

The Nature of Murabahah Financing in Islamic Banking in Indonesia

Susi Aryani Manangin*, Sukarno Aburaera**, Syahrudin Nawi**,
Said Sampara**

*Student of Postgraduate Doctoral Program in Legal Studies, Universitas Muslim Indonesia

**Lecturer of the Faculty of Law, Universitas Muslim Indonesia

Corresponding Author: Susi Aryani Manangin

Abstract: This study aims to analyze and explain and discover the nature of murabahah financing in Islamic banking in Indonesia; analyze and explain, the implementation of murabahah financing in providing legal benefits to Islamic Banking in Indonesia; analyze and explain and find the concept of murabahah financing in the perspective of the principle of legal benefits in Islamic Banking in Indonesia. The type of research to be conducted is normative and empirical legal research that is descriptive in nature with theological approaches, legislation and concepts regarding murabahah financing in Islamic banking in Indonesia.

Keywords: Islamic Banking, Legal Benefit, Murabahah Financing

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I. INTRODUCTION

Islamic banking is a financial-based Islamic economic institution whose function is as an intermediary organization between the over-funded community and the underfunded community which in carrying out its activities must be in accordance with Islamic principles. Islamic banks or Islamic banks also function as intermediary institutions, namely collecting funds from the public in the form of deposits and channeling them back to the people who need them in the form of financing facilities in order to improve people's lives.¹

The presence of Islamic Banking in Indonesia is one form of government efforts in realizing national development goals as mandated by the 1945 Constitution, namely the creation of a just and prosperous society based on economic democracy. In realizing this development goal, community participation is needed in the form of extracting potential in the economic field based on Islamic (syariah) values based on the values of justice, expediency, balance, and universality.

The role of Islamic banks in spurring regional economic growth is increasingly strategic in order to create a more balanced economic structure. Support for the development of Islamic banking is also shown by the existence of a "dual banking system", in which conventional banks are allowed to open Islamic business units.² The Syariah banking system is actually not limited to the market for customers who have an emotional religious bond (Muslim community). Syariah banking services can be enjoyed by anyone, regardless of religion, as long as they are willing to follow the permissible way of doing business. Society needs financial institutions that are strong, transparent, fair and committed to helping improve the economy and business of the customer.³

Business activities based on syariah principles in their operations are manifested in various syariah banking financing products. Article 1 point 25 of Law of the Republic of Indonesia Number 21 of 2008 on Syariah Banking (hereinafter referred to as the Syariah Banking Law), explains that financing is the provision of funds or bills equivalent to that, in the form of:

- a. profit sharing transactions in the form of *mudharabah* and *musyarakah*;
- b. lease transactions in the form of *ijarah* or rent buy in the form of *ijarah muntahiya bittamlik*;
- c. sale and purchase transactions in the form of *murabahah*, *salam*, and *istishna*' receivables;
- d. lending and borrowing transactions in the form of *qardh* receivables; and
- e. service lease transactions in the form of *ijarah* for multi-service transactions.

¹Muhammad. (2009). *Model-Model Akad Pembiayaan di Bank Syariah: Panduan Teknis Pembuatan Akad/Perjanjian Pembiayaan pada Bank Syariah*. Yogyakarta: UII Press, p. 4.

²Rivai, Harif Amali, et al. (2006). Identifikasi Faktor Penentu Keputusan Konsumen dalam Memilih Jasa Perbankan: Bank Syariah Vs Bank Konvensional. *Bank Indonesia dan Center for Banking Research (CBR), Universitas Andalas*, pp. 2.

³Maulidiana, Lina. (2011). Penerapan Prinsip-Prinsip *Murabahah* dalam Perjanjian Islam (Kajian Operasional Bank Syariah dalam Modernisasi Hukum). *Jurnal Sains dan Informasi*, 7(1), p. 72.

Murabahah is a contract of sale and purchase of certain goods, where the seller clearly states the goods being traded, including the purchase price of the goods to the buyer, then he requires a certain amount of profit or profit. Another opinion states that *Murabahah* is a form of sale and purchase that must be subject to the general legal rules of sale and purchase applicable in Muamalah Islam.⁴

Islamic banks with the principle of *murabahah* are a positive alternative for some people because the principle of religion or belief is not willing to use the services of conventional banks that have the principle of the interest system that is considered a violation of religious syariah because it is not in accordance with the Islamic concept of an agreement/contract that does not contain gharar (unclear), maisir (gambling) and usury (interest money).

II. STATEMENT OF THE PROBLEM

1. What is the nature of *murabahah* financing in Islamic banking in Indonesia?
2. How is the provision of *murabahah* financing in providing benefits to Islamic Banking in Indonesia?
3. What is the concept of *murabahah* financing in the perspective of the principle of legal benefit in Islamic Banking in Indonesia?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Benefit Theory

In the Islamic Law system of the Theory of Benefit as a theory of Benefit (*maslahah*), etymologically is the sole word of al-masalih, which means the word 'solah' which is "that brings good". Not infrequently the problem or term is accompanied by the word al-munasib which means "things that are suitable", appropriate and appropriate for their use.⁵

M. Hasbi Umar⁶, concluded that from some of these meanings an understanding can be taken that everything, anything, which contains benefits in it both to obtain benefits, goodness, and to reject harm, then all of that is called *maslahah*.

The benefit in Islamic law is very relevant to be studied in connection with the question of where the emergence and development of Syariah Banking and Syariah economics in general. One important part is the prohibition of usury. Maulana Maududi⁷, explained that the institution of interest is a source of danger and crime. Flowers will afflict and destroy society through their influence on human character, among others, flowers create a feeling of love for money and wealth to accumulate wealth for selfish interests, without avoiding God's rules and warnings.

From the aspect of the substance of the Syariah Banking Law, the underlying interest incarnates from its purpose, based on Article 3 of the Syariah Banking Law, regulates that "*Syariah Banking aims to support the implementation of national development in order to improve justice, togetherness, and equitable distribution of people's welfare*". This provision is basically a form of public interest or collective interest because the elements of togetherness and equitable distribution of justice are the objectives of Islamic Banking.

2. Justice Theory

a. Theories of Justice in Islamic law

The terminology of justice in the Al-Qur'an is mentioned in various terms, including ' *adl, qisth, mizan, hiss, qasd*, or variations in indirect expression, while the terminology for injustice is *zulm, itsm, dhalal*, and others. After the words "Allah" and "Knowledge" justice with various terminology is the most frequently mentioned words in the Al-Qur'an. With the various contents of the meaning of "fair", in general justice can be defined as a condition where there is equality of treatment in the eyes of the law, equality of the right to compensation, the right to live properly, the right to enjoy development and the absence of a disadvantaged party and the existence of a balance in every aspect of life.⁸

b. Theories of Justice in Western Legal Philosophy

In Plato's concept of justice there is individual justice and justice within the state. In order to find the correct understanding of individual justice, it must first be discovered that the nature of justice is in the state, for that Plato said⁹: "*Let us inquire first what is the cities, then we will examine it in the single man, looking for the*

⁴Muhammad. (2009). *Op. Cit.*, p. 22.

⁵Syahrani, Riduan. (2004). *Rangkuman Intisari Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, p. 21.

⁶Umar, M. Hasbi. (2007). *Nalar Fiqih Kontemporer*. Jakarta: Gaung Persada, p. 112.

⁷Antonio, Muhammad Syafii. (2001). *Bank Syari'ah: Dari Teori ke Praktik*. Jakarta: CV. Gema Insani Press, p. 77.

⁸Penyusun, Tim (Ed.) (2008). *Ekonomi Islam* (Pusat Pengkajian dan Pengembangan Ekonomi Islam (P3EI) Universitas Islam Indonesia Yogyakarta kerjasama dengan Bank Indonesia). Jakarta: PT. Raja Grafindo Persada, p. 59.

⁹Gie, The Liang. (2002). *Teori-Teori Keadilan: Sumbangan Bahan untuk Pemahaman Pancasila*. Yogyakarta: Supersukses, p. 22.

likeness of the larger in the shape of the smaller". Although Plato said so, it does not mean that individual justice is identical with justice in the state. It's just that Plato saw that justice arises because of adjustments that give a harmonious place to the parts that make up a society. Justice is realized in a society when each member performs well according to his ability to function that is appropriate or in harmony with him.

John Rawls asserted that the program to uphold justice with a populist dimension must pay attention to two principles of justice, namely: *first*, giving equal rights and opportunities to the most broadest basic freedoms of equal freedom for everyone. *Secondly*, being able to re-regulate the socio-economic inequalities that occur so that they can provide reciprocal benefits for everyone, both those from the fortified and disadvantaged groups.¹⁰

c. Agreement Theory

According to John Locke, people who carry out social contracts are people who are orderly and respect freedom, the right to life and ownership of property as human rights. An ideal society is one that does not violate basic human rights.¹¹

According to Herlien Budiono, an agreement can also be defined as a legal act that causes, changes, abolishes rights, or gives rise to a legal relationship and in this way the agreement results in legal consequences which are the goals or wishes of the parties.¹²

B. Agreement in Islamic Law and the *Burgerlijk Wetboek voor Indonesie*/the Civil Code

1. Agreement in Islamic Law

In Islamic law the word "agreement" is known by the term "contract". The word Akad is taken from Arabic. There are two words in Arabic that have a contractual meaning, namely the word akad (*al-aqadu*) and the word 'ahd (*al-'ahdu*).¹³ The term contract can be equated with the term engagement or verbintenis, while the word *al-'ahdu* can be said to be the same as the term agreement or *evereenkomst*, which can be interpreted as a statement from someone to do or not do something, and has nothing to do with the other party's will, so it is only binding for the person concerned.¹⁴

Whereas the understanding of the contract according to Article 20 of Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 on the Compilation of Syariah Economic Law (hereinafter referred to as the Compilation of Syariah Economic Law) is an agreement between two or more parties in carrying out certain legal actions.

The establishment of a legal and binding contract (agreement) in Islamic law must meet the terms of the contract. The terms of the contract are divided into four types, namely:¹⁵ conditions for the formation of the contract, conditions for the validity of the contract, conditions for effect as a result of contract law, conditions for binding the contract. Meanwhile, according to some Islamic jurists (*Jumhur fuqaha*), the agreement consists of: the parties directly involved in the contract; the object of the contract or something to be brought about; sight contract or sentence statement that is usually carried out through a statement of consent and qabul.

2. Agreement in the *Burgerlijk Wetboek voor Indonesie*/the Civil Code

a. Definition of agreement

In the terminology of civil law the word agreement¹⁶ we can find it in Book III of Staatsblad Number 23 of 1847 on the *Burgerlijk Wetboek voor Indonesie (BW)*/the Civil Code (hereinafter referred to as the *Burgerlijk Wetboek*) governing *Verbintenissenrecht*, which also includes the term *Overeenkomst*. Known from 3 *Verbintenis* translations, namely engagement, contract and agreement, while *Overeenkomst* has 2 translations, agreement and agreement.

Furthermore, the term agreement according to legal experts, among others, according to Raden Subekti¹⁷ said that an agreement is an event where someone promises to someone else or where two people promise to do something. Abdulkadir Muhammad¹⁸ stated that the engagement is a legal relationship that occurs

¹⁰S., Salim H. & Nurbani, Erlies Septiana. (2014). *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*. Jakarta: PT. Raja Grafindo Persada, p. 31.

¹¹Tanya, Bernard L., Simanjuntak, Yoan N., & Hage, Markus Y. (2010). *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*. Yogyakarta: Genta Publishing, p. 84.

¹²Budiono, Herlien. (2010). *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*. Bandung: PT. Citra Aditya Bakti, p. 3.

¹³Miru, Ahmadi. (2012). *Hukum Kontrak Bernuansa Islam*. Jakarta: PT. Raja Grafindo Persada, p. 5.

¹⁴Djamil, Fathurrahman. (2001). *Hukum Perjanjian Syariah*. In *Kompilasi Hukum Perikatan: Dalam Rangka Menyambut Masa Purna Bakti Usia 70 Tahun*. Bandung: PT. Citra Aditya Bakti, p. 248.

¹⁵Anwar, Syamsul. (2007). *Hukum Perjanjian Syariah: Studi tentang Teori Akad dalam Fikih Muamalat*. Jakarta: PT. Raja Grafindo Persada, pp. 97-105.

¹⁶Raharjo, Handri. (2009). *Hukum Perjanjian di Indonesia*. Yogyakarta: Pustaka Yustisia, p. 41.

¹⁷Subekti, Raden. (1990). *Hukum Perjanjian* (Revisi ed.). Jakarta: PT. Intermedia, p. 1.

¹⁸Muhammad, Abdulkadir. (2000). *Hukum Perdata Indonesia*. Bandung: PT. Citra Aditya Bakti, p. 9.

between the debtor and the creditor, which is located in the field of assets in which the entire legal rules governing legal relations in the field of assets are called property laws. According to R. Wirjono Prodjodikoro¹⁹ the agreement is as a legal relationship regarding property between two parties promising or deemed promised to do something or not doing something while the other party has the right to demand the implementation of that promise.

b. Principles of Agreement

Agreement law recognizes several important principles that are the basis of the parties' will to achieve their goals, including:

1) The Principle of Freedom Of Contract

Freedom of contract is one of the most important principles in contract law. This freedom is the embodiment of free will, the transmission of human rights.²⁰ With freedom of contract means that people can create individual rights that are not regulated in book III of the *Burgerlijk Wetboek*, but are themselves regulated in an agreement. The articles in book III of the *Burgerlijk Wetboek* are only binding on them, if they do not regulate their own interests or arrange it in an agreement. But it is incomplete so that the unregulated matters are applied to the articles of engagement law. Freedom of contract provides a guarantee of freedom for someone to be free in several matters relating to the agreement, including:²¹

- a) free to determine whether he will make an agreement or not;
- b) free to determine who he will make the agreement with;
- c) free to determine the contents or clauses of the agreement;
- d) free to determine the form of the agreement; and
- e) other freedoms that do not conflict with laws and regulations.

2) Principle of Consensualism (Conformity of Will)

Initially, an agreement or agreement must be confirmed by an oath, but in the 13th century the view was removed by the church and then formed the understanding that with the agreement between the parties, an agreement already has binding power. This principle can be found in Article 1320 of the *Burgerlijk Wetboek* which requires an agreement as a legal condition for an agreement, however it should be noted that the principle of consensualism is exempt, namely in the real agreement and formal agreement that requires the submission or fulfill certain forms required by law.²²

3) Principle of Legal Certainty (*Pacta Sunt Servanda*)

The principle of *servanda sunt pacta* or also called the principle of legal certainty. Related to the consequences of the agreement. The principle of the *suntserva pacta* is the principle that judges or third parties must respect the substance of the contract made by the parties, as befits a law. They may not intervene in the substance of the contract made by the parties. The principle of the *suntservanda pacta* can be concluded in Article 1338 section (1) of the *Burgerlijk Wetboek*, regulates that "*all treaties made legally apply as a law for those who make them*".²³ Every person who makes a contract he is bound to fulfill the contract because the contract contains promises that must be fulfilled and the promises are binding on the parties as binding the law.²⁴

4) Principle of Personality (Personnel)

The principle of personnel is regulated and can be found in the provisions of Article 1315 of the *Burgerlijk Wetboek*, regulates that "*in general, no one can bind themselves in their own name or write the stipulation of an agreement rather than for themselves*". An agreement only puts the rights of obligations between the parties that make it and does not bind others (third parties).²⁵

5) Principle of Trust (*Vertrouwensbeginsel*)

A person who makes an agreement with another party fosters trust between the two parties that each other will hold his finger, in other words will fulfill his achievements behind the day. Without this trust, it is impossible for the agreement to be entered into by the parties. With this trust, both parties bind themselves and for both the agreement has binding power as a law.

¹⁹Prodjodikoro, R. Wirjono. (2011). *Asas-Asas Hukum Perjanjian* (Revisi ed.). Bandung: CV. Mandar Maju, p. 4.

²⁰Badrulzaman, Mariam Darus, et al. (2001). *Kompilasi Hukum Perikatan: Dalam Rangka Menyambut Masa Purna Bakti Usia 70 Tahun*. Bandung: PT. Citra Aditya Bakti, p. 66.

²¹Syahrani, Riduan. (2004). *Op. Cit.*, p. 15.

²²Budiono, Herlien. (2010). *Op. Cit.*, p. 29.

²³S., Salim H. (2003). *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika, p. 9.

²⁴Syahrani, Riduan. (2004). *Op. Cit.*, p. 5.

²⁵Muljadi, Kartini & Widjaja, Gunawan. (2004). *Perikatan yang Lahir dari Perjanjian*. Jakarta: PT. Raja Grafindo Persada, p. 14-15.

6) The principle of equality in law

This principle places the parties in equality, there is no difference, even though there are differences in skin, nation, wealth, power, position, and so on. Each party must see this equality and require both parties to respect each other as human beings created by God.

7) The principle of balance

This principle requires both parties to fulfill and implement the agreement. This principle of balance is a continuation of the principle of equality. Creditors have the power to demand achievements and if needed can demand payment of achievements through the debtor's wealth, but creditors also bear the burden of carrying out the agreement in good faith. Strong creditor position with obligations to pay attention to good faith so that the creditor and debtor position is balanced.

8) Principle of legal certainty

Agreement as a legal feature must contain legal certainty. This certainty was revealed from the binding power of the agreement, namely as a law for the parties.

9) Moral Principle

This principle is seen in a reasonable engagement where a voluntary act of a person does not create the right for him to challenge the debtor's counterparts as well as this is seen in the age of *zaakwarneming* where someone who performs an act voluntarily (morally) concerned has an obligation (legal) to continue and completing his actions, this principle is contained in Article 1339 of the *Burgerlijk Wetboek*. The factors that provide motivation to those involved in carrying out legal actions are based on moral (moral) as a call from their conscience.

10) The Principle of Propriety

This principle is contained in Article 1339 of the *Burgerlijk Wetboek*, the principle of certainty here is related to the provisions regarding the contents of the agreement. This principle of propriety must be maintained because through this principle the size of the relationship is also determined by the sense of justice in society.

c. Terms for the validity of an agreement

The legal conditions for an agreement in Indonesia are regulated in Article 1320 of the *Burgerlijk Wetboek*. In these provisions there are 4 conditions for the validity of the agreement, which are as follows:

- 1) agree that those who commit themselves;
- 2) capable of those who commit themselves;
- 3) a certain thing; and
- 4) a lawful cause.

C. Islamic Economic Concepts

1. Definition of Islamic Economics

The term Syariah Economics is a term in the field of syariah-based economics which is certainly different from other economic terms. In addition to the term Islamic Economics, there are also terms that have the same meaning as "Islamic Economy", (*al-iqtisad al-Islamic*, Islamic economic). According to Hasbi Hasan²⁶ in contemporary Islamic Economic thought discourse, the concept of Islamic Economics is indeed often identified with various different terms, including "Islamic Economics", "Divine Economy", "Qur'anic Economy", "Syria Economy", "Economics based on principles profit sharing", and "Economy rahmatan lil'alamin". All of these terms refer to a concept of the economic system and business activities based on Islamic law or economics based on syariah principles.

2. Syariah Economic Resources

Islamic Economics has been regulated based on the provisions of Islamic Law with clear sources and sources. Abd Somad²⁷ explained, the unique characteristics of Islamic law that distinguishes other legal systems include the source of law that recognizes two types of legal sources. First, sources of law that are "naqly" and sources of law "aqly". The source of Naqly's law is Al-Quran and As-Sunnah, while the source of Aqly's law is the effort to find law by prioritizing the process of thinking with various methods.

²⁶Hasan, Hasbi. (2011). *Pemikiran dan Perkembangan Hukum Ekonomi Syariah di Dunia Islam Kontemporer*. Jakarta: Gramata Publishing, p. 19.

²⁷Shomad, Abd. (2010). *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum Indonesia*. Jakarta: Kencana Prenada Media Group, p. 124.

D. Syariah Economic System

Islamic economic system or also called the Islamic economic system is one part of the economic system in general, which relies on the main thing is "economy". According to Suhrawardi K. Lubis²⁸ what is intended by the Islamic economic system is the science of economics that is carried out in daily practice (application of economics) for individuals, families, community groups and the government/authorities in the framework of organizing the factors of production, distribution, and utilization of goods and services produced which are subject to Islamic legislation (Sunatullah).

The Syariah economic system is broader, while the syariah banking system is narrower, the main point of which is in the banking field. As in the Islamic economic system which is part of economic systems in general that are known and in force today, then in Islamic banking also develops as part of the banking system with characteristics that show the differences between these systems.

E. Islamic Banking Concepts

1. Definition of Syariah Banking

Based on Article 1 point 1 of the Syariah Banking Law, explains that:

"Syariah Banking is anything that concerns Syariah Banks and Syariah Business Units, including institutions, business activities, as well as ways and processes in carrying out their business activities."

Based on Article 1 point 2 of the Syariah Banking Law, explains that:

"Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and / or other forms to improve people's living standards."

Furthermore, based on Article 1 point 3 of the Syariah Banking Law, explains that *"Bank Indonesia is the Central Bank of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia"*.

2. Principles of Syariah Banking Agreements/Contracts

a. Definition of Contract

A contract according to language is binding or collecting two ends of something. According to Taufiq in Wahbah al-Zuhaili, there are two definitions of a covenant according to syariah. A contract is an agreement between two words that have legal consequences.

Ahmad Azhar Basyir gives the definition that a contract is an agreement between consent and Kabul in a manner that is justified by shara 'which stipulates the existence of legal consequences on the object. Teungku Muhammad Hasbi Ash-Shiddieqy mentions the contract as an agreement between consent and qabul in a manner that is justified by syara 'which establishes the pleasure of the two parties.²⁹

Understanding the contract can also be found in Article 1 point 4 of Bank Indonesia Regulation Number 9/19/PBI/2007 on Application of Syariah Principles in Activity of Fundraising, Funds Distribution, and Syariah Bank Services (hereinafter referred to as Bank Indonesia Regulation No. 9/19/PBI/2007), explains that:

"Contract is a written agreement between the Bank and the customer and/or other parties that contains rights and obligations for each party in accordance with syariah principles."

b. Principles of Contract

As in treaty law according to the *Burgerlijk Wetboek* which recognizes the principle of freedom of contract, the principle of personality, and the principle of good faith, while in customary law recognizes the principles of light, cash and real, in Islamic law also recognizes the principles of contract law, namely as follows:

1) Al Hurriyah (Freedom)

This principle is a basic principle in Islamic treaty law, in the sense that the parties are free in making a contract or contract. Free in determining the object of the contract and free to determine with whom he will make the agreement, and free to determine how to determine the resolution of the dispute if it occurs in the future.

2) Al Musawah (Equality or Equality)

This principle implies that the parties have the same position, so that in determining a contract each party has an equal or equal position.

²⁸Lubis, Suhrawardi K. (2000). *Hukum Ekonomi Islam*. Jakarta: Sinar Grafika, p. 14.

²⁹Ash-Shiddieqy, Teungku Muhammad Hasbi. (1974). *Pengantar Fiqih Muamalat*. Jakarta: Bulan Bintang, p. 33.

3) Al'adalah (Justice)

Implementation of this principle in a contract requires the parties to do what is right in the disclosure of the will and circumstances, and fulfill all obligations. The contract must always bring a fair and balanced profit, and must not cause harm to either party.³⁰

4) Ash Shidiq (Truth or Honesty)

Islam forbids people from lying and deception, because the existence of lies and fraud is very influential on the validity of the contract. A contract that contains lies or fraud gives the other party the right to stop the process of carrying out the contract.

5) Al Kitabah (written)

Each contract should be made in writing, because it is in the interests of proof if a dispute later occurs.

3. Principles of Syariah Banking Management

In the operationalization of Islamic banking, several management principles are presented by Abdul Ghofur Anshori as follows:

a. The Fiduciary Principle

One of the banking missions is to accept deposits in the form of demand deposits, savings and deposits. These funds are needed by banks in running their businesses, whose actions may only be relied on from the bank's own capital. For this reason, in order to attract fresh funds from the public, the bank also continues to make improvements in offering banking services. In addition, banks as a component in maintaining a balance of progress and national economic unity in conducting their business require public trust.³¹

Ensuring the implementation of the principle of trust, among others, banks must provide advice to customers about the risks that may occur in depositing funds in banks and banks in carrying out transactions for the benefit of customers must do it carefully. Therefore, Article 29 section (4) of Law of the Republic of Indonesia Number 10 of 1998 on Amendment to Law Number 7 of 1992 on Banking (hereinafter referred to as the Banking Law), regulates that "*for the interests of customers, banks are required to provide information about possible risk of loss in connection with customer transactions conducted through banks*".

b. Prudential Principle

The Banking Law does not state explicitly regarding the understanding of the principle of prudence. Normatively Article 2 of the Banking Law, regulates that "*Indonesian banking in conducting their business are based on economic democracy by using the precautionary principle*".

As an essential principle in banking, this precautionary principle can also be applied in non-bank financial institutions, financial institutions, and finance companies. Through the implementation of this precautionary principle, the existing financial institutions and financial institutions will be able to maintain their existence, especially in times of crisis such as the provision of credit/financing that is full of collusion and violations of the legal lending limit or the maximum limit of lending.

c. Principles of Confidentiality

Other principles of managing financial institutions that are also very related. This principle is very important to be maintained in the banking industry because it is the soul and industry of banking. Financial system stability will be shaken if banks do not adhere to the principle of confidentiality. The principle of bank secrecy is regulated through the Banking Law.

4. Juridical Basis of Syariah Banking

Government Regulation of the Republic of Indonesia Number 72 of 1992 on Bank Based on the Profit Sharing Principle, among others regulates the provisions concerning the process of establishing a Rural Banks. Pursuant to articles 28 and 29 of the Decree of the Board of Directors of Bank Indonesia Number 32/34/KEP/DIR dated May 12, 1999 on Bank Based on the Profit Sharing Principle, regulates several business activities that can be carried out by Islamic banks. Other regulations specifically regulating contracts in business activities based on syariah principles are Bank Indonesia Regulation No. 9/19/PBI/2007.

F. Murabahah Financing

1. Definition of Murabahah Financing

As explained in the theoretical study in the previous section that Islamic banking introduces a system that not only benefits banks but also cares about customer welfare, namely profit and loss sharing-based transactions or better known in Indonesia with profit sharing systems, which are further reduced to revenue sharing systems. This system emphasizes that in every transaction, the possibility of profit and loss is always there. However, in practice, the principle of profit sharing is not easy because this type of profit sharing financing is full of risk and

³⁰Djamil, Fathurrahman. (2001). *Op. Cit.*, p. 248.

³¹Anshori, Abdul Ghofur. (2008). *Penerapan Prinsip Syariah dalam Lembaga Keuangan, Lembaga Pembiayaan dan Perusahaan Pembiayaan*. Yogyakarta: Pustaka Pelajar, p. 190-214.

uncertain results, so that Islamic banking practitioners are more likely to choose another type of short-term financing that is lower in risk and more certain in terms of profit, namely *murabahah*.³²

Based on several *murabahah* definitions above, it can be concluded, *murabahah* is a form of trust sale based on price determination, namely the form of exchange of selling objects with prices which are the sum of acquisition prices plus certain profits.

2. The Murabahah Financing Concept

In general, buying and selling can be interpreted as a form of agreement or contract based on good faith, involving both parties - each from the seller and buyer, an exchange agreement, and limited value³³. *Murabahah* as a form of buying and selling emphasizes the existence of community purchases based on consumer demand and the sales process to consumers at a selling price is the accumulation of purchase costs and desired additional profit. Thus, the bank is required to explain the purchase price and the desired additional benefits to the customer.

3. Legal Foundation for Murabahah Financing

Buying and selling with the *murabahah* system is a transaction that is allowed, this is based on the arguments contained in the Qur'an, hadith or the Ulema Ijtima.

Based on this stipulation, the sale and purchase of *murabahah* receive recognition and legality of syariah, and are legal to run in the practice of financing Islamic banks, because buying and selling *murabahah* is a form of sale and purchase that does not contain elements of usury.

4. Murabahah Financing Terms and Conditions

From an Islamic perspective, *murabahah* financing is a form of sale, therefore *murabahah* conditions are the same as general sales which include:

- a. Islamic Bank notifies the cost of capital to the customer.
- b. The first contract must be legal.
- c. The contract must be free from usury.
- d. Islamic banks must own and control these commodity goods before selling them to clients.
- e. Commodities traded must be halal.
- f. Islamic banks should disclose any defects that occur after the purchase of the product and open all matters relating to the defect.
- g. Islamic banks must open all sizes that apply to the purchase price, for example if the purchase is made in debt.
- h. If the conditions in 1, 6 or 7 are not met, the buyer has the choice: continue the purchase as it is, return to the seller and declare disapproval or cancel the contract.

5. Murabahah Financing Procedure

Murabahah financing in an Islamic bank must follow the procedure as follows³⁴:

- a. The client asks the bank through a written form to buy certain products, which the client will buy through *murabahah*. The form contains the requested product specifications, document requirements, total product value, information about clients, profit sharing and sources of product offerings.
- b. Islamic Bank studies client application forms from all aspects which include:
 - 1) Study the client's position, such as the client's business type, credit situation and liquidity;
 - 2) Study the product in terms of economics, an overview of the general market situation, namely the amount of supply and demand for products.
 - 3) Learn about purchase offer methods, such as *murabahah* financing operating costs, term of the agreement, financing profit and loan installment payments.
 - 4) Request collateral to protect the bank's right to get his money back in accordance with the time of the agreement.
- c. After checking and authorizing *murabahah* financing, the bank asks the buyer to sign the contract. At this stage, the operating costs of *murabahah* financing and the determination of profit sharing are discussed and agreed upon. Besides this the Islamic bank asks the buyer to pay the first installment of the *murabahah* price. The most common form of Islamic bank purchase contract here is a statement by the client that the client will complete his purchase agreement when notified by the bank that the product is available.

³²Imama, Lely Shofa. (2014). Konsep dan Implementasi Murabahah pada Produk Pembiayaan Bank Syariah. *Iqtishadia, Sekolah Tinggi Agama Islam Negeri Pamekasan, 1*(2), p. 243.

³³*Ibid.*, p. 223.

³⁴Al-Khadas, H. (1999). Accounting Measurement for Murabahah Operations in Islamic Banks. Paper presented in the *International Conference 3rd on Accounting Commerce and Finance: The Islamic Perspective*, Jakarta.

d. After the Islamic bank buys the product, then the Islamic bank and the buyer sign a *murabahah* sales contract. In this contract, the actual operating costs of *murabahah* financing and the profits obtained by the bank must be known.

e. The buyer receives the product.

Murabahah as a form of buying and selling, can not be separated from all matters related to buying and selling in general. Aspects that need to be considered in the sale and purchase are the pleasure of the seller and buyer of the goods sold, prices, and several other related conditions.³⁵

IV. IV.DISCUSSION

A. The Nature of *Murabahah* Financing in Indonesian Islamic Banking

1. Divine Value

Divine value is the most important and highest value in Islamic economics derived from the provisions of the Qur'an and Sunnah. This divine value then reduces a number of principles in Islamic economics, such as the principles of justice, expediency, balance and equity.

The application of the *murabahah* contract in the banking system in addition to reflecting the divine spirit in the economy is also a value added from a consumer/customer perspective. The absence of divine values that underlie banking operations can destroy the nation's economy originating from banking.³⁶

Syariah economy is characterized by divinity (divine-rabbani), because it is based on a number of divine principles, principles and principles derived from Islamic syariah sources. Islamic economics has a divine character in terms of its source and starting point, objectives and targets, methods and tools, as well as concepts and values.

If examined from the perspective of a banking company, the principles used in carrying out syariah banking activities are not solely for profit, or capture market opportunities that are predisposed to syariah. But more than that, the initial intention was to implement syariah values in the banking world. Whereas in terms of customers, *murabahah* in syariah banking is aimed at making transactions in the form of help that is based on syariah principles, and not solely seeking profit, the divine value is implemented in the syariah banking industry.

The principle of justice as part of the divine value in the implementation of the contracts mentioned above means that the customers (micro and medium businesses) are not burdened with business risk because the risk is shared with Islamic banks. It is different from conventional banking when bad credit occurs, then the customer's collateral will be auctioned off to return the funds of the bank concerned.

2. Principle of Humanity

Human values are gathered in the Islamic economy in a number of values shown by Islam in the Qur'an and as-Sunnah. For example inheritance, as an example of these values are the values of independence and glory, humanity, justice, brotherhood, mutual love and help each other.³⁷

Murabahah is a means of helping among human beings. The existence of a concept like this, means that among fellow customers have implemented mutual help to help, even though they do not face each other face to face. *Murabahah* financing is not a loan given at interest. *Murabahah* financing is the sale and purchase of commodities at a resilient price that includes a profit margin above the agreed cost. As a form of buying and selling, and not a form of loan, *murabahah* financing must fulfill all the conditions needed for a legitimate sale and purchase. *Murabahah* cannot be used as a form of financing, except when a customer needs funds to buy a commodity or item.

3. Principle of Justice

Justice is a fundamental aspect in the Islamic economy. Determination of a business outcome in the future in a business activity is considered as something that can be burdensome for one of the parties trying, thus violating aspects of justice. This is because the principle of business uncertainty so that the results obtained can vary greatly, from profit to loss. For example, interest is a result that is determined in advance, before the business, so that interest such as ensuring the business must bring profit, and can be burdensome for one party.

In analyzing of the Syariah Banking Law, explains about the meaning of a concept of justice in applying in Islamic banks which is contained in Article 2 of the Syariah Banking Law, regulates that "*Syariahbanking in conducting their business are based on SyariahPrinciples, economic democracy, and the precautionary principle*". Explanation of the purpose of Article 2 is that the implementation of syariah banking regarding the relationship between the customer and the bank must be applied in the presence of the values of fairness and equity so that there are no parties who feel disadvantaged or more favorable. The concept of justice

³⁵Imama, Lely Shofa. (2014). *Op. Cit.*, p. 227

³⁶Antonio, Muhammad Syafii. (2001). *Op. Cit.*, p. viii.

³⁷Naqvi, Syed Nawab Haider. (1985). *Etika dan Ilmu Ekonomi: Suatu Sintesis Islami* (Husin Anis, Trans.). Bandung: Mizan, p. 126.

in Islam and justice contained in the Syariah Banking Law, all explain that the equality that occurs in the relationship between the customer and the bank must get a form of justice.

Based on the results of the researchers' brief interviews with the financing authority holders in Islamic Banking in Manado, the researcher can state that the determination of the *murabahah* contract margin has reconstructed the principle of justice. This is based on the principle of fairness (1) between the interests of customers and BMT, (2) between the enforcement of Islamic economic syi'ar with the company's operational capabilities (including profit making interests), (3) and the ability of Islamic Banking to describe between a significant corporate market with determining proportional margins (not too small and not too big).

Murabahah Based on the Fatwa of the National Syariah Board – Indonesian Ulema Council Number 04/DSN-MUI/IV/2000 on *Murabahah* (hereinafter referred to as the Fatwa No. 04/DSN-MUI/IV/2000), interpreted is a sale and purchase agreement where the bank confirms the purchase price to the buyer and the buyer pays a higher price as a profit from the bank. In this connection the bank must inform honestly the cost of goods to customers along with the required costs included in the Compilation of Syariah Economic Law by the Supreme Court which is regulated in a strict and detailed manner.

4. Balance Principle

One of the characteristics of Islamic economics is the existence of a balance which is a basic characteristic of Islamic economics, the actualization of which is the balance of individual ownership and public ownership. Syariah transactions uphold the value of togetherness and fairness in obtaining benefits (sharing economics) so that a person cannot benefit above the losses of others. The implementation of justice in business activities, one of which is in the form of muamalah rules that prohibit the existence of elements of interest in all forms and types.³⁸

The principle of balance in a contract or agreement can be interpreted as equality in law or equality, in contract law using the term balance. This is an implementation of the principle of good faith, the principle of transactions based on honesty in determining something, including in terms of determining the "profit margin" because it will result in determining the margin basically there is a difference in installments between 2 (two) years with installments with a period of more than 2 (two) years (what happens is that the installment payments are greater than they should).

In carrying out the contract *murabahah* should be based on the principle of balance. This principle requires both parties to fulfill and implement the agreement. The creditor has the power to demand achievements and if necessary can demand the repayment of achievements through the debtor's wealth, but the creditor also bears the burden of carrying out the agreement in good faith. It can be seen that the position of a creditor is strong in balance with his obligation to pay attention to good faith, so that the position of the creditor and debtor is balanced. Islamic syariah agreement law still emphasizes the need for a good balance between what is given and what is received and what is the balance in taking risks.³⁹

B. Provisions on Murabahah Financing in Providing Legal Benefit to Islamic Banking in Indonesia

1. Legal benefit of customers

In this *murabahah* contract, the benefit aspect received by the customer is getting the items needed by paying installments to the bank. Nonetheless, this cheap contract, it seems that customers and the bank did not happen sale and purchase agreement, but there was a commodity money lending. Furthermore, credit/installments by customers so that customers do not feel indebted to the bank directly to the sale and purchase of these commodities.

If the commodities contracted between the customer and the bank are fully owned, bought first by the bank and in the name of the bank and then resold to their customers, thus twice the buying and selling process, this will be subject to two sales taxes, and the price of the commodity/goods will be more expensive. In *Murabahah* financing transactions, the bank enters into a contractual agreement with the customer to represent the bank in carrying out the sale and purchase transaction with the supplier. In this case the banks have not been able to provide commodities or goods ordered by the customers or to avoid double taxation. The bank avoids responsibility for operational risks, both in storage and operational costs. Therefore, the bank usually represents the process of ordering and delivering goods to the customer. *Murabahah* contract is a contract of sale and purchase transaction, but in fact is used to finance working capital on an ongoing basis. This shifts the meaning of the form of classic syariah banking products.

³⁸Muyassir, Ahda. (2016). "Asas Keadilan dalam Penetapan Biaya Administrasi Pembiayaan di Bank Syariah". *Tesis*, Institut Agama Islam Negeri Antasari, Banjarmasin, p. 86.

³⁹Z., Lukman Santoso A. (2016). *Hukum Perikatan: Teori Hukum dan Teknis Pembuatan Kontrak, Kerja Sama, dan Bisnis*. Malang: Setara Press, p. 59.

The risk faced by banks is usually and the profit margins have been determined at the beginning. Moreover, the purchase asset is used as a guarantee and the bank can also ask the client to provide a certain guarantee. The combination of fixed profits and guarantees ensures that the risk borne by the bank is very small.

2. The Usefulness of the Syariah Banking Law

A number of reasons are put forward to explain the popularity of *murabahah* in Islamic banking investment operations, namely:⁴⁰

- a) *Murabahah* is a short-term investment mechanism and compared to the Profit and Loss Sharing (PLS) system is quite easy;
- b) Mark-ups in *murabahah* can be determined in such a way as to ensure that banks can obtain profits comparable to those of interest-based banks that rival Islamic banks;
- c) *Murabahah* steers clear of the uncertainties in income from businesses with profit and loss sharing (PLS);
- d) *Murabahah* does not allow Islamic banks to interfere in business management, because banks are not partners of the customer, because their relationship in *murabahah* is the relationship between creditors and debtors.

Islamic banks in Indonesia are slightly different from Islamic banks in other countries such as Middle Eastern countries. Social services in Syariah banking in Indonesia are still very limited and even limited by Indonesian banking law, where Syariah Banks in Indonesia may not conduct social services that have been the authority of social institutions, but with the issuance of a new banking law this has been changed so that Islamic banks can run their social service functions.

In addition, Islamic Bank instruments and products still rely a lot on the *murabahah* system even though the Syariah Bank has many superior and safe investment systems such as *mudharabah*, *musyarakah* and others. This is due to the position of Islamic banking which is trying to play “safe” in channeling its customers’ funds. Because the *murabahah* system is a more certain and easier system in calculating the profit sharing that will be received

C. The Concept of Murabahah Financing in the Perspective of the Principle of Legal Benefit in Syariah Banking in Indonesia

1. Carry out Islamic Principles

Islamic banks really need to continue to maintain the principles of syariah in carrying out its activities. These principles are free from three things, namely *maisir* (gambling/gambling), *gharar* (fraud), and usury (interest). These three principles are the characteristics of Islamic banks which are not owned by conventional banks. If the Islamic bank does not try to maintain these principles, then the public trust will be reduced. Therefore, the function of the syariah supervisory board must be optimal so that bankers working in the field can truly implement these syariah principles properly.

The Syariah Banking Law, addresses financing based on Islamic principles that does not contain elements of interest/usury, speculation/*maisir*, *garar*, wrongdoing, and haram.

In *murabahah* products in Islamic banks, there is a thing called mark up. This mark up is the excess price from the cash price which is considered as profit for the bank. In conventional banks, the concept of mark-ups is known as interest. The difference between the two is the concept of conventional banks, customers do not know the exact amount to be paid because they have to adjust to interest rates. But at Islamic banks, the addition was agreed at the beginning. Some parties argue that the concept of mark-up on *murabahah* is very similar to usury because it holds to the opinion of Maliki who does not approve of buying and selling whose credit price is greater than the cash price.

2. Avoidance of Usury

Murabahah generally encourages customers to get bailouts to pay for their needs that they cannot pay in cash. In fact, for some people, *murabahah* is merely following the trend. This phenomenon needs to be examined, because the nature of this transaction is bank debt. Though debt is highly discouraged in Islamic law, unless it requires goods and is able to pay it off. Once again, a Muslim is strongly discouraged from buying luxury items on credit.

At the moment in determining the level of *Murabahah* margin, there are several Islamic banks that use the approach as conventional banks do in determining the loan interest rate so that the fall is higher/equal to loan interest in conventional banks. This raises the perception of the public who think that the *Murabahah* product is the same as conventional bank credit.

⁴⁰Muhamad, Muhamad. (2004). *Teknik Perhitungan bagi Hasil dan Pricing di Bank Syariah*. Yogyakarta: UII Press, p. 154.

According to the language, usury is meaningful: ziyadah (additional) can also be interpreted as growing or enlarging means growing and enlarging. Usury in terms, usury means taking additional from the basic assets or capital in vanity. There are a number of opinions in explaining usury but in general there is a common thread that confirms that usury is an additional take, both in trading transactions and borrowing and borrowing in violation or contrary to the principle of muamalah in Islam.

Islamic Bank or Islamic Bank is a bank that was established which aims to avoid problems regarding bank interest, which is feared to contain elements of usury. So far, banks that we know of as conventional banks generally recognize it as interest. So as to avoid the existence of elements of usury, the activities of Islamic Banks lead to Classical Islamic legal institutions such as *mudharabah* and *musyarakah*. This legal system aims to avoid the existence of credit receivable transactions with usury elements.

3. Implementation of Partnerships between Customers and Banks

Islamic banking applies a number of principles that distinguish it from conventional banking systems. One of them is the relationship between Islamic banks and customers. In the conventional banking system, bank relations with customers are seen only as debtors-creditors. This does not apply in Islamic banking. The relationship between banks and customers in the syariah system is divided into several types. The first type is partnership which demands commitment from both the customer and the bank. This is stated in the form of *mudharabah* and *musyarakah* contracts.

The concept of partnership is the position of depositors, users of funds and financial institutions in line with business partners that synergize with one another in order to gain profit. Bukopin's Bank Syariah Director, Riyanto, said that basically the partnership approach between customers and Islamic banks has the concept of mutual benefit because they work together. This is reflected in the rights, obligations, risks and also a balanced profit among depositors, customers who use funds and banks.

Murabahah is the most dominant scheme used in Islamic banking compared to other contracts, because in *murabahah*, banks as intermediary institutions of prudential principles can be applied efficiently so that the risk of bank losses can be minimized.

Based on the description above, the *murabahah* contract when examined in the perspective of the *maslahah* that *murabahah* helps the community to carry out and improve welfare and various activities. Syariah banks need to have *murabahah* facilities for those who need them, namely selling an item by confirming its purchase price to the buyer and the buyer pays it at a price more as profit;

The implementation of revenue sharing in Islamic banks is one of the applications of the proposition of the problematic problem. This can be seen from the Fatwa No. 04/DSN-MUI/IV/2000. In the fatwa there are *maslahah* rules used among them "Basically, all forms of muamalah can be done unless there is an argument that forbids it". *Maslahah* which is a combination of utility and blessing is then framed by *adh-dharurat al-khams*, namely preserving religion, soul, reason, descent and wealth.

The substance of the *murabahah* contract as a product of buying and selling parameters has basically been fulfilled by Islamic banking, but as a whole it has only reached the spirit level and the concept. It means that spiritually and the concept that is expected is that the *murabahah* contract standard is a standard for buying and selling, not a full consumer credit standard. Islamic banks with *murabahah* products are said to be financing products because the financing parameters are first, *murabahah* is included in the category of consumer financing (but not excessive consumptive), meaning that the bank facilitates customers to get goods by the bank buying the goods and selling them in non-cash to bank. This consumer financing installment is not to satisfy all desires or desires of customers. Instead, it is only limited to consumptive as meeting the real needs needed.

V. CONCLUSION

1. The nature of *murabahah* financing in Syariah banking in Indonesia is obtained from the profits derived from the Qur'an, Hadith and Fatwa Ulama which contains Divine values, humanitarian principles, the principle of justice and the principle of balance.
2. *Murabahah* financing provisions in providing benefits for customers have not been fully because the profit margin has been determined at the beginning, the purchase of assets is used as a guarantee and the bank can also ask its clients to provide a certain guarantee. The combination of fixed profits and guarantees ensures that the risk borne by the bank is very small compared to the customer.
3. The concept of *murabahah* financing in the perspective of the principle of legal benefit in Islamic Banking in Indonesia is the achievement of the implementation of Islamic syariah, namely, avoidance of usury, and the application of partnerships between banks and customers.

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