

# Analysis of the Implementation of Motorcycle Financing Agreements in Banda Aceh, Indonesia

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### Abstract

This article examines the issues surrounding the implementation of motorcycle financing contracts in Banda Aceh, with a particular focus on PT. Mandala Finance. The main issue identified is the inconsistency between the murābahah contract explicitly stated in the agreement and the joint ownership clause, which resembles musyārahah. The study employs a qualitative, normative legal approach with descriptive-prescriptive analysis, utilizing a literature review, contract documentation, and supplementary interviews. Findings reveal that financing companies in Banda Aceh generally apply murābahah (bi al-wakālah and li al-amr bi al-syirā') as well as musyārahah mutanāqishah—however, PT. Mandala Finance demonstrates an anomaly by blending murābahah with musyārahah, resulting in consumers not fully attaining milk al-tāmm (complete ownership) of financed vehicles. This highlights the need for contractual consistency with the principles of Islamic economic law to avoid gharar.

**Keywords:** Banda Aceh, Islamic Law, Financing Contract, and Motorcycle.

## Introduction

The emergence of Islamic banking and non-bank financing institutions today is part of an effort to counterbalance the long-established presence of conventional, non-Islamic banking institutions.<sup>1</sup> The rapid development of Islamic banking institutions (*bunūk islāmiyyah*) and non-bank financing companies today is characterized not only by their varied forms and names but also by the multitude of financing products whose contractual nature is relatively new in the world of Islamic commerce, as well as the high level of

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<sup>1</sup>Imanuddin, "Assessing the Probability of Maṣlaḥah in the Products and Operational Models of Islamic Banks in Aceh," *Jurnal Hukum: Waqfeya* Vol. 1, no. 1 (2024): pp. 1-24, doi:<https://uin-arranry.academ ia. edu/ imanuddinab>.

consumer uptake of these financing services. Occasionally, financing products emerge in Islamic banking and finance that retain the structure of conventional bank financing products but with certain adjustments.<sup>2</sup> There are also entirely new financing products as part of efforts to meet public needs in the field. Among the financing products generally applied in both Islamic banking and non-bank financing companies are *murābahah* and *musyārahah al-mutanāqīshah* (MMQ) financing.<sup>3</sup>

Financing under *murābahah* or MMQ contracts is a contract type relatively frequently used by finance companies. A *murābahah* contract is a sale and purchase agreement in which the seller specifies the original price of the goods being sold and the anticipated profit from their sale.<sup>4</sup> The concept of a sale and purchase agreement under the *murābahah* contract is a type of agreement between a company and a customer involving the financing of the purchase of goods at the original price plus a profit margin known to both parties; through this mechanism, the *murābahah* contract possesses at least three key characteristics, namely:

1. The *murābahah* contract is executed after the goods have, in principle, become the property of the company.
2. The company is obliged to disclose the original price and the amount of the profit margin to the customer or consumer.
3. The addition of a profit margin to the original price is permitted if the customer or consumer makes payments in installments over an extended period.<sup>5</sup>

As for the MMQ financing product, it is a *musyārahah* or *syirkah* in which the ownership of the asset or capital of one party (*syarik*) is reduced as the other party gradually purchases it. The MMQ product implemented by Sharia

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<sup>2</sup>Muhammad Ramadhan, *Islamic Political Economy in the Narrative of National Development* (Yogyakarta: LKiS, 2018), p. 164.

<sup>3</sup>Uci Ramadani and Iiz Izmuddin, "Comparison of Murābahah and Musyārahah Mutanāqīshah Financing Management Strategies," *JPS (Journal of Islamic Banking)*, Vol. 5, no. 1 (27 March 2026): pp. 1–20, doi:10.46367/jps.v5i1.1576; Melisa Ananda Putri Ritonga, "A Comparative Analysis of Mortgage Financing Using the MurābahahMutanāqīshahMaslahah: *Journal of Islamic Management and Economics* Vol. 2, no. 2 (25 January 2024): pp. 219–33, doi:10.59059/maslahah.v2i2.1059.

<sup>4</sup>Abd Al-Aziz Mabrūk Al-Aḥmadī et al., *Fiqh Al-Muyassar*, (Trans. Izudin Karimi), 3rd ed., (Jakarta: Darul Haq, 2016), p. 356-357.

<sup>5</sup>Ghina Putri Raihan and Husni Abdul Jalil, "Settlement of Receivables of Murābahah Contract According to DSN Fatwa Number 47 of 2005: A Study at Bank Syariah Indonesia KCP Lhoknga Aceh Besar," *Al-Mudharabah: Journal of Islamic Economics and Finance* 5, no. 1 (27 April 2024): pp. 41–42., doi:10.22373/al-mudharabah.v5i1.4594.

financing companies is a financing product that falls under a *hybrid contract* (*'uqūd murakkabah*) or a mixed contract, namely a combination of a *'syirkah'* ownership contract with a *'ijarah'* that is *'mutanāqīshah'* (decreasing) or a *'syirkah'* ownership contract with a sale and purchase characterized as *'mutanāqīshah'/decreasing*. The emergence of this combination of contracts has given rise to a new term: *musyārahah al-mutanāqīshah*, or MMQ.<sup>6</sup>

The practice of MMQ and *murābahah* contracts has become widespread and is now a necessity within society. The existence of Islamic banks and non-bank Islamic companies, acting as intermediaries and financing instruments, is vital in bridging the public's need for specific products, with Islamic banks providing financing products on a partnership basis to customers. MMQ financing products can meet customer needs by utilizing *syirkah* and ownership contracts through a sale-purchase process with installment payments, whilst the *murābahah* contract involves direct purchase by the financing institution with a predetermined margin. The mechanism of MMQ's financing products is as follows: the customer applies to the Islamic bank for financing to purchase a commodity (e.g., a house). In this case, the bank and the customer enter into a principal agreement to contribute capital towards the purchase of the house, with a specific share of the capital. Subsequently, the customer gradually purchases the Islamic bank's share of the capital, so that the Islamic bank's share decreases (*mutanāqīshah*) until it eventually becomes the customer's full ownership. With this mechanism, the MMQ contract possesses three characteristics, as outlined in the following points:

1. MMQ is a derivative product of *musyārahah*, which is a form of cooperation agreement between two parties (the bank and the customer) for the ownership of an asset.
2. One party's (in this case, the bank's) ownership of the goods gradually decreases, whilst the other party's (in this case, the customer's) ownership rights increase.
3. The transfer of ownership shares from one party (from the bank to the customer) occurs through a payment mechanism.<sup>7</sup>

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<sup>6</sup>Muhamad, *Sharia Business: Transactions and Their Binding Patterns* (Jakarta: Rajawali Pers, 2018), p. 252.

<sup>7</sup>Moh. Mufid, *Philosophy of Sharia Economic Law: A Study of the Ontology, Epistemology, and Axiology of Contemporary Muamalah Contracts* (Jakarta: Kencana Prenada Media Group, 2021), p. 209.

The application of the MMQ contract in this Islamic finance company is considered safer than the *murābahah* contract; indeed, the *murābahah* contract is regarded as outdated and riskier amid market fluctuations, particularly in Islamic banking; therefore, the solution is *musyārahah mutanāqishah* (MMQ).<sup>8</sup> Conceptually, a contract using the *al-musyārahah* or partnership agreement does not, in principle, result in the sole ownership of one party, as both partnering parties jointly own the object of the transaction. However, with the addition of a reduction in participation or share, another contract is also introduced, so that the contract consists of a *syirkah* contract and a sale and purchase contract, whereby the partner's payment mechanism is carried out in stages as the other partner's share decreases. In this context, there is a combination of two contracts in a single transaction, namely *syirkah*, which ends in ownership through a sale and purchase (*bai'*) process. DSN MUI Fatwa No. 73/DSN-MUI/XI/2008 on *Musyārahah Mutanāqishah* includes a provision in point three regarding the terms of the contract, stating that the *musyārahah mutanāqishah* contract consists of a *musyārahah/syirkah* contract and a *bai'* (sale and purchase) contract. Thus, both the sale and purchase contract (*murābahah*) and the partnership contract, or MMQ, can serve as financing options within a sharia-compliant company.

In implementing *murābahah* and MMQ contracts, a company may use only one form of contract; selecting both simultaneously within a single financing product is not permitted. Consequently, the company must choose only one of the two contracts. However, in practice, the application and implementation of Islamic financing contracts are not always carried out properly, as some cases involve companies applying both contracts (*murābahah* and MMQ) simultaneously. This can be observed in the Sharia financing process at PT. Mandala Finance in Banda Aceh. PT. Mandala Finance, or PT. Mandala Multifinance Tbk in Banda Aceh is a branch of a company headquartered in Jakarta with branches across various regions, including Banda Aceh, whose primary service is providing financing to consumers for both productive and consumptive products.

In the Province of Aceh, the implementation of Qanun No. 11 of 2018 on Sharia Financial Institutions (LKS) requires (mandates) all financing companies in Aceh, whether banks or non-banks, including PT. Mandala Finance, to ensure that its operational systems are conducted in accordance

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<sup>8</sup>Moh. Mufid, *Principles of Contemporary Economic and Financial Jurisprudence: From Theory to Application*, Second Edition, 2nd Printing, (Jakarta: Kencana Prenada Media Group, 2018), p. 212.

with Sharia principles.<sup>9</sup> Currently, PT. Mandala Finance Banda Aceh has formally adopted Sharia terminology for its financing products. Financing companies may also utilize one type of Sharia contract within a single financing product they issue; however, in the implementation by PT. Mandala Finance, the form of contract used, still requires further analysis. This is because, whilst the agreement or contract states that the vehicle financing product is a “*Murābahah Financing Contract*”, the terms of the agreement actually include an MMQ contract. One of the clauses of the contract reads:

“The Company and the consumer, hereinafter referred to as the Parties have mutually consented, agreed and acted in good faith to draw up, sign and fulfill the *murābahah* financing agreement (Agreement)”.<sup>10</sup>

The wording of this contractual provision indicates that the agreement used is a *murābahah* agreement; however, in practice, it is more akin to an MMQ agreement. In *murābahah* financing, the two-wheeled motor vehicle financed by the company ideally becomes the full property (*milk tam*) of the consumer (<sup>11</sup> Therefore, the consumer essentially has the freedom to rent out, replace, or alter *spare parts*, lend out, and so on; however, PT. Mandala has included a clause in the agreement stating that the financed two-wheeled motor vehicle must not be rented out, replaced, or have *its spare parts* altered, nor lent out or used for other purposes, as it is jointly owned by the company and the customer (*syirkah*). This can be understood in one of the following clauses: Article 6 Prohibitions:

“The parties agree that as the vehicle is jointly owned by the parties for the duration of this agreement, unless prior written consent has been

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<sup>9</sup>Article 1, point 8 of the LKS Law states that a sharia financial institution, or LKS, is an institution that carries out activities in the banking sector, the non-banking sharia financial sector, and other financial sectors in accordance with sharia principles. Article 1, point 10 of the LKS Law stipulates that a non-bank Islamic financial institution is an institution engaged in capital market activities, insurance, pension funds, venture capital, pawnbroking, cooperatives, financing institutions, factoring, microfinance institutions and other financial institutions whose operations do not conflict with Sharia principles.

<sup>10</sup>This point is derived from a motorbike financing agreement at PT. Mandala Finance Banda Aceh.

<sup>11</sup>In the legal concept of sale and purchase, the object of the transaction—whether purchased for cash or on credit—becomes the full property of the buyer, so that he may exercise any right (*taşarruf*) over it. This is as explained by Al-Zuhaili and Al-Miṣri. See, Muḥammad Al-Zuhaili, *Al-Mu'tamad fi Al-Fiqh Al-Syāfi'i*, Volume 1, (Trans: M. Hidayatullah), (Jakarta: Gema Insani Press, 2018), p. 30; Compare also with the explanation by Rafiq Yūnus Al-Miṣri, *Buḥūs fi Al-Iqtisād Al-Islāmī* (Damascus: Dār Al-Maktabī, 2009), p. 66; Also in Wahbah Al-Zuhaili, *Al-Fiqh Al-Islāmī wa Adillatuh*, Vol. 7, (Trans. Abdul Hayyie al-Kattani et al.), (Jakarta: Gema Insani Press, 2012), p. 45.

obtained from the company: 6.1. The consumer is prohibited from depositing, renting out, lending, pledging, transferring, pawning, selling, refinancing, or transferring the vehicle in any way whatsoever, including pledging the right to payment of the *ujrah* to another person or party, altering the form or replacing spare parts/vehicle components".<sup>12</sup>

Based on these two clauses, it can be seen that PT. Mandala Finance tends to use two types of contracts and leans towards the MMQ model, whereby the company's share decreases whilst the customer's share increases in line with the rise in the customer's share resulting from the installment payments made by the customer to the company. This was also acknowledged by a customer, identified only by the initial I, who utilized PT's financing services. Mandala Finance in Banda Aceh. In their statement, the company states that it uses the *murābahah* contract; however, the customer is prohibited from renting out, replacing, or altering *spare parts*, or even simply lending the vehicle. Yet, in a sale and purchase contract—including the *murābahah* sale and purchase contract—the object of the transaction may be used in full by the customer. This is because the vehicle has become the customer's property, even though its status is on credit or not yet fully paid off.<sup>13</sup> Referring to the dualism between legal reality and legal idealism, this article analyses in greater depth the implementation of financing contracts in sharia-compliant products, specifically motorcycle financing contracts in the city of Banda Aceh.

## Data and Method

A method is a specific approach, whilst research is a scientific activity involving analysis conducted in a methodological, systematic, and consistent manner.<sup>14</sup> In this article, the approach is conceptually based, namely, an analysis of Islamic economic law and the doctrines of experts.<sup>15</sup> This type of research is a normative legal study (*juridical-normative*) based on descriptive-prescriptive analysis. To explore information regarding the implementation of motorcycle financing contracts in the city of Banda Aceh, the data used in this article consists of documentary evidence, books, and texts; in some instances,

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<sup>12</sup>Wording of the Financing Agreement Clause in the Customer Contract Documentation of PT. Mandala Finance Banda Aceh.

<sup>13</sup>Results of an interview with I, a customer of PT. Mandala Finance Banda Aceh, on 13 June 2024.

<sup>14</sup>Beni Ahmad Saebani, *Research Methods* (Bandung: Pustaka Setia, 2009), p. 13.

<sup>15</sup>Peter Mahmud Marzuki, *Legal Research*, 13th ed., (Jakarta: Kencana Prenada Media Group, 2017), p. 133-134.

as supplementary data within this article, it is also supplemented by interview findings, as in normative legal research, field data may also be utilised as supplementary material, functioning as secondary data.<sup>16</sup>

The data sources required for this research are divided into three categories of legal materials: Firstly, primary legal materials constitute the core data of the research, providing direct information regarding the concept of contracts in Islamic finance, whether in legal books or texts, or in official financing documents. Secondly, secondary legal materials serve as supplementary data; in certain circumstances, interview results may also be utilized to support the analysis of primary data.<sup>17</sup> Third, tertiary legal materials consist of supplementary sources, such as dictionaries and articles.<sup>18</sup> Following data collection, the next stage is the data analysis phase, which employs a deductive method. The data analysis is prescriptive-descriptive, meaning it proceeds from general theories or premises, utilizes the legal theory of muamalah regarding financing contracts, and is subsequently analyzed within the context of Sharia financing law in Banda Aceh.

## Results and Discussion

### A. The Concept of Contracts in Financing from the Perspective of Islamic Economic Law

From an Islamic perspective, contracts constitute one of the legal dimensions regulated in a relatively comprehensive manner; this applies not only to the broad field of muamalah law (such as cooperation between individuals in economic relations) but also encompasses the narrower scope of private law, which covers various legal dimensions. Consequently, the status of contracts in Islamic law is of great significance, and indeed, contracts determine the validity of a transaction. To understand the concept of the contract in Islam, this discussion must first outline its etymological and terminological meanings.

The term 'akad' is derived from the Arabic word **الْعَقْدُ**, which is the *maṣḍar* (verbal noun) of the verb 'aqada, and its plural form is 'uqūd. In English, it is referred to as 'tie' (a binding cord or tie), 'contract' (an agreement), or 'join' (to

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<sup>16</sup>Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI Press, 2020), p. 191; Marzuki, *Legal Research...*, p. 200; Jonaedi Efendi and Johnny Ibrahim, *Methods of Normative and Empirical Legal Research* (Jakarta: Kencana Prenada Media Group, 2018), p. 57; I Made Pasek Diantha, *Methods of Normative Legal Research in the Justification of Legal Theory*, 2nd ed., (Jakarta: Kencana Prenada Media Group, 2017), p. 188.

<sup>17</sup>Marzuki, *Legal Research...*, p. 200.

<sup>18</sup>Saebani, *Research Methods...*, p. 158.

join).<sup>19</sup> Linguistically, akad refers to an agreement, or a firm bond, a commitment to confirm or bind.<sup>20</sup> Al-Zarqā defines akad etymologically as *'al-rabṭu'*, meaning to bind and tie. As for al-Aṣfahānī, he defines akad as *al-jam'u baina aṭrāfu al-syai'*, meaning the coming together of two parties regarding an object.<sup>21</sup> In light of these definitions, it is understood that the meaning of akad is a binding agreement. This is consistent with Nurdin's explanation that an akad is the manifestation of an individual or group's intention to engage in transactional activities involving the exchange of property.<sup>22</sup> Thus, the word akad literally means a strong bond or an agreement.

Terminologically, there are many definitions of a contract, both general and specific. According to Al-Zuhailī, a contract in the general sense is equivalent to the linguistic definition, namely anything that a person intends or resolves to do, whether arising from one's own volition – such as a waqf, divorce, or an oath – or requiring an effort to bring about the act, such as a sale or a lease. As for the contract in the specific sense, it refers to the relationship between the offer (ijab) and the acceptance (kabul).<sup>23</sup> According to Al-Jurjānī,<sup>24</sup> a contract is a bond (relationship) between several parties in a transaction, established through offer and acceptance in accordance with Islamic law. Ibn Ābidīn, as quoted by Syakir Sula, states that a contract is the link between offer and acceptance that conforms to the requirements of Islamic law and concerns the subject matter of the agreement.<sup>25</sup> Similarly, in Al-Zarqā's commentary, as quoted by Muhammad, a contract is defined as a legal bond entered into by two or more parties who mutually wish to bind themselves. The will or intention of the parties entering into the contract resides in the heart. Therefore, to express their respective intentions, they must articulate them in

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<sup>19</sup>J.M. Cowan, *Arabic English Dictionary*, 3rd ed. (New York: Spoken Language Services, 1976), p. 627.

<sup>20</sup>Ministry of Endowments, *Fiqh Encyclopaedia* (Kuwait: Ministry of Endowments, 1995), p. 198.

<sup>21</sup>Muṣṭafā Aḥmad Al-Zarqā, *An Introduction to General Islamic Jurisprudence*, (Damascus: Dar Al-Qalam, 2004), p. 381; See also in several other commentaries such as, Rāghib Al-Aṣfahānī, *Mufradāt Al-Fāz Al-Qur'ān*, (edited by Ṣafwān Adnān Dāwūdī), (Damascus: Dār Al-Qalam, 2009), p. 576; Compare also with, Ibn Manẓūr, *Lisān al-'Arab* (Kuwait: Dār Al-Nawādir, 2010), , p.. 34.

<sup>22</sup>Ridwan Nurdin, *Fiqh Contracts in Islamic Banking in Indonesia: History, Concepts and Development*, 2nd ed. (Banda Aceh: Yayasan PeNA, 2014), , p.. 4.

<sup>23</sup>Al-Zuhailī, *Al-Fiqh Al-Islāmī...*, p. 420.

<sup>24</sup>Alī bin Muḥammad Al-Jurjānī, *Mu'jam Al-Ta'rīfāt*, (Edited by: Muḥammad Ṣiddīq al-Minsyāwī), (Riyadh: Dār Al-Faḍīlah, 2004), p. 129.

<sup>25</sup>Muhammad Syakir Sula, *Sharia Insurance (Life and General): Concepts and Operational Systems* (Jakarta: Gema Insani Press, 2016), p. 38.

a single statement. This statement by the parties is known as the offer and acceptance.<sup>26</sup>

According to this definition, a contract is a composition of several elements, consisting of the will of two or more people, which is then formalized in a cooperative agreement and formulated as *ijab kabul*. The elements or pillars of a contract that must be fulfilled consist of four types, namely *'āqid* (the parties entering into the contract), *ma'qūd 'alaih* (the subject matter of the contract), *mauḍū' 'aqd* (the primary purpose of the contract), and *ṣighah al-aqd* (the act indicating the formation of the contract).<sup>27</sup> These four elements must be present in all forms of transaction, and they must also meet the requirements for commercial transactions, including financing, to comply with Sharia principles.

All contracts in Islamic muamalah, including financing, have two general effects: *nafaz* and *iltizam*. These involve a person being obliged to act or being prevented from acting, such as handing over goods or receiving money. Therefore, for *iltizam* to be fulfilled, *nafaz* is required. *Nafaz* is a specific effect on a contract that produces *a result* upon its formation. This means the obligation of a mukallaf to act or refrain from acting, for example, to hand over property, or to refrain from wrongfully taking another's property. Meanwhile, *nafaz* in a sale and purchase contract is the transfer of ownership of the goods.<sup>28</sup> In line with this, the scholars of Islamic jurisprudence (*fuqaha*) hold that within the contract there are specific legal consequences or effects, namely the achievement of the intended and planned objective from the outset – such as in a sale and purchase, the transfer of ownership from the seller to the buyer – and that the contract is binding upon both parties.<sup>29</sup>

All the provisions of such contracts apply to various types of transactions within the Islamic economy. In the context of Sharia financing, the fulfillment of Sharia principles in the contract must also be met by both the company and the customer entering into the financing agreement. The contract used must also be relevant to the types or forms of the transaction.

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<sup>26</sup>Muhamad, *Sharia Business...*, p. 122.

<sup>27</sup>Abdul Rahman Ghazaly, Ghufroon Ihsan, and Sapiudin Shidiq, *Fiqh of Transactions*, Vol. 1, 4th ed. (Jakarta: Kencana Prenada Media Group, 2015), pp. 51–52; Muhamad, *Islamic Business...*, p. 123; Mardani, *Fiqh of Islamic Economics: Fiqh of Muamalat*, 5th ed. (Jakarta: Kencana Prenada Media Group, 2019), p. 72.

<sup>28</sup>Rozalinda, *Islamic Economic Jurisprudence: Principles and Implementation in the Islamic Finance Sector* (Jakarta: Rajawali Pers, 2019), p. 53–54.

<sup>29</sup>Muhamad, *Islamic Business...*, p. 131.

The following table presents various contracts that may be utilized by financing companies, whether Sharia banks or non-bank institutions.

**Table 1. Contracts in Sharia Financing Products**

No	Method	Product Name	Financing Application	Sharia Principles
1	Sale and Purchase (Bay')	Murābahah	Working capital/project or investment	Murābahah Sale
		Salam	Working capital or investment	Bay' al-Salam
		Istisnā'	Working capital or investment, particularly projects with payment by installments	Bay' al-Istisnā'
2	Hire Purchase (Lease with Option to Buy)	Ijārah Muntahiya bi al-Tamlīk	Working capital or investment	Ijārah
3	Profit-sharing	Musyārahah	Working capital or investment	Musyārahah
		Muḍārahah	Working capital or investment	Muḍārahah
		Restricted Mudaraba	Working capital or investment	Muḍārahah

Source: Nilam Sari, 2015

If the transaction takes the form of a sale and purchase, the contract generally used is the 'bai' contract, which may take the form of a *cash* sale or a credit sale, for example, using the *murābahah* contract, or *murābahah lil amr bi al-syirā'*, which is a sale to the purchaser (KPP).<sup>30</sup> This *murābahah* sale and

<sup>30</sup>Muhammad Syafi'i Antonio, *Islamic Banking*:pp. 102-103; The *murābahah lil amr bi al-syirā'* ,*murābahah lil amr bi al-syirā'* *murābahah* associated with a promise (*al-wa'ad*) from the customer to the bank to purchase a commodity; the bank then completes the purchase, takes possession of the goods, and resells them to the customer in instalments. Al-Zuhaili also explains that *murābahah li al-amr bi al-syirā'* involves a sale and purchase transaction with the person instructing the purchase of the goods; the transaction takes the form of an individual submitting a proposal to the bank to purchase a car with specified characteristics, laboratory equipment, medical instruments, or specific laboratory apparatus. The bank then purchases the goods and sells them to the relevant party, with the payment process determined over a specific period on a credit basis. This activity consists of two promises or agreements: the

purchase contract is also commonly combined with a *wakālah* contract, similar to the previous KPP contract, whereby the customer applying for this financing is authorized to purchase the desired product from *the supplier*. This means that if a customer wishes to apply for financing to purchase goods from a finance company, the company acts on the customer's behalf to purchase the desired goods in the company's name. The goods are then sold to the customer on an installment plan.<sup>31</sup>

Furthermore, if the transaction takes the form of a partnership or joint venture, the financing agreement applied is the *syirkah/musyārah* agreement. This partnership agreement is often combined with a sale and purchase agreement, so that the share of one party, particularly the financing company's share, gradually decreases over time. This agreement is often referred to as *musyārah mutanāqishah*. On the other hand, there is also the hire-purchase agreement, known as *ijārah muntahiya bi al-tamlīk*, which is a lease agreement between the finance company, as the lessor (who leases the asset), and the customer, as the lessee. The lessee agrees to pay rent for the duration of the agreed lease term. The lessee agrees to pay rent for the agreed-upon lease period, and at the end of the lease, ownership is transferred from the bank to the lessee. In addition, other contracts commonly used by Islamic finance companies include the *muḍārabah* and *salam* contracts.<sup>32</sup>

Normatively, muamalah contracts, whether executed in markets or within financial institutions, must fulfill the contractual requirements previously discussed. Furthermore, the operational practices of financing companies must avoid elements that could invalidate the contract; for instance, they must be free of *gharar* (uncertainty and ambiguity), fraud (*tadlis*),

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customer's promise to purchase the goods, and the bank's promise to sell the goods via *murābahah*, or by adding a specific profit margin to the original price. See: Wahbah Al-Zuhailī, *Qaḍāyā Al-Fiḥ wa Al-Fikr Al-Mu'āṣir* (Damascus: Dar Al-Fikr, 2006), p. 271; Al-Zuhailī, *Al-Fiḥ Al-Islāmī wa Adillatuh*, p. 366;

A similar view was also put forward by Rafiq Yūnus Al-Miṣrī and subsequently by Yūsuf Al-Qaraḍāwī, namely that the operational mechanism of *murābahah li al-amr bi al-syirā'* stages or phases *mu'āwaḍah* (mutual agreement) *murābahah* and the *murābahah-style* (Al-Miṣrī, *Fiḥ Al-Mu'āmalāt Al-Māliyyah*, (Damascus: Dār Al-Qalam, 2005), p. 34; Yūsuf Al-Qaraḍāwī, *Bai' Al-Murābahah li Al-Amr bi Al-Syirā' Kamā Tajriyyah Al-Muṣārif Al-Islāmiyyh: Dirāsah fi Ḍaw' Al-Nuṣūṣ wa Al-Qawā'id Al-Syar'iyyah*, 3rd ed. (Cairo: Maktabah Wahbah, 1995), p. 5.

<sup>31</sup>M. Cholil Nafis, *Theory of Islamic Economic Law* (Jakarta: University of Indonesia, 2011), pp. 167-169; See also in, Mufid, *Principles of Contemporary Economic and Financial Jurisprudence: From Theory to Application*, . 243; Abd. Shomad, *Islamic Law: The Codification of Sharia Principles in Indonesian Law*, Revised Edition (Jakarta: Kencana Prenada Media Group, 2017), p. 166.

<sup>32</sup>Nilam Sari, *Contracts and Their Implementation in Islamic Banking in Indonesia*, Edited by Nevi Hasnita (Banda Aceh: PeNA, 2015), , p. 171.

oppression, and riba (unjustified surcharges).<sup>33</sup> Therefore, in addition to the contract having to be in accordance with the type of transaction, financing companies must also avoid various aspects that could invalidate the contract.

## **B. The Concept of Ownership of the Financing Object from the Perspective of Islamic Economic Law**

One of the key variables in a contract from the perspective of fiqh muamalah is the consequence regarding the subject matter of the contract, namely, ownership of that subject matter. Within the framework of Islamic financing, the subject matter of financing is of paramount importance, as its existence largely determines the extent to which the parties have the freedom to manage (*taṣarruf*) the contract's subject matter. Ownership is one of the objectives of commercial transactions within society. In the practice of buying and selling, for example, each party transfers ownership to the other party. The use of each item (object) of the sale is entirely at the discretion of both parties. The essence of a sale, in technical terms, is an agreement between two or more parties in a transaction involving the transfer of ownership of an item.<sup>34</sup> Similarly, in partnership contracts or lease agreements, ownership of the subject matter of the contract is also crucial, so it is clear how the parties are authorized to use that subject matter.

The term 'ownership', when considered from its etymological origin, is a word borrowed from Arabic, namely 'milk', which is the singular form (*mufrad*), the plural of which is 'al-mulūk', meaning 'to possess'. This is akin to a man marrying a woman; indeed, that man has taken his wife as his own.<sup>35</sup> The word 'milk' or 'milkiyyah' means to possess something and to be able to act upon it (*taṣarruf*).<sup>36</sup> Al-Zarqā defines ownership, or 'milkiyyah', as a privilege that, according to Islamic law, prevents others, whilst justifying the owner's authority to act upon the object they possess unless there is an impediment.<sup>37</sup> Al-Zuhailī states that ownership is a privilege over something that prevents others from taking it. Hence, the owner is free to exercise *taṣarruf* (disposal) directly unless a legal impediment exists.<sup>38</sup> The term 'ownership' is related to property rights, and the concept of rights itself is sometimes associated with

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<sup>33</sup>Sayyid Sābiq, *Fiqh Al-Sunnah*, (Translated by Abu Aulia & Abu Syauqina), (Jakarta: Republika, 2018), p. 9.

<sup>34</sup>Azhari Akmal Tarigan, *Exegesis of the Economic Verses of the Qur'an: An Exploration Through Key Terms*, (Bandung: Cita Pustaka Media Perintis, 2012), p. 264.

<sup>35</sup>Manzūr, *Lisān al-'Arab...*, p. 384.

<sup>36</sup>Ministry of Endowments, *Encyclopaedia of Fiqh...*, p. 31.

<sup>37</sup>Al-Zarqā, *An Introduction to Fiqh...*, p. 333.

<sup>38</sup>Wahbah Al-Zuhailī, *Encyclopaedia of Islamic Jurisprudence and Contemporary Issues*, Vol. 7, (Damascus: Dār Al-Fikr, 2010), p. 63-64.

property and sometimes not. For example, in parental custody. Unlike property rights, the latter is specific to property. Property is anything owned among all things. On that basis, anything received that becomes one's property is referred to as property.<sup>39</sup>

In the context of Islamic economic law, ownership of property, goods, or objects has specific causes. Generally, there are four causes of property ownership.<sup>40</sup> *Firstly*, ownership through the acquisition of property not yet owned by an individual or another legal entity, which in Islam is referred to as *mubah* property. For example, rocks, sand in a river not yet owned by an individual or legal entity, or fish in the sea or a river.<sup>41</sup> *Secondly*, ownership of property through a transaction, such as sale and purchase, gift, and *waqf*. *Third*, ownership of property through a person's estate, such as inherited property from a deceased heir. *Fourth*, ownership of property through the produce or fruits of property already owned by a person, whether that produce comes naturally, such as fruit from a tree in a garden, or a calf born, or through the efforts of ownership, for example, trading profits earned by a merchant, or wages received by a worker.<sup>42</sup>

The concept of property ownership in Islam, when viewed in terms of its nature, can be divided into two forms: *milku al-tāmm* and *milk nāqis*.

- a. *Milk al-tāmm* ownership is ownership that encompasses both the object and its benefits; that is, ownership of an asset in its entirety, including both the object and its benefits. In *milk al-tāmm* ownership, the owner of the asset has rights over the asset in accordance with the law.<sup>43</sup> Perfect ownership (*milk al-tāmm*) is a right of ownership that encompasses control over the object (its substance) and its benefits in their entirety.<sup>44</sup> The most important characteristic of *milk tāmm* is that it is a permanent form of ownership, not limited to a specific period, as long as the object owned still exists, and it cannot be revoked.<sup>45</sup> *Milk tāmm* can be acquired in many ways, for example, through sale and purchase. A distinctive feature of the concept of *al-tāmm* ownership is that, from the outset, ownership of both the material substance and the benefits of the property

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<sup>39</sup>Muhammad Abu Zahrah, *Property and the Theory of Contracts in Islamic Law*, (Egypt: Dar Al-Fikr Al-'Arabi, 1962), p. 15.

<sup>40</sup> Mardani, *Fiqh* of p. 66-67.

<sup>41</sup> Abdul Rahman Ghazali et al., *Fiqh of Transactions...*, p. 49.

<sup>42</sup> Mardani, *Fiqh* of p. 66-67.

<sup>43</sup> Al-Zuhaili, *Islamic Jurisprudence...*, p. 32-33.

<sup>44</sup> Abdul Manan, *Sharia Economic Law from the Perspective of the Jurisdiction of Religious Courts*, (Jakarta: Kencana Prenada Media Group, 2016), p. 48.

<sup>45</sup> Al-Zuhaili, *Islamic Jurisprudence...*, p. 32-33.

is complete. This means that the object of the property becomes the complete property and right of its owner. The material substance and benefits already exist from the moment of ownership of the object. Another characteristic is that perfect ownership is not limited by time, nor can it be revoked by other parties with no interest whatsoever. If the property is jointly owned, then each person is free to use their share as their own, but in the context of joint ownership, consent must first be obtained from one of the parties, as the right to the property is of a *musyarakah* nature.<sup>46</sup>

- b. As for '*milk al-nāqis*', this refers to ownership that encompasses either the physical object itself or its benefit alone.<sup>47</sup> In another sense, '*milk al-nāqis*' denotes ownership where a person possesses only one of two things: for instance, owning the physical object without its benefit, or possessing the benefit/utility alone without the physical object itself. On this basis, '*milk al-nāqis*' takes two forms. *Firstly, partial* ownership in the form of ownership *of the thing itself* (owning the object alone), where the physical object is owned by one person, whilst its benefit is owned by another. *Secondly, partial* ownership in the form of ownership *of the benefit* (possessing the benefit alone) or *the right to use*. For example, in the case of a rented house, the tenant only possesses the right to rent or the right to use the house for a specific period.<sup>48</sup> *Incomplete ownership (milk al-nāqis)* in the form of control over the substance of an object is called *raqabah* ownership, whilst *incomplete* ownership in the form of control over its use or benefit alone is called ownership *of benefit* (*milik manfaah*) or right of use, through *i'ārah*, *waqf*, and *wasiat*. The specific characteristics of imperfect ownership (*milk al-nāqis*) are that the right of ownership may be limited in terms of time, place and nature. This *milk nāqis* may not be inherited because benefits are not included as property in their definition. The majority of scholars permit, for example, the bequeathing of the right to use a house to another person. The person utilising the property may claim it from the owner, and if the property has been handed over by the owner to the person using it, it becomes a

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<sup>46</sup>Nasrun Haroen, *Fikih Muamalah*, 2nd ed. (Jakarta: Gaya Media Pratama, 2007), p. 35-36.

<sup>47</sup>Manan, *Islamic Economic Law...*, p. 48.

<sup>48</sup>Rozalinda, *Islamic Economic Jurisprudence: Principles and Implementation in the Islamic Finance Sector*, p. 30.

trust in their hands, and they are liable for compensation if they act arbitrarily towards the property.<sup>49</sup>

Thus, the distinction and understanding between *milk al-tāmm* and *milk al-nāqish* is crucial as it determines whether the object in question can be disposed of or not. This also applies in the context of ownership of the object in Islamic financing products. Legal certainty regarding this ownership enables both the customer and the Islamic financing company to either restrict themselves or, conversely, have the authority to use the goods that form the object of the financing product. Therefore, clarity regarding this ownership can also provide opportunities for each party to use the goods in question, provided the ownership status is clear.

### **C. Implementation of Motorcycle Financing Agreements in Banda Aceh**

Motor vehicle financing at Islamic finance companies (whether banking or non-banking institutions) is a fairly common type of transaction among the community in Banda Aceh. Indeed, it can be said to be one of the alternative transactions that helps the community meet their needs for motor vehicles. There are quite a number of financing companies in Banda Aceh that provide motor vehicle facilities, such as Adira Finance, Mandala Finance, Mandiri Utama Finance, Astra Credit Companies, FIF Group, and other financing companies.

The implementation of motor vehicle financing contracts by these companies in Banda Aceh generally employs a *murābahah*-based sale and purchase agreement. This *murābahah* contract is typically combined into a *hybrid contract*, meaning it sometimes incorporates a *wakālah* agreement, so that the operational model utilises a *murābahah bi al-wakālah* sales contract, and at other times the company uses a *murābahah li al-amr bi al-syirā'* contract, also known as a sales contract to the Purchaser (KPP). These two types of *murābahah* contracts can be described as follows:

- a. In a *murābahah bi wakālah* agreement, the consumer approaches the finance company (whether a bank or a non-bank institution) directly to apply for motor vehicle financing under the ' ' scheme. The company then sets out the conditions that must be met by the consumer. Once all conditions have been met, the company will act as the consumer's agent in purchasing the motor vehicle. The purchase is made in the company's name and, in principle, ownership of the vehicle being financed remains

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<sup>49</sup>Nasrun Haroen, *Fiqh...*, pp. 35–36.

with the company. Once the purchase under this *wakālah* arrangement is complete, the company then resells it to the consumer.<sup>50</sup>

- b. In the *murābahah li al-amr bi al-syirā'* contract, the initial process is exactly the same: the consumer approaches the company to apply for financing and must meet the conditions set by the company. Once all conditions have been met, the purchase of the goods is carried out directly by the company through a designated officer. This involves a process of *al-amr bi al-syirā'* or ordering the purchase, i.e. from the consumer to the company. There is no act of acting as an agent in the purchase; rather, the company itself purchases the vehicle in accordance with the criteria, type, or specifications of the consumer's order.<sup>51</sup>

In addition to the two contracts mentioned above, the company also utilises the *musyārakah al-mutanāqishah* contract. This contract takes the form of a partnership in which the motor vehicle in question is jointly owned by the consumer and the company. The operational model used is as follows: the consumer applies for financing; the company then sets the conditions that must be met; the consumer provides a sum of money as initial capital for the vehicle purchase, or alternatively, no initial capital is required at all; subsequently, the consumer purchases a portion of the company's rights to the vehicle in accordance with the agreement, and the timeframe has also been determined. Over time, the company's share of the capital decreases whilst the consumer's share ( ) gradually increases, so that by the final stage of payment,

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<sup>50</sup>This information was provided by Zainal Arifin (*Account Officer* at Bank Aceh Syariah) and Junaidi (*Business Banking Relationship Manager* at Bank Syariah Mandiri), as cited in Badrul Akmal's research. The financing process at Bank Aceh Syariah and Bank Syariah Mandiri (prior to *their merger* to form Bank Syariah Indonesia (BSI)). Similarly, Thonal Sunandar (*RBRM - Retail Banking Relationship Manager*) stated this, as cited in Rahmat Hidayat's research. See: Badrul Akmal, "The Application of the Wakālah Contract in Murābahahpp. 83 and 88, <https://repository.ar-raniry.ac.id/19018/>; Rahmat Hidayat, "The Practice of Multipurpose Murābahahp. 45., doi:<https://repository.ar-raniry.ac.id/19061/>.

<sup>51</sup>This information was provided by Oktona M (*Supervisor* at ACC Banda Aceh) regarding the financing process at ACC Banda Aceh, as cited by Mirza Kamal. Furthermore, similar information was also provided by M. Iqbal (*Sales Officer, PT. Astra Sedaya Finance, Banda Aceh*) regarding the financing process at PT Astra, as cited by Ulandari. See inside, Mirza Kamal, "Analysis of Murabahahat Astra CreditCompanies (ACC) Banda Aceh" (Thesis: Master of Law Programme, UIN Ar-Raniry, Banda Aceh, 2024), <https://repository.ar-raniry.ac.id/36761/>; Widya Ulandari, "An Islamic Legal Review of Ownership of the Subject Matter of Sale and Purchase through the Murabahahat PT Astra Sedaya Finance" (Published Undergraduate Thesis, UIN Ar-Raniry, Banda Aceh, 2022), <https://repository.ar-raniry.ac.id/22884/>.

the consumer's share becomes full and ownership of the vehicle passes to the consumer.<sup>52</sup>

However, in some cases, such as the purchase of a motor vehicle by a customer with the initials I at PT. Mandala Finance, the contract used tends to be unclear, falling somewhere between a *murābahah* contract and a *musyārakah* contract.<sup>53</sup> Similarly, S, a customer of PT. Mandala Finance, stated that the contract used at the outset, as per the agreement, was a *murābahah* sale and purchase contract; however, the terms of the agreement actually stipulated that the object of the sale and purchase remained jointly owned by the company and the customer.<sup>54</sup>

This can be seen from the contract containing the financing agreement clauses. One of the clauses in the motor vehicle sale and purchase contract at PT. Mandala Finance is:

“The company and the consumer, hereinafter referred to as the Parties, have mutually consented, agreed and acted in good faith to draw up, sign and fulfil the *murābahah* financing contract (the Contract)”.<sup>55</sup>

The wording of the above clause clearly indicates that the form of contract used is a *murābahah* sales contract, namely a non-cash (credit) sale, where the original price is added to a pre-agreed profit margin. This agreement covers, but is not limited to, the limit on the duration of the financing, the maturity period, the amount of the monthly instalment (premium), and other matters. In other words, from the contract clause, it is clear that the contract used is a *murābahah* contract, but of the type known as *murābahah bi al-wakālah*, whereby PT. Mandala Finance acts as an agent for the purchase on behalf of the consumer, in the name of and, in principle, on behalf of PT. Mandala Utama Finance; the company then resells to the consumer under a *murābahah* sale and purchase contract with a credit scheme.<sup>56</sup>

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<sup>52</sup>Riska Faradilla and Bismi Khalidin, “Application of the *Mutanaqisah* at Bank Aceh *Shari'ah*,” : *Journal of Law and Justice*, Vol. 8, No. 1 (30 July 2024): pp. 307-24, doi:10.22373/jurista.v8i1.139.

<sup>53</sup>Interview Results with I, a Motor Vehicle Financing Customer at PT. Mandala Finance, 15 April 2026.

<sup>54</sup>Interview with S, a motor vehicle finance customer at PT. Mandala Finance, 10 April 2026.

<sup>55</sup>These points were obtained from the two-wheeled motor vehicle financing agreement at PT. Mandala Finance, Banda Aceh.

<sup>56</sup>Results of an interview with I, a motor vehicle finance customer at PT. Mandala Finance, dated 15 April 2026.

Although the *murābahah* financing contract clause at PT. Mandala Finance mentioned above clearly uses a *murābahah* contract, in reality, in other clauses of the ' ', PT. Mandala Finance includes a contractual provision stating that the financed two-wheeled motor vehicle must not be leased, exchanged, or have *its spare parts* altered, nor lent out or otherwise disposed of, as the financed two-wheeled motor vehicle is jointly owned by the company and the consumer (*syirkah*). An explanation regarding the partnership or joint ownership of the subject matter of the agreement in this financing is contained in Article 6 of the contract, which sets out the prohibitions. It reads as follows:

“The parties agree that as the vehicle is jointly owned by the parties for the duration of this agreement, then unless prior written consent has been obtained from the company: 6.1. The consumer is prohibited from depositing, renting out, lending, pledging, transferring, pawning, selling, refinancing, or otherwise disposing of the vehicle in any manner whatsoever, including pledging the right to payment of the *ujrah* to any other person or party, altering the form of the vehicle, or replacing its spare parts or components”.<sup>57</sup>

An analysis of motor vehicle finance contracts at PT. Mandala Kota Banda Aceh reveals conceptual problems in the structure of the contracts used. In the first clause, the contract explicitly states that the legal relationship between the company and the consumer is a *murābahah* contract, namely a sale and purchase transaction with an agreed profit margin. The *murābahah* contract stipulates that the object of the transaction (the vehicle) becomes the full property of the consumer once the contract is valid, whilst the company is only entitled to the agreed payment. However, the subsequent clause states that the vehicle is “*jointly owned by the parties*” and restricts the consumer’s right to transfer, lease, or pledge the vehicle without the company’s consent. This clause tends to resemble the characteristics of a *musyarakah* or *syirkah* contract, or more specifically a *musyarakah mutanāqishah* (MMQ) contract, where ownership of the object is held jointly by both parties.

Based on this data, it is understood that the implementation of motorcycle financing contracts in the city of Banda Aceh takes various forms; at times, the *murābahah* contract is used with the *bi al-wakālah* and *li al-amr bi al-syirā'* patterns, whilst in other instances, the *musyarakah/syirkah* contract is employed with the *mutanāqishah* pattern. These contracts are used in accordance

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<sup>57</sup>Wording of the Financing Agreement Clause in the Customer Contract Documentation of PT. Mandala Finance, Banda Aceh.

with the needs and assessments made by each company (banks such as Bank Aceh Syariah, Bank Syariah Mandiri/Bank Syariah Indonesia, as well as non-banks such as ACC, FIF, MUF, and PT Mandala). However, specifically regarding the financing contracts entered into by PT Mandala Finance, it appears that the contracts used in their operational framework differ, in that the *murābahah* contract is combined with a *musyarakah* contract, although the form of the *musyarakah* contract is not explicitly stated in the clauses of the ‘ ‘ (Agreement on the Sale and Purchase of Motor Vehicles); nevertheless, in practice, elements of a *musyarakah* agreement are evident when the company states that the motor vehicle forming the subject of the agreement becomes jointly owned by Mandala and the consumer. Furthermore, there is an emphasis that the consumer is prohibited from entrusting, renting out, lending, pledging, transferring ownership, pawning, selling, refinancing, or transferring in any manner whatsoever, as well as altering the form or replacing spare parts/vehicle components. This clause arises because PT. Mandala Finance considers the vehicle to be jointly owned by the company and the consumer.

#### **D. Analysis of the Implementation of Motorcycle Financing Agreements in Banda Aceh from the Perspective of Islamic Economic Law**

Islamic Economic Law establishes various general principles, which serve as a benchmark for the implementation of various forms of transactions; the aim is to avoid deviations from the principles of Islamic Sharia. As far as the analysis of the implementation of motorcycle financing contracts in Banda Aceh is concerned, the financing contracts or agreements are generally the same, namely using a sale and purchase contract based on the *murābahah* model, whether in the form of *bi al-wakālah* (delegating the purchase to the consumer) or in the form of *li al-amr bi al-syirā'* (to the purchaser). However, the focus of the analysis in this sub-section is the implementation of motorcycle financing contracts specifically at PT. Mandala in Banda Aceh.

The analysis of the financing contract at PT. Mandala Kota Banda Aceh can be directed towards two aspects: firstly, the clarity of the contract used; and secondly, the ownership of the financed object:

##### **a. The aspect of contractual clarity**

The implementation of motorcycle financing contracts, particularly at PT. Mandala Kota Banda Aceh, reveals conceptual issues in the structure of the contracts used. The contract explicitly states that the legal

relationship between the company and the consumer is a *murābahah* contract, i.e., a sale and purchase transaction with an agreed-upon profit margin. In the theory of Islamic economic law, *murābahah* stipulates that the object of the transaction (the vehicle) becomes the full property of the consumer once the contract is valid, whilst the company is only entitled to the agreed payment of the price. The seller (the company) delivers the goods, the buyer (the consumer or customer) is entitled to the object of the financing, and the remaining obligation is merely the payment of the price in instalments.

Should the company wish to establish a fiduciary guarantee, the object of that guarantee must be entirely different and not the vehicle that is the subject of the contract. The provisions regarding the *murābahah* contract are already in place and clearly stated by the company. However, the clarity of the contract is called into question regarding a clause in the agreement set by the company, which specifically states that the vehicle is jointly owned by the parties and also restricts the consumer's right to transfer, lease, or pledge the vehicle without the company's consent. This clause clearly meets the characteristics of a *musyarakah* (*syirkah*) contract, where ownership of the object is held jointly by both parties.

From the perspective of fiqh muamalah (Islamic economics), the combination of two different contracts gives rise to confusion. A contract based on the *murābahah* contract requires sole ownership by the consumer, whereas *musyarakah* requires collective ownership. This inconsistency has the potential to render the contract invalid, as it mixes two different legal systems within a single contract. The contract established by PT. Mandala Finance can be critiqued through the theory of *uqūd al-murakkabah* (compound contracts or *hybrid contracts*). The jurists state that the combination of two conflicting contracts is not permitted, as it may give rise to *gharar* (uncertainty) and undermine the legal certainty of the contract.<sup>58</sup> Drawing on the opinion of 'Alī Aḥmad Al-Sālūs, a parallel contract (*uqūd al-murakkabah*) must be free from formal defects; that is, it must not result in the combination of mutually contradictory contracts, nor must it merely constitute a change in the fiqh form of a prohibited transaction or be merely a formal condition. If two contracts forming a compound contract are mutually contradictory, they

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<sup>58</sup>Muḥammad bin Ṣāliḥ Al-'Uṣaimīn, *Al-Ḥalāl wa Al-Ḥarām fī Al-Islām*, (Trans. Imam Fauzi), 2nd ed. (Jakarta: Ummul Qura, 2016), p. 66.

must not be combined into a single contract.<sup>59</sup> Al-Sālūs quotes an opinion by Al-Qurāfi who states: “Any two contracts that are mutually contradictory must not be combined into a single contract”. This principle establishes a limit that a contract must not contain clauses or conditions that are mutually contradictory, as this would invalidate the contract.<sup>60</sup> The evidence is quite clear, referring to a hadith narration:

“From Abu Hurairah, he said: The Prophet, peace be upon him, said: ‘Whoever conducts two transactions (contracts) within a single transaction shall be subject to the lesser of the two or usury.’ (Narrated by Abu Dawud)”.

In this context, the *murābahah* contract, which should grant the buyer full rights to the motor vehicle, is undermined or negated by the joint ownership clause between the finance company and the consumer, thereby creating a contradiction between the contract's substance and the additional clauses. From the perspective of Islamic economic law, this can be categorized as a form of *al-tadākhul al-uqūd* (the mutual intrusion and nullification of contracts), which may violate the principle of clarity regarding the contract's subject matter. Consequently, this contract is substantively inconsistent with the contract mentioned at the outset in terms of its content, clauses, and operational aspects. A contract combining two contracts into a single transaction gives rise to an anomaly: the company has declared it to be *murābahah*, but substantively it contains elements of *musyārahah*.

b. The aspect of ownership of the financed object

In the theory of ownership, there are several causes of ownership of property; one of these is through the process and transaction of sale and purchase or *al-bai'*, and there is also joint ownership (partnership) in the *musyārahah* contract. Scholars agree that a sale and purchase transaction constitutes the cause of the transfer of ownership rights from one person to another: from the seller to the buyer in the form of goods, and from the buyer to the seller in the form of money as the value of the

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<sup>59</sup> Alī Aḥmad Al-Sālūs, *Islamic Economics and Contemporary Fiqh Issues* (Qatar: Dār Al-Ṣaḳāfah Al-Dūḥah, 1998), , p. 550-551.

<sup>60</sup> *Ibid.*

goods, whether conducted on a cash or non-cash (credit) basis.<sup>61</sup> Each party exchanges ownership, and both parties (seller and buyer) may utilise the goods freely. As for the object of the sale and purchase, ownership transfers in full (*tāmm*) from the seller to the buyer. This complete ownership (*tāmm*) takes effect immediately upon the conclusion of the sale and purchase contract.

Similarly, in *murābahah* transactions, ownership of the object transfers immediately upon contract conclusion. In *murābahah* sales conducted on an installment or credit basis, ownership of the goods is transferred immediately upon contract conclusion.<sup>62</sup> Under Islamic economic law, consumers have the freedom to resell goods, whether the sale is profitable or incurs a loss (as the selling price to a third party may be lower than the purchase price paid to the company). Should the consumer incur a loss from the sale, they remain obliged to settle their debt with the finance company. This is stipulated in the DSN MUI Fatwa.

Regarding the implementation of motor vehicle financing contracts at finance companies in the city of Banda Aceh, particularly PT. Mandala Finance, it is evident that the consumer does not have full rights over the purchased goods, or ownership of the object of sale and purchase does not fall within the category of *milk al-tāmm*. This is because the consumer lacks the ability or authority to freely dispose of or use the object in question. Such practices are inconsistent with the principles of Sharia as set out in DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 on *Murabahah*. This fatwa explicitly states that the consumer may sell the subject of the sale even if the required installments have not yet been paid in full.

This can be understood from the following three points of the fatwa's ruling:

- 1) In principle, the settlement of a customer's debt in a *murābahah* transaction is unrelated to any other transaction the customer enters into with a third party regarding the goods; if the customer resells the goods at a profit or even at a loss, the customer remains obliged to settle their debt to the bank.
- 2) If the customer sells the goods before the end of the repayment period, they are not obliged to settle the entire outstanding balance immediately.

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<sup>61</sup>Ghazaly, Ihsan, and Shidiq, *Fiqh Muamalat...*, p. 49.

<sup>62</sup>Jaih Mubarak, *Fiqh of Financial Transactions*, (Bandung: Simbiosis Rekatama Media, 2017), pp. 116-117.

- 3) If the sale of the goods results in a loss, the customer must still settle the debt in accordance with the initial agreement; therefore, they must not delay installments or request that the loss be taken into account.

With reference to the three points of the DSN-MUI Fatwa mentioned above, the customer (consumer) actually has the freedom to take legal action regarding the object they have purchased, including entrusting the vehicle, renting it out or lending it, pledging it, transferring ownership, pawning it, and also selling it, refinancing the object, transferring it, altering its form or replacing vehicle spare parts/equipment, and even reselling it to another party. This indicates that within the *murābahah* sale and purchase contract, in which a *musyarakah* contract arises at the financing company in Banda Aceh (namely PT. Mandala Finance), ownership of the object of sale and purchase ideally constitutes full ownership or *milk al-tāmm* for the consumer.

Based on the two analyses above, it can be understood that the financing practices at PT. Mandala Finance have not yet fully implemented Sharia principles, as the nature of the contract remains unclear – whether it employs a *murābahah* contract or a *musyarakah* contract – since the initial mention refers to the use of a *murābahah* contract, whilst the ownership rights of the vehicle are actually established as joint ownership (*syirkah*) between the company and the consumer. The wording of the contract clause indicates that the contract used is a *murābahah* contract; however, in practice, it leans more towards an MMQ contract. In *murābahah* financing, the two-wheeled motor vehicle financed by the company should ideally become the full property (*milk tāmm*) of the consumer; this is as stated by Wahbah Al-Zuhailī, that within the legal concept of sale and purchase, the object of the transaction – whether conducted on a cash or credit basis – becomes the full property ( ) of the buyer, so that they may exercise (*taṣarruf*) any right over that object.<sup>63</sup> Similarly, Al-Miṣrī states that in a sales contract, the subject matter of the contract becomes the full property of the buyer, and they are entitled to use it.<sup>64</sup> It is for this reason that consumers essentially have the freedom to rent out, replace or alter the form of *spare parts*, lend them out, and so on.

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<sup>63</sup>Al-Zuhailī, *Al-Mu'tamad fi Al-Fiqh...*, p. 30; Al-Zuhailī, *Al-Fiqh Al-Islāmī...*, p. 45.

<sup>64</sup>Al-Miṣrī, *Studies in Economics...*, p. 66.

## Conclusion

This article concludes two points, namely: *Firstly*, the implementation of motorbike financing contracts in Banda Aceh is that the financing of motor vehicles by sharia companies, both banks and non-banks, generally uses the *murābahah* contract with variations of the *bi al-wakālah* and *li al-amr bi al-syirā'* models, and in some cases also uses the *musyārahah mutanāqīshah* contract. These contractual patterns are theoretically valid under Islamic economic law; however, in some practices there are inconsistencies, particularly at PT. Mandala Finance, where the *murābahah* contract explicitly stated in the contract clauses is mixed with joint ownership clauses resembling a *musyārahah* contract.

*Secondly*, the implementation of motorcycle financing contracts in Banda Aceh from the perspective of Islamic economic law is that the contractual practices employed, particularly at PT. Mandala Finance, are not yet fully consistent with Sharia principles. While the contract explicitly states the use of a *murābahah* contract, the ownership clause contains elements of *musyārahah*, creating an anomaly and contradiction between the form of the contract and the substance of the agreement. This results in uncertainty regarding the ownership status of the vehicle, which under a *murābahah* contract should be the full ownership of the consumer (*milik al-tāmm*), but in practice is restricted to joint ownership. This inconsistency contravenes the principles of contractual clarity, legal certainty, and the consumer's freedom of disposal, as affirmed in the DSN-MUI Fatwa. Therefore, the contract must be restructured to comply with the principles of Islamic economic law and to avoid gharar and contractual defects.

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