

## SUMMARY

According to the Sharia Principle Law No. 21 of 2008 concerning Sharia banking, Article 1 Point 12 , is "the Islamic law principle in Banking activities based on the fatwa issued by The Institute who has authority in the field of Sharia fatwa Determination". Principles of Sharia must become top platform to arrange murabahah agreement, because it concerns related to rights and liabilities has agreed a pre agreement, the contents of the contract and Implementation of Murabahah agreement.

Characteristics of Murabahah agreement is a purchase, furthermore to formulating murabahah agreement as part of activities of sharia banking products should apply the Sharia principles to be used as a foundation and foothold in drawing up the agreement substance. As for the principles that should be avoided in preparing the murabahah agreement is not to be an element of riba, gharar, gambling, illicit and dzalim. While the principles in preparing murabahah agreement are the principle of the divine or the principle of tawhid (ilahiyah), the principle of justice (Al - adalah), the principle of help each other (Ta'awun), the principle of stead (Maslahat), the principle of freedom (Al - Huriyah), the principle of equality or equality (Al - Musawah), the principle of willingness (Ar - Ridlo), the principle of honesty and truth (As-Siddeeq), the principle of written (Al - kitabah).

Substantially, the nature of Agreement is the relationship between consent and granted which is justified by Syara' which creates legal effect to the object. While, murabahah is definition in Islamic jurisprudence which means a certain form of purchase when the seller makes the cost of acquisition of goods, including the price of goods and other costs incurred to acquire such goods, and the rate of expected profit (margin).

The elements contained in the murabahah agreement, namely: 1) the consent and granted, the consent and granted in the contract to perform an *muamalah* action can be arguably as the agreement. The agreement in the murabahah agreement can be made by writing and orally. 2) Agreement do not contravene with the *shari'a* or matters set forth in the Qur'an and *Hadith*. 3) have a legal effect on the object. 4) There must be the party of the seller and the buyer. 5) The object of the murabahah agreement consists of objects, both tangible and intangible, movable or the immovable and any registered and unregistered.

In carrying out a murabahah agreement, there are pillars and conditions to be met, harmony and these requirements are : 1) Subject murabahah can consist of human and legal entities. 2) there are requirements of the object of murabahah that must be met include the object of the contract should have been there when the ceremony was held, the object is justified by the Sharia, should be clear and recognizable object, the object must be handed over.

The purpose of murabahah is a very important thing in a contract which is executed. In Islamic law with the purpose of the agreement is for a contract made by a person with another person in order to execute a *muamalah* between humans and which determine the legal effect of a contract is Allah himself . In other words. The legal consequences of a contract must be known through the *syara'* and should be in line with the will of *syara'*. If the contract is contrary to the *syara'* then the contract is not valid and does not give rise to legal consequences.

Murabahah agreement is a contract that is permitted by Islamic law (*syara'*), and supported by a majority of scholars from among the Companions , Tabi'in as well as the scholars of various sects and streams. The legal basis in the murabaha agreement is contained in the Qur'an, the Hadith and the Fatwa of National Sharia Board .

As already described in the legal basis of murabahah agreement contained in the Al - Quran, hadith and ijma Scholars as well as selling basic (*Ba'i*) and buy (*musytari*). The subjects of law in a contract which the parties of the contract can arise from human or legal entities, which need to be in the position of the party that is the subject of law in murabahah is proficiency act (*ahliyah*), authority (*region*), and representatives (*wakalah*) of the subject of the contract. If this is fulfilled, the contract has a value Murabahah made law is justified by *Syara'* .

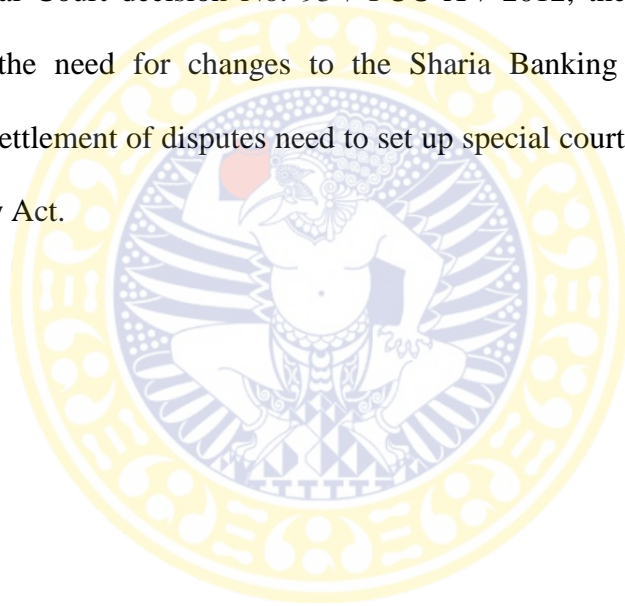
The findings in this the dissertation research is the first, because the characteristics of Murabahah agreement is a sale and purchase where the customer as the representative of the Islamic Banking as a third party as a seller (*ba'i*),

while the customer as a buyer (*musytari*), therefore the need to standardize the preparation of Murabahah Agreement, this is to avoid the practice of the two transactions with a contract, it should be the banks while providing customers expected item.

Second, the murabahah agreement is a formulation of wishes of the parties that made the contract. Further described in words and sentences or legal language that can be understood by the parties. In substance murabahah contains about capital murabahah agreement, management contract of murabahah agreement, period of murabahah agreement, payment of rebates or discounts, advance payment, cancellation murabahah, failure murabahah, improvement and change murabahah, circumstances difficult (*mufliis*) if it happen. Special to the problem of difficult circumstances (*mufliis*), time to be viewed objectively, if the customer declined payment capability can restructure the financing, to efforts to minimize losses or face situation with the *mufliis* and if they do not produce results in the face of circumstances *mufliis*, the last attempt to done is to remove the book or delete bill taken from the reserve fund created by the Islamic bank. All substances must be clearly and in detail in a murabaha contract, it is intended that does not pose a problem of poverty or the new and future cases.

The Sharia banking has its own characteristics, as in operational practice is supervised directly by the name of Sharia Supervisory Board (DPS) and the role task is extremely determine the legitimacy of the products issued by the Sharia Banking. Furthermore, because it has a characteristic, then the future if there is a

problem that the dispute then the dispute settlement process can be done in two ways, first through litigation, the Second, dispute resolution non litigation. Settlement through the courts to do in court unless the parties Religious freedom determines the means of dispute resolution, while outside the court completion can be done through consultation, banking mediation or BASYARNAS. Based on the Constitutional Court decision No. 93 / PUU-X / 2012, the abolition of the General Court the need for changes to the Sharia Banking Act especially concerning the settlement of disputes need to set up special court sharia, while the establishment by Act.



## RINGKASAN

Prinsip *syari'ah* menurut Undang-undang Nomor. 21 Tahun 2008 tentang Perbankan *Syari'ah*, Pasal 1 angka 12, adalah ”*prinsip hukum Islam dalam kegiatan perbankan berdasarkan fatwa yang dikeluarkan oleh lembaga yang memiliki kewenangan dalam penetapan fatwa dibidang syari'ah*”. Prinsip *syari'ah* harus menjadi landasan utama dalam menyusun akad *murabahah*, karena menyangkut dengan hak dan kewajiban yang telah disepakati dalam sebelum membuat akad, isi akad dan pelaksanaan akad *Murabahah*.

Karakteristik Akad *Murabahah* adalah jual beli, karena itu dalam merumuskan akad *murabahah* sebagai bagian dari kegiatan produk perbankan *syari'ah* harus menerapkan prinsip-prinsip *syari'ah* untuk digunakan sebagai landasan dan pijakan dalam menyusun substansi akad tersebut. Adapun prinsip-prinsip yang harus dihindari dalam menyusun akad *murabahah* adalah tidak boleh mengandung unsur *riba*, *gharar*, *maisir*, haram dan dzalim. Sedangkan Asas-asas dalam menyusun akad *murabahah* tersebut yakni asas tauhid (*ilahiyah*), asas keadilan (*al-adalah*), asas saling tolong menolong (*ta'awun*), asas manfaat (*maslahat*), asas kebebasan (*al-huriyah*), asas persamaan atau kesetaraan (*al-musawah*), asas kerelaan (*ar-ridlo*), asas kejujuran dan kebenaran (*as-shidiq*), asas tertulis (*al-kitabah*).

Secara substansi hakikat Akad adalah pertalian antara ijab dan kabul yang dibenarkan oleh *syara'* yang menimbulkan akibat hukum terhadap objeknya.

Sedangkan *murabahah* adalah istilah dalam *fiqh* Islam berarti suatu bentuk jual beli tertentu ketika penjual menyatakan biaya perolehan barang, meliputi harga barang dan biaya-biaya lain yang dikeluarkan untuk memperoleh barang tersebut, dan tingkat keuntungan (*margin*) yang diinginkan.

Adapun unsur yang terkandung di dalam akad *murabahah* yaitu 1) ijab dan kabul, ijab kabul dalam kontrak untuk melakukan suatu tindakan *muamalah* adalah dapat dikatakan sebagai kesepakatan. Kesepakatan dalam akad *murabahah* dapat dilakukan dengan tulisan dan lisan. 2) Akad dilakukan tidak boleh bertentangan dengan *syari'ah* atau hal-hal yang diatur dalam Al-Qur'an dan Hadits. 3) Mempunyai akibat hukum terhadap objeknya. 4) Harus ada para pihak yaitu penjual dan pembeli. 5) Objek akad *murabahah* terdiri atas benda berwujud maupun tidak berwujud, bergerak maupun tidak bergerak dan terdaftar maupun tidak terdaftar.

Dalam melaksanakan suatu akad *murabahah* terdapat rukun dan syarat harus dipenuhi, rukun dan syarat tersebut adalah 1) Subyek akad *murabahah* bisa terdiri dari manusia dan badan hukum. 2) Obyek akad *murabahah* terdapat syarat-syarat harus dipenuhi diantaranya adalah objek akad harus telah ada ketika akad dilangsungkan, obyeknya dibenarkan oleh *syari'ah*, obyeknya harus jelas dan dikenali, obyeknya harus dapat diserahkan.

Tujuan akad *murabahah* merupakan suatu hal sangat penting dalam sebuah akad yang dilaksanakan. Dalam hukum Islam tujuan akad adalah untuk suatu kontrak dilakukan oleh seseorang dengan orang lain dalam rangka melaksanakan

suatu muamalah antara manusia dan menentukan akibat hukum dari suatu akad adalah Allah sendiri. Dengan kata lain, akibat hukum dari suatu akad harus diketahui melalui *syara'* dan harus sejalan dengan kehendak *syara'*. Apabila akad tersebut bertentangan dengan *syara'* maka akad tersebut tidak sah dan tidak menimbulkan akibat hukum.

Akad *murabahah* merupakan suatu akad diperbolehkan oleh hukum Islam (*syara'*), serta didukung oleh mayoritas ulama dari kalangan sahabat, *Tabi'in* serta para ulama dari berbagai mazhab dan aliran. Landasan hukum dalam akad *murabahah* ini terdapat di dalam Al-Qur'an, Hadits dan Fatwa Dewan *Syari'ah* Nasional.

Seperti sudah dijelaskan di atas dasar hukum akad *murabahah* terdapat di dalam Al – Qur'an, Hadits dan ijma Para Ulama begitu juga sama halnya dengan dasar jual (*bay'*) dan beli (*shira'*). Subyek hukum dalam suatu akad yaitu para pihak atau pelaku akad dapat timbul dari manusia atau badan hukum, perlu diperhatikan dalam kedudukan para pihak yaitu subjek hukum dalam akad *murabahah* adalah kecakapan bertindak (*ahliyah*), kewenangan (*wilayah*), dan perwakilan (*wakalah*) dari subjek akad tersebut. Apabila hal ini terpenuhi, maka akad *murabahah* yang dibuatnya mempunyai nilai hukum yang dibenarkan oleh *syara'*.

Temuan dalam penelitian disertasi ini adalah *pertama*, karakteristik akad *Murabahah* adalah jual beli yang mana pihak nasabah selaku wakil dari bank *syari'ah* sementara pihak ketiga sebagai penjual (*bayie*), sedangkan pihak nasabah



sebagai pembeli (*musytar*), oleh karena itu perlunya standarisasi penyusunan Akad *Murabahah*. Hal ini untuk menghindari praktek dua transaksi dengan satu akad, maka semestinya pihak perbankan sekaligus menyediakan barang yang diinginkan nasabah.

Kedua, akad *murabahah* merupakan formulasi keinginan para pihak pembuat akad. Selanjutnya diuraikan dalam kata dan kalimat atau bahasa hukum yang dapat dimengerti oleh para pihak. Dalam substansi akad *murabahah* tersebut berisi mengenai barang dan harga akad *murabahah*, penerapan akad *murabahah*, jangka waktu akad *murabahah*, pembayaran potongan harga atau diskon, uang muka, pembatalan akad *murabahah*, kegagalan akad *murabahah*, perbaikan dan perubahan akad *murabahah*, keadaan sulit (*muflis*) apabila itu terjadi. Khusus terhadap masalah keadaan sulit (*muflis*), saatnya dilihat secara obyektif, apabila nasabah mengalami penurunan kemampuan pembayaran dapat melakukan *restrukturisasi* pembiayaan, untuk upaya meminimalisasikan kerugian atau menghadapi keadaan *muflis* dan apabila dengan tersebut masih tidak membuahkan hasil dalam menghadapi keadaan *muflis*, maka upaya terakhir yang dapat dilakukan adalah dengan hapus buku atau hapus tagih yang diambil dari dana cadangan yang dibuat oleh bank *syari'ah*. Semua substansi-substansi tersebut harus diatur secara jelas dan terinci dalam akad *murabahah*, hal ini bertujuan agar tidak menimbulkan suatu permasalahan kemiskinan baru dan atau perkara dikemudian hari.

Dalam hal penyelesaian sengketa pada perbankan *syari'ah* khususnya pelaksanaan akad *murabahah*, apabila dikemudian hari terjadi suatu permasalahan yaitu sengketa maka proses penyelesaian sengketa tersebut dapat dilakukan melalui dua cara, *pertama* melalui litigasi, *kedua*, penyelesaian sengketa non litigasi. Penyelesaian melalui jalur pengadilan dilakukan di Pengadilan Agama kecuali para pihak atas kebebasan menentukan cara penyelesaian sengketa, sedangkan penyelesaian diluar pengadilan dapat dilakukan melalui musyawarah, mediasi perbankan atau BASYARNAS. Berdasarkan Putusan Mahkamah Konstitusi No 93/PUU-X/2012, dihapusnya penyelesaian melalui Pengadilan Umum perlu adanya perubahan Undang-undang Perbankan *Syari'ah* terutama yang menyangkut penyelesaian sengketa perlu dibentuk peradilan khusus *syari'ah*, sedangkan pembentukannya dengan Undang-undang.

## ABSTRACT

### SHARIA PRINCIPLES IN MURABAHAH AGREEMENT IN ISLAMIC BANKING

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This dissertation title : “Sharia principles in Murabahah Agreement in Islamic Banking”. In this dissertation, the writer suggested the function and nature of Islamic principles (Sharia), which as a foundation in formulating the contract in Islamic banking, Islamic banking As known together as the intermediary financial institution. In carrying out Islamic banking should be submissive and obedient to Islamic Principles (Sharia) compliance, which in Islamic banking supervision established National Islamic principles (Sharia) board of supervisors.

The Characteristics of murabahah contract is a form of sale, where the sale and purchase of the benefit provisions agreed by all parties. For further the customer will have the representative of Islamic banking to buying and selling to the third party. The model and type of this research is using Legal research type, the problem approach is done with the law approach, conceptual approach, case approach.

The research findings of this paper is, first, the formulation of Murabahah contract can be run as appropriate to ensure the Islamic principles (Sharia). then just one contract of Murabahah transactions in a single transaction, which is the customer just makes murabahah with Islamic banking. So it shall not involve a third party, because it will be more efficient as economically. Secondly, for the formulation of Murabahah contract with Islamic principles (sharia), especially on the state of bankruptcy must be put forward to the next state of completion for the Customer's bankruptcy as highlighting the completion of the using funds drawn from the reserve fund created by the Islamic bank, it is not executed directly by mortgage right model encumbrance as applicable today. The formulation of Murabahah on dispute settlement should be established special courts on the grounds of Islamic principles (sharia) law, and those who are not Muslim should be submissive and obedient to the rules of Islamic banking.

**Keywords : Sharia Principles, Murabahah Agreement, Islamic Banking.**