PROCESS ANALYSIS AND MURABAHAH CONTRACTS IN SHARIA BANK FINANCING

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***ABSTRACT**: In Islamic bank financing activities, Murabahah is the most popular product. Apart from being easy to calculate, both for customers and bank management, this product has several similarities (which are not in principle) with the credit system in conventional banking. However, in principle, Murabaha is very different from interest rates in conventional banking. In addition, from a syara ' point of view, there is no interest element in Murabaha financing, but the margin adds to the cost of purchase, so it is not against sharia. However, a fatwa is still needed to answer various public questions about Murabaha financing that has been practiced by banks with sharia principles so far, as well as the legality of syar'i for the operations carried out. It is for this purpose that this research was conducted, looking at the extent to which Islamic banks with the fatwa of the National Sharia Council - Indonesian Ulema Council (DSN-MUI) comply, especially regarding the Murabahah financing process and contracts . And as a result, Islamic banks have not only contradicted the DSN-MUI fatwa, but also violated several Islamic bank rules and regulations, as well as the provisions of the Sharia Economic Law Compilation (KHES), in the process and the Murabaha contracts they use.*

Keywords: Islamic Bank, Murabahah , Process, Akad .

INTRODUCTION

As of the 2022 quarter, the Murabahah financing scheme still dominates the amount of Islamic bank financing to its customers, which reaches almost 50%, while the remainder is divided into several other contracts such as Mudharabah, Musyarakah, Salam, and Istyshna contracts with various derivative contracts. Even globally, more than 75% of Islamic bank financing is in the form of Murabahah. Followed by Ijarah around 11%, profit sharing (Musyarakah and Mudarabah) of 4.17% and 1.67% respectively, and the share of Qardh contracts is only 1.53%.[1]

The most prominent reasons Why contract Musyarakah or sell buy become prima donna in Islamic banking is Because small risk compared with other contracts. The reason is the margin given in a financing scheme Murabaha , will give more big profit for Islamic banks. No Can denied that the bank is institution profitable so that minimal risk in the contract murabaha also provides profit for Islamic banks and also for customer.

Therefore, often Murabahah looked at like general bank credit. Whereas clear

[1] *IsDB, 2019*

different between both, contract Murabahah is contract sell buy whereas system credit is borrow borrow money. Then the profit on the contract Murabaha in shape margins sales Already including selling price. Whereas advantage on credit based on level ethnic group flower.

In distinguishing a Murabahah financing scheme from a loan/credit, then in a Murabaha financing scheme no money is loaned. There are only certain assets that are purchased for the client for the sake of confirming that the funding is related to the assets. In the case of lending money, the funder is only exposed to credit risk. In the case of Murabaha, the funder may, first of all, be exposed to price risk when procuring the product for the customer. And before the customer decides to buy the product, the customer still has the option to refuse product delivery.[2] (Naja, 2010). So, by carrying out the buying and selling of products, the bank exposes itself to several risks as well as leads to real asset trading; Therefore, Murabaha transactions are different from ordinary (conventional) loans/credit.

The confusion in equating Murabaha with a loan is not new. Arab traders at the time of the Prophet sallallaahu alaihi wa sallam also asked the same question. They stated that "trade is similar to usury" (QS. Al-Baqarah: 275) which was then answered: "But Allah allows trade and prohibits usury" (QS. Al-Baqarah: 275).

The legal difference between Murabaha financing and interest-based loans is very clear, in that Murabaha financing is a contract of sale in which the price is increased due to delayed payments, while the latter is an increase in the amount owed due to delayed (timed) payments. The practice of using an interest rate index to determine markup rates has been a source of confusion and a focus of much criticism. Islamic banks often argue that the mark-up rate is a function of an index of interest rates because there is no Islamic comparator that can provide an indication of the current rate of return in the economy. This necessitates the creation of an index to track estimates of the cost of capital and rates of return that can be used to determine the price of financial instruments.[3] In line with this argument, Frank E. Vogel and Samuel L. Hayes (2007), stated that the murabaha that is commonly used is only a mixed form known as al-murabaha lil-mir bi-al-syira' or "Murabaha from someone who orders or asking other parties to buy. In this transaction, the customer asks the bank to purchase goods according to certain specifications and then, after the bank obtains and owns the goods, then sells them to the customer with Murabaha. One of these two transactions can be made on credit (bay' mu'ajjal), and in the practice of Islamic banks so far, the second transaction is always on credit.

Modern murabaha involves representation between the bank and any third party or even the customer himself. Murabahah to purchasers (murbahah to purchase orders) in this form involves three different contracts (contracts), namely:[4]

1. *The main contract (akad) that defines all activities that will occur, followed by an agreement to buy or a promise by the customer to buy the goods offered by the*

[2] *H.R. Daeng Naja. Akad Bank Syariah, Cetakan Pertama, Yogyakarta: Media Pressindo, 2010.*
[3] *Zamir Iqbal and Abbas Mirakhor, 2008.*
[4] *Muhammad Ayub, Understanding Islamic Finance A-Z Keuangan Syariah, Cetakan Pertama, Jakarta : Gramedia Pustaka Utama, 2009.*

bank. This contract (contract) does not become a forward sale contract (contract) which is bilateral in nature, the "purchase agreement" is a unilateral promise from the customer that binds him and does not bind the bank.

2. *Representative contracts (akad) where the representative, who can be a customer or any third party, has to buy goods from the market or a supplier appointed by the customer and take ownership of them on behalf of the bank; This contract (contract) must be separate from the Murabaha agreement.*
3. *The Murabahah contract (akad) itself must be signed when the bank owns the commodity in question.*

RESEARCH METHODS

The research method used is qualitative research with several variants, namely by means of phenomenological research, where researchers collect data by participant observation to find out the essential phenomena of the participants. Then with ethnography, where the researcher conducted a study of the participants' manual rules and procedures through observation and interviews.

And the last way that is also used by researchers is with case studies, where researchers carry out in-depth exploration of programs, events, processes, activities, towards several participants. In this study, researchers collected data in detail using various data collection procedures in a continuous time.

RESULT

1. Understanding Murabahah

Murabahah is the most popular product in financing practices in Islamic banking. Apart from being easy to calculate, both for customers and bank management, this product has several similarities (which are not in principle) with the credit system in conventional banking. However, in principle, Murabaha is very different from interest rates in conventional banking.

Murabahah is a trustworthiness transaction, because the buyer (customer) has entrusted the seller (bank) to determine the original price of the goods purchased. Therefore, when offering a Murabahah financing scheme, the bank actually offers high trust and good-will to the customer, and vice versa the customer also gives full trust to the bank. The concept of trust and mutual trust is what distinguishes Murabahah from interest-based loans by conventional banks.

Murabahah is buying and selling of goods at the original price with an additional agreed profit/margin. In this sale and purchase, the seller must inform the cost of goods purchased and determine a certain profit level in addition and explain it to the buyer. Murabahah emphasizes the purchase of commodities based on the request of the customer concerned, not just a mere loan as in the credit system in conventional banking.

Ideally, in Murabahah financing, the customer comes to apply for financing for a commodity with certain criteria, at this stage negotiations occur and requirements must be met by both parties. Then the bank orders goods from suppliers according to the criteria desired by the customer. After the item officially becomes the property of the bank, then a sale

and purchase contract occurs between the customer and the bank. Goods and documents are sent to the customer, then the customer makes payments according to the agreement.

With this explanation, of course it can be said that for Murabaha financing, there is no element of interest, but only a margin in addition to the cost of purchase, so it is not against sharia. However, a fatwa is still needed to answer various public questions about Murabaha financing that has been practiced by banks with sharia principles so far, as well as the legality of syar'i for the operations carried out.

Murabahah, included in one of the financing with the principle of buying and selling, which relates to the transfer of ownership of goods or objects. Transactions or financing with the principle of buying and selling are distinguished by the form of payment and delivery of goods. The term buying and selling can be interpreted as an exchange of something for something else, based on pleasure. In the Qur'an, we can find various terms related to buying and selling contracts, including the words of Allah Subhanahu wa Ta'ala: "They expect a trade that will not result in losses. (QS. Faathir: 29).

In terms of terminology, the meaning of buying and selling is the ownership of property by exchanging it in accordance with syara` rules. In other words, buying and selling can be interpreted as an exchange with property for the purpose of ownership.

The sharia basis for buying and selling, among others, is found in the Al- Qur`an Surah An-Nisa Verse 29: "O you who believe, do not eat your neighbor's property in a false way, except in a commercial way that applies with likes and dislikes between you." And Surah Al-Baqarah Verse 275: "And Allah has permitted trading and prohibited usury." Then the hadith narrated by Imam Achmad: "Work done by one's own hands and every sale and purchase transaction that is mabrur."

Transactions based on the buying and selling principle are differentiated based on the form of payment and the time of delivery of the goods, so that in the business activities of channeling funds, banking legal products related to sale and purchase contracts are financing contracts consisting of: (a) Murabahah contracts;
(b) Salam contract; and (c) Istishna contract.

In Murabahah financing, Islamic banks act as sellers and customers as buyers. The selling price is the purchase price paid by the Islamic bank from the supplier plus profit. Both parties (Islamic banks and their customers) must agree on the selling price and the payment term. The sale and purchase price and the payment term are stated in the Murabahah contract (sale and purchase contract), and do not change during the validity of the contract. In this transaction, the goods that are the object of sale and purchase are handed over after the contract is signed by the parties, while payments by customers to Islamic banks are made in a tough manner.

Murabahah is a sale and purchase agreement where according to DSN-MUI Fatwa No.: 04/DSN-MUI/IV/2000, where the seller of an item confirms the purchase price to the buyer and the buyer pays it at a higher

price as profit. That is, Murabahah is a sale and purchase transaction in which the bank mentions the amount of the profit. The bank acts as a seller, while the customer acts as a buyer. The selling price is the price the bank buys from the supplier plus profit. Both parties must agree on a selling price and a payment term. The selling price is stated in the sale and purchase contract and if it has been agreed it cannot change during the validity of the contract.

In banking practice, Murabahah is usually done by means of installment payments. In this transaction, goods are delivered immediately after the contract, while payments are made in installments. By using the Murabaha facility, banks can finance their customers for working capital or investment purposes. However, in this study, researchers only focus on Murabahah financing for the purchase (investment) of capital goods in the form of land and or buildings.

a. Legal Basis (Proposition)

Murabaha is a permissible Islamic bank financing service product, with reference to the following arguments:

i. *QS. al-Baqarah verse 275 (translation): "... and Allah has permitted trading and prohibited usury ...".*

Based on this provision, the sale and purchase of Murabahah has recognition and legality from Syara', and is valid to be operationalized in the practice of Islamic bank financing because it is a form of buying and selling and does not contain elements of ribawi.

ii. *Q.S. al-Ma'idah verse 1 (translation): "O you who believe, fulfill the contracts ...".*

In the context of Murabaha financing, there is a promise by the bank to buy commodities according to the specifications proposed by the customer, in addition, the customer also promises to buy these commodities from the bank. Relevant to this paragraph, banks and customers are obligated to fulfill the commitments and agreements made by both of them.

iii. *Hadith (translation): From Abu Sa`ia Al-Khudri, that Rasulullah Shallallahu Alaihi wa Sallam said: "Indeed, buying and selling must be done like and like." (Narrated by al-Baihaqi and Ibn Majah).*

This hadith provides a prerequisite that the sale and purchase contract of Murabahah must be carried out with the willingness of each party when making a transaction. All provisions contained in buying and selling Murabahah, such as determining the selling price, desired margin, payment mechanism and others, must be agreed and willing between the customer and the bank.

iv. *Hadith (translation): The Prophet Shallallahu 'Alaihi wa*

Sallam said: "There are three things that contain blessings: buying them in cash, muqaradhah (mudharabah), and mixing wheat with jamawut for household needs, not for sale" (HR. Ibn Majah).

This hadith is another argument for the permissibility of murabaha which is done on a tempo basis. Blessings in the sense of growing and getting better, are found in commerce, especially in buying and selling that is carried out on a tempo or Mudharabah contract as the Prophet sallallaahu 'Alaihi wa Sallam said in the hadith.

v. *Hadith (translation): "Peace can be made between Muslims, except for peace that forbids what is lawful or justifies what is unlawful; and the Muslims are bound by their conditions except conditions that prohibit what is lawful or allow what is unlawful." (HR. at-Tirmidhi).*

This hadith refers to the freedom to make transactions and the permissibility of setting certain conditions in transactions. In the context of Murabahah financing, both parties are given the freedom to determine the terms as long as they do not violate the provisions of the syara'.

vi. *Ijma': The agreement of the scholars on the permissibility of buying and selling in general is quoted from Dr. Wahbah Zuhaili in the book Al Fiqh Al Islami Wa Adillatuhu. Muslim scholars agree on the validity of the buying and selling contract, it is realized that human needs are sometimes related to other people, and humans cannot take these needs directly without compensation, for this a sale and purchase transaction is carried out. Ijma' generally applies to all types of buying and selling transactions, including buying and selling Murabahah.*

vii. *The Fiqh principles cited refer to the principle that basically all muamalah are permissible, unless there is evidence that forbids them. Thus the sale and purchase of Murabaha is a permissible contract because it does not conflict with any sharia provisions such as not containing gharar, dhoror, maisir, usury, and others.*

b. DSN-MUI fatwa regarding Murabahah

From the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN MUI) No. 04/DSN-MUI/IV/2000 concerning Murabahah, further provisions can be explained which include the following (described only those related to the material of this research):

First: General provisions of Murabaha in Sharia Banks, namely: (1) banks and customers must enter into a usury-free Murabahah contract; (2) goods traded are not prohibited by Islamic law; (3) the bank finances part or all of the purchase price of goods whose qualifications have been agreed

upon; (4) the bank buys goods needed by the customer on behalf of the bank itself, and this purchase must be legal and free from usury; (5) the bank must submit all matters related to the purchase, for example if the purchase is made on account of debt; (6) the bank then sells the goods 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; (7) the customer pays the agreed price of the goods at a certain agreed time; (8) to prevent misuse or damage to the contract, the bank may enter into a special agreement with the customer; and (9) if the bank wants to represent the customer to buy goods from a third party, a murabaha sale and purchase contract must be made after the goods, in principle, belong to the bank.[5]

Second: Terms of Murabahah to the Customer, namely: (1) the customer submits an application and promises to purchase an item or asset to the bank; (2) if the bank accepts the application, it must first purchase the assets legally ordered by the trader; (3) the bank then offers the asset to the customer and the customer must accept (buy) it according to the promise made, because legally the promise is binding; then both parties must enter into a sale and purchase contract; (4) in this sale and purchase, the bank is allowed to ask the customer to pay a down payment when signing the initial order agreement; (5) if the customer then refuses to buy the goods, the bank's real fees must be paid from the down payment; (6) if the value of the down payment is less than the loss that must be borne by the bank, the bank can ask the customer for the remaining losses; and (7) if the down payment uses an 'urbun contract as an alternative to the down payment, then if the customer decides to buy the item, he just has to pay the remaining price, and if the customer cancels the purchase, the down payment belongs to the bank for a maximum of the loss borne by the bank as a result of the cancellation; and if the down payment is insufficient, the customer must add/pay off the shortfall.[6]

From the description of the provisions above, it can be explained further that the important point of Murabahah financing is the necessity/obligation to have 2 (two) contracts, namely: (1) a sale and purchase contract between a bank and a supplier, namely the bank purchases assets (Murabaha objects) from suppliers; and

(2) a sale and purchase contract between the bank and the customer, in which the bank sells the asset (the Murabahah object) to the customer.

That is, if one of the two contracts mentioned above is not made, then the Murabahah financing carried out by the bank and its customers becomes not syar'i, and violates the MUI DSN Fatwa. And from the analysis of the

[5] *Rahman, 2017.*
[6] *Rahman, 2017.*

fatwa mentioned above, then the practice of Murabaha carried out by Islamic banks should be by using 2 (two) contracts, all of which involve Islamic banks in a syar'i way.

In addition, based on the DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 regarding the Murabahah, the researcher also refers to Bank Indonesia Regulation No. 7/46/PBI/2005 concerning Contracts for Collection and Distribution of Funds for Banks Conducting Business Activities Based on Sharia Principles; and Compilation of Sharia Economic Law (KHES).

Chronologically, the Murabahah financing scheme by banks according to Bank Indonesia Regulation No. 7/46/PBI/2005, DSN-MUI Fatwa No. 04/DSN- MUI/IV/2000 and KHES, can be described as follows: First, the customer submits an application for financing goods/commodities to the bank with certain specifications. Second, the bank and the customer make an agreement that the bank promises to sell the commodities they already own, and the customer promises to buy the commodity with an additional profit/certain margin on the cost of purchase (at this stage there is no sale and purchase contract, but only an agreement or agreement pre-murabahah). Third, the bank buys commodities from suppliers/suppliers on behalf of the bank itself, and this sale and purchase must be legal and riba-free. What the author needs to emphasize here is the words "on behalf of the bank itself". If there is a Wakalah from the bank for the customer, then the customer must act "for and on behalf of and represent the bank". Or in other words, with Wakalah the customer does not act for and on his own behalf. Fourth, after the commodity officially becomes the property of the bank (according to syar'i), then the bank offers the asset to the customer, and of course the asset or object must comply with the specifications agreed beforehand. Fifth, the bank and the new customer can enter into a sale and purchase contract (Murabaha contract). In this case, the bank must submit all matters related to the purchase, such as the cost of purchase, the amount of margin, including if the purchase is made in debt. Sixth, if there has been an agreement in the sale and purchase, the goods and documents are sent to the customer. Seventh, then the customer pays the price of the goods (in installments) which has been agreed at the time period specified in the Murabahah Agreement.

c. Process and Akad Murabahah In Practice

A bank customer, obtains financing facilities from two different banks. First, he received a Home Ownership Credit (KPR) financing facility from a conventional bank, and secondly, he also obtained a Murabahah financing facility from an Islamic bank for a house (PPR).

From the results of the research it is known that the process and financing contract until disbursement (conventional bank KPR and Islamic bank PPR) are not different. There are no differences in principles that can

prove that Islamic bank PPR is different from conventional bank mortgages.

In transactions on Murabahah financing between banks, customers and suppliers (in this study, developers), at least 2 (two) buying and selling transactions will occur. First, is the sale and purchase transaction (contract) between the developer (as a seller) and an Islamic bank (as a buyer). Second, is the sale and purchase transaction (contract) between Islamic banks (as sellers) and customers (as buyers).

The most basic difference between conventional bank credit and Islamic bank financing, one of which can be seen in this case. In granting credit by conventional banks, what happens is that customers are given funds (loans) to buy their own fixed assets (land and buildings) according to what they want, so that what happens is buying and selling between the developer (as seller) and the customer (as buyer), then Transactions between banks and their customers are loans (credit) transactions or what are commonly referred to as collateralized credit agreements. Whereas in financing by Islamic banks, what occurs is a sale and purchase transaction of land and building assets (not a debt/credit agreement) between the bank and its customer, which is carried out by financing on the principle of sale and purchase or Murabahah. So that in the financing of Murabahah by Islamic banks there are two sale and purchase agreements, as described above.

However, in research it is known that the practice that has occurred so far has been carried out by Islamic banks, this is not the case. The practice of Murabahah financing that has been carried out so far is also that only one sale and purchase transaction occurs, namely only between the developer (as a seller) and the customer (as a buyer), just like what happens in the practice of providing credit by conventional banks.

The reason for Islamic bank practitioners, is that in Islamic banks using Wakalah to customers as buyers, he acts as the proxy of the Islamic bank that provides the financing. The basis for the power of attorney is the Fatwa of the National Sharia Council No. 10/DSN-MUI/IV/2000 concerning Wakalah. Even though the fatwa stated that, if the bank wants to represent the customer (Wakalah) to buy goods from a third party (supplier), then the bank and the customer must sign an agency agreement (agency contract), in which the customer becomes a bank representative (agent). to buy commodities (customers buy commodities on behalf of the bank). Furthermore, the customer provides information to the bank that he has purchased a commodity, which the bank then offers the commodity to the customer, and a sale and purchase contract (Murabaha) is formed. And according to Ahmad Muhyidin Ahmad from the Kuwait Islamic Bank (in Naja, 2010), this transaction is known and commonly referred to as al-Murabahah lil Amir Bissyira' bil Wakalah.

So, one of the conditions for buying and selling Murabahah that must

be met in order to be considered valid is the first sale and purchase contract, between the bank and the developer (supplier/supplier) must be valid, if not, then the sale and purchase transaction carried out by the bank and the customer will be damaged and cancelled. In the case of Murabahah and Wakalah, the existence of Wakalah does not answer the law of buying and selling in Islam, which among other things requires that goods which are not owned may not be sold. As mentioned, among others, in the Hadith of the Prophet Shallallahu 'Alaihi wa Sallam which was narrated by At-Tirmidhi and Ibn Majah (translation): "Do not sell something that you don't have."

Article 119 KHES also states that if the seller wants to represent the buyer to buy goods from a third party, a Murabahah sale and purchase contract must be made after the goods in principle already belong to the seller. And Article 120 KHES states that if the seller accepts the buyer's request for an item or asset, the seller must first purchase the ordered asset and the buyer must complete a legal sale and purchase with the seller.

Another finding in this study related to the Wakalah in the Murabahah is, after the certificate of land rights which is the object of the Murabahah contract, the name is reversed to be on behalf of the customer, not on behalf of the bank as the principal, even though the customer acts as the proxy under the Wakalah earlier. In fact, the customer who has been given the power of attorney (Wakalah) performs the legal action "on behalf of" the person giving the power of attorney or it is also said that he "represents" the person giving the power of attorney. This means that what is done is "at the expense of" the person giving the power of attorney and all rights and obligations arising from the act committed become the rights and obligations of the person giving the power of attorney. And if what is done is in the form of making an agreement/contract, then it is the principal who becomes the "party" in the agreement or contract.

In Article 465 paragraph (1) HKES it is stated: a transaction carried out by a power of attorney in terms of grants, loans, mortgages, deposits, loans, cooperation, and cooperation in capital/business, must be based on the will of the person in charge. Then in paragraph (2) it is stated that if the transaction as referred to in paragraph (1) above does not refer to acting on behalf of the authorizing agent, then the transaction is invalid.

This provision is further emphasized by Article 466 which states that a power of attorney transaction is valid if the power is exercised by the person in charge and the results are forwarded to the person giving the power of attorney. Then it is continued by Article 477 which states that the rights and obligations in the power of attorney transaction are returned to the authorizing party.

Apart from that, the basis for Wakalah by Islamic banks is one of the Hadith (HR. Malik in Al-Muwaththa) "Rasulullah Shallallahu 'Alaihi wa Sallam, delegated to Abu Rafi` and an Ansar to marry (the Prophet's marriage qabul)

with Maimunah Radhiyallahu ' Anha" So what needs to be remembered is that Rasulullah Shallallahu 'Alaihi wa Sallam gave power to Abu Rafi` Radhiyallahu 'Anhu not meaning that the recipient of the power of attorney was married, but still Rasulullah Shallallahu 'Alaihi wa Sallam who became the husband of Maimunah Radhiallahu Anha.

So thus the Wakalah which has been run by Islamic banks in the Murabahah contract scheme is actually the opposite of and contradicts some of the Hadiths of Rasulullah Muhammad Shallallahu 'Alaihi wa Sallam.

Another rule that has been adhered to by Islamic banks regarding Wakalah is: "in terms of the consequences and rights in a wakalah contract, a representative has the same status as the person he represents".

The Hanafi school of scholars provides a rule that a representative will be in the same position as the person he represents in matters relating to the rights, consequences and responsibilities of a contract (contract). For example, the result of a sale and purchase contract is the transfer of ownership of the goods from the seller to the buyer, where the obligations and rights of the contract are the handover of the object of the contract, demands for payment, the exercise of the right to choose whether or not to buy if the goods are defective, the right to inspect and return goods if there is a reclaim. These rights and obligations rest with the representative, not with the person he represents. That is, the representative is responsible for receiving the goods from the seller, submitting payment to him, and returning the goods to the seller if there is a defect in the goods. All these rights belong to the representative, not to the person he represents. The representative himself can be sued to pay the price of the goods, not the person he represents (Muhammad Tahir Mansoori, 2010 in Naja, 2017). So, this rule is not included in terms of ownership. That is, if the sale and purchase takes place with Wakalah by the buyer, ownership does not necessarily transfer to the representative. The representative is only responsible for receiving the goods from the seller, submitting payment to him, and returning the goods to the seller if there is a defect in the goods. Moreover, the funds submitted as payment/settlement of the sale and purchase are bank funds as the party being represented, not the funds of the representative (customer).

From the results of the study it was also found that, in fact, Wakalah, which is always mentioned in the financing of Murabahah, was never used. Wakalah is only mentioned, but never used. It is not a syar'i document but only a hilah document. Because in Murabahah financing there is not a single contract made using the Wakalah. Or in other words, the customer has never signed a contract where he acts as a bank representative

So far, the trading structure through customers as bank representatives (Wakalah) has been considered as the only safest way for banks to avoid various financing risks. However, such an arrangement is

likely to make the Murabaha transaction a back door for interest. The most important claim is that the goods are in the possession of the bank and the risk is also borne by the bank. In addition, the customer must also explain to the developer (supplier/supplier of goods) regarding his status as a bank representative. If in Murabaha the bank does not buy and own goods and only makes payments for whatever goods are purchased and received directly by the customer from the supplier, this constitutes sending an amount of money on behalf of the customer, which will become a loan for him and the profit on that amount will only be into flowers (Muhammad Ayub, 2009). In connection with the Murabahah contract being considered a "sale and purchase contract" so that the object of the contract can be directly reversed to the name of the customer, the researcher raises several new questions, which cannot be answered by Islamic bank practitioners. This includes the provisions or the

sound of the articles of the Murabaha contract that have been used so far.

These questions: (1) why isn't the Murabaha contract used as the basis for the right to transfer the name of the certificate of land rights to the land office? (2) why is it precisely the deed of sale and purchase between the supplier/supplier and the customer that is used as the basis for the right to transfer the name of the said certificate of land rights, even though the customer is only acting as a proxy from the bank? (3) why in the deed of sale and purchase between the supplier and the customer of the bank, it is not stated that the customer acts as the proxy of the bank?; and (4) what is the function of a Murabaha contract made between a customer and an Islamic bank?

Thus, the researcher is of the opinion that the contracts in the sharia banking Murabahah scheme that have been practiced so far have violated the DSN-MUI fatwa and various regulations that supervise them, which of course the logical consequence is the cancellation of these contracts.

At least the questions mentioned above further emphasize that the sale and purchase contract actually only occurs between the developer and the customer. While buying and selling between developers and banks and buying and selling between banks and their customers never happened. This is what the researcher means as a defect in the contract, or an unsyar'i contract. So that the Murabahah scheme that has been running so far cannot be classified as financing based on the buying and selling principle. And with the questions mentioned above, it basically proves that Murabaha financing which has been practiced by Islamic banking is no different from conventional bank credit schemes.

One of the buying and selling fatwas from Al-Lajnah ad-Daa-imah lil Buhuuts al-'Ilmiyyah wal Iftaa' of the Kingdom of Saudi Arabia which can be used as an analogy for the Murabahah case which has been practiced by Islamic banking in general. The fatwa reads: "If you buy a car from a showroom

using your own name, then you receive and control it, then sell it to someone else by cash or credit, even if it is at a higher price than what you bought, then that is permissible. And you are not allowed to record the car using someone else's name that he bought it from the show room, because in that case it contains lies. Apart from that, this could cause other problems. If you haven't received it from the show room, for example, and don't have control over it, then it is not legal for you to sell it to other people, either by cash or credit, even though the sale is the same as the purchase price, because the Prophet Muhammad Shallallahu 'Alaihi wa Sallam forbade selling an item so that you hold and master it.

Other evidence, which was found by researchers, can be seen from the sound of the articles in the murabahah agreement/contract which has been the handle of Islamic banks with their customers, including:

Article 3
PRINCIPLE IMPLEMENTATION OF MURABAHAH

Murabahah principle that takes place between the BANK as the Seller and the CUSTOMER as the Buyer is carried out based on Sharia provisions and regulated according to the following terms and conditions:

i. *CUSTOMER ... etc. _*
ii. *BANK ... etc. _*
iii. *CUSTOMER ... etc. _*
iv. *The BANK with this Agreement fully represents the CUSTOMER to buy and receive Goods from the Supplier, and gives the right to make a sale and purchase deed for and on behalf of the CUSTOMER himself directly with the Supplier.*

Paragraph 4 mentioned above is in conflict with the scheme and legal requirements of the murabaha sale and purchase agreement. Because the bank should first have to buy the object before the object is sold to its customers. Meanwhile, the contents of paragraph 4 above clearly state that a murabaha contract takes precedence over a sale and purchase between the supplier and the bank/customer. The new verse gives power to buy, meaning that the Murabahah object is not yet owned by the bank, but has been sold by the bank.

Paragraph 4 is also very contradictory to the DSN-MUI Fatwa No. 4/DSN-MUI/IV/2000 concerning Murabahah, which states that 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 belong to the bank.

It is also contrary to Article 119 of the Compilation of Sharia Economic Law which states that if the seller wants to represent the buyer to buy goods from a third party, a murabaha sale and purchase contract must be carried out after the goods in principle belong to the seller.

Article 4
TERMS OF FINANCING REALIZATION

1. *The BANK will realize Financing based on the Murabahah principle based on this Agreement , after the CUSTOMER first fulfills all of the following requirements: … etc.*
2. *Murabahah Financing will be carried out by the BANK to Suppliers, either directly or through THE CUSTOMER .*

Paragraph 2 above further proves that this Murabaha agreement is no different from a conventional bank credit agreement, because there is still a relationship between the supplier and the customer, even though the supplier should be dealing with the bank, not the customer, while the customer only deals with the bank).

Article 5
RESPONSIBILITIES OF THE PARTIES

1. *Choice of Goods … etc.*
2. *If later ... etc.*
3. *a defect ... etc.*
4. *The BANK is not responsible for completing letters/documents for Goods purchased with Murabahah Financing which are the responsibility of the Supplier.*

Paragraph 4 above is exactly the same as paragraph 2 of Article 3 above, namely the article which further proves that this Murabaha agreement is no different from a conventional bank credit agreement, because there is still a relationship between the supplier and the customer, even though the supplier is no longer involved in the agreement. This murabaha, because the Sya'ah bank has completed it, including regarding what is mentioned in paragraph 4, namely regarding the letters or documents of the object of sale and purchase. Even if it has not been resolved, in fact it will be the responsibility of Islamic banks, because Islamic banks sell to their customers.

So thus, the practice of Murabaha scheme financing contracts that have been practiced by Islamic banks, has contradicted the DSN-MUI Fatwa regarding Murabahah, Bank Indonesia Regulation No. 7/46/PBI/2005 concerning Contracts for Collection and Distribution of Funds for Banks Carrying Out Business Activities. Based on Sharia Principles and KHEI, because: (1) buying and selling between suppliers/providers of goods (in this study, developers) and Islamic banks has never happened ; and (2) buying and selling between Islamic banks and their customers also never happened.

With the practice of the Murabahah scheme that has been described by the Researcher mentioned above, basically these things have proven that the

Murabahah financing that has been practiced by Islamic banks is no different from investment credit schemes or consumer loans or mortgage loans (KPR) by banks. conventional.

To be even more valid, the researcher describes the articles in the Example of Standard Murabahah Financing Contracts contained in the Financial Services Authority (OJK) Sharia Banking Product Standards Guidebook.

Section 2

PRINCIPLES OF MURABAHAH FINANCING

The principle of Murabahah financing that takes place between the BANK as the seller (bai ') and the CUSTOMER as the buyer (musytari') is carried out based on sharia provisions and is regulated according to the terms and conditions as follows:

1. *The CUSTOMER requires goods and requests the BANK to provide a Murabahah financing facility for the purchase of goods. In connection with this request, the CUSTOMER is required to submit a Transaction Notification to the BANK through the Murabahah Declaration .*
2. *The BANK is willing to sell Goods to the CUSTOMER by way of representing the CUSTOMER to purchase Goods from the Provider, and based on trust grants the right to the CUSTOMER to act for and on behalf of the CUSTOMER himself, makes sale and purchase documents and receives the goods directly from and from the Supplier, and gives authority to the CUSTOMER to sue the Supplier if the goods received are claimed for ownership by a third party or there are hidden defects.*
3. *Murabahah financing in accordance with the provisions applicable to the BANK regarding Murabahah financing .*
4. *etc.*

In general, the wording of article 2 illustrates that this contract is not or cannot yet be called a "Murabaha", but only in the form of a Memorandum of Understanding (MoU) between the bank and its customer.

In addition, the use of the word "financing" in this article illustrates that this contract is a contract of "providing funds" by the bank to its customers to buy goods (even though the bank is supposed to sell goods to its customers). So that it is no different from credit/debt facilities provided by conventional banks. And that means usury too, because it is an interest-bearing debt.

Article 2 also emphasizes that the Murabahah Agreement is only an MoU, not a sale and purchase agreement between the bank and its customer. It also illustrates that buying and selling between developers and banks has not taken place. So if it is said that this Murabahah Akad is a sale and purchase contract of goods (Murabaha object) between the bank and its customer, then of course this Murabahah Akad becomes invalid (not syar'i), because the bank sells goods it does not own, as the hadith of the Prophet

sallallaahu 'alaihi wa Greetings that have been described above.

Origin 4
MURABAHAH GOODS OR OBJECTS

1. *The BANK hereby provides a Financing facility to the CUSTOMER which will be used to purchase Murabahah Objects with the following specifications: ... etc._*
2. *If the Murabahah object is still in the stage of completion by the Supplier, the parties agree that the financing to be disbursed by the BANK will be carried out in stages according to the process of completing the Murabahah object . The amount of financing to be disbursed by the BANK will be equivalent in real terms to the completed Murabahah object.*

Article 4 uses the sentence: "BANK hereby provides financing facilities to the CUSTOMER which will be used to purchase Murabahah Objects..." Of course this also illustrates that this Murabahah Agreement is a "funding" contract by the bank to its customers to purchase goods (even though Murabaha contract is a sale and purchase contract, so the bank must sell goods to its customers). So that this contract is no different from the credit/debt facilities provided by conventional banks, and that means it is an interest-bearing debt.

Article 7
APPOINTMENT OF THE CUSTOMER AS BANK'S ATTORNEY

1. *BANK with This give power to the CUSTOMER for Act as BANK representative for buy object Murabahah in accordance with specifications , conditions , as well price Which Approved by BANK.*
2. *Before accept object Murabahah from Supplier , CUSTOMER is obligated inspect object Murabahah to quality , condition , selection And specification object murabaha Which received is object Murabahah in accordance with Which has agreed .*
3. *In implementation CUSTOMER's duties as BANK representatives , CUSTOMERS act direct For And on CUSTOMER's own name And take steps Which needed For protect rights and the interests of the BANK and No do or neglect things Which No in accordance with obligation And not quite enough answer the CUSTOMER.*
4. *and so on .*

Article 7 also emphasizes that there has not been any sale and purchase between the developer and the bank, because with this article the bank has just given authority (Wakalah) to its customers to purchase and receive goods (Murabaha objects). This means that this Murabaha contract is only an MoU, not a sale and purchase agreement between the bank and its customer, which is correct. However, if the Murabaha contract is considered a

sale and purchase agreement between the bank and its customer, then it means that the contract is not valid (not syar'i) because the Islamic bank in question is selling goods it does not own.

What is very fatal in this article 7 is the contents of paragraph 3 which reads: In carrying out the duties of the CUSTOMER as the representative of the BANK, the CUSTOMER acts directly for and on behalf of the CUSTOMER himself and takes the necessary steps to protect the rights and interests of the BANK and does not commit or neglecting things that are not in accordance with the obligations and responsibilities of the CUSTOMER. Fatal because as a proxy/representative, the CUSTOMER should only act for and on behalf of the Authorizer/Representative, namely the Bank.

According to Al-Kasani (in Naja, 2010), the sale and purchase of Murabahah can be said to be valid if it fulfills several conditions, one of which is the first sale and purchase agreement (between the Islamic bank and the supplier/supplier) must be valid, if not, then the sale and purchase transaction what the bank does with the customer will be damaged and the contract will be cancelled.

CONCLUSION

From the description above, it can be concluded that the Murabaha financing scheme provided by Islamic banks to their customers has contradicted DSN-MUI Fatwa No. 4/DSN-MUI/IV/2000 concerning Murabahah and violating the provisions of the Compilation of Sharia Economic Law (KHES), particularly Article 119; 120; 465; 466 and Article 477 and are not in accordance with Bank Indonesia Regulation No. 7/46/PBI/2005 concerning Contracts for Collection and Distribution of Funds for Banks Carrying Out Business Activities Based on Sharia Principles, it even contradicts the meaning of the hadith of the Prophet Muhammad Shallallahu 'Alaihi wa Sallam, both in the process and in the contract.

Under these conditions, the Murabahah financing scheme from Islamic banks is no different from the similarities in the process and contract/agreement with investment credit schemes and/or consumer loans extended by conventional banks to their customers.

SUGGESTION

From the results of this study, the researcher provides advice by correctly translating the provisions contained in the DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 regarding the Murabaha, namely by changing the total process and contract of the Murabaha.

First, the customer submits a financing application in the form of land and/or buildings to the bank with certain specifications. Second, the bank and the customer make a written agreement (akad), in which the bank promises to sell the land and buildings they already own, and the customer promises to buy it with a certain additional profit/margin on the cost of purchase. Third, the bank buys land and

buildings from the developer, on behalf of the bank itself, and this sale and purchase must be legal and free of usury. The bank has to buy it from the developer himself, either in cash, or in a deferred manner or partial payment, the payment of which will be determined later. As for the sale and purchase agreement between the bank and the developer, namely the Deed of Agreement for Sale and Purchase of Land and Buildings, plus the Deed of Authorization to Sell, both of which must be notarized. Fourth, after the land and buildings officially become the property of the bank, the bank then offers these assets to customers, and of course these assets must comply with the agreed specifications. Fifth, the bank and the new customer can enter into a sale and purchase contract (Murabaha). In this case, the bank must submit all matters related to the purchase, such as the cost of purchase, the amount of margin, including if the purchase is made in debt. Sixth, if there has been an agreement in the sale and purchase, the Murabahah object is handed over to the customer, and then the customer pays the agreed price of the Murabahah object within a predetermined period.

With the process as mentioned above, in this Murabahah financing scheme, there are at least 5 (five) contracts that must be made, namely:

1. *Preliminary Agreement (may be made under hand) between the bank and its customer regarding the agreement to sell and purchase goods (land and buildings) on the customer's order to the Islamic bank concerned.*
2. *Deed of Sale and Purchase of Land and Buildings (notarized) between the supplier as a seller and an Islamic bank as a buyer, followed by Deed of Power of Attorney to Sell (notarized) namely the power of attorney from the supplier to the bank to sell the land and building.*
3. *Sales and Purchase Deed (made by the Land Deed Making Officer) between the bank and its customer. In this case, even though the bank is acting on the basis of power of attorney, officially the bank is already the owner, it's just that the name of the land title certificate has not been reversed so that the bank still has to act based on the power of attorney from the person whose name is printed on the certificate.*
4. *Murabaha contract (may be underhand or notarized) between the bank and its customer. It is in this deed that all the terms and conditions regarding the financing scheme are stated.*
5. *Deed/Power of Attorney to Install Mortgage Rights (SKMHT: notarized) between Islamic banks and their customers. This deed is to perform a guarantee agreement on the Murabahah object mentioned above. The SKMHT Deed was made as the basis for making a Mortgage Deed (APHT).*

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