

Basic Concept of *Musyarakah* Contract in Contemporary Sharia Economic Practices

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Abstract

Muamalah, the law that broadly regulates social relations sense (ahkam al-muamalah), is human law with other people. Muamalah is separated into numerous laws, including politics, economy, family, etc. Musyarakah contract, also known as a union, is one of the various procedures used in economic transaction activities. Musyarakah is controlled in Islam with the primary goals of avoiding undesirable risks, minimizing losses, and seeking benefits. Musyarakah is a financial transaction activity that may use for research due to the various models and forms of unions that exist in society. This research aims to learn more about the evolution and application of Musyarakah contracts in modern economic activity.

Keywords: concept, musyarakah, economy, contemporary

A. Introduction

As creature God 's creation of Humans created as guard whole natural must stick to principles *habluminallah* and *habluminannas* for the sake of balance natural life. *Habluminallah* could embodied in the form of worship, have principle with nature *ta'abbudi*, meaning man must obey what Allah SWT and Rasulullah SAW commanded. Whereas *habluminannas* could implemented in form association man in environment society, which is the basis nature *al -iltifat ila al -ma'ani wal-maqashid*, meaning the purpose under consideration mean. (Samsudin 2018) Connection vertical man with God and human horizontal activity together man arranged in form law man with Allah (Saputra 2016) or called with worship, includes law prayer, law fasting, paying zakat, performing the pilgrimage, fulfilling vow or oaths and others, which are connection vertical Among man as a servant to Allah as its creator. Human law with man other called with muamalah is governing law connection between Public in whole aspect (*ahkam al-muamalah*), for example like transaction man in Thing fulfillment need, action man in Public as well as penalty law on crime and so on, outside problem of mahdhah worship.

Muamalah law in principle could share Becomes a number of type like law family (*al-ahwal asy-Syakhshiyah*), law civil law (*al-ahkam al-madaniyah*), law criminal law (*al-ahkam al-jina'iyah*), procedural law (*ahkam al- murafa'at*), law state administration (*ahkam addusturiyah*), law abroad (*ahkam ad -dauliyah*), law finance and economics (*ahkamul-iqtishadiyah wal-maliyah*), (Ibrahim 2019) related with law muamalah later our call jurisprudence muamalah Duski Ibrahim in the book *Al-Qawa'id Al-Fiqhiyah* define as "rule law related with transaction object-oriented people or property, among others like activity buying and selling (*al-bai*), leasing (*al-ijarah*), pawning (*ar-rahn*), debts (*ad-dain*), debt guarantees

(*al-kafalah*), association (*asy-Sharikah*), loans-borrowing (*al-ariyah*), entrusted (*al-wadiyah*), cultivating land (*al-muzara'ah wal-mukharabah*), law labor (*al-ijarah 'ala al-amal*), rights buy main (*syuf'ah*), goods findings (*al-luqathah*), rewards find goods lost (*al-ju'alah*), division treasure owned by together (*al-qismah*), gift (*al-grant*), peace (*ash-shuluh*), liberation rights (*al-ibra*) and fulfill Public regarding with treasure and maintain right every individual .”

Definition Contract Musyarakah

More far our will learn law related muamalah with Union or contract musyarakah. Musyarakah in other words Shariah or Shirkah according to language means please ie mixed or join. Whereas definition musyarakah according to term actually no far different with the origin of the word. Musyarakah it means contract work same between 2 parties or more, with different limits in accordance with type their musyarakah do. Definition contract musyarakah according to Imam Maliki, “Shirkah is permission for utilize (do and or no to do deed law) for second split party including each one , i.e. one party from two the doing party union allow to the other party for to do deed law or no to do deed law to owned property _ two people (or more), as well right for to do deed law that permanent attached to each of them .” (DR. Sri Sudarti 2013). Whereas according to Imam Hambali, "Shirkah is is association rights or processing (properties wealth). According to definition this, syirkah more connotation is a business entity managed by many people, everyone has rights. rights certain in accordance roles and functions in process and manage assets owned by the business entity it”. (Sabid 2006). Imam Shafi'i define Shirkah is something association or association that has consequence law give second split agreed parties or more the same rights, including in thing unification treasure, union employee, or both. (DR. Sri Sudarti 2013). One between definition frequent musyarakah cited by the scholars is definition musyarakah in literature hanafiyah namely : "Shirkah (Musyarakah is defined as the contract is made two people or more, which is mutual partners (*mutasyarik*) for in a manner together provide capital and each is entitled get profit. (Baist 2018)

From the definition above could understood that syirkah is a working system same in form engagement among two party good individual or institution or a number of agreed parties to do something agreement in thing capital, employment, expertise or trust in something effort certain in framework obtain later profits profit the shared in accordance with deal from party cooperating parties.

Legal Basis of Contract Musyarakah

Original nauseous law in muamalah is allowed activities economy except what is prohibited, akad Is musyarak allowed? based on the arguments of the Qur'an and Hadith and Ijma (consensus of scholars). In Surat An- Nisa':12 Allah says “If brothers a mother that more from one, then them associate in which a third that ” (QS. An-Nisa':12). found in surah Shad:24 Allah does not either forbid exist union inside agreement sharing property in terms of hadith be found hadith authentic from the Prophet SAW narrated by Abu Hurairah, ra he narrates "Indeed

Allah 'Azza waw Jala said, I am the party third from two people in a company during one of them no betray others” H.R Abu Daud and Hakim. Al-Hakim also narrated that Prophet Muhammad SAW once do shirk by Sa'ib bin Abi Saib al Makhzumi at the time early Islam



Picture 1 : Agreement Scheme Musharakah

B. Discussion

Terms and Conditions musyarakah

In every activity effort need mandatory terms and conditions there is in agreement effort the, in contract musyarakah is needed terms and conditions contract musyarakah ie includes: first, Healthy (*Ijab and Qobul*), Alliance or agreement made should be preceded by *ijab and qobul* between allied parties. Second, Al-Aqidain (2 or more contracting party), There are people who do alliance required meet requirements Among other things. Reasonable, The party that did contract musyarakah must intelligent it means already capable differentiate good deeds and which are bad and deep deeds circumstances have common sense _ like normal people. Baligh, Perpetrator engagement must already enough age or adults, no legitimate if contract musyarakah is done those who haven't mature. Independence (no in coercion). By love willingly the contracting parties do agreement without there is coercion and pressure parties any, and not is my servant. (a) Expensive, Aqad (Object Alliance) In contract musyarakah required exists object or something attached namely capital, both capital in the form of treasure nor skill or trust. (b) Ratio for revenue profit, Something engagements that aim at shared profitsis obligatory harmony carried out, where profit This is based on agreement together.

Condition contract musyarakah:

- No there is form unique contract, something agreement is legitimate if be spoken in a manner oral / written, and recorded in a manner written and witnessed.
- Colleagues must capable give / receive authority.

- Paid up capital must cash, fine gold, or maybe silver the origin of the value same. Riches no form or right trading could included (licenses, patents, etc.)
- Is violate law for one partners for participate in profession with rule out the others.

Type musyarakah

Miscellaneous syirkah on the basis his there are 2 types namely: 1) Shirkah Ibahah, Shirkah Ibahah that is deal between some people or more to use he allowed obtain benefit from something treasure or objects, for example enjoy take benefit from the presence of river water, the benefits of sea salt, as well take benefit from goods other items not yet there is mastery on right source power. 2) Shirkah Amlak or owned by Shirkah owned by that is deal between some insiders effort ownership things certain. Shirkah amlak or belonging to which is syirkah with 2 types as well viz syirkah character traits _ optional or based on effort and syirkah character traits jabari, is as following: Shirkah amlak or property based on business somebody or characteristic optional that is ownership on treasure or object where somebody in a manner automatic have right on object. However in Thing accept it the party concerned can choose or accept ownership on treasure or object, in Thing this example somebody accept grant or gift. Then Shirkah character traits jabari that is ownership on treasure or object where somebody in a manner automatic have right on object the where somebody that no can choose Among accept or refuse it, someone the no can no must accept right on ownership. Example in Thing this is will or legacy. 3) Shirk contract or Shirk Uqud. Shirkah Uqud that is deal between some people on purpose for to do something effort with Street have a contract or agreed for operate effort the with destination obtain profit with portion distribution profit in accordance with agreed terms. Shirk uqud (contract) in general divided top five type among others: (a) Shirkah 'Inan Shirkah 'inan that is an agreement made by some people to to do cooperation in capital in Thing this is no capital must same. (b) Shirkah charity or Abdan. Shirkah Abdan that is the agreement was made some insiders Thing accept something profession certain. (c) Syirkah Al-Wuhuh, Syirkah Al-Wuhuh it means fellowship done by the same people very no there is capital, then people the to do purchase object or treasure in a manner credit then sell it with method cash with destination obtain results profit, and then profit the will shared to those who agree in accordance with portion. (d) Shirkah Mufawadah. Shirkah Mufawadah that is association that was carried out some people agreed in framework doing something profession together with condition exists suitability capital between some people agree, fine riches or necessary rights and obligations carried out (account answer) (e) Shirkah Mudharabah. Shirkah Mudharabah that is the union is carried out by several people in which one willing party becomes capital provider (*Shohibul mal*) then the other party becomes party worker (*Mudhorib*). In thing this contract mudharabah is part from contract musyarakah, however musyarakah not yet of course contract mudharabah.

Practice contract musyarakah in practice economy contemporary

Take for example, syirkah 'inan: Abdun and Fulan want to make coffee business. They agreed for make partnership for operate coffee shop. They together deposit IDR 50 million as investation early, then they work same in union worker. Paid up capital in syirkah 'inan this must in the form of money. Well profit nor risk the resulting losses from agreement and match with part from paid- up capital then divided by both split party.eg syirkah 'abdan: Fulan and Abdun work same manager something project. Where are they agreed for to do something profession without capitalize their money only together operate profession in a manner wholesale, when done to do profession they get profit and the profits then shared based on portion already agreed.

Example syirkah mufawadhoh: Fulan is the party providing the capital, to two of his colleagues named Abdul and Aziz. Then they then agreed for give intended capital statue for buy something object certain value sell with method credit with based on trust by traders to Fulan and Aziz. at the start happening contract union that happened is form from syirkah 'abdan, happened when they together to deal with each associate with only give contribution only for work just. However, when Abdul has money and he pleased for provide capital Fulan and Azis, means between they three people agreed the has materialized contract mudharabah. here Abdul apply as owner of capital, meanwhile Fulan and Aziz apply as given capital manager Abdul. However something moment when Fulan and Azis have also have money and them agreed that each of they pleased for give capital contribution, mean has come true contract syirkah 'inan in between they both, when si Fulan and Aziz to do purchase goods with method purchase in a manner credit based on the trust given trader to both, mean materialized exists contract syirkah wow Among si Fulan and Aziz. This that is, shape from contract syirkah like the on is combined from all type contract syirkah and mentioned as contract syirkah mufawaḍah." (Hasan 2018)

Implementation contract musyarakah in the environment Islamic banking can found in contracts financing like: in general contract Financing Project Musyarakah this implemented for finance walk something project. Customers and banks own portion for provide amount of funds earmarked as finance implementation upcoming projectrun, and when walk project has done, then customers return the funds provided by the bank together for results in accordance agreement agreed to by both split party.

Venture Capital in institutions finance allowed specials operate investation in ownership company, musyarakah this applied in form venture capital scheme. Equity participation is made in period time certain and after end of the agreement that the bank does divestment or sell part stock , fine in a manner short nor gradually. (Aziroh 2014). Musyarakah mutanaqishah (diminishing partnership) is derivative from contract musyarakah that is form cooperation Among customers and banks for obtain ownership something goods or assets. In cooperation this will reduce right to possession from one party, meanwhile the other party will increase right ownership. Form cooperation this end with diversion right over one party to the other party. In syirkah mutanaqishah must already explained

magnitude installments and amounts must rent paid customers to banks. (Imronah 2018)

The end Agreement Musharakah

Fasakh or cancellation contract musyarakah happened when: Cancellation by one allied parties, cancellation is done by both split allied parties, the ending time agreement except there is extension, when capital runs out because occur loss, and if one party someone has died.

C. Conclusions

From the discussion mentioned above can be taken conclusion that Musharakah is agreement some insiders Federation property or even things, good regularly love willingly or coercion, union in form of working capital good in the form of money or membership. There is contract musyarakah make activities muamalah more effective and efficient, because a the job done regularly together will more fast achieve benefits from work done continuously individually. In activities union is required voluntariness between each party, as well as openness among actors contract musharakah for the sake of achieving it benefits people in achieve profit that is conditioned by religion.

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