




The Consistency of Sharia Principles Application in Murabaha Contracts During the Covid-19 Pandemic

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Abstract. The aim of this article is to investigate and thoroughly assess the consistency of Islamic financial institutions in adopting Sharia principles. It compares the standard operating procedures and company regulation which adopted by the Sharia Rural Bank (BPRS) with the fatwa issued by the National Sharia Council of Indonesian Ulema Council (DSN-MUI). It also explores particularly on the procedure and mechanism of Murabaha financing products application by the customer. The paper used a normative-empirical research method with employing statutory and conceptual approach. The analysis of data is described in qualitative-descriptive approach with comprehensive and systematic manner. The study reveals that the practice of Murabaha contracts at BPRS are carried out in conformity with the DSN-MUI Fatwa on Murabaha. Nevertheless, some aspects are considered to be in contravention of the DSN-MUI fatwa on Murabaha, particularly on the application of the Murabaha contract, which is accompanied by a wakalah contract.

Keywords: Sharia Principles · Murabaha · Covid-19 · Fatwa · Financial Institution

1 Introduction

The Covid-19 pandemic has slowed the Indonesian economy, particularly the Micro, Small, and Medium Enterprise (MSME) sector, which dominates the Indonesian economy [1]. Various policies have been issued by the Government to stimulate economic conditions, ranging from the provision of margin subsidies for financing for MSME customers as outlined in the Ministry of Finance Regulation (PMK) Number 65/PMK.05/2020 to the policy of determining the quality of financing with current quality for customers whose income has decreased due to the pandemic Covid-19 [2] contained in the Financial Services Authority Regulation (POJK) Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy Impact of the Spread of Corona Virus Disease 2019 [3]. Based on the POJK, the Bank can then provide credit to other new debtors who have received special treatment in accordance

with POJK by determining the quality of credit separately from the previous quality of credit [4].

One of the most popular products in Islamic banking is financing based on a Murabaha contract [5]. Murabaha financing is the financing that is most in demand by the public [6] as Murabaha financing has a fast and relatively easy system and has a small risk compared to other financing products such as Mudharaba and Ijara financing. Financing provided by Islamic banks to customers goes through a long process and careful analysis is carried out to reduce financial risk [7]. However, the reality shows that there are still many problems such as non-performing financing, in this case, many factors that cause financing problems. On the other hand, there are also some cases where the object of the contract is not fully owned by the bank but then a sale and purchase transaction has been carried out between the bank and the customer [8]. This also raises a question mark whether this kind of practice is justified according to sharia principles.

Furthermore, during the pandemic, several Islamic financial institutions converted Murabaha contracts to other contracts such as the Ijarah Al Muntahiyah Bi Al-Tamlik (IMBT) contract [9]. This strategy is carried out with the aim that Islamic financial institutions does not suffer losses [10]. Because if it only relies on a rescheduling strategy, and the amount of Murabaha financing is large, it is almost certain that the BPRS will lose out.

Based on Law No. 21 of 2008 the definition of sharia bank is a bank that carries out its business activities based on sharia principles and by type consists of Sharia Commercial Banks (BUS) and Sharia Rural Banks (BPRS) [11]. Basically, BUS and BPRS act as financial intermediary institutions that are intended to assist the community in running micro, small and medium enterprises (MSMEs) in accordance with sharia principles [12]. It can be seen that the development of the banking industry, particularly Islamic Rural Banks (BPRS) from the number of banks, the number of offices, and the number of workers is increasing. Based on data released by the Financial Services Authority (OJK), which shows that as of December 2019, the number of BPRS in Indonesia reached 164 with 617 offices and a workforce of 6,620 people [13].

Nevertheless, several studies have shown that the pandemic in early 2020 greatly affected the performance of the BPRS so that the BPRS had to maintain good liquidity in order to continue operating despite the pandemic. For example, with what happened to several BPRS in West Java as throughout 2019, there are 3 BPRS that have been efficient, because the efficiency value has reached 1 (1.00), namely BPRS Artha Fisabilillah, BPRS Mentari Garut, BPRS Amanah Robbaniah. However, throughout 2020, the average efficiency level of BPRS in West Java was only 0.989 or 98.9%, slightly more efficient than the previous year [14]. This is also in line with the research conducted by Widiyaningtias and Dura on 28 BPRS in East Java, where the study showed that the financial performance variables of Non-Performing Loan (NPL), Return on Assets (ROA), and Loan to deposit ratio (LDR) in BPRS companies decreased significantly during the pandemic [15]. In order to deal with this issue, OJK issued a national economic stimulus policy as stated in POJK No. 48/POJK.03/2020 and then last modified by POJK No 17/POJK.03/2021. In its implementation, Lestari and Keumala show that the internal regulations of Bank Syariah Indonesia (BSI) are in accordance with the Financial Services Authority Regulations with several additional special provisions that are generally

regulated in the Financial Services Authority Regulations to prevent massive customer defaults at the end of the restructuring [16].

In this regard, it is regrettable that the author has been unable to find literature that specifically addresses the consistency of the application of sharia in murabaha contracts during the Covid-19 pandemic. This is essential as murabaha is one of the most popular products in Islamic banking. Therefore, the authors believe there is a need for research and analysis of its implementation throughout the outbreak. The paper aims to examine comprehensively the consistency of Islamic financial institutions in applying sharia principles, particularly in Murabaha financing products. It also explores the DSN-MUI Fatwa and OJK policy on restructuring mechanism during the Covid-19 outbreak. Besides, it also discusses the general overview of Islamic financial institution and its legal framework as well as the sharia principles that every Islamic bank must comply with it. Furthermore, the study also explains and analyze the procedure and mechanism of applying Murabaha financing whether or not it has complied with the sharia principles which regulated by DSN-MUI.

2 Method

The paper used a normative-empirical research method to examine the process of Murabaha financing contracts in Islamic Financial Institutions. The approach chosen by the researcher is a statutory approach and conceptual approach. Literature study aims to identify and analyze secondary data. Meanwhile, field study aims to obtain primary data by exploring the perspective of the informant stakeholders through observation and in-depth interviews based on purposive sampling. The resource persons in this field study will involve two Islamic banks, namely BPRS Mitra Harmoni Group and BPRS Bangun Drajat Warga (hereinafter called BPRS). In addition, the analysis of data employed a qualitative descriptive approach. A number of data and facts that have been collected will be identified and systematized according to the object of the problem being studied. Besides, the series of data and facts will be analyzed and studied systematically with several selected approaches.

3 Islamic Financial Institutions: A Legal Framework Overview

Financing institutions in Indonesia began to develop with the issuance of the Deregulation Package of 27 October 1988 (Pakto 88) and the Deregulation Package of 20 December (Pakdes 88) [17]. The existence of financial institutions in Indonesia is regulated based on Presidential Decree No. 61 of 1988 concerning Financing Institutions, which was enhanced by the Presidential Regulation of the Republic of Indonesia No. 9 of 2009 and the Decree of the Minister of Finance No. 1251/KMK.013/1988 concerning Provisions and Procedures for Implementation of Financing Institutions [18]. Based on Article 1 point (1) of Presidential Regulation No. 9 of 2009 what is meant by a financial institution is a business entity that carries out financing activities in the form of providing funds or capital goods.

Financing Institution is a business entity that carries out financing activities in the form of providing funds or capital goods by not withdrawing funds directly from

the public. The business sector of financial institutions includes several alternative financing activities such as leasing, factoring, credit cards, and consumer finance [19]. Financial institutions, as regulated in Presidential Regulation No. 9 of 2009, consisting of Financing Companies, Venture Capital Companies, and Infrastructure Financing Companies.

According to Article 1 point 2 of Presidential Regulation No. 9 of 2009 concerning Financing Institutions, "Financing Company is a business entity specifically established to perform Leases, Factoring, Consumer Financing and/or Credit Cards". This provision clearly stipulates that finance companies may only carry out financing activities related to the four forms of business activities above [20]. This business activity also applies to sharia finance companies, only in carrying out their activities sharia finance companies must channel their funds based on sharia principles. Finance companies based on sharia principles have different characteristics from conventional finance companies [21].

Financing is said to be successful if the principal can be returned and the profit sharing is in accordance with the agreed time period and the debtor's business is progressing. To be successful, the financing provided must also be in the right amount, at the right time and in an appropriate manner. Financing based on Sharia principles is the provision of money or an equivalent claim based on an agreement between the bank and another party that requires the party being financed to return the money or claim after a certain period of time in exchange for profit or profit sharing [22].

The financing can be divided into several types as follows: [23] 1. Funding with the principle of Profit Sharing (Mudharaba, Musyaraka), 2. Financing with the principle of buying and selling (Murabaha, Salam, Istishna), 3. Financing with the principle of Complementary Contracts (Hiwalah, Rahn, and Qard). Meanwhile, according to the Sharia Banking Law (UUPS) No. 21 of 2008 Article 1 paragraph (25) concerning Islamic Banking, financing can be in the form of: (1) profit-sharing transactions (Mudharaba, Musyaraka), (2) leasing in the form of *ijarah* or leasing in the form of IMBT, (3) buying and selling transactions (Murabaha, salam and istishna'), (4) lending and lending transactions in the form of receivables and *qardh*, (5) lease transactions in the form of *ijarah* for multi-service transactions.

4 The Application of Sharia Principles in Sharia Banking

The definition of a sharia bank is a financial institution whose main business is to provide financing and other services in payment traffic and money circulation whose operations are adjusted to sharia principles [24]. Sharia banking in Indonesia was presented with the establishment of Bank Muamalat Indonesia which operated on May 1, 1992 [25]. The bank's operations are based on Law No. 7 of 1992 concerning Banking. As an effort to minimize potential losses caused by non-performing financing, Islamic banks and Sharia Business Units (UUS) can restructure financing for customers who experience a decline in their ability to pay and still have good business prospects and are able to meet their obligations after restructuring [26]. In Islamic banking, it is strictly forbidden to conduct transactions if there are the following conditions: [27]

- a. *Gharar*, namely the presence of elements of uncertainty or deception in the transaction.

- b. Maysir, namely gambling elements whose transactions are speculative in nature which can cause losses to one party and profits to the other.
- c. Riba, namely transactions that use the interest system.

There are several Sharia Bank principles that are in accordance with the Sharia Banking Law, namely:

1. At-Ta'awun
It is a principle to help each other and work together. In this case, Allah SWT has ordered humans to help each other in doing good and piety [28].
2. Al-Ikhtinaz
This principle is in line with the function of money, namely not letting money idle, meaning that money must continue to rotate in transactions that are beneficial to the general public. In the view of Islam, money is a flow concept, therefore it must revolve in the economy. The faster money rotates in the economy, the higher the level of people's income and the better the economy [29].
3. Al-Maslahah
Maslahah is the goal of the formation of Islamic law, namely to get happiness in the world and the hereafter by taking benefits and rejecting harm. The Sharia Banking Law is oriented towards economic development based on Islamic values, namely justice, expediency, balance, and universality so that the Indonesian people in the future will experience an increase in economic welfare on the basis of Sharia principles [30].
4. At-Tauhid
Islam bases economic activity as an effort to provide worship to Allah SWT, so that the purpose of business is not merely seeking profit or material satisfaction and personal interests but seeking the pleasure of Allah SWT, and spiritual and social satisfaction.
5. Principle of Justice
The application of the Principles of Justice in the Sharia Banking Law, namely: (1) Consideration of letter (a), which reads: That in line with Indonesia's national development goals to achieve the creation of a just and prosperous society based on economic democracy, an economic system is developed based on the values of justice, togetherness, equity, and benefits in accordance with sharia principles. (2) The value of fairness in Sharia Banking business activities is reflected in the variety of contracts used as an effort to make adjustments based on proportional needs.
6. Amar Ma'ruf Nahy Munkar
The Amar Ma'ruf principle in the Sharia Banking Law is the obligation to use Islamic Law principles in Sharia Banking business activities, while the Nahy Munkar Principle is realized in the form of a prohibition on business activities containing elements of usury, gharar, maysir, and haram.

5 Murabaha Financing Mechanisms and Procedures

The need for an economy that is in accordance with Islamic principles that keep up with the times has made the concept of classical Islamic economics more developed. Islam has

always had an understanding of economics and until now this understanding of Islamic economics can still be applied both in business and in people's social life. This progress certainly cannot be separated from the fiqh experts and Islamic economists who have played a role to date. Indonesia, the country with the largest Muslim population in the world, has implemented many Islamic economics in various sectors. Many banks and other financial institutions have implemented Islamic economics, including BPRS. One of the businesses that implement sharia is a Murabaha financing product [31].

Murabaha is part of the sale and purchase that is different from buying and selling in general. To make it easier, it is necessary to first understand the issue of price, in this case the price is divided into two. First, the acquisition price is the price of an item purchased from another party and the selling price is the price agreed between the seller and the buyer for the sale and purchase transaction of an item. Murabaha is a sale and purchase transaction based on the trust of the buyer to the seller regarding transparency in informing the purchase price of the goods to be sold [32]. This is certainly different from buying and selling in general in society where the buyer does not have to know the purchase price.

Murabaha is defined in the DSN-MUI fatwa as the sale of an item by explaining the purchase price to the buyer and the buyer paying a higher price as a profit. This understanding is the same as explained in fiqh books. In contrast to the definition contained in Law No. 21 of 2008 concerning Sharia Banking which explains that Murabaha Financing is the provision of funds, in the form of buying and selling transactions in the form of Murabaha receivables based on an agreement between the sharia bank or UUS and the customer who requires the party being financed to return the funds after a certain period of time in exchange for compensation in the form of profit [33].

Murabaha contracts are generally applied to Islamic financial institution for short-term financing [34]. The financing institution will provide goods according to the member's purchase order. The basic characteristics of a Murabaha financing agreement are as follows:

- a. The buyer must have knowledge of the cost of goods and the mark-up limit must be set as a percentage of the total price plus costs.
- b. What is sold is goods or commodities and is paid for in money.
- c. What is being traded must exist and be owned by the seller and must be able to deliver the goods to the buyer.
- d. The payment is deferred.

BPRS Mitra Harmoni Group and BPRS Bangun Drajat Warga have Murabaha products. Murabaha is a sale-purchase contract between a BPRS and a customer for a certain type of goods according to the customer's needs at a price advantage that is mutually agreed upon at the beginning of the contract. The BPRS accepts every item according to the needs of the members to be used as the object of buying and selling in this financing provided that the goods are goods that are permitted by sharia, either in the form of goods for additional business capital or goods for daily use. In addition, the BPRS requires the existence of collateral in this type of financing. This is done as an effort to mitigate risk in the event of customer default.

There are two methods of Murabaha financing at BPRS Mitra Harmoni Group and BPRS Bangun Drajat Warga, first using Murabaha with wakalah contracts or the second using only Murabaha contracts. Financing using only Murabaha contracts is carried out if the object of sale and purchase is easily accessible by the BPRS to the provider of the good. For example, a customer applies for Murabaha financing to buy a refrigerator, after the financing is received by the central BPRS committee, then the branch BPRS will place an order directly for the refrigerator according to the specifications to the provider of the good. Furthermore, the refrigerator will be handed over to the customer who applies for financing after the Murabaha contract is signed.

Meanwhile, Murabaha financing that uses a wakalah contract is applied when the goods that are the object of sale and purchase are controlled or more easily accessible by the customer. BPRS Mitra Harmoni Group and BPRS Bangun Drajat Warga explained that the wakalah contract applied in Murabaha financing was carried out so that the financing was more effective as the number of employees was limited so it would take longer if it was carried out without a wakalah contract.

To obtain Murabaha financing there are procedures and conditions that must be followed by prospective customers where all these procedures must be followed and implemented. In general, the requirements for applying for financing include being a customer, filling out a financing application form, having a business or permanent job, being willing to be surveyed, and having collateral. To become a financing customer of BPRS Mitra Harmoni Group and BPRS Bangun Drajat Warga, a mandatory deposit of Rp. 10,000 and principal savings of Rp. 10,000. Following that, the customer can apply for Murabaha financing by filling in the financing application form that has been provided at the office.

Before filling out the application form, the customer will meet with the BPRS marketing to provide an understanding of the purpose and objectives of the financing. The BPRS will explain about financing products and explain the portion of profits that will be taken by the BPRS. After getting an understanding and agreement, then the customer can continue the application by filling in the blank provided. The form must clearly explain the identity of the customer, the purpose of financing, what type of goods will be purchased, the desired time of purchase, information on employment and income, information on collateral and other required attachments. After filling in the form, the BPRS will ask questions about what has been filled in by the customer applying for Murabaha financing.

The next process will be a survey to the location of the customer's residence. The BPRS will conduct direct field checks regarding the customer's condition and the location of the object to be used as collateral. This is done to find out the truth of what has been stated in the application and as one of the risk mitigation efforts so as not to default. One of the survey methods carried out is that the BPRS will conduct direct interviews with the customer concerned and if necessary, will conduct a comparison survey to three or more customers' neighbors. The BPRS will dig up information about the character, personality, daily activities of customers who apply for financing as well as some other information that is useful for smooth financing. Some of the assessment criteria carried out by the BPRS to determine financing approval include 5C.

The first is character, knowing the good faith and honesty of members to pay for the financing that has been received. This can be seen through personality, behavior, background, and lifestyle which can be identified through interviews and surveys. The second is capacity, which is knowing the ability of members to reverse financing along with the profit margins that have been agreed and accepted. The BPRS will assess the ability of members to manage the finances of the business being carried out or the work being carried out. The third is capital, to determine the condition of the assets and wealth of members. Fourth is collateral, which is to find out the value of the collateral which will later cover if the member defaults or fails to pay. The collateral provided is something that is legally owned by the member who applies for financing. Fifth is the condition, which is to find out the possible conditions that can affect the customer's business or work from a social, political and government perspective.

The results of the survey and analysis that have been carried out will be submitted by the branch leadership in the form of a portfolio bundle to the committee in the central management for discussion through meetings. The decision to accept or not a Murabaha financing will be issued by the central management. The realization of financing is carried out after the application for Murabaha financing is approved by the central management who will also send information to the branch on the amount of the approved financing. Customers whose applications are accepted will be given a financing approval letter and summoned to the branch office to carry out further agreements. Several agreements will be made, such as an agreement on the margin to be taken and the implementation of the Murabaha financing agreement. All the results of the agreement will be incorporated into the Murabaha contract agreement.

The most important thing in transactions in Islam is the existence of a contract [35]. The contract is an agreement of the parties in the form of a statement of will to do or not to do certain actions and is approved by the other party [36]. Akad is also interpreted as an agreement, on the basis of a consensus, one party has the right to claim the rights of the other party, and the other party is obliged to fulfill those demands [37]. Therefore, the agreement is a source of engagement because the agreement creates a legal relationship and the legal position of the agreement is the law for the party who made it.

In the formation of a Murabaha contract agreement, the BPRS involves customers who apply for financing. Everything related to the Murabaha contract will be explained in detail in the contract clause. The identity of the parties, namely the BPRS and the customer, the amount of margin, total monthly installments, maturity date, time period and so on are detailed in the contract. Murabaha financing is carried out without wakalah, there is only one contract applied in the agreement, namely the Murabaha contract. The agreement will be made after the BPRS orders the goods desired by the customer. The BPRS and the customer applying for financing will enter into an agreement with the contract. Then the Murabaha contract will be signed by both parties and witnesses so that the Murabaha contract financing will apply and the goods will be handed over to the customer.

On the other hand, for Murabaha financing carried out with wakalah, two contracts will be made, namely the wakalah contract and the Murabaha contract. Both will be agreed and signed by both parties and witnesses simultaneously. However, in this financing the BPRS has not ordered the goods needed by the customer, therefore a wakalah

contract is needed, which has been agreed upon to obtain the goods needed. The wakalah agreement contains that the second party, namely the customer who applies for financing, will represent on behalf of the BPRS to purchase the goods needed by the customer.

6 The Consistency of Sharia Principles Application in Murabaha Contracts Under the Fatwa of the National Sharia Council

The BPRS in carrying out its business activities must comply with sharia principles and in the preparation of its operational activities it must be based on the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). The provisions regarding the Murabaha contract which are used as guidelines for muamalah in Indonesia are contained in the DSN-MUI Fatwa No. 4 of 2000 concerning Murabaha [38]. The author will look at the practice of financing Murabaha contracts at BPRS which will then be analyzed for conformity with the DSN-MUI Fatwa on Murabaha.

The General Provision of the DSN-MUI Fatwa regarding Murabaha under point a states that “Banks and customers must enter into Murabaha contracts that are free of usury.” BPRS in carrying out its business practices are based on Islamic sharia which is free of usury. Riba literally means addition or increase, [39] meanwhile Murabaha is a sale and purchase in which there is an additional profit [40]. The addition that occurs in the sale and purchase of Murabaha is allowed because it becomes a profit from commerce. Although buying and selling at financial institutions is made in installments, however, the additions imposed in the contract are still allowed. Thus, its implementation at the BPRS is in accordance with the DSN-MUI fatwa at the point in question.

The BPRS gives the customer the right to apply for Murabaha financing for any goods that the customer needs, whether goods used for additional business capital or daily personal items. However, the BPRS still provides guidelines for the goods that will be accepted for financing applications, namely goods that are permitted under Islamic sharia. This is in accordance with the DSN-MUI fatwa regarding Murabaha in the general provisions of point b that “Goods traded are not prohibited by Islamic law.”

Furthermore, in point c it is explained that “Banks finance part or all of the purchase price of goods whose qualifications have been agreed upon.” In the financing of the Murabaha contract carried out at the BPRS, the Bank will finance the entire purchase of goods. However, if the customer who applies for financing already has some funds, the customer can include the funds for purchase. The funds will be received by the BPRS as a down payment. This is in accordance with point c in the DSN-MUI Fatwa on Murabaha.

The general provisions of the DSN-MUI fatwa regarding Murabaha in point d are explained that “Banks buy goods needed by customers on behalf of the bank, and this purchase must be legal and free of usury.” The BPRS implements two methods of purchasing goods. First, the BPRS will directly buy the goods that the customer needs. Second, the BPRS will represent the purchase by giving money to the customer to purchase goods on behalf of the BPRS based on the agreed Wakalah contract.

The BPRS must be open about the purchases that have been made. As point e, the general provisions of the DSN-MUI Fatwa regarding Murabaha contracts state that “Banks must submit all matters relating to purchases, for example if the purchase is made on debt.” In this case, the BPRS will not cover information regarding purchases

in a Murabaha contract. Everything related to financing will be explained by the BPRS, such as administrative costs, insurance and other costs. The BPRS will also provide information on the cost of the object of financing along with the profit or margin taken by the BPRS. This is in accordance with the rules in the DSN-MUI fatwa regarding Murabaha in point f which reads “The bank then sells the goods to the customer at a selling price equal to the purchase price plus the profit. In this regard, the Bank must honestly notify the customer of the cost of goods and other necessary costs.”

Furthermore, point g of the general provisions of the DSN-MUI Fatwa regarding Murabaha explains that “The customer pays the agreed price for the goods within a certain agreed period of time.” The mechanism for the amount of installments that must be paid as well as the payment due date and the length of time for financing repayments have been explained by the BPRS and agreed upon with the customer applying for financing. The entirety of the agreement is included in the Murabaha contract which will be signed by both parties, namely the BPRS and the customer and witnesses. This agreement is made so that the agreement in the contract is truly obeyed by both parties and will be legally binding. In accordance with point h of the general provisions of the DSN-MUI that regarding the Murabaha Fatwa it states that “To prevent misuse or damage to the contract, the bank can enter into a special agreement with the customer.”

The last point in the general provisions, namely point h, reads “If the bank wants to represent the customer to buy goods from a third party, the Murabaha sale and purchase contract must be carried out after the goods, in principle, become the property of the bank.” In practice, BPRS also implements Murabaha financing using wakalah contracts. The mechanism is after the BPRS approves the Murabaha financing proposed by the customer. The BPRS will call the customer to make an agreement on the price and payment period. Then the agreement is stated by making a Murabaha contract agreement between the two parties. In addition, because Murabaha will be accompanied by wakalah, an agreement will also be made regarding the wakalah contract between the two parties with a separate contract.

Two contracts, namely the Murabaha contract and the wakalah contract, were agreed and signed simultaneously. After that, the BPRS gives the agreed amount of money to the customer and the customer is obliged to buy the goods needed on behalf of the BPRS under a wakalah contract. At the time of the Murabaha contract agreement, the goods needed by the customer were still not available, because the wakalah contract, which was agreed upon with the Murabaha contract, had not yet been fulfilled. The BPRS explains that the Murabaha contract will be effective when the member has fulfilled the wakalah contract and the goods are in the control of the customer. This is stated in the contract clause of the Murabaha contract which reads “In the event that the Murabaha contract is accompanied by a wakalah contract, the Murabaha contract is effective (Nafadz) when the representative has performed all his obligations in accordance with the substance of the wakalah”.

The third part of the DSN-MUI Fatwa regarding Murabaha is Collateral in Murabaha. The BPRS in the process of applying for Murabaha financing requires the existence of collateral that must be included by the requesting customer. This collateral is needed by the BPRS to guarantee customer commitment and as an anticipation in case of default in the process of running the Murabaha. This is in accordance with the provisions in

point a that “collateral in Murabaha is allowed, so that the customer is committed to his promise.” and in point b states that “The Bank may ask the customer to provide collateral that can be retained by the Bank.”

The fourth part of the DSN-MUI Fatwa on Murabaha is Debt in Murabaha. In this section it is explained that, point a “In principle, the settlement of customer debt in Murabaha transactions has nothing to do with other transactions made by customers with third parties for the goods. If the customer resells the goods at a profit or loss, the customer is still obliged to settle the debt to the bank. Furthermore, point b states that “If the customer sells the item before the installment period ends, the customer is not obliged to immediately pay off all the installments”. Then point c reads “If the sale of the goods causes a loss, the customer still has to settle the debt according to the initial agreement. The customer must not delay installment payments or ask for the loss to be calculated.”

The BPRS has implemented it as explained in the points in the fourth part of the fatwa. Customers who make transactions with other parties, while still in the installment payment period, for example selling goods that are the object of Murabaha, must still complete their installment obligations in accordance with the agreed agreement. However, the BPRS requires the transfer of rights and responsibilities as stipulated in the contract that has been made. Provided that the transfer must go through a notification and approval process from the BPRS. If the transfer is not approved by the BPRS then it has no legal force.

The fifth part of the DSN-MUI Fatwa on Murabaha determines the Postponement of Payments in Murabaha. In point a it is stated that “Customers who have the ability are not justified in delaying the settlement of their debts” and point b “If the customer delays payments intentionally, or if one of the parties does not fulfill their obligations, then the settlement is carried out through the Sharia Arbitration Board after an agreement is not reached through deliberation.”

BPRS always prioritizes deliberation and consensus in solving problems with customers. Every month BPRS always monitors and reminds customers who have installment obligations. If there are Murabaha financing customers who are found not to fulfill their obligations in accordance with the agreed agreement, the BPRS will reprimand and communicate directly in a good manner. If the installment has not been paid for more than three months, while the BPRS has tried to negotiate and mediate but the customer concerned does not have good faith, the BPRS will settle it through a religious court and execute the collateral.

Furthermore, the sixth and final part of the DSN-MUI Fatwa on Murabaha is about the state of bankruptcy in Murabaha. It was explained that “If the customer has been declared bankrupt and failed to settle the debt, the bank must postpone the debt bill until the customer is able to return, or based on the agreement another matter is determined.” This is still related to the fifth section above. Whereas members who are found unable to pay installments, the BPRS is very open to deliberation and consensus to find the best solution.

The BPRS will offer installment settlement solutions for customers who are in bankruptcy or experiencing difficulties. With the consideration that the customer has good faith and has the opportunity to be able to keep his promise. Therefore, the BPRS

will usually postpone the repayment provided that the customer continues to pay as much as he can every month until the customer in question is deemed able to pay according to the agreement.

7 DSN-MUI Fatwa and OJK Policy in Relieving Financing Issues During the Covid-19 Pandemic

In the Fatwa of the National Sharia Council No. 47/DSN-MUI/II/2005 Concerning Settlement of Murabahah Receivables for Customers Unable to Pay, the Settlement Provisions are that Sharia Financial Institution (LKS) may carry out murabahah settlements for customers who cannot settle/pay off their financing according to the agreed amount and time, provided that: The murabahah object or other collateral is sold by the customer to or through LKS at the agreed market price; The customer pays the remaining debt to LKS from the sale proceeds; If the sales proceeds exceed the remaining debt, the LKS returns the remainder to the customer; If the sales proceeds are less than the remaining debt, the remaining debt remains the customer's debt; If the customer is unable to pay the remaining debt, the LKS can release it. However, if one of the parties does not fulfill its obligations or if there is a dispute between the related parties, the settlement is carried out through the National Sharia Arbitration Board after no agreement is reached through [41].

Furthermore, in the Fatwa of the National Sharia Council No. 48/DSN-MUI/II/2005 states that LKS may reschedule murabahah bills for customers who cannot complete or pay off their financing in accordance with the agreed amount and time, provided that: Do not increase the number of remaining bills; Charges in the rescheduling process are real costs; The extension of the payment period must be based on the agreement of both parties. And if one of the parties does not fulfill its obligations or if there is a dispute between the related parties, then the settlement is carried out through the National Shari'ah Arbitration Board after no agreement is reached through deliberation [42].

The recent Financial Services Authority Regulation (POJK) No. 11/POJK.03/2020 Regarding National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019, states that the impact on debtor performance and capacity will increase credit risk which has the potential to disrupt banking performance and financial system stability so that it can affect economic growth. Therefore, to encourage optimization of banking performance, especially the intermediation function, maintain financial system stability, and support economic growth, it is necessary to take an economic stimulus policy as a countercyclical impact of the spread of Covid-19 [43]. Furthermore, in making the policy, the principle of prudence must still be observed.

On the other hand, the POJK policy states that debtors who are directly or indirectly affected by the Covid-19 pandemic can be designated as current quality as long as the POJK applies on condition that debtors must apply for financing restructuring to banks. For Islamic banks, the restructuring mechanism by extending the term is a good mechanism, so that the debtor's total monthly installment payment obligations are smaller, adjusted to their abilities due to the Covid-19 pandemic. The spread of Covid-19, which continues to this day globally and domestically, has had a direct or indirect impact on the performance and capacity of debtors in fulfilling credit or financing payment obligations.

Hence, to encourage optimization of banking performance, especially the intermediation function, maintain financial system stability, and support economic growth, the government has taken anticipatory and further steps in the form of adjustments to POJK No. 11/POJK.03/2020 by stipulating POJK No. 48/POJK.03/2020.

POJK No. 48/POJK.03/2020 states that Banks can implement policies that support economic growth stimulus for debtors affected by the spread of Covid-19, including micro, small and medium business debtors. To implement this policy, banks must still pay attention to the implementation of risk management in accordance with the regulations of the Financial Services Authority regarding the implementation of Bank risk management [44].

There are several important points that should be applied in the application of Bank risk management: banks have guidelines for setting criteria for debtors and sectors affected by the spread of Covid-19; banks are required to conduct an assessment of debtors who are able to continue to survive the impact of Covid-19 and still have business prospects, so that banks can provide credit or financing restructuring in accordance with the Financial Services Authority Regulation; the bank must establish reserves for debtors who are considered no longer able to survive after restructuring of credit or financing in accordance with the Regulation of the Financial Services Authority; banks must distribute dividends and bonuses to consider capital resilience and also take into account additional reserve formation to anticipate declining credit quality or restructured financing; banks must conduct periodic resilience tests against the potential decline in the quality of credit or restructured financing and their effect on the liquidity and capital of the Bank.

8 Conclusion

Generally speaking, the implementation of Murabaha contracts at BPRS is in accordance with the DSN-MUI Fatwa and OJK Policy. However, there are several things that are considered not to be in accordance with the DSN-MUI fatwa regarding Murabaha, for instance the implementation of the Murabaha contract which is accompanied by a wakalah contract. In practice, the BPRS applies the Murabaha agreement and the wakalah contract at the same time, then after the contract is agreed, then the customer is represented to buy the goods. This means that the Murabaha contract is agreed upon when the goods that are the object of the contract are not yet available and do not comply with the terms of sale and purchase where the goods must be owned by the seller. This is different from what is described in the DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 concerning Murabaha, that if a bank wants to represent members to buy goods from a third party, then the Murabaha sale and purchase contract must be made after the goods, in principle, become the property of the bank. Therefore, the application of Murabaha contracts at BPRS needs to be reviewed as the discrepancy made is a major issue that can potentially be a null or void contract.

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