

The Typology of Sasaknese Muslim Scholars' Views in Lombok toward the Hybrid Contract as a Problem-Solving in Islamic Finance

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Abstract

This paper studies the views of Sasaknese Muslim Scholars toward the Hybrid Contract, in Lombok Island Indonesia in terms of their argumentations, typologies, and applications which becomes confusion in the society. The paper argues that problem in the transaction exists clearly. It is because of the limited meaning of Riba which is very strict that raises the society to fear to do the both in individual and group transactions since Riba have been prohibited by Al-Qur'an. While, the globalization of economic world rapidly runs which people must catch up with it. Then, related to the financial aspect of the Islamic teaching is tasted that it is running at its place. Hence, it needs to the solution. One of the solutions is applying Hybrid Contract in the view of TGH where they are very influential the life of society. Moreover, Lombok island is popularly known as thousands mosque island and soon as being seen from different references and facts. Consequently, for understanding the above phenomenon, the researcher used qualitative approach, juridical approach, and sociology by collecting data through observation, and interview to know typology Muslim scholars about hybrid contract by a hope to be the contributions for the government to take a policy.

Keywords: *Hybrid Contract, Sasaknese Muslim Scholar, Society Problem, and Muamalah.*

INTRODUCTION

The growth and development of the financial activities in Shari'ah institutions (LKS) in Indonesia today are very rapid as shown by the report of OJK where some institutions of Islamic finance as the Islamic banking, Islamic insurance, Islamic finance, and etc are gradually growing and developing.¹ Hence, the practitioners, regulators, and even academics who have the attention in the field of Islamic financial actively and creatively response the growth of Islamic finance. This situation pushes the people who have an attention in Islamic law business to make their products free from usury (*ribā*), gambling, deception and any crimes that are forbidden by al-Qur'an *hadith* (tradition) of the Prophet. Then, all the products were given a special identity addressing the Islamic value or are named by the Arabic name, like *muḍārabah* (profit sharing), *mushārahah* (cooperation), *rahn* (mortgage) and etc. Even though all products have been known with a special identity, but it can be recognized as the valid contract by *al-takyīf al-fiqh* (the review of *fiqh*) to know the validity in the aspect of the Islamic law.

As being known in the real life, the transaction done by people is one transaction, like in the form of buying and selling, pawning, tenancy, etc. But, the new facts show that the existence of two contracts which are combined into one as can be seen in the following examples: 1). The "*shariah* card" containing 3 (three) contracts, *ijārah* (rent), *qard* (loan), and *kafālah* (guaranty);² 2). The syari'ah bond³ has more or less than three contracts, 3).*muḍārabah* (profit sharing) (*orijārah*) and *wakālah* (representation) and it is followed by *kafālah* or *wa'd*⁴ 4). The product of "*Gadai Syari'ah*" has two contracts; *rahn* and *ijārah*,⁵ 5)

¹See the related explanation with the growth of Islamic financial etc at <http://www.ojk.go.id/id/kanal/syariah/data-dan-statistik/statistik-perbankan-syariah/Pages/-Statistik-Perbankan-Syariah---Februari-2016.aspx>. Quoted at 27 February 2017.

²See the explanation about "shari'ah Card" in Harun, "*Hybrid Contract Muamalah Dalam Aplikasi?*" at <http://harun-mh>, quoted at 27 Februari 2017

³Islamic bonds are a long-term securities issued by the principles of Shariah bond to holders of Shariah oblige the issuer to pay income to the holders of bonds of Shariah in the form of profit sharing/margin/fee and repay the bond at maturity. Futhermore see Fatwa "Dewan Syari'ah Nasional" Fatwa No: 32/DSN-MUI/IX/2002

⁴Abdul Hanan, *Aspek Hukum Dalam Penyelenggaraan Investasi di Pasar Modal Syari'ah Indonesia*, (Jakarta: Prenanda Group, 2009), 118

⁵See at Fatwa Dewan Syari'ah Nasional Nomor: 26/DSN-MUI/III/2002 Tentang Gadai Emas.

The “*Dana Talangan Haji*” has two transactions; *qard* and *ijarah*,⁶ 5). The “*Bay‘ al-Murabahah*” has two transactions; *bay‘* and *ijarah*.⁷ 6). The “*Musharakah mutanaqisab*” has two contracts; *musharakah* and buying,⁸ 7). The “*Sandak contract*” uses two transactions; *rahn* and *isti‘zan* (*tabarru*) or bay‘.⁹ The examples above show that there are two contracts in each transaction that carried out simultaneously or at least every contract consists of two transactions that cannot be separated because all of those are a unity. The type of this transaction is known as the “Hybrid Contract” or “*al-‘uqūd al-murakkabah*” as in the contemporary contract (*al-fiqh al-mu‘amalat al-maliyah al-mu‘ashirah*) which is one form of *ijtihad* of the Muslim scholars as an effort to escape from the shackles of usury that has prohibited by al-Qur’an and Sunnah, the source of Islamic law for Muslim life.

THE ARGUMENTATION OF THE HYBRID CONTRACT

As being known, some contracts have used the “Hybrid Contract” as the solution to the financial problem living in the middle of society, either in the modern transaction or classic. But, after checking to the books of the *hadith* – as the second source of Islamic law, the explanation in *hadith* has forbidden the compounding of two or three contracts in the contract, like the compounding of buying and tenancy as contract. It is shown by some traditions (*hadith*), and one of these *hadiths* is the voice of the honorable Prophet that reported by Imam al-Tirmiziy as the following text:

إِنَّ النَّبِيَّ -ﷺ- نَهَى عَنْ بَيْعَتَيْنِ فِي بَيْعَةٍ

“*Verily that the prophet forbids the combination of two contracts (such as buying) in a contract (purchasing)*”¹⁰

Literally, the meaning of that *hadith* is that the prophet forbids that transaction done by two contracts directly, such as the two buying (or selling)

⁶Muhamad Ahbar Ilyas, “*Dana Talangan Haji Problem dan Relita Hukum di Kalangan Masyarakat*” dalam <http://blog.umy.ac.id/muhakbargowa/2012/09/26/> quoted 15 Februari 2017

⁷Asmuni Mth, *Aplikasi Musyarakah Dalam Perbankan Islam*, al-Mawardi, (Yogyakarta: Jurnal, edition 2004), 22

⁸The more explanation can be found at Fatwa Dewan Syari‘ah Nasional No: 73/DSN-MUI/XI/2008, Tentang *Musharakah Mutanaqisab*.

⁹See at Musawar, *Sandak Dalam Perspektif Tuan Guru* (Studi Kasus di Lombok Nusa Tenggara Barat, (Yogyakarta: IAIN Sunan Kalijaga, Tesis, 2002)

¹⁰ See at Muhammad bin Isa Abū ‘Isā al-Turmuzi, *al-Jamī‘ al-Ṣāhiḥ Sunan al-Turmuziy*, (Baerut: Dār Iḥyā’ al-Turāth al-‘Arabiy, tt), volume III, 533

contracts are combined in one buying contract. Moreover, it is supported by the *hadith* that is narrated by al-Baihaqiy in his book, where it also literally forbids a contract which is done by grouping two contracts directly. The prohibition is based on each contract functions that have different purposes. The supporting *hadith* is as following:

قَالَ رَسُولُ اللَّهِ ﷺ: لَا يَجِلُّ سَلْفٌ وَيَبِيعُ وَلَا شَرْطَانِ فِي بَيْعٍ... الْحَدِيثُ

“The prophet said: “it is not allowed to do the loan and the buying (combined) and not allowed to have two requirements in a buying”¹¹

Another similar in tone of hadith as the previous idea that the contract is not allowed to be done by two contracts as a group is the *hadith* that is narrated by Imam Ibnu Hambal. It explicitly forbids two contracts that are combined into one, as in the following text:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ صَفَقَتَيْنِ فِي صَفَقَةٍ وَاحِدَةٍ

“The Prophet forbids the transaction such as the two (buying) in a purchasing”¹²

Strictly elaborating, according to some traditions (*hadith*) narrated by Muslim scholars above, that those traditions appear literally forbid that a contract cannot be established by two contracts. It means that a contract to which aims to fulfill the need of community or person must not in the form of combining two or more contracts in a contract. Based on the explanation related to some *hadith* explicitly forbid a contract containing two or more contracts, it is natural to ask whether financial products that use the Hybrid Contract can be deemed that the products have followed the principles of *Shari'ah* or not. It is because some *hadith* that are mentioned previously clearly forbid the use of the combination of contracts in a contract.

Therefore, this research is a very urgent matter with a complete and detail analysis from some products containing the Hybrid Contract from a *Shari'ah* financial institution or not *Shari'ah* institution too. Hence, this research describes what and how the actual concept of the Hybrid Contract and how the typology of Sasaknese scholars' views at Lombok Island against the Hybrid Contract in general is. The preliminary observation and interview show that some Sasaknese scholars' have different views on it. The different views as shown here are a phenomenon of development of Islamic law in Lombok

¹¹ See further the more explanation in Sulaimān bin Aḥmad bin 'Ayūb Abū al-Qāsim al-Ṭabrāniy, *al-Mu'jam al-Kabīr*, (Mushaf: Maktabah al-Ulūm wa al-Ḥukum, 1983), volume III, 107

¹² Ahmad bin Hanbal Abu Abdillah al-Syaibaniy, *Musnad al-Imam Ahmad bin Hambal*, (al-Qahirah: Mu'assah Quthubah, without year), vol, I, 398

island which is known as the “*One Thousand Mosques Island*”, even though it is famous as the “*World Halal Tourism*”¹³ and also “*World’s Best Halal Honeymoon Destination*”,¹⁴ it points that Lombok people are living infirm and settle religious value.

Surely, the mentioned phenomenon above is something which needs the attention of the academic world. Hence, it can be questioned, what the basic argumentation of Sasaknese Muslim scholars against the Hybrid Contract is, although the *hadith* clearly forbids the use of two contracts in a contract. Then, why Sasaknese Muslim scholars in Lombok have the different outlook on the Hybrid Contract, although they are in an area. While the assumption of the researcher is the arisen discourse because of the differences in a frame of the paradigm used in approaching issues and ultimately has implications for the differences in the level of understanding. Perhaps, the bigotry against the view of Muslim Scholar is rigidity, thus it makes them being unable to see Jurisprudence (in this case Jurisprudence *mu’amalah*) that is dynamic.¹⁵

THE MEANING OF HYBRID CONTRACT

As it is known that this article attempts to find the typology of Sasakneses Muslim scholar’s views and their argumentation related to Hybrid Contract. Therefore, the theoretical framework which is used to analyze their views literally and terminologically is the meaning of the Hybrid Contract it’s self. The meaning of the Hybrid Contract is similar to the *al-‘uqūd al-murakkabah* in the Arabic language, where it literally is two contracts are combined to be one by putting something on the other one. The word of *al-‘uqūd al-murakkabah* contains two words; *al-‘aqūd* (contracts/transaction) *al-murakkabah* (the composed thing). The word of “*al-‘uqūd*” (العقود) is a plural of “*al-‘aqd*” (العقد) having the meaning; الشد (strong), الربط (bonding), الجمع (assemblage), and التوثيق (brace) and then can be translated by meaning “some contracts”. Its meaning in the Indonesian language is “*Multiple Contract*”. In the terminology, the meaning of “Hybrid Contract” is setting some things to be one in a name, or making two contracts to be one. It means that two contracts are combined into one contract

¹³ See the more information at <http://nationalgeographic.co.id/berita/2016/12/indonesia-raih-12-penghargaan-bergengsi-di-ajang-the-world-halal-tourism-awards-2016>

¹⁴ See at <http://traveling.bisnis.com/read/20160210/224/517670/lombok-destinasi-wisata-halal-terbaik-untuk-bulan-madu->

¹⁵ Akh. Minhaji, “Zakat dalam Konteks Otonomi Daerah (Perspektif Sejarah Sosial Hukum Ekonomi Islam)”, dalam M. Amin Abdullah, dkk., *Tafsir Baru Studi Islam di Era Multi Kultural* (Yogyakarta: Kurnia Kalam Semesta, 2002), 219.

and can not be separated from each other.¹⁶ If it is seen from the legal aspect, the Hybrid Contract is a way to do some transactions in the real life for getting the needs by agreement of both sides (buyer and seller). It refers to the text of al-Qur'an as main source of Islamic law, as in the first verses of *al-maidah* as follows:¹⁷

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ...الآية.

The verse above emphasizes believers that they must keep all of their contracts on any aspects, whether related to the God or humankind relation¹⁸. The contract that relates to humankind are as in buying, loan, tenancy, selling, and other contracts. They must be seriously kept, because as they are mercy from the Lord as The Creator of the creation to overcome the economic problem. The other verse supporting that people are prohibited to eat the goods of others in falsehood manner, but they are ordered to do the contract with a satisfaction of heart is as follows:¹⁹

لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ...الآية

Likewise, the following verse affirms that God allows in general obtaining needs done by way of buying and purchasing, meaning that purchasing of any form is allowed as long as suitable with the rule, as in the following verse:²⁰

... وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا...الآية.

The verse above is globally explaining that the buying and selling as kind of contract which can be established anywhere, but any kind of usury is exactly forbidden. Therefore, all of the activities related to contracts are allowed as long as it is suitable with a source; hence, Muslim scholars make the rule (*qaida*) considering that the contracts that have fulfilled the requirement and principle of *sharia* are allowed as expressed by the following *qaida*:

الأصل في المعاملات للإباحة

Basically, in case of action in society is allowed

¹⁶ Abdullāh bin Muḥammad bin Abdullāh al-Imrāni, *al-Uqūd al-Māliyah al-Murakkabah: Dirāsah Fiqhiyyah Ta'sīliyah wa Taḥbiqiyah*, (Riyād: Dār Kunūz Eshbelia li al-Nashr wa al-Tauzī, 2006), second printing, 45

¹⁷ Qur'an verse 1 of al-Ma'idah

¹⁸ Jābir bin Mūsā bin 'Abd al-Qādir bin Abū Bakar al-Jazā'ir, *Aisar al-Tafāsir li Kalām al-'Alī al-Kabīr*, (al-Mamlakah al-Arabiyyah al-Su'ūdiyah: Makatabah al-Ulūm wa al-Hukum, 2003), Vol. 1, 681

¹⁹ Qur'an 29 of al-Nisa'

²⁰ Qur'an 275 of al-Baqarah

According to this rule, it can be understood that all contracts are allowed, except for the thing that is mentioned clearly as the forbidden thing,²¹ as it is shown by the view of *Zāhiriyyah* scholars related to the Hybrid Contract, namely it is unlawful. It is since the contracts are made without basis of law or unlawful; except, it is clearly pointed by the verses of al-Quran or *Hadith* about the legality of the contract.²²

Therefore, the theory mentioned just now has been used by the researcher to dig the outlook of Sasaknese Muslim scholar's view that the main focus is the typology of view and the argumentation against the Hybrid Contract as the way for avoiding from the usury that becomes the social illness as pointed by "*Bank Subuh*" and some public loan units that give the loan easily with the usury, especially in the villages where they are far from the town.

THE TYPOLOGY OF TGH'S VIEW

After analyzing comprehensively all the contents related to this study, this research showed that there are two typologies of Sasaknese Muslim scholars' views against the Hybrid Contract with their supporting argumentation; the first is Typology of Traditional Text and the second is Typology of Progressive Textual.

Typology of Traditional text

The word of traditional is taken from the word "**tradition**" means a belief or behavior passed down within a group or society with symbolic or special meaning from the past that exists in life. Related to this, the Sasaknese Scholars behave on traditional text, where their argumentations on Hybrid contract are built based on the belief on textual meaning from the sources of law (Al-Qur'an or Hadith). The argumentation that describes that behavior mentioned in next explanation:

a. The text of *hadith*

A lot of *hadith* of the prophet related to the Hybrid Contract can be found in the second Islamic source, namely the tradition of The Prophet, Muhammad peace be upon him.²³ For example, is *hadith* that narrated by the Imam Baehaqi and Turmuziy in their book as seen in the next expression:

²¹ Ibn Taimiyah, *Al-Qawā'id al-Nūrāniyyah al-Fiqhiyyah*, (t.p: Dār Ibnu Jauziy, t.th), 222

²² Abū Muḥammad Ali bin Aḥmad bin Sa'id bin Ḥazm, *al-Muḥalla*, j.5, (Kairo: Dār al-Turāth, tt.), 15.

²³ Iyadh bin Namiy al-Salma, *Uṣyūl al-Fiqh al-Laḥi La Yas'u al-Faqiah Jablub*, (with out the publisher and year), 78

عَنْ أَبِي هُرَيْرَةَ: أَنَّ النَّبِيَّ ﷺ - نَهَى عَنْ بَيْعَتَيْنِ فِي بَيْعَةٍ (رواه البيهقي و الترمذی)

“From Abi Hurairah, that the prophet forbids two buying on the buying”²⁴

According to the text of *hadith* above, explicitly, the prohibition of two buying in a buying is obvious as pointed by the word “بَيْعَتَيْنِ” (two kinds of buying). This case can be exemplified by the combining of two contracts on a contract, such as the buying contract (as the one side contraction) and combined with loan contract (as the contract on another side). The combination of those contracts one transaction or as two contracts done at once in the difference time.

Regarding to the *hadith* text, it can be understood that the word of “نَهَى” is infinitive and its meaning is “he forbids” containing the prohibition of action, such as the *riba* (usury), *maysir* (gamble), and *gharar* (stealth) because of all these are unfair manners to find the needs in social life, especially for the Muslim community. Hence, through the language approach, Sasaknese Muslim scholar comprehend the existence of the “Hybrid Contract” is as a forbidden thing in Islamic financial problem and this method is easier to bring someone to find the clearness of the delivered expression. Therefore, it does not need to think hard to conclude the meaning of the text and this method is suitable for the following statement:

لأن الظاهر إنما يدل باللفظ على ما شاع استعماله فيه؛ لأنه المتبادر إلى الذهن

“Verily, the true situation of text is shown by the expression used generally, since that is the fact which is fastest to be understood.”²⁵

The similar example of a transaction with the combination of two contracts is *ba'i al-Īnah* that intend for getting the profit from the transaction. It seems closer to *hīlah* namely the action that is seen as the prohibited thing but it is explicitly allowed.²⁶ To give the understanding against the *hīlah*, it can be given the simple example, with the practice of *ba'i al-Īnah*, namely buying

²⁴Muḥammad bin Isa Abū Isa al-Turmuḏi, *al-Jami' al-Ṣaḥīḥ Sunan al-Turmuḏiy*, (Baerūt: Dār Ihyā' al-Turāth al-Arabiyy, tt), jilid III, 533

²⁵Ala al-Din Abi al-Ḥusain 'Ali bin Sulaimān, *al-Taḥbīr Syarḥ Fī Uṣyūl al-Fiqh*, (Riyāḏ: Maktabah al-Ruṣhd, 2000), 78

²⁶ Muhammad bin Shalih bin Muhammad al-Uṣmain, *Al-syarḥ al-Mummta' 'Ala Zad al-Mustaḡna'* (ttp. Tt,) vol. 10, 65

something with the additional payment that postponed under the aim of the owner can sell to the buyer, so he is free from debt.²⁷

Regarding the *ba'i al-Īnah* practice, it can commonly be shown with the practice of what someone does. For example: (A) sells bicycle in credit to his friend (B) for IDR 200.000 (two hundred thousand rupiahs). Then, (A) buys the bicycle back from (B) with a lower price, IDR 150.000 (a hundred and fifty thousand rupiahs).²⁸ The kind of this transaction is combining two contracts, namely: the first is a combination of buying in cash by the higher price with buying which payment postponed and the lower price at the same time. It is sure; this transaction has aimed to get more profit than a usual transaction. As seen in the practice of *ba'i al-Īnah* to fulfill the needs, here is *hilah*, namely avoiding transaction containing the usury.

Reviewing the *hadīth* narrated by al-Turmuziy in his book that becomes argumentation, which further its content is analyzed with the content of practice of hybrid contract through language approach. It is understood as an attempt to comprehend a meaning from language aspect of religious text including sentence, such as the *'am* (general) *kaḥaṣ* (specific), *muṭlaq-muqayyad*, *nāsikh-mansūkh*, *'amr* (order), *nahy* (prohibition).²⁹ This approach is a part of manner used by the scholar of uṣūl al-Fiqh to understand the text of al-Qur'an and al-Hadis as explained in some literature said by, for example, Wahbah al-Zuhaili in his book, *Uṣūl al-Fiqh al-Islāmiy*. Understood that there is in the *hadīth* the word of “نَهَى” (he forbids) as the "infinitive", but its meaning is an information containing the prohibition. This sentence is known as the terminology “خبرية لفظا إنشائية معنى”.³⁰

Sasaknese Muslim scholars that include to this type of "the traditional text typology" do not admit to the Hybrid Contract as the solution to avoid usury problem as in mentioned *hadīth* text, such as “*Dana Talangan Haji product*”, is the product of the grant payment given by Syari'ah institution for whom will do the pilgrim worship to Mecca. The grant payment will be paid within two months after finishing the pilgrim. This product contains two

²⁷ Wizarat al-Awqaf wa al-Shu'ūn al-Islamiyah, *al-Mausū'ah al-Fiqhiyah al-Kuwaitiyah*, (Kuait: Dār al-Salāsīl, 1427 H), IX, 168

²⁸ Abū al-Sa'ādāt al-Mubārah bin Muḥammad al-Jaziriy, *al-Nihāyah fī Gharīb al-Athar*, (Baerūt: al-Maktabah al-Ilmiyah, 1979), volume V, 452

²⁹ Wahbah al-Zuhailiy, *Uṣūl al-Fiqh al-Islāmiy*, (Baerut: Dār al-Fikr, 1987), jilid II, 232

³⁰ Badar al-Din Muḥammad bin Bahard, *al-Baḥr al-Mubīt fī Uṣūl al-Fiqh*, (Baerut: Dār al-Kutub al-Ilmiyah, 2000), jilid II, 456

transactions at one time, namely loan (*qard*) and rent (*ijarāh*).³¹ The position of the customer who borrowed the budget is a borrower, so he does the loan, while the Syari'ah institution bank is the owner budget that rented to him. So that, here there are two contracts established at a time, namely the loan and rent. This product results in long waiting list from the previous year till next year.

The other *hadith* to support argumentation related to the Hybrid Contract that it is unlawful the following tradition:

عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ قَالَ رَسُولُ اللَّهِ -ﷺ-: «لَا يَجُلُّ سَلْفٌ وَيَبْعُ وَلَا تَرْطَانُ فِي يَبْعٍ وَلَا رِبْحٌ مَا لَمْ يُضْمَنْ وَلَا يَبْعُ مَا لَيْسَ عِنْدَكَ رَوَاهُ الْبَيْهَقِيُّ وَالنَّسَائِيُّ»³²

“Narrated from Amar bin Sya’ib from his father from his grandfather, that the Prophet said: “It is unlawful, that the loan and buying are combined and two conditional on the buying do not get profit (taken) before being received and you may not sell something that you do not have it”

According to the view of Sasaknese Muslim Scholar, the prohibition the Hybrid Contract is caused by the similarity of conditional contract, it is asserted in the two words; "سلف" (loan) and "وبيع" (buying), namely the existence of two contracts, selling and loan as shown by *hadith* mentioned above.

b. Conditional Transaction

The second argumentation used by Sasaknese Muslim scholars to reject the Hybrid Contract is fiqh approach, as it is seen in their analysis in finding the hidden meaning of the *hadith* mentioned before, where its connection to the Hybrid Contract is seen in the "*Dana Talangan Haji product*" and others. Surely, the *hadith* is addressing to activities for getting profit between a person and/or people in public area that it must be on the good track as being taught by Islamic law.

In their view, the relationship of the *hadith* text with the "*Dana Talangan Haji*" product is pointed by the sentence "لَا يَجُلُّ سَلْفٌ". Here, it can be affirmed that the analysis is "the traditional text typology" that is clear. Then, the result of Sasaknese Muslim scholars' interpretation result is similar to the interpretation of Muslim scholar against the meaning the *hadith*

³¹ Muhamad Ahbar Ilyas, "*Dana Talangan Haji Problem dan Relita Hukum di Kalangan Masyarakat*" dalam <http://blog.umy.ac.id/muhakbargowa/2012/09/26/> quoted 15 Februari 2017

³² Abū Bakar Ahmad bin al-Ḥusain bin Ali al-Baehaqiy, *al-Sunan al-Kubra*, (Hindi; Majli Dairah al-Ma'arif al-Nizamiyah, 1344H), jilid V, 267

mentioned before as shown in the next expression taken from Subul al-Salam:³³

لَا يَحِلُّ سَلَفٌ وَبَيْعٌ مِثْلُهُ أَنْ يَقُولَ: بِعْتُكَ هَذَا الْعَبْدَ بِأَلْفٍ عَلَى أَنْ تُسَلِّقَنِي أَلْفًا فِي مَتَاعٍ أَوْ عَلَى أَنْ تُقْرِضَنِي أَلْفًا لِأَنَّهُ يُقْرِضُهُ لِجَاهِلِيَّةٍ فِي الثَّمَنِ فَيَدْخُلُ فِي حَدِّ الْجَهَالَةِ وَلِأَنَّ كُلَّ قَرْضٍ جَرَّ مَنَفَعَةً فَهُوَ رِبًا وَلِأَنَّ فِي الْعَقْدِ شَرْطًا

Here, the understood meaning of the text above is an example of the buying combined with the rent, where each contract has different aims, like the buying basically used to give something bought by buyer permanently to the seller. But, the aim of rent is giving the benefit to who wants to rent temporarily. So here, there is a hidden something wished by each contractor that does the contract, both as the buyer or the renter. It is known from the sentence of “فِي حَدِّ الْجَهَالَةِ”. Here, the additional explanation can be understood too by understanding that combination of two contracts can bring indication of the usury and conditional contract, where it is known from the sentence: “وَلِأَنَّ كُلَّ قَرْضٍ جَرَّ مَنَفَعَةً فَهُوَ رِبًا وَلِأَنَّ فِي الْعَقْدِ شَرْطًا” Furthermore, the other argumentation that taken from *hadith* is the combination of two contracts can be said as the “conditional contract” or “اشترط عقد في عقد”, namely that there is another requirement within a contract as the new contract and it must be done, so that this condition makes each contract depends on the other contract, whereas it does not have any connection.³⁴ Of course, the requirement made by either buyer or seller is the additional bounds that are not related to the contract recognized by them before leaving each other. However, the requirement related to the contract its self as a mortgage or loan is valid, because its position is trust on the loan.³⁵

c. Interpretation of verse

Furthermore, the other argumentation used is interception of the verses of al-Qur’an, where they forbid clearly the unlawful things, such as *riba* (usury), *maysir* (gambling), and *gharar* (stealth) at any transaction done by any aims and manners, because these elements are an unfair mark and that must be

³³ Muḥammad bin Isma’īl al-Amiry al-Kaḥlāni al-Ṣan’aniy, *Subul al-Salam*, (t.t.p.;Maktabah Muṣṭafa al-Bābiy al-Halibiy, 1960), Jilid III, 13.

³⁴ Shams al-Dīn ‘Abi ‘Abdillāh Muḥammad bin ‘Abdillāh al-Zarkasi al-Miṣriy al-Ḥambaliy, Sharh al-Zarkasiy ‘Ala Mukhtaṣar al-Kharaḥiy, (Baerut: Dār al-Fikr, 2002), jilid II, 93 lihat juga pada Wazā’ir al-Auqāf wa al-Shu’ūn al-Islāmiyah, *al-Mausū’ah al-Fiqhiyah al-Kuaitiyah*,.. jilid V, 290.

³⁵ See the Majmu’ah min al-Mu’allifin, *Fiqh*,..., 69

avoided. Therefore, it becomes the basic principle of the Islamic law as shown by the verse of al-Qur'an, namely:³⁶

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا
أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Explicitly, the verse forbids someone not to eat others' without the permission recognized well by *shariah*, such as buying-selling, rent, etc. that allowed commonly and done with the good willing from each other, both as the buyer and seller. Likewise, this verse forbids all believers not to do any kind of a forbidden thing to fulfill the needs for life, such as eating the other's goods by stealing, robbing, and etc. that are categorized as a crime in social life. The prohibition of those things are caused by the opposition with the aims of society, that are having welfare, security, calamity, happiness, and etc., that is social welfare which is dreamt by all human kinds on earth.

d. Taqlid

To refuse the use of the Hybrid Contract as one of the ways for the transaction, Sasaknese Muslim scholar uses another approach, namely *istimbath al-furu'*, namely taking the status of law globally from the Muslim scholar's books, where it is taken from the detail argumentation within the Islamic sources, and then it is called with term "fiqh". The meaning of *fiqh* is understood from the explanation of Muslim scholars separated in some recognized books and known as the *furu'* not *usyul* because this term has a different meaning and function in understanding Islamic teaching comprehensively, especially it relates to Islamic law. While the term of "*fiqh*" as the result of the *ushul al-fiqh* processing is explained by Muslim scholars as follows:³⁷

وَ الْفِقْهُ (سَرْعًا) أَي فِي اصْطِلَاحِ فُقَهَاءِ الشَّرْعِ (مَعْرِفَةُ الْأَحْكَامِ الشَّرْعِيَّةِ) دُونَ الْعَقْلِيَّةِ (الْفَرْعِيَّةِ)
(لَا الْأَصُولِيَّةِ ، وَمَعْرِفَتُهَا إِمَّا (بِالْفِعْلِ) أَي بِالِاسْتِدْلَالِ (أَوْ) ب (الْقُوَّةِ الْقَرِيْبَةِ) مِنْ الْفِعْلِ ، أَي
بِالنَّهْيِ لِمَعْرِفَتِهَا بِالِاسْتِدْلَالِ .

Here, they Muslim Sasaknese scholar followed the result of thinking of the Muslim scholars to determine the status of Islamic law for a case living in social life. This manner is recognized as "*taqlid*" in *fiqh* area, such as *taqlid* toward *al-mazāhib al-'arba'ah*.³⁸ Here, Sasaknese Muslim scholars clearly hold

³⁶ Al-Qur'an, *al-Nisa'* (4) verse : 29

³⁷ Taqiy al-Din, *Sharh al-Kaukab al-Munir*, (t.tp: Maktab al-Abikan, 1997), 41

³⁸ The meaning of "taqlid" is joining the voice of the man. It is shown by Muhammad bin Husain bin Hasan al-Jizaniy, *Ma'alim ushul al-Fiqh Inda 'Ahl al-Sunnah wa al-Jam'ah*, (Makkah, Dar ibn al-Jauziy, 1427H), 36

the *madhab* of Muslim scholars, especially *madhab* by Syafi'i. It is because that this *madhab* is the widest *madhab* in Lombok and recognized as the answer to Islamic law problem. Behind this approach, Sasaknees Muslim scholar uses the *qaeda fiqhiyah* too, namely the basic rule in the form of short phrases including the laws and regulations relating to some problems of law, both it is relating to worship or social action related to humankind, animal, and the other creation living on the earth as can be seen in the expression of Muslim scholars as follows:³⁹

الْقَوَاعِدُ الْفَقْهِيَّةُ بِأَنَّهَا أُصُولٌ وَمَبَادِيٌّ كُلِّيَّةٌ فِي نُصُوصٍ مُوجِزَةٍ تَتَضَمَّنُ أَحْكَامًا تَشْرِيْعِيَّةً عَامَةً فِي الْحَوَادِثِ الَّتِي تَدْخُلُ تَحْتَهَا مَوْضُوعِيًّا.

Based on the explanation concerning to the definition of *qaeda fiqhiyah*, it appears that Sasaknees Muslim scholars try out to do the inductive analysis (*istiqrā'*) with attention all of the same factors (*ashbāh*) in a problem with the other problems in the *fiqh* area. So, they reject the concept of the Hybrid Contract by using the familiar *qa'idah fiqhiyah*, that is:

كل قرض جر نفعاً فهو ربا⁴⁰

The meaning of this expression is that loan which takes benefits –as an additional contract- is usury, it is either a little or more benefit, because of the contract containing the forbidden aspect must be avoided and natively the contract is standing up by itself without condition. So that, this approach is used by Sasaknees Muslim scholar to explore the law of Hybrid Contract so that the conclusion is that Hybrid Contract is one of the forbidden contracts and named by “اشتراط عقد في عقد”,⁴¹ namely a contract depends on another contract requirement for doing a transaction, while each requirement has not the relationship between them, such as the “loan” contract is hung on “rent” contract, while each contract has different meaning or term. The meaning of loan contract is an agreement to return what has been borrowed as defined with the next meaning follows: “تَمْلِيْكٌ”⁴² But the meaning of “rent” is a contract to be taken the

³⁹ Muḥammad al-Ḥusain, *Dirāsah wa Taḥqīq 'Umdah al-Naẓīr 'Ala al-Asyāb wa al-Naẓā'ir*, (t.p.: t.t., th), 89

⁴⁰ Muhammad Ashim al-Ihsan al-Mujaddiy al-Barkuniy, *Qawaid al-Fiqh*, (Charahi, 1986), 79

⁴¹ Ibnu Hajar al-Haetami, *al-Fatāwa al-Kubra*, (Baerūt: Dar al-Fikr, t.th), jilid IV, 54. Lihat juga Wazā'ir al-Auqāf wa al-Shu'ūn al-Islāmiyah, *al-Mausū'ah al-Fiqhiyah al-Kuaitiyah*, (Kuait: Dār al-Salāsīl, 1427H), jlid V, 290..

⁴² Zakariya, *Asna al-Matalib fi Sharh Raud al-Talib*, (Baerut: Dar al-Kutub al-Ilmiyah, 2000), v 2, 140

benefit and given the payment after using the object, it is known by definition as follows "عقد معاوضة على تملك منفعة بعوض".⁴³

So, the point here is the combination between the different kinds of contracts that the aims cannot be united, except if it is forced to be established without paying attention to the rule in the agreement as allowed by Islamic law, both it is coming from the contractors or the others.

The Second Type is Typology of Progressive Textuality

The various ways of thinking are the color of the growth from the human being's life and are signals making the distinction among the other creatures living on the earth, either is related to culture, politic, economic, religious, custom, laws, or the other aspects as nature. Then, the related reality, the researcher can show the other type of Sasaknese Scholars Muslim's thinking that is the Typology of Progressive Textuality. Its meaning is who has been involved in this type does not only refer to the argumentation that is not only based on the premier source; al-Qur'an and *hadith*, but they also progress more to recognize the concept of the Hybrid Contract to be used in the transaction between each the contractors in fulfilling the needs of life, such as the primary need, secondary need, and complementary need. Related to the topic of this study, the Hybrid Contract concept, the Sasaknese Muslim scholars develop argumentation that supports the hybrid contract in social life, either the people are as the buyer, sellers, farmer, gardener, or the other specialist profession and skill. The argument used to receive the Hybrid Contract is the following.

a. Habit Contract

According to the view of Sasaknese Muslim scholars, the Hybrid Contract is a similar contract to the others. It is recognized and has been used by the people, including the Islamic financial institution, with its Arabic name "*al-'uqud al-murakkabah*" means combining two contracts. Broadly, it means that two contracts truly have each different impacts, and the two contracts are made to be one model to undertake the problem of Islamic finance, like in the "Dana Talangan Haji product". This product combines two transactions as the combination of *al-Qard* (loan) and *al-'Ijarah* (rent), where they have a different impact. Here, it can be seen that the example uses the combination has a function to get the profit from each customer. More explanation that loan contract is one way to get a loan to pay the budget of pilgrim and also the *al-'ijarah* contract is to find the profit for the Islamic financial institution, according to this type that service needs, where

⁴³ Waza'ir al-Auqaf wa al-Syu'un al-Islamiyah, al-Mausu'ah al-Fiqhiyah al-Kuaitiyah, (Kuait: Waza'ir al-Auqaf wa al-Syu'un al-Islamiyah, with year), vol 1, 502

all services need to pay the administration budget. That is why the combination of two contracts is not included as the parallel combination and is also not *ta'alluq*, namely each contract as the combination does not depend on the contract, so it is not the requirement of the transaction, but each contract is free from dependency on the other contract. For example, the *al-qard* is a contract and *al-'ijarah* is a contract that does not grow because of *al-qard* at one time since the position of *al-Qard* is a support to get the portion of pilgrimage.⁴⁴

So, it can be affirmed here that the meaning of the combination of two contracts is that the contract, natively, does not have an impact on each other so that it does not include to meaning *gharar* (stealth) as forbidden by the *Hadith* as follows:⁴⁵

عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ : قَالَ رَسُولُ اللَّهِ ﷺ - : « لَا يَجِلُّ سَلْفٌ وَيَبِغُ وَلَا شَرْطَانٌ فِي بَيْعٍ وَلَا رِبْحٌ مَا لَمْ يُضْمَنْ وَلَا يَبِغُ مَا لَيْسَ عِنْدَكَ رَوَاهُ الْبَيْهَقِيُّ وَالنَّسَائِيُّ

Based on the interpretation of this *hadith* that combination of two contracts as understood by Muslim scholars is the combination of two contracts containing *gharar* (stealth), obscurity contract, and so on. However, if the contract does not contain an element of deception, of course, it is allowed, as seen in the example practiced in the "Dana Talangan Haji" as a product in the Islamic Financial Institution. That is why, if it is free to contract from any kind of forbidden thing as wished by the *hadith* mentioned before, it is of course not allowed. Like *gharar* contained contract that is not a clear thing as shown in the next expression:⁴⁶

الغرر هو المجهول العاقبة

Here is the researcher sees the progressive position of Sasaknese Muslim scholars against the hybrid contract, where each contract is made in a package, though basically as separated part. However, it is made as the one contract type without depending on the each other. The "Dana Talangan Haji" mentioned above contains two contracts; *al-qard* and *al-ijarah* where each transaction does not depend on the other.

b. Qaidah Fiqhiyah

It has been known that Hybrid Contract is a combination of two transactions in a transaction. One of the transactions is not a requirement for

⁴⁴ See the more explanation at Riduan, "Lagi Masalah Dana Talangan Haji" pada <http://mridwancenter.wordpress.com> quoted at 23 October 2017.

⁴⁵ Abū Bakar Ahmad bin al-Husain bin Ali al-Baehaqiy, *al-Sunan al-Kubra*, (Hindi; Majli Dairah al-Ma'arif al-Nizamiyah, 1344H), jilid V, 267

⁴⁶ Ibn Taimiyyah, *Majmu' al-Fatāwa*, (t.t.: Dar al-Wafā', 2005).vol. XXIX, 22

the other and it is a legal manner since it is not opposing Mu'amalah principle. All of this is based on the famous statement of Muslim scholar that all human being activities basically is allowed in Muamalah area by the Islamic rule as found in some books of fiqh, such as disclosed by Abdullah bin Abdurrahman bin Shalih al-Basam in his statement as shown below:

إن الأصل في المعاملات، وأنواع التجارات والمكاسب، الحل والإباحة. فلا يمنع منها إلا ما حرمه الله ورسوله

“Verily, that basic of transactions, types of trade and gains are valid and permissibility, so it is not forbidden to be done except what Allah and His Messenger have been forbidden.”⁴⁷

The *statement* above shows that the original activity is valid except what has been recognized by The God and The Prophet as the forbidden activity. Related to the terms of Hybrid Contract issues, it seems that proponents are using the “freedom of contract analysis” based on the determination that something cannot implicitly be stated as a prohibited thing without a clear statement from the lawmakers; The God and The Prophet. Because it is based on the consideration of the philosophy value to facilitate the humankind in doing something well, and also it is the characteristic of Islamic teaching giving an easy solution for human beings to fulfill the needs, as felt by Muslim community in daily life as long as it is suitable with the norm of the religion, as expressed by the next expression bellows:

إِنَّ الْأَصْلَ فِي الْمُعَامَلَاتِ الْإِبَاحَةُ، إِنْطِلَاقًا مِنَ الْقَاعِدَةِ الشَّرْعِيَّةِ (أَنَّ الشَّرِيعَةَ مَبْنِيَّةٌ عَلَى التَّيْسِيرِ وَرَفْعِ الْحَرَجِ) فَكُلُّ مَا لَمْ يَرُدْ نَصٌّ فِي تَحْرِيمِهِ فَهُوَ مُبَاحٌ، يَقُولُ تَعَالَى (مَا جَعَلُ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ)⁴⁸.

The points of the above expressions are transactions in *mua'amalah* field are allowed, it is based on the principle of the Islamic teaching that discards the difficulties to fulfill the needs as known in the term of "*maqashidal-shari'ah*".

Related to what has been studied above, *Sasaknese* Muslim scholars builds the argumentation supporting the validity of the “Hybrid Contract” as the solution to avoid usury in the transaction by getting back to the “basic principle of Islamic teaching” as explained by Ibn Taymiyyah in his book: *al-Qawa'id al-Nurāniyah al-Fiqhiyah*, which is basically something transacted is

⁴⁷Abdullah bin Abdurrahman bin Shalih al-Basam, Taisir al-Ulam Syarh Umdah al-Ahkam, (Mesir: Ain Syam, 2016), vol. 1., 449

⁴⁸Ali bin Nāyif al-Shuhūd, *Mansū'ab al-Bihūth wa al-Maqālāt al-Ilmiyah*, (t.p.:t.t.th), 2

allowed, either in a contract or two contracts, as long as there is no description of the Shari'ah blocking its validity as shown as follows:⁴⁹

إِنَّ الْأَصْلَ فِي الْعُقُودِ وَالشُّرُوطِ الْجَوَازُ وَالصِّحَّةُ، وَلَا يَحْرُمُ مِنْهَا وَيَبْطُلُ إِلَّا مَا دَلَّ الشَّرْخُ عَلَى تَحْرِيمِهِ وَإِطَالِهِ، نَصًّا أَوْ قِيَاسًا

c. The changing of time

According to Sasaknese Muslim scholars that are included in "Typology of Progressive Textuality," that the "Hybrid Contract" is valid based on consideration of the changing of the time that runs fast, day after day and even year after, almost the changing can exactly not be avoided. Because it is natural when it is seen through some aspects, such as the growth of ways of thinking, the growth of the population of the country, and the exchanging of a generation living in the different periods or milieu and so on. All of these gives the wide influence to the ways of life to reach the needs of the people as wished. The changing aspects explained is one of elements to think harder to answer the problem happened in the society, especially it is related to Islamic law for Mulsim that find the difficulty in fulfilling the needs. So, "mashlahlah" is the foundation of the activity recognized in the "*al-Maqāṣid al-Shari'ah*."

Besides the changing of the legality caused by various factors, however, another reason raised by Sasaknese Muslim scholars to admit the hybrid contract as valid and can be carried out. Though in some traditions that have been described that combination of the contract is forbidden. However, the social conditions in such a way at the moment are approaching the threshold "*dharurat*" (emergency). The difficult condition that must be handled becomes one reason so that the purpose of community life can be achieved by not ignoring the messages of "Shari'ah". Therefore, the Muslim scholars have made the "*qeda fiqhiyah*" describing the necessity that can occupy "*dharurat*" (emergency) due to the changing of times, namely: *al-Hājjah tanzīl al-darurat*.

d. *Maqāṣid Al-shari'ah Approach*

The *maqāṣid al-shari'ah* approach is the setting of law based on the intention and purpose of *shariah*, namely the consideration of the benefit (*mashlahah*), so the emphasis lies in the effort to uncover and to explain the law of a case with the benefit considerations which is applied both to cases of texts of the source; *Qur'an* and *hadith*, as well as to the cases happen without the text. The *maqāṣid al-shar'ah* is generally in line with the linguistic

⁴⁹ Ibnu Taemiyah, *al-Qawā'id Al-Nuraniyah Al-Fiqhiyah*, (t.p., Dar Ibnu al-Jauziy, 1422), jilid I, 261

approach, for example in the obligatory to prayers and fasting in Ramadhan which are understood from some verses of the Qur'an, but according to the *maqāsyid approach*, the obligatory is to preserve the religion aspect (*hijz al-dīn*). This *maqāsyid al-sbar''ah* approach is used by Sasaknese Muslim Scholar who support the Hybrid Contract, although it is clearly seen in some traditions used by people who reject Hybrid Contract. Otherwise, some who support hybrid contract believe some traditions support the al-Qur'an verse that forbids usury, *ghbrar*, and *maysir*. Therefore, the things that implicate the ban of prophet also forbids it. Because Islam through the Qur'an wants to preserve the various joints of life (*al-Nafs, al-Dīn, al-Māl, al-'Aql* and *al-Nasā*), so the *hadith* also supports it, because of the position of hadith as explanatory Al-Qur'an. However, when it is viewed from the general principles of the Qur'an relating to covenants, it is found that keeping the general purpose of the Qur'an is very permissible in contracts, including the Hybrid Contract are based on the original law, the original law in *mu'amalah* is permissible as long as there is no proposition forbid it. Therefore, making any contract is permissible under the declaration of the verse and for that reason, the 'ulama' makes *qa'idahfiqhiyah*:

الأصل في المعاملات الإباحة⁵⁰

e. The Easiness of Approach (*rukhsah*)

In maintaining the Hybrid Contract concept, the Sasakneses's Muslim Scholars use the easiness approach to be an argumentation, so it becomes reasonable action because the contract is thought as a compulsory way to be used in current the position of the institution today, especially for LKS (Islamic Financial Institution), where it is still at an emergency position. So, the products that use hybrid contracts are carried out with the utmost consideration as possible as to avoid the prohibition of usury in a business until the public can get the right financial institution that is clean of the "assumption" or even the usage of usury the business.

Likewise, the community is in a forced situation to make a contract with a bank that considered as a conventional bank. Therefore, Sasaknese MuslimsScholar as the supporters argue that the Hybrid Contract is allowed by reason the *rukhsah*(easiness), because it is in the "emergency" condition, even though the interpretation of the Hybrid Contract is clearly prohibited in some traditions as mentioned before. This means that the ability to use Hybrid Contract is based on emergency situation and also an emergency

⁵⁰ Ṣāliḥ bin Muḥammad bin Ḥasan al-Asmariy, *Majmū'ah al-Fawā'id al-Bahiyah 'Alā Manzūmah al-Qawā'id al-Bahiyah*, (t.t.p, Dār al-Ṣamī'iy, 2000), 75

condition of the person is allowed to do illicit things because it was in accordance with *qaidah fiqhiyah*⁵¹

الضرورات تبيح المحظورات

The fairness to give the profit to the LKS (Sharia Financial Institutions) for example in the Syariah pawnshops or the Hajj Fund product by holding hybrid contracts supported by Sasaknese Muslim Scholar, because it is impossible that an institution can run well without any cost obtained from own business, especially in the competition condition today, where the conventional bank clearly uses the "interest" (*riba*). It is difficult to avoid and even it becomes an urgent thing to push a person to get the "interest". In the *fiqh* language, this condition is commonly called "*umūm al-balwa*", namely the condition embodying to all areas of life, such as the social culture, economy, education; even it was running to religious practice such as the pilgrim. So, someone can not escape from it and it can not be avoided. This condition was in accordance with the expression follows:

عُمُومُ الْبَلْوَى، وَهُوَ فِي الْأَمْرِ الَّذِي يَعْسُرُ الْإِنْفِكَاطَ عَنْهُ، كَالنَّجَاسَةِ الَّتِي يَشُقُّ الْإِحْتِرَازُ عَنْهَا، كَمَنْ بِهِ سَلْسُنٌ بُولٍ، وَاحْتِمَالِ يَسِيرِ الْعَذِّينَ فِي النَّبُوعِ، وَنَحْوَ ذَلِكَ⁵²

"Another definition of the emergency condition, namely the things which it was difficult to avoid a normal condition is mentioned by the expression follows"

هو الحالة أو الحادثة التي تشمل كثيراً من الناس ويتعذر الاحتراز منها⁵³

"Conditions or events that include many people and it is difficult to be ignored"

One of the difficulty types that faced by humankind in many aspects of their life, either related to economic, political, or religion always deals with the bank who always strives for services with an interest. For example, related to religious aspect is what the Ministry of Religion orders to use the banks, such as BNI, BTN, and the other for payment of fees for students in

⁵¹ Zain al-'Abidīn bin Ibrāhīm bin al-Nakhī'i, *al-Ashbāh wa al-Naẓa'ir*, (Baerūt: Dār al-Kutub al-Ilmiyah, 1980), 85 lihat juga al-'Imām al-'Allāmah Tāj al-Dīn 'Abd al-Wahhāb bin 'Alī bin 'Abd al-Kāfī al-Subkīy, *al-Ashbāh wa al-Naẓa'ir li al-'Imām Tāj al-Dīn al-Subkīy*, (t.p.: Dār al-Kutub al-Ilmiyah, 1991), 55 lihat 'Alā' al-Dīn 'Abī al-Ḥasan 'Alī bin Sulaimān al-Mardāwī al-Ḥambalī, *al-Taḥrīr Sharḥ al-Taḥrīr fī Uṣūl al-Fiqh*, (Riyād: Maktabah al-Rushd, 2000), jilid VIII, 647 lihat juga 'Abū al-'Abbās 'Aḥmad bin Idrīs al-Ṣanhājī al-Qarāfī, *al-Furūq 'Aww 'Anwār al-Burūq fī 'Anwā' al-Furūq*, (Baerūt: Dār al-Kutub al-Ilmiyah, 1998), IV, 206

⁵² Zaid al-Dīn Ibn Nujaim al-Ḥanafī, *al-Baḥr al-Ra'iq Sharḥ Kanẓ al-Daqa'iq*, (Baerut: Dār al-Ma'rifat, t.th), 101

⁵³ Wizarat al-Awqaf wa al-Shu'un al-Islamiyah, *al-Mausū'ah al-Fiqhiyah al-Kuwaitiyah*, (Kuait: Dār al-Salāsīl, 1427 H), XXXI, 6

the Islamic college. Whereas these banks take the interest as one of the advantages obtained from customers to conduct some activities with the banks. For the Hybrid Contract supporters, when they are looking for someone who can lend without interest is very difficult. Hence, the hybrid contract is allowed in order to avoid usury. Further, the convenience contracts are permissible and it is what Shariah wants to fulfill the humankind needs. Therefore scholars make the *qaidah fiqhiyah*, namely the expression "المشقة تجلب التيسر" which it is same in the meaning with the *qaidah* which explains the same status with the emergency condition, namely: "الحاجة تنزل منزلة الضرورة".

CONCLUSION

After studying the main problem mentioned above, it can be concluded that the typology of Sasaknense's Muslim Scholars is divided into two, namely the supporters and rejecters against the Hybrid Contract that is used in a contract; either it was used in an informal institution or non-formal institution. Then, each group has the argumentation based on sources and logic, although they have the same argumentation. Basically, they are different in way of thinking, where the first group goes with the text of *hadith* that prohibits the Hybrid Contract practice in a contact as it contains one of the prohibited things surely, namely the gambling, cheating, and usury. Therefore, the first group is known by the term Typology of Traditional Text. The second group has different argumentation. Although they get back to traditions or *hadith* which are used by the first group, they interpreted the text of *hadith* that forbids if the contract is established by mean to get usury and soon. Moreover, the changing of condition influence the needs of life. Hence, this group is called by the Typology of Progressive Textuality. ■

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