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Arguments of *Maslahah* and *Mafsadat* in Modern Islamic Economic Law in Indonesia and Morocco

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Abstract. *This study analyzes the arguments for maslahah (benefit) and mafsadat (harm) in developing modern Islamic economic law in Indonesia and Morocco by exploring the practice of murabahah in banking. As this study shows, the dialogue between maslahah and mafsadat may result in the notion of emergency and needs (hajiyat) in economic activities. Using document studies, this study finds that maslahah has been used as the foundation of Islamic economic practices. These include the establishment of financial institutions, market mechanisms, hisbah institutions, and the prohibition of foreign exchange speculation. Meanwhile, maslahah al ammah is considered in using dinar and dirham in transactions.*

Keywords: *Islamic Economics; Law; Maslahah*

Abstrak. *Penelitian ini menganalisis argumen maslahah (manfaat) dan mafsadat (kerugian) dalam pengembangan hukum ekonomi Islam modern di Indonesia dan Maroko dengan mengeksplorasi praktik murabahah di dunia perbankan. Studi ini menunjukkan bahwa dialog antara maslahah dan mafsadat dapat menghasilkan pengertian darurat (daruriyat) dan kebutuhan (hajiyat) dalam kegiatan ekonomi. Dengan menggunakan studi dokumen, penelitian ini menemukan bahwa maslahah telah digunakan sebagai landasan praktik ekonomi Islam di Indonesia dan Maroko. Hal ini mencakup pembentukan lembaga keuangan, mekanisme pasar, lembaga hisbah, dan pelarangan spekulasi valuta asing. Sementara itu, maslahah al ammah dipertimbangkan dalam penggunaan dinar dan dirham dalam transaksi.*

Kata kunci: *Ekonomi Islam; Hukum; Maslahah*

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Introduction

The primary purpose of the Sharia (Islamic law) is to create the benefits of the world and the hereafter and to avoid the harm of both. In other words, the purpose of Sharia is to create benefits for human beings. Scholars, such as Imam Juwaini (d. 476 H) and his disciple Al-Ghazali (d. 505 H), agreed that maintaining property (*al- muhāfazhah 'ala al-māl*), preserving religion (*al-muhāfazhah' ala al-din*), preserving the soul (*al-muhāfazhah' ala al-nafs*), maintaining offspring (*al-muhāfazhah' ala al-nasl*), and protecting mind (*al-muhāfazhah' ala al-'aql*) is one of the main objectives of Islamic law (Al-Qaradhawi, 2010).

It is believed that every religious commandment contains benefits and avoids harm, although applying these benefits in worldly life can vary and differ. In addition, there can also be a contradiction between personal and public benefits. In economic activity (*mu'amalah*), personal benefit is manifested in the form of freedom of contract, personal rights, and freedom to use their property rigths. The general benefit is to create order, welfare, and justice. Both require comparing Islamic law and positive law to realize justice and freedom (Al-Qaradhawi, 2010). Al-Qaradawi maintains that it is necessary to understand specific texts of the Quran and its general benefits (Al-Qaradhawi, 2010).

There are two concepts to determine the purpose of a text, namely the *ta'abbudi* (worship) method and *ma'qūliyat al-ma'na* (intentions understood by reason (Al-Aziz, 2010). Religious texts are not entirely *ta'abbudi* or entirely *ma'qūliyat al-ma'na*. Some texts are *ta'abbudi,* while some of their purposes can be known by reason (*ma'qūliyat al-ma'na*).

The division of Sharia into two broad categories, worship and *mu'amalah,* is closely related to these two methods. The *ta'abbudi* method is a prominent in worship, while the *ma'qūliyat al-ma'na* method is widely applied to texts-related and *mu'amalah* activities (Al-Aziz, 2010).

Regarding *maslahah,* the fatwa of the National Sharia Council (DSN) of the Indonesian Ulama Council seems to be flexible. This can be seen from three aspects. These are the combination of several contracts in one transaction, the innovation of *qard* (loan) combined with other contracts to avoid *riba* (usury), and the expansion of additional requirements (Maksum, 2013). This leniency is marked by efforts to formulate laws called *hīlah* to avoid forbidden things.

Conceptually and practically, because a particular law can be set aside in coercion (emergency) or because of necessity (*li al-hājah*), an Islamic law principle states that "an emergency can justify something that is forbidden (*al-dharūrat*

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tubīh al-mahzhūrāt)," With this principle, a prohibited act can be violated due to an emergency. In economic activities, it is permissible to be involved in financial activities involving *riba* in conventional banking due to an emergency. This is allowable when no other financial institutions offer financial services free from *riba*. Therefore, the 2004 MUI fatwa emphasized that bank interest is haram and no longer has an emergency element because Sharia financial services can be found anywhere (MUI, 2004).

In addition to emergency reasons, reasons for necessity (*li al-hājah*) are also the basis for the permissibility of overriding a law. The *fiqh* rule states that "needs sometimes occupy an emergency position" (*al-hājah qad tanzil manzilat al-dharūrat*). That is, the need (*al-hājah*) under certain conditions can be a reason to override the law because the status of the need is equated with emergency.

One legal provision that uses the *al-hājah* basis is the permissibility of buying and selling currency under a forward agreement.[1] In the DSN-MUI fatwa No. 28 of 2002, it is stipulated that the transaction is unlawful because the price used is the agreed price (*muwa'adah*) and the delivery is made at a later date, even though the price at the time of delivery is not necessarily the same as the agreed value. However, the *fatwa* emphasizes that if it is for reasons of *al-Hājah*, then the transaction is justified (DSN-BI).

Another reason that is explicitly mentioned in the fatwa is the reason for the benefit (*al-maslahah*). Two fatwas were ratified simultaneously: the fatwa on the distribution system of operating results of Islamic financial institutions and the fatwa on the distribution of the profit of Islamic financial institutions. These were stated in Fatwa No. 14 and 15, respectively. Both fatwas confirmed the accrual basis accounting system, namely an accounting principle that allows the recognition of costs and revenues to be distributed over several periods and a profit-sharing system using the revenue-sharing method. In this case, profit sharing is calculated from the total revenue of fund management on the grounds that both methods are beneficial (DSN-BI).

The request for a fatwa will continue, and in the future, it is likely to touch more complex matters on *mu'amalah*. Therefore, problems that are likely to arise beyond basic contracts and involve matters that could be contrary to Sharia principles. An example is the request for a fatwa on cash financing that conventional financial institutions have practiced.

[1] Forward Transactions are foreign exchange buying and selling transactions whose value is determined at the present time and will be applied for the future, between 2 x 24 hours up to one year.

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Until 2017, 116 fatwas were issued by the National Sharia Council. This number will continue to increase, especially fatwas in the Sharia business sector. The arguments or *maslahah*, necessity, and emergency will continue to be considered in the subsequent fatwas. Therefore, these three principles need investigation, as well as the extent to which these concepts are applied and what models are applied to the fatwa. This research relies on doctrinal legal research by studying various documents of fatwas issued by the National Sharia Council of the Indonesian Ulama Council. This study will also compare with Morrocco, where Islamic economic activities are practiced.

Literature Review

The Meaning of *Maslahah Mursalah*

Maslahah mursalah is an Arabic word consisting of two words: Etymologically, *al-maslahah* means goodness, usefulness, promptness, feasibility, harmony, and propriety. The word *al-maslahah* is the opposite of *al-mafsadah,* which means damage (Jauhari, 1956; Al-Ifriqi, 2003; Mustafa, n.d.). The plural form is *masalih* and is distinguished antagonistically with the word *mafsadat* (plural of *mafsadah*) (Ma'luf, 1986). Conversely, the word *mursalah* comes from the word *arsala*. Etymologically, *mursalah* means *mutlaqah*,[14] which means detached or free. Thus, when the two words are combined, they become *al-maslahah al-mursalah*. It means independent of the information that shows it can or should not be done (Syarifuddin, 1999). Terminologically, *maslahah* is defined by Islamic legal scholars using different narratives but substantively and essentially similar. In principle, *maslahah* is to take advantage and reject harm or harm to maintain the primary objectives of Islamic law (Al-Ghazali, 1999).

In particular, the application of Islamic economics (*mu'amalah*) has a broader scope than worship. One example of the application of *al-maslahah* is when Ibn Taymiyyah justified price determination of intervention by the government. In contrast, the Prophet Muhammad PBUH did not interfere in the issue of prices in Medina when the Companions urged him to lower prices (Marthon, 2004). When situations changed, where price distortions occurred in the market, Ibn Taymiyyah taught that the government could intervene in the issue of prices (Nasution, 2007). Textually, Ibn Taymiyyah seemed to violate the hadith of the Prophet. However, because of the consideration of welfare, where the situation is different from the time of the Prophet, Ibn Taymiyyah reinterpreted the hadith contextually based on the consideration of *maslahah* or the benefits of the people in his time.

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The implementation of *maṣlaḥah* and *maslahah al-mursalah* in economic activities can also be seen in various aspects, such as in the establishment of Sharia financial institutions, market mechanisms, the establishment of ḥisbah institutions, the prohibition of foreign exchange speculation due to *mashlahah'ammah* (general benefit), application of dinars and dirhams due to *maslahah' ammah*, prohibition dumping (*siyasah igraq*) in the sale of a product considering the mashlahah of the manufacturers, and the prohibition monopoly for consumers' benefit (Mingka, 2013).

This section explains the argument for including the value of *maslahah* in the practice of Sharia economic law in Indonesia. As the opinion of the scholars about maslahah has been explained above, the understanding of *maslahah* culminates at a point of discovery of the value of goodness (*ijad al-khair*) that does not conflict with the provisions of Islamic Sharia in every human activity, as the subject of law.

In Indonesia, Sharia-based economic activities are regulated by fatwas of the National Ulama Council of the Indonesian Ulama Council. The fatwas have been adopted in the national laws. Satria Effendi Zein considers the adoption process the *taqnin* (legislation) process (Ali, 2002). This study will present several *maslahah* arguments applied in Indonesian economic activities, including *murabahah* and employment-based *zakat* (alms).

Results and Discussion

Sharia Economic Law in Indonesia

There are two entities in Sharia economic law: the law and Sharia economics. Hans Kelsen defines law as a system of rules regarding human behavior (Asshidiqie and Safa'at, 2006). Meanwhile, Mochtar Kusumaatmadja revealed that law is the entirety of rules and principles that regulate social life and has the aim of maintaining order (Kusumaatmadja, 2002). Islamic economics, according to Zainuddin Ali, is a collection of legal norms that regulate the economy of humankind whose sources are from the Qur'an and hadith (Ali, 2003).

The Sharia Economic Law Compilation (KHES) also regulates the Sharia economy in Indonesia. This Law stipulates that a Sharia economy is a business or activity carried out by individuals, groups, or business entities that legally or do not meet commercial and non-commercial needs according to Sharia principles (Supreme Court Regulation Number 2 of 2008 on the Compilation of Sharia Economic Law).

It can be concluded that Sharia Economic Law is a binding legal rule that regulates human economic issues, including regulating Islamic financial institutions

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involved in it, based on the values of Islamic teachings and guided by Islamic principles in the Quran, Hadith, and the *ijtihad* of the ulama.

In Indonesia, the development of Islamic economic activities from year to year has experienced significant developments, for example, in Islamic banking. On November 1, 1991, the first Islamic bank in Indonesia, PT. Bank Muamalat Indonesia (BMI), was established with an initial capital of IDR106,126,382,000 (Antonio, 2001). Until now, the development of the banking industry in Indonesia has changed very drastically. This is marked by the establishment of Sharia Commercial Banks (BUS), Sharia Business Units (UUS), and Sharia Credit Banks (BPRS) throughout Indonesia (Financial Services Authority, 2020).

The significance of the development of Sharia economic activities cannot be separated from the role of practitioners, the public, and the government who pay attention to the field of Sharia economics. Also, the role of *muftis* from the Indonesian Ulama Council issued a fatwa on Sharia economic problems. Valid and accurate Sharia legal fatwas must respond to problems related to Sharia economics. Thus, all these activities have a strong Sharia foundation. Until 2020, the National Sharia Council of the Indonesian Ulama Council has successfully issued at least 130 fatwas related to Islamic economics.

In addition, the Indonesian government has taken a concrete step in developing Sharia economic activities by making Sharia economic law a positive law. Positive law is a written legal rule applied in a country, commonly called *ius constitutum* (Astawa, 2008). The efforts made by the government in making Sharia economic law a positive law in Indonesia are aimed at providing an umbrella (umbrella act) for Sharia economic activities to prevent chaos. This is because if the Sharia economy is practiced without a legal basis, it will result in harm to the parties. This is in line with the opinion that the law is always behind economic activity (Manan, 2009).

Other laws and regulations follow the positivization of Sharia economic law in Indonesia. Until now, several regulatory products have been related to Sharia economic activities in Indonesia, such as the law on Sharia banking, management of *zakat*, *waqf* (endowment), state Sharia securities, the guarantee of halal products, insurance, religious courts, etc. Meanwhile, in regulations under the law, the positivization of Sharia economic law is contained in the Financial Services Authority Regulations (POJK), such as POJK Number 8/POJK.03/2014 on Assessment of the Health Level of Islamic Commercial Banks and Islamic Business Units, POJK Number 15/POJK.04/2015 Implementation of Sharia Principles in the Capital Market, etc.

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Compared to Morocco, Indonesia is relatively different in adhering Islam in its constitution. In the Moroccan constitution, Islam is the state religion, similar to expressions in the constitutions of Arab and other Islamic countries. They considered Sharia the primary source of legislation or Sharia. One of the Islamic economic industries in Morocco is Islamic banks, known as "participatory banks". This financial institution is no different from traditional banks, as it provides banking services. These include loans, project financing, check issuance, debit card issuance and currency exchange, but the difference from traditional banks is the literature on this. The bank category (participatory bank) is based on the Sharia-based operation and is free from interest.

The new law on credit institutions, approved by the Moroccan Parliament, contains several implementations of Sharia Principles in the Capital Market that fit into this category of banks. One of the essential aspects of participatory banking is the *murabaha* contract. This contract is based on buying and selling, not a loan. For example, if a customer applies for a loan to buy an apartment or a car, then an Islamic bank, instead of making a loan, buys a car or apartment and resells it to the customer in exchange for a profit. Apart from that, there are two types of *ijara* contracts. The first type is a normal lease of real estate or equipment, while the second type is a lease that ends with ownership. There is also *mudarabah* where the customer submits a request to the Participating Bank to participate in project development. In other words, the customer participates in the work and experience while the bank shares the capital. If the customer makes a profit, both parties win together. However, if the customer loses, the bank bears the consequences. The last aspect is participation. In this case, the customer signs a contract with the bank, in which the bank participates in the capital project proposed by the customer, provided that both parties share the profits and losses.

The participatory banking sector in Morocco consists of many actors, such as Bank Al-Maghrib, the main actor in charge of legalizing and controlling the banking sector.[2] The other is the Supreme Scientific Council, one of the bodies affiliated with the Ministry of *Wafq* (Endowments) and Islamic Affairs. It has a mission in the Moroccan banking sector to issue a fatwa on the suitability of participatory banking products with the principles and objectives of Islamic law.[3] Finally, the Professional Group of Banks in Morocco, a professional association formed in 1943, and all banks are required to join it. It deals with topics related

[2] Central Bank of Morocco, established in 1959 by Royal Decree No.1-59-233

[3] This bank was formed in 1981 based on His Excellency Dahir No. 1-80-270.

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to participatory banking to enhance this new activity in the Moroccan banking system.

A report released by the Thomson Reuters Foundation estimates that the value of Islamic banking assets in Morocco reached $8.6 billion in 2018 and that the combined profits of Islamic finance providers range between $67 million and $112 million. Moroccan Economy and Finance Minister Mohamed Bou said that participatory financing was expected to enable the mobilization of additional sources of financing for investments directed at large projects. Also, it is expected that participatory financing would provide essential services for individuals and companies. It is also expected to expand the network of banks and offer financial services, provide new solutions for savings, and provide adequate financing for the special needs of families and small businesses.

The Practice Murabahah

Murabahah is an agreement between people in financing or capital contracts at Islamic banks. The *murabahah* agreement is a solution to stimulate the economic development of middle and lower-class people who often have competence and expertise but lack sufficient capital to start their businesses (Ali, 2003). In other cases, there are people with sufficient capital but do not have the skills and competence to maintain a business. By definition, a *murabahah* is a contract between a seller and a buyer declaring the basic price and amount of profit on the goods being transacted. Ibn Qudamah and other Hanafiyyah scholars defined *murabahah* as the sale of the capital cost combined with the profit. The capital cost information is an absolute requirement for the contract's validity (Sulaiman 2014).

Thus, the *murabahah* is based on natural certainty contracts where the amount and period have been determined and become a mutual agreement (Assalimah, 2021). Murabahah is one of the leading products in various Islamic banks, both national Islamic banks and international Islamic banks. This is because *murabahah* is a contract scheme that is considered the most profitable with the certainty of the benefits (Ibrahim & Fitria, 2012). A study shows that *murabahah* is considered the most attractive contract by Islamic banking, with a percentage of 60% to 90% of the total existing transactions (Hakim and Anwar).

Technically, the *murabahah* contract is a buying and selling agreement between a bank and a customer, where the bank plays the role of a seller and commodity provider, and the customer is the buyer. *Murabahah* arguably are

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different from general buying and selling transactions, especially in the requirement of transparent declaration of the profit margin. Some of the special characteristics of *murabahah* are: 1) a transparent determination of price and profit before the transaction (Wiroso, 2005); 2) payment mechanisms consisting of cash and instalment payment (Abdulmalik, 1982); and 3) the transacted object may or may not be owned by the seller (DSN-MUI Fatwa No. .111/DSN-MUI/IX/2017 on *Murabahah* Contract).

The legal basis of *murabahah* transaction as one of the Sharia-based financing schemes is the Fatwa of DSN-MUI No. 111/ DSN-MUI/ IX/ 2017 concerning *Murabahah* Agreements and the Fatwa of DSN-MUI No. 04 of 2000 concerning *Murabahah* Contracts. It explicitly explains that the contract can be carried out as long as it fulfills the provisions of the contract. These provisions are two people legally carrying out a transaction, a commodity with rightful ownership, and ownership exchange between commodity and capital owners. The murabahah transactions are generally categorized into two forms: *murabahah al-adiyah and murabahah lil amir bi al-shira'. Bai' Murabahah al-Adiyyah* is a *murabahah* contract when the object to be transacted is already owned by the seller, while *murabahah lil amir bi al-shira'* is a *murabahah* contract that occurs based on an order contract from a prospective buyer at a financial institution.

Furthermore, in general practice, *murabahah* only buys and sells with the two schemes mentioned. Based on the contract allocation, *murabahah* can be classified into several more specific transaction schemes. First, *murabahah* working capital is a *murabahah* transaction involving goods used as working capital. Business people usually use this as a capital injection for their businesses. Second, *murabahah* investment is financing the purchase of goods used as capital for expansion, rehabilitation, and creation of a specific project. Third, *murabahah* consumption is individual financing not related to businesses but personal needs, such as buying a house or vehicle (Ulum, 2020).

Banking takes its profit by determining the agreed price difference. This, in practice, must consider several important aspects, including the average profit margin rate of Islamic banking. the average interest rate of conventional banking, competitive profit-sharing targets for third-party funds, and costs incurred by the bank. Applying for *murabahah* funding in Islamic banking in Indonesia must go through several stages. The first is the stage of applying for financing. After that, the customer and the bank will negotiate the price of the goods and agree on the terms and payment method (Ibrahim, 2012). When this has been agreed upon, the bank will purchase the goods according to the specifications expected

by the customer, and then the transaction proceed. After the contract is officially executed, the supplier will deliver the purchased goods to the customer along with all the documents. Then, the customer makes payments of principal and margin to the bank with an agreed payment mechanism. In general, the determination of the financing installment will depend on several aspects. These are the customers' ability to pay in a particular period and the financial ability to repay the financing (Ibrahim, 2012).

The *murabahah* financing model practiced by the Islamic financial services industry in Indonesia refers to the National Sharia Council fatwas. These are DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 on *Murabahah*, DSN- MUI Fatwa No. 13/DSN-MUI/IX/2000 on Profit Distribution System in Shari'ah Financial Institutions, DSN-MUI Fatwa No. 16/DSN- MUI/IX/2000 on Discount in *Murabahah*, DSN-MUI Fatwa No. 07/DSN-MUI/IX/2000 on *Mudarabah* Financing (*Qiradh)*, DSN-MUI Fatwa No. 23/DSN-MUI/III/2002 on Discount in Repayment of *Murabahah*, DSN-MUI Fatwa No. 31/DSN-MUI/VI/2002 on Debt Transfer, DSN-MUI Fatwa No. 46/DSN-MUI/II/2005 on *Murabahah* Bill Discount, DSN-MUI Fatwa No. 47/DSN- MUI/II/2005 on Settlement of Murabahah *Receivables* for Customers Unable to Pay, DSN-MUI Fatwa No. 48/ DSN-MUI/II/2005 on Rescheduling of *Murabahah* Bills, and DSN-MUI Fatwa No. 49/DSN-MUI/II/2005 on Conversion of *Murabahah* Agreements.

In addition to the provisions of the National Sharia Council fatwa governing *murabahah* above, the explanations regarding *murabahah* financing are also regulated in Bank Indonesia Regulations (PBI) and Financial Services Authority Regulations (POJK). These are Bank Indonesia Regulation Number: 9/19/PBI/2007 on the Implementation of Sharia Principles in Fundraising and Distribution of Funds and Sharia Bank Services; and Bank Indonesia Regulation Number: 10/16/PBI/2008, and SE OJK Number 37/SEOJK.03/2015.

The National Sharia Council Fatwas describes *murabahah* as follows. First, banks finance part or all of the purchase price of goods whose qualifications have been agreed upon. Second, banks purchase the goods required by the customers on behalf of the banks, and this purchase must be legal and free of *riba* (usury). Third, banks must submit all matters relating to purchases, for example, if the purchase is in debt. Fourth, banks sell the goods to the customers at a selling price equal to the purchase price plus the profit. In this regard, the bank must honestly tell the customer the cost of goods and the costs required. Fifth, the customer pays the agreed price for the goods within a certain agreed period. Sixth, to prevent misuse or damage to the contract, the bank may enter into a special agreement with the customer.

Furthermore, *murabahah* is a part of buying and selling transactions whose payments are often not made in cash (non-cash). This is because the seller gives the buyer the convenience of paying the price of the agreed goods in installments within the agreed period. The installment value is adjusted to the selling price.

From the explanation of the characteristics of *murabahah* above, several *maslahah* values can be found in *murabahah* financing, commonly practiced by the Islamic financial services industry. First, the contract used in *murabahah* financing is a sale and purchase agreement. The implications of using a sale and purchase agreement require the presence of sellers, buyers, and goods being sold. The value of *maslahah* from the sale-purchase agreement is to raise the spirit of *taradhin* (willingness) between the parties who conduct the sale-purchase transaction. The seller willingly or sincerely sells the goods to the buyer, and the buyer willingly and sincerely buys the goods from the seller.

Second**,** the price set by the seller (Islamic bank) is not affected by the payment frequency. That is, *murabahah* requires only one price, the price agreed upon between the Islamic bank and the customer. It does not depend on the payment period, as has been practiced by the conventional financial services industry. The conventional practice requires differences in payments according to a set period. The longer the payment period desired by the customer, the greater the number of dependents that must be paid. Here, the provisions of the time value of money apply. The *maslahah* value of fixed pricing in *murabahah* financing benefits customers who are not bothered by the fluctuations in interest rates as experienced in conventional financial institutions.

Third, the profit in *murabahah* financing is in the form of a sales margin, which includes the selling price. The profit (*ribh*) is naturally negotiable between the parties conducting the transaction, namely the Islamic bank and the customer. The weakness of the current *murabahah* practice is the lack of bargaining power that customers should have. So that the customer's position is often "forced" to accept the price offered by the Islamic bank. It differs from conventional credit practices in non-Islamic banks, whose profits are based on interest rates. Customers who get credit from non-Islamic banks are obligated to pay installments and loan interest at once. The benefit of determining the sales profit (margin) is the profit benefits that the seller can enjoy. Of course, every seller wants to get *maslahah* from buying and selling transactions.

Fourth, the payment is made in cash. That is, the customer pays the item's price in installments. In this case, the customer owes the Islamic bank because it has not paid off the obligation to pay the price of the goods transacted. Meanwhile,

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the installments on *murabahah* financing are not tied to a specified payment period. This means that the principle of the time value of money does not apply. The longer the payment period, the greater the number of installments that must be paid. A big mistake if the practice of *murabahah* depends on the amount of installment time. If this happens to *murabahah* financing, it has violated the initial concept of *murabahah*. Because, from the substance, it is the same as the credit practiced by the conventional financial services industry. The value of *maslahah* is the payments made in cash, in addition to carrying out the hadith of Shuhaib, about three activities that can open the door of blessing, including buying and selling transactions made in cash. Non-cash payments provide *maslahah* for customers who cannot pay in cash (cash).

Fifth, in *murabahah* financing, guarantees are possible because its financing nature is a sale and purchase whose payment is not made in cash. Because it is not paid in cash, the dependent payment is a debt that the customer must pay. Islamic banks apply the precautionary principle by imposing customer guarantees in this case. The value of *maslahah* in determining the existence of a guarantee is to mitigate the risk of default experienced by the customer. The breakthrough of guarantees in *murabahah* financing has *maslahah* value for both parties who enter into the *murabahah* financing contract.

Like the Indonesian banking discourse, the progress of Islamic financial institutions in Morocco is led by *murabahah* products. In the second half of 2017, *murabahah* transactions amounted to 159 Dirhams (Amal, 2020). In the international world, the definition of *murabahah* is not much different from the one mentioned above. *Murabahah* is defined as buying and selling activities directly mentioning the cost and its markup. Reviewing the *murabahah* classification released by AAOIFI as an international non-profit organization responsible for developing international Islamic financial governance is interesting. AAOIFI mentions that the implementation of *murabahah* transactions can be completed in two ways: with or without a purchase agreement (AAOIFI Shari'ah Standards, 2017).

Murabahah that uses a purchase agreement submitted by the person who wants to buy to the interested party to obtain the goods is termed banking *murabahah.* Meanwhile, *murabahah* contracts that do not use a purchase agreement are called ordinary *murabahah*. According to Hassan Hammud, a *murabahah* contract is like a combined contract, namely a combination of sales and purchase transactions with applicable legal documents (Ibtihal, 2023). The combined contract, as mentioned, can be categorized into two main types. The first is a combination of a sale and purchase contract and a promise with a mutual commitment. An agreement

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document precedes this sale and purchase agreement. The agreement is bilateral, where the bank also commits to buying and selling the goods to the customer. The second is the combination of sale and purchase and unilateral purchase promise, which is a promise combined with a *murabahah* sale and purchase contract. This is a promise between the bank and the customer without a binding agreement between the two parties. In this model, the parties can directly set the price of the goods along with the margin or not set it.

In Morocco, *murabahah* contracts are often associated with unilateral promises on the part of the customer. This is to the arguments presented by the Moroccan High Council of Scholars in opinion No. 7 of the Committee Shari'atique of Islamic Finance of the Council. Some fundamental aspects of such unilateral agreements are: 1) the promise must detail the customer's commitment to purchase goods from the bank; 2) the determination of the price and its margin; 3) clear terms of payment and goods delivery date; 4) the commitment fee or security deposit as a commitment proof (Ibtihal, 2023).

Thus, the agreement made by the customer must be maintained as stated in Article 18 of the Morrocan Law on Obligations and Contracts (Benabderrazik et al., 2020). In reality, however, Moroccan Islamic scholars have not agreed on the procurement mechanism for goods. Most argue that the object transacted in the *murabahah* contract must already be the financial institution's property. This opinion was conveyed by Rafiq al-Masri, whom the Moroccan High Council of Scholars also legitimized. Meanwhile, the second opinion does not require the transaction's object to be the financial institution's property. Hassan Hamud supports this (Ibtihal, 2023). Ultimately, the implications of *murabahah* as a transaction have a legal impact, and its forms can be very diverse. The *Murabahah* agreement can be considered a credit agreement attached to the sale of an underlying asset.

The comparison of the two banking systems in Indonesia and Morocco can be categorized into general and special comparisons. The general comparison is seen in how the financial institutions operate. The similarity in their operation is related to the principles used, including supervision of the business activities and compliance with Sharia involving special supervision agencies. In Indonesia, the supervision is carried out by the Sharia Supervision Board, which is the extension of the National Sharia Board of the Indonesian Ulama Council. This non-government institution is responsible for ensuring Sharia compliance in Sharia-based business units.

Morocco has a similar institution ensuring Sharia compliance in Sharia businesses. The state directly supports this institution. This can be considered a

wise step considering the importance of religion in the state constitution. The Highest Scientific Council affiliated with the Ministry of *Waqf* and Islamic Affairs is the leading institution with the authority to issue religious opinions or fatwa regarding the suitability of products with the principles and objectives of Sharia.

Regarding financial institution products, both countries have various types of contracts. However, there are differences in the theoretical basis and legal understanding used as the principles. In Indonesia, the Murabahah contract uses the procurement of goods that banks do not yet own (*murabahah* lil amir bi al-shira'). This is allowable considering the relevance of its benefits or maslahah. Meanwhile, in Morocco, Islamic scholars have not reached an agreement regarding the contract scheme in *murabahah.*

Conclusion

This study shows the use of *maslahah* principle in modern economic transactions, one of them is in *murabahah* contracts in banks. This is to ensure the Sharia compliance of the economic transactions for Muslims in banking practices. In principle, financing schemes offered by Islamic and non-Islamic financial institutions are relatively similar, in Indonesia and Morrocco. The significant differences are based on the contract and transactions. Also, both countries have special institutions supervising the Sharia compliance in all Sharia-based business units. Indonesia has the Sharia Supervision Board of the Indonesian Ulama Council, while Morrocco has the Highest Scientific Council affiliated with the Ministry of *Waqf* and Islamic Affairs. To conclude, this study finds that *maslahah* has been used as the foundation of Islamic economic practices. These include the establishment of financial institutions, market mechanisms, *hisbah* institutions, and the prohibition of foreign exchange speculation. Meanwhile, *maslahah al ammah* is considered in using dinar and dirham in transactions.

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