

## **Murabahah Implementation in Islamic Bank (Study at Bank Muamalat Kendari Branch)**

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**Abstract.** *This study aims to uncover Murabahah implementation in Bank Muamalat Kendari branch, as well as explore the factors driving and inhibiting implementation. This study used qualitative approach, with case study method. This approach is intended to study, explain, or interpret a case in its natural context without any outside intervention. Where researchers investigate carefully a program, events, activities, processes, which occur in practice Murabaha carried out by the Bank Muamalat Kendari branch, then researchers collected detailed information using a variety of data collection procedures, namely: observation interviews and documentation. Analysis of the data used descriptive and explanative. The result of this study found that murabaha practice in Muamalat Bank Kendari branch not fully in accordance with the concept of Islamic law, because they do some things that are forbidden by the Qur'an and the Hadith, among others: (1) goods which become the object of the murabaha yet fully belong to the bank, This means that the Bank sells goods that are not already owned; (2) advances; (3) the presence of fines (Ta'dzir) for customers who are in arrears and compensation (Ta'widh) for customers wan achievement.*

*Keywords: Murabaha, Bank Muamalat, Islamic Banking, Islamic concept.*

**Keywords:** *performance-based budgeting system, organizational effectiveness*

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Date of Submission: 06-06-2017

Date of acceptance: 13-09-2017

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### **I. Introduction**

Indonesia as a country with a majority Muslim population is a separate market potential for all kinds of products that carry the teachings of Islam. The presence of Sharia Financial Institutions (LKS) in Indonesia is inseparable from the needs of the people who do not want any interest in Indonesian banking transactions.

Currently it can be said that Indonesia has entered the era of sharia economy which is characterized by various business and financial institutions that use the principle of interest-free justice.

The general framework of sharia in economic depicted in a building consisting of *foundations, pillars and objectives or falah* (Bank Indonesia, 2016). *The foundation* is a prerequisite condition that duly identified and met for admission to the implementation stages of economic development of sharia, where the main foundation within the general framework of sharia is *aqidah*. In the concept of *aqidah*, every human activity has put the value of *accountability divine* sharia as parameter fit between business activities with Islamic principles. While foundation supporting is *sharia and morals*. Sharia principles in general economic activity will be a source of conditions governing the relationship patterns for all actors and *stakeholders* of Islamic banking. While *morality* is the norm and ethics contain moral values in interactions among humans, humans with the environment and human and creator of the universe so that the relationship becomes harmonious and synergy. In addition there are other supporting foundation that *brotherhood* which is the principle of fraternity, where the economic activity is done through a process *ta'aruf* (mutually recognize), *tafahum* (mutual understanding), *ta'awun* (mutual help), *takaful* (mutual guarantee) and *tahaluf* (Mutually allied). Ukhuwah put the pattern of relationship between people based on the principle of alignment, mutual trust and mutual need.

While *Falah* is the ultimate target of all activities in the framework of the implementation of sharia economic development, the success of which essentially be achieved prosperity in the world and in the hereafter.

The rapid development of sharia banks was marked by the establishment of Bank Muamalat Indonesia in 1991 and the enactment of Law Number 10 Year 1998 as a substitute of Law Number 7 of 1992 concerning Banking, which encouraged the presence of sharia banking extensively. This is logical considering this legislation embraces dual banking system (*dual banking system*), so that in a conventional bank can simultaneously provide Islamic services to establish Sharia (UUS).

Since the enactment of Act Number 10 of 1998 on Banking, the Banking industry in Indonesia is divided into banks operating on the basis of interest (called conventional banks) and banks operating under Sharia Principles (called sharia banks). Bank Syariah which operates based on Islamic sharia implemented using instruments purchase (*murabaha, salam, istishna*), leasing (*Ijarah and Ijarah muntahiya bittamlik*), for the results (*mudharaba and loss*) and borrowing (*qard and qardh al hasan*).

The development of Islamic banks in Indonesia since 2000 is very significant, it can be seen from the asset of syariah bank nationally at the end of 2000 which is only Rp 1.79 Trillion and has reached Rp 7.86 Trillion at the end of 2003. Data as of December 2004 Shows that the assets of sharia banks amounted to Rp 15.205 trillion or increased by 93.45% compared to the end of 2003 (Bank Syariah Mandiri, 2004).

In late 2013 Indonesian Islamic banking has become *the biggest Islamic retail banking* in the world with 17.3 million customers, a bank office 2990, 1267 Islamic services and 43 thousand employees. Islamic bank in Indonesia is also known throughout the world as *un-doubtful* and *applicable*, so widely used as an example (*benchmark*) and learning place for sharia banks of other countries. *Un-doubtful* because of fatwas related to Islamic bank operations issued by the National Fatwa Committee credible and independent, the National Sharia Council - Council of Ulama Indonesia or DSN-MUI, so that no doubt all his syariahan. *Applicable* for fatwas DSN-MUI then translated into the Bank Indonesia Regulation or PBI to be easily applied by Islamic banks. Thus sharia banking has become the new mecca of sharia banking world (Bank Indonesia, 2016).

Financing products in sharia banking are the products most demanded by customers, so the financing practices are increasing from year to year in nominal terms. However, in practice only a few contract that is widely used by Islamic banks in channeling financing, among others, *mudharaba, musharaka, murabaha* and *Ijarah qard*. Akad persistent dominate the financing and the most preferred (*preferable*) by sharia banking in Indonesia is *murabaha* which has a market share ranged from a high of 62.4% (in 2005) to the lowest 54.9% (in 2011), but remained dominant and the in 2013 reached 60.0%, while *musharaka* and *mudharaba* in 2013, respectively 21.7% and 7.4%. (Bank Indonesia, 2016). While the development of financing composition based on OJK Sharia Banking Statistics is as follows:

**Table 1.** Composition of Financing of Syariah Banking *In Million Rupiah*

Type of Akad	Dec 2014	Dec 2015	June 2016
<i>Mudharabah</i>	122,467.00	168,516.00	182,677.00
<i>Musharaka</i>	567,658.00	652,316.00	764,862.00
<b><i>Murabaha</i></b>	<b>3,965,543.00</b>	<b>4,491,697.00</b>	<b>4,927,903.00</b>
<i>Qardh</i>	97,709.00	123,588.00	139,772.00
<i>Regards</i>	4pm	3pm	2pm
<i>Istishna</i>	12,881.00	11,135.00	9,388.00
<i>Ijarah</i>	5,179.00	6,175.00	7,508.00
<i>Multijasa</i>	233,456.00	311,729.00	431,711.00
<b>Total</b>	<b>5,004,909.00</b>	<b>5,765,171.00</b>	<b>6,463,835.00</b>

Source: SPS OJK (2016)

Bank Muamalat as a pioneer bank that applies the concept of sharia in Indonesia, is expected to give different nuance for people who want a better life with muamalah atmosphere is more Islamic. This can be seen with the great support for the Muamalat Bank since it was first established in 1991 and started operations in 1992, where on October 27, 1994, just two years after its operation, Bank Muamalat successfully holds the title as Foreign Exchange Bank. This recognition further strengthens the Company's position as the first and leading Islamic bank in Indonesia with a variety of services and products that continue to develop. Currently Bank Muamalat provides services to more than 4.3 million customers through 457 outlets spread across 33 provinces in Indonesia. BMI network is also supported by an alliance through more than 4000 Post Office Online / SOPP in Indonesia. BMI ATMs and 95,000 *merchant debit*. BMI is currently also the only sharia bank that has opened an overseas branch, namely in Kuala Lumpur, Malaysia. To improve the accessibility of customers in Malaysia, in cooperation with the network run *Malaysian Electronic Payment System (MEPS)* so that services can be accessed at a BMI of more than 2,000 ATMs in Malaysia. In addition, Bank Muamalat has *shar-e gold* products with chip technology first in Indonesia that can be used in 170 countries and free of charge throughout the

merchant logo visa. As Pure First Bank Syariah Muamalat bank committed to delivering banking services that are not only *complied* with sharia, but also competitive and accessible to the public until the archipelago (Bank Muamalat, 2016).

Behind the published successes described above, negative perceptions of Islamic banks in general and muamalat banks are particularly well known in the community, this is revealed by customers' disappointment with the muamalat bank.

The desire of the community to be able to *muamalah* well through a free transaction of *riba* encourage people to choose Islamic banks in investing funds either through savings, deposits and financing products available. But sometimes the public trust given to the bank must be ended in disappointment because less amanahnya investment manager (*Mudharib*). This matter which then will cause negative perception of society to bank especially sharia bank which put forward Islamic concept in running its operation. Negative perceptions of the community against sharia banks can result in a decrease in public confidence to invest in sharia banks, it can be seen, among others, from the decline in the performance of third party funds collected in Islamic banks in general from 19.0% at the end of the year 2014 to just 2.4% by the end of 2015 (Bank Indonesia, 2015).

The phenomenon of society's disappointment to the muamalat bank is one of the factors of declining public confidence to invest funds in the bank, this is because people's expectations to be able to transact (*bermuamalah*) in accordance with Islamic teachings are not met, resulting in public perception that banks muamalat same with conventional banks Which only labeled sharia, even the society considers that bank muamalat more cruel than conventional banks.

The number of problems that arise in Bank Muamalat will affect the loss of public confidence in the bank. This will not only reduce the interest of the people to save their funds in Bank Muamalat but will also impact on the shift of people's choice to invest from Bank Muamalat to conventional banks. If the case goes on continuously then Bank Muamalat will lose customers and cause closure of bank offices muamalat.

The phenomenon raises questions about what exactly happened at the bank Muamalat, whether bank Bank Muamalat as the slogan "*First Purely Sharia*" they consistently apply the concepts of sharia? Given the many problems that occur, which is not only caused by un-Islamic behavior but also the problems caused by the implementation of the concept of sharia on its products.

In addition to public disappointment observed, this phenomenon can also be proved by several empirical studies, among others: Study conducted by Shofawati (2014) concerning *Murabahah* In Islamic bank in Indonesia, found that the implementation of *murabaha* financing in Islamic banking is not fully mencerminkanfatwa of Shariah Council national NO: 04 / DSN-MUI / IV / 2000 on *Murabaha*, which in one of its provisions states "Bank purchase necessary items the customer on behalf of the bank itself, and this purchase is valid and free of usury", but in practice "islamic banking, just do a *murabaha* contract if the customer has made a purchase in advance and payment of a portion of the value of the goods".

In line with this, a study conducted by Ramadhani (2014) concerning the Application of Analysis Kesyarahan *Murabahah* on one Islamic bank found that there is a mismatch between the application of the *murabaha* with sharia principles. That in its application violates several principles of *murabaha* which the received client information is not perfect, because the negotiations which took place between the customer and the bank did not actually happen, because the magnitude of the margin has been set unilaterally by the bank. negotiations that there are only about the size of the financing ceiling, this violates the principle of *an tarradin minkum* namely the principle of equal willingly willingly, where the transaction occurred within Islam must be based on the willingness of both parties. In addition the product Al-Amanah iB in BPRS xxx does not correspond with the *murabaha* KPP (*Hybrid Contract murabaha wal wakalah*), Al-Amanah iB can be said to be invalid because it does not meet the requirements of sale and purchase *murabaha*, and the survey process are less accurate that the parties Banks have experienced losses.

In line with Ramadhani, Study conducted Qomariyah (2014) at the Bank Muamalat Indonesia Branch Malang, found that Bank Muamalat Indonesia Branch Malang set *murabaha* margin equal to the interest rate prevailing in conventional banks. This reinforces the public's assumption that muamalat banks are shariah-labeled banks but their operations are the same as conventional banks.

Martasari (2015) on *sharia compliance*, found that the application of *sharia compliance* (adherence level Islamic principles) in Islamic banks today raises a variety of perceptions, both negative and positive. Their negative perceptions of the application of *sharia-compliance* show that Islamic banks have not been really consistent in applying this concept in its products.

The people's desire to apply the concept of Islam comprehensively not only in the rituals of worship but also in the free friend of *Riba*, is a logical consequence considering it is Allah's command in the Qur'an Al-Baqarah verse 275:

*The people who eat (take) usury can not stand but like the establishment of people who conceded devils because of (pressure) madness. Their circumstances were such that, is because they say (argued), the actual buying and selling the same as usury, but Allah has permitted trading and forbidden usury. Those who have*

reached to him the prohibition of his Lord, then continue to stop (from taking usury), then for him what he has taken first (before coming to ban); And its affairs (up to) to God. The one who returns (takes usury), then that person is the inhabitants of hell; they will abide therein.

(Surah Al-Baqarah: 275)

With the demands that the concept of Islam should be applied in all aspects of life both in terms of worship and in muamalah practice, then look at the phenomenon seen and the results of previous research about Bank Muamalat, it seems important to conduct a more in-depth review of the problem, so obtained empirical evidence About the implementation of the concept of sharia at Bank Muamalat Branch Kendari. This study is intended to reveal the meaning of the phenomenon of the implementation of sharia concepts related to *murabaha* in Bank Muamalat branch of Kendari, so appropriate research methods used are a qualitative method. Because it is trying to find the scientific truth by studying in depth, the approach used is a case study approach.

Under these conditions, that are the focus of this research is the product Muamalat using *Murabahah*. Phenomenally observed, many disappointment of society against Bank Muamalat causing doubts about consistency of bank in implementing the concept of sharia. Based on this statement, then the question will be a problem in this research is: "how the implementation of Bank Muamalat branch *Murabahah* in Kendari?"

In connection with this problem, the objectives to be achieved through the method used are to uncover implementation in Bank Muamalat branch *Murabahah* Kendari, as well as explore the factors driving and inhibiting implementation.

## II. Research Method

### *Qualitative Approach: Case Study*

Case study is one of the strategies in a qualitative research. According to John W. Creswell (2008), Case study is a research strategy in which researchers carefully investigate a program, event, activity, process, or group of individuals. Cases are limited by time and activity, and researchers collect information in full Using various data collection procedures based on the time specified.

The problem-solving process in this research can be explained as follows: (1) observing the various phenomena, symbols, writings, and actions conducted by informants; (2) seek to understand, stories, complaints regarding transactions in the bank Muamalat, a phrase meaning *Murabaha* implementation phenomena expressed freely by the informant as a subject. (3) the meaning that has been found, then compiled or synthesized with relevant theories and concepts of Islam (Al-Qur'an and Hadith). In these two and three stages, the researcher acts as a subject and actively develops ideas to discover and explain the meaning of the understanding of phenomena.

### *Scope*

The scope of this discussion is limited to the disclosure aspects of the implementation of *the murabaha* and actions arising from the implementation. *Murabaha* is referred to in this research is a particular form of trading when the seller makes the cost of acquisition of goods, including goods and other costs incurred to acquire such goods, and the rate of profit (*margin*) is desired. References used are Fatwa SN-MUI no. 04 / DSN-MUI / IV / 2000 on *Murabaha*.

### *Characteristics of Object Research*

The selection of Bank Muamalat as the object of research, because based on the phenomenon has characteristics relevant to the issues to be studied, namely: (1) is a pure sharia bank and is the first syariah bank; (2) implementing *murabaha* on the product; (3) having branch offices in almost every Regency in Southeast Sulawesi; (4) is one of the best sharia banks in Indonesia.

### *Unit Analysis and Informants*

Unit data analyses of this research are: product *murabaha* in Bank Muamalat. because *murabaha* is a product of the principle of trading that apply this concept as mandated by law, so as to analyze the implementation of the bank's *murabaha* contract is expected to provide an overview muamalat whether Islamic banks are inconsistent or in implementing *murabaha* trading in accordance with this concept.

For informants in this study, there are two kinds of informants that are key informants and supporting informants. The key informants are customers of Islamic banks to directly engage in the process of implementation of the agreement on the products of Islamic banks, for the informant supporters Employees of Bank Muamalat Kendari namely, Assistant financing which clearly aware of how the management mechanisms of financing using the *murabahah* and circumstances of the customer at Banking, employees of Bank Indonesia Kendari Branch Office or from the Financial Services Authority (OJK) acting as the coordinator or supervisor of

the national banking of the Southeast Sulawesi region. It also required the informant who came from scholars who understand *the murabaha* contract is based on the concept of Islam (Qur'an, hadith).

#### **Data Validity**

The validity of the data will be tested by doing triangulation, ie checking or testing the truth of data that has been collected by using different sources, techniques and different times. Sugiyono (2005) explained that the validity test is done by using data credibility test (internal validity), data dependability test, transferability test (external validity / generalization), and conformability test (objectivity). But the main one is the test of data credibility. This test is done by: extension of observation, increasing perseverance, triangulation, discussion with peers, member checks, and case analysis is negative.

#### **Data Processing Process**

This research uses descriptive explanatory analysis that describes and explains the phenomena studied. Creswell (1998) explains that case descriptions as a detailed view of the case. Creswell also points out that in case studies involves collecting large amounts of data because researchers are trying to build a deep picture of a case. The process of data analysis in this research is done through the following stages:

1. *Transcription or typing.* At this stage, the raw data observations and interviews with tools: notebook, radio tape recorders, cameras, and camcorders, typed text integrally made earlier by informants natural language. This is done so that the data is easy to read, while doing the initial editing.
2. *Identification and coding.* At this stage, it is the identification stage, in which data is given code or identity for the same data or theme. This is done to facilitate the grouping of data.
3. *Grouping.* At this stage, groupings are based on the theme codes that have been given.
4. *Ordering.* At this stage, the clustered data is sorted according to the analysis pattern determined by the researcher and then linked.
5. *Interpretation and inference.* At this stage, an interpretation is done to explore the meaning of the phenomenon and then drawn an empirical conclusion.
6. *Synthesis.* At this stage, discussions are based on empirical conclusions, then synthesized relevant Islamic concepts.

#### **Data analysis**

In connection with a *case study* approach that aims to uncover elements of the implementation of the bank *murabaha* Muamalat is observed, then the appropriate data analysis techniques used in this study is a comparative analysis. Using this analysis, the empirical findings and conclusions obtained are then compiled and matched with Islamic concepts in the Qur'an and hadiths. The realm of research methodology, this kind of analysis known as constant comparative data analysis techniques (*constant comparative analysis*) with descriptive analysis strategy. This technique was used to compare when researchers analyzed and performed continuously throughout the study (Moleong, 2007).

### **III. Result and Discussion**

*Murabahah* is the lifeblood of Islamic banking investment products. It can be seen from the composition of financing provided by Islamic Banks and Sharia which reach 57% of *Murabaha* financing, *Musharaka* financing 29.8%, 6.9% *Mudharabah* financing, *Ijarah* 4.2%, *Qard* 1.8%, and 0.3% *Isthisna*, (SPS OJK, June 2016).

At the beginning of the era of Islamic banks offer some Muslim economists *Murabaha* product that has been modified. By adding appointments between buyers and sellers to conduct *Murabaha* transactions when the goods ordered have been purchased by the bank. Hence the name of this purchase turned into a *Murabaha lil Aamir bisysyiraa*. *Murabaha* in this case is that the seller is not selling as traders. He only buys goods based on the prospect's request. The law of this transaction depends on the agreed contract text. (Erwandi Tarmizi, 2016).

If we compare the *Murabaha* practice at Bank Muamalat branch Kendari *Murabaha* practice based on Islamic law (Chapter VI) then there are a few different things and need to be addressed in this chapter.

1. Filing the Product Order and Purchase Customer Promise To Bank.

*Murabaha* financing begins with the customer comes to the bank, expressed his intention to buy a certain item by explaining the specifications as detailed as possible and promised to buy it if the bank had bought the goods. This stage is only limited promises that may be met and also may not, because the contract of sale at this stage has not started yet.

Happens on the field at this stage, Bank Muamalat branch of Kendari directly write *Murabaha* sale contract, namely The Bank Muamalat sell goods with customers' specifications outlined for umpteen plus a margin so that repaid within a certain time. About this Ustadz Zezen Zaenal Mursalin explains that: Banks should not be doing *Murabahah* before the bank essentially has the goods to be sold to customers. It is like the Hadith of the Messenger of Allah,

عن حكيم بن حزام قال يا رسول الله يأتيني الرجل فيريد مني البيع ليس عندي أفأبتاعه له من السوق فقال: لا تبع ما ليس عندك

From Hakim bin Hizam, "He said to the Messenger of Allah, 'O Messenger of Allah, there are people who come to me. The person wants to have a sale and purchase transaction, with me, stuff I do not have yet. May I buy certain items that he wants in the market after transacting with the person?' Then, the Prophet said, 'Do not sell anything you have not yet.'" (Abu Dawud, No. 3505, judged by Al-Albani) (Scholars: 293-305).

In connection with this, Ustadz Erwandi Tarmizi (2016) explains that:

If this happens then the *Murabahah* is illegal is prohibited purchasing and selling law, the Prophet ﷺ said,

لا يحل سلف وبيع ولا شرطان في بيع ولا ربح ما لم تضمن ولا بيع ما ليس عندك

*It is not lawful to combine debt with the sale and purchase, nor the two conditions in buying and selling, nor profit without sacrifice, nor sell goods that you do not have.* (Ahmad 6671, Abu Daud 3506, Turmudzi 1279 and assigned Syaib al-Arnauth).

In the case of the above sale, Bank Muamalat does not own the goods yet, but the Bank has sold it to the Customer. This is prohibited by the Prophet ﷺ, ie selling goods that have not been owned.

Furthermore Ustadz Erwandi Tarmizi (2016) stated that the Islamic banking guidelines drawn up by the Bahrain-based AAOIFI affirmed, "*haram party financial institution to sell the goods in the form of Murabaha before the item has. So unlawful both parties sign the Murabahah contract before the Islamic financial institutions buy and receive goods ordered by customers from the first seller*".

## 2. Advance Payment

Frequent errors in practice *Murabaha* this stage. Namely, prospective home buyers who come to the bank previously has conducted transactions with developers, and even sometimes the buyer has paid the down payment, and then come to the Islamic financial institutions to apply for a *Murabaha* financing.

As expressed by its *Business Development Branch Manager of Bank Muamalat Kendari* that:

Customers may go directly to the bank to apply for financing the purchase of the house or they can come first to the developer with the developer later that will contact the bank muamalat but if that means we are already working with developers. (KB 2: 136-139)

"But now it is a developer if the customer has not paid his DP there so he does not want to, because the DP is evidence that the customer has no purchase order home on the developer" (KB 2: 608-613).

About it is expressed also by an informant follows:

"I was at Bank Muamalat I asked what the requirements and how the process. Then I go to the developer and it turns out the developer konek ji with bank muamalat. I already booked the location here, then I pay DP which is 30% of the price of the house "(N 4: 1-6).

When that happens and then the bank approves the financing for the customer, in fact the contract is no different from the interest money loan. This is because the bank does not buy a house from the developer. Because by the developer, the house has been sold to customers who then came to the bank to apply for financing. So the status of the bank in this case only pay off customer debt to the developer then the customer repay on credit with added profit or margin. This transaction is exactly the same as the bank lends money to the customer and the customer returns it in installments plus interest. This is clearly *usury jahiliyyah* (Erwandi Tarmizi, 2016).

Therefore, in the guide Islamic banking organized by the *Accounting and Auditing Organization for Islamic Financial Institution* (AAOIFI) stated: "It should be no ties of any transaction between the customer applying to the bank, and the seller first, because when there are ties *Murabaha* transactions carried out before actually essentially a debt loan is paid with flowering".

Concerning the down payment paid by the Customer either to the developer or to the Bank, Ustadz Zezen Zaenal Mursalin states that:

If using advance means were used instead *Murabahah* contract but *bai 'salam* (reservation system), for a cash advance of any size already indicated that a sale and purchase contract and, well that's different from the concept of *Murabahah*. (U: 346-349)

Fatwa illegitimate draw advances at this stage issued by Majma 'al-Fiqh al-Islami (OIC Fiqh Division) No. 72 (3/8) in 1993: "There should be give and receive an advance on the stage of the promise made in the transaction *Murabaha Amir bisysyiraa lil* ', and advances may be taken at a later stage. "

(U: 353-357).

3. Akad *Wakalah* to represent the Purchase of Goods

The signing of the contract *Murabaha* and contract *Wakalah* at Bank Muamalat branch Kendari conducted simultaneously before the goods ordered by the customer exists. This was revealed by the Chairman / Branch Manager of Bank Muamalat branch of Kendari, that:

Akad *Murabaha* and *Wakalah* done before the goods there, so we ask the customer to buy, is not essentially *Murabaha* the items to be purchased, nah but we ask to him (the customer) to buy the goods in question. So the contract ( *Murabahah* and *Wakalah* ) everything is done at the beginning (KB 1: 177-180).

On it is also conveyed by *its Business Development Manager of Bank Muamalat Kendari*, that:

First thing to do akad *Murabahah* first, *Wakalah* or can simultaneously pack. But it should not be *Wakalah* first, so must *Murabaha* new first *Wakalah* but can at the same day as the record persists akad *Murabahah* first. Because the contract *Wakalah* stood on the contract *Murabaha* so *Murabahah* it as the basis of a contract *Wakalah* (KB 2: 873-877).

Practice *Murabahah* as practiced by Bank Muamalat branch different Kendari with DSN-MUI fatwa stating that:

"If the bank was about to depute to customers to buy goods from a third party, sale and purchase agreement *Murabahah* should be made after the goods are, in principle, belong to the bank." (National Sharia Board Fatwa No: 04 / DSN-MUI / IV / 2000 About *murabaha* ).

Akad *Murabaha* should be a sale and purchase agreement made when the goods to be used as an object of *Murabaha* is already available or have been purchased by the Bank from the supplier. Therefore, if the Bank Muamalat would deputize for the customer to buy goods in accordance with customer orders then that should be done first is to make the contract *Wakalah* in the sense that the Bank authorize or delegate to the customer to buy the goods in question on behalf of the bank. Once purchased goods had been there and been under the full control of the Bank, the Bank then made a contract *Murabahah* with the Client.

In connection with the practice of *Murabahah* conducted by the Bank Muamalat branch Kendari, one scholar explains as follows:

*Wakalah* taking precedence over akad *Murabahah* , because essentially occurs *Murabaha* if the goods to be *Murabahah* not it already exists or is already owned by the Bank. Even then, in an emergency situation where the banks really can not make a purchase the goods. If *Murabaha* new first *wakalah* it means that the Bank selling items that have not belonged to him, and this is a transaction that is forbidden by the Hadith.

لا تبع ما ليس عندك

"Do you sell items that you have not had. ' "(HR. Abu Dawud no. 3505; rated authentic by Al-Albani)

So if it is done by the Bank means buying and selling transactions just as *suri* means that only the theatrical form only.

(Cleric: 307-319).

Frequent errors in practice *Murabaha* at this stage, the bank Muamalat delegate to clients to buy and receive goods. For example, as illustrated below:

This pack price of 10 million, 2 million and *keuntungan* I'm selling to the father of 12 million, now you want *ngangsur* how long, say 3 years, 4 years or 5 years stay divided 12 million just right for so many years. when the customer wants to buy a motorcycle earlier to the bank, the bank just shows, this pack you want to buy a motorcycle that Honda brand costs 10 juta. *Saya* father's love of money 10 million, please represent is my father as a bank to buy a motorcycle in accordance with this, that *wakalah* ( KB 1: 126-128, 146-149).

The above examples can be described as follows:

Customers come to the Bank wants to buy a bike for \$ 10 million with the specifications outlined, the bank provides the funds to the Customer by 10 million and to delegate to the Customer to purchase and receive from Party Motor Dealer or Showroom. At the same time the bank notes Client's obligation to pay to the bank Parties by 12 million (10 million of principal plus a margin of 2 million) by way of installments specified in a given time period and the number of installments to be paid.

Erwandi Tarmizi (2016) states that the practice *Murabaha* like this is *engineering legalized usury* , because the banks do not yet have a motor that is the object of sale *Murabahah*. And the nature of this transaction is to lend banks as much money as 10 million that will be returned within a certain period as many as 10 million plus a margin of *Murabaha* as many as 2 million. These transactions together with loans.

It is also emphasized by the *Accounting and Auditing Organization for Islamic Financial Institution* (AAOIFI) in Erwandi Tarmizi (2016) when the Islamic Financial Institutions (LKS) was forced to delegate to the customer: " *Basically LKS buy goods directly from the seller. And LKS may make purchases of*

goods by the customer representative Murabaha as long as not being representative, but in conditions of forced okay to customers as a representative. And then customers who act as representatives LKS to purchase goods not directly sell the goods to him. However, direct LKS who sold it to clients after first owned by LKS. And also required to separate between the two guarantees (liability risk goods): guarantee of financial institutions and guarantee customers as representatives of financial institutions to buy goods Murabahah, namely the existence of separate time between contract represents for customers to purchase and contract purchase customers with Murabahah with how customers agree to implement wakalah, then just made a sale contract LKS to customers. LKS proposition that requires agreement represents to customers is made separately from Murabahah LKS with customers, so that no doubtful usury by binding between wakalah with Murabahah (into one) ".namely the existence of a separate time between contract represents to clients to buy and purchase agreement with Murabaha customers in a way customers implement wakalah agree, then the newly created worksheets sale contract to the customer. LKS proposition that requires agreement represents to customers is made separately from Murabahah LKS with customers, so that no doubtful usury by binding between wakalah with Murabahah (into one) ".namely the existence of a separate time between contract represents to clients to buy and purchase agreement with Murabaha customers in a way customers implement wakalah agree, then the newly created worksheets sale contract to the customer. LKS proposition that requires agreement represents to customers is made separately from Murabahah LKS with customers, so that no doubtful usury by binding between wakalah with Murabahah (into one) ".

Also frequent errors in practice *Murabaha* at this stage, in which the bank sells the goods to the customer without first receiving the goods.

For example:

A customer wants to buy a car with the specifications dirincikannya. Then the banks to contact one show room over the phone and he did a contract of sale in cash. Still in the same room direct bank made a contract of sale of the car *Murabaha* with customers, before the bank received from the car showroom. Once the contract was made customers come to the showroom and receive the car he wanted.

Accordinging Erwandi Tarmizi (2016) contract of sale of *Murabaha* is **imperfect** (damaged) and haram. Because there is a prohibition of the Prophet ﷺ sell goods before acceptance.

Among the arguments of this rule Prophet *sallallahu 'alaihi wa sallam*, from Hakim bin Hizam *radhiyallahu 'anhu*, he said,

قلت: يا رسول الله، إني أشتري بيو عا فما يحل لي منها وما يحرم علي؟ قال: «يا ابن أخي، إذا اشتريت منها بيعة فلا تبعه حتى تقبضه»

" *buying and selling what is lawful, I often make buying and selling, O Messenger of Allah? and unlawful: The Prophet said do not sell When you buy an item that you !O my son" before the goods you received.* (Imam Nawawi stated degree hasan hadith ,Ahmad .HR)" .

This hadith explains that it is forbidden to sell goods that have been purchased but not yet received physical goods.

Also narrated by Ibn Abbas *radhiyallahu 'anhuma*,

عن ابن عباس رضي الله عنهما أن رسول الله ﷺ (نهى أن يبيع الرجل طعاما حتى يستوفيه). قلت لابن عباس: كيف ذلك؟ قال: ذلك دراهم بدراهم والطعام مرجأ

"Dari Ibnu Abbas that the Rasulullah shallallahu 'alaihi wa sallam, forbade selling food until he got it perfectly. (Up in his hand). I asked Ibnu Abbas: "How is it (could be banned)? He said: "That is as if he bought the dirham by dirham more, while the food terundur arrival (suspended)" (Bukhari and Muslim).

This hadith clearly forbids the sale of goods that have been purchased but not yet received physical. Ibnu Abbas explains the reason for its ban that form of sale is the same as *usury Ba'i*, because when he bought goods worth 100 dirhams then resold for 120 dirhams each to swap 100 dirhams to 120 dirhams (this is called *usury Ba'i*) while ingredients food becomes the object of the contract remains with the seller first.

In the case of *Murabaha* car as exemplified above, after being purchased by the bank from the showroom by telephone and before it is accepted by the customer, the guarantee of the goods covered by the showroom, car suppose missing / lost, the showroom is responsible, not the bank. Thus the banks have already benefited from *Murabaha* without bearing the risk of the goods. It is haraam (Erwandi Tarmizi, 2016).

#### 4. Application of Fines (*Ta'zir*) and Indemnity (*Ta'wid*).

For the validity of the sale of *Murabaha* not cash, then there can be no requirement of financial penalties when customers are late paying installments. This statement agreed by all scholars, because the penalty for delay is usury committed by people of ignorance and Allah has forbidden in the Koran. This is confirmed by the decision of Congress Majma 'al-Fiqh al-Islami No: 51 (2/6) of 1990, which reads: " *Should the buyer (goods are not cash) late in paying the installments on a predetermined tempo, then it should not give sanctions in the form of additional debt; well this is required prior to the contract or not, because this is forbidden usury.* "(Erwandi Tarmizi, 2016).



In connection with this, Ustadz Zezen Zaenal Mursalin explained that:

Whatever the reason there should be no penalty for the customer because he riba, because one of the requirements of murabaha is *ghoiru kobilil li ziyadah* (it can not do any additions including when experiencing delays), so when the customer delays payment later he was penalized for whatever reason then he is included in the category Riba. (Cleric: 456-462).

If within the period of repayment of customers experiencing problems or defaulted or delinquent then the Islamic banks should give time or delay debt bill to be able to return customers to make payments. This is in accordance with the Word of God in the Qur'an, which reads:

وإن كان ذو عسرة فنظرة إلى ميسرة ...

"And if (the debtor is) in trouble, give respite until he berkelempangan ..." (QS. Al-Baqarah: 280).

In addition to fines (*Ta'zir*) Kendari Branch Bank Muamalat also apply Indemnity (*Ta'widh*) is the Client's obligation to indemnify the real (*ta'widh*) caused the delay in payment obligations of the Customer to Bank. It is as stated in Murabaha Agreement Article 12, paragraph 1c and 1d below:

1. Fine
- c. Besides fines (*ta'zir*) as mentioned in paragraph 1a of this Article, the CUSTOMER shall indemnify the real (*ta'widh*) caused the delay in payment obligations of the Customer to Bank.
- d. Funds from *ta'widh* received by the BANK will be allocated to cover the real losses BANK under this facility.

In the National Sharia Board Fatwa Indonesian Ulama Council (DSN-MUI) explained about *Ta'widh* that:

#### **General requirements:**

1. Compensation (*ta'widh*) should only be imposed on those who intentionally or negligently does something that deviates from the provisions of the contract and cause harm to the other party.
2. These losses can be charged *ta'widh* referred to in paragraph 1 is the real losses that can be calculated clearly.
3. The real losses referred to in paragraph 2 is that the real costs incurred in the billing rights that should have been paid.

Erwandi Tarmizi (2016) explains that *Ta'widh* was opposed by the majority of the scholars and difatwakan forbidden by international fiqh institutions, including:

- Decision Majma' Al Fiqh Al-Islami (fiqh division OIC) No. 51 (2/6), 1990, which reads, " *For clients who are able to unlawful delaying the payment was due. Nevertheless, the Shariah does not allow sellers to make the requirements ta'widh (compensation) when customers pay off the overdue payment obligations.* "
- Decisions Al Majma' Al Fiqhy Al Islami (division of Rabita Alam Islami Jurisprudence) which reads, " *If the lender provides the requirements or require the debtor in order to pay a sum of money as a penalty of, either in a specific amount or percentage; when the debtor's too late to repay the installments which are overdue, the terms or liability is not valid and is not mandatory, not even a catered kosher, either to make the requirements are banks or other parties. Because of these requirements are essentially the same ignorance which Allah has forbidden usury in the Koran* " .
- AAOIFI in Islamic Financial Institutions guidelines on Article *Debtor Procrastination Maturity Payment Obligations* " , paragraph 2 / 1.b and 2 / 1.c states, *Islamic Financial Institutions are not allowed to make the requirements ta'widh in the form of money or goods to the debtor when he was late paying the obligations that have matured, well defined number ta'widh at the time of the transaction or not. Both losses are in the form of lost profits on paper (unrealized profit) or loss due to currency fluctuations. Islamic Financial Institutions are not allowed to apply for customers who delay payment obligations maturing to court with claims ta'widh (compensation) in the form of an amount of cash or valuables* " .

The decisions of international institutions above Jurisprudence is based postulates as follows:

1. The verses of the Qur'an, which forbids usury  
Ibn Abdil Barr said, " *Ulama Salaf and khalaf agreed that usury is forbidden Qur'an is attractive compensation (ta'widh) of borrowers who are late paying their obligations after maturity*".  
So every additional debt in any form is haraam according to the consensus of the scholars; either on behalf of a *penalty* or whatever.
2. Hadith of the Prophet ﷺ,  
Hadith of the Prophet sallallahu 'alaihi wa sallam:

« لي الواجد يحل عقوبته وعرضه » And « مظل الغني ظلم »

" The delay repayment by people capable of an injustice, it is permissible sentence allowed him and defamed ". (HR. Bukhari).

Problems procrastination maturing debt is not a new thing, but it has happened since the time of the Prophet ﷺ. And the Prophet ﷺ did not allow sanctions against mampuyang procrastinating debt except in the form of defamation and punishment a deterrent that confinement. And no one previous scholars who interpret the meaning of the hadith above sanctions with penalties in the form of payment *ta'widh* (Erwandi Tarmizi, 2016).

Thus it is clear that attract *ta'widh* (compensation) of the debtor is able procrastinating payment obligations that are due the same sentence with usury.

### **Obstacles and Solutions in Implementing Murabahah According to Sharia**

As a financial intermediary bank has won the trust of the community as a safe institution to save money as well as lending institutions. Islamic bank is an integral part of the banking system in Indonesia, so that even brought the concept of sharia in its operations, but has not been fully able to apply the rules of the Shari'a. This is due to the many constraints faced by Islamic banks that Islamic principles remain on the right lines, which are as a rule of life, and not just a label.

The application of the concept of *murabaha* on buying and selling system of Islamic banks is considered as legalized usury practice because of an error in the implementation so no longer in line with this concept. In order to apply the concept of *Murabahah* accordance Islamic law, Islamic banks should attempt to plunge into the Real sector, although it was not easy because of various constraints and challenges faced by the Islamic Bank in Indonesia.

Aripin Badri (2016) describes some of the main obstacles faced by Islamic banking when plunging into the real sector, as follows:

#### **1. First obstacle: Community Preparedness .**

Growth of Islamic banks in Indonesia have not been accompanied by an understanding and knowledge of the community about the work of Islamic banking system. Most practitioners of Islamic banking confirms that the majority of people not yet fully ready with the provisions of the Shari'a. Understanding of society is still strong in the conventional banking system with interest. Instead ready to bear the risk of investment in the real sector, some people unabashedly demanding Islamic banks provide the results that the magnitude of at least comparable to conventional bank interest rates.

In December 2000, Bank Indonesia is working with LP-IPB, and PPBEI-Unibraw conducted research in West Java and East Java. From this research, the facts are revealed: "It turned out that the main motivation of society in the two regions while using the services of Islamic banking is the factor of quality of service and the proximity of central bank activity. While religious considerations factor and halal products is not an important factor for them in choosing Islamic banking services.

#### **Solution:**

The fact hamper the development of Islamic banking. Therefore, no solution is more accurate than educate the community with islamic teachings in general and the financial sector in particular. And it is fitting for Islamic banking an active role in this activity.

#### **2. Second obstacle: Human Resources**

Has become the nature of Muslims in our country, that the growth of Islamic banking so rapidly without preceded by the preparation of human resources (HR) is sufficient and reliable. Inevitably, in order to meet needs that can not be postponed, applying Islamic banking ancient motto: " *no root cane was so* ".

Perhaps because of the urgent need, there are Islamic banks which take the shortcut. Not mengkader prospective practitioners of Islamic banking through existing educational institutions, but "converting" practitioners of conventional banks into Islamic banking practitioners. Naturally, when the patterns of thought and work during their active in conventional banking is still strongly attached to their souls. The impact of this emergency solution is Islamic banking reluctantly plunged into the real sector. The reason is that the Islamic banking practitioners feel more comfortable with working pattern resembles conventional banking work patterns.

#### **Solution:**

To create Islamic banking practitioners are reliable, will require an adequate educational institution. Banking science education, especially science sharia. To that end, it is time for Muslims to enter the Islamic economic system into the school curriculum. Starting from mid-level to higher education. In fact, there is no harm if Muslims open special schools that teach Islamic law and Islamic economics.

#### **3. Third obstacle: Real Sector Ethics Business Actors**

Honesty and trustworthy a great impact on the success of various models of investment is justified in Islam. Without these two things, it's hard to an investment in line with Islamic law (Makhathirul Istitsmar Masharif Fil Al Islamiyah by Dr. Hamzah Abdul Karim Muhammad Hammad, p. 45).

Could the agreement *mudaraba*, *Musharaka*, *murabaha* and more successful when without based on honesty and the trust of both parties? It may be that Islamic banks are already trying to meet these criteria, but the criteria were not necessarily present in the capital borrowers. Both of these elements have now become scarce, making it difficult to distribute the funds of Islamic banking in order to benefit from kosher. Face and other businesses are now dark because of the practice of forgery, fraud, corruption, delay and other liabilities, has become the culture of the population. Even further than that, some entrepreneurs menghalakan all sorts of ways in order to make profits shortly. This phenomenon is a major obstacle for the Islamic financial institutions to disburse the funds, except by way of "burdening" the customer, namely a guarantee on capital received by the customers.

**Solution:**

To resolve these problems, some solutions that can be taken include:

1. Investment banking running in the same direction. With this system, banks play a direct role as a manager of public funds and plunge into the real sector. But at the same time, banks refrain from distributing the funds to the other party, except after going through a selection process that is extra tight.
2. Shaleh Kamil, founder of Al-Baraka Banking Group recounts, " At the beginning we set up an Islamic bank, we have a division of purchasing, marketing and warehouse. But it is now not owned by the existing Islamic banking. Islamic banking currently only has a sharia council. However, the attention of the existing Islamic banks only focus on mechanisms alone " (Daily *As-Shabiba Oman*, ha 3, edition January 26, 2012).
3. Banking requires pawn goods in the form of a number of assets or securities that can be cashed when businessmen cheating or mistakes resulting in losses.
4. Every time you make a purchase of goods, banking requires *the right khiyar* (the right to cancel the contract) within a reasonable time. As banks may also require that the payment-was done owing to the beat of time.
5. By requiring both cases, Islamic banking can narrow the losses and the accumulation of goods that are not being sold to customers.
6. By law Shari'a, requires two things are justified, as confirmed in the following hadith: "*The Muslims shall meet the requirements which they have agreed, except for the requirement that forbids the lawful or justify the unlawful.*" (HR. Abu Dawud and in *Saheeh* right Al- Albani)
7. Building a data bank of business people and their behavior. Based on a comprehensive review of the data, Islamic banking can identify trustworthy businessman and inadequate given the mandate.
8. Banks perform the role of intermediation between investors and entrepreneurs. And on this role, banks earn *fees* from both sides or from one of them. Therefore, banks safe from the risk business due to the low level of trust and honesty investors or entrepreneurs.

4. *Fourth obstacle: Regulatory and Legal Guarantees*

Islamic banking conditions in our country like a live fish on land. Minimal like a bird in a cage. Your opinion, is it possible to survive the fish and bird can flap its wings in such circumstances?

The presence of Islamic banking in our country is a remarkable thing. Because of the regulations, Islamic banking should not yet fully supported, both in terms of rules or collateral in the form of legal certainty in accordance with Islamic law. Furthermore, bitter experience of our country during the 1997-1998 economic crisis up to now, leaving deep enough injuries and trauma. As a result, the government limits the working space and authority of the banking world, without exception Islamic banking. This condition is more narrow the space for Islamic banking.

**Solution:**

As a solution, banks can play an active role encouraging the birth of the legislation to accommodate Islamic Sharia. Thus, Islamic banking can have authority in the course of practical business. Keep in mind, the law could come from the desires of the community. When the public interest and demand, there is no reason for anyone to resist. Plus the bank is a commercial institution, so that when the system that they run no longer sold in the community, they would quickly adapt to the wishes of the people. Therefore, as members of the public as well as businesses, you should participate actively fought for the birth of an adequate solution.

## IV. Conclusion And Suggestions

### Conclusion

Based on the description, synthesis, and interpretation of various phenomena relating to the implementation of *Murabahah* at Bank Muamalat branch of Kendari, then a number of conclusions that the research findings sebaga follows:

1. Practice *Murabahah* at Bank Muamalat branch Kendari beginning with reservations by the customer when it comes to Bank, where the booking is already binding because at this stage of its capital directly write the contract of sale *murabaha* which is binding, and the bank is deemed to have sold goods to the specifications outlined customers with prices, margins and tempo of time. A kad *murabaha* such unauthorized and selling-purchasing law is forbidden, because the bank violated the ban on selling goods which have not become the property of the bank .
2. Practice *Murabahah* at Bank Muamalat branch Kendari done by selling items that have not owned or has not become fully control of The Bank. This is done by Bank Muamalat branch Kendari make akad *Murabahah* (Sell-buy) then make a contract *Wakalah* (depute to customers) to purchase goods that become places Akad. Practice *Murabahah* like this is **engineering legalized usury** , because the banks do not yet have the goods that are the object of sale *Murabahah* .

Transactions conducted by Bank Muamalat branch Kendari violates Hadith the Prophet ﷺ,

عن حكيم بن حزام قال يا رسول الله يأتيني الرجل فيريد مني البيع ليس عندي أفأبتاعه له من السوق فقال: لا تبع ما ليس عندك

*From Hakim bin Hizam, "he said to the Prophet, 'O Messenger of Allah, there are people who come to me. The people want to hold a sale and purchase transactions, to me, yet I have the goods. Can I buy a particular item he or she wants in the market after the transaction with that person?' Then, the Prophet said, 'Do you sell items that you have not had.' "* (HR. Abu Dawud no. 3505; rated authentic by Al-Albani)

Practice *Murabahah* as practiced by Bank Muamalat branch different Kendari with DSN-MUI fatwa stating that:

"If the bank was about to depute to customers to buy goods from a third party, sale and purchase agreement *Murabahah* should be made after the goods are, in principle, belong to the bank." (National Sharia Board Fatwa No: 04 / DSN-MUI / IV / 2000 About *murabaha* ).

It is also contrary to Islamic banking denganpanduan prepared by the *Accounting and Auditing Organization for Islamic Financial Institution* (AAOIFI), which states:

"Unlawful party financial institution to sell the goods in the form of *Murabaha* before the item has. It is not legitimate ruling the two sides signed *Murabahah* before the Islamic financial institutions to buy and receive goods ordered by the customer from the first seller ".

3. Practice *Murabahah* in Kendari MuamalatCabang Bank begins with such advance payments on the mortgage program, it is surely no different akadnya with loan money on interest, because the banks do not buy a home from the developer. Because by the developer, the house has been sold to a customer who then came to the bank to apply for financing. So the status of the bank in this case customers only pay off debts to the developer and then customers pay off credit with the added profit or margin . This transaction is exactly the same as the bank lending money to customers and clients return it in installments plus interest. This is clearly **usury jahiliyyah**.

4. Practice *Murabahah* at Bank Muamalat branch Kendari still apply fines ( *Ta ' zir* ) for nasabahyang late in paying the installments and Indemnity ( *Ta ' wid* ) for customers who delay payment.

Terms penalties when customers are late paying installments is usury committed by people of ignorance and Allah has forbidden in the Koran. This statement agreed by all scholars.

Similarly that *Ta`widh* opposed by the majority of the scholars and difatwakan forbidden by the institutions of the international Jurisprudence Hadith the Prophet sallallaahu 'alaihi wa sallam:

« لي الواجد يحل عقوبته وعرضه » And « مظل الغني ظلم »

"The delay repayment by people capable of an injustice, it is permissible sentence allowed him and defamed". (HR. Bukhari).

Decision Majma 'Al Fiqh Al-Islami (fiqh division OIC) No. 51 (2/6), 1990, which reads, " *For clients who are able to unlawful delaying the payment was due. Nevertheless, the Shariah does not allow sellers to make the requirements ta'widh (compensation) when customers pay off the overdue payment obligations . "*

### Suggestions

Referring to the conclusions and implications as suggested above, then proposed some suggestions as follows:

1. Bank Muamalat branch for Kendari to always strive to apply this concept in a pure, so that people's expectations to be bermuamalah in accordance with Islamic law can be realized.
2. For the general public and customers of Bank Muamalat branch Kendari in particular, in order to understand the principles of the Islamic Shari'a compliant bermuamalah so as to support the application of the Shari'a concept purely at Bank Muamalat branch of Kendari.
3. For the government, in order to provide full support to the Islamic banks to be able to apply this concept is pure in every product, by creating a special regulation on Islamic banks apart from conventional banks.

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