

Evaluating Murābahah Contract Practices in BPRS Financing Agreement No. 8854/MBA/11/2010 and Associated Challenges in Islamic Banking

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ABSTRACT

This research aims to analyze the application of the murābahah contract in BPRS financing agreement number 8854/MBA/11/2010 related to the payment period and problems that may arise in BPRS financing practices in Islamic banking. The research method uses a literature study that uses an empirical normative approach, which focuses on the application of normative law to certain legal situations that occur in society. The results showed that the application of the murābahah contract in the BPRS financing agreement Number 8854 / MBA / 11/2010 in the context of the payment period. In the application of the murābahah financing contract, the profit is not more than one-third or one-fifth and the repayment period is not more than three years because if it is more, it will cause ribā because the calculation uses a profit calculation instead of profit sharing as based on the calculation. Second Problems that can occur in murābahah financing. In the practice of murābahah financing, there are various problems that can occur, including non-transparent margins, risks of ownership and storage, problems with the quality of goods, risk of bad financing, uncertainty of market prices, high involvement of third parties and the difficulty of renegotiating and if viewed from various aspects such as sharia aspects, legal aspects, and operational aspects, it is very likely that there will be a failure in the contract.

Keywords: Murabahah Contract, Financing, Islamic Banking.

ABSTRAK

Penelitian ini bertujuan untuk menganalisis penerapan akad murābahah dalam perjanjian pembiayaan BPRS nomor 8854/MBA/11/2010 terkait jangka waktu pembayaran dan permasalahan yang mungkin timbul dalam praktik pembiayaan BPRS di perbankan syariah. Metode penelitian menggunakan studi kepustakaan yang menggunakan pendekatan normatif empiris, yang menitikberatkan pada penerapan hukum normatif terhadap situasi hukum tertentu yang terjadi di masyarakat. Hasil penelitian menunjukkan bahwa penerapan akad murābahah dalam akad pembiayaan BPRS Nomor 8854/MBA/11/2010 dalam konteks jangka waktu pembayaran. Dalam penerapan akad pembiayaan murābahah, keuntungannya tidak lebih dari sepertiga atau seperlima dan jangka waktu pengembaliannya tidak lebih dari tiga tahun karena jika lebih maka akan menimbulkan riba karena perhitungannya menggunakan perhitungan keuntungan. bagi hasil berdasarkan perhitungan. kedua Permasalahan yang dapat terjadi dalam pembiayaan murābahah. Dalam praktik pembiayaan murābahah terdapat berbagai permasalahan yang dapat terjadi antara lain margin yang tidak transparan, risiko kepemilikan dan penyimpanan, permasalahan kualitas barang, risiko pembiayaan buruk, ketidakpastian harga pasar, tingginya keterlibatan pihak ketiga dan sulitnya

melakukan renegotiasi dan jika dilihat dari berbagai aspek seperti aspek syariah, aspek hukum, dan aspek operasional, besar kemungkinan akan terjadi kegagalan dalam akad.

Kata Kunci: Akad Murabahah, Pembiayaan, Perbankan Islam.

INTRODUCTION

The advantage of the Islamic banking system lies in the basis of the system which is based on the sharing of profits and losses and risk sharing. (Trimulato 2021). Essentially, banks are intermediary institutions between savers and investors. With the addition of the word "Islam", the concept of "interest-free banking" emerged as an idea involving banking instruments or operations that avoid the use of interest. (F. Kamal, 2015). Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking states that Sharia Banks are financial institutions that carry out their business activities in accordance with sharia principles. Examples of Islamic banks include (BPRS). In Law No. 10 of 1998 concerning Banking, Article 1 Paragraph (4) explains that Sharia People's Credit Bank is a bank financial institution that can operate both in general and based on sharia principles. (Aulia, 2019).

Sharia financing is present as a solution for individuals who cannot meet their own needs. One form is through *murābahah* financing where a transaction of buying and selling goods occurs by adding the profit that has been agreed between the bank as the seller and the customer as the buyer at the original price (J. Kamal, 2022). Currently, *murābahah* is used as one type of financing product offered by Islamic financial institutions in accordance with the DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 concerning *Murābahah*.

The use of the *murabahah* contract scheme tends to be high, reaching an average of 70%, as seen from the many Islamic banks around the world that adopt it. Some examples include *Bahrain Islamic Bank*, *Bank Islam Malaysia*, *Faysal Islamic Bank*, *Kuwait Finance House*, and various other Islamic banks. (Mughtar, 2021).

In the *murabahah* financing scheme, there are three parties involved, namely the customer as the buyer, the bank as the seller, and the supplier as the provider of goods. This transaction can be done by direct payment or through installment payments. In the context of *murabahah*, the bank as the seller has an obligation to inform customers about the profits or surplus obtained from the purchase and sale transactions. As a buyer, the customer must have an understanding of the amount of profit that will be obtained by the bank from the goods.

However, one of the potential problems in *murabahah* contracts is related to the implementation of payment periods. Profits for Sharia Banks depend on payments made by customers. The longer the payment period, the larger the margin obtained by the bank, and conversely, the shorter the payment period, the less margin will be obtained.

The previous research that has a correlation with this research was conducted by (Afrida, 2016) with the theme of Islamic banking financing analysis, the research method used is qualitative research with a library research approach, while the results of his research are To ensure that the implementation of *murabaha* financing is in accordance with sharia concepts, strict supervision is needed from the Sharia Supervisory Board or the National Sharia Council, so that *murabaha* financing as *prima donna* financing in Islamic banking can be guarded and does not tarnish the image and authority of Islamic banking so that there is no longer the impression that Islamic banks are the same as conventional banks. The similarity between this research and the

previous one is that the previous research both analyzed murabaha financing in Islamic banks and the difference between this research is the point of the case study discussed.

Furthermore, research conducted by (Mughtar, 2021) entitled risk analysis of murabahah contracts in Islamic banking, in this study conducted research with qualitative methods, the results showed that the risks faced by Islamic banks are very diverse and complex in line with the innovations in banking products offered to the public, namely: financing risk, market risk, liquidity risk, operational risk, legal risk, reputation risk, strategic risk, compliance risk, yield risk, and investment risk. Islamic Bank management must pay special attention to all risks that have been identified by preparing steps and mitigation efforts. The equation in this research is in the analysis process and the research subject, but the difference is that this research focuses on case studies that occur in one of the financing in Islamic banks.

Based on the previous discussion, this study aims to discuss the application of murabahah contracts in BPRS financing agreements Number 8854/MBA/11/2010, especially in the context of payment periods and problems that may arise in Islamic banking practices. The results of this research can be used as reference material in conducting contract transactions with the murabahah system by Islamic banking companies and as a reference material for writing theses, theses, and articles in conducting research by students.

METHODS

This research is a literature research that uses an empirical normative approach, which focuses on the application of normative law to certain legal situations that occur in a society (Muhammad Syahrudin, 2022). The type of data used is secondary data. Secondary data is information obtained from pre-existing sources, such as books, research journals, the internet, and other sources. (Beno, 2022). (In this study, the first element used as a source of data in terms of legal materials is Primary Legal Materials, namely Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking, DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 concerning Murābahah, and BPRS Financing Agreement Number: 8854/MBA/11/2010. Second, Secondary Legal Materials, which include research results and scientific works from experts related to the murābahah contract and its problems in Islamic banking practices. Third, Tertiary Legal Materials, namely legal dictionaries and legal encyclopedias. The data collection process is carried out through literature studies by referring to laws and regulations, books, publications, and research results. Furthermore, the data obtained is analyzed descriptively qualitative. And deductive inference.

RESULTS AND DISCUSSION

In various writings, it is explained that murābahah comes from the root word *ribḥu* which means profit. Murābahah can be interpreted as a form of buying and selling transaction in which the trader's capital and the profits to be obtained have been agreed beforehand. According to the dictionary of Sharia Finance and Banking terms issued by the Directorate of Sharia Banking, murābahah is a form of transaction for buying and selling goods. In this transaction, the price set is the cost price plus the margin that has been agreed by the bank and the customer. In the process, banks are obliged to provide information to customers regarding the principal value and the amount of margin (Stiawan & Agnesta, 2021).

In essence, the Qur'an talks mainly about the topic of buying and selling (al-bai'). Therefore, when establishing the legal basis for the practice of *murābahah*, scholars associate this practice with the transaction of buying and selling. According to Imam Shafi'i and Imam Malik, *murābahah* is considered permissible. For example, Imam Malik refers to the practice of the inhabitants of Medina who have performed *murābahah*, which is considered similar to buying and selling. Other scholars of the Ḥanafīyah madhhab, such as Marghinani, also acknowledged the validity of *murābahah* by outlining the crucial conditions for the validity of buying and selling in *murābahah*. In *murabahah* financing, there are several main elements. First, there are *ba'i* or sellers who are individuals who own merchandise. Second, a *polytheist* or buyer is a person who buys goods owned by the seller. Third, *mabi'* or goods are objects that are traded. Fourth, *tsaman* or selling price is a standard used to determine the value of goods. Finally, *sighat* is an agreement regulated in a transaction contract. (Afrida, 2016)

The conditions for *murābahah* financing: (Afrida 2016): First, the parties involved must have legal knowledge and agree voluntarily without any pressure or coercion. Second, the goods sold must be legal, useful, can be handed over to the buyer, and fully owned by the contracting party. If the goods move, the buyer can control them after the contract is completed. Third, the details of the agreement must be clear, including the identity of the contracting party, the description of the goods in accordance with the agreed price, and the ownership of the goods by the customer indefinitely. Fourth, the selling price consists of the cost price plus the margin, cannot be changed during the agreement, and the payment system and payment period according to mutual agreement.

Based on the provisions contained in Article 1 Paragraph (13) of Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking, the contract refers to an agreement between a Sharia Bank or Sharia Business Unit and other parties involving the rights and obligations of the parties in accordance with sharia principles. From an Islamic perspective, an agreement is an agreement that occurs when there is an attachment between the parties involved in a cooperation or transaction. (Hana, 2022).

Financing according to Article 1 point 25 of Law of the Republic of Indonesia Number 21 of 2008 related to Sharia Banking can be explained as the acquisition of funds or equivalent bills that involve profit-sharing transactions such as *muḍārabah* and *musyarakah*, as well as involving leasing in the form of *ijarah* or hire purchase through *ijarah muntahiya bittamlik*, sales through receivables *murabahah*, *salam*, and *istisna*. The financing concept also includes borrowing and lending through *qardh* receivables, as well as leasing services in the form of *ijarah* for multi-service transactions. The implementation of sharia financing is regulated through an agreement or contract as a basis, which in essence is an agreement between the parties involving rights and obligations related to the provision of funds to meet the needs or desires of customers.

The elements in financing, namely (Kasmir & Lainnya, 2014): *First*, trust, which is the belief from the bank to the customer that he will be paid for financing in the form of goods or services; *Second*, the agreement is the agreement of the parties contained in a written agreement containing the rights and obligations of the parties; *Third*, the time period, namely the time for repayment of financing that has been set; and *Fourth*, the risk is the non-payment of financing that has been determined by the customer, either intentionally or unintentionally due to the occurrence of a disaster nature or disaster.

1. Contract Substance

Murābahah contract for the purchase of land for Rp. 125,000,000 as the basic price. The profit from the land price that is paid in installments reaches Rp. 37,600,000. Furthermore, the total price of land in installments is set at Rp. 162,600,000. This financing is provided with a period of 63 months, including a grace period of 3 months after the financing agreement is signed.

To ensure the repayment of financing facilities to the financing recipients, the customer commits and guarantees to the Bank by declaring ownership of a piece of yard land, along with what grows and stands on it, with a Certificate of Ownership no. 7546 Sariharjo village Survey Letter dated 10.11.2005 no.04354/2005, has an area of 150m², and with an estimated provisional auction price of Rp. 120,000,000.

Based on the contractual agreement, the object of the guarantee officially belongs to the Bank, but remains under the control of the customer as the borrower, and may only be used in accordance with its purpose and nature. The customer needs to take good care of the object of the collateral, and take all necessary actions to maintain and repair the object of the guarantee at its own cost and liability. Customers must also pay taxes and other related fees. If the collateral object is damaged or can no longer be used, the customer is responsible for replacing the damaged part.

2. BPRS Financing Agreement Number: 8854/MBA/11/2010

Based on the contract agreement, the pledged object officially becomes the property of the Bank, but remains under the control of the customer as a user-borrower, and may only be used in accordance with its purpose and nature. The customer needs to take good care of the pledged object, and take all necessary measures to maintain and repair the pledged object at his own expense and responsibility. The customer shall also pay taxes and other related fees. If the collateral object is damaged or can no longer be used, the customer is responsible for replacing the damaged part.

Murābahah financing in Islamic Banks is a financing agreement that follows the principle of sale and purchase. This product is a general application of a sale and purchase agreement, where murabaha can be done with or without an order. In other words, the bank purchases the goods after receiving an order from the customer, which can be binding or non-binding to repurchase the ordered goods. Although these orders are generally considered binding, cancellation of goods already ordered is very rare. In the practice of murabahah, the bank has the right to ask for a deposit (Hamish ghadiyah) at the time of the agreement as a sign of the buyer's seriousness. Payment for a murabahah contract can be made in cash or by instalments. Based on the source of funds used in its implementation, murabahah financing can be divided into three main groups. First, murabaha financing based on Unrestricted Investment Account. Second, murabaha financing based on Restricted Investment Account funds. And third,

murabaha financing supported by capital from the Bank. In this study, attention is focussed on the category of murabaha financing that receives capital support from the bank.. (Karim, 2011).

In terms of risk management, this contract has similar risk characteristics to interest-based contracts in the risk management process. Financing with a long repayment period, for example above 10 years, has the potential to reduce the profit rate for the bank. The determination of the term is due to the fact that if there is a decline or slowdown in economic conditions, Islamic banks cannot increase the financing margin as conventional banks do using the floating concept. The agreement on the transaction price cannot be changed or increased (Mughtar, 2021) Long-term financing that is not accompanied by compensation can result in bad faith from customers to delay payments (moral hazard). (J. Kamal, 2022).

The determination of the financing period is due to the pricing aspect. The selling price must be fair and efficient. Pricing in the murābahah contract does not make interest rates a reference. Although the determination of the high margin is in anticipation of rising interest rates in the market. However, this has an impact on high inflation, so the price setting is based on the trading mechanism carried out by the Prophet. In setting prices, the Prophet did it transparently by explaining the purchase price, costs incurred and the desired profit. (J. Kamal, 2022). As revealed by Abdul Manan in his book *Islamic Economic: Theory and Practice*, the need for caution in setting profits in murābahah transactions in order to avoid selling at prices that exceed the initial cost. Excessive profits make it usury which is prohibited in Islam. (Heru, 2021).

Afzalurrahman, in his article "Muhammad as a Trader," suggests that the Prophet's trading success can be found in his integrity and fairness in dealing with customers. Profit in the buying and selling process is calculated based on the cost of goods, understanding of risk, and profit margin. Wahbah Az-Zuhaili, in his work "Fiqh Islam Wa Adillatuhu," highlights that to avoid usury, profits should not exceed one-third to one-fifth of the transaction. (Az-Zuhaili, 2010). Profit is the surplus earned after deducting from income all costs and capital expenditures, including taxes, employee wages, postage, and other expenses. The principle of profit in Islam based on the Qur'an is emphasised on the element of *riḍā sama riḍā*, avoiding the elements of *baṭil* (garar and *tadlīs*), and *ribā*. Yûsuf Qarḍāwī in his book *Min Hadyi ul-Islam I 'aknul al-mu'asirruh*, argues that there is no text that sets a limit on profit, whether it is one-fold or two-fold, the issue of profit is left to the discretion of the merchant by promoting the values of justice and morals as long as *muamalah* is carried out in a halal manner.

Based on this with the subject matter of this research study on a rational period of time so that there are signs of assessment of the period is not too long that will have implications for *ribā* and can occur by looking at the financial situation of the customer as a financing applicant..

- a. Purchased land with a cost price of Rp. 125,000,000. Margin keuntungan berdasarkan penghitungan bank adalah Rp. 37.600.000.
- b. Determined land price in instalments of Rp. 162,600,000 for 60 months
- c. Then the customer pays every month amounting to: Rp 2,710,000 for 60 months
- d. Payment of the contract every 24th of the current month. And if it is late, a late administration fine of IDR 500,000 will be imposed.

- e. The customer as a payment will experience financial ups and downs that are very possible to delay payments as in the contract. Consequently, the customer is obliged to pay the delay as determined by IDR 500,000.
- f. If it is assumed that during 60 months, the customer has 35 late monthly payments. This means that the late value is Rp 500,000 x 35 = Rp 17,500,000.
- g. Then until the final payment deadline the customer pays Rp.162,600,000 + Rp 17,500,000 = Rp 180,100,000. Far from the agreement in the contract due to the customer's financial situation
- h. When more than 60 months, the increase in funds due to customer finances will increase and will make profits many times over.

3. Problematics of Murābahah Agreements in Islamic Banking Practice

Financing systems that adopt murābahah practices do not always generate profits and carry certain risks for all parties involved. In the shariah banking environment, murābahah is often one of the most commonly used contract types. In general, murābahah involves the sale and purchase of goods with the addition of a margin as profit for the bank. Currently, most financing is done through murābahah contracts, especially in the consumptive sector in Indonesia, such as financing motor vehicles, house purchases, and other consumer needs. However, studies show that murābahah has several problems or challenges.

Murābahah has several potential risks and problems that need to be considered. Some of these problems include:

a. Non-transparent Margins

Some murabaha transactions may involve margins that are not transparent or difficult for the buying party to understand. This may lead to uncertainty regarding the amount of the margin and the fairness of the transaction.

b. Ownership and Storage Risks

The bank as the temporary owner of the goods in a Murābahah transaction may face ownership and storage risks. This risk may arise if the goods are damaged or lost during the period of temporary ownership by the bank.

c. Goods Quality Issues

The quality of goods acquired through Murābahah transactions may become an issue. The purchasing party must ensure that the goods he buys are in line with his expectations, as there is a possibility of discrepancies between expectations and reality.

d. Risk of Bad Debt Financing

As is the case in other types of financing, the risk of bad debts remains. If the purchasing party has difficulty paying instalments or paying off the transaction, the bank may face the risk of bad financing.

e. Market Price Uncertainty

The price of goods obtained through murabaha transactions can be affected by market fluctuations. If the market price drops after the transaction is made, the bank may face losses.

f. High Involvement of Third Parties

Murabahah transactions can involve many parties, including agents, which can increase complexity and operational risk.

g. Renegotiation Difficulties

In some cases, when the buying party faces financial difficulties, renegotiating the terms of the Murābahah transaction can be difficult, thereby increasing the risk of bad debts.

It is important for parties involved in a Murābahah transaction to fully understand the terms of the contract, including the profit margin, and conduct a thorough risk analysis before engaging in the transaction. In addition, good regulation and supervision are also needed to mitigate risks that may arise such as: Aspek syari'ah

- 1) Murābahah can turn into a tawarruq contract which results in no transfer of ownership from the bank to the customer.
- 2) There is an increase in the value of profit based on non-cash financing or value of time that is not in accordance with shariah values.
- 3) Can turn into a loan and borrowing contract on the object if the murabahah financing object is not given.
- 4) Delaying the schedule or transferring payment obligations to customers who are experiencing financial difficulties, which is considered similar to the practice of usury because of the additional cost burden as compensation for time delays.
- 5) There is a deduction for the customer if paying off the financing before the agreed period.

There are several aspects that need to be considered such as

1. Legal aspects
 - a. There is an action clause that makes the customer's position weak, such as negative covenant.
 - b. There is a lien (APHT) on the bank's profit margin which can become ribā.
 - c. There is legal pluralism in relation to collateral aspects.
2. Operational aspects
 - a. The bank, which functions as a liaison institution for funds, cannot be a direct seller in murābahah financing.
 - b. The non-application of VAT makes murābahah equated with debt and credit.
 - c. When the customer lies about not having the ability to complete the payment or moral hazard, it will harm the Bank.
 - d. There is a claim from the customer stating that the customer owes to a third party not to the bank.

CONCLUSIONS

Based on the findings produced by researchers, a conclusion can be drawn:

1. The application of the murābahah contract in BPRS financing agreement Number 8854/MBA/11/2010 in the context of the payment period.

In the application of the murābahah financing contract to take a profit of no more than one-third or one-fifth and a repayment period of no more than three years because if more will lead to ribā due to the calculation using the calculation of profit not profit sharing as based on the calculation.

2. Problems that can occur in murābahah financing.

In practicing murābahah financing, there are various problems that can occur, including non-transparent margins, ownership and storage risks, goods quality problems, risk of bad debts, uncertainty of market prices, high involvement of third parties and difficulty in renegotiating and if seen from various aspects such as sharia aspects, legal aspects, and operational aspects, it is very possible that failure in the contract can occur, therefore a deeper understanding is needed before making a contract.

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