

Application of Murabahah Financing with Debt Transfer (*Take Over*) in Islamic Banking in Indonesia

Hery Dwi Utomo

Duta Bangsa University Surakarta

Author: hery_dwiutomo@udb.ac.id

Abstract. *The level of public trust in the performance of Islamic banking is quite rapid. One of them is because it is based on the principle of ta'awun (helping and cooperation among people for good and benefit) which is in accordance with the ethnographic conditions of the Muslim population in Indonesia. From the author's observation, the need for (take over) Home Ownership Loans is increasing from conventional banks to Islamic banking. The author highlights the debt transfer financing contract (take over) carried out by Islamic banking with the concept of ta'awun. This research uses empirical research to examine and analyze the implementation and application of law in society and sociological research, to look at law from the point of view of formal institutions and understand the law and the empirical behavior of applicable legal operations. the approach used socio legal research. The application of murabahah financing, one of the financing with the principle of sale and purchase (ba'i) in Islamic banking, provides many benefits for lighter installments for customers.*

Keyword: *Akad, Murabahah, take over, Islamic banking.*

INTRODUCTION

In Indonesia there are two types of banking, namely conventional banking and Islamic banking. Islamic banking emerged after the issuance of Law Number 7 of 1992 concerning Banking which implicitly opened up opportunities for banking business activities that have a profit and loss sharing operational basis as the legal basis for the establishment of Islamic banks. Sharia is a guideline used by Muslims to behave in all aspects of life. For Muslims, business activities including the banking business will never be separated from the bonds of Sharia ethics (Muhammad, 2022).

The issuance of the Haram Interest Fatwa from MUI in 2003, which was followed up later with the birth of Law Number 21 of 2008 concerning Islamic Banking, that Islamic banks are banks that carry out their business activities based on sharia principles and by type consist of Islamic

commercial banks and Islamic people's financing banks. In order to carry out its business activities, Islamic banks also provide financing to its customers. The sharia principle in question is that Islamic banks do not apply the interest system in carrying out their business activities.

In Article 25 of Law No.21 of 2008 concerning Islamic Banking and Decree of the Board of Directors of Bank Indonesia Number 32/36/KEP/DIR/1999 concerning Rural Banks Based on Sharia Principles, Islamic banks in carrying out one of their functions, namely as a distributor of funds for the community channel funds through: First, Sale and purchase transactions based on the principles of murabahah, ishtishna, ijarah, salam and other sale and purchase (ba'i). Second, financing based on the principles of mudharabah, musyarakah and other profit sharing. Third, financing based on the principles of hiwalah (transfer of debt), qardh (provision of bill funds), wakalah (representation), kafalah (bank guarantee), and rahn (pawn). Thus, in carrying out its business activities, Islamic banks do not use interest. The rewards given in Islamic banks are based on contracts or agreements as Islamic law by paying attention to the pillars and conditions (Ismail, 2016).

Islamic banking is a banking system developed based on Islamic sharia (law) which popularizes the practice of profit sharing to avoid the practice of usury (interest). The effort to establish this system is based on the prohibition in Islam to collect or borrow with interest or what is called usury and the prohibition of investment in businesses that are categorized as haram, where this cannot be guaranteed by the conventional banking system. This can be seen from the descent of the verses of the Qur'an in succession from: Q.S Al-Baqarah: 275-281, Q.S. Al-Imran: 130-131, Q.S. An-Nisa: 160-161, Q.S. Az-Zumar: 39.

In other cases, Islamic banking applies the principle of murabaha financing because this financing tends to have the least risk and is more secure for stakeholders, because murabaha itself in Islamic banks is generally used as the main method of financing, which constitutes almost seventy-five percent of its assets. This indicates implicitly that although murabaha financing dominates aspects of Islamic banking financing practices, there are still risks that accompany it. In this case, it can be concluded that murabaha can be called an important Islamic banking product and is in demand by the public in general. Meanwhile, in Islamic banks, murabahah itself is based on the fatwa of the National Sharia Council Number 04/DSN-MUI/IV/2000 concerning Murabahah (Saeed. 2018).

The increasing existence of Islamic banking tends to increase public confidence in the implementation of financing. The implementation of financing in Islamic banks has been divided into two, namely takeover financing between banks and mortgage takeover financing (Juwita Anggraini, 2016). Banking customers often transfer financing as an alternative solution to get lighter installments. One of them is through KPR (home ownership credit) takeover from conventional banking to Islamic banking. With the principle of murabaha sale and purchase agreement financing, it is not impossible for Islamic bank mortgage takeovers to make monthly installments lighter.

The term takeover is usually used in KPR (home ownership credit), which is a credit facility provided by conventional banks to customers who want to buy a house. The term take over according to the language is defined as taking over. The term take over according to language is defined as taking over (Echols & Shadily, 2015). In Islamic banking, the provisions regarding take over are explained in the MUI National Sharia Council Fatwa that take over is the transfer of customer debt from conventional banks to Islamic banks. The provisions of Fatwa DSN MUI Number 31/DSN-MUI/VI/2002 provide an explanation that debt transfer is the transfer of customer debt from conventional banks/financial institutions to Islamic banks/financial institutions. Thus what is meant by financing based on takeover is financing that arises as a result of takeover of ongoing non-sharia transactions carried out by Islamic banks at the request of customers (Karim, 2011). From the background described above, the important point that will be discussed in this research is related to the new offer of murabahah financing contract construction with debt transfer (take over) in Islamic banking.

METHOD

This research uses a combination of research methods, namely empirical research to examine and analyze the implementation and application of law in society and sociological research, to look at law from the point of view of formal institutions and understand the law and the empirical behavior of applicable legal operations. Research used with a statutory approach and conceptual approach. The statutory approach is an approach that examines all laws and regulations related to legal issues. This type of research is a prescriptive analysis, namely studying legal objectives, values of justice, validity of legal rules, legal concepts and legal norms (Marzuki, 2017). The approach method used by socio legal research tries to understand an object not from a foreign or external perspective,

but from an internal perspective to respect the specificity and uniqueness of the murabahah financing contract on debt transfer (take over) in Islamic banking.

FINDINGS

Transactions to transfer (take over) financing from conventional banks to Islamic banks are regulated in fatwa No. 31/DSN-MUI/VI/2002 concerning the transfer of debt. In this fatwa, there are four alternative contracts that can be used (DSN-MUI, 2002), namely: Qardh and murabahah

1. Shirkah al-milk and murabahah
2. Qardh and Ijarah
3. Qardh and Ijarah Muntahiya bit-Tamlik

Qardh is a gift to another person that can be repaid or requested again or in other words lending without expecting a return. In classical fiqh literature, qardh is categorized as a tathawwui contract or mutual aid contract and not a commercial transaction. Murabahah is a term derived from Arabic from the root word ribhu which means profit (Asad & Al-Kalali, 2018). Based on the decision of the National Sharia Council of the Indonesian Ulema Council (MUI), DSN-MUI allows murabahah contracts, as outlined in its fatwa number 04/DSN-MUI/IV/2000 (Harmoko, 2019). This fatwa is a legal umbrella and guideline for Islamic banking in Indonesia in carrying out murabahah contracts. According to Iskandar et.al, (2021) the practice of murabahah financing for the transfer of debt (take over) mortgages consists of two direct models and indirect models, including:

1. The direct financing model is that the bank directly gives money to the conventional bank / house seller, without going through the customer. The example is a customer who aims to transfer debt (take over) KPR to Islamic banking. After going through the analysis and survey process, the bank writes a qardh sale-purchase contract between it and the prospective customer. After going through certain calculations, the bank said, "We will pay the transfer of debt (take over) to the conventional bank with the amount of price agreed with the customer. The Islamic bank then pays the amount requested by the conventional bank.
2. The indirect financing model is that the bank only gives money to the customer for the agreed house price, then the customer transfers the debt (take over) to the conventional bank. In this case the bank remains in its office and does not go to the conventional bank.

DISCUSSION

The transfer of debt (take over) carried out by the customer as the debtor in this case results in the transfer of the customer's debt (debtor) from the conventional bank to Bank Tabungan Negara (BTN) Syariah. The transfer of credit or transfer of financing debt (take over) can have legal consequences on the debtor's debt to the old creditor to the new creditor. In this case it is said to be subrogation that occurs due to the agreement as stated in article 1401 of the Civil Code.

For example, the takeover that occurred at Bank Tabungan Negara (BTN) Syariah was carried out at the initiative of the debtor customer. Where the debtor submits an application to Bank Tabungan Negara (BTN) Syariah to take over his existing debt at a conventional bank. Against the debtor's debt, Bank Tabungan Negara (BTN) Syariah made an agreement to borrow money using a qardh contract. So that in this case there has been a new creditor who replaces the old creditor for the debtor's debt with payment. As stipulated in article 1382 of the Civil Code.

Debt agreements made at conventional banks will give rise to receivables which are the rights of the creditor. Debt agreements give rise to additional interest in installment payments and fines in the event of delays in installment payments. Thus there is an agreement that has been agreed upon in the amount of payment, the number of installments and the penalty due in payment. So that there is a debtor's remaining debt (outstanding) to the bank (old creditor) that must be paid.

In contrast, Islamic banking uses a contract, namely qardh as a debt repayment contract for debtors to creditors and a murabahah (sale and purchase) contract with a margin (bank profit) and an object in the contract. For the qardh contract, the bank does not take profit because the qardh contract (money loan) is a type of social contract with no profit. Thus, as a result of the takeover, there is a debt renewal (novation) with a new agreement replacing the old agreement.

The distribution of funds through (take over) in the operational activities of Islamic banks is not a business activity of the investment or commercial banking system but the activities of Islamic banks as managers of social funds, whose functions are optional. Take over in Islamic banks is based on the principle of tabarru or the principle of helping each other as Qardh. Against the qardh contract, Islamic banks are not allowed to take advantage of the transaction. So, for funds channeled in qardh contract activities, Islamic banks may not withdraw from deposit funds in the form of: savings, deposits, and customer current accounts, but must come from the Islamic bank's own internal funds or capital and social funds from customers (Santos, 2021).

Murabahah is a sales transaction of goods by stating the acquisition price and profit (margin) agreed by the seller and buyer. The thing that distinguishes murabahah from the sales we are used to is that the seller clearly tells the buyer how much the cost of the goods is and how much profit he wants (Nurhayati & Abdullah, 2015). Murabaha financing is a sale and purchase agreement in which the bank sells goods to customers in installments in accordance with the purchase price, margin and term determined by both parties. And the purchase price is agreed at the beginning of the contract and applies during the financing period.

According to Article 1 number 13 of Law No. 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Regarding murabahah financing, there are technical provisions found in Article 36 letter b of PBI No.6/24/PBI/2004 concerning Commercial Banks Carrying out Business Activities Based on Sharia Principles, which basically states that banks are required to apply sharia principles and prudential principles in their business activities which include channeling funds through the principle of sale and purchase based on murabahah contracts.

In its position as a form of murabahah financing, it is not a loan financing that is subject to interest as it is in conventional banks, but is practiced as a commodity sale by adding some agreed profits whose payment can be made in the future. For more details, an understanding of the position of murabahah financing and conventional loans can be described in the form of a table below:

Table 1. Differences between Murabahah Financing and Conventional Loans

| Aspects | Murabahah Financing | Conventional Loan |
|--|--|--|
| Contract Type | Sales Contract | Loan Contract |
| Product Description | The client asks the bank to acquire and sell an asset to it | The client asks the bank for a loan and the bank lends an agreed amount of money, charging interest at a fixed or variable rate on the principal amount. |
| Repayment | The bank buys and resells the asset to the client at cost and a markup price, where the initial cost and the markup are known to both parties and mutually agreed upon. Repayment is specified in the schedule and most often deferred, either as a lump sum or as installments. | Payments are specified in the schedule. If the interest is fixed, the schedule will not change during the period. If the interest is variable, the schedule will also be variable. |
| The Bank's Relationship with the asset | A key requirement of murabaha is for the bank to take possession | Conventional banks only lend funds and have no |

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| | of the asset, physically or constructively, and then resell it to the client. In short, the bank sells the asset. | relationship with the asset. In short, the bank sells money. |
| Profit margin for Banks | Banks have a fixed margin since the cost plus markup is decided at the beginning of the contract. | Banks usually have a variable margin, since most often the interest rate varies. Even if the rate is fixed, it is usually fixed for a limited period of time and then becomes variable. |
| Asset-related Risks for Banks | If the assets delivered by the vendor have defects or shortcomings, the bank bears the risks and costs as the owner. | The bank only provides the funds; the client is the owner of the asset and bears all risks or costs of defects or shortcomings of the asset delivered by the vendor. |
| Payment Extension | The bank can extend the date of but no additional markup or penalty can be charged. | An extension of the repayment date is technically an extension of the the loan and will lead to an increase in interest |
| Early Payment Discount | Early payment discounts cannot be incorporated into the Murabahah contract in accordance with Shariah law and cannot be mandatory. The bank may provide the discount on a voluntary basis | In most loan contracts, early payment discounts are already in place and early payment also leads to less interest charges. |
| In Case of Default | The bank can sue the client and demand payment. | Banks can demand payment as well as additional fees. |

Source: Author

In the takeover process using a murabahah contract scheme, a sale and purchase agreement (murabahah) is carried out by selling the murabahah object to the bank and the bank resells the object to the customer with a murabahah contract. The contract is carried out with an agreement agreed by both parties. Furthermore, in the takeover process, the sale and purchase agreement (murabahah) is carried out if the qardh contract has been completed and the object has been handed over from the conventional bank to the customer. As for the practice in Islamic banks, ownership of the object in the sale and purchase (murabahah) is not followed by the binding of collateral for the murabahah object.

Islamic banks have a very important role in advancing the real sector. This is because the operationalization of sharia banks is based on the principle of developing the principle of ta'awun (helping and cooperation among the community for good and benefit). Sharia banks socialize the practice of profit sharing to avoid the practice of usury (interest).

Murabahah financing is one of the financing with the principle of sale and purchase (ba'i) in Islamic banking. The principle of buying and selling (ba'i) is the principle of buying and selling which is carried out in connection with the transfer of ownership of goods or objects (transfer of property), where the level of profit is determined in advance (at the beginning) and becomes part of the price of the goods sold. Sale and purchase transactions can be distinguished based on the form of payment and delivery time (Djazuli, 2002). The main principles of Shariah banks consist of the prohibition of usury in all types of transactions, the implementation of business activities on the basis of equality, fairness, and transparency, the establishment of mutually beneficial partnerships, and the obligation to obtain halal business profits (Indonesian Bankers Institute, 2001).

Since the beginning of Islamic history, Muslim societies have never legalized usury (including interest). Muslim society manages its economy and organizes its domestic and international trade without the institution of interest. Profit-sharing and various types of participation systems served as a viable basis for savings and investment, and considerable capital was raised for mining, shipbuilding, textiles and other industries, as well as for maritime trade.

Muslim societies were introduced to interest-based banking when colonial regimes colonized Muslim countries (al-Siddiqi, 1984). The absence of an Islamic financial system at that time forced the Muslim community to accept the interest-based system, making it almost impossible for businesses to develop without the involvement of interest-based banking. The existence of interest-based banking responded to several Muslim scholars and intellectuals. Hence, the idea of reform to establish Islamic banking.

CONCLUSION

Murabahah financing with debt transfer (take over) in Islamic banking with the concept of ta'awun is an important issue to provide input to the development of Islamic economics. When arranged into the practice of the contract, there are 4 (four) important components that must be prioritized, namely the perpetrator of the sale-purchase contract (ba'i), sighat (ijab qabul), the object of the contract (ma'qud alaih), and the purpose of the sale-purchase. The debt transfer financing agreement (take over) is contained in a contract of mutual agreement between the parties. Integrating the value

of ta'awun can be interpreted into the values of justice, togetherness, equity and utilization for the parties to the contract.

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