

Akad Musyarakah In Fatwa Majelis Ulama Indonesia

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Abstract: This paper would like to provide some explanations relating to the development of musyarakah contract in the Indonesian Ulema Council's fatwa after the study found several methods used by MUI in determining fatwa about this musharaka include using the *Naş Qathi* ', *Qauli* and approaches *Manhaji*. The method or approach used in the determination of this fatwa is by referring to the main legal source and all of these methods or approaches are in accordance with the MUI stipulations in issuing legal edicts.

Keywords: *Covenant, Musyarakah, Fatwa, MUI*

INTRODUCTION

Along with the development of Islamic financial institutions in the country, so many problems have arisen in the lives of Muslim communities regarding the economic order. In facing the current era of globalization, Indonesian people experience a very poor life. Especially the middle to lower classes, they all work hard so that the poor lives they face today are not sustainable.

To improve from the beginning, of course, we must get motivation from the community in order to realize a strong and developing economic system. Thus regular people's lives, the relationship between each other to be good. This system of behavior in Islam is referred to as Muamalah.¹ Therefore, MUI as an umbrella of institutions and organizations in Islamic the country, considers the need to establish a sharia council national and oversees all financial institutions, including Islamic banks. This institution would later become known as the Sharia National Council (DSN).²

In the banking context, musyarakah means the pooling of capital from banks and customers for business purposes. Musyarakah is usually applied for project financing, where the customer and the bank both provide funds to finance the project. After the project is completed, the customer returns the funds together with the profit sharing agreed in the contract for the bank. Investment is carried out by the bank for a certain period of time and after that the bank divests, both briefly and gradually.³

Therefore, in terms of conducting transactions, it is necessary to have ulama's fatwa so that it does not deviate from religious provisions. One of the main things in the process of

establishing a fatwa is the procedure for legal discovery. Whatever the discussion of Jurisprudence basically the procedure of legal discovery must proceed according to the approach agreed upon by the previous ulama through the method of *uṣūl fiqh*, then traced through the syara rules' namely *qawā'id fiqhiyyah* and completed with the approach *maqāsid syari'ah*. Through this mechanism, the ulama tried to produce legal products which were dug out from the main *na'ara*, namely the Koran and the Sunnah and the relevant fiqh principles.

DISCUSSION

A. Use of the term Musyarakah

Musyarakah which is often referred to as "syarikah" or "syirkah" comes from *fi'il madhi* (شرك - يشرك - شركا - وشركة) which means: allies or company friends, associations, unions.⁴ Syirkah in terms of etymology means: الإختلاط means: mixing or mixing. The purpose of mixing here is that someone mixes his wealth with the property of others so that between one part with another part is difficult to distinguish again.⁵ The word *musyāarakah* is a published word which also means: company partner or associate, association, union. This sentence can be found in the Koran.⁶ This can be seen in the sub discussion of the later musyarakah argument.

According to Wahbah Zuhaili, musyarakah is the mixing of assets with other assets so that the two cannot be distinguished anymore. Meanwhile, according to the terms the scholars of fiqh differed in interpreting the term Musharaka.⁷ According to Imam Asy-Syaukani writing in his fiqh book,⁸ (*Syirkah syar'iyah mutual*) is realized (realized) on the basis of pleasure between two or more people, each of whom issued capital in a certain size. Then the joint capital is managed to make a profit, with the condition that each of them gets a profit in accordance with the amount of shares handed over to the syirkah. But when they all agree and are happy, the profits are shared equally between them, even though the amount of capital is not the same, then it is permissible and legitimate, although some of their shares are smaller while others are greater in number. In the eyes of the Shari'a, things like this are okay, because the most important business is based on the same pleasure, pleasure, tolerance and grace.⁹

According to Malikiyah scholars, musyarakah is the granting of permission to both partners to manage shared assets or capital. That is, each partner gives permission to the other partners to manage their assets without losing the right to do so. According to

Hambali scholars, *musyarakah* is a partnership of property rights or arrangements. According to the Shafi'ite scholars, *musyarakah* is the ownership rights of two or more people so that they do not distinguish between the rights of one party to another. According to Hanafi scholars, *musyarakah* is a transaction between two people who are allied in capital and profits. This is the most appropriate definition when compared with other definitions, because this definition explains the nature of *musyarakah*, which is a transaction. As for the other definitions, all of them only explain *musyarakah* in terms of objectives and their impact or consequences.¹⁰

Of the several definitions of the Imam of the School above, the Hanafi school of thought is more appropriate in giving meaning to the meaning of *shirkah* as an agreement on two people to manage property together and the profit is shared proportionally. And from this understanding of the Hanafi school of thought then, *syirkah* was popularized in the banking world as an financing product Islamic. Can be defined broadly so that *syirkah* is a partnership contract between two or more parties to a particular business in which each party contributes funds (or charity /*expertise*) with the agreement that the benefits and risks will ditang gung together in accordance with the agreement.¹¹

Musharaka financing can be permanent and can also be temporary. Statement of financial accounting standards (PSAK) No. 59 provides an explanation of the characteristics of *musyarakah* financing. In *musyarakah* partners and banks both provide capital to finance a particular business, both those that are already running and those that are new. Furthermore, the partners return the following capital to the results agreed upon in stages or at the same time to the bank.¹²

According to the National Sharia Council, *Musyarakah* is financing based on a contract of cooperation between two or more parties of a certain business, where each party contributes funds provided that the benefits and risks will be borne together in accordance with the agreement.¹³ Therefore, *Musyarakah* is financing in the form of a cooperation agreement between the capital owner and the Customer in the form of a pooling of capital by each party to carry out a particular business or project and / or an effort to own certain assets aimed at obtaining a number of benefits provided that the profits (*profit*) and loss (*loss*) will be shared.

Even though the fuqaha provide a variety of definitions, but the substance has in common, namely business cooperation between two or more parties for a particular

business, where each party contributes with the agreement that the benefits and risks will be borne together in accordance with the agreement.¹⁴In general, according to *jumhur ulama'*, *shirkah* is divided into two, namely: 1) *amirk syirkah* (ownership), and 2) *syirkah' uqud* (akad).¹⁵*Syirkah amlak* is a partnership between two or more people to have shared assets without going through the agreement *syirkah*. Joint ownership (*co-ownership*) and its existence appears when two or more people by chance acquire joint ownership (*joint ownership*) over a wealth (*asset*) without have made a formal partnership agreement or with no contract or agreement beforehand.¹⁶

The *Syirkah amlāk* is divided into two forms, namely *amlak ijbāri* (forced) and *amlāk ikhtiāri* (voluntary). The first form occurs automatically and forcefully that does not require a contract to form it and there is no alternative to reject it such as joint ownership of property caused by inheritance.¹⁷ The second form of *syirkah* occurs automatically, but is free in nature, that, is it does not require a contract to form it and is a form of choice or option to refuse like two people or more to get a grant from another person. In both forms of *syirkah* the assets of each person who is in association in accordance with the provisions of their rights.¹⁸

Fatwa of the National Sharia Council of the Indonesian Ulema Council No: 08 / DSN-MUI / IV / 2000 concerning the financing agreement *Musyarakah* outline the provisions as follows:

- a) The statement of consent and *qabul* must be stated by the parties to show their intention in entering into a contract (contract).
- b) Contracting parties must be capable of law.
- c) The contract object (includes capital, work gains and losses).
- d) Equity in capital costs.

Musyārahah is included in the contract *tijārah* (commercial contract) with partnership (*isytirāk*) and profit sharing. What is meant by the contract here according to the *fuqaha* is an agreement determined through *ijāb* and *qabūlsharak* based on the provisions of which cause legal consequences on the object.¹⁹ Based on the above explanation that *musyārahah* is cooperation between two or more people in an agreement effort to conduct joint business. When profits and losses are determined in accordance with the agreement. Likewise, it should be stressed that the sentence *musyārahahpaper* or *syirkah* intended in this is equally intended to be a partnership based on the parties' agreement. In this case,

most fiqh books, both classic fiqh, contemporary fiqh, comparative fiqh or muamalah fiqh, often use the term *syirkah* widely.

B. Methods and Systematics of Fatwa

The existence of methods in determining fatwas is very important. If not, then legal decisions are seen to have flaws in terms of the strength of their arguments. Therefore a approach or management is needed clear when establishing a fatwa. One example of the fatwa determination method is as developed in the MUI Fatwa Commission environment. The approach was divided into three namely the *Naş Qathi'*, approach the *Qauli* approach and the approach *Manhaji*.²⁰

The approach is *Naş Qathi'* carried out by adhering to the *naşl* of the Koran or the Hadith if the problem specified is contained in the *naşr* of the Koran or the Hadith clearly. The *Qauli* approach is an approach to the process of establishing a fatwa by basing it on the opinions of the Imams of the school in jurisprudence books prominent (*al-polar mu'tabarah*). All three are approaches.

Manhaji is an approach in the fatwa process by using the basic principles (*al-qawāid al-uşuliyah*) and the methodology developed by the school of thought when formulating the law. This approach is carried out collectively using the method of *al-jam'u wa al-taufiq, tarjihi, ilhaqi* and *istinbāthi*.²¹ In short, the method or approach used in the determination of the fatwa or its resolution is to refer to the main source and the second source.²² The main sources are from the Koran and al-Sunnah. The second (secondary) source is *ijtihad* which consists of *ijma'*, *qiyās, maslahah, istihsān, istishāb, sadd dzari'ah, 'urf, siyāsah al-syar'iyyah, ta'wil, istiqlal* and *talfiq*.²³

All methods *istinbāth* and stipulations of the law that have been stated, the process of determining the law on *musyarakah* is based on considerations raised by Ma'aruf Amin and the order contained in the guidelines for the determination of the MUI fatwa. The approach *Qauli* can be seen based on the details of the provisions in the fatwa concerning the *sighah of the contract*, the parties to the agreement, and the object of the contract which can each be traced to the existence in books your' *tabarah*. Meanwhile approach *Manhaji's* to the fatwa *muswa'rakah* DSN MUI can be seen when the fatwa explains the security of collateral in the covenant in the agreement *musyarakah* to avoid cheating one of the parties. In detail about the subject and methods *al-hukmi istinbāt* mentioned above are as follows:

1. The nature and amount involved in making legal decisions.

Based on the guidelines for determining the MUI fatwa, the fatwa process is carried out collectively as an institution.²⁴ According to Satria Effendi *collective* *ijtihād* is an activity *ijtihād* involving various disciplines in addition to fiqh itself according to the issues to be discussed.²⁵ According to Satria, fatwa is collectively seen as a form of *ijtihād* modern which is considered ideal, because the formulation process is based on various scientific perspectives that are closer to the truth. *ijtihād* is collectively seen as necessary because the problems that arise today are increasingly complex.

2. Approach to the determination of law

a. approach *Nash Qathi*

According to Ma'aruf Amin approach *Qathi Nas* performed by adhering to the *Nas* Qur'an or Hadith when problems set contained in *the passage* of the Koran or Hadith clearly. When viewed in terms of the method *istinbāṭ* legal, in determining the ability to conduct financing transactions *musyārah* in their fatwa, the National Sharia Council (DSN) uses the pattern *ijtihād bayāni*.²⁶

b. approach *Qaūli*

In the process of defining fatwa approach by basing on the opinion of the Imam sect in the books of the leading fiqh (*al-polaral mu'tabarah*). This approach is carried out if the answers can be satisfied by the opinions in the fiqh books, and there is only one opinion (*qaūl*) only, except if the opinion (*qaūl*) which is considered to be no longer suitable to hold because it is very difficult to be implemented (*ta'assur*, *ta'adzdzur* or *ṣu'ūbah al-'amāl*), or for legal reasons (*'illah*) change. Under these conditions a review (*i'adatun nazhar*) was carried out.

The application of this approach can be seen in the DSN MUI fatwa which justifies the inclusion of capital *musharakain* the form of other than valuable exchange instruments such as cash, gold and silver. This provision is something that has been required by *jumhur* ulama as mentioned by Ibn Munzir.²⁷ Thus, it can be concluded that the DSN MUI Fatwa concerning *musyarakah financing* is *muswarah amwāl* because it requires the parties to contribute funds. While if seen from the equality of capital, the truth given in this fatwa is in the form of *musharaka 'inan* side of *jumhur*

ulama', that is, the donations do not have to be the same but according to the agreement of the parties. In the case of profit sharing it is decided according to agreement with the provisions of the form *musyarakah 'inan* itself, namely there is no necessity of equality in capital, work, type of business and profit. Then when it set the distribution of losses, DSN MUI decided in accordance with agreement *jumhur* that the loss-sharing in accordance with the proportion of capital each partner.²⁸

c. Approach *Manhāji*

In the MUI fatwa procedure it is mentioned, the approach is *manhāji* done through collective *ijtihad (ijtihad jama'i)*, by bringing together opinions different (*al-Jam'u wat taufiq*), choosing opinions that are more accurate in their arguments (*tarjih*), analogizing problems that are different. comes up with problems that have been determined by the law in the books of fiqh (*Ilhāqi*) and *Istinbā'i*.²⁹ The method is *istinbā'i* carried out by applying the *qiyāsi, istislahi, istihsani* and *sadd dzariah methods*.³⁰ The application of this approach in the DSN MUI fatwa can be seen in two ways. One of them uses the approach and *maslahah mursalah* also uses the *al-Qawaid al-Fiqhiyyah approach* as explained earlier.

CONCLUSION

Musyarakah is a cooperation agreement or joint venture between two/ more capital owners or experts, to carry out a type of business that is lawful and productive. The Qur'anic evidence is Surah As Shaad verse 24, in this paragraph it can be interpreted as a partnership, partnership in two contexts is cooperation between two or more parties to carry out a commercial effort. Second, Al Ma'idah verse 2, the verse explains that please help (*syirkah al-ta'awun*) is a form of partnership. Third, Al Anfal verse 41, said *ghanimah* in that verse is the spoils of war that the obtained Muslim together and made the property of *shirkah* with a fair distribution according to the provisions of Islamic shari'ah. Fourth, from Abu Hurairah ra, The purpose of the above hadith is that Allah SWT will reduce barakah on property their, provide supervision and help to them and take care of their property for as long as in the partnership there is no betrayal but if there is betrayal then Allah SWT will revoke barakah from these assets.

Based on the MUI Organization Regulation regarding the Guidelines for Establishing the Fatwa, MUI there are 8 stages in outline that must be passed. *First*, before the fatwa was adopted, the MUI conducted a comprehensive study to obtain a complete description of the problem being monitored. This stage is called *tashawwur al-trouble*). In addition to the study, the team also made a formulation of the problem, including socio-religious impacts and critical points from various aspects of law (sharia) related to the problem.

Second, trace back and examine the views of the *fuqaha* (jurisprudents) of the past mujtahids, opinions of the Imam of the schools and scholars, study offatwas related, and look for the views of fiqh experts regarding the matter to be reported. *Third*, assigning members of the Fatwa Commission or experts who have competence in the field of issues to be sent to make a paper or analysis. If what is discussed is very important, the discussion can involve several other Commissions.

Fourth, if the law and its arguments are clear (*ma'lum min al din bi al-dalalah*), then the Fatwa Commission will determine the fatwa by presenting the law as it is. Sometimes the problem being asked is their clear answer in sharia. *Fifth*, discuss and find common ground if it turns out there are differences of opinion (*masail khilafiyah*) among the scholars of the school. The results of the meeting point will be very decisive. There are certain methods that can be taken to reach the meeting point, or if no meeting point is reached. *Sixthly*, collectively members of the Fatwa Commission if jurisprudence among no legal opinion was found among the sects or scholars.

The method of decision-making is commonly called *heroes* and *devotees seek*, as well as the method of law-making (*manhaj*) that scholars of the sect. *Seventh*, in the event of a difference of opinion between the members of the Fatwa Commission, and the meeting not reached point is, the determination of the fatwa remains. Instead, the disagreements are loaded and elaborated on each of their arguments with an explanation of how best to exercise caution and to avoid possible disagreements. *Eighth*, the ruling of the fatwa always respects the rule of law by the Shari'ah and considers the common interest and purpose of law (*maqashid al-sharia*). Fatwa MUI is a decision or opinion given by MUI on an issue of Muslim life. Referring to the type and hierarchy of legislation in Law No. 12 of 2011 on Establishment of Regulations, the Fatwa MUI position is not a type of legislation that has the force of binding law. Fatwa MUI is only binding and adhered to by

Muslims bound who feel to the MUI itself. Fatwa MUI does not have the legality to force it to be obeyed by all Muslims.

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