

## CONSTRUCTION OF *MUSYÂRAKAH MUNTAPIYYAH BI AL-TAMLÎK* CONTRACT IN SHARIA PRINCIPLES-BASED DSN-MUI FATWA

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### Abstract

The legitimacy and pros and cons of multi-contract and *wa'ad mulzim*-based fatwa products receive serious attention from contemporary *fiqh* scholars. One of the multi-contract and *wa'ad mulzim*-based fatwas issued by National Sharia Council-Indonesian Ulema Council is fatwa Number 133 Year 2019 concerning *Musyâraakah Muntapiyyah bi al-Tamlîk*. This consists of a series of several contracts and contains the provisions of *wa'ad mulzim*. The purpose of the study was to examine the construction of *Musyâraakah Muntapiyyah bi al-Tamlîk* contract and explore sharia principles-based *Musyâraakah Muntapiyyah bi al-Tamlîk* contract. The method of this study was qualitative research using a normative juridical approach, and its data collection technique was library research. The result revealed that the construction of *Musyâraakah Muntapiyyah bi al-Tamlîk* contract in the fatwa is the allowed multi-contract, considering that the prohibition of multi-contract has legal reasons or legislature ratio. The *wa'ad mulzim* in the fatwa is a form of implementing the principle of benefit and providing the value of legal certainty in conducting a transaction. Thus, the fatwa of DSN-MUI regarding *Musyâraakah Muntapiyyah bi al-Tamlîk* is not out of sharia principles. The Implication of This Research That Ijtihad Products in the Field of Sharia Economic Law in the Form of Fatwas Can Be Used as Guidelines in Encouraging Product Innovation of Islamic Financial Institutions.

**Keywords:** Fatwa; Contract Construction; *Musyâraakah Muntapiyyah bi al-Tamlîk*

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### I. Introduction

Principally, a fatwa includes the domain of legal norms, while its application in Sharia Financial Institutions or *Lembaga Keuangan Syariah* (LKS) is an effort to realize sharia norms in real life including the domain of law application (no longer the domain of legal norms) (Hasanudin, 2013).

The practice of sharia banking in Indonesia was originally based on a fatwa issued by National Sharia Council-Indonesian Ulema Council or *Dewan Syariah Nasional-Majelis Ulama Indonesia* (DSN-MUI). The aforementioned fatwa is one of the references in Islamic law to provide answers and solutions to the problems faced by the

people. Even Muslims in general use fatwas as a reference in attitude and behavior (Neni Sri Imaniyati dan Panji Adam, 2017).

The emergence and development of sharia banking in the world, including in Indonesia, is driven by the awareness of Muslims to implement Islamic law in all fields, such as in the field of muamalah (sharia economic law). One of the awareness is to leave the interest system considered the same as usury which is forbidden in sharia (Neneng Nurhasanah, 2020) and switch to a banking system with sharia principles-based operations.

The practice of sharia banking in Indonesia was originally based on a fatwa issued by the DSN-MUI. As stated earlier that this fatwa is one of references from an institution in Islamic law to provide answers and solutions to the problems faced by the ummah. Even Muslims in general use fatwas as a reference in attitude and behavior (Neni Sri Imaniyati, 2019).

Today, the rapid development of business has also implications for the underlying contract scheme. One of the contemporary contract schemes issued by DSN-MUI is fatwa Number 133 Year 2019 concerning *Musyârahah Muntahiyah bi al-Tamlîk* (MMBT), which is a multi-contract category (*al-'uqûd al-murakkabah*) meaning that a combination of various

contracts in it, namely *musyârahah*, *bai'*, *hibah*, and *ijârah* contracts.

The contract construction in *Musyârahah Muntahiyah bi al-Tamlîk* (MMBT) has received sharp criticism from contemporary muamalah scholars because it includes the domain of prohibited multi-contracts and *wa'ad muzlim*, which is the realm of *ikhtilâf* among *fiqh* scholars. According to 'Imrani, the '*illat* prohibition of multi-contract schemes is due to two factors. First, the '*illat* law of hadith prevention regarding the prohibition of two transactions in one transaction is *gharar*, namely the absence of clarity regarding the price (*jahâlah al-tsaman*). Second, the existence of *ta'liq al-'uqûd* or conditional contracts, especially in sale-purchase contracts, while the majority of *fiqh* scholars view that sale-purchase contracts should not be carried out in *mu'allaq* way (Abdullah Ibn Muhammad Abdullah al-'Imrani, 2006).

In addition to the issue of multi-contract law, the construction of *Musyârahah Muntahiyah bi al-Tamlîk* (MMBT) contract in the DSN-MUI fatwa contains discussions regarding the law of legal binding promises or commonly referred to as *wa'ad muzlim*. This topic has received attention from both classical and contemporary *fiqh* scholars. Therefore, discussions related to *wa'ad muzlim* become the realm of *ikhtilâf* (differences of opinion)

among jurists. In the view of the majority of jurists, promises are only moral binding, not legally binding (Alwi, 2020).

This study attempted to describe the concept and construction of *Musyârah Muntahiyah bi al-Tamlîk* (MMBT) contract in the DSN-MUI fatwa and analyze the validity of the contract construction in the DSN-MUI fatwa regarding *Musyârah Muntahiyah bi al-Tamlîk* (MMBT).

This study used a qualitative research method with a normative juridical approach, by examining theories, concepts, or legal principles related to *Musyârah Muntahiyah bi al-Tamlîk* (MMBT) contract. The primary data source was the DSN-MUI Fatwa Number 133 Year 2019 concerning *Musyârah Muntahiyah bi al-Tamlîk* (MMBT). The secondary sources were *fiqh* books and articles in journals and reference books that are relevant and related to this study. The data collection technique used a library research. After that, the data was processed and analyzed, and then drawn a legal conclusion regarding the validity of construction of *Musyârah Muntahiyah bi al-Tamlîk* (MMBT) contract in the DSN-MUI fatwa.

## II. Discussion

### A. The Concept of *Musyârah Muntahiyah bi al-Tamlîk* (MMBT) Contract in *Fiqh* Perspectives

In contemporary muamalah *fiqh* literature, scholars provide the following definition of *Musyârah Muntahiyah bi al-Tamlîk* (MMBT) contract:

According to Muhammad ‘Utsman Syubair in the book entitled *al-Mu’âmalât al-Mâliyyah al-Mu’âshirah fî al-Fiqh al-Islâmî*, the definition of *Musyârah Muntahiyah bi al-Tamlîk* (MMBT) contract is:

شركة يعطى البنك فيها الحق للشريك في الحلول محله في الملكية دفعة واحدة او على دفعات حسبما تقتضيه الشروط المتفق عليها.

“A form of *syirkâh* contract in which the bank gives the *syarîk* the right to replace his position in terms of *hisbah* ownership, whether the transfer is carried out all at once or in stages in accordance with the terms agreed upon by both parties” (Muhammad Utsman Syubair, 2007).

In *Mausû’ah al-‘Alamiyyah wa al-‘Amaliyyah li al-Bunûk al-Islâmiyyah* as quoted by Salah Sa’id Abdullah al-Marzuqi, the definition of *Musyârah Muntahiyah bi al-Tamlîk* (MMBT) contract is:

مشاركة يساهم فيها المصرف الاسلامى في راس المال شركة او مؤسسة تجارية, او بنايات, او مصنع, او زراعة مع شريك او اكثر وعندئذ يستحق كل من الشركاء نصيبه من الارباح بموجب الاتفاق عند التعاقد مع وعد المصرف

الاسلامى ان يتنازل عن حقوقه عن طريق بيع اسهمه الى شركائه, والشركاء يعدون بشراء اسهم المصرف, والحلول محله في الملكية, سواء على دفعة واحدة او دفعات حسبما تقتضيه الشروط المتفق عليها.

“A form of *musyârah* in which sharia banks or other financial institutions with their *syarik* (customers) contribute to *syirkâh* capital, and each *syarik* is entitled to a share of profits in accordance with the agreement when the initial agreement is accompanied by a promise from the sharia bank to release its asset rights by selling its shares to the *syarik* (customer), and the *syarik* (customer) promises the bank to buy shares belonging to the sharia bank and replaces the position in terms of share ownership, either in stages or all at once in accordance with the agreed terms” (Shalah Sa’id Abdullah al-Marzuqi, 2000).

Shalah Sa’id Abdullah al-Marzuqi in the book entitled *al-Syirkâh al-Muntahiyah bi al-Tamlîk wa Tathbîqâtuhâ fî al-Mashârif al-Islâmiyyah* defines *Musyârahah Muntahiyah bi al-Tamlîk* (MMBT) contract as follows:

المشاركة المنتهية بالتملك بالاتي: اتفاق اثنين او اكثر على المساهمة في مال او ما من احدهما والعمل من الاخر, على ان يكون العائد بينهما حسب الاتفاق, والخسارة بحسب راس المال مع اشتراط تملك احدهما حصته للاخر او وعد بذلك.

“An agreement between two or more people on capital shares or capital from one party and the business of the other party, both of which are entitled to profit (from the cooperation business) in accordance with the agreement, and the loss depends on the share of each capital, and is required the transfer of ownership of *hishah* from one party to another or based on a promise (transfer of

ownership” (Shalah Sa’id Abdullah al-Marzuqi, 2000).

Contemporary scholars divide *Musyârahah Muntahiyah bi al-Tamlîk* (MMBT) contract into three categories: (Muhammad Rawas Qal’a Jie, 2002) *first, al-musyârahah al-tsâbitah al-muntahiyah bi al-tamlîk* is a form of cooperation between two or more people in a *syirkâh* contract capital in which one of the *syarik* (partners) transfers his *hishah* (capital ownership portion) to another *syarik*, i.e. after the *syarik* has paid in full/all of the value (portion or payment all at once). In the concept of *al-musyârahah al-tsâbitah al-muntahiyah bi al-tamlîk*, the *syarik* party who buys a portion of another *syarik* is not entitled to own that portion after he pays in full the portion of the *syarik* party that he buys his *hishah*.

*Second, al-musyârahah al-mutanaqishah al-muntahiyah bi al-tamlîk* is a form of cooperation between two or more people in a *syirkâh* contract capital in which one *syarik* (partner) transfers the ownership of *hishah* (capital ownership portion) to another *syarik* with payment in stages. Each time one *syarik* buys a portion (*hishah*) from another *syarik*, the share of ownership and profits increases due to the gradual purchase of the portion. Then, the portion and profit of one *syarik* (whose share of capital ownership has been bought)

decreases (due to the purchase by another *syarik*), until he buys all other *syarik*'s *hishahs* (whose *hishahs* have been bought). Then, the ownership of the *hishah* is completely transferred.

In line with the aforementioned explanation, Muhammad Rawas Qal'ah Jie defines *al-musyârahak al-mutanaqishah al-muntahiyyah bi al-tamlîk* as follows:

الشركة المتناقصة المنتهي بالتمليك: هي اشتراك طرفين او اكثر في راس المال شركة بشرط ان يكون لاحد الاطراف شراء حصص الاطراف الاخرى على دفعات, وكلما اشترى شيا من حصة غيره زادت ارباحه بنسبة ما اشتراه ونقصت حصة الاخر بنسبة ما باعه له, حتى يشتري كامل حصة غيره في الشركة, وعندئذ تخلص الشركة كلها له.

“A form of cooperation between two or more parties in an association with the provision of one party (*syarik*) will buy the other party's *hishah* share in stages. Every time he (the customer) buys a share of the *syarik* (his partner), his share of asset's ownership increases, and his partner's share decreases as much as what he has sold, until he (the customer) buys all of his partner's assets in full” (Muhammad Rawas Qal'a Jie, 2002).

Third, *al-mudhârabah al-muntahiyyah bi al-tamlîk* is a form of cooperation between two or more people in which one party contributes capital (*shâhib al-mâl*) and the other party contributes skills and efforts to do a business. The parties are entitled to the benefits of the cooperative. The *'âmil* party (who contributes

effort/skill) is entitled to the ownership of the object of *mudhârabah* contract after he has paid the entire price of the object of *mudhârabah* contract in stages. Thus, the *'âmil* party has no right to own the object of *mudhârabah* contract except after he has purchased the entire capital of the *shâhib al-mâl*.

According to Muhammad Rawas Qal'ah Jie, the definition of *al-mudhârabah al-muntahiyyah bi al-tamlîk* is:

المضاربة المنتهي بالتمليك: المضاربة يكون فيها المال من طرف والعمل اخر, وتكون لكل واحد من الاطراف من الربح. نسبة مسماة, فاذا اتفقا على ان يدخر العامل في كل شهر مثلا عند البنك صاحب راس المال مبلغا معلوما يستثمره له البنك, ومتى بلغ المال المدخر عند البنك قيمة اعيان المضاربة انحلت المضاربة, وصارت كلها ملكا للعامل, كما امام شركة منتهي بالتمليك, وشرط الادخار فيها, وشرط انتقال الملكية حينما تبلغ مدخرات العامل قيمة اعيان الشركة, هو شرط يناسب العقد, ليس في الشرع ما يحرمه, فهو شرط صحيح.

“This form of cooperation is based on a *mudhârabah* contract in which the capital is from one party (*shâhib al-mâl*) and efforts (skills) are from the other party (*mudhârib*). Each party is entitled to benefit in accordance with the agreed ratio. The agreement agrees that the customer is obliged to save money (saving) every month in the bank (*as shâhib al-mâl*), to be further invested (by the bank into certain sectors). When the amount of deposits in the bank reaches the value of the invested assets (based on *mudhârabah* contract). Then, the *mudhârabah* ends and the assets are owned by the customer (*mudharib*) as in the *Syirkâh Muntahiyyah bi al-Tamlîk* contract. Monthly deposit and ownership

transfer when the amount of deposits is equal to the *syirkâh* capital provided by the bank are the requirements that are in accordance with sharia. No teaching in sharia forbids it, then it is a justified condition” (Muhammad Rawas Qal’a Jie, 2002).

The capital provided by the bank to the customer is returned every month under the name of the deposit. For example, the capital provided by the bank to customer is Rp. 120,000,000. The customer is required to deposit funds in the bank as much as Rp. 1,000,000 for 12 months. When the installments are complete for 12 months, the *mudhârabah* contract ends and all business assets become the customer’s property. Deposits that are used as a return on capital are not known in the history of *mudhârabah* contracts in the classical period. This concept seems a new development in contemporary muamalah treasures.

*Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract is basically a type of *syirkâh inân*, so its provisions must also be in line with the requirements in *syirkâh inân*. Besides that, *dhawâbit* or special provisions relating to the terms of *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract: (1) let the *ma’qûd ‘alaih* (object) of *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract be permissible property (permitted sharia legally). Thus, the object in this *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract should not

be an object that is prohibited by sharia; (2) whereas *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract must be closed from usury transactions such as interest-bearing loans; (3) one of the *syarîk* (sharia bank) has *hishah* (portion) in the *syirkâh* contract with perfect ownership meaning that the *syarîk* can use the right of ownership portion perfectly either in terms of management or take legal action against the ownership portion. When the *syarîk* represents to another *syarîk* (in this case the bank represents to its customers) to carry out activities in *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract, then the representative *syarîk* party (sharia bank) still has the right to exercise control and supervision; and (4) in terms of profit sharing in *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract, the profits are distributed according to the agreement. As for the loss or destruction of the object in *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract, the *syarîk* bears the loss according to their respective capital proportions (Shalah Sa’id Abdullah al-Marzuqi, 2000).

#### **B. *Musyâraakah Muntahiyyah bi al-Tamlîk* in the DSN-MUI Fatwa**

The National Sharia Council-Indonesian Ulema Council (DSN-MUI) has issued a special fatwa regarding *Musyâraakah Muntahiyyah bi al-Tamlîk*

(MMBT) contract, namely fatwa Number 133/DSN-MUI/X/2019 concerning al-*Musyâarakah al-Muntahiyyah bi al-Tamlîk* (MMBT). According to the general provisions of the fatwa, it is defined that *Musyâarakah Muntahiyyah bi al-Tamlîk* (MMBT) contract is a *syirkâh* contract whose one of the *syarîk* transfers his *hishah* to another *syarîk* all at once in accordance with the promise (*wa'd*), using a *bai'* contract, grant or *hibah wal bai'*, so that all of the *syirkâh*'s business capital becomes the other *syarîk*'s property.

As for the legal provisions regarding *Musyâarakah Muntahiyyah bi al-Tamlîk* (MMBT) contract in the fatwa, it is explained that this contract may be carried out by subjecting to and complying with the provisions contained in this fatwa.

Moreover, the fatwa states that the provisions of *Musyâarakah Muntahiyyah bi al-Tamlîk* (MMBT) contract consists of a *musyâarakah* or *syirkâh* contract with a *tamlîk* contract (transfer of ownership), and a promise (*wa'ad*) to transfer the *hishah* belonging to one *syarîk* to another, either by sale-purchase (*bai'*) contract, grants, or other *tamlîk* contracts.

In the fatwa, there are special provisions relating to *Musyâarakah Muntahiyyah bi al-Tamlîk* (MMBT)

contract. First, the parties who carry out *Musyâarakah Muntahiyyah bi al-Tamlîk* (MMBT) contract are required to carry out the *syirkâh* contract in advanced, and clearly state *ra's al-mâl* of each party (*syarîk*), efforts, profit-sharing ratio, provisions regarding the time and method of doing profit-sharing, and provisions related to losses. Second, in the case of the transfer of *hishah* ownership in *Musyâarakah Muntahiyyah bi al-Tamlîk* (MMBT) contract with a sale-purchase contract, the first party (one of the *syarîk* meaning that LKS) promises (*wa'ad*) to sell all of his *hishah* at once and the second party (the other *syarîk* meaning that the customer) promises to buy it at the end of the *syirkâh* contract period or at the agreed time. Third, the sale-purchase as referred to in number two above is carried out separately at the end of the *syirkâh* contract period or at the agreed time. Fourth, the *hishah* price (*tsaman*) in the sale-purchase contract as referred to in number three is determined by agreement. Fifth, in the sale-purchase contract, *hishah* has been carried out automatically for the sake of *Musyâarakah Muntahiyyah bi al-Tamlîk* (MMBT) contract law ends. Sixth, business activities in the *Musyâarakah Muntahiyyah bi al-Tamlîk* (MMBT) contract may be carried out

with *ijârah*, *mudhârabah*, *bai'*, or other contracts in accordance with sharia principles. Seventh, other provisions related to *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract, which have not been regulated in this fatwa, the provisions and limitations are stipulated in the DSN-MUI Fatwa Number 114/DSN-MUI/IX/2017 concerning *syirkâh* contracts and the DSN-MUI fatwa Number 08/DSN-MUI/IV/2000 concerning *Musyâraakah* Financing.

### C. The Construction Analysis of *Musyâraakah Muntahiyyah bi al-Tamlîk* Contract in the DSN-MUI Fatwa

One of sharia principles-based sharia banking products is *musyâraakah mutanaqishah* financing contract. As stated in the DSN-MUI fatwa, several contracts are carried out in parallel in this *musyâraakah mutanaqishah* financing contract. They are 1) *syirkâh 'inan* contract of two or more parties who work together (*syarîk*) by enclosing their assets with unequal amounts to be used as joint venture capital; 2) a promise (*wa'ad*) of the *syarîk* (customer) to another *syarîk* (bank) to purchase capital goods enclosed by the bank; 3) transfer of ownership based on *bai'* or grant contracts; and (4) business activities based on *ijârah*, *mudhârabah* or similar contracts (Adam, 2017).

As stipulated in the fatwa that *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract is a multi-contract domain and a legal binding promise whose legal status is disputed by contemporary *fiqh* scholars. They base their arguments on the hadith of the Prophet Muhammad, which prohibits two transactions in one transaction (*shafqataini fi shafqatin wahidatin*) (Adam et al., 2020). *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) financing contract has the requirements of two contracts in one transaction, namely *syirkâh* contract (cooperation) and *al-bai'* contract (sale-purchase)/grant contracts in one transaction.

Hadiths related to the prohibition of multi-contract based on the hadith text regarding the prohibition of two transactions in one transaction or two sale-purchases in one sale-purchase emerge several interpretation. The scholars who argue about two prices in one transaction interpret that the transaction will have *gharar* if there are two prices for different payments: cash and installment, without determining the method of payment after the parties leave the sale-purchase place. However, if the parties determine about one particular payment and price, this transaction is allowed. This means that the multi-contract prohibition is a form of *ahkâm mu'allah* or a law that has an *'illat* (legislature ratio), so the multi-



contract transaction cannot be pseudo-generated.

Ibn Qayyim al-Jauziyyah as cited in Nazih Hammad (Nazih Hammad, 2001) argues that a more correct interpretation of the prohibition of *two transactions in one transaction* or *two sale-purchases in one sale-purchase* is the prohibition of conducting *inah* transactions or sale-purchase, namely usury manipulation transactions with the sale-purchase scheme. Therefore, the purpose of the multi-contract prohibition is a prohibition in conducting manipulation *bai'* contract (sale-purchase) in *zhahir*, but usury in essence. This hadith contains the meaning of *sad al-dzarî'ah* or preventive efforts so as not to fall into prohibited cases or transactions (Adam, 2021). Thus, *'illat* or legislature ratio regarding the hadiths prohibition of *two transactions in one transaction* or *two sale-purchases in one sale-purchase* means that usury *hîlah* prohibition (Ramdhan, 2007).

Meanwhile, Umar Muhammad Sayyid 'Abd al-'Aziz in the book entitled *Aḥkâm al-Mu'âmalât baina al-Ta'abud wa Ma'qûliyyat al-Ma'nâ* conveys about hadith of multi-contract prohibition in which that *'illat* of preventive law in that hadith is *gharar*. The price is not clear (*jahâlah al-tsaman*) and the purchased goods is also not

clear (*jahâlah al-mabî'*) (Umar Muhammad Sayyid 'Abd al-'Aziz, 2010).

According to Hasanudin (Maulana, 2016), multi-contract transactions are prohibited if those contracts prohibit the following principles: (1) multi-contract is caused by religious texts; (2) multi-contract is as *hilah* usury (usury-based manipulation transaction); (3) multi-contract causes fall in usury transactions; and (4) multi-contract consists of contracts whose legal consequences are contradictory. Thus, the law of combining several contracts in one transaction or the law of multi-contract is permissible if the multi-contract does not violate these principles. Then, back to the generality of the permissibility of combining several contracts includes *Musyârah Muntahiyyah bi al-Tamlîk* (MMBT) contract.

The permissibility of multi-contracts in *Musyârah Muntahiyyah bi al-Tamlîk* (MMBT) is based on at least two considerations. First, the agreement of the scholars regarding the permissibility of combining several contracts in one transaction as long as no *syar'i* argument forbids it. If the establishment of each contract is a valid, the law of combining contracts in one transaction is permissible. Second, basically, sharia contract law, has

the principle of freedom of conducting contract (*hurriyah al-ta'âqud*) and the obligation to fulfill an engagement based on consensual principles as long as the engagement does not violate sharia principles. This is reinforced by the rule stating that "In principle, every engagement and condition (which is made) is valid and permissible, as long as no arguments forbid" (Mardhi Masyuh al-'Inzi, 2015).

'Ala al-Din Za'tari conveys about the permissibility of combining two contracts in one transaction as stated in *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) as follows:

لا مانع شرعا من الجمع بين عقدين في صفقة واحدة, سواء اكان من عقود المعاوضات ام من عقود التبرعات, لعموم الادلة الدالة على الامر بالوفاء بالشرط واعقود.

"There is no sharia prohibition regarding the combination of two contracts in one transaction, both the combination is in the domain of an exchange contract (*mu'âwadhâh*) or a social contract (*tabarru'ât*). This is based on the generality of the arguments that command to fulfill the contract and its requirements" ('Ala al-Din Za'tari, 2010).

The permissibility and validity of *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) is conveyed by Wahbah al-Zuhaili in the book entitled *al-Mu'âmalât al-Mâliyyah al-Mu'âshirah* as follows:

"*Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract is a contract that is justified by sharia, same as *ijârah*

*Muntahiyyah bi al-Tamlîk* (IMBT) contract which is based on the *wa'ad* from sharia bank to its customers that the bank will sell the share of ownership to the customer if the customer has paid the sharia bank the price of the bank's portion. When the contract takes place, *musyâraakah* is a form of *syirkâh 'inân* because both parties (sharia banks and customers) give a share of capital. Then, sharia banks give delegations to their customers to manage business activities after completing the *syirkâh* contract. The bank sells all or part of the portion to its customers with the initial provisions of this sale being carried out separately which is not related to *syirkâh* contract" (Wahbah al-Zuhaili, 2002).

Furthermore, 'Utsman Syubair explains that in fact *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract is a form of muamalah that combines permissible components, does not contain contrary things to *nash-nash syar'i*, and does not conflict with *al-qawâ'id al-kulliyyah al-'âmmah* (general universal rules). Thus, *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract is permitted by *syar'i* (Muhammad 'Utsman Syubair, 2007).

In addition to the concept of multi-contract, in the DSN-MUI fatwa, *musyâraakah mutanaqishah* contract has the promise (*wa'ad*) concept as an instrument to transfer the portion from one of the joint venture partners. In muamalah *fiqh* literature, discussion of legally binding promises (*wa'ad mulzim*) is the realm of debate and discussion of scholars (law that

is being *ikftilaf*). There are at least four opinions among *fiqh* scholars regarding the law of keeping promises. First, the opinion of the majority of jurists from Hanafiyah, Syafi'iyah, Hanabilah, and one opinion from Malikiyah says that a promise is a religious obligation (*mulzimun diniyah*) and not a formal legal obligation (*ghair mulzim qadhaan*) because *wa'ad* is a *tabarru'* (policy/generosity) contract, which is unusual (binding). Second, the opinion of some scholars including Ibn Syubrumah (144 H), Ishaq bin Rawahiyah (237 H), Hasan Basri (110 H) and some Malikiyah states "Promises must be fulfilled and legally binding". Third, the opinion of some Malikiyah jurists states the promise is legally binding if it is related to a cause even though the cause is not part/mentioned from the statement of promise (*mau'ud*). Fourth, the Malikiyah's opinion that is popular among them is the opinion of Ibn Qasim stating that the promise is binding to be fulfilled if it is related to the cause, which is confirmed in the statement of the promise (*mau'ud fih*) (Panji Adam Agus Putra, 2018).

Muhammad Rawas Qal'ajih favors the strongest opinion stating that a promise is legal binding, if the promise is related to a certain cause and included in the contract

clause (Muhammad Rawas Qal'ah Jie, 2002). In line with this, the decision of the first Islamic finance conference in Dubai in 1979 states "a promise like this (the law) is legal binding for the parties referred to the opinion of the Malikiyah's school of thought, and legally binding on the religious law for the parties based on the opinion of other schools of thought. The religiously binding allows it to be legally binding if there is a benefit value in it (Muayyad, 2014).

The determination of legally binding promise (*wa'd muzlim*) in a series of *mu'awadhah* (business) contracts. One of them is the *musyârah mutanaqishah* financing contract, which has at least two urgencies: first, business certainty (*daf' al-gharar*) and second, the illustration of uncertainty (*gharar*) at the same time also relates to *dharar* which must be minimized, or even eliminated (*al-dharar yuzâl*). *Dharar* occurs because there are parties who are harmed, even though in business it is not permissible to harm other parties (*lâ dharar wa la dhirâr*) (Hasanudin, 2012).

This research was conducted as well as strengthens the previous research conducted by Jaih Mubarak and Hasanudin that the position of the promise in the context of sharia finance and business is

legally binding. This is certainly more able to provide legal certainty in business activities, one of which is the MMBT contract.

According to al-Qaradhawi, the *wa'ad* concept nowadays as a part of the implementation of sharia financial institution products is different from the *wa'ad* concept in the context of classical *fiqh*. As part of the business product, the provisions of legal binding promises (*wa'ad mulzim*) are *hâjah* (needs) and realize the principles of benefit (*mashlahah*) in carrying out transactions. Therefore, the opinion stating that *wa'ad* is a legal binding is more relevant to be used as a guide in business transactions (Al-Qaradhâwî, 1995).

Although *wa'ad* is still criticized from a conceptual perspective, it is seen that in practice this instrument has become a contractual promise because it has the function of avoiding the existence of *dharar* experienced by the parties carrying out transactions (Nadhirah Nordin, Asmak Ab. Rahman, 2014).

Furthermore, in order to ensure legal certainty (in doing business) in Sharia Financial Institutions (LKS), especially sharia banking, the DSN-MUI has issued a special fatwa regarding promises (*wa'ad*) namely the fatwa of the DSN-MUI Number 85/DSN-MUI/XII/2012 concerning Promises (*wa'ad*) in Sharia Financial and

Business Transactions (Muhammad Maksum, 2016).

The results of this study can serve as a basic framework in the field of Islamic economic law. The findings in this study that Islamic financial product innovation is the result of *ijtihad* and creativity of the DSN-MUI in its fatwa products. In addition, the basis for innovation and product development is motivated by the position of legally binding promises and the ability to multi-contract in Islamic financial products

### III. Conclusion

The construction of *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract in the DSN-MUI fatwa Number 133 Year 2019 is a multi-contract domain. Based on the analysis and opinions of contemporary *fiqh* scholars, the *'illat* of multi-contract prohibition is the prohibition of *hîlah* usury and the presence of *gharar* in the price. As for *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract, no *hîlah* usury and *gharar* are found, so the multi-contract provisions in the DSN-MUI fatwa regarding *Musyâraakah Muntahiyyah bi al-Tamlîk* (MMBT) contract are multi-contract that are allowed and do not violate sharia principles. Moreover, the *wa'ad muzlim* in the fatwa is an implementation of *mashlahah* values and provides legal certainty in transactions.

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