

A COMPARATIVE STUDY OF MUSHARAKAH MUTANAQISAH IN ISLAMIC
HOME FINANCING

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ABSTRACT

Musyarakah mutanaqisah is a hybrid contract containing three shariah contract namely *Ijarah, al bay'*, *Musyarakah*. This research discusses the implementation of *musyarakah mutanaqisah* in Islamic home financing by RHB Islamic Bank Berhad and Kuwait Finance House (Malaysia) Berhad (KFHMB). This study also analyzes the parameters used for *musyarakah mutanaqisah* and sees whether RHB Islamic Bank and Kuwait Finance House (Malaysia) Bank (KFHMB) use these parameters on their product in *musyarakah mutanaqisah*. The researcher also wants to analyze the parameter for *musyarakah mutanaqisah*. Besides that, the selection of two banks is meant to compare their Standard Operating Procedure (SOP) in the implementation of *musyarakah mutanaqisah* in RHB Islamic Bank Berhad and KFHMB. The researcher also analyzes the issues and challenges faced by both of the banks in implementing this product because *musyarakah mutanaqisah* product is considered as a new product in Islamic home financing and has started getting noticed by Islamic banking in this country. In order to achieve the objective of the research, the researcher uses the library and field works as a method to collect the data. The data collected are analyzed, using the method of content, inductive and comparative. To obtain the information for getting answers to all the research questions, the researcher has conducted interviews with executive officers from both of the banks and the experts in this field. In the end, the researcher makes a few suggestions and recommendations to the banks, government, academicians and society with the aim to improve and get acceptance of this product in future.

ABSTRAK

Secara umumnya, *Musyarakah Mutanaqisah* adalah kontrak hybrid yang mengandungi tiga kontrak yang lain iaitu *Musyarakah*, *Ijarah* dan *Bay'*. Kajian ini bertujuan untuk membincangkan mengenai pelaksanaan *Musyarakah Mutanaqisah* dalam pembiayaan perumahan secara islam di dua buah bank iaitu RHB Islamic Bank Berhad dan Kuwait Finance House (Malaysia) Berhad. Kajian ini juga bertujuan untuk menganalisis Parameter yang digunakan oleh kedua-dua bank dan melihat samada RHB Islamic Bank dan KFHMB menggunakan parameter ini dalam product ini. Selain itu kajian ini juga untuk mengetahui apakah parameter yang digunakan dalam produk ini. Disamping itu, pemilihan kedua-dua bank ini adalah bertujuan untuk melihat perbandingan SOP yang digunakan dalam pelaksanaan *Musyarakah Mutanaqisah*. Pengakaji juga menganalisis isu-isu dan cabaran yang dihadapi oleh kedua-dua bank dalam melaksanakan produk ini memandangkan produk ini masih baru dan mula mendapat perhatian daripada perbankan islam di negara ini. Untuk mencapai objektif kajian ini, pengkaji menggunakan kajian lapangan dan kajian perpustakaan sebagai kaedah untuk proses pengumpulan data. Kemudian data yang dikumpul tersebut akan dianalisis dengan menggunakan kaedah "content", induktif dan komparatif. Untuk memperolehi semua maklumat yang dikehendaki oleh pengkaji bagi menjawab semua persoalan kajian, pengkaji telah menjalankan beberapa sesi temubual bersama pegawai di kedua-dua bank dan pakar yang arif dalam bidang ini. Pada bahagian yang terakhir dalam kajian ini, pengakaji telah memberikan beberapa cadangan kepada pihak bank, kerajaan, ahli akademik dan masyarakat dengan tujuan untuk meningkatkan penerimaan produk ini pada masa hadapan.

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LIST OF ABBREVIATIONS

MM	<i>Musharakah Mutanaqisah</i>
BBA	<i>Bay' Bithaman Ajil</i>
BNM	Bank Negara Malaysia
UUM	Universiti Utara Malaysia
KFHMB	Kuwait Finance House (Malaysia) Berhad
SAC	Shariah Advisory Council
AAIOFI	Accounting and Auditing Organization for Islamic Financial

CHAPTER 1

1.0 INTRODUCTION

1.1 Introduction

Every person in the world wants to own a house, but it is not easy for anyone to get it without any support from manifold sources, such as, government, banks and loan from a company. The decision to buy a house is a significant phenomenon and it is the biggest step in one's life time. In order to get an access to one's residence, for a buyer, it does not only require the high financial commitment but also the purchaser also makes a long term investment because today's reality showcases that investment in purchasing home can give the biggest profit and benefit for the future. However, the ability to own one's home also depends on the sources of income coming out of household because as we can see today, most of Malaysians, they are not able to own their home in cash except they get a loan from banks. However, the problem faced by customers in Malaysia today is related to the types of financing that is offered: whether to take the financing on the basis of either by conventional concept or Islamic concept. Both of the concepts can give options to the customers to choose any type of financing and make a right decision to get better home financing.

From the very beginning of human civilization, the approaches to meet day-to-day needs have been undergoing changes with the change of social, financial, scientific, cultural and political situations, especially in terms of behaviors, fashions and the standard of living. The above-mentioned methods regulate the commercial activities and differ from place to place and time to time. When Islam was in its peak, the Arab society had very simple financing methods and forms of business which were not considered peculiar to that society (Al Harran, 1993).

The advent of the Holy Prophet saw the practice of *musharakah*, which later on became significantly fundamental for all commercial activities in Arabia. He not only approved it, but also himself did business on the basis of *musharakah*.

After Hijrah, the *Muhajirin* and the *Ansar* were announced as brothers by the Prophet. Then they joined as partners, in the form of *musharakah*, *muzara'ah* and *musaqat*, in their trade and commerce. The nature of the transaction, though it was in different forms from today, is identical. The different nomenclature in Arabic refers to various activities, such as *muzara'ah* in agriculture, *musaqat* in gardening and *musharakah* in trade. The *musharakah* of capital and labour is called *mudharabah*. These four systems were so developed that they became independent institutions and the jurists formed detailed rules regarding them. There remains a consensus of opinion among the jurists of all schools of thought (including Hanafi, Maliki, Syafie, and Hanbali) that *musharakah* is considered as a valid and lawful contract in Islam (Al Harran, 1993).

Generally, all the Muslim around the world, especially Muslims in Malaysia want to see the implementation of Islamic precepts in the area of banking and finance in Malaysia. As we can observe today, many transactions free from usury or *Riba* can be chosen by Muslim. Islamic banking industries in Malaysia today give options for their customers to choose Islamic system. The first institution that introduced Islamic financial system in Malaysia was the establishment of managing board of Tabung Haji or *Lembaga Urusan Tabung Haji (LUTH)* and it is known as *Lembaga Tabung Haji (LTH)* from 1969 onwards (Aziz, 1959). The objective of the establishment of LUTH is to allow the Muslims in order to save money for meeting expense to perform pilgrimage and to engage in plantation area, to have enterprise, farming and real estate through halal way.

The hope to establish Islamic banks has also been voiced at the state level by the Muslim communities in Malaysia. The efforts to establish Islamic banks were initiated independently in 1980 by LUTH, Malaysian Islamic Welfare Organization (religious association) and by several individuals as well. As a result of these efforts, the government accepted the recommendations of the Fund Board to establish Islamic banks and coordinated action at the national level. The establishment of Islamic bank in Malaysia was known as Bank Islam Malaysia Berhad (BIMB). It was incorporated as a limited company under Companies Act 1965 with 1 Mac1983 name and registration Holdings with offices in Malaysia. The business operations of Bank Islam Malaysia Berhad (BIMB) began in July 1983, opening a branch in Kuala Lumpur (Alwi, 2005).

Islamic finance and banking in Malaysia caters to meet the need of users who want their financial transactions to be free from *Riba* or interest. Therefore, Islamic financial institutions in the country have introduced several methods of home financing that follow the rule of shariah. The two dominant methods used in Malaysia in terms of home financing are *bay' bithaman ajil* (BBA) and *musharakah mutanaqisah*. However, considering the list of Islamic banks in Malaysia, one can mention that there exist 16 banks; out of which 10 banks represent the local banking in Malaysia and six bank-branches represent foreign banks that offer financial aid in home financing, including *musharakah mutanaqisah*. The researcher lists down the 16 Islamic banks that offer products in home financing:

Table 1.1: List of Islamic Bank offers financial aid in Islamic Home Financing

No	NAME OF BANKS	PRODUCTS/CONTRACTS	TYPE
1.	Affin Islamic Bank Berhad	<i>Musharakah mutanaqisah</i> (affinislamic.com, 2014)	Local
2.	Al Rajhi Banking and	<i>Bay' bithaman ajil</i> (AlRajhi Bank.com,	Foreign

	Investment Corporation	2014)			
	(Malaysia) Berhad				
3.	Alliance Islamic Bank Berhad	<i>bay bithaman ajil</i>	(AllianceIslamicbank. Com, 2014)	Foreign	
4.	AmIslamic Bank Berhad	AmIslamic Home Financing-i	(Ambankgroup.com, 2014)	Local	
5.	Asian Finance Bank Berhad	Home Financing-i	(AsianFinanceBank..com, 2014)	Foreign	
6.	Bank Islam Malaysia Berhad	<i>Tawarruq</i>	(BankIslam.com, 2014)	Local	
7.	Bank Muamalat Malaysia Berhad	Home financing-i	(Muamalat.com, 2014)	Local	
8.	CIMB Islamic Bank Berhad	<i>Ijarah</i>	(CIMBIslamic.com, 2014)	Local	
9.	HSBC Amanah Malaysia Berhad	<i>Musharakah mutanaqisah</i>	(Diminishing Partnership) (HSBCAmanah.com, 2014)	Foreign	
10.	Hong Leong Islamic Bank Berhad	Commodity murabahah	(Hlisb.com, 2014)	Local	
11.	Kuwait Finance House (Malaysia) Berhad	<i>Musharakah mutanaqisah ijarah muntahia bi al tamlik & ijarah mausufah fi al zimmah</i>	(Kfh.com, 2014)	Foreign	
12.	Maybank Islamic Berhad	<i>Musharakah mutanaqisah</i>	(Diminishing Partnership) (Maybankislamic.com, 2014)	Local	
13.	OCBC Al-Amin Bank Berhad	<i>Ijarah muntahia bi al tamleek</i>	(Ocbc.com,2014)	Foreign	
14.	Public Islamic Bank Berhad	<i>Musharakah mutanaqisah</i>	(Diminishing Partnership) (PublicIslamicBank.com,2014)	Local	

15.	RHB Islamic Bank Berhad	<i>Musharakah mutanaqisah</i>	(Diminishing Local Partnership) (RHBIslamicbank.com, 2014)
16.	Standart Chartered Saadiq Berhad	<i>Musharakah</i> (Sc.com, 2014)	Foreign

The table 1.1 above shows that all of the 16 Islamic banks in Malaysia use different schemes or financial package in home financing. Based on this table, one can observe also that *musharakah mutanaqisah* product got selected for the Islamic bank to offer to the customers.

Islamic financial system today promotes Islamic product as an alternative to conventional products to the customers who can be either Muslim or non-Muslim. The potential Islamic product in framework which is free from *riba* can show a comparison as well as contrast between Islamic and conventional system. The *musharakah mutanaqisah* contract, alternatively, is based on lessening partnership theory. A partnership is based on such a concept to which the bank contributes capital and promises to relinquish its rights by selling its share of the partnership to its partners. The partners, on the other hand, promise to buy the bank's shares in the partnership at one go or gradually, as per the terms agreed upon. In fact, *musharakah mutanaqisah* contract provides two portions; firstly, the customers have go into a partnership under the concept of *syirkah al milk'* (joint ownership) agreement with the bank. Secondly, the bank rents its share (90%) in the possessions of house to the clients under the *Ijarah* concept. So the said product can give an alternative or option to customers to choose this product than only to depend on the *bay' bithaman ajil* (BBA).

The term of *musharakah* is a word of Arabic origin which has been incorporated in Islamic jurisprudence. On the other hand, the classical jurist has used a more general term known as *syirkah* which connotes a wider scope compared to *musharakah*. The term of شركة 'syirkah' is a derivative from the root شرك 'sharaka'. Literally, مشاركة '*musharakah*' means 'sharing' or 'intermingling' or the conjunction of two or more estates, in such a manner that one of them is not distinguishable from the other. Technically, it means the union of two or more persons in one concern. Terminologically, *shirkah* is defined as permission to transact where each of the partners permits the other one to transact with the partnership property while at the same time he/she retains his own right to transact with the same property (Hasan, 2011). *Musharakah* is meant as a contract of capital joint venture partnership to establish a new project or share on the existing project. All parties to the joint venture will contribute to their portion of capital and will subsequently share the profit or loss from the project in accordance with the proportion of the contributed capital. The said concept is applied usually for business partnership, profit made on the basis of *musharakah* or shared on an agreed ratio while losses will be divided based on the equity participation ratio (Hasan, 2011).

Musharakah mutanaqisah is known as a contract of partnership between two parties, where one partner gradually buys the whole parts of the property. Kuwait finance house first offered MM in Malaysia in 2006 although this contract existed since 1995. At present home financing through MM has widely begun in Malaysia. For additional information, researcher can mention further that currently only nine banks implement MM-based financing contract; the banks are RHB Islamic Bank, Kuwait Finance House, OCBC Al Amin, HSBC Amanah, Bank Muamalat Malaysia Berhad, Citibank, Affin Islamic Bank and Standard Chartered Sadiq Islamic Bank. In addition, *musharakah mutanaqisah* contract is internationally accepted, and

this international acceptance gives the opportunity for the bank to attract the foreign customers and to explore the international market share (Muhamad and Abd Rahman, 2013).

Musharakah mutanaqisah also faces some challenges in its implementation. The fluctuation of rental price of a house is a serious problem that *musharakah mutanaqisah* has to face. Normally, the rental price of a house rises and indirectly places the customers into difficulties. This contract also poses the question who will pay the tax. Meera, Abdul Razak and Dzuljastri (2005) urges that the tax should be paid from the profit added to the bank's equity, not from the profit added to the customer's share. The other important disadvantage relates getting promise (*wa`ad*) from the customer to buy the share of the bank gradually until he owns the whole property. Islamic jurists are divided in determining whether fulfilling this promise would be obligatory or recommended. If the promise is compulsory, the bank has the legal right to impose a penalty to the client if the client fails to fulfill his/her promise. On the other hand, if the fulfillment of promise is suggested, the client has the freedom to carry it out or cancel it at any time. The bank should not have any legal right to impose fine on the customer. The International *Fiqh* Academy under OIC makes the decision that a promise made is legally binding, consequently; compensation must be paid to the bank in case the customer fails to fulfill the promise (*wa`ad*) except that if there is a valid reason not fulfilling the promise made (International Fiqh Academy, 1988).

Another problem regarding this contract is the damage of the property. If the property is damaged by the client because of his negligence, should he pay the whole compensation? However, if the damage is due to natural disaster and so on, do both the partners have to

share the loss on the property according to their proportion as the condition of partnership? (Osmani and Abdullah, 2010).

As conclusion, the implementation of *musharakah mutanaqisah* is a new hybrid contract and this implementation have own advantages than other product in Islamic home financing. However, researcher have to explore more about *musyarakah mutanaqisah* because this product can be alternative product for home financing generally.

1.2 Problem Statement

The implementation of *musharakah mutanaqisah* is still new in Malaysia and this *aqad* (contract) has become a new innovation for shariah concept that is used to create the product. (Mohd Solehuddin, Ahmad Azzam, Ahmad Taqiuddin, 2011). There are discussions took place among shariah scholars regarding the concept and process of *musharakah mutanaqisah* and how this concept has become fully shariah compliant than the other products. Besides that, the discussion on legitimacy of *musharakah muatanaqisah* as a mode of financing can be found from several shariah principles with used to issue the *hukm* for *musharakah mutanaqisah* (Hanafi, 2012).

Kuwait Finance House Malaysia Berhad (KFHMB) is a local foreign bank with its branches in Malaysia. So the background of KFHMB is different from any local Malaysia banks, such as RHB Islamic bank. Different background of the bank can affect the culture or operation of style in offering product. This is because foreign banks are affected by their mazhab, and their scholars' background (Shuib, Azzam, Taqiudin, 2011).

Every bank implementing this product also has to face some difficulties and challenges regarding *musharakah mutanaqisah*. According to Boon Ka (2009), mostly the banks offering this product need to focus on the issues related to *musharakah mutanaqisah* financing. The issues in MM, such as agreement between the client and bank, legal issues in ownership of properties, issues regarding promise to buy the property gradually by the client and issuing about penalties in the event of late payment by the customers become prominent.

Nowadays, many customers still don't realize about the existence of *musharakah mutanaqisah* in home financing. Many of them still rely on with the other products, such as *bay' bithaman ajil (BBA)*, *Ijarah* and *Tawarruq* financing. This is because the customers still don't understand about the advantages in *musharakah mutanaqisah* product. According to Osmani (2010), commonly in Malaysia, some of the banks still promote and offer BBA and customers still accept this concept although BBA has greater disadvantages and has received rejection from some of the scholars.

1.3 Research Questions

1. What is the parameter of *musharakah mutanaqisah*?
2. How is the Standard Operating Procedure (SOP) in the implementation of *musharakah mutanaqisah* between RHB Islamic Bank and Kuwait Finance House Malaysia Berhad (KFHMB)?
3. What are the issues and challenges faced by RHB Islamic bank and Kuwait Finance House Malaysia Berhad (KFHMB) in implementing *musharakah mutanaqisah*?

1.4 Research Objectives

The research objectives of this paper are:

1. To identify types of parameter in *musharakah mutanaqisah*.
2. To compare the Standard Operating Procedure (SOP) in the implementation of *musharakah mutanaqisah* for home financing in RHB Islamic and Kuwait Finance House (KFH).
3. To analyze the issues and challenges about the implementation of *musharakah mutanaqisah* in Islamic home financing.

1.5 Significance Of The Study

Conducting this research would be very important and useful for:

1.5.1 Banks

Through this study, the implementation of the *musharakah mutanaqisah* in Islamic banking could help customers' industries to manage the product in home financing based on *shariah* compliance.

1.5.2 Academicians

In terms of academic, this research can help students to understand clearly about *aqad* (contract) used in Islamic home financing, thus; students can indirectly know more about *musharakah mutanaqisah*.

1.5.3 Society

This study also can help the society in general in terms of making decision relating to home financing, and at the same time it will provide information to them about the implementation of the *musharakah mutanaqisah*.

1.6 Scope and Limitations of the Research

Through this research, the researcher focuses on Islamic home financing by using *musharakah mutanaqisah* as a contract (*aqad*) for the research. This research focuses on the implementation of *musharakah mutanaqisah* in RHB Bank Islamic and Kuwait Finance House Malaysia Berhad (KFHMB). The researcher chooses the RHB Islamic Bank as a representative of local bank in Malaysia and Kuwait Finance House as a representative of foreign bank branches in Malaysia.

To collect data and the items of this research, the researcher has used the primary source, such as interview from the bankers, academicians, and shariah executives. The researcher interviews officers from both of the banks; two officers from shariah executive section and officers for home financing are involved in this research. Interviews from experts also are incorporated in the research. The researcher includes interviews from several academicians who are expert in Islamic finance and banking. The experts are from University Utara Malaysia (UUM), Islamic Business School and from Shariah and Economy Department of Universiti Malaya (UM). The researcher also obtains the additional information regarding MM, conducting interview with officer's form other banks, like vice President of Shariah Compliant from Bank Rakyat at Kuala Lumpur. Besides that, others sources are included to

get information; data from library research, such as Al Quran, hadith, journals, book, previous thesis and etc. are encompassed for research purpose.

1.7 Conclusion

Above all, from this chapter, it can be summarized that the implementation of *musharakah mutanaqisah* nowadays has become one of the attractive sources in home financing than other types of sources in terms of Islamic home financing. The selection of RHB Islamic Bank and Kuwait Finance House as a medium for research for *musharakah mutanaqisah* is more suitable than other Islamic banks, regarding offering the product. It is because RHB Islamic Bank has got own skills in producing and implementing this product and RHB Islamic Bank also has own references for this product. On the contrary, KFH also has the style to conduct this product. Thus, this study explains how the implementation materializes for both of the banks in term of their parameters, execution of MM, and issues and challenges regarding this product.

Besides that, the information from academicians in the area of Islamic finance and banking also plays important role in this research because Islamic finance and banking is a popular course taught in most institutions in Malaysia. The opinions of the experts also are importance to improve this product in future because the academicians selected in this research also have direct relationship with banking industries.

CHAPTER 2

LITERATURE REVIEW

2.0 Introduction:

In relation to home financing, currently, a number of products has been offered to the customers, like BBA financing, *musharakah mutanaqisah*, *istisna'*, *murabahah*, *ijarah mausufah fi zimmah*, *ijarah muntahia bi tamlik and tawarruq*. The current 16 Islamic banks with full- fledged local and foreign bank status operate using the mentioned concepts under the guise of various name of home financing product (Shahwan, Mohammad and Rahman, 2013).

Musharakah mutanaqisah or diminishing partnership or co-financing technique was approved for house financing in 1991 during a workshop organized by the Islamic Research and Training Institutes (IRTI), Jeddah and Sudanese Estate Bank, Sudan, and the workshop was held in Khartoum (Mahdi, 1995). However, only in the last couples of years financing mode has started gaining more attention from both practitioners and academicians as a possible Islamic alternative for home financing (Rafe Haneef, 2011). The contract involved in *musharakah mutanaqisah* also is identified as three categories, namely: *musharakah*, *ijarah and al bay'* (Shuib, 2011).

2.1 Background of RHB Islamic Bank Berhad

RHB Islamic Bank is one of the Islamic banks today growing positively in Malaysia. With 18 year experience in this field, RHB Islamic Bank has become one of the premier Islamic banks in Malaysia and is preferred by customers, either Muslim or non-Muslim. RHB Islamic Bank

also is one of the few Malaysian Islamic banks that fully adopt international Shariah standards. RHB Bank is the first commercial bank in Malaysia. It received a full license for the establishment of Islamic banking subsidiary in BNM in July 2004. RHB Islamic bank is the third Islamic bank in Malaysia after Bank Islam Malaysia Berhad (BIMB) and Bank Muamalat Malaysia Berhad (RHB.com, 2005).

As we can see today that RHB Islamic Bank strives to be on the front line compared to other Islamic banking systems. The said bank is able to manage over RM13.1 billion in assets (as of 31 December 2010), and this figure of amount indirectly puts RHB Islamic Bank among the fastest-growing Islamic financial institutions in Malaysia. (RHB.com, 2005) The product and services offered by RHB Islamic for their customer are RHB Islamic credit card, deposit, financing, wealth management, Az Zahra, and Ar Rahn Facility-i (RHB.com, 2005).

2.2 Background of Kuwait Finance House (Malaysia) Berhad

On May 2004, Kuwait Finance House (Malaysia) Berhad KFHMB has received approval from Bank Negara Malaysia (BNM) to become the first foreign bank in Malaysia. One year later, the finance ministry of Malaysia has awarded a license to KFHMB to commence activities in Malaysia. KFHMB also the first Islamic bank licensed distributor by Security Commission (SC) in February 2006 (Rahman, 2006).

Generally, the establishment of Kuwait Finance House (Malaysia) Berhad (KFH Malaysia) is considered as the first foreign Islamic bank that attained a license under the Islamic Banking Act (Malaysia) 1983 on 8 May 2005. KFH Malaysia started its Branch Operations on 8 August 2005. The bank has a wholly-owned subsidiary of KFH; the move to set up an office

in Malaysia was taken by the decision and will of Bank Negara Malaysia (BNM's) to open up the country's Islamic banking industry for qualified foreign players as recommended under BNM'S Financial Sector Master Plan. As a regional headquarter of KFH in the Asia-Pacific region, the main role of KFH is to provide innovative Shariah-based financial solutions to KFH customers. Besides that, KFH also works as the intermediary and facilitator to promote two-way investments and trade between Malaysia, Asia-Pacific and the Middle East. Considering KFH also as wholly-owned subsidiary institution, Kuwait Finance House (Labuan) Berhad is licenced to carry on offshore banking business in the Federal Territory of Labuan (KFH.com, 2012).

KFH offers a complete range of Shariah-based financial products and services under Corporate and Investment, Commercial, and Retail and Consumer Banking as well as Treasury and International Business. In addition, KFH has established Asset Management Sdn Bhd to provide asset and fund management activities, and to encompass private equity, alternative investments and unit trusts. (KFH.com, 2012)

2.3 Background of *musharakah mutanaqisah*

Equity Participation (*musharakah*) can be defined as a form of partnership where two or more people combine either their capital or labor together, in order to share the profit, thus; they are able to enjoy similar right and liabilities (Iqbal, 2009). From the very inception of human society, the methods to meet day-to-day needs have been changing with the changes of social, economic, scientific, cultural and political circumstances, especially in terms of habits, fashions and the standard of living. These methods regulate the commercial activities and vary from place to place and time to time. The Arab society at that time when we see the rise

of Islam had very simple financing methods and forms of business which was peculiar to that society (Iqbal, 2009).

According Al Harran (1993), the advent of the Holy Prophet (s.a.w) observed the practice of *musharakah* which were fundamental for all commercial activities in Arabia. Our Prophet not only approved it, but also himself did business on the basis of *musharakah*.

After Hijrah, the *Muhajirin* and the *Ansar* were announced to lead life like brothers by the Prophet. Then they joined as partners, in the form of *musharakah*, *muzara'ah* and *musaqat*, in their trade and commerce. The nature of the transaction, though in different forms from today, is identical. The different nomenclature in Arabic refers to various activities, such as *muzara'ah* in agriculture, *musaqat* in gardening and *musharakah* in trade. The *musharakah* of capital and labor is called as *mudharabah*. These four concepts were so developed that they became independent institutions and the jurists formed detailed rules about them. There exists a consensus of opinions among the jurists of all schools of thought (including Hanafi, Maliki, Syafie, and Hanbali) that *musharakah* is a valid and lawful contract in Islam. (Al Harran, 1993)

The concept of *musharakah mutanaqisah* is also known as *musharakah muntahia bitamlik* which started in Egypt. For the first time, the implementation of *musharakah mutanaqisah* began when one of the banks in Egypt agreed gradually to get involved into partnership under *musharakah muntahia bitamlik* contract for one tourist Vehicle Company. Operation for the company at that time was used as customer service which included travelling from Cairo to Aswan (Syubair, 2001).

The innovation of *musharakah mutanaqisah* for home financing was firstly approved in 1991 during a workshop organized by the Islamic Research and Training Institute (IRTI), and the Sudanese Estate Bank, and the workshop was held in Khartoum (Haneef, Kunhibava & Smolo, 2011). In Malaysia, particularly, the contract was resolved by Shari'ah Advisory Council (SAC), Bank Negara Malaysia (BNM) on 5th February 2006 (Bank Negara Malaysia (BNM), 2010).

2.4 Conceptual of *musharakah mutanaqisah*

According to Iqbal (2009), the concept of brotherhood means equal treatment to all individuals in society and before the law the concept of brotherhood is not meaningful unless it is not accompanied by economic justice in such a way that everyone gets his/her due for his/her contribution to society or to the social product and that there is no exploitation of one individual by another (Iqbal, 2009).

This warning of our dearest Prophet Muhammad (S.A.W) against injustice and exploitation is designed to protect the rights of all individuals in a society (whether consumers or producers and distributors, and whether employers or employees) and at the same time, it also encompasses many aspects of life, economy and politics. (Yakcob, 1996) The prominently significant aspect here is the relationship between the employer and employee, and Islam places the relationship in a proper setting and in specific norm for the mutual treatment of both so as to establish justice between them. An employee is entitled to get a “just” wage for his contribution to output and it is unlawful for the employer to exploit his employee (Iqbal, 2009).

The term *مشاركة musharakah* is a word of Arabic origin which has limited uses in Islamic jurisprudence. On the other hand, the classical jurist had used a more general term known as *syirkah* which connotes a wider scope compared to *musharakah* (Hasan, 2011).

In Arabic, the more accurate pronunciation of this word is *شركة shirkah*. However, it may also be referred to *شاركة syarikah* or *syarkah*. According to the Arabic term, *شركة syirkah* also can be defined as partnership through contract (*akad*) or without contract (Hasan, 2011). This terminology is used generally to mention partnership property. For example, the terminology can be explained further on the basis of the word of Allah:

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَالَالَةِ أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ
مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ

“And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third”

(Al- Nisa, 4:12)

Based on the above verse, al-Ruyani and al-Juzairi (2003) explains that it can function as evidence to the partnership between the two parties and it can bring something good and benefit. The term “*Kalalah*” suggests beneficiary other than children, grandchildren, and below or father, grandfather and older. The meaning of beneficiary here is meant as brother or sister of the mother (Al quran wa Tafsiruhu, Maktabah Shamilah, 2014).

In other definition, *al syarikah* is construed as a contract of partnership between two or more parties who jointly share capital or entrepreneurship with equal share of profits and losses between them according to the agreement agreed on (Al Bakri, 2012). Several definitions

from four different schools of thought which are given by Hanafi, Maliki, Syafie and Hanbali on *musharakah* are mentioned in the following:

1. According to Hanafi Scholars, “*syarikah*” is a contract between two people or participants who share in the capital and profits (Ibn ‘Abidin, 1966).
2. According to Maliki scholars, both parties provide consent of partnership for the management of common property and both of parties have the right on management. (Al Khitab, 1978).
3. According to Syafie scholars, “*syarikah*” gives rights on something for two or more persons jointly owned (Al Syarbini, 1994).
4. According to Hanbali scholars, “*syarikah*” is jointly together (assemble) to get the right or *tasaruf*. (Power of management) (Al Ramli, 1938).

Originally partnership (*musharakah*) was of two types, namely, non-contractual partnership (*syirkah al milk*) and contractual partnership (*syirkah al uqud*). Non- contractual partnership implies co-ownership and comes into existence when two or more persons happen to get joint ownership of some assets without having entered in to a formal partnership agreement; for example, two persons will be receiving inheritance or gift of land or property which may or may not be divisible (Al Bakri, 2012).

The partners have to share the gift or inherited property or its income, in accordance with their share in it until they decide to divide it. If the property is divisible and the partners still decide to stick together, in this case the *syirkah al milk* is termed as *ikhtiyariyyah* (voluntary). However, if it is indivisible and they are constrained to stay together, in this case the *syirkah al milk* is characterized as *jabariyyah* (involuntary) (Iqbal, 2009).

In terms of contractual partnership, it is mentioned that contractual partnership is considered as a proper partnership because the parties concerned have willingly entered into a contractual agreement for joint investment and sharing the profit and risk as well. The agreement will not to be necessarily formal and written; it could be informal and oral, just as in *mudharabah*, where the profit can be shared in any equitable agreed proportion (Iqbal, 2009). Losses must, however, be shared in proportion to the capital contribution. In fiqh books, *syirkah al uqud* has been divided into four kinds: *al mufawadah* (full authority and obligation); *al inan* (restricted authority and obligation); *al abdan* (labor, skill and management; and *al wujuh* (goodwill, credit worthiness and contracts) (Ayub, 2007).

In the case of *mufawadah*, partners would be adults, equal in their capital contribution; they will have the ability to undertake responsibility and accept their share of profit and losses. They have full authority to act on behalf of others; they are jointly and severally responsible for the liabilities of their partnership business, provided that such liabilities have been incurred in the ordinary course of business (Iqbal, 2009). Thus, each partner can act as an agent (*wakil*) for the partnership business and stand as surety and guarantor (*kafil*) for the other partners. *Inan*, on the other hand, implies that all partners need not be adult or have an equal share in the capital, and they are not equally responsible for the management of the business. Accordingly, their share in profit may be unequal, but this must be clearly specified in the partnership contract. Their share in losses, of course, would be in accordance with their capital contribution. Thus, in *syarikah al inan* the partners act as agents but not as sureties for their colleagues (Iqbal, 2009).

Syarikah al abdan is defined as such a phenomenon where the partners contribute their skills and efforts to the management of the business without contributing the capital. In *syirkah al wujuh*, the partners use their goodwill, their credit worthiness and their contact for promoting their business without contributing the capital. Both of these forms for partnership are built-in such a way, where the partners do not contribute any capital, and would remain confined essentially to small scale businesses only. These are the examples of course models. In practice, however, the partners may contribute not only finance but also labor, management and skills, and credit and goodwill, although they will not contribute necessarily equally (Iqbal, 2009).

Musharakah mutanaqisah is a partnership concept refers to down, decrease and ending with ownership on the property (Shuib, 2011). In terms of language analysis, the meaning of *musharakah* is closely connected with the derived Arabic verb form *syarika*. *Syarika* means association, share or dealing with it. (Al Marbawi, 1990). *Syarikah* is a derivative form, and it means a mixture or a partnership between two or more parties in the form of property or employment (Qal'ahji, 2000).

Mutanaqisah is derived from the Arabic verb *naqasa*. The term of *naqasa* means decrease, smaller or diminish. *Mutanaqisah* also means further reduced reciprocally. Dail (1994). So, from the standpoint of our discussion, the understanding of *musyarakah mutanaqisah* can be referred to as diminishing partnership or narrowed (ending with a sole proprietorship).

Musharakah mutanaqisah also is a *musharakah* contract in form, and it can be determined to transfer of ownership from one party to the other party, and the whole process does not

materialize until to the point when one partner receives the full ownership by the transfer of ownership (the funded) (Dail, 1994).

Musharakah means partnership, and *mutanaqisah* means ‘to diminish’. So *musharakah mutanaqisah* means diminishing partnership. It is a joint partnership contract between the financial institution and its client. The client keeps on purchasing the share of the financial institution until he owns the whole property (Osmani and Abdullah 2010).

According Abdullah (2010), *musharakah mutanaqisah* is the combination of three contracts; and they are partnership, *ijarah* and sale. MM has come into being through the gradual development of Islamic banking products. The concept of partnership and its *Shari`ah* ruling is elaborately discussed in the classical Fiqh books. Bendjilali and Khan (1995) as cited in Abdullah (2010), define the diminishing partnership and perpetual partnership concept in their study. They mention about the need and importance of diminishing partnership. However, their study does not reflect the features of *musharakah mutanaqisah* as a whole.

According to Khan and Bendjilali (1995), propose the significance of using *musharakah mutanaqisah* as it allows financier to terminate his or her ownership slowly in a project. They argue that some of the problems faced by *mudharabah* (profit or loss sharing) and *musharakah* (joint ownership) could be avoided through application of *musharakah mutanaqisah*. It is believed that *musharakah mutanaqisah*, as a mode of Islamic financing, is more efficient, equitable and just at the same time (Bendjilali and Khan). Under the *musayarakah mutanaqisah*, the period needed for the transfer of ownership will be shorter (Bendjilali and Khan, 1995, Meera and Dzuljastri, 2005).

Nor Alida Yahaya (2011) in her study explains the *musharakah mutanaqisah* financing as a whole. In her research, she focuses on the several aspects. The first aspect is about how to

restructure home financing through implementation of *musharakah mutanaqisah*. Besides that, she also describes about the operational aspect of *musharakah mutanaqisah* and the description of the characteristics of *musharakah mutanaqisah* financing.

2.6 Legitimacy from Al Quran, Hadith and Scholars

Musharakah mutanaqisah product is combined with three other contracts, namely *musharakah*, *ijarah* and *al bay'*. In terms of *musharakah* contract, most of the scholars agree that the law (*hukm*) is permissible. The arguments used for this contract are in the following:

قَالَ لَقَدْ ظَلَمَكَ بِسُؤَالِ نَعَجْتِكَ إِلَىٰ نَعَايِهِ وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ
إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَقَلِيلٌ مَا هُمْ وَظَنَّ دَاوُدُ أَنَّمَا فَتَنَّاهُ فَاسْتَغْفَرَ رَبَّهُ وَخَرَّ
رَاكِعًا وَأَنَابَ

“Verily many are the partners (in business) who do wrong to each other except those who believe and work deeds of righteousness and how few of them....”

(Al-Sad, 38: 24)

The second contract is known as *al-ijarah*. In this contract, there are different opinions regarding the law (*hukm*) (Hammad, 2001). There are some opinions of jurists, and their opinions suggest that it is permissible, and the others' opinions mention that it is not valid. Majority of Maliki scholar opine that it is permissible under this contract. They agreed the permissibility of this contract should be general, and it also should have the conditions. However, they only differ about whether the rental price should be payable at the beginning of the contract or not.

According to the Shafi'i (Sabiq, 1971) and Maliki school, (Al-Juzairi, 2003), it should be paid at the beginning of the contract because it is like selling *al-salam*. If it is split without paying the price at first, the contract will be void. It is also necessary to avoid such a situation because it will be like selling one's debt. But AAOIFI Shariah Council gives little space for payment, and the payment needs to be done with maximum of three days, and this concept is in line with the opinion of *bay' al-salam* (AAOIFI, 2007).

According to the Hanbali school (Sabiq, 1971), and the Shariah Council of AAOIFI (AAOIFI, 2007), the price should be paid only at the beginning of the contract if the words (*lafaz*) *al-salam*, or *al-salaf* (the words *lafaz* means that it will be fulfilled in the future) are used during drafting the contract. Thus, if the contract is performed using the words of "rent" or *ijarah*, the price will not be required to be paid at the beginning of the contract (AAOIFI, 2007).

Shariah Advisory Council of Bank Negara Malaysia has decided that the *ijarah* contract is void if the leased asset is not under use and the parties lose benefits if the contracting parties fail to meet the terms and conditions of the contract, or the cancellation of the *ijarah* contract is agreed upon by both contracting parties (Bank Negara Malaysia, 2010).

The third contract is known as *al-bay'*. This contract has been described in the Holy Qur'an, which gives permission of sale. As an example from Surah al-Baqarah can be mentioned here, which reads:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

“Allah has permitted trade and has forbidden interest”

(Al- Baqarah 2:275)

Hence, it is clear from the understanding of the verse that every contract on this financing is permitted by law. But how these three contracts will be working concurrently that needs to be considered. In the light of the verse, it can be said that one can use the *musharakah mutanaqisah* contract (diminishing contract) where under diminishing partnership, the customer and the bank enter into a joint ownership agreement to acquire and own residential properties, and also both of the parties enter into agreement in order to reduce the rate gradually from ownership of one partner (bank) to another friend *musharakah* (*musharik* or customer) and finally the customer will hold full ownership of the property (RHB Islamic Bank Berhad).

The legitimacy of the *musharakah* contract is established based on the Qur'an, the Sunnah of the Prophet Muhammad (SAW) and the consensus of Muslim jurists. Though most of the Islamic jurists agree upon the permissibility of *musharakah*, the majority of them believe that it is permissible and shariah compliant (Hasan, 2011). The following Qur'anic verses generally indicate the validity of *musharakah*.

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ

“And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third”

(Al- Nisa, 4:12)

The verse specifically underlines the rule of Islamic inheritance. However, in general context, Muslim jurists have regarded the text as containing general permissibility of any form of partnership.

قَالَ لَقَدْ ظَلَمَكَ بِسُؤَالِ نَعَجَتِكَ إِلَىٰ نِعَاجِهِ وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ
إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَقَلِيلٌ مَّا هُمْ وَظَنَّ دَاوُودُ أَنَّمَا فَتَنَّاهُ فَاسْتَغْفَرَ رَبَّهُ وَخَرَّ رَاكِعًا
وَأَنَابَ

“Verily many are the partners (in business) who do wrong to each other except those who believe and work deeds of righteousness and how few of them....”

(Al-Sad, 38: 24)

Based on both verses, Surah al-Nisa and al-Sad, one can notice that Allah (SWT) describes the partnership of the property. If a person dies without leaving behind any ascendants or descendants, but he has brothers and sisters more than two in number, they will share a third of the property of the mortal. So, based on that, one can say that the partnership of the property is legal in shariah (Al-Kawamelah, 2008). Shariah scholars generally agree on the validity of a sale contract which is combined with lease contract. Also, there is no clear text in the shariah that prohibits *musharakah*. Considering the public interests and benefits of *musharakah* in the investment, one can say that *musharakah* should be permitted in the shariah (Smolo 2007). Some scholars however, disagree to the validity of *musharakah* contract. To them, it should be declared invalid as it contains some elements of doubts. They claim that it is similar to taking interest as the primary purpose of *musharakah* is to give loan to the clients and to derive extra money from the amount of loan. (Al-Kawamelah, 2008). Several hadiths also narrate the permissibility of *musharakah*. The Narration of Abu Hurairah will be suitable to quote here. Abu Hurairah narrated that:

إن الله يقول أنا ثالث الشريكين ما لم يخن أحدهما صاحبه فإذا خانه خرجت من بينهما

The Prophet (S.A.W) said: Allah says: I am the third (partner) of the two partners as long as they do not betray each other. When one of them betrays the other, I depart from them”

(Sunan Abu Daud: 3383)

This hadith shows that Islam encourages the practice of partnership contract as long as it is not tainted with fraud, dishonesty or oppression.

The prophet (S.A.W) in many occasions approved of the practice of partnership and he himself entered into a partnership with Sa'ib ibn Sharik at Makkah. When he met him in Madinah, he recollected the incident and mentioned it with approval (Securities Commission Malaysia, 2009).

Further, the Prophet (s.a.w) observed that the community at that time had applied this type of transaction and he had never questioned the said practice. His (SAW) being silent indicated that the Prophet (s.a.w) approved the said practice (al Zuhaily, 2007).

Ibn Qudamah in his book, *al- Mughni*, mentions that Muslim jurists are in consensus as the legality of partnership is concerned. (*al-Mughni*, 629H) Furthermore, Imam Ibn al- Mundhir mentions in his book, *al Ijma'*: “And they (Muslim jurists) agree on the validity of partnership where each of the two partners contributes capital in dinar or dirham, and commingles the two capital to form a single property which is inseparable, and they would sell and buy what they see as (beneficial) for the business, and the surplus will be distributed

between them while the deficit will be borne together by them, and when they really carry out (as prescribed) the deal, the partnership is valid (BNM Draft, 2010).

One thing is more important regarding shariah principle, which is for the independent variable, the International *Fiqh* Academy of OIC (2004) in its 15th session makes the resolution that MM is a valid contract in the shari`ah. Similarly, Shariah Advisory Council (SAC) of Central Bank of Malaysia on its 56th meeting held on 6th February 2006 /7th Muharram 1427 issues a fatwa that Islamic financing product structure based on *musharakah mutanaqisah* contract is permissible because *musharakah mutanaqisah* is considered as a recognized contract in Islamic muamalat.

2.7 Parameter of *musharakah mutanaqisah*

Considering the problem of identifying standard and the need to introduce standard which are acceptable and applicable in Islamic finance industry, the central bank of Malaysia (BNM) has introduced some parameter guidelines. Standardization is seen as necessary to circumvent any contradiction and inconsistencies between different fatwa rulings and their application by these institutions with a view to activate the of Shariah supervisory board of Islamic financial institution (Ismail, 2010).

According to Ismail (2010), the reasons why BNM introduces these guidelines are to achieve convergence and harmonization of Islamic financial practices and to promote operational in the institution to bring out more efficiency and to have best practices that would safeguard the interest of stakeholders and in particular participants.

In terms of parameter of *musharakah mutanaqisah*, it is said that the objective of this standard is to explain the basis and general ruling for *syarikat al aqd* (contractual partnership) which is known today as *musharakah*, which includes the ruling for joint partnership, reputation (creditworthiness) partnership, vocation partnership, diminishing partnership and modern corporation. The explanation of these partnerships includes definitions, rulings applicable to each partnership and the shariah limitations that must be taken into account by Islamic financial institutions (AAOIFI, 2008).

2.8 Issues and Challenges

Musharakah mutanaqisah still has a few issues unsolved in spite of its Shariah compliancy. Meera and Abdul Razak (2009) point out some practical issues regarding the implementation of the *musharakah mutanaqisah*; besides still there remains tendency among the bankers to use the interest rate rather than rental rate. Osmani and Abdullah (2005) list some issues regarding implementation of *musharakah mutanaqisah* contracts, such as rental rate, *wa'ad*, damage of property, tax and land ownership. Muhamad and Rahman (2013) also make an explanation about some issues in *musharakah mutanaqisah*. Although most of the *shariah* scholars approve the *musharakah mutanaqisah* as shariah compliant like the issues regarding using of interest rate as rental rate, property maintenance, risk sharing between bank and customer, charge and fee, and ownership of property.

According to Noor Zainan and Ismail (2013), there were some issues which can be raised regarding the problem; what will happen if the client fails to settle the installment payment as determined by the bank? Can the client do a reduction in repayments and rescheduling returns with the installment payment? In addition, are the banks using fully the *musharakah* concept

in the *musharakah mutanaqisah*? In the context of *musharakah*, MM must involve in the sharing of gains and losses; do both of the parties bear the burden together? In case of home insurance, only one party has to bear the payment of insurance, not other party. The concept of *musharakah*, both of the parties have to involve in sharing.

Boon Ka (2009) in his article discussed about the legal issues involved in *musharakah mutanaqisah* financing. He explained about the agreement between the bank and the customer, legal issues in ownership; promise to bequeath the property gradually to the client and issuing penalties in case of late payment by the customers. There are several issues that can be reviewed in this study; they are about the costs incurred to the customers when they make reschedule towards payment of rent by customers because they have difficulties in fulfilling the responsibilities to pay, and the issues about payment of takaful on the assets have to bear by one party while that home is owned by both of the parties.

According to Osmani (2010), another significant issue related to *musyarakah mutanaqisah* is regarding the damage of property because of client negligence, which indicates that he should pay the compensation. Besides this, if the damage is due to natural calamities and so on, both of the partners have to share the loss according to their proportion as specified in the condition of partnership.

2.9 *Musharakah mutanaqisah* as an alternative product in home financing

Keeping the previous researches in this field in mind, Meera and Abdul Razak (2005) mention that they basically agree with the implementation of *musharakah mutanaqisah* because the implementation can give choices to customers than rely on *bay' bithaman ajil*

(BBA). Some researchers give the opinion that *musharakah mutanaqisah* can be evaluated through Islamic microeconomic because the objective of implementations of is more beneficial to all customers in any stages and it offers less risks for clients who have low or middle income (Seibel 2005, Obaidullah and Khan 2008). In case any risky situation takes place, such as something bad situation like inflation, according Hanira (2012) the *bay' bithaman ajil* (BBA), it can be mentioned that financing is unfavorably affected and *musharakah mutanaqisah* financing is able to work as protectors for the financial institution from the bad possessions of inflation.

Dusuki and Abo zaid (2007) argue that this product will give and work as to facilitate to the customers and development in country takes place in terms of social justice, economic growth; stability can be seen between both of the parties and efficiency regarding this practice. We can understand from that all the elements follow shariah principles. The features of *musharakah mutanaqisah* home financing compares to the existing debt-based home financing, namely conventional interest rate home financing and BBA fixed rate home financing. The latter modes are criticized by scholars as its operations do not promote justice and fairness, thus; it does not conform to the purpose of the *Shariah (maqasid al-Shariah)* (Al-Ghazali, 1937). Furthermore, Anwar (2003) asserts that the current practice of BBA home financing is *haram*, thus; it cannot be classified as an Islamic banking product. Conversely, he views that the *musharakah mutanaqisah* concept possesses “Islamic identity”, reflecting the philosophies, values and precepts of Islamic society, such as the promotion of the well-being of individual and society, so the *musharakah mutanaqisah* should be considered as an alternative to other Islamic concept. In MM, the most important aspect regarding this practice is permissibility and shariah compliant. According to Chapra (1992), the implementation of *musharakah mutanaqisah* moves in line with shariah compliant and

allows all people to get home ownership. Indirectly, it also promotes welfare in society. All the scholars agree that the execution of MM is the best practice and more shariah compliant than other product because both of the parties have the ownership for Islamic home financing and also they adhere to the principle of risk sharing. (Usmani, 2002).

Additionally, Bendjilali and Khan (1995) opine that *musharakah mutanaqisah* could lead to specialization, productivity and mitigation of poverty through rearrangement mechanism. Besides that, *musharakah mutanaqisah* is also offered Rosly (2005) as a solution to the market unpredictability and uncertainty. Nor (2008) points out the differences among the operational construction of the both contracts, their acceptance in the Shari`ah, the related problems in implementation of this product, risks involved in the agreements and the flexibility in terms of using the contract. She makes the conclusion that *musharakah mutanaqisah* should be a better alternative or best choice by customers to BBA since it is more just and fair to the customers and also promotes welfare.

2.10 Conclusion

The description mentioned in literature review is very important for research because it will explain clearly about the topic presented. References from the good sources can provide an effective understanding for the researchers or reviewers. The input via literature review aims to show the relationship between previous researchers and topic already discussed.

Based on the conclusion of chapter two, it can be said that the researcher describes in details about the implementation of *musharakah mutanaqisah* in Islamic Home Financing from the history of development in Islamic banking institutions, how the implementation of *musharakah* took place from the time of Prophet Muhammad S.A.W, the conceptual definitions of *musharakah mutanaqisah*, how it is formed, some explanations regarding issues and challenges faced by the banks to implement this product, the evidence from Al Quran and Sunnah, and the researcher also describes the comparison between this product than other products in Islamic home financing.

3.0 CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter introduces the methods, procedures and approaches employed by researcher. The main aim in chapter is to explain and provide a detailed idea about how the research is conducted in terms of research design, operational definition, sampling selected, data collection method and procedures, and data analysis technique. Indirectly it will help the researchers and reviewers to understand about the implementation of research from beginning until the end of the research.

Qualitative data signify data in the form of words. Examples of qualitative data can be interview notes, transcript of focus group, answers of open ended questions, transcriptions of video recordings, account of experience with a product of internet, news article and the like. Qualitative data can come from wide variety of primary sources and/or secondary sources, such as individual, focus group, company records, government publications, and the internet. The analysis of qualitative data is aimed at making valid references from the often overwhelming amount of collected data (Sekaran and Bougie, 2013).

To understand the methodology and analysis techniques applied by researcher, table 3.1 below shows the simplified research methodology to analyze chapter four.

Research question	Sources of Data	Analysis
1) What is the parameter of Document <i>musharakah mutanaqisah</i> ?	-Bank Negara -HIOAFI Majma' Fiqh	Content Analysis
2) How is the Standard Operating Procedure (SOP) in the Interview and Inductive Approach implementation of <i>musharakah mutanaqisah</i> between RHB Islamic Bank and KFHMB?		
3) What are the issues and challenges faced by RHB Islamic bank and Interview (KFHMB) in implementing <i>musharakah mutanaqisah</i> ?		Inductive Approach

Table 3.1 Analysis Technique

1.8 Research Design

This research adopts qualitative method. To ensure that this research will be successful, the researcher uses both of primary and secondary data. The conducting of interview method for data collection is very important for this study because it remains as primary data on the implementation of *musharakah mutanaqisah* in Kuwait Finance House Malaysia Berhad (KFHMB) and RHB Islamic Bank. The researcher conducts and uses qualitative approach by

interviewing two officers from both of the banks. Few discussions with the previous researchers on *musharakah mutanaqisah* are conducted as well.

Besides that, the analysis on the secondary data is done through past literatures on *musharakah mutanaqisah* contract and by going through official websites of both banks, previous articles, Al Quran and Hadith. The analysis is done by comparing and evaluating the implementation of *musharakah mutanaqisah* by these two banks where the Kuwait Finance House Malaysia Berhad (KFHMB) represents a foreign bank and RHB Islamic Bank represents a local bank in Malaysia.

1.9 Data Collection Method And Procedure

Data can be collected in a variety of ways, in different setting –field or lab and from different sources. Data collection methods include interviews (face to face interviews, telephone interviews, computer–assisted interviews, and interviews through electronic media), observation of individuals and events, with or without videotaping or audio recording, questionnaires, which can be personally administered, sent through the mail, or electronically administered, and variety of motivational techniques, such as projective tests. Interviewing, observing people and other phenomena, and administering questionnaires are the three main data collection method in survey research.

For data collection method in this research, conducting of library research and field research are used in the study .To explain both of these methods, examples are used from library research, such as reference from previous journals, thesis, articles, books, Al Quran, and hadith. Thus, researcher seeks out all of these sources at University Utara Malaysia library,

Alor Setar Public library, Insaniah College University Library, University Malaya Library and University Kebangsaan Malaysia Library. Besides this, the information regarding *musharakah mutanaqisah*, contract in home financing, *shariah* Fatwa also are obtained from references available from Institute of Islamic Banking in Malaysia (IBFIM), International Centre of Education in Islamic Finance (INCEIF) and Shariah Research Academy for Islamic Finance (ISRA).

In field research, one method of collecting data is to interview respondents to obtain information on the issues of interest. Interviewing is a useful data collection method, especially during the exploratory stages of research. Where a large number of interviews are conducted with a number of different interviewees, it is important to train the interviewers with care in order to minimize interviewer bias which is manifested in such ways as voice inflections, difference in wording, and interpretation. Interviews may be unstructured or structure, and conducted face to face, by telephone, or online (Sekaran and Bougie, 2013).

To obtain the information on this research, the researcher uses in depth interview. In-depth interview can be defined as conversation between researcher and informant's perception of self, life and experience, and the words are expressed in her or his own words. In depth interview also is a one-to-one interview between a professional researcher and a research respondent, and the interview is conducted about some relevant or social topics. (William G. Zikmund, 2013). The researcher conducts interview sessions with the bankers from RHB Islamic Bank and KFHMB and with the experts in this field, and they are Ustaz Azmir Azri bin Ahmad, Shariah Officer KFHMB, Ustaz Nik Muhammad Adib, Shariah Officer of KFHMB, Associate Prof. Dr. Asmadi bin Mohamed Naim, Dean, Islamic Business School (IBS), University Utara Malaysia (UUM) and Shariah Advisory Council of Bank Negara

Malaysia (SAC), Dr Mohammad Taquiuddin bin Mohamad from University Malaya, and Ustaz Zamerey bin Abdul Razak, Vice President of Shariah Compliant from Bank Rakyat. The research is conducted in order to obtain information regarding implementation on *musharakah mutanaqisah* from academicians and both of the banks. The protocol interview is very important as it can make sure that the goal or objective can be achieved. The interview session is conducted depending on the need to get additional information and explanation about the problem or issues involved in the research.

3.3.1 Interview Administration

Before the interview process begins, the researcher might first need to build an interviewing relationship with the potential interviewees by making preliminary contact through telephone, walk-in, email, and stating a brief introduction concerning the purpose of interview, clarifying the name of the person in charge and arranging the date of the meeting. When the approval from the cooperative is obtained, a cover letter from the department faculty needs to be requested as the official proof that the student will conduct the study at the said institution. After going through of these procedures, the researcher can set up an appointment date and follow up the necessary steps until the interview day. However, the sets of questions and protocol interview should be prepared before interview is conducted. The interview questions might be close-ended questions or semi-structure to help the researcher recalls the main subject to ask and gather the sources of information as much as possible.

3.3.2 Cover Letter

A cover letter is important in order to influence the informants' willingness to participate. Following Buckingham and Saunders (2004) suggestion, it can be said that the information

given in the cover letter must be short and informative and in simple language so as to be easily understood by the informant. Anonymity and confidentiality are very important too.

3.3.3 Developing Interview Protocol

Developing an interview protocol is about the rules that guide the administration and implementation of the interviews. Put simply, these are the instructions that are followed for each of the interviews to ensure consistency between interviews, thus; these instructions help get accurate and reliable information of the findings. Interview questions also are validated by Dr. Muhammad Noor Habibi bin Haji Long and Dr. Sollehuiddin bin Shuib who is a senior lecturer of Islamic Business School in UUM and Ustaz Azmir Azri bin Hj Ahmad, Shariah Coordination for Direct Investment & Subsidiaries SD, Kuwait Finance House (Malaysia) Berhad (KFHMB). In this research, protocol interview also is used as a guide to the administration and implementation of the interview and the said interview is used to ensure the consistency between interviews, thus; it increases the reliability of the findings (Boyce, C. and Neale, P., 2006).

The interviews for this research have been designed to probe the following key issues, and the set questions are given below:

3.3.4 Questions for Bankers:

1. What types of housing loan are offered by the bank?
2. Is the loan of *musharakah mutanaqisah* considered as the main product implemented here?

3. What are types of assets are funded by *musharakah mutanaqisah*?
4. What are the fatwa guidelines or “views/outlook” applied on MM activity in your bank?
5. What is the significance of the parameter in MM?
6. Does the bank fully comply with all the guidelines and parameters of MM?
7. What would you explain about the operation procedure of *musharakah mutanaqisah*?
8. How long are the “loan/financing” and “housing loan margin” in MM at your bank?
9. Do housing loan products offered by *musharakah mutanaqisah* in your bank offer an early settlement (early settlement)?
10. What action will be taken by the customer in case of failure to complete the home loan through MM loan?
11. What action will be taken by the developers in case of failure to complete the home loan through MM loan?
12. Are, under MM product, the customers eligible for refinancing?
13. Nominee for *musharakah mutanaqisah*, should the name be registered on the customer name or the bank?
14. Along the payment period, shall the custody of impairment asset be borne by the bank, customers or both parties?
15. Who should pay for home Takaful in *musharakah mutanaqisah* loan?
16. Can you explain about the current issues in MM loan from customers’ point of view and from the perspective of banks?
17. What is the feedback level of this product in your bank from the first launch until now?

3.3.5 Question for Experts:

1. What are your opinions on the *musharakah mutanaqisah* products compared with the other products offered in the housing loan?
2. What is the importance of the implementation of *musharakah mutanaqisah* contract of Islamic housing loan today?
3. In your opinion, is there any difference or gap between *musharakah mutanaqisah* product and other products such as BBA, *ijarah* and others?
4. Is *Musharakah Mutanaqisah* more *Shariah* compliant than other products?
5. What are the current Islamic scholars' views/*Shariah* Advisory Council/securities commission on products *musharakah mutanaqisah*?
6. In your opinion, are the parameters of the existing banks inadequate to implement *musharakah mutanaqisah* or important for a bank?
7. There is a perception by some people, and they say that the product *musharakah mutanaqisah* is unprofitable for banks. In some cases, the banks have to bear loss while in other products, the bank will not bear certain costs, which are different from the products *musharakah mutanaqisah*. What are the views of the master on this issue?
8. From your perception, whether *musharakah mutanaqisah* benefits both sides of the bank and the customer?
9. Should the concept of implementation *musharakah mutanaqisah* be implemented in all Islamic banking in Malaysia? Why?
10. Why is BBA most widely practiced in Malaysia compared *musharakah mutanaqisah*?

11. In your opinion, are the issues in *musharakah mutanaqisah*, such as rental rates, *wa'ad*, and risk sharing considered among the main reasons for the implementation of *musharakah mutanaqisah* and why is it still less practiced in Malaysia?

There are few steps in the interview process:

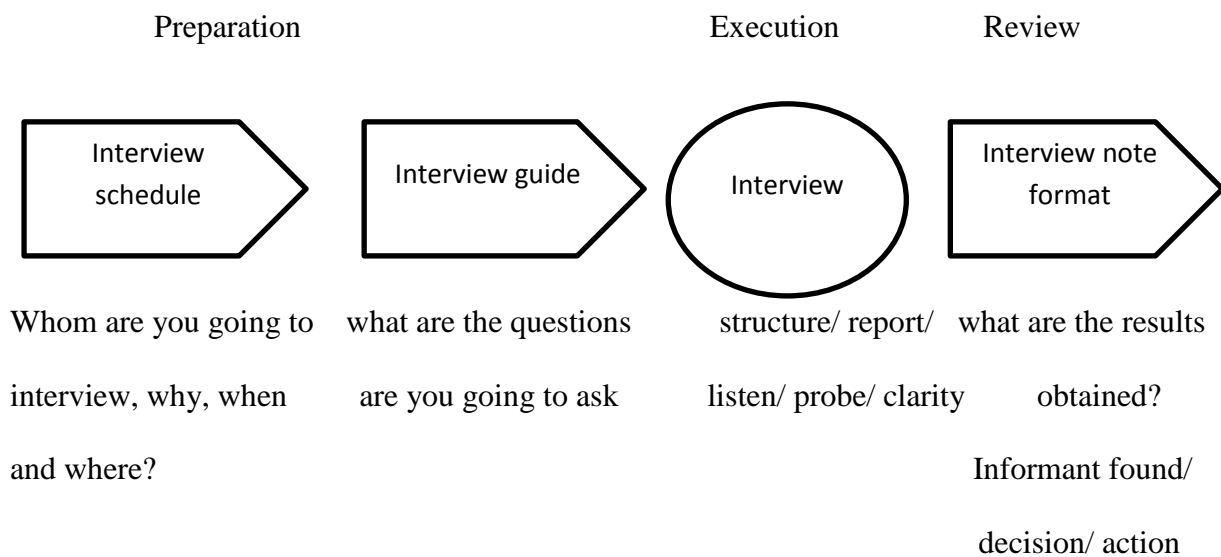


Figure 3.1: Interview process

3.4 Probing

According to Camino, Zeldin, and Payne-Jackson (1995), probing is asking follow up questions when the researcher does not fully understand the feedback or response from the interviewers or when he finds the answers as vague or ambiguous or when he wants to obtain more specific question and information from the respondents. For example:

1. Can you tell me more about.....
2. Actually I do not understand about the situation....
3. You mentioned..... Can you tell me more about that?

The researcher also makes explanation regarding probing questions which begins with “what” or “how” because the researcher wants to get more detail. Questions that begin with “Do you..” “Are you..” invite personal reflection. For question “Why” can be problematic while we obtain the information. They may put the respondents on the defensive or result in little useful information and require additional probing with the objective to get clear information. Some examples, such as “why did you do that?” “Because I wanted to...” are included in the interview. If possible, the researcher has to try replace “why” to “what” with other question words.

3.5 Sampling

Regarding sampling from the research, one can say that the approach used in qualitative research is non-probability sample through convenience, snowball, quote and theoretical and judgment sampling.

To achieve the objective of this research, the researcher has used judgment sampling where this sampling is focused on the subject who in the best position to provide information. Judgment sampling also involves the choice of subjects who are most advantageously placed or in the best position to provide the information required. For instance, if a researcher wants to find out what it takes for woman managers to make it to the top, the only people who can give first-hand information are the women who have risen to the positions of president, vice presidents, and important top level executives in work organizations. The study of Sekaran and Bougie (2010) shows that the researchers have obtained information from 16 Islamic banks in Malaysia regarding product which offers home financing from their banks. Further, the researcher only chooses two banks out of the 16 Islamic banks in Malaysia as to fulfil the

research objective for this research. Both of the banks are Kuwait Finance House Malaysia Berhad (KFHMB) and RHB Islamic bank.

There are few factors or reasons why the researcher has chosen these two banks. It is because of their background implementation and the practice is different. Besides that, the reason for selecting Kuwait Finance House (KFH) is that the bank KFH also represents foreign bank and RHB Islamic Bank represents local bank in Malaysia. The reason for the selection of KFH also is that the researcher is interested to know more whether the implementation of *musharakah mutanaqisah* is according to their international standard in their operation as Islamic full-fledged Islamic bank.

The reason for the selection of RHB Islamic banks is that the banks also offer *musharakah mutanaqisah*, and RHB Islamic is the first local bank in Malaysia, and RHB bank implements *musharakah mutanaqisah* in their home financing, so as Islamic window in Malaysia, the researcher wants to know and find out the re-implementation of *musharakah mutanaqisah* in their operations. Therefore, to obtain all information and data needed for this research, the researcher gets those from executive shariah officers in RHB Islamic Bank, and other information from officers in home financing from both of the banks.

3.6 Data Analysis Technique

The analysis of qualitative data is aimed at making valid inference from the often overwhelming amount of collected data. Miles and Huberman (1994) describe the major phases of data analysis, and they are in the following:

1. Data reduction,

2. Data display
3. Conclusion drawing and verification.

3.6.1 Step 1: Data Reduction

Data reduction refers to the process of selecting, focusing, simplifying, abstracting, and transforming the data that appear in written up field up notes and transcriptions. (Miles and Huberman, 1994)

According to Sekaran and Bougie, (2013), data reduction can be divided into two stages:

- i. Coding
- ii. Categorization

3.6.2 Coding:

Coding is the process of identifying categories and meaning in text, creating and applying to a name or to each code, and also it is a process of systematically marking similar strings of text with the same code name. According to Zikmund, Babin, Carr and Griffin, (2013), coding is the process of assigning a numerical score or other characters, symbols to previously edited data. Coding also is the analytic process through which the qualitative data that the researcher has gathered reduced, rearranged, and integrated to form a theory. The purpose of coding is to help one to draw meaningful conclusion about the data. (Sekaran and Bougie, 2010)

In terms of coding unit, it is said that it begins with selecting coding unit. Coding unit is a form of word, sentences, paragraphs, themes, items, images, graphics, phrases, keywords and so forth. The function of coding is to help researcher to identify patterns in data and then

group them into different categories. Coding is an interactive process whereby the required data can be repeated and read and categorized into patterns or connected, and organized data can be grouped into categories. Lastly, for the end result of coding, therefore, is to enable the researcher to link data with topics, themes, concepts, ideas and other higher order abstractions, so the data can be manipulated, organized and eventually categorized.

3.6.3 Categorization:

Categorization can be defined as process of organizing, arranging, and classifying coding unit. It also can give meaning to the data in terms of identify theme and pattern, such as ideas, concepts, behaviours, interaction, incident, terminology or phrases used. The function of categorization also can be seen as bring meaning to the text. Codes and categorized can be developed both inductively and deductively.

Code Remark	Categories
<ol style="list-style-type: none"> 1. BNM, Majma' Fiqh, and AAIOFI 2. Importance of guideline 3. View of scholars 4. References. 	Parameter
<ol style="list-style-type: none"> 1. <i>Musharakah mutanaqisah</i> 2. Property, vehicle, plant 3. Acceptance 4. Benefit or profit 5. Gap with other product 6. Standard operating procedure (SOP) 	Implementation

7. Facilities	
8. Document	
1. Issues and problems	Issue and challenges
2. Obligation of payment	

Table 3.2 Code and categorized

3.6.4 Pre-set Categories

Here are two ways to categorize narrative data from qualitative data, and they are known as Preset Categories and Emergent Categories. The Pre-set Categories or the other name predetermined categories are gained before interview process are conducted. The categorized concept might be gained from any sources information which can be used as the theme categories or key words to measure the conceptual study. For example, the researcher might start with concepts that he really wants to know about. The themes provide direction for what he looks for in the data. The researcher will identify the data, and search the data from text that matches the themes (Renner, 2003).

3.5.5 Emergent Categories

The emergent approaches are categories concept when the researcher reads through the text and finds the themes or issues that recur in the data. They may be ideas or concepts that he has not thought about. Categories are gained after process of an interview. For example, in obtaining the answers of research questions, the pre-set and emergent categories might help the researcher finding the answers. The emergent categories then help the researcher to sort

out the data and organize these data into their categories to identify patterns and bring meaning to the responses (Thomas, 2006).

Data analysis through Content, inductive, and comparative.

3.6.6 Content analysis: Content analysis is an observational research method that is used to systematically evaluate the symbolic contents of all forms of recorded communications (Kolbc & Burneet, 1991). Content analysis can be used to analyze newspaper, websites, advertisements, recordings of interviews, and the like. The method of content analysis enables the researcher to analyze (large amount of) textual information and systematically identify its properties, such as the presence of certain words, concept, characters, themes, or sentences. To conduct the content analysis on a text, the text is coded into different categories and then is analyzed using conceptual analysis or relational analysis (Sekaran and Bougie, 2013).

Examples of content analysis:

Banks			Bank Negara	AAIOFI	Majma' Fiqh
RHB	Islamic	Bank	Yes	Yes	Yes
Berhad					
Kuwait	Finance		Yes	Yes	Yes
House	(Malaysia)				
Berhad					

Table 3.4: Content analysis

3.6.7 Inductive

Inductive reasoning works from the other way, moving from specific observation to broader generalization and theories.

The researcher collects the information which is catered to clarify and elaborate on topics being studied. At the same time the researcher attempts to find out a relationship between the facts or evidence accumulated to make the interpretation available. For example, a description of the interview results on a *musharakah mutanaqisah* implementation can be relevant here. The researcher has concluded to establish a definition and intended to explain *musharakah mutanaqisah*.

3.6.8 Comparative

This method emerges from data what is collected by the researcher. Comparisons are made based on the same categories and the researcher gets precise conclusions from both of the subjects. This method is used to analyze data involving two principle data that differ in the same instrument. For example, the difference between implementation of *musharakah mutanaqisah* in Kuwait Finance House (Malaysia) (KFHMB) and RHB Islamic Bank Berhad can be quoted here.

3.6.9 Step 2: Data display

Data display is a process to help qualitative research to organize information and the viewing of it enables them to identify linkage and develop explanations that are related to their findings of existing theory. Data displays link various codes and help to build themes.

Examples of data display, such as charts, matrices, diagrams, graphs, table, frequently, mention phrases and drawings are given below.

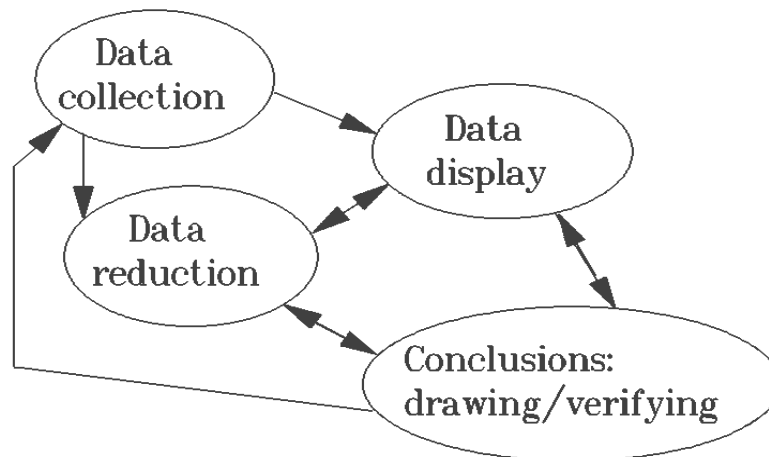


Figure 3.2: M&H's Components of Data Analysis

3.5.10 Step 3: Drawing conclusions and verification

In terms of drawing conclusion, it can be said that it involves deciding what the identified themes and pattern mean, and how they help to answer the research questions. The verification of it involves checking and re-checking of the data to ensure that the initial conclusions are realistic, supportable and valid.

3.7 Methodology structure:

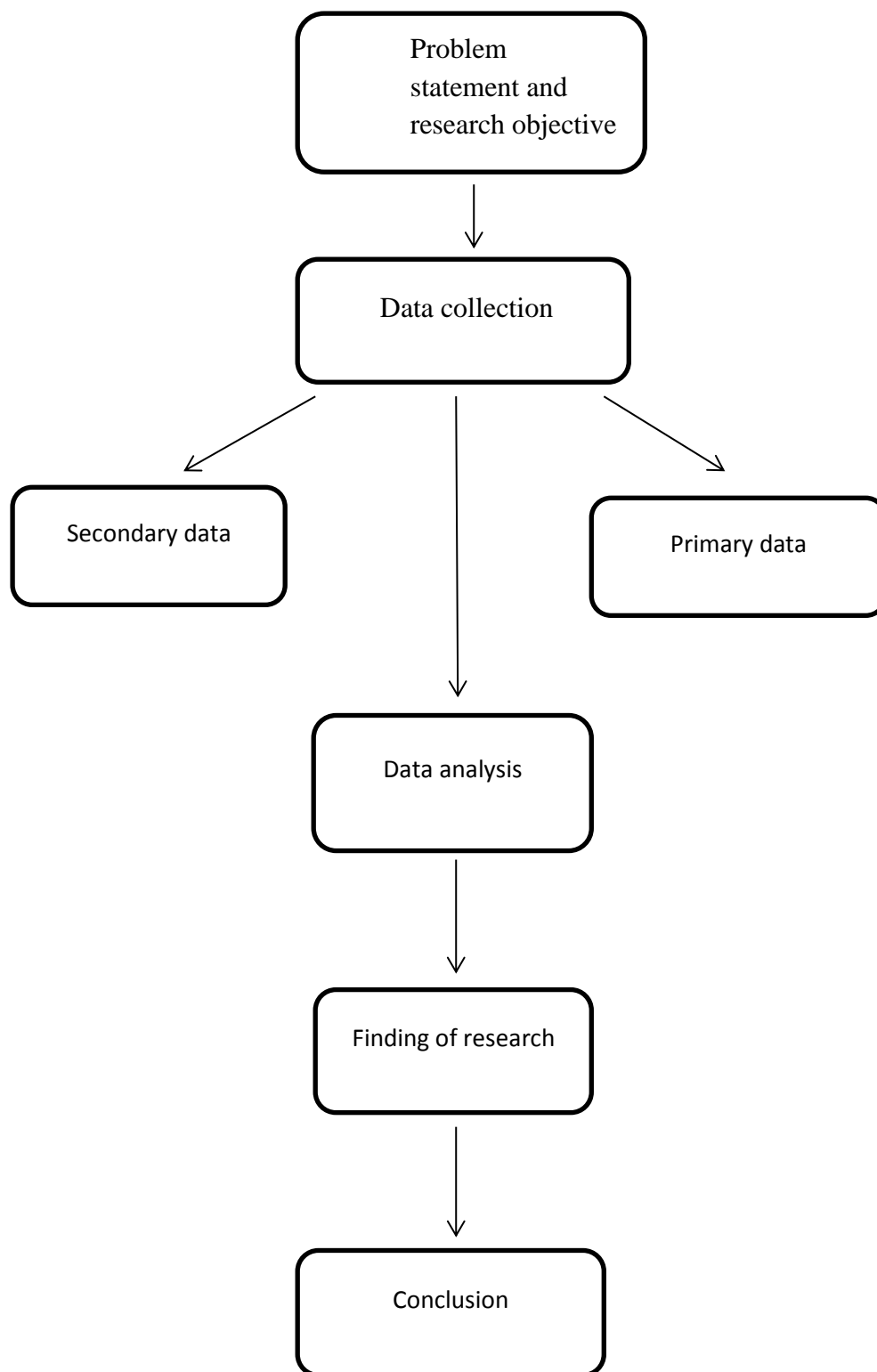


Figure 3.7: Methodology Structure

3.8 CONCLUSION

In this chapter of Research Methodology, one can say that it has provided the appropriate methods and techniques for the researcher to conduct this research and used the said methods and techniques to get the analysis of the data. The flow processes of gathering the data must have been done accordingly and systematically, and at the end the analysis, the gained data are reliable and valid. The researcher also has made sure that every process is needed to execute smoothly and all the processes have provided the answers to the research questions and research objectives.

4.0 CHAPTER FOUR

FINDING AND ANALYSIS

4.1 Introduction

Home is needed for every person in the world. Thereby, Islamic finance provides commercial contract that allows people to enjoy these requirements, for examples; like contract for sale (*al-bay'*), contract of lease (*ijarah*) and contract of partnership (*musharakah*). With the changes of development and technology today, people have produced financial innovative product, such as *bay' bithaman ajil* (BBA) and *musharakah mutanaqisah*. The objective of Shariah (*maqasid shariah*) is to eliminate interest (*riba*) and legitimize the business transaction. Besides that, it also ensures effective methods to all parties in the business of contract.

Musharakah mutanaqisah contract was introduced in home financing at Malaysia. It is a modern contract that combines the three contracts, such as partnership (*musharakah*), sale and purchase (*al bay'*) and rental (*ijarah*). This contract also is an alternative to *musharakah mutanaqisah*, such as *bay' bithaman ajil* (BBA), *ijarah*, and *tawarruq* in islamic home financing.

The development of product based on Islamic transaction (Muamalat) also is growing today. The products offered by Islamic banking today are *mudharabah* (profit sharing), *musharakah* (partnership), *bay' bithaman ajil* (BBA), *ijarah muntahia bi al tamleek*, *ijarah mausufah fi zimmah* and the last one is *musharakah mutanaqisah*. This development is seen as in line with the norm of Muslims in Malaysia today, and the Muslims want the *shariah* compliant

products. For example, from the beginning of Islamic banking institutions, Islamic home financing in Malaysia mostly are using BBA. But the implementation of these principles has seen lot problems and this situation has happened not because of this product, but this problem has appeared due to the human nature.

Therefore, the researcher considers that the research in the implementation of *musharakah mutanaqisah* in Islamic home financing is important because it can provide exposure to society about new principles in Islamic transaction (*Muamalat*) and give the information about the facilities that can be provided by *musharakah mutanaqisah* product. This principle also can improve the responsibility for both of the parties whether banks or customers. It is because through this method, bank and customer together own that property and banks provide the customers with investing the portion into the house. Indirectly, this transaction gives harmony for both of the parties and provides new image to conventional product in terms of home financing.

4.2 An Overview of RHB Islamic Bank:

RHB Islamic Bank is one of the Islamic banking systems in Malaysia, and it is growing positively in Malaysia. With 18 year experience in this field, RHB Islamic Bank has Islamic banking, which has become preferred choice by customers either Muslims or non-Muslim. RHB Islamic Bank also is one of the few Malaysian Islamic banks that fully adopt international Shariah standards. RHB Bank is the first commercial bank in Malaysia and it received a full licence for the establishment of Islamic banking subsidiary BNM in July 2004.

RHB Islamic bank is the third Islamic bank in Malaysia after Bank Islam Malaysia Berhad (BIMB) and Bank Muamalat Malaysia Berhad (RHB.com, 2005).

As we can see today that RHB Islamic Bank strives to be on the front line compared to other Islamic banking since the bank is able to manage over RM13.1 billion in assets (as of 31 December 2010), and indirectly puts RHB Islamic bank among the fastest-growing Islamic financial institutions in Malaysia. (RHB.com, 2005). The product and services offered by RHB Islamic for their customer are RHB Islamic credit card, deposit, financing, wealth management, Az Zahra, and Ar Rahnu Facility-i (RHB.com, 2005). Until today, RHB Islamic still offer the product of *musyarakah mutanaqisah* for home financing.

4.3 An Overview of Kuwait Finance House (Malaysia) Berhad (KFHMB):

Generally, the establishment of Kuwait Finance House (Malaysia) Berhad (KFH Malaysia) is considered as the first foreign Islamic bank that was given a license under the Islamic Banking Act (Malaysia) 1983 on 8 May 2005. KFH Malaysia started its Branch Operations on 8 August 2005. It has fully-owned subsidiary of KFH; the move to set up an office in Malaysia took place by the Bank Negara Malaysia's (BNM's) decision to open up country's Islamic banking industry to qualified foreign players as recommended under its Financial Sector Master Plan. As regional headquarter of KFH in the Asia-Pacific region, the main role of KFH is to provide innovative *Shariah*-based financial solutions to KFH customers. Besides that, KFH also works as intermediary and facilitator to promote two-way investments and trade between Malaysia, Asia-Pacific and the Middle East. KFH also has wholly-owned subsidiary, and Kuwait Finance House (Labuan) Berhad is licensed to carry out on offshore banking business in the Federal Territory of Labuan (KFH.com, 2012).

KFH offers a complete range of Shariah-based financial products and services under Corporate and Investment, Commercial, and Retail and Consumer Banking as well as Treasury and International Business. In addition to that, KFH has established KFH Asset Management Sdn Bhd to provide asset and fund management activities, encompassing private equity, alternative investments and unit trusts (KFH.com, 2012). Currently, in home financing, KFHMB also offered *ijarah muntahia bi al tamleek* and *ijarah mausufah fi zimmah*.

4.4 The pillars of *musharakah mutanaqisah*

To make sure the implementation in Islamic home financing based on *musharakah mutanaqisah* product, the parties who are involved in this contract need to make sure that all the pillars exist in this contract. This pillars provided by the scholars with the objective to ensure the *musharakah mutanaqisah* product always comply with *Shariah*.

4.4.1 *Sharikah*

1. Person who is involved in contract
2. Capital
3. *Sighah*
4. Project or Job

4.4.2 *Al Ijarah*

1. Both of parties are involved in contract

2. Benefit of property
3. Rental payment
4. *Sighah, Ijab and qabul*

4.4.3 *Al Bay'*

1. Both of parties are involved in contract, seller and buyer
2. Item of contract
3. *Sighah Ijab and Qabul*

4.5 Parameter Of *musharakah mutanaqisah*

4.5.1 Parameter of *musharakah mutanaqisah* from AAI OFI

Members of the *shariah* committee of AAI OFI have issued *shariah* standard no 12, description of *sharikah (Musharakah)* and modern operation at the 8th meeting held at Madinah on 28 Safar to 4th Rabiulawal 1423 Hijrah equivalent to 11 to 16 May 2002. More precisely this *shariah* parameter was released or published on 4th Rabiulawal 1423 Hijrah equivalent to 16 May 2002. Examples of *shariah* standards are in the following:

- i. *Musharakah mutanaqisah* is a form of partnership where one of the partner's promises to buy the equity share of the other partner gradually until the ownership of equity is transferred entirely. Transaction begins with the formation of a partnership, and after that sale and purchase of equity will occur between the two parties. However, the contract of sale and purchase should not be included in the partnership contract. In other words, a partner who wants and promises to buy is

allowed to purchase only. This agreement shall be separated from the partnership contract. This is not allowed to occur, and that is, the condition of one contract will not be applicable for another contract.

- ii. The general rule for a partnership must be reduced, especially with rules regarding *sharikat al-'Inan*. Therefore, in *musharakah mutanaqisah* contract, it's not allowed to give either party the right to draw its share of the capital.
- iii. One party is not allowed to specify that a partner must bear the entire cost of the insurance or maintenance, maintaining with the reason that at the end of partnership, one party will get full ownership.
- iv. Each partner must contribute to the part of the capital. Contributions may be in the form of cash or assets that can be seen and can be translated into monetary value, for example; it can be land for building, or equipment for the operation of partnership. Losses, if any, shall be borne from time to time by the parties in accordance with the sharing ratio at the time.
- v. The ratio of profits or income from the partnership for each partner must be clearly defined. However, the partners are allowed to agree on the profit ratio although the ratio of share ownership is not the same. The partners are also allowed to keep either the profit ratio that has been determined although the ratio of equity ownership changes or agrees to transfer the ownership ratio of equity due to changes in the ratio of equity ownership. In the meantime, they must ensure that the principle of the provision for losses is in proportion to the equity of the partnership is maintained.

- vi. One party (partnership) is not allowed to receive a lump sum of profit.
- vii. There remains permission for one party to make agreement with another party to acquire the equity gradually according to the market value or agreed price of ownership. However, the contract does not allow to fix the equity earned by the original price or down payment because guarantees of the equity portion of the partners (institutions) by other partners is prohibited by *syara'* (law).
- viii. A partner can manage how to obtain equity shares of the institution with the objective to meet the needs of the both parties. This includes such agreement by which the client is allowed to allocate part of the profits to own percentage in shareholders. So the partner in this partnership can buy some of shares in certain period until he become shareowners and finally gets the full ownership.
- ix. There remains permission for any partner to rent or lease the other partner's part with certain amount and period. Every partner needs to be responsible for maintaining his part based on the estimated time.

4.5.2 Majma' Al Fiqh Resolution:

The Council of Majma' Al Fiqh in its 15th meeting in Musqat, Oman on 6-11 March 2004 equals 14-19 *Muharam* 1425H. The conference has discussed and decided on the resolutions pertaining to the *musharakah mutanaqisah*. This resolution is significant for the reference on the implementation of the entirely Islamic banking sector. Some of the resolutions are in the following:

- i. *Musharakah mutanaqisah* is new type of muamalat, which is consisted of partnership between the two parties, and the two parties, the customer and the bank in a project promote a

profit. One of them promise to buy goods, and the other side either gradually or promptly buys goods through gained profit.

ii. The basis of *musharakah mutanaqisah* is based on a contract done by both parties, and each party is responsible for contributing share in the respective divisions in the capital provider. Stock basis is known as money or something that can be measured by the money along with other detailed explanation on how the distribution of profits and losses in proportion to their respective shares works out.

iii. *Musharakah mutanaqisah* focuses on the agreement that must be followed at least by one party only (usually the customer), and another party (the bank) also has the options whether to sell goods or not. This happens with the occurrence of the contract to sell the part, even with *ijab qabul*.

iv. Necessarily, one of the sharing parties responds to rent another's goods with specific rental rate in a given period, and each of them is responsible for maintaining the proportions respectively.

v. *Musharakah mutanaqisah* is carried out in accordance with the rules of *syarak* when it complies with general sharing terms and rules which are in the following.

a. The customer (one party) does not make promises to sell the goods of the bank (another party) in accordance with the value during partnership partner. This is because it is included in the mutually assurance between the two partners. Both parties need to decide on the selling price of their shares, the market value on the day of sale in accordance with the current alliances of the contract is made.

b. It is not compulsory for one of the parties to assure any fee, insurance or care and other charges.

But the burden should be shared by the respective divisions. Any charges made must be shared between the customer and the bank according to respective divisions.

c. The partnership must determine the profit sharing with known ratio and does not have to set the certain amount of profits and ratio among the stock.

d. The contract must have to differentiate between the *akad* and responsibilities associated to the partnership.

e. It does not prohibit the rights for any parties to return or ask to return what a stock has given.

4.5.3 Decisions of Shariah Advisory Council of Bank Negara Malaysia

There are some suggestions of the Islamic financial institutions to offer Islamic home financing products based on *musharakah mutanaqisah* concept. However, in the application, there are issues that are questioned on are related to this, Shariah Advisory Council (SAC). Bank Negara Malaysia refers and responds to it. The issues related to the application of the concept *musharakah mutanaqisah*, are in the following:

- i. Whether *musharakah* and *ijarah* agreement can be assembled in one document because concerning this consolidation, it can be said that it causes two transactions, the first one is akad of selling-buying (*bay'atayn fi al-bay'ah*) which is denied by *Syara'*; and
- ii. The charge can be done by one of the assets owners against something jointly owned assets.

Related to the above, it is said that MPS Bank Negara Malaysia in the 56th meeting held on 6 Februari 2006 equal to 7 Muharram 1427 has decided that financing product based on

musharakah mutanaqisah contract which assembles both *musharakah* and *ijarah* contracts is in a form of contract which consists of new akad (*uqud mustajiddah*), and the new akad has been recognized by current ulama fiqh to meet the requirements of *muamalah* Islam today. In implementing the *musharakah mutanaqisah* contract, the needs for the contracting parties are in the following:

- i. The first need is about practice of combining two contracts, *musharakah* and *ijarah* in one documentation agreement, as long as both of the contracts are signed separately and clearly also do not get mixed with each other; and
- ii. Collateral practice in *musharakah mutanaqisah* can be implemented if collateral document only involves customer's properties and gets pawned to Islamic financial institutions. This is because property beneficial or useful has been recognized by the *Shariah*.

Syarak allows some forms of management (*tasarruf*) to *musharakah* assets. Among them, both parties shared in the *musharakah* contract have the right to sell or rent *musharakah* assets, because the incorporated one has purpose of *wakalah*. Therefore, any partner who has share can be representative to their partner for buying and selling or doing rental, which means including buying and selling or renting some respective divisions on *musharakah* assets among themselves. Otherwise, partners who share are also allowed to give and take of collateral towards *musharakah* assets with the consent of others partner. This is in accordance with the following fiqh:

كُلُّ عَيْنٍ جَازَ بَيْعُهَا جَازَ رَهْنُهَا

“All that must be purchased must be pawned”.

4.6 Analysis of Standard Operating Procedure (SOP) by RHB Islamic Bank and KFHMB:

Stages of SOP	RHB Islamic Bank	KFHMB
Stage 1: Home identify to purchase	Yes	Yes
Stage 2: Find the document and customer to meet the bank	Yes	Yes
Stage3: Bank and partner into an agreement as a partnership in <i>musharakah mutanaqisah</i>	Yes	Yes
Stage 4: Ratio Sharing by both of parties	Yes	Yes
Stage 5: Customers make payment to the bank	Yes	Yes
Stage 6: Sign the <i>Wa'ad</i> agreement	Yes	Yes
Stage 7: Ratio of the bank will diminish	Yes	Yes
Stage 8: Finish partnership after completing MM	Yes	Yes
Stage 9: Customer will get notice fulfillment by bank	Yes	Yes

Table 4.1 Standard Operation Procedure in Implementation of musharakah mutanaqisah from both of the banks:

4.7 Operational of musharakah mutanaqisah at RHB Islamic Bank Berhad:

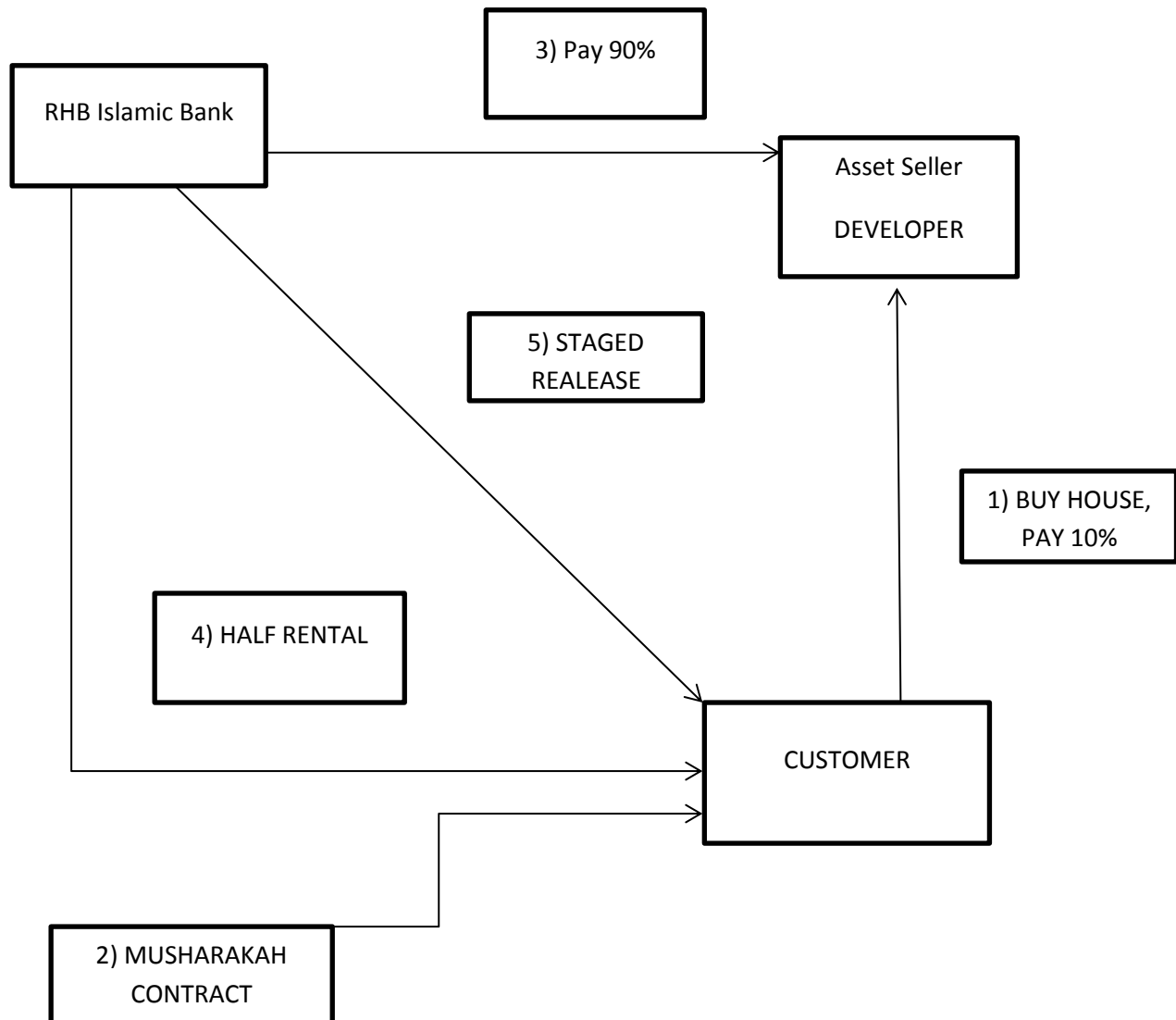


Figure 4.1: Operational of musharakah mutanaqisah at RHB Islamic Bank Berhad

Sources: Based on interview with RHB Islamic Executive Officers

Explanation of Standard Operating Procedure (SOP) of musharakah mutanaqisah product according to Ustaz Suhaib Torla, Shariah Division RHB Islamic Bank Berhad (2014).

1. (Stage 1) A customer identifies the home to be purchased. Customers make reservation by paying 10% from price as down payment. Then customer gets the sale and purchase agreement (SPJB / S & P) from developer. The document received from the developer is S&P, which is important as a testament to the bank when the loan application is made.
2. (Stage 2) Customers bring document required with S&P, which is obtained from the developer and, they try to find and meet RHBIB to obtain equity financing.
3. (Stage 3) After receiving an explanation from RHBIB, agreed customers and bank entered into an agreement through documents, which is provided by the bank. As a partner, RHBIB pays the remaining 90% of the price to the developer.
4. (Stage 4) Sharing ratio between the bank and customer is 90:10. It includes 90, which is owned by state-owned banks and 10 is owned by customer. The maximum ratio is 90%, which may be issued by RHBIB to be shared with the customers.
5. (Stage 5) After that, the customer occupies the house and pays rent to the bank. Customers only need to pay the rent based on 90% as installment payments.
6. (Stage 6) At the same time, customers gradually buy bank equity in order to have the house. Both of these payments are included in one installment. This is because the customer has to sign *Wa'ad* agreement for buying equities of RHBIB.

7. (Stage 7) Possession (Equity) bank on the house is reduced or diminished after the customer purchases gradually until the period of financing gets over, for example 30, 35 or 40 years depend on the guidelines prescribed by Bank Negara Malaysia (BNM).
8. (Stage 8) Once completed, the partnership between Customer and Bank for *musharakah mutanaqisah* contract is finished.
9. (Stage 9) Customers receive a final notice (notice fulfillment) from RHBIB to indicate that the client gets full ownership on the house individually.

All the stage need follow by customer while apply this financing and as we can see, all the standard operating procedure (SOP) for musharakah mutanaqisah at RHB Islamic Bank with the aim for help the customer to understand about execution this product.

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4.8 Operational of *musharakah mutanaqisah* at Kuwait Finance House (Malaysia) Berhad (KFHMB)

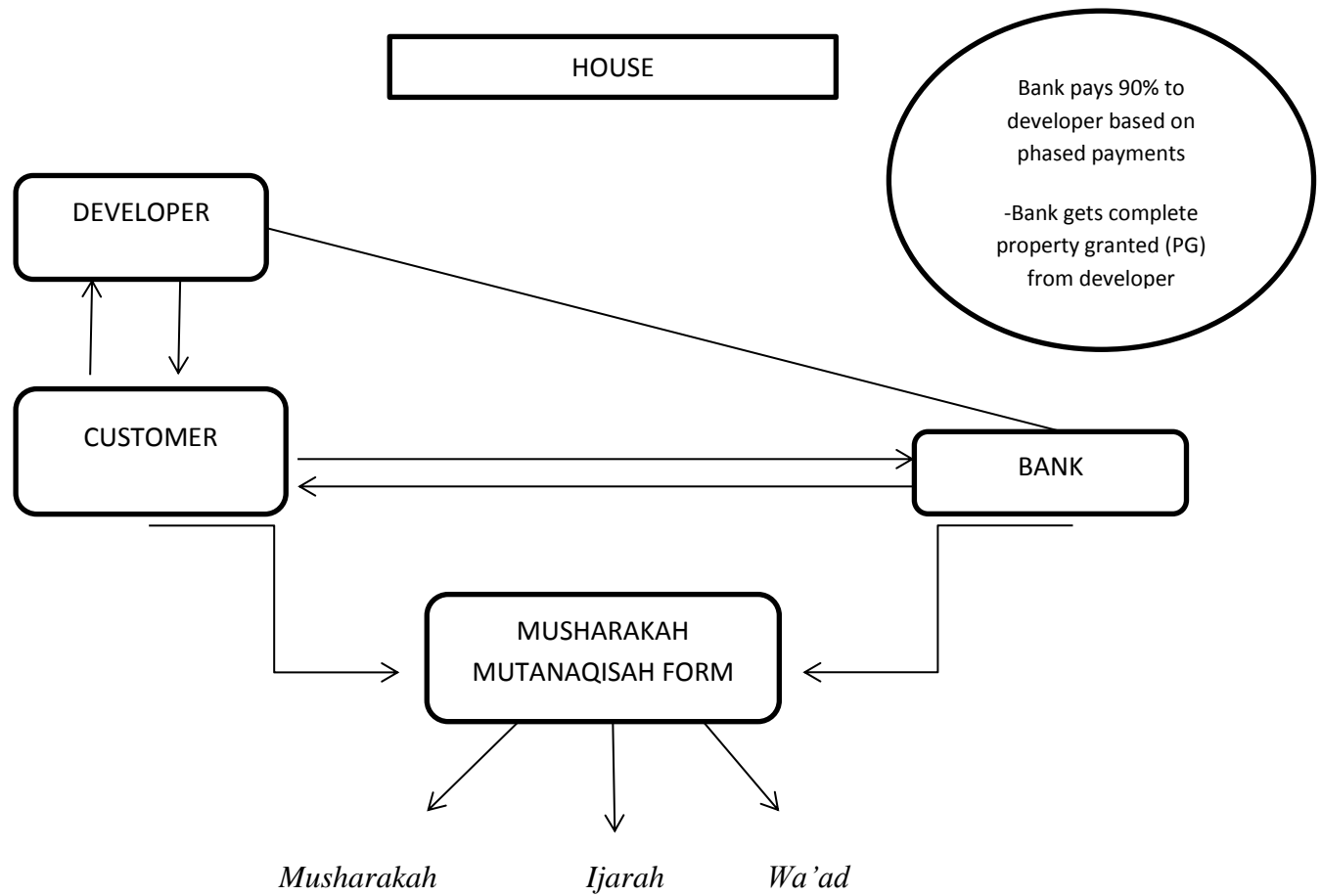


Figure 4.2: Operational of *musharakah mutanaqisah* at KFHMB

Sources: Based on the interview with Executive officers at Shariah Department

Explanation of Standard Operating Procedure (SOP) of musharakah mutanaqisah product according to Ustaz Azmir Azri and Nik Muhammad Adib from KFHMB Shariah Officer (2014).

- 1) (Stage 1) Customers will identify home type to purchase. After being satisfied with the home, customers must obtain a certificate of sale and purchase agreement (SPBJ) as evidence (documents) for submission to the bank when he is applying for financing.
- 2) (Stage 2) Name of SPBJ must be on the customer and KFHMB.
- 3) (Stage 3) Next, the customer will find KFHMB to apply for financing in *musharakah mutanaqisah* with the required documents.
- 4) (Stage 4) After discussing and getting the deal from both of the parties, bank and the customer will sign the agreement as agreed for contracts in *musharakah mutanaqisah* through *musharakah* financing products *mutanaqisah-i*.
- 5) (Stage 5) Customers will start paying installments, such as 30 years from the date of agreement for both of the parties.
- 6) (Stage 6) Through concepts of *musharakah mutanaqisah*, KFHMB and the client equally share the capital required to buy a house, and the projected capital sharing ratio agreed is 90:10 (banks: customers). Bank ratio is usually greater than the ratio of customers.
- 7) (Stage 7) Customer will occupy the house (if the house is known as completed property) and pay rent according to the rental rates agreed and usually the rent is counted once in monthly installments made by the customer.
- 8) (Stage 8) Through monthly installments also, the client gradually buys the bank-owned equity in the sharing of the home.

- 9) (Stage 9) After due and proper customer installment payments made, the process to transfer the house will be completed between KFHMB and customers.

The implementation of *musyarakah mutanaqisah* at KFHMB in term of their practice on this product quite similar with RHB Islamic Bank but the most important here, all the stage can help the customer to understand how this product works.

1.5 Issue And Challenges Faced by Both of Banks:

In implementing *musharakah mutanaqisah* by both of the banks, the banks also face some issues and challenges in their implementation. However, the different background of the bank also influences the issue, and the problem arises because RHB Islamic Bank Berhad is a representative of local bank and KFHMB also represents foreign bank in Malaysia.

There are several issues and challenges that arise in *musharakah mutanaqisah* home financing at RHB Islamic Bank and KFHMB. The first issue is who will pay the Takaful under *musharakah mutanaqisah* contract. The second issue is related to the event of default, which can be either from the developer or customer while choosing developer and the third issue is related with the risk sharing whether the bank will be in conjunction with customer in case of abandoned house, damage and so on. The last issue is about documentation during the period when customer is applying for *musharakah mutanaqisah* product.

1.5.1 Takaful

In the issue of takaful, the researcher can mention that the result from this study is to analyses which parties are involved on Takaful when both of parties are agreed upon as partnership in *musharakah mutanaqisah*. For the first issue regarding Takaful payment, after researcher has

executed and conducted interviews with both of the banks, the involvement of both of the banks, namely RHB Islamic Bank and Kuwait Finance House (Malaysia) Berhad (KFHMB) is different. According to Suhaib Torla from RHBIB, he makes an explanation on this matter:

“Both of parties will involve in Takaful because we follow our agreement, in musharakah (partnership), it will serve to buy that asset, so the musharakah will bear the Takaful”

In RHB Islamic, firstly, the bank will delegate the customers to make payment on Takaful, thus; the customer will decide whether to claim back to bank or not because if the customer wants bank gradually to bear the takaful, the bank will include that cost on *ijarah*. But, if only the customer bears cost of Takaful individually, the bank will not put that amount of takaful into the *ijarah*.

However, in KFHMB, the obligation for the takaful will be paid by the customer because the bank passes responsibility to pay or subscribe to the customer. The customer also can ask the bank to pay the takaful; in terms of installments, it must get agreement from both of the parties. The role of takaful for KFHMB is very important because if something happens (major damage) on the property, it will cover on the damage.

1.5.2 Event of Default (EOD)

Event of default refers to customer and developer who fail to perform the obligation based on their agreement. Event of default also can be related to developer who fails to complete the house (House Abandoned) after the house is purchased by customer. These cases usually occur in home finance under construction. Beginning on October 2008, Home Equity

Financing was extended for financing under construction. Hence, the questions arise from this problem regarding what is the role of bank and customer in case of house abandon? What action can be taken by bank and customer to the developer if the developer fails to complete the house? Based on these questions, the researcher conducts the interview with executive officers from RHB Islamic Bank Berhad and Kuwait Finance House (Malaysia) Berhad (KFHMB) to obtain the information regarding these problems.

According to Ustaz Suhaib Torla from RHB Islamic Bank (2014), in an agreement between bank and customer, the bank will not be taking any risk because bank has delegated customers to choose developer for constructing the house. It depends to the customers to find their own contractor, and the occurrence of any risks has to be borne by the customer. Although *musharakah mutanaqisah* is a partnership contract, it still is bound with *wa'ad* (agreement) by both of the parties. In this case, banks also have a right to sue the customer because he has failed to monitor the background of developer clearly. However, RHB Islamic will return the installments paid by customer and will terminate the contract of financing. So in this case, the customer does not need to continue paying of installments on abandoned house. At the same time, the customers have to pay back the money that has been paid by bank to the customer. This is because the customer already has a deal regarding the Performance Guarantee (PG) with the bank after the signature has taken place. Nevertheless, this action actually does not show the advantage of *musharakah mutanaqisah* where both of the parties actually have responsibility although in some situations, RHB Islamic does not want take any risks. But they give other opportunities to the customer to solve this problem.

In KFHMB, the problem related to failure can be divided into three situations:

1. If the customer fails to pay installment for the certain period, the KFHMB will charge the penalty 1% like other Islamic banks. The revenue from this penalty will be used for welfare fund.
2. The customer has failed to give the notice more than six months. Under such situation, to solve this problem, KFHMB will provide four options to the customers, and the options are that KFHMB will take over the house and give lease to the third party or KFHMB will take over and rent it to other party while waiting for the new buyer or KFHMB will restructure and evaluate home prices and offer back to the customer or if the customer doesn't give any response, KFHMB will bring this case to the court and after getting an order form the court, the bank will auction the house. After that, the bank will pay off debt of financing and the customer will receive back the surplus.
3. The developer fails to complete the house required by customer. In this case, commonly, KFHMB will give options to customer, and they are either give back the amount deposited to the customer or KFHMB gets the permission to build the house until it is completed.

1.5.3 Risk Sharing

Every product offered by bank has risk either to the bank or to the customer. In this research, risk sharing refers to any action taken by the bank to manage the risk. In implementation of *musharakah mutanaqisah*, the researcher makes an analysis of the interview answers conducted by the researcher and the answers are taken from shariah executives from RHB Islamic Bank and KFHMB, and also the researcher refers to the previous research at both of the banks regarding risk sharing.

The issues and problems found in risk sharing by RHB Islamic Bank and KFHMB are the problem related to home damage, and the question arises whether the bank will involve and bear the cost of home damage? It is because *musharakah mutanaqisah* is considered as partnership contract, and both of the parties have to bear the risk together if something occurs, such as abandoning home. To obtain the information regarding this issue, the researcher obtains the information, conducting interview from officers of the banks and taking reference from the previous research regarding this issue from both of the banks. According to Suhaib Torla (2014) from RHB Islamic, in this case, it is divided into two segments which are known as major damage and minor damage. If the minor damage happens to the house, usually the customer will bear the cost of the repairs, such as broken door, broken window, and fused light and so on. But in the event of major damage, such as natural disaster and loss of ability, Takaful will cover for all damage and medical cost because bank and customer gradually get involved in Takaful.

However in KFHMB, the issue in risk sharing also is related with how bank and customer gradually get involved in risk when something occurs in the period of construction or under construction.

4.9.4 Documentation

According to Ustaz Suhaib Torla (2014) from RHB Islamic Bank, there are some issues and challenges from Islamic Banking today, and one of them is about documentation in

musharakah mutanaqisah. This product is a hybrid contract and it involves in three elements of contract, which are *musharakah*, *ijarah*, and *bay'*. The problem faced by bank today is that customers need to fill in many documents compared with another product, such as BBA or conventional product, and they have only one document to fill in. Besides that, the customers need to pay for every document, and when they compare with conventional way, they just need to pay for one document only.

In *musharakah mutanaqisah* product, mostly the customers do not really understand about *musharakah mutanaqisah* product. They just only sign the contract because it is quite complicated for them than the other product in conventional.

4.9.10 Conclusion:

For the finding and analysis in chapter four, it can be summarized that the implementation of *musharakah* from both of the banks is not really different because both of the banks have the different background and practice, but they have to comply with rules and guidelines provided by Bank Negara. As we know that Kuwait Finance House (Malaysia) Berhad (KFHMB) is originally from Kuwait and they open their branch at Malaysia and RHB Islamic Bank as a local bank offers *musharakah mutanaqisah* product. The Implementation of *musharakah mutanaqisah* is quite similar, but some issues and challenges faced by both of the banks are different. However, the differentiation from both of the bank provides options to the customer for choosing an Islamic home financing.

5.0 CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Introduction

The chapter five describes the conclusion for research as a whole which has been explained by the researcher. Besides that, the researcher offers several recommendations for Muslims to improve the understanding of the concept of *musharakah mutanaqisah* and the effectiveness of this concept in the Islamic banking arena can be seen, especially for RHB Islamic Bank Berhad, which works as representative for local bank in Malaysia and Kuwait Finance House (Malaysia) Berhad (KFHMB) represents international banks that practice the implementation of *musharakah mutanaqisah* at their respective institutions.

The main objective of *Shariah* Islamiah is to promote the public benefit by preserving the faith, life, style, intellect, posterity and the property. Anything that can ensure the preservation of these five things is equivalent to ensure the public interest. Islamic banking is based on *shariah* principles, and it is very important to make sure that the Muslims always have the integrity, fairness, impartiality, trustworthiness and honesty for ensuring more equitable distribution of wealth.

5.2 Summarizing of Research

The purpose of this research is to compare the implementation of *musharakah mutanaqisah* by both banks of RHB Islamic Bank Berhad and Kuwait Finance House (Malaysia) Berhad. Additionally, this study wants to see the parameters that exist for *musharakah mutanaqisah*

and whether banks use the existing parameters for the implementation of *musharakah mutanaqisah* in their banks or not. In obtaining the information related to *musharakah mutanaqisah*, the researcher already has conducted some interviews with both of the bank officers and has interviews session with experts who are knowledgeable in this area because *Musharakah Mutanaqisah* is started and concerned by most Islamic banks in Malaysia today. In addition, the sources of previous studies about this product also have been used as reference to the researcher for completing this study.

During an interview with Ustaz Zamerey (2014), Vice President of Shariah Compliant at Bank Rakyat, he argues that *musharakah mutanaqisah* is the best products for the benefit of both sides-either banks or customers. This is because--the biggest implication on this product is that both parties are involved in this contract, and each other mutually bears the risk in partnership. Besides that, this research also discusses about the issues and the challenges faced specifically by the both banks and entirely by Islamic bank generally. The researcher selects four issues in *musharakah mutanaqisah* because these issues are important and latest of this product. However, there are still a few issues remain related to this product. According to Ustaz Zamerey (2014), there are three issues that arise for the implementation of *musharakah mutanaqisah* by Islamic banks, and they are the problem of understanding about *musharakah mutanaqisah*, legal constraints and willingness of the bank to execute this product. Whereas, Dr Taqiuddin, senior lecturer at University Malaya, agrees with the interview question about the issue of rental rate, *wa'ad* and risk sharing, and these are the reasons why some of Islamic banks still don't provide this product in their practice.

However, the researcher provides some recommendations and suggestions to the banks, academicians and society with the purpose to increase the performance and acceptance of the research topic in future.

5.3 Suggestion and Recommendation

After obtaining the result and finding of the research, the researcher has found some shortcomings and weaknesses that can be addressed in the implementation of *musharakah mutanaqisah* product in Islamic financial institutions. For the improvement of the financing on this product, the researcher proposes some suggestions that may be adopted by the parties involved, such as banks, government, academicians, and society. This suggestion has come after the researcher has looked at these products and has found their advantages and this product also can be alternative product to Muslim people, specifically for those who have found the product in home financing, and the product complies with shariah requirements.

5.3.1 Recommendation to the Banks

The Islamic banks offer *musharakah mutanaqisah* product, and effective promotion will simplify the KFHMB and RHB Islamic Bank by introducing *musharakah mutanaqisah* product and services to attract targeted customers. Through this product, it can be said that it will reduce expenses and maximizes the return by both parties. Currently, mass media plays an important role in disseminating information to public. Therefore, the researcher wants to suggest to the banks for using this method for promoting *musharakah mutanaqisah* financing to public, and the media can be television, radio, newspaper, magazine, facebook and so on. In this way, the advantages of *musharakah mutanaqisah* product will be known clearly and public involvement on this financing will be increased.

In addition, another reason that this product must be highlighted by banks because the financing aspect of it is less controversial than other products, such as *bay' bithaman ajil*

(BBA). When Assoc. Prof. Dr. Asmadi Bin Mohamed Naim, Dean of Islamic Business School and Shariah Advisory Council of Bank Negara (SAC) was interviewed, he said:

“The Issue in BBA is related with bay’ inah, so musharakah mutanaqisah is out of controversy”.

5.3.2 Recommendation to Academicians

Now-a-days, institutions of higher have been expended from time to time; whether that is/are private institutions or government institution. Development on this institution is seen very positively because the society today are sensitive with the importance of knowledge. As we can see today, many institutions of education offer courses for Islamic Banking and Finance, and the institutions are Universiti Utara Malaysia (UUM), Universiti Kebangsaan Malaysia (UKM), Universiti Malaya (UM) and so on. It is because--awareness from Muslim society to find some product as an alternative to conventional is increasing.

The recommendation presented by researcher is to have responsibility to create more human capital in field of Islamic Banking and Finance. In term of academicians, it is noted that they must provide more students with profound knowledge in this area because many of the staffs in Islamic Banking today, they don’t have enough knowledge in Islamic banking and finance. Most of them come from conventional bank. Therefore, awareness about importance of Islamic Banking and Finance still is less among them. Besides that, understanding regarding the importance of product in Islamic home financing, like *musharakah mutanaqisah* should be explained in details to the student, so they will act directly as promoter on this product to society.

5.3.3 Recommendation to Society

The society must be always sensitive with the Islamic product in Islamic Banking because as a Muslim, we need to find an alternative when we are involved in financing. They also always increase their knowledge and information regarding product that was offered by Islamic bank, conducting workshop, forum, or talk. When the society in general have more knowledge and information regarding products in Islamic banking, they will support Islamic banking because as we know, Islamic banking in Malaysia still is young, and it needs more support from the society to increase their performance.

Although Islamic finance and banking still have some weakness on the practice that should not treated as reason for the society to avoid using Islamic banking and their product. In the area of Islamic home financing today, according Suhaib Torla from RHB Islamic Bank, most of the society still doesn't understand about *musharakah mutanaqisah* product. Sometimes they just agree with the product without understanding what the advantages of this product are.

Besides that, supports from governments, such as the Malaysian Muslim Consumers Association should have role in disseminating information to the society regarding advantages of Islamic product, such as *musharakah mutanaqisah*, *ijarah muntahia bitamleek*, *ijarah mausufah fi zimmah*, AITAB, and *tawarruq* because they have the capability to influence, and they also always get support from community in the matter of *shariah* compliant products which have been used daily.

5.4 Conclusion

Musharakah mutanaqisah is an alternative product provided to the customers in Islamic home financing. The innovation of this product actually arises from the three contracts, namely *musharakah*, *ijarah* and *bay'*. The study of *musharakah mutanaqisah* is practiced in two banks who are representatives for local and foreign bank. RHB Islamic Bank is a representative of local Bank and KFHMB is a representative of foreign bank in Malaysia. This is because-both of banks have the different background and culture, especially in the practice of *mazhab*. Besides that, the parameter was provided by BNM, AAI OFI and Majma' Fiqh, which are the main references for the banks in implementing of *musharakah mutanaqisah*. These guidelines are very important to make sure that this product is complied with *shariah* for both of the banks. The standard operating procedure (SOP) from both of the banks also is discussed by this researcher. It is because- the researcher wants to analyze whether they have the same practice or not. Both of the banks have quite similarity in terms of practice, but they have some difference from the stage. The issues and challenges faced by bank to implement this product are also discussed in this study, and the focus is on both of the banks. The last part of this study shows that the researcher provides some recommendations to the banks, academicians and society with the aim to increase the performance and to get acceptance by customers in future.

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