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**A Comparative Analysis of DSN-MUI Fatwas Regarding *Murabahah* Contract and the Real Context Application (A study at Islamic Banking in Aceh)**

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**Abstract:** The National Sharia Council-Indonesian Ulama Council (DSN-MUI) has issued 11 fatwas (a formal ruling on a point of Islamic law) related to *murabahah* for parties in economic transactions. However, in the initial study, several indications of the dissonance between the clauses in the fatwa and the practice of Islamic banking were found. This study aims to analyze the application of *murabahah* contracts in Islamic banking in Aceh. Several Fatwas declared by the National Sharia Council - Indonesian Ulama Council (DSN-MUI) that are related to *murabahah* were used as an analytical tool to assess the shariah value of the contract in financing practice at Islamic banking in Aceh. This study used a descriptive qualitative method, particularly, a critical study approach. Data were collected using: 1) interviews with bank employees and customers, 2) participant observation in which researchers were directly involved in the process of financing application at several Islamic banks, and 3) documentation studies of resources related to the fatwas. The results showed that the practice of *murabahah* financing conducted by Islamic banking in Aceh was not fully in accordance with the fatwas stipulated by the DSN-MUI. The results of the analysis showed that the discrepancy lies in the following matters such as ownership of goods, 'coercion' in the use of *murabahah* contracts, and the inappropriate use of '*wakalah*' or contract assistant. The study also revealed that the practice of *murabahah* in this method has both positive and negative economic implications for banking customers and the banks, especially with regards to profits, calculations of credit ceiling, and customers' image and trust.

**Keywords:** DSN-MUI Fatwas, *Murabahah* financing, Sharia Bank

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**Abstrak:** *Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI) telah mengeluarkan 11 fatwa yang berkaitan dengan murabahah untuk para pihak dalam transaksi ekonomi. Akan tetapi, dalam kajian awal ditemukan beberapa indikasi ketidaksinkronan antara isi fatwa dengan praktik yang dilakukan perbankan syariah. Penelitian ini bertujuan untuk menganalisis penerapan akad murabahah dalam perbankan syariah di Aceh. Beberapa Fatwa Dewan Syariah Nasional – Majelis Ulama Indonesia (DSN-MUI) yang terkait murabahah dijadikan sebagai alat analisis untuk menilai kesyariahan penerapan akad tersebut dalam praktik pembiayaan pada perbankan syariah di Aceh. Penelitian ini menggunakan metode kualitatif deskriptif dengan pendekatan studi kritis. Data dikumpulkan melalui: 1) wawancara dengan personalia bank dan nasabah, 2) participant observation dimana peneliti terlibat langsung dalam proses pengambilan pembiayaan di beberapa bank syariah, dan 3) studi dokumentasi terhadap fatwa-fatwa terkait. Hasil penelitian menunjukkan bahwa praktik pembiayaan murabahah yang dijalankan perbankan syariah di Aceh belum sepenuhnya sesuai fatwa yang ditetapkan DSN-MUI. Hasil analisis menunjukkan bahwa letak ketidaksesuaian berada pada hal-hal yang berkaitan dengan kepemilikan barang, ‘pemaksaan’ penggunaan akad murabahah, dan juga penggunaan akad pembantu ‘wakalah’ yang kurang tepat. Hasil kajian juga menunjukkan bahwa praktik murabahah dengan pola tersebut mempunyai implikasi ekonomi yang positif dan negatif bagi nasabah dan bank, terutama berkaitan dengan keuntungan, kalkulasi perhitungan plafon, citra dan kepercayaan nasabah.*

**Kata Kunci:** *Fatwa DSN-MUI, Pembiayaan Murabahah, Bank Syariah*

## **Introduction**

Similar to other banking institutions in general, one of the functions of Islamic banks is to channel funds in the form of financing practice from parties with surplus incomes to those with deficit incomes. The distribution of financing in Islamic banking uses various contracts, one of which is *murabahah*. Financing with a *murabahah* contract is basically a sale and purchase transaction of an item at the cost of the goods plus a margin agreed upon by the involving parties, which in this case the seller informs the purchaser about the total expenditure (acquisition cost) in advance.<sup>1</sup>

With the development of Islamic banking, the use of *murabahah* contracts is also growing rapidly. According to the 2019 Islamic Financial Development Report of the Financial Services Authority (OJK), the

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<sup>1</sup> Rajesh K Aggarwal and Tarik Yousef, "Islamic Banks and Investment Financing," *Journal of Money, Credit and Banking* 32, no. 1 (2000).

financing practice in Islamic banking is still dominated by *murabahah* contracts. As of December 2019, financing with *murabahah* contracts was recorded at 46.04% of the total percentage of Islamic financing.<sup>2</sup>

The practice of *murabahah* in Islamic banking financing is still dominant because of the ease in the implementation.<sup>3</sup> With this contract, the bank's profits can be predicted at the beginning, making it easier to make financial planning and allowing the banks to record transactions on an accrual basis, that is recognizing profits even before payment occurs.<sup>4</sup> In addition, the risk of financing for this contract is relatively low.<sup>5</sup> The use of other contracts might pose a high risk for banks in the midst of the moral decadence of today's society. According to Ascarya, financing with a *murabahah* contract is a type of financing that is only used for the transition period of Islamic banking from the interest system,<sup>6</sup> but after 3 decades of establishing Islamic banks in Indonesia, this contract is still a mainstay in the financing practice in Islamic banking.

To ensure the sharia value in the practice of this contract in Islamic financing, the National Sharia Council - Indonesian Ulema Council (DSN-MUI) has issued several fatwas concerning *murabahah* to guide participants who enter into *murabahah* contracts in economic transactions, namely Fatwa No. 04/2000 concerning *murabahah*, Fatwa No. 13/2000 concerning Advances in *Mubaraha*, Fatwa No. 16/2000 concerning *Murabahah* Granting Discount, Fatwa No. 23/2002 concerning *Murābahah* Deduction on Repayments, Fatwa No. 46/2005 concerning *Murabahah* Deduction on Payments, Fatwa No. 47/2005 concerning *Murabahah* Debt Settlements for Customers in Financial Hardship, Fatwa No. 48/2005 concerning *Murabahah* Rescheduling Payments, Fatwa No. 49/2005 concerning *Murabahah* Contract Conversion, Fatwa No. 84/2012 concerning Profit Recognition Method of Islamic Financial Institutions, Fatwa No. 90/2013 concerning The Transfer of *Murabahah* Financing Between Islamic Financial Institutions, Fatwa No. 111/2017 concerning the *Murabahah* Sale And

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<sup>2</sup> OJK, *Laporan Perkembangan Keuangan Syariah* (Jakarta: Otoritas Jasa Keuangan, 2019).

<sup>3</sup> Azharsyah Ibrahim and Arinal Rahmati, "Analisis Solutif Penyelesaian Pembiayaan Bermasalah Di Bank Syariah: Kajian Pada Produk *Murabahah* Di Bank Muamalat Indonesia Banda Aceh," *IQTISHADIA (Jurnal Kajian Ekonomi dan Bisnis Islam)* 10, no. 1 (2017).

<sup>4</sup> Azharsyah Ibrahim and Fitria, "Implikasi Penetapan Margin Keuntungan Pada Pembiayaan *Murabahah* (Suatu Studi Dari Perspektif Islam Pada Baitul Qiradh Amanah)," *Share: Jurnal Ekonomi dan Keuangan Islam* 1, no. 2 (2012).

<sup>5</sup> Uswatun Hasanah and Azharsyah Ibrahim, "Implikasi Perubahan Kebijakan Pola Pelunasan Pembiayaan *Murabahah* Pada Pt. Bank Aceh Syariah Capem Sigli," *ibid.* 2, no. 1 (2013).

<sup>6</sup> Ascarya, *Akad & Produk Bank Syariah* (Jakarta: PT Raja Grafindo Persada, 2007).

Purchase Contract.<sup>7</sup> These Fatwas from DSN-MUI are the answers or explanation from ulamas regarding a religious issue and is generally approved by members of the House of Representatives in the division meeting. The determination of fatwas was carried out collectively by an institution called the Fatwa Commission. The stipulation of the fatwas is based on the Al-Quran, Hadith, *Ijma* ', *Qiyas* and other conclusive arguments, such as: *Istihsan*, *Maslahah Mursalah* and *Sadd azzari'ah*.<sup>8</sup>

In the DSN-MUI Fatwa No. 04 of 2000, it is explained that banks and customers must carry out *murabahah* contracts that are free of usury and the goods being traded are not prohibited by Islamic sharia. In addition, the bank finances only part or all of the purchase price of goods which qualifications have been agreed upon and the bank must submit all matters relating to the purchase, for example if the purchase is made on debt.<sup>9</sup> Meanwhile, Fatwa No. 111 of 2000 states that the sale and purchase within *murabahah* are performed on the basis that the goods being traded are already owned by the seller at the time when they are offered to potential buyers.<sup>10</sup>

However, the researcher's initial study shows some indications of incompatibility between the fatwa and the implementation of *murabahah* contracts on Islamic banking financing in Aceh. One of them is the requirement for *milkiyah* (ownership of goods) that occurs in the form of a *murabahah bil wakalah* contract, that the bank represents the customer to buy the expected goods. In the real practice, the bank settles the *murabahah* contract with the customer in advance, and during the contract processing time, there is no handover of goods from the bank to the customer, which fundamentally, the bank does not own the goods. In the process, the bank loans a certain amount of money to the customer when the *murabahah* contract is completed to buy the desired items. In the following, the bank no longer confirms whether the customer actually make the purchase or not. The delivery of money (not goods) to customers has consequences for the customer's feeling that they do not buy goods at Islamic banks, but only borrows a certain amount of money as commonly practiced in conventional banks.

On the other hand, Fatwa No. 4/2000 and 111/2017 indicate the necessity of having the material objects in the practice of buying and selling

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<sup>7</sup> DSN-MUI, "Fatwa," <https://dsnemui.or.id/kategori/fatwa/?s=murahabah>.

<sup>8</sup> Heri Firmansyah, "Qawaid Fiqhiyyah Dalam Fatwa Majelis Ulama Indonesia," *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 6, no. 2 (2019).

<sup>9</sup> DSN-MUI, "Fatwa No. 04/Dsn-Mui/Iv/2000 Concerning *Murabaha*," (Jakarta: DSN-MUI, 2000).

<sup>10</sup> "Fatwa Dsn No. 111/Dsn-Mui/Ix/2017 concerning *Murabaha* Sales And Purchase Contract," (Jakarta: DSN-MUI, 2017).

with *murabahah* contracts. Practically, Islamic banks are like 'forcing' *murabahah* contracts for various types of financing proposed by customers. For example, the use of a *murabahah* contract in financing with the aim of renovating a house is not appropriate with this contract because the requirement of *milkiyah* (ownership of goods) and *ra'sulmāl* (capital) are noticeably fulfilled. Such practice should be included in the type of parallel *isthisna'* contract. The same result was also found in several other studies, such as Muslina,<sup>11</sup> Sarah Nadia, dkk.,<sup>12</sup> Rizqa Fadhilah,<sup>13</sup> Hulam dan Azani,<sup>14</sup> dan Faozah.<sup>15</sup>

In another case, in calculating profit (margin), Islamic banking involves inflation in determining its profit (margin). Whereas in sharia law, the prospective inflation rate is still an uncertainty. Something that is undetermined is a form of *gharar*.<sup>16</sup> The method of determining margin in Islamic banking is based on interest rates. This is settled to anticipate inflation that causes losses, but in the present situation, high and low interest rates has no effect on the determined margin. Meanwhile Islamic banks still consider that inflation will continue to occur, so they set a larger margin than the projection.<sup>17</sup> In recognition of profits, Islamic banks generally determine the number of installments using the proportional method, but the recognition of profits is carried out using the annuity method in which the bank distributes the principal installments and the margin proportionally by taking the proportion of the margin first which is higher than the principal debt.

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<sup>11</sup> Muslina, "Sistem Pelunasan Pembiayaan Murabahah Pada Pt Bank Aceh Syariah (Analisis Perlakuan Akuntansi Dan Perspektif Nasabah)" (Thesis, UIN Ar-Raniry Banda Aceh, 2017).

<sup>12</sup> Sarah Nadia, Azharsyah Ibrahim, and Jalilah Jalilah, "Analisis Hambatan Pertumbuhan Perbankan Syariah Di Indonesia (Kajian Terhadap Perbankan Syariah Di Aceh)," *JIHBIZ: Global Journal of Islamic Banking and Finance*. 1, no. 2 (2021).

<sup>13</sup> Rizqa Fadhila, "Analisis Komparatif Pembiayaan Murabahah Dengan Fatwa Dsn-Mui No. 04 Tahun 2000 Tentang Murabahah (Studi Terhadap Dampak Bagi Bank Dan Nasabah Pada Bni Syariah Banda Aceh)" (UIN Ar-Raniry Banda Aceh, 2019).

<sup>14</sup> Taufiqul Hulam and Muhammad Azani, "Penjadwalan Kembali (Rescheduling) Tagihan Murabahah Di Bank Rakyat Indonesia Syariah (Bris) Kota Pekanbaru Berdasarkan Hukum Islam," *Jurnal Perspektif Hukum Islam* 16, no. 1 (2016).

<sup>15</sup> Ummi Faozah, "Analisis Penanganan Pembiayaan Bermasalah Pada Akad Murabahah (Studi Kasus Pada Kjks Bmt Amanah Ummah Kc. Karah Agung Surabaya)" (paper presented at the GLOBAL, 2015).

<sup>16</sup> Dusuki Asyraf Wajdi and Abdulazeem Abozaid, "A Critical Appraisal on the Challenges of Realizing Maqasid Al-Shari'ah in Islamic Banking and Finance," *IJUM Journal of Economics and Management* 15 (2008).

<sup>17</sup> Zainul Arifin, *Dasar-Dasar Manajemen Bank Syariah* (Tangerang: Pustaka Alvabet, 2009).

Another phenomenon in Islamic banking is that the repayment of *murabahah* financing installments is not always in accordance with the agreement. Sometimes customers return the money before the due date because they have been able to pay off all the remaining loan of *murabahah* financing or they might be motivated by the intention to make a new contract at the same bank or switch to another bank. In this case, several previous studies show that Islamic banks usually provide deductions on the selling price (total remaining installments) of *murabahah* financing, the amount of which is relative according to the policies of each banking institution.<sup>18</sup> However, customers generally feel burdened, and they file complains about this policy by assuming that the bank imposes a number of penalties for the early repayment.

In addition, there are also customers who fulfill their obligations behind the schedule because of a financial difficulty or it could be due to negligence. In this case, Islamic banks usually provide relief by waiving fines. Islamic banks formulate a policy to reschedule the financing by reducing the number of installments that have been paid by customers without taking into account the remaining bills before rescheduling the financing, so that the bills become larger. The initial study found that the policy was not in accordance with the fatwa stipulated by the DSN.<sup>19</sup>

Not to underestimate the role of the Sharia Supervisory Board (DPS) in every aspect of sharia bank, the phenomena as described above need further investigations. Therefore, this study aims to analyze the practice of financing using *murabahah* contracts and compare it with various related fatwas. In addition, this study will also describe the impact of implementing this contract on banks and customers.

To achieve these goals, the researchers collected data in threefold, namely: 1) interviews with bank employees and customers, 2) participant

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<sup>18</sup> Aam Slamet Rusydiana and Yulizar Djamaluddin Sanrego, "Measuring the Performance of Islamic Banking in Indonesia: An Application of Maslahah-Efficiency Quadrant (Meq)," *Journal of Islamic Monetary Economics and Finance* 3 (2018); Agus Widarjono, "Maqasid Sharia Index, Banking Risk and Performance Cases in Indonesian Islamic Banks," *Asian Economic and Financial Review* 8, no. 9 (2018); Helmi, "Kajian Pelaksanaan Pembiayaan Murabahah Pada Bank Syariah Jalan Demang Lembar Daun Palembang," *Jurnal Adminika* 1, no. 2 (2015); Apriliani Fajrin, "Tinjauan Hukum Islam Terhadap Biaya Administrasi Pada Pelunasan Angsuran Pembiayaan Murabahah Produk Kpr Sebelum Jatuh Tempo Studi Kasus Pada Btn Syariah Kantor Cabang Surabaya" (UIN Sunan Ampel, 2014); Yenti Afrida, "Aplikasi Penetapan Diskon Dalam Pelunasan Murabahah Pada Perbankan Syariah," *Jurnal Publikasi Mizani* 25, no. 1 (2015); Zulia Hanum, "Analisis Penerapan Transaksi Murabahah Pada Pt. Bank Pembiayaan Rakyat (Bpr) Syariah Gebu Prima Medan," *Jurnal Ekonomi dan Studi Pembangunan* 14, no. 1 (2014).

<sup>19</sup> Hulam and Azani.

observation in which researchers were directly involved in the process of applying for financing at several Islamic banks, and 3) documentation studies of fatwas regarding *mubaraha*. The data will then be analyzed using descriptive qualitative methods, particularly, a critical study approach by which the researcher criticizes the practice of financing, using several DSN-MUI fatwas related to *murabahah* as the comparative indicators. The investigation takes place in Banda Aceh, where the main branch office of the Islamic bank is located. The research location was conducted at one local Islamic bank, Bank Aceh, and national Islamic banks (Bank Syariah Mandiri, Bank BNI Syariah, and Bank BRI Syariah). The three national Islamic Banks were later merged into Bank Sharia Indonesia.

### **The concept of *Murabahah* in Islamic Law**

*Murabahah* originates from an Arabic word *rābaḥa* (رابع), rooted from word *rabaḥa* (ربح) which means “addition” (الزيادة). A more comprehensive definition regarding the word *murābahah* was delivered by Wahbah Az-Zuhaili as follows:

البيع بمثل الثمن الأول مع زيادة ربح

*Means: sell and purchase with the initial price plus profit*<sup>20</sup>

This definition provides a clear picture of the purpose of the addition in the *murabahah* contract, namely the profit taken from the sale and purchase which increases the selling price of the goods. To clarify the concept of a *murabahah* contract, the followings are the perspectives of the scholars regarding the *murabahah* contract:

- a. According to Hanafi scholars, what is meant by *murabahah* is to transfer ownership of goods purchased from the first party, to the second or another party using the first price supplemented by additional profits.<sup>21</sup>
- b. According to Malikiyah scholars, *murabahah* is the sale and purchase of goods at a purchase price that has been increased with an extra cost agreed by the seller and the buyer.<sup>22</sup>
- c. According to the scholars of Syafi'iyah, *murabahah* is defined as buying and selling at the original price, or equivalent to it, supplemented by a profit on each part.<sup>23</sup>

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<sup>20</sup> Wahbah al-Zuhaili, "Al-Fiqh Al-Islami Wa 'Adillatuh (the Islamic Fiqh and Its Justices)," (Damascus: Dar al-Fikr, 1989).

<sup>21</sup> M. Sayyid Sabiq, *Fiqh Sunnah*, trans. Cet. III Terj. Mujahidin Muhayan, vol. 5 (Jakarta: Pena Pundi Aksara, 2011).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

- d. According to Sayyid Sabiq, *murabahah* is a sale and purchase contract with the condition that the buyer clearly knows the price of the goods and the specified profit.<sup>24</sup>

In sum, it can be concluded that the *murabahah* contract is a sale and purchase contract between the seller and the buyer, where the seller declares the total price and profit (margin) according to mutual agreement after the seller declares the purchase cost to the buyer.<sup>25</sup>

*Murabahah* contracts do not have a legal basis that directly discusses the context of the transaction, so the permissibility of this transaction is based on the trade regulations. The following describes the legal foundation for the *murabahah* contract:

1. God said in the Qur'an. An-Nisa 4:29:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ...

*"O Ye who believe! devour not your substance among yourselves unlawfully, but let it be a trading among you by mutual agreement..."*

2. God said in the Qur'an al-Baqarah 2:275:

...وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا...

*"...and Allah has made trading lawful and forbidden usury..."*

3. God said in the Qur'an al-Maidah 5:1:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ...

*"O you who have believed, fulfill [all] contracts ...."*

4. God said in the Qur'an al-Baqarah 2:280:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ...

*"And if someone is in hardship, then (let there be) postponement until (a time of) ease. ..."*

5. Hadith Prophet Muhammad SAW:

*From Abu Sa'id Al-Khudri, Allah's Messenger said: 'Indeed, the selling process should be conducted based on consensual agreement.'* (Hadith Narrated by Al-Baihaqi dan Ibnu Majah, and is considered valid by Ibnu Hibban).

6. Hadith Prophet Muhammad SAW:

*From Shuhaib, Allah's Messenger said: "There are three things in which the blessing found inside: do trading firmly, muqaradhan (mudharabah), and blend flour with butter for household needs, not for sale".* (Hadith Narrated by Ibnu Majah).

7. Hadith Prophet Muhammad SAW:

*From 'Amr bin 'Auf, Allah's Messenger said: "Reconciliation is permissible*

<sup>24</sup> Ibid.

<sup>25</sup> Ibnu Rusyd, *Bidayatul Mujtahid Wa Nihayatul Muqtashid* (Beirut: Dar al- Kutub Al-Ilmiyah, tt).



*between Muslims, except one which makes unlawful something which is lawful, or makes lawful something which is unlawful; and Muslims must abide by their conditions (which they have made), except for a condition which makes unlawful something which is lawful or makes lawful something which is unlawful.*" (Hadith Narrated by Tirmizi)

8. Hadith Prophet Muhammad SAW:

*From Amar bin Al-Sharid, Allah's Messenger said: "Delay of payment on the part of one who is capable of paying making payment exposes him to humiliation and chastisement."* (Hadith Narrated by Nasa'i, Abu Dawud, Ibu Majah, dan Ahmad)

9. Hadith Prophet Muhammad SAW:

*From Zaid bin Aslam, "Prophet Muhammad SAW was asked about 'urban (advance) in a transaction, then he permit it."* (Hadith Narrated by `Abd al-Raziq)

10. Rules of Fiqh:

*"Basically, all forms of muamalah can be conducted unless there is a proposition that forbids it."*

*Murabahah* is a form of trading agreement that is not much different from what has commonly been practiced.<sup>26</sup> Therefore, this trade contract follows the general pillars and requirements that apply to trading agreement in general, which are a statement to bind the involved oneself (*sighat al-'aqd*), the parties performing the contract (*al-muta'aqadain*) and the object to be agreed upon (*al-ma'qud 'alaihi*).<sup>27</sup> The statement to bind oneself is usually called the *ijab qabul*, which is a statement of agreement between the seller and the buyer to make a trade contract based on the *murābaha* system.<sup>28</sup> The implication of the *ijab qabul* statement in a *murābaha* contract is mutual acceptance in doing buying and selling transactions. And this consent is the main and very important requirement, as it is not even valid to carry out a contract, if one of the parties feels compelled.<sup>29</sup>

Similar to *sighat al-'aqad*, people who conduct the trade contract must be mentally healthy, mature (come of age) and liberated. Certain conditions also apply to the object of the trade contract, the object must be defined (not concealed) and be owned by the seller. Clarity of specification of the trading object is mandatory because it establish the honesty and willingness of both

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<sup>26</sup> M. Syafi'i Antonio, *Bank Syariah Dari Teori Ke Praktik* (Jakarta: Gema Insani Press, 2001).

<sup>27</sup> Nasrun Haroen, *Fiqh Muamalah* (Jakarta: Gaya Media Pratama, 2007).

<sup>28</sup> Adiwрман A Karim, *Bank Islam, Analisis Fiqih Dan Keuangan*, third edition. (Jakarta: PT Raja Grafindo Persada, 2008).

<sup>29</sup> Yusuf al-Qaradhawi, *Al-Qawaid Al-Hakimah Li Fiqh Al-Mu'amalat* (Kairo: Dar al-Syuruq, 2010).

parties. In addition, *murabahah* is also bound by the general terms of trading. It involves characteristics that can protect parties from an unspecified goods with potential defects, unclear prices, intimidation, manipulation, disadvantages, and other circumstances that can damage the contract.<sup>30</sup> If these conditions are met, the trade agreement can be labelled valid, and each party has no right to cancel the decision partially except by drawing up a new contract.

The specific requirements that must be fulfilled in a *murabahah* contract are as follows:<sup>31</sup>

- a. The execution of the contract must be carried out when the goods are under the sellers' ownership. This means that the sellers have control on it, so that the seller is entitled to profit in return for bearing the risk of damage and decline in the value of the goods;
- b. The seller must explain the amount of initial cost and fee incurred for the goods to be sold to the buyer;
- c. Profits must be clearly determined both in number and in percentage, so that the buyer is fully informed about the price of the goods;
- d. This contract system is permitted for the seller to set conditions to the buyer that an invisible damage to the goods must be borne by the buyer, but this term is not appropriate to set because the guarantee on the goods' quality is the seller's responsibility.

Based on the earlier discussion, it can be concluded that the *murabahah* contract must be carried out to the acceptance of both parties with the guarantee of honesty and transparency of information about prices and objects. When all the above requirements and conditions have been fulfilled, then this contract is approved to be valid. However, each party has the right to *khiyar* which consists of *khiyar majlis*, *khiyar syarat*, and *khiyar aib*.<sup>32</sup> The purpose of the *khiyar* is to give the buyer the opportunity to carry out or cancel the contract when the goods purchased are defective. The maximum period for *khiyar* is three days, during which a buyer is considered to have known in detail about the goods they bought.<sup>33</sup>

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<sup>30</sup> Agus Arwani and Muhammad Wakhidin, "Murabahah Financing and Effect on Earnings Ijarah Bca Islamic Year 2012-2015," *Jurnal Ekonomi dan Bisnis Islam (Journal of Islamic Economics and Business)* 4, no. 1 (2018).

<sup>31</sup> al-Zuhaily.

<sup>32</sup> Ali Ahmad Salus, *Mausu'ah Al-Qadhaya Al-Fiqhiyah Al-Mu'ashirah Wa Al-Iqtisad Al-Islami* (Cairo, Egypt: Maktabah Dar al-Qur'an).

<sup>33</sup> Syaikh 'Ali Ahmad Al-Jurjawi, *Hikmah Dibalik Hukum Islam Bidang Muamalah*, trans. Erta Mahyudin Firdaus and Mahfud Lukman Hakim (Jakarta: Mustaqim, 2003).

### Profit Margin Limitation on *Murabahah* Contract

Islam does not prohibit earning profit, but it must be within reasonable limits. These reasonable limits are based on customs in the community in certain areas and places. However, some jurists interpret this reasonable limit as profit that does not contain fraud and injustice, which is one third of the initial cost. Others argue that one-sixth of the initial cost. And there are also opinions according to the habits that apply among Muslims who are intelligent and conscious.<sup>34</sup>

Setting one third as the threshold for maximum profit earning (markup) is based on the hadith about Wills and Testaments.<sup>35</sup>

Hadith Prophet Muhammad SAW:

عن ابن عباس رضي الله عنهما قال: لو غرض الناس الى الربعا لان رسول الله صلى الله عليه وسلم قال: الثلث والثلث كثير او كبير. (رواه البخارى)

“From Ibnu ‘Abbas ra, Allah’s messenger said: I recommend that people reduce the proportion of what they bequeath by will to the fourth (of the whole legacy), for Allah’s Apostle (SAW) said, “One-third, yet even one third is too much.” (Narrated by Bukhārī)<sup>36</sup>

If it is to track down the existence of Qur’an verses and hadiths that discuss about the limits of profit, none of them will be found. Thus, the decision regarding maximum profit margin is based on the conscience of each Muslim and the traditions surrounding community. Also, it is mandatory to keep the rules of justice and virtue and to avoid bringing *mudharat* (harm) to oneself and others.<sup>37</sup> These rules can be in the form of a ban on making a profit by doing usury, for instance, hoarding basic necessities and selling illegal food and drink. This should be done to ensure justice and avoid harm to the parties who make the contract.

In that case, Islam permits to take 100% profit from the capital or even more than that. This refers to the events of the time of the Prophet Muhammad, among which was experienced by Abdullah bin Zubair in the case of buying forest land at a price of one hundred and seventy thousand and selling it for 1,600,000. However, the profit-making cannot be generalized to all conditions or all types of goods, especially for trading

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<sup>34</sup> Ahmad Asy-Syarbashi, *Yas’alunaka Tanya Jawab Lengkap Tentang Agama Dan Kehidupan*, trans. Ahmad Subandi (Jakarta: Lentera, 1997).

<sup>35</sup> Yusuf al-Qaradhawi, *Fatwa-Fatwa Kontemporer* (Jakarta: Gema Insani Press, 1995).

<sup>36</sup> Abū ‘Abd Allāh Muḥammad ibn Ismā‘īl al-Bukhārī, *Sahih Al-Bukhārī*, trans. Muhammad Muhsin Khan, 9 vols., vol. 3 (Riyadh, Saudi Arabia: Maktaba Dar-us-Salam, 1997).

<sup>37</sup> Yusuf al-Qaradhawi, *Peran Nilai Moral Dalam Perekonomian Islam* (Jakarta: Robbani Press, 2001).

basic necessities that are desperately needed by the community. This also includes increasing prices for the community, manipulating buyers, taking advantage of those who lack of price information, benefit from people with urgent needs or commit atrociousness in any forms. This is clearly a way that is not justified by sharia rules and the profits are classified as unlawful incomes.<sup>38</sup>

The types of profits that are forbidden in Islam are as follows:<sup>39</sup>

- a. Profits from illicit trade.
- b. Making profit in a deceitful manner and giving false information about the goods.
- c. Manipulation by concealing the selling price of the item.
- d. Profits derived from a scheming buying and selling strategy, for example raising prices because they assume that buyers like and need the goods.
- e. Profit by hoarding goods.

The provisions on profits mentioned earlier provide a broad description of the permissibility of making larger profits than the principal capital. Therefore, today's modern problems especially in taking advantage by using *murabahah* system, does not conflict with the Sharia principle. In other words, it is allowed to take more than 100% profit in *murabahah* trading practice as long as there is agreement and approval between the two parties involved in the contract.

### **DSN-MUI Fatwas on *Murabahah* Trading Practice**

Financing with a *murabahah* contract in Islamic banking must follow the sharia rules that have been stipulated by the DSN-MUI. The conformity of practice and the regulation is supervised by the Sharia Supervisory Board of each sharia bank institution. There are at least 11 fatwas that have been issued by DSN-MUI regarding *murabahah* contracts that can be referred to by Islamic Financial Institutions in their economic transactions. The following summarizes a number of DSN-MUI fatwas on *murabahahh* contracts:

Table 1. DSN-MUI Fatwas Regarding *Murabahahh*

No	Fatwa Description
1	<b>Fatwa No. 04/DSN-MUI/IV/2000 Concerning <i>Murabahahh</i></b>
	<b>General terms:</b>
	a. Banks and customers must enter into a usury-free <i>murabahahh</i> contract.
	b. Goods that are traded are not prohibited by Islamic sharia.

<sup>38</sup> *Norma Dan Etika Ekonomi Islam*, ed. M. Solikhin, trans. Zainal Arifin and Dahlia Husain (Jakarta: Gema Insani Press, 1997).

<sup>39</sup> *Halal Haram Dalam Islam* (Jakarta: Robbani Press, 2000).

- c. The Bank shall fund only part or total of the purchase price of goods that qualifications have been agreed upon.
- d. The bank purchases the goods demanded by the customer on behalf of the bank itself, and this purchase must be legal and free of usury.
- e. The bank must convey all matters relating to the purchase, for example if the purchase is made on debt.
- f. The bank then sells the goods to the customer (customer) at a selling price equal to the purchase price plus the profit. In this regard, the bank must honestly tell the customer the real price of the goods and other additional cost.
- g. The customer pays the fixed price for the goods within a certain settled period of time.
- h. To prevent misuse or damage to the contract, the bank may 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 *murabahah* sale and purchase contract must be made after the goods, in principle, become the property of the bank.

**Terms for customers:**

- a. The customer submits an application and an agreement to purchase an item or asset to the bank.
- b. If the bank accepts the request, the bank must legally purchase the assets from the merchant.
- c. The bank then offers the asset to the customer and the customer must accept (buy it) in accordance with the agreement they have agreed upon, because the agreement is legally binding. Then both parties must make a sale and purchase contract.
- d. In this transaction, the bank is allowed to ask the customer to pay an advance fee when signing the initial order agreement.
- e. If the customer then refuses to buy the item, the real cost must be paid from the down payment.
- f. If the value of the down payment is less than the loss borne by the bank, the bank can request the customer to pay for remaining losses.
- g. If the down payment uses the *'urbun* contract as an alternative to the down payment, then:
  - 1) If the customer decides to buy the item, they only need to pay the remaining price.
  - 2) If the customer cancels the purchase, the down payment belongs to the bank up to the amount of the loss borne by the bank as a result of the cancellation, and if the down payment is insufficient, the customer is obliged to pay off the shortfall.

**Guarantee in *Murabahah* transaction**

- a. Collaterals in *murabahah* transaction are allowed, so that customers are serious about their orders.
- b. Banks can require customers to pledge collateral to make the deal more secure.

**Indebtedness in *Murabahah* transaction**

- a. Ideally, the settlement of customer debt in *murabahah* transactions has nothing to do with other transactions made by customers with third parties for the goods. If the customer resells the goods at a profit or loss, they are still obliged to settle their debt to the bank.
- b. If the customer trades the goods before the installment period ends, they are not obliged to immediately pay off all the installments to the bank.
- c. If the sale of the goods causes a loss, the customer still has to settle the debt according to the initial agreement. They must not delay payments or ask for the loss to be calculated.

**Delayed payment in *Murabahah* transaction**

- a. Customers who are financially stable are not allowed to delay the settlement of their debts.
- b. If the customer intentionally delays payment, or one of the parties does not fulfill their

	<p>obligations, but no accord is reached through deliberation, the resolution will be carried out by the National Sharia Arbitration Board.</p> <p><b>Bankruptcy in <i>Murabahah</i> transaction</b></p> <p>If the customer has been declared bankrupt and failed to settle their debt, the bank must postpone the debt collection process until the customer can continue to make payments or an alternative decision can be taken based on the agreement.</p>
2	<p><b>Fatwa No. 13/DSN-MUI/IX/2000 concerning Advances in <i>Murabahah</i></b><sup>40</sup></p> <p><b>First, General terms on Advances</b></p> <ol style="list-style-type: none"> <li>In a <i>murābahah</i> financing contract, Islamic Financial Institutions (LKS) are allowed to ask for a down payment under an agreement of both parties.</li> <li>The amount of the down payment is determined by agreement.</li> <li>If the customer cancels the <i>murābahah</i> contract, the customer must provide compensation to the LKS taken from the down payment.</li> <li>If the amount of the down payment is less than the loss, the LKS may request additional payments from the customer.</li> <li>If the amount of the down payment is larger than the loss, the LKS must return the excess to the customer.</li> </ol> <p><b>Second:</b></p> <p>If one of the parties does not fulfill their obligations, or a dispute occurs between the two parties, then the settlement is carried out by the Sharia Arbitration Board after no agreement is reached through deliberation.</p>
3	<p><b>Fatwa No. 16/DSN-MUI/IX/2000 concerning Granting Discounts in <i>Murābahah</i></b><sup>41</sup></p> <p><b>First General terms</b></p> <ol style="list-style-type: none"> <li>The price (<i>tsaman</i>) in purchase and sales is an amount agreed upon by both parties, which can be equal to the value (<i>qimah</i>) of the object, or even higher or lower.</li> <li>The price in the <i>murabahah</i> sale and purchase is the purchase price marked up with required costs plus profits according to the agreement.</li> <li>If, in <i>murabahah</i> sale and purchase, the Islamic Financial Institution-LKS gets a discount from the supplier, the actual price is the price after being deducted because the customer has the right to claim the discount.</li> <li>If the discounting occurs after the contract, the distribution of the discount is based on the agreement (approval) written in the contract.</li> <li>In the event of discount distribution, the contract should be agreed and signed.</li> </ol> <p><b>Second:</b></p> <p>If one of the parties does not fulfill their obligations, or a dispute occurs between the two parties, then the settlement is carried out by the Sharia Arbitration Board after no agreement is reached through deliberation.</p>
4	<p><b>Fatwa DSN No. 17/DSN-MUI/IX/2000 concerning Penalties for Solvent Customers Postponing Payments</b><sup>42</sup></p> <p><b>First General terms</b></p> <ol style="list-style-type: none"> <li>The sanctions referred to in this fatwa are sanctions imposed by LKS on customers who are financially stable, but deliberately delay payments.</li> <li>Customers who are not / have not been able to pay due to force majeure may not be penalized.</li> <li>Solvent customers who delay payments and/or do not have the good will and decency to pay their debts may be subject to sanctions.</li> </ol>

<sup>40</sup> DSN-MUI, "Fatwa No. 13/Dsn-Mui/Ix/2000 concerning Advances in Mubaraha," (Jakarta: DSN-MUI, 2000).

<sup>41</sup> "Fatwa No. 16/Dsn-Mui/Ix/2000 concerning Murabaha Granting Discount," (Jakarta: DSN-MUI, 2000).

<sup>42</sup> "Fatwa Dsn No. 17/Dsn-Mui/Ix/2000 concerning Murabaha Penalties for Solvent Customers Postponing Payments," (Jakarta: DSN-MUI, 2000).

	<p>d. Sanctions are based on the principle of <i>ta'zir</i>, which aims to make customers more disciplined in carrying out their obligations.</p> <p>e. Sanctions can be in the form of financial payment, the amount of which is determined on the basis of an agreement and decided when the contract is signed.</p> <p>f. Funds derived from fines ought to be donated to charity.</p> <p><b>Second:</b> If one of the parties does not fulfill their obligations, or a dispute occurs between the two parties, then the settlement is carried out by the Sharia Arbitration Board after no agreement is reached through deliberation.</p>
5	<p><b>Fatwa DSN No. 23/DSN-MUI/III/2002 concerning Deduction on Repayments in Murabahah<sup>43</sup></b></p> <p>a. If the customer in a murābahah transaction makes timely payments or reimburse the money before the appointed schedule, LKS may give a deduction from the payment obligation, provided that it is not agreed upon in the contract.</p> <p>b. The amount of the discount as referred to above is based on the LKS policy and consideration.</p>
6	<p><b>Fatwa DSN No. 46/DSN-MUI/II/2005 concerning Deduction on Payments in Murabahah<sup>44</sup></b></p> <p>a. LKS may grant a deduction from the total payment obligations to customers in murābahah transactions (contracts) who have paid off their installments timely and customers who experience a financial difficulty that affects their capacity to pay.</p> <p>b. The amount of the discount as referred to above is based on the LKS policy.</p> <p>c. Discount allocation cannot be stated in the contract.</p>
7	<p><b>Fatwa DSN No. 47/DSN-MUI/II/2005 concerning Murabahah Debt Settlements for Customers in Financial Hardships<sup>45</sup></b></p> <p>a. The murābahah object used as a guarantee or other collaterals are sold by the customer to or through LKS at an agreed market price.</p> <p>b. The customer pays off the remaining debt to LKS from the sale proceeds.</p> <p>c. If the sale proceeds exceeds the amount of the remaining debt, LKS returns the remainder to the customer.</p> <p>d. If the sales proceeds are less than the remaining debt, the remaining debt remains the customer's debt.</p> <p>e. If the customer is unable to pay the remaining debt, the LKS can release it.</p>
8	<p><b>Fatwa DSN No. 48/DSN-MUI/II/2005 concerning Murabahah Rescheduling Payments<sup>46</sup></b></p> <p>a. Does not increase the amount of the remaining payment.</p> <p>b. Charges in the rescheduling process are real costs.</p> <p>c. The extension of the payment period must be based on the agreement of both parties.</p>
9	<p><b>Fatwa DSN No. 49/DSN-MUI/II/2005 concerning Murabahah Contract Conversion<sup>47</sup></b></p> <p>a. The murābahah contract is terminated by:</p> <ol style="list-style-type: none"> <li>1) The murābahah object is sold by the customer to the LKS at the market price.</li> <li>2) The customer pays off the remaining debt to LKS from the sale proceeds.</li> </ol>

<sup>43</sup> "Fatwa Dsn No. 23/Dsn-Mui/Iii/2002 concerning Murābahah Deduction on Repayments ," (Jakarta: DSN-MUI, 2002).

<sup>44</sup> "Fatwa Dsn No. 46/Dsn-Mui/Ii/2005 concerning Murabaha Deduction on Payments," (Jakarta: DSN-MUI, 2005).

<sup>45</sup> "Fatwa Dsn No. 47/Dsn-Mui/Ii/2005 concerning Murabaha Debt Settlements for Customers in Financial Hardships," (Jakarta: DSN-MUI, 2005).

<sup>46</sup> "Fatwa Dsn No. 48/Dsn-Mui/Ii/2005 Murabaha Rescheduling Payments," (Jakarta: DSN-MUI, 2005).

<sup>47</sup> "Fatwa Dsn No. 49/Dsn-Mui/Ii/2005 Murabaha Contarct Conversion," (Jakarta: DSN-MUI, 2005).

	<p>3) If the sale proceeds exceeds the remaining debt, this excess can be used as a down payment for the <i>ijarah</i> contract or the capital for the <i>mudharabah</i> and <i>musyarakah</i>.</p> <p>4) If the sales proceeds are less than the remaining debt, the remaining debt remains the customer's debt, the payment method of which is agreed between the LKS and the customer.</p> <p>b. The LKS and ex-<i>murābahah</i> customers can make a new contract with the following contract:</p> <p>1) <i>Ijarah Muntahiyah bit Tamlik</i> for the goods mentioned earlier by referring to the DSN fatwa No. 27/DSN-MUI/III/2002 concerning <i>Al-Ijarah Al-Muntahiyah Bi Al-Tamlik</i>.</p> <p>2) <i>Mudharabah</i> by referring to the DSN fatwa No. 07/DSN-MUI/IV/2000 concerning <i>Mudharabah Financing (Qiradh) or</i>,</p> <p>3) <i>Musyarakah</i> by referring to the DSN fatwa No. 08/DSN-MUI/IV/2000.</p>
<p><b>10</b></p>	<p><b>Fatwa DSN No. 84/DSN-MUI/XII/2012 concerning Profit Recognition Method of Al-Tamwil Bi Al-Murabahh<sup>48</sup></b></p>
	<p>General terms:</p> <p>a. The Proportional Method (<i>Thariqah Mubasyirah</i>) is a profit recognition method that is carried out proportionally to the amount of receivables (selling price/<i>tsaman</i>) that has been successfully collected by multiplying the percentage of profit from receivables that have been successfully collected (<i>al-tsaman al-muhashshalah</i>);</p> <p>b. The Annuity Method (<i>Thariqah al-Tanzuliyah / Tariqah al-Tanaqushiyah</i>) is a profit recognition that is carried out proportionally to the remaining amount of the unbilled cost of goods, by multiplying the percentage of profit and the remaining amount of the unbilled cost of goods (<i>al-tsaman al-mutabaqqiyah</i>);</p> <p>c. <i>Murābahah</i> is a sale and purchase contract by confirming the purchase price to the buyer and the buyer agrees to pay a higher price as profit for the seller;</p> <p>d. <i>At-Tamwil bi al-Murābahah</i> (<i>Murābahah Financing</i>) is <i>murābahah</i> in Islamic Financial Institutions (LKS), in the event after the goods become the property of LKS, LKS sells it to customers by payment in installments;</p> <p>e. Selling price (<i>tsaman</i>) is the cost of goods plus profit;</p> <p>f. <i>Al-Mashlahah (ashlah)</i> is a condition that is considered to be the most beneficial for the growth of Islamic Financial Institutions.</p> <p>Legal terms The method of recognizing <i>murabahah</i> profits and <i>murabahah</i> financing may be carried out proportionally and on an annuity basis by following the provisions in this fatwa.</p> <p>Special terms</p> <p>a. Recognition of <i>murabahh</i> profits in business conducted by traders may be carried out proportionally and on an annuity basis by following the provisions in this fatwa;</p> <p>b. Recognition of the profits of <i>al-Tamwil bi al-murābahah</i> in the business conducted by Islamic Financial Institutions (LKS) may be carried out proportionally and on an annuity basis as long as it is in accordance with the 'urf (customs) prevailing in LKS</p> <p>c. The selection of the <i>al-Tamwil bi al-Murabahah</i> profit method on LKS must contemplate LKS <i>maslahah</i> for sustainable LKS growth;</p> <p>d. The profit method of <i>al-Tamwil bi al-Murabahah</i> which is <i>ashlah</i> in the LKS growth period LKS is the annuity method;</p> <p>e. In the event that the LKS uses the <i>at-Tamwil bi al-Murabahah</i> profit recognition method on an annuity basis, the profit portion must exist during the installment period; profit <i>at-Tamwil bi al Murabaah</i> (<i>murabaah financing</i>) may not be fully recognized before the return of the <i>murabahh</i> financing receivable expires / has not been paid.</p>

<sup>48</sup> "Fatwa Dsn No. 84/Dsn-Mui/Xii/2012 concerning Profit Recognition Method of Al-Tamwil Bi Al-Murabahah," (Jakarta: DSN-MUI, 2012).



<b>11</b>	<p><b>Fatwa DSN No. 111/DSN-MUI/IX/2017 concerning <i>Murabahah</i> Sales And Purchase Contract<sup>49</sup></b></p> <p>General terms:</p> <ol style="list-style-type: none"> <li>1. <i>Bai' al-murahahh</i> contract is a transaction of an item by informing the purchase price to the buyer and the buyer pays it at a higher price as profit for the seller.</li> <li>2. The seller (al-ba'i) is the party who sells the goods in the sale and purchase contract, either a person (syakhshiyah thabi'iyah) or a representative to a person, either a legal entity or non-legal entity (syakhshiyah i'tibariah/syakhshiyah legal).</li> <li>3. The buyer (al-Musyteri) is the party who makes the purchase. in the sale and purchase contract, either in the form of a person (Syakhshiyah thabi'iyah) or a representative to a person, either a legal entity or a non-legal entity (Syakhshiyah i'tibariah/syakhshiyah Hukumiyah)</li> <li>4. <i>The ashliyyah</i> area is the authority owned by the seller as the party with the ownership.</li> <li>5. <i>The niyabiyyah</i> area is the authority owned by the seller as the representative of the owner or guardian of the owner.</li> <li>6. <i>Mutsman/mabi'</i> are goods sold; <i>mutzman/mabi'</i> is the counterpart to the exchanged <i>tsaman</i>.</li> <li>7. <i>Ra's mal al-murahahh</i> is the total price in the <i>murabahahh</i> sale and purchase contract in the form of the purchase price (at the time of shopping) or production costs along with the other costs that may be added.</li> <li>8. <i>Tsaman al-murahahh</i> is the selling price in the <i>murabahahh</i> sale and purchase contract in the form of <i>ra's mal al-murahahh</i> plus the agreed profit.</li> <li>9. <i>Bai' al-murahahh al-'adiyyah</i> is a <i>murabahahh</i> transaction which is carried out on goods that are already owned by the seller at the time the goods are offered to potential buyers.</li> <li>10. <i>Bai' al-murahahh li al-amir bi al-syira'</i> is a <i>murabahahh</i> transaction made on the basis of an order from the prospective buyer.</li> <li>11. <i>At-Tamwil bi al-murahahh</i> is <i>murabahahh</i> financing, that is a <i>murabahahh</i> with non-cash payment.</li> <li>12. <i>Bai' al-muzayadah</i> is buying and selling with the highest price. The determination of the price (<i>tsaman</i>) is carried out through a bargaining process.</li> <li>13. <i>Bai' al-munaqashah</i> is a transaction at the lowest price. The determination of the price (<i>tsaman</i>) is carried out through a bargaining process.</li> <li>14. <i>Al-Bai' al-hal</i> is a transaction in which the price is paid in cash.</li> <li>15. <i>Al-Bai' bi al-taqsih</i> is a transaction in which the price is paid in installments/in stages.</li> <li>16. <i>Bai' al-muqashshah</i> is a transaction whose price is paid through a debt settlement.</li> <li>17. <i>Khiyanah/Tadlis</i> is a falsification from the seller to the buyer regarding the delivery of <i>ra's mal murabahahh</i>.</li> </ol> <p>Legal terms: The <i>murabahahh</i> sale and purchase contract may be made in the form of <i>bai' al'murahahh al-'adiyyah</i> or in the form of <i>bai' al-murahahh li al-amir bi al-syira'</i>.</p> <p>Terms regarding <i>Shigat al-'Aqd</i></p> <ol style="list-style-type: none"> <li>1. The <i>murabahahh</i> sale and purchase contract must be stated explicitly and clearly and understood and understood by the seller and the buyer.</li> <li>2. <i>Murahahh</i> sale and purchase contracts may be made verbally, or in writing, by gestures, and by deeds/actions, and it can be carried out electronically in accordance with sharia and applicable laws and regulations.</li> <li>3. In the event that the <i>murabahahh</i> sale and purchase agreement made in writing, the</li> </ol>
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<sup>49</sup> "Fatwa Dsn No. 111/Dsn-Mui/Ix/2017 concernig *Murabahah* Sales and Purchase Contract."

	<p>agreement must contain information regarding the initial price (<i>ra's mal al-murabahahh</i>), profit (<i>al-ribh</i>), and selling price (<i>tsaman al-murabahahh</i>).</p> <p>Terms on Parties:</p> <ol style="list-style-type: none"> <li>1. Transaction can be done by people or the representative, either legal entities and non-legal entities, based on the applicable laws and regulations.</li> <li>2. The seller (<i>al-Ba'i</i>) and the buyer (<i>al-Musyteri</i>) must be legally proficient (<i>ahliyah</i>) in accordance with sharia and the applicable laws and regulations</li> <li>3. The seller (<i>al-Ba'i</i>) must have the authority (<i>region</i>) to enter into a sale and purchase contract, both <i>ashliyyah</i> authority and <i>niyabiyyah</i> authority.</li> </ol> <p>Terms regarding <i>Mutsman/Mabi'</i></p> <ol style="list-style-type: none"> <li>1. <i>Mutsman/mabi'</i> may be in the form of goods and/or in the form of rights that are fully owned by the seller (<i>milk al-tam</i>).</li> <li>2. <i>Mutsman/mab'i'</i> must be in the form of goods and/or rights that may be used according to sharia (<i>mutaqawwam</i>) and it may be traded according to sharia and the applicable laws and regulations.</li> <li>3. <i>Mutsman/mabi'</i> must exist in a palpable and visible material that can be handed over (<i>qudrat al-taslim</i>) at the time of the <i>murabahahh</i> sale and purchase contract.</li> <li>4. In the case of <i>mabi'</i> in the form of rights, the provisions and limitations as stipulated in the MUI Fatwa number <i>IMUNAS/VII/5/2005</i> concerning the Protection of Intellectual Property Rights and applicable laws and regulations shall apply.</li> </ol> <p>Terms regarding <i>Ra's Mal al-Murabahahh</i></p> <ol style="list-style-type: none"> <li>1. <i>Ra's mal al-murabahahh</i> must be acknowledged (<i>ma'lum</i>) by the seller and the buyer.</li> <li>2. The seller (<i>al-ba'i</i>) in the <i>murabahahh</i> sale and purchase contract may not conduct <i>khiyanah/tadlis</i> actions related to <i>ra's mal al-murabahahh</i>.</li> </ol> <p>Terms regarding <i>Tsaman</i></p> <ol style="list-style-type: none"> <li>1. The price in the <i>murabahahh</i> transaction (<i>tsaman al-murabahahh</i>) must be clearly stated at the time of the contract, whether determined through bargaining, auctioning, or tendering.</li> <li>2. Payment of the price in <i>murabahahh</i> transaction may be made in cash (<i>bai' al-hal</i>), in credit (<i>bai' al-mu'ajjal</i>), in installments (<i>bai' bi al-taqsih</i>), and under certain conditions, may be indebt settlement (<i>bai' al-muqashshah</i>) based on the agreement.</li> </ol> <p>Terms regarding Product dan Practice</p> <p><i>Murabahahh</i> practiced in the form of financing (<i>al-tamwil bi al murabahahh</i>), both <i>al-murabahahh li al-amir bi al-syira'</i> and <i>al-murabahahh al-'adiyah</i>, applies the provisions (<i>dhawabith</i>) and limits (<i>hudud</i>) of <i>murabahahh</i> as stated in DSN-MUI fatwa Number <i>04/DSN-MUI/IV/2000</i> concerning <i>Murabahahh</i>.</p>
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### **Implementation of *Murabahah* Contract in Sharia Banking in Aceh**

In comparison to other regions, the application of *murabahah* contracts in Islamic banking in Aceh is applied in the product of providing funds, namely *murabahah* Financing. This is a financing product in which the bank acts as a mediation between involved parties, customers and suppliers. In other words, if the customer wants an item from the supplier while the customer does not have sufficient funds to buy it, the bank in this case provides assistance in the form of financing by buying the goods desired by the customer first from the supplier, then the bank resells the item to the

customer at a price according to the bank's purchase from the supplier plus a profit margin based on the agreement with the customer.

**a. Financing Procedure**

Practically, the *murabahah* financing practiced by Islamic banks in Aceh consists of three models, namely 1) *Murabahah* financing *bil wakalah* contract without *urbun*, 2) *murabahah* financing *bil wakalah* contract plus *urbun*, and 3) *urbun* financing without a *wakalah* contract. The three models, certainly, have different implications for both banks and customers.

1) *Murabahah* financing *bil wakalah* contract without *urbun*

In the *murabahah* financing model *bil wakalah* without *urbun*, Islamic banks and customers carry out sales and purchase transactions using *wakalah* contracts as a complement. At the initial stage, the customer and the bank agree on the *murabahah* contract, then the bank issues a procuration letter to allowing customer to represent the bank to purchase the *murabahah* object using a *wakalah* contract. After the procuration letter is received by the customer, the bank disburses the funds and the customer immediately buys the object based on the list of goods that have been approved by the bank. This *murabahah* financing model scheme can be described as follows:

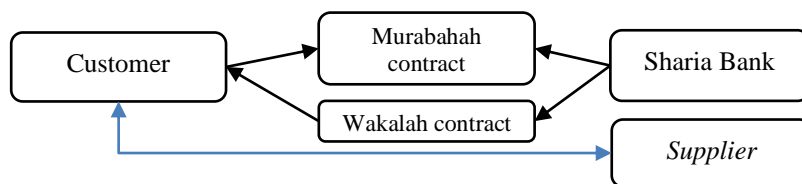


Figure 1. *Murabahah* transaction procedure without *Urbun*

2) *Murabahah* financing *bil wakalah* contract without *urbun*

The *murabahah* financing model with *wakalah* and *urbun* contracts is a transaction with additional *wakalah* contracts accompanied by the *urbun* deposit (down payment) by the customer to the bank. In this model, the bank and the customer carry out a *murabahah* contract with a number of agreements in it, including the amount of *urbun* that is borne by the customer. Technically, the amount of *urbun* that is borne by the customer is the remainder of the total price of the *murabahah* object financed by the bank. In the next process, the customer is made a representative (delegated) to buy the object approved in the contract, so that the customer can buy the goods they want directly. After this stage, the bank no longer monitors or ensures whether the goods purchased by the customer are in accordance with the specifications in the list that has

been approved in the contract.

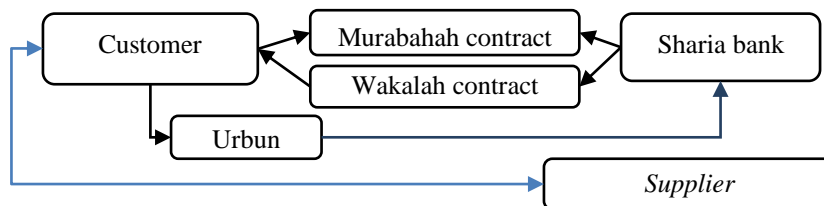


Figure 2. Murabahah transaction procedure complemented with Urbun and Wakalah contract

### 3) *Murabahah* financing with urbun and no wakalah contract

This financing method uses a delivery system. This transaction is marked by the urbun deposit (down payment) by the customer to the bank. Then, the bank buys the goods ordered by the customer to the supplier in cash. After that, the murabahahh contract is made between the bank and the customer followed by the delivery of the murabahahh object to the customer.

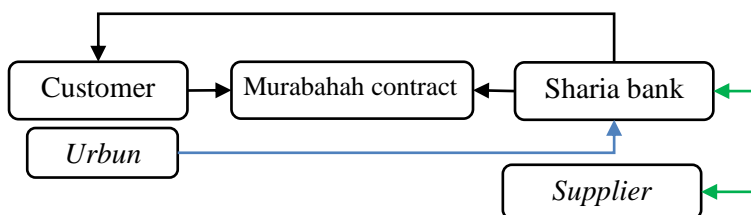


Figure 3.5.

### ***Murabahah* transaction procedure with urbun and without Wakalah**

The three models of *Murabahah* Financing transactions above, show relatively small differences but have distinctive impacts on the activities of customers and Islamic banks. The first model of *murabahah* financing is not accompanied by a delivery order because the customer acts as a direct representative of the bank to purchase goods from the supplier in accordance with the list of details approved in the *murabahahh* contract. It is different with the second model in which the customer remains as the bank's representative, but they also deposit an advance followed by the approval of the contract. The most contrastive is third transaction model in which financing begins with a delivery order from the customer and after the ordered items are received by the bank, then the *murabahahh* contract is agreed upon by both parties.

In practice, the first model is more dominantly implemented in Islamic banking in Aceh than the other two models. When related to the context of

fiqh, the third model is closer to the actual concept of buying and selling *murabahah*. However, the first model is more prevailing because it is considered more efficient to be applied by Islamic banks, including cost efficiency, Human Resources (HR) efficiency, and time efficiency. This model supports the typical customer who wants financing to be carried out quickly and precisely, but they are rather neglectful with *fiqh* rules.

However, in a more comprehensive analysis, banks can cooperate with suppliers of goods needed by customers, such as property developers, motor vehicle dealers, home improvement retailers (e.g., Home Depot), construction service companies, and etc. When a customer requires certain financing, the bank can directly contact the supplier partner by buying it first and then delegate the customer to pick it up. Technically, the financing object has become the property of the bank when an agreement has been reached between the bank and the supplier. With this concept, both banks and customers can carry out the *murabahah* financing process quickly and precisely and it is more acceptable to the actual *murabahah* buying and selling concept.

#### **b. *Murabahah* Financing Procedure**

For the implementation of *murabahah* financing, customers are required to provide several administrative requirements, such as application letters, salary statement, identification document, employment verification letters (for civil servants) or letter of guarantees (for non-civil servants), and other relevant requirements. After these documents are completed, the bank will consider the feasibility of the customer by assessing the 5-C elements (character, capacity, capital, condition of economic, and collateral). The assessment is carried out within a period of 1-3 days depending on the workload of each unit.

Technically, the implementation of *murabahah* financing in Islamic banks is preceded by a *wakalah* contract, in which the bank represents its customers to buy the desired goods. The distribution of authority is carried out by granting a procuracy letter to the customer to purchase goods as listed in the financing statements at prices and specifications determined by the customer himself. In addition to the procuracy letter made with the *wakalah* contract, the Islamic bank financing department also prepares several other related documents, such as memos on *murabahah* financing, life insurance, a procuracy letter to create a direct debit payment method, financing contracts, and other related documents.

The next stage, the bank will determine the selling price of the items being traded. Determination of the selling price of goods in *Murabahah* Financing is done by adding the purchase price of the goods with a margin in accordance with the rate determined by the bank. The rate is based on the

decision of the ALCO (Asset and Liability Committee Organization) as conducted by Bank Aceh, where they formulate a policy after observing the market and considering the liability that must be borne by the bank. In addition to the rate margin, ALCO has also set a financing limit (ceiling) that will be chosen by the customer.

In practice, the amount of funds given to customers to purchase the *murabahah* object is the net price after deducting related costs, such as administrative costs, insurance, and other costs which rates are determined based on the policies of each sharia bank institution and clearly stated in the contract. In Fatwa No. 4 of 2000, it is stated that "In this regard, the Bank must honestly notify the customer of the cost of goods and the costs required." When referring to this fatwa, the practice carried out by Islamic banking in relation to the *murabahah* financing procedure is in line with the fatwa.

### **c. Guarantee**

In the transaction process for *murabahah* financing, Islamic banks in Aceh require customers to submit certain guarantees or collateral to the bank which will be held for the duration of the financing process. The amount and type of collateral is determined by the bank which is usually in the form of fixed assets such as land and building property. If the customer is a civil servant, the required guarantee is documents or letters as a proof of employment. If referring to the DSN-MUI fatwa No. 4 of 2000, this requirement is allowed if there is a suspicion of default. The fatwa stated that "Guarantee in *murabahah* is allowed, so that customers are serious about their orders" and "Banks can ask customers to provide collateral that can be held".

If a default found on the financing installments, the Islamic bank will auction this guarantee through the State Property and Auction Service Office (KPKNL). Pricing is determined by surveying the market price of similar goods. The proceeds from the auction will be recognized as bank income and if there is an excess from the arrears, it will be returned to the customer. This policy is usually detrimental to the bank because the auction process is time-consuming and it requires a complicated process, especially the costs incurred when dealing with legal institutions. Therefore, the bank cooperates with the insurance company to protect non-performing financing. As a consequence, customers will be charged with insurance costs, not only life insurance but also financing insurance, so that the insurance costs borne by customers will be even larger.

From further analysis of DSN Fatwa No. 47/2005, it is found that the pattern of selling collaterals as carried out by Islamic banks is permissible, but it must be done with the acknowledgement of the customer. The fatwa

states that, “Objects of *murabahah* or other collateral are sold by customers to or via LKS at an agreed market price; The customer pays the remaining debt to LKS from the sale proceeds; If the sales proceeds exceed the remaining debt, the LKS returns the remainder to the customer. In practice, some Islamic banks carry out direct executions (*parate* execution) without waiting for a consent from the customer through the KPKNL. This case is stated in Law no. 4 of 1996 concerning Mortgage Rights. This still becomes one of the obstacles in the execution of collaterals for repayment of *murabahah* arrears. Some customers assume that if the bank communicates with them, the *murabahah* object can be sold at a higher price.

#### **d. Accelerated (Voluntary) Payment**

In the event of an accelerated settlement, Islamic banks in Aceh provide a discount on the total selling price of the *murabahah* financing object. However, some customers presume that the bank imposes a penalty on them because the initial process of *murabahah* financing carried out by Islamic banks does not focus on providing goods, but rather on providing funds for customers to purchase *murabahah* objects as stated in the contract. This creates a different perception if the customer receives the goods. Customers believe that the bank gives them loans that they can use suited to their needs even though it is not in accordance with the agreed contract. In reality, most customers do not read in detail the contents of the contract they sign, so that in the end, they do not understand the *murabahah* system as intended by the bank. Generally, customers compare cumulatively the amount they still have to pay with credit loans at conventional banks.

Referring to the DSN Fatwa No. 23 of 2002 concerning discounts on *murabahah* financing, it is stated that banks can provide discounts from payment obligations if the customer has made timely payments or earlier than the agreed time. The amount of the discount is not specifically regulated in the fatwa, but it is based on the policies of each Islamic bank institutions. Generally, Islamic banks calculate the discount on the basis of the remaining selling price (the amount of margin plus the remaining principal installments).

This is what differentiates between one bank to another, including the conventional banks. For conventional banks which profit level is certain, the repayment discount can be estimated directly from the amount of profit they have earned, while Islamic banks still have to take into account costs for other financing considerations with an uncertain rate of return. As a result, it causes some Islamic banks to be unable to provide large discounts for customers who want to make expedited payments.

#### **e. Late Payments**

In the event of a delay in payment by the customer, the Islamic bank will

investigate case by case to find out the exact cause of the delay. There are customers who experience inability to make payment due to a decrease in their business income, and there are also customers who fail to fulfill their obligations. In practice, banks find it difficult to identify the true cause of delays. Generally, if there is a delay which has been categorized as non-performing financing, the bank will issue a letter. If it is caused by customer negligence, the bank will send a Notification Letter (SP-1), Summon Letter (SP-2), Warning Letter (SP-3).<sup>50</sup> If the delay is caused by a slowdown in the customer's business or delays in deductions from the salary treasurer where the customer works, the Islamic bank provides concessions by rescheduling the financing, or reducing the installments until the customer is able to pay it off. However, the rescheduling technique—in some Islamic banks—is executed by not taking into account the remaining bills before the rescheduling is carried out so that the financing bills that must be paid by customers becomes larger.

The rescheduling policy as carried out by Islamic banks in the event of late payments is in accordance with DSN-MUI Fatwa No. 4 of 2000 which states that: "If a customer has been declared insolvency and fails to settle his debt, the bank must postpone the debt claim until they are able to repay, or other alternatives decision shall be based on the agreement". However, the technical implementation of the policy has become problematic in some Islamic banks because in the process, it causes more costs to be paid by the customers. This happens because the bank reduces the number of installments paid by customers but does not take into account the remaining bills before the rescheduling is carried out. This is contrary to the DSN Fatwa No. 48 of 2005 which states that Islamic banks may defer (rescheduling) *murabahah* installments provided that they do not increase the number of remaining bills.

However, if the rescheduling process causes the bank to incur a certain amount of fees, the bank is allowed to charge it to the customer as long as it is a "real" cost. The DSN Fatwa No. 48 of 2005 stated that "The cost of the rescheduling process is a real cost". In an actual case, the costs incurred by Islamic banks in the process are rather difficult to calculate because the workload is mixed with the bank routine activities, such as increasing bank HR working time, billings for water, electricity, and telephone, and so on. To anticipate this, banks usually charge administrative fees based on estimates which later become the bank's policy.

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<sup>50</sup> The issuance of the SP-1 is three months after the customer fails to make payments, while the SP-2 is four months in indebtedness, and later after five months of arrears, the customer will be given the SP-3.



If the customer experiences an inability to pay the *Murabahah* Financing installments due to a natural disaster, fire incident or other force majeure events, the bank will release the obligation to pay for the margin (100% margin discount). Thus, customers are only required to pay the remaining principal installments that have not been repaid. In the case of customer's death, the bank writes off all the customer's debt, both principal and margin, so that the heirs do not have liability to pay off the debt. In exchange, the bank will receive a claim from the insurance company for all remaining customer financing installments.

#### f. Profit Determination

The method of determining margin in Islamic banking is benchmarked on the interest rates. This is done to anticipate inflation that causes losses, but the current reality is that the high and low interest rates have no effect on the determined margin. Yet, Islamic banks continue to predict that inflation will continue to occur, so they set a larger margin than the projection.<sup>51</sup> This will remain until there are other regulations that can be based by the Islamic banks to decide the amount of profit margin. In Islamic banking, there are two methods of profit recognition used, namely the proportional (flat) method and the annuity method. Recognition of profits with the two methods is permitted by DSN Fatwa No. 84 of 2012 concerning the method of recognizing the profit of *murabahah* financing in Islamic financial institutions.

The formula for calculating the profit from the selling price of the *murabahah* object using the proportional (flat) method is as follows:

$$\text{Bank's sales price} = \text{Purchase cost} + (\text{Purchase cost} \times \text{Margin} \times \text{time})$$

The profit percentage specified above will continue to increase over time. If the customer takes a shorter period of time, the margin charged is relatively lower, but otherwise, the customer will bear a very high margin in the payment. The DSN Fatwa No. 84/2012 states that: "The Proportional Method (*Thariqah Mubasyirah*) is the recognition of profit which is carried out proportionally on the amount of receivables (sales price, *tsaman*) that has been successfully collected by multiplying the percentage of profit with the number of receivables that have been successfully obtained (*al-atsman al-muhashshalah*);

The majority of Islamic banks currently apply the annuity method as the basis for recognizing profits. Here is the formula used by Islamic banks to calculate the margin in the annuity method:

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<sup>51</sup> Muhammad, *Manajemen Bank Syariah* (Yogyakarta: UPP STIM YKPN, 2011).

$$\text{Interest Rate} = SP \times \text{Rate Margin} \times \frac{30}{360}$$

where:

- SP : principal balance  
 i : Interest rate (annual margin rate)  
 30 : number of days monthly  
 360 : number of days annually

Meanwhile, the total installments under the annuity method are also determined by a different formula, that is:

$$\text{installments per month} = Pl \times \frac{i}{12} \times \frac{1}{1 - \frac{1}{(1 - \frac{i}{12})^m}}$$

where:

- Pl : *murabahah* financing ceiling  
 I : *Murabahah* Margin rate  
 m : number of instalments

Although the annuity and flat methods have different formulas in determining the amount of the margin, the monthly installments remain the same, that there is no difference regarding the number of installments from the beginning to the end of the due date. Yet, the annuity method is not suitable for a short period of time, especially for early repayment because the proportion of margin is higher than the principal in the early installments. It is different with the flat (proportional) method, which has its own advantages in terms of accelerated repayment because the proportion of margin and the principal is comparable. However, the determination of the margin on the initial acquisition price is certainly very burdensome for customers if they have to pay in installments over a long period of time.

## Conclusion

Based on the discussion above, it can be concluded that in general the implementation of *murabahah* contracts in Islamic banking is already in line with the DSN-MUI fatwas which regulate the *murabahah* transaction. However, there are some differences caused by the internal conditions of Islamic bank institutions that should have been addressed, such as technology and human resources; and external conditions such as unsupported regulations, and public perceptions that equate Islamic banks with conventional banks. From the financing procedure, Islamic banks tend to choose the practical and economical methods, although there are other alternatives that have more 'sharia' value. In the case of demanding

guarantees for *murabahah* financing, Islamic banks have followed the provisions in the DSN fatwas, but in the guarantees processing, some Islamic banks do not fully act according to the DSN fatwas. If there is an accelerated repayment, Islamic banks have provided a discount from the total installment payment, but it seems to be problematic when customers compare the remaining nominal that they still have to pay with conventional banks. As a result, if the price at an Islamic bank is the same or even slightly more expensive than the total price at a conventional bank, customer will consider the Islamic banks are not as 'sharia' as advertised. If there is a delay in payment, the Islamic bank will conduct investigation on a case-by-case basis. If it is due to negligence, the bank will auction the guarantee, otherwise if it is due to a customer's financial difficulty, the bank will reschedule the payment. In determining the profit margin, Islamic banks are allowed to use the proportional (flat) method or the annuity method.

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