

Murabahah Financing in the Perspective of Islamic Law

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ABSTRACT

The current era encourages financial institutions, such as Islamic banks, to continue developing and producing high-quality products. One of them is a financing product with a murabahah contract. Murabahah financing. Murabahah is a sale and purchase agreement between two parties, where the buyer and seller agree on the selling price, which consists of the purchase price plus the cost of purchase and profit for the seller. Another understanding of murabahah is the sale and purchase of goods, whereby the acquisition price and the agreed-upon profit (margin) are stated. This research aims to identify the Sharia principles applied by financial institutions, such as Islamic banks, to murabahah financing products. This research employs a qualitative descriptive approach, using library sources, specifically written materials.

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INTRODUCTION

Islamic sharia teaches all aspects of life in the world, including the aspect of muamalah. This aspect of muamalah is used to regulate human social interaction, as humans are essentially social creatures. Muamalah is a general term that gives meaning to various activities, including business activities, financial transactions, trade, and what most often humans do is buying and selling activities (Haryoso, 2017).

Buying and selling activities are often undertaken to meet human needs. In buying and selling activities, of course, a clear contract must be made, because if the contract is not carried out, the buying and selling that occurs is not valid in sharia principles. The purpose of buying and selling is to keep people away from the practice of usury, because usury is something that is hated by Allah SWT and must be avoided, because it brings great sins (Haryoso, 2017), In accordance with what is explained in the Quran Surah Al-Baqarah: 275

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

Means "As for usury, that is, those who eat usury cannot stand unless they stand up to those who are incarcerated by the devil because of a madness, their condition is because they say, buying and selling is the same as usury, whereas Allah has legalized buying and selling and forbidding usury, those who have come to it forbidden from their lord and then continue to stop (from taking usury), so for him what he has taken before (before the prohibition came) and his business (is up to) Allah, the one who returns (to take usury) then that person is the dweller of Hell, they will abide in it" (Q.S. Al-Baqarah:275) (Ministry of Religion, 2020).

Currently, the sharia economy is experiencing quite rapid growth. The study and concept of Sharia economics is not only carried out in countries with a majority Muslim population, but non-Muslim countries, such as the United States and European countries, have also studied the concept of Sharia economics. Especially after a series of crises that have befallen the capitalist countries that are incessant, there is a thought that a new economic system is needed to replace the liberal economic system and capitalism, which is considered to have failed (Nasution, 2021). The emergence of Islamic financial institutions provides a breath of fresh air for Muslims, especially in Indonesia. Among them are sharia business entities, sharia business units, sharia people's financing banks, and Baitul Mal waat tamwil or BMT. This financial institution strives to make financial transactions free from usury and to provide security for humanity to avoid major sins.

In Islamic financial institutions such as Sharia Banks or BPRS, murabahah financing products are often found, where this financing dominates among other financings, as much as 56.8% of the public chooses murabahah financing, while mudharabah and musharakah financing are only 22.1% and 14.1% of the total existing financing (Haryoso, 2017).

A Murabahah contract is a contract to buy and sell goods at the original price with an additional profit that has been agreed. The characteristic of murabahah is that the seller must inform the buyer of the purchase price of the product by stating the amount of profit added to the cost (Prabowo, 2009). Murabahah can be conducted in two ways: with or without orders. Several survey results show that many Islamic banks, both in Indonesia and abroad, have implemented murabahah as their main financing method (Hakim & Anwar, 2017)

Islamic banking is more interested in the murabahah system because profits are certain and straightforward in practice; consequently, murabahah accounts for 60%-90% of Islamic banking financing schemes. This has triggered a number of criticisms because the practice of murabahah is no different from interest in conventional banking, where the profits are certain; the difference is only the basis of the contract, namely, murabahah based on buying and selling, while interest is based on debt. However, the problem is not the size of the financing channel in the murabahah contract in Islamic banking because murabahah is recognized syah by sharia, but the problem arises because there are irregularities in the practice of murabahah contracts, so whether these deviations are legal in sharia or not (Nasution, 2021).

Murabahah, according to Mansuri, is a buying-and-selling transaction in which the seller discloses the actual price paid for the product and adds a mutually agreed profit. Murabahah is used as a financing model because Islamic financial institutions experience difficulties in terms of mudharabah and musharakah financing (Mansuri, 2006).

In Haitam (2015) research, Islamic scholars in Indonesia from 10 provinces said that Islamic banks in Indonesia have not purely implemented Islamic Sharia. The practice of murabahah at Bank Islam also clearly violates the sharia principles that have been explained by the MUI National Sharia Council. This also needs to be researched on the practice of murabahah financing in BMT (Haitam, 2015).

From the background of the problems that have been described above, in this study, further research will be carried out with a qualitative approach to analyze how the implementation of murabahah financing in Islamic financial institutions in Indonesia

METHODOLOGY

Research methods are the steps researchers use to collect data for a study. This research approach uses a qualitative approach with a literature study or *Library Research*, namely collecting data by using written documents such as previous research, books, journal articles and so on (Scott, 2019).

RESULTS AND DISCUSSION

Concepts and Principles of Islamic Economic Policy

Islam posits a conception of values as the basis of truth that governs all areas of human life comprehensively and universally, whether in vertical relationships with the Creator (speak to my Allah) or in horizontal relationships with fellow human beings (*Talk About Your Relationship*). The three values in Islamic teachings include (Fitzgerald, 2015) :

1. Faith: a component of Islamic teachings that regulates the belief in the existence and power of Allah so that it must be the faith of a Muslim when carrying out various activities on earth solely to obtain Allah's pleasure as a caliph who receives a mandate from Allah.
2. Sharia: a component of Islamic teachings that governs the life of a Muslim both in the field of worship (*hablumminAllah*) and in the field of muamalah (*hablumminannas*) which is the actualization of the creed that is his belief. While muamalah itself covers various areas of life, including those related to the economy or property and business, called muamalah maliyah.
3. Morals: the basis of behavior and personality that will characterize him as a devout Muslim based on sharia and aqidah, which is the guideline for his life, so that he is called to have moral character as the hadith of the Prophet PBUH states, "I was not sent except to perfect noble morals".

Of these three values, in Islam there are quite a lot of provisions that are a reference in carrying out economic activities, including the following (Baraba, 1999) :

- Islam places the function of money solely as a medium of exchange, not as a commodity to be traded, let alone for speculative activities.
- Riba in all its forms is forbidden, even in the Qur'anic verse about the prohibition of usury, the last surah al-Baqarah [2]:278-279 expressly states that riba is haram
- Wealth must be revolving (traded) so that it is not only centered on a few people, and Allah is very displeased with those who accumulate wealth so that it is not productive, and therefore, those who have unproductive wealth will be subject to greater zakat than if they were productive. This is also based on the teachings that state that man's position on earth as a caliph who receives a mandate from Allah as the absolute owner of everything contained in the earth and man's duty to make it as great as possible for human prosperity and welfare.
- Working and or earning a living is worship and waJib is done so that no one without work which means that they are ready to face the risk of getting benefits or benefits.

- In various fields of life, including economic activities, it must be carried out transparently and fairly on the basis of consensuality without coercion from any party.

Murabahah Financing Based on Fiqh Perspective

The buying and selling of murabahah are discussed only in fiqh books. Imam Malik and Imam Shafi'i said that the buying and selling of murabahah was legal, even though Abdullah Saeed said that this statement did not mention any clear reference from the Hadith. According to al-Kaff, a contemporary critic of murabahah, prominent fuqaha began to express their opinions on murabahah in the early 2nd century AH. Since there is no direct reference to it in the Qur'an or in the generally accepted Hadith, legal experts must justify murabahah based on other foundations. Imam Malik supported its validity by citing the practices of the people of Medina. He said: "The people of Medina have agreed on the legitimacy of the person who buys clothes in one shop and takes them to another city to sell, with the added benefit that has been agreed. Imam Shafi'i expressed his opinion that if someone shows a commodity to someone and says: *"Buy something for me and I will give you a certain profit and that person then buys something for him, then such a transaction is valid"*.

Wahbah az-Zuhaili said that in buying and selling murabahah, several things are required, namely:

- a. Knowing the cost price: In buying and selling murabahah, it is required to know the cost of goods or the original price, because knowing the price is a valid condition for buying and selling. This condition is also intended for *buying and selling at-tauliyyah* and *al-wadhi'ah*
- b. Know the profits: The profit margin should also be known to the buyer, as the profit margin is part of the price. Meanwhile, knowing the price is a legal condition for buying and selling
- c. And the cost of goods is something that can be measured, calculated and weighed, either at the time of buying and selling with the seller with the first seller or afterwards.

Murabahah is a trust sale because the buyer authorizes the seller to determine the cost of the goods without written evidence. Or in other words, in buying and selling it is not allowed to betray. Allah SWT says in surah Al-Anfal 27:

"O you who have believed, do not betray Allah and His Messenger, and do not betray the Commandments entrusted to you, while you know." (QS. Al-Anfal: 27)

Based on the above verse, if there is a sale and purchase of *murabahah* and there is a defect in the goods, then in this case there are two opinions of *fiqh scholars*, namely: according to Hanafiyyah scholars, the seller does not need to explain the existence of defects in the goods, because the defect is part of the price of the goods, while the majority of scholars do not allow hiding defects in the goods sold because it is treasonous.

From the previous explanation, it is appropriate that the implementation of murabahah contract financing must meet the principles and requirements of murabahah, so that the activities can be valid according to Islamic law. The pillars and conditions are:

- a. Rukun Murabahah
 - 1). Contracting parties: seller and buyer
 - 2). Object to be sold: Goods to be traded and price
 - 3). Sighat/Akad: Surrender (Ijab) and Receive (Qabul)

b. Murabahah Conditions

1). Contracting parties:

- a) As the validity of an agreement (akad), the parties must be legally competent.
- b) Voluntary (ridho), not under forced circumstances and not under pressure.

2). Objects for sale:

- a) The goods traded do not include prohibited goods (haram), and are useful and do not hide the defects of the goods.
- b) It is the full property of the contracting party.
- c) According to the specifications, between what the seller submits and what the buyer receives. d) Delivery from seller to buyer can be done.

3). Sighat:

- a) It must be clear and specifically stated who the parties to the contract are.
- b) The ijab qabul (handover) must be harmonious and transparent both in the specifications of the goods (physical explanation of the goods) and the agreed price (informing the buyer of the cost of capital).
- c) Not inviting clauses that depend on the validity of the transaction on future events.

Techniques for Implementing Murabahah in Sharia Banking

Islamic financial institutions use techniques to finance projects. They purchase commodities for cash and then sell them to customers on a cost-plus basis with deferred payment. In Islamic financial institutions, murabahah is practiced in the following ways (Mansuri, 2006):

- a. The customer submits to an Islamic financial institution to make a purchase request for certain goods. The customer must also describe the specifications of the requested goods.
- b. In this case, the Islamic financial institution agrees to the request, then asks the customer who bought the goods to make an agreement regarding the set margin.
- c. After signing the business for purchase, the Islamic financial institution purchases the required goods.
- d. Once the Islamic financial institution has purchased and taken ownership from them, it enters into a murabahah contract with the customer. The contract includes markups on the cost of goods and payment schedules. Islamic financial institutions deliver goods to customers in lieu of a check bearing an expiration date, according to the payment schedule.
- e. To guarantee the payment of the price, the Islamic financial institution may ask the buyer to provide security in the form of collateral

Figure 1. Murabahah Financing Scheme



There are several applications of murabahah, the first is the consistent application of murabahah to the fiqh of muamalah. In this type, Islamic financial institutions first purchase goods that will be purchased by customers under a prior agreement. After the goods are purchased on behalf of the Islamic financial institution, they are sold to the customer at the acquisition price plus the agreed profit margin. Purchases may be made in cash or in installments at specified intervals. In general, customers pay reliably (Haryoso, 2017).

The second implementation is similar to the first, but ownership is transferred directly from the supplier to the customer, while payment is made by the Islamic financial institution directly to the first seller/supplier. The customer, as the final buyer, receives the goods after previously entering into a murabahah agreement with an Islamic financial institution. Purchases can be made in cash, or in the form of installments or at a certain time. In general, customers pay hard. This transaction is closer to the original murabahah, but it is vulnerable from a legal aspect (Latif, 2012)

Another example of this scheme is intended for a trader who seeks to purchase merchandise under murabahah financing. The trader submits an application to the Sharia Bank, then the Bank buys the goods from the supplier, then the Bank submits the ordered goods to the merchant with the agreed margin level during the contract, then the trader pays the price of the goods to the Sharia Bank in cash or through installments, along with the agreed margin (Prince, 2021).

There are several opinions of scholars regarding the practice of murabahah in sharia banking, including (Scott, 2015):

- *Murabahah* is not buying and selling but hilah with the aim of taking riba. The first opinion: murabahah is not buying and selling but hilah with the aim of taking riba. Some scholars argue that the purpose of murabahah is to obtain riba and make money, as done by conventional banks. The picture is as follows: In essence, the buyer comes to the bank to get the loan money, and the bank does not buy the goods (*assets*) except with the intention of selling to the buyer on credit. That is not the purpose of buying and selling.

- *Murabahah* is the buying and selling of inah that is prohibited by Islam; *The second opinion is that* murabahah is buying and selling inah. Inah means loan. A trader sells his goods at a credit price, then he buys the goods again from the debtor at a lower price. In a buying-and-selling transaction, a person sells something to another at a fixed price; the item is then handed over to the buyer, and the seller buys the goods back at a lower price than the selling price. It is not permissible to sell something at a credit price or to buy from the buyer in cash at a lower price before the first seller receives payment. Because if the purpose is to make an excuse to be able to receive the goods immediately and sell them at a higher price a few days later, then there is no doubt that this kind of act is *riba*
- *Murabahah is bai'atani fi bai'ah*. The third opinion is that murabahah is *bai'atanai fi bai'ah*. Ibn Ruslan in the syarah as-Sunan interprets that *bai'atani fi bai'ah* is a person who lends one dinar to another person for a month on the condition that one measure of wheat is paid. Then, when the appointed time had come, and the wheat had been requested, the borrower said: "Sell this wheat to me with a payment term of two months, which I will pay in two measures".

Murabahah is the buying and selling of goods that are not yet owned. The fourth opinion is that murabahah is the purchase and sale of goods that you do not possess. Al-Baghawi said: including buying and selling is selling something that you do not have, for example, selling a bird that has no hope of returning to its place

CONCLUSION

From the above explanation, it can be concluded that *Murabahah* is one of the products developed by Islamic banks. This product is based on the principle of buying and selling, which, in Islamic fiqh terms, is called *bai' al-murabahah*: selling goods at the cost of goods plus the agreed-upon profit. *Bai' al-murabahah* is a form of *bai' al-amanah*, besides *bai' at-tauliyyah*, which is selling goods at basic price without taking any profit and *bai'al-wadhi'ah*, which is selling goods at a selling price below the basic price. *Bai' al-murabahah* in *fiqh* is then applied in the form of Islamic banking products. In Islamic banking, this product is defined as a purchase-and-sale agreement between the bank, as the provider of goods, and the customer, who orders the purchase of goods. From these transactions, banks derive profits.

However, in their application in financial institutions such as banks in Indonesia, murabahah practices are still found to be outside their original context, particularly in determining margins.

Therefore, it is essential to ensure comprehensive supervision and support from all parties involved in the enforcement of Islamic Sharia for products issued by financial institutions, particularly Islamic financial institutions such as Islamic banks, BMT, BPRS, and others.

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