OPEN ACCESS
Scholars International Journal of Law, Crime and Justice
Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) |ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Original Research Article

Legal Reconstruction of Fund Distribution in the Implementation of Sharia Principles in *Murabaha* Financing Products

Mahdinur[1*], Anis Mashdurohatun[2], Abdul Halim Barkatullah[3]

[1]Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia
[2]Faculty of Law Sultan Agung Islamic University Semarang, Indonesia
[3]Faculty of Law Lambung Mangkurat University Banjarmasin, Indonesia

DOI: 10.36348/sijlcj.2023.v06i04.009 | **Received:** 05.03.2023 | **Accepted:** 17.04.2023 | **Published:** 23.04.2023

***Corresponding author:** Mahdinur
Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

Abstract

The objectives of this research are to analyze and find out the appropriateness of the application of sharia principles in *Murabaha* financing in sharia banking and how to reconstruct *Murabaha* financing in Islamic banking that is in accordance with Islamic principles. The method used in this study uses a juridical-empirical and normative approach with a constructivist paradigm. The result of the study shows that the application of sharia principles in *Murabaha* financing in sharia banking is not in accordance with sharia principles, because it contains two contracts in one transaction. In addition, the application of Wakalah contracts in *Murabaha* in buying and selling transactions in Islamic banking has the potential to cause usury, which is expressly prohibited in the Koran and hadith. By buying and selling *Murabaha* In *Murabaha* financing, the bank does not own and control the goods to be purchased by the applicant. The bank, in this case, provides financing in the form of money to financing customers, who then represent the purchase of goods ordered to financing customers on behalf of the bank with a Wakalah contract. Furthermore, banks also impose fines on late payments made by financing customers, which is also against sharia principles. Therefore the application of contracts to *Murabaha* financing that is more in line with the principles of Islamic law (fiqh muamalah) proposed by the author is by means of the bank purchasing goods to be purchased by the customer in advance after a previous agreement has been made. After the goods are purchased on behalf of the bank, they are then sold to customers at the acquisition price plus a profit margin according to the agreement. Purchases can be made in cash (cash), or in Installments either in the form of installments or all at once at a certain time where the customers can pay at a later time.

Keywords: Legal Reconstruction, Sharia, *Murabaha*, Financing Products.

INTRODUCTION

As a superior product of Islamic banking, *Murabaha* financing products in its implementation still raise various sharia issues, namely that there is a potential for violations of sharia principles. Violation of the principle of buying and selling *Murabaha* does not only occur in the form of implementing wakalah contracts in *Murabaha* financing, but also occurs in various other forms of violations.

Several forms of irregularities in the practice of *Murabaha* financing by Islamic banking as described above indicate that in the implementation of financing products with *Murabaha* contracts in Islamic banks, there are still various sharia issues, namely the potential for violations of sharia principles.

Sharia principles refer to Islamic law (shariah), in which the main source is the Al-Quran which contains various commands and prohibitions, as well as As-Sunnah which is also a source of reference in determining Islamic law.

Referring to a hadith narrated by Tirmidzi, the Prophet Muhammad Shollalhu Alaihi Wassalam, once said: "*It is not lawful to sell and buy and sell, it is not lawful to have two conditions in one sale and purchase, it is not lawful to make profits as long as (goods) are not in your responsibility and it is not lawful to sell anything. which is not yours"* (Ergün, 2022).

Murabaha contract is a superior product of Islamic banking, so arrangements regarding the relationship between the parties involved in it, especially between customers, banks, and suppliers,

must be under the provisions of Islamic law. Therefore, the regulation of each Muamalah has the aim that humans do not commit acts of deviation from the applicable provisions so that there is no inner conflict or feeling of injustice. Therefore, religion has provided the best regulations, so that Muamalah relations can be orderly and orderly and fulfill a sense of justice, which is ultimately expected able to create prosperity, tranquility, and peace (Wahyu, 2019).

It must be understood that the basis for the emergence of a *Murabaha* contract is not only to replace "*bank interest*" with a "*profit scheme*" so that Islamic banks are then considered to have applied Islamic principles with the loss of interest in Islamic banking practices. However, the emergence of a *Murabaha* contract is to provide benefits, so that in its implementation the product of a *Murabaha* contract must remain under the Al-Quran and Hadith. Likewise the provisions of the DSN fatwas serve as guidelines for Islamic banking in realizing sharia principles (Al_Othman, 2022).

It is recognized that the lifeblood of Islamic banking products is financing because Islamic banking does not recognize the term credit as does conventional banking. In other words, financing is the wheel of life in the banking world, especially Islamic banking, which in principle does not recognize the credit (debt) system. The existence of financing products in Islamic banking, especially *Murabaha* financing in Islamic banking operations is very decisive in maintaining the existence and development of Islamic banks.

Islamic banking financing products, especially cheap financing, are highly dependent on contractual agreements in their implementation. The contract agreement is the main key in implementing Islamic financing products because financing can be ascertained if there is an underlying contract. In other words, without a financing agreement, financing, which is one of the ways of Islamic banking in channeling funds to the public, will not work as it should (Widodo, 2018).

Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Fund Distribution In The Implementation Of Sharia Principles In Murabaha Financing Products*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of regulation regarding Fund Distribution In The Implementation Of Sharia Principles In *Murabaha* Financing Products in Indonesia currently?
2. How is the Legal Reconstruction Of Fund Distribution In The Implementation Of Sharia Principles In *Murabaha* Financing Products Based On The Islamic Principles?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of Regulation Regarding Fund Distribution In The Implementation Of Sharia Principles In *Murabaha* Financing Products In Indonesia Currently

Based on the principles contained in the *Murabaha* sale and purchase transaction according to Islam and the *Murabaha* principle known in Islam, then in the application of buying and selling with a *Murabaha* contract, several things need to be considered by Islamic banking, including (Rahmat, 2021):

a. Islamic banks in this case finance the purchase of goods needed by customers by buying these goods from suppliers and then selling them to customers

by adding a cost-plus profit that is agreed upon by both parties.

b. Modification of the provisions of *Murabaha* is very important because *Murabaha*, even though it concerns the sale and purchase of goods, is essentially a financing transaction. The function of the bank remains as a service trader providing financing facilities, not as a goods trader. Thus, the mechanism for financing with *Murabaha* is not much different from conventional financing institutions or financing applied by conventional banks. The difference lies only in obtaining profits where conventional banks it is called interest, and in Islamic banks, it is called a profit scheme.
c. In the practice of *Murabaha*, actually the customer buys goods from the supplier, not the bank. The relationship between the bank and the supplier of goods is as a power of attorney from and on behalf of the bank's customer. Banks must be aware of the risk, in the event of a lawsuit by the supplier of goods if the order for goods from the customer is canceled. So that if there is a cancellation when the item is already in the hands of the bank, then the bank must bear all the consequences of the cancellation.
d. If there is a delay in the payment obligation due to the inability of the customer, the bank is not allowed to ask the customer to pay an additional amount as a fine, but the bank is obliged to wait for the customer to be able to pay the installments. Because imposing fines in terms of debt is not justified in Islam.
e. The customer also has the right or can sell goods or objects purchased based on the *Murabaha* principle, even though the payment to the Islamic bank has not been paid. This means that there are still installments that must be paid by customers to the bank. The sale of these goods can be carried out by the customer because buying and selling with the *Murabaha* principle is buying and selling with debt, so when the contract is signed, the goods become the property of the customer. The customer is free to do anything with his assets, including selling them.

The application of *Murabaha* buying and selling in Islamic banking is not under Islamic principles, it can even be said that the *Murabaha* sale and purchase contract currently practiced by Islamic banking leads to violations of the principles in making Islamic contracts and has the potential for usury transactions to arise.

When examined from the aspect of legal certainty, the *Murabaha* sale and purchase contract in Islamic banking does not yet create legal certainty. This is because the *Murabaha* sale and purchase contract in Islamic banking contains two contracts in one transaction, so there is no clarity in the contract, whether it is a *Murabaha* sale or purchase agreement or a loan agreement (financing/credit).

Substantially, the occurrence of violations by banks is because the Sharia Banking Law has not accommodated the facts that occur in Islamic banking practices. The substance of the Islamic Banking Law is still the same as the provisions of conventional banking as stipulated in Law Number 10 of 1998 concerning Banking. This can be seen in the formulation of Article 1 point 2 of the Sharia Banking Law which states: "*A bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in the context of improving the people's standard of living*. "

There are differences in the legal system that underlies the implementation of sharia banking, so the legal substance that regulates the implementation of sharia banking should be adjusted to sharia principles and be free from the influence of positive law. Thus, the understanding of Islamic banks should not be equated with the understanding of banks in general as stated in Law Number 10 of 1998 concerning Banking.

The definition of Islamic banks is formulated in Article 1 point 2 of the Banking Law, which substantially becomes a separate obstacle for Islamic banks to implement the products offered by Islamic banks and adjust the implementation of these products following Islamic principles.

For example, in buying and selling *Murabaha*, in this case, the bank must act as a seller in principle. However, due to the provisions of Article 1 point 2 of the Banking Act, Islamic banks cannot act as sellers. As a result, Islamic banks are looking for a way to get around this legal problem, namely by making a wakalah contract in the sale and purchase of *Murabaha*.

The application of wakalah contracts in the sale and purchase of *Murabaha* by Islamic banking, in theory, and in practice studies, has led to the practice of buying and selling *Murabaha* contracts in Islamic banking contrary to sharia principles, namely the occurrence of two contracts in one transaction and causing ambiguity in the contract, whether as a sale and purchase contract of *Murabaha* or as a debt agreement contract (credit/financing).

It can be said that the substance of the Banking Law still does not give rise to legal certainty. This is due to the provisions of Article 1 point 2 of the Banking Law causing Islamic banks to be unable to carry out their business activities, particularly running *Murabaha* products that comply with sharia, as stated in Article 24 paragraph (1) letter (a) in conjunction with Article 25 letter a, which states that Banks Sharia Public Banks and Sharia Rural Banks are prohibited from conducting business activities that are contrary to sharia principles.

2. Legal Reconstruction of Fund Distribution In The Implementation Of Sharia Principles In *Murabaha* Financing Products Based On The Islamic Principles

Murabaha financing by Islamic banks refers to the DSN Fatwa issued by MUI, which in this case refers to DSN Number 111/DSN-MUI/IX/2017 concerning *Murabaha* Sale and Purchase Contracts. Many things need to be considered related to the distribution of funds to the community using a *Murabaha* contract.

In Indonesia, the application of buying and selling *Murabaha* in Islamic banking is based on the Fatwa Decree of the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI) and Bank Indonesia Regulations (PBI). According to the decision of the DSN fatwa Number 04/DSNMUI/IV/2000, the provisions of *Murabaha* in Islamic banking are as follows:

a. Banks and customers must enter into a usury-free *Murabaha* contract.
b. Goods that are traded are not prohibited by Islamic law.
c. The bank finances part or all of the purchase price of goods whose qualifications have been agreed upon.
d. Banks buy goods that customers need on behalf of the bank itself, and these purchases must be legal and riba-free.
e. The bank must submit all matters related to purchases, for example, if the purchase is made in debt.
f. The bank then sells the item to the customer (subscriber) at a selling price equal to the purchase price plus the profit. In this regard, the Bank must honestly notify the cost of goods to customers along with the costs involved.
g. The customer pays the agreed price of the goods at a certain agreed period.
h. To prevent misuse or damage to the contract, the bank can enter into a special agreement with the customer.
i. If the bank wants to represent the customer to buy goods from a third party, the *Murabaha* sale and purchase agreement must be made after the goods, in principle, become the property of the bank.

Based on regulations related to *Murabaha*, both originating from DSN fatwas and PBI, Islamic banking carries out *Murabaha* financing. However, in practice, there is no uniform model for applying *Murabaha* financing due to several underlying factors. There are several types of *Murabaha* implementation in Islamic banking practices, all of which can be divided into three broad categories, namely (Jundi, 2022):

a. The first type, namely the application of *Murabaha* is a consistent type of muamalah fiqh. In this type, the bank buys the goods that will be purchased by the customer after a prior agreement has been made. After the goods are purchased on behalf of the bank, they are then sold to customers at the acquisition price plus a profit margin according to the agreement. Purchases can be made in cash (cash), or tough either in the form of installments or all at once at a certain time. In general, customers pay tough.
b. The second type, second type is similar to the first type, but the transfer of ownership is direct from the supplier to the customer, while payments are made by the bank directly to the first seller/supplier. The customer as the final buyer receives the goods after previously entering into a *Murabaha* agreement with the bank. Purchases can be made in cash (cash), or tough either in the form of installments or all at once at a certain time. In general, customers pay tough. This transaction is closer to the original *Murabaha*, but is prone to legal issues. In several cases, it was found that there were customer claims that they owed nothing to the bank, but to third parties who sent the goods. Even though the customer has signed a *Murabaha* agreement with the bank, this agreement lacks legal force because there is no evidence that the customer received money from the bank as proof of a loan/debt. To avoid such incidents, when an Islamic bank and the customer have agreed to carry out a *Murabaha* transaction, the bank will transfer the payment for the goods to the customer's account (passing through) and then debit it with the customer's approval to be transferred to the supplier's account. In this way, there is evidence that funds have been transferred to the customer's account. However, from a sharia perspective, a *Murabaha* model like this still has the opportunity to violate sharia provisions if the bank as the first buyer never receives goods (qabdh) on its behalf but directly on behalf of the customer. Because in sharia principles, the sale and purchase contract of *Murabaha* must be carried out after the goods, in principle, belong to the bank.
c. The third type, this type is the most widely practiced by Islamic banks. The bank enters into a *Murabaha* agreement with the customer, and at the same time represents (wakalah contract) to the customer to buy the goods themselves. The funds are then credited to the customer's account and the customer signs a receipt for the money. This receipt of money is the basis for the bank to avoid claims that the customer is not indebted to the bank because he did not receive the money as a means of loan. This third type can violate sharia provisions if the bank represents the customer to buy goods from a third party, while the *Murabaha* sale and purchase agreement has been made before the goods, in principle, belong to the bank.

The various types of *Murabaha* buying and selling practices above are motivated by various motivations. There are times when to simplify procedures further so that the bank does not have to bother buying the goods needed by the customer, but it is enough to appoint or contact a supplier to provide the goods and send them directly to the customer at once on behalf of the customer (Type II). Or by way of the bank directly giving money to the customer then the customer buys the goods needed by reporting the purchase receipt to the bank (type III). These two methods are often used by Islamic banks to avoid the imposition of double Value Added Tax which is considered to reduce the competitive value of Islamic bank products compared to conventional banks which are exempt from VAT. This happens because in type I *Murabaha* buying and selling, where the bank will first buy the goods needed by the customer on behalf of the bank and then sell them to the customer on a *Murabaha* basis, there will be a transfer of ownership twice, namely from the supplier to the bank and from the bank to the customer (Toebagus, 2022).

Through Bank Indonesia Regulation (PBI) number 9/19/PBI/2007 jo BI Circular Letter No. 10/14/DPbS dated 17 March 2008 which abolished PBI Number 7/46/PBI/2005 concerning the Contract for Collection and Distribution of Funds for Banks Carrying Out Business Activities Based on Sharia Principles, the implementation of *Murabaha* financing has increasingly placed Islamic banks solely as intermediary institutions acting as a provider of funds, not as a buying and selling agent of *Murabaha*. This is confirmed in the text of BI Circular Letter No. 10/14/DPbS in point III.3, that: "*Banks act as providers of funds to purchase goods related to Murabaha transaction activities with customers as purchasers of goods*".

Judging from the text of this circular letter, it is clear that there is an attempt by Bank Indonesia to emphasize that sharia banking transactions based on the principle of buying and selling *Murabaha* are still financing as are other transactions using mudharabah, musyarakah, salam, istishna, ijarah, and *Ijarah Rompiiya Bit Tamlik* contracts.

Of the various types described above, the first type of application of *Murabaha* is the consistent type of muamalah fiqh. In this type, the bank buys the goods that will be purchased by the customer after a prior agreement has been made. After the goods are purchased on behalf of the bank, they are then sold to customers at the acquisition price plus a profit margin according to the agreement. Purchases can be made in cash (cash), or tough either in the form of installments or all at once at a certain time where the customer generally pays at a later date.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The application of sharia principles in *Murabaha* financing in sharia banking is not in accordance with sharia principles, because it contains two contracts in one transaction. In addition, the application of Wakalah contracts in *Murabaha* in buying and selling transactions in Islamic banking has the potential to cause usury, which is expressly prohibited in the Koran and hadith. By buying and selling *Murabaha* In *Murabaha* financing, the bank does not own and control the goods to be purchased by the applicant. The bank, in this case, provides financing in the form of money to financing customers, who then represent the purchase of goods ordered to financing customers on behalf of the bank with a Wakalah contract. Furthermore, banks also impose fines on late payments made by financing customers, which is also against sharia principles.
2. The application of contracts to *Murabaha* financing that is more in line with the principles of Islamic law (fiqh muamalah) proposed by the author is by means of the bank purchasing goods to be purchased by the customer in advance after a previous agreement has been made. After the goods are purchased on behalf of the bank, they are then sold to customers at the acquisition price plus a profit margin according to the agreement. Purchases can be made in cash (cash), or in Installments either in the form of installments or all at once at a certain time where the customers can pay at a later time.

REFERENCES

- Al_Othman, M. (2022). Measuring the Profit of the Murabaha Activity in the Islamic Banks. *Tishreen University Journal for Research and Scientific Studies*, 33, 2011.
- Ergün, T. (2022). *The Relationship Between Murabaha And Macroeconomic Dynamics.*
- Faisal. (2010). *Menerobos Positivisme Hukum.* Rangkang Education, Yogyakarta, p.56.
- Jundi, N. (2022). The effect of the nature of the financing activity on interest rates and Murabaha rates in the emerging economy. *Journal of Governance and Regulation*, 11, 309-320. 10.22495/jgrv11i2siart10.
- Rahmat, Rahmat & Ernawati, Ernawati. (2021). *Murabaha Oriented at Sharia Banks in Kendari City*. Indonesian Interdisciplinary Journal of Sharia Economics (IIJSE). 3. 135-148. 10.31538/iijse.v3i2.1075.
- Pratama, T. G. W. (2020). The urgency for implementing crytomnesia on Indonesian copyright law. *Saudi Journal of Humanities and Social Sciences*, *5*(10), 508-514. DOI:10.36348/sjhss.2020.v05i10.001

- Pratama, T. G. W. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*, *4*(1), 65-83. DOI: https://doi.org/10.37631/widyapranata.v4i1.583
- Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030. *The Social Sciences*, 13, 1307-1311.
- Wahyu, W., & Toebagus, G. (2019). *Poverty, Evictions And Development: Efforts To Build Social Welfare Through The Concept Of Welfare State In Indonesia*, 3rd International Conference On Globalization Of Law And Local Wisdom (Icglow 2019). Dx.Doi.Org/10.2991/Icglow-19.2019.65.