

## IMPLEMENTATION OF THE NATIONAL ISLAMIC COUNCIL FATWA NUMBER 47 / DSN-MUI / II / 2005 IN BANKS SYARIAH MANDIRI BRANCH MANADO

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### ABSTRACT

*This study aims to determine the policies of Bank Syariah Mandiri Branch Manado in resolving Murabahah receivables disputes for customers who are unable to pay and the realization of DSN No. fatwa. 47 / DSN-MUI / II / 2005 at Bank Syariah Mandiri, Branch Manado. The method used a qualitative research method using a normative approach. The informants interviewed were as many as five informants who were employees of the Bank Syariah Mandiri Branch of Manado. The concept of the settlement of Murabahah receivables for customers who are unable to pay has two stages. First for customers who are categorized as having a reduced ability to pay but can still pay off the remaining debt by restructuring. The second stage is for customers who are classified as no longer able to pay their remaining debts even though the bank has provided several policies. Sharia Financial Institutions (LKS) may settle for customers who cannot complete or pay off their financing by agreed amounts and times; the system has been by the provisions of sharia in terms of the properties of the DSN-MUI.*

**Keywords:** Fatwa Policy; Bank Mandiri Syariah Branch Manado; Customers Who Cannot Afford To Pay

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## INTRODUCTION

Daily community activities, in general, their purpose is to fulfill needs. Need meeting of each, it is essential to have a tool to meet the needs of money, so that it is possible that they will conduct transactions with banking institutions.

As is well known, that the financial industry in the banking sector is multiplying not only at the national level, but also at the international level, and not only in countries with a majority Muslim population but also in countries with minority non-residents. Islam.

According to Abdulkadir Muhammad in the book Neni Sri Imaniyati, a banking institution is a business entity that has wealth in the form of financial assets. Wealth in the form of financial assets is used to run a business in the field of financial services, both providing funds to finance productive enterprises to and consumer needs, as well as financial services not financing (Imaniyati, 2013).

Banks have a vital role in a country, one of which is the heart of the economy. Money liked to blood in the economic field flowing into the bank; then the bank is circulated back into the financial system to run the business process. This process takes place continuously without stopping. So, the commercial banking system for a country is essential for the financial system. The ability of the bank system to carry out its role efficiently and effectively depends on efficient and effective bank management. Every bank must be healthy and bring in adequate profits so that banks can grow and grow strong, and be able to meet the needs of the community (Darmawi, 2014).

In connection with running its business as a financial institution, daily bank activities cannot be separated from the financial sector. Banking institutions can be said as a place to serve all the needs of the community, in this case, called customers. Customers carry out transactions with banks according to their needs. This accordance with the main activities of a bank, namely raising funds from the community through deposits, channeling funds to the people in need both for productive and consumptive activities through financing (Kasmir, 2003).

Sharia-based banks, like conventional banks, also function as an intermediary institution, which is to mobilize funds from the community and redistribute the funds to the people who need them in the form of financing facilities (Sjahdeini, 1999). Financing is one of the bank's main activities, which is the primary source of income for Islamic banks.

Financing in Islamic banks is carried out with several contracts, including *Murabahah*. In *Murabahah* financing is carried out through the process of buying and selling of an item at a basic price with additional profits, the value of which is agreed upon by Islamic banks and customers at the beginning of the contract. The seller, in this case, is an Islamic bank must notify the cost of goods purchased, as well as the level of profit desired

by the customer (Anshori, 2008). Murabahah, in principle, is based on two elements, namely the purchase price and related costs based on the agreement on mark up or profit margin.

For example, customers need financing for the purchase of a car. In conventional banks, customers will be charged interest and are required to pay monthly installments for a certain period where the applicable interest rates may change. Whereas in the Islamic banking system, such forms are not credit but use the principle of buying and selling, namely *Murabahah* financing. For example, Islamic banks will buy cars that customers want first, then sell them to customers, the price is a little high, as a form of Islamic bank profits. Because the number of Islamic bank profits agreed upon at the beginning of the contract, the installment value that the customer must pay fixed (Anshori, 2008).

Bank Syariah Mandiri Branch Manado is one of the existing Islamic banks in Manado that runs the *Murabahah* concept, namely the sale and purchase contract for which the selling price of ordered goods comes from the cost of goods ordered plus the agreed profit between Islamic banks and debtors. The bank provides financial assistance by using a *Murabahah* contract for which payments made on credit or installments made by procedures or conditions that apply in the Syariah Mandiri Bank Branch of Manado and must be fulfilled by prospective debtors.

The financing activities that exist in Islamic banks and conventional banks, known as credit, have never been separated from problems. The financing problems in Islamic and conventional banks are caused by several factors, both from customers and the bank.

In some cases, the bank will experience problems regarding the financing provided to customers. One of them is the dispute of *Murabahah* receivables for customers who cannot afford to pay. Implementation, efforts to develop Islamic banking require binding sharia rules for Islamic banking. Problems related to the immunity of the customer to pay the receivables, the National Sharia Council issued a fatwa regulating this matter, namely the DSN fatwa No. 47 / DSN-MUI / II / 2005 concerning the settlement of *Murabahah* receivables for customers who are unable to pay. Often the authors find that Islamic banks, often confiscate goods in the middle of the installments without returning the remaining money from the sale of confiscated goods, while the DSN fatwa No. 47 / DSN-MUI / II / 2005 in the first part of point c clearly states that "If the sale proceeds exceed the remaining debt, the LKS returns the remainder to the customer". Then according to the author there must be specific research relating to Islamic bank policy in terms of *Murabahah* receivables dispute resolution for customers who cannot afford to pay.

The importance of this research done because the authors have not found specific research related to the above problem. The following is the research relevant to this research, as follows: (1) Application of Sharia Principles in the Implementation of Murabahah Agreement, this study only discusses what are the *Murabahah* provisions based on the positive laws

that apply in Indonesia including Islamic Law (Yuspin, 2007); (2) Legal Analysis of Murabahah Dispute Settlement in the Religious Courts (Case Study of the Decision of the Mojokerto Religious Court Number 2860 / Pdt.G / 2013 / PA.Mr), this study discusses the decision of the Murabahah Dispute Resolution Panel; (Zahra & Naim, 2018) (3) Murabahah Financing Agreement and Its Practice in Manado Manado Pt Bank Syariah where this study discusses the procedures and requirements in the distribution of funds in the form of Murabahah Financing Agreement at PT. Manado Syariah Bank Mandiri Branch and the legal consequences of the agreement made by the bank and the customer but did not specifically discuss the policy of the Bank Syariah Mandiri Branch Manado about customers who could not afford to pay (Rejeki, 2013).

In Indonesia, the rules for Sharia Banking was established, namely Law No. No. 21 of 2008 concerning Perbankan Syariah, this rule has become a primary basis for the management of Sharia Banks or other Islamic Financial Institutions in applying the products they issue. Different binding rules are also stipulated by the Indonesian Ulema Council (MUI) through the fatwas of the National Sharia Council-Indonesian Ulema Council (DSN-MUI). Why is the fatwa of the DSN-MUI said to be binding, because the fatwas were made by Bank Indonesia as the Central Bank to take a stand on the suitability of products issued by Islamic banks with sharia principles? So that Islamic banks and other sharia financial institutions do not implement products that can conflict with sharia principles. If this happens, the application of financing in Islamic banking will be far from the initial concept of establishing Islamic banks and the laws of Islamic finance (Bawanti & Hasan, 2018).

DSN-MUI fatwas relating to Islamic Financial Institutions are the necessary foundation of Islamic Financial Institutions (LKS) in implementing their products so that Islamic Financial Institutions can be subject to administrative sanctions if the products applied are not by sharia principles (in this case DSN fatwas). -MUI), as stated in Bank Indonesia Regulation No. 10/17 / PBI / 2008 and Bank Indonesia Circular No. 10/31 / DPS / 2008 concerning Islamic Bank Products and Sharia Business Units (Hasan, Syarifuddin, & Luntajo, 2016). The importance of the MUI DSN Fatwa rules for sharia product quality assurance, the Islamic Financial Institutions should be the MUI DSN fatwa as a mecca in terms of the application of products in the LKS, especially in Bank Mandiri Syariah, Manado Branch.

Based on these problems, the authors conducted a study on how the Bank Syariah Mandiri Branch Manado policy in resolving *Murabahah* receivables disputes for customers who are unable to pay and the realization of DSN No. fatwa. 47 / DSN-MUI / II / 2005 at Bank Syariah Mandiri, Manado Branch.

## RESEARCH METHODS

The type of research used in this study is qualitative research using a normative approach, while the research location is in Bank Syariah Mandiri, Manado Branch. This research was conducted on February 2, 2018, until July 6, 2018. The number of informants interviewed was five people, consisting of 2 Sales Assistants, 1 Retail Banking Officer, 1 Funding Executive, and 1 Micro Marketing Executor.

## RESULTS AND DISCUSSION

The position of fatwa in Islamic law can be assessed from the definition of the *fatwa* so that when speaking of the *fatwa* it will not be separated from the aspect of who or what organization contains the fatwa. The fatwa is issued by Islamic scholars or Islamic jurists who can answer every problem that will become the legal basis for an act or activity that is religious or non-religious (Fatah, 2006).

The position of fatwa in the perspective of Islamic law, including: (a) as an institution in Islamic law to provide answers and solutions to problems faced by the people; (b) as a reference in behaving and behaving a person to solve a problem he faces; (c) as a product of mufti or fatwa giver, which is not just any person or institution or institution authorized to issue a fatwa, because there are conditions that must be met scientifically and in faith; and (d) as a legal proposition or opinion, which functions to explain a law or regulation (Gayo, 2011).

While the function of a fatwa is (a) diagnosing contemporary problems and the problems experienced by people who need legal certainty (Qardhawi, 1997); (b) to solve contemporary problems and real problems experienced by humans in their lives; (c) for reparation and preaching to comprehensive and balanced Muslims; (d) for knowledge and direction to the instructions of the Qur'an and Islamic justice, as well as a warning against the deception of deceivers and the misdirection of people who are vengeful towards Islam (Qardhawi, 1997). From this explanation, the function of the *fatwa* is to solve problems that occur in a person or group, so that they get legal certainty.

Funding is to give back funds obtained through deposits, savings, and deposits to the public in the form of financing (Nesner, 2014). Investment is one of the bank's main tasks, namely the provision of facilities to provide funds to meet the needs of those who are unit deficits (Antonio, 2001). Financing provided by Islamic banks is different from loans given by conventional banks. In Islamic banking, the return on the funding is not in the form of interest, but in other ways, according to the contracts provided by Islamic banks.

In Islamic banking, the term credit is not known, because Islamic banks have a scheme that is different from conventional banks in channeling funds to parties in need. Islamic banks channel their funds to customers in

the form of financing. The nature of financing is not debt but is an investment given banks to customers in doing business (Ismail, 2011), so that conventional banks are known as the interest system, while Islamic banks are known as profit sharing systems.

Murabahah is a sale and purchase contract for a particular item, where the seller mentions the purchase price of goods to the buyer and then sells it again to the buyer by requiring the expected profit according to a certain amount (Ismail, 2011).

The word *Murabaha* according to Ibn Al-Mandzur is taken from the Arabic word *ar-ribhu* (الربح) which means excess and additional (profit) or Murabahah also means al-irbaah because one of the two people who transact gives benefits to others, while in terms of Azzuhaili in his book Ismail, bai'ulMurabahah which is buying and selling at an initial price accompanied by additional profits (Ismail, 2011). While according to Shafi'i Antonio *Murabahah* is buying and selling goods at the original price with other agreed benefits (Antonio, 2001).

Murabahah financing is a sale and purchase transaction, that is, the Islamic bank acts as a seller and the customer as a buyer, with the selling price of the bank being the purchase price of the supplier plus a guaranteed percentage profit for the Islamic Bank by the agreement. In the form of a percentage of the purchase price (Imaniyati, 2013).

There are also those who explain that *Murabahah* financing is an agreement agreed upon between the customer and the bank, where the bank provides financing for the purchase of raw materials or other working capital needed by the customer, which the customer will pay in installments at the bank's selling price, the purchase price the bank is added with profits agreed upon by both parties (Perwataatmadja & Antonio, 1992).

In the opinion of the researcher, based on the above understanding, is a buying and selling transaction where the seller buys goods based on orders from the buyer, then the rights are given to the buyer with a basic price plus additional benefits agreed on by both parties. The bank and the customer, in which case the bank acts as a buyer in the first contract, namely between the bank and the supplier, and acts as a seller in the second contract between the bank and the customer, which in this second contract, the bank notifies the customer of capital or the cost of the order requested by the customer which is then added to the profit based on an agreement between the two parties who are in agreement.

*Murabahah* payments can be made in cash or installments. *Murabahah* is characterized by the delivery of goods at the beginning of the contract and payment later, both in installments and cash (Karim, 2004).

In general buying and selling, the mechanism of payment is in cash, but with a *Murabahah* mechanism, buying and selling become resilient in payments, and the seller can take additional profits from the goods purchased (Dahlan, 2012).

Customers use *Murabahah* financing because they do not have cash, so they use bank services in this case, funding *Murabaha* buying, and selling, so customers will feel light by paying it to the bank in installments.

Warkum Sumitro stated that the purpose of *Murabahah* financing is for financing that is consumptive such as houses, land, shops, cars, motorbikes, etc. (Sumitro, 2002). The author agrees with this opinion because if *Murabahah* financing is productive, then it is no longer said to be financing with a *Murabaha* contract, but it has become a *mudharabah* contract which will result in a profit-sharing system in it.

Muhammad Syafi'i Antonio stated that, in *murabaha* buying and selling, the buyer is allowed to ask the buyer to pay a down payment or sign when signing the initial order agreement. Some Islamic banks use the term as another word for advances (Antonio, 2001). Advances are used to guarantee the bank's sincerity from the customer to make transactions with the bank.

According to Saeed in his journal Anita Rahmawaty, Saeed criticized the *Murabahah* that it was from an economic point of view that there was no fundamental difference between mark up and interest. The difference between the two is only about the legal problem of the interest in the debt agreement and the sale and purchase contract in the markup. Saeed's opinion is reinforced by the argument by Zaidi, who stated, "In my opinion the cost of credit in bank financing on the base of *Murabahah* or murk up in price, is the same as in the case of financing on the basis of simple interest, except that in *Murabahah* financing, the price agreed remains the same even though the payment is not made on the due date." (Rahmawaty, 2007)

Also, Abdul Azzis Herawanto stated that the profit margin on *Murabahah* financing is fixed and is valid since the financing agreement is signed between the applicant and the bank until the end of the financing period (Herawanto, 2009).

The legal basis for *murabaha* is in QS. Al-Baqarah / 2: 275; QS. An-Nissa ' / 4: 29; and QS. Al-Baqarah / 2: 280. These arguments mean that Allah SWT. has given freedom to his people to seek sustenance with commerce, one of which is by buying and selling. The argument also emphasizes that if there is someone who owes difficulties in making payments, it is highly recommended that those who give debt to give more time until the person who is owed can pay it off, and Allah SWT does not justify his servant to do evil including usury. This is intended to prevent future harm.

In addition to the Al-Quran there are also hadiths that explain about *muarabahah*, namely: "It has been reported to us Abbas bin Walis Ad-Dimasyqi, preaching to us Marwa bin Muhammad, has told us Abdul Aziz bin Muhammad, from Daud Ibn Salih Al-Madani, from his father, he said: I heard Abi Said Al-Khudry, he said that Rasulullah SAW. said "Indeed,

buying and selling can only be done with the willingness of both parties;" (Kamil & Fauzan, 2007)

*"Having preached Kutaybah bin Sa'id, has reported Laitsu from 'Uqoili, from Az-Zuhri, from Salim, from his father that the Messenger of Allāh W. said: "A Muslim is a brother to fellow Muslims. He may not persecute his brother and must not let his brother be persecuted. Who helps to provide for his brother's needs, then Allah SWT helps him in fulfilling his needs. Who makes the difficulty of a Muslim, then Allah SWT. also make it difficult for later on the Day of Judgment. And who closes the mistake (secret) of Muslims, then Allah SWT. also cover up his mistakes later on the Day of Judgment. "(Daud, 1993)*

The first hadith explains that buying and selling transactions must be carried out based on willingness if one party does not agree then the sale and purchase deal will not occur, and the second explains to help each other Muslims in reducing fellow difficulties.

The relationship between the two hadiths with *Murabahah* financing, that is, wherein the *Murabahah* transaction, there is an additional price that must be agreed upon by the bank and the customer based on willingness. If in the payment period the customer has difficulty repaying it and entering the category of customers who cannot afford, then as the hadith above and fatwa National Sharia Council Number 47 / DSN-MUI / II / 2005, banks must provide policies to customers based on these rules.

In buying and selling activities, the implementation must fulfill the pillars and conditions that have been determined. This is because every legal act has the consequence of the transfer of rights, to something from the seller to the buyer.

Pillars of *Murabahah*, namely: seller and buyer, goods, price and profit, and *sighat* (contract) (Hakim, 2011). If one of the pillars above is not fulfilled, then the sale and purchase transaction using a *Murabahah* contract will not occur. The *Murabahah* conditions, namely: Information about the initial or principal price. The seller and buyer agree on the purchase price of the goods to be transacted; Information about benefits; Payment media must be a calculated unit (such as a currency); In a transaction, it must not contain usury'; The first purchase agreement must be valid. Because *murabaha* is buying and selling at the original price plus profits, then there is directly the first purchase by the seller to a third party. This first purchase must be valid following the law of sale and purchase. If the purchase is not valid, the *Murabahah* will be invalid (Hakim, 2011). Also, the general provisions of *Murabahah* financing customers must meet 5C, namely: (Prabowo, 2012) Character (character); Collateral (guarantee); Capital (capital); Condition of Economy (economic conditions); Capability.

From the description above, the legal requirements for *murabaha* are information on initial prices, profits, payment media (money), no banking and the first purchase agreement must be valid. If one of these conditions is not fulfilled, the law is invalid. In addition, the requirements for customers

that the bank must look at are the nature of the customer whether the customer is serious or not in Murabahah financing, the guarantee that the customer will give to the bank as a sign of the customer's seriousness, capital or down payment, the customer's economic condition, and the customer's ability to pay off his debt.

### ***MURABAHAH FINANCING APPLICATION IN SHARIA BANKS***

Use of the Murabahah Agreement: *Murabahah* financing is a type of funding that is often applied in Islamic banks, which are generally used in buying and selling transactions of investment goods and goods needed by individuals; Types of use of *Murabahah* financing, more suitable for investment and consumer financing. In investment financing, *Murabahah* contracts are ideal because there are goods that will be invested by the customer, or there will be goods that will be the object of investment. In consumption financing, usually the products to be consumed by customers are clear and measurable; and *Murabahah* financing is not suitable for financing working capital, which is given directly in the form of money (Ismail, 2011).

Items used as objects of sale and purchase: Houses; Motorized vehicles or transportation equipment; Purchasing industrial equipment; Purchasing factories, warehouses, and other fixed assets; and Asset purchases that do not conflict with Islamic law (Ismail, 2011).

Bank: The Bank has the right to determine and choose suppliers in purchasing goods. If the customer appoints another supplier, then the Islamic bank has the right to assess the supplier to determine its feasibility by the criteria set by the Islamic bank; Banks issue purchase orders by agreements between Islamic banks and customers so that goods are sent to customers; The method of payment made by Islamic banks is by transferring directly to the account of the supplier (seller), not to the customer's account (Ismail, 2011).

The customer: Customers must be competent according to the law so that they can make transactions; and Customers have the willingness and ability to make payments (Ismail, 2011).

Supplier: A supplier is a person or legal entity that provides goods at the customer's request; Suppliers sell their products to Islamic banks, then Islamic banks will sell these items to customers; and Under certain conditions, Islamic banks authorize customers to buy products by specifications specified in the contract. Purchase Orders for the purchase of fixed goods are issued by Islamic banks, and payments are still made by the bank to the supplier. However, the delivery of goods can be done directly by the supplier to the customer or a power of attorney from the Islamic bank (Ismail, 2011).

Price: The selling price of goods has been determined by the sale and purchase agreement between the Islamic bank and the customer and cannot change during the agreement period; The selling price of Islamic

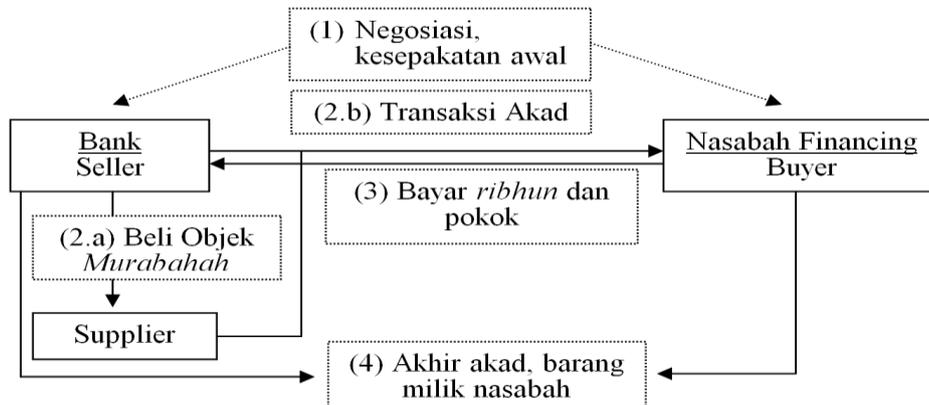
banks is the selling price agreed upon between Islamic banks and customers; Advances for the purchase of goods made by the customer (if any), will reduce the number of *Murabahah* receivables that will be paid in installments by the customer. If a *Murabahah* transaction is carried out, the urban is recognized as part of the repayment of *Murabahah* receivables so that it will reduce the number of *Murabahah* receivables. If the *Murabahah* transaction is not executed (canceled), then the *urbun* (down payment) must be returned to the customer after being deducted from the funds issued by the Islamic bank (Ismail, 2011); The agreed selling price will never change during the term of the financing even though during this period devaluation, inflation, and changes in the interest rates of conventional banks occur in the market (Perwataatmadja & Antonio, 1992).

Period: The term of *Murabahah* financing can be given in the short, medium and long term, according to the ability of payment by the customer and the amount of funding provided by the Islamic bank; The period of funding cannot be changed by one party. If there is a change in the period, then this change must be approved by Islamic banks and customers (Perwataatmadja & Antonio, 1992). Etc

Fines for delinquent customers (if any), are permitted in Islamic banking rules to educate customers to discipline installments on *Murabahah* receivables. However, income earned by Islamic banks due to late payment of installments of *Murabahah* receivables, may not be recognized as operating income, but collected in an individual account or included in safekeeping (other obligations). These entrants will be channeled to help weak economic communities, such as assistance for natural disasters, scholarships for underprivileged students, and loans without compensation for small traders. If the customer delays continuously and is no longer able to pay installments, the settlement of this dispute can be done through deliberation. If deliberation is not reached, the resolution will be submitted to the religious court (Perwataatmadja & Antonio, 1992).

The conclusion of the explanation of the application of *murabaha* in Islamic banks is *Murabahah* financing is a sale and purchase transaction between the bank and the customer with a sale price, which is based on the underlying rate plus the agreed benefits of both at the contract time. The bank buys the goods ordered by the customer to the supplier and pays them in cash, then the item is sent to the customer, after which the customer pays the products that have been sent to the bank at the agreed price both by installments with the time agreed by both. The *Murabahah* financing scheme at the Islamic Bank:

Figure 1. Murabahah Financing Scheme



Source: Ahmad Dahlan “*Bank Syariah: Teori, Praktik dan Kritik*”

Customers propose *murbahah* financing and negotiate with the bank in terms of the specifications of goods needed, nominal prices needed and estimates of the ability of customers to pay in a resilient manner, and the determination of the time period based on the customer's ability to pay installments, which will affect the mark up to be taken by the bank. After that, the bank buys goods needed by the customer to the supplier based on an agreement, then the supplier, together with the bank, sends the rights to the customer. After the products are in the customer, the customer must pay the profits and cost of products in installments according to the agreement at the beginning of the contract.

### General Provisions of *Murabaha*

Murabahah financing has been arranged in DSN No. Fatwa. 04 / DSN-MUI / IV / 2000, namely (Ali, 2010):

*First:* General Provisions of Murabaha in Islamic Banks:

- Banks and customers must conduct *Murabahah* contracts that are free of exploitation.
- Goods that are traded are not prohibited by Islamic law.
- The bank finances part or all of the purchase price of goods whose qualifications have been agreed on.
- The bank buys goods needed by the customer on behalf of the bank itself, and this buyer must be legal and free of usury.
- The bank must submit all matters relating to the purchase, for example, if the purchase is made in debt.
- The bank then sells the item to the customer (buyer) with a sale price worth the purchase price plus the profit. In this connection, the bank must inform honestly about the cost of goods to customers, and the costs required.

- g. The customer pays the price of the agreed upon an item for a specified period.
- h. To prevent misuse or damage to the contract, the bank can enter into special agreements with customers.
- i. If the bank wants to represent customers to buy goods from a third party, the *Murabahah* sale and purchase contract must be made after the products, in principle, belong to the bank.

*Second: Murabahah provisions to customers*

- a. The customer submits an application and agreement to purchase an item or asset to the bank.
- b. If the bank accepts the request, he must first buy the assets he has ordered legally with the merchant.
- c. The bank then offers the asset to the customer, and the customer must accept (buy) it according to the agreement he has agreed to, because legally the deal is binding, then both parties must make a sale and purchase contract.
- d. In this sale and purchase, the bank is allowed to ask customers to pay down payment when signing the initial order agreement.
- e. If the customer then refuses to buy the item, the real cost of the bank must be paid for the down payment.
- f. If the value of the down payment is less than the loss that must be borne by the bank, the bank can ask for the remaining damages to the customer.
- 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, he can only pay the remaining price;
  - 2) If the customer cancels the purchase, the down payment becomes the bank's maximum amount of the loss borne by the bank due to the cancellation; and if the down payment is insufficient, the customer is obliged to settle the shortfall.

*Third: Guarantees in Murabahah*

- a. Murabahah guarantees are permitted, so customers are serious about their orders.
- b. Banks can ask customers to provide assurances that can be held.

*Fourth: Debt in Murabahah*

- a) In principle, the settlement of customer debt in *Murabahah* transactions has nothing to do with other operations carried out by customers with third parties on the goods. If the customer resells the item with a profit or loss, he is still obliged to settle the debt to the bank.
- b) If the customer sells the item before the installment period ends, he is not obliged to immediately pay off the entire installment.

- c) If the sale of the item causes a loss, the customer still has to settle the debt according to the initial agreement. It may not slow down installment payments or request that the loss be calculated.

*Fifth: Postponement of Payment in Murabahah*

- a. Customers who have the ability are not justified in delaying the settlement of their debts.
- b. If the customer delays payment intentionally, or if one of the parties does not fulfill his obligations, the settlement is carried out through the Sharia Arbitration Board after no agreement is reached through deliberation.

*Sixth: Bankrupt in Murabahah*

If the customer has been declared bankrupt and failed to settle his debt, the bank must postpone the debt bill until he becomes able to return, or based on an agreement.

**Purpose of Murabahah**

The use of *Murabaha*, among others (Antonio, 2001): Looking for the experience. One party to contract (the buyer of purchases) asks the other party (buyer) to buy an asset. The buyer promised to replace the asset and give it an advantage. The buyer chooses this purchasing system, which is usually done on credit, more because they want to find information rather than the reason for the urgent need for the asset; I am looking for financing. In sharia banking operations, the motive for fulfilling asset or working capital procurement is the main reason that encourages customers to come to the bank. In turn, the financing provided will help facilitate the cash flow in question.

According to the author, the benefits of this *Murabahah* financing are to relieve customers if they want to buy something both consumptive and productive goods and the funds they have are insufficient because in *Murabahah* financing the payment can be made in installments in terms agreed upon at the beginning of the agreement.

***THE CONCEPT OF SETTLEMENT OF MURABAHAH RECEIVABLES FOR CUSTOMERS THAT ARE NOT ABLE TO PAY***

The settlement of *Murabahah* receivables for customers who are unable to pay is one of the troubled financing solutions that exist in Islamic banks. The technical term commonly used among banks is the rescue of concerned financing, which is an effort and steps taken by banks to overcome financing problems. Faced by customers who still have good business prospects, but experience difficulties in paying the principal or other obligations (Djamil, 2014).

Rescue financing is financing with lowered interest rates or extended loan term to facilitate debtors making payments; this alternative is often

used for debtors who cannot pay their principal obligations or additional prices as agreed (Sholihin, 2010).

The author concludes that what is meant by the settlement of problem financing is the steps in the form of bank policy to customers in resolving problematic financing disputes ranging from restructuring to the elimination of additional costs or other based on policies determined by the bank.

The concept of the settlement of *Murabahah* receivables for customers who are unable to pay has two stages. First for customers who are categorized as having a reduced ability to pay but can still pay off the remaining debt by restructuring.

Financing restructuring is an effort made by the bank to help customers to complete their obligations (Sholihin, 2010). The redesign is done by Rescheduling, which is a restructuring carried out by extending the maturity period without changing the remaining customer obligations that must be paid; It is reconditioning, namely restructuring by re-implementing conditions including changes in the payment schedule, installments, deductions as long as it does not add to the remaining obligations that must be paid by the customer; Restructuring, namely restructuring by converting *Murabahah* receivables in the amount of the remaining customer liabilities to *mudharabah*, *musyarakah* or *ijarah muntahiyyah bittamlik*. Also, by turning into Medium Term Sharia Securities or by converting to Temporary Equity Participation (Djamil, 2014).

The second stage is for customers who are categorized as no longer able to pay their remaining debts even though the bank has provided several policies. Sharia Financial Institutions (LKS) may settle for customers who cannot complete or pay off the financing by the agreed amount and time, provided that: *Murabahah* or other collateral objects sold by customers to or through Islamic financial institutions at agreed market prices; The customer repays the remaining debts to the sharia financial institutions from the sale proceeds; If the proceeds of the sale exceed the remaining debt, then the remainder of the sale after paying off the debt, the rest is owned by the customer; If the sale is smaller than the rest of the debt, the customer is still obliged to pay off the rest; and if the customer is unable to pay off the remaining mortgages, the sharia financial institution can release it (Sholihin, 2010).

The explanation above explains that the settlement of *Murabahah* receivables for customers who are unable to pay first by conducting restructuring and the second by selling *Murabaha* objects based on the current market price. If the selling price exceeds the remaining debt, the remaining sales are owned by the customer, but if smaller, then the remaining debt remains the debt of the customer. Before the customer is truly declared unable to pay his debt, the bank conducts a restructuring in advance both from the time of payment, the installment amount and the related settlement of *Murabahah* receivables, but by not changing the remaining amount debt that must be repaid by the customer.

Interviews on February 13, 29, and 30 June 2015 with five informants. The five people are Riandi Chandra as Sales Assistant, Muh. Sadly Mokodompit as Sales Assistant, Donna A. Mokodompit as Retail Banking Officer, Dewi Arimbi Ngurawan as Sharia Funding Executive, and Rachmad R. Rompah as Micro Marketing Executive. The following are the results of the interview:

Bank policy in completing *Murabahah* receivables for customers who are unable to pay, among others, by restructuring or rescheduling the *Murabahah* receivables settlement limit, conducting the intensive collection, or conducting an auction of goods provided by the customer as collateral. Donna namely stated another answer by giving a final in the form of a fine.

The method carried out by banks in minimizing losses that will occur if there are customers who are unable to pay their debts is to make regular billing to customers, and if it is unsuccessful, an auction is guaranteed.

Bank compensation is given to customers who are unable to pay by restructuring, and additionally, carry out collateral execution and litigation and or reduce installments. The indemnification provided is by providing discounts of up to 80% for troubled customers.

Sanctions are given to customers If it is late in paying installments every month based on the agreement sanctions given for late payment of installments based on the agreement is to provide a Warning Letter (SP) or subject to fines. Sanctions for late payments in the form of penalties and the determination of the number of penalties applied by the bank must be by the agreed contract or conditions, namely 0,00069% per day multiplied by the amount of arrears.

KP must approve determination of market prices for *Murabahah* objects to be sold by customers to or through Islamic Financial Institutions (LKS) that the market price of *Murabahah* objects to be sold by customers to or through LKS is assessed by an appraiser, namely independent appraisal, while costs are evaluated by an independent assessment. Determination of market prices for *Murabahah* objects is seen from the auction based on collateral value.

The period given to the customer to pay off the remaining debt if the proceeds of sales are smaller than the remaining obligation is three months to 1 year. By bank policy, the bank has never assessed the guarantee of lower selling prices of customer debts, even if there are additional benefits removed

The criteria for the bank's assessment of customers who can be freed from their *Murabahah* receivables disputes are that the customer can be released from the disagreement of *Murabahah* receivables if the customer is genuinely unable to pay the remaining debts, even though waivers have been paid in installments, and / or the auction results cover the liability.

Murabahah objects that have been sold by customers to banks to pay off their debts, the next action is to auction back the *Murabahah* object.

The fatwa position of the National Sharia Council (DSN) for products in the bank is as a basis or the primary guideline to take every decision in carrying out transactions.

***POLICY OF THE MANDIRI SYARIAH BANK OF MANADO BRANCH IN COMPLETING THE DISPUTE OF MURABAHAH RECEIVABLES FOR CUSTOMERS THAT ARE NOT ABLE TO PAY***

Based on the theory that has been presented in the previous chapter, the author concludes that the policy carried out by the bank in completing *Murabahah* receivables for customers who are unable to pay has two stages. The first is for customers who experience a decline in the ability to pay but can still pay off the remaining debt by restructuring. Restructuring is carried out in several ways, including rescheduling, reconditioning and restructuring by converting the remaining liabilities of customers into *mudharabah* or *musyarakah* or *ijarah muntahiyyah bittamlik*.

The second stage for customers categorized as indeed already unable to pay even though the restructuring has been carried out is the same as the fatwa of the National Sharia Council No. 47 / DSN-MUI / II / 2005, namely by selling *Murabahah* or other collateral objects to Islamic Financial Institutions. If the sale is higher than the customer's remaining debt, then the remainder becomes the customer's right, but if the deal is smaller than the remaining debt, then the remainder remains the customer's obligation, but if the customer is unable to repay the remaining debt, the bank can release him.

Similar to the *Murabahah* receivables dispute settlement policy theory, the Bank Syariah Mandiri Branch Manado policy in resolving *Murabahah* receivables disputes for customers who are unable to pay, initially by giving a Warning Letter (SP). In addition to providing a warning letter (SP) to the customer concerned, the next policy is to restructure or reschedule the *Murabahah* receivables settlement limit, after restructuring the bank intensively or periodically bills, if after restructuring and the customer still cannot pay the remaining debt is another policy, namely by giving *Murabahah* pieces, which the bank reduces installments to even provide discounts of up to 80%.

But if the bank has provided some of these policies to the customer, and the customer is still unable to pay the remaining debt, the bank will conduct a guarantee auction or the troubled customer *Murabahah* object.

***APPLICATION OF FATWA DSN NO. 47 / DSN-MUI / II / 2005 CONCERNING COMPLETION OF MURABAHAH RECEIVABLES FOR CUSTOMERS THAT ARE NOT ABLE TO PAY IN MANDIRI SHARIA BANKS OF MANADO BRANCH***

Settlement of Murabahah receivables for customers who are unable to pay based on the fatwa of the National Sharia Council No. 47 / DSN-MUI / II / 2005, including:

*First:* Settlement Provisions

Sharia Financial Institutions may settle *Murabahah* for customers who cannot complete or pay off the financing according to the agreed amount and time, provided that:

- a) Customers sell Murabahah and other collateral objects to or through Islamic Financial Institutions at the agreed market price;
- b) The Customer repays the remaining debts to the Sharia Financial Institution from the sale proceeds;
- c) If the sale proceeds exceed the remaining debt, the Sharia Financial Institution returns the remainder to the customer;
- d) If the proceeds of the sale are smaller than the rest of the debt, the remaining debt remains the customer's debt;
- e) If the customer is unable to pay the remaining debt, the Islamic Financial Institution can release him.

*Second:* Closing Provisions

- a) If one of the parties does not fulfill its obligations or if there is a dispute between the related parties, the settlement is carried out through the National Sharia Arbitration Agency after the agreement is reached through deliberation.
- b) This fatwa is valid from the date of stipulation provided that in the future, there is a mistake; it will be amended and refined accordingly.

Implementation of fatwa National Sharia Council No. 47 / DSN-MUI / II / 2005 at the Manado Syariah Bank Mandiri Branch, almost all the contents of the fatwa has been carried out. Judging from the results of previous interviews, the bank has the criteria that customers are categorized as unable to pay and can apply the fatwa of the National Sharia Council No. 47 / DSN-MUI / II / 2005 to him, that is, customers who actually cannot afford to pay even though they have been given a dry cleaning by the bank.

Application of the fatwa contents of the National Sharia Council No. 47 / DSN-MUI / II / 2005 first point, namely "Murabahah and / or other collateral objects sold by customers to or through Islamic Financial Institutions at agreed market prices" can be seen from the results of interviews with the author regarding the Manado branch of Bank Syariah Mandiri, namely one of them by conducting a guarantee auction, where the bank's treatment of collateral or *Murabahah* objects that have been sold to

the bank will be resold or auctioned by the bank. As part of the interview quotation on the first question, which is about bank policy in resolving *Murabahah* receivables disputes, namely "according to the five informants that the bank's way of completing *Murabahah* receivables includes the auction of goods given by customers as collateral." In addition, the application of the fatwa at the first point is supported by the opinion of Dewi A. Ngurawan, one of the employees of the Manado branch of Bank Syariah Mandiri, he said that "the bank does the *murabaha* object that the customer has sold to the bank by auctioning the *Murabahah* object back."

Application of the *fatwa* contents of the National Sharia Council No. 47 / DSN-MUI / II / 2005 second to fourth point, namely the customer repays the remaining debts to the Sharia Financial Institution from the sale, if the sale proceeds exceed the remaining debt, the Sharia Financial Institution returns the remainder to the customer, and if the sales proceeds are smaller than the remaining debt remains the customer's debt. From the three fatwa points, the writer finds out how the period is given by the bank to the customer to pay off the remaining debts if the selling price is lower than the remaining debt. There are differences in answers regarding the period given, according to Donna for three months, but different from Dewi A. Ngurawan according to him, the period is given for one year. In contrast to the answers put forward by Rachmad R. Rompah, according to him, the bank has never considered the guarantee or *Murabahah* object to be sold at a price lower than the customer's debt, even if there are such things, the additional profits will be eliminated. With the repayment period of the remaining debt, the Manado Syariah Bank Mandiri branch applies the contents of the fourth point of the fatwa.

Application of the fatwa contents of the National Sharia Council No. 47 / DSN-MUI / II / 2005 fifth point namely "if the customer is unable to pay the remaining debt, then the Islamic Financial Institution can release him." For the application of the *fatwa* there is little difference to the one at the bank, which is according to Rachmad R. Rompah if there are customers who still have the remaining debt after the sale of *murabaha* objects, then the bank does that by removing additional profits or prices agreed at the beginning of the agreement.

## CONCLUSION

The policy of Bank Syariah Mandiri Branch Manado in resolving *Murabahah* receivables disputes for customers who cannot afford to do that is by restructuring or rescheduling *Murabahah* receivables, after restructuring the bank intends to collect intensively or periodically, if after restructuring and the customer remains unable to pay off the remaining debts, the other policy is to provide *Murabahah* deductions, which the bank reduces installments to even provide discounts of up to 80%. But if the bank has provided some of these policies to the customer, and the customer is still unable to pay the remaining debt, the bank will conduct a guarantee auction or the troubled customer *murabaha* object. If the proceeds from the sale of *murabaha* objects or the auction of collateral are smaller than the remaining debt, then the additional price agreed upon at the beginning of the contract is

written off. Application of Fatwa National Sharia Council No. 47 / DSN-MUI / II / 2005 concerning the settlement of *Murabahah* receivables for customers who cannot afford to pay at the Manado branch of Bank Syariah Mandiri in accordance with sharia provisions in this case the Fatwa of the National Sharia Council No. 47 / DSN-MUI / II / 2005, although there were several differences of opinion among some informants regarding the policy regarding settlement of accounts receivable contracts for customers who were unable to pay.

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## REFERENCES

- Ali, Z. (2010). *Hukum Perbankan Syariah* (I). Jakarta: Sinar Grafika.
- Anshori, A. G. (2008). *Kapita Selekt Perbankan Syariah di Indonesia*. Yogyakarta: UII Press.
- Antonio, M. S. (2001). *Bank Syariah: Dari Teori ke Praktik*. Jakarta: Gema Insani Press.
- Bawanti, K. A., & Hasan, F. (2018). Mudharabah Bank Syariah Ditinjau dari Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah. *Jurnal Ilmiah Al-Syir'ah*, 16(1), 35–57.
- Dahlan, A. (2012). *Bank Syariah: Teori, Praktik dan Kritik*. Yogyakarta: Teras.
- Darmawi, H. (2014). *Manajemen Perbankan*. Jakarta: Bumi Aksara.
- Daud, M. (1993). *Terjemahan Hadis Shahih Muslim, Jilid IV*. Jakarta: Fa.Widjaya.
- Djamil, F. (2014). *Penyelesaian Pembiayaan Bermasalah di Bank Syariah* (I). Jakarta: Sinar Grafika.
- Fatah, R. A. (2006). *Analisis Fatwa Keagamaan: Dalam Fikih Islam*. Jakarta: Bumi Aksara.
- Gayo, A. A. (2011). *Kedudukan Fatwa MUI Dalam Upaya Mendorong Pelaksanaan Ekonomi Syariah*.
- Hakim, C. M. (2011). *Belajar Mudah Ekonomi Islam*. Banten: Shuhuf Media Insani.
- Hasan, F., Syarifuddin, S., & Luntajo, M. M. R. (2016). Tinjauan Hukum Islam dalam Penerapan Akad Ijarah pada Produk Rahn di Cabang Pegadaian Syariah Istiqlal Manado. *Jurnal Ilmiah Al-Syir'ah*, 14(2), 40–51.
- Herawanto, A. A. (2009). *Implementasi Akad Murabahah dalam Pembiayaan Pemilikan Rumah Bersubsidi Secara Syariah di Bank Tabungan Negara Kantor Cabang Syariah Surakarta*. Universitas Sebelas Maret.
- Imaniyati, N. S. (2013). *Perbankan Syariah dalam Perspektif Hukum*

- Ekonomi*. Bandung: Mandar Maju.
- Ismail, I. (2011). *Perbankan Syariah* (I). Jakarta: Kencana.
- Kamil, A., & Fauzan, M. (2007). *Kitab Undang-Undang Hukum Perbankan dan Ekonomi Syariah* (I). Jakarta: Kencana.
- Karim, A. (2004). *Bank Islam: Analisis Fiqh dan Keuangan* (II). Jakarta: PT. RajaGrafindo Persada.
- Kasmir, K. (2003). *Manajemen Perbankan*. Jakarta: PT RajaGrafindo Persada.
- Nesneri, Y. (2014). *Analisis Tingkat Kesehatan PT Bank Syaria Mandiri dengan Metode Camels*. Riau: Lembaga Penelitian dan Pengabdian Kepada Masyarakat UIN Sultan Syarif Kasim.
- Perwataatmadja, K. A., & Antonio, M. S. (1992). *Apa dan Bagaimana Bank Islam*. Yogyakarta: Dana Bhakti Wakaf.
- Prabowo, B. A. (2012). *Aspek Hukum Pembiayaan Murabahah pada Perbankan Syariah*. Yogyakarta: UII Press.
- Qardhawi, Y. (1997). *Al-Fatwa Bainal Indhibath wat Tasayyub*. Jakarta: Gema Insani.
- Rahmawaty, A. (2007). Ekonomi Syariah: Tinjauan Kritis Produk Murabahah dalam Perbankan Syariah di Indonesia. *Jurnal Ekonomi Islam "La Riba,"* 1(2).
- Rejeki, F. Y. S. (2013). Akad Pembiayaan Murabahah dan Praktiknya pada PT Bank Syariah Mandiri Cabang Manado. *LEX PRIVATUM*, 1(2), 19–31.
- Sholihin, A. I. (2010). *Buku Pintar Ekonomi Syariah*. Jakarta: Gramedia Pustaka Utama.
- Sjahdeini, S. R. (1999). *Perbankan Islam dan Kedudukannya dalam Tata Hukum Perbankan Indonesia*. Jakarta: PT Pustaka Utama Grafiti.
- Sumitro, W. (2002). *Asas-Asas Perbankan Islam dan Lembaga-Lembaga Terkait: BMI & Takaful di Indonesia* (I). Jakarta: PT. RajaGrafindo Persada.
- Yuspin, W. (2007). Penerapan Prinsip Syariah dalam Pelaksanaan Akad Murabahah. *Jurnal Ilmu Hukum*, 10(1), 55–67.
- Zahra, A. T., & Naim, M. (2018). Analisis Hukum Penyelesaian Sengketa Murabahah di Pengadilan Agama. *Justisia Ekonomika*, 2(2), 1–12.