

Juridical Basis of Murabahah Bil Wakalah Contracts at Islamic Banks

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ABSTRACT

The wakalah agreement that appears in financing schemes in Islamic banks becomes a series with the murabahah agreement. This series of contracts then appears in financing in the form of a murabahah bil wakalah contract. The specific purpose of this research is to find out and analyze the juridical basis of the murabahah bil wakalah contract in positive law and Islamic Law in Indonesia. This research is categorized as legal research with a normative juridical method. The normative juridical approach used is the statute approach. The data collection method in this research uses cross methods, namely literature study, observation and interviews, according to the types and sources of data needed. Until now, there are no rules governing murabahah bil wakalah as a unit in Islamic bank financing products, both rules in positive law and Islamic law in Fatwa DSN MUI. Therefore, the juridical basis for murabahah bil wakalah financing comes from the juridical basis for each murabahah contract and wakalah contract, whether from the Law, Regulations of the Financial Services Authority of the Republic of Indonesia, or other laws and regulations, as well as Fatwa DSN MUI.

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I. INTRODUCTION

The development of Islamic banking in Indonesia began in 1991 with the establishment of the first Islamic bank in Indonesia, and is growing rapidly to date. Islamic banks must compete with conventional banks that are more dominant and have first developed in Indonesia. This increasingly sharp competition must be followed by good management to survive in the banking industry (Marimin, 2015: 84). Islamic banks must also follow the dynamics of society and respond to community development. This is done by issuing bank products that are in accordance with the real needs of the community, including in fund distribution activities in the form of multi-service financing, namely financing with various contracts according to community needs. One of these financing contracts is a combined contract between a murabahah contract and a wakalah contract, or called a murabahah bil wakalah contract.

Murabahah is one of the muamalah contracts in the form of buying and selling. Wahbah az-Zuhaili gives the definition of murabahah as "buying and selling at the acquisition price plus profit" (OJK, 2016: 7). Murabahah is a form of amanah (trust-based) sale and purchase (Nurhadi, 2020: 77). One of the pillars that must be met regarding the object of murabahah financing is that the goods that are the object of the contract must be under the

control of the seller. Because in murabahah financing the bank acts as a seller, the goods must be in the control of the bank. This becomes complicated in practice, so to facilitate the technical availability of these goods, a wakalah contract is made between the bank and the customer. This wakalah agreement authorizes the customer to choose and purchase goods on behalf of the bank. Wakalah comes from the wazan wakalah-yakilu-waklan which means handing over or delegating affairs, while wakalah is the work of a representative (Munawwir, 1997: 1679).

The wakalah agreement that appears in financing schemes in Islamic banks becomes a series with the murabahah agreement. This series of contracts then appears in financing in the form of a murabahah bil wakalah contract. A clear and firm regulation is needed in its juridical basis considering that until now there has been no DSN MUI Fatwa specifically regarding murabahah bil wakalah. Therefore, this research is needed to find out how the review of the juridical basis of the murabahah bil wakalah contract in positive law and Islamic Law in Indonesia.

The specific purpose of this research is to find out and analyze the juridical basis of the murabahah bil wakalah contract in positive law and Islamic Law in Indonesia. Meanwhile, the urgency of this research is needed considering that Islamic banking continues to compete with conventional banking in the banking market in Indonesia, so that attention is needed to the development of Islamic banking for the sake of improving the Islamic banking system. In addition, the rule of law or juridical basis must be clearly ensured so that every operational activity of Islamic banks becomes legal and strong. Based on the description in the background, we are interested in examining these problems by raising them in research with the title juridical basis of murabahah bil wakalah contracts at Islamic banks.

II. RESEARCH PROBLEMS

How is the analysis of the juridical basis of the murabahah bil wakalah contract in positive law and Islamic Law in Indonesia?

III. RESEARCH METHODS

This research is categorized as legal research with a normative juridical method. The normative juridical approach used is the statute approach. According to Syamsudin (2009: 58), the statutory approach is carried out by examining all laws related to the legal issues currently under study, namely the murabahah bil wakalah contract in the sale and purchase financing scheme at the bank. The specification used is descriptive analysis. The definition of descriptive analysis method is a method that serves to explain the object of a study through data or samples collected, processed and analyzed or to provide a picture that can be drawn conclusions. The research data used in this research is secondary data which contains the legal materials studied, namely primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method in this research uses cross methods, namely literature study, observation and interviews, according to the types and sources of data needed. In this research, literature study is conducted to collect data in the form of literature on Islamic banking and legislation in the field of Islamic banking law. The method of analysis carried out in this study is to use data triangulation, namely by comparing and testing the data obtained from the results of the analysis. interviews and observation results with data in the form of laws and regulations, to then analyze and draw conclusions regarding the juridical basis of the murabahah bil wakalah financing contract.

IV. RESULT AND DISCUSSION

One of the functions and activities of Islamic banks is to channel funds in the form of financing as specified in Article 4 paragraph (1) of Law Number 21 of 2008, namely Islamic Banks and Islamic Business Units (UUS) must carry out the function of collecting and channeling public funds. Financing is one form of channeling funds provided by Islamic banks to people who need to use funds that have been collected by Islamic banks from people who have surplus funds. Therefore, banks must pay attention to various factors and aspects that must be considered in making decisions on the distribution of funds to the general public through financing activities.

Financing broadly means funding issued to support planned investments, whether carried out by themselves or run by others. The allocation of funds in the form of financing has several objectives, namely achieving a sufficient level of profitability and a low level of risk and maintaining public trust by maintaining a safe liquidity position. Therefore, the main source of bank income comes from financing distribution activities in the form of profit sharing, margin (markup), and rental income (Yudha and Rijal, 2018: 1293).

Fatwa DSN MUI Number 111/DSN-MUI/IX/2017 concerning Murabahah Sale and Purchase Agreement formulates ba'i al-murabahah agreement is a sale and purchase agreement of an item by confirming the purchase price to the buyer and the buyer pays more as profit. Murabahah itself means that one of the two people in the transaction gives profit to the other. Meanwhile, according to Ibn Qudamah, murabahah is selling at the base price plus an agreed profit margin (Muhammad, 2000: 23). Murabahah is a sale and purchase in which the amount of profit is openly known by the seller and buyer (Ichsan, 2016: 418). Murabahah is a contract for the sale and purchase of goods by stating the acquisition price and profit (margin) agreed upon by the seller and buyer. This

agreement is a form of natural certainty contracts, because in murabahah it is determined what the required rate of profit is (Karim, 2014: 113).

Murabahah, as believed by the followers of the Shafi'i and Hanbali Madhhab, is understood as buying and selling at the seller's cost or acquisition price plus a profit of one dirham for every ten dinars. Or the like, provided that both parties to the transaction know the cost price. Murabahah is one type of contract that is permitted and considered valid by Shari'a as explained by Az-Zuhaili that murabahah contracts are permitted based on Ijma' and have been practiced since the time of the Companions. That means the scholars agree on it. The rules of fiqh state: "Basically, all forms of muamalah may be carried out unless there is evidence that forbids it" (Syauqi, 2020: 4).

Based on the Sharia Banking Product Standard Book (Murabahah) prepared by the Financial Services Authority, murabahah is a muamalah transaction contract by applying the principle of selling and buying at the acquisition price of goods plus a margin agreed by the parties. The acquisition price is informed by the seller to the buyer. Meanwhile, murabahah financing is an Islamic banking financing product to meet customer needs by using a murabahah fund wakalah contract in it.

As one of the most popular financing schemes in channeling funds in Islamic banking, a clear and firm juridical basis is needed that regulates murabaha financing. The definition of murabahah based on Law Number 21 of 2008 concerning Islamic Banking is found in the Explanation of Article 19 letter d, namely what is meant by "Murabahah agreement" is an agreement to finance an item by confirming its purchase price to the buyer and the buyer pays more as an agreed profit. A more detailed explanation of murabaha in Indonesian positive law is contained in the rules issued by the Financial Services Authority of the Republic of Indonesia. The government issued Financial Services Authority Regulation Number 13/POJK.03/2021 concerning the Implementation of Commercial Bank Products, which revoked the previous regulations issued by Bank Indonesia, namely Bank Indonesia Regulation Number 10/16/PBI/2008 concerning Amendments to Bank Indonesia Regulation Number 9/19/PBI/2007 concerning Implementation of Sharia Principles in Fund Raising and Fund Disbursement Activities and Services of Islamic Banks, and Bank Indonesia Regulation Number 9/19/PBI/2007 concerning Implementation of Sharia Principles in Fund Raising and Fund Disbursement Activities and Services of Islamic Banks. In POJK Number 13/POJK.03/2021, the definition of murabahah financing is the provision of funds or bills that can be equated with that for the sale and purchase of goods at the principal price plus a margin based on an agreement or agreement between the bank and the customer which requires the customer to pay off the debt / obligation.

In addition to the rules that have been formulated by the government in positive law, murabahah is certainly regulated in Islamic religious law. However, considering that murabaha is included in the field of muamalah which is so broad in scope and it is possible that there are differences of opinion among scholars in muamalah matters as long as it is still within the Islamic corridor, specific rules are needed so as to provide legal certainty for Islamic banking actors. For this reason, the rules in Islamic law governing the technical implementation of murabaha financing are taken from the fatwa of the authorized institution, as stipulated in Article 26 of Law Number 21 of 2008 concerning Islamic Banking as follows.

(1) Business activities as referred to in Article 19, Article 20, and Article 21 and/or sharia products and services, must comply with Sharia Principles.

(2) The Sharia Principles as referred to in paragraph (1) are authorized by the Indonesian Ulema Council.

The Sharia Banking Law clearly determines that the Sharia Principles used as the basis for operations from the Islamic Sharia side in Islamic banking are sharia principles or rules in Islamic Law that are authorized by an institution that has the authority to issue fatwas, namely the Indonesian Ulema Council. In addition, in Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector, Article 337 letter h determines that all terms "Indonesian Ulema Council" that existed before this Law came into force in legislation in the financial sector are read as "institutions that have the authority to determine fatwas in the field of sharia". In the elucidation of the article, it is determined that what is meant by "institution that has the authority to issue fatwa in the field of sharia" as referred to in this Law is the Indonesian Ulema Council. In relation to this, the rules of Islamic law governing murabaha are rules derived from the religion of Islam which are set out in the form of Fatwas of the Indonesian National Sharia Council of the Indonesian Ulema Council.

In murabahah financing in Islamic banks, as specified in the First Provision of DSN-MUI Fatwa Number 04/DSN-MUI/IV/2000 concerning Murabahah, the bank acts as a seller of goods needed by customers, while customers who apply for murabahah financing act as buyers. Therefore, as a seller, the bank is obliged to provide goods that will be used as objects of murabahah financing. To fulfill this, because the goods that will be needed by the customer are not yet owned by the bank, the bank is obliged to purchase the goods on behalf of the bank itself and this purchase must be legal and free of usury as stipulated in the First Provision in Fatwa DSN-MUI Number 04/DSN-MUI/IV/2000 concerning Murabahah. The First Provision in Fatwa DSN-MUI Number 04/DSN-MUI/IV/2000 concerning Murabahah formulates the General Provisions of Murabahah in Islamic Banks, in number 9 it is stated that if the bank wants to represent the customer to purchase goods from a third party, the murabahah sale and purchase agreement must be made after the goods, in principle, become the property of the

bank. Furthermore, in the Second Provision of Fatwa DSN-MUI Number 04/DSN-MUI/IV/2000 concerning Murabahah number 2 formulates that if the bank accepts the request, it must first purchase the assets it has legally ordered with the trader.

After the goods become the property of the bank, only then does the bank then sell the goods to the customer (orderer) at a selling price equal to the purchase price plus profit. In this case, the murabahah contract can only be carried out after the goods become the property of the bank in principle as specified in POJK Number 13/POJK.03/2021. The process of purchasing goods on behalf of customers in murabahah financing is carried out with a wakalah contract.

Murabahah financing in which there is an act of representing the customer for the purchase of murabahah object goods is referred to as murabahah bil wakalah. Murabahah bil wakalah in Islamic banking is a sale and purchase transaction between the buyer (customer) and the seller (bank) in this case buying the goods needed by the customer (the customer determines the specifications) and selling to the customer at a price plus profit. In this sale and purchase system, the seller represents the purchase to the customer, thus the first contract is a wakalah contract, after the wakalah contract ends, which is marked by the delivery of goods from the customer to the bank, then the bank provides a murabahah contract (Harahap, 2004: 95).

The murabahah contract and wakalah contract contained in murabahah bil wakalah financing are not two different contracts in one product, but a series of contracts, each of which stands alone. This means that in murabahah bil wakalah financing, the wakalah contract, which exists first in the context of purchasing murabahah object goods, must be carried out to completion and then the murabahah contract can be carried out. The sign that the wakalah contract has been completed is that the goods have been handed over from the provider (supplier) to the bank, so that there is a transfer of ownership of the goods from the provider to the bank represented by the customer. If the goods officially belong to the bank, only then can the murabahah bil wakalah contract be carried out between the Islamic bank and the customer who applies for the financing.

Regarding the juridical basis of the murabahah bil wakalah contract, until now there has been no regulation that specifically regulates murabahah bil wakalah as an integral part of Islamic bank financing products, both regulations in positive law and Islamic law in the MUI DSN Fatwa. Therefore, the juridical basis for murabahah bil wakalah financing comes from the juridical basis for each murabahah contract and wakalah contract, both from the Law, Regulations of the Financial Services Authority of the Republic of Indonesia, and other laws and regulations. On the other hand, the rules of Islamic law related to this financing are based on the Fatwa of DSN MUI which regulates murabahah and wakalah because there is no DSN MUI Fatwa that regulates murabahah bil wakalah separately.

V. CONCLUSION

The most popular financing scheme in Islamic banks uses a murabahah bil wakalah contract, which consists of a series of murabahah contracts and wakalah contracts, which means that the wakalah contract that exists first in the context of purchasing murabahah object goods, must be carried out to completion and then the murabahah contract can be carried out. After the purchase is completed and there is a transfer of ownership of the goods from the provider to the bank represented by the customer, it officially becomes the property of the bank, so that then a murabahah bil wakalah contract can be carried out between the Islamic bank and the customer who applies for the financing. Until now, there are no rules governing murabahah bil wakalah as an integral part of Islamic bank financing products, both rules in positive law and Islamic law in the Fatwa of DSN MUI. Therefore, the juridical basis for murabahah bil wakalah financing comes from the juridical basis for each murabahah contract and wakalah contract, whether from the Law, Regulations of the Financial Services Authority of the Republic of Indonesia, or other laws and regulations, as well as the Fatwa of DSN MUI which regulates murabahah and wakalah because there is no Fatwa of DSN MUI which regulates murabahah bil wakalah separately.

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