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THE RECONSTRUCTION OF THE REGULATION OF THE OBJECT OF MURABAHAH FINANCING CONTRACTS IN ISLAMIC BANKING IN INDONESIA

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Abstract

The type of research in this study is normative legal research (legal research) with statutory, conceptual, philosophical, and comparative approaches. This study aims to determine the nature of the object of murabahah financing contracts in Islamic banking, to analyze the regulation and implementation of the object of murabahah financing contracts in Islamic banking in Indonesia, and to identify a reconstruction of the regulation of the object of murabahah financing contracts in Islamic banking in Indonesia. **Research findings:** 1). The object of a murabahah contract must exist at the time of the contract, be lawful (halal), clearly specified, capable of delivery, known to the contracting parties, and free from riba, while reflecting the principles of justice, transparency, and accountability. 2). Normatively, banks are required to own the object first through wakalah (as regulated by DSN-MUI, OJK, KHES, and PPPMPS 2023); however, in practice, implementation still deviates from sharia principles. 3). Legal reconstruction is required through strengthening juridical ownership (qabdh hukmi), simplifying proof of ownership, and reformulating a more transparent and objective pricing mechanism. **Recommendations:** 1). The Financial Services Authority (OJK), Sharia Supervisory Boards (DPS), and Islamic banking institutions must consistently implement PPPMPS 2023 and strengthen supervision of wakalah arrangements. 2). Regulatory harmonization is needed (POJK, KHES, PPPMPS 2023), along with strengthening the legal status of PPPMPS 2023. 3). The establishment of supporting institutions such as PWM, LPHM, and OKPS is necessary to ensure compliance and fairness in sharia financial transactions.

Keywords: Islamic Banking, Murabahah, Reconstruction.

1. INTRODUCTION

Philosophically, Islamic banking is founded upon the objective of achieving *falah*, namely human well-being that encompasses not only material prosperity but also spiritual fulfillment. Economic activities are therefore perceived not merely as instruments for generating profit, but as mechanisms for realizing justice, balance, and public welfare within society. This foundation is rooted in the *maqashid al-shariah* (objectives of Islamic law), which comprise the protection of faith and piety (*ad-Din*), lineage (*an-Nasab*), life and personal security (*an-Nafs*), property and wealth (*al-Maal*), and intellect (*al-Aql*)*)*.[1]

From a theoretical perspective, the attainment of human welfare in Islamic banking is not merely material in nature, but also spiritual. Accordingly, the principle of public benefit (*maslahah mursalah*) is positioned as a fundamental orientation of the law, provided that it does not contradict the *nash* as the primary source of Islamic law.[2] In this context, the existence of the *aqad* constitutes a fundamental aspect, serving as a medium for the articulation of the values of justice, trustworthiness (*amanah*), balance, and responsibility. Accordingly, its existence not only determines the juridical legitimacy of a transaction, but also its moral and

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spiritual acceptability. The *aqad* referred to herein is the *murabahah* contract, which conceptually positions the bank as the seller of goods to the customer through the provision of financing for the purchase of the required goods, while stipulating a predetermined margin or profit for the bank.[3]

From a juridical perspective, Article 19 paragraphs (1) and (2), as well as Article 21 of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (State Gazette of 2023 No. 4, Supplement to the State Gazette No. 6845), position the *murabahah aqad* as one of the principal instruments in both fund-raising and financing activities within Islamic banking institutions.

Furthermore, the *murabahah aqad* is also regulated under the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2008 concerning the Compilation of Sharia Economic Law, which provides as follows:

Article 116:

(1). The seller shall finance part or all of the purchase price of goods whose specifications have been agreed upon.

(2). The seller shall purchase the goods required by the buyer in the seller's own name, and such purchase must be free from *riba* (usury).

(3). The seller shall honestly disclose to the buyer the acquisition cost of the goods, including any necessary related expenses.

Article 117:

The buyer shall pay the agreed price of the goods in the *murabahah* transaction at the time agreed upon by the parties.

Article 118:

The seller in a *murabahah* transaction may enter into a special agreement with the buyer in order to prevent the misuse of the contract.

Article 119:

Where the seller intends to authorize the buyer to purchase goods from a third party, the *murabahah* sale and purchase agreement may only be concluded after, in principle, the goods have become the property of the seller.

In addition to the foregoing regulations, the provisions concerning *murabahah* are also embodied in DSN-MUI Fatwa Number 4/DSN-MUI/IV/2000 on *Murabahah*, particularly point 4, which stipulates that "the bank purchases the goods required by the customer in the name of the bank itself, and such purchase must be legally valid and free from *riba*."

The aforementioned regulation and concept of murabahah, particularly from the perspective of ownership over the object of the contract, give rise to practical difficulties when implemented as a murabahah financing product. This is because the concept of sale and purchase requires

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the bank to act as the seller of the goods, whereas, as a financial intermediary institution, the bank does not actually possess the goods serving as the object of the murabahah transaction. The essential substance of a sale and purchase agreement lies in the existence of an object (goods) to be traded. If no goods exist at the time the contract is concluded between the customer and the bank, the substantive element of sale and purchase is effectively absent. Since the object does not exist, the delivery of goods from the seller to the buyer never actually occurs, thereby raising concerns that such a transaction may constitute the sale of goods not owned by the bank and the imposition of illegitimate profit.[4]

The weakness in this substantive aspect has sociological implications. In practice, the bank, acting as the seller, grants customers the discretion to independently select the goods or vehicles they intend to purchase. This circumstance constitutes one of the reasons why the public frequently perceives Islamic banks as being no different from conventional banks. This type of sale and purchase is prohibited based on the following hadith:[6]

حَدَّثَنَا أَزْهَرُ بْنُ مَرْوَانَ قَالَ حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ و حَدَّثَنَا أَبُو كُرَيْبٍ حَدَّثَنَا إِسْمَعِيلُ ابْنُ عُلَيَّةَ قَالَا حَدَّثَنَا أَيُّوبُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا يَحِلُّ بَيْعُ مَا لَيْسَ عِنْدَكَ وَلَا رِبْحُ مَا لَمْ يُضْمَنْ

Meaning: Azhar ibn Marwan narrated to us, saying: Hammad ibn Zaid narrated to us. (In another chain of transmission it is mentioned:) Abu Kuraib narrated to us, saying: Isma'il ibn 'Ulayyah narrated to us. Both of them narrated to us from Ayyub, from 'Amr ibn Shu'aib, from his father, from his grandfather, who said: "*The Messenger of Allah (peace be upon him) said: 'It is not lawful to sell something that you do not own, and there is no profit in something for which liability has not yet been assumed*.'" (Narrated by Ibn Majah).

The concept of sale and purchase without the existence of goods at the time the contract is concluded can only be justified within the framework of *istisna'*[7] and *salam*[8] contracts. Conversely, the concept of *murabahah* refers to the general principles of sale and purchase. This becomes problematic when a single financing transaction involves multiple and diverse objects. Consequently, financing recipients frequently fail to provide complete evidence of expenditures related to the utilization of *murabahah* funds, particularly for items of relatively small value. Such matters are often regarded as trivial by bank marketing officers, who tend to adopt practical shortcuts, such as rounding off expenditure figures deemed convenient in the fund utilization report.[9]

The practice of *murabahah* financing accompanied by *wakalah* (agency) indicates that Islamic banking remains confined within a conventional paradigm when transforming the interest-based system into a profit- or *murabahah*-margin-based system. Although customers are fully informed of the purchase price and the additional margin imposed, the *murabahah bil wakalah* financing scheme becomes problematic when the parties merely use the contract as a formal mechanism to obtain funds from the bank.[10] In practice, the *murabahah bil wakalah* concept in Islamic banking is frequently used as a justification for banks to refrain from directly purchasing goods on the grounds of efficiency.[11] As a consequence, such financing patterns

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give rise to moral hazard, namely the pursuit of profit while disregarding compliance with Sharia principles.

The problems arising in the practice of murabahah bil wakalah within Islamic banking essentially do not merely indicate technical issues of financing, but simultaneously reflect philosophical, theoretical, juridical, and sociological crises. From a philosophical perspective, there has been a distortion of the very essence of the murabahah contract as a sale and purchase agreement which requires actual ownership and control over the object by the seller prior to the transaction. In practice, banks frequently do not genuinely assume the position of owner of the goods, but rather function merely as providers of funds sheltered behind contractual formalities. Consequently, murabahah loses its ethical substance as a real transaction and is transformed into an administrative construction that preserves the form while neglecting the spirit of sharia justice. From a theoretical perspective, such practice demonstrates that Islamic banking remains trapped within a conventional paradigm. Profit margins that continue to refer to conventional banking interest rates indicate that the transformation taking place is more terminological than substantive in nature. At this point, murabahah risks becoming merely a reproduction of an interest-based credit system under sharia nomenclature, thereby depriving the ideals of Islamic economic justice of their transformative meaning.

From a juridical perspective, the problem arises from normative ambiguity concerning ownership of the financing object. The phrase “in principle becomes the property of the bank” is often interpreted loosely, such that actual possession and control over the object are reduced merely to administrative evidence. Such interpretation creates tension between formal legality and substantive sharia legitimacy, thereby causing the law to potentially lose its ethical orientation.

From a sociological perspective, the practice of murabahah bil wakalah reflects the dominance of economic pragmatism over sharia idealism. Society tends to perceive sharia financing merely as a means of obtaining funds, while banking institutions are more oriented toward efficiency and market profit. This condition gives rise to a permissive culture toward deviations from the substantive nature of the contract and ultimately erodes public trust in the authenticity of Islamic banking itself.

METHODE

The type of research employed in this study is normative legal research (legal research), which examines legal principles, systematic legal structures, the degree of legal synchronization, legal history, and comparative law,[12] or what is commonly referred to as doctrinal legal research[13] and also known as dogmatic legal research.[14] According to Peter Mahmud Marzuki, legal research is aimed at discovering the coherence of truth, namely whether legal rules are consistent with legal norms, whether norms in the form of commands or prohibitions are in accordance with legal principles, and whether a person’s actions (acts) conform to legal norms or principles[15]. This study applies several approaches, namely the statutory approach, conceptual approach, philosophical approach, and comparative approach.

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RESULTS AND DISCUSSION

The Essence of The Object of Murabahah Financing Contracts in Islamic Banking

The essence of the object of a *murabahah* financing contract in Islamic banking cannot be separated from the foundational construction of contracts (*'aqd*) in Islamic law, which emphasizes the fulfillment of the essential pillars (*arkān*) and the conditions (*shurūt*) of a valid contract.

A legally valid and binding contract can only be formed when all constitutive elements are satisfied, as the pillars constitute the intrinsic components that form the very existence of the contract, while the conditions function as external requirements that determine the legal validity of the contract. The pillars of a *murabahah* contract include the contracting parties (*al-'āqidān*), the offer and acceptance (*sighat ijab wa qabul*), the object of the contract (*mahall al-'aqd*), and the purpose of the contract (*maudū' al-'aqd*).[16]

With the fulfillment of all aforementioned pillars and conditions, a contract, in principle, possesses a normative foundation for recognition under both Sharia and positive law. However, such fulfillment does not automatically give rise to enforceable legal consequences between the parties. In practice, the validity of a contract must also be assessed from the perspective of its effectiveness (*nafādh*) and binding nature (*luzūm*), which determine whether the contract is immediately executable or remains subject to conditions that delay or restrict its legal effect.

The conditions relating to the formation and validity of contracts may be categorized into two types, namely:[17]

1) Non-executable contract (*'aqd mawqūf*), namely a valid contract that cannot yet produce legal effects because the conditions for its enforceability have not been fulfilled; and
2) Effective contract (*'aqd nāfidh*), namely a valid contract that is fully enforceable because it has satisfied all conditions required for legal effectiveness.

Even where a contract has fulfilled all its essential pillars and validity conditions, it does not necessarily generate immediate legal consequences if the conditions for its execution have not been met. Therefore, in determining whether a contract can function effectively within Islamic legal doctrine, further examination of the conditions attached to the object of the contract is required, as the object constitutes an essential element that determines whether the contract can be performed and produce complete legal effects.

Islamic jurists (*fuqahā'*) unanimously agree that the object of a contract must be something that is permissible under Sharia, namely property (*māl*) that is *mutaqawwim* (legally recognized and capable of lawful ownership). Accordingly, anything not recognized as property under Sharia such as carcasses, blood, pork, and intoxicants (*khamr*) cannot constitute a valid object of contract, whether in sale and purchase, gift (*hibah*), endowment (*waqf*), or bequest (*wasiyyah*).

This principle aligns with the general Sharia doctrine concerning lawful benefit and the prohibition of using unlawful objects, and is supported by the divine injunction that everything

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on earth was created for human benefit, yet within the limits of lawful and unlawful, as stated in QS. Al-Baqarah: 29:

هُوَ ٱلَّذِى خَلَقَ لَكُم مَّا فِى ٱلْأَرْضِ جَمِيعًا ثُمَّ ٱسْتَوَىٰٓ إِلَى ٱلسَّمَآءِ فَسَوَّىٰهُنَّ سَبْعَ سَمَٰوَٰتٍ ۚ وَهُوَ بِكُلِّ شَىْءٍ عَلِيمٌ

This means that:

"He is (Allah) who created for you all that is on the earth. Then He turned toward the heaven and perfected them into seven heavens. And He is All-Knowing of everything."

Furthermore, the object of a contract (ma'qūd 'alayh) must be capable of being delivered at the time the contract is concluded. The jurists are in agreement that a contract is invalid if the object cannot be delivered, even if it physically exists or is owned, such as fish in the sea, birds in the air, runaway animals, or goods that are beyond reach. This requirement is grounded in the prohibition of *gharar* (uncertainty) in transactions as stipulated by the Prophet Muhammad ﷺ in his prohibition of *bay' al-gharar* (uncertain transactions), as stated in his saying:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْغَرَرِ

This means that:

"The Messenger of Allah prohibited the sale involving gharar (uncertainty)" (Reported by Muslim).

This prohibition is grounded in the rationale that the inability to deliver the object of a contract may generate uncertainty and lead to disputes. Nevertheless, divergent juristic opinions exist, whereby Imām Mālik permits voluntary contracts such as hibah (gratuitous transfer) involving non-deliverable objects, on the basis that such arrangements do not give rise to conflicts of interest comparable to those inherent in commercial transactions.

Furthermore, the object of the contract must be clearly defined and known to both parties in order to eliminate elements of gharar and potential disputes. Such clarity may be achieved through direct inspection, detailed specification of characteristics, type, and quantity, or any other means capable of removing uncertainty that may otherwise result in legal conflict. The foundational basis for the prohibition of gharar is derived from the Prophetic tradition: "The Messenger of Allah prohibited the sale involving gharar" (Reported by Muslim). In this regard, jurists differ concerning the legal consequences of uncertainty: the Ḥanafī school classifies it as a fasid (irregular) contract where the uncertainty is substantial; the Shāfiʿī and Ḥanbalī schools regard it as void (bāṭil); whereas the Mālikī school permits minor uncertainty under certain conditions where it does not materially affect the transaction.

In the specific context of murabahah contracts, the object must also satisfy the principles of price transparency, profit disclosure, and the validity of the initial acquisition transaction. This requirement is intended to ensure that the contract remains free from gharar and riba, both of which are expressly prohibited under Islamic law.

Within murabahah transactions, the contractual object occupies a central position as it forms the basis for the transfer of ownership of the traded goods. The object must comply with Sharia requirements, namely that it must exist at the time of contract formation, be capable of delivery,

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be clearly identifiable, and be known with certainty by both contracting parties. These requirements are intended to eliminate gharar (uncertainty) that may undermine the validity of the contract. In addition, the object must be something legally permissible under Sharia (mutaqawwin), thereby rendering invalid any sale of prohibited items or those lacking lawful utility under Islamic jurisprudence.

Moreover, in murabahah contracts, transparency constitutes a fundamental requirement inherent in the nature of the contractual object. The purchaser must be informed of the acquisition cost (capital), the amount of profit agreed upon, and the detailed specifications of the goods. This requirement follows from the essential character of murabahah as a trust-based sale and cost-plus financing arrangement; thus, ignorance of the base price may invalidate the contract. In addition, the goods subject to sale must be measurable, weighable, or otherwise quantifiable (mithliyyāt), thereby enabling objective valuation and reducing the likelihood of future disputes.[18]

From the perspective of Islamic law of obligations (al-iltizām), the object of murābaḥah falls within the category of an obligation relating to a specific thing (al-iltizām bi al-ʿayn), as it gives rise to legal consequences in the form of the transfer of ownership of the goods from the seller to the buyer.[19] Therefore, the object must be under lawful possession, capable of delivery, and free from any element of ribā, particularly in ribawī commodities transactions, which may give rise to ribā nasī'ah if equivalence and clarity in exchange are not properly ensured.

From the perspective of Islamic law of obligations (iltizām), the positioning of the murābaḥah object as an obligation pertaining to a specific asset (al-iltizām bi al-'ayn) affirms that the essence of this contract lies in the lawful and measurable transfer of ownership in accordance with Sharīʿah principles. Consequently, the validity of the contract is highly dependent upon the existence of an object that is deliverable, lawfully possessed, and free from elements of ribā that may distort value, particularly ribā nasī'ah in ribawī commodities. In other words, the elements of certainty, permissibility (ḥalāl status), and accessibility of the object function not merely as technical requirements, but as normative preconditions that safeguard the integrity of the contractual structure, ensuring that it remains within the framework of Islamic legal justice and legal certainty. This understanding simultaneously serves as a conceptual bridge that shifts the discussion from the normative-operational dimension of contracts toward a more philosophical interpretation of the nature of contracts within the horizon of Islamic legal philosophy.

Within the horizon of Islamic legal philosophy, a contract cannot be understood merely as a formal agreement, but rather as an existential manifestation of the relational binding between human volition and the divine normative order. A contract is a normative event that "comes into being" through the fulfillment of its essential elements (arkān), while simultaneously acquiring legal legitimacy through the conditions that govern its enforceability in reality. Accordingly, the existence of a contract does not end at the validity of its structure, but extends toward the actualization of legal meaning in the form of nafādh (executability) and luzūm (binding effect). Within this framework, the object of the contract (maḥall al-ʿaqd) occupies a decisive ontological position; it is not merely an economic good, but a locus where legal and

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ethical values converge. It becomes the medium through which the intent of Sharīʿah is actualized within the sphere of exchange.[20] This is where the theory of *maslahah mursalah* operates as the teleological rationality of the Sharia. *Maslahah* does not stand as an external legal proof (*dalil*), but rather as an internal logic that directs the law toward human welfare without being detached from the *nash* (revealed texts)[19] It affirms that every contractual construction must move from formalism toward substance, from validity in structure toward correctness in purpose.

Thus, in *murabahah*, the object of the contract is no longer merely a material entity, but a structure of meaning that simultaneously embodies three dimensions: an ontological dimension (the existence of the goods), an epistemological dimension (clarity of information), and an ethical dimension (lawfulness and justice in profit distribution). These dimensions are interwoven into a single normative unity that ensures the contract does not devolve into a relationship of domination, but remains within the horizon of transactional justice.

Proceeding from the above dialectic, it can be concluded that the essence of the contractual object in *murabahah* financing within Islamic banking is the crystallization of the principles of justice, transparency, and responsibility of ownership. It requires the existence of the object at the time of contract formation, Sharia compliance, transferability, and full clarity for the contracting parties. Embedded within it is an epistemic obligation to ascertain the acquisition cost, the profit margin, and the characteristics of fungible goods (*mitsliyat*), alongside the prohibition of generating *riba nasi'ah* in ribawi commodities. At this point, law is no longer merely a set of rules, but becomes a mechanism through which the Sharia preserves transactions within the orbit of maslahah and prevents them from falling into the chaos of economic meaning.

Nevertheless, the weaknesses evident in the practice of *murabahah*, particularly concerning the inconsistent fulfillment of the principle of ownership of the contractual object and the deviation in the use of *wakalah* arrangements, indicate the need for Islamic banking institutions and the Financial Services Authority (*Otoritas Jasa Keuangan*) to consistently adopt PPPMPS 2023 as the primary guideline in implementing *murabahah* contracts, especially in relation to the ownership of the contractual object. The practice of *wakalah* arrangements that deviates from regulatory requirements must be rectified in order to prevent legal uncertainty and deviation from Sharia principles. The Sharia Supervisory Board (*Dewan Pengawas Syariah*), as the implementing supervisory organ under the Financial Services Authority, is obliged to adopt PPPMPS 2023 as a binding operational supervisory standard.

The Regulation and Implementation of The Object of Murabahah Financing Contracts in Islamic Banking in Indonesia

The regulation of ownership by Islamic banks over the object of murabahah financing contracts in Islamic banking in Indonesia essentially requires that the Islamic bank must first acquire ownership of the contractual object before the murabahah contract is concluded with the customer.

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This provision is regulated in DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 concerning Murabahah, which stipulates that:

1) The customer must first submit a request to the bank for the purchase of goods.
2) The bank is obliged to purchase the ordered goods lawfully from the supplier.

Subsequently, the bank purchases the goods in its own name, and such purchase must be lawful and free from usury (riba), as stipulated in First Part, point 4. If the bank appoints the customer as its agent through a wakalah contract, then the murabahah contract may only be concluded after the goods have, in principle, become the property of the bank. This is regulated in First Part, point 9.

Similar provisions are also found in the Financial Services Authority Regulation (OJK Regulation) No. 13/POJK.03/2021 concerning the Implementation of Commercial Bank Products, State Gazette 2021 No. 164, Supplement to the State Gazette No. 6701. In Appendix II, Section II, Number 1, Letter (e), it is stated that: *"the bank may authorize the customer to purchase goods from a third party on behalf of and in the name of the bank; however, the murabahah contract may only be executed after the goods have, in principle, become the property of the bank."* This provision affirms that although the purchase may be conducted by the customer as agent, ownership of the contractual object must first rest with the Islamic bank.

Furthermore, the *Guidelines for the Implementation of Murabahah Financing Products for Islamic Banking (PPPMPS) 2023* further strengthen the regulation regarding ownership of murabahah contract objects. Chapter III A1 letter (c) states that: *"the asset must already exist, be clearly identifiable, deliverable, and owned by the bank at the time the murabahah contract is executed."* In terms of ownership, this is evidenced by the transfer of the asset from the supplier to the bank, either through physical possession (qabdh haqiqi) or constructive possession (qabdh hukmi), as regulated in Chapter III A5. After the murabahah contract is concluded, ownership of the asset is transferred from the bank to the customer through physical or constructive delivery as stipulated in Chapter III A8.

The PPPMPS 2023 further stipulates that: *"the bank is required to have Standard Operating Procedures (SOPs) governing the purchase and delivery process of assets,"* as regulated in Chapter III A9. In addition, Chapter V B3 permits the bank to grant authorization (wakalah) to the customer or another party to purchase the asset on behalf of the bank, while Chapter V B10 emphasizes that: *"the murabahah contract may only be concluded after the asset has been delivered from the supplier to the customer as the bank's agent."*

Regulation on ownership of the contract object is also found in Supreme Court Regulation (PERMA) No. 02 of 2008 concerning the Compilation of Sharia Economic Law (KHES). Article 76 stipulates that: *"goods traded must already exist and be deliverable."* Article 120 states that the seller is obliged to first purchase the goods ordered by the buyer, while Article 116 paragraph (2) states that *"the seller must purchase the goods in its own name and free from riba."* Furthermore, Article 119 regulates that *"if the buyer is authorized to purchase goods from a third party, the murabahah contract may only be concluded after the goods have, in*

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principle, become the property of the seller." These provisions indicate that ownership of the contract object by the Islamic bank is a fundamental requirement prior to the execution of a murabahah contract.

In relation to wakalah contracts, DSN-MUI Fatwa No. 10/DSN-MUI/IV/2000 concerning Wakalah requires that *"the principal (muwakkil) must be the lawful owner of the object being delegated."*

This is reinforced by KHES Articles 475 and 476, which state that the agent is not permitted to purchase goods for himself because the goods remain the property of the principal. Thus, wakalah in murabahah financing functions solely as an authorization to purchase on behalf of the bank and does not eliminate the bank's legal status as owner of the contract object.

Sutan Remy Sjahdeini interprets that *"goods to be delivered in a sale transaction do not necessarily have to be in the physical possession of the bank (in physical possession), but it is sufficient if the goods are already in constructive possession under the bank's control."* He further cites Ashraf Usmani, who defines constructive possession as "a situation where the possessor has not taken physical delivery of the commodity yet it has come into his control and all rights and liabilities of the commodity are passed on to him, including the risk of its destruction."[22].

Thus, it is sufficient that the bank has legally become the owner of the goods even if the goods have not been physically possessed. This approach is essential in murabahah transactions because the supplier may directly deliver the goods to the customer upon the bank's instruction or authorization.

Based on the above explanation, the interpretation of the phrase "ownership of goods in principle belonging to the bank (seller)," and ownership through physical possession (qabdh haqiqi) or non-physical possession (qabdh hukmi) as evidence of Islamic bank ownership of the financing object can be summarized as follows: 1) no physical delivery from supplier to the bank is required; 2) the Islamic bank has legal ownership of the object; 3) the bank has full control over the object; 4) rights, obligations, and risks over the object are transferred from supplier to the bank; and 5) delivery of the financing object may be made directly from the supplier to the customer. Thus, as the owner, the Islamic bank is entitled to conduct murabahah financing over the object it owns.

Based on all these regulations, it can be understood that Islamic banking law in Indonesia positions the Islamic bank as the owner of the murabahah contract object prior to its sale to the customer.

Therefore, murabahah financing is understood as a sale and purchase contract requiring transfer of ownership from supplier to bank, then from bank to customer, and not as a loan-based financing contract. In this context, normatively, murabahah regulation in Indonesia requires the bank to first acquire ownership of the object through wakalah mechanisms, with risk borne by the bank as regulated in DSN-MUI Fatwa, OJK Regulation, KHES, and PPPMPS 2023.

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Regulations concerning ownership of murabahah financing contract objects in DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000, OJK Regulation No. 13/POJK.03/2021, PPPMPS 2023, and Article 119 of the Compilation of Sharia Economic Law affirm that *"the murabahah contract may only be concluded after the contractual object has, in principle, become the property of the bank, either through physical possession (qabdh haqiqi) or constructive possession (qabdh hukmi)."* However, in its implementation at PT Bank Syariah Indonesia Tbk, such ownership is obtained through a wakalah mechanism, whereby the bank authorizes the customer to search, purchase, pay for, and receive the contract object from the supplier on behalf of the bank.

In micro and regular financing contracts, customers are even obliged to inspect the supplier's condition, the physical condition of goods, and the legality of ownership documents of the contract object. After the purchase is made by the customer as the bank's agent, the bank declares that the object has become its full property based on proof of purchase in the form of a sale statement or call memo, and then resells the object to the customer with a predetermined margin. Delivery of the object is agreed to be conducted in principle through sharia constructive possession (qabdh hukmi), while physical delivery is made directly by the supplier to the customer.

A similar condition is found in the implementation of murabahah financing at PT Bank Syariah Indonesia Tbk, where the bank authorizes the customer to search, purchase, and receive the contract object from the supplier. The customer is responsible for inspecting the supplier and ownership documents, while the bank only makes payment based on documents issued by the supplier. After the transaction between supplier and customer as the bank's agent is completed, the customer then purchases the object from the bank at a predetermined price. Although normatively the bank is positioned as the owner of the object before the murabahah contract, implementation shows that control and purchasing activities are predominantly conducted by the customer as the bank's agent.

A similar implementation is also found at PT Bank Muamalat Indonesia Tbk, where the bank declares that it has purchased the contract object according to the customer's order and then sells and delivers it to the customer. However, delivery may be made directly by the bank or supplier. Under the wakalah arrangement, the bank authorizes the customer to search, pay for, and receive the object on its behalf, accompanied by an obligation to inspect the physical goods and ownership documents. The customer is also held responsible for risks of defects or non-conformity and is not allowed to cancel financing on such grounds. This contradicts PPPMPS 2023, which stipulates that the risk of asset damage prior to delivery to the customer is generally borne by the bank, unless caused by negligence of the customer as the bank's agent.

The same pattern is found at PT BPRS PNM Patuh Beramal Amali, where the bank commits to purchase, provide, and sell goods to the customer. However, under wakalah implementation, the bank authorizes the customer to purchase goods on its behalf, make payments, receive invoices, and submit documents to the bank within fifteen days after the murabahah contract is

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signed. Based on these practices, ownership of murabahah contract objects in Islamic banking is not evidenced by direct physical or legal possession by the bank. Instead, it is primarily based on wakalah arrangements, receipts or sale deeds registered under the customer's name, and goods delivery documents also recorded under the customer's name. Thus, although normatively ownership must first be held by the bank, in practice control and ownership evidence are predominantly in the hands of the customer as agent.

The gap between regulation (das sollen) and implementation (das sein) indicates the need for reconstruction of the definition of murabahah financing contracts and regulation of bank ownership principles over contract objects. Normatively, existing regulations position murabahah as a sale contract requiring prior ownership by the bank. However, implementation shows that banks do not physically control the object, either physically or legally.

Therefore, reconstruction is required by redefining murabahah financing as bank funding for the purchase of assets from third parties at the customer's request, where the bank has legal ownership and subsequently sells the asset to the customer at a disclosed cost and agreed margin, with installment payments. This reconstruction ensures legal certainty that murabahah is fundamentally a sale-based financing instrument based on legal ownership rather than physical possession.

Furthermore, reconstruction is necessary to clarify the ambiguity of the phrase "in principle owned by the bank." It should be interpreted as legal transfer of rights, obligations, and risks from supplier to bank, without requiring physical possession by the bank. Thus, direct delivery from supplier to customer does not negate sharia principles of murabahah.

Such reconstruction is also essential to align sharia principles with modern banking efficiency. Strict physical possession requirements would create operational inefficiency and additional costs. Therefore, harmonization between sharia principles, legal certainty, and banking practice is necessary.

CONCLUSION

1) The essence of murabahah contract objects in Islamic banking reflects principles of justice, transparency, and ownership responsibility. The object must exist at the time of contract, be sharia-compliant, deliverable, clearly identifiable, and known to the contracting parties.
2) Normatively, murabahah regulation in Indonesia requires banks to first acquire ownership through wakalah mechanisms, with risk allocation borne by banks as regulated in DSN-MUI Fatwa, OJK Regulation, KHES, and PPPMPS 2023. However, in practice, inconsistencies remain, including the use of murabahah for working capital financing, merging of wakalah and murabahah contracts, customer acting as independent buyer, risk transfer before delivery, absence of khiyar rights, and margin determination resembling conventional interest rates.
3) Reconstruction is required in three directions: (1) affirmation of legal ownership without physical possession; (2) simplification of ownership evidence through constructive

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possession; and (3) reformulation of pricing mechanisms based on objective and transparent indicators.

RECOMMENDATION

1) Islamic banking institutions and the Financial Services Authority (OJK) should consistently adopt PPPMPS 2023 as the primary guideline for murabahah implementation, particularly regarding asset ownership.
2) OJK should revise Regulation No. 13/POJK.03/2021 and align it with PPPMPS 2023, and the Supreme Court should revise KHES Article 119 to ensure legal consistency. PPPMPS 2023 should be attached as an annex to POJK to strengthen its binding force.
3) A Murabahah Wakalah Executor Agency (PWM) and a Murabahah Price Assessment Institution (LPHM) should be established, along with a long-term establishment of an independent Sharia Compliance Authority (OKPS).

Reference

1) Financial Services Authority of the Republic of Indonesia (OJK), *Indonesia Islamic Banking Roadmap 2020–2025*, Jakarta: Financial Services Authority of the Republic of Indonesia, 2020, available at: Indonesia Islamic Banking Roadmap 2020–2025 PDF, p. 14, accessed on May 15, 2024, at 09:35 PM Western Indonesian Time.
2) Ali Yafie, *Merintis Fiqh Lingkungan Hidup*, Ufuk Press, Jakarta, 2006, p. 159.
3) The term "margin" in economics, also referred to as profit margin, denotes the difference between sales value after deducting all operating costs divided by total sales; profit calculation as a ratio of net sales and company capital. In banking practice, the term "margin" refers to the difference between the value of securities offered and the value of loan debit; in trade, it refers to the difference between production cost and selling price, also known as profit; in the foreign exchange market, it denotes the difference between spot and forward values known as premium or discount (margin). See: Panca Aksara Editorial Team, *Seri Referensi Unggulan: Complete Dictionary of Economic Terms*, Yogyakarta: Indoliterasi, 2017, pp. 262–263.
4) Syauqoti (2018), in Andi Asruni, Zainal Said, and Damirah, "Analysis of DSN-MUI Fatwa No. 4/DSN-MUI/IV/2000 Concerning Murabahah Contract in the Application of Ownership Rights (Study at Bank Muamalat KCP Parepare)", Journal, Vol. 4, May 2022, p. 65.
5) Muhammad Dayyan, *Reconstruction of Murabahah Financing Contracts in Islamic Banking in Aceh*, Doctoral Dissertation, State Islamic University Ar-Raniry, Banda Aceh, 2022, pp. 12–13.
6) Abi Abd Allah Muhammad bin Yazid Ibn Majah al-Qazwini, *Sunan Ibn Majah* (Beirut: Dar al-Ta'shil, 2014), p. 551.
7) Istishna' means purchasing something produced according to an order. See: Sayyid Sabiq, *Fiqh al-Sunnah*, Vol. 5, trans. Rajalul Kalam et al., Depok: Medina Adipustaka, 2014, p. 55.
8) Salam, also known as salaf, is the sale of specified goods under liability with immediate payment (advance payment). Jurists refer to it as bay' al-mah'awij (contract of necessity), because it is a sale of non-existent goods driven by urgent need of both contracting parties. The buyer needs the goods, while the seller needs advance payment before production or harvest in order to finance personal needs or cultivation until harvest. Thus, the contract serves the benefit of necessity. *Ibid*., p. 79.

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ISSN 1533-9211
DOI: 10.5281/zenodo.20249122

9) Muh. Fudhail Rahman and Aida Humaira, "Position and Role of Sharia Banks in the Implementation of Murabahah Contracts", *Madania: Journal of Islamic Studies*, Vol. 23, No. 2, 2019, pp. 213–222.

10) Syukri Iska, "The Dilemma of Murabahah Scheme in Islamic Banking", *Miqot: Journal of Islamic Sciences*, Vol. XXXV, No. 2, 2011, pp. 331–349.

11) Syu'aibun, "Critical Review of the Deviation of Murabahah Financing Contracts in Their Application in Islamic Banking", *Human Falah: Journal of Islamic Economics and Business*, Vol. 1, No. 2, 2014, pp. 24–40.

12) Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: Universitas Indonesia Press, 1981, p. 44.

13) Doctrinal legal research is an effort to inventory positive law, to discover the principles and philosophical foundations (dogma or doctrinal aspects) of positive law, and to identify concrete legal rules (in concreto) that are appropriate to resolve specific legal disputes. See: Bambang Sunggono, *Legal Research Methodology*, Jakarta: Grafindo Persada, 1997, p. 42.

14) Najmul Akhyar, *Reconstruction of the Regulation of the Governor's Role in the System of Regional Government Administration in Indonesia*, Malang: Brawijaya University, 2014, p. 13.

15) Peter Mahmud Marzuki, *Legal Research: Revised Edition*, Jakarta: Kencana Prenada Media Group, 2005, p. 47.

16) Syamsul Anwar, *Sharia Contract Law: A Study on the Theory of Contracts in Islamic Jurisprudence*, Jakarta: RajaGrafindo Persada, 2007, p. 96.

17) Ibid., pp. 103–104.

18) Wahbah al-Zuhaili, *Islamic Jurisprudence and Its Evidences*, trans. Abdul Hayyie al-Kattani et al., Vol. 5, 1st ed., Jakarta: Gema Insani, 2011, pp. 358–360.

19) Syamsul Anwar, Op. Cit., p. 43.

20) Ibid., p. 38.

21) Andi Herawati, *Maslahat According to…*, Op. Cit., p. 46.

22) Sutan Remy Sjahdeini, *Islamic Banking: Products and Legal Aspects*, Jakarta: Kencana Prenada Group, 2018, p. 208.