

# Risks of Multi-Contract in Sharia Financial Institutions, Indonesia

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**Abstract.** The objective of this study was to explore multi-contracts on Sharia Financial Institutions which mainly consist of two problems: 1) products of Sharia Financial Institutions which are related to multi-contracts; and 2) risk accountability of multi-contracts on Sharia Financial Institutions. The approach used was a descriptive-qualitative approach and the subjects were the costumers of Sharia Financial Institutions. The data were obtained through direct observations and semi-interviews in Sharia Financial Institutions with the employees' activities. The results showed that the products of Sharia Financial Institutions related to multi-contracts in the DSN-MUI fatwa include *musyarakah mutanaqishah*, financing takeover, and sharia credit card. Every transaction in multi-contracts has a risk. Moreover, the risk is to be held accountable by all the parties involved in the contract, and also risk accountability occurs due to the customers' negligence of their obligations.

**Keywords:** Accountability, Risk, Multi-Contracts, Costumers, Sharia Financial Institutions

## INTRODUCTION

Islamic law requires a freedom of transactions in the contract in which this must be obeyed by all parties. The law applicable in the transaction is the agreement between the parties when making the contract [1]. In determining the applicable law of the contract, one should first consider the agreement between the parties at the time of making the contract [2]. Islamic law requires the implementation of contracts from all parties without any pressure or force in the transaction.

Sharia financial institutions have various kinds of contracts [3], such as *musharakah*, *mudhrabah*, *Murabaha*, *ijara*, *salam* and *istisna'* as contract innovations formulated into excellent products. The implementation of contracts in sharia financial institutions is implemented in accordance with the fatwa of scholars sourced from the Qur'an and Hadith. When the law is explicitly mentioned from both sources, there is no room for human's judgment in Islamic law [4].

Sharia financial institutions in Islamic law strongly reject *riba* in each transaction. As explained by the Qur'an, *ribais* considered inhumane; besides, there is discrimination between the borrower and the lender as well as the dominance of the rich over the poor. Many sharia financial institutions pretend to reject *riba*, *gharar*, and *maysir* although in its practice, they are still not able to totally apply the social values in Islamic law [5]-[8]. It means that sharia financial institutions are prohibited from making contracts in any transaction containing *riba*.

Sharia financial institutions have special characteristics in providing investment and financing products where it should not deviate from sharia [9]. As such, *riba* has a very strong influence in the contract, so the concept should always be revised in the transactions continuously [10]. Sharia financial institutions must change the paradigm of Muslims society in Indonesia to make transactions on various products.

The innovative efforts of banking products in responding to the needs of the modern society are to develop multi-contract products in modern financial transactions [11]. Multi-contracts are used in many industries to balance incentives for cost efficiency and quality [12].

One of the strategies is an innovation of the products, such as multi-contracts for the development of sharia financial institutions; in other words, sharia financial institutions must create many more innovative products in order to increase the interest of customers to overcome the very slow growth and decline in the market share.

## METHOD

The aims of this study were to describe and analyze the accountability of risk in multi-contract on sharia financial institutions. This was done by using descriptive-qualitative with normative theology, formal juridical and sociological approach. The design of this study was considered appropriate to produce research products validly, practically and effectively.

The sources of the data were from interviews, books, scientific articles, scientific journals, books and reports needed to sharpen the accountability of risk in multi-

contract on sharia financial institutions. The Processing techniques and data analysis used were editing and validation. Furthermore, the data were structured on the basis of the content and structure of the discussion to obtain the validity about the concept of accountability of risk in multi-contract on sharia financial institutions.

## RESULT

### Products of Multi-Contracts in Sharia Financial Institutions

Multi-contract in Arabic is called *al-uqud al-murakkabah* which means a double contract. According to Nazih Hammadthat, *Al-Uqud Al-Murakkabah* is a two-party agreement to carry out transactions of two or more contracts [13]. In Multi-contracts, the first contract can respond to the second contract; in addition, the interrelation and support between the fulfillment of the first contract depends on the fulfillment of the second contract, through a reciprocal process[14]-[15].

Innovations of various products that became the focus of a multi-contract are *musharakah mutanaqishah*, financing takeover, and sharia credit card. The multi-contract innovation in *musharakah mutanaqisah* financing in sharia financial institutions are operated for the consumptive products in forms of home ownership by using a combined system of contracts consisting of *musharakah* contract, leasing, buying and selling.[16]. Homeownership financing based on *musharakah mutanaqisah* contract is allowed and consists of *musharakah* or *syirkah* contract and sold in accordance with the fatwa of DSN No.73/DSN-MUI/XI/2008.

The multi-contract on take-over products in sharia financial institutions is currently using marketing strategy with a take-over system of residential financing. Take-over residential financing occurs with the transfer of financing facilities from one bank to another. Take-over debt is the willingness of customers to transfer their credit to other banks to make a profit. Financing products are offered by a sharia bank to its customers by using *ba'imurabaha* contract. *Ba'imurabaha* contract in Islamic law is a multi-contract, which is a combination of *ba'i* contract and *murabaha* contract[17].

The first step of financing takeover starts with the request of customers to move its sharia financing from conventional banks to sharia bank. Then sharia bank repays the remaining debt from customers who get home loans from a conventional bank.

Besides, multi-contracts related to products in a sharia bank are considered necessary to provide convenience and security for customers in conducting the transaction and cash withdrawal by providing a credit card in accordance with the principles of sharia. DSN Fatwa No.54/DSN-MUI/X/2006 explains that a sharia card is allowed. The contracts used for sharia cards are *kafalah*[18], *qard* and *ijarah*. Terms of fee in sharia card include membership fee, merchant fee, cash withdrawal fee, and *kafalah* fee.

### Risk Accountability in Multi-contracts on Sharia Financial Institutions

The risk certainty in transactions aims to prevent from the exploitation of one party to another that each transaction must be free from many manipulation, and speculation. Islamic law prohibits any transaction which is against the inherent uncertainty of the risk amount or uncertainty that is inevitable in every transaction [19].

The determination of risk means ensuring the stability of bank management so that it may become more responsible [20]. According to R. Raymond Sant, a risk is inherent in most human endeavors, and financial risk is embedded in all loans and trading transactions run by any financial institution[21]. For sharia financial institutions in Indonesia, the risk is about a potential loss due to certain events[22].

A law principle says that "earnings are accompanied by risks"; the risk sharing of in a trading environment is also known as risk-taking. In terms of the risk distribution in transactions, the borrowers and lenders must share the risk. Therefore, it is unfair to burden all risks to customers of the bank solely[23]. It is unfortunate that the application of risk in sharia banks has the same risk as that in conventional banks. For example, the application of the credit risk in sharia banks still adopts the interest rate in conventional banks[24].

The Islamic Financial Services Board recognizes six major types of risks, namely credit risk, equity investment risk, market risk, liquidity risk, the rate of return risk, and operational risk[25]. Thus, any contract on uncertain events must be avoided. The Sharia financial system strives to contribute to achieve the major socioeconomic goals of society. This system focuses on the ethical, social, and moral dimensions of wealth creation that enhances equality and fairness for society[26].

It was also found that the risk accountability in multi-contract tends to affect the sustainability of contract on *musharaka mutanaqisah*. The system of execution of *musharaka mutanaqisah* contract in *mudharabah* financing allows the bank to supervise and control the business of its customers by requesting reports on the results of management and income from *mudharabah* financing. The results of the *mudharabah* fund management report aim to determine the realization of the projected income profit after the signing of the *musharaka mutanaqisah* contract.

In practice, *musharaka mutanaqisah* contract is implemented consistently by Muamalat Bank Makassar branch and Sharia Business Unit of BPD South Sulawesi by always requesting a report and supporting evidence related to the *mudharabah* fund management. The consistency of the bank requests *mudharabah* fund management report is one of the preventive measures to prevent the occurrence of *gharar* and *mudharat* caused by mismanagement of *mudharabah* funds.

The risks of multi-contracts in Law No. 21 2008 consist of administrative and criminal penalties. Administrative penalties are stipulated by Bank Indonesia to a sharia bank or sharia financial institution,

and a conventional commercial bank which has a sharia business unit that obstructs the implementation of sharia principles in carrying out its business and duties. Giving criminal penalties for not complying with sharia principles in running multi-contracts in sharia banks is a preventive effort of the government in maintaining its consistency in applying sharia principles in the funds distribution.

Multi-contracts applied to sharia banks cannot be separated from the potential risk that occurs in financing. Multi-contracts, if not supported by Islamic law, may become a way to anticipate the type of transactions containing riba to be lawful. In *musharaka mutanaqisihah* contract, there is an *ijarah* or lease contract. The increase in lease expenses on financing objects whose management and designations are not in accordance with the agreement may potentially fall into riba.

### CONCLUSION

*Musharakah mutanaqisah* contract in sharia financial institution is operated in the form of consumer financing such as home ownership with capital participation scheme, *ijara*, as well as buying and selling. Multi-contracts in taking over products in sharia banks are currently using a marketing strategy with a take-over system of residential financing. Multi-contracts are related to products in sharia banks for customers in conducting the transaction and cash withdrawal by providing a credit card. The contracts used for sharia cards are *kafalah* contract, *qard*, and *ijarah*.

The risk accountability of multi-contracts in Law no. 21 2008 consists of administrative and criminal penalties. Administrative penalties are stipulated by an Bank Indonesia to a sharia bank or sharia financial institution, and a conventional commercial bank having a sharia business unit that obstructs the implementation of sharia principles in carrying out its business and duties. Criminal penalties are also implemented for violations, such as not complying with sharia principles in running multi-contracts in sharia banks.

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