

Implementation of Mortgage Guarantee in Housing Financing through *Musyārahah Mutanāqishah* Contract

A. M. Nur Atma Amir^{1*}, Rika Dwi Ayu Parmitasari², Rahmawati Muin³, Murtiadi
Awaluddin⁴, Kamaruddin Arsyad⁵, Iqmal Wahyudi⁶

^{1,2,3,4,5} Universitas Islam Negeri Alauddin, Makassar, Indonesia

⁶ Yarmouk University, Irbid, Jordan

¹80500222043@uin-alauddin.ac.id, ²rparmitasari@uin-alauddin.ac.id, ³rahmawati.muin@uin-alauddin.ac.id, ⁴murtiadi.awaluddin@uin-alauddin.ac.id, ⁵dr.kamaruddin46@gmail.com,

⁶2023184054@ses.yu.edu.jo

*Correspondence

DOI: [10.38073/aljadwa.v4i2.1957](https://doi.org/10.38073/aljadwa.v4i2.1957)

Received: November 2024

Revised: February 2025

Accepted: March 2025

Published: March 2025

Abstract

In the banking system, collateral serves as a crucial tool for protecting creditors and ensuring debtors fulfill their obligations, particularly in transactions involving valuable assets like property. This study aims to analyze the implementation of collateral in the *Musyārahah mutanāqishah* Contract on the *Hijrah* Home Ownership product at Bank Muamalat Indonesia (BMI) Makassar Branch and to evaluate the suitability of the application of collateral in housing financing through the *Musyārahah mutanāqishah* Contract with Islamic economic principles. This study is included in the category of field research by implementing descriptive qualitative research procedures and using phenomenological and juridical-normative approaches. This study was conducted using four data collection techniques, namely participant observation, structured interviews, documentation, and literature review. This study's data analysis involved the collection, reduction, presentation, and drawing of conclusions. Data validity testing was carried out by triangulating data sources and triangulating theories. The results of the study indicate that the implementation of collateral in the *Musyārahah mutanāqishah* contract at the Bank Muamalat Indonesia Makassar branch effectively provides legal protection for the bank against the risk of default while maintaining the balance of customer rights through a transparent and fair process. The use of collateral in the *Musyārahah mutanāqishah* (MMQ) contract at Bank Muamalat Makassar is also in line with Islamic economics' five principles, which are fairness, trustworthiness, security, prosperity, and brotherhood. This study is expected to provide new contributions in the field of Islamic economics, especially in the context of the implementation of the MMQ contract in Islamic banking at the local and national levels.

Keywords: *Guarantee, Mortgage, Housing Financing, Musyarakah Mutanāqishah, Bank Muamalat Indonesia.*

How to Cite this Article

Amir, A. M. Nur Atma, Rika Dwi Ayu Parmitasari, Rahmawati Muin, Murtiadi Awaluddin, Kamaruddin Arsyad, and Iqmal Wahyudi. "Implementation of Mortgage Guarantee in Housing Financing through *Musyārahah Mutanāqishah* Contract." *Al-Jadwa: Jurnal Studi Islam* 4, no. 2 (2025): 182–95. <https://doi.org/10.38073/aljadwa.v4i2.1957>.

INTRODUCTION

Collateral in the banking system plays an important role in protecting creditors and ensuring that debtors' obligations are met, especially in financing involving valuable assets such as property. In conventional banking, collateral is regulated by Law No. 4 of 1996, which provides legal certainty for banks to execute assets if the debtor fails to pay.¹ However, the execution procedure is often considered detrimental to customers because it tends to be more biased towards creditors and less concerned with the welfare of debtors.²

In contrast to conventional systems, Islamic banking applies the principle of profit sharing and partnership through contracts such as *Musyārahah mutanāqishah*, which are considered fairer because they involve equal cooperation between the bank and the customer.³ This contract is popular in housing finance. However, in Eastern Indonesia, the implementation of *Musyārahah mutanāqishah* faces various challenges, such as limited public understanding of sharia contracts, limited access to sharia financial institutions, and differences in understanding between banks and debtors regarding the implementation of the contract.⁴ In addition, strong traditional financial habits in this region as well as limited human resources in the Islamic financial sector slow down the adoption of this contract.⁵

Although the *Musyārahah mutanāqishah* contract offers a fairer model, these challenges need to be overcome if Islamic banking is to develop more rapidly in Eastern Indonesia.⁶ This study aims to analyze the implementation of collateral in the *Musyārahah mutanāqishah* Contract on the Hijrah Home Ownership product at Bank Muamalat Indonesia (BMI) Makassar Branch and to evaluate the suitability between the implementation of collateral in housing financing through the *Musyārahah mutanāqishah* Contract with Islamic economic principles.

Islamic banks are financial institutions that operate based on Islamic sharia principles, which prioritize an interest-free economic system.⁷ In Islamic banking, every financial transaction must comply with the provisions set out in the Qur'an and Sunnah.⁸ The main function of Islamic banks is as an intermediary between parties who have

¹ Zainuddin Ali, *Hukum Perbankan Syariah* (Jakarta: Sinar Grafika, 2016), h. 85-88.

² Ali, h. 89-90.

³ Muhammad Syukri Salleh, *An Introduction to Islamic Economics* (Selangor: Ilham Books, 2012), h. 98-100.

⁴ Sherhan, "Eksekusi Hak Tanggungan Akad Musyarakah Mutanaqisah: Sebuah Kajian Keadilan Hukum," *Jurnal Ilmu Syari'ah, Perundang-Undangan Dan Ekonomi Islam* 15, no. 2 (2023): 317-31, <https://doi.org/10.32505/jurisprudensi.v15i2.6846>.

⁵ Nuhbatul Basyariah, "Analisis Implementasi Pembiayaan Musyarakah Mutanaqishah Pada Perbankan Syariah Di Indonesia," *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 9, no. 2 (December 1, 2018): 120-33, <https://doi.org/10.18326/muqtasid.v9i2.120-133>.

⁶ Humaira dan T. Hafliyah, "Objek Syirkah Menjadi Jaminan Hak Tanggungan Pada Pembiayaan Perumahan Melalui Akad *Musyārahah mutanāqishah*," *Jurnal Hukum Samudra Keadilan* 18, no. 1 (2023): 121-30.

⁷ Adiwarman A. Karim, *Bank Islam: Analisis Fikih Dan Keuangan*, Cet. X (PT. RajaGrafindo Persada, 2015), h. 9.

⁸ Heri Sudarsono, *Bank Dan Lembaga Keuangan Syariah Deskripsi Dan Ilustrasi*, Cet. III (Yogyakarta: Ekonisia, 2005), h. 87.

surplus funds and parties who need funds with the aim of improving community welfare.⁹

A mortgage guarantee is a legal instrument that provides protection to creditors in loan agreements.¹⁰ In the conventional banking system in Indonesia, collateral rights are regulated by Law No. 4 of 1996, which gives banks the authority to execute collateralized assets if the debtor fails to fulfill his obligations.¹¹ In the context of Islamic banking, collateral guarantees must be implemented with the principles of fairness and transparency, as regulated in Islamic law.¹²

The *Musyārakah mutanāqīṣah* contract is a type of financing contract that combines elements of partnership (*syirkah*) and lease (*ijārah*).¹³ In this contract, the bank and the customer share ownership of an asset, with the bank as the initial owner and the customer acting as the user or lessee. Over time, the customer can buy part of the bank's ownership and eventually become the full owner of the asset.¹⁴ This contract is considered fairer because it avoids interest and involves risk sharing between both parties. The principles of Islamic economics are based on five basic values that serve as guidelines in every transaction and economic activity. Fairness: Every economic transaction must be fair, without any party being harmed. In Islamic banking, this is reflected in the avoidance of usury and uncertainty as well as proportional profit sharing.¹⁵ Trustworthiness: The trustworthiness placed in transactions must be maintained with transparency and responsibility to ensure that funds are managed with integrity.¹⁶ Security: Assets and funds involved in economic transactions must be well protected, both for customers and banks, through fair and transparent mechanisms.¹⁷ Prosperity: Islamic economics aims to create shared prosperity by ensuring that economic transactions provide equitable benefits to all parties.¹⁸ Brotherhood: Social solidarity and concern for the welfare of the people are the basic principles on which the economy must pay attention to social welfare, not just individual profit.¹⁹

Previously, research related to the implementation of the *Musyārakah mutanāqīṣah* contract has been widely conducted. In terms of discussion, Nurlailiyah's

⁹ Ikatan Bankir Indonesia, *Memahami Bisnis Bank Syariah* (Jakarta: Gramedia, 2014), h. 76.

¹⁰ Ahmad Wardi Muslich, *Hukum Jaminan: Aspek Yuridis, Ekonomi Dan Sosial Dalam Pelaksanaan Hak Tanggungan* (Bandung: Mandar Maju, 2020), h. 98.

¹¹ Mohammad Daud Ali, *Hukum Pembiayaan Syariah* (Jakarta: Sinar Grafika, 2016), h. 42-43.

¹² Cholil Nafis, *Teori Hukum Ekonomi Syariah* (Jakarta: UIN Jakarta Press, 2011), h. 98.

¹³ Atang Abdul Hakim, *Fiqh Perbankan Syariah* (Bandung: PT. Refika Aditama, 2011), h. 247-248.

¹⁴ Sri Nurhayati dan Wasilah Abdullah, *Akuntansi Syariah Di Indonesia*, Ed. V (Jakarta: Penerbit Salemba Empat, 2016), h. 147-148.

¹⁵ M. Umer Chapra, *The Future of Economics: An Islamic Perspective*, Vol. 21 (Leicestershire: Kube Publishing Ltd, 2016), h. 81-85.

¹⁶ Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam* (Cairo: Al-Falah Foundation, 2001), h. 201.

¹⁷ M. Ali, "Risk Management and Shariah Compliance in Islamic Finance," *Journal of Islamic Finance and Risk Management* 3, no. 1 (2014): h. 25.

¹⁸ Mehmet Asutay, *Islamic Moral Economy as the Foundation of Islamic Finance. In: Islamic Finance in Europe* (Cham: Palgrave Macmillan, 2013), h. 227.

¹⁹ Lilis Suryani, "Solidarity and Cooperation in Islamic Economics," *Islamic Economic Studies Journal* 11, no. 2 (2013): h. 39-40.

research,²⁰ Qureshi and Hidayat,²¹ Sariningsih et al.,²² Husein,²³ and Zainuddin's research²⁴ discusses the *Musyārahah mutanāqishah* contract from various perspectives with library research. This is different from what the researcher did, where the researcher conducted field research with a phenomenological and juridical-normative approach. Then the research of Maulan et al.,²⁵ Bahari et al.,²⁶ Redzuan et al.,²⁷ Mikail,²⁸ Zaaba and Hassan,²⁹ Basyariah,³⁰ Rahmat,³¹ Sherhan,³² Kusmastuti and Muzzami³³ have discussed the implementation of *Musyārahah mutanāqishah* contracts with different subjects and places. However, none have specifically discussed the implementation of collateral in a particular local context, as the researcher did at Bank Muamalat Makassar Branch.

²⁰ Nurlailiyah A.S., "Tinjauan Hukum Akad Syariah Terhadap Multi Akad (Al-'Uqūd Al-Murakkabah) Dalam Lingkup Akad *Musyārahah mutanāqishah*," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 10, no. 1 (2016): 117–34, <https://doi.org/10.15575/adliya.v10i1.5150>.

²¹ Fahad Qureshi and Sutan Emir Hidayat, "Challenges in Implementing Musharakah Mutanaqisah Islamic Home Financing in Malaysia," *Journal of Islamic Financial Studies* 2, no. 2 (December 1, 2016): 45–54, <https://doi.org/10.12785/jifs/020205>.

²² Sariningsih Sariningsih, Jaenudin Jaenudin, and Mila Badriyah, "Tinjauan Hukum Ekonomi Syariah Tentang Beban Biaya Dalam Pembiayaan Mikro Dengan Akad Musyarakah Mutanaqishah Di BRI Syariah," *Al-Muamalat: Jurnal Ekonomi Syariah* 7, no. 1 (2020): 57–64, <https://doi.org/10.15575/am.v7i1.10860>.

²³ Muh Turizal Husein, "Telaah Kritis Akad Musyarakah Mutanaqisah," *Al Maal: Journal of Islamic Economics and Banking* 1, no. 1 (July 7, 2019): 79–88, <https://doi.org/10.31000/almaal.v1i1.1775>.

²⁴ Muhammad Anwar Zainuddin, "Akad Musyarakah Mutanaqisah Dalam Sistem Perbankan Syariah," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 12, no. 2 (December 31, 2018): 321–38, <https://doi.org/10.24239/blc.v12i2.373>.

²⁵ 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* 2, no. 1 (March 29, 2023): 43–51, <https://doi.org/10.59683/ijls.v2i1.31>.

²⁶ Zakaria Bahari, Nor Hatizal, and Caturida Meiwanto Doktoralina, "Study of Direct Relationship Determinants on the Selection of Musyarakah Mutanaqisah (MM) Products," *International Journal of Supply Chain Management* 8, no. 5 (October 26, 2019): 501–8, <https://doi.org/10.59160/ijscm.v8i5.3649>.

²⁷ Nur Harena Redzuan, Salina Kassim, and Adam Abdullah, "Rental Yield As An Alternative To Interest Rate In Pricing Musyarakah Mutanaqisah Home Financing – The Case For Malaysia," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilisation (ISTAC)*, December 1, 2018, 69–88, <https://doi.org/10.31436/shajarah.v0i0.716>.

²⁸ Said Adekunle Mikail and Mohd Shahril Mat Rani, "Sharī'ah Contracts Underpinning Mushārahah Mutanāqishah Financing: A Conceptual Analysis," *ISRA International Journal of Islamic Finance* 8, no. 1 (June 15, 2016): 35–66.

²⁹ Nurul Iffah Binti M A Zaaba and Rusni Hassan, "Why Islamic Banks Are Reluctant to Offer Musharakah Mutanaqisah for Home Financing: The Case of Maybank Islamic and Affin Islamic Bank," *Turkish Journal of Islamic Economics* 6, no. 1 (February 15, 2019): 51–66, <https://doi.org/10.26414/A044>.

³⁰ Basyariah, "Analisis Implementasi Pembiayaan Musyarakah Mutanaqishah Pada Perbankan Syariah Di Indonesia."

³¹ Edwin Rahmat, "Analisa Pembiayaan Properti Menggunakan Akad MMQ (Musyarakah Mutanaqisah)," *El-Arbah: Jurnal Ekonomi, Bisnis Dan Perbankan Syariah* 2, no. 02 (2018): 1–26, <https://doi.org/10.34005/elarbah.v2i02.540>.

³² Sherhan Sherhan, "Eksekusi Hak Tanggungan Akad Musyarakah Mutanaqisah," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 15, no. 2 (August 30, 2023): 317–31, <https://doi.org/10.32505/jurisprudensi.v15i2.6846>.

³³ Ines Prasheila Kusmastuti and Al Muazzami, "Telaah Kesesuaian Kontrak Musyarakah Mutanaqisah Di Perbankan Syariah Terhadap Fatwa DSN MUI No. 73/DSN-MUI/XI/2008: (Studi Kritis Kontrak Pembiayaan No. 257)," *Minhaj: Jurnal Ilmu Syariah* 5, no. 2 (July 5, 2024): 266–75, <https://doi.org/10.52431/minhaj.v5i2.2818>.

Moreover, in Eastern Indonesia in particular, limited understanding of this contract, limited access to Islamic financial institutions, and strong local regulatory and cultural issues are the main obstacles. This indicates a gap in the understanding and implementation of *Musyarakah mutanāqishah*, which is the focus of this study. This study aims to fill this gap by analyzing in depth how collateral in the MMQ contract is applied in this context and how this is in accordance with the principles of Islamic economics, as well as the practical and legal challenges faced in its implementation in the field. Thus, this study is expected to provide new contributions in the field of Islamic economics, especially in the context of the implementation of the MMQ contract in Islamic banking at the local and national levels.

METHOD

This research is included in the category of field research by implementing descriptive qualitative research procedures and using phenomenological and juridical-normative approaches. This research was conducted at PT. Bank Muamalat Indonesia Tbk., located at Jl. Dr. Ratulangi No.79, Labuang Baji Village, Mamajang District, Makassar City, South Sulawesi. Primary data in this study includes all information obtained in the field, including data, documents, and interview results with parties who are considered to understand the problem being studied. Secondary data in this study are theoretical data obtained through literature studies that include library documents, theoretical studies, and scientific works that are relevant to the problem being studied. This research was conducted using four data collection techniques, namely participant observation, structured interviews, documentation, and literature reviews. The research data was analyzed through various methods such as data collection, data reduction, data presentation, and conclusion drawing. Data validity testing is carried out by triangulation of data sources and triangulation of theory.

RESULTS AND DISCUSSION

Implementation of the Collateral Guarantee in the Musyarakah Mutanāqishah Contract

Collateral guarantee plays an important role in maintaining legal certainty and protection for banks in the *musyarakah mutanāqishah* (MMQ) contract at Bank Muamalat Indonesia. The following are the stages of implementing collateral guarantees in the MMQ contract:

1. Signing of the Musyarakah Mutanāqishah Agreement

This agreement stipulates that the property purchased will be jointly owned by both parties, with the customer paying off the bank's portion of ownership in installments. The customer has the right to live in the property and pay rent to the bank based on the portion of ownership. The results of interviews with informants indicate that at this stage all agreements and legal provisions governing the MMQ agreement are made by considering sharia principles. The portion of ownership of the bank and the customer is regulated transparently from the start so that it can provide

a clear understanding of how the property will be transferred to the customer.

2. Installation of Mortgage Guarantee

Although the house is still jointly owned by the bank and the customer, the mortgage guarantee is still placed in the customer's name. This is done to provide protection for the bank and ensure that the property can be executed in the event of default. The notary has an important role in this process by preparing important documents such as the Power of Attorney to Charge Mortgage Rights (SKMHT) and the Deed of Granting Mortgage Rights (APHT). The results of the interview showed that the mortgage guarantee aims to provide legal protection for the bank and ensure that if a dispute occurs, the bank has the right to execute the property that is the object of the guarantee.

3. Installment Payments and Transfer of Ownership

This stage is the core of the MMQ contract because at this stage the customer pays monthly installments to the bank consisting of profit sharing and rent payments on the bank's ownership portion. Each time the customer pays an installment, the bank's ownership portion gradually decreases, while the customer's ownership portion increases. When all installments are completed, the property is fully owned by the customer. From the interview results, it can be concluded that this process shows transparency and fairness in the transfer of ownership, where both parties clearly understand their rights and obligations.

4. Settlement of Default

At this stage, the settlement efforts taken must consider aspects of fairness and protection of both parties. The results of the interview showed that the default settlement efforts implemented by the bank include several important steps as explained in Figure 1.

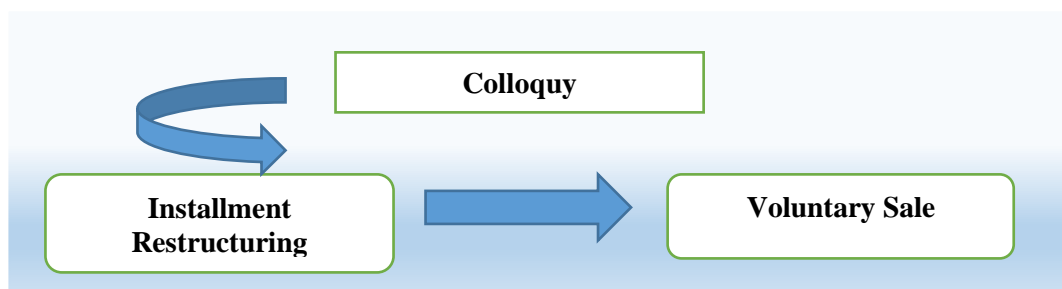


Figure 1. Steps for Settling Default

5. Execution of Mortgage Guarantee

If the settlement of default through colloquy, installment restructuring, and voluntary sale has not been successful, the bank has the right to execute the collateral. This execution process follows the positive law in force in Indonesia, especially Law Number 4 of 1996 concerning mortgage rights. Execution is carried out by auctioning the property that is the object of collateral while still complying with sharia principles that prioritize fairness and transparency. The results of the interview showed that the

execution of the collateral is the last option taken by the bank to protect its interests if all previous settlement efforts have not yielded results. The bank must ensure the implementation follows all legal procedures and does not unfairly harm customers.

Challenges in the Implementation of Mortgage Rights and the Solutions Implemented

Although mortgage rights provide strong legal protection for banks, there are a number of challenges that are often faced in their implementation. One of the most common challenges is the legality of the property used as collateral. When the collateralized property has legal problems, this can hinder the execution process of the mortgage rights, requiring further legal resolution. In addition, the value of the property used as collateral can also decrease during the installment period, which poses additional risks for the bank. If the value of the property drops significantly, the bank may not be able to cover the entire remaining installments with the proceeds from the sale of the property. Although solutions such as installment restructuring and voluntary sales offer a fair way out for both parties, there are several challenges faced in their implementation.³⁴ One of the main challenges is dishonesty from customers regarding their financial capabilities or administrative problems in the property sale process. This dishonesty can hinder the process of resolving the problem peacefully and cause the bank to have to take execution steps sooner than expected. In addition, the decline in property values in the market can also be a problem, especially in the voluntary sale process. If the market price of the property drops, customers may not be able to sell the property at a price sufficient to cover their debts.

Theoretical and Practical Implications of the Implementation of Mortgage Guarantee

Theoretically, the implementation of collateral in the MMQ contract reflects the principles of rahn in sharia and the concept of fairness ('adl). The collateral provides legitimate protection for creditors without violating the rights of debtors. In addition, the principle of maṣlahah (general welfare) is also applied in the implementation of collateral because banks and customers are protected fairly through transparent and sharia-compliant mechanisms.³⁵

In practice, the mortgage in the MMQ contract provides legal certainty for banks in facing the risk of default. With the mortgage, the bank guarantees that the financed property can be used as a source of debt repayment if the customer is unable to continue payments. For customers, the mortgage provides a guarantee that they have full control over the property being paid in installments, and full ownership will be transferred to them after all installment obligations are paid off. This process is carried out with full transparency so that customers have a clear understanding of the status of their

³⁴ Maulan, Harahap, and Sasmini, "Comparative Analysis of Murabahah Financing Agreement with Musyarakah Mutanaqisah Financing Agreement in Indonesia's Sharia Banking System."

³⁵ Abdul Aziz, Wira Franciska, and Felicitas Sri Marniati, "Kepastian Hukum Jaminan Hak Tanggungan Atas Sertifikat Hak Pakai Di Atas Hak Milik Perorangan Terkait Penolakan Pembiayaan Oleh Perbankan.," *SENTRI: Jurnal Riset Ilmiah* 2, no. 12 (December 8, 2023): 5062–71, <https://doi.org/10.55681/sentri.v2i12.1891>.

installments and ownership.

Overall, the implementation of the mortgage guarantee in the *Musyārahah mutanāqishah* contract at Bank Muamalat Indonesia, Makassar branch, shows that the mortgage not only provides strong legal protection for banks but also maintains the balance of customer rights. With the mortgage, banks can protect their interests against the risk of default while customers are protected through a transparent and fair process in installment payments and transfer of property ownership. Securing mortgage rights on jointly owned property in a *Musyārahah mutanāqishah* contract is a complex legal challenge, but the solutions implemented by Bank Muamalat demonstrate that sharia principles can be effectively integrated with Indonesian positive law.³⁶

Conformity of the Implementation of Collateral Guarantee in *Musyārahah mutanāqishah* Contracts with Islamic Economic Principles

The application of collateral guarantees in the *musyārahah mutanāqishah* contract must be in accordance with the principles of Islamic economics, namely fairness, trustworthiness, security, prosperity, and brotherhood. These principles are the main foundation in the preparation of every Islamic banking product, including the *musyārahah mutanāqishah* contract.

Table 1. Application of Islamic Economic Principles

Principles of Islamic Economics	Interview Statements	Meaning and Interpretation
Fairness	“... <i>Transparency is maintained... profit and risk sharing is done proportionally...</i> ”	The distribution of ownership and profit portions is carried out fairly, transparently, and in accordance with the contribution of each party.
Trustworthiness	“... <i>Customers pay rent every month according to the bank’s portion of ownership... full ownership of the house will be transferred entirely to the customer....</i> ”	The bank maintains the trustworthiness by ensuring that property ownership is transferred to the customer in accordance with the agreed provisions.
Security	“... <i>The first settlement is always through deliberation. After deliberation, the next settlement step is installment restructuring or voluntary sale....</i> ”	Transaction security is maintained by providing solutions to resolve installment payment problems without directly executing mortgage rights.
Prosperity	“... <i>The ownership process in the MMQ contract is very transparent...</i> ”	Prosperity is achieved with transparency in installment payments and a clear transfer of ownership.
Brotherhood	“... <i>The mortgage guarantee is not to take advantage of the customer....</i> ”	Brotherhood is created because of cooperation and protection.

³⁶ Kusmastuti and Muazzami, “Telaah Kesesuaian Kontrak Musyarakah Mutanaqisah Di Perbankan Syariah Terhadap Fatwa DSN MUI No. 73/DSN-MUI/XI/2008.”

Based on the interview results explained in Table 1 with various informants, the following is an interpretation regarding the suitability of applying these principles in the *musyarakah mutanāqishah* contract.

1. Fairness

The principle of fairness is a major aspect of Islamic economics that requires the distribution of profits and risks to be carried out proportionally and without exploitation. In the *musyarakah mutanāqishah* contract, fairness is implemented by means of a clear division of property ownership portions between the bank and the customer. Every time the customer makes an installment payment, the customer's portion of ownership increases, while the bank's portion of ownership decreases. This process continues until all ownership is transferred to the customer after the installment period is complete.

The results of the interview showed that the profit and risk-sharing system in the MMQ contract is carried out in a fair and transparent manner in accordance with the principles of fairness in Islam. Fairness is achieved because all parties understand their rights and obligations from the start without any uncertainty that harms one party. No one is disadvantaged in the division of ownership because the customer gradually obtains full ownership of the property.³⁷

The principle of fairness is also a major concern in the process of executing mortgage rights. If the customer experiences a default, the bank does not immediately execute the collateral but first tries to find a fair solution through deliberation, installment restructuring, and voluntary sale. Execution is only carried out as a last resort to ensure that the customer is not unfairly disadvantaged. This principle of fairness ensures that the execution of collateral rights remains in accordance with Islamic law, where the bank continues to protect its rights without oppressing the customer. In the application of collateral rights in the MMQ contract, the principle of fairness is reflected in various aspects, starting from the division of ownership and transparency in the payment process to the default resolution mechanism.

2. Trustworthiness

The principle of trustworthiness requires each party to carry out their obligations with full responsibility, transparency, and honesty. In the *musyarakah mutanāqishah* contract, the principle of trustworthiness is reflected in how the bank ensures that transactions are carried out with full transparency and without any manipulation in payments. The bank is obliged to transfer ownership in stages to the customer in accordance with the provisions agreed upon in the contract. Trustworthiness also includes protection of the rights of both parties, both the bank as the provider of financing and the customer as the recipient of financing. The results of the interviews showed that the bank carried out its mandate to transfer property ownership transparently without any delay or ambiguity in the process. The role of the notary in this case is also important to ensure that every action taken in the MMQ

³⁷ Qureshi and Hidayat, "Challenges in Implementing Musharakah Mutanaqisah Islamic Home Financing in Malaysia."

contract process does not violate the principle of trustworthiness and that all documents involved are valid and do not harm any party.³⁸

3. Security

The principle of security in Islamic economics is not only related to the protection of the rights of both parties in the contract but also to the mechanism that can ensure that the transaction is carried out smoothly and fairly, even if there is a risk or default. In the *musyarakah mutanāqishah* contract, the principle of security is maintained by having a clear settlement system if the customer experiences difficulties in paying installments. This security includes legal certainty over collateral rights, clarity of procedures for payment and transfer of ownership, and protection of both parties in a situation of default. The results of the interviews showed that banks try to maintain transaction security by providing customers with the opportunity to resolve payment problems without immediately executing collateral rights. The process of deliberation and installment restructuring provides customers with the opportunity to improve their situation, which is in line with sharia principles that prioritize resolving problems fairly and without coercion. This process provides customers with a sense of security because they know that they will not immediately lose the property they have paid for. Banks are also protected from the risk of loss because of the existence of valid collateral.

4. Prosperity

The principle of prosperity is achieved if economic transactions provide clear and sustainable benefits for all parties involved. In the *musyarakah mutanāqishah* contract, prosperity is achieved through transparency in installment payments and transfer of property ownership that makes customers feel secure in planning their future. The interview results revealed that transparency in the payment system motivates customers to continue paying installments because they know exactly how much more they have to pay and how much portion of ownership they have obtained. This transparency leads to prosperity for customers because they have full control over the payment process and property ownership. Even in more difficult situations such as property value declines or economic fluctuations, Bank Muamalat ensures that prosperity is maintained by not burdening customers excessively and providing fair solutions to avoid further problems.

5. Brotherhood

The principle of brotherhood in Islamic economics focuses on mutually beneficial relationships, cooperation, and protection between the parties involved in the transaction. In the *musyarakah mutanāqishah* contract, the principle of brotherhood is reflected in how the bank and the customer work together to achieve the same goal, namely gradual home ownership, and then both parties share the risks and profits.

The results of the interviews showed that customers felt that there was no exploitation in this contract. The bank acts as a partner that helps customers achieve

³⁸ Redzuan, Kassim, and Abdullah, "Rental Yield As An Alternative To Interest Rate In Pricing Musyarakah Mutanaqisah Home Financing – The Case For Malaysia."

their goal of home ownership and does not take advantage of the customer's situation to gain unfair benefits. The collateral only serves to protect both parties and ensure that the transaction takes place fairly.

Other interview results emphasized that the relationship between the bank and the customer is indeed based on the principle of fair and mutually beneficial cooperation without any element of exploitation. The principle of brotherhood is maintained in the MMQ contract because the relationship between the bank and the customer is based on cooperation that is based on mutual understanding, transparency, and mutual benefit.

The implementation of collateral in the *Musyārahah mutanāqishah* (MMQ) contract at Bank Muamalat Makassar is in accordance with the five principles of Islamic economics: justice, trustworthiness, security, prosperity, and brotherhood. Justice is seen from the proportional distribution of property ownership, transparency in installments, and settlement of defaults through restructuring or voluntary sale. Trustworthiness is realized through the bank's responsibility in installing collateral and transferring property ownership, while customers are given clarity and commitment to their obligations. Security is guaranteed through legal protection of collateral, ensuring that the rights of both parties are protected during the payment process and when default occurs.³⁹ The principle of prosperity is reflected in access to affordable sharia financing, encouraging gradual property ownership without usury, thereby improving community welfare. Brotherhood is realized through a harmonious partnership between the bank and customers, with conflict resolution based on deliberation. This study confirms that the MMQ contract at Bank Muamalat Makassar is not only in line with sharia but also contributes to social justice, prosperity, and strengthening the value of solidarity in Islamic economics.⁴⁰

CONCLUSION

The implementation of collateral in the *Musyārahah mutanāqishah* contract at the Bank Muamalat Indonesia Makassar branch effectively provides legal protection for the bank against the risk of default while maintaining the balance of customer rights through a transparent and fair process. The implementation of collateral in the *Musyārahah mutanāqishah* (MMQ) contract at Bank Muamalat Makassar is in accordance with the five principles of Islamic economics: justice, trustworthiness, security, prosperity, and brotherhood. This implementation reflects fair sharia financing through transparent property ownership distribution, legal protection of collateral, and peaceful settlement of defaults. To strengthen customer trust, Bank Muamalat is advised to improve the recording system that allows customers to monitor the portion of ownership that has been paid directly and periodically. Further and intensive collaboration with notaries, the

³⁹ Bahari, Hatizal, and Doktoralina, "Study of Direct Relationship Determinants on the Selection of Musyarakah Mutanaqisah (MM) Products."

⁴⁰ Maulan, Harahap, and Sasmini, "Comparative Analysis of Murabahah Financing Agreement with Musyarakah Mutanaqisah Financing Agreement in Indonesia's Sharia Banking System."

Sharia Supervisory Board (DPS), and related legal institutions is needed to minimize legal obstacles that may arise, especially in terms of the completeness of property documents. Considering the risk of changes in property values, it is recommended that the Bank Muamalat Makassar branch conduct further research to develop a more adaptive collateral value adjustment mechanism.

ACKNOWLEDGMENT

The researcher would like to thank Mr. Nurman Prayudi, Mr. Dr. Idris Parakkasi, Mr. Dr. Abdurrifai, Mr. Andi Rustam, Mr. Haeril Anwar, and Mrs. Dr. Sri Wulandari as parties who have agreed to be respondents or sources in this study. The researcher also expresses gratitude to the management of the Al-Jadwa journal, who has given the researcher the opportunity to publish the results of his studies and research.

REFERENCES

- Abdullah, Sri Nurhayati dan Wasilah. *Akuntansi Syariah Di Indonesia*. Ed. V. Jakarta: Penerbit Salemba Empat, 2016.
- Ali, Mohammad Daud. *Hukum Pembiayaan Syariah*. Jakarta: Sinar Grafika, 2016.
- Ali, Zainuddin. *Hukum Perbankan Syariah*. Jakarta: Sinar Grafika, 2016.
- Al-Qaradawi, Yusuf. *The Lawful and the Prohibited in Islam*. Cairo: Al-Falah Foundation, 2001.
- A.S., Nurlailiyah. “Tinjauan Hukum Akad Syariah Terhadap Multi Akad (Al-’Uqūd Al-Murakkabah) Dalam Lingkup Akad *Musyārahah mutanāqishah*.” *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 10, no. 1 (2016): 117–34. <https://doi.org/10.15575/adliya.v10i1.5150>.
- Asutay, Mehmet. *Islamic Moral Economy as the Foundation of Islamic Finance*. In: *Islamic Finance in Europe*. Cham: Palgrave Macmillan, 2013.
- Aziz, Abdul, Wira Franciska, and Felicitas Sri Marniati. “Kepastian Hukum Jaminan Hak Tanggungan Atas Sertifikat Hak Pakai Di Atas Hak Milik Perorangan Terkait Penolakan Pembiayaan Oleh Perbankan.” *SENTRI: Jurnal Riset Ilmiah* 2, no. 12 (December 8, 2023): 5062–71. <https://doi.org/10.55681/sentri.v2i12.1891>.
- Bahari, Zakaria, Nor Hatizal, and Caturida Meiwanto Doktoralina. “Study of Direct Relationship Determinants on the Selection of Musyarakah Mutanaqisah (MM) Products.” *International Journal of Supply Chain Management* 8, no. 5 (October 26, 2019): 501–8. <https://doi.org/10.59160/ijscm.v8i5.3649>.
- Basyariah, Nuhbatul. “Analisis Implementasi Pembiayaan Musyarakah Mutanaqishah Pada Perbankan Syariah Di Indonesia.” *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 9, no. 2 (December 1, 2018): 120–33. <https://doi.org/10.18326/muqtasid.v9i2.120-133>.
- Chapra, M. Umer. *The Future of Economics: An Islamic Perspective*. Vol. 21. Leicestershire: Kube Publishing Ltd, 2016.

- Haflisyah, Humaira dan T. “Objek Syirkah Menjadi Jaminan Hak Tanggungan Pada Pembiayaan Perumahan Melalui Akad *Musyārahah mutanāqishah*.” *Jurnal Hukum Samudra Keadilan* 18, no. 1 (2023): 121–30.
- Hakim, Atang Abdul. *Fiqih Perbankan Syariah*. Bandung: PT. Refika Aditama, 2011.
- Husein, Muh Turizal. “Telaah Kritis Akad Musyarakah Mutanaqisah.” *Al Maal: Journal of Islamic Economics and Banking* 1, no. 1 (July 7, 2019): 79–88. <https://doi.org/10.31000/almaal.v1i1.1775>.
- Ikatan Bankir Indonesia. *Memahami Bisnis Bank Syariah*. Jakarta: Gramedia, 2014.
- Karim, Adiwarman A. *Bank Islam: Analisis Fikih Dan Keuangan*. Cet. X. PT. RajaGrafindo Persada, 2015.
- Kusmastuti, Ines Prasheila, and Al Muazzami. “Telaah Kesesuaian Kontrak Musyarakah Mutanaqisah Di Perbankan Syariah Terhadap Fatwa DSN MUI No. 73/DSN-MUI/XI/2008: (Studi Kritis Kontrak Pembiayaan No. 257).” *Minhaj: Jurnal Ilmu Syariah* 5, no. 2 (July 5, 2024): 266–75. <https://doi.org/10.52431/minhaj.v5i2.2818>.
- M. Ali. “Risk Management and Shariah Compliance in Islamic Finance.” *Journal of Islamic Finance and Risk Management* 3, no. 1 (2014).
- Maulan, Anas, 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* 2, no. 1 (March 29, 2023): 43–51. <https://doi.org/10.59683/ijls.v2i1.31>.
- Mikail, Said Adekunle, and Mohd Shahril Mat Rani. “Sharī’ah Contracts Underpinning Mushārahah Mutanāqishah Financing: A Conceptual Analysis.” *ISRA International Journal of Islamic Finance* 8, no. 1 (June 15, 2016): 35–66.
- Muslich, Ahmad Wardi. *Hukum Jaminan: Aspek Yuridis, Ekonomi Dan Sosial Dalam Pelaksanaan Hak Tanggungan*. Bandung: Mandar Maju, 2020.
- Nafis, Cholil. *Teori Hukum Ekonomi Syariah*. Jakarta: UIN Jakarta Press, 2011.
- Qureshi, Fahad, and Sutan Emir Hidayat. “Challenges in Implementing Musharakah Mutanaqisah Islamic Home Financing in Malaysia.” *Journal of Islamic Financial Studies* 2, no. 2 (December 1, 2016): 45–54. <https://doi.org/10.12785/jifs/020205>.
- Rahmat, Edwin. “Analisa Pembiayaan Properti Menggunakan Akad MMQ (Musyarakah Mutanaqisah).” *El-Arbah: Jurnal Ekonomi, Bisnis Dan Perbankan Syariah* 2, no. 02 (2018): 1–26. <https://doi.org/10.34005/elarbah.v2i02.540>.
- Redzuan, Nur Harena, Salina Kassim, and Adam Abdullah. “Rental Yield As An Alternative To Interest Rate In Pricing Musyarakah Mutanaqisah Home Financing – The Case For Malaysia.” *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilisation (ISTAC)*, December 1, 2018, 69–88. <https://doi.org/10.31436/shajarah.v0i0.716>.
- Salleh, Muhammad Syukri. *An Introduction to Islamic Economics*. Selangor: Ilham Books, 2012.
- Sariningsih, Sariningsih, Jaenudin Jaenudin, and Mila Badriyah. “Tinjauan Hukum Ekonomi Syariah Tentang Beban Biaya Dalam Pembiayaan Mikro Dengan Akad

- Musyarakah Mutanaqishah Di BRI Syariah.” *Al-Muamalat: Jurnal Ekonomi Syariah* 7, no. 1 (2020): 57–64. <https://doi.org/10.15575/am.v7i1.10860>.
- Sherhan. “Eksekusi Hak Tanggungan Akad Musyarakah Mutanaqisah: Sebuah Kajian Keadilan Hukum.” *Jurnal Ilmu Syari’ah, Perundang-Undangan Dan Ekonomi Islam* 15, no. 2 (2023): 317–31. <https://doi.org/10.32505/jurisprudensi.v15i2.6846>.
- Sherhan, Sherhan. “Eksekusi Hak Tanggungan Akad Musyarakah Mutanaqisah:” *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 15, no. 2 (August 30, 2023): 317–31. <https://doi.org/10.32505/jurisprudensi.v15i2.6846>.
- Sudarsono, Heri. *Bank Dan Lembaga Keuangan Syariah Deskripsi Dan Ilustrasi*. Cet. III. Yogyakarta: Ekonisia, 2005.
- Suryani, Lilis. “Solidarity and Cooperation in Islamic Economics.” *Islamic Economic Studies Journal* 11, no. 2 (2013).
- Zaaba, Nurul Iffah Binti M A, and Rusni Hassan. “Why Islamic Banks Are Reluctant to Offer Musharakah Mutanaqisah for Home Financing: The Case of Maybank Islamic and Affin Islamic Bank.” *Turkish Journal of Islamic Economics* 6, no. 1 (February 15, 2019): 51–66. <https://doi.org/10.26414/A044>.
- Zainuddin, Muhammad Anwar. “Akad Musyarakah Mutanaqisah Dalam Sistem Perbankan Syariah.” *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 12, no. 2 (December 31, 2018): 321–38. <https://doi.org/10.24239/blc.v12i2.373>.