

## Home Ownership Agreement

**Dr. Dewi Anggraeni, SH., MH. and Yuli Afriyanti, SH.**

University of Pamulang  
Corresponding Author E-mail: dewifhunpam@yahoo.com

Received December 22, 2018; Accepted December 29, 2018; Published January 2, 2019.

**Abstract:** Meeting the needs of housing that is growing rapidly, and the desire for free usury services, has triggered the emergence of Home Ownership Loans relating to the sharia system (Islamic Mortgage). Conventional mortgages with Islamic mortgages must have their uniqueness. In this paper we will explain the characteristics of a conventional mortgage with an Islamic mortgage. Both in terms of terms of contracts, installments, penalties, interest systems, confiscations and so on. Sharia KPR uses sharia rules implied in the contents of the agreement. These rules of sharia rules include the legal requirements of a Sharia mortgage, a Sharia mortgage pillar, the cancellation of an Islamic mortgage contract as well as the legal consequences of a Sharia mortgage. Islamic rules determine the form and content of an Islamic mortgage agreement.

**Citation:** Dewi Anggraeni and Yuli Afriyanti. 2019. Home Ownership Agreement. International Journal of Recent Innovations in Academic Research, 3(1): 13-20.

**Copyright:** Dewi Anggraeni and Yuli Afriyanti., **Copyright©2019.** This is an open access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

### Preliminary

#### A. Background

Basic human needs must be fulfilled whether it is clothing, food and board. Related to meeting housing needs, encouraging the government and the private sector to carry out development, especially in the housing sector. For people who have funds, it might be easier just to own a house. But for people who have limited funds, there is no doubt mortgaging (KPR) options, be it mortgages through banks or mortgages organized by developers (developers). The majority of the Muslim population is from Indonesia, where Islam is a perfect religion. Islam provides guidance for us in life, not only serves as a guide in spiritual matters but also economic problems. In Al-Qur'anQs. Al-Baqarah (2): 275, "And Allah has justified buying and selling and prohibiting usury".

#### Next in Qur'an - Nisa '(4): 29, God said

"O you who believe, do not eat the property of each other's neighbors by vanity, except by the way the trade happens with the love between you ..."

The need for a usury-free sharia mortgage community is one that triggers the emergence of financing offers with sharia models in the world of property in Indonesia.

Based on this background, the author wrote an article with the title of a home ownership Islamic Contract Agreement.

## B. Problem Formulation

Based on the background above, the problem can be formulated as follows

1. What are the characteristics of a Home Loan for Conventional Sharia Housing Loans?
2. What is the shape and content of a sharia Home Loan agreement?

## Discussion

Mortgages or home loans are one of the loans given by banks or developers to people who want a special loan to meet their home ownership needs. Mortgages also arise due to various conditions including the support of strategic fulfillment of housing needs but higher and higher have not been able to offset the purchasing power of cash from the community. It can also be said that a mortgage is a loan used to buy a house with collateral. there are subsidies for housing loans and subsidized housing loans.

A. Characteristics of a Conventional Home Loan Sharia Home Loan.

In Sharia Home Loans there are different characteristics of conventional Housing Loans.

### 1. Bank Interest

In conventional Home Loans, the term interest is known, this is avoided by Islamic Credit Housing. Interest as referred to in a conventional Home Loan is called the usury system. As Qs. Al\_Baqoroh: 275 God forbids usury.

In Sharia Housing Loans, the term gain / profit (the difference between the purchase price and the selling price of the mortgage) is known, if using a murabahah (buying and selling) contract or taking a rental price if the Iyar Musharaka contract is used. This can be done. The developer or bank must inform consumers about the house which will be the acquisition price on the right of the mortgage. House prices are added to the amount of profit desired by both the Mortgage Bank organizer or the developer.

### 2. Contract

In conventional housing loans, only one type of contract is a sale and purchase agreement. While Islamic Home Loans are known by several agreements. All transactions must follow the rules and regulations that apply to sharia contracts:

#### a. Murabahah (buying and selling)

The Fatwa National Sharia Council Association explains: "Murabahah is selling items by confirming the purchase price to the buyer and the buyer pays it at a higher price as profit".

In principle, Murabahah is a sale and purchase agreement between a bank or developer to consumers. In this contract, either the bank or the developer of the mortgage provider will sell the house to consumers at prices that have added to the advantage. The selling price has been determined from the start. So that consumers pay installments with a fixed amount for the mortgage provider with a certain period of time.

The terms of Murabahah (buying and selling) are:

- 1) the credit provider is obliged to inform the cost of capital to the customer (cost of housing)
- 2) The first agreement that applies in accordance with the stipulated pillar
- 3) The agreement must be free from usury,
- 4) The implementation of a mortgage must explain to consumers in the case of disability on a home mortgage,
- 5) Credit The organizer must submit all matters relating to the acquisition of a mortgage, for example if the house is carried out in debt.

### **b. Mutanaqishah musyarakah contract (increment ownership)**

Mutanaqishah's contract is to work together. Consumers and mortgages providers will work together to buy houses with their respective portions. Then the house is rented and the results will be shared between the customer and the bank. But if the consumer intends to occupy the house itself, then the customer is a tenant. So consumers must pay installments.

- c. Ijarah (rent),
- d. Bittamlik Muntahua Ijarah (leasing).

Parties are welcome to determine consumer choices, contracts that will be used according to their needs.

### **3. Bargaining**

In conventional home loan developers / banks do not provide flexibility to consumers to bargain or negotiate until the results of consensus. Terms and loans for housing conditions have been determined solely by the mortgage provider (Developer or Bank). Unlike Islamic housing loans that allow consumers to bargain with banks or developers, financing procedures and so on.

### **4. Installation costs**

Generally conventional interest mortgage loans with fixed installments are only valid for a period of 1-3 years, next year the amount of installments to adjust the conditions prevailing interest rates (volatile).

On housing loans, the flat Sharia amount is installments / repairs from the first installment to the last installment. installments have been set at the beginning of the home ownership agreement.

When viewed in terms of the implementation of annual installments / flat loans imposed on Islamic Home Loans, it is quite risky. It can be explained that when there is an increase in interest rates, banks or developers can reduce the risk of loss with the threat of an increase in interest rates also applies to conventional mortgages. While on a Sharia mortgage, the developer / bank cannot do this, because if the installment changes in a certain amount, it will cancel the contract, and of course this violates sharia provisions. When viewed in terms of consumer financial planning, the implementation of fixed installments makes it easier for consumers to manage and manage your monthly finances. Because installments with a fixed amount for Housing Loans, not found tend to increase.

### **5. Penalty**

In Conventional housing loans, if we are willing to make a payment before the contract expires, a penalty will be imposed. Because a conventional mortgage early repayment is considered to reduce the potential income.while in the Syariah home loan the initial payment or before the contract expires will not be charged a penalty fee.

Sharia mortgage loans do not recognize the term penalty because the price of the house on the mortgage is determined when signing the agreement.

### **6. Transfer of ownership**

In general, the conventional Home Loan houses right to Home Ownership Loans, right behind calls on behalf of consumers, even though the period of housing loans is still running, it hasn't ended Her Housing Credit. .

While in Sharia Home Ownership Loans, it does not have to be directly in the name of consumer rights. Sharia rules, Housing Credit houses must be fully owned first by new Consumers to be made behind the name. The first new keel must be behind calls on behalf of consumers.

If the Home Loan Bank is held, housing ownership loans must be preceded by the transfer of ownership to the bank that has full rights and obligations at the house purchased. Home ownership is transferred to consumers when a second agreement is made, in which the consumer has full authority over the rights and obligations as the owner of the house that has just been purchased.

## 7. Foreclosure

In conventional housing loans when consumers make payments for disability (wan achievement), the technical term is fine, which can from time to time refer to the act of seizure. Where assets are used as collateral houses can be controlled by credit providers. Furthermore, the house will be auctioned by the organizer of Credit Housing. But this is not the case in Islamic housing loans. When consumers default, for example inability to pay, the house will be sold, results will be taken to settle the remaining credit at the mortgage provider, the rest will be given to consumers.

### B. The form and content of the sharia housing loan agreement

Indonesian law says this agreement is synonymous with word contracts in Islamic law. The word rice is a contract of al'aqdu which means binding, connecting, connecting. The contract definition according to Syamsul Anwar in his book Sharia Law agreement states that "contracts are agreements and Qobul is a statement of meeting two or more parties to bear some legal effects on the object". In a sharia mortgage agreement the form of agreement generally refers to the form and agreement of its contents containing Sharia rules. The shape is as follows:

1. Title of Agreement
2. The identity of the parties which includes:
  - ✓ Name
  - ✓ Address
  - ✓ total population
  - ✓ Work and others
3. The contents of the agreement are embodied in the agreement article:
  - a. All kinds of information
  - b. Rights and authority of both parties
  - c. Agreed matters
  - d. Time and method of shipping and payment
  - e. sophisticated obligations
  - f. Information about load
  - g. Statement of parties, stamp duty, taxes and so on,
  - h. Remarks in case of a dispute
  - i. Information about the number of agreements made
  - j. Description of other additional provisions.
4. Place and date of appointment
5. Related party signature and full name
6. Signature and full name of witness
7. Signatures and full names of approved officials.

The contents of the agreement contain rules relating to sharia agreements or contracts:

### 1. Contract terms

In making an agreement for all requirements must be met, if the contract is not canceled. There are general requirements which are the pillars that must be in each contract (people of contract, objects of contract, objects that are useful and not prohibited by Islamic rules) and there are special requirements (requirements that must be fulfilled and not needed in other parts, such as having to delivery of goods / object contracts).

**2. The terms of the contract apply:** Hanafi Ulama explained that the validity of the contract if conditions to avoid the following six:

- a. Al Jahala (Unclear about price, type and specification, payment terms, duration of payment and insurance or responsible)
  - b. Al Ikrah (coercion)
  - c. Attribute (limited time)
  - d. Al-gharar (there is no element of clarity or fiction)
  - e. Al Dhahar (there is an element of usability)
  - f. Al Syarahl is not perfect (broken terms, such as purchase requirements for consumers to sell more houses at lower prices)
3. Provisions for implementing the contract. There are two conditions for the implementation of the agreement, ownership and power / authority of a person in the use of ownership, both directly by themselves and other strengths.
4. Termination of contract.

### A contract / agreement can expire for the following reasons

- a. Fulfillment of contract objectives.
- b. Cancellation of contract. This is due to a subject that is not justified in Islamic rules, damage to the contract. For example, lack of clarity.
- c. One party dies.
- d. There is no agreement from the title.

### 5. As a result of the contract / contract law

#### - The legal consequences of the contract / contract with the parties:

A contract / agreement with 1338 PSAL The civil code applies as a law for the maker. The person who makes the agreement / contract must be in accordance with what he has promised.

#### - As a result of the legal agreement regarding the contents:

The contents of the agreement or agreement to be carried out by the contracting party. Therefore it is important to determine the intent of the contract and the scope of the contents of the contract, the scope of achievement that must be fulfilled by the parties. The clause of the agreement may not burden one party.

## Characteristics of a Conventional Home Loan Sharia Home Loan

### 1. Bank Interest

Conventional Home Loans are known as term interest. While At Home Sharia Loans, the technical terms for results and losses (profit and loss sharing) are allowed to do.

### 2. Contract

Conventional Home Loans there is only one type of contract that is a sale and purchase agreement. While Islamic Home Loans are known by several agreements.

- a. Murabahah (buying and selling)
- b. Mutanaqishah musyarakah contract (increment ownership)
- c. Ijarah (rent),
- d. Bittamlik Muntahua Ijarah (leasing).

### 3. Bargaining

Conventional Home Loans developers / banks do not provide flexibility to consumers to bargain. Terms and loans for housing conditions have been determined solely by the mortgage provider (Developer or Bank). Islamic Home Loan allows bargaining between consumers and banks or developers, financing procedures and so on.

### 4. Installation costs

Generally, conventional mortgages with fixed installments are only valid for a period of 1-3 years, next year the amount of installments to adjust the conditions that apply interest rates (volatile). Housing Loans the number of flat Sharia installments / repairs from the first installment to the last installment. installments have been set at the beginning of the home ownership agreement.

### 5. Penalty

Conventional home ownership loans, if we are willing to make a payment before the contract expires, a penalty will be imposed. Credited to Sharia home ownership is the initial payment or before the contract expires, no penalty fee will be charged.

### 6. Transfer of ownership

Conventional housing loans are generally home to the right Home Ownership Loans, right behind calls on behalf of consumers, even though the period of housing loans is still running, it hasn't ended Her Housing Credit. .

While in Sharia Home Ownership Loans, it does not have to be directly in the name of consumer rights. Consumers must pay the payment process first and must be made behind the name.

### 7. Foreclosure

In conventional housing loans when consumers make payments for disability (wan achievement), the technical term is fine, which can from time to time refer to the act of seizure. Which is usually the house to be auctioned. In the Islamic Home Loan. When consumers default, for example inability to pay, the house will be sold, results will be taken to settle the remaining credit at the mortgage provider, the rest will be given to consumers.

### The form and content of the sharia housing loan agreement

In sharia agreements the form of agreement generally refers to the form and agreement of its contents containing Sharia rules.

#### The shape is as follows

1. Title of Agreement
2. Identity of the parties
3. The contents of the agreement are manifested in the agreement article
4. Place and date of appointment
5. Related party signature and full name
6. Signature and full name of witness

7. Signatures and full names of approved officials.

The contents of the agreement contain rules relating to sharia agreements or contracts:

### **1. Contract terms**

All requirements must be met, if the contract is not canceled. There are general requirements which are the pillars that must be in each contract (people of contract, objects of contract, objects that are useful and not prohibited by Islamic rules) and there are special requirements (requirements that must be fulfilled and not needed in other parts, such as having to delivery of goods / object contracts).

**2. The terms of the contract apply:** The Hanafi Ulama explained that the condition of the validity of the contract if it was avoided by Al Jahala, Al Ikrah (coercion), Attauqit (limited time), Al-gharar (there was no element of clarity or fiction), Al Dhahar (there was an element of use) and Al syarahl was imperfect (condition broken conditions, for example, the term purchase to consumers to sell more houses at a cheaper price)

**3. Provisions for implementing the contract:** There are two conditions for implementing agreements, ownership and power / authority.

### **4. Termination of contract**

**A contract / agreement can expire for the following reasons:**

- a. Fulfillment of contract objectives.
- b. Cancellation of contract.
- c. One party dies.
- d. There is no agreement from the title.

### **5. As a result of the contract / contract law**

**- The legal consequences of the contract / contract with the parties:**

A contract / agreement according to Article 1338 of the Civil Code applies as a law for its maker.

- As a result of the legal agreement regarding the contents:

The contents of the agreement or agreement to be carried out by the contracting party. Therefore it is important to determine the intent of the contract and the scope of the contents of the contract, the scope of achievement that must be fulfilled by the parties. The clause of the agreement may not burden one party.

### **Conclusion**

1. Provision of sharia home ownership credit services using two contracts in financing, namely murabahah and istishna contracts. The difference between the two contracts lies in the object, the position of the Islamic bank, the customer's position, the profit margin and the method of payment.

2. Credit agreements in sharia-based banks must be based on the submission of credit applications and procedures for granting credit and credit assessments. Where in practice it is based on profit sharing schemes with a certain margin. Basically the implementation of the agreement is based on the principle of partnership principles and the principle of freedom of contract which is based on mutual agreement between the parties.

## References

1. Arabic dictionary
2. Dictionary of Indonesian
3. Fatwa Dewan Syari'ah National Number 19/DSN-MUI/IV/2001 concerning Al-Qardh, dated 18 April 2001.
4. Veithzal, R.H. and Veithzal, A.P. 2008. Islamic Financial Management: Teori, Konsep, dan Aplikasi Panduan Praktis Untuk Lembaga Keuangan, Nasabah, Praktisi, dan Mahasiswa. PT RajaGrafindo Persada.
5. Wiroso. 2011. Akuntansi transaksi syariah (Accounting for sharia-compliance transaction). Jakarta: IAI.