



## Home Procurement Solution: The Utilization of *Tawatu'* in the *Musharakah Mutanaqishah* Agreement for Home Ownership

Jasmin<sup>1\*</sup>, Syaifuddin<sup>2</sup>, Umu Rosyidah<sup>3</sup>, Muh. Sajjaj Sudirman<sup>4</sup>, Abubakar Esa<sup>5</sup>

<sup>1,2,4,5</sup>Institut Agama Islam Negeri Ternate, Indonesia

<sup>3</sup>Universitas Islam Negeri Mataram, Indonesia

DOI: <https://doi.org/10.61987/bamj.v3i2.1636>

### Article History:

Received: 18 July 2025

Revised: 28 September 2025

Accepted: 22 November 2025

### Keywords:

*Musharakah Mutanaqishah*,  
*Tawatu' Concept*,  
*Home Ownership Financing*,  
*Islamic Banking*,  
*Sharia Contract*

### \*Correspondence Address:

[jasmin@iain-ternate.ac.id](mailto:jasmin@iain-ternate.ac.id)

### Abstract :

This research aims to examine the application of the *tawatu'* concept to enhance the *Musharakah Mutanaqishah* contract for home ownership financing (KPR), addressing the challenges posed by population growth and housing shortages. Islamic banks offer home ownership financing based on the *Musharakah* principles, specifically *Musharakah Mutanaqishah*, which involves a gradual transfer of ownership from the bank to the customer. However, the issue arises from naming the certificate in the customer's name, even though the house remains jointly owned. This study uses field research, collecting data through interviews and document review, and analyzes them using the descriptive qualitative model of Huberman and Miles. The findings indicate that naming the customer on the certificate helps streamline the process with the National Land Agency (BPN), Sharia banks, and the customer. This process is supported by the *tawatu'* concept, a secret agreement between two parties aimed at finding a way out of contractual issues within the scope of Sharia law and positive law. The *tawatu'* concept provides a harmonious solution for Islamic banking, supporting further growth and development.

## INTRODUCTION

Housing is a fundamental need for everyone, and the high population growth rate, combined with insufficient housing availability, has led to a significant backlog. According to the PUPR Ministry, the homeownership backlog in Indonesia reached 11.04 million units in 2020, while only around 400 thousand new homes are built annually. This discrepancy between housing demand and supply creates a gap that hampers the establishment of a healthy and conducive environment for families (Bentley et al., 2025; Reid, 2023). Moreover, the lack of adequate housing makes it difficult to form a prosperous and civilized society. In this context, housing plays an essential role alongside food and clothing in shaping a civil society. Therefore, addressing the housing backlog through innovative financing solutions, such as the *Musharakah Mutanaqishah* (MMQ) contract, becomes increasingly important to meet the growing housing needs and ensure equitable access to homeownership.

The gap between housing demand and supply in Indonesia is widening, and Islamic financial institutions have responded by offering homeownership financing solutions, including the MMQ contract. This contract, based on the *Musharakah* principle, aims to make homeownership more accessible to individuals and business entities (Hasan

& Ahmad, 2024; Yusuf, 2025). However, despite its potential, MMQ financing faces several challenges, including limited understanding of its legal and operational framework and difficulty aligning it with community needs. The slow uptake of MMQ contracts compared to other Islamic financing options underscores the need for further research and development to enhance their effectiveness and market popularity. The research will explore these issues to better understand how MMQ can address the housing backlog and improve homeownership opportunities in Indonesia.

The implementation of MMQ financing has been slower than anticipated. While it offers unique advantages, such as gradual ownership transfer and risk and profit sharing, the practical use of this contract remains limited (Rodrigues & Lindhard, 2023; Tanveer et al., 2025). Many Islamic banks prefer to use alternative financing models, such as *murabahah/bai' bi tsaman ajil*, which are easier to implement but less aligned with the principles of partnership in Islamic law. Furthermore, several banks continue to face operational challenges, particularly in adhering to the guidelines outlined in the DSN-MUI Fatwa regarding MMQ contracts (Anas et al., 2024; Fathurrahman et al., 2025). These inconsistencies are confusing and hampering the effectiveness of MMQ as a solution for homeownership financing. Therefore, it is crucial to explore the underlying reasons for the slow adoption of MMQ and identify ways to improve its application.

Previous research on MMQ financing in Indonesia has highlighted several challenges related to its implementation. Widyawati and others have noted that while Islamic banks have introduced MMQ products, they have not fully adopted the DSN-MUI Fatwa guidelines. Several studies have focused on the practical application of MMQ in Islamic banks, including Bank Muamalat and Bank Jabar Syariah (Wibowo et al., 2025; Zahro et al., 2024). However, these studies also acknowledge that the percentage of financing using MMQ remains low, indicating a gap between theoretical potential and actual implementation. While the concept of MMQ has been explored, much of the existing literature overlooks the operational challenges banks face, particularly in legal documentation and customer awareness. This gap represents a critical area for further research and development.

Existing research has primarily focused on the legal framework and compliance aspects of MMQ contracts, but implementation challenges in real-world banking operations have received less attention. Furthermore, the role of customer education in increasing MMQ uptake has not been sufficiently explored. Previous studies have largely focused on Islamic legal perspectives, such as the increase in customer numbers with MMQ. However, they do not address barriers related to bank operations, customer satisfaction, and product innovation (Ahinful et al., 2024, 2025). As a result, there is a need for more comprehensive research that integrates operational, legal, and customer-centric perspectives to bridge this gap. This research will contribute to a more nuanced understanding of MMQ financing and offer actionable solutions to improve it.

The novelty of this research lies in its exploration of the operational difficulties and legal inconsistencies surrounding MMQ financing, an area that has not been extensively covered in existing literature (O'Dea & O'Dea, 2023; Paul et al., 2024). While previous studies have focused on the legal and theoretical underpinnings of MMQ contracts, this research aims to fill the gap by examining how these contracts are implemented in practice within Indonesian Islamic banks. By examining both the legal framework and operational challenges, the study will offer valuable insights into how MMQ can be enhanced to more effectively address the housing backlog. Moreover, the

research will propose innovative solutions such as *Tawatu'*, an alternative approach to resolving issues within MMQ contracts, thereby contributing to the advancement of Islamic finance.

The central research problem is the slow adoption of *Musharakah Mutanaqishah* (MMQ) contracts in Indonesian Islamic banks despite their potential to address the housing backlog. The study will investigate the reasons for the low uptake of MMQ and propose solutions to address legal and operational challenges. The research aims to determine whether MMQ contracts can be a sustainable solution for financing homeownership in Indonesia and how they can be adapted to better meet community needs. By examining the strengths and weaknesses of current MMQ implementations, the study will enhance the relevance and effectiveness of MMQ in the Islamic finance sector. The findings will offer practical recommendations for both banks and regulators to improve MMQ's impact on the housing market.

## RESEARCH METHODS

This study adopts a qualitative research design to explore the *Musharakah Mutanaqishah* (MMQ) contract in housing financing and the application of the *Tawatu'* concept to address the legal gaps within it (Danford, 2023; Niam et al., 2024; Takona, 2024). The rationale for selecting this qualitative approach lies in its ability to systematically gather and analyze verbal data, providing an in-depth understanding of the complex dynamics of Islamic financial products. According to Sugiyono, qualitative research is designed to describe situations based on the experiences and perspectives of key informants. This method is particularly appropriate for examining the intricacies of MMQ contracts, as it allows for a nuanced exploration of the issues surrounding the implementation of Islamic financing mechanisms in the housing sector, specifically within Indonesia's regulatory and financial context.

The research was conducted at Bank Muamalat Surabaya, which was strategically selected for its significant involvement in implementing MMQ-based home financing products. The location was selected for the bank's direct experience in offering and managing these financing solutions, which provides the necessary context to study the practical challenges and operational dynamics of MMQ financing in the real estate sector. Furthermore, Bank Muamalat's prominent role in Indonesia's Islamic banking sector makes it a valuable case for examining the broader impact of MMQ on housing accessibility. Interviews and discussions with bank employees, managers, and customers were central to gathering diverse viewpoints on the application of MMQ, offering insights into both institutional practices and consumer experiences.

The primary data for this study were collected through semi-structured interviews with key stakeholders, including employees, managers, and customers from Bank Muamalat (Ahmad & Wilkins, 2025; Hennink & Kaiser, 2022). These interviews provided essential verbal data about the practicalities of MMQ financing and its associated challenges. In addition to the verbal data, secondary data were collected through document analysis, focusing on relevant sharia fatwas, operational guidelines, and legal frameworks that inform the implementation of MMQ contracts in Islamic banking. A purposive sampling technique was employed to ensure that individuals selected for interviews had relevant experience with MMQ, *Tawatu'*, and home financing. The combination of primary and secondary data collection methods allowed for a comprehensive understanding of the subject matter, ensuring the research addressed

both theoretical and practical concerns.

Data analysis was conducted using thematic analysis, which involved several stages to ensure a thorough examination of the research questions. Initially, the data was reviewed in detail, and transcripts from the interviews, along with relevant documents, were analyzed to identify key patterns and emerging themes. A coding system was applied to organize the data into thematic categories, which were then reviewed and refined for accuracy and relevance. An inductive analysis approach, as described by Waluya, was employed to derive broader conclusions from the data. This method allowed for practical, rational insights into the implementation of MMQ contracts, legal challenges, and the application of the *Tawatu* concept. The findings are presented in a structured report, supported by direct quotes and illustrative examples drawn from the data, which highlight the key issues identified during the analysis.

## RESULTS AND DISCUSSION

### Results

#### Distribution of Contracts in MMQ and Unclear Ownership Status

The findings of this study show that there is a clear inseparability between *musharakah* contracts, *ijarah*, and buying and selling in the implementation of *Musharakah Mutanaqishah* (MMQ) for home financing. The practice of combining several contracts in one transaction often causes confusion among parties, especially customers, about their rights and obligations. This leads to a vague understanding of ownership status. Therefore, *tawatu'* needs to be used as an instrument to explain the relationship between contracts, ensure that each contract has clear boundaries, and prevent legal misunderstandings that can arise. Thus, *tawatu'* is the key to clarifying the structure and legal relationship in MMQ, while reducing the potential for errors in customer understanding.

One of the main problems found in the practice of MMQ is the incompatibility between the concept of *shirkah* in *fiqh* and the practice of certification in Indonesia. Although a home is a shared asset between the bank and the customer, the house certificate is often recorded in the client's name in full, which creates uncertainty about the actual ownership status. This study proposes the use of *tawatu'* to assert more proportionate economic ownership. By stating in the agreement document that administrative and economic ownership is not always in line, customers and banks can understand each other's positions in the financing. This solution ensures that even if the certificate is registered in the name of the customer, the economic rights of the bank are still recognized proportionately according to the portion of *hishshah* owned by both parties.

#### Unbalanced Cost and Risk Sharing

Another finding is the imbalance in the sharing of costs and risks between banks and customers, which often leads to injustice. In many cases, the client bears almost all of the home's operational, maintenance, and insurance costs, despite the fact that the home is still a shared asset. This research shows that to correct these injustices, the sharing of costs and risks must be done according to the portion of ownership. Banks and customers must bear the burden together, in clear proportions. Maintenance and utility costs associated with the use of the home may be charged to the customer, while costs related to ownership, such as home insurance and property taxes, should be divided

according to the portion of ownership. That way, the principle of shirkah in sharia can be maintained, and MMQ will be more fair and proportionate.

Transparency in the preparation of MMQ contracts is very important so that customers can fully understand the content and terms contained in the agreement. One of the key findings of the study is that many customers do not fully understand the division of rights and obligations in MMQ contracts, particularly in relation to installments, ownership, and the consequences of default. To overcome this, banks should draft contracts in simpler and easier to understand language, as well as provide a clear explanation of the financing mechanism. In this case, *tawatu'* acts as a tool that ensures that every aspect of the contract, especially those related to rights and obligations, is clearly explained to the client. With this transparency, the opportunity for disputes is reduced, and customers feel more protected in undergoing the MMQ contract.

### **Strengthening Regulations and Institutions for the Implementation of *Tawatu'***

The findings of this study also identify that regulations that are not clear and integrated are hindering the effective implementation of MMQ. Although DSN-MUI and OJK have issued fatwas and related regulations, there are still many aspects that have not been regulated in detail, such as ownership registration, transfer of rights, and supervision procedures. This study proposes that relevant authorities such as DSN-MUI, OJK, ATR/BPN, and notaries develop clearer technical guidelines regarding the implementation of MMQ, including the necessary procedures and document formats. With clear regulations, Islamic banks will find it easier to implement MMQ appropriately, and customers will also feel more protected. This institutional strengthening will also increase the credibility of MMQ as a legal and fair sharia home financing product in practice.

Finally, the solution found in this study is the optimization of *tawatu'* as an integral part of MMQ-based home financing. By using *tawatu'*, Islamic banks can clarify every step in the transaction, reduce uncertainty, and ensure that sharia contracts run fairly and transparently. *Tawatu'* becomes a link between the musharakah, ijarah, and buying and selling contracts that separately have different logics and objectives, but still support each other in a series of clear and proportional transactions. The proper implementation of *tawatu'* will ensure that MMQ can be widely accepted by the community and is not only understood as a legitimate financing product according to sharia, but also as a product that provides justice for all parties involved. Thus, *tawatu'*-based MMQ has the potential to become a fairer and more efficient home financing solution in the future.

## **Discussion**

### **Optimizing *Tawatu'* as a Home Procurement Solution in the *Musharakah Mutanaqishah* Contract**

Home ownership financing through the *Musharakah Mutanaqishah* contract is basically a form of Islamic financial innovation designed to answer people's needs for housing without having to use an interest-based financing pattern. In this construction, the Islamic bank and the customer jointly own a certain portion of the house's assets, then the portion of the bank's ownership is gradually reduced because it is purchased by the customer until finally the house fully belongs to the customer. However, although in theory this contract is considered more in accordance with the principles of justice,

partnership, and profit-loss sharing in sharia, the practice still faces various problems. These problems include the overlap between shirkah, ijarah, and buying and selling contracts, unclear ownership status in certificates, fees that tend to be biased, potential information imbalances between banks and customers, and lack of optimal technical regulatory support. It is in this context that *tawatu'* can be positioned not as just a hidden agreement, but as an instrument of contractual reconstruction that can bridge the needs of sharia with the needs of positive law and modern banking practices (Abdullah, 2022; Rahmah & Hastriana, 2025).

Conceptually, *tawatu'* in the study of fiqh is understood as an understanding between two parties to realize a certain intention through a series of contracts or promises that are outwardly valid, as long as they are not used to legalize something that is prohibited. In the context of home financing, this concept is important because the practice of *Musharakah Mutanaqishah* in Indonesia often has to deal with administrative realities that are not entirely identical to classical fiqh construction (Asyiqin, Akbar, et al., 2024). For example, the national land system does not recognize the recording of house certificates with a gradual ownership scheme as understood in shirkah, so in practice banks and customers need additional agreements so that the substance of the partnership is maintained even though the certificate is administratively in the name of one of the parties. Thus, *tawatu'* can be directed as an instrument of affirmation of the legal intention of the parties, namely that administrative recording should not erase the fact that the asset at the initial stage is still joint ownership. This function is what makes *tawatu'* relevant to be used as part of the solution for housing procurement in the MMQ scheme, as long as it is formulated in a transparent, proportionate manner, and does not contradict sharia principles or national law.

### **Reorientation of the *Tawatu'* Function from Additional Agreements to Sharia Substance Guarantee Mechanism**

One of the fundamental problems in the practice of *Musharakah Mutanaqishah* is the tendency to place *tawatu'* solely as a technical solution to administrative obstacles. As a result, it is often understood only as an "underhanded agreement" that serves to close the gap between theory and practice. This approach is too narrow, because in the sharia contract system, the most important thing is not only the formal form of the document, but also the protection of the purpose of the contract, the fairness of the relationship between the parties, and the prevention of manipulative elements. Therefore, the *tawatu'* function needs to be reoriented. *Tawatu'* should not be positioned as a passive complementary document, but as a normative-operational mechanism to ensure that the entire series of MMQ contracts continue to move within the sharia corridor. That is, he must explain clearly who owns what, who bears what risks, how the transfer of ownership occurs, and when the relationship of shirkah really ends. If this function is carried out correctly, then *tawatu'* actually becomes a tool to strengthen the integrity of the contract, not just an administrative adjustment (Asyiqin, Akbar, et al., 2024).

In the practice of home procurement, this reorientation is important because many public doubts about MMQ arise from the impression that the contract in the end only imitates the conventional credit pattern with different terms. The suspicion is further strengthened when the customer bears almost all the costs, the certificate from the beginning in the name of the customer, and the entire risk of default is charged to the

customer, even though in theory the bank is still the ownership partner. If *tawatu'* is only used to justify such conditions, then it risks turning into a tool for legalizing inequality. On the other hand, if *tawatu'* is designed to affirm the substance of shirkah, then it can be a corrective tool for deviations in practice. In this case, *tawatu'* must contain the principle that the bank really acts as a sharik until all its hishshah is transferred, not just acting as a disguised creditor. Thus, the financing of sharia houses is not only formally legal, but also reflects the substantive justice that is at the core of Islamic muamalah (Alfiani, 2024; Badeeu & Muneeza, 2023).

The reorientation of the *tawatu'* function also means placing it within the framework of maqashid al-shariah on the aspects of property protection (hifz al-mal) and transaction justice. Home procurement is not just about purchasing consumptive goods, but concerns basic family needs, social stability, and long-term economic security. Therefore, any contractual engineering used in home financing must be tested in terms of real benefits for the parties, not just in terms of technical abilities. In this framework, a good *tawatu'* is a *tawatu'* that clarifies rights, reduces disputes, closes opportunities for exploitation, and keeps the transfer of ownership in a measurable manner. On the other hand, *tawatu'* which is prepared in a vague manner, is not understood by customers, and only benefits financial institutions, contrary to the spirit of partnership that is the basis of MMQ. Thus, the first solution that must be built is a paradigm shift: *tawatu'* is not a means of covering up the weaknesses of the contract, but a means of securing the purpose of the contract.

### **Reconstruction of the MMQ Contract Structure in Stages and Not Requiring Each Other**

Another very crucial question in the practice of MMQ is the mixing of several contracts in a transaction network that gives the impression of having two or more contracts on one object simultaneously. The text discussed shows that the structure of MMQ in the practice of home financing can involve shirkah, ijarah, and buying and selling contracts in order, and is often understood as if they are attached to each other in one inseparable unit. This is what then raises the issue of murakkabah contract, ta'alluq, and public doubts about its sharia compliance. To overcome this problem, the most relevant solution is to reconstruct the MMQ into a strict phased contract model, not an overlapping contract model. The first stage must be understood as the formation of shirkah of home ownership between the bank and the customer. The second stage is ijarah for the portion of benefits that come from the bank's ownership share. The third stage is the gradual sale and purchase of bank hishshah purchased by the customer through an agreed mechanism. With this construction, each contract still stands with its own legal logic and consequences (Ashsiddiqy et al., 2020; Asyiqin, Hamsin, et al., 2024).

This gradual reconstruction has several important benefits. First, he eliminates the impression that the ijarah contract is an absolute condition for the validity of the shirkah contract. Second, he makes it clear that the buying and selling of hishshah is a consequence that is carried out separately through a stand-alone wa'ad, not a condition attached to shirkah from the beginning in a binding manner in a problematic way. Third, he assists notaries, banks, sharia auditors, and clients to identify when a legal relationship begins and when it ends. In contract practice, the unclear order is often a source of dispute, because it is difficult for the parties to distinguish between the part of the payment that is ujah, the part that is the purchase of the portion of ownership, and the part that is another obligation. Therefore, Islamic banks need to develop a document

format that truly separates the shirkah clause, ijarah clause, and hishshah transfer clause into a systematic document, rather than just separating them in terms (Sadique, 2008; Zahro et al., 2024).

In the context of *tawatu'*, this reconstruction can be strengthened by the formulation of an understanding that states that the parties from the beginning understand the existence of a series of legal relationships that run gradually, but each stage remains subject to its own legal terms and consequences. In other words, *tawatu'* serves as an explanation of the relationship between contracts, not as an adhesive that removes the boundaries of each contract. This is important because one of the criticisms of MMQ's practice is the tendency of financial institutions to consolidate all legal relationships into a single financing package that is practical for banks, but less clear for customers. In fact, sharia actually demands clarity (*bayyinah*) and the avoidance of *jahalah* which has the potential to cause disputes. Therefore, a gradual design supported by open *tawatu'* is a form of solution that is cleaner in sharia and more contractually stronger. This model makes MMQ not a confusingly complex contract, but rather a series of contracts that are rationally interrelated and clearly auditable.

### **Solutions to Certification and Dual Ownership Problems through Economical Ownership Recognition**

One of the practical problems that most often arise in MMQ-based home financing is the incompatibility between the concept of joint ownership in fiqh and the land registration system in Indonesia. In the practice mentioned in the text, the house certificate is often recorded in the name of the customer from the beginning, even though in substance the house is still jointly owned by the bank and the customer. This condition is carried out to facilitate the process at the National Land Agency because the administrative system does not recognize the certificate format with gradual ownership as the concept of shirkah. The problem is, if this situation is not strictly regulated, then a serious question will arise: whether the bank is really still the owner of part of the asset, or just economically as if it has without adequate legal protection. This is where *tawatu'* can be used as a solution through an explicit recognition of the duality between administrative and economic ownership (Ashsiddiqy et al., 2020; Hamidah & Azzahra, 2024; Zahro et al., 2024).

The concept of economic ownership needs to be affirmed in the official document that even if the certificate is recorded in the name of the customer for administrative reasons, the bank's portion of the capital in the house is still recognized as a legitimate hishshah and has not moved before being gradually purchased by the customer (Alamoudi, 2023). To make this solution robust, it is not enough for banks to simply make additional agreements that are informal. A deed format that has high evidentiary power is required, at least outlined in a notarial deed or a standard document recognized in sharia financing governance. The contents of the document must contain in detail the initial capital percentage of each party, the scheme to reduce the bank portion, the hishshah purchase schedule, the prohibition of asset transfer without the consent of both parties, the handling in the event of default, and the *roya* mechanism at the end of the financing period. With a design like this, *tawatu'* is not just an implicit understanding, but turns into a legal instrument that provides clarity and certainty (Mansour, 2022; Subky et al., 2017).

Furthermore, this solution also carries fairer protection implications for both parties. For banks, recognition of economic ownership keeps their legal position from being completely dependent on the good faith of the customer. For customers, this clarity prevents banks from acting as if they are the full owner or as absolute creditors beyond the portion they still hold. Thus, the relationship between the two remains within the framework of partnership. This solution will also reduce conflicts when a default occurs, because the parties understand from the beginning that the object of financing is not purely debt collateral, but shirkah assets whose portion of ownership changes gradually. If this approach is standardized, then the big problem that has been a weak point of MMQ in Indonesia, namely the tension between fiqh of joint ownership and national land administration, can be bridged more elegantly. In other words, *tawatu'* here functions as a bridge between sharia and state administration without having to sacrifice the substance of one of them.

### **Reformulation of the Distribution of Costs, Risks, and Defaults to Be in Harmony with the Principles of Shirkah**

The next problem that needs to be fixed in MMQ is the sharing of costs and risks that are often unbalanced (Nurrahmawaty, 2025). In practice, customers are often burdened with maintenance, insurance, administration, and even the consequences of losses almost completely, even though in theory the bank is still the owner of some of the assets. A pattern like this gives the impression that the bank makes profits like the owner, but avoids the burden like the owner. If this condition is left unchecked, MMQ will be increasingly difficult to distinguish substantially from debt-based financing. Therefore, the reformulation of burden sharing is a must. The basic principle is simple: all costs related to the use of the house as a residence can be charged to the customer in his capacity as a tenant, while the costs attached to the ownership status of the asset must be borne according to the proportion of ownership between the bank and the customer (Fattah et al., 2025; Hamidah & Azzahra, 2024).

With that principle, routine maintenance, utilities, and minor repair costs incurred due to daily use can be the responsibility of the customer. However, property taxes, structural home insurance, and the risk of major damage related to the existence of assets as capital goods should not be fully charged to the customer, because the bank still owns the portion of the house. Likewise, when a loss occurs that is not the result of the customer's negligence, the bank cannot immediately escape from the consequences of the loss. This reformulation will restore MMQ to its original nature as a co-ownership arrangement, rather than a disguised secured lending arrangement. In the framework of *tawatu'*, the division must be explained in detail from the beginning. *Tawatu'* can contain the classification of costs into ownership costs, utilization costs, asset protection costs, and costs due to negligence. This classification will be very helpful in practice, because so far disputes have often arisen precisely from the blurring of the boundaries between types of costs (Ashsiddiqy et al., 2020; Kadir et al., 2022).

The default aspect also needs to be reformulated. In many financing practices, when a customer fails to meet his obligations, the solution tends to resemble conventional credit logic, i.e. the customer is required to pay off all remaining liabilities or lose assets in total. In fact, in the framework of MMQ, the settlement of default should take into account the fact that the house is the object of shirkah. Therefore, default settlement is ideally based on the actual value of the respective portion of ownership at

that time. If the financing must be terminated early, then what is settled is the distribution of rights to the assets or the proceeds of the sale according to the portion, not automatically the entire burden is placed on the customer as if he is the only party who bears the risk. This is where *tawatu'* needs to work as an anticipatory tool. It must formulate a fair default settlement scenario, such as restructuring the purchase of *hishshah*, the sale of assets based on mutual consent, or the refund of funds after deducting legitimate fees. With this approach, MMQ becomes more sharia-characterized, because it places risks and rights proportionately.

### Document Transparency and Contract Literacy as Customer Protection

Not a few problems in sharia house financing are actually not only because the contract is problematic, but because the contract is not adequately understood by customers. The manuscript also shows that there are still many people who do not understand MMQ products, while human resources who really master its implementation are also still limited. In such a situation, the complexity of the contract can turn into a source of injustice. The customer may sign a document that is formally legal, but does not substantially understand which part of the rent payment, which part of the purchase portion of the bank, what the consequences of the certificate are in his name, and how the risk is borne in the event of a dispute. Therefore, the next important solution is to strengthen document transparency and contract literacy. MMQ-based home financing must be designed not only to pass sharia audits, but also to be understood by customers as parties who will undergo contracts in the long term (Santoso et al., 2020; Zubir et al., 2023).

Islamic banks need to change the documentation approach from purely legalistic to educational and communicative. Each contract should be accompanied by an easy-to-understand explanatory summary, a simulation table separating the payment components, a *hishshah* transfer chart, as well as a simple explanation of the ownership status during the financing period. In this case, *tawatu'* should not be left as an agreement known only to bank officials and notaries. Instead, it should be part of a document that is explicitly explained to the client so that the client understands why there is an additional agreement, what it means, and what the legal consequences are. This kind of transparency will reduce information asymmetry that has often positioned customers as weak parties. The clearer a contract is understood, the less likely it is to have disputes and accusations that sharia financing simply changes the terms without changing the practice (Bintang & Suman, 2023; Mujib & Suleman, 2022; Zahro et al., 2024).

In addition, contract literacy is also part of protecting the reputation of the Islamic banking industry. The public will trust MMQ more if they see the openness, consistency, and courage of the institution to explain its sharia logic rationally. Transparency is not a threat to banks, but rather an instrument of strengthening trust. In the long run, banks that have simple, honest, and easy-to-understand contracts will have a stronger competitive value than banks that rely on the complexity of clauses. Therefore, one of the concrete forms of *tawatu'* optimization is to make it an object of contractual education. This means that any additional agreements are not only made to strengthen the bank's position, but also to build mutual understanding. Thus, the relationship between banks and customers is not just a formal relationship between the lender and the recipient of financing, but a partnership relationship that is built on the basis of

knowledge, consent, and clarity of rights-obligations.

### **Strengthening Institutions, Notaries, and Technical Regulations as Prerequisites for the Effectiveness of *Tawatu'***

While contractual solutions are essential, their effectiveness will not be maximized without adequate institutional and regulatory support. The discussed manuscript emphasizes that one of the obstacles to the implementation of MMQ in Indonesia is the lack of regulations that really help this financing practice comprehensively (Yulitasari et al., 2024). The DSN-MUI fatwa and existing technical rules have indeed provided a general basis, but they are not detailed enough to answer all operational issues, especially related to certification, notarial deeds, risk sharing, and dispute resolution formats. As a result, each bank tends to develop its own improvisations, while notaries and related officials do not necessarily have a uniform understanding of the typical character of MMQ. This condition creates a space of legal uncertainty that ultimately weakens the position of all parties. Therefore, the use of *tawatu'* as a solution will only be effective if it is supported by institutional standardization (Rozi, 2024).

On a practical level, there needs to be a common guideline between sharia authorities, financial services authorities, notaries, and land agencies regarding how MMQ should be documented. The guidelines must at least regulate the model of the shirkah deed of ownership, the form of wa'ad for the purchase of hishshah, the procedure for including economic ownership in financing documents, the format of the *tawatu'* clause, the classification of costs and risks, and the procedure for settlement in the event of default or early termination. Without this standardization, *tawatu'* will continue to be in gray area: needed in practice, but not entirely having clear operational legitimacy. On the other hand, standardization will also help the sharia supervision process, because auditors can assess whether a bank uses *tawatu'* to maintain the substance of the contract or precisely to circumvent sharia principles. In other words, technical regulatory support will distinguish healthy *tawatu'* from potentially problematic *tawatu'* (Asyiqin & Alfurqon, 2024; Rahmi et al., 2025).

Institutional strengthening must also touch the aspect of human resources. As long as the understanding of bankers, notaries, and financing officers towards MMQ is still limited, no matter how good the document is, it will not be applied consistently. Therefore, special training on MMQ and *tawatu'* needs to be part of the capacity building of the Islamic banking industry. The training material should emphasize that MMQ is not a murabahah wrapped in a partnership, but a joint ownership scheme that has a different logic of risk and division of liabilities. This training must also equip industry players with the ability to explain contracts to customers in a simple way. Thus, the effectiveness of *tawatu'* depends not only on the text of the document, but also on the competence of the people who carry it out. If institutions are strengthened, regulations are tightened, and documentation is standardized, then MMQ has the potential to become a much more credible and stable homeownership solution in Indonesia's sharia economic ecosystem.

### ***Tawatu'* Implementation Solution Model in MMQ for Home Procurement**

Based on all the descriptions above, a solution model for the implementation of *tawatu'* in MMQ for home procurement can be formulated. This model is built on five

main elements. The first element is the affirmation of the intention and substance of the contract, namely that the relationship between the bank and the customer from the beginning is an ownership partnership, not a borrowing. The second element is the gradual separation between contracts, in which *shirkah*, *ijarah*, and the purchase of *hishshah* are placed in an orderly manner and do not pollute each other. The third element is the strengthening of economic ownership documents through open *tawatu'* which explains the status of the certificate, the portion of ownership, and the prohibition of unilateral actions. The fourth element is the reformulation of the sharing of costs, risks, and default settlement so that it is truly proportional according to the status of ownership. The fifth element is transparency and contractual education to customers. If these five elements are carried out simultaneously, then *tawatu'* will not only solve administrative problems, but will actually become an instrument for perfecting the MMQ contract (Nurjaman et al., 2022; Santoso et al., 2020).

This model is important because it touches on two needs at once. On the one hand, the community needs a halal, fair, and non-burdensome home ownership scheme. On the other hand, financial institutions need legal certainty, administrative certainty, and protection of the capital they invest. So far, the tension between the two needs has often prompted imperfect compromises: sharia is maintained in terms, while its substance conforms to the logic of conventional financing. Through the *tawatu'* optimization model, the compromise can be changed into harmonization. Sharia is not marginalized, positive law is not ignored, and the needs of industry are not rejected. All are brought together in one framework of a more honest, open, and proportionate contract. This is what makes *tawatu'* have a strategic position in the development of MMQ-based sharia mortgages in Indonesia. It is not just an additional fiqh theory, but a practical bridge to make partnership contracts really work in modern economic life (Ashsiddiqy et al., 2020; Asyiqin & Alfurqon, 2024; Hamidah & Azzahra, 2024; Maripah & Zainusyukur, 2025).

In the end, the solution to the procurement of houses through the use of *tawatu'* in the *Musharakah Mutanaqishah* contract must be understood as an effort to improve the quality of the design of sharia contracts as a whole. The focus is not only on making transactions "permissible", but on making them truly fair, feasible, easy to understand, and in accordance with the purpose of property protection in Islam. If *tawatu'* is used transparently, supported by a healthy separation of contracts, strengthened by the recognition of economic ownership, accompanied by proportionate risk sharing, and run under clear regulatory standards, then MMQ can appear as a real alternative for people who need a house. On the contrary, without this improvement, MMQ will continue to be overshadowed by *syubhat*, public distrust, and operational difficulties. Therefore, the optimization of *tawatu'* is not an additional option, but a strategic need for a more authentic and equitable future of sharia house financing.

## CONCLUSION

The most significant finding from this study is the identification of ownership status issues that arise from the *Musharakah Mutanaqishah* hybrid contract in public housing credit. These issues stem from discrepancies between the contract's intent and the actual legal status of the property, particularly when the asset is registered solely under the customer's name. The use of the *Tawatu'* concept, as a secret agreement between the two parties to resolve these legal issues, provides an effective solution. This

concept ensures that the agreement remains compliant with both Sharia principles and Indonesian civil law, making it acceptable to the National Land Agency (BPN). The study demonstrates that *Tawatu'* can be an essential tool for overcoming legal challenges in housing financing while allowing customers to fulfill their basic housing needs in a Sharia-compliant manner.

This research makes a valuable contribution to the academic understanding of Sharia-compliant housing financing by highlighting the legal harmonization between the *Musharakah Mutanaqishah* contract and Indonesian land regulations. By incorporating the *Tawatu'* mechanism, this study offers a practical solution for Islamic financial institutions and regulators, ensuring that ownership issues are addressed legally while fulfilling the growing demand for decent housing in Indonesia. However, the study is limited to its focus on legal harmonization within a specific case study at Bank Muamalat Surabaya. Future research should explore the broader applicability of the *Tawatu'* concept across other Islamic banks and its potential for formalization within the National Sharia Supervisory Board (DSN-MUI) to develop comprehensive guidelines for the industry.

#### ACKNOWLEDGEMENT

We sincerely thank Bank Muamalat Surabaya for their support, the participants for their valuable insights, our academic mentors and colleagues for guidance, and our families for their encouragement throughout this research.

#### REFERENCES

- Abdullah, A. (2022). Comparative analysis of murabahah and musyarakah mutanaqishah contract in Islamic home financing ownership at Islamic bank. *NUsantara Islamic Economic Journal*, 1(2), 226–232. <https://doi.org/10.34001/nuiej.v1i2.260>
- Ahinfu, A. A., Opoku Mensah, A., Koomson, S., Cobblah, C., Takyi, G., & Kwarteng, A. H. (2025). Achieving Banking Industry Innovation Performance Using Total Quality Management: An Empirical Study. *The TQM Journal*, 37(5), 1292–1319. <https://doi.org/10.1108/TQM-10-2023-0327>
- Ahmad, M., & Wilkins, S. (2025). Purposive Sampling in Qualitative Research: A Framework for the Entire Journey. *Quality & Quantity*, 59(2), 1461–1479. <https://doi.org/10.1007/s11135-024-02022-5>
- Alamoudi, A. M. (2023). Mortgage and its Importance in Authenticating Debt: A Case Study of Islamic Banks. <https://doi.org/10.59992/ijsr.2023.v2n9p3>
- Alfiani, Y. (2024). The Role of PPAT Officials in Home Ownership Financing at Sharia Banks Seen from the Maslahah Approach. <https://doi.org/10.4108/eai.17-6-2024.2349112>
- Anas, I., Alfarouq, A. R. Z., & Nasution, A. (2024). The Role of DSN-MUI Fatwa No. 153/DSN-MUI/VI/2022 in Realizing Consumer Protection in the Islamic Banking Sector. *Ekonomika Syariah: Journal of Economic Studies*, 8(2), 206–218. <https://doi.org/10.30983/es.v8i2.8697>

- Arfan, A., Arfan, I. A., Abdulrahman, A., & Ramadhita, R. (2024). The Implementation of Maqashid Sharia: Heterogeneity of Scholars' Fatwas Towards Islamic Banking Contracts. *Legality: Jurnal Ilmiah Hukum*, 32(1), 105–128. <https://doi.org/10.22219/ljih.v32i1.32170>
- Ashsiddiqy, M. R., Monoarfa, H., & Cakhyaneu, A. (2020). Implementation of Aqad Musyarakah Mutanaqisah (MMQ) Take Over Financing on KPR Products in Sharia Banks. 1(1), 32–42. <https://doi.org/10.17509/RIEF.V1I1.23745>
- Asyiqin, I. Z., & Alfurqon, F. F. (2024). Musyarakah Mutanaqisah: Strengthening Islamic Financing in Indonesia and Addressing Murabahah Vulnerabilities. *Jurnal Media Hukum*. <https://doi.org/10.18196/jmh.v31i1.20897>
- Asyiqin, I. Z., Akbar, M. F., Onielda, M. D. A., & Farid, A. M. B. M. (2024). Mushārahak Mutanāqīshah (Diminishing Partnership) Regulation for Housing Finance in Indonesian and Malaysian Law. *Al-Ahkam*. <https://doi.org/10.21580/ahkam.2024.34.1.20133>
- Asyiqin, I. Z., Hamsin, M. K., Anggriawan, R., & Fanani, A. (2024). Musharakah Mutanaqisah in Indonesia and Malaysia: Fatwa Institution, Regulation, and Recent Practice. *Deleted Journal*, 13(1), 1–18. <https://doi.org/10.54471/iqtishoduna.v13i1.2302>
- Badeeu, F. N., & Muneeza, A. (2023). Striving for authenticity: enhancing shariah-compliance in home financing products within malaysia's islamic finance industry. *International Journal of Islamic Economics and Finance Research*, 1, 48–62. <https://doi.org/10.53840/ijiefer112>
- Bentley, R., Mason, K., Jacobs, D., Blakely, T., Howden-Chapman, P., Li, A., Adamkiewicz, G., & Reeves, A. (2025). Housing as a Social Determinant of Health: A Contemporary Framework. *The Lancet Public Health*, 10(10), e855–e864. [https://doi.org/10.1016/S2468-2667\(25\)00142-2](https://doi.org/10.1016/S2468-2667(25)00142-2)
- Bintang, I., & Suman, A. (2023). Dinamika implementasi akad jual beli properti syariah non bank. 2(1), 53–68. <https://doi.org/10.21776/ieff.2023.02.01.06>
- Danford, C. A. (2023). Understanding the Evidence: Qualitative Research Designs. *Urologic Nursing*, 43(1). <https://doi.org/10.7257/2168-4626.2023.43.1.41>
- Fathurrahman, H., Rahmawati, Y., Abdullah, F. D., & Wiwaha, S. M. (2025). A Contemporary Islamic Legal Review of Muḍārahah Contracts Based on the DSN-MUI Fatwa. *Al-Mawarid Journal of Sharia and Law (JSYH)*, 7(2). <https://doi.org/10.20885/mawarid.vol7.iss2.art8>
- Fattah, A., al-Hakim, S., & Januri, F. (2025). Dialektika Fikih Musyarakah Mutanaqisah: Analisis Kritis Penerapannya dalam Pembiayaan Perumahan Syariah di Indonesia. *Al-Kharaj: Jurnal Ekonomi, Keuangan Dan Bisnis Syariah*, 7(9). <https://doi.org/10.47467/alkharaj.v7i9.9233>
- Hamidah, S., & Azzahra, F. (2024). Masalah in Multi Akad Musyarakah Al Mutanaqishah (MMQ) Based on the Maqasid Syariah System Approach. <https://doi.org/10.55606/eksekusi.v2i4.1459>
- Hasan, S., & Ahmad, A. U. F. (2024). Debt-Free Diminishing Musharaka Home Finance in the United Kingdom: An Empirical Case Study of Primary Finance. In *Islamic Finance in Eurasia* (pp. 151–162). Edward Elgar Publishing. <https://doi.org/10.4337/9781035308705.00016>

- Hennink, M., & Kaiser, B. N. (2022). Sample Sizes for Saturation in Qualitative Research: A Systematic Review of Empirical Tests. *Social Science & Medicine*, 292, 114523. <https://doi.org/10.1016/j.socscimed.2021.114523>
- Kadir, S., Lutfi, M., Sapa, N. Bin, & Hafid, A. (2022). Implementasi akad musyarakah mutanaqishah di lembaga keuangan islam. *Islamic Economic and Business Journal*, 4(2), 1–19. <https://doi.org/10.30863/iebjournal.v4i2.3754>
- Mansour, W. (2022). Increasing Musharakah through Repetitive Mutual Promises and Participatory Hedging. 13(1), 5–34. <https://doi.org/10.55188/ijifarabic.v13i1.240>
- Maripah, E., & Zainusyukur, Z. (2025). Legal Construction of Home Ownership Financing According to Sharia Principles. *International Journal of Social Service and Research*, 5(7), 868–882. <https://doi.org/10.46799/ijssr.v5i8.1290>
- Mujib, A., & Suleman, N. H. (2022). The urgency of rescheduling policy as a solution to sharia banking dispute on murabahah agreements. *Tasharruf : Journal Economics and Business of Islam*, 7(2), 170. <https://doi.org/10.30984/tjebi.v7i2.2106>
- Niam, M. F., Rumahlewang, E., Umiyati, H., Dewi, N. P. S., Atiningsih, S., Haryati, T., Magfiroh, I. S., Anggraini, R. I., Mamengko, R. P., & Fathin, S. (2024). Qualitative Research Methods.
- Nurjaman, M. I., Sofie, H. M., & Istianah, I. (2022). Transformasi Akad Natural Uncertainty Contracts: Analisis Akad Musyarakah Mutanaqishah (MMQ) di Lembaga Keuangan Syariah. *Tawazun : Journal of Sharia Economic Law*, 5(1), 92. <https://doi.org/10.21043/tawazun.v5i1.13871>
- Nurrahmawaty, N. (2025). Default In Musyarakah Contract A Critical Examination Of Legal Certainty In Islamic Economics. *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah*, 9(1), 1316–1329. <https://doi.org/10.30651/justeko.v9i1.25873>
- O'dea, X., & O'Dea, M. (2023). Is Artificial Intelligence Really the Next Big Thing in Learning and Teaching in Higher Education?: A Conceptual Paper. *Journal of University Teaching and Learning Practice*, 20(5), 1–17. <https://doi.org/10.53761/1.20.5.06>
- Paul, J., Khatri, P., & Kaur Duggal, H. (2024). Frameworks for Developing Impactful Systematic Literature Reviews and Theory Building: What, Why and How? *Journal of Decision Systems*, 33(4), 537–550. <https://doi.org/10.1080/12460125.2023.2197700>
- Rahmah, S., & Hastriana, A. Z. (2025). Conceptual Analysis of Musyarakah Mutanaqishah Contract and its Implementation in Islamic Banking. *Al-Hiwalah*, 4(1), 76–87. <https://doi.org/10.47766/al-hiwalah.v4i1.5258>
- Rahmi, N., Rizali, M., & Badrian, B. (2025). Implementation and Challenges of Musyarakah Contracts in Sharia Financing in Indonesia: Analysis of Regulations, Practices, and Optimization Strategies. *Jurnal Manajemen Dan Bisnis*, 3(3), 85–101. <https://doi.org/10.36490/jmdb.v3i3.1647>
- Reid, A. (2023). Closing the Affordable Housing Gap: Identifying the Barriers Hindering the Sustainable Design and Construction of Affordable Homes. *Sustainability*, 15(11), 8754. <https://doi.org/10.3390/su15118754>
- Rodrigues, M. R., & Lindhard, S. M. (2023). Benefits and Challenges to Applying IPD: Experiences From a Norwegian Mega-Project. *Construction Innovation*, 23(2), 287–305. <https://doi.org/10.1108/CI-03-2021-0042>
- Rozi, F. A. (2024). Analisis Implementasi Fatwa DSN-MUI No. 4 Tahun 2000 dalam Perspektif Hukum Praktik Perbankan Syariah di Indonesia. 1(4), 221–240. <https://doi.org/10.62383/konstitusi.v1i4.207>

- Sadique, M. A. (2008). Financing micro and medium sized enterprises through decreasing partnership (musharakah mutanaqisah): refining shari'ah and banking aspects for enhanced applicability. Islamic Research & Training Institute, Islamic Development Bank.
- Santoso, I. R., Harsanto, M., Sulila, I., & Bahsoan, A. (2020). Risk Management of Musyarakah Mutanaqisah Contract in Sharia Banks in Indonesia: Legal and Operational Issues. 5(3), 41–50. <https://doi.org/10.32535/IJABIM.V5I3.980>
- Shebaita, M. (2025). The General Principles of Law Recognised by Civilised Nations in Islamic Law: M. Shebaita. *Liverpool Law Review*, 46(2), 219–243. <https://doi.org/10.1007/s10991-025-09384-2>
- Subky, K. H. M., Liu, J. Y., Abdullah, M. M., Mokhtar, Z. F., & Faizrahman, A. (2017). The Implication of Musharakah Mutanaqisah in Malaysian Islamic Banking Arena: A Perspective on Legal Documentation. *The International Journal of Management*, 4(1), 17–30. <https://doi.org/10.18646/2056.41.17-003>
- Takona, J. P. (2024). Research Design: Qualitative, Quantitative, and Mixed Methods Approaches. *Quality & Quantity*, 58(1), 1011–1013. <https://doi.org/10.1007/s11135-023-01798-2>
- Tanveer, U., Ishaq, S., & Hoang, T. G. (2025). Tokenized Assets in a Decentralized Economy: Balancing Efficiency, Value, and Risks. *International Journal of Production Economics*, 282, 109554. <https://doi.org/10.1016/j.ijpe.2025.109554>
- Wibowo, H. S., Sasongko, Y. B., & Hidayatulloh, F. (2025). Implementation of the Musyarakah Mutanaqisah Agreement (MMQ) in Productive Financing (Study at Bank Syariah Indonesia (BSI) Madiun Branch Office). *Al-Muamalat: Journal of Islamic Economics*, 8(1).
- Yulitasari, L., Suryanto, T., & Hilal, S. (2024). Regulatory and legal challenges of sharia peer-to-peer lending in indonesia. *Al Fiddhoh*, 5(1), 28–34. <https://doi.org/10.32939/fdh.v5i1.3499>
- Yusuf, J. A. (2025). Sustainable Housing Finance Through Islamic Contracts: A Comparative Study of Murabaha Vs, Diminishing Musharakah Models. *COMSATS Journal of Islamic Finance (CJIF)*, 10(1). <https://doi.org/10.26652/cjif.10202514>
- Zahro, D. S., Kholiq, A., & Ulfah, M. (2024). Implementation of the MMQ Agreement in KPR Products On Increasing Financing at Bank Muamalat KCP Kuningan. *Journal of Islamic Economics and Business Ethics*, 1(1), 26–34. <https://doi.org/10.24235/jiesbi.v1i1.97>
- Zubir, Z., Muhazir, M., & Wahyudani, Z. (2023). Akad al-Ijarah al-Mausufah fi al-Zimmah in Sharia Banking in Aceh: A Study of Home Ownership Finance. *Justicia Islamica*, 19(2). <https://doi.org/10.21154/justicia.v19i2.3653>