

# Implementation of the Musyarakah Contract (Akad) in the Property Business in Kudus Central Java Indonesia

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## Abstract

Regulation of *musyarakah* contracts there is a tendency to understand differently in the community regarding the process of implementing musyarakah contracts in joint business activities in which one party causes losses in business based on the absence of openness in carrying out obligations. The purpose of this writing is to complement the shortcomings of the existing authors, since it is limited to the economic aspects of Islam and the author discusses the legal aspects. With the description of the problem as follows: 1) How is the implementation of the musyarakah agreement in property business activities in Kudus. 2) Factors that are the basis for the implementation of sharia contracts in the property business? 3) Does the practice of a musyara contract have implications for customer trust in buying property? The approach used is a qualitative approach. The application of anauthentic contract-based contract is in accordance with legal norms involving notaries, developers, and parties. Musyarakah agreement in the property business in Kudus has knowledge of religiosity as knowledge based on sharia contracts. Thus, customer trust in transacting sharia property business has applied sharia values in the form of musyarakah contracts.

**Keywords:** *musyarakah, Sharia Contracts, Properties business*

## Abstract

Arrangement contract deliberation there is trend understanding Which There are differences in society regarding the process of implementing a musyarakah contract in joint business activities where one party causes losses in business based on No exists openness in operate obligation. Objective writing This is For complete lack from writer Which There is, Because limited on aspect economy Islam And writer discussing legal aspects. With a description of the problem as follows: 1) How implementation of musyarakah contracts in property business activities in Kudus. 2) Factors- factors that form the basis for implementing sharia contracts in the property business? 3) Does the practice of musyara contracts have implications for customer trust in buying property? Approach used is qualitative approach. Application contract based deed authentic in accordance with norm law Which

involve Notary Public, developer, And para party. Contract deliberation in business property in Holy own knowledge religiosity as knowledge based on contract sharia. With thereby, trust customers in sharia property business transactions have implemented sharia values in form contract deliberation.

Say Key: musyarakah, Contract Sharia, Business Property

## INTRODUCTION

Property becomes one of the primary human needs as a realization of the feasibility of living to take refuge, rest and enjoy life with family. In addition, property also has a family learning function, economic function, recreation function, worship function, social function and other activities related to humans as individual and social beings in society. Property itself is defined in the KBBI as property in the form of land, buildings and facilities and infrastructure which is an inseparable part of the intended land and / or building. (Language Center Dictionary Drafting Team, ed.3, Big Indonesian Dictionary, Balai Pustaka, Jakarta, 2008, p.898).

Property as *hajjah dharuriyah* is captured by business people as a promising economic opportunity. Devolepers are here to offer the property products they work on, with a variety of systems, both cash and credit offers. Property business opportunities are rife nationally, including in the city of Kudus, Central Java.

For home ownership as a goal that must be achieved by individuals, there are many ways taken in order to obtain it, be it by saving first from a long time ago to then be able to buy it and even until someone makes a loan as capital to buy it. (Rahima, 2020)

Sharia-based developers also take this business opportunity (opportunities) to fight the dominance of conventional-based businesses that are considered usury. Although the toughest challenge (weakness) of Devoleper Sharia is the low liquidity of capital owned to be able to compete with conventional developers as competitors (threats) in seizing this opportunity. Moreover, it has not been supported by ideological sharia-based capital regulation to provide stimulation of sharia-compliant profit-sharing cooperation, as well as constraints on the land acquisition process where the role of the government is still inclined to the hegemony of capitalism through the power of banks.

The implementation of the Islamic economic concept by sharia-based property developers is seen in the current phenomenon in the property world that is trying to escape from bank and non-bank financial institutions. The birth of a new property developer community, offering property solutions based on pure sharia. One of them is a sharia property in Kudus Al madinah Griya Asri which is open in 5 places in the Kudus area. Likewise, Bumi Kudus Syariah Simangu Housing, Jati, Kudus, Housing with sharia financing, without banks, without

usury, without BI checking, without confiscation, without a bathil contract, is located in Pasuruhan Kidul Village, Jati District, Kudus Regency.

This phenomenon, from the point of view of researchers, is an interesting and even solutive thing for the property business in shari'a, until the end it will be able to shift the home ownership loan (KPR) system by conventional banks or Home Ownership Financing (PPR) by banks labeled shari'ah. Some of the contracts used in Sharia property transactions in business are based on *Fiqh Muamalah Islam* such as *the Syirkah Abdan* contract for the internal sharia Property Management team, with land owners/financiers through buying and selling on credit or *mudharabah*, marketing activities with *ijarah* or *syamsarah contracts*, and *bay' al-istishna'* with payment in cash or installments to the User.

However, in this study, it examines the musyarakah contract, or specifically called *Musyarakah Mutanaqisah*. According to Hosen (2009) *Musyarakah Mutanaqisah* (diminishing partnership) is a form of cooperation between two or more parties for the ownership of an item or asset, where this cooperation will reduce the ownership rights of one of the parties, while the other party increases its ownership rights. Interestingly, the researcher formulated this study in 3 problems, 1) How is the implementation of the musyarakah agreement on property business activities in Kudus? 2) What are the supporting factors and obstacles to the implementation of Musyarakah in the property business in Kudus 3) How is the implementation of the musyarakah contract on property business activities in Kudus from the perspective of sharia economic law?

## RESEARCH METHODS

This method and type of research uses a descriptive qualitative type of research, where qualitative research itself is a research method with an analysis procedure that does not use statistical or numerical analysis procedures. The research approach used by the author in this study is a qualitative approach (qualitative research). The qualitative approach according to Creswell is: "Qualitative research is an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The research builds a complex, holistic pictures, analyzes words, reports detailed views of informants, and conducted the study in natural setting [2]. Data collection uses observation techniques, structured interviews, and documentation. The data analysis used is the Descriptive Qualitative Analysis Method.

## RESULT AND DISCUSSION

### **How is the implementation of the musyarakah agreement on property business activities in Kudus**

Musyarakah is defined as a merger, mixing or union. Musyarakah means partnership cooperation or in English it is called partnership (Mardani, 2014). The

words syirk and syirkah/syirkah alternately, but the commonly used is the first word. The meaning of the word leads to al-ikhtilāṭ (mixing) [4][5](Humaemah, 2019)(Humaemah, 2019)(Humaemah, 2019).

Fiqhly, in his book, as-Sailul Jarrar III: 246 and 248, Imam Asy-Shaukani wrote as follows, "(Syirkah syar'iyah) is manifested (realized) on the basis of equally ridha between two or more persons, each of whom expends capital in a certain measure. Then the joint capital is managed for profit, on the condition that each of them gets a profit according to the size of the shares handed over to the syirkah. But when they all agreed and agreed, the profit was divided equally between them, even if the amount of capital was not the same, then it was permissible and valid, although their shares were fewer while others were larger in number. In sharia perspective, this kind of thing is not why, because business ventures are the most important thing based on ridha sama ridha, tolerance and airy chest(Naf'an, 2014).

Az-Zuhaily (1989: 792-793) in Edwin Rahmat *mentioned*, *musyarakah* is a cooperation agreement between two or more parties for a certain business to which each party contributes funds with the opportunity that profits and risks will be borne together in accordance with the agreement(Yulianto, 2015).

Musyarakah is a cooperation agreement that occurs between capital owners (musyarakah partners) to combine capital and do business together in a partnership, with a ratio of distribution of proceeds in accordance with the agreement, while losses are borne proportionally according to capital contributions(Naf'an, 2014).

#### Legal Base of Musharakah

Musyarakah is a contract that is allowed based on the Qur'an, sunnah, and ijma'. Al Qur'an Q.S An Nisa verse 12

.So,F

"Of the truth most of the people of the association are partly they do zalim to some of the others, except those who have faith and work the shaleh charity; and very few are these".

In Surah An-Nisa (4) verse 12, the notion of *syarukâ'* is to ally in possession of property obtained from inheritance. Whereas in Surah Shâd (38) verse 24, the recitation of al-khulathâ' means syarukâ', that is, people who mix their property to be managed together. "God one party does not betray the other. If one of the parties has betrayed, I am out of them." (HR. Abu David, who was abdicated by al Hakim, from Abu Hurairah)

Ibn Qudamah in his book, *al Mughni*, has said: "Muslims have been consensual about the legitimacy of society globally despite differences of opinion in some elements of it" (Muhammad Syafi'i Antonio, 2010). Based on juridical considerations, the legal basis based on DSN MUI Fatwa No.08 / DSN-MUI / IV / 2000 concerning *musyarakah* financing (<https://tafsirq.com/fatwa/dsn-mui/pembiayaan-musyarakah> accessed Monday, July 18, 2022 at 22:00). Those that must be fulfilled in the transaction are several, which are as follows: a. Contractors, business partners, b. The object of the contract, namely capital (*mall*), work (*drabah*), c. *Shighar*, i.e. Ijab and Qabul. Types of *Musyarakah*

Broadly speaking, *musyarakah* is categorized into two types, namely *ownership musyarakah* (*syirkah al amlak*), and *contract musyarakah* (*syirkah al aqad*). The *ownership musyarakah* is created because of an inheritance, will or other condition resulting in the ownership of one asset by two or more persons. In this *deliberation*, the ownership of two or more persons shares in a real asset, and also shares in the profits that the asset generates. The *musyarakah* contract is created because of the way of the agreement, it is agreed that two or more parties agree that each of them contributes to the *musyarakah* capital, and agrees to share profits and losses (Djuwaini, 2010).

#### Shirkah Amlak

*Syirkah amlak* is a *syirkah* that occurs not because of a contract, but because of a certain effort or occurs naturally (*ijbari*). Therefore *syirkah amlak* is divided into two: *Syirkah ikhtiyar* (voluntary), that is, *syirkah* born by the will of two allied parties. For example, two people who have a congregation to buy an item, or two people get a grant or will, and both receive, so that both become allies in property rights and *Syirkah jabar* (coercion), that is, a communion that occurs between two or more people without their will the inherited goods become the property of the person concerned. The law of these two types of *syirkah* is that each ally is like a foreign party over his other ally, so that one party is not entitled to take any action against the property without the permission of the other, because each ally has no power over his brother's share.

#### Syirkah Uqud

*Syirkah uqud* is two or more persons performing an agreement to cooperate (unionize) in capital and profit. That is, this cooperation is preceded by a transaction in investment and an agreement on the distribution of its profits. Hanafiah scholars set the conditions for *syirkah uqud*. For the validity of *syirkah uqud* that must be fulfilled include:

1. *Tasarruf*, which is the object of the *syirkah* contract, must be represented. In *syirkah uqud* the profit obtained is a joint ownership that is divided according to the agreement. On this basis, each member of the

*musyarakah* has the authority to other members of the union to perform *tasarruf*. Thus each party becomes a representative of the other party.

2. The distribution of profits must be clear. The share of profits for each member of the *deliberation* must be clearly determined, for example, 30%, 20%, or 10%. If the distribution of profits is not clear, then *syirkah* becomes *fasid*, because profit is *mauqud* alaih rukun dari *musyarakah*.

3. The profit must be a commonly owned part as a whole, not by determination for example for A 200, B 500. if the profit has been determined, then the *syirkah* contract becomes a *fasid*. Because *syirkah* requires participation in profits, if the determination is made to a certain person, it will affect the nature of the conspiracy. individuals, there are many ways taken in order to get it, be it by saving first from a long time ago to then be able to buy it and even until someone makes a loan as capital to buy it. However, it is currently very difficult to obtain home ownership in cash, this is due to the unavoidable rise in house prices (Rahima, 2020). Then the credit system becomes an alternative. Meanwhile, the majority of housing loans are dominated by conventional banking (Sunarto, 2018).

### **Factors that are the basis for the application of sharia contracts in the property business?**

Based on research that has been carried out on several sharia properties in Kudus, the marketing strategy used by sharia housing is in accordance with the theory previously explained, namely Promotion is an activity carried out by companies to show, communicate the products they produce to the public. Promotion carried out by sharia properties is by promoting via OLX online media, social media facebook, instagram, tiktok and brochures available at marketing offices. The price list is in accordance with the products offered accompanied by an explanation of the product, As for discounts or prizes included When launching sharia housing. Design, namely the design of the products offered always considers the values of Islamic law in designing their homes, besides that it also provides freedom to consumers if they want to change the design of the house according to the wishes of consumers but still must not violate Islamic values.

The location is closely related to public facilities such as places of worship, markets and shopping. Especially sharia properties in kudus prioritize the location of worship in every location that is opened, to make it easier for residents of housing to worship. Participants, namely people who work in sharia housing upholding akhlaq, islamic economics and an attractive appearance have a great influence on consumer perceptions or success in delivering services and products

offered by the company. The web, namely sharia property, designs information systems according to current technological developments, namely web-based marketing information systems, by utilizing web media to expand the sharia property marketing network does not pursue for local people even to the point of leaving the area (Mincarti et al., 2020). Devolepers who are moved to open sharia property opportunities, such as the holy sharia house Gondang Manis Kudus, the holy sharia house Gondang Manis and Al Madinah Property Syariah. They are sharia property developers who have been doing the starting point of their business in Kudus since August the last five years, one of the founders is Mr. Setyo Utomo. Al Madinah Property Sharia for example, since its establishment principled should not separate between proselytizing and business not solely worldly. It can be said that the property business with the sharia system is *deferentiation* with other property businesses based on ansich profit, without considering the sharia law. Sharia property emphasizes its business processes or even to the concept of its occupancy. Sharia property has the characteristic of anti-usury to build islamic *hadharah* (civilization) or that is justified in Islam. Sharia property prioritizessakinahan for its residents, so it is very urgent to process its ownership and utilization in accordance with syara'.

Since the beginning of the kudus sharia property, it has wanted to implement a sharia system in selling property. Because business is not only *profit oriented*, but there are nuances of da'wah, ukhuwah and *taysir* (providing convenience) for consumers. More important than all that is to seek Ridho Allah swt. As stated by the Developer, Mr. Setyo utomo: "At the beginning of the establishment of Al Madinah Property Syariah, I wanted to apply sharia principles in property buying and selling transactions, with an agreement according to the fikh that I learned and followed, opportunities were very good in business and strengthened ukhuwah".

Regarding the choice in the field of Property, according to him, man is commanded to develop property so as not to deprive the offspring of weak offspring both faith, knowledge, physique and property. Developing treasures in the era of hedonistic capitalism there are two options, namely: gold and property. Gold follows the value of the currency, although it is anti-devaluation but the predecision is different from Property which has capital gains and generates cashflow.

As one of the Sharia property developers, Al Madinah Property Syariah has the *tagline* NON RIBA HOME LOANS, No BI Checking, No Interest, No Usury, No Fines / Confiscation.

This tagline is an attraction for consumers who want to avoid syubhat contracts, especially haram, thus making Sharia Property in Kudus as one of the attractive choices for consumers.

In general, Sharia Property in Kudus carries out the nauseamah maliyah

syar'iyah without usury in business and property ownership, opening up opportunities for business people to be able to cooperate or partner in developing sharia property in Kudus. Cooperation through syirkah contracts based on Islamic sharia contracts. The partnership opportunities offered are:

*First*, the Land Partnership uses the syirkah *Mudharabah* agreement, which is the land owner giving up land he owns himself, to be used as property development land, while Sharia Property in Kudus provides a system of development, marketing, and property design, with profit sharing through profit sharing. It is this partnership that is the object of research by researchers, related to the effectiveness of the property business.

*Second*, capital cooperation uses *the syirkah mudharabah* contract.

*Third*, the sale of land with a valid contract is a contract for buying and selling land to pay tempo.

*Fourth*, marketing cooperation using the *syamsara contract*, which is a realtor contract. The advantages offered by Sharia Property in Kudus that uses sharia-compliant management are financial benefits and sharia-compliant mu'amalah proselytizing to land owners, Users (buyers) and the general public. So that the success for Sharia Property in Kudus to achieve a definite profit is fortunately. Sharia property in Kudus offers a *deference* compared to the previous property business. Sharia property in Kudus emphasizes its business processes even to the concept of occupancy. Sharia property has the characteristic of *hadharah* (A form of civilization influenced by certain keyakninan) of Islam or that is justified in Islam(Sunarto, 2018).

Effectively, entrusting Sharia Property in Kudus to provide customer satisfaction as a form of effectiveness. The fulfillment of the commitment of Sharia Property in Kudus, Sharia Property prioritizes the validity of its residents, with the concept of shari'a housing as well as the ownership process and its use as desired by Syara'(Sylvana et al., 2020). In terms of property ownership of Sharia Property in Kudus, it absolutely passes to the buyer. This is like fiqh muamalah one of the main pillars of the Sharia Property business in Kudus that the law of an object / item that can be owned by an individual, public interest or the state. So that it is also justified to be an item that can be of business value as is being carried out by Sharia Property in Kudus. Land and buildings are geographically positioned property of wealth / immovable property. Ownership carries the consequence of the right to avail, or transfer benefits to anyone the owner desires. This includes buying and selling in the property business over land and buildings to own and occupy.

**Does the practice of a musyara contract have implications for customer trust in buying property?**



The musyarakah agreement in the application of the property business in kodus has implications for public trust with a universal understanding of Islamic values related to mutually beneficial cooperation (syirkah) as usvita called (Usvita, 2021)(Pramana & Rastini, 2016)(Pramana & Rastini, 2016)(Pramana & Rastini, 2016) Trust is an important thing for a committee or promise, and commitment can only be realized if one day it matters. Trust exists if customers believe that the service provider can be trusted and also has a high degree of integrity. The trust of the customer is all the knowledge that the customer has and all the conclusions that the customer makes about its objects, attributes and benefits.

Trust has a belief that will ultimately create a brand image for a company. because of the conformity of sharia law. Sharia law is the implementation of all transactions in Islamic financial institutions that will achieve sharia law conformity, if in the implementation of each transaction avoids elements of maysir, gharar, haram, usury, and bathil (Usvita, 2021). Even, This includes buying and selling in the property business over land and buildings to own and occupy. sharia property can build resilience during the COVID-19 pandemic and provide a model of business resilience by exploring its ability to be resilient during the COVID-19 pandemic. strengthening developer commitment, strengthening cash flow management, increasing and disseminating sharia property knowledge, and emerging dynamic capabilities to respond to shocks and maintain the continuity of the sharia property business (Fauzi & Rahadi, 2021).

This means that customers are very confident in doing property business because it is in accordance with all aspects of human life with aqidah, sharia and akhlaq. With the many Islamic elements contained in an activity and transaction carried out by the developer, customers will be more confident to buy sharia-based property.

### **Conclusion**

Based on the practice of musyarakah contracts in the property business in Kudus that occur during transactions not only as a result of social experience but as a result of the trust of people who have knowledge of religiosity as a reproduction of knowledge based on sharia contracts. Thus, customer trust in transacting sharia property business has applied sharia values in the form of musyarakah contracts. This study provides a perspective in looking at the practice of musyarakah contracts in the property world not on static causal factors but in the dynamic process of how people's confidence in buying property. Follow-up studies that accommodate a wider sample and diverse sources of informants can be a source of knowledge for deeper understanding and better social structuring.

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