APPLICATION OF MURABAHAH FINANCING BY SYARIAH BANKS FROM THE PERSPECTIVE OF ISLAMIC LAW

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Abstract: Murabahah in the perspective of Islamic jurisprudence is a form of buying and selling that has nothing to do with financing, but several contemporary scholars have modified the use of murabahah as a form of alternative financing with certain conditions that must be considered. Initially, murabahah was not a form of financing, but only a tool to avoid "interest" and was not an ideal instrument for carrying out the real goals of Islamic economics. Buying and selling with a murabahah contract is based on the opinions of scholars. In general, the fuqaha agree that buying and selling with a murabahah contract is permissible (mubah), with the provision that the sale and purchase with the murabahah contract does not contain elements of usury. The application of the murabahah contract at Bank Syariah Binjai can be said to be not in accordance with sharia principles. This is because in murabahah sales and purchases with a murabahah contract, the bank does not own and control the goods to be purchased by the applicant, the bank also imposes a fine, and there is an acknowledgment of debt from the customer in the contract, which is contrary to the principle of investment. Violations of sharia principles in sales and purchases with a murabahah contract at Islamic banks, substantially, namely: a. The existence of a mortgage (APHT) the profit margin of the Bank can become usury. b. the deed of financing made by the Notary does not meet the requirements and main pillars of the agreement regulated in sharia. Technically, violations of the principles of murabahah sales and purchases, due to: a. Murabahah financing is often equated with debts because VAT does not apply to sales and purchases. b. Islamic banks do not own and control the goods to be purchased by the applicant.

Keywords*: Implementation, Murabahah Financing, Islamic Law Perspective*

Introduction

The fundamental difference between conventional banks and Islamic banking, is the legal system that underlies its implementation. The legal system that underlies the implementation of Islamic banking refers to the provisions of Islamic law or sharia principles. In accordance with Article 1 number 7 of the Sharia Banking Law, which states that Sharia Banks are "Banks that carry out their business activities based on Sharia Principles and according to their types consist of Sharia Commercial Banks and Sharia People's Financing Banks".

The current development of Sharia Banking refers to the provisions of Law Number 21 of 2008 concerning Sharia Banking (called the Sharia Banking Law). The Sharia Banking Law, provides the definition of Islamic banking as follows: "Sharia banking is

everything related to Islamic banks and Islamic business units, including institutions, business activities, and methods and processes in carrying out their business activities".[1]

The legal norms in the Qur'an are still general, therefore many of the hadiths of the Prophet Shalallahu Alaihi Wassalam then detail and explain the meanings of the verses of the Qur'an, so that the hadiths of the Prophet become the second reference in the determination of the law. However, sometimes a problem faced by the community is not clearly regulated in the Quran or hadith, so ijtihad is needed by scholars in determining the law on the issue.

Ijtihad is the result of the thinking of scholars in establishing the law by exerting and devoting all the maximum abilities to be able to interpret and establish the law in accordance with the Qur'an and hadith on a problem faced by society. The ijtihad of the scholars is the basis for the development of fiqh science in Islam which is urgently needed in the development of Islamic law.[2] In the study of fiqh law, it cannot be excluded from the source postulates, namely the Qur'an and Sunnah.[3] The rules of fiqh law state that the law "as long as all muamalah is permissible as long as there is no evidence that prohibits it".[4] The meaning of this rule is that all muamalah and transactions are basically allowed, such as buying and selling, renting, pawning and so on, except for those that are expressly prohibited in the Quran and hadith.

The distribution of funds by Islamic banks does not recognize the term credit, but is channeled through financing. In distributing funds to customers, in general, sharia financing products are divided into 4 (four) categories that are differentiated based on the purpose of use, namely: financing with the principle of buying and selling, financing with rental principles, financing with profit sharing principles, financing with complementary contracts.[5]

The distribution of funds by Islamic banks to the community was initially carried out by offering interest-free banking products in the form of mudharabah and musharakah. Both products are assumed to be based on a profit-sharing system or popularly known as Profit and Loss Sharing (PLS). Through these two products, Islamic banks can operate without interest, but by implementing a profit-sharing system with customers.[6] However, over time, Islamic banks realize that PLS-based products are difficult to implement, because there is a potential for difficulties for banks, because in addition to having to share profits, banks also have to share losses with customers.

To overcome these problems, Islamic banks then look for other forms of products that are felt to be more profitable. The type of product that is felt to be appropriate and more profitable is known as murabahah financing. Murabahah basically has nothing to do with financing at all. However, scholars and experts in Islamic banking then combined the

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[1] Article 1 number 1 of the State Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking.

[2] Rohidin, *Introduction to Islamic Law*, (Yokyakarta: Lintang Rasi Aksara Books, 2016), p. 9

[3]Fathurrahman Azhari, *Qawaidh Fiqhiyyah Muamalah*, (Banjarmasin: Lembaga Pemempowerment Quality, 2015), p. 21

[4]Abdul Wahhab Khallaf, *Ushul Fiqih*, (Semarang: Bina Utama, 2006), pa. 19

[5]Adiwarman Karim, *Bank Islam; Fiqh and Financial Analysis*, (Jakarta: Raja Grafindo Persada, 2006), p. 97

[6]Arif Maftuhin, *Questioning Sharia Banks*, (Jakarta: Paramadina Publishers, 2004), p. 9

concept of murabahah with several other concepts to form the concept of financing with murabahah contracts.[7]

Financing with the murabahah scheme which is currently applied as a superior product of Islamic banking still raises various sharia issues, namely the potential for violations of sharia principles, both substantively and practically. In the practice of murabahah financing, violations of the principle of buying and selling murabahah do not only occur in the implementation of wakalah contracts in murabahah contracts, but also various other forms of violations. Such as: the determination of fines and also the occurrence of two contracts in one transaction.

Literature Review

Murabahah is a concept or principle in Islamic law related to buying and selling. Etymologically, the word murabahah comes from the word "ribh" which means profit or profit. In practice, murabahah refers to a buying and selling transaction in which the buyer asks the seller to buy an item at a certain price and resell it by adding an agreed profit margin or profit. In murabahah transactions, the selling price given by the seller to the buyer consists not only of the purchase price of the goods, but also the profit margin or profit that has been agreed upon beforehand. This profit margin is a substitute for interest or riba that is commonly applied in conventional credit transactions. In Sharia principles, riba is prohibited because it is considered detrimental to one of the parties in the transaction and is contrary to the principle of mutual benefit.[8]

Murabahah financing in Islamic banks has a position as a seller and the customer as a buyer. In the application, the bank conducts a buying and selling transaction with the customer, but the object of the transaction has not been controlled by the bank.18 According to sharia provisions, having the object of the transaction is included in the ownership requirements that must be met in buying and selling. The Prophet (peace and blessings of Allaah be upon him) stated a prohibition on buying and selling if the object of the transaction has not been mastered. In its application, the bank first completes the murabahah contract even though it is in a position not to control the object of the transaction. The practice that occurs in Islamic banking, banks complete the murabahah contract and then enter the wakalah contract, where here the authority is delegated to the customer to buy goods according to their wishes.[9]

Practice in the field, customers are often given financing without having to care about what is being traded, so that there is an impression for customers who are used to consumptive credit skins stating that Islamic banks are the same as conventional banks, because customer needs are no longer only for the purchase of goods, but for the need for fresh funds. There are even those who argue that murabahah is not only buying and selling but hilal which aims to take usury which is clearly prohibited in Islam. Irregularities in murabahah financing that repeatedly occur by the bank, where the bank only submits proof of purchase of goods to be changed, where the fact is that the customer himself buys the goods on behalf of the

[7] Mulya, E. Siregar, et al, *Murabahah Sharia Banking Product Standards*, (Jakarta: Sharia Banking Product Development and Education Division, 2016), p. 3

[8] Nurul Fitria Rahcmat, *The Concept of Murabahah and Its Application at PT. Bank Syariah Indonesia (BSI)*, (Journal of Economic & Business Etich and Science Histories, Vol. 1, No. 1, January-June, 2005), p. 123-131

[9] Raihan Putri, Fitri Yanti, *The Implementation of the Murabah Contract and Its Problems in Sharia Banking*, (Journal of Sharia Economic Law Review, Vol. 15, No. 2, December 2023), p. 186-196

customer on the invoice, the bank only needs to pay the nominal amount stated on the invoice plus the margin or profit that has been mutually agreed upon.[10]

Method

This research includes normative juridical research supported by empirical research, which is to see the suitability of the application of the principle of buying and selling in murabahah contracts in Sharia Banks. This research is classified as a form of descriptive research that aims to describe, describe and analyze precisely the properties and legal concepts of the implementation of murabahah financing in accordance with sharia. The approach method in this study is empirical juridical, which looks at the compatibility between the application of murabahah financing and Islamic law (sharia). In addition, conceptual methods are also used, which refer to the opinions of classical and contemporary scholars related to the application of murabahah buying and selling in Islamic banking.

The data sources in this study consist of primary data and secondary data, namely in the form of field research and literature research. Field data collection techniques use interviews and observations, while literature research is carried out by carrying out document studies. The data analysis in this study was carried out by qualitative analysis.

Results and Discussion

The buying and selling system with a murabahah contract is a buying and selling activity, which sets the cost price with additional agreed profits. In this case, the seller must first inform the cost of the purchase plus the profit he wants. For example, the price of Mount Kijang goods is Rp. 100,000,-. The expected profit is Rp. 105,000,-. This Baal Murabahah activity will only be carried out after there is an agreement with the buyer, then an order is made.[11]

The application of murabahah financing practiced by Islamic banking in Indonesia in general also has differences with the classic murabahah concept. The differences in the main characteristics between murabahah financing in classical literature and practice in Indonesia can be described in the following table:

Table. 1
Difference Between Classic Murabah Practice and Practice Murabahah in Indonesia

Main Characteristics	Classic Practices	Practices in Indonesia
Purpose of the transaction	Buying and selling activities	Financing in the context of providing facilities/goods
Transaction Stages	Two stages	One stage
Transaction Process	The seller buys goods from the manufacturer. The seller sells the goods to the buyer	The bank as the seller can represent the customer to buy goods from the producer to be

[10] Maya Sandriana, Melia Marlia, Siti Zuleha, *Analysis of the Implementation of Murabahah Financing Agreements in Islamic Banking*, (Indonesian Multidisciplinary Journal, Vol. 2, No. 5 June 2023), p. 880-885

[11] Thamrin Abdullahdan Francis Tantri, *Banks and Financial Institutions*, (Jakarta: Rajawali Pers. 2015), p. 222

		resold to the customer.
The status of ownership of goods at the time of the contract.	The goods have been owned by the seller when the sales contract with the buyer is carried out.	The goods are not clear to the seller when the sales contract with the buyer is carried out.
Margin level calculation	- Profit calculation using real transaction costs - Profit calculation is lumpsum and wholesale	- Calculation using benchmarks on the prevailing rates in the money market - Profit calculation uses a percentage of the dividend and is calculated based on the outstanding balance of financing
The nature of ordering goods by customers.	- Unwritten - Two opinions; - Binding and non-binding	Written and binding
Disclosure of cost and margin.	Must be transparent	Must be transparent
Tenor	Very short	Long term (1 – 5 years)
How to pay for buying and selling transactions	*Cash and carry*	with installments *(ta'jil)*
collateral	No collateral	There are additional collateral/guarantees

The financing requirements on the basis of the murabahah contract according to the Bank Indonesia Circular Letter (SEBI) No. 10/14/DPbs/dated March 17, 2008 are as follows:

a. The Bank acts as a fund provider in order to purchase goods related to murabahah transaction activities with the customer as the buyer of goods.
b. Goods are buying and selling that are clearly known in quantity, quality, acquisition price, and specifications.
c. The Bank is obliged to explain to the customer the characteristics of the financing product on the basis of the murabahah contract, as well as the customer's rights and obligations.
d. The Bank is obliged to conduct an analysis of the financing application on the basis of the murabahah contract from the customer, which includes, among others, personal aspects in the form of analysis of characteristics and/or business aspects, including analysis of business capacity (capacity), finance (capital), and/or business projects (condition).
e. The Bank can finance part or all of the purchase price of goods that have been agreed upon by the qualifications.
f. The bank is obliged to provide funds to realize the provision of goods ordered by the customer.
g. The agreement on margin is determined only once at the beginning of the financing on the basis of murabahah and does not change during the financing period.

h. The Bank and the customer are obliged to enter into an agreement in the form of a written agreement in the form of a financing contract on the basis of murabahah.
i. The period of payment of the price of goods by the customer to the bank is determined based on the agreement between the bank and the customer.

Islamic banks in buying and selling with murabahah contracts can provide discounts in a reasonable amount without having to make an agreement or agreement between the customer and the bank. On the other hand, banks can also ask customers for compensation for order cancellation by real fees.

The profits obtained by Islamic banks through sale and purchase financing products with murabahah contracts are based on an agreement between Islamic banks and customers. This is the fundamental difference between the buying and selling financing system with the murabahah principle applied to Islamic banks and the financing system applied in conventional banks or financing institutions. Meanwhile, the similarity between Islamic banks and other financial institutions in the implementation of buying and selling financing (murabahah) lies in several items, such as the application of fines for late installment payments, administrative fees. Thus, it can be said that buying and selling financing with the principle of murabahah in Islamic banks is not much different from consumer financing carried out by consumer financing institutions (leasing) and conventional banks. The difference is only in the determination of the profit scheme, in Islamic banks it has been determined in advance.

Buying and selling with a murabahah contract in Islamic banking as explained at the beginning is not a form of financing, but only a means to avoid "interest" and is not an ideal instrument to carry out the real goals of Islamic economics. Murabahah is used as a transitional step taken in the process of economic Islamization in line with the spirit of the spirit and the principle of fostering Islamic law, namely in establishing a law to be carried out in a tadarruj (gradually) manner.

The modification of murabahah from a form of buying and selling murabahah to a type of financing in Islamic banking has implications for changes in murabahah provisions, namely with the existence of new rules in the form of wakalah contract media by authorizing customers to buy goods, down payments and collateral in murabahah financing which were previously unknown in murabahah.

There is a modification in the provisions of murabahah as an answer to the needs of the community in economic traffic in an effort to Islamize the economy in order to create the benefit of the people and their welfare. In the practice of financing in Islamic banking, murabahah is a sale and purchase agreement between the bank as a provider of goods and the customer who orders to buy goods. Based on the sale and purchase through the murabahah contract, the bank gets the profit of the mutually agreed upon sale. In other words, murabahah is a financing service by Islamic banks through buying and selling transactions with customers in installments/installments.

Based on the description above, it can be understood that buying and selling with murabahah contracts in Islamic banking has occurred two contracts in one transaction. In addition, in buying and selling with murabahah contracts in Islamic banking, there has been inconsistency in the type of contract, whether buying and selling murabahah or debt-receivables contracts.

If buying and selling with a murabahah contract in Islamic banking is a murabahah buying and selling contract, then this is clearly not in accordance with the existence of the bank as a financial intermediary institution, which is expressly regulated in Article 1 number

2 of the Banking Law, that: "A bank is a business entity that collects funds from the public in the form of deposits and distributes them to the community in the form of credit and/or other forms in order to improve the people's standard of living".

The provisions of Article 1 number 2 of the Banking Law are restrictions on activities carried out by banks, where banks cannot act in trading goods. This provision is clearly not possible for banks as sellers, so the principles of buying and selling murabahahi cannot be implemented consistently by Islamic banks. This means that in principle, Islamic banks cannot act as sellers.

The provision of Islamic banks as financial intermediary institutions, then Islamic banks in the implementation of murabahah buying and selling will not be able to act as sellers, as mentioned in number 4 of the First Part of the General Provisions of Murabahah on Sharia Banks in Fatwa DSN No. 04/DSN-MUI/IV/2000, which states that: "Banks buy goods needed by customers on behalf of their own banks, and these purchases must be legal and free of usury".

The existence of Islamic banks as financial intermediary institutions as stipulated in conventional banks, has caused Islamic banks to be unable to act as sellers. This means, that in the implementation of buying and selling with murabahah contracts in Islamic banking, it has violated sharia principles in buying and selling murabahah which requires the presence of sellers and buyers in buying and selling murabahah. So, if the Islamic bank still wants to carry out the sale and purchase with a murabahah contract, then the bank in this case must act as a seller of goods.

In accordance with the above, Islamic banks then apply wakalah contracts in buying and selling murabahah. The application of wakalah contracts in buying and selling murabahah in Islamic banking is in accordance with the provisions of number 9 of the First Part of the General Provisions of Murabahah in Sharia Banks in Fatwa DSN No. 04/DSN-MUI/IV/2000 concerning Murabahah, which states: "If a bank wants to represent the customer to buy goods from a third party, the murabahah purchase and sale contract must be carried out after the goods, in principle, belong to the bank". Based on the provisions of number 9 of DSN No. 04/DSN-MUI/IV/2000, the wakalah contract in the purchase and sale of murabahah in Islamic banking must be carried out first before the murabahah purchase and sale contract. In practice, in the implementation of murabahah buying and selling in Islamic banking, the murabahah buying and selling contract always precedes the wakalah contract. This means that the application of wakalah contracts in Islamic banking is not in accordance with the provisions of DSN No. 04/DSN-MUI/IV/2000 concerning Murabahah.

The application of wakalah contracts in Islamic banking, in addition to not being in accordance with the provisions of DSN No. 04/DSN-MUI/IV/2000 concerning Murabahah, in principle the application of wakalah contracts in buying and selling murabahah has the potential to cause usury, because buying and selling murabahah in Islamic banking is actually a contract of debts and receivables, not buying and selling.

Based on DSN No. 126/DSN-MUI/VII/2009 concerning the Al-Istitsmar Wakalah Agreement, what is meant by wakalah is a contract of granting power of attorney from Mtnttakkil to the Deputy to perform certain legal acts. As for the requirements as muwakkil in carrying out the wakalah contract according to DSN No. 10/DSN-MUI/2000 concerning Wakalah, that "muwakkil must be the legal owner who can act on something represented.

Referring to the provisions of the wakalah above, it can be understood that the use of wakalah contracts in buying and selling murabahah in Islamic banking is not in accordance with the provisions of DSN No. 10/DSN-MUI/2000 concerning Wakalah. If the condition

of muwakkil is "legal owner", while the wakalah contract in the purchase and sale of murabahah muwakkil is not a "legal owner", but as the owner of funds. So that the wakalah contract intended in DSN No. 10/DSN-MUI/2000 concerning Wakalah, aims to represent the owner of goods to act on an item, for example selling goods. Meanwhile, in the wakalah contract in buying and selling murabahah in Islamic banking, muwakkil is not the owner of the goods, but the owner of the funds. The purpose of making a wakalah contract here is for the person represented to buy goods on behalf of the bank.

The application of wakalah contracts in buying and selling murabahah in Islamic banking can therefore have the potential for usury. Where the Islamic bank in this case tells the customer to buy goods on behalf of the bank, which then the goods are the goods previously ordered by the customer. Thus, there is actually no buying and selling of murabahah here, but the provision of funds from the bank to customers to meet their needs. This transaction process is then considered to have the potential to become riba. Because Islamic banks in this case are not directly the owners of goods and sell these goods to customers, but only provide funds to customers to buy goods desired by customers according to orders, on behalf of the bank.

According to Faturahman Jamil as quoted by Mardani, explained that in carrying out the contract, at least the following principles must be fulfilled:

a. The agreed thing or the object of the transaction must be halal according to shlaw.
b. There is no gharar (ambiguity) in the formulation of the contract or the agreed achievements.
c. The parties are not wronged and not wronged.
d. Transactions must be fair.
e. Transactions do not contain elements of gambling (masyir)
f. There is a principle of prudence.
g. Do not make items that are not useful in Islam or unclean goods.
h. Does not contain riba

Observing the implementation of the murabahah purchase and sale contract in Islamic banking, it can be said that the implementation of the murabahah purchase and sale contract is unclear and vague, so that it does not meet the requirements for the validity of the contract as per sharia principles. In addition to the unclear contract, because the murabahah purchase and sale contract in Islamic banking contains two contracts in one transaction, the application of the wakalah contract in the murabahah purchase and sale contract also has the potential for riba.

The potential for riba in murabahah buying and selling transactions, because Islamic banks are basically not sellers, because in principle banks do not own and control the goods ordered or needed by customers. The potential for riba in murabahah buying and selling transactions at Islamic banks is even greater when Islamic banks make wakalah contracts, where banks represent purchases on behalf of customers through customers. So, here the bank provides a certain amount of money or funds needed by the customer to meet the lack of funds in the purchase of goods needed by the customer. For example, the purchase of cars, motorcycles, housing and others.

Conclusion:

The application of the purchase and sale of murabahah contracts on. Sharia banks are not in accordance with sharia principles, because they contain two contracts in one transaction. In addition, the application of wakalah contracts in murabahah buying and

selling transactions in Islamic banking has the potential to cause usury, which is expressly prohibited in the Quran and hadith. Buying and selling murabahah in murabahah financing, the bank does not own and control the goods to be purchased by the financing applicant. The bank in this case provides financing in the form of money to the financing customer, who then represents the purchase of goods ordered by the customer on behalf of the bank with a wakalah contract. Banks also apply fines to late payments made by financing customers, which is contrary to sharia principles

Violations of sharia principles in buying and selling with murabahah contracts in Islamic banks, substantially including: The existence of Dependent Rights (APHT) the Bank's profit margin can be riba. Meanwhile, technically operationally, the violation of the principle of buying and selling murabahah, because: a. Murabahah financing is often equated with debts and receivables because VAT tax on buying and selling is not applicable. b. Islamic banks do not own and control the goods to be purchased by the applicant, this is because the concept of banks as money intermediary institutions results in banks not being able to act as direct sellers of murabahah financing. The determination of profit margin is determined unilaterally by the bank, not based on an agreement between the financing customer and the Islamic bank. The bank applies a late payment penalty when the customer is negligent in making installment/installment payments.

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