



## The Concept of Musyarakah in Surah Al Kahfi verse 79

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### ARTICLE INFO:

#### Sejarah Artikel:

Received: 07 February 2023

Revised: 16 March 2023

Published: 28 March 2023

#### Keywords:

Musyarakah; Syirkah Amlak Jabar;  
Joint Ownership.

#### Kata Kunci:

Musyarakah; Syirkah Amlak Jabar;  
Kepemilikan Bersama

### ABSTRACT

*In social muamalah, especially in terms of transactions, there are contracts included in it, including sale and purchase contracts and capital. the concept of capital contracts in Islam is known to be two things, namely mudharabah and musyarakah. In the context of the dynamics of today's society, it is musyarakah that is often used rather than mudharabah in the scope of business and property ownership. In the Qur'an itself, there are three verses that explain about musyarakah, including; the 12th verse in Surah an-Nisa', the 38th verse in Surah Ash-Shad, and the 79th verse in Surah al-Kahf. This research tries to discuss more deeply the concept of musyarakah contained in Surah Al-Kahf verse 79 and compares it with the hadiths and opinions of the madzhab imams. This research uses the method of literature (library research). Then the conclusion is obtained, namely that the 79th verse in Surah al-Kahf explains the concept of musyarakah, namely there is the concept of ownership of property owned by several people using the Shirkah Amlak Jabar/Ijbari contract. The contract is a joint ownership contract, whether the contract is consented to or not. In this case, it is joint ownership that occurs from the cause of inheritance.*

### ABSTRAK

*Pada muamalah sosial, terutama dalam hal transaksi terdapat akad-akad yang tercakup di dalamnya, diantaranya ialah akad jual beli dan permodalan. konsep akad permodalan dalam islam diketahui ada dua hal, yakni mudharabah dan musyarakah. Dalam konteks dinamika masyarakat saat ini, musyarakahlah yang sering digunakan daripada mudharabah dalam ruang lingkup bisnis dan kepemilikan harta. Dalam al-qur'an sendiri ayat yang menjelaskan perihal musyarakah ada tiga ayat, antara lain; ayat ke-12 dalam surat an-Nisa', ayat ke-38 dalam surat ash-Shad, dan ayat ke-79 pada surat al-Kahfi. Penelitian ini mencoba membahas lebih dalam konsep musyarakah yang tertuang pada Surat Al-Kahfi ayat 79 dan mengkomparasikan dengan hadits-hadist serta pendapat para imam madzhab. Penelitian ini menggunakan metode kepustakaan (library reseach). Kemudian diperoleh kesimpulan yaitu bahawa ayat ke-79 pada surat al-Kahfi menjelaskan konsep musyarakah, yakni terdapat konsep kepemilikan harta yang dimiliki oleh beberapa orang dengan menggunakan akad Syirkah Amlak Jabar/Ijbari. Akad tersebut merupakan akad kepemilikan bersama, baik secara suka atau tidak suka terjadinya akad tersebut. Dalam hal ini ialah kepemilikan bersama yang terjadi dari sebab waris.*



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**How to cite:** Hakim, A, L., Abror, A, S. (2023). The Concept of Musyarakah in Surah Al Kahfi verse 79. *Iqtishodia: Jurnal Ekonomi Syariah*, 8(1), 25-34. doi: <https://doi.org/10.35897/iqtishodia.v8i1.951>

## INTRODUCTION

Musyarakah is one of the oldest business methods that still exists and practiced by the muslim community. In line with the dynamics of human thought, the Musyarakah contract underwent a process of modification in order to be adapted to human needs that are always evolving, (Hasanudin & Mubarak, 2012). Musyarakah is also often used by the economist in the term of capital and partnership, where each party contributes funds for a certain business with profits and risks that occur will be borne together, (Iskandar, 2010).

There are many verses and hadiths that explain the permissibility of a Muslim to associate in good things, even mentioned in the hadith narrated by Abu Daud "*I am (Allah) with two parties who are sharing as long as one of them does not betray the other, if he betrays then I am out of their partnership*". (HR. Abu Daud No 3833). The hadith above explains that Allah SWT becomes the third party for two people who have a partnership. Islam views the musyarakah contract as a contract that has benefits, especially in the economic field. If this contract is enforced in accordance with the principles of sharia, of course the benefits will be increasingly felt and more profitable because it uses the principle of profit sharing proportion, (Sa'diyah, 2014).

In the Quran there are three verses that clearly contain discussions about Musyarakah, They are first in QS. An.Nisa' (4): 12, it is explained that the heirs (who are brothers and sisters who are more than two people) receive one-third of the share to be distributed jointly. This verse indirectly explains the concept of joint ownership in the context of the division of inheritance. Secondly in QS. Shaad (38): 24, which states that "*many of those who share are wrongdoers, except those who are based on faith and righteous deeds, but these are very few in number*". What is meant by *al khulatha* is joining or mixing. (Al-Syirazy, 2010). And the third in QS. Al Kahfi (18): 79 which is stated in the meaning "*As for the boat, it belongs to the poor who work in the sea*" which means poor people or *masaakin* which is a plural form that is more than two people. In this case co-ownership is a form of specialized partnership contract, (Abdul Rahman et al., 2020). Therefore, researchers try to explore the concept of Musyarakah in Surah al-Kahf verse 79 because the verse implicitly describes an item (namely, *as-safiinah*) owned by several poor people (partnership), (Albaghowi, 2000).

## RESEARCH METHOD

This research uses qualitative research. qualitative research is a type of research that produces findings that cannot be achieved using statistical procedures or other quantification methods, (Murdiyanto, 2020). The type of research is library research, which is research related to reading, recording, and managing materials used in activities related to research, (Mustari et al., 2012). The data collection technique uses a literature study, (Zed, 2004).

In this research, the verses of the Qur'an related to Musyarakah will be studied. Will be reviewed with thematic system (*Maudhu'i*). This research is included in conceptual thematic, which is research on certain concepts that are not explicitly mentioned in the Qur'an, but substantially the idea of the concept is in the Qur'an, (Mustaqim, 2022).

## RESULT AND DISCUSSION

### DEFINITION OF MUSYARAKAH

According to terminology, Musyarakah or Shirkah is the mixing of one asset with another asset so that the two can no longer be distinguished. The majority of scholars then used this term to refer to a specific transaction, even though there is no mixing of the two assets, because what causes the mixing of assets is the transaction, (Albabirti, 1970). As for the term, the fiqh scholars differ in their opinion in interpreting the term musyarakah.

The Malikiyah scholars explained that musyarakah is the granting of permission to the two partners to manage the joint property (capital). This means that each partner gives permission to the other partner to manage their property without losing the right to do so, (Daasuqi, 2018). The Hanbalis, then, emphasize musyarakah on the sharing of rights or the management of property, (Qudama, 1997). Meanwhile, the Shafi'iyah scholars explained that musyarakah is a permanent ownership right for two or more people so that there is no distinction between one party and the other, (Syirbini & Syamsuddin, 1994). And according to the

Hanafiyah scholars, Musyarakah is a form of transaction between two or more people who are partners in capital and profit, (Abidin, 1966).

Zuhaili argues that the definition of Musyarakah according to the hanafiyah scholars is the most appropriate definition when compared to other definitions, because the hanafiyah emphasize the essence of Musyarakah, which is a transaction. As for the other definitions, all of them only explain Musyarakah in terms of its purpose and impact or consequences, (Zuhaili, 2011).

## TERM AND CONDITIONS OF MUSYARAKAH

The madzhab scholars differed in their opinions regarding the terms and conditions of Musyarakah, there are:

### Hanafi Madzhab

The Hanafis say that there is only one pillar of musyarakah, namely *ijab-qabul*. Because only then can the contract be realized. While there are two conditions, the first condition: regarding the thing that is dealt with, it is the condition that must be able to be represented. The second condition: with regard to the profit, is that the profit must be a common and certain share, such as half or one-third and the like.

### Maliki Madzhab

The term of Musyarakah according to the Maliki madzhab are divided into three. First, the property that is the object. Second, how to divide the profits between the two of them. Third, knowing the level of work. As for the conditions relating to the two parties to the contract according to this madzhab, there are three, they are, a free person, a person of reason and an adult (*baligh*).

### Syafi'i Madzhab

In the Shafi'i madzhab, the terms of Musyarakah are divided into three. They are; *Shigah*, two parties who are partners, and property (capital). The term follows every condition that exists.

- a) *Shigah*; It must contain a statement authorizing the management of the assets in the Musyarakah.
- b) Two parties to the contract; The person who undertakes Musyarakah, it is required that both must be of sound mind, puberty and independence.
- c) Property (Capital); (1). The asset has (i.e., it is an asset that can be measured or weighed). (2). The assets were mixed before the contract so that one of them cannot be distinguished from the other. (3). It is required that the property spent by each party be combined with some of it.

### Hambali Madzhab

The Hambali Madzhab is of the opinion that the conditions of Musyarakah are divided into three parts. First, a valid condition that does not cause harm and the contract does not depend on it. Second, a broken condition that does not require a contract. Third, the conditions that determine the validity of the contract, (An-Nawawi, 1928).

The fact that the Musyarakah contract is widely studied in the books of fiqh by scholars both past and contemporary scholars. Each school of thought has similarities and differences of opinion regarding the pillars and conditions of Musyarakah. Basically, the reason for the emergence of differences of opinion among humans is about interpreting the nature of truth. Then the reason for the differences between Muslims is the class of thought related to the perception of Islam. But if there is a decree in force that no one should disobey, then let not man disobey it. Of course, what is the difference of opinion of the imams of the madhhab is not in the *ushul* area that has been determined in the *shar'i* texts but rather the *furūiyah* (secondary) area.

The occurrence of differences in fiqh thinking comes from a fiqh teaching which then becomes a school of fiqh. It should be informed that the differences in madzhabs are not in the essence of religion or sharia, but only at the level of differences in understanding the texts to apply all their branches (*al-furū'*). All differences will converge towards purifying the verses of the Qur'an and al-Sunnah. But part of the virtue of following Islam is that most of them do not allow contradicting the opinions of the Companions who witnessed and saw the revelation process. Receiving knowledge from the Prophet (peace and blessings of Allaah be upon him) has led to differences, not in the principles but in the branches. Hence there is no clear evidence for the difference in. An example of their opinion that is attributed to sharia is the sharing of branches from trees.

With reference to Surah An Nisa [4]:59, differences of opinion are very likely to occur. However, in the event of disagreement, Allah commands us to return to the Qur'an and al-Sunnah. The scholars have warned of the dangers of dissent (al-ikhtilâf) in all its forms through emphasizing the obligation to avoid it. Ibn Mas'ud r.a. stated that al-khilâf is a bad thing. Al-Sabaki said that mercy is the obligation to eliminate differences of opinion, (Jabir, 1992). Based on this warning, it can be learned that avoiding disagreements is preferable to doing so. Allah's mercy is closer to unity of opinion than difference of opinion. Even if there are differences of opinion, there are limits to what is permissible and what is forbidden.

Indeed, the differences of opinion among the Imams of the madzhab are mostly a matter of ijtihad, just as the Companions and Taabi'een differed before them. They are all in guidance if the difference of opinion does not come from lust or desire to dispute. A person who offers an endeavor that is not within his capacity should not impose his goal, except to achieve the truth of attaining the pleasure of Allah. Therefore, a person of ahl al 'ilm in his journey always expresses his acceptance of the fatwas of the muftis for various ijtihad issues as long as they are competent, (Jabir, 1992).

The imams are competent fuqaha so many Muslims follow their opinions. Alawani divides the imams of the mazhab into two, both are the category of hadith fuqaha are Maliki, Shafi'i, Hambali who all received fiqh in Medina, while Abu Hanifah inherited the fiqh of *ahlul ra'yi*, (Jabir, 1992). Each of these imams has followers whose works refer to their fiqh. The works of the imams of the madzhab and their followers are then widely cited by contemporary scholars through a comparative approach. One of the differences of opinion contained in the works of the mazhab scholars is related to the pillars and conditions of Musyarakah mentioned above.

### MUSYARAKAH POSTULATES

The evidence for the permissibility of shirkah is the Qur'an, Sunnah, and consensus.

While the evidence from the Quran is the Word of Allah SWT

*"And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. 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, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing". (QS. An Nisa': 12)*

In this verse Allah makes the property left behind by the deceased as a common property that is distributed to the heirs.

Allah Almighty also says,

*[Daud] said, "He has certainly wronged you in demanding your ewe [in addition] to his ewes. And indeed, many associates oppress one another, except for those who believe and do righteous deeds - and few are they." And David became certain that We had tried him, and he asked forgiveness of his Lord and fell down bowing [in prostration] and turned in repentance [to Allah]. (QS. Shad: 24)*

While the evidence from the hadith narrated by Abu Daud is as follows,

حَدَّثَنَا مُحَمَّدُ بْنُ سُلَيْمَانَ الْمَصْبُحِيُّ حَدَّثَنَا مُحَمَّدُ بْنُ الزُّبَيْرِ قَالَ قَالَ عَنْ أَبِي حَبِيَّانَ التَّمِيمِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ رَفَعَهُ قَالَ إِنَّ اللَّهَ يَقُولُ أَنَا ثَالِثُ الشَّرِيكَينَ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ فَإِذَا خَانَ خَرَجْتُ مِنْ بَيْنِهِمَا (رواه أبي دود)

Narrated Muhammad ibn Sulaiman AlMishshishi, narrated Muhammad ibn Az Zibriqa], from Abu Hayyan At Taimi], from his father from Abu Hurayrah and he narrated it. He said: Allah said: "I am the third party of two partners, so long as neither of them betrays his friend. If he has betrayed him, then I am out of both of them". (HR Abu Daud 2936)

The hadith provides an explanation that as long as no one betrays in a partnership of any kind, including business / trade on something halal, Allah will provide blessings in it because Allah is among those who are allied. On the other hand, if the alliance is for something that is forbidden then Allah will certainly give severe sanctions / punishment.

يُدُّ اللَّهُ عَلَى الشَّرِيفَيْنِ مَا لَمْ يَتَخَاوُنَا (رواه البخاري و مسلم)

"Allah's help is upon two parties in a partnership, as long as they do not betray each other". (HR. Bukhari dan Muslim)

Another Musyarakah hadith is the hadith narrated by Ibn Darimi with hadith number 643 which reads;

أَحْبَبْنَا أَحْمَدُ بْنُ حُمَيْدٍ حَدَّثَنَا ابْنُ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ عَنْ وَهْبِ بْنِ مُنَبِّهٍ عَنِ الْحَكَمِ بْنِ مَسْعُودٍ قَالَ أَتَيْنَا عُمَرَ فِي الْمَشْرَكَةِ فَلَمْ يُشْرِكْ ثُمَّ أَتَيْنَاهُ الْعَامَ الْمُقْبِلَ فَشَرَكْنَا لَهُ فَقَالَ تِلْكَ عَلَيَّ مَا قَضَيْنَا وَ هَذِهِ عَلَيَّ مَا قَضَيْنَا

"Ahmad ibn humaid has narrated to us Ibn al Mubarak from Ma'mar from Simak ibn al Fadhl from Wahab ibn Munabbih from Hakam ibn Mas'ud who said: "We went to Umar (to ask about) Musyarakah (in warrants), at first he was not of the opinion of Musyarakah, then we went to him the following year and he was of the opinion of Musyarakah, we asked him (what about your decision last year), then he replied: 'That is in accordance with what we decided, and this is in accordance with what we decided.'" (HR. Ibnu Ad-Darimi: 643)

The hadith is in line with Surah An-Nisa 12, which is the basis of Musyarakah. Likewise, this hadith is the basis for the Musyarakah contract, even though both (an-nisa' - hadith) discuss mawaris.

As for the evidence of Ijma', Ibn Qudamah said in his book Al-Mughni: "The Muslims have agreed on the legitimacy of Musyarakah globally, although there are differences of opinion on some elements of it", (Qudama, 1997). Most scholars have agreed on the permissibility of the Musyarakah contract, and it has also been practiced by many people for a long time.

## TYPES OF MUSYARAKAH

Shirkah is divided into two, both are shirkah amlak (property partnership) and shirkah 'uqud (transaction partnership). In positive law, shirkah amlak is considered a forced shirkah (ijbariyah), while shirkah 'uqud is considered a voluntary shirkah (ikhtiyariyah).

### Syirkah Amlak

Shirkah amlak is the joint ownership of two or more people over an item without a Shirkah transaction. This Shirkah of property rights is divided into two, (Al-Bagdadi, 2010).

Shirkah ikhtiyar (voluntary), which is a shirkah that is born by the will of two joint parties. Examples of this are: two people entering into a partnership to buy an item, or two people receiving a grant or will, and both accepting it, so that they become partners in the property right.

- Syirkah jabar (forced), which is a partnership that occurs between two or more people without their will. Like two people who get an inheritance, so that the inherited goods become the property of the two people concerned.
- The ruling on these two types of shirkah is that each partner is like a stranger to the other. Thus, one party is not entitled to take any action against the property without the permission of the other, as each partner has no control over his brother's share. (As-Sarkhasi, 2010).

### Syirkah 'Uqud

Syirkah 'uqud is a transaction made by two or more people to establish an alliance in property and profits, (Al-Juzairi, 2003). This is the definition of shirkah according to the Hanafiyah scholars mentioned earlier. According to the Hanbalis, there are five types of syirkah 'uqud, they are syirkah 'inan, syirkah mufawadhah, syirkah abdan, syirkah wujuh and mudharabah. Meanwhile, according to the Hanafis, syirkah 'uqud is divided into six, there are syirkah amwal, syirkah a'mal, and syirkah wujuh. And each of these syirkahs is divided into two, both are syirkah mufawadhah and syirkah 'inan. (Az-Zayla'i, 1896).

In general, according to the scholars of fiqh including the Malikiyah and Shafi'iyah scholars, syirkah is divided into four types, they are syirkah 'inan, syirkah mufawadhah, syirkah abdan, and syirkah wujuh. (Rusyd, 2004). The scholars agree that syirkah 'inan may be done. As for the other three types of syirkah, they differed on the ruling. The Shafi'iyah, Zahiriyah and Imamiyah consider all types of syirkah to be haram, except syirkah 'inan and syirkah mudharabah. While the Hanbalis allow all types of syirkah, except syirkah mufawadhah. The

Maaliki allowed all types of syirkah, except syirkah wujuh and syirkah mufawadhah with the definition mentioned by the Hanafis. Meanwhile, the Hanafis and Zaydis allow all types of shirkah without exception, if they fulfill the conditions that have been determined.

Table 1. Opinions of Al-Madzahib Al-Arba'ah on the form of Syirkah

Madzahib al-arba'ah	Syirkah 'Inan	Syirkah Mufawadhah	Syirkah 'Abdan	Syirkah Wujuh
Hanafiyyah	√	√	√	√
Malakiyyah	√	x	x	x
Syfi'iyah	√	x	x	x
Hanabilah	√	x	x	x

In the book of *Al-Rūdhat Al-Nadiyah*, as quoted by Sayid Sabiq, it is stated that the naming that occurs in the books of *furu'* about forms of syirkah, such as *mufāwadhah*, *'inân*, *wujūh*, and *abdân*, is not mentioned in *shar'iyah* or *lughaiyyah*. But the terms are a distinction. There is no prohibition for the two parties to combine their property or business as he interprets the term *mufāwadhah*, (Sabiq, 1977). Because the forms of shirkah in terms of terms are not mentioned in the texts, it means that Allah gives His servants the opportunity to do ijihad. What Al-Mazāhib Al-Arba'ah did regarding the forms of shirkah is part of ijihad.

## HISTORI OF SYIRKAH

Shirkah is one of the business institutions that existed before Islam. Pharaoh's reign in Babylon had recognized the syirkah. The concept of syirkah at that time was contained in the Hamurabi law which was valid one hundred years BC. Some of the rulings on shirkah were already in effect at that time, (Al-Khafifi, 2009). Abu Dawud and Ibn Majah narrated from Ibn Abi Saib r.a that he said to Rasulullah SAW:

كُنْتُ شَرِيكِي فِي الْجَاهِلِيَّةِ فَكُنْتُ خَيْرَ شَرِيكٍ لَا تُدَارِينِي وَلَا تُمَارِينِي (رواه ابو داود و ابن ماجه)

From the hadits, it is stated that although shirkah has been practiced since the days of jahiliyyah. However, its existence can bring goodness if it is done seriously and does not do damage.

The Romans had also incorporated shirkah into their system of legislation where a special shirkah contract with a preliminary agreement of mutual consent was made, (Al-Khiyad, 1993). Later after Islam came, syirkah was practiced among the Arabs. It is the nature of economic life that there is a need for cooperation in developing property and investment among people. Because of this need, especially among the Quraish Arabs at that time, the syirkah contract was legislated. Syirkah is prescribed by Allah because not all businesses can be run through individual efforts. In certain businesses, there is a need for cooperation / partnership involving other parties. Al-Sayyid Sabiq emphasizes with two points:

First, syirkah 'inan already existed at the time of the Prophethood, the Companions of the Prophet (SAW) at that time had syirkah (share) to buy something, each Companion gave his property (among others in the form of money) to buy goods. After the item was purchased, it was then distributed to the companions proportionally, (Sabiq, 1977). Imam Hasan in *Al Rawdhah al Nadiyah* explains that Syirkah 'uqud and all the syirkahs it encompasses (syirkah 'inan, syirkah mufawadhah, syirkah abdan, and syirkah wujuh) are not contracts that are included in sharia (contracts named in terms of sharia or *al aqd al musamma*). but includes a new term (unnamed contract or *al 'aqd ghair al musamma*), (Sabiq, 1977).

Second, Syirkah mudharabah has existed before Islam which was later confirmed by the Prophet Muhammad SAW the Companions had cooperated with the Jews with the knowledge of the Prophet SAW. The Prophet Muhammad did not abrogate (Naskh) nor did he prohibit it. *Al-Khulafa' al Rashidun* (i.e., Abu Bakr, Umar, Ustman, and Ali) and their companions afterward did not prohibit the practice of *syirkah mudharabah*; therefore, the companions practiced *syirkah mudharabah* based on the custom (*al 'adah*) that had been done before. Such practices are considered relevant to the words of the Prophet SAW. Which means: "Do not make something forbidden unless it has been forbidden by Allah and His Messenger". Allah and His Messenger did not forbid the *syirkah 'uqud* and its scope, so the basic principle is that it is permissible, (Sabiq, 1977).

As we also know, the Prophet is a role model in doing business. Limited material capital should not be used as an excuse not to do business. In his business activities, the Prophet did not have his own material capital, he got capital from rich people in the city of Mecca who were unable to manage their money to be managed based on the principle of partnership with a profit-sharing system, as was done with Khadijah. Of course, the partnership format was very simple and could easily be practiced by the community, (Sholihah, 2016).

### The Concept of Musyarakah Surah Al Kahfi Verse 79

From the previous 2 verses which have been widely used as the legal basis for *musyarakah*. The researcher mentions another verse that contains the concept of *musyarakah*, but has not been widely studied, namely surah al Kahfi verse 79.:

	أَمَّا السَّفِينَةُ فَكَانَتْ لِمَسْكِينٍ يَعْمَلُونَ فِي الْبَحْرِ فَأَرْدَتْ أَنْ أَعْيَبَهَا وَكَانَ وِرَاءَهُمْ مَلِكٌ يَأْخُذُ كُلَّ سَفِينَةٍ غَصْبًا
As for	: أَمَّا
Boat	: السَّفِينَةُ
Belongs to the poor	: كَانَتْ لِمَسْكِينٍ
Work	: يَعْمَلُونَ
On The sea	: فِي الْبَحْرِ

"As for the ark (boat), it belongs to the poor people who work in the sea." This is an explanation and detailing of the strange and miraculous events that Musa AS, and he could not be patient with them. That is, the ship that I (khidir) plowed through belonged to some weak people and was unable to face the wrongdoers. They work with the ship to make money. "and I (khidir) intended to damage the ark," I (khidir) perforated their ship so that it would be deformed so that it would not be seized by the tyrannical king. "for there was a king before them," a pagan, unjust king before them, "who seized every ship." Seizing every good and flawless ship, (Ash-Shabuni, 2020). The ownership of the boat in this verse is explained in the interpretation of Al-kassyaf which states that the boat is owned by ten brothers, of which five are disabled and the remaining five work at sea, (Az-Zamakhsari, 1986).Ka'b and others said, "(The boat) belonged to ten poor brothers whom they inherited from their father. Five of them were disabled, while the other five worked at sea". Another opinion states that there were seven of them, each of whom had a defect that was not found in the others. An-Naqqasy has mentioned their names. As for the workers among them, the first had leprosy, the second was blind in one eye, the third was lame, the fourth was senile, and the fifth had a fever that never ceased for all time. The other five people who cannot work are: blind, deaf, dumb, lame, and insane. The sea where they work is between Persia and Rome, (Al-Qurthubi, 1926).

From some excerpts of the above interpretation, we can find out the concept of joint property (boat) owned by ten brothers from the gift (read: inheritance) of his father. When viewed from the various types of *Musyarakah* that exist, the concept of the implementation of joint property here is in accordance with the form of *Musyarakah Amlak* contract in the type of *Musyarakah Amlak Al-Ijbariyah*, which is an alliance that occurs due to compulsion, not from the wishes of the people who are allied, (Maarif et al., n.d.).

Based on the description in the sub-discussion of *shirkah* fiqh, it is understood that the substantial elements in a *shirkah* include: the parties to the union (legal subjects); the contract of union (legal action); the object of the union, namely: venture capital -could be in the form of assets, labor, or credibility- and legal consequences (responsibility and authority, rights, and obligations). And there is an agreement on the distribution of profits and losses, (Besar, 2019).

In terms of the contract (*Shigat*), if referring to the type of *Musyarakah*. So between the two types of *Musyarakah* mentioned earlier (*Musyarakah`amlak* and *Musyarakah`uqūd*) both have differences in terms of the contract, *syirkah`amlak* does not require a contract while *syirkah`uqūd* requires a contract to carry it out. If examined from the contract, the joint property can be categorized as *syirkah`amlak* because it does not require *ijab-kabul* which must be pronounced. *Syirkah`amlak* is different from *syirkah`uqūd* which is often used in the

Islamic business world. *Syirkah 'uqūd* is the pooling of assets that are then used as business capital, the intention is to obtain profit while *Syirkah `amlak* is the opposite. This is what makes this type of *Musyarakah* more suitable if it is equated with joint property, (Nadia & Noval, 2020).

In terms of legal subjects (*Al 'aqidain*), *musyarakah* consists of two or more parties who all share together in the property. The ten brothers who shared ownership of the boat became the legal subjects of this *musyarakah* contract. Since the boat they owned was inherited from their father, this partnership did not create a *syirkah 'Uqud*.

The legal object (*Al maal*) in this *Musyarakah* contract is the boat that they use to support their economy. Then when made into a table it looks like this:

Table 2. *Musyarakah* Contract on QS. Al Kahfi verse 79

<i>Shigat</i>	<i>Al 'Aqidain</i>	<i>Al Maal</i>
There is no <i>ijab-qabul</i> in this contract because it is a <i>Syirkah Amlak</i> .	<i>Al Masakin</i> (Ten poor brothers whom they inherited from their father)	<i>As-Safinah</i> (boat)

To answer the question "Is the implementation of joint property part of *Musayarakah*". As an analytical critique there is a rule العبرة في العقود بالمقاصد والمعاني لا بالألفاظ والمباني (Ad-Dawsariy, 2007). In simple terms, the rule can be interpreted: The law of a contract is determined based on its intent and meaning, not based on its pronunciation and language structure. This rule has been widely recognized by all four mainstream schools of Sunni fiqh. However, this news sentence structure is only used by the Madzhab of Hanafi, while the other madzhab use the question structure. In the Madzhab of Syafi'i of thought, the rule reads: هل العبرة بصيغ العقود أو بمعانيها؟ Is the ruling determined based on the sigat of the contract or its meaning? while the Hambali madzhab uses the wording إذا وصل بألفاظ العقود ما يخرجها عن موضوعها فهل يفسد العقد بذلك أو يجعل؟ If the contracts are connected to things that take them out of their original place, do they become corrupt or do they remain so? The difference in the structure of this rule, according to al-Burnū, is the paradigm of each school of thought towards the validity of the rule. The question structure indicates that there is a difference of opinion within the school about its validity, while the rule with a positive sentence structure indicates the unanimity of the school's view, (Al-Burnu, 1992).

## CONCLUSION

In language, *Musyarakah* or *Syirkah* is the mixing of one asset with another so that the two can no longer be distinguished. Most scholars then used this term to refer to a specific transaction, even though there is no mixing of the two assets, because what causes the mixing of assets is the transaction.

In Surah al-Kahf verse 79, it is explained that the boat is owned by several poor brothers whose ownership of the boat cannot be distinguished. So that the form of ownership can be called a partnership (*musyarakah*). The *Musyarakah* in this contract is in the form of *Musyarakah Amlak Al-Ijbariyah*, which is a form of joint ownership by accident or force because the boat is inherited from their parents.

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