent, transparency, clearly defined rights and obligations, and compliance with Sharia principles. In practice, Islamic banks employ a modified parallel contract structure that combines *musyarakah*, *ijarah*, *wa'ad*, and *ba'i* contracts to accommodate property acquisition, utilization, rental payments, and gradual ownership transfer. Therefore, *musyarakah mutanaqisah* demonstrates considerable flexibility as a contemporary Islamic financing instrument. Its application also illustrates the ability of Islamic banking institutions to transform classical partnership principles into financing

[45] Husein, "Telaah Kritis Akad Musyarakah Mutanaqisah."

products that respond to modern housing needs without abandoning their normative foundations. The study concludes that the use of *musyarakah mutanaqisah* for home financing is appropriate as long as its implementation consistently fulfills Sharia requirements and applicable legal provisions.

Nevertheless, the legitimacy of *musyarakah mutanaqisah* does not eliminate the practical and legal challenges associated with its implementation. The main problems identified concern the costs imposed on customers, taxation, and collateral arrangements. These issues can influence the affordability, efficiency, and fairness of home financing and may create uncertainty when contractual responsibilities are not clearly distributed between banks and customers. The involvement of multiple contracts within a single financing structure also requires greater contractual transparency to prevent misunderstanding regarding ownership, rental obligations, payment mechanisms, and risk allocation. Accordingly, Islamic banks and regulators need to strengthen regulatory harmonization, simplify contractual structures where possible, and ensure transparent disclosure of all costs and obligations. Collateral mechanisms should likewise provide balanced protection for both parties while respecting the principles of joint ownership and gradual ownership transfer. This study contributes academically by demonstrating that *musyarakah mutanaqisah* can function as a legitimate and relevant Sharia—compliant mechanism for contemporary home financing. However, its effectiveness depends not only on formal compliance with Sharia and positive law but also on consumer protection, equitable risk and cost allocation, and legal certainty. Future regulatory and contractual improvements are therefore essential to strengthen the sustainability, fairness, and practical effectiveness of *musyarakah mutanaqisah* in Islamic home financing.

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Danang Wahyu Muhammad contributed to the study's conceptualization and design, including theoretical framing. Izzy Al Kautsar conducted field work and data collection, also performed data analysis and interpretation, and led the drafting of the manuscript. Ahdiana Yuni Lestari contributed to the substantive and critical revision of the manuscript. Ayi Leoni Putri contributed to entering the manuscript into the template and ensuring language corrections. All authors reviewed and approved the final version of the manuscript and take full responsibility for its content.

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The authors declare that they have no known competing financial or non-financial interests that could have influenced the work reported in this paper.

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