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Distinguishing Receivable Assignment and *Hissah* Transfer in *Musyarakah Mutanaqisah* Contracts

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Abstract

Musyarakah Mutanaqisah is an Islamic financing contract based on joint ownership between a financial institution and a customer through the gradual transfer of ownership shares (*hissah*). However, the legal characterization of a bank's transfer of rights to a third party remains contested, particularly regarding whether the transaction constitutes a receivable assignment (cessie) or a transfer of ownership rights. This study aims to analyze the judicial reasoning in Decision No. 1271/Pdt.G/2023/PA.Bgr of the Bogor Religious Court, affirmed by Decision No. 180/Pdt.G/2024/PTA.Bdg of the Bandung Religious High Court, and to assess its conformity with the principles governing *Musyarakah Mutanaqisah* and *hissah* transfer under Islamic law. Using a normative-empirical legal approach, this study examines judicial decisions, relevant legal materials, and interview data from court officials. The findings reveal that the courts characterized the transaction as a cessie, rendering notification to the customer sufficient for legal validity. Nevertheless, the decisions also recognized that the transferred object was the bank's ownership share in jointly owned property. This study contributes to Islamic commercial law by clarifying the distinction between receivable assignment and *hissah* transfer and highlighting the importance of accurately identifying the transferred object before determining the applicable legal framework.

INTRODUCTION

Musyārakah Mutanāqiṣah is one of the Islamic financing instruments used in home financing, as it combines the principle of partnership with the gradual transfer of ownership. The National Sharia Council of the Indonesian Council of Ulama (DSN-MUI) Fatwa No. 73 of 2008 defines this contract as a form of *musyārakah* in which one party's ownership share decreases as the other party gradually purchases that share. Accordingly, the legal relationship between a bank and its customer under a *Musyārakah Mutanāqiṣah* contract is not merely a creditor debtor relationship, as in debt-based financing, but a partnership relationship (*syirkah*) in which both parties jointly own an asset until the bank's entire ownership share has been transferred to the customer (Ansori et al., 2026; Musliadi, 2022). This characteristic establishes the ownership share (*ḥiṣṣah*) as a fundamental element distinguishing *Musyārakah Mutanāqiṣah* from other financing contracts.

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In the context of Islamic economic dispute resolution, the Religious Courts have absolute jurisdiction under Article 49(i) of Law No. 3 of 2006 concerning the Amendment to Law No. 7 of 1989 on Religious Courts. This jurisdiction places judges in a strategic position to interpret the legal relationship between the parties based on the underlying Islamic contractual framework. Therefore, disputes arising from *Musyārakah Mutanāqiṣah* contracts cannot be resolved solely through the application of general civil law but must also take into account the Sharia principles governing joint ownership, the transfer of rights, the protection of partners' interests, and the attainment of *maṣlaḥah* (public benefit) within partnership contracts (Dakum & Tamtowi, 2019; Fateh, 2018; Rohmati et al., 2018).

The legal issues become more complex when a *default* occurs and an Islamic financial institution transfers its rights to a third party. This issue is reflected in the dispute between a customer and the Sharia Business Unit of PT Bank Maybank Indonesia Tbk, which was adjudicated in Religious Court Decision No. 1271/Pdt.G/2023/PA.Bgr and subsequently upheld by Bandung High Religious Court Decision No. 180/Pdt.G/2024/PTA.Bdg. In this case, the bank transferred its rights to a third party after the customer fell into arrears on the financing payments. This situation raises a legal question concerning the classification of the transferred object: whether it constitutes a receivable that may be transferred through the *cessie* mechanism under civil law or an ownership share (*ḥiṣṣah*) in a jointly owned asset that is subject to the partnership provisions of Islamic economic law. This distinction has direct implications for the legal requirements and procedures governing the transfer of rights (Alwi et al., 2022; Faizal et al., 2023).

From the perspective of civil law, the transfer of receivables through *cessie* generally does not require the debtor's consent. However, notification to or written acknowledgment by the debtor is relevant to the transfer's enforceability against the debtor, as stipulated in Article 613 of the Indonesian Civil Code. By contrast, from the perspective of Islamic economic law, the transfer of an ownership share in jointly owned property has characteristics distinct from those of a receivables assignment because it concerns ownership rights and the interests of the parties bound by the contract. These differences indicate potential divergence between the civil law framework and Islamic economic law principles in determining the validity of rights transfers under *Musyārakah Mutanāqiṣah* contracts (Asyiqin & Alfurqon, 2024; Lagalanti et al., 2026).

The significance of this issue has increased following the issuance of DSN-MUI Fatwa No. 159 of 2024 concerning the Sale and Purchase of *al-Māl al-Musytarak* and *al-Māl al-Musya'*. The fatwa stipulates the requirement for permission from the other partner and the fulfilment of *maṣlaḥah* for the parties in the transactions it regulates. This provision offers an important perspective for assessing the transfer of *ḥiṣṣah* under *Musyārakah Mutanāqiṣah* contracts, particularly when one party transfers its ownership share without the direct involvement of the other party. In the context of the case examined in this study, the provision also raises questions regarding whether the judicial reasoning in the Bogor Religious Court Decision and the Bandung High Religious Court Decision is consistent with the relevant developments in Sharia norms (Ibrahim & Salam, 2021; Nufus, 2022).

Research on *Musyārakah Mutanāqiṣah* has developed across various perspectives, ranging from its conceptual foundations to financing implementation and Sharia compliance. *Musyārakah Mutanāqiṣah* has been regarded as a financing instrument that reflects the principles of partnership and fairer risk sharing than debt-based financing (Avissa et al., 2025). Its defining characteristic lies in joint ownership, which is gradually transferred to the customer through the purchase of *ḥiṣṣah* (Nasrat et al., 2023). The successful implementation of this contract also depends on the consistent application of justice, transparency, and protection for all

parties to the partnership. Furthermore, the structure of *Musyārakah Mutanāqiṣah* has been considered more consistent with Sharia principles than *murābaḥah*-based home financing (Dayuni, 2025). The status of joint ownership under this contract also gives rise to legal consequences that differ from those associated with creditor–debtor relationships in conventional financing (Smolo & Hassan, 2011). Collectively, these studies underscore that ownership share (*ḥiṣṣah*) is a fundamental element of the legal structure of *Musyārakah Mutanāqiṣah*.

Meanwhile, studies on rights transfers and Islamic economic dispute resolution have identified challenges in reconciling positive law with Sharia compliance. The transfer of receivables through the *cessie* mechanism may be recognised under positive law but continues to raise concerns regarding Sharia compliance. Disputes involving receivables assignments are also associated with the auction of collateral and the protection of customers' rights (Basri, 2024). Furthermore, DSN-MUI Fatwa No. 159 of 2024 identifies the other partner's permission and the attainment of *maṣlaḥah* as important considerations in transactions involving the sale and purchase of jointly owned property. Other studies have shown that judicial reasoning in Islamic economic disputes generally focuses on evidence, contractual performance, and legal certainty (Kasri et al., 2023; Khalidin et al., 2023; Sobiyanto & Fatwa, 2023).

Nevertheless, previous studies have not specifically examined the legal classification of the object transferred under *Musyārakah Mutanāqiṣah* contracts, particularly whether it constitutes a receivable or *ḥiṣṣah* as an ownership share in a jointly owned asset. This distinction is crucial because it determines the applicable legal basis for the transfer, the requirements for consent, the protection of partners' rights, and the transaction's conformity with Sharia principles. Moreover, the relationship between judicial reasoning and fatwa provisions governing the sale and purchase of jointly owned property in disputes involving the transfer of *ḥiṣṣah* requires further investigation. Accordingly, a research gap remains concerning the legal construction of banks' rights transfers under *Musyārakah Mutanāqiṣah*, particularly from the perspectives of joint ownership and Sharia compliance.

The novelty of this study lies in its analysis of the transfer of banks' rights under *Musyārakah Mutanāqiṣah* based on the legal classification of the transferred object, namely whether it constitutes a receivable or *ḥiṣṣah* as an ownership share in a jointly owned asset. The study also compares the judicial reasoning in Bogor Religious Court Decision No. 1271/Pdt.G/2023/PA.Bgr, as upheld by Bandung High Religious Court Decision No. 180/Pdt.G/2024/PTA.Bdg, with the provisions of DSN-MUI Fatwa No. 73 of 2008 concerning *Musyārakah Mutanāqiṣah* and DSN-MUI Fatwa No. 159 of 2024 concerning the Sale and Purchase of *al-Māl al-Musytarak* and *al-Māl al-Musya'*. This comparison aims to assess the consistency of the judicial reasoning with the characteristics of joint ownership and the relevant principles of Islamic economic law.

This study aims to analyse the legal reasoning of the judicial panel in Bogor Religious Court Decision No. 1271/Pdt.G/2023/PA.Bgr, as upheld by Bandung High Religious Court Decision No. 180/Pdt.G/2024/PTA.Bdg, concerning the transfer of a bank's rights to a third party under a *Musyārakah Mutanāqiṣah* contract. It also aims to evaluate whether the judicial reasoning is consistent with DSN-MUI Fatwa No. 73 of 2008 concerning *Musyārakah Mutanāqiṣah* and DSN-MUI Fatwa No. 159 of 2024 concerning the Sale and Purchase of *al-Māl al-Musytarak* and *al-Māl al-Musya'*.

Theoretically, this study is expected to contribute to the development of Islamic economic law by clarifying the conceptual differences and legal consequences between receivables and *ḥiṣṣah* under *Musyārakah Mutanāqiṣah* contracts, while enriching the discourse on harmonising civil law with Sharia principles. Practically,

the findings are expected to serve as a reference for Islamic financial institutions in formulating clearer rights-transfer clauses that comply with Sharia principles. The findings may also inform judges and regulators in strengthening legal certainty and Sharia compliance in transactions based on joint ownership.

METHODS

This study employs a qualitative method with a normative-empirical legal approach and a *case study* design to analyse judicial reasoning concerning the transfer of a bank's rights to a third party under a *Musyārakah Mutanāqiṣah* contract, based on Bogor Religious Court Decision No. 1271/Pdt.G/2023/PA.Bgr and Bandung High Religious Court Decision No. 180/Pdt.G/2024/PTA.Bdg. The normative approach is used to examine court decisions, fatwas, and statutory regulations governing Islamic financing, while the empirical approach is employed to gain an understanding of the legal reasoning underlying judicial decisions through interviews with court personnel. By combining these two approaches, this study seeks to comprehensively explain the relationship between legal norms, Sharia principles, and the practice of Islamic economic dispute resolution (Dagan et al., 2018; Sudarmin et al., 2023).

Method and Design

This study adopts a qualitative approach using a case study design. A case study is employed to explore an event or phenomenon in depth within its real-life context, enabling the researcher to understand the characteristics and complexity of a case holistically. The study applies a normative-empirical legal approach, which combines an analysis of legal norms with empirical facts arising from judicial practice. This approach is appropriate because the research object comprises not only legal documents but also judicial reasoning, which requires empirical clarification from sources involved in the proceedings (Engkizar et al., 2026; Phelan & Phelan, 2015).

Data Sources

The data sources consist of primary and secondary data. Primary data were obtained through semi-structured interviews with a panel judge and a court registrar involved in the appellate proceedings. Secondary data were collected from court decisions, fatwas issued by the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI), statutory regulations, books, scholarly articles, and relevant literature on Islamic economic law related to the research topic (Bryant & Charmaz, 2019). These data sources were selected to provide a comprehensive understanding of both the normative and empirical dimensions of the legal issues under investigation.

Research Instruments

The primary research instrument was the researcher (*human instrument*), who was responsible for determining the research focus, collecting data, interpreting the findings, and drawing conclusions (Alhazmi & Kaufmann, 2022). To support data collection, the study employed an interview guide, a document analysis sheet, and an analytical matrix for examining court decisions and fatwas. These instruments were appropriate because the study required interpretative judgement that could not be fully replaced by standardised instruments.

Data Collection Techniques

Data were collected through document analysis and semi-structured interviews. Document analysis involved examining court decisions, fatwas, regulations, and literature relating to *Musyārakah Mutanāqiṣah* contracts, the assignment of receivables, and the transfer of *ḥiṣṣah*. Interviews were conducted to obtain a deeper understanding of the legal considerations underlying the decisions and the practices of dispute resolution from the perspective of court personnel (Qureshi, 2022). These two techniques were employed to enable cross-verification between normative data

contained in legal documents and empirical data obtained directly from the interviewees.

Data Analysis Tools

The analytical tools consisted of *document analysis* and normative legal analysis. Document analysis was used to identify and interpret the substantive content of court decisions, fatwas, and regulations relevant to the research topic. Normative legal analysis was employed to assess the conformity of judicial reasoning with the principles of Islamic economic law and applicable legal provisions. These analytical tools were appropriate because the study focused on the legal constructions and arguments contained in various legal documents.

Data Analysis Techniques

Data were analysed using the interactive model proposed by Miles, Huberman, and Saldaña, which comprises data condensation, data display, and conclusion drawing. Data condensation involved selecting and focusing on information relevant to the research questions. The data were then presented in analytical narratives and normative comparisons to facilitate interpretation. Finally, conclusions were drawn by examining the relationships between the empirical findings, the contents of the court decisions, and the legal provisions serving as the basis for the analysis. This model was appropriate because it facilitated a systematic analysis of complex and diverse data (Daniel & Harland, 2018; Lungu, 2022).

Data Trustworthiness

Data trustworthiness was established through source triangulation and methodological triangulation. Source triangulation involved comparing information obtained from court decisions, fatwas, statutory regulations, and interviews. Methodological triangulation was conducted by comparing the results of document analysis with interview findings to assess the consistency of the information obtained. In addition, relevant excerpts from court decisions and interview transcripts were re-examined to minimise interpretative errors. These procedures were intended to strengthen the credibility, dependability, and validity of the research findings, thereby ensuring their academic rigour and accountability.

RESULT AND DISCUSSION

Chronology and Legal Facts of the Case

The case involved six parties in addition to the customer. PT Bank Maybank Indonesia Tbk, Sharia Business Unit, was designated as the First Defendant; the second assignee, namely the head of PT Protindo Mitra Muda Selaras, as the Second Defendant; the auction winner as the Third Defendant; PT Triniti Menara Cipta as the First Co-Defendant; the State Asset and Auction Service Office (Kantor Pelayanan Kekayaan Negara dan Lelang, KPKNL) in Bogor as the Second Co-Defendant; and the housing developer, PT Nuansa Pesona Asri, as the Third Co-Defendant. The customer alleged that the parties had committed an unlawful act and requested that the auction be declared invalid. The customer also argued that the house remained jointly owned and expressly rejected any transfer of debt or ownership to any party. Conversely, the bank filed a counterclaim seeking a declaration that the customer had breached the contract and that the assignment of receivables was valid (Pengadilan Agama Bogor, 2024: 96–97, 112).

The subject matter of the contract was a house covered by Building Use Rights Certificate No. 1245. In accordance with the contractual provisions, the certificate was registered in the customer's name, while the property was encumbered with a first-ranking mortgage in favor of the bank through Mortgage Deed No. 06/2019 dated January 16, 2019 (Pengadilan Agama Bogor, 2024: 104, 109). This fact is significant because it reveals a duality in the legal construction: under the contract, the bank and the customer were joint owners, whereas the land registration records

listed the asset in the customer's name and positioned the bank as the creditor holding the mortgage.

Following the first-instance judgment, the customer filed an electronic appeal on June 3, 2024, requesting that the judgment be overturned and the entire claim granted. Meanwhile, the bank submitted a counter-appeal memorandum requesting that the first-instance judgment be upheld. The case was registered with the Bandung Religious High Court on August 13, 2024, and decided by a panel comprising three appellate judges (Pengadilan Tinggi Agama Bandung, 2024: 5–8, 17). The sequence of legal facts established by the panel is summarized in Table 1.

Table 1. Chronology of the Legal Facts of the Case

Date	Event	Source
February 1, 2017	The customer paid a down payment of IDR 695,800,000 to the developer for a house priced at IDR 945,800,000.	PA Bogor, p. 84
July 31, 2017	MMQ Contract No. 006/MMQ/BGR/2017 established the bank's share at IDR 250,000,000 and the customer's share at IDR 695,800,000; the asset was registered in the customer's name.	PA Bogor, pp. 84, 104
December 2018–February 2019	Arrears in the *ujrah* (rental fee) for the MMQ property began in December 2018. First, Second, and Third Warning Letters were issued on January 17, January 24, and February 1, 2019, respectively.	PA Bogor, p. 105
January 16, 2019	Mortgage Deed No. 06/2019 was executed, naming the bank as the holder of the first-ranking mortgage.	PA Bogor, p. 109
March 23, 2021	Deed of Sale and Assignment of Receivables No. 31 was executed to transfer the bank's share, valued at IDR 229,155,360.29, to PT Triniti Menara Cipta. Notice of the assignment was sent to the customer on the same date.	PA Bogor, pp. 91–92, 99
April–May 2021	PT Triniti Menara Cipta issued formal demands, to which the customer responded with a written reply and a request for a special settlement arrangement.	PA Bogor, pp. 87–88
July 30, 2021	Deeds Nos. 62 and 63 were executed to transfer the receivables from PT Triniti Menara Cipta to the Second Defendant.	PA Bogor, pp. 115–116
June 15, 2022	The Second Defendant submitted an auction application, specifying the customer's outstanding obligations as IDR 307,001,489.86.	PA Bogor, pp. 93–94
September 9, 2022	A mortgage enforcement auction was conducted by KPKNL Bogor with a reserve price of IDR 693,000,000, and the Third Defendant was declared the winner.	PA Bogor, pp. 100–101
May 28, 2024	The Bogor Religious Court rejected the claim and granted the bank's counterclaim.	PA Bogor, pp. 117–119
July 4, 2024	DSN-MUI Fatwa No. 159/DSN-MUI/VII/2024 was issued.	DSN-MUI (2024)
September 11, 2024	The Bandung Religious High Court upheld the first-instance judgment while revising the wording and structure of the operative ruling.	PTA Bandung, pp. 16–17

Source: *Compiled from Judgment No. 1271/Pdt.G/2023/PA.Bgr and Judgment No. 180/Pdt.G/2024/PTA.Bdg.*

Table 1 reveals two facts that qualify the prevailing narrative surrounding this case. First, the customer's ownership contribution was substantially greater than the bank's. The customer's contribution of IDR 695,800,000 accounted for approximately 73.6% of the house price, whereas the bank contributed only about 26.4%. The bank's share transferred in 2021 was valued at IDR 229,155,360.29. Second, the assignment was not carried out entirely without the customer's knowledge. The first-instance panel found that the bank had demonstrably sent a notice of assignment on the same date as the assignment deed. The customer subsequently responded to the formal demand issued by PT Triniti Menara Cipta (Pengadilan Agama Bogor, 2024: 87–88, 98). Accordingly, the legal issue was not a complete absence of information, but rather the failure to obtain the customer's consent or offer the share to the customer before selling it to an external party.

In summary, the findings of this study reveal three main points. First, both judicial levels classified the transfer of the bank's rights as a cessie of receivables and assessed it under Article 613 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPerdata) and the fatwas concerning novation and subrogation. Second, this classification was inconsistent with the panel's own finding that the transferred object constituted the bank's ownership share. Third, when assessed against DSN-MUI Fatwa No. 73 of 2008 and DSN-MUI Fatwa No. 159 of 2024, the applicable standards include the partner's consent and the welfare of all partners, neither of which can be satisfied merely by providing notice after the transfer has occurred. These three findings are discussed in the following two subsections.

Judicial Reasoning: From Contractual Clauses to the Cessie Regime

The reasoning of the Bogor Religious Court rested on three main pillars. The first was the binding force of the contract. The panel held that the parties were bound by Article 1338(1) of the Indonesian Civil Code and were therefore required to comply with every provision of the contract, "article by article and clause by clause." The panel also emphasized that the contract could not be interpreted selectively (Pengadilan Agama Bogor, 2024: 107–108).

The second pillar was Article 19.3 of the contract, which the panel quoted in full. The clause stipulated that the customer agreed and authorized the bank "at any time to sell, transfer, pledge [...] or in any manner transfer the Bank's receivables/claims against the Customer" to a third party with whom the bank entered into a subrogation, cessie, joint financing, or other form of cooperation agreement, together with all associated rights and security interests (Pengadilan Agama Bogor, 2024: 97–98).

The third pillar was the application of the cessie regime. The panel affirmed that, under Article 613(2) of the Indonesian Civil Code, a cessie does not require the debtor's consent. Since notice had been given through a letter dated March 23, 2021, the panel concluded that the action "did not constitute an unlawful act" (Pengadilan Agama Bogor, 2024: 116).

The panel also provided the construction with a basis in Islamic law. Referring to DSN-MUI Fatwas Nos. 103 and 104/DSN-MUI/X/2016, Article 613 of the Indonesian Civil Code, Article 16(1) of the Mortgage Law, and Articles 459 and 467 of the Compilation of Sharia Economic Law, the panel declared that the cessie from the bank to PT Triniti Menara Cipta, which was subsequently transferred to the Second Defendant, was "valid and permissible under Sharia." The transfer was also considered a form of hawalah that did not require an offer and acceptance (*ijab* and *qabul*) (Pengadilan Agama Bogor, 2024: 116–117). The references to the fatwas on subjective novation and subrogation indicate that the panel understood the entire sequence of events as a substitution of creditors. Within this construction, the MMQ contract was treated merely as the source of the assignment clause rather than as a co-ownership structure requiring further examination.

Describing cessie as a "form of hawalah" also raises a conceptual problem. Under DSN-MUI Fatwa No. 12/DSN-MUI/IV/2000, hawalah refers to the transfer of a debt from the party liable for it; accordingly, the initiative and object of the transfer are situated on the debtor's side (DSN-MUI, 2000). In this case, however, the opposite occurred: the creditor transferred its claim to another party without the debtor's involvement in the assignment process. The statement that this form of *hawalah* "does not require an offer and acceptance" further indicates that the arrangement was not *hawalah* in its fiqh sense, but rather a cessie labeled as Sharia-compliant. Such labeling creates an appearance of Sharia compliance without examining the substantive requirements of the contract invoked as its legal basis.

The Bandung Religious High Court adopted all of these considerations as its own reasoning and added only two points. First, the appellate panel emphasized that the appellant had to abide by the contract voluntarily entered into, referring to Article 1338 of the Indonesian Civil Code and Q.S. al-Mā'idah [5]:1, which the judgment translated as "O you who believe, fulfill your promises." Second, the panel stated that the bank's actions, which ultimately led to the auction, constituted a "consequence of the Appellant's breach of contract" under Articles 19.1 and 19.3 of the agreement (Pengadilan Tinggi Agama Bandung, 2024: 13–14).

The appellate judgment contains no reference to DSN-MUI Fatwa No. 159/DSN-MUI/VII/2024, no consideration of the customer's position as a co-owning partner, and no ethical observation concerning transparency. The additions made by the appellate panel concerned only the provisional claim and revisions to the structure of the operative ruling (Pengadilan Tinggi Agama Bandung, 2024: 12, 15).

The reference to Q.S. al-Mā'idah [5]:1 could have opened up an avenue of analysis that the panel did not pursue. The command to fulfill contractual obligations applies to the entire contract, including Article 2, which the first-instance panel recorded as an undisputed fact: under Sharia principles, ownership of the property was shared by the bank and the customer (Pengadilan Agama Bogor, 2024: 84). If the principle of pacta sunt servanda and the command to fulfill contractual obligations were applied comprehensively, the bank's obligation to respect the customer's status as a co-owning partner would be as binding as the customer's obligation to make payments. The first-instance panel itself emphasized that the contract had to be understood as a whole rather than selectively. Nevertheless, this principle was applied only to the customer's obligations and the bank's authority.

This construction reveals a shift in legal classification that was not explicitly acknowledged. In its evidentiary analysis, the first-instance panel stated that the bank had "only transferred the First Defendant's ownership share in the collateral object, amounting to IDR 229,155,360.29" (Pengadilan Agama Bogor, 2024: 99). However, in its legal reasoning and operative ruling, the same object was described as a receivable, even as a "*murabahah* receivable," although no murābaḥah contract existed in the legal relationship between the parties (Pengadilan Agama Bogor, 2024: 118; Pengadilan Tinggi Agama Bandung, 2024: 17).

Article 19.3, which served as the basis for the bank's authority to transfer the asset, likewise referred only to the transfer of "the Bank's receivables/claims," not its ownership share. Thus, an object factually described as an ownership share was assessed under rules governing receivables, while an authorization textually relating to receivables was used to justify the transfer of an ownership share.

An interview with an appellate judge illustrates how this shift was understood from within the judiciary. The judge explained that the contract had not terminated but had undergone a change in nature: "In fiqh, this is known *as taḥawwul al-'aqd*, namely a change in the form of a contract. What initially began as a partnership then shifted into a debt obligation" (Interview with a Bandung Religious High Court

Appellate Judge, July 16, 2025). This concept may explain why the panel treated the bank's rights as receivables. However, the concept does not appear in either judgment and therefore cannot be regarded as part of the ratio decidendi. The judgments also do not explain when or through what legal act the bank's ownership share was converted into a receivable. Under DSN-MUI Fatwa No. 73/DSN-MUI/XI/2008, a change in ownership shares occurs through the gradual sale of the bank's share to the customer, rather than automatically as a consequence of default (DSN-MUI, 2008).

The interview statements must also be interpreted cautiously because some do not align with the written judgment. The appellate judge stated that the panel had "also considered that fatwa" and that there was an "ethical note" intended to prevent similar practices from recurring. Meanwhile, the court clerk stated that the panel had included a consideration that such an action should preferably not be taken without prior notice (Interviews with a Bandung Religious High Court Appellate Judge and Court Clerk, July 16, 2025). Neither statement appears in Judgment No. 180/Pdt.G/2024/PTA.Bdg.

The judge's statement that the customer was unaware of the sale also differs from the first-instance panel's finding that notice had been given and received by the customer. In this study, the interview statements are more appropriately understood as post-judgment ethical reflections rather than as part of the legal reasoning recorded in the judgment. These reflections remain important because they show that the judges recognized the Sharia dimension of the case, even though that dimension was not reflected in the judgment itself.

In addition to the issue of legal classification, the operative ruling contains inaccuracies that affect legal certainty. Both judgments declared valid and binding the "Sale and Assignment of Receivables Agreement dated July 30, 2021" between the bank and PT Triniti Menara Cipta (Pengadilan Agama Bogor, 2024: 118; Pengadilan Tinggi Agama Bandung, 2024: 17). However, according to the evidence assessed by the panel itself, the deed between the bank and PT Triniti Menara Cipta was Deed No. 31 dated March 23, 2021. July 30, 2021, was instead the date of Deeds Nos. 62 and 63 executed between PT Triniti Menara Cipta and the Second Defendant (Pengadilan Agama Bogor, 2024: 91–92, 115–116).

The appellate panel stated that it had revised the structure of the operative ruling but did not correct the identity of the deed. This inaccuracy did not alter the outcome of the case, but it indicates that neither judicial level precisely identified the object of the assignment.

The appellate review process also reveals limitations in the scope of judicial correction. The appellate panel stated that the objections in the appeal memorandum and the matters raised in the counter-appeal memorandum had already been covered in its considerations and therefore "did not need to be considered again" (Pengadilan Tinggi Agama Bandung, 2024: 15). Adopting the first-instance court's reasoning is a common and legitimate practice. However, in a case involving a newly issued fatwa and the distinctive characteristics of a particular contract, adopting the earlier reasoning without renewed examination deprived the appellate court of an opportunity to develop standards for Sharia economic law.

At the same time, most of the first-instance court's reasoning focused on the validity of the auction, including compliance with the requirements of Minister of Finance Regulation No. 213/PMK.06/2020, the protection of the auction winner as a good-faith purchaser, and the enforceability of the mortgage certificate (Pengadilan Agama Bogor, 2024: 102–103, 109–110). This focus is understandable because the auction was the event that directly affected the customer. However, as a consequence, the legal chain preceding the auction namely, the nature of the rights transferred by the bank did not receive a commensurate level of scrutiny.

Overall, the judicial reasoning in this case was constructed according to a contractual-civil law logic. The contract was declared valid and binding; it contained an assignment clause; the customer was found to be in breach; the assignment was carried out and notice was given; therefore, no unlawful act had occurred. This reasoning is internally consistent and aligns with the tendency of courts in other cessie cases involving Sharia financing, in a judgment of the Batam Religious Court. The weakness of this construction lies in the starting point of the analysis: the object being transferred was not first legally identified. Because the object was assumed to be a receivable, the question of the customer's rights as the majority owner was never raised (Pengadilan Agama Bogor, 2024: 99, 116).

Compliance with DSN-MUI Fatwas: Notice, Partner Consent, and the Classification of *Ḥiṣṣah*

Compliance with DSN-MUI fatwas cannot be assessed using a single criterion because the outcome depends on the legal classification of the transferred object. Table 2 compares two possible classifications of the object and the legal standards applicable to each.

Table 2. Classification of the Transferred Object and Applicable Standards

Aspect	Classification as a Receivable (Cessie)	Classification as *Ḥiṣṣah*
Object	Outstanding *ujrah* charges and installment payments that have fallen due	The remaining ownership share of the bank in the house
Positive legal basis	Article 613 of the Indonesian Civil Code; Article 16(1) of the Mortgage Law	The MMQ contract (joint ownership); Article 1338 of the Indonesian Civil Code
Fatwa basis	Fatwas Nos. 103 and 104/DSN-MUI/X/2016	Fatwa No. 73/DSN-MUI/XI/2008; Fatwa No. 159/DSN-MUI/VII/2024
Consent standard	Notice to the debtor; consent is not required	Partner consent and the welfare of all partners
Substantive Sharia requirements	Transfer using sil'ah (goods) as the means of payment; the amount of the receivable must be clear	Consent, clarity of the object, and *khiyār* based on the contract, 'urf, or *maṣlaḥah*
Application in the judgment	Applied; notice dated March 23, 2021, was considered sufficient; the sil'ah requirements were not examined	Not applied, although the object was described as an "ownership share"

Source: *Compiled from the judgments, the Indonesian Civil Code, the Mortgage Law, and DSN-MUI fatwas.*

Table 2 shows that the judgment was consistent with the first classification but did not examine the second. If the transferred object was a receivable, the notice issued on March 23, 2021, satisfied Article 613(2) of the Indonesian Civil Code. However, even under this classification, Sharia compliance was not fully examined. Fatwa No. 104/DSN-MUI/X/2016, cited by the panel, requires that monetary receivables may only be transferred in exchange for goods (*sil'ah*) as the means of payment and that the amount of the receivable be clearly established (DSN-MUI, 2016).

The judgment does not examine whether the transfers from the bank to PT Triniti Menara Cipta and from PT Triniti Menara Cipta to the Second Defendant followed this mechanism, what the transfer values were, or whether the assignees conducted their activities in accordance with Sharia principles. The transfer of receivables from an Islamic bank to a conventional business entity conflicts with Islamic banking principles. Accordingly, the conclusion that the cessie was "valid and

permissible under Sharia" was reached without examining the requirements established by the very fatwa cited by the panel.

If the transferred object was ***ḥiṣṣah***, the applicable assessment standards would change fundamentally. Fatwa No. 159/DSN-MUI/VII/2024 requires partner consent and consideration of the welfare of all partners when selling a share of jointly owned property. Notice sent on the same day the deed was signed constitutes information about an event that has already occurred, rather than a request for consent before the event takes place. This distinction is consistent with the differing opinions reflected in the deliberations underlying Fatwa No. 73/DSN-MUI/XI/2008.

According to the opinion of Ibn 'Ābidīn, selling a share of a building to an external party is impermissible. Conversely, according to the opinion of Kamāl Taufīq Ḥaṭṭāb, a sale to a third party is permissible when a partner wishes to withdraw from the partnership (DSN-MUI, 2008). Fatwa No. 159 can be understood as adopting a middle position: selling to another party is permissible, provided that the partner's consent is obtained. Under this standard, the transfer of the bank's share without the customer's consent did not meet the fatwa's requirements.

A more precise classification could, in fact, have been derived from the facts established by the panel itself. The panel found that, beginning in December 2018, the customer had failed to fulfill the obligation to pay the "*Ujrah* Sewa Obyek MMQ" (rental fee for the MMQ property) (Pengadilan Agama Bogor, 2024: 105). Overdue rental charges and installments constitute receivables in the relevant legal sense, and their transfer may therefore be assessed under the cessie regime and Fatwa No. 104/DSN-MUI/X/2016. By contrast, the bank's remaining ownership share in the house constitutes ***ḥiṣṣah*** and is subject to Fatwas Nos. 73 and 159.

The judgment did not distinguish between these two components. Consequently, the value of IDR 229,155,360.29, which was described as an ownership share, was treated entirely as a receivable. This distinction is not merely a technical matter because it determines which component requires only notification and which requires the partner's consent.

A more fundamental issue is whether Article 19.3 can be regarded as advance consent granted by the partner. The MUI summary of the plenary meeting at which the fatwa was adopted states that jointly owned property may be sold by agreement between the partners and that one partner may sell on behalf of another. The argument that a standard contractual clause constitutes advance consent has a legal basis, but it faces three objections.

First, textually, the clause authorizes the transfer of "the Bank's receivables/claims," not ***ḥiṣṣah***. Thus, the consent given does not clearly cover the object that, according to the panel's own findings, was transferred. Second, Fatwa No. 159 requires not only consent but also *maṣlaḥah* for the partners. Yet the judgment does not consider the customer's welfare as the owner of approximately 73.6% of the asset's value. Third, the customer expressly stated that they rejected the transfer of either debt or ownership to any party (Pengadilan Agama Bogor, 2024: 10). This rejection indicates that the element of consent, which lies at the heart of Q.S. an-Nisā' [4]:29, was absent when the transfer occurred, regardless of the breadth of the authorization contained in the contract.

The provisions of Fatwa No. 159 concerning the right of *khiyār* are also relevant. The fatwa states that *khiyār* in the sale and purchase of *al-māl al-musya'* (jointly owned property) is contractual, follows *'urf* (custom), and/or is based on *maṣlaḥah*. The contract in this case did not grant the customer the right to reject or exercise priority over the sale of the bank's share to an external party. Meanwhile, the prevailing *'urf* of selling non-performing financing to debt investors is rooted in conventional banking practices.

If *khiyār* were assessed in light of considerations of welfare, the interests of the customer as the majority owner who continued to occupy the house should have been a primary consideration. A change of partner is also not a neutral event for the customer. In this case, the party with whom the customer had to deal changed from an Islamic bank to a company purchasing receivables, then to an auction applicant, and ultimately to an auction winner who pursued eviction proceedings (Pengadilan Agama Bogor, 2024: 102–103). The overall compliance of the judgments with the fatwas is summarized in Table 3.

Table 3. Compliance of the Judicial Reasoning with DSN-MUI Fatwas

Provision	Source	Findings in the Judgment	Assessment
The MMQ contract is valid and binding on the parties	Fatwa No. 73/2008	The contract was declared valid and binding under Article 1338 of the Indonesian Civil Code and Q.S. al-Mā'idah [5]:1	Compliant
Joint ownership of the asset and the definition of *ḥiṣṣah*	Fatwa No. 73/2008	Recorded as an undisputed fact but not used as an assessment criterion	Not examined
Gradual sale of *ḥiṣṣah* to the customer; opinions concerning sales to external parties	Fatwa No. 73/2008 (contractual provisions and deliberations)	The share was sold to an external party; the plaintiff's argument based on this fatwa was not addressed	Not examined
Transfer of receivables using sil'ah and a clearly established amount	Fatwa No. 104/2016	The fatwa was cited as a legal basis, but its requirements were not examined	Cannot yet be assessed
Partner consent and the welfare of all partners (*maṣlaḥah*)	Fatwa No. 159/2024	The fatwa was not cited; only notice issued simultaneously with the transfer was established	Non-compliant if the object is classified as *ḥiṣṣah*
Consent of the parties	Fatwa No. 159/2024; Q.S. an-Nisā' [4]:29	The customer stated that they rejected the transfer of debt or ownership	Non-compliant

Source: *Compiled from Judgment No. 1271/Pdt.G/2023/PA.Bgr, Judgment No. 180/Pdt.G/2024/PTA.Bdg, and DSN-MUI fatwas.*

Table 3 reveals a consistent pattern: the judgments complied with the fatwas in matters concerning the validity of the contract and the formal procedures for transferring receivables, but did not examine matters relating to the structure of joint ownership. This pattern confirms that DSN-MUI fatwas were applied selectively in this case. The fatwas concerning novation and subrogation were cited to legitimize the cessie, but their substantive requirements were not examined. Meanwhile, Fatwa No. 73/DSN-MUI/XI/2008, which governs the contractual relationship between the parties, was not used as an assessment standard.

The plaintiff had expressly cited Fatwa No. 73 in the statement of claim, including its definition of *ḥiṣṣah* and the bank's obligation to sell its share gradually to the customer. However, this argument was not addressed in the legal reasoning (Pengadilan Agama Bogor, 2024: 15–16).

The status of Fatwa No. 159/DSN-MUI/VII/2024 requires separate consideration. This fatwa cannot be applied retroactively to determine the validity of the transfer that occurred in 2021 because it had not yet been issued when the legal act took place. Nevertheless, the fatwa had been issued before the appellate panel deliberated and decided the case on September 11, 2024 (Pengadilan Tinggi Agama Bandung, 2024: 17).

In this context, the fatwa could serve as an interpretive source concerning Sharia principles that had already existed, namely the principle of consent and the protection of partners' rights reflected in the deliberations underlying Fatwa No. 73. Article 26 of Law No. 21 of 2008 positions MUI fatwas as a source of Sharia principles for Islamic banking activities, while Article 5(1) of Law No. 48 of 2009 requires judges to explore the legal values prevailing in society. In light of these provisions, the failure to refer to the most relevant fatwa in the appellate judgment represents a missed opportunity to affirm the Sharia standards governing the sale of ***ḥiṣṣah***, rather than merely a technical omission.

The practical implications of these findings can be seen in the parties' economic positions. The bank's transferred share was worth approximately IDR 229 million, whereas the customer had contributed IDR 695.8 million. When the bank's rights were transferred twice and ultimately led to a mortgage enforcement auction with a reserve price of IDR 693,000,000 (Pengadilan Agama Bogor, 2024: 100), the asset at stake was not merely the bank's share, but the entire property, most of whose value had been financed by the customer.

Under the cessie and mortgage frameworks, this process may be considered valid provided that all applicable procedures are satisfied. However, under the framework of *syirkah* (partnership), the majority partner should have been given the opportunity to purchase the minority partner's share before it was sold to an external party. Such an opportunity is consistent with the concept of ***ḥaqq*** *al-syuf'ah* (pre-emption rights) in fiqh and the consent requirement under Fatwa No. 159.

The customer's statement in the reply to the bank's counterclaim that they had offered to pay IDR 200,000,000 since 2020, together with the request for a special settlement arrangement submitted to PT Triniti Menara Cipta, indicates that an amicable settlement between the partners remained possible. However, this possibility was not addressed in the judges' reasoning (Pengadilan Agama Bogor, 2024: 88, 114).

These findings are also relevant to contract design and Sharia supervision. Article 19.3 in this case is an assignment clause commonly used in credit agreements, but it was incorporated into a contract based on joint ownership without adequate adjustment. The clause does not distinguish between overdue *ujrah* charges or installment payments, which may be classified as receivables, and the bank's remaining ***ḥiṣṣah***, which constitutes an ownership right in the asset.

In the statement of claim, the plaintiff also referred to the role of the Sharia Supervisory Board in ensuring that the bank's activities complied with DSN-MUI fatwas (Pengadilan Agama Bogor, 2024: 8–9). Following the issuance of Fatwa No. 159/DSN-MUI/VII/2024, clauses of this kind warrant reconsideration to include a mechanism for offering the share to the customer, obtaining consent for sales to external parties, and clearly distinguishing the assignment of receivables from the sale of ***ḥiṣṣah***.

These findings do not imply that the judgment was incorrect under positive law or that the bank had no right to recover non-performing financing. The contribution of this analysis lies in emphasizing that, in an MMQ contract, the question "what is being transferred?" must be answered before the question "is the transfer valid?"

The dual structure of MMQ joint ownership under the contract but secured debt under the registration and enforcement framework creates a risk that judges will prioritize the receivables regime because it provides a more comprehensive set of legal mechanisms. Unless this duality is adequately addressed, Fatwas Nos. 73 and 159 are likely to remain merely ethical guidelines acknowledged in interviews rather than standards applied in judicial decisions (Pengadilan Agama Bogor, 2024: 97–99).

CONCLUSION

An analysis of the ruling indicates that determining the validity of the transfer of rights in a *Musyārakah Mutanāqiṣah* agreement cannot be based solely on the mechanism for the assignment of claims as recognized in civil law. The nature of the transferred object must first be accurately classified because the distinction between a receivable and a *ḥiṣṣah* gives rise to different legal consequences regarding the normative basis, the conditions for the parties' consent, and the parameters for assessing Sharia compliance. Thus, the qualification of the object of assignment becomes a central point in the legal construction of Sharia financing disputes based on joint ownership.

The novelty of this research lies in the assertion that identifying the status of the object of assignment is a methodological prerequisite for assessing the validity of the assignment of rights in a *Musyārakah Mutanāqiṣah* contract. These findings enrich the development of Sharia economic law by integrating the perspective of joint ownership into the analysis of the transfer of rights, while also providing practical implications for Sharia financial institutions and the judiciary in drafting contractual clauses and legal considerations that are more consistent with the characteristics of the contract and the underlying Sharia principles.

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Author contribution

Siti Widya Umiyati: data curation, writing-original draft preparation, analysis, conceptualization, **Fitriyah Nurul Fauziyah:** visualization, editing, **Nahid Ayad:** methodology.

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