

The Implementation of Sharia Compliance in the Murabaha Contract

Mohammad Ghozali*, Abdul Hafidz Zeid, Ika Prastyaningsih, Roifatussyaquqi

Postgraduate Program
University of Darussalam Gontor
Ponorogo, Indonesia

*mohammadghozali@gontor.ac.id, zafeenaaisyah@gmail.com, abuafadh@unida.gontor.ac.id, roifatussyaquqi@gmail.com

Abstract—Murabaha contract is a contract that predominates all financing in sharia banking. The prudential principle on risk and loss forms the background in sharia banks' choosing the murabaha contract as the preferred contract. The murabaha contract as applied by sharia banks has been modified and adapted to suit today's conditions. However, it is these modifications that sometimes cause sharia banks to lack compliance with Islamic principles. This research is a literature study by inductive analysis from which a conclusion can then be drawn. It may be concluded from the research that the factors that cause a lack of compliance in sharia banks include differing definitions from different regulators, which give rise to different understandings, and a representation in the purchase of goods.

Keywords: *murabaha, Islamic banks, sharia compliance*

I. INTRODUCTION

Sharia compliance is an integral part of sharia banking. It is the fundamental principle that sets sharia banking apart from conventional banking without sharia compliance, there would be nothing to differentiate the two [1]. The discussion about this sharia compliance continues to be a crucial discussion due to sharia banks' focus on the murabaha contract giving rise to questions on the philosophical foundation of sharia banking [2], since murabaha's application appears similar to conventional loan products [3].

The murabaha contract is a contract that dominates transactions in sharia banking. According to the Sharia Banking Statistics of July 2019, sharia bank financing that uses murabaha contract was worth as much as 157,976 billion rupiah [4]. Sharia banks tend to use the murabaha contract because it carries a lower risk than mudarabah and musharakah contracts, which employ the high-risk profit and loss sharing system [5]. Furthermore, the murabaha contract has a positive impact on the sharia bank's net profits [6] compared to the mudarabah contract because more people are interested in the murabaha contract [7].

The murabaha contract's dominance in sharia banks have drawn criticism from the general public. When it comes to determining margins, banks still set the margins unilaterally and employ the cost of fund principle -- the foundation of conventional bank loans [8]. On top of that, use of the wakala contract to complement the contract also draws criticism since the bank does not purchase the customer's desired item; rather,

it has the customer represent it in purchasing the goods along with a transfer of money from the bank's account to the customer's. This transfer of a sum of money gives rise to the opinion that murabaha is not a sale and purchase but rather a hilah to collect riba [9].

The amount of criticism levelled against the murabaha contract application indicates sharia banks' lack of compliance with Islamic principles; thus sharia banks have virtually injured and violated its own character. The lack of compliance with sharia principles may have a negative impact on the state of the bank itself and may potentially cause the bank to fail. Sharia compliance is an indicator for gauging sharia bank soundness, which stands in direct proportion with public trust; therefore, the healthier the sharia bank, the higher the public trust in it, and vice versa [10].

II. METHODOLOGY

The research is a literature study using the qualitative study method. It is analytically descriptive, with the researchers collecting data through literature review. The generated data were then analyzed using the inductive analysis method, in which the researchers performed the analysis from the specific to the general, enabling them to draw a conclusion.

III. RESULTS AND DISCUSSION

A. *Sharia Compliance and the Bulwark of its Implementation Quality*

Sharia compliance according to Bank Indonesia Regulation is the values, conduct, action and supports the realization of sharia compliance in every Bank Indonesia provision, DSN-MUI fatwa and prevailing laws and regulations. This compliance is also a manifestation of the fulfilment of sharia principles in the characteristics, integrity and credibility of the sharia bank [11]. Compliance is an absolute requirement for banks to maintain and boost the public's and stakeholders' trust. This trust is crucial for banks in order to keep their business sustainable and increase business profits [12].

The implementation of sharia compliance in sharia banks is overseen by a number of supervisory boards to ensure the banks' quality under Law No. 40 of 2017 Article 109, which explains that any corporation engaging in business under the

sharia principle must have a Board of Commissioners and Sharia Supervisory Board. The Sharia Supervisory Board will be tasked with providing advice and opinions to the directors in order to run their business in accordance with the sharia principles.

B. Application of the Murabaha Contract in Sharia Banks

Language-wise, murabaha means profit, while terminology-wise, it is a sale and purchase with a base price and an added profit. In another definition, murabaha is a sale and purchase contract in which the sale price is derived from the costs, plus a profit margin agreed by the seller and buyer, which requires the buyer to disclose the acquisition cost for the item to the buyer [13]. The sale price agreed by the buyer and seller is agreed at the outset of the contract and may not change for the duration of the contract. The murabaha contract is not explicitly mentioned in the Koran or the sunnah. The permissibility of this contract refers to the generality of Verse 275 of surah Al-Baqarah which explains how trade is halal and riba is haram.

The application of the murabaha deed in Sharia Banks can be described in the following scheme:

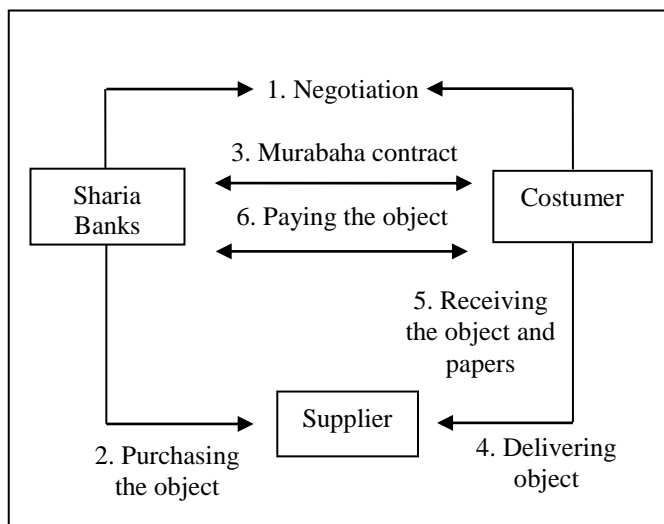


Fig. 1. Murabaha contract scheme.

Description:

- The customer applies for murabaha contract financing and negotiates the sale and purchase plan.
- After the bank and the customer have agreed on the object’s specifications and price, the bank purchases the customer’s desired object from a supplier
- After the object has become the bank’s property in principle, the bank and the customer enter into a murabaha contract
- The supplier then delivers the object that the bank has purchased to the customer
- The customer receives the object and its papers
- The customer pays the sharia bank in cash or in instalments.

C. Implementation of Sharia Compliance in the Murabaha Contract

Regulators have different definitions of the murabaha contract, leading to different positions among the banks on this contract. According to DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 on murabaha [14] and PSAK 102 [15] murabaha is selling an object for the sale price plus profit while requiring the seller to disclose the object’s acquisition price . According to Financial Services Authority Circular No. 36/SEOJK.03/2015 [16] and Law No. 21 of 2008 article 1 paragraph 25 [17] murabaha is the provision of a fund or bill for an object sale and purchase transaction for the base price plus a margin agreed by the bank and customer.

It may be concluded from the above definitions that DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 on murabaha and PSAK 102 position the bank as the seller in a murabaha contract. On the other hand, Financial Services Authority Circular No. 36/SEOJK.03/2015 and Law No. 21 of 2008 position the bank as the fund provider. The definition that positions the bank as the seller matches the essence and characteristics of the murabaha contract, i.e. sale and purchase, while the definition that positions the bank as a fund provider does not. The mismatch between the definition and the character and essence of the murabaha contract will result in a sharia non-compliant application of the contract.

The practical application of the murabaha contract has gone through a paradigm shift, in which the bank, which should have acted as a seller, has transformed into a fund supplier. In the case where the bank acts as a fund supplier, the bank will only serve to provide the fund for a customer to purchase an object. In such a case, the bank will not act as a seller who owns the object, but rather as a mere facilitator for a customer who lacks the fund to buy the desired object. The bank’s failure to position itself as a seller means that it has departed from the very meaning of murabaha.

Furthermore, the murabaha contract as applied in sharia banks has been modified and combined with the wakalah contract, commonly referred to as murabaha bil wakala. The wakala contract arises from a representation process between the bank and the customer. The bank is represented by the customer in the purchase of the customer’s desired object from the supplier. This wakala contract benefits the customer because the customer will be able to pick the desired object himself, minimizing the risk of cancelled purchase by the customer that may cause a loss to the bank. According to the DSN-MUI fatwa, the wakala contract must be entered into prior to the murabaha, so that the object will have become the bank’s property in principle.

However, the combination of the murabaha and wakala contracts has also drawn criticism from some researchers. The combination between the murabaha and wakala contracts does not violate the sharia, since there is no rule against combining the two [18]. Criticism against the murabaha bil wakala application lies in the customer’s representation in the purchase coupled with the direct transfer of the fund to the customer. Direct transfer of the fund may potentially result in side streaming or fund misuse, with the customer failing to use the fund in accordance with the agreement.

Nor does the murabaha bil wakala contract application by direct fund transfer reflect a proper sale and purchase, since the customer acts as the buyer to purchase his desired object from the supplier by himself. The bank should have purchased the object directly from the supplier to be resold to the customer after the object has principally become the bank's property. Such a murabaha application is akin to conventional banking loans and is not sharia compliant as the customer is given the fund directly instead of having the object purchased for him.

Bank Indonesia through PBI No. 7/46/PBI/2005 dated 14 November 2005 on contract standardization has determined that the murabaha contract may proceed after the object has in principle become the banks' property. This rule aligns with the DSN-MUI Fatwa on murabaha that positions the bank as the seller rather than a mere fund provider. If sharia banks meet these provisions, there will be no deviation from the sharia principles. This will also set the murabaha contract in sharia banks apart from loans in conventional banks. A strict oversight from the Sharia Supervisory Board, the National Sharia Board and the Financial Services Authority will also play a key role in the sharia compliance implementation in contracts and products in sharia banks. Without a strict oversight, sharia banks will simplify the murabaha contract and abandon the sharia principles.

IV. CONCLUSION

The murabaha contract is a contract that dominates transactions in sharia banking and is a preferred product thanks to its low risk. However, this contract has drawn a great deal of criticism due to the lack of compliance with sharia principles in its application, and its similarity to conventional bank loans. In applying the murabaha contract, the bank does not position itself as the seller but rather as the fund provider, who subsequently has the customer represent it in the purchase of the object accompanied by the provision of funds. This deviation from the sharia principles can be minimized with a more rigorous supervision from the Sharia Supervisory Board, National Sharia Board and the Financial Services Authority.

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