

Review of Hybrid Contract of Sharia Banking from the Perspective of *Maqashid Syariah*

Abstract

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Background. Multi-contract (hybrid contract) is currently widely applied in Sharia Banking. The contract is used in various transactions in Sharia Banking products such as the Ijarah Muntahiyah Bit Tamlik and Musyarakah Mutanaqishah contracts. In practice, the application of the multi-contract raises schematic problems, but Sharia Banking still applies the contract. It is interesting to study the practice of multi-contract in Sharia Banking from the aspect of maqashid sharia. Maqashid sharia analysis is used to see the maslahah side.

Aim. This study aims to review the practice of multi-contract in Sharia Banking in the perspective of maqashid sharia.

Methods. This study uses library research.

Results. The results of this study indicate that the jurists (fukaha) agree on the permissibility of multi-contracts, but the validity of the results of the merger depends on what contracts are combined. The elements prohibited by the maqashid sharia in this hybrid contract include coercion, elements of fraud to gain profit, and no one is harmed between the two parties.

Keywords: Hybrid contract, maqashid sharia, Sharia Banking

INTRODUCTION

The latest transaction needs must be considered when evaluating the development of banking institution transactions, especially related to contracts. A systematic solution is needed for contract development as a basis for contract implementation. Islamic banks have various ways to develop contracts. Islamic banks include Sharia Banking contracts as part of the latest approach to adjusting core banking contracts. Practitioners, regulators, and academics in the field of Islamic finance, with the current development of Sharia Banking in Indonesia, must continue to be active and innovative in responding to changes in contract schemas in banking products. New products in Sharia Banking bring difficulties in implementing Islamic principles, especially in accordance with the contract.¹

One way to know whether a product meets sharia principles is to look at the agreement and its various provisions. Multi-agreement is any transaction that is carried out simultaneously, or at least each agreement contained in a product cannot be left out, because one with the other is a unity. Multi-agreement in contemporary fiqh terms (*fiqh al-mua'malat al-maalayah al-mua'shirah*) is called *al-'uqud al-murakkabah*.² The term multi-agreement is also known as a hybrid contract, meaning a contract that combines several contracts in one contract. For example, *qardh*, *ijarah*, and *kafalah* are three contracts used in sharia credit card transactions, while in sharia bonds at least use *mudharabah* and *wakalah* contracts.³

Sharia Banking must understand the theory of hybrid contracts to gain an advantage and compete with conventional banks. The role of hybrid contracts is very important for the banking and

¹ Aryanti Yosi, "Multi Akad (Al-Uqud Al-Murakkabah) di Perbankan Syariah Perspektif Fiqh Muamalah," *Juris (Jurnal Ilmiah Syariah)*, 2016, 15, 2, 177–90.

² Andi Sudarmin Azis, "Analisa Penerapan Multi Akad Pada Produk Pembiayaan dalam Perspektif Fiqh Muamalah (Studi Kasus Koperasi Mitra Dhuafa Cabang Polewali), 4, 2022, h.163.

³ Harun, "Multi Akad Dalam Tataran Fiqh," *Suhuf*, 30, 2, 2018.



financial sectors.⁴ Sharia Banking must not reject halal opportunities due to the shallowness of knowledge about the theories of developing Islamic contracts. Sharia Banking must understand and apply the theory of hybrid contracts well in order to be able to produce more innovative and creative products. Hybrid contracts are also related to risk management, including legal risks. Sharia Banking practitioners must understand the theory and practice of hybrid contracts.⁵

Sharia Banking innovates through a series of changes in its products to meet the needs of the community and develop the increasingly competitive banking and financial industry. Adaptation has become a necessity for a company. For example, Islamic credit cards, insurance, bonds, and Fix IB, Islamic Swap. These products have several contracts in them.⁶ For example, in Islamic credit card transactions, there are *ijarah*, *qardh*, and *kafalah* contracts. Islamic bonds contain at least *murabahah* and *wakalah* contracts, and are sometimes accompanied by *kafalah* or *wa'ad*.⁷

All transactions in Sharia Banking must be based on trust between the two parties. Trust begins with the existence of an agreement. The public has little trust in multi-akad because of the uncertainty of the price value arising from the agreement, and many customers still feel disadvantaged by the uncertainty. Sharia Banking must improve public trust in multi-akad.⁸

Hybrid contract of Sharia Banking in this article is studied from the perspective of *maqashid sharia*. The study aims to educate the public to always transact in the concept of sharia and not be tempted by all conventional institutional contracts, as well as; to be a comparison and to always support Sharia Banking so that it continues to grow consistently and compete with other conventional banking institutions.⁹

Previous researchers have studied hybrid contracts. Yunus's¹⁰ research shows that in Sharia Banking in the practice of hybrid contracts, there are conformities and differences in theory and facts of economic transactions. Yuliani's¹¹ research shows that in the hadith *صفتين في الصفقة* it is prohibited because it contains *gharar* which is forbidden in Islam, because it causes uncertainty and causes one party to be harmed, and the other party to benefit. The purpose of buying and selling with mutual consent is not achieved. Febriani's¹² research shows that the original law of everything is permissible until there is evidence stating its prohibition. The *Fatwa* of the National Sharia Council of the Indonesian Ulema Council, states that hybrid contracts are permissible because their application in banking today is different from the case during the time of the Prophet Muhammad Saw.

Previous research has not solved the problem of compliance with the principles of Islamic law and the relationship with *maqashid sharia*. This study focuses on the continuity of the hybrid contract relationship by combining various types of agreements in one transaction with elements of *maqashid sharia* that underlie all aspects of life in Islam, including in economic transactions in Sharia Banking. The study will provide a discourse on the application of hybrid contracts that have been widely applied by the community in various *muamalah* economic activities.

⁴ Abi Waqqosh, "Telaah Kritis Implikasi Hadis Multi Akad dalam Pengembangan Produk Lembaga Keuangan Syariah," *Mubeza: Pemikiran Hukum dan Ekonomi Islam*, 11, 1, 2021.

⁵ Shofy Liza, Nurul Arafah & Muhamad Yogi Hamdani, "Multi Akad (Hybrid Contract) Inovasi Produk Lembaga Keuangan Syariah," *Eksisbank*, 2, 2, 2018, 49–54.

⁶ Muhammad Furqon Almurni, Nuradi Nuradi, and Trisiladi Supriyanto, "Analisis Hukum Multi Akad Pada Dana Talangan Haji Bank Muamalat," *Nukhbatul 'Ulum: Jurnal Bidang Kajian Islam*, 8, 2, 2022, 195-196.

⁷ Nurul Fatma Hasan, "Hybrid Contract: Konstruksi Akad dalam Produk Perbankan Syariah," *Jurnal Febi*, 2018.

⁸ Agus Wahyu, "Tinjauan Hybrid Contract Perspektif Maqashid Syariah," *Journal of Islamic Banking*, 1, 1, 2020, 55.

⁹ Setiawan, "Hybrid Contract dalam Transaksi Syariah Perspektif Maqashid Syariah," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam*, 4, 2, 2022, 716.

¹⁰ Muhammad Yunus, "Hybrid Contract (Multi Akad) dan Implementasinya di Perbankan Syariah," *Tahkim, Jurnal Peradaban dan Hukum Islam*, 2, 1, 2019, 87–102.

¹¹ Marifah Yuliani, "Interpretasi Hadits Nabi Larangan Dua Akad dalam Satu Transaksi," *Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum*, 5, 2, 2021.

¹² Febriani, Hybrid Contract Menurut Perspektif Hukum Ekonomi Syariah, *Proceeding of Dirundeng International Conference on Islamic Studies (DICIS)*, 2021.

LITERATURE REVIEW

Hybrid contract or called *'uqud mukhtalithah*, or double contract, has the same meaning as *murakkab* contract, namely after being combined, the contract has the same legal force, or a contract consisting of a combination of several contracts.¹³ *Mukhtalith* contract is another term from *murakkab* which has the same meaning, but its meaning is deeper. The word *murakkab* for some contracts, it is more appropriate and specific than the word *mukhtalith* which may have a different meaning. *Murakkab* and *mukhtalith* contracts are intended to combine various contracts into one contract and have the same legal consequences for the principal contract.¹⁴

Hybrid contract law is permitted and valid according to the majority of Hanafiyah, Malikiyah, Shafi'iyah, and Hanbali scholars (*madzhab*). As long as there is no legal evidence that prohibits or cancels it, the original law of the contract is not prohibited or canceled. When done independently, it has a law that allows for transactions with more than one contract, as long as there is no evidence that prohibits it.¹⁵ When there is a reason that prohibits something, the reason is not always enforced, but excludes things that are prohibited by the reason. The case of a reason that is an exception is considered to violate the general rule, namely the freedom to make agreements.¹⁶

Hybrid contracts can occur naturally because the nature of the contract is interconnected with each other. A follower contract will apply if the principal contract applies. If the principal contract does not occur, then the follower contract cannot apply.¹⁷ The law of the follower contract follows the law of the original contract. The rule of fiqh states that the follower must follow or the follower's law is not separate from the principal. The follower contract is also adjusted to the needs.

RESEARCH METHOD

The study uses a qualitative descriptive method. The author describes and analyzes in depth based on the data obtained. The study uses a literature study approach. The research location is libraries, documents, and archives.¹⁸ The study uses primary data sources from books, scientific articles, and secondary data from relevant websites. The analysis technique uses an approach from Mile and Huberman which starts from the stages of data presentation, data reduction, and drawing conclusions.¹⁹

RESULTS AND DISCUSSION

Hybrid contract in Sharia Banking

According to Wahbah Zuhaili,²⁰ akad is a relationship or alliance between *ijab* and *qabul* in accordance with the principles of *shari'a* which stipulates the existence of legal consequences on the object of the agreement. The word *multi* in Indonesian has several meanings, namely: many, more than one, more than two, and multiplied. Multi contract (hybrid contract) in Indonesian means many contracts or more than one contract, multiplied. A contract is specifically an *ijab qabul* that gives rise to rights and

¹³ Nurhayati Ziqri Anhar, "Teori Maqashid Al-Syariah Penerapannya Pada Perbankan Syariah," *Jesya: Jurnal Ekonomi & Ekonomi Syariah*, 5, 1, 2022, h. 905.

¹⁴ Juhaidir Purba, "Kebutuhan Multi Akad Dalam Transaksi Ekonomi Muamalah: Analisis Maqashid Syariah," *jurnal Syariah dan Hukum Islam*, 8, 1, 2023, 65–82.

¹⁵ Ijang Jamaludin, "Hybrid Contract According to Sharia Economic Law Hibrid Kontrak Menurut Hukum Ekonomi Syariah," *Law Economics*, 1, 1, 2017, h.9.

¹⁶ Aryanti Yosi, "Multi Akad (Al-Uqud Al-Murakkabah) di Perbankan Syariah Perspektif Fiqh Muamalah." h.184

¹⁷ Popon Srisusilawati & Panji Adam, "Kedudukan Multi Akad dalam Pembiayaan Murabahah di Perbankan Syariah," *Seminar IQRA*, 1, 1, 2017, h.1445.

¹⁸ Nurrohman Wida Ramdani, Novita Irawati, "Konsep Konsumsi Dan Kesejahteraan Dalam Perspektif Ekonomi Islam," *Iqtisadiya: Jurnal Ilmu Ekonomi Islam*, 7, 14, 2020, h.95.

¹⁹ Sandu Siyoto, *Dasar Metodologi Penelitian*, Yogyakarta: Literasi Media Publishing, 2015, 122-124.

²⁰ Moh Ulumuddin, "Hybrid Contract dalam Perspektif Maqashid Al-Syari'ah Jasser AUDA," *At-Tahdzib: Jurnal Studi Islam dan Mu'amalah*, 9, 1, 2021, 52.

responsibilities towards the object of the contract (ma'qud "alaih). A contract in general refers to every act that creates, transfers, changes, or terminates rights, whether done by one party or both parties.²¹

Abdullah al-Imrani, classified the division of hybrid contracts into five types: *al-'uqud al-mutaqabilah*, a contract that depends on another contract; *al-'uqud al-mujtami'ah*, the gathering agreement, *al-'uqud al-mutajanisah*, the similar agreement, *al-'uqud al-mutanaqidhah wa al-mutadhaddhah wa al-mutanafiyah*, the opposite agreement. Hybrid contract is also defined as a collection of several material contracts contained in a contract, both in combination and reciprocally. All rights and obligations arising are considered as legal consequences of a contract.²²

A hybrid contract can be concluded to occur when: There are two or more contracts; there is a relationship between one contract and another contract. The whole contract becomes like one. If it is not as what is meant, then it is not included in the category of *murakkad* contract (hybrid contract).²³

The Messenger of God, may God bless him and grant him peace, in the hadith of Tirmidhi forbids several contracts that combine others:²⁴

عن حكيم بن حزام قال: نهاني رسول الله صلى الله عليه وسلم عن أربع خصال في البيع: عن سلف وبيع, وشرطين في البيع, وبيع ما ليس عندك, وبيع ما لم تضمن.

The Prophet, peace be upon him, in the hadith of Tirmidhi also forbade people from making 2 (two) sales contracts in one sales contract:²⁵

عن أبي سلمة عن أبي هريرة: أن النبي صلى الله عليه وسلم نهى عن بيعتين في بيعة

Do sharia financial products that use hybrid contracts meet sharia principles, or vice versa because some hadiths clearly prohibit the procurement of one contract. This study is important from a scientific perspective with a comprehensive analysis of a number of products containing hybrid contracts from sharia or non-sharia financial institutions.²⁶

Sharia Banking empirically applies hybrid contracts in legal practice (law) Contracts in Sharia Banking, some must be separated and some must be combined. The contract of *syirkah mutanaqishah* must be separated from each other, the first contract is a property *syirkah*, and the second contract is a special *ijarah*. All scholars recommend separating the *syirkah* contract and the *ijarah* contract.²⁷

Some other practices also apply hybrid contract practices, such as *sharia* pawn products which contain three contracts, namely *rahn*, *qardh* (dayn) and *ijarah*. The *rahn* and *dayn* (debt promise) contracts can be combined, because they must be united in one contract. The *ijarah* contract, on the other hand, should be separated to avoid the basic elements of debt. *Ijarah* is not included in *qardh*, but is related to the rental of a place, security of pawned goods and so on. The hedging practice (*tahawwut*) contains a hybrid contract, first it can apply double *qardh*, the second is ordinary *sharf* and *wa'ad*, and the third is reciprocal *tawarruq* (double *tawarruq*), and all of them are included in the hybrid contract.²⁸

Maqashid Sharia Perspective on Hybrid Contract Practices in Sharia Banking

Various contracts can be used in Sharia Banking transactions because it is clear that the purpose of combining contracts is so that human life and human souls are valuable and beneficial

²¹ Purba, *Kebutuhan Multi Akad Dalam Transaksi Ekonomi Muamalah: Analisis Maqashid Syaria*, 68

²² Minollah Hiranuddin, Rodliyah, "Hybrid Contract Design in Sharia Banking Product Development," *Journal o Legal, Ethical and Regularly Issues*, 24, 1, 2021, 4.

²³ Hasnita, *Konsep Multiakad (Hybrid Contract) Dalam Kajian Fikih Muamalah Kontemporer*, 3, 1, 2018, 8-9.

²⁴ Musawar Musawar, "Pandangan Tuan Guru Lombok Terhadap Multi Akad Dalam Muamalah Maliyah Kontemporer," *Ijtihad Jurnal Wacana Hukum Islam dan Kemanusiaan*, 16, 1, 2016, 131.

²⁵ Widya Ratna Sari, "Hybrid Contract Model (HCM) dalam Perspektif Etika Bisnis Islam," *Jurnal Ekonomi Bisnis dan Akuntansi*, 3, 2, 2023, 2.

²⁶ Musawar, "Pandangan Tuan Guru Lombok Terhadap Multi Akad dalam Muamalah Maliyah Kontemporer."134

²⁷ Nur Wahid, "Pelibatan Akad Ijarah Dalam Praktik Rahn Di Bank Syari'ah Perspektif Hukum Ekonomi Syari'ah," *Al-Manahij: Jurnal Kajian hukum Islam*, 12, 1, 2018, 148.

²⁸ Andi Azis Mita Musfa, Anwar Hindi, "Peguruang: Conference Series," *Peguruang: Conference Series*, 4, 1, 2022, 163.

according to *syari'ah*.²⁹ Imam Syathibi stated that *Maqashid* is divided into two: The first relates to God's intention as *shari'* and the second relates to the intention of *mukallaf*. According to Abdul Wahhab Khallaf, the general purpose when Allah establishes His laws is to benefit humans by fulfilling the needs of *dlaruriyat*, *hajiyat*, and *tahsiniyat*. *Maslahah* is defined as the benefits determined by *shari'a* for His servants, which include maintaining their own religion, self, intellect, descendants, and property in a certain order. According to al-Bouthi, realizing goodness while preventing evil is the core of the theory of *Maqashid as-Shari'a (jalbu al-mashalih wa dar'u al-mafasid)*. This is because the establishment of law in Islam is based on *maslahah*, the equivalent term for *maqashid shari'a* is *maslahah*.³⁰

The concept of *maqashid sharia* also emphasizes the element of coercion in hybrid contracts, because: First, basically humans are not allowed or prohibited from forcing a will on others; Second, humans basically have freedom. Hybrid contracts are considered valid through *maqashid sharia* if there is no element of coercion between the two parties. In addition to the element of coercion, hybrid contracts are not permitted or validated if they are detrimental to both parties.³¹

Ulemas divide *maqashid shari'ah* into 3 levels, namely; First, *dharuriyat* (primary needs) needs that must be met in human life. Second, *hajiyat* (secondary needs) needs that arise after primary needs. Third, *tahsiniyat* (tertiary needs) needs that arise after primary and secondary needs and if these needs do not exist humans will still live.³² Hybrid contracts, seen from their purpose, clearly do not contain elements that can cause economic instability or even loss of life, mind, or property. Hybrid contracts are intended to maximize profits and reduce losses. According to Yusuf Qoedhawi, the purpose of *sharia (maqashid)* is more important than the tools and media (*wasail*). For example, Islam does not clearly explain the hybrid contract method. Islam provides freedom to build more than one contract with limitations and objectives for the benefit of the parties involved.³³

Hybrid contract in practice, such as the *ijarah muntahiah bi at tamlik* contract. The leased goods remain in their function to provide satisfaction for both parties. The lessee will get the function of a rented car, and the car owner who rents it will get benefits in the form of rent money obtained from the lessee. The lessee and the lessor, both still get benefits and advantages without any loss.³⁴

Hybrid contract transactions are included in *al-'uqud ghairu al-musamah*, namely contemporary contracts that do not exist, and cannot even be explained in the books of *turats*. The hybrid contract itself is made to meet the needs of market share, increase profits, and minimize risk. Hybrid contracts are actually allowed in their implementation, as long as there is no evidence that prohibits them. Viewed from the perspective of *maqashid sharia*, hybrid contracts must still be clear so that no party is harmed or wronged. *Maqashid* has complementary contracts that provide dispensation with the existence of a core contract, meaning something that should be prohibited in the core contract, but is allowed in the complementary contract. This is in accordance with the *urf* and explanations of experts based on the rules, namely according to the principle that complementary contracts are tolerated and cannot be tolerated, when standing alone, such as the *ijarah muntahiya bi al-tamlik* (IMBT) contract, the *musyarakah mutanaqishah* (MMQ) contract, gold pawn products (i.e. a combination of *qardh*, *rahn*, and *ijarah* contracts), *hajj* savings (a combination of *qardh* and *rahn* contracts), and parallel *istishna'* (a combination of *istishna'* and *wakalah* contracts).³⁵

²⁹ Ahmad Iqbal Fathoni, "Urgensitas Dalam Transformasi Hybrid Contract Pada Lembaga Keuangan Syariah Oleh," *Jurnal Al-Hukmi*, 3, 2, 2022, 183.

³⁰ أبو إسحاق إبراهيم بن موسى بن محمد الشاطبي، الموافقات، دار ابن عفا، 1997، ص. 9-11.

³¹ Arridho Abduh, Asmuni, and Tuti Anggraini, "Konsep Multiakad Dalam Fatwa DSN-MUI: Sebuah Inovasi Dalam Praktik Keuangan Syariah Di Indonesia," *Kutubkhanah: Jurna Penelitian Sosial Keagamaan*, 23, 1, 2023, 112.

³² وهبة الزهيلي، "أصول الفقه الإسلامي"، n.d., دمشق: دار الفكرى، 2001، ص. 310-312.

³³ Muhammad Yunus, Sofyan Al Hakim, and Iwan Setiawan, "Analisis Filosofis Terminologi Multi Akad Perspektif Hukum Ekonomi Syariah," *Al-Afkar: Journal for Islamic Studies*, 6, 3, 2023, 495.

³⁴ Panji Adam Agus Putra et al., "The Legality of Hybrid Contract on Sbsn (Sukuk) Ijarah Sale and Lease Back in Dsn-Mui Fatwa," *Laa Maisyir : Jurnal Ekonomi Islam*, 7, 2, 2020, 283.

³⁵ Rida Ahroum, Othmane Touri, and Boujemâa Achchab, "Murabaha and Musharakah Moutanaquissah Pricing: An Interest-Free Approach," *Journal of Islamic Accounting and Business Research*, 11, 1, 2020, 203.

Based on the study, there are several *maqashid* of the implementation of hybrid contracts in Sharia Banking. Hybrid contracts in them have contemporary business flexibility, and there is a principle of justice in the distribution of profits and business risks.³⁶ The practice of *muamalah* will further facilitate the people to fulfill their lives, and can eliminate mistakes and disputes between Sharia Banking and customers. The provisions of the hybrid contract are in accordance with one of the objectives of the *maqashid* As-Syatiby, namely the element of *hajiyyat* (secondary needs).

Based on the study, the implementation of hybrid contract transactions is based on the rules of *fiqh*, "The original law of *muamalah* is permissible, unless there is evidence that confirms its prohibition." The rules of *fiqh* provide the freedom to carry out any transaction as long as there is no text that explicitly states that a transaction is forbidden. Freedom of transaction provides *sharia* guarantees as long as it does not bring things that are prohibited. Hybrid contracts can provide religious convenience to all its adherents to fulfill their needs and desires. The rules of *fiqh* need to be adapted to achieve the welfare of the people's lives, because the lives of society are increasingly developing.

CONCLUSION

According to the perspective of contemporary *muamalah fiqh*, economic progress, business demands, and the fulfillment of the needs of today's economic actors require hybrid contracts. The jurists agree on the permissibility of hybrid contracts, but their validity depends on what contracts are combined, the purpose of the results of the combination, and the legal impact/consequences of the combined contracts. The prohibition on combining several contracts in one transaction cannot be generalized to all forms of hybrid contracts. Hybrid contracts only apply and are justified in certain forms that are specifically prohibited by the *hadith*, with reference to the principle of general permissibility in *muamalah* (*al-ibahah*/general permissibility), the principle of freedom of contract (*al-hurriyah al-ta'aqud*/freedom of contract), and the need approach (*al-hajah*/need approach).

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³⁶ Fitri Nurul Fauziah, Ahmad Mulyadi Kosim, and Santi Lisnawati, "Analisis Implementasi Akad Hybrid Contract Murabahah Bil Wakalah Di Bank BJB Syariah Kc Bogor Jabar," *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam*, 4, 2, 2021, 154.

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