

## **Contract Engineering in OTO Financing Products at Bank Syariah Indonesia**

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### **Abstract**

Currently, Islamic banking in Indonesia is part of the main financial services sector that is entering a new phase. Growth so that it really needs the loyalty and trust of the community. This loyalty and trust transformed Islamic banks before entering the maturity phase. This includes financing the procurement of motor vehicles that can ease the community. The purpose of this research is to find out what contracts are contained in the financing. Is the theory in accordance with the practice in the field? The results of this study concluded that there was contract engineering in OTO financing at Sharia Banks, making it widely criticized by the public. If in practice two contracts are used, it must be explained at the beginning, and the gem contract must be adjusted, however, what happens in the field is not as written. Therefore, the author concludes that OTO financing is contrived by the contract and is not in accordance with sharia.

[Saat ini, perbankan syariah di Indonesia merupakan bagian dari sektor jasa keuangan utama yang sedang memasuki fase baru pertumbuhan sehingga sangat membutuhkan loyalitas dan kepercayaan masyarakat. Loyalitas dan kepercayaan tersebut menjadi faktor penting dalam mendorong transformasi perbankan syariah sebelum memasuki fase kematangan. Salah satu bentuk layanan yang ditawarkan adalah pembiayaan pengadaan kendaraan bermotor yang dapat memberikan kemudahan bagi masyarakat. Tujuan penelitian ini adalah untuk mengetahui jenis akad yang digunakan dalam pembiayaan tersebut serta menilai apakah teori yang mendasarinya sesuai dengan praktik di lapangan. Hasil penelitian menunjukkan adanya rekayasa akad dalam pembiayaan OTO di Bank Syariah sehingga menuai banyak kritik dari masyarakat. Apabila dalam praktik digunakan dua akad, maka harus dijelaskan sejak awal dan ketentuan setiap akad harus disesuaikan, namun kenyataan di lapangan tidak sesuai dengan ketentuan tertulis. Oleh karena itu, penulis menyimpulkan bahwa pembiayaan OTO direkayasa melalui akad dan tidak sesuai dengan prinsip syariah.]

**Keywords:** Contract Engineering, OTO Financing, Sharia Bank.

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## INTRODUCTION

Islamic banking has grown rapidly since Law No. 7 of 1992, which was later amended into Law No. 10 of 1998, establishing the legal basis for banking operations to ensure the legality of Islamic banks and provide wider room for Islamic banks, this law shows the monetary authority of Bank Indonesia.(Zulheti, 2023)

Islamic banking in Indonesia is part of a major financial services sector that is entering a new phase of growth and is in dire need of community loyalty and trust. This loyalty and trust transformed Islamic banks before entering the maturity phase. Islamic banking has many roles and functions, one of which is to refine Islamic banking operations to increase Muslim awareness of sharia and expand its market share as well as establish cooperation with scholars because the role of scholars is very important for the lives of Muslims, especially Indonesia.

Islamic banks are developing so quickly and rapidly that there are some people who think it is just a name used to attract the sympathy of the Muslim community in the banking sector. They consider Islamic banks as conventional banks that use Islamic terms with the head of contract with the phrase *Bismillahirrahmanirrahim* and employees who dress in Islamic clothes and say greetings, but still use contracts using methods that are forbidden by religion, according to the public's opinion about Islamic banking it is clear because of its relationship with banking, from the beginning it is indeed different from sharia, so many people are skeptical of its success Islamic banking. Islamic economics that seeks to unify the banking system with sharia law.(Al-Fajri, 2023)

According to Law Number 10 of 1998, financing is the handover of money or similar bills to customers in accordance with an agreement made between the bank and the customer, or an agreement that requires the customer to return the money or bill. Issue deadlines to the bank within a certain period of time. Financing is divided into two categories based on its type, the first being consumptive financing is a type of financing used to meet consumer needs in terms of goods. For example, vehicle financing, home ownership financing, business ownership financing and so on. Second, productive financing is a type of financial application that is used to meet consumer demand in the manufacture of products. Examples of the use of this financing are financing the inventory of commercial companies, financing of production materials, and others.

In the context of Islamic banking in Indonesia, motor vehicle cultivation is one of the products that attracts attention from both banks and customers. Bank Syariah Indonesia as one of the leading Islamic financial institutions in the country, offers OTO financing products that use the murabahah contract. This contract is a form of buying and selling transactions that are allowed in Islamic sharia. Where the bank buys the vehicle and sells it to customers with an agreed profit margin.

In the writings of Yulesva and Neti Zulheti, the mechanism of the "BSI OTO" motor vehicle at Bank Syariah Indonesia KCP Muara Bungo is very simple and does not take long from application to disbursement of financing. In carrying out its operations, Bank Syariah Indonesia KCP Muara Bungo applies the murabahah contract to the motor vehicle financing product "BSI OTO" in accordance with the regulations stipulated in the DSN-MUI fatwa No. 04/DSN-MUI/IV/2000. Where the contract process is free from riba because the addition to the contract is the bank's profit, and the goods traded are halal according to Islamic law. The use of murabahah contracts in the implementation of BSI

OTO financing services at Bank Syariah Indonesia KCP Muara Bungo is in accordance with Islamic law. However, the murabahah contract is not fully used because there is a wakalah contract in it.(Zulheti, 2023)

In the writings of Ika Ramadani and Mustafa Kamal, the BSI OTO mechanism at Bank Syariah Indonesia KCP Medan Padang Bulan in the implementation of the murabahah contract is in accordance with sharia. However, it is not 100% in accordance with the existing theory. In the process, there is a wakalah contract used by BSI KCP Medan Padang Bulan to delegate the bank to the supplier.(Mustafa Kamal Rokan, 2022)

In M. Fadiel's writing, the implementation of the murabahah contract in the implementation is in accordance with the theory, but not one hundred percent in accordance with the theory because there is a wakalah contract in its implementation.(Al-Fajri, 2023)

The above discussion concludes that there is a wakalah contract in banking practice in the financing of murabahah contracts in BSI OTO products. Bank Syariah Indonesia KCP Adisucipto also allows the wakalah contract to take place.

From the discussion above, this study aims to examine more deeply the contract engineering in OTO financing products at Bank Syariah Indonesia, as well as to evaluate the implementation and mechanisms used in the financing process.

Contract engineering in Islamic banking products is a transaction that is carried out by combining several or more contracts, which is called a multi-contract or *hybrid contract*. An agreement is an agreement or agreement between two parties who submit and receive. In Islamic sharia, the contract is very important to distinguish between halal and haram transactions. The contracts that are often used in Islamic banking are, wadiah, mudharabah, musyarakah, murabahah, salam, istishna, ijarah, ijarah muntahiya bit tamlik.(Hasan, 2017)

In practice, the OTO financing mechanism at Bank Syariah Indonesia shows convenience for customers in the process of applying to disbursing funds. However, the implementation of the murabahah contract is not always done purely in a pure way. Most Islamic financial institutions, including Indonesian Islamic banks, also integrate wakalah contracts in the process. Therefore, it raises questions about the suitability of the practice with the sharia principles that govern financial transactions.

## **METHOD**

The research with the title "Akad Engineering in OTO Financing Products in Indonesian Sharia Banks" uses a type of library research which is a data collection technique that is carried out by studying books, literature, records, and reports related to the problem to be solved.(Sari, 2020)

A descriptive-analysis method was used in this study. The primary data sources of this research consist of theses, dissertations, scientific journal articles, policy reports, and official documents related to the engineering of motor vehicle procurement contracts at Sharia Banks.

From these various data sources, relevant and or near-relevant data will be identified, sorted, and reviewed, then a critical evaluation of the data that has been obtained will be carried out to be able to measure the level of reliability so that conclusions can be drawn in accordance with the problems about contract engineering in the Islamic bank.

## **RESULTS AND DISCUSSION**

### **Contract engineering**

The fabrication of akad or hillah ribawi can be part of multiple contracts that are prohibited in Islamic law. According to Dr. Nazih Hammad, multiakad is an agreement

between two parties to carry out a contract that contains two or more contracts, such as buying and selling with lease, hibah, wakalah, qardh, muzara'ah, sharf, shirkah, mudharabah and others. So that all the legal consequences of the collective contracts, as well as all the rights and obligations they entail, are seen as an inseparable unit, as the legal consequences of a contract.(Adam, Hadiyanto, and Yulia, 2020)

Meanwhile, Abdullah al-Imrani argues that multiakad is a collection of several material contracts contained by a contract, either jointly or reciprocating so that all the rights and obligations it entails are seen as a legal consequence of a contract.

Al-; Imrani divides multi-contracts into five types, including:

1. Contract is dependent/conditional. This contract has been known for a long time and in its implementation it has been widely practiced. For example, between the mu'awadhabah (exchange) contract and the tabarru' (social) contract,
2. Accumulated contracts are multiple contracts that are collected in one contract. Two or more contracts are grouped together in one contract. For example, mudharabah bil wadiah
3. Opposite contract
4. A different contract is the collection of two or more contracts that have differences in all legal consequences between the two contracts or part of them.
5. Similar contracts are contracts that are compiled in one contract without affecting the law and its legal implications.(Adam, Hadiyanto, and Yulia, 2020)

The law of multi-contract scholars differ in their opinions, especially related to the law of origin. What is meant in the original law here is the rule, namely, *al-ashlu fi mu'amalah al-ibahabah* (the original law of muamalah is permissible). The scholars who allow multi-contract are the majority of Hanafiyah scholars, some of the opinions of Malikiyah scholars, Shafiiyah and Hanbali scholars. It is said that the law of origin of buying and selling is halal if there is no evidence that prohibits it. Because all activities related to the effort to produce it or develop it are allowed as long as there is no evidence that prohibits it.

This opinion is based on several nash that show the ability to multi-contract and contract in general, namely in the words of Allah QS Al-Maidah verse 1:

"O you who have believed, fulfill your contracts".

In this verse, Allah commands that believers fulfill the covenant between them. The word contract is mentioned in general, it does not refer to a specific contract. This means that in principle all contracts are allowed by Allah and believers are obliged to fulfill that contract. Another Nash in Surah An-Nisa verse 29:

"O you who have believed, do not eat the wealth of one another unjustly, except for the sake of business, based on mutual will among you."

The above verse explains that in business only consensual is required. This means that consensuality is the basis of halalness to obtain something. If willingness is the basis for halal, then every activity based on willingness becomes halal based on the instructions of the Qur'an, as long as it does not contain something that is prohibited such as trading on prohibited objects, pigs, khamr, unclean goods and so on. From this, it can be concluded that the law of origin of the contract is permissible. Other verses in surah Al-Baqarah: 275 "Allah legalizes buying and selling and prohibits usury".

Buying and selling that is lawful by Allah is all forms of buying and selling, except those that have been expressly forbidden. Therefore, activities related to material transactions are basically allowed.

The ability to multi-contract which is based on the original legal principle of the contract is permissible and the law of multi-contract is qiyas, with the law of the contracts that build it, must pay attention to the religious provisions that limit it. This means that

even though multi-contracts are allowed, there are restrictions that should not be violated, because these limits are a sign for multi-contracts so as not to fall into the practice of muamalah which is prohibited. The boundaries as described in the previous section are the boundary lines for multi-contract practices that should not be crossed.

### **Principles of Sharia Financing**

The principles that must be implemented by Sharia Banks are:

1. The Principles of Al-Ta'awun

This principle is a principle to help each other and work together. In this case, Allah SWT commands His servants to do good to each other in doing good and piousness. As stated by Allah SWT in QS. Al-Maidah: 2.

2. The Principle of Avoiding Al-Iktinaz

This principle is in line with the function of money, which is not to let money idle and not to revolve in transactions. In the Islamic view, money is *a flow concept*, therefore it must revolve in the economy. In Islamic banking, it is strictly forbidden to make transactions if there are the following:

- a. *Gharar*, which is the existence of elements of uncertainty or deception in transactions
- b. *Maysir*, which is an element of gambling whose transactions are speculative which can cause losses for one party and profits for the other.
- c. *Riba*, a transaction that uses an interest system.

There are three basic values that differentiate the sharia economy from others, namely:

1. Adl

Adl (kedailan) is the most basic value in Islamic teachings. Upholding justice and eradicating tyranny were the main goals of His Apostles' treatises. Justice in general is a situation where there is equality of treatment in the eyes of the law, equality of compensation rights, the right to live properly, the right to enjoy development and the absence of disadvantaged parties and the existence of balance in every aspect of life.

2. Caliphate

Caliphate generally means responsibility. In general, the caliphate is the mandate and responsibility of humans for what has been empowered to them in the form of human attitudes and behaviors towards Allah SWT. Sesame and the universe.

3. Takaful

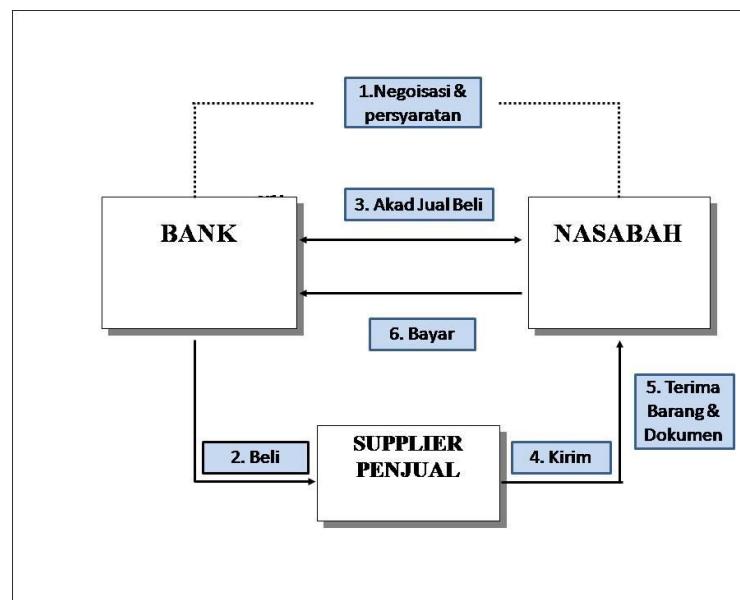
Responsible for cooperating and protecting each other. Efforts to protect each other among a number of people/parties.(Danang Wahyu Muhammad, 2014)

Sharia financing is a fund distribution activity carried out by Islamic financial institutions which is based on the principle of the prohibition of usury, Sharia Financing according to Law (UU) No. 21 of 2008 concerning Sharia Banking is the provision of money or bills that are equated with it based on an agreement or agreement between the Financial Institution and the financed party to return the money or bill after a certain period of time in exchange for profit sharing. Sharia financing must refer to the contract that has been issued by the National Sharia Council of the Indonesian Ulema Council (DSN MUI) or the Sharia Conformity Statement from DSN MUI.

Financing is allowed and prohibited in sharia. Based on the rules of ushul fiqh, the origin of muamalah is allowed until there is a prohibition. Financing is classified as muamalah worship which is basically allowed, so financing in Islam is allowed or halal by following the principles of Sharia principles, the fulfillment of the pillars and conditions in the contract. Meanwhile, what is prohibited is providing financing to businesses that contain haram goods (substances are haram), financing that contains ribawi taransakasi,

maysir (gambling), ghoror (uncertainty), tadlis (fraud), non-fulfillment of the principles and conditions in the contract, and taáluq.(Ridha Nugraha, 2024)Types of financing are based on murabahah, istishna, and salam. Murabahah is a sale and purchase contract by stating the acquisition price with profit (margin) agreed upon by the seller and the buyer. Istishna is the buying and selling of goods in the form of orders for the manufacture of goods with certain criteria and conditions agreed upon with payment in accordance with the agreement. While salam is the buying and selling of ordered goods (*muslam fiib*) with the suspension of delivery by the seller (*divine muslam*) and payment/repayment is made in advance.

Of the three types of financing mentioned, the author will discuss buying and selling financing (*murabahah*). The murabahah financing scheme is as follows:



The stages of the scheme are:

1. The bank and the customer negotiate for the purchase in accordance with the applicable conditions.
2. The bank buys the goods to suppliers or suppliers
3. A sale and purchase agreement occurs between the bank and the supplier
4. Then the supplier sends the goods that have been purchased by the Bank to the customer
5. Then the customer receives the goods and documents, then returns to the bank to pay according to the predetermined agreement.

The above scheme stages refer to the fatwa of DSN MUI No. 04 of 2000 concerning murabahah. The calculation of margin, namely the price in the sale and purchase contract (tsaman) must be stated definitively at the time of the contract, whether determined through bargaining, auction, or tender. Tsaman is the selling price in the sale and purchase contract in the form of plus the agreed profit. Price payments in Murabahah buying and selling can be done in cash, Tough, in stages/installments, and under certain conditions may be done by way of debt meeting in accordance with the agreement.(Ridha Nugraha, 2024)

## BSI OTO Financing at Bank Syariah Indonesia

Financing in Islamic banks uses murabahah contracts, where banks buy from suppliers and then resell them to customers with a predetermined margin and mutual agreement. BSI OTO financing is financing to buy a new motor vehicle with a murabahah system.

Linguistically, the term "akad" comes from the Arabic word "al-aqd", which means "alliance, agreement, and consensus", and the term "aqad" is the words "ijab" and "qabul" which are justified by the sharia' and stipulate the pleasure of both parties. Thus, an agreement is an agreement between two parties that has been mutually agreed. Abdulahanaa, "The Rules of Multi-Contract Validity," Trust Media Publishing 3 (2015): p. 33

In the Qur'anic verses, the word akad is found in QS. Al-Maidah verse 1:

يَأَيُّهَا الَّذِينَ إِيمَانُوكُمْ أَوْفُوا بِالْعَهْدِ إِذَا حَلَّتُ لَكُمْ بَهِيمَةُ الْأَنْعَمِ إِلَّا مَا يُنْهَا عَلَيْكُمْ غَيْرُ حُلْيَ الْصَّيْدِ وَأَشْمَ خُرُمٌ إِنَّ اللَّهَ يَعْلَمُ مَا تُرِيدُ

Meaning: "O you who believe, fulfill the contracts. It is lawful for you to keep cattle, except for those that will be recited to you (which is so) and do not make it lawful when you are performing Hajj. Indeed, Allah decrees the laws according to His will."

The meaning of the covenant mentioned in the verse includes the promise of the servant's prefidelity to Allah and the covenant made by man in association with his fellow man. According to the majority of scholars, the contract is the sutau of the alliance between ijab and qabul in a way that is justified by shari'i which stipulates the existence of legal consequences on the object.(ARIFIN and SH, 2021)

According to Law No. 21 of 2008, a contract is a written agreement between a Sharia Bank or UUS and other parties that contains rights and obligations for each party in accordance with Sharia Principles.(Indonesia, 2008)

There are three pillars of the contract, namely: the contractor, the object of the contract, the shigah or the statement of the contractor, namely ijab and qabul. While the conditions in the contract are four, namely, *in'iqod* is the condition for the occurrence of the akad, *shibah* is the condition for the validity of the contract, *nafadz*, is the condition for the realization of the akad, and the usual conditions.

Meanwhile, murabahah in language is taken from the word *ar-ribb* which means profit in business. The term fuqoha murabahah is selling goods at an initial price (purchase price) with additional known profits. Ibn Qudamah together with fuqoha Hambali defines murabahah as selling at the cost of capital coupled with a known profit, knowledge of the cost of capital is a requirement for it.(Mauliddiyah, 2021)

According to Ismail in the book Sharia Banking, a murabahah contract is a contract to buy and sell certain goods, where the seller states the purchase price of the goods to the buyer and then sells to the buyer by requiring the expected profit according to a certain amount. Murabahah is a certain form of buying and selling where the seller states the cost of acquiring the goods, including the price of the goods and other costs incurred to acquire the goods, and the desired level of profit (margin). According to the term fiqh, murabahah is selling goods at an initial price (purchase price) with additional known profits. In Law No. 21 of 2008 concerning Sharia Banking in the explanation of Article 19 paragraph (1) letter d, that a murabahah contract is a contract to finance an item by affirming its purchase price to the buyer and the buyer pays it at a price that is more like the agreed profit.(Indonesia, 2008)

Therefore, murabahah is a sale and purchase contract used in the context of financing by the Bank, where the Bank will buy the goods desired by the Customer from the original owner and pay the purchase price in cash to the original owner, then sell the

goods to the customer at a selling price equal to the purchase price of the original owner plus the profit margin for the Bank agreed by the parties within the agreed period.

Margin is the amount of profit that is the right of the parties as sellers for the transaction of buying and selling goods carried out and agreed with the customer and is the difference between the selling price and the cost of financing with the murabahah buying and selling scheme.

The flow of the motor vehicle financing process at Bank Syariah is that the Bank will first purchase the vehicle according to the specifications desired by the Customer from the original owner (dealer) in cash, then the Bank resells the vehicle to the Customer at a selling price equal to the purchase price of the original owner (dealer) plus the profit margin for the Bank, which is accompanied by a written agreement between the Bank and the Customer regarding the payment pattern and term financing. The financing term for motor vehicles when paid in installments is up to 5 years.

The Financial Services Authority (OJK) has established the following Standard for Sharia Banking Products for Murabahah Financing: (Sugiarto, 2016)

The standard of the object of murabahah financing and its ownership:

1. The object of Murabahah Financing must be goods, or goods combined with services, that meet the sharia principles regulated in Law Number 21 concerning Sharia Banking and have specifications clearly stated in the contract agreement.
2. The specifications of the clearly stated financing object include, but are not limited to:
  - a. Criteria for goods which include the nature, type and type of goods.
  - b. The quantity of goods that includes the quantity or unit of goods
  - c. The type of object that Murabahah transacts in packages (*jizaf*) and other related objects that become a unit.
3. Murabahah Financing Objects and business activities carried out using these financing objects must be avoided from properties that violate sharia principles such as:
  - a. Riba, Void increase in income due to the exchange of similar goods that are not of the same quality, quantity, and time of delivery (*riba fadhl*) or in a loan-borrowing transaction that requires the customer receiving the facility to return the funds received in excess of the loan principal due to the passage of time (*riba nasi'ah*).
  - b. Maysir, transactions that are dependent on an uncertain situation and have the probability of taking advantage of the losses of other parties.
  - c. Gharar, transactions using objects that are not clear, not owned, whose existence is unknown or cannot be handed over at the time the transaction is made.
  - d. Haram, both objects and transactions that are prohibited by sharia.
  - e. Tyranny, a transaction that causes injustice for a party.
  - f. Risyawah (bribe), a gift given to a person in order to obtain certain interests.
4. The Murabahah Financing Object must be owned by the Bank first. The concept of ownership by the Bank can be recognized based on valid evidence in principle and in accordance with sharia
5. The characteristic of the object of murabahah financing that has been owned in principle is that the object has clear specifications, is easy to identify, has value, has legal proof of ownership (deed of ownership), can be traded, and can be transferred ownership.
6. Murabahah financing objects can be in the form of *tangible assets* or *intangible assets*.

7. The tangible assets in question can be in the form of merchandise, production raw materials, property assets, heavy equipment and other similar assets.
8. Intangible assets can be in the form of trademarks, *logos*, *copyrights*, *patents*, reputations and other non-monetary assets as well as other similar intangible assets.
9. The Customer is required to submit all information related to the specifications of the Financing Object to be financed such as price, availability, location of goods and so on. Related to the above, the Bank is also authorized to conduct a separate assessment of the Financing Object to be financed.
10. The ownership of the Financing Object must be already in the seller's control either in physical control (*qabd haqiqi*) or constructive control (*qabd hukmi*).
11. The effective ownership of the Financing Object is when both parties enter into and agree to a valid contract of sale and purchase even though there is no requirement for legal proof of administration of ownership by the Bank (physical control). Ownership by the Bank is considered valid only with proof of transaction between the Bank and the Supplier (constructive control).
12. Ownership by the Customer is recognized after the Bank hands over the Financing Object to the Customer after the parties agree on the Murabahah contract.
13. As a result of the Customer's ownership of the Financing Object, all rights and obligations over the Financing Object are fully borne by the Customer.
14. As long as the customer does not have full access to the use of the Financing Object, the Bank is responsible for the losses and for the Financing Object
15. One Financing Object may not be used in multiple Murabahah contracts at the same time.
16. Multiple Financing Objects may not be used in a single Murabahah contract for the same parties at the same time.
17. The Customer does not have the right to exchange (*khijar*) for the Financing Object that is found to have defects at the time or after the contract is agreed
18. Regarding the above provisions, the Customer has the right to cancel the contract or continue the contract with or without additional conditions agreed in the contract.
19. Both parties agree on the exchange period of the defective Financing Object for a better Financing Object according to the customer's requested specifications
20. Both parties agree on the types of damage to the Financing Object that affect the right of exchange (*khijar*)
21. The Bank may postpone the recording of the customer's name on the Financing Object until an agreement is reached on the selling price from the Bank
22. The Bank will and must reject the Murabahah Financing request if the Customer and the Supplier have made an agreement requesting the Bank to provide funds credit in lieu of the exchange (sale and purchase) of goods.

In the practice of murabahah financing on motor vehicles that occurs in the field, customers apply for financing by making the RAB (Draft Budget) desired by the customer. After that, the bank will conduct a survey and verify to customers whether the financing application is approved or rejected.(Zulheti, 2023)

Then after the Bank approves, the financing contract is carried out, the guarantee is binding and the original guarantee handover letter, after the contract is made with the customer, the bank will disburse the financing funds by transferring them into the customer's account. After that, the bank will authorize the customer to buy goods that have been made by the customer in the RAB.(Al-Fajri, 2023)

In this practice, it turns out that there is a wakalah contract in the process. Where the customer becomes a bank representative to buy the desired goods from the dealer after getting the purchase money from the bank. Wakalah in murabahah financing according to OJK guidelines on Murabahah Product Guidelines. Wakalah is a contract of granting power of attorney from the power of attorney (*muwakki*) to the beneficiary (*representative*) to perform certain legal acts.

Murabahah practices like this are like credit transactions in conventional banking. Because the practice of murabahah contract is no longer pure like the concept of murabahah in fiqh. However, it is distorted so that it leads to the credit financing model in conventional banks, because customers are not bought goods but money. After the funds are realized, even the customer does not submit proof of receipt or information that the goods have been purchased, thus giving rise to two contracts in the transaction.

Therefore, that is where the engineering of the murabahah contract occurs, in a few interviews that the author did that at Bank Syariah Indonesia KCP Adisucipto also allows this practice, that customers who purchase the vehicle themselves with the Bank's permission using a power of attorney.

### **Legal Compliance of Sharia Banks for Financing Products in Applicable Regulations in Indonesia**

Islamic bank legal compliance is Islamic banking's compliance with Islamic law and related regulations. Compliance with sharia principles is an absolute requirement that must be met by financial institutions that implement sharia principles.(Dwiningsih, 2021)

Sharia compliance is important to increase public trust in Islamic financial institutions. Some things that need to be considered to ensure sharia compliance of Islamic banks include:

1. Appointing managers and leaders of the bank who master the principles of Islamic muamalah
2. Establish a Sharia Supervisory Board tasked with supervising bank operations
3. Improve the quality of DPS members.
4. Conduct strict supervision.

Islamic banks that violate sharia laws and principles will be subject to administrative sanctions, such as: written warnings or reprimands, fines, reduction in the Health Level of Islamic banks and UUS.

Islamic banking in Indonesia is regulated by several laws, including Law Number 7 of 1992 concerning Banking, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. Law Number 21 of 2008 concerning Sharia Banking, POJK Number 16/POJK.03/2022 concerning Sharia Commercial Banks.

According to Law Number 10 of 1998 concerning Banking. Islamic banks are financial institutions that carry out their business activities based on Islamic sharia principles. In general, the function of an Islamic bank is to collect funds, distribute funds to people in need, provide services in the form of Islamic banking services, carry out social functions in the form of the Baitul Mal Institution, namely receiving zakat, infaq, alms, grants or other social funds and distributing them to zakat management organizations.(Law of the Republic of Indonesia 1998)

Murabahah contract financing is regulated in Law Number 21 of 2008 concerning Sharia Banking. This law regulates the principles of sharia used in banking, including the principles of Islamic law which are based on the fatwa of the competent institution.

In addition, the financing of murabahah contracts is also regulated in the fatwa of DSN MUI No. 04/DSN-MUI/2000. This fatwa states that banks must purchase goods

needed by customers on behalf of the bank itself, and such purchases must be legal and free from usury.

The explanation of Article 19 paragraph (1) letter d of Law Number 21 of 2008 explains that: "What is meant by a murabahah contract is a contract for financing an item by affirming the purchase price to the buyer and the buyer pays it at a higher price as an agreed profit".

Based on the function of Islamic banking in Law Number 10 of 1998 concerning banking, Islamic banks deviate from their functions where there is no bank function of murabahah financing (buying and selling).

Based on the OJK Murabahah Financing Guidelines Standards and DSN-MUI fatwa No. 04/DSN-MUI/2000. The murabahah contract in BSI OTO financing is not in accordance with the fatwa. However, in practice, the murabahah contract in Islamic banking is not in accordance with the murabahah theory. Although it is possible to use the wakalah contract in its application, it is not in accordance with the fatwa in the implementation in the field. Because after the customer receives the money through transfer, the customer is not given the obligation to submit a receipt or information that the item has been purchased, so the certainty of the murabahah contract and also the wakalah attached to the murabahah financing product cannot be fulfilled properly.

In determining fatwas based on the pattern of multi-contracts, the National Sharia Council-Indonesian Ulema Council determines the multi-contract standar, as stated by Hasanudin that the practice of multi-contracts that violate the rules are as follows: (1) multi-contracts are prohibited because of religious reasons; (2) multi-contract as hiflah (engineering) of the practice of usury; (3) multi-contract with implications for falling into the practice of usury; and multi-contract consists of contract contracts whose legal consequences are contrary to each other or opposite.

Abdullah Saeed also said in his book "*Islamic Banking and Interest: A Study of Prohibition of Riba and its Contemporary Interpretation*", that he criticized the practice of murabahah financing in Islamic banking. He concluded that the practice of murabahah financing in Islamic banking is nothing more than an attempt to carry out covert usury, which he termed as an "interest-like" transaction, because it is not much different from the practice of interest in conventional banks. In fact, this "flower-like" practice or murabahah is permissible and even develops far beyond mudharabah or musharakah transactions.(Anas, 2020)

From the explanation above, the wakalah contract is carried out to outsmart murabahah in Sharia Banks. Because, the function of banks in Law No. 10 of 1998 is that banks only collect and distribute funds, no banks are allowed to buy and sell transactions or murabahah.

### **Murabahah Contract Financing from a Shariah Maqashid Perspective**

Murabahah financing is one of the main products in Islamic banking, which functions as a buying and sell-based financing mechanism. In the context of sharia maqashid, which focuses on the purposes and benefits of Islamic law, murabahah financing can be analyzed from various aspects to ensure that this practice not only complies with sharia principles, but also contributes to the well-being of society.

Maqashid sharia has several main objectives, including:(Saifullah and Muh. Nashirudin, 2024)

1. Safeguarding religion: ensuring that financial practices do not violate religious principles

2. Safeguarding the soul: promoting the economic well-being and security of individuals and communities
3. Keeping a mind: avoiding practices that can be detrimental to mental and intellectual health
4. Safeguarding offspring: ensuring that economic activity supports the clergy, and future generations
5. Safeguarding property: encouraging good and fair property management.

Murabahah financing, when implemented correctly, can help achieve this goal by providing fair and transparent financial access for the community.

Aspects of murabahah financing in the context of sharia maqashid, murabahah financing must meet several criteria:

1. Transparency: the financing process must be clear and transparent, including the disclosure of fees and profit margins charged by the bank
2. Fairness: financing should be provided without discrimination, providing equal opportunities to customers
3. Economic sustainability: murabahah financing must contribute to sustainable economic growth, especially for micro, small and medium enterprises (MSMEs).
4. Community empowerment: financing must support the economic empowerment of the community, such as in the development of local businesses or superior products.

Imam Syatibi is of the view that the main purpose of the sharia maqashid is to maintain and fight for five important things. The safeguarding in the sharia is known as kulliyat al-khasamah the five most important things. Which has been mentioned above. Motor vehicle financing can be categorized as daruriyyah (primary) if the customer really needs the vehicle to travel. It is categorized as hajjiyat (secondary) if the customer needs the vehicle but delays paying the installments. It is categorized as tahsiniyat (tertiary) if the financing of the motor vehicle is not a basic need in the customer's life. Therefore, if this motor vehicle financing is beneficial to the customer, it is allowed, but if there are more benefits, it is not recommended to take the financing.(Milhan, 2022)

## **CONCLUSION**

Based on the data above, the researcher can conclude that Islamic banks are in financing the procurement of motorized vehicles contained in BSI OTO products. This financing applies the murabahah contract in it, the contract is not in accordance with sharia and the DSN MUI Fatwa No. 04 of 2000 concerning Murabahah. In practice, in the field, not only murabahah contracts are used in the financing, but there is a wakalah contract. Which is the wakalah contract that occurs before the murabahah contract is carried out. The wakalah contract in this financing, where the customer becomes the bank's representative to buy a vehicle that is in accordance with the customer's order using a power of attorney from the bank. After this wakalah contract is running, the customer does not return to the bank to continue the murabahah contract. The wakalah contract is applied to outsmart the validity of the murabahah contract, therefore the contract engineering occurs which is the same as crediting in conventional banks. This is what makes the Muslim community think that Islamic banks are the same as conventional banks, only the difference is in terms of contract and name.

The public hopes that Islamic banks pay more attention to what happens in the field so that the Indonesian people think that Islamic banks are better and more beneficial to them. The author also hopes that the government, if it really wants to implement Islamic banking in accordance with sharia, then the government must be firm in running it both in

terms of regulations, practices and so on, so that Islamic banking exists correctly and appropriately in accordance with Islamic sharia, not only sharia that should not be sharia.

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