

## RINGKASAN

### Prinsip Jual Beli Pada Pembiayaan Murabahah di Bank Syariah Oleh Liliek Istiqomah

Salah satu fenomena ekonomi yang mendesak untuk ditanggulangi adalah interaksi umat Islam dengan bank. Bank-bank konvensional yang ada menawarkan sistem bunga, sedangkan Islam melarang adanya riba oleh karena itu lembaga perbankan yang Islami yang bebas dari praktek-praktek riba sangat dibutuhkan, sehingga umat Islam dapat menyalurkan investasi yang sesuai syariah. Esensi bank Islam tidak hanya dilihat dari keadaan sistem riba dalam seluruh transaksinya tetapi di dalamnya terdapat sistem yang membawa manusia mendapatkan kebahagiaan lahir batin. Salah satu prinsip kegiatan usahanya adalah prinsip jual beli dengan margin keuntungan (*bai al murabahah*).

Dari latar belakang tersebut diatas permasalahan yang dikaji dalam penelitian ini adalah bagaimana konstruksi hukum akad jual beli pada pembiayaan murabahah dan bagaimana upaya hukum penyelesaian pembiayaan murabahah bermasalah dengan jaminan fidusia.

Penelitian ini merupakan penelitian hukum normatif. Pendekatan masalah yang digunakan dalam memberikan jawaban terhadap permasalahan yang dibahas adalah dengan pendekatan perundang-undangan dan pendekatan konseptual serta wawancara dengan pihak terkait. Analisis dilakukan dengan cara deskripsi yang bersifat kritis.

Sebagai hasil dari penelitian ini pada intinya menyimpulkan bahwa konstruksi hukum akad jual beli pada pembiayaan murabahah terdiri dari akad pertama yaitu akad jual beli yang terjadi antara bank dengan pemasok barang. Akad yang kedua adalah akad murabahah yaitu terjadi antara bank dengan nasabah. Perjanjian ini merupakan perjanjian pokok akibat adanya akad murabahah sehingga menimbulkan perjanjian hutang-piutang karena pembayaran dilakukan secara tangguh. Selanjutnya diikuti dengan perjanjian pengikatan jaminan dengan fidusia yang merupakan perjanjian ikutan (*assesoir*). Upaya hukum penyelesaian murabahah bermasalah dilakukan dengan tindakan penyelamatan melalui Komite Pembiayaan dan restrukturisasi. Penyelesaian pembiayaan murabahah melalui Badan Arbitrase Syariah, penjualan jaminan, eksekusi jaminan, ketentuan denda, pailit atau bangkut dan penutupan asuransi syariah, untuk menghindari beban resiko yang tidak diharapkan atau diluar kemampuan nasabah. Sebagai saran perlu segera diterbitkan undang-undang Perbankan Syariah dan perangkat hukumnya sebagai pijakan dan pedoman dalam melakukan kegiatan perbankan syariah. Dalam menyelesaikan sengketa harus menggunakan Badan Arbitrase Syariah yang putusannya bersifat final dan mengikat para pihak, sebab di dalam praktek masih menggunakan lembaga Peradilan Negeri.

## SUMMARY

### The Principles of Transaction in *Murabahah* Costs at The *Syariah* Bank

By: Liliek Istiqomah

Recently in Indonesia, the economic interaction of Moslem society and the bank institution has been increasing and becoming one of the phenomena that needs to be solved without delay. The existing conventional banks propose the interest rate system that is prohibited in Islam since it is categorized as *riba* (excessive interest or usury). On the other hand, Moslems need to be sure that their transaction with the bank will be profitable in line with the Islamic *syariah*. To cater the need of the Moslem society to do business securely in an Islamic bank, a bank in which Moslems will not be worried about the interest, it is essential then to systematize such kind of bank. This kind of bank is *Syariah* Bank that operates on interest-free basis in dealing with all transactions, so the Moslems would be comforted for it, corresponds with the Islamic law or Islamic *syariah*. The essential of the Islamic banks is not only be looked upon its *riba*-free system in all level of the transactions, but most importantly this system implies means that point human being in the right direction to contentment of inner self and the outer world. One of its operating business principles is the principle of selling and buying or transaction in marginal profit (*bai al murabahah*).

Based on the aforementioned background, this research is intended to investigate on: (1) How is the construction of the contract law (*hukum akad*) of transaction in *murabahah* costs?; (2) What juridical actions need to be implemented in order to solve the *murabahah* cost transaction which is conflicting with *fidusia* collateral?

This present research is a normative law research that is intended to investigate the principles of selling and buying or transaction in *Murabahah* Costs at the *Syariah* Bank. It is determined as the topic of this research since the Moslems need to be guaranteed that the transaction they do is *riba*-free (excessive interest or usury). The approach used to seek answers of the research problems is normative approach and conceptual approach. To obtain the supporting information needed, interviews with the related individuals were also undertaken. The interviewees are the bank officers and the consumers. The collected information then was thoroughly analyzed and is expressively accomplished in descriptive critical way.

Based on the analysis, the research results indicate that the construction of the contract law of transaction in *murabahah* costs is consisted of two contracts. The first contract is a transaction between the bank and the supplier. The second one is the *murabahah* contract between the bank and the consumer. This is the primary contract as the result of the *murabahah* contract, which then followed by issuing debit and credit contract because the payment will be in mortgage.

Afterwards the contract is added with the bound collateral contract with fidusia which is an inclusive agreement (*assesoir*)

The juridical efforts needed to solve the discrepancy of *murabahah* is done by undertaking the security action by The Financial Committee and restucturization. The resolution of the *murabahah* costs is sorted out by The Body of *Syariah* Arbitrary, selling the collateral executing the collateral, stipulating the fine, declaring loss or bankruptcy and closing the *syariah* insurance, to avoid the burden of inconvenient risk or it is beyond his/her ability to pay.

There is a couple of things need to put forward, that the Law of *Syariah* Bank and its equipment is adequately required to materialize so as to ensure the arrangement of the contract and can be used as a guide for doing business with the *Syariah* Banks. It must use The Body of *Syariah* Arbitrary to solve the dispute that appear, which it decision is final and binds the actor, because it still use the institution of state court in the practice.

## ABSTRACT

### The Principles of Transaction in *Murabahah* Costs at The *Syariah* Bank

By: Liliek Istiqomah

This present research is a normative law research that is intended to investigate the principles of selling and buying or transaction in *Murabahah* Costs at the *Syariah* Bank. It is the focus of this research because the Moslems need to be guaranteed that the transaction they do with the bank will be *riba*-free (excessive interest). The research consists of the following problems: (1) How is the construction of the contract law (hukum akad) of transaction in *murabahah* costs?; (2) What juridical action need to be done in order to solve the *murabahah* cost transaction which is conflicting?

The research methods applied are normative and conceptual approach that is to look the problem from the law itself. Interview with the related parties is also conducted to get the supporting information on the phenomenon. The interviewees are the bank officers and the consumers. The collected information then was analyzed using conceptual approach and is critically completed in explanatory manner.

The research give details about a cost agreement in which the bank will pay the items that consumer have purchased. The consumer will pay it in mortgage in an agreed length of time. Practically, the transaction is administered in either way. The *Syariah* bank directly buys the intended article, or it authorizes the consumer to purchase it on its behalf based on the *wakalah* principle. At the same moment, the bank sells the purchased article to the consumer at the same cost price but will be added with the profit (mark-up) that is approved to repay at the arranged period. The nature of the profit taken by the bank is constant, which means that it neither is increasing nor decreasing and would not be influenced by the fluctuating value of *rupiah* currency against the American dollar as it is the case in the conventional banks. This condition is effective until the consumer pays off the loan to the bank.

The *Syariah* Bank also makes active the collateral system. The collateral is the article the consumer has bought on behalf of the bank by using *fidusia* collateral system. The status of the item is as the security for the bank. The purchased item would still be guaranteed, until it is paid off.

Key words: principles of transaction, *murabahah*, mortgage, collateral