



IMPLEMENTATION OF THE MURABAHAH FINANCING AKAD IN THE KOTA MEDAN SYARIAH BANK

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Abstract

One of the most popular Islamic banking products is murabahah financing. In practice, the bank sells goods to customers, then the customer makes payments to the bank by installments and payments can also be made in cash, where in principle the bank takes advantage based on the freedom of the mutually agreed agreement. In implementing the murabahah sale and purchase agreement at the Sharia Bank of Medan City as stipulated in the Fatwa of the National Sharia Council (DSN) Number 111/DSN-MUI /IX/2017 concerning the Murabahah Sale and Purchase Agreement, it has not fully met the rules or standards given by the National Sharia Council (DSN). The main problem in this case is in the murabahah sale and purchase agreement where the supplier directly sells and purchases with the customer, so that only two parties are involved in the murabahah sale and purchase contract.

Keywords: *Implementation, financing, Murabahah, Islamic Banking*

A. INTRODUCTION

Islamic law is part of the Indonesian constitution, which for every Muslim community in Indonesia, has become a daily life to apply the rules that have been commanded by Allah SWT, because Islam regulates all aspects of human life, including muamalah legal institutions that should be used as an opportunity special to uphold Islamic law.¹ The regulation of each field of muamalah law has the purpose of so that human beings do not commit acts of deviation from the

¹ Mohammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, (Jakarta: Raja Grafindo Persada, 1998), p. 39.

applicable provisions, so that there will be no inner conflict or injustice. ² Therefore, religion gives the best rules, because with the regular muamalah, then human life becomes peaceful and peacefu.³

Various muamalah and transactions in Islam such as buying and selling (al-bai '), leasing (al-ijarah), Islamic banks, sharia pawnshops, sharia insurance, company or partnership (asy-sirkah), profit sharing (al-mudharabah), and the capital market has developed according to sharia, which is followed by an increase in various kinds of Islamic business transactions and forms of agreements that require to use Islamic rules.⁴

According to Fathurrahman Djamil⁵, Islamic law basically gives people the freedom to make and make agreements according to their wishes, but what determines the consequences of the law is the teachings of religion, to ensure that there is no persecution between fellow human beings through contracts (agreements) and conditions which he made.

The freedom to make an agreement in the Qur'an is found in Surat An-Nisa 'verse (29).

Meaning:

"O you who believe, do not give each other wealth in the wrong way, except in the way of trade that takes place on the basis of mutual love between you, and do not kill yourself, for Allah is Most Merciful to you." (Q. S. An-Nisa: 29).⁶

In the implementation of the sale and purchase agreement transaction, in addition to the existence of a seller, a buyer, it must also be carried out in accordance with the terms of the sale and purchase agreement, and the most important thing is that there is no element of deception, so it must be consensual or mutually pleased.⁷ In Islamic law, freedom to enter into an agreement in an agreement is a right that is owned by every human being, and the person who promises must keep his promise.

The implementation of buying and selling transactions as mandated by Islam is now being implemented in the banking world, especially the banking sector in Indonesia. The application of Islamic law in the banking world can be seen from the emergence of Islamic bank names.

² R. Abdul Djamali, *Hukum Islam*, (Bandung: Mandar Maju, 1992), p. 138

³ Sulaiman Rasjid, *Fiqh Islam: Hukum Fiqh Lengkap*, (Bandung: Sinar Baru, 2002), p. 278.

⁴ M. Ali Hasan, *Berbagai Macam Transaksi Dalam Islam (Fiqh Muamalat)*, (Jakarta: Raja Grafindo Persada, 2004), p. 5.

⁵ Fathurrahman Djamil, *Hukum Perjanjian Syariah*, Dalam Mariam Darus Badzrulzaman, et. al, *Kompilasi Hukum Perikatan*, (Bandung: Citra Aditya Bakti, 2001), p. 249.

⁶ Lihat Alquran, Q. S. An-Nisa: 29.

⁷ Abdulkadir Muhamad, *Hukum Perjanjian*, p. 25

Currently the growth of Islamic banks in Indonesia is very fast, along with the growing public understanding that the interest and capital which results have been determined in advance is usury which is prohibited in Islamic law. On the basis of this understanding, since 1950 Muslim scholars and Islamic economic theorists have wanted the existence of a bank that is free of bank interest or usury.

Islamic banking is one of the Islamic financial institutions in Indonesia that facilitates transactions, whether funding, financing, buying and selling, or other similar activities, in accordance with the principles of Islamic sharia.⁸ Philosophically, Islamic banks were established as an effort to meet the material and spiritual needs of the community in implementing Islamic law in the economic field. Islamic banks are expected not only to produce products or provide services to create economic growth and progress based solely on Islamic economic principles, but also to improve the morality and spirituality of society. Because in essence, investors, employees and customers interact and behave in an Islamic manner.⁹

Currently, one of the most popular Islamic banking products is murabahah financing. In practice, the bank sells goods to customers, then the customer makes payments to the bank by installments and payments can also be made in cash, where in principle the bank takes advantage based on the freedom of the mutually agreed agreement. The existence of a murabahah financing agreement by a sharia bank with a customer, there will be a legal consequence and this result occurs when the parties who enter into the agreement have agreed, in the law of the agreement it is known as the principle of consensualism, which is what the first party wants and the other party wants. Murabahah financing agreement at a non-cash price by deferring payments until a certain time limit, in accordance with the agreement provided that the syariah bank raises the price because of the deadline (the grace period).

Furthermore, regarding guarantees, related to murabahah, in the world of Islamic banking or Islamic banking, the application of the guarantee element for financing between banks and borrowing customers is the same as conventional banks, namely consisting of individual guarantees and material guarantees.¹⁰

⁸ Ascarya, *Akad dan Produk Perbankan Syariah*, (Jakarta: Bank Indonesia, 2006), p. 1

⁹ Sudin Harun dan Bala Shamugam, *Islamic Banking System*, (Malaysia: Pelanduk, 2001), p. 35.

¹⁰ A. Qiram Syamsudin Meliala, *Pokok-Pokok Hukum Perjanjian Beserta Perkembangannya*, (Liberty: Yogyakarta, 1995), p. 20.

The difference lies in the application of the contract (contract) and the operational principles of bank transactions, where Islamic banks are based on Islamic law. The element of guarantee used in Islamic banks is the same principle as conventional banks in providing financing. This principle is known as the 5 C principle, which consists of Character, Capacity, Capital, Collateral, and Economic Condition. Of the five principles, the guarantee element lies in the collateral principle.

There is a need for collateral or collateral because customers buy and sell goods with payments using the loan installment method. Due to this condition, the bank feels the need to present a guarantee from the customer as a guarantee that the customer will pay the installments according to the agreement. This means that the guarantee is a preventive step to ensure that the capital given or borrowed can be returned based on terms and agreements. This is also explained in Article 2 paragraph 1 Decree of the Board of Directors of Bank Indonesia No. 23/69 / Kep / DIR dated February 28, 1991 Regarding the Guarantee of Credit Provision, that the guarantee is a banker's confidence on the ability of the debtor to pay off the credit in accordance with the agreement.¹¹

The existence of guarantees at Islamic banks, especially in murabahah financing, which is requested from customers who are working partners. The requirement for a guarantee at a syariah bank serves as evidence of a good intention from the customer to pay off his debt or commitment to fulfill his promise.¹² So that the guarantee as proof of agreement on financing, especially murabahah financing, between a bank and anasabah obtains tale.

B. DISCUSSION

1. Implementation of Murabahah Financing Agreement at Islamic Bank in Medan City.

Murabahah, in Islamic connotation basically means selling. Sales on murabaha. Clearly informs the buyer what the cost of the goods is and how much Profit is made at that value. This profit can be either a lump sum or a percentage basis.¹³

Murabahah in financial institutions is a sale and purchase agreement between Islamic financial institutions, including banks and customers. Sharia banks buy goods needed by customers, namely the cost of goods plus the profit (margin) agreed upon between the Sharia Bank and the customer. Murabaha is different from musawamah, or the sale of commodities/goods at a

¹¹ Hermansyah, *Hukum Perbankana Nasional Indonesia*, (Jakarta: aKencana, 2006), p. 68.

¹² Amir Naruddin, *Urgensi Hukum Ekonomi Islam dalama Menjawab Isu-isu Global*, (Makalah seminar Nasional: Program Pascasarjana IAIN Sumatera Utara, Medan, 2004).

¹³ M. Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik* (Jakarta: Gem Insani Press, 2001).

price without telling the principal value, even though you also take profit from the sale, it is not said to be murabaha.

Murabahah is a transaction of selling goods by stating the cost and profit (margin) agreed upon by the seller and the buyer, with payment for the murabahah contract that can be made firmly and in cash. The difference between murabahah and regular sales is that the seller's murabahah clearly informs the buyer of the cost of purchase of the product and the amount of profit the seller will take.

Murabahah financing is the financing of funds from owners of capital, both LKS and Sharia Banks to customers to buy goods by confirming the purchase price of the goods and the buyer (customer) will pay a higher price, as the benefit of the owner of the capital as agreed upon. Prices may not change throughout the contract and if there is difficulty in paying, restructuring can be carried out and if you do not pay due to default, you may be subject to fines.

Example:

Based on the negotiations between the Islamic bank and the customer, where the customer places an order with the bank regarding the purchase of a plot of land and the house on it. Islamic banks and customers negotiate the purchase and sale price of the house ordered by the customer. After there is an agreement regarding the predetermined price, installment and grace period, a murabahah sale and purchase agreement is carried out.

The Sharia Bank which provides Home Ownership Credit (KPR) buys a house from a supplier at a price of Rp. 650,000,000 (six hundred and fifty million rupiah). Whereas between the bank and the supplier (developer) a notarized sale and purchase agreement was drawn up at a price of Rp. 650,000,000 (six hundred and fifty million rupiah). After the house is legally owned by the bank, the bank sells it to the customer at a price of Rp. 720,000,000 (seven hundred and twenty million rupiah). So that the bank gets a profit (margin) of Rp. 70,000,000 (seventy million rupiah), upon agreement between the bank and the customer. At the time of sale between the bank and the customer of the house, it is evidenced by the signing of a sale and purchase agreement between the bank and the customer. Of the sales price, namely the cost of Rp. 650,000,000 (six hundred and fifty million rupiah) plus a profit (margin) of Rp. 70,000,000 (seventy million rupiah) to be Rp. 720,000,000 (seven hundred twenty million rupiah), the payment of which is made in installments for 10 years, so that the customer pays the bank in the amount of Rp. 6,000,000 (six million rupiah) per month for a period of 10 years.¹⁴

¹⁴Djoko Muljono, Perbankan dan Lembaga Keuangan Syariah, (Yogyakarta: Andi, 2015), p.144.

This is of course in accordance with the MUI Fatwa No. 111 / DSN-MUI / IX / 2017. The terms of Murabahah Financing are as follows:

- a. A bai'al-murabahah contract is an agreement to sell and buy an item by confirming the purchase price to the buyer and the buyer pays the higher price as profit.
- b. Seller (al-Ba'I) is a party who sells goods in a sale and purchase agreement, either in the form of a person or an equivalent of a person, whether incorporated or not.
- c. Buyer (al-Musyitari) is a party who makes a purchase in a sale and purchase contract, either in the form of a person or an equivalent of a person, whether incorporated or not.
- d. Ashliyyah area is the authority possessed by the seller because the person concerned is the owner.
- e. The niyabiyyah area is the authority possessed by the seller because the person concerned is the representative of the owner or guardian over the owner.
- f. Mutsman / mabi 'are goods that are sold; mutsman / mabi 'is a counterpart to the tsaman being exchanged.
- g. Res mal al-murabahah is the acquisition price in a murabahah sale and purchase agreement in the form of the purchase price (at the time of shopping) or production costs along with costs that may be added.
- h. Tsaman al-murabahah is the selling price in the murabahah sale and purchase agreement in the form of ra's mal al-murabahah plus the agreed profit.
- i. Bai 'al-murabahah al-adiyyah is a murabahah sale and purchase agreement made on goods that are already owned by the seller at the time the goods are offered to prospective buyers.¹⁵

2. Murabahah Lil Amir Bis-Syira

According to Sami Hamoud, Murabahah Lil Amir Bis-Syira 'is a sale and purchase transaction in which a customer comes to the bank to buy a commodity with certain criteria, and he promises to buy the commodity murabaha, which is in accordance with the cost of goods purchased plus the level benefits agreed by both parties, and the customer will make installment payments (periodic installments) according to their financial capabilities.¹⁶

According to Ahmad Mulhim, Murabahah Lil Amir Bis-Syira 'is a request to purchase a commodity with certain criteria submitted by the customer which is subsequently approved by the

¹⁵Soemitra, Andri, Hukum Ekonomi Syariah dan Fiqh Muamalah, (Jakarta : Prenadamedia Group, 2019), h. 82

¹⁶ Panji Adam, Fikih Muamalah Maliyah, (Bandung:Refika Aditama, 2017), p.115

bank. Then, the bank promises to buy the commodity as intended and the customer promises to buy it according to the cost of purchase plus the level of profit agreed by both parties.¹⁷

Based on this understanding, it can be understood that in the sale and purchase of Murabahah Lil Amir Bis-Syira 'there are three parties involved, namely the party who gives the purchase order of commodities (the customer), the bank, and the commodity seller (supplier).

In addition, Murabahah Lil Amir Bis-Syira 'will be perfect with the following stages: The customer submits an application for financing goods / commodities to the bank with certain specifications. Then, the two of them made an agreement that the bank promised to sell the commodity with an additional profit / margin on the cost of purchase. In this stage, a sale and purchase contract had not yet occurred, but only an agreement or agreement.

Then, the bank buys the supplier's commodity on behalf of the bank itself, and this sale and purchase must be legal and free from usury. After the commodity officially becomes the property of the bank, then the bank offers the asset to the customer, and of course the asset must comply with the agreed specifications. After that, the bank and the new customer can enter into a sale and purchase contract. In this case, the bank must convey all matters relating to the purchase, such as the cost of purchase, the amount of margin, including if the purchase is made in debt. If there is an agreement in the sale and purchase, the goods and documents are sent to the customer, then the customer pays the agreed price at a predetermined time.

If the bank wants to represent the customer to buy goods from a third party (supplier), then both parties must sign an agency agreement, whereby the bank gives the customer the authority to become its agent to buy commodities from a third party on behalf of the bank. In other words, customers become bank representatives to buy commodities. Then, the customer buys the commodity on behalf of the bank, and its ownership is limited to as an agent of the bank.¹⁸

Next, the customer provides information to the bank that he has bought the commodity, then the bank offers the commodity to the customer, and a sale and purchase contract is formed and the commodity is then transferred to the customer's property with all the risks. According to Ahmad Muhyiddin Ahmad from Kuwait Islamic Bank, this transaction is permitted and is commonly referred to as al *murabahah lil amir bis-syira 'bil-wakalah*.

¹⁷ Ibid. h. 15

¹⁸ Muhammad, *Bisnis Syariah Transaksi dan Pola Pengikatannya*, (Yogyakarta: RajaGrafindo Persada, 2018), p. 270-271.

3. The Role of Authentic Deeds in Making Murabahah Financing Contracts at Islamic Banks in Medan City.

a. The Power of Evidence of Authentic Deeds Based on Law Number 30 of 2004 concerning the Position of Notary Public

- Whereas legal certainty, order and protection demands that legal traffic in people's lives requires evidence that clearly determines the rights and obligations of a person as a legal subject in society.
- Authentic deeds as the strongest and perfect evidence have an important role in every legal relationship in public life. In various business relationships, activities in the banking, land sector, including murabahah financing deeds and guarantees are made authentically. The need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various economic and social relationships.
- An authentic deed is a guarantee on a sharia bank that serves as written evidence of the customer's good faith to pay off their debts or commitments to fulfill their promises.
- The value of the power of proof of authentic deeds is regulated in Article 1870 of the Civil Code. The value of the power of proof attached to it is perfect and binding, meaning that the authentic evidence has met the physical, formal and material requirements.
- This is related to the Notary Department Law (UUJN) Number 30 of 2004, where the evidence made authentically is the authority of the Notary as regulated in Article 15 Paragraph 1 of UUJN Number 30 of 2004.
- That the authentic act made by the Notary has a binding and perfect proof. Thus the truth of the contents of the statement contained therein is perfect and binding on the parties as to what is stated in the act, as well as perfect and binding on the judge, so that the judge must make it a perfect and sufficient basis of facts to decide when a matter/dispute occurs.

b. The Power of Evidence of Deeds of Land Deed Making Officials (PPAT) (Government Regulation Number 37 of 1998).

Land Lawmaker Office in addition to having duties, and authority. The authority of the land act maker office is to make the act. An act made by the Land Act Making Office is

an act of certain legal acts concerning the right to land and title to an apartment unit located within its work district. Certain legal acts as evidenced by the Act of the Land Act Maker, namely:

- 1) Buy and sell
- 2) Exchange
- 3) Grant
- 4) Entry into the company (inbreng)
- 5) Sharing of joint rights
- 6) Encumbrance of Mortgage Rights
- 7) Granting of Building Use Rights/ Use Rights to Freehold land.
- 8) Granting of Power to Impose Mortgage Rights.

The Act made by the Land Act Making Office has 2 (two) functions, namely:

- 1) Act of the Land Act Maker Office as proof that certain legal acts have been held on the rights to land and title to the apartment unit.
- 2) The Act of the Land Deed Making Officer will be the basis for the registration of changes in land registration data to the Regency / City land office whose work area covers the land area concerned. ¹⁹

In carrying out its duties the Land Act Making Office makes an act which is a signed act, made to be used as a tool of evidence, and to be used by others, for the purposes of who the act was made. According to Sudikno Martokusumo, an act is a signed letter, which contains the events that constitute the basis of a right or alliance, made from time to time deliberately for proof. Deed made so by or in the presence of an official authorized to make it sufficient evidence for both parties and their heirs as well as relating to the other party as a legal relationship, of all matters referred to in the act as notice of direct contact with the subject matter of the act. A deed is a signed letter made by a person or official who serves as proof of a legal act or legal event.

A.A. Andi Prajitno stated that the Act of the Land Deed Making Officer as an authentic act has:

- 1) The power of external proof (witwendige bewiskracht), having the ability to prove its validity, is commonly called "acta publica probant sese ipsa"

¹⁹Urip Santoso, Pejabat Pembuat Akta Tanah Perspektif Regulasi, Wewenang, dan Sifat Akta, (Jakarta: Rawamangun, 2017), p. 132

- 2) The power of formal proof (formale bewiskracht), is the statement of the official in writing contained in the act is the same as that done and witnessed by the official concerned in carrying out his office, including the certainty of the date of his making, his signature, and the place of making his act.
- 3) The power of material proof (material bewiskracht), in the sense of the content of the act is true to every person who ordered to make the act for it against himself.

4. The Law of Taking Profits by the Bank in the Murabahah Financing Contract.

Whereas the phenomenon that occurs in the field in implementing murabahah financing in Islamic banking, where the profit taking by the bank in the murabahah sale and purchase agreement is not in accordance with what is mandated by the MUI Fatwa, because in the sale and purchase of murabaha carried out by Islamic banks are two parties, namely between the supplier and the customer, however, the bank takes profit as if the murabahah sale and purchase was carried out between three parties.

Whereas the Wakalah Akad which is made under the hand between the bank and the customer on behalf of the bank, is not followed up or carried out by the customer, therefore the sale and purchase carried out is actually not three parties but two parties.

Thus, the murabahah sale and purchase agreement carried out by the two parties, in the definition of the bank, is as if it were made between three parties. In connection with what has been described above that the Murabahah Bil Wakalah Sale and Purchase Agreement carried out at the Medan City Islamic bank in principle is not fully in accordance with what has been mandated in the National Sharia Council Fatwa (DSN) Number 111/DSN-MUI/IX/2017, so that creates legal uncertainty. Furthermore, to anticipate that the implementation of the murabahah sale and purchase agreement is in accordance with what is mandated in the Fatwa of the National Sharia Council (DSN), a deed of sale and purchase agreement between the supplier (developer) and the bank should be paid off, so that the land and building those above it are in principle the property of the bank. Then the bank can legally sell it to customers. Furthermore, from the difference in the cost of goods sold, the bank can take the profit (margin) that has been mutually agreed upon between the seller and the buyer (the bank and the customer). Among the scholars who acknowledge the validity of the murabahah sale and purchase agreement mentioned above are Sami Hamoud, Yusuf Qaradhawi, Ali Ahmad Salus, Shidiq Muhammad Amin and Ibrahim Fadil. The arguments that support the validity of the murabahah purchase agreement are as follows:

- a. The original law in muamalah is permissible (mubah). The original law in muamalah is permissible and permissible, unless there are nash shahih and sharih that forbid and forbid it.

In contrast to mahdah worship, the original law is haram unless there is a nash who orders it to be done.

- b. The generality of nash Al-Quran and Hadith which shows the halal of all forms of trading, unless there is a specific evidence that prohibits it. Dr. Qardhawi says, in surah Al-Baqarah verse 275, Allah SWT. legalize all forms of trading in general, whether muqayadlah trading (barter goods with goods), currency trading, stock trading or absolute trading and other trading. All types of trading are halal because they fall into the category of buying and selling which is halal by Allah and there is no haram buying and selling, unless there is a nash from Allah and His Messenger who forbade it.
- c. Muamalah transactions are built on the basis of mashlahat. Syara 'will not prohibit any form of transaction, unless there is an element of tyranny in it, such as usury, fraud and others. Or in the indication that the transaction can cause disputes or hostility among humans, such as the presence of gharar or speculative nature.
- d. The opinion that allows this form of murabahah contract is intended to facilitate the question of human life. Islamic law comes and simplifies human affairs and eases the burden it bears.

That for the sake of human life in today's more complex so that there is no conflict of opinion or interest in society or in the business world, then to facilitate in its implementation and for the benefit of the lives of the people as desired by the Shari'ah, so as to contract The above murabahah is allowed (mubah).

The Fiqh rule which is the basis of the law of murabahah financing contract entrusted by the Fatwa of the National Syariah Council (DSN) Number 111/DSN-MUI/IX /2017 is "basically, all forms of muamalah can be done unless there is evidence that forbids it.

Sharia bank is an Islamic Financial Institution and more than just a bank (beyond banking) based on the Qur'an and the Hadith (guidance) of the Prophet SAW, which refers to the principle of muamalah, that is, something can be done unless there is a prohibition in the Qur'an ' an and Hadith that regulate human and economic and social relations.

C. CONCLUSION

Based on the analysis of this research, several conclusions can be drawn as outlined below:

1. In implementing the murabahah sale and purchase agreement at the Islamic Bank of Medan City as stipulated in the Fatwa of the National Sharia Council (DSN) Number 111 / DSN-MUI / IX / 2017 concerning the Murabahah Sale and Purchase Agreement, it has not fully met the rules or standards given by the Sharia Board National (DSN). The main problem in this case is in the murabahah sale and purchase agreement in which the supplier (developer) directly makes a sale and purchase with the customer, so that only two parties are involved in the murabahah sale and purchase contract.
2. Related to the role of authentic deeds in making Murabahah Financing Contracts at Islamic banks in Medan City. Whereas murabahah financing agreements made authentically provide certainty, order and legal protection in people's lives which require strong and perfect evidence. The strength of this evidence provides certainty regarding the material of the deed contained in it and is binding on the Judge, so that the Judge must make it a perfect and sufficient fact base to make a decision on the settlement of a case/dispute.
3. The law of taking profit by the bank in a murabahah sale and purchase agreement at a Sharia Bank in Medan City. Based on the fatwa of the National Sharia Council (DSN) Number 111/DSN-MUI/IX /2017 which states that in the murabahah sale and purchase agreement the seller (bank) is the owner and the bank must already have the commodity to be sold when the commodity is sold to buyer (customer). So that the law is permissible (mubah).

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