Mushārakah Mutanāqiṣah (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 mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah in housing finance, the study aims to provide recommendations for regulatory enhancements, fatwa institutions, product development, and adherence to sharī'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; mushārakah mutanāqiṣah


Kata Kunci: kajian perbandingan; pembiayaan perumahan; mushārakah mutanāqiṣah

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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

*Mushārakah*, 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, *mushārakah* 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 mushārakah as resembling the pattern employed by traditional banks, which prioritizes fixed income structures and is often brief to medium in duration.⁴

*Mushārakah mutanāqiṣah* is a product development derived from products based on *mushārakah* contracts. *Mushārakah mutanāqiṣah*, 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

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payment method throughout the term of the contract. Mushārakah products may be utilized to finance the acquisition of real estate and motor vehicles. The product structure, which is established upon the mushārakah mutanāqiṣah 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 mushārakah contract.

Mushārakah mutanāqiṣah 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. 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 mushārakah mutanāqiṣah concept, as well as the project’s objectives, costs, prices, and house specifications.

The authority to decide shari‘ah-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 shari‘ah are made sensibly and honorably. Because the SAC upholds shari‘ah objectives, the Islamic finance community will refer its economic activities to it (maqāṣid).

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authenticity through in-depth discussions and a careful consultation process, which makes a major contribution to the effectiveness of the shari'ah governance regulations in Malaysia.\textsuperscript{12}

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

Osman and Abdullah wrote that \textit{mushārakah mutanāqīṣah} is the combination of three contracts which are partnership, \textit{ijārah}, and sale. It has been invented through the gradual development of Islamic banking products. The concept of partnership and its \textit{shari'ah} ruling.\textsuperscript{15}

Ashsiddiqqy et al. research delves into the construct and model of \textit{mushārakah mutanāqīṣah} financing in Islamic banks. By examining general and special transactions within the contextual framework of Islamic banking, Ashsiddiqqy et al. provide insights into the applicability of \textit{mushārakah mutanāqīṣah} in addressing housing finance needs. Their findings contribute to the understanding of \textit{mushārakah mutanāqīṣah} systemic implementation within Islamic banking institutions.\textsuperscript{16}

\begin{itemize}
\item \textsuperscript{13} Muḥammad bin Mukrim bin 'Ali Abū al-Faḍl Jamāl al-Dīn ibn Mandhūr, \textit{Lisān al-'Arab} (Beirut: Dār al-Shadir, 1997), 33.
\end{itemize}
The objectives of this study are to investigate issues related to current issues of conventional and shari‘ah home financing models and the mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah. 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 Mushārakah Mutanāqiṣah**

*Mushārakah mutanāqiṣah* is a form of shari‘ah financing that has similar basic principles in Indonesia and Malaysia, although there are differences in implementation. In Indonesia, *mushārakah mutanāqiṣah* 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, *mushārakah mutanāqiṣah* is regulated by Bank Negara Malaysia (BNM) through a policy issued on 20 April 2015 with code BNM/RH/STD028-7. *Mushārakah mutanāqiṣah* in both countries is based on the principle of *mushārakah mutanāqiṣah*, namely a form of partnership between shari‘ah banks or shari‘ah financial institutions (Lembaga Keuangan Syariah/LKS) and customers.\(^{18}\)

In Indonesia, *mushārakah mutanāqiṣah* uses the concept of shirkah ‘inān, where the capital portion of one shirkah (Shari‘ah Bank/LKS) is reduced

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

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

Meanwhile, in Malaysia, BNM issued mushārakah mutanāqiṣah implementation guidelines to ensure that mushārakah mutanāqiṣah is carried out in accordance with šarī‘ah principles and meets prudential standards in financial practices. This Code provides clear guidance on how mushārakah mutanāqiṣah should be implemented in financing products, including the commercial transfer process and venture capital arrangements.\textsuperscript{24}

\begin{itemize}
  \item \textsuperscript{24} Naama Trad, Mohamed Ali Trabelsi, and Jean François Goux, ‘Risk and Profitability of Islamic Banks: A Religious Deception or an Alternative Solution?’, \textit{European Research on Management and Business}
\end{itemize}
Although there are differences in implementation guidelines between Indonesia and Malaysia, mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah practices can develop consistently and provide benefits to people who need sharī'ah-based housing finance.

**Mushārakah Mutanāqiṣah** Regulation for Housing Finance in Indonesia

**Legal Regulations in Indonesia**

For effective implementation of mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah principle to housing finance.

There are numerous provisions about housing finance in mushārakah mutanāqiṣah in the fatwa and regulations. Initially, with regard to the form of 'aqad employed, specifically al-ijārah al-mausūfah 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.

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

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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 shari'ah.28

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

**Important Practical Challenges in Indonesia**

The application of mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah contract designates the Shari’ah Bank and the consumer as joint proprietors of the assets. This occurs as a result of mushārakah mutanāqiṣah financing, in which both entities contribute financial resources towards the acquisition of products. Hence, concerning the subject matter of mushārakah mutanāqiṣah, 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 mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah 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,

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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.\textsuperscript{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 mushārakah has embraced. Because mushārakah mutanāqiṣah 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.\textsuperscript{32}

Moreover, under DSN-MUI Regulation No. 01/DSN-MUI/X/2013 about implementation guidelines for mushārakah mutanāqiṣah in product financing, with the approval of the šarī’ah bank/šarī’ah financial institution, this regulation permits the subject of mushārakah mutanāqiṣah financing to be held directly in the customer’s name in the case of mushārakah mutanāqiṣah 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 šarī’ah law issues about a specific matter. Fatwas ascertain the permissibility of an action following šarī’ah law. Conversely, regulations serve to establish technical mechanisms and processes for the execution of fatwas.\textsuperscript{33}

Therefore, it is necessary to encourage further the development of šarī’ah banking products incorporating mushārakah mutanāqiṣah 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


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

*Mushārakah Mutanāqisah* Regulation for Housing Finance in Malaysia

**Institution for Authorized Resolution**

The significance of institutions like the Shariah Advisory Council (SAC) in Malaysia regarding mushārakah 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 mushārakah 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

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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 *mushārakah mutanāqiṣah* 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 *mushārakah mutanāqiṣah*, it is critical to consider the SAC’s determination of the most suitable contract type. It was decided at the 135\(^{th}\) SAC meeting that asset acquisition *mushārakah*

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mutanāqiṣah should be conducted following shirkah al-milk, whereas business and investment mushārakah mutanāqiṣah should be conducted following shirkah al-‘aqd.\textsuperscript{41}

Mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah 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.\textsuperscript{42}

Apart from that, mushārakah mutanāqiṣah 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.\textsuperscript{43}

In addition, the regulations also stipulate that when signing a mushārakah 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 mushārakah contract.\textsuperscript{44}


\textsuperscript{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 mushārakah mutanāqiṣah, SAC decisions and regulations stipulated by Bank Negara Malaysia play a key role in establishing procedures and mechanisms that are in accordance with shari'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 mushārakah mutanāqiṣah in Malaysia, several important issues need to be considered. One of the issues that arises is the problem of asset ownership in the mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah assets. According to shari'ah principles, the mushārakah


mutanāqiṣah 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 mushārakah mutanāqiṣah as a financing facility and ask customers to handle all these costs.\textsuperscript{49}

Apart from that, the application of \textit{wa’ad} (agreement) in mushārakah mutanāqiṣah is also an important issue that needs attention. \textit{Wa’ad} is used to guarantee payment of property promised by the partners.\textsuperscript{50} The unilateral use of \textit{wa’ad} by banks or customers in the practice of mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah in Malaysia. This will help increase the effectiveness and compliance with shari’ah principles in Islamic financial practices in the country.

**Comparison of the Mushārakah Mutanāqiṣah Regulation in Housing Finance in Indonesia and Malaysia**

Mushārakah mutanāqiṣah, 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 mushārakah mutanāqiṣah regulatorys in Indonesia and Malaysia for housing finance.

In Indonesia, mushārakah mutanāqiṣah is regulated by the DSN-MUI’s fatwa and appropriate regulations. This fatwa provides important direction regarding the implementation of the mushārakah mutanāqiṣah 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


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

In Malaysia, mushārakah mutanāqiṣah is governed by SAC decisions and Bank Negara Malaysia regulations. This regulation allows various housing finance mechanisms through mushārakah mutanāqiṣah, 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 mushārakah mutanāqiṣah. 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 mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah 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 mushārakah mutanāqiṣah, and shari’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 shari’ah related to the Islamic financial sector. They have the authority to establish shari’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 mushārakah mutanāqiṣah, both countries have provided guidelines regarding the implementation of mushārakah mutanāqiṣah. 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 *mushārakah mutanāqīṣah* 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 *mushārakah* 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 *mushārakah mutanāqīṣah* are all sectors that inhibiting the practice of *mushārakah mutanāqīṣah* 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 *mushārakah mutanāqīṣah* 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 *mushārakah mutanāqīṣah* is emerging as a major issue that must be addressed by all Islamic banking practitioners and authorities.

To improve the practice of *mushārakah mutanāqīṣah* 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 *mushārakah mutanāqīṣah* 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 *mushārakah mutanāqīṣah* 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 *mushārakah mutanāqīṣah* 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 *mushārakah mutanāqīṣah* 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 Onielda:** Conceptualization; Formal Analysis; Methodology; Writing Original Draft; Writing, Review & Editing.

**Adriana Maisarah binti Mohd Farid:** Conceptualization; Validation.

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