



## **The Law Concept of *Sharia* Banking Compliance on *Murabaha* Financing in Indonesia**

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**Abstract:** Submission to *sharia* is a fundamental factor which discriminates *sharia* banking from the conventional one. Therefore, *sharia* banking as intermediating institution and provider of financial services which base their operation on Islamic *sharia* values have to ensure their compliance towards *sharia* principles. Besides, *sharia* banking applies profit sharing principle as the main foundation in fund collection, fund distribution, and financing. A product dominating and attracting customers the most is *murabaha*. This product still receives tough critics from scientists, though, so that this research aims at investigating *sharia* banking compliance on *murabaha* financing viewed from the perspective of *fatwa* from DSN-MUI. This research applies qualitative design with normative approach (DSN-MUI *fatwa*). The result of the study shows that *murabaha* contract in Indonesian *sharia* banking must fulfill *sharia* compliance stated in the Qur'an, Sunnah, Regulation of Bank of Indonesia, and DSN-MUI *fatwa*.

**Keywords:** Murabaha, sharia banking, sharia compliance

|| Submitted: November 17, 2021 || Accepted: July 21, 2024 || Published: August 24, 2024

**Abstrak:** *Ketundukan kepada syariah merupakan faktor fundamental yang membedakan perbankan syariah dengan perbankan konvensional. Oleh karena itu, perbankan syariah sebagai lembaga intermediasi dan penyedia jasa keuangan yang mendasarkan operasinya pada nilai-nilai syariah Islam harus memastikan kepatuhannya terhadap prinsip-prinsip syariah. Selain itu, perbankan syariah menerapkan prinsip bagi hasil sebagai landasan utama dalam penghimpunan dana, penyaluran dana, dan pembiayaan. Produk yang paling mendominasi dan menarik konsumen adalah murabahah. Produk ini masih mendapat kritik keras dari para ilmuwan, sehingga penelitian ini bertujuan untuk mengkaji kepatuhan perbankan syariah dalam pembiayaan murabahah ditinjau dari Fatwa DSN-MUI. Penelitian ini menggunakan desain kualitatif dengan pendekatan normatif (Fatwa DSN-MUI). Hasil penelitian menunjukkan bahwa akad murabahah di perbankan syariah Indonesia harus memenuhi kepatuhan syariah yang tertuang dalam al-Qur'an, Sunnah, Peraturan Bank Indonesia, dan Fatwa DSN-MUI.*

**Kata Kunci:** *Murabahah, perbankan syariah, kepatuhan syariah*

## Introduction

In Indonesia, dual banking system (conventional and *sharia* banking) has been applied since 1992.<sup>1</sup> However, these two systems can be fully implemented after the Law No. 10 of 1998 was issued.<sup>2</sup> *Sharia* banking is *sharia* banks of which the operational business and activities are based on compliance towards Islamic principles and values. All regulations and contracts between the related bank and its customer in money saving, financing, or any other activities have to be based on *sharia* values, ethics, moral, and principles,<sup>3</sup> especially for being free of

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<sup>1</sup>Shifa Mohamed Saeed, et. al., "Dependency of Islamic Bank Rates on Conventional Rates in a Dual Banking System: A Trade-off between Religious and Economic Fundamentals," *International Review of Economics and Finance* 86 (2023). Moau Yong Toh and Dekui Jia, "Determinants of Bank Liquidity Creation: A Comparison Between Islamic Banks And Conventional Banks In A Dual Banking System," *Singapore Economic Review* 68, no. 3 (2023). Arivatu Ni'mati Rahmatika, "Dual Banking System Di Indonesia," *At-Tahdzib: Jurnal Studi Islam Dan Muamalah* 2, no. 2 (2014), p. 1–3.

<sup>2</sup>Zied Saadaoui and Hichem Hamza, "Lending Cyclicity in Dual Banking System: Empirical Evidence from GCC Countries," *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020). Ismail, *Perbankan Syariah* (Jakarta: Prenada Media Group, 2013), p. 7.

<sup>3</sup>Wahyuniati Hamid, "Developing a Model for Syariah Banking Acceptance among Non-Moslem Majority Population: A Case Study from Bali, Indonesia," *Banks and Bank Systems* 13, no. 3 (2018). Heri Sudarsono, *Bank Dan Lembaga Keuangan Syariah* (Yogyakarta: Ekonesia, 20024), p. 27.

interest (*riba*),<sup>4</sup> *maysir*,<sup>5</sup> *gharar*,<sup>6</sup> and *bathil*, being fair, and only funding *halal* activities.<sup>7</sup>

Referring to the above definition, *sharia* compliance serves as a fundamental factor which distinguishes *sharia* banking from other types of banking.<sup>8</sup> As an intermediating institution and provider of financial services, it is obligatory for *sharia* banks to obey and apply *sharia* principles in every operational activity. *Sharia* banking applies profit sharing principle in fund collection, fund distribution, and financing. Thus, *sharia* banks are often called as interest-free banks.<sup>9</sup>

Several customer fund collection products of *sharia* banking follow the principles of *wadiah*, *qardh*, and *ijarah*. Meanwhile, principle of profit sharing in *mudharaba*, *musyaraka*, *murabaha*, *salam*, *istisna*, and *ijarah* (*ijarah wa ijarah wa iqrina*) belongs to *sharia* banking financing. Other than that, *sharia* banking service products implement the principle of *wakalah*, *kafalah*, *hawalah* and *sarf*.

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<sup>4</sup>*Riba* according to its original linguistic is الزيادة = addition, grow, increase, enlarge. Viewed from specific term, *riba* denotes to addition or profit which is not legal or *batil*. According to Indonesian Council of Religious Scholars (*Majelis Ulama Indonesia-MUI*) *riba* is defined as profit with no reward caused by payment delay in the related contract (The *Fatwa* of Indonesian Council of Religious Scholars (MUI) No. 01/2004 about Interest). Masfuk Zuhdi, *Masail Fiqhiyah* (Jakarta: Gunung Agung, 1994), p. 102.

<sup>5</sup>*Gharar* is a case/hidden matter/uncertainty/fraud speculation/*majhul* by a party which causes obscurity and doubt on contract object commodity or one of contract subject elements. Jamal al-Din Muhammad bin Makram, *Lisan Al-Arab* (Beirut: Dar al-Sadr, n.d.), p. 11.

<sup>6</sup>*Maysir/qimar*/gambling or speculation is every activity in which an object is made as a bet and given to the winner. It also refers to any transaction forms inside which contains gambling, bet, high speculation, or getting profit with no hard work. Muhammad Imarah, *Qamus Al-Mushthalahay Al-Iqtishadiyah Fi Al-Hadharah Al-Islamiyyah* (Kairo: Dar al-Shuruq, 1993), p. 577.

<sup>7</sup>Subekti Khoirun Nikmah and Amalia Nuril Hidayati, "The Effect of Sharia Monetary Transmission on Murabahah Financing in Sharia Banks in Indonesia," *Indonesian Economic Review* 2, no. 1 (2021). A. Wangsawidjaja Z., *Pembiayaan Bank Syariah* (Jakarta: Gramedia Pustaka Utama, 2012), p. 15–16.

<sup>8</sup>Muhaimin, Muhammad Sood, Lalu Hayyanul Haq, "Legal Synchronization Of Sharia Banking Supervision Arrangements In Indonesia," *Russian Law Journal* 11, no. 3 (2023). Hichem Hamza, "Sharia Governance in Islamic Banks: Effectiveness and Supervision Model," *International Journal of Islamic and Middle Eastern Finance and Management* 6, no. 3 (2013). Ahmad Baehaqi, "Usulan Model Sistem Pengawasan Syariah Pada Perbankan Syariah Di Indonesia," *Jurnal Dinamika Akuntansi Dan Bisnis* 11, no. 1 (2024), p. 1120.

<sup>9</sup>Adriano A. Rampini, et.al., "Risk Management in Financial Institutions," *Journal of Finance*, 2020. Ifedapo Adeleye, Yaw A. Debrah, and Lilac Nachum, "Management of Financial Institutions in Africa: Emerging Themes and Future Research Agenda," *Africa Journal of Management* 5, no. 3 (2019).

Out of these products, the most dominating and trending product among Indonesian society is *murabaha* financing for as much as 50-80%.<sup>10,11</sup>

Nevertheless, a number of studies reveal that *murabaha* financing in *sharia* banking receives numerous critics from various parties. Within the procedure of *murabaha* financing, violation towards *sharia* compliance is spotted with an assumption that those *sharia* banks still apply interest labelling as “Islamic interest”. This *murabaha* financing is only merely *hilah* to get the profit from the interest.<sup>12</sup> Therefore, based on the above explanation, this study intends to discuss the matter related to “*The Law Concept of Sharia Banking Compliance on Murabaha Financing in Indonesia*”.

The method of this research is qualitative with normative analysis approach on DSN-MUI *fatwa*. The research steps cover data collection of scientific work, journal, and *fatwa* of DSN-MUI, data and document verification according to the research problem, data analysis based on certain theories, and conclusion.

### The Definition of *Murabaha*

Etymologically, *murabaha* is an Arabic word of *riḥ* "رَبْحٌ" meaning to grow or to develop. *Murabaha* is the source or origin of the words مُرَبِّحَةٌ - يُرَبِّحُ - رِبْحٌ which mean giving profit, interest, or benefit.<sup>13</sup> Terminologically, *murabaha* is a form of *ba'i* (trade) agreement in which the determination of sale price is rooted from the total of the initial price of goods (original price) and the profit (*riḥun*) (البيع بزيادة على الثمن الأول).<sup>14</sup> *Murabaha* pillars cover those involved on the agreement (*ba'i*/merchant and *mustari*/buyer), *mabi'* (goods/object of contract), *tsaman* (price), and *sighat* (statement of agreement from the two parties).<sup>15</sup>

The condition for *murabaha* financing contract is that the merchant is obliged to deliver all information regarding the purchase including the original price and the profit taken, information on the condition of the object whether or

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<sup>10</sup>Svitlana Mishchenko et al., “Innovation Risk Management in Financial Institutions,” *Investment Management and Financial Innovations* 18, no. 1 (2021).

<sup>11</sup>Hani Werdi Apriyanti, “Model Inovasi Produk Perbankan Syariah Di Indonesia,” *Jurnal Economica: Jurnal Ekonomi Islam* 9, no. 1 (2018), p. 87–89.

<sup>12</sup>Nur Hidayah, Abdul Azis, and Moch Bukhori Muslim, “Complying with Sharia While Exemptinfrom Value-Added Tax: Murābahah in Indonesian Islamic Banks,” *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (2022). Ririn Irmadariyani, Ahmad Roziq, and Bayu Aprillianto, “Prediction Model of Murabahah Financing Performance in Sharia Cooperatives,” *Quality - Access to Success* 23, no. 187 (2022).

<sup>13</sup>Makram, *Lisan Al-Arab*, p. 103.

<sup>14</sup>Asyraf Taha Abu Dhahab, *Al-Mu'jam Al-Islamy: Al-Jawanib Al-Diniyah Wa Al-Siyasiyyah Wa Al-Ijtima'iyah Wa Al-Iqtisadiyyah* (Kairo: Dar al-Syuruq, 2002), p. 549.

<sup>15</sup>Hidayah, Azis, and Muslim, “Complying with Sharia While Exemptinfrom Value-Added Tax: Murābahah in Indonesian Islamic Banks.”

not there are any damages, and information on *murabaha* procurement process including the case if the purchase is in debt.<sup>16</sup>

If the merchants do not fulfill their obligation in delivering the whole information, buyers can perform action of selecting or *khiyar*.<sup>17</sup> It means that buyers can continue the purchase contract, return the purchased object to the merchants due to incomplete information, or cancel the *murabaha* contract.<sup>18</sup>

### The Foundation of *Murabaha*

The foundation of *murabaha* financing product in *sharia* banking in Indonesia goes along with the *fatwa* issued by National Shariah Board of Indonesian Council of Religious Scholars (*Majelis Ulama Indonesia*) as it is stated in a verse in Qur'an: "Allah Swt. allows trading and prohibits interest" (surah al-Baqarah verse 275). The foundation of *murabaha* contract in hadith "From Suaib ar-Rumi that Rasulullah Saw. said: "Three things within which contain blessing: honest transaction, *muqaradhah* (*mudharabah*), and mixing wheat and flour for the household needs not for sale" (*al-hadith al-riwayah* Ibnu Majah).<sup>19</sup>

### *Sharia* Compliance

Referring to the highest formal law foundations of *sharia* bank which cover regulation of Bank of Indonesia, DSN-MUI *fatwa*, and another provision called Law Number 21 of 2008 declare that operational activities of *sharia* banks are based on Islamic principles and values, economic democracy, and precautionary principle.<sup>20</sup>

The crucial point of the law mentions that within *sharia* banking activities in Indonesia, compliance is a form of bank obedience toward constitution and law on banking, and regulation from Bank of Indonesia (*Peraturan Bank Indonesia*). The *sharia* compliance of Islamic commercial banks possesses specialty one of which is the compliance which is based on several regulations set by the

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<sup>16</sup> Wabbah Al-Zuhailiy, *Al-Fiqh Al-Islami Wa Adillatuhu*, Juz V (Damaskus: Dar al-Fikr, 2004), p. 3767–3770.

<sup>17</sup> *Khiyar* action is divided into three types. First, the right for *mabi'* (merchant) and *mustari* (buyer) to cancel the contract while the two parties are in one assembly is called *khiyar majlis*. Second, the right for one or both parties to continue or cancel the contract within agreed certain time period is called *khiyar as-syarat*. Third, *khiyar* given to the buyer in choosing and deciding the property which serves as the contract object is called *khiyar at-ta'yin*. Al-Zuhailiy, p. 3086–3095.

<sup>18</sup> Nasrun Haroen, *Fiqh Muamalah* (Jakarta: Gaya Media Pratama, 2007), 130; Abdul Manan, *Hukum Ekonomi Syariah Dalam Perspektif Kewenangan Peradilan Agama* (Jakarta: Kencana, 2012), p. 98.

<sup>19</sup> Ahmad Hasan, *Bulughul Maram* (Bangil: Pustaka Tamam, 1991), p. 496.

<sup>20</sup> Bank Indonesia, *Cetak Biru Pengembangan Perbankan Syariah Indonesia* (Jakarta: Direktorat Perbankan Syariah Bank Indonesia, 2002), p. 21.

authorized institutions within the constitution, DSN-MUI or *fatwa* from Indonesian Council of Religious Scholars, Regulation of Bank of Indonesia, Circular of Bank of Indonesia (*Surat Edaran Bank Indonesia*) and Financial Services Authority (*Otoritas Jasa Keuangan*).<sup>21</sup>

Concerning the above elaboration, it can be concluded that *sharia* banking is obliged to perform *sharia* compliance as a manifestation of fulfilling and performing *sharia* principles as a part of corporate governance and risk management framework of *sharia* banking as a logical consequence of an institution's character, integrity, and credibility.<sup>22</sup>

Basic concept of compliance function as risk management framework cooperates with working unit of compliance (*satuan kerja kepatuhan* - SKK) which executes preventive supervision in minimizing the possible negative impact, and law and standard violation in Indonesia which is compulsory to be followed by all elements. Thus, it can be ensured that each system, procedure, policy, and provision created by *sharia* banks are rooted from the current regulation and *fatwa*.<sup>23</sup>

### The Regulation of *Sharia* Compliance

Regulation of formal law in *sharia* banking compliance is the Constitution of Republic of Indonesia No. 21 of 2008 which regulates basic principles and business activities of *sharia* banking in general and specific manner.<sup>24</sup>

In a specific manner, regulation on the performance of *sharia* compliance in Indonesian *sharia* banking is the regulation of Bank of Indonesia No. 13/2/PBI/2011 explaining that the absolute requirement which should be accomplished by *sharia* banking is the implementation of precautionary principle as an effort to keep stakeholder trust. Therefore, *sharia* banks have an obligation to follow compliance function on the current law of provision and regulation. This is because stakeholder trust can yield implication on the endurance and profitable growth of banking business.<sup>25</sup>

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<sup>21</sup>Dalvinder Singh, "Basel Committee on Banking Supervision: Compliance and the Compliance Function in Banks," *Journal of Banking Regulation* 6, no. 4 (2005). Ikatan Bankir Indonesia, *Menguasai Fungsi Kepatuhan Bank* (Jakarta: Gramedia Pustaka, 2018), p. 111.

<sup>22</sup>Islamic Financial Service Board, *Guiding Principles on Sharia Governance Systems for Institutions Offering Islamic Financial Services, Point 35*, 2009, p. 3

<sup>23</sup>Abdullah M. Nomormon, "Imperatives of Financial Innovations for Islamic Bank," *International of Islamic Financial Services* 4, no. 3 (2002), p. 6.

<sup>24</sup>Md Kausar Alam et al., "Independence and Effectiveness of Shariah Department Officers to Ensure Shariah Compliance: Evidence from Islamic Banks in Bangladesh," *Asian Journal of Accounting Research* 8, no. 1 (2023).

<sup>25</sup>Jonathan Edwards and Simon Wolfe, "The Compliance Function in Banks," *Journal of Financial Regulation and Compliance* 12, no. 3 (2004). Indonesia, *Menguasai Fungsi Kepatuhan Bank*, p. 26.

On the other hand, after a shift of function occurs in which duties and authorities of Bank of Indonesia are taken by Financial Services Authority (*Otoritas Jasa Keuangan - OJK*) Regulation No. 46/POJK.03/ 2017 is issued as the foundation on the execution of compliance function.<sup>26</sup>

### **Sharia Compliance in Murabaha Financing Viewed from DSN-MUI Fatwa Perspective**

In the collection of DSN-MUI No. 111/DSN-MUI/2017 *fatwa*, it is mentioned that *ba'i al-murabaha* contract is an agreement in purchasing goods between merchant and buyer by clearly declaring that the price of goods is the total of its original price added with the fee and profit for the merchant.<sup>27</sup> Some of the DSN-MUI *fatwa*'s related to regulation in *murabaha* are stated below:

**Table 1: DSN MUI Fatwa's Related to Regulation in Murabaha**

| No | Fatwa                    | Topic of Discussion  |
|----|--------------------------|--|
| 1  | No. 04/DSNMUI/IV/2000    | <i>Murabaha</i>  |
| 2  | No. 13/DSN-MUI/IX/2000   | Down payment in <i>murabaha</i>  |
| 3  | No. 16/DSN-MUI/IX/2000   | Discount in <i>murabaha</i>  |
| 4  | No. 17/DSN-MUI/IX/2000   | Sanction on customers with sufficient economy capability who keep delaying payment |
| 5  | No. 23/DSN-MUI/III/2000  | Repayment piece in <i>murabaha</i>   |
| 6  | No. 43/DSN-MUI/VIII/2004 | Compensation ( <i>ta'widh</i> )  |
| 7  | No. 46/DSN-MUI/II/2005   | Discount on <i>murabaha</i> bill   |
| 8  | No. 47/DSN MUI/II/2005   | Finishing of <i>murabaha</i> debt for customers with no capability to pay          |
| 9  | No. 48/DSN-MUI/II/2005   | Reschedule of <i>murabaha</i> bill   |
| 10 | No. 49/DSN-MUI/IX/2005   | Conversion of <i>murabaha</i> contract   |
| 11 | No. 111/DSN-MUI/IX/2017  | <i>Murabaha</i> purchase contract  |

<sup>26</sup>Md Kausar Alam et al., "The Influences of Shariah Governance Mechanisms on Islamic Banks Performance and Shariah Compliance Quality," *Asian Journal of Accounting Research* 7, no. 1 (2022).

<sup>27</sup>Dewan Syariah Nasional, *Kumpulan Fatwa*. Retrieved from <https://dsnmu.or.id/kategori/fatwa/>. Accessed on November 12, 2019.

## The Principles of *Sharia* Compliance

In the application of *sharia* banking *murabaha* contract in Indonesia, there are two types of *murabaha* transaction namely *murabahah li al-amir bi al-syira*<sup>28</sup> and *al murabahah al-'adiiliya*<sup>29</sup> with the related provision (*dhawabith*) and limitation (*hudud*).<sup>30</sup>

The principles of *sharia* compliance which are compulsory to be followed by *sharia* banking and are written in National Shariah Board Fatwa-Indonesian Council of Religious Scholars are stated below:

### The Contract Performers Consist of Merchant and Buyer (*Ba'i and Mustari*)

*Sharia* principle in relation to merchant and buyer in *ba'i murabaha* is that the contract can be done by the merchant and buyer either in person (*syakhsyah thabi'iyah/naturale persoon/الشخصية الطبيعية*) or ways similar to this, or in a manner involving legal board or non-legal board (*syakhsyah i'tibariah/syakhsyah hukmiyah/الشخصية الاعتبارية/الشخصية الحكيمة*), based on the ongoing regulation and constitution. The merchant (*al-bai'*) and buyer (*al-mustari*) doing the transaction are declared to have the legal prowess (*ahliyah*) namely acquiring sanity and *mumayyis* referring to the current *sharia* constitution and provision. The merchant (*al-bai'*) is obliged to have authority (*wilayah ashliyah* (الولاية الأصلية) ) both in *ahliyah* and *nihabiyyah* الولاية النيابية manner to run the contract.<sup>31</sup>

### Price (*Tsaman/ ثمن المربحة*)

In *murabaha* contract, both merchant and buyer must be aware (*ma'lum*) of the original price (*ra's mal al-murabahah*).<sup>32</sup> This is the obligation of the merchant to clearly announce matters related to price, profit, the condition of the object, and all information regarding the process of object procurement (whether it is completed in cash or debt). The merchant (*al-bai'*) is not permitted to cheat (*khiyanah/tadlis*) especially concerning the *murabaha* original price (*ra's mal al-murabahah*).<sup>33</sup>

<sup>28</sup>A form of *murabaha* transaction contract done based on order proposed by buyers. Ikhwan Abidin Basri, *Sistem Moneter Islam* (Jakarta: Gema Insani Press dan Tazkia Cendekia, 2000), p. 120.

<sup>29</sup>A form of *murabaha* transaction contract taking place when the transaction object offered to the buyer is fully owned by the merchant. Wiroso, *Jual Beli Murabahah* (Yogyakarta: UII Prees, 2005), p. 14.

<sup>30</sup>Al-Sayyid Sabiq, *Fiqh Al-Sunnah*, II (Kairo: Dar al-Fath Li I'lam al-'Arabi, 1996); Al-Sayyid Sabiq, *Fiqh Al-Sunnah*, III (Kairo: Dar al-Fath li I'lam al-'Arabi, 1996).

<sup>31</sup>Sabiq, *Fiqh Al-Sunnah*, 1996, p. 129.

<sup>32</sup>*Murabaha* property price sale price is the original object price added by production fee or other types of fee. *Tsaman* should be approved by the merchant and buyer on the same value with value/*qimah* of the property which becomes the transaction object. Fatwa of DSN MUI No. 16/DSN-MUI/2000 about Discount in *Murabaha*, First Point No. 1.

<sup>33</sup>Al-Zuhailiy, *Al-Fiqh Al-Islami Wa Adillatuhu*, p. 383.



If there are discounts during the transaction process done by bank, the final price given to the prospective debtors is the price after discount. This is due to the customers' privilege on the discount. However, if the discount is applied after the contract, its distribution must be accomplished with an agreement signed by the two parties involved in the contract.<sup>34</sup>

The price of the goods (*tsaman*) must be explained and declared clearly when the agreement takes place, whether the process in determining the price is completed by negotiation, auction, or tender. The payment process can be completed in cash (*ba' al-hal/ البيع الحال*), deferred payment (*bai' al-muajjal*), or staged payment or installment (*bai' bi al-taqsih/ بيع التقسيط*) and payment with collateral (*bai' al-muqashsa/ بيع المقاصة*) according to the agreement of the two parties.<sup>35</sup>

### Condition of the Transaction Object (*Mutsman/Mabi' البيع/المتن*)

In *murabaha* trade contract, object or *mabi'* can come in the form of goods or property which is fully owned by *al-bai'* (*milk al-tam*).<sup>36</sup> The object or property should be able to be utilized in *sharia* manner (*mutaqawwam*),<sup>37</sup> and can be traded according to the current *sharia* and constitution. Object or goods of *murabaha* must be tangible (existing), clear, certain, and exchangeable (*qudrat al-taslim*) at the time of the *murabaha* contract.<sup>38</sup>

Other than that, object in *murabaha* must be free from *riba* so that the objects of *murabaha* are not those *haram* goods according to Islamic *sharia*.<sup>39</sup>

### Condition for Transaction (*Sighat*)

According to the description of DSN-MUI No. 111/DSN-MUI/2017 *fatwa* on the third point regarding condition for statement of agreement in *murabaha* transaction contract, it must fulfill *sharia* norms. The norms are that the transaction should be declared firmly and clearly, and it can be understood by both parties.<sup>40</sup> This contract can be done orally or written, using signs or actions or electronic devices, but it still has to be based on current *sharia* provision and constitution. It is compulsory for written *murabaha* contract to be completed with information regarding original price (*ra's mal al-murabahah*), profit (*al-ribh*), and sale price (*tsaman al-murabahah*) in the contract.<sup>41</sup>

<sup>34</sup>Haroen, *Fiqh Muamalah*, p. 118.

<sup>35</sup>Al-Zuhailiy, *Al-Fiqh Al-Islami Wa Adillatuhu*, p. 386.

<sup>36</sup>Al-Zuhailiy, p. 383.

<sup>37</sup>Abd al-Rahman Al-Jazari, *Al-Fiqh 'Ala Al-Mazahib Al-'Arba'Ah*, Juz II (Mesir: Tijariya al-Kubra, n.d.), p. 150.

<sup>38</sup>Sabiq, *Fiqh Al-Sunnah*, 1996, p. 129.

<sup>39</sup>Al-Zuhailiy, *Al-Fiqh Al-Islami Wa Adillatuhu*, p. 283.

<sup>40</sup>Syamsul Anwar, *Hukum Perjanjian Syariah* (Jakarta: Raja Grafindo Persada, 2007), p. 146.

<sup>41</sup>Hendi Suhendi, *Fiqh Muamalah* (Jakarta: Rajawali Pers, 2014), p. 72.

### The Procedure of *Murabaha* Transaction Contract

A number of phases which need to be accomplished by the customer and the *sharia* bank during the *murabaha* transaction contract are fit and proper study phase, fund distribution phase, and control and evaluation phase.<sup>42</sup> The procedure is written as follow:

### Property Procurement and Procurement Analysis

Customers propose their demand in property procurement by completing personal identity and specification of the property that they order and request a property purchase contract to the bank. The contract proposal will firstly be analyzed by the bank party.

In analyzing and assessing the eligibility of the property order proposal by the customers, regulation of Bank of Indonesia No. 9/19/PBI/2007 in Bank of Indonesia Circular No. 10/14/DPBs date of March 17, 2008 states that *sharia* bank must carefully pay attention to precautionary principles in assessing the financing proposal through 5C analysis consisting of character, capacity, capital, condition of economy, and collateral.<sup>43</sup> The goal of this analysis is preventing loss, fraud, or bad credit.

Character analysis serves as the effort of *sharia* bank by analyzing customer's character to convince the bank that the customers who propose financing own decent character, are discipline, and responsible in fulfilling the deal and obligation in the contract (willingness to pay). Character assessment is accomplished through survey, business source or partner, or the living or business environment of the prospective debtors.<sup>44</sup> Capacity assessment is an evaluation on customer candidate's ability in managing business and in collecting profit. It enables the bank to see their capability in fulfilling their responsibilities.<sup>45</sup> The process of assessment by the bank is guided by the debtor finance report, the compliance of finance report with the salary slip, saving account, and survey on customer's business location.<sup>46</sup>

Capacity analysis is performed to ensure that the prospective debtors/customers have sufficient income and capability to fulfill their obligation according to the time period stated on the contract.<sup>47</sup> Capital analysis assesses the amount of capital fund of the prospective debtors. The bank will check the capital

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<sup>42</sup>Aminah Lubis, "Aplikasi Murabahah Dalam Perbankan Syariah," *Fitrah: Jurnal Kajian Ilmu-Ilmu Keislaman* 2, no. 2 (2016), p. 191.

<sup>43</sup>Maryanto Supriyono, *Buku Pintar Perbankan* (Yogyakarta: Andi, 2011), p. 161–65.

<sup>44</sup>Ali Suyanto Herli, *Pengelolaan BPR Dan Lembaga Keuangan Pembiayaan Mikro* (Yogyakarta: Andi Offset, 2003), p. 38–39.

<sup>45</sup>Kasmir, *Dasar-Dasar Perbankan* (Jakarta: Raja Grafindo Persada, 2008), p. 91.

<sup>46</sup>Ismail, *Manajemen Perbankan Dari Teori Menuju Aplikasi* (Jakarta: Kencana, 2010), p. 112.

<sup>47</sup>Dewan Syariah Nasional, *Kumpulan Fatwa*. Retrieved from <https://dsnmu.or.id/kategori/fatwa/>. Accessed on November 13, 2019.

adequacy of the prospective debtors. If the customers who propose the asset analysis can be seen from prospective debtor's company financial lane and it is done in person, asset analysis can be viewed from the result of prospective debtor's wealth survey.<sup>48</sup>

Collateral analysis is assurance whether in the form of properties or valuable letters given by prospective debtors. Referring to DSN-MUI No. 4 /DSN-MUI/2000 *fatwa* on the third point regarding *murabaha* contract collateral, the *sharia* banking party is allowed to demand collateral so that the customers are serious at performing their obligation. The collateral serves as something which can be trusted.<sup>49</sup> The collaeral must be checked for its legality to enable the bank to quickly withdraw it when customers are proven to violate the agreement.<sup>50</sup> The guarantee is expected to bind cooperation and trust so that something stronger will emerge. It also serves as an effort of the banking to take final solution to cover all credit risks if the customers fail to complete the payment. The bank will give maximum debt ceiling rate for as much as 75% out of debt collateral transaction.<sup>51</sup>

Analysis on condition of economy is the assessment on the economic condition of customer candidates by seeing and considering business sector owned by prospective debtors based on the government policy. This phase is completed to figure out the economic condition and business of prospective debtors to avoid unexpected matters.<sup>52</sup>

### Property Purchase Process by Bank and Auction to Customers

After customers or prospective debtors propose property order and the proposal is accepted and approved by the *sharia* bank, the bank will purchase the order to the supplier. In purchasing the customer's order, in its application technique, the purchase is under the name of the bank legally and free of interest.<sup>53</sup>

The bank can pay some or the whole price of the property purchase with the approved provision and amount. However, if the bank wishes the customers to be the representative in property purchase from the supplier, *murabaha* contract between buyer and the bank must be completed after the property is officially owned by the bank.<sup>54</sup>

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<sup>48</sup>Ikatan Bank Indonesia, *Manajemen Resiko 1* (Jakarta: Gramedia Pustaka Utama, 2016), p. 87.

<sup>49</sup>Fatwa DSN-MUI No. 4 of 2000, third point about collateral in *murabaha* contract.

<sup>50</sup>Kasmir, *Manajemen Perbankan* (Jakarta: Raja Grafindo Persada, 2008), p. 92.

<sup>51</sup>Sutarno, *Aspek-Aspek Hukum Perkreditan Pada Bank* (Jakarta: Alfabeta, 2003), p. 94.

<sup>52</sup>Budi Kolistiawan, "Sharia Review about Problematic Financing in Sharia Banking," *Jurnal An-Nisbah* 1, no. 1 (2014), p. 197.

<sup>53</sup>Muhammad, *Model-Model Akad Pembiayaan Di Bank Syariah: Panduan Teknis Pembuatan Akad/Perjanjian Pembiayaan Pada Bank Syariah* (Yogyakarta: UII Press, 2009), p. 58.

<sup>54</sup>Fatwa DSN-MUI No. 04 of 2000 about point b *murabaha*.

With the two transaction phases, each of them has to meet the requirement and condition of *sharia* principles. If violation is found on the first purchase condition like fake purchase, it will cause the second transaction to be illegal.

### Down Payment and Collateral

In *murabaha* contract, *sharia* bank is allowed to determine the amount of down payment or collateral for customers when they sign the initial contract. The down payment can be used by the bank to pay the rill cost if customers cancel the property purchase. If customers decide to approve the purchase process, their obligation is to complete the rest of the payment. If the customers cancel the purchase, the down payment will be used for replacing the bank's loss caused by the order cancel. If the money is not sufficient, the customers are obliged to finish the remaining payment.<sup>55</sup>

The condition is met according to DSN-MUI No. 04/DSN-MUI/2000 *fatwa* about the implementation of collateral to make customers serious with their order. Not only does *murabaha* allow the application of down payment, it can also apply *urbun* method.<sup>56</sup>

### Debt in *Murabaha*

Debt occurring in *murabaha* between customer and bank must be fulfilled by the customers to the bank. Principally, there is no correlation between *murabaha* debt and other transaction done by customers with the third or other party. The customer's property purchase completed before installment payment period ends, whether it yield profit or loss, customers are still obliged to pay their whole debt to the bank.<sup>57</sup>

### Payment Delay

During the *murabaha* contract, buyers or customers who are economically capable are not allowed to delay the debt settlement. If they delay the debt settlement with or without intention, the finishing can be accomplished through *sharia* arbitration agency after agreement is reached. If customers are found to be economically capable, but they suspend their obligation, the bank can give sanction. The sanction is *ta'dzir* in nature aiming to make the customers discipline in completing their responsibility.<sup>58</sup>

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<sup>55</sup>Al-Zuhailiy, *Al-Fiqh Al-Islami Wa Adillatuhu*, p. 3434.

<sup>56</sup>Abdul Hamid Mahmud Al-Bu'ali, *Al-Istitsmar Wa Al-Riqabah Al-Syar'iyah Fi Al-Bunuk Wa Al-Muassasat Al-Islamiyah* (Turki: Bank Faishol, 1991), p. 116.

<sup>57</sup>*Urbun* is down payment, an object made as transaction binder.et. al. Abdullah bin Muhammad ath-Thayar, *Ensiklopedia Muamalah Dalam Pandangan Madzhab*, 2004, p. 72.

<sup>58</sup>Fadli, "Penerapan Denda Murabahah Menurut Fatwa Dewan Syariah Nasional DSN-MUI: Studi Di PT Bank Muamalat Indoensia Cabang Padangsidempuan," *Jurnal Imiah Syraiah* 16, no. 2 (2017), p. 223–225.

Sanction can come in the form of money in agreed certain amount which is written and signed at the time when the contract is created. The penalty will be used as social fund. For the customers who are not capable of completing their obligation due to force major, they will not receive any penalties.<sup>59</sup> If the customers have the capability to pay on time or in time, the bank is permitted to give discount to the customers in which the condition for giving discount is not included on the contract.<sup>60</sup>

For those customers who cannot complete their payment, the bank will take a solution to enable them to complete the payment according to the agreed amount and period. The solution is selling the collateral that the customers have submitted with the agreed market price. Proceeds from collateral sales will be used to pay off customer's obligation. If there is still several amount of balance, it will be returned to the customers. If the proceeds from collateral sales are not sufficient to pay off their obligation, the remaining installment or debt is on customer's responsibilities. If customer's are not able to pay their loan off, the bank is free to give looseness.<sup>61</sup>

### **Bankruptcy in *Murabaha***

If customers go through bankruptcy during the *murabaha* contract, the bank can refer to the regulation on *fatwa* of DSN-MUI No. 04/DSN-MUI/ 2000. It explains that if the case happens, it is compulsory for the bank to postpone the debt bill. The bank has to wait until those customers are declared to have the capability according to the initial agreement. Preventive action and solution to the problem is through reviewing and re-analyzing the *murabaha* financing between the bank and customers.<sup>62</sup>

The restructuring review and analysis can be accomplished by the bank to help the customers to pay off their obligation. It covers several stages. The first stage is rescheduling. Customer's schedule in paying off their loan and their payment period is altered to give remission for the customer's obligation.<sup>63</sup>

The second one is reconditioning. It is an effort accomplished by the *sharia* bank by changing part of or the whole financing condition without giving any additional obligation and with no maximum credit amount for the bank. One

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<sup>59</sup>Suci Hayati, "Sanksi Atas Nasabah (Murabahah) Mampu Yang Menunda-Nunda Pembayaran Hutang: Studi Fatwa DSN," *Jurnal Tapis* 12, no. 2 (2012), p. 5.

<sup>60</sup>Hanik Maesaroh, "Pelunasan Angsuran Sebelum Jatuh Tempo Dalam Pembiayaan Murabahah Di Bank Pembiayaan Rakyat Syari'ah (BPRS)," *Jurnal Az-Zarqo* 10, no. 1 (2018), p. 150.

<sup>61</sup>Abdul Aziz, *Ensiklopedia Hukum Islam* (Jakarta: Ichtiar Baru van Houve, 2000), p. 383.

<sup>62</sup>Malayu, *Dasar-Dasar Perbankan* (Jakarta: Bumi Aksara, 2005), p. 115.

<sup>63</sup>Z. A. Wangsawidjaja, *Pembiayaan Bank Syariah*, p. 448.

of those changes covers the schedule of payment period which is made to be more flexible for the customers to pay off their loan.<sup>64,65,66</sup>

The third phase is restructuring. The bank tries to lighten customer's burden by altering the financing condition one of which is the additional fund of financing facility to trigger customers to set goals and improve the ability to develop their business and finally pay off their obligation. This action is performed by *sharia* bank by referring to SEBI No. 13/16/DPbS date of May 30, 2011 regarding restructuring.<sup>67</sup>

## Conclusion

As intermediating institution and financial services provider, *sharia* banks are obliged to fulfill and perform *sharia* compliance as a manifestation of obedience towards *sharia* principles as a part of corporate government and risk management framework in managing *sharia* banking risk. This idea serves as manifestation of logical consequence of character, integrity, and credibility of *sharia* bank. Compliance in Indonesia is obedience towards constitution on banking and regulation of Bank of Indonesia. In performing compliance, *sharia* commercial bank possesses specialty among which are compliance towards constitution, Regulation of Bank of Indonesia, Bank of Indonesia Circular (*Surat Edaran Bank Indonesia* - SEBI) and *fatwa* of National Shariah Board-Indonesian Council of Religious Scholars (DSN-MUI). In performing its operational action, *sharia* banking applies profit sharing principle in fund collection, fund distribution, and financing. *Murabaha* is a product which dominates and is largely used by customers and the community. However, its application is still subject of critics. Thus, *murabaha* financing application must follow *sharia* principles written in *fatwa* of DSN-MUI. There are 11 *fatwa*'s which describe *sharia* principles and conditions which need to be fulfilled on *murabaha* contract namely *murabaha fatwa* (No. 04 of 2000), *murabaha* down payment (No. 13 of 2000), *murabaha* discount (No. 16 of 2000), penalty for customers with payment delay (No. 17 of 2000), *murabaha* pay-off discount (No. 23 of 2004), compensation/*ta'widh* (No. 43 of 2003), discount on debt bill (No. 46 of 2005), *murabaha* debt finishing for customers with low economy ability (No. 47 of

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<sup>64</sup>Syamsul Iskandar, *Bank Dan Lembaga Keuangan Lainnya* (Jakarta: Inmedia, 2011), p. 209.

<sup>65</sup>Muhammad Turmudi, "Manajemen Penyelesaian Pembiayaan Bermasalah Pada Lembaga Keuangan Syariah," *Jurnal Li Falah: Jurnal Studi Ekonomi Dan Bisnis Islam* 1, no. 1 (2016), p. 103.

<sup>66</sup>Faisal, "Restrukturisasi Pembiayaan Murabahah Dalam Mendukung Manajemen Resiko Sebagai Implementasi Prudential Printing Pada Bank Syariah Di Indonesia," *Jurnal Dinamika Hukum* 11, no. 3 (2011), p. 486.

<sup>67</sup>Umi Kalsum and Rahmi, "Restrukturisasi Pembiayaan Murabahah Bermasalah: Studi Kasus Pada BNI Syariah Cabang Kediri," *Jurnal Li Falah: Jurnal Studi Ekonomi Dan Bisnis Islam* 2, no. 2 (2017), p. 60–61.

2005), schedule of invoice (No. 48 of 2005), conversion of *murabaha* contract (No. 49 of 2005), and *murabaha* purchase contract (No. 111 of 2017).

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