

## **Re-Reading *Al-Uqud Al-Murakkabah*: Types and Models of Hybrid Contracts Concept in Fatwa DSN-MUI**

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### **ABSTRACT**

The aims of this research is to clarify the type of multi-contract used by National Sharia Council-Indonesian Ulama Council (DSN-MUI) in its product innovation, so that the multi-contract concept used is a multi-contract concept that is in accordance with sharia rules and principles. This research is sharia economic law research that uses descriptive literature research methods. This research uses a normative juridical approach. The primary data used in this research is the DSN-MUI Fatwa which is related to the concept of hybrid contracts in the innovation of sharia banking products. Meanwhile, Secondary data sources include various sources of literature such as laws, scientific articles, books, and others. The data analysis technique used was the cumulative data analysis technique of Miles et al., namely data condensation, data presentation, and drawing conclusions. This study found that so far, the DSN-MUI has used the type of multi-contract for similar contracts (a combination of *muawadhat* contracts) and also non-similar contracts (a combination of *muawadhat* contracts and *tabarru'* contracts) provided that there is a separation of agreement documents to avoid usury schemes for the use of these contract combinations and income (both margins, *ujrah*, and profit sharing) is obtained from the use of *muawadhat* contracts. This non-similar contract combination scheme is confirmed in the Fatwa on the Income of Islamic Financial Institutions (LKS) During the Construction Period (Fatwa No. 142 of 2021), namely *Al-Uqud al-Murakkabah al-Muta'addidah*. Meanwhile, the hybrid contracts scheme for similar contracts uses the *Al-Uqud al-Murakkabah al-Mutajanisah* hybrid contracts scheme.

Keywords: Hybrid Contracts, Fatwa, DSN-MUI

### **ABSTRAK**

Penelitian ini bertujuan untuk memperjelas jenis multi akad yang digunakan oleh Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI) dalam inovasi produknya, sehingga konsep multi akad yang digunakan adalah konsep multi akad yang sesuai dengan kaidah dan prinsip syariah. Penelitian ini merupakan penelitian hukum ekonomi syariah yang menggunakan metode penelitian kepustakaan yang bersifat deskriptif. Penelitian ini menggunakan pendekatan yuridis normatif. Data primer yang digunakan dalam penelitian ini adalah Fatwa DSN-MUI yang terkait dengan konsep hybrid contract dalam inovasi produk perbankan syariah. Sedangkan sumber data sekunder meliputi berbagai sumber kepustakaan seperti Undang-Undang, artikel ilmiah, buku-buku, dan lain-lain. Teknik analisis data yang digunakan adalah teknik analisis data kumulatif Miles dkk., yaitu kondensasi data, penyajian data, dan penarikan kesimpulan. Penelitian ini menemukan bahwa selama ini, DSN-MUI menggunakan jenis multi akad atas akad sejenis (kombinasi antar akad *muawadhat*) dan juga akad tidak sejenis (kombinasi antara akad *muawadhat* dan akad *tabarru'*) dengan catatan terdapatnya pemisahan dokumen perjanjian untuk menghindari skema riba atas penggunaan kombinasi akad tersebut dan pendapatan (baik margin, *ujrah*, dan bagi hasil) diperoleh dari penggunaan akad *muawadhat*. Skema kombinasi akad tidak sejenis ini ditegaskan dalam Fatwa tentang Pendapatan Lembaga Keuangan Syariah (LKS) Selama Masa Kontruksi (Fatwa No. 142 Tahun 2021) yaitu *Al-Uqud al-Murakkabah al-Muta'addidah*. Sedangkan bagi skema *hybrid contracts* atas akad sejenis menggunakan skema *hybrid contracts Al-Uqud al-Murakkabah al-Mutajanisah*.

Kata kunci: Hybrid Contracts, Fatwa, DSN-MUI

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## INTRODUCTION

Islamic banking in Indonesia began to experience significant growth in the late 1980s and early 1990s (Nofinawati, 2015). This growth is mainly fuelled by the growing awareness among the Muslim community regarding the importance of having access to financial services that not only function effectively but are also aligned with Islamic principles (Antonio, 2018). People see the need for a banking system that can provide financial solutions that do not contradict religious teachings, especially in terms of rejection of the practice of usury (interest) which is considered oppressive and speculative transactions that are considered unfair and high risk (Marwini, 2017). This further strengthens the demand for Islamic banking that is able to provide more ethical and equitable financial services.

In addition, the Asian economic crisis in 1997-1998 was a pivotal moment that showed the weakness of the conventional banking system, so the Indonesian government began to look at Islamic banking as a more stable and ethical alternative (Ascarya, 2010). Efforts to strengthen this sector began with the establishment of Bank Muamalat Indonesia (BMI) in 1992, as the first Islamic bank in Indonesia (Aristoni, 2019; Witro et al., 2021). The government should assist institutions that manage economic potential with a budget to support operational costs, capital adequacy ratios, and other necessary costs (Witro et al., 2020). Over time, government regulation and support further strengthened the sector, most notably with the passing of the Syariah Banking Law in 2008. Islamic banking has since grown rapidly, offering a range of products and services that are more inclusive and suited to the needs of the Muslim community, while supporting wider financial inclusion in Indonesia (Rama, 2015).

The resilience of Islamic banking from the economic crisis is inseparable from the contract scheme used in the development of its products. The growth of Islamic banking has come to the forefront of modern financial development at key moments over the past few decades (Khalidin et al., 2023). In Indonesia, Islamic banks have grown significantly since 2008 (Syahputra & Armayani, 2021). Contracts have an important role as a determinant of sharia banking in gaining profits. Its position is one of the most significant differentiators from conventional banking (Dolgun et al., 2019).

Various contract schemes greatly color the sharia banking operational system, such as *mudharabah* and *musyarakah* contracts which are types of cooperation contracts, *murabahah*, *salam*, and *istishna* contracts which are types of sale and purchase contracts and also *ijarah* contracts which are lease contracts and other contracts that are in accordance with sharia principles. However, in its development, the use of single contracts is no longer able to meet the needs of sharia banking in offering its products (Busni, Witro, Setiawan, et al., 2022). This is in line with Kholijah stated that the use of contracts alone is no longer able to meet developments and transaction needs in sharia banking (Kholijah, 2020). As Islamic finance continues to evolve and innovate, new product combinations and contracts have offered people the expectation of ethical financing (Qonita, 2019). Therefore, many product innovations use multi contract schemes (hybrid contracts) as an alternative that is able to meet customer needs in enjoying sharia banking products.

*Multi aqad* (hybrid contracts) in question are the use of several contracts in one transaction (Busni, Witro, Alghani, et al., 2022). such as the *Musyarakah Mutanaqishah* (MMQ) contract, which combines a *musyarakah* contract, a business activity contract and a sale/ grant contract, an *Ijarah Muntahiyah bi al-Tamlik* (IMBT) contract which combines an *ijarah* contract with a sale/ grant contract, *Murabahah li al-Amir bi al-Syira'*, which combines a *murabahah* sale and purchase contract with a *wakalah* contract and other multi-contract schemes that are summarised in various products such as gold *rahn* products that combine *qordh* and *ijarah contracts*, debt transfer products and Export and Import L/C products that have several types of multi-contract schemes as well as in other Islamic banking products. According to Yunus that its use in sharia banking is one way to respond to the needs of sharia banking transactions which are

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increasingly developing and require innovation through multi contract schemes, however the use of multi contracts remains in accordance with sharia rules and principles (Yunus, 2019). Based on this, National Sharia Council- Indonesian Ulema Council (DSN-MUI) as an institution that is given the authority to determine sharia economic and financial fatwas, has carried out many studies and *ijtihad* regarding the use of multi-contracts.

Based on several examples of multi-contract schemes contained in the substance of the fatwa that has been presented, DSN-MUI does not state which type of multi-contract scheme is used. Meanwhile, in the book *Al-Uqud al-Maliyyah al-Murakkabah* by Al-Imrani there are at least five types of multi contract schemes, namely *Al-Uqud al-Murakkabah al-Mutaqabilah* (multi dependent or conditional contracts), *Al-Uqud al-Murakkabah al-Mujtami'ah* (multiple contracts gathered), *Al-Uqud al-Murakkabah al-Mutanaqidhah wa al-Mutadhadah wa al-Mutanafiyah* (multi separate contracts), *Al-Uqud al-Murakkabah al-Mukhtalifah* (multi different contracts) and *Al-Uqud al-Murakkabah al-Mutajanisah* (multiple similar contracts) (Al-Imrani, 2006). An example of multiple contracts is the *Musyarakah Mutanaqishah* (MMQ) contract. In this contract scheme, there are several contracts, namely a *musyarakah* contract as a capital participation contract between the Sharia Financial Institution (LKS) and the customer, a business activity contract as a consequence of the *musyarakah* contract and a sale and purchase/*grant* contract as a transfer of ownership of the portion owned by the LKS (Nurjaman, Sofie, et al., 2022). In this multi-contract scheme, DSN-MUI does not mention which type of multi-contract is used from the five types of multi-contract according to Al-Imrani.

Regarding the type of multi contract used by DSN-MUI, there are several previous research results, namely according to Hasanudin in his dissertation that DSN-MUI does not explain the concept of multi contract clearly and in detail. However, according to Hasanudin, DSN-MUI firmly rejects multi-contracts of the type *Al-Uqud al-Murakkabah al-Mutaqabilah* (multiple dependent or conditional contracts), namely a contract that contains several contracts by linking one contract to another. Meanwhile, the multi contracts accepted and approved by DSN-MUI are multi contracts with the type *Al-Uqud al-Murakkabah al-Mujtami'ah* (multi contract gathering) (Hasanudin, 2008).

According to Setiawan et al. in their research on the application of multi contracts in problem financing restructuring products, they stated that the type of multi contract in problem financing restructuring products is the *Al-Uqud al-Murakkabah al-Mutaqabilah* multi contract type (multi dependent or conditional contracts) (Setiawan et al., 2022), namely, multiple contracts which occur because of the relationship between one contract which is responded to by the second contract on the basis of conditions, namely restructuring through various forms, both through the form of rescheduling, the form of reconditioning and the form of restructuring. This is in line with Setiadi that the use of the multi contract concept in LKS is to use multi contracts with the type *Al-Uqud al-Murakkabah al-Mutaqabilah* (multi dependent or conditional contracts) (Setiadi, 2017).

According to Marizal in his thesis on the application of the multi-contract concept in the fatwa regarding guidelines for the implementation of sharia health and social security, it is stated that the multi-contract scheme in the fatwa includes multi-contracts with the type *Al-Uqud al-Maliyyah al-Murakkabah al-Mujtami'ah* (Marizal, 2017). According to Aryanti that the multi-contracts applied in the DSN-MUI Fatwa are multi-contracts with the types *Al-Uqud al-Murakkabah al-Mujtami'ah* (multi-contract who gathering) and *Al-Uqud al-Murakkabah al-Muta'addidah* (multi-contract who calculated) (Aryanti Yosi, 2016). Meanwhile, according to Isfandiar (Isfandiar, 2014), and Yunus (Yunus, 2019), states that the multi contract construction adopted by sharia banking is muti contracts with the type *Al-Uqud al-Murakkabah*

*al-Mutaqabilah* (multi dependent or conditional contracts) and multi contracts with the type *Al-Uqud al-Murakkabah al-Mutajanisah* (multiple similar contracts).

The variety of research results that explain the use of multi-contract types determined by DSN-MUI in sharia banking products, has resulted in DSN-MUI not explaining the concept of multi-contract in every fatwa that contains a multi-contract scheme, as explained by Hasanudin (Hasanudin, 2008). This can show that the type of multi-contract described by Al-Imrani is indirectly widely used by DSN-MUI in every fatwa substance where there is a multi-contract scheme. However, of the five types of multi-contract schemes explained by Al-Imrani, not all of them are permissible, but only a few types of multi-contract schemes, namely *Al-Uqud al-Murakkabah al-Mutaqabilah* (multi-contract dependent or conditional), and *Al-Uqud al-Murakkabah al-Mujtami'ah* (multi contract gathering).

On this basis, this research tries to explain the concept of hybrid contracts in the DSN-MUI Fatwa. The aim of this research is to clarify the type of multi-contract used by DSN-MUI in its product innovation, so that the multi-contract concept used is a multi-contract concept that is in accordance with sharia rules and principles. Apart from that, it is hoped that the results of this research will be able to provide insight and scientific knowledge regarding the concept of multi-contracts as part of the response to sharia economic and financial developments which will continue to develop and meet the needs of the sharia financial industry required by society and the people.

## RESEARCH METHOD

This research is sharia economic law research that uses descriptive literature research methods. The primary data used in this research is the DSN-MUI Fatwa which is related to the concept of hybrid contracts in the innovation of sharia banking products. Meanwhile, Secondary data sources are considered relevant to the topic discussed and serve to support the primary data sources. These data include various sources of literature such as laws, scientific articles, books, and others (Ayu et al., 2022; Nurjaman & Witro, 2021; Sudrajat et al., 2022). To ensure the validity and reliability of data, especially primary data, the author directly searches for data on the official DSN-MUI website by downloading all 156 DSN-MUI Fatwas. As for secondary data, the author downloaded in internet several journal articles, books, etc. (Setyawan et al., 2024; Syukrawati et al., 2024). Both types of data are very valid data and can be a source in completing this research. As evidence of the validity of the data, the DSN-MUI Fatwa is the result of DSN-MUI ijtihad in responding to the development of Islamic economics and finance. This research uses a normative juridical approach (Rasidin et al., 2024; Wahyu Sururie et al., 2024), so that legal sources are used as guidelines in solving research problems which are then described in a narrative that is integrated with each other in the form of statements of fact that have references.

The data analysis technique used was the cumulative data analysis technique of Miles et al., namely (Miles et al., 2014): first, data reduction, namely a data analysis technique by focusing the data and filtering the data obtained into the data needed according to the research object. Second, data presentation, namely data analysis techniques by presenting the data obtained in a form that is easy to understand and interpret. Because this type of research is qualitative research, the data is presented in narrative form which provides a number of facts and meanings. Third, drawing conclusions, namely the final technique of data analysis by drawing threads from the data that has been presented as a conclusion in the form of a narrative of facts that are integrated and can be novel in this research (Asa'ari et al., 2023; Witro, 2020, 2024). The limitations in this study are related to its scope. This research only focuses on the Fatwa of DSN-MUI relating to multiple contracts. The author's limitation is accessing Fatwas issued by fatwa institutions in other countries as material for consideration.

## RESULTS AND DISCUSSION

### The Concept of Hybrid Contracts (*Al-Uqud Al-Murakkabah*)

In the Big Indonesian Dictionary (KBBI) the definition of a hybrid contract is called a multi contract, which can be interpreted as multi (1) multiple; (2) more than one, more than two, many. This can be interpreted as that multi contract in the KBBI means many contracts, more than one contract or can be referred to as multiple cards. Then it is explained according to the *muamalah fiqh* text, namely that hybrid contracts are mentioned with various terms, namely *Al-Uqud al-Mutajanisah* (similar contracts), *Al-Uqud al-Murakkabah* (composed contracts), *Al-Uqud al-Mutadakhilah* (contracts that are included in another contract), *Al-Uqud al-Muta'addidah* (contracts that have numbers), *Al-Uqud al-Mutakarrirah* (repeated contracts), *Al-Uqud al-Mutaqabilah* (paired contracts), *Al-Uqud al-Mukhtalifah* (mixed contracts), and *Al-Uqud al-Mujtami'ah* (combined contracts) (Hasan, 2019).

Of the eight terms above, the most popular is the word hybrid contract, which is often referred to as *Al-Uqud al-Murakkabah* and *Al-Uqud al-Mujtami'ah*. *Al-Uqud al-Murakkabah* consists of two words, namely *Al-Uqud* (plural form of 'aqd) and *al-Murakkabah*. If we look at it etymologically, *al-'aqd* means binding, strengthening, and connecting. Meanwhile, according to Islamic law can be interpreted as follows (Aryanti Yosi, 2016):

First, a contract can be intended as a connection with *ijab* (statement of offer and transfer of ownership) and *qabul* (statement of acceptance of ownership) within the scope of what has been prescribed which results in an influence on something that has been done with an agreed commitment. Second, according to the opinion of Malikiyah, Hanabilah, and Syafi'iyah, everything that is done by someone is either with their own desire or with the desire of two people to do something, such as buying and selling, representation, and pawning (done by two people) and such as *waqf*, *talaq*, liberation, and others (done by one's own wishes). Third, a contract is an agreement made by someone using a consent agreement which will give rise to legal consequences on the object of the contract.

It can be concluded that *'aqd* is an agreement or relationship carried out using consent and acceptance in accordance with sharia principles which results in the emergence of law on the object of the agreement. Meanwhile, what is meant by *al-murakkabah/ murakkab* is etymologically *jam'u (mashdar)* which is interpreted as gathering or collection. The word *al-murakkabah (murakkabah)* comes from the words *rakkaba, yurakkibu, tarkiban*, which means placing something on something else that produces a good arrangement above or below (Saraswati & Hidayat, 2017). Meanwhile, there are several opinions regarding *murakkab*, namely according to *fiqh* scholars, namely (Najamuddin, 2013):

First, a collection of various things into one name. As someone does in making several things into things (one name), this is said to be a combination (*tarkib*). Second, something that is made from several parts or from two parts and then simplified into one thing (single/ *basith*) which has no parts. Third, combining or placing something on top of something else.

The three definitions above explain that each of them has its own advantages, however, the one that is suitable and appropriate to use falls on the first meaning, which explains the coming together of several things and becoming one thing and then becoming that meaning. The second meaning is less precise because it does not explain the consequences of the combination of several things, even though the second meaning explains the combination of two or several things, it does not explain anything after the combination occurs. Furthermore, the third meaning refers more to the etymological meaning which does not explain a particular term.

### **The Opinion of Ulama about Hybrid Contract**

In this case, there are several opinions of scholars regarding hybrid contracts. According to Nazih Hammad *Al-Uqud Murakkabah* is an agreement made by two parties to enter into an agreement with two or more contracts such as rental, sale, and purchase, *wakalah*, *muzaraah*, *qardh*, grant, *mudhrabah*, *syirkah*, *sharf* (exchange of eyes money), and the like which result in contract law occurring on the object of the contract which is gathered into one inseparable unit, as is the legal consequence of that one contract (Hammad, 2005). According to Al-Imrani, *Al-Uqud Murakkabah* is a collection of material contracts contained in one contract either reciprocally or in combination so that all the rights and obligations resulting from it become law in one contract (Al-Imrani, 2006).

Ibn Qayyim said that the Prophet Muhammad forbade the hybrid contract between lending/ *qardh* and buying and selling to avoid usury, which is forbidden. However, if they are separate then it is permissible (Mas'ud, 2020). The prohibition that is forbidden is the combination of two sale contracts with one other sale contract as explained in the hadith of the Prophet Muhammad, namely "from Abu Hurairah, the Messenger of Allah forbade the sale of loans." (HR. Malik)

There are many interpretations regarding menstruation, some say that contracts like this create unclear prices and result in usury. An example can be taken if a seller announces that he is selling goods that cost 1 million if paid directly, and the price will change to 1 million 200 if paid in credit/ installments over a period of one year. Then someone says "I'll buy it", so here the agreement takes place, but there is uncertainty because two prices have been chosen. Another interpretation of this is that an item is paid in installments, with the condition that the buyer sells the item back to the seller at a lower price in cash. An *al-'inah* contract like this is a hilah from usury, and this is what is called *bay' al-'inah*. According to Ibn Qayyim, this interpretation is very correct.

Ibnu Taymiyah said that the permissibility of a hybrid contract means that it is more clear and unequivocal that it is permissible according to Sharia law by determining the validity of one contract to come together into one unit and become one agreement that is carried out in accordance with Sharia provisions and does not violate these provisions. Because the original law that is in accordance with the text is freedom of contract and the obligation to fulfill everything agreed upon by both parties as long as there are no prohibitions either from the text or *qiyas shahih*. If there is a text or *qiyas shahih* that specifically forbids it because of the gathering of the contract, then transacting with it is considered damaged (Syakur, 2016).

It can be concluded from the understanding of several scholars regarding a hybrid contract, namely an agreement between two parties in carrying out a *muamalah* transaction using two or more contracts to produce one inseparable contract in which all rights and obligations in the transaction are carried out giving rise to legal status and consequences in one contract. Such as making a sale and purchase agreement with a grant contract, a sale and purchase agreement with an *ijarah* contract, etc.

### **Prohibited Hybrid Contract Agreements**

Banking is one of the most important components in a country's economy (Assari, 2023). The establishment of an Islamic banking system is at the core of Islam's commercial transaction injunctions, which prevent Muslims and the institutions that serve them from dealing in interest (*riba*) and transactions that are deemed to be contrary to Sharia (Imam-Tamim & Salawu, 2022). There are several hadiths that prohibit practicing hybrid contracts in a transaction. The legal basis for hybrid contracts refers to the hadith of the Prophet Saw. which indicates the prohibition of two contracts in one transaction, namely as follows (Ghozali & Fammy, 2018): First, the prohibition on using two sales and purchase

contracts in one sales and purchase agreement. As in the hadith narrated by Imam Al-Nasa'i, among others: "It has been reported to us 'Amru bin Ali and Ya'qub bin Ibrahim and Muhammad bin Al Mutsanna they said; has told us about Yahya bin Sa'id, he said; has told us Muhammad bin 'Amru, he said; has told us Abu Salamah from Abu Hurairah said; "The Prophet *sallallahu 'alaihi wasallam* prohibited two buying and selling in one buying and selling contract." (HR. Nasa'i)

Many scholars interpret the above hadith regarding the meaning of two sales and purchase contracts in one sales and purchase contract, this gives rise to many considerations so that a clear/ chosen opinion can be taken that this contract creates unclear prices and leads to usury. Another interpretation of this is that an item is paid in installments, with the condition that the buyer sells the item back to the seller at a lower price in cash. An *al-'inah* contract like this is a *hilah* from usury, and this is what is called *bay 'al-'inah*. According to Ibn Qayyim, this interpretation is very correct.

Second, the prohibition on combining buying and selling and loans/ *salaf*. As in the hadith narrated by Imam Al-Nasa'i, among others: "Muhammad bin Rafi has informed us," he said; has told us about Abdur Razzaq, he said; has told us Ma'mar from Ayyub from 'Amru bin Syu'aib from his father from his grandfather, he said; "The Prophet *sallallahu 'alaihi wasallam* forbade buying and selling on the condition that you are given a debt, two conditions in one sale and purchase contract, and selling something that you do not own." (HR. Nasa'i)

It can be explained that a contract is declared permissible if both parties know the object, price, and time. If any of the three is not clear then the law of the contract is prohibited. Al-Syafi'i can give an example, namely if someone buys a house for 100 with the condition that he lends/ *salaf* him 100, then, in fact, the contract being executed is not clear because the 100 received is a loan/ *'ariyah* contract, resulting in unclear whether the number 100 is enter into loans or buying and selling.

In this case, Ibn Qayyim is of the opinion that the Prophet prohibited multiple contracts between buying and selling contracts and *salaf* (giving loans/ *qardh*) even though both contracts would be permissible if they were valid separately without any combination between the two. The reason it is prohibited is to avoid usury which is forbidden, this happens if someone lends/ *qardh* 1000, then he sells goods worth 800 for 1000, he seems to give 1000 and the goods in the hope of getting 2000. Here it is called usury because there is an excess of 200. Therefore, the Prophet prohibited the mixing of sale and purchase contracts and *salaf* contracts (loans/ *qardh*) because it avoids usury transactions which are forbidden.

Third, the prohibition on combining two contracts in one transaction. As narrated by Imam Al-Nasa'i, among others: "Hasan and Abu Nadlr and Aswad bin Amir told us they said; Has told us Sharik from Simak from Abdurrahman bin Abdullah bin Mas'ud *radiallahu 'anhu* from his father said; The Prophet *sallallahu 'alaihi wasallam* prohibited two transactions in one contract. Aswad said; Sharik said; Simak said; A man selling goods said; He has such and such credit and such and such cash." (HR. Al-Nasa'i).

It can be explained that every multi-contract/ hybrid contract that leads to *haram* is forbidden like usury even though the contracts that build it are permissible, as exemplified in the hadith above. This is based on the Prophet's prohibition on combining two contracts, namely a *salaf* contract and a sale and purchase contract, these two contracts have different legal content. *Salaf* is a social activity that refers to aspects of humanity with compassion. Meanwhile, buying and selling is a contract that is used to calculate profits and losses. The banking system in the Islamic economy is based on the concept of sharing profits and losses (Yuspin et al., 2023). Therefore, it is not permissible to combine the two contracts, as is the prohibition by Malikiyah ulama that multiple contracts from different contracts will have different laws, for example between buying and selling with *ju'alah*, *sharf*, *musaqah*, *syirkah*, *qiradh*, or marriage.

### Permitted Hybrid Contract Agreements

There are various differences between scholars regarding hybrid contracts, scholars have different opinions regarding the legal origin, this relates to whether hybrid contracts are permitted or void and prohibited from being practiced. Therefore, it is necessary to carefully explain this matter. The following is an explanation regarding hybrid contracts, namely that according to the majority of scholars such as Hanfiyah, Malikiyah, Syafi'iyah, and Hanabilah, they are of the opinion that hybrid contracts are permissible and legal according to Islamic law, the reason is that they refer to the rule "*al-ashlu fil muamalah al-ibahah hatta yadullu dalillu 'ala tahrimiha*" means that the original law of the contract is that it is permissible or valid, it is not forbidden or canceled as long as there is no argument that forbids or cancels it. This rule shows that forms of *muamalah* and economic activity are permitted as long as there are no arguments that forbid or forbid the most important thing that adhere to the principles of sharia.

According to Nazih Hammad, the legal origin of a hybrid contract with a single contract is that it can be valid and it can also be a façade (Hammad, 2001). It is explained in Compilation of Sharia Economic Law (KHES) article 28 paragraph (1) and paragraph (2) that a valid contract is a contract that fulfills the conditions. Meanwhile, the facade of a contract is a contract that fulfills the terms and conditions, but there are aspects or other things that damage the contract because of considerations of benefit (Pusat Pengkajian Hukum Ekonomi Syariah (PPHIM), 2019). Likewise, Ibn Qayyim al-Jauziyyah is of the opinion that the original law of the contract and the conditions are valid, except those which are prohibited by religion and are canceled (Al-Jauziyyah, 2006). It can be explained that the original law is permissible in *muamalah*, so every contract and condition that has not been explained as *haram* by Allah cannot be said to be *haram*, and vice versa.

### Types of Hybrid Contracts (*Al-Uqud Al-Murakkabah*)

From Al-Imrani divides hybrid contracts into five types, namely *Al-Uqud al-Mutaqobilah*, *Al-Uqud al-Mujtami'ah*, *Al-Uqud al-Mutanaqidhah wa al-Mutadhadah wa al-Mutanafiyah*, *Al-Uqud al-Mukhatalifah*, *Al-Uqud al-Mutajanisah*. Of these five types, there are two types that are commonly used, namely *Al-Uqud al-Mutaqobilah*, and *Al-Uqud al-Mujtami'ah* (Al-Imrani, 2006). The following is the explanation:

First, *Al-Uqud al-Mutaqobilah* (conditional/ dependent contract). Starting from the word *taqabul* which means to face. That is, something that is said to be facing each other if they are facing each other, while what is meant by *Al-Uqud al-Mutaqobilah* is a multi-contract in the form of a second contract that perfects the first contract, where the perfection of the first contract depends on the perfection of the second contract through several processes that produce reciprocity or it can be said that one contract depends on another contract. If we trace it, it turns out that in the *fiqh* tradition it is very well known and has been used for a long time and its practices have been widely carried out, such as between the exchange contract/*mu'awadhah* and *tabbaru'* contract, it could also be the *tabbaru'* contract with the *tabbaru'* contract or the exchange contract with the exchange contract. Therefore, scholars usually call it a conditional contract.

Second, *Al-Uqud al-Mujtami'ah* (collected contract). The meaning of *Al-Uqud al-Mujtami'ah* is a collected contract or a contract that combines two or more into one contract, such as I sell this house to you and I rent the other house to you for several years at a price of 1 million. Hybrid contracts which occur starting from one contract for two objects of one price, this is a legal consequence that occurs in *Al-Uqud al-Mujtami'ah*, or it can also occur when two contracts are different, resulting in the law in one contract for objects with two prices or two contracts in one contract with different laws regarding one object with one reward, either at the same or different periods of time.



Third, *Al-Uqud al-Mutanaqhidhah wa al-Mutadhadah wa al-Mutanafiyah* (opposite contract). These three terms show similarities by containing differences with different implications. Like *mutanaqhidhah* which has the opposite meaning to the first. For example, when someone says something that is true and then says something that is wrong, these words are called *mutanaqhidhah*, this becomes contradictory because they do not support each other but rather break each other.

From the above understanding, jurisprudence experts formulate the meaning of hybrid contract/*Al-Uqud al-Murakkabah*, which is *al-mutanaqhidhah wa al-mutadhadah wa al-mutanafiyah*, namely (Isfandiar, 2014): (1) At the same time, these are two things that cannot be combined simultaneously, and cannot be eliminated simultaneously. Therefore, it is impossible for every conflicting contract to be united in one contract; (2) One thing with another thing is not compatible with two opposite things, because there are two things that deny each other and result in mutual denial; (3) It cannot be combined because the two cards are practically opposite and have contradictory legal consequences; (4) It is forbidden to combine sales and purchase agreements and *sharf* in one contract. Where the majority of *ulama* (scholar) say that the contract is void because the legal provisions of the two contracts deny each other, namely that there are delays and *khiyar* in buying and selling, whereas in *sharf* there are delays and *khiyar* which are not permitted; (5) There are two opinions regarding the accumulation of buying and selling and *ijarah*, then buying and selling with *sharf* by holding rewards/ *iwadh*. The first opinion states that the two contracts are void because there are conflicting laws between the two contracts and there is no priority of one contract over the other, therefore, the law is invalid. The second opinion says that it is valid if the two contracts and the compensation is divided between the two contracts according to the price of each contract, this is a merger of the contracts which does not cancel the contract; (6) The combination of two contracts for objects that have different prices with one reward/ *iwadh*. Such as *sharf* and buying and selling or selling goods where it is stated that the contract is binding before the handover is valid, because both can be asked for compensation/ *iwadh* as the price for each object. Therefore, these two contracts are allowed to ask for compensation simultaneously. But there are some opinions that are invalid because they have different legal provisions.

From several opinions presented above, it can be concluded that the hybrid contract *al-mutanaqhidhah wa al-mutadhadah wa al-mutanafiyah* is a contract that is not allowed to be combined into one contract. Even so, the views of scholars differ regarding multi-contracts and various opinions are not uniform.

Fourth, *Al-Uqud al-Mukhtalifah* (different contract). A hybrid contract *al-mukhtalifah* is a contract that is composed of two or more contracts, all of which have differences due to the law between the two contracts or part of them. As with the legal consequences that occur in sale and purchase contracts and leases, in sale and purchase contracts there are no time provisions, whereas in leases there is a clear time specified as a period for the rental. The second example is from the *ijarah* and *salam* contracts, if the *ijarah* is a rental contract which is not handed over in full at the time of the contract, while the *salam* price must be handed over at the time of the *aqad* (contract)/ *fi al-majlis*. So the difference between *mukhtalifah*, *mutanaqidhah*, *mutadhadah*, and *mutanafiyah* lies in the existence of each contract. Although the word *mukhtalifah* is more general and can include the other three types that can be found according to Islamic law.

Fifth, *Al-Uqud al-Mutajanisah* (similar contract). *Al-Uqud al-mutajanisah* this contract is a contract of the same type and is combined in one contract, which has no legal effect or legal consequences, this hybrid contract can be formed from the same law or different law, or consists of one type of contract such

as a contract buying and selling with a sale and purchase agreement, or several sale and purchase contracts with a rental contract.

### Model of Hybrid Contracts Concept in Fatwa DSN-MUI

Based on the discussion above, the level of *haram* for Hybrid Contracts (*Al-Uqud Al-Murakkabah*) can be caused by three things, namely: First, it is prohibited by sharia provisions because it can cause uncertainty (*gharar*) (Tuturoong & Herry, 2022), and also ambiguity (*jahalah*). Second, combining several contracts can lead the perpetrator to the practice of usury. Third, the hybrid contracts carried out result in laws that conflict with sharia that apply to the same transaction object. Therefore, hybrid contracts that do not give rise to legal consequences as explained above, include hybrid contracts that comply with sharia principles or hybrid contracts that meet agreed standards or *dhawabith* and do not conflict with sharia (Maulana, 2016).

The position of the Fatwa issued by DSN-MUI is a form of legitimization of various sharia banking products and other Sharia Financial Institutions (LKS). This means that for every product that sharia banking will offer to customers, the use of the contract as a determinant of the sharia bank's profit must first be stipulated in the Fatwa of DSN-MUI. Even though in the national legal system, the position of the DSN-MUI Fatwa is not part of it but is only limited to an expert opinion (legal opinion) which is in the nature of an appeal and does not have binding legal provisions (Nurjaman & Witro, 2021). However, after the issuance of Law Number 21 of 2008 concerning Sharia Banking, the position of the DSN-MUI Fatwa can have binding legal force (legal binding) provided that its substance is legitimized by Bank Indonesia Regulations (PBI). Apart from that, after the issuance of Law Number 21 of 2011 concerning the Financial Services Authority (UU OJK), which has the authority to supervise the operational systems of financial institutions, including sharia banking. So the position of the DSN-MUI Fatwa, apart from being legitimized by PBI, can also be legitimized by the Financial Services Authority Regulation (POJK).

DSN-MUI as an independent institution which has the authority to issue fatwas relating to sharia economics and finance, has issued many fatwas relating to hybrid contracts as a form of product innovation needed in the implementation of sharia economics, especially in the sharia banking operational system. The implementation of hybrid contracts stipulated by DSN-MUI in each fatwa substance is a necessity which has the aim of implementing the sharia values contained in the contracts used in each transaction. The *Sunnah* provisions that discuss hybrid contracts are an exception that do not apply generally. Therefore, there are hybrid contracts which are natural in nature, such as combining the main contract with its derivative contracts, namely the *qardh* contract (main contract) and *rahn* contract (derivative contract) in the pawn contract scheme. The hybrid contract scheme resulting from modifications to the legal provisions is not prohibited as long as the implementation and legal consequences do not conflict with sharia. Based on this, according to Susamto, the difference in the legal status of hybrid contracts does not lie in the hybrid contracts which are inevitable but lies in how to modify or combine them in one transaction (Susamto, 2016).

Hybrid contracts are a formulation of a combination of contracts as a form of responsiveness in order to answer the dynamics and challenges of the development of information technology in the fields of sharia economics and finance (Sayuti, 2020). Mabid Ali al-Jarhi (Former Director of the Islamic Research and Training Institute, Islamic Development Bank (IRTI IDB) said that the combination of contracts today is a necessity in order to develop increasingly diverse sharia banking products according to customer needs. Therefore, there are eleven contracts that can be combined in product development, namely *the Musyarakah contract, Musyarakah Mutanaqisah (MMq), Mudharabah Muqayyadah, Mudharabah*

*Muthlaqah, Wakalah, Ijarah, IMBT, Bai' al-Taqsith* (credit sale and purchase), *Murabahah, Istishna'* and *Salam* this combination of contracts will be able to replace the credit scheme that has long been used by conventional banking. Apart from that, the combination of contracts is not only limited to the eleven contracts above but can be carried out by other contracts in order to open up a very wide space for unification and innovation by pay attention to modifications of contract combinations that are in accordance with sharia (Al-Jarhi, 2009).

Therefore, there are several hybrid contract schemes in the DSN-MUI Fatwa on Islamic banking products as shown in table 1, among others:

**Table 1. Hybrid Contracts in the DSN-MUI Fatwa Concerning Sharia Banking Products**

No.	Product Name	Combination of Contracts ( <i>Aqad</i> )		Bank Opinion
		<i>Muawadhat</i> Contracts	<i>Tabarru'</i> Contracts	
1.	Sale and Purchase Financing: <i>Murabahah</i>	<i>Murabahah</i>	<i>Wakalah</i>	Margin
2.	<i>Ijarah</i> Financing: IMBT ( <i>Ijarah Muntahiya Bittamlik</i> )	<i>Ijarah</i> + Sale and Purchase	<i>Hibah</i> (Grants)	<i>Ujrah</i> (Reward)
3.	<i>Mudharabah</i> Financing: <i>Mudharabah Musyarakah</i>	<i>Mudharabah</i> + <i>Musyarakah</i>		Profit Sharing
4.	<i>Musyarakah</i> Financing: MMQ ( <i>Musyarakah Mutanaqisah</i> )	<i>Musyarakah</i> + Financing		Profit Sharing
5.	<i>Qardh</i> Financing: <i>Rahn</i> (Pawn)	<i>Ijarah</i>	<i>Qardh</i>	<i>Ujrah</i>
	Hajj Financing	<i>Ijarah</i>	<i>Qardh</i>	<i>Ujrah</i>
	Shari Financing Card	<i>Kafalah bi al-Ujrah</i>	<i>Qardh</i>	<i>Ujrah</i>
	Sharia Factoring	<i>Wakalah bi AL-Ujrah</i>	<i>Qardh</i>	<i>Ujrah</i>
	Take Over	<i>Murabahah</i>	<i>Qardh</i>	Margin
6.	Sharia Export and Import Letter of Credit (L/C) Financing	Sale and Purchase + <i>Murabahah</i>		Margin
		<i>Ijarah</i>	<i>Qardh</i>	<i>Ujrah</i>
		Sale and Purchase + IMBT	<i>Qardh</i>	<i>Ujrah</i>
7.	Syariah Current Account Financing (PRKS)	<i>Wakalah</i> + Other Contracts	<i>Qardh</i>	Margin, Profit Sharing <i>Ujrah</i>
		Sale and Purchase + <i>Murabahah</i>		Margin
		Sale and Purchase + <i>Ijarah</i>		<i>Ujrah</i>

Source: DSN-MUI Fatwa relating to Sharia Banking Products

Based on the table 1 above, DSN-MUI combines many contracts into two categories, namely: First, a combination of similar contracts, namely a combination of *muawadhat* contracts. The two combinations of contracts are not the same, namely the combination of the *muawadhat* contract and the *tabarru'* contract. This second combination is often used, especially in combination with the use of *qardh* contracts, which dominate in several sharia banking product financing schemes. An important note about this combination of unlike contracts is that the contract agreement in the transaction must be separated between the *muawadhat* contract and the *tabarru'* contract. This is widely emphasized in the substance of the DSN-MUI Fatwa. The reason is to avoid the legal consequences of the *qardh* contract which if you take

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advantage of it is included in the usury scheme. Apart from that, in all combinations of *muawadhat* contracts and *tabarru'* contracts, sharia banking can only gain profits from the *muawadhat* contracts used, whether the profits are in the form of margin, *ujrah* or profit sharing.

The DSN-MUI Fatwa is an inseparable part of sharia economic and financial growth, especially in sharia banking. The more products offered, the more fatwas issued by DSN-MUI. Regarding the multi-contract scheme in the DSN-MUI Fatwa, it is contained in the fatwa regarding *rahn* and *rahn* of gold (Fatwa 25/26 of 2002). The substance of the two fatwas states that in the *rahn* scheme there are costs for storing goods (*marhun*) which are the object of the pawn. This fee is handed over by the pawnbroker (*rahin*) to the party receiving the pawn (*murtahin*) for their services in looking after and caring for the pawned goods (*marhun*). As for the costs of these services, they should not be linked to the amount of the loan given. This means that it must be separate and has nothing to do with the number of *qardh* given. This is to avoid additional usury, which is a contract principle that is strictly avoided in sharia banking operations. Through the scheme of implementing the *rahn* contract in LKS, there are multiple contracts in one transaction, namely the *qardh* contract and the *ijarah* contract. The details are that the position status of the *rahn* contract is an additional contract to the main contract, namely the *qardh* (loan) contract. So if you take benefits or additions from a *qardh* contract, it falls into the category of usury. Meanwhile, sharia banking is a financial institution whose aim is to carry out business activities to seek profit. So, through the concept of the *rahn* contract, Islamic banks benefit from the *ijarah* contract for their services (*ijarah 'ala al-ashkhash*) in safeguarding and caring for the pawned goods (*marhun*).

What is more visible about the multi-contract scheme is in the substance of the DSN-MUI Fatwa regarding debt transfer (Fatwa 31 of 2002). The fatwa relates to the transfer of debt from customers of Conventional Financial Institutions (LKK), which were transferred to LKS. The substance of the fatwa provides several alternative contract options that LKS can use in implementing this debt transfer (take over) product. The choice of contract, as explained by Nurjaman et al. namely First, a multi-contract scheme between *qardh* contracts, buying and selling, and *murabahah* buying and selling. Second, a multi-contract scheme between sale and purchase contracts, *syirkah*, and *murabahah* sale and purchase contracts. Third, a multi-contract scheme between *ijarah* and *qardh* contracts. Fourth, a multi-contract scheme between *qardh* contracts, buying and selling and *Ijarah Muntahiya Bittamlik* (IMBT) contracts. Some of the alternative contracts offered are multi-contract schemes in one transaction, namely debt transfer (take over) products in sharia banking. Apart from that, there are still many multi-contract schemes in several DSN-MUI fatwas, the number of which has reached 156 fatwas to date (Nurjaman, Ayu, et al., 2022).

As for the modification of the hybrid contract scheme explained by DSN-MUI in the substance of the fatwa regarding sharia banking products, DSN-MUI did not mention which type of hybrid contract scheme was used. According to Al-Imrani, as explained previously, there are five types of hybrid contracts. However, of these five, there are only two combination contracts that are widely used, namely *Al-Uqud al-Murakkabah al-Mutaqabilah* (multi dependent or conditional contracts), and *Al-Uqud al-Murakkabah al-Mujtami'ah* (multiple group contracts). DSN-MUI's indecisiveness in mentioning the type of hybrid contracts scheme has given rise to many research results, namely:

First, the results Hasanudin research in his dissertation show that DSN-MUI does not explain the concept of multiple contracts clearly and in detail. However, according to him, DSN-MUI firmly rejects multi-contracts of the type *Al-Uqud al-Murakkabah al-Mutaqabilah* (multiple dependent or conditional contracts), namely a contract that contains several contracts by linking one contract to another

(Hasanudin, 2008). Meanwhile, the multi contracts accepted and approved by DSN-MUI are multi contracts with the type *Al-Uqud al-Murakkabah al-Mujtami'ah* (multi contract gathering).

Second, research results Setiawan et al. (Setiawan et al., 2022), and Setiadi (Setiadi, 2017), in his research on the application of multi contracts in problem financing restructuring products stated that the type of multi contracts in problem financing restructuring products is the *Al-Uqud al-Murakkabah al-Mutaqabilah* multi contract type (multi dependent or conditional contracts), namely multi contracts that occur because of the existence of a relationship. between the first contract which was responded to by the second contract on the basis of conditions, namely restructuring through various forms, both through the form of rescheduling, the form of reconditioning and the form of restructuring.

Third, the results of research by Marizal in his thesis on the application of the multi-contract concept in the fatwa regarding guidelines for implementing sharia social health and health security stated that the multi-contract scheme in the fatwa included multi-contracts with the type *Al-Uqud al-Maliyyah al-Murakkabah al-Mujtami'ah* (Marizal, 2017).

Fourth, the results of Aryanti research on multi contracts applied in the DSN-MUI Fatwa, namely multi contracts with the types *Al-Uqud al-Murakkabah al-Mujtami'ah* (multi gathering contracts) and *Al-Uqud al-Murakkabah al-Muta'addidah* (multi numbered contracts) (Aryanti Yosi, 2016).

Fifth, research results Isfandiar (Isfandiar, 2014), and Yunus (Yunus, 2019), states that the multi contract construction adopted by sharia banking is muti contracts with the type *Al-Uqud al-Murakkabah al-Mutaqabilah* (multiple dependent or conditional contracts) and multi contracts with the type *Al-Uqud al-Murakkabah al-Mutajanisah* (multiple similar contracts).

Meanwhile, if you look at the hybrid contracts scheme modified by DSN-MUI, the confirmation is in the modification of the hybrid contracts scheme, similar contracts, and hybrid contracts, dissimilar contracts, with the contract modification scheme where the contract agreement must be separated in the transactions carried out. Therefore, this confirmation is a bright spot for DSN-MUI in determining the type of hybrid contract scheme that is modified in every sharia banking product development innovation. DSN-MUI confirmed this in its Fatwa regarding LKS Income during the construction period (Fatwa Number 142 of 2021). In the substance of the fatwa, there is a statement in the general provisions regarding the definition of a combination of contracts (*Al-Uqud al-Muta'addidah*) as a number of contracts used to finance certain business activities, the implementation of which is carried out using separate documents (DSN-MUI, 2021).

The inclusion of the definition of a combination of contracts is due to the fact that several financings use a hybrid contract scheme. However, if you look at the considerations of the DSN-MUI Fatwa (Fatwa Number 142 of 2021), the hybrid contract scheme in financing that was previously carried out can refer to the Fatwa regarding *murabahah*, *istishna*, *musyarakah*, *istishna'* parallel, line facility, *MMq*, sharia refinancing, and *Ijarah Maushufah fi al-Dzimah (IMFD)*. The fatwa (Fatwa Number 142 of 2021) emphasizes that LKS income is in the form of margin, *ujrah*, and profit sharing during the construction period, namely the time required for customers to complete an object whose funding is financed by LKS, which mostly uses a hybrid contract scheme.

The definition of a combination of contracts in the substance of the fatwa shows that the DSN-MUI emphasizes that the type of multi-contract scheme used and modified in the innovation of sharia banking products and sharia financial institution products as a whole is the type of hybrid contracts *Al-Uqud al-Murakkabah al-Muta'addidah* with a scheme separation of the agreement document from the collected contract (between the *muawadhat* contract and the *tabarru'* contract). Meanwhile, modifications and combinations of similar contracts are between *muawadhat* contracts. The type of hybrid contract used is

the *Al-Uqud al-Murakkabah al-Mutajanisah* hybrid contracts type. Thus, the types of hybrid contracts scheme construction used by DSN-MUI in developing sharia banking product innovations are First, the type of hybrid contracts *Al-Uqud al-Murakkabah al-Muta'addidah* and the type of hybrid contracts *Al-Uqud al-Murakkabah al-Mutajanisah*.

The practical implication of the results of this study for the Islamic banking industry is the importance of developing and implementing the concept of hybrid contracts in accordance with sharia principles. Some policy and practice recommendations that can be implemented include: First, Islamic banking can introduce financial products that combine various types of sharia contracts (*hybrid contracts*) to meet the needs of more diverse customers by requesting Fatwa from DSN-MUI. Second, in improving sharia compliance, the Sharia Supervisory Board (DPS) should ensure that the implementation of hybrid contracts is strictly in accordance with the provisions in the DSN-MUI fatwa. This includes regular monitoring and auditing of financial products that utilise these concepts. Third, Islamic banks need to provide education and training to staff and customers on the concept of hybrid contracts and their benefits. This is important to increase understanding and trust in Shariah-based products. By implementing these recommendations, Islamic banking can improve operational effectiveness while ensuring that all products and services remain in accordance with the sharia principles set out in the DSN-MUI fatwa.

## CONCLUSION

Significant sharia economic and financial developments have forced DSN-MUI to develop many hybrid contract schemes in developing sharia banking products. This was done in order to respond to the dynamics and challenges of technological developments and customer needs. So there are many hybrid contract schemes established by DSN-MUI in developing these products. The types of hybrid contract schemes that are often combined by DSN-MUI are the type of hybrid contracts scheme, similar contracts (between *muawadhat* contracts) and the type of hybrid contracts scheme, unlike contracts (between *muawadhat* contracts and *tabarru'* contracts) provided that there is separation of agreement documents in the transactions carried out. This is with the aim of minimizing the existence of usury schemes due to the combination of contracts carried out. So, based on this combination of contracts, it is confirmed that sharia bank income comes from the *muawadhat* contract, not from the *tabarru'* contract. The *tabarru'* agreement in the combination contract scheme is only a complementary contract in developing innovative sharia banking products which is no longer relevant, if only a single contract is used. The type of hybrid contracts scheme used by DSN-MUI, is confirmed in the substance of the Fatwa concerning LKS Income During the Construction Period (DSN-MUI Fatwa Number 142 of 2021), namely the type of hybrid contracts scheme/ combination of *Al-Uqud al-Murakkabah al-Muta'addidah* contracts. Meanwhile, the hybrid contracts scheme for similar contracts uses the *Al-Uqud al-Murakkabah al-Mutajanisah* hybrid contracts scheme. The results of this study certainly need to be developed by further researchers, especially from various aspects such as evaluation of *hybrid contracts* schemes, risk analysis, and mitigation, comparative studies, customer response, regulatory development, and other aspects. Through this further research, a more comprehensive insight into the application of hybrid contracts schemes can be generated, as well as making a significant contribution to the development of the Islamic banking industry in the future.

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