



ICOn-LBG 2016
**The Third International
Conference on Law,
Business and Governance**

PROCEEDINGS

Hosted by
Faculty of Law, Faculty of Economics and Faculty of Social Science
Bandar Lampung University (UBL)

Icon-LBG 2016

THE THIRD INTERNATIONAL CONFERENCE
ON LAW, BUSINESS AND GOVERNANCE 2016

20, 21 May 2016
Bandar Lampung University (UBL)
Lampung, Indonesia

PROCEEDINGS

Organized by:



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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the Third International Conference on Law, Business and Governance (3th Icon-LBG 2016) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 46 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Unika ATMA JAYA, Shinawatra University, Universitas Sebelas Maret, Universitas Timbul Nusantara, Universitas Pelita Harapan, Universitas Bandar Lampung, Universitas Lampung.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 21 May 2016

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APPLICATION OF ISLAMIC ECONOMIC LAW OF MURABAHAH FUNDING IN ISLAMIC BANKING

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Abstract

The Bank is a financial institution that has a strategic role in developing national development. Banking world recognize two systems, namely the economic system of conventional and Islamic economic system. Conventional economic systems are commercial banks and rural banks. Islamic bank is a bank that uses the basic Islamic law and doing business with the Islamic principles referring to the Al - Quran and Al - Hadith and Al- Ro'yu (reasonable minds). One Islamic products that exist in Islamic banking is murabaha financing. Their financing channeled Islamic bank will always involve risks, namely the risk of losses due to non-current provision of financing or financing problems. The problem in this research is how the application of the principle of economic law on the Sharia to financing murabaha Islamic Banking and rescue efforts against murabaha financing is problematic. This study is a normative legal research with descriptive type. This research is using the normative legal - normative approach applied to the type of normative approach, analytical legal substance (approach of legal content analysis). The data used are secondary data consists of primary legal materials, secondary law and tertiary legal materials. The findings of the research that murabahah on Islamic Banking uses wakalah that empowers the customer to buy the object or objects that have been agreed in the contract , so that execution of the contract murabaha does not conflict with existing provisions , whether the provisions issued by the National Sharia Council of Indonesian Ulema Council No. 04/DSN - MUI / IV / 2000 on murabaha and Bank Indonesia Regulation Number 7/46 / PBI / 2005 on Contract Assembler and Disbursement For banks Conducting Business Based on the principle of murabaha financing Syariah. Upaya rescue troubled on researching Islamic Banking customers , when acting in good faith efforts to rescue the troubled murabaha financing is done through financing by way of rescheduling restructuring (rescheduling), reconditioning (back requirements) , and restructuring (restructuring).

Keywords: Financing Agreement , Murabahah , Islamic Economic Law

1. INTRODUCTION

The Bank is a financial institution that has a strategic role in developing national development. The main activity of the bank is absorbing and channeling funds to community.¹ Banking world recognize two systems, namely the economic system of conventional and Islamic economic system. In conventional banks, the interests of fund owners are rewarded with a high savings rate, while the interests of shareholders are among acquire and optimize between deposit rates and lending rates. As with the Islamic banks, Islamic banks are banks that use Islamic sharia basis and operating with Islamic principles referring to the Al - Quran and Al -Hadith.² Islamic banks generally adopt murabaha to provide short-term financing to its customers for the purchase of goods even though the customer may not have the money to pay.

The cornerstone of sharia in Islamic banking are legal provisions muamalah , especially regarding contract law. The forms of sale and purchase agreement that has been discussed by scholars in jurisprudence muamalah spelled out a lot. There are three types of transaction that has been developed as a staple in the backrest of financing in Islamic banking , namely bai 'al murabaha (sale of goods at the original price with the added profit / margin agreed upon) , bai ' as- salam (purchasing goods delivered in

¹Hermansyah, *Hukum Perbankan Nasional Indonesia*, Jakarta, Kencana, 2008, hlm. 3.

²Gatot Supramono, *Perbankan dan Masalah Kredit*, Jakarta, Rineka Cipta, 2009, hlm. 134.

the future where the payment is made in advance / cash), and bai 'al - istishna (istishna ' is almost the same as the greeting that is in terms of the object of the order to be made or ordered in advance with special characteristics , it's just that the payment is made in stages according to the agreement).³

Since the beginning of the emergence in fiqh, murabahah may have been used purely for trading purposes. Murabaha is a form of sale with the commission, where buyers usually can not obtain goods that he wanted except through an intermediary or when the buyer does not want to bother to get it himself, so he sought the services of an intermediary. Islamic banks generally adopt murabaha to provide short-term financing to its customers for the purchase of goods even though the customer may not have the money to pay.

Al - Murabaha financing agreement is a contract of the most demanding clients in the Islamic Bank . Some of the reasons is the cause 're interested in this contract are as follows :

1. Murabahah financing is a mechanism for short-term investments , and compared with the system Profit and Loss Sharing (PLS) , more easily ;
2. Mark -up in murabaha can be determined exactly which is the guarantee for the LKS in the returns to savers and can also do a comparison with the level of interest that exist in conventional banks ;
3. Murabahah removed any uncertainty on revenue from businesses with PLS system ;
4. Murabahah is not allowed to interfere in business management LKS , LKS is not a partner for the customers , because their relationship in murabaha is the relationship between buyer and seller or the giver and the recipient of financing .

Islamic Banking implementing murabaha contract binding . Islamic Banking will only make purchases when it has been determined there are customers who will buy back the item for murabahah in running financing murabaha , Islamic Banking selling goods to confirm the cost of the goods to the customers honestly and customers pay lower prices as profit (margin) for the bank as the seller in accordance with the agreement between the Islamic Banking and customers . Payment by customer liabilities for deferred or installment.

In Islamic banking in financing murabaha implementation by providing financing in the form of a sum of money in accordance with the necessary financing to customers, this is called the wakalah, namely the granting authority over the fund and the name of the bank to its customers to make purchases itself according to desired specifications to party supplier after obtaining financing from the bank. It is almost the same as the conventional bank lending, then the application of the murabaha to provide financing in the form of power to customers in Islamic Banking, is less suitable in making the application of murabaha financing with Islamic principles. In connection with the exchange contract, there are often problems associated with delivery of the object of the contract. That the submission of objects / object of the contract shall hukumnya. Akad exchange in the form of buying and selling judged not eligible (imperfect) and can be canceled if the object is the object of the contract was not submitted. Akad that is not coupled with the delivery of the object of the contract is considered as gharar (obscurity at the time of delivery of goods / obejk contract). This includes transactions that are prohibited by the hadith of the Prophet⁴.

2. ISSUES

- a. How murabaha financing the implementation of Islamic Banking?
- b. How to rescue the troubled murabaha financing Metode Penelitian?

3. METHOD

This type of research conducted in this study are normative - applied ie using a legal substance analytical normative approach (approach of legal content analysis).⁵ This type of research used in this research is descriptive . Type a descriptive study of exposure that aims to gain an overview (description) about the legal situation prevailing in certain places and at certain times in society.⁶ This study included the normative - legal approach applied using secondary data obtained from the law books on Islamic banking and the Act and other regulations.

³ M. Syafi'i Antonio, *Bank Syari'ah : Dari Teori Ke Praktek*, Jakarta, Gema Insani Press, 2001, cet. III, hlm. 101.

⁴ Wahbah al-Zuhaili, *Investment and Sale of Debts: An Islamic Perspective*, dalam Abdul Munir Yakob dan Hamiza Ibrahim (edt), *Islamic Financial Service and Products*, Kuala Lumpur: Institute of Islamic Understanding Malaysia, 1990, hlm. 415.

⁵ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung, PT. Citra Abadi, 2004), hlm. 53.

⁶ *Loc. cit.*, hlm. 115.

The data used in this research is secondary data, consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data collected was obtained by using the method of data collection literature. The analysis used in this study using qualitative analysis .

4. DISCUSSION

a. Implementation Murabahah on Islamic Banking

Implementation of financing murabaha Islamic Bank in general make a purchase to the supplier/ dealer / developer of Islamic Banking using wakalah , namely the customer on a special power of the written and separated by murabahah given the power in the name of Islamic Banking to conduct transactions (checks , both against the physical state of the object of the contract nor the validity of the evidence , letters or documents relating to ownership or other rights on the object of the contract.

Implementation wakalah in Islamic Banking is appropriate according to the conditions stipulated in Bank Indonesia Regulation Number 7/46 / PBI / 2005 regarding the Agreement of Collection and Disbursement For Banks Conducting Business Based on Sharia Principles and DSN-MUI No. 04 / DSN / MUI / IV / 2000 on Murabaha, only in terms of underwriting the burden of the risk of the object of the contract is still less in line with the concept of economic law of sharia, because it fiqh / principle object of the contract is still under the responsibility of the Bank until the ratification of islamic marriage contract (handover) the object of the contract with the contract (murabaha) are made separately to the customer. Further regarding urbun, namely the purchase advances to customers if both parties agree. If murabahah implemented, they become part payment urbun murabaha receivables, if the customer decides to buy the goods he stayed the rest of the price paid. If canceled, the murabaha transaction does not occur, then urbun be returned to the customer after deducting losses (real costs) incurred by the Islamic Banking, this provision contained in the DSN No. 13 / DSN-MUI / IX / 2000 on Advances in Murabaha:

1. The financing agreement murabaha , Islamic Financial Institutions (LKS) is allowed to request advances if both parties agree
2. The amount of advance payment determined by agreement.
3. If the customer cancels the murabaha contract, the customer must provide compensation to the worksheet from the advance.
4. If the amount of down payment is less than the loss , may request additional worksheet to customers.
5. If the advance is greater than the losses , the worksheet must refund the excess to customers.

Implementation of murabaha financing based on the theory and practice . Implementation urabahah financing arranged in DSN - MUI Fatwa No. 04 / DSN - MUI / IV / 2000 on Murabaha :

1. Bank finance part or all of the purchase price of goods that have been agreed upon qualifications.
2. Bank customers purchase necessary items on behalf of the bank itself, and this purchase is valid (not forbidden by Islamic law) and the usury-free.
3. The Bank shall submit all matters relating to the purchase, for example, if the purchase is done debt.
4. The Bank then sell the goods to the customer (buyer) the selling price is worth the price plus benefits. In this regard, the Bank should tell honestly the cost of goods to customers following the necessary costs.
5. Customers pay the price of the goods that have been agreed on a specific period of time agreed upon.
6. To prevent tampering or damage to the contract, the bank may enter into a special agreement with the customer.
7. If the banks want to delegate to the customer to purchase goods from a third party, murabaha sale and purchase agreement must be made after the goods are, in principle, be the property of the bank.⁷

Procedures offered to customers in the use of financing murabaha agreement with through stages . Some of these stages can be described and discussed the author as follows :

1. Customer proposes financing request to the bank by filling or completing paperwork and administrative documents completeness of the data as determined by the bank. If the petition meets the eligibility standards can then immediately do the registration. Customers come to Bank Syariah did report a visit in order to determine the needs of the proposed financing will then be followed up
2. The financing proposal and then do a financial analysis of customers. In this financial analysis examines bank or customize the ability to pay of the customer. This is necessary so that customers do not experience difficulties in paying the installments within the agreed future.
3. Customer financing proposals submitted investigated in terms of the validity of documents and juridical analysis . This analysis was conducted by the Legal staff. This analysis is done to anticipate the problems that might be posed in terms of juridical such false certificate , unauthorized , or not

⁷ Fatwa DSN 04/DSN-MUI/IV/2000: *Murabahah*

true. The results of the analysis of phase I and II of the financing proposals submitted by the customer can be filed to part fund investment committee to be considered in making decisions financing request .

4. Proposed financing approval of the fund investment committee , then the next given a letter offering to the customer to make an agreement between the bank and its customers . Once the funding proposal is approved it issued Letter of Approval Murabahah. Murabahah Financing Agreement Letter contains details of the financing that has been agreed by the customer and the bank as well as guarantees given by customers to the bank.
5. After the issuance of Approval in Principle Funding (SP3) Murabahah customer must open an account to share the future for debiting liabilities / debt customers during customer financing shall be included life insurance with Banker's Clause BMI and during customer financing required to insure collateral with Banker's Clause BMI . In addition the client must attach a statement of return guarantees are willing to surrender voluntarily to the BMI if overdue installments over 3 months.
6. After an approval letter issued Murabahah financing , the issuance of a Funding Application realization that the Customer has been designated by the Islamic Banking as the power of the Bank to purchase the Building Materials and Materials for the benefit and on behalf of the Bank . This is done because the Bank uses a system wakalah that empower customers to purchase goods on behalf of the bank to the supplier / dealer / developer.⁸

The stages that must be passed by the client in order to obtain this financing is a series of activities that will be very useful for prevent any obstacles in the future. For example, the financial analysis can be seen from the Customer 's eligibility can obtain financing or not . In addition , pursuant to Article 3 paragraph(1) National Sharia Board Fatwa Council of Ulama Indonesia Number 04 / DSN - MUI / IV / 2000 on Murabahah mention that the collateral in the murabaha allowed to enter the Customer serious in their order , as well as in the Bank Indonesia Regulation Number 7 / 46 / PBI / 2005 states that the bank may ask the customer to provide additional collateral other than those financed by banks.

Basically the National Sharia Board Fatwa Council of Ulama Indonesia implement the general provisions in Islamic Banking in murabahah free of usury , the goods traded are not prohibited by Islamic law , and if the Bank intend to delegate to clients to buy goods in a third party , contract sales murabahah should be made after the goods are, in principle , be the property of the bank . Here's an example of the implementation of the financing murabaha contract according DSN- MUI fatwa on murabaha:

A customer at Bank Syariah named Mr. Rochmad apply for the purchase of a pickup Rp . 100 million as working capital to increase its revenue turnover . Banks then purchase necessary items customers (as per specifications) on behalf of the bank itself , the bank and then delivered to customers all things related to the purchase , for example, if the purchase is done debt . Banks then sell the goods to the customer / buyer (in this case Mr. Rochmad) to notify the selling price of these cars is the cost plus margin obtained following bank fees are required . Payment is made at the appropriate time period the agreement by the Islamic Bank Mr. Rochmad . To mencegh tampering or damage to the contract, the Islamic Bank can enter into a special agreement with Mr. Rochmad .

Based on the illustration above can be concluded that the object that made the sale is a pick -up (not forbidden according to Islamic law) , the Bank also inform the cost and the margin taken by the Islamic Bank . PerbankanSyariah obvious benefit is based on the margin (usury-free) .

b. Efforts to Rescue Troubled Murabahah in Islamic Banking

Salvation is a step in the completion of the financing problems through negotiations between the bank and customers with easier financing conditions are expected to return Customers have the ability to complete the financing . Level rescue troubled financial institutions do not take advantage of because customers still koorperatif law and good faith.⁹

Financing is problematic is the estimated financing is not paid back in part or in whole, or the customer can not repay the obligation in accordance with the agreed time. Financing is problematic is the estimated financing is not paid back in part or in whole, or the customer can not repay the obligation in accordance with the agreed time.

Bank Syariah based on PBI No. 13/9 / PBI / 2011, Article 1 (7) which is intended to finance the restructuring was an attempt by the bank in order to help the customer in order to complete its obligations through the stages as follows :

1. *rescheduling*

Rescheduling is extending the financing period, extend the distance of time and a decrease in the number of installments for each installment that resulted in the extension of financing period. Rescheduling may be made to customers who have in good faith but does not have the ability to pay principal plus margin with the agreed schedule. Rescheduling carried out by the bank in the hope that customers can pay back its obligations.

2. *reconditioning*

At this stage the bank give attractive offers to customers who have financial constraints in the form of a margin far and even the elimination of margins. This is done because the bank considers that customers really experiencing financial difficulties so that banks provide relief.

3. *restructuring*

Restructuring is an effort made by the bank in rescue financing problems by changing the financing structure underlying the provision of financing. There are several ways adopted by banks in restructuring (realignment), ie by converting murabaha financing for the remainder of clients' obligations be *Ijarah Muntahiyah Bit Tamlik* or *mudharaba* or *musyarakah*.

5. CONCLUSION

Application of murabaha financing agreement with Bank Syariah use wakalah that provide power to customers on behalf of the Bank to purchase the object or objects that have been agreed in the contract. The Customer is obliged to pay the remainder of the sale price that has not been repaid, the payment is made in installments in accordance with the terms of ability to pay borrower agreed, until the implementation of murabahah the Bank does not contradict or violate the regulations / provisions, both general provisions of the Law Islamic Banking Number 21 of 2008 and the provisions issued by the National Sharia Council of Indonesian Ulema Council No. 04 / DSN - MUI / IV / 2000 on murabaha and Bank Indonesia Regulation Number 7/46 / PBI / 2005 on Contract Assembler and Disbursement the Bank Conducting Business Based on Sharia Principles.

Murabaha financing the troubled rescue efforts made by restructuring the financing by means of rescheduling (rescheduling), reconditioning (reservations back), and restructuring (realignment). With the restructuring of the financing, the customer is able to perform its obligations return and risk of loss Islamic banks can be avoided.

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