

***Mushārahah Mutanāqīshah* (Diminishing Partnership) Regulation for Housing Finance in Indonesian and Malaysian Law**

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Abstract

The housing business continues to grow along with the increasing need for the fulfillment of housing. This research delves into the application of *mushārahah mutanāqīshah* in housing finance within Indonesia and Malaysia, scrutinizing their regulations and relevant governing institutions. Employing a normative legal approach, it explores the legal principles, systematics, synchronization, and historical context of *mushārahah mutanāqīshah* financing method. Employing inductive, deductive, and comparative methods, it analyzes regulations and practices in both countries. By offering insights into the potential and challenges of implementing *mushārahah mutanāqīshah* in housing finance, the study aims to provide recommendations for regulatory enhancements, fatwa institutions, product development, and adherence to shar'ah principles. This research is crucial for deepening understanding and facilitating improvements in various sectors related to housing finance within the context of Islamic finance in Indonesia and Malaysia.

Keywords: comparative study; housing finance; *mushārahah mutanāqīshah*

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Bisnis perumahan terus berkembang seiring meningkatnya kebutuhan terhadap pemenuhan tempat tinggal. Penelitian ini menyelidiki penerapan *mushārahah mutanāqīshah* dalam pembiayaan perumahan di Indonesia dan Malaysia, dengan mengkaji kerangka peraturan dan lembaga pemerintahan terkait. Dengan menggunakan pendekatan hukum normatif, kajian ini mengeksplorasi prinsip-prinsip hukum, sistematisasi, sinkronisasi, dan konteks sejarah yang berkaitan dengan metode pembiayaan *mushārahah mutanāqīshah* ini. Dengan menggunakan metode induktif, deduktif, dan komparatif, laporan ini menganalisis peraturan dan praktik di kedua negara. Dengan menawarkan wawasan mengenai potensi dan tantangan penerapan *mushārahah mutanāqīshah* dalam pembiayaan perumahan, penelitian ini bertujuan untuk memberikan rekomendasi penyempurnaan regulasi, lembaga fatwa, pengembangan produk, dan kepatuhan terhadap prinsip syariah. Penelitian ini sangat penting untuk memperdalam pemahaman dan memfasilitasi perbaikan di berbagai sektor terkait pembiayaan perumahan dalam konteks keuangan syariah di Indonesia dan Malaysia.

Kata Kunci: kajian perbandingan; pembiayaan perumahan; *mushārahah mutanāqīshah*

Introduction

In Indonesia, the Islamic financial sector is a recent development in the economy. However, the growth of the Islamic financial market has been quite brisk in recent years. The increase in the number of *sharī'ah* financial institutions engaged in *mu'āmalah* in Indonesia, including *sharī'ah* banking, *sharī'ah* insurance, and *sharī'ah* mutual funds, is indicative of this trend. The *Sharī'ah* Banking Industry has the potential to facilitate economic transformation by engaging in productive and inclusive economic endeavors.¹

Mushārah, a profit-sharing partnership-based product, is presently regarded as one of the *sharī'ah* banking industry's products with the greatest competitive value.² However, regrettably, *mushārah* has not undergone substantial advancements to the same extent as other *sharī'ah* banking products to date.³ The absence of development of partnership-based products in *sharī'ah* banking that are more temporally flexible, particularly long-term financing, is one factor contributing to this issue. This results in the majority of individuals perceiving *mushārah* as resembling the pattern employed by traditional banks, which prioritizes fixed income structures and is often brief to medium in duration.⁴

Mushārah mutanāqīshah is a product development derived from products based on *mushārah* contracts. *Mushārah mutanāqīshah*, a *sharī'ah* banking financing product founded on the *shirkah 'inān* principles, entails the incremental commercial transfers or purchases of capital by other partners, resulting in a reduction of one partner's capital share.⁵

The customer transfers possession of the asset by receiving a portion of the capital (*hiṣṣah*) from the bank in installments according to a predetermined

¹ Fredi Wijaya Kusuma, 'The Effect of Financial Services Authority Regulatory Implementation Concerning Financial Consumer Protection on Banking Financial Performance', *Eduvest - Journal of Universal Studies* 3, no. 7 (2023): 1289–1302, <https://doi.org/10.59188/eduvestv3i7.845>.

² Azhar Alam et al., 'The Problem of Murabaha Financing of Islamic Microfinance Institution and The Handling Strategies in Indonesia: A Literature Review', *al-Muzara'ah* 11, no. 1 (2023): 17–30, <https://doi.org/10.29244/jam.11.1.17-30>.

³ Evi Eka Elvia et al., 'BASYARNAS as a Place for Dispute Resolution of Musyarakah Financing in Sharia Banking in the Disruption Era', *el-Mashlahah* 13, no. 1 (2023): 39–56, <https://doi.org/10.23971/el-mashlahah.v13i1.5345>.

⁴ Chaidir Iswanaji, 'Challenges Inhibiting Islamic Banking Growth in Indonesia Using the Analytical Hierarchy Process', *Journal of Islamic Economics Lariba* 4, no. 2 (2018): 97–107, <https://journal.uui.ac.id/JIELariba/article/view/10746>.

⁵ Maryam Batubara and Sakti Andiyanto, 'The Influence of Islamic Insurance and Islamic Banks on Indonesia's Economic Growth for the Period 2016-2022', *al-Falah: Journal of Islamic Economics* 8, no. 2 (2023): 271–86, <https://doi.org/10.29240/alfalah.v8i2.8210>.

payment method throughout the term of the contract.⁶ *Mushārah* products may be utilized to finance the acquisition of real estate and motor vehicles. The product structure, which is established upon the *mushārah mutanāqīshah* contract, is composed of hybrid multi-contracts, which include *istisnā* (manufacture), *ijārah* (leasing), *bai' al-musāwamah* (sales), and *al-ijārah al-mauṣūfah fī al-dhimmah* (forward rental) contracts in addition to the *mushārah* contract.⁷

Mushārah mutanāqīshah was initially implemented in Malaysia on January 1, 1989, The aforementioned initiative has been effectively executed across multiple districts within the Selangor Darul Ehsan state.⁸ The only data and piece of information the author could locate concerning the project's accomplishments and performance was a synopsis of the April 2, 1989 meeting between *Koperasi Belia Islam* (KBI) and potential purchasers at the *Angkatan Belia Islam Malaysia* (ABIM) Training Center in Sungai Ramal dalam, Selangor. The report describes the *mushārah mutanāqīshah* concept, as well as the project's objectives, costs, prices, and house specifications.⁹

The authority to decide *sharīah*-related disputes in Islamic finance rests primarily with Bank Negara Malaysia's Shariah Advisory Council (SAC). The council is crucial in making sure that decisions about *sharīah* are made sensibly and honorably.¹⁰ Because the SAC upholds *sharīah* objectives, the Islamic finance community will refer its economic activities to it (*maqāṣid*).¹¹ SAC maintains

⁶ Muhammad Hasan, 'Murābahā Reconstruction: Its Application in the Electronic Journal in Indonesia', *al-Ahkam* 30, no. 1 (2020): 77–94, <https://doi.org/10.21580/ahkam.2020.30.1.5077>.

⁷ Rosnia Masruki, Mustafa Mohd Hanefah, and Bablu Kumar Dhar, 'Shariah Governance Practices of Malaysian Islamic Banks in the Light of Shariah Compliance', *Asian Journal of Accounting and Governance* 13, no. 1 (2020): 91–97, <https://doi.org/10.17576/AJAG-2020-13-08>.

⁸ Nurjannah Hasmad and Abdulrahman Alosman, 'Islamic Home Financing in Malaysia: An Overview of Islamic Finance Concepts Applied', *al-Afkar: Journal for Islamic Studies* 5, no. 1 (2022): 171–193, https://al-afkar.com/index.php/Afkar_Journal/article/view/210.

⁹ Tauseef Khan et al., 'An Investigation of the Performance of Islamic and Interest Based Banking Evidence from Pakistan', *Holistica: Journal of Business and Public Administration* 9, no. 1 (2018): 81–112, <https://doi.org/10.1515/hjbpa-2018-0007>.

¹⁰ Theresia Anita Christiani, Mary Grace Megumi Maran, and Johannes Ibrahim Kosasih, 'Analysis of Financial Services Authority Regulation Number 10/Pojk.05/2022 Concerning Information Technology-Based Joint Funding Services in the Perspective of Legal Purposes', *International Journal of Multidisciplinary Research and Analysis* 6, no. 3 (2023): 1144–52, <https://doi.org/10.47191/ijmra/v6-i3-36>.

¹¹ Mohammad Dulal Miah and Yasushi Suzuki, 'Murabaha Syndrome of Islamic Banks: A Paradox or Product of the System?', *Journal of Islamic Accounting and Business Research* 11, no. 7 (2020): 1363–78, <https://doi.org/10.1108/JIABR-05-2018-0067>; Nuarrual Hilal Md. Dahlan et al., 'The Shariah Advisory Council in the Malaysian Islamic Financial Institutions: Features and Legal Issues', *Journal for Global Business Advancement* 9, no. 3 (2016): 284–98, <https://doi.org/10.1504/JGBA.2016.076718>.

authenticity through in-depth discussions and a careful consultation process, which makes a major contribution to the effectiveness of the *sharī'ah* governance regulations in Malaysia.¹²

Shuib et al. wrote that *mushārahah mutanāqīshah* is a partnership concept that decreases and ends with ownership. In terms of language, *mushārahah* comes from Arabic, the basic word of which is *sharika*. *Sharikāt* or *sharikah* which means an alliance with him, sharing with him, joint business or partnership between two parties (also called *al-shirkah*). *Sharikah* also means a mixture or partnership between two or more parties in the form of property or work. *Mutanāqīshah* also comes from the root word *naqasha*. *Naqasha* means less.¹³ *Mushārahah mutanāqīshah* also means continuing to decrease reciprocally. So, *mushārahah mutanāqīshah* from a linguistic point of view can be called a decreasing partnership. or shrinking (ending with sole ownership).¹⁴

Osman and Abdullah wrote that *mushārahah mutanāqīshah* is the combination of three contracts which are partnership, *ijārah*, and sale. It has been invented through the gradual development of Islamic banking products. The concept of partnership and its *sharī'ah* ruling.¹⁵

Ashsiddiqy et al. research delves into the construct and model of *mushārahah mutanāqīshah* financing in Islamic banks. By examining general and special transactions within the contextual framework of Islamic banking, Ashsiddiqy et al. provide insights into the applicability of *mushārahah mutanāqīshah* in addressing housing finance needs. Their findings contribute to the understanding of *mushārahah mutanāqīshah* systemic implementation within Islamic banking institutions.¹⁶

¹² Virginia Nur Rahmanti, 'Mengapa Perbankan Syariah Masih Disamakan dengan Perbankan Konvensional?', *Imamensi: Jurnal Ekonomi, Manajemen dan Akuntansi Islam* 1, no. 1 (2019): 62–74, <https://doi.org/10.34202/imanensi.1.1.2013.62-74>.

¹³ Muḥammad bin Mukrim bin 'Ali Abū al-Faḍl Jamāl al-Dīn ibn Mandhūr, *Lisān al-'Arab* (Beirut: Dār al-Shadir, 1997), 33.

¹⁴ Mohd Sollehudin Shuib, Joni Tamkin Borhan, and Azizi Abu Bakar, 'Musharakah Mutanaqisah Home Financing Products: An Implementation Analysis, Product Advantages and Issues at Citibank (Malaysia) Berhad', *Journal of Techno-Social* 3, no. 2 (2011): 43–54, <https://publisher.uthm.edu.my/ojs/index.php/JTS/article/view/364>.

¹⁵ Noor Mohammad Osmani and Md. Faruk Abdullah, 'Musharakah Mutanaqisah Home Financing: A Review of Literatures and Practices of Islamic Banks in Malaysia', *International Review of Business Research Papers* 6, no. 2 (2010): 272–82.

¹⁶ Muhammad Rafi Ashsiddiqy, Hilda Monoarfa, and Aneu Cakhyaneu, 'Implementation of Aqad Musyarakah Mutanaqisah (MMQ) Take Over Financing on KPR Products in Sharia Banks', *Review of Islamic Economics and Finance* 1, no. 1 (2020): 32–42, <https://doi.org/10.17509/riefv1i1.23745>.

The objectives of this study are to investigate issues related to current issues of conventional and *sharī'ah* home financing models and the *mushārahah mutanāqīshah* regulations for housing finance between Indonesia and Malaysia.

Legal research is carried out through the study of library resources as well as qualitative data. This study involved data collection from secondary sources obtained through library research and the internet. It is an attempt to collect data and then analyze it in depth to develop a framework that focuses on the scope and the study. This study is a normative/doctrinal law and comparative legal studies. Normative legal research comprises the study of the principle of law, legal systematic, synchronization of law, and legal history.¹⁷ The author used inductive, deductive, and comparative methods. Inductive and deductive methods are used to research and understand the conceptual concepts such as legal frameworks and regulations that exist in both countries on the issue of *mushārahah mutanāqīshah*. In contrast, the comparative method is used to study the comparative legal and regulatory between Malaysia and Indonesia as well as explore the authorized institutions.

The Essence of *Mushārahah Mutanāqīshah*

Mushārahah mutanāqīshah is a form of *sharī'ah* financing that has similar basic principles in Indonesia and Malaysia, although there are differences in implementation. In Indonesia, *mushārahah mutanāqīshah* is regulated by the Fatwa of the National Shari'ah Council - Indonesian Ulema Council (DSN-MUI) No. 73/DSN-MUI/XI/2008, while in Malaysia, *mushārahah mutanāqīshah* is regulated by Bank Negara Malaysia (BNM) through a policy issued on 20 April 2015 with code BNM/RH/STD028-7. *Mushārahah mutanāqīshah* in both countries is based on the principle of *mushārahah mutanāqīshah*, namely a form of partnership between *sharī'ah* banks or *sharī'ah* financial institutions (Lembaga Keuangan Syariah/LKS) and customers.¹⁸

In Indonesia, *mushārahah mutanāqīshah* uses the concept of *shirkah 'inān*, where the capital portion of one *shirkah* (*Sharī'ah* Bank/LKS) is reduced

¹⁷ Tunggul Ansari Setia Negara, 'Normative Legal Research in Indonesia: Its Originis and Approaches', *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1-9, <https://doi.org/10.22219/acj.v4i1.24855>.

¹⁸ Anas Maulan, Burhanudin Harahap, and Sasmini, 'Comparative Analysis of Murabahah Financing Agreement with Musyarakah Mutanaqisah Financing Agreement in Indonesia's Sharia Banking System', *International Journal of Law and Society (IJLS)* 2, no. 1 (2023): 43-51, <https://doi.org/10.59683/ijls.v2i1.31>.

gradually through commercial transfers to other *sharikah* (customers).¹⁹ Meanwhile, in Malaysia, *mushārahah mutanāqīshah* also utilizes the *mushārahah* principle, and BNM published *mushārahah mutanāqīshah* implementation guidelines to provide a clear framework for *mushārahah mutanāqīshah* financing practices in the country.²⁰ Although the essence of *mushārahah mutanāqīshah* in both countries is rooted in *mushārahah* principles and has a similar aim of providing partnership-based financing, differences in implementation guidelines and regulations can lead to variations in practice.²¹

In Indonesia, DSN-MUI published guidelines for implementing *mushārahah mutanāqīshah* in financing products (DSN-MUI Decision No. 01/DSN-MUL/X/2013) to provide a clear framework for *mushārahah mutanāqīshah* practice in the country.²² This guideline emphasizes that *mushārahah mutanāqīshah* is a financing product based on the *mushārahah* principle, with special characteristics such as the existence of business capital from the parties which must be expressed in the form of *hişşah*, and this capital must not decrease as long as the contract is in effect.²³

Meanwhile, in Malaysia, BNM issued *mushārahah mutanāqīshah* implementation guidelines to ensure that *mushārahah mutanāqīshah* is carried out in accordance with *sharī'ah* principles and meets prudential standards in financial practices. This Code provides clear guidance on how *mushārahah mutanāqīshah* should be implemented in financing products, including the commercial transfer process and venture capital arrangements.²⁴

¹⁹ Zahid Iqbal and Maria Quibtia, 'Theoretical Differences between Islamic Banking and Conventional Banking', *International Journal of Business and Social Science* 8, no. 1 (2017): 141–53, <https://doi.org/10.30845/ijbss>.

²⁰ Adi Susandi and Sofian al Hakim, 'Accelerated Repayment of Murabahah Agreement in Sharia Banking', *Journal of Economic Studies* 4, no. 2 (2020): 108–16, <https://journalislamicateinstitute.co.id/index.php/joes/article/view/663>.

²¹ Eka Wahyu Hestya Budiarto, 'Bibliometric and Literature Review of Financing Risk in Islamic Banking', *JPS (Jurnal Perbankan Syariah)* 4, no. 1 (2023): 79–97, <https://doi.org/10.46367/jps.v4i1.1031>.

²² Tri Hidayati and Muhammad Syarif Hidayatullah, 'Urgensi Fatwa DSN-MUI mengenai Manajemen Risiko Pembiayaan Berbasis Syariah', *al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (2021): 201–20, <https://doi.org/10.24090/mnh.v15i2.4641>.

²³ Mahmud Yusuf et al., 'Islamic Banks: Analysis of the Rules of Fiqh on the Fatwa of the National Sharia Board-Indonesian Ulama Council', *International Journal of Law, Environment, and Natural Resources* 3, no. 1 (2023): 21–37, <https://doi.org/10.51749/injurlens.v3i1.44>.

²⁴ Naama Trad, Mohamed Ali Trabelsi, and Jean François Goux, 'Risk and Profitability of Islamic Banks: A Religious Deception or an Alternative Solution?', *European Research on Management and Business*

Although there are differences in implementation guidelines between Indonesia and Malaysia, *mushārahah mutanāqīshah* remains an important instrument in providing housing finance in accordance with *sharī'ah* principles in both countries. With clear regulations and guidelines, it is hoped that *mushārahah mutanāqīshah* practices can develop consistently and provide benefits to people who need *sharī'ah*-based housing finance.²⁵

***Mushārahah Mutanāqīshah* Regulation for Housing Finance in Indonesia**

Legal Regulations in Indonesia

For effective implementation of *mushārahah mutanāqīshah* in the context of housing finance, explicit and specific provisions are necessary. The DSN-MUI Fatwa No. 73/DSN-MUI/XI/2008, which was subsequently reinforced by DSN-MUI Regulation No. 01/DSN-MUI/X/2013 and DSN-MUI Fatwa No. 101/DSN-MUI/X/2016, establishes crucial directives regarding the application of the *mushārahah mutanāqīshah* principle to housing finance.²⁶

There are numerous provisions about housing finance in *mushārahah mutanāqīshah* in the fatwa and regulations. Initially, with regard to the form of 'aqad employed, specifically *al-ijārah al-mauṣūfah fī al-dhimmah*, in which the financed entity is still undergoing construction (indent). This guarantees that the financed item, such as a residence or property, is actively under construction or exists in a distinguishable state at the moment the agreement is reached.²⁷

Additionally, as mandated by the regulations, the subject of financing must be unambiguous, wholly *fatwa* possessed by the developer or supplier, and devoid of

Economics 23, no. 1 (2017): 40–45, <https://doi.org/10.1016/j.iiedeen.2016.09.001>; Andi Sulfat, 'Profit and Loss Sharing: Funding Solutions at Indonesian Islamic Banks', *International Journal of Innovative Science and Research Technology* 5, no. 10 (2020): 963–69, <https://ijisrt.com/assets/upload/files/IJISRT20OCT627.pdf>.

²⁵ Nida Zehra et al., 'The Role of Islamic Banking Development and Its Impact on Financial Stability: Evidence from Morocco's Financial Institutions', *Pakistan Journal of Humanities and Social Sciences* 10, no. 1 (2022): 354–365, <https://doi.org/10.52131/pjhss.2022.1001.0203>.

²⁶ Ikin Rojikin, 'Musyarakah Mutanaqishah Contract Concept: Review of Product Refinancing and Take Over', *Jurnal Mediasas: Media Ilmu Syari'ah dan Ahwal al-Syakhshiyah* 5, no. 2 (2022): 188, <https://doi.org/10.58824/mediasas.v5i2.493>.

²⁷ Salah Alhammadi, Khaled O. Alotaibi, and Dzikri F. Hakam, 'Analysing Islamic Banking Ethical Performance from Maqāṣid al-Sharī'ah Perspective: Evidence from Indonesia', *Journal of Sustainable Finance & Investment* 12, no. 4 (2022): 1171–93, <https://doi.org/10.1080/20430795.2020.1848179>.

any pending disputes. This is essential to guarantee ownership clarity and prevent future legal complications. Aside from that, both parties must be aware of certain requirements about product specifications to prevent disputes. Additionally, the advantages derived from the financing asset must be tangibly and legally transferable, in adherence to the principles of *sharī'ah*.²⁸

Therefore, housing finance in *mushārahah mutanāqishah* adheres to a set of regulations and principles established by the DSN-MUI. It is crucial to ensure transparency and protection for consumers and *sharī'ah* financial institutions alike when conducting housing finance transactions in adherence to *sharī'ah* principles.²⁹

Important Practical Challenges in Indonesia

The application of *mushārahah mutanāqishah* in Indonesia raises several significant concerns that must be taken into account in the context of housing finance. To begin with, regarding the ownership status of assets, the *mushārahah mutanāqishah* contract designates the *Sharī'ah* Bank and the consumer as joint proprietors of the assets. This occurs as a result of *mushārahah mutanāqishah* financing, in which both entities contribute financial resources towards the acquisition of products. Hence, concerning the subject matter of *mushārahah mutanāqishah*, particularly when it pertains to property, the transfer of ownership constitutes a formal contract necessitating substantiation through a certificate.³⁰ Given the partnership nature of the *mushārahah mutanāqishah* contract between the bank and the customer, the use of collateral mechanisms, such as mortgages, which grant the creditor the authority to execute the collateralized *mushārahah mutanāqishah* item, is not advisable. This is because the relationship between the bank and the customer cannot be equated with that of a creditor and debtor in a mortgage. Moreover,

²⁸ Siti Afidatul Khotijah, 'Analysis of the Effect of Murabaha Finance in Sharia Banks on the Economic Growth of Agricultural Sector', *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 4, no. 2 (2020): 246–59, <https://doi.org/10.29313/amwaluna.v4i2.5432>.

²⁹ Chokri Kooli, Mohammed Shanikat, and Raed Kanakriyah, 'Towards a New Model of Productive Islamic Financial Mechanisms', *International Journal of Business Performance Management* 23, no. 1/2 (2022): 17–33, <https://doi.org/10.1504/IJBPM.2022.119551>.

³⁰ Lastuti Abubakar and Tri Handayani, 'Telaah Yuridis terhadap Pembiayaan Perumahan melalui Akad Musyarakah Mutanaqisah (MMQ) sebagai Alternatif Pembiayaan Perumahan dalam Upaya Pengembangan Produk Perbankan Syariah', *Jurnal Hukum Ekonomi Islam (JHEI)* 1, no. 1 (2017): 194–219, <https://garuda.kemdikbud.go.id/documents/detail/2466136>.

since this contract employs a distinct concept than debt (*qarḍ*), it is impossible to equate this agreement with debt. Rather, it is a partnership agreement.³¹

Furthermore, an issue arises concerning the customer's responsibility to purchase every item in the event of a default, which contradicts the profit-sharing principle that *mushārahah* has embraced. Because *mushārahah mutanāqīshah* is a derivative of the *shirkah* contract, it is obligatory to distribute any profits in accordance with the predetermined ratio. The share of capital must be apportioned equally if the situation reverses. Consequently, if the client is obligated to make payment in the event of a default, this would render the *shirkah* contract incongruous with the essence of the current agreement.³²

Moreover, under DSN-MUI Regulation No. 01/DSN-MUI/X/2013 about implementation guidelines for *mushārahah mutanāqīshah* in product financing, with the approval of the *sharī'ah* bank/*sharī'ah* financial institution, this regulation permits the subject of *mushārahah mutanāqīshah* financing to be held directly in the customer's name in the case of *mushārahah mutanāqīshah* business activities utilizing the leasing (*ijārah*) principle. The process of regulating the permissibility of such activities through the implementation of regulatory instruments in the form of regulations is deemed inappropriate. These provisions are more pertinent and precise when regulated in a fatwa as opposed to regulation, given that the authority and scope of a fatwa is to ascertain *sharī'ah* law issues about a specific matter. Fatwas ascertain the permissibility of an action following *sharī'ah* law. Conversely, regulations serve to establish technical mechanisms and processes for the execution of fatwas.³³

Therefore, it is necessary to encourage further the development of *sharī'ah* banking products incorporating *mushārahah mutanāqīshah* contracts. Public understanding and awareness of this type of contract must be increased through a variety of means, including seminars, focus group discussions, and even the publication of scientific papers that can serve as a means of disseminating

³¹ Aang Kunaifi, Puji Handayati, and Mat Bahri, 'Accounting of Refinancing and Take Over for Murabahah Contract', *Indonesian Interdisciplinary Journal of Sharia Economics (IJSE)* 5, no. 1 (2022): 108–20, <https://doi.org/10.31538/ijse.v5i1.1490>.

³² Aulia Fitria Yustiardi et al., 'Issues and Challenges of the Application of Mudarabah and Musharakah in Islamic Bank Financing Products', *Journal of Islamic Finance* 9, no. 2 (2020): 26–41, <https://journals.iium.edu.my/iibf-journal/index.php/jif/article/view/482>.

³³ Jamal Abdul Aziz, 'Islamic Banking in Global Economic Context (Critical Studies of Operational System and Performance of Islamic Banking)', *al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 2 (2018): 343–61, <https://doi.org/10.19105/al-ihkam.v12i2.1301>.

information and understanding to *sharī'ah* banking practitioners and the general public. In addition to this, the DSN-MUI ought to possess the capability to develop regulations that feature more straightforward language, thereby facilitating comprehension for all relevant parties. The utilization of intricate Arabic terminology in the regulations of the DSN-MUI ought to be minimized, as this contributes to the public's perplexity regarding the meaning of these provisions.³⁴

***Mushārahah Mutanāqisah* Regulation for Housing Finance in Malaysia**

Institution for Authorized Resolution

The significance of institutions like the Shariah Advisory Council (SAC) in Malaysia regarding *mushārahah mutanāqisah* housing finance lies in their establishment of regulations and standards that adhere to *sharī'ah* principles within the Islamic financial industry. The SAC is vested with extensive jurisdiction to issue fatwas and supervise adherence to *sharī'ah* principles within the Islamic finance industry.

SAC is particularly significant in evaluating the *sharī'ah*-compliant validity of conventional financial instruments utilized by banking and *takāful* (Islamic insurance) institutions for housing finance via *mushārahah mutanāqisah*.³⁵ A comprehensive examination is undertaken of the structure, mechanisms, and application of these instruments to ascertain whether any of them conflict with *sharī'ah* principles. Subsequently, Islamic financial institutions devised and developed housing finance and other *sharī'ah*-compliant instruments in light of the findings of this study.³⁶

In addition, SAC advises commercial banks and other financial institutions that wish to issue new banking products on whether or not they adhere to *sharī'ah* requirements. A structured reference source for determining whether

³⁴ Amirudin Mohd Nor, Siti Nurulhuda Ibrahim, and Shahreena Daud, 'Recovery Issues on Murabahah Financing in Malaysia', *International Journal of Academic Research in Business and Social Sciences* 10, no. 4 (2020): 323–36, <https://doi.org/10.6007/IJARBS/v10-i4/7132>.

³⁵ Nik Abdul Rahim Nik Abdul Ghani and Abdul Rahman A Shukor, 'Deemed Consent in Islamic Banking from Contract Law Perspective: A Sharia Analysis', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 1 (2024): 39–61, <https://doi.org/10.22373/sjhkv8i1.16305>.

³⁶ 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/10.1108/JIABR-08-2015-0036>.

banking products comply with *sharī'ah* requirements is also provided, and manuals that have been developed through deliberations among SAC members are published.³⁷

In addition to advising and overseeing the operations of *takāful* funds, the SAC ensures that their investments are exclusively in instruments that comply with *sharī'ah* law. The objective is to guarantee that funds allocated to participants in need originate exclusively from halal sources and not from investments comprising usury or other components that are forbidden in Islam.³⁸

Furthermore, the responsibility of developing and establishing *sharī'ah* standards for Islamic banking, *takāful*, Islamic finance, Islamic financial development, and other enterprises operating following *sharī'ah* principles is entrusted to SAC. In addition to Islamic financial institutions, courts, and arbitration institutions are obligated to rely on SAC decisions for all Islamic business and finance-related processes and to acknowledge the validity and binding nature of SAC decisions.³⁹

Therefore, by utilizing the services of SAC, housing finance via *mushārahah mutanāqīshah* in Malaysia can ensure adherence to *sharī'ah* principles and instill public trust in the legitimacy and safety of Islamic financial transactions.⁴⁰

Legal Regulations in Malaysia

When considering housing finance through *mushārahah mutanāqīshah*, it is critical to consider the SAC's determination of the most suitable contract type. It was decided at the 135th SAC meeting that asset acquisition *mushārahah*

³⁷ Slamet Akhmadi, 'Hukum Musyarakah Mutanaqhisah dan Implementasinya pada Perbankan Syariah', *Volksggeist: Jurnal Ilmu Hukum dan Konstitusi* 2, no. 1 (2019): 53–61, <https://doi.org/10.24090/volksggeist.v2i1.2283>.

³⁸ Wiwin Juliyanti and Yohanes K. Wibowo, 'Literature Review: Implementation of Musharakah Mutanaqisah Partnership over the World', *Bukhori: Kajian Ekonomi dan Keuangan Islam* 1, no. 1 (2021): 1–10, <https://doi.org/10.35912/bukhori.v1i1.196>.

³⁹ 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>.

⁴⁰ 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 (IIJSE)* 5, no. 1 (2022): 390–408, <https://doi.org/10.31538/iijsse.v5i1.1770>.

mutanāqishah should be conducted following *shirkah al-milk*, whereas business and investment *mushārahah mutanāqishah* should be conducted following *shirkah al-'aqd*.⁴¹

Mushārahah mutanāqishah for asset acquisition may be governed by BNM/RH/STD028-7 following the SAC decision. Various contract options are permissible, including *bai' musāwamah* (sales), *al-ijārah al-mauṣūfah fī al-dhimmah* (advance rental), *istisnā'* (manufacture), and *al-ijārah al-mauṣūfah fī al-dhimmah* (advance rental upon arrival). Under the *mushārahah mutanāqishah* scheme, this instance permits third parties to acquire entire assets in conjunction with partners. Using an *ijārah* mechanism, one part of the partners shall lease the property to the other in proportion to their ownership stake. Ultimately, the investor will acquire full ownership of the property through the partner who rents it out, who will then relinquish the shares of the partner who is renting the asset.⁴²

Apart from that, *mushārahah mutanāqishah* can also be carried out using the *istisnā'* mechanism to take over ownership of property that is being built by a third party. Each partner will then use the *al-ijārah al-mauṣūfah fī al-dhimmah* process to lease their share ownership to the other partners until the asset is completed. At the same time, the lessee, who is also a contractual partner, will become the sole owner of the asset by paying shares in installments.⁴³

In addition, the regulations also stipulate that when signing a *mushārahah* contract, partners can sell assets to other partners or third parties if the partner violates their promise to take over the assets or fails to pay in stages according to the agreed *mushārahah* contract.⁴⁴

⁴¹ Stefano De Nichilo, 'Substantive Analytical Procedures in Sharia Compliant as Agreed-upon Procedures Service in Italian Corporate Governance', *Indonesian Interdisciplinary Journal of Sharia Economics (IJSE)* 3, no. 2 (2021): 96–112, <https://doi.org/10.31538/ijse.v3i2.1069>.

⁴² Lailatul Azizah, 'The Practice of Fair Transaction on Property Business: A Case on Islamic Property Company', *Airlangga Journal of Innovation Management* 3, no. 1 (2022): 33–47, <https://doi.org/10.20473/ajim.v3i1.36339>.

⁴³ Norbaizurah Abdul Jabar, Razli Ramli, and Sazali Abidin, 'Understanding the Mushārahah Mutanāqishah of Koperasi Pembiayaan Syariah Angkasa (KOPSYA)', *ISRA International Journal of Islamic Finance* 10, no. 1 (2018): 62–77, <https://doi.org/10.1108/IJIF-07-2017-0016>.

⁴⁴ Muhamad Izazi Nurjaman, 'Fund Ownership of Sharia Banking according to Islamic Economic Political Perspective', *EkBis: Jurnal Ekonomi dan Bisnis* 5, no. 2 (2021): 113–26, <https://doi.org/10.14421/EkBis.2021.5.2.1377>.

Thus, in the context of housing finance through *mushārahah mutanāqīshah*, SAC decisions and regulations stipulated by Bank Negara Malaysia play a key role in establishing procedures and mechanisms that are in accordance with *sharī'ah* principles, as well as providing a clear framework for the parties involved in the transaction.⁴⁵

Important Practical Challenges in Malaysia

In the context of housing finance through *mushārahah mutanāqīshah* in Malaysia, several important issues need to be considered. One of the issues that arises is the problem of asset ownership in the *mushārahah mutanāqīshah* contract. In the Malaysian land law system, which adopts the “Torrens” system, the name listed as the owner on the certificate is the actual owner of the property. This is a problem because it does not reflect the true intention of *mushārahah mutanāqīshah* where the property is owned jointly by the partners. The use of various approaches by Islamic banks in recording the name of the registered owner at the Malaysian land office is a challenge, whether the bank's name is registered as the owner or the customer's name.⁴⁶

Another important issue is properties that are under construction. Its implementation revealed several legal issues, especially regarding the decreasing part of the *mushārahah mutanāqīshah* agreement, which can only be sold and purchased after the asset is completed.⁴⁷ To resolve this situation, Islamic banks have to enter into a different contract during the construction of the property, which is referred to as an *al-ijārah al-mausūfah fī al-dhimmah* advance rental agreement, which is a land lease, which is generally done when the construction of the property is not yet completed.⁴⁸

Another problem is the maintenance and major repairs of the *mushārahah mutanāqīshah* assets. According to *sharī'ah* principles, the *mushārahah*

⁴⁵ Mohd Zakhiri Md Nor et al, 'Legal Challenges of Musharakah Mutanaqisah as an Alternative for Property Financing in Malaysia', *Journal of Legal, Ethical and Regulatory Issues* 22, no. 3 (2019), <https://www.abacademies.org/abstract/legal-challenges-of-musharakah-mutanaqisah-as-an-alternative-for-property-financing-in-malaysia-8295.html>.

⁴⁶ Ashsiddiqy, Monoarfa, and Cakhyaneu, 'Implementation of Aqad Musyarakah Mutanaqisah (MMQ) Take Over Financing on KPR Products in Sharia Banks'.

⁴⁷ Wiwin Koni, Syamsul Bachri, and Haerul Anam, 'Perception of Amanah on Musyarakah Mutanaqisah Financing in Sharia Banking in Gorontalo', *World Bulletin of Management and Law* 12, no. 1 (2022): 85–98, <https://scholarexpress.net/index.php/wbml/article/view/1167>.

⁴⁸ Zulfikar Zulfikar, Asmuni Asmuni, and Tuti Anggraini, 'Mutanaqishah Musyarakah Contract: A Solution to Infrastructure Investment Syndication Financing', *JESI (Jurnal Ekonomi Syariah Indonesia)* 13, no. 2 (2023): 325–41, [https://doi.org/10.21927/jesi.2023.13\(2\).325-341](https://doi.org/10.21927/jesi.2023.13(2).325-341).

mutanāqishah partners should be jointly responsible for maintenance and major repairs, as they are joint owners of the asset. However, in reality, some Islamic banks still classify *mushārahah mutanāqishah* as a financing facility and ask customers to handle all these costs.⁴⁹

Apart from that, the application of *wa'ad* (agreement) in *mushārahah mutanāqishah* is also an important issue that needs attention. *Wa'ad* is used to guarantee payment of property promised by the partners.⁵⁰ The unilateral use of *wa'ad* by banks or customers in the practice of *mushārahah mutanāqishah* shows that customers gradually buy shares owned by the bank, and conversely, the bank also sells its shares to customers.

By paying attention to these issues, it is important for related parties, including Islamic banks, regulators, and customers, to work together to overcome the problems that arise in the implementation of housing finance through *mushārahah mutanāqishah* in Malaysia. This will help increase the effectiveness and compliance with *sharī'ah* principles in Islamic financial practices in the country.

Comparison of the *Mushārahah Mutanāqishah* Regulation in Housing Finance in Indonesia and Malaysia

Mushārahah mutanāqishah, as a sharia financing principle used in housing finance, has become the focus of attention in Indonesia and Malaysia. Both countries have regulations that govern the use of these principles in their Islamic finance industry. In this article, we will compare the *mushārahah mutanāqishah* regulatory in Indonesia and Malaysia for housing finance.

In Indonesia, *mushārahah mutanāqishah* is regulated by the DSN-MUI's fatwa and appropriate regulations. This fatwa provides important direction regarding the implementation of the *mushārahah mutanāqishah* principle in housing finance, such as clarity on the subject of financing and product requirements that must be met. However, practical challenges arise regarding the ownership

⁴⁹ Tuti Anggraini, M. Yasir Nasution, and Andri Soemitra, '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): 2394–2415, <https://doi.org/10.33258/birci.v4i2.1941>.

⁵⁰ Muhammed Habib Dolgun, Abbas Mirakhor, and Adam Ng, 'A Proposal Designed for Calibrating the Liquidity Coverage Ratio for Islamic Banks', *ISRA International Journal of Islamic Finance* 11, no. 1 (2019): 82–97, <https://doi.org/10.1108/IJIF-03-2018-0033>.

status of assets and payment responsibilities in case of default, which do not always comply with the principle of profit sharing.

In Malaysia, *mushārahah mutanāqīshah* is governed by SAC decisions and Bank Negara Malaysia regulations. This regulation allows various housing finance mechanisms through *mushārahah mutanāqīshah*, with the handling of assets under construction through land rental agreements. However, challenges related to asset ownership and maintenance responsibilities also remain.

A comparison between the two countries shows differences in regulatory approaches and handling of practical challenges related to *mushārahah mutanāqīshah*. While Indonesia places greater emphasis on requirements for clarity on financing subjects, Malaysia faces challenges related to asset ownership and handling of assets under construction. However, both have similarities in facing challenges regarding payment responsibilities in cases of default and asset maintenance.

Therefore, cooperation between various parties is needed to increase effectiveness and compliance with sharia principles in Islamic financial practices in these two countries. Although there are differences in regulations and addressing practical challenges, the ultimate goal is to ensure housing finance through *mushārahah mutanāqīshah* follows Sharia principles and provides maximum benefits for all parties involved.

Conclusion

In the conclusion of this study, in general, the regulations in both countries are sufficient to accommodate the needs of *mushārahah mutanāqīshah* users and practitioners. However, problems in practice show that several sectors must be improved by all related parties, especially regarding regulations, related fatwa institutions, development of *mushārahah mutanāqīshah*, and *sharī'ah* compliance.

The DSN-MUI in Indonesia and the Shariah Advisory Council in Malaysia, have a very important role in establishing fatwas regarding Islamic banking activities. These two institutions are the highest authority bodies in making fatwas and establishing *sharī'ah* related to the Islamic financial sector. They have the authority to establish *sharī'ah* rules and regulations in the field of Islamic finance, which are binding on all Islamic financial institutions.

In terms of legal provisions related to the practice of *mushārahah mutanāqīshah*, both countries have provided guidelines regarding the implementation of *mushārahah mutanāqīshah*. The DSN-MUI has issued fatwas and regulations such as DSN-MUI Fatwa No. 73/DSN-MUI/XI/2008, DSN-MUI Decision No. 01/ DSN-

MUI/X/2013, and DSN-MUI Fatwa No. 8/DSN-MUI/IV/2000. In Malaysia, provisions regarding *mushārahah mutanāqīshah* and its arrangements with *wa'ad*, *al-ijārah al-mauṣūfah fī al-dhimmah*, and *istisnā* have been regulated in the Policy Document referred to BNM/RH/STD028-7 regarding *mushārahah* which was issued on April 20, 2015 by Bank Negara Malaysia.

However, there are several issues in practice that every regulator, scholar, and consumer should be aware of and correct. In Indonesia, the problem of identifying ownership of assets that are jointly owned by Islamic Banks and customers, the problem of Bank Indonesia regulations which are not yet complete enough to regulate the substance of Islamic banking agreements, the problem of the regulatory instruments used, and the slow development of *mushārahah mutanāqīshah* are all sectors that inhibiting the practice of *mushārahah mutanāqīshah* in Indonesia.

Furthermore, various issues are also faced by Islamic banking practitioners and consumers in Malaysia. One of the relevant issues is the identification of ownership of *mushārahah mutanāqīshah* assets. This is a problem because Malaysian land law adopts the "Torrens system", which means "system with registration". The study also highlights problems with properties currently under construction. Additionally, the use of *wa'ad* in *mushārahah mutanāqīshah* is emerging as a major issue that must be addressed by all Islamic banking practitioners and authorities.

To improve the practice of *mushārahah mutanāqīshah* in Indonesia and Malaysia, it is important to strengthen the existing regulatory framework. This can be achieved through the preparation of more detailed and clear guidelines regarding the implementation of *mushārahah mutanāqīshah* which includes procedures for eliminating asset ownership, resolving conflicts, and mechanisms for sharing profits and losses. In addition, the government needs to encourage the issuance of comprehensive fatwas by fatwa institutions that explain in detail how the practice of *mushārahah mutanāqīshah* can be implemented in accordance with sharia principles, thereby providing legal clarity and certainty for all parties involved.

On the other hand, the development of *mushārahah mutanāqīshah* products must also continue to be pursued to meet diverse market needs. Islamic finance companies can integrate new features in their products, such as fairer profit sharing mechanisms or gradual purchase options, to increase product appeal and refinement. Apart from that, consumer education regarding the concept and benefits of *mushārahah mutanāqīshah* must also be improved through public education programs organized by financial institutions, so that they can

understand in depth about this sharia financial product and make the right decisions in accordance with sharia principles.[a]

Author Contribution Statement

Istianah Zainal Asyiqin: Conceptualization; Data Curation; Formal Analysis; Resources; Validation; Writing Original Draft; Writing, Review & Editing.

M. Fabian Akbar: Conceptualization; Methodology; Resources; Writing Original Draft; Writing, Review & Editing.

Muhammad Daffa Auliarizky Oniella: Conceptualization; Formal Analysis; Methodology; Writing Original Draft; Writing, Review & Editing.

Adriana Maisarah binti Mohd Farid: Conceptualization; Validation.

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