

## Research Article

# Legal Protection for Customers in Murabaha Financing Whose Land Ownership Object is Not on Behalf of Sharia Banks to Fulfill Sharia Compliance

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**Abstract.**

Murabaha financing is one of Sharia banks financing that uses a sale and purchase agreement with a counter-performance in the form of a margin determined in accordance with an agreement between the bank and the customer. The difference between Murabaha contract and credit at a conventional bank is that, in a Murabaha contract, Sharia banks purchase the object (house or land) that the customer wants in advance. Then, the banks sell the house to the customer by informing the amount of the price that has been added with a margin. In practice, not all Sharia banks provide Murabaha financing using this procedure. Therefore, this study aimed to, first, explain the practice of Murabaha financing whose ownership object is not on behalf of Sharia banks in terms of legal protection for customers, and second, find the practice of Murabaha financing whose ownership object is not on behalf of Sharia banks in terms of fulfilling Sharia compliance. The method used is a normative juridical approach with descriptive-analytical research specifications. The data used secondary data, which was collected through library research, and then analyzed by qualitative analysis through legal interpretation methods. The results showed that, first, in terms of legal protection for customers, the practice of this Murabaha financing was not in accordance with internal and external legal protection, and second, in terms of fulfilling Sharia compliance, the practice of this Murabaha financing contained elements of *gharar* (unclear object) and *dzalim* (causing injustice).

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## 1. INTRODUCTION

Financial institution is financial intermediary institutions whose function is to collect and distribute funds to the community. This institution consists of Bank Financial Institutions and Non-Bank Financial Institutions that offer many products or services to the public. Sharia bank is a financial institution that functions as an intermediary institution, but its services are also those usually provided by a conventional bank. This happens because of the variety of contracts (agreements) that can be used in these transactions[1], one of which is *murabaha* contract.

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*Murabaha* is one type of contracts that is most commonly applied in financing activities of sharia banking[2]. It is implemented through a mechanism for buying and selling goods with additional margins as a profit to be obtained by the financing bank. In Law of the Republic of Indonesia Number 21 Year 2008 concerning sharia banking, it is stated in Article 19 that “*Murabaha Contract*” is a financing contract for an item by confirming the purchase price to the buyer, and the buyer pays it more expensive as an agreed profit. It is the same as the statement in in DSN-MUI Fatwa Number 04/DSN-MUI/IV/2000 concerning *Murabaha*.

*Murabaha* financing contract has a role in implementing sharia principles since this contract in Islamic jurisprudence and sharia bank practices has undergone modifications, hence their concepts are different. *Murabaha* in sharia bank practices is divided into two types, namely *murabaha* with a buyer’s order and *murabaha* with a buying power. The latter has two different transactions made in one contract. First, *murabaha* financing contract occurs between the bank (*bai’*) and customer (*musytari*). Second, a buying power contract occurs between the bank and its customer in which that the customer buys goods at the supplier’s location. This type contains an agreement granting power of attorney as well as a *murabaha* agreement and an agreement granting power of attorney which occur together. As a result, the bank’s position is as seller and giver of power, while the customer’s position is as a buyer and recipient of power[3].

*Murabaha* financing contract is the most popular contract with growth of 8-9% in 2020 and 2021[4]. The characteristic of *murabaha* is that the seller must inform the buyer about the purchase price of the product and state the amount of profit added to the cost[5]. However, in practice, several cases emerge, for example as the court decision Number 4/Pdy.GS/2022/Pa pbg and Number 280/Pdt.G/2020/MS.Sgi. That becomes the subject of the lawsuit is not buying and selling goods, but the object of the guarantee which actually does not exist in the terms and conditions. Besides that, it is feared that it will cause *gharar* (unclarity). In addition, in practice, there are Islamic banks that provide *murabaha* financing without using any procedures.

## 1.1. Objectives

This study aimed at first explaining the practice of *murabaha* financing whose object of ownership is not in the name of sharia bank in accordance with legal protection for customers, and second, discovering the practice of *murabaha* financing whose object

of ownership is not in the name of sharia bank in accordance with sharia compliance fulfilment.

## 2. METHOD

This study used normative juridical research which views law as a set of rules that must be implemented and are binding. This was conducted to produce arguments in viewing a problem faced[6]. Additionally, this study used the statutory approach and conceptual approach method. The former was based on all legal products that have binding force, including the Al-Qur'an, Hadith, and DSN-MUI Fatwa as binding sources of law for Muslims. Meanwhile, the latter used the concept of legal protection and Sharia law. This used primary and secondary legal materials which the former is sorted based on the hierarchy of laws and regulations, while the latter is obtained from scientific books and journals related to the problem. Furthermore, data analysis techniques used qualitative analysis through legal interpretation methods.

### 2.1. Thinking Framework

Research regarding the legal aspects of financing activities with a *murabaha* contract, especially those related to the issue of *murabaha* concept complying with Islamic sharia, has never been conducted in Indonesia. The following are the results of previous research related to the *murabaha* aspect.

### 2.2. Legal Protection

Sasongko defines legal protection as an act of protection for certain parties aimed at certain parties using certain methods. There are three elements in legal protection, namely: a. Element of protective measures; b. Element of the protecting party; c. Element of ways or mechanisms to protect[7]. Legal protection, according to Isnaeni, is divided into two, namely internal and external legal protection. The internal legal protection is the law basically made by both parties when drafting a contract, in which that they want their necessities to be based on a contract when making contract clauses. Likewise, all risks that have occurred can be seen in the clauses that have been made on the contract bases, so that with clauses that have been drafted together, you can obtain balanced legal protection with the agreement of both parties. This internal legal protection can

TABLE 1: Thinking Framework.

No	Name	Title/Year	Method	Objectives	Results	Difference
1	Roifatul Syauqoti and Mohamad gozali	The Implementation of Murabaha Contract in Sharia Financial Institutions	Normative juridical research methods	This study examined the policy bases related to testing applications applying <i>murabaha</i> .	The result was found that <i>murabaha</i> is almost the same as conventional financing.	This dissertation emphasized the concept that <i>murabaha</i> is conducted in accordance with Islamic law.
2	Danang Wahyu Muhammad, Erika Vivin Setyoningsih	A Study on <i>Murabaha</i> Contracts with Buying Power in Bank Practice	Normative juridical methods and qualitative methods	This study aimed at building an alternative model for conflict management in the gold mining area of Palu City.	The result was found that the description and analysis of building alternative concepts for dispute resolution.	This study focused on the gold mining conflict resolution model.

be realized by both parties if the legal position of the parties is relatively balanced, hence with the principle of freedom to have contract, each party entering into the contract has the freedom to express their wishes according to their respective interests. Meanwhile, external legal protection is prepared by the authorities through regulations for the interests of the weaker party, “in accordance with the essence of statutory regulations which must not burden one party and take sides in favor of one party”[8].

### 2.3. Murabaha

In *murabaha* with buying power, there are two different transactions made in one contract. First, the *murabaha* financing contract occurs between the bank (*bai'*) and the customer (*musytari*). Second, the contract to grant buying power occurs between the bank and the customer. Based on this power, the customer buys goods at the supplier's place (3). *Murabaha* with buying power is feared to be trapped in *Tawarruq* so that there is no actual transfer of ownership from the bank to the customer, and the bank's function as a financial intermediary institution cannot be as a direct seller of *murabaha* financing. *Murabaha* contract based on the DSN-MUI fatwa is more emphasized on actors in Islamic Financial Institutions. Therefore, indirectly, the DSN-MUI fatwa is an unwritten law for Islamic banking. Apart from that, the position of the fatwa is the result of the *ijtihad* of the scholars in transforming *fiqh muamalah maliyyah*. The DSN-MUI fatwa consists of Number 4 Year 2000 concerning *Murabaha* and Number 111

Year 2017 concerning *Murabaha* Contract. Based on the pillars, terms (conditions or requirements), and various types of *murabaha* contract, the *murabaha* contract may be in the form of an order or without an order. The seller such as Islamic Financial Institutions will first buy goods as his own in accordance with an order from the buyer or customer. *Murabaha* with the order can be binding and non-binding. Therefore, for orders that are not binding, the buyer may cancel the order (*khiyar*) taking into account the losses suffered by the LKS. It means that there is a loss due to the buyer cancelling the order/contract, then the buyer must compensate for the loss [9]. In Law of the Republic of Indonesia Number 21 Year 2008 concerning sharia banking, stated in Article 19 “*Murabaha* Contract” is a contract for financing an item by confirming the purchase price to the buyer, and the buyer pays it at a higher price as the agreed profit as the DSN-MUI Fatwa Number 04/DSN-MUI/IV/2000. *Murabaha* emphasizes purchasing commodities based on customer demand and a sales process to customers at a selling price which is the accumulation of purchasing costs and additional desired profits. Thus, the bank is obliged to explain the purchase price and the desired additions and benefits to the customer. Buying and selling with a *murabaha* contract is legally permissible, if there is a betrayal of the principal price then it is permissible for the buyer to commit *khiyar* [10].

### 3. RESULTS AND DISCUSSION

#### 3.1. Murabaha Financing Whose Object of Land Ownership is Not in the Name of Sharia Bank Based on the Efforts to Fulfil Sharia Compliance

Banking financial institution is one of the most dominant business activities and very much needed in the economic activities of modern society. Based on this reality, Muslims think the need to establish banking institutions that can meet the Muslim community needs to use usury-free banking services. Banks as financial intermediary institutions, whose main task is to collect funds from the public, are expected to be able to meet the funding needs for financing that are not provided by the previous two institutions, both state and private institutions. In fund distribution activities, sharia banks invest and finance[11].

Naja stated that in general financing in sharia banking is divided into three categories based on the purpose of its use, namely (1) financing transaction for owning goods is

carried out using buying and selling principle, which is divided into *istishna* contract and *murabaha* contract; (2) financing transaction for obtaining services is carried out under leasing principle, which is *ijarah*; (3) financing transaction for joint ventures for obtaining goods and services at the same time is carried out using profit sharing principle, which is divided into *mudharaba* contracts and *musyaraka* contracts [12].

Based on the language, *murabaha* is derived from the word ربح which means profit, since in buying and selling *murabaha*, profit must be explained. Meanwhile, based on the term, *murabaha* is buying and selling at the basic price with additional profits. This becomes one of the most popular fiqh schemes used by sharia banking. Besides that, it has been being carried out by Rasulullah SAW and his companions until now. In simple terms, *murabaha* means a sale of goods with the price that is the sum of the price of the goods and the agreed margin.

In determining whether a *murabaha* financing contract is valid or not, certain pillars and requirements in accordance with Islamic law must be fulfilled. Since this *murabaha* financing uses buying and selling contract, there must be pillars and requirements as follows[13]:

TABLE 2: Murabaha Pillars.

Murabaha Pillars				
Ba'i or seller is a person who has goods to sell or a person who offers an item.	<i>Musytari</i> or buyer is a person who makes a request for an item offered by the seller.	<i>Mabi'</i> or goods are traded commodities, goods, and or objects.	<i>Tsaman</i> or selling price is a measuring tool to determine the value of an item.	<i>Ijab</i> and <i>Qabul</i> is the statement as outlined in the contract.

There are several things that must be considered in *murabaha* financing. (1) The seller informs the cost of capital to the customer. (2) The first contract must be valid in accordance with the established pillars. (3) The contract must be usury-free. (4) The seller must explain to the buyer if defects occur on the goods after purchase. (5) The seller must convey all matters relating to the purchase, for example if the purchase is made on account of debt [14].

In its application in sharia banking, *murabaha* involves three parties, namely the customer as the buyer, the bank as the seller, and the supplier as the supplier of goods to the bank at the customer's request. However, in reality, *murabaha* is more widely applied, the bank gives authority to the customer to buy and sell land by conducting a direct buying and selling contract, in the end the customer only submits the land

TABLE 3: Murabaha Requirements.

Murabaha Requirements			
Contracted parties (seller and buyer)	Objects that are traded Does not include what is forbidden or prohibited by religion Helpful Delivery from the seller to the buyer can be done It is the full property of the contracting parties In accordance with the specifications received by the buyer and submitted by the seller. If it is movable property, the item must be controlled by the buyer after the documentation and contract agreement are completed.	<i>Sighat (Ijab and Qabul)</i> It must be clear and stated specifically who the contract is with. <i>Ijab</i> and <i>Qabul</i> (handover) must be in harmony both in the specifics of the goods and the agreed price. Do not rely on the validity of transactions in the future No time limit, for example A sells goods to B for a period of 10 months and after that it will be A's again.	Price The selling price is the purchase price plus profit. The selling price may not change during the contract period. The payment system and time period are mutually agreed upon.

buying and selling contract t on behalf of the customer and not of the bank. The selling power contract is made after the buying and selling contract occurs. In this context, if it is traced based on pillars and requirements, it creates confusion.

*Murabaha* financing mechanism has several basic characteristics or elements. What is most important and distinguishes *murabaha* financing from conventional credit is the existence of goods as the underlying asset of transaction where the goods must remain in the bank's responsibility as long as the transaction between the bank and the customer has not been completed. *Murabaha* financing provided by the bank to the customer must be stated in the form of a contract made notarized or privately. When preparing *murabaha* financing contract, the bank (as the seller) must convey all matters relating to the purchase of the Financing Object to the customer (as the buyer) such as the cost price, margin, quality, and quantity of the Financing Object to be traded [15].

In its implementation, the bank acts not as a seller because the power contract is made after the buying and selling contract occurs so that it violates the procedures in the *murabaha* scheme. Even after the customer has made a buying and selling with the owner of the land, *murabaha* financing contract is drawn up between the customer and the bank, and it is explained that the bank sells the Financing Object to the customer at a Selling Price consisting of Acquisition Price and Margin. This scheme violates the procedure that the *murabaha* Financing Object must be owned by the bank first. The concept of ownership by the bank can be recognized based on evidence that is valid in principle and in accordance with sharia. In the context and pattern as explained, *murabaha* financing contains *gharar* meaning that a transaction uses an object that

is unclear, does not belong to someone, its whereabouts are unknown, or cannot be submitted at the time the transaction is made.

### **3.2. Legal Protection for Customers in Murabaha Financing Whose Land Ownership Object is Not in the Name of a Sharia Bank Based on the Efforts to Fulfil Sharia Compliance**

According to Fitzgerald, as quoted by Raharjo, the beginning of the emergence of legal protection theory came from natural law theory or school, pioneered by Plato, Aristotle (a student of Plato), and Zeno (founder of the Stoic school). Based on the natural law school, it is stated that law originates from God who is universal and eternal, and that law and morals cannot be separated. Adherents of this school view that law and morals are internal and external reflections and rules of human life which are realized through law and morals. Fitzgerald explained Salmond's theory of legal protection that law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on other parties. The interest of law is to deal with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected. Legal protection is born from a legal provision and all legal regulations given by the community which are basically community agreements to regulate behavioral relations between members of the community and between individuals and the government who are considered to represent the interests of the community [16].

Legal protection is essentially to coordinate the various interests of community by making rules internally and externally. This is in line with the opinion of Isnaeni who views that legal protection is divided into two, namely internal and external legal protection. Internal legal protection is based on an agreement that has been made by both parties to regulate the legal interests of the parties [17].

In *murabaha*, the position of the bank is supposed to be the seller of the goods, in practice the bank authorizes the customer to buy land and the land is directly registered in the name of the customer, not the bank. Procedurally, this violates the *Murabaha* Operational Standards regulations issued by the Financial Services Authority. Based on internal legal protection between the customer and the seller, the land buying and selling has occurred, and then the land belongs to the customer as evidenced by the change in the owner's name in the certificate of land rights. However, based on sharia, the implementation of the *murabaha* concept is invalid. Therefore, in the



context of customer as a Muslim, there is no protection since there are no legally binding internal rules between the customer and the bank. In other contexts, external legal protection has not yet had detailed regulations relating to *murabaha*. Detailed *murabaha* regulations are only available in the *Murabaha Sharia Banking Product Standards Book*. If the rules are in the form of a book and not coercive rules, the enforcement of *murabaha* products will not be carried out in accordance with sharia compliance.

## 4. CONCLUSION

The practice of murabaha financing whose object of ownership is not in the name of a sharia bank based on the efforts to fulfil sharia compliance contains elements of gharar (the unclear object) and dzalim (causing injustice).

1. Legal protection for *murabaha* financing whose object of ownership is not in the name of a sharia bank based on legal protection for customers is not in accordance with internal and external legal protection

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