Legal Analysis of Islamic Economic Law on Hybrid Contracts in Islamic Financial Institution Products

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Abstract: This article intends to philosophically analyze the existence of hybrid contracts or al-'uqūd al-murakkabah (complex contracts) or multi-contracts. The research focuses on the opinions of hadith and fiqh muamalah (Islamic commercial jurisprudence) scholars, as well as their use in Islamic financial institutions. This is crucial because a single contract form cannot adequately respond to the current financial conditions. Transactions are always dynamic and influenced by the financial industry at national, regional, and international levels. This research is a qualitative-literature study with a philosophical-normative approach. It analyzes the hadith texts and scholars' views philosophically, then juxtaposes the ideal-philosophical aspect with the reality in Islamic banking. The study concludes that, first, the Sharia economic law analysis of hadith related to the hybrid contract model explains the prohibition of bai‘ataini fi bai‘atin (two sales and purchases in one), the prohibition of shafqataini fi shafqatin (two agreements in one), and the prohibition of bay‘ and salaf (sales agreement and advance payment for goods). Second, the construction of the hybrid model in Islamic banking aims to develop al-‘uqūd al-mutaqâbilah (conditional contracts) and al-‘uqūd al-mujtami‘ah (similar contracts), implemented in housing financing.

Keywords: Sharia Economic Law; Hybrid Contract; Islamic Financial Institutions

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Introduction

Interest (riba) is recognized as a profit instrument in financial institutions, agreed upon as forbidden according to sharia.¹ In Islamic financial institutions, the muamalat contract serves as a mechanism and alternative instrument to gain profits. The migration process of muamalat contracts, initially of a personal nature, transforms into an institutional one as these contracts are adopted and adapted by financial institutions.² Financial transactions create their own complexity faced by practitioners in financial institutions. This complexity becomes more pronounced in the era of modern financial technology transactions which require contract designs in not only singular but multiple forms, known as hybrid contracts (in English), ʻuqûd al-murakkabah (in Arabic) or multi-contracts (in Indonesian). Singular contracts are no longer sufficient to respond to contemporary financial transactions that are dynamic and influenced by the financial industry at national, regional, and international levels.³

According to Dr. Mabid Al-Jarhi, the former director of Islamic Bank Development (IDB), the current combination of contracts is considered unavoidable. However, the challenge faced is that sharia economic literature in Indonesia, in particular, has long held the theory that sharia does not allow two contracts in a single transaction (two-in-one). In fact, the prohibition of two-in-one contracts only applies to three specific cases mentioned in hadiths related to the prohibition of hybrid contract usage. These three cases are mentioned in hadiths containing three prohibitions: (1) the prohibition of bay’ataini fi bay’atin; (2) the prohibition of shafqatātai fi shafqatin, and (3) the prohibition of bay' and salaf.⁴

These hadiths are always referred by scholars, sharia consultants, and bankers regarding the prohibition of two-in-one contracts in a transaction. However, this prohibition is limited to specific cases only. In fact, the first hadith (bay’ataini fi bay’atin) and the second (shafqatātai fi shafqatin) have similar meanings, although their wordings differ each others. The meaning of the hadith shafqatātai fi shafqatin is bay’ataini fi bay’atin. The prohibition of two-in-one should not be extended to other irrelevant issues and should be relevant according to its context. Unfortunately, this prohibition has been generalized to all contracts, so every contract containing two or more agreements is considered contrary to sharia.⁵

Therefore, an approach using mushtha’alā hadith science and several sharia hadith books as confirmatory references is needed so that the valid meaning of hadith narratives (matan) can be revealed. This effort is aimed at finding a permissible construction of multi-contracts and its development in Islamic financial institutions considered not contradictory to authoritative sources (hadiths).

By using the theory presented by Abdullah bin Muhammad bin Abdullah al-‘Imrani, Nazih Hammad, Alauddin Za’tary, and Sulaiman Aba al-Khool (t.t), the author

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will discuss hybrid contracts (al-’uqûd al-murakkabah or multi-contracts). Abdullah bin Muhammad bin Abdullah al-’Imrâni, through his doctoral dissertation, became one of the pioneering works studying al-’uqûd al-murakkabah, delving into al-’uqûd al-murakkabah with a fiqh approach and its application in contemporary fiqh. According to him, the majority of Hanafi scholars and some scholars from the Maliki, Shafi’i, and Hanbali schools believe that hybrid contract law is valid and permissible according to Islamic law. Scholars who permit it argue that the fundamental law of contracts is permissible and valid unless there is legal evidence prohibiting or annulling it. This excludes any situation when combining two contracts results in usury or resembles usury, such as combining qardh with another contract, as the hadith prohibits combining the sale of qardh. Similar situation is combining instalment sales and cash sales in one transaction.

Sulaiman Aba al-Khoil, in the introduction to his writing on Al-’aqd al-murakkab (al-’uqûd al-murakkabah), refers to three important works as references: Abdullah al-’Imrâni, Al-’Uqûd al-Mâliyah al-murakkabah: Dirâsah Fiqhîyyah Ta’shîliyyah wa Tathbîqiyyah, Nazih Hammad, Al-’uqûd al-murakkabah fi al-Fiqh al-Islâmy, and Hasan Syadzali, Ijtîmâ’ al-’uqûd al-Mukhtalîfah fl’i’aqd wahid. The discussion in this article is dominated by a fiqh approach. Nuances of comparing fiqh schools with a combination of quotes from official sources are also used. When compared to its three predecessors, Sulaiman's writing often refers to these two works.

In addition to the theory of hybrid contracts, the terminology theory is also used as an instrument in the transformation of instruments used in the sharia financial system from a modified muamalah contract model as a substitute for instruments used in the conventional financial system, namely interest. In the context of financial institutions, instruments carry the meaning of tools as intermediaries binding financial institutions and customers related to financial rights (returns) and obligations.

Research on hybrid contracts has been conducted by previous researchers, such as research by Susamto,6 Murtadho,7 Aryanti Yosi,8 and Siti Kohlijah.9 Despite their existence, there has been no research on hybrid contracts that analyzes, in a philosophically comparative manner, the opinions of hadith scholars and scholars of muamalah fiqh. This article aims to philosophically analyze the existence of hybrid contracts or al-’uqûd al-murakkabah or multi-contracts. The research focuses on the opinions of hadith scholars and muamalah fiqh, as well as their application in Islamic financial institutions. This is important because a single contract form cannot respond to current financial conditions. Transactions are always dynamic and influenced by the financial industry at national, regional, and international levels.

**Method**

This research is a qualitative study that focuses on Sharia Economic Law literature regarding hadiths and the model of hybrid contracts, as well as the construction of institutional models of hybrid contracts in Islamic finance. Islamic financial institutions are the central focus of this research, being products of sharia banking that utilize a combination of contracts. The primary data source is obtained using a literature review method to address the philosophy of mixed

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contract models in hadiths and sharia economic law.

Secondary data sources are gathered through a survey of documentary literature, including books, journals, internet publications, both internal materials from sharia financial institutions (brochures, reports, etc.) and external materials as reading materials. As this is a literature-based study supported by information from various competent parties in the field, the analysis begins with the method of analyzing hadith texts and the perspectives of scholars in the field of muamalah fiqh (philosophical). The philosophical perspectives are then synchronized with their application in Islamic financial institutions, aiming to identify any synthesis gaps by aligning the philosophical (ideal) side with the real-world (actual) side adopted by Sharia financial institutions.

**Literature Review**

**Hybrid Contracts**

Hybrid contracts are literally defined as contracts formed by different contracts. Meanwhile, in Indonesian, hybrid contracts are referred to as "multiakad." In Indonesian, "multi" means (1) many; more than one; more than two; (2) double. Therefore, "multiakad" means many contracts or more than one contract. In the fiqh terminology, the term "multiakad" is a translation of its Arabic counterpart, which is "al-'uqūd al-murakkabah," meaning compound contracts. "al-'uqūd al-murakkabah" consists of two words, "al-'uqūd" (plural of 'aqd) and "al-murakkabah." Aqad has been specifically explained earlier, while the word "al-murakkabah" (murakkab) etymologically means al-jam'u, which is to gather or to collect. The term "murakkab" itself comes from the word "rakkaba-yurakkibu-tarkiban," which means placing something on top of something else, creating a pile with something on top and something below. "Al-'uqūd al-murakkabah" is therefore an agreement between two parties to execute a contract containing two or more akad (such as buying and selling with lease, lease, gift, wakalah, qardh, muzara'ah, sahraf/money exchange, partnership, mudharabah, and so on). Consequently, all the legal consequences of the demanded agreement, as well as all the rights and obligations produced, are considered as a unified whole that cannot be separated. Abdullah al-'Imrānī further defines "al-'aqd al-murakkab" as a collection of several material akad contained in a contract (either collectively or reciprocally), so that all the rights and obligations resulting from it are considered as legal consequences of an agreement.

As for the types of hybrid or multi-contracts according to Al-'Imrānī, they are divided into five types: "al-'uqūd al-mutaqābilah," "al-'uqūd al-mujtami'ah," "al-'uqūd al-mutanāqidhah wa al-mutadhādah wa al-mutanāfīyah," "al-'uqūd al-mukhtalifah," and "al-'uqūd al-mutaqānīsah." According to him, the first two types, "al-'uqūd al-mutaqābilah" and "al-'uqūd al-mujtami'ah," are commonly used in multi-akad. Here is an explanation of the five types of multi-contracts:

1. Conditional Agreement/Contract (al 'uqūd al-mutaqābilah): "Taqābul" linguistically means facing each other. "Al-'uqūd al-mutaqābilah" is therefore a multi-akad that is a response to the first two contracts which form the basis of the perfection of the first contract in the improvement of the second contract through reciprocity. In other words, one

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2. Joint Agreement (al-'uqūd al-mujtami'ah): "Al-'uqūd al-mujtami'ah" is a combination of multi-akad in one contract, where two or more contracts are combined into one.\(^{14}\)

3. Contradictory Agreement (al-'uqūd al-mutanāqidhah wa al-mutadhādah wa al-mutanāfīyah): These three terms, mutanāqidhah, mutadhādah, and mutanāfīyah, share the commonality that all three contain the aim of differentiation. However, each of these terms has different implications. Mutanāqidhah implies the opposite, for example, someone says something and then says something opposite to the first. Meanwhile, the etymological meaning of mutadhādah is two things that cannot be combined at the same time, such as night and day. The meaning of mutanāfīyah, meanwhile, is to deny.

4. Different Contracts (al-'uqūd al-mukhtalifah): Multi-akad mukhtalifah refers to the combination of two or more contracts that have different legal consequences between the two contracts or some of them. For example, the difference in legal consequences in a sales agreement and lease contract, where the lease agreement requires a time condition, while the sales agreement applies the opposite. Another example is ijārah and salam contracts. In salam, the salam price must be delivered at the time of the akad (fi al-majlis), while in ijārah, the rent price does not have to be delivered at the time of the akad.

5. Similar Contracts (al-'uqūd al-mutajānīnah): "Al-'uqūd al-murakkabah al-mutajānīnah" is an akad that can be collected in one akad without any influence on its legal and legal consequences. This type of multi contract can consist of one type of contract such as a sales agreement or several types such as a sales contract and lease contract. This type of multi akad can also be formed from two similar or different legal akad.

Results and Discussion

Hybrid Contract Agreement and Its Use in Islamic Financial Institutions

This text discusses the concept of "akad" in Islamic law and its transformation into "İrtibâth al-ijab bi al-qabûl" (attachment or the relationship between agreement and acceptance), such as in agreements for buying and selling, marriage, and the likes. According to the principles of Islamic jurisprudence (qawâ'id al-fiqh), "al-'aqd" is the connection of parts of transactions in a sharia-compliant manner with an offer (ijab) and acceptance (qabûl). Alternatively, "al-'aqd" represents the commitment or agreement of two parties intending to do something. Thus, "al-'aqd" is an expression of the binding agreement and acceptance.

Basya explains the term as often mentioned in Islamic law as follows: an "akad" (agreement) is "a proposed agreement by one party with the consent of the other party that gives rise to legal consequences concerning the object of the agreement." In summary, a contract is a meeting of agreement and acceptance as statements of intent from two or more parties, resulting in legal consequences for the subject matter.

The text also elaborates on the understanding that an "akad" is a relationship or meeting of agreement and acceptance resulting in legal consequences. Secondly, a contract is a legal act of the parties, as "akad" represents a meeting of the representative agreement of one party and the gift expressing the intention of the other party. Thirdly, the purpose of an "akad" is to generate legal consequences.

The objectives of "akad" can be categorized into five, namely:

1. Transfer of ownership with or without consideration (at-tamlîk).
2. Performing work (al-'amal).

\(^{13}\) Isfandiar, “Analisis Fiqh Muamalah Tentang Hybrid Contract Model dan Penerapannya Pada Lembaga Keuangan Syariah.”

\(^{14}\) Isfandiar.
3. Participating in a partnership (al-
    ishtirdik).
4. Implementing delegation (al-tafwidh).
5. Carrying out guarantee (al-tautsiq).  
   In implementing "akad," there are four elements that must be fulfilled, each with its own conditions:
1. The subject of the "akad" (the parties entering into the "akad" or al-’aqidain).
   o The subject of the "akad" must meet two conditions: (1) there must be several parties, and (2) they must have a legal competence level known as "tamyyiz" or "al-ahliyyah" (qualification), meaning the ability of someone to understand and act according to sharia law or suitability to accept rights and obligations recognized by sharia law.  
2. Statements of the parties (shighat al-
    ’aqd).
   o The statements of intent from the parties are often referred to as "shighat al-’aqd," consisting of agreement and acceptance. These represent permission (consent). "Shighat al-’aqd" entails (1) the existence of alignment between agreement and acceptance, marking the convergence of intent resulting in an agreement, and (2) the attainment of a unified agreement of intent (agreement) in a single assembly.  
3. The object of the "akad" (mahal al-’aqd).
   o The object of the "akad" is the

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16 Inayah, Hamid, and Afifah, “Al-Uqud Al-
Murakkabah pada Transaksi Online dengan Sistem Gofood dalam Perspektif Fikih Muamalah.”


intricate, necessitating the design of contracts (akad) not only in a singular form but combining several contracts, commonly known as hybrid contracts in English “al-‘uqūd al-murakkabah” in Arabic, or multiakad in Indonesian.¹⁹

The issue of hybrid contracts arises from the shariah theory that does not permit two contracts in one transaction (two in one). However, the prohibition of two-in-one is limited to specific cases mentioned in the Hadiths of Prophet Muhammad pbuh. These three prohibitions include the prohibition of bay‘ and salaf, the prohibition of bai‘atayni fi bai‘atin, and the prohibition of shaqataini fi shaqatatin. ²⁰

All contracts containing elements of sale and purchase are forbidden to be combined with qardh in a single transaction, for example, between ijarah and salam, qardh, and so on. ²¹ Although the combination of qardh and sale is prohibited, Abdullah al-‘Imrānī argues that it is not always forbidden. The combination of these two contracts is permissible as long as there are no conditions or intentions to inflate the price through qardh. For instance, lending money to someone and then selling something to them at a later date, even if it falls within the qardh period, is legally permissible. ²²

Any multi-akad leading to haram, such as riba (usury), on the other hand, can be counted even if the contracts constructing it are permissible. The amalgamation of several contracts, while individually permissible, becomes prohibited if it leads to unlawful consequences. This is evident in multi-akad involving salaf and sale contracts, as previously explained, where Prophet Muhammad prohibited dual contracts between sale and purchase and salaf. This prohibition is to prevent falling into the forbidden realm of usurious transactions. Most scholars therefore discourage the practice of multi-akad, such as combining sale contracts (mu‘āwadah) with loans (qardh) if necessary. If such multi-contract transactions occur unintentionally, they are allowed because the absence of intentional involvement in usurious qardh makes it permissible. ²³

In another aspect, the view of contemporary muamalah jurisprudence regarding the legal status of multi-contracts may not necessarily align with the legal status of the contracts constructing them. Take an example of contracts such as bai‘ and salaf that are explicitly declared haram by prophet pbuh. However, if these two contracts stand alone, each is considered permissible. Marrying two sisters is also prohibited, but marrying them one by one (if unmarried) is allowed. In other words, the legality of multi-contracts cannot be solely determined by the legality of the individual contracts. The contracts constructing them may be permissible when standing alone, but combining them in a single transaction may render them impermissible. This is as stated by al-Syâtiby: "Research on Islamic law indicates that the legal consequences of a collection (akad) are not the same as when the contract stands alone." ²⁴

In conclusion, the legal status of multi-contracts is not necessarily identical to the legal status of the contracts constructing them. In other words, the legal status of constructive contracts does not automatically become the legal status of multi-contracts. While many contracts may be prohibited, the principle of multi-contracts may still be allowed. The legality of

²² Lamtana and Mayditri, “Penerapan Prinsip Syariah Pada Akad Rahn di Lembaga Pegadaian Syariah.”
multi-contracts is affirmed by the legality of many contracts constructing them, meaning every transaction that combines several contracts is deemed permissible as long as the contracts constructing it are permissible. This provision provides an opportunity to create transaction models containing multi-contracts. This rule applies generally, and some hadiths and other texts that prohibit multi-contracts are exceptions. These exception rules cannot be applied to all muamalah practices involving multiple contracts.25

Regarding the legal status of multi-contracts, scholars hold differing opinions, especially concerning their fundamental legal status. This difference revolves around whether multi-contracts are valid and allowed or void and prohibited. Scholars are divided into two opinions: allowing and prohibiting. The majority of Hanafi scholars, some Maliki scholars, Shafi’i scholars, and Hanbali scholars believe that the legal status of multi-contracts is valid and permissible according to Islamic law. Those who permit it argue that as long as the individual contracts are permissible and valid, not prohibited or invalidated by any legal evidence, then combining them is also allowed.26

In terms of its relevance to contemporary needs, renewal and the invention of contracts are essential. Modern developments demonstrate many muamalah practices and financial transactions that were not practiced during the time of the prophet and are not explicitly mentioned in religious law. The need for new transaction contracts becomes a necessity with human growth and the advancement of science and technology. Malikiyah and Ibn Taymiyyah argue that multi-contracts are a permissible and recommended solution as long as they are beneficial and not prohibited by religion. The original law is the application of the conditions of the entire contract without conflicting with religion and benefiting humanity.

From the above explanation, the following conclusions can be drawn through the methods of muqâranah and tarjîh, indicating that the first opinion is stronger and more fitting with the development of the times compared to the second opinion. This conclusion is based on several considerations:

Figure 1. Considerations of hybrid contract

Figure 1 illustrates the considerations involved in hybrid contracts. It highlights the key factors and criteria that must be evaluated when dealing with contracts that combine elements from different contract types, ensuring a comprehensive understanding and effective implementation.

1. The evidence used in the first opinion has a strong status and clarity of meaning. The arguments supporting the first opinion are founded on robust evidence with clear meanings.

2. Compatibility with the objectives of Sharia (maqâshid syariah), namely the existence of ease in muamalah, lightening the burden, and providing opportunities for innovation. The first opinion aligns well with the goals of sharia, emphasizing the importance of facilitating transactions, reducing burdens, and fostering opportunities for innovation.

3. Relevance to recent developments and human needs regarding modern transactions and contracts. The first opinion is more relevant to current needs regarding modern transactions and contracts.


26 Jamaludin, “Hibrid Kontrak Menurut Hukum Ekonomi Syariah.”
developments and addresses the evolving requirements of individuals in terms of modern transactions and contracts.

The permissibility of multi-contracts based on the principle that the original law of the contract is permissible, and the justification of the legality of multi-contracts must consider the religious provisions that limit them. In other words, although multi-contracts are permissible, there are boundaries that should not be violated. These limitations serve as a guide for multi-contracts to avoid engaging in forbidden muamalah practices. The constraints explained in the previous section act as limits for the practice of multi-contracts that cannot be surpassed.

Conclusion

The conclusion of this article contains two points; the contemporary fiqh muamalah perspective on hadith regarding the model of hybrid contracts, focusing on the editorial content regarding the prohibitions of ba’irataini fi ba’iratin (two sales in one sale), shafqataini fi shafqatin (two contracts in one contract), and the prohibition of bay’ and salaf (sale and advance booking contracts).

Here are the controversies:
First, controversy over the first hadith editorial: It focuses on contracts that create ambiguity in pricing and lead to usury. This opinion assumes that someone sells something on an instalment basis, with the condition that the buyer must resell it to the seller at a lower price in cash. Contracts like this are considered problematic and involving usury, even though there is no sale and purchase contract in the transaction.

Second, controversy over the second hadith editorial: It focuses on the need for clarity in separating contracts. The clarity of the relationship between ijab (offer) and qabûl (acceptance) is crucial. There is a provision that contracts must be made regarding one of two things: the substance (goods or objects) or services (benefits).

Third, controversy over the third hadith editorial: It focuses on the combination of sale and salaf (advance booking contracts) or salaf (loan). The first salaf indicates the sale of bonds (futures), while the second salaf indicates a combination of sale and qardh (loan agreement). Both involve the construction of hybrid contract models in Islamic banks, leaning towards (1) the construction of al-’uqûd al-mutaqâbilah (dependent or conditional contracts), which are multi-contracts in the form of a second contract that responds to the first. The perfection of the first contract depends on the perfection of the second contract through a reciprocal process. This construction is applied to al-’uqûd al-murakkabah al-mutajânisah (similar contracts), which are contracts that can be claimed in one contract without affecting its legal consequences. This type of multi-contract can consist of one type of contract or several types. Multi-contracts of this type can also be formed from two contracts that have the same or different legal implications.

Credit Authorship Contribution
Anita Niffilayani: Methodology, investigation, Writing - Original Draft, and supervision. Le Thi Thao: Coseptualization, data analysis, and Writing - Review & Editing.

Declaration of Competing Interest
The authors declare no competing interests related to this study. There are no financial or personal conflicts of interest.

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