



## COMPLYING WITH SHARIA WHILE EXEMPTING FROM VALUE-ADDED TAX: *MURABAHAH* IN INDONESIAN ISLAMIC BANKS

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**Abstrak:** UU No. 42/2009 tentang Pajak Pertambahan Nilai dan beberapa amandemen berikutnya telah membebaskan bank syariah dari pajak pertambahan nilai (PPN) pada transaksi murabahah. Namun ketentuan ini dianggap menimbulkan isu syariah karena barang diserahkan langsung dari pemasok ke nasabah, sedangkan Fatwa DSN-MUI tentang akad murabahah mengatur bahwa bank harus membeli dan memiliki barang terlebih dahulu dari pemasok sebelum menjualnya kembali kepada nasabah. Dengan ketentuan pajak ini, transaksi murabahah telah bergeser dari sistem jual beli menjadi sistem jasa karena bank dianggap tidak melakukan pembelian barang melainkan mentransfer dana pembelian barang kepada nasabah. Ketentuan pajak ini telah meringankan beban pajak pertambahan nilai bank syariah namun mengorbankan pemenuhan prinsip syariah. Kajian ini berupaya mencari solusi dilema ini dengan usulan revisi regulasi perpajakan untuk transaksi murabahah dengan pendekatan analisa legal filosofis, normatif, dan sosiologis. Penyerahan barang dari pemasok kepada bank dan dari bank kepada nasabah dimasukkan dalam transaksi barang tidak kena pajak. Dengan usulan ini diharapkan bank syariah tetap terhindar dari pajak ganda, namun tetap memenuhi prinsip syariah serta berdaya saing dengan bank konvensional.

**Kata kunci:** murabahah; PPN; jual beli; jasa; prinsip syariah

**Abstract:** Law number 42/2009 on Value Added Tax and some subsequent amendments have exempted Islamic banks from the value-added tax on their *murābahah* transactions. This provision raises the sharia issue because the goods are delivered directly from the supplier to the customer. At the same time, the DSN-MUI Fatwa regarding the *murābahah* contract sets that banks must first buy and own the goods from the suppliers before selling them back to the customers. With this tax provision, *murābahah* transactions have shifted from trade systems to service ones because banks directly transfer funds to customers to purchase goods. Such tax policy has dealt with the so-called double taxation issue of Islamic banks but sacrificed the compliance of sharia principles. This paper seeks to solve this dilemma by proposing a revision of tax regulations for *murābahah* transactions using philosophical, juridical, and sociological legal approaches. The delivery of goods from suppliers to banks and from banks to customers is included in non-taxable goods transactions for Islamic banks. With this proposal, Islamic banks are expected to be exempted from value-added tax while complying with sharia principles and competing with conventional banks.

**Keywords:** *murābahah*; VAT; trade; services; sharia principles

## Introduction

Indonesian laws, Law No. 18/2000 on Banking and Law No. 42/2009 on Value Added Tax, stipulate that banking financial services are among services excluded from the taxable objects of Value Added Taxes. However, such regulations have been exempted from some assistance in Islamic banks whose operation is based on sharia principles, including the *murābahah* contract that has become one of the dominant financing schemes in Islamic banking. Since *murābahah* transaction involves buying and selling goods while the core business of Islamic bank is financial intermediary, the arrangements require more specific regulations.

Such specific arrangements of *murābahah* require that the sharia principles are met, but the transactions do not violate tax law provisions in Indonesia. Before enacting the Value Added Tax (VAT) Law No. 42/2009, Islamic banks had been charged VAT on their *murābahah* transactions. Since the transactions involved two sequences of goods delivery from the first supplier to the bank and the second from the bank to the customer, with such a tax burden, *murābahah* transaction costs in Islamic banking became more expensive. They reduced the competitiveness of Islamic banks compared to conventional banks.

Islamic banking stakeholders have requested the government to eliminate the tax burden of *murābahah* transactions for the sake of Islamic banks. The government has responded to it through the VAT Law No. 42/2009 and several subsequent amendments.<sup>1</sup> The provision stipulates that to exempt Islamic banks from VAT, the delivery of goods is deemed to be carried out directly from the supplier to the customer. The bank transfers funds to the customer to purchase the goods. Therefore, the selling tax is only levied on the supplier while the buying tax is set on the customer. This provision has exempted Islamic banks from the VAT on their *murābahah* transactions. However, it violates sharia principles because buying and selling transactions have been directly between the supplier and the customer. Furthermore, *murābahah* transactions as the purchase contract have shifted into service transactions as the bank directly transfer fund to the customer to purchase the goods.

Then how to bridge the tax policies to exempt Islamic banks from the VAT of *murābahah* transactions and the issue of sharia non-compliance of the *murābahah* transactions? This paper analyzes the

dilemma between the exemption of VAT and the fulfilment of sharia principles on *murābahah* transactions in Indonesian Islamic banking. The study adopts a philosophical, normative, and sociological legal approach in reconciling the contradiction between the tax provisions and the sharia compliance in *murābahah* transactions in Indonesian Islamic banks. It also proposes the revisions to the Tax Law related to *murābahah* transactions.

The discussion begins with the literature review related to the sharia principles of the *murābahah* contract and its tax provisions in Indonesia. It is followed by the philosophical, juridical, and sociological legal analysis of the contradiction between the sharia principles and tax provisions. Next, it will discuss proposed changes in the taxation policy of *murābahah* transactions. Finally, the papers will be closed with some concluding remarks.

### ***Murābahah* in Islamic Banking**

*Murābahah* is derived from the word “*ribh*” meaning gain or profit. *Murabahah* means selling a product on a cost-plus-profit basis. In *murābahah*, the seller explicitly reveals the cost and specifies the profit margin as an addition to constitute the selling price of the goods (Abu Zayd, 2004; Sairally, 2002).

In classical fiqh, one of the prerequisites of this sale to be valid is that both seller and buyer recognize the cost and selling price of the goods. Furthermore, except for the Shafi’is, most fiqh schools required the goods to be accurate and *mithli* (standard) objects, while the Hanafis required that the goods be something exclusive of gold and silver (Abu Zayd, 2004).

Such a common type of sale in the classical Islamic period has been adapted to contemporary Islamic banks and other Islamic financial institutions. The so-called modern *murābahah* is used as one of the financing schemes of Islamic banks. Customers who need goods can propose *murābahah* financing to the banks. Then the banks purchase such goods from suppliers and resell them to the customers with an agreed profit margin over the cost price, while the customer pays with instalment, adjusting their capacity (Guney, 2015; Ayub, 2007). It is considered mutually beneficial dealings as the banks can profit by

providing customers commodities they need in the present time while the customers can benefit from purchasing the items in instalments.

In contrast to the direct nature of *murābahah* trading from the seller to buyer in the classical period, the contemporary practice of *murābahah* has been compounded and constituted a multi-stage process. The latter consists of three stages: the promise (*wa'd*) phase, where the bank and the customer bind themselves to deal in *murābahah* financing to buy and sell goods or services. Second, the bank buys the requested goods from the supplier based on the order from the customer. Third, the bank sets the selling price with some profit margin from the cost and sells the items to the customers with deferred payment (Abu Zayd, 2004; Sairally, 2002). This scheme is well-known as *murābahah lī al-amr bi al-shirā'*.

Due to a significant transformation of classical *murābahah* into the contemporary practice of *murābahah*, there are currently debates among scholars on the permissibility of the latter. There are at least three positions regarding this: first, those who argue that the contemporary practice of *murābahah* is permissible. This represents the majority view that includes some scholars such as Sami Hamud, Yusuf al-Qaradhawi, Ali Ahmad Salus, Sadiq Muhammad Amin, and Ibrahim Fadhil. They have several arguments on which to base. First, the original law of any contract in *mu'āmalah* is permissible unless evidence forbids them. Second, the Quran and Hadith indicate the lawfulness of buying and selling, one of which is contained in Q.S Al-Baqarah: 275 that Allah has permitted buying and selling. Third, the opinions of fiqh scholars include Shafi'i's statement that *murābahah* transactions are allowed on the condition that the buyer has *khiyār* rights, namely the right to continue or cancel the sale and purchase contract. Fourth, *murābahah* transactions are built based on the principles of benefits obtained, not causing disputes, and become a community habit. Finally, the existence of *murābahah* aims to facilitate human life and lighten the burden it bears (Lathif, 2012). In general the implementation of *murābahah* contracts in Islamic banking is already in line with the regulation of the *murābahah* transaction (Ibrahim & Salam, 2021: 397).

Similarly, Miah & Suzuki (2020) justify the "*murābahah* syndrome" of Islamic banks due to existing institutional underpinnings. Furthermore, they argue that expanding PLS based-financing on will lead Islamic banks to higher risk, which is prohibited in Islam. Therefore Islamic banks

would logically be involved with PLS-based financing only limitedly unless the current governing institutions are changed. To achieve the social mission of Islamic finance, they recommend the job division and specialization between Islamic banks. The recommendation includes catering to the needs of depositors whose mainstream operation will remain mark-up dominant and independent Venture Capital firms and Micro Finance Institutions to cater to the condition for equity financing of entrepreneurs and the funding of marginal clients, respectively.

Second, those who argue that the predominance of *murābahah* as a financing model in Islamic banks is "a deviation from Islamic banking principles and criticize the long-term tendency of Islamic banks to utilize debt-like instruments. They demand Islamic banks to replace them with profit and loss sharing modes of financing" (Guney, 2015). Some scholars, such as Muhammad Sulayman al-Asyqar, Bakr ibn 'Abd Allah Abu Zayd, and Rafiq al-Mishri, forbid *murābahah li al-amr bi al-shirā'*. They have several arguments. First, there is usury in *murābahah* because the practice of *murābahah* in Islamic banks is not intended for buying and selling but is just a trick to justify usury. Islamic banks are not serious about buying these goods. Second, none of the previous scholars allowed *murābahah*. Third, *murābahah* is included in the sale and purchase of inah, namely usury loans engineered with buying and selling. Fourth, *murābahah* has *bay'atan fi bay'ah*. The sale and purchase contract takes place without a definite choice (*khiyār*), and the sale and purchase bind one party. Fifth, Islamic banks sell goods they do not own. To realize the agreement, Islamic banks and customers make promise transactions. Islamic banks promise to sell goods, and customers promise to buy goods. Finally, Islamic banks have required dealings with mere promises. The basis for the necessity to buy is not in the rules of the sharia (Lathif, 2012).

Third, those who accept this mode of financing generally raise objections to some details of the theory and the practical application of modern *murābahah* by Islamic banks today (Guney, 2015). These include Usmani (2007), Guney (2015), and Shah & Niazi (2019). Usmani (2007) argues that *murābahah* is not a mode of financing in its origin. It is a simple sale on a cost-plus basis. However, after adding the concept of deferred payment, *murābahah* has been devised as a mode of financing only in cases where the client intends to purchase

the commodity. Therefore, it should neither be taken as an ideal Islamic mode of financing nor a universal instrument for all sorts of financing. It should be a transitory step towards the perfect Islamic financing system based on *mushārahah* or *muḍārahah*. Otherwise, it should restrict its use to areas where *mushārahah* or *muḍārahah* cannot work.

Furthermore, Usmani (2007) argues that it is the initial condition for the validity of *murābahah* that the commodity comes in the ownership and physical or constructive possession of the financier before he sells it to the customer on a *murābahah* basis. There should be a time when the financier bears the risk of the commodity without ownership or assuming the entity's risk, though for a short while, the transaction is not acceptable to sharia for a short time, and the profit from that place is not halal. Shah & Niazi (2019) argue that the contemporary practice of *murābahah* has raised some Sharia issues. However, some strategies can resolve the problems due to the public need for such financing.

### ***Murābahah* Transactions of Islamic Banking in Indonesia and Its Taxation Policies**

Islamic banks and other Islamic economic institutions have been developed since the 1990s in Indonesia, which relatively lagged behind other Muslim countries such as Malaysia, Egypt, and Pakistan. The development has represented Indonesian Muslims' aspiration to implement their religious teachings in their economic life. Islamic teachings on economic justice are expected to continue to be developed through the development of Islamic financial institutions and other people's economies. This is done by basing the Islamic banking system and financial institutions on sharia principles: avoiding *riba*, *maysir*, *gharār*, *ḥarām*, and exploitative dealings. But it can not deny that the Islamic banks have been developed in the period when the conventional banking system has dominated, demanding Islamic banks to be competitive with established conventional banking.

In contrast to conventional banks based on the interest system, Islamic banks are based on sharia principles in their systems, operations, and products. Islamic banks generally use multi-layer *muḍārahah* where customers function as *ṣāhib al-māl* (fund owner) and banks as managers. On the other hand, Islamic banks, such as *ṣāhib al-māl* and customers, serve as managers or *muḍārib*. The products offered to depositors are

*wad'ah*, *muḍārabah* savings, and *muḍārabah* deposits. While on the asset side, Islamic banks provide several financing products using *muḍārabah*, *mushārahah*, *murābahah*, *salām*, *istithnā*, and *ijārah* contracts. The Financial Services Authority (Otoritas Jasa Keuangan/OJK) statistics show that the most significant financing distribution uses a *murābahah* contract, with almost 50% of the total financing disbursed by Islamic banks (Bisnis.com, 2019).

In practice, *murābahah* transactions have been carried out by many Islamic banks in Indonesia because they have high opportunities and minor risks. *Murābahah* transactions are allowed by fulfilling the principles of buying and selling according to the sharia. The Islamic bank perfectly owns the goods sold, the buyer or customer has *khiyār* rights, and this transaction has benefits.

There is specificity for *murābahah* products because it has a buying and selling transaction scheme in contrast to conventional banking, which performs the functions of intermediary financial institutions without involving the sale and purchase of goods. In *murābahah* transactions, Islamic banks buy and sell goods from suppliers to banks, and then the banks sell them to customers. This is stated in the DSN-MUI Fatwa No. 4/2000 on *murābahah*, which requires banks to buy goods with perfect ownership and then sell them to customers. Thus, two transactions occur transactions between suppliers and banks and transactions between banks and customers. These two transactions show that there have been two deliveries of goods, so the old tax provisions have caused Islamic banks to be burdened with double taxes. Firstly, the bank must pay the tax when buying goods from suppliers, and the second is the income tax obtained as the bank's profit.

This provision is based on the Letter of the Directorate General of Taxes, the Ministry of Finance of Indonesia on the Treatment of VAT on *Murābahah* Transactions No. 243/PJ.53/2003 dated 10 March 2003, and the Letter of the Directorate General of Taxes, the Ministry of Finance of Indonesia on the Treatment of VAT on Financing Products by Islamic Banking. No. S-65/PJ.53/2006 dated 7 February 2006, Letter of the Directorate General of Taxes, Ministry of Finance of Indonesia on Requests for VAT Confirmation on *Murābahah* Transactions, No. S-1003/PJ.322/2006 dated 7 February 2006. The three letters explain the delivery of taxable goods in *murābahah* transactions, either by the



supplier/producer to the bank or by the bank to the customer. It could occur as long as the party making the delivery is a taxable entrepreneur and constitutes the delivery of taxable goods for which value-added tax is payable.

This double tax provision is burdensome for sharia banking stakeholders because it burdens Islamic banks and their customers. *Murābahah* transaction becomes more expensive because of double taxation. This has implications for the declining competitiveness of Islamic banks compared to conventional banks. Therefore, the stakeholders demanded that Islamic banks' double taxation be abolished. The government responded to this request by revising Law No. 42/2009 on the Value-added Tax of Goods and Services and Luxury Goods. With Law No. 42/2009, Islamic banks are free from double taxation, especially *murābahah* transactions.

VAT Law No. 42/2009 Article 1A section (1) point h stipulates that "delivery of Taxable Goods by the Taxable Entrepreneur in the framework of the finance agreement. It is implemented based on the sharia principles, which its delivery is deemed directly from the Taxable Entrepreneur to the party who requires the Taxable Goods". Explanation Law No. 42/2009 on Value Added Tax Article 1A section (1) point h. Example: In a *murābahah* transaction, a sharia bank acts as a provider of funds to purchase a motor vehicle from Taxable Entrepreneur A at the order of a sharia bank customer (Mr. B). Although based on sharia principles, Islamic banks must first buy the motorized vehicle and then sell it to Mr. B. Based on this Law, the delivery of the motorized vehicle is considered to be carried out directly by Taxable Entrepreneur A to Mr. B.

This provision has simplified the system for delivering goods from suppliers to customers in sharia banking *murābahah* transactions. However, when viewed from the aspect of compliance with sharia principles, this tax provision is contrary to sharia principles as stated in the DSN MUI fatwa regarding *murābahah* transactions. In this fatwa, *murābahah* transactions require banks to buy goods from suppliers before reselling them to customers.

## Research Method

This study aims to provide solutions or proposals that can bridge the tax provisions to exempt Islamic banks from value-added tax

on the one hand while still complying with the Sharia principles on the other hand. The methodology used is to conduct philosophical, juridical, and sociological legal analysis on the contradictions of tax provisions and the fulfilment of sharia principles with dialectical and synthesis methods. The philosophical and legal analysis will discuss the reconciliation of sharia principles and VAT Law of Islamic banks in the light of *maqāṣid al-sharī'ah*. The juridical legal analysis will examine the contradictions between the VAT Law and the DSN-MUI Fatwa. Meanwhile, the sociological and legal analysis will analyze the Sharia issue of implementing *murābahah* using the scheme in the VAT Law.

### Philosophical Legal Analysis

The presence of Islamic banking and finance is a biological child (institutional aspects/operational tools of Islamic economics) from the aspirations of Islamic economics, which was born as a critique of the capitalist economic development mode and the socialist/communist resource allocation system. Muslim economists argue that the failure of economic development in the Muslim world is due to a capitalist economic development strategy that ignores the importance of social welfare. As a solution, they offer a human-centred economy. The reflection of Muslim economists on Islamic principles in the Quran and Sunnah gave birth to several axioms of sharia economics, namely: *tawhīd*, *al-'adl wa al- ihsān* (justice and equity), *ikhtiyār* (free will), *fard* (responsibility), *rubūbiyyah* (divinity), *tazkiyah* (purification), and *khilāfah* (viceregency), as well as *maqāṣid al-sharī'ah* (the higher objectives of Islamic law). So that Islamic economics is defined as "an approach to and process of interpreting and solving the man's economic problems based on the values, norms, laws and institutions found in, and derived from all sources of knowledge in Islam (Asutay, 2007).

On this philosophical basis, Islamic banking and finance is a financial institution that not only aims to create wealth (wealth creation) by seeking profit (profit-making) but also to distribute wealth (wealth distribution). This aims to realize social justice, narrowing the gap between the rich and the wealthy, poverty, eradicate poverty, and preventing exploitation. Islamic finance principles avoid *ribā* (usury), *maysir* (gambling), *gharār* (uncertainty), *ḥarām* (prohibited) transactions, and *zulm* (exploitative dealing).

From a legal and philosophical perspective, the discrepancy between the fulfilment of sharia principles and compliance with tax regulations can be seen from the sequence of five principles in *maqāṣid al-sharī'ah*: protecting religion, protecting souls, protecting reason, protecting offspring, and protecting property (Al-Ghazali, 1983). Sharia compliance in *murābahah* transactions can be categorized as an effort to maintain the religion. Meanwhile, compliance with the provisions on tax payments in *murābahah* transactions is included in protecting assets to secure sources of foreign exchange/state revenues for development needs. Based on the conditions of the order of the five principles of *maqāṣid al-sharī'ah*, the principle of protecting religion is in a higher hierarchy than the principle of protecting property. Therefore, to fulfill the tax provisions of *murābahah* transactions, one should not sacrifice the principle of sharia compliance. In other words, the exemption of Islamic banks from value-added tax should not make the process of *murābahah* transactions in Islamic banking violate sharia principles.

Therefore, the VAT Law must recognize Islamic banks' business models and activities. It can adjust the value-added tax of *murābahah* transactions in Islamic banks. However, it cannot change *murābahah* transactions from buying and selling systems into service ones. It cannot deconstruct the mechanism of business activities carried out by Islamic banks.

### **Juridical Legal Analysis of *Murābahah* Contracts**

The Indonesian Value Added Tax Law states the value-added tax on each delivery of goods or services. However, it can be levied at various links and is only charged on the value-added at each link so that the value-added tax burden is not burdensome. Not all goods are taxable, while the export of goods is subject to a 0% tax, considering the imposition of a value added tax on the consumption of goods and/or services in the country or the customs area. Every delivery of goods or services must be made with a tax invoice proof of the transaction (Indonesia, 1983).

The VAT Law aims to increase legal certainty and justice, create a simple tax system, and secure state revenues. However, legally, there is a contradiction between the provisions of the VAT Law and the conditions of the DSN-MUI Fatwa. VAT Law No. 42/2009 Article 1A section

(1) point h: "delivery of Taxable Goods by the Taxable Entrepreneur in the framework of finance agreement of which is implemented based on the sharia principles. That delivery is deemed directly from the Taxable Entrepreneur to the party who requires the Taxable Goods", which is included in the definition of the delivery of taxable goods.

*Murābahah* transactions contained in the Indonesian Value Added Tax Law describe the delivery of goods (sale and purchase) in a financing agreement based on sharia principles, such as a *murābahah* transaction. The goods are delivered directly from the Taxable Entrepreneur (supplier) to the party who requires the taxable goods (consumer). The delivery is considered carried out now from the supplier to the customer. Such provision has simplified the *murābahah* transaction to exempt Islamic banks from the VAT of such *murābahah* transactions.

Implementation of the use of tax invoices using sales invoices, namely direct sales and purchases recorded by the customer's name as the buyer, payment obligations to suppliers registered on behalf of the customer as the buyer, delivery of goods directly from the supplier to the customer as the buyer, tax burdens and others are the responsibility of the customer. The bank is free from all obligations, including the tax burden and the bank is free from the responsibility related to the object. The bank is not recorded associated with purchasing the thing from the supplier. Thus, *murābahah* transactions can be identified with credit distribution transactions at conventional banks as referred to in the Indonesian Value Added Tax Law. It mainly related to proof of sale and purchased with suppliers, proof of payment to suppliers, and proof of receipt of delivery of goods from suppliers, namely the position of the customer as the buyer directly from the supplier.

Such provision has been contrary to the Fatwa of DSN-MUI No. 04/DSN-MUI/IV/2000 on *Murābahah*. The fatwa stipulates that the bank purchases the goods the customer needs on behalf of the bank itself, which must be legal and free of usury; if the bank accepts the request, it must pre-purchase the legally ordered assets with the merchant; and suppose the bank wishes to represent the customer to purchase goods from a third party, the *murābahah* sale and purchase contract must be executed after the goods, in principle, become the bank's property. *Murābahah* transactions, as stipulated in the fatwa of the DSN-MUI, begin with the bank's position as a buyer from a

supplier. The bank performs a *murābahah* transaction in its position as a seller to a customer. Purchases by banks on behalf of banks must be legal and free of usury. If the bank authorizes the customer to purchase goods, then the *murābahah* transaction can only be carried out after the interests in principle become the bank's property (DSN-MUI, 2017).

Meanwhile, suppose you look at the tax arrangements for *murābahah* and other Malaysian transactions. In that case, it can be seen in the 1976 Real Property Profit Tax Law (RPGT), which was last amended by the 2019 Finance Law. In schedule 2, paragraph 3, letter (g), describes a bank that carries out financing business activities in the context of selling an object to a customer by sharia principles which are not subject to profit tax (Malaysia, 1976).

### **Sociological Legal Analysis**

Some sharia issues arise when the scheme of *murābahah*, as described in the VAT Law, is implemented in Islamic banks. First, *murābahah* can be trapped into *tawarruq akad*, where no transfer of ownership occurred from the bank to the customer as it is equivalent to selling a commodity without assuming the ownership risk. Such a condition is found when the *murābahah* transaction scheme follows the VAT Law scenario. Second, When there is no activity of delivering the goods as the object of *murābahah* financing, such contract can be considered a loan or credit contract, as a typical scheme of conventional banks. Third, filling and signing all the documents of *murābahah* and *wakālah* simultaneously also create another sharia issue.

Some issues are identified regarding the operational matters: first, the banking concept as intermediary financial institutions might imply that banks cannot act as direct sellers in *murābahah* financing. Second, the risk that the bank should bear is often shifted to the customer using the *wakālah* contract from the bank to the customer. Third, customers can claim they are not liabilities to the bank, as the purchasing contract is between the customer and the supplier.

This transaction has caused issues because non-compliance with sharia principles related to buying and selling has been carried out directly by the supplier as the seller, with the customer as the buyer in *murābahah* financing. There is no activity of delivering goods, so

the *murābahah* contract carried out will fall as a loan agreement. The Indonesian Financial Services Authority also describes the possibility of sharia issues because there is no accurate transfer of ownership from the bank to the customer.

The issue of *gharār*, as referred to in this case, is the Indonesian Sharia Banking Law which explains that banking business activities must be based on sharia principles. It includes actions that do not contain elements of *gharār*, namely, because banks do not have goods to sell to customers and cannot deliver the goods when the transaction is executed. The issue of *gharār*, as referred to in this case, is the Indonesian Sharia Banking Law which explains that banking business activities to be based on sharia principles, which include actions that do not contain elements of *gharār*, namely because banks do not have goods to sell to customers, and because banks cannot deliver the goods at the time the transaction is executed. The existence of *gharār*, which is part of the sharia issue, can occur because the sale and purchase have been carried out directly from the supplier to the customer. There is no buying, selling, or transfer of ownership from the supplier to the customer. There is no objective evidence of a transfer proven in writing as proof of ownership for the sharia bank. As the Fatwa of DSN-MUI, No. 111 states, the provisions regarding objects must exist, be clear/certain/specific, and be handed over at the *murābahah* sale and purchase contract.

The issue of usury which is part of the sharia issue can occur because there is no accurate transfer of ownership from the bank to the customer. There is a transfer of money from the bank to the customer's account, or the customer receives cash from the sharia bank, and then the customer returns the money in instalments with an excess value. The issue of usury referred to the Indonesian Sharia Banking Law, which requires that banking business activities be based on sharia principles, which include actions that do not contain elements of usury, namely because there is an excess when refunding money received by customers.

The existence of sharia issues and legal issues can become transactions that can cancel because the legal conditions of the agreement are not fulfilled. Namely, the absence of ownership of the object owned by the bank as the seller and the object of the transaction has become the customer's property purchased directly from the supplier. The bank does

not have legal standing (legal position) as a seller. Other issues related to *murābahah* transactions can be seen in other related literature.

There is a discrepancy between what is meant by the bank having the object and what is recorded. It turns out that the customer is the owner of the thing purchased from the supplier, so the customer can claim that he has no obligation in any form to the bank regarding the purchase of goods that the customer has purchased from the supplier with the payment of money transferred by the supplier bank to customers. The object of the transaction has become the customer's property, purchased directly from the supplier. Thus, the marketing became a null and void transaction due to the absence of the object sold by the bank to the customer in the *murābahah* transaction.

The empirical analysis concludes that Islamic banks must comply with the VAT Law. The provisions for *murābahah* transactions in the VAT Law apply to Islamic banks. However, compliance with the VAT Law causes Islamic banks not to comply with sharia principles.

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The issue of usury which is part of the sharia issue can occur because there is no accurate transfer of ownership from the bank to the customer. There is a transfer of money from the bank to the customer's account, or the customer receives cash from the sharia bank, and then the customer returns the money in installments with an excess value. The issue of usury referred to in this case is the Indonesian Sharia Banking Law which requires that banking business activities must be based on sharia principles, which include actions that do not contain elements of usury, namely because there is an excess when refunding money received by customers (Indonesia, 2008).

The existence of sharia issues and legal issues can become transactions that can cancel because the legal conditions of the agreement are not fulfilled. Namely, the absence of ownership of the object owned by the bank as the seller and the object of the transaction has become the property of the customer purchased directly from the supplier so that the bank can qualify does not have legal standing as a seller (MA, 2008). Other issues related to *murābahah* transactions can be seen in other literature (Aziz, Muslim, & Hidayah, 2020).

There is a discrepancy between the bank owning the object, and what is recorded that the customer is the owner of the thing purchased from the supplier. Therefore, the customer can claim that he has no obligation to the bank regarding the purchase of goods that the customer has purchased from the supplier with the payment of money transferred by the supplier. Thus, the transaction can become null and void marketing due to the object's absence sold by the bank to the customer in the *murābahah* transaction. The transaction has become the customer's property purchased directly from the supplier (MA, 2008).

## Policy Analysis

Based on the philosophical, juridical, and empirical legal analysis above, we can see the contradiction between sharia and tax compliance. Finding a solution that prioritizes sharia compliance over tax compliance is necessary. In the perspective of *maqāsid al-sharī'ah*, the element of protecting religion is at a higher level than the element of protecting property. Shariah compliance which represents the element of protecting religion, is at a higher level than compliance with tax provisions which



means the component of protecting property. On this basis, this paper recommends an amendment to the tax provisions for *murābahah* transactions.

The solution is to conduct a judicial review of Article 1A letter h. For the time being, it is to provide an interpretation of Article 1A letter H with a *contrario* interpretation. This *contrario* interpretation must be obeyed by the directorate general of taxes not to collect value-added tax on *murābahah* transactions, even though the law states that direct transactions from suppliers to customers are limited to collect value-added tax. Meanwhile, the actual *murābahah* transaction is still carried out from the supplier to the bank, then from the bank to the customer.

As for the provisions on VAT taxation, it is necessary to add a clause that the delivery of goods from suppliers to banks and the delivery of goods from banks to customers are included in transactions that are included in categories that are not included in the VAT tax object.

An illustrative example of the calculation of Law No. 7/2021, which provides an 11% rate effective in 1 April 2022 on the value-added tax of *murābahah* transactions for Islamic banks. A *murābahah* transaction for purchasing a vehicle by Islamic bank C acts as a provider of funds to purchase a motor vehicle from taxable entrepreneur A at the customer's order (Mr. B). It can be illustrated with taxable entrepreneur A selling goods to sharia bank B for IDR 150,000,000,-, then the value-added tax, which is an output tax collected by Taxable Entrepreneur A to sharia bank C is  $11\% \times \text{IDR } 150,000,000,- = \text{IDR } 16,500,000,-$ . The amount of sharia bank C payment to entrepreneur A is taxable IDR 166.500.000,-. Then sharia bank C sells goods to Mr. B's customer for IDR 200,000,000. The customer's total payment to sharia bank C is IDR 216,500,000. Meanwhile, IDR 50,000,000 as added value by sharia bank C is not subject to value-added tax. It is categorized as not included in the definition of delivery of taxable goods on the grounds of delivery of taxable goods by sharia banks to customers for financing business activities based on sharia principles, for example, for *murābahah* transactions or buying and selling transactions or similar transactions.

This solution illustrates that the placement of a *murābahah* transaction clause as part of Article 1A Paragraph (1) of the Indonesian Value Added Tax Law is inappropriate because it can be categorized

as having eliminated the delivery of taxable goods from taxable entrepreneurs to Islamic banks for transaction activities based on sharia principles as an example.

From taxable entrepreneurs to Islamic banks and delivery of goods from Islamic banks to customers. *murābahah* transaction results from the direct delivery of goods or deemed to be directly submitted by the taxable entrepreneur to the customer. This can be clarified by Article 13 Paragraph (5) of the Indonesian Value Added Tax Law, which requires recording the names of sellers and buyers on tax invoices to state that the seller is a taxable entrepreneur and the buyer is a customer. In addition, there is a clause in Article 4A Paragraph (3) letter d of the Indonesian Value Added Tax Law which explains that financing based on sharia principles is categorized as specialization only specifically for financial services as part of the types of services that are not subject to value-added tax. Thus, the sharia-based financing clause only in Article 1A Paragraph (1) letter h and Article 4A Paragraph (3) letter d is still not appropriate to eliminate the value-added tax burden for Islamic banks for their business activities using a sale and purchase transaction system (delivery of goods).

A relationship between Article 1A Paragraph (1) letter h and Article 4A Paragraph (3) letter d in the Indonesian Value Added Tax Law had been interpreted by the judges of the Indonesian Tax Court. It stated that since the enactment of the Indonesian Value Added Tax Law the amendments to the year 2009, banks do not perform *murābahah* transactions perform service transactions. The reason is only a provider of funds while the delivery of goods (sales and purchases) is considered to be carried out directly from the supplier to the customer. Therefore, it make bank as non subject to value-added tax. Meanwhile, for *murābahah* transactions before enacting the 2009 amendment to the Indonesian Value Added, the government bore Tax Law, the levy of value-added tax on banks based on the Regulation of the Minister of Finance of Indonesia No. 251/PMK.011/2010 on Value Added Tax Borne by the government on *murābahah* transactions in Sharia Banking Fiscal Year 2010.

The basis for this solution is according to the Indonesian Value Added Tax Law, which does not impose service transactions on banking and sharia banking. In addition, the purpose of Article 1A Paragraph (1) letter h of the Indonesian Value Added Tax Law is very likely to have

the intention of freeing the burden of value-added tax for sharia banking activities, but it may be misplaced.

The imposition of value-added tax for customers, which is collected with the handle of the bank's acquisition price from the supplier or taxable entrepreneur, will clarify the position of the *murābahah* transaction, namely the notification of the bank's acquisition price to the customer, which is realized by the existence of a bank purchase invoice from the supplier and the customer's purchase invoice from the bank. The second is the invoice as a guide for imposing a value-added tax for customers.

This solution follows the concept of value-added tax as public law or as a cause and effect of a sale and purchase transaction or delivery of goods, which should not override *murābahah* transactions seen as private law.

To accommodate the amount of value-added tax for the delivery of taxable goods from sharia banks to customers in the context of transaction activities based on sharia principles, it is calculated from the acquisition price of sharia banks. This solution has eliminated sharia and legal issues because the demands of the three problems have been fulfilled. For this reason, the Indonesian Value Added Tax Law needs to be updated by updating Article 1A Paragraph (1) of the Indonesian Value Added Tax Law to accommodate the value-added tax burden for *murābahah* transactions or buying and selling transactions or similar transactions used for sharia-based financing business activities in the category not included in the definition of delivery of taxable goods, renewal of Article 1A Paragraph (2) of the Indonesian Value Added Tax Law to accommodate the delivery of taxable goods from sharia banks to customers in the context of transaction activities that are guided by sharia principles, renewal of Article 7 Paragraph (2) of the Indonesian Value Added Tax Law.

The solution's strengths are an interpretation of Islamic bank ownership in principle for the *murābahah* financing object following the legal concept of ownership in the Fatwa of DSN-MUI. It has provided strong evidence for Islamic banking in implementing sharia principles, especially when in dispute. They also follow the ownership concept applicable in Indonesia, not avoiding the transfer of ownership for Islamic banking, which is strengthened by several Supreme Court decisions as jurisprudence. However, the weaknesses of the solution described above are still the norm of Article 1A Paragraph (1) letter h of the Indonesian Value Added Tax Law. It states that Islamic banks do not accept delivery and deliver goods

and do not register Islamic banks as buyers of goods but deliver goods directly from suppliers to customers. As a contrary interpretation of the Indonesian Value Added Tax Law norms, which provides an exemption, elimination, or imposition at a rate of IDR 0,- or 0%.

The Tax Court has interpreted opportunities for the solutions described above through at least 12 decisions defined after the amendment to the Indonesian Value Added Tax Law. It has been in effect since 1 April 2010. The distribution of *murābahah* financing can no longer be carried out by Islamic banks, and they must be able to encourage parties -Relevant parties to review the Indonesian Value Added Tax Law. However, it can only implement the threats to the solution described above Amendments to the law utilizing a judicial review by the Constitutional Court of the Republic of Indonesia. The limitation states that it has no binding legal force or uses a legislative review by the Indonesian House of Representatives. The authority to amend the law or utilize executive review by the President of Indonesia in the event of a compelling emergency can be in the form of government regulation instead of a law. Changes to regulations or regulations under the law can only be implemented utilizing a judicial review by the Supreme Court of Indonesia. However, this option is limited as it has no binding legal force or by way of executive review by each agency. That has the authority to make or amend the regulation. Implementing law or regulation reform also takes longer and requires stakeholder encouragement.

## Conclusion

After enacting Law No. 42/2009 on Value Added Tax and its several amendments, Islamic banks are no longer burdened with double taxes on *murābahah* transactions. However, this provision violates sharia principles because the goods are delivered directly from the supplier to the customer. This is contrary to the DSN-MUI Fatwa No. 4/2000 concerning *murābahah* contracts, where Islamic banks must purchase goods from suppliers before reselling them to customers. With this tax provision, *murābahah* transactions have shifted from a buying and selling system to a service system because banks are considered not to purchase goods but to transfer funds to buy goods to customers. This tax provision has eased the double tax burden of Islamic banks but sacrificed the fulfillment of sharia aspects. Using a philosophical, normative, and

sociological, legal analysis approach seeks to solve this dilemma by proposing a revision of tax regulations for *murābahah* transactions. Delivery of goods from suppliers to Islamic banks is included in non-taxable goods transactions, while the delivery of goods from banks to customers is included in taxable goods transactions. This proposal hopes that Islamic banks will still avoid double taxation while complying with sharia principles and being competitive with conventional banks.

Article 1A Paragraph (1) point h of the VAT Law explains that *murābahah* transactions are carried out directly by the supplier as the seller and the customer as the buyer. Customers are burdened with paying value-added tax, while Islamic banks are not burdened with value-added tax. Revision of Article 1A Paragraph (1) point h of the VAT Law, namely the collection of value-added tax is charged to customers because customers carry out *murābahah* transactions as buyers with banks as sellers. The addition of Clause Article 1A Paragraph (2), namely that Islamic banks are not subject to value-added tax because Islamic banks carry out *murābahah* transactions as buyers with suppliers as sellers for Islamic bank business activities.

## Endnotes

- 1 The first amendment is Law of the Republic of Indonesia No. 11/1994 (VAT Law 11/1994). VAT Law No. 42/2009 is an amendment to Law of The Republic of Indonesia No. 8/1983 on The Value Added Tax of Goods and Services and Tax of Luxury Goods Sale (VAT Law No. 8/1983) which has been amended five times. The fifth amendment is Law of the Republic of Indonesia No. 7/2021 on Harmonization of Taxation Regulations (VAT Law No. 42/2009). The fourth amendment is Law of the Republic of Indonesia No. 11/2020 on Job Creation (Law No. 11/2020). The third amendment is Law of The Republic of Indonesia No. 42/2009 (VAT Law No. 42/2009). The second amendment is the Law of the Republic of Indonesia No. 18/2000 (VAT Law No. 42/ 2009). Law No. 7/2021 and Law No. 11/2020 do not change the rules for *murabahah* transactions regulated in the VAT Law No. 42/2009.

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