

KRITIK TERHADAP IMPLEMENTASI AKAD MUSYARAKAH DI PERBANKAN SYARIAH

CRITICISM OF MUSYARAKA CONTRACT IMPLEMENTATION AT SHARIA BANKING

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ABSTRACT

Musyaraka is one of Islamic business contracts. Musharaka contract in business activities to be exact at sharia banking is operationalized based on profit sharing, which makes the product becomes a characteristic of sharia bank. However, there are such notes regarding to operational mechanisms for these products, which Islamic bank does not seem to contribute concretely in managing such joint ventures that already created through that contract. This article aims to discuss whether the implementation of the musyaraka contract at sharia banking is appropriate with the concept of syirka / musyaraka itself. This is a type of descriptive qualitative research with library research approach. This research revealed that it needs such concrete efforts in order to carry out monitoring and evaluation regarding to this contract specifically in business that already created between sharia banking and customers. Therefore, what is required in musyaraka financing contract can be realized through Islamic principle properly.

Key words: Criticism, Musyaraka Contract, Sharia Banking

ABSTRAK

Musyarakah merupakan salah satu kontrak bisnis Islam. Akad tersebut dalam konotasi bisnis khususnya di bank syariah dikenal sebagai akad bagi hasil, yang menjadi karakteristik dari industri perbankan syariah. Namun, terdapat beberapa catatan mengenai mekanisme pelaksanaan akad tersebut di bank syariah yang dinilai belum sesuai dengan prinsip syariah. Artikel ini bertujuan untuk mengulas lebih dalam mengenai apakah implementasi akad musyarakah di perbankan syariah sudah sesuai dengan prinsip-prinsip syariah itu sendiri. Penelitian ini merupakan penelitian deskriptif kualitatif dengan pendekatan *library research*. Hasil dari penelitian ini menunjukkan bahwa perlu adanya upaya konkret dalam hal ini ialah monitoring dan evaluasi oleh bank syariah ketika melakukan kontrak musyarakah dengan nasabah dalam rangka merealisasikan prinsip-prinsip syariah itu sendiri.

Kata kunci: Akad Musyarakah, Kritik, Perbankan Syariah

INTRODUCTION

Syirka is one of *muamala* contracts which means a joint venture contract which conducted by two persons or more that that. *Syirka* or *musyaraka* is one of popular contracts in the world of Islamic business. It says so, because *syirka* contract is operated based on profit sharing principle as the characteristic of Islamic business.

This is also well-known as a partnership system in the term of business, while there are some people which joining regarding to creating such a business, and it operationalized through the joint venture or partnership approach. This is appropriate through Wahbah az-Zuhaili which explained that *syirka* or *musyaraka* is a partnership contract in order to make business which carry out between some people, and every people who are joining in this kind of contract should be contributed crucial things such as: capital, skill, and time in order to operationalize the business. Meanwhile, profits which got from the business would be shared according to proportion based on mutual agreement of the contract. It is not only about profit, but losses as well would be burdened of every parties proportionally (az-Zuhaili, 2000).

Principally, concept of *syirka* is different from company (joint venture) model in capitalism economy system. This differences can be seen from the basic principle of those two systems. In *syirka*, there is no interest (read: *riba*) because it operationalizes based on profit and loss sharing system. Besides, a fundamental difference also seen in the terms of establishing profits and losses as well as responsibilities of each particular parties who are joining in this *musyaraka* contract (Setiawan, 2013).

In the world of Islamic business, *syirka* has a prominent role in the term of financing contract in order to help people who experiencing a deficit condition regarding to running such business. This contract becomes one of characteristics

contracts at sharia banking after *mudharaba*. This is because *syirka* or *musyaraka* contract at sharia banking is running based on profit and loss sharing principle which is the main characteristic of sharia financial institution (Lestari, 2019).

Syirka or *musyaraka* comes as an alternative in the term of financing specifically in providing such fund for someone who experiencing deficit condition regarding to creating and running such business based on partnership scheme and profit loss sharing system without *riba*. Generally, the implementation of *musyaraka* in the term of business contract can be seen at sharia finance institution activities especially sharia banking. This kind of contracts become a characteristic of sharia banking operational system while it uses profit and loss sharing system. This is appropriate through the Indonesia's constitution No. 21/2008 which mentioned that sharia banking is a finance institution with profit and loss sharing as a fundamental basis system in running its operational management activities.

Nevertheless, the implementation of *syirka* or *musyaraka* contract at sharia banking seems to omit the essence of *musyaraka* concept itself which refers to the sharia principle. In this *musyaraka* contract sharia banking seems to does not contribute yet such a concrete effort in order to manage the partnership business that already created based on the contract agreement.

Therefore, based on matter that already revealed, this article aims to discuss and criticize *musyaraka* concept and its implementation at sharia banking as the representation of Islamic business activity.

THEORY AND METHODOLOGY

The Concept and Legal Basis of *Musyaraka*

Syirka or *musyaraka* has several meanings at law of dictionary such as

union, partnership, and company (joint venture). Meanwhile in the term of *fiqh* (Nssrun, 2007) and Amir Machmud Rukmana (Rukmana, 2010) *musyaraka* is a contract which conducting by two people or more that these in order to gain such a profit through creating business based on partnership system. Sharia law compilation article 20 (3) mentioned that such an activity which contributing capital, skill, trustworthies among other parties regarding to carry out business calls *syirka* or *musyaraka*. In *musyaraka*, not only capital or skill which sharing by every parties, but in the term of profits and losses as well.

According to *fiqh* expert specifically *hanafiya*, *malikiya*, *hambali*, and *syafi'iyya* defined *musyaraka* as a partnership business contract which carrying by several people though contributing such capital, or skill proportionally based on the contract agreement, and the main purpose of this activity is gaining profits based on profit and loss sharing system (Ghufron A., 2002).

On one hand, Budisantoso and Sigit Triandu also explained that *musyaraka* financing is partnership system in regarding to creating such a business, and every parties who joining in this contract has responsibility in managing the business. The proportion of profit sharing does not have to be balanced through the percentage of capital proportion. This is because, in *musyaraka* contract, not only capital which contributed, but skill and time as well become a prominent aspect in this contract. While, if the business is experiencing such financial loss, every parties should be responsible based on their capacity (Budisantoso, 2006). On the other hand, Ahmad Dahlan (Dahlan, 2012), Muhammad Solahuddin (Sholahuddin, 2008) also explained that *musyaraka* is a partnership contract which conducting by two people or more, and every people who joining in this contract contributes their capability in order to manage the

business properly based on the contract agreement.

Based on the explanation, it could be concluded that *musyaraka* is a partnership business contract between several people in order to running such business based on profit and loss sharing system and refers to the contract agreement.

This is accordance through Q.S al-Nisa': 12

فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثَّلَاثِ ۗ
مَنْ بَعْدَ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ ۗ

Meaning:

"So they allied in the third one, after being filled with the will made by him or after being paid the debt without giving mudharat." (Q.S al-Nisa': 12).

Besides, legal basis of *musyaraka* also can be seen in Q.S al-Shad: 24

وَإِنْ كَثِيرًا مِّنَ الْخُلَطَاءِ أَلْبَغَىٰ بَعْضُهُمْ عَلَىٰ
بَعْضٍ إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ وَقَلِيلٌ مَّا هُمْ ۗ وَظَنَّ
دَاوُدُ أَنَّمَا فَتَنَّاهُ فَاسْتَغْفَرَ رَبَّهُ وَخَرَّ رَاكِعًا وَأَنَابَ

Meaning:

"And in fact, most of the people who associate some of them do wrong to some other, except those who believe and do righteous deeds; and there are very few of them" (Q.S al-Shad: 24).

Generally, there are several types of *syirka* or *musyaraka* based on *fiqh* expert thought, those are *syirka al-'inan*, *syirka al-mufawadh*, *syirka al-'abdan*, *syirka al-wujuh*.

Musyaraka Principles and Provisions

There are such principles and provisions when conducting Islamic business contract. This is an absolute provision that must be met in order to determine whether a contract is valid or not.

Syafi'i Antonio (Syafi'i, 2001) explains in his book *Bak Syariah dari Teori Ke Praktik* that there are three fundamental provisions in *musyaraka* contract. Besides, DSN-MUI Fatwa No. 8 of 2000 which enrolls *musyaraka* contract

states that syirka provisions are as follows:

- a. **Sighat (Ijab and Qabul)**
- b. **Al-'Aqidain**
- c. **Object of contract**
- d. **Marginn**

Besides, there are several principles of syirka contract according to Ghufron A Mas'adi those are (Ghufron A. , 2002):

- a. Each party who conducting such cooperation in the term of business has authority to take legal actions on behalf of the cooperation with the permission of the other party. All consequences of the action, both the results and the risks are shared proportionally.
- b. The profit sharing system must be clearly stated together in the beginning of contract. Both in terms of presentation and period, for example 60%, 50% or 30% per three months or year.
- c. Before sharing the profit, all its are owned every people who joining in contract. No certain amount of profit generated by one party should be seen as profit.

Implementation of *Musyaraka* Contract at Sharia Banking

Talking about Islamic business, it is inseparable from the discussion of financial institutions specifically sharia banks. Sharia banks are representation of sharia business in the field of financial institutions, which experiencing significant developments in every year.

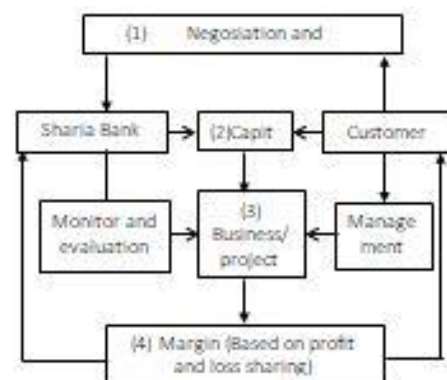
Practically, the operational activities and products which provide by sharia banks are adjusted to Islamic principles (Latumaerissa, 2011). As a bank that operates based on Islamic principles, sharia banks have a specific product that is valued as a characteristic, namely *syirka* / *musyaraka* (cooperation / partnership) which operated based on profit sharing principle.

Musyaraka is one of sharia-based business contract with profit sharing principle as the characteristic of Islamic business activities. *Syirka* is known as a

financial product based on profit and loss sharing system in the Islamic financial business. Syirka contract is included in Natural Uncertainty Contract (NUC) in Islamic financial business, especially sharia banking, which the implementation of it can be found in financing products which provided by sharia banks in the context of venture capital financing (Trimulanto, 2019).

At sharia banking, *musyaraka* contract is a partnership contract consisting of two or more parties (sharia banks and customers) in running a particular business (joint venture) (Dahlan, 2012). The form of *musyaraka* contract is implemented as financing product at sharia banking, where sharia bank provides amount money, while customers contribute their capital or skill proportionally in accordance through the contract agreement, and both parties have the same rights and proportions regarding to managing the business which conducting based on partnership system, both in managerial terms or business project development ideas. After running the business, if it gets a profit it will be divided according to the proportions as well as losses (Syafi'i, 2001).

Here the scheme of *musyaraka* contract as the financing product at sharia banking (Dahlan, 2012):



Notes:

1. The customer proposes financing form to the bank for a business project plan. Then, the bank analyzes the proposes

form as well as creating such agreement between the bank and customer.

2. Both sharia bank and customer provide such capital for the continuity of the project. Then, it equipped with documents that seems to be required in the contract.
3. Customer is the most potential person in order to run the project. While sharia bank with all its time constraints can only monitor and evaluate the business or projects that are being carried out together.
4. Profits will be shared to customers and banks according to the proportion of capital and role in managing the business.

M. Antonio Syafi'i stated that *syirka* / *musyaraka* is also called as partnership, project investment participation that can be applied for (Syafi'i, 2001):

1. Business project financing form while sharia bank and customer contribute their capital in order to run business project. After the project is finished, the customer has responsibilities to return sharia bank's capital include the profit which getting from the business.

Venture capital form which applied on special financial institutions that are allowed to invest in company ownership. Investments are carried out within a certain period.

Methodology

This is a descriptive qualitative research which is analyzed through the library research approach method. Such data which used in order to support this research is collected from a related journals, book, article, and other resources.

DISCUSSION AND RESULT

Criticism of *Musyaraka* Implementation at Sharia Banking

Conceptually, *syirka* or *musyaraka* contract at sharia banking is a cooperation

contract between the bank and the customer in running a business project. Where both parties have a role in managing business projects.

Some scholars have argued regarding to *musyaraka* such as Wahbah az-Zuhaili in his book *al-Fiqh al-Islamy Wa Adillatuhu* explained that *musyaraka* is a contract between two or more people in the term of capital, expertise, and profit as well as losses (az-Zuhaili, 2000).

Ahmad Dahlan explained in his book that, in *musyaraka* contract both the bank and the customer have their respective roles in managing joint business projects (Dahlan, 2012). This opinion is appropriate though *fatwa* of National Sharia Council No. 08/ DSN-MUI/IV/2000 point 3b about *musyaraka* contract which stated:

"Participation of each person is a fundamental basis of *musyaraka* contract. Meanwhile, the proportion of work in managing the business or project is not a provision requirement. A partner of the contract may carry out more task than another, and in this case that person may demand an additional part of the profit for himself".

Besides, Muhammad Sholahuddin also explained as cited by Hanafi Hadi Susanto and Muhammad Ghozali (Hanafi Hadi Susanto, 2016) explained that *musyaraka* is a contract between people who are joining in capital and profits. Not only capital, but expertise and time. If there is a loss while running the business, each participants has responsible based on the proportion of their capital which already contributed.

Based on these statements, it can be concluded that the *musyaraka* contract requires both participants who joining in this contract to contribute in managing the projects even though they have different work portions.

However, the implementation at sharia banking institutions, the banks seem to have no active role in managing the project. Which means in this case,

sharia banks only provide amount of capital which proposed customers when applying for financing form, and there has been no maximum effort in carrying out significant monitoring and evaluation actions in the business project (There is no form of control has been seen yet).

Musyaraka financing activities at sharia banks seem only formality of the contract at the beginning of the agreement, but practically, the estuary of the contract is the same as a credit contract where customers who apply for financing in the form of *musyaraka* are only received such funds to create a business, and they are required to return the funds as well as the profit which obtained from the business project.

Based these explanations, the authors assume that *musyaraka* financing contract at sharia banks seems to eliminate the essence of *musyaraka* contract its self which appropriate through Islamic principle, and of course this is not in accordance with the basic concept of the *musyaraka* itself. As stated by some scholars which represented by the opinion of Wahbah az-Zuhaili, Ahmad Dahlan, Muhammad Solahuddin and DSN-MUI Fatwa stated that in *musyaraka* contract every participant who joining in this contract are required to contribute in order to manage the business together, although the portion not the same.

CONCLUSION AND IMPLICATION

Syirka or *musyaraka* is a contract in Islamic business term which operating based on profit sharing principle between two or more people who are cooperating one and another. This contract is an alternative partnership in the form of financing without usury in order to solve such problem specifically people who experiencing deficit condition for business actors.

In *syirka* contract, each participants has the responsibility in managing the business that has been mutually agreed in

accordance based on the agreement of proportion, and this is becoming one of the pillars of *syirka* or *musyaraka* contract

However, in its implementation, especially at sharia banking, the bank seems does not have implemented yet the contract as a whole. It can be seen when banks provide financing to customers who apply for funding based on *syirka* or *musyaraka* contract in order to conduct such a business project, and the bank does not seem have a significant role in monitoring and evaluating in order to manage the business project.

Therefore, it impressed that the implementation of the *syirka* contract does not have a significant difference with credit contracts at conventional banking, where the bank only provided funds which proposed by customers, without any contribution in terms of business management.

Based on these explanations it needs more concrete efforts to carry out monitoring and evaluation of *syirka* or *musyaraka* business projects between sharia banks and customers. Thus, what is required in the *musyaraka* financing contract can be realized as it should base in accordance through Islamic principle.

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