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Legal Reqiurements for the hybrid contract in financing financial syariah institutions in Indonesia

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Abstract
Multi-contract is a concept that exists in Islamic law to combine agreements with one another. *Riba* (an addition obtained illegally) which is clearly prohibited in Islamic law, on the other hand, human needs are increasingly complex. Financing in Islamic financial institutions requires a combination of contracts. This study aims to seek clarity on the legal requirements for multi-contractual financing in Islamic financial institutions in Indonesia. This type of research is normative with a conceptual approach supported by primary and secondary legal materials. The validity of the contract in Islamic law can be seen in terms of *wad'i* law, namely the fulfillment of the terms and conditions of the contract. Multi contracts must be in accordance with sharia principles, namely avoiding *maysir* (gambling), *gharar* (uncertainty), and *riba* (usury). The provisions of the contract in positive law in Indonesia are that the contract is not prohibited and does not contradict the law, and does not conflict with public order. The legal requirement for multi-contract is not in a place prohibited by sharia texts, not between contracts which have conflicting legal consequences, do not result in haram, and not as a form of *hillah* (engineering) *riba*.

Keywords: financing, hybrid contract, Islamic financial institutions

Introduction

According to the language of the contract according to Abu Zahrah, as quoted by Ahmad Wadi Muslich, it means to join and tie the ends of something and it can also be interpreted as strengthening and strengthening (Ahmad, 2013) [3]. According to the term Islamic law it means agreement, the contract is also called a contract which provides legal certainty to avoid manipulative transaction practices. The agreement in Article 1313 of the Civil Code (herein after referred to as the Civil Code) is the act of one or more people with one or more other people who bind themselves to one another. For those who make an agreement legally, it applies as a law as regulated in Article 1338 of the Civil Code. Contemporary transactions in increasingly complex Islamic financial institutions cannot use a single contract for the perfection of the various forms of transactions in each of its products.

The National Sharia Council of the Indonesian Ulema Council (hereinafter referred to as DSN-MUI) as an Islamic fatwa institution, one of which is the Islamic economic policy maker in Indonesia, carries out *ijtihad* against the application of multiple contracts to realize economic benefit. The merger of contracts is a solution to respond to the varied models of modern transactions. Not a few DSN-MUI fatwas have adopted the concept of a contract to serve as the basis for transactions so that their validity is legitimate (Burhanuddin, 2016) [18]. There is no explicit finding regarding the multi-contracting in the Sharia Economic Law Compilation (hereinafter referred to as KHES) which is a regulation stipulated by the Supreme Court in Supreme Court Regulation Number 2 of 2008 concerning Compilation of Sharia Economic Law.

Modern transactions consisting of several contracts in financing in Islamic financial institutions based on the DSN-MUI fatwa, namely mutual fund investment guidelines (*wakalah* and *mudharabah*), sharia insurance guidelines (*mudharabah* and *hibah* (grants)), pawn (*qardh*, *rahn* and *ijarah*), multi-services (*kafalah* and *ijarah*), line facilities (*murabahah*, *istishna*, *mudharabah*, *musyarakah* and *ijarah*), insurance (*mudharabah musytarakah*), settlement of export receivables (*wakalah* and *qardh*), sharia factoring (*wakalah bil ujrah* and *qarh*), rahn *tasjili* (*rahn*, *qarh*, and *ijarah*), direct selling tiered travel services for umrah (*ijarah* and *jualah*), intermediary (*wakalah bil ujrah*, *jualah*, *bay al-samsarah*), guidelines for administering sharia social health insurance (grants, *wakalah bil ujrah*, *kafalah*, and *qardh*), and other products that are multi-contracted in the DSN-MUI fatwa (Burhanuddin, 2016) [18].

Sharia mutual fund transactions use multiple contracts, namely *wakalah* between investors and investment managers, sale and purchase contracts between investment managers and brokers (securities intermediaries), *mudharabah* contracts between owners of capital represented by investment managers and investment users (Islamic banks) as *mudharib*, between investors as owners capital represented by investment managers and investment users (issuers), and musyarakah inan contracts, namely between investors represented by investment managers as stock investors and investment users (Harun dan Hanif, 2018). *Musyarakah mutanaqisah* consists of a *musyarkah* / *syirkah* and sale and purchase agreement, the parties have the right and obligation to provide capital and work with an agreed profit accompanied by a sale and purchase agreement, namely selling and buying gradually to transfer ownership of the object of the contract (Fatwa DSN-MUI Nomor 73/DSN-MUI/XI/2008 about *Musyarakah Mutanaqisah*).

The implementation of the musyarakah mutanaqisah contract on financing at Bank Muamalat Indonesia, the customer identifies the object to be purchased on a *musyarakah* basis and performs a *musyarakah mutanaqisah* contract with the bank. The object that has been purchased

is then leased to the customer or third party, the rental income from the object of the contract is divided according to the agreement. The customer buys part of the ownership from the bank from the rental income earned (‘Ainul, 2018). The multi-contract on the *musyarakah mutanaqisah* was included in the Codification of the International Sharia Banking Product of the Sharia Banking Directorate in 2008. In practice, the product of *musyarakah mutanaqisah* in addition to the musyarakah and buying and selling contract is accompanied by a lease agreement. Based on Nurlailiyah's research, there are still differences of opinion among the scholars who allow and prohibit them, but in the DSN-MUI fatwa the contract is allowed (Nurlailiyah, 2016). In general, multi-contract according to Nazih's opinion is allowed except in the hadith texts which prohibit three forms of multi-contract (Nazih, 2005) [11]. Three forms of multi-contracting are prohibited in the hadith, namely: first, the prohibition of combining loan agreements with sale and purchase agreements (*لايحلسلف وبيع*), second, regarding two buying and selling contracts in one buying and selling contract (*بيعتين فى بيعة واحدة*) and third, there are two transactions in one transaction (*صفقتين فى صفقة واحدة*) (Burhanuddin, 2016) [18]. Apart from Indonesia, other countries are also implementing modern transactions in Islamic financial institutions. For example, the Malaysian state through the Majelis Penasihat Syariah (MPS) Bank Negara Malaysia (BNM) has approved 135 fatwas and the Kuwait Finance House has ratified more than 500 sharia economic fatwas (Muhammad, 2014).

As a result of multi-contract law, the resulting rights and obligations constitute an inseparable whole (Yosi, 2016) [25]. The legal consequences of the various covenants being combined seem to be the result of one contract. The validity of the contract is part of one of the terms of the contract. The validity of multiple contracts is an interesting phenomenon to study, among others, to conclude the legal requirements, validity of each contract, contracts that are contradictory to one another, and the legal consequences of implementing multiple contracts in Islamic law.

Research Method

This research is a prescriptive type of doctrinal research, namely understanding the content of the law which is conceptualized as written law or as a norm that regulates human behavior (Amiruddin, 2003). In this case, it explores the legal requirements for multi-contract financing in Islamic financial institutions based on Islamic law, in addition to the relevant positive laws. An important conceptual approach is used in this study to analyze the concepts of multiple contracts to answer the valid terms of use of each contract. This research uses primary and secondary legal materials with inventory techniques, both electronically and manually.

Research Result and Discussion

Multi Akad Concept in Islamic Law and Positive Law in Indonesia

According to Syamsul Anwar, the contract is the meeting of the statement of the will of the parties which results in a legal connection to the object (Syamsul, 2007). The relationship between the statement of the will, the legal action of the parties acting and the objectives of the contract that give birth to legal consequences. The contract is valid if it is in harmony and the conditions of the contract are met. Rukun akad is something that must be in the contract, consisting of *aqid* (parties who carry out the contract), *shighat* (expressions or actions of the parties agreeing to each other), *ma'qud alaih* (object of the contract), and the main purpose of the contract (Mardani, 2013). The terms of the contract in general are that the parties who carry out the contract are capable of acting, the object of the contract can accept the law, the statement of the will of one of the parties (*ijab*) continues unbroken and continues before a statement of response is accepted or not from the other party (*qabul*) if the parties separate before there is qabul, the contract is canceled, the contract is permitted by syara', not the one that is prohibited, and the contract provides benefits (Hendi, 2005) [8].

The term multi-contract in Arabic is *called al-uqud al-murakkabah*. This term can be replaced by the term "mixed contract". Fatwa means answering a problem, modern transactions that use multiple contracts become a new problem that is difficult in Islamic law to be answered by the DSN-MUI fatwa. Modern Islamic financial transactions are an application form of Islamic law (Frank, 1998). In general, the multi-contract according to al-Imrani as quoted by (Burhanuddin, 2016) [18] generally divides the multi-contract into two types, namely requiring the contract in the other contract and collecting the contracts in one contract. Five kinds of multi-contract concepts according to al-Imrani, quoted by (Yosi, 2016) [25] are:

1. **A dependent contract or conditional contract (*al-uqud al-mutaqabilah*)**

Al-uqud al-mutaqabilah is a conditional contract, the perfection of the first contract depends on the completion of the second contract through a reciprocal process. This multi-type contract applies to co-contracts which are commercial in nature (*mu'awadah*), non-commercial co-contracts (*tabarru*') and contracts that are commercial in nature with non-commercial contracts.

2. **Collected contract (*al-uqud al-mujtami'ah*)**

Al-uqud al-mujtami'ah is two or more contracts joined in one contract. This multi-contract occurs when two contracts which have different legal consequences in one contract for two objects with one price, two different legal consequences in one contract for two objects with two prices, or two contracts in one contract with different laws on one object with one reward either at the same time or different.

3. **The opposite contract (*al-uqud al-mutanaqidah wa al-mutadadah wa al-mutanafiyah*)**

The terms *al-mutanaqidah, al-mutadadah, al-mutanafiyah* mean the three are differences that are opposite with different implications. Multiple contracts *al-uqud al-mutanaqidah wa al-mutadadah wa al-mutanafiyah*, namely contracts that cannot be collected in one contract. Two contracts that are opposite to each other and consequently are legally contradictory, it is impossible to be united in one contract because it will have the same effect.

4. **Different agreements (*al-uqud al-muhtalifah*)**

Al-uqud al-muhtalifah is a multi-agreement that collects two or more contracts which have different legal consequences. Such as differences in the legal consequences of the sale and purchase agreement and ijarah regarding the terms of time.

5. A similar contract (*al-uqud al-mutajanisah)*

Al-uqud al-mutajanisah, which is a multi-contract agreement whose contracts may be collected in one contract. However, it does not affect the law and its legal consequences. This contract can be formed from the same type of contract or two contracts that have the same or different laws. Such as a sale and purchase contract with a sale and purchase agreement, or from several types of sale and purchase agreements and *ijarah*.

Based on the results of Burhanuddin's research until mid-2016, the DSN-MUI has issued 100 fatwas around 39.32%, namely 35 fatwas with a multi-contract approach. The results of the research conducted by Abbas Arfan showed that there were only two multi-contract agreements in the DSN-MUI fatwas since 2000-2009 of the *mutaqabilah* and *mujtami'ah* contracts, 22 fatwas consisting of two contracts and 2 fatwas consisting of 3 contracts (Abbas, 2017) [15]. Until 2020, there were 137 fatwas issued by the DSN-MUI.

Multi contracts in positive law in Indonesia do not regulate these provisions specifically and specifically. The Civil Code regulates contracts in general and the Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Laws does not regulate provisions regarding multi-contract in general, but only regulates several types of transactions that use multiple contracts such as *mudharabah* syariah bonds, syariah a capital markets, sharia mutual funds, and Islamic overdraft financing. The problem of sharia economic law in positive law in Indonesia is resolved back to the provisions and principles of sharia which are the authority of the Religious Courts.

The validity of each covenant

Before the contracts are used in financing products at Islamic financial institutions, each contract has special provisions. Each contract is valid when the agreement in the statement of agreement between the agreement (offer) and *qabul* (acceptance) between the parties in the contract is also called shigat al-aqd to mutually commit to fulfill rights and obligations and bind themselves according to the consensualism theory that mutual agreement means mutually binding self (Donald, 1989) [6]. The theory of freedom of contract teaches that the contract as a form of freedom of the will of the parties who have contracted, as a whole the contract creates obligations that are free to be determined by the will of the parties who have contracted (Michael, 1985) [21].

The contract will not occur without a statement of the will of the parties who have the contract to give birth to a legal relationship to the subject of the contract. The DSN-MUI fatwa gives freedom and the parties agree to mutually agree on the contract. When a contract joins another contract, there need to be limitations that must be considered and clearly stated the will of the contract subject in each contract. The principles of the contract both in Islamic law and positive law in Indonesia apply to the contract, namely:

1. The principle of freedom of contract (*al-hurriyah*)

The parties making the contract are free to determine the content, terms, method of implementation, and other provisions. The existence of this freedom can create new contracts such as multi-contracts. In both hadith and fiqh rules, it is stated that freedom in the contract also applies to the law of engagement as regulated in book III of the Civil Code (Neng, 2015) [12]. Free does not mean lawful and lawful for everything, but there are limitations that must be obeyed. The provisions of the contract in positive law in Indonesia are that the contract is not prohibited and does not contradict the law, and does not conflict with public order (Wawan, 2011) [14]. The limitations of freedom in the contract in the hadith and the rules are legal and permissible contracts except those that are prohibited and declared haram and null and void by sharia.

2. The principle of consensualism (*ittifaq*)

Consensualism can be interpreted as agreement. Article 1320 paragraph (1) of the Civil Code, one of the legal conditions for an agreement is an agreement (Wawan, 2011) [14]. The principle of consensualism (*ittifaq*) in sharia law is the conformity of a statement of will (*ijab*) and a statement of acceptance to bind oneself (*qabul*).

3. The principle of willingness (*al-ridhaiyyah*)

In both positive law and Islamic law there is a principle of willingness, there is no coercion in the contract. The parties are willing to each other in making the contract.

4. The principle of justice (*al-'adalah*)

The principle of justice is important in the contract, the concept of fairness in positive law and Islamic law both benefits the parties.

5. The principle of *pacta sun servanda*

Pacta sun servanda means a contract made by the parties to act as a law for the maker so that it has binding power (Wawan, 2011) [14]. The provisions of this principle are contained in al-Qur'an surah al-Maidah verse 1, it can be concluded that the contract made is binding on the parties and must fulfill these contracts.

The contract is made because of the object of the contract so that it applies due to law. Conditions for the object of the contract can be submitted or carried out, must be certain or can be determined, and can be transacted in the form of objects, services or work, or something that does not conflict with sharia (Al-Sanhuri, 1956) [2]. There are two opinions regarding two objects with one price or two prices, or an object with one reward, either at the same time or differently. First, to say that both contracts are null and void because the laws of the two contracts are contradictory and there is no priority for one contract over the other because the two contracts are invalid. The second opinion, said that the two contracts are valid and the compensation is divided into two contracts according to the price of each contract object, the merger does not cancel the contract (Ali, 2013). The clarity of the object, price, and time must be known to the parties in the contract.

In the House Ownership Financing (PKR) in the form of buying a house, the *murabahah* contract is used along with the *salam* contract because the object of the residence contract is just handed over. Home owners sell to Islamic banks, then Islamic banks sell to home buyer customers. If the PKR is in the form of building or renovating a house, then the *murabahah* contract is accompanied by the *istishna*' contract, because the object of the contract still has to be held after the object is there and then it can be submitted. The *Ijarah Muntahiya Bi Tamlik* (IMBT) agreement in the DSN-MUI fatwa Number 27 / DSN-MUI / III / 2002 is an *ijarah* contract accompanied by a promise at the beginning of the contract to transfer ownership of the object after the

lease term is over by using a sale and purchase agreement or a grant (Abbas, 2017) [15].

Merger of contracts may be when the time is clear and the characteristics of each contract. The formation of a contract with multiple contracts must use contract builders that have the same contract objectives so that the legal consequences are in line (Isyrokh, 2016) [20]. The purpose of the contract is to give birth to a legal consequence, there is a contract that aims for profit and not profit. The five categories of contract objectives are transfer of ownership, undertaking work, undertaking cooperation, delegating, making guarantees (Ali, 2013).

Mutanaqisah musyarakah financing between Islamic financial institutions and customers must clearly state the purpose of implementing the contract either in terms of transferring ownership or leasing for profit (‘Ainul, 2018) [16]. In addition, there is also a syirkah contract, the parties have the right and obligation to provide capital, work and profits according to the agreement. The purpose of the contract in the DSN-MUI fatwa is one of the important things for the realization of the contract agreement. The purpose of a multi-contract agreement according to the DSN-MUI fatwa from several fatwas issued regarding multi-contracting results in a legal relationship between one contract and another. The purpose of each contract is different so that the legal relationship that is generated is also different. Completing one contract with the aim of the contract taking precedence then the other contract objectives are implemented even though it must be preceded by a promise at the beginning of the contract to realize the objectives of the next contract.

The DSN-MUI fatwa confirms the merger of two contracts such as the *qardh* and *ijarah* contracts in the financing of hajj management at Islamic banks, the meaning of the jarah contract is ujrah as compensation for non-lease services. There are no objects for rent and the amount of service fees should not be associated with the loan amount (Musawar, 2016) [23]. In the management of Islamic cards between card issuers, card holders, card recipients, and intermediary banks, at least three contracts are used, namely *kafalah*, *ijarah*, and *qardh*. The contract is only made by cardholder customers with card issuers. The use of these contracts has legal consequences, namely the permissibility to use the card (Yosi, 2016) [25].

Multi-Akad Legal Requirements in Islamic Law and Positive Law in Indonesia

The contract can be imperfect or fasid (damaged) if the valid conditions are not there, but it can still be said to be a valid contract if the conditions and harmonious agreement are fulfilled. Legitimate conditions are conditions set by syara 'for the emergence of legal consequences of a contract (Ahmad, 2013) [3]. Implicitly multi-contract in Articles 73, 112, 119, and 324 of the Supreme Court Regulation Number 2 of 2008 concerning Compilation of Sharia Economic Laws, it can be understood that two or more contracts are compiled, each forming contract independently.

The limitations of multi-contract according to al-Imrani, namely not regarding issues that are prohibited by sharia, one contract with another is not contradictory, multi-contract does not lead to and becomes a cause towards being haram, it cannot be multi-contract between commercial contracts (*mu'awadah*) with a non-commercial contract (*tabarru'*) (Abd Allah, 1431 H). The provisions of the multi-contract based on KHES are that it must benefit the parties conducting transactions in financing and the contracts that form it must stand alone and not merge together. Some opinions of the four schools of fiqh scholars (Hanafiyah, Malikiyah, Syafi'iyah, and Hanabilah) can be concluded that the multi-contract in sharia financing is valid as long as it does not cause *jahalah* (obscurity), *gharar* (uncertainty), and lead to usury.

The pillars and terms of the contract in general also apply to each contract in the multi-contract. The validity of the covenants that form multi-contracts fulfill the pillars and requirements of each contract, taking into account the limitations set by the hadith. In general, the boundaries of the multi-contract agreed by the scholars are (Yosi, 2016) [25]:

1. Multi-contract is not in a place prohibited by sharia texts

There are three forms of multi-contracting that are prohibited in the hadith (Burhanuddin, 2016) [18], namely: *first*, the prohibition of combining loan agreements with buying and selling contracts (**لايحلسلف وبيع**). For example, someone who lends Rp.1,000,000.00 then sells an item worth Rp.500,000.00 at a price of Rp.1,000,000.00 as if giving Rp.1,000,000.00 and goods worth Rp.500,000.00 in order to get an excess of Rp.500,000. 00.

Second, regarding two contracts of sale and purchase in one sale and purchase agreement (**بيعتين فى بيعة واحدة**), Imam Syafi'i interprets the hadith into two, namely buying and selling accompanied by two terms of payment methods at different prices and buying and selling with other buying and selling conditions. for example, such as someone selling goods at a price of Rp. 500,000.00 if paid in cash and Rp. 1,000,000.00 if paid in debt. Another example is someone selling goods on the condition that the buyer also sells his own goods.

Third, there are two transactions in one transaction (**صفقتين فى صفقة واحدة**). DSN-MUI strictly prohibits multiple contracts with one contract consisting of several contracts. Such as the compilation of the lease agreement with the agreement of accounts payable. The three hadiths do not mean to prohibit all forms of multi-contract, but as an exception to the form of multi-contract which is prohibited.

2. Multi contracts are not between contracts with conflicting legal consequences

Contracts whose legal provisions and / or legal consequences are contradictory because the compilation of two contracts with different terms and laws causes the obligation and outcome to be out of sync. Two covenants for one object and one time, while the laws are different.

For example, the joining of a sale and purchase contract and a grant contract is prohibited because the contract is opposite which is accumulated in one transaction. The legal consequence of the sale and purchase agreement is the reciprocal transfer of ownership to gain profit, while the legal consequence of the grant agreement is the transfer of ownership for free without any profit.

3. Multi contracts do not result in haram

The contract that leads to usury is haram, even though the contracts that are joined are allowed. Such as the multi-contract between the *salaf* (borrowing) contract with the sale and purchase agreement and the multi-contract between

the *qardh* (loan) contract and the free giving contract (grant) to the ulama lender, agreeing to forbid the qardh contract which is accompanied by better compensation requirements in the form of a grant or contract. other agreements.

4. Multi-contract is not a form of hillah (engineering) usury

Multi contracts do not contain methods or processes as prohibited in usury. This can occur through an 'inah sale and purchase agreement (the condition for reselling the object of the contract) or vice versa and through riba fadhl (similar ribawi goods exchanged for different doses). In the sale and purchase of 'inah, the purpose and conditions of the sale and purchase cannot be found because it seems like there are two sale and purchase agreements but it is actually a loan. For example, someone sells an item for Rp. 100,000.00 which is paid in cash on condition that the buyer resells the item to the seller at a lower price in cash.

Multiple contracts through riba fadhl when two contracts of sale and purchase of similar goods are at the same price, however, different measures are not allowed because the second sale and purchase is not a perfect condition for the first sale and purchase. For example, someone sells 2 kg of rice at a price of Rp. 100,000.00 on the condition that the price is the same as he gets more or less rice from the buyer. So that the two contracts must stand alone, not related or dependent.

The merger of contracts in the DSN-MUI fatwa shows that it does not violate the boundaries of the multi-contract. The practice of merging contracts has been carried out since the time of the Prophet, the practice of multi-contracting in Islamic financial institutions such as credit cards, *ijarah muntahiya bi tamllik*, *musyarakah mutanaqishah*, and parallel greetings are some of the forms of contracts used in modern transactions that have been written and used by financial institutions. sharia. In the Sharia Current Account Financing (PRKS) transaction, there are two multi-contract options, namely the *wakalah* and *murabahah* contracts or the *wakalah* and *qardh* contracts.

Two kinds of Islamic law are known as *taklifi* laws and *wad'i* laws to find out the law of issues that arise based on whether or not they are valid or not (Ansari, 2013) [5]. The study of the legal requirements for multi-contractual contracts in Islamic law from the point of view of their stipulations can be seen in *wad'i* law, which explains a legal problem that is a cause, condition, and barrier. Regarding whether or not a multi-contract is valid, it refers to the terms and conditions of each contract being fulfilled first. The four schools of fiqh scholars forbid multi-contracts included in the text which forbid them, are unclear on prices, and lead to usury.

The legal requirements for multi-contracts are not violating its boundaries, starting from a combination of contracts not in places prohibited by sharia texts, not between contracts which have conflicting legal consequences, do not result in haram, and are not a form of hillah (engineering) usury. The benefits of having multiple contracts in Islamic financial institutions are to enhance, complement, strengthen, and relate one contract to another. The application of multi contracts in Islamic financial institutions has been regulated in the DSN-MUI fatwa. The implication of one contract with another contract in the DSN-MUI fatwa is known that the characteristics of each contract along with the law of origin, when joining another contract, do not conflict with each other. Prioritizing one contract so that other contracts can be carried out together.

Conclusion

According to the fatwas issued by the DSN-MUI, multi-contracts are not contradictory and are in accordance with sharia principles to see which contracts should be prioritized. Each contract is valid when an agreement occurs by the parties. The legal requirements for multi-contracting in Islamic financial institutions are not in places prohibited by sharia texts, not between contracts which have conflicting legal consequences, do not result in haram, and are not a form of *hillah* (engineering) usury. The provisions of the contract in positive law in Indonesia are that the contract is not prohibited and does not contradict the law, and does not conflict with public order. The logical consequence of having multiple contracts is that each contract is mutually perfecting, complementing, strengthening, and related to one contract with another.

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