



DIMINISHING PARTNERSHIP (MUSHARAKAH MUTANQISAH) PRODUCT FOR ISLAMIC HOME FINANCING: THE CONCEPT FOR ISLAMIC FINANCIAL INSTITUTIONS IN AFGHANISTAN

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ABSTRACT

This study aims to examine the factors influencing the Practitioners' acceptance on Musharakah Mutanaqisah (MM) Islamic home financing (IHF) products amongst clients of Islamic financial institutions in Afghanistan. Using the MM model as a baseline theory, data are collected from the practitioners (Managers, Head of departments and Shari'ah advisors) of IFIs in Malaysia and Afghanistan, using self-administered open-ended questions. Using the qualitative method, the study finds that; attitude, subjective norm, perceived control and Compliancy of product are instrumental in determining the practitioners' acceptance of Islamic home financing products. It is also discovered that; gender, academic qualification and monthly income have their own effects on without the consumer acceptance. There are three limitations for future studies of IHF in Afghanistan. First, the current work does not include the experienced users who utilize Islamic home financing products. Second, the contribution of the present study is confined to the analyzed explanatory variables. Third, this study also has geographical constraints in which it will be conducted in Afghanistan. These limitations, however, provide directions for further future research. Essentially, this study is a pioneering effort in applying the MM model to the new context of IHF products and to integrate the stakeholders' acceptance for lower-income class in Afghanistan. This study introduces the compliancy of product and factors in explaining the practitioners/stakeholders acceptance on MM Islamic home financing products. Most fundamentally, this study proposes a modified intellectual framework that is of utmost importance to predict the demand for IHF products in the future.

Keywords: Islamic Finance, Shari'ah objectives, Equity financing, Hybrid contract, House financing systems.

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INTRODUCTION

Home financing products, as the case with other financing products, can be classified into two groups; debt-based contract and equity-based contract. The debt-based financing contracts create the debt as a result of the additional sale and purchase transactions and the debt is payable to the IFIs over a specified tenor, normally over a period of 20 to 30 years. The total amount of debt payable is normally about double to triple from the original amount of financing. It is mirrored to the conventional home loans, as the total payable over the entire tenor is almost equivalent to conventional. Despite the underlying contracts are different, there are many





scholars argued that; the existing practices are only in forms but without substance, hence making it similar to conventional finance. From the perspective of IFIs, it is considered as low risk as full debt which is claimable under the selling price. For the equity-based contract, the parties share the risk according to capital contribution and there is no guaranteed debt due to IFIs. It is a more equitable and justifiable way of financing.

As a partner, the IFIs share the risk including all major costs associated with the ownership of the home until the end tenure, and then the ownership is transferred fully to the customer. The concept of profit and loss sharing is believed to contribute more values in life compared to the debt-based contracts (Siddiqui, 2008). The core values in profit and loss sharing are equality and justice. Islam promotes equity regardless of gender, age, race and position. Likewise, Islam encourages profit that comes from lawful trade and productive investment. Therefore, people are able to get their counter value ('Iwad) from the three elements, namely:

1. Risk,
2. Work
3. Effort, as well as liability.

Equity financing seems to fulfill all of these elements. Many would argue that religion has nothing to do with finance. However, Islam as religion provides a complete format of all aspect of our life. The main challenge would be how to translate the Islamic teachings into modern business and corporate world.

Musharakah Mutanaqisah Concept

The Diminishing Partnership (DP) / Musharakah Mutanaqisah (MM) contract is based on a diminishing partnership concept. The MM consists of three contracts which are partnership (Musharakah), Lease (Ijarah) and sale (Bai'). First, the customer enters into a Musharakah under the concept of Shirkat-al-Milk' (joint ownership) agreement with the bank to co-own the asset being financed. Second, the bank leases its share in the asset ownership to the customer under the concept of Ijarah. This is when the customer pays a% of the asset cost as the initial share to co-own the asset whilst the bank provides for the balance of b%. Third, the customer gradually buys the bank's b% share at an agreed portion periodically until the asset is fully owned by the customer. The periodic rental amounts will be jointly shared between the customer and the bank according to the percentage shareholding at the particular times which keeps changing as the customer purchases the financier's share. The customer's share ratio would increase after each rental payment due to the periodic redemption until eventually fully owned by the customer. According to one report, Musharakah Mutanaqisah was implemented for the first time in Egypt by the Islamic banking division of a commercial bank in partnership with a tourism company. This concept has been approved by Islamic scholars at the First Conference for Islamic Banks, which was held in Dubai¹.

LITERATURE REVIEW

Diminishing Partnership (DP) / Musharakah Mutanaq'isah (MM) is the combination of three contracts which are partnership (Musharakah), Lease (Ijarah) and sale (Bai'). It has been invented through the gradual development of Islamic financial institution's products. The concept of partnership and its Shari'ah ruling is discussed in the classical Fiqah books, (Al-Sarakhsi, 1978; Al-Kasani, 1983). In the late eighties (80s) and the beginning of the nineties

¹ The Recommendations of the First Conference for Islamic Banks-Dubai (1399/1979), Fatwas on financial transactions, page 21, Dubai Islamic Bank Publications, 1985





(90s) when Islamic banking and finance started its journey; the partnership business was the main concern at that moment, and DP (MM) was non-existent at that time. Al-Harran (1993) defined the concept of partnership in Islamic finance and discussed its historical background. He explained different types of partnership and its practices focusing on the management issues like the distribution of profits, liabilities of losses, withdrawal of members etc. He also described the modes of equity investment in Islamic finance. He provided some suggestions which must be followed to convert the interest-based financial system to equity based financial system. Haron (1997) provides the overview, philosophy, history and regulation of Islamic banking and finance. He mentioned different types of Islamic financial products including partnership (Musharakah), but did not explain DP (MM) in his book. Bendjilali and Khan (1995) have defined the diminishing partnership and perpetual partnership in their study. They mentioned the need and importance of diminishing partnership. However, their study does not reflect the features of DP (MM) as a whole. On the other hand, Lease (Ijarah) was a popular mode of financing in Islamic banking. Ramli & Onn (2007) described the features of the lease that ended up with sale (Ijarah thumma al-Bay (ITAB) from the Shari'ah perspective. They also illustrated its application, the mode of operations and legal restrictions in Malaysia. Issues such as the guarantor, documentation of this contract and the transfer of ownership were explained. Furthermore, the computation of ITAB which includes the selling price, total rental, compensations, security deposit, monthly rental etc. is being discussed.

DP (MM) was practiced outside Malaysia for long. It was regarded as one of the modes of financing in Islamic banks in Pakistan. Meezan Bank of Pakistan has been implementing this mode of finance for house financing. Usmani (2002) has described the characteristics of DP (MM) in Pakistan and made a detailed discussion on the operational method of house financing in Meezan Bank. The International Fiqah Academy of OIC in its 15th session has made a discussion on DP (MM) where the Shari'ah scholars have discussed the fundamental characteristics of this contract, its permissibility in the Shari'ah, its conditions and other Shari'ah principles related to this contract. (International Fiqah Academy of OIC, 2004). DP (MM) contract has been defined by Usmani (2005) and described its mode of applications, trade and business services in home financing product, while maintaining Shari'ah principles.

RESEARCH METHODOLOGY

This case study was done on two Islamic banks in Malaysia; a local Islamic bank (Bank Islam) and a foreign (Kuwait Finance House (KFH) Islamic bank's branch in Malaysia. It was conducted using a qualitative approach by interviewing two officers from both banks. Few discussions with the previous researchers on Musharakah Mutanaqisah were also conducted. Besides that, the analysis on the secondary data is done through past literatures on Musharakah Mutanaqisah contract and official website of both banks and previous articles. The analysis is done by comparing and evaluating the implementation of Musharakah Mutanaqisah by these two banks; representing a foreign bank and domestic bank in light of the Shari'ah principles; whether it is truly reflects the essence of the Musharakah Mutanaqisah contract or not, and able to be one of the tool to achieve the Maqasid Shari'ah.





FINDINGS AND DISCUSSION

Table1: Summary Table of the Questionnaire

Q.N0	Research Objectives	Research Questions	Research Methods	Results
1.	To know the age of the respondents as the demographic characteristic.	What is the average age of the respondents in this research paper?	Distribution of Questionnaires: Question on stating the age: <ul style="list-style-type: none"> • Under 23 • 31-40 • 40 and above 	Respondents' age: <ul style="list-style-type: none"> • 0% under 23y • 10% age 23-30 • 76.667% age 31-40 • 13.33% age 40 and above
2.	To distinguish the gender of the respondents.	What gender is the most respondents?	Survey distribution: Gender: <ul style="list-style-type: none"> • Male • Female 	Number of the gender: <ul style="list-style-type: none"> • 28 out of 30 are male, and 2 of them are female
3.	To know the marital status of the respondents.	What is the marital status of the respondents?	Distribution of Questionnaires: <ul style="list-style-type: none"> • Single • Married • Single father • Single mother 	Respondents' status: <ul style="list-style-type: none"> • All are married except one.
4.	To specify the religion of the respondents.	What is their religion?	Survey distribution: <ul style="list-style-type: none"> • Muslim • Others 	All of the respondents are Muslim.
5.	To know whether the respondents are involve in owning house or not.	Have you ever bought a house?	Questionnaires distribution. <ul style="list-style-type: none"> • Yes • No 	Most of them did not buy house.
6.	To choose the dreamed financial institutions.	What is the best institution for home financing?	Survey question; <ul style="list-style-type: none"> • Islamic financial intuitions • Conventional financial institutions 	Islamic financial institutions are considered as an option to finance a dreamed house.





7.	To know the preferred criteria selecting home financing.	What are the preferred principles in selecting HF?	Questionnaires distributed: <ul style="list-style-type: none"> • Lowest interest rate • Sharia'h compliant • Highest financing margin • Concept used in financing. 	Selecting criteria: Shria'h compliant with almost 92% strongly agreed, concept used in financing with 80% agreed scale, and lowest interest rate with highest financing margin got 50% neutral scale.
8.	To identify Islamic finance knowledge.	Do you know about the concepts used in Islamic home financing?	Questions been asked: <ul style="list-style-type: none"> • Murabahah • MM • Ijarah • Istisna' • Tawwaruq 	Knowledge on IHF: MM with around 90% strongly agreed scale, Murabahah agreed with around 80%, Ijarah concept with almost 75% acceptance, and istisna' with 60% neutral scale, finally Tawarruq concept is not well known in Afghanistan.
9.	To observe the achievement of <i>Sharia'h</i> objectives in MM concept.	Do you think MM is fulfilling <i>Sharia'h</i> objectives?	Survey distributed: <ul style="list-style-type: none"> • Fair dealing • Valid offer and acceptance • Valid condition • Interest free element • Affordable price • The best alternative to conventional loan 	MM compliancy: Table no 8-8.6 has described it in very detail.
10.	To understand what home financing product is used in Afghanistan.	What concept of home financing is used in Afghanistan?	Open-ended question: Simi- interview	<i>Murabahah</i> and <i>Ijarah</i> home financing is in use.
11.	To figure out whether there is <i>Sharia'h</i> issue in home financing product.	What is the <i>Sharia'h</i> issue in home financing product?	Open-ended question	Yet the issue has not seen yet, but the main issue is security risk.
12.	To know if <i>Murabahah</i> home financing meet societal well-being.	Does <i>Murabahah</i> HF determine equal distribution of	Open ended question	<i>Murabahah</i> home financing has some restriction in percentage by IFIs, that's why it is not an ideal product to





		wealth and income?		meet social well-being of the society.
13.	To examine equity concept of home financing.	What is your view on MM home financing concept?	Simi-interview	Equity financing is preferable mood in IFIs compare to debt financing.
14.	To find out if there are some similarities in computing MM and <i>Murabahah</i> home financing products.	How these products do differ?	Simi-interview	Depend on each financial institutions practice, how they compute. <i>Murabahah</i> (fix rate) and MM (should be market rental rate)
15.	To have an idea about the benchmark for MM product.	What would be the benchmark for MM home financing product?	Simi-interview	Some uses LIBOR or KIBOR, and some uses fix rate, but market rental would be the best to be used.
16.	To see if the FIs uses rental rate as a benchmark.	What do you think if the rental rate has been used as a benchmark?	Simi-interview	Regarding rental rate for MM product, it should be on the percentage of ownership.
17.	To get the view of improving MM product in Afghanistan in order to achieve <i>Sharia'h</i> objectives.	How would be possible to improve it?	Open-ended question	The practice of MM product must be based on Justice, to avoid interest, <i>Gharar</i> and uncertainty.
18.	To know the way of owning a house in Afghanistan.	What is the most common way to own a house in Afghanistan?	Open-ended question	<ul style="list-style-type: none"> • Through property dealer • Richs are buying land and hire constrictor for construction.

Issues and Problems in MM

Issues;

- Contract ownership (Shirkah al a'qd) or Join ownership (Shirkah al milk),
- Default by customer,
- Undertaking (Wa'ad) to purchase,
- Indemnity for breach of Undertaking (Wa'ad),

The existence of Islamic home financing based on Musharakah Mutanaqishah concept is a string of various problems arise in the Bai' Bithaman Aajil (BBA) contract. Musharakah Mutanaqishah is said to be a better alternative to debt-based financing such as the Murabahah. Although there are not many cases regarding the Musharakah Mutanaqishah products, so its implementation is not free from criticism and problems. The selected issues will be discussed as follows.





First Issue: Shirkah al `aqd or Shirkah al milk (Two Contracts in One Document of Agreement)

The combination of Shirkat al-milk and Ijarah contract in one document of agreement² is one of the arguments that arise in the implementation of Musharakah Mutanaqishah contract. It may be perceived as having two sales in one sale contract (Bai atain fi baya`h) which is prohibited in Shari`ah. However, this issue has been resolved by Shari`ah Advisory Council of Bank Negara Malaysia in its 56th meeting³. In this case, the combination of two contracts in one agreement is permissible as long as the contracts are concluded separately and are not made conditional upon each other.

Second Issue: Default by customer (Abandoned Housing Development)

Abandoned Housing is another question that arises when the party gets confused who is responsible to bear the risk⁴. Since the Musharakah Mutanaqishah is an equity contract, the financial institution and the customer should share the losses according to their capital share on the house at that specific time. For example, if the house is left incomplete in year three; and the customer holds 30 percent share, so, the customer should suffer 30 percent losses and the remaining will be borne by the Islamic financial institution. The customer should not bear the losses solely by paying the full amount disbursed by the financial institution because this practice does not comply with the Shari`ah principles.

Third Issue: Undertaking (Wa`ad) to purchase

The application of undertaking (wa`ad) is another Shari`ah issue in the implementation of Musharakah Mutanaqishah⁵. Wa`ad is usually entrenched in two forms:

First, the customer undertakes to pay the monthly installment until the end of the Musharakah Mutanaqishah contract.

Second, the customer irrevocably undertakes to purchase the bank share on the asset in the event of default. In this case, Islamic fiqh Academy issued the resolution that:

The unilateral promise made by the buyer or seller is legally binding if made conditional upon the fulfillment of an obligation, and the promise has already incurred expenses on the basis of such promise.

Issue of using interest rate as rental rate

The Islamic Financial Institution uses Islamic Bank Rate (IBR) with adjustment as the profit rate. The profit rate will be different according to the financing amount and whether the property is already completed or under construction. For home financing range between USD 20 thousand to USD 50 thousand, the rate for the completed home will be IBR – 1.70% while for the under-construction home, the rate is IBR – 1.60%. While for the home financing above

² BNM, Resolution of Shariah Advisory Council of Bank Negara Malaysia, <http://www.bnm.gov.my/guidelines/01_banking/04_prudential_stds/07_shariah_resolution.pd> viewed on 23 January 2013, page 11/37

³ BNM, Resolution of Shariah Advisory Council of Bank Negara Malaysia, <http://www.bnm.gov.my/guidelines/01_banking/04_prudential_stds/07_shariah_resolution.pd> viewed on 23 January 2013, page 11/37

⁴ Rafee Haneef, Sherin Kunhibava, Edib Smolo, “musharakah mutanaqishah and Legal Issues: Case Study of Malaysia” Vol. 3 (2011) ISRA International Journal of Islamic Finance 103.

⁵ Adam Ng Boon Ka, “Analysis-Shari`ah and Legal Issues of Musharakah Mutanaqishah”, New Horizon, <<http://www.newhorizonislamicbanking.com/index.cfm?section=news&action=view&id=10852>>, viewed on 3 september 2013





USD 50 thousand, the adjustment rate is higher by 1% for both completed and under construction. The same goes to commercial property financing. The rate is different whether the amount of financing is below USD 50 thousand or above. For the completed property below USD 50 thousand, the rate is IBR – 1.30% while for under construction property, the rate is IBR – 1.20%. While for the financing amount above USD 50 thousand, the adjustment rate is higher by 1% for both completed and under construction property. From here it seems that the bank still use the conventional interest rate as a benchmark while if we follow the concept of Musharakah Mutanaqisah, the Islamic Financial Institutions should use the rental rate. Besides that, in Malaysia as the IBR is based on Overnight Policy Rate of Bank Negara Malaysia, it may contains an element of uncertainty as argued by Meera and Abdul Razak (2005), because the interest rate is fluctuating every day and it may burdensome to the customer, although the bank states that the profit rate is being capped at 10.25%. This benchmark will lead Musharakah Mutanaqisah to be similar with conventional financing contracts.

Challenges

1. How Islamic banks can utilize Musharakah Mutanaqisah based financing contracts to cater the low-income customers

As discussed before, currently the Islamic banks offer Musharakah Mutanaqisah to the middle and high-income group rather than to low-income group, due to the issues of creditworthiness. However, this product has to be offered to the low income group in Afghanistan as it is one of the necessities to have a shelter for themselves. Shelter is one of the pillars of Maqasid al Shari'ah. However, the most of the Islamic Financial Institutions reluctant to offer this product, it is because they want to reduce the percentage of Non-Performing Loan (NPL). According to International Monetary Fund, NPL is when the payments of interest and principal are past due by 90 days or more, or at least 90 days of interest payments have been capitalized, refinanced, delayed by agreement, or payments are less than 90 days overdue, but there are other good reasons to doubt that payments will be made in full. Obviously, all banks, whether Islamic Financial Institutions or conventional; they want to get rid of NPL as it is the loss to the banks and will reduce their profit. Thus, this is one of the challenges that the Islamic Financial Institutions need to face, so that they will cater the demand of home financing for all level of income group.

2. To educate the representative of Islamic banks on the true objectives of Islamic Financial Institutions

As an Islamic law (Shari'ah) oriented business entity, Islamic bank is vigorously expected to be guided by the philosophies of Islamic business, which are;

Firstly, the philosophies will be used by the management or policy makers of the financial institutions in the process of formulating corporate objectives and policies.

Secondly, these philosophies serve as an indicator as to whether the particular Islamic bank is upholding true Islamic principles. The representatives should know these philosophies. Other than that, Islamic financial institutions are a subset of the overall Islamic economic system. They must strive for a just, fair and balanced society as envisioned and deeply inscribed in the objectives of Islamic Business Law (Shari'ah). However, we are in opinion that not many representatives of Islamic financial institution even most of the key position holder knows and understand these philosophies and objectives. This is because most of them are from conventional financial institutions, and also they did not acquire a comprehensive knowledge of Islamic Jurisprudence, Islamic Economics or Islamic Banking and Finance. So, they will tend to act and think like a conventional banker rather than an Islamic banker.





3. To promote Musharakah Mutanaqisah

The implementation of Musharakah Mutanaqisah is still new and not all Islamic financial institutions implement this type of contract due to risk-sharing issues. Thus, some Islamic financial institutions are already familiar with Bay' Bithaman Ajil contract and reluctant to move to Musharakah Mutanaqisah based contract as it involves cost to change from Bay' Bitahman Ajil contract to Musharakah Mutanaqisah contract, besides; most of the Islamic financial institutions in Afghanistan are more familiar with debt-based financing rather than equity-based financing and there may be some objections from the customers regarding the changes, so it should be resolved by professional employees and public awareness. Additionally, the Afghan government can play positive roles introducing MM home financing product to the nation with around 10 years' time/less plus a reasonable price and profit rate, so taking into account the cooperation and insolvency issues of its clients at first years of installments too.

CONCLUSION AND RECOMMENDATIONS

To wrap up, shifting from debt based financing to equity based financing would be the best option towards implementing a real Islamic Finance practice. Thus, in Afghanistan the implementation of Murabahah and Musharakah Mutanaqisah will not totally achieve the objective of Islamic Finance and economics due to the lack of human capital in IFIs. There are some other weaknesses the require further considerations and improvement from various bodies, such as; Islamic finance and economic research centers, Universities, the central bank and its employees, Islamic financial institutions and its Shari'ah supervisory boards, users and others. As we may know, the objective of Shari'ah is very crucial to all mankind, especially the Muslims, equally it will ensure that all the action implemented either in the dealings (Mua'malat) or any other actions are considered as worship or otherwise. Though, if Islamic financial institutions in Afghanistan are only focusing on maximizing profit without giving proper attention to the Shari'ah objectives and its compliant requirement; it will not only be treated as an act of worship, but it will be considered as a usurious institution. In fact, it brings damage and harm to the financial institution itself, which upholds the name of Islamic institution and it would also be harmful to general public. Therefore, it is the responsibility of the Afghan government, regulators, shareholders and stakeholders of the Islamic financial institutions to ensure that almost all its employees are Islamic finance and economic graduates; each and every product offered by Islamic financial institutions complies with the objectives and goals of the Shari'ah. However, if a product fails to perfect the overall objectives of the Shari'ah, the improvement process must be continued and should always be a concern to the related parties whether the academicians, financial institutions, practitioners, even customers.

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