

FUTURE PACKAGE FINANCING PRODUCTS WITH AKAD MURABAHAH IN THE PERSPECTIVE OF SHARIA ECONOMIC LAW

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Abstrak: Makalah ini bertujuan untuk menguji praktik kontrak murabahah dalam Produk Pembiayaan Paket Masa Depan (PMD) dari Bank Syariah BTPN, dan kesesuaiannya dengan UU No. 21 tahun 2008, Peraturan Bank Indonesia No. 07/46 / PBI / 2005 dan DSN-Fatwa MUI No. 04 / DSN-MUI / IV / 2000, dan Peraturan Otoritas Jasa Keuangan (POJK). Penelitian ini menggunakan data yang diperoleh dari wawancara dengan pejabat Bank Syariah BTPN, berbagai dokumen, dan artikel, buku, dan tesis yang relevan. Hasil penelitian ini menunjukkan bahwa Program PMD yang dipraktikkan oleh BTPN Bank Syariah tidak konsisten dengan peraturan Murabahah tentang Hukum Ekonomi Syariah dalam fatwa DSN-MUI No. 4 tahun 2000 tentang Murabahah. Selain itu, ada beberapa indikator yang menunjukkan bahwa praktik murabahah dalam program PMD tidak sesuai dengan ketentuan syariah.

Kata kunci: Produk Pembiayaan Paket Masa Depan, Perspektif Hukum Ekonomi Syariah

Abstract: This paper aims at examining the practice of murabahah contract in Future Package Financing (PMD) Product of the BTPN Sharia Bank, and its compatibility with Law No. 21 of 2008, Bank Indonesia Regulation No. 07/46/PBI/2005 and DSN-MUI Fatwa No. 04/DSN-MUI/ IV/2000, and Financial Services Authority Regulation (POJK). This research relies on data obtained from interviews with BTPN Sharia Bank officials, various documents, and relevant articles, books, and theses. The results of this study indicate that the PMD Program practiced by BTPN Syariah Bank is inconsistent with Murabahah regulations on Sharia Economic Law in the DSN-MUI fatwa No. 4 of 2000 concerning Murabahah. Moreover, there are several indicators showing that the practice of murabahah in the PMD program is not in accordance with sharia.

Keywords: Future Package Financing Products, Perspective of Sharia Economic Law

Introduction

Future Package Financing Program (*Paket Masa Depan/* PMD) is an integrated program of Syariah BTPN Bank. This program is for rural women who want to have a business and have dreams to change lives, but do not have access to banking services. The main objective of this program is to provide financial solutions, simple financial planning and group participation.

BTPN Syariah Bank is here to provide easy financing for the women. The funding significantly facilitates the community's access to financial facilities. The bank does not ask for collaterals because the target is an unbankable community (customers without collateral). Customers are required to be present at every meeting with the employees of BTPN Syariah Bank, which is referred to as "Melati Putih Bangsa". It is center trustees who act as facilitators and assist customers in transactions (saving, paying installments and disbursing funds) as well as provide education and become role models for customers Syariah BTPN Bank. The meeting between the customers and the center coach is held every two weeks for one year (Interview Trenggana 2 Oktober 2018).

This funding is intended for super micro-communities or underprivileged people. In practice, contracts for PMD at Sharia BTPN Banks use murabahah contracts. After that, the bank gives the Power of Attorney to the costumers to purchase their commodities, as the bank does not provide them (Interview Trenggana 2 Oktober 2018). Murabahah is a selling and buying contract by declaring the price and profit margin agreed by the seller and buyer. According to DSN-MUI Fatwa No 4 of 2000, the traded goods must be fully owned by the bank.

In practice, there has been a legal confusion in the PMD program carried out by the BTPN Syariah Bank, especially in the matters related to *milkiyah* terms (property ownership), and the placement of accurate contracts.

To be in line with the provision of sharia, the bank should comply with the terms of goods ownership and placement of the right contract in murabahah. As murabahah is a form of buying and selling, the contract needs to apply the principle of buying and selling (Sulaiman,

2016: 14). There is a need for legal clarity in the implementation of PMD, especially in the status of the contract and the ownership of the objects.

Discussion

In the context of mu'amalah, the word murâbahah as mentioned by al-Jurjaniy (Al-Jurjaniy, 1405 H: 266), and al-Munawiy, is usually defined as buying and selling, which is done by adding the initial price (Al-Qawnuniy, 1406 H: 214). In terms of jurisprudence, murabahah is a form of sale and purchase of goods by stating the acquisition price of goods and the specified margin profit (Al-Jaziri, 1999: 250).

In the legal context, murabahah is the transaction of sale of goods by stating the acquisition price and profit (margin) agreed upon by the seller and the buyer. The distinctive feature of murabahah and other buying and selling is that in murabaha, the seller must notify the buyer about the basic price of the goods and the amount of the profit earned by the seller.

According to fuqaha (scholars in Islamic jurisprudence), murabaha is the selling of cost/item cost combined with its profit margin or mark-up. Hanafiyya scholars defined murabahah as “transferring ownership of something through a contract with the initial price combined with additional cost as the profit.”

The Mâlikiyyah scholars, on the other hand, stated that murabaha is: “The sale and purchase of a good with equal price, combined with the additional cost as profit, where both parties are aware of” (Al-Barakat, t.th:159)

In the view of the Malikiyya scholars, as mentioned al-Abdariy (Al-'Abdariy Abu, 1398 H: 489), the sale and purchase of murâbahah are also divided into two. The first is buying and selling with a clear additional cost (profit) to the initial capital. For example, the profit of one dirham is added to one dirham of initial capital and an additional one dirham is added to ten dirhams of the initial and subsequent capital. This can be more or less, depending on the agreement. The second is buying and selling with the additional profits mentioned and agreed upon from the overall initial price.

Meanwhile, the Syafi'iyya defined the murabahah with: (Al-Syarwaniy, t.th: 424) "buying and selling with the price of the original value, added with some amount of profits." While according to the Hanâbilah, murâbahah means: "buying and selling with the capital prices plus known profits" (Qudamah, 1405: 129).

In this case, the main element of murabahah transaction is an agreement on profits. The profit is determined and agreed upon by taking into account the seller's capital. In this case, openness and honesty are the main conditions for real murabahah practice.

In addition to murabahaba, this type of transaction is also called al-bay`bi al-tsaman al-'ajil (differed payment sale). In the book al-Umm, Imam Al-Shafi'iy named such kind of transaction as al-amr bi al-shirâ` (Al-Syâfi'iy, 1961: 93).

Sayyid Sabiq defines murabahah as a sale with the purchase price of the goods plus the known profits (Sabiq, 1988: 83). Ibn Qudamah defines murabahah as buying and selling by calculating capital plus certain known profits (Sarthawy, t.th: 235). Hasbi As-Siddiqi defines murabahah as selling goods with certain profits (Shiddiqy, 1997: 353). Another opinion says murabaha as buying and selling where the price and profit are agreed between the seller and the buyer (Arifin, 2001: 21).

According to Adiwarmar Karim, murabahah is the sale of a good with the cost of the goods plus the agreed profits. In short, murabaha is a contract of sale and purchase of goods by declaring the original cost and profits that are agreed upon by the seller and the buyer. Murabahah is one form of Natural Certainty Contract (NCC) because the transaction determines the expected and obtained profits (Karim, 2006: 113).

In Indonesia, Law No. 21 of 2008 concerning Islamic Banking, Article 19 Section 1d mentions that murabahah is a financing contract for an item, where the seller informs the original price to the buyer, and the buyer pays the certain price including the agreed profits for the seller (Undang-Undang Republik Indonesia N0. 21 Tahun 2008).

In the Compilation of Sharia Economic Law Article 20, Murabahah is defined as a mutually beneficial financing carried

out by shahibul al-mal (property owner) and other parties through buying and selling transaction with a clear explanation of the original cost of the item and the profits obtained by sahib al-mal from the selling price; and the item is paid by the buyer in cash or through installments (UU MA.No. 2 Tahun 2008 Tentang Kompilasi Hukum Ekonomi Syariah).

In general, murabaha is buying and selling goods at the original price, added with the agreed-upon profits. In murabahah, the seller must inform the original price of the product to the buyer, and after that, determine the profits as the addition to the original price (Antonio, 2001: 101).

The Regulation of Bank of Indonesia considers several legal bases for the practice of murabahah, such as 1) Article 1 paragraph (13) of Law Number 10 of 1998 concerning Banking; 2) Bank Indonesia Regulation No. 9/19 / PBI / 2007 jo. PBI No. 10/16 / PBI / 2008 concerning Sharia Principles Implementation in Activities of Fundraising and Fund Distribution and Sharia Bank Services; 3) Bank Indonesia Regulation Number 10/17 / PBI / 2008 concerning Sharia Bank Products and Sharia Business Units; 4) Provisions on Murabahah Financing in the practice of Islamic Banking in Indonesia; 5) Article 19 of Law Number 21 of 2008 concerning Sharia Banking which regulates business activities of Sharia Commercial Banks, one of which is murabahah financing (Prabowo, 2012: 29).

According to Bank Indonesia Regulation No.7 / 46 / PBI / 2005 Chapter 1 Article 1, murabahah is the sale and purchase of goods in the amount of the cost of goods plus an agreed profit margin. The implementation of murabahah should be in accordance with the provisions in Article 2. First, in carrying out fund collection and distribution activities, banks are required to establish contracts in accordance with the provisions mentioned in this Regulation. Second, the contract, meant by Article 1, is required to use a sharia transaction. Third, sharia transaction, as is mentioned in section two, should not contain the element of gharar (uncertainty), maysir (gambling), riba (interest), violation against the law, illicit goods and immorality (Peraturan Bank Indonesia No. 7/46/PBI/2005 tentang Akad Penghimpunan dan Penyaluran Dana bagi Bank yang melaksanakan kegiatan usaha berdasarkan prinsip syariah).

Bank Indonesia Regulation No. 9/19/PBI/2007 concerning the Implementation of Sharia Principles in Fund Raising Services and Services in Sharia Banks, Article 3 mentions that murabahah is a buying and selling transaction with the price equal to the original cost of the item, added with margins agreed by both parties, where the seller informs the original cost the buyer in advance (Peraturan Bank Indonesia Nomor: 9/19/PBI/2007).

Funding activities in the form of murabahah-based financing should at least meet the following requirements:

1. Banks provide financing funds based on the sale and purchase agreement.
2. The payment period is determined based on the agreement of the Bank and the customer.
3. Banks can partially or fully finance all the purchase price of goods with the agreed qualifications.
4. In the case of a bank becomes the representative of the customer in buying goods (*wakalah*), then the murabahah contract must be made after the items is legally belongs to the bank.
5. Banks can ask customers to pay a down payment or
6. Banks can ask customers to pay a down payment or *urbun* when signing an initial agreement to order goods by the customers.
7. Banks can ask customers to provide collateral in addition to goods financed by the Bank.
8. The margin agreement must be determined once at the beginning of the contract and should not change during the contract period.
9. Financing installments during the contract period must be carried out proportionally.

If the Bank requests customers to pay a down payment or *urbun* as referred to in paragraph (1) section e, the following provisions are applied:

1. In the case of down payment, if the customer refuses to buy the goods after paying a down payment, then the customer must pay the real cost to the bank from the paid down payment. However, if the paid down payment is less than the loss suffered by the bank, then the bank can request the remaining losses to the customers.

2. In the case of *urbun*, if the customer cancels the purchase, the *urbun* paid by the customer is taken by the bank for the losses caused by the cancellation; and if the *urbun* is insufficient to cover the losses, then the customer should pay the remainder. This is regulated by Article 10 Section (1) and (2) of Bank Indonesia Regulation.
3. In murabahah financing, banks can give deductions from the total payment obligation only to the customers who have made on-time installments or customers who experience a decrease in their ability to make payments.
4. The amount of deduction given to the customers in murabahah transaction should not be in the contract, and the discretion is given to the bank (Peraturan Bank Indonesia No. 7/46/PBI/2005 tentang Akad Penghimpunan dan Penyaluran Dana bagi Bank yang melaksanakan kegiatan usaha berdasarkan prinsip syariah).

The Legal Status of Good Ownership in the Murabahah Agreement

Property rights in sharia law refer to sharia-relationship (legal relationship) between a person and a matter which resulted in legal consequences. Because of this relationship, the person has authority over the matter and has a right to use the object. Such authority is closed for others (Dewi, 2006: 22). In a murabahah contract, banks' ownership of goods is obtained from the contract or contract that causes the transfer of ownership (buying and selling).

Sharia banks can buy goods directly from customers or suppliers; or through an ordering system (murabahah with orders). Ownership of goods by a sharia bank is the essential aspect of a murabahah contract. This is related to the role of the sharia bank as the seller and the Customer as the buyer.

Basically, buying and selling is the act of transferring ownership rights; if a sharia bank does not have goods to sell to the customer, there will be no transfer of ownership. In this case, the contract cannot be considered murabahah because it should be based on the principle of buying and selling.

Initially, ulama debated the validity of murabahah. Al-Dasuki gave an example of the practice of murabahah buying and selling as follows: A asks B to buy goods from A. However, because A does not have the

goods, A buys the goods from C to resell the goods to B. This kind of transaction is called Bay 'al-Inah because the seller (A) asks other sellers (C) to help him achieve his goal, which is to pay cheaply to get big profit. This is also known by ulama as Bay al Muwasafah, which is different from murabahah that is justified by sharia.

Imam Al-Shafi'i allowed the sale and purchase with non-binding promises. In the book *Al-Umm*, Imam Al-Shafi'i explained that someone says: "buy this item! And I will give you a profit!" The first statement and the transaction is valid. The sentence "I give you a profit" is between buying or not buying the item. Shafi'iyah, Malikiyyah and Hanafiyah allowed the contract with the condition that the promise to buy certain products is not binding. Some of the Malikiyyah scholars forbid such practice because it contains riba (usury), which is forbidden. Such transaction includes in bay' al-inah category. This ban is a form of anticipation or sadd al-zari'ah. If the promise is binding, then according to al-Shafi'i, the contract is invalid for two reasons. First, buying and selling of items that are not owned by the sellers, and consists of *garar* in the price. The DSN fatwa states that the promises are binding. In murabahah, the customer must buy the item that has been ordered. The fatwa of the DSN avoids Bay 'al-Inah by stipulating the terms of object ownership in a contract established legally by an Islamic bank.

Murabahah transaction practiced by the Islamic bank is not in accordance with Al-Shafi'i's opinion, which stated that the promise is not binding. A binding promise to purchase in DSN fatwa gives certainty and avoids the possibility of the customer ordering the commodity. Al-Sarkhasi suggested a three-day "cooling off" to ascertain whether the customer proceeds to buy the commodity or not. The existence of *gharar*, as is revealed by Al-Shafi'i, according to Yusuf Al-Qardawi includes minor *gharar* in the practice of Islamic banking (Muhammad Maksum, 2013: 81-83). However, Al-Zuhayli disagreed upon the equation between the practice of murabahah with riba (interest). According to Al-Zuhayli, the practice of contract is not only seen from the results but also the process. Murabahah agreement required the practice of buying and selling carried out by the bank.

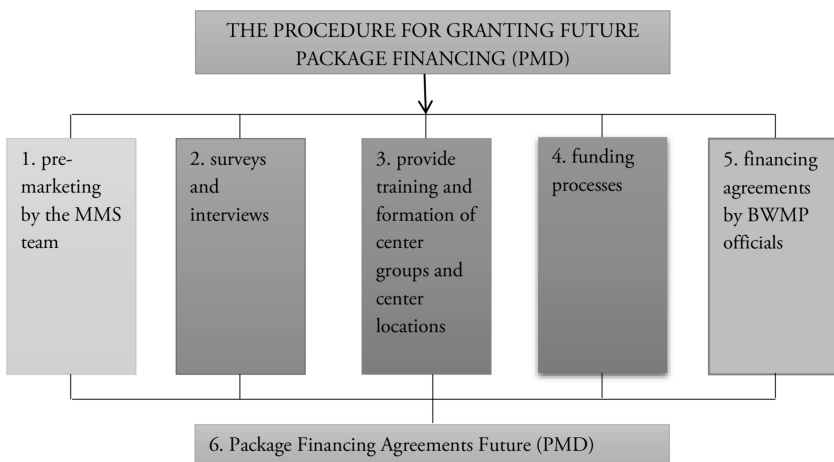
The law on buying and selling allows the seller to take advantage of the acquisition price. Sales can be made in cash or credit (Zuhayli,

2004: 70-71). The fatwa of the DSN on murabahah products emphasizes on two procedures in selling and buying transaction. First, the sale and purchase must be carried out legally, and the commodity (object of the contract) must be owned by the Islamic bank. This provision is to avoid the Islamic bank to become only a money lender (Maksum, 2013: 85).

Imbang Jaya Trenggana, the BTPN Sharia staff of Empowerment Program Division, reveals that the main target of the program carried out in Karang Harja Village, Pebuaran District, Bekasi Regency, is women, especially those who are members of the PMD Program at BTPN Sharia Bank. This PMD program uses wakalah murabahah agreement which consists of financing for business capital, wadi'ah saving, health and life insurance for the customers, including the compensation for the husbands in the case of the customers' death (Interview Trenggana 2 Oktober 2018).

Before establishing a financing agreement, the customer must meet the terms and conditions determined by the PMD program. Imbang Jaya Trenggana explained the procedures of financing contract set by the PMD program as follows (Interview Trenggana 2 Oktober 2018):

Figure 1. Financing Contract Stages based on the procedure for granting Future Package financing (PMD)



Based on the above picture, there are several procedures to be passed before the contract or disbursement so that the customer can be entitled to the loan provided by BTPN Sharia bank based on the application and Power of Attorney from BTPN Syariah Bank, to WMS / MS to sign financing agreements with customers. The first stage is to conduct pre-marketing by the MMS team. After that, the bank conducts surveys and interviews with the prospective members or PMD costumers. The third stage is that the bank provides training and form center groups and center locations. The fourth stage is the funding processes. The fifth is the financing agreements by BWMP officials. The last is the implementation of the PMD program.

PMD program at BTPN Sharia Bank provides financing offers by determining the ceiling, installment, and tenors (one-year, one-and-a-half-year, and two-year) at the beginning of the PMD program application. This can reveal the form of financing offered by the PMD program in the form of money, and the margin or profits based on the ceiling and not the price of the item. DSN-MUI Fatwa No. 4 of 2000 concerning Murabahah stipulates the general provisions of Murabahah in sharia banks. Provision No. 2 states that banks and customers must carry out murabahah contracts that are free from usury. Next, Provision No. 3 mentions that the bank purchases the commodity partially or entirely with the agreed qualifications. In the ceiling determined by PMD program, there has been a legal ambiguity in which the bank offers Fund Loan Ceiling instead of commodity purchases. This is very contrary to the DSN-MUI Fatwa No. 4 of 2000.

The fifth stage of the PMD contract procedure is to request financing approval and Financing Authority Limit (Batas Wewenang Memutus Pembiayaan/ BWMP). Financing approval and BWMP are obtained based on dual control principles where every financing is recommended and submitted by the finance committee. This committee is authorized officials who approve the financing request based on customers' proposed limit and banks' limit.

Within two weeks after the financing application submission and after obtaining financing approval as well as BWMP from the head office, the customers will then be informed to carry out the contract. After that, the Power of Attorney from BTPN Sharia bank authorizes the

Sharia Mobile Marketing (MMS) Team Center Managers, and Center Trustees to implement the contract or disburse funds. The financing contract is an integral part of the AP3R form. If the customer cannot read or write, the MMS must ensure that the customers understand the content of the contract. Furthermore, the signing process must be witnessed by the group leader.

The sixth stage of the PMD contract procedure is funding agreement and Power of Attorney. After the contract is read by the MMS team, the customers, and the witness, which is the member of the PMD Customer Group, then, the MMS team asks the PMD Customer Group/ group center members: "Is this legitimate?" The witness, after that, answers the question by saying "It is legitimate!". This statement becomes qabul (agreement) that is valid to proceed.

The next is the signing of the contract, which is followed by disbursement and the transfer of funds to the customer. This contract uses murabahah and wakalah contract. Because the object of financing is in the form of money, which must be spent on commodities in accordance with the agreement in the AP3R form. After the contract is signed by both parties, the customer and the bank, the financing contract is copied; with the original document is for the bank, and the copy is for the customer. The Power of Attorney is the delegation of authority from the authorized official of the BTPN Sharia bank head office to WMS/MS to sign a financing contract with the customer, based on a financing agreement between the bank and the customer (party declaring qabul). This becomes written evidence provided the bank. If a contract is unsigned, the bank does not have written evidence in providing financing. In this case, the risk is that the bank cannot demand the installment payments. Consequently, the risk of financing will be the personal responsibility of the center coach. Therefore, the MMS team must ensure that the contract is signed by the bank and the customer.

After the Disbursement Agreement is implemented, or the customer gets PMD, within two weeks, the central trustees will conduct two matters such as the Centre Routine Meeting (Pertemuan Rutin Sentra/ PRS) and Business Monitoring (Monitoring Usaha). PRS is conducted for the customers to pay their installment every two weeks and ensure the payment of the current installment. The monitoring, on the other hand, is conducted to ensure customers' serious efforts.

This study finds that the above-mentioned financing agreement or PMD is considered legal according to the law. This paper finds that such contract is one form of Natural Certainty Contract (provide financial certainty from the aspects of quantity, time and cash flow, which are predictable with relative certainty based on the initial agreement between two parties). This contract is categorized as Natural Certainty Contract because murabahah transaction requires the determination of profit rates (the amount of agreed profit).

During the Center Routine Meeting and the Business Monitoring, this study did not find any further business monitoring from the bank. Furthermore, the bank does not monitor the purchase of goods submitted by the customer in the AP3R agreement form.

MUI Fatwa No. 4/DSN-MUI/ IV/2000 concerning Murabahah used by Sharia BTPN in Future Packages is as follows (Buku Panduan Paket Masa Depan, 35):

1. Banks and customers must carry out murabahah contracts that are free of usury.
2. Commodities traded are not prohibited by sharia.
3. The bank finances the purchase partly or entirely with the agreed qualification.
4. The bank purchases commodities needed by the customers on behalf of the bank itself, and this purchase must be legal and free of usury.
5. The bank must submit all matters relating to the purchase, for example, if the purchase is made in debt.
6. The bank sells the commodities to the customers (buyers) at the original price plus the profit. In this case, the bank must honestly notify the original cost of the items and cost required.
7. The customer pays for the agreed price of the item for a specific period. From MUI Fatwa DSN No. 4/DSN-MUI/IV/2000, BTPN Sharia Bank does not use and implement the 8th point and 9th point mentioned in the fatwa. These points state that:
8. To prevent the misuse or damage to the contract, the bank may establish a special agreement with the customers
9. If the bank intends to represent customers to buy commodities

from a third party, the sale and purchase contract between the bank and the customers must be carried out after the commodities in the ownership of the bank.

The implementation of MUI DSN Fatwa No.4/DSN-MUI/IV/2000 in PMD program is not consistent and not comprehensive, especially in the terms of ownership status of the approved goods or objects. In practice, the PMD program implements the contract without the ownership of goods. In other words, there is an absence of ownership status of goods used as the objects in the contract. This is in contrast with the 9th provision of the DSN-MUI Fatwa No.4 / DSN-MUI / IV / 2000. Another problem is that the object is usually in the form of money.

Supposedly before the implementation of financing agreement between the two parties, they must first purchase the intended goods if they use wakalah agreement. After the goods become the property of the bank, then the murabahah agreement can be implemented.

This research also finds several other problems in the implementation of the PMD program, namely:

1. The customers do not understand that the PMD program at BTPN Sharia Customers uses mudarabah contract. What they know is that they are given the load, and they know when they have to pay.
2. During the Basic Membership Training, it was mentioned that the PMD program consists of basic loans (venture capital financing), housing loans, and loans for educational purposes. In fact, the sharia economic does not recognize loans but financing.
3. The bank determines financing ceiling, where the margin/ profit is based on the ceiling offered to the customer. Whereas in the sharia economy, the calculation of the margin/ profit of the murabahah contract must be based on the price of the item.
4. DSN-MUI Fatwa NO.4/DSN-MUI/IV/2000 used as the basis in the PMD program of BTPN Sharia Bank has not been used comprehensively. The PMD program only used point 1 to point 7 of the fatwa and ignores the point 8 and 9.
5. In the implementation of the PMD program using murabahah contract, the object in the form of money is directly given to the customer to purchase commodities. Supposedly, the financing

contract is carried out when the bank already purchases the commodities and owns them. If the customers are the one who has to buy the goods, then they need to prove the purchase with the purchasing receipt by the time the contract is made. With the unwillingness of the bank to purchase the goods and own them before the contract, it can be seen that the bank is very careful and avoids any risk.

6. The use of murabahah contract in the PMD program is inappropriate because murabahah is a form of sale and purchase transaction, not business capital as is practiced by the PMD program.
7. In the PMD program, there are no commodities bought; and no differences between the profit margin in PMD's murabahah and the interest in conventional banks.
8. In the future Package Financing Product (PMD) contract at BTPN Syariah Bank, there is no commodity of goods purchased; there is no difference between murabahah profit or margin contained in the Future Package Financing Product (PMD) contract with interest in Conventional Banks.

Based on the above-mentioned problems, this study concludes that the PMD agreement at BPTN Sharia Bank is not in accordance with the legal basis used, DSN-MUI Fatwa No. 04 / DSN-MUI / IV / 2000. This fatwa defines murabahah to sell goods by declaring the purchase price to the buyer, and the buyer pays it at that price plus the profit for the bank (Dewan Syariah Nasional MUI dan Bank Indonesia, 2006: 24-25). In such practice, the bank is required to provide the requested commodities. In the case that the bank does not the commodities, the bank can establish murabahah contract with orders, by which the bank buys the commodities from a supplier then reselling them to the customers by also taking profits from this sale.

To be in accordance with sharia economic law, the murabahah transaction must fulfill the determined pillars and conditions. In general, the contract is the willingness of both parties. If all conditions are met, then the contract becomes valid. For this reason, this paper suggests that in implementing wakalah and murabahah contract, BTPN Sharia Bank needs to monitor and request the purchasing receipt to

the customers after the financing agreement made. Based on This is similar to Bagya Agung Prabowo's theory in his work entitled Aspects of Financing Law

Finally, it can be concluded that in murabahah financing contract, the bank plays a role as a funder, and not a commodity seller. This is because the bank does not have its commodity and does not face any risks. The bank merely deals with related documents for the contract. Usually the murabahah contract is signed before the bank obtains the commodity requested by customers. In such contract, the customer needs to be more careful and obey all regulations related to the commodity delivery, margin of profit, and correct specifications.

Moreover, the customers, in this practice, are responsible for any legal consequences and fines occurred due to violation of the law. It seems that the bank does not bear for responsibility related to the commodity. Therefore, all risks, which theoretically in the responsibility of the bank, are effectively avoided. Moreover, the customers do not deal the loss with the bank, but with the suppliers. For this reason, if BTPN Sharia Bank implements wakalah murabahah transaction, then it is recommended that the bank as the funder provides monitoring and request written proof to the customers to avoid the possible fraud committed by the customers as it is expected that the contract is implemented to achieve the targets mentioned in the AP3R and to avoid legal confusion so that the wakalah murabahah contract is in accordance with sharia provisions.

Conclusion

BTPN Sharia Bank uses murabahah contract for its financing product called Future Package Financing (PMD). In its practice, the bank gives the customers to buy their intended commodities (wakalah). However, several indicators show the incompatibility of the practice of Murabahah in PMD program of BTPN Sharia Bank with DSN-MUI Fatwa No. 4 of 2000 concerning Murabahah, especially regarding the ownership status of the acquired goods which have not yet become the property of the bank. In this case, such practice leads to riba, because the commodities should be in the ownership of the bank before the sale and purchase transaction occurs. Therefore, the practice of murabahah

in the PMD program operated by BTPN Sharia Bank has not been in accordance with the sharia due to its inability to fulfil the determined conditions.

Reference

- Abd al-Hamid al-Syarwaniy. *Hawasyiy al-Syarwaniy*. Beirut: Dar al-Fikr, t.th.
- Abd al-Rahman Al-Jaziri. 1999. *Kitab Al-Fiqh 'Ala Madzahib Al-Arba'ah*, Jil II, Beirut: Dar Al-Kutub Al-Ilmiyah.
- Abi Abdillah Muhammad bin Idris al-Syāfi'iy 1961. *Al-Umm*. Kairo: Maktabah Kulliyah al Azhariyah.
- Adiwarman A. Karim. 2006. *Bank Islam Analisis Fiqih dan Keuanagan*. Jakarta: PT. Raja Grafindo Persada.
- Ali bin Muhamamd bin 'Ali al-Jurjaniy. 1405 H. *Al-Tārifat*. Beirut: Dar al-Kitab al-'Arabiy.
- Bagya Agung Prabowo. 2012. *Aspek Hukum Pembiayaan Hukum Pembiayaan Murabahah Pada Perbankan Syariah*. Yogyakarta: UII Press.
- Buku Panduan Paket Masa Depan.
- Dewan Syariah Nasional MUI dan Bank Indonesia. 2006. *Himpunan Fatwa Dewan Syariah Nasional MUI Cet. 3*. Jakarta: CV. Gaung Persada.
- Fuad Sarthawy. *At-Tamwil al-Islāmī wa Daur al-Qithā' al-Khāsh*, cet.1. Jordan: Dār al-Masīra,tt.
- Gemala Dewi. 2006. *Aspek-Aspek Hukum dalam Perbankan dan Perasuransian Syariah di Indonesia*. Jakarta: Kencana.
- Himpunan Peraturan Perundang-undangan/Peraturan Mahkamah Agung No. 2 Tahun 2008 Tentang Kompilasi Hukum Ekonomi Syariah, Disusun Oleh Tim Redaksi Fokusmedia, Bandung, Fokusmedia, 2009.
- Muhammad bin Yusuf bin Abi al-Qasim al-'Abdariy Abu 'Abdillah. 1398 H. *Al-Taj wa al-Iklil*. Beirut: Dar al-Fikr.
- Muhammad Maksum. 2013. *Fatwa Ekonomi Syariah di Indonesia, Malaysia, dan Timur Tengah*, Jakarta: Badan Litbang dan Diklat Kementerian Agama RI.
- Muhammad Syafii Antonio. 2001. *Bank Syariah Dari Teori ke Praktik*. Jakarta: Gema Insani.
- Peraturan Bank Indonesia. 2008. Jakarta: Sinar Grafika.
- Qasim bin 'Abdillah bin Amir 'Ali al-Qawnuniy. 1406 H. *Anis al-Fuqaha'*. Jedah: Dar al-Wafa'.
- Saydiy Ahmad al-Dardir Abu al-Barakat. *Al-Syarh al-Kabir*. Beirut: Dar al-Fikr, t.th.
- Sayyid Sabiq. 1988. *Fiqh Sunnah 11, Terj, Kamaludin A Marzuki, Fiqh Sunnah jilid 11*, Bandung: Pustaka.

- Sulaiman, Sofyan Sulaiman. 2016. *Penyimpangan Akad Murabahah Pada Perbankan Syariah di Indonesia*. Iqtishodia: Jurnal Ekonomi Syariah, Universitas Islam Indragiri Tembilahan, Vol. 1, No. 2.
- Teungku Muhammad Hasbi Ash Shiddiqy. 1997. *Hukum-hukum Fiqh Islam (tinjauan antar madzhab)*. Semarang: Pustaka Rizki Putra.
- Undang-Undang Republik Indonesia.
- Wahbah Zuhaili. 2004. *Al-Fiqh al-Islāmī wa Adillatuhu*, cet. 4. Damaskus: Dār al-Fikr.
- Zainul Arifin. 2001. *Memahami Bank Syari'ah: Lingkup, Peluang, Tantangan dan Prospek*. Jakarta: Alvabet.

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