

# Disfunction of Wakalah Contract in Murabahah Financing of Sharia Banking in Indonesia

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## Abstract

Murabahah financing is the most dominant financing product in Islamic banking entities in Indonesia. Several factors make murabahah financing more dominant than other financing products, including; First, the murabahah financing scheme is simpler so that it is easier for the public to understand. Second, the amount of profit margin can be known at the beginning of the contract and is fixed until the financing period ends. The application of murabahah financing in Islamic banking in Indonesia uses the murabahah bil wakalah scheme. This study uses a descriptive-qualitative method with a normative theological approach using field research techniques that focus on the flow of the murabahah bil wakalah financing process. The results showed that there was an error in the application of the murabahah bil wakalah scheme where the murabahah and wakalah contracts were signed and agreed upon in the same assembly. This of course violates the rules in muamalah fiqh which makes a murabahah (buying and selling) contract turn into a qardh (debts) contract. So, the real transaction that occurs between the Islamic banking party and the customer is a debt-receivable contract transaction, not a sale and purchase agreement.

**Keywords:** *murabahah; wakalah; Islamic Banking; Riba.*

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## INTRODUCTION

In the last two decades, the development of Islamic banking in Indonesia has shown significant progress. Data from the Financial Services Authority (OJK) noted that the growth of Islamic banking assets as of December 2020 reached Rp. 608.9 trillion or an increase of about 13% when compared to total Islamic banking assets in 2019 (Otoritas Jasa Keuangan, 2020). The government's support and seriousness in advancing Islamic banking is demonstrated by the enactment of Law Number 21 of 2008 concerning Islamic Banking. With this legal law, it is hoped that the development of Islamic banking in Indonesia can be faster.

Islamic Bank In general have more varied products when compared to conventional bank products. From the aspect of raising funds, Islamic banks use two contract schemes, namely the wadiah contract (deposit) and the mudharabah contract (profit sharing). Meanwhile, from the aspect of financing distribution, Islamic banks have several contract schemes, including murabahah (sales and purchases that

mention profit), mudharabah (profit sharing), musyarakah (shares/capital participation), ijarah (lease), salam and istishna' (sales and purchases made object submission is deferred). By the various financing schemes, the murabahah scheme is the dominant financing used in the Islamic banking system. Sharia banking statistics released by the Financial Services Authority noted that the financing of receivables to non-bank third parties with the murabahah scheme reached Rp. 142,098 billion for the Sharia Commercial Bank category, while for the Sharia Business Unit category it reached Rp. 41,409 billion (Otoritas Jasa Keuangan, 2021).

There are several reasons that make the murabahah contract scheme more dominant when compared to other financing contract schemes. First, the murabaha contract scheme has lower risk and provides certainty of profit (profit) because it is determined at the beginning of the contract. Second, the concept of the murabahah scheme is simpler and easier for customers to understand (Bahjatulloh, 2011). The selection of the murabahah scheme as the pre-eminent contract scheme in running business operations in Islamic banking is legal. However, in its application, it must pay attention to mechanisms that are in accordance with the principles of Islamic law. Compliance with sharia principles is the main characteristic that differentiates sharia banking and conventional banking. If in conventional banking the analysis of the feasibility of financing is only from a business wise aspect, then in Islamic banking the value of financing feasibility is not only from a business wise aspect but also from a sharia wise aspect.

The development of Islamic banking both in the Indonesian context and globally is not only caused by the factor of increasing the Muslim population but also because of the compliance with sharia values in it. In Indonesia, the presence of Islamic banking is based on the spirit to carry out Islamic law in *kaffah* (impeccable) manner, namely the belief in the prohibition of bank interest (Baehaqi, 2017). The results of research conducted by Iman Prakosa and Lutfi Zuchri concluded that the main cause of customers choosing to have Islamic banking is the existence of a halal product guarantee with a system that is in accordance with sharia principles (Prakosa & Zuchri, 2011).

The attachment of the word "sharia" to Islamic banking entities makes the entity seem to bear a great responsibility. Sharia bankers are required to carry out sharia principles in all their activities. Therefore, the fulfillment of sharia compliance is a necessity. The current reality, there is a negative perception from some people who think that there is no difference between Islamic banking and conventional banking. Islamic banking is considered to have not fully implemented the principles of Islamic law in all of its business operations (Widigdo et al., 2016).

One of sharia banking products that is in the spotlight and considered not to meet the principles of Islamic law is the murabahah financing scheme. Murabahah according to the fatwa of the National Sharia Council (DSN) MUI Number 04/DSN-MUI/IV/2000 is described as an activity of selling an item by disclosing its purchase price to the buyer and the buyer paying it at a higher price as profit.

In the development of the Islamic banking system, financing products with the murabahah scheme underwent several modifications in their application. The financing product does not only use murabahah contracts but also uses wakalah as an auxiliary contract. The existence of a wakalah contract that accompanies a murabahah contract aims to facilitate Islamic banks in the process of purchasing murabahah contract objects. However, in practice there are many mistakes that result in the

invalidity of the murabahah contract itself. Through this article, the author will examine the errors in the use of wakalah contracts in Islamic banking.

## METHODOLOGY

This study uses a descriptive-qualitative method with a normative theological approach using field research techniques that focus on the flow of the murabahah financing process. For this reason, data collection was used using interviews, observation, and documentation. Interviews were conducted unstructured or in the form of in-depth discussions with informants who were considered qualified or had sufficient knowledge regarding the object of this research. The data that has been collected is then processed through three stages, namely data reduction, data presentation, and drawing conclusions.

## RESULT AND DISCUSSION

### *Definition of Murabahah and Its Implementation in Sharia Banking*

In fiqh muamalah point of view, murabahah is defined as a form of buying and selling in which the seller discloses the acquisition cost or profit/margin desired by the seller. The amount of profit can be obtained in the form of a lump sum or a certain percentage of the acquisition cost. Payment can be made in cash or can also be done in a delay as agreed by the parties to the contract (Ascarya, 2006). Meanwhile, Law Number (UU) 21 of 2008 concerning Islamic Banking defines murabahah as a financing contract in which the seller confirms the purchase price of an item to the buyer and the buyer pays it at an agreed higher price as profit. The method of payment can be done in cash or in a respite or in stages.

Allah swt allows the practice of buying and selling murabahah as stated in the Qur'an QS Al-Baqarah/2: 275

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

The translation:

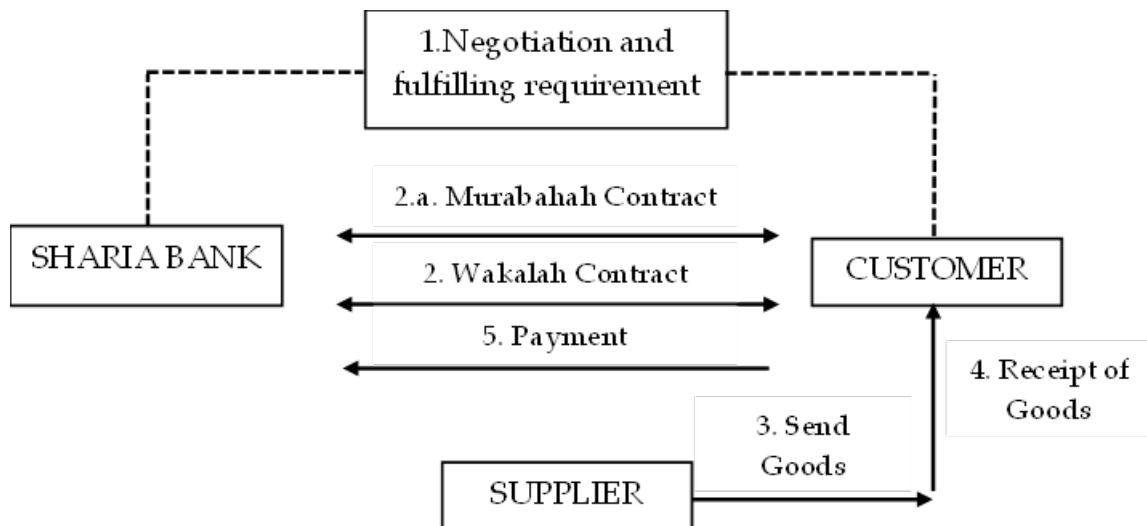
Allah swt justifies buying and selling and forbids the practice of usury.

In the practice of sharia banking in Indonesia, murabahah is legalized in the fatwa of the National Sharia Council number 04/DSN-MUI/IV/2000 concerning Murabahah. The general provisions of murabahah in the fatwa are as follows: (a) Banks and customers enter into usury-free murabahah contracts. (b) Goods that are traded are not forbidden by the teachings of Islam. (c) The Bank finances part or all of the purchase price of goods whose qualifications have been determined or agreed upon. (d) Banks buy goods needed by customers on behalf of the bank itself, the purchases must be legal and free from the practice of usury. (e) Banks must submit all matters relating to purchases, such as purchases made under a debt scheme. (f) The bank sells the goods to customers who have previously ordered at a selling price equal to the cost of goods plus the profit (margin). Banks must provide information openly to customers the cost of goods and all necessary costs. (g) The customer pays the price of the goods within the agreed period of time. (h) To prevent contract defects, banks may enter into special agreements with customers. (i) If the bank wants to represent the customer in terms of buying goods from a third party, then the murabahah contract is carried out after the goods have been owned by the bank in principle.

Meanwhile, the pillars of a murabahah contract that must be fulfilled are as follows:

- (a) Contractors, namely the owner of the goods to be sold (*bai'*), and the party who needs the goods to buy them (*musytari*).
- (b) The object of the contract, in this case the merchandise and the price of the goods.
- (c) *Shigah*, namely the agreement in consent and *qabul*.

From the explanation above, the minimum requirements for a murabahah contract can be seen in the following table (Ascarya, 2006):



**Figure 1** Murabahah bil Wakalah Scheme in Sharia Banking

The customer first applies for financing to the Bank to purchase an item. The bank will provide requirements for the financing application and negotiate the price. The bank then purchases goods from the supplier with the specifications proposed by the customer. Furthermore, the bank and the customer enter into a murabahah sale and purchase agreement on the goods submitted by the customer. Then the supplier sends the goods to the customer. The customer receives the goods and the accompanying documents. The customer makes payments (margin + principal) to the bank in stages with an agreed period of time.

When examined in depth, the murabahah financing process in Islamic banking refers to the concept of *bai' al-murabahah li al-amri bi al-syira'* namely the practice of buying and selling where the customer asks the Islamic bank to buy an item with certain specifications and promises to buy the item using a murabahah scheme then the customer makes a delayed payment.

Some contemporary scholars disagree regarding the law of practice *bai' al-murabahah li al-amri bi al-syira'*. Some allow it and some forbid it. The scholars who allow it include; Yusuf Qardhawi, Sami Hamud, and Ibrahim Fadhil. The reasons they allow are as follows: *First*, the law of origin of muamalah cases is permissible unless there is evidence that prohibits it. *Second*, the argument of buying and selling in the Qur'an and Hadith is general, which means it shows the permissibility of all forms of modification in buying and selling. *Third*, In the contract between the bank and the customer there are rights *khiyar* which means both parties may choose to continue or cancel the contract. *Fourth*, there is a virtue that arises in every muamalah transaction. *Fifth*, there is an element of convenience for both parties which is the goal of *maqashid*

sharia. The scholars who forbid include: Sulaiman al-Asyqar, Rafiq al-Mishri, Bakr Ibn Abu Zayd. The arguments for the prohibition include: *First*, the murabaha scheme in Islamic banking is a *go away* (trick). *Second*, there is not a single scholar *salaf* which allows the practice of murabaha. *Third*, the practice of murabaha resembles a buying and selling scheme 'ah, namely the practice of usury which is modified as if it resembles buying and selling. *Fourth*, the Islamic bank sells goods that do not yet have (Lathif, 2013).

DSN and the AAOIFI Fatwa Council are more likely to choose opinions that allow practice *bai' al-murabahah li al-amri bi al-syira*'. So that DSN fatwa Number 111/DSN-MUI/IX/2017 was born regarding the Murabahah Sale and Purchase Agreement. AAOIFI also issued a fatwa in Sharia Standard Number 8 concerning Murabahah.

### ***Definition of Wakalah and Its Implementation in Sharia Banking***

Wakalah is defined as the act of delegating someone to represent the position of the person who delegated it to do a certain task. In simple terms, wakalah is a contract or agreement to give the power to be a representative in carrying out the duties of the party being represented (Wiroso, 2017). According to Bank Indonesia Regulation, wakalah contract is defined as a contract of power of attorney by one party to another in a case that is permitted. Meanwhile, according to Sharia Standard No. 23 AAOIFI, wakalah is the act of one party representing another party and acting on behalf of the representative regarding the subject of representation (International Shariah Research Academy (ISRA) for Islamic Finance, 2015). Therefore, all scholars agree on the permissibility of the wakalah contract even if it is considered a sunnah because it is part of the attitude of ta'awun (help).

In the application of wakalah contracts in Islamic banking, the customer acts as the representative, while the Islamic bank acts as the represented. The provisions of the wakalah contract are contained in the DSN-MUI fatwa Number 10/DSN-MUI/IV/2000 concerning the Wakalah contract. These provisions generally contain; First, Ijab and Qabul must be declared by all parties as a form of their wishes in the contract. Second, Wakalah which requires compensation is binding and cannot be canceled unilaterally.

The concept of wakalah contract is widely involved in the operational system of Islamic banking as an intermediary institution between depositors and debtors. In the process of disbursing financing, the wakalah contract becomes the main contract that aims to facilitate the financing process where the customer acts as a representative of the Islamic bank. In addition to financing products, wakalah contracts are also related to several Islamic banking products, such as payroll salaries, payment points, fund transfers, and others. In this product, the Islamic bank acts as a representative of the customer.

### ***Disfunction of Wakalah Contract in Murabahah Financing***

Buying and selling using a murabahah contract scheme can be done in two ways, namely pure murabahah and murabahah bil wakalah. However, in general, Islamic banking uses a murabahah bil wakalah financing scheme. Incorporating wakalah contracts in every murabahah financing transaction aims to streamline and



facilitate Islamic banking in the financing process. As stated by Mr. Muhidin (Relationship Manager in Sharia Bank):

"All murabahah financing uses wakalah contracts. Why do you have to use a wakalah contract? Because the bank has difficulty if you have to make purchases yourself." (Interview in April 2021).

And also the statement of Mr. Anugrah Lutfi (Financing Analyst Manager in Sharia Bank):

"The use of wakalah contracts aims to make the murabahah financing process more practical, time-saving, and the customer can immediately find out the condition of the goods to be purchased and the bank does not receive complaints from customers about the condition of the goods because the customer himself bought the goods." (Interview in April 2021).

The use of wakalah contracts in murabahah financing is in line with the DSN fatwa Number 10/DSN-MUI/IV/2000 concerning Wakalah contracts. Wakalah contract participation is considered part of the modification of the murabahah contract scheme with *thebai' li al-amri bi al-syira'*. However, the process of participating in the wakalah contract was not implemented properly. In its application, the wakalah contract which always accompanies the murabahah contract is agreed and signed by the customer simultaneously in the same assembly. As revealed by Mr. Wahyudin Jusuf Kamal as one of the financing customers at sharia banks:

"At the time of binding the mortgage, as far as I know, I only did the binding once and there were several documents that I signed at that time, including the wakalah contract and the murabahah contract". (Interview in April 2021).

And also Mr. Bambang Sutomo (financing customer at sharia bank):

"At that time, the binding of wakalah and murabahah contracts was only once in front of a notary."

The existence of a process of agreement or signing of wakalah contracts and murabahah contracts simultaneously in the same assembly violates the provisions stipulated in the DSN-MUI fatwa Number 04 of 2000 concerning Murabahah. The fatwa states that "If the bank wants to represent a prospective customer to buy goods from a third party, then the murabahah contract must be carried out after the goods are owned by the bank in principle. Likewise, what is stated in the Shariah Standard Number 8 AAOIFI regarding Murabaha where in the provision states *"It is obligatory to separate the two liabilities of risk attaching to the purchased item, namely the liability of the Institution and the liability of the customer as agent of the Institution. This is achieved by having an interval in time between the performance of the agency contract and the execution of the contract of Murabahah, as indicated in the customer's notice of performance of the agency contract to acquire the item and offer to purchase the item by means of Murabahah, followed by the institution's notice of its acceptance of the customer's offer to purchase and the execution of the Murabahah sale contract"* (Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI), 2015).

Seeing the provisions of the DSN-MUI and AAOIFI fatwas, the two fatwas explicitly emphasize that the wakalah contract and murabahah contract processes must be carried out separately. The wakalah contract should be done first before the murabahah contract is carried out. This is also confirmed in the Bank Indonesia Regulation (PBI) Number 7/46/PBI/2015 concerning the Funds Collection and Distribution Agreement which states that the wakalah contract and the murabahah contract must be made separately.

The agreement and signing of wakalah and murabahah contracts simultaneously seem to become something that cannot be avoided by Islamic banking entities. Several studies reveal this, including the results of research conducted by Meilano and Harahap (2018) on the Implementation of Wakalah Agreements in Murabahah Financing at the Surakarta branch of BNI Syariah Bank which stated that the implementation of wakalah contracts was not in accordance with the provisions of the DSN-MUI fatwa because it was agreed at the same time as the murabahah contract (Meilano & Harahap, 2018). Naila Wardatul Jannah's research (2017) on the application of murabahah bil wakalah contracts to financing at BRI Syariah Banyuwangi resulted in similar things, namely the signing of wakalah contracts and murabahah contracts at the same time (Jannah, 2017). Meanwhile, according to Ani Yunita (2018) in her research on the problems of the inclusion of wakalah contracts in murabahah financing in all Islamic banks, it is revealed that Islamic banks in implementing wakalah contracts are sometimes unwise and not careful. In practice, murabahah contracts often precede wakalah contracts (Yunita, 2018).

The Writer analyzed the main factors that led to the signing of wakalah contracts and murabahah contracts simultaneously in one assembly due to the low understanding of Islamic bankers regarding the essence of contracts in the Islamic financial system. So far, Islamic banking in general has experienced difficulties in finding Human Resources (HR) who have qualified competencies in the field of Islamic banking. According to Yustisa Tricahyani (2018) who examined the urgency of human resources in Islamic banking, she concluded that so far what has happened is simply the transfer of employees from conventional banks to Islamic banks without the provision of qualified knowledge of Islamic banking (Tricahyani, 2018). Ahmad K Permana (CEO of Bank Muamalat Indonesia) similarly stated that there are three big problems in Islamic banking, namely; First, the lack of product availability and standardization of Islamic banking products. Second, the public's low understanding of the products and terms in Islamic banking. Third, inadequate human resources.

Due to the lack of competent human resources in the field of Islamic banking, there has been a rise in employee turnover from conventional banks to Islamic banks. This will have an impact on the mindset and work patterns of conventional banks carried over to Islamic banks. Therefore, to produce professional and competent Islamic banking practitioners, collaboration with higher education institutions is needed in supplying human resources. In addition, tiered training is needed on basic sharia for all stakeholders in sharia banking because sharia bank entities are business institutions that are bound by religious rules and spiritual aspects.

The existence of a wakalah contract agreement and a murabahah contract simultaneously in one assembly is not in accordance with the concept of fiqh. This resulted in no transfer of ownership of the goods from the supplier to the bank, but the goods still belonged to the supplier. The status of the goods transacted is not fully owned by the bank while the profit from the sale of the goods has been determined. This practice violates the principle of buying and selling in Islam where the Messenger of Allah (saw) forbids selling goods that are not fully owned. As in the hadith narrated by Hakim bin Hizam who said to the Messenger of Allah;

يَا رَسُولَ اللَّهِ يَا تَبِيْنِي الرَّجُلُ فَيُرِيْدُ مِمِّي الْبَيْعَ لَيْسَ عِنْدِي أَقَابَتَاْعُهُ لَهُ مِنَ السُّوْقِ فَقَالَ لَا تَبِعْ مَا لَيْسَ عِنْدَكَ

It means:

"O Messenger of Allah! Someone came up to me and wanted me to sell something that didn't belong to me. Should I buy for him in the market? The Messenger of Allah (saw) said: do not sell things that you do not have." (Narrated by Abu Dawud No. 3503) (Dawud, 2008).

In essence, the bank only lends a certain amount of money to the customer and then the customer pays it to the supplier. The relationship between the bank and the customer is not a seller-buyer relationship but between the creditor and the debtor (borrower). If the bank takes advantage of debt transactions, it means that the bank is practicing usury.

If we look at some of the realities that happened above, it is not surprising that some people think that Islamic banking and conventional banking are different in form but similar in substance. The researcher argues that the error in the application of sharia compliance (sharia compliance) mentioned above is the cause of the slow growth of Islamic banking in Indonesia.

## CONCLUSION

In the process of distributing murabahah financing, Islamic banking in Indonesia uses the bai' al-murabahah li al-amri bi al-syira' scheme, which is the practice of buying and selling (murabahah) in which the prospective customer asks the bank to buy an item with certain criteria and has certain criteria. -a promise to buy the goods under a murabahah scheme, namely the cost of purchase plus a profit margin agreed by both parties, and the customer makes periodic payments (in installments). This is in accordance with the DSN fatwa number 111/DSN-MUI/2017 concerning Murabahah Sale and Purchase Agreements and AAOIFI Sharia Standards Number 8 concerning Murabahah.

In each distribution, Islamic banking uses an intermediary for wakalah contracts where the customer acts as a bank representative to carry out buying and selling transactions from the supplier. The use of wakalah contracts is in accordance with DSN fatwa number 10/DSN-MUI/IV/2000 concerning Wakalah. From the maqhasid aspect of sharia, the inclusion of wakalah contracts in the murabahah contract process is seen as a matter that provides convenience for the bank. Meanwhile, the benefit for the prospective customer is that the customer can directly identify the goods to be purchased. Mistakes occur when the wakalah contract and the murabahah contract are agreed and signed in the same assembly.

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