

ANALYSIS AND IMPLEMENTATION OF MULTI-CONTRACT DEVELOPMENT (HYBRID CONTRACT) AS A SOLUTION FOR ISLAMIC BANKING PRODUCTS

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ABSTRACT

One indicator of the progress of sharia banking is the ability to produce financial products that can compete in the national and even international markets. Economists view the existing Islamic banking products today are still unable to compete. Some even seem to copy-paste conventional products. Whereas in Islam there are many components of a contract that can be formulated to produce products that are not less interesting than conventional products. Combined single contracts that form the new contract formula is known as *Al-Uqud Al-Maliyah Al-Murakkabah*. In general terms it is often referred to as a hybrid contract. However, this concept has a legal problem because the hadith prohibits two contracts in one transaction. In its development based on in-depth study, scholars and academics put forward theories that refute this view. The purpose of this paper is to provide a proper understanding of the concept and application of hybrid contracts, while refuting views in academic debate that hybrid contracts are absolutely prohibited in Sharia. This study presents the basic principles in Sharia commercial transactions, so that structured contracts do not conflict with the hadith that prohibits hybrid contracts. In summary, if the formula hybrid contract does not contain usury, *gharar*, *dzulm*, *maisir* or various other prohibitions, then back to the original law of *muamalah*, namely the original law of the *muamalah* contract is permissible. The method used in this paper is library research or library study. The conclusion of this paper is the importance of innovation in Islamic banking products on abasis hybrid contract and it is hoped that this paper also offers several solutions for developing hybrid contracts as a basis for Islamic banking products.

Keywords: multi contract, hybrid contract, double contract, product innovation.

1.0 INTRODUCTION

1.1 Background of the Problem

Sharia banking¹ needs of superior and high quality products to compete in the international market. Moreover, this is supported by a very competitive market competition between Islamic and conventional financial institutions. Each institution competes to attract customers with various superior products that they roll on the market.

The fierce market competition is pushing Islamic financial institutions both banks and non-banks continue to work hard to innovate to create new products. But unfortunately, the development of Islamic banking products in Indonesia is still relatively static when compared to Islamic banking products in other countries. If traced to the root of the problem, one of the reasons is the weakness of the study in the field of transaction contracts that were extracted from *fiqh* and *ushul fiqh* rules. Finally, innovation in banking products Islamic in Indonesia is not as fast as in other countries. Not just that, research on the concept of multi-contract² (*al-, uqud al-murakkabah/hybrid contract*) which is the basic foundation of sharia banking product innovation among the country's academics is still very rare.

The reality that runs so far, the contracts used in Islamic banking are still dominated by a single contract such as *mudharabah*, *musyarakah*, *wadiah*, *ijarah*, and others. Factually, modern transactions often use several contracts to facilitate activities. This is because it is considered practical and efficient regardless of the legality which is sometimes still debated by the scholars. *Muamalah* with several contracts or multiple contracts in one transaction is often called a *hybrid contract*.

Hybrid Contract or better known in modern *fiqh* literature with "*al- uqud al-murokkabah*" is actually a polemic of Islamic banking which today is actually being discussed. Not just limited in Indonesia, in various Islamic countries are seriously working on Islamic banking product innovation. The polemic of the *hybrid contract* is mainly about legality which often crashes into standard rules in the *muamalah* of Islam.

The goal of Islamic economists to develop this research is to produce halal new products, be able to compete in the market, have high selling points, and be relevant in responding to the challenges of the times. This study is actually one of the tough demands of Indonesian Islamic banking in the global market. Therefore, product innovation Islamic financial institution must continue to be developed. Various studies, studies, seminars, training, and workshops on product innovation should also

¹ Many differences occur in the definition of Islamic banks or Islamic banks, this is because it is explicitly the term bank has never been mentioned either in the Qur'an or As-Sunnah. But among the definitions that can be used as a basis for the understanding of Islamic banks is a financial institution that functions as a fundraiser and distributes it to the public, where the system, procedures and mechanisms of business activities are based on Islamic law, namely the Qur'an and the hadith. See the Sharia Professional Education Briefcase Book. (2007). *Islamic Bank Concept & Implementation*. Jakarta: Renaissance. p. 19-20.

² This etymologically means *contractual- "aqd* (connection) or *al- "ahd* (promise), while in particular it is an engagement that is determined by consent based on sharia provisions' which have an impact on the object. See Rachmat Syafei. (2011). *Fiqh of Muamalah*. Bandung. Loyal Reader CV. p. 43-44.

continue to be intensified. All it is to respond quickly to various forms of muamalah which are easily shared in classical literature of fiqh.

The challenge of product development through this study *hybrid contract* certainly requires scientific answers and can be accounted for both in the world and in the hereafter. The role of DSN-MUI³ and the Sharia Supervisory Board (DPS)⁴ as a body banking supervisory must be really tough and observant in exploring Islamic law relating to financial products that become alternative innovations. As explained by Muhammad Syafi'i Antonio⁵ about the DPS task as follows:

"Another task of the Sharia Supervisory Board is to examine and make recommendations for new products from the banks it supervises. Thus, the Sharia Supervisory Board acts as the first filter before a product is re-examined and registered by the council national sharia. The work mechanism of DPS can be described as follows:

The main function of the National Sharia Board is to oversee the products of institutions Islamic financial to be in accordance with Islamic law. This board not only oversees banks Islamic, but also other institutions such as: insurance, mutual funds, venture capital, and so on. For the purposes of this supervision, the National Sharia Council makes guide lines for sharia products taken from Islamic legal sources. This guideline forms the basis of supervision for sharia supervisory boards in financial institutions Islamic and forms the basis for the development of its products".

With this supervision, it is hoped that the products that are rolled out are truly products quality and can become a *syar'i* solution in the midst of the rioting system that dominates the Islamic community. The purpose of quality is to be able to compete with other conventional banking products, especially in the international market.

So, not just innovating in the product, but also consider the element halal. Because often the practice of Islamic banking in the field is still far from what is expected. The fall to the practice of ribawi is still very vulnerable. This is as explained by Muhammad⁶ in his book.

"Theoretically no one has denied that the concept of Islamic banks is good. However, something theoretically good is not always good in practice. The situation on the ground often forces the ideal formula to compromise with existing realities. Especially if the creation of the concept of Islamic banks turned out to only touch on its aspects outside. Kuran said that such conditions would invite more problems which meant that more compromises would also occur.

As the name implies, Islamic banking should be able to make contribution a significant to the objectives of Muslim communities in the economic field, such as poverty eradication, equitable distribution of wealth, and job creation. Nyazee said that:

The maximum contribution of Islamic banks is difficult to realize if Islamic banks are allowed to operate in intense competition with conventional banks. Banks are Islamic only able to give their full positive role when practices banking based on interest are completely replaced by an financial system Islamic.

The contract in sharia banking transactions is a gateway for customers to invest their capital. The contract is also a basic guideline in regulating the risk management of an Islamic banking. Through the contract, the banks also calculate profit sharing for each customer.

Thus mistakes in product innovation launched in the community will have fatal consequences for banks and customers. Fatal because it will cause two losses that must occur. The loss of the world in the form of the spread of usury and justice. Whereas in the hereafter will be a disaster for the culprit.

1.2. Research Methods

The type of research used is descriptive analysis, which uses literature studies to obtain primary data, there are data from the Qur'an and its translations, DSN-MUI Ulama Hadith and Fatwa, Islamic fiqh muamalah books, Islamic economics books, journals and research results which related, and field studies to obtain secondary data, which are sourced from interviews with several Sharia banks in practice are sacrificed to apply a hybrid contract. Then a juridical review normative of the regulations that apply to the provisions regarding the existence of two or more contracts in one transaction, both in the Quran, Hadith or Fatwa of the National Sharia Council.

³Authority highest sharia in Indonesia are on the National Sharia Board-Indonesian Ulema Council (MUI DSN-), which is an independent agency in issuing a fatwa-related with all the problems of Islamic sharia, both worship and problem *your'amalah*, economics, finance and banking. However, due to the variety of functions handled by DSN-MUI and the absence of special specialization in the fields of economics, finance and Islamic banking, DSN-MUI's response to problems faced by Islamic financial institutions has become less responsive and late in meeting market needs. See Ascarya. (2007). *Sharia banking contract & products*. Jakarta: PT RajaGrafindo Persada. p. 206-207.

⁴ As a follow-up to the BI Board of Directors Decree, MUI Decree No. Kep-754 / MUI / I / 1999 concerning the Establishment of the National Sharia Council (DSN). While sharia supervisory board members are regulated in DSN MUI Decree No. 03 of 2000 concerning Guidelines for Implementing the Determination of Members of the Sharia Supervisory Board at Islamic Financial Institutions. See Adrian Sutedi. (2009). *Islamic Banking, Overview and Some Legal Aspects*. Bogor: Ghalia. p.141.

⁵ See Muh. Shafi'i Antonio. (2009). *Islamic banks from theory to practice*. Jakarta: Gema Insani. p.31-32

⁶ Muhammad. (2008). *Mudharabah Financing Management at Syari'ah Bank Maximizes Return and Minimizes Risk*. Jakarta: Rajawali Press. p. 20-21.

2. DISCUSSION

2.1. Previous Research

Along with this phenomenon, there are several studies that discuss the hybrid contract. The first study entitled "Hybrid Contracts in Islamic Banking and Finance: A proposed Shariah Principles and Parameters for Product Development", written by Muhammad Imam Sastra Mihajat, was published in EJBM Journals of Islamic Management and Business, volume 2, number 2, 2004. The second study, entitled "Muamalah Fiqh Analysis about Hybrid Contract Models and its Applications in Islamic Financial Institutions", written by Ali Amin Iskandar, in a Thesis on STAIN Pekalongan

2.2 Analysis of the Development of the Contract and Legality of Hybrid Contracts

In the life of bermuamalah, a Muslim cannot be released with the muamalah contract that they do in everyday life. Islam has provided guidance on sharia agreements to regulate muamalah. If we trace Islamic literature, almost every fiqh book from various schools of thought always includes muamalah discussion. Muamalah fiqh in Islam has the characteristics of human (humanity), morality, and, natural (universal).⁷ These characteristics are always found in the discussion of muamalah which makes Islamic muamalah fiqh different from the perspective of other religions in bermuamalah.

It's just that the contracts mentioned in the hadith are mostly single contracts such as mudharabah,⁸ murabahah,⁹ rahn, ijarah, qard, buying and selling *salam*, *istishna'*, and others. In Islam, contracts which are built to be the basis of bermuamalah have many rules and ethics of politeness so that they can achieve the ultimate goal of bermuamalah. The main purpose is to facilitate and make each other happy.¹⁰ In addition, the contracts are carried out in order to maintain the benefit of the two parties who bermuamalah.

Along with the times, human needs bermuamalah increasingly complex. Thus muamalah also develops very fast. In the field of muamalah Islam is indeed not rigid as long as technically muamalah is still in the corridor of sharia. Nowadays various kinds of muamalah appear that combine various kinds of contracts as a form of response from modernity. The combination of these contracts is often termed *al-uqud al- maliyah al-murakkabah* (عقد كركل مائتي لامل مادوقه علا) or more popularly called the *hybrid contract* (HC).

Hybrid contract is indeed an interesting and challenging discussion to be studied and further investigated at this time. Interesting because indeed Islamic banking and LKS are in dire need of varied product innovations to compete and respond to progress. In addition, research in this issue is quite challenging because references in English or Indonesian and even Arabic are scarce to obtain. In addition to this, Islamic economics books circulating and becoming references in the world of Islamic economic campuses in Indonesia have not touched many discussions on *hybrid contracts*.

Issues regarding *hybrid contracts* are indeed very widespread in the world of Islamic finance, including in Indonesia. Among the experts who discussed the *hybrid contract* was Nazih Hamad in his book *Al-Uqud Al-Murakkabah fi Al-Fiqh Al-Islami*. In the book¹¹ he defines the *hybrid contract* as follows:

"The agreement of two parties to carry out a contract containing two or more contracts so that all the legal consequences of the contract which are collected, and all rights and obligations that arise thereof are seen as a single entity that can not be separated, divided and cut and it is a legal consequence of a contract. "

As Abdullah Imroni defines it as follows:

"Combination of several financial contracts contained in a contract so that all rights and obligations arising from all the contracts are seen as a legal consequence of one contract, both the arrangement of the contract jointly or reciprocally."

If we look at these two definitions, which are the definitions that are developing at the moment, it is clear that the *hybrid contract* is an integral and inseparable contract. Thus in punishing the legality of HC, it can not only be seen from the

⁷ See Atang Abd. Judge. (2011). *Islamic Banking Jurisprudence*. Bandung: PT Refika Aditama. p.188

⁸ *Mudharabah* is a trade union agreement between two parties, the first party as a financier, while the party second as a business implementer, and the profits obtained are divided between the two of them in the agreed percentage between the two. See Muhammad Arifin bin Badri. (2012). *Usury and Critical Review of Sharia Banking*. Bogor: CV Darul Ilmi. p. 131.

⁹ *Murabaha* or also called *Bai 'Bitsamanil Ajil*. The word *murabaha* comes from the word *ribhu* (profit). So *murabaha* means mutual benefit. simply *Murabaha* means buying and selling of goods plus agreed profits. See Mardani. (2013). *Islamic Economics Fiqh*. Jakarta: Kencana PrenadaMedia Group. p. 136.

¹⁰ Among these courtesies there are at least a few main points. a). Covenants are reviewed in terms of objectives and benefits. b). Covenants in Islam can be held in any way that can show the purpose of these contracts. c). Covenants in Islam will not be perfect unless it applies with equal likes and consensus between the two parties to the contract. d). Islam has obliged the strengthening of the contracts to guarantee the rights and upholding of justice among all people. e). Covenants must be able to realize justice between the two parties to the contract and must avoid persecution. f). All contracts and muamalat must be able to realize the objectives of the Shari'a in worship and morals. g). All muamalat contracts cannot be perfect except by placing a size and limiting property. Islam requires honesty and acts of virtue and forbids fraud, falsehood, and violations. See Ahmad Muhammad Al-Assal and Fathi Ahmad Abdul Karim. (1999). *Systems, Principles and Objectives of Islamic Economics*. Bandung: Loyal Reader CV. p. 182-208.

¹¹ Nazih Hamad. (2005). *Al-Uqud Al-Murakkabah fi Al-Fiqh Al-Islami*. Damascus: Darul Qalam, p. 7

side of one contract. This formulation is actually a new breakthrough that is very potential in the innovation of the Islamic financial world.

If we trace, in principle muamalah with more than one contract actually has been around for a long time. In general the merging of muamalah with one contract more has been alluded to by scholars. Among them is the agreement agreement *bargaining*. *Tawarruq*, namely selling goods to the first buyer on debt at a price certain, then the first buyer sells to the second buyer in cash at a lower price.

The purpose of the first buyer to buy goods is as an intermediary to get cash from the second buyer. If the goods are sold to the seller then this is called in the bargain purchase "*inah*". So, in contract this *tawarruq* there are two contracts in one transaction. Namely the contract of goods debt to the first seller and the sale and purchase contract to the next buyer. Ibn Taymiyyah had referred to this issue in *Majmu' Fatawa*¹² as follows:

"*Tawarruq based on two narrations from Imam Ahmad is forbidden, this is as the opinion of Umar bin Abdul Aziz, and Imam Malik as I had expected.*"

Ibn Taymiyyah's statement shows that this problem has existed since time immemorial. As for the law, it is still in the realm of the difference between allowed and not. With regard to *bargain*, Andril Hakim and Luqman Hakim Handoko¹³ explain:

"Transaction *bargaining*¹⁴ as recognized by the perpetrators, namely the sale and purchase transactions carried out with the aim not to use goods, but to generate cash for buyers (in this case banks). DSN has not yet stipulated a fatwa on *bargaining*. Contemporary scholars who are members of the *Islamic Fiqh Academy* have banned this transaction, namely at its 17th annual conference in 2003"

If we examine the nature of the hybrid contract as mentioned in the above definition, of course we will be dealing with the hadiths which prohibit the merging of two contract in one transaction. This is what actually lies behind the differences in the scholars regarding the legality of multi-contract muamalah. Among the hadiths of the Prophet which forbid these are as follows:

Ahmad narrated the hadith in Musnad number 6628:¹⁵

"*It was narrated from Imam Ahmad of Amr bin Syu'ib from his father from his grandfather he said, "The Messenger of Allah has forbidden two contracts to sell in one transaction. He also forbade combining the sale and purchase of debt and debts, and he forbade taking profits from transactions that are not guaranteed, and prohibits the sale and purchase of something that does not belong to him."*

Likewise Ahmad's hadith narration number 3783:¹⁶

"*It has been narrated from Imam Ahmad of Abdulloh bin Mas'ud from his father he said, "The Messenger of Allah has banned the existence of two contracts in a sale and purchase transaction."*

The hadiths that are similar to the two hadith are very many. By *Zahir* hadiths indicate the ban on combining two contract implicitly in a single transaction.

"It has been narrated in a number of authentic hadith about the prohibition of *bai' ataini fi bai'ah* (two agreements in one transaction)."¹⁷

The scholars of jurisprudence agreed with this hadith in general and they forbade someone to make two transactions in one agreement. However, they disagree in the interpretation of the hadith, both in variations the form of transactions that are absolute or those that are not absolute. In this issue they have many interpretations.

Writers tend to interpret the meaning *bai' ataini fi bai'ah* is an agreement with the two transactions, both with the implementation of one of the two transactions (or in terms of price). For example when the seller says: "I sell this commodity

¹² See Ahmad Abdul Halim Al-Haroni. (1998). *Majmu' Fatawa*. Riyadh: Maktabah „Repeat. Juz 15. p. 20

¹³ Journal of SEBI (Islamic economics and finance journal, banking product innovation 'somenotes. SyaricriticalWww.sebi.ac.id.hal.19) vol.03.No.1, October 2010.

¹⁴ In Arabic, root word *Tawarruq* is "*wariq*" which means: a symbol or character from silver (silver). The word *bargain* can be interpreted more broadly, that is, looking for cash in various ways, namely by finding silver, gold, or other coins. The term *bargaining* is introduced by the Hambali school of thought. Shafi school of "i know *Tawarruq* as "*zarnaghah*" which means to grow or develop. In Islamic law, *awarruq* means a structure that can be carried out by a *mustawriq / mutawarriq* that is someone who needs liquidity. A transaction *bargain* is when someone buys a product on credit (repayments) and sells it back to a third person who is not the first owner of the product in cash, with less expensive assets

¹⁵ See Ahmad bin Muhammad bin Hambal. (2001). *Musnad Imam Ahmad bin Hambal*. Tahqiq Syua'ib Al- Arnauth. Bairut: Muassasah Ar-Risalah. Juz 11. p. 203.

¹⁶ Ahmad bin Muhammad bin Hambal. (2001). Juz 6. p. 324

¹⁷ Among these hadith Abu Hurairah said: The Messenger of Allah, forbade the sale and purchase of two agreements in one transaction. The hadith is narrated by At-Turmudzi and An-Nasa'i. Said Abu Isa: the hadith of Abu Hurairah is a hasan saheeh hadeeth and is allowed to postulate with the hadith according to the scholars (Al-Jami 'Al-Shahih 3/533 and Sunan An-Nasa' 7/295)

to you for one hundred in cash and one hundred and ten by credit ". Then the buyer answers: "I accept". However, the buyer does not determine which contract (agreement) or price he chooses to buy, which should be one of the two agreements or the price must be decided by the buyer.

Another form of *bai'atiani fi bai 'ah* can also apply with the implementation of the two agreements or prices, such as the seller's statement: "I sell my house to you for that much as long as you sell your car to me at this price".

Then to further crystallize our understanding of *hybrid contracts*, the form of muamalah is actually an example of a case *hybrid contract*.

"The form of muamalah based on human creations created in accordance with social change will change again if there are social changes other. That is, a form of muamalah is permitted at one time and legalized according to sharia ', if at a time when the benefit of humans is no longer in line with the form of the muamalah, then the type of muamalah can be declared no longer valid. For example, in the middle of the V century H. in Bukhara and Balk (in Central Asia), the scholars of Hanafi Jurisprudence created a form of muamalah which they called *bai 'al-wafa'* which is a form of conditional sale and purchase with a grace period, so that when the grace period has passed used up, the buyer is obliged to sell the goods bought to the seller in accordance with the price when the first contract took place.

For example, Suhaimi needed some money being pressed, while he owned a plot of garden. While the rich do not want to lend their money voluntarily, even though the contract *ar-rahn* (borrowing goods or money guaranteed by certain goods without any compensation), without getting any compensation, if in the current era. Suhaimi sold his garden, for example, for Rp. 25,000,000 (twenty-five million rupiah) for two years to a rich man (Marwan), provided that the garden would be repurchased by Suhaimi if the two-year period ended at a price that was over the same (twenty five million rupiah). As long as the garden is in the hands of the buyer, he is free to exploit the garden for his interests. "

Buying and selling like this, according to Mustafa Ahmad Az-Zarqa, is a fabrication of three forms of transactions, namely: a) when a contract is made, it is a sale and purchase because the contract explains that the transaction is a sale and purchase. b) after the transaction is carried out and the property is transferred to the buyer, this transaction is in the form of *al-iyari* (leases), because the goods purchased must be returned to the original seller, even if the buyer has the right to exploit the benefits of the assets in his hand until the agreed time at the beginning of the transaction. c) at the end of the contract, when the agreed time limit has expired, *bai 'al-wafa'* shaped *ar-Rahn*, since the fall of the tempo is agreed by both parties, the seller must return the money to the buyer of the price (Rp. 25,000,000, -) which is submitted to the seller when the transaction takes place, and the buyer is obliged to return the item to the seller in full.

Buying and selling like this was created by the community and approved by the Hanafi School with the aim that there is no rampant usury among the people at that time, because the rich do not want to lend money to those who need it only voluntarily (*al-qardh al-hasan*) without getting rewarded any.

On the other hand, the owner of excessive assets will also get a benefit from transactions like this, because their money is productive. Thus creating mutual help between owners of a certain period. School of thought scholars Hanafisee that buying and selling like this is not included in the Prophet's prohibition in terms of conditional sale, because even though it is required that the property must also go through a sale and purchase agreement like this is in order to avoid the public conducting a transaction that contains usury.

From the description of *bai 'al-wafa'* above, it appears that social changes that occur are very influential on the problems of muamalah, as long as the principles and rules as well as the desired syariah 'is achieved, namely the benefit of mankind'.

So, the reality shows that the *hybrid contract* actually developed at that time among the Muslims. The main cause of the *hybrid contract* because the conditions and needs are urgent. If we examine it, the contract model is actually a new form of innovation in the world of Islamic finance. From the above case, innovation very much needed *ijtihad* from ulama is when a problem arises and there is no evidence found in the Qur'an in the Qur'an and Sunnah.

Therefore, understanding the principles of ushul fiqh and mastery of the science of fiqh especially muamalah fiqh is very important.¹⁸ The problem of social muamalah which is stated by the ulama may one day change if it turns out that in practice there are deviations or other things that are not in accordance with sharia.

In this case, Ibn Al-Qayyim has a fairly monumental hypothesis in his book.¹⁹

"Discussion: relating to changes in a fatwa and its differences in accordance with changes in time, place, conditions and intentions and customs"

From this rule, it is possible for a fatwa to change from legal to illegal because of the conditions of time, circumstances, and intentions and customs. In the case of *ijtihad fiqh*, this case is not a new fact. Famous fiqh figures such as

¹⁸ Nasrun Haroen. (2007). *Fiqh Muamalah*. Jakarta: Primary Media Style. p. xviii-xix

¹⁹ Ibn Al-Qayyim Al-Jauziyyah. (2004). *T'lm Al-Muwaqqi 'an 'Rabbi Al-'lamin*. Egypt: Dâr Al-Hadîts. Juz 2. p. 5.

Imam Syafii also have some problems between *qaulul jaded* and *qoulul qadim* (opinion old and revision). In the discourse of the science of hadith, often a hadith expert makes a tradition and then makes it warm or vice versa. The dynamics of changing fatwas is very possible because indeed the nature of fiqh itself is dynamic. Unlike the problems that are creed or creed.

In its journey, the *hybrid contract* continues to develop along with the times. In fact, in these days of transactions with *hybrid contract* be glances of many within the financial institutions in finding and developing new products which could be a reliable solution of the product usury. One example of a *hybrid contract* that developed at this time was *al-Ijara al-Muntahiyah bi Tamlik* and *Tawarruq*, as mentioned earlier.

Al-Ijarah al-muntahiyah bi tamlik has been claimed by DSN²⁰ for its legality and is applied in leasing products. The *bargain*, apart from the pros and cons, has been developed into a variety of products including multi-purpose financing, KTA (Unsecured Loans), *murabahah commodity* for *treasury products*, palm oil financing using the method *Margin During Construction (MDC)*, *bay'afa "and bay" istighlal* for micro, *hedging with forward and swaps*, *Tawarruq* goldbased *istihsan* and *masalahah*, and so on.²¹

From the various literature reviews above it is clear that *hybrid contract* is very important to be examined to contribute to the innovation of banking products Islamic in Indonesia. As far as the author's knowledge, scientific works such as research, books, fatawa, or special *taste* related to the *hybrid contract* on *turats*, classical scholars are very rare. Abdullah Imrani in his dissertation *Al-Uqud Al-Maliyah Al-Murakkabah*,²² explained a study of *hybrid contract* research that supports his research. These studies include:²³

- The book *Ijtima' Al-Uqud Al-Mukhtalifah Al-Ahkam fi' Aqdin Wahidin* by Dr. Hasan Al-Syadzaali. This paper consists of 38 pages. This book contains the arguments relating to the problem, the foundation of the establishment of a problem restriction that was agreed and which was not, the opinion of the scholars associated with multiple contracts in one contract and various kinds of examples.
- The book *Ijtima' Al-Uqud Al-Muta'addidah fi Shafqatin Wahidah fi Al-Fiqh Al-Islami* by Dr. Nazih Hammad which consists of 21 pages. This book contains definitions and laws in a concise manner, and mentions the 3 principles of discussion claimed from the excerpts of fiqh books, then presents a cover and a reference.
- Writing with the title *Ijtima' Al-Uqud Al-Muttafiqah Al-Ahkam wa Al-Mukhtalifah Al-Ahkam fi' Aqdin Wahidin* by Izzuddin Muhammad Tuni which consists of 46 pages. This paper contains the law of gathering agreements which are not different in the same contract, types, rules, and laws related to it. Likewise it also contains the law of two different contracts in one contract, kinds and rules. Then the chapter closing. (the three studies above are preamble in the held fifth fiqh seminar at the Bait Tamwil (financial institution) of Kuwait. Held in Kuwait on 12-15 / 7/1419 H.
- Research with the title *Shina'ah Al-Handasah Al-Maaliyah Nazharat fi al-Manhaj Al-Islami* by Dr. Sami Al-Suwailim which consists of 38 pages. At the end of the discussion explained about the rules of the prohibition of two sale and purchase in one contract. This book also contains various kinds of two buying and selling in one contract, the meaning that negates contract and correlations, what is not included in the prohibition specifically ban along with lessons in this regard.

According to Abdullah Imrani, who makes his dissertation points different from previous studies that the discussion related to the requirements of the contract in the contract. After examined research that is only sufficient to erroneous problems without explain the elaborating and classifying the factors that influence the combined contract. In addition, the existing discussion is very concise so that it is unable to answer contemporary challenges.

Then some of the contemporary hybrid contract applications contained in this dissertation such as *ijarah al-muntahiyah bi al-tamlik*, agreements on ATM, actually have been discussed by authors in various scientific treatises. Therefore, research is not discussed from all sides. However, only according to the levels needed in the study.

²⁰ M. Ichwan Sam, Hasanuddin. (2006). *MUI National Sharia Council Fatwa Association*. Jakarta: CV Gaung Persada. p. 163.

²¹ Innovation of sharia banking products from the aspect of muamalah fiqh development, Agustianto (chairman Association of the Syariah Economists and member of the MUI DSN plenary), <http://ekonomi.kompasiana.com/monetary/2011/09/27/innovation-produk-sharia-banking-from-aspects-development-fiqh-muamalah>.

²² *Al-Uqud "Al-Maaliyah Uqud Al-Murakkabah; Dirasatun Fiqhiyyah Ta' shiliyah wa Tathbiqiyah (Multi Contract of Finance (hybrid contract); Comprehensive and Applicative Fiqh Study)* is the title of a dissertation by Abdullah ibn Muhmma d ibn Abdullah Al-Imrani He is one of the teaching teams at the Sharia Lecture in Riyadh This dissertation was tried at the Sharia Lecture at al Imam Muhammad University ibn Su'ud Al-Islamiyah Riyadh and won the cumlaude score on 22/11/1425 H. This dissertation also succeeded in combining the basic theories of classical fiqh as well as the practice of multi-financial covenants in a contemporary context. This dissertation is widely referenced in Indonesia by economic practitioners when talking about developing multi-contract based financial products (*hybrid contracts*). This dissertation was guided by Dr. Ahmad ibn Yusuf Al-Duraiwisy, lecturer at the Faculty of Fiqh and Dr. Khalid ibn Abdurrahman Al-Musya'il; lecturer at the Faculty of Economics and Management. After the trial, then The dissertation was published as a 476-page book (from the first book to the bibliography in addition to additional pages of points (lilibysI zunuK raD rehsilbup eht yb (jya, Riyadh in 1431 H / 2010 AD (cet.II). The sponsor of the publication of this book is Al-Rajhi Bank, which is escorted by (ة الشرعية في المجمع مصرف الراجحي الهئية الشرعية و) or the Sharia Supervisory Board of Bank Al-Rajhi Group. The council consists of 6 senior scholars of Jurisprudence and contemporary Jurisprudence, such as Shaykh Abdullah bin Abdul Aziz bin Aqil, Shalih bin Abdurrahman Al-Hushain, Mustafa Ahmad Zarqa, Abdullah bin Abdurrahman Al-Bassam, Abdullah bin Sulaiman Al-Mani', Yusuf Al-Hushain Qardhawi was then added to dozens of other senior scholars.

²³ See Abdullah 'Imrani. (2010). *Al-Uqud Al-Maliyah Al-Murakkabah: Dirasatun Fiqhiyah Tashiliyah wa Tathbiqiyah*. Riyadh: Dar Kunuz Islam. p. 9.

In this study the authors also added several scientific points including:

- a. Explanation of the effect of composition / incorporation in the contract.
- b. Research in contemporary examples.

So, there is no doubt about the urgency of research in this issue. There are at least three points of urgency for this problem to be actualized and redeveloped.

- a. As a re-actualization of muamalah fiqh so that it is able to develop it in accordance with the demands of the times.
- b. Proving to the financial world about the level of flexibility of banking Islamic in responding to the challenges of the times with the existence of various types of contracts that can be chosen according to needs.
- c. Opening a new discourse about hybrid contracts so that it can be a provision of further research. Because there is no research on science stops at one point but will continue to grow and vary.

Aside from urgency, it certainly cannot be separated from the benefits of research. Among the benefits that can be taken are the practical and theoretical levels. In level practical such as:

- a. For researchers, this will contribute to the innovation concept of Islamic banking products, which today seems to be simplistic, *copy and paste* conventional bank products.
- b. For banking and financial practitioners, this research will help improve the capability of Islamic banking human resources in understanding existing concepts product. So that it can be a reference for innovation of products Islamic banking in the future.
- c. For banking DPS, this research will facilitate the mastery of the concept of *hybrid contracts* so as to minimize errors in assessing a product to be financed by banks.
- d. For students majoring in Islamic economics this research will deepen the concept of contract in Islamic banking products.

As for the theoretical level such as :

- a. Research in this field will enrich scientific literature in banking Islamic to make it easier for students and other circles to compile research that builds the people's economy in the future.
- b. Being a similar and linear research material for students, practitioners and economists.

It is hoped that research in this field can achieve the following points:

- a. Analyze, explore, and know the concept and legality of the *hybrid contract* in Islam. So get new information and data that are relevant to the times.
- b. Mapping DSN-MUI fatwa products based on *hybrid contracts* and *mono contracts* so that it is easier to oversee practice in the field in order to avoid various contract deviations.

Knowing the extent of the influence of *hybrid contracts* in product innovation sharia banking in Indonesia. Thus, the map of innovation in banking products Indonesian Islamic is more focused

2.2. Implementation of Development Hybrid Contract as a Solution for Banking Products Islamic

The pros and cons in the hybrid contract is none other than the scholars looking for a legal factor in the transaction. The illat (factor legal) prohibition in transactions such as this is the element of usury,²⁴ gambling or fraud. As in the case of the sale and purchase of two prices in one transaction, actually the party who sells the commodity for one hundred (for example) by cash and one hundred and ten credit by cannot know which contract or price will be realized or chosen by the buyer. From here it is clear that there is unclear transaction.

Thus, business transactions (in bai' ataini fi bai'ah) as in the example above clearly contain the gharar element contained in the sighat (sentence) of the transaction agreed and not in the object.²⁵

From the example of the case we can find out that the transaction contract is very influential on the legality of the muamalah transaction. Dimyauddin Djuwaini²⁶ stated that the contract had legal implications such as transfer of ownership, lease rights, and others.

²⁴Ibn Taimiyah interprets *gharar* by betting so that the results are not clear. *Al-Gharar* could also mean *al-jahalah* means ambiguity or uncertainty (*unclearly/uncertainty*). See Muhammad Nizarul Alim. (2011). *Muhasabah Syariah Finance*. Solo: PT Aqwam Media Profetika. p. 31.

²⁵Husein Shahatah and Siddiq Muh. (2005). *Islamic Transactions and Business Ethics*. Jakarta: Al-Amin Adh-Dhahir Visi Insani Publishing. p. 152

²⁶Dimyauddin Djuwaini. (2008). *Introduction to Muamalah Fiqh*. Yogyakarta: Student Library. p.47-48.

Islamic in contract law is permissible as long as there is no shariah prohibition about the contract. In this case as stated by Abdullah Muslih and Shalah Ash-Shawi in his book²⁷ that:

"The origin of all forms of contract and conditions is permissible, in the opinion of the most correct scholars, so that nothing is prohibited except as indicated by the prohibition by Islamic teachings, with a firm argument or qiyas. "

Among the arguments of those who think so are as follows, "The origin of the contract is the pleasure of both parties. The consequence is the commitment they have agreed to for them.

Allah says:

"O you who believe, do not eat property in a your neighbor's false way, except in the way of business that applies with equal love among you. And do not kill your self; surely Allah is Most Merciful to you. "

(Surat an-Nisa '[4]: 29)

Allah SWT excludes assets taken from others by mutual pleasure from the prohibited assets. Required in buying and selling in this paragraph only mutual pleasure alias like and like, as a willingness to be a condition of charity. It shows that all transactions based on mutual respect are permissible, unless it is proven that Shariah teach prohibits them, such as buying and selling liquor.

Covenants and conditions are a matter of customs, and their origin is not prohibited. Because the origin of customs is mubah.

Allah says:

"...In fact Allah has explained to you what He forbids you from, except what you are forced to eat." (Surat al-An'am [6]: 119)

This law applies generally to things and deeds. The law is used as the original legal standard until there is an explanation of the prohibition.

Al-'Irani says about multi-contract law:²⁸

1. The majority of Hanafiyah scholars, some opinions of Malikiyah, Shafi'i scholars, and Hanbali are of the opinion that multi-contract law is legal and permissible according to Islamic law.
2. The reason; the legal origin of the contract is permissible and valid, not forbidden and canceled as long as there is no legal proposition that prohibits or cancels it.

Permission Hybrid contract in a transaction, according to Ibn Qayyim:²⁹

Legal origin of the contract and conditions are valid, except those that are canceled or prohibited by religion.

Al-Syatiby explains:³⁰

1. The difference between the original law of worship and muamalat. According him to the original law of worship is to carry out (ta'abbud) what is ordered and not interpret the law
2. While the original law of muamalat is based on its substance rather than lies in practice (iltifat ila ma'any)
3. In the field of muamalat the opportunity is wide open for make changes and new discoveries, because the basic principle is permissible (al-idzn) not implementing (ta'abbud)

May combine several contracts in one transaction, with the following conditions:

1. Terms do not prohibit the merger (there are two hadiths that prohibit the merger of two contract).
2. The merging of the contracts is not to be a waslah (hilah) to those who are forbidden (usury).

Nash or strict arguments which forbid various forms of activity very little. That shows that selian mentioned forbidden, but in the original law, that is mubah. Ibn Al-Arabi stated, "There are four categories of texts which become the rules of muamalat activities in Islam: a) Verses about the necessity of mutual pleasure between the two parties (who make a contract or transaction). b) The Word of Allah SWT "And God justifies buying and selling." (Surah Al-Baqarah [2]: 275) c) hadiths about the prohibition of buying and selling ghoror (manipulation). d) Make the lofty goals of Islamic law the basis ".

²⁷ See Abdullah Al-Mushlih and Shalah Ash-Shawi. (2004). *Islamic Financial Economics Fiqh*. Jakarta: Darul Haq. p. 57.

²⁸ Al-Imrani. Op Cit

²⁹ Ibn al-Qayyim, I'lam al Muwaqi'in, in Agustianto Mingka, Hybrid Contract Webinar, Hybrid Contract online training material, Jakarta, 7 May 2020

³⁰ Al-Syatiby, Al Muwafaqat, Ibid

Although not free from pros and cons, but *hybrid contracts* have the potential to be developed into innovative solutions for Islamic banking products. Because what is not agreed upon by them are certain points. At least there are several solutions that can be done to jointly develop products Islamic banking that are innovative and free from prohibitions.

- a. DSN or DPS at each Islamic bank or Islamic financial institution makes a special division of research and development (R&D). They do not handle technical tasks as DPS, but focus on conducting scientific studies and research in the multi-contract field. not developed *Hybrid hontract is* because there is a lack of experts in this field. If you only rely on practitioners, then not a few field practitioners who are not qualified in terms of scientific capacity.
- b. Establish cooperation with international institutions that focus on public health issues such as Majma "Fiqih Al-Islami which focus on the field of fiqh or modern Islamic financial accounting such as AOIFI (Accounting and Auditing Organizations for Islamic Financial Institutions).
- c. Conduct comparative studies on Islamic banks and Islamic financial institutions in the Islamic world to find out superior products and the latest product innovations that fit the needs of the times. Comparative studies will at least open up insights and horizons for the development of the latest product innovations.
- d. Open research opportunities and provide rewards to researchers from practitioners and academics to jointly innovate in developing halal products and national and even competitiveness international.
- e. Prepare and educate special staff to become Sharia experts and multi-contract. Because, the future of Islamic banking will be more solid and has a good reputation when the products produced are truly halal and innovative.

If we examine it, of course there are so many things that can be done to develop a *hybrid contract* as a solution for Islamic banking products in Indonesia. At least these five points can provide solutions and be a breakthrough in this field.

3. CONCLUSION

From the above explanation conclusions can be drawn about the legality of hybrid contracts in Islam as follows:

1. The legal origin of the hybrid contract is originally mubah as the origin of muamalah other in Islam as long as it is proven to not be postulated or "illah (legal factors) that forbid the transaction.
2. The ability of hybrid contracts must be free from the following main elements:
 - a. Usury
 - b. Gharar
 - c. Maisir
 - d. Dhulm
3. Solutions Development of hybrid contracts as a basis for Islamic Banking products include:
 - a. DSN or DPS at each Islamic bank or Islamic financial institution makes a special division of research and development (R&D).
 - b. Establish cooperation with international institutions that focus on public health issues.
 - c. Conduct comparative studies on Islamic banks and Islamic financial institutions in the Islamic world to find out superior products and the latest product innovations that fit the needs of the times.
 - d. Open research opportunities and provide rewards to researchers from practitioners and academics to jointly innovate in developing halal products and national and even competitiveness international.
 - e. Prepare and educate special staff to become Shariah experts and multi-contract.

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