

Syirkah/Musyarakah/Partnership in Contemporary Islamic Business

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2016



Definition of shirkah (general)

- Literally
 - Intermingling of properties whereby one cannot be differentiated from the other
 - Mixing of two properties so that they could not be distinguished from each other



Types of Syirkah

Syirkah Amlak

A partnership that is not because of an agreement, but in nature instead (join ownership)


Gift/hibah,
waris/inheritance

Syirkah Uqud

A partnership as a result of agreement

Partnership,
corporation

Syirkah in
business



Definition of Syirkah/musharakah Contract (Syirkah Uqud)

Literally

musyarakah/syirkah

“شرك”

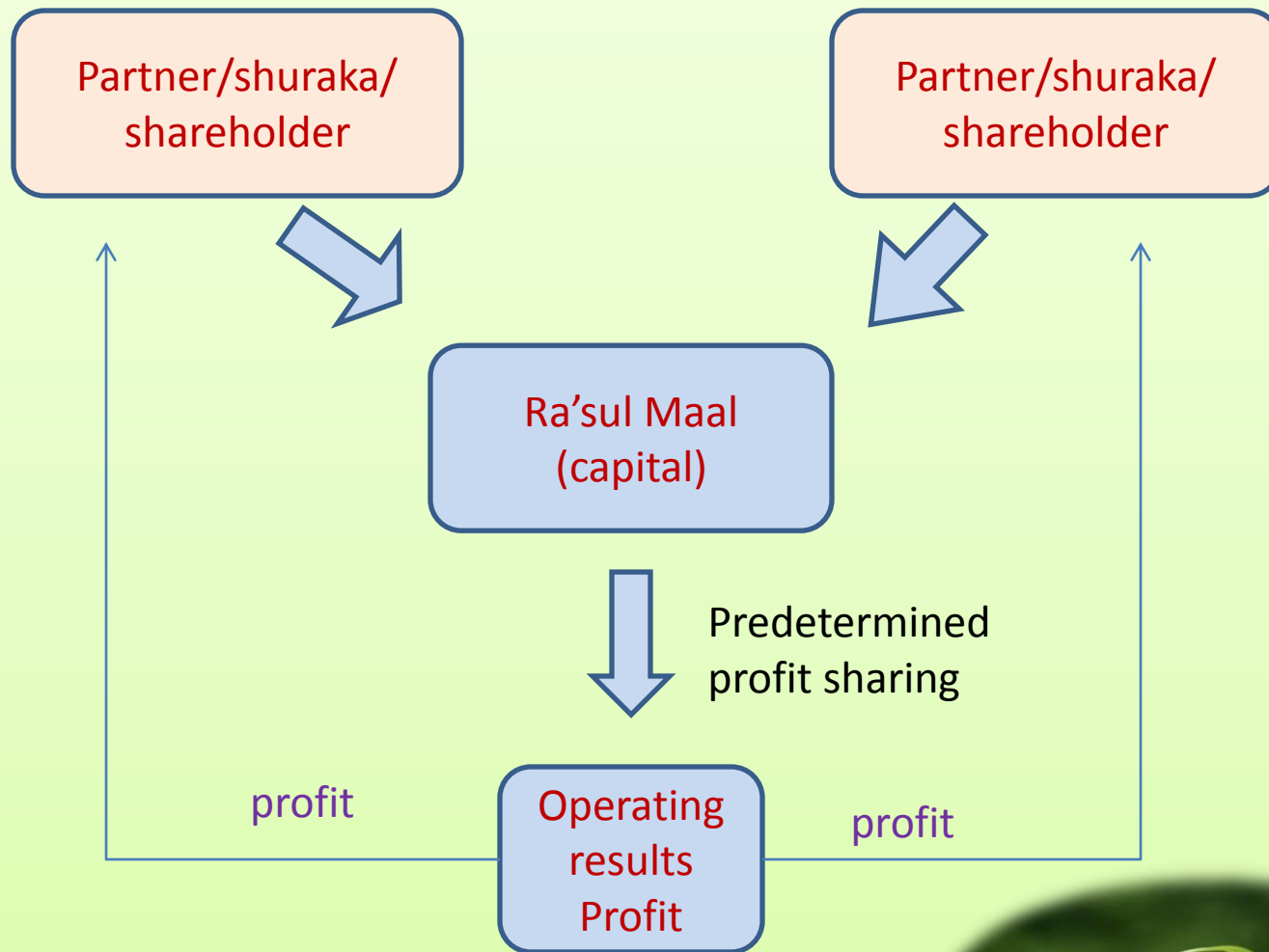
Partnership

Terminology

An agreement between two or more parties for a specific business where each party contribute funds or skill and share risks according to the agreement



Scheme of Syirkah Contract



Law/Dalil

QS. An-Nisa: 12

- ... They share in a third

As-Sad: 24

- And, verily, many partners oppress one another, except those who believe and do righteous good deeds, and they are few

Hadits: Ad-Daruquthni 3/35

- Allah's hands is upon two partners as long as they both do not cheat to each other



Requirement of Legality

Parties involved

The object of agreement

Ijab Qabul (statements)



Syirkah uqud – some rules

- If the capital assets are damaged after the agreement, syirkah should not be ended. If the damaged is before the agreement, the partnership is fail.
- Wakalah/representativeness: permit from a party to the other to do something:
 - Business can be done in cash or deferral
 - Can buy with different price from the market as long as it is not a cheating
 - parties are allowed to do mudharabah agreement with the third party as a mudharib (person who contribute works)
 - One party may give authority to the other party as a representative (wakalah)
 - Parties may put an asset as a covenant as long as other party agree
 - It is allowed to do business in foreign contry (Imam Shafi'i forbid this unless there is an approval from the other party)
 - Tabarru and qardh are not allowed.



Capital

- Musharakah capital shall be identifiable, readily and accessible
- Musharakah capital may be in the form of cash or in-kind that may include intangible assets
- Capital in-kind shall be valued in monetary terms by third party, which may include experts, valuers, or as agreed upon by the partners at the inception of the contract
- Total amount of capital to be contributed by each partner shall be known and determined at the time of contract
- Upon the disbursement of capital by the musharakah partners, all partner's rights and liabilities with regard to the partnership shall be established



profits

Profit is the value created over and above the capital which is determined based on a method acceptable by market standard or practices

The partners share profit based on mutually agreed ratio among them

Profit sharing ratio should be based on the proportion capital contribution

Shall not stipulate a pre-determined fixed amount to any partner

Any partner may relinquish his right to other partner, if any



Classical types of syirkah uqud

Hanafi	Hambali	Maliki	Syafi'i
Inan	Inan	Inan	Inan
Abdan	Wujuh		
Wujuh	Abdan	Abdan	
Mufawadhah	Mudharabah		Mudharabah
Mudharabah		Mudharabah	

Contemporary type: Syirkah Al-Musahamah



Types of Syirkah Contracts

\$ X

+

\$ X

Syirkah Mufawadah

\$ X

+

\$ Y

Syirkah Inan

\$ X

+



Syirkah Wujuh

\$ X

+



Syirkah Mudharabah

\$ X

+



Syirkah 'Abdan

Types of Syirkah Contracts

\$ X

+

\$ Y

Syirkah Inan

Two or more parties brings funds as capital

Profit sharing depends on agreement, loss is based on percentage of capital

Based on amanah (trust) and wakalah (representation)

Syirkah Mufawadah

\$ X

+

\$ X

Syirkah Mufawadah

Fund contribution is similar among the partners

One man one vote

Profit is divided according to the agreement, loss is divided evenly

Example: Cooperation,
Commanditaire Vennootschaap(CV)

Syirkah Wujud (partnership in goodwill)

\$ X

+



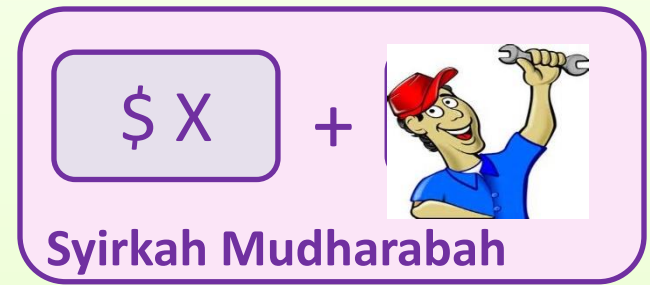
Syirkah Wujud

Partnership of person with funds and persons of good reputation, to form a partnership

Profit is divided according to the agreement

Loss is bear by persons with funds

Syirkah Mudharabah (partnership in goodwill)



Partnership between persons with funds (*shahibul maal*) and persons who contribute works to manage the funds (*mudharib*)

Profit is divided according to the agreement

Loss is bear by the shahibul maal

Syirkah Abdan or A'maal (Partnership in Labor)

\$ X

+



Syirkah 'Abdan

Two or more parties contribute labor in their partnership

Profit is divided according to the agreement

Example: carpenter and cement construction join together

Syirkah Musahamah (Corporation)

Join-stock company

Separated legal entity

Responsibility of owners is limited,
only for the money they invested in
the company



Pooling of capital

- Jumhur (ulama decision): no need to put capital in a pool. The hakikat is the aqad (aggreement) not the pooling of asset.
- Malikiah: pooling of assets is necessary, after the partnership, the assets should be one, cannot be classify based on the source and the type.
- Ibn Rusyd: the pooling of asset is not a requirement, but it is encouraged



Syirkah kontemporer

Merupakan akad baru pengembangan syirkah:

1. Syirkah mutanaqishah
2. Syirkah-musahamah
3. Syirkah-tadhamun
4. Syirkah-taushiyah bashithah
5. Syirkah-saushiyah bi al-asham
6. Syirkah-muhashah

